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International Anti-LGBT Legislation: How Nationalistic Cultural Warfare Supports Political Motivations

Emily E. Holley*

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I. INTRODUCTION

Recent laws criminalizing homosexuality in countries worldwide seem shocking after decades of progress towards equality for the worldwide lesbian, gay, bisexual, and transgender (LGBT) community. While the general global progress of LGBT rights is laudable, many countries may have used it as a political football. Similar to the desegregation necessary during the Cold War in order for the United States to avoid appearing hypocritical while touting democracy as superior to Russia's communism, "freedom" cannot exist in a society

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where civil rights are afforded to some citizens and not others based on immutable characteristics such as sexual orientation or gender.[1]

Russia passed national legislation in 2012 criminalizing homosexuality and LGBT "propaganda," a vague term that Russian authorities have since used as a catchall for anyone speaking publicly about homosexuality.[2] The Indian Supreme Court in 2013 reinstated a law criminalizing homosexual acts, overturning a lower court decision from 2001 that declared the law unconstitutional.[3] Nigeria passed a law in January 2014 imposing a prison sentence on same-sex couples who marry, as well as on friends and people who assemble with gay people.[4] Shortly following Nigeria, in February 2014, Uganda enacted its Anti-Homosexuality Act, which criminalizes the "promotion" of homosexuality, including merely renting housing to gay people, and permits life sentences for some homosexual sexual acts, even if committed by consenting adults in private.[5] An examination of these laws will support the claim that many countries are using LGBT human rights strategically, for political gain.

Additionally, this Comment aims to show that restrictions on free speech and freedom of assembly based on membership in a discrete cultural minority are neither arbitrary nor tone-deaf. Rather, the anti-LGBT laws are ploys by dictatorial regimes to create support by drumming up nationalist sentiment, strategically pitting their own supporters, unified in their dislike for LGBT people and Western culture, against what they see as an oppressive foreign power. This Comment will show that such laws use each country's own LGBT citizens as scapegoat symbols of unwanted Western cultural and legal influence.

But now that the laws have been enacted, human rights advocates are stuck. To condemn Russian President Vladmir Putin's Administration and his homophobic laws is to condemn the Russian Orthodox Church, and Russia's cultural identity, just as the West and Russia's own leaders

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1. As any debate on the "choice" of homosexuality as a lifestyle is beyond the scope of this Comment, it will be treated as an immutable characteristic.

2. Miriam Elder, *Russia Passes Law Banning Gay 'Propaganda,'* GUARDIAN (June 11, 2013), http://www.theguardian.com/world/2013/jun/11/russia-law-banning-gay-propaganda.

3. Gowthaman Ranganathan, *Ruling in India not the last word*, GAY & LESBIAN REV. (June 25, 2014), http://www.glreview.org/article/ruling-in-india-not-the-last-word.

4. Michelle Garcia, *New Nigeria Law Imprisons Gays Who Marry*, ADVOCATE (Jan. 13, 2014), http://www.advocate.com/news/world-news/2014/01/13/new-nigeria-law-imprisons-gays-who-marry.

5. Although this law was subsequently overturned, many of its effects remain, which will be discussed later in this comment. *Uganda: Anti-Homosexuality Act's Heavy Toll*, HUM. RTS. WATCH (May 15, 2014), http://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-act-s-heavy-toll.

have done in the past, eventually leading to the situation today. Removal of the sanctions placed on Uganda once its court overturned the law could suggest that the Ugandan legal system is influenced by wealthy Western powers, and perhaps its courts are not credible. For the Indian Supreme Court to uphold the decriminalization of homosexuality would be to reject Indian cultural and spiritual ideals in favor of neocolonialist pressure to adhere to Western-created international human rights laws. Indeed, some protestors burned copies of ancient Hindu texts in response to the Court's decision.[6] However, allowing human rights abuses of LGBT people anywhere without at least condemning the abuse is inhumane. Finally, this Comment will consider the role of the West in preventing human rights abuses against the global LGBT community.

II. BACKGROUND

The recent laws criminalizing homosexuality were all passed in non-Western countries. They all criminalize homosexual sex regardless of consent or the age of the participants or whether the act took place in private, and all impose disproportionately harsh penalties. Additionally, all but one of the laws criminalize freedom of speech and assembly, outlawing the support of LGBT people by friends and family, pride parades, or speaking about homosexuality positively.[7] By international standards, the laws constitute human rights violations and also violate freedoms guaranteed in the nations' own constitutions. The most significant common feature of the anti-LGBT laws examined here are that they all purport to be representative of the "culture" of the society that spawned them, all of which are deeply religious in nature and share relationships with Western societies that are hostile at worst, and resentful at best.

A. Russia

In 2012, St. Petersburg was the most recent Russian city to adopt legislation criminalizing any public demonstration of homosexuality.[8] A prohibition on "promoting sodomy, lesbianism, bisexualism, and transsexualism to minors" prevents LGBT people from retaining their

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6. Ranganathan, *supra* note 3.
7. India's law is specific to same-sex sexual relations. *Id.*
8. Marina Darmaros, *Russia's Bleak Record on Gay Rights*, TELEGRAPH ONLINE (July 2, 2012), http://www.telegraph.co.uk/sponsored/rbth/society/9370585/russia-gay-rights.html.

jobs, attending school, and living honest lives in society.[9] It criminalizes freedom of assembly and freedom of expression not just of LGBT people, but of their supporters, friends, and families, and of anyone who refers publicly to alternative sexual orientations and/or gender identities in a way other than pejorative.[10]

Laws restricting the freedoms of LGBT Russians started locally and have spread. Prior to the 2012 legislation in St. Petersburg, Moscow had already unofficially banned gay pride parades since 2006.[11] But by June 2013, the anti-LGBT bug had spread to the federal level as Russian legislators enacted a federal ban on LGBT "propaganda" under auspices of protecting the religious freedom of the Russian Orthodox Church. This Church is closely allied with the Putin Administration.[12] Putin's restrictions on LGBT Russians and their supporters went much further by banning adoption of Russian children by same-sex couples and sanctioning the arrest of LGBT or suspected pro-LGBT visitors to Russia. The threat to Russian visitors came just in time to create a threat to the 2014 Olympic athletes who would compete in Sochi.[13]

The Russian law arrives on the heels of several victories for Russian LGBT people in recent years. Homosexual sexual activity was decriminalized nationally in 1993.[14] In 2010, after years of being denied permission to hold gay pride parades, Moscow Pride, a Russian LGBT social and political activist group, won a victory in *Alekseyev v. Russia* at the European Court of Human Rights (ECtHR) for the right to assemble.[15] In finding that its leader's fundamental right to assemble had been violated, the ECtHR stressed the importance of this freedom, noting that "a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position."[16] Responding directly to the faulty reasoning that the pride parade was a

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9. *Id.*; Laura Mills, *How Russia Enforces Its Ban on 'Gay Propaganda,'* ASSOCIATED PRESS (Feb. 6 2014), http://globalnews.ca/news/1132141/how-russia-enforces-its-ban-on-gay-propaganda/.

10. Mills, *supra* note 9.

11. Andrew Ashworth, *Human Rights: Article 11—Right to Freedom of Assembly—Ban on "Gay Pride" Marches*, 6 CRIM. L. REV. 480, 480-81 (2011) (showing that city authorities denied requisite permission to Moscow Pride to hold demonstrations); *see also* Molly Hofsommer, *Freedom to Assemble in Russia: Does the Future Hold Hope for Improvement?*, HUM. RTS. BRIEF, Winter 2011, at 37.

12. Elder, *supra* note 2.

13. Harvey Fierstein, *Russia's Anti-Gay Crackdown*, N.Y. TIMES (July 21, 2013), http://www.nytimes.com/2013/07/22/opinion/russias-anti-gay-crackdown.html?_r=0.

14. Darmaros, *supra* note 8.

15. App. No. 14599/09, Eur. Ct. H.R. para. 63, HUDOC (Oct. 21, 2010), http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101257; Hofsommer, *supra* note 11.

16. Ashworth, *supra* note 11, at 480.

violation of the Eastern Orthodox Church's religious liberty, the ECtHR held that "conditioning minority group's right to freedom of assembly on the majority's acceptance of these rights is inconsistent with Article 14 of European Convention on Human Rights," which prohibits discrimination.[17]

However, despite these isolated incidents of progress, social conditions overall for LGBT Russian citizens have worsened since the fall of the Soviet Union.[18] Although homosexuality was decriminalized in 1993, public approval of it has declined since that time.[19] Violence against LGBT people has recently increased, especially since enactment of the Russian law.[20] Russian politicians publicly condemn homosexuality.[21] Many LGBT Russians remain closeted for fear of violence, harassment, or retaliation. Gay activists in Russia are frequently arrested, detained, and fined for peacefully advocating in support of LGBT acceptance.[22]

The Church is a strong influence in Russian society. Although repressed by the communist government in the early twentieth century, the Church experienced resurgence in popularity and power since the Soviet era, becoming the new base of Russian cultural identity and nationalism.[23] About two thirds of the Russian population identifies as Church followers, and the Church has aligned itself with nationalistic and conservative values.[24] Putin has catered to the Church throughout his term, and the Church now declares itself as allied with the state.[25] In this vein, Putin and the supporters of the Russian law are quick to defend it as necessary to protect religious freedom of the Church, in spite of the ECtHR's admonition in *Alekseyev*.

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17. Hofsommer, *supra* note 11, at 38; *see also* Convention for the Protection of Human Rights and Fundamental Freedoms art. 14, Nov. 4, 1950, 213 U.N.T.S. 221.

18. Igor Volsky, *Russians Protest St. Petersburg's Anti-Gay Propaganda Law With Lunch Plates, Are Detained By Police*, THINKPROGRESS (Nov. 17, 2011, 1:55 PM), http://thinkprogress.org/lgbt/2011/11/17/371135/russians-protest-st-petersburgs-anti-gay-propaganda-law-wi/.

19. *Id.*

20. Elder, *supra* note 2.

21. Kristen L. Thomas, *We're Here, We're Queer, Get Used to It: Freedom of Assembly and Gay Pride in* Alekseyev v. Russia, 14 OR. REV. INT'L L. 473, 475 & 479 (2012).

22. Darmaros, *supra* note 8.

23. John Garrard & Carol Garrard, *Russian Orthodoxy Resurgent: Faith and Power in the New Russia*, FOREIGN AFFAIRS (Sept. 13, 2014, 10:01 AM), http://www.foreignaffairs.com/articles/64761/robert-levgold/russian-orthodoxy-resurgent-faith-and-power-in-the-new-russia.

24. *Russia Mourns Orthodox Patriarch*, ALJAZEERA (Dec. 9, 2008, 13:16 GMT), http://www.aljazeera.com/news/europe/2008/12/200812910445486903.html.

25. Charles Clover, *Russia in Grip of Clean-Living Orthodoxy*, FIN. TIMES (Oct. 23, 2012), http://www.ft.com/cms/s/0/487f0600-1cf5-11e2-a17f-00144feabdc0.html#axzz2veQpkhil.

Since the adoption of the Russian law, the lives of LGBT Russians have deteriorated further. The Russian law has resulted in arrests and fines for peaceful demonstrators.[26] In June 2012, a peaceful demonstration by LGBT people in Moscow was ended by police after conflict broke out between the demonstrators and activists from the Church.[27] Children have been kicked out of schools for supporting LGBT people.[28] As well as freedom of assembly, freedom of expression is also being stifled by the anti-LGBT legislation. For example, protestors were fined for expressing their pro-LGBT opinions in public.[29] While arrests of citizens demonstrating for other causes rarely amount to much, arrests of citizens demonstrating in favor of LGBT issues often result in detention and hefty fines.[30] Suppression of freedom of the press by the Russian government has also predictably accompanied the anti-LGBT legislation: pro-LGBT journalists are being fined, and facilitators of LGBT-friendly social networking sites are being prosecuted.[31]

Beyond denial of their rights to assembly and expression, stifling of freedom of the press, and clashes with law enforcement, the poor conditions for Russian LGBT people extend to their personal and social lives as well. They are persecuted by the religious majority and ostracized by society, prompting more LGBT people to remain in the closet for fear of violence, harassment, and job and home loss.[32] Results have included not only arrests and fines, but also lasting psychological damage for countless LGBT youth and adults whose government, instead of protecting them, now candidly describes them as abnormal after stripping them of their fundamental freedoms.

B. Nigeria

In January 2014, Nigeria's government passed the Same Sex Marriage (Prohibition) Bill (Prohibition Bill), criminalizing gay people and prescribing lengthy prison sentences.[33] The Prohibition Bill also

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26. Mills, *supra* note 9.

27. Darmaros, *supra* note 8.

28. Mills, *supra* note 9.

29. Alekseyev fined for holding pro-LGBT sign in public. Mills, *supra* note 9; John Bercow, *John Bercow: This Isn't Just About Sexuality. It's About Basic Humanity*, INDEPENDENT (May 17, 2012), http://www.independent.co.uk/voices/commentators/john-bercow-this-isnt-just-about-sexuality-its-about-basic-humanity-7758141.html.

30. Mills, *supra* note 9.

31. *Id.*; Thomas Melia, *Human Rights and Democracy in Eastern Europe*, 11 HAMPTON ROADS INT'L SEC. Q. 48, 53 (2011).

32. Darmaros, *supra* note 8.

33. *Nigeria Same-Sex Marriage (Prohibition) Act: Global Day of Action*, INT'L GAY & LESBIAN HUM. RTS. COMMISSION (Feb. 13, 2014), https://iglhrc.org/content/nigeria-global-action.

criminalizes the supporters of gay organizations and societies, those who aid any meetings of gay people, or anyone who "administers, witnesses, aids or abets" homosexual activity.[34] Such sentencing is in addition to the laws already on the books in Nigeria that criminalize homosexuality, where the maximum punishment for same-sex sexual activity in some of its religiously administered states is death by stoning.[35] Even under secular law in other states, the maximum penalty is a harsh fourteen years' imprisonment.[36]

Effects of the Prohibition Bill have included increased violence against same-sex couples and gay individuals by the authorities and civilian vigilantes, as well as "homelessness, unemployment, harassment, and a steep drop-off in HIV/AIDS treatment."[37] Property loss occurs as LGBT Nigerians lose their jobs, businesses, and homes once their sexual orientations are discovered, because they often are either evicted, fired, threatened into not returning, or flee in fear of such likely consequences.[38] Non-LGBT Nigerians are directly affected as well: some fail to seek out HIV/AIDS treatment since the passage of the Prohibition Bill for fear of having their sexual orientation questioned, and treatment facilities that serve the entire population are considered criminal under the law if they also serve LGBT people.[39] Resources have become scarce as providers halt services to avoid potential arrest for aiding gay people.[40]

Homosexuality has been a crime under Nigerian law since Nigeria was under British colonial rule, which ended in 1960.[41] However, convictions for homosexuality were rare until the Prohibition Bill, which spurred a homophobic "witch hunt" led by law enforcement.[42] Until recently, in some parts of the north, a subculture of cross-dressing men whose members practiced their own Muslim ritual was widely tolerated by the majority conservative Muslim society.[43]

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34. *Id.*; Irene Monroe, *Nigeria's Anti-LGBTQ Law*, HUFFINGTON POST (Feb. 24, 2014, 8:44 PM), http://www.huffingtonpost.com/irene-monroe/nigerias-anti-lgbtq-law_b_4832554.html.

35. Death by stoning is a potential punishment for homosexuality under Shari'a law, which has been adopted by several northern Nigerian states. *Id.*

36. *Id.*

37. Erika Eichelberger, *You Thought It Was Tough Being Gay in Uganda. "It's Hell in Nigeria,"* MOTHER JONES (Mar. 13, 2014, 6:00 AM), http://www.motherjones.com/politics/2014/03/nigeria-anti-gay-law-hiv.

38. *Id.*

39. *Id.*

40. *Id.*

41. Monroe, *supra* note 34.

42. Eichelberger, *supra* note 37.

43. Monroe, *supra* note 34.

Religion is integral to Nigerian society and largely informs their national and state laws in both the predominantly Christian south and the predominately Muslim north, where some states have adopted Shariah law.[44] The Prohibition Bill has unified both areas despite their religious differences, a task that has been a struggle for the central government continuously since the time of colonial rule.[45] Nationalism and support for President Jonathan, who signed the Prohibition Bill into law in January, have flourished since its enactment.[46] The predominant roles of intolerant religious beliefs, poverty, lack of education, and government corruption in Nigerian law render it a hostile climate for tolerance of the LGBT community.

The Prohibition Bill is among many devastating human rights violations to occur in Nigeria in 2014. Boko Haram, a militant Islamist group in Nigeria, was responsible for the deaths of an estimated 2,053 civilians in 95 attacks during the first half of 2014,[47] as well as the kidnapping of over 200 schoolgirls.[48] The Nigerian government's corruption, abuse of police authority, and lack of concern for the country's rampant poverty partially led to this predictable vigilante violence.[49]

C. Uganda

Following Nigeria, Uganda enacted its Anti-Homosexuality Act (AHA) in February 2014.[50] Although homosexual sexual acts were already illegal in Uganda, the AHA assigns harsh penalties for new crimes such as "aggravated homosexuality," which can carry a life sentence.[51] It also criminalizes "the promotion of homosexuality" and

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44. *LGBT Rights in Nigeria*, *supra* note 35.

45. "The sixty years of Britain's colonial rule in Nigeria are characterized by frequent reclassifying of different regions for administrative purposes. They are symptomatic of the problem of uniting the country as a single state." "Regional hostilities" were an important basis of near constant civil war since independence in 1960, with arms being supplied by the United States, Britain, and France during the 1960s. *History of Nigeria*, HISTORY WORLD, http://www.historyworld.net/wrldhis/plaintexthistories.asp?historyid=ad41 (last visited Oct. 27, 2014).

46. Monroe, *supra* note 34.

47. *Nigeria: Boko Haram Kills 2,053 Civilians in 6 Months*, HUM. RTS. WATCH (Sept. 14, 2014, 3:10 PM), http://www.hrw.org/news/2014/07/15/nigeria-boko-haram-kills-2053-civilians-6-months.

48. Nicholas Kristof, *"Bring Back Our Girls,"* N.Y. TIMES (May 3, 2014), http://www.nytimes.com/2014/05/04/opinion/sunday/kristof-bring-back-our-girls.html?_r=0.

49. *Nigeria: Boko Haram Kills 2,053 Civilians in 6 Months*, *supra* note 47.

50. *Uganda: Anti-Homosexuality Act's Heavy Toll*, *supra* note 5.

51. *From Torment to Tyranny: Enhanced Persecution in Uganda Following the Passage of the Anti-Homosexuality Act 2014, 20 December—1 May 2014*, SEXUAL MINORITIES IN

"aiding and abetting homosexuality," assigning prison time as a punishment for both acts.[52] The law thus required landlords to evict LGBT tenants and family and friends to report LGBT people to the authorities or face prosecution themselves.[53]

The effects of the law on Uganda's LGBT community have been widespread persecution, denial of healthcare, loss of property, and increased violence and harassment.[54] Arbitrary arrests, police abuse, and extortion have risen dramatically. Between the enactment of the law on March 10, 2014, and May 2014, seventeen people were arrested for same-sex conduct. This is in stark comparison with twenty-three people total from 2007-2011.[55] Police can demand bribes and subject gay men to forced anal exams upon arrest with impunity.[56] An HIV treatment and research center was closed down on the basis of its "promotion" of homosexuality, and healthcare providers are refusing services to LGBT people, lest they be found guilty of "aiding and abetting" or "promoting" homosexuality and shut down as a result.[57] Clients and other businesses refuse to do business with LGBT business owners and landlords evict LGBT tenants based on the same concerns.[58] Because LGBT people are always subject to arrest, they can be mistreated by the rest of the population with impunity. There has been exposure of LGBT Ugandans' sexual orientation in local press that has led to threats of physical violence, actual physical attacks, and a few cases of kidnappings and torture.[59] Thus, the overall consequences of the AHA are increased joblessness, homelessness, and human rights violations.

Internationally, Western nations reacted to the AHA with condemnation of Uganda's homophobic legislation and sanctions. The Obama Administration removed financial support for Ugandan public

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UGANDA 5 (May 9, 2014), http://www.sexualminoritiesuganda.com/Torment%20to%20Tyranny%2009-05-2014%20FINAL.pdf.

52. *Id.*

53. Sunnivie Brydum, *Uganda's Anti-Homosexuality Act: 'Null and Void,'* ADVOCATE (Aug. 1, 2014), http://www.advocate.com/world/2014/08/01/breaking-ugandan-court-throws-out-jail-gays-law.

54. *Obama Administration To Hold Ugandan Government Accountable for Anti-LGBT Laws*, HUM. RTS. CAMPAIGN (June 19, 2014), http://www.hrc.org/blog/entry/obama-administration-to-hold-ugandan-government-accountable-for-anti-lgbt-l.

55. *Uganda: Anti-Homosexuality Act's Heavy Toll*, *supra* note 5.

56. *Id.*

57. *Id.*

58. *Id.*

59. *From Torment to Tyranny: Enhanced Persecution in Uganda Following the Passage of the Anti-Homosexuality Act 2014, 20 December—1 May 2014*, *supra* note 51, at 5.

healthcare services, police force, and military programming.[60] Several European nations also cut off financial aid to Uganda as a result of the AHA.[61]

In August 2014, Uganda's constitutional court declared the AHA null and void.[62] However, the court's reasoning was based on a mere technicality and did not address the subject matter of the law.[63] Despite initial celebration among Uganda's LGBT community and their supporters, backlash swiftly followed. Members of the Ugandan Parliament publicly pledged to pass the AHA again, dismissing the United States' removal of financial aid as inconsequential.[64] The AHA had widespread public support in Uganda, leading many Ugandans to wonder if the president's impending visit to the United States in August wrongfully influenced the judges' decision.[65]

As in India and Nigeria, homosexuality in Uganda has been a crime since British colonial rule.[66] In fact, some Ugandans even claim that homosexuality was brought to Africa by British colonialists.[67] Since gaining independence from Britain in 1962, Uganda has been plagued with political instability and corruption.[68] Indeed, its current president, Museveni, has been in power since a military coup in 1986, abolishing term limits in 2005 despite suspicion of corrupt elections by European observers.[69] Uganda has had a strained relationship with Western powers since the early 1970s, during which time the United States ceased trade with Uganda not as a result of the mass human rights violations its government committed, but because two Americans were killed by Ugandan soldiers.[70] Uganda's leaders formed military and financial

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60. Grant Harris & Stephen Pomper, *Further U.S. Efforts To Protect Human Rights in Uganda*, WHITE HOUSE BLOG (June 19, 2014), http://www.whitehouse.gov/blog/2014/06/19/further-us-efforts-protect-human-rights-uganda.

61. *Uganda Court Annuls Anti-Homosexuality Law*, BBC NEWS (Aug. 1, 2014), http://www.bbc.com/news/world-africa-28605400.

62. Brydum, *supra* note 53.

63. *Id.*

64. *Uganda Parliament Committed To Reintroducing Anti-Homosexuality Act*, HUM. RTS. CAMPAIGN (Aug. 7, 2014), http://www.hrc.org/blog/entry/uganda-parliament-committed-to-reintroducing-anti-homosexuality-act.

65. *Uganda Court Annuls Anti-Homosexuality Law*, *supra* note 61.

66. Val Kalende, *Africa Homophobia is a Legacy of Colonialism*, GUARDIAN (Apr. 30, 2014), http://www.theguardian.com/world/2014/apr/30/africa-homophobia-legacy-colonialism.

67. Amy Hoffman, *Do Tell: Recovering LGBT History*, GAY & LESBIAN REV., Jan.-Feb. 2015, at 22.

68. *Uganda—History*, AFR. STUD. CENTER, U. PENN., http://www.africa.upenn.edu/NEH/uhistory.htm (last visited Aug. 10, 2014).

69. *Uganda Court Annuls Anti-Homosexuality Law*, *supra* note 61.

70. *Uganda—History*, *supra* note 68.

alliances at that time with Russia and Arab states instead.[71] In the early 1990s, the administration reinstated the four kingdoms of Uganda that had been exploited under British rule and abolished when Uganda gained independence.[72]

D. India

In 2013, at the end of a thirteen-year process, the Indian Supreme Court upheld section 377 of its penal code, a law criminalizing homosexuality, against a constitutional challenge filed in 2001 in *Naz Foundation v. Government of NCT of Delhi*.[73] In doing so, the Indian Court reversed a 2009 decision from a lower court that struck down section 377 as unconstitutional.[74] Section 377 was a statute originally enacted in 1860 by the British colonialist rulers of India. It criminalized "carnal intercourse against the order of nature" with the possibility of a life imprisonment sentence.[75] Despite its gender-neutral language, section 377 has been used almost exclusively to prosecute gay people.[76] The lower court found section 377 to be inconsistent with articles of the Indian Constitution guaranteeing all citizens the rights to "equality, freedom from discrimination, and the right to life, which includes the right to dignity and the right to privacy."[77] Because the statute could be, and has been, used to prosecute consenting adult same-sex partners in the privacy of their own home, the lower court found it incompatible with India's constitutional ideals.[78] This finding was based on the Indian Constitution's "underlying theme" of inclusiveness, and the opinion invoked human rights concerns by noting, "Those perceived by the majority as 'deviants' or 'different' are not on that score excluded or ostracized."[79]

However, a backlash ensued in Indian media against the LGBT community, especially by various Indian religious groups.[80] In his appeal to the Indian Supreme Court, the plaintiff, an astrologer, was joined by many religious groups in arguing that homosexuality was contrary to

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71. *Id.*
72. *Id.*
73. Ranganathan, *supra* note 3.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. Danish Sheikh, *The Road to Decriminalization: Litigating India's Anti-Sodomy Law*, 16 YALE HUM. RTS. & DEV. L.J. 104, 121 (2013).
79. Ranganathan, *supra* note 3.
80. Sheikh, *supra* note 78.

Indian culture,[81] while the defense argued that homosexuality had been a part of Indian culture for millennia, citing an old folk story as evidence.[82] The Indian Supreme Court rejected LGBT rights, viewed as neocolonialist, favoring India's religious traditions over Western values by, ironically, upholding a statute left over from British colonialism.[83] Rather than rule on the merits of the case, the Indian Supreme Court noted that it was Parliament's duty to abolish the law, not the judiciary's.[84]

Despite the plaintiff's arguments, LGBT rights in India had been progressing incrementally prior to the Indian Supreme Court's judgment. India's first significant gay rights protest took place in 1992.[85] India's Health Ministry submitted an affidavit in *Naz* in support of decriminalization in 2006, citing section 377 as an obstacle to HIV/AIDS prevention.[86] Pride marches and visibility of LGBT people had been increasing ever since the lower court's 2009 judgment striking down the law.

Since *Naz*, LGBT rights in India have continued to progress slowly, despite the reinstatement of section 377. The judgment resulted in major public protests, an onslaught of letters to the chief justice of India, and numerous affidavits filed with a petition to reconsider the decision (which was quickly denied).[87] Pride marches have continued to be held in major Indian cities.[88] Additionally, the Indian Supreme Court has expanded the rights of transgender people in subsequent cases, directing the government to work towards safeguarding their rights,[89] and establishing a "third gender" category, noting very progressively that "it is the right of every human being to choose their gender."[90] Although increased rights for the transgender community does not necessarily correspond to rights for gay or bisexual people, such rulings could indicate the Indian Supreme Court's progress and willingness to rule in favor of human rights in the future.

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81. Ranganathan, *supra* note 3.

82. Sheikh, *supra* note 78, at 105.

83. Richard Schneider, Jr., *The Summer Issue: Backlash!*, GAY & LESBIAN REV., July-Aug. 2014, at 4.

84. Ranganathan, *supra* note 3.

85. Sheikh, *supra* note 78, at 108.

86. *Id.*

87. Ranganathan, *supra* note 3.

88. *Id.*

89. Radheshyam Jadhav, *Steps to Empower Transgender Community*, TIMES INDIA (Aug. 7, 2014), http://timesofindia.indiatimes.com/articleshow/39831957.cms.

90. Ash Kotak, *India's Transgender Law Is No Help to Its Lesbian, Gay and Bisexual Communities*, GUARDIAN (Apr. 17, 2014, 5:00 PM), http://www.theguardian.com/commentisfree/2014/apr/17/india-transgender-laws-lbg-gay-communities.

E. Global Progress for LGBT Rights

The homophobic laws of Russia, India, Nigeria, and Uganda are particularly surprising because they occur in the wake of decades of awareness and progress for LGBT rights in many areas of the world. In Europe, the Council of Europe (Council) issued recommendations to its forty-seven member states in 2010 on eliminating discrimination against LGBT citizens.[91] In 2012, the Council held an unprecedented conference on the status of LGBT rights among its member states, which includes Russia.[92] Also in 2012, the European Commission, the politically guiding apparatus of the European Union (EU), stated that unchecked persecution of LGBT citizens would prevent accession to the EU.[93] The Human Rights Council of the United Nations, of which Russia is also a member, reaffirmed its commitment to ending discrimination and mistreatment of LGBT people.[94]

Abroad, progress continues in Latin America, Mexico, Turkey, Jamaica, Nepal, Iceland, and even in Pakistan, with inclusiveness of LGBT citizens in society and government expanding, and their civil rights gaining better and stronger protection.[95] The United States Supreme Court decision ruling a federal ban on same-sex marriage as unconstitutional brought the United States one step closer to many nations which have already legalized same-sex marriage.[96]

Global progress towards legal equality for LGBT people can be seen through legislation regarding marriage, hate crimes, visibility, and the decriminalization of sodomy. It includes the removal of limitations on LGBT people's rights to freedom of speech and assembly, as well as regulation of social tolerance via the legal protection of those rights, their practice by LGBT citizens, and the political disassociation of homosexuality with immorality through decriminalization of private same-sex sexual activity. As of August 2014, nineteen countries

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91. *Serbia: Revoke Ban on Belgrade Pride Parade*, HUM. RTS. WATCH (Oct. 5, 2012), http://www.hrw.org/news/2012/10/05/serbia-revoke-ban-belgrade-pride-parade.

92. Bercow, *supra* note 29; *see also European Convention on Human Rights*, EUR. CT. HUM RTS. (May 3, 2002), http://www.echr.coe.int/Documents/Convention-ENG.pdf.

93. *Serbia: Revoke Ban on Belgrade Pride Parade*, HUM. RTS. WATCH (Oct. 5, 2012), http://www.hrw.org/news/2012/10/05/serbia-revoke-ban-belgrade-pride-parade.

94. Bercow, *supra* note 29.

95. David W. Austin, *Sexual Orientation and Gender Identity*, 46 INT'L LAW. 447 (2012).

96. The Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina, New Zealand, Denmark, Uruguay, Brazil, Mexico, France, the United States, and Britain. *Gay Marriage Legal Nationwide In 10 Countries Around the World*, WORLD POST (May 9, 2012, 12:05 PM), http://www.huffingtonpost.com/2012/05/09/gay-marriage-legal-world_n_1504054.html.

worldwide have issued marriage licenses to same-sex couples.[97] Even countries with strong religious societies are moving towards legality of same-sex marriage: Ireland is set to vote on same-sex marriage in 2015, and a bill recognizing same-sex unions will come to the Senate in Italy in September 2014.[98] Visibility of LGBT people, crucial to societal tolerance, has also been growing. Puerto Rico elected its first openly gay judge in June of 2014.[99] Freedom of assembly has bolstered this visibility, as other formerly Soviet states have broken with Russia's recent intolerance: The Balkan Pride parade continues annually, rotating its location between Estonia, Latvia, and Lithuania.[100] Citizens in Turkey, a historically LGBT-intolerant nation, marched to end violence against transgender people earlier this year.[101]

International organizations have also pushed for LGBT equality recently. The U.N. issued its first ever report on global LGBT rights in 2011.[102] Furthermore, U.N. member states are required to decriminalize homosexuality, in accordance with international human rights law.[103] Accession to the EU is now conditional upon the existence of domestic laws targeting discrimination against LGBT citizens.[104] The Council of Europe, United Nations, and Organization of American States have all passed human rights resolutions to end discrimination and violence against LGBT people.[105]

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97. *Marriage Equality Around the World*, HUM. RTS. CAMPAIGN, http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/World_Marriage_Map-7-14-2014.pdf (last visited Aug. 10, 2014).

98. Hayley Miller, *Ireland To Vote on Marriage Equality in 2015*, HUM. RTS. CAMPAIGN (July 3, 2014), http://www.hrc.org/blog/entry/ireland-to-vote-on-marriage-equality-in-2015. http://www.pinknews.co.uk/2014/06/18/italy-senate-to-debate-same-sex-civil-unions-in-september/.

99. Hayley Miller, *First Openly LGBT Judge Confirmed to Puerto Rico Supreme Court*, HUM. RTS. CAMPAIGN (June 26, 2014), http://www.hrc.org/blog/entry/first-openly-lgbt-judge-confirmed-to-puerto-rico-supreme-coUrt.

100. Limor Finkel, *HRC Joins LGBT Advocates in Estonia for Baltic Pride*, HUM. RTS. CAMPAIGN (June 19, 2014), http://www.hrc.org/blog/entry/hrc-joins-lgbt-advocates-in-estonia-for-baltic-pride.

101. Hayley Miller, *Protesters in Turkey March To End Violence Against Transgender Community*, HUM. RTS. CAMPAIGN (June 24, 2014), http://www.hrc.org/blog/entry/protesters-in-turkey-march-to-end-to-violence-against-transgender-community.

102. *UN Issues First Report on Human Rights of Gay and Lesbian People*, UN NEWS CENTRE (Dec. 15, 2011), http://www.un.org/apps/news/story.asp?NewsID=40743#.UxHAdc KYblU.

103. *Id.*

104. Austin, *supra* note 95.

105. *Organization of American States Adopts LGBT Human Rights Resolution*, HUM. RTS. CAMPAIGN (June 6, 2014), http://www.hrc.org/blog/entry/organization-of-american-states-adopts-lgbt-human-rights-resolution; *LGBT Rights at the United Nations*, WIKIPEDIA, http://en.

F. Global Backlash

Increasing visibility and global support for LGBT rights has also been met with a backlash, mainly concentrated in a few nations in Eastern Europe, the Middle East, and Africa. Serbia and Hungary have, like Russia, banned gay pride parades in recent years.[106] Also following in Russian's footsteps, Kyrgyzstan's parliament approved a bill that would impose a prison sentence for "promotion of homosexuality."[107] Moroccan courts upheld convictions for same-sex sex acts in July 2014, sentencing the defendants to prison time.[108] At the time that the U.N. issued its first report on human rights of gay and lesbian people in 2011, five countries criminalized homosexuality under penalty of death, and 76 criminalized same-sex conduct.[109]

III. PROOF OF MY CLAIM

A. Progress—Equality or Politics?

Progress in legal protection of the human rights of LGBT people in many countries may have less to do with equality, and more with politics. Western countries and international organizations have consciously incentivized protection for LGBT people globally in various ways. If they want the economic and foreign relations benefits accompanying EU membership, nations must pass legislation protecting their LGBT citizens from discrimination. Compliance with international human rights law, which is largely influenced by Western powers, obliged U.N. member states to decriminalize homosexuality, despite opposition by some of them.[110] The international community's response to reports by Western international groups, the EU, Amnesty International, and the United States State Department on the status of the LGBT community globally has prompted changes. For example, Turkey's march to end

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wikipedia.org/wiki/LGBT_rights_at_the_United_Nations (last visited Aug. 10, 2014); Thomas, *supra* note 21.

106. Austin, *supra* note 95; *see also Ugandan Anti-Gay Bill Signed Into Law: A Terrible Set Back for Human Rights*, KALEIDOSCOPE TRUST (Feb. 24, 2014), http://kaleidoscopetrust.com/news/63.

107. Hayley Miller, *Anti-LGBT "Propaganda" Law Advances in Kyrgyzstan*, HUM. RTS. CAMPAIGN (June 20, 2014), http://www.hrc.org/blog/entry/anti-lgbt-propaganda-law-advances-in-kyrgyzstan.

108. *Morocco: Homosexuality Convictions Upheld*, HUM. RTS. WATCH (July 8, 2014), http://www.hrw.org/news/2014/07/08/morocco-homosexuality-convictions-upheld.

109. Iran, Yemen, Saudi Arabia, Mauritania, and Sudan. *UN Issues First Report on Human Rights of Gay and Lesbian People*, *supra* note 102.

110. *Id.* The U.N. resolution was opposed by the Arab League. *LGBT Rights in Nigeria*, *supra* note 35.

violence against transgender people in June of 2014 came after the EU reported in 2013 that hate speech was increasing in Turkey and urged the Turkish government to take action against it.[111] Additionally, foreign aid is often revoked for countries who commit human rights violations against LGBT people. For example, the United States withdrew financial assistance to Uganda after its government passed the AHA.[112]

Furthermore, it behooves nations to protect LGBT rights in order to avoid negative responses from the international community. Puerto Rico, the economy of which depends heavily on U.S. tourists, including members of the LGBT community, confirmed its first openly gay Supreme Court judge in June 2014.[113] If it is in their best interests to stay on good foreign relations terms with Western nations and international organizations, many nations are now making efforts to distinguish themselves from Russia by promoting tolerance of LGBT citizens. The Baltic Pride parade in Estonia, Latvia, and Lithuania is one such example.[114] Additionally, Israel, closely aligned with the United States politically, will register same-sex marriages obtained abroad, although same-sex couples may not marry in Israel itself.[115]

B. Backlash

Passage of the Russian law was almost certainly a result of the progress made recently by the Russian LGBT community in Europe and abroad. Russia's enactment of anti-LGBT laws leading up to its hosting of the 2014 Olympics, an international event that was sure to draw global attention to such a law that would affect many foreign athletes and visitors, was no coincidence. Instead, it was Russia's way of retaining cultural distinction and thus resisting international assimilation—it says, we are powerful, and we choose to reject Western culture. We will decide for ourselves what is right for our people. Similarly, the backlash in India may be fueled by both anti-Western postcolonialist sentiment, and a desire for independence in the face of a legal sphere dominated by secular Western influence.

Because of its economic power and heavy influence over international legal systems, the West's cultural values are inescapable in

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111. Miller, *supra* note 101.

112. Brydum, *supra* note 53.

113. *See, e.g.*, *Gay San Juan: The Gay Center of the Caribbean*, GAY CITIES, http://Puertorico.gaycities.com/overview/ (last visited Aug. 10, 2014).

114. Finkel, *supra* note 100.

115. Yoav Sivan, *Israel: Equal Rights as Workaround*, GAY & LESBIAN REV., May-June 2013, at 31.

international law. The West uses its wealth and power to create compliance with its human rights ideals through international courts, international human rights law, and membership in international organizations, as discussed above. Ultimately, whatever ulterior political motivations may have existed behind laws protecting human rights, such laws pave the road to equality for LGBT people, and that is a good thing. However, with international organizations adopting what they perceive as Western values as mandates, resistance from other nations, especially those with a history of enmity, competition, and hostility with the West, can be expected.[116] Nations whose citizens feel that their unique cultures are being swallowed up by globalization, tourism, and economic competition with the West resist the imposition of human rights law, often misunderstood to be reflective only of the ideals of a culture different from theirs.

India's Supreme Court upheld the criminalization of homosexuality on technical grounds, ignoring the merits of the claim.[117] The U.S. Supreme Court ruled similarly in *Bowers v. Hardwick*, before finally decriminalizing same-sex sexual conduct between consenting adults in private in *Lawrence v. Texas* in 2004.[118] Rather than a hindrance to progress, one Indian legal scholar has wondered whether *Naz* was "our *Bowers*"—in other words, a temporary hurdle that will become a stepping stone on the path towards laws protecting LGBT equality in India on terms defined by its own societal values.[119] Let's hope the scholar was right.

However, unlike the Indian *Naz* decision, Russia's law does not bode well for progress. Firstly, it has been followed by further restrictions on human rights, such as banning the use of certain swear words (most of which are sexual references) from the arts, constituting another limitation on freedom of speech and expression.[120] Secondly, the Indian Supreme Court has subsequently decided in favor of upholding the rights of transgender Indian people, perhaps in response to public local and international uproar following its decision in *Naz*.[121] Pride

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116. The first U.N. resolution in support of LGBT rights was introduced in 2008 by Dutch and French representatives, and backed by the EU. The Arab League filed an opposition to it. *LGBT Rights at the United Nations*, WORLD PUB. LIBRARY, http://netlibrary.net/articles/LGBT_rights_at_the_United_Nations (last visited Feb. 23, 2015); Thomas, *supra* note 21.

117. Ranganathan, *supra* note 3.

118. Bowers v. Hardwick, 478 U.S. 186 (1986); Lawrence v. Texas, 539 U.S. 558 (2003).

119. Sheikh, *supra* note 78.

120. Maryam Omidi, *WTF? Russia Bans Swearing in the Arts*, GUARDIAN (July 1, 2014, 3:42 PM), http://www.theguardian.com/world/2014/jul/01/russia-bans-swearing-arts.

121. Kotak, *supra* note 90.

parades and public events in support of the LGBT community have continued to be held peacefully in India since the ruling.[122] On the other hand, LGBT people and their supporters in Russia face increasing violence, police harassment and arbitrary arrests, and discrimination, now sanctioned by their government. Pride parades since the ECtHR ruling in *Alekseyev* have incurred violence from both civilians and authorities.[123] The Russian government has ignored Western criticism and seen Putin's approval rating soar as his homophobic laws stoke the flames of a growing nationalism that is largely rooted in the ideals of the conservative Church. Indeed, Putin's approval rating recently hit an all-time high of 87% among Russian citizens.[124] By contrast, the only U.S. presidents to ever achieve such high approval ratings were both Bush presidents, also during wartime.[125] This would seem to bolster the idea that a common enemy, whether created or perceived, unites citizens of a troubled nation during times of crisis.

Like Russia's, both Nigeria's and Uganda's homophobic laws have been met with public approval, even as their governments restrict the civil rights of an ever-expanding portion of the population.[126] Also like Russia, they occur after years of political instability and human rights violations.[127] Uganda's current president, Museveni, has restricted its citizens' rights to freedoms of assembly, association, and expression throughout his twenty-eight-year presidency.[128] In 2013, he passed the Public Order Management Act (POM Act), restricting freedoms of expression and assembly.[129] Although its constitution guarantees equal rights for all citizens and equal opportunity in the workplace,[130] Nigeria's notoriously corrupt government has done little to secure such civil rights since its constitution was passed in 1999. Instead of advocating for equal rights, the government chooses to pay its legislators hugely inflated

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122. Ranganathan, *supra* note 3.

123. Thomas, *supra* note 21.

124. *Putin's Approval Rating Hits All-Time High at 87%*, MASHABLE, http://mashable.com/2014/08/06/putin-approval-rating/ (last visited Aug. 10, 2014).

125. *Id.*

126. In Nigeria, violence against LGBT has increased since the law was enacted. *Nigeria Same-Sex Marriage (Prohibition) Act: Global Day of Action*, *supra* note 33; *see also* Brydum, *supra* note 53.

127. *Nigeria*, *supra* note 41.

128. *Uganda: Anti-Homosexuality Act's Heavy Toll*, *supra* note 5.

129. *Uganda's Constitutional Court Should Repeal the Public Order Management Act as Unconstitutional*, FIDH (Dec. 19, 2013), http://www.fidh.org/en/africa/uganda/14422-uganda-s-constitutional-court-should-repeal-the-public-order-management.

130. *LGBT Rights in Nigeria*, *supra* note 35.

salaries without requiring any accountability to its impoverished population, upon whose taxes the government need not rely for income.[131]

In Russia, the law is indicative of Putin's stifling not only of progress for LGBT rights, but of civil rights generally. The laws target freedom of assembly generally, rather than specific rights of LGBT people such as same-sex marriage or protection against discrimination based on sexual orientation. In India, Uganda, and Nigeria, however, the laws in question criminalize homosexuality directly. Upholding India's section 377 was perhaps culturally motivated because the case itself was filed and supported by members of India's religious groups, which are a predominant part of Indian culture. But both Uganda and Nigeria achieved political ends by criminalizing homosexuality specifically: unification of fractured populaces against a small and powerless scapegoated enemy, support for highly criticized corrupt governments, popularity among powerful and large religious majorities, and distinction from their former colonizers.

C. Public Opinion—Influenced and Influential

Public opinion of a minority is shaped by political leaders' reactions to it, the public's knowledge of and familiarity with members of the minority, and legalization of acts associated with it.[132] Indeed, Russian citizens have become less accepting of LGBT people since adoption of the anti-LGBT laws,[133] and violence in Nigeria has increased since the passage of the Prohibition Bill.[134] Putin and local politicians in major Russian cities in which anti-LGBT legislation was adopted have publicly condemned homosexuality as unnatural, an offense to religion and morals, and harmful to children.[135] Even Russia's Human Rights Commissioner has said that he does "not think the publicity of sexual preferences is acceptable," even as he claims paradoxically that LGBT citizens enjoy civil rights in Russia.[136] The Russian public admittedly

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131. Michael Burleigh, *A Country So Corrupt It Would Be Better To Burn Our Aid Money*, DAILY MAIL ONLINE (Aug. 8, 2013, 18:14), http://www.dailymail.co.uk/debate/article-2387359/Nigeria-country-corrupt-better-burn-aid-money.html.

132. A recent study conducted by the University of Chicago identifies Russia as one of four countries where approval of homosexuality has decreased. Austin, *supra* note 95, at 456.

133. *Id.*

134. *From Torment to Tyranny: Enhanced Persecution in Uganda Following the Passage of the Anti-Homosexuality Act 2014, 20 December—1 May 2014*, *supra* note 51.

135. Randall Dills, *Putin Policies a Backdrop to Winter Olympics*, COURIER-J. (Feb. 6, 2014, 2:29 AM), http://www.courier-journal.com/story/opinion/contributors/2014/02/05/putin-policies-a-backdrop-to-winter-olympics/5231909/.

136. "As Russia's human rights commissioner, I must say that we receive few complaints regarding rights violations of sexual minorities." Darmaros, *supra* note 8.

associates LGBT people with drug addicts and criminals.[137] Rather than based on public opinion, the anti-LGBT laws, as well as statements by local politicians condemning homosexuality, are creating and fueling negative sentiment towards LGBT people.[138]

Furthermore, as Charles Radcliffe, chief of the global issues section of the Office of the High Commissioner of Human Rights, explained to U.N. Radio, "One of the things we found is if the law essentially reflects homophobic sentiment, then it legitimizes homophobia in society at large. If the State treats people as second class or second rate or, worse, as criminals, then it's inviting people to do the same thing."[139] Thus, law enforcement's failure to protect LGBT citizens leads to further violence against them and stokes resentment and hatred towards them by the public. The effects of this are shown in the attack on Moscow's Pride parade in 2012[140] and by violence against LGBT people by fellow citizens in Nigeria and Uganda.

Similarly, criminalization of homosexuality evokes anti-LGBT public sentiment, and vindicates homophobia by justifying it. Crimes, by nature, are acts that are condemned by society, behaviors that a society attempts to eradicate via punishment. Conversely, public opinion of criminals is consequentially low, and citizens will naturally view as reprehensible acts that their government punishes as criminal acts. Thus, criminalization of behavior is inherently tied to public morality in an endless feedback loop. Acts are crimes because they are condemned by the public, but the public will condemn them because they are crimes. A chicken versus egg analogy comes readily to mind.

Criminalization of homosexuality thus leads to societal reprehension of LGBT people, at least as much as the opposite. Furthermore, while in a truly democratic state where the civil rights of members of minorities are protected by governmental safeguards against the will of the majority, civil rights in a dictatorial regime are vulnerable not only to shifting public opinion, but also the oppressive will of political actors. Hence, oppressive and corrupt leaders such as Putin and Jonathan can criminalize the civil rights of LGBT citizens regardless of public sentiment, and thereby sway the public against an unpopular and misunderstood minority whose members are now equivalent to criminals.

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137. Austin, *supra* note 95, at 455; Volsky, *supra* note 18.

138. "Of course there is a link—we see that whenever such laws on propaganda are adopted, or even discussed, then the activism of violent groups increases." Miriam Elder, *Gang Attack Blamed on Russia's Ban on 'Gay Propaganda,'* GUARDIAN (Nov. 4, 2012), http://www.theguardian.com/world/2012/nov/04/gang-attack-russia-gay.

139. *UN Issues First Report on Human Rights of Gay and Lesbian People*, *supra* note 102.

140. Darmaros, *supra* note 8.

By doing so, these leaders garner stronger public support for their oppressive government, even as their supporters give up pieces of their own rights in favor of nationalism. After all, repression of rights is still oppression—if freedom is denied to one group arbitrarily, what protects it for another group?

D. Anti-Western Sentiment

Russia, India, Nigeria, and Uganda all have strained histories with Western powers. Russia's enmity towards Western countries, as well as its strong cultural identity and its recent association with religion, are the strongest influences of its current anti-LGBT legislation. Notably, many of the international laws guaranteeing freedom of assembly and international criticism of Russia's contemptible track record on LGBT rights come from European organizations.[141] For centuries, Russia has struggled to maintain economic competitiveness with Western Europe and the United States, culminating in the Cold War following World War II.[142] Indeed, the recent crisis between Russia and Ukraine was initiated when Ukraine took steps towards an association agreement with the European Union, which Russia threatened to punish with financial sanctions on Ukrainian imports.[143]

Independence from Western colonial powers was achieved in the twentieth century by India, Nigeria, and Uganda (1947, 1960, and 1967, respectively).[144] In India, independent the longest and the most politically stable of the three, the criminalization of homosexuality seems to hinge on societal acceptance and cultural identity, as both sides in the *Naz* case argued about whether homosexuality belonged in Indian culture.[145] In Nigeria and Uganda, both of which have had near constant bloody civil unrest and human rights violations since independence, criminalization

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141. Thomas, *supra* note 21, at 483-84.

142. "Throughout the last half of the nineteenth century, Russia's economy developed more slowly than did that of the major European nations to its west. Russia's population was substantially larger than those of the more developed Western countries, but the vast majority of the people lived in rural communities and engaged in relatively primitive agriculture .... Industrial growth was significant, although unsteady, and in absolute terms it was not extensive.... Foreign trade was inadequate to meet the empire's needs. Until the state introduced high industrial tariffs in the 1880s, it could not finance trade with the West because its surpluses were insufficient to cover the debts." *Russia*, LIB. CONG. COUNTRY STUD., http://lcweb 2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+ru0023) (last visited Oct. 28, 2014).

143. *Stealing Their Dream*, ECONOMIST (Nov. 30, 2013), http://www.economist.com/news/ europe/21590977-viktor-yanukovych-hijacking-ukrainians-european-future-stealing-their-dream.

144. *India 1900 to 1947*, HISTORY LEARNING SITE, http://www.historylearningsite.co. uk/india_1900_to_1947.htm (last visited Oct. 29, 2014).

145. Sheikh, *supra* note 78, at 105.

of homosexuality is clearly a tool for gaining power. Like Putin in Russia, Nigerian and Ugandan leaders are using Western support for LGBT people to paint homosexuality as a Western value. They are exploiting their countries' colonial pasts to stoke anti-Western nationalism, turning fear of Western control, poverty, antidisestablishmentarianism, and confusion about the LGBT minority into loyalty to oppressive and brutal governments.

With their homophobic legislation, leaders in Russia, Uganda, Nigeria, India, and other nations enacting such laws conveniently gain further control by restricting freedom of assembly, while civilians turn on each other. Citizens ignorant about LGBT people will turn their support to an oppressive government, having no opportunity for familiarity with LGBT people, who stay in the closet to preserve their own safety. When civil liberties are in short supply, the privileged few who have a small taste will fight tooth and nail before giving up what little they have for others to share. Not only are Western powers unable to escape our ugly colonialist and proselytizing pasts, but we are unable to explain away our own recent embarrassing legislation and court decisions violating the rights of the LGBT community we now seek to protect. In the United States, for example, only in 2004 did the Supreme Court decriminalize homosexual sexual activity.[146]

E. Societal and Global Impact of Anti-LGBT Legislation

The oppressive effects of anti-LGBT legislation impact all of society, and will be felt globally. For example, the anti-LGBT legislation in several Russian cities has been used to suppress public demonstrations of all kinds, including those demanding political reform and those opposing damaging environmental policies.[147] Restrictions in all of the laws herein examined on homosexual propaganda, which is defined as including any comparison of same-sex relationships to opposite-sex relationships or portraying homosexuality as normal or acceptable, perpetuate an "us versus them" mentality that is intended to fracture society, creating a common enemy between the majority and the government by sacrificing the LGBT minority as a scapegoat.[148]

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146. Lawrence v. Texas, 539 U.S. 558 (2003).

147. Mills, *supra* note 9; Hofsommer, *supra* note 15 at 38.

148. "The law in effect makes it illegal to equate straight and gay relationships.... The government is using these instincts—homophobia, xenophobia—to justify its policies against an independent civil society," Kochetkov said. "They are making enemies out of us—not just LGBT society, but any group in society that doesn't agree with their current politics." Elder, *supra* note 2.

A failure to protect the rights of a minority is a failure to protect all human rights. The majority in a given society is powerful by sheer numbers, and in a democratic society, their interests will thus be represented via their votes. Human rights exist therefore to protect the rights of minorities, whose interests may be subsumed numerically in political processes. Suppression of any minority necessarily requires a failure by the government to uphold its responsibility to protect its citizens. This is true no matter the distinguishing minority characteristic—religion, sexual orientation, ethnic/cultural identity. Suppression of minority rights is just one way of limiting the freedoms of civil society and violating human rights.

IV. CONCLUSION

The anti-LGBT laws in nations such as Russia, India, Nigeria, and Uganda were passed just as LGBT people were approaching the cusp of global tolerance, having gained civil rights and protection against discrimination in many nations very quickly in recent decades. Proponents of anti-LGBT laws use such laws to distinguish their countries from the global world intentionally, staking national independence against international acceptance and feeding these nations' conservative bases and anti-Western sentiments in order to strengthen government control.[149] Such legislation pits religious and cultural groups and other anti-Western people against humanitarian progressive activists, appealing to nationalism, distrust and resentment of the West, and fear of the unknown to strengthen support for oppressive regimes. Unfortunately, by purporting to maintain appropriate balance between morality as defined by the local society and the government, the governments of such nations often end up (intentionally or not) sacrificing the lives and wellbeing of their own citizens, as is the case with the recent anti-LGBT laws.

Retention of cultural sensitivity and recognition of the subjectivity and bias of international law, ever-present obstacles in international relations, have been molded by these laws into unavoidable landmines. But can human rights ever truly be subjective? Is not the suppression of any minority objectively, universally wrong? Regardless of these rhetorical, abstract wonderings, the depths of the West's hypocrisy regarding human rights of LGBT people may be too profound for the

149. Sarah Kaufman, *Why Putin Is Loving the West's Protests Against Russia's Anti-Gay Laws*, POLICY MIC (Feb. 18, 2014), http://www.policymic.com/articles/82569/why-putin-is-loving-the-west-s-protests-against-russia-s-anti-gay-laws.

best-intentioned humanitarian concerns to buoy. Thus, Putin's approval rating will continue to soar until more of Russia's citizens are all stripped of their civil rights, LGBT people will continue to suffer hardship in countries with legal systems based on religion, and former colonies will continue struggling to balance the preservation of their hijacked culture with acceptance of religious and cultural minorities among their own citizens.