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## Dating the State: The Moral Hazards of Winning Gay Rights

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**COLUMBIA  
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**DATING THE STATE: THE MORAL HAZARDS OF  
WINNING GAY RIGHTS**

*Katherine Franke*

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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 Beit Pazi in Tel Aviv, the home of the Aguda, the National Association of GLBT in Israel.<sup>1</sup> 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 ten others.<sup>2</sup> This terrible act of violence attracted immediate national and international attention and condemnation. President Simon Peres declared the next day:

[T]he 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.<sup>3</sup>

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1. *Murder in the Bar-Noar*, Aguda (Aug. 2, 2010), <http://gibt.org.il/en/aguda/articles.php?articleID=1572>; *Two Killed in Shooting at Tel Aviv Gay Center*, Haaretz (Aug. 1, 2009, 11:14 PM), <http://www.haaretz.com/hasen/spages/1104506.html>.

2. *Murder in the Bar-Noar*, *supra* note 1; *Two Killed in Shooting at Tel Aviv Gay Center*, *supra* note 1.

3. Roni Sofer, *Netanyahu: Israel a Country of Tolerance*, Ynetnews.com (Aug. 2, 2009, 10:56 AM), <http://www.ynetnews.com/articles/0,7340,L-3755571,00.html> (internal quotation marks omitted).

Prime Minister Benjamin 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.”<sup>4</sup> When the Prime Minister visited the Aguda’s 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.”<sup>5</sup> 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.”<sup>6</sup>

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.<sup>7</sup>

This essay turns to several diverse sites of global politics—Israel, Romania, Poland, Iran, and the United States—to illuminate 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 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

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4. *Id.* (internal quotation marks omitted).

5. *TA Gay Attack Bears Marks of Terrorism*, Jerusalem Post (Aug. 6, 2009, 10:06 AM), <http://www.jpost.com/Israel/Article.aspx?id=150999> (internal quotation marks omitted).

6. Attila Somfalvi, *Peres at Gay Support Rally: Bullets Hit Us All*, Ynetnews.com (Aug. 8, 2009, 10:41 PM), <http://www.ynetnews.com/articles/0,7340,L-3758881,00.html> (internal quotation marks omitted).

7. Israeli politicians, lesbian, gay, bisexual, and transgender (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 group 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 meanings do 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 of gay, indeed all, Israelis. Unpacking the categorization of crime as hate crime or terrorism is a worthy project but one for another venue.

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.<sup>8</sup>

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. 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 transgender (LGBT) 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*,<sup>9</sup> 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—takes form in settings outside the West. "Following in the footsteps of the white Western women's movement, which . . . sought

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8. The use of "gay rights [as] . . . a public-relations tool" has been termed "pinkwashing" by critics. Sarah Schulman, *Israel and "Pinkwashing,"* N.Y. Times, Nov. 23, 2011, at A31 (quoting Aeyal Gross, a law professor at Tel Aviv University) (internal quotation marks omitted). As I have noted elsewhere: "[T]he pinkwashing critique applies to *all* states, not just Israel. In the United States there are many of us who have expressed concern that the Obama administration is using its good gay rights record (repealing 'don't ask/don't tell,' backing away from defending the Defense of Marriage Act, and endorsing marriage equality rights for same-sex couples, for example) to deflect attention from its otherwise objectionable policies (aggressive deportation of undocumented people, use of drones to execute civilians, and failure to prosecute anyone or any entity in connection with the 2008 financial crisis for example). As some states expand their laws protecting the rights of LGBT people, pinkwashing has become an effective tool to portray a progressive reputation when their other policies relating to national security, immigration, income inequality, and militarism are anything but progressive." Katherine Franke, *The Greater Context of the Pinkwashing Debate*, Tikkun Mag. (July 3, 2012), <http://www.tikkun.org/nextgen/the-greater-context-of-the-pinkwashing-debate>.

9. Joseph Massad, *Re-Orienting Desire: The Gay International and the Arab World*, 14 Pub. Culture 361 (2002); see also Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times*, at xxiv (2007) (discussing "forms of queer secularity that attenuate constructions of Muslim sexuality" and noting the "emergence of a global political economy of queer sexualities"); Sonia Katyal, *Exporting Identity*, 14 Yale J.L. & Feminism 97, 100–01 (2002) ("[T]he changing social meanings surrounding gay or lesbian sexual identities raise deeply complex questions that are often ignored by scholars and activists in the name of globalizing gay civil rights.").

to universalize its issues through imposing its own colonial feminism on . . . 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.<sup>10</sup> Not surprisingly, Massad received some pushback from the persons and entities he identified as imperialist missionaries who have sought to redeem their good names and good work.<sup>11</sup> In the middle of these two polarized perspectives lie a few activists and scholars who have 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.<sup>12</sup> For this last group, as for Gayatri Spivak, rights are something we “cannot *not* want,”<sup>13</sup> 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 strive toward the middle course). Rather, it seeks to introduce an analysis none of the disputants have acknowledged: To focus this discussion on the relationship between LGBT human rights non-governmental organizations (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 analysis 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

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10. Massad, *supra* note 9, at 361.

11. See, e.g., Scott Long, *The Trials of Culture: Sex and Security in Egypt*, Middle E. Rep., Winter 2004, at 12, 18 (“What must be resisted is the political presumption that all interchange is conquest.”).

12. See, e.g., 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, 132 (2007) (asking how human rights violations can be addressed “without imposing a Western model of sexuality” but also without ignoring the realities of globalization); Teemu Ruskola, *Legal Orientalism*, 101 Mich. L. Rev. 179, 181, 185 (2002) (analyzing “prevailing cultural prejudices that inform the interpretation of comparative scholarship on Chinese Law” and examining the “ethics of comparison”); Amr Shalakany, *On a Certain Queer Discomfort with Orientalism*, 101 Am. Soc’y Int’l L. Proc. 125, 128 (2007) (“[W]e might see in U.S. gay-identity discourse some benefits for the Egyptian bottom.”).

13. Gayatri Chakravorty Spivak, *Outside in the Teaching Machine* 51 (2009) (emphasis added).



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 are expected to 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.

## I. ISRAEL

When and how did homophobic violence acquire such important 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,<sup>14</sup> or the following year when right-wing activists called for violent protests against the WorldPride procession in Jerusalem?<sup>15</sup>

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 “beyond the conflict.”<sup>16</sup> In 2006, in large measure in response to its military

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14. See Greg Myre, *Israel: 3 Stabbed At Jerusalem Gay Parade*, N.Y. Times, July 1, 2005, at A9.

15. See Neta Sela, *Holy War Against Pride Parade*, Ynetnews.com (Oct. 30, 2006, 2:48 AM), <http://www.ynetnews.com/articles/0,7340,L-3321178,00.html>; Efrat Weiss, *Baruch Marzel: Pride Parade Will Lead to Violence*, Ynetnews.com (Oct. 18, 2006, 5:48 PM), <http://www.ynetnews.com/articles/0,7340,L-3316718,00.html>.

16. See David Suissa, *Opening Israel*, Virtual Jerusalem (Sept. 8, 2011, 9:26 AM), <http://www.virtualjerusalem.com/blogs.php?Itemid=4693> (describing efforts of the Israeli Foreign Ministry to improve Israel’s image by focusing attention on areas “beyond the conflict” with the Palestinians as part of an initiative titled “Brand Israel”) (internal quotation marks omitted); see also Uriel Heilman, *The Difficult Chore of Getting Israel’s Message Across*, B’nai B’rith Mag., Summer 2009, at 20, 24, available at <http://www.urielheilman.com/0601hasbara.html> (discussing Israel’s rebranding efforts, including the Israeli

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,<sup>17</sup> 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 international peace and security?’, Israel scored lowest of all the 36 countries in the NBI.<sup>18</sup>

When the Palestinians elected a Hamas-majority government in January of 2006, the Israelis sensed that they had a public relations 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 public relations firm Saatchi & Saatchi.<sup>19</sup> Livni 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.<sup>20</sup>

Thus the Foreign Ministry, concerned that the international community held an unfairly negative view of Israel, launched an

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Foreign Ministry’s May 2006 effort to bring a group of American entertainment reporters to Israel in order to visit trendy Tel Aviv nightclubs, Israeli rock stars, and gay and lesbian rights groups).

17. *The Anholt-GfK Roper Nation Brands Index*, GfK Custom Research North America, [http://www.gfkamerica.com/practice\\_areas/roper\\_pam/nbi\\_index/index.en.html](http://www.gfkamerica.com/practice_areas/roper_pam/nbi_index/index.en.html) (last visited Oct. 30, 2012).

18. Simon Anholt, *Places: Identity, Image and Reputation* 58 (2010).

19. Dan Williams, *Don’t Mention the War—Israel Seeks Image Makeover*, Reuters, Oct. 26, 2006, available at <http://uk.reuters.com/article/2006/10/26/uk-mideast-israel-image-idUKL2611919120061026>.

20. *Id.* (internal quotation marks omitted).

extensive public relations campaign “to make people like us.”<sup>21</sup> “The idea here is to have a major branding campaign in America and Europe,” 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.<sup>22</sup> 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.<sup>23</sup> According to the Jewish Daily Forward, “[d]irectors 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.”<sup>24</sup>

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.”<sup>25</sup> In this regard, virtually every country has devoted considerable public funds to international branding campaigns designed to advance economic and diplomatic objectives.<sup>26</sup>

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21. 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.” Caroline Glick, Truth in Advertising, *Jerusalem Post* (Nov. 3, 2006, 3:53 PM), <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=40071>. This campaign has specifically included a pitch to make Israel appear more friendly based on its treatment of gay men and lesbians. *See id.*

22. Nathaniel Popper, *Israel Aims to Improve Its Public Image*, *Jewish Daily Forward* (Oct. 14, 2005), <http://www.forward.com/articles/2070/> (internal quotation marks omitted).

23. *Id.*

24. *Id.*

25. Evan H. Potter, *Branding Canada: Projecting Canada’s Soft Power Through Public Diplomacy*, at i (2009).

26. *See, e.g.*, Taken by Storm: The Media, Public Opinion, and U.S. Foreign Policy in the Gulf War 131–48 (W. Lance Bennett & David L. Paletz eds., 1994) (examining the role of the media in the development of U.S. foreign policy in the Gulf War); Jozef Bátora, *Public Diplomacy Between Home and Abroad: Norway and Canada*, 1 *Hague J. Dipl.* 53, 54 (2006) (observing the importance of nation-branding as a basis for arguing for a “more sophisticated understanding of public diplomacy”); James E. Grunig, *Public Relations and International Affairs: Effects, Ethics and Responsibility*, 47 *J. Int’l Aff.* 137 (1993) (discussing the ethical issues involved in international public relations); Alice Kendrick & Jami A. Fullerton, *Advertising as Public Diplomacy: Attitude Change Among International Audiences*, 44 *J. Advertising Res.* 297 (2004) (assessing the effectiveness of an advertising campaign run by the United States in the Middle East and Asia from

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,<sup>27</sup> and enlisted the assistance of several NGOs (and GNGOs<sup>28</sup>). 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.<sup>29</sup> “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.”<sup>30</sup> Caroline Glick further noted in her article *A Gay Old Time*: “Ministry officials view gay culture as the entryway to the liberal culture because . . . gay culture is the culture that creates ‘a buzz.’”<sup>31</sup> To advance the pink tourism project, the Tel Aviv-Yafo Tourism Association established the Tel Aviv Gay Vibe campaign in 2010, offering gay travelers “discounted travel and flights, plus free city

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October 2002 to January 2003); Philip Kotler & David Gertner, *Country as Brand, Product, and Beyond: A Place Marketing and Brand Management Perspective*, 9 J. Brand Mgmt. 249 (2002) (exploring whether a country can be a brand); Peter van Ham, *Branding Territory: Inside the Wonderful Worlds of PR and IR Theory*, 31 Millennium 249 (2002) (exploring how and why nation branding has become important); Peter van Ham, *The Rise of the Brand State: The Postmodern Politics of Image and Reputation*, 80 Foreign Aff. 2 (2001) (arguing that nation branding is contributing to the pacification of Europe); Beata Ociepka & Marta Ryniejska, *Public Diplomacy and EU Enlargement: The Case of Poland* (Neth. Inst. of Int’l Relations Clingendael, Discussion Paper in Diplomacy No. 99, 2005) (describing Polish public diplomacy efforts during Poland’s accession to the European Union (EU)).

27. See Gay Israel, <http://tourism.glb.org.il> (last visited Oct. 30, 2012) (noting that on the website you can find “everything you need to know about gay Israel: pictures, tourist sites, accommodation, attractions, gay night life and entertainment,” among other things).

28. GNGO, or governmental NGO, is a term used to refer to a NGO created by a governmental entity to do work in support of, or in furtherance of, the state’s interests and aims.

29. Aron Heller, *Tel Aviv Emerges as Top Gay Tourist Destination*, Huffington Post (Jan. 24, 2012, 08:46 AM), [http://www.huffingtonpost.com/2012/01/24/tel-aviv-gay-travel-destinations\\_n\\_1227888.html](http://www.huffingtonpost.com/2012/01/24/tel-aviv-gay-travel-destinations_n_1227888.html) (internal quotation marks omitted).

30. *Id.* (internal quotation marks omitted).

31. Caroline Glick, *A Gay Old Time*, Jewish Press (Nov. 8, 2006), <http://www.jewishpressads.com/pageroute.do/19838/> (quoting David Saranga, former Consul for Media and Public Affairs at the Consulate General of Israel in New York and former Deputy Spokesman for the Israeli Foreign Ministry).

tours and restaurant vouchers,<sup>32</sup> and launched a website,<sup>33</sup> a Twitter account,<sup>34</sup> and a smartphone application.<sup>35</sup> Additionally, Israeli consulates across the United States and Europe frequently sponsor gay-friendly activities, such as the Tel Aviv Gay Vibe Float in Chicago's Gay Pride Parade.<sup>36</sup>

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).<sup>37</sup> Berlin is

32. *Tel Aviv to Rebrand Itself as Gay Destination*, PinkNews (July 22, 2010, 4:18 PM), <http://www.pinknews.co.uk/2010/07/22/tel-aviv-to-rebrand-itself-as-gay-destination/>.

33. Tel Aviv Gay Vibe, <http://telavivgayvibe.atraf.com> (last visited Oct. 30, 2012).

34. *Tel Aviv Gay Vibe*, Twitter, <http://twitter.com/TelAvivGayVibe> (last updated Sept. 15, 2011).

35. *See Tel Aviv Gay Vibe*, iTunes App Store, <http://itunes.apple.com/us/app/tel-aviv-gay-vibe/id433636568?mt=8> (last visited Oct. 30, 2012).

36. The Consulate General of Israel to the Midwest promoted the Tel Aviv Gay Vibe Float through Facebook, Israel in Chicago, *Tel Aviv Gay Vibe Float @ Chicago Gay Pride Parade 2011*, Facebook, <http://www.facebook.com/events/105208666236631/> (last modified June 26, 2011), and through its Twitter account, Israel in Chicago, *Come to "Tel Aviv Gay Vibe float @ Chicago Gay Pride Parade 2010" Sunday, June 27 from 12:00 pm to 10:00 pm*, Twitter (June 16, 2011, 12:10 PM), <http://twitter.com/#!/IsraelinChicago/status/16328567787>. There are many other examples of national and local Israeli government entities enlisting well-known gay people in the project of public diplomacy. See, for example, the U.S. tour of Assi Azar, a famous openly-gay television star, *Events, Out in Israel Month*, <http://www.outinisraelmonth.com/#!/events> (last visited Oct. 30, 2012) (promoting several screenings of Assi Azar's documentary film as part of the Out in Israel Month Campaign in November 2011, organized by the Consulate General of Israel to New England); Gal Uchovsky, *Left and Gay in Israel*, Jerusalem Post (Nov. 2, 2011, 10:59 PM), <http://www.jpost.com/Opinion/Op-EdContributors/Article.aspx?id=244186> (describing Assi Azar's tour as "the first US leg of this grand scheme" organized by the Israeli Foreign Ministry, which has also included "an exhibition of gay art in London and Manchester with works from some great Israeli talents").

37. 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 (Dec. 7, 2010), <http://israelgaynews.blogspot.com/2010/12/by-aviv-benedix-israels-second-largest.html> (calling Tel Aviv the "gay Mecca" of Israel and noting that Lonely Planet and Out Magazine have referred to Tel Aviv as "a kind of San Francisco of the Middle East" and "the gay capital of the Middle East," respectively) (internal quotation marks omitted); Mayaan Lubell, *Tel Aviv Reveling in Gay Tourism Boom*, Reuters, Jan. 24, 2012, available at <http://www.reuters.com/article/2012/01/24/us-israel-tel-aviv-gay-idUSTRE80N12O20120124> ("Leon Avigad,

well known for doing so as well, to its great economic advantage. In fact, Out Now Consulting, the gay public relations firm that designed the “MyGayBerlin” campaign<sup>38</sup> was hired by the Israelis to assess the feasibility of branding Tel Aviv as an international gay tourist destination.<sup>39</sup> 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 to cancel out, the growing international condemnation of Israel’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.”<sup>40</sup>

Israel’s promotion 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. Over time, however, 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,

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owner of the gay-friendly Brown hotel, said Tel Aviv has become a ‘gay Mecca’ and is enjoying a tremendous tourist boom in recent years.”)

38. Out Now Consulting’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.” Out Now, *Out Now Global: Gay Market Leaders—Berlin Tourism Marketing*, Facebook (Oct. 29, 2008, 12:02 PM), [http://www.facebook.com/note.php?note\\_id=32620247091](http://www.facebook.com/note.php?note_id=32620247091).

39. Press Release, Out Now Consulting, 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 (Oct. 7, 2009), available at <http://www.webwire.com/ViewPressRel.asp?aId=105143>.

40. Asa Winstanley, *In New Pinkwashing Recruitment Campaign, Israel Offers Free Travel for Propaganda Services*, Electronic Intifada (Nov. 24, 2011, 10:43 PM), <http://electronicintifada.net/blog/asa-winstanley/new-pinkwashing-recruitment-campaign-israel-offers-free-travel-propaganda>.

laid it out plain and simple: “[T]he 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.”<sup>41</sup> Israeli Prime Minister Benjamin Netanyahu’s speech to the U.S. Congress in May 2011 said it best: “In a region where women are stoned, gays are hanged, Christians are persecuted, Israel stands out. It is different.”<sup>42</sup>

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 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.<sup>43</sup> As recently as May 2012, Shin Bet officers detained a gay Palestinian man visiting East Jerusalem to see a medical specialist and told him that if he didn’t inform the Shin Bet “when he hears about a demonstration, about people, where they’re going, who’s got a mind to protest, who helps kids who throw stones, who’s religious, who throws stones at soldiers,” he would “see what kind of problems [the officers would] make for [him] with the Palestinian Authority.”<sup>44</sup> Thus, the Ministry of Public Diplomacy and

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41. Cecile Surasky, *Naomi Klein Shows You Can Boycott Israel Without Cutting Off Dialogue Over Palestine*, *Alternet* (Aug. 31, 2009), <http://www.alternet.org/story/142341/>.

42. Prime Minister Benjamin Netanyahu, Speech to U.S. Congress (May 24, 2011), available at [http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2011/Speech\\_PM\\_Netanyahu\\_US\\_Congress\\_24-May-2011.htm](http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2011/Speech_PM_Netanyahu_US_Congress_24-May-2011.htm).

43. 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. See Jason Ritchie, *Queer Checkpoints: Sexuality, Survival, and the Paradoxes of Sovereignty in Israel-Palestine* 118 (Jan. 14, 2011) (unpublished Ph.D. dissertation, University of Illinois at Urbana-Champaign), available at <http://www.ideals.illinois.edu/handle/2142/18233> (noting that the Shin Bet identifies homosexuals as one of the most fruitful sources for its network of Palestinian collaborators). 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.

44. Amira Hass, *Shin Bet Inquiry: Did the Israeli Slip His Gay Palestinian Lover Into the Country Illegally?*, *Haaretz* (May 28, 2012, 2:04 AM), <http://www.haaretz.com/news/national/shin-bet-inquiry-did-the-israeli-slip-his-gay-palestinian-lover-into-the-country-illegally.premium-1.432857>.

Diaspora Affairs' use of gay public diplomats is, in important respects, the friendly flip side of that of Shin Bet.

Concerned that the international community was wavering in its hard line stance toward Iran's growing nuclear capability, in 2009, Israel allocated roughly two million dollars to a new campaign to discredit Iran by specifically highlighting its mistreatment of lesbians and gay men.<sup>45</sup> The Israeli Foreign Ministry confessed that the new public relations 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."<sup>46</sup> David Saranga, former Consul for Media and Public Affairs at the Consulate General of Israel in New York and former Deputy Spokesman for the Israeli Foreign Ministry, put it clearly:

Instead of wasting time attempting to persuade them [i.e., liberal audiences in the United States 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.<sup>47</sup>

The Israeli Supreme Court joined the issue in September of 2010. It held that the City of Jerusalem had engaged in impermissible discrimination in its ongoing refusal to fund the city's lesbian, gay, bisexual, and transgender community center, Open House.<sup>48</sup> Year after year, the City had refused funding requests from Open House, and Justice Isaac Amit, writing for the Court, ruled that:

The history of the relationship between the parties reveals that the appellant's hand reaching out for support has met time and time again with the miserly

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45. Barak Ravid, *Israel Recruits Gay Community in PR Campaign Against Iran*, Haaretz (Apr. 20, 2009, 9:46 AM), <http://www.haaretz.com/hasen/spages/1079589.html>.

46. *Id.*

47. Uri Leventher, *The Diplomat Who Tweeted*, Globes: Israel's Business Arena (Oct. 14, 2009, 6:51 PM), <http://www.globes.co.il/serveen/globes/docview.asp?did=1000505339> (internal quotation marks omitted).

48. File No. 343/09 Supreme Court (Jer), *Jerusalem Open House for Pride & Tolerance v. City of Jerusalem* (Sept. 14, 2010), Nevo Legal Database (by subscription) (Isr.).



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.<sup>49</sup>

Justice Amit declared that equal and respectful treatment of the gay community was one of the criteria for a democratic state, noting that 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 . . . .”<sup>50</sup> He then mentioned Iranian President Mahmoud Ahmadinejad’s 2007 speech at Columbia University in which Ahmadinejad claimed that there were no homosexuals in Iran.<sup>51</sup> This statement by the Iranian president served as evidence, in Justice Amit’s view, of Israel’s comparative tolerance, modernity, and morality.<sup>52</sup> Whether or not this language is 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 as well as 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.<sup>53</sup>

Other NGOs closely allied with the Israeli re-branding effort, such as StandWithUs, a pro-Israeli advocacy organization based in Los Angeles,<sup>54</sup> have explicitly pursued a strategy of responding to

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49. *Id.* at ¶ 86.

50. *Id.* at ¶ 55.

51. *Id.*

52. *See id.* (describing Israel as “liberal” and “democratic”).

53. Aeyal Gross, *Israeli GLBT Politics between Queerness and Homonationalism*, Bully Bloggers (July 3, 2010), <http://bullybloggers.wordpress.com/2010/07/03/israeli-glbtpolitics-between-queerness-and-homonationalism/>.

54. StandWithUs is “an international, non-profit organization that promotes a better understanding of Israel, through examination of diverse issues.”

criticism of Operation Cast Lead, a three-week military campaign Israel began in Gaza in December of 2008,<sup>55</sup> by emphasizing how well lesbian and gay people are treated in Israel. “We decided to improve Israel’s image through the gay community in Israel . . . .” said an official with StandWithUs to the Jerusalem Post.<sup>56</sup>

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.<sup>57</sup>

Other bloggers similarly saw an opportunity to blunt international criticism of Operation Cast Lead by pointing to Hamas’s intolerance toward gay men as a justification for the Israeli military action.<sup>58</sup> Back in the United States, StandWithUs circulated a flyer on college campuses in which it compared 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 supports gay rights.”<sup>59</sup>

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Stacey Maltin, *International Pride Comes to Tel Aviv*, Ynetnews.com (June 13, 2009, 9:00 AM), <http://www.ynetnews.com/articles/0,7340,L-3730396,00.html>.

55. Operation Cast Lead, otherwise known as “the Gaza War,” was a three-week Israeli military offensive begun in late 2008 aimed at stopping rocket fire from Gaza into Israeli territory. A U.N. report issued after the end of the war charged both Israel and the Palestinians with war crimes and possible crimes against humanity. U.N. Fact-Finding Mission on the Gaza Conflict, *Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, Human Rights Council, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009) (by Richard Goldstone et al.).

56. Mel Bezalel, *Gay Pride Being Used to Promote Israel Abroad*, Jerusalem Post (June 7, 2009, 10:13 PM), <http://www.jpost.com/Israel/Article.aspx?id=144736> (internal quotation marks omitted).

57. *Id.* (internal quotation marks omitted).

58. Paula Brooks, *What About the Gaza Gays?*, Lez Get Real: A Gay Girl’s View on the World (Jan. 4, 2009, 3:21 PM), <http://lezgetreal.wordpress.com/2009/01/04/what-about-the-gaza-gays/>.

59. *Gay Rights in the Middle East*, StandWithUs, [http://www.standwithus.com/pdfs/flyers/gay\\_rights.pdf](http://www.standwithus.com/pdfs/flyers/gay_rights.pdf) (last visited Oct. 30, 2012). StandWithUs was by no means the first to use this strategy. “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. . . . [M]any 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

The timing of the pink turn in Israel's management of its international reputation is noteworthy. Convincing the world that Israel is 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. 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.<sup>60</sup>

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."<sup>61</sup> He reported the "hurtful" and "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."<sup>62</sup> He then explained to the camera how the organizers of the flotilla had close ties to Hamas and highlighted Hamas's violent hatred of women and homosexuals.<sup>63</sup> 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."<sup>64</sup> The video got much play, including promotion by the Israeli Government Press Office on Twitter.<sup>65</sup> It was later discovered that "Marc" was an Israeli

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of the enlightened policies of Israel." Blair Kuntz, "Queer" As A Tool Of Colonial Oppression: The Case Of Israel/Palestine, ZNet (Aug. 13, 2006), <http://www.zcommunications.org/queer-as-a-tool-of-colonial-oppression-the-case-of-israel-palestine-by-blair-kuntz>.

60. The U.N. Fact-Finding Mission on the Gaza Conflict issued a controversial report on the force used by both sides in Operation Cast Lead. See U.N. Fact-Finding Mission on the Gaza Conflict, *supra* note 55.

61. marc3pax, *Who You Get in Bed With—Human Rights, Gay Rights*, YouTube (June 23, 2011), <http://www.youtube.com/watch?v=vhmBbGFJleU>.

62. *Id.*

63. *Id.*

64. *Id.*

65. See *Anti-Flotilla Video Fraud Linked to PM Netanyahu's Office, Official Israeli Hasbara Agents*, Max Blumenthal (June 24, 2011), <http://maxblumenthal.com/2011/06/anti-flotilla-video-fraud-has-links-to-pm-netanyahus-office-official-government-hasbara-agents/> [hereinafter Blumenthal] ("Earlier today, the Israeli Government Press Office promoted the apparent hoax video on Twitter."); Benjamin Doherty, *Israeli Actor in Anti-Gaza Flotilla Pinkwashing Video Identified*, Electronic Intifada (June 25, 2011, 6:03 PM), <http://electronicintifada.net/blog/benjamin-doherty/israeli-actor-anti-gaza-flotilla->

actor hired to create the video as a way of discrediting the flotilla's aims.<sup>66</sup> According to journalist Max Blumenthal, the Government Press Office's tweet was a re-tweet from a Netanyahu aide who seemed to have opened a Twitter account for the sole purpose of promoting the video.<sup>67</sup>

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."<sup>68</sup> Israel has effectively used the "gay issue" to advance a larger political aim of proving that Palestinians are too backwards, uncivilized, and unmodern to have their own state. The campaign to create gay solidarity with Israel around the globe has also, often unwittingly, drawn LGBT communities outside the Middle East into collusion with the Israeli state's larger public relations project.<sup>69</sup>

Israel's so-called pinkwashing of its treatment of the Palestinians as a tool to gain international support for its larger

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pinkwashing-video-identified (discussing the "YouTube video condemning the Gaza Freedom Flotilla for alleged homophobia, that was tweeted by the Israeli Government Press Office"); *see also* Ethan Bronner, *Setting Sail on Gaza's Sea of Spin*, N.Y. Times, July 2, 2011, at SR3 ("Israeli officials . . . had promoted the clip on Twitter and Facebook . . ."); Catrina Stewart, *The Hoax Video Blog and the Plot to Smear a Gaza Aid Mission*, Independent (June 29, 2011), <http://www.independent.co.uk/news/world/middle-east/the-hoax-video-blog-and-the-plot-to-smear-a-gaza-aid-mission-2304030.html> (describing the "heavy promotion by Israeli government bodies on Facebook and Twitter").

66. Bronner, *supra* note 65 (stating that the "video was exposed as a fake," posted by an Israeli actor, and noting that Israeli "officials had long used the talking point that Hamas and other Islamist groups were intolerant of homosexuality"); Doherty, *supra* note 65 (revealing Marc's true identity as Omer Gershon, a figure "who is relatively well-known in the Israeli gay scene"); Stewart, *supra* note 65 (noting that bloggers, after becoming suspicious of the video's "slick production and heavy promotion by Israeli government bodies," exposed Marc as an Israeli actor named Omer Gershon).

67. Blumenthal, *supra* note 65.

68. *See* Sarah Schulman, *supra* note 8 (noting that the "global gay movement against the Israeli occupation" has named Israel's tactics "pinkwashing": a deliberate strategy to conceal the continuing violations of Palestinians' human rights behind an image of modernity"); *see also* Gross, *supra* note 53 (criticizing the Israeli pinkwashing campaign as an effort to mask other human rights abuses occurring regularly within Israel's borders).

69. Parents and Friends of Lesbians and Gays (PFLAG) is one recent example thereof. Katherine Franke, *PFLAG Holds Israeli Pinkwashing Event*, Huffington Post (Feb. 22, 2012, 3:21 PM), [http://www.huffingtonpost.com/katherine-franke/pflag-israel-pinkwashing\\_b\\_1290935.html](http://www.huffingtonpost.com/katherine-franke/pflag-israel-pinkwashing_b_1290935.html) (describing an event with Anat Avissar from Aguda on February 22, 2012 held at PFLAG headquarters and co-sponsored by the Israeli Embassy).

foreign policy aims demands careful analysis. The criticism of Israel embodied in the term pinkwashing does not deny the fact that gay men and lesbians enjoy a wide range of civil and other rights in Israel. They do.<sup>70</sup> Nor does the term deny that sexual minorities struggle in Arab societies. They do.<sup>71</sup> Rather, the claim is that

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70. 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, 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, many parental rights are banned for same-sex couples; [sic] and there is not even civil marriage—not to mention same-sex marriage, or inter-religious marriage by the state.” E-mail from Erez Aloni, Fellow, Ctr. for Reproduct. Rights, Columbia Law Sch., to author (Feb. 27, 2012, 3:22 PM EST) (on file with author). To be sure, homophobia and transphobia are to be found throughout Israeli and Palestinian society. See, e.g., Jason Koutsoukis, *Homophobia in Israel Still High but Declining Slowly, Says Survey*, Sydney Morning Herald (Aug. 7, 2009), <http://www.smh.com.au/world/homophobia-in-israel-still-high-but-declining-slowly-says-survey-20090806-ebkb.html> (stating that in a 2009 poll by Haaretz, following the Aguda attack, 46% of 498 people viewed homosexuality as a “perversion,” while 42% disagreed); Ilan Lior, *Civil Patrol “Army” Formed to Stamp Out Homophobic Attacks in TA Park*, Haaretz (Feb. 18, 2012, 1:07 AM), <http://www.haaretz.com/print-edition/news/civil-patrol-army-formed-to-stamp-out-homophobic-attacks-in-ta-park-1.409398> (noting two attacks against gay individuals in December 2011 and January 2012 near a gay communal center in Tel Aviv). The increasingly powerful role that the ultra-Orthodox wing (the *Haredim*) of Israeli society plays in shaping official governmental policy and public opinion more generally draws into question the claim that there is widespread support for gay rights across Israeli society. See, e.g., Ethan Bronner & Isabel Kershner, *Israelis Facing a Seismic Rift Over Role of Women*, N.Y. Times, Jan. 15, 2012, at A1 (describing the tension between the ultra-Orthodox *Haredim* and the views of other Israelis regarding women); *The Takeaway: Israel’s Secular and Moderate Majority Struggling with Ultra-Orthodox Minority* (Pub. Radio Int’l radio broadcast Jan. 16, 2012), available at <http://www.pri.org/stories/politics-society/religion/israel-s-secular-and-moderate-majority-struggling-with-ultra-orthodox-minority-7965.html> (describing the tension between the ultra-Orthodox and more moderate sects of Judaism on women). Similarly, the rise of Hamas in Palestinian society has been accompanied by a greater intolerance of homosexuality. See, e.g., Press Release, Int’l Gay & Lesbian Human Rights Comm’n, Palestinian Territories: IGLHRC Supports Free Expression for ASWAT (Mar. 26, 2007), <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/415.html> (noting that ASWAT, a Palestinian lesbian organization in Israel, received threats from Islamic leaders describing the organization as a “fatal cancer”).

71. 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

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. Indeed, that helping hand is more symbolic than real, since gay Palestinian asylum seekers cannot seek refuge in Israel,<sup>72</sup> nor can most gay Palestinians enjoy the hot gay nightlife of Tel Aviv due to the severe limitations placed on their movement by the laws of occupation.<sup>73</sup>

## II. IRAN

Iranian President Mahmoud Ahmadinejad'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. Iranian President Mahmoud Ahmadinejad was invited to give a speech at Columbia University 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 U.S. government of Iran's efforts to build nuclear

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criminal sanction for same-sex sex, as the Jordanians repealed their sodomy law in 1951, well before the United States (2003) or the Israelis (1988) did so. Ritchie, *supra* note 43, at 114. 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. *Id.* 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. ALWAAN, Bint el Nas, and other websites also provide important resources to LGBT people in the Arab world.

72. Michael Kagan & Anat Ben-Dor, *Nowhere To Run: Gay Palestinian Asylum-Seekers in Israel 20–22* (2008), *available at* [http://www.law.tau.ac.il/Heb/\\_Uploads/dbsAttachedFiles/Nowhere.pdf](http://www.law.tau.ac.il/Heb/_Uploads/dbsAttachedFiles/Nowhere.pdf).

73. Jason Ritchie's dissertation offers a nuanced and thoughtful study of the paradoxes of belonging and disenfranchisement experienced by Palestinian queers. Ritchie, *supra* note 43.

weapons; and ongoing campaigns of highly inflammatory anti-US rhetoric by the Iranian political leadership and, simultaneously, highly inflammatory anti-Iranian rhetoric by U.S. political leadership. 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 Columbia 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.<sup>74</sup> 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 Israel and the Holocaust.<sup>75</sup> Yet the significance of the Ahmadinejad speech and the controversy it triggered has to be understood in local context. In the last several years, a number of Columbia faculty members who study the Middle East—and have taken positions that express some sympathy for the situation of the Palestinians—have been aggressively attacked by organizations in the United States

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74. Press Release, David M. Schizer, Dean & Lucy G. Moses Professor of Law, Columbia Law Sch., Statement by David M. Schizer Re: SIPA Invitation to Mahmoud Ahmadinejad (Sept. 23, 2007), [http://www.law.columbia.edu/media\\_inquiries/news\\_events/2007/september07/deans\\_statement](http://www.law.columbia.edu/media_inquiries/news_events/2007/september07/deans_statement).

75. See, e.g., Letter from President Mahmoud Ahmadinejad to "the American People," (Nov. 29, 2006), available at <http://edition.cnn.com/2006/WORLD/meast/11/29/ahmadinejad.letter/> (accusing the Bush Administration of foreign policy based on "coercion, force, and injustice," with reference to the invasion of Iraq and U.S. support for Israel, and stating that "legitimacy, power and influence of a government do not emanate from its arsenals of . . . nuclear weapons"); *Iranian Leader Denies Holocaust*, BBC News (Dec. 14, 2005, 1:50 PM), [http://news.bbc.co.uk/2/hi/middle\\_east/4527142.stm](http://news.bbc.co.uk/2/hi/middle_east/4527142.stm) (describing Ahmadinejad's denial of the Holocaust and anti-Israel rhetoric as well as denunciation of his statements by Israel, Germany, and the EU).

charging them with being anti-Semitic or anti-Israeli.<sup>76</sup> These activities have included efforts to intervene in the tenure cases of two faculty members.<sup>77</sup>

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.”<sup>78</sup> Bollinger criticized the Iranian president’s 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 making an unsubstantiated claim of Iran’s involvement in a proxy war in Iraq floated by the U.S. government.<sup>79</sup> Bollinger closed with the charge: “I doubt that you will have the intellectual courage to answer these questions.”<sup>80</sup>

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 United States’ efforts to limit the rights of other nations to nuclear weapons when it regularly violates the nuclear arms

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76. See, e.g., Karen W. Arenson, *Fracas Erupts Over Book on Mideast by a Barnard Professor Seeking Tenure*, N.Y. Times, Sept. 10, 2007, at B1 (describing the controversial tenure bid of a Barnard anthropology professor, Nadia Abu El-Haj, whose scholarship received criticism for perceived anti-Israel remarks); Jennifer Senior, *Columbia’s Own Middle East War*, N.Y. Mag. (May 21, 2005), <http://nymag.com/nymetro/urban/education/features/10868/> (discussing Columbia Unbecoming, a 2004 documentary accusing Arab professors of academic intimidation).

77. Richard Byrne & Robin Wilson, *Palestinian-American Scholar at Columbia U. Gets 2nd Chance at Tenure*, The Chron. of Higher Educ. (May 27, 2008), <http://chronicle.com/article/Palestinian-American-Scholar/835>.

78. Helene Cooper, *At Columbia University, Ahmadinejad of Iran Parries and Puzzles*, N.Y. Times (Sept. 25, 2007), <http://www.nytimes.com/2007/09/25/world/americas/25iht-ahmedinejad.1.7626558.html?pagewanted=all> (internal quotation marks omitted).

79. *Id.* (internal quotation marks omitted) (describing President Bollinger’s statements on Iran’s role in Iraq); Annie Karni, *Bollinger Stuns Ahmadinejad With Blunt Rebuke*, N.Y. Sun (Sept. 25, 2007), <http://www.nysun.com/new-york/bollinger-stuns-ahmadinejad-with-blunt-rebuke/63300/> (describing President Bollinger’s statements regarding Ahmadinejad’s views on nuclear weapons, women, homosexuals, and the Holocaust).

80. Cooper, *supra* note 78.



non-proliferation treaty itself,<sup>81</sup> 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. He asked: “[W]hy is it that the Palestinian people are paying the price of an event they had nothing to do with?”<sup>82</sup> 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, Ahmadinejad replied that “[w]omen in Iran enjoy the highest levels of freedom,” and then asserted: “In Iran, we don’t have homosexuals, like in your country. . . . In Iran, we do not have this phenomenon. I don’t know who’s told you that we have it.”<sup>83</sup> He then reminded the audience that in the United States, the state frequently executes individuals, not only gay people but many others.<sup>84</sup>

Surprisingly enough, despite ample coverage of President Ahmadinejad’s visit to Columbia, the parts of the story that got the most attention 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.<sup>85</sup> What was most remarkable from my

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81. See President Mahmoud Ahmadinejad, Keynote Address at Columbia University World Leaders Forum (Sept. 24, 2007), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/24/AR2007092401042.html> (“If you have created the fifth generation of atomic bombs and are testing them already, what position are you in to question the peaceful purposes of other people who want nuclear power?”).

82. “[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?” *Id.*

83. *Id.*

84. See *id.* (“Don’t you have capital punishment in the United States? You do, too.”).

85. See, e.g., Press Release, Int’l Gay & Lesbian Human Rights Comm’n, Iran: IGLHRC Deplores Denial of Iranian Homosexuals by President Ahmadinejad (Sept. 34, 2007), <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/471.html> (denouncing President Ahmadinejad’s denial of the presence of sexual minorities in Iran); Press Release, Columbia Law Sch. Sexuality & Gen. Law Clinic, Sexuality and Gender Law Clinic Denounces Anti-Gay Remarks by Iranian President (Sept. 26, 2007), [http://www.law.columbia.edu/media\\_inquiries/news\\_](http://www.law.columbia.edu/media_inquiries/news_)

perspective, however, was how conservative U.S. politicians and commentators highlighted sexism and homophobia in Iran as a justification for the denunciation of the Iranian president and as reinforcement of the widely held view that Iranian culture was particularly intolerant and primitive compared to Western modernity and cosmopolitanism.<sup>86</sup> Never mind that the U.S. government, particularly the administration in place during President Ahmadinejad's visit, was vulnerable to charges of sexism and homophobia as well.<sup>87</sup>

That gender and sexuality emerged as the most salient aspects of President Ahmadinejad's speech at Columbia is interesting not only because of 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 United States 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. Conversely, 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

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events/2007/september07/Iran\_GLB\_T (condemning the remarks made by President Ahmadinejad at the World Leaders Forum at Columbia University).

86. For example, on the show *On the Record w/ Greta Van Susteren*, the following exchange took place between Van Susteren and former Republican Congressman Newt Gingrich:

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, [h]ow you can have somebody here who denies the Holocaust, executes homosexuals, arrests students, tortures and kills journalists . . . .

*On the Record w/ Greta Van Susteren: Newt Gingrich's Take on Ahmadinejad* (Fox News television broadcast Sept. 24, 2007), available at <http://www.foxnews.com/story/0,2933,297973,00.html>.

87. See, e.g., Planned Parenthood Fed'n of America, Inc., *George W. Bush's War On Women: A Chronology* (2003) (outlining actions taken by former President Bush that indicate a steady pursuit to eliminate reproductive freedom); Barbara Morrill, *A Surgeon General Who Will "Cure" Gays?*, *Daily Kos* (June 1, 2007, 9:07 AM), <http://www.dailykos.com/story/2007/06/01/341697/-A-Surgeon-General-Who-Will-Cure-Gays-> (concerning former President Bush's decision to nominate a Surgeon General who had co-founded a church that "ministers to people who no longer wish to be gay or lesbian").

Western hegemony and drumming up forms of nationalism.<sup>88</sup> The nation comes to acquire both a gender and a sexual orientation along the way.

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, while tolerance toward homosexuality is demanded of those nations that seek membership in international economic and political communities. In the following sections I aim 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. 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.

### III. ROMANIA AND POLAND

Human rights norms provide 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.<sup>89</sup> 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

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88. “[S]tate efforts to eradicate the traces of empire and to resurrect an authentic post-colonial nation have produced sexual subjects that serve as a . . . reminder of a demonized colonial past and absence.” Katherine Franke, *Sexual Tensions of Post-Empire*, 33 *Stud. L. Pol. & Soc’y* 63, 64 (2004). “[A] set of homosexual social and legal subjects have been created by the . . . government, and once so formed and disciplined, ‘human rights’ rides into the rescue to liberate them from social and legal opprobrium. . . . [T]he assistance of the international human rights establishment has further reinforced post-colonial nationalist rhetoric that located individual rights as a Western norm that threatens to undermine authentic . . . culture.” *Id.* at 65.

89. See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 1, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (“All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood.”).

itself to be civilized and modern.<sup>90</sup> Inclusion in various institutions that embody modern global citizenship, such as the United Nations, the International Monetary Fund, 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 (EU), commonly called the Copenhagen Criteria, set forth the following requirements:

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.<sup>91</sup>

Accession states—those states that seek admission to the EU—are asked to undertake two important reform efforts to qualify for admission: One having to do with human rights and the other having to do with open markets.<sup>92</sup> However, 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.<sup>93</sup> These norms are given relative importance over the values of open markets, privatization, and fiscal and monetary stability.<sup>94</sup>

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 civilized, rights respecting Europe and the non-rights respecting states to its east and south. Under this differentiation, Europe is economically disciplined, global, and modern, whereas its other is more primitive, tribal or local, communitarian, and economically antiquated. Romania’s campaign to join the EU started in 1993 with its membership in the Council of Europe and culminated in its full EU membership in 2007. It offers a

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90. See, e.g., Peter Fitzpatrick, *Modernism and the Grounds of Law* 121 (2001) (noting the importance of “the standard of civilization”).

91. Presidency Conclusions, Copenhagen European Council (June 21–22, 1993).

92. *Id.*

93. *Id.*

94. *Id.*

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 “credentialization” as global citizen.

Romania has had a shocking modern history of human rights violations, from Nicolae Ceausescu’s rule through the post-Communist era.<sup>95</sup> The criminal treatment of homosexuality, the invasion of women’s bodies in the name of the nation, and discrimination against Roma, were among the most extreme forms of state-sponsored rights-abridging behavior.<sup>96</sup> 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.”<sup>97</sup> Article 200 greatly increased the penalties for homosexuality, mandating sentences of one to five years.<sup>98</sup> This new law supplemented Ceausescu’s pro-natalist decrees that compelled women to undergo periodic and compulsory gynecological examinations and severely punished abortions.<sup>99</sup> In 1986, Ceausescu declared: “[T]he fetus is the socialist property of the whole society. Giving birth is a patriotic duty . . . . Those who refuse to have children are deserters . . . .”<sup>100</sup> To a regime that predicated its authority on its surveillance of every detail of existence, there was no

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95. See Tom Gallagher, *Romania After Ceausescu: The Politics of Intolerance* (1995) (examining how officials have abused nationalism in post-1989 Romania to deflect criticism for human rights violations); see also Human Rights Watch, *Struggling for Ethnic Identity: Ethnic Hungarians in Post-Ceausescu Romania* (1993) (exploring the dramatic rise in racist propaganda in Romanian press and politics after the fall of Ceausescu in 1989).

96. See, e.g., U.S. Helsinki Watch Comm., *Violations of the Helsinki Accords, Romania: A Report Prepared for the Helsinki Review Conference* 39, 45 (1986) (reporting state discrimination and persecution against ethnic minorities in Romania as well as “deep infringements of the right to privacy,” including governmental pro-natalist campaigns); Charlotte Hord et al., *Reproductive Health in Romania: Reversing the Ceausescu Legacy*, 22 *Stud. Fam. Plan.* 231, 231–34 (1991) (describing “the world’s most rigidly enforced pronatalist population policy” under Ceausescu’s regime and the “challenges . . . facing Romania in the areas of reproductive health, family planning, and sex education” in the post-Communist era).

97. Ingrid Baciu, et al., *Unspoken Rules: Sexual Orientation and Women's Human Rights* 156-58 (Rachel Rosenbloom ed., 1996); Aleksandar Štulhofer, *Sexuality and Gender in Postcommunist Eastern Europe and Russia* 61 (2005).

98. Štulhofer, *supra* note 97.

99. Ctr. for Reprod. Law & Policy, *Women’s Reproductive Rights in Romania: A Shadow Report* 14–16 (2000); U.S. Helsinki Watch Comm., *supra* note 96, at 45.

100. Hord, *supra* note 96, at 232 (internal quotation marks omitted).

realm beyond the interest of the state.<sup>101</sup> Liberal rights such as privacy thus found no traction in socialist Romania for women or for sexual minorities.<sup>102</sup>

After the violent overthrow of the socialist government in 1989, the laws prohibiting abortion were overturned,<sup>103</sup> yet the laws criminalizing sodomy were not.<sup>104</sup> Following complaints from Council of Europe rapporteurs, the Romanian government surrendered to the fact that its economic future lay to the West and reviewed its laws outlawing homosexuality when it sought Council membership.<sup>105</sup> 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 behind.”<sup>106</sup> Another Romanian politician remarked at the time: “[O]f course the EU parliament wants us to abolish Article 200—they are all gay.”<sup>107</sup>

Just as women’s bodies were seized to play a key role in Ceausescu’s nationalistic project, 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

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101. See Gail Kligman, *The Politics of Duplicity: Controlling Reproduction in Ceausescu’s Romania* 22 (1998).

102. See *id.* (“By legislating reproductive behavior, the state intruded into the most intimate realm of social relations.”).

103. U.N. Dep’t of Econ. & Soc. Affairs, Population Div., *Abortion Policies: A Global Review*, at 54, U.N. Doc. ST/ESA/SER.A/129/Add.2, U.N. Sales No. E.95.XIII.24 (2002).

104. Homosexuality was illegal under Romanian law until 2001. Shirin Wheeler, *Romania’s Gays Celebrate End of Ban*, BBC News (Dec. 20, 2001), <http://news.bbc.co.uk/2/hi/europe/1721661.stm>; Sinziana Carstocea, *Romania*, in *The Greenwood Encyclopedia of LGBT Issues Worldwide* 347, 352 (Chuck Stewart ed., 2010).

105. See Eur. Parl. Ass. Deb. 27th Sess. 929–30 (Sept. 24, 1996) (discussing the changes Romania had to make to its Penal Code as a condition to be accepted as a member of the Council of Europe).

106. Human Rights Watch, *supra* note 95, at 31–32 (internal quotation marks omitted). It is worth noting that Ninosu went on to become a member of the Romanian Constitutional Court.

107. Carl F. Stychin, *Governing Sexuality: The Changing Politics of Citizenship and Law Reform* 122 n.7 (2003) (internal quotation marks omitted).

new EU 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,<sup>108</sup> since it included the terms of the European Charter of Fundamental Rights—a document that includes rights for homosexuals.<sup>109</sup> President Kaczynski had his staff download a video from the Internet of two men marrying and used it as a backdrop to his address to the nation, while patriotic Polish music played along.<sup>110</sup> The two men, who live in New York and had posted the video on the Internet for their friends and family after they married in Canada, were outraged when they heard that they were being used as a homophobic prop to fortify Polish nationalism.<sup>111</sup>

Ultimately Romania repealed Article 200, and in 2007 it was admitted to the EU.<sup>112</sup> The coupling of a “victory” for gay people in Romania with every Romanian's long term economic interests by virtue of membership in the EU teaches us something important about the power and limits of using human rights law as the lever with which to pry more “backward” nations from their pre-modern ways and induct them into modern global citizenship.

Just as the Council of Europe pressured the Romanian government to repeal its laws criminalizing homosexual conduct, the Dutch government began funding a Romanian NGO called ACCEPT that would work toward the repeal of Article 200.<sup>113</sup> ACCEPT defined itself explicitly as a human rights organization, not as a local gay and lesbian grassroots service provider.<sup>114</sup> By formally affiliating with the largest federation of lesbian and gay associations in the Netherlands, and by receiving funding from the Dutch Foreign Ministry, ACCEPT's main mission was limited exclusively to the repeal of Article 200.<sup>115</sup> It

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108. *Address of President Lech Kaczynski* (TVP1 television broadcast Apr. 1, 2008), available at <http://www.youtube.com/watch?v=cqbHnh7WNpU>.

109. Charter of Fundamental Rights of the European Union art. 21, Dec. 18, 2000, 2000 O.J. (C 364) 1 (“Any discrimination based on any ground such as . . . sexual orientation shall be prohibited.”).

110. *Address of President Lech Kaczynski*, *supra* note 108.

111. Sewell Chan, *Political Fight in Poland Hits Home for Gay Pair*, N.Y. Times, March 20, 2008, at B5.

112. *EU Approves Bulgaria and Romania*, BBC News (Sept. 26, 2006, 1:56 PM), <http://news.bbc.co.uk/2/hi/europe/5380024.stm>.

113. *See For a More Gay Romania*, ACCEPT, <http://accept.org.ro/foramorgayromania.html> (last visited Oct. 30, 2012).

114. *See ACCEPT Association*, ACCEPT, <http://accept-romania.ro/en/despre-noi/asociatia-accept/> (last visited Oct. 30, 2012).

115. *See About Us*, ACCEPT, <http://accept-romania.ro/en/stiri/campanie-de-vara/> (last visited Oct. 30, 2012).

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 grassroots 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—ACCEPT merely had to perform it 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 not ethnographers prepared to find new forms of sexual affiliation that were the unique product of a post-Communist Romanian culture. Nor were they prepared to adapt their normative tools to respond to those unique conditions. Quite the contrary, European rapporteurs 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, serious candidacy for admission to the EU meant performing plausible modernity by having a recognizable minority of citizens who understood themselves to “have” a gay identity just as in the European metropole and 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 annunciation 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. ACCEPT is an organization that did not primarily grow out of Romanian society, but instead played an important role as a 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 they “*share the same values*,”<sup>116</sup> Romania was able to satisfy the Copenhagen criteria simply by repealing Article 200. This is the legally formalistic price of admission into the economic community of the EU.

The kind of gay subject these politics call up is one whose identity would coagulate in public institutions such as gay pride parades and gay community centers, where “gayness” could be

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116. Stychin, *supra* note 107, at 134-35.



isolated and privileged over other kinds of identification grounded in, for instance, class, ethnicity, or religion.

Since 2004, a gay and lesbian pride parade, known as Gay Fest, has been held in Bucharest every June.<sup>117</sup> The first parade was named the Diversity Festival.<sup>118</sup> 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.”<sup>119</sup> Again, Western Europe got what they asked for in Romania—a Western style gay-rights movement that demonstrated the kinds of progress that mark a society being “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 type 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 been accompanied by the neglect of other types of security and rights-based values. The “shadow report” prepared by Romanian women’s rights 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.<sup>120</sup> 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.<sup>121</sup> More recent

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117. See *About Us*, Gay Fest, <http://www.gay-fest.ro/en/despre-noi/> (last visited Oct. 30, 2012).

118. *Info*, Gay Fest, <http://www.gay-fest.ro/en/despre-gayfest/gayfest-2004/info/> (last visited Oct. 30, 2012).

119. “*Hall of Shame*” Shows Reach of Homophobia: On International Day Against Homophobia, Violations Mixed With Victories, Human Rights Watch (May 17, 2006), <http://www.hrw.org/news/2006/05/16/hall-shame-shows-reach-homophobia>.

120. Women’s Non-Governmental Orgs. of Romania, Women’s Status in Romania: A Shadow Report to the CEDAW 23rd Session (Apr. 2000), available at <http://legislationline.org/documents/action/popup/id/7703>.

121. See *id.* at 8–11, 18–22; see also Ctr. for Reprod. Law & Policy, Women’s Reproductive Rights in Romania: A Shadow Report (2000), available at [http://www.reproductiverights.org/pdf/sr\\_rom\\_0600\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_rom_0600_eng.pdf).

reports on the rights of Romanian women, particularly Roma women, show little improvement.<sup>122</sup>

What is more, Romania has received 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.<sup>123</sup> Perhaps this is the lesson of Romania's entrance into 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 host 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 homosexualized as a means of solidifying or fortifying national identity within. The body of the nation becomes sexualized, if not heterosexualized, and a virulent and revitalized national heterosexual body stands ready to battle penetration or violation from the extraterritorial sexual other. When that heterosexualized 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, United Nations) and Brussels or Strasbourg (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—

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122. See European Roma Rights Ctr. & Romani CRISS, 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 (2006), available at [http://www.iwraw-ap.org/resources/pdf/Romania\(2\)\\_SR.pdf](http://www.iwraw-ap.org/resources/pdf/Romania(2)_SR.pdf).

123. Scott Horton, *Inside the CIA's Black Site in Bucharest*, Harper's Mag. (Dec. 8, 2011, 11:37 AM), <http://harpers.org/archive/2011/12/hbc-90008343>.

justified the renovation of the heterosexualized body of the nation, while conjuring up a homosexualized 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 United States' "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.

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 his or her rights-bearing status stand as the metonyms of freedom. That is, the lack of freedom 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<sup>124</sup>); 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 through a set of twenty-eight precepts that seek to integrate concerns about sexual orientation and gender

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124. Sister Sledge, *We Are Family* (Atlantic Records 1979).

identity into the main of human rights law and norms.<sup>125</sup> For present purposes, Principle 3 is most important, holding that “[e]ach 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.”<sup>126</sup> Just as Article 15 of the Universal Declaration of Human Rights sets out that “[e]veryone has the right to a nationality . . . [and] no one shall be arbitrarily deprived of his nationality or denied the right to change his nationality,”<sup>127</sup> the Yogyakarta Principles are animated by a commitment to establish a universal and fundamental right to a sexual orientation and gender identity.<sup>128</sup> 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 United States, 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.

#### IV. PRESIDENT AHMADINEJAD COMES TO COLUMBIA

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.

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125. Int’l Comm’n of Jurists, Yogyakarta Principles, Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007). 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.” *Id.* at 7.

126. *Id.* at 11.

127. Universal Declaration of Human Rights, G.A. Res 217 (III) A, *supra* note 89, art. 15.

128. Int’l Comm’n of Jurists, *supra* note 125, at 8–9.

Having called President Ahmadinejad 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.<sup>129</sup> The occasion required that Bollinger get all gender-y, as Eve Sedgwick would have put it.<sup>130</sup>

President Ahmadinejad’s comment that “[i]n 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 United States thought they already knew about Iran and its political leadership: It is tyrannical, pre-modern, 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 used as the ideal cudgel with which international actors could attack the Iranians?

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,

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129. Cooper, *supra* note 78 (“[President Bollinger] said, ‘Mr. President [Ahmadinejad], you exhibit all the signs of a petty and cruel dictator’ adding, ‘You are either brazenly provocative or astonishingly uneducated. . . . I doubt,’ Bollinger concluded, ‘that you will have the intellectual courage to answer these questions.’”).

130. See Eve Kosofsky Sedgwick, *Gosh, Boy George, You Must be Awfully Secure in Your Masculinity!*, in *Constructing Masculinity* 11, 16 (Maurice Berger et. al. eds., 1995). In many respects the intended audience for Bollinger’s “Iranophobic” 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-Zionist views. Furthermore, 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.

and his insights apply with equal force in Iran.<sup>131</sup> Afsaneh Najmabadi's and Pardis Madhavi's works have been equally important in exploring the contours of sexual and gender identity in modern Iran.<sup>132</sup> While I don't imagine that President Ahmadinejad's claim that there are 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 a thoughtful response to President Ahmadinejad's statement requires sensitivity to the imperial nature of the insistence upon the universal, stable, and binary fact of hetero- and homosexualities by some of the international human rights community.

Nonetheless, 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. As translated by Professor Dabashi while listening to the recording of the event, the exact words the Iranian president used were: "[I]n 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."<sup>133</sup> 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."<sup>134</sup> Dabashi's second point is subtler, and muddies the issue far more greatly. He wrote to me:

[N]ow 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

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131. Massad, *supra* note 9.

132. See, e.g., Afsaneh Najmabadi, *Women with Mustaches and Men Without Beards: Gender and Sexual Anxieties of Iranian Modernity* (2005) (discussing evolving social views in Iran in the areas of gender and sexuality since the 19th century); Pardis Mahdavi, *Passionate Uprisings: Iran's Sexual Revolution* (2009) (describing sexual habits and social views of modern Iranian youth and their effect on Iranian society).

133. E-mail from Hamid Dabashi, Hagop Kevorkian Professor of Iranian Studies & Comparative Literature, Columbia Univ., to author (Feb. 12, 2011, 12:29 PM EST) (on file with author) (internal quotation marks omitted).

134. *Id.*

existence”—yet another polyvalent phrasing that has embedded in it 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.<sup>135</sup>

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.<sup>136</sup> They unfavorably compared that horrendous treatment to the favorable constitutional protections that homosexuals receive in the United States.<sup>137</sup> The press release noted that gay Iranians have sought asylum in the United States and suggested that this fact was evidence of the greater freedoms here in the United States and lesser freedoms there in Iran.<sup>138</sup>

LGBT rights advocates found themselves in an unintended allegiance with political conservatives in Washington who, despite long and vitriolic opposition to positive legal rights for homosexuals in the United States, opportunistically used this moment to proclaim the moral superiority of the United States compared to 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 United States 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.<sup>139</sup> At the time of

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135. *Id.*

136. Press Release, Columbia Law Sch. Sexuality & Gend. Law Clinic, *supra* note 85.

137. *Id.*

138. *Id.*

139. See, e.g., *Iran Continues To Execute Gays*, Joe. My. God. (Nov. 13, 2007), <http://joemygod.blogspot.com/2007/11/iran-continue-to-execute-gays.html> (describing the release of the photos); see also Steve Shives, *Ahmadinejad Denied More Than the Holocaust This Time*, Yahoo! Voices (Sept. 26, 2007),

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.<sup>140</sup> Tom Lantos, then a member of the U.S. Congress and a Holocaust survivor who had long been an adamant supporter of Israel and a critic of Arab states or states influenced by Islam, strongly condemned the action: “This sickening episode shines a bright light on the severe shortcomings of the Iranian legal system. . . . [I]n this case, authorities apparently chose to play on deep-seated feelings of bigotry toward homosexuality.”<sup>141</sup> 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.”<sup>142</sup>

It turns out, however, that the young men in this picture were very likely prosecuted for sexually assaulting a thirteen-year old boy, not for consensual homosexual conduct.<sup>143</sup> Reports of their

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<http://voices.yahoo.com/ahmadinejad-denied-more-than-holocaust-time-571138.html?cat=9> (discussing the 2005 public hangings of the two teenagers in the context of Ahmadinejad’s 2007 speech at Columbia University).

140. See, e.g., *Report: Gay Youths Hanged in Iran*, Towleroad, (July 20, 2005), [http://www.towleroad.com/2005/07/report\\_gay\\_yout.html](http://www.towleroad.com/2005/07/report_gay_yout.html) (decrying the hanging of the two men).

141. Press Release, Rep. Tom Lantos, Rep. Lantos Deplores Iran’s Killing of Gays (July 27, 2005), available at [mpetrelis.blogspot.com/2005/07/rep.html](http://mpetrelis.blogspot.com/2005/07/rep.html).

142. *Execution of Gay Teens in Iran—Ayatollahs Have Murdered 100,000 People*, Peter Tatchell (July 27, 2005) <http://www.petertatchell.net/international/iran/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-19th 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 about the imminent threat of radical Islam, but with a more frank design of intimidating Muslim students and women’s studies departments. *A Student’s Guide to Hosting Islamofascism Awareness Week*, Terrorism Awareness Project, [http://www.terrorismawareness.org/islamofascism-awareness-week/](http://www.terrorismawareness.org/islamofascism-awareness-week/49/a-students-guide-to-hosting-islamofascism-awareness-week/) (last visited Oct. 30, 2012). Columbia University faculty members 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. Larry Cohler-Esses, *The New McCarthyism*, Nation (Oct. 25, 2007), <http://www.thenation.com/article/new-mccarthyism#>.

143. Press Release, Amnesty Int’l, Iran Continues to Execute Minors and Juvenile Offenders (July 22, 2005),



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.<sup>144</sup> 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.<sup>145</sup> This work was severely undermined when the international community intervened and plucked these two boys out for special treatment because they were “gay.”<sup>146</sup>

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 with global politics, in which rights-based claims for sexual liberty are used by states as the lever to pry other state interests 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 by the domestic political opposition in Iran to an 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.

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<http://www.amnesty.org/en/library/asset/MDE13/038/2005/en/1628dceb-d4c7-11dd-8a23-d58a49c0d652/mde130382005en.html>.

144. See Richard Kim, *Witness to an Execution*, *Nation* (Aug. 7, 2005), <http://www.thenation.com/article/witnesses-execution> (discussing the unclear circumstances surrounding the 2005 execution and the spread of news about the incident via Iranian and Western media).

145. See, e.g., *Nobel Laureate Condemns Hanging of 2 Teenage Boys*, *Chicago Trib.* (July 24, 2005), [http://articles.chicagotribune.com/2005-07-24/news/0507240331\\_1\\_shirin-ebadi-raping-teenage-boys](http://articles.chicagotribune.com/2005-07-24/news/0507240331_1_shirin-ebadi-raping-teenage-boys) (noting that Nobel Peace laureate Shirin Ebadi has stated that her organization, the Center for the Protection of Human Rights, “will intensify its fight against Iran’s execution of minors”).

146. Interview with Afsaneh Najmabadi, Francis Lee Higginson Professor of History & of Studies of Women, Gen. & Sexuality, Harvard Univ., in Cambridge, Mass. (Sept. 20, 2008).

## V. ISRAEL REDUX

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 United States., 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 United States from the Soviet Union as with the rightness of African American civil rights.<sup>147</sup> Likewise, 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, on behalf of women undergoing genital cutting in Sudan, against foot binding in Japan, or abortion rights in the United States and elsewhere.<sup>148</sup>

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 have 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 intervention 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?

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147. See Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518, 524–25 (1980).

148. Is the “right” feminist ending to the film *Juno* (Fox Searchlight Pictures 2007), one where she has the abortion rather than carries the child to term? For a smart discussion of the biopolitics of abortion rights, see Lauren Berlant, *A Barrel of Acid and a Barrel of Water*, *Supervalent Thought* (Feb. 24, 2008), <http://supervalentthought.com/2008/02/24/a-barrel-of-acid-and-a-barrel-of-water-or-things-happen-like-this/> (discussing Christian Mungiu’s film *4 Months, 3 Weeks and 2 Days* (BAC Films 2007)).

Lauren Berlant has urged that we concern ourselves with a kind of moral atrophy that sets into some rights-based social movements precisely at the moment that the state “takes up” their cause.<sup>149</sup> 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 United States, there is a risk that the rights-bearing gay subject—a new “good citizen”—emerges in the foreground of a national landscape while at the same time producing at its margin others who are not so good.

We might laud Israel’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 came 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.<sup>150</sup> 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, whereas the queers in the streets just might have. Aeyal Gross has posed an even more difficult challenge: “Israeli politicians and the GLBT community must ask whether the massacre of children in Gaza, and in Sderot, is less shocking that [sic] that of children on Nachmani Street in Tel-Aviv [where the Aguda is located].”<sup>151</sup>

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 nineteenth century, liberal or progressive causes become significantly less liberal or progressive as soon as they are

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149. *Id.* (drawing from Mladen Dolar, *At First Sight, in Gaze and Voice as Love Objects: Sic 1*, at 129 (Renata Salecl & Slavoj Žižek eds., 1996) and 4 Months, 3 Weeks and 2 Days).

150. Jonathan Lis & Amiram Barkat, *J’lem Gay Parade Halted After Protester Stabs 3 Marchers*, Haaretz (July 1, 2005, 12:00 AM), <http://www.haaretz.com/print-edition/news/j-lem-gay-parade-halted-after-protester-stabs-3-marchers-1.162735>.

151. Aeyal Gross, *Harvey Milk Was Here*, Zeek: Jewish J. Thought & Culture (Oct. 25, 2009), <http://zeek.forward.com/articles/115761>.

embraced by the state.<sup>152</sup> His conclusion that “there are no worse and no more thorough injurers of freedom than liberal institutions,”<sup>153</sup> 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*,<sup>154</sup> 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 have refused to conform to state-endorsed normative homo- or heterosexuality. This is true both for queers whose desires refuse to orient themselves ineluctably toward marriage, as well as for Muslims with sexual norms and practices of polyamory, homosociality, and modesty.<sup>155</sup> 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 objectives with respect to Palestine and Iran.<sup>156</sup>

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.”<sup>157</sup> With this he sought to capture the process by which

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

153. *Id.*

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

155. This is among the arguments made by Puar, *supra* note 9.

156. See *supra* notes 55–59, 61–69 and accompanying text.

157. Michel Foucault, *The History of Sexuality*, Vol. 1: *An Introduction* 17–35 (Robert Hurley trans., 1st ed. 1978) (1976).

“taking sex ‘into account’”<sup>158</sup> 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 eighteenth century rational turn in conceptualizing sexuality applies with equal measure to the contemporary examples I offer in this essay:

[O]ne 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.<sup>159</sup>

The public potential of sex and sexuality in today’s context has materialized in homonationalist policies when states gain political 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 de-politicizing the communities in whose name those rights are mobilized.<sup>160</sup>

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

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158. *Id.* at 24.

159. *Id.*

160. “[T]he 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: Pinkwashing Homonationalism*, *Jadaliyya* (Dec. 16, 2011), [http://www.jadaliyya.com/pages/index/3560/gay-rights-as-human-rights\\_pinkwashing-homonationa](http://www.jadaliyya.com/pages/index/3560/gay-rights-as-human-rights_pinkwashing-homonationa).

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. “Victory” in the sense of gaining the state as a partner, rather 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 rights’ outside.

## VI. CONCLUSION

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.<sup>161</sup> 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 nationalism that the state had been actively cultivating, thus reinforcing a kind of anti-nationalist identification.<sup>162</sup> Their banners read: “There is no Pride in the Occupation.”<sup>163</sup> These queer/left politics were 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

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161. This is how Aeyal Gross has put it in his analysis of the current rift between gay and queer activists in Israel. See Gross, *supra* note 53 (discussing the rift between queer radical activists and supporters of homonationalism, and noting that “gay rights have essentially become a public-relations tool”).

162. Aeyal Gross, *The Politics of GLBT Rights in Israel (and Beyond): Between Queer Politics and Homonationalism* 26–28 (unpublished manuscript presented at Columbia Law School, Oct. 18, 2010) (on file with author).

163. *Id.*

Palestinians not with Israel.<sup>164</sup> Their signs and stickers, donned for the main parade, offered a retort to the signs of the anti-nationalists: “[N]o to the occupation of the parade,” and “I am a proud Zionist.”<sup>165</sup> In the end, the resistance of 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.<sup>166</sup> 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 how 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 [I]srael as such but you know that’s not a view I share—we should be able to talk of gay rights in [I]srael even if [it] 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 [grassroots] activism and founded Israeli gay monthly which under his

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164. *Id.*

165. *Id.*

166. *Id.*

leadership was a voice for queer thought (I used to write there regularly) and its dissemination.<sup>167</sup>

In Aeyal's response lies the challenge of activism 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 ways. Jasbir Puar has termed the tethering of gay rights to nationalist projects a kind of “golden handcuffs.”<sup>168</sup>

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.<sup>169</sup> It also prevents the government from doing business with companies that initiate or comply with such boycotts.<sup>170</sup>

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 the LGBT and feminist communities,<sup>171</sup> I thought I was prepared for the backlash that engagement with pinkwashing might generate.<sup>172</sup> I

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167. E-mail from Aeyal Gross, Associate Professor of Law, Tel-Aviv Univer., to author (Feb. 11, 2011, 9:40 PM EST) (on file with author).

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

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

170. *Id.*

171. See, e.g., Katherine Franke, *The Politics of Same-Sex Marriage Politics*, 15 *Colum. J. Gender & L.* 236 (2006) (reflecting on the politics of same-sex marriage politics); Katherine Franke, *Theorizing Yes: An Essay on Feminism, Law & Desire*, 101 *Colum. L. Rev.* 181 (2001) (critiquing the absence of a positive theory of female sexuality in feminist legal theory).

172. 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,



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 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 biopolitical project that figures reproduction and the hetero-normative family as vital to national survival. All of these dynamics "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."<sup>173</sup>

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 of the latter. As one Israeli human rights lawyer

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would have undertaken projects that question both pinkwashing and Israeli state policy with respect to Palestine.

173. Ritchie, *supra* note 43, at 121.

from Tel Aviv told a group of us on the first LGBTI delegation to Israel/Palestine in January 2012, “Tel Aviv may be the most gay city in the world, but it’s also the least Arab you’ll find in the Middle East.”<sup>174</sup>

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 also 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.

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174. Source declined identification due to the sensitivity of his work.