

Special
Rapporteur's
Compilation of
Articles on
Freedom of
religion or belief
and Sexuality

September
2017

[The articles in this compilation are contributed by various authors who participated in the Conference on Freedom of religion or belief and Sexuality organized in June 2016. The compilation illustrates different perspectives of the intersection of freedom of religion or belief and sexuality.]

Table of Content

Introductory Remarks..... 3

Towards a Holistic Human Rights Approach: Religious Freedom and Respect for Sexual Diversity by **Heiner Bielefeldt**..... 6

Clashing rights? Freedom of Religion or Belief and Equality for LGBT People by **Erica Howard**..... 18

The rise of Rainbow Dharma: Buddhism on sexual diversity and same-sex marriage by **Michael Vermeulen**..... 27

Towards a Dialogue between Muslims and LGBTI people: pathways and pitfalls by **Momin Rahman**..... 43

Discrimination of sexual minorities: A case of teaching and practices of the Catholic Church by **Krzysztof Charamsa**..... 55

The Ground We Share: Values, Religion and Sexualities by **Mark Barwick**..... 68

*Reproduction, adaptations, modifications, translations and/or commercial use of **Special Rapporteur’s Compilation of Articles on Freedom of religion or belief and Sexuality** are strictly prohibited, without prior permission from the authors.*

Disclaimer: *The views of authors used in this compilation do not necessarily reflect those of the UN Special Rapporteur on freedom of religion or belief.*

Introductory Remarks

The outcome document of 1993 *Vienna World Conference on Human Rights* corroborated that “All human rights are universal, indivisible and interrelated and interdependent.”¹ When this frequently-cited formula was coined, its focus was on the positive interrelatedness of civil and political rights on the one hand, and economic, social and cultural rights, on the other. There seems to be a broad consensus nowadays that the various categories of rights inextricably belong together and mutually support each other, thus constituting a holistic understanding of human rights. Unfortunately, new fault lines have arisen and the holistic human rights approach remains contested. One main area of contestation has become the relationship between freedom of religion or belief and issues of sexuality². While freedom of religion or belief is part of all major human rights instruments, the due respect for people in their diverse sexual orientations and gender identities has also received recognition in the framework of international human rights. The question of how these rights fit together, however, has so far not been sufficiently explored.

During my six years’ experience as UN Special Rapporteur on freedom of religion or belief (2010-2016), I often came across sceptical views that presuppose that freedom of religion or belief does not really fit together with demands for recognizing people in their sexual diversity or gender identity. Such scepticism is widespread even among human rights activists. While, in theory, subscribing to the Vienna formula that the various human rights are positively interrelated, human rights practice often seems to indicate the opposite. Not only is the relationship between the various human rights claims tense; it is at times even construed in keeping with the logic of a zero-sum-conflict. The idea that freedom of religion or belief and recognition of diverse sexual orientations and gender identities could mutually support each other appears to be far-fetched if not utterly absurd – or so is a broadly shared assumption.

Without a holistic understanding of human rights, however, countless people would remain left with the dilemma of having to choose between different aspects of their identity, which seemingly contradict each other. This would be tantamount to tearing the human lifeworld itself apart. Numerous people whose life situation is characterized by complex needs and wishes in the intersection of religion and sexuality in practice fall outside of any appropriate human rights protection. This would be a scandal, even worse: a scandal committed in the name of human rights.

¹ Vienna Declaration and Programme of Action, UN Document A/CONF.157/24 (Part I), chapter III, section I, paragraph 5.

² Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors. (Working definition by the World Health Organization (WHO) from a 2006 report titled “Defining sexual health: report of a technical consultation on sexual health, 28–31 January 2002, Geneva.”)

In order to overcome the dangers of fragmentation and to retrieve a holistic understanding of human rights, we held a conference, which took place in June 2016 in Palais des Nation in Geneva. It was jointly organized by the mandate of the Special Rapporteur on freedom of religion or belief and Muslims for Progressive Values, an NGO that inter alia promotes the recognition of sexual diversity from a particular religious perspective. Invitations to experts and activists were sent out on a rather short notice. We were all the more surprised to receive overwhelmingly positive responses. About 60 people stemming from most diverse religious backgrounds and coming from all regions of the world participated in the conference. Contributions, all of which were presented orally in order to allow for a maximum of interaction, also contained many personal narratives, which added to the persuasiveness of the presented arguments. While two of the three conference days took place as a private in-depth exploration, the last day included a public component, which found wide interest. Kate Gilmore, Deputy High Commissioner for Human Rights, moderated the final panel discussion, thus also subscribing to the theme of the conference, viz. the need to overcome fragmentation and strive for a holistic human rights approach. She found clear and strong words when pointing out it would be absurd to pit off two existential dimensions of human life against each other: faith and love.

The conference aspired to an in-depth discussion of an underexplored theme, which undoubtedly will require more attention in future. The conference itself proved that synergies between commitment for freedom of religion or belief and concerns of sexual and gender diversity are not only possible; they have become a reality that warrants acknowledgment and recognition. Some contributors have kindly provided written versions of their statements or further reflections after the conference. The collection of their short articles does not cover all the subjects discussed at the conference. Most of the articles testify to their authors' personal commitment in an area, which currently seems to be the main test field for sticking to a holistic human rights approach as proclaimed at the Vienna conference.

In the past year since our conference, international conflicts over the rights of LGBTI peoples have intensified, with the targeting of gay men in Chechnya, Pride parades in Uganda and Turkey, to name but a few. The UN continues to engage with these issues through the newly appointed Independent Expert, and our contribution here is a small part of that wider engagement. In particular, these contributions highlight the possibilities for compassion rather than anger; for respect rather than hate, for a recognition that deep, serious and legitimate differences can and should be resolved through dialogue and a fundamental respect for the integrity of human security and rights.

I would like to conclude by expressing my gratitude to all those who have contributed to and participated in the conference. Chian Yew Lim, human rights officer at the OHCHR, was the driving force putting the conference together. The special motivation that many

people showed before, during and after the conference, was largely due to her inspirational commitment. Ani Zonneveld, Founder and President of Muslims for Progressive Values, was our co-partner at this conference and gave her firmest support throughout. The Deputy High Commissioner of OHCHR, Kate Gilmore and the Director of Thematic Engagement, Special Procedures and Right to Development Division, Peggy Hicks, both supported and endorsed the high relevance of this theme. Momin Rahman, Professor of Sociology, who kindly assisted with the editing of the texts contained in present compilation. I am particularly grateful to all those who share their personal experiences and perspectives. Human rights work, after all, is not a mere technical exercise. Its main source of legitimacy remains the articulation of experiences of injustice, which warrants clear public responses.

Towards a Holistic Human Rights Approach: Religious Freedom and Respect for Sexual Diversity

Heiner Bielefeldt¹

1. Zero-sum-conflicts Within the Human Rights Framework?

Can freedom of religion or belief (FoRB)² be harnessed to foster respect for people in their diverse sexual orientations and gender identities (SOGIs)? At first glance this may look like a far-fetched idea. FoRB and SOGI are acronyms that seem to belong to very different, if not opposite, political worlds. Conservative hotel owners refusing to host gay couples have justified their behaviour by referring to religious freedom; registrars at local authorities who do not wish to get professionally involved with same-sex marriage ceremonies have claimed conscientious objection on religious grounds; and adoption agencies, which exclusively cater to heterosexual couples, have likewise based their policies on the right to religious freedom.³ FoRB thus appears to chiefly suit conservative political agendas. Those fighting for gender-related emancipation may thus see FoRB as a mere obstacle on the way to a liberal society respectful of diverse sexual orientations and gender identities. Given the experience that conservatives like to waive the banner of religious freedom, progressive advocates of SOGI rights may feel tempted to simply discard FoRB as a somewhat “anachronistic” right.

Surely, both FoRB and SOGI are part of the broader human rights framework. But whereas FoRB belongs to a “classical” canon of rights,⁴ SOGI rights represent the more recent “progressive” trends within human rights law.⁵ In short: FoRB equals tradition, and SOGI equals progress – or so is the perception. Some commentators may even describe the alleged antagonism in the language of a zero-sum-conflict: whatever one camp wins, the other camp will necessarily lose. Accordingly, any breakthrough in the ongoing fight for same-sex marriages or other SOGI issues seems to be a lost territory for FoRB, and any legal or political gains in the area of FoRB appears to indicate a setback for gender-related progress. From such a zero-sum-logic, the search for common ground, let alone possible synergies, must appear utterly hopeless. Whoever tries to combine the various rights will at best achieve an uneasy, lukewarm compromise or a

¹ Heiner Bielefeldt is Professor of Human Rights and Human Rights Politics at Friedrich-Alexander-University Erlangen-Nürnberg, Erlangen, Germany (✉) heiner.bielefeldt@fau.de

² One should bear in mind that the full title is freedom of thought, conscience, religion or belief. For ease of reference, I will usually use the formulation “freedom of religion or belief” (“FoRB”), sometimes also “religious freedom”. However, these shorthand formulations represent a right whose scope must be broadly defined.

³ For an overview see Holzleithner (2011); Donald and Howard (2015) and the contribution by Erica Howard in this collection of texts.

⁴ The most relevant international standard is article 18 of the 1966 International Covenant on Civil and Political Rights (ICCPR). For a thorough analysis see Bielefeldt/ Ghanea/ Wiener (2016).

⁵ For an overview see O’Flaherty (2013).

precarious “balance”, which at the end of the day cannot do justice to any of the rights at stake.⁶

The purpose of the present article is to overcome such an antagonistic perception, without denying the reality of complicated legal and political conflicts between (some) FoRB issues and (some) rights-based claims of people with diverse sexual orientation and gender identities. What is needed is a contextualized analysis of existing disputes in order to avoid them being turned into an abstract normative dichotomy. Above all, such an analysis must be based on an adequate understanding of human rights, including FoRB. The main point I would like to clarify in this article is that FoRB epitomizes exactly the same normative structure that defines the human rights approach in general, i.e. it empowers human beings. By taking the empowerment function of FoRB systematically seriously, I will deconstruct the abstract dichotomy that supposedly exists between FoRB on the one hand, and respect for everyone in their sexual orientation and gender-identity, on the other. My overall interest is to recapture a holistic understanding of the various human rights norms at issue, all of which are ultimately “universal, indivisible and interrelated and interdependent”, to cite a formula coined by the 1993 World Conference on Human Rights.⁷ Without such a holistic human rights approach tens of millions of people whose life-situation is characterized by complex wishes, needs, identities and vulnerabilities, would remain confronted with a strange and ultimately artificial either-or-choice: either they opt for their religious freedom or they go for gender-related emancipation. However, what is if they wish to have both? This is the question we have to answer. A human rights agenda that aspires to do justice to the complex realities of human life cannot afford to remain stuck in abstract either-or-dichotomies.⁸

2. The Empowerment Function of FoRB

Supporters of rights-based SOGI agendas have often mixed feelings, to put it mildly, whenever religion is invoked. This is more than understandable. Even today, some of the laws criminalizing homosexual activities carry “sodomy” in their titles, thus conjuring up the notorious story of Sodom. Both in the Bible and the Qur’an the city of Sodom epitomizes sinful decadence, which eventually led to the total destruction by God of the town and its inhabitants. Numerous teachers and preachers from various religions and denominations continue to castigate homosexuality as deviant behaviour and demand that those suspected of homo-erotic inclinations be “healed” or removed from the community. Hetero-normative assumptions appears to be deeply rooted in many religious traditions, with the result that those not fitting into predefined gender roles are deemed “immoral” and a threat to society. They may even become victims of so-called “honour crimes” committed by their own families and sometimes applauded by religious

⁶ See Cumper (2015).

⁷ Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/24 (Part I), chapter III, section I, paragraph 5.

⁸ See article in this compilation by Momin Rahman titled “Towards a Dialogue between Muslims and LGBTI people: pathways and pitfalls”.

leaders and activists. Although not all of the stigmatization of people based on their sexual orientation and gender identity stem from religious prejudices – it also comes from medical standardization of “healthy sexuality” – religious traditions continue to provide justifications of homophobic and transphobic resentments, which affect and intimidate countless individuals. That explains the skepticism among activists toward religions in general – and possibly also towards the right to freedom of religion or belief.

However, the relationship between religion, on the one hand, and the human right to FoRB, on the other, is more complex than commonly assumed. Surely, FoRB deals with religion; that is a truism. Within the human rights framework, its function is to recognize the identity-shaping existential significance that religion has for numerous people; this also includes identity-shaping non-religious beliefs or convictions, which receive the same protection.⁹ But the important point is that FoRB tackles issues of religion or belief in a way that is fully in keeping with the human rights approach in general, which has been succinctly summed up in article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.” Thus, the right holders of FoRB are human beings, not religions or belief-systems as such. FoRB empowers human beings, all of whom should be recognized in their freedom to hold, confess and practice their religions or beliefs as they see fit, provided that this freedom remains compatible with the equal freedom of others.

Many of the grave misunderstandings around FoRB stem from a neglect or even ignorance of its nature as a human right. The fact that FoRB has “religion” in its title leads people to think that it gives an unqualified backing to whatever figures under the headline of religion: religious dogmas, religious truth claims, collective religious identities, religious norms or traditional religious family values. This is a source of endless confusion and countless misperceptions.¹⁰ Hence, one cannot emphasize enough that FoRB, when dealing with issues of religion or belief, will always focus on human beings, i.e. their dignity, freedom and equality. To put it in a nutshell: FoRB protects believers, not beliefs. Although one may wonder whether it is possible to separate believers from their beliefs, the point remains that FoRB, in keeping with the human rights approach in general, always addresses beliefs through the believers who are the ultimate right holders, strictly speaking.¹¹

This clarification has a direct bearing on the relationship between FoRB and SOGI issues. By placing the emphasis on the active role of human beings, FoRB deals with religion as a “lived” social reality, brought about by human practice, human understanding and human interpretation, all of which happens on a daily basis. As lived realities, however,

⁹ The UN committee in charge of monitoring the ICCPR has clarified in its General Comment no. 22 (1993) that FoRB must be broadly interpreted so as to cover “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief”. UN Doc. HRI/GEN/Rev.9, p. 205, paragraph 2.

¹⁰ See Bielefeldt (2013).

¹¹ Against a possible misunderstanding, I would like to emphasize that this does not presuppose a narrow individualistic understanding of FoRB. Communitarian, institutional and infrastructural components belong to the core of FoRB. However, the systematic point of departure remains the human being and his or her human dignity.

religions can change – and indeed do change.¹² FoRB can further broaden the scope for deliberate interpretative efforts by the believers themselves in the interest of change. In conjunction with freedom of expression, freedom of research and other rights to freedom, it opens up religious traditions to systematic questions and debates. This may lead to an enhanced awareness that religious attitudes towards diverse manifestations of sexuality are themselves an area of theological contestation, both within and between religious communities. Moreover, by empowering traditionally discriminated groups to voice their experiences, concerns and demands, FoRB can serve as a normative reference for challenging patriarchal values and hetero-normative assumptions that have become historically dominant in most religious traditions.

Now back to the question posed at the outset of this article: Can FoRB be invoked to foster respect for sexual diversity? The answer is yes, this possibility certainly exists. However, it is a possibility, not a guarantee, since it all depends on how FoRB is used in practice. FoRB is a human right to which liberals as well as conservatives, feminists as well as traditionalists, advocates of reforms as well as those defending the status quo can equally refer in order to promote their various religious agendas, including their conflicting religious views on SOGI issues. Hence, the mere existence of FoRB does not alter the fact that some believers may have strong reservations against lesbians, gays or trans-persons on religious grounds. The empowerment function of FoRB can be no guarantee that liberal or progressive religious voices will in the end get the upper hand. But this is something that FoRB has in common with other rights to freedom, such as freedom of expression, freedom of peaceful assembly or freedom of association. All of these rights can be harnessed for different purposes and different political agendas. From the very logic of a right to freedom, it follows that this right can be used in various ways. FoRB is no exception in this regard.

In light of FoRB, the above described conflicts in the area of religion and sexuality will certainly not disappear. However, based on an appropriate understanding of FoRB as an empowerment right, those conflicts need to be re-conceptualized. Instead of perceiving existing disputes as originating from an allegedly inherent antagonism between FoRB and recognition of the rights of people with different sexual orientation and gender identities, as the assumption often seems to be, it would be more appropriate to connect them with an ongoing contestation within and between religious communities, which FoRB brings to the fore. This is a very important change of perspective. Although FoRB does not provide the criteria on how to assess the disputed positions on their theological merits, which this is entirely left to the religious communities, it does empower people to at least voice the various positions that exist in this field, including positions which traditionally have been marginalized or even silenced. In conjunction with other human rights, such as freedom of expression, FoRB thus can play a role in enhancing respect for people with diverse sexual orientations and gender identities. This potential is often overlooked.

¹² See the article by Mark Barwick on “The Ground We Share: Values, Religion and Sexualities” in this compilation.

3. Invocations of FoRB in the Context of SOGI-debates

Having emphasized the empowerment function that FoRB has in common with other human rights, I would now like to briefly structure the field of conflicts – perceived and real conflicts – between FoRB and SOGI within the overall framework of human rights. I will first give a few examples where an assumed normative conflict actually does not exist, because not all invocations of religion represent a legitimate FoRB issue. Subsequently, I will turn to the area of conflicts originating e.g. from religiously motivated reservations to SOGI interests (3.2). This is the very conflict constellation which many observers consider to constitute the predominant pattern defining the relationship between FoRB and SOGI in general. It is all the more important to also point to possible synergies between these two rights, e.g. in the shape of new readings of religious sources from the perspective of sexual diversity (3.3).

3.1 Not a FoRB Issue: Religiously Motivated Acts of Homophobic Violence

As a human right to freedom, FoRB covers non-coercive religious practices broadly. It cannot become a pretext for destroying or nullifying the human rights of others. Thus, acts of homophobic or transphobic violence committed in the name of religion can never be justified with reference to FoRB. This may sound like a trivial remark. However, the strange misunderstandings, to which FoRB is often exposed, can actually include utterly absurd presuppositions, often in total ignorance of the spirit of human rights that FoRB epitomizes. In panel discussions, it may happen that a discussant simply equates FoRB with “religion”, thus assuming that whenever the label “religion” is used, the practice thus labelled is a manifestation of FoRB. Questions have even been raised whether the death penalty for homosexual activities, which regrettably still exists in the law books of a few States, could hypothetically be justified in the name of FoRB.¹³ The answer, of course, is no. The same is true with regard to militant homophobic vigilantism exercised by non-State actors under the auspices of various religions, or violent attacks on gay-pride demonstrators, regardless of the motivation underneath such acts of violence. Whenever religion is used – or as many believers would prefer to say: abused – to commit or legitimize violence, this has nothing to do with human rights; consequently, it has nothing to do with the human right to FoRB. It is sad enough that this triviality is even worth mentioning.

Of course, borderline cases may come up, in which the assessment is more difficult. One example is religiously colored homophobic hate speech that remains below the threshold of incitement to discrimination, hostility or violence.¹⁴ People who wish to voice their disapproval of homosexuality in unpleasant or aggressive ways often invoke their freedom of expression in conjunction with FoRB and other rights. As mentioned

¹³ See http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf (page 37).

¹⁴ The issue of incitement to discrimination, hostility or violence has recently attracted renewed attention in the international community. A series of regional consultations organized by the UN Office of the High Commissioner for Human Rights (OHCHR) culminated in October 2012 in the elaboration of the Rabat Plan of Action dedicated to this problem. For details see Bielefeldt/ Ghanea/ Wiener (2016), pp. 495-506.

previously, rights of freedom can in fact be employed in different ways, including in ways that might displease, shock and disturb others. This is the price a free society must be willing to pay. Legal prohibitions should remain a last resort, and they must be linked to clearly defined, high thresholds; otherwise they can easily become the pretext for shrinking the space for public discourse, dissent and contestation more and more.

As it is the case with freedom of expression and other rights to freedom, manifestations of FoRB can, when necessary, be limited by law, but this is only permissible if all the criteria for limitations are unambiguously met.¹⁵ Given the obvious risk of political misuse, limitation clauses always require diligent and cautious handling. In case of doubt, it seems advisable to refrain from employing legal sanctions or other restrictive measures. There is a plethora of possibilities to counter hate speech by taking non-restrictive initiatives, for instance, public solidarity demonstrations for targeted individuals or groups, educational efforts to overcome negative religious stereotypes, public awareness-raising campaigns and other measures. Notwithstanding the formal human rights obligations of States in this regard, religious communities, too, have a particular responsibility to respond quickly and clearly to any hate manifestations occurring in their name.

3.2 Examples of Normative Conflict: Conservative Religious Reservations

Traditional views on gender-roles have shaped people's normative expectations throughout the generations, possibly since time immemorial. Changes – in particular rapid changes – occurring in this area, as a result of new insights or newly developed societal sensitivities, may thus cause anxieties and meet with reluctance, often voiced in the language of traditional religious family values. This is also reflected in tensions which have arisen between certain FoRB claims and SOGI concerns. Representatives of various religious communities have publicly campaigned against same-sex marriages or anti-discrimination laws that prohibit discrimination on the grounds of sexual orientation or gender identity. Most religious communities still do not permit openly living gays and lesbians to join their clerical ranks. Gay priests or other clerics have been removed from their positions after coming out in the open.¹⁶ Some charity organizations operating on a conservative religious mission statement formally exclude gays or lesbians from their services. Individuals have claimed conscientious objection against getting involved with same-sex marriage ceremonies, even though this falls within the remit of their professional duties. There are numerous examples of such conflicts and disputes, only a few of which have made headlines or have ended up before a national or regional court. Finding appropriate ways of settling such conflicts is a complicated task. However it can succeed, “if policy makers embrace nuanced religious liberty

¹⁵ Criteria for justifiable limitations are listed in article 18, paragraph 3 of the ICCPR and similar FoRB provisions. For details see Bielefeldt/ Ghanea/ Wiener (2016), pp. 551-570.

¹⁶ See the book by Krzysztof Charamsa (2016) as well as his article in this compilation.

accommodation qualified by hardship to the public”, as Robin Fretwell Wilson admonishes.¹⁷

Although there is no recipe for coping with the manifold conflicts in this area, I would like to briefly point to some guiding principles which should be considered. Based on a holistic understanding of the ultimate interrelatedness of all human rights, none of the human rights concerns at issue in a dispute can simply be discarded. Just as it would be wrong to use FoRB as a blanket norm in the name of which rights-based SOGI concerns could be pushed aside, it would likewise be false to invoke gender-oriented human rights to ridicule or marginalize FoRB concerns. No right can “trump” another human right in the sense of rendering it irrelevant.¹⁸ Instead, the task remains to search for a way that does justice, to the maximum degree possible, to all the human rights concerns at stake in a concrete context. This requires a careful empirical analysis of the nature of the conflict as well as precise knowledge of the relevant human rights norms, including different degrees of legal protection. For instance, the protection of FoRB is stronger when relating to the internal affairs of a religious community (e.g. the autonomous recruitment of clergy) than when occurring within society at large (e.g. in the case of an adoption agency offering its societal services on the basis of traditional religious family values).

Human rights are connected to legal remedies in order to make sure that right holders do not depend on the mercy of others. However, before going to court, it may be advisable to first explore the potential of non-judicial conflict settlement. Pragmatic arrangements in cases of conscientious objection against getting involved in same-sex marriage ceremonies may help avoid cumbersome litigation, which often causes bitterness between the conflicting parties. In 2012, Denmark introduced a law that entitles same-sex couples to marry in the Evangelical Lutheran Church, which has the constitutional status of “the People’s Church” (“Folkekirke”).¹⁹ Those comparatively few pastors who on religious grounds refuse to officiate in such ceremonies are left alone, which does not seem to create problems in practice, since there is no shortage of Folkekirke pastors who gladly offer their services to same-sex couples. Another interesting example of accommodating conflicting viewpoints is the recently negotiated “Utah Compromise”, which ensures non-discrimination on the basis of sexual orientation and gender identity in public life, employment, accommodation etc., while exempting church-internal regulations from legal non-discrimination stipulations in this field. Many observers were surprised that the LDS Church (“Mormon Church”), which generally has a reputation of sticking to rather conservative family values, agreed to that compromise, which itself certainly leaves many wishes open.

¹⁷ Wilson (2012), p. 1508.

¹⁸ The metaphor of “trump rights” has been coined by Ronald Dworkin. However, he mainly used it with regard to public order interests that could be “trumped” by individual rights. See Dworkin (1977).

¹⁹ See preliminary findings of the visit to Denmark undertaken as UN special rapporteur on FoRB, March/April 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18500&LangID=E>.

Surely, pragmatic accommodation will not always lead to acceptable results, and some conflict situations require clear political or judicial decisions. At the end of the day, this can mean giving a contextualized priority to one of the rights-based claims over the other. Even then, however, the decision-making should not be carried out on the understanding that one right “trumps” the other, which itself would thereby become irrelevant. From a holistic understanding, there can be no abstract hierarchy of rights that would justify such a “trump rights” language. In a critical assessment of the 2013 Ladele judgment, in which the European Court of Human Rights dismissed the claims of an Evangelical registrar who had refused to officiate in same-sex partnership dealings, Maria Valero Estrellas points out: “Conscientious objection to specific work-tasks connected with same-sex couples is an emerging and highly sensitive issue that should not be played out as an easy game of win-all or lose-all.”²⁰ Accordingly, when human rights based claims collide, even the losing party should be able to feel that their human rights issues have been handled diligently. I agree with Valero Estrellas that the Ladele case is a lost opportunity in this regard, because the Strasbourg court did not embark on a careful analysis of the proportionality of the measures taken against the applicant; instead the Court too quickly invoked its doctrine of a wide margin of appreciation left to member States.²¹

3.3 Possible Synergies: Exposing Religious Sources to Innovative Interpretations

The right to FoRB, with its consistent focus on human beings, addresses religion as a lived social reality upheld by human beings. In this sense, religion is always “interpreted” religion, shaped by human understanding and human practice. This happens inevitably and on a daily basis. Thus, interpretation is not merely an academic discipline; it is also part of the human life-world in general. Moreover, interpretation is not limited to the work of experts in exegesis, theology or religious ethics; it also occurs through ordinary believers who may have their own ways of believing and practicing their faith. Interpretation can be an explicit enterprise undertaken by individuals who want to see theological changes and reforms; but it may also happen implicitly through gradual adjustments of religious practices to the standards of modern life.

One of the contributions of FoRB is that it further opens up religious traditions to new questions, critical discussions, expressions of doubts and explicit reform agendas. Surely, religious traditions have always been areas of internal contestation. However, with the advent of FoRB as an international right to freedom this has become clearer and more explicit than ever before. FoRB can thus encourage the elaboration of innovative positions within religious discourses, including feminist theologies, queer theologies and the exegesis of religious texts from diverse sexuality and gender perspectives. As Ayelet Shakhar points out from a feminist point of view, far-reaching internal reforms within

²⁰ Valero Estrellas (2016), at p. 45.

²¹ While criticizing the judgment, I certainly do not subscribe to the dissenting views expressed by two judges who wrongly assume that any act of conscientious objection of moral grounds falls within the absolutely protected *forum internum* of FoRB. See also Bielefeldt/ Ghanea/ Wiener (2016), pp. 258-305.

religious traditions are certainly not easy and yet have proved possible: “The challenges for feminist and other equity-seeking religious interpreters are significant. Beyond gaining access to the historically male-dominated ‘temple of knowledge,’ they must work within the tradition’s hermeneutic horizons so that their re-interpretative claims cannot be dismissed as ‘inauthentic.’ This path of change-from-within may take years to achieve, but the winds of change are already blowing through the world’s major religious traditions.”²²

Recently, we have also seen innovative attempts to decipher religious sources and theological concepts from the hermeneutical viewpoint of sexual diversity. “Queer theology” is a very new phenomenon; it is not even much contested within the various religious communities, since most believers have never heard of it. Yet the crucial point is: it has come into existence. For instance, Krzysztof Charamsa demands that the diversity of sexual orientations and gender identities should be appreciated as part of the creation and thus willed by God.²³ Michael Vermeulen is convinced that Buddhist teachings, if rightly understood, might strongly support contemporary SOGI agendas.²⁴ In an article on the prospects of SOGI advancements within an Islamic frame of reference, Javaid Rehman and Eleni Polymenopoulou have raised the question: “Is green part of the rainbow?” Their answer is affirmative: yes, the rainbow, symbol of the SOGI movement, could in principle also accommodate the colour of the Islamic prophet, which is green – and vice versa.²⁵ Organizations like Muslims for Progressive Values operate on precisely that understanding. Even if many Muslims might disagree with those new readings of the Islamic sources, the crucial point is that such discussions have begun to take place within various religious communities and traditions. As mentioned before, FoRB cannot provide the criteria for assessing the disputed theological positions on their merits; but it certainly contributes to making such debates possible, which in itself is an important contribution.

4. The Need to Overcome Abstract Dichotomies

Concerns brought forward under FoRB, on the one hand, and claims for respecting everyone in their sexual and gender diversity, on the other, will certainly continue to cause complicated political and legal disputes, including litigation before national and international courts. This is not an area where quick and easy solutions are to be expected. However, the tensions that have arisen between FoRB and SOGI issues cannot adequately be described as a zero-sum-conflict. It is simply not true that any victory for FoRB equals a defeat for SOGI interests, or vice versa. FoRB is not just an obstacle on the long path toward more respect for sexual diversity, and laws prohibiting discrimination against people based on their sexual orientation or gender identity do not threaten

²² Shachar (2013), at p. 127.

²³ See the article by Krzysztof Charamsa on “Discrimination of sexual minorities: A case of teaching and practices of the Catholic Church” in this compilation.

²⁴ See the article by Michael Vermeulen on “The rise of Rainbow Dharma: Buddhism on sexual diversity and same-sex marriage” in this compilation.

²⁵ See Rehman and Polymenopoulou, E. (2013).

religious freedom. Being sympathetic to both FoRB and SOGI agendas is certainly not a self-contradictory “schizophrenic” attitude, as those sticking to antagonistic interpretations would have us believe.

Breaking through the frequently assumed abstract dichotomy between FoRB and SOGI-related rights is the sine qua non for finding viable compromises and searching for possible synergies. More importantly, it is the precondition for doing justice to human beings. The flawed assumption that one has to make a “choice” between either of these rights would tear the life-world of countless human beings apart. Why are they confronted with such an artificially imposed either-or? Why should they be deprived from enjoying all their human rights? It is true that many lesbians, gays, bisexuals, trans- and intersex persons, owing to frustrating experiences of homophobic stigmatization within religious communities, may prefer not to be in touch with any religion. If FoRB is of any interest to them, they might most likely request their freedom from religion.²⁶ But this is certainly not everyone’s preference. One can merely conjecture that probably tens of millions of people worldwide live in circumstances where they would actually need both: respect for their religious identities, in accordance with their religious self-understandings, as well as the freedom to live in harmony with their sexual orientations or gender identities. A dichotomized understanding of the relationship between FoRB and SOGI rights would reinforce existing boundaries rather than removing them.²⁷

When visiting Bangladesh in my capacity as UN Special Rapporteur on FoRB,²⁸ I met with an organization of gays who told me that, according to an investigation conducted internally, the vast majority of their members are religiously interested and religiously practicing; many of them regularly attend the Islamic Friday prayer. At the same time, they are exposed to hostile prejudices, including the widespread stereotypical assumption that a gay person must per definition be an “atheist”, since homosexual behavior is considered to deviate from the traditional norms of religious ethics. Obviously, this creates extremely stressful situations, in which many individuals feel literally torn between the various aspects of their personal identity. In Bangladesh this can be a matter of life and death. Things can become complicated, albeit to different degrees, in all parts of the world. The spokesperson of gay Muslims in an Eastern European country narrated that he often feels excluded from both his religious community as well as the gay community. After coming out as gay, he experienced inimical reactions from his religious environment. At the same time, he said, he often feels alienated from the gay community, some of whose members presuppose that the only reasonable way for a homosexual person to deal with religion is to simply turn away from it.

²⁶ Freedom *from* religion is a recognized component within FoRB, which qua its nature as a right to freedom, necessarily includes the freedom not to profess a religion or belief, not to practice, not to worship etc.

²⁷ See also the article by Mark Barwick on “The Ground We Share: Values, Religion and Sexualities”.

²⁸ See UN Doc. A/HRC/31/18/Add.2, paragraphs 92-95.

Construing the relationship between FoRB and SOGI rights as an abstract either-or-dichotomy would ultimately amount to betraying the yearnings of all those tens of millions of people whose life situation is characterized by complex needs and multiple vulnerabilities. It would further deteriorate their prospects to ever reconcile the various components of their identity in order to live in peace with themselves and their social environment. However, as Deputy High Commissioner Kate Gilmore pointed out, it would be very strange to separate the arguably two most existential dimensions of human life artificially from each other: love and faith. It would be even stranger to pit them against each other. To do so in the name of human rights would be utterly absurd. Hence, there is no viable alternative to working for a holistic human rights approach as well as a consistent human rights practice based on such a holistic understanding. Although the relationship between FoRB and SOGI rights can at times become complicated, both norms do belong together, and they should be applied in conjunction in order to do justice to the complexities of human life.

References

- Bielefeldt, H. (2013). Misperceptions of freedom of religion or belief. *Human Rights Quarterly*, 35, 33-68.
- Bielefeldt, H., Ghanea, N., & Wiener, M. (2016). *Freedom of religion or belief. An international law commentary*. Oxford: OUP.
- Charamsa, K. (2016). *La Prima Pietra. Io, prete gay a la mia ribellione all'ipocrisia della Chiesa*. Milano: Rizzoli.
- Cumper, P. (2015). Freedom of religion and human rights laws - awkward bedfellows. In M. Van den Brink, S. Burri, & J. Goldschmidt (Eds.), *Equality and human rights: nothing but trouble?* (pp. 283-304), Utrecht: SIM, Netherlands Institute of Human Rights.
- Dworkin, R. (1977). *Taking rights seriously*. Boston: Harvard University Press.
- Holtzleithner, E. (2011). Intersektionen von Gender und Religion im Menschenrechtsdiskurs. Der Fall sexueller Orientierung. *Zeitschrift für Menschenrechte*, 5, 22-40.
- Donald, A., & Howard, E. (2015). *The right to freedom of religion or belief and its intersection with other rights*. Research Paper for ILGA-Europe, Middlesex University School of Law.
- Howard, E. (2015). Religious rights versus sexual orientation discrimination: A fair deal for everyone. *Religion and Human Rights*, 10, 128-159.
- Mir-Hosseini, Z. (2009). Classical fiqh, contemporary ethics and gender justice. In K. Vogt, L. Larsen, & C. Moe (Eds.), *New directions in Islamic thought. Exploring reform and Muslim tradition* (pp. 77-88). London: Tauris.
- O'Flaherty, M. (2013). Sexual orientation and gender identity. In D. Moeckli, S. Shah, & S. Sivakumaran (Eds.), *International human rights law*, 2nd edn (pp. 331-344). Oxford: OUP.
- Rehman, J., & Polymenopoulou, E. (2013). Is green part of the rainbow? Sharia, homosexuality and LGBT rights in the Muslim world. *Fordham International Law Journal*, 37, 1-52.
- Shachar, A. (2013). Entangled: family, religion and human rights. In C. Holder, & D. Reidy (Eds.), *Human rights. The hard questions* (pp. 115-135). Cambridge: CUP.
- Valero Estrellas, M. J. (2016). State neutrality, religion, and the workplace in the recent case law of the European Court of Human Rights. In W. Cole Durham, Jr., & D. Thayer (Eds.), *Religion and equality. Law in conflict* (pp. 35-55). London: Routledge.
- Wilson, R. F. (2012). *The calculus of accommodation: Contraception, abortion, same-sex marriage, and other clashes between religion and the state*. Washington and Lee University School of Law Research Paper, October 2 2012, pp. 1417-1513.

Clashing rights?

Freedom of Religion or Belief and Equality for LGBT People

Erica Howard¹

1. Introduction

This paper is based on a report commissioned by ILGA-Europe, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (Donald and Howard, 2015). ILGA-Europe asked us (Dr Alice Donald and author) to examine how the right to freedom of religion or belief intersects with other human rights and particularly with the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people. The aim of the paper was to assist ILGA-Europe and other interested parties to respond to such situations in a manner which is consistent with the standards and principles enshrined in both human rights and equality law at European and international level.

The fundamental human rights to freedom of religion or belief and to be free from religious discrimination and the right to be free from discrimination on the grounds of sexual orientation and gender identity are often said to be in conflict with each other and with other fundamental human rights. The ILGA report sets out a framework, based on international human rights law, for the practical resolution of these situations of apparent conflict. This framework is made up of a set of principles and of some ground rules for negotiating a practical resolution in these cases and these will be discussed in this chapter. Before this discussion, a quick overview of the relevant rights is given.

2. The Right to Freedom of Religion or Belief

The right to freedom of religion or belief is a fundamental human right recognised in all major human rights treaties. Article 18 of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations (UN) in 1948, Article 18(1) of the International Covenant on Civil and Political Rights 1966 (ICCPR), and Article 9(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR) all guarantee freedom of thought, conscience and religion. All three state that this includes freedom to change one's religion or belief and freedom, either alone or in community with others and in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance.

The UN also adopted, in 1981, a Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (Declaration on Religion or Belief). Article 1 of this Declaration is very similar to the above guarantees of freedom of

¹ Erica Howard is Associate Professor of Law at Middlesex University, London, United Kingdom.
(✉) E.Howard@mdx.ac.uk

religion or belief; in addition, it states that ‘this right shall include freedom to have a religion or whatever belief of his choice’ and it determines, in Article 1(2), that ‘no one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice’.

Under all these instruments, freedom of religion or belief has two components: first, the freedom of thought, conscience and religion, which covers the right to hold or change one’s religion or belief; and, second, the right to manifest one’s religion or belief. The first right cannot be restricted under any circumstances, but, according to Articles 18(3) ICCPR and 9(2) ECHR, the second right can be limited if this is prescribed by law and necessary – Article 9(2) ECHR states ‘necessary in a democratic society’ - for the protection of public safety, public health or morals or for the protection of the rights and freedoms of others. ‘Necessary in a democratic society’ has been interpreted by the European Court of Human Rights (ECtHR), the Court overseeing the ECHR, as meaning that the interference with the right must fulfil a pressing social need and there must be a reasonable relationship of proportionality between the aim of the restriction and the means used to achieve that aim.² Article 18 UDHR allows for similar restrictions, as does the Declaration on Religion or Belief. So the right to manifest one’s religion or belief can be restricted.

3. The Right to be Free from Discrimination

The right to be free from discrimination is also a fundamental human right recognised in all major human rights instruments. Article 1 UDHR proclaims: ‘All human beings are born free and equal in dignity and rights’ and Article 2 then continues that everyone is entitled to enjoy the rights and freedoms in the Declaration ‘without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Article 7 then declares that: ‘All are equal before the law and are entitled without any discrimination to equal protection of the law’. Articles 2 of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) contain similar guarantees to Article 2 UDHR. Article 26 ICCPR also contains a prohibition of discrimination. The ECHR contains a non-discrimination clause in Article 14: ‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

However, despite the extensive list of prohibited grounds, Articles 2 UDHR, ICCPR and ICESCR and Article 14 ECHR do not provide a freestanding right to non-discrimination. They only secure the enjoyment of the rights and freedoms in the instrument without distinction or discrimination. Therefore, discrimination can only be challenged in

² ECtHR, *Handyside v the United Kingdom*, Application No. 5493/72, 7 December 1976, para. 49. See also Human Rights Committee, General Comment 22, para. 8.

relation to other rights and a victim of discrimination cannot claim a breach of the anti-discrimination article alone. There are two exceptions to this: Article 26 ICCPR which provides a freestanding right that can be invoked without having to be linked to another protected right; and Protocol 12 to the ECHR, which prohibits discrimination in 'the enjoyment of any right set forth by law'. However, the Protocol is not widely signed and ratified. Although it came into force in 2005, only 19 out of the 47 Council of Europe states have signed and ratified it.

All the above instruments mention religion as one of the prohibited grounds of discrimination, but none of them mention sexual orientation or gender identity. However, all mention 'or other status'. This means that other grounds of discrimination can be recognised as falling under the guarantee. The Human Rights Committee (HRC) has held that 'sex' in Articles 2(2) and 26 ICCPR includes sexual orientation,³ while the Committee on Economic, Social and Cultural Rights (CESCR), which oversees the ICESCR, has also indicated that sexual orientation discrimination is covered by Articles 2(2) and 3 ICESCR (on equal rights between men and women).⁴ Gender identity has also been mentioned by both Committees.⁵ Thus, discrimination on the grounds of religion, sexual orientation and gender identity is expressly prohibited by the UN instruments. According to the ECtHR case law, these grounds are also covered by Article 14 ECHR.⁶

The right not to be discriminated against is not an absolute right. For example, the ECtHR has held that the equal treatment principle in Article 14 is only violated if the distinction has no objective and reasonable justification. To be justified, a difference in treatment must not only pursue a legitimate aim, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

4. Resolving Situations of Competing Rights: Principles and Ground Rules

The right to freely manifest one's religion or belief can, as mentioned, be restricted for, among other aims, the protection of the rights of others. This includes the right of others not to be discriminated against, including the right not to be subjected to hate speech, for example on the grounds religion or belief or of sexual orientation or gender identity. Thus the right to manifest one's religion and to be free from religious discrimination can also come into apparent conflict with the rights to freedom of expression and freedom of assembly, which are also both rights guaranteed by all major human rights instruments. Freedom of expression would be engaged where someone is expressing their religion or

³ HRC, *Toonen v Australia* (488/1992) CCPR/C/50/D/488/1992, 1-3 IHRR 97 (1994), para. 8.7.

⁴ See CESCR, General Comment No. 14, para. 12; General Comment No. 15, para. 18; General Comment No. 18, para. 12; and, General Comment No. 20, para. 32.

⁵ See, e.g. HRC, Concluding Observations on Ireland, para. 7, and on the United Kingdom, para. 5; and, CESCR, General Comment No. 20, para. 32.

⁶ Sexual orientation: ECtHR, *Salgueiro da Silva Mouta v Portugal*, Application No. 33290/96, 21 December 1999; gender identity and being transgender: ECtHR, *PV v Spain*, Application No. 35159/09, 30 November 2010.

belief or where someone is expressing views about the religion or belief of others, which might be deemed offence by those others. Freedom of assembly can be engaged when LGBTI people want to hold peaceful assemblies, rallies or parades (for example, Gay Pride parades), but also when religious organisations want to protest and hold vigils outside abortion clinics. Both rights, to freedom of expression and to freedom of assembly, can be restricted under prescribed circumstances which are similar to those applying to the right to freedom of religion or belief.

However, it must be kept in mind that all these rights can also intersect in a complementary and mutually reinforcing way; for example, an individual who manifests their religion or belief may be protected by freedom of religion, freedom of expression, freedom of assembly and/or the right to be free from discrimination.

So, how should situations where there are apparent conflicts between rights be solved? The ILGA report provides a framework for the practical solution of situations where such an apparent conflict arises. This framework consists of eight inter-related principles which have been derived from international human rights law and some ground rules for negotiating such situations. These will be discussed next.

5. Principles Established in Human Rights Law

5.1 The principle of non-discrimination

This means that there is ‘no right to discriminate’. The prohibitions of discrimination in the international instruments cover, as has been explained, both religion or belief and sexual orientation and gender identity. When these rights come into conflict, the national courts must strike a fair balance between the competing rights and interests at stake. In respect of freedom of religion or belief, any restriction on this right should not be discriminatory in the sense that it bears more directly or more harshly on the followers of one religion or belief than another.

In respect of claims for religiously-motivated refusals to provide goods or services to same-sex couples, courts have consistently held either that the requirement to provide goods and services to the public in a non-discriminatory way is not an interference with religious freedom, or that such interference is justified by the goal of combating discrimination. A good example is the ECtHR case of *Eweida and Others v the United Kingdom*.⁷ Two of the applicants in this case, a registrar of birth, deaths and marriages (Ladele) and a relationship counsellor (McFarlane), refused to perform those parts of their duties which involved providing a service to same-sex couples, due to their Christian belief that homosexuality is against God’s law. In relation to both applicants, the ECtHR considered that their employer’s policy pursued a legitimate aim - to provide

⁷ ECtHR, *Eweida and Others v the United Kingdom*, Application Nos 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013.

its services without discrimination. The Court mentioned that the right not to be discriminated against on the ground of sexual orientation is also protected under the ECHR. The ECtHR then examined whether the means used to achieve the legitimate aim were appropriate, or, in other words, whether a fair balance had been struck between the competing interests at stake. The Court also held that the national authorities are allowed a wide margin of appreciation when it comes to striking a balance between competing Convention rights. In both cases, the State did not exceed this margin and no violation of Article 9 ECHR or Article 14 in conjunction with Article 9 was found.

5.2 The principle of neutrality and impartiality

The state is required to act in a neutral fashion as between religions and as between religious and non-religious forms of belief. This means that any protection or restriction should be generic and not focused on a particular religion or belief. It also excludes any discretion on the part of the state to determine whether religious beliefs or the means used to express those beliefs are legitimate.⁸

The HRC has commented that ‘the fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 (freedom of religion) and 27 (right of ethnic, linguistic and religious minorities), nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26’.⁹

5.3 The principle of the respect for the right of others to believe

This principle is a key factor when assessing the necessity of any interference with the manifestation of a religion or belief; it establishes the duty of the state to create a ‘level playing field’ between different groups, including both those with religious or non-religious beliefs and those with no religion or belief, with one side being free to present their point of view, and the other to reject it. The principle of respect is thus sensitive to imbalances of power and seeks to ensure that those who ‘enjoy “superiority” over others, educationally, socially, politically or in any other fashion, are not unduly advantaged in an exchange of ideas’. The principle may be summarised as respecting the believer rather than the belief.

⁸ ECtHR, *Manoussakis and Others v Greece*, Application No. 18748/1991, 26 September 1996, para. 47.

⁹ HRC, General Comment 22, para. 9.

The right to freedom of religion or belief includes the right to try and convert others, as 'teaching' is mentioned as part of manifesting one's religion or belief. But this does not mean that a religious person can express their religion or belief in all circumstances and improper proselytising is not allowed. An example of improper proselytising can be found in *Larissis v Greece*, where army officers tried to convert the soldiers under their command.¹⁰

Part of the principle of respect for the rights of others to believe is that, in human rights law, there is no right not to be offended. Freedom of expression includes expressions that may be regarded as deeply offensive, shocking or disturbing;¹¹ and, religious believers cannot expect to be exempt from criticism.¹² The right to change religion or belief would not be meaningful without open debates about religions and belief with room for criticism and even denial of other people's religion or beliefs. This is very much linked to the next principle.

5.4 The principle of pluralism and tolerance

Pluralism and tolerance are fostered by the application of the two previous principles of state neutrality / impartiality and respect. But, the principle of fostering pluralism and tolerance is also viewed as a goal in its own right because it is a means of preserving democracy. This principle requires that religious adherents accept that their belief systems will be challenged. But the same applies to non-believers who have to tolerate manifestations of religion or belief which they might find unpalatable. The role of the state here is to encourage pluralism and promote tolerance between different groups.

5.5 The principle of institutional and personal autonomy

Freedom of religion or belief under international human rights law protects not only individuals but also communities and organisations. The right to freedom of religion (along with the right to freedom of association) thus protects religious organisations and communities from state intrusion into their associative life and governance or into doctrinal or other internal disputes, to the extent that this is compatible with the rights and freedoms of others. Personal autonomy is also protected under human rights law, for example, Articles 17 ICCPR and 8 ECHR protects the right to respect for private and family life, home and correspondence.

5.6 The principle of proportionality

This is one of the key principles in human rights law. As mentioned above, the concept of justification plays an important part in both human rights and in anti-discrimination

¹⁰ ECtHR, *Larissis and Others v Greece*, Application Nos 23372/94, 26377/94 and 26378/94, 24 February 1998.

¹¹ HRC, General Comment 34; and ECtHR, *Handyside v the United Kingdom*, App. No. 5493/72, 7 December 1976, para.49.

¹² *Otto-Preminger-Institut v Austria*, Application No. 13470/87, 20 September 1994, para. 47.

measures and claims under either or both are often unsuccessful because the interference or restriction is considered to be justified. To be justified, a restriction or limitation must have a legitimate aim and the means used to achieve this aim must be proportionate and necessary. This means that all interests at stake must be considered and balanced against each other: a fair balance needs to be struck between the rights of the individual and the interests of the state, employer, service provider or the rights of others. Whether a restriction is objectively justified and thus is proportionate, depends very much on the facts of each particular case. This means that the outcome of an individual case cannot be used as a basis for making general and abstract determinations about competing rights or about the outcome of any specific case.

The balancing of interests required in situations of apparently competing rights should involve a consideration of the question whether the legitimate aim of the restriction on the right could have been achieved by less restrictive or less discriminatory means. It can be argued that this comes close to a duty of reasonable accommodation of religious observances or practices.¹³ Such a duty exists in the United States and Canada and is subject to the proviso that accommodation should not lead to undue hardship. The Special Rapporteur on Freedom of Religion or Belief has also suggested that the provision of reasonable accommodation as it is laid down in Article 5 of the Convention on the Rights of People with Disabilities 'should be understood as part of the legal responsibility of States, including as regards the guarantee of freedom of religion or belief'.¹⁴ However, he also stated that 'against a widespread misunderstanding, the purpose of reasonable accommodation is not to "privilege" religious or belief-related minorities, at the expense of the principle of equality'.¹⁵

5.7 The principle that there is no hierarchy of rights

Human rights law abhors the notion of a hierarchy of rights and all human rights deserve equal respect. No right should be given more weight or trump other rights. There is also no hierarchy of discrimination grounds. In situations of competing rights, the balancing exercise should not be seen a 'zero sum' game, in which a gain for one side in a conflict necessarily entails a corresponding loss for the other side; rather, it is one in which compromise may be required from both sides. In each instance, an attempt should be made to maximise each of the rights engaged and to ensure that none is inappropriately sacrificed.

5.8 The principle of legality

This principle can be found in the requirement that any restriction on fundamental rights must be prescribed by law. This means that restrictions on the right to manifest

¹³ See on this: Howard, E. (2013) and the authors referred to there.

¹⁴ General Assembly, UN, 69th session, Interim Report Special Rapporteur, H. Bielefeldt, on Freedom of Religion or Belief, para. 62.

¹⁵ Ibid. para. 72.

one's religion or belief must not be arbitrary or irrational. They must be clear, publicly accessible, non-retrospective, and people must be able to understand the circumstances in which they might be imposed and should be able to foresee, with a degree of accuracy, what the consequences of their actions will be if they do not conform to the restrictions.

6. Conclusion

The eight principles deduced from human rights law summarised above can help in solving situations where rights appear to come in conflict with each other. In the ILGA-Europe report, we advocate that these human rights based principles should be used not only within courts and tribunals but also in the wider public sphere. They can be used in any situation where an apparent conflict might arise. In such situations, a balancing of all interests involved could help to find a solution. We also advocate that differences should be negotiated outside the courts and that litigation should be avoided, although this will not always be possible and some litigation will be unavoidable. But in many instances, litigation will not resolve the apparent conflict, but could rather make it worse because the adversarial character of a court case tends to magnify underlying tensions and differences, and put parties in opposite corners each stressing their own identities or characteristics.

The ILGA report also suggests a number of ground rules for negotiating differences outside the courts. Negotiations should take place in good faith, with honesty and openness to the other's point of view. There should be mutual respect for the right of all to express views and a non-judgemental approach to each other. The parties should also be willing to engage in mediation, negotiation and conciliation to resolve differences. All parties should be aware of the need to avoid essentialising religions or beliefs or misattributing certain views or values to entire groups or communities, whether these are communities identified by their religion or belief, their sexual orientation or gender identity or any other characteristic. And, last but not least, it is very important that legal cases are reported in a way which is accurate and socially-contextualised, since erroneous reporting of high-profile cases may make tensions between religion or belief and other interests appear more prevalent or intractable than they actually are. Cases have often been reported or even partially misreported and then this is used as evidence of the existence of wider conflicts. But, these legal cases are not necessarily representative of common experience or a reliable indicator of the place of religion or belief (or specific religions or beliefs) in society.

References

Committee on Economic, Social and Cultural Rights, General Comment No. 14, Right to the Highest Attainable Standard of Health, 2000

Committee on Economic, Social and Cultural Rights, General Comment No. 15, Right to Water, 2002

Committee on Economic, Social and Cultural Rights, General Comment No. 18, Right to Work, 2005

Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in Economic, Social and Cultural Rights, 2009

Donald, A. and Howard, E. (2015). *The Right to Freedom of Religion or Belief and its Intersection with Other Rights* (Research Paper for ILGA-Europe): http://www.ilga-europe.org/sites/default/files/Attachments/the_right_to_freedom_of_religion_or_belief_and_its_intersection_with_other_rights_0.pdf

Howard, E. (2013). Reasonable Accommodation of Religion and other Discrimination Grounds in EU law. *European Law Review*. 38, 3, 360-375

General Assembly of the United Nations, 69th Session, A/69/261, Interim Report of the Special Rapporteur, Heiner Bielefeldt, on Freedom of Religion or Belief, para. 62, <http://www.ohchr.org/Documents/Issues/Religion/A.69.261.pdf>

Human Rights Committee, General Comment 22, Article 18, HRI/GEN/1/Rev.9, 1993

Human Rights Committee, Concluding Observations on the United Kingdom, CCPR/C/GBR/CO/6, 2008

Human Rights Committee, General Comment 34, Article 19, CPR/C/GC/34, 2011

Human Rights Committee, Concluding Observations on Ireland, CCPR/C/IRL/CO/4, 2014

The rise of Rainbow Dharma: Buddhism on sexual diversity and same-sex marriage

Michael Vermeulen¹

1. From Pride to Enlightenment?

Can you take part in Gay Pride as well as Buddhist meditation? In other words: is being queer² a road-block on the spiritual journey towards Enlightenment? Or is it a highway? Or does it not matter? Many people - Buddhists and non-Buddhists alike - believe Buddhism is very accepting of diversity, including sexual diversity. We live in times where religion often advocates homo-hatred, even murders. Given such a hostile religious context, Buddhism can indeed be proud of the fact it has no history of hate-speech or physical violence towards sexual minorities. But it would be wrong to claim it has never been subject to prejudices and discrimination. Despite its openness to people who did not fit in the patriarchal Indian society of the 5th century BCE, Buddhism failed from the start to be fully inclusive.

This article will map both the openness Buddhism expressed as well as the prejudices to which it was subjected, from the days of the Buddha³ to the present. In this 2500 year history, Buddhism did spread to widely different cultures with different sensitivities on family life, sexual orientation and gender identity. It also became doctrinally extremely diverse, stretching from soteriological⁴ Pure Land Buddhism (with its faith that one will be reborn in the Pure Land of Amida Buddha, a Buddhist Savior who vowed to save all beings without any discrimination), to atheist secular Buddhism (which does not believe in the supernatural or in literal rebirth). Throughout this diversification process, some scholars have tried to incorporate local prejudices rather than fighting them. But only in Tibet did homo-negativity become included in mainstream Buddhist teachings (although never leading to violence or persecution).

With the globalization of Buddhism in the 20th century, Buddhists became more aware of historical prejudices within their own traditions⁵. Many Buddhists also became strong advocates for human rights and social change within their societies and their traditions.

¹ Dr. Michael Vermeulen studied philosophy, medicine, theology and religious sciences at the University of Leuven. He developed a special interest in human rights, Buddhism and moral philosophy, and was the Representative of the European Buddhist Union to the European Union from 2011 to 2015. This article is based on his presentation 'Sexual minorities and the Buddhist Spiritual Path' at the UN Conference on 'Freedom of Religion or Belief and Sexuality' (Geneva, 8-10 June 2016). (✉) mmdv68-ebu@yahoo.co.uk

² Queer refers to a sexual orientation outside culturally established norms. In the present globalised culture, it refers to someone who is not heterosexual - a person who identifies as lesbian, gay, bisexual, transgender, intersexual, gender diverse/non-binary, or someone who is questioning their sexual identity.

³ The word 'Buddha' is not a name but a title, meaning 'one who is awake'. His original name was Siddhartha Gautama. It is not clear when exactly the historical Buddha lived. According to Theravada tradition he lived 624-544 BCE, but most Buddhologists agree he probably lived about a century later (+/- 490-410). Some date his life even more recent.

⁴ From the Greek σωτήρ (soter), meaning 'saviour'.

⁵ Vermeulen (2016) survey on European Buddhism and sexual diversity (not published) - reply by the National Unions Committee of the European Buddhist Union: *"Because of more knowledge about LGBTI there are less prejudices within Buddhism compared to the old times."*

2. Early Buddhism

The Buddha was at the head of his community of lay and monastic followers for more than four decades. During this long period, he was asked for advice on a very wide variety of issues on sex and sexuality that would impress many present day sexologists. As a result, there are literally dozens of references in the Buddhist canons⁶ to all sorts of sexual relationships and practices, mainly hetero- and homosexual activities but also to pedophilia, bestiality, necrophilia, etc.

Before analysing these counsels in detail, we can make some general remarks. First, almost all of these are discussed in the *Vinaya* (the monastic code). In other words, the most common context is that of a monk or a nun struggling to lead a celibate life. Second, given the wide variety of items addressed, the Buddha was obviously not ignorant or naive on human sexual passions and activities in the broadest sense. And last but not least, there is nowhere in his teachings any sense of homo-negative language or condemnation of gay or lesbian homosexual behavior.

Let us get a closer look at the specific ethical advice given to lay and monastic followers.

2.1. Lay members of the Early Buddhist community: do no harm

Lay followers of the Dharma⁷ commit to train five skills⁸ (mostly called precepts): abstain from killing living beings, from taking what is not given, from sexual misconduct (also referred to as ‘the third precept’), from wrong speech and from intoxicants. ‘Precept’ is a misleading term, as people raised in an Abrahamic culture may wrongly presume the five precepts function in a similar way to the divine commandments in theistic religions. But Buddhist precepts do not refer to a list of rules we must follow blindly, regardless of the various contexts we live in. The Buddhist Spiritual Path is about training the mind to think, speak and act free from any greed, hatred and delusions. Failing these is not a sin that leads to eternal damnation. Its approach is more empirical: with trial and error and guided training one becomes more skilled to lead an ethical life in changing contexts.

‘Misconduct’ on the other hand is a very vague concept, which has to derive its meaning from its cultural context. In the scriptures *“The third precept relates primarily to the avoidance of causing suffering by one’s sexual behaviour. Adultery (...) is the most straightforward breach of this precept. The wrongness of this is seen partly in terms of its being an expression of greed, and partly in terms of its harm to others. (...) What counts as ‘adultery’ varies according to the marriage patterns of different societies, though, and Buddhism has been flexible in adapting to these.”*⁹ Most teachers therefore rephrase the third precept as ‘do not use sex in a harmful way’, which puts more emphasis on the

⁶ There is no consensus on one single Buddhist canon. The Theravada Pali canon is by most Buddhologists considered to be the oldest. Referrals in this article are to the Pali canon (Pali Text Society edition).

⁷ Buddhists refer to themselves as follower of the Buddhadharmā: the teachings of the Buddha.

⁸ The *panca-sila* (five precepts or five skills) are present in all Buddhist traditions, although some use extended lists.

⁹ Harvey (2000), at p. 71.

evaluation of ones actions, rather than complying with a rule: Is there misuse of power? Is there consent? Is there addictive behaviour? Etc.

As mentioned, the Buddha was well aware of sexual diversity in general and homosexual behaviour in particular. If this had been an issue for him, he had plenty of opportunities to condemn it, or to say that Buddhists should live a heterosexual life only. But instead there is silence. Some scholars interpret this silence as neutral (Cabezón, 1993) or negative (Harvey, 2000)¹⁰. The majority of the teachers however, consider this to be a positive, accepting silence. They compare it to the silence they are familiar with within their own tradition: *“Bernard Faure, in his cultural critique of Zen Buddhism titled The Rhetoric of Immediacy remarks that homosexuality seems to be overlooked in Zen teachings, and indeed in classical Buddhist texts. My impression from my own monastic experience suggests that homosexuality has not been taken as an aberration, and so did not receive comment.”*¹¹ In my survey on European Buddhism and sexual diversity most comments were indeed along this line. Many teachers are silent on the topic, not because they disapprove on certain sexual orientations or gender identities, but because they consider this an irrelevant issue¹².

2.2. Monastic members of the Early Buddhist community: have no sex

In what is probably the oldest documented story on the interface of religious and LGBTI-rights, the Buddha was approached by what we nowadays would call a transgender monk and a transgender nun¹³. They were not happy as members of their all male and all female monastic communities (monks and nuns lived mostly separately) and asked for help. The Buddha pragmatically ruled that the trans-female monk should join the nuns and the trans-male nun should join the monks.

The red line for monks or nuns was engagement in sexual activities. Sex (whether homo- or heterosexual in nature) is condemned because the monks and nuns are expected to be celibate. There is no negative attitude towards sex or sexual diversity as such, but towards a lack of discipline to control lust: *“It is notable that these prohibitions against homosexuality in the Vinaya are not given any special (homophobic) metaphysical, philosophical, or doctrinal support. They are merely expressions of uncontrolled desire on the part of persons who have vowed to control their desires.”*¹⁴

It would however be wrong to presume there was no discrimination towards sexual minorities at all within the early Buddhist community. A varied range of people were not

¹⁰ As a proof Harvey refers to a comment by Buddhaghosa. (Harvey (2000), at p. 421) Buddhaghosa lived in the 5th century AD, roughly a millennium after the Buddha, and his comments were not mainstream in Theravada (see below).

¹¹ In 1995, some religious leaders gave testimony to the Hawaii Commission on Sexual Orientation and the Law in support of same-sex marriage. One of them was zen priest Robert Aitken, co-founder of the Buddhist Peace Fellowship. (See: <http://www.qrd.org/qrd/religion/zen.buddhist.perspective.on.same.sex.marriage>)

¹² Vermeulen (2016) survey on European Buddhism and sexual diversity (not published). Silence, however also confirms the (heteronormative) social status quo. This will therefore be challenged by the queer sangha (see 4.4.)

¹³ Vin III. 35. The story speaks of a rather magical sudden change of characteristics. It seems more meaningful to consider this a way to express their ‘coming out’.

¹⁴ Corless (1998), at p. 255.

allowed ordination, although they were welcome to become lay followers. The reasons why are sometimes hidden in the mists of the past. The prejudice against intersexed people¹⁵ in particular, as well as the rather unusual category of people called *pandakas*¹⁶, seems to have been that their anatomical variety also meant they could not control their sexual desires. Hence they were believed to lack the discipline to live a celibate life. The most important of these stories within the *Vinaya*, refers indeed to a *pandaka* with extreme uncontrollable sexual lust (Vin I. 85-86). Someone we would nowadays define as a sex-addict, which was understandably troublesome for a community of monks and nuns.

3. Sexual diversity and marriage after the Buddha: Asia

In the millennia after the Buddha, three major, geographically distinct traditions were formed in Asia. Some consider these traditions to be so different that it makes it impossible to speak about Buddhism as one religion or talk about 'a' Buddhist point of view. That is probably a bit over the top, for despite all differences there is a clear sense of belonging together. With regard to marriage, Buddhism never claimed marriage as an exclusive or 'sacred' Buddhist religious institution, nor did it reject marriage in favour of celibacy or restrict itself to one specific type of marriage.

3.1. Buddhism in South-East Asia: Theravada¹⁷

With a few exceptions, Theravada has been largely silent on sexual diversity, but its silence might reflect a certain apathy by the monks for sexuality in general. Theravada is simply very focused on the monastic life. The early Theravada comments are completely silent on sexual acts between women, and by the 12th century AD (17 centuries after the Buddha) only one commentary was known to expand the third precept to sexual acts between men: "*This may simply be due to an oversight, in which the texts concentrate on the most common ways of breaking the third precept, rather than a positive acceptance of homosexual acts. Even so, it shows that most Indian Buddhist commentators did not have a particular bee in their bonnet about condemning such acts.*"¹⁸

¹⁵ Intersex refers to people who are born with anatomical characteristics that are not typically male or female. In early Buddhism they were called *ubhato-byanjanakas*. The reason why they were not allowed to become a monk or a nun is because they might persuade other monks and nuns to have sex with them (Vin I. 89 and Vin II. 271). In other words, intersexed people were believed to be unable to control their sexual lusts (Harvey (2000) pp. 412-413).

¹⁶ There is no agreement to what *pandaka* exactly meant in the days of the Buddha, and the term appears in a variety of contexts. But if we analyse the most commonly attributed characteristics, combined with the above prejudice (the presumed link between anatomical variation and lack of discipline in intersexed people), we can make sense of these diverse rulings. First, *pandaka* seems to refer to men lacking the full anatomical characteristics of a man, in a few occasions to women lacking the full anatomy of a woman. A second characteristic of a *pandaka* is that they were considered to be men who prefer to have passive sex with other men; or women who could not have sex with men. In either case this seems to be attributed to their anatomical variation (which one believed made them unable to control their lusts), rather than to a homosexual orientation. Zwilling (1992) translates the term as 'one without testicles', not necessarily as in a eunuch but also someone who's impotent or lacks the energy, courage and self-control that a patriarchal society associates with 'full maleness' (in common language: someone 'lacking balls').

¹⁷ Theravada - the School of the Elders - is the religion of the vast majority of the population in Sri Lanka, Burma/Myanmar, Laos, Cambodia and Thailand.

¹⁸ Harvey (2000), pp. 421-422. Zwilling (1992) states there are two early Theravada comments that did expand the third precept to include sexual acts between men: Buddhaghosa (5th century AD) and an anonymous commentary on

When Theravada cultures were confronted with the criminalisation of homosexuality by the British colonisers, Buddhists did not stand up to defend equality but stayed silent. Even after independence, homosexuality remained illegal in the former British colonies Sri Lanka and Burma up to the present day. Laos, Cambodia and Vietnam were under French protectorate. These countries have never known any laws against same-sex sexual activity.

Marriage in Theravada cultures was and is largely considered to be a secular institution, although it is custom to ask the monks for a blessing after marriage. Heterosexual monogamy is the usual practice, but polygamy (of the kings of Burma and Thailand and of wealthy farmers) has also been tolerated. In 2004, the Buddhist king Norodom Sihanuk of Cambodia called for the legalization of same-sex marriage in his country. In 2013, the Thai parliament debated legalising same-sex marriage¹⁹. The influential and conservative legal body of Thai monks remained silent in this debate²⁰. But the well-known Buddhist activist Sulak Sivaraksa and the scholar Suraphot Thaweesak gave public support²¹. They emphasised that Buddhism never prohibited same-sex marriage, that it is normal for lay people to have sex, and that sex in Buddhism is not only in function of procreation. Therefore, it doesn't matter to Buddhism whether sex is same-sex or not. The Australian (Thai trained) Theravada monk Ajahn Brahm also explicitly campaigns for marriage equality²². In March 2015, the Thai parliament passed the Gender Equality Act. It is the first law in South-East Asia to punish discrimination based on gender identity or sexual orientation..

3.2. Buddhism north of India: Vajrayana²³

It was the 12th century Buddhist teacher Ganpopa who expanded²⁴ the third precept for lay people to include sex between men (notably 17 centuries after the Buddha). He gives a long list of sexual behaviours he considers inappropriate for Buddhists. They clearly reflect social taboos in 12th century Tibet, rather than early or universal Buddhist

Asanga's (4th century AD) *Abhidharma-samuccaya*. But Harvey uncovers that the inclusion of Buddhaghosa is based on a wrong translation: "the passage is simply saying that 'for men', intercourse with various categories of females breaks the precept." (Harvey (2000) at p. 421) "The *Upasaka-janalankara*, a popular guide to Buddhism written in twelfth-century Sri Lanka, where Buddhaghosa worked, also explains the third precept simply by discussing the categories of women with whom a laymen should not have sex." (Harvey (2000), at p. 421)

¹⁹ Legislation to legalise same-sex marriage was submitted to parliament in 2012, but was put on hold indefinitely due to political instability.

²⁰ But several attempts have been made to expand *pandaka* to gays, and thus ban them from being ordained as a monk.

²¹ Interview in *The Nation*, July 27 2013, *Keep Buddhism out of same-sex marriage debate, activist advises*.

²² See: <https://www.youtube.com/watch?v=GOPcbFhCEj0&feature=youtu.be>

²³ Vajrayana - the Diamond Vehicle, also called Tantrayana - includes Buddhism from Tibet, Bhutan, Mongolia and Kalmykia. Vajrayana is the smallest Buddhist tradition in numbers, but became the best known worldwide due to the Tibetan diaspora in the 1950s and 60s.

²⁴ Ganpopa's *Jewel Ornament of Liberation* (12th century AD) is using a list from the *Abhidharma-kosa-bhasya* (Treasury of the Abhidharma, by Vasubandhu, 4th century AD) But he is adding several items to the list, among others: not using 'improper parts of the body' (i.e. the mouth and the anus) as well as sex between men (Harvey (2000), at p. 73) According to Ganpopa, a lay Buddhist should for example not have sex more than five successive times or in daylight. Only at the very end of his list of various types of sexual misconduct with women, he adds in a very brief type of afterthought sex between men before he proceeds to describe how all these people will be reborn 'in dusty places'.

teachings. Ganpopa's influence however, is far stretching, because the 14th Dalai Lama - one of the best known Buddhists of our time - upholds his views: *"I think that, according to Buddhism, homosexuality is a breach of certain [Tibetan Buddhist] prescriptions²⁵, but it is not a harmful act as such, as opposed to theft, murder and other crimes that make other people suffer. (...) That's why there is no reason to reject homosexuality or to discriminate against homosexuals."*²⁶ In other words: even Buddhists who are convinced that being gay is a breach of a moral precept make it clear this is no license to discriminate or expel gays (a distinction that is often blurry in Abrahamic traditions). The Dalai Lama repeatedly condemned hate speech and violence towards sexual minorities, emphasized that being gay does not mean one can no longer be Buddhist, and explicitly supports secular same-sex marriage²⁷.

Not all Asian Vajrayana teachers stick to Ganpopa's homo-negative interpretations though. The Bhutanese Lama Dzongsar Jamyang Khyentse for example clearly states that gay people are welcome in Vajrayana²⁸, and most, if not all, Vajrayana teachers in the West explicitly accept sexual diversity within their communities. Shambhala, a worldwide but mainly Western community, is fully inclusive, including queer meetings and networks.

Next to heterosexual monogamy, Tibetan Buddhism has also known polygamy and polyandry (in the form of a woman marrying several brothers). Several scholars also mention the existence of same-sex relationships in Tibetan monasteries, especially among the so called *ldab-ldob*²⁹, a type of laborer-monk.

3.3. Buddhism in East-Asia: Mahayana³⁰

When the first Jesuit missionaries arrived in China and Japan in the 16th century, they were shocked by the acceptance of homosexuality by Buddhism. They would use it as one of their main arguments to prove that the cultures of the Far East were in decline and inferior to the West, and more specifically, that Buddhism was a decadent religion, inferior to Christianity. From their side, the Buddhists were shocked by the hate-speech

²⁵ Many gay Buddhists are upset by the Dalai Lama's homo-negative point of view. This resulted in a meeting with representatives of the San Franciscan LGBTI community in 1977. No agreement was reached on the interpretation of the third precept, but there was a common press release stating that the Dalai Lama *"was greatly concerned by reports made available to him regarding violence and discrimination against gay and lesbian people. His Holiness opposes violence and discrimination based on sexual orientation. He urges respect, tolerance, compassion and the full recognition of human rights for all."* (quoted in Harvey (2000), at p. 433)

²⁶ Dalai Lama (2001) - own translation. In the same book the Dalai Lama emphasizes that whether it is considered to be a breach of prescriptions or not, gay Buddhists who are actively homosexual are still Buddhists and can continue to practise the Buddhist way of life.

²⁷ <https://www.youtube.com/watch?v=pJVvVSr8E2M>

²⁸ https://www.youtube.com/watch?v=qA_Kp9v9ZtA

²⁹ *Ldab-ldobs* were not the same as monks. Their function has been compared to that of lay brothers in some Catholic monastic orders. They were allocated heavy physical labor as well as security tasks during religious festivals or as body guards for important monks. Unlike monks, *ldab-ldobs* let their hair grow and took part in sports, including fighting. They were infamous for fighting for young boys, or even kidnapping them for sex (Goldstein (1964)) Some of them seemed to have engaged in long term same-sex relationships.

³⁰ Mahayana Buddhism - the Great Vehicle - includes Pure Land and Chan/Zen Buddhism in countries such as China, Vietnam, Korea and Japan. Mahayana is followed by over half of the world's Buddhists. Pure Land and Zen would play an important role in giving spiritual and social support to the LGBTI community in the US in the 20th century.

of the Jesuits when it came to something the Buddhists considered to be a fact of life. Due to ideological pressure from Christian missionaries and European colonial powers, both China and Japan went through an era of 'Westernisation'. In this process, their acceptance of homosexuality was considered to be backwards compared to the West, just as other traditions such as polygamy or forcing women to bind their feet. Ironically, many present day Chinese and Japanese consider tolerance for sexual minorities to be an ideological importation from the West, alien to their own cultures. *"This is yet another modern assumption about sexuality which is demonstrably false. In fact, it is especially ironic since China, also among world cultures, has an unbroken documented history of homosexuality covering nearly three thousand years of its history, from the early Zhou dynasty until the 20th century."*³¹

China also had a centuries old tradition of same-sex marriages, often in a Buddhist religious context. During the Yuan and Ming dynasties (1271-1644), the men in the province of Fujian were famous throughout the empire for their long-term relationships with other men. These were often formalized by legal marriage ceremonies that were almost identical to opposite-sex rituals³².

Similar records can be found about lesbian relations. For women who wanted to escape the very patriarchal Confucian society, the only real way out was to become a Buddhist nun. During the Qing dynasty (1644-1911) an alternative movement arose in the silk province Guangdong, commonly known as The Golden Orchid sisterhoods³³. Their motivation was similar to the Beguines in medieval Europe: women who combined forces to stay (physically and financially) independent from men. They rejected being subordinate to a husband in marriage or to male clergy as a nun. The movement considered themselves the continuation of The Ten Sisters society which was created by a Buddhist nun several centuries earlier. Both movements referred to the Buddhist Bodhisattva Guan-Yin³⁴ (the Bodhisattva of Compassion) as their spiritual paragon. Members of The Ten Sisters lived together as couples and went through legally binding same-sex marriage ceremonies. Many Golden Orchid members also lived as couples and took legally binding vows for life. Some were close friendships, others were sexual relationships. They also had the right to adopt abandoned or orphaned girls as their legal daughters and heirs. The Golden Orchid sisterhoods would be banned by the Communist Party after the CCP rose to power in 1949.

Only in Japanese Buddhism is the clergy allowed to marry. Many of them also engaged in same-sex relationships, often in the form of *nanshoku* (an elder monk with a younger

³¹ Neill (2009), at loc. 4765.

³² Hinsch (1990)

³³ Much of their history is preserved due to the field work of anthropologist Marjorie Topley (1955)

³⁴ Guan-Yin (In Tibet known as the male Avalokiteshvara, in Japan as the female Kannon), is best known in Buddhism as the Bodhisattva of Compassion. She/he sees all the suffering of the world, even in the darkest loneliest corner. Less known is that Guan-Yin somehow became the Buddhist patron saint of sexual diversity. In China there was a legend that Guan-Yin was once a princess who refused heterosexual marriage, turning her into the heroine of women opposing patriarchal dominance as well as of people engaged in same-sex relationships.

acolyte). As in China, the Bodhisattva of Compassion was an important spiritual figure for same-sex relationships³⁵.

Since the Meiji reforms (1868-1912)³⁶, traditional Japanese Buddhism focused on funeral services and had no habit of performing marriages. At present, same-sex marriage is not legal in Japan, but the Zen Shunkoin temple in Kyoto started performing Buddhist same-sex wedding ceremonies in 2010. The lay Buddhist organization Soka Gakkai International (SGI) is a Japanese Nichiren tradition practiced in 192 countries and territories. In 1995, SGI USA - one of the largest Buddhist organizations in the States - announced they would allow same-sex weddings at all their centres, later followed by many other SGI organizations.

4. Buddhist Globalization

In the centuries following the first contacts between Christian missionaries and Asian cultures, a clash of civilizations between East and West took place, and Asian tolerance towards homosexuality was at the heart of this debate. In the Christian world-view of those days there was no space for diversity (and certainly not sexual diversity). In this ideological collision, Asia in general and Buddhism in particular were initially on the defense.

The British Empire made homosexual activities punishable by law, and in doing so globalized homo-criminalization. Meanwhile, Christian missionaries successfully convinced the world that homosexuality is an 'unnatural' activity within god's creation. They did this with such vitriolic language that they also globalized homo-hatred. Although Buddhism does not believe in a creator god, many traditional Buddhist countries adopted Western views, including its homophobia.

The psychological turning point for Buddhism was the meeting of the World Parliament of Religions in Chicago in 1893³⁷. Buddhism revived and started spreading to the West. So, contrary to common belief, the roots of a settled Buddhist presence in the Europe and America did not start with the social revolution of the 1960s, but can be traced back to the late 19th century.

4.1. Buddhism in the West: Europe, America, Australia

Europeans have historically lived in quasi mono-religious regions and are therefore often less comfortable with religious diversity than Americans are. As a result, European Buddhists did put more emphasis on internal ecumenical dialogue than on social action,

³⁵ Japanese religious trans-gender legends mention how the (female) Kannon sometimes transformed into a (male) acolyte engaging in a *nanshoku* same-sex relationship with an older monk.

³⁶ The Meiji governments wanted to modernise Japan into a 'civilized' nation, which meant a focus on the West and on Christian values. State support for Buddhism was withdrawn, and the tolerance towards *nanshoku* gradually evaporated.

³⁷ Especially the speech of the Sri Lankan Theravada monk Anagarika Dharmapala got worldwide media attention. Some days later, he conducted the first known conversion of an American to Buddhism in the USA.

and the first European Buddhist congress took place as early as 1933³⁸. In 1975, the European Buddhist Union (EBU) was founded³⁹. The EBU has always put great emphasis on human rights and equality⁴⁰.

As is well known, European countries were the pioneers in legalizing same-sex marriage: the Netherlands in 2001, followed by Belgium in 2003. Buddhists supported this evolution⁴¹. The oldest documented European Buddhist same-sex ceremony I could trace took place near Paris, in 1995⁴². Many European Buddhist teachers of various traditions have told me they would be very happy to perform same-sex marriages, but were not yet asked to do so by members of their community. Others said their tradition does not (or very rarely) perform a religious marriage, but would be happy to bless a marriage if the couple would wish them to do so. In the same survey, all teachers said they have no problems with sexual orientation or gender identity among their members⁴³.

American culture is more religious and also has a stronger tradition of religious diversity and religious charity activities than Europe. In 1987, Zen priest Issan Dorsey⁴⁴ took in a homeless student dying of AIDS. This was the start of the Buddhist Maitri Hospice, which may well be the first hospice in the world that was set up for people dying from AIDS.

The first Buddhists to come to the USA were not Theravada as in Europe⁴⁵, but Chinese and Japanese Mahayana Buddhists⁴⁶. In 1898, the Jodo Shinshu community (Japanese Pure Land Buddhism) founded the Buddhist Church of San Francisco (BCSF)⁴⁷. They would make history, performing the oldest documented Buddhist same-sex marriages in

³⁸ These historic congresses took place in Berlin in 1933, followed by London (1934) and Paris (1937) and were halted by WWII. It would take till the 1970s before Buddhists started organising themselves again on a European level.

³⁹ The EBU is the official umbrella association of national Buddhist unions and Buddhist organisations in Europe.

⁴⁰ "We support the implementation of Human Rights, equality and individual responsibility for all, regardless of ethnicity, gender, sexual orientation, language, religion, nationality, social origins, birth status or any other distinction." (EBU Statement of Mission, Vision, Values and Goals - see: <http://europeanbuddhism.org/about/mission-vision-values-goals/>)

⁴¹ "Buddhism makes a clear distinction between the Buddhist point of view and society's viewpoint. The secular society should strive for full equality and non discrimination amongst all its citizens, including sexual minorities. Buddhism has no religious objections towards a secular same-sex-marriage and many Buddhist institutions perform religious blessings or marriages for same-sex couples." (Council of Europe (2010), Report on Religion and Human Rights, Recommendations of the EBU on Chapter 5 'Sexual Orientation and Sexual Gender Identity')

⁴² The male same-sex 'alliance ceremony' of Fabrice Midal and Bruno Tyszler, performed by Julia Sagebien, with the approval of Vajradhatu/Shambhala's spiritual leader (Vajrayana). The same ritual was used as for other weddings. In the UK, David Brazier of the Amida Trust (Pure Land) performed a female same-sex marriage in 2014 in Malvern.

⁴³ Vermeulen (2016) survey on European Buddhism and sexual diversity (not published).

⁴⁴ Issan Dorsey (1933-1990) was abbot of the Hartford Street Zen Center in San Francisco. He was not only famous for his social engagement, but also because he used to be a drag queen before he became a Soto priest.

⁴⁵ The first Buddhist monasteries in Western Europe - Das Buddhistische Haus in Berlin (1924) and The London Buddhist Vihara (1926) - were both Theravada. The Russian Republic of Kalmykia, in the far Eastern corner of the European continent, has been predominantly Vajrayana Buddhist since the 17th century.

⁴⁶ During the Gold Rush to California, Chinese miners founded Buddhist and Taoist temples in California as early as 1853. The oldest surviving Taoist temple in the USA (Weaverville, CA - founded 1869) has an image of the Bodhisattva of Compassion.

⁴⁷ The BCSF is probably the oldest Buddhist Temple still in use in mainland America (Hawaii also has some older ones).

the post WWII era. In the early 1970s *“people began to seek the same services that heterosexuals already enjoyed in American society. A male couple in the congregation eventually asked Rev. Koshin Ogui, then assigned to BCSF, to perform their marriage. He readily agreed, and the ceremony was held in the main hall—identical to other marriages at the temple, except for the dropping of gender-based pronouns in the service. Without fanfare, history was made.”*⁴⁸ Some decades later, most main Buddhist traditions in the USA and Canada were also performing same-sex marriages. Buddhist organizations of Hawaii and California did also actively support the process for legalization of same-sex marriage in their states.

In Australia, both national Buddhist umbrella organizations (one for the lay and one for the clergy) advised the Australian government in 2012 to legalize same-sex marriage. Ajahn Brahm, abbot of the Theravada Bodhiyana monastery in Perth and Spiritual Director of the Buddhist Society of Western Australia: *“Religion does not own the institution of marriage and has no right to govern it. As a Buddhist leader, I would very much like to perform the Buddhist marriage ceremony for gays and lesbians. Why should Buddhists be denied this opportunity? Let other religions make the rules for their own members, but may they not make the rules for the Buddhists.”*⁴⁹

4.2. Shared minority experiences: are you one of them?

A less highlighted effect of Buddhist globalization was that many traditions suddenly found themselves in a minority position in a different culture. This had an immediate, more existential impact on their relationship with the queer community in four ways. First, a shared experience of discrimination. Belonging to a minority also means exposure to discrimination. In the States *“Jodo Shinshu ministers who support same-sex marriage frequently cite the internment experience and extrapolate from the suffering of the Japanese-Americans to reject any form of discrimination.”*⁵⁰ In Hungary, the Roma/gypsies are subject to severe discrimination in the form of school segregation and racial discrimination. Jai-Bhim, an Ambedkarite Buddhist movement for Roma, also supports the Hungarian LGBTI community by taking part in the Budapest Gay Pride. In 2013, on the road leaving the Pride, the Jai-Bhim participants were beaten up by neo-nazis. They were nevertheless *“proud to represent the struggle for LGBT rights in Hungary.”*⁵¹

Second, a shared experience of ‘being in the closet’. Buddhists (especially Western converts) suddenly realize they have to come out of a Buddhist closet: *“Heterosexual American Buddhists may have some inkling of this phenomenon, for as members of an uncommon or exotic religious group, many have had to face the issue of “coming out” as a Buddhist to relatives and friends.”*⁵²

⁴⁸ Wilson (2015)

⁴⁹ *A Buddhist's view on gay marriage*: www.aphref.aph.gov.au-house-committee-spla-bill-marriage-subs-sub-017.pdf

⁵⁰ Wilson (2012), at p. 48.

⁵¹ Vermeulen (2016) survey on European Buddhism and sexual diversity (not published) - reply from Jai Bhim.

⁵² Whitney (1998), at p. 19.

Third, a shared exposure to prejudice. Buddhists in the West were often seen as exotic, with a mix of attraction and rejection. *“One straight Buddhist acquaintance recounted wearing a Buddhist rosary (juzu or mala) around her wrist when she went to work one day. The Christian receptionist took one look at it and exclaimed: “Oh, your’re one of those!” - in a tone of voice that suggested cannibalism or witchcraft.”*⁵³

Fourth, a shared experience of ‘unity in diversity’. Buddhist globalization was not just an interaction with the West, but also resulted in an intense Buddhist ecumenical dialogue worldwide. Just as sexuality is very diverse, Buddhism also realized its own ‘unity in diversity’. One of the effects of this process is enculturation⁵⁴: the awareness that much of one’s own tradition might be more cultural than universal. This process is not only about doctrine and liturgy, but also made Buddhists worldwide more aware of local customs with regard to the third precept.

4.3. Compassion in action: the Buddhist welcoming of diversity

To be gay or lesbian in the West in the early 20th century, meant to be rejected; not just by society at large, but especially by the churches. This fuelled the conviction - by Christians and queers alike - that there is an opposition between gay and god. In other words, you can’t be gay and spiritual. When gays were looking for a spiritual environment that accepted them the way they are *“The answer most often given was that there was none. The dominant Christian, or rather quasi-Christian culture of the West (...) declared gays to be grievous sinners. To discover that one was gay, apparently, meant that one could not have a spiritual life. One could only have sex.”*⁵⁵ However, many members of the LGBTI community in search for spirituality found refuge in Buddhism. And at present, several Buddhist traditions have queer teachers, preceptors etc., actually running Buddhist communities where they teach and interpret the Dharma.

A major motivation for Buddhism to support and accept sexual diversity was, and still is, the Buddhist engagement for compassion (*karuna*) to all sentient beings, personalized in the figure of the Bodhisattva of Compassion, or by Amida Buddha’s Primal Vow to save all beings without any discrimination. Traditions like Jodo-Shinshu, Zen and new movements such as Shambhala, Soka Gakkai International and Triratna have, motivated by compassion, not just silently accepted queers in their midst or actively campaigned for more social justice, but also taken extra steps to become more inclusive. Jodo Shinshu not only performed the first Buddhist same-sex marriage in America (supra),

⁵³ Ibid.

⁵⁴ Enculturation is defined as the debate about what is essential, universal about the Dharma and what is a local, cultural expression of this universal teaching. A similar debate has been taking place for much longer within the Roman Catholic Church, examining in how far the Roman liturgy and dogma’s were expressed in European concepts and symbols. In other words, enculturation is the question in how far ideas and rituals that for centuries have been vocalised and expressed in a specific cultural context, can (or cannot) be adapted to another cultural background. This Buddhist enculturation process is relatively young and will undoubtedly give rise to interesting debates for many years to come.

⁵⁵ Corless (2000), pp. 270-271.

but also showed flexibility to include bisexual people⁵⁶. In 2016, for the first time, a trans-female member of the Triratna Buddhist Order⁵⁷ (originally ordained as a man) conducted the ordination of a cis-woman: a radical step in a tradition where ordination is always single-sex. In the last two years, Triratna also had a large number of people declaring themselves as gender-diverse or non-binary. They asked to be recognized the way they are, and for Triratna to adjust so they could be included (Triratna has a long tradition of valuing single-sex activities, as well as mixed ones). In 2016 Triratna's headquarters in Herefordshire, UK held its first retreat for gender diverse people.

4.4. *Queer Sangha*⁵⁸: the need for a queer tribe

The Gay Buddhist Fellowship (GBF) in San Francisco was set up in 1980 to address the spiritual concerns of gay men. The GBF never intended to create a new Buddhist tradition, but sees itself as a service to gay Buddhists in existing traditions. As Robert Aitken Roshi formulated it powerfully: *'You can't do zazen in the closet.'*⁵⁹ The fact that, so many decades later, they still exist and several other queer Buddhist groups have been formed in the USA, Canada and Europe, proves the need for a queer sangha. Traditional sanghas replied to these groups with a mixture of liberal caution, fear of separation and fear of failure: *"Straight Buddhists often seem vaguely hurt at the idea that their own community might not be meeting the needs of gay and lesbian students."*⁶⁰ But queer Buddhists feel the need to meet with their queer tribe too, in a separate environment free from (intentional or unintentional) heteronormative pressure: *"Heterosexual persons in a heterosexual society need not be aware that they are heterosexual. (...) To be human is to be sexed. We can choose to be celibate, but we cannot choose to be asexual. This being so, if we are gay, we cannot fully practice Buddhism, or even life, in a context that denies our gayness. To be fully Buddhist, we must be fully gay. And so we practice together as gay men."*⁶¹ The lasting success of queer sangha groups also reflects the necessity of identifying structural social injustice and biased history, just as feminists and African-Americans once did: *"Not that long ago, it was argued, often on Biblical grounds, that Africans and their descendants were subhuman. It was "natural" for them to be slaves and "unnatural" for them to be in positions of power and responsibility. Similarly, it was argued that women should keep their place in the home, doing the housework and praying for their menfolk. It was also "unnatural" for them to be in positions of power and responsibility."*⁶² The queer sangha rightly exposed that Buddhist silence does not only lead to tolerance, but can also result in maintaining the status-quo of a heterosexist or homo-negative society.

⁵⁶ In 2000 "Rev. Mark Unno officiated at a lay ceremony in a Seattle dance hall. The wife was bisexual and had had a prior relationship with a woman, and the couple formulated their wedding vows in such a manner that the marriage was "open," allowing the spouses to potentially be involved with additional persons " Wilson (2012), at p. 39.

⁵⁷ Vermeulen (2016) survey on European Buddhism and sexual diversity (not published) - reply from Triratna.

⁵⁸ Sangha in the broad sense refers to the Buddhist spiritual community (in the narrow sense it refers to the monastic community only)

⁵⁹ Zen priest Robert Aitken Roshi, quoted by Corless (1998), at p. 256.

⁶⁰ Whitney (1998), at p. 16.

⁶¹ Corless (2000), at p. 277.

⁶² Corless (2000), at p. 272.

4.5. *The rise of Rainbow Dharma: transcending the binary bias of self and society*

Several Buddhist teachers realize that the process of accepting sexual diversity is also a *spiritual* learning opportunity to practice the Dharma. As the rainbow follows the rain, it is the realization of a transformation: from identifying a situation of oppression and suffering that needs our help, into seeing diversity as an opportunity to learn how we ourselves must change. *“In our effort to create an enlightened society, the dualism of gender binaries such as male/female, heterosexual/homosexual, and cisgender (people whose psychological gender aligns with their assigned physical gender)/transgender reinforces the very separation that our practice is aimed at transcending. The reality is that not all men are masculine and not all women are feminine, and no one is entirely one or the other. (...) In the phenomenal world, our everyday life, we rely on what we see to determine what gender others are. But that interpretation is a function of our attachment to a collective, societal judgment of narrowly defined gender pigeonholes. To see each person as they are, we need to let go of our attachment to those categories.”*⁶³ Rita Gross talks about suffering in ‘the prison of gender roles’, but *“At the same time, Buddhists have also claimed that gender is relatively irrelevant, that enlightened mind is beyond gender, neither male nor female.”*⁶⁴ Realising this non-binary nature of the enlightened mind (or in other words, the binary and heterosexist bias of the self) means that for Buddhists, overcoming these biases becomes a part of their spiritual path. Consequently, the ‘rise of Rainbow Dharma’ does not only mean Queer Dharma by and for queer Buddhists, but fully, existentially, engaging with diversity as a spiritual practice for all. Many Buddhists take part in their local Pride manifestations, both to support the queer people within their traditions and to engage for social equality. But it can also be part of their Dharma practice. Centro Zen L’Arco for example, has been taking part in the Rome Pride since 2012 as a spiritual practice for their sangha, to actualize the Zen teaching of ‘harmony of difference and equality’. Abbot Dario Doshin Girolami: *“It’s an indispensable spiritual work, and a social justice work. The whole Universe is like a symphony that we co-create. How do we want to contribute?”*⁶⁵

5. Conclusions

This article shows that throughout its long history, Buddhism has always shown flexibility to adjust marriage to local needs (including same-sex marriage with adoption). It did so again when the LGBTI-community in the West asked for the recognition of same-sex marriage in the second half of the 20th century. Buddhists have replied positively to this request, decades before the first legalization of secular same-sex marriage.

⁶³ McCormick (2014)

⁶⁴ Gross (2016), at p. 23.

⁶⁵ See: <http://europeanbuddhism.org/news/centro-zen-larco-holding-the-love-in-our-hearts-rome-gay-pride-2016/> (The ‘Harmony of difference and equality’ is expressed in the Sandokai, by Sekito Kisen.)

This illustrates that the present-day dynamic for marriage equality was from the start both secular and religious, and it happened both in the West and in the East. It thus falsifies the popular theory that activism for same-sex marriage (and by extension for non-discrimination of sexual orientation and gender identity) is a recent, atheist and Western demand that is alien to, and imposed upon, religious and/or non-Western cultures. If we go back far enough in history, it is clear that the West globalized homophobia, rather than non-discrimination and marriage equality. Buddhists never considered marriage to be an exclusive religious institution and they reject the claim by some religions that they have the exclusive right to define marriage, even for other religions and beliefs. Consequently, Buddhists also dismiss the view that the human right 'freedom of religion and belief' can be used by one religion (Christianity for example) to deny another (Buddhism) the right to perform same-sex marriages, as a contradiction in terms.

The history of Buddhism also proves that the popular notion that all religious attitudes are - and have always been - monolithically negative towards sexual diversity is simply false. In the past, most mainstream Buddhist traditions have shown tolerance. And those who did adopt homo-negative views never crossed the line of hate-language or preaching violence. In the process of Buddhist globalization, many Buddhist traditions have moved from passive tolerance towards active inclusion of queer people within their traditions, and public support for equal rights, including marriage equality.

References

- Cabezón, J. I. (1993). *Homosexuality and Buddhism*. In A. Swidler (Ed.), *Homosexuality and World Religions*. (pp. 81-101), Valley Forge, PA: Trinity Press International.
- Corless, R. (1998). *Queer Community in American Buddhism*. In Ch. S. Prebish & K. K. Tanaka (Eds.), *The Faces of Buddhism in America*, (pp. 253-265), Berkeley & Los Angeles, CA: University of California Press.
- Corless, R. (2000). *Gay Buddhist Fellowship*. In Chr. S. Queen (Ed.), *Engaged Buddhism in the West* (pp. 269-279), Boston, MA: Wisdom Publications.
- Dalai Lama (2001). *Conseils du Coeur*. Paris: Presses de la Renaissance.
- Goldstein, M. (1964). A Study of the Ldab Ldob. *Central Asiatic Journal*, 9: 123-141.
- Gross, R. (2016). *Buddhism*. In M. Copeland & D. Rose, *Struggling in Good Faith. LGBTQI Inclusions from 13 American Religious Perspectives* (pp. 11-26), Woodstock, VT: SkyLight Paths.
- Harvey, P. (2000). *An Introduction to Buddhist Ethics; Foundations, Values and Issues*. Cambridge: Cambridge University Press.
- Hinsch, B. (1990). *Passions of the Cut Sleeve. The Male Homosexual Tradition in China*. Berkeley & Los Angeles, CA: University of California Press.
- McCormick, M. (2014) Gender Identity in Shambhala. *Shambhala Times*, December 22 2014.
- Neill, J. (2009). *The Origins and Role of Same-Sex Relations in Human Societies*. Jefferson & London: McFarland & Company.
- Topley, M. (1975). *Marriage Resistance in Rural Kwangtung*. In M. Wolf & R. Witke (Eds.), *Women in Chinese Society*. (pp. 67-88), Stanford, CA: Stanford University Press.
- Whitney, K. S. (1998). *Vast Sky and White Clouds: Is There a Gay Buddhism?* In W. Leyland (Ed.), *Queer Dharma. Voices of Gay Buddhists*. (pp. 15-26), San Francisco, CA: Gay Sunshine Press.
- Wilson, J. (2012), "All Beings Are Equally Embraced By Amida Buddha": Jodo Shinshu Buddhism and Same-Sex Marriage in the United States. *Journal of Global Buddhism*, 13: 31-59.
- Wilson, J. (2015). A Big Gay History of Same-sex Marriage in the Sangha. *Tricycle*, June 27 2015.
- Zwilling, L. (1992). *Homosexuality as Seen in Indian Buddhist Texts*. In Cabezón, J. I. (Ed.), *Buddhism, Sexuality and Gender*. (pp. 203-214), New York, NY: State University of New York Press.

Towards a Dialogue between Muslims and LGBTI people: pathways and pitfalls

Momin Rahman¹

1. Introduction

As Heiner Bielefeldt points out in his Introduction to this volume, the dominant political understanding of LGBTI and religion is one of absolute dichotomy. Islam is often seen as an extreme example of this opposition, with Muslim states at the forefront of resistance to international human rights of SOGI and enforcers of some of the most oppressive laws against LGBTI people. Furthermore, Muslim religious leaders often reiterate extremely negative views on sexual and gender diversity and both minority and majority Muslim populations express some of the most negative attitudes homosexuality in national and global comparison.² My aim in this chapter is to begin to map out a pathway that disrupts this dichotomy and points to potential routes to dialogue. My focus is on Muslim cultures and peoples but some points will have a wider relevance for managing the relationship between FORB and sexuality politics more generally. I also concentrate on the political rather than theology, insisting that we must take account of how religion is politicized and deployed politically.

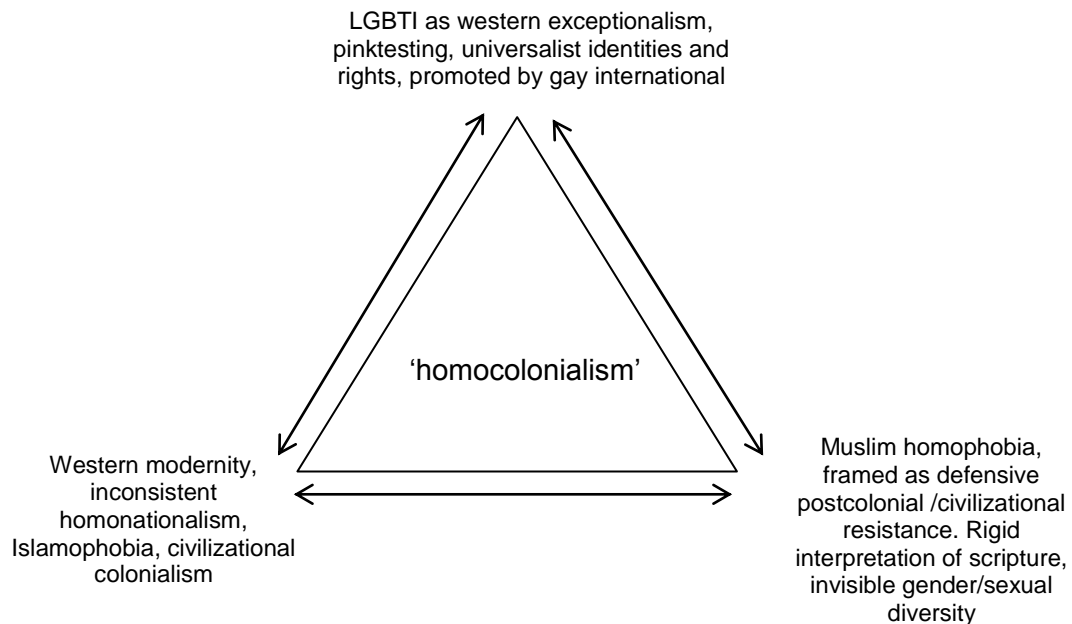
I begin with my characterisation of the contemporary politics of Islam versus sexual diversity as a triangulation of *homocolonialism*, illustrating how LGBTI politics is caught up in the promotion of the civilizational superiority of western modernity, and thus opposition to SOGI becomes framed as resistance to western cultural colonialism. The remainder of the chapter is focused on how we challenge this political framing and I emphasize the power of an intersectional analytical framework in achieving this end. I begin with the need to highlight LGBTI Muslims as an identity that fundamentally disrupts the oppositional locations of LGBTI and Muslims and how we can support that disruptive power through building capacity for LGBTI Muslim autonomy and visibility. I then move on to discussing how other strategies focused on LGBTI groups and Muslim communities are also important in disrupting both the triangulated process of oppositions, and the dichotomous positioning within the triangulation model.

¹ Momin Rahman is a Professor of Sociology at Trent University and a Fellow of the Mark S. Bonham Centre for Sexual Diversity Studies at the University of Toronto, both in Canada. (✉) mominrahman@trentu.ca

² See, for example, the global survey by the Pew Center, at <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>, or the annual survey by ILGA at http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf, both accessed October 6, 2016.

2. The Triangulation of Homocolonialism

I begin with the ‘problem’ that we are facing, suggesting that this is best understood by acknowledging that LGBTI politics, Muslim homophobia and western modernity are part of a triangulated process of *homocolonialism*.³



This process of homocolonialism is primarily one of political positioning, with LGBTI politics deployed as the vanguard of western civilization’s development and progress, producing the ‘pinktesting’ of Muslim immigrants, refugee Muslim populations, and Muslim majority nations for their attitudes to SOGI rights. This discourse is based on western experiences but assumes a universalist, transcultural and transhistorical idea of what it means to be gay, lesbian, bi or trans. This positioning validates the exceptionalism of western modernity by suggesting that best examples of western civilization embrace SOGI rights and implies that these rights and identities are possible *only* in western social and political formations. Even though the embrace is inconsistent across the west, it is that very inconsistency which requires LGBTI politics to be understood both as outside of the ‘core’ west, and as illustrative of its best version. This political vanguarding of SOGI rights by western politics - and international organizations that are seen as controlled by western agendas – is another point of the triangulation. The third position is Muslim culture and populations, distinct, *politically* outside of the west and its modernity, even when those populations are minorities *physically* within the west. These populations are uniformly characterized in opposition to the vanguard position of LGBTI identities.⁴

The positioning also produces a triangulated *process* which can be understood as a feedback loop that flows in both directions at the same time. The recent consolidation of

³ This model draws on Puar’s concept of homonationalism, (2007: 1-36) and Massad’s critique of the ‘gay international’ (2008: 160-190) but pays more attention to Muslim homophobia and Islamophobia.

⁴ For full evidence for these political manifestations see Rahman (2014).

LGBTI citizenship in the west (Hildebrandt, 2014) and the even more recent attempts to internationalize LGBTI provokes resistance from Muslim states, cultures and populations towards SOGI rights, often framed within a wider political discourse of resistance to western and international neo-colonialism. This resistance also depends upon rigid interpretations of Islam as a religion and renders invisible historical and contemporary forms of sexual and gender diversity in Muslim cultures. In turn, this resistance confirms the irredeemable characterization of Islam as a conservative religion and Muslim adherents as consequently too 'traditional' for the modern world. In this closed loop of triangulation, we can see how *both* LGBTI rights and Muslim homophobia are drawn into confirming Islamophobia, raising the central question for both groups of whether this is how they want their identities used.

An important point to remember is that this process of homocolonialism can be both intentional and unintentional. Many activists and policy makers working for LGBTI IGOS and governments are genuinely committed to the security and well-being of LGBTI peoples, but their actions may unintentionally contribute to and reinforce homocolonialism. This is a particular danger when we do not take into account the desires of the local populations that our actions are attempting to help. A major issue here is that, despite nods to cultural variations, most policy defaults into assuming that western identities and outcomes of equality are the ultimate policy aim. Of course, there are many examples, often in the service of Islamophobia, where reiterating this process is indeed intentional and that is something that we should counter or, at the very least, dispute when it is being done in the name of LGBTI rights. On the Muslim side, there is also perhaps unintentionality, although this may seem less obvious given the evidence of widespread Muslim homophobia. Nonetheless, laying bare this triangulated process may open up some possibilities of acknowledgement that homophobia feeds Islamophobia and that may be a source of reflection and dialogue. There is, however, much evidence that this discursive framing of homocolonialism suits repressive and patriarchal Muslims leaderships in governments and religious communities because they can claim cultural or national legitimacy by resisting LGBTI rights as a western imposition. Thus, Muslim leaderships are not passive 'dupes' of homocolonialism; they have agency in how they participate in this process.

In the remainder of this brief discussion, I try to identify pathways that can disrupt the dichotomies of this process of homocolonialism. Overall, my approach in this reflection is to consider the process and positioning above, and to consider whether specific tactics and strategies reinforce this closed loop of triangulation or disrupt it.

3. LGBTI Muslim as Disruptive Intersectional Subjects

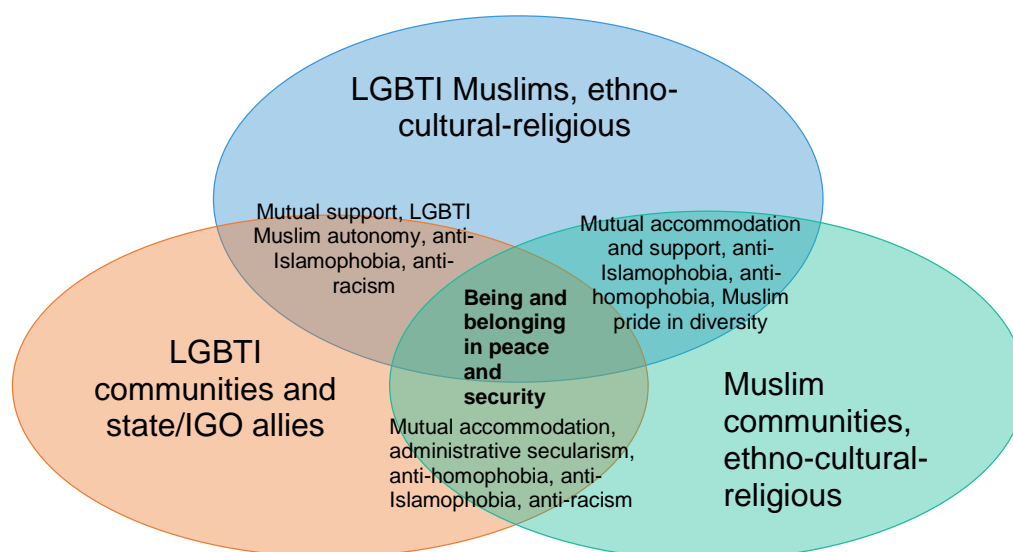
This triangulated process means that both Muslim postcolonial/religious resistance and western universalist LGBTI politics compound the assumption that there is *only one possible form* of sexual diversity, which has already been achieved in the west and is

incompatible with Muslim cultures. This means that both the subject of LGBTI Muslims and the possibilities of LGBTI Muslim being and belonging are rendered invisible if not impossible. First and foremost, we must recognize the dangers of assuming that western LGBTI identity and politics are the only possible form of existing and living sexual diversity and thus avoid an unreflective and unintended homocolonialism. Therefore, a primary starting point for a pathway to dialogue between Muslims and LGBTI groups must be a focus on the visibility and experiences of LGBTI Muslims. Think for a moment if we positioned LGBTI Muslims in the centre of the triangle above: our very existence there would render the structure and flows of the triangulation untenable – it shatters the dichotomy to realize that there are, and always have been, people from Muslim cultures who have sexual and gender diversity. In this sense, LGBTI Muslims are an *intersectional* social and political identity – showing the connections and overlaps between apparently dichotomous cultures and peoples. Moreover, this is a challenge to *both* western/international LGBTI groups *and* to Muslim cultures because a rigorous intersectional perspective demands that we recognise that the experiences of an intersectional identity are not ‘minority’ experiences within a dominant identity category, but are *fundamentally different* and *equally legitimate ways of being* that dominant identity (Rahman, 2010).

4. Operationalizing Intersectionality in the Movements Toward Dialogue

The issues of increasing the support for LGBTI Muslims illustrate a broader one of assessing tactics, which I suggest we can frame as a ‘homocolonialist’ test. There are three key steps in using this reflexive strategy. A first step in any decision making about policies should be whether we are reiterating the triangulation of homocolonialism or whether we are contributing to its disruption. Second, we need to make this assessment with a keen understanding of the complexity of the situation which is best understood as the intersectionality of the group we are ultimately attempting to support. Third, we need to think about the outcomes that such populations are looking for, being clear in resisting the vanity of our own assumptions about what their ‘equality’ will look like. In this sense, we should think of equality as a lived resource, entailing any actions or policies that enhance the capacity of being and belonging in peace and security. This is captured in the diagram below and the remaining discussions expand on this visual representation.

Operationalizing Intersectionality



4.1 LGBTI Support for LGBTI Muslims

In the current political climate, the research being done on Muslim homoeroticism and gender diversity is primarily possible in the west, as is the activism necessary to force visibility and political change. This should be supported and accelerated, as ILGA Europe is attempting with its support of the nascent European Queer Muslim Network. Governments should also pay attention to how best to fund autonomous groups of LGBTI Muslims that can build their own identities and interventions. There is a large and growing body of academic research on Muslim sexual diversity, and this contributes to raising contemporary visibility as well, as well as rendering visible histories of sexual diversity from Muslim cultures.⁵ Again, funding is always the issue for academic work, and so interventions here can be a huge help. Too many funding opportunities from governments or international organizations are focused on security, integration and radicalization when they are interested in Muslims. We need more attention, research and support for Muslim investigations of Muslim diversities. The pitfall here is, of course, that this kind of active financial and institutional support will more than likely be derived from western governments and sources, or IGOs that are seen as dominated by the west. But a question to consider is whether that matters if the longer term outcome is to ultimately contribute to rendering Muslim sexual diversity more visible, more possible, in all Muslim cultures, thereby disrupting the triangulation.

Moreover, this is not just about external Muslim cultures since we know that in the west, there are established LGBTI organizations that have yet to fully consider the needs of LGBTI Muslims within their own communities. Furthermore, many LGBTI organizations are not fully engaged in an intersectional politics of anti-racism and anti-Islamophobia – issues that demand acknowledgement and action if the aim is to support LGBTI Muslims.

⁵ See, for example, Babayan and Najmabadi (2008), Murray and Roscoe (1997)

The benefit of addressing these issues more directly is that they also support a potential dialogue between LGBTI groups and mainstream Muslim communities.

4.2 Dialogue between LGBTI and Muslims

In order to achieve dialogue, LGBTI politics in the west has to confront its troubled history with organized Christian religions. We cannot simply talk to 'secular' Muslim organizations or demand that Muslims be secular when the evidence on Muslim identity suggests an increasing adoption of a cultural identity that has religious practices at its centre. If religion is a primary identification of a particular group (usually but not exclusively ethnically based), then a robust multiculturalism in the west must include religious identification as much as it does gender, sexuality or race (Modood, 2013: 72-79) and we must also recognise this when dealing with Muslim majority nations and IGOs. LGBTI politics in the west has benefitted from secular anti-discrimination and citizenship policies and that fundamental principle of public policy is important. We must, remember, however, that this is an *administrative* secularism, focused on how people are treated by the state and other groups in public. All too often, LGBTI people and politics adopt an anti-religious view that defaults to an ideological secularism that demands that everyone become secular, or at least, privatise their religion. Putting religious people in the closet is not a productive pathway to dialogue. Not only does this potentially prevent the development of LGBTI Muslim religious discourses within Muslim politics but it lowers the likelihood of debate and change within Muslim communities on issues of sexuality and gender because it reduces multiculturalism to a focus on race and ethnic culture without acknowledging that culture may be infused with religious practices and beliefs. If religion is expressly excluded from multiculturalism, then we have no room for dialogue within the practices and balancing of diversity that multiculturalism entail.

Taking administrative secularism as a base line in governance, there are still areas of common experience between Muslim minorities and LGBTI groups, not least of which is discrimination. Rights of non-discrimination are a fundamental part of the expansion of liberal equality towards social justice that feminism, gay liberation and ethnic politics have all helped to shape and there should be more discussion of the commonalities in political structures and policies that prevent homophobia *and* racism or Islamophobia. Too often Muslim groups are silent on the issue of homophobia, or vocal only in opposition to sexual rights, often in alliance with other religious groupings. Both the silence and the articulation of opposition in extreme ways has its consequences; when there are no Muslim voices articulating against discrimination and violence directed towards LGBTI communities, it is simple enough for those who wish to do so to use this position to compound Islamophobia. Can we imagine a Muslim position against homophobia that retains the right to disagree with the acceptability of homosexuality? In that this position would be much like the Vatican's, queer activists may disdain it, but accepting religious rights to disapprove of particular acts *within* the framework of a public politics that protects queers against discrimination is a reasonable outcome in

multiculturalism and includes an obligation from Muslim politics to acknowledge the need to balance their cultural rights with the rights of others.

There are always limits in accommodating diversities, but, as Bielefeldt argues in his Introduction, the base line is non-discrimination, so religious freedom cannot be used to trump the non-discrimination rights of others. However, positively accommodating the religious basis of Muslim identity, combined with autonomous LGBTI engagement with anti-racism and anti-Islamophobia, will surely aid in signalling to Muslim populations that there is a common ground on which we can meet. Even if that dialogue results in a scriptural defence of Muslim homophobia, the tone and scale of that homophobia will be reduced if the rights enabling it are seen as part of the broader framework of diversity rather than existing as weapons of cultural defense that are outside of the dialogic requirements of multiculturalism.

Strategies from LGBTI groups that enhance these possibilities include their more principled engagement with intersectional oppressions of race and, in this case, Islamophobia. Could we, for example, imagine campaigns that resist 'pinktesting' by identifying LGBTI politics against Islamophobia in the treatment of minority populations, potential immigrants and refugees? A 'Queer Day against Islamophobia' as part of the annual political calendar? Or Pride days devoted primarily to such specific causes, to raise consciousness and build alliances? These interventions, moreover, do not silence our ability to critique Muslim homophobia, but rather they encourage us to resist describing it outside of a wider context of Islamophobia and thus, I would argue, allow us more credibility to confront specific instances of Muslim antipathy to sexual diversity and provide more credible indications of an openness to cultural debate about human rights.

Moreover, accessing this terrain of dialogue may eventually produce positive results from the Muslim side of the discussion, which would be an acknowledgement from Muslim groups that sexual diversity is part of the spectrum of diversity that includes ethnic and religious pluralism, and thus it has as proper a place in public politics as Muslim consciousness.

This is a much more complex engagement when considering the international realm, given that many Muslim majority nations do not have a culture of secular administration or open civil societies and respect for minorities. Each case, moreover, will be different given the particular framework of laws, culture and visibility of LGBTI groups. Here, we may have to return to the first principle of the homocolonialist test and consider whether specific tactics are moving us onto a terrain of potential dialogue, or simply reinstating the oppressive triangulation. And *every* tactic must be up for scrutiny here, from the insistence on LGBTI rights as human rights, to threats of aid conditionality, to demands for decriminalization. This is not meant to suggest paralysis of action, but rather that if certain discourses and tactics are making the situation worse, then let's think outside of the box on how to create dialogue and mutual accommodation,

remembering, above all, that our ultimate aim to create security of being for LGBTI Muslims. So let us pluralize our concern for equality beyond 'rights' towards the material resources of equality in their local contexts. This might mean that capacity building for local groups is more useful than calls for decriminalization, for example, or that a broader debate on the benefits of human rights is a more useful engagement than a repeated focus on LGBTI rights.⁶

This is not to abandon the international attempt to establish LGBTI rights as human rights, since there is evidence that the developing architecture of LGBTI rights can be woven into human rights and thus serve as a resource for many local movements (Lind, 2010; Lennox and Waites, 2013). However, many of these movements have also demonstrated the contradictions of dealing with universal expressions in local or national context (Lind, 2010), suggesting that we need to be more thoughtful about the full range of resources needed to flesh out the conditions of human rights, taking account of the intersectionalities of sexual subjectivity with, at the very least, class, culture and gender, and the political structures available (Boellstorff, 2012; Lind, 2010). In their analysis of LGBTI movements in the Commonwealth, for example, Lennox and Waites point to the national specificities of how movements have developed as far more important than international discourses or rights structures, even where the latter have been used as resources in the local context. Whilst being careful to limit the generalizability of their comparative analysis, they identify some broad common processes, primarily the building of alliances beyond exclusively LGBTI groups, and a concurrent legitimization of human rights within regional, rather than international, contexts (Lennox and Waites, 2013). If we are to continue promoting an international framework of rights, perhaps we can refocus efforts to engage more directly with regional, pan-Islamic, Asian and African rights bodies, as Langlois (2014) has suggested. At the very least, nation-specific strategies need to be thought through, requiring a lot of time, research and energy, for sure, but necessary nonetheless and potentially being developed soon through the UN's new independent expert on the rights of SOGI peoples. There is, of course, a problem in that attempting these expansions of strategies are, in the short term, confirming the triangulation of homocolonialism from IGOs. I am not sure that can be avoided in the immediate time frame, but the more these strategies become southern led and regionally led, the more they contribute to the longer term possibility of autonomous movements towards SOGI rights. This seems a particularly bleak and distant future in terms of Muslim majority countries right now, but each strategy is only one tool in a broader overall attempt.

There is as yet no common ground between Muslim IGOs emphasis on Islamic human rights and those of the UN in the area of sexuality but there has been some discussion of commonality when it comes to gender and of human dignity. Can we then, reformulate concepts to include the possibility of cultural diversity in sexuality and relate it to gender rights? Is human dignity a shared value here that might be open to productive

⁶ See, for example, toolkits developed by the UK's Department for International Development at <http://www.spl.ids.ac.uk/sexuality-gender-faith>, accessed October 6, 2016.

contestations? This is a much longer term issue and perhaps requires the intersection of academic theorizing and policy, and that work, particularly when it demonstrates the diversities of sexuality and gender in non-western countries, is important. However, I would also caution against too much hope being placed on reformulating concepts of sexuality or looking for some alternate concept that permits dialogue. Yes, SOGI is seen as western but the issue at stake is not the concepts, but rather the *political significance* of sexual diversity as demonstrated in my model of triangulation. So the pitfall to avoid here is an attempt to reformulate concepts without challenging the political significance that SOGI has within the oppositional civilization discourse. Challenging that discourse should be the priority, and this will indeed include rendering visible the knowledge of sexual and gender diversity from Muslim cultures. This may open up the space to recognize culturally specific archives and their contemporary manifestations and that route to conceptual reformulation is productive, but much longer term. In the short and medium term, I am not sure that energy spent on conceptual reformulations avoids the political significance of SOGI identities and terminology that enables the resistance from Muslim cultures.

A final important point to consider for activists and state allies is whether there needs to be a strategy of private attempts to explore the possibilities of dialogue – something which is a common in first step in diplomacy and peace-building. For Muslim communities and leaderships (and perhaps even for some LGBTI groups and state allies), this option provides a respite from the triangulated process without the need to engage in a public defensive re-assertion of homophobia.

4.3 Dialogue between LGBTI Muslims and Muslim Communities

This final area of dialogue is, of course, the ultimate goal to all of the strategies discussed above. The Muslim route to such a debate is, however, presented with the obstacle of governments and leaderships that are heavily invested in a hetero-nationalism legitimized through Islam. In these circumstances, the development of LGBTI Muslim organization will rely heavily on the western LGBTI support and the transnational dialogues and strategies discussed in the previous sections and the pitfalls discussed above make the development of a *general* Muslim consciousness around sexual diversity highly improbable. Nonetheless, I think there is one strategy that we can adopt that may help, and that is asking Muslim groups to hear about, learn about and think about the experiences of LGBTI Muslims. The increasing body of research on these experiences and identities are fully intersectional, illustrating a concern with racism, Islamophobia as well as sexual identities. There is also a common theme that discusses the heartfelt anxieties of having to negotiate or choose between their Muslim identity and their sexual identity; a crisis of belonging both culturally and psychologically. Hearing about these issues, outside of a dichotomous framing, will hopefully show some common ground between Muslims and LGBTI Muslims, at the very least in terms of experiences of racism, Islamophobia and perhaps even the lack of an ability to feel proud, belong with pride to their cultures. Again, I think that any initial steps here may need to be

private but that will depend on specific situations in each minority and majority country, or the diplomatic context of an IGO.

There are numerous pitfalls here too, focused around spiritual reformations, pluralism within Muslim communities and thought, and the overriding issue of 'progress'. First, there is an emergent strand of religious reinterpretation around issues of sexuality, something that the evidence on lived experience demonstrates is important to many queer Muslims. Kugle's work is the most sustained rethinking of the role of sexuality within Muslim spiritualism and he illustrates the many ambiguities that inform scriptural and legal reasoning often used to justify Islamic condemnation of homosexuality (2010), complemented recently by Jahangir and Abdullatif's scriptural argument for same-sex marriage (2016). Both they and other queer Muslims are creating a body of scholarship that has already been a resource for Muslim queer organizations and this is a welcome development, but this has been hugely contentious for mainstream Muslims, partly because this scholarship speaks to broader concerns about the static traditionalism of religion in Muslim life and, in particular, recognizing the historical and cultural context in which Islamic traditions and canons have developed. This is a contentious issue in any organized religion and it no doubt will remain so in Islam, particularly when there are widespread calls from western political voices for a 'reformation' in Islam that seems only to be a call for 'modernization' based on western experience (Safi, 2003: 15-17). However, although we must ultimately confront the ideological basis of the deployment of religion to serve a hetero-nationalism that legitimizes particular governments or community organizations, this may not be a productive issue in any first steps towards dialogue. I suggest, therefore, that these debates are not the subject of any initial attempt to render visible LGBTI Muslim experience to mainstream Muslim groups.

Letting go of an ideological version of Islam is difficult enough when it is seen as a defence against western Islamophobia, but it also raises the question of diversity within Islamic thought, traditions of practice and, more broadly, within Muslim communities. Safi frames this issue as pluralism and that chimes with many of the institutional and social factors that seem important in developing a queer visibility and politics discussed in the previous chapters. The institutions and civic traditions of western liberal capitalist societies may have unintentionally provided the impetus and space for queer emergence, rather than contained the principle of sexual liberation from their inception, but that does not dismiss the fact that plural, open forms of societies seem empirically to be the most productive for all forms of diversity. Again, many others have discussed the potential recovering of plural traditions within Muslim histories, but I want to focus on the one key issue of pluralism and diversity that relates most directly to sexuality and that, of course, the acceptance of gender equality. This is a more hopeful area of Muslim engagement, largely because there is a strong tradition of Muslim feminist thought and an increasing number of political and civil groups that focus on gender equality, such as Muslims for Progressive Values. We have seen, however, how the issue of gender equality is easily woven into oppositional dialectics, most brutally in the justifications of

war and the scrutiny of Muslim immigrant populations (Razack, 2008) whereby its positioning is used to invoke both Islamophobia and Muslim ideological resistance. Nonetheless, the regulation of sexual and gender diversity is universally related to the maintenance of gender normativity, however culturally differentiated that normativity may be, and so this question of pluralism as gender equality fundamentally underpins any changes we might hope to see in Muslim sexualities. As with sexual diversity politics, Muslims must continue engage with this issue ourselves if we are not to be subject to more uses of gender justice as a colonizing tactic. Thus, the challenge of sexual diversity may indicate a broader issue in Muslim consciousness, that it is time to think of different possibilities from within a confident, progressive Muslim identity, rather than to invest in the triangulation of western exceptionalism by oppressing gender and sexual diversity.

5. Conclusion: Toolkits without Blueprints

First and foremost, we must recognize the dangers of assuming that western LGBTI identity and politics are the only possible form of existing and living sexual diversity and thus avoid an unreflective and unintended homocolonialism. There is no one blueprint for how sexual diversity will be lived in various communities and cultures but there are tools that we can use to begin fleshing out the 'shape' of equality (Rahman, 2014) that is relevant for specific LGBTI Muslim communities. I argue that a primary starting point for a pathway to dialogue between Muslims and LGBTI groups must be a focus on the visibility and experiences of LGBTI Muslims that builds and funds LGBTI Muslim capacity for *autonomy*. Second, this capacity building requires a more rigorous and committed engagement from mainstream LGBTI groups with issues of intersectionality, primarily Improving LGBTI consciousness of racism, Islamophobia and *connecting* these to campaigns against homophobia.

We also need to engage with Muslim communities, and such strategies above should contribute to building *confident*, rather than defensive, Muslim communities who, as a first step, are willing and able to engage with shared experiences of discrimination. Ultimately, these dialogues will hopefully build the capacity within Muslim communities to engage with the *diversity* of Muslim traditions in gender, sexuality and, above all, Muslim identities and politics. In the current climate of homocolonialism, these may seem impossible goals, both with minority and majority Muslim populations, and with LGBTI organizations that are defending against extreme homophobia, but we need to find the strength to begin. Making the subject of LGBTI Muslims *possible* and *visible* is disruptive, but that disruption is the only route to a more productive engagement with these difficult dichotomies.

References

- Babayan, K. and Najmabadi, A, editors. *Islamicate Sexualities: Translations across Temporal Geographies of Desire*. Cambridge: Harvard University Press, 2008.
(2012).
- Boellstorff, T. "Some notes on new frontiers of sexuality and globalization." Chp 12 in Aggleton, P., Moore, H.L., and Parker, R. (eds), *Understanding Global Sexualities: New Frontiers*. London and New York: Routledge. 2012.
- Hildebrandt, A. "Routes to Decriminalization: A Comparative Analysis of the Legalization of Same-Sex Sexual Acts", *Sexualities*, 2014; 17 (1-2): 230-253.
- Jahangir, J. and Abdullatif, H. *Islamic Law and Muslim Same-Sex Unions*. New York: Lexington books. 2016
- Kugle, S. Siraj Al Haqq. *Homosexuality in Islam: Critical Reflection on Gay, Lesbian and Transgender Muslims*. Oxford: Oneworld Press; 2010.
- Langlois, A. J. "Human Rights, 'Orientation' and ASEAN" in *Journal of Human Rights*, 13: 307-321, 2014.
- Lennox, C, Waites, M, editors. *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change*. London: School of Advanced Study, 2013.
- Lind, A. (ed.) *Development, Sexual Rights and Global Governance*. London and New York: Routledge. 2010.
- Massad, J. *Desiring Arabs*. Chicago: University of Chicago Press, 2008
- Modood, T. (2013). *Multiculturalism*. (2nd edition). Cambridge: Polity Press
- Murray, S, Roscoe, W. *Islamic Homosexualities: Culture, History and Literature*. New York: New York University Press; 1997.
- Puar, J. K. *Terrorist Assemblages: Homonationalism in Queer Times*. Durham and London: Duke University Press, 2007.
- Rahman, M. *Homosexualities, Muslim Cultures and Modernity*. Basingstoke, Palgrave Macmillan, 2014.
- Razack, S. *Casting Out: the Eviction of Muslims from Western Law and Politics*. Toronto: University of Toronto Press. 2008.
- Safi, O. "Introduction: *the times they are a-changin'* – a Muslim quest for justice, gender equality and pluralism." In Safi, O, editor. *Progressive Muslims: on Justice, Gender and Pluralism*. Oxford: Oneworld Press, 2003. p. 1-32.

Discrimination against sexual minorities: A case of teaching and practices of the Catholic Church

Krzysztof Charamsa¹

1. Introduction

This paper has two backgrounds: one is a scholarly analysis of the dangerous phenomenon of homophobic teaching and practices of the Catholic Church; another is my personal experience as a Catholic gay priest who worked in the Vatican for twelve years as a theologian and an official in the Congregation for the Doctrine of the Faith (previously known as the “Holy Inquisition”). I was also the second Secretary of the International Theological Commission and professor of dogmatic theology, anthropology and methodology in two pontifical universities: Gregorian University and Regina Apostolorum University in Rome. This was before his coming out on 3 October 2015.

The purpose of the present paper is not to speak about my personal experience, which is the topic of my new book *La prima pietra. Io, prete gay, e la mia ribellione all’ipocrisia della Chiesa* (Rizzoli, Milano 2016, *The first stone. I, a gay priest, and my rebellion against the hypocrisy of the Church*), published in Italian and translated in several languages². However, I wish to share my experience in the Congregation, which is the doctrine-maker institution of the Catholic Church and the source of information for its view in the following reflections on publicly available (but generally unknown) homophobic documents of the Church.

In this paper I would like to illustrate a few examples of discriminations against sexual minorities (LGBTIQ = lesbian, gay, bisexual, transsexual, intersexual and queer people) in the Catholic Church. Here, I do not intend to discuss the broader issues of human sexuality and the human rights of a heterosexual majority, which is also neglected by the Church. In fact, when defending the human rights of minorities, it is protecting the human rights of all people (thus also of the majority) as well.

2. Ecclesial homophobia and gay discrimination

2.1 A specific kind of homophobia: ecclesial homophobia

In my opinion, there is a very specific form of homophobic discrimination in the Catholic Church. We can call it the “ecclesial homophobia”, which is present in three main fields:

¹ Dr. Krzysztof Charamsa, Ap. Postal 5055, 08080 Barcelona (ES). Personal website: www.kcharamsa.com
(✉) kcharamsa@kcharamsa.com

² Currently, there are translations of the book in: Portuguese, French, Spanish, Catalan, Brazilian, German and Polish.

2.1.1 Dominant mentality in many sectors of the Church (convictions, prejudices, stereotypes, false images, apocalyptic accusations of 'gay lobby', negative emotions, psychological refuse of gay people, etc.);

2.1.2 Ecclesial theory (i.e. in the ecclesial official teaching or magisterium, that means the Church's doctrine, which obligates in conscience every Catholic person and defines the limits for theological studies and for every Catholic scholarship);

2.1.3 Pastoral practice of the Church's authorities and clergy (actions and disciplinary procedures, canon law applications, pastoral projects against gays, elimination of any LGBTIQ believers' pastoral presence, promotion of homophobic propagandists, promotion of anti-gay manifestations and civil initiatives, etc.).

2.2 Some examples of discriminations

I would like to present some examples of discriminations in the Catholic Church against sexual minorities in ten different issues:

2.2.1 The gay discriminations developed by Ratzinger's policy

Gay discrimination of the Catholic Church was developed by Pope John Paul II and by cardinal Joseph Ratzinger when he was the prefect of the Congregation of the Doctrine of the Faith (1979-2005), the former "Holy Inquisition", i.e. the most important Vatican institution tasked with defining the current doctrine of the Catholic Church (the highest doctrinal organ of the Catholic Church). On one hand, there were the homophobic convictions of the Polish Pope, which are typical in the Polish mentality and popular prejudices. On the other hand, the intellectual abstraction was also based on homophobic convictions of the German prefect, Ratzinger. It was the "perfect" explosive combination of homophobic emotions (Polish pope) and homophobic intellectualism (German prefect). This discrimination continued when Ratzinger became Pope Benedict XVI (2005-2013).

In Western societies, this was a decisive time to embark on a reflection about sexual minorities. Such reflection was characterized by an evolution in the scientific knowledge of sexuality, by the first laws against discriminations based on sexual orientation and gender identity and by the explicit recognition of civil and human rights of LGBTIQ persons. By contrast, this was the time of a paranoiac closeness to the question of homosexuality in the Church, during which this time Ratzinger, with permission of John Paul II and later-on as the Pope, intensified LGBTI-phobia both in the theoretical and the practical field:

2.2.1.1 Theory: a collection of very dangerous public documents (3 official documents, some notifications against theologians, Catechism of the Catholic Church, some

documents of other Vatican Congregations and Councils prepared in collaboration with CDF, etc.) and

2.2.1.2 Practice: many regular and confidential actions, persecutions of theologians and gay catholic activists and organizations. From my direct experience we can affirm that the persecution of every proof of serious treatment of gay question by Catholics is the constant obsession of the CDF.

In the Church there still exists a prohibition of studying, exchange and discussing with modern human sciences about sexual orientation and gender identity, because they do not match the Catholic doctrine. All revolutionary scientific and experiential researches in the comprehension of this problematic are judged by the Church's authorities as ideological, not scientific. The only "experts" accepted by Vatican are the ideological and pseudo-scientific demagogues, like the Americans Joseph Nicolosi (promoter of curative therapy for gays) and Mark Regnerus (author of sociologic studies about gay couples) or the French priest Tony Anatrella (promotor of cure for gays, who has been denounced by the victims of his conversion therapies for having invited them to sexual actions).

These long-lasting indoctrinations do not permit within Catholic thought the development of an objective and peaceful reflection about homosexuality with reference to the scientific evolutions in this issue, let alone a confrontation with real life experience of LGBTIQ persons.

The practical results of these indoctrinations were the last two Church's Synods about family, promoted by Pope Francis (October 2014 – October 2015). The preparatory time and Synod participants showed a real incapacity to study, reflect and discuss about the human dignity of LGBTIQ persons. Synod Fathers were not able to reflect seriously about homosexuality. The only thing they did was the repetition of the worst document of homophobic CDF based on the stereotypical and negative vision of gays. They were unable to accept the first draft proposed to the Assembly with a more positive affirmation (and still dogmatically neutral): "gay people have also charismas and gifts to offer to Christian community". It was only a proposal to affirm a positive recognition of the human dignity and the inherent worth of gay men without any real change of the current position. This text was rejected by the Assembly, because it could have undermined homophobic stigmatization and the politics of silence about gay people. Actually, in the Church it is impossible to speak and think positively about gay men in reference to the objective knowledge and human experiences of those people (this kind of reflection is recognized as contrary to the Catholic doctrine, so really forbidden). This is the homophobic attitude and mentality: the fear and the hiding of homosexual persons, which blocks any open reflection about them. There is only a stereotypic and offensive perception of gays in the Church, which makes it impossible to reflect about them. Gays should be stigmatized and marginalized, offended and treated as not-existing beings. The Synod has shown that the more sensitive declarations of Pope Francis have not changed that general situation. Finally, Pope Francis himself has also changed his

attitude from an open position to a what comes close to a condemnation of homosexual love (Post-synodal Exhortation *Amoris Laetitia*, 19.03.2016) and recently confirmation of the law forbidden access to priesthood for gay men (Ratio fundamentalis institutionis sacerdotalis *The Gift of the Priestly Vocation*, 8.12.2016).

I call this situation paranoiac because it is not rational; rather, it is a strongly emotional rejection of any serious treatment of human beings. Of course, there is a certain facade of rationality in the Church's ideology, but this is only an abstract rationality, which shuns any serious exchange with current human sciences about homosexuality.

Actually, with regard to sexual orientation and gender identity, the Church has the same strategy of refusal which it used in the past with regard to Copernic's and Galilei's revolution of Solar system or Darwin's theory of evolution. The first reaction of the Church to new discoveries is the rejection before the necessary acceptance. After a long-time rejection, the Solar system and the evolution history of humanity were finally accepted. Today, the Church has again rejected any reflection about sexual orientation and gender identity. But in the future it should accept it for keeping its proposal of rationality ("fides" not without "ratio").

2.2.2 A "fair discrimination" of LGBTIQ persons

There exists a false conviction about the Catholic teaching regarding to sexual minorities. People think that the Catholic doctrine does not permit discrimination against gay people and violence against them. The main reference used in that sense is the sentence of *Catechism of the Catholic Church*, many times evoked also by Pope Francis: "Every sign of unjust discrimination in their [homosexual persons'] regard should be avoided" (*Catechism of the Catholic Church*, n. 2358).

In fact, this text states the following rule: the Catholic Church refuses only "unjust discriminations", but permits and imposes to Catholics the "just discrimination". There is even a clearly stated obligation of "just discriminations" against gays by Catholic institutions, believers and States. A discrimination is usually seen as something wrong³, and "just discrimination" would thus seem to be a contradiction in terms. Within Catholic doctrine, however, "just discrimination" against gays is not only permitted, but also mandatory in many human fields (State; family; work and habitation; adoption and foster care of children, even when children are sons or daughters of gays; employment of teachers or athletic coaches and military recruitment; these are only a few examples). This is a doctrinal foundation of a real persecution on base of sexual orientation and gender identity imposed by Church's magisterium on all Catholics. It is not true that this kind of discriminatory attitudes are promoted only by extremist and

³ Regarding discrimination, the Universal Declaration of Human Rights (United Nations General Assembly on 10 December 1948) states that: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

marginal Catholic groups or some Protestant sects. These practices are imposed by Catholic official doctrine which is mandatory (by Canon Law) for all baptized.

Amongst very ambiguous texts, which are mandatory to Catholics, we can remember here, for example, a document that states:

There are areas in which it is not unjust discrimination to take sexual orientation into account, for example, **in the placement of children for adoption or foster care, in employment of teachers or athletic coaches, and in military recruitment.**

Homosexual persons, as human persons, have the same rights as all persons including the right of not being treated in a manner which offends their personal dignity (cf. no. 10). Among other rights, *all persons have the right to work, to housing, etc. Nevertheless, these rights are not absolute. They can be legitimately limited for objectively disordered external conduct.* This is sometimes not only licit but *obligatory*. This would obtain moreover not only in the case of culpable behaviour but even in the case of actions of the physically or mentally ill. Thus it is accepted that the state may restrict the exercise of rights, for example, in the case of contagious or mentally ill persons, in order to protect the common good.

Recently, legislation has been proposed in various places which would make discrimination on the basis of sexual orientation illegal. In some cities, municipal authorities have made public housing, otherwise reserved for families, available to homosexual (and unmarried heterosexual) couples. *Such initiatives [of non-discrimination of homosexual persons], even where they seem more directed toward support of basic civil rights than condonement of homosexual activity or a homosexual lifestyle, may in fact have a negative impact on the family and society. Such things as the adoption of children, the employment of teachers, the housing needs of genuine families, landlords' legitimate concerns in screening potential tenants, for example, are often implicated.* (CDF, *Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons*, 1992, nn. 11-12)

In this sense, the Catholic Church assumes that Catholics not only *can* but *should* refuse to rent a house or to provide other services to gay people. So, there is a doctrinal prescription of gay persecution in the Catholic Church. No doubt, the violent manner of gay persecution in ISIS is much more horrible, but the Catholic Church, too, is not free from committing violence against gays. While in ISIS the violence against gays is physical, in the Catholic Church it is more psychological and social. There is a persecution of sentiments and love, familiar and social life, workplace and home discrimination. Gay people are reduced to silence in the legal field. As said above, this kind of discrimination is based on a total ignorance and a refusal to study, reflect and being confronted with the modern scientific knowledge and human experience of homosexuality and others not heterosexual orientations.

2.2.3 Discriminations against gays in priesthood

The most irrational decision of homophobic discrimination was enacted in 2005 when Pope Ratzinger issued his decree *Instruction Concerning the Criteria for the Discernment of Vocations with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders* prepared by the Congregation for Catholic Education with supervision of Congregation for the Doctrine of the Faith. This new ecclesial law forbids gay men to become priests. Formally, gay men cannot be priests in the Catholic Church. For a gay man it is not enough to not saying who he is and to promise sexual abstinence in celibacy. "It is necessary to state clearly that the Church, while profoundly respecting the persons in question, cannot admit to the seminary or to holy orders those who practices homosexuality, [but also] *present deep-seated homosexual tendencies* or support the so-called 'gay culture'" (n. 2). The Catholic Church states that a man who is gay (*present deep-seated homosexual tendencies*) is not able to be a priest, because he is not able to have a sexual and affective maturity. In the background of this law there is an assumption that gays are psychologically and sexually immature, naturally disordered, sick and unable to develop normal social relations in the society as well as unable to keep sexual abstinence.

The document states: "Deep-seated homosexual *tendencies*, which are found in a number of men and women, are also objectively disordered... Such persons, in fact, find themselves in *a situation that gravely hinders them from relating correctly to men and women*. One must in no way overlook the negative consequences that can derive from the ordination of persons with deep-seated homosexual tendencies" (n. 2). The homosexuality is recognized as one of the "*disturbances of a sexual nature*, which are incompatible with the priesthood" (n. 3).

This false comprehension of homosexuality is the base of the Catholic "apartheid" segregation, comparable with a "racial law" based on the stereotypical view of gays. Many regimes used the same stigmatizations against some social groups perceived as an enemy. The Nazi dictatorship used the analogous kind of scientific backgrounds to eliminate Jews.

The document against gay priests was prepared and presented in the Vatican press conference by extremist ideologists as above mentioned mons. Tony Anatrella, the Vatican expert of curative therapies for gays (recently accused by his gay patients, victims of his sexual invitations in the time of the cure. Those facts were known by the Congregation for the Doctrine of the Faith and hidden many years as "denunciations with no credibility").

Once again, we are confronted with a case of cooperation between the German intellectual homophobia of Pope Benedict and the Polish emotional and ignorant form of homophobia represented by the Prefect of Congregation for Catholic Education, Cardinal Zenon Grocholewski, well-known for his obsession against gays. This was the perfect

continuation of German-Polish homophobic position victorious in the Catholic Church since the Wojtyła-Ratzinger times.

The document of Pope Benedict XVI is the expression of homophobia of the Catholic Church in its unhuman, paranoiac and obsessional dimension, where there is a lack of rational knowledge and scientific verification. This is the clear expression of stigmatization of a whole social group.

The Catholic Church has the right to the discernment of vocation with regard to all candidates to priesthood. The Church has the right to refuse a single candidate for being unable for the ministry. For example: by mental illness or psychological immaturity or immoral conduct. The new law states the elimination of a whole social group without possibility of individual discernment. This is a clear case of “negative law of enemy”, that is stigmatized and eliminated by the regular ecclesial law.

The interesting aspect for the application of this unhuman law is the necessity to verify the homosexuality of candidates to the Catholic priesthood. It is imaginable that gay candidates, who want to be priests, should hide their own sexual orientation. Currently, as in the past, this is a regular habit in the Church. In this sense the document is a legal sanctification of a current unhuman habit (also before the 2005 law it was impossible for gay candidates for ministry to reveal their sexual orientation, but now this is even an official rule). In addition, the law specifies that the Church should verify the homosexuality of candidates, because “in order to admit a candidate to ordination to the diaconate, the Church must verify, amongst other things, that the candidate has reached affective maturity” (n. 3), and all homosexual persons by nature are not able to be affectively mature. This verification is the responsibility of the Bishop and the rector of the seminary⁴. The question is how these ecclesial authorities want to verify homosexuality.

In the end, this law contains the ridiculous and contradictory “consolation” for gay priests: the validity of ordination of gays who were ordained priests previously to this law is not questioned by this instruction⁵.

⁴ This imposition is a moral and legal duty: “This Congregation reaffirms the need for Bishops, major superiors and all relevant authorities to carry out an attentive discernment concerning the suitability of candidates for holy orders, from the time of admission to the seminary until ordination. This discernment must be done in light of a conception of the ministerial priesthood that is in accordance with the teaching of the Church. Let Bishops, episcopal conferences and major superiors look to see that the constant norms of this Instruction be faithfully observed for the good of the candidates themselves, and to guarantee that the Church always has suitable priests who are true shepherds according to the Heart of Christ” (Conclusion).

⁵ Cfr Tony Anatrella, Reflections on the Instruction on the Admittance of Homosexuals into Seminaries, <http://www.catholicnewsagency.com/resources/life-and-family/homosexuality/reflections-on-the-instruction-on-the-admittance-of-homosexuals-into-seminaries/> [10.10.2016].

2.2.4 Prohibition of coming out and of any public expression of not hetero-sexuality

Under the pressure of “heteronormativity” imposed by the Church as a unique form of humanity, the homosexuality is seen as “unhuman”, shameful and disgusting. Consequently, every not-heterosexual minority must hide and cannot appear in any language, mentality or publication. Homosexuality cannot exist publicly.

The Church is convinced that this “silence” is also a way to eliminate any possibility of homophobia. If you stay in the closet, you can be sure that you will not become a victim of homophobia. The past US Army’s rule “Don’t ask, don’t tell” is still applied as a rule imposed to the whole life of Catholic believers. We must specify the rule: “when the gay is asked if he is gay, he must lie”. To maintain this prohibition it is necessary to develop in believers the sense of shame and culpability for their own homosexuality. The perception of disgust relating to gays is the form of protection in front of recognition and legalization of human rights of persons belonging to sexual minorities.

There is another contradiction. On the one hand, the Church proclaims that homophobia does not exist. The doctrinal document of the Church stipulates: “The “sexual orientation” of a person is not comparable to race, sex, age, etc. also for another reason than that given above which warrants attention” (*Some considerations concerning the response to legislative proposals on the non-discrimination of homosexual persons*, n. 14). So there is allegedly no base to speak about homophobic discrimination on the field of sexual orientations.

On the other hand, in contradiction to this, the Church’s authority demands (strongly suggests) the believers to not reveal their homosexual orientation, as this is something wrong. In the same point 14, the document continues: “An individual’s sexual tendency is generally not known to others unless he publicly identifies himself as having this tendency or unless some overt behaviour manifests it. As a rule, the majority of homosexually oriented persons who seek to lead chaste lives do not publicize their sexual orientation. Hence the problem of discrimination in terms of employment, housing, etc., does not usually arise”⁶. In synthesis, if you do not come out of the closet, there will no problem of discrimination. This position is not only contradictory in relation to the alleged non-existence of homophobia, but also profoundly inhumane, since it denies the psychological and spiritual rights of homosexual people.

Another ridiculous error is the perception of the majority of the homosexual community in relation to their coming out. The first question is whether they do not want to make their sexual orientations publicly known or whether they are manipulated by centuries of anti-gay ideology. The second question is whether it is healthy to hide their own

⁶ When some English versions of ecclesial documents use the scientific term “orientation”, this is correct, but this does not reflect the original ecclesial texts which do not accept scientific language at this point. The Church uses only the term “sexual tendency” because the concept of tendency permits her to maintain the ancient and wrong vision of homosexuality, which is useful for the Catholic doctrine.

sexual orientation during their whole life. If the answer is negative, in that it such a policy of hiding provokes stress and personal problems, we must conclude that Church acts against public psychological health.

2.2.5 The prohibition of serious and objective studies about LGBTIQ minorities in the theological field

In the last half-century the scientific and interdisciplinary progress about homosexuality can be consider the “Copernican revolution” in the human knowledge about LGBTIQ questions. This progress, with its hypothesis and thesis, should be investigated by the theology and by the Church for understanding the development and confronting it with theological/doctrinal position about homosexuality. This real, objective and serious confrontation was made impossible in the Church of Wojtyła and Ratzinger, and nothing has been changed by Pope Francis.

The Catholic Church exerts pressure and intimidation on theologians and generally on the Catholics professionals to make sure that they do not consider scientifically “sexual minorities” in the light of current scientific knowledge, because this would lead to doubts or difficulties in relation to the current Catholic doctrine. This means that interdisciplinary exchange and dialogue between Catholic theology and the current human conscience about homosexuality is blocked. This blockage is exerted by central power (Vatican) and by local control (Bishops Conferences).

In the Congregation for the Doctrine of the Faith it is custom that if candidates for professorships or bishops have problems getting nominated as soon as Church officials find the word “homosexuality” in their scientific publications. The Church wants to denigrate any scientific reflection about LGBTIQ issues, presenting this as “an ideological invention paid by lobby gay” or “a dangerous and temporary mode”. It believes that human sciences on homosexuality are not credible, and it refuses any rational exchange. This has provoked a historical loss and an unforgivable delay in ecclesial reflection.

Currently the ignorance is a power of the Church’s position about homosexuality. Effectively, the confrontation with human sciences is “dangerous” for the ecclesial interpretation of the Bible. In the light of modern science about homosexuality, everything in the Catholic doctrine should be discussed and then updated or changed. It is the same thing that happened in the time of discovering of Copernic and Galilei, and on the occasion of Darwin’s theory of evolution. The Church was obliged to accept the discovery of Earth’s movement in its interpretation of the Bible, but it has done it only after a big delay. The same thing happened with the evolution theory which seemed to be contrary to the Bible. Today it is not anymore viewed as “contrary” to the Bible, but the Church needed more than a century to accept it and reflect about the right interpretation of the Bible, which was demanded by human progress of knowledge.

Today the Church lives in the similar time of ignorance concerning homosexuality, because it is afraid to confront itself with the discovery of human sciences. It is clear that Catholics should reflect on the faith with reason and not against reason. But this is a very intellectual and cultural demanding process that Church does not want to face it yet. The future political decision of the Church will be to consider and respect sexual minorities, and begin to reflect about them in a serious way. The Church is the responsible of every delay in this field.

2.2.6 Prohibition to LGBTIQ persons to publicly pray and to form groups in the Church

There is a real persecution and elimination of every public form of gay association in the Church. The identity of gay people cannot be publicly manifested. They cannot affirm themselves as believers in the liturgical and pastoral space of the Church, because they are wrong and pathological. In the Church there cannot be any pastoral assistance of gay people without considering them as sick people and demanding of them to hide their wrongness. For the Catholic ecclesial practice LGBTIQ persons cannot be visible.

The most eloquent expression of this fight against pastoral assistance is the *Letter to the Bishops of the Catholic Church: Homosexualitatis problema* (October 1, 1986: thirty years ago!) which has effectively forbidden the pastoral care of homosexual persons. According to this document, the Vatican and local Bishops eliminate every Catholic organized pastoral care for gays, which had been done in respect for human dignity and scientific knowledge about sexual orientation. It is in clear contradiction with Pope Francis's declarations about pastoral reception of gay men. Considering that in the Vatican of Pope Francis nothing has changed, we must seriously wonder about Francis' declarations' credibility.

2.2.7 The scandalous support to the civil penalizations of LGBTIQ persons

It is not true that the Catholic Church refuses every kind of violence against gays, as its documents or the Pope's pronunciations officially declare. Actually, the Catholic Church silently supports persecutions and laws against gays in many countries: in Africa, in Asia, in many confessional countries. Not only did the Vatican refuse to support the UN petition against penalizations of homosexual persons in 2008. The Vatican is still convinced that the states should defend themselves from dangerous people, as gays are.

Paul Cameron, an American homophobic and pseudo-scientific psychologist contends that for controlling homosexuals it is necessary to treat homosexuality as an illness or a crime. He finds the second option the most effective. Cameron is a regular guest in the Church's institutions, for example, in Poland. The Catholic Church in its doctrine and in the Vatican's policy supports confidentially this homophobic and pseudo-scientific point of view. When the states' legislations condemn homosexuals, local Churches, Bishops' Conferences and catholic organizations do not fight against such legislations, but

promote unjust and unhuman laws (for example, in African countries such as Uganda, Burundi, etc.).

2.2.8 Stigmatization of homosexual “tendency”

The Catholic language and the mentality are based generally on the stereotypes and prejudices against homosexuality. As an example, we highlight that the ecclesial official language does not use the concept of “sexual orientation” (but only “homosexual tendencies”) without explaining why it avoids the generally accepted term “sexual orientation”.

The attitude of the Catholic Church equals that of many states and societies in the '60 of the last century. It is not a rational refusal of something recognized as objectively wrong (objectively wrong is pedophilia). It is a very negative reaction, full of fear and hate, against gay people, that does not accommodate any positive scientific reflection.

The serious academic reflection was one of the important spaces of the homosexual revolution for the recognition of sexual orientation, as natural and health dimension of the human person. This possibility of study and confrontation is prohibited in the Church. In place of that, the Church supports only an emotional negative refusal of the LGBTIQ question based on the homophobic mentality.

2.2.9 The very strong ecclesial lesbophobia (case of nuns)

In the Catholic Church it is necessary to specify and distinguish *homophobia* (= fear and hate against gay men) from *lesbophobia* (against lesbian women) and *transphobia* (against transgender people) or *interphobia* (against intersexual people).

Lesbophobia is a really unknown field of ecclesial stigmatization of sexual minorities. The social persecution of lesbians in the Church is stronger than the one of gay men. Practically, there is a combination of double stigmatization: they are women (misogyny) and gay (homophobia).

2.2.10 The ecclesial form of transphobia

Transsexual persons are also excluded from religious practices, for example from admission to sacraments. This general exclusion is the effect of ignorance and prejudice against them. As an unhuman example of this practice, we can refer the last public case: In Cordoba (Spain) in 2015, a confidential letter from Congregation of the doctrine of the faith to the local bishop with an answer about the possibility for a transgender man to be godfather of his nephew was made public. The answer was negative and stated that any transgender person is not able to live according to the Catholic faith.

This is the disciplinary practice of the Church. In this light we cannot admit any credibility of Pope Francis' gestures and words that seem to accept transgender

Catholics. He has the responsibility to change the current law and practice in the Church, but he fails to do so. His declarations cannot be seriously accepted, because they are not consistent with the ecclesial practices of discrimination permitted by himself.

The same dramatic problem of ignorance and unjust persecution is perceived in the Church by every intersex person. I can say that the ecclesial officials in Vatican who prepare rules against these sexual minorities are not able to define transsexuality or intersexuality. They confuse transsexual people, transvestite people and intersexual people (no difference, everybody is the same “devil”).

Bibliography about Catholic doctrine and praxis regarding homosexuality

Catechism of the Catholic Church, Vatican City First Edition (*editio typical*) 1994, Second Edition changed regarding the homosexuality (in the most homophobic line) 1997, Nos. 2357-2359.

CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration Persona humana on Certain Questions Concerning Sexual Ethics*, December 29, 1975, n. 8.

-----, *Letter to the Bishops of the Catholic Church Homosexualitatis problema on the Pastoral Care of Homosexual Persons*, October 1, 1986.

-----, *Some Considerations Concerning the Response to Legislative Proposals on the on-Discrimination of Homosexual Persons*, July 24, 1992.

-----, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*, June 3, 2003.

CONGREGATION FOR CATHOLIC EDUCATION, *Instruction Concerning the Criteria for the Discernment of Vocations with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders*, November 4, 2005.

-----, *A Memorandum to Bishops Seeking Advice in Matters Concerning Homosexuality and Candidates for Admission to Seminary*, July 9, 1985.

CONGREGATION FOR THE CLERGY, *Ratio fundamentalis institutionis sacerdotalis The Gift of the Priestly Vocation*, December 8, 2016.

PONTIFICAL COUNCIL FOR THE FAMILY, *Letter to the Presidents of the Bishops' Conferences of Europe on the Resolution of the European Parliament Regarding Homosexual Couples*, March 25, 1994.

-----, *Family, marriage and "de facto" unions*, July 26, 2000, n. 23.

POPE FRANCIS, Post-Synodal Apostolic Exhortation *Amoris Laetitia* on love in the family, March 19, 2016.

The Ground We Share: Values, Religion and Sexualities

Mark Barwick¹

Defending “traditional values” has always been a slippery affair. Whose traditions? And whose values within that tradition? Values are personal and often deeply felt. They can be collectively held, but even these remain highly subjective and change over time. Traditions themselves are not as constant as many imagine. They are fluid and ever subject to revision. Once a tradition has outlived its relevance, it can be modified or abandoned altogether. Few people think and act just like their grandparents. Societies change. People change.

“Traditional values” have been evoked in recent debates on the social and political inclusion of lesbian, gay, bisexual and transgender (LGBT) people. Inevitably, religion has been at the heart of this debate. Religion has been an interlocutor on moral and ethical questions for a very long time. However, the mapping of religion-based opinions on the morality of same-sex relations is complex.

It is true that many religious leaders have denounced homosexual acts as immoral. Some find justification for their position in sacred texts. Others appeal to moral principles, official teaching or theological reasons for rejecting homosexual behavior.

Still other religious leaders and institutions have been strong advocates for the full inclusion of LGBT people, not only within their own faith communities but in general society as well. For them it is a matter of respecting human diversity, compassion and justice. These voices have received less attention by the media, leaving the impression that a religious consensus exists on the matter. In truth, the status of LGBT people remains a highly controversial topic for many religious bodies. No such consensus can be expected in the foreseeable future, even for those within the same religious tradition. Such a diversity of views between and within religions necessitates a thorough and conscientious debate to avoid simplistic conclusions to what has become an extremely thorny matter.

1. Religion and culture

Religious institutions are easy targets for those who want to lay blame for societies’ intransigence toward LGBT people. There is no question that religions have played a role in opposing homosexual relationships. Yet religious teaching is much more fluid than many people appreciate. For all the universal truths that religions claim, it is clear

¹ Mark Barwick is the priest at St Alban’s (Anglican) Church in Strasbourg, France. He has worked extensively in support of European policies protecting the freedom of thought, conscience, religion and belief.
(✉) mark.barwick@gmail.com

that they are also malleable and adapt to their environment. Religions are invariably a reflection of the dominant host culture. Even wildly different traditions, once implanted in a country, will become contextualized to some degree, sharing the values, ideas and beliefs that become regarded as the tradition of that country. These can become fixed as perceived “traditional values,” even if they do not have a long history in the country. In this way, religion becomes a lens and an interpreter of society.

For instance, the Russian Orthodox Church has been at the center of a vigorous campaign to limit the rights and freedoms of LGBT people in Russian society. Is the church mirroring the values, ideas and beliefs that are already present in Russian society? Or has the church been an actor in promoting them? Of course, the answer is that throughout its long history it has been both. Religion, like other social institutions, can be both interpreter and promoter of a people’s values.

It should then come as no surprise that religious institutions have resisted the wider acceptance and visibility of LGBT people in many societies. Institutions are inherently conservative. They defend the status quo. The fear of change, the loss of cultural normativity and power has been behind much of the religious opposition to homosexuals and transgendered people, even when scripture and religious teaching are cited in defense of their position.

Similar resistance has been mounted – again with tightly-bound arguments from religion – toward migrants, poor people, women and people of color. Institutional group-think is a subtle but powerful influence in shaping “traditional values” and driving opposition to change. It is the loss of normativity that causes institutions to tremble. Truly pluralistic societies are difficult to build. More often they are thrust upon us through internal and external forces.

2. All our sexualities

Just as values and traditions are fluid, it has also become clear to many people that sexuality and gender identity are not as static as they had once thought them to be. There has been lively debate over the origins of sexual orientation, whether it is biologically determined, the product of environmental influences or any number of other factors that contribute to human development. Sexual orientation remains constant for some people throughout their lives and for others it can change over time. Similarly, one’s gender can be experienced differently, irrespective of one’s genitalia or sexual orientation. Some people describe themselves as gender fluid, identifying variously as male, female or some non-binary identity.

It is not within the scope of this paper to argue the causes of sexual orientation or differing types of gender identity. While the causal debate may appear inconsequential

to some people, to others it has moved the discussion away from issues of moral responsibility (“choice”) and into the realm of human diversity.

Diversity is part of our human story. Humans are like one another in their humanity and also quite different from one another in their diversity. Expressions of LGBT – and Q, I, A or whatever else one may wish to add to the list (that’s Queer, Intersex and Asexual, for the uninitiated) – testify to the fact that humans are complex beings. We do not all conform to the mainstream of human sexuality and gender, just as we do not all conform to a number of other traits of being and identity.

Here a note of caution is in order. Some find it demeaning to pile up letters (LGBT+) to define what they live and experience quite naturally. They are not insects under a microscope, they say, awaiting the classification of others. They are just who they are, independent of any external validation and having no need to explain themselves. To demand justification for simply being who they are is duplicitous at best. In contrast, heterosexuals are almost never asked why, when or how they became heterosexual. Most have never thought about it. They just are who they are.

Religious people in particular, who lay claim to universal principles of love, compassion and justice, should be at the forefront of promoting respect for diversity and combating ignorance and discrimination. What has become known as the Golden Rule – to treat others as one wishes to be treated oneself – can be found in one form or another in most religious traditions. Implicit in this principle is the acceptance of human differences, including our sexualities and gender identity. Sadly, this has not been a guiding principle in much of the recent debate.

Some religions lay claim to special revelation by which norms are established for sexual conduct. These norms seek to determine what is normal, a risky affair in the face of human diversity. The difficulty becomes especially evident when one’s personal experience conflicts with claims to revelation or other constructed visions, whether religious or secular. Some opt for the authority of sacred texts; others rely on the validity of their experience; still others find no contradiction between the two.

In any case, diversity is an evident feature of the natural world, including the world of humans, and it is here to stay. Diversity can be a source of conflict, but it can also be regarded as a source of strength. Societies that affirm the worth and role of all its members can richly benefit from their contributions. This mosaic of differences – of all sorts – is rapidly becoming the paradigm of the 21st century.

3. Reimagining Family

One topic that has moved to the forefront in the debate over sexuality and gender is how families are to be legitimately constituted. For many religious people and social conservatives, this is the most contentious point for expanding the public space for

LGBT people. Even those who can concede the right of LGBT people to their private sexual lives may not be ready to acknowledge their right to marry and to establish a family.

The refusal to accept same-sex marriage is often based on deeply-held views on how marriage is constituted and the normative nature of what is considered to be mainstream family structures. Indeed, “traditional values” have become closely associated with “family values,” an often narrowly-defined term used to defend an increasingly fragile point of view.

A family is a group of people who are related to one another; however, this relatedness has been expressed in diverse ways across the span of history and cultures. How family is defined has always been typically influenced by ancestry, culture, religion, social norms, economics and history. In fact, the notion that a family is two parents living with their children under the same roof is a singularly Western concept. And even for Westerners it is fairly recent.

What many people have now come to view as the “traditional family” is really the product of several elements coming together since the 18th-century. The Industrial Revolution had an immense impact on European society and on family life especially. Ties of extended family were weakened, fathers (and much later mothers) began to spend large portions of their waking hours away from their homes, and the education of children was gradually shifted to the public authority. Add to this numerous other changes – including wars, economic crises and the effects of various social movements – and we see the origins of the much-revered nuclear family, where families have become largely autonomous units.

This is admittedly a rather simplistic and Eurocentric way of looking at the development of family patterns in the post-industrial world. Even still, there is no question that what many people have come to regard as normative for family life is but one tradition among many others. Former visions of family have now expanded to include new paradigms, blended families and other ways of constituting family. Anyone who wishes to establish a norm for marriage and family in modern Western societies quickly runs up against hard statistics. In fact, it has now become extremely difficult to establish any such norm.

If traditional marriage is a “cornerstone” of society, as some have suggested, then society is clearly in the process of collapsing.

Instead, the patterns of marriage and family have become much more diverse. In this rapidly changing environment, the claims of LGBT people for marriage and family equality are just one part of that process. Like anyone else, LGBT people wish to be free to establish a family, if they so desire, including the right to have children. Article 8 of the European Convention on Human Rights addresses this right – and the language of the convention does not limit the provision to different-sex couples.

At this moment in time, it is difficult to substantiate the claim that traditional marriage and family structures are superior to more recent configurations, especially as these structures have themselves been in such flux for a very long time in most Western societies as well as in many non-Western societies. This has been the case throughout much of human history and will no doubt continue to be so in the future. The challenge for our times is whether we will be able to adapt to the wider claims of a more diverse and inclusive society, not only in respect to individuals but also to families and communities.

4. Learning to Read

Religious proponents of “traditional values” have sometimes appealed to a fundamentalist reading of scripture or tradition for developing their positions on sexuality morality. Here the word “fundamentalist” is employed as a neutral term, neither positive nor negative. It signifies a return and strict adherence to foundational beliefs and principles. A fundamentalist reading of the Bible or Quran, for example, usually means a direct, literal and ahistorical lens through which to interpret these writings. This is widely practiced by many religious believers, often unwittingly. They may not identify with the term fundamentalist, but the approach is nonetheless the same.

When it comes to the safety and inclusion of LGBT people, a fundamentalist reading of sacred texts can be dangerous indeed. It can lead to discrimination, give impetus to hate speech and incite violence. Blind obedience to texts which sanction violence in response to homosexual acts runs the risk of serious offenses that have no justification in democratic societies. Moreover, religious leaders who advocate such violence are themselves undermining some of religion’s most enduring values: love, tolerance, compassion and solidarity.

It is clear that many religious believers need to readjust their thinking and their approach to reading sacred literature. Ancient texts, however sacred they may be, cannot provide the definitive word on many contemporary issues. For instance, a body of laws intended to regulate the sexual conduct of people in early patriarchal societies, often resulting in blatantly unjust sentences inflicted upon women, cannot be accepted as applicable to today’s world. Similarly, those who wish to identify a “biblical model” for sexuality and the family will be sorely disappointed. In fact, one can identify portions of the Bible which endorse a wide range of relationships, including polygamy, rape, forced marriages and wifely submission.

Coming to terms with the literary sources and traditions of one’s religion can be troubling, but it does not have to be. Many people in our times have moved away from a fundamentalist hermeneutic in favor of reading the texts as more descriptive than prescriptive; that is, they understand them to be descriptive of a specific time, place and

cultural setting. Accordingly, they are careful not to prescribe moral codes that were created under vastly different circumstances. This approach establishes a different relationship between the text and the reader of that text. It is reading conscientiously while honoring the integrity of the text itself. Moreover, it humanizes the reading of sacred literature. It acknowledges that moral positions have evolved over time and will continue to change.

As with anyone else, LGBT people have no need for an external source to “sanction” for them the pleasures of human loving and sexual expression. Nor is it a question of submitting to a moral code, if it has not been freely chosen. Same-sex attraction and same-sex loving are simply facts of life. They always have been and they always will. And no amount of textual soundbites to the contrary can change that.

5. Finding Common Ground

If we are searching for common ground on which to build a constructive debate on religion and sexualities, we would do well to begin with recognized principles for human rights. Article 1 of the Universal Declaration says it all: everyone should be “free and equal in dignity and rights.” No one should be subjected to discrimination and violence because of their sexual orientation or gender identity. Nor should anyone suffer hardship or inhumane treatment due to religion or convictional belief. “Free and equal in dignity and rights” is the unifying principle that must govern all human relations, regardless of one’s personal feelings or attitudes toward another person’s life choices.

In upholding this principle, public figures have a particular responsibility to foster an environment of respect and harmonious relationships within society. This is especially the case for those who are entrusted with responsibilities of moral and ethical guidance, such as religious leaders and institutions. Refraining from any speech that incites hatred, bigotry or discrimination is a good beginning point.

Moreover, in the interest of the common good, a wider and sustained dialogue is necessary for reconciling religious teaching with the diverse sexual expressions and gender identities that have come to the fore in our times. Here creating space for honest dialogue will be critical. Simplistic answers to complex phenomena are in no one’s best interest and are ultimately unsatisfying.

The religions have had to face contentious issues in the past, such as slavery, apartheid, justification for war, colonialism and the place of women in society. In each of these instances, different sides have supported radically different positions, each referencing sacred texts and the weight of their tradition. If nothing else, genuine dialogue should drive us to assume a spirit of humble and honest enquiry. This too can help point the way to a healthier and more inclusive vision for our future.

Similarly, LGBT organizations and their advocates will need to exercise a spirit of open dialogue toward their religious interlocutors. Religion has been around in one form or another for a very long time, mirroring the very best (and yes, sometimes the very worst) of our humanity. As an enduring part of the human story, it merits more respect than has been afforded by some anti-religionist voices which have arisen in the name of a supposed modernity.

Until now, genuine dialogue has been difficult on all sides. The language of human rights remains foreign to many people in mainstream religious traditions. The language of moral conduct has been more prevalent in the articulation of religion. Even still, sexual attitudes and opinions regarding sexual behavior have varied greatly for religious people as indeed they have for general society. Sincere dialogue on these matters will require all sides to lay aside long-held assumptions in order to listen more freely to one another.

Beyond the polarizing debate, there are common values to be explored between LGBT advocates and adherents of religion. In the end, religious people as well as LGBT people – and yes, they are sometimes the same people – all wish to be heard, respected and protected. They do not ask for special treatment, just to be part of a society that is safe and respectful of differences. At the very least, the recognition of our common humanity and shared dignity should lead to a more respectful dialogue and mend bridges that have been damaged during recent debates.