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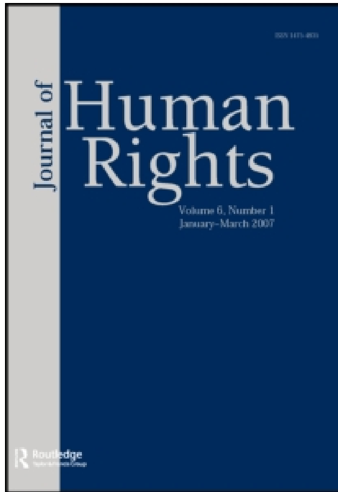

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Queering Human Rights: The Yogyakarta Principles and the Norm That Dare Not Speak Its Name

RYAN RICHARD THORESON

Over the past twenty years, regional and international efforts to secure formal protections for sexual minorities in the human rights framework have met with limited success. The prospects of these campaigns changed significantly in November 2006, when a group of activists, intellectuals, and policymakers met in Yogyakarta, Indonesia to draft a document that would outline the rights that sexual minorities enjoy as human persons under the protection of international law. Since then, activists and policymakers in local, national, and international forums have consistently invoked the Yogyakarta Principles as an authoritative document on the rights of sexual minorities worldwide, despite the fact that the document itself is not legally binding for any state or governing body. In this paper, I explore the entrenchment of sexual minorities as an at-risk group protected by human rights and the importance of the Yogyakarta Principles in advancing this "norm that dare not speak its name" on the global stage. I identify three reasons why the Principles have been quickly assimilated into policymaking: the modesty of their demands, the stability of their foundations, and the strategic, inventive ways that activists have framed and deployed them from multiple points of entry in the global system. In doing so, they have fostered a growing consensus that sexual minorities deserve protection, without necessarily creating or promoting the rights or formal protections that typically accompany such claims.

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Introduction

Over the past twenty years, regional and international efforts to secure formal protections for sexual minorities have met with limited success. The prospects of these campaigns changed significantly in November 2006, when a group of activists, intellectuals, and policymakers met in Yogyakarta, Indonesia to draft a document that would outline the rights that sexual minorities enjoy as human persons under the protection of international law. The result was the Yogyakarta Principles of 2007, designed to be "a set of principles on the application of international human rights law in relation to sexual orientation and gender identity."[1] The Principles were celebrated as a crucial tool for sexual minorities, but

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without official sponsorship from sovereign states or a multilateral organization they were effectively nonbinding and did not technically affect international law. In light of these limitations, it was not immediately clear what impact—if any—the Principles would have on policymaking and the lives of sexual minorities.

After only two years, activists and policymakers in local, national, and international forums consistently invoke the Yogyakarta Principles as an authoritative document on the rights of sexual minorities worldwide. In this paper, I explore the entrenchment of sexual minorities as an at-risk group protected by human rights and the importance of the Yogyakarta Principles in advancing this "norm that dare not speak its name" on the global stage. I identify three reasons why the Principles have been quickly assimilated into policymaking: the modesty of their demands, the stability of their foundations, and the strategic, inventive ways that activists have framed and deployed them from multiple points of entry in the global system. In doing so, they have fostered a growing consensus that sexual minorities deserve protection, without necessarily creating or promoting the rights or formal protections that typically accompany such claims.

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Homophobia, Sexual Minorities, and Human Rights

At a glance, the most striking aspect of the debate about sexuality and rights is the relative lack of coordinated efforts to combat or even to theorize homophobia on a global level. Although sexual minorities remain relatively undertheorized by scholars of law and international relations, these populations shed a powerful light on the limits and possibilities of universality and norm creation in the global arena. The reasons for this are twofold. First, conceptions of sex, gender, sexuality, and the family tend to occupy privileged positions at the heart of different cultures, and the protection of sexual minorities—especially self-identified gay and lesbian populations—raises difficult theoretical questions about cultural imperialism and the sovereignty of states in a globalized system. Secondly, widespread hostility toward sexual minorities in the overwhelming majority of states tests the limits of global protections enacted at the local level and delineates the boundaries of the post-Westphalian project.

With remarkable consistency, concepts of gender, sexuality, and the family lay at the heart of cultural self-conceptions—and as such, are fiercely protected (Nussbaum 1999: 15–16). To the extent that these conceptions are already morphing under the pressures of industrialization and the entry of women into the workforce, the visibility of alternative arrangements of sex and gender through globalized media, and the availability of divorce, contraception, and legal recourse for women, reactionary forces may already be actively seeking to reinforce what they regard as traditional arrangements (Castells 1997: 242). Without returning to longstanding debates about relativism and universality, it is worth noting that debates about gender and sexuality are profoundly controversial in the pragmatic implementation of international law.

In light of this, it is perhaps understandable that sexuality may be the most difficult test case for proponents of universally enforceable human rights. Even in countries where human rights are part and parcel of a tradition of political mobilization or a defining characteristic of nationalism, these rights typically do not extend to sexual minorities. And where they do—like post-apartheid South Africa—these rights have often been enacted by the judicial or legislative branches and remain deeply unpopular with the public at large (Thoreson 2008). If rights cannot actually be safeguarded for unpopular groups, the legitimacy and moral foundations of the human rights regime are called into question. In theory and in practice, the extension of human rights to sexual minorities tests the

boundaries of what human rights can (and should) protect. The Principles are theoretically and practically critical for the human rights project in general, since those populations who are especially at risk indicate where protections fail to be legally and practically enforceable (Donnelly 2003: 237). For gay and lesbian activists, this is a practical limitation of rights-based advocacy as a means of providing recourse to a population at risk. For human rights activists in general, the exemplary place of sexual minorities under the law points to the practical *and* theoretical boundaries of their project.

Sexuality thus exposes the parameters of a rights-based approach, shedding light on its limitations as well as its possibilities. It is precisely those rights that are the least popular or most controversial in the global arena that draw attention to the biases, oversights, unenforceability, and hypocrisies of any international human rights regime, where power differentials in the global community allow some states to assert their normative prescriptions on their less influential counterparts. Nonetheless, the fact that this strong-arming has tangible effects suggests that the idiom of human rights can still provide one of the most powerful frameworks for addressing injustice or mistreatment, even if they require support from social movements or other mechanisms for producing structural and cultural change. It is this tension—what Sonia Correa, Rosalind Petchesky, and Richard Parker call the "paradox of indispensability and insufficiency"—that underlies the pursuit of sexual rights as human rights (2008: 152, see 151–224).

Even rights that are divisive or virtually unenforceable can alter sociopolitical discourse in favor of material protections. The debate about sexuality is not yet about practicable *protections* as much as it is about the creation of favorable *norms*. The extensive literature on women's rights suggests that this is not a fatal flaw in securing symbolic and structural protections for a population. Under the aegis of the United Nations and other international bodies, one of the most successful instances of norm creation and enforcement is the establishment of women's rights as human rights. From the Universal Declaration of Human Rights (UDHR) in 1948 to the Fourth World Conference on Women in Beijing in 1995 and the ongoing enforcement of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), activists have crafted a framework to promote dignity, to protect rights, and to nullify adverse treatment on the basis of gender.

In replicating this strategy, gay and lesbian activists have promoted a framework built around the axes of sexual orientation and gender identity and seeking rights for those populations based on their membership in those groups. To date, they have little to show for their efforts. Aside from the theoretical and practical difficulties of safeguarding sexualities, there are also real differences between sexual rights and women's rights. While the category of "women" is often taken for granted under the law and universally recognized, attempts to safeguard sexual orientation and gender identity cross-culturally must grapple with a category that is internally fragmented and whose potential causes, origins, and expressions are unknown and potentially infinite.

I follow legal theorists in grouping nonnormative genders and sexualities—often, but not exclusively, gay, lesbian, bisexual, transgender, or queer—together under the category of "sexual minorities." For anthropologists and queer theorists, this category has been problematic in transnational arenas because the concept of normative sexuality (i.e., the imagined "sexual majority") is profoundly contextual and varies dramatically from place to place. According to Jack Donnelly, a practical definition might be "those despised and targeted by 'mainstream' society because of their sexuality, victims of systematic denials of rights because of their sexuality (and in most cases, for transgressing gender roles)" (2003: 229). In practice, this has pertained to two protected categories outlined by the International Lesbian and Gay Association. On a very general level, sexual orientation involves "the capacity to relate emotionally, affectively, and sexually with a person of a

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different sex to oneself or of the same sex," and gender identity "refers to the comprehension and experience that each one of us has about his or her gender, independently of his or her biological sex" (International Lesbian and Gay Association [ILGA] April 19, 2007).

The definition of sexual minorities is intentionally broad and open ended because violence is often directed at those who are perceived to be in any way queer, regardless of whether this is actually the case. Transgression from the perceived norm of either gender or sexuality is punished severely, and the World Values Survey suggests that this persecution occurs in virtually every country to varying degrees (Badgett and Frank 2007: 1). Although antigay laws vary considerably from country to country, Daniel Fischlin and Martha Nandorfy suggest that "they create an atmosphere wherein queers and transgender people are demeaned, even where they are not subject to persecution, harassment, and extortion" (2007: 91). The result of this marginalization is a type of abuse that transcends local, national, and regional borders. A global framework to protect sexual minorities is thus justified both by the repression that sexual minorities face in virtually every sovereign state and the fact that anti-queer elites around the world already share goals, rhetorics, and tactics among themselves.

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Prior Protections

Prior to the Yogyakarta Principles, a number of efforts were launched by activists from different regions who sought broader protections for sexual diversity in international law. Typically, success has been precluded by the structures of global governance—because advances tend to proceed from a consensus established among sovereign states, it is typically quite easy for small collectives to derail any proposals that do not enjoy strong, widespread support (Merry 2005). In light of the severe persecution that sexual minorities face, attempts to combat discrimination and violence have been sporadic and tentative and have tended to arise as opportunistic responses to openings in geopolitics instead of stages in a coordinated, premeditated strategy.

Thus, in the waves of declarations and treaties that have reached the General Assembly since the UDHR was adopted in 1948, no standardized protection of sexual orientation or gender identity has been approved by that body (Fischlin and Nandorfy 2007: 91). As Christopher Kaindi and others have pointed out, the UN Human Rights Committee has maintained that the International Covenant on Civil and Political Rights (ICCPR) offers protection from discrimination on the basis of sexual orientation as part of its reference to "sex" in Articles 2.1 and 26 (2007: 6). Unlike discrimination against women, however, this sentiment has not been enshrined in a formal convention for states to approve and enforce, and violations are neither closely monitored nor actively reprimanded.

In April 2003, Brazil's delegation to the UN introduced a draft resolution on Human Rights and Sexual Orientation, popularly known as the Brazil Resolution. As Arvind Narrain has argued, however, this resolution "[did] not in any manner create any new rights, but merely affirm[ed] that the existing rights framework should apply regardless of sexual orientation" (2005: 1). At least 19 countries voiced support, but Pakistan, Egypt, Libya, Saudi Arabia, and Malaysia—with support from the Vatican—threatened to amend it to the point of irrelevance, removing any references to sexuality from the resolution entirely (Fischlin and Nandorfy 2007: 91). Ultimately, the coalition killed the resolution. It has since been reintroduced but never successfully passed. The unflagging political opposition to efforts like the Brazil Resolution has led Jack Donnelly and others to conclude that "[i]n the short and medium run, there is no chance of anything even close to an international consensus on even a working text for a draft declaration on the rights of homosexuals"

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(2003: 238). After years of advocacy work, activists have similarly found that any action by sovereign governments is something of a dead end.

In recognition of this roadblock, activists and academics have attempted to address violations against sexual minorities in other forums. In July 2006, activists gathered at the International Conference on LGBT Human Rights in Montreal, which included days of expert testimony and panels of activists from around the world. The resulting Declaration of Montreal sought "to summarize the main demands of the international LGBT movement in the broadest possible terms, so as to make the document useful at a global level and in all parts of the world" (Swiebel 2006: 1). The Declaration of Montreal is utopian in a way that the Brazil Resolution is not and calls for recognition of queer partnerships, queer families, and rights that are not yet recognized by the vast majority of states worldwide. As a platform for sexual minorities worldwide, its goals are grounded in values like diversity, tolerance, and respect, rather than explicit, established international law. The Declaration has provided a vision for activists rather than a program for policymakers and trusts local actors to translate that vision into policy demands. As a deeply aspirational document, its practical impact outside of activist networks has been quite limited.

The Brazil Resolution and Declaration of Montreal typify two transnational approaches to promote sexual diversity: the former attempts to secure official commitments by sovereign governments enshrined in international law, while the latter is a normative, unofficial declaration that sexual diversity is valuable. To date, they have produced few concrete results.

To plot a way forward, a conference was held at Gadjah Mada University in Yogyakarta, Indonesia in November 2006 to explore the legal rights of sexual minorities worldwide. The conference drew influential figures from multilateral bodies, state governments, and local nongovernmental organizations alike, who assembled to identify common abuses against sexual minorities as well as those treaties forbidding them under binding international law. Afterwards, a number of participants demanded that a series of widely-recognized rights—29 in all—should be afforded in equal measure to sexual minorities.

The resulting Yogyakarta Principles, released in March 2007, differ from previous efforts in that they "are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity.... [that] affirm binding international legal standards with which all States must comply" (Yogyakarta Principles 2007: 3). Instead of merely outlining what a fair and just world might look like for sexual minorities, the Principles stress binding, foundational agreements that apply equally to all states and demonstrate that abuses against sexual minorities are in violation of these obligations. By citing the UDHR, ICCPR, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and other agreements, the Principles insist that governments must observe and respect universal human rights without regard to sexual orientation and gender identity. Essentially, the strategy is a humanizing one, asking states to recognize sexual minorities *as humans* within the existing human rights framework.

The strategy has met with considerable success. Within a matter of two years, the Principles are widely cited by state and nonstate actors alike, despite the fact that they were formulated privately by a cadre of experts and not by any official or quasi-representative body. Still, they are not only rhetorically invoked as evidence of a normative shift in geopolitics but have been used concretely by elites to formulate policy for localities and nation-states. While activists have not established any sexual *rights* per se, they have nonetheless managed to define sexual *minorities* as a population at risk that deserves protection. The subtlety with which this was achieved—essentially, the creation of a norm that dare not speak its name—is premised on the modesty of activists' demands, the stable

foundations on which they rest, and the strategic, inventive ways that activists have framed and deployed them from multiple points of entry in the global system.

Modest Demands

The first notable feature of the Yogyakarta Principles is the tactical modesty of activists' demands. In the past, states have refused to provide specific protections for sexual minorities by asserting that sexual orientation and gender identity are legitimate grounds for differential treatment by state and substate actors. Thus far, this strategy has been fairly successful. Under international law, "[s]tates are not prohibited from taking into account *any* status differences. Individuals are entitled only to protection against *invidious* discrimination, discrimination that tends to ill will or causes unjustifiable harm" (Donnelly 2003: 225). For many elites, this justification for the denial of rights has been used indiscriminately, ranging from issues like the definition of marriage to the suspension of the rule of law and use of extrajudicial executions.

The Yogyakarta Principles draw a necessary distinction between legitimate and illegitimate discrimination. The Principles clarify that the most malignant discrimination prevents sexual minorities from enjoying basic freedoms and must be prohibited as "public (or publicly supported or tolerated) discrimination that deprives target groups of the legitimate enjoyment of other rights" (Donnelly 2003: 226). Structurally, this isolates the discrimination that deprives sexual minorities of other rights that should theoretically exist for everyone—like freedom of association and freedom of speech—but are frequently and unjustly revoked on the basis of sexual orientation and gender identity. By identifying the breadth and depth of discrimination against sexual minorities, the Principles show that such discrimination is both invidious and prevents groups from claiming their other rights. They depict the range of abuses that result when governments and global bodies actively discriminate or even passively comply with mistreatment, stressing a minimum of protection that is understood to be nonnegotiable for all people.

In keeping with this differentiation, the Principles therefore leave space for elites to tentatively recognize sexual minorities as a population at risk without endorsing a full slate of rights that they might not support. Opponents of queer rights frequently cite cultural concerns about family, kinship, and gender roles, but the Yogyakarta Principles have tactically sidestepped this debate to focus on basic freedoms and the right to bodily security. Although Principle 24 asserts the right to found a family, the authors of the Principles explicitly acknowledge that this does not yet include the right to marriage under international law (Long 2007a). Amid widespread anxiety about same-sex partnerships, this keeps elites from using anxieties about family and kinship as an excuse for inaction on other fundamental rights. With that distinction in place, many elites may be willing and able to recognize the basic demands expressed in the Principles and to act accordingly.

Ultimately, the Principles differ from earlier efforts in that they are authored by a coalition of experts outside of a lawmaking, multilateral body and only rely on *existing* declarations and treaties that states have agreed to respect and uphold. Unlike previous declarations, they are based in the realism of international law rather than the idealism of a perfectly just, ideally attainable vision. As Scott Long of Human Rights Watch has specified, "the aim was normative, not utopian, to codify what was known: to set out a common understanding developed over three decades" (Long 2007b: 3). After ignoring that understanding for years, though, it remained to be seen whether the Principles could be framed and deployed in a way that might resonate with policymakers at the state and substate levels.

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Stable Foundations

Even modest demands can be rejected or flatly ignored. The second characteristic of the Principles that led to their rapid adoption was the stability of their structural and philosophical foundations. By bringing discrimination against sexual minorities to the fore, the authors of the Principles employed a key tactic of group rights advocates—they argued that persistent discrimination against sexual minorities merited a declaration that clearly outlined the obligations that states have to protect them. One result of these group-based arguments is a greater recognition of the abuses that those groups face, regardless of whether they seek remedies through group or individual rights. With time, this has led nongovernmental organizations (NGOs) to rely heavily on international law to aid groups that have been disadvantaged by the state, making governments agree about the commitments they have already made and the commitments they might be willing to discuss in the future (Falk 2000: 139). And crucially, this recognition of at-risk status can be achieved without actually awarding any new rights.

Structurally, the Yogyakarta Principles rest on a stable, widely recognized foundation; they themselves are not in any way legally binding but do explicitly demand that states comply with other binding obligations to which they have voluntarily committed themselves. Historically, the wide variety of group rights that have been pursued within multilateral bodies suggests that even nonbinding declarations can have significant effects. Fischlin and Nandorfy point to a series of declarations that have been passed to protect minorities and at-risk majorities, including children, women, indigenous peoples, and economically, socially, or culturally marginalized groups. Ultimately, "[w]hat most of these groups, including lesbians, gays, bisexuals, and transgender people share is that they are marginalized by an elite, predominantly made up of powerful men who erect their privilege over everyone else's rights" (Fischlin and Nandorfy 2007: 78–79). In an attempt to level the playing field, the international community has used declarations to identify persistently disadvantaged groups and voluntarily commit themselves to their well-being.

Although nonbinding declarations have often been used to protect group rights, one subtle but crucially important strategy used by the author of the Yogyakarta Principles is to break with earlier attempts to demand "gay" and "lesbian" rights in favor of a more inclusive, universal rhetoric. The Principles are constructed to secure *each* person's right to sexual self-determination, regardless of sexual orientation and gender identity, and "[t]heir authors [deal] in terms, not of identities, but status: 'sexual orientation,' 'gender identity,' all given as much space as possible to be 'self-defined' " (Long 2007b: 6). While the Principles quite clearly aim to curb abuses against sexual minorities, this particular framing strategy advances that cause on two levels. By abandoning efforts for special rights and focusing instead on universal rights, the Principles offer something to the normative "sexual majority" but are also inclusive of sex/gender configurations like the *bakla* in the Philippines, *kathoey* in Thailand, *waria* in Indonesia, a variety of queer subjectivities, and other groups that may not comfortably fit within the rhetoric of "gay" and "lesbian" rights. This inclusivity is mirrored in the Principles' invocation of universal protections like the ICCPR, ICESCR, and UNDHR.

Like many other nonbinding declarations, one of the stated objectives of the Yogyakarta Principles is to publicly highlight gaps in international law. A similar approach to "protection gaps" between agreed-upon norms and the shortcomings of enforcement has been used to establish principles for dealing with the rights of indigenous groups and internally displaced persons as well as the 1998 International Guidelines on HIV/AIDS and Human Rights (Long 2007b). The Yogyakarta Principles mark a departure from past strategies by

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emphasizing these protection gaps and urging governments to respond rather than seeking new commitments in forums like the UN. By doing so, they echo nonbinding declarations like the Declaration on the Right to Development or the Declaration on the Rights of Indigenous Peoples by stressing that the mistreatment in question is a profoundly global problem; one that manifests itself differently from state to state and thus requires local responses.

But the Principles also rest on firm philosophical foundations. Proponents of the Principles tend to draw upon a principled discourse of equality, nondiscrimination, and justice—a vocabulary that is not at all uncommon in campaigns for rights and responsibilities based in the rhetoric of liberal democracy. This takes shape in two ways: first, the Principles delineate exactly how sexual minorities are excluded or abused and the injustices they suffer, and, secondly, the Principles insist—both implicitly and explicitly—that sexual minorities be treated as humans. The Brazil Resolution, the Declaration of Montreal, and most rights declarations also do this to some extent. But by citing the principles that obligate governments to provide redress, the Yogyakarta Principles offer a compelling blend of pragmatic and philosophical justifications that both justify and normalize their demands.

Firstly, the authors of the Yogyakarta Principles outline the specific abuses, exclusions, and injustices that sexual minorities face, often in great detail. Within the human rights framework, this taps into a philosophical strain that sees the denial of basic capabilities as a problem in its own right. Drawing on the lives of women in India, Martha Nussbaum has maintained that the objective aim of formal protections should be to ensure a basic set of capabilities that enable people to live full lives (2000). Sexuality complicates this project in virtually every country around the world, since sexual minorities are frequently denied rights and responsibilities as well as basic necessities like food, shelter, and water, the ability to speak and associate freely, access to meaningful work, and integration in community life (Nussbaum and Sen 1993: 1–6). Aside from denying the humanity of sexual minorities, discrimination, neglect, and violence prevent individuals from claiming basic protections and utilizing their innate capabilities, rending them from the social fabric entirely. On this basis, Nussbaum's justification for the allocation of rights and responsibilities explains why governments should theoretically provide a minimum standard of capability and dignity to sexual minorities. By illustrating the real challenges faced by sexual minorities rather than advancing purely aspirational or theoretical justifications, the authors of the Principles place their demands within the ambit of the many proponents of this view.

But while this approach may provide a practical justification, it does not provide a guarantee. The second justification that tacitly underlies the Principles is its insistence on the humanity of sexual minorities. The pragmatic philosopher Richard Rorty, who understood the limitations of universal declarations and unenforceable laws, insightfully asserted that "everything turns on who counts as a fellow human being" and noted that the victims of the grossest abuses are preemptively dehumanized by those who liken them to animals, children, or women (1993: 243–244, 250). For sexual minorities, any global declaration of principles is likely to fail unless sexual minorities are first understood to be humans who deserve equal protection under the law. If empirical evidence from opponents of sexual diversity is any indication, Rorty's observations about the resonance of rights discourse is certainly true where sexual minorities are concerned. Dehumanization, whether explicit or implicit, is routinely employed in very different cultural contexts to place sexual minorities outside the purview of formal protection. Wonder Tapfumanei cites the example of President Robert Mugabe of Zimbabwe, who famously "likened homosexuals to dogs [and] described the act as 'an abomination, a rottenness of culture, a real decadence of culture'" (Tapfumanei 2006: para. 12). Mugabe's sentiment has been echoed by leaders worldwide, who strip away the

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rights of sexual minorities and censor free speech, curtail free association, suspend the rule of law and right to trial and inflict cruel and unusual punishment. The language of savagery, perversion, and degeneracy has become a reliable tool that opponents of sexual minorities use to differentiate them from those who are protected by human rights. In many cases, this rhetoric not only justifies differential treatment but torture and execution. The Yogyakarta Principles not only make a powerful case for treating sexual minorities as *capable* actors in law and politics but crucially insist that they are *human* actors.

As the widespread support for Nussbaum and Rorty's views might suggest, the Yogyakarta Principles thus extend beyond a purely theoretical approach to make a stronger case for sexual diversity in international law. They recognize sexual minorities as capable actors deprived of their capacity to act, but they also make the apparently radical claim that sexual minorities are humans who deserve human rights. Although the principled stance of activists up to this point has been crucially important, these pragmatic approaches demonstrate that progress can also be justified to governments on the grounds of deprivation, and that any other efforts are likely to fall flat unless the humanity of sexual minorities is firmly established. It remains to be seen whether the Yogyakarta Principles can successfully establish a place for sexual minorities in international law, but, thus far, activists seem to be making strategic advances at the local and global levels alike.

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Strategic Deployment

Of course, even modest, well-founded demands are of limited utility if they are not effectively disseminated and taken up by relevant actors. For activists challenging cherished cultural norms and values, this requires a delicate balancing act. In *Human Rights and Gender Violence*, Sally Engle Merry argues that in order to be effective, proponents of human rights must be simultaneously responsive to "a transnational community that envisions a unified modernity and national and local actors for whom particular histories and contexts are important" (2006: 3). Merry points to this tension to explain the failures and successes of global efforts to combat gender violence, where lofty, widely popular platitudes coexist uneasily with everyday practices that people are often loathe to abandon. The tension is especially important with regard to gender because ideas of masculinity, femininity, and gendered roles are profoundly culturally specific. But like gender violence, homophobia and transphobia are often linked to strong local prescriptions that counteract global protections. Ultimately, activists in global forums must take local conditions into account—and vice versa—if rights are to be relevant in people's everyday lives.

Overall, the authors of the Principles address this tension in two notable ways—first, they consciously incorporate local and global perspectives into the Principles themselves, and, second, they strategically promote their demands in a series of tactical moves that maximize the document's impact. In the authorship of the text and its practical application alike, advocates of sexual rights as human rights have played an instrumental role in the adoption of this norm that dare not speak its name.

Like many universal claims, the Yogyakarta Principles were explicitly designed to appeal to a global audience. The Principles drew on the experience of a variety of experts in transnational activism and international law, including Justice Edwin Cameron of South Africa, Asma Jahangir of Pakistan, Judge Sanji Mmasenono Monageng of Botswana, Mary Robinson of Ireland, Sunil Pant of Nepal, and other human rights advocates from virtually every region of the world. Indeed, shortly after they were introduced, ARC International found that "states were already beginning to cite the Principles in their statements to the

plenary of the UN Human Rights Council" and over 30 states had intervened on behalf of sexual minorities (ARC International 2007: 2). In an address to the Human Rights Council at the UN, Beto de Jesus specifically "encouraged the Council to use the Yogyakarta Principles to frame a future debate on sexual orientation and gender identity" (ILGA, "LGBT Rights," 2007: para. 10). High Commissioner Louise Arbour then publicly recognized the efforts of queer activists; although she had been supportive in the past, it was the first time that she had addressed abuses against sexual minorities in a plenary session of the Council. Arbour's remarks were notable for their content, but also notable for the rhetoric that they used. Like the authors of the Yogyakarta Principles, she linked discrimination to the deprivation of other basic human rights (ILGA, "First Statement," 2007). Since then, the UN and agencies like UNAIDS have approvingly referenced the Principles in their work (Human Rights Watch 2007).

But beyond their impact on global conversations about queer issues, the Yogyakarta Principles and other nonbinding declarations are also uniquely well positioned to serve as an organizing tool for activists and NGOs that mediate between local and global spheres of influence. Richard Falk argues that through global manifestos like the Principles, "a sense of global presence is achieved, helping the leadership of these vulnerable groups to feel that their efforts are part of a wider transnational undertaking with its own unity rather than merely a series of isolated and lonely stands against the overwhelming power of a modern state" (2000: 143). To begin sharing best practices and tactics against similar abuses, this may be critically important for activists worldwide.

Thus, by encouraging activists to see themselves as part of a global movement, nonbinding declarations like the Yogyakarta Principles can also provide an impetus for local action. Many of the worst abuses against sexual minorities take place beyond the control of global elites. In recognition of this, Merry argues that global ideas "need to be translated into local terms and situated within local contexts of power and meaning. They need, in other words, to be remade in the vernacular" (2006: 1). If global platforms easily translate into this vernacular, they will be much more likely to create actual, meaningful change. Above all, the Yogyakarta Principles are likely to be "vernacularized" because they have been specifically tailored to reflect local struggles. As Long recalls, "there were a number of experienced LGBT activists among the experts. . . but even on the secretariat we certainly had pretty extensive experience documenting violations and working with the local groups that stand in the front lines of response" (Long 2007a: para. 2). In areas of the world where activists have established popular understandings of human rights, the Principles can demonstrate that sexual minorities deserve the same protections as anyone else. In areas where human rights are not popularly understood, the Principles can still be used by activists to pressure governments and can thus be used to produce a bare minimum of protection from state-sponsored discrimination, harassment, and violence.

But aside from this tactical incorporation of global and local perspectives, the authors of the Principles have maximized potential points of entry into various ideological and political systems by working with NGOs and governments to launch the principles in multiple arenas. To empower local activists, ARC International notes that information about the Principles was distributed at the grassroots level, "to highlight the application of the Principles to domestic human rights initiatives" (ARC International 2007: 4). Shortly thereafter, that information was incorporated into local projects in Kenya, China, Guyana, the United Kingdom, Uganda, Andorra, the United States, Nicaragua, India, Poland, and Belize, and the Principles were translated into English, Spanish, French, Chinese, Arabic, and Russian, or the six official languages of the UN (ARC International 2007). The authors of the Principles have used a series of regional launches to highlight the specific types of abuses that are

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most pressing at the local level; in 2007, the Principles were launched at the Human Rights Council of the UN on March 26th and 28th, a briefing for the Human Rights Committee on October 23rd, and a panel in New York on November 7th. As Douglas Sanders has pointed out, these launches—and launches held in individual countries—have helped immensely in publicizing the Principles and making their claims widely known (Sanders 2008).

Often, these launches have led to a surge of activity and subsequent commitments by governments in a region. When the Principles were released at UN Headquarters in New York, a panel discussion was cosponsored by representatives of the governments of Brazil, Argentina, and Uruguay. All three noted the steps that their governments were taking to align themselves with the Principles and to raise awareness about homophobia in their respective countries. Notably, Uruguay also put the Principles on the agenda of the ninth meeting of the Southern Common Market (MERCOSUR) working group on sexual orientation, furthering a dialogue on the Principles throughout South America (Human Rights Watch 2007). At the event, President Michael Cashman of the European Parliament's Intergroup on Gay and Lesbian Rights sent a letter noting their endorsement of the Principles in their regional efforts in Europe (Human Rights Watch 2007). Activists who were present focused attention specifically on ways to promote the principles at the local and national levels. Notably, after cosponsoring the launch of the Principles in New York, Uruguay's Congress unanimously passed a bill in December 2007 that granted civil unions to both same-sex and opposite-sex couples (Baklinski 2007). As debate continues in global forums, activists have succeeded in building consensus by enshrining the Principles' spirit in local, national, and regional laws.

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One unforeseen effect of this constant, intensive publicity around the Principles is that the media and civil society frequently cite them as an authoritative source in local debates. The Principles have been referenced to advocate for better legislation on transgender issues in India, to protest homophobia in Guyana, and in controversies over sexuality in virtually every region of the world (Venkat 2008; SASOD 2007; Sanders 2008). Even in Ghana, where Deputy Attorney General Kwame Osei-Prempeh concluded that Section 104(2) of the Criminal Code of 1960 overrules international law, the Principles provided a powerful counterpoint to the government's stance. When the Principles were circulated at the 41st Ordinary Session of the African Charter on Human People's Rights (ACHPR), "gay rights activists accused the organizers of failing to put their rights on the table for discussion," and Osei-Prempeh was challenged over his government's refusal to guarantee basic human rights to sexual minorities (*Africa News* 2007: para. 2). If the Principles do not succeed in affecting policy change, they nonetheless affect the conversation over sexual diversity and challenge governments to defend stances that might otherwise be taken for granted.

The Principles have also been consciously foregrounded by local organizations and social movements, which have been instrumental to their success. Since their inception, a variety of grassroots NGOs have begun adopting the Principles into their public education, protest, lobbying, and litigation strategies. In Turkey, a two-day conference against homophobia ended with Kursad Kahramanoglu of the Kaos Gay and Lesbian Cultural Research and Solidarity Organization (Kaos GL) urging Turkey and other states in attendance to formally adopt the Yogyakarta Principles as official policy. Earlier in the conference, a speaker identified the formulation of the Principles as one of the two major milestones in sexual minority rights at the international level, the other being the removal of homosexuality from the World Health Organization's list of pathologies in 1990 (*Turkish Daily News* 2007). When a bill in Guatemala proposed excluding same-sex couples and single parents from official definitions of "family" in the country, Claudia Acevedo of the Association of Liberated Lesbians (LESBIRADAS) cited the Yogyakarta Principles and the right to found

a family under international law (Benitez 2007). In Manila and elsewhere, the Yogyakarta Principles have acted as the theme for annual Pride Parades and local campaigns, leading to a spike in publicity at the local and national level (Remoto 2008). In vigils to support sexual minority rights during the summer of 2007, activists asked "for the implementation, endorsement, and support of the Yogyakarta Principles" by governments in rallies in Caracas, Cologne, Mexico City, New York City, San Diego, San Francisco, Stockholm, Vancouver, Warsaw, and Washington, DC (Straube 2007). In these protests, the Principles provided a useful point of reference to remind governments of the abuses they had agreed to curb.

The actions of activists have not only been indispensable in laying the groundwork for a declaration like the Yogyakarta Principles to be received seriously in the global arena but have been instrumental in taking them up and wielding them outside the walls of the UN. Activists vernacularize the Principles by selectively citing those portions that might be effective in their own locally specific campaigns. Because the authors of the Principles took their perspectives into consideration in crafting the Principles, the resulting document provides a laundry list of wide-ranging rights that activists can selectively invoke when authoritative transnational support might bolster their agenda.

And occasionally, governments have been responsive to these demands in their policymaking. Nepal's Blue Diamond Society translated the Yogyakarta Principles into Nepali and distributed them throughout the country, conducted domestic lobbying in anticipation of the new constitution and used the Principles in the international arena to urge Dr. Peter Piot and UNAIDS to endorse the spirit and recommendations of the Principles in their work (Pant 2007). Most notably, the Yogyakarta Principles were cited and emphasized in writ petitions submitted to the Supreme Court in Nepal in legal challenges that culminated in a ruling banning discrimination on the basis of sexual orientation and gender identity and the creation of a working group to advise the government on implementing same-sex marriage in the country (IGLHRC 2007; *Mail and Guardian* 2007). In India, the Delhi High Court followed suit by citing the Principles in a decision which read down Section 377 and decriminalized sodomy (Delhi High Court 2009: para. 42–43).

Thus, one of the most important uses of the Yogyakarta Principles (or perhaps any nonbinding declarations) is that they provide a detailed set of principles or policies that local, national, or regional governments can choose to codify into law to provide redress. When the much-applauded (and nonbinding) UN Declaration on Human Rights Defenders was adopted by the General Assembly in 1998, the International Gay and Lesbian Human Rights Commission praised it as "a series of principles that can represent the political commitments to which governments have given their approval"; one that links normative and political commitments together (IGLHRC 2005: para. 2). Ideally, the Yogyakarta Principles will continue to function in this way. Long predicts that "by setting out in one place what international law says (implicitly as well as the explicit jurisprudence) about sexual orientation and gender identity, they will be a tool for activists; I hope the concrete recommendations to states will be a way to press them for concrete change" (Long 2007a: para. 3). In Canada, for example, Bill Siksay has already introduced a bill in Parliament that would "endorse and fully implement the Yogyakarta Principles within Canada and to promote them in all international relations" (New Democratic Party 2007: para. 5). Upon filing the bill, Siksay asserted, "Canada has an obligation to protect and advance human rights for all persons, regardless of their sexual orientation or gender identity. We must do all we can to end the violence and the discrimination experienced by [gay, lesbian, bisexual, transgender, transsexual, and intersex people] in Canada and all over the world" (New Democratic Party 2007: para. 4). The bill in Canada demonstrates that the Yogyakarta Principles may be eagerly promoted locally and globally by sympathetic governments—and

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by insisting upon their importance in foreign affairs, that promotion may affect residents of countries with unsympathetic elites as well. Both the Netherlands and Sweden use the principles to determine which countries and groups receive funding from their governments, for example (Straube 2007). In domestic and foreign policy alike, the Yogyakarta Principles are quickly becoming ubiquitous as a definitive starting point for discussions of sexuality.

The Norm That Dare Not Speak Its Name

While it is still too early to gauge the full impact of the Yogyakarta Principles and their structural and symbolic effects, there is one subtle way that I think they have already transformed the discourse around sexual rights as human rights. Along each of these three axes—the modesty of their demands, the stability of their foundations, and the strategic ways they have been deployed—activists have temporarily bypassed demands for particular rights, stressing instead that sexual minorities are a population at risk. Instead of fighting for a full slate of aspirational demands, they have focused on the most basic, agreed-upon rights to bodily integrity and expression under international law. Instead of basing their demands in ideologically or politically charged values, they have couched them in states' existing commitments. And instead of simply issuing the declaration in a global forum, they have consciously incorporated local demands and strategically promoted the Principles in local, national, and regional arenas.

The overall effect of these strategies is to lay the groundwork that has been missing for so long in debates about sexuality in international law. Governments are notoriously reluctant to commit to sexual rights and the uncertain implications that these might have for their legal—and cultural—frameworks linking gender, marriage, childrearing, and the family. The Yogyakarta Principles not only justify the work that activists are doing to protect sexual minorities from abuse but also allow governments and the international community to recognize sexual minorities as a population at risk. Activists have shifted their focus; they have placed demands for group-based rights or sexual rights on the back burner and instead focused on abuses that clearly violate international law. In the process, they have advanced the elusive normative goal that is pivotal to both enterprises—the recognition of sexual minorities as a population deserving of protection. Without framing it as an uncharted step forward, this is how activists are finally beginning to establish the norm that dare not speak its name.

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A telling example might be the recent vote in the United Nations General Assembly on a nonbinding declaration that would formally protect individuals on the basis of sexual orientation. Only five years after the introduction of the Brazil Resolution, France and the Netherlands set forward a declaration condemning legal sanctions on the basis of sexual orientation and gender identity (Trevelyan 2008). While 66 countries endorsed the proposal, Syria and 59 other countries supported a counterdeclaration that asserted that countries should have the right to make their own laws regarding sexuality. The first resolution was implicitly modeled on the Yogyakarta Principles but avoided citing them explicitly to appease those countries that had expressed their opposition to that document's demands (Tozzi 2008). The backlash suggests that sexuality is still controversial, if markedly less controversial than it was in the decade before the Yogyakarta Principles were introduced.

But what truly stands out about the two votes is that the counterdeclaration did not emphasize that sexual minorities had *no* rights, or that their fundamental rights were in any way violable by sovereign states. Whatever the motivations of the states supporting it might have been, the resolution itself was framed in a way that emphasized sovereignty in deciding *what* those rights would be and *how* they might be protected. Even Syria's declaration condemned "all forms of stereotyping, exclusion, stigmatization, prejudice,

intolerance and discrimination and violence directed against peoples, communities and individuals on any ground whatsoever, wherever they occur (Tozzi 2008: para. 2)." Instead, it cited "just requirements of morality, public order and the general welfare" as reasons why states should not be bound to a single global standard like the one that France and the Netherlands proposed (Tozzi 2008: para. 2). Without guaranteeing any new rights, even unsympathetic delegations seemed to *recognize* sexual minorities as a population that might be at risk. Indeed, it would seem to appear that a tacit norm has developed among most governments that sexual minorities are disproportionately targeted for abuse; one that has quietly developed in discussions about rights. I would argue that the question has shifted from whether sexual minorities *deserve* basic human rights protections to whether the international community should *require* sovereign states to provide specific protections on the basis of sexual orientation and gender identity. The importance of this step forward should not be underestimated.

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Conclusion

Since the Yogyakarta Principles are still in their infancy, it is most likely that they will show their historical importance in the years to come. Activists have used their clear, persuasive recommendations to protest discrimination and violence, but, as Richard Falk observes, the tenacity of these types of gains in the face of aggressive backlash against them is something that will only become clear over time (2000: 141). More optimistically, declarations require time to become entrenched in people's minds, and the Principles will likely evolve with time to better reflect grassroots concerns. As contributors to the Principles have noted, "[it] is meant to be a living document, and where it falls short of being a tool for change, there will opportunities to revise and revitalize it in [the] future" (Long 2007a: para. 3).

Broadly, the Yogyakarta Principles invite deeper theorization about the links between elites and publics, the global and the local, and the complex relationship among grassroots, top-down, and transnational change. What does already seem apparent is that the declaration not only fills a crucial gap between rhetoric and enforcement but provides a useful link between global and local advocacy by sexual minorities. Discrimination and violence against sexual minorities is ubiquitous around the globe, and, thus far, activists have urged reluctant governments to endorse ambiguous rights or demanded sweeping social reforms. In contrast, the Principles have stressed that sexual minorities "are still human beings, no matter how deeply they are loathed by the rest of society. They are therefore entitled to equal protection of the law and the equal enjoyment of all internationally recognized human rights" (Donnelly 2003: 236). By targeting the most egregious violations, this unequivocal stance is likely to permit local, national, and regional actors to protect sexual minorities under the guise of existing international law. From the UN Human Rights Council to legislatures and judiciaries to grassroots groups, the Yogyakarta Principles have already offered the promise of a coordinated movement that insists that sexual minorities be protected by virtue of their humanity. Although they do not technically assert any new rights, they *do* make a compelling case for states to treat sexual minorities as bearers of recognized rights—and critically, as a population at risk. As activists and policymakers work together to translate this global framework into localized changes, the Yogyakarta Principles offer an unprecedented opportunity to bring locally grounded energy and urgency to the global struggle for human rights, subtly solidifying the place of sexual minorities within that universal framework.

Note

1. The Yogyakarta Principles make recommendations about the legal treatment of sexual orientation and gender identity based on 29 rights that currently exist in international law. For additional information on the content of the Principles, see the Yogyakarta Principles, available at http://www.yogyakartaprinciples.org.

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