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***Ahmadinejad Comes To Columbia: The Perils Of
Standing Up For The Gays*** [†]

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On August 1, 2009 a masked man dressed in black carrying an automatic weapon stormed into the Agudah, a basement apartment and home of the Israeli national Gay, Lesbian, Bisexual, Transgender Association building in Tel Aviv. He opened fire on a group of gay and lesbian teenagers who were meeting in the basement for “Bar Noar,” or “Youth Bar,” killing two people and wounding at least 10 others.¹ This terrible act of violence attracted immediate national and international attention and condemnation. President Simon Peres declared the next day: “the shocking murder carried out in Tel Aviv yesterday against youths and young people is a murder which a civilized and enlightened nation cannot accept ... Murder and hatred are the two most serious crimes in society.

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¹ See Aeyal Gross, Unpublished Op-ed, on file with author.

The police must exert great efforts in order to catch the despicable murderer, and the entire nation must unite in condemning this abominable act.”² Prime Minister Benjamin Netanyahu added: “We are a democratic country, a country of tolerance, a law-abiding state, and we will honor every person regardless of his or her beliefs.”³ When the Prime Minister visited the LGBT Association building several days later he remarked, “This is not just a blow to the gay-lesbian community. This is a blow to all Israeli youth and Israeli society... Only tyrants in dictatorial regimes take this authority upon themselves.”⁴ President Peres echoed these remarks at a rally honoring the murdered gay teens, “The gunshots that hit the gay community earlier this week hit us all. As people. As Jews. As Israelis.”⁵

These remarks, while laudable for their strong condemnation of violence against gay and lesbian people, signal something quite interesting about the relationship between homosexuality, the state of Israel, the Jewish people, and the idea of a modern, democratic and tolerant state. Israeli politicians,

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

³ Id.

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

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

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

According to the Israeli government - whether Labor, Kadima or Likud - this is how a modern, democratic, and tolerant state should respond. Indeed, for some this is what distinguishes a state such as Israel from, for instance, its Muslim and Arab neighbors. Various pro-Israel advocates, including the Israeli government, have seen a strategic advantage in comparing Israel's tolerance of gay people with intolerance toward gays in neighboring Arab and Muslim countries. Last May, the Israeli Foreign Ministry, concerned that the international community was wavering in its hard line stance toward Iran's growing nuclear capability, allocated roughly \$2 million to a new campaign to discredit Iran by specifically highlighting its mistreatment of lesbians and gay men.⁶ Similarly, StandWithUs, a pro-Israeli advocacy organization based in Los Angeles, has explicitly

⁶ Barak Ravid, *Israel Recruits Gay Community in PR Campaign Against Iran*, Haaretz, May 20, 2009, www.haaretz.com/hasen/spages/1079589.html.

pursued a strategy of responding to criticism of Operation Cast Lead (the invasion of Gaza in December 2008) by emphasizing how well lesbian and gay people are treated in Israel.⁷ “We decided to improve Israel’s image through the gay community in Israel” said an official with StandWithUs to the Jerusalem Post.⁸ “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.”⁹ Other bloggers similarly saw an opportunity to blunt international criticism of Operation Cast Lead by pointing to Hamas’ intolerance toward gay men as a justification for the Israeli military action.¹⁰ Back in the U.S., StandWithUs circulated a flyer on college campuses in which it compares Israeli, Egyptian, Jordanian, Palestinian, Iranian, Lebanese and other Middle Eastern states’ policies on “sexual freedom” and concludes that Israel is

⁷ StandWithUS is “an international, non-profit organization that promotes a better understanding of Israel, through examination of diverse issues.” “Who Are We?” from IPride website, a project of StandWithUS, www.ipride-tlv.org/.

⁸ Mel Bezalel, *Gay Pride Being Used to Promote Israel Abroad*, Jerusalem Post, June 7, 2009, www.jpost.com/servlet/Satellite?cid=1244371033880&pagename=JPost%2FJPArticle%2FShowFull.

⁹ Id.

¹⁰ By Paula Brooks, *What About the Gaza Gays?*, LezGetReal: A Gay Girl’s View on the World, January 4, 2009, lezgetreal.com/?p=719 (last visited August 25, 2009).

the “only country in the Middle East that supports gay rights.”¹¹

Notably, just as Prime Minister Netanyahu declared that “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,”¹² the United Nations High Commissioner for Human Rights, Navi Pillay, was poised to issue a report finding “significant prima facie evidence of serious violations of international humanitarian law having been committed by the Israeli forces” when it invaded Gaza in December of 2008.¹³ Comparatively speaking, the Israeli government’s sensitivity to the Tel Aviv shooting received far more national and international attention and acclaim than did the finding that it had committed numerous human rights abuses in the Gaza military campaign.

I begin this essay with the discussion of Israel not to single it out, but to illustrate a larger, more widespread phenomenon: It is

¹¹ www.standwithus.com/pdfs/flyers/gay_rights.pdf.

¹² Roni Sofer, *Netanyahu: Israel a Country of Tolerance*, Ynet News, August 2, 2009, www.ynetnews.com/articles/0,7340,L-3755571,00.html (Last visited August 25, 2009).

¹³ *Human Rights Situation in Palestine and Other Occupied Arab Territories, The grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip, Report of the United Nations High Commissioner for Human Rights on the implementation of the Human Rights Council resolution S-9/1*, Human Rights Council A/HRC/12/37, 10 August 2009; *Significant Prima Facie Evidence of Serious Rights Abuses in Gaza, UN Reports*, UN News Centre, 14 August 2009, www.un.org/apps/news/story.asp?NewsID=31768&Cr=palestin&Cr1=

worth tracing why, how and to what effect a state's posture with respect to the rights of "its" homosexuals has become an effective foreign policy tool, often when negotiating things that have little or nothing to do with homosexuality.¹⁴ 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 transgendered people within the protective infrastructure of the well organized human rights communities. On the other side is a group, perhaps most provocatively represented by Joseph Massad in *Re-Orienting Desire: The Gay International and the Arab World*,¹⁵ that derides the work of LGBT human rights actors and organizations for a kind of missionary zeal to universalize western, sexualized identities that have little or no fit with the ways in which sexuality, or for that matter, identity take form in settings outside the West. "Following in the footsteps

¹⁴ The Israeli Foreign Ministry confessed that the new PR campaign "aims to appeal to people who are less concerned with Iran's nuclear aspirations and more fearful of its human rights abuses and mistreatment of minorities, including the gay and lesbian community." Barak Ravid, *Israel Recruits Gay Community in PR Campaign Against Iran*, Haaretz, May 20, 2009, www.haaretz.com/hasen/spages/1079589.html.

¹⁵ Joseph Massad, *Re-Orienting Desire: The Gay International and the Arab World*, 14 *Public Culture* 361 (2002), later republished as Chapter 3 in Joseph A. Massad, *Desiring Arabs* (U. Chicago Press, 2007). See also, Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (2007); Sonia Katyal, *Exporting Identity*, 14 *Yale J. L. & Fem.* 97 (2002).

of the white Western women's movement, which had sought to universalize its issues through imposing its own colonial feminism on the women's movements in the non-Western world—a situation that led to major schisms from the outset—the gay movement has adopted a similar missionary role,” wrote Massad in *Public Culture* in 2002.¹⁶ Not surprisingly, Massad got some push-back from the persons and entities he vilifies as imperialist missionaries, who have sought to redeem their good names and good work.¹⁷ Still others have sought to chart 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.¹⁸ For this last group, as for Gayatri Spivak, rights are something we cannot not want,¹⁹ 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 my sentiments lean in the direction of the middle course), but rather seeks to introduce an analysis none of the

¹⁶ Joseph Massad, *Re-Orienting Desire: The Gay International and the Arab World*, 14 *Public Culture* 361, 361 (2002).

¹⁷ See, e.g. Scott Long, *The Trials of Culture: Sex and Security in Egypt*, Middle East Report, No. 230 (Spring, 2004), pp. 12-20.

¹⁸ See e.g. Amr Shalakany, *On a Certain Queer Discomfort with Orientalism*, 101 *Am. Soc'y Int'l L. Proc.* 125 (2007); Aeyal Gross, *Queer Theory and International Human Rights Law: Does Each Person Have a Sexual Orientation?*, 101 *Am. Soc'y Int'l L. Proc.* 129 (2007); Teemu Ruskola, *Legal Orientalism*, 101 *Mich. L. Rev.* 179 (2002).

¹⁹ Gayatri Chakravorty Spivak, *Outside in the Teaching Machine* 46 (1993).

disputants have acknowledged: To focus this discussion on the relationship between LGBT human rights NGOs in the metropole and the potentially colonial subjects they seek to aid misses a third and vastly important actor in this theater - that of the state. In hugely interesting ways, states have come to see that their political power, their legitimacy, indeed their standing as a global citizen, is bound up with how they recognize and then treat “their” gay citizens. A careful account of the role of human rights mechanisms and institutions in the expansion of human sexual freedom requires that we recognize and account for the manner in which NGO’s working in this area, along with the victimized populations they seek to aid, often find their work and their interests taken up and deployed by state actors for purposes that well exceed the articulated aims of something called “human rights.” The Israeli example I opened with is but one of the ways in which sexuality bears a curious relationship to global citizenship, politics and governance.

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

* * *

In September of 2007, against a backdrop of a failed U.S. occupation of Afghanistan and Iraq, charges that Iran has been covertly supplying arms to Shi’a militias in Iraq, intense criticism by the United States government of Iran’s efforts to build nuclear reactors, and ongoing campaigns of highly inflammatory anti-US

rhetoric by the Iranian political leadership and highly inflammatory anti-Iranian rhetoric by U.S. political leadership, Iranian President Mahmoud Ahmadinejad was invited to give a speech at Columbia University. This invitation was highly controversial - anti-Iranian forces arguing that President Ahmadinejad should not be given a forum in the United States, and others arguing that free speech and open democracy principles instruct that we should hear from those whose ideas we find most aberrant. Still others, though admittedly a minority in the University community, felt that President Ahmadinejad represented an articulate, though at times extreme, counterpoint to U.S. imperialism in the middle east and Western Asia. Notably, the Dean of my Law School issued a press release the day before President Ahmadinejad arrived at Columbia expressing anticipatory condemnation of the Iranian President's remarks.²⁰

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. Yet the significance of the Ahmadinejad speech and the controversy it triggered has to be understood on the local level in a context that included the fact that for the last several years a number of Columbia faculty members who work on the Middle East, and had taken positions that expressed some sympathy for the situation of the Palestinians, had been aggressively attacked by radical Zionist organizations in the United States charging them with being anti-semitic or anti-

²⁰ *Statement by David M. Schizer Re: SIPA Invitation to Mahmoud Ahmadinejad*,
www.law.columbia.edu/media_inquiries/news_events/2007/september07/deans_statement.

Israeli.²¹

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

President Ahmadinejad ably defended himself and voiced criticisms of U.S. policy in the Middle East and Western Asia in tones and in terms rarely heard in the United States. He pointed out the hypocrisy of the U.S.’s efforts to limit the rights of other nations to nuclear weapons when it regularly violates the nuclear arms non-proliferation treaty itself, and asked why the Palestinian people should be shouldered with paying for the historical atrocity of the holocaust, when this genocide was committed by Europeans. In response to a question from a student in the audience about why women were denied human rights in Iran and condemning the execution of young men on account of their presumed homosexuality, he replied that “women in Iran enjoy the highest levels of freedom,” and then asserted that “In Iran we don’t have

²¹ See, for instance, video *Columbia Unbecoming*, www.columbiaunbecoming.com/; Anderson, *Fracas Erupts Over Book on Mideast by a Barnard Professor Seeking Tenure*, *N.Y. Times*, Sept. 10, 2007 p. B1.

homosexuals like you do in your country. We do not have this phenomenon. I don't know who's told you that we have it." He then reminded the audience of the frequent use of the death penalty in the United States.

Surprisingly enough, despite ample coverage of President Ahmadinejad's visit to Columbia, the parts of the story that got the most coverage were his remarks relating to women and homosexuals in Iran. Of course, as one would expect, domestic gay rights groups issued press releases the next day denouncing Ahmadinejad's denial of homosexuality in Iran - noting that without question there are men who have sex with men in Iran, and they are treated very harshly by the Iranian government. But what was most remarkable from my perspective was how conservative U.S. politicians and commentators highlighted sexism and homophobia in Iran as a justification to denounce the Iranian President and as reinforcement of the widely held view that Iranian culture was particularly intolerant and primitive as compared with Western modernity and cosmopolitanism.²² Never mind that the United States government, particularly the administration in place

²² See remarks of Newt Gingrich on [On the Record with Greta](http://www.foxnews.com/story/0,2933,297973,00.html), Fox News, September 25, 2007
www.foxnews.com/story/0,2933,297973,00.html

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

VAN SUSTEREN: Does he kill them?

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

during President Ahmadinejad's visit, was openly and aggressively sexist and homophobic.

That gender and sexuality emerged as the most salient aspects of President Ahmadinejad's speech at Columbia is interesting not only for how conservative U.S. politicians showed themselves to be deeply hypocritical on these issues when it so served their interests. Perhaps more importantly, the use of the rights of women and gay people as a device by which the U.S. asserted its moral superiority to Iran echoes similar uses of gender and sexuality in struggles for the West to assert its dominance over less "civilized" or "modern" peoples. So too, resistance to human rights norms that both construct and then protect a certain type of gendered and sexualized citizenship have been deployed outside the West in post-colonial and other contexts as a way of turning back Western hegemony and drumming up forms of nationalism. The nation comes to acquire both a gender and a sexual orientation along the way.²³

What I will do in this essay is first examine 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, and then, in turn, look at how a revulsion toward gay men gets articulated as the most visible trope deployed by political leadership seeking to hold on to local control and governance. I will 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 to show how the issue of gender and sexual orientation-based intolerance of which he was accused signals the centrality and manipulation of sexuality and sexual rights in struggles for and

²³ See Katherine M. Franke, *Sexual Tensions of Post-Empire*, 33 *Studies in Law, Politics and Society* 63 (2004).

against the civilizing mission that lies at the heart of key aspects of globalization. I will conclude with reflections on the ethical predicament for LGBT human rights advocates posed by the complex relationship between rights, nationalism, and global citizenship.

* * *

Human rights norms claim as their justification and their source a set of universal and generalizable claims about the moral worth of all persons that requires the recognition of the inherent dignity and equality of all members of the human family, thereby entitling each of us to a set of inalienable rights which any government must respect as a condition of its legitimacy. Many have observed that an adherence to human rights has become among the most important criteria by which a nation might prove itself to be civilized and modern.²⁴ Inclusion in various institutions that embody modern global citizenship, such as the United Nations, the IMF, NATO, and regional trade agreements, have come to require from applicants that they recognize a form of “individualized humanity” in their own citizens, and that those citizens possess certain inalienable rights by virtue of that humanity.

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

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and, protection of minorities, the existence of a functioning

²⁴ See for example Peter Fitzpatrick, *Modernism and the Grounds of Law* (2001) at 120.

market economy as well as the capacity to cope with competitive pressure and market forces within the Union.²⁵

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

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

Romania has had a shocking modern history of human rights violations, from Ceausescu's rule through the post-Communist era.²⁶ The criminal treatment of homosexuality, the invasion of women's bodies in the name of the nation, as well as discrimination against Roma, were among the most extreme forms

²⁵ Copenhagen Criteria (1993).

²⁶ See Human Rights Watch, *Public Scandals: Sexual Orientation and Criminal Law in Romania* (1998).

of state-sponsored rights-abridging behavior. In 1968, the socialist Romanian government enacted article 200, which criminalized sexual acts between persons of the same sex in any setting - expanding into the private domain a law which had previously criminalized only such acts which created a "public scandal." Article 200 greatly increased the penalties for homosexuality, mandating sentences of one to five years. This new law outlawing homosexuality supplemented Ceausescu's other pro-natalist decrees which compelled women to undergo periodic and compulsory gynecological examinations and severely punished abortions. In 1986 Ceausescu declared "the fetus to be the socialist property of the whole society. Giving birth is a patriotic duty ... those who refuse to have children are deserters."²⁷ To a regime which predicated its authority on its surveillance of every detail of existence, there was no realm beyond the interest of the state - thus liberal rights such as privacy found no traction in socialist Romania for women or for sexual minorities.²⁸

After the violent overthrow of the socialist government in 1989, the laws prohibiting abortion were overturned yet the laws criminalizing sodomy were not. Only when the Romanian government ceded to the fact that their economic future lay to the West - to Europe - were they forced to review their laws outlawing homosexuality - largely in response to the complaints of *rapporteurs* from the Council of Europe when Romania sought membership therein in 1993. In response to European demands that Romania modernize its criminal laws, Romanian Justice Minister Petre Ninosu responded "if we let homosexuals do as they

²⁷ T. Gallagher, *Romania After Ceausescu: The Politics of Intolerance* (1995) p.61

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

please, it would mean entering Europe from the back.”²⁹ Another Romanian politician remarked at the time: “Of course the EU parliament wants us to abolish Article 200 – they’re all gay.”³⁰

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

We witnessed the same fears expressed by the President of Poland recently when he used the specter of gay marriage to trigger national resistance to Poland’s ratification of the new European Union Constitution. In a nationally televised speech, President Kaczynski appealed to threats to Poland’s national values and morality if the new Constitution were ratified since it included the terms of the European Charter of Fundamental Rights - which includes rights for homosexuals. President Kaczynski had his staff pull off the internet a video of two men being married and used it as a backdrop to his address to the nation, while patriotic music played along.³¹ The two men - who live in New York and had posted the video on the internet for their friends and family after they were married in Canada - were outraged when they heard that they were being used a homophobic ploy to fortify

²⁹ Human Rights Watch, *Public Scandals*, pp. 31-32. It is worth noting that Ninosu is now a member of the Romanian Constitutional Court.

³⁰ Stychin, *Governing Sexuality* (2003) p. 122 n. 7.

³¹ www.youtube.com/watch?v=cqbHnh7WNpU.

Polish nationalism.³²

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

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

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

What do I mean by this script? Here as elsewhere, European *rapporteurs* were the opposite of ethnographers prepared

³² Chan, *Political Fight in Poland Hits Home for Gay Pair*, N. Y. Times, March 20, 2008 p. B5.

to find new forms of sexual affiliation that were the unique product of a post-Communist Romanian culture, and then adapt their normative tools to respond to those unique conditions. Quite the contrary - they went looking for something familiar: a society that had homosexuals just like their homosexuals, who were discriminated against in predictable ways by public and private actors, and who could seek legal protection for that discrimination from the state. For a state like Romania, being viewed as a serious candidate for admission to the EU meant performing plausible modernity by having a recognizable minority of citizens who understood themselves to be constituted by a gay identity, a same-sex sexual orientation, as in the European metropole, who could then be recognized by the state as rights bearing subjects. The extent of the state's obligation with respect to these subjects was the announcement of an anti-discrimination norm, and a minimal infrastructure of enforcement.

This is what the Dutch paid for when they underwrote the activities of ACCEPT, and that is what they got. An organization that did not primarily grow out of Romanian society, but instead played an important role as bridge between the European West and the needy European East. Although the EU Parliamentarians insisted in letters to the Prime Minister of Romania that they were looking forward to welcoming Romania into the EU, so long as "*we share the same values*,"³³ Romania was able to satisfy the Copenhagen criteria by repealing article 200 - the legally formalistic price of admission into the economic community of the EU.

Since 2004, a gay and lesbian pride parade has been held in Bucharest every June - The theme of the first parade: *You have the right to be diverse*. Again, Western Europe got what they asked for in Romania - a western style gay-rights movement that

³³ Stychin, *Governing Sexuality* (2003) p. 134-35.

demonstrated the kinds of progress that mark a society that is being successfully civilized by adherence to regional human rights norms and membership in a global community.

It is impossible to say whether a kind of “gay identity” would have emerged in Romania in the absence of the kind of interpellation that Western European parliamentarians insisted upon as a condition of EU membership - calling up recognizable gay subjects who could then be protected by human rights laws. Yet the almost singular focus on sexual rights as the marker of modernity, has meant that other types of security and rights-based values have been neglected. The “shadow report” prepared by Romanian Women’s NGOs to supplement the report of Romanian government to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2000 details the horrendous treatment of women - marital rape remains legal, there are no laws prohibiting domestic violence, laws prohibiting sex discrimination in the workforce are not enforced, and the maternal mortality rate is among the highest in all of Europe, due to the fact that unsafe abortions remain the primary method of birth control in the absence of adequate family planning information and resources.³⁴

What is more, if you look up Romania’s human rights record on Human Rights Watch’s home page, one of the most shocking report is of the Romanian President allowing the United States’ CIA to set up secret detention camps in his country within which to interrogate and torture suspected terrorists captured in Afghanistan. Perhaps this is the lesson of Romania’s entrance into

³⁴ Women’s Status in Romania: A Shadow Report to the CEDAW 23rd Session April 2000, www.legislationline.org/legislation.php?tid=178&lid=7613&less=false; Center for Reproductive Law and Policy, Women’s Reproductive Rights in Romania: A Shadow Report (2000), www.reproductiverights.org/pdf/sr_rom_0600_eng.pdf

the modern Europe: so long you treat your gay people well, we'll look the other way when it comes to other human rights issues.

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 - both as a threat from without in the form of non-normative sexuality, and as a means of solidifying or fortifying national identity within - insofar as the body of the nation becomes sexualized, in fact hetero-sexualized, and that virulent form of revitalized national heterosexual body is threatened by penetration or violation from the extraterritorial sexual other. 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 - justified the abandonment of the hetero-sexualized body of the nation, while conjuring up a homo-sexualized private citizen. Global citizenship requires the state to then formally tolerate a rights-bearing homosexual Romanian citizen. This new citizen was grounded in a form of identity politics that is familiar to late-capitalist societies, but had few roots in post-communist cultures playing catch up, as was Romania: identity becomes individualized, indeed privatized, along with the economy. So too, sexual orientation becomes a private fact about a person that should not have public consequences, such as discrimination in employment or the ability to serve in the military. Well written laws, adequately enforced, can take care of the problem. Little or no effort was made to strengthen the institutions of civil society that might check the distributional inequalities of capitalist culture, might balk at the conscription of the west's weaker economic players in the U.S.'s "global war on terror," and might have seen solidarity with other oppressed groups such as the Roma and women. Here, as in other contexts, international gay rights NGO's risk being used as the front end of the plow that opens up the path for new markets for European goods, new low-wage workers, and a much weaker

social welfare state.

* * *

So this brings me back to President Ahmadinejad at Columbia last September. Orientalism in its classical form characterized so much of President Bollinger's excoriating address to the Iranian leader, as well as the subsequent reactions of much of the U.S. media and political elites. In response to a hostile question from the audience, President Ahmadinejad claimed that "In Iran we don't have homosexuals like you do in your country," and that "women in Iran enjoy the highest levels of freedom." How should we understand the prominence of sexuality and gender in the criticisms that followed President Ahmadinejad's visit, and what relationship does this bear to the dynamics in Romania?

Certainly these events echo similar European efforts to advance various forms of economic and human rights-based freedoms in the states formerly behind the Soviet Iron Curtain. In these contexts, both the cultural intelligibility of a gay citizen/subject and that citizen/subject's rights-bearing status stand as the metonyms of freedom. That is, unfreedom is most convincingly evidenced by two things: first, the absence of a certain percentage of the population who will stand up, wave a rainbow flag, and proclaim their authentic homosexual identity. 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 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,³⁵ a set of twenty-eight precepts that seek to integrate concerns about sexual orientation and gender identity into the main of human rights law and norms. For present purposes, Principle 3 is most important, holding that “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.” It is hard not to read this language as being animated by a commitment to establish a universal and fundamental right to a sexual orientation, particularly when read in the context of Article 15 of the Universal Declaration of Human Rights which sets out that “Everyone has the right to a nationality ... [and] no one shall be arbitrarily deprived of his nationality or denied the right to change his nationality.”³⁶

Thus, a member of good standing in the community of states that is human rights-abiding, not human rights-denying, must recognize the universal “fact” that human bodies everywhere organize and then sort themselves according to a sexualized orientation. The work of Massad and his fellow travelers draws this fundamental and universal fact into question, not to deny that some people in world experience a “sexual orientation” as deeply constitutive, but that not all people do and certainly do not in the same or similar ways.

Thus President Ahmadinejad’s comment about

³⁵ *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, available at: www.yogyakartaprinciples.org/principles_en.pdf. Arrived at in Yogyakarta, Indonesia in November of 2006, “a distinguished group of human rights experts” gathered to draw up “principles on the application of international human rights law in relation to sexual orientation and gender identity.”

³⁶ Universal Declaration of Human Rights, Article 15.

homosexuality in Iran offered evidence of what some in the U.S. thought they already knew about Iran and its political leadership: it is tyrannical, premodern, uncivilized, and not to be trusted - not trusted about its knowledge of its own people, nor about other issues such as its nuclear ambitions, or role in supporting the insurgency in Iraq. 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? And what does it mean that here, as elsewhere, the denial of homosexuality and the persecution of sexual deviance are used as the best suited cudgel with which the Iranians are attacked by international actors?

First of all, I hasten to point out that the question of homosexuality in Iran is not one obviously amenable to a yes/no answer. Of course sexual identification, desires and identities in Iran don't line up precisely as they do in the United States or in Western Europe. Why would they? Again, Joseph Massad has done a more than ample job of unpacking this complex issue in the Arab world, and his insights apply with equal force in Iran. Afsaneh Najmabadi's work has been equally important in exploring the contours of sexual and gender identity in modern Iran.³⁷ While I don't imagine that President Ahmadinejad's claim that there were no homosexuals in Iran was a nuanced reference to Massad's or Najmabadi's analysis of sexuality in Islamic countries, I do think that sensitivity to the imperial nature of the insistence upon the universal, stable and binary fact of hetero and homo sexualities by some of the international human rights community is necessary in order to formulate a thoughtful

³⁷ Afsaneh Najmabadi, Women with Mustaches and Men Without Beards: Gender and Sexual Anxieties of Iranian Modernity (2005).

response to President Ahmadinejad's statement about his population's sexuality.

Far too many human rights groups, politicians and media outlets outside Iran responded to President Ahmadinejad's remarks with the demand for recognition: "yes, of course there are gay people in Iran!" Even my own colleagues at Columbia Law School's Sexuality and Gender Law Clinic issued a press release immediately after the speech expressing outrage at the Iranian President's denial of a gay Iran, at the persecution of lesbian and gay Iranians by the government, and unfavorably compared that horrendous treatment to the favorable Constitutional protections that homosexuals receive in the United States. So too they noted the number of gay Iranians who have sought asylum in the U.S. as evidence of the greater freedoms here in the U.S. and lesser freedoms there in Iran.³⁸

In an odd turn, 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 U.S., opportunistically used this moment to proclaim the moral superiority of the United States. They pointed to the intolerance of Islam toward homosexuality as evidence of Iran's backwardness, while failing to mention that all but a few of the organized Christian churches in the U.S. vehemently oppose the rights of gay people.

Immediately after President Ahmadinejad's speech, media outlets and blogs recirculated a horrible picture of two young Iranian men being hanged in 2005, ostensibly for being gay. At the time of the execution in 2005 there had been a vocal outcry

³⁸ *Sexuality and Gender Law Clinic Denounces Anti-Gay Remarks by Iranian President*, September 26, 2007, www.law.columbia.edu/media_inquiries/news_events/2007/september07/Iran_GLB_T

from the international human rights community decrying this kind of treatment of Iranian gay men. Tom Lantos, a Democratic member of the U.S. Congress, and a holocaust survivor who had long been an adamant supporter of Israel and critic of Arab or Islamically influenced states strongly condemned the action: “This sickening episode shines a bright light on the severe shortcomings of the Iranian legal system ... in this case, authorities apparently chose to play on deep-seated feelings of bigotry toward homosexuality.”³⁹ The Belgian Foreign Minister and a British gay rights group similarly joined the protest. Peter Tatchell of the British NGO claimed that “this was just the latest barbarity by the

³⁹ Statement of Rep. Tom Lantos, July 27, 2005, available at: mpetrelis.blogspot.com/2005/07/rep.html.

Islamofascists⁴⁰ in Iran.”⁴¹

But it turns out that the young men in this picture very likely were prosecuted for sexually assaulting a 13-year old boy, not for consensual homosexual conduct. Reports of their homosexuality had originated with an opposition group in Iran - the National Council of Resistance of Iran - knowing full well that the international media and human rights community would pick up on it immediately as a justification for criticism of the Iranian government. And they were right. Meanwhile, domestic groups that had situated the plight of these young men within local movements to reform death penalty laws or criminal laws affecting children found their efforts undermined by an international community's intervention that plucked these two boys out for

⁴⁰ The term “Islamofascist” is not original to Peter Tatchell, but has a history traceable back to conservative commentators who sought an effective neologism to link modern states made up of predominantly Muslim populations to European fascist states in the early to mid nineteenth century. David Horowitz's Freedom Center has organized something dreadfully called “Islamofascism Awareness Week” on college campuses in the last several years, with the purported aim of educating students to the imminent threat of radical islam, but with a more frank design of intimidating Muslim students and women's studies departments. www.terrorismawareness.org/islamofascism-awareness-week/49/a-students-guide-to-hosting-islamofascism-awareness-week/. Columbia University has been a particular target of these events, together with CampusWatch, launching 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.

⁴¹ *Execution of Gay Teens in Iran*, www.petertatchell.net/international/iranexecution.htm.

special treatment because they were “gay.”⁴²

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

Conclusion

In some respects, the deployment of LGBT rights by states to further other national and nationalist interests is nothing new. Woodrow Wilson “used” the enfranchisement of women in the United States in the immediate post World War I period as a means by which to champion the moral superiority of the U.S., and the U.S. military was racially integrated by Harry Truman after World War II for reasons that had as much to do with efforts to distinguish the U.S. from Soviet Russia than the rightness of

⁴² Conversation with Afsaneh Najmabadi, September 20, 2008.

African American civil rights.⁴³ So too, the universalist humanism that underlies the post World War II human rights paradigm always risks a kind of biopolitics that should give us pause, whether the rights asserted are on behalf of LGBT people in Egypt or Romania, women undergoing genital cutting in Sudan, footbinding in Japan, or abortion rights in the United States and elsewhere.⁴⁴

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. I've got a different bone to pick. It has to do with who and what is actualized when the LGBT subject is given a voice through the intervention of the tools of human rights? To what degree should a state's operationalization of sexuality and sexual rights trigger a set of ethical concerns back at the home office of the NGOs working to advance sex and sexuality-based human rights? What kind of duty do the non-state actors who seek to engage the human rights apparatus in the name of the rights and freedom of certain populations and practices have to take into account the ways in which the meaning and implications of their work may be of their own making or design?

⁴³ Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L.Rev. 518 1(1980).

⁴⁴ Is the "right" feminist ending to the film *Juno* one where she has the abortion rather than carries the child to term? For a smart discussion of the biopolitics of abortion rights politics see Lauren Berlant's discussion of Christian Mungiu's film *4 Months, 3 Weeks and 2 Days*, at supervalentthought.com/2008/02/24/a-barrel-of-acid-and-a-barrel-of-water-or-things-happen-like-this/.

Berlant, drawing from the work of Mladen Dolar⁴⁵ and Mungiu's film *4 Months, 3 Weeks and 2 Days*, suggests that we concern ourselves with a kind of moral atrophy that sets into some right-based social movements. Might a kind of atrophy be at risk when the state starts doing the heavy lifting related to defending the rights of sexual minorities, as we saw in the examples I discussed above? Whether in the sodomy reform politics of post-Ceausescu Romania or in today's same sex marriage politics in the U.S., there is a risk that the rights-bearing gay subject - a new "good citizen" - emerges in the foreground of a national landscape that by contrast highlights at the margin others who are not-so-good.

Once we recognize that the normative homosexuality that undergirds human rights discourse is not merely a "fact" in the world, but more of 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 hetero- sexuality. This is true both for queers whose desires refuse to orient themselves ineluctably toward marriage, or Muslims with sexual norms and practices of polyamory, homosociality, and modesty.⁴⁶ Under this scenario, newly patriotized gay subjects find themselves implicated, whether they want to or not, in the construction and identification of the "enemies of the state." Witness the ingenious strategy of StandWithUs and the Israeli Foreign Ministry to appeal to gay rights supporters in their efforts to shore up Israel's foreign policy with respect to Palestine and Iran.

⁴⁵ Mladen Dolar, *A Voice and Nothing More* (2007)

⁴⁶ This is among the arguments made by Puar in *Terrorist Assemblages*.

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

The moral atrophy that has kept us from recognizing the tragedy of these strategies and outcomes is where more critical, and indeed discomfiting, work needs to be done. By theorists and activists alike. This means rethinking the horizon of success in this work. "Victory" in the sense of gaining the state as a partner, rather 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 muster rights-based movements into its larger governance projects, accompanied by an affirmative resistance to conceptions of citizenship that figure nationality by and through the creation of a constitutive other who resides in the state's and human right's outside.