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Dating The State: The Moral Hazards of Winning Gay Rights

Katherine Franke[†]

On August 1, 2009 a masked man dressed in black carrying an automatic weapon stormed into the Aguda, the home of the Israeli national Gay, Lesbian, Bisexual, Transgender Association in Tel Aviv. He opened fire on a group of gay and lesbian teenagers who were meeting in the basement for “Bar-Noar,” or “Youth Bar,” killing two people and wounding at least 10 others.¹ This terrible act of violence attracted immediate national and international attention and condemnation. President Simon Peres declared the next day: “the shocking murder carried out in Tel Aviv yesterday against youths and young people is a murder which a civilized and enlightened nation cannot accept ... Murder and hatred are the two most serious crimes in society. The police must exert great efforts in order to catch the despicable murderer, and the entire nation must unite in condemning this abominable act.”² Prime Minister Benjamin

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¹ *Two killed in shooting at Tel Aviv gay center*, Haaretz.com, August 2, 2009, <http://www.haaretz.com/hasen/spages/1104506.html>.

² Roni Sofer, *Netanyahu: Israel a Country of Tolerance*, Ynet News, August 2, 2009, www.ynetnews.com/articles/0,7340,L-3755571,00.html (Last visited August 25, 2009).

Netanyahu added: “We are a democratic country, a country of tolerance, a law-abiding state, and we will honor every person regardless of his or her beliefs.”³ When the Prime Minister visited the LGBT association building several days later he remarked, “This is not just a blow to the gay-lesbian community. This is a blow to all Israeli youth and Israeli society... Only tyrants in dictatorial regimes take this authority upon themselves.”⁴ President Peres echoed these remarks at a rally honoring the murdered gay teens, “The gunshots that hit the gay community earlier this week hit us all. As people. As Jews. As Israelis.”⁵

These remarks, while laudable for their strong condemnation of violence against gay and lesbian people, signal something quite interesting about the relationship between homosexuality, the state of Israel, the Jewish people, and the idea of a modern, democratic and tolerant state. Israel’s top political leaders did more than express concern about an act of private violence against members of the nation’s sexual minority, rather the way they rendered the Aguda shooting both patriotized its victims and homosexualized Jews and Israel.⁶

³ Id.

⁴ *TA Gay Attack Bears Marks of Terrorism*, Jerusalem Post, August 6, 2009, www.jpost.com/servlet/Satellite?cid=1249418535660&pagename=JPost/JPArticle/ShowFull (last visited August 25, 2009).

⁵ Attila Somfalvi, *Peres at Gay Support Rally: Bullets Hit Us All*, Ynet News, August 8, 2009, www.ynetnews.com/articles/0,7340,L-3758881,00.html (last visited August 25, 2009).

⁶ Israeli politicians, LGBT activists, and the media overwhelmingly framed the Tel Aviv shooting as a hate crime, not an act of terrorism, despite the fact that the shooter wore a black ski mask and sprayed a grouping of Israelis with an automatic weapon. Surely not every act of violence that takes place in the state of Israel, whether it is a shooting, a car accident, or a barroom brawl, is understood as an attack on Israel and the Jewish people. Some acts of violence are considered random and their meaning does not exceed their mere violence, while others are labeled acts of terror (a frequent occurrence in Israel). This one was immediately considered a hate crime - a violation of the human rights

When and how did homophobic violence acquire this meaning in Israel, such that the President and Prime Minister were expected to, and did, embody the role of national victim before domestic and international audiences immediately after the shooting? Why then and not in 2005 when an ultra-Orthodox man stabbed and wounded three participants in the Jerusalem gay pride parade, or the following year when right-wing activists called for violent protests against the World Gay Pride procession in Jerusalem?⁷

The answer lies in significant part in efforts by the Israeli government to rebrand itself in a self-conscious and well-funded campaign termed alternately “Brand Israel” and “Israel Beyond the Conflict.”⁸ In 2006, in large measure in response to its military incursion into Lebanon, Israel found its international “brand reputation” slipping to a new low. Simon Anholt, who publishes the influential annual Anholt-GfK Roper Nation Brands Index,⁹ observed that in 2006

Israel’s brand was by a considerable margin the most negative we had ever measured in the NBI [Nation Brands Index], and came bottom of the ranking on almost every question ... In response to one of the questions in [the governance] section of the survey, ‘how strongly do you agree with the statement that this country behaves responsibly in the areas of

of gay, indeed all, Israelis. Unpacking the relationship of crime, to hate crime, to terror is a worthy project but one for another venue.

⁷ Greg Myre, *World Briefing, Middle East: Israel: 3 Stabbed At Jerusalem Gay Parade*, New York Times, July 1, 2005 p. A9; Neta Sela, *Holy war against pride parade*, Ynet news, October 30, 2006 *Baruch Marzel: Pride parade will lead to violence*, Ynet news, October 18, 2006, <http://www.ynetnews.com/articles/0,7340,L-3316718,00.html>

⁸ Uriel Heilman, *Getting Israel’s Message Across*, B’Nai B’rith Magazine, Summer 2009, available at: <http://www.urielheilman.com/0601hasbara.html>

⁹ http://www.gfkamerica.com/practice_areas/roper_pam/nbi_index/index.en.html

international peace and security?’, Israel scored lowest of the 36 countries in the NBI.¹⁰

When the Palestinians elected a Hamas-majority government in January of 2006 the Israelis sensed that they had a PR opening. “After decades of battling to win foreign support for its two-fisted policies against Arab foes, Israel is trying a new approach with a campaign aimed at creating a less warlike and more welcoming national image,” wrote a Reuters reporter covering the meeting of then-Foreign Minister Tzipi Livni with executives from the British PR firm Saatchi & Saatchi.¹¹ Livni had expressed the view that the protracted conflict with the Palestinians was sapping Israel’s international legitimacy. “When the word ‘Israel’ is said outside its borders, we want it to invoke not fighting or soldiers, but a place that is desirable to visit and invest in, a place that preserves democratic ideals while struggling to exist,” Livni told the British advertising executives who had agreed to work on the Israeli re-branding effort for free.¹²

Thus the Foreign Ministry, concerned that the international community held an unfairly negative view of Israel, launched an extensive public relations campaign “to make people like us.”¹³ “The idea here is to have a major branding campaign in America and

¹⁰ Simon Anholt, *PLACES: IDENTITY, IMAGE AND REPUTATION* 58 (2010).

¹¹ Dan Williams, *Don't mention the war: Israel seeks image makeover*, Reuters News, October 26, 2006.

¹² *Id.*

¹³ Livni “hired a whole host of public relations firms who have conducted focus groups and used other mass marketing tools to figure out how to reinvent Israel in a manner that will make people like us.” This campaign has specifically included a pitch to make Israel appear more friendly based on its treatment of gay men and lesbians. Caroline Glick, *Column One: Truth in Advertising*, Jerusalem Post, Nov. 3, 2006, available at <http://www.jpost.com/servlet/Satellite?cid=1162378319794&pagename=JPost%2FJPArticle%2FShowFull>.

Europe,”¹⁴ Gidon Meir, deputy director-general for public affairs at the Foreign Ministry, told *The Jewish Daily Forward* in 2005 as the campaign was getting underway. The government along with branding experts from the private sector set out to “re-brand” the country’s image to appear “relevant and modern” instead of militaristic and religious. According to *The Jewish Daily Forward*, “Directors of Israel’s three most powerful ministries agreed on a new plan to improve the country’s image abroad — by downplaying religion and avoiding any discussion of the conflict with the Palestinians.”¹⁵

The state of Israel is not alone in its turn to public relations experts as part of a larger “nation-branding” policy. Scholars have described the marketing of state reputation as a form of “soft power” whereby the state aims to “persuade and attract followers through the attractiveness of its culture, political ideals and policies.”¹⁶ In this regard, virtually every country has devoted considerable public funds to international branding campaigns designed to advance economic and diplomatic objectives.¹⁷

¹⁴ Nathaniel Popper, *Israel Aims To Improve Its Public Image*, *The Jewish Daily Forward*, October 14, 2005, <http://www.forward.com/articles/2070/#ixzz1mZvb2pwU>

¹⁵ Nathaniel Popper, *Israel Aims To Improve Its Public Image*, *Jewish Daily Forward*, October 14, 2005 <http://www.forward.com/articles/2070/>.

¹⁶ Evan H. Potter, *BRANDING CANADA: PROJECTING CANADA'S SOFT POWER THROUGH PUBLIC DIPLOMACY* x (2009).

¹⁷ See eg: Batora, Jozef. 2006. Public diplomacy between home and abroad: Norway and Canada, *The Hague Journal of Diplomacy* 1 (1): 53-80; Grunig, James E. 1993. Public relations and international affairs: Effects, ethics and responsibility. *Journal of International Affairs* 47 (1): 137-61; Ham, Peter van. 2001. The rise of the brand state. *Foreign Affairs* 80 (5): 2-6; 2002. Ham, Peter van. *Branding territory: Inside the wonderful worlds of PR and IR theory*. *Millennium* 31 (2): 249-69; Kendrick, Alice, and Jami A. Fullerton. 2004. Advertising as public diplomacy: Attitude change among international audiences. *Journal of Advertising Research* 44 (3): 297-311; Kotler, Philip, and David Gertner. 2002. Country as brand, product, and beyond: A place

The re-brand Israel campaign took a decidedly “pink turn” in 2006. The Israeli Ministry of Tourism launched a beef-cakey website that promoted gay (largely gay male) tourism in Israel,¹⁸ and enlisted the assistance of several NGOs (and GNGOs¹⁹).

Israeli diplomats were explicit about the role for gay and lesbian rights in this strategy. “We’ve long recognized the economic potential of the gay community. The gay tourist is a quality tourist, who spends money and sets trends,” Pini Shani, a Tourism Ministry official told the media after Tel Aviv was elected a top gay destination in 2012.²⁰ “There’s also no doubt that a tourist who’s had a positive experience here is of PR value. If he leaves satisfied, he becomes an Israeli ambassador of good will.”²¹ “Ministry officials view gay culture as the entryway to the liberal culture because, as he

marketing and brand management perspective. *Journal of Brand Management* 9 (4-5): 249-61; *TAKEN BY STORM: THE MEDIA, PUBLIC OPINION, AND U.S. FOREIGN POLICY IN THE GULF WAR*, ed. W. Lance Bennet and David L. Paletz, 131-48. Chicago: University of Chicago Press; Ociepka, Beata, and Marta Ryniejska. 2005. Public diplomacy and EU enlargement: The case of Poland, Discussion Papers in Diplomacy no. 99, Netherlands Institute of International Relations, Clingendael.

¹⁸ See gayisrael.org.il. It is worth noting that the map of “Israel” that appears on the sites opening page does not make any mention of Palestine or Palestinian control of the West Bank or Gaza, but rather labels all of the territory that was divided between the Israelis and the Palestinians in the Oslo Agreements as “Israel”.

¹⁹ GNGOs, or Governmental Non-Governmental Organizations is a term used to refer to NGOs created by a governmental entity to do work in support of or in furtherance of the state’s interests and aims.

²⁰ Aron Heller, Tel Aviv emerges as top gay tourist destination, January 24, 2012, AP http://www.google.com/hostednews/ap/article/ALeqM5iWyaLxZHkxRFHAc_k7QBbUHItH8g?docId=23831e37389d41fa81ca3f5f9b072c20.

²¹ Id.

put it, gay culture is the culture that creates “a buzz.”²² To advance the pink tourism campaign the Tel Aviv Tourism Association established the *Tel Aviv Gay Vibe* campaign in 2010, offering gay travelers “discounted travel and flights, plus free city tours and restaurant vouchers,”²³ and launched a website, gayisrael.org, a twitter account and a PDA App, Tel Aviv Gay Vibe. Israeli Consulates around the U.S. and Europe frequently sponsor gay-friendly activities, such as the Tel Aviv Gay Vibe Float in Chicago’s Gay Pride Parade.²⁴

What distinguished Israel’s branding strategy was not the degree to which it was chasing gay tourist dollars by explicitly selling itself as a “gay mecca” (an ironic term to be sure).²⁵ Berlin is

²² Caroline Glick, A gay old Time, The Jewish Press, Nov. 8, 2006, available at: http://www.jewishpress.com/page.do/19838/A_Gay_Old_Time_-_%3Ci%3EHow_Israel_Proposes_To_Improve_Its_Image%3C%2Fi%3E.html.

²³ *Tel Aviv to Rebrand Itself as Gay Destination*, pinknews, July 22, 2010, <http://www.pinknews.co.uk/2010/07/22/tel-aviv-to-rebrand-itself-as-gay-destination/>.

²⁴ Promoted on a Facebook page set up by the Consulate, <http://www.facebook.com/events/105208666236631/>, and tweeted by the “Israel in Chicago” twitter account: <https://twitter.com/#!/IsraelinChicago/status/16328567787>. There are many other examples of national and local Israeli governments enlisting well-known gay people in the project of public diplomacy. For example, see the U.S. tour of Assi Azar, a famous openly-gay television star, <http://sanfrancisco.mfa.gov.il/index.php/he/cultural-news/521-assi-azar-visit-the-bay-area->; the *Out In Israel Month* campaign organized by the Israeli Consulate <http://www.outinisraelmonth.com/>; and Gal Uchovsky, *Left an Gay in Israel*, The Jerusalem Post, February 2, 2011, <http://www.jpost.com/Opinion/Op-EdContributors/Article.aspx?id=244186>.

²⁵ Examples of the frequent reference to Tel Aviv as a “gay mecca” include Aviv Benedix, *Tel Aviv, Israel’s Gay Mecca, Invites Gay Travelers to Come and Visit*, Israel Gay News, December 7, 2010, <http://israelgaynews.blogspot.com/2010/12/by-aviv-benedix-israels-second-largest.html>; *Tel Aviv Grows as ‘Gay Mecca,’* Miami Gay News, January 25, 2012 <http://www.miamigaynews.com/2012/01/25/tel-aviv-grows-as-gay-mecca-photos/>; Maayan Lubell, *Tel Aviv revelling in gay tourism boom*,

well known for doing so as well, to its great economic advantage. In fact, OutNow, the gay public relations firm that designed the “MyGayBerlin” campaign²⁶ was hired by the Israelis to assess the feasibility of branding Tel Aviv as an international gay tourist destination.²⁷ Rather, what differentiated the role of gays in the Israeli branding campaign was the position it played in a larger national political agenda, one that exceeded mere niche marketing to gay tourists. Israeli’s public embrace of gay rights figured at the core of a project to distract attention from, if not cancel-out, the growing international condemnation of Israeli’s treatment of the Palestinians. To this end, the Ministry of Public Diplomacy and Diaspora Affairs has solicited applications from Israeli citizens who would like to serve as “public diplomats,” traveling abroad (at the state’s expense) spreading the good word about Israel. The announcement makes clear that the program “is primarily interested in receiving applications from people representing the diverse faces of Israeli society, including ... representatives of the gay community.”²⁸ As the outcry about the Israeli Occupation of Palestine grew louder, Israeli voices responded: Look how well we treat our gays! The complex significance of this official and public use of Israeli homosexuals can

Reuters January 24, 2012, <http://www.reuters.com/article/2012/01/24/uk-israel-tel-aviv-gay-idUSLNE80N01Y20120124>.

²⁶ OutNow’s Facebook page states: “Out Now has worked with German National Tourist Office and Berlin Tourism Marketing for several years to credentialize these destinations with lesbian and gay travelers.” http://www.facebook.com/note.php?note_id=32620247091.

²⁷ Think You Know All About Gay Welcoming Tourism Destinations? Think Again: The First-Ever Market Study into Middle East Gay Travel Unveiled by Out Now at WTM, WebWire, October 7, 2009 <http://www.webwire.com/ViewPressRel.asp?ald=105143>.

²⁸ Asa Winstanley, *In New Pinkwashing Recruitment Campaign, Israel Offers Free Travel For Propaganda Services*, November 24, 2011, The Electronic Intifada, <http://electronicintifada.net/blog/asa-winstanley/new-pinkwashing-recruitment-campaign-israel-offers-free-travel-propaganda>.

only be fully appreciated when considered in light of the Israeli security agency, Shin Bet’s, policy begun in 1967 to “turn” Palestinian homosexuals into informants through blackmail and other dirty tactics.²⁹ Thus, the Ministry of Public Diplomacy and Diaspora Affairs’ use of gay agents is, in important respects, the friendly flip side of that of Shin Bet.

Israel’s use of its pro-gay policies has, over time, operated in two registers. First, as laid out above, there was the deliberate campaign to improve Israel’s international “brand perception” by highlighting Tel Aviv as a hot and hunky gay tourist destination. But over time the emphasis has shifted from being a project of the Tourism Ministry to one used by the Foreign Minister as a tool of foreign relations. To great effect, Israel has sought to stake out a moral high ground in comparison with its enemies by referring to how well it treats its gays. Israeli government officials and their private sector advocates have seen a strategic advantage in comparing Israel’s tolerance of gay people with intolerance toward gays in neighboring Arab countries. Naomi Klein, in an interview, laid it out plain and simple: “the state of Israel has an open strategy of enlisting gay and lesbian rights and feminism into the conflict, pitting Hamas’s fundamentalism against Israel’s supposed enlightened liberalism as another justification for collective punishment of Palestinians.”³⁰ Israeli Prime Minister Benjamin

²⁹ As a result, gay men have gained a reputation in Palestinian society for being collaborators or snitches, given the widespread belief that gay people are vulnerable to blackmail by the Israelis. This reputation is not entirely unearned, given the “success” of Shin Bet’s tactics. This fact is vital to understanding how homophobia in Palestine derives not only from a kind of sexual revulsion we are familiar with elsewhere, but also from particularly local political dynamics. See Jason Ritchie, *Queer Checkpoints: Sexuality, Survival, and the Paradoxes of Sovereignty in Israel-Palestine*, at 118, unpublished dissertation, available at: <http://www.ideals.illinois.edu/handle/2142/18233>.

³⁰ Cecilie Surasky, *Naomi Klein Shows You Can Boycott Israel Without Cutting Off Dialogue Over Palestine*, September 3, 2009, http://www.auphr.org/index2.php?option=com_content&task=view&id=4278&pop=1&page=0&Itemid=44

Netanyahu’s speech to the United States Congress in May of 2011 said it best: “In a region where women are stoned, gays are hanged, Christians are persecuted, Israel stands out. It is different.”³¹

Concerned that the international community was wavering in its hard line stance toward Iran’s growing nuclear capability, in 2009 it allocated roughly \$2 million to a new campaign to discredit Iran by specifically highlighting its mistreatment of lesbians and gay men.³² The Israeli Foreign Ministry confessed that the new PR campaign “aims to appeal to people who are less concerned with Iran’s nuclear aspirations and more fearful of its human rights abuses and mistreatment of minorities, including the gay and lesbian community.”³³ David Saranga, a former deputy spokesman for the Israeli Foreign Ministry, put it clearly: “Instead of wasting time attempting to persuade them [liberal audiences in the U.S. and Europe] that I am right, in contradiction of their worldview, it is better to try to speak to them through the concepts and values that they understand and appreciate. For instance, presenting the attitude towards the gay community in Israel and the equality it enjoys often cracks the blind wall of criticism which liberal audiences in the United States may present.”³⁴

The Israeli Supreme Court joined the issue in September of 2010. It found that the City of Jerusalem had engaged in impermissible discrimination in its ongoing refusal to fund the City’s

³¹ *Transcript of Prime Minister Netanyahu's address to U.S. Congress*, The Globe and Mail, May 24, 2011, <http://www.theglobeandmail.com/news/world/americas/transcript-of-prime-minister-netanyahus-address-to-us-congress/article2032842/>

³² Barak Ravid, *Israel Recruits Gay Community in PR Campaign Against Iran*, Haaretz, May 20, 2009, www.haaretz.com/hasen/spages/1079589.html.

³³ Id.

³⁴ Uri Leventher, *The Diplomat Who Tweeted*, Globes: Israeli Business Arena, October 14, 2009, <http://www.globes.co.il/serveen/globes/docview.asp?did=1000505339>.

lesbian, gay, bisexual and transgender community center, Open House.³⁵ Year after year, the City has refused funding requests from Open House, and Justice Isaac Amit, writing for the Court, ruled that “The history of the relationship between the sides reveals that the appellant’s hand reaching out for support has met time and time again with the miserly hand of the municipality ... We cannot but express hope that the municipality will not behave stingily again and that the sides can shake hands without further involving the court.”

Justice Amit went on to declare that equal and respectful treatment of the gay community was one of the criteria for a democratic state. This is what separates Israel from “most of the Mideast states near and far, in which members of the gay community are persecuted by the government and society.” He then mentioned Iranian President Mahmoud Ahmadinejad’s 2007 speech at Columbia University in which he claimed that there were no homosexuals in Iran. This statement by the Iranian President served as evidence, in Justice Amit’s view, of Israel’s comparative tolerance, modernity, and morality. Whether or not officially a part of the new campaign to use gay rights to whip up support both domestically and abroad for a military strike against Iran, the Israeli Supreme Court is certainly pulling an oar in this project.

Aeyal Gross, a law professor at Tel Aviv University and a sharp critic of Israeli politics generally and LGBT politics in Israel specifically, wrote about the role of the gay community in the Brand Israel campaign: “LGBT rights are used as a fig leaf, and the larger the area that needs to be hidden, the larger the fig leaf must be. Although conservative and especially religious politicians remain fiercely homophobic, this is partially counterbalanced – even in years when a conservative government has been in power – by the new homonationalism and the important role gay rights plays in burnishing Israel’s liberal image.”³⁶

³⁵ 343/09 Jerusalem Open House for Pride and Tolerance v. City of Jerusalem (Sept. 14, 2010) Nevo Legal Database (Isr.) ¶ 55.

³⁶ Aeyal Gross, “Israeli GLBT Politics between Queerness and Homonationalism,” Bully Bloggers, July 3, 2010,

Other non-governmental organizations closely allied with the Israeli re-branding effort, such as StandWithUs a pro-Israeli advocacy organization based in Los Angeles, have explicitly pursued a strategy of responding to criticism of Operation Cast Lead by emphasizing how well lesbian and gay people are treated in Israel.³⁷ “We decided to improve Israel’s image through the gay community in Israel” said an official with StandWithUs to the Jerusalem Post.³⁸ “We’re hoping to show that Israel is a liberal country, a multicultural, pluralistic country ... That is a side of Israel we are very proud of and that we think should be shown around the world ... As far as a lot of people are concerned, Israel is Gaza and the West Bank and tanks, and they don’t see the beautiful culture and the liberal side.”³⁹ Other bloggers similarly saw an opportunity to blunt international criticism of Operation Cast Lead by pointing to Hamas’ intolerance toward gay men as a justification for the Israeli military action.⁴⁰ Back in the U.S., StandWithUs circulated a flyer on college campuses in which it compares Israeli, Egyptian, Jordanian, Palestinian, Iranian, Lebanese and other Middle Eastern states’ policies on “sexual freedom” and concludes that Israel is the “only country in the Middle East that

<http://bullybloggers.wordpress.com/2010/07/03/israeli-glb-t-politics-between-queerness-and-homonationalism/> (last visited September 23, 2010).

³⁷ StandWithUS is “an international, non-profit organization that promotes a better understanding of Israel, through examination of diverse issues.” “Who Are We?” from IPride website, a project of StandWithUS, www.ipride-tlv.org/.

³⁸ Mel Bezalel, *Gay Pride Being Used to Promote Israel Abroad*, Jerusalem Post, June 7, 2009, [www.jpost.com/servlet/Satellite?cid=1244371033880&pagename=JPost%2FJP Article%2FShowFull](http://www.jpost.com/servlet/Satellite?cid=1244371033880&pagename=JPost%2FJP%2FShowFull).

³⁹ Id.

⁴⁰ Paula Brooks, *What About the Gaza Gays?*, LezGetReal: A Gay Girl’s View on the World, January 4, 2009, lezgetreal.com/?p=719 (last visited August 25, 2009).

supports gay rights.”⁴¹

The timing of the pink turn in Israeli’s management of its international reputation is noteworthy. Convincing the world that Israel was a gay haven in the otherwise homophobic Middle East began to figure centrally in the marketing of Israel in the aftermath of Operation Cast Lead, a three-week military campaign Israel began in Gaza in December of 2008. Military tactics used by both the Israelis and the Palestinians in the Gaza war were subject to international criticism, however the Israelis received particularly harsh condemnation from the international human rights community for the targeting of civilians and the use of disproportionate force.⁴²

In the spring of 2011, as the Free Gaza Flotilla was preparing to sail to the Gaza Strip with the intent of highlighting the Israeli blockade of Gaza, a slick, well-produced video began to circulate on Facebook and elsewhere on the internet, purportedly made by “Marc” a “gay rights activist.”⁴³ He reported the “hurtful” and

⁴¹ www.standwithus.com/pdfs/flyers/gay_rights.pdf. StandWithUs was by no means the first to use this strategy. See e.g. Blair Kuntz, “Queer” As A Tool Of Colonial Oppression: The Case Of Israel/Palestine, ZNet, Aug. 13, 2006, available at <http://www.zmag.org/znet/viewArticle/3391> (“As the second Palestinian Intifada erupted in the autumn of 2000, a curious and persistent argument began being employed by supporters of the Israeli state. At many supporters of Israel, many of them rather macho young men who never identified themselves as gay and who almost certainly never lived in an Arab or Muslim country, would stand up and decry the lack of gay rights in the Palestinian Territories compared to their view of the enlightened policies of Israel.”)

⁴² The United Nations’ Human Rights Council issued a controversial report on the force used by both sides in Operation Cast Lead, *Human Rights In Palestine And Other Occupied Arab Territories Report Of The United Nations Fact Finding Mission On The Gaza Conflict*, September 15, 2009, http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFM_GC_Report.pdf.

⁴³ www.youtube.com/watch?v=vhmBbGFJleU&feature=player_embedded

“heartbreaking” experience of being told by flotilla organizers that “the participation of his LGBT network would not be possible since it would not be in the overall interest of the flotilla.” He then explained to the camera how the organizers of the flotilla had close ties to Hamas, and then highlighted Hamas’s violent hatred of women and homosexuals. He ended with a plea to those who care about human rights, “Be careful who you get in bed with. If you hook up with the wrong group you might wake up next to Hamas.” The video got much play, including being promoted by the Israeli government press office on Twitter. It was later discovered that “Marc” was an Israeli actor hired to do the video as a way of discrediting the flotilla’s aims.⁴⁴ According to journalist Max Blumenthal, the government press office’s tweet was a retweet from a Netanyahu aide who seemed to have opened a Twitter account for the sole purpose of promoting the video.⁴⁵

The fake anti-flotilla video well-illustrates why Israel’s use of gays in its re-branding campaign has been termed by critics as “pinkwashing.”⁴⁶ In this regard, Israel has effectively used the “gay issue” to advance a larger political aim of proving that Palestinians

⁴⁴ Ethan Bronner, *Setting Sail On Gaza's Sea of Spin*, New York Times, July 2, 2011, p. SR3; Catrina Stewart, *The hoax video blog and the plot to smear a Gaza aid mission*, Independent, June 29, 2011, 2011 WLNR 12882019;; Benjamin Doherty, *Israeli actor in anti-Gaza Flotilla pinkwashing video identified*, Electric Intafada, June 25, 2011, <http://electronicintifada.net/blog/benjamin-doherty/israeli-actor-anti-gaza-flotilla-pinkwashing-video-identified>;

⁴⁵ Max Blumenthal, *Anti-Flotilla video fraud linked to PM Netanyahu’s office, official Israeli hasbara agents*, June, 24, 2011, <http://maxblumenthal.com/2011/06/anti-flotilla-video-fraud-has-links-to-pm-netanyahus-office-official-government-hasbara-agents/>

⁴⁶ See Sarah Schulman, *Israel and ‘Pinkwashing’*, The New York Times, November 22, 2011 p. A31. Some Israeli scholars are less enthusiastic about the term “pinkwashing,” see Aeyal Gross, *Israeli GLBT Politics between Queerness and Homonationalism*, supra note ___.

are too backwards, uncivilised, and unmodern to have their own state. So too, the campaign to create gay solidarity with Israel around the globe has, often unwittingly, drawn LGBT communities outside the Middle East into collusion with the Israeli state’s larger public relations project.⁴⁷

Israel’s so-called pinkwashing of its treatment of the Palestinians as a tool to gain international support for its larger foreign policy aims demands careful analysis. The criticism of Israel that the term embodies is not one that seeks to deny the fact that gay men and lesbians enjoy a wide range of civil and other rights in Israel, they do.⁴⁸ Nor does it deny that sexual minorities struggle in

⁴⁷ Parents and Friends of Lesbians and Gays (PFLAG) is one recent example thereof. Katherine Franke, *PFLAG Holds Israeli Pinkwashing Event*, February 22, 2012, Huffington Post, http://www.huffingtonpost.com/katherine-franke/pflag-israel-pinkwashing_b_1290935.html.

⁴⁸ Though in Israel, as in other places where lgbt rights have gained traction, those rights were hard won and need constant defense. As Erez Aloni, an Israeli queer legal scholar recently reminded me: “Israel is a highly heteronormative and patriarchal state. It is also the case that the movement toward gay rights was achieved despite the strong resistance of the government – achievements were made mainly by the courts or the attorney general. What’s more, most parental rights are banned for same-sex couples; and there is not even civil marriage – not to mention same-sex marriage, or inter-religious marriage by the state.” Correspondence with Erez Aloni, February 27, 2012, on file with author. To be sure, homophobia and transphobia are to be found throughout Israeli and Palestinian society. Jason Koutsoukis, *Homophobia In Israel Still High But Declining Slowly, Says Survey*, The Sydney Morning Herald, August 7, 2009, <http://www.smh.com.au/world/homophobia-in-israel-still-high-but-declining-slowly-says-survey-20090806-ebkb.html>; Ilan Lior, *Civil patrol 'army' formed to stamp out homophobic attacks in TA park*, Haaretz, February 18, 2012 <http://www.haaretz.com/print-edition/news/civil-patrol-army-formed-to-stamp-out-homophobic-attacks-in-ta-park-1.409398>.

The increasingly powerful role that the ultra-orthodox wing (the *Haredim*) of Israeli society is having in shaping official governmental policy and public opinion more generally draws into question the claim that there is widespread support for gay rights across the Israeli society. See e.g. Ethan Bronner and Isabel Kershner, *Israelis Facing a Seismic Rift Over Role of Women*, The New York Times p. A1, January 15, 2011; *Israel's secular and moderate majority*

Arab societies, they do.⁴⁹ Rather, the claim is that comparisons of this sort are irrelevant. The status of gay people in Israel is beside the point insofar as fundamental human rights are understood to be universal and not subject to zero-sum calculations: Israel’s illegal occupation of Palestine cannot be somehow justified or excused by its purportedly tolerant treatment of some sectors of its own population. So too, many LGBT Palestinians bristle when the Israeli government purports to speak on their behalf and look after their interests, driving a wedge between their gay-ness and their Palestinian-ness. Israel expresses an interest in their welfare only so long as their interests are framed as gay. To the extent that they identify as Palestinian, Israel’s helping hand cruelly curls into a fist. But that helping hand is more symbolic than real, since gay asylum seekers cannot seek refuge in Israel,⁵⁰ nor can most gay Palestinians

struggling with ultra-Orthodox minority, The Takeaway, January 16, 2012, <http://www.pri.org/stories/politics-society/religion/israel-s-secular-and-moderate-majority-struggling-with-ultra-orthodox-minority-7965.html>.

Similarly, the rise of Hamas in Palestinian society has been accompanied by a greater intolerance of homosexuality. See: IGLHRC Supports Free Expression for ASWAT, <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/415.html>.

⁴⁹ In Palestine, the oppression of lgbt people takes place as a cultural, not legal, matter. Palestinian “law” does not criminalize same-sex sex. The Palestinian Legislative Council has not adopted a criminal sodomy law. Thus, in the West Bank, where the Jordanian Penal Code is still applied, there is no legal criminal sanction for same-sex sex, as the Jordanians repealed their sodomy law in 1951, well before the U.S. (2003) or the Israelis (1988) did so. In Gaza, where law from the British mandate is still applied, there is a law criminalizing sex between men, thus tracing the legal sanction of homosexuality in Gaza to colonial, not native, influences. See, Ritchie, *supra* note ___ at 209. Unfortunately, the important work done by LGBT activists in Arab settings is often ignored when Arab societies are portrayed as more homophobic than others. Al Qaws, Aswat and Palestinian Queers for Boycott, Divestment and Sanction are doing great work in Palestine, as are Helem and Meem in Lebanon, and Kifkif in Morocco. So too, ALWAAN, Bint el Nas and other websites provide important resources to LGBT people in the Arab world.

⁵⁰ Michael Kagan and Anat Ben-Dor, *Nowhere To Run: Gay Palestinian*

enjoy the hot gay nightlife of Tel Aviv due to the severe limitations placed on their movement by the laws of occupation.⁵¹

Maya Mikdashi sets up the problem as a tension between civil and political rights:

Today, the promise of “gay rights” for Palestinian goes something like this: The United States will protect your right to not be detained because as a gay, but will not protect you from being detained because you are Palestinian. As a queer, you have the right to love and have sex with whomever you choose safely and without discrimination, but you do not have the right to be un-occupied, or to be free from oppression based on your political beliefs, actions, and affiliations. As long as it is Arabo-Islamic culture and its manifestation through (Palestinian) law that is oppressing you, we are here for you. If you are being oppressed by Israeli colonial policies, you’re on your own.⁵²

I began this essay with the discussion of Israel not to single it out, but to illustrate a larger, more widespread phenomenon: It is worth tracing why, how, and to what effect a state’s posture with respect to the rights of “its” homosexuals has become an effective foreign policy tool, often when negotiating things that have little or nothing to do with homosexuality. I aim in this discussion to intervene in an ongoing conversation among scholars of international law and politics that has cleaved into two rather unfriendly camps.

Asylum-Seekers in Israel, Tel Aviv University Public Interest Law Program (2008).

⁵¹ Jason Ritchie’s dissertation offers a nuanced and thoughtful study of the paradoxes of belonging and disenfranchisement experienced by Palestinian queers. Ritchie, *supra* note ____.

⁵² Maya Mikdashi, *Gay Rights as Human Rights: Pinkwashing Homonationalism*, *Jadaliyya*, December 16, 2011, <http://www.jadaliyya.com/pages/index/3560/gay-rights-as-human-rights-pinkwashing-homonationa>.

On the one side are human rights groups and activists who seek to secure human rights protections for subordinated, oppressed, tortured and murdered sexual minorities around the globe. They have worked hard to bring lesbian, gay, bisexual and transgendered people within the protective infrastructure of the well-organized human rights communities. On the other side is a group, perhaps most provocatively represented by Joseph Massad in *Re-Orienting Desire: The Gay International and the Arab World*,⁵³ that derides the work of LGBT human rights actors and organizations for a kind of missionary zeal to universalize western, sexualized identities that have little or no fit with the ways in which sexuality, or for that matter, identity take form in settings outside the West. “Following in the footsteps of the white Western women’s movement, which had sought to universalize its issues through imposing its own colonial feminism on the women’s movements in the non-Western world—a situation that led to major schisms from the outset—the gay movement has adopted a similar missionary role,” wrote Massad in *Public Culture* in 2002.⁵⁴ Not surprisingly, Massad got some push-back from the persons and entities he identified as imperialist missionaries who have sought to redeem their good names and good work.⁵⁵ Still others charted a middle course, acknowledging the ever-present risk of imperial effects, if not aims, when undertaking rights work in an international *milieu*, while at the same time recognizing the important and positive work that rights-based advocacy can bring about.⁵⁶ For this last

⁵³ Joseph Massad, *Re-Orienting Desire: The Gay International and the Arab World*, 14 *Public Culture* 361 (2002), later republished as Chapter 3 in Joseph A. Massad, *Desiring Arabs* (U. Chicago Press, 2007). See also, Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (2007); Sonia Katyal, *Exporting Identity*, 14 *Yale J. L. & Fem.* 97 (2002).

⁵⁴ Joseph Massad, *Re-Orienting Desire: The Gay International and the Arab World*, 14 *Public Culture* 361, 361 (2002).

⁵⁵ See, e.g. Scott Long, *The Trials of Culture: Sex and Security in Egypt*, *Middle East Report*, No. 230 (Spring, 2004), pp. 12-20.

⁵⁶ See e.g. Amr Shalakany, *On a Certain Queer Discomfort with Orientalism*,

group, as for Gayatri Spivak, rights are something we cannot not want,⁵⁷ yet we proceed with them cognizant of the complex effects their use entails.

The present essay carries a brief for neither side of this debate (though I will confess sentiments that lean in the direction of the middle course), but rather seeks to introduce an analysis none of the disputants have acknowledged: To focus this discussion on the relationship between LGBT human rights NGOs in the metropole and the potentially colonial subjects they seek to aid misses a third and vastly important actor in this theater - the state. In hugely interesting ways, states have come to see that their political power, their legitimacy, indeed their standing as global citizens, are bound up with how they recognize and then treat “their” gay citizens. A careful account of the role of human rights mechanisms and institutions in the expansion of human sexual freedom requires that we recognize and account for the manner in which NGOs working in this area, along with the populations they seek to aid, often find their work and their interests taken up and deployed by state actors for purposes that well exceed the articulated aims of something called “human rights.” The Israeli example I opened with is but one of the ways in which sexuality bears a curious relationship to global citizenship, politics and governance.

Illuminating this complex dynamic reveals some patterns: *Modern* states recognize a sexual minority within the national body and grant that minority rights-based protections. *Pre-modern* states do not. Once recognized as modern, the state’s treatment of homosexuals offers cover for other sorts of human rights shortcomings. So long as a state treats its homosexuals well, the international community will look the other way when it comes to a range of other human rights abuses.

101 Am. Soc’y Int’l L. Proc. 125 (2007); Aeyal Gross, *Queer Theory and International Human Rights Law: Does Each Person Have a Sexual Orientation?*, 101 Am. Soc’y Int’l L. Proc. 129 (2007); Teemu Ruskola, *Legal Orientalism*, 101 Mich. L. Rev. 179 (2002).

⁵⁷ Gayatri Chakravorty Spivak, *Outside in the Teaching Machine* 46 (1993).

Iranian President Mahmoud Admadinejad’s visit to Columbia University in September of 2007 sharpened my attention to this queer, and by this I mean odd or curious, role of gay rights in larger state projects. Against a backdrop of two parallel U.S.-led wars in Afghanistan and Iraq, charges that Iran had been covertly supplying arms to Shi’a militias in Iraq, intense criticism by the United States government of Iran’s efforts to build nuclear weapons, and ongoing campaigns of highly inflammatory anti-US rhetoric by the Iranian political leadership and highly inflammatory anti-Iranian rhetoric by U.S. political leadership, Iranian President Mahmoud Ahmadinejad was invited to give a speech at Columbia University. This invitation was highly controversial - anti-Iranian forces arguing that President Ahmadinejad should not be given a forum in the United States, and others arguing that free speech and open democracy principles instruct that we should hear from those whose ideas we find most abhorrent. Still others, though admittedly a minority in the University community, felt that President Ahmadinejad represented an articulate, though at times extreme, counterpoint to U.S. imperialism in the Middle East and Western Asia. Notably, the Dean of my Law School felt moved to take sides in this debate and issued a press release the day before President Ahmadinejad arrived at Columbia expressing anticipatory condemnation of the Iranian President’s remarks.⁵⁸ To my knowledge this was the first and only time that the Law School’s Dean has seen it appropriate to issue a formal denouncement of any individual – head of state or otherwise – invited to speak at the University.

President Ahmadinejad’s speech would surely gain national attention given his views on U.S. involvement in southwest Asia, his insistence on the duplicity underlying the Bush Administration’s nuclear proliferation policies, and of course his comments about

⁵⁸ Statement by David M. Schizer Re: SIPA Invitation to Mahmoud Ahmadinejad, www.law.columbia.edu/media_inquiries/news_events/2007/september07/deans_statement.

Israel and the holocaust.⁵⁹ Yet the significance of the Ahmadinejad speech and the controversy it triggered has to be understood on the local level in a context that included the fact that for the last several years a number of Columbia faculty members who work on the Middle East and had taken positions that expressed some sympathy for the situation of the Palestinians, had been aggressively attacked by organizations in the United States charging them with being anti-semitic or anti-Israeli.⁶⁰ These activities included efforts to intervene in the candidacy of two faculty members’ tenure review.⁶¹

When President Ahmadinejad arrived he was “introduced” by Columbia University’s President Lee Bollinger. President Bollinger’s direct address to President Ahmadinejad included statements such as: “Mr. President, you exhibit all the signs of a petty and cruel dictator,” criticized his pursuit of nuclear weapons, highlighted the mistreatment of women and homosexuals in Iran, cited Ahmadinejad’s denial of the holocaust as evidence that the Iranian President was “either brazenly provocative or astonishingly uneducated,” and noted as fact Iran’s role in supplying arms to the militias in Iraq - thereby taking sides in a highly contested war and unsubstantiated claim of Iran’s involvement in a proxy war in Iraq floated by the U.S. government. Bollinger closed with the charge that “I doubt that you will have the intellectual courage to answer these questions.”

⁵⁹ President Mahmoud Ahmadinejad *Open letter to the American People*, November 29, 2006, <http://edition.cnn.com/2006/WORLD/meast/11/29/ahmadinejad.letter/>; *Iranian leader denies Holocaust*, BBC News, December 14, 2005, http://news.bbc.co.uk/2/hi/middle_east/4527142.stm.

⁶⁰ See, for instance, video *Columbia Unbecoming*, www.columbiaunbecoming.com/; Anderson, *Fracas Erupts Over Book on Mideast by a Barnard Professor Seeking Tenure*, New York Times, Sept. 10, 2007 p. B1.

⁶¹ Richard Byrne and Robin Wilson, *Palestinian-American Scholar at Columbia U. Gets 2nd Chance at Tenure*, The Chronicle of Higher Education, May 27, 2008, <http://chronicle.com/article/Palestinian-American-Scholar/835>.

President Ahmadinejad responded by voicing criticisms of U.S. policy in the Middle East and Western Asia in tones and in terms rarely heard in the United States. He pointed out the hypocrisy of the U.S.’s efforts to limit the rights of other nations to nuclear weapons when it regularly violates the nuclear arms non-proliferation treaty itself, and asked why the Palestinian people should be shouldered with paying for the historical atrocity of the holocaust when this genocide was committed by Europeans, “why is it that the Palestinian people are paying the price of an event they had nothing to do with?”⁶² In response to a question from a student in the audience about why women were denied human rights in Iran, which included a condemnation of the execution of young men on account of their presumed homosexuality, he replied that “women in Iran enjoy the highest levels of freedom,” and then asserted “In Iran we don’t have homosexuals like you do in your country. We do not have this phenomenon. I don’t know who’s told you that we have it.” He then reminded the audience that in the U.S. the state frequently executes not only gay people but many vulnerable others.

Surprisingly enough, despite ample coverage of President Ahmadinejad’s visit to Columbia, the parts of the story that got the most coverage were his remarks relating to women and homosexuals in Iran. As one would expect, domestic gay rights groups issued press releases the next day denouncing Ahmadinejad’s denial of homosexuality in Iran, noting that without question there are men who have sex with men in Iran, and they are treated very harshly by the Iranian government. But what was most remarkable from my perspective was how conservative U.S. politicians and commentators highlighted sexism and homophobia in Iran as a justification to

⁶² “[W]e need to still question whether the Palestinian people should be paying for it or not. After all, it happened in Europe. The Palestinian people had no role to play in it. So why is it that the Palestinian people are paying the price of an event they had nothing to do with?” President Ahmadinejad Delivers Remarks at Columbia University, The Washington Post, September 24, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/24/AR2007092401042.html>.

denounce the Iranian President and as reinforcement of the widely held view that Iranian culture was particularly intolerant and primitive as compared with Western modernity and cosmopolitanism.⁶³ Never mind that the United States government, particularly the administration in place during President Ahmadinejad’s visit, was vulnerable to charges of sexism and homophobia as well.⁶⁴

That gender and sexuality emerged as the most salient aspects of President Ahmadinejad’s speech at Columbia is interesting not only for how conservative U.S. politicians showed themselves to be deeply hypocritical on these issues when it so served their interests. Perhaps more importantly, the use of the rights of women and gay people as a device by which the U.S. asserted its moral superiority to Iran echoed similar uses of gender and sexuality in struggles for the West to assert its dominance over less “civilized” or “modern” peoples. So too, resistance to human rights norms that both construct and then protect a certain type of gendered and sexualized citizenship have been deployed outside the West in post-colonial and other contexts as a way of turning back Western hegemony and drumming

⁶³ See remarks of Newt Gingrich on On the Record with Greta, Fox News, September 25, 2007 www.foxnews.com/story/0,2933,297973,00.html

GINGRICH: Well, I mean — you and I — I think that treating an evil leader — let me give you an example. He made a comment in passing there were fewer homosexuals in Iran.

VAN SUSTEREN: Does he kill them?

GINGRICH: They execute them. I'm just saying nobody got up and said, How you can have somebody here who denies the Holocaust, executes homosexuals, arrests students, tortures and kills journalists.

⁶⁴ *George W. Bush’s War On Women: A Chronology*, Planned Parenthood Federation of America, October 1, 2003; by Barbara Morrill, *A Surgeon General Who Will “Cure” Gays?*, Daily Kos, June 1, 2007, <http://www.dailykos.com/story/2007/06/01/341697/-A-Surgeon-General-Who-Will-Cure-Gays->.

up forms of nationalism. The nation comes to acquire both a gender and a sexual orientation along the way.⁶⁵

Here we see the role of human rights law - particularly rights securing equality for gay men and lesbians - in the expansion of neo-liberalism and its fellow traveler, capitalism, in less economically developed precincts of the world. Revulsion toward gay men gets articulated as the most visible trope deployed by political leadership seeking to hold on to local control and governance. The remainder of this essay aims to illustrate these points through struggles for political and economic power in Romania and Poland and then will circle back to President Ahmadinejad’s visit to Columbia University and the Israeli pinkwashing campaign to show how the issue of gender and sexual orientation-based intolerance of which he was accused signals the centrality and manipulation of sexuality and sexual rights in struggles for and against the civilizing mission that lies at the heart of key aspects of globalization. I will conclude with reflections on the ethical predicament for LGBT human rights advocates posed by the complex relationship between rights, nationalism, and global citizenship.

* * *

Human rights norms claim as their justification and their source a set of universal and generalizable claims about the moral worth of all persons that requires the recognition of the inherent dignity and equality of all members of the human family, thereby entitling each of us to a set of inalienable rights which any government must respect as a condition of its legitimacy. Many have observed that in the post-World War II era an adherence to human rights has become among the most important criteria by which a nation might prove itself to be civilized and modern.⁶⁶ Inclusion in

⁶⁵ See Katherine M. Franke, *Sexual Tensions of Post-Empire*, 33 *Studies in Law, Politics and Society* 63 (2004).

⁶⁶ See for example Peter Fitzpatrick, *Modernism and the Grounds of Law* (2001) at 120.

various institutions that embody modern global citizenship, such as the United Nations, the IMF, NATO, and regional trade organizations, have come to require from applicants that they recognize a form of “individualized humanity” in their own citizens, and that those citizens possess certain inalienable rights by virtue of that humanity.

For example, the European rules that define whether a country is eligible to join the European Union, commonly called the Copenhagen Criteria, set forth that:

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.⁶⁷

Accession states - that is those states that seek admission to the EU - are asked to undertake two important reform efforts to be admitted to the EU: one having to do with human rights and one having to do with open markets. But in order to commence negotiations with a state seeking membership, the EU insists only that the accession state have made progress on the human rights and rule of law front. These norms are given relative importance over the values of open markets, privatization, and fiscal and monetary stability.

Romania’s effort to secure membership in the EU provides an interesting example of how admission to modern economic society turns on the differentiation between the civilized, rights-respecting, economically disciplined, global and modern Europe and its other: the more primitive, tribal or local, non rights-respecting, communitarian, and economically rigid or undisciplined states to its East and South. Romania’s campaign to join the EU, starting in 1993 with its membership in the Council of Europe, and culminating in its full EU membership in 2007, offers a useful example of the essential, but in many ways bankrupt, role of human rights law - particularly the rights of sexual minorities - in the evolution of a state’s reputation

⁶⁷ Copenhagen Criteria (1993).

as global citizen.

Romania has had a shocking modern history of human rights violations, from Ceausescu’s rule through the post-Communist era.⁶⁸ The criminal treatment of homosexuality, the invasion of women’s bodies in the name of the nation, as well as discrimination against Roma, were among the most extreme forms of state-sponsored rights-abridging behavior. In 1968, the socialist Romanian government enacted article 200, which criminalized sexual acts between persons of the same sex in any setting - expanding into the private domain a law that had previously criminalized only such acts that created a “public scandal.” Article 200 greatly increased the penalties for homosexuality, mandating sentences of one to five years. This new law supplemented Ceausescu’s pro-natalist decrees that compelled women to undergo periodic and compulsory gynecological examinations and severely punished abortions. In 1986 Ceausescu declared “the fetus to be the socialist property of the whole society. Giving birth is a patriotic duty ... those who refuse to have children are deserters.”⁶⁹ To a regime that predicated its authority on its surveillance of every detail of existence, there was no realm beyond the interest of the state, thus liberal rights such as privacy found no traction in socialist Romania for women or for sexual minorities.⁷⁰

After the violent overthrow of the socialist government in 1989, the laws prohibiting abortion were overturned yet the laws criminalizing sodomy were not. Only when the Romanian government ceded to the fact that their economic future lay to the West – to Europe – was it forced to review its laws outlawing homosexuality, largely in response to the complaints of *rapporteurs*

⁶⁸ See T. Gallagher, *Romania After Ceausescu: The Politics of Intolerance* (1995); Human Rights Watch, *Struggling for Ethnic Identity: Ethnic Hungarians in Post-Ceausescu Romania* (1993).

⁶⁹ T. Gallagher, *Romania After Ceausescu: The Politics of Intolerance* 61 (1995).

⁷⁰ G. Kligman, *The Politics of Duplicity: Controlling Reproduction in Ceausescu’s Romania* (1998).

from the Council of Europe when Romania sought membership therein in 1993. Responding to European demands that Romania modernize its criminal laws, Romanian Justice Minister Petre Ninosu shot back “if we let homosexuals do as they please, it would mean entering Europe from the back.”⁷¹ Another Romanian politician remarked at the time: “Of course the EU parliament wants us to abolish Article 200 – they’re all gay.”⁷²

Just as women’s bodies were expropriated during the Ceausescu regime to do the work of the Romanian nation, Romanian politicians used a homosexualized European body to aid in their own nationalist project by resisting repeal of Article 200. The nation took on the form of a sexualized body that was threatened with violation from the rear when the Council of Europe insisted that it bend to European values.

We witnessed the same fears expressed by the President of Poland in the spring of 2008 when he used the specter of gay marriage to trigger national resistance to Poland’s ratification of the new European Union Constitution. In a nationally televised speech, President Lech Kaczynski appealed to threats to Poland’s national values and morality if the new Constitution were ratified since it included the terms of the European Charter of Fundamental Rights – a document that includes rights for homosexuals. President Kaczynski had his staff pull off the internet a video of two men being married and used it as a backdrop to his address to the nation, while patriotic Polish music played along.⁷³ The two men, who live in New York and had posted the video on the internet for their friends and family after they were married in Canada, were outraged when they heard that they were being used as a homophobic prop to fortify Polish nationalism.⁷⁴

⁷¹ Human Rights Watch, *Public Scandals*, pp. 31-32. It is worth noting that Ninosu went on to be a member of the Romanian Constitutional Court.

⁷² Stychin, *Governing Sexuality* (2003) p. 122 n. 7.

⁷³ www.youtube.com/watch?v=cqbHnh7WNpU.

⁷⁴ Chan, *Political Fight in Poland Hits Home for Gay Pair*, *New York Times*,

Ultimately Romania repealed article 200, and in 2007 it was admitted to the EU. The coupling of a “victory” for gay people in Romania with every Romanian’s long term economic interests by virtue of its membership in the EU teaches us something important about the power and the limits of globalization’s use of human rights law as the lever with which more “backward” nations can be pried from their pre-modern ways and be inducted into modern global citizenship.

Just as the Council of Europe was pressuring the Romanian government to repeal its laws criminalizing same-sex sexual conduct, the Dutch government began funding a Romanian NGO called ACCEPT that would work toward the repeal of Article 200. It is worth noting that ACCEPT defined itself explicitly as a human rights organization, not as a local gay and lesbian grass roots service provider. By formally affiliating with the largest federation of lesbian and gay associations in the Netherlands, and being funded by the Dutch Foreign Ministry, ACCEPT’s main mission was a law reform project limited exclusively to the repeal of Article 200. It did not partner with other human rights campaigns in Romania, such as those launched on behalf of the Roma or women, nor did it see itself as enabling or responding to a local or indigenous grass roots gay or sexual rights movement in Romania.

Instead, ACCEPT was both responding to and speaking to an international audience in Western Europe. Much of the human rights script, therefore, was already written - it merely had to be performed in Romania in a manner that was plausible enough to satisfy audiences in Amsterdam and Brussels.

What do I mean by this script? Here as elsewhere, European *rapporteurs* were the opposite of ethnographers prepared to find new forms of sexual affiliation that were the unique product of a post-Communist Romanian culture, and then adapt their normative tools to respond to those unique conditions. Quite the contrary, they went looking for something familiar: a society that had homosexuals just like their homosexuals, who were discriminated against in predictable

ways by public and private actors, and who should and could seek legal protection for that discrimination from the state. For a state like Romania, being viewed as a serious candidate for admission to the EU meant performing plausible modernity by having a recognizable minority of citizens who understood themselves to be constituted by a gay identity, a same-sex sexual orientation, as in the European metropole, who could then be recognized by the state as rights-bearing subjects. The extent of the state’s obligation with respect to these subjects was the announcement of an anti-discrimination norm, and a minimal infrastructure of enforcement.

This is what the Dutch paid for when they underwrote the activities of ACCEPT, and that is what they got. An organization that did not primarily grow out of Romanian society, but instead played an important role as bridge between the well-endowed European West and the needy European East. Although the EU Parliamentarians insisted in letters to the Prime Minister of Romania that they were looking forward to welcoming Romania into the EU, so long as “*we share the same values*,”⁷⁵ Romania was able to satisfy the Copenhagen criteria simply by repealing Article 200 - the legally formalistic price of admission into the economic community of the EU.

The kind of gay subject this politics calls up is one whose identity would coagulate in public institutions such as gay pride parades and gay community centers, where “gayness” could be isolated and privileged over other kinds of identification grounded in, for instance, class, ethnicity, or religion.

Since 2004, a gay and lesbian pride parade has been held in Bucharest every June. The theme of the first parade was: *You Have The Right To Be Diverse*. In 2006, Romania was named by Human Rights Watch as one of five countries in the world that had made “exemplary progress in combating rights abuses based on sexual orientation or gender identity.”⁷⁶ Again, Western Europe got what

⁷⁵ Carl Stychin, *Governing Sexuality* (2003) p. 134-35.

⁷⁶ ‘Hall of Shame’ Shows Reach of Homophobia

On International Day Against Homophobia, Violations Mixed With Victories, Human Rights Watch, <http://www.hrw.org/news/2006/05/16/hall-shame->

they asked for in Romania - a western style gay-rights movement that demonstrated the kinds of progress that mark a society that is being successfully civilized by adherence to regional human rights norms as the price of membership in a global community.

It is impossible to say whether a kind of “gay identity” would have emerged in Romania in the absence of the kind of interpellation that Western European parliamentarians insisted upon as a condition of EU membership - calling up recognizable gay subjects who could then be protected by human rights laws. Yet the almost singular focus on sexual rights as the marker of modernity has meant that other types of security and rights-based values have been neglected. The “shadow report” prepared by Romanian Women’s NGOs to supplement the report of the Romanian government to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2000 detailed the horrendous treatment of women - marital rape remains legal, there are no laws prohibiting domestic violence, laws prohibiting sex discrimination in the workforce are not enforced, and the maternal mortality rate is among the highest in all of Europe due to the fact that unsafe abortions remain the primary method of birth control in the absence of adequate family planning information and resources.⁷⁷ More recent reports on the rights of Romanian women, particularly Roma women, show little improvement.⁷⁸

[shows-reach-homophobia.](#)

⁷⁷ Women’s Status in Romania: A Shadow Report to the CEDAW 23rd Session April 2000, www.legislationline.org/legislation.php?tid=178&lid=7613&less=false; Center for Reproductive Law and Policy, Women’s Reproductive Rights in Romania: A Shadow Report (2000), www.reproductiverights.org/pdf/sr_rom_0600_eng.pdf

⁷⁸ SHADOW REPORT, United Nations Convention on the Elimination of All Forms of Discrimination against Women in Romania for its consideration at the 35th Session 15 May to 2 June 2006, prepared by European Roma Rights Center and the Romani CRISS, available at: [http://www.iwraw-ap.org/resources/pdf/Romania\(2\)_SR.pdf](http://www.iwraw-ap.org/resources/pdf/Romania(2)_SR.pdf)

What is more, Romania has come in for severe criticism for its willingness to allow the United States’ CIA to set up secret detention camps and “black sites” in Bucharest where detainees have reportedly been subjected to sleep deprivation, slapping, and stress positions.⁷⁹ Perhaps this is the lesson of Romania’s entrance into the modern Europe: so long as you treat your gay people well, we’ll look the other way when it comes to other human rights abuses, or worse, ask that you serve as host to the export of our own human rights dirty secrets.

The entrance of Romania into the economic and political community of Europe shows us several important things. During periods of political transition sexuality has a curious way of surfacing when external threats are homo-sexualized as a means of solidifying or fortifying national identity within. The body of the nation becomes sexualized, if not hetero-sexualized, and a virulent and revitalized national heterosexual body stands ready to battle penetration or violation from the extraterritorial sexual other. When that hetero-sexualized state later seeks membership in a global political and/or economic community it must revisit its sexual identity in ways that satisfy twenty-first century braiding of neo-liberal economics and sexual politics. This amounts to what is surely a tricky undertaking that involves identity management as part of a larger project of global citizenship. The state must convince a global audience of a newly found and genuinely felt tolerance toward homosexuality, including patriating its gay nationals, while hanging on to its own heterosexual reputation. The state’s new homo-tolerance, some might even call it a kind of “metro-sexuality,” becomes a kind of calling-card carried by the Finance and Foreign Ministers when they visit Geneva (WTO), Washington (IMF, UN) and Brussels or Strassbourg (European Parliament).

The Romanian experience shows us how the drive for economic inclusion in Western Europe – a drive that was understood explicitly by the Europeans as a process of civilizing the Romanians

⁷⁹ Scott Horton, *Inside the CIA’s Black Site in Bucharest*, Harper’s Magazine, December 8, 2011, <http://harpers.org/archive/2011/12/hbc-90008343>.

– justified the renovation of the hetero-sexualized body of the nation, while conjuring up a homo-sexualized private citizen. The new gay citizens this process produced emerged from a form of identity politics that is familiar to late-capitalist societies, but had few roots in post-communist cultures playing catch up, as was Romania: identity becomes individualized, indeed privatized, along with the economy. So too, sexual orientation becomes a private fact about a person that should not have public consequences, such as discrimination in employment or the ability to serve in the military. Well-written laws, adequately enforced, can take care of the problem. Little or no effort was made to strengthen the institutions of civil society that might check the distributional inequalities of capitalist culture, might balk at the conscription of the west’s weaker economic players in the U.S.’s “global war on terror,” and might have sought solidarity with other oppressed groups such as the Roma and women. Here, as in other contexts, international gay rights NGOs risk being used as the front end of the plow that opens up the path for new markets for European goods, new low-wage workers, and a much weaker social welfare state.

* * *

So this brings me back to President Ahmadinejad’s visit to Columbia. President Bollinger’s “introduction” of the Iranian leader was nothing if not a spectacular display of masculinity. The moment seemed to demand the performance of a kind of national manhood. Having called President Ahmedinejad a “petty dictator,” Bollinger closed his remarks with a put down, chiding the little man who wore no tie for lacking the courage, or even the capacity, to parry the thrust of Bollinger’s accusations. The occasion required that Bollinger get all gender-y, as Eve Sedgwick would have put it.⁸⁰

⁸⁰ Eve Kosofsky Sedgwick, *Gosh, Boy George, you must be awfully secure in your masculinity!*, in *Constructing Masculinity* 16 (1996). In many respects the intended audience for Bollinger’s Iran-phobic remarks was not present in the room. Many *alumni* had adamantly denounced the University’s invitation to the Iranian President on the ground that it amounted to a condonation of his anti-

Certainly these events echo similar European efforts to advance forms of economic and human rights-based freedoms in the states formerly behind the Soviet Iron Curtain. In these contexts, both the cultural intelligibility of a gay citizen/subject and that citizen/subject’s rights-bearing status stand as the metonyms of freedom. That is, unfreedom is most convincingly evidenced by two things: first, the absence of a certain percentage of the population who will stand up, wave a rainbow flag, and proclaim their authentic homosexual identity: “We Are Family” as the Sister Sledge gay anthem declares. And second: a state that is expected to recognize them by and through the enactment of anti-discrimination legislation. An international audience is fully prepared to stand in judgment of the societies who cannot produce a particular kind of gay citizenry and who refuse to extend human rights protections to that citizenry on the basis of their identity.

This formulation of the necessary relationship between identity formation, recognition and rights was concretized in the Yogyakarta Principles in 2006,⁸¹ a set of twenty-eight precepts that seek to integrate concerns about sexual orientation and gender identity into the main of human rights law and norms. For present purposes Principle 3 is most important, holding that “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.” Just as Article 15 of the Universal Declaration of Human Rights sets out that “Everyone has the right to a nationality ... [and] no one shall be arbitrarily deprived of his nationality or

zionist views. Further, President Bollinger had received substantial pressure from New York politicians to cancel the Ahmadinejad event. He needed their support for plans to proceed with the expansion of the university campus into West Harlem despite, and sometimes over, the objections of local residents.

⁸¹ *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, available at: www.yogyakartaprinciples.org/principles_en.pdf. In November of 2006, “a distinguished group of human rights experts” gathered in Yogyakarta, Indonesia to draw up “principles on the application of international human rights law in relation to sexual orientation and gender identity.”

denied the right to change his nationality,”⁸² the Yogyakarta Principles are animated by a commitment to establish a universal and fundamental right to a sexual orientation and gender identity. This seemingly progressive, inclusive and dignity-respecting addition to the inventory of fundamental rights secured by international law makes an epistemic claim that risks a kind of violence in many contexts outside of the U.S., western Europe and their satellites. It takes as given that all persons do, or should, understand themselves to have a sexual orientation and a gender identity, and that this sexually-oriented and gendered sense of self is fundamental not only to how they *know* themselves but fundamental to who they *are*.

A member in good standing in the community of human rights-abiding states (in contrast with those that are human rights-denying) must recognize this universal “fact” of humanity: that human bodies everywhere organize and then sort themselves according to a sexualized orientation. To deny or question the universality of this *truth of the human* is *prima facie* evidence of bigotry and intolerance.

Thus President Ahmadinejad’s comment that “In Iran we don’t have homosexuals like you do in your country,” and that “women in Iran enjoy the highest levels of freedom,” offered evidence of what some in the U.S. thought they already knew about Iran and its political leadership: it is tyrannical, premodern, uncivilized, and not to be trusted - not trusted about its knowledge of its own people, nor about other issues such as its nuclear ambitions, its role in supporting the insurgency in Iraq, or its threat to Israel. While there may be some debate among experts about the extent and aims of Iran’s nuclear program, no thinking person could doubt the existence of homosexuals in Iran and their entitlement to the protection of human rights law.

Or could they? What does it mean that here, as elsewhere, the denial of homosexuality and the persecution of sexual deviance are

⁸² Universal Declaration of Human Rights art. 15, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

used as the ideal cudgel with which the Iranians could be attacked by international actors?

First of all, I hasten to point out that the question of homosexuality in Iran is not one obviously amenable to a yes/no answer. Of course sexual identification, desires and identities in Iran don’t line up precisely as they do in the United States or in Western Europe. Why would they? Again, Joseph Massad has done a more than ample job of unpacking this complex issue in the Arab world, and his insights apply with equal force in Iran. Afsaneh Najmabadi’s and Pardis Madhavi’s work have been equally important in exploring the contours of sexual and gender identity in modern Iran.⁸³ While I don’t imagine that President Ahmadinejad’s claim that there were no homosexuals in Iran was a nuanced reference to Massad’s, Najmabadi’s or Mahdavi’s analysis of sexuality in Islamic countries, I do think that sensitivity to the imperial nature of the insistence upon the universal, stable and binary fact of hetero and homo sexualities by some of the international human rights community is necessary in order to formulate a thoughtful response to President Ahmadinejad’s statement about his population’s sexuality.

But what of the exact words he used in his speech? I thought it might be useful to check the translation of his comment about gays in Iran. I asked an Iranian colleague Professor Hamid Dabashi, whether the translation we received of the speech was accurate. The exact words the Iranian President used were, as translated by Professor Dabashi listening to the recording of the event: “in Iran we do not have homosexuals as you do. In our country there is no such thing. In Iran such things . . . In Iran . . . In Iran . . . There is no such thing. I have no idea who has said this to you.” Professor Dabashi raised two points about President Ahmadinejad’s word choice. First he focused on the phrase “as you do,” noting that it could be “implicitly suggesting that we have a different kind of homosexuality in Iran,” or it could mean, “we don’t have them at all.” Dabashi’s second point is more subtle, and muddies the issue far more greatly.

⁸³ Afsaneh Najmabadi, *Women with Mustaches and Men Without Beards: Gender and Sexual Anxieties of Iranian Modernity* (2005); Pardis Mahdavi, *Passionate Uprisings: Iran’s Sexual Revolution* (2009).

He wrote me:

now the other issue is that when the second time he says “In Iran there is no such thing” the phrase that he uses is literally “such a thing has no external presence/vojud e khareji nadareh” -- now this phrase “vojud e khareji nadareh” idiomatically means “does not exist” but literally means “has no external existence” -- yet another polyvalent phrasing that is embedded in it is the suggestion that homosexuality is not a socially acceptable behavior in Iran, namely we do not see it in public space -- adding credence to the first reading of “as you do” I suggested above -- namely, again a sympathetic reading of Ahmadinejad that in Iran these are private matters.⁸⁴

So maybe President Ahmadinejad was reading Massad and Najmabadi after all!

Far too many human rights groups, politicians and media outlets outside Iran responded to President Ahmadinejad’s remarks with the demand for recognition: “yes, of course there are gay people in Iran!” Even my own colleagues at Columbia Law School’s Sexuality and Gender Law Clinic issued a press release immediately after the speech expressing outrage at the Iranian President’s denial of a gay Iran, at the persecution of lesbian and gay Iranians by the government, and unfavorably compared that horrendous treatment to the favorable Constitutional protections that homosexuals receive in the United States. So too they noted the number of gay Iranians who have sought asylum in the U.S. as evidence of the greater freedoms here in the U.S. and lesser freedoms there in Iran.⁸⁵

In an odd turn, LGBT-rights advocates found themselves in

⁸⁴ E-mail from Hamid Dabashi to Katherine Franke, February 12, 2011, on file with author.

⁸⁵ *Sexuality and Gender Law Clinic Denounces Anti-Gay Remarks by Iranian President*, September 26, 2007, www.law.columbia.edu/media_inquiries/news_events/2007/september07/Iran_GLBT.

an unintended allegiance with political conservatives in Washington who, despite long and vitriolic opposition to positive legal rights for homosexuals in the U.S., opportunistically used this moment to proclaim the moral superiority of the United States as compared with the hostile-to-gays Iranian government. They pointed to the intolerance of Islam toward homosexuality as evidence of Iran’s backwardness, while failing to mention that all but a few of the organized Christian churches in the U.S. vehemently oppose the rights of gay people.

Immediately after President Ahmadinejad’s speech, media outlets and blogs recirculated a horrible picture of two young Iranian men being hanged in 2005, ostensibly for being gay. At the time of the execution in 2005 there had been a vocal outcry from the international human rights community decrying this kind of treatment of Iranian gay men. Tom Lantos, then a member of the U.S. Congress and a holocaust survivor who had long been an adamant supporter of Israel and critic of Arab or Islamically influenced states, strongly condemned the action: “This sickening episode shines a bright light on the severe shortcomings of the Iranian legal system ... in this case, authorities apparently chose to play on deep-seated feelings of bigotry toward homosexuality.”⁸⁶ The Belgian Foreign Minister and a British gay rights group similarly joined the protest. Peter Tatchell, a British activist, claimed “this was just the latest barbarity by the Islamo-fascists in Iran.”⁸⁷

⁸⁶ Statement of Rep. Tom Lantos, July 27, 2005, available at: mpetrelis.blogspot.com/2005/07/rep.html.

⁸⁷ *Execution of Gay Teens in Iran*, www.petertatchell.net/international/iranexecution.htm. The term “Islamofascist” is not original to Peter Tatchell, but has a history traceable back to conservative commentators who sought an effective neologism to link modern states made up of predominantly Muslim populations to European fascist states in the early to mid nineteenth century. David Horowitz’s Freedom Center has organized something dreadfully called “Islamofascism Awareness Week” on college campuses in the last several years, with the purported aim of educating students to the imminent threat of radical islam, but with a more frank design of intimidating Muslim students and women’s studies departments. www.terrorismawareness.org/islamo-

But it turns out that the young men in this picture very likely were prosecuted for sexually assaulting a 13-year old boy, not for consensual homosexual conduct. Reports of their homosexuality had originated with an opposition group in Iran - the National Council of Resistance of Iran – knowing full well that the international media and human rights community would pick up on it immediately as a justification for criticism of the Iranian government. And they were right. Meanwhile, there were local groups in Iran that had galvanized support for the reform of the death penalty and criminal laws applying to children through the use of the case of the hanging of these two young men. This work was severely undermined when the international community intervened and plucked these two boys out for special treatment because they were “gay.”⁸⁸

I raise this not to deny that the Iranian government has a policy of persecuting men who have sex with men, or women who have sex with women, but rather to illustrate how many of the events in Iran must be understood in light of how they are inextricably intertwined within global politics in which rights-based claims for sexual liberty are used by states as the lever with which other state interests are pried loose. These images, stories, prosecutions, executions, and statements are taken up and manipulated in the service of narratives of modernity, backwardness, threats to the sovereignty of Iran, threats by Iran to the sovereignty of other nations such as Israel or Iraq, and internal politics and resistance within Iran itself, as the last example clearly illustrates. That the possibly fabricated persecution of gay men could be so easily tossed up, like raw meat, by the domestic political opposition in Iran to an

facism-awareness-week/49/a-students-guide-to-hosting-islamo-facism-awareness-week/. Columbia University faculty have been a particular target of these events. Horowitz’s Freedom Center, working together with CampusWatch, has launched efforts to discredit several faculty members whose scholarship and teaching have included sympathy toward the struggle for Palestinian statehood, the plight of Palestinian people, or criticism of Israeli state policy.

⁸⁸ Conversation with Afsaneh Najmabadi, September 20, 2008.

international audience already poised to criticize the Iranian government should itself give us pause when we consider the role of sexuality in struggles for and against global citizenship.

* * *

In some respects, the deployment of LGBT rights by states to further other national and nationalist interests is nothing new. Woodrow Wilson “used” the enfranchisement of women in the United States in the immediate post World War I period as a means by which to champion the moral superiority of the U.S., and the U.S. military was racially integrated by Harry Truman after World War II for reasons that had as much to do with efforts to distinguish the U.S. from the Soviet Union as the rightness of African American civil rights.⁸⁹ So too, the universalist humanism that underlies the post World War II human rights paradigm always risks a kind of biopolitics that should give us pause, whether the rights asserted are on behalf of LGBT people in Egypt or Romania, women undergoing genital cutting in Sudan, footbinding in Japan, or abortion rights in the United States and elsewhere.⁹⁰

To be honest, I’m happy sitting out the internecine battle between the likes of Joseph Massad on the one hand and the LGBT advocates at Human Rights Watch on the other when it comes to the impossible goal of getting the descriptive project “right” on the question of identity and sexual practices. For present purposes I’ve got a different bone to pick. It has to do with who and what is actualized when the LGBT subject is given a voice through the

⁸⁹ Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L.Rev. 518 1(1980).

⁹⁰ Is the “right” feminist ending to the film *Juno* one where she has the abortion rather than carries the child to term? For a smart discussion of the biopolitics of abortion rights politics see Lauren Berlant’s discussion of Christian Mungiu’s film *4 Months, 3 Weeks and 2 Days*, at supervalentthought.com/2008/02/24/a-barrel-of-acid-and-a-barrel-of-water-or-things-happen-like-this/.

intervention of the tools of human rights? To what degree should a state’s operationalization of sexuality and sexual rights trigger a set of ethical concerns back at the home office of the NGOs working to advance sex and sexuality-based human rights? When non-state actors seek to engage the human rights apparatus in the name of the rights and freedom of certain populations and practices, what sort of duty do they have to take into account the ways in which the meaning and implications of their work may not be of their own making or design?

Lauren Berlant has urged that we concern ourselves with a kind of moral atrophy that sets into some right-based social movements precisely at the moment that the state “takes up” their cause.⁹¹ Might a kind of atrophy be at risk when the state starts doing the heavy lifting related to defending the rights of sexual minorities, as we saw in the examples I discussed above? Whether in the sodomy reform politics of post-Ceausescu Romania or in today’s same sex marriage politics in the U.S., there is a risk that the rights-bearing gay subject – a new “good citizen” – emerges in the foreground of a national landscape that by contrast highlights at its margin others who are not-so-good.

We might laud Israeli’s political leadership when it stood up for the gays after the Tel Aviv shooting, but we ought to note the circumstances when these leaders stood down in the face of similar violence perpetrated in more trying circumstances from the perspective of the liberal state. Prime Minister Netanyahu come out as a defender of gay Israelis when attacks were made against innocent young people who had gathered privately in Tel Aviv, but not when members of the Israeli religious right attacked radical queers who marched in the streets of Jerusalem. A “gay right” is not a “gay right” is not a “gay right.” The LGBT kids in the basement – by no means deserving any form of attack – posed little challenge to the liberal state, while the queers in the streets just might have. Aeyal Gross has posed an even more difficult challenge, “Israeli

⁹¹ Id. drawing from the work of Mladen Dolar, *A Voice and Nothing More* (2007) and Christian Mungiu’s film *4 Months, 3 Weeks and 2 Days* (2007).

politicians and the GLBT community must ask whether the massacre of children in Gaza, and in Sderot, is less shocking than that of children on Nachmani Street in Tel-Aviv [where the Aguda is located].”⁹²

This is all to say that a particular kind of caution is called for when the state becomes a partner in the project of converting wrongs into rights and outlaws into rights-bearing citizens. As Nietzsche observed in the late 19th century, liberal or progressive causes become significantly less liberal or progressive as soon as they are embraced by the state. His conclusion that “there are no worse and no more thorough injures of freedom than liberal institutions,”⁹³ may press the point further than I would like, yet the idea is one with resonance for present purposes. As John D’Emilio taught us in *Sexual Politics, Sexual Communities*,⁹⁴ the legibility of modern homosexual identity has been intimately tied to the interests and needs of the liberal state, and in the cases I have discussed here we see evidence of how modern liberal states have made good use of their rights-bearing homosexual citizens.

Noting the duplicity of the state’s homo-friendliness is not enough. Rather the “patriotized” rights-bearing LGBT subject and “its” movement have a duty to actively resist being mustered into nationalist projects undertaken in its name and purportedly on its behalf.

Once we recognize that the normative homosexuality that undergirds human rights discourse is not merely a “fact” in the world, but more of a complex value, it becomes easier to see how the state’s embrace of the sexual citizenship of these new human rights holders risks rendering more vulnerable a range of identities and policies that

⁹² Aeyal Gross, *Harvey Milk Was Here*, *Zeek: The Jewish Journal of Thought and Culture*, October 25, 2009, <http://zeek.forward.com/articles/115761>.

⁹³ Friedrich Nietzsche, *Twilight of the Idols*, in *The Portable Nietzsche* 541 (Walter Kaufmann ed. 1976).

⁹⁴ John D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970* 11 (1983).

have refused to conform to state-endorsed normative homo- or hetero- sexuality. This is true both for queers whose desires refuse to orient themselves ineluctably toward marriage, or Muslims with sexual norms and practices of polyamory, homosociality, and modesty.⁹⁵ Under this scenario, newly enfranchised gay citizens find themselves implicated, whether they want to or not, in the construction and identification of the “enemies of the state.” Witness the ingenious strategy of StandWithUs and the Israeli Foreign Ministry to appeal to gay rights supporters in their efforts to shore up Israel’s foreign policy with respect to Palestine and Iran.

The challenge of disentangling the state’s agenda from our own is enormously difficult, in no small measure due to the degree to which the problem is set up by what Foucault called the “incitement to discourse.”⁹⁶ By this he sought to capture the process by which “taking sex into account”⁹⁷ transforms it from something understood within the grasp of morality (how do we judge it along a continuum of sacred to disgusting) to that of reason (how do we make it useful). Remarkably, the way he describes the 18th Century rational turn in conceptualizing sexuality applies with equal measure to the contemporary examples I offer in this essay:

one had to speak of it as of a thing to be not simply condemned or tolerated but managed, inserted into systems of utility, regulated for the greater good of all, made to function according to an optimum. Sex was not something one simply judged; it was a thing one administered. It was in the nature of a public potential.⁹⁸

The public potential of sex and sexuality in today’s context has materialized in homonationalist policies when states gain political

⁹⁵ This is among the arguments made by Puar in *Terrorist Assemblages* (2007).

⁹⁶ Michel Foucault, *THE HISTORY OF SEXUALITY, VOL. 1: AN INTRODUCTION*, pp. 17-35 (1978).

⁹⁷ *Id.* at 24.

⁹⁸ *Id.*

power by and through the granting of civil rights to “their” sexual minorities. Civil rights, in this regard, not only enable the expansion of state power, but also have had the felicitous effect of depoliticizing the communities in whose name those rights are mobilized.⁹⁹

Does this discussion leave us helpless in the face of a critique that eschews both the epistemic violence of securing human rights for global gay subjects on the one hand, and state politics as cynical, manipulative, instrumental and tragic on the other? To be sure, this is where some find themselves. But we can do better than that. Critical awareness of the state’s role as now-fundamental partner in the recognition and protection of a form of sexual rights should push us to regard these “victories” as necessarily ethically compromised.

The moral atrophy that has kept us from recognizing the tragedy of these strategies and outcomes is where more critical, and indeed discomfiting, work needs to be done. By theorists and activists alike. This means rethinking the horizon of success in this work. “Victory” in the sense of gaining the state as a partner, rather

⁹⁹ Maya Mikdashi explains this well:

the language of gay rights in the Arab world is a double bind: we must use it in order to achieve restitution from very real, and very immediate oppression, but as we use this language it mobilizes us in a struggle to transform questions of social, political, and economic justice into claims of discrimination. This discrimination, in turn, can only be addressed by nation states or by international political bodies that are actively involved in oppressing our peoples, our families and loved ones, and the parts of us that not captured by the LGBTQ paradigm. We cannot “choose” to not be who we have become, but we must recognize how we have been formed as neoliberal rights seeking and speaking bodies, and how this formation is linked to a history of depoliticization and alienation. In other words, we must be both tactical and skeptical when this language reaches to embrace us, and when we, as activists and as academics, use it ourselves. We must find ways to critically inhabit this homonational world and try, always, to act within the uncomfortable and precarious line between rights and justice.

Maya Mikdashi, *Gay Rights as Human Rights*, supra note 47.

than an adversary, in the struggle to recognize and defend LGBT rights ought to set off a trip wire that ignites a new set of strategies and politics. This must necessarily include a deliberate effort to counteract, if not sabotage, the pull of the state to enlist rights-based movements into its larger governance projects, accompanied by an affirmative resistance to conceptions of citizenship that figure nationality by and through the creation of a constitutive other who resides in the state’s and human right’s outside.

* * *

I will end with Israel, just as I began this essay, to highlight a community that has resisted some of the moral atrophy that often accompanies conscription in the state’s larger projects. Some queer activists in Israel have parted company with the mainstream of the LGBT community, rejecting the terms of the deal made with the Israeli government whereby their rights are recognized in exchange for being used as a public relations tool.¹⁰⁰ The 2010 Tel Aviv gay pride parade was held only a few days after the Gaza flotilla raid, and the more radical/queer wing of the community chose to hold an alternative parade in which they would disidentify queer people with the sort of homonationalism that the state had been actively cultivating, thus reinforcing a kind of anti-nationalist identification. Their banners read: “There is no pride in the occupation” and “We Stand With Queers in Palestine.” This queer/left politics was met with an even greater homonationalization of the mainstream Gay Pride parade, resisting what they termed “the occupation” of gay pride by queers who identified with the Palestinians not with Israel. Their signs and stickers, donned for the main parade, offered a retort to the signs of the anti-nationalists: “No To The Occupations of the Parade,” and “I am a Proud Zionist.”¹⁰¹ In the end, the resistance of

¹⁰⁰ This is how Aeyal Gross has put it in his analysis of the current rift between gay and queer activists in Israel. See Gross, *Israeli GLBT Politics between Queerness and Homonationalism*, supra note 34.

¹⁰¹ Id.

some Israeli queers to their cooptation into a nationalist project provoked an invigorated re-nationalization of the Gay Pride Parade in response, resulting in the proliferation of Israeli flags held by parade-goers. Nevertheless, this intervention introduced and cemented a link between the dangers of Israeli nationalism, religious fundamentalism, and homophobia in a way that shifted the frame for gay politics in Israel.

Queer activists in Israel offer an example of a new kind of politics that at once appreciates the value of rights and launches new strategies to resist the perils of partnership with the state. Having said that, it is important to note how narrow the room for this work is and perilous it can be. In February of 2011, I received an e-mail from the Office of Cultural Affairs of the Israeli Consulate letting me know that the Embassy was sponsoring a U.S. tour of a new documentary on the early days of the Israeli gay rights movement. “We would love to try and organize a screening and talk with Yair [Qedar, the filmmaker] at Columbia University,” the official wrote me. Worried that I was being invited to participate in a pinkwashing event, I e-mailed my colleague, Aeyal Gross, a law professor at Tel Aviv University, and asked whether he knew anything about the filmmaker or the film, “Gay Days,” and whether this was “the usual sort of propaganda.” He wrote me back immediately,

Yair - the director - is a friend and the film is certainly not propaganda. I’m sure some will consider any depiction of gay rights in israel as such but you know that’s not a view I share - we should be able to talk of gay rights in israel even if is also co-opted ... I think that it almost impossible to distinguish Israeli government promoting culture from the political uses of that, but as I say the film is not a propaganda effort - not coming from there at all (even if government promotes it for its own purposes). The director was involved in grass root activism and founded Israeli gay monthly which under his leadership was a voice for queer thought (I used to

write there regularly) and its dissemination.¹⁰²

In Aeyal’s response lies the challenge of work in the era of homonationalist politics. Once the state takes up your cause -- for the dual purpose of embracing greater rights and of advancing the state’s own larger political aims -- politics becomes much more complicated in tragic kinds of ways. Jasbir Puar has termed the tethering of gay rights to nationalist projects a kind of “golden handcuffs.”¹⁰³

Working on the role of LGBT rights in relation to Israel/Palestine is particularly challenging in this regard, given that any critique of Israeli state policy (and it is important to reiterate that I am talking about state policy, not individual Israelis or Jews) is immediately tagged as anti-semitic. What is more, recently enacted Israeli law makes careful political engagement with these hard issues even more difficult. The “Boycott Bill” passed by the Knesset in July of 2011 allows Israeli citizens to bring civil suits against persons and organizations that call for economic, cultural or academic boycotts against Israel, Israeli institutions or regions under Israeli control. It also prevents the government from doing business with companies that initiate or comply with such boycotts.¹⁰⁴

I must confess that I have experienced aggressive, sometimes violent, reactions to the recent work I have done that expresses sympathy for the rights of Palestinians and offers criticisms of Israeli state policy. As someone who has often taken unpopular positions in

¹⁰² E-mail from Aeyal Gross to Katherine Franke, February 11, 2011, on file with author.

¹⁰³ Jasbir K. Puar, *The Golden Handcuffs of Gay Rights: How Pinkwashing Distorts both LGBTIQ and Anti-Occupation Activism*, the Feminist Wire, January 30, 2012, <http://thefeministwire.com/2012/01/the-golden-handcuffs-of-gay-rights-how-pinkwashing-distorts-both-lgbtqi-and-anti-occupation-activism/>.

¹⁰⁴ Lahav Harkov, *Anti-Boycott Bill Becomes Law After Passing Knesset*, The Jerusalem Post, July 11, 2011, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=228896>.

the LGBT and feminist communities,¹⁰⁵ I thought I was prepared for the backlash that engagement with pinkwashing might generate.¹⁰⁶ I wasn’t. Both our “golden handcuffs,” to borrow Puar’s term, and the chilling effect of the blowback certain political critique now receives, has made very cramped room for politics and intellectual work that questions the role that sexual civil rights now play in larger nationalist projects.

Queer activists in Israel/Palestine have something to teach us about what it means to do politics that resists state occupation. In their own ways, on either side of the so-called security “fence” (*hafrada*) or “wall” (*jadir*), some queers in the region are carving a path that neither privileges a global “gay citizen” nor succumbs to raw nationalism or racism/anti-semitism. The Palestinian queers I have met have a complex analysis of the relationship of occupation to homophobia, and refuse to privilege their experience of one over the other. They are acutely aware of and their politics respond to the ways in which negative social and cultural attitudes toward homosexuality in Palestinian culture are shaped in important ways by the occupation itself. They resist a politics that elevates a particular kind of sexual identity, such as gay or lesbian, over and apart from their identity as Palestinian. In this sense, their task has been so much more complicated than merely making demands for a gay pride parade in al-Manara Square in the center of Ramallah. Rather they situate queer politics within a complex web of Israeli occupation, nationalist resistance to the occupation, the weakness of the Palestinian Authority, the rise of Islamist politics, and a Palestinian bio-political project that figures reproduction and the hetero-normative family as vital to national survival. All of these dynamics

¹⁰⁵ See e.g. Katherine Franke, *The Politics of Same-Sex Marriage Politics*, 15 Colum. J. Gender & L. 236 (2006); Katherine Franke, *Theorizing Yes: An Essay on Feminism, Law & Desire*, 101 Colum. L.Rev. 181 (2001).

¹⁰⁶ I know for a fact that the threat of backlash has chilled the speech of other academics that, in a more open intellectual and political environment, would have undertaken projects that question both pinkwashing and Israeli state policy with respect to Palestine.

“have had serious consequences for Palestinian queers, not because Islam is an inherently (or particularly) ‘homophobic’ religion, but because Islamism has ascribed a (negative) ideological value to ‘homosexuality’ that did not exist before.”¹⁰⁷

So too, radical queer voices in Israel have refused the appeal of the new queer nationalism that they have been offered. They insist on drawing connections between the radicalism of the settlers’ homophobia/sexism and their imperial project in Palestine. The creation of social space for out LGBT people in Israel has occurred alongside the evacuation of Palestinians from that same territory. The one doesn’t necessarily cause the other, but the former has been used in the service the latter. As one Israeli human rights lawyer from Tel Aviv told a group of us on the first LGBTI delegation to Israel/Palestine, “Tel Aviv may be the most gay city in the world, but it’s also the least Arab you’ll find.”

This is what queering our politics demands: a refusal to take up the frames, and the identities those frames call up, which “winning” our rights produces. As it turns out, rights are something the state is particularly well-suited to provide, and, as it turns out, those very rights end up being quite easily requisitioned by the state to advance its own larger interests. It falls on us, those in whose name those rights materialize, to resist the seduction of the state that, at long last, offers us its embrace, and in return seeks collaboration in its own imperial projects.

¹⁰⁷ Ritchie, *supra* note __ at 121.