

Post/Colonial Queer Globalisation and International Human Rights: Images of LGBT Rights

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In recent years, literature has pointed to the role of pictorial images in human rights advocacy. While this literature has focused mostly on images which portray the violations of human rights, this article considers images of a different type, that are used in the context of LGBT rights advocacy, arguably portraying utopian visions of human rights. Through a reading of two images – the first portraying Dana International, the transgender pop singer who represented Israel in the Eurovision Song Contest and won, and the second portraying what looks like a same-sex couple who have got married – the article examines issues that come up in international LGBT rights advocacy, focusing on questions of the globalisation of identities, the recognition of family life and on the (post)colonial context in which rights claims are being made. The tension between the texts superimposed upon the images and the images themselves serve to expose existing contradictions within LGBT rights advocacy as practiced inter alia through the use of these images. Finally, the ‘Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity’ are examined and critically engaged with in light of the tensions in international LGBT rights advocacy discussed through a reading of the images.

I. INTRODUCTION

While the editors of this volume talk of the 2000s as the “Decade of Sex Rights,”¹ its precursor can be traced to the 1990s, when, through a set of almost simultaneous developments, sexuality started carving a place for itself in international human rights discourse. In 1995, two seminal books on the topic were published, entitled *Sexual Orientation: A Human Right*² and *Sexual Orientation and Human Rights*.³ This was preceded

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1. Special Issue Theme Note, 4 (1) JINDAL GLOBAL L. REV. (2012).
2. ERIC HEINZE, *SEXUAL ORIENTATION – A HUMAN RIGHT: AN ESSAY ON INTERNATIONAL HUMAN RIGHTS LAW* (1995).
3. ROBERT WINTEMUTE, *SEXUAL ORIENTATION AND HUMAN RIGHTS: THE UNITED STATES CONSTITUTION, THE EUROPEAN CONVENTION, AND THE CANADIAN CHARTER* (1995).

in 1994 by the U.N. Human Rights Committee's first decision on sexual orientation, holding that a statute enacted in Tasmania, Australia, criminalising various forms of sexual contact between men, including all forms of sexual contact between consenting adult homosexual men in private, was in violation of the International Covenant on Civil and Political Rights and, moreover, that discrimination based on sexual orientation is prohibited under the Covenant.⁴

In the same year, Amnesty International became the first major international human rights NGO to publish a report on sexual orientation, significantly titled *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*.⁵ Other NGOs, both general and specialised, subsequently became active in this area. Thus it seemed only natural in 1998 for Amnesty to launch a campaign bearing the slogan 'Gay rights are human rights', echoing the women's rights movement slogan 'Women's rights are human rights'.

The gay rights slogan seems to entail a uniform conception of both sexuality and rights, an understanding that both 'gay' and 'rights' are or should be identically conceived everywhere. Notably, this slogan was voiced at a time when the singularity of these very concepts was being questioned. The invocation of 'gay' as a universal phenomenon happened at a time when queer theory⁶ was challenging our understanding of this identity as transcultural and transhistorical, and pointing to the fact that sexuality may mean different things in different societies and different periods.⁷ But the slogan not only assumes the universality

4. U.N. H.R.C., Views of the Human Rights Committee in *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/ C/50/D/488/1992 (1994) (hereinafter "Toonen v. Australia").

5. AMNESTY INTERNATIONAL, *BREAKING THE SILENCE: HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION* (1994).

6. For an introduction to queer theory, see ANNAMARIE JAGOSE, *QUEER THEORY: AN INTRODUCTION* (1996); For an introduction to queer legal theory, see CARL STYCHIN, *LAW'S DESIRE: SEXUALITY AND THE LIMITS OF JUSTICE* 140-56 (1995).

7. On the historical context of modern gay identity, see DAVID HALPERIN, *ONE HUNDRED YEARS OF HOMOSEXUALITY* (1990); On 'gay' identity as a product of globalisation, see Dennis Altman, *Global Gaze/Global Gays*, 3 (4) *GLQ: A J. OF LESBIAN & GAY STUD.* 417-36 (1997); On the complex interaction between local and global identities in this context, see Lisa Rofel, *Qualities of Desire: Imagining Gay Identities in China*, 5 (4) *GLQ: A J. OF LESBIAN & GAY STUD.* 451-74 (1999); See also Dennis Altman, *Rupture or Continuity?: The Internationalization of Gay Identities*, in *POST-COLONIAL, QUEER: THEORETICAL INTERSECTIONS* 19 (J. C. Hawley ed., 2001); For a discussion of the complexities of 'queer globalisation', see A. Cruz-Malavé & M. F. Manalansan IV, *Dissident Sexualities/Alternative Globalisms*, in *QUEER GLOBALIZATION: CITIZENSHIP AND THE AFTERLIFE OF COLONIALISM* 1-10 (A. Cruz-Malavé & M. F. Manalansan IV eds., 2002); JON BINNIE, *THE GLOBALIZATION OF SEXUALITY* 32-49 (2004); For some accounts of forms of sexuality that differ from modern Western forms, see for example, *RITUALS OF MANHOOD: MALE INITIATION IN PAPUA NEW GUINEA* (G. H. Herdt ed., 1982); T. WATANABE & J. IWATA, *THE LOVE OF THE SAMURAI: A THOUSAND YEARS OF JAPANESE HOMOSEXUALITY* (1989).

of so-called gayness but also of rights.⁸ The axiom that rights are the same everywhere has been called into doubt by approaches suggesting a need to examine the cultural contexts in which rights claims are made.⁹ Moreover, the slogan embodies a resort to rights as the ultimate emancipatory project when the limitations of international human rights as tools of emancipation have been made clear from many critical perspectives.¹⁰ Finally, the slogan 'gay rights are human rights' entails a perception of the universality of 'human' itself; it requires us to think not only of the globalised 'gay' and globalised 'rights', but also of the globalised 'human'.

It was through the 2000s, and particularly in 2010, that the development described above started to take the form of global statements and declarations, some of them at the U.N. level: such as the 2010 Resolution on Extrajudicial, Summary or Arbitrary Executions, adopted at the U.N. General Assembly which addressed killings of persons based on their sexual orientation;¹¹ and the 2011 Resolution of the U.N. Human Rights Council on Human Rights, Sexual Orientation and Gender Identity which expressed grave concern at acts of violence committed against individuals because of their sexual orientation and gender identity.¹² The latter Resolution has led to a report by the U.N. High Commissioner on Human Rights titled *Discriminatory Law and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity*, published in December 2011.¹³

The adoption in March 2007 of the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender*

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8. See Carl Stychin, *Same-Sex Sexualities and the Globalization of Human Rights Discourse*, 49 MCGILL L. J. 951, 953-961 (2004).
 9. For a collection of sources on the cultural relativism and human rights debate, see HENRY STEINER, PHILIP ALSTON & RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 517-665 (3rd ed., 2007).
 10. See, e.g., DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* 3-35 (2004); MAKAU MUTUA, *HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE* (2008).
 11. U.N.G.A., Resolution adopted by the General Assembly on Extrajudicial, Summary or Arbitrary Executions, 21 December 2010, U.N. Doc. A/Res/65/208.
 12. U.N.G.A., Human Rights Council, Human rights, sexual orientation and gender identity, 15 June 2011, U.N. Doc. A/HRC/17/L.9/Rev.1..
 13. U.N.G.A., Human Rights Council, Report of the U.N. High Commissioner for Human Rights, on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, Nov. 17, 2011, U.N. Doc. A/HRC/19/41. The U.N. Secretary General addressed the issue in a statement to the U.N. Human Rights Council on March 7 2012 available at <http://www.youtube.com/watch?v=qtXU9iOx348>. In May of the same year, the U.N. High Commissioner for Human Rights issued a statement honouring the International Day Against Homophobia, available at http://www.youtube.com/watch?v=5_kzl-_mrg&feature=youtu.be. For a discussion of the rise of the global politics of LGBT rights, see Kelly Kollman & Matthew Waites, *The Global Politics of Lesbian, Gay, Bisexual and Transgender Human Rights: An Introduction*, 15 CONTEMP. POL. 1 (2009).

Identity,¹⁴ although outside of the U.N. framework, was an important stage in the process described here. Drafted by an international panel of experts in international human rights law and sexual orientation and gender identity, this comprehensive document deals with twenty-eight human rights examined in the context of sexual orientation and gender identity. Many of these rights are actually general human rights that have been adapted in the context of sexual orientation and gender identity merely through a proviso that people should not be discriminated with regard to the given right on the basis of sexual orientation or gender identity.¹⁵ However, some of the principles and rights outlined in the *Yogyakarta Principles* engage with more specific and unique issues relating to gender identity and sexual orientation, such as recognition before the law and the right to family life.¹⁶

In this article, rather than discussing the important uses of the *Yogyakarta Principles* by advocates world-wide¹⁷ and the developments concerning LGBT rights at the U.N. level¹⁸ as well as at other international and national fora, I seek to examine some issues that come up in international LGBT human rights advocacy through the reading of *images* deployed in LGBT advocacy work. I will do so by offering readings of two images associated with the work of Amnesty International, the relationship between those images and the texts that accompany them and the contexts in which these images appear. My discussion begins with the images and their accompanying texts. In reading these, I will engage with questions regarding the discourse of international LGBT rights that they, with their attempt to internationalise this discourse, raise. These very questions will be reflected upon in the conclusion where

14. Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, YOGYAKARTA PRINCIPLES, <http://yogyakartaprinciples.org> (last visited Oct. 11, 2013) (hereinafter “The Yogyakarta Principles”). The Yogyakarta Principles were issued by a group of twenty-nine international human rights experts under the auspices of the International Commission of Jurists and International Service for Human Rights.

15. *Id.* Principle 8 on the right to a fair trial, Principle 14 on the right to an adequate standard of living and other principles.

16. *Id.* Principles 3 and 24, respectively.

17. For a discussion of this aspect, as well as of the background to the Yogyakarta Principles, and for an examination of their content in light of existing international law, see David Brown, *Making Room for Sexual Orientation and Gender Identity in International Human Rights Law: An Introduction to the Yogyakarta Principles*, 31 MICH. J. INT’L L. 821 (Summer 2010); On the context of the Yogyakarta Principles and their reception, see also Michael O’Flaherty & John Fisher, *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles*, 8 (2) HUMAN RTS. L. REV. 207-48 (2008); Ryan Richard Thoreson, *Queering Human Rights: The Yogyakarta Principles and the Norm That Dare Not Speak Its Name*, 8 (4) J. HUMAN RTS. 323-39 (2009).

18. See Sophie Clavier, *Objection Overruled: The Binding Nature of the International Norm Prohibiting Discrimination Against Homosexual and Transgendered Individuals*, 35 FORDHAM INT’L LAW J. 385 (2012).

I consider two issues which emerge from the reading and addressed within the *Yogyakarta Principles*: recognition before the law and family life. The gaps and dilemmas I will identify within LGBT rights advocacy through my readings of the images used in this advocacy work will be used to critically engage with the way rights are articulated within the *Yogyakarta Principles* and more generally within the growing global LGBT rights discourse. In a way, the tensions I will point to between the texts superimposed upon the images discussed and the images themselves will serve to expose existing contradictions within LGBT rights advocacy as practiced *inter alia* through the use of these images. I argue that these contradictions manifest themselves within the *Yogyakarta Principles* themselves.

A few words should be said about the choice to study the issue through the readings of images which are related to human rights advocacy. There has been much discussion in recent years about the use of images and photographs in human rights advocacy. However, most of this literature deals with images and photographs that portray human rights violations, showing victims and atrocities and with the way human rights campaigns use such images.¹⁹ While this article offers readings of images which involve a photograph and a text, its focus is different in that the images do not portray the violation of human rights but rather an iconic image in one case and what may be described as a photograph showing the exercise of rights which were attained in the second.²⁰ So unlike the photographs which portray the suffering to be redressed, the images discussed here arguably portray utopian visions that are yet to be attained. In spite of these differences, perhaps there is something common to the different uses of photographs in human rights advocacy. As Sharon Sliwinski has noted, the struggle for universal human rights is alongside a story of atrocious events and courageous campaigners, also a lively aesthetic scene full of pictorial images and fascinated spectators. Social justice campaigns, she adds, alongside political speeches and juridical reform, almost always involve the circulation of visual images,

19. See, e.g., SHARON SLIWINSKI, HUMAN RIGHTS IN CAMERA (2011); WENDY HESFORD, SPECTACULAR RHETORICS: HUMAN RIGHTS VISIONS, RECOGNITIONS, FEMINISMS (2011); JUST ADVOCACY? WOMEN'S HUMAN RIGHTS, TRANSNATIONAL FEMINISMS, AND THE POLITICS OF REPRESENTATION (Wendy Hesford & Wendy Kozol eds., 2005); Daniel Joyce, *Photography and the Image-Making of International Justice*, 4 (2) L. & HUMANITIES 229-49 (2010); See generally SUSAN SONTAG, REGARDING THE PAIN OF OTHERS (2003).

20. For an exception that actually deals with iconography in the context of LGBT civil rights not through the portrayal of atrocities but that considers the images used in anti-gay rights campaigns, see Jonathan Goldberg-Hiller, *Do Civil Rights Have a Face? Reading the Iconography of Special Rights*, in QUEER MOBILIZATIONS: LGBT ACTIVISM CONFRONT THE LAW 231-56 (Scott Barclay et. al. eds., 2009).

with spectators' encounters with them bearing on the notions and ideals that undergrid universal human rights: the ideal of a human subject endowed with dignity and rights, she argues, migrated through public imagination in part by virtue of spectators' engagement with pictures.²¹ While Sliwinski's analysis is made in the context of images which portray the abuse of human rights, it resonates also with the images discussed in this article. Looking at these images we should recall that, as Wendy Hesford pointed out, human rights discourse constructs humanity and its capacities through what she calls "spectacular rhetorics" and the visual field of human rights internationalism often functions as a site of power for and normative expression of cosmopolitanism and neoliberal global politics. Images used by human rights organisations are often caught up in the logic and legacies of Western imperialism parading under the cloak of international humanitarianism and human rights advocacy.²² However, she argues that the 'human rights spectacle' is riddled with paradoxes and contradictions: it is not fully allied with abusive power, nor does it only defy hegemonic structures.²³ These observations about the role of images in human rights advocacy will resonate throughout the text as I will engage with the two Amnesty International (henceforth AI) images.

At the heart of both images is a photograph accompanied by a text. Ariella Azoulay points to the fact that photography has created a new form of encounter that opens new possibilities of political action and new conditions for its visibility. The relations between the three parties involved in the photographic act (the photographed person, the photographer, and the spectator) are, suggests Azoulay, not mediated through a sovereign power and are not limited to the bounds of a nation-state or an economic contract. The users of photography thus re-emerge as people who are not totally identified with the power that governs them and who have new means to address this power and negotiate it. Photography, she argues is deterritorialised citizenship, reaching beyond its conventional boundaries and plotting out a political space in which the plurality of speech and action is actualised by the eventual participation of all the governed.²⁴ Photography, according to Azoulay, has formed a citizenry without sovereignty, without place or borders: the citizenry of photography is a global form of relation not subject to national regimes, despite existing within their borders,

21. SLIWINSKI, *supra* note 19, at 4-9.

22. HESFORD, *supra* note 19, at 2-4.

23. *Id.* at 7.

24. ARIELLA AZOULAY, *THE CIVIL CONTRACT OF PHOTOGRAPHY* 24-25 (2008).

not entirely obedient to global logic even as it enjoys the channels of exchange and association the latter creates.²⁵ While one should not read Azoulay's analysis in too utopian a way, as clearly the images I describe in the text are mediated through NGOs, publishers, media, and other powers, they arguably indeed exist within a global form of relationships creating visibility that potentially crosses national borders. This is certainly true when the images are promoted by global human rights groups, although one should be careful of over-generalising, and consider specific questions of distribution and accessibility of the images considered.²⁶

II. DANA INTERNATIONAL/ AMNESTY INTERNATIONAL

The question of 'gay rights' troubled AI²⁷ for many years: are 'gay rights' within the organisation's mandate? Should AI's mandate be changed to ensure that they are? In 1979, AI affirmed that people jailed for their advocacy of lesbian and gay rights should be considered prisoners of conscience and thus within their mandate. In 1991, AI agreed to expand the scope of its work and interpret its mandate as including people imprisoned because of their homosexuality as prisoners of conscience.²⁸

Attempts by AI's 'Members for Lesbian and Gay Concerns' to ensure that sexual orientation is explicitly included in AI's mandate originally failed. Repeatedly, the reason adduced for the exclusion was that involvement in this area might hinder AI's expansion beyond Western countries. At AI's 1997 international conference, the decision

25. *Id.* at 131-132.

26. For an example of the complex meanings concerning images and words on a human rights advocacy poster, which brings up questions of production and power relationships, see the 2012 controversy concerning an AI poster on 'Human Rights for Women and Girls in Afghanistan' which featured the words "Nato: Keep the progress going" alongside a picture of women in *burqas* taking young girls to school; For a critique, see Ashley Smith, *Amnesty for Occupation?*, SOCIALIST WORKER (Aug 8, 2012), <http://socialistworker.org/2012/08/08/amnesty-for-occupation>; For AI's explanation, see Vienna Colucci, *We Get It*, AMNESTY INTERNATIONAL, (May 19, 2012) <http://blog.amnestyusa.org/asia/we-get-it/>.

27. Amnesty International's involvement in the cause of "oppressed homosexuals" was described as having had "its ups and downs." Although Amnesty is presently highly involved in this issue, when Amnesty's Dutch section suggested in 1978 that people imprisoned for their sexual orientation should be considered political prisoners, the idea was resisted. Some feared that, if it were accepted, Amnesty would also have to start "campaigning for child rapists, prostitutes and others guilty of deviant sexual behavior." See Ali Remmelts, *Out of the Closet*, in GAY RIGHTS: SPECIAL EDITION OF WORDT VERVOLGD 11 (Amnesty International, July/August 1998) (presently, the organisation rejects this linkage); See AMNESTY INTERNATIONAL, THE LOUDER WE WILL SING: CAMPAIGNING FOR LESBIAN AND GAY HUMAN RIGHTS 32-33 (1999).

28. AMNESTY INTERNATIONAL, BREAKING THE SILENCE: HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION 62-65 (1997).

was to 'study' the issue further.²⁹ Nevertheless, AI's gay advocacy work did develop in the 1990s at the insistence of active groups within the organisation,³⁰ including actions for gay and lesbian prisoners of conscience.³¹ In 1994, AI-USA published their first comprehensive report on gay rights³² bearing the meaningful title, *Breaking the Silence*.³³ A later report with the same title was published by AI-UK in 1997³⁴ and AI has since produced several other publications on the issue. AI has also recognised that because of their sexual orientation, people are subject to many violations of human rights that are unquestionably within its mandate and the organisation's work in this area has greatly expanded.³⁵ The 'Gay Games' in Amsterdam in 1998 marked an important turning point in AI's action on gay rights. The organisation's Dutch section produced a poster on the issue, styled and photographed by Erwin Olaf.³⁶

The 'Gay Rights are Human Rights' poster features Dana International, a singer from Israel and a male-to-female transsexual.³⁷ Just shortly before the production of the poster, her song 'Diva' won for Israel the 1998 Eurovision Song Contest, a highly popular annual music event in Europe.³⁸ Dana was a very popular singer in Israel even before participating in the Eurovision and clearly associated herself with the

29. Rimmels, *supra* note 27; See also Paul EeNam Park Hagland, *International Theory and LGBT Politics: Testing the Limits of a Human Rights-Based Strategy*, 3 (4) GLQ: A JOURNAL OF LESBIAN & GAY STUD. 357, 364-368 (1997).

30. Rimmels, *supra* note 27; See also Hagland, *supra* note 29.

31. See also Hagland, *supra* note 29, at 365-366.

32. AMNESTY INTERNATIONAL, *supra* note 28.

33. Compare the title of this report, *Breaking the Silence*, with the AIDS slogan, 'Silence=Death'. Lee Edelman has argued that this slogan's insistence on the therapeutic property of discourse without specifying in any way what should be said is striking. The call against silence, says Edelman, is not a call to arms but rather a call for the production of discourse or more text. Can the same perhaps be said of the *Breaking the Silence* title? See Lee Edelman, *The Plague of Discourse*, in *HOMOGRAPHESIS: ESSAYS IN GAY LITERARY AND CULTURAL THEORY* 87-88 (1994).

34. AMNESTY INTERNATIONAL, *supra* note 28.

35. AMNESTY INTERNATIONAL, *supra* note 27; AMNESTY INTERNATIONAL, *CRIMES OF HATE, CONSPIRACY OF SILENCE: TORTURE AND ILL-TREATMENT BASED ON SEXUAL IDENTITY* (2001); VANESSA BAIRD, *SEX, LOVE AND HOMOPHOBIA: LESBIAN, GAY, BISEXUAL AND TRANSGENDER LIFE* (2004) AMNESTY INTERNATIONAL, *LOVE, HATE AND THE LAW: DECRIMINALIZING HOMOSEXUALITY* (2008), available at <http://www.amnesty.org/en/library/asset/POL30/003/2008/en/e2388a0c-588b-4238-9939-de6911b4a1c5/pol300032008en.pdf>; AMNESTY INTERNATIONAL, *TOWARDS EQUALITY: DISCRIMINATION IN MOLDOVA* (2012), <http://www.amnesty.org/en/library/info/EUR59/006/2012/en>. Amnesty's mandate was generally expanded in 2001 to include, *inter alia*, freedom from discrimination. Information on current activity in this area is available online at <http://www.amnesty.org.uk/content.asp?CategoryID=876>; <http://www.amnestyusa.org/our-work/issues/lgbt-rights>. For discussion of the debates within Amnesty on the topic, see STEPHEN HOPGOOD, *KEEPERS OF THE FLAME: UNDERSTANDING AMNESTY INTERNATIONAL* 116-20 (2006).

36. For more on Erwin Olaf, see ERWIN OLAF EXHIBITION, <http://www.erwinolaf.com>.

37. Although the term 'transgender' may also be used to describe Dana and is considered broader, much of the international press described her as transsexual and I will use this term here.

38. On the Eurovision Song Contest, see *A SONG FOR EUROPE: POPULAR MUSIC AND POLITICS IN THE EUROVISION SONG CONTEST* (Ivan Raykoff & Robert Deam Tobin eds., 2007).

LGBT community by appearing in Gay Pride events and giving political statements on gay issues.³⁹



In this poster, Dana International meets Amnesty International. Dana, an Israeli singer and a *Mizrahi* Jew,⁴⁰ is portrayed wearing a veil, possibly alluding to a traditional religious woman: perhaps a Christian Madonna, a Jewish religious woman, or maybe an Arab or, specifically, a Palestinian woman. As Amalia Ziv notes, Dana International embodies several contradictions. She represents queer political struggle and yet rejects identity politics in favour of universalism. She stands for the fight against religious coercion yet declares herself faithful to Judaism. She defines herself as international yet expresses patriotic sentiment.⁴¹

But Dana's representation of Israel and of gay rights in the global contexts, both in the Eurovision Song Contest and as AI's 'poster girl' as a follow up to her victory, raises additional questions concerning her representation of gay rights, AI and Israel respectively. Since both representations are connected, with Dana's appearance on the AI poster being a result of the fame she gained when she won the Eurovision earlier in the same year, the context of her Eurovision participation

39. See Amalia Ziv, *Diva Interventions: Dana International and Israeli Gender Culture*, in *QUEER POPULAR CULTURE: LITERATURE, MEDIA, FILM AND TELEVISION* 119-135 (Thomas Peele ed., 2007); For background on Dana, see LEE WALZER, *BETWEEN SODOM AND EDEN: A GAY JOURNEY THROUGH TODAY'S CHANGING ISRAEL* 170-175 (2000); See also Dana's unofficial website, which is a rich source of information: <http://www.phreak.co.uk/dana/>. For my own discussion of the Amnesty International poster featuring Dana International and questions it brings up, which some of the discussion here draws upon, see Aeyal Gross, *Queer Globalization and Human Rights: Dana International/Amnesty International*, 23 *THEORY & CRITICISM* 227 (2003) (Hebrew).

40. 'Oriental' [*Mizrahi*] Jews, also known in Israel as Sephardic Jews, come from families of Middle-Eastern or North-African extraction, whereas Ashkenazi Jews are of European origin. Dana comes from a family of Yemenite Jews.

41. Ziv, *supra* note 39.

is part of what is read into the image. The question comes up of the meaning of Dana representing the state of Israel at the Eurovision Song Contest. Did Dana represent Israel at the Eurovision, an event reputed as having a large gay following, or did she represent a queer (European?) border-crossing identity?⁴² What is the meaning of Dana's stage name? What does it mean to be 'International'? What does it mean to be 'International' while representing a state in a competition structured on the basis of national representation? What does it mean for a state to be represented by an 'International'? What does it mean for Israel to be represented by Dana International, a transsexual, who regularly sings in Hebrew, Arabic, English, and other languages?⁴³ What does it mean for Israel, the self-proclaimed 'Jewish state' to be represented by a transgendered person who dresses up for an Amnesty poster possibly as a Palestinian? What does it mean for AI to be represented by an Israeli? What does it mean for gay rights to be represented by a transsexual?⁴⁴ Addressing these complex questions of representation, I suggest that while the declaration 'Gay rights are human rights' on AI's poster employs a liberal identity politics model of human rights, Dana's border-crossing appearance on the same poster opens the door to queer and performative politics which take up special significance in the Middle Eastern context where Dana International lives and works.

Indeed, being a *transsexual* is in itself about crossing borders. In Dana's case, many of her songs are about crossing borders, including geographical borders.⁴⁵ Dana, or at least her music, also literally crosses Israel's troubled borders: she was very popular (even if also condemned) in neighbouring Arab countries.⁴⁶ When Dana International represents

42. On the gay following of the Eurovision and its meaning as the context of Dana's victory in the contest, see Zvi Triger, *Music Makes the (Gay) People Come Together: Dana International's Victory in the Eurovision Song Contest and the Formation of a European Gay Community* (2000) (unpublished manuscript); Dafnah Lemish, "My Kind of Campfire": *The Eurovision Song Contest and Israeli Gay Men*, 2 *POPULAR COMMUNICATION* 41-63 (2004); Robert Deam Tobin, *Eurovision at 50: Post-Wall and Post-Stonewall*, in *A SONG FOR EUROPE: POPULAR MUSIC AND POLITICS IN THE EUROVISION SONG CONTEST* 25 (Ivan Raykoff & Robert Tobin eds., 2007).

43. On the language in Dana's songs, see Liora Moriel, *Diva in the Promised Land: A Blueprint for Newspeak?*, 17 *WORLD ENGLISHES* 225-237 (1998); Liora Moriel, *Dana International: A Self-Made Jewish Diva*, 5 *RACE, GENDER & CLASS* 110-124 (1999); For a discussion of the musical strategies in Dana's songs, see Chris Vancil, *Shushu, Zumzum, and Sumsum: Dana International and the Politics of the 'Other'*, Paper presented at the Mid-Atlantic Chapter of the Society for Ethnomusicology, May 2000, available at <http://chrisvancil.com/dana.pdf>.

44. Compare with Ziv's discussion of the paradox involved in the representation of Israel's gay community by a transsexual in "Dana International." Ziv, *supra* note 39.

45. See Yael Ben-Zvi, *Zionist Lesbianism and Transsexual Transgression: Two Representations of Queer Israel*, *MIDDLE EAST REPORT* 26, 27-28 (Spring 1998).

46. Moriel, *supra* note 43, at 115-117. One argument against Dana in Egypt was that she is part of a Zionist conspiracy to bring sexual corruption to Egyptian society, to which Madonna, James Dean, Michael Jackson, and others are also allegedly connected; MUHAMMAD AL-

Israel, she is crossing the traditional borders of national representation. Being 'International' (or rather transnational) is also, obviously, about crossing borders. In her case, the crossing of borders of nationality and sexuality are inherent in her name, her performances, and her gender identity.⁴⁷ A long-time icon of the Israeli gay community, Dana has expressed this border-crossing position in her repeated declarations in various interviews she gave after winning the Eurovision song contest: "I represent regular Israelis, all the Arabs, the Christians... everyone who wants to be represented by me, he gets the [victory]."⁴⁸ When asked about an alleged conflict between her representation of 'the Jewish state' and the opposition by religious Jews to her, Dana said: "I was chosen to represent the state of Israel, not the state of the Jews, because we have Arab citizens... Christian citizens, any kind, so I was chosen to represent all Israeli citizens, not the Jewish state."⁴⁹

Dana gave a post-Zionist answer, corresponding to the post-Zionist view of Israel as the state of all its citizens rather than as the 'Jewish state' or the 'state of the Jewish people'.⁵⁰ Since Zionism or Jewish nationalism is the nationalism of Israel, her post-Zionist answer is also

GAYTI, A SCANDAL BY THE NAME SAIDA SULTAN (1995) (a book published in Egypt elaborating on this theory); For a partial translation of this text, see Geir Skogseth, <http://home.online.no/~geskogse/scandal.pdf>; Ted Swedenburg discusses Dana's popularity in Egypt and the surrounding conspiracy theory. He points out that the discussion in Israel focuses on Dana's sexual identity and is oblivious to the ethnic questions she raises. Swedenburg notes that Dana is one of very few Israeli-Jewish-Mizrahi female singers who also sing in Arabic and whose music crosses the border to Egypt. Dana, as he sees her, is both Arab and Jewish. Hence the opposition to her in Egypt, in the context of a nationalism that leaves no room for border figures like Dana. See Ted Swedenburg, *Saida Sultan/ Dana International: Transgender Pop and the Polysemiotics of Sex, Nation, and Ethnicity on the Israeli-Egyptian Border*, 81 *THE MUSICAL QUARTERLY* 81-108 (1997); See also Ted Swedenburg, *Saida Sultan/ Dana International: Transgender Pop and the Polysemiotics of Sex, Nation, and Ethnicity on the Israeli-Egyptian Border*, in *MASS MEDIATIONS: NEW APPROACHES TO POPULAR CULTURE IN THE MIDDLE EAST AND BEYOND* 88-119 (Walter Armbrust ed., 2000) (a re-print of the earlier work, with revisions); On Dana as part of a tradition of Mizrahi singers, see also Philip Bohlman, *The Shechinah, or The Feminine Sacred in the Musics of the Jewish Mediterranean*, <http://home.online.no/~geskogse/bohlman.pdf>.

47. On Dana as transcending any specific language in her songs and transcending any specific sex, gender, class, and race, see Moriel, *supra* note 43, at 236.
48. Jerrold Kessel, *Win at Eurovision giving Israeli transsexual international headlines*, CNN, May 11, 1998. (She made similar statements on Sky News after winning the Eurovision Song Contest).
49. *Id.* See also Riz Khan, Interview with Dana International after the Eurovision 1998, CNN, May 9, 1998. For the first part of this interview, see Dana International - After the Eurovision 1998 CNN Interview, YOUTUBE, <https://www.youtube.com/watch?v=DPwPMMIRwdM> (last visited Sep. 22, 2013). Over her long career Dana International made many statements concerning issues of sexuality, gender identity and nationalism. The discussion here is limited to statements which concerned her Eurovision Song Contest victory which took place shortly before her appearance on the poster and presumably led to her appearance on it.
50. On Post-Zionism, see LAURENCE J. SILBERSTEIN, *THE POSTZIONISM DEBATES: KNOWLEDGE AND POWER IN ISRAELI CULTURE* (1999).

post-national.⁵¹ From this perspective, Dana's appearance on the AI poster makes her a very different 'poster girl' for gay rights from that of gay Israeli soldiers nowadays appearing on posters distributed by the 'brand Israel' campaign. This campaign, by focusing on the recognition of gay rights in Israel, aims to legitimise Israel and win support for it and its policies by attempting to deflect from the occupation of Palestinians by Israel and human rights violations associated with it.

These 'brand Israel' posters 'celebrate' the fact Israel is 'the only country in the Middle East' where gays arguably enjoy equal rights generally and in the military specifically,⁵² with the question of the violations of human rights – specifically those of Palestinians, that these soldiers partake in violating – remaining unaddressed. Unlike the current cooptation of gay rights for Israel's propaganda war and as a 'fig leaf' for Israeli democracy,⁵³ Dana while representing Israel in a competition based upon the representation by nation-states, in her appearance and answers actually undermines (homo)nationalist discourses.⁵⁴ This notwithstanding the fact that fourteen years after her participation at the Eurovision, the Israeli ambassador to the U.S. cited it as proof of Israel being a 'pioneer' in LGBT rights, actually illustrating homonationalist discourse and 'pinkwashing'. In a way this points to the paradox of Dana's border-crossing personality representing the nation-state.⁵⁵ But the answer Dana herself gave, is not only post-nationalist, it

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51. On Dana International as challenging normative Zionism, see Ben-Zvi, *supra* note 45; Alisa Solomon, *Viva la Diva Citizenship: Post-Zionism and Gay Rights*, in *QUEER THEORY AND THE JEWISH QUESTION* 149-165 (Daniel Boyarin et. al. eds., 2003); See also LAUREN BERLANT, *THE QUEEN OF AMERICA GOES TO WASHINGTON CITY* 223 (1997). Solomon sees Dana as representing what Lauren Berlant calls "diva citizenship" – a term Berlant uses to describe a moment when a person stages a "dramatic coup" in a public sphere in which she does not have privilege. Dana's choice of the song *Diva* for the Eurovision Song Contest, indeed seems to inadvertently, symbolically highlight the way her appearance fulfilled Berlant's model of citizenship.
 52. See, e.g., Military Gay Rights Israel, BLUESTARPAR, <http://www.bluestarpr.com/military-gay-rights-israel.html> (last visited Oct. 11, 2013).
 53. For these uses of gay rights by Israel, see Aeyal Gross, *The Politics of LGBT Rights in Israel (and beyond): Between Queer Politics and Homonationalism* (forthcoming); Aeyal Gross, *Israeli GLBT Politics between Queerness and Homonationalism*, Bully Bloggers, (July 3, 2010), <http://bullybloggers.wordpress.com/2010/07/03/israeli-glb-politics-between-queerness-and-homonationalism>.
 54. On 'homonationalism', see JASBIR K. PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* 1-78 (2007).
 55. On 'pinkwashing' and the limits of the term see Gross (forthcoming), *supra* note 53; For a use and elaboration of the term, see Sarah Schulman, *Israel and 'Pinkwashing'*, N. Y. TIMES, November 22, 2011, at A31; For Oren's speech, see Michael Oren, *Israel: A Pioneer in LGBT Rights, Remarks*, (Equality Forum on LGBT Rights), May 2, 2012, <http://www.israelemb.org/index.php/he/component/content/article/656-remarks-by-ambassador-michael-oren-to-the-equality-forum-on-lgbt-rights>; For discussions and critiques of this speech, see, for example Roe Rutenberg, *Controversy over Israeli envoy's address at gay rights forum*, , May 7, 2012, <http://972mag.com/ambassador-oren-keynotes-at-gay-rights-forum->

is also postmodern: Dana represents, as she says, whoever wants to be represented by her. Dana deconstructs modern ideas of ‘identity’ and ‘representation’.

For Dana to represent Israel at the Eurovision is also a representation of that which cannot be represented, of that which is both inside and outside, as Israel is outside Europe but inside the Eurovision, which is a European song contest.⁵⁶ Israel, then, is both inside and outside Europe. Moreover, at a forum in which Israel attempts to be part of Europe, Dana represents Israel as a *Mizrahi* singer who sings in both Hebrew and Arabic and thus emphasises the Arab dimension of her *Mizrahi* identity, contrary to Zionism’s traditional position, which had sought to de-Arabise *Mizrahi* Jews in order to draw a clear line between Jews and Arabs.⁵⁷ In bringing the Eurovision victory to Israel, Dana partakes in the Israeli and European colonial fantasy of Israel being an outpost of Europe in the oriental Middle East while simultaneously undermining this very fantasy by singing in Arabic and being popular even if condemned in Egypt. As an Arab-Jew herself, she is also the object of Zionism’s subjugation of oriental Jews and of its own post/colonial fantasies about them. As an ‘oriental’ Jew, she is *both* part of Israel’s European endeavor and its other.⁵⁸ To the extent that queerness

featuring-israel/44899/; Natasha Mozgovaya, *LGBT Rights in Israel: ‘Pinkwashing’ oppression of Palestinians or illuminating the Middle East*, Haaretz, May 6, 2012, <http://www.haaretz.com/news/diplomacy-defense/lgbt-rights-in-israel-pinkwashing-oppression-of-palestinians-or-illuminating-the-middle-east-1.428480>; Specifically, on the gap between Dana’s statements and the nationalist use of her appearance by Oren, see Aeyal Gross, *Michael Oren Pinkwashes the Truth About Israel and Gay Palestinians*, Haaretz, May 9, 2012, <http://www.haaretz.com/opinion/michael-oren-pinkwashes-the-truth-about-israel-and-gay-palestinians-1.429248>. I realise that some may suggest in hindsight that the mere fact of sending Dana International to represent Israel in the Eurovision Song Contest amounts to ‘pinkwashing’ Israel’s human rights violations. To address this issue in this context would require asking whether any LGBT representation by Israel at any time amounts to ‘pinkwashing’? Does the intention count and then whose intention? Or if the effect counts, how do we measure it? What I think is important for the purpose of this article is that Dana’s performance and answers, including her appearance on the Amnesty poster, very much deviated from any ‘homonationalist’ discourse, even if Oren’s statements put her Eurovision appearance in this framing.

56. For the significance of Israel’s participation in the Eurovision and on Israel as presenting the “most celebrated and complicated case for marginality and camp in Eurovision,” with Dana International’s participation as a significant factor, see Ivan Raykoff, *Camping on the Borders of Europe*, in *A SONG FOR EUROPE: POPULAR MUSIC AND POLITICS IN THE EUROVISION SONG CONTEST 2*, 11 (Ivan Raykoff & Robert Deam Tobin eds., 2007). Raykoff points to how Dana’s victory represented geographically peripheral Israel as ‘international’ too, and served to rally liberal West European values towards the image of a secular and progressive nation.
57. See Yehouda Shenhav, *Ethnicity and National Memory: World Organization of Jews from Arab Countries (WOJAC)*, 29 *BRITISH J. OF MIDDLE EASTERN STUD.* 25-55 (2002); YEHOUDA SHENHAV, *THE ARAB JEWS: A POSTCOLONIAL READING OF NATIONALISM, RELIGION, AND ETHNICITY* (2006).
58. Compare with Raz Yosef’s study of Israeli cinema in which he shows how Israeli heterosexual masculinity cannot imagine itself apart from the conception of its ‘others’, such as the queer, the (homo)eroticised *Mizrahi*, and the Palestinian male. These ‘others’ internally mark the dominant national masculinity opening an epistemological gap in maleness itself. See RAZ

is transnational and that the diasporic queer is a paradigmatic figure of globalisation,⁵⁹ the appearance of Dana International is thus that of *both* a 'national' and a 'diasporic' subject in Israel *and* in Europe.

Since the transsexual is also neither in nor out, crossing the borders of male and female, the idea of Dana's representation opens up new options when thinking about nationalism and sexuality.⁶⁰ Indeed this is the case where transnationality and transsexuality can be seen as allegories for each other. Dana who, as the AI poster shows, became a gay icon not only in Israel but rather globally,⁶¹ represents queerness at least as much as she represents Israel. Indeed, the choice of a transsexual to represent gay rights is queer not only because of the complex relationships between the idea of 'gay rights' and 'transsexual (or transgender) rights'⁶² but also because of the queer option personified by a transsexual, and especially one like Dana, who does not aim to 'pass' as a woman while denying her past as a man but proudly adopts her transsexual identity, and is thus a visible transsexual, or in Sandy Stone's term, "posttranssexual."⁶³ It is thus the International, maybe the Queer International, who now represents Israel at the Eurovision song contest.

Dana's representation of AI and of Israel raises questions about the meaning of representation to begin with. In many ways, Dana represents the unrepresentable. She re-presents each one of the entities

YOSEF, BEYOND FLESH: QUEER MASCULINITIES AND NATIONALISM IN ISRAELI CINEMA (2004).

59. Meg Wesling succinctly summarises the argument that is made by much of the literature on queer diasporas, see Meg Wesling, *Why Queer Diaspora?*, 90 FEM. REV. 30, 31-33 (2008). One of the central texts she draws upon is CINDY PATTON & BENIGNO SANCHEZ-EPPLER, *QUEER DIASPORAS* (2008). On queer racialised and diasporic subjects as articulating notions of diaspora which recuperate desires, practices and subjectivities that are rendered impossible and unimaginable within conventional diasporic and nationalist imaginaries, see GAYATRI GOPINATH, *IMPOSSIBLE DESIRES: QUEER DIASPORAS AND SOUTH ASIAN PUBLIC CULTURES* (2005); For a discussion of 'queering the diaspora' as a project inseparable from the disruption of a singular, normalised queer subject, which is white, male or local, see for example, Anupama Arora, *Rituals of Queer Diaspora in Ganatra's Chutney Popcorn*, 5 S. ASIAN POPULAR CULTURE 31 (2007).
60. As Dana Peleg shows, 'inside' and 'out' also mix in the lyrics of Dana's songs. See Dana Peleg, *Dana International ke-Intelektualit* [Dana International as an Intellectual] (1999) (Unpublished manuscript).
61. On Dana International's status as an icon, see Alex Heard, *Go, Girl!*, N. Y. TIMES MAGAZINE, (Apr. 19, 1998); Peter Terzian, *It's a Fierce World After All*, OUT, 50 (Nov. 1999); Joshua Gamson, *The Officer and the Diva*, THE NATION, (Jun. 28, 1999), <http://www.thenation.com/article/officer-and-diva>.
62. See Shannon Price Minter, *Do Transsexuals Dream of Gay Rights? Getting Real about Transgender Inclusion*, in *TRANSGENDER RIGHTS* 141 (Paisley Currah et. al. eds., 2006).
63. See Sandy Stone, *The Empire Strikes Back: A Posttranssexual Manifesto*, in *BODY GUARDS* 280-304 (Julia Epstein & Kristina Straub eds., 1999); On the queer dimension of this kind of transsexuality, see Susan Stryker, *The Transgender Issue: An Introduction*, 4 (2) GLQ: A J. OF LESBIAN & GAY STUD. 145-158 (1998).

she represents. In a way, in the AI poster, she re-presents herself: transsexuals partake in showing us that gender is always a form of drag. This insight follows from Judith Butler's reading of drag as revealing the imitative and performative structure of gender.⁶⁴ Transsexuality differs from drag in its attempt to create a 'woman' rather than an explicit 'imitation'. Yet, at least in the case of Dana International, a former drag queen and a woman open about her transsexuality (and thus in Stone's terms a 'post-transsexual'), this is a relevant insight: in the poster, Dana wears what may appear as Christian, Jewish or Arab religious drag. This poster, then, has double-drag content.

The 'gay rights are human rights poster' with Dana as a representative of AI becomes a possibility only after the globalisation, or rather the transnationalisation of gay politics.⁶⁵ AI's activities on gay issues, given its role as one of the world's most famous international human rights NGOs, constituted a significant step in the transnationalisation of gay politics.⁶⁶ The very idea of a 'gay' identity beyond the 'West' is considered a product of globalisation.⁶⁷ As Dennis Altman observes, this globalisation produces globalised identity politics: "Sexual identity politics grows out of modernity, but also shows the way to postmodernity, because it both strengthens and interrogates identity as a fixed point and a central reference."⁶⁸ Indeed, as Lisa Rofel notes and other scholars illustrate, even through globalisation, the complexity of gay identities worldwide is not reduced to a singular, global gay identity but rather takes the form of a complex cultural production in the interactions between the West and non-West.⁶⁹ Given the argument that modern gay

64. JUDITH BUTLER, *GENDER TROUBLE* 128-141 (1990).

65. On the globalisation of gay politics, see *THE GLOBAL EMERGENCE OF GAY AND LESBIAN POLITICS* (Barry D. Adam et. al. eds., 1999); *THE LESBIAN AND GAY MOVEMENT AND THE STATE* (David Paternotte & Carol Johnson eds., 2011).

66. Hagland, *supra* note 29.

67. See Altman, *supra* note 7, at 417.

68. *Id.* at 430.

69. See, e.g., Eng-Beng Lim, *Glocal Queering in New Asia: The Politics of Performing Gay in Singapore*, 57 *THEATER J.* 383 (2005); Bobby Benedicto, *Desiring Sameness: Globalisation, Agency, and the Filipino Gay Imaginary*, 55 *J. OF HOMOSEXUALITY* 274 (2008) (Benedicto points to gay identities as such that cannot be understood either as a straightforward process of replication or as an unproblematic fusion of global and local elements but rather as unstable political processes performed and negotiated through the relational and spatial character of race, class and gender); Bobby Benedicto, *The Haunting of Gay Manila*, 14 (2) *GLQ: A J. OF LESBIAN & GAY STUD.* 317-38 (2008); Alyssa Cymene Howe, *Undressing the Universal Queer Subject: Nicaraguan Activism and Transnational Identity*, 14 *CITY & SOC'Y* 237 (2002) (discussing the ways in which western definitions of sexuality are 'at best unevenly applied' in Nicaragua and the ways Nicaraguan activists strategically deploy concepts describing and elaborating homosexuality while creating forms of queer subjectivity that engage international discourses of identity and human rights, but are not ruled by them, while they negotiate and transform a universal queer subject model in order to achieve

identity developed with the rise of capitalism,⁷⁰ it may not be surprising to find that international gay identity develops with globalisation which together with neoliberalism is the current form of capitalism.⁷¹ For Dana to represent AI's campaign or appear on television screens throughout Europe, gay politics must be globalised. Dana's sexual identity politics are indeed a case in which identity politics are not only modern but also show the way to postmodernity and which involve a complex cultural production.

Joseph Massad famously accused what he called the 'Gay International' of producing gays and lesbians where they do not exist in a way that represses same-sex desires and practices that refuse to be assimilated into its sexual epistemology, arguing that the 'Gay International' campaign to universalise itself provoked a discourse on homosexuality. In the context of international human rights work conducted around the trial of men arrested in Egypt on the 'Queen Boat' club on the Nile, accused of practicing 'debauchery', Massad argued that this crackdown followed an increased visibility of Westernised, Cairo-based, upper and middle-class Egyptian men who identified themselves as gay. The "Gay International", he argued, misses the important distinction that what is repressed by the Egyptian police is not same-sex sexual practices, but rather, the social identification of these practices with the Western identity of gayness. In his harsh critique of the international gay rights project, Massad argues that by exporting gay identity, this movement imposes the binary hetero/homo division on a society in which it does not exist, and incites discourse on homosexuality in a way that will actually make same-sex sex less feasible.⁷²

Against Massad's argument, and following a distinction suggested by Baudrillard, we can consider whether international gay identity is indeed a product of 'universalisation' through human rights or whether it is actually exported through globalisation' that is through the globalised world of information, tourism, media and money.⁷³ But also we must

their own situated goals of social change); See also Peter Jackson, *Capitalism and Global Queering*, 15 (3) GLQ: A J. OF LESBIAN & GAY STUD. 357, 387 (2009). (Peter Jackson points to the way in which global queering can be seen as the sum of the many local transformations that have emerged from the intersecting influences of both national and transnational forms of capitalism.); See Rofel, *supra* note 7; See JAGOSE, *supra* note 6; See also STYCHIN, *supra* note 6;

70. John D'Emilio, *Capitalism and Gay Identity*, in THE LESBIAN AND GAY STUDIES READER 467-476 (Henry Abelove et. al. eds., 1993).

71. See generally DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM (2003).

72. Joseph Massad, *Re-Orienting Desire: The Gay International and the Arab World*, 14 PUBLIC CULTURE 361 (2002); See also JOSEPH MASSAD, DESIRING ARABS (2007).

73. I draw here on Baudrillard's distinction between 'universalisation,' which is about values,

wonder whether even globalisation can mean simply the Western model of gayness imposed on Egypt or rather a mixture of local and global notions of sexuality in complex negotiation and production.⁷⁴ Clearly, the gay rights universalising move reinforces the outcomes of globalisation but it is also a response to it. If we take seriously the idea that notions of sexuality are constitutive of the way we interpret and give meaning to our lives and actions, then we cannot from a queer perspective just say that the concept of sexual orientation is a Western one while ignoring the complexity of how identities and meanings given to sex are articulated in the non-West.⁷⁵ The discourse of human rights occurs against a background where globalisation has already ‘exported’ a ‘Western’ model of sexuality on one hand and where the construction of sexuality is already a post-colonial one. This identity cannot be reduced to one unitary model. Indeed, Dana International’s appearance on the poster, the slogan ‘Gay Rights are Human Rights’ notwithstanding attests to the non-reducibility of the queer subject to a unitary model: it is not the ‘Gay International’ then that appears on AI’s poster. It is rather Dana International.

In a conference on the Frankfurt School at Tel-Aviv University in 1998, Dana International was the focus of a question: is she, like mass culture and mass music, another case of commodity fetishism⁷⁶ or is she a subversive alternative? As Judith Halberstam notes, bodily flexibility has become both a commodity and a form of commodification. Transgenderism could be the sign of the re-incorporation of a radical subculture back into the flexible economy of postmodern culture.

human rights, freedom, and democracy, and ‘globalisation’ which is about technology, market, and information. Baudrillard points to the fact that universalisation and globalisation are not identical but mutually exclusive. In terms of Baudrillard’s categories, ‘rights’ are a subject of universalisation but the question remains open as to whether international gay identity is a product of ‘universalisation,’ or its creation is part of ‘globalisation’. See JEAN BAUDRILLARD, *PAROXYSM: INTERVIEWS WITH PHILIPPE PETIT* (Chris Turner trans., 1998).

74. See *supra* text accompanying note 6; See *supra* text accompanying note 69.

75. I discuss this issue in the context of Massad’s criticism and through a reading of Human Rights Watch’s report on the Queen Boat incident. For more detail, see Aeyal Gross, *Queer Theory and International Human Rights Law: Does Each Person Have a Sexual Orientation?*, 101 ASIL PROCEEDINGS 129-132 (2007); See also Amr Shalkany, *On a Certain Queer Discomfort with Orientalism*, 101 ASIL PROCEEDINGS 125(2007); RAHUL RAO, *THIRD WORLD PROTEST: BETWEEN HOME AND THE WORLD* 176-179 (2010).

76. For the ‘classic’ Frankfurt School statement on this matter, see Theodor Adorno, *On the Fetish-Character in Music and the Regression of Listening*, in *THE ESSENTIAL FRANKFURT SCHOOL READER* 270-299 (Andrew Arato & Eike Gebhardt eds., 1993) (1938). The queer identity Dana offers can also be examined as a case of commodity fetishism from other perspectives which view queer identity as commodified; See ROSEMARY HENNESSY, *PROFIT AND PLEASURE: SEXUAL IDENTITIES IN LATE CAPITALISM* 111-142 (2000); For attempts to look at connections and critical convergences between queer theory and Marxism, see KEVIN FLOYD, *THE REIFICATION OF DESIRE: TOWARD A QUEER MARXISM* (2009).

On the other hand, transgenderism can be kept alive as a meaningful designator of unpredictable gender identities and practices.⁷⁷

AI's choice of Dana for the gay rights poster may bolster the latter option. Dana crosses the straight/gay/transsexual border, the male/female border, the west/east border, the Jewish/Arab border, the colonised/coloniser border, and the Israel/ Middle East/ Europe/ International border.⁷⁸ We should recall that Dana's border-crossing is especially significant as she comes from a country in which the regulation of who is a Jew and who is Arab is a strict one and where borderlands are always danger zones.

To the extent that we may conceive of queerness as being about transgressing borders and divides,⁷⁹ her appearance on the poster offers a queer take on human rights: Dana queers Amnesty International when in the midst of its tedious debate on the mandate she appears on its poster saying, 'Gay rights are human rights'. But she also queers queerness itself by incorporating her religiousness and Arab identity into queerness, complicating the discourse of Western secularism. Indeed, the border between chastity and sexuality is another border crossed by Dana's appearance on the poster: on the one hand, she is represented wearing a veil, a symbol of sexual modesty, and on the other hand as a pop star portrayed in a sexual way. She transgresses stable categories of gender, sexuality, nationality, and ethnicity. When saying that she represents whoever wants to be represented by her, she transgresses the very idea of such categories as identity and representation. She re-presents whoever she represents. Both Israel and AI, as well as gay rights, are re-presented when represented by Dana International. But as Meg Wesling notes, within the discourse of the transnational queer we should recall that queer desire is implicated in the social reproduction of globalisation: it is required, she suggests, to look not only into liberatory

77. See JUDITH HALBERSTAM, IN A QUEER TIME AND PLACE: TRANSGENDER BODIES, SUBCULTURAL LIVES 18-21 (2005).

78. For a seminal exploration of the connections between sexual, gendered, ethnic and national borderlands in the (post) colonial context, see GLORIA ANZALDUA, BORDERLANDS/LA FRONTERA (1987); For a discussion of hybrid, border or diasporic cultural-political forms of resistance, see Smadar Lavie & Ted Swedenburg, *Between and Among the Boundaries of Culture: Bridging Text and Lived Experience in the Third Timespace*, 10 CULTURAL STUD. 154-179 (1996).

79. For a discussion of a movement that will be the vanguard against state boundaries as one that will be queer and of the need to consider nationalism and sexual politics together in the context of Zionism, see Jacqueline Stevens, *The Politics of LGBTQ Scholarship*, 10 (2) GLQ: A J. OF LESBIAN & GAY STUD. 220-226(2004); See also Gil Hochberg, *Introduction: Israelis, Palestinians, Queers: Points of Departure*, 16 (4) GLQ 493-516 (2010); For the connections between national and gendered borderlands, see Aeyal Gross, *Gender Outlaws Before the Law: The Courts of the Borderlands*, 32 HARV. J. OF LAW & GENDER 165-231 (2009).

spaces that may be found in globalisation but also to consider whether or not the material changes that attend to the conditions of globalisation, mobility and diaspora engender new forms of normative and the queer.⁸⁰ Thus when considering the queer dimension of the poster, we should not neglect to ask what the new articulations of the global gay rights discourse are, of which this poster is part.

As noted above, any discussion on gay rights as human rights supposedly requires the globalisation or perhaps the universalisation of ideas of gay identity and human rights. The universalisation of rights and the globalisation of identity⁸¹ seem to require that both categories be accepted as unitary and coherent. Critiques of this liberal framework point to its limits and address the need for additional understandings from a queer and performative perspective⁸² in the discourse on gay rights as international human rights. These critiques, which address the development of international law in this area, illustrate the need for new perceptions subverting the notion of sexual and gender identities as binary, unitary, and coherent and point to the heteronormative framework within which the liberal human rights discourse exists.⁸³ Other critiques point to the way in which the discourse of gay rights may be part of the global, neoliberal, privatisation of rights where gay rights are part of a neoliberal narrative of private rights and in which a 'homonormative' privatised and sanitised gay agenda⁸⁴ works together

80. Wesling, *supra* note 59, at 35, 45.

81. For a discussion of the complexities of 'queer globalisation', see *supra* text accompanying notes 6, 69, 74.

82. See Brenda Cossman, *Gender Performance, Sexual Subjects and International Law*, 15 CANADIAN J. OF L. & JURISPRUDENCE 281-296 (2002).

83. For such critiques, see COSSMAN, *supra* note 82; Wayne Morgan, *Queering International Human Rights Law*, in LAW AND SEXUALITY 208-225 (Carl Stychin & Didi Herman eds., 2001); Sonia Katyal, *Exporting Identity*, 14 YALE J. OF LAW & FEMINISM 97-176 (2002); Kristen Walker, *United Nations Human Rights Law and Same-Sex Relationships: Where to from Here?*, in LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW (Robert Wintemute & Mads Tønnesson Andenæs eds., 2001); Kristen Walker, *Capitalism, Gay Identity, and International Human Rights Law*, 9 AUSTRALIAN J. OF LESBIAN L. 58-73 (2002). For an account of the need to address these questions while doing human rights work, see HUMAN RIGHTS WATCH, IN A TIME OF TORTURE: THE ASSAULT ON JUSTICE IN EGYPT'S CRACKDOWN ON HOMOSEXUAL CONDUCT 4-6 (2004); For implications on the work of human rights groups, see Scott Long, *Unbearable Witness: How Western Activists Mis(recognize) Sexuality in Iran*, 15 CONTEMP. POLITICS 119 (2009); Hakan Seckinelgin, *Global Activism and Sexualities in the Time of HIV/AIDS*, 15 CONTEMP. POLITICS 173-195 (2009); RAO, *supra* note 75, at 179-189; For a discussion, see Gross, *supra* note 75; Aeyal Gross, *Sex, Love and Marriage: Questioning Gender and Sexuality Rights in International Law*, 21 LEIDEN J. INT'L LAW 235-253 (2008).

84. On 'homonormativity' as consisting of neoliberal sexual politics which do not contest dominant heteronormative assumptions and institutions but upholds them while promising the possibility of a de-mobilised gay constituency and a privatised, depoliticised gay culture anchored in domesticity and consumption, see LISA DUGGAN, THE TWILIGHT OF EQUALITY 43-66 (2003); See also BRENDA COSSMAN, SEXUAL CITIZENS: THE LEGAL AND CULTURAL REGULATION

with a racist and imperialist order⁸⁵ in which gay rights (as part of human rights) serve as a marker between the ‘civilised’ and the “barbarians at the gate,”⁸⁶ often using markers of ‘progress’ which are biased towards the liberal gay rights and gay coming out agenda in ways that do not fit the needs of other societies.⁸⁷ These critiques gained special resonance in the U.S. against the background of the ‘war on terror’ which invited a resignification of the ‘good gay citizen’ and the racialised ‘other’.⁸⁸

But against these important critiques of gay rights discourse, we may consider whether in fact given the factors and contradictions discussed above, Dana’s appearance on the poster actually queers the idea of gay rights as human rights. A gap may be detected then between the text, that is the liberal slogan on the poster and the image, that is Dana’s queer appearance. Even if Dana herself may be read as representing

OF SEX AND BELONGING 2-3 (2007) (on the “new modality of sexual citizenship” as one that is “privatized, domesticated and self-disciplined”); See also DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS AND THE LIMITS OF LAW* (2011).

85. See, e.g., Anna M. Agathangelou et. al., *Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire*, 100 *RADICAL HIST. REV.* 120 (2008); For similar concerns, see Stychin, *supra* note 8, at 967-969 pointing to the risk that ‘gay citizen’ will within the fetishisation of rights ‘consume’ human rights and then withdraw from any kind of progressive politics, especially when those who have bestowed the rights are also pursuing policies that are eviscerating the human rights of others on issues from migration to counter-terrorism, this within neoliberal economic hegemony that emphasises privatisation of responsibility to others; For a discussion of the ways in which the claiming of rights by queer white people does not pay significant attention to issues of race and racism, see DAMIEN RIGGS, PRISCILLA, (WHITE) QUEEN OF THE DESERT (2006); Neville Hoad points to the imperial and neo-imperial contexts in which the universalisation of the homosexual as a trans-historical, trans-spatial subject is articulated in human rights discourse. See Neville Hoad, *Arrested Development or the Queerness of Savages: Resisting Evolutionary Narratives of Difference*, 3 *POSTCOLONIAL STUD.* 133 (2000).
86. Stychin, *supra* note 8, at 962-963; See also BINNIE, *supra* note 7, at 75-77; Kathrine Franke, *Dating the State: The Moral Hazards of Winning Gay Rights*, 44 (1) *COLUMBIA HUMAN RTS L. REV.* 1 (2012), available at <http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Dating%20the%20State.pdf>.
87. In the Arab and, specifically, Palestinian context, see for example, Lynn Darwich & Haneen Maikey, *From The Belly of Arab Queer Activism: Challenges and Opportunities*, BEKHSOOS, October 12, 2011, <http://www.bekhsoos.com/web/2011/10/from-the-belly-of-arab-queer-activism-challenges-and-opportunities>; Haneen Maikey & Sami Shamali, *International Day Against Homophobia: Between the Western Experience and the Reality of Gay Communities*, BEKHSOOS, May 23 2011, <http://www.bekhsoos.com/web/2011/05/international-day-against-homophobia-between-the-western-experience-and-the-reality-of-gay-communities>; Haneen Maikey, *Signposts from Al Qaws: A Decade of Building a Queer Palestinian Discourse*, BEKHSOOS, May 27 2012, <http://www.bekhsoos.com/web/2012/05/alqaws>; Jason Ritchie, *How Do You Say “Come Out of the Closet” in Arabic?: Queer Activism and the Politics of Visibility in Israel-Palestine*, 16 (4) *GLQ: A J. OF LESBIAN & GAY STUD.* 568-571 (2010).
88. PUAR, *supra* note 54; Related critiques point to the neocolonial tones of western NGOs advocating in the area which put too much emphasis on law and litigation and argues for the need to let activists from the south take the lead. See Colin Robinson, *Decolonising Sexual Citizenship: Who Will Effect Change in the South of the Commonwealth?*, COMMONWEALTH ADVISORY BUREAU, (Apr. 2012), http://www.commonwealthadvisorybureau.org/fileadmin/CPSU/documents/Publications/April_Opinion.pdf.

the liberal notion of individual dignity, then at the same time her queer appearance subverts the ideas of unitary identity, clear gender or fixed and marked sexuality that are part of the modern and liberal human rights discourse. Whereas this discourse unfolds in a framework that maintains boundaries and hierarchies between people, and today is often entangled in homonormative and homonationalist discourses, Dana's re-presentation of gay rights potentially offers a queer and performative politics involved in deconstructing categories and crossing borders.⁸⁹ Dana's transgenderism and her representation celebrates the diaspora and the borderlands (national, ethnic, and gender ones), rather than that attempting at creating a new, fixed identity.⁹⁰

The narrative of globalisation that Dana and the AI poster offer may thus be read as a queer one. We can hardly celebrate globalisation while remaining oblivious to its concomitants: exploitation, colonialism, and neocolonialism. Indeed, Dana's appearance with a veil in the AI poster may be read by some as an instance of colonialism⁹¹ and even as trivialising Palestinian suffering or the suffering of gays, lesbians, and transsexuals who

89. About performative politics in the Israeli context, see Amalia Ziv, *Performative Politics in Israeli Queer Anti-Occupation Activism*, 16 (4) GLQ: A J. OF LESBIAN & GAY STUD. 537-56 (2010).

90. The debate about the 'borderlands' played a central role in recent discussions of transgenderism. Judith Halberstam and Jacob Hale point to the central place that the borderlands may play in the lives of people who cross the gender lines, while Jay Prosser argues for the need of a safe and stable place within a person's desired gendered identity. See Judith Halberstam and Jacob Hale, *Butch/FTM Border Wars: A Note on Collaboration*, 4 (2) GLQ: A J. OF LESBIAN & GAY STUD. 283-285 (1998); Judith Halberstam, *Transgender Butch: Butch/FTM Border Wars and the Masculine Continuum*, 4 (2) GLQ: A J. OF LESBIAN & GAY STUD. 287-310 (1998); Jacob Hale, *Consuming the Living, Dis(re)membering the Dear in the Butch/FTM Borderlands*, 4 (2) GLQ: A J. OF LESBIAN & GAY STUD. 311-348 (1998); JAY PROSSER, *SECOND SKINS: THE BODY NARRATIVES OF TRANSSEXUALITY* 171-177, 200-205 (1998).

91. Compare with Wendy Hesford's reading of a 2002 AI campaign brochure which featured a photograph of an Afghan refugee dressed in a headscarf with the phrase 'Human Dignity, Human Rights' superimposed on her face. As Hesford notes, this image, (which actually bears some similarity to the 'Gay Rights are Human Rights' poster), within the context of a campaign called 'Imagine', recasts the Western fantasy of imagining what is behind the veil as a project of imagining this girl with rights and dignity. The Afghan girl is both recognised for her universality as a human being and for her difference as a female child and refugee, with the spectator configured as the holder of rights and their distributor to those who are unable to claim them independently. This is achieved through the superimposition of the language of human rights on perceptions of the headscarf or veil, which Westerners typically view as emblems of oppression of women and girls under Islam. HESFORD, *supra* note 19, at 1-4. While it is tempting to compare the image Hesford discusses to the one I discuss in the text, a careful comparison will consider both the similarities and differences between the two images. Both involve veiled women and a universal human rights slogan but while the Afghan refugee is arguably represented as one who may be rescued by the West through the deployment (or rather superimposition) of human rights, Dana International appears on the poster as a successful LGBT and pop icon who has arguably attained her rights. Her appearances as both the bearer of human rights and literally of the AI candle, while at the same time a veiled woman, points to the contradictions the image offers, as discussed in the text.

are victims of discrimination. Yet, especially because of the connection that historians have noted between the rise of capitalism and the rise of modern gay identity and because of the need to think critically on the current LGBT international human rights discourse, an exploration of the role that the meeting between Dana (International) and Amnesty (International) plays in shaping and undermining this identity and rights discourse is a relevant question. The poster featuring the liberal slogan ‘Gay rights are human rights’ together with Dana International incorporates within in, the contexts of globalisation, identity and human rights politics, queer performative politics and the complex connections between them.

III. SEX RIGHTS OR MARRIAGE RIGHTS?

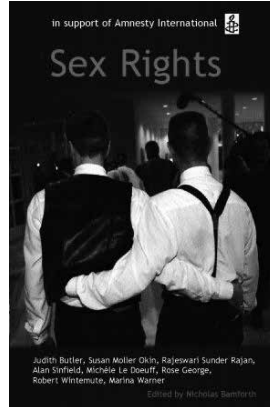
In 2002, the book *Sex Rights* was published by Oxford University Press as part of The Oxford Amnesty Lectures series.⁹² The cover of *Sex Rights* shows the picture of two men photographed from the back, with their hands holding each other’s waists. They are walking towards a camera crew. Based on the way they are dressed, it seems that they have just been married. Both men are wearing white dress shirts and have similar hairstyles, with one wearing a black vest over the white shirt and the other with black shoulder straps. *Sex Rights*, a book of collected articles based on the Oxford Amnesty Lectures series on gender and sexuality apparently features on its cover the same-sex marriage of two men, ostensibly held in one of the few jurisdictions that have legalised such a union (probably the Netherlands, which was the first to do so, and was later followed by other states and jurisdictions).⁹³ While we know that ‘love and marriage go together like a horse and carriage’, what’s sex got to do with this? Would it not be more appropriate for a cover of a book entitled *Sex Rights* to feature two persons engaged in sex or having just engaged in sex rather than a marriage ceremony? Would it not be more appropriate to depict on the cover of a book called *Sex Rights*, a picture of two men or two women in a position that suggests they have just had sex, an act for which they could be persecuted and prosecuted in various jurisdictions? So, then, why does a book on *Sex Rights* feature same-sex marriage on its cover?

Once again, then, an Amnesty International publication (even if the

92. *SEX RIGHTS* (Nicholas Bamforth ed., 2002). I discussed the book as part of my essay Gross, *supra* note 83 and some of my discussion of the book’s cover and content draws on that essay.

93. The cover photo credit is given to ‘Camera Press/Guido Benschop’. Guido Benschop is, like Erwin Olaf, a Dutch photographer. See GUIDO BENSCHOP: PHOTOGRAPHER, <http://guidobenschop.carbonmade.com> (last visited Oct. 13, 2013).

cover was, in this case, presumably chosen by the publisher and did not involve AI itself), contains a gap between the text and the image, pointing to both the convergence and the conflict of different rights projects in the sex/gender area, between sex rights and marriage rights, raising the question of whether or not this book should be actually judged by its cover.



Sex rights are about sexual liberty. They are about releasing us from the structures that place limits on our sexual practices that brand certain forms of sex as legitimate and others as not, sometimes even criminalising forms of sexual behaviour. In “Thinking Sex,”⁹⁴ Gayle Rubin, arguing for pluralistic sexual ethics, which includes a concept of benign sexual variation, pointed to the current existence of a hierarchy of sexual values that treats some sexuality as ‘good’, ‘natural’, and ‘normal’ and others as ‘bad’, ‘abnormal’, or ‘unnatural’. ‘Good’ sex is heterosexual, marital, monogamous, reproductive, and coupled. ‘Bad’ sex may be homosexual, unmarried, promiscuous, or non-procreative. Indeed some of the sexual activities Rubin discussed as situated on the ‘bad’ end of the hierarchy, specifically same-sex sex, were criminalised by laws that have been struck down by national and international courts (e.g. the South African Constitutional Court,⁹⁵ the U.S. Supreme Court,⁹⁶ the Delhi High Court in India⁹⁷ and the European Court of Human

94. Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in *DEVIATIONS: A GAYLE RUBIN READER* 137-181 (G. Rubin ed., 2011); The original article is Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 267 (C. S. Vance ed., 1984).

95. *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, [1998] SACHS CCT 11/98 (9 October 1998) (South African Constitutional Court).

96. *Lawrence v. Texas*, 539 US 558 (Sup. Ct. 2003).

97. *Naz Foundation v N.C.T. of Delhi and Others*, (2009) 160 DLT 277.

Rights⁹⁸) as well as by the UN Human Rights Committee⁹⁹ as violating human rights. Thus the notion of sex rights – regardless of the question of the specific human rights under which they are protected¹⁰⁰ – has expanded sexual liberty in this regard. But following Rubin’s analysis, we should expect the expansion of sexual liberty to also include freedom from the bias in favour of marital sex and against non-marital sex.

With Rubin’s analysis in mind then, let us reconsider the claim of progression inherent to much discourse about ‘sex rights’: from sex rights (i.e. the right to sexual liberty which requires the annulment of criminal prohibition on same-sex sex) to partnership/marriage rights,¹⁰¹ a claim which the relationship between the title Sex Rights and the image that accompanies it hints to. Can we instead point to a gap between the two: could marriage rights not actually in some way be in tension with sex rights? After all, marriage is not about sexual liberty but, in certain respects, quite the opposite. It is about the regulation of sexuality in the framework of an institution that is purported to be the most legitimate, if not the only, place for sex, thereby signalling the inferiority of all sex that is not conducted between married couples. Moreover, marriage as an institution conveys the message that it is the most sacred form of human relationship and the ultimate fulfillment of the individual’s personal life. The mere existence of marriage (at least so long as it is constructed around the couple that enters into it and thus commits to the obligations associated with it) sends a message of exclusion to all who do not or cannot participate in the institution. Consequently, although allowing same-sex couples’ entry into this institution breaks out of the heteronormative borders of marriage, it also reinforces the message that marriage is the ultimate form of human relationship, whether for different sex or same-sex partners. Given the symbolic and material benefits associated with marriage, this message is discriminatory towards all who do not participate in it, specifically those who opt to live in family units not based on couplehood: the single person, individuals with more than one lover, and other forms of human relationships.¹⁰² In Michael

98. *Dudgeon v. Ireland* 7525/76 Eur. Ct. H.R. 5 (1981); *Norris v. Ireland* 10581/83 Eur. Ct. H.R. 22 (1988); *Modinos v. Cyprus* 15070/89 Eur. Ct. H.R. 18 (1993).

99. *Toonen v. Australia*, *supra* note 4.

100. Human rights included in the decisions cited above are the rights to privacy, equality, and liberty.

101. For such a ‘progress narrative’, see for example, Robert Wintemute, *From ‘Sex Rights’ to ‘Love Rights’: Partnership Rights as Human Rights in SEX RIGHTS: THE OXFORD AMNESTY LECTURES* (Nicolas Bamforth ed., 2005), as discussed in *infra* notes 104–106 and accompanying text.

102. See Aeyal Gross, *The Burden of Conjugalality*, in *DIVERSITY AND EUROPEAN HUMAN RIGHTS: RE-WRITING JUDGMENTS OF THE ECHR 265–292* (Eva Brems ed., 2013).

Warner's words:

As long as people marry, the state will continue to regulate the sexual lives of those who do not marry [...] In the modern era, marriage has become the central legitimating institution by which the state regulates and permeates people's most intimate lives; it is the zone of privacy outside of which sex is unprotected.¹⁰³

Thus marriage can be seen as conflicting with sex rights: it privileges sex and love conducted only within the framework of the institution.

Nevertheless, the narrative of connections between 'sex rights' and 'marriage rights' is one which gains much force. In an article in this AI book (whose cover I've been discussing) entitled "From 'Sex Rights' to 'Love Rights': Partnership Rights as Human Rights," Robert Wintemute presents the relationship between sex rights and marriage rights as one of convergence and progress. In Wintemute's account we can see a transition "from 'Basic Rights' to 'Sex Rights' to 'Love Rights'."¹⁰⁴ The *first stage* was the recognition of what he calls 'basic rights' in the context of sexual orientation and gender identity discrimination, such as the right not to be killed or tortured, alongside freedom of speech rights. The *second stage* was the evolution of 'sex rights', a term he uses to refer to discrimination against LGBT individuals because of their actual or presumed same-sex activity, their undergoing of gender reassignment, or their exclusion from the *third stage* of rights, 'love rights', that is the denial of rights, benefits or recognition to same-sex partners. The battle for sex rights thus defined has largely met with success in the European context, Wintemute claims, citing a few decisions of the European Court of Human Rights against blanket criminalisation of same-sex sexual activity and holding that discrimination by public authorities against LGBT individuals requires that strong justification be shown for the action.

The third stage of progress – 'love rights' – is in this account the legal recognition and equal treatment of the relationships between LGBT individuals and their partners.¹⁰⁵ Notably, so-called love rights are actually transformed in Wintemute's account into partnership rights:¹⁰⁶ his analysis apparently makes no distinction between the right to love and the right to be recognised as a couple; he uses the two terms interchangeably.

103. MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS AND THE ETHICS OF QUEER LIFE* 96 (1999).

104. Wintemute, *supra* note 101, at 187. I discussed the book itself in more detail in Gross, *supra* note 83.

105. *Id.* at 187-91.

106. Wintemute, *supra* note 101, at 197.

Reading Wintemute's account against the background of the discrepancy between the title *Sex Rights* and the picture on the cover, his article can be understood as offering a possible bridge between the two: sex rights are a stage in the process towards the recognition of love rights, which are, in fact, partnership rights and, ultimately, marriage rights. However, though this description may indeed describe the development of LGBT rights in some countries, I would question this 'progress narrative' and argue that the gap we may sense when looking at the cover of *Sex Rights* is a real one: we should consider the gap between the 'sex rights' title and the image of marriage as pointing to the fact that Wintemute's three stages of rights exist in conflict and not only in progression. Does the struggle for same-sex marriage not in fact participate in sending a stigmatising and inferior message to those who would not want to or would not be able to marry even if same-sex marriage was recognised? This could include people who have no partner either because they do not want one or could not succeed in finding one, people who have more than one partner or anyone whose patterns of relationship do not fit the marriage model. Given the message of inferiority that the existence and stature of marriage sends to all kinds of relationships – and sex – outside of its parameters, marriage must be understood as part of the heterosexual-patriarchal structure of society which seeks to restrict sexual relationships to this structure.

How, then, can a battle to extend marriage rights to same-sex couples be conceived as a continuation of the battle for sex rights, rather than its negation? As we see, the extension of the status of marriage to same-sex couples may actually reinforce the sex/ marriage connection: expanding it to include the context of same-sex sex will create a discourse whereby LGBT individuals also face pressure to marry and forego other forms of relationships outside marriage. The existence of same-sex marriage may thus subordinate same-sex sexual liberty, which has been growing and certainly benefited from the development of sex rights, to the normalising power of marriage.¹⁰⁷ The conflation of love rights and partnership rights and their collapse into marriage rights entails this risk. The danger is that rather than offering freedom of sex and love, the sex/gender international human rights movement is reinforcing their subordination to normalising institutions using the discourse of sex rights itself. This once again raises the question of whether international human rights discourse reinforces

107. See WARNER, *supra* note 103, at 81-147; Janet Halley, *Recognition, Rights, Regulation, Normalization: Rhetorics of Justification in the Same-Sex Marriage Debate*, in *THE LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW* 97 (M. Andenaes & R. Wintemute eds., 2001).

homonormativity in the form of marriage of the same-sex couples at the expense of giving equal value to diverse forms of living.

This is not to deny that equal partnership and marriage rights can expand human liberty. In many contexts, such as immigration and hospital visitation rights, state recognition of same-sex partners or same-sex marriage in jurisdictions that do not usually recognise non-married couples, marriage appears necessary to guarantee LGBT individuals greater equality and liberty. Also, marriage and other systems of registration of same-sex couples might sometimes actually have less of a normalising effect on individuals than the absence of such options, for they often grant rights upon mere registration, as opposed to cohabitation models which require proof that the couple in question have lived together in line with a model based upon the heteronormative concept of marriage.¹⁰⁸ This would also make rights more accessible to those lacking the means for private legal representation and litigation which they would otherwise require to secure certain rights. Nonetheless, in view of the normalising aspects of the institution of marriage, it is important that we choose our rights battles – and the discourses we create through them – carefully and be cautious of the risks.

Some advocates of marriage rights are motivated by the fact that marriage can be instrumental in securing certain material rights. In this context, we must ask the strategic question of what is the best route for attaining these rights: a struggle for same-sex marriage or a struggle to detach material rights from the context of marriage? Other marriage rights advocates seek the undeniable symbolic value of equal recognition for same-sex love, cited by Wintemute. Here it is necessary to ask what receives recognition and what does not. At whose expense is this recognition conferred? As Janet Halley notes, we must remember that when we ask the state for recognition we are in fact recognising the state's power to recognise (or not) our relationships.¹⁰⁹

The book cover, then, with the gap detected between the title *Sex Rights* and the image which pictures a same-sex couple exercising marriage rights articulates, within the context of globalisation, a narrative that conflates the two within a progress narrative. It suggests to a global audience that the ultimate trajectory of sex rights leads to same-sex marriage within the homonormative model which given the

108. As Mary Anne Case notes of marriage, it licenses couples to structure their lives as best suits them without losing recognition for their relationship, without having their commitment or the legal benefits that follow from it challenged. See Mary Anne Case, *Marriage Licenses*, 89 MINNESOTA LAW REV. 1758, 1772-1773 (2005).

109. Halley, *supra* note 107, at 99.

presumed race of the presumed Dutch couple on the book's cover, also reinforces homonationalist messages about the benevolence of the rights-granting 'Western' nation state, in this case the Netherlands. This message is embedded inevitably in anti-immigrant and anti-Muslim discourse.¹¹⁰ Interestingly, the couple is photographed from the back, their facelessness supposedly allowing them to be a 'universal' couple. However, we cannot escape the specificities of gender, race, and location in one of the countries where same-sex marriage already existed at the time of publication, sending the message that these countries have attained the ultimate utopian achievement of 'sex rights'. But in any case, the gap between the image and the text – a gap different than the one detected in the poster featuring Dana International with her recognised iconic image – actually incites a discussion of the above narrative that will consider that focus on marriage may also undermine some of the emancipatory potential of 'sex rights'.

IV. CONCLUSION: RE-READING *YOGYAKARTA*

In the previous sections I discussed how the images of LGBT rights used in two publications related to AI, when contrasted with the texts accompanying these images represented a few gaps. First, I addressed the gap between global queer performative transnational politics involving diasporic and border-crossing subjectivities on the one hand, and liberal gay rights politics, which presumes a universal global gay subject and may develop within a homonormative and homonationalist context on the other. Then I discussed the gap between the idea of sexual freedom with its radical potential, on the one hand, contrasted with the idea of marriage equality on the other, with the latter possibly overlapping with sexual freedom but also contradicting it because of its normalising force especially regarding sex. In this concluding section I will revisit the *Yogyakarta Principles* and consider how gaps detected throughout the text may shed light on the way the right to recognition before the law and the right to family life are articulated within them.

Principle 3 of the *Yogyakarta Principles* 'The Right to Recognition before the Law' declares that "[p]ersons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life." It argues that "[e]ach person's self-defined sexual orientation and gender

110. This is especially significant in the Dutch context. See Suhraiya Jivraj & Anisa de Jong, *The Dutch Homo-Emancipation Policy and its Silencing Effects on Queer Muslims*, 19 FEM. LEGAL STUD. 143 (2011); Fatima El-Tayeb, 'Gays who cannot properly be gay': *Queer Muslims in the Neoliberal European City*, 19 EUROPEAN J. WOMEN'S STUD. 79 (2012).

identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.” Thus, states are required to ensure that all persons are accorded legal capacity without discrimination on the basis of sexual orientation or gender identity.

A similar declaration about sexual orientation and gender identity as integral to every person’s dignity and humanity appears in the ‘Introduction’ to the *Yogyakarta Principles*, which provides, in a footnote, broad definitions of sexual orientation and gender identity. The former is defined as referring to a person’s capacity for “profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.” Gender identity is defined as referring to an individual’s “deeply-felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body [...] and other expressions of gender, including dress, speech and mannerisms.”¹¹¹ While these are very broad definitions, which are not limited to ‘gay’ and ‘lesbian’ identities, they are still centred, respectively, around the concept of sexual orientation as based on the question of the similarity or difference in gender between oneself and one’s object of desire and around sexuality and gender as features of the self.¹¹² This is, of course, to be expected in a document that seeks to establish human rights focused on sexual orientation and gender identity, especially in a world where LGBT individuals suffer from discrimination based on their sexual orientation or gender identity thus defined. However, it is necessary also to consider the extent to which such definitions remain confined within a certain model of gender and sexuality and whether sexual orientation and gender identity are indeed integral to every person’s dignity and humanity.

Sexual orientation defined as such is a feature of modern ‘Western’ societies but not necessarily a feature of all of humanity. The concept of sexual orientation, assigning people an identity based on the gender of their object-choice being identical or opposite to their own gender, is not typical of societies that do not subscribe to the modern ‘Western’ concept of sexuality, which divides people into hetero and homo-sexuals.

111. *Yogyakarta Principles*, *supra* note 14, at 1, 2.

112. See Thoreson, *supra* note 17, at 329. Thoreson argues that the Yogyakarta Principles broke away from attempts to demand ‘gay’ and ‘lesbian’ rights in favour of a more inclusive, universal rhetoric, in a way that is inclusive of ‘non-Western’ sex/gender configurations; Brown, *supra* note 17, at 844. Brown discusses how, by avoiding the term ‘LGBT’ and talking instead of ‘sexual orientation’ and ‘gender identity’, the principles use a ‘global language’. While this is commendable, as I argue in the text, the reference to sexual orientation as defined remains captured within the modern concept of sexuality.

For example, in societies where men have sex with men regardless of any specific sexual identity, defining people as having a sexual orientation that is integral to their humanity constitutes an exportation of the 'Western' model of sexual orientation identity and its categorisation of this orientation as a distinct and autonomous feature of the self.¹¹³ While, as discussed throughout the text, this is never a straightforward, unilateral exportation process, we should nonetheless consider the implication of defining sexual orientation according to this model in a document that aims to be global. Thus, the determination in Principle 3 warrants some contemplation as to whether we can think of a person without any specific sexual orientation and/ or gender identity either because she or he lives in a society that lacks any notion of sexual orientation/gender identity in the 'Western' sense or because she or he seeks to be free of the ideas of sexual orientation and gender identity.

If we consider, following queer theory, that the binary hierarchical categories of gender and sexuality (i.e. men/ women and heterosexual/ homosexual) are themselves part of the problem as this structure mandates that every person must have a gender or sexual orientation and argue that an emancipatory project may include "undoing gender"¹¹⁴ and sexuality, then we can acknowledge that the *Yogyakarta Principles*, in spite of the broad definitions, limit themselves to the gender/sexuality framework without opening the door to transcending this framework.

From a queer theory perspective, assuming our identities as women or gays is not merely a liberatory act but also one in which we subordinate ourselves to the sex/ gender system that demands that, "in the modern world everyone can, should, will 'have' a nationality, as he or she 'has' a gender"¹¹⁵ and a sexual orientation. This is concretely manifested in Principle 3's requirement that states take all necessary measures to ensure that state-issued identity papers indicate a person's gender/sex in accordance with the person's self-defined gender identity. But if we consider, following Judith Butler, that the division into two genders is part of the institution of compulsory heterosexuality, which requires a binary, polarised gender system since patriarchy and compulsory heterosexuality are only possible in a world built upon such a hierarchised division,¹¹⁶

113. Sexuality as a constitutive principle of the self, defined as a separate sexual domain within one's psychological nature and generating sexual identity, as a peculiar turn in conceptualising human nature, along with other developments, marks the transition to modernity in Northern and Western Europe, see HALPERIN, *supra* note 7, at 24-25.

114. See JUDITH BUTLER, *UNDOING GENDER* (2004).

115. BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 5 (1983).

116. BUTLER, *supra* note 64, at 1-34, 110-28.

we might shift the focus of our demands to the abolishment of state registration of gender altogether. This would be out of recognition of the fact that a binarised gender system requires that we all have a gender with only two possibilities in a hierarchy. If we consider gender and sexuality as arbitrary categories that we should be emancipated from, rather than confined within, our rights demands may take a different shape. An apt analogy here may be Marx's determination that the development of civil rights gave people the right to property but did not liberate them from property.¹¹⁷ Similarly the *Yogyakarta Principles* represent an attempt at offering freedom of, but not freedom from, sexual orientation and gender identity.¹¹⁸

Current queer/ gender politics¹¹⁹ often suggests going beyond gay and transsexual identity politics which demand recognition and affirmation of subordinated identities and seek, alongside such affirmation, their deconstruction. Unlike transsexual politics, which call for recognition of a gender different from that assigned to a person at birth on the basis of perceived biological sex, especially after a physical modification to suit the newly assigned gender, genderqueer politics may demand recognition of the possibility of a lack of, or mixed, or broader, gender identity.

Unlike gay politics, queer politics may articulate an emancipatory project geared towards a transformation from the sexual orientation categories themselves, rather than equality and recognition for gays and lesbians, a project that is captured within the existing sex/ gender system. These challenges of rearticulating such claims within the human rights system have been left largely unaddressed in the *Yogyakarta Principles*.

The reading I offered here of the 'Gay Rights are Human Rights' poster, points then to the need for critical perspectives which while addressing the development of international law in this area, take into account new perceptions subverting the notion of sexual identity as binary, unitary, coherent, and allow the shift from identity politics to queer and performative politics.

Principle 24 of the *Yogyakarta Principles* deals with the right to found a

117. Karl Marx, *On the Jewish Question*, in THE MARX-ENGELS READER 45 (R. C. Tucker ed., 1972).

118. Gross, *supra* note 75; For a critical engagement from a queer perspective with the concepts of 'sexual orientation' and 'gender identity' as they appear in the *Yogyakarta Principles*, see also Matthew Waites, *Critique of 'sexual orientation' and 'gender identity' in Human Rights Discourse: Global Queer Politics Beyond the Yogyakarta Principles*, 15 CONTEMP. POL. 137, 153 (2009) in which he points to the need to more vigorously conceptualise, define and situate the concepts and contest their meanings.

119. See for example GENDERQUEER: VOICES FROM BEYOND THE SEXUAL BINARY (C. Howell, J. Nestle & R. Wilchins eds., 2002).

family, regardless of sexual orientation or gender identity. It states that family exists in diverse forms including those not defined by descent or marriage and calls for prohibition of discrimination of any family unit based on the sexual orientation or gender identity of any of its members. Alongside a requirement that national laws and policies recognise this diversity of family forms, the Principle also stipulates that: 1) states that recognize same-sex marriage or registered partnerships make any entitlement available to different-sex, married or registered partners equally available to same-sex, married or registered partners; and 2) states ensure that any benefit available to different-sex, unmarried partners be equally available to same-sex unmarried partners. The result of these requirements is that states that do not recognise same-sex marriage or registered partnerships are not required to offer same-sex couples the rights accorded to married couples: they need only extend to same-sex couples the rights enjoyed by different-sex unmarried couples. Thus, notwithstanding its declaration on families existing in various forms, and notwithstanding the fact that a right to marry is not claimed,¹²⁰ marriage maintains its privileged status in the *Yogyakarta* document. It does not advocate a concept of rights as something that should be fully detached from marriage or from 'partnership' or the couple format; there is no engagement with the need to detach rights from relationships. Without such detachment, privilege remains attached to the form of relationship that enjoys rights as well symbolic recognition.

Thus the *Yogyakarta Principles*, despite the attempt at inclusivity and the fact that there is no demand that states recognise same-sex marriage, in fact convey the same message conveyed by the cover of *Sex Rights*: marriage is privileged and same-sex marriage is conceived as the ultimate form of sex rights, at least in the context of human relationships and family. The queer potential in re-thinking kinship detached from descent or marriage¹²¹ is not realised.¹²²

As my reading of the *Yogyakarta Principles* through the questions raised

120. See Thoreson, *supra* note 17, at 328; Brown *supra* note 17, at 854-858.

121. On the need to think beyond the heteronormative conceptions of kinship, see JUDITH BUTLER, *ANTIGONE'S CLAIM: KINSHIP BETWEEN LIFE & DEATH* (2000); Judith Butler, *Is Kinship Always Already Heterosexual?*, 13(1) DIFFERENCES: A J. OF FEM. CULTURAL STUD. 14 (2002); See also KATH WESTON, *FAMILIES WE CHOOSE: LESBIANS, GAYS, KINSHIP* (1991); NANCY POLIKOFF, *BEYOND STRAIGHT (AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* (2009).

122. On the need to think of different forms of relationships beyond the heterosexual model, following Foucault's idea of the need for what he called a 'new relational right', see Aeyal Gross, *Challenges to Compulsory Heterosexuality: Recognition and Non-Recognition of Same-Sex Couples in Israeli Law*, in *LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW* 391, 411-4 (Robert Wintemute & Mads Tønnesson Andenæs eds., 2001).

by the two images of LGBT rights discussed in this article shows, the risk entailed in the sex/gender rights discourse is that operating from within the liberal identity rights paradigm may leave us within the current sex/gender system, with its hierarchies and privileges, and co-opt any attempt at seriously challenging these systems in themselves.¹²³ Moreover, as the discussion has demonstrated, any attempt to conceive a purportedly single, overarching sex/gender human rights project, encompassing all rights for all people with common sex/gender issues, involves more than one conflict, given the tensions existing amongst and within the different projects entailed. These tensions exist between liberal rights projects and queer projects, such as liberal identity politics rights versus identity diversity, transformation and deconstruction, and marriage rights versus sexual liberty and the transformation of societal institutions. Contrary to the temptation to think of all the issues advocated under the title of sex and gender rights as harmonious and a continuation of one another, I suggest that we consider the conflicts arising in this context and the need to make choices.¹²⁴ The challenge of working within international human rights law but at the same time questioning the sex/gender system within which it operates, lies in thinking beyond liberal identity rights politics (which often plays out into homonormative and homonationalist discourse) and considering where queer perspectives on sex and gender are necessary for transcending existing structures of hierarchy and privileging.



123. For the need to go beyond the liberal – and heteronormative – assumptions of international human rights law, see Morgan, *supra* note 83, at 217. As Morgan notes, pursuing legal strategies based upon human rights means validating the theory of identity as given, with the possibilities of subject positions polarised into hetero/homo, the former being the normative category.

124. I am continuing here Janet Halley's argument for an alternative to the normative demand to harmonise and reconcile the different theories on sexuality and her suggestion that splits amongst theories are part of their value and that we will make better decisions about what we want if we lavish attention and appreciation on the capacity of our theory-making to reveal the world as a place where interests differ. See JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* 3 (2008).