

THE AGAINST NATURE JOURNAL

Issue #2 Winter 2021

The Against Nature Journal is a biannual arts and human rights magazine exploring “crime against nature” laws and their legacies, in print, in person, and online. Authors and readers from law, activism, social sciences, and the arts are brought together to foster dialogue on sexual and reproductive rights and rethink nature anew.

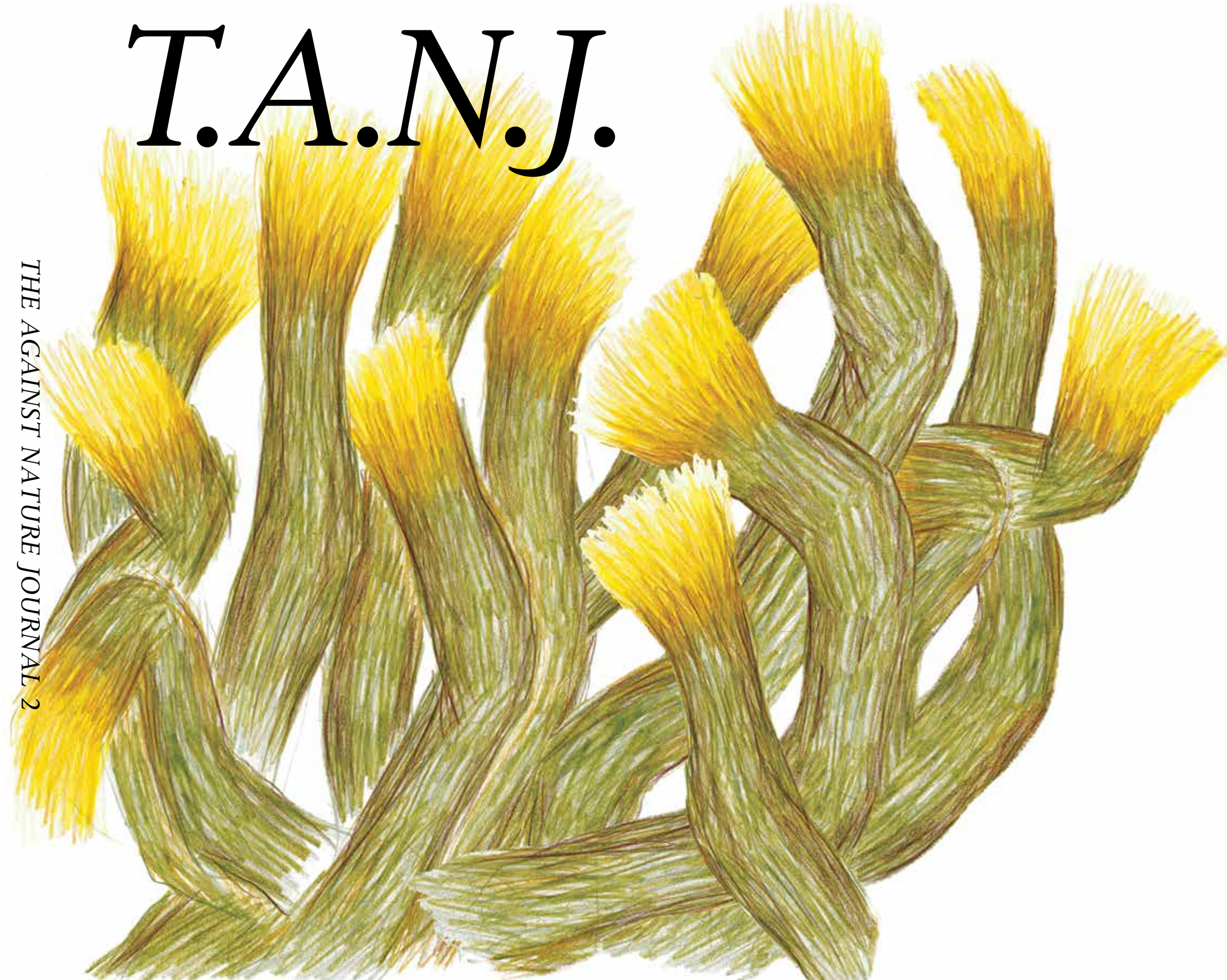
This second issue revolves around the theme of migration, a crucial topic when addressing the forced displacement of LGBTQI+ people from contexts where “nature” is still used to criminalize consensual same-sex conduct or gender expression. We are honored to publish a new short essay by *JASBIR K. PUAR* that updates her work on homonationalism. In an interview with Indian activist *ALOK HISARWALA GUPTA*, we discuss how laws also cross borders, while legal researcher *WARUGURU GAI THO* and activist *CARL COLLISON* offer different approaches to reporting on asylum claims. *FATIMA EL-TAYEB*’s vibrant essay invites us to consider the meaning of a queer “we,” while iconic writer and filmmaker *ABDELLAH TAÏA* tackles everyday xenophobia in France. Poems by *GLORIA ANZALDÚA* and *DIVYA VICTOR* offer personal reflections of homelessness and alienation, which resonate with photographs by artist *ZOE LEONARD* that focus on the quotidian movements of crossing the river border between the US and Mexico. Historian *ZEB TORTORICI* addresses the notion of “against nature” through an engagement with the archive, while our Columns section brings news from Brazil, India, Kenya, Lebanon, Morocco, and the UK, in a season marked by the Covid-19 pandemic.

Published by Council



THE AGAINST NATURE JOURNAL 2

T.A.N.J.



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T.A.N.J.

The Against Nature Journal is printed in summer and winter in Paris.

500 copies are distributed in selected bookshops worldwide.
€15 / £13 / \$16 per issue

1,500 free copies are distributed internationally to individuals and organizations who operate in the fields of law, activism, social sciences, and the arts. To join this network, please sign up on our website: www.theagainstnaturejournal.com

T.A.N.J. intertwines six themes, each becoming the major focus of one issue: religion, migration, medicine, love, death, nature. If you would like to send us a letter or suggest an author or text, please write to: editors@theagainstnaturejournal.com

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Issue #2 published in January 2021 at 78 rue des Archives 75003, Paris.
Legal deposit in January 2021

ISSN 2742-2569

Printed in Germany by Benedict Press in an edition of 2,000 copies
Paper: Munkens Print Cream by Arctic Paper

Significant support for *The Against Nature Journal* is provided by the Foundation for Arts Initiatives, Kone Foundation, and Nordic Culture Point.



KONE FOUNDATION



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Gloria Anzaldúa

was a Chicana, Tejana, lesbian, feminist poet, theorist, and fiction writer from South Texas. In addition to authoring *Borderlands/La Frontera: The New Mestiza* (Aunt Lute Books, 1987), she was coeditor of *This Bridge Called My Back: Writings by Radical Women of Color* (Persephone Press, 1981) and editor of the critical anthology *Making Face, Making Soul: Haciendo Caras* (Aunt Lute Books, 1990). Anzaldúa passed away in 2004.

Dayna Ash

is a cultural and social activist, playwright, performance poet, and the founder and executive director of the nonprofit arts organization Haven for Artists, based in Beirut, Lebanon.

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is an African LGBTI activist from Morocco. He is the cofounder of Equality Morocco. For over ten years, he has worked with local and international human rights NGOs and different campaigns to decriminalize homosexuality and raise awareness of LGBTI issues in Morocco.

Carl Collison

is a freelance journalist, photographer and filmmaker, who focuses specifically on producing LGBTIQ-related content from across Africa. In 2020, he was included in *Exit* magazine's list of Queer Warriors, a list of twenty people globally who are fighting for queer liberation on the African continent.

Pawan Dhall

has been engaged with queer activism in India since the 1990s. He runs Varta Trust, a nonprofit for gender and sexuality issues that works on legal aid and citizen journalism. He researches and writes on the histories, health, and socioeconomic inclusion concerns of queer communities. His most recent publication is *Out of Line and Offline: Queer Mobilizations in '90s Eastern India* (Seagull Books, 2020).

Fatima El-Tayeb

is Professor of African-American Literature and Culture at the University of California, San Diego. Her work deconstructs structural racism in "color-blind" Europe and centers strategies of resistance among racialized communities, especially those that politicize culture through an intersectional, queer practice. She is the author of three books and numerous articles on the interactions of race, gender, sexuality, and nation.

Waruguru Gaitho

is a queer, Black, African, radical feminist. As a human rights lawyer specializing in SOGIESC, gender, race, and social justice, her career is dedicated to advocating for the equal rights and dignity of marginalized communities, not just through the law but also via academia and community organizing.

Alok Hisarwala Gupta

is a queer activist and lawyer. He has written extensively on Section 377 of the Indian Penal Code. He coedited *Law Like Love: Queer Perspectives on Law* (Yoda Press, 2011) with Arvind Narrain, where a wider queer politics was imagined. Guided by his queer politics that transcend the species barrier, he now works on animal rights.

Tim Johnson

is a poet and artist based in Marfa, Texas. With his partner Caitlin Murray, he operates Marfa Book Co., a bookstore, gallery, and publishing company. He is also the cohost of a weekly Spanish language radio program on Marfa Public Radio, *Dos Horas Con Primo*.

Eliel Jones

is a (queer) critic, writer, and associate curator at Cell Project Space, London. He has written about contemporary art and performance for *Artforum*, *Elephant*, *Flash Art*, *Frieze*, *The Guardian*, *MAP*, and *Mousse*, among other publications.

Zoe Leonard

is an artist working with photography, sculpture, and installation. She has exhibited widely since the early 1990s, with recent solo exhibitions at MOCA—Museum of Contemporary Art, Los Angeles (2018), Whitney Museum of American Art, New York (2018), and MoMA, New York (2015). Her project *Al Rio/ To the River* will be shown at Mudam, Luxembourg, and MAM Paris in 2021.

Kari Mugo

is a Kenyan creative writer and activist. Her writing covers identity, culture, global mobility, politics, and travel. She previously worked at Kenya's National Gay and Lesbian Human Rights Commission, and continues to agitate for the full inclusion of sexual and gender minorities in the region.

Jasbir K. Puar

is Professor of Women's and Gender Studies at Rutgers University. She is the author of *The Right to Maim: Debility, Capacity, Disability* (Duke University Press, 2017) and *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press, 2007). In 2019, she was awarded the Kessler from the Center for Gay and Lesbian Studies, given yearly to scholars and activists whose work has significantly impacted queer research and organizing.

Mariah Rafaela Silva

is a Black trans woman activist and member of the group Conexão G for LGBTI citizenship in the favelas. She is also a PhD researcher in social communication at Universidade Federal do Rio de Janeiro.

Abdellah Taïa

is an acclaimed Paris-based novelist and filmmaker born in Morocco. He has published eight books in French that have been widely translated, and was awarded the prestigious Prix de Flore for his novel *Le jour du roi* (Seuil, 2010). His commitment to the defense of homosexuals in Muslim countries has made him one of the most prominent Arab writers of his generation.

Zeb Tortorici

is Associate Professor of Spanish and Portuguese at New York University. He is the author of *Sins Against Nature: Sex and Archives in Colonial New Spain* (Duke University Press, 2018) and coeditor of *Ethno-Pornography: Sexuality, Colonialism, and Archival Knowledge* (Duke University Press, 2020). His current research looks at the preservation and archiving of pornography in Mexico.

Divya Victor

is the author of *CURB* (Nightboat Books, 2021, forthcoming), *Kith*, a book of verse, prose, and lyric essay (Fence Books / BookThug, 2017), and *Natural Subjects* (Trembling Pillow Press, 2014), winner of the Bob Kaufman Award. Her work has also featured in numerous anthologies, including the New Museum's *The Animated Reader* and *Crux Desperationis: International Journal of Conceptual Writing*.

Sexual and gender identities are varied and contextual: cultures and struggles and the degree of intersectionality change from one context to another. This is expressed in the use of a variety of acronyms and initialisms, from the most common LGBT to the more recent LGBTQI+, all intended to emphasize the diverse culture of sexuality and gender identities. Throughout this journal, the editors have chosen to maintain each author's initialism of choice to reflect the diversity of positions.

LETTERS

November 23, 2020

Dear editors,

When I received the package, I poured myself a glass of red wine and cozied up with my furry boy in the reading corner of our apartment in Groningen. A neat booklet with a crayon cover of a cardinal-red and light-green ... cactus flower? The *T.A.N.J.* acronym rings as tangible. Thick and crispy pages with a delicious cream tinge that smell of stationary and scholastic beginnings. I flip through poems, essays, and photographs, when suddenly, a map falls into my lap. A foldable representation of state-sponsored homophobia. I stumble on a letter by Maya Mikdashi and a contribution by Dayna Ash, and I feel pulled into a borderless world where my feminist communities have been, one I am eager to visit as a diasporic reader preoccupied with connection. *The Against Nature Journal*—how exciting it is to hear disciplinary boundaries break under the weight of our queerness.

Sinine Nakhle

Creator, *Beirut By Dyke*, The Netherlands

November 20, 2020

Dear *T.A.N.J.* editors and readers,

As a young academic and Women/LGBTQI+ activist, I believe that LGBTQI+ life, culture, politics, representation, rights, awareness, and empowerment must be accepted, accomplished, and visible in today's world. *T.A.N.J.* questions and deconstructs the concept of nature used by religious, patriarchal, normative, and political institutions. It is a haptic and visible space for all gender identities, all sexual orientations, and all human beings. Despite the repression, exclusion, and discrimination in all areas of life, LGBTQI+ people resist and open up new perspectives and visible living spaces to emphasize their visibility, fluidity, presence, and agency in order to be accepted and recognized. Only together we can fight for everyone's rights!

Fatma Uysal

PhD candidate in Art and Cultural Studies, UNSA Vienna

November 19, 2020

Dear editors,

I wrote a little reflection about identity I would like to share with your readers: I am skeptical of stories that promote a binary division—friend versus enemy, good versus bad, etc. They simplify an identity construction at the level of a simpleton. Isn't it pathological? That pathology of "defining oneself," whether out of fear or fashion, on the basis of denying the contrary of a stereotypical void, and to shout it out as if it were valid because of one's inability to assume ourselves.

Thank you!

Cecilia Alfaro

Santiago, Chile

November 19, 2020

Dear editors,

A few weeks ago, I received the surprising gift of the inaugural issue of *T.A.N.J.* I was immediately intrigued by the global perspective approach regarding LGBTQ+ rights and gender issues. I also enjoyed the mix of photos, news, essays, and poetry, and I'm already looking forward to the next issue.

As someone who contributed to the establishment of the subfield of critical men's studies in religion and who expanded Holocaust studies through engagement with masculinity studies, I welcome the opportunity to learn from new voices and from locations to which I usually have less access. As a cisgender man, I appreciate conversations across our gendered identities and identifications around the globe.

Björn Krondorfer

Director, Martin-Springer Institute and Endowed
Professor of Comparative Religious Studies,
Northern Arizona University

EDITORIAL

Rethinking Migration

The second issue of *The Against Nature Journal* revolves around the theme of migration, a crucial topic when addressing the experiences of LGBTQI+ individuals who have been displaced from contexts where “nature” is still used as an argument to criminalize consensual same-sex conduct or gender expression, as well as the broader questions of transnational rights and activism, and the trafficking of knowledge and customs.

The first section of this issue presents two different approaches to claims for asylum related to sexual orientation. WARUGURU GAITHO’s legal analysis focuses on a 2013 judgment from the Court of Justice of the European Union regarding three asylum applications in the Netherlands from nationals of Sierra Leone, Uganda, and Senegal. Her review of the case shows up the contradictory position of the EU on immigration and the differing conceptions of refugee and asylum seekers’ rights by EU countries. It also reveals the very nature of court decision-making, where progressive gestures often go hand in hand with regressive moves. Activist and writer CARL COLLISON shares a journalistic story based on a Zimbabwean national seeking asylum in South Africa due to sexual discrimination in his home country. Collison’s piece also considers desire and aspiration as reasons to migrate, while dealing with questions of representation.

The central section focuses on political, cultural, and historical processes of “othering,” that is, of perceiving or portraying someone or something as essentially alien or different. Both the symbolic and pragmatic mechanisms of constructing an “other” are key to the rhetoric of migration policies. Gender studies scholar JASBIR K. PUAR coined the term “homonationalism” to explain how queer identities are used by the nation-state against Brown, usually Muslim, others. We are fortunate to be able to republish Puar’s influential essay “Rethinking Homonationalism” (2013), which is accompanied by a new introductory note by the author. Her concept sits in close relationship with the main concerns of our project, and so our engagement with it does not end with this issue; rather, we think of homonationalism as a transversal

question that will continue to inform the journal. The vibrant essay by FATIMA EL-TAYEB advocates for queer intersectional critique to denounce structures of oppression, including global migration policies. In doing so, she reflects on the possible meaning of a queer “we,” which connects her text to Linn Marie Tonstad’s essay in our previous issue and to further commissioned texts on this term in issues to come. In our interview with activist and legal researcher ALOK HISARWALA GUPTA, we explore how India is central to understanding the historical expansion of against nature laws, showing that it is not only people but also laws which cross borders. The conversation considers Gupta’s earlier LGBTQI+ activist work in relation to his current animal rights activism, troubling the division between human and nonhuman animals. All three contributions offer powerful propositions for reviving the potentiality of queer politics: through acknowledging racism, patriotism, and terrorism (Puar); incorporating intersectionality in theory and action (El-Tayeb); and by considering animal rights in the fight against oppression of all forms of life (Gupta).

While the question of queer migration calls for an overview of the structural, transnational processes that occur when queer subjects cross borders, it also asks for a more personal reflection of the everyday diasporic experience. Thus, the final section brings together several voices that offer insights into migration on a micro level. Writer and filmmaker ABDELLAH TAÏA’s short story is a firsthand account of the xenophobia that a young Moroccan migrant typically faces in France. Taïa is an iconic figure in the Arab world and beyond; his contribution to *T.A.N.J.* is part of his fervent fight for LGBTQ+ rights globally. The four-part poem by DIVYA VICTOR from her forthcoming book *CURB* (Nightboat Books, 2021) links desire, feeling, and the personal to the process of applying for an Alien Relative visa in the United States post-2016, when hate crimes committed against South Asian migrants only escalated. GLORIA ANZALDÚA (1942–2004) explores the alienation and homelessness experienced by many queers in her poem “Del Otro Lado” (*Of/from the other side*). The work of this significant author of feminist and queer theory—and a great inspiration to many

contributors to this issue—was informed by living on the Mexico–US border and her personal experiences of social and cultural marginalization.

The journal’s regular features continue in issue two, including the section devoted to rethinking the notion of “against nature.” This time, a reprint of the introduction by ZEB TORTORICI to his book *Sins Against Nature* (Duke University Press, 2018) traces the construction, development, and consequences of sodomy laws in colonial New Spain through a passionate engagement with the archive. This issue also includes our Columns section, with reports from Brazil, India, Kenya, Lebanon, Morocco, and the UK, many of which reflect on the ways the Covid-19 pandemic has impacted queer lives.

Lastly, this issue on migration presents a significant visual intervention by artist ZOE LEONARD, who has shared with us a number of photographs from her ongoing project *Al Rio/To the River* (2016–). Through seriality and repetition, these images emphasize the quotidian movements of crossing the river border between the US and Mexico, and explore the complexities of representing the many lives that touch its currents.

Aimar Arriola and Grégory Castéra
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A Note for *Al Rio/To the River*

Tim Johnson

A river boundary naturalizes a nation's edge. But forcing rivers to perform the role of international boundary proves very difficult without tremendous, even violent, effort to control the river's behavior. A river, especially a desert river, is essential to the life that surrounds it. In this way, rivers function more like centers than edges, providing sites of hydration and gathering for all the species that rely upon them. Moreover, rivers meander; they flood and jump their banks. Rivers make new, sometimes multiple, courses. In time, the land which shapes rivers is shaped by them. River behavior troubles boundaries and disrupts property, often dramatically. One consequence of river boundaries is a profound anxiety at the very site of a nation's (or any other entity's) edge. Attempts to control rivers, and to control their related phenomena, though effective in some ways, are rarely effective for long. For the most part, this failure of architecture and other modes of intervention to control rivers has resulted in greater and more violent forms of intervention. And that doesn't begin to address the impacts, both intentional and unintentional, which these interventions introduce.

The photographs in this issue of *T.A.N.J.* are excerpted from *Al Rio/To the River*, a large-scale photographic work in progress by Zoe Leonard. A book of the same name, a collaboration with the artist which I am editing, will accompany the work when it appears in 2021.

Since late 2016, Leonard has photographed from both banks of the Rio Grande/Río Bravo, following the course of the river where it is used to demarcate the international boundary between Mexico and the United States. In *Al Rio/To the River*, as in much of her work, Leonard uses strategies of seriality and shifting perspective to investigate the myriad ways in which the politics of depiction and representation coincide with lived experiences of sexuality, gender, mourning, migration, and displacement.

Across several hundred photographs, *Al Rio/To the River* engages a sustained observation of the water, the surrounding landscape, and the constructed environment—dams, levees, roads, irrigation trenches, bridges, pipelines, fences, checkpoints, and detention centers—built into and alongside the riverbed to control the flow of water, the passage of goods, and the movement of people.

Much of the Río Bravo/Rio Grande flows through the Chihuahuan Desert, which encompasses several states and parts of both nations. The breadth of the river's mouth as it reaches the Gulf of Mexico results in most of what isn't desert. The significance of rivers to the region is evident in the name Chihuahua, which derives from the Nahuatl (the language of the Aztecs) word for "confluence," a reference to where two rivers, the northerly Conchos and southerly Bravo/Grande, meet. Today the confluence is known as La Junta de los Ríos, the name used by the earliest Spanish conquistadors.

For several thousand years, humans have lived at La Junta. During that same time, the people who have arrived at La Junta on their way to more distant points vastly outnumber the people who have forever called it home. Today we would call it a crossroads, but anachronistically. In fact, it is rivers that have provided us with the ancestral routes of movement and association that later roads have followed. Today, La Junta de los Ríos is located about three kilometers west of the International Bridge connecting Ojinaga, Chihuahua, and Presidio, Texas.

The photographs in this selection were taken at locations along nearly 2,000 kilometers of river boundary and include: the former site of the Candelaria Bridge, which, until its removal by US Border Patrol in 2008, connected the remote villages of Candelaria, Texas, and San Antonio del Bravo, Chihuahua; the Los Ebanos Ferry, also known as El Chalán, the hand-operated cable ferry that connects the towns of Los Ebanos, Texas, and Gustavo Díaz Ordaz, Tamaulipas; bridges connecting Ciudad Juárez, Chihuahua, and El Paso, Texas; and a bridge connecting Laredo, Texas, with Nuevo Laredo, Tamaulipas.

Zoe Leonard
 Images from *Al Rio/To the River*,
 2016–2021
 Approximately 500 gelatin silver prints
 and 50 chromogenic color prints
 Dimensions variable
 Courtesy the artist, Galerie Gisela
 Capitain, Cologne, and
 Hauser & Wirth, New York

Support for the artwork has been
 given by the Graham Foundation for
 Advanced Studies in the Fine Arts,
 the John Simon Guggenheim Memorial
 Foundation, Galerie Gisela Capitain,
 Cologne, and Hauser & Wirth,
 New York.

COLUMNS

Faveladas Fighting to Rewrite Their Future

Mariah Rafaela Silva

Rio de Janeiro's *favelas* are known worldwide for their social discrepancy, lack of infrastructure, and daily violence. These settlements emerged at the end of the nineteenth century as a direct effect of slavery, racism, and violence produced by centuries of colonialism. Newly freed slaves found a possible refuge in the city's hills to establish a life and a culture in the absence of a political system that would guarantee their rights. More than a century later and the situation of the favelas is still rooted in stigma and institutional abandonment. The inhabitants, in turn, suffer from a lack of education, basic sanitation, and public security.

Being an LGBTI person in this place isn't an easy thing, especially at a time when the world is squirming: the Covid-19 pandemic has brought new challenges for LGBTI bodies and subjectivities given the collective imaginary that invests enmity in the LGBTI experience as though we too are a virus. In this sense, Brazil kills the most trans people in the world, taking away not only lives but especially citizenship. Here's an important fact: according to the National Association for Travestis and Transsexuals (ANTRA), 82 percent of people murdered in 2018 were Black; in

Brazil, racism and transphobia operates as a necropolitics.

However, there is resistance. And a thriving peripheral culture that gives life and transforms the alleys of the favelas into colorful and plural environments. During Covid-19, residents have had to find their own strategies to deal with the devastating effects caused by the virus. Groups of Black trans women (*faveladas*) have come together to claim their rights to citizenship. The ethics that overflows from their bodies has produced movements and pedagogies of global interest. One of their main achievements has been the self-organized distribution of basic food packages, protective masks, and hygiene products to the most vulnerable, forming a broader care network that currently reaches six favelas in Rio.

They have also rewritten the future of trans women, teaching us how to exist at the upper limits of resistance. These Black trans women got together in small groups, many barely knowing how to read or write, and yet they took the lead in the process of care for the favela community in general. For example, in Maré, one of the largest and most violent favelas in Rio, they decided to knock door-to-door to advise on hygiene in an environment where the lack of water and basic sanitation is a structural issue (shacks of around 20–25 square meters are often shared by whole families), and in doing so they surveyed the sociodemographic of the residents. As a result, they have affirmed the trans presence in

these territories and built a path to guarantee citizenship, respect, and social inclusion, while contributing to the demobilization of historic structures of oppression with the strength of their creativity and sense of social justice.

Queer Migrations in India: Lockdown Revelations

Pawan Dhall

In India, migration and being queer are becoming more closely associated. But this is not reflected in the statistics: the 2011 Census of India recorded 450 million internal migrants, 45 percent higher than in 2001. Livelihood, education, and marriage were the most common motivations to migrate. And while it is not known how many of these migrants were queer, prejudice toward queerness would likely have informed their decision.

My activist experience shows that many queer persons aspire to or actually leave for another city or country to “breathe easy,” to be in a loving relationship, or to seek gender affirmative care. They are forced to in India because family and the community culture allow little space for gender, sexual, and sexuality non-normativity. A digital magazine on sexuality published by Delhi-based NGO

TARSHI, *In Plainspeak*, outlines several accounts of queer individuals migrating to lead a more fulfilling life. Sometimes it is even brutal family violence that necessitates migration, as in the case of transgender persons who are evicted from home. In *The Truth about Me: A Hijra Life Story*, renowned transgender activist A. Revathi shares a poignant autobiographical narrative of the journey she undertook to escape family violence and achieve self-realization.

Recognition of transgender citizenship rights, decriminalization of queer people, and court orders that give adult queer couples cohabitation rights are making it imaginable in India to leave home. Unfortunately, not all migratory flights take off or land safely. Queerness intersecting with class, caste, race, location, age, and disability poses myriad challenges. The coronavirus pandemic has highlighted this rather painfully. The sudden lockdown imposed in late March 2020 created unprecedented ordeals for labor migrants trying to return to their homes. A public outcry compelled central and state governments to organize transport for the returnees. But Launda dancers from West Bengal, transgender women who migrate biannually to perform at weddings in neighboring Bihar and Uttar Pradesh, could only depend on queer groups to organize funds and transport to help them return, as their profession is not recognized by the state.

Furthermore, it took the West Bengal government five months to

announce free and universal access to rations for transgender persons through the public distribution system. This was a welcome relief, however, for migrant transgender persons and those not possessing ration cards: under the usual rules, they can only receive (subsidized) rations if they have a card and only at the address shown on the card, which is often the home they have left.

Meanwhile, in the Nadia district of West Bengal, two lesbian couples have been facing domestic violence. The police, in both cases, instead of registering their complaints were violently moralizing and told each couple that they should listen to their parents and respect society’s values. Queer and women’s groups have been unable to intervene legally because it could expose the women to retaliation from their families, and to do so they would have to leave their homes. Both couples want just that. But, then, where will they go during lockdown?

My work as an activist since the age of twenty-two has allowed me to travel extensively, but I never imagined migrating from Kolkata. Now, if I do, I wonder if being “queer at fifty-two” will be a deterrent.

Migrant Dreams: Fleeing Home with Nowhere to Go

Kari Mugo

“Some of us had dreams turned into boulders”: In *Nine Lives*, playwright Zodwa Nyoni chronicles the story of Ishmael, an asylum seeker fleeing homophobia in Zimbabwe and hoping, desperately, to begin a new life in the English city of Leeds. Originally commissioned in 2014, the play was staged again this year in London. It highlights the discrimination and violence facing LGBTQI+ communities in Africa, while excoriating the failures of the UK immigration system in meeting their needs.

For many LGBTQI+ individuals, home is often a dangerous place, causing many, like Nyoni’s protagonist, to flee. Kenya is the only country in East Africa to offer asylum on the basis of persecution for sexual orientation, gender identity or expression; the UN Refugee Agency (UNHCR) estimates that, as of August 2020, there were up to 1,000 LGBTQI+ refugees and asylum seekers within its borders.

The plight of these refugees never fails to make headlines, year after year, especially with reports of attacks on this already vulnerable community. In these same reports, LGBTQI+ refugees in Kenya share their frustration with

a painfully slow, often insensitive, asylum process which keeps them surrounded by hostile neighbors, while offering little in the way of economic relief. Underscoring the disillusionment some feel, earlier this year, in April, authorities were called to investigate the death of a twenty-five-year-old Ugandan LGBTQI+ refugee. The man, in despair, had committed suicide outside the UNHCR offices in Nairobi.

Kenya, indeed, remains less than ideal for those seeking safety. It is a country that continues to criminalize its own LGBTQI+ citizens; many LGBTQI+ refugees and asylum seekers hope that it is simply a stop on their way to somewhere else—where they are welcomed, or simply accepted for who they are. Worrisome trends exacerbated by the Covid-19 pandemic have, however, halted or slowed down refugee resettlement across the globe, further challenging the hope these refugees have in realizing their dreams. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), in their recent State-Sponsored Homophobia Report, warns of an increasing political polarization which is only threatening gains made in LGBTQI+ advocacy globally. As the volume of anti-migrant and anti-LGBTQI+ rhetoric grows louder in the capitals and the cities of the West, we need to craft even stronger responses that ensure the dignity of LGBTQI+ refugees, asylum seekers, and all other migrants, along with their rights to safety and protection.

A good place to start is by complicating our notion of who migrants are, so no one is left out of pertinent discussions on migration issues. By arguing against the default definition of migrants as heterosexual or monolithic, we can then recognize the limitations of existing laws and policy instruments. After all, there are myriad reasons why people choose to leave a place. Our political frameworks must accommodate the breadth of these experiences and build more inclusion and empathy toward the migrant experience.

Facing Spaces

Dayna Ash

The LGBTQIA community in Lebanon is scattered, but there were once condensed areas where we lived and frequented. In Beirut, it was the long walk of the lengthy street that runs through Gemmayzeh, Armenia, and Mar Mikhaël in the district of Achrafieh. The sidewalk was lined with heritage buildings that housed small artisan shops, bars, fashion boutiques, cafés, art and culture tucked into their arches. With its tentacle-like side streets and winding stairways, it was easy to create a community there. It was where we built safe spaces. These streets were our place of employment and our shelter. It was a place to unwind, dance, or

just have a drink with like-minded people. It was never perfect, but it was ours.

In August 2020, Lebanon was struck by an explosion caused by ammonium nitrate stored at the Port of Beirut. The explosion destroyed homes as far as 10 kilometers away, causing 300,000 people to lose their homes; at least 204 were killed and more than 6,500 injured. Our safe street was less than a kilometer away from the blast; it currently lies beneath rubble. Collapsed buildings and walls fill the pavement. We cannot see each other crossing the street; we can no longer share a drink; we can no longer talk. The reconstruction will take three to five years.

It was difficult enough to exist here. Article 534 of the Lebanese Penal Code prohibits having sexual relations that are “contradicting the laws of nature,” a crime punishable by up to a year in prison. The society, culture, religion, and the government are all sewn from the same thread. They work together to certify dehumanizing subjugation that asserts and maintains power. So, it seems that we must leave. With 55 percent unemployment, thousands of businesses closed, dire living conditions, and lack of security, LGBTQIA persons are looking to migrate now more than ever, but we are faced with another startling question: How much racism can I handle in comparison to how much homophobia can I handle, in comparison to how much misogyny can I handle, in comparison to how much of myself can I give away, in

comparison to how much of myself can I be, in comparison to who will I be after this, in comparison to how long can I survive?

The diaspora pledge allegiance to HOPE, regardless of where it is found. We leave to live, even if enduring the fear of another threat. We escape laws that persecute, only to arrive in nations that read our pigmentation as barbaric and untamed. We seek safety only to meet an authoritarian face, one that takes note of everything we are not. How do you escape Islamophobia, homophobia, racism, and misogyny?

You don't. You trade and you fight. The only thing that is constant is the struggle. Where we go is chosen by how much, of which oppression, we can handle, in various doses, at any given time. And we hope that for that short time, freedom is an ally as we face new spaces.

The Irony of Racism in Morocco

Naoufal Bouzid

I happen to be from a country where you live with and alongside harmonious and clashing cultures and ethnicities. Morocco was for a long time the channel between Africa and Europe for the movement of goods and people, especially sub-Saharan Africans seeking to escape hard realities with the hope for a better future in the north. Now that the European Union has put up a lot of restrictions and the borders have become harder to penetrate, most sub-Saharan people have made Morocco—initially a temporary place of transit—their home.

The passage through my country hasn't been easy. Historically, Morocco traded in sub-Saharan slaves. Colonialism planted the seeds of inferiority of Black people from the south in relation to the sense of superiority of being white from the north. The treatment of Moroccans toward their fellow African immigrants reflects this, even today, and it still affects the use of language: pejorative words are used to describe Black people in Morocco.

The situation for LGBTI Black people is all the more challenging. A case that personally touched me more recently is that of M. B. It was referred to me by Amnesty International in Morocco. M. B. is a gay person from Guinea. He had to

flee his country in 2017 because of threats made by his family members. He considered Morocco as a place to make a fresh start, while being open to other possibilities. Unfortunately, the reality was far crueler than he was expecting, not only because of the homophobia he faced but also the racism. This double discrimination made his life so difficult that even finding a job became a real challenge. Not having enough resources to live from, he had to do sex work and was homeless for some time.

These cases of double discrimination are more frequent than one may think; although there's no official statistics on the matter, which makes the issue even more complicated. What M. B. experienced in Morocco is simply due to ignorance, propaganda, and a lack of government policies offering protection. Despite Morocco opening its arms to sub-Saharan migration, no work has been done by the government to educate its citizens, who are themselves people of color, with a 10 percent Black population.

I acknowledge that sometimes even those who have experienced racism and suffered from it can also practice it. Racism comes from a deeply rooted sentiment of superiority and a place of profound ignorance. That's how the irony of racism looks like in Morocco at least.

Fighting the Hostile Environment in the UK

Eliel Jones

Since 2012, the United Kingdom has officially been a “hostile environment.” In that year former Home Secretary Theresa May announced a series of administrative and legislative measures “to create here in Britain a really hostile environment for illegal immigrants.” The resulting Immigration Act 2014, later amended in 2016, has implemented one of the most inhumane migration surveillance systems in the world, insidiously forcing teachers, doctors, landlords, and other public-facing professionals to be complicit in conducting identity checks and regularly reporting to immigration officials.

If utilizing citizens as a surrogate immigration force isn't disturbing enough, the Conservative government has actively made legal residency or “leave to remain” increasingly difficult as well as exceedingly expensive. Based on the principle of “deport first, appeal later,” the UK Home Office has for decades gone to war with migrant communities, fueling racism and compounding xenophobia. This has resulted not only in appalling rejection rates but also numerous neglectful deaths and wrongful deportations.

Between 2016 and 2018, the UK rejected 3,100 LGBT asylum applications from countries where consensual same-sex acts are criminalized, most notably Bangladesh, Nigeria, and Pakistan. In 2017, cases began to emerge of those who were wrongly detained, denied legal rights, and threatened with deportation due to their inability to “prove” they had lived in the UK since 1973. Referred to as the Windrush generation (former commonwealth citizens legally settled in the UK), these British nationals faced a vitriol of abuse of power by a system that privileges “naturalization” based on whiteness and class.

Under the new leadership of Home Secretary Priti Patel, the hostile environment policy continues to be alive and kicking. In fact, Patel is only contributing to the already precarious system of survival for migrant communities, particularly during the global pandemic. As part of the “no recourse to public funds” measure, people who are subject to immigration control cannot access the most basic government support, which has led to increasing rates of poverty, exploitation, and homelessness amongst migrant communities. The voluntary agency Covid-19 Mutual Aid UK was established as a response. In early October 2020, Migrants Organise coordinated a weekend of actions against the Hostile Environment under the banner of “Our Solidarity Knows No Borders,” which culminated in a vigil outside the Home Office to remember all the lives that have been lost.

Over the same weekend, Migrants in Culture advocated for the Fair Immigration Reform Movement (FIRM), a comprehensive charter for humane immigration and inclusion policies. This group of migrant cultural workers and allies also recently released *A Culture Sector Recovery for Migrants*, an advocacy document that seeks to structurally challenge the hostile environment policy within the cultural sector and champion an intersectional approach to solidarity toward all migrant struggles in the UK.

By the time this column is published, the UK would have left the European Union, potentially without a deal. A new immigration reform might have been approved, likely with ongoing repercussions for non-UK born citizens. Fascist oppression threatens to be the order of the day. And yet the activist work of individuals and organizations offers a glimmer of hope—the fight against the hostile environment will no doubt continue.

AT THE HOMELAND

SECURITY OFFICE

*A legal analysis and a candid story on
the ups and downs of seeking asylum
related to sexual orientation.*

Regressive Revolutionary: An Analysis of X, Y, and Z v. Minister voor Immigratie en Asiel (2013) as a Blueprint of the Paradox of LGBTQIA+ Asylum Case Law in the European Union

Waruguru Gaitho

ESSAY

INTRODUCTION

Over the last few decades, the European Union has developed an intricate asylum law and policy corpus, commonly referred to as the Common European Asylum System (CEAS).¹ The legal basis of CEAS lies in the Treaty on the Functioning of the European Union, which sets out an obligation for the EU to develop a “common policy on asylum, subsidiary protection and temporary protection.”² This case brief analyzes the judgment of the Court of Justice of the European Union (CJEU) in the joined cases of X, Y, and Z v Minister voor Immigratie en Asiel,³ which turns on the interpretation of sections of the Qualification Directive, a critical, albeit subsidiary, part of the CEAS.⁴

Asylum claims related to sexual orientation form a fundamental part of the European asylum regime: a 2011 report estimates that “there are up to 10,000 LGBTI-related asylum applications in the European Union annually.”⁵ A major driver of these numbers is the law. Despite significant advancements in the last quarter-century, sixty-eight countries around the world still carry laws that criminalize consensual same-sex relations between adults,⁶ with punishment ranging from fines and imprisonment to the death penalty.⁷ Protective precedents in LGBTQIA+ asylum cases set by courts, such as the CJEU, are thus important not only to harmonize interpretation and application of the EU refugee legal regime but also to guarantee international protection and safe haven to vulnerable individuals fleeing dangerous contexts.

FACTS OF THE CASE AND ISSUES ARISING

X, Y, and Z (nationals from Sierra Leone, Uganda, and Senegal, respectively) applied for asylum in the Netherlands between July 2009 and April 2011.⁸ They cited as grounds for their applications for asylum a well-founded fear of persecution in their home countries on account of their sexual orientation.⁹ In particular, they claimed that they had all been subjected to various degrees of homophobic treatment by their families as well as state authorities.¹⁰ In each of these countries, same-sex activity is criminalized and punishable by a term of imprisonment:¹¹ in Sierra Leone, the Offences against the Person Act 1861,¹² a British law transposed to local law via the Courts Act of 1965, prescribes a minimum sentence of ten years and a maximum sentence of life imprisonment for the act of buggery;¹³ in Uganda, the Penal Code Act 1950 prescribes a fixed life imprisonment term for those found guilty of “carnal knowledge against the order of nature”;¹⁴ while Senegalese law punishes any person found guilty of same-sex relations with a one- to five-year prison sentence and a fine.¹⁵

All three applications were rejected by the Dutch Minister for Immigration, Integration and Asylum Affairs. The applicants then appealed this decision before the Court of Justice.¹⁶ The court upheld the appeals of both X and Y (dismissing Z’s, a decision which was then appealed), reasoning that while the minister could consider their claims as not credible, he had failed to give sufficient reasons as to whether their fear of persecution was well-founded, especially given the criminalization of same-sex acts in their countries.¹⁷ The minister appealed this ruling to the Raad van State (Dutch Council of State) as entitled to by the preliminary rulings procedure¹⁸ on how to tackle asylum applications in the context of applicants fleeing persecution on grounds of sexual orientation,¹⁹ which having assessed the circumstances of the case opted to stay the proceedings and seek clarification from the CJEU. In doing so, the domestic court asked three fundamental questions, as follows:

(1) Do foreign nationals with a homosexual orientation form a particular social group as referred to in Article 10(1)(d) [of the Directive]?

(2) If the first question is to be answered in the affirmative: which homosexual activities fall within the

scope of the Directive and, in the case of acts of persecution in respect of those activities and if the other requirements are met, can that lead to the granting of refugee status? That question encompasses the following sub questions:

(a) Can foreign nationals with a homosexual orientation be expected to conceal their orientation from everyone in their [respective] country of origin in order to avoid persecution?

(b) If the previous question is to be answered in the negative, can foreign nationals with a homosexual orientation be expected to exercise restraint, and if so, to what extent, when giving expression to that orientation in their country of origin, in order to avoid persecution? Moreover, can greater restraint be expected of homosexuals than of heterosexuals?

(c) If, in that regard, a distinction can be made between forms of expression which relate to the core area of the orientation and forms of expression which do not, what should be understood to constitute the core area of the orientation and in what way can it be determined?

(3) Do the criminalisation of homosexual activities and the threat of imprisonment in relation thereto, as set out in the Offences against the Person Act 1861 of Sierra Leone (Case C-199/12), the Penal Code Act 1950 of Uganda (Case C-200/12) or the Senegalese Penal Code (Case C-201/12) constitute an act of persecution within the meaning of Article 9(1)(a), read in conjunction with Article 9(2)(c) of the Directive? If not, under what circumstances would that be the case?²⁰

APPLICATION AND RULING

QUESTION ONE

On the first question of whether applicants with a homosexual orientation form a “particular social group” as per the Directive, the court answered in the affirmative. First, the court applied the definition of a “refugee”: “a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.”²¹ Next, the court contemplated what membership to a particular social group entailed. Under the Directive, membership to a particular social group, from which a fear of persecution may arise, must meet two conditions: “(1) members share a characteristic or belief that is fundamental to their identity or conscience; and (2) members have a ‘distinct identity’ because they are ‘perceived as being different by the surrounding society.’”²² On the former, the court reasoned that “a person’s sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it,”²³ and with regards to the latter, asserted that the criminalization of homosexuality proved the “distinct identity” standard.²⁴

Thereby, the court established a standard to meet the requirements of the Directive in such claims where the existence of criminal laws target homosexuals and so set them apart as a group from society. While an important element in identifying a fear of persecution, this position missed the mark. By drawing the line at criminalization of conduct as opposed to expression of sexual orientation, the court failed to protect children who identify as LGBTQIA+.²⁵ The implication of this oversight is a fragmented and problematic practice across EU countries with regard to asylum claims of children concerning sexual orientation and gender identity. For example, a 2018 study of the Swedish Migration Agency shows that case officers tended to more critically examine the children’s sexual relationships (an emphasis on sexual conduct, not overall expression), indicating an expectation that they would engage in long-term sexual relationships similar to adults.²⁶

QUESTION THREE

Finding it imperative that it be addressed before the second question, the Court then moved to the third question, on whether the criminalization of homosexual activities and the threat of imprisonment thereto constituted an act of persecution. Under the Directive such acts would need to “be ‘sufficiently serious’ by their nature or repetition as to constitute a ‘severe violation of basic human rights,’” in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or be an accumulation of various measures, including violations of human rights, which are sufficiently severe as to affect an individual in a similar manner as mentioned.”²⁸

In terms of what is “sufficiently serious,” the court reasoned that not all violations of fundamental rights against homosexual asylum seekers would meet this standard,²⁹ and, further, that the fundamental rights linked to the proceedings (such as the right to privacy³⁰ and freedom from discrimination³¹) were not non-derogative rights.³² Taken together, the court therefore concluded that in those circumstances the existence alone of criminal laws against homosexuality did not *per se* constitute an act of persecution,³³ but that imprisonment enforced under such laws was capable of meeting the sufficiently serious standard and thus constituting an act of persecution.³⁴

However, as barrister S. Chelvan points out, a fundamental flaw in the court’s imprisonment requirement is that while unenforced, the laws in many of these countries are used by both state and non-state actors to extort, blackmail, detain, and torture individuals, who then have no recourse to the judicial system.³⁵ Moreover, as the law positions these individuals as criminals, socially enforced state-sponsored homophobia quickly festers and manifests through different forms of violence: exclusion from the workplace, expulsion from schools, and denial of services such as health care.³⁶ This position thus entirely overshadows the lived realities of individuals, which, as highlighted by the United Nations High Commissioner for Refugees, could amount to being persecutory.³⁷

QUESTION TWO

Finally, the court tackled the question of whether individuals could be expected to conceal their sexual orientation upon their return home, and, if not, if they could be expected to exercise restraint in expressing their sexual orientation in their countries of origin in order to avoid persecution.³⁸ Applying reasoning by analogy, the court referenced an earlier case concerning the (fear of) persecution of a religious minority group in Pakistan, the Ahmadi Muslim community,³⁹ in which it ruled that requiring applicants to abstain from religious practices in order to avoid persecution in the countries of origin was not in line with the rules of the Directive, and the protection conferred by the same.⁴⁰ This decision, and its ripple effect as felt in the case of X, Y, and Z, was crucial, as it extended the otherwise narrow traditional view that asylum could only be granted in cases of extreme persecution where even practice in private/concealment would not be sufficient to guarantee the safety of asylum applicants.⁴¹ Thus, the court ruled that excluding the *specific* acts criminalized by the national laws,⁴² asylum applicants could not reasonably be expected to *limit* expression of their sexual orientation.⁴³

THE IMPACT OF THE JUDGMENT

The decision of the CJEU in X, Y, and Z made some positive change in both the policy and the practice of the majority of the member states of the European Union.⁴⁴ In the Netherlands particularly, the judgment spurred formal legislative amendments by way of modification of the Aliens Circular 2000, which is still in force to date.⁴⁵ Furthermore, in terms of practice, the decision significantly shifted Dutch policy on concealment. Since then, Dutch authorities cannot expect asylum seekers to conceal their sexual orientation upon return to their country of origin.⁴⁶ A 2017 study of relevant decisions of domestic courts also showed that the judiciary in most member states had applied the judgment relatively consistently, derogating from it only in limited instances.⁴⁷ The result, generally speaking, has been the increased protection of queer asylum seekers across Europe. In countries such as Belgium, France, Germany, Italy, and Sweden, the judgment

reinforced the notion (and by extension the practice) that criminal laws targeting homosexuals need not exist in the asylum seeker's country of origin for them to be considered a member of a particular social group.⁴⁸

However, due to the court's failure to elaborate on what constitutes an act of persecution and how the relevant assessment should be made, practice across member states has varied.⁴⁹ States such as Bulgaria and the (once member) United Kingdom have taken a more restrictive stance, wherein the former's judiciary focuses on whether an asylum seeker has been a victim of violence rather than assessing risk of persecution,⁵⁰ and in the latter, a distinction is made by authorities between asylum seekers who are "naturally discreet" and those "whose concealment of sexuality is founded on a fear of persecution."⁵¹

CONCLUSION

Even though rendered seven years ago, the ruling by the CJEU in X, Y, and Z remains a relevant landmark moment in the interpretation of the law and praxis as regards queer asylum seekers in Europe. Critically, it cemented the notion that being homosexual meant having membership in a particular social group, a key element in the recognition of an individual as a refugee. Further, it legitimized the argument that the existence of criminalizing legislation creates a potential credible fear of persecution. The court's authoritative position on the concealment of applicants' sexual orientation was similarly validating and challenged entrenched homophobic attitudes and preconceived notions in the European asylum system. That being said, the court then appeared to withdraw into its conservative shell by narrowly interpreting persecution only in the light of criminalization, thereby fatally ignoring other forms of persecution that thrive in homophobic societies supported by harmful legislation and attitudes. Typecast as both a panacea and a fortress, Europe, and by extension its LGBTQIA+ refugee regime, reinforces this notion. The case of X, Y, and Z serves to amplify the complex positioning of the court as both guardian and perpetrator—regressive *and* revolutionary as it were.

NOTES

- [1] Nuno Ferreira et al., “The Reform of the Common European Asylum System: Fifteen Recommendations from a Sexual Orientation and Gender Identity Perspective,” *SocArXiv Papers*, June 4, 2011, edited July 2, 2018, accessed November 3, 2020, <https://osf.io/pkfrt>.
- [2] Consolidated Version of the Treaty on the Functioning of the European Union, 2008/C 115/01, 78(1).
- [3] X, Y and Z v. Minister voor Immigratie en Asiel, C-199/12, C-200/12, and C-201/12 (2013), Fourth Chamber of the Court of Justice of the European Union.
- [4] “X, Y and Z: A Glass Half Full for ‘Rainbow Refugees’?,” International Commission of Jurists, June 3, 2014, accessed November 3, 2020, <https://www.icj.org/x-y-and-z-a-glass-half-full-for-rainbow-refugees>, para. 28.
- [5] Sabine Jansen and Thomas Spijkerboer, *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe* (Amsterdam: COC Netherlands and VU University, 2011), 16.
- [6] ILGA World and Lucas Ramón Mendos, *State-Sponsored Homophobia Report 2019: Global Legislation Overview Update* (Geneva: International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2019), 47.
- [7] “Equaldex: The Collaborative LGBT Rights Knowledge Base,” Equaldex, accessed November 3, 2020, <https://www.equaldex.com>; in 2019, Brunei introduced new Islamic laws making homosexuality an offense punishable by stoning to death.
- [8] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 23.
- [9] Ibid., para. 24.
- [10] Ibid., para. 25.
- [11] *The Court of Justice of the European Union Delivers Judgment in the Joined Cases of C-199/12, C-200/12 and C-201/12, X, Y and Z v. Minister voor Immigratie en Asiel*, European Database of Asylum Law, November 7, 2013, accessed November 3, 2020, <https://www.asylumlawdatabase.eu/en/content/court-justice-european-union-delivers-judgment-joined-cases-c-19912-c-20012-and-c-20112-x-y>.
- [12] Offences against the Person Act 1861, 61.
- [13] “Sierra Leone,” Human Dignity Trust, accessed November 3, 2020, <https://www.humandignitytrust.org/country-profile/sierra-leone>.
- [14] Penal Code Act 1950, Uganda, Section 145.
- [15] Code Pénal 1965, Senegal, Section 319(3).
- [16] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 29.
- [17] Ibid., para. 30.
- [18] Consolidated Version of the Treaty on the Functioning of the European Union, 267.
- [19] European Database of Asylum Law, 11.
- [20] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 37.
- [21] Council Directive 2004/83/EC, *Official Journal of the European Union*, April 29, 2004, 2(c).
- [22] Ibid., 10(1)(d).
- [23] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 46.
- [24] Ibid., para. 48.
- [25] S. Chelvan, “C-199/12, C-200/12, C-201/12–X, Y, Z v. Minister voor Immigratie en Asiel: A Missed Opportunity or a New Dawn?,” *European Law Blog*, November 13, 2013, accessed November 3, 2020, <https://europeanlawblog.eu/2013/11/13/c-19912-c-20012-c-20112-x-y-z-v-minister-voor-immigratie-en-asiel-a-missed-opportunity-or-a-new-dawn>.
- [26] Daniel Hedlund and Thomas Wimarck, “Unaccompanied Children Claiming Asylum on the Basis of Sexual Orientation and Gender Identity,” *Journal of Refugee Studies*, 32, no. 2 (June 2019): 257.
- [27] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 50.
- [28] Council Directive 2004/83/EC, para. 9(1)(a), (b).
- [29] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 53.

- [30] European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (ETS 5), 8; see also corresponding Article 7 of the Charter of Fundamental Rights of the European Union.
- [31] Ibid., 14; see also corresponding Article 21(1) of the Charter of Fundamental Rights.
- [32] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 55.
- [33] Ibid.
- [34] Ibid., para. 61.
- [35] Chelvan, 25.
- [36] Kenya Human Rights Commission, *The Outlawed amongst Us: A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya* (Kenya Human Rights Commission, 2011), chap. 2; a 2011 study of the lived realities of sexual and gender minorities in Kenya revealed staggering disparities in treatment from both state and non-state actors, even though the actual enforcement of the law criminalizing homosexuality was rare.
- [37] *Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees* (United Nations High Commission for Refugees, 2012), 27–28, 37, 53, 61; HCR/GIP/12/09, para. 27.
- [38] C-199/12, C-200/12, and C-201/12 (2013), 3, para. 65.
- [39] Neha Sahgal, “In Pakistan, most say Ahmadis are not Muslim,” Pew Research Center, September 10, 2013, accessed November 3, 2020, <https://www.pewresearch.org/fact-tank/2013/09/10/in-pakistan-most-say-ahmadis-are-not-muslim>; Ahmadi Muslims are not recognized by the Muslim majority in Pakistan, and according to the Pakistani Penal Code can be punished with up to three years imprisonment if they claim to be Muslims, preach, or try to spread their religion.
- [40] C-71/11 and C-99/11 (2012), Grand Chamber of the CJEU, 78, 80.
- [41] “Right to Asylum: The Court of Justice of the European Union Defines Religious Persecution and Reinforces Freedom of Religion,” European Center for Law and Justice, September 17, 2012, accessed November 3, 2020, <https://eclj.org/right-to-asylum-the-court-of-justice-of-the-european-union-defines-religious-persecution-and-reinforces-freedom-of-religion?lng=en>.
- [42] C-199/12, C-200/12, and C-201/12, (2013), 3, para. 66.
- [43] Ibid., para. 67, 70.
- [44] *Preliminary Deference? The Impact of Judgments of the Court of Justice of the EU in Cases X.Y.Z., A.B.C. and Cimade and Gisti on National Law and the Use of the EU Charter of Fundamental Rights* (European Council on Refugees and Exiles, 2017), 32.
- [45] See Vreemdelingencirculaire 2000 (Vc 2000).
- [46] European Council on Refugees and Exiles, 44, 34.
- [47] Ibid., 6.
- [48] Ibid., 33.
- [49] Ibid.; for example, the UK Home Office in 2016 published a guidance note providing that in order for criminal sanctions to be considered “an act of persecution,” they must reach a certain degree of severity, specifically imprisonment, and not just the imposition of a fine.
- [50] Ibid., 34.
- [51] Ibid.

“No gay men in Zimbabwe”: The Struggles of Queer African Asylum Seekers in South Africa

Carl Collison

STORY

“Come and look at this *moffie* from Zimbabwe,” the Department of Home Affairs official called to her colleague in the next room. Rushing in, the colleague then stared at Evermore Muzariri (not his real name). Dressed in a tight, brightly colored jumpsuit and wearing silver hoop earrings and red lipstick, Muzariri stared straight ahead as the official asked, “Do your parents know what you do? Or did you come to South Africa to do *this*?”

His parents were, in fact, the reason he fled his country of birth. Upon discovering that their son was gay, they threatened to have him arrested. If that didn’t work, they promised that they would have him murdered. So he fled. Cloaked in the blinding darkness of a rural Zimbabwean night, he fled. First to the country’s capital, Harare, then to neighboring South Africa.

As a result of provisions in the South African Refugees Act 1998 (no. 130), LGBTIQ people are offered the possibility of asylum in South Africa on the basis of persecution due to gender identity and/or sexual orientation in their countries of origin. Now, here, Evermore was at the Home Affairs office hoping these officials who were reveling in mocking him — “But there are no gay men in Zimbabwe,” they laughed — would grant him refugee status based on his sexual orientation. The officials were tasked, according to the department’s website, with “proceed[ing] with a fair adjudication of the application, [making] a decision on claims for asylum application, [providing] reasons for the decision, [and] on conclusion of the status determination hearing, grant[ing] asylum; or reject[ing] the application as manifestly unfounded, abusive or fraudulent.”

During his first visit to the office, he risked being seen as fraudulent based simply on his masculine presentation: “They didn’t take me seriously because of the way I dressed; I didn’t look gay enough.” To the officials then, Evermore, dressed in blue jeans, a white button-up shirt, and black formal men’s shoes, could not have been a gay man.

“They have that mentality of, ‘If you are a gay person, you need to be gayly.’ You need to look more like a girl, the way you talk, the way you dress. Only then will they believe for sure that you are gay. So they refused to take me in. So I thought for them to take me seriously, or to show them for sure that I am gay, I needed to dress up. For them not to have questions. I wanted to get done with this thing and get my papers. When you are in that position, you need to know your goal. For me, I wanted the documentation.”

It was then that he decided to “do the drama” of performing as “an obviously gay man.” “The moment I got there the second time, they were like, ‘Hi sisi (young lady), how are you? Okay, you can come through.’ Their attitude, it kind of changed to be a bit better than when I was there the first time dressed in my usual men’s clothes. But also not much better, because what they were saying were kind of hurtful words. They would call me names. So in my mind, I was thinking, ‘Okay, what do you guys really want? Because in the first place, when I am dressing like I normally do, you are telling me I am not gay enough. But when I am dressed like this, this is too much.’”

Evermore’s situation was by no means unique. In the report *Homosexuality as Grounds for Asylum: The Deplorable Experiences of Lesbian, Gay and Transgender Refugees Seeking Asylum in South Africa*, Mandivavarira Mudarikwa shows that “LGBTI claimants . . . may be afraid to disclose their sexual identity to the RSDO [Refugee Status Determination Officer], or to the interpreter present during their interview” out of a fear of being discriminated against. “The discrimination and outright failure of RSDOs to give effect to both international and domestic legal obligations in respect of LGBTI persons is glaring. Ironically, LGBTI asylum seekers from other African countries come to South Africa for protection, but a large number of their applications are rejected as ‘unfounded.’”

It is, of course, not only in South Africa where this is playing out. Mert Koçak, in his recent article “Who is ‘Queerer’ and Deserves Resettlement?: Queer Asylum Seekers and Their Deservingness of Refugee Status in Turkey,” published in *Middle East Critique*, argues that queer refugees find themselves having to turn their often complex experiences into a “performance” they feel obliged to deliver to officials in the hope of proving their “deservingness of refugee status and resettlement.” As a result, officials “get to ‘validate’ legally

certain gendered performances of persecution as ‘authentic’ by declaring them as deserving of resettlement.”

Victor Chikalogwe, the gender and LGBTIQ refugee project coordinator at Cape Town-based grassroots nonprofit organization People Against Suffering, Oppression, and Poverty (PASSOP) says, “When it comes to the queer community, when they go there [Home Affairs], most of them say they are asked things like, ‘Why are you gay?’; ‘Can you prove to me that you are gay?’; or ‘Why are you gay people leaving your home countries? Why don’t you stay there? You are coming here to confuse our people.’ Some officials, the moment they see you are gay or transgender, they don’t want to listen to you. Right away, they will say, ‘Oh, I know your story,’ and write whatever they want.”

Chikalogwe notes that another issue is the language barrier. “Because some are, for example, from French-speaking countries, [some] cannot express themselves properly in English. [There are interpreters but] most of these people are straight people who are homophobic. Once the interpreter sees you [and can tell that you are queer], they will think, ‘Oh, you are a disgrace . . . So I am going to punish you.’ So you are confiding in this person, trusting that they will say exactly what you say to the officer, but they twist the story . . . change and manipulate the story so that you are punished.”

A 2017 baseline survey conducted by PASSOP found that out of one hundred LGBTIQ refugees who had applied for refugee status based on sexual orientation and/or gender identity, only six were approved. “The remaining ninety-four are divided into two groups,” says Chikalogwe. “Either you are given asylum seeker status or you are completely rejected and have to go back to your home country.”

Aware of the odds so heavily stacked against him, Evermore took to performativity. The trope of the effeminate queer man was central to the performance he would deliver, even though it was antithesis to how he navigates the world. “I felt very, very uncomfortable,” he says. “On a normal daily basis, I just dress like a guy. I even have girls approaching me. You know, thinking that I am straight. Because if I am coming to town to work and I am dressing like a lady, everybody I pass is going to look at me, and they will have a judgment. So for me, I am that kind of person who doesn’t want that. I don’t want people to look at me most of the time. I don’t want judgment. But I knew what I had to do to get my papers,

so I went to a tailor and got him to make that jumpsuit. A short jumpsuit. All of my legs were showing, and it was open at the chest. If a person just looked at me, they would know, 'Okay, this is a gay person walking in.' So it was uncomfortable for me. Also because you feel . . . they are terrorizing you. Deep down, you are not okay. It's emotional. You are traumatized. Because you are in this place, and you don't know what is going to be happening next. Because my life was depending on them. This is where they decide whether I get the papers or whether they are going to send me back home. So it's very bad. I don't know how to describe that feeling, but I would not want to go back again to that feeling. Because I felt bad. I felt like I was less than human. Like I was not human enough. Like I was just an animal. Like a dog, or something like that."

As unpleasant as the experience was, Evermore was in a comparatively fortunate position. The effeminate attire he wore and the manner he assumed that day was performative, and, as such, easily taken on or dispensed with. Others on the LGBTIQ spectrum do not have this luxury. In *Categories and Queues: The Structural Realities of Gender and the South African Asylum System*, B. Camminga details the "two interconnected sites of discipline in relation to asylum at work in the country": paperwork and "an initial site of surveillance at the very entrance to any Refugee Reception Office—the queue." Camminga argues that because gender refugees are immediately forced to choose between separate lines (for men or for women) when approaching the South African state for asylum, the messaging they are receiving is that "there are two distinct categories of people that Home Affairs expects to interact with but these categories are based on unchanging, visibly readable anatomical difference."

By way of example, Camminga quotes the experience of Alex, a trans-identified person from Central Africa: "There was a lot of people, and there was confusion. . . . You know, there was two queues, and you have [to] choose. Am I gonna be to the girl's queue or the men's queue? I was, like, in the middle. I was just in the middle. . . . There were people fighting there. Everyone wanted to go inside to get the permit." Akraam, a trans woman from the Horn of Africa, is also quoted: "I can hear people talking, 'Why is he like this?' and in [a] loud voice too, to make me feel bad. 'This man is supposed to be a man. He is a disgrace.' Discussing about me when I'm in the queue. I ignore it. . . . Even though I'm hurting inside, I just show, just pretend that I'm confident."

Jabu Pereira, the director of the Johannesburg-based lesbian, transgender, and intersex rights organization Iranti, states that "systemic transphobia along with xenophobia is inherently the first challenge and interface asylum applicants have with South Africa." And yet for many LGBTIQ people across Africa, it is South Africa's progressive constitution that makes the country appear to be something of a queer land of milk and honey. Chikalogwe says, "People come here because they know that the Constitution of South Africa protects the queer community. So there is this belief that 'the moment I get there, I will be protected.' They take South Africa as a place where they can build their home; a safe home where they can enjoy life as a queer person. But it is a different story on the ground. And this is where we always say, 'South Africa has the best constitution (even better than some European countries) but implementing the constitution has been a problem.' Refugees, queer refugees, are protected in the constitution. But outside the constitution they are not protected. It has been a problem."

In 2019, Chikalogwe visited other countries in Southern Africa to gain more clarity on why so many LGBTIQ people have fled to South Africa. "The answers we were getting were, 'South Africa is where we can live freely'; 'Nobody will do anything to you there'; 'There are gay clubs there'; 'You can wear what you want.' Those are some of the stories we were told. But, most importantly, they say that the constitution will protect them, which isn't really true on the ground. People are coming here thinking, 'This is going to be a good life for me.' But when they get here, it is a different story because they don't have information on how to apply for asylum seeker status, or where to find shelter. So in visiting those countries, we also wanted to share information with organizations in those countries on what people could expect when they come here. So that whenever they make the decision to seek asylum in South Africa, they should be ready. Whether it is bad or good, they should be ready."

On the night Evermore fled Zimbabwe, the image he had careering through his head repeatedly during the fourteen-hour drive from Harare to Johannesburg was that of the wedding of a gay Zulu couple in 2013. The wedding of Tshepo Modisane and Thoba Sithole caused a stir internationally as the first reported marriage between two men in a traditional Zulu ceremony, which took place in rural KwaZulu-Natal. "Being in Zimbabwe and seeing all of that, those images

of that wedding and that story, it gave me hope. It was like, 'Okay, at least there, in South Africa, I am going to be accepted. I can be who I am. And I will be safe as well.'"

In the preceding months, Evermore had been in an online relationship with a gay man in Cape Town. They fell in love. "We were promising each other, 'Oh, we are going to live happily ever after. We are going to get married.' You know, when love is blooming over the phone, they will promise you the world. He was saying, 'I will take care of you, and everything is fine here. We will go and get married. You are going to be fine.' And looking at all of that, I always had that picture of that wedding in my head, and I was seeing myself also walking down the aisle. From the things we spoke about, what I pictured was that I will arrive in South Africa and we will be staying together. And we will have a family. And he promised me we will have a big wedding. Mostly, it was the wedding thing I had in my mind. I loved it. It was a beautiful thing to see two guys getting married. That's where I saw myself. Walking in those footsteps. Meeting this guy and getting married and having a family. So it was kind of a hope for me."

Evermore's hopes were, however, shattered as soon as he arrived in South Africa: "He switched off his phone. And I'm not going to lie to you, it's another thing. On the first day, you think it might be a mistake. You'll try again tomorrow. Weeks pass by, and you are thinking he will contact you. So it was bad, but I also had hope. I didn't know what to feel exactly, but I was thinking, 'I am here in South Africa and this guy has been promising me all of these things, so I don't think he would just switch off his phone. Maybe something went wrong. Maybe he will contact me. Maybe...' But days pass by. Weeks pass by. Months later, that is when you realize the reality of South Africa now. And the reality of being alone."

Evermore is now currently employed at PASSOP, and his main drive is to ensure other queer asylum seekers do not suffer under this "reality of being alone." To this end, he has created a group for LGBTIQ refugees and asylum seekers. And although the Covid-19 pandemic has impacted the group's face-to-face meetings, its members actively keep communication alive through a WhatsApp group.

It has been more than two years now since Evermore strutted into that Home Affairs office and put himself in the firing line of prejudice in a bid to secure his refugee

status. More than two years later, he still only holds asylum seeker status. His valiant attempt had failed, but he has appealed the decision and now, like so many other LGBTIQ asylum seekers, waits patiently to hear whether his story of persecution is deemed valid enough to grant resettlement in South Africa. In the meantime, it is Evermore's volunteer work with the LGBTIQ asylum seekers that fills his days with purpose.

"Just having this group makes me feel like there is hope," he says, smiling. "It is a good thing when I am working for my community. It's a good thing to give back to my community. So I feel good. I feel privileged to be able to share with them my experiences. And also to hear the experiences of others. So it makes me feel good. Like I haven't lost hope. I also think it does a lot of good for a lot of people because we are coming from African countries where these things, sexuality and gender identity, are not discussed—you are on your own. In South Africa, they kind of have this privilege where you get to have information at hand. But in Zimbabwe or other countries, this kind of information on gay men or stuff like that is forbidden. So I think that having this group and sharing experiences is a good thing. If you are sharing with other people and you hear the experiences and challenges they are going through, then you realize you are not alone. So I think the group helps a lot of people in terms of coming out and also embracing themselves and becoming who they are. And that makes me happy. It makes me very, very happy."

THE OTHER

IN US

Different takes on the political, cultural, and historical processes of “othering,” one of the main prejudices that force queer migration.

Rethinking Homonationalism (Redux) as Homocapitalism

Jasbir K. Puar

ESSAY

I am writing this introduction to “Rethinking Homonationalism” during a confluence of history-making events that might render imperceptible the alignments of LGBTQ subjects and nation-states. Emerging authoritarian regimes in the United States, Hungary, Brazil, along with India, Israel, Turkey, and the Philippines are not only antithetical to but increasingly assaultive toward queer, trans, and women’s rights. In the US, Donald J. Trump most recently ruled to “erase protections for transgender patients against discrimination by doctors, hospitals and health insurance companies.”¹ This decree followed a string of other discriminatory actions against transgender people, including banning them from the military.² Hungary’s government over the past five years has systematically dismantled gender studies at the renowned Central European University in Budapest. In Brazil, there is ongoing backlash to what has been codified as “gender ideology”: the right to gender equality and sexual freedom.³ This is just a smattering of how authoritarian and fascist governments have made their anti-sexual rights, writ large, agenda clear.

It’s hard not to index these trajectories as the decline of the “homonationalist” state and the rise of anti-liberal, illiberal, and right-wing governments. I tend to reiterate that “homonationalism” is not a descriptor rather a hermeneutic that asks how and why the treatment of homosexuals emerges as an arbiter of the capacity for national sovereignty, governance, and self-determination. I have therefore never thought of homonationalism as an attribute of any one state or states; it is rather the field within which demarcations of nation-states as “progressive,” “gay-friendly,” “tolerant,” and, conversely, “homophobic,” “backwards,” and “barbaric” have salience in the first place. The thorny conundrum does not involve assessing how homonationalist a state is but asks what is at stake for liberal democratic states-gone-authoritarian to attack LGBTQ rights at this political juncture—who

does this benefit and how? Trump is perfectly capable of lauding conservative family values one moment and demeaning conservatism in racialized (Muslim, immigrant) families the next, as he did in the aftermath of the Orlando shootings.

There continues to be a co-constituted existence of liberal progressive ideals of queer rights, tolerance, and freedom alongside and working through homophobia, violent repression, and ostracization. These two supposedly opposite poles are used to alternately laud and demonize different populations. In fact, we might think of homonationalism and authoritarianism as operating in a tandem formation that is only seemingly contradictory; the weaponization of queer identities in the service of this partnership of oscillation indicates that “the ascendancy of whiteness”⁴ is porous to any whiteness that can be rehabilitated into liberal (think Pete Buttigieg) and indeed white supremacist (think Milo Yiannopoulos) formations. It appears that crucial gains in the United States LGBTQ rights movement are leaking away, while the civilizational discourse of Islamophobia that subtends homonationalism (illiberal, terrorist, uncivil, viral brown bodies threatening the “safe space” of white American soil) is tenaciously intact, often so embedded in the quotidian discourse of security as to dissolve into nonrecognition.

Islamophobic tropes are however easily animated. The narration of the current pandemic, for example, is deeply embedded in terrorist discourse: it is a lexicon of epidemiology that fuses terrorism with the plague, illness, contagion; the uncontained virus is a refraction of the body politic that is ever vulnerable;⁵ and in the last twenty years the changing racial landscape of the US has centered anti-blackness through a forceful critique of liberal multiculturalism and the coalitional limits of the term “people of color.” Thus, it warrants attention that Black Lives Matter is often accused of being a domestic terrorist organization propagating single-issue extremist ideologies. LGBTQ rights may be deteriorating, but the racial elasticity of terrorism and the bodies that reference it have only become more emboldened.

And yet, even as I write the above, I must wonder what is homonationalism without US exceptionalism? This to me seems the trenchant question. Homonationalism is foremost a theory of racial formation that mobilizes the discourses and affects of American exceptionalism. It is not hyperbole to say that the US is on the precipice of civil war as

Trump signals his intent to steal the election by casting suspicion on the election process, egging on white supremacist violence, and sanctioning anti-black police killings. The murder of George Floyd and the unhesitant repression of the Black Lives Matter uprisings have amplified the violence at the heart of the illiberal US police state. While nostalgic narration posits the US as having “failed” in its response to Covid-19, it is clear to me that this pandemic is unfolding on American soil exactly as the bio-necropolitical state intends.

We are likely witnessing and experiencing the end of empire, an ongoing process of disintegration that has accelerated at dizzying speed since Trump’s election. American exceptionalism is like a Möbius strip: the inside is the outside is the inside. A few weeks ago I glanced at an article in *The New York Times* titled “‘I Feel Sorry for Americans’: A Baffled World Watches the U.S.”⁶ While *The New York Times* is hardly known for its thorough ethnographic data collection, the smattering of opinions from far-flung parts of the world make it clear that the so-called Third World—already a troubling top-down construct—considers the US to be acting below, or at least not acting anything like the richest First World country should. In fact, it appears, rightly so, that the world knows that the US is a banana republic. So long, Möbius strip.

I also sheepishly admit that lately, typically on social media, I have occasionally affirmed and sometimes even deployed “homonationalist” as an adjective. This stretching reflects the semiotic and morphing capacities of language, but I think it is also a symptom of growing out of and away from an established grammar—a once new lexicon now confines us to that lexicon. The vocabulary of homonationalism has been helpful to situate the civilizational discourse animating the US-led war on terror that solicits and disavows various genders and sexualities. It has also illuminated the subtle complicities of (queer, feminist) liberal rights discourse with Islamophobia. It has targeted the pervasive developmentalist discourse subtending “the West and the rest,” the “woman question to the homosexual question.” But it has also—as do many conceptual frames and traveling theory—become performative: it produces what it names. It only remains useful as analytics if we acknowledge that its own theoretical force transits through the very circuits of empire, settler colonialism, neoliberal multiculturalism, and developmentalism that it seeks to upend.

"Now that we have understood homonationalism, we have overcorrected for it," spoke Rahul Rao during a virtual forum celebrating the launch of his stupendous book *Out of Time: The Queer Politics of Postcoloniality*.⁷ This overcorrection is precisely the performativity I speak of: an "applied" use of homonationalism as a statist theory or theory of the state accompanied by a subsuming Orientalizing of local nation-state actors, who might have far more important things to deal with than tarrying with the discourse of the West. Rao convincingly intervenes, not through staging a reversal of actors (the rest to the West) nor by arguing for a subaltern sexuality of the global south, rather he emphasizes the plethora of global, regional, and sub- and paranational entities populating the movements for LGBTQ rights in India and Uganda. Rao traces what he dubs "homocapitalism": the solicitous transit of international actors such as the World Bank, IMF (International Monetary Fund), NGOs, and (Western) governmental aid, networks which impel acquiescence by illiberal states to LGBTQ rights platforms, promising economic growth and productivity in exchange for partaking in complex networks of transactions.

Rao's work clarifies for me that the schema of homonationalism in my book *Terrorist Assemblages* (2007) suffers from a lack of analysis of capitalism; though there is attention to how neoliberal multiculturalism produces economic vectors of racial difference and containment through sexual regulation, the argument itself is not anti-capitalist. Moving the discussion from the oft-regarded "clash of civilizations" with its focus on the cultures of nations and religions, Rao's analysis foregrounds the materiality of geopolitical orderings of the global theater of nation-state alliances and disaffiliations. David Eng and I too have addressed the elision of materiality in our introduction to a forthcoming issue of *Social Text*, titled "Left of Queer." While queer theory has long critiqued its/the "universal subject," it has had less to say about how this universal subject is one "not only of queerness but also and notably of capitalism"⁸—noting, as Rao does, that a reductive opposition between Global North and Global South allows "queer as identity" to "become an important foil for the globalization of capital in its imperial travels, fostering the production as well as erasure of particular queer subjects and subjectivities."⁹

The unfoiling of capitalism makes sense in a world where economic mobility is a determinant in the ever-shrinking "make live" vector of biopolitics, one that cuts through the nation-state when needed and cuts away from it when profitable. Peering forward, my sense is that the cultural alibi of homonationalism ("our" investment in liberal codes of progress, acceptance, and inclusion) are no less salient, especially as they are increasingly discarded if not destroyed by authoritarian regimes. Homonationalism was never not driven by negotiations of capitalist reward. And in this emerging world of economic depression, financial collapse, and unprecedented political and social upheavals, we will indeed see how far homocapitalism can flourish.

NOTES

[1]

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[6]

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[7]

See Rahul Rao, *Out of Time: The Queer Politics of Postcoloniality* (New York: Oxford University Press, 2020).

[8]

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[9]

Ibid.

My Queer Migrant We

Fatima El-Tayeb

ESSAY

In his gentle reminder to submit this essay on time, the journal's editor suggested that I might end my piece with a brief reflection of what the hopeful US election turnaround could mean for the global migration regime. Being the contrarian that I am, I decided to instead start with a reflection on the challenges the election results pose for a queer migrant "we." There is no doubt that the end of the disastrous Trump presidency is good news all round and that the Biden/Harris government will bring improvements to the US and likely the global migration control regime. There is also little doubt that there will be no fundamental rethinking of the structures that made Trump's success possible in the first place—and that of similar authoritarian leaders elsewhere—among them a mainstreaming of white nationalist positions and the vilification of migrants, refugees, and people of color, the systematic disenfranchisement of Black and Indigenous voters, and an economic system that leaves an ever-growing part of the population struggling below the poverty line.

Biden's rhetoric of "reaching across the aisle" toward a Republican party that blatantly supported and enacted violent racism, sexism, transphobia, and extreme anti-immigrant measures is a clear indication of that. So is a media discourse explaining why the "blue wave" carrying Democrats toward a decisive win failed to manifest. This narrative is remarkably similar to the one circulating after Trump's election in 2016: what is to blame is the identity politics of minorities, a neglect of the white working class, and voters of color and women who did not turn out in sufficient numbers. This narrative is embraced by those who want the Democrats to be more centrist and by the white Left. And what emerges is an all too typical pattern: the commitment of those whose rights are systematically denied is taken for granted—where else would they go after all? They receive no incentives, instead their demands are largely ignored. Incentives are offered to those actively

engaged in denying minority rights, in hopes of winning them over. If this strategy fails, the lacking commitment of minoritized groups is blamed.

The reality is that while Trump received an estimated 34 percent, 32 percent, and 12 percent from Asian, Latinx, and Black voters, respectively, 58 percent of white voters supported him (including 55 percent of white women). In other words, it was voters of color who pushed the Democrats to victory and a majority of white voters who endorsed racism. Black women in particular not only continue to be the most reliable Democrat voting contingent, they are also at the center of mobilizing others: Black women like Stacey Abrams, who registered an estimated 800,000 new voters in Georgia. Nonetheless, as activist Bree Newsome states: “There is this constant abusive relationship between party politics and Black communities, where we are scapegoated when it’s convenient, and then we are thrown under the bus when it’s convenient. And otherwise, it’s, you know, ‘Show up to the polls to help us stay in power because we can’t get elected without you.’” This is a dynamic that is by no means limited to party politics, it is reflected nearly everywhere, including queer politics and activism. Thus, from my hopeful but exhausted perspective as a Black, lesbian immigrant, the US elections emphasize the need for coalitional politics that see the struggle for queer rights as part of a larger movement for equality and liberation, a necessary part of this larger movement, a part that cannot be excluded or postponed or ignored. Simultaneously, this struggle for equality and liberation for all must be a necessary part of any queer “we.”

The term “queer” is contested, and for good reasons. When I began to call myself queer rather than lesbian, sometime in the 1990s, the term indicated a rejection of an assimilationist identity politics that aspired to inclusion rather than transformation. There’s no doubt that “queer” has lost a lot of its edge over the decades, but from my vantage point (living and working on the US–Mexico border, researching queer of color activism in continental Europe, where I’m originally from), I want to make a case for the continued, though perhaps limited, usefulness of a queer “we,” which centers queers of color and uses queer of color critique as a framework that allows us to build and sustain coalitional

politics, both attentive to the intersecting structures of power that we are all fighting and to the different positions from which we do so. This results in complex, at times tense, relationships, in which the desire to show solidarity cannot necessarily be translated into practice successfully because our intersecting positionalities (as Indigenous, unhoused, trans, white, migrant, gay, Muslim, academic, etc.) do not automatically create aligned interests among allies but might unexpectedly put us at odds with each other. The challenge then is to work through these odds and understand them, not as personal failure nor reason to call off coalitions, but as outcomes of intersecting power structures.

Intersectionality, too, is a contested term. To a considerable extent, it has shared the fate of queer and other radical theorizations aimed at dismantling the neoliberal agenda, namely its appropriation and domestication of multiculturalism. Some queer theorists have given up on intersectionality, but I believe that the original vision of activist–artist–theorists like Ama Ata Aidoo, Gloria Anzaldúa, Audre Lorde, and Chandra Talpade Mohanty can still teach us a lot, that their teachings have in fact not been valued enough by radical academics. This is a fate typical for works of (queer) women of color, whose theorizing is often treated as raw material by white and/or male theorists, that is, it is used but not credited. Queer of color critique—as in the work of Paola Bacchetta, Jin Haritaworn, Grace Kyungwon Hong, Roderick Ferguson, José Esteban Muñoz, and many others—is an overdue revival of the radical potential of women of color feminism drowned in multiculturalism’s lip service to a depoliticized intersectionality. While multiculturalism constructs and fetishizes difference, women of color feminism and queer of color critique deconstruct neoliberal “different but equal” discourses that justify and maintain capitalist exploitation by not merely using but producing difference as a means to hide connections between: for example, the privatization of permanent war on the Global South and the militarization of civil society in the Global North, resulting in the mass incarceration of people of color and migrants as a normalized and profitable form of population management.

I understand queer of color critique as a methodology that resurrects “queer” as a term of intersectional analysis, not merely synonymous with LGBTQIA but referencing processes of constructing normative and non-normative behaviors and populations, recognizing that the interaction of race, class, sexuality, and gender creates more complicated groupings and hierarchies between and within communities than simple dichotomies suggest; it builds on women of color feminism and its identification of culture as a site of resistance for multiple marginalized people. Queer of color critique disrespects borders between theory and practice, activism and art, reflective of Édouard Glissant’s poetics of relation, or in Cathy Cohen’s terms, “a politics where one’s relation to power, and not some homogenized identity, is privileged in determining one’s political comrades,” in the process of destabilizing naturalized understandings of time and space that work in the interest of a Eurocentric world order, or by recovering “impossible alternatives,” or to riff on Lorde, it “is the way we help give name to the nameless so it can be thought.” In short, my queer migrant “we” is one that is both inclusive, potentially open to everyone, and judgmental and exclusive—it is built through action and negotiation, with no lifetime memberships.

“Sometimes you need to prove the obvious”: An Interview with Alok Hisarwala Gupta

Aimar Arriola

INTERVIEW

The following interview with Indian lawyer and activist Alok Hisarwala Gupta, conducted by e-mail in October 2020, considers his earlier LGBTQI+ activist work in relation to his current animal rights activism. Among other things, Gupta is well-known as the author of the influential report This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism (2008). This interview highlights his interest in colonial legislative history and the culture of crimes against both sexual minorities and animals, a connection that is not immediately obvious but which he outlines here. By linking the violence exerted on marginalized people and on nonhuman animals, Gupta suggests the need to introduce a shift in contemporary queer politics that expands its “natural borders.” This conversation thus invites us on an epistemic and ethical migration, from identity based activism to a more inclusive politics that recognizes interspecies oppression. With an emphasis on the colonial origins of anti-sodomy laws and their echo in other former British colonies in Africa, Asia, and the Caribbean, the following interview also explains the centrality of India in these histories and why the country continues to lead global struggles for justice.

Aimar Arriola: This second issue of *The Against Nature Journal* focuses on the theme of migration. To begin on a personal note: As a gay man living in India, have you experienced situations of migration or displacement firsthand? Were you ever forced to leave your home for reasons of sexual orientation?

Alok Hisarwala Gupta: Migration is an important focus, and as philosopher Martha Nussbaum has argued, large-scale human displacement, statelessness, along with disability and animal rights are the new frontiers of justice. However, personally, I have never faced any displacement because of my sexual orientation.

AA: You are the author of the famous Human Rights Watch (HRW) report *This Alien Legacy* (2008),¹ which puts the so-called against nature laws in historical perspective. How did this commission come about and what were its initial aims?

AHG: In 1999, I was asked by Anand Grover and Vivek Divan of Lawyers Collective to research the reported cases under Section 377 as a preparatory exercise for the Naz challenge in the Delhi High Court. I found a story embedded in the law, and so I decided to pursue it—Arvind Narrain was instrumental in shaping my thinking around this jurisprudential history, which I first published in the *Economic and Political Weekly* in 2005. One year later I wrote to human rights activist Scott Long and proposed collaborating on further research of anti-sodomy laws across the commonwealth, and he immediately said yes. I was given permission by Professor Peter Rosenblum to access the library at the Columbia Law School. So essentially it was a deep curiosity to tell the story of anti-sodomy laws that led to this report. I am grateful for all the encouragement and support along the way.

AA: A specific chapter of the report, “‘Sodomy,’ Colonialism, and Codification,” shows how the Indian Penal Code (IPC) became the model for British legal systems throughout most of its colonies. It also shows how laws “migrate” across geographies and time. How did India become such a central context for understanding the expansion of against nature laws?

AHG: I can only say that the British administration was interested in perfecting the art of control and governance, and they considered the law as an integral part of this pursuit. The first British (colonial) law commission outside

of England was formed in India in 1834. Laws were important for creating order and exercising colonial sovereignty, especially criminal law. India became the chosen site for legal experimentation, which then extended to other colonies in Asia, Africa, and the Caribbean. *The Alien Legacy* traces the accounts of English officers debating revisions after revisions of the anti-sodomy regulation, thereby perfecting the art of controlling the “natives.”

AA: We are interested in thinking about how cultural production, such as an arts and human rights journal, can become a tool for advocacy. Thinking of your HRW report as a piece of historical and cultural writing, and looking back at its public life since it was published, what would you say has been its concrete impact in terms of advocacy?

AHG: The report created the evidentiary basis that these laws were rooted in colonial policy. Sometimes you need to prove the obvious. We proved the obvious. It also gave impetus to the international, commonwealth campaign seeking apology² from the British government for anti-sodomy laws. Theresa May actually gave a public apology, which was then poignantly rearticulated by Justice Indu Malhotra in the Navtej judgment: “History owes an apology to the members of this [LGBT] community and their families, for the delay in providing redress for the ignominy and ostracism that they have suffered through the centuries.”

AA: Your current practice is focused on animal rights. Can you describe the work you are doing? In what ways does your work on animal rights connect with your previous activism for LGBTQI+ rights?

AHG: Let me take one example—the extreme case of violent crimes against street animals in India. I say “street” animals because the violence against them happens in public view, which only alludes to the horrors that farm animals go through behind closed doors. This unfortunate reality is the most important bridge between my work on LGBT rights and animal rights.

As gay or queer activists, our primary struggle has been against social exclusion, from our families, society, and the *samaj* at large. Being lesbian, transgender, or gay disturbs the socially understood and sanctioned norms of society that attribute deeply entrenched roles for men and for women: women are seen as daughters, sisters, mothers, wives, who serve men as brothers, husbands, and fathers. The most important role in this paradigm—which the queer identity challenges—is the social duty to marry heterosexually and produce children. The declaration of a queer identity has an automatic effect of social exclusion. This is experienced in varying degrees by different queer people, but the brunt of it is faced by queer women and transgender people. Numerous reports have documented the control of families over their daughters and sons across India, and the extreme violence that social exclusion has brought about, including cases of young lesbian women committing suicide and cases of physical abuse, torture, and sexual violence inflicted upon the transgender community.

This social exclusion gained support from two colonial legislations: Section 377 of the IPC and the Criminal Tribes Act 1972. Section 377 made all kinds of non-procreative sex a criminal offense, and the Criminal Tribes Act deemed many tribes (like the nomadic Schedule Tribes and the hijras) criminals—just the mere act of belonging to the hijra community was a punishable offense. The latter is possibly the most startling example of legally sanctioned social exclusion with criminal implications.

The queer struggle has been about opposing legal and social exclusion, not just by asking for “inclusion” but by challenging the very structures that define these bounded terms: the right to form bonds of love was also unavailable to heterosexual men and women who defied the norms of caste, class, and gender—the primary structures of hierarchy. Thus, we presented a fresh challenge to the very idea of the “order of nature” that was heterosexual, but also patriarchal, and which maintained the divisions of caste and religion. We realized that our politics could not be confined merely to us, as queers, but had to extend to other injustices in our society.

Yet, while we created a language for a larger politics, we did not include rights of animals in our discourse. The fate that animals face is not that different.

But our relationship with animals is seen through the prism of their usefulness and our ability to own and control them.

AA: Are you suggesting then that the violence toward those considered outside the “order of nature” and toward nonhuman animals are part of the same colonial entanglement?

AHG: Let me put it this way, only useful animals were worthy of protection. Free, “unowned” animals on the street were, and to some extent still are, frowned upon as carriers of disease (rabies); they are seen as a public nuisance, and it is feared that they could contribute to overall social collapse. Similar fears of hijras as carriers of syphilis in the colonial era circulated; it is HIV today, and these people are also considered a public nuisance.

It is with this belief that the British Indian government enacted a set of laws in the 1870–80s, which still defines our relationship with animals in different ways. Along with Section 377, the IPC had two provisions that punished crimes against animals, but there were two problems with these provisions. Firstly, they only protected animals that had a value (fixed in 1860; Rs. 10 and 50, respectively), and secondly, the provisions were located in the chapter of the IPC that punishes crimes against human property. Thus, animals were protected against violence as long as they were seen as worthy, valuable, and useful to humans. At the same time, across British India municipal laws were enacted that advocated for catching and killing unowned street dogs. The caught dogs would be taken to the pound and kept up to forty-eight hours. If unclaimed after that time, the dogs would be killed. This was the first “fatal” distinction between owned and unowned dogs. The method of killing is still shocking—adult dogs were almost always electrocuted on specially designed chairs, strapped one after the other; young puppies were gassed in a closed room with chloroform.

The British enacted the first Prevention of Cruelty to Animals Act (PCA) in 1890; the act was largely led by British women and aimed at civilizing India on how to treat “useful” animals. So, again, it only protected captive, working animals. Street animals continued to remain excluded from any protection—just by being a street dog

they were considered criminals and awarded the punishment of death. Even the revised 1960 PCA still openly advocated the killing of street dogs. The official practice was still in place as recently as the late 1990s; although the new Animal Birth Control Rules and numerous court interventions ensure it is on the decline, it still happens, especially in smaller cities. Animals on the street have remained victims of constant violence, just like we see with poor folks, marginalized communities, migrant workers, sex workers, hijras, and transgender workers. To give you just one example, I have documented over one hundred cases of sexual abuse toward street animals, many of them dogs, in the past ten years.

AA: Considering all of the above, what future could there be for both contemporary queer activism and our understanding of what “nature” is by fully embracing animal rights?

AHG: It is unfortunate that I have not seen a single women’s or queer rights group condemn the sexual and brutal violence toward street animals, neither have I seen them speak against the daily exploitation of working animals, like load-bearing, draft, or dairy animals, whose role renders them a lifetime of exploitation and forced work. This is not very different from how social family structures treat women in particular.

Many of my queer activist friends say there are more important issues in our society than talking about animals. They forget that just twenty years ago they were at the receiving end of a similar reprimand from other social struggles who saw LGBT rights as a sexual extravagance, a luxury in a Third World country. Queer activists overcame this by placing rights, such as gender equality, autonomy, and personal integrity, among essential freedoms. Moreover, the courts recognized our political struggle, not only as a demand for equality but for dignity—that every individual carries a promise, a dream, and an inherent right to live their lives to their full capacity based on their natural instincts.

Animals lie on similar fault lines of exclusion, exploitation, and violence toward marginalized communities. The queer movement must extend its gains and now speak for the rights of animals. Animals are also

sentient beings—all animals, if they be street, companion, working, wild, or farm. They also have an inherent, intrinsic value, and it is our duty to both acknowledge and protect it. Animals have a right to live their lives to their full capacity based on their natural instincts just like queer people. And like all of us, they deserve to be free.

NOTES

[1]

Alok Hisarwala Gupta, “This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism,” Human Rights Watch, December 2008, accessed November 11, 2020, https://www.hrw.org/sites/default/files/reports/lgbt1208_webwcover.pdf.

[2]

Frankie Edozien et al., “Britain apologized for its colonial-era anti-gay laws but it won’t help African LGBT communities,” *Quartz Africa*, April 25, 2018, accessed November 11, 2020, <https://qz.com/africa/1261482/theresa-may-sorry-for-colonial-anti-gay-laws-in-commonwealth-africa-but-it-wont-help-lgbt-community>.

The Past and Present of Against Nature Laws

Living in a society based on a secular legal system with a religious imprint, we are subject to the concept and figure of “nature.” It is used to criminalize individuals for nonreproductive sexual orientations, gender identities, and ways of being. This affects primarily LGBTQI+ communities, but it extends beyond them too. The legal language to support such criminalization often stems from colonial legal codes: the Napoleonic Penal Code, for example, and other British texts. Defined in some Penal Codes as an “act against nature” (Article 534, Lebanon 1943), “carnal intercourse against the order of nature” (Section 377, India 1860, repealed in 2018), or “carnal knowledge against the order of Nature” (Article 162, Kenya 1930), these laws often found no cultural base when first introduced to former European colonies. Using arbitrary concepts to divide what is “natural” from what is “unnatural,” politicians, judges, and religious figures have ascribed an indisputable authority to nature (and still do), and such divisions are enforced with the full coercive power of the state. Over the past couple of years, we have welcomed important legal changes, especially in India and Botswana. These are moments of hope, but more importantly they are occasions to discuss further developments.

Ultimately, challenging the colonial origins of the *contra naturam* laws is important work to do, and yet this work still remains insufficient; we bear responsibility for the continuing exercise of these laws and their related imaginaries. From north to south, the laws against nature have become a horizon for the politics of many conservative movements, who look for more control and uniformization of people’s gender, sexuality, and privacy. We are witnessing a rise of anti-gender ideologies, the justification of verbal and physical discrimination toward trans individuals, worsening environments for LGBTQI+ organizations, divergent legal statuses and reproductive rights for LGBTQI+ families, as well as the threat to abortion rights for women.

Discrimination is not only enforced by the state, and while international advocacy is more necessary than ever, human dignity and equality enacted on a personal level must become part of rethinking the social and legal imaginary, to which *The Against Nature Journal* hopes to contribute.

Grégory Castéra and Giulia Tognon
Editors

ENDNOTE

INITIATIVES AND ADVERTISING

Black LGBTQIA+ Migrant Project (BLMP)

Oakland, California, US

is an independent organization run by Nigerian trans activist Ola Osaze and sponsored by Transgender Law Center. It envisions a world where no one is forced to give up their homeland, where all Black LGBTQIA+ people are free and liberated. BLMP engages hundreds of community members across the US, and has developed active local/regional networks in Oakland; New York City; the Upper Midwest; Washington DC; and the South.

[transgenderlawcenter.org/
programs/blmp](http://transgenderlawcenter.org/programs/blmp)

Mythological Migrations

Helsinki, Finland

is a three-year multidisciplinary research project that examines formations of queer identity and resistance in Muslim migratory contexts. Drawing on Islamic mythological ideas, and employing artistic and curatorial strategies, the project responds to the need to recognize queer Muslim voices, challenging rampant Islamophobia in Europe and the West at large. Conceived and curated by Abdullah Qureshi at Aalto University and funded by Kone Foundation, Finland.

mythologicalmigrations.com/

People Against Suffering, Oppression and Poverty (PASSOP)

Cape Town, South Africa

is a community-based, non-profit human rights organization devoted to protecting and fighting for the rights of asylum seekers, refugees, and immigrants in South Africa. They also advocate on behalf of LGBTI refugees and confront homophobia, transphobia, and xenophobia throughout South Africa.

passop.co.za/

Queer Migration Research Network

Austin, Texas, US

is an interdisciplinary initiative that examines how migration processes fuel the production, contestation, and remaking of sexual and gender norms, cultures, communities, and politics. Its website offers useful resources for anyone interested in or affected by contemporary queer migration, including academic readings, videos, course syllabi, and other documents. The Network is co-founded by leading scholar Karma R. Chávez and sponsored by The University of Texas at Austin.

queermigration.com/

Kifkif

Madrid, Spain

is a not-for-profit based in Madrid and founded by Moroccan communicator and LGBT+ activist Samir Bargachi. Kifkif – meaning same, alike, in Arabic – focuses on improving the living conditions of LGBT+ refugees, migrants, racialized and other marginalized people, mainly those arriving in Europe from North Africa and Latin America through Spain.

kifkif.info/en/

Queer Refugees Deutschland

Cologne, Germany

connects, supports and advises LGBTI refugees and organizations working with them. Its aim is to network existing structures throughout Germany as well as refugee LGBTI activists and to support them in their work. Queer Refugees Deutschland is a project by LSVD, the Lesbian and Gay Federation in Germany, the largest non-governmental LGBT rights organization in Germany.

queer-refugees.de/en/

Forces of Art – Perspectives from a Changing World

European Cultural Foundation,
Prince Claus Fund, Hivos

Forces of Art is a unique publication on the importance of cultural practice in shaping societies. This joint research challenges existing conventions on the role of art in our communities. It brings together a wide variety of voices and perspectives from all over the globe, contextualizing the value of art in different ways. *Forces of Art* is a fundamental book in the global debates about the place and financing of art and culture in our world.

forces-of-art.org
valiz.nl/en/publications/forces-of-art.html

In the House of my Love at Cell Project Space

London –
April to June 2021

Cell Project Space presents *In the House of my Love*, a group exhibition that will bring together artists whose work proposes strategies for homemaking in the context of hostile environments. So far in this exhibition, a home is a belly, a ballroom, a spaceship, a landscape, a friend and a poem.

With Alex Baczynski-Jenkins, Beatriz Cortez, rafa esparza, Mohammad Tayyeb, Jade Montserrat.

cellprojects.org

Between Bridges

Berlin –
since 2017

Between Bridges is a foundation established by Wolfgang Tillmans in 2017. It is committed to humanism, solidarity, and the advancement of democracy. Between Bridges supports the arts, LGBT+ rights, and anti-racism work. Please find more information about our work on the website.

betweenbridges.net

Girls Like Us: Issue 13 Club Architecture

online and in bookstores –
January 28, 2021

A new issue guest edited by Swedish artist / architecture collective MYCKET, who spent over nine years researching the concept of the queer nightclub as a safe space and how to create rooms that support discussion, that inspire dreams and utopias. The magazine is divided in ten chapters that each explore a part of the nightclub in both theory and lived experience. Who knew we would miss the club so much?

girlslikeusmagazine.com

