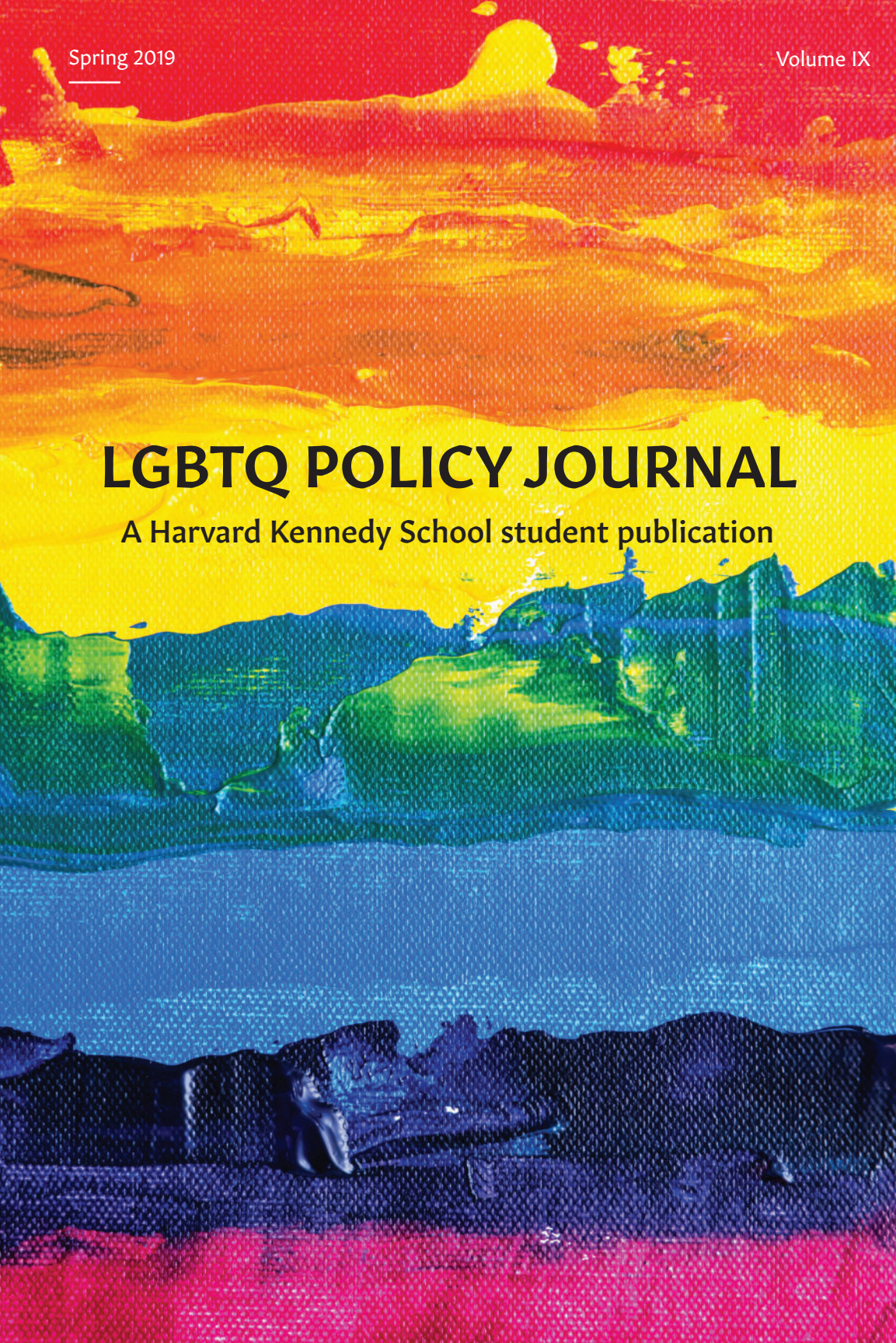


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The David Bohnett Foundation, which has been the Journal's long-standing supporter and champion to LGBTQ causes cross the United States. Its help has contributed to the mission of the Journal to promote, disseminate, and foster public policy in the field.

LETTER FROM THE EDITOR

Dear Readers,

It is a privilege for us to share the ninth edition of the *LGBTQ Policy Journal* with you.

Since our most recent publication in spring 2018, our communities have witnessed amazing triumphs and horrific losses. After the 2018 midterm elections here in the United States, which operate as a kind of referendum on our president, we watched Senator Kyrsten Sinema become the first openly bisexual member of the US Senate, and Governor Jared Polis become the first openly gay governor. Yet, while some of our communities are winning new visibility and representation in the highest echelons of power, other communities are literally disappearing. The United States still faces an epidemic of violence against trans peoples, which disproportionately impact trans-womxn of color. Not even a full week into 2019 did the United States witness the murder of Dana Martin, a black transgender woman killed in Montgomery, Alabama. And later in January 2019, the US Supreme Court upheld President Donald Trump's ban on transgender people serving in the military.

Beyond US borders, same-sex marriage, intimacy, and identification are criminalized in over 70 countries; however, LGBTQ communities are creating new spaces for visibility and justice around the world. Angola became the first country in 2019 to decriminalize same-sex conduct, after Trinidad and Tobago's highest court overturned a ban on same-sex intimacy in April 2018.

These victories do not only appear in courtrooms, in legislatures, or on ballots. These victories reflect the resilience of LGBTQ leadership, from local to global contexts and from individual and collective experiences.

As you may know, the *LGBTQ Policy Journal's* mission is "to inspire thoughtful debate, challenge commonly held beliefs, and move the conversation forward on LGBT rights and equality." We seek to advance our mission this year by curating a multidisciplinary journal, in print and online, with both analytical and artistic pieces that honor the complexity of our communities' leadership.

We feature pioneers like openly bisexual, transgender activist Jessica Xavier, who has led city- and state-level surveys on health issues impacting the transgender communities in Washington, DC, and the state of Virginia. We also honor

the agency of individuals like Cara Tierney. In 2013, Cara underwent a prophylactic double mastectomy after doctors had identified a genetic signal tied to developing cancer. Cara courageously offers a photo essay, which documents the decision to cremate their breasts to “overturn” the way medical fields structure how we experience our bodies.

At the same time, this edition charts critical junctures in our communities. Truman Scholar Lamar Greene of Emory University examines how “HIV criminal laws exacerbate HIV rates among Black men who have sex with men.” And on a transnational scale, in the midst of the global migration crisis, Brianna Scolaro reviews the current state of support and resources available for LGBTI/Q individuals in shelter and camp contexts.

From our home base in Cambridge, Massachusetts, we thank you for your time, and we look forward to reading your thoughts!

Sincerely,

Your Editors

Georgia's HIV Criminal Law: Amplification of the HIV Epidemic among Atlanta Black Men Who Have Sex with Men

By Lamar Greene

Bio

Lamar Greene is a senior at Emory University and from Richmond, Virginia. A Gates Millennium scholar and Truman scholar, Lamar is majoring in human health. He is also pursuing a concentration in health innovation at the Goizueta Business School, which focuses on basic principles of business as they relate to health. Currently, Lamar is working on an independent research project analyzing racial disparities in maternal morbidity under the guidance of Emory epidemiologist, Dr. Carol Hogue. Lamar has dedicated his time at Emory to addressing health disparities across race and sexuality both on campus and in the broader Atlanta community. With the support of the Office of Health Promotion, he helped expand the reach of Emory's PrEP clinic for HIV prevention and worked to educate clinicians around stigmas on sexuality and race. He also volunteers annually during the open-enrollment period to help some of Atlanta's most vulnerable residents navigate their health insurance options. Lamar plans to pursue a public health career focused on community-based initiatives to promote health equity and address health disparities.

Abstract

The objective of this paper is to determine whether Georgia's HIV-specific criminal exposure law leads to an increase in HIV transmission among Black men who have sex with men (MSM) in the Atlanta metropolitan area. This analytical paper utilizes systematic reviews, epidemiological studies, behavioral theoretical frameworks, and other sources to demonstrate the link between Georgia's HIV criminal law and the high incidence of HIV cases among Black MSM in Atlanta. The paper argues that the HIV epidemic among Black MSM in Atlanta has endured due to several social and structural factors, ranging from HIV stigma to a lack of access to preventative and treatment services, and that Georgia's HIV criminal law exacerbates said social and structural factors by further stigmatizing the disease and changing how people interact with HIV preventative and treatment services. The paper concludes that HIV should not be criminalized but instead treated as a public health issue. It recommends that Georgia repeal its HIV criminal law and increase efforts to destigmatize HIV, build trust among vulnerable communities, and increase access to HIV preventative and treatment services.

This paper argues that Georgia's HIV criminal law leads to an increase in HIV among Black men who have sex with men (MSM) in Atlanta. The paper further

defines HIV as a health outcome, Black MSM as a target population, and the social factors linking Georgia's HIV law to a high incidence of HIV with recommendations provided at the end.

HIV Health Outcomes

Although there have been many notable advances regarding HIV treatment and prevention, HIV is and has been an enduring epidemic that affects the lives of many. Currently, there are more than one million people living with HIV in the United States. While the number of new HIV infections declined by 8 percent for the general population between 2010 and 2015, new cases continue to be reported, with more than 38,500 new HIV cases having been reported in 2015.¹ Moreover, HIV infections have been steadily increasing among key risk populations such as youth (e.g., ages 18–24), people of color, and people who inject drugs.²

Today's HIV epidemic is not evenly distributed throughout the country. The American South accounted for roughly half of new HIV diagnoses in 2016.³ Georgia is one of the states with the heaviest burden of new HIV diagnoses. While the national average rate of new HIV diagnoses was 14.7 per 100,000 citizens in 2017, Georgia's rate was more than double: 31.8 per 100,000. Such new HIV diagnoses are concentrated primarily in large metropolitan areas such as Atlanta, with rates that have been compared to those of developing nations. In 2016, there were approximately 35,402 people living with HIV and 1,513 new HIV diagnoses in Atlanta, leading Dr. Carlos del Rio, co-director of Emory University's Center for AIDS Research, to note that "[d]owntown Atlanta is as bad as Zimbabwe or Harare or Durban."⁴ In fact, the HIV epidemic in Atlanta has been spreading so rapidly and uncontrollably that doctors have suggested that all residents living in the metropolitan area take pre-exposure prophylaxis (PrEP), a medicine taken once a day to prevent HIV infection in people who are not currently infected with HIV.⁵

Atlanta Black MSM

While gay and bisexual men make up only 2 percent of the American population, they are by far the population most affected by new HIV infections.⁶ In the United States, 67 percent of HIV diagnoses in 2016 were reported by MSM, and the population represented 56 percent of people living with HIV in 2015.⁷ Black MSM, specifically, are the most disproportionately affected subpopulation in the United States. They accounted for the largest number of new HIV diagnoses in 2016, with 10,226 cases.⁸ Moreover, a Centers for Disease Control and Prevention (CDC) study in 20 major American cities found that more than one in three Black MSM had HIV and that more than two-thirds of Black MSM were not aware of their infection.⁹

While the CDC study shows just how severe the HIV epidemic is for Black MSM across the country, rates of new HIV diagnoses among Black MSM in Atlanta are some of the highest in the nation. In 2017, approximately 10 percent of new HIV diagnoses among Black MSM across the United States occurred in the Atlanta metropolitan area.¹⁰ Overall, the estimated HIV prevalence among Black MSM in Atlanta is 46 percent.¹¹ As if the current rates of HIV among Black MSM in Atlanta were not alarming enough, the CDC has projected that one in two Black MSM will be infected with HIV in their lifetime if current rates of new diagnoses continue.¹²

Numerous factors have led to the alarming prevalence of HIV among Black MSM in Atlanta and across the United States. Historically, doctors failed to report cases of HIV among Black men alongside the other initial cases of the epidemic. While the first cases of HIV are remembered as occurring in 1981, in reality, Robert Rayford was the first known person to die of HIV—in 1969.¹³ Rayford was a 15-year-old Black teenager who presented swollen limbs and a deteriorating body to doctors, who thought he had acquired chlamydia from a same-sex partner and failed to treat his worsening symptoms. It was not until 1984 that scientists isolated

the HIV virus and not until 1987 that scientists found HIV in Rayford's tissue samples.¹⁴

Furthermore, when the CDC reported the five cases of HIV that took place among White MSM in California in 1981, there were two additional cases among Black men that were not reported. One of the cases involved a gay Black man, and the other involved a heterosexual Haitian man.¹⁵ Michael Gottlieb, the doctor who wrote the CDC report in 1981, was quoted telling the *New York Times*, "until recently, I wouldn't have thought it mattered" regarding reporting these two HIV cases among Black men.¹⁶ Not reporting the initial cases of HIV among Black men meant that awareness was not raised among Black MSM and research was not being done to understand how what came to be known as HIV was affecting this community. The lack of HIV awareness for both the medical community and Black MSM allowed HIV to spread silently among this population and has contributed to the disproportionate rates of HIV among Black MSM to date.

In addition to this history, according to a systematic review, the disproportionate rate of HIV infections among Black MSM is best explained by differences in social and structural factors.¹⁷ Some of the main factors driving the disparity include stigma and internalized homophobia, constrained sexual networks, limited financial resources, and the lack of access to preventative services and treatment.¹⁸ Among the relatively small population of Black MSM, members are more likely to engage in sexual relationships with others in the same group, causing the virus to spread more quickly. Furthermore, the lack of access to health care means that viral loads are high because a smaller proportion of Black MSM with HIV are receiving treatment.¹⁹ Due to these social and structural factors, HIV for Black MSM becomes an issue of confined sexual networks and high viral loads.

Georgia's HIV Criminal Law

Historically, there have been numerous federal departments and agencies involved

in addressing the HIV/AIDS epidemic. The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act was launched in 1990 to provide support and access to HIV care for people who were uninsured, underinsured, or could not otherwise afford it.²⁰ Notably, the act required states, in order to receive funding, to certify that their criminal laws were adequate to prosecute any person who was knowingly infected with HIV and intentionally exposed another person to the virus.²¹

The Ryan White CARE Act was rooted in the initial fear and panic that consumed America's consciousness during the first reports of HIV cases in the 1980s. As a result of this legislation, 33 states created specific laws criminalizing people living with HIV for knowingly spreading the virus.²² Today, a total of 67 laws explicitly focused on people living with HIV have been enacted in said 33 states, with the laws centered on criminalizing individual behaviors or resulting in additional penalties for people living with HIV. In 24 states, the law requires that people who are aware they have HIV disclose their status to their sexual partners, and 14 states require that people who are aware that they have HIV disclose their status to needle-sharing partners.²³ Many HIV activists argue that HIV criminalization laws do not consider the modern advances in HIV treatment such as antiretroviral therapy, which reduces HIV transmission risk, or in HIV prevention such as PrEP.

Georgia was one of the 33 states to enact HIV-specific criminal laws under the Ryan White CARE Act, and Georgia's HIV criminalization laws are still in effect today. These criminal laws have two primary parts. First, the law states that reckless conduct by a person living with HIV is punishable as a felony with up to 10 years in prison, even if HIV is not transmitted.²⁴ Georgia defines reckless conduct as engaging in any of the following acts without first disclosing one's HIV-positive status: engaging in vaginal, oral, or anal sex; sharing needles or syringes; offering or agreeing to engage in sexual in-

tercourse in exchange for money; soliciting another person for sodomy in exchange for money; and donating blood, blood products, other bodily fluids, or any body organ or body part.²⁵ Under this provision of the law, a person who is knowingly infected with HIV can also be charged with a felony, and face up to 10 years in prison, for spitting or biting at someone—even though HIV is not transmitted through these behaviors.²⁶

The second portion of Georgia's HIV criminalization law states that, for individuals living with HIV (or hepatitis), assaulting a police or correctional officer with intent to transmit is punishable as a felony with 5–10 years in prison, even if the virus is not transmitted.²⁷ Blood, semen, vaginal secretions, saliva, urine, and feces are considered “deadly weapons” when used by a person living with HIV to assault a police or correctional officer.²⁸

Atlanta's burden of enforcement under Georgia's HIV criminal law is not equally distributed. In 2017, 36 percent of all people with HIV-related arrests across the state of Georgia were in the metropolitan area of Atlanta (i.e., Dekalb, Cobb, Gwinnett, Clayton, and Fulton counties). Fulton County had the highest number of arrests in 2017, with 17 percent of HIV-related arrests in Georgia occurring there.²⁹ Such arrests were disproportionately made against Black men, with 46 percent of HIV-related arrests being made of Black males (as opposed to 26 percent HIV-related arrests being made of White males).³⁰

Social Ecological Model

As shown in Figure 1, the Social Ecological Model may be used to demonstrate how the enforcement of Georgia's HIV criminal laws in Atlanta lead to higher rates of new HIV cases among Black MSM in Atlanta. The model provides a conceptual framework for describing individual change within the context of social change.³¹ Although the model has traditionally been used to demonstrate behavioral change, this paper applies the framework to a biological outcome under

the assumption that Georgia's HIV criminal law changes the behavior of Black MSM in Atlanta and, therefore, leads to higher incidence of HIV among this population. The social world is categorized into five levels of influence under this framework: public policy, community, organizational, interpersonal, and individual levels.³²

Public policy is the outermost level of the Social Ecological Model and involves implementing as well as interpreting existing policy. Key stakeholders at the public policy level include federal, state, local, and tribal government agencies.³³ For the case of HIV criminalization, public policy includes the Ryan White CARE Act and Georgia's HIV criminal laws. The public-policy level also includes the federal, Georgia, and Atlanta governments, which all work to oversee and enforce HIV criminal laws.

The community level is the next sphere of social influence and consists of the cultural values and norms that are commonly held.³⁴ For the case of HIV criminalization, community-level norms and cultural values are centered around homophobia, biphobia, and HIV stigma. The public-policy level interacts with the norms and cultural values present on the community level through the stipulation of the Ryan White CARE Act that required every state to certify that its criminal laws for HIV were adequate.³⁵ Seeing the manner in and degree to which HIV was criminalized influenced community consciousness by making individuals think that HIV was wrong and that any populations disproportionately affected by HIV, such as Black MSM, should be condemned.

The organizational level is the next sphere of social influence and consists of organizational rules, regulations, policies, and informal structures that are present within communities.³⁶ For the case of HIV criminalization, the organizational level consists of Atlanta prisons, the Atlanta police department, religious groups, and other organizations that view or legitimize community norms that stigmatize HIV and populations disproportionately affected by HIV.

The community level interacts with the organizational level by identifying norms and cultural values surrounding HIV criminalization. Organizations then operate under the identified norms and cultural values surrounding HIV criminalization by including it in rules, regulations, and policies.

The interpersonal level is the next sphere of social influence and consists of interpersonal processes and primary groups that provide social identity and role definition.³⁷ For the case of HIV criminalization, the interpersonal level consists of sexual networks for Black MSM in Atlanta, as well as family members, police officers, and clinicians. The organizational level interacts with the interpersonal level by outlining the rules, regulations, and policies that people are mandated to operate under. The organizational level also helps institutionalize community norms and values that may affect views on homophobia, biphobia, and HIV stigma among the social-sexual networks of Black MSM in Atlanta at the interpersonal level.

The individual level is the final sphere of influence and consists of characteristics that influence behavior such as knowledge, beliefs, attitudes, and personality traits.³⁸

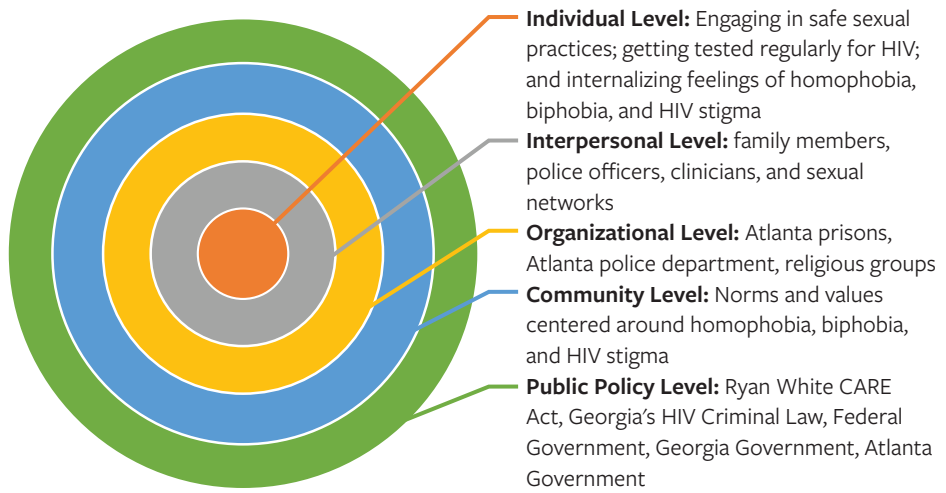
For the case of HIV criminalization, the individual level consists of attitudes such as internalized homophobia, biphobia, and HIV stigma and behaviors such as getting tested regularly for HIV and engaging in safe sexual practices. The individual level is influenced by the social networks provided at the interpersonal level. Social networks can serve as a site for peer-mediated homophobia, biphobia, and HIV stigma that can be internalized by some individuals.

Causal Pathways of Georgia’s HIV Criminal Law

Instead of addressing the social and structural factors that drive the HIV disparity for Black MSM in Atlanta, Georgia’s HIV criminal law has only exacerbated the HIV epidemic. As Figure 2 demonstrates, causal pathways link Georgia’s HIV criminal law to the higher incidence of HIV among Black MSM in Atlanta. One pathway is the disproportionate burden of HIV-related arrests and convictions faced by Black men.

Imprisoning Black MSM only amplifies the spread of HIV among this population, due to the links between race, incarceration, and HIV status. Black men are disproportionately incarcerated, with the imprison-

Figure 1: Social Ecological Model



ment rate for Black men in 2010 being nearly seven times higher than that of White men. According to the Center for HIV Law and Policy, the rate of HIV among people in prison is five to seven times higher than that of the general population, and rates are the highest among Black male prisoners.³⁹ HIV transmission while incarcerated is extremely common, as the virus spreads rapidly through behaviors such as unprotected sex and needle sharing. Furthermore, people in American prisons generally receive substandard health care, exacerbating the lack of preventative care and treatment.⁴⁰

Georgia's HIV criminal law also leads to higher incidence of HIV among Black MSM in Atlanta because the law further stigmatizes HIV. Seeing HIV punished so blatantly, especially among MSM, strengthens the already common negative associations that the virus carries and can lead to internalized homophobia. More specifically, research has shown that HIV stigma leads to both increased feelings of loneliness and a decrease in condom usage with the most recent partner of an unknown HIV status.⁴¹ As Black MSM in Atlanta decrease their condom usage as a result of HIV stigma and internalized homophobia, the chances of HIV transmission among their often relatively confined sexual network increase.

Increased HIV stigma also interrupts public health efforts and leads to Black MSM not getting tested regularly for the virus. Research has shown that Black MSM avoid HIV testing due to fears of stigma and discrimination.⁴² Black MSM fear the negative implications of an HIV-positive diagnosis and may become too anxious about this possibility to get tested. Georgia's HIV criminalization law adds the legal system to the list of people and institutions to fear. In order to avoid potential liability under the law for knowingly spreading the virus, individuals may choose to not get tested.

HIV stigma also leads to people being less likely to disclose their HIV-positive status to their sexual partners due to fear of being further stigmatized. A study among

HIV-positive Black MSM revealed that greater internalized stigma surrounding HIV was associated with less HIV-status disclosure to participants' last sexual partner and to family members.⁴³ Given the fact that Black MSM often have higher viral loads and have several barriers for accessing HIV prevention services, not disclosing one's HIV status to a sexual partner carries a high risk for transmitting the virus.

Studies indicate that health literacy, among many other social and structural factors, is another roadblock to vulnerable populations accessing HIV prevention resources.⁴⁴ They suggest that Black MSM have a need for better awareness and education about the role of PrEP in HIV prevention and improved health literacy in order to understand the confusing and overwhelming medical jargon surrounding HIV.⁴⁵ This lack of literacy is also endemic among doctors, evidenced by the fact that one in three primary care doctors and nurses have never even heard of PrEP, an HIV-prevention medication.⁴⁶ The fact that even doctors have limited literacy regarding HIV prevention highlights the overwhelming barriers within the medical system that prevent Black MSM from accessing PrEP and learning about its role in HIV prevention.

Additionally, HIV stigma further compounds medical distrust among Black MSM. Research shows that Black MSM generally reported that the CDC and medical providers cannot be trusted to provide accurate information about PrEP.⁴⁷ Accordingly, medical distrust among Black MSM was associated with a lower interest in PrEP and antiretroviral therapy.⁴⁸ Without accessing such crucial HIV prevention and treatment services, there is little hope to contain and prevent further spread of HIV within the population.

Conclusion

Georgia's HIV criminal law has been in place for more than 20 years, and there have been increases in HIV rates among Black MSM in Atlanta.⁴⁹ The exacerbated spread of the

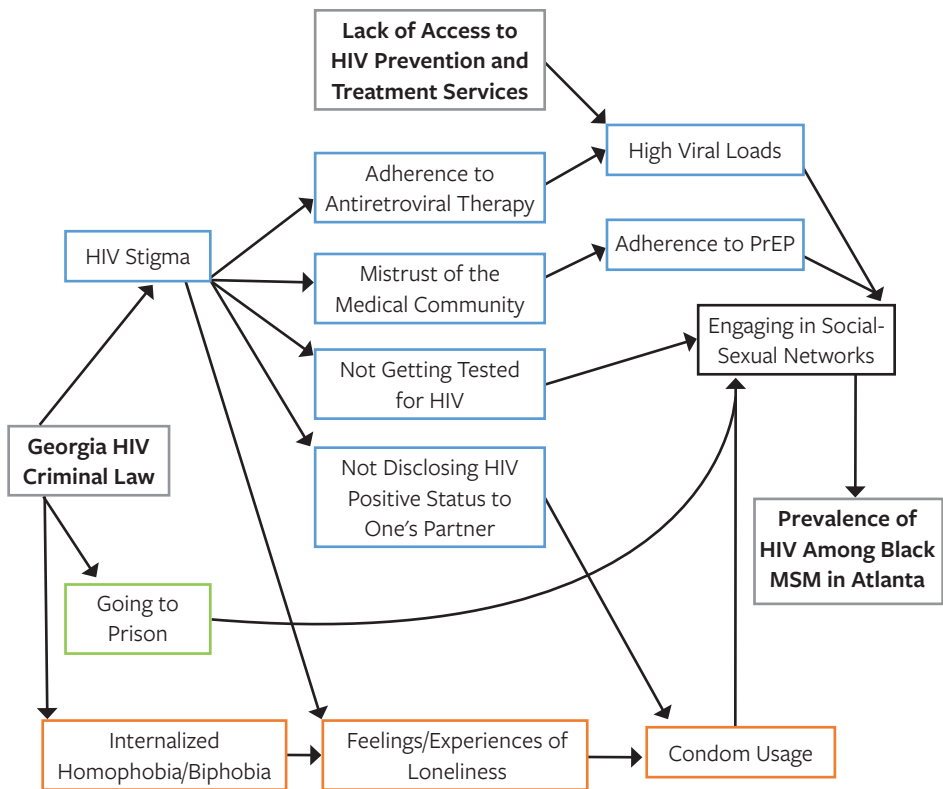


Figure 2: Causal Diagram for Georgia HIV Criminal Law

virus demonstrates that this punitive approach to addressing the HIV epidemic is not effective, as demonstrated by the Social Ecological Model and causal pathway diagram. To properly address the epidemic, it is vital that Georgia repeal its HIV criminal law and invest in public health initiatives aimed at treatment and prevention, particularly among Black MSM in Atlanta. Such initiatives should include HIV community-education campaigns, anti-stigma curricula. These public health efforts are vital if there is any hope of treating HIV as the public health issue that it is.

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The Protection of LGBTI Migrants in Camp Settings

By Brianna Scolaro

Bio

Brianna Scolaro, MSW, is a trained social worker and experienced program manager who is passionate about the nexus of humanitarian response, human rights, and mental health. Her prior work experience has centered around disaster relief and immigration issues, including a post-graduate fellowship with the International Organization for Migration (IOM) in Geneva, Switzerland; advocating for LGBTQ asylum seekers at the UN in New York; and a year of direct disaster response with AmeriCorps NCCC FEMA Corps. Currently, she is the director of community relations at a mental company in New York City and the founder of Scolaro & Associates LLC, a strategic consulting firm. She received her master of science in social work from Columbia University and bachelor of arts in psychology from the University of Delaware.

Abstract

This paper examines the dangers presented to Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI) persons who find themselves among the 2.6 million forcibly displaced persons living in camp settings. While some LGBTI individuals flee due to the persecution of their sexual orientation, gender identity and/or gender expression (SOGIE), others are forcibly displaced by a political, economic or social crisis. After briefly outlining the grounds for formal protection such as international human rights law and the 1951 Convention, I identify challenges to individual safety and well-being in camp settings, including barriers within the humanitarian process itself. A series of concrete recommendations are accompanied by best practices from the United Nations and community-based organizations to showcase how future efforts can enhance protection at the individual, programmatic and global levels.

Introduction

As of 2018, the United Nations High Commissioner for Refugees (UNHCR) estimates that there are 68.5 million forcibly displaced people globally.¹ Many of these individuals identify as lesbian, gay, bisexual, transgender, or intersex (LGBTI) persons who have fled their home countries due to persecutory laws and practices. Around 80 countries criminalize same-sex activity,² often carrying the death penalty. Where activity is not illegal, violence and discrimination are woven into societal norms, presenting barriers in accessing housing, employment, education, and health care. Often, LGBTI individuals face restrictions in their rights to free speech and privacy and are arbitrarily arrested, imprisoned, and tortured.

Left with no other option, LGBTI persons are forced to flee and seek shelter either within or outside of their home countries. Due to these threats, an unknown number of LGBTI persons find themselves among the 2.6 million³ forcibly displaced persons living in camp settings, either from the persecution of their real or perceived sexual orientation, gender identity, and expression (SOGIE) or other political, economic, and social crises. Although designed to provide temporary shelter and protection, migrants increasingly find themselves living in camps for extensive periods,⁴ presenting specific risks to the lives of LGBTI persons.

This paper, which reviews documents from the United Nations, NGOs, nonprofits, and news sources, further examines the dangers presented to LGBTI persons living in camp settings. After briefly outlining the grounds for the formal protection, I identify challenges to individual safety and well-being, including barriers within the humanitarian process itself. A series of recommendations are accompanied by best practices to showcase how future initiatives and policies can assist in the protection of LGBTI persons in camp settings.

The Grounds for Protection

All individuals, regardless of SOGIE, are entitled to enjoy the protections established by international human rights law, such as Articles 1 and 2 of the Universal Declaration of Human Rights (UDHR).⁵ Additional human rights instruments include the Yogyakarta Principles, which specifically outline the right to seek and enjoy asylum from persecution related to SOGIE.⁶ Under the 1951 Convention Relating to the Status of Refugees, individuals can obtain refugee status due to an actual or well-founded fear of persecution on the grounds of race, nationality, and membership of a particular social group or political opinion,⁷ an often problematic definition. As the only United Nations agency with a mandate to protect this population, the UNHCR has sought to strengthen the link between the definition of “social group”⁸ and one’s SOGIE. Additionally, the work of UNHCR includes internal policies on age, gender, and diversity⁹ and disseminating guidelines¹⁰ on the protection of LGBTI persons. Despite international and organizations’ protections, LGBTI persons in camp settings continue to be at serious risk of human rights violations.

The Threat to Physical and Mental Security

Camp settings pose serious threats to LGBTI persons, including physical violence, sexual and gender-based violence (SGBV), and the threat to life as well as verbal harassment and marginalization. These acts of hate can be committed by members of the asylum-seeker and refugee community, family members, humanitarian actors, and local populations.¹¹ LGBTI migrants face additional barriers in navigating routine parts of camp operations, including safe housing, documentation, and sanitation. It is important to note the unique challenges faced within each subgroup of the LGBTI community. For example, transgender individuals are at increased risk of SGBV when placed in a housing option that contradicts their

current gender identity and/or expression. LGBTI refugees also face what is known as “double marginality,”¹² for instance, the compound effect of being both LGBTI and an ethnic, religious, or gender minority.

The attacks against LGBTI refugees in Kenya’s Kakuma Camp serve as an example of the dangerous conditions posted by camps. In December 2018, 20 LGBTI refugees were beaten by locals and other camp members in response to protesting for greater protections outside of an UNHCR office.¹³ Refugee Flag Kakuma (RFK), a grassroots organization that works to empower LGBTI refugees, highlighted these attacks and the population’s subsequent relocation to a safehouse in Nairobi through their social media account.¹⁴

In addition to physical violence, LGBTI migrants face mental health challenges during all phases of their journey. The process of migration itself can cause severe trauma on an LGBTI individual, who has already fled their home area due to a real or well-founded fear of persecution. Upon arrival in camps, the experience of homophobia, transphobia, xenophobia, and other discriminatory attitudes can lead to post-traumatic stress disorder (PTSD), depression, suicidal ideation, and a heightened sense of anxiety from the fear of being outed. Others may experience cultural bereavement¹⁵ or the loss of familiar social structures, language, and other customs. Together, the psychological impact of living in camps leads to isolation¹⁶ and the withdrawal from critical social support networks, further underscoring the need for psychosocial services.

Barriers and Discrimination in the Humanitarian Process

LGBTI persons face additional risks and barriers when interacting with all aspects of the humanitarian process, including registration, access to services, and the process of refugee status determination (RSD). Due to issues of safety and confidentiality, LGBTI individuals are often hesitant to

share their status when registering for or requesting services. Humanitarian personnel may not be able to respectfully and effectively conduct interviews or make appropriate referrals for psychosocial, medical, legal, and other services. When accessed, providers may deliver services in a way that is prejudicial or may lack training on the specific needs of LGBTI persons, including transition-related care or HIV prevention and treatment.¹⁷ Systems meant to gather feedback on camp operations often lack confidentiality or are unresponsive, often not worth the potential risk of exposure for LGBTI persons.

The RSD, or the legal method determining grounds for formal refugee recognition, can be carried out by UNHCR staff or government officials. This process is especially problematic when conducted by government representatives in countries where diverse SOGIE is criminalized. Barriers exist around submitting the required documentation, such as when one’s noted biological sex is incongruent with their current gender identity or expression.¹⁸ During the interview, LGBTI persons may be forced to recount their survival of persecution or prove their LGBTI status, leading to trauma and further marginalization.

Policy Recommendations

1. Prioritize the Safety and Security of LGBTI Persons in Camps

Issues surrounding safety and security, including the right to life, should be the priority of any initiative, guidance, or policy aimed at the protection of LGBTI migrants in camps. A combined approach should be utilized that includes preventing and responding to violence while reducing the amount of time spent in camps.

To the extent possible, LGBTI migrants should be consulted on important decisions surrounding their daily life in camps, such as the decision to be housed with same-sex partners or in a location matching their gender identity or expression. Any acts of violence, when witnessed or reported, should prompt

quick response from appropriate UNHCR officials and/or security forces. In no instance should personnel participate in these attacks or otherwise limit a person's right to submit a complaint or document abuse.

When appropriate, LGBTI persons should be relocated from high-risk situations in camps to pre-existing LGBTI networks in local cities. While relocation to an urban environment presents its own set of challenges, many LGBTI refugees feel cities are far safer places for them, allowing for a greater sense of anonymity and control over social interactions.¹⁹ Efforts should be made to shorten the overall time of LGBTI persons in camps by fast-tracking applications for resettlement. The RSD process should be carried out in a non-discriminatory manner in accordance with mandated protection under the 1951 Convention.

Best Practice: Outside Support from NGOs in Nairobi

In Nairobi, Kenya, NGOs provide services that mitigate the physical and mental consequences of living in camps. One NGO addresses the immediate safety needs of LGBTI refugees by providing scattered housing for those who face heightened risk while waiting for resettlement. A scattered-housing program allows LGBTI refugees to identify a safe place to stay and covers the associated costs for a temporary period, overall reducing the risk of an attack being carried out in a single location.²⁰ Another NGO addresses the mental health of LGBTI persons by providing refugee-run counseling services and organizing community events, counteracting trauma and isolation, and re-establishing social support networks.

2. Generate Confidential and LGBTI-Sensitive Referral Networks

In order to alleviate barriers in accessing legal, medical, psychosocial, and other critical services, a referral network of LGBTI-sensitive providers and partner organizations that can be accessed safely and confidentially should be generated. This

should be led by a dedicated protection officer responsible for overseeing operations in each camp setting. Outreach initiatives should be conducted, in order to identify and build relationships with existing local LGBTI organizations that may not yet be involved with supporting LGBTI refugees, asylum seekers, and migrants in camps. The perspectives of LGBTI partner organizations and migrants should be collected and incorporated into the design, implementation, and evaluation of these referral systems.

Best Practice: UNHCR Jordan

The operations of the UNHCR Jordan office provide a clear example of addressing the safety of LGBTI individuals in both camp operations and referral networks. As a result of a joint workshop with the Organization for Refuge, Asylum & Migration (ORAM) in 2013,²¹ UNHCR established an internal group of LGBTI-sensitive staff members. Each of these staff members serve as a focal point, wearing a rainbow button signifying the safe approach for LGBTI persons. Safe-space posters and brochures are available in each office and translated into the local language. Feedback and complaints can be channeled through boxes at registration sites or by providing direct feedback to focal points. Additionally, focal points match each LGBTI person with a case worker either in the camp or at a partner organization who then oversees the referral process. Cumulatively, focal points collect information on the risks, needs and priorities of LGBTI persons and incorporate them into the office's standard operating procedures and practices.

3. Facilitate Outcome-Driven Sensitization Trainings for Staff and Other Personnel

To enable further protection regarding the safety and security of LGBTI persons, mandatory sensitivity trainings should be implemented with humanitarian staff and third-party consultants involved with camp operations, including security officers.

Trainings should focus on methods for assessing the risks and needs of LGBTI persons across the humanitarian process. To navigate around the additional barriers presented by the criminalization of SOGIE, discussions should avoid cultural and religious debate and instead focus on the delivery of humanitarian assistance. As a result, trainings should produce a series of concrete actions backed by guidance and policies. Identified risks, needs, and priorities should be incorporated into organizational-level codes of conduct to address attitudes and policy toward LGBTI persons from within the organization, as modeled by UNHCR's Code of Conduct.²² Key progress indicators should be established to monitor the impact of trainings on both increased levels of staff sensitivity and the protection of LGBTI persons in camps.

Best Practice: UNHCR/IOM LGBTI Training Package

In 2016, UNHCR together with the IOM developed and piloted a comprehensive LGBTI training package for humanitarian actors. The training consists of five modules administered annually to help humanitarian actors understand risk factors for LGBTI persons in camp and refugee settings. The content itself reviews both foundational knowledge on terminology and assumptions as well as operational protection, including conducting interviews and the RSD process. Anticipated long-term outcomes of the training include transforming UNHCR and IOM offices into safe and welcoming spaces, generating awareness on the responsibility to protect LGBTI persons of concern, and increasing the capacity of RSD adjudicators to assess claims per UNHCR policies and guidelines.²³

4. Advocate for Protection at the National and Global Levels

Until we solve the core issue of the criminalization of SOGIE, we cannot effectively ensure the protection of LGBTI individuals in camps. Protection and other personnel

working with camp populations need to develop a direct tie to human rights mechanisms and channel perspectives into larger advocacy mechanisms. Public awareness campaigns and global advocacy should be a result of combined efforts from UN organizations such as UNHCR and the Office of the Commissioner on Human Rights (OHCHR), NGOs, and grassroots organizations as well as LGBTI persons. Messaging should be tailored to local customs, ideas, and languages in order to address the systematic discrimination infused within societies, even in regions where LGBTI status has been decriminalized.

Best Practice: The Concerted Efforts of the United Nations and Local Organizations

Lessons can be learned from the participation of both UN and local organizations in advocating for the rights of LGBTI persons in formal human rights mechanisms. In its 2015 survey, UNHCR found that 36 percent of its 106 offices reported the situation of LGBTI individuals to national, regional, or international human rights mechanisms such as the Universal Periodic Review, Convention on the Elimination of Discrimination Against Women (CEDAW), and national human rights institutions (NHRIs).²⁴ Key findings include the usefulness of creating templates for writing reports and assisting LGBTI persons in submitting individual complaints. In another example, Helem, a nonprofit, continues to submit reports to the Human Rights Committee (HRC) regarding the protection of LGBTI persons in Lebanon. Their 2017 report to the HRC asserted a series of recommendations specific to Lebanon, including the abolition of the country's penal code, greater dialogue between the government and human rights defenders, and the launch of a national anti-bullying campaign within educational institutions.²⁵

Final Remarks

Due to the dangers outlined in this paper, many migrants will ultimately choose to

hide their SOGIE status, creating a major challenge in accurately monitoring the ongoing human rights situation in camp settings. When humanitarian programs are expanded to track the situation of LGBTI persons, they should be careful not to do so for the sake of checking off a box. While UNHCR should be commended for its progress in protecting LGBTI persons, further collaboration is needed across other United Nations agencies, such as OHCHR and the Joint United Nations Program on HIV and AIDS, as well as amongst local NGOs and members of civil society.

Addressing the protection of LGBTI persons in camps is only a cross-sectional glance of the journey to safety. Future initiatives and policies need to analyze the situation of LGBTI persons across all pathways and stages of migration. Often, the most ideal locations for resettlement, including New York and San Francisco, are also the most expensive. Once resettled, either as a refugee or on the grounds of asylum, LGBTI persons continue to face isolation, abuse and discrimination, finding themselves facing the same persecution that prompted their initial flight.

Endnotes

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- ³ “What is a Refugee Camp?” USA for UNHCR, n.d., <https://www.unrefugees.org/refugee-facts/camps>.
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- ⁵ *Universal Declaration of Human Rights* (United Nations, 2015) [PDF file].
- ⁶ “The Yogyakarta Principles,” ARC International, n.d., <http://www.yogyakartaprinciples.org/>.
- ⁷ *Convention and Protocol Relating to the Status of Refugees* (Geneva: UNHCR, 1951), <https://www.unhcr.org/3b66c2aa10>.
- ⁸ *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement* (Geneva: UNHCR, 2011) [PDF file].
- ⁹ *UNHCR Policy on Age, Gender and Diversity* (UNHCR, March 2018), <https://www.unhcr.org/>

[protection/women/5aa13coc7/policy-age-gender-diversity-accountability-2018.html](https://www.unhcr.org/refugees/protection/women/5aa13coc7/policy-age-gender-diversity-accountability-2018.html).

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¹⁷ Siobhan McGuirk et al., *Stronger Together: A Guide to Supporting LGBT Asylum Seekers* (Washington, DC: LGBT Freedom and Asylum Network, October 2015) [PDF file].

¹⁸ *Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees* (Division of International Protection, UNHCR, April 2013) [PDF file].

¹⁹ Jennifer Rosenberg and Anne Meyers, *Mean Streets: Identifying and Responding to Urban Refugees’ Risk of Gender-Based Violence* (New York: Women’s Refugee Commission, February 2016) [PDF file].

²⁰ *Sexual orientation and gender identity and the protection of forced migrations* (Oxford: Forced Migration Review, no. 42, April 2013) [PDF file].

²¹ *Building Capacity for Protection of LGBTI Persons Of Concern – Jordan* (Geneva: UNHCR, n.d.) [PDF file].

²² *Code of Conduct & Explanatory Notes* (UNHCR, June 2004) [PDF file].

²³ Jennifer Rumbach, *Working with Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons in Forced Displacement and the Humanitarian Context*, Module 01 Facilitation Guide (UNHCR, IMO, January 2017) [PDF file].

²⁴ Nathwani, *Protecting Persons with Diverse Sexual Orientations and Gender Identities*.

²⁵ Helem – Lebanese protection for LGBTQ, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon* (Helem – Lebanese protection for LGBTQ, April 2017) [PDF file].

Transgender Warrior & Elder: An Interview with Jessica Xavier

By J. Michael Ryan

Bios

*J. Michael Ryan is currently a research fellow on the TRANSRIGHTS project at The University of Lisbon. He received his PhD in sociology from the University of Maryland. He has previously taught courses at The American University in Cairo, Facultad Latinoamericana de Ciencias Sociales (FLACSO), and at the University of Maryland. Before returning to academia, Dr. Ryan worked as a research methodologist at the National Center for Health Statistics in Washington, DC. He is the editor of more than a half dozen volumes including *Trans Lives in a Globalizing World: Rights, Identities, and Politics* (Routledge, forthcoming) and *Core Concepts in Sociology* (Wiley-Blackwell, 2018). He has also served as advisory editor on *The Wiley-Blackwell Encyclopedia of Gender and Sexuality Studies*.*

*Jessica Xavier has been a leading trans activist, scholar, and artist for more than 25 years. She was the co-founder of the first nationally organized grassroots political action and lobbying group for transgender people, *It's Time, America!*, in 1994, and also co-founded *Gender Education and Advocacy* in 2000. Jessica is also a pioneer in transgender-related data collection, working for over 35 years in and around the HIV epidemic, including more than a decade in the federal government with the *Ryan White HIV/AIDS Program*. Her work has been recognized by numerous awards including the highly prestigious *Public Service Award* from the *Society for the Scientific Study of Sex* (alongside two former US surgeon generals) and the *Distinguished Service Award* presented by the *Gay and Lesbian Activist Alliance*. She is also an accomplished singer/songwriter, and in 1999, she released *Changeling*, one of the first trans music CDs. Perhaps more importantly, Jessica has been a role model and inspiration to countless individuals, trans and otherwise, opening many doors for the increased understanding, support, and acceptance of a number of disenfranchised communities.*



RYAN: You have a considerable, and impressive, history related to trans activism. Can you tell us what first inspired you to become an activist for trans rights?

XAVIER: After I came out, I became the outreach director for the Transgender Educational Association of Washington, DC. In that capacity I answered a call for volunteers for the host committee for the 1993 March on Washington for Gay, Lesbian and Bi Equal Rights and Liberation (MOW). I met many gay men and lesbians who were out, loud, and proud and became inspired by their courage and commitment toward gaining their civil rights. So participating in the 1993 MOW politicized me, along with other transgender people who realized we had to emerge from the shadows and openly advocate for ourselves if we were going to live our lives free from discrimination and violence. The only justice we receive, we must create for ourselves.

There once was a perceived tension between the LGB and the T in activist circles. What do you think is the relationship between the T and the LGB in terms of social activism?

I believe that all queer folks are simply seeking the same civil rights that straight, cisgender people (people who do not identify as transgender) take for granted. We have learned to work together in common cause to fight discrimination and violence and to obtain recognition of our marriages and families. But trans people are different in that we need access to specialized medical care for our physical transformations in order to be comfortable in our bodies and safe from stigma-driven violence and discrimination. We also have to re-document our identities and fight to have our chosen genders recognized and respected.

Some might argue that the early days of the LGBT movement were really just an LGB movement, with the T often being

either ignored or thrown under the bus for the supposed sake of political advances. Arguably, however, this situation has improved somewhat over the last decade, with increasing attention being paid to the T in its own right and, in fact, the growing, albeit still limited, prominence of organizations that focus exclusively on T issues. How do you respond to this assessment?

There was once a time when we were all just gay, before identity politics separated us into a hierarchy of oppressed groups. Then in the 1990s, there was an enormous struggle by trans people to be included in the larger, better-organized gay and lesbian civil rights movement. There were those who thought trans people were completely different from gay and lesbian people, even though we all fought at Stonewall together. And some were all too ready to put a dress code on civil rights. So lots of education became necessary, sometimes with people who did not want to listen. This struggle absorbed much of my time and effort and brought me into conflict with gay and lesbian advocates whom I looked up to and admired for their courage and industry. So we had to form parallel organizations of our own to work beside gay and lesbian organizations to advocate and educate. I tried to organize the groups I co-founded based on my transfeminist principles, but I largely failed to gain acceptance of this approach.

Can you tell us a bit more about what these transfeminist principles are and why you feel they failed to gain acceptance with the larger movement?

Transfeminism builds upon the intersectional understandings of oppression based on sex, race, class, age, poverty, etc. Its demand for bodily autonomy and access to the transformational medical procedures that allow our bodies to correspond with our true genders parallels reproductive choice for cisgender women. However, it critiques

traditional second-wave feminism that predicated its opposition to gender-based oppression (GBO) on identity politics and how it dumbs down GBO to only where it intrudes into narrowly drawn identity boxes, such as “women” and “lesbians.” Inherent in transfeminism is a call to action to not just fight GBO but to dismantle compulsory, heteronormative gender itself, thus transcending sexism, homophobia, biphobia, and transphobia to focus on the actual disease of GBO rather than just its symptoms.

I was a feminist for at least 15 years before I transitioned, and I became one of the early transfeminists after reading Sandy Stone’s ovarian essay, *The “Empire” Strikes Back: A Posttranssexual Manifesto*.¹ For me, transfeminism emerged as a reaction to a particularly vicious form of GBO, which is generally called transphobia. In my survey research, I’ve assessed transphobia’s measureable outcomes including murder, physical, and sexual assault; discrimination in employment, education, housing, and health care; and suicidality and substance abuse. Thus transfeminism began as a politics of survival. I like to say that if you have time to write about transfeminism, you are probably not practicing it. But I suppose everyone needs to take a break now and then [*laughs*].

In my 1995 essay, “Transsexual Feminism and Transgender Politicization,”² I analyzed why so few transgender people were actively participating in the movement. There were hardly any transmen and transpeople of color showing up at our meetings, so our transpolitical agenda was mostly driven by transwomen and male crossdressers. I saw a lot of competition among the few national organizations; personal rivalries; and worse, no underlying, inclusive politics to inform the movement. I also saw the diversity of the trans population as an unused asset, while too many people were being driven away by leadership’s bent on retaining their White, male, passing privileges. So in *It’s Time, America!* and *It’s Time, Maryland!* I tried to incorporate feminist process and

consensus-based decision-making in our meetings, to bring in the voices of everyone who showed up. We outreached to transpeople of color and transmen to bring them into our groups and agendas. It was radical, it was revolutionary, it was way too far ahead of its time, and so it failed. The movement remained an attorney-driven, patriarchal “gimme my rights back” endeavor, seemingly seeking to reclaim lost privilege.

How do you view the goals and strategies of the trans-rights movement as having evolved over the last several decades?

It seems to me that the primary focus has continued to be on anti-transgender violence. Kay Brown did an analysis once and found that it was more likely for a transwoman to be murdered than to be married. But other issues, like discrimination in employment, education, housing, and health care and recognition and re-documentation of our legal identities, have also seen some focus and progress. Regrettably, the extent of HIV infection among transgender people, primarily among transgender women of color, has been obscured by these other issues. A hopeful note has been the emerging recognition of the importance of data in documenting these concerns.

You have been one of the pioneers in trans-related data collection. The results of this work have been foundational in laying the groundwork for what we know about a number of trans communities. Can you share what first got you interested in this kind of work and why you think it is so important?

Back in the 90s, I spent a good deal of my time in DC, where I encountered many transgender women of color who were living hellish lives. Too many were dying from violence, HIV, substance abuse, homelessness, and despair, and they were not being served by the district government’s health care and social service agencies. This was a

time when trans people were not well understood, and the social stigma drove too many cisgender people to act out horrific violence. The galvanizing moment was the tragic death of Tyra Hunter, a transgender woman who was denied medical care by the DC Fire Department and DC General Hospital after a car accident in 1995. She died on a gurney untreated by the ER staff, and her mother sued for gross violation of her child's civil rights. She was awarded \$2 million by a jury. Transphobia is tragic, but it also can be very expensive to taxpayers.

I knew of a transgender survey that was conducted in Philadelphia³ by a group of friends and saw that putting hard facts and figures on paper about a "hidden" population would be a powerful advocacy tool to inform the DC government of the many unmet needs and sheer human misery. So the Washington Transgender Needs Assessment Survey (or WTNAS, pronounced "witness") was born. I followed the Philadelphia survey's first-time use of the two-step method of asking respondents about their gender followed by their birth sex. Since many transgender people will simply identify themselves as male or female after their transitions, this methodology captured more trans people than just asking a single question. In a little over four months, WTNAS had 252 trans and intersex people in its sample. It was also the first survey I know of in the United States that was translated into Spanish.

After the report⁴ was released, the DC Department of Health provided the first trans-specific HIV-prevention funds, and a few years later, Transgender Health Empowerment was founded, the first transgender community-based organization in DC. But perhaps more importantly, conducting the WTNAS study by following a community-based participatory research (CBPR) approach organized the transgender community of Washington, bringing all the diverse subpopulations together to work in common cause. It literally created our community.

You are currently working with the This Great New Community Survey in Virginia, among the first to directly target not just transgender individuals but also those who identify as gender nonconforming as well. You have also done work specifically with transgender people of color. Can you talk a bit about why you think it is important that surveys, and other research and activism, begin to more properly nuance their work with the trans population in this way?

Although "TGNC" is widely used in the same way we say "LGBT," in a public health context, I view the trans and gender-nonconforming (GNC) populations as distinct with some overlapping needs and concerns. They are also very diverse, with many people of color, and they express their genders (or the lack thereof) in myriad ways. This impacts how and what kind of health care they seek, and indeed, how they view their bodies and their health itself. I've read that some gender non-binary people will adopt a trans identity in order to obtain access to trans health services, in order to partially virilize or feminize their bodies. Health care and social service providers and staff are largely unprepared to deal with them respectfully and comprehensively, and we have no idea of their sexual risks, their mental health and substance use, and other health conditions. Despite the lack of systematic surveillance by the CDC, transgender women of color are horribly impacted by the HIV epidemic. Even the CDC estimates that half of African American transwomen are living with HIV.⁵ Trans-latinas also have high HIV infection. While these transwomen of color have some terrific advocates, they also need allies to speak truth to power where their voices can't reach.

The ability to be recognized, legally, for who you are is a foundational human right, and yet it is one that is denied to many trans people. Why do you feel it is important that people be allowed to re-

ceive legal recognition for their chosen gender identity?

In a fundamental way, recognition of chosen gender is more important than marriage equality. The latter validates the legal recognition of someone's love and family, but gender goes to the heart of what it means to be a human being. Denial of someone's gender is to deny their personhood, agency, and existence. Traditionally, legal recognition of a trans person's gender could only be obtained with documentation of sex-reassignment surgery. Although the insurance industry is finally beginning to cover the costs of transgender health and even the surgeries, many trans people do not have insurance and cannot afford the out-of-pocket costs. But perhaps more importantly, many trans and gender-non-binary people do not want these surgeries. After they socially transition, their identities are grounded in their lived experience, not their birth anatomy. Gender (binary, non-binary, or the total lack of it) is a personal expression of one's humanity, and it must be respected. Full stop.

One of the central issues of trans activism in recent years has centered around bathrooms. So-called bathroom bills have become a lightning rod for drawing attention to the discrimination faced by many trans people. Why do you think this is so?

This is sheer hysteria—fear-mongering used by social conservatives as a wedge issue for political gain. I like to say the controversy shows that trans people don't even have a pot to pee in. But it is also illustrative of how these conservatives strive to maintain the social stigma of being transgender. Stigma has been heavily researched in the social sciences, but really it's just a means for many, if not most people, to safely hate others who are different from them. I'm sure many of my generation remember the "Hate is Not a Family Value" bumper sticker. Oh, but it

is. In these socially and politically polarized times, hatred has become a central organizing principle of society: you are defined by who you hate. That's what I call the false empowerment by scapegoating others—blaming someone else means you don't have to deal with your own shit. So the maintenance of stigma becomes a means of escaping not just the notice of personal deficits but also the lack of accountability for one's actions toward themselves and the lack of responsibility toward others. Whether we accept it or not, the simple truth is that we are all spiritual beings sharing a human experience that intrinsically links us together on this fragile orb we are so busy destroying.

Given your years of activism and involvement, what do you think should be the main focus of the trans-rights movement in the United States today?

Probably inclusion in, and passage of, the Equality Act. Anti-LGBTQ discrimination disproportionately affects trans and GNC people because so many lack passing privilege, the ability to pass as cisgender/straight. A job is more than just income—it's a chance at a normal life. But for everyone living today and the next generations to come, we must do something to halt the effects of man-made climate change. According to the UN, we've got just a dozen years before we reach the tipping point, when there's nothing left to do except adapt to extreme weather, droughts, famines, water shortages, and widespread tropical diseases. I'd say the survival of the species, straight and gay, cis and trans, should properly be our first concern in the United States and everywhere else.

The Trump administration has received various, mostly well-deserved, scathing critiques for their approach to trans-related policies, which many view as a reversal of the more positive directions taken by the Obama administration. That said, the current policies either being put

in place or rescinded do not move overall policy to a place that differs from the early years of the Obama administration or, in fact, from any previous administration before that. Why do you think such ire is being directed specifically at the current administration?

The national LGBT organizations fought hard during the Obama administration to obtain open service for trans service members and also to enforce the US Equal Employment Opportunity Commission's finding that trans people are protected from discrimination under Title 7 of the Civil Rights Act. The Affordable Care Act also prohibited discrimination in health care on the basis of gender identity, and the federal government began taking its first steps to collect data to finally count transgender people in some of its national health care surveys. These were not gimmies. We fought long and hard to move people—lots of risk-averse bureaucrats and some who were religious fundamentalists—to achieve these rights. So losing these gains has been jarring and yet another reminder of our vulnerability as trans people living in an intolerant culture.

I am a survivor of physical violence including a murder attempt, and I understand transphobia all too well. I've had to become a student of stigma in order to survive, but still, transphobia strikes me as odd. Not so long ago, in non-Western cultures, we trans people were valued as healers and teachers, for only we truly understood the twin mysteries of human existence: male and female. A pearl without price, to be sure, that today is sadly cast before and trod under by swine.

As someone who has been a trans-rights activist for nearly three decades, what do you see as the future of the trans-rights movement in the United States?

It's hard to predict what might happen to a small, under-resourced movement representing a still-stigmatized population at-

tempting to survive while living under an unpredictable administration led by people who use fear as a motivator for their supporters. But I've told my friends in the HIV and trans-health research world that we must continue to develop our interventions and to educate our health care and social service providers as best we can, so when political change inevitably comes, we will be ready to quickly implement those changes to improve the health and lives of trans and gender-non-binary people. But in the meantime, it's Bette Davis's famous line from *All About Eve*: "Fasten your seat belts, it's going

Endnotes

¹ Sandy Stone, *The "Empire" Strikes Back: A Posttranssexual Manifesto* (University of Texas at Austin, 1993), [PDF file], <http://webs.ucm.es/info/rqtr/biblioteca/Transsexualidad/trans%20manifesto.pdf>.

² Jessica Xavier, "Transsexual Feminism and Transgender Politicization," *TransSisters: The Journal of Transsexual Feminism*, no. 10 (1995), <https://learningtrans.files.wordpress.com/2010/11/transsexualfeminismtransgenderpoliticization1.pdf>.

³ T.B. Singer, M. Cochran, and R. Adamec, *Final Report by the Transgender Health Action Coalition (THAC) to the Philadelphia Foundation Legacy Fund (for the Needs Assessment Survey Project)* (Philadelphia: Transgender Health Action Coalition, 31 October 1997).

⁴ Jessica M. Xavier, *The Washington DC Transgender Needs Assessment Survey: Final Report for Phase Two* (Administration for HIV and AIDS, Government of the District of Columbia, August 2000) [PDF file], https://www.researchgate.net/publication/307464621_Final_Report_of_the_Washington_DC_Transgender_Needs_Assessment_Survey_WTNAS_August_24_2000.

⁵ Jeffrey H. Herbst et al., "Estimating HIV Prevalence and Risk Behaviors of Transgender Persons in the United States: A Systematic Review," *AIDS and Behavior* 12, no. 1 (2008): 1–17.

to be a bumpy night."

Defending Rights from “Gender Ideology”: Discourses in Mexico’s Backlash against LGBTI Inclusion

By Roberto Zedillo Ortega

Bio

Roberto Zedillo Ortega is a Chevening & Cambridge Trust scholar studying for a master of philosophy in sociology at Sidney Sussex College, University of Cambridge. In 2015, he graduated top of his class from Mexico City’s Centre for Research and Teaching in Economics with a bachelor’s degree in political science and international relations. He has collaborated in evaluation projects on Mexican social policy, and his research about individual attitudes toward LGBTI-inclusive policies has been recognized and published by the Mexican Chamber of Deputies. He has also assisted in studies on LGBTI exclusion in the workplace and recently co-authored the book Reconstruir con inclusión: Desastres naturales y no discriminación (Inclusive Reconstruction: Natural Disasters and Non-discrimination), published by the Belisario Domínguez Institute at the Mexican Senate. From 2016 to 2018, he served as an advisor to the head of the National Council for the Prevention of Discrimination, Mexico’s federal institution tasked with anti-discrimination policy.

Abstract

In May 2016, Mexican President Enrique Peña Nieto issued a number of directives for LGBTI (lesbian, gay, bisexual, transgender, and intersex) inclusion in various arenas, including marriage. This was followed by strong opposition, in particular from the Catholic Church and the National Front for the Family, a newly emerged coalition of civil society organizations. The following paper focuses on the discourses underlying said actors’ declarations, press releases, interviews, articles, and legislative efforts. It shows that, while Mexican adversaries to LGBTI equality still rely heavily on arguments related to nature, divinity, and biology, they have also come to internalize and deploy human rights discourses. This is part of an international trend whereby conservative forces, shying away from their initial skepticism, have now become adept at articulating their demands under human rights narratives.

Introduction¹

While scholars have long discussed the circumstances under which steps towards LGBTI² equality may be met with resistance,³ they have devoted less attention to the discursive components of backlash. Especially outside of Europe, few academics have explicitly noted that opposition to inclusive policies has come to be articulated under increasingly common frameworks. Thus, even though some media have alerted about phenomena like the rise against “gender ideology” in Latin America,⁴ these narratives have merited only limited analysis.⁵

To fill this gap, the present article examines the discourses that opponents to LGBTI rights in Mexico have most recently relied on. It focuses on the aftermath of 17 May 2016, when in commemoration of the International Day Against Homophobia, Transphobia and Biphobia (IDAHOTB), President Enrique Peña Nieto issued a number of directives for inclusion. Among other things, he instructed his cabinet to create protocols for non-discriminatory access to health care, develop a national campaign against homophobia, inscribe “respect for diversity” in educational materials, and ensure Mexico joined the United Nations LGBTI Core Group. He also signed two legislative initiatives to enshrine marriage equality in the constitution and the federal civil code, which (since marriage is regulated at the state level) were mostly symbolic.⁶ His directives, especially those pertaining same-sex marriage, faced strong opposition.

The text will focus on the discursive strategies of the two main detractors of these measures. The first is the Catholic Church, whose influence has been (albeit to varying degrees) a fixture in Mexican politics since the 16th century. The second is the National Front for the Family (*Frente Nacional por la Familia*, heretofore NFF or the Front), a coalition of more than a thousand civil society organizations that came together in response to the president’s LGBTI

agenda. These actors’ declarations, press releases, interviews, and articles as well as an alternative legislative bill put forth by NFF member ConFamilia will be analyzed to show that, while Mexican adversaries to LGBTI equality still rely heavily on arguments related to nature, divinity, and biology, they have also come to internalize and deploy human rights discourses.

The remainder of this piece is organized as follows. Section 1 provides a brief context to situate the significance of the period under study. Section 2 discusses the way in which the Church and the NFF relied on narratives that portrayed marriage as a heterosexual—even divine—institution based on reproduction, while claiming to be on the side of “biology” versus gender ideology. Section 3 highlights the ways in which, perhaps counterintuitively but in tune with growing global trends, these actors also framed their views under human rights rhetoric. The piece then offers some conclusions.

1. Why 2016?

Partly owing to its federal nature,⁷ Mexico has recognized LGBTI rights in a fairly gradual manner. For instance, civil unions were only first enacted in Mexico City in 2006. Same-sex marriage and adoption, facing strong opposition from then right-wing President Felipe Calderón, were also first legalized in Mexico City three years later. By May 2016, although the Supreme Court had already ruled that restricting marriage to heterosexual couples constitutes discrimination, only three additional states had recognized marriage equality in their legislation. Similarly, adoption by same-sex couples was only possible in two states. LGBTI activists systematically reported high levels of exclusion at home, in schools, in the workplace, and in public spaces.⁸

2016 marked the first time that the head of the Mexican Executive ever held a formal act to commemorate IDAHOTB. His directives and legislative bills were announced at an unprecedented live-streamed meet-

ing that joined members of his cabinet with LGBTI activists, scholars, artists, businesspeople, and politicians. Commentators claimed the event “caused surprise across all sectors.”⁹ Marriage equality quickly became the main focus of national discussion.

Even though public opinion seemed favorable at first,¹⁰ backlash soon ensued. Catholic leaders condemned the president’s agenda in the media, in the pulpit, and in print. In addition, eight days after the commemoration, the NFF was born to “respond to President Enrique Peña Nieto’s initiative to modify the Constitution and the Civil Code to recognize unions between same-sex people.”¹¹ Aside from calling for the president to roll back his instructions, the Front demanded that Congress restrict marriage to one man and one woman, in accordance with an unsuccessful bill that member organization ConFamilia had introduced in February 2016. To these effects, the NFF convened mass demonstrations across the country, with open support from the Catholic hierarchy.¹² While most of the president’s instructions were followed, his bills were dismissed by Congress in November.¹³

2. A Defense of the “Natural” Family

A survey of the NFF’s and the Catholic Church’s discourses reveals that, in present-day Mexico, opposition to LGBTI inclusion is often based on understandings of what is “natural.” In fact, most critiques against the president’s measures were framed as a defense of the family or, more explicitly, the “natural family,” which allegedly emanates from the “natural—complementary—relationship between one man and one woman.”¹⁴ According to this logic, marriage and the family are founded upon the “mutual compatibility” between men and women, which renders them heterosexual by definition.¹⁵

The reasons why the family is perceived as a “natural institution” vary depending on the actor. The Catholic clergy’s statements suggest that, for them, compatibility between men and women derives mainly from

their reproductive potential. From cardinals to archbishops, religious figures highlighted men and women’s “fecundity” or capability to “transmit life”¹⁶ and argued that “the human body is not designed for homosexual relations.”¹⁷ These assertions replicate the general Catholic conviction that God calls upon men and women to reproduce. As Chicago scholar Mary Anne Case shows, beyond Mexico, religious figures—including the incumbent Pope—have opposed marriage equality on the grounds that it contradicts “God’s plans.”¹⁸

For the NFF, the compatibility at the core of the “natural family” was based not only on men and women’s reproductive potential but also on their “psychological” differences.¹⁹ To be sure, the possibility for men and women to conceive through heterosexual intercourse was thoroughly emphasized (e.g., “two men cannot make a mother, and two women cannot make a mother”).²⁰ However, it was paired with a notion of biological determinism regarding the mindsets of men and women. It is interesting to note that, even though Case suggests that these kinds of assertions are the basis for “most of the Vatican’s newly preferred theological anthropology of complementarity,”²¹ they did not figure in the Mexican Catholic Church’s discourse. This could owe to clergymen’s attunement with national public opinion, which has come to reject most overly sexist stereotypes.²²

LGBTI exclusion based on conventional understandings of “nature” and “the family” is not new in Mexico. According to analysts such as Jordi Díez,²³ this mechanism can be traced back to at least 16th-century colonization, when the Catholic Church introduced natural law to Latin America. In fact, political developments have seemed to reinforce its persistence: following the region’s independence plights, for instance, the heteronormative family arguably cemented its position as the main formal unit of social organization.²⁴ References to nature in relation to homosexuality, however, have gradually lost centrality, especially after the emergence of medical and

psychological approaches to the study of sexuality in the 19th century.²⁵

Aside from references to the “natural,” the NFF and the Church also produced a discourse of the “biological.” Front representatives stressed: “biology . . . teaches us that people are born from a relationship between one man and one woman.”²⁶ However, the appeal to science and “basic biology” was not only another way to reference heterosexual reproductive potential—it also served as a device to draw a juxtaposition between the NFF’s and the Church’s understandings of marriage and family on the one hand and gender ideology on the other.²⁷

While it remains challenging to succinctly define what gender ideology entails, Case contends that early-1980s writings of Joseph Ratzinger (later Pope Benedict XVI) delineate its basic elements, which could be summarized in a denunciation against “the trivialization of sexual specificity that makes every role interchangeable between man and woman.”²⁸ The idea is, then, to “reaffirm heteropatriarchal conceptions of sex, gender, and sexuality.”²⁹ Conservative and religious leaders have publicly rejected gender ideology since at least the 1990s, after various UN conferences led to breakthroughs in the international plight for gender equality.³⁰ 2016 offered the first venue for this ill-defined notion to become part of Mexican mainstream discourse. For instance, Mexico City’s archdiocese published materials advising parents to push back against gender ideology,³¹ while the Front positioned itself against “social experiments” based on it.³²

3. The Rights of the Right

While it may seem unusual, apart from well-established notions about sexuality, the family, and reproduction, Catholic clergymen and the NFF also resorted to human rights rhetoric to resist LGBTI inclusion. As will be shown below, they deployed this framing to push back against any mention of “diversity” in educational materials, defend themselves from perceived attacks against their freedom

of religion and expression, and contend that marriage equality is not a right.

As to educational materials, Mexican opponents to the president’s instructions claimed (heterosexual) parents had a right to teach their children their own values. The president’s agenda was denounced as a “[push] for the State to overtake parent’s formative functions,”³³ which infringed, according to the Church, on a “natural right . . . not given to us by the State.”³⁴

Arguments to shield children and their “innocence” from other moral orientations, particularly with regard to sexuality, have been put forward by conservative organizations globally to oppose a variety of developments, from the appearance of diversity in popular media to changes in sexual-education pedagogies.³⁵ In the Mexican case, the insistence that “it is a parent’s right to determine what knowledge their children should have and when they should receive it”³⁶ was mostly deployed in relation to gender ideology, which was thought to manifest itself in all attempts to portray LGBTI individuals (and their “unions”) as equal to non-LGBTI citizens (and their marriages). Scholars have underlined the ways in which the insistence on “protecting children” and the emphasis on paternal authority over the types of content infants should be exposed to reinforce tropes about childhood as a pure, naive, asexual, even sacrosanct stage of human development.³⁷ Especially in cases like Mexico, where the focus is on educational materials, this could be considered a form of surveillance, as well as of individual control, that works to the benefit of adult’s interests instead of children’s rights.³⁸

As to religious freedoms, opponents to LGBTI equality posited that the president’s measures were a way to impose the “radical agenda” of the “gay lobby” on everyone, including Catholics.³⁹ The implication was that LGBTI inclusion was at odds with other individuals’ rights in a zero-sum dynamic.

While opponents to LGBTI equality around the world have certainly appealed to religious freedoms, they have done so with

radically different purposes. During the United Kingdom debates on the Equality Act 2010, for instance, members of parliament (MPs) with a history of voting against LGBTI inclusion on faith-based grounds evoked this logic to favor the *removal* of prohibitions around registering same-sex civil partnerships in religious premises. In their view, as Johnson and Vanderbeck relate, while it was foreseeable that not many churches would desire to hold ceremonies for homosexual couples, they should all be entitled to decide for themselves instead of having the State decide for them.⁴⁰ In Mexico, since legal recognition of same-sex marriage bears no implications for religious (or secular) heterosexual ceremonies, claims of this nature seem more exclusively grounded on ideational concerns.

Also related to religious freedoms, and especially after facing criticism for their statements—or in the case of the Church, for its involvement in policy debates overall—clergymen and the NFF argued that their voice was legitimate on the grounds of freedom of expression. On one hand, once they had held demonstrations across the country, the Front partly characterized them as a call for freedom of speech.⁴¹ On the other hand, Mexico City’s archbishop continuously defended his statements against the president’s measures on the grounds that modern democratic societies had “to be open to a debate of ideas between different points of view.”⁴² He also decried that, especially within marriage-equality debates, opposition was deemed homophobic and allegedly met with “repeated mocking, persecution, insults and threats.”⁴³ This, the archbishop said, was a roadblock to fruitful dialogue.

While global debates on whether discriminatory ideas are protected by freedom of speech are still ongoing, it is increasingly clear that censorship should not figure in states’ policies.⁴⁴ Still, while the NFF’s right to publicly defend its ideas can be more easily deemed legitimate (since it comprises civil society organizations), the Church’s involvement should be evaluated in light

of three facts. First, with its almost 90 dioceses and archdioceses, each with countless pulpits and sometimes even publications, the Catholic Church has considerable reach and echo—probably much more so than all Mexican LGBTI organizations combined. Second, no available data seem to suggest that 2016 witnessed any increase in any sort of persecution against religious individuals or figures. And third, for historical political reasons, religious organizations have long been legally forbidden from publicly opposing Mexican laws, regulations, or institutions,⁴⁵ yet the Church was never penalized for its continuous statements on President Peña Nieto’s directives.⁴⁶ It would thus be difficult to argue that its freedom of expression was curtailed.

Finally, the NFF and the Catholic hierarchy not only posed their own interests as a matter of human rights, they also actively questioned whether LGBTI inclusion was a right at all. Especially in the case of marriage, they insisted that advocating for exclusion was only a matter of conceptual rigor. For the Church, the federal government sought to recognize “false rights”⁴⁷ because “President Enrique Peña Nieto and the Supreme Court of Justice ha[d] made a serious mistake in their interpretation of what marriage is and on what discrimination means.”⁴⁸ Meanwhile, the NFF exhorted same-sex couples to create their own legal figures,⁴⁹ accusing proponents of marriage equality—federal authorities included—of trying to “invent” non-existent rights.⁵⁰

The previous logic relied on detractors’ understandings of marriage and the family as purely heterosexual institutions (as noted above). Indeed, their willingness to concede same-sex couples’ access to other forms of civil unions suggests that one of their main concerns was the symbolic importance of marriage, which several individuals and organizations around the world seem to share. In their study of New York City Christian evangelicalism, for example, Andersson et al. showed that certain evangelicals who opposed marriage equality

seemed more concerned with “maintaining a symbolic form of classification” than with withholding access to marriage-related prerogatives.⁵¹ However, the authors also noted that other evangelicals drew distinctions between their own religious convictions and the realm of civil rights, agreeing with marriage equality despite their own “theological reservations.” None of the discourses by Mexican opponents to LGBTI equality echoed the latter logic; on the contrary, the Church and the Front even misleadingly referenced rulings by the European Court of Human Rights that allegedly concluded same-sex marriage is not a right.⁵²

It should be clear that, in framing their opposition under a human rights logic, the NFF and the Church joined a growing trend that scholars seldom recognize. Indeed, academics have long described and analyzed the implications of LGBTI activists—in Mexico and elsewhere—adopting a human rights discourse.⁵³ However, they seem to mostly assume that this narrative is exclusive to progressive, counter-hegemonic voices and narratives.⁵⁴ As this article and other sources show,⁵⁵ several conservative forces seem to have overcome their initial skepticism about human rights narratives and deftly deploy it today.

Conclusions

This paper has analyzed the main discourses deployed by detractors of LGBTI inclusion in Mexico after May 2016. It has shown that while civil organizations and Catholic figures played upon existing narratives about sexuality and sought to defend the “natural family” against gender ideology, they also crafted a human rights narrative to frame their claims.

Several lessons derive from this study:

1. As relates to academia, it is fundamental that studies on backlash against LGBTI equality closely consider the discursive consequences of policy debates, recognizing that a growing number of actors deftly articulate conservative views in the language of human rights.
2. As relates to LGBTI-rights activists and their allies, it is important to work on narratives that dismantle the assumptions—so naturalized in societies like Mexico—that underlie the defense of “the family” and “biology” from gender ideology. Conservative claims for human rights must be swiftly contested; otherwise, the Right could almost inadvertently “pass the Left.”⁵⁶
3. As relates to government, it is necessary for public officials to be able to provide solid arguments that boost legislative and policy changes for LGBTI equality. It is also crucial that, while avoiding censorship, institutions create platforms for LGBTI-rights defenders to counter the discourses of their better-funded, more powerful counterparts. Otherwise, hegemonic narratives will prevail.

Endnotes

¹ The author wishes to thank the editors of the journal, as well as Marcin Smetana, Sarah Franklin, and particularly Robert Pralat, for their very helpful comments on earlier versions of this article.

² The LGBTI acronym refers to lesbian, gay, bisexual, trans, and intersex persons. I use this term following regional standards set forth by the Inter-American Commission on Human Rights; see *Violence against LGBTI Persons in the Americas* (Inter-American Commission on Human Rights and Organization of American States, 12 November 2015) [PDF file].

³ For instance, in the United States, Stoutenborough, Haider-Markel, and Allen have shown that Supreme Court rulings such as *Bowers v. Hardwick* (1986) and *Lawrence v. Texas* (2003) have been followed by greater opposition to same-sex marriage, although certain characteristics (e.g., the prominence of equality debates in the media) mediate the magnitude of these effects. See James W. Stoutenborough, Donald P. Haider-Markel, and Mahalley D. Allen, “Reassessing the Impact of Supreme Court Decisions on Public Opinion: Gay Civil Rights Cases,” *Political Research Quarterly* 59, no. 3 (2006): 419–33.

⁴ “Latin America’s battle over ‘gender ideology,’” *The Economist*, 30 September 2017, <https://www.economist.com/the-americas/2017/09/30/latin-americas-battle-over-gender-ideology>.

⁵ See, for example, Gloria Careaga-Pérez, “Moral Panic and Gender Ideology in Latin America,” *Religion & Gender* 6, no. 2 (2016), 251–5.

⁶ It must be noted, however, that modifying the Federal Civil Code would benefit any of the 12 million Mexican citizens abroad who might want to get married to a same-sex partner under Mexican law. See “Mexicanos en el Mundo,” Secretaría de Relaciones Exteriores, 9 May 2017, http://www.ime.gob.mx/gob/estadisticas/2016/mundo/estadistica_poblacion.html.

⁷ Mexico comprises 31 states plus Mexico City. As mentioned above, a variety of issues, including marriage and adoption, are regulated at the state level.

⁸ Some civil society reports on the matter include Juan Carlos Mendoza Pérez and Luis Ortiz Hernández, “Principales Resultados del Diagnóstico Situacional de las Personas LGBTIQ de México 2015” (technical report, Universidad Nacional Autónoma de México, 2015), [⁹ Ricardo Baruch D., “¿Y los compromisos con la poblaci3n LGBTI?,” *Animal Pol3tico* \(blog\) 8 May 2017, <https://www.animalpolitico.com/blogueros-blog-invitado/2017/05/08/paso-los-compromisos-la-poblacion-lgbti/>.](https://www.researchgate.net/publication/308346510_Principales_Resultados_del_Diagnostico_situacional_de_personas_lesbianas_gays_bisexuales_transgenero_travestis_transexuales_intersexuales_y_queers_de_Mexico_2015_Primer_a_parte; and Investigaci3n sobre atenci3n a personas LGBT en M3xico: Resumen Ejecutivo (Comisi3n Ejecutiva de Atenci3n a V3ctimas and Fundaci3n Arcoiris, 2016) [PDF file]. The National Council for the Prevention of Discrimination and the National Commission of Human Rights recently published the results of the first National Survey on Discrimination based on Sexual Orientation and Gender Identity, which shows that LGBTI exclusion remains widespread; see Instituto Nacional de Desarrollo Social, <i>Encuesta sobre Discriminaci3n por motivos de Orientaci3n Sexual e Identidad de G3nero 2018</i> (Consejo Nacional para Prevenir la Discriminaci3n and Comisi3n Nacional de los Derechos Humanos, 2018) [PDF file].</p></div><div data-bbox=)

¹⁰ In the first weeks following May 2016, almost all of the articles and opinion columns on the subject in major newspapers and electronic media supported the president’s measures. It should be noted, however, that some LGBTI activists regarded them as an attempt to pink-wash a “government marked by human rights violations.” See H. Gloria Virginia Davenport, “El lavado rosa del Presidente (Manual para domesticar un arcoiris),” *Desde Abajo* (blog), 2 June 2016, <http://www.desdeabajo.org.mx/wordpress/el-lavado-rosa-del-presidente-manual-para-domesticar-un-arcoiris/>.

¹¹ *Nace Frente Nacional por la Familia y exigen se apruebe reforma al Art3culo 4 impulsada por ConFamilia* (press release, Frente Nacional por la Familia, 2016) [PDF file].

¹² “Respaldo al Frente Nacional por la Familia,” press release, Conferencia del Episcopado Mexicano, 16

August 2016, <http://www.cem.org.mx/prensa/879-respaldo-al-frente-nacional-por-la-familia-cem-jovenes-vida.html>.

¹³ Redacci3n Animal Pol3tico, 2016. “Diputados del PAN, PRI y Verde rechazan la iniciativa de Peña Nieto sobre matrimonio igualitario,” *Animal Pol3tico* (blog), 9 November 2016, <https://www.animalpolitico.com/2016/11/diputados-matrimonio-igualitario/>.

¹⁴ *Reforma por la Familia, por los Ni3os y por Todos* (Consejo Mexicano de la Familia to Sen. Roberto Gil Zuarth, 23 February 2016), 46 [PDF file]; *Nace Frente Nacional por la Familia y exigen se apruebe reforma al Art3culo 4 impulsada por ConFamilia*.

¹⁵ Fredy Mart3n P3rez, “Cada quien es libre para vivir su sexualidad: obispo Arizmendi,” *El Universal*, 25 September 2016,

¹⁶ See, for example, Silvia Ayala, “Preocupa a Iglesia adopci3n de parejas gay,” *Milenio*, 20 May 2016, [https://www.abnnoticias.mx/tornillo-va-con-tuerca-no-con-tornillo-cardenal-de-morelia/51178](http://www.milenio.com/region/Arzobispo_de_Durango-Jose_Antonio_Fernandez-matrimonio_igualitario-Pena_Nieto_0_740926131.html; Redacci3n ABC, “‘Tornillo va con tuerca, no con tornillo’: Cardenal de Morelia,” <i>Peri3dico ABC</i>, 20 May 2016, <a href=).

¹⁷ Sanjuana Mart3nez, “El ano, seg3n el cardenal Norberto Rivera,” *Sin Embargo*, 1 August 2016, <https://www.sinembargo.mx/01-08-2016/3074174>.

¹⁸ Mary Anne Case, “Trans Formations in the Vatican’s War on ‘Gender Ideology,’” *Signs: Journal of Women in Culture and Society* 44, no. 3 (2019): 650.

¹⁹ *Reforma por la Familia, por los Ni3os y por Todos*, 56.

²⁰ *Reforma por la Familia, por los Ni3os y por Todos*, 49.

²¹ Case, “Trans Formations in the Vatican’s War on ‘Gender Ideology,’” 655.

²² Paula Montenegro, *Encuesta Nacional sobre Discriminaci3n en M3xico, Enadis 2010: Resultados sobre mujeres* (M3xico, DF: Consejo Nacional para Prevenir la Discriminaci3n, 2012) [PDF file]; Paula Leite and Adri3n Meza Holguin, *Encuesta Nacional sobre Discriminaci3n 2017: Prontuario de resultados* (Ciudad de M3xico: Consejo Nacional para Prevenir la Discriminaci3n, October 2018) [PDF file].

²³ Jordi Diez, *The Politics of Gay Marriage in Latin America: Argentina, Chile, and Mexico* (Cambridge, UK: Cambridge University Press, 2016).

²⁴ Diez, *The Politics of Gay Marriage in Latin America: Argentina, Chile, and Mexico*, 34.

²⁵ Diez, *The Politics of Gay Marriage in Latin America: Argentina, Chile*, 29–35.

²⁶ Astrid Rivera, “Matrimonio gay, un ‘falso derecho’: Arquidi3cesis,” *El Universal*, 14 August 2016, <https://www.eluniversal.com.mx/articulo/nacion/sociedad/2016/08/14/matrimonio-gay-un-falso-derecho-arquidiocesis>.

²⁷ Siobhan Guerrero Mc Manus, “La ciencia seg3n el Frente Nacional por la Familia,” *Animal Pol3tico* (blog), 28 September 2016, <https://www.animalpolitico.com>.

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²⁸ Benedict XVI [Joseph Cardinal Ratzinger] and Vittorio Messori, *The Ratzinger Report: An Exclusive Interview on the State of the Church* (San Francisco: Ignatius, 1985); cited in Case, “Trans Formations in the Vatican’s War on ‘Gender Ideology,’” 646.

²⁹ Elizabeth S. Corredor, “Unpacking ‘Gender Ideology’ and the Global Right’s Antigender Countermovement,” *Signs: Journal of Women in Culture and Society* 44, no. 3 (2019): 616.

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Ignored LGBTQ Prisoners: Discrimination, Rehabilitation, and Mental Health Services During Incarceration

By Patricia Elane Trimble

Editor's Note: Given the limited technology and communication pathways afforded prisoners, this manuscript was edited by Reed Miller of Black and Pink, Inc.

Bio

Patricia Elane Trimble is a transgender feminist, activist, and advocate for the incarcerated LGBTQ community. She has been incarcerated twice as an adult and had numerous incarcerations as a juvenile. She has spent a total of 42 years of her adult life in Missouri's prison system, with her first adult incarceration at the age of 17 and first juvenile incarceration at age 8. Much of her information comes from lived experience. During her current incarceration (since 1979), Ms. Trimble has survived a sentence of death, earned her GED, attended Platt Junior College where she studied paralegal studies, and later attended St. Louis University where she studied theology and made the Dean's List. Currently Ms. Trimble lobbies Missouri legislators and prison administrators for changes to both Missouri laws and prison policies to end mandatory minimum sentences and institute meaningful programs for the rehabilitation of LGBTQ offenders.

Abstract

LGBTQ people are sent to prison for a wide range of convictions, with most tracing their first incarceration to their juvenile years. LGBTQ youth are disproportionately represented in the juvenile “injustice” system. Once inside, there is systemic discrimination against the incarcerated LGBTQ community and a lack of understanding concerning the need for care and treatment of certain members of the community. Within the incarcerated transgender community, evidence clearly shows high levels of abuse and non-treatment (medical, mental health, and rehabilitation programs). Considerable efforts must be made to establish policies and programs to help prevent LGBTQ children from entering the system and, in the event that they do, to ensure they have the education, access to rehabilitative programs, and trade skills necessary to survive outside of the criminal justice system later. To address issues experienced by incarcerated LGBTQ adults, a starting place is the provision of LGBTQ-inclusive programming, designed in consultation with the prisoners themselves. Many of the recommendations for the currently incarcerated populations cost little to nothing in additional funding, but they do require time and the willingness to update current programs and modify others to include the LGBTQ incarcerated community.

LGBTQ Experiences of Incarceration

There is systemic discrimination against the incarcerated LGBTQ community and a lack of understanding concerning the need for care and treatment of certain members of the community. The foci of this paper are LGBTQ youth caught up in the juvenile “injustice” system and transgender prisoners. There are significant deficiencies in targeted programing, which if implemented, could improve the life chances of LGBTQ prisoners.

In 2015, a nationwide survey was conducted of over 1,100 incarcerated LGBTQ prisoners. The resulting report, *Coming Out of Concrete Closets*, found that of the respondents:¹

- 71 percent dropped out of school or were expelled
- 58 percent had their first arrest when under 18 years of age
- 38 percent had their first incarceration when under 18 years of age
- 18 percent were homeless or transient prior to incarceration
- 36 percent were unemployed prior to first incarceration
- 47 percent had been in relationships involving domestic abuse while incarcerated, compared to 25 percent of gays and lesbians and 31 percent of transgender people nationally²
- 82 percent did not know of any institutional resources that could help them if they were attempting to leave an abusive relationship
- 15 percent had been excluded from a program because of their gender preference or sexuality
- 20 percent had access to LGBTQ books

This report shines a bright light on several critical areas of concern. Interpreting the findings, one can infer that prison administrators are overlooking important factors during the intake and classification process. With high rates of youth leaving

school and experiencing arrest and incarceration, clearly we have a system in dire need of repair.

From the author’s decades of observations, many LGBTQ prisoners suffer from gender dysphoria; post-traumatic stress disorder (PTSD); and sexual abuses including rape and domestic abuse in adolescence and/or adulthood, which includes verbal, psychological, and physical abuses due to the transphobic or homophobic views of an unaccepting family or members of the community. These are all contributing factors that often lead to involvement in one or more of the various criminalized activities.

Although the Prison Rape Elimination Act (PREA) brought forth many sweeping changes within prisons and jails, its protections have fallen short. Often prison staff use the regulations as reasons to target LGBTQ prisoners for abuse, to deny protections afforded other prisoners, or to end practices the LGBTQ prison community established for their own safety. Under the federal PREA regulations, prison administrators are forbidden from segregating LGBTQ or intersex people unless it is in connection with “a consent decree, legal settlement, or legal judgement for the purpose of protecting such inmates.”³ Many prison administrators use this very regulation to deny requests by LGBTQI prisoners to be moved into cells with other LGBTQ prisoners where they often feel safer.

LGBTQ Youth Incarceration

A report by the Center for American Progress found that “[t]hough gay and transgender youth represent just 5 percent to 7 percent of the nation’s overall youth population, they compose 13 to 15 percent of those currently in the juvenile justice system.”⁴ In a study of transgender youth involved in criminalized behaviors such as sex work, 67 percent had been arrested, and 37 percent had been incarcerated.⁵ Some studies suggest that such disproportionate negative interactions with law enforcement result in incarceration due to prejudice (i.e.,

LGBTQ youth are more targeted than their heterosexual peers). Such arrest rates are further increased when marginalized race, gender, and class identities are factored in.⁶

In a study of incarcerated girls in Ohio, researchers were surprised to discover a lack of information gathering at intake and a desire among administrators to remain ignorant regarding past victimization of the juvenile prisoners prior to their incarceration.⁷ Highlighting this deficiency, the National Center for Transgender Equality prepared guidance for intake and identification procedures and risk assessments as part of their advocate's guide.⁸

Administrators in both the juvenile and adult criminal justice systems tend to back grant-funded programs that fail to address the early-childhood traumas that elevated risk factors that helped foster the current criminalized behaviors.⁹ Some studies suggest that LGBTQ youth who have been victims of abuse are at substantial risk for substance abuse and depression,¹⁰ transience or homelessness.¹¹ It has long been viewed that juvenile delinquency is directly related to associations, peer pressure, and social class. Indeed, numerous findings, and my own observations, indicate that many LGBTQ youth who try to "fit in" with a heteronormative lifestyle and have only heterosexual associates present significant predictors for criminalized behavior.¹²

Trans Adult Incarceration

A joint survey conducted by the National Gay and Lesbian Taskforce and National Center for Transgender Equality found that nearly one in six transgender people in the United States has been sent to jail or prison. Transgender people of color experience incarceration at the following higher than average rates: Black (47 percent), American Indian (30 percent), and Latino/a (25 percent). Transgender women are incarcerated at around twice the rate of transgender men, 21 percent and 10 percent, respectively.¹³

Within the incarcerated transgender community, the evidence clearly shows

high levels of abuse and non-treatment (e.g. by medical, mental health, and rehabilitation programs). A 2009 study found that 59 percent of surveyed transgender prisoners in California suffered sexual assault compared to 4 percent of a random sample.¹⁴ Of transgender and gender nonconforming people, 41 percent have attempted suicide, compared with 1.6 percent of the general population;¹⁵ tragically, these rates are likely higher within prison.

Despite these statistics, most prisons have no support groups or gender-affirming information for LGBTQ people. It is left to the prisoner to seek out this information from outside sources—if prison administrators will even permit the materials into their institutions. Often prison administrators refuse to permit LGBTQ material. This is likely due to a general belief among administrators that homosexuality is against the rules and causes problems within the prison system, so they will not support it on any level and often conflate homosexuality and transgenderism. Lawyers from the ACLU suggest that this logic was behind Kansas state prisons' prohibition on mail "promoting homosexuality."¹⁶ Indeed, a third of LGBTQ prisoners surveyed reported disciplinary action for engaging in consensual sex, demonstrating that queer sex is "against the rules."¹⁷

Case Study: Author's Name Change in Missouri

The Circuit Court of Cole County, Missouri, issued an order granting a petition for legal name change for Patricia Trimble on 17 September 2018.¹⁸ The Missouri Department of Corrections indicated that they would be willing to pay for a copy of the new birth certificate but refused to give the proper forms required to affect the change or exercise their waiver of processing fee. The author was forced to pay the processing fee to have her birth certificate altered. When the birth certificate arrives (it is still being processed as of this writing), she will then have to proceed with the

process to change her name on her Social Security card. All of these are simple processes made complicated by a non-affirming agency that is unwilling to even offer guidance.

Lack of Programming for Incarcerated LGBTQ People

Many well-meaning policy makers try to combat recidivism but overlook the very policies designed to help curb incarceration in the first place, claiming insufficient resources. Failing to adequately fund programs aimed to reduce recidivism results in ever-growing prison populations and the continued building of ever more prisons at substantially greater costs.

Few prisons offer support groups for LGBTQ-based issues, and none have attempted to tailor the programs they do offer to the unique needs of the LGBTQ community. Many will even go so far as to state that it is a prisoner's own sexuality or gender identity that brought them to prison, implying that they are hanging out with the wrong crowd. This thought pattern is discriminatory and simply leaves an entire segment of America's prison population without effective treatment for the root causes of their incarceration. As a result, we see high rates of recidivism within the incarcerated LGBTQ community. Even when local LGBTQ organizations reach out and offer guidance and support to LGBTQ prisoners, prison administrators have been observed to disregard the efforts.

This pattern of disregard of LGBTQ prisoners contrasts with efforts around women prisoners. Long ago, prison administrators recognized that women sent to prison have unique and differing needs from men. Although the same societal, socioeconomic, and/or psychological conditions exist, it is recognized that there is a need for additional treatment options due to more frequent experiences of trauma from dysfunctional and/or abusive relationships, emotional abuse, sexual abuse, and other conditions. Yet these same administrators do not ac-

knowledge that there is a sizeable number of LGBTQ prisoners who suffer from similar abuses as many of their straight cisgender women counterparts. This very refusal to recognize what is so obvious—so easily discovered during intake classification procedures—and the refusal to provide the incarcerated LGBTQ population with much needed services lead the author to conclude that those same administrators are guilty of discrimination in areas of education, rehabilitation, and mental health services based on an inmate's sexual orientation or gender identity.

Existing prison programs are typically neutral with regards to gender and sex and, further, do not contain the elements necessary to address symptoms of spousal abuse, domestic violence or rape, all of which we see in shocking frequency within LGBTQ prison populations. Programs consist of classes, counseling, and vocational opportunities. Classes found at most prisons are for anger management, alcoholism, drug addiction, and the GED. Counseling is provided for various psychological disorders including PTSD, depression, anxiety, and most psychoses. In effect, these gender- and sex-neutral programs are designed to muzzle the LGBTQ prisoner, forcing them to avoid talking about their sexuality, gender identity, or same-sex relationships. When LGBTQ identities are not permitted in the conversation, discrimination based on sexuality or gender identity is an ever-present specter preventing core issues from being brought to the forefront for resolution. Further, even in existing programming, there are a shocking number of cases where LGBTQ prisoners are denied access to programs and vocational opportunities simply due to their identities.

Our prison systems rely on antiquated research models for development and implementation of programs and policies. One such model is the salient factor score, developed as a result of studies within the US Parole Commission.¹⁹ In it, every proposed program is first weighed against the

objectives of the scoring index versus similar programs. If it is concluded that the proposed program would not make a significant change to a large enough population, the program is rejected.

This logic of effectiveness pervades government decision-making processes. For example, the military uses similar assessments to determine acceptable civilian casualties prior to a mission in populated areas. Only strikes by US military expected to kill over 30 civilians required special clearance in the early months of the Iraq War in 2003.²⁰ More recently in Syria, soldiers were permitted to kill up to 10 civilians; additional deaths simply needed additional approval.²¹ While the comparison may seem dramatic, in effect, models such as the salient factor score amount to prison administrators determining an acceptable number of LGBTQ casualties by denying programming.

Case Study: Education Support Group for Transgender and Gay Inmates at Jefferson City Correctional Center

In recent years, prisoners have led attempts to enhance programming, only to have these attempts rebuffed by prison authorities who seek to maintain the status quo. A recent incident highlights this: Recently, Dr. Sonia Dhaliwal of the Educational, School and Counseling Psychology Department at the University of Missouri - Columbia, sent a letter to the Missouri Department of Corrections. In the letter, she stated that the Counseling Psychology Department at the University of Missouri was in full support of the education support group for transgender and gay inmates at Jefferson City Correctional Center. She proceeded to offer that the group be facilitated by two of the department's doctoral students. Rather than approve this request—and take her up on this generous offer—it was forwarded to the offices of the director of Corrections. After almost a year of silence, the generous offer was declined without so much as a letter or phone call to the university explaining why.

Conclusion and Recommendations

Criminalized LGBTQ Youth

With such a large percentage of LGBTQ prisoners having first been incarcerated within the juvenile justice system, it seems only logical to put forth considerable efforts to establish policies and programs to help prevent children from entering the system and, in the event that they do, to ensure they have the education, access to rehabilitative programs, and trade skills necessary to survive outside of the criminal justice system later. Our LGBTQ children cannot continue to be treated as some form of a disposable commodity, simply to be thrown away for being raised in an unaccepting home or for having made bad choices.

Policy Changes Must Be Made within the Education System at the K-12 Level

While many children are accepting of their LGBTQ friends and classmates, school administrators and parents, often with outdated and archaic values and prejudices, may still facilitate extreme harm toward LGBTQ students, while instilling unfounded prejudices in non-LGBTQ children. Thus, it is recommended that strong legal protections be applied by including sexuality and gender identity as categories of legally cognizable discrimination. This would force educational institutions to apply nondiscrimination policies that protect the LGBTQ students or risk losing federal grant funding. Furthermore, funding must be increased to organizations and programs that provide services to at-risk LGBTQ children before they end up in the juvenile justice system. These organizations should all provide counseling and mental health referrals for those most in need. Funding also must be made available to help pay for mental health and substance abuse services as well as the development of mentorship programs within our communities. It is imperative that everything is done to help keep our children out of the hands of the juvenile justice system. Finally, schools

must work hand-in-hand with local LGBTQ organizations in order to better understand the sometimes unique needs of our LGBTQ children and refer at-risk students to local mentoring programs.

Laws Must Be Passed Ensuring that Children within the Juvenile Justice System Are Housed in Improved Facilities

To meet the needs of incarcerated LGBTQ children, facilities housing children within the juvenile justice system must be:

- Fully funded in areas of education (with special emphasis on special needs children) and certified within their state as a fully functioning and accredited educational center with the ability to prepare students for college
- Equipped to provide vocational training to ensure that those who cannot return to school or to their homes can support themselves without resorting to criminalized economies
- Connected with federal housing grants accessible to emancipated juveniles, so that upon release they have the best chances for reintegration into society
- Staffed with certified and licensed psychologists trained to offer treatment and counseling to LGBTQ children and given the authority to report instances of discrimination based on sexual orientation or gender identity
- Equipped to provide treatment and counseling for physical, sexual, and emotional abuse as needed

Change takes time, but without change we stand to lose a large percentage of our community to the very system that seeks to silence us. While our community leaders put forth changes in legislation and policy, we have to give ourselves and our resources to those organizations who so selflessly and tirelessly work to keep our children off of the streets, helping them to escape sex work, drugs, homelessness, and prison. Once a child is incarcerated into the juvenile justice system, the likelihood of that child

ending up in prison as an adult increases dramatically.

Incarcerated LGBTQ Adults

If there is to be the expectation of successful reentry into society upon completion of sentences, changes in classification and rehabilitative programs must be modified to be inclusive to LGBTQ prisoners. Prisoners must be consulted throughout the development of the programs to maximize effectiveness. Continued exclusion of LGBTQ prisoners simply does not satisfy or address the root causes of the criminal actions marginalized individuals are often forced into.

Prisons Conditions Must Be Improved for LGBTQ Adults

To ensure that prisons are equipped to fully rehabilitate LGBTQ adults, provision of the following training and resources must be prioritized:

- Rehabilitation programs that are LGBTQ inclusive and provide specific programs dealing with issues identified by incarcerated LGBTQ prisoners
- Training for staff to help identify LGBTQ prisoners who may suffer from the effects of domestic violence or abusive relationships and counseling and therapy for those who have suffered from such abuses. Such resources should be informed by the guidance of established LGBTQ organizations
- A national reporting system to report instances of discrimination within the prison systems as it relates to programs that may receive full or partial funding from the federal government
- Interviews of prisoners in order to revise the current regulations governing PREA to make it harder for institutional administrators to use the PREA standards to further suppress LGBTQ populations. Such revisions should address the faults in PREA implementation and focus on defining and inter-

preting PREA provisions in a manner consistent with supporting LGBTQ prisoners

Often when changes are proposed, administrators decry lack of financial resources for implementation, opting for the status quo instead. Many of the recommendations listed here for the currently incarcerated populations cost little to nothing in additional funding, they but do require time and the willingness to update current programs and modify others to include the LGBTQ incarcerated community. If there is any hope of truly supporting LGBTQ prisoners, such resources must be invested.

Endnotes

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That Time I Thought Homophobia Was Over on the Upper West Side

By Emma Price

Bio

Emma Price is an EdM candidate in school leadership at the Harvard Graduate School of Education. Emma attended the Charles E. Smith Jewish Day School in Rockville, Maryland, from first to twelfth grade. She lives with her fiancé Earnest and their two cats in Cambridge, Massachusetts.

It doesn't matter that it was two summers ago. It's still hard to write about. And it doesn't matter that Anita Bryant's Save the Children Campaign, which successfully mobilized enough Miami residents to rescind an anti-discrimination ordinance protecting LGBTQ employees, was 40 years ago. Her campaign reverberates today. Especially in schools.

Bryant's motivation for Save the Children was this: "the thought of known homosexuals teaching my children, especially in a religious school, bothered me."¹ Her 1970s new-Christian-right rhetoric parallels the discrimination I experienced as a bi teacher at a Reform Jewish day school on the Upper West Side in 2017.

Kenji Yoshino, prominent legal scholar, explains the concept of covering as "ton[ing] down a disfavored identity to fit into the mainstream."² Yoshino posits that while American society accepts that people should not be penalized for differences like race, gender, or sexual orientation, this acceptance is predicated on demands that they mute those differences through covering. In a school context, where students are seen as having unformed sexual identities prone to persuasion or conversion to homosexu-

ality, the covering demand is even higher. At least eight states have "no-promo homo" statutes that prohibit public educators from "promoting" homosexuality in schools (and consider any mention of one's sexual orientation to be "promotion").

Bryant states this demand plainly: "American society largely has developed an attitude of tolerance . . . based on the understanding that homosexuals will keep their deviate activity to themselves, will not flaunt their lifestyles, will not be allowed to preach their sexual standards to, or otherwise influence, impressionable young people."³ In June, Pride Month, of 2017, my head of school told me that coming out to my students as bisexual "wasn't a win for the school." He added, "You can be out at school if that's what you want, but how you are out and who you are out to is nuanced." Before coming out, he had said, "of course you can be out at school," while after, he firmly stated, "I thought you understood I meant out to the faculty and staff, not students." Apparently, the nuance was lost on me.

A month earlier, my division head told me to remove an "LGBTQ We Welcome All" sign my students made for our classroom door. The reason: Conversations were

“seeping” out into other classrooms and grades, and other teachers were unprepared to have “those conversations.”

The use of the word “seeping” indicates a belief in homosexuality as a contagion. Yoshino writes, “Although the idea of homosexuality as a literal disease (a mental illness) has faded, the idea of homosexuality as a figurative disease (a disfavored contagious condition) has endured.”⁴ When homosexuality is seen as a contagion, “it legitimates no-promo-homo measures by making them seem defensive.”⁵ I was cast as a “rogue teacher” veering from prescribed curriculum, despite teaching the same gender and sexism unit the previous year. The difference was that I had covered my identity. Uncovered, it was no longer OK.

Rather than queer teachers ourselves harming children, the harm lies in the shame and silence exacted by covering demands. Covering contributes to the “taken-for-grantedness of dominant sexuality” that isolates queer children and adolescents.⁶ The year before I was told I would be placed under the supervision of someone who “better understands the community” if I were to continue to teach at my school, the CDC’s study of more than 15,000 high school lesbian, gay, and bisexual (LGB) students revealed that LGB students are three times as likely as heterosexual students to skip school out of fear for their safety, and they are five times as likely to have attempted suicide in the past 12 months.⁷

This study, and my experience, shed light on some of the ways expansive boundaries of queerness expose the limitations of progressive politics. The CDC’s study does not include experiences of trans or gender-nonconforming students. Although Reform Judaism adopted resolutions supporting the inclusion of gay and lesbian Jews in 1987 and asserting the rights of transgender and gender-nonconforming people in 2015, those ideals were not embodied in this religious educational institution. As a bisexual person outside the “gay and lesbian” category, partnered with a trans, nonbinary person

who also falls outside of the more accepted bounds, I wonder where progressive Judaism is when it comes to the B and T of LGBTQ.

One year later, the sentence I still hear most clearly is “you need to be on board with the pace of institutional change or it isn’t safe for you to be here.” In 1972, Radicalesbian Rita Mae Brown wrote, “When there is just one person pushing the issue, that one person becomes the issue until others see it.”⁸ Well, I decided that I wasn’t on board and got out. But is it safe for the other queer teachers, families, or students who are still there?

In an effort to discredit her opponents, Anita Bryant quoted Father John J. McNeill saying, “Most homosexuals think they are the only ones in the world, that they are absolutely isolated and, therefore, they grow up with all sorts of feelings of self-doubt and even self-hatred. It would be so important that there be some gay teachers in the schools who could serve as models.”⁹ This is still as true now as it was when he said it on the Phil Donahue Show in 1978.

It doesn’t matter how long ago it was. It still hurts, and the work still matters urgently. If I, as an out queer person, can help students love their identities more expansively and work to undo the oppression that teaches us we are unlovable, then I will have done my work as an educator. I urge other educators, other queers, other Jews, to do the same.

Endnotes

¹ Anita Bryant, *The Anita Bryant Story: The Survival of Our Nation’s Families and the Threat of Militant Homosexuality* (Ada, MI: Revell, 1977).

² Kenji Yoshino, *Covering: The Hidden Assault on Our Civil Rights* (New York: Random House, 2007).

³ Bryant, *The Anita Bryant Story*.

⁴ Yoshino, *Covering*.

⁵ Yoshino, *Covering*.

⁶ Michael Warner, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life* (Cambridge, MA: Harvard University Press, 2000).

⁷ Martin Duberman, *Has the Gay Movement Failed?* (Oakland, CA: University of California Press, 2018), 86.

⁸ Rita Mae Brown, “Take a Lesbian to Lunch,” *Come out Fighting: A Century of Essential Writing on Gay and Lesbian Liberation*, ed. Chris Bull (Thunder’s Mouth Press/Nation Books, 2001), 115–25.

⁹ Bryant, *The Anita Bryant Story*.

Non-Binary Actors and the Theatre Industry: An Interview with Kevin Kantor

By K. Woodzick

Bios

K. Woodzick is an actor, director, producer, and PhD student in theatre and performance studies at the University of Colorado, Boulder. They hold an MFA in contemporary performance from Naropa University. This past fall, they performed in the Denver Center for the Performing Arts Off-Center production of Bite-Size: An Evening of MicroTheatre as the Veterinary Assistant and the bear. Woodzick is the founder of The Non-Binary Monologues Project. They are currently directing Into the Woods Jr at Southern Hills Middle School and will be reprising the role of Laertes in Nirvamlet 2.0 this summer in Denver with Band of Toughs. Learn more about them at www.woodzick.com.

Kevin Kantor (they/them) is a genderqueer non-binary director, actor, and performance poet working to challenge, deconstruct, and reimagine traditional semiotics of gender on stage and in performance. They are currently in rehearsals at the Milwaukee Repertory Theatre, where they are originating the role of Mia in the American Premiere of Things I Know To Be True by Andrew Bovell. As a poet, Kevin's writing, which explores topics related to queerness, gender identity, rape culture, and survivorship, has been featured in Button Poetry, Teen Vogue, Mic.com, and the Huffington Post, with over 17 million collective online views, and in the anthology We Believe You: Survivors of Campus Sexual Assault Speak Out (Holt Paperback). They can be found on social media at: [@Kevin_Kantor](https://twitter.com/Kevin_Kantor).

This interview has been lightly edited for clarity and readability.



Kevin Kantor, I know you as an actor, activist, and poet. When you meet someone new, how do you introduce yourself?

I start usually with, “Hello, I’m Kevin, pronouns they, them,” and go from there. A mentor of mine, Ken Arkind, a poet from Denver, Colorado, has always said that we gift one another with our names. I’ve carried that sentiment with me for a long time. Usually, when I meet someone new, I’ve borrowed Ken’s phrasing, “Gift me with your name?” And, yes, I am an actor, a director, theatre artist, and spoken-word poet. There’s been an emerging trend, I believe across the board, to celebrate interdisciplinary artists—the optimist in me thinking of how that skill set lends itself to collaboration, the cynic thinking of how that diversified skill set has become a necessity to survive in the market.

I first met you when you were presenting at the Statera Conference [a national arts and theatre conference for women and non-binary people] about breaking binaries in the theatre industry. What was the motivation for giving that presentation?

I’ve admired the work that Statera has been catalyzing—and those involved in the [Statera] foundation’s genesis, Melinda Pfundstein, Shelly Gaza, and others. I was excited by the opportunity to help bring their mission into the next step of actualization, that mission being gender equity in theatre arts. That’s a difficult (read: impossible) goal to work toward without TGNC (transgender and gender nonconforming) voices in the room. In a broader sense, I’m interested in having these necessary discussions whenever possible. There’s been an overdue increase in dialogue surrounding how to better serve TGNC artists in the community, but I’ve found a lot of organizations only really paying lip service to the issue or not really implementing actionable steps to make their spaces more inviting, inclusive, and even basically accommodating of trans

folk. So, this first presentation was a little bit of trans literacy 101, hopefully something that will spur and catalyze action.

What would you most want to say to cisgender casting professionals? [“Cisgender” refers to someone who doesn’t identify as transgender, sometimes referred to as “cis.”]

First and foremost, trans folk should be playing trans roles. Full stop. There are countless reasons for this, but ultimately, for me, it comes down to the intersection of opportunity and representation. There are so few roles, proportionately, being written for trans actors, and when institutions intend on programming queer and trans narratives, those communities should be the ones profiting from that work (you’d think, obviously). Also, TGNC representation extends beyond merely the ways in which our exposure manifests onstage. Programming trans work is an opportunity to invite valuable insight to your institution and community at large that can only really be achieved when you actually hire trans artists—so stop with the cis-washing. Cisgender heterosexual actors are too often afforded the privilege of being seen as Swiss Army knives of versatility, with their cis-ness and straightness functioning as a blank canvas, whereas trans actors’ identities are somehow a hurdle to overcome. Casting directors, theatre artists, and cis creators of all kinds have a responsibility to challenge their understanding of the semiotics of gender onstage and in performance; too often dominant practices serve the binary out of sheer laziness, unexamined tropes, and misguided gender essentialism. Moreover, program more trans work! I think one of the greatest challenges I’ve faced with cis casting professionals is the limited scope (if any) with which they view TGNC identities. There’s a troubling narrowness in their understanding, which often excludes trans non-binary, gender-queer, and gender-nonconforming folk. I believe if there was a stronger onus to produce

the work of TGNC playwrights, the industry would come to realize the vast breadth of the trans experience that they've yet to really embrace or explore.

In their article “Don’t Call Me Ma’am: On the Politics of Trans Casting,” (written for HowlRound) playwright M.J. Kaufman shares that in their research, most casting directors give two excuses for not casting trans actors: (1) they can’t find the, or (2) they’re not well trained or versatile enough for repertory casting. How do you respond to that?

It might seem curt to say, but it’s just lazy. It’s irresponsible. And flatly untrue. There are online networks of TGNC theatre makers with nearly a thousand members. We are here, and we are capable. And still, even if their second point were true, I’d challenge them as to why they aren’t trying to actively remedy these so-called problems. Why aren’t training programs prioritizing TGNC recruitment? Why isn’t the *canon* or *repertory programming* versatile enough to provide opportunities to TGNC artists instead of the other way around? Again, here my notion about the assumed versatility afforded of cisgender (cisgender and heterosexual) actors can be applied. The notion that TGNC actors’ identities somehow pigeon-hole them or make them incapable or less equipped of playing traditional cisgender roles is just ludicrous. It’s the equivalent of reducing an entire human being’s body of work and storytelling ability to their gender, which is something that we just don’t do to cis people. So . . . stop.

How do you handle misgendering in the rehearsal room or other professional settings?

I think navigating being misgendered is very personal for each individual, but I can speak to what I usually tell a new group of collaborators. Firstly, they should be doing their own homework around pronouns (we

all should be). (1) I’m not a walking encyclopedia, (2) I can’t speak of all TGNC folks, and (3) I’m at work, not leading a trans literacy 101 course. People will mess up. I have patience for it—some days less, some days more. The question I get most though is, “What should I do if I accidentally misgender you?” Again, speaking from personal preference, my response is, first, if you catch yourself, correct yourself in the moment and move on. If I hear you misgender me, I might not (and probably won’t in the middle of a workday on the go) have the emotional bandwidth to correct you in the moment; I don’t have the time, the room doesn’t have the time, the project I’m working on doesn’t have the time for me to stop to correct a collaborator (who already knows I’m non-binary, mind you) every time they misgender me. That being said, if I *do* go out of my way to correct you, to make the time, to gift you with the gentle reminder of my existence, please do not say “sorry.” Say “thank you.” And mean it. And remember. And move on.

The recent Actors Equity strike has come to a close with an agreement that ensemble members who participate in the workshop process of new musical theatre works will share 1 percent of the profits generated from the show, up to ten years after it opens. Do you think that actors in the TGNC community who participate in the development of transgender characters should receive a similar financial agreement built into their contracts?

I’m going to answer around this question a bit. Too often, when a TGNC actor is the only non-cis individual working on a project, they’ll inevitably end up doing sort of off-the-record consultation work on their lived experience or with regards to the role they’re playing *in addition* to whatever work they were actually hired to do. It’s unpaid labor. It happens all the time. So, yes, cis-dominated spaces should be building consulting fees into their budgets. And it’s worth it. And necessary.

Your new book of poetry, *Please Come Off Book*, comes out next year. Can you talk about the inspiration behind this new book of poetry?

The manuscript is something of a love letter to the theatre, though one that recognizes how much love can hurt—that often, the ones love you most have the capacity to cut you deepest. In many ways, I discovered my transness through my work as a theatre artist and a storyteller. Yet, like so many cultural institutions, it's still beholden to many cisnormative practices and still, too often, reduces queer folk to their trauma. *Please Come Off Book* is my way of fighting for what I love—the theatre—while also fighting for myself. Titular poem:

PLEASE COME OFF-BOOK

some days i call for my gender
like a forgotten line.
everyone else showed up
to the first rehearsal off-book.
they have memorized
their roles,
& i am unsure of who i am
meant to play.

What are the most meaningful actions that cisgender allies can take to be in support of the TGNC community, personally, professionally, and artistically?

Firstly, educate yourself. It feels hackneyed to still be saying this, but we are: marginalized communities shouldn't bear the responsibility of educating others on their own marginalization. Once you've done your research, pass the mic. Share your resources. Provide a platform. I am tired of presenting cases for the worthiness of TGNC work when I just want to be presenting the work. Work to unlearn your internalized prejudices and assumptions surrounding gender and consider TGNC artists for all sorts of work and roles. We're available, capable, and we have so much to offer—talents and

stories that extend beyond our gender identities and presentations.

What are you working on now? Where can folk find you if they want more information about your work?

I am currently in rehearsal at The Milwaukee Repertory Theatre for the American Premiere of Andrew Bovell's *Things I Know To Be True* while also working on my poetry manuscript, *Please Come Off Book*. I am also currently booking college and university spoken-word poetry engagements. My booking contact is KevinKantorBooking@gmail.com.

LGBT Rights on the International Stage: An Analysis of Diplomatic Practice

By Violet Lhant

Bio

Violet Lhant graduated from SOAS University of London with an MA in international studies and diplomacy. Her interests include travel, communications, and personal development.

Abstract

Over the last decade, LGBTQ rights have developed a strong presence within international diplomacy, yet support remains subject to debate within the international community. International bodies such as the United Nations have passed measures to support LGBTQ rights, but official statements typically face resistance from member states unwilling to address their own records on the issue. Due to this division, LGBTQ rights do not have official recognition within the world's most prominent diplomatic body. Instead, LGBTQ rights are represented by informal groupings such as the LGBTI Core Group as well as individual UN agencies. As well as examining the United Nations, this paper will examine the role of LGBTQ diplomacy among individual states. Case studies of Brazil, the United Kingdom and the United States demonstrate that LGBTQ rights often remain at the whims of domestic politics and can be endangered even following positive gains. This analysis explores the variability of support for LGBTQ rights internationally as well as the vulnerability of support even where LGBTQ rights have previously been established.

Introduction

Following the Orlando Pulse nightclub shooting in 2016, the United Nations Security Council issued a rare statement condemning the attack for “targeting persons as a result of their sexual orientation.”¹ The statement represented the first time the UN Security Council addressed issues of sexual orientation and even included support from notoriously anti-LGBT countries such as Russia and Egypt.² Nevertheless, this statement of condemnation masks the strong opposition to advancing LGBT rights exhibited by several UN member states. As recently as 2017, Egypt represented several UN member states in declaring that LGBT rights constitute “controversial notions outside the internationally agreed human rights legal framework.”³ Despite recent progress, LGBT rights remains subject to continued debate within international diplomacy.

This article seeks to examine the state of LGBT rights internationally, with particular focus on recent developments, both positive and negative, that have influenced the status of LGBT rights as a human rights norm. It includes an analysis of LGBT rights within the United Nations system as the primary arena for international diplomacy. This is followed by an examination of individual states, with a close look at the alarmingly regressive trends in countries that have previously secured LGBT rights. Although LGBT rights are considered a human rights norm by several UN bodies, powerful blocs within the UN have attempted to halt or delay its formal recognition. Even in countries ostensibly committed to advancing LGBT rights, this norm is now weakening as new governments adopt policies that curtail previous gains.

Vitit Munarbhorn, UN independent expert on protection against violence and discrimination based on sexual orientation and gender identity, stated in his report before the General Assembly that “more than 70 states still criminalize same-sex relationships” and noted that the death penalty may be applied in certain African and Asian

countries.⁴ His report also notes that several countries criminalize transgender individuals based on their gender identity and expression.⁵ International calls for LGBT rights are increasingly opposed by the domestic politics of individual states. There is often internal debate within countries that reflects their policy shifts regarding LGBT rights as governments change hands. This trend has led to increased uncertainty about the status of LGBT individuals in countries where they may have previously felt secure.

LGBT Rights at the United Nations

In 2008, a group of 66 countries issued a statement before the UN General Assembly affirming their support for LGBT rights.⁶ The statement referenced the Universal Declaration of Human Rights in condemning human rights violations based on sexual orientation and gender identity.⁷ It was opposed by Russia, China, the United States under the Bush administration, The Holy See, and the Organization of the Islamic Conference, the last of which issued its own statement accusing the 66 countries of attempting to “undermine the international human rights framework by trying to normalize pedophilia, among other acts.”⁸ The 2008 statement was followed in 2011 by a UN Human Rights Council report documenting discrimination faced by LGBT individuals in both law and society.⁹ It was updated in 2015 with a second UN Human Rights Council report concerning violence against LGBT individuals relative to commitments under international law.¹⁰

Despite efforts by UN agencies to advance LGBT Rights, countries opposed to such reform constitute a strong faction with the ability to halt or delay progress. In his final year in office, former Secretary General Ban Ki-Moon stated that his advocacy for LGBT rights often put him at odds with powerful member states.¹¹ Although he affirmed LGBT rights as an “institutional commitment,” he regarded his efforts as mostly unsuccessful.¹² This is reflected in the final version of the Sustainable Development Goals, the UN’s global development

agenda, which failed to include any mention of LGBT rights.¹³ Calls for specific language protecting LGBT persons faced opposition from “a bloc of countries, including Russia and most of Africa, Middle Eastern, Asian and Caribbean countries, as well as the Vatican and religious groups.”¹⁴

Nevertheless, on 29 September 2015, a mere four days after the adoption of the Sustainable Development Goals, a group of 12 UN agencies (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, and WHO) released a statement declaring their intention to end violence and discrimination against the LGBT community.¹⁵ The statement, *Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People*, frames discrimination against LGBTI individuals as a violation of international human rights law and an impediment to achieving the Sustainable Development Goals.¹⁶ Its specific recommendations include recognizing LGBTI status as grounds for asylum, repealing laws that criminalize people “on the basis of their sexual orientation, gender identity or gender expression,” and “prohibit[ing] discrimination against LGBTI adults, adolescents and children in all contexts—including in education, employment, healthcare, housing, social protection, criminal justice and in asylum and detention settings.”¹⁷ Several UN member states maintain power to influence UN resolutions against the inclusion of LGBT rights, but they have been unable to fully impede the efforts of those countries seeking reform.

LGBT rights at the UN are represented by the LGBTI Core Group, an informal assembly of countries and nongovernmental organizations (NGOs) committed to addressing LGBT rights outside of formal UN bodies.¹⁸ Established in 2008, the Core Group supported both the General Assembly’s 2008 statement and the Human Rights Council’s 2011 statement on LGBT rights but failed to secure specific protections within the Sustainable Development Goals.¹⁹

Despite this setback, the Core Group has promoted cooperation between the Global North and Global South, including representation from both Western countries and Latin America and even including Albania as its first Muslim-majority observer state.²⁰

The Office of the High Commissioner for Human Rights joined the Core Group in 2010, with Charles Radcliffe, senior advisor to the High Commissioner, describing the Core Group’s policy aim as such:

The political landscape has changed markedly in the past 10 years at the UN when it comes to human rights, sexual orientation and gender identity — in part because of the work of the Core Group. . . . That helps to create the political space you need if you want to make progress. It makes it easier for the UN Human Rights Office and other parts of the UN to step up their efforts to promote and protect equal rights for members of the LGBT community.²¹

Due to opposition from certain member states, the UN’s formal institutions face obstacles in securing widespread support for LGBT rights. The LGBT Core Group, as an informal assembly, works around these barriers to coordinate policy among countries and NGOs committed to establishing LGBT rights as a human rights norm.

In 2016, the UN Human Rights Council established an independent expert to examine global violence and discrimination against LGBT individuals.²² Several Western and Latin American countries in the LGBT Core Group supported the measure, which was adopted with a close vote of 23 to 18.²³ The establishment of an independent expert formalized the work of the LGBT Core Group within official UN institutions.²⁴ Its mandate included assessing; raising awareness of global discrimination based on sexual orientation or gender identity; working with states to institute anti-discrimination policies; and consulting states, NGOs, and UN agencies on issues of anti-LGBT violence.²⁵

The Human Rights Council ultimately selected international law professor Vitit Muntarbhorn for the post.²⁶ Following Muntarbhorn's first report to the Human Rights Council, an Egyptian delegate claiming to represent Russia, Belarus, and the Organization of Islamic Cooperation minus Albania stated the following:

We do not recognize the mandate of the independent expert and therefore are not in a position to engage, interact or cooperate with the mandate holder. . . we believe that the resolution establishing the mandate adopted by a margin vote is highly divisive. Moreover, the introduction and imposition of controversial notions outside the internationally agreed human rights legal framework contradicts the fundamental universality and would lead to polarization.²⁷

Security Council members China and Russia voted against the measure, as did all Islamic countries besides LGBT Core Group observer Albania, with all African countries besides South Africa also voting no or abstaining.²⁸

LGBT Rights in Individual States

Increased recognition for LGBT rights is also exemplified in the actions of individual countries. Efforts to overturn laws barring homosexual activity have appeared in Botswana, India, Kenya, and Trinidad and Tobago.²⁹ In Taiwan, the Constitutional Court issued a 2018 ruling declaring that same-sex marriage is a legal right.³⁰ Although two referendums failed to approve legislative changes to the existing Taiwanese Civil Code, they have no effect on the court's prior ruling.³¹ According to André du Plessis, executive director of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, "We've seen a lot of exciting changes. . . . Progress has been slow but steady."³² Reform and decriminalization have appeared in Africa, Asia, and even the

Middle East, reflecting the global nature of the LGBT rights movement.

Several countries such as Botswana and India have retained anti-LGBT laws as a legacy of imperialism.³³ At a special UN event in 2015, former president of Botswana Festus Mogae declared same-sex activity "the most basic of rights" and commented on the need for LGBT Rights to combat the African AIDS epidemic.³⁴ At the same forum, Frans Timmermans, vice president of the EU commission, "apologized on behalf of Europe for having brought 'homophobia and discrimination' to Africa."³⁵ The High Court of Botswana is scheduled to hear a case in March 2019 challenging Botswana's penal code regarding the sections criminalizing same-sex activity.³⁶ In September 2018, India's Supreme Court decriminalized same-sex activity in a unanimous decision.³⁷

Despite advancements in the LGBT rights frameworks of non-Western countries, violence and discrimination remain a norm for LGBT individuals in over 70 countries barring same-sex activity.³⁸ The sobering reality of violence against the LGBT individuals in these countries is beyond the scope of this article. Instead, this section examines a surprising shift that endangers LGBT rights internationally: over the past few years, Western countries have faced increasing challenges to previously achieved gains in LGBT rights. This is manifest in Brazil, at times a strong supporter of LGBT equality internationally; in Britain, which is currently debating reforms to the 2004 Gender Recognition Act; and even in the United States under the Trump administration.

Brazil

Brazil's large LGBT community represents a significant force in the Brazilian economy and contributes to the country's status as an LGBT tourist destination. According to corporate advisory firm LGBT Capital, Brazil's LGBT market has an estimated value of R\$300 billion, or US\$133 billion.³⁹ In 2017, the Brazilian Association of LGBT Tourism announced that LGBT tourism in Brazil was

growing at a rate of 11 percent per year, more than triple the 3.5 percent growth rate for conventional tourism.⁴⁰ This growth is reflected in the image Brazil projects internationally, with former Rio de Janeiro mayor Eduardo Paes declaring that “Rio is a city without prejudice. . . . It is an open city that accepts everything with an open heart.”⁴¹ Sao Paulo boasts the world’s largest pride parade, with 2018’s festival attracting more than three million people.⁴²

LGBT rights in Brazil have also experienced significant progress during the last decade, with the National Council of Justice legalizing gay marriage nationwide in 2013.⁴³ In 2018, the council removed restrictions requiring transgender individuals to undergo surgery or judicial review in order to change their names or gender markers on identification documents.⁴⁴ Internationally, Brazil presented a 2003 resolution to the Economic and Social Council of the United Nations entitled “Promotion and Protection of Human Rights,” which addressed human rights violations due to sexual orientation.⁴⁵ Discussion of the resolution was postponed, but it served as a precursor to the 2008 statement and 2011 declaration of LGBT rights before the General Assembly.⁴⁶ As recently as 2015, Brazilian Ambassador to the UN Guilherme de Aguiar Patriota expressed a strong desire to implement “more progressive language” regarding LGBT rights in the UN Sustainable Development Goals.⁴⁷

Yet these positive developments mask the high rate of violence experienced by Brazil’s LGBT community. Brazil has the highest rate of LGBT homicides in the world, with an LGBT individual murdered near daily.⁴⁸ Anti-LGBT attitudes are fostered by evangelical Christianity, a movement imported from the United States that has grown from 5 percent of the Brazilian population in 1970 to nearly 25 percent today.⁴⁹ The influence of evangelicalism has taken root in Brazilian politics to such a degree that Jean Wyllys, Brazil’s only openly gay congressman, expressed a belief that evangelicals have “taken over congress.”⁵⁰ No-

where is this influence more apparent than in the election of President Jair Bolsonaro.⁵¹ Bolsonaro has expressed deep personal opposition to LGBT rights and has inspired his supporters toward anti-LGBT violence.⁵² Despite attempts by Brazilian politicians and cultural organizations to position the country as an LGBT-friendly destination, anti-LGBT violence and discrimination remain a serious concern.

The United Kingdom

In the United Kingdom, debate over reforms to the 2004 Gender Recognition Act have revealed rifts within feminism and between UK and US political norms. The act became the first in the world to allow for self-identification of gender without requirements such as medical transition to amend legal status.⁵³ In October 2018, the Government Equalities Office opened a consultation to address concerns of bureaucratic inefficiency in the process of legal gender change.⁵⁴ The consultation’s description states that “trans and non-binary people are members of our society and should be treated with respect.”⁵⁵ Nevertheless, the proposed reforms sparked debate between trans activists and anti-trans campaigners.⁵⁶ Responding to this debate, *The Guardian UK* published an editorial that attempted to highlight instances of conflict between “trans women and other women” such as in rape support services or women’s prisons.⁵⁷ The editorial was criticized by *Guardian US* journalists who described it as advancing “transphobic viewpoints” reflective of attacks on transgender rights in America.⁵⁸

British mainstream politics is home to so-called trans-exclusionary radical feminists (TERFs), a group of whom disrupted the 2018 London Pride parade stage in anti-trans protest.⁵⁹ In a *New York Times* editorial, feminist theorist Sophie Lewis relays the history of TERFism, a movement vastly different in origin from American evangelicalism yet still committed to similar anti-trans policy aims.⁶⁰ Dr. Lewis declares that “many prominent figures in British journalism and politics have

been TERFs; British TV has made a sport of endlessly hosting their lurid rudeness and styling it as courage; British newspapers seemingly never tire of their broadsides against the menace of ‘gender ideology.’”⁶¹ According to this history, TERFism is a product of American cultural feminism and British movements against postmodernism.⁶² While American feminism became tempered by discussions of race, gender, and class, middle- and upper-class White feminism remained unchallenged after its importation to Britain.⁶³ Although the British government retains a positive stance on LGBT rights, British society and media continue to debate their validity.

The United States

In 2011, former Secretary of State Hillary Clinton announced before the UN that “gay rights are human rights,” signaling a strong commitment by the Obama administration to protect LGBT rights both domestically and internationally.⁶⁴ This pronouncement represented a wider initiative by the Obama administration for all US agencies to “promote and protect” LGBT rights.⁶⁵ The State Department created a new position of US special envoy for the human rights of lesbians, gay men, bisexuals, and transgender persons, a role established to promote LGBT rights internationally.⁶⁶ To further this effort, the administration utilized LGBT rights as a diplomatic tool, tying access to foreign aid with a country’s commitment toward decriminalizing same-sex activity.⁶⁷ US embassies played a vital role in LGBT diplomacy, joining local pride parades and promoting LGBT rights in hostile countries such as Poland and Nigeria.⁶⁸ Domestically, the Obama administration expanded rights for LGBT workers, such as adding gender identity as a protected class under the Equal Employment Opportunity Commission and expanding health care access for LGBT federal workers.⁶⁹

However, the election of President Donald Trump brought a reversal of these pro-LGBT trends both domestically and internationally. Coinciding with his inaugura-

tion, the White House website removed all references to LGBT issues, an early sign that LGBT rights were not a priority for the administration.⁷⁰ In January 2019, the Supreme Court upheld the Trump administration’s ban on transgender people from serving in the military.⁷¹ With US troops stationed in nearly 150 countries, the removal of transgender visibility constitutes the loss of a powerful tool in advancing on-the-ground LGBT rights diplomacy.⁷² The Trump administration has also denied visas to the same-sex partners of foreign diplomats and UN employees.⁷³ Although the administration justified the new policy as aligned with the Supreme Court’s approval of same-sex marriage, the policy change imposes difficulties for foreign officials from countries where same-sex marriage remains illegal, and who may face punishment if they marry in the United States.⁷⁴ By retreating from LGBT diplomacy, President Trump has signaled a strong opposition to the human rights priorities established under President Obama.

Conclusion

LGBT rights diplomacy has the power to transform societies and establish international human rights norms in countries that have previously been averse to their adoption. The increasing awareness of LGBT rights in Caribbean, African, Asian, Eastern European, and Middle Eastern countries inspires belief in an arc of history toward progress. Yet narratives of a progressive West and Latin America versus a regressive rest of the world mask a deep complexity within each society regarding LGBT rights and acceptance. Brazil, the UK, and the United States are but three examples of countries whose governments have displayed formal commitments toward LGBT rights yet have seen a regression of these commitments due to changes in both society and domestic politics. For LGBT rights to become a worldwide reality, countries must honor their human rights commitments domestically while advocating for change on the international stage.

Endnotes

¹ Tanya Mohn, "The Shifting Global Terrain of L.G.B.T.Q. Rights," *The New York Times*, 21 June 2018, <https://www.nytimes.com/2018/06/21/world/lgbtq-global-rights.html>.

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⁴ *Protection against violence and discrimination based on sexual orientation and gender identity* (doc. no. A/72/172, 72nd session, United Nations General Assembly, 19 July 2017).

⁵ *Protection against violence and discrimination*.

⁶ *Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly* (doc. no. A/63/64, 63rd session, United Nations General Assembly, 22 December 2008).

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