5. International polarization

As the successes of the gay rights movement in some places have been mirrored by increasing homophobic repression in others, the result has been growing international polarisation. Social, legal and intellectual changes starting in the 1960s ultimately created circumstances in which some governments began to argue that discrimination on the basis of ‘sexual orientation and gender identity’ was a violation of universal human rights. In response, other states proposed an alternative norm: that human rights are only valid if they are grounded in the ‘universal traditional values of mankind’ – from the perspective of traditional morality, homosexuality is a social vice and sin which may be criminalised. Whereas only a few decades ago sexuality went unmentioned in global institutions, today sexual rights are the subject of heated international debate.

The theatrics of international politics – such as the moment in March 2012 when almost half the national representatives walked out of the UN Human Rights Council, as it began to discuss a report on sexual orientation-based discrimination – are of largely symbolic importance. The international posturing of governments doesn’t always reflect domestic practices, and there is often a gap between the polarised debates in Human Rights bodies, and the practical work of some UN Agencies. Likewise, while laws governing homosexuality are important, in many cases they do not reflect the reality of gay experience. Today, homosexual acts are lawful in Russia, but illegal in Singapore, yet Singapore is home to a flourishing gay scene and political movement that – unlike in Russia – is largely free from official or unofficial harassment. Yet while international human rights debates and legal trends do not determine the dynamics of persecution and acceptance that affect the lives of ordinary people, neither are they wholly disconnected. Regional and international dynamics have repercussions for queer rights on the ground, even if the interconnections between national politics and global trends are often complex.

Regional and international politics

There are clear patterns in the formal responses of governments to questions of sexuality that align with international regional and religious groupings. The majority of countries that retain criminal sanctions against homosexual behaviour are either [or both] members of the Commonwealth or the Organisation of Islamic Cooperation (OIC). While the Commonwealth is a loose organisation of some fifty five countries, almost all of them former British colonies, it has no means of enforcing norms other than through expulsion of member nations, a move which began with the expulsion of South Africa in 1961 for its policies of apartheid, and more recent expulsions of several countries for their lack of democracy.
The Commonwealth Charter claims that its members are united in support of democracy, human rights and the rule of law, and in recent years demands for recognising sexuality as included within the human rights penumbra have become significant. An Eminent Persons Group, established in 2011, recommended that existing criminal sanctions against homosexuality should be removed, in part because of their impact on effective HIV prevention. But while a meeting of Commonwealth foreign ministers adopted the recommendation for a human rights charter in 2012, Commonwealth member countries have been amongst those most active in increasing legal penalties against homosexuality in the past few years. It seems very unlikely that the Commonwealth will be a major avenue for pursuing sexual rights in the foreseeable future.¹

Another regional approach has responded to international debates about human rights and gender identity in a more distinctive way. As already noted, Pakistan’s highest court recognised the status of a 3rd gender (‘hijra’) in 2009. This traditional accommodation of gender non-conformity may be viewed as an indirect response to international legal debates over ‘sexual orientation and gender identity’ – the court accepted protection of gender identity that reflected local traditions, but has not accepted the case for decriminalisation of homosexual acts. ii In 2014 the Indian Supreme Court reached a similar decision when it extended legal recognition to transgendered people, and referred to a raft of international precedents – including the Yogyakarta Principles and the Pakistani case – in reaching this decision. A distinct regional norm seems to have emerged in South Asia, with legal recognition of a ‘third gender’ category in Pakistan, Nepal, Bangladesh and India.

Meanwhile, most of ‘Confucian’ Asia has remained largely uninvolved in the international dispute over gay rights. While some governments, such as China, typically vote in opposition to sexuality rights internationally, there has been no obvious move toward increased domestic repression of sexual minorities or efforts to exploit the issue for political gain. Other states, such as Vietnam, have indicated partial acceptance of same sex identities, but have not promoted this norm internationally, which is consistent with their opposition to any interference in the “internal affairs” of other countries.

Over the past few years Russia under Putin has emerged as a powerful leader in anti-homosexual rhetoric, both domestically and internationally. While homophobic public rhetoric is common and has been used to solidify links between Putin’s regime and the Russian Orthodox Church, homosexual sex has been decriminalised since 1993. However, a more recent agreement between Putin and the Russian Orthodox Church gives the Church a particular role in reviewing possible legislation, and the Church has played an official role in promoting social conservatism.

Russia’s homophobic rhetoric is part of a sophisticated international public diplomacy campaign, which seeks to narrow the validity of human rights to those that are consistent with ‘universal traditional values.’ Through this explicit rejection of sexuality rights, Putin has sought to
form international alliances with those who critique secular human rights from religious or collectivist traditions and to encourage allies to use the issue of sexual rights to distinguish themselves from the West. In a 2013 speech Putin argued:

Today, many nations are revising their moral values and ethical norms, eroding ethnic traditions and differences between peoples and cultures. Society is now required not only to recognise everyone’s right to the freedom of consciousness, political views and privacy, but also to accept without question the equality of good and evil... We know that there are more and more people in the world who support our position on defending traditional values that have made up the spiritual and moral foundation of civilization in every nation for thousands of years: the values of traditional families, real human life, including religious life, not just material existence but also spirituality, the values of humanism and global diversity. iii

Putin’s allies have used a ‘civilizational critique’ of human rights to marginalize domestic liberal opponents, to consolidate the Orthodox Church’s support for Kremlin, to blunt the domestic impact of Western critiques of Putin’s human rights record, and as an instrument of Russian soft power internationally. iv Allying with both Islamic and Christian opponents of gay rights adds to Russia’s credibility in many parts of the world, and helps define it as representing an alternative to western values.

**Polarization**

When new norms are proposed internationally, some states will typically defend the status quo by clarifying and formalising their opposition. When the international community began to condemn apartheid in 1946, the South African government asserted the principle of non-interference in internal affairs and adopted laws that codified racial discrimination.v While disputation over apartheid continued for several decades, in this case the new norm of racial equality ultimately won widespread international acceptance. Female enfranchisement and prohibition of slavery are other examples of norms that have been adopted globally after initial resistance, even if they continue to be violated in practice – such as the tolerance for slavery in Mauritania. Despite these hopeful precedents, global acceptance of gay rights is not similarly inevitable – ongoing polarization is also possible as is true of whaling and the death penalty. As in the case of whaling, discussion of sexuality is complicated by claims that national identity and traditions are being compromised by cultural imperialism.

Once some countries and human rights bodies accepted that human rights protect sexual minorities, it was inevitable that other countries would disagree, but it was not inevitable that the debate should become as polarized as it now appears. The dispute over whether human rights
protection should cover “sexual orientation and gender identity” has become so fractious that it has created an opportunity for Russia and the OIC to undermine the wider concept of secular human rights, and has frustrated the work of some UN bodies. Thus in 2010 the UN General Assembly rejected an otherwise innocuous report from the Special Rapporteur on Education because it supported access to ‘comprehensive sexual education’ – conservative governments worried such education might normalise sexual diversity.

International disputation over homosexuality only began comparatively recently, and the story begins with the development of LGBT-specific international organisations. The International Lesbian and Gay Association (ILGA) was granted official consultative status with the United Nations Economic and Social Council (ECOSOC) in 1993. However, conservative US Senator Jesse Helms revealed historical links between several of ILGA’s member organisations and paedophile groups as part of a campaign to overturn this decision (although ILGA itself refused to admit pedophile groups, it was unable to guarantee that no member organization has continuing links). Helms persuaded the US Senate to make withdrawing ILGA’s recognition a precondition for payment of the US’s $118 million debt to the UN and its consultative status was suspended for several years. Nevertheless, LGBT organisations were officially accredited at both the 1993 World Conference on Human Rights and the 1995 Fourth World Conference on Women in Beijing and, in time such representation has become commonplace.

In 1999, Asma Jahangir, the UN Special Rapporteur on extrajudicial executions submitted a report to the UNCHR which argued that imposition of the death penalty for sexuality related offences breached the Covenant on Civil and Political Rights’ guarantee of a “right to life”. Jahangir called for universal decriminalization and drew attention to extra-judicial killings of homosexuals in Brazil, Colombia and Mexico. At first, the international community reacted to Jahangir’s report in a reasonable and routine manner and added specific reference to killings on the basis of “sexual orientation” to a regular resolution condemning extra-judicial killings. However, over the following decade while resolutions mentioning sexual orientation continued to pass, each vote was fiercely contested and the anti-gay camp gained strength. Finally, in November 2010, a motion sponsored by Benin deleted any reference to ‘sexual orientation’ from the resolution.

This was not the first time that opponents of sexual rights had scored an important victory – however, it was the first such victory secured without the approval of the United States. In 2003, Brazil had introduced a broad draft resolution titled ‘Human Rights and Sexual Orientation’ to the U.N. Commission on Human Rights (a UN Human rights body that was abolished and replaced by UN Human Rights Council in 2006). Strong resistance delayed an initial vote and Brazil eventually requested a permanent postponement. Discussion of the Brazilian resolution exposed deep divisions among governments and opposition from members of the OIC was particularly strong.
Bush Administration was also opposed (it planned to abstain rather than vote against) the Brazilian proposal was clearly untenable. For so long as the United States sided with the conservatives, international debate over sexuality rights was contained. Despite significant international disagreement, there would be no serious challenge to the status quo while an informal alliance existed between the world’s only superpower and a network of conservative developing states.

Election of the Obama Administration shifted this balance. After the defeat of the resolution condemning extra-judicial killings on the basis of ‘sexual orientation’ the United States Ambassador Susan Rice sponsored an alternative resolution and the General Assembly reversed the earlier decision (93 to 55, 27 abstentions). The UN Africa Group and Organisation of Islamic Cooperation are usually staunch opponents of sexual rights; however, in response to US pressure, the unity of the African Group was broken, and South Africa, Angola, Cape Verde and Rwanda were among the countries persuaded to vote for the resolution.

Under Obama the United States took an increasingly activist position on international gay rights, responding to growing interest and pressure from domestic organisations which make up a significant constituency for the Democratic Party. Without doubting Obama’s genuine commitment, statements by high level US government officials sometimes appear more directed at domestic voters rather than persuading the countries which are under scrutiny. In 2015, the United States appointed a “Special Envoy for the Human Rights of LGBT Persons”, and Obama has increasingly referred to this issue in his speeches. Disagreement with President Kenyatta over gay rights was a prominent theme in Obama’s visit to Kenya in July 2015.

In 2011, the U.S. was instrumental in a resolution of the U.N. Human Rights Council commissioning the High Commissioner for Human Rights to prepare a report on ‘discriminatory laws and practices…against individuals based on their sexual orientation and gender identity, and how international human rights law’ could provide redress. Whereas the earlier Brazilian resolution suffered from a lack of coordination among supportive states and NGOs, this new resolution was carefully planned. Voting (23 in favour, 19 against 3 abstentions) again saw strong opposition from the OIC and African Group. However, in order to avoid the impression of Western neo-colonialism, South Africa was chosen to present the final text.

2011 was also the year where the US State Department founded a US$3 Million Global Equality Fund “to support programs that advance the human rights of lesbian, gay, bisexual and transgender (LGBT) persons around the world” and also a “LGBT Core Group” at the United Nations. The LGBT Core Group was a coalition of countries “committed to eliminating violence and discrimination against individuals based on their sexual orientation and gender identity” and to recognizing that LGBT individuals should enjoy human rights protection. Some members of the LGBT Core Group – such as Japan and Israel – have no previous record of advocacy for sexuality
rights either domestically or internationally, so one wonders if their participation might be explained by close alliances with the United States.

Over the past few years both European and U.S. governments have increasingly raised the profile of sexual rights. Thus a ministerial declaration from France, Italy and Belgium in 2013 deliberately linked these rights to the idea of a European identity: “We want to live in a European space in which individual freedoms are effectively protected, regardless of one’s sexual orientation or gender identity”; and groups like ILGA-Europe have consciously linked themselves to the European project. When Malta voted to accept same sex civil unions and adoptions in 2014 it boasted that this made them ‘more liberal and more European’. In the last few years the UN Secretary General Ban Ki Moon has also begun to assert the need for universal recognition of sexual rights and, in 2013, the UN Human Rights Office launched a “Free & Equal” campaign. Gay rights are simultaneously being promoted in unprecedented ways and being assimilated into the legitimating narratives of global power structures.

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**Conditionality**

Conditionality refers to linking conditions to the provision of benefits such as loans or aid. The post WWII Marshall Plan required ‘participating countries’ to adopt ‘self-help measures’ that supported free trade (especially with the United States) and currency convertibility, while throughout its history the International Monetary Fund has sought to link funding to policy measures. Since conditionality’s purpose is to promote a donor’s goals it intentionally restricts recipients’ autonomy, and this exploitation of power differentials is frequently controversial. However untied aid creates perverse incentives for rulers, since an impoverished population may attract aid-flows that can be diverted to empower ruling elites and undermining democratizing reforms. These dilemmas might potentially be resolved through carefully designed conditionality; such as grassroots participation and ownership of aid projects, and an insistence that programs promote gender equality. However, evidence suggests that conditionality is usually a blunt instrument, since donors struggle to create incentives that allow their goals to take precedence over those of recipients.

During the 1980s when high interest rates had created crippling balance-of-payments crises in many heavily indebted countries increasingly strict ‘conditionalities’ were imposed by the Western-dominated International Monetary Fund and World Bank in exchange for finance. Structural adjustment lending sought to refashion developing economies according to the dictates of liberal economic thinking: reducing the economic role of the state at the expense of markets. While economic
impacts were mixed, in many cases these policies, which included winding back public health and education services, harmed the poor. The IMF also lost much prestige when those nations that resisted its policy prescriptions recovered fastest from the 1997 Asian financial crisis (Malaysia is the key example). Where the first generation of conditionality focused on neoliberal economic reform, a second wave promoted a broader liberal agenda around ‘good governance’ and respect for ‘human rights’. Once again, the practical impact of this well-intentioned conditionality was mixed at best.

While aid conditionality has always been controversial, the period in which neo-liberal policies (often termed the ‘Washington Consensus’) were imposed on developing countries has created a significant legacy of distrust. Conditionality that withdraws aid from states which torture or kill those perceived as sexual deviants might seem far removed from IMF demands for governments to charge impoverished children school fees. However, all forms of conditionality seek to impose a donor’s agenda and so are likely to trigger a backlash among those on whom ‘conditions’ are placed. While it seems likely that well-designed ‘conditions’ might offset the negative dimensions of aid-giving, the very fact that conditionality exploits the north-south power inequality means that it is an imperfect method with which to protect marginalized communities.

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**International development assistance**

Beginning with tentative steps by Sweden and the Netherlands, donor governments over the past decade have sought to find ways to encourage groups working around sexual and gender diversity, often through programs for HIV prevention. [The Australian government funded a few such groups in the late 1980s, and helped contribute to the emergence of gay networks in southeast Asia.] The first few years of this century saw a strong emphasis on international efforts to combat the spread of HIV and AIDS, and to roll out effective treatments, and AIDS was specifically named, along with malaria and tuberculosis as a focus of the Millennium Development Goals, While services directed at marginalised group such as trans* and men who have sex with men remain under resourced, the emphasis on HIV and AIDS meant new opportunities for both activists and sympathetic donors to increase their attention to issues of sexuality.

While much of the focus of gay advocacy has been on resolutions by the Human Rights Committee and other parts of the U.N. system, there has been increasing programmatic activity by some of the United Nations agencies around sexual rights. The creation of UNAIDS in 1996 in order to coordinate the work of all U.N. agencies around HIV meant an agency whose guiding principles would take up the ideas of health and human rights, and give many LGBT groups access to decision making. Other UN agencies started to adopt policies and programs working with diverse sexual and
As donor governments pledged considerable funds to combatting HIV, assistance came with conditions not always acceptable to recipient countries. The clearest case was George W Bush’s very ambitious President’s Emergency Plan for AIDS Relief [PEPFAR] which funded both treatment and prevention programs. However the funding was conditional on accepting certain principles, especially a refusal to support groups working with sex workers, which led Brazil to refuse PEPFAR funding. The Bush Administration also lined up with conservative governments in refusing to name ‘men who have sex with men’ as particularly vulnerable to HIV infection in various U.N. resolutions.

The Global Fund to Fight AIDS, Tuberculosis and Malaria was founded in 2002 as a partnership between governments, civil society, the private sector and people affected by the diseases, and has sought to link funding to governments demonstrating that they are willing to work effectively with marginalised populations most vulnerable to HIV, usually identified as men who have sex with men, injecting drug users and sex workers. At the same time, various parts of the United Nations system have taken up issues of sexuality orientation and gender identity, with the support of the Secretary General. Regional offices of UNESCO have conducted workshops on homophobia, and UNICEF has committed itself to “Eliminating discrimination against children and parents based on sexual orientation and/or gender identity”, a position that was strongly condemned by some religious groups. At country level, often under pressure from determined staffers, many of the UN agencies have been able to provide resources and support to emerging queer groups, which in turn creates a constituency to continue this work. Perhaps most significantly the World Bank has pressured loan recipients to halt discrimination against people based on their sexuality and gender identity.

Donor nations, particularly the western Europeans and United States, have increasingly raised sexual rights generally, and LGBT issues specifically, as part of their general approach to international development. In 2010 the renegotiation of the Cotonou Agreement, which covers trade and political relations between the European Union and 79 African, Caribbean, and Pacific nations, became acrimonious when the European Parliament demanded that ‘actions conducted under the terms of the various partnerships be pursued without any discrimination on grounds of gender … sexual orientation or against people living with HIV/AIDS.’ African, Caribbean and Pacific states unanimously rejected this threat and wrote a statement which demanded that the European Union ‘refrain from any attempts to impose its values’ concerning the ‘phenomenon of homosexuality’. Next controversy erupted over the incident described in Chapter One, where UK Prime Minister David Cameron raised the possibility of withdrawing bilateral aid if African countries increased criminal penalties for homosexuality. Again, targeted governments were furious and the threat appeared to backfire; Malawian politicians at one point blamed LGBT activists for British aid cuts
that were wholly unrelated to gay rights. Moreover, critics pointed out that Cameron’s announcement was not followed by specific policy descriptions – suggesting that it might have been motivated by domestic political concerns. xix

A group of African Social Justice Activists responded: “An effective response to the violations of the rights of LGBTI people has to be more nuanced than the mere imposition of donor sanctions. The history of colonialism and sexuality cannot be overlooked when seeking solutions to this issue.” Sanctions “sustain the divide between the LGBTI and the broader civil society movement,” “disregard the agency of African civil society” and “are by their nature coercive and reinforce the disproportionate power dynamics between donor countries and recipients.” The activists went on to call on the UK to abandon aid conditionality, to, support “national and regional human rights mechanisms” and expand support for community based and led LGBTI programmes. xx

As we have noted, the major shift in US policies under the Obama Administration have served to make this issue far more central to international debates. Comments by President Obama urging various states to decriminalise homosexuality and the responses to anti-gay laws in countries such as Uganda have drawn defensive responses from target countries and in some cases have led to increased persecution. The US State Department’s resourcing of SOGI-linked civil society groups has also been controversial – when the US Embassy in Pakistan hosted an event honouring ‘gays and lesbians’ the Lahore High Court Association condemned this as a ‘drone attack on culture and social life of the region’.xxi

Since the election of the Obama Administration, countries that support ‘gay rights’ have built a powerful alliance and are now usually able to pass resolutions in international fora. But even if there are rhetorical gains, the realities of global division persist. Opponents of gay rights continue to make similar claims– that liberal treatment of sexuality violates religious traditions, national values and will lead to family and social breakdown. Sexual minorities continue to be targets of violence and political scapegoating across much of the world. In many cases efforts to promote or impose ‘gay rights’ have seemed to play into the hands of oppressive governments. The reality of international polarization and the sensitivities about Western imperialism in those countries that have only recently escaped colonial domination raise real questions for activists – how best to promote human rights and liberation within a divided world.

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