

SESSION 6

HUMAN INTERNATIONAL LAW

International Law and the Uncertainty of Rights

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For lesbian, gay, bisexual and transgender (LGBT) people the law is a paradox. The law can operate as an instrument of repression and control, but also as a tool for resistance and liberation. We find fragments of our collective histories in court records. Here we find a sorry history of people in countries across the world convicted of loitering, sodomy, cross-dressing or so-called "crimes against nature."

For a vulnerable minority, and an unpopular one, domestic and international law has proven to be an indispensable tool, sometimes the only tool, for LGBT people to claim a space in the world. Two decades ago in a 1994 case, the UN Human Rights Committee in [Toonen v. Australia](#) asserted the right to privacy for same-sex consenting adults under international law. In 1998, South African courts [repealed](#) the Immorality Act and five years later, in 2003, [Lawrence v. Texas](#) saw the remaining sodomy laws in the US declared unconstitutional.

Yet some 76 countries around the world maintain discriminatory LGBT laws. Britain exported its sodomy laws to the empire, where many remain in force. These laws not only hold the threat of arrest and prosecution, but have other profound implications for LGBT people as well.¹ Even in the many countries where sodomy laws are seldom enforced, such as India and Uganda, they still symbolize national discrimination against LGBT people.

Human Rights Watch **has reported** these laws are routinely used for blackmail and extortion, in settings as diverse as **Kyrgyzstan, Jamaica** and **Uganda**. Such laws contribute to a climate of prejudice and hostility in which violence occurs with impunity. The passage of the **anti-propaganda laws** in Russia led to a peak in violence against LGBT people. In Nigeria, the immediate effect following the enactment of **draconian legislation** was mob violence against gay men. The law in these places means that LGBT people must live a shadow existence under the threat of violence.

What seldom gets talked about is the psychological impact on individuals. The archaic language of these laws; "the abominable crime of buggery" as the Jamaican law **reads**, the more delicate language of "the love that dare not speak its name" or vague reference to "carnal knowledge against the order of nature," casts a shadow over desire and the most personal expression of human intimacy. Read through the **judgment** of the Indian Supreme Court ruling that upheld the sodomy law: the language of family and kinship is reserved for heterosexual marriage, while for homosexuals the language is one of body parts engaged in sexual acts.

A Nigerian activist in Abuja recently told me a story about how, when she visited London, someone had asked her about the situation back home. She said she instinctively withdrew to a corner and spoke in hushed tones, before thinking, "What am I doing?" She had already internalized a fear of being noticed. What cumulative effect does this have on self-esteem and self-worth?

Sodomy laws have historically been used for political purposes. In France in 1307, King Philip IV brought **sodomy accusations** against the Order of the Knights Templar and dissolved it. The reason - he was heavily indebted to the Knights at the time. In England, King Henry VIII promulgated the **Buggery Act in 1533** then promptly accused Roman Catholic monks of sodomy and used that as an excuse to confiscate their monastic lands. He also disposed of his opponent Lord Hungerford by executing him for sodomy in 1540.

Such tactics are still in use. The progress, passage and **fate** of the Ugandan Anti-Homosexuality Act has as much to do with political intrigue within the ruling party and President Yoweri Museveni's fluctuating popularity as it has to do with homosexuality. Vladimir Putin wears a mantle of traditional and family values as political armor that works for him domestically, and also internationally as he takes the stage on an anti-Western ticket. In Malaysia, the political opposition is kept in check by recurrent accusations of sodomy against opposition leader **Anwar Ibrahim**. And in Zimbabwe we can tell an election is coming just by monitoring the level of homophobic rhetoric emanating from the ruling party.

Anti-gay laws are seldom just about homosexuality. Homophobia is both a reality and a ruse. Increasingly it is being used as an instrument of political repression. Laws that ban "propaganda," "promotion" or support of LGBT groups are so vague and sweeping that they threaten fundamental freedoms of association and expression. And it is not only LGBT groups that are at risk. The recent wave of anti-LGBT legislation that seeks to outlaw not only sexual practice but also public expression of identity is almost invariably accompanied by broader attacks on activism, on political opposition and on the ability of local organizations to receive foreign funding.

This is playing itself out at a national level, but it is also evident internationally. At the UN, Russia is leading an aggressive charge

against the rights of LGBT people under the rubric of "traditional values." **Speaking** on the crisis in Ukraine at the UN Human Rights Council in March, Foreign Minister Sergey Lavrov caricatured recent advances in basic human rights for marginalized people as resulting from "[s]upporters of ultraliberal approaches, supporting all-permissiveness and hedonism, requesting a revision of moral values."

Similarly with a push for more limited language on "the family" and an emphasis on the rights of the family as an entity, rather than the individuals who make up the family, the Russian government and its allies are pushing for a concept of human rights that protects the group over the individual. This rhetoric and practice creates a false dichotomy and pits "tradition" against human rights. LGBT rights are the wedge issue, but at stake are the basic principles of international human rights law: that human rights are universal, inalienable and indivisible.

So we should not fool ourselves into thinking that this is only about the rights claims of a vulnerable minority. The well-known adage that the way a society treats its minorities is a good measure of its democracy rings particularly true. What seems distinct about this particular time in our history is the way in which the rights of LGBT people have become a lightning rod for competing visions of the world.

Using homophobia for political ends is as old as the law itself. What has changed is that this is playing itself out on an international level and is becoming the language for articulating two very different visions of the world, one in which human rights are seen as a value to be cherished and upheld, the other in which human rights are seen as a profound threat.

Timeline

1815 The Congress of Vienna expresses international concern for human rights. Freedom of religion is proclaimed, civil and political rights discussed, and slavery condemned.

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1864 The First Geneva Convention protects the wounded in battle and gives immunity to hospital staff and the Red Cross during war.

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1919 The League of Nations is established with the aim of guaranteeing and protecting the basic rights of members of minority groups.

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1945 The United Nations is formed to build peace, protect human rights, oversee international law and to promote social progress and better standards of life.

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1948 The Universal Declaration of Human Rights (UDHR) outlines protection of rights for all people.

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1949 The Fourth Geneva Convention provides for the humane treatment and medical care of prisoners of war.

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1965 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) resolves to abolish racial discrimination and promote understanding between races.

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1966 The International Covenant on Civil and Political Rights (ICCPR) protects the individual from any misuse of government power and affirms the individual's right to participate in the political processes of their nation.

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1966 The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees access to the resources needed for an adequate livelihood, such as food, health care, clothing, shelter, education and personal safety, and ensures participation by all in the life of society, religion and culture.

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1979 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and sets up an agenda to end it.

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1984 The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines tortures and similar activities in order to prevent their use.

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1989 The Convention of the Rights of the Child (CRC) sets out the civil, political, economic, social and cultural rights of children, defined as those under 18 year of age.

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1993 The Vienne Declaration from the Second World Conference on Human Rights reaffirms the Universal Declaration on Human Rights, emphasising that human rights are universal and indivisible and

rejecting arguments that some should be optional or subordinated to cultural practices and traditions.

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1995 The Beijing Declaration of The Fourth World Conference on Women declares "Women's rights are human rights".

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1999 The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour is adopted by the International Labour Organisation (ILO)

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2002 The International Criminal Court (ICC) is established. It is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes.

civilian any person who is not a combatant

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civilian object any object that is not a military objective

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combatant member of armed forces, member of an armed group under the orders of a party to the conflict

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military objective object which by its nature, location, purpose or use makes an effective contribution to military action and whose destruction offers a definite military advantage

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hors de combat means "out of the fight" describes combatants who have been captured, wounded, sick, shipwrecked, and no longer in a position to fight

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principle of proportionality the expected number of deaths or injuries to civilians or damage to civilian objects must not be excessive compared to the anticipated military advantage

What is public international law? Rules that govern relationships involving states and international organizations. Covers a huge field involving war, human rights, refugee law, international trade, the law of the sea, environmental issues, global communications, outer space

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What is private international law? Concerned with the clash between laws from different jurisdictions and is sometimes referred to as the conflict of laws.

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What is the International Court of Justice and what does it do? Part of the UN and based in The Hague, Netherlands

Only hear cases relating to conflicts between states

Also gives legal advice to UN bodies

Doesn't follow a precedent system

NZ is one of the 60 nations that has accepted the IJC's compulsory jurisdiction

All UN members must comply with IJC decisions that apply to them

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What is the International Criminal Court and what does it do? It was established in July 2002

Jurisdiction of the ICC includes genocide, crimes against humanity and war crimes

Put individuals on trial not their states

ICC can only act when nations won't or are unwilling to

Can only hear cases from participating nations or the SC can call upon others

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What is the United Nations? Formed in 1945 after WWII

Charge with the task preventing a WWIII

Encourages cooperation and compromise among different nations

Constitutional document establishing the UN is called the Charter of the UN

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What is the Security Council? It is an executive body made up of the 5 most powerful members of the allied forces that defeated Nazi Germany and imperial Japan

Us, Russia, China UK and France permanently sit on the SC and each has the power to veto any SC decision

These are joined by 10 other nations each of which get a 2 year temporary membership

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What does Article 24 of the charter state? The SC has primary responsibility of the maintenance of international peace and security and acts on behalf of UN members nations

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What does article 42 of the charter state? The council can order military action to maintain or restore international peace and security

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What does article 43 of the charter state? It instructs member nations to make military service available for UN use if necessary