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Homosexual Rights and the Non-Western World: A Postcolonial Reading of Homosexual Rights in International Human Rights Law

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HOMOSEXUAL RIGHTS AND THE NON-WESTERN WORLD: A POSTCOLONIAL READING OF HOMOSEXUAL RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW

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> Any attempt at a worldwide perspective . . . [has] to take into account the cultural divide between two very different approaches to sexuality and homosexuality. There . . . [is] the contemporary Western model – that of a world divided into heterosexuals and homosexuals and perhaps bisexuals, of lesbian and gay identity, of discrimination and homophobia . . . . In . . . non-Western countries . . . the situation . . . [is] much more complicated.[1]

I. INTRODUCTION

As a theoretical discourse, globalisation has always been tightly interwoven with, and often subsumed by, imperatives of Westernisation. Globalisation theory has historically been characterised by expansive concepts of international standardisation, global democratisation and grand narratives of modernity. These in turn have given rise to expectations of global homogenisation, the decline of the nation-state and the rise of the global village.[2] In its most recent and most progressive formulations, however, globalisation marks a dialectic discourse between global formations, largely derived from the West and the locally specific conditions which they encounter. Global flows of change and exchange are increasingly seen as multi-directional and variable.[3] The new world–space created by

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[1] NEIL MILLER, OUT IN THE WORLD: GAY AND LESBIAN LIFE FROM BUENOS AIRES TO BANGKOK 357-8 (1992).

[2] Mike Featherstone, *Global Culture: An Introduction*, 7 THEORY, CULTURE AND SOCIETY 1 (1997).

[3] Chris Berry, *Globalised Gays/Gaze: The Difficulty of Interpreting Three Asian Gay Films*, *in* COMMUNAL/PLURAL (PLURALISING THE ASIA PACIFIC) 83, 84-5 (Ghassan Hage, Justine Lloyd & Lesley Johnson eds., 1994).

the global/local encounter is characterised by the unificatory processes of globalism while simultaneously being subject to localised forms of resistance, contestation and assertions of difference.[4]

Human rights theories have fed into and upon these conceptions. The contemporary international human rights regime has been variously understood as either an instrument of progressive and desirable globalising processes or as an agent of homogenising and socio-politically inappropriate flows of global change emanating from, and imbued with, the culturally specific morality of the West. There have long been tensions between conceptions of the universality of human rights and the relativist requirement that the implementation of such rights be sensitive to the socially and politically diverse settings in which they necessarily find their expression. And while it is important not to oversimplify what is a complex and multifaceted argument, one of the key boundary lines of this contestation has been between theoretical positions emerging from both within Western academe and international legal jurisprudence, and the theoretical positions adopted by many scholars, jurists, politicians and theorists in the non-Western world. Further, what has become increasingly clear is that this contestation becomes of far greater intensity and immediacy when the rights which the international legal system is called upon to protect give rise to social, cultural, religious or political controversy.

This paper examines one such issue: that of the calls for the international legal recognition and protection of rights for homosexual men and women. To undertake such an examination, the paper utilises theoretical paradigms from within the field of postcolonial studies. Opening with an overview of the theoretical bases and preconceptions of postcolonial analysis, the paper then examines the extant bases for the protection of the rights of homosexuals at international law. It then goes on to examine Dutch-American scholar Eric Heinze's calls for a treaty-based instrument to codify and enforce principles of non-discrimination on the basis of sexual orientation in international law.[5] The paper will argue that while homosexual rights are indeed worthy

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[4] Rob Wilson & Wimal Dissanayake, *Introduction: Tracking the Global/Local, in* GLOBAL/LOCAL: CULTURAL PRODUCTION AND THE TRANSNATIONAL IMAGINARY 1 (Rob Wilson & Wimal Dissanayake eds., 1996).

[5] ERIC HEINZE, SEXUAL ORIENTATION: A HUMAN RIGHT – AN ESSAY ON INTERNATIONAL HUMAN RIGHTS LAW (1995).

of protection at international law, the current means by which they are protected, and the current proposals for international legal reform in this area, articulate colonialist and specifically Western understandings of homosexuality and sexual orientation. By viewing these processes through the lens of postcolonial theory, the existence of enforced power inequalities between the West and the non-West, and the continued privileging of Western forms of thought, identity and morality in this area will be identified. The paper will close with an overview of the possible avenues for reform of contemporary international human rights jurisprudence as it relates to the protection and provision of homosexual rights.

The application of postcolonial theory will be seen to offer significant insights for those – from the West and the non-West alike – who shape, inform and participate in the debate over the international legal protection of homosexual rights. It is suggested that postcolonial theory's rejection of simplistic, oppositional and binaristic understandings of international relations between cultures, societies and geographies can give rise to a more nuanced understanding of the role that international human rights law can play in protecting the rights of homosexuals worldwide. Such an understanding would encompass a more sophisticated awareness of the varying positions which homosexuality occupies in cultures and societies worldwide. Simultaneously it would pay heed to the colonial legacy which continues to operate not just in the restriction of homosexual rights, but also in the calls for the international legal recognition and protection of such rights.

II. POSTCOLONIAL THEORY: IMPLICATIONS FOR THE PROTECTION OF HOMOSEXUAL RIGHTS AT INTERNATIONAL LAW

Postcolonial theory is predicated upon a critical engagement with relations of resistance and domination within and following European colonisation. Postcolonialism seeks, in the words of theorist Gyan Prakash, 'to undo the Eurocentrism produced by the institution of the West's trajectory'.[6] The methodology of postcolonial analysis is

[6] Gyan Prakash, *Postcolonial Criticism and Indian Historiography*, 31/32 SOCIAL TEXT 8 (1992).

strongly, and necessarily, predicated on an historical perspective. The current position of non-Western formerly-colonised peoples and nation states *vis à vis* the West is understood, within the discourse of postcolonial theory, to result, in whole or in part, from the effects of nineteenth century, and earlier, European colonial domination.

But postcolonialism's concerns move beyond mere identifications of unequal power relations to the provision of epistemological constructs which may be used to organise postcolonial subjects' resistance to, and critical awareness of, hegemonic discourses. Notions of resistance, of mimicry and of hybridity as well as the empowerment of postcolonial voices all contribute to this process. Through these processes of resistance, the postcolonial subject dismantles colonialist discourses of subordination and 'otherness' in the process of creating new subjectivities and identities. These practical implications of postcolonial theory are examined by Phillip Darby when he speaks of postcolonial analysis being (potentially) able to

> open up a space for Third World peoples to plot a course for themselves, free from the domination of outside forces. Its frame of reference is international because the major processes which circumscribe freedom of action and thought are seen to be located externally – in the West and the global system created and maintained by the West.[7]

When it comes to the application of postcolonial theory to the examination of the international legal system, Darby's analysis becomes of central importance. Postcolonialism is critically concerned with identifying ways in which international law may operate as part of the dominant global system 'created and maintained by the West'.[8] Through the identification and problematising of Western legal narratives within international law, postcolonial legal analysis seeks to provide means through which Western-centric legal constructs, and the ideologies with which they are imbued, may be understood, evaluated, criticised and selectively recast or abandoned.

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[7] PHILLIP DARBY, THE FICTION OF IMPERIALISM: READING BETWEEN INTERNATIONAL RELATIONS AND POSTCOLONIALISM 218 (1998).

[8] *Id.*

This project is, of course, of immediate relevance to international human rights law. Postcolonial analysis can shed considerable light upon inequalities of power, and underlying colonialist assumptions operating within the international human rights regime. This possibility, and some of the dangers which it must avoid, are addressed by Chesterman when he writes that

> [t]he essentialised concept of the abstract individual at the centre of the liberal internationalist agenda relies on precisely the same legitimation as that of the European State as 'self-evident': its historical grounding in Western liberal thought. This is not to say that the discourse of human rights must retreat into facile cultural relativism, but rather that it has to be self-critical and aware of universalising norms in imposing historically and culturally specific order, and the contradictions that emerge in legitimising such moves by reference to extant paradigms.[9]

Chesterman's form of analysis suggests significant possibilities for the decentring of universalist and Western-centric notions within the international human rights system, while allowing for the international legal framework to monitor, recognise and protect human rights. Chesterman calls for a self-reflexive paradigm within international human rights law, in which all parties are forced to confront and evaluate the presuppositions and biases they bring to the debate which shapes the nature of contemporary human rights theories. In this way, international human rights jurisprudence can come to occupy a space in which it is characterised by fluidity, readiness to change and an ability to take on new situations such as those posed by globalisation.[10] It is with such possibilities in mind, that the paper now moves on to an examination of international law's recognition and protection of homosexual rights.

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[9] Simon Chesterman, *Law, Subject and Subjectivity in International Relations: International Law and the Postcolony*, 20 MELBOURNE U. L. REV. 979, 995-6 (1996).

[10] Peng Cheah, *Posit(ion)ing Human Rights in the Current Global Conjuncture*, 9 PUBLIC CULTURE 233, 266 (1997).

III. HOMOSEXUALITY AND GLOBALISATION: A POSTCOLONIAL OVERVIEW

Recent theoretical developments from within the discourses of lesbian, gay and queer studies have drawn linkages between the processes of globalisation and the development in varying locations worldwide of communities of self-identified homosexuals. This process is increasingly being termed as one of 'global queering'.[11] The Australian social commentator and academic, Dennis Altman, perhaps the one theorist most closely associated with this emerging field of enquiry, writes of this phenomenon:

> It has become fashionable to point to the emergence of 'the global gay,' the apparent internationalization of a certain form of social and cultural identity based upon homosexuality. He – sometimes, though less often, she – is conceptualized in terms that are very much based upon recent American fashion and intellectual style.[12]

Altman points out that the global proliferation of sexual and social identities is both the result of, and draws explicitly upon, Western understandings of sexual identities and Western models of behaviour and social organisation. As *The Economist* editorialised in 1996, "this . . . view of homosexuality is radiating from North America and Europe, homogenising sexual culture as it goes".[13]

The circulation of Western conceptions of homosexual identity can be argued to be representative, in large part, of the very hegemonic discourses which postcolonial discourse sets out to identify and disrupt. As the Filipino gay activist Martin F. Manalansan writes "[t]he postcolonial gay man faces a[n] . . . intricate grid of hierarchies and oppressions . . . . The gay postcolonial body is caught in the intersection of class, desire and race."[14]

Western homosexual identities, which circulate within the global/local encounter, are specific to a late twentieth century Western

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[11] Dennis Altman, *On Global Queering*, AUSTRALIAN HUMANITIES REV., July 1996. *Available from* http://www.lib.latrobe.edu.au/AHR/archive/Issue-July-1996/altman.html.

[12] Dennis Altman, *Rupture or Continuity? The Internationalization of Gay Identities*, 14 (3) SOCIAL TEXT 77, 77 (1996).

[13] *It's Normal to be Queer*, 338 (7947) THE ECONOMIST, Jan. 6, 1996, at 82, 84.

[14] Martin F. Manalansan IV, *(Re)Locating the Gay Filipino: Resistance, Postcolonialism, and Identity*, 26 (2/3) J. HOMOSEXUALITY 53, 65-6 (1993).

political and socio-cultural setting. Yet Western discourses remain tellingly universalist in their approaches to understanding issues of homosexual identity formation within the non-West. Altman himself can be situated as part of these discourses.

> There is considerable evidence of growing 'gay' communities (far less so of 'lesbian') in almost all countries with sufficient affluence and political space .... Identification with such communities seems highly correlated with class, ability in English ... exposure to western media and involvement in AIDS activities.[15]

Altman's analysis is typical of many Western academic examinations of homosexual identity development. Traditional forms of homosexual expression, together with those forms of homosexual identity which have developed in opposition to, or as hybrids of, Western formations, are positioned as subordinate to new globalised identity constructs. The limitations of these conceptions are pointed to by Browning who writes:

> [T]he American approach to "sexual orientation' [would not] explain the Filipino world explored in the 1995 film *Midnight Dancers*, where handsome young working-class men, married with children, performed as dancers and call boys and gradually developed loving relationships with older or richer [male] clients. There, as in much of Central America, Peru, Columbia and parts of South Asia, the distinctions separating love, exploitation, opportunity and desire make a mockery of the gay-straight divide that has defined so much of the lesbian and gay movement in the United States.[16]

This distinction between the binaristic understandings of the homosexual/heterosexual divide prevalent in the West and alternative and more fluid conceptions of sexuality in the non-West will be shown to be of significant importance in the development of international human rights law regarding sexual orientation.

International human rights jurisprudence is, as one of the major flows of global conceptions of morality, justice, human dignity and worth, immediately brought into contact with, and some would argue

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[15] Dennis Altman, *Research and Its Discontents*, 24 MELBOURNE J. POL. 41, 41 (1997).

[16] FRANK BROWNING, A QUEER GEOGRAPHY: JOURNEYS TOWARD A SEXUAL SELF 6 (rev. ed. 1998).

implicated in, the propagation of Western-style conceptions of homosexuality. And it is this argument, over the perceived Westernising role of international human rights law, especially with regard to its protection and recognition of homosexual rights, which has given rise to so much social controversy both in the West and the non-West. In the contemporary world, a nexus of contestation has come into being where conceptions of the universality of human rights, the global propagation of Western-style homosexual identities, the cultural, social, political and governmental integrity of non-Western states and peoples, and the socio-political position of non-Western homosexual traditions meet and collide.

IV. INTERNATIONAL HUMAN RIGHTS LAW AND HOMOSEXUALITY

There is no express mention of homosexual rights in any of the international human rights instruments.[17] This is not to say that homosexual rights are not protected or recognised under international law. Indeed, homosexuals and homosexual groups worldwide have increasingly been appealing to the rights-based protections and standards of international law to overturn discriminatory practices within their various nations and societies.[18] And even in the absence of specific binding protections for homosexual rights, international law and international human rights standards are increasingly being used to exert pressure for positive change in the social, civil and political milieu in which homosexuals live and work, around the world.[19]

Dunton and Palmberg identify four strands of rights for homosexuals which require recognition and protection. These are the

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[17] CHRIS DUNTON & MAI PALMBERG, HUMAN RIGHTS AND HOMOSEXUALITY IN SOUTHERN AFRICA 36 (1996).

[18] *See* Dudgeon v United Kingdom, 4 Eur. H.R. Rep. 149 (1981); Norris v Ireland, 13 Eur. H.R. Rep. 186 (1989); Modinos v Cyprus, 16 Eur. H.R. Rep. 485 (1993); Toonen v Australia, United Nations Human Rights Committee, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31 1994).

[19] *See* Elizabeth McDavid Harris, *Intercourse Against Nature: The Role of the Covenant on Civil and Political Rights and the Repeal of Sodomy Laws in the United States*, 18 HOUS. J. INT'L L. 625 (1996); Mark E. Wojcik, *Using International Human Rights Law to Advance Queer Rights: A Case Study for the American Declaration of the Rights and Duties of Man*, 55 OHIO ST. L. J. 649 (1994); Donald J. West & Richard Green, *Introduction, in* SOCIOLEGAL CONTROL OF HOMOSEXUALITY: A MULTINATION COMPARISON 1 (Donald J. West & Richard Green eds., 1997); Donald Morton, *Global (Sexual) Politics, Class Struggle, and the Queer Left*, 1 (3) CRITICAL INQUEERIES 1 (1997).

decriminalisation of sexual acts between women and men of the same gender, freedom of expression in speaking and writing in public about homosexuality, legal protection against discrimination on the grounds of sexual orientation and finally, and perhaps most controversially, recognition of equal rights for homosexual relationships in comparison with heterosexual relationships.[20] International law can play a role in the protection and provision of such rights, through either the enumeration of specific rights for homosexuals in multilateral rights agreements or through the extension of extant rights-based protection, in areas such as anti-discrimination, equal opportunity and so on to cover homosexuals and homosexuality. Yet it is important to understand that international human rights law does not automatically and unproblematically apply within all jurisdictions. Many of the international legal attempts to recognise and protect homosexual rights have had limited application – either due to the nature and jurisdictional limits of the international forums in which they have been undertaken or simply through the lack of recognition of such rights by many states. For instance, the European Union and the Council of Europe have both condemned the criminalisation of homosexual behaviour in their member states and have made some, although limited, attempts at protecting homosexuals from discrimination. Yet these directives have not been uniformly incorporated into the domestic legal systems of the member states of the European Union or the Council of Europe.[21]

How then, has international law aided in the protection and provision of homosexual rights? There have not yet been any instances of judicial interpretation either at a national or international level of the applicability of the rights contained in the Universal Declaration of Human Rights (UDHR)[22] to homosexual men and

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[20] Dunton & Palmberg, *supra* note 17, at 34.

[21] Donald J. West & Richard Green, *Introduction, in* Sociolegal Control of Homosexuality *supra* note 19, at 1; HOMOSEXUALITY: A EUROPEAN COMMUNITY ISSUE – ESSAYS ON LESBIAN AND GAY RIGHTS IN EUROPEAN LAW AND POLICY (Kees Waaldijk & Andrew Clapham eds., 1993); Simon Obendorf, *The European Union and the Protection and Provision of Homosexual and Lesbian Rights*, 16 CONTEMPORARY EUROPEAN STUDIES ASSOCIATION OF AUSTRALIA NEWSLETTER 21 (1996).

[22] Universal Declaration of Human Rights, GA Res 217, U.N. GAOR, 3d Sess., U.N. Doc. A/819, Dec. 10, 1948 [hereinafter UDHR]. The UDHR, while never intended to create legally binding obligations between member states of the United Nations has, however, been regarded by many as "an authoritative interpretation of the Charter of the highest order": Louis B. Sohn, *A Short History of United*

women.[23] Despite this, some of the most significant opportunities provided by international law for establishing and protecting homosexual rights exist as a result of the international legal community's recognition and acceptance of universal human rights as espoused in documents based on the UDHR, such as the *International Covenant on Civil and Political Rights (ICCPR)*[24] and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.[25] These two documents both promise protection for the human rights which they cover, irrespective of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.[26] While these grounds of protection do not explicitly include sexual orientation, Sweden's first anti–discrimination ombudsman Peter Nobel is of the opinion that "[i]t can clearly be argued and there is little doubt about it among leading Human Rights experts that individuals with a sexual orientation other than the majority are included and that they shall be protected from discrimination."[27]

This analysis may also be applicable to regional human rights instruments such as the *African Charter of Human and People's Rights*[28], the *American Convention on Human Rights*[29] and the *European Social Charter*.[30] These instruments all contain enumerated lists detailing grounds of protection against discrimination, similar to those found in the ICCPR and the ICESCR. It is arguable that homosexuality falls within the list of protected statuses, either through its subsumption within another status (such as sex[31]) or in its own right as an 'other status'.[32] More significantly for the international

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Nations Documents on Human Rights, in THE UNITED NATIONS AND HUMAN RIGHTS 39, 57 (Commission to Study the Organization of Peace ed., 1968).

[23] Dunton & Palmberg, *supra* note 17, at 37.

[24] International Covenant on Civil and Political Rights, entered into force Mar. 23 1976, 999 U.N.T.S. 171 [hereinafter ICCPR].

[25] International Covenant on Economic, Social and Cultural Rights, entered into force Jan. 3 1976, 993 U.N.T.S. 3 [hereinafter ICESCR].

[26] ICCPR art 2; ICESCR art 2.

[27] Peter Nobel, *Written Communication*, (May 1996) as cited in Dunton & Palmberg, *supra* note 17, at 37.

[28] African Charter on Human and Peoples' Rights, entered into force Oct. 21 1986, 21 I.L.M. 58.

[29] American Convention on Human Rights, entered into force Jul. 18 1978, 1144 U.N.T.S. 123.

[30] European Social Charter, entered into force Feb. 26 1965, 629 U.N.T.S. 89.

[31] *See* discussion of Toonen v Australia, *infra* note 31.

[32] *See* Dunton & Palmberg, *supra* note 17, at 36-7.

protection of rights for homosexuals, the European Court of Human Rights, the judicial body charged with enforcing and protecting those rights detailed in the *European Convention on Human Rights* (ECHR)[33] has, in a series of judgements, ruled that the existence of anti-sodomy statutes in member states of the ECHR constituted a violation of the right to privacy protected under the convention.[34]

International and regional human rights instruments have increasingly been seen as a legitimate means of promoting homosexual rights within the domestic jurisdiction of states parties. For instance, there has been a strong movement on the part of homosexual lobby groups within the United States of America (U.S.), especially in more conservative states within that country's federal structure, to use international legal mechanisms to push for domestic reform of anti-sodomy legislation and other discriminatory laws.[35] Similarly, a case has recently been brought before the African Commission on Human and Peoples' Rights by an American human rights organisation claiming that the continuing presence of anti-sodomy statues within Zimbabwe constitutes a breach of many of the articles of the *African Charter of Human and People's Rights*.[36]

The only successful instance of the use of international (as distinct from regional) legal mechanisms to advance homosexual rights within a domestic jurisdiction can be seen in the case of *Toonen v Australia*[37], decided by the Human Rights Committee in 1994. This case was brought by an individual, Nicholas Toonen, under the provisions of the First Optional Protocol to the ICCPR to which Australia had acceded.[38] Toonen, an openly homosexual man resident in the

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[33] European Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force Sep. 3 1953, [1950] E.T.S. 5, [1950] U.K.T.S. 70.

[34] Dudgeon v United Kingdom, *supra* note 18; Norris v Ireland, *supra* note 18; Modinos v Cyprus, *supra* note 18.

[35] James S. Wilets, *Using International Law to Vindicate the Civil Rights of Gays and Lesbians in United States Courts*, 27 COLUM. HUM. RTS. L. REV. 48 (1995); David A. Catania, *The Universal Declaration of Human Rights and Sodomy Laws: A Federal Common Law Right to Privacy for Homosexuals Based on Customary International Law*, 31 AM. CRIM. L. REV. 289 (1994).

[36] William A. Courson (Petitioner), Complaint Relating to Violation(s) of Certain Provisions of the African Charter of Human and Peoples' Rights by the Republic of Zimbabwe (Magnus F. Hirschfeld Centre for Human Rights, Montclair, New Jersey, USA; Sep. 27, 1995).

[37] United Nations Human Rights Committee U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31 1994) [hereinafter *Toonen*].

[38] Hilary Charlesworth, *Australia's Accession to the First Optional Protocol to the International Covenant on Civil and Political Rights*, 18 MELBOURNE U. L. REV. 428 (1991).

Australian State of Tasmania, claimed that certain sections of the Tasmanian Criminal Code which outlawed consensual male homosex[39] were in violation of sections 2(1), 17 and 26 of the ICCPR.[40] The Human Rights Committee unanimously held that the sections of the Tasmanian Criminal Code were in violation of Toonen's individual rights under Article 17 of the ICCPR finding that the 'continuing existence of the challenged provisions... continuously and directly "interferes" with the author's [Toonen's] privacy'.[41] Interestingly, the Committee also found that reference to the term 'sex' in Articles 2 (1) and 26 of the Covenant should be read as including sexual orientation.[42]

As has been shown here, international human rights law is increasingly being seen as an appropriate mechanism through which homosexual rights may be protected and recognised. Indeed in the political, academic and legal discourse of international human rights post–*Toonen*, there is strong reason to believe that the rights protected by treaty-based human rights instruments such as the ICCPR apply in such a manner as to prevent discrimination on the basis of an individual's sexual orientation.

Yet such developments have not gone unchallenged. In fact, strident opposition to the existence and promotion of universal homosexual rights has emerged from a number of states, cultures and societies worldwide. Geopolitics is immediately implicated here. The majority of states which have been involved in resisting what they see as the Westernising imperative of universal human rights in general, and homosexual rights in particular, can be loosely classified as falling within the group of postcolonial, and usually socio-economically developing nation-states. The apparent corollary of this fact has been that the majority of instances of successful assertion of homosexual rights have been from within the nation-states of the West.[43]

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[39] *Tasmanian Criminal Code 1924* (Tas) ss. 122 and 123. These section outlawed "unnatural sexual intercourse" and "intercourse against nature" (s. 122) and "indecent practice between male persons" (s. 123).

[40] *Toonen*, *supra* note 37, at ¶3.1.

[41] *Id.* at ¶8.2.

[42] *Id.* at ¶8.7. For the debate over the appropriateness of including sexual orientation within the ambit of this term *see* Wayne Morgan *Identifying Evil For What It Is: Tasmania, Sexual Perversity and the United Nations*, 19 MELBOURNE U. L. REV. 740, 748-50 (1994).

[43] It is important to note here the significant exception which South Africa presents to this schema. The transition to democracy in South Africa led to a series of debates over the nature of the new South

The reasons for the existence of this distinction are many. In addition to questioning the 'naturalness' of homosex, postcolonial governments have conflated homosexuality with Western-derived forms of homosexual expression and used this 'fact' to justify resistance to the provision of homosexual rights and the continued oppression of homosexuals by their social, political and legal institutions. Chris Berry writes of this with regard to the discursive use of homosexuality by certain East and Southeast Asian nation-states, arguing that such usages are "regional and maybe even hemispherical, implicitly dividing the world into a West and an East or non-West, with homosexuality marking a boundary line".[44] Outside of Asia, African leaders such as Zimbabwean president Robert Mugabe, have also participated in such strategies, linking homosexuality explicitly with the West, and using the supposed 'freedom' of their own nations, cultures and societies from homosexuality as a reason for resisting the recognition or protection of rights for homosexuals.[45] "Let the Americans keep their sodomy, bestiality, stupid and foolish ways to themselves, out of Zimbabwe . . . . Let them be gay in the US, Europe and elsewhere . . . they shall be sad people here."[46]

Jacqui Alexander situates such strategies on the part of postcolonial leaders as being the result of fears of "cultural contamination from the 'West'".[47] Positing linkages between the adoption of anti-homosexual positions and fears of the 'importation' of homosexuality from the West, she goes on to situate the nervousness

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African constitution. One of the agreed bases upon which the new South African constitutional state was to be founded was that of non-discrimination and the valuing of diversity. Thus, South Africa became the first state in the world to include a specific reference to sexual orientation as a ground of anti-discrimination protection in its constitution: South African Constitution, Ch. 2 sub-s. 9(1)(3). *See* Kevan Botha & Edwin Cameron, *South Africa, in* Sociolegal Control of Homosexuality, *supra* note 19; Dunton & Palmberg, *supra* note 17, at 28-31. The constitutional protection afforded to those with a non-heterosexual sexual orientation under the South African constitution was upheld in *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs,* No. 3988/98 (High Court of South Africa (Cape of Good Hope Provincial Division) (Feb. 12 1999). In this case, the court held that the denial of spousal immigration benefits to same sex partnerships (as well as to those married under common law or in accordance with Hindu and Muslim customary law) under s. 25 (5) of the *Aliens Control Act 1991* (South Africa) discriminated unfairly and unconstitutionally between different forms of life partnership.

[44] CHRIS BERRY, A BIT ON THE SIDE: EAST-WEST TOPOGRAPHIES OF DESIRE 74 (1994).

[45] Oliver Phillips, *Zimbabwe, in* Sociolegal Control of Homosexuality, *supra* note 19.

[46] Robert Mugabe, speaking on 'This Way Out" programme #386, Associated Press and Reuters news service (Distributed 21 August 1995) as cited in Dunton & Palmberg, *supra* note 17, at 13.

[47] M. Jacqui Alexander, *Not Just (Any)Body Can Be A Citizen: The Politics of Law, Sexuality and Postcoloniality in Trinidad and Tobago and the Bahamas,* 48 FEMINIST REV. 5, 15 (1994).

of postcolonial state governments with regard to homosexuality and the granting of homosexual rights as arising from their concern to legitimate procreative heterosexuality as the foundation of the nation-state.

> The erosion of heterosexual conjugal monogamy is a perennial source of worry for state managers and so it is invoked and deployed particularly at moments when it is threatened with extinction. Nothing should threaten this sphere; not the single woman, the lesbian, the gay man, the prostitute, the person who is HIV infected.[48]

Thus, under Alexander's analysis, homosexuality becomes a highly charged symbol of non-Western difference. Significantly, this symbol has been utilised by postcolonial governments, not just to deny homosexual rights, but also to bolster cultural integrity and nationalistic difference.

But beyond the use of homosexuality as a symbolic boundary between the West and its non-Western 'Other', many of the procedures and processes of international law have privileged Western-derived and post-Stonewall[49] conceptions of gay and lesbian liberation, identity and socio-politics. This fact alone has been sufficient to cause alarm, not just from within the governments of postcolonial nation-states (for many of the reasons outlined above), but also from those homosexuals in the non-West who are seeking to establish identities and subjectivities free from Western dominance. There have been ambivalent responses by many non-Western homosexuals to the presuppositions and constructions which characterise the current means by which homosexual rights could be protected at international law.

An example of this, may be found in the development of *tongzhi* identities in East Asia. This culturally-specific and explicitly anti-Western form of homosexual identity utilises the Chinese word

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[48] *Id.* at 20.

[49] "Stonewall" refers to the incident of 28 June 1969 when gay men and lesbians resisted a police raid on the Stonewall Inn, a popular bar and meeting spot in Manhattan, New York, U.S., following the funeral of the popular homosexual icon Judy Garland. The incident sparked an upsurge of gay and lesbian militancy and is widely regarded as the starting point of the Western gay and lesbian liberation and rights movement. *See* MARTIN DUBERMAN, STONEWALL (1993).

tongzhi, literally meaning 'comrade', to signify 'lesbians, bisexuals, gays and all transgendered people'[50] adhering to sense of socio-sexual identity that is similar to, but distinct from, the more widely globally circulating and Western-centric, gay, lesbian and queered identities. In the press release issued in the wake of the first *tongzhi* conference, held in Hong Kong in 1996, the conference organisers stated that

> [t]he les-bi-gay movement in many Western societies is largely built upon the notion of individualism, confrontational politics and the discourse of individual rights. Certain characteristics of confrontational politics, such as through coming out and mass protests and parades may not be the best way of achieving tongzhi liberation in the family-centred, community oriented Chinese societies which stresses the importance of social harmony [*sic*]. In formulating the tongzhi movement strategy, we should take the specific socio-economic and cultural environment of each society into consideration.[51]

If one takes the position adopted by the *tongzhi* movement as a starting point, it is possible to conceive of an international dialogue between Western and non-Western conceptions of homosexuality and homosexual rights.

This dialogue can, and should, have implications for the development of international human rights jurisprudence as it relates to homosexuality. As Muto Ichiyo writes:

> Cross-fertilization can occur between civilisations as dominance of one upon others is overcome. It is happening already. The human rights concept, originating in Western Europe, has been greatly enriched and modified as it interacted with Third World realities, Asian civilisations, and indigenous people's cultures as well as feminist thoughts and ecological world views.[52]

Such cross-fertilisation and inter-geographical dialogue can also have a great impact on the content and methodology of international

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[50] 1996 Chinese Tongzhi Conference *About 200 Chinese Tongzhi Gathered in Hong Kong: Tong-zhi Movement Should be Cultural Specific for Chinese Societies, available from* http://sqzm14.ust.hk/hkgay/news/manifesto.html (Dec. 12, 1996) (copy on file with author).

[51] *Id.*

[52] Muto Ichiyo, *Alliance of Hope and Challenges of Global Democracy, in* TRAJECTORIES: INTER-ASIA CULTURAL STUDIES 346, 351 (Kuan-Hsing Chen ed., 1998).

legal responses to specific instances of violations of the rights of homosexuals. An example of this can be seen in the growing sensitivity on the part of some Western human rights groups to what Linda Alcoff has characterised as 'the problem of speaking for others'[53], that is to say the usurpation of a minority's right to speak for and about itself. Instead of unproblematically applying Western preconceptions, or international legal norms and standards to breaches of homosexual rights in the Third World, the deployment of human rights by such groups has had to become sensitive to differing conceptions of homosexuality, or the differing position which homosexuality occupies in various societies around the world. An example of this emerging sensitivity can paradoxically be found in a Western human rights group's decision to abandon international legal proceedings against a non-Western state accused of violating homosexual rights.

In 1995, the Magnus F. Hirschfeld Centre for Human Rights, a U.S. based homosexual rights organisation, filed a complaint before the African Commission on Human and Peoples' Rights in The Gambia, claiming that Zimbabwe's anti-sodomy laws violated certain provisions of the *African Charter of Human and Peoples' Rights*.[54] This filing came in the wake of a concerted anti-homosexual campaign mounted by Zimbabwean President Robert Mugabe and other Zimbabwean parliamentarians.[55] The matter was subsequently withdrawn by the Magnus F. Hirschfeld Centre at the request of Gays and Lesbians of Zimbabwe (GALZ) a homosexual group within Zimbabwe. GALZ held fears of reprisals from the Zimbabwean government should the matter have gone to hearing at the African Commission.[56] Clearly the Magnus F. Hirschfeld Centre's laudable attempts were to situate homosexuality as a subject of international legal protection, and to establish within Zimbabwe many of the rights which protect homosexuals in the Western world. The dilemma faced by the Centre as it sought the best means to facilitate the rights and interests of homosexuals in Zimbabwe was in the disparity between the internationally-based standards and norms of international human

[53] Linda Alcoff, *The Problem of Speaking for Others* 20 CULTURAL CRITIQUE 5 (1991-92).
[54] Courson, *supra* note 36.
[55] Dunton & Palmberg, *supra* note 17, at 8-15; Phillips, *supra* note 45.
[56] William A. Courson, Personal Communication, (Jan. 18, 1999) (copy on file with author).

rights law and the realities of the socio-political position which homosexuality occupies in contemporary Zimbabwe.

In this case, the best outcome for the Zimbabwean homosexual group, and for homosexuals within Zimbabwe, was not through recourse to international human rights law. As events transpired, it was political activism at both regional and international levels and the utilisation of globalising technologies such as computer-mediated communications (as opposed to more formal international legal avenues) which provided greater opportunities for creating visibility and global awareness of the socio-legal position which homosexuality occupies in contemporary Zimbabwe.

> [H]omosexuals responded to Mr. Mugabe's attack by jumping onto the Internet and dispatching alarms in all directions; in London, "Out This Week", a two-year-old BBC radio magazine for homosexuals, downloads this news (and much else) and flings it onto the air. When Mr. Mugabe visited Johannesburg in August, New Zealand in November and Holland in December [1995] he was met by crowds of Net-alerted protesters .... "Without the Internet" says a Zimbabwean lesbian, "we would probably have just quickly faded back into oblivion."[57]

The use of internet and media technologies to disseminate information regarding the Zimbabwean government's anti-homosexual statements was not, however, restricted to consciousness-raising regarding the issue amongst activist groups. As a result of such strategies, strong international disapproval for the Zimbabwean government's stance was expressed during 1995 within a number of domestic, regional and international forums. These included the Global Coalition on Africa (sponsored by the World Bank), the Commonwealth Heads of Government Meeting and the Parliament of Sweden.[58] While such strategies have not brought about legislative change within Zimbabwe, they have been remarkably successful in bringing global attention to bear upon the lack of rights accorded to Zimbabwean homosexuals, and the ways in which homosexuality was used to enforce and uphold Zimbabwean nationalistically-conceived difference from the supposedly negative effects of Western cultural

[57] The Economist, *supra* note 13, at 84.
[58] Dunton & Palmberg, *supra* note 17, at 16; Phillips, *supra* note 45, at 43.

and (homo)sexual contamination. As Dunton and Palmberg wrote, it is difficult to tell whether the events within Zimbabwe "signalled a new chapter for an understanding of human rights, and the acceptance of homosexuals, or whether . . . [they were] a symptom of the erosion of universal human rights in the name of indigenous values, as interpreted by those in power."[59]

Whatever the outcome may eventually be, in this case, new technologies (such as the internet) were seen as a more appropriate avenue of seeking social, political and legislative change than that of formally seeking adjudication at the regional treaty-based human rights organisation.

Martin and Berry have examined the impact of new computerised communications technologies on the development of homosexual identities in East Asia, arguing that the impact of such technologies on identity development is "characterised by processes of syncretisation . . . rather than [these technologies] simply acting as helpmate to cultural homogenisation or as spaces where the local same-sex culture absorbs and assimilates the foreign".[60] It is in the conceptualisation of such processes that dynamics of postcoloniality can be seen clearly at work. Rather than positioning the processes of globalisation as being invariably representative of unidirectional and inappropriate flows of global change and exchange originating from within the West, postcolonial ways of thinking can provide significant theoretical and practical constructs for those seeking reform within non-Western societies. Under such analysis, issues of globalisation and non-Western difference may be thought of, not in terms of diametric oppositions between the "West" and the "Rest", but in terms of a dialogue between these two positions. Such a dialogue should ideally be characterised by non-Western societies' acceptance (or utilisation) of certain globally circulating epistemological and socio-cultural formations, as well as technologies of globalisation, while simultaneously encouraging such societies' critical awareness of, and in many cases resistance to, the homogenising imperatives and non-

[59] Dunton & Palmberg, *supra* note 17, at 17.

[60] Fran Martin & Chris Berry, *Queer'N'Asian on the Net: Syncretic Sexualities in Taiwan and Korean Cyberspaces*, 2 (1) CRITICAL INQUEERIES 67, 81-2 (1998).

awareness of socio-cultural difference which can so often mark globally circulating knowledge formations.

Such a dialogue, occurring both within and without the formal procedures of international human rights law, would seem to offer significant opportunities for those advocating for the protection and provision of homosexual rights within postcolonial nations. This was certainly the case in the Zimbabwean example. The solution in this case lay, not in an absolute rejection of the idea that a Western human rights group might speak for or on behalf of the 'Other', but in a requirement that such speaking be done with a sensitivity to the relative subject positions of those speaking and those spoken for. Significantly too, the Zimbabwean example demonstrates the potential for nurturing socio-cultural and legislative change inherent within a postcolonial rethinking of conceptions of globalisation. Nowhere is this more clearly seen than in the resignification and utilisation of the technologies and processes of globalisation to present non-Western and/or non-governmental viewpoints to local, regional and global audiences. If speaking for and about the 'Other' must be done with a sensitivity to power imbalances between speaker and subject, then the provision of opportunities for non-Western societies and cultures to articulate their own agendas and conceptions as regards issues of human rights can only contribute to a more sophisticated and pertinent global discourse of international human rights. It is the possibility and potential of such a discourse that becomes of immediate importance when assessing calls for the reform or extension of international human rights as it relates to sexual orientation.

V. INTERNATIONAL LAW REFORM: TOWARD AN INTERNATIONAL DECLARATION ON SEXUAL ORIENTATION?

Perhaps the most comprehensive proposal for law reform in the area of sexual orientation has come from the Dutch-American scholar Eric Heinze. His 1995 work, *Sexual Orientation: A Human Right* sets out to articulate 'discrete, human rights of sexual orientation',[61] setting as its goal the ability

[61] Heinze, *supra* note 5, at 21.

> to enlighten and encourage tolerance . . . to identify people subject to discrimination, and to establish for them the same rights accorded to people facing other comparable, already recognised forms of discrimination. The goal is not to elevate sexual orientation to special status, but only to assign it a status comparable to race, ethnicity, religion, sex and other grounds of discrimination.[62]

Heinze posits, as a desirable means of overcoming the discrimination suffered by homosexuals worldwide, the inclusion of sexual orientation as a discrete marker of identifiable minority status in international law. Heinze regards as comparable the discrimination suffered by homosexuals and that persecution committed against other, already recognised classes of individuals in international human rights law. Thus, he proposes a "Model Declaration of Rights Against Discrimination On the Basis of Sexual Orientation", along similar lines to other international instruments protecting minority rights such as the *International Convention on the Elimination of All Forms of Racial Discrimination*[63] and the *Convention on the Elimination of All Forms of Discrimination Against Women.*[64] Heinze's Declaration proposes to cover areas such as privacy, expression, association, thought and conscience, criminality, employment and training, education, child custody and visitation, housing and accommodations, health care, social services, the age of consent, the welfare of homosexual youths, hate propaganda and the media and travel, immigration and asylum.[65] This would seem to place the model Declaration squarely within the four strands of rights identified by Dunton and Palmberg. Yet the model Declaration articulates an almost exclusively Western notion of sexual orientation, seemingly intent on enforcing a distinct divide between homosexuality and heterosexuality that would be of little utility in dealing with or understanding many of the alternative forms of homosexual identity that exist in the non-West. This can be seen in Heinze's definition of

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[62] *Id.*

[63] *International Convention on the Elimination of All Forms of Racial Discrimination*, entered into force Jan. 4 1969, *660* U.N.T.S. 195 (1966).

[64] *Convention on the Elimination of All Forms of Discrimination Against Women*, entered into force Sept. 3 1981, 19 I.L.M.33 (1980).

[65] Heinze, *supra* note 5, at 291.

sexual minorities, as denoting "people whose sexual orientation derogates from a dominant heterosexual norm, and in particular, those subject to discrimination on the basis of their sexual orientation."[66]

Heinze's definition is problematic in a number of respects. Those who would fall under the protection of the rights established by his model are identified by their difference from an unspecified "dominant heterosexual norm".[67] This definition ignores much of the fluidity and multiplicity of meanings which characterise homosexuality's position (and that of other non-heterosexual identities) within non-Western societies. The definition thus reinforces the dualistic boundaries, not just of homosexual and heterosexual but also of West and non-West.

Further, Heinze's model Declaration, through its reliance on a jurisprudence of sexual minorities, seems to ignore a fundamental difference between homosexuality and almost all of the other characteristics enunciated in specific purpose international instruments as subjects of protection (i.e. gender, class, race, religion). A subject's membership of these minority groups is usually immediately apparent, because of such factors as physical appearance, dress, language and so on. Homosexuality has no such consistent and identifiable markers. Thus, for homosexuals to be able to take advantage of the rights established under Heinze's proposed declaration they would be required to identify themselves publicly as a homosexuals. This seems to be little more than a contemporary reinscription of the Western gay liberationist insistence on 'coming out' as a political strategy for effecting social change. As the Zimbabwean example discussed above demonstrates, such public declarations of homosexuality in the non-West are, in many cases, likely to have serious implications for an individual, comprising variously the possibility of arrest, detention, loss of social standing or physical danger.

This is, of course, no reason for the abandonment of international human rights law as a means of overcoming such discriminatory practices against homosexuals. And indeed, many of the discriminatory practices directed at homosexuals in nations around the world, such as arrest, detention and violence, can be seen as constituting human rights problems of the highest degree. But while

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[66] *Id.* at 295.
[67] *Id.*

international human rights law can, and indeed should in many cases, establish rights-based standards for the protection of homosexuals, the methodology which Heinze advances for accomplishing this is seriously flawed. The definitional bases and assumptions of the model Declaration are, it has been shown, strongly predicated upon Western understandings of homosexuality and homosexual identity. But as has been consistently demonstrated, there are vast differences between social, cultural, religious and personal experiences of homosexuality within the non-West. By basing the protections of his model Declaration upon a conception of public affirmation of (homo)sexual orientation, Heinze ignores much of the diversity which characterises the non-Western homosexual experience. This is of central importance to an understanding of the (non) applicability of Heinze's Declaration to non-Western homosexualities.

There is in the non-West (as there is to a lesser but still very significant extent in the West) a huge difference between the numbers of those engaging in homosexual behaviour and those identifying themselves publicly as homosexual.[68] This makes Heinze's insistence on sexual orientation as the basis of protection for his model Declaration problematic. While his definition of sexual orientation attempts to cover both homosexual behaviour and identity, it is fundamentally based on derogation from heterosexual identity and strongly allied with what appear to be Western conceptions of homosexual identity.

> *Sexual orientation* denotes real or imputed acts, preferences, or lifestyles, or other forms of expression, association or identity, of a sexual or affective nature, in so far as these conform to or derogate from a dominant heterosexual norm [original emphasis].[69]

Heinze appears to disregard such issues, instead appearing to place his faith in the pedagogic and enabling force of law as means of instigating change. Dianne Otto has criticised such practices, arguing for a more sophisticated understanding of the role international human

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[68] Gary Dowsett, *What is Sexuality? A Bent Answer to a Straight Question*, 55 (1) MEANJIN 16, 21 (1996).

[69] Heinze, *supra* note 5, at 295.

rights law can play in bringing about social change. While not denying the potentially enabling force of law, Otto argues for

> a transformative paradigm that responds to human multiplicity, rejects the privileging of elite human experience, resists the creation of subjugation of its converse in an Other, and guards against the erasure of its incommensurabilities.[70]

Heinze's calls for multilateral treaty-based protections do not recognise or offer any hope of reaching such a paradigm. His analysis articulates a specifically Western understanding of homosexual identity, and requires identification with a Western ordering of the homosexual experience – an ordering specific to the West of the late 20th century – in order to benefit from the rights he sets out to recognise and protect through his model declaration.

As has already been shown, homosexuality, and the calls for its international legal protection and recognition, has already been used by those in the non-West to assert regional or national difference. This assertion has been based on the perceived Western origins of homosexuality, and the (fallacious) rejection of the presence of sexual diversity within non-Western nations and regions. Perhaps the most famous example with of this is Singaporean Foreign Minister Wong Kan Seng's declaration at the Vienna Conference on Human Rights that '[h]omosexual rights are a Western issue, and are not relevant to this conference'.[71] Such glib dichotomisations of the West and the non-West operate to silence and deny the existence of sexual diversity within postcolonial states. By placing his faith in the power of international human rights law to overcome such silencing, Heinze seems unaware of how political, social and nationalistic meaning has been strengthened and reinforced within postcolonial nation-states through the investment of state energies into the restriction of homosexual behaviour and identity.

But in many ways, Heinze's position in this regard provides a convenient starting point for examining alternative methodologies and epistemologies of international human rights jurisprudence in the area

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[70] Dianne Otto, *Rethinking the "Universality" of Human Rights Law*, 29 COLUM. HUM. RTS. L. REV. 1, 44 (1997).

[71] Berry, *supra* note 44, at 73.

of homosexual rights. One of the key themes running through the analysis presented here has been that of a global-local dialectic. Such a discourse provides significant opportunities for rethinking the ways in which homosexuality is understood and presented within the discourse of international human rights law. Rather than unthinkingly presuming the desirability and suitability of identity formations imbued with specifically Western understandings of the operation of homosexuality (both behaviourally and in terms of identity), new forms of understanding globalisation which are emerging from within postcolonial discourse posit a more sophisticated and multifaceted understanding of the existence of sexual diversity within non-Western societies, cultures and nations. Such epistemological constructs necessarily have an impact on international human rights law. Rather than thinking of the protection and provision of homosexual rights in terms purely derived from understandings of Western homosexual identity and the socio-political and legal positions which homosexuality occupies within the West, these new forms of analysis require examination into the cultural, social, legal, political, and religious impacts on varying homosexualities worldwide. More than this though, they require the creation of spaces within the jurisprudence of international human rights, and the debates and dialogues which create that jurisprudence, where non-Western homosexual voices and experiences can be aired and understood. Human rights law should not be formulated without due heed being paid to such voices.

Frank Browning has written of "the growing presumption that American-style gay identity is a universal human condition, impeded only by shame and social stigma elsewhere in the world".[72] Should the development of homosexual rights in international human rights law be based on such a presumption, it cannot fail to be complicit in the continual denial and silencing of the non-Western homosexual experience. This is an outcome which should be avoided. As has been shown here, new technologies of globalisation are providing significant opportunities for non-Western homosexuals to construct new subjectivities and to rethink their relationships with global formations such as the international human rights regime. The

[72] Browning, *supra* note 16, at 25.

interchange of global knowledge formations and locally specific circumstances offers both challenges and opportunities for the formulation of human rights in the contemporary world. It is only with a critical awareness of the privileging of Western knowledge and identity formations, and the provision of opportunities for homosexuals in the non-West to participate in the definition of suitable bases and grounds for the protection of homosexual rights within their own nations, cultures and societies that the debate over homosexual rights can move beyond its current Western-centric underpinnings and assumptions.

VI. CONCLUSION

Narratives of domination, resistance, selfhood and otherness underlie and inform a great many of the great social changes of the late part of the twentieth century. Nowhere is this more the case than in the postcolonial state. Situated at the nexus of the global/local encounter, the postcolonial subject has been, and continues to be, required to negotiate a relationship which reconciles globalising flows with locally specific circumstance. Self-identities generally, and (homo)sexual identities in particular, cannot fail to be influenced by the plethora of new concepts, significations and vocabularies which circulate globally. In fact, configurations of identity draw relevance, inspiration and integrity from the locally specific circumstances in which they operate. An understanding of identity in the late twentieth century can no longer be premised on singular and continuous influences from a locally specific series of cultures and/or traditions.[73]

As this paper has shown, much of the international legal jurisprudence currently circulating globally reinforces and articulates primarily Western concepts of homosexual identity. To take advantage of these legal formations, non-Western homosexuals it seems are required to select their personal identity formations from, to adopt Partha Chatterjee's phrase, "certain 'modular' forms already made available to them by Europe and the Americas".[74] If this is the

[73] JAMES CLIFFORD, THE PREDICAMENT OF CULTURE: TWENTIETH CENTURY ETHNOGRAPHY, LITERATURE AND ART 9-17 (1988).

[74] PARTHA CHATTERJEE, THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES 5 (1993).

case, then, as Chatterjee states, "[h]istory, it would seem, has decreed that . . . the postcolonial world, shall only be perpetual consumers of modernity".[75]

But this fact should not operate to deny or discourage new and continued forms of providing for homosexual rights in the international legal milieu. The best outcomes will be achieved when the multiplicity of voices and subject positions that postcolonial analysis empowers to speak are heard and understood, and that these voices are taken into account when creating a rights-based jurisprudence of sexual orientation. Current efforts, while laudable, still have a long way to go if they are to be of benefit to Western and non-Western homosexuals worldwide.

[75] *Id.*