

# Introduction

## *Putting the SOGI in Human Rights*

### From Human Rights to SOGI Human Rights

Since the turn of the millennium, agents and agencies of the US government have been engaging in programs and projects with the stated purpose of protecting the human rights of lesbians, gay men, bisexuals, transgender women and men, men who have sex with men (MSM), women who have sex with women (WSW), and same-sex-loving adults outside the United States.<sup>1</sup> As I have learned more about these programs and projects and discussed them with academic colleagues and other well-educated citizens, I discovered that the existence of such initiatives has not been well known. More fascinating is the variety of responses I received to describing this project since I began working on it in early 2013.

These responses came in two basic types: some interlocutors stated their conviction that no such initiatives existed and that I would look for them in vain. Had these colleagues been correct, this would have been a short project indeed. Others conceded that if such initiatives existed, I might be able to discover their true purpose, which surely would be a covert geopolitical or economic interest of US elites and not a commitment—however fruitful or misguided—to aiding lesbian, gay, bisexual, transgender, or queer (LGBTQ) people outside the United States in their struggles against discrimination and violence. Even though I believe it's possible for policies and projects to serve multiple purposes at once, as well as fail to serve any or all of the purposes for which they were designed, I don't think these colleagues are correct, either. On these disagreements, the reader ultimately can judge for herself.

At the outset, it is important to clarify what this book is and what it is not. My first goal is to construct an empirical account of US government programs, policies, and interventions outside the United States on behalf of the human rights of LGBTQ people, those who engage in sexual relations with same-sex partners, and those whose gender identity or expression puts them at odds with—or in danger from—people, including government authorities, in their own countries. Another way of pointing to this same object of research is to use the term “sexual orientation and gender identity” (SOGI) human rights, a phrase that isolates and directs attention to forms of discrimination and human rights jeopardy aimed at people of minority sexuality and/or gender identity.

The SOGI human rights programs and projects with which I concern myself here have been designed by a variety of government actors and have taken a variety of forms. US government officials have created programs to advance gender and sexual minority human rights abroad; funded individuals and groups engaged in social, legal, or political advocacy on behalf of LGBTQ people abroad; worked closely with local and regional activists and groups to provide support and resources to LGBTQ people; provided resources to protect individuals who are targeted for their minority sexual identity or behavior, or for their minority gender identity or presentation; brokered relationships among human rights actors that include governments, civil society organizations (CSOs), faith communities and faith-based groups, and corporations; and advocated for SOGI human rights in regional, national, and international forums. “Capacity building”—empowering people and organizations in contexts that present SOGI human rights challenges—is consistently cited as a goal by US government officials whose work is focused on human rights and in venues dedicated to SOGI human rights.<sup>2</sup> In his study of a prominent Western transnational LGBTQ rights organization, Ryan R. Thoreson explains that human rights advocates participate in constructing, promoting, and institutionalizing LGBT human rights, and this characterization broadly applies to SOGI efforts of US government officials.<sup>3</sup>

The first goal of this book is to construct an empirical account of these US government interventions on behalf of SOGI human rights. My second goal is to enunciate and examine key arguments against these programs, policies, and interventions that originate on both the conservative right and the progressive academic—especially critical humanist—left. Hence, this book is not a comprehensive account of the activism by and on behalf of LGBTQ actors and groups, CSOs, nation-states, or supranational

bodies and institutions. It is rather an attempt to document US government interventions in recent years concerning LGBTQ people around the world and then place those interventions into their unavoidable context of intra-US political and intellectual discourse and critique.

Opposition within the United States to the federal government designing and executing programmatic and rhetorical interventions that link SOGI rights and human rights proper comes in two ideological packages crafted by distinct sets of moral entrepreneurs.<sup>4</sup> One of these packages hails from the political right. In May 2013, *The Economist* published an article titled “The War on Gays: Strange Bedfellows,” that featured the subhead “American Christian zealots are fighting back against gay rights—abroad.”<sup>5</sup> Indeed, the belief system and activism of these very Christians constitutes the main form of opposition from the political right to US government investments in human rights protections for LGBTQ people and the projection of those protections abroad in US spheres of influence. For social conservatives who oppose characterizing SOGI rights as civil and human rights, the inclusion of LGBTQ people in categories populated by members of racial, ethnic, religious, and other groups of what they regard as genuine victims of oppression is an insult to the dignity of these groups and a cynical redefinition of immorality as abjection. US Christian right leaders have been implicated in anti-LGBTQ funding, lobbying, political activism, and cultural projects around the world.<sup>6</sup>

By contrast, opposition from a critical humanist academic left is not motivated by animus toward LGBTQ people and the belief that same-sex sexuality and gender nonconformity should be stigmatized and punished. However, many humanist scholars who focus their research on US domestic and/or foreign policy are skeptical about government participation in human rights abroad, particularly US government intervention in parts of the world where human rights are most precarious. Left-progressive skepticism about—if not outright opposition to—discourse such as Secretary of State Hillary Clinton’s 2011 equation of gay rights and human rights underpins an explicit critique of the camouflaging of US national and neoliberal business interests as disinterested virtues exercised on behalf of disempowered groups. It also repudiates, often on cultural grounds, the notion that there can be a set of human rights or values that does not reflect a Western, universalizing—and therefore culturally imperialistic—ideal.<sup>7</sup>

There is no single intellectual source for the skepticism about human rights discourse and interventions that originate on the academic left. Often overlapping with each other, versions of this human rights skepticism

proliferate, especially in humanities disciplines and in the humanist subfields of some traditional social science disciplines. Intellectual sources include anarchism, feminism, some forms of critical theory, and the many kinds of thought that have been heavily influenced by poststructuralist theory, including postcolonial, anti-imperialist, and queer theories and discourses. Although it isn't possible to survey all formulations from these various traditions of academic progressive thought that bear on human rights, it is possible to abstract from them a set of claims that constitute a case not only against US human rights interventions but also against human rights discourse when it is associated with agents and institutions of the US government. Informed by legal, historical, and political accounts of US national hypocrisy, foreign policy cynicism, cultural and economic imperialism, and realpolitik, scholarship on politics in these fields often demonstrates "coherence as a political project."<sup>8</sup>

There is no readily available and agreed-on term to denote academic critics of US government intervention in SOGI human rights. Terms that scholars might use to characterize their work include "critical," "radical," and "progressive," in addition to whatever words are appropriate to denote the particular kinds of theory being practiced. For my purposes, I'm concerned with scholarship that is critical/radical/progressive humanist scholarship on government, domestic policy, and/or foreign policy. I'm neither concerned with nor critical of humanist scholarship on other topics besides government, politics, and policy. For the purposes of this project, I refer to this scholarship as critical humanism and those who produce it as critical humanists.

A final caveat about the category of scholarship I evaluate for its cogency in rejecting a US government role in SOGI human rights: social science scholars in the field of human rights explore, debate, and disagree intellectually about many foundational questions, including what rights are fundamental human rights? Where do human rights come from—or, is there a source of human rights to which everyone can and should subscribe? What kinds of responsibilities do states have to protect the human rights of their own citizens—or the citizens of other nations? Are human rights universal? How should human rights be implemented and enforced at national and multinational levels? What can and should be done about the problem of powerful states exempting themselves from human rights standards and conventions?<sup>9</sup> These key questions in the theory and practice of human rights are common themes in human rights scholarship and may never be completely settled. Although there may be some overlap,

these questions aren't the same as the concerns endemic in the critical humanist literature I take up later in this book.

Whatever their orientation toward LGBTQ identities, desire, or behavior, most Americans would not be surprised to learn that the most vehement opposition to the promotion of SOGI civil and human rights comes from the conservative right, especially from the Christian right movement. What probably would surprise many people is the opposition to certain facets of the movement for SOGI human rights that originates on the humanist left from critics of political and philosophical liberalism. This feature of SOGI human rights—contested not only from the US political right but also from an intellectual redoubt on the political left—distinguishes this configuration of identity-based human rights from those that came before it. To be more specific, SOGI human rights advocacy offers a rare example of disapproval of the US government in human rights assistance mounted by those who belong to, identify with, or are well disposed toward the targeted communities.

In this introduction I lay the foundation for a consideration and analysis of SOGI US government policies and acts by briefly surveying certain key discourses and institutions. These include debates over human rights and the Universal Declaration of Human Rights (UDHR); the appearance of international LGBTQ organizations that use human rights principles and discourse; the adoption of nonnormative sexuality and gender identity as human rights issues by mainstream human rights organizations; the groundbreaking promulgation of the Yogyakarta Principles; United Nations engagement with SOGI human rights; and finally, an outline that focuses on the chronology of US government LGBTQ/SOGI human rights discourse and intervention as well as the political-intellectual context for such advocacy in the United States.

### Human Rights: What Are They Good For?

The idea (to say nothing of the reality) of SOGI human rights is a very recent invention. In many cases, anti-SOGI attitudes and public policies in the postcolonial world are a product of the domination exercised by Western colonial powers over colonized peoples. This is particularly true of sodomy laws imposed throughout the British Empire in Africa and Asia and the consequences of those laws.<sup>10</sup> Contemporary situations of vulnerability to discrimination and violence in which LGBTQ people find themselves are

a result of complex histories of colonial rule and of the unique cultural and political circumstances of individual nations and regions. Twenty-first-century transnational SOGI human rights discourse takes place in a complicated context of Western culpability, religious worldviews, convictions with regard to cultural authenticity, and elite political interests.

In honor of International Human Rights Day, December 6, 2011, Secretary Hillary Clinton delivered a speech in a European capital pledging US commitment to the human rights of LGBTQ the world over: “Remarks in Recognition of International Human Rights Day.” Clinton premised her case for universal human rights that include gender and sexual minorities on the UDHR. Like Clinton, I begin with that key text of our contemporary human rights regime. Submitted to the United Nations in 1948 and ratified by the General Assembly in 1949, the UDHR is a cornerstone of the post-World War II international order. The declaration was drafted by the UN Human Rights Commission, whose chair, Eleanor Roosevelt, was the first US representative to the international body and a longtime human rights advocate.

The UDHR consists of a brief preamble and thirty articles that set forth general principles, specific rights in different domains of life (civic, political, social, cultural, and economic), remedies for violations of human rights, and responsibilities of individuals, groups, and nations to the principles and protection of human rights. Focusing on individuals, the UDHR affirms “the dignity and worth of the human person” and a commitment to “the equal and inalienable rights of all members of the human family.” At a more collective level of analysis, the UDHR links “barbarous acts” that display a “disregard and contempt for human rights” to the aspiration of “friendly relations between nations,” even though the exact nature of the connection between human rights violations against individuals or members of particular groups and foreign relations remains unstated. In the decades since its ratification, the UDHR has been supplemented with a variety of international conventions, covenants, and treaties, and has provided widely cited definitions of human rights. It has also provided a template for national constitutions and international treaties, as well as being widely considered a foundational document of customary international law.

Because of its status as a venerable, widely circulated international statement of human rights, the UDHR has been analyzed extensively by legal and political theorists who produce critiques and interpretations of political texts. Soon after ratification, the UDHR began to be criticized by legal experts as not having binding significance in international law.<sup>11</sup>

Some political theorists trenchantly criticize “culturally specific concepts” and “family” metaphors of the sort that appear in the declaration and unpack the forms of domination and subordination implicit in conceptions of “the individual” that circulate in Western liberal democracies.<sup>12</sup> Others question the meaning and political implications of concepts such as “dignity.” Although many human rights proponents regard respect for and protection of human dignity to be a foundational concept, inquiries into the concept have demonstrated that there are a variety of accounts of human dignity and of the intersection of dignity with human rights. As Franke Wilmer puts it, “globalization . . . highlights philosophical differences in the ways that various cultural traditions conceive of human dignity.”<sup>13</sup> Particularly relevant to the case of SOGI human rights is Karen Zivi’s concern that dignity can function as a normative standard against which LGBTQ people are measured. Under these circumstances, LGBTQ people may be understood as failing to embody and comport themselves with a dignity that would justify human rights protections. Zivi also argues that even though dignity-based arguments have costs, these costs don’t negate the value of dignity as a central concept for SOGI human rights.<sup>14</sup>

Critics have assailed the UDHR and other human rights discourses as embodying an individualistic and culturally Western perspective on people on whose behalf human rights claims are made. Two prominent strands of criticism have included the charge of Western cultural bias and an emphasis on political over economic rights. It is not unusual for critiques of the UDHR to include both grievances: first, “the Western conception of human rights” is “meaningless” and “inapplicable” to people in developing areas owing to deep cultural differences that may be elided by “human rights.” Second, human rights regimes too often focus on the legal and political standing of individuals rather than the economic development and satisfaction of basic economic needs that are more important to people in many poor nations.<sup>15</sup> Of these two charges, the first is more likely to be invoked to dispute and delegitimize the application of the UDHR or other statements of universal human rights to LGBTQ people, MSM, and WSW. With regard to the second charge, as many researchers and activists understand, it’s possible to apply intersectional approaches to SOGI human rights, including those that integrate links between poverty, insecurity, and discrimination against outgroups.

Today the aspiration for universal human rights continues to be a matter of academic debate, but it’s a matter of political debate as well. For Christian conservatives, the UDHR’s recognition in Article 16 of

“the family” as “the natural and fundamental group unit of society [that] is entitled to protection by society and the State” provides support for opposition to LGBTQ human rights.<sup>16</sup> Even as virtually all nations recognize dimensions of human rights as they are codified in such conventions as the declaration, national representatives and opinion leaders from cultures and regimes that seek to exclude LGBTQ people from human rights protections decry universalizing human rights discourses in ways that recall scholarly arguments against universal human rights. Claims for “Asian values” or “Islamic values” that are different from the values of the West, the United States, Europe, or the global North, are often central to these debates over SOGI human rights and measures intended to protect gender and sexual minorities. Such multicultural objections to universal human rights stimulate a variety of rejoinders, among which are: (1) arguing that human rights values have arisen at different times and places and been championed by people outside the West; (2) acknowledging that principles of individual human rights arose in the West but discounting the significance of this history for human rights concerns in the present; (3) observing that the kinds of values enshrined in various international declarations and treaties can usefully be understood as dividing global sectors, continents, and nation-states against themselves instead of only dividing East from West (or global North from South); and (4) reframing the history of human rights ideas and discourse as a product of modernity rather than a product of Western thought and imposition.

Taking these criticisms in turn, first, it has been common for arguments that cleanly distinguish between Western and non-Western values to go relatively uncontested among scholars for whom such a distinction is a fundamental assumption.<sup>17</sup> However, this doesn’t mean that such arguments are uncontested. Amartya Sen has been a proponent of the position that the values underlying respect for human rights can be found in a variety of cultural sources. In his lecture “Human Rights and Asian Values,” Sen challenges the perspective that the values associated with human rights are only found in Western traditions. He traces some dimensions of the “diversity of Asian values” and delineates one basis of misunderstandings of the human rights legacies of East and West:

The question has to be asked whether these constitutive components can be found in Asian writings in the way they can be found in Western thought. The presence of these components must not be confused with the absence of the opposite, that is, with the presence of ideas and doctrines that clearly do not

emphasize freedom and tolerance.

Here, Sen calls attention to the attribution of “nonfreedom” values of order, discipline, loyalty, and obedience to the East as though these are the only Asian values and as though such values also have been unknown in the West. He explains that it’s not coincidental that “Asian values” have been championed by authoritarian regimes, which appeal to indigenous values and traditions to evade human rights scrutiny.<sup>18</sup>

Second, some scholars of human rights acknowledge a Western provenance to human rights discourse, especially discourse that advocates for inalienable individual rights. Abdullahi An-Na’im points out the Western provenance of foundational principles of individual human rights such as those found in the UDHR. However, he qualifies this confirmation by arguing that human rights are not inherently reconcilable with any political system or faith tradition, including Islam, Christianity, and Judaism. Thus, respect for human rights cannot be taken for granted in particular global contexts or among particular groups and is an achievement wherever it occurs. A common feature of this process is that citizens “encourage” and “motivate” states to commit to and protect human rights.<sup>19</sup>

Third, some scholars reframe the critique of imposition of Western values outside the ambit of the West in ways that call attention to the differences that reside within cultures, nations, and transnational regions. The Pew Research Center’s 2013 report, “The Global Divide on Homosexuality: Greater Acceptance in More Secular and Affluent Countries,” surveys transnational attitudes toward same-sex sexuality in thirty-nine countries and finds “broad acceptance of homosexuality in North America, the European Union, and much of Latin America, but equally widespread rejection in predominantly Muslim nations and in Africa, as well as in parts of Asia and in Russia.”<sup>20</sup> This broad picture of acceptance and rejection provides important information about the well-being and prospects of LGBTQ people around the world, but the big picture conceals regional and individual variations and recent and ongoing attitude shifts. For example, as chapter 4 shows, the values codified in international covenants cannot be understood as Western in the sense that they are uncontested in the United States. Writing of sex education, Jonathan Zimmerman makes an argument that is relevant to the case of SOGI human rights:

certain parts of the world are [not] “conservative” or “traditional” on the topic. Instead, conservatives around the globe have united across borders to block or inhibit sex education. On

issues of sex and reproduction, it's not East vs. West anymore. It's liberals vs. conservatives, each of which often have more in common with their ideological soulmates in other parts of the world than they do with people next door.<sup>21</sup>

Finally, Jack Donnelly takes a position that locates human rights principles neither in many world cultures nor in the West, pointing out instead that human rights discourse and ideals did not come into existence in any traditional societies, East or West. Instead, he argues, human rights are a product of modernity that properly belongs to all people.<sup>22</sup> Some SOGI human rights-respecting developments might be adduced to support multiple perspectives on the provenance or diffusion of human rights, including human rights as an achievement anywhere in the world, contested even in the global North, and a product of modernity. One example of such a development is a 2009 Issue Paper produced by the Council of Europe Commissioner for Human Rights, "Human Rights and Gender Identity." The booklet explains gender and transgender identity, discrimination against transgender women and men, and the applicability of international human rights law to transgender people. The production of this paper and its translation into several languages suggests that in 2009 European citizens needed to be informed about the "ignored and neglected" "human rights situation of transgender persons."<sup>23</sup>

Having studied the US Christian right for many years, I can attest to that movement's ongoing opposition to all forms of LGBTQ rights and recognition, here and abroad. On the other hand, in early 2014, I attended the wedding in Washington, DC, of two women who fled Iran after being warned that they would face prosecution for their sexuality. Throughout the wedding, I kept an iPad camera trained on the couple so the mother of one of the partners could participate in the ceremony from her home in Tehran. For that mother watching the marriage of her daughter to another woman, the Pew findings, though accurate, did not reflect her attitude toward same-sex sexuality and LGBTQ equality under the law. She was proud and happy that her daughter was marrying the woman she loved at the same time that US Christian conservatives were intensifying their own anti-same-sex marriage rhetoric in the face of the adverse Supreme Court decisions of 2013. Of course, similar intranational divisions prevail outside and inside the United States.<sup>24</sup>

Even though it is well over fifty years old, the UDHR and other statements and conventions continue to be subject to debate, among nations

and among social, political, and intellectual communities. On one hand, governments and human rights advocates and organizations acknowledge and use the principles enshrined in the declaration to advance human rights and try to hold states accountable for human rights violations.<sup>25</sup> An example of the incorporation of the declaration into the LGBT advocacy of a government entity is the Swedish International Development Cooperation Agency (Sida). Sida is a government agency whose broad mission is “to ensure that people living in poverty and under oppression have the ability to improve their living conditions.”<sup>26</sup> Sida works on many issues and with many constituencies, and among these groups is LGBTQ people around the world whose human rights are in jeopardy. The text of an English-language Sida brochure on “Human Rights of Lesbian, Gay, Bisexual and Transgender Persons: Conducting a Dialogue” begins:

The Universal Declaration of Human Rights includes the right of every person to life, privacy, health and equality before the law, as well as the right to freedom of expression and freedom from discrimination and violence, including torture. Lesbian, gay, bisexual and transgender (LGBT) persons are constantly at risk of persecution and gross violations of their fundamental human rights in a number of countries. Many LGBT persons fear or face imprisonment, torture, abuse and even murder, solely because they live in a context that does not tolerate their sexual orientation, gender identity or gender expression.<sup>27</sup>

Thus, Sida prefaces its literature on LGBT human rights with direct appeals to the legitimacy of the UDHR and its applicability to sexuality, sexual orientation, and gender identity and expression.

An additional consideration is relevant to the question of women’s and SOGI human rights, even though it should not be a determining factor in cultural or national decisions about whether to discriminate against groups because the question of whether to apply human rights principles is not an issue best decided by macroeconomic analysis. However, it turns out that, like discrimination against women, widespread discrimination against LGBTQ people is economically wasteful and harms national economies. However, it is useful to understand how exclusion and discrimination cost the societies that practice group-based stigma and oppression. In 2014, a forum at the World Bank headquarters in Washington, DC, highlighted ongoing research on “The Economic Cost of Homophobia: How LGBT

Exclusion Impacts Development.” The forum brought together economists, World Bank and UN officials, and human rights professionals to address how LGBT exclusion affects economic development. Although transnational economic impact research is in its early stages, it is clear that discriminatory policies and social practices are costly in a variety of ways, including to the health of individuals affected by these policies and practices and to national measures of productivity and fiscal sustainability.<sup>28</sup> Thus, research that surveys the economic costs of large-scale inequalities based on sex, race, and sexuality/gender identity, among other categories, can be understood implicitly to uphold a cross-cultural set of human rights norms.<sup>29</sup>

Even as critics debate these issues, a broad coalition of advocates find in human rights principles and their codification in instruments such as the UDHR indispensable resources for supporting the “dignity and worth of the [LGBTQ] person.” As critics of LGBTQ human rights on the political right point out, SOGI human rights did not exist as a category for human rights advocates in the early decades after the UDHR. When same-sex sexual behavior, identity, and orientation began to be integrated deliberately into the discourse of human rights, those who led these efforts understood the threats faced by gender and sexual minorities firsthand. These activists created a path for other human rights advocates to take up the banner of SOGI human rights.

### International LGBT Organizations

Historians of LGBTQ rights generally agree that a movement for SOGI rights began in Germany at the turn of the twentieth century with Dr. Magnus Hirschfeld’s founding of the Scientific Humanitarian Committee (Wissenschaftlich-humanitäres Komitee), later the Institute for Sexual Research. All traces of Hirschfeld’s institute were decimated by the Nazis.<sup>30</sup> In the post–World War II period, organizations formed in Nordic and Western European states; 1950 saw the launch of two gay organizations: in the United States, the Mattachine Society and in Sweden, the Federation for Sexual Equality (Riksförbundet för Sexuellt Likaberättigande).<sup>31</sup> Other gay and lesbian organizations formed in the United States throughout the 1950s and 1960s, embracing a “homophile” label that soon became synonymous with self-abasement.

The decade after the Stonewall riots occurred in New York City was a politically fertile period in the United States. Many gay advocacy and

media organizations were founded in the 1970s, especially in Europe, the United Kingdom, and the United States. Some US organizations founded in the immediate aftermath of the riots do not survive, including the Redstockings (1969–70), the Gay Liberation Front (1969–72), the Gay Activists Alliance (1969–74), and the Lavender Menace (later Radicalesbians, 1970–72). Others established in this period are still viable: the National Gay and Lesbian Task Force (1973–present), the National Center for Lesbian Rights (1977–present), Gay and Lesbian Advocates and Defenders (1978–present), and the Human Rights Campaign (1980–present). The Human Rights Campaign Fund—since 1995, the Human Rights Campaign—was founded in the wake of the October 1979 National March on Washington for Lesbian and Gay Rights, the first LGBTQ civil rights march in the United States.

Today, many scholars of sexuality distinguish between LGBT and queer organizations, marking the former (most often the Human Rights Campaign) pejoratively as “assimilationist” and the latter (for example, ACT UP and Queer Nation) approvingly as “liberationist.” Nevertheless, other perspectives problematize this distinction between assimilationist and liberationist groups and political agendas. For example, what constitutes liberationism in style or agenda may be contested, as Julie Mertus contests the liberationism of Queer Nation and places it in the category of “liberal, self-worth promoting”—presumably assimilationist—organizations of its advocacy moment.<sup>32</sup> Craig Rimmerman takes a different approach in his study of “the lesbian and gay movements,” examining them through a lens of assimilationist or liberationist goals and methods, and the “intersection between . . . assimilationist and liberationist strategies over time.” Surveying LGBTQ movements in the United States from the Stonewall riots to the present, Rimmerman persuasively demonstrates that rather than the assimilation and liberation marking a divide between groups and movements, the divide of assimilation versus liberation has run *through* LGBTQ movements, groups, and issue formations since the 1950s. For example, he analyzes the goals, practices, and strategies of the AIDS Coalition to Unleash Power (ACT UP), usually invoked as an exemplar of liberationism, and concludes that “what makes ACT UP such an interesting organization to study is the fact that it has embraced both liberationist and assimilationist approaches to political, social, and cultural change.”<sup>33</sup>

One feature of LGBTQ rights and justice claims and activism in the United States that has distinguished domestic US activism from global

advocacy, including advocacy outside the country by US activists, has been the use of civil and constitutional—rather than human—rights claims. Julie Mertus explains that in spite of the “strategic importance” of “linking human rights and LGBT issues,” in the United States, “policy-makers, the general public, and even many social change advocates still view human rights as something that applies not at home, but in some distant land.”<sup>34</sup> Mertus outlines three reasons domestic US LGBT activists generally haven’t used human rights frames in their advocacy. The explanation she seems to favor is that identitarian human rights frames are antithetical to conceptions of “gender and sexuality [as] socially constructed and fluid” that have been embraced by many LGBTQ political activists since the 1970s.

I’m more persuaded by other reasons she gives: first, that, for Americans, human rights invokes connotations of “gross human rights violations committed against faraway victims”; and second, that US political institutions and elites have been “unreceptive” to human rights discourse and even, as we shall see in chapter 4, vigorously opposed to international law.<sup>35</sup> Implicit in Mertus’s analysis but not spelled out explicitly, a final reason for US LGBTQ activists’ decision not to use human rights frames might well be that until recently there was no basis in international law or in human rights discourse for recognition of discrimination and abuse based on nonnormative sexuality or gender expression or identity. US activists in the 1970s, 1980s, 1990s, and 2000s would have been hard-pressed to look to human rights principles or discourse for vindication before a plurality of the global human rights community stood firmly behind their claims.

The oldest of the gay, queer, or LGBT-oriented international human rights organizations is the Astraea Lesbian Foundation for Justice (Astraea), founded in the United States in 1977 as ASTRAEA, National Lesbian Action Foundation. Astraea bills itself as “the only philanthropic organization working exclusively to advance LGBTQI human rights around the globe, with a focus on reinforcing the political leadership of lesbians, women, transgender people and people of color.”<sup>36</sup> Astraea pursues its own LGBTQI (the *I* stands for intersex) human rights projects and grantmaking, especially with activists and organizations in rural areas, and organizations led by lesbians, transgender people, and/or people of color.<sup>37</sup> In addition, today Astraea plays a key role as a mediating organization between LGBTQ/SOGI donors and indigenous activists throughout the world.

Shortly after the founding of Astraea, in 1978, the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA) was formed

in the United Kingdom as the International Gay Association. ILGA is a global umbrella federation of over 1,000 LGBTQ advocacy organizations worldwide and functions as “an international platform to collectively campaign against the discrimination, and at times persecution, faced by LGBTI people around the world.”<sup>38</sup> ILGA representatives have participated in meetings of multilateral organizations since the 1980s, lobbying the Conference on Security and Cooperation in Europe and the Inter-American Commission of Human Rights, among others.

In 1993, ILGA was the first LGBTQ organization to achieve consultative status as a recognized nongovernmental organization at the United Nations; however, this achievement required that the UN Economic and Social Council suspend its usual consensus method for so designating organizations. Initially supportive, the United States soon challenged consultative status for ILGA over the membership of the North American Man/Boy Love Association (NAMBLA), a group formed in 1978 “to end the extreme oppression of men and boys in mutually consensual relationships.”<sup>39</sup> Under pressure from proponents of NAMBLA and a liberationist ethos and from conservative critics, ILGA was embroiled in controversy throughout the mid-1990s.<sup>40</sup> ILGA sponsors regional and world conferences that provide forums for elections, agenda-setting, and other movement activities.

In 1990, activist Julie Dorf founded the International Gay and Lesbian Human Rights Commission (IGLHRC), which for some time employed the motto “Human Rights for Everyone. Everywhere.”<sup>41</sup> In 2015, IGLHRC changed its name to OutRight Action International. In a video, Executive Director Jessica Stern explains the two reasons that drove the decision to rename the organization: because the old name (and abbreviation) was “something of a mouthful to pronounce” and “more importantly,” because “we decided it was long past time to make it clear that we support everyone in our community,” including those whose bisexual, transgender, and intersex identities weren’t explicitly denoted in the original name.<sup>42</sup> OutRight concentrates its work at multiple levels: “improving the lives” of people harmed because of their sexuality or gender identity or expression, “strengthening the capacity” of the global LGBT human rights movement, and “engaging in human rights advocacy” with a broad set of partners that includes the United Nations, governments, and CSOs around the world.<sup>43</sup> Today, OutRight operates under the leadership of Stern, an international staff, and a board. The organization documents its activist work in a variety of ways, including through videos such as “In Their Own Words: Documenting Violence and Discrimination against Lesbians, Bisexual Women,

and Transgender People in Asia” and country reports such as “Exposing Persecution of LGBT Individuals in Iraq.”<sup>44</sup> Since 2011, OutRight has held consultative status with the UN Economic and Social Council.<sup>45</sup>

Finally, there is the Council for Global Equality (CGE), a single-issue nonprofit organization with the goal of “advancing an American foreign policy inclusive of sexual orientation and gender identity.” Founded during the 2008 presidential election campaign and led by Council Chair Mark Bromley, the CGE is a new group among US and Western human rights organizations. It is an umbrella group with organizational members, many (but not all) of which are LGBT rights organizations: American Jewish World Service, Amnesty International, Anti-Defamation League, Center for American Progress, Freedom House, Gay and Lesbian Institute, Global Rights, Heartland Alliance, Human Rights Campaign, Human Rights First, Human Rights Watch, Immigration Equality, International Gay and Lesbian Human Rights Commission, Metropolitan Community Churches, National Center for Lesbian Rights, National Center for Transgender Equality, National Gay and Lesbian Chamber of Commerce, National Gay and Lesbian Task Force, ORAM (Organization for Refuge, Asylum and Migration) Institute, Out and Equal Workplace Advocates, and the Robert F. Kennedy Center for Justice and Human Rights.<sup>46</sup> The CGE operates under the fiscal sponsorship of San Francisco-based Community Initiatives and is one of many LGBTQ and mainstream human rights groups that partners and coordinates with the US government for SOGI human rights initiatives.

In the global history of the juxtaposition of human rights with same-sex sexuality, homosexual—later gay, and still later, LGBT+—individuals, media, and organizations first led the organized resistance against antigay and antitransgender bias, discrimination, and violence. However, a key development occurred when mainstream human rights “gatekeeper” organizations formally incorporated discrimination and human rights violations based on sexuality, sexual orientation, and gender identity into their missions, often in response to lobbying from LGBT people within their ranks.<sup>47</sup> Thus, in briefly documenting the turn of mainstream human rights organizations toward advocating on behalf of LGBT human rights, I emphasize US-based human rights groups. These organizations and activists associated with them have pushed the US government to affirm support for SOGI human rights and partnered with the government to accomplish ends associated with SOGI.<sup>48</sup>

## The Mainstreaming of LGBT Human Rights

The first mainstream human rights organization to commit to supporting LGBTQ human rights was Amnesty International, founded in the United Kingdom in the early 1960s. Amnesty is a mass-membership human rights organization that bills itself as “the world’s largest grassroots human rights organization,” a “global movement of people fighting injustice and promoting human rights.” Although it engages in many activities, Amnesty is best known for its targeted mobilizing of publicity and support for individuals who suffer human rights deprivations around the world. Today there are Amnesty chapters in more than 150 countries, and the largest of these is the US chapter, with approximately 250,000 members.<sup>49</sup>

In 1991, Amnesty took a position on judicial detainment or imprisonment based on same-sex sexual behavior, calling these acts of governments “a grave violation of human rights.”<sup>50</sup> This development was not uncontested; in addition to predictable disapproval from constituencies in the United States that disagreed that people of nonnormative sexual orientation and those who engaged in same-sex sexuality were proper candidates for human rights protections, disapproval arose from within the organization itself. Amnesty’s decision to include persecution based on same-sex sexuality and gender identity as violations of human rights upon which the organization would act was opposed by some chapters in Asia, Africa, and Latin America. The controversy within Amnesty was a case of an organization whose leaders and members generally agree on the universality of human rights disputing the application of that principle in the case of same-sex sexuality. In the end, the internal argument over whether to include persecution based on same-sex sexuality in the group’s portfolio was concluded by political means when Amnesty’s International Executive Committee, on which northern and western national chapters enjoyed stronger representation, settled the matter in favor of the North American and European chapters.<sup>51</sup> Another milestone was the publication by Amnesty International UK of the global report, *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*.<sup>52</sup> Today, Amnesty calls for the decriminalization of same-sex sexual relations, civil marriage equality, judicial recourse for human rights violations based on same-sex sexual identity and gender identity and expression, equality for LGBT people in the administration of justice, and protections for those who defend the human rights of LGBT people.

A second international human rights organization to embrace the human rights of LGBT people is Human Rights Watch (HRW), which came into existence in the United States in 1978 as Helsinki Watch and extended its network of “watch committees” throughout the world in the 1980s. HRW engages in investigation, monitoring, documentation, analysis, and reporting of human rights violations worldwide, and it presses governments to address and resolve categories of the human rights violation it identifies. HRW targets a wide range of categories of human rights abuses and campaigns that include rape as a war crime, women’s human rights, landmine abolition, workers’ human rights, human trafficking, and use of child soldiers. The organization declared its commitment to report on human rights violations against gay men and lesbians in 1996. After partnering extensively with IGLHRC, HRW integrated these concerns into its operations in the form of an LGBT Human Rights Program:

Human Rights Watch works for lesbian, gay, bisexual, and transgender people’s rights, with activists representing a multiplicity of identities and issues.

We document and expose abuses based on sexual orientation and gender identity worldwide—including torture, killing and executions, arrests under unjust laws, unequal treatment, censorship, medical abuses, discrimination in health and jobs and housing, domestic violence, abuses against children, and denial of family rights and recognition.

We advocate for laws and policies that will protect everyone’s dignity. We work for a world where all people can enjoy their rights fully.<sup>53</sup>

A smaller Western human rights nongovernmental organization is Human Rights First (HRF), established in New York in 1978 as the Lawyers Committee for International Human Rights and renamed in 2003. The motto of HRF is “American ideals, Universal values,” a slogan that acknowledges the US roots of the organization while attesting to a belief in the universality of human rights principles. The United States looms large in the mission of HRF, which emphasizes encouraging and leveraging US leadership to redress human rights violations—“harnessing American influence to secure core freedoms”—and pressuring the US government and corporations to support human rights in their spheres of influence around the world.<sup>54</sup> HRF incorporated support for LGBTI human rights

into its principles and operations after 2000 and included hate crimes based on SOGI into its 2005 report, *Everyday Fears: A Survey of Violent Hate Crimes in Europe and North America* under the category, “Bias Crimes Based on Discrimination Other Than Racism.”<sup>55</sup> Among its concerns for other populations, HRF is committed to supporting “fundamental human rights protections for LGBTI persons,” and the organization has taken a particular interest in the difficulties of LGBTI refugees, who frequently are confronted with “discrimination, marginalization, and bias-motivated violence” in ways that exacerbate their vulnerability as refugees. HRF works with the United Nations Refugee Agency and the US government to advocate for the needs of this vulnerable population in conflict zones and in places throughout the world in which people are displaced.<sup>56</sup>

As is clear from this brief history of LGBTQ and mainstream human rights advocacy on behalf of LGBTQ people and issues of minority gender and sexuality, LGBTQ groups pioneered this advocacy, although mainstream multifocus human rights groups increasingly have become champions of these causes. Through the 1990s and into the early decades of the new millennium, human rights defenders and organizations throughout the world at local, regional, and international levels have been working, and sometimes cooperating on, problems related to gender and sexuality. Key events in this transnational organizing and advocacy occurred in 2006: first, when the Declaration of Montreal was presented at an International Conference on LGBT Human Rights in Canada,<sup>57</sup> and second, when human rights professionals, activists, scholars, and leaders from around the world came together for a conference at Gadjah Mada University on Java, Indonesia. The representatives who met in Yogyakarta set out to articulate a set of human rights principles and state obligations with regard to violations based on sexuality, sexual orientation, and gender identity. The resulting Yogyakarta Principles have not been uncontroversial. But they continue to be influential in debates and advocacy regarding those who may suffer ill consequences because of gender or sexuality.

### The Yogyakarta Principles

The November 2006 conference of human rights leaders—including members of the International Commission of Jurists and the International Service for Human Rights—held in Yogyakarta produced “The Yogyakarta Principles on the Application of International Human Rights Law

in Relation to Sexual Orientation and Gender Identity.” The Yogyakarta Principles website introduces the document delivered by the conference as follows:

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.<sup>58</sup>

The twenty-nine principles that follow are divided into eight broad categories: rights to universal enjoyment of human rights, nondiscrimination, and recognition before the law; rights to human and personal security; economic, social, and cultural rights; rights to expression, opinion, and association; freedom of movement and asylum; rights of participation in cultural and family life; rights of human rights defenders; and rights of redress and accountability.<sup>59</sup>

The principles are explicitly universalizing but also multinational and multicultural, at least in two respects. First, signatories to the principles constitute a who’s who of human rights service and advocacy from around the world. Perhaps the most well-known signatory in the West is former President of Ireland (and former UN High Commissioner for Human Rights) Mary Robinson; however, only one signatory is from the United States, and just nine of twenty-four are from North America, Australia, and Western Europe. Second, those who met to develop and finalize the principles intended them to serve as a normative set of standards that *should* guide states and national communities regardless of the differences that might prevail between them. On the website constructed to disseminate the final document, the Yogyakarta Principles are translated into the six official languages of the United Nations: English, Spanish, French, Russian, Arabic, and Chinese.

Since its publication, the Yogyakarta Principles have been subjected to a range of responses, from praise to various forms of criticism through disapproval and rejection. Some criticisms, especially by experts in law and human rights, were relatively modest, including qualifications regard-