

## After the Arab Spring: A New Opportunity for LGBT Human Rights Advocacy?

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### INTRODUCTION

Most people will not be surprised to hear that homosexuality is an extremely taboo subject in the Arab world. In a region heavily influenced by Islam, the idea of homosexuality is seen as antithetical to some of the most important principles of Arab society: family and procreation.<sup>1</sup> As a result, several Arab countries have very strict, severe laws outlawing same-sex acts that proscribe prison sentences, lashes, and, in some cases, even the death penalty as proper punishments.<sup>2</sup> Moreover, due to these strict laws, homosexuals are also subject to police entrapment, blackmail, torture,<sup>3</sup> and have been banned from frequenting certain public establishments.<sup>4</sup> However, far worse to many openly Lesbian, Gay, Bisexual, and Transgendered (LGBT) people in the Arab world is the potential shame and possible ensuing violence they will face in their homes, where they fear not only how their families will react, but also how being openly homosexual will affect the reputation of their family name.<sup>5</sup>

Homosexual acts, however, are much more widespread in the region than one might expect. As Stephen Murray notes in his book *Homosexualities*, the

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1. See HALIM BARAKAT, *THE ARAB WORLD: SOCIETY, CULTURE, AND STATE* 97, 107 (1993).

2. See generally *In a Time of Torture: The Assault on Justice In Egypt's Crackdown on Homosexual Conduct*, HUM. RTS. WATCH (2004), [www.hrw.org/en/reports/2004/02/29/time-torture](http://www.hrw.org/en/reports/2004/02/29/time-torture) [hereinafter *In a Time of Torture*]; AMNESTY INT'L, *EGYPT: TORTURE AND IMPRISONMENT FOR ACTUAL OR PERCEIVED SEXUAL ORIENTATION* (2001), [www.amnesty.org/en/library/info/MDE12/033/2001](http://www.amnesty.org/en/library/info/MDE12/033/2001); Hossam Bahgat, *Explaining Egypt's Targeting of Gays*, MIDDLE EAST RESEARCH AND INFORMATION PROJECT (July 23, 2001), [www.merip.org/mero/mero072301](http://www.merip.org/mero/mero072301); *They Want Us Exterminated": Murder, Torture, Sexual Orientation and Gender in Iraq*, HUM. RTS. WATCH (Aug. 17, 2009), [www.hrw.org/reports/2009/08/17/they-want-us-exterminated-0](http://www.hrw.org/reports/2009/08/17/they-want-us-exterminated-0) [hereinafter *They Want Us Exterminated*].

3. See generally *id.*

4. For example, a Dunkin' Donuts in Lebanon refused entry to "gay-looking" customers. *Dunkin' Donuts Accused of Discriminating Against Gay Customers*, DAILY STAR LEBANON (July 25, 2003), [www.dailystar.com.lb/News/Local-News/Jul/25/Dunkin-Donuts-accused-of-discriminating-against-gay-customers.ashx#axzz2IFwPCRHy](http://www.dailystar.com.lb/News/Local-News/Jul/25/Dunkin-Donuts-accused-of-discriminating-against-gay-customers.ashx#axzz2IFwPCRHy).

5. BRIAN WHITAKER, *UNSPEAKABLE LOVE: GAY AND LESBIAN LIFE IN THE MIDDLE EAST* 43 (Saqi Books, 2006).

existence of such laws against homosexual acts is a testament to the acts' desirability for some people within the society and the truth is that the acts still occur frequently.<sup>6</sup> The catch, however, is that the acts occur in a very specific manner, where they are based primarily on power structures and dynamics in which the powerful and powerless are clearly defined, whether it involves age or gender stratification (or both).<sup>7</sup> The acts also function under the guise of collective denial, where both the actors and the society deny or at least fail to acknowledge that the acts exist and are still happening.<sup>8</sup> The true problems with homosexuality arise when this idea of collective denial is challenged and the lines between the public and private spheres of society are blurred and severed (i.e., someone breaks the silence and clearly defines himself as homosexual in a public manner). Does this mean that homosexual men should continue to keep silent or, by challenging the status quo, is there a future possibility of a tolerated gay Arab identity? Is the notion of a "gay identity" even relevant to the region?

A large portion of the international human rights community has reacted strongly to the violence, discrimination, and persecution that openly LGBT people face in the Arab world, calling for the protection of LGBT people through the application of international human rights law. Most notably, in 2007, a group of human rights experts released *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (hereinafter the "Yogyakarta Principles" or the "Principles"), which were "intended as a coherent and comprehensive identification of the obligation of States to respect, protect and fulfill the human rights of all persons regardless of their sexual orientation or gender identity."<sup>9</sup> Per the *Yogyakarta Principles*, "[a]ll human beings are born free and equal in dignity and rights," and sexual orientation and gender identity are "integral to every person's dignity and humanity and must not be the basis for discrimination or abuse."<sup>10</sup> However, while such human rights are universal in theory, does the application of the Yogyakarta Principles provide a practical solution for the human rights issues and societal tensions that revolve around homosexuality in the Arab world? And will international pressure to follow such human rights principles actually work, particularly when many in the Arab world see such principles as a western imposition (or 'westoxication'<sup>11</sup>)?

As a result of this perceived "westoxication," the push for international LGBT rights in the Arab world certainly has not been without critics. Most notably, Joseph Massad of Columbia University criticizes the idea of such an

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6. STEPHEN O. MURRAY, *HOMOSEXUALITIES* 6 (2000) [hereinafter *HOMOSEXUALITIES*].

7. See generally Bruce Dunne, *Power and Sexuality in the Middle East*, 206 *MIDDLE EAST REP.* 8 (Spring 1998).

8. *Id.* at 9.

9. Michael O'Flaherty & John Fisher, *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles*, 8 *HUM. RTS. L. REV.* 207, 207 (2008).

10. *THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY* 6 (2007).

11. Vanja Hamzić, *The Case of 'Queer Muslims': Sexual Orientation and Gender Identity in International Human Rights Law and Muslim Legal and Social Ethos*, 11 *HUM. RTS. L. REV.* 237, 259 (2011). The term 'westoxication' (in Farsi: *gharbzadegi*), popular among the clerical elites of the present day Iran, was coined by Ahmad Fardid, an Iranian intellectual. *Id.* at 259 n.136.

openly gay identity in the Arab world, particularly with regards to the promotion of LGBT rights.<sup>12</sup> Massad claims that the promotion of gay rights in Arab countries is an imperialist-style “missionary” project in which the “Gay International” forces the Arab to subscribe to a heterosexual/homosexual binary, thus “heterosexualizing” him because when only given the choice to be one or the other, heterosexuality will be the compulsory choice given that being exclusively homosexual deviates from the cultural norm.<sup>13</sup> Thus, Massad’s critique seriously questions the notion of sexual identity classifications in the region.

While there is certainly an argument that this idea of an openly gay identity is a westernized notion of sexual identity, Massad does not address the aforementioned human rights concerns in the Arab world with regards to LGBT rights in his critique, and offers no solutions to these issues. So, where does that leave the conversation? Some argue, that in the aftermath of the “Arab Spring,”<sup>14</sup> the time is ripe for the promotion of LGBT rights in the Arab world.<sup>15</sup> Given the spirit of political revolution behind the Arab Spring, the argument goes, now is also the time for cultural and societal revolution. The reality, however, is that the Arab Spring has seen the rise and election of Islamist groups,<sup>16</sup> such as the Muslim Brotherhood in Egypt and the Ennahda party in Tunisia, both of which still view homosexuality as perversion or deviance.<sup>17</sup> Thus, “while gay Arabs have been generally supportive of the Arab Spring, the Arab Spring has not been very supportive of gay Arabs.”<sup>18</sup> While the Arab Spring has certainly brought about dramatic change to the Arab world, and while there has been some shift in attitudes towards homosexuality in the region, the state of LGBT rights in the Arab world in the aftermath of the Arab Spring is precariously uncertain at best.

This note explores the tensions and complexities that arise when exploring homosexual identities, human rights concerns, and LGBT rights advocacy in the Arab world. Part I of this note will provide some background on how homosexuality and homosexual identity functions in the Arab world. In particular, the section will discuss the long history of homosexual/homoerotic acts in the region, while also looking at the specific ways in which these acts occur, where the acts are based primarily on power structures, power dynamics,

12. See Joseph Massad, *Re-Orienting Desire: The Gay International and the Arab World*, 14 PUB. CULTURE 361, 383–84 (2002).

13. *Id.*

14. See Garry Blight, Sheila Pulham & Paul Torpey, *Arab Spring: An Interactive Timeline of Middle East Protests*, GUARDIAN UK (Jan. 5, 2012), available at [www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline](http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline).

15. See Ernesto Londono, *Egypt’s gays hope for change in culture after revolt*, WASH. POST (Aug. 19, 2011), available at [www.washingtonpost.com/lifestyle/style/egypts-gays-hope-for-change-in-culture-after-revolt/2011/08/15/gIQA0iskQJ\\_story.html](http://www.washingtonpost.com/lifestyle/style/egypts-gays-hope-for-change-in-culture-after-revolt/2011/08/15/gIQA0iskQJ_story.html) (“Egypt’s gays [have] emerged buoyed from the uprising that toppled President Hosni Mubarak in February. Increasingly visible and willing to speak up, they show how upheavals across the Arab world could prove to be social and cultural revolutions, albeit with uncertain outcomes.”).

16. See generally JOHN R. BRADLEY, *AFTER THE ARAB SPRING: HOW ISLAMISTS HIJACKED THE MIDDLE EAST REVOLTS* (Palgrave Macmillan, 2012).

17. *Id.* at 48–49, 80–90.

18. Brian Whitaker, *Gay Rights and the Arab Spring*, AL-BAB.COM BLOG (Feb. 25, 2012), <http://www.al-bab.com/blog/2012/blog1202.htm>.

and collective denial. Part II of this note then looks at the serious dangers LGBT people, or people that perform homosexual/homoerotic acts, have faced and currently face in the region. Part III of this note discusses the push for international LGBT rights in the Arab world, particularly through the application of international human rights law and the *Yogyakarta Principles*, and then engages with the criticisms that have resulted from this push, particularly from scholar Joseph Massad. Finally, Part IV of this note looks at potential methods of LGBT advocacy in the region, particularly in the aftermath of the Arab Spring. More specifically, as the effects of the Arab Spring develop more clearly, this note argues that for the time being LGBT people, and those participating in same-sex sexual acts, in the Arab world should engage in what Hassan El Menyawi calls "activism from the closet," by which advocates can push for the strengthening of privacy rights while also attempting to broaden the discussion about sexual identities in the Arab world to include models that are more relevant to the region.

## I. HOMOSEXUALITY/HOMOEROTICISM IN THE ARAB WORLD

This section attempts to give readers some background about the long history of homosexuality and homoeroticism in the Arab world, as well as the different dynamics that play a role in same-sex acts in the region. Having a deeper comprehension of this background is important to better understanding the Arab world's perceptions of the concept of sexual identity, as well as the region's general resistance to the international human rights framework for LGBT advocacy. As this section demonstrates, homosexual and homoerotic acts have been occurring in the Arab world for quite some time, and are still occurring to this day, but these acts are based primarily on power structures, power dynamics, and collective denial. The specific nature in which these same-sex acts occur ultimately calls into question the viability of the Arab world to follow an international LGBT human rights framework, because such a framework is in many ways dependent on people openly defining themselves in accordance with their sexual acts. This issue will be explored further in the following sections.

### A. Male Homosexuality and Power Dynamics

Despite the myriad of problems facing homosexuals, and despite claims that homosexuality is not an Arab issue,<sup>19</sup> homosexual and homoerotic acts have been abundant in the Arab world for a long time and are far from a foreign concept. As Sabine Schmidtko explains in her article *Homoeroticism and Homosexuality in Islam*, "the frequency of homosexual practices in the Islamic world is well attested by a variety of sources, such as prose romances, poetry, *adab* literature, dreambooks, and legal and medicine literature."<sup>20</sup> Some even claim that the

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19. Most famously, at a speech at Columbia University, Iranian President Mahmoud Ahmadinejad stated: "In Iran we don't have homosexuals like in your country[.] . . . In Iran we do not have this phenomenon. I don't know who's told you that we have this." *Ahmadinejad Blasts Israel, Denies Existence of Iranian Gays During Columbia Speech*, FOXNEWS.COM (Sept. 24, 2007), available at [www.foxnews.com/story/0,2933,297823,00.html](http://www.foxnews.com/story/0,2933,297823,00.html).

20. Sabine Schmidtko, *Homoeroticism and Homosexuality in Islam: A Review Article*, 62 BULL. SCH.

"Arab and Moslem world" is a "highly homosexualized region"<sup>21</sup> because "male homoeroticism is deep within [its] cultural roots."<sup>22</sup> Indeed, the acts have taken place for several centuries, stretching back to the Mamluks and the Ottomans. Murray argues that before the twentieth century, Northern Africa and Southwestern Asia were the regions of the world with the most diverse and visible homosexualities.<sup>23</sup> Some scholars look to the absence of females due to the segregation of the genders as a possible cause for the frequency of these acts, because "an extreme separation between [the] sexes and deprivation of the feminine element leads to substitutive homosexual intercourse."<sup>24</sup> Even T.E. Lawrence, better known as Lawrence of Arabia, describes the "instance . . . of the eastern boy and boy affection which the segregation of women [makes] inevitable."<sup>25</sup>

However, while arguably more open in the past, these acts primarily continue today under the guise of collective denial, in which both the actors and the society deny or at least fail to acknowledge that the acts take place because there is a "common Islamic ethos of avoidance in acknowledging sex and sexualities"<sup>26</sup> and because "[i]n Muslim culture honor is not lost by doing something but by being seen doing it, by not at least denying it."<sup>27</sup> Thus, people can successfully avoid deviations from the sexual norm by engaging in same-sex sexual behavior in private. This idea is further enhanced by the clear delineation between the public and private spheres of life, whereby the private sphere (i.e., the privacy of the home) cannot and should not be violated, but in public people keep up appearances and deny any instances of homosexual behavior. Furthermore, the fact that making accusations is very difficult under Islamic law furthers this notion. At least "[f]our trustworthy Muslim men must testify that they have seen 'the key entering the key hole' or the culprit must confess four times."<sup>28</sup> And there is a risk of punishment for not adequately proving a claim, thus, in many cases people would rather look the other way.<sup>29</sup> Moreover, in Arab culture "snooping into people's private lives is a vulgar way of behaving

ORIENTAL & AFR. STUD. 260, 260 (1999).

21. Rex Wockner, *Homosexuality in the Arab and Moslem World*, in *COMING OUT: AN ANTHOLOGY OF INTERNATIONAL GAY AND LESBIAN WRITINGS* 103, 104 (Stephan Likosky ed., 1992).

22. *Id.* at 105 (quoting Lisa Power, cosecretary general of the International Lesbian and Gay Association).

23. Will Roscoe & Stephen O. Murray, *Introduction*, in *ISLAMIC HOMOSEXUALITIES: CULTURE, HISTORY, AND LITERATURE* 3, 6 (Stephen O. Murray & Will Roscoe eds., 1997).

24. Frédéric Lagrange, *Male Homosexuality in Modern Arabic Literature*, in *IMAGINED MASCULINITIES: MALE IDENTITY AND CULTURE IN THE MODERN MIDDLE EAST* 169, 179, (Mai Ghousseub & Emma Sinclair-Webb eds., 2000).

25. Joseph A. Boone, *Vacation Cruises; Or, the Homoerotics of Orientalism*, 110 *PMLA* 89, 97 (1995) (alteration in original) (internal quotation marks omitted).

26. Stephen O. Murray, *The Will Not to Know: Islamic Accommodations of Male Homosexuality*, in *ISLAMIC HOMOSEXUALITIES: CULTURE, HISTORY, AND LITERATURE* 14, 14 (Stephen O. Murray & Will Roscoe eds., 1997) [hereinafter *The Will Not to Know*].

27. Arno Schmitt, *Sexual Meetings of East and West: Western Tourism and Muslim Immigrant Communities*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 125, 128 (Arno Schmitt & Jehoeda Sofer eds., 1992) [hereinafter *Sexual Meetings*].

28. Murray, *supra* note 26, at 15.

29. *See id.*

that is [considered] inappropriate."<sup>30</sup>

Homosexual acts, regardless of their motivations, tend to be based primarily on power structures, where social actors are categorized into roles of power or subordination, clearly defining what is "normal" or "deviant." To an Egyptian, sexual behavior conforms to a particular concept of gender that "is characterized by the 'general importance of male dominance, the centrality of penetration to conceptions of sex [and] the radical disjunction of active and passive roles in male homosexuality.'"<sup>31</sup> Furthermore, "[i]t is the right of [the man] to penetrate and their duty to lie on top."<sup>32</sup> These ideas fit into the greater social picture of patriarchy that is predicated upon the "subordination of women to men and young to old."<sup>33</sup> In this way, sexual roles in homosexual acts are based primarily on power dynamics, in which the powerful and powerless are clearly defined, whether in terms of active (penetrator) and passive (penetrated) sexual roles (i.e., "masculine" or "feminine" roles) or in terms of age-stratified roles (between powerful adult "men" and powerless boys).

The clear distinction between the active masculine partner and the passive feminine partner is an essential element of same-sex acts between adult men in the Arab world because sexual intercourse cannot "take place between equals and necessarily involves the exercise of power."<sup>34</sup> Sex in this way becomes an act of male domination where those who penetrate (the active role) have the power while those who are penetrated (the passive role) are powerless and in complete subordination to the active, dominant partner. As Bruce Dunne explains, sex (or more specifically the act of penetration)

took place between dominant, free adult men and subordinate social inferiors: wives, concubines, boys, prostitutes (male and female) and slaves (male and female). What was at stake was not mutuality between partners but the adult male's achievement of pleasure through domination.<sup>35</sup>

In this way, the act itself is less about its homosexual/homoerotic nature, but about the power and dominance behind it. The idea of deriving pleasure from power and domination is seen clearly in Sa'dallah Wannus' work *Tuqus al-isharat wa-l-tahawwulat* ("The rites of signs and transformations"), where 'Abbas, the active partner, denies any sort of romantic passion or feeling between himself and al-'Asfa, the passive partner, saying that he "took pleasure in mounting a man . . . watching him bend and make himself small between [his] legs."<sup>36</sup>

Moreover, in most cases, by taking the active, "masculine" role in same-sex relations, these men are not necessarily considered "homosexual," because

30. WHITAKER, *supra* note 5, at 66.

31. *Power and Sexuality*, *supra* note 7, at 9 (alteration in original).

32. Arno Schmitt, *Different Approaches to Male-Male Sexuality/Eroticism from Morocco to Usbekistan*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 1, 2-3 (Arno Schmitt & Jehoeda Sofer eds., 1992) [hereinafter *Different Approaches*].

33. Bruce W. Dunne, *Homosexuality in the Middle East: An Agenda for Historical Research*, 12(3/4) *ARAB STUD. Q.* 55, 64 (1990) [hereinafter *Agenda for Historical Research*].

34. Lagrange, *supra* note 24, at 173.

35. *Power and Sexuality*, *supra* note 7, at 10.

36. Lagrange, *supra* note 24, at 181-82.

"[h]omosexual acts do not imply an exclusive sexual interest."<sup>37</sup> "A man who plays the active, penetrator role in a homosexual act behaves like a man, and is therefore not considered 'homosexual.'"<sup>38</sup> His actions are not necessarily regarded as shameful or as any indication of his sexual orientation - a concept that is not particularly palpable to an Arab culture that is far more concerned with sexual acts than sexual identities - because he is "merely performing the role that men normally perform in intercourse with women."<sup>39</sup> In this way, the social recognition of separate sexual roles

between 'active' inserter and 'passive' insertee . . . enables many heterosexual men to engage in homosexual relations which are considered to be a 'secondary sexual outlet', since, for them, although the sexual relation takes place in a 'homosexual context', it satisfies a 'heterosexual need'.<sup>40</sup>

In fact, some of these men may even confer a status of hyper-masculinity and hyper-heterosexuality by dominating another adult male, which is thought to require "greater strength or sexual prowess."<sup>41</sup>

In most cases, the active partner's social respectability actually remains unscathed because "homosexual intercourse, when occurring between a grown man and one who is submitted to his authority because of his age or social status, finds its place in the social hierarchy and never jeopardizes the order."<sup>42</sup> Moreover, Arabs "tend to accept the *lūṭī* [active partner], since he acts as a strong man subjugating a non-man,"<sup>43</sup> and by definition "the fucker is in no danger of being considered queer."<sup>44</sup> This circumstance, however, is not the same for the "passive" partner, who in "allowing [himself] to be possessed by another male leads to general mockery and loss of social status."<sup>45</sup> Men who "do not fit readily into prevailing notions of true manhood . . . are often looked down upon and despised."<sup>46</sup> A man's willing submission to another man denotes a loss of self-respect and power because "[p]assive homosexual behavior . . . implies being penetrated like a woman, and is considered to be extremely scandalous and humiliating for a man, because it is feminine behavior."<sup>47</sup> Thus "[m]en are not 'real' men if they behave passively in sex, an (sic) illusion driven home relentlessly by a culture that insists that, in practice, anyway, gay men are

37. *Agenda for Historical Research*, *supra* note 33, at 65.

38. Maarten Schild, *Islam*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 179, 185 (Arno Schmitt & Jehoeda Sofer eds., 1992).

39. WHITAKER, *supra* note 5, at 206.

40. Huseyin Tapinc, *Masculinity, Femininity, and Turkish Male Homosexuality*, in *MODERN HOMOSEXUALITIES: FRAGMENTS OF LESBIAN AND GAY EXPERIENCE* 39, 41 (Ken Plummer ed., 1992).

41. WHITAKER, *supra* note 5, at 206.

42. Lagrange, *supra* note 24, at 172.

43. Gianni De Martino, *An Italian in Morocco* (Arno Schmitt trans.), in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 25, 27 (Arno Schmitt & Jehoeda Sofer eds., 1992).

44. Jerry Zarit, *Intimate Look of the Iranian Male*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 55, 56 (Arno Schmitt & Jehoeda Sofer eds., 1992).

45. Lagrange, *supra* note 24, at 181.

46. Jeffrey Weeks, *Foreword*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* ix, x (Arno Schmitt & Jehoeda Sofer eds., 1992).

47. Schild, *supra* note 38, at 185.

women"<sup>48</sup> and that women are inferior to men. This idea is emphasized by Arno Schmitt, who declares: "A *man* should not allow others to bugger him. Otherwise he loses his name [and] his honor [because] . . . 'only someone who can't fuck would allow others to fuck him.'"<sup>49</sup>

In addition, many consider the state of desiring penetration (*ubnah*) to be an illness,<sup>50</sup> because it is "incomprehensible that a man could voluntarily choose to be dishonored and debased in the role of a woman."<sup>51</sup> His willingness to "take pleasure in a subordinate sexual role, in submitting to penetration, [is] deemed inexplicable, and could only be attributed to pathology."<sup>52</sup> As a result, "to show that one likes it increases the stigma,"<sup>53</sup> especially because of the general association that the passive partner would become addicted to being in the passive role because "[i]t is like an infectious disease."<sup>54</sup> Due to these distinctions in sexual roles, in many Arab cultures, where penetration is central to their ideas and conceptions of homosexuality, the only "homosexual" in the sexual act is the one that takes the passive, "feminine," role.<sup>55</sup> The division of public and private spheres becomes essential in this process of stigmatization. Even though the Islamic norm is that a man in the sexually passive role has lost his honor and should be despised, "[t]here is always room for manoeuv[er]ing. . . . As long as nobody draws public attention to something everybody knows, one ignores what might disrupt important social relations."<sup>56</sup> Moreover, "it would be shameful to denounce somebody as having been [penetrated]. Done discreetly one is able to pretend that nothing has happened."<sup>57</sup> In this way, "[t]he Magribī . . . 'forgets' all the things one does not talk about."<sup>58</sup>

The predominant idiom for same-sex relations in Arab societies, however, has been age-stratified, where the expression of sexual power dynamics takes the form of pederasty in which an older Arab man penetrates a younger boy.<sup>59</sup> The boy then ceases to be penetrated soon after reaching puberty and may penetrate younger boys in return. The use of boys, Murray notes, is viewed as an alternative sexual outlet and release for a society where access to women is severely restricted, and the use of boys, who can still become honorable men in

48. Gary B. MacDonald, *Among Syrian Men*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 43, 49 (Arno Schmitt & Jehoeda Sofer eds., 1992).

49. *Different Approaches*, *supra* note 32, at 7 (emphasis added).

50. The idea of *ubnah* was first discussed in Ar-Razi's *Treatise on the Hidden Illness*. See *Agenda for Historical Research*, *supra* note 31, at 59.

51. Schild, *supra* note 36, at 185.

52. *Power and Sexuality*, *supra* note 7, at 10 (internal quotations omitted).

53. *Different Approaches*, *supra* note 32, at 7.

54. *Id.* at 8.

55. Tapinc, *supra* note 40, at 42.

56. *Different Approaches*, *supra* note 32, at 7.

57. De Martino, *supra* note 43, at 27.

58. *Id.* at 29.

59. See *HOMOSEXUALITIES*, *supra* note 6, at 130 ("Boys are much more available, and their sexual use less serious than the expropriation of the bodies of women to which some other man has the rights or the responsibility of conserving.").

the end, also protects women's virtue and purity.<sup>60</sup> In fact, Everett Rowson argues that there are parallels between male active homosexual desire for boys and male heterosexual desire for women in that the "canons for beauty of boys are virtually the same as those for women."<sup>61</sup> Bruce Dunne supports this idea using the example of Morocco where, for the notables of Fez, "it [was] just as good form to have a *mezlough* (a small pre-pubescent boy) or a *hassas* (a youth having reached puberty) as a pretty mistress."<sup>62</sup>

In classical times, boys were often the object of great passion and the subject of love poems; "a great many poets . . . have not hesitated, at some point or other in their career, to sing the praises of a youth."<sup>63</sup> James Silk Buckingham, who journeyed through Mesopotamia in 1817, discussed at length adult men's "platonic" love for respectable boys where "the youths who [were] the avowed favourites or beloved of particular individuals [were] as much respected and thought as honourably of, as any virtuous girl."<sup>64</sup> Arno Schmitt supports this idea saying, the fact "[t]hat all men were susceptible to boyish beauty was taken for granted. Many would fall in love with boys."<sup>65</sup> The Mamluks of Egypt were apparently addicted to pederasty,<sup>66</sup> "and others have stressed that parents groomed sons for sexual service to the rulers and, when successful, sold them."<sup>67</sup> These youths in many cases also improved their social status because favorite boys could grow up to marry their masters' daughters or take over their businesses, properties, etc.<sup>68</sup> Al-Hakim II, the Khalif of Cordoba from 961–976, was also "so exclusively committed to boy-love that in order to please him, his wife Subh had to dress like a boy and bear the masculine name Djafar."<sup>69</sup> Another example of male-boy relations occurred among the Afghan Pathan, where effeminate youths would also play the role of camp wife:

These *Zune-e-suffuree* (traveling wives) were the essential part of any camel caravan or other company of travelers passing through the forbidden Khyber [Pass] and into the fertile Punjab . . . [T]hese youths, ranging in age from five to twenty years, were scented, depilated, rouged hennaed, and adorned with long silken pomaded hair and kohl-rimmed provocative

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60. *See id.*

61. Everett K. Rowson, *The Categorization of Gender and Sexual Irregularity in Medieval Arabic Vice Lists*, in *BODY GUARDS: THE CULTURAL POLITICS OF GENDER AMBIGUITY* 50, 58 (Julia Epstein & Kristina Straub eds., 1991).

62. *Power and Sexuality*, *supra* note 7, at 62.

63. Charles Pellat, *Liwat*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 151, 157 (Arno Schmitt & Jehoeda Sofer, eds., 1992).

64. Stephen O. Murray, *Some Nineteenth-Century Reports of Islamic Homosexualities*, in *ISLAMIC HOMOSEXUALITIES: CULTURE, HISTORY, AND LITERATURE* 204, 205 (Stephen O. Murray & Will Roscoe, eds., 1997) [hereinafter *Nineteenth-Century Reports*].

65. *Different Approaches*, *supra* note 30, at 5.

66. Stephen O. Murray, *Male Homosexuality, Inheritance Rules, and the Status of Women in Medieval Egypt: The Case of the Mamlūks*, in *ISLAMIC HOMOSEXUALITIES: CULTURE, HISTORY, AND LITERATURE* 161, 165 (Stephen O. Murray & Will Roscoe, eds., 1997) [hereinafter *The Case of the Mamlūks*].

67. *HOMOSEXUALITIES*, *supra* note 6, at 54.

68. *Id.* at 56–57.

69. *The Will Not to Know*, *supra* note 26, 23–24 (internal quotations omitted).

eyes.<sup>70</sup>

In the same vein, Gavin Maxwell, a Scottish author that traveled to Morocco in 1966, observed that boys often accompanied imperial troops to satisfy their sexual needs.<sup>71</sup> These relations were not limited to military life, however, and even formed a part of the religious order where, as Finnish sociologist Edward Westermarck observed in Morocco, “[s]exual intercourse with a saintly person [was] considered beneficial . . . [I]t [was] a common belief among the Arabic-speaking mountaineers of Northern Morocco that a boy [could not] learn the Koran well unless a scribe commit[ed] pederasty with him.”<sup>72</sup>

Once again, the penetration of boys, just like with the penetration of feminized men, does not compromise a man’s masculinity or heterosexuality because, as Rowson notes, “if to be male (and adult) is to penetrate, men who penetrated boys were just as masculine as those who penetrated women.”<sup>73</sup> However, whereas the adult passive male is scorned and seen as powerless, boys could be penetrated without losing their potential manhood because “[a]s long as the penetrated was a boy who was not yet virile, his masculinity was not regarded as compromised by his taking of the passive role”<sup>74</sup>; thus, there was no stigma in this process. However, boys were not supposed to enjoy being penetrated because of the concern that this enjoyment would develop into an addiction and would continue into adulthood. And those boys that were known to have been penetrated were thought to be game to everyone else for penetration. Pederasty would continue until the boys became older and more manly and thus, less desirable. The natural cycle was such that these boys would become “men” and then go on to get married and penetrate women and other boys as well. Schmitt describes this natural progression from a boy’s “desire to be [penetrated], and the desire to be taken care of . . . transformed into the wish to sodomise and to appear invulnerable.”<sup>75</sup> Thus, as men, they should no longer desire or accept the passive role in such relations. Gianni De Martino sums up these ideas: “[b]y the age of 15 or 16 a *zamel* [someone submitting to anal intercourse] loses his admirers or he starts refusing advances: becomes a ‘man’, i.e. he fucks boys and courts girls.”<sup>76</sup>

## B. Private Lies, Public Scorn

How can there be so many problems with homosexuality in the Arab world when homosexual acts have been so widespread over its history? The idea of collective denial, mentioned earlier, is a crucial element to answering this question. The issue with “homosexuality” arises when the men who perform these acts clearly and publicly define themselves as homosexual, that is to say, define their identity based on the exclusive sexual involvement with other men. Here, public acknowledgment becomes the primary problem because

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70. *Id.* at 28.

71. *Agenda for Historical Research*, *supra* note 33, at 61–62.

72. *Nineteenth-Century Reports*, *supra* note 64, at 217–18.

73. Rowson, *supra* note 61, at 69.

74. Schmidtke, *supra* note 20, at 261.

75. *Different Approaches*, *supra* note 32, at 3.

76. De Martino, *supra* note 43, at 26.

homosexuality is “a subject that Arabs . . . are generally reluctant to discuss”<sup>77</sup> and “those who publicly flout the codes [for conformity] bring ‘shame’ upon the community as well as themselves.”<sup>78</sup> By breaking away from the expectations set in the public and private spheres of life and by rupturing the idea of collective denial through the presentation of exclusive, romantic homosexual relationships in the public sphere, openly homosexual men force people to acknowledge their presence. This type of public acknowledgment goes against some of the most important principles of Arab society: family, procreation, and Islam, where homosexuality is seen as a ‘fierce attack on progeny and pregnancy.’<sup>79</sup> Moreover, the idea of egalitarian, reciprocal sexual and romantic relations between men is incomprehensible. As anthropologist Malek Chebel argues, far worse than the participation in homosexual acts is the presence of love, affection, or equality among participants,<sup>80</sup> and “[e]qually strange is the idea that a man could both sodomise and be sodomised by the same man.”<sup>81</sup> This idea is especially palpable when one sees that most words for “to fuck” in Arabic have no form of reciprocity<sup>82</sup> and “this vocabulary reflects a sharp separation between penetrator and penetratee.”<sup>83</sup> One of the most commonly used terms for same-sex male acts is *liwat*, which, as Schmitt discusses, cannot refer to a “joint action by several ‘equal’ actors, but only to something done by someone to somebody else.”<sup>84</sup>

So it is not that same-sex acts cannot occur, it is that everyone must keep up appearances that conform to the important principles and values of Arab society; “so long as everyone can pretend that [homosexuality] doesn’t happen, there is no need to do anything [to] stop it.”<sup>85</sup> Brian Whitaker discusses this manner of keeping up appearances, elaborating on the

double life that Arabs, especially the younger ones, increasingly lead—of a growing gap between the requirements of society and life as it is actually lived, between keeping up appearances in the name of tradition or respectability and the things people do in private or when away from home.<sup>86</sup>

This “double life” almost always involves marriage, because, as already noted, family and progeny are of the utmost importance in Arab society. As Brian Whitaker, former Middle East editor for British newspaper *The Guardian*, notes:

the range of plausible excuses for not marrying at all is severely limited. This presents [gay Arab men] with an unenviable choice: to declare their sexuality (with all the consequences that can entail) or to accept that marriage is inevitable and either try

77. WHITAKER, *supra* note 5, at 9.

78. *Id.* at 220.

79. *Id.* at 149.

80. *Power and Sexuality*, *supra* note 7, at 10.

81. *Different Approaches*, *supra* note 32, at 6.

82. *Id.* at 10.

83. *Id.* at 13.

84. *Id.* at 14.

85. WHITAKER, *supra* note 5, at 10.

86. *Id.* at 7.

to suppress their homosexual feelings or pursue outlets for them alongside marriage.<sup>87</sup>

Moreover, the majority of Arabs feel an incredible sense of loyalty and duty to their families and many openly gay Arabs are willing to put this loyalty before notions of their own sexuality, especially when being openly gay will tarnish a family's respectability and status (and may prevent brothers and sisters from marrying, etc.).<sup>88</sup> However, if a man fulfills his role as a husband and a father in the public realm, what he does in private many times is not questioned. This is because publicly condemned sexual acts, such as same-sex sexual relations, can occur provided that the paramount values of family maintenance and reproduction are not threatened.<sup>89</sup> So while a man must comply with his role by marrying and having children, "[a]s long as he maintains his role in public, his private preferences and idiosyncrasies are nobody's business but his own, that is if he is discrete about them, and harms no one."<sup>90</sup> In this way, it is "only [the] public transgression of Islamic morals that is condemned"<sup>91</sup> and it is only through silence and collective denial that homosexual acts still occur in Arab society without severe repercussions. But this type of framework leaves very little room for egalitarian homosexual relations.

This framework also lends credence to the idea that a sexual identity that is based on homosexual/homoerotic acts (also known as a "substitutive" model, discussed later) may simply not be a relevant or salient concept in the Arab world. This is an imposition of a heterosexual/homosexual binary, a Western orientalist imposition, because sexuality in the Arab world does not function along these lines.<sup>92</sup> This idea is important to keep in mind when thinking about LGBT rights advocacy in the Arab world, and will be explored further later in this note.

## II. FEAR AND LOATHING IN CAIRO

When people think of homosexuality and the Arab world, the first words that usually come to mind are repression, discrimination, violence, the death penalty, denial, torture, etc. Many of these ideas are unfortunately true; as Brian Whitaker discusses in his book *Unspeakable Love: Gay and Lesbian Life in the Middle East*:

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87. *Id.* at 25.

88. *Id.* at 26–27.

89. *Power and Sexuality*, *supra* note 7, at 9.

90. Schild, *supra* note 38, at 184.

91. *Will Not to Know*, *supra* note 26, at 15.

92. See Massad, *supra* note 12, at 383–84 ("By inciting discourse about homosexuals where none existed before, the Gay International is in fact *heterosexualizing* a world that is being forced to be fixed by a Western binary. Because most non-Western civilizations, including Muslim Arab civilization, have not subscribed historically to these categories, their imposition is producing less than liberatory outcomes: men who are considered the passive or receptive parties in male-male sexual contacts are forced to have one object choice and identify as homosexual or gay, just as men who are the 'active' partners are also forced to limit their sexual aim to one object choice, women or men. Most 'active' partners see themselves as part of a societal norm, so heterosexuality becomes compulsory given that the alternative, as presented by the Gay International, means becoming marked outside the norm—with all the attendant risks and disadvantages of such a marking.").

People whose sexuality does not fit the norm have no legal rights; they are condemned to a life of secrecy, fearing exposure and sometimes blackmail; many are forced into unwanted marriages for the sake of their family's reputation; there is no redress if they are discriminated against; and agencies providing advice on sexuality and related health matters are virtually non-existent.<sup>93</sup>

Homosexuality is indeed illegal in most Arab countries. Thirty-six of the eighty-one countries identified by the International Lesbian and Gay Association as outlawing same-sex acts belong to the Arab league and/or Islamic Conference Organization.<sup>94</sup> Not only are same-sex acts illegal in the majority of Arab countries, but the possible punishments and penalties for the acts can be particularly harsh, including long prison sentences, lashes and beatings, and even the death penalty in some countries (which can involve beheading or even stoning the "perpetrator" to death).<sup>95</sup> Between 2001 and the release of their report in 2004, Human Rights Watch identified at least 179 cases in which men were brought before prosecutors under Egypt's law against "debauchery," which it predicts was only a miniscule percentage of the actual total.<sup>96</sup> Hundreds of others, the report continues, have been "harassed, arrested, often tortured, but not charged."<sup>97</sup> While prison sentences are a far more common punishment, Saudi Arabia, Iran, and Afghanistan still prescribe the death penalty in some instances. For example, on July 11, 2000, three men were beheaded for what the Saudi interior ministry described as "the extreme obscenity and ugly acts of homosexuality, marrying among themselves and molesting the young."<sup>98</sup> In Iran, soon after Ayatollah Khomeini came to power in 1979 and established the death penalty for homosexual acts, there were sixteen executions in February and March of 1979 alone.<sup>99</sup>

More recent reports of human rights violations in Arab countries continue to include murder, torture, and arbitrary detention. For example, in April 2009, at least sixty-three people were tortured and seven killed in Iraq because of their perceived sexual orientation.<sup>100</sup> In addition, in June 2009, sixty-seven men were arrested in Riyadh, Saudi Arabia for wearing women's clothing.<sup>101</sup> The number of executions of gay people in Iran has risen sharply in the past few years,<sup>102</sup> and

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93. WHITAKER, *supra* note 5, at 10.

94. *Id.* at 112.

95. Kim Krisberg, *Saudis Beheaded for Sodomy*, WASH. BLADE (Jan. 4, 2002), [www.sodomylaws.org/world/saudi\\_arabia/saudinews15.htm](http://www.sodomylaws.org/world/saudi_arabia/saudinews15.htm) (last visited Mar. 23, 2012).

96. *In a Time of Torture*, *supra* note 2, at 2.

97. *Id.*

98. Krisberg, *supra* note 95.

99. WHITAKER, *supra* note 5, at 79.

100. Hossein Alizadeh, *Iraq: Torture, Cruel, Inhuman and Degrading Treatment of LGBT People*, INT'L GAY & LESBIAN HUM. RTS. COMM'N BLOG (Apr. 20, 2009), <http://iglhrc.wordpress.com/2009/04/20/iraq-torture-cruel-inhuman-and-degrading-treatment-of-lgbt-people/>. For a detailed report on these events, see *They Want Us Exterminated*, *supra* note 2.

101. *Saudi Arabia: Drop 'Cross-Dressing' Charges*, HUM. RTS. WATCH (June 24, 2009), [www.hrw.org/en/news/2009/06/24/saudi-arabia-drop-cross-dressing-charges](http://www.hrw.org/en/news/2009/06/24/saudi-arabia-drop-cross-dressing-charges).

102. Rasheed Abou-Alsamh, *Protecting Rights of Gay Citizens in Iran*, PBS FRONTLINE (Dec. 10,

there are countless other stories in Iran and other Arab countries of violence against, as well as the persecution and criminalization of, LGBT people.<sup>103</sup>

These severe laws and treatment have a basis in Islamic law because in the Qur'an sodomy is strongly condemned in a number of verses concerning Lot (Lut in the Qur'an) and his people. While the verses are open to interpretation, the stricter Islamic jurist interpretation has become a legal precedent supporting the recommendation of stoning the homosexual perpetrator to death on the grounds that it replicates God's punishment of Sodom.<sup>104</sup> There is actually no clear punishment prescribed in the Qur'an, but some *hadiths* (narrative records of the sayings or customs of Muhammad and his companions), however, proclaim death for sodomy,<sup>105</sup> declaring that "both the active and the passive [partner] should be stoned"<sup>106</sup> because "[w]hen a male mounts another male, the throne of God trembles."<sup>107</sup> Abu Bakr, the first Caliph in Islam (and father-in-law to Islamic prophet Muhammad), for example, condemned a homosexual to "be buried beneath the debris of a wall, and prescribed burning alive as the penalty for all those guilty of such practises (sic)."<sup>108</sup> These ideas stem from the notion that:

Sexual activity outside of marriage, adultery, is sharply condemned by Islamic law as a crime against humanity, which opens the door to many other shameful acts, and affects the reputation and property of the family, thereby disrupting the social fabric. Homosexual behavior (*liwat*) . . . is considered to be adultery, being sex with an illicit partner . . . . Homosexual behavior is actually considered a revolt against God which violates the order of the world, and would be a source of evil and anarchy.<sup>109</sup>

However, it should be noted that because sodomy is "not among the *hadd* crimes specified in the Qur'an, . . . the penalties assigned for it by the various

2011, 3:28 PM), [www.pbs.org/wgbh/pages/frontline/tehranbureau/2011/12/xxx-un-calls-on-iran-to-respect-protect-rights-of-gay-citizens.html](http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2011/12/xxx-un-calls-on-iran-to-respect-protect-rights-of-gay-citizens.html).

103. See *Islam and Homosexuality: Straight but Narrow*, ECONOMIST (Feb. 4, 2012), available at <http://www.economist.com/node/21546002> ("Of the seven countries that impose the death penalty for homosexuality, all are Muslim. Even when gays do not face execution, persecution is endemic. In 2010 a Saudi man was sentenced to 500 lashes and five years in jail for having sex with another man. In February last year, police in Bahrain arrested scores of men, mostly other Gulf nationals, at a "gay party". Iranian gay men are typically tried on other trumped-up charges. But in September last year three were executed specifically for homosexuality . . . . Where laws are gentler, authorities find other ways to crack down. In the Jordanian capital, Amman, several gay hangouts have been raided or closed on bogus charges, such as serving alcohol illegally."). For a detailed report on the mistreatment of Iranian gay men and women, see *We Are a Buried Generation: Discrimination and Violence against Sexual Minorities in Iran*, HUM. RTS. WATCH, (Dec. 15, 2010) [www.hrw.org/reports/2010/12/15/we-are-buried-generation-0](http://www.hrw.org/reports/2010/12/15/we-are-buried-generation-0).

104. WHITAKER, *supra* note 5, at 192.

105. Jim Wafer, *Muhammad and Male Homosexuality*, in *ISLAMIC HOMOSEXUALITIES: CULTURE, HISTORY, AND LITERATURE* 87, 89 (Stephen O. Murray & Will Roscoe eds., 1997).

106. Jehoeda Sofer, *Sodomy in the Law of Muslim States*, in *SEXUALITY AND EROTICISM AMONG MALES IN MOSLEM SOCIETIES* 131, 132 (Arno Schmitt & Jehoeda Sofer eds., 1992).

107. Schild, *supra* note 38, at 181.

108. Pellat, *supra* note 63, at 153.

109. Schild, *supra* note 38, at 180.

schools of Islamic law are the result of human (and therefore fallible) processes of deduction."<sup>110</sup>

One of the major consequences of these laws and penalties is that many homosexuals are subjected to harsh treatment from the police, whether it involve raids, entrapment methods, blackmail, or torture. One of the most notable and publicized cases occurred a little over a decade ago in Egypt in 2001 when the police raided the Queen Boat, a floating night club on the Nile that was known to be frequented by "men attracted to other men . . . all in the name of moral rectitude."<sup>111</sup> As a result of this raid, several dozen men were arrested and fifty-two men went to trial.<sup>112</sup> In 2005, police arrested more than one hundred men after raiding a party in Jeddah, Saudi Arabia, that was described as a "gay wedding," where the men—all Saudis—were reported to have been "dancing and 'behaving like women.'"<sup>113</sup> Thirty-one of the men were sentenced to between six months and a year of prison, with 200 lashes each.<sup>114</sup> Four other men were jailed for two years, with 2,000 lashes and a further seventy men were later sentenced to a year in jail.<sup>115</sup> Apart from these raids, another common, and newer, method of singling out homosexual acts is through entrapment, where informants set up "gay parties" that are later raided by the police (and where arrests are made) or where informants go on online to gay websites and chat with unsuspecting men wanting to perform homosexual acts who later will meet them in a public place only to be confronted by the police and arrested instead.<sup>116</sup>

In many of these cases, homosexual men are also tortured. After the police entrapped Tayseer, a Palestinian from Gaza, they told him he would have to become an undercover agent (where he would also entrap gay men and thus continue the vicious cycle) in order to avoid prison.<sup>117</sup> When he refused, he was tortured. "He was forced to stand in sewage water up to his neck, his head covered by a sack filled with feces, and then he was thrown into a dark cell infested with insects and other creatures he could feel but not see."<sup>118</sup> And during another interrogation, he was forced to sit on a coke bottle.<sup>119</sup> In Turkey, the police would pick up people who they assumed were homosexual and these people were

stuffed into a place which is part prison and part lunatic asylum—which they call a 'hospital.' There, even the healthy ones [were] diagnosed as having syphilis . . . and [they were] locked up, beaten, and humiliated. Their hair [was] cut and they [were] thrown out of the city . . . [The police] notif[ied their]

110. WHITAKER, *supra* note 5, at 118.

111. *Id.* at 8.

112. *Id.* at 8, 49.

113. *Saudi Arabia: Men "Behaving Like Women" Face Flogging*, HUM. RTS. WATCH (Apr. 7, 2005), [www.hrw.org/news/2005/04/06/saudi-arabia-men-behaving-women-face-flogging](http://www.hrw.org/news/2005/04/06/saudi-arabia-men-behaving-women-face-flogging).

114. *Id.*

115. *Id.*

116. See *In a Time of Torture*, *supra* note 2, at 5–6; WHITAKER, *supra* note 5, at 23–26.

117. Yossi Klein Halevi, *Refugee Status*, NEW REPUBLIC (Aug. 19, 2002), [www.tnr.com/article/refugee-status](http://www.tnr.com/article/refugee-status) (last visited Mar. 23, 2012).

118. *Id.*

119. *Id.*

employers in writing, causing homosexuals to be interrogated and to lose their jobs. [The police] even notif[ied their] parents.”<sup>120</sup>

Similarly, a Police Commissioner of the Beyoglu area, which has been known for having a large number of gay men, ordered several raids on gay homes, leaving doors smashed. The men were then “stripped naked, truncheons were inserted into their anuses and they were beaten severely.”<sup>121</sup> As a result of such incidents, many times when homosexuals are attacked, assaulted, or robbed, they cannot turn to the police for help because they fear being further criminalized and tortured instead.

Far worse than being entrapped and tortured by the police for the gay Arab man, however, is the idea of being discovered and disclosed to his family. As Gary B. MacDonald’ notes, “even the death penalty is less feared than disclosure before one’s family and friends. Gays tremble merely to imagine the ostracism that would result from the most important act of coming out. Compared to it, self-imposed exile is trivial.”<sup>122</sup> Whitaker also discusses the idea that: “[f]ear of the law seems less immediately relevant than fear of the ‘shame’ that would be heaped upon a gay man’s family if his sexuality became known.”<sup>123</sup> Whitaker recounts many stories from Arabs he interviewed who were beaten severely by their families, one of whom was even imprisoned in his own house for five days, locked in the boot of a car, threatened at gunpoint, and told “if I find out one day that you *are* gay, you’re dead. It’s not good for our family and our name.”<sup>124</sup> Having homosexuality in the family incurs a large stigma that can make other siblings worse candidates for marriage, and many Arab homosexuals’ loyalty to their family is much stronger than their desire to be open about their sexuality.<sup>125</sup>

That being said, while many gay Arab men accept silence and denial as a part of life, others attempt to leave the country, primarily due to fear of the authorities and their family (who in many cases exact physical violence on gay family members when they discover they are gay). These attempts, however, are usually unsuccessful because even though the 1951 UN Convention and Protocol Relating to the Status of Refugees stipulates that countries have a legal duty to offer protection to those people with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,”<sup>126</sup> many countries (even countries where sexually-based persecution is an accepted principle) have still refused asylum to gay Arabs who fear persecution and the possible death penalty upon their return home. As a result, some gay Arab asylum seekers have committed suicide.<sup>127</sup>

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120. Arslan Yuzgun, *Homosexuality and Police Terror in Turkey*, 24 J. OF HOMOSEXUALITY 159, 164 (1993).

121. *Id.* at 167.

122. MacDonald, *supra* note 48, at 45.

123. WHITAKER, *supra* note 5, at 60.

124. *Id.* at 18.

125. *See id.* at 27.

126. U.N. HIGH COMM’R FOR REFUGEES, CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 3 (2011).

127. WHITAKER, *supra* note 5, at 33.

## III. INTERNATIONAL LGBT HUMAN RIGHTS IN THE ARAB WORLD?

As the previous section of this note indicates, there are some legitimate concerns with regards to the human rights of LGBT people, and those that perform homosexual acts, in the Arab world, including torture, humiliation, criminalization, and even execution in some circumstances. These concerns have mobilized several international leaders and other people in the international human rights community, with many calling for the application of international human rights principles to LGBT people in the region. Most recently, the United Nations (UN) Human Rights Council held a panel in Geneva in March 2012 on the issue of “[d]iscriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.”<sup>128</sup> The panel discussion, which was sponsored by South Africa and Brazil, was moderated by the Ambassador of South Africa and featured panelists from Brazil, Pakistan, Sweden and the United States.<sup>129</sup> The panel arose out of the UN Human Rights Council resolution 17/19 from June 2011 that expressed “grave concern” about acts of violence and discrimination based on sexual orientation and gender identity.<sup>130</sup> The resolution requested the High Commissioner for Human Rights to prepare a report on “how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity,”<sup>131</sup> and called for a panel discussion at the nineteenth session of the Human Rights Council to discuss the findings of the report in a “constructive, informed and transparent dialogue.”<sup>132</sup> All of the panelists, and the majority of the countries that made statements during the proceedings, called for the application of universal human rights principles to LGBT people (the approach advocated by the *Yogyakarta Principles*, which will be discussed in more depth shortly), under which “all human beings are born free and equal in dignity and rights”.<sup>133</sup> Multiple nations pointed out that they were not requesting the creation of new rights for LGBT people, but rather advocating that LGBT people be able to enjoy all the same rights that everyone else in their societies enjoys (and many times, takes for granted).<sup>134</sup>

The panel conversation is the continuation of a recent push over the past year for international LGBT rights in many parts of the world. For example, President Obama recently released a Presidential Memorandum entitled *International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons*, which stated: “[t]he struggle to end discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons is a global challenge, and

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128. U.N. HUM. RTS. COUNCIL, PANEL ON SEXUAL ORIENTATION AND GENDER IDENTITY, NINETEENTH SESSION OF TWENTY-SECOND MEETING 1 (Mar. 7, 2012), available at <http://www.unmultimedia.org/tv/webcast/2012/03/panel-discussion-sexual-orientation-and-gender-identity.html>.

129. *Id.*

130. Human Rights Council Res. 17/19, Human Rights, Sexual Orientation and Gender Identity, 17th Sess., July 14, 2011, A/HRC/RES/17/19, at 1 (July 14, 2011).

131. *Id.*

132. *Id.* at 2.

133. YOGYAKARTA PRINCIPLES, *supra* note 10, at 6.

134. U.N. HUM. RTS. COUNCIL, PANEL ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 128.

one that is central to the United States' commitment to promoting human rights."<sup>135</sup> This position was reinforced by U.S. Secretary of State Hillary Rodham Clinton, who stated: "Gay rights are human rights, and human rights are gay rights, once and for all."<sup>136</sup> While these documents are directed at LGBT discrimination all over the world, the Arab world is certainly a focal part of the conversation.<sup>137</sup>

The past few decades have seen the rise of a global gay rights movement. As Carl Stychin, a Professor at City Law School in London, discusses:

In the past decade, a "double movement of globalization" has taken place in the realm of gay rights. On the one hand, a globalization of human rights has occurred, whereby human rights have become a key criterion by which the "progress" of nations is evaluated. On the other hand, there has been a globalization of same-sex sexualities as identities.<sup>138</sup>

Sonya Katyal, a Professor at Fordham Law, further comments that "the struggle for gay civil rights is becoming more global"<sup>139</sup> and that "[g]ay and lesbian organizations now exist in virtually every continent and in many major urban centers throughout the world."<sup>140</sup>

As a result of this global movement towards international LGBT rights, in 2007 a group of human rights experts launched the *Yogyakarta Principles*:

135. Presidential Memorandum on International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons, 2011 DAILY COMP. PRES. DOC. (Dec. 6, 2011), available at [www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l](http://www.whitehouse.gov/the-press-office/2011/12/06/presidential-memorandum-international-initiatives-advance-human-rights-l).

136. U.S. DEPT. OF STATE, *Factsheet: U.S. Dept. of State Engagement on the Human Rights of Lesbian, Gay, Bisexual, and Transgender People*, available at [www.humanrights.gov/wp-content/uploads/2011/12/20111214-dos-lgbt-factsheet.pdf](http://www.humanrights.gov/wp-content/uploads/2011/12/20111214-dos-lgbt-factsheet.pdf) (last visited Mar. 26, 2012). The factsheet emphasizes the Department of State's active work and leadership in protecting LGBT people through human rights promotion, including:

- **Engaging** bilaterally and regionally in conjunction with U.S. embassies, civil society, and multilateral agencies to encourage countries to repeal or reform laws that criminalize LGBT conduct or status.
- **Reinforcing** the human rights of LGBT people in multilateral fora, such as the UN Human Rights Council (HRC). . . .
- **Promoting** human rights worldwide. . . .
- **Supporting** LGBT human rights defenders and civil society groups, with programmatic and financial assistance, including efforts to document human rights violations; build advocacy skills; provide advocates with legal representation; and, when necessary, relocation support.
- **Reporting** on the conditions of human rights of lesbian, gay, bisexual and transgender people in each of its annual, country-specific Human Rights Reports.
- **Strengthening** the Department's personnel and consular policies. . . .
- **Protecting** LGBT refugees, asylum seekers, and migrants through a protection strategy developed with other U.S. Government agencies, the UN High Commissioner for Refugees and NGOs.

137. *Id.* at 13–15.

138. Carl F. Stychin, *Same-Sex Sexualities and the Globalization of Human Rights Discourse*, 49 MCGILL L. J. 951, 951 (2004).

139. Sonia Katyal, *Exporting Identity*, 14 YALE J.L. & FEMINISM 97, 99 (2002).

140. *Id.* at 98.

*Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, providing the most comprehensive effort to apply international human rights law principles to LGBT people around the world.<sup>141</sup> As the Introduction to the Yogyakarta Principles begins:

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.<sup>142</sup>

Thus, at the core of the Yogyakarta Principles are the human rights norms of universality and non-discrimination. The Principles then discuss that while

[m]any advances have been made toward ensuring that people of all sexual orientations and gender identities can live with the equal dignity and respect to which all persons are entitled. . . . [n]evertheless, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights.<sup>143</sup>

The Introduction then continues that to address these concerns, "a consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity is necessary."<sup>144</sup> The Introduction finally concludes that the Yogyakarta Principles:

address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. . . . affirm the primary obligation of States to implement human rights. . . . affirm binding international legal standards with which all States must comply. . . . [and] promise a different future where all people born free and equal in dignity and rights can fulfill that precious birthright.<sup>145</sup>

After this introduction and background, the Principles then officially begin with a Preamble, which emphasizes many of the same points discussed in the Introduction, but in a shorter, more formalized fashion.<sup>146</sup> After the Preamble,

141. O'Flaherty & Fisher, *supra* note 9, at 207.

142. YOGYAKARTA PRINCIPLES, *supra* note 10, at 6.

143. *Id.*

144. *Id.* at 7.

145. *Id.*

146. *Id.* at 8–9. The Preamble includes short statements such as:

- **RECALLING** that all human beings are born free and equal in dignity and rights, and that everyone is entitled to the enjoyment of human rights without distinction of any kind. . . .
- **DISTURBED** that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all regions of the world because of their sexual

the Yogyakarta Principles then list twenty-nine principles, each of which “comprises a statement of international human rights law, its application to a given situation and an indication of the nature of the State’s duty to implement the legal obligation.”<sup>147</sup> As Michael O’Flaherty and John Fisher discuss, there is an order to the principles:

Principle	Emphasis
1-3	<ul style="list-style-type: none"> <li>• Principles of the universality of human rights and their application to all personal without discrimination.</li> <li>• Right of all people to recognition before the law.</li> </ul>
4-11	<ul style="list-style-type: none"> <li>• Fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention.</li> </ul>
12-18	<ul style="list-style-type: none"> <li>• Non-discrimination in the enjoyment of economic, social and cultural rights, including employment, accommodation, social security, education and health.</li> </ul>
19-21	<ul style="list-style-type: none"> <li>• Freedom to express oneself, one’s identity and one’s sexuality, without State interference based on sexual orientation or gender identity.</li> <li>• Rights to participate peaceably in public assemblies and events and otherwise associate in community with others.</li> </ul>
22-23	<ul style="list-style-type: none"> <li>• Rights of persons to seek asylum from persecution based on sexual orientation or gender identity.</li> </ul>
24-26	<ul style="list-style-type: none"> <li>• Rights of persons to participate in family life, public affairs and the cultural life of their community, without discrimination based on sexual orientation or gender identity.</li> </ul>

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orientation or gender identity . . .

- **OBSERVING** that international human rights law affirms that all persons, regardless of sexual orientation or gender identity, are entitled to the full enjoyment of all human rights . . .
- **RECOGNISING** that there is significant value in articulating in a systematic manner international human rights law as applicable to the lives and experiences of persons of diverse sexual orientations and gender identities . . .” etc. (emphasis in original).

147. O’Flaherty & Fisher, *supra* note 8, at 234.

27	<ul style="list-style-type: none"> <li>•Right to defend and promote human rights without discrimination based on sexual orientation and gender identity.</li> <li>•Obligation of States to ensure the protection of human rights defenders working in these areas.</li> </ul>
28-29	Importance of holding rights violators accountable and ensuring appropriate redress for those who face rights violations. <sup>148</sup>

Overall, the *Yogyakarta Principles* are meant to be a comprehensive reflection of the current status of international human rights law as it could potentially apply to sexual orientation and gender identity. According to O’Flaherty and Fisher, the Principles have been “met with a surprising degree of success”<sup>149</sup> and are “increasingly cited in the international human rights system.”<sup>150</sup> Other scholars attribute this apparent success of the Principles to the fact that they

de-mystify the large and very legalistic array of international human rights treaties, jurisprudence, and procedural actions. They distill hundreds of pages of documents reflecting decades of advocacy and scholarship into 29 basic principles that emanate from two fundamental, and interlocking, human rights concepts: 1) that human rights law must be universally applied if it is to have any integrity at all, and 2) that every person has the right to be treated with respect and to be free from social and legal discrimination because of who they are.<sup>151</sup>

Accordingly, several scholars have also called for the application of the Yogyakarta Principles to the Arab world, saying that “‘Queer Muslims’ should widely use the platform of the Yogyakarta Principles to frame their human rights demands, based on international human rights law.”<sup>152</sup>

However, while the Principles may be experiencing success in some parts of the world since their release, they certainly have not been without serious detractors, and not surprisingly, many of these detractors are from the Arab world. In particular, the Organization of the Islamic Conference (OIC) has been passionately opposed to the application of international human rights principles to LGBT people because the OIC does not believe that human rights violations based on sexual orientation or gender identity constitute legitimate areas of human rights concern. At the most recent UN Human Rights Council panel in

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148. *Id.* at 234–35.

149. *Id.* at 238.

150. Hamzić, *supra* note 11, at 250.

151. Paula L. Ettlbrick & Alia Trabucco Zerán, *The Impact of the Yogyakarta Principles on International Human Rights Law Development*, at 60 (Sept. 10, 2010), available at [www.ypinaction.org/files/02/57/Yogyakarta\\_Principles\\_Impact\\_Tracking\\_Report.pdf](http://www.ypinaction.org/files/02/57/Yogyakarta_Principles_Impact_Tracking_Report.pdf).

152. Hamzić, *supra* note 11, at 270.

March 2012 on sexual orientation and gender identity, several Arab and Islamic states walked out of the panel,<sup>153</sup> and the OIC, as well as Mauritania, on behalf of the Arab group, expressed their complete opposition to the findings and recommendations of the UN High Commissioner's report and to the general work of the UN Human Rights Council to promote international human rights for LGBT people.<sup>154</sup> During the panel, the OIC described homosexuality as "licentious behavior," and emphasized that sexual orientation has no clear definition and should not be introduced into the UN human rights framework.<sup>155</sup> The OIC also expressed concern that such efforts may lead to the social normalization and the legitimization of many "deplorable acts" such as pedophilia and incest, and the OIC called on the Council to demonstrate sensitivity to different cultural and social common belief systems and to refrain from promoting national or regional values or norms that do not enjoy international consensus.<sup>156</sup> Mauritania, in addition, said that "the controversial topic of sexual orientation" would undermine discussion in the Council of all "genuine human rights problems," and that the Council's work posed a serious challenge to cultural pluralism and constituted a breach of the right of states and communities to promote their own well-established value systems.<sup>157</sup> Ultimately, Mauritania stated that the focus on homosexuals was totally extraneous to the human rights system because the UN is not required to deal with a person's individual choices and personal likes and dislikes.<sup>158</sup> Such statements demonstrate that the Arab world's opposition to applying international human rights principles to LGBT people is still unwavering, and continues to hold strong in 2013.

These statements and actions are the continuation of a longstanding effort by the Arab world, and the OIC in particular, to shut down any potential proposals to discuss international human rights for LGBT people. As various resolutions or statements have been raised in the UN over the past decade regarding international human rights and sexual orientation/gender identity, the OIC has consistently denounced such efforts, asserting that "[sexual orientation] is not a human rights issue."<sup>159</sup> For example, when a resolution on human rights and sexual orientation was presented by the Brazilian delegation before the UN Commission on Human Rights in 2003, the OIC brought a "no action" motion and then threatened to boycott an upcoming Arab-Latin American trade summit.<sup>160</sup> Then, five years later, Argentina delivered a historic statement on human rights, sexual orientation, and gender identity at the 63rd session of the UN General Assembly, and the OIC immediately responded with a statement,

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153. Robert Evans, *Islamic States, Africans Walk Out On U.N. Gay Panel*, REUTERS (Mar. 8, 2012, 1:35 PM), [www.reuters.com/article/2012/03/07/un-gays-idAFL5E8E778Z20120307](http://www.reuters.com/article/2012/03/07/un-gays-idAFL5E8E778Z20120307).

154. U.N. HUM. RTS. COUNCIL, PANEL ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 128.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. Ignacio Saiz, *Bracketing Sexuality: Human Rights and Sexual Orientation – A Decade of Dev. and Denial at the UN 12* (Sexual Policy Watch, Working Paper No. 2, 2005).

160. Hamzić, *supra* note 11, at 245.

delivered by Syria, on behalf of 57 states.<sup>161</sup> The statement denied sexual orientation and gender identity as cognizable grounds of discrimination, and expressed a fear that the recognition of these categories could “legitimize many deplorable acts, such as paedophilia”<sup>162</sup> (an argument, as discussed earlier, that was reiterated by the OIC again in 2012 during the UN Human Rights Council panel on sexual orientation and gender identity). Needless to say, many countries in the Arab world are not receptive to the spirit behind the Yogyakarta Principles.

Apart from this opposition on the international human rights stage, the approach of applying an international gay human rights framework, and of using open gay rights advocacy, has also been met with criticism and opposition from scholars. One of the most notable and outspoken critics is Joseph Massad of Columbia University, who has called the promotion of gay rights in Arab countries an imperialist-style “missionary” project in which the “Gay International” forces the Arab to subscribe to a heterosexual/homosexual binary, thus “heterosexualising” him because when only given the choice to be one or the other, heterosexuality will be the option dictated by cultural norms.<sup>163</sup> Massad’s “Gay International” “both produces . . . gays and lesbians, where they do not exist and represses same-sex desires and practices that refuse to be assimilated into its sexual epistemology.”<sup>164</sup> The “Gay International,” according to Massad, also “incites discourse,” because “same-sex contact between men has not been a topic of government or journalistic discourse in the Arab world of the last two centuries.”<sup>165</sup> This discourse, Massad continues, “assumes prediscursively that homosexuals, gays, and lesbians are universal categories that exist everywhere in the world, and based on this prediscursive axiom, the Gay International . . . demands that their rights as ‘homosexuals’ be granted where they are denied. . . .”<sup>166</sup> This missionary campaign will also produce effects that are less than liberating for supposed “gay” people in the Arab world, Massad argues, because:

men who are considered the passive or receptive parties in male-male sexual contacts are forced to have one object choice and identify as homosexual or gay, just as men who are the “active” partners are also forced to limit their sexual aim to one object choice, women or men. . . . The so-called passive homosexual whom the Gay International wants to defend against social denigration will find himself in a double bind: first, his sexual desires will be unfulfilled because he will no longer have access to his previously available sexual object choice (i.e., exclusively active partners, as in the interim they will have become

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161. Press Release, Dept. of Pub. Info., General Assembly Adopts 52 Resolutions, 6 Decisions Recommended by Third Committee on Wide Range of Human Rights, Social, Humanitarian Issues, U.N. Press Release GA/10801 (Dec. 18, 2008), available at [www.un.org/News/Press/docs/2008/ga10801.doc.htm](http://www.un.org/News/Press/docs/2008/ga10801.doc.htm).

162. *Id.*

163. Massad, *supra* note 12, at 361–62, 383–85

164. *Id.* at 363.

165. *Id.* at 374.

166. *Id.* at 363.

heterosexual); and second, he will fall victim to legal and police persecution as well as heightened social denigration as his sexual practice becomes a topic of public discourse that transforms it from a practice into an identity.<sup>167</sup>

In short, 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.”<sup>168</sup>

Lying at the base of Massad’s critique is the idea that the push for international LGBT rights in the Arab world (the so-called missionary project of Massad’s “Gay International”) is a Western, orientalist imposition. Sabine Schmidtke seconds this notion, saying that “[a]ny attempt to form a movement for gay rights in the Islamic world is seen as yet another symptom of ‘Westernization.’”<sup>169</sup> Similarly, as Nabil Osman, the Egyptian government’s spokesperson, told the *New York Times* in 2003, “[Homosexuality] is not accepted here, and everybody should accept that what is good for America or for Europe may not be good for another place.”<sup>170</sup> The idea of gay identity in the Arab world is thus “deeply fraught with accusations of cultural inauthenticity and Western decadence”<sup>171</sup> and “often attacked as a ‘threatening imperialist import;’”<sup>172</sup> discussions on the topic “represent part of an age-old conflict between cultural sovereignty, modernity, human rights, and tradition.”<sup>173</sup>

This type of “[c]ultural protectionism”<sup>174</sup> against the West and what may be perceived as Western-imposed ideas may be particularly palpable in the sexual arena because of the West’s sexual exploitation of the colonized, in which the dominant white male tourist gave “vent to his own desires at the expense of the Maghrebins.”<sup>175</sup> Many sexually repressed Westerners came to the Arab world in search of an alternative sexual outlet and in particular, homosexual tourists (but many heterosexual tourists as well), including writers, artists, and general travelers. They came to this region of the world in search of what Edward Said describes as “sexual experience unobtainable in Europe” and a “different type of sexuality.”<sup>176</sup> By exploring this new type of sexuality, these tourists opened up a “Pandora’s box of phantasmic homoerotic desire.”<sup>177</sup> However, many homosexual men came to the Arab world in search of sexual gratification because, “[s]exually exiled from the repressiveness of the home culture . . . ,

167. *Id.* at 383–85.

168. Aeyal Gross, *Queer Theory and International Human Rights Law: Does Each Person Have A Sexual Orientation?*, AM. SOC’Y OF INT’L LAW ANNUAL PROCEEDINGS 12 (2007).

169. Schmidtke, *supra* note 20, at 260.

170. *Egyptian Government Denies Gay Crackdown*, DATA LOUNGE (Apr. 4, 2003), [www.glapn.org/sodomylaws/world/egypt/egnews211.htm](http://www.glapn.org/sodomylaws/world/egypt/egnews211.htm).

171. Katyal, *supra* note 139, at 122.

172. *Id.* at 126.

173. *Id.*

174. WHITAKER, *supra* note 5, at 11.

175. Robert Aldrich, *The French in North Africa*, in COLONIALISM AND HOMOSEXUALITY 329, 337 (2003).

176. Boone, *supra* note 25, at 89.

177. *Id.* at 93.

homosexuals have searched instead for fulfilment [sic] in the realm of the foreign."<sup>178</sup> Their status as "other" at home does not diminish either the power dynamics that still have existed between them and their Arab sexual partners or their ability to exploit the colonized abroad. Joseph Boone, a Professor of Gender Studies at the University of Southern California, explains this idea clearly, stating:

In narratives where the occidental traveler by virtue of his homosexuality is already the other, the presumed *equivalence* of Eastern homosexuality and occidental personal liberation may disguise the specter of colonial privilege and exploitation encoded in the hierarchy white man/brown boy.<sup>179</sup>

Sexual tourism in the Arab world, in general, cannot escape these established structures of power because the Arab world has almost always been seen as inferior in such relations. In fact, as Edward Said discusses in *Orientalism*, the Arabic Orient has come to represent "one [of the West's] most recurring images of the Other" in which the West effeminizes the East in such a way that it becomes "sexually available so that it can be penetrated, cataloged, and thus contained by the 'superior' rationality of the Western mind."<sup>180</sup> So even when the white homosexual man has been the "other" at home and goes to the Arab world in search of sexual liberation from the oppression he feels at home, this notion still involves power dynamics between the dominant white male tourist and the submissive Arab local, in which the western tourist's presumed superiority and assumed authority to narrate the situation leads to the exploitation and oppression of the Arab man. Such notions only further reinforce the idea that an openly gay identity and LGBT liberation is a Western import the Arab world should protect against.

Running through the currents of these critiques, as well as through the earlier discussions on homosexuality and homoeroticism in the Arab world, is the notion that defining one's personal sexual identity in line with the performance of same-sex sexual conduct simply may not be a relevant or salient concept in the Arab world. This idea is focal to Sonia Katyal's discussion of same-sex sexual identities in a global context, where a "divergence between identity and conduct raises the difficult question of whether sexual orientation itself is a culturally specific concept."<sup>181</sup> As Katyal notes, "some cultures view homosexuality as an activity, not an identity."<sup>182</sup> Moreover, although over the past few decades there has been an emergence of openly self-identifying gay and lesbian individuals, who define their public sexual identity along the lines of their sexual orientations,

many Western activists and scholars often fail to recognize that arguments for legal protection on the basis of sexual orientation often collide with, rather than incorporate, these preexisting social meanings of same-sex sexual activity. In other words, the

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178. JARROD HAYES, *QUEER NATIONS: MARGINAL SEXUALITIES IN THE MAGHREB* 29 (2000).

179. Boone, *supra* note 25, at 104.

180. *Id.* at 92.

181. Katyal, *supra* note 139, at 99.

182. *Id.* at 99–100.

presumed equation between sexual conduct, sexual orientation, and sexual identity, so prevalent in Western legal thought, tends to swiftly unravel when viewed in a cross-cultural framework.<sup>183</sup>

Underlying Katyal's argument is the idea that focusing on sexual identity-based protections, which are not always palpable to some cultures, can be very limiting and may end up excluding a large number of sexual minorities that do not view sexuality through this lens.<sup>184</sup> While Katyal's discussion is primarily grounded in examples from India and Thailand, the frameworks she describes appear in many ways to be applicable to the Arab world context as well, and merit further discussion.

Katyal begins her discussion by analyzing different models of sexuality that examine the relationship between sexual identity and sexual conduct. The first model she looks at, which she describes as "the most prominent model of gay civil rights,"<sup>185</sup> is the substitutive model. This model "assumes that one's public sexual identity and private sexual conduct are interchangeable; that is, individuals who engage in same-sex sexual conduct can be legally classified by a fixed and clearly demarcable gay, lesbian, or bisexual sexual identity."<sup>186</sup> Thus, the substitutive model conflates sexual conduct, sexual orientation, and sexual identity. Katyal uses the term substitutive for the model because it implies a legal, as well as a personal, interchangeability between sexual conduct and sexual identity. As Katyal further expounds:

First, at its most basic level, proponents of this model presume that the gender of one's object choice determines a person's sexual orientation. Second, the model also presumes that a person's subjective sexual orientation comprises a foundational and central aspect of a person's sexual identity. Third, and most significantly, this model also assumes the interchangeability (or "substitutive" nature) of gay sexual identity, orientation, and conduct.<sup>187</sup>

Thus, Katyal argues, the success of the model depends on "propagating a model of 'gay personhood' or 'gay essentialism' which presume[s] the universality of a number of principles involving sexuality, sexual orientation, and sexual identity,"<sup>188</sup> so within this context, "the performance of same-sex sexual behavior, however slight or occasional, is assumed to indicate a universal essence and meaning."<sup>189</sup>

The substitutive model, which appears to be widely used in the discussions about LGBT sexual identities and legal rights in Western countries, also frames the discussion about LGBT human rights cases in the international context in a particularized manner, where open expression of identity becomes essential for the progress of international LGBT rights. As Katyal explains:

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183. *Id.* at 100.

184. *Id.*

185. *Id.* at 101.

186. *Id.*

187. *Id.* at 109.

188. *Id.* at 108.

189. *Id.*

Because such cases often depend upon an identity that is not immediately visible . . . the identity—gay, lesbian, bisexual—must be expressed in order to become cognizable . . . . Under this substitutive relationship between identity, conduct, and expression, ‘coming out’ is largely viewed as an essential, political instrument to build a community instead of a largely personal decision.<sup>190</sup>

Under the substitutive model, the focus on an outward expression of a gay or lesbian identity becomes a “categorical imperative,”<sup>191</sup> to building a public, collective gay identity, and diverges greatly from the idea of sexuality as simply an activity.

Even though Katyal acknowledges the predominance of the substitutive model in the discussions about international LGBT rights, she finds that this monopoly power over sexual self-definition can also be deeply problematic . . . . Categories of gay, lesbian, heterosexual, or bisexual identity, as a basis for individual and collective identity, often obscure a deeper question of whether such categories of sexual orientation can—or should—serve as universal categories for everyone.<sup>192</sup>

In particular, she thinks that “imposing a gay, lesbian, or bisexual identity on individuals who may engage in same-sex sexual behavior, but who do not fit a substitutive paradigm between identity and conduct, can be unduly confining, exclusionary, and inappropriate.”<sup>193</sup> Apart from the argument that sexual acts in and of themselves have no inherent meaning,<sup>194</sup> Katyal argues that “[s]ince sexual acts carry different meanings in different cultural and temporal contexts, it is largely impossible to universalize clear definitions of identity, and the relationship between act and identity is not nearly as ‘fixed’ as the model of gay personhood presupposes.”<sup>195</sup>

Katyal’s main premise is that the overreliance on this substitutive model of sexual identity is problematic for a variety of reasons. First, the idea of a universal paradigm for sexual identity, which then becomes promoted as a universal global human rights fixture, renders all sexual acts, regardless of their motivations, as having similar significance in global civil rights terms.<sup>196</sup> This is particularly problematic for people that participate in same-sex acts, but do not identify as gay, lesbian, or bisexual. These people “may regard themselves as ‘heterosexuals,’ ‘straights,’ or just ‘human beings’ who on occasion participate in homoerotic encounters for various reasons, including pleasure, money, social expectations, and the absence of other sexual opportunities.”<sup>197</sup> Second, by

190. *Id.* at 109.

191. *Id.* at 114.

192. *Id.*

193. *Id.* at 114–15.

194. Steven Epstein, *Gay Politics, Ethnic Identity: The Limits of Social Constructionism*, in *SOCIAL PERSPECTIVES IN LESBIAN AND GAY STUDIES* 134, 136 (Peter M. Nardi & Beth E. Schneider eds., 1998).

195. Katyal, *supra* note 139, at 115.

196. *Id.* at 129.

197. GILBERT HERDT, *SAME SEX, DIFFERENT CULTURES* 4 (Westview Press, 1997).

establishing such a universal paradigm, the substitutive paradigm does not include or accommodate the complexity of potential meanings and identifications that are related to same-sex sexual acts, thus marginalizing many individuals that do not follow this dominant paradigm, particularly in cross-cultural contexts.<sup>198</sup> Third, international actors that promote the substantive model many times fail to question “whether one’s sexual orientation universally – and necessarily – comprises a central aspect of personhood.”<sup>199</sup> This is a particularly important question when people from other cultures may view the intersections between sexual desire, behavior, and identity differently.<sup>200</sup> The substitutive model appears to presume that an equation between public sexual identity (“coming out”) and private sexual behavior is the only proper way to conceive these concepts.<sup>201</sup> Finally, the substitutive model overwhelmingly favors the visibility and politicization of sexual identity, and privileges certain formations of sexual identity over others. There is an assumption that increased visibility is a successful formula for combating homophobia, heterosexism, misconceptions about LGBT people, etc.,<sup>202</sup> but, as will be discussed shortly, such visibility can backfire, and may actually turn “out” gay people into targets. Ultimately, Katyal’s critique highlights the problems and dangers that arise with the substitutive model, while questioning whether such a model or “formula”<sup>203</sup> is always translatable, a critical question to consider when evaluating the substitutive model’s potential applicability and relevance to the Arab world.

#### IV. AFTER THE ARAB SPRING: AN OPPORTUNITY FOR OPEN LGBT RIGHTS ADVOCACY?

After looking at the model of “gay rights as international human rights,” fueled by the global gay rights movement and the Yogyakarta Principles, and then exploring critiques of such a model by several scholars, most notably Joseph Massad and Sonya Katyal, it appears that this model may not be the most appropriate for the Arab world. But where does this conclusion leave us? Rather than just criticizing the push for international LGBT human rights, is there not some other way to address what are very serious human rights concerns? Some have looked to the series of protests and revolutions in the Arab world over the past year, known collectively as the “Arab Spring” or “Arab Awakening,” as a momentous opportunity to promote the international human rights agenda for Arab LGBT people. There is an idea that this “new wave of freedom”<sup>204</sup> will benefit LGBT people in the region. As Khaled, a twenty-two year-old Egyptian biology student stated: “As a gay Arab, I feel represented in

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198. Katyal, *supra* note 139, at 129.

199. *Id.* at 130.

200. *See id.*

201. *Id.*

202. John Clark et al., *Introduction* to THE THIRD PINK BOOK: A GLOBAL VIEW OF LESBIAN AND GAY LIBERATION AND OPPRESSION 17 (Aart Hendriks et al. eds., 1993).

203. Katyal, *supra* note 139, at 131.

204. Hossein Alizadeh, *100 Years of International Women’s Day: Will the “New Middle East” Be a Welcoming Place for Gays and Lesbians?*, TRUSTLAW (Mar. 6, 2011, 5:08 PM), [www.trust.org/trustlaw/blogs/100-years-of-international-womens-day/will-the-new-middle-east-be-a-welcoming-place-for-gays-and-lesbians/](http://www.trust.org/trustlaw/blogs/100-years-of-international-womens-day/will-the-new-middle-east-be-a-welcoming-place-for-gays-and-lesbians/).

these protests in every way and I'm confident that one day there will be a gay rights movement sweeping the Arab streets."<sup>205</sup> Most notably, scholar Hassan El Menyawi, who has been against open "Stonewall" gay rights advocacy<sup>206</sup> because it proved to be ineffective and made him a target for torture from the Egyptian government, has also looked upon the Arab Spring with a renewed rejuvenation:

[T]he peoples of the Middle East have arisen. Across the Middle East, people have stood up to brutal tyrants. They stood up to their fear. In Bahrain, troops openly fired into crowds of protesters. In Libya, the military has repeatedly shot mourners at the funerals of other victims, and military jets are dropping aerial bombs into public demonstrations. But the people do not return home cowering in fear as they did when I was young. Instead, trembling and anxiety-ridden, they rush back to the center squares, crying out their peaceful chants in defiance of their tyrants. . . . I look at the Middle East with renewed excitement, planning my return and imagining new futures for gay rights.<sup>207</sup>

However, while the Arab Spring has certainly brought dramatic changes to the region - politically, socially, and even culturally - there is good reason to doubt that now is the best time to push for LGBT rights in the region. In particular, the Arab Spring has seen the rise of Islamist groups,<sup>208</sup> who, to put it simply, are not receptive to the international human rights framework for LGBT people.<sup>209</sup> Most recently, Tunisia's prime minister for human rights, Samir Dilou, attacked the existence of an online gay magazine called *Gayday Magazine*, saying, "freedom of expression has limits. [LGBT people] live as citizens but they must respect the red lines set up by our religion, heritage and civilization."<sup>210</sup> Dilou continued, saying that homosexuality is a "sexual

205. Simba Shani Kamaria Rousseau, *A Touch of Spring for LGBT Arabs*, INTER PRESS SERVICE (Jan. 11, 2012), [www.ipsnews.net/news.asp?idnews=106405](http://www.ipsnews.net/news.asp?idnews=106405); see also Londono, *supra* note 15, at 1 ("Here in Egypt, gays and lesbians have turned a handful of public venues into spaces where it's safe for men to dance with men and where women sit on each other's laps. And activists are quietly putting together campaigns they hope will enable gays and lesbians to live openly in a country where sexual minorities have long been ostracized.").

206. *Infra* p.316-19.

207. Hassan El Menyawi, *Egyptian Gay-Rights Expert Reflects on the Mideast Revolutions*, EDGE ON THE NET (Mar. 1, 2011), [www.edgeonthenet.com/index.php?ch=news&sc=&sc3=&id=116835](http://www.edgeonthenet.com/index.php?ch=news&sc=&sc3=&id=116835) [hereinafter "*Egyptian Gay Rights*"].

208. See John M. Owen IV, *Why Islamism is Winning*, N.Y. TIMES (Jan. 6, 2012), available at [www.nytimes.com/2012/01/07/opinion/why-islamism-is-winning.html](http://www.nytimes.com/2012/01/07/opinion/why-islamism-is-winning.html) ("Rather than bringing secular revolutionaries to power, the Arab Spring is producing flowers of a decidedly Islamist hue. More unsettling to many, Islamists are winning fairly: religious parties are placing first in free, open elections in Tunisia, Morocco and Egypt.").

209. See Londono, *supra* note 15, at 2 ("[F]or Bidak and many other Egyptian gays, the enthusiasm has fizzled. Islamists, all but certain to become politically powerful in the coming elections, have been calling for a strict religious state; dogmatic politicians have been ascendant in Tunisia, which is among the most liberal of Arab nations.").

210. Dan Littauer, *Tunisia rights minister pledges to deny freedom to gays*, GAY STAR NEWS (Feb. 6, 2012), [www.gaystarnews.com/article/tunisia-rights-minister-pledges-deny-freedom-gays](http://www.gaystarnews.com/article/tunisia-rights-minister-pledges-deny-freedom-gays).

perversion” that needs to be “treated medically.”<sup>211</sup> Amnesty International responded to Dilou’s statements with a letter that demanded the public retraction of his “damaging and discriminatory comments about homosexuality,”<sup>212</sup> urged for the repeal of Article 230 of the Tunisian Criminal Code that makes consensual sexual acts between members of the same sex a criminal offense, and reminded Dilou that homosexuality “stopped being seen as an illness or ‘perversion’ by world medical organizations and associations decades ago.”<sup>213</sup> In response, Dilou simply reiterated the same position through his press secretary, who stated, “Dilou believes that Tunisia’s distinctiveness as an Arab-Muslim society must be respected . . . .”<sup>214</sup> This situation is a very recent example of the opposition LGBT people, or the idea of an open LGBT sexual identity, still faces. This opposition from Islamist groups, along with the problems that the substitutive model poses for sexual identity in the Arab world, presents some serious challenges to an international LGBT rights movement in the region.

All hope is not lost, however. The aftermath of the Arab Spring is still playing out, and comments from people like Dilou demonstrate that, rather than being swept under the rug never to be spoken of again, issues of homosexuality and sexual identity are gaining more exposure and prominence in the Arab world, even if the immediate result is backlash. That being said, because the effects of the Arab Spring are still developing and the social foundations of the Arab world are slowly reforming, now is not the time to push for the application of the *Yogyakarta Principles* and international human rights for LGBT people. Such a movement, for the time being, will be flatly rejected by the Islamist groups in the Arab world that have risen to power, and will likely be ineffective amongst Arab people because it is premised on what will be perceived as an imperialist, substitutive model for sexual identity that will not gain much traction in the Arab world. So, where does that leave us, and what can be done?

There are other potential approaches to tackling the complexities of sexual identity and human rights in the Arab world. While the Arab Spring may have provoked him to reevaluate his ideas for advocacy,<sup>215</sup> Hassan El Menyawi had previously presented an interesting advocacy approach for LGBT people, or those that participate in same-sex sexual activity, which he deemed “activism from the closet.”<sup>216</sup> The “activism from the closet” approach involves not explicitly advocating for LGBT rights, but rather advocating for issues that, while not categorically “gay rights” issues, will greatly benefit LGBT people or those that participate in same-sex sexual acts.<sup>217</sup> Thus, the “activism from the closet” model is a more subtle approach to gay rights advocacy because it attempts to

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211. *Id.*

212. Letter from Hassiba Hadj Sahraoui, Deputy Dir. Middle East and North Africa Programme of Amnesty Int’l (Feb. 23, 2012).

213. *Id.*

214. Dan Littauer, *Tunisia Rights Minister Stands By Homophobia*, GAY STAR NEWS (Mar. 3, 2012), [www.gaystarnews.com/article/tunisia-rights-minister-stands-homophobia030312](http://www.gaystarnews.com/article/tunisia-rights-minister-stands-homophobia030312) .

215. *Egyptian Gay Rights*, *supra* note 207.

216. Hassan El Menyawi, *Activism from the Closet: Gay Rights Strategising in Egypt*, 7 MELB. J. INT’L L. 28 (2006) [hereinafter *Activism from the Closet*].

217. *Id.* at 46–47.

persuade people on important issues that indirectly benefit LGBT people and those that participate in same-sex acts. The model most notably focuses on heightened privacy protections. It does not enunciate directly notions of LGBT rights and LGBT identity - notions that would be met with vehement opposition in much of the Arab world.<sup>218</sup> In addition to presenting a more subtle approach to LGBT rights advocacy, “activism from the closet” also provides a model where the safety of LGBT people and those participating in same-sex acts is built in, because such activism does not involve being “out.” Thus, rather than becoming a target for the government or other non-state actors, “[t]he closet, fluid, protean and hidden, becomes a safe locus for collective strategising – a place from which LGBTQ groups can engage in activism.”<sup>219</sup>

The “activism from the closet” approach developed out of El Menyawi’s personal experiences in Egypt, where he saw firsthand the failure of the open model of LGBT advocacy. Looking to the work of other (Western) gay rights organizations, El Menyawi adopted a “Stonewall” model of advocacy, where he “pursued gay rights activism by openly speaking out through demonstrations and by publishing [his] ideas about how gay rights and Islam were reconcilable.”<sup>220</sup> In the Stonewall model, “one’s sexual identity — being gay — is part of one’s being. The key moment of identity formation is ‘coming out’ and declaring one’s being to others as part of a ‘political act.’”<sup>221</sup> El Menyawi saw this model of advocacy as the dominant paradigm, and decided to follow suit:

I internalised the ‘coming out’ narrative; I was an heir of the rainbow flag, the pride parade and, without knowing it at the time, of Stonewall. In effect, I acted as a conduit for the dissemination of a notion of gay rights activism in which gay identity is a key part of an attempt to open spaces for gay Egyptians.<sup>222</sup>

While such an internalization was certainly understandable, particularly when information about homosexuality has been repressed within most Arab countries for a long time and the dominant paradigm of open Stonewall advocacy may have been the only known path to follow, El Menyawi unfortunately became a target for the government, and experienced violence and torture as a result, including “beatings, being forced into small confined spaces, withholding of food or delivery of food with filth in it, electrocution, and rape.”<sup>223</sup> El Menyawi soon realized that his efforts at open advocacy had backfired.<sup>224</sup> Making a parallel to a Mahatma Gandhi quotation, “First they ignore you. Then they laugh at you. They then fight you. Then you win,” El Menyawi found his path of advocacy had taken a different course: “First they

218. *Id.* at 47–48.

219. *Id.* at 51.

220. *Id.* at 30.

221. *Id.* at 36.

222. *Id.* at 37.

223. *Id.* at 35.

224. *See id.* at 35 n.37 (“My openly ‘coming out of the closet’ not only attracted the attention of Egyptian authorities, but my willingness to take on a ‘gay identity’ was provocative.”).

hear you. Then they pursue you. Then they harm you. Then you lose.”<sup>225</sup> Ultimately, El Menyawi found his attempt at Stonewall advocacy made him a prime target for a government that could use him (and other “open” LGBT people) to distract the country from its dire economic straits, and to shore up the government’s Islamic credentials at a time that was seeing the slow rise in popularity of the Muslim Brotherhood, an Islamist group.<sup>226</sup>

As a result, El Menyawi had to head back to the drawing board. Based on his experiences, it appeared that using the Stonewall model of advocacy and coming out of the closet to demonstrate and increase visibility was not a feasible approach, particularly “in a context wherein persecution, imprisonment and torture . . . persist[ed].”<sup>227</sup> Instead of viewing the closet as a dominating symbol of oppression and suppression of one’s true identity (while simultaneously seeing coming out of the closet as the ultimate symbol of freedom and liberation), El Menyawi began to view the closet as a “location that provides a protective space — a space in which one may be free from the direct oppression of a dictatorial regime such as the Egyptian State.”<sup>228</sup> This conception of the closet acknowledged the fact that:

[w]hile the Stonewall model perceives the closet to be problematic as it does not allow for self-expression, the prospect of being violently attacked is surely much more problematic. The prospect of losing one’s life or being tortured outweighs the minimal expression benefits that ‘coming out of the closet’ brings, particularly considering that currently in Egypt there are officers standing outside the closet doors, waiting — waiting to apprehend, imprison and torture you.<sup>229</sup>

El Menyawi’s conception of the closet as a safe space is not limited to a single individual seeking shelter from torture and abuse. His advocacy model calls for a reconceptualization of the closet, in which the closet becomes a space that is inhabited by several self-identified LGBT people and their allies, “a location in which LBGTQ groups can meet one another by creating safe spaces in which to learn about one another without ‘coming out’ to the wider public; without being in visible locations within the reach of the state’s apparatus of violence.”<sup>230</sup>

This closet forms the basis for his “activism from the closet” model, where “activism from the closet occurs by publicly hiding — covering — one’s gay identity outside of the collective closet, but still actively engaging in activism — hidden activism.”<sup>231</sup> This hidden activism becomes crucial to El Menyawi’s advocacy model, and requires “that one does not explicitly enunciate ‘gay rights’ and ‘gay identity’ as part of gay rights activism, rather, that one should approach activism in more subtle ways, by persuading others on issues that appear to have

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225. *Id.* at 43.

226. *Id.* at 39–40.

227. *Id.* at 43.

228. *Id.* at 44.

229. *Id.*

230. *Id.*

231. *Id.* at 45.

very little explicit connection with gay rights or gay identity.”<sup>232</sup> More specifically, El Menyawi highlights a number of issues for which those in the closet can advocate, the most important issue being heightened privacy protections.

Privacy rights are strongly protected by Islamic law,<sup>233</sup> and are thus deeply respected by Islamist groups. Privacy rights also would indirectly benefit LGBT people or those engaging in same-sex sexual acts by “preserving their bodily integrity, protecting them from violence, and allowing for the potential expansion of ‘the closet’. Most of all, it would allow LBGTQ groups within the closet to sustain their closeted gay rights activism.”<sup>234</sup>

While privacy rights are the focus of El Menyawi’s “activism from the closet” model, he also discusses other potential strategies to advocate for from the closet. First, he suggests a promotion of the sciences, which in turn could point to the physiological explanations for homosexuality (as opposed religious ones).<sup>235</sup> Second, he suggests diverting the public’s attention away from LGBT people by getting them to focus on other critical issues, such as the economy, democracy, etc.<sup>236</sup> Finally, he recommends trying to produce and support a political party that is particularly concerned with secular issues.<sup>237</sup>

El Menyawi first advocated for his “activism from the closet” model back in 2006, several years before the Arab Spring occurred. After the Arab Spring began to take flight, like other people, he was excited by the revolutionary changes occurring in the region and he began to reevaluate his advocacy model. As he succinctly stated: “No more activism from the closet. Now begins an activism outside of the closet.”<sup>238</sup> While his excitement and anxiety to push his advocacy model out of the closet is understandable, particularly given his tried history with LGBT rights advocacy in the region, now is not the time to abandon his “activism from the closet” model. As discussed earlier, the Arab Spring has left the situation for LGBT people, as well as those who engage in same-sex activity, uncertain at best. There is recent evidence of continued opposition, for example the statements made by Samir Dilou in Tunisia. In light of the rise of Islamist groups in the region, commentators such as Michael Lucas from the Huffington Post believe that the “expectations raised by the Arab Spring will be hard to live up to; soon, the new governments will start looking for scapegoats

232. *Id.* at 47.

233. *See id.* at 47–48 (“An example of how LBGTQ groups can further the goals of increasing privacy is by relying on sources such as the following from the Qur’an: ‘O you who have attained to faith! Do not enter houses other than your own unless you have obtained permission and greeted their inmates. This is [enjoined upon you] for your own good, so that you might bear [your mutual rights] in mind. Hence, [even] if you find no one within [the house], do not enter it until you are given leave; and if you are told, ‘turn back,’ then turn back. This will be most conducive to your purity; and God has full knowledge of all you do.’”).

234. *Id.* at 48.

235. *Id.* at 49.

236. *Id.*

237. *Id.*

238. Hassan El Menyawi, *Egyptian Gay-Rights Expert Reflects on the Mideast Revolutions*, EDGE BOSTON (March, 1 2001), <http://www.edgeboston.com/index.php?ch=news&sc=&sc3=&id=116835>.

and distractions. Gays have always played those roles too well.”<sup>239</sup> Lucas looks to Iran after the Ayatollahs took over from the Shah during the Islamic revolution of 1979, and to the post-Saddam Hussein regime in Iraq; in both cases anti-gay violence and criminalization increased.<sup>240</sup> Ultimately, Lucas thinks the idea that “the practical concerns of democracy—getting elected, building coalitions—will keep radical Islam in check . . . [is] deeply naïve,”<sup>241</sup> and there is good reason to believe he is right. The most recent UN Human Rights Council panel on sexual orientation and gender identity in March 2012, in which the OIC and the Arab group expressed continued staunch opposition to accommodating the “personal choices” of LGBT people’s “licentious behavior,” only further indicates that attitudes about homosexuality have not shifted much in the Arab world, even after the Arab Spring.

As the aftermath of the Arab Spring continues to unfold over a year later, those interested in pursuing a model for advocacy for LGBT people or those that participate in same-sex activity would be wise to adopt El Menyawi’s “activism from the closet” model. This model allows for important advocacy work to be done right now from safety, rather than waiting to see how things play out between Islamist leaders and open LGBT rights advocates post-Arab Spring. Advocacy for privacy is a strong strategy, particularly because, as described above, the right to privacy carries so much weight in Islamic law. This bodes well when dealing with groups such as the Muslim Brotherhood in Egypt or Ennahda in Tunisia. As El Menyawi recently pointed out, “[e]ven though the Muslim Brotherhood has openly rejected the inclusion of gay rights in a new Egyptian constitution, they support broad human rights protections, such as outlawing torture and the universal right to privacy, which are likely to benefit LGBT people in the long-term.”<sup>242</sup> Universal privacy and outlawing torture, then, are two great issues to advocate for from the closet.

Advocating for the right to privacy before advocating for sexual identity-based protections resonates with Katyal as well. As discussed earlier, Katyal criticized the dominant LGBT rights paradigm, the substitutive model, for being too limiting and alienating for those people that do not equate sexual activity with sexual identity, among other things. Instead, she advocates for a model that integrates the “additive” model, in which “one’s sexual identity—heterosexual, homosexual, or bisexual—can be entirely *separated* from one’s sexual conduct or desire,”<sup>243</sup> with the “substitutive” model.<sup>244</sup> This integrated model embraces terms such as “men who have sex with men” (MSM), allowing those who do not equate sexual conduct with sexual identity to enter the conversation,<sup>245</sup> and under such a model, privacy protections become more important than sexual identity-based protections. Using India as the primary example, Katyal notes

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239. Michael Lucas, *The Hard Fall of the Arab Spring*, HUFFINGTON POST (Nov. 16, 2011, 9:24 PM), [www.huffingtonpost.com/michael-lucas/arab-spring-gay-rights\\_b\\_1095798.html](http://www.huffingtonpost.com/michael-lucas/arab-spring-gay-rights_b_1095798.html).

240. *Id.*

241. *Id.*

242. *Egyptian Gay Rights*, *supra* note 207.

243. Katyal, *supra* note 139, at 156.

244. *Id.* at 160–61.

245. *Id.* at 153.

that:

a strategy that focuses primarily on the right to privacy *before* identity-based protections allows an individual the autonomy to determine his or her sexual identity and preferences, instead of forcing them to adopt a particular identity in order to access constitutional protection. In other words, by demanding the right to privacy, Indian activists are actually demanding the right to *deliberate*—and determine—the interior and exterior aspects of their sexual identity, for themselves, and not as a prerequisite for a particular legal entitlement.<sup>246</sup>

In this way, El Menyawi's "activism from the closet" model can be considered alongside Katyal's integrated "additive/substitutive" model. First, from the closet, advocates should try to expand the discussion about sexual identity in terms that are more relevant or salient to Arab culture. Like in India, the term "MSM" may prove to be more relevant to Arab men, some of who participate in same-sex conduct but have no interest in defining themselves as "gay" or "homosexual," especially in a fixed or permanent manner. This type of identification then can go hand-in-hand with privacy because same-sex acts can happen in private without interference. Second, such a model is less likely to be viewed as a Western or imperialist imposition because it is more accommodating of sexual identity differences in the Arab world. The model practically anticipates some of the major issues or backlash that could follow the use of an open "Stonewall" model of advocacy or a "gay rights as human rights" model in the region. Third, the model also seems to harken back to the mode of sexuality that was occurring in the region before, as Massad puts it, the "Gay International" incited discourse about open LGBT human rights. Regardless of one's opinion on Massad's view, strengthening privacy rights would, in turn, further strengthen the boundaries between the public and private spheres, a line that has been respected historically in the Arab world. Particularly as post-Arab Spring life and culture develops, this model can address some of the concerns and complexities that arise when dealing with the intersections between sexual activity, sexual identity, and human rights concerns in the Arab world, at least for the time being.

#### CONCLUSION

The Arab world presents a number of complex issues with regards to same-sex sexuality. Many people from Western cultures associate homosexuality in the Arab world with complete oppression, torture, violence, etc. While some of these occurrences are unfortunately true, the fact is that homosexual acts and homoeroticism have been occurring in the region for a long time, but in a very particularized fashion that is oftentimes based on power dynamics and the idea of collective denial. Those that have deviated from these sexual norms, particularly those that have "come out of the closet," have become the targets of state torture, humiliation, and violence. This mistreatment has captured the attention of the international human rights community, which has called for the

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246. *Id.* at 166.

application of universal human rights principles, particularly the *Yogyakarta Principles*. But such a model of advocacy will not be effective in the Arab world. Several scholars, most notably Joseph Massad, have criticized this model as Western, imperialist, and based on a heterosexual/homosexual binary that is not relevant in the Arab world. Apart from being an imperialist “incitement of discourse” that creates gays and lesbians where they do not exist, this conflation of sexual conduct and sexual identity has been viewed as problematic.

Theoretical criticisms aside, from a practical standpoint these critiques raise serious questions about whether or not an open “Stonewall” model of gay rights advocacy could even function in the Arab world right now. There is good reason to believe that it would not, particularly after engaging with the work of Hassan El Menyawi, who attempted this model of advocacy and found himself the target of the Egyptian government’s wrath. Through his experiences, El Menyawi created a new model of advocacy, “activism from the closet,” whereby he and other closeted advocates could push for other non-explicitly LGBT rights, such as the right to privacy, which would ultimately benefit LGBT people or those that participate in same-sex sexual activity.

Despite his prior experiences, El Menyawi has recently been reenergized by the Arab Spring, looking to the revolutions as an opportunity to envision new possibilities for LGBT rights advocacy in the Arab world. While his hope and excitement are certainly understandable, the aftermath of the Arab spring is still uncertain, particularly for LGBT people. The rise of Islamist groups in the region, such as the Muslim Brotherhood and Ennahda, and recent statements from people like the human rights prime minister Samir Dilou in Tunisia, as well as the OIC and the Arab group during the recent UN Human Rights Council’s panel on sexual orientation and gender identity, seem to demonstrate that now is not the time to abandon El Menyawi’s “activism from the closet” model. Alongside Sonya Katyal’s integrated “additive/substitutive” model for sexual identity, advocates can try to expose Arab cultures to new models of sexual identity while attempting to strengthen privacy rights and pushing for the banning of torture in general (not just as it relates to LGBT people).

At this point, it is hard to say if this model can or will develop over time, and if the idea of an open, sexual identity model will ever be feasible in the Arab world. Whether it likes it or not, the Arab world is being exposed to Western ideas and situations more and more, and, as Whitaker argues, “the old ways look increasingly unsustainable as foreign travel, satellite television and the Internet crack open Arab society’s protective cocoon.”<sup>247</sup> Moreover, we must remember that the idea of gay rights is fairly new to the Western world, is still not universally accepted, and that it took time to start this change in attitudes. Although Whitaker noted back in 2006 that many Arabs he interviewed were “deeply pessimistic about the likelihood of significant change,”<sup>248</sup> he also noted that “[t]he denunciations of sexual non-conformity emanating from the Arab world today are also uncannily similar, in both their tone and their arguments, to those that were heard in other places years ago . . . and ultimately rejected.”<sup>249</sup>

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247. WHITAKER, *supra* note 5, at 222.

248. *Id.* at 11.

249. *Id.* at 12.

For now, it is a good idea for advocates to wait and see how the aftermath of the Arab Spring will play out, and in the meantime engage in “activism from the closet” à la El Menyawī. A rainbow flag may not fly high in the Arab world for the time being, but, using the “activism from the closet” model of advocacy, Arab LGBT people, and those engaging in same-sex acts, can at least strategize about the future of gay rights advocacy from a place of safety.