LGBT Law: a comparison between the UK and the USA
Outline:

- What does LGBT law stand for?
- Development of LGBT law – a global overview
- Worldwide LGBT laws
- Development of LGBT in the UK
- Allan Horsfall
- Development of LGBT in the US
- „A milestone decision?“ – Obergefell v Hodges (2015)
- Obergefell v Hodges (2015): Overview
- Changes after Obergefell v Hodges
- Current situation in the US (2016)
- Similarities and distinctions between the USA and UK relating to LGBT law
What does LGBT (also called GLBT) law stand for?

- Stands for lesbian, gay, bisexual and transgender (used since 1990)

- Term LGBT used to represent all members of the community accurately

- Used for everyone who is non-heterosexual or non-cisgender: not only for LGBT people but even for people who consider themselves queer or intersex people

- Whether or not LGBT people openly identify themselves may depend on local political concerns etc.
Development of LGBT law – a global overview

- Still nearly 80 countries that have a total prohibition on same-sex relations (over half of them are members of the Commonwealth)

- Some countries even have death penalties or life imprisonment i.e. 25 years jail in Trinidad and Tobago

- Serious troubles in some countries: new anti-LGBT laws established to distract the public (‘enemy within theory’) from the economic failings and corruptions in their own country

- Trans people statistically the highest number of victims when it comes to anti-LGBT violence
Worldwide laws:

- Trend towards greater equality, i.e.:
  - Seychelles: repealed anti-gay laws
  - Vietnam: lifted ban on same-sex marriage 2015
  - Taiwan: elected first woman president (supporter of same-sex marriage)

- Rising global acceptance of same-sex relations (incl. In developing countries):
  - Uruguay: acceptance of homosexuality of 34% - Ecuador: 2%
  - Legal recognition for same-sex marriages: Uruguay: 57% - Guatemala: 12%
Development of LGBT in the UK

- Buggery Act 1533 (First recorded victims of the Buggery Act)
- Offences against the Person Act 1828
- Sexual Offences Act I 1956
- Sex Discrimination Act 1975
- Sex Discrimination Act 2002
- Sexual Offences Act II 2003
- Right of Civil partnership 2005
- Equality Act 2010
- Legalization of same-sex marriages 2014
Buggery Act 1533:
- Act for punishment of the vice of Buggery
- Act of Parliament of England during reign of Henri VIII
- First civil sodomy law
- Dealt by the ecclesiastical courts
- Buggery as unnatural sexual act against will of God and man
- Replaced by Offences against the Person Act 1828

First recorded victims of the Buggery Act:
- Walter Hungerford → July 1540, sex offence and treason, hung
- Nicholas Udall → 1541, headmaster of school, sex offence, jail sentence for 1 year
- Mervyn Tuchet → Was not hung, grand order of priority, beheaded
- John Pratt and John Smith → Last victims of buggery, nov. 1835, Newgate jail London
<table>
<thead>
<tr>
<th>Offences against the Person Act, 1828</th>
<th>Sexual Offences Act, 1956</th>
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<tbody>
<tr>
<td>o Also Lord Lansdown’s Act</td>
<td>o Act of Parliament of UK</td>
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<tr>
<td>o Act of Parliament of UK</td>
<td>o Consolidated English criminal law relating to sexual offences</td>
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<tr>
<td>o Only applied to England and Wales</td>
<td>o Term of art</td>
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<tr>
<td>o Replaced clause XXVI of Magna Carta</td>
<td>o Gives different penalties for sexual offences</td>
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<tr>
<td>o Penalty to rape was death until 1841</td>
<td>o Also in reference to LGBT</td>
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<tr>
<td>o Act made it easier for victims to prosecute the rapists</td>
<td>o especially about children</td>
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<tr>
<td>o Replaced by Offences against the Person Act 1861</td>
<td>o Mostly replaced by 2nd Sexual offences Act 2003</td>
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<tr>
<td><strong>Sex Discrimination Act 1975</strong></td>
<td></td>
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<td>-------------------------------</td>
<td></td>
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<tr>
<td>- Act of Parliament of UK</td>
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<tr>
<td>- Protected men and women</td>
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<td>- Concerned protection in employment, training, education, harassment and provision of goods and services</td>
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<tr>
<td>- Introduced other amendments and rulings of the European Court of Justice</td>
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<td>- Fully repealed by Equality Act 2010</td>
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<tr>
<td>Sex Discrimination Act 2002:</td>
<td>Sexual Offences Act II 2003:</td>
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<td>---------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------</td>
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<tr>
<td>o  Act of Parliament of UK</td>
<td>o  Replaced older sexual offences laws with more specific and explicit wording</td>
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<tr>
<td>o  Purpose to exempt selection of candidates in parliamentary elections</td>
<td>o  Created several new offences</td>
</tr>
<tr>
<td>o  Allows political parties to select candidates based on their gender to increase representation of women in British politics</td>
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<td>o  Originally scheduled to run until end of 2015</td>
<td></td>
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<tr>
<td>o  Extended until 2030 under the Equality Act 2010</td>
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<tr>
<td>Gender Recognition Act 2004:</td>
<td>Right of Civil Partnership</td>
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<td>---------------------------------</td>
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<tr>
<td>o Act of Parliament of UK</td>
<td>o Allows same-sex couples to obtain essentially the same rights and responsibilities as civil marriage</td>
</tr>
<tr>
<td>o Allows transgender people to change their legal gender</td>
<td>o Same property rights</td>
</tr>
<tr>
<td>o Came into effect on 4th April 2005</td>
<td>o Same exemption on inheritance tax, social security and pension benefits</td>
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<tr>
<td>o People acquire a new birth certificate</td>
<td>o Same ability to parental responsibility for a partner’s children</td>
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<tr>
<td>o affording them full recognition of their acquired sex in law for all purposes, including marriage</td>
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<tr>
<td>o Main exceptions: right of conscience for Church of England and descent of peerages remain unchanged</td>
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Legalisation of same-sex marriages 2014

- Now, same sex marriages are legal in UK
  - England and Wales: passed by Parliament of UK in July 2013, came into force on 13th of March 2014, first marriage on 29th March 2014
  - Scotland: passed by Scottish Parliament in February 2014, took effect 16th December 2014, first marriage was that day too
  - Northern Ireland: Same-sex marriages are not allowed, married same-sex couples are treated as civil partnerships
Allan Horsfall

- Born 1927
- British gay rights campaigner and founder of the North West Committee for Homosexual Law Reform
- Described as one of the truly great pioneers of LGBT equality in Britain
- Ran CHE Campaign 1971-1974 and became president for life
- Died 2012
Development of LGBT in the US

- 1924: Society for Human Rights (Chicago) was established
- 1962: Illinois becomes first state in the US to decriminalize homosexual acts between consenting adults in private
- 1969: Stonewall riots
- 1973-1978: Harvey Milk
- 1982: Wisconsin: outlaws discrimination on the basis of sexual orientation
- 1993: ‘Don’t ask, don’t tell” policy instituted for US military
- 2000: Vermont: First state which legally recognizes civil unions
- 2003: Lawrence v Texas
- 2004 (7 May): Massachusetts: Same-sex marriage becomes legal
- 2007 (Nov): House of Representatives approves bill for ensuring equal right in workplace
- 2013: U.S. v Windsor
- 2015 (June 26): Obergefell v Hodges
Obergefell v Hodges (2015): overview

- **Marriage Equality**
- **Important background cases:**
  I. Windsor v United States (2013) (DOMA)
  II. Bower v Hardwick (1986)
  III. Lawrence v Texas (2003)
  IV. Roe v Wade (1973)
  V. Loving v Virginia

Meaning and scope of the 14th Amendment:
Main issues relating to this amendment:

Do same sex couples have the right to marry in every state?
Must the States grant licenses to same sex couples?
Must the States recognize and allow marriages that have been licenses and performed rightfully and legal out-of-state?
„A milestone decision?“: Obergefell v Hodges, June 2015

"They ask for equal dignity in the eyes of the law. The Constitution grants them that right."

— Justice Anthony Kennedy

No matter what the Supreme Court says, homosexual “marriage” will always be WRONG.

www.AmericansForTruth.org
Changes after Obergefell v Hodges (2015)

End of the debate whether same-sex marriage is legal or constitutionally required

- Endpoint of the following 20-year trajectory in which the Supreme Court gradually expanded the scope of rights for America’s LGBTQ+ community

Changes in adoption rights
Current situation in the US (2016)

- North Carolina’s Anti-LGBT law: “bathroom bills“:
  - State enacted legislation requiring people to use public bathrooms that correspond with their gender showing on their birth certificate
  - CONFLICT for transgender men and women

- U.S. Department of Justice filed a lawsuit because state law violates federal laws
Similarities and distinctions between the US and UK relating to LGBT law

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<th>USA</th>
<th>UK</th>
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<tbody>
<tr>
<td><strong>Public Opinion:</strong></td>
<td>More than 50% of the citizens think gay couples should have the same rights as hetero couples</td>
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</tbody>
</table>
| **Discrimination Protection:** | - Federal system  
- 32 of 50 states have no comprehensive anti-discrimination law  
- An Equality Act is in the works (since 2016) | **Discrimination Protection:**  
- Protection Act 2010 |
# Similarities and distinctions between the US and UK relating to LGBT law

## USA

<table>
<thead>
<tr>
<th>Recognition</th>
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<tbody>
<tr>
<td>- Supreme Court decision on June 26, 2015</td>
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<tr>
<td>- Sane-sex marriage is legal in all 50 states</td>
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<thead>
<tr>
<th>Adoption and family planning:</th>
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<tbody>
<tr>
<td>- Same-sex couples are allowed to adopt</td>
</tr>
<tr>
<td>- Various states allowed it prior to the Supreme Court decision</td>
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## UK

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<thead>
<tr>
<th>Recognition:</th>
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<tbody>
<tr>
<td>- Civil Partnership</td>
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<tr>
<td>- Same-sex marriage</td>
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<th>Adoption and family planning:</th>
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<tr>
<td>- Adoption and Children Act 2002 (England and Wales)</td>
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<td>- Similar legislation in Scotland in 2009</td>
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<tr>
<td>- Human Fertilisation and Embryology Act 2008</td>
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## Similarities and distinctions between the US and UK relating to LGBT law

### USA

**Military Service:**
- “Don’t ask, don’t tell”
- “Don’t ask, don’t tell” Repeal Act of 2010

### UK

**Military Service:**
- LGBT people have been allowed to serve openly since 2010
- Discrimination on a sexual basis has been forbidden since 2010

**Role of the EU**
- The EU has been a positive force for LGBT rights