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Volume 41 | Number 1

Article 4

Winter 2-1-2018

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Recommended Citation

LAUREN TISDALE, *A Triumphant Victory for Gay Rights in Belize Lays the Foundation for a Domino Effect Throughout the Caribbean*, 41 Loy. L.A. Int'l & Comp. L. Rev. 99 (2018).

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A Triumphant Victory for Gay Rights in Belize Lays the Foundation for a Domino Effect Throughout the Caribbean

LAUREN TISDALE*

I. INTRODUCTION

Over the past decade, the gay rights movement has seen immense progress, particularly in North America, Western Europe, and Latin America. Social and legal reforms have developed beyond decriminalization to allow for equal civil rights for lesbian, gay, bisexual, transgender (“LGBT”) persons as well as legalization of same-sex sexual relations.¹ These progressive countries stand in stark contrast with the 72 remaining countries, which still have actively enforced laws that criminalize same-sex sexual acts.² Over half of these countries are former British Colonies, which inherited British “buggery” statutes in the 1800’s.³ These statutes criminalized acts “committed by carnal knowledge against the ordinance of the Creator, and order of nature, by mankind with mankind . . . or with brute beast.”⁴ During the age of exploration and discovery, these statutes were exported to British colonies and adopted locally, many with no modification even today.⁵

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1. Dinusha Panditaratne, *Decriminalizing Same Sex Relations in Asia: Sociocultural Factors Impeding Legal Reform*, 31 AM. U. INT’L L. REV. 171, 173 (2016).

2. AENGUS CARROLL, STATE SPONSORED HOMOPHOBIA: A WORLD SURVEY OF SEXUAL ORIENTATION LAWS 36 (11th ed. 2016).

3. HUMAN RIGHTS CONSORTIUM, UNIV. OF LONDON, HUMAN RIGHTS, SEXUAL ORIENTATION AND GENDER IDENTITY IN THE COMMONWEALTH: STRUGGLES FOR DECRIMINALIZATION AND CHANGE 14-16 (Corinne Lennox & Matthew Waites eds., 2013); Joshua Hepple, *Will Sexual Minorities Ever Be Equal? The Repercussions of British Colonial “Sodomy” Laws*, 8 THE EQUAL RTS. REV. 50, 52.

4. Alok Gupta, Human Rights Watch, *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism* 15 (2008).

5. *Id.* at 13-25.

Currently, ten out of thirteen former British colonies in the Caribbean still criminalize same-sex sexual activity.⁶ In a landmark decision in *Orozco v. Attorney General of Belize*, the Supreme Court of Belize determined section 53 of the Belize Criminal Code, which operated to criminalize same-sex sexual activity between two consenting male adults in private, was unconstitutional.⁷ The Court found the law violated an individual's constitutionally protected right to dignity, right to privacy, right to freedom of expression and right to equality and consequently ordered it to be amended.⁸

This comment takes the position that *Orozco v. Attorney General of Belize* will have a domino effect on the remaining Caribbean nations, which still have their anti-sodomy laws in effect, and should serve as a model for repealing them for future plaintiffs. Section II will first examine the origins of section 53 of Belize's criminal code and the influence of British culture during the colonial era in the Caribbean and its lasting impact. Section III will closely examine the case itself; the arguments put forth by both sides, the Court's holding and its reasoning. Section IV will analyze the systematic approach used by the Court to evaluate each of Orozco's claims ensuring a just decision, which comports with international laws and protections. Section V looks closely at other seminal international decisions which decriminalized same-sex sexual activity and showcases the proven framework for attacking a country's discriminatory laws and proving they are unconstitutional. Section VI argues that if future plaintiffs in the Caribbean adopt Orozco's legal strategy and demonstrate how their country's anti-sodomy laws infringe on their constitutional rights, and thus, have a detrimental effect on their day-to-day lives, their chances of success in overturning these laws are high. However, in order for any such ruling to lead to local acceptance and social change, the movement to bring such an action must have local roots and cannot be dominated by foreign entities. Feelings of neo-colonialism among Caribbean locals require that foreign entities act in conjunction with local efforts as opposed to taking a directive approach. Section VII concludes by recognizing that equality in the Caribbean may be a slow process, but it is happening and most importantly, it is happening organically which is the only way to ensure long term success.

6. Sexual Orientation and Gender Identity in The Commonwealth, *supra* note 3, at 20-22.

7. *Orozco v. The Attorney General of Belize*, Supreme Court Claim No. 668 of 2010 (2016).

8. *Id.*

II. LEGAL BACKGROUND

During the 15th and 16th centuries, European countries such as Spain and Portugal pioneered European exploration of the globe, a period commonly referred to as the Age of Discovery.⁹ Other European powers watched as these overseas empires generated great wealth which ultimately prompted England, France and the Netherlands to establish trade networks and colonies of their own in the Americas and Asia.¹⁰ In the early 1600's, the British established their first successful colonies in the Caribbean after multiple failed attempts.¹¹ British colonizers were quick to implement and mandate adherence to British common law in order to establish their dominance and protect themselves against the alien Caribbean peoples.¹² British laws were imposed undemocratically reflecting British Christian morality without regard for local order, values or cultural tradition.¹³ Colonizers also made a practice of exporting British cultural and religious values to each new colony to ensure their naval fleets would not be socially contaminated by their interactions with indigenous peoples.¹⁴ The proximity of the Caribbean to the equator made the British particularly wary because, according to British lore, heat promoted promiscuity and the potential for same-sex activity, of which prevention was a primary concern.¹⁵ This fear demanded strict implementation and adherence to anti-sodomy laws in particular.¹⁶ Buggery, at one point punishable by death, was commonly punished by life imprisonment or any term greater than ten years.¹⁷

This new social order, which propped colonizers above Caribbean locals, was instrumental as the slave trade began to develop and the Caribbean became the key ingredient for its success, and ultimately, the

9. *See generally* JEAN RUSSO, *PLANTING AN EMPIRE: THE EARLY CHESAPEAKE IN BRITISH NORTH AMERICA* (2012).

10. *See generally* NIALL FERGUSON, *EMPIRE: THE RISE AND DEMISE OF THE BRITISH WORLD ORDER AND THE LESSONS FOR GLOBAL POWER* (2004).

11. *See generally* NICHOLAS CANNY, *THE ORIGINS OF EMPIRE: THE OXFORD HISTORY OF THE BRITISH EMPIRE VOL. 1* (1998).

12. Charlene L. Smith & Ryan Kosobucki, *Homophobia in the Caribbean: Jamaica*, 1 J. L. & SOC. DEVIANCE 1, 12 (2011).

13. SEXUAL ORIENTATION AND GENDER IDENTITY IN THE COMMONWEALTH, *supra* note 3, at 15.

14. Smith & Kosobucki, *supra* note 12, at 12.

15. *Id.* at 16.

16. *Id.*

17. Orozco, *supra* note 7, at 5.

growth of capitalism.¹⁸ Those captured in Africa were taken to the Caribbean to provide much needed labor on British owned plantations.¹⁹ The imported slaves became the prevailing source for cheap labor which allowed the plantation owners to process and export the sugar on their newly acquired land.²⁰ By the mid-1700's, more than 300,000 slaves had been captured and brought to Jamaica alone.²¹ This solidified the concept of master-slave relations which became an inescapable part of Caribbean culture.²² Not only did racism permeate the newly developing culture, but the plantation elite defended ripping Africans from their homes and families to export them across the globe on the premise that their lives would be better outside of "barbaric Africa."²³ They asserted that "Africans were being liberated from an intolerable living situation" in an effort to legitimize the actions of the elite and subsequent subjugation of all non-whites.²⁴

The British continued living in accordance with their common law background; however, the rights and privileges granted by these laws did not extend to the slaves.²⁵ Instead, a Slave Code was passed in 1696 which evolved into a Code predominantly focused on preventing slave rebellions and ensuring that power stayed in the hands of the plantation owners.²⁶ These Codes prevented slaves from owning property or any sort of weapon and allowed slave owners to punish their slaves in any way they saw fit.²⁷ These punishments often amounted to what would unequivocally be considered torture today.²⁸

By the end of the 1700's, the abolitionist movement had impacted all of the major powers, particularly those with global empires.²⁹ In 1800, Congress passed the Slave Trade Act which abolished the importation of slaves to America.³⁰ Other countries began passing their own legislation

18. Smith & Kosobucki, *supra* note 12, at 17.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 17.

23. *Id.* at 17-18.

24. Smith & Kosobucki, *supra* note 12, at 18.

25. *Id.* at 19.

26. *Id.* at 20.

27. *Id.* at 21.

28. *Id.* at 21.

29. *Id.* at 22.

30. The Schomburg Ctr. for Research in Black Culture, *The Abolition of the Slave Trade*, N.Y. PUB. LIBR., http://abolition.nypl.org/essays/us_constitution/4/ (last visited Sept. 8, 2017).

to end slavery; and, in 1838, all slaves in the British colonies gained freedom.³¹ A majority of former slaves left the Caribbean, but those that stayed had the opportunity to become landowners.

Even after the Caribbean colonies gained independence, an overwhelming majority of the countries kept British laws in effect.³² The rigorous British legal infrastructure largely stayed in place to ensure that the freedom gained by revolution would not turn into chaos and lead to anarchy.³³ A hierarchy was established in order to ensure social order and heterosexual males became the leaders and made up the upper class.³⁴ “[N]aturalized heterosexuality shap[ed] the definitions of respectability, Black masculinity and nationalism.”³⁵

Many former slaves had turned to religion for support and answers when they were enslaved.³⁶ With the influence of the British, Christianity became the predominant religion and its ideals had an immense influence on local beliefs and understandings.³⁷ Thus, in addition to the British legal structure which stayed in place, Christianity remained a constant during these times of change which informed the pervasive belief throughout the Caribbean that homosexuality was immoral and akin to incest or adultery.³⁸

In Belize, British buggery law, which criminalized homosexual activity, was implemented in 1888, incorporated into their Criminal Code as section 53, and remained largely unchanged until 2016.³⁹ Section 53 was generally not enforced with jail time, however it was used to marginalize, harass and intimidate the gay community.⁴⁰ From 1997-2008, 43 cases of ‘unnatural crime’ were lodged in the Supreme Court of Belize; 32 of which were dismissed.⁴¹ While there has never been a prosecution on the basis of a violation of section 53 alone, men are arrested each year

31. Smith & Kosobucki, *supra* note 12, at 23-24.

32. SEXUAL ORIENTATION AND GENDER IDENTITY IN THE COMMONWEALTH, *supra* note 3, at 16.

33. Zoe Mintz, *Homophobia in the Caribbean: Anti-Sodomy Laws and Persecution, Being Gay is No Fun in the Islands*, INT’L BUS. TIMES (Aug. 9, 2013, 8:57 PM), <http://www.ibtimes.com/homophobia-caribbean-anti-sodomy-laws-persecution-being-gay-no-fun-is-lands-1377485>.

34. Smith & Kosobucki, *supra* note 12, at 26.

35. *Id.*

36. *Id.* at 29.

37. *Id.*

38. *Id.* at 28.

39. Orozco, *supra* note 7, at 6.

40. Mintz, *supra* note 35.

41. Orozco, *supra* note 7, at 17.

once it is revealed through an investigation that they have engaged in anal intercourse, irrespective of consent.⁴²

III. OROZCO V. ATTORNEY GENERAL OF BELIZE

Caleb Orozco is a Belizean national who has faced violence, persecution and discrimination since he came out to his family when he was fifteen years of age.⁴³ He is the Executive President of United Belize Advocacy Movement (UNIBAM), an organization dedicated to furthering LGBT rights and advocating on their behalf on human rights issues, as well as providing HIV/AIDS education and resources in his home country of Belize.⁴⁴ Orozco and UNIBAM, as joint claimants, brought this action to have section 53 of the Belize Criminal Code amended to clarify that persons in consensual, intimate relationships shall not be in violation of the law.⁴⁵ Section 53 previously read, "Every [p]erson who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years."⁴⁶ In its opinion, the Supreme Court of Belize recognized section 53 had never been judicially explored or clarified, noting a definitive definition of both "carnal knowledge" and "against the order of nature" did not exist.⁴⁷

Seven interested parties were granted permission to intervene in the proceedings. On the Claimant's side was The Commonwealth Lawyers Association (an entity concerned with the advancement of the rule of law in the Commonwealth and beyond), The Human Dignity Trust (a British non-governmental organization ("NGO") specializing in constitutional and international law), The International Commission of Jurists (an international human rights organization), and UNIBAM (Orozco's organization which was initially struck out as a claimant for lack of standing, but permitted to be added as an interested party).⁴⁸ On the Government's side was the Roman Catholic Church in Belize, the Belize Church of England Corporate Body, and the Belize Evangelical Association of Churches.⁴⁹

Initially, the Government argued that Orozco, like UNIBAM, did not have standing to bring the case in the first place because a Claimant must present evidence of fear of prosecution.⁵⁰ The Court determined,

42. *Id.* at 16.

43. *Id.* at 12.

44. *Id.*

45. *Id.* at 11, 34.

46. *Id.* at 2.

47. Orozco, *supra* note 7, at 7.

48. *Id.* at 9-11.

49. *Id.* at 10.

50. *Id.* at 18.

however, that based on Orozco's first affidavit, in which he admits he is a homosexual male who engages in consensual homosexual activity in private, "he perpetually runs the risk of being prosecuted" and thus had standing.⁵¹ The Court then proceeded by acknowledging the prevalent and unavoidable moral issues in the case, and reaffirmed its commitment to preserving the Constitution while stressing the Court's predominant role as the guardian of those rights guaranteed under the Constitution.⁵²

The Court next examined the precise language of the Constitution and the evidence presented by both sides to evaluate whether Orozco's claims demonstrated a violation of those guarantees.⁵³ Orozco claimed section 53 violated his fundamental right to dignity by "stigmatizing him as being a criminal by virtue of being a homosexual; and categorizing consensual male homosexual acts in private with forced intercourse, sex with minors and sex with animals."⁵⁴

The Court cited with approval *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, a constitutional rights case from South Africa.⁵⁵ This case was initiated by a coalition representing a broad range of South African LGBT organizations against the Minister of Justice, the national minister responsible for governing criminal law.⁵⁶ The High Court of South Africa declared the offense of sodomy to be invalid and unconstitutional because it criminalized an act between men that would not be a crime between a man and a woman, which amounted to unfair discrimination both in terms of gender and sexual orientation.⁵⁷ This judgment was then confirmed by the Constitutional Court, as is necessary under South African law when acts of Parliament are declared unconstitutional. The Constitutional Court reasoned the classification of sodomy as a criminal offense was unconstitutional because a law that punishes a form of sexual expression for gay men devalues their place in society, and thereby violates their right to human dignity.⁵⁸

The Supreme Court of Belize acknowledged the similarities between the two claimants' experiences and arguments and ultimately

51. *Id.* at 19.

52. *Id.* at 22.

53. *Id.* at 23-37.

54. Orozco, *supra* note 7, at 26.

55. *Id.*

56. *Nat'l Coal. for Gay and Lesbian Equal. v. Minister of Justice* 1999 (1) SA 6 (CC) (S. Afr.).

57. *Id.* at 2-3.

58. *Id.* at 30.

adopted the reasoning of the Constitutional Court.⁵⁹ Thus, it was determined that section 53 was in breach of Orozco's right to human dignity and in violation of the Constitution.⁶⁰

The Court evaluated Orozco's second claim: section 53 violated his right to personal privacy.⁶¹ Under the Constitution, the right to privacy is tempered by a clause which limits this free-standing right when claims related to public health, public order and public morality are at issue.⁶² The Government argued that because Belize is a deeply religious country, founded upon strong Christian values, the public morality limitation was applicable.⁶³ The Court acknowledged that while that may be the sentiment of the majority of Belizeans, it summarized its stance when it adopted the language of a South African Constitutional Court in *State of Makwanyana* which held, "public opinion may have some relevance to the enquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold the provisions without fear or favour."⁶⁴

The Government also argued the public health limitation warranted application as the spread of HIV/AIDS is a legitimate concern.⁶⁵ The Court evaluated the evidence provided by public health practitioners on both sides and determined that section 53 hindered rather than promoted testing, diagnosis and treatment for HIV/AIDS.⁶⁶ Thus, the Court found the government's argument wholly unpersuasive and concluded a plain reading of the Constitution demonstrated section 53 violated Orozco's fundamental right to privacy.⁶⁷

Without need for much analysis, the Court easily determined the right to freedom of expression was irrefutably violated by criminalizing consensual private sexual activities between adults of the same sex because one could be prosecuted simply for expressing his preference or orientation.⁶⁸ Recognizing that freedom of expression is one of the fundamental pillars of a democratic society, the Court deemed it clear that Orozco's constitutional right had been infringed.⁶⁹

59. Orozco, *supra* note 7, at 27.

60. *Id.*

61. *Id.*

62. *Id.* at 27-28.

63. *Id.* at 28-29.

64. *Id.* at 32.

65. Orozco, *supra* note 7, at 29.

66. *Id.*

67. *Id.* at 33.

68. *Id.* at 34.

69. *Id.*

Lastly, the Court evaluated Orozco's final claim that section 53 violated his right to equality.⁷⁰ The Court found Orozco had adequately established he had been discriminated against on the basis of his sexual orientation, and that this amounted to "an ongoing violation of his rights."⁷¹ His affidavit describing threats of violence, violent acts committed against him, and derogatory statements from civilians and police officers alike was more than enough to demonstrate the unequal and hostile treatment he had experienced for years.⁷² Additionally, the Court concluded the language of section 53 itself was discriminatory as it explicitly criminalized same-sex sexual activity between men without considering consent or whether women were also subject to section 53.⁷³

The Court ultimately declared that section 53 violated four fundamental constitutional rights and mandated an amendment to the rule reading: "This section shall not apply to consensual sexual acts between adults in private."⁷⁴

IV. THE SYSTEMATIC APPROACH USED BY THE COURT TO EVALUATE OROZCO'S CLAIMS LED TO THE CORRECT DECISION

The Court methodically examined the language of the Constitution, the evidence presented by Orozco and the Government, the veracity of the arguments presented by each side, and relevant international laws and decisions, which allowed the Court to come to the correct and just decision. As an initial matter, the Court properly dismissed the Government's assertion that Orozco did not have standing to bring the suit. The Government argued that in order to have standing, Orozco must not only prove "that he is a homosexual, but also that he is likely to be prosecuted."⁷⁵ The Court relied on the reasoning of the European Court of Human Rights ("ECHR") in *Dudgeon v. United Kingdom*, a groundbreaking case that established the right to private, same-sex behavior between adults in Northern Ireland.⁷⁶ Dudgeon was a gay activist living in Northern Ireland that filed a complaint after being interrogated about his private sexual activities by the police.⁷⁷ The ECHR in *Dudgeon* held that criminalizing homosexual conduct in private by consenting males over 21 constituted "an unjustified interference with [a person's] right to respect for

70. *Id.* at 36.

71. Orozco, *supra* note 7, at 36.

72. *Id.*

73. *Id.* at 35.

74. *Id.* at 37.

75. *Id.* at 18.

76. *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser. A) (1981).

77. *Id.* at 11.

his private life” in contravention of Article 8 of the *European Convention on Human Rights*.⁷⁸ Article 8 reads in relevant part, “Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary...in the interests of national security, public safety or ...economic wellbeing.”⁷⁹ The court reasoned that the existence of the legislation made the plaintiff persistently vulnerable to prosecution, which was enough to demonstrate that it directly affected his private life.⁸⁰

The Supreme Court of Belize concluded Orozco had standing by virtue of his sexual orientation and the existence of section 53, which put him at perpetual risk of prosecution.⁸¹ The Court was correct not only to adopt a broad interpretation of fear of prosecution in order to proceed to the merits of the case, but also in aligning its reasoning with international human rights bodies to ensure Belize did not uphold a challenged law in contravention with widely accepted international human rights.

The Court proceeded systematically through an examination of each constitutional right Orozco claimed was infringed upon by section 53. The Court’s unbiased, disciplined application of facts to law allowed it to evaluate the merits of each claim and arrive at the correct holding. The amendment to section 53 modernized the law in Belize and brought it within the purview of international human rights.⁸² Article 19 of the *Universal Declaration of Human Rights* states in relevant part, “everyone has the right to freedom of opinion and expression.”⁸³ Section 53, in its prior reading, was in direct conflict with this guaranteed internationally mandated right. Prior to its amendment, section 53 impinged upon the freedom of expression because if a homosexual male was to express his sexual preference or orientation, he would be exposing himself to potential arrest or prosecution. Additionally, the very existence of section 53 interfered with the private lives of homosexual men who had to choose whether they would respect the law and refrain from engaging in consensual sexual activity in the privacy of their own home, or commit the act

78. *Id.* at 20.

79. European Convention on Human Rights, Art. 8. (1950).

80. *Dudgeon*, 45 Eur. Ct. H.R., *supra* note 78, at 20.

81. *Orozco supra* note 7, at 19.

82. *Id.* at 37.

83. Universal Declaration of Human Rights, art. 19., G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

and become liable to criminal prosecution.⁸⁴ This too was in direct opposition with Article 8 of the ECHR which guarantees a right to privacy without interference by a public authority without good reason.⁸⁵

The clarifying amendment by the Supreme Court of Belize was necessary to ensure homosexual males were not only receiving the benefit of their constitutional rights but also those guaranteed by international human rights law.

V. THIS CASE SETS THE STAGE FOR ADOPTION OF THE COURT'S DECISION BY THE REST OF THE CARIBBEAN COUNTRIES WHICH STILL HAVE THEIR ANTI-SODOMY LAWS IN PLACE

The legal strategy employed by Orozco and plaintiffs in earlier international cases provides a proven model for overturning discriminatory anti-sodomy laws. When plaintiffs attack their country's laws by demonstrating how they infringe on their constitutional rights, they experience a high rate of success.⁸⁶ The Supreme Court of Belize relied on many seminal international decisions when reaching their decision. Orozco structured his arguments in a similar fashion as previous successful plaintiffs had, which made the prior decisions highly persuasive and relevant to the Court's analysis.

Toonen v. Australia was decided in 1994 by the Human Rights Committee.⁸⁷ Nicholas Toonen was an Australian gay rights activist living in Tasmania.⁸⁸ He claimed the Tasmanian Criminal Code, which criminalized all private sexual activity between consenting men, infringed on Articles 2, 17, and 26 of the International Convention on Civil and Political Rights ("ICCPR").⁸⁹ These articles respectively hold:

2. Each State party undertakes to respect and to ensure to all individuals subject to its jurisdiction the rights recognized by the Covenant without distinction of any kind such as race, colour, sex, language, religion, political or other status... Each State Party to the present covenant undertakes to ensure any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

84. *Orozco*, at 13.

85. Eur. Convention on Human Rights, *supra* note 81.

86. *See generally Orozco*.

87. *Toonan v. Aust.*, Comm'n No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (Nov. 5, 1992).

88. *Id.*

89. *Id.*

17. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law...the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.⁹⁰

The Committee rejected the State’s argument that the challenged laws were supported on public health and moral grounds in order to prevent the spread of HIV/AIDS, noting that studies have shown criminalization of homosexual activity in fact “drives underground many of the people at risk of infection” which ultimately aggravates the risk of spread.⁹¹ The Committee determined the criminal code did interfere with the ICCPR and Toonan’s right to privacy, directly and continuously by the code’s existence, even though it had not been enforced for a decade.⁹² Accordingly the Committee ordered the law to be repealed.⁹³

In 2003, the Supreme Court of the United States decided *Lawrence v. Texas*, in which two men were arrested and convicted when police responded to a call and found them engaging in sexual activity.⁹⁴ The Court evaluated whether a Texas statute that criminalizes same-sex sexual activity violates a homosexual’s right to liberty and privacy which are protected freedoms under the Constitution.⁹⁵ The Texas Penal Code §21.06(a) provides: “A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.”⁹⁶

The Supreme Court decided *Bowers v. Hardwick* seventeen years prior which, in a 5-4 ruling, held the Constitution did not extend protection against a state law that criminalized same-sex sexual activity.⁹⁷ *Lawrence* proved to be a landmark decision which overturned *Bowers* in a 6-3 ruling and held homosexuals do have a “right to liberty under the Due Process Clause [which] gives them the full right to engage in their conduct without intervention of the government.”⁹⁸ The Court reasoned that the State did not put forth any legitimate reason to justify the intrusion

90. International Covenant on Civil and Political Rights, art. 2, 17 & 26, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

91. *Toonan*, *supra* note 89.

92. *Id.*

93. *Id.*

94. *Lawrence v. Texas*, 539 U.S. 559 (2003).

95. *Id.* at 564.

96. *Id.* at 563.

97. *Bowers v. Hardwick*, 478 U.S. 186 (1986).

98. *Lawrence*, 539 U.S. at 560.

into people's private lives, and because the case involved two adults engaging in consensual sexual activity in private, they were entitled to respect and protection for their private activity under the Constitution.⁹⁹

Two years later in *McCoskar v. The State*, McCoskar, an Australian man, stayed with a Fijian man while on vacation in Fiji.¹⁰⁰ The two adult males were criminally charged in Fiji after admitting to police they engaged in consensual same-sex activity and were subsequently sentenced to two years' imprisonment.¹⁰¹ The plaintiffs argued sections 175(a) and (c) and 177 of the Fijian Penal Code should be invalid because they breached the constitutionally guaranteed "rights of privacy, equality and freedom from degrading treatment."¹⁰² These sections hold:

175: Any person who has carnal knowledge of any person against the order of nature; or... permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony, and is liable to imprisonment for fourteen years with or without corporal punishment.

177: Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him ... is guilty of a felony, and is liable to imprisonment for five years, with or without corporal punishment.¹⁰³

The Court looked at the reasoning behind other international decisions such as *Dudgeon v. United Kingdom*, *Toonen v. Australia*, and *Lawrence v. Texas* and ultimately held the sections of the penal code at issue were invalid for their opposition with rights guaranteed by the Constitution.¹⁰⁴ The Court adopted a broad construction of privacy consistent with international law and recognized the right to same-sex sexual activity between consenting adults as fundamental to an open, democratic society.¹⁰⁵

By employing a legal strategy similar to the above plaintiffs, Orozco allowed the Court to utilize persuasive precedent, which it ultimately agreed with and relied on. Plaintiffs who specifically articulate which constitutional rights are being infringed and demonstrate how their lives are being directly affected experience a significant rate of success.¹⁰⁶ In

99. *Id.* at 578.

100. *McCoskar v. The State*, [2005] F.J.H.C. 500 (Fiji).

101. *Id.* at 2.

102. *Id.*

103. *Id.* at 4.

104. *Id.* at 14.

105. *Id.* at 10.

106. Paul W. Hughes, *Not a Failed Experiment: Wilson-Saucier Sequencing and the Articulation of Constitutional Rights*, 80 U. COLO. L. REV. 401, 429 (2009).

contrast, the Caribbean Court of Justice was unpersuaded by a plaintiff's arguments in *Tomlinson v. the State of Belize and the State of Trinidad and Tobago*. Tomlinson is a well-known LGBT activist who is a Jamaican national.¹⁰⁷ He sued the states of Belize and Trinidad and Tobago because they both had immigration acts which, he argued, sought to prohibit homosexuals from entering the two states.¹⁰⁸ He asserted that the existence of these laws prejudiced the exercise of his right to free movement.¹⁰⁹ However, his argument failed because he was unable to show he had ever been or would be in danger of being prejudiced by the existence of the provisions.¹¹⁰ The Court held that because each state is legally required to admit homosexual nationals based on Article 9 of the *Revised Treaty of Chaguaramas*, he did not have a legitimate concern that the States would not respect his rights and prevent his entrance into the country.¹¹¹ Article 9 states, "Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of this Treaty."¹¹²

The court found that the protections extended to all parties to the treaty prevailed over individual state immigration acts. Section 5(1)(e) of the Immigration Act of Belize prohibits "any prostitute or homosexual or any person who may be living on or receiving or may have been living on or receiving the proceeds of prostitution or homosexual behaviour" from entering the state.¹¹³ However, the State of Belize successfully argued that it only banned homosexuals from entering who sought financial gain, either by offering sexual services or profiting from those performed by others.¹¹⁴ The Court recognized that while this interpretation was not clear from the statute's language, it could not ignore the actions of the state, which had never prevented a homosexual from entering simply on the basis of suspected sexual orientation.¹¹⁵

107. *Tomlinson v. The State of Belize and the State of Trinidad & Tobago*, CCJ Application No. OA [2016] CCJ2 (Caribbean).

108. *Id.* at 2.

109. *Id.* at 12.

110. *Id.* at 38.

111. *Id.* at 63.

112. *Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Caricom Single Market and Economy* art. 9, July 5, 2001 [hereinafter *Revised Treaty of Chaguaramas*].

113. Immigration Act of Belize § 5(1)(e) (2000).

114. *CCJ Dismisses Gay Rights Activist's Case*, CARICOM TODAY (June 10, 2016), <http://today.caricom.org/2016/06/10/ccj-dismisses-gay-rights-activists-case/>.

115. *Tomlinson*, at 2-5.

The same line of reasoning and conclusion applied to Tomlinson's complaint against Trinidad and Tobago. Section 8 of the Immigration Act of Trinidad and Tobago provides:

"Entry into Trinidad and Tobago... is prohibited... [for] prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected as coming to Trinidad and Tobago for these or any other immoral purposes."¹¹⁶

While this law would seem to indisputably prohibit the entrance of all homosexuals into the country, the court placed significantly more importance on the actions taken by the state than whether or not there was "a real or apparent contradictory provision" in both states' Immigration Acts.¹¹⁷

Tomlinson was unable to present a compelling enough argument in the way Orozco, Lawrence and other plaintiffs had because he did not demonstrate to the Court the effect this rule had on his day-to-day life or provide evidence of how it infringed on his guaranteed freedoms. Therefore, future plaintiffs should adopt the model used by Orozco and other successful plaintiffs for the greatest chance of success. By identifying exactly which fundamental rights are affected and showing a court how the law has an impact on their everyday lives, plaintiffs are better able to present compelling, logical arguments which make it easier for the court to rely on international precedent and rule in their favor.

VI. THIS CASE HAS THE POWER TO LEAD TO SYSTEMIC CHANGE
THROUGHOUT THE CARIBBEAN, SO LONG AS FOREIGN ENTITIES ALLOW
THE LGBT MOVEMENT TO DEVELOP ORGANICALLY WITHOUT MAKING IT
FEEL EXPORTED

Much of the world has not only decriminalized same-sex sexual behavior, but has moved toward social and even legal acceptance of the LGBT community.¹¹⁸ The Netherlands was the first country to legalize same-sex marriage in 2001.¹¹⁹ Since then, nineteen other countries have effectively legalized same-sex marriage and the twentieth, Finland, has

116. *Id.* at 11.

117. *Id.*; *CCJ Dismisses Maurice Tomlinson Immigration Case*, PLUS TV BELIZE (June 13, 2016), <http://www.plustvbelize.com/ccj-dismisses-maurice-tomlinson-immigration-case/>; *see also CCJ Dismisses Maurice Tomlinson's Immigration Case*, CHANNEL 5 BELIZE (June 10, 2016), <http://edition.channel5belize.com/archives/130389>.

118. Panditaratne, *supra* note 1, at 173.

119. *Gay Marriage Around the World*, BBC NEWS (Apr. 23, 2013), <http://www.bbc.com/news/world-21321731>.

passed legislation that will become effective in 2017.¹²⁰ In 2015, the United States Supreme Court declared the ban on same-sex marriage unconstitutional in the landmark decision *Obergefell v. Hodges*.¹²¹ This case was taken by the Supreme Court to resolve a circuit split as to the constitutionality of state laws which denied marriage rights to same-sex couples.¹²² In taking this case, the Court consolidated four lower court cases in order to provide one coherent answer.¹²³ The Court held that same-sex marriage bans violated the Due Process Clause as well as the Equal Protection Clause of the Constitution and reasoned that the liberty and equality of same-sex couples had been greatly burdened.¹²⁴ Now, all states are required to issue marriage licenses to same-sex couples and recognize valid same-sex marriages performed in other jurisdictions.¹²⁵

Unsurprisingly, the impact of this decision was felt globally.¹²⁶ When *Obergefell* was decided, there was a marriage equality case pending before the Colombian Constitutional Court.¹²⁷ In April of 2016, Colombia became the fourth Latin American nation to extend marriage rights to same-sex couples.¹²⁸ The outcome of this case was not a huge surprise as the Constitutional Court had not only ruled in 2008 that same-sex couples are entitled to all the same property and pension rights as married heterosexual couples, but in 2011, the Court held that same-sex couples had a right to marry and gave Congress two years to pass legislation reflecting this decision.¹²⁹ Congress did not pass the bill within the given time frame, so the Court began approving marriages itself until it ruled for a second time that same-sex couples had a right to marry in Colombia.¹³⁰

120. *Marriage Equality*, LGBTQ NATION (June 26, 2015), <http://www.lgbtqnation.com/tag/gay-marriage/>.

121. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2588 (2015).

122. Lyle Denniston, *Court will rule on same-sex marriage*, SCOTUS BLOG (Jan. 15, 2015), <http://www.scotusblog.com/2015/01/court-will-rule-on-same-sex-marriage/>.

123. *Id.*

124. *Obergefell*, 135 S. Ct. at 2590-91.

125. *Id.* at 2591.

126. J. Lester Feder, *Will Supreme Court Ruling Put LGBT Rights At the Heart of The U.S. Global Human Rights Push?*, BUZZFEED NEWS (Jun. 29, 2015 6:58 AM), https://www.buzzfeed.com/lesterfeder/will-supreme-court-ruling-put-lgbt-rights-at-the-heart-of-th?utm_term=.moq70403R#.hl2ZNNYx.

127. *Id.*

128. Sunnive Brydum, *Marriage Equality Comes to Colombia*, ADVOCATE (Apr. 7, 2016 3:16 PM), <http://www.advocate.com/world/2016/4/07/marriage-equality-comes-colombia>.

129. *Id.*

130. J. Lester Feder, *First Same Sex Couple Wins Marriage Suit in Colombia*, BUZZFEED NEWS (July 12, 2013), https://www.buzzfeed.com/lesterfeder/same-sex-couples-in-colombia-could-start-marrying-9a7s?utm_term=.kjbW1gAM8o#.wuGmyewKJB.

Today, only one major European Union power has yet to legalize same-sex marriage: Germany.¹³¹ While no Caribbean nations have gone so far as to legalize same-sex marriage, in recent years, Caribbean parliaments have seen calls from citizens and other parliamentarians requesting they begin acknowledging that LGBT people are a part of the Caribbean and should be protected by their laws.¹³² The only Caribbean nations which recognize (but do not grant) same-sex marriage are Aruba, Curaçao and Saint Maarten, which are all part of the Kingdom of the Netherlands as constituent countries.¹³³ Accordingly, these nations are obliged to recognize valid same-sex marriages registered in the Netherlands even though same-sex couples cannot legally marry there.¹³⁴

Local change is starting to take root in the Caribbean thanks to brave activists and litigants, like Orozco, who put their safety on the line to fight for equality.¹³⁵ A spotlight was thrust upon Jamaica in 2006 when Time magazine published an article dubbing the island “the most homophobic place on earth.”¹³⁶ The article profiled a Jamaican man, only willing to reveal his first name, Brian, who had been attacked and left blind in one eye after being beaten by a well known Jamaican reggae star Buju Banton and five other men.¹³⁷ Banton made a name for himself through his popular song “Boom Bye Bye” which calls for the death of gays.¹³⁸ Violent, homophobic dancehall music is commonplace in Jamaica and Banton is not alone in his vicious lyrics.¹³⁹ This hate-filled music justifies the dehumanization, torture and murder of many homosexual men within Jamaica

131. Feder, *supra* note 128 (At the time of publication of Feder’s article, neither Germany nor Italy had legalized same sex marriage. However, same sex marriage was legalized in Italy in 2016, leaving Germany as the only member of Western Europe without marriage equality).

132. Smith & Kosobucki, *supra* note 12, at 50.

133. *New Constitutional Order*, GOV’T OF THE NETH., <https://www.government.nl/topics/caribbean-parts-of-the-kingdom/contents/new-constitutional-order> (last visited Sept. 8, 2017); Joe Pike, *Where Same-Sex Couples Can Get Married Legally in the Caribbean*, TRAVEL AGENT CENTRAL (Dec. 3, 2015, 1:00 AM), <http://www.travelagentcentral.com/destinations/where-same-sex-couples-can-get-married-legally-caribbean>.

134. Peter Prengaman, *Arubans, Dutch Differ on Gay Marriage*, WASH. POST (Aug. 28, 2005), https://www.washingtonpost.com/archive/politics/2005/08/28/arubans-dutch-differ-on-gay-marriage/8ae125de-738c-4490-b523-8c61e0e8b605/?utm_term=.6a3f57435ada.

135. Javier Corrales & Cameron Combs, *Christian and LGBT Groups Have Brought the Battle for Gay Rights to the Caribbean*, THE ATLANTIC (June 27, 2013), <http://www.theatlantic.com/international/archive/2013/06/christian-and-lgbt-groups-have-brought-the-battle-for-gay-rights-to-the-caribbean/277280/>.

136. Tim Padgett, *The Most Homophobic Place on Earth*, TIME (Apr. 12, 2006), <http://content.time.com/time/world/article/0,8599,1182991,00.html>.

137. *Id.*

138. *Id.*

139. *Id.*

and feeds into a culture of intolerance, violence and immense fear.¹⁴⁰ Part of the motivation to have Jamaica amend their laws to no longer criminalize same-sex sexual activity is that the Jamaican press publishes the names of men charged under these criminal provisions, which without question puts their lives at risk.¹⁴¹ “Two of [Jamaica’s] most prominent gay activists ... [were] murdered – and a crowd even celebrated over [one’s] mutilated body.”¹⁴² There are countless reports of mobs attacking “batty boys” which is what Jamaicans refer to gay men as.¹⁴³ Notably, two American CBS News producers were hospitalized and had to be airlifted to Miami after suffering through a vicious mob attack while on vacation in St. Martin.¹⁴⁴

Public shaming “perpetuates a climate of sanctioned harassment that carries the force of law” which in turn emboldens police officers to extort and intimidate gays to pay them off with bribes or essentially whatever they want.¹⁴⁵ Thus, in order to survive such a hostile environment, silence is key. As long as gay men do not draw much attention to themselves and attempt to live under the radar, they have a chance of keeping out of harms way.¹⁴⁶ A common tactic involves going to “Hooters-like” establishments with other straight men to blend in and maintain a straight façade.¹⁴⁷

While the hostility in Jamaica is as horrific as it gets, it takes great courage on any of the islands to take a public stance on homosexual equality, let alone file a lawsuit. Orozco’s attorney expressed concern at the beginning of the trial about including additional plaintiffs after Orozco suffered through extensive hate mail, videos and a home invasion.¹⁴⁸ News of these lawsuits travels quickly, and historically it has not taken much time after filing before large established international human rights organizations rally behind local Commonwealth organizations, such as UNIBAM, in their efforts to decriminalize same-sex sexual activity.¹⁴⁹ Human Dignity Trust, for example, is a UK organization which defines itself as a global network of international lawyers and law firms

140. Smith & Kosobucki, *supra* note 12, at 39.

141. Camille A. Nelson, *Lyrical Assault: Dancehall Versus the Cultural Imperialism of the North-West*, 17 S. CAL. INTERDISC. L. J. 231, 260 (2008).

142. Padgett, *supra* note 138.

143. *Id.*

144. *Id.*

145. Nelson, *supra* note 143, at 260.

146. Mintz, *supra* note 35.

147. *Id.*

148. *Id.*

149. SEXUAL ORIENTATION AND GENDER IDENTITY IN THE COMMONWEALTH, *supra* note 3, at 38.

dedicated to decriminalizing homosexuality by offering their support, resources and expertise to local lawyers, organizations and activists.¹⁵⁰ The rise of Human Dignity Trust and similar organizations marks the beginning of a collective fight for homosexual rights, which provides necessary resources and help for local activists. However, these organizations must proceed with some caution because the intervention of transnational NGOs has generated backlash domestically and raised accusations of cultural imperialism and neocolonialism.¹⁵¹

Human Dignity Trust announced its involvement in Orozco's case in a UK newspaper, which received harsh criticism in Belize because the article did not make it clear that the case had already been initiated by Belizean lawyers with a legal strategy developed by a local organization.¹⁵² A Caribbean activist wrote in response to the article, "It's a classic example of how Global North journalism frames all of us as invisible victims with no agency."¹⁵³ While many local LGBT activists recognize the value of outside intervention, the importance of working *with* local activists as active contributors instead of taking a superior or authoritative role cannot be stressed enough.¹⁵⁴

Part of the resistance to foreign intervention is the result of a local belief that Caribbean nationals must adopt the same framework for understanding LGBT issues as the North and West.¹⁵⁵ Critics have identified "an attempt to re-write the human rights culture in the image of the interveners."¹⁵⁶ Interestingly, however, before the British colonized the Caribbean and imposed their Christian morals and beliefs on the islands, Akan was a common religion, particularly in Jamaica, in which patrons recognized and worshipped a bi-sexual deity.¹⁵⁷ After the Caribbean had been "indoctrinated by the colonizer's religious and political systems, one can safely make the claim that much of the homophobia within [Caribbean] culture is a direct result of British colonization."¹⁵⁸ Prior to British influence and the common law regime, vehement hatred and disapproval

150. *Id.* at 39.

151. Christopher McCrudden & William W. Cook, *Transnational Culture Wars*, 13 INT'L J. CONST. L. 33 (2015).

152. SEXUAL ORIENTATION AND GENDER IDENTITY IN THE COMMONWEALTH, *supra* note 3, at 41-42.

153. *Id.*

154. *Id.* at 42.

155. Nelson, *supra* note 143, at 249-50.

156. McCrudden & Cook, *supra* note 153, at 34.

157. Smith & Kosobucki, *supra* note 12, at 33-34.

158. *Id.* at 35.

of homosexual activity was not an issue in the Caribbean until the introduction of buggery laws.¹⁵⁹

Throughout the Caribbean today, remnants of colonialism are denounced and efforts are made to differentiate between indigenous culture and that which has been influenced by former colonizers.¹⁶⁰ Along the way, the concept of indigenous homosexuality has been essentially erased leaving instead a concept of “colonial contamination” to be associated with homosexuality.¹⁶¹ Thus, to many, homosexuality is a foreign and imposed concept. This sentiment is hammered home by local and foreign religious groups who are determined to keep anti-sodomy legislation in the Caribbean.¹⁶²

As United States based conservative religious groups began losing the homosexual rights debate at home, they spearheaded the interventionist movement in religious litigation abroad.¹⁶³ In Belize, the most prominent advocate for maintaining section 53 was an American who founded Belize Action, a religious group and the main organization which opposed the effort to decriminalize sodomy.¹⁶⁴ While American conservative groups see themselves as defending biblical values, their efforts actually feed prejudice and promote anti-homosexual legislation.¹⁶⁵ These groups have managed to cloak their own prevalent interventionism and self-serving motives through a hyper-nationalist position in which they denounce international LGBT groups for importing their foreign models and ideals and imposing them upon the islands.¹⁶⁶ For example, advertisements in Belize claimed Orozco’s case was an example of “moral decadence” being thrust on Belize by then President Barack Obama.¹⁶⁷ These claims and admonishments are spread during sermons which then trickle down into people’s day-to-day conversations amongst themselves.¹⁶⁸

Local conservative groups opposed to homosexual rights have intentionally diverted attention on the debate about homosexual rights to one about neocolonialism.¹⁶⁹ Interestingly, however, these same local

159. *Id.*

160. Nelson *supra* note 143, at 258.

161. *Id.* at 260.

162. *Id.*

163. McCrudden & Cook, *supra* note 153, at 34.

164. Corrales & Combs, *supra* note 137.

165. *The War on Gays Strange Bedfellows: American Christian Zealots are Fighting Back Against Gay Rights – Abroad*, THE ECONOMIST, (May 4, 2013), <http://www.economist.com/node/21577043/print>.

166. Corrales & Combs, *supra* note 137.

167. *Id.*

168. *Id.*

169. *Id.*

conservative groups have allied with as many foreign organizations for support and resources as progressive activists have in their fight.¹⁷⁰

NGOs of all types have played a large role in the development of human rights law, particularly as it relates to religion.¹⁷¹ Conservative religious groups have continuously fought progressive secular NGOs both at home and abroad for influence on policy issues and public opinion.¹⁷² Interventions by both types of groups in foreign litigation has increased dramatically with the rise of globalization because organizations recognize that “what happens in one country can directly or indirectly affect developments in the NGO’s own country” and across the globe.¹⁷³

After Caribbean nations gained independence, conservative religious groups identified a vacuum in the ideological underpinnings of human rights in the former British colonies and squarely situated themselves on the side of the locals who were then sold on the idea that the organizations were helping them combat foreign intervention and liberal ideals.¹⁷⁴ This has left international LGBT groups in a sticky predicament as they must figure out how to help local actors fight conservative religious groups, while at the same time protecting themselves from accusations of neocolonialism.¹⁷⁵ A successful path forward requires international LGBT and human rights groups to forge alliances with local activists and governments for the greatest chance at local acceptance.¹⁷⁶ Without these alliances, meaningful change will likely be delayed for many years.¹⁷⁷

The tension between sentiments of neocolonialism and recognition of the need for outside help underscores the importance of a homegrown movement. During the period after World War II, American sentiment towards homosexuals was very negative and there was a strong desire to restore pre-war social order and hold off forces of change, namely acceptance of people who were different.¹⁷⁸ Police would regularly raid bars which they knew were frequented by homosexuals and arrest them.¹⁷⁹ Bars that were known to cater to homosexuals were often quickly shut

170. McCrudden & Cook, *supra* note 153, at 25.

171. *Id.* at 6.

172. *Id.*

173. *Id.* at 11.

174. *Id.*

175. Corrales & Combs, *supra* note 137.

176. SEXUAL ORIENTATION AND GENDER IDENTITY IN THE COMMONWEALTH, *supra* note 3, at 46.

177. *Id.*

178. See generally BARRY ADAM, THE RISE OF A GAY AND LESBIAN MOVEMENT (Twayne Publishers, 1995).

179. *Id.*

down.¹⁸⁰ Inspired by the Civil Rights Movement, some brave LGBT activists began protesting the discrimination they were facing, which precipitated a few notable riots.¹⁸¹ In June of 1969, police raided the Stonewall Inn located in New York City which was known for hosting a wide array of marginalized patrons, including LGBT people, those dressed in drag and homeless youth, because it was the only place these crowds could dance freely and enjoy themselves.¹⁸² During a routine raid, bar patrons refused to cooperate with the known police raid procedures. One of which involved female police escorting customers dressed as women to the bathroom in order to verify their sex, and those found to be men were subsequently arrested.¹⁸³

An angry crowd began to form outside the bar and they grew increasingly outraged and unsettled as they watched police forcibly drag patrons out of the bar.¹⁸⁴ This ultimately led to a violent and unexpected two-day riot in which some police were stuck inside the inn for hours.¹⁸⁵ These riots thrust gay rights into the national civil rights discussion and led to the formation of the first cohesive organizations dedicated to furthering gay rights.¹⁸⁶

The riots at Stonewall served as a catalyst for the gay rights movement in the United States and the Caribbean is ready for its own.¹⁸⁷ The movement for equality, however, must come from within the Caribbean if it is to lead to widespread acceptance. Many attribute the unification of the movement in the United States and its subsequent success to its local development as it was a reaction to a build up of harsh and unequal treatment which had pushed enough people to their breaking point.¹⁸⁸ Post-colonial sentiments in the Caribbean require aid from the North and West to allow local cultural values to catch up and adapt to a Caribbean world in which same-sex sexual activity is no longer a crime. Only with this natural progression can broad social equality become a reality and an accepted way of life.

180. *Id.*

181. *Id.*

182. *See generally* DAVID CARTER, *STONEWALL: THE RIOTS THAT SPARKED THE GAY REVOLUTION* (St. Martin's Griffin, 2004).

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. Pratima Narayan, *Somewhere Over the Rainbow...International Human Rights Protections for Sexual Minorities in the New Millennium*, 24 B.U. INT'L L.J. 313, 318 (2006).

188. *Id.*; Mintz, *supra* note 35.

VII. CONCLUSION

The Supreme Court of Belize unequivocally reached the correct and just decision in *Orozco v. Attorney General of Belize*. By looking to international legal precedent, international human rights laws and the exact language of the constitution, the Court took a fair, unbiased look at the claims made by Orozco and evaluated them on their merits. In addition, Orozco did his part to aid the Court in its decision by structuring his legal arguments in such a way, that made them *almost* undeniable. By employing a legal strategy which had been successfully relied on by international plaintiffs fighting for similar changes, Orozco's likelihood of success was significant. With evidence demonstrating the ways in which section 53 infringed on his guaranteed constitutional rights, the Court was left no rational option other than to amend section 53.

This case is a landmark decision and should serve as a catalyst for the remaining Caribbean nations whose buggery laws are still in effect. If this approach is adopted by future plaintiffs in their efforts to repeal the remaining anti-sodomy laws internationally, their chances of success are as strong as can be. Another large contributor to Orozco's success was the intervention of international entities. While there is and will remain a tension between local organizations and foreign organizations, the necessity of outside support and resources cannot be denied. Striking a balance regarding the appropriate level of intervention will likely be a fact determinant inquiry and no two cases will be the same. Therefore, going forward, international entities need to be cognizant of neocolonial sentiments and resentments in order to tailor their involvement to the optimal level, while still providing the meaningful support that is needed.

The movement towards equality and acceptance in the Caribbean is contingent upon Caribbean ownership of this movement. It cannot feel exported or imposed. As one American law professor of Jamaican descent wrote, "an organic homegrown emergence of pro-sexual choice appreciation, not an externally waged campaign of cultural domination" will have the greatest chance of local adoption.¹⁸⁹ Thus, it seems the best practice would be for international entities to wait until they are asked for help by local activists. It sounds like an all too simple solution, but it would have the effect of putting the power of choice back in the hands of local organizations and lawyers who may not wish for intervention at such early stages.

189. Nelson, *supra* note 143, at 268.

From a human rights standpoint, this may not be the best practice as the delay in aid could lead to sustained inequality for longer than necessary. But from the perspective of local organizations, it seems to be the best approach because it gives them time to work on the ground, educate, and expose other locals to the issues in hopes of future acceptance, which can only be created by locals.

In 2010, Jamaica had their first gay pride event at which twenty-five individuals gathered wearing rainbow colors and kissing in public.¹⁹⁰ This was particularly significant as Jamaica was famously dubbed “The Most Homophobic Place on Earth” by Time magazine in 2006 for its innumerable murders and violent beatings of openly or simply suspected gay men.¹⁹¹ Nevertheless, slowly but surely, change is happening in the Caribbean. As Maurice Tomlinson, who unsuccessfully brought a case against the states of Belize and Trinidad and Tobago, shared, the key to spreading acceptance is the influence of the Caribbean diaspora communities living in the United States and Europe who impact the discourse at home.¹⁹² Tomlinson has struggled to find acceptance even within his own family.¹⁹³ His son has grown up Catholic in Belize and has struggled to reconcile his faith with his father’s sexuality.¹⁹⁴ Similarly, many in America also struggle to reconcile their religious beliefs with the new law of the land. International pro-LGBT groups should stand ready to help but focus in the meantime on more on-the-ground objectives. They could build alliances with local groups and develop rapport with locals by addressing homelessness or school bullying, both of which are prominent issues on the islands.¹⁹⁵ There is a significant need for help in the Caribbean and it is critical that the various interests at play are balanced and help is provided strategically.

The Government in Belize filed an appeal to the case, specifically in opposition to the definition of “sex” the court reached, which would result in an amendment to the Constitution to have “sex” encompass “sexual orientation” in addition to gender.¹⁹⁶ If the Government were to prevail in its appeal, the Constitution would no longer be read to protect

190. Jarrett Terrill, *First Ever Jamaica Gay Pride-2010*, S. FLA. GAY News (May 2, 2010), <http://southfloridagaynews.com/World/first-ever-jamaica-gay-pride-2010.html>.

191. Padgett, *supra* note 138.

192. Mintz, *supra* note 35.

193. *Id.*

194. *Id.*

195. Corrales & Combs, *supra* note 137.

196. *Belize Government Opens Door for Appeal of Court Ruling the Legalized Gay Sex*, CARIBBEAN 360, (Sept. 12, 2016), <http://www.caribbean360.com/news/belize-government-opens-door-appeal-court-ruling-legalized-gay-sex#ixzz4KTo7CFi4>.

against laws which discriminate based on sexual orientation and would revert back to only protecting against gender discrimination.¹⁹⁷ While the Government only wanted to appeal on this narrow issue, the interested religious parties have decided to appeal as well.¹⁹⁸ The fate of this decision is unlikely to be reverted, however it is hard to accurately predict when there is so much public policy involved in the outcome.¹⁹⁹ International assistance may be more important than ever to ensure this momentous decision is not overturned. Orozco has stated, “when a person like me has been marginalized for over two decades and I live in a state which does not acknowledge my concern, fighting is a normal part of the process ... I’m ready for round two and let the fight begin.”²⁰⁰

With the humanity and constitutional rights of LGBT individuals at stake, Orozco’s determination and strength is both admirable and inspiring. Change is bubbling in the Caribbean, and this appeal could have a monumental impact on the movement. After concluding criminalization of same-sex sexual activity deprives individuals of their constitutionally guaranteed rights and freedoms, it would seem to follow there is only one right answer to the outcome of this appeal. With all eyes on Belize, the struggle for LGBT rights is in the Court’s hands once again.

197. *See Id.* at 2.

198. *Id.* at 4.

199. *Id.* at 5.

200. *Id.*