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**THE POLITICS OF LGBT RIGHTS IN
ISRAEL AND BEYOND: NATIONALITY,
NORMATIVITY, AND QUEER POLITICS**

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THE POLITICS OF LGBT RIGHTS IN ISRAEL AND BEYOND: NATIONALITY, NORMATIVITY, AND QUEER POLITICS

Aeyal Gross*

ABSTRACT

The 2010 Israeli Supreme Court judgment in the matter of the Jerusalem Open House for Pride and Tolerance, Jerusalem's LGBT community center, was a turning point in both its recognition of equality for the gay community and its adoption of the discourse that sets LGBT rights as signifying Israel as a liberal democracy and as distinguishing it from other states. This article explores LGBT rights politics in Israel and beyond, taking a critical look at the terms "homonormativity" and "homonationalism." Homonormativity has

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been described as neoliberal sexual politics that does not challenge the dominant heteronormative institutions and is anchored in domesticity and consumption. Homonationalism has been described as nationalist homonormativity, in whose framework “domesticated” homosexuals serve as ammunition for nationalism. The discussion of homonationalism highlights a process whereby the homosexual, rather than being viewed as a threat to the state and its security, has been transformed into someone who is perceived as integrated in the state and who distinguishes it from other states through its tolerance towards him. Homonormativity and homonationalism are preconditions for “pinkwashing”: the use of LGBT rights for propaganda purposes. The article will argue for the need for non-reductive conceptions of the connection between homonationalism, homonormativity, and pinkwashing, as well as point to the contradictions between domesticity and consumption that exist within the notion of homonormativity.

The slaying of two gay youths in a 2009 shooting attack at the Barnoar gay youth center in Tel Aviv was a turning point in LGBT rights politics in Israel. The reactions to this incident marked the rise of the new homonationalism alongside the intensification of criticism of this phenomenon, leading to divisive rifts amongst activists. This article examines the “deal” that was woven in the shadow of the Barnoar attack between the gay community establishment and the nationalist establishment and the ensuing crisis in queer politics. In response to the ascent of homonormativity and homonationalism, there was a strengthening of identity politics amongst the groups that are excluded from them, while the queer politics that challenged essentialist notions of identity fell into crisis. The queer idea was at times turned into simply one more identity (“Q”) in the alphabet soup of identities, at the expense of its critical potential and effectiveness.

INTRODUCTION

In September 2010, the Israeli Supreme Court handed down its decision in the matter of the Jerusalem Open House for Pride and Tolerance (hereinafter “the JOH”), the Jerusalem LGBT community center. The JOH had appealed the Jerusalem Administrative Court’s 2008 decision rejecting its petition against the Jerusalem Municipality for denying the center financial aid for activities it had conducted between the years 2005 and 2007. The JOH argued that the Municipality had set criteria for receiving financial support that

were impossible for the LGBT community¹ it represents to meet.² Even though the Municipality had set criteria for allocating funds, the JOH's applications for aid were consistently rejected.³ The JOH claimed that the Municipality's criteria were in fact grounded in irrelevant and invalid considerations aimed at excluding the gay community from public activism in Jerusalem. The JOH further argued that under the outcome test, the Municipality's criteria produce indirect discrimination of the gay community as well as its exclusion.⁴

In his decision, writing for the Court, Justice Amit stated that discrimination based on sexual orientation involves a suspect group classification and is, therefore, covered by the "hard core" (author's trans.) of the right to equality. Accordingly, borrowing from American constitutional law, Amit held that a "strict scrutiny" standard of review must be applied.⁵ "Israeli law on the matter of the gay

1. Throughout the article, I will use the term "LGBT" to refer to issues relating to lesbians, gays, transgender persons, and bisexuals. I will refer to only gays and lesbians when relating to specific issues pertinent to these two groups alone and the use that has been made of their rights specifically. At some points in discussing the global discourse, I will use "gay rights" to refer to the presence of this term in that discourse.

2. APA 343/09 Jerusalem Open House for Pride & Tolerance v. Municipality of Jerusalem (Sept. 24, 2010), Nevo Legal Database (by subscription) (Isr.). The Supreme Court noted that a number of legal proceedings had been conducted in the past between the two sides regarding municipal support, following the rejection of prior JOH applications for aid. In the framework of one such proceeding, the Municipality had complied with the court recommendation to grant aid to the JOH but then resumed its practice of rejecting the center's applications. *See id.* ¶ 4 of Justice Amit's opinion. For my note on the case, see, Aeyal Gross, *Israel Supreme Court Issues Historic Gay Rights Decision*, Lesbian/Gay L. Notes 158 (Oct. 2010), available at http://www.nyls.edu/documents/justice-action-center/lesbiangay_law_notes/ln1010.pdf. My discussion of the case and its significance for the questions discussed in the article draws on my article, Aeyal Gross, *HaPolitika Shel Zchuyot Laha"tab: bein (Homo)Normativit Ve(Homo)Leumiut LePolitika Quirit [The Politics of LGBT Rights: Between (Homo)normativity, (Homo)nationalism, and Queer Politics]*, 5 Ma'asei Mishpat [Tel Aviv U. J.L. & Soc. Change] 101 (2013) [Hebrew].

3. *See* APA 343/09 Jerusalem Open House, ¶¶ 5–15 of Justice Amit's opinion.

4. *Id.* ¶ 29 of Justice Amit's opinion.

5. *Id.* ¶ 53 of Justice Amit's opinion. Writing for the Court, Justice Amit relied in his opinion on Section 3A of the Budget Foundations Law, 5745–1985, SH No. 1139 p. 60 (Isr.), which stipulates that public authorities must allocate their budgets in an equal and reasonable manner, by setting criteria that are clear, transparent, and relevant and that uphold these two values. The Supreme Court ruled that no entity has an acquired right to state aid, but when the

community and its members,” noted Amit, “reflects the changes and transformations that have occurred over the years in Israeli society.” He added, “The stance of Israeli society is that the law must treat sexual orientation with indifference There is broad consensus that the gay community must not be restricted in its activities or discriminated against” (author’s trans.).⁶ As evidence of his assertions, Amit reviewed the principal legislative and case law developments in this field in Israel,⁷ noting that due to these advances, there are no longer “‘islands’ of rights, but rather a comprehensive constitutional conception of the right not to be discriminated against based on sexual orientation” (author’s trans.). Since discrimination on these grounds falls under the hard core of prohibitions on discrimination, it must be strictly scrutinized, with special attention to the fact that from a political standpoint, this is a relatively weak group that is the target of stigmatization, prejudice, and negative stereotyping.⁸ Given this background, the Court ruled that there are understandable grounds for the JOH’s suspicion of intentional discrimination on the part of the Jerusalem Municipality,⁹ and ordered the Municipality to transfer to the JOH, under the heading of support for community centers, an amount of NIS 100,000 for each year between 2005 and 2008.¹⁰

authorities do decide to provide aid and set criteria for providing aid to institutions, these criteria must be scrutinized through the prism of the principle of equality. *See* APA 343/09 *Jerusalem Open House*, ¶ 34 of Justice Amit’s opinion.

6. *Id.* at ¶ 54 of Justice Amit’s opinion.

7. *Id.*

8. *Id.* ¶ 56 of Justice Amit’s opinion.

9. Contributing factors, noted the Court, are Jerusalem Municipality’s actions over the years, public statements made by the previous mayor opposing JOH activities, and the fact that municipalities in other big cities in Israel support activities serving the gay community. *Id.* ¶ 57 of Justice Amit’s opinion.

10. *Id.* at ¶ 87 of Justice Amit’s opinion. This was in addition to NIS 65,000 to be paid as the Municipality’s participation in funding the 2006 gay pride parade; the parties arrived at an agreement on this amount alone. *Id.* ¶¶ 66, 87. In relating to the specific claims, the Supreme Court held that some of the JOH applications for aid had been justifiably rejected. However, the Court ruled, the requirement that community organizations operate in a specific geographic area to be eligible for support is discriminatory and does not respond to the unique needs of dispersed communities. *Id.* ¶¶ 65–84 of Justice Amit’s opinion. For a discussion of this decision and criticism of the conception of LGBT identity expressed therein, see Hagai Kalai, *Elad Rot Lo Homo: HaTeoria HaQuirit BaPraktika HaMishpatit* [*Elad Roth Is Not a Homo: Queer Theory in Legal Practice*], 4 *Ma’asei Mishpat* [Tel Aviv U. J.L. & Soc. Change] 167, 176–78 (2011) [Hebrew].

The JOH decision is important in its recognition of a comprehensive right to equality and a prohibition on discrimination based on sexual orientation, as well as in acknowledging the gay community as a “suspect class” in this context. Also significant is the Court’s holding that a negative opinion about the gay community cannot justify discriminating against it. Accordingly, this decision contains certain holdings that can be classified as “liberal” with respect to the gay community and its rights, while at the same time manifesting additional dimensions of the current discourse in Israel in this context. In the framework of his review of the advances in Israeli law and society in relation to the gay community, Justice Amit made the following observation:

It goes without saying that the treatment of the gay community is one of the measures of Israel as a liberal-democratic state, in contrast to the situation in the overwhelming majority of Middle-Eastern states, near and far, where members of the gay community are persecuted both by the state authorities and by society (and let us recall the unforgettable words of Iranian President Ahmadinejad, who claimed that there are no homosexuals in Iran when at the same time, the High Court in England is deliberating the petition of an Iranian homosexual against the British authorities, which are seeking to deport him to his country, while he is requesting asylum in England out of fear for his life if he returns to Iran).¹¹

In this passage, Justice Amit adopted the prevalent discourse that invokes gay rights to brand Israel as democratic and liberal, primarily in contrast to its regional neighbors. As this article will show, Amit’s statement is a broad reflection of how the politics of LGBT rights and sexual freedom in Israel is expressed in Israel’s attempt to brand itself as gay-friendly and, therefore, as a Western, progressive, democratic, and liberal state. This image is set in opposition to the surrounding Islamic and Arab states in the Middle East (Iran, in this particular context), which are conceived of as homophobic and miserably primitive.

11. See APA 343/09 *Jerusalem Open House*, ¶ 55 of Justice Amit’s opinion (referring to a judgment that had already been handed down by the British High Court of Justice in *HJ (Iran) v. Sec’y of State for the Home Dep’t*, [2010] UKSC 31).

Justice Hayut's concurrence to Justice Amit's majority opinion is noteworthy in this context. She asserted that although Israeli law has evolved on this matter, "it is difficult, in this context, to suffice with the fact"—noted by Justice Amit—"that our law is more liberal than that of our neighbors in the Middle East."¹² Justice Hayut recalled a stabbing incident at the 2005 Jerusalem gay pride parade¹³ and the fatal 2009 shootings at the *Barnoar* gay youth center in Tel Aviv.¹⁴

It appears that phenomena of hate towards members of the gay community, which are at times translated into severe violence and even acts of murder and attempted murder . . . are indicative of the fact that there we are still a long way off from adequate assimilation of these protected values within the Israeli public sphere.¹⁵

This stands in contrast with the narrative of progressiveness and progress in Justice Amit's opinion, which compared the advances in liberal-democratic Israel to the situation in its neighboring states so as to highlight Israel as a liberal-democratic state that upholds human rights in general and the rights of the gay community in particular. Justice Hayut's opinion, however, notes that despite the legal advances, violent homophobia exists in Israel as well.

This article will examine LGBT rights politics in Israel and beyond as expressed in, amongst other things, the JOH decision and how these politics were impacted by the attack in the Tel Aviv *Barnoar* gay youth center. The Israeli case will be used as a framework for critically examining the terms homonormativity and homonationalism, which are frequently invoked in the current global discourse on LGBT rights and LGBT politics. Lisa Duggan describes the new homonormativity as neoliberal sexual politics that affirms, rather than challenges, the dominant heteronormative premises and institutions, while at the same time facilitating a privatized gay culture that has been depoliticized and is anchored in domesticity and

12. See APA 343/09 *Jerusalem Open House*, ¶ 2 of Justice Hayut's concurrence.

13. On this incident, see Doron Sheffer & Efrat Weiss, *Violence Erupts at Gay Pride Parade*, Ynet, June 30, 2005, <http://www.ynetnews.com/articles/0,7340,L-3106491,00.html>; see CrimA 2625/06 Schlissel v. State of Israel (Dec. 17, 2007), Nevo Legal Database (by subscription) (Isr.); CrimC (Jer) 843/05, State of Israel v. Schlissel (Jan. 31, 2006), Nevo Legal Database (by subscription) (Isr.).

14. See text accompanying *infra* notes 82–87.

15. APA 343/09 *Jerusalem Open House*, ¶ 2 of Justice Hayut's concurrence.

consumption.¹⁶ According to Duggan, this homonormativity entails a narrow conception of “equality” that amounts to formal access to a number of institutions of a preservative nature and a conception of “liberty” that, in essence, permits the maintenance of prejudices and broad inequality. This is set within the framework of a minimal concept of the state that entails, in turn, neoliberal privatization of emotional, economic, and public life.¹⁷ Jasbir Puar describes homonationalism as “nationalist homonormativity,” in whose framework “domesticated” gay entities provide ammunition for strengthening the nationalist project. She grounds this on Duggan’s definition of homonormativity as the new neoliberal politics of sex and links its ascent, in the American context, to the war on terror: the “domesticated” homosexuals are used as ammunition in support of nationalist projects.¹⁸ According to Puar, the nation today is not only heteronormative but also homonormative.¹⁹

The debate on homonationalism highlights a process by which the homosexual is no longer perceived as a threat to the state and its security²⁰ but, rather, as integrated in the state and also—in certain

16. See Lisa Duggan, *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* 50 (2004). On the new privatized and domesticated form of sexual citizenship, see also Brenda Cossman, *Sexual Citizens: The Legal and Cultural Regulation of Sex and Belonging* 2–3 (2007).

17. See Duggan, *supra* note 16, at 65–66. For criticism of the integration of the gay-lesbian rights strategy into the neoliberal agenda, see Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of Law* (2011); *Against Equality: Queer Revolution, Not Mere Inclusion* (Ryan Conrad ed., 2014).

18. Jasbir Puar, *Terrorist Assemblages—Homonationalism in Queer Times* 38–39 (2007).

19. *Id.* at 50. Homonationalism, Puar suggests, is a “facet of modernity and a historical shift marked by the entrance of (some) homosexual bodies as worthy of protection by nation-states” and its analysis constitutes a “deep critique of lesbian and gay liberal rights discourses and how those rights discourses produce narratives of progress and modernity that continue to accord some populations access to citizenship—cultural and legal—at the expense of the delimitation and expulsion of other populations.” Jasbir Puar, *Rethinking Homonationalism*, 45 *Int’l J. Middle E. Stud.* 336, 337 (2013), available at http://www.jasbirpuar.com/assets/Puar_Rethinking-Homonationalism.pdf; see also Jasbir Puar, *Homonationalism as Assemblage: Viral Travels, Affective Sexualities*, 4 *Jindal Global L. Rev.* 23 (2013), available at http://www.jgls.edu.in/JindalGlobalLawReview/PDF1/Jasbir_K_Puar_%28Chapter-2%29.pdf (defining homonationalism and its relationship to terrorist assemblages and the Israel/Palestine conflict).

20. On this conception, see Aeyal Gross, *Miniut, Gavriut, Tsava VeEzrahut: Sherut Homoim VeLesbiot BeTzahal BeMishkafaim Hashvaatiim* [*Sexuality, Masculinity, Military, and Citizenship: Gay and Lesbian Military*

states—as distinguishing their state from other states to the extent it is more tolerant or accepting of homosexuals. Accordingly, homonormativity and homonationalism are also preconditions for what has come to be known as “pinkwashing”.²¹ the use of LGBT rights in general and gay rights in particular as a propaganda tool by certain states, including Israel. This article will use these terms, but, at the same time, also critically examine them. The purpose of the article is to study the politics of LGBT rights in Israel and beyond on the background of notions of homonormativity, homonationalism, and pinkwashing, as well as to explore the need to rethink these terms in light of insights from the Israeli case.

Over the course of the article, I will claim that the attack at the *Barnoar* center was a turning point in LGBT rights politics in Israel. The reactions to this event marked not only the rise of the new homonationalism in Israel, but also the intensification of the criticism of this phenomenon, producing rifts and struggles amongst LGBT activists. In this context, I will argue that this criticism is developing in a way that has generated a crisis in queer politics which should have potentially been able to offer alternatives to homonationalism, homonormativity, and pinkwashing. This crisis has emerged in the form of strengthening the identity politics of groups excluded from the forefront of LGBT politics, which is often dominated by homonormative and homonationalist representation, along a path that is likely to diverge from the radical potential and, perhaps, even effectiveness of queer politics. It is my claim that when what often passes for queer politics focuses on renewed identity politics, this may come at the expense of queer theory’s and queer politics’ potential as a tool of critical thought and theory—as a theory that questions identities as boundaries. In Foucault’s words, while asserting the right to be different, queer theory should be based on refusing to be “who we are” and attacks everything that ties the individual to an

Service in the IDF in a Comparative Perspective], 9 Plilim [Isr. J. Crim. L.] 95, 144–48 (2000) [Hebrew] [hereinafter Gross, *Sexuality, Masculinity, Military, and Citizenship*]; Aeyal Gross, *Between the Homosocial and the Homoerotic: Gays/Military in Comparative and International Law*, in Hague Yearbook of International Law 2000 86–91 (2001).

21. See *infra* notes 75–78, 163–73 and accompanying text. On the relationship between “homonationalism” and “pinkwashing,” see Jasbir Puar, *Rethinking Homonationalism*, *supra* note 19, at 337–38 (describing pinkwashing as “one manifestation and practice made possible within and because of homonationalism”).

identity in a constraining manner.²² In addition, I will argue for a need for new, non-reductive conceptions of the complex connection between homonationalism, homonormativity, and neoliberalism, and of the pinkwashing analysis. In particular, I will point to a need to explore the contradictions embedded in the notion of homonormativity itself, highlighting the existence of two homonormativities: one that is anchored in the “domesticity” apparent in the shifts towards same-sex marriage and family life, and one that is anchored in the “consumption” of what is considered the right way of being gay in terms of “lifestyle,” i.e., parties, clubs, drugs, gay tourism, and sex. In the process of this analysis, I will explore how the state does not disappear in this context, but rather, homosexuality is incorporated into governmentality, through the combined dynamic of neoliberal consumerist ideology and state intervention. I will also discuss how the pinkwashing critique at times produces the mirror image of what it is criticizing and the necessity for critical queer thought, which is at times absent from the radical debate. I will also consider the persistence of homophobia in liberal societies, in the form of what I call “liberal homophobia,” which is structured upon the private/public divide.

In Part I of the article, I will briefly map out the emergence of LGBT rights in Israeli law. Part II will discuss the process by which these rights have been co-opted and appropriated by the Israeli state to position itself as democratic and liberal. Part III will discuss the fatal shooting attack at the Tel Aviv *Barnoar* gay youth center and the reactions to this event and Part IV will discuss the rise of the new homonationalism on the background of the attack. Part V will discuss the new “deal” that was forged in the shadow of this incident between the gay “establishment” and the national establishment, along with the responses to and criticism of these processes and their ramifications for the gay community. Part VI will discuss the crisis that has emerged in queer politics with the resurgence of identity politics while Part VII will address the dilemmas for LGBT rights politics that arise from this discussion. Part VIII will argue for the need to rethink notions of homonormativity, homonationalism, and pinkwashing in light of the article’s discussion, and the conclusion will offer some thoughts to sum up the discussion.

22. See Michel Foucault, *The Subject and Power*, 8 *Critical Inquiry* 777, 781–85 (1982) (contending that modern individuals are subjects not only to the state, but also to the type of individualization which is linked to the state).

I. LGBT RIGHTS IN ISRAEL: BETWEEN RELIGION, STATE, AND NATIONALITY

Legal battles played a central role in the relatively rapid development of lesbian and gay rights in Israel in the 1990s and 2000s. This is a process that, in itself, warrants deep analysis, but I will present only a condensed version here, for the purpose of understanding the current politics of LGBT rights.²³ As the discussion in this section will show, it is the particular relations between law and religion in Israel that, perhaps counterintuitively, paved the way for the development of LGBT rights there. The Supreme Court's JOH decision provided a review of the legal dimensions of this process,²⁴ the starting point of which was the nullification of the Penal Code clause prohibiting "unnatural" sexual intercourse, which had been interpreted as prohibiting "sodomy."²⁵ Another noteworthy landmark

23. Elsewhere, I have called the 1990s the "Gay Decade," during which many developments occurred. Aeyal Gross, *Challenges to Compulsory Heterosexuality: Recognition and Non-Recognition of Same-Sex Couples in Israeli Law*, in *Legal Recognition of Same-Sex Partnerships: A Study of National European and International Law* 391 (Robert Wintemute & Mads Andenas eds., 2001) [hereinafter Gross, *Challenges*]. Alon Harel has called this the period of the gay legal revolution. Alon Harel, *The Rise and Fall of the Israeli Gay Legal Revolution*, 31 Colum. Hum. Rts. L. Rev. 443, 449–53 (2000). For a general background, see Lee Walzer, *Between Sodom and Eden: A Gay Journey Through Today's Changing Israel* (2000) (interviewing Israelis and Palestinians in order to trace the rapid growth of gay rights in Israel); Amit Kama, *From Terra Incognita to Terra Firma: The Logbook of Gay Men's Community into the Israeli Public Sphere*, 38 J. Homosexuality 133 (2000) (detailing the roles of sociopolitical strategies and mass media in developing gay rights in Israel). The text above tells mainly of the legal developments, which are obviously only part of the story. They were accompanied, as described in the preceding sources, by important advances in the cultural and political spheres as well. This included, in 1993, the first conference on the subject in the *Knesset* (the Israeli parliament) initiated by MK Yael Dayan, the first public pride events in the same year, and in 1998, transgender singer Dana International's win in the annual Eurovision contest and the election of lesbian activist Michal Eden to the Tel Aviv City Council as the first public representative from the LGBT community.

24. APA 343/09 Jerusalem Open House for Pride & Tolerance v. Municipality of Jerusalem (Sept. 24, 2010), Nevo Legal Database (by subscription) (Isr.), ¶ 54 of Justice Amit's opinion.

25. Penal Law, 5737–1977, Special Volume, LSI 124, § 351 (1977) (Isr.). For an analysis of this development, see Yuval Yonay, *HaDin BiDvar Netyia Khad-Minit: Bein Historia LeSociologia [The Law Regarding Homosexuality: Between History and Sociology]*, 4 Mishpat UMimshal [Law & Gov't in Israel] 531 (1998) [Hebrew]; Yuval Yonay & Dori Spivak, *Bein Shtika LeGinui: Havnait HaZehut Shel HaHomoim BaSiakh HaMishpati BeIsrael 1948–1988 [Between Silence and Damnation: The Construction of Gay Identity in the Israeli Legal*

was the incorporation in 1992 of a prohibition on discrimination based on sexual orientation into the Equal Opportunities in Employment Law.²⁶ This was the first legislated provision prohibiting discrimination on this basis, and in its wake, similar provisions were added to other laws prohibiting discrimination.²⁷ This provision stood at the center of the Supreme Court's judgment in relation to the petition filed by Jonatan Danilowitz, an airline flight attendant, against his employer El Al Airlines,²⁸ which was the first Supreme Court decision to address the prohibition on discrimination based on sexual orientation. In its decision, the Court ruled that an employer must grant employees with same-sex partners the same work-related benefits that it gives to employees with opposite-sex partners. Although this decision was based on the law governing equal opportunities in employment and could have been interpreted narrowly to be limited to this context, in reality, it had a tremendous impact on the subsequent case law and expanded the recognition granted to same-sex partners in other contexts as well.²⁹ Particularly noteworthy Supreme Court decisions in this line of jurisprudence include its decisions recognizing the possibility of joint parenthood for same-sex female partners³⁰ and its ruling in another instance that the marriages of same-sex Israeli partners who wed abroad must be registered as such in the Israeli population registry.³¹

Discourse 1948–1988], 1 Sociologia Yisraelit [Israeli Soc.] 257 (1998–1999) [Hebrew].

26. Equal Opportunities in Employment Law, 5748–1988, SH No. 1240 p. 38 (Isr.).

27. Prohibition of Discrimination in Products, Services, and Entry into Places of Entertainment and Public Places Law, 5761–2000, SH No. 1765 p. 58 (Isr.); Patient's Rights Act, 5756–1996, SH No. 1591 p. 327 (Isr.); Anti-Defamation Law, 5725–1965, 19 LSI 254 (1964–1965) (Isr.); Prevention of Sexual Harassment Law, 5758–1998, SH No. 1661 p. 166 (Isr.); Employment Service Law, 5719–1959, SH No. 270 p. 32 (Isr.).

28. HCJ 721/94 El Al Airlines v. Danilowitz 48(5) PD 749 [1994] (Isr.). For a detailed analysis of *Danilowitz* and the “*Danilowitz* effect,” see Gross, *Challenges*, *supra* note 23.

29. Gross, *Challenges*, *supra* note 23.

30. HCJ 1779/99 Brener-Kadish v. Interior Minister 54(2) PD 368 [2000] (Isr.); HCSH 4252/00 Interior Minister v. Brener-Kadish (Mar. 2, 2008), Takdin Legal Database (by subscription) (Isr.); CA 10280/01 Yarus-Hakak v. State Att'y Gen. 59(5) PD 64 [2005] (Isr.).

31. HCJ 3045/05 Ben-Ari v. Director of Population Registry in Interior Ministry 61(3) PD 537 [2006] (Isr.). See Aeyal Gross, *Israel's Supreme Court Orders Registration of Same-Sex Marriage Conducted in Canada, Lesbian/Gay L. Notes*, 226 (Dec. 2006), available at <http://www.nyls.edu/documents/justice-action->

There are a number of factors that must be taken into account when considering the complex relationship between rights in this area and religion, state, and nationality. At times, the rapid progress in Israel gives pause to wonder: in a state in which religion plays such a central role, particularly in relation to personal status, how have gays and lesbians gained such relatively swift and successful recognition of their rights? It is my claim that the monopoly held by the orthodox religious establishment over marriage and divorce is a major factor in the relatively quick success of the gay and lesbian struggles. In Israel, marriage and divorce are governed solely by religious law and can be performed only by state-recognized religious institutions, which, for Jews, are limited to the orthodox Jewish institutions.³² Thus, a need for alternatives—particularly secular ones—to the monopolistic religious marriage arrangement existed for many years for opposite-sex couples who did not want to or could not marry in the orthodox Jewish rabbinate. These couples include partners from different religions and couples whose ability to marry is restricted under Jewish religious (*halakhic*) law. This need led to the development in Israeli law and society of two institutions: recognition of the domestic partner rights of cohabitating couples, akin to common-law marriage³³ and what is known as a “Cyprus marriage”³⁴—a civil marriage conducted abroad, usually in Cyprus, which is registered as marriage in the Israeli population registry. The status of these institutions was so strong that when same-sex couples began to struggle for their rights, they could insert themselves into these already existing legal frameworks, which are based on various forms of recognition of domestic partnerships as alternatives to the institution of marriage. Thus, the case law that applied and expanded

center/lesbiangay_law_notes/ln0612.pdf (summarizing and contextualizing the court’s ruling).

32. Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713–1953, 7 LSI 139 (1953–1954) (Isr.).

33. See Ariel Rosen-Zvi, *Family and Inheritance Law*, in Introduction to the Law of Israel 75, 97–99 (Amos Shapira & Keren DeWitt-Arar eds., 1995).

34. Shahar Lifshitz, *Dinei HaMishpakha BaIdan HaEzrachi: MeDini HaNisuim Shel Mi Shnisu MiHutz LeGvulot HaMedina El Hayom Sheakhrei Kinunam Shel Nisuim Ezrakhim BeIsrael* [Family Law in the Civil Era: From the Laws of Marriage of Persons Who Married Outside Israel to the Day after Civil Marriage Is Instituted Within the Country], 10 Mishpat ve’Asakim [Law & Bus.] 447 (2009) [Hebrew]. Regarding the “Cyprus marriage,” see Menashe Shava, *Civil Marriages Celebrated Abroad: Validity in Israel*, 9 Tel Aviv U. Stud. L. 311, 320–27 (1989); HCJ 143/62 Funk Shlezinger v. Interior Minister 17(1) PD 225 [1963] (Isr.); HCJ 2232/03 Jane Doe v. Tel-Aviv-Jaffa Regional Rabbinical Court (Nov. 21, 2006), Nevo Legal Database (by subscription) (Isr.).

the Danilowitz rule recognized the entitlement of same-sex couples to legal protection, even without being married, under the common-law marriage model;³⁵ similarly, in decisions dealing with the status of same-sex couples who had wed in Canada—where same-sex marriage is recognized—it was held that these marriages must be registered in the Israeli population registry³⁶ based on the case law on Cyprus marriages.³⁷ These achievements were not without legal struggles along the way, but they culminated in victory in the Supreme Court. This is not, however, to imply that the legal battles have always been successful. Lower-court judges have at times refused to recognize same-sex couples despite these case law developments,³⁸ and inequality persists at the legislative level in the context of access to institutions such as marriage in Israel, rights that continue to be bound to the institution of marriage alone, and parenthood-related institutions such as surrogacy³⁹ and adoption.⁴⁰

35. CC (Nz) 3245/04 *Estate of S.R. v. State Att’y Gen.*, 2002(2) PM 521 (2004) (Isr.). In this case, the district court recognized same-sex partners as heirs for the purpose of the Succession Law; however, a petition on this issue brought before the Supreme Court after a rabbinical court refused to recognize a same-sex partner as “an interested party” in the matter of his partner’s estate ended in compromise. CA 1019/12 *John Doe v. Supreme Rabbinical Court of Appeals in Jerusalem* (Mar. 10, 2003) (Isr.) (subject to gag order, but text of final decision on file with author). After the judgment in *Estate of S.R.* was handed down, the State Attorney General announced that he would not appeal the decision, which he viewed as acceptable, and that “there is a need to distinguish, for the purpose of recognizing same-sex couples, between monetary issues and other practical arrangements, where the inclination should be to be pragmatic and flexible in the spirit of the times and changing reality, and issues in which a new statutory personal status is created, which require greater caution and are usually a matter for the legislator.” Press Release, State Att’y Gen., (Dec. 8, 2004).

36. HCJ 3045/05 *Ben-Ari*.

37. HCJ 143/62 *Funk Shlezinger*.

38. FC (TA) 16310/08 *Doe v. Roe* (Apr. 16, 2008), Takdin Legal Database (by subscription) (Isr.).

39. Embryo Carrying Agreements Law (Agreement Authorization & Status of the Newborn Child), 5756–1996, SH No. 1577 p. 176 (Isr.). A petition on the matter was withdrawn when the Ministry of Health appointed a committee to examine the issue. See the petition filed with the Supreme Court in HCJ 1078/10, *Pinkas v. Authorization Comm. for Embryo Carrying Agreements* (June 28, 2010), Nevo Legal Database (by subscription) (Isr.). The Health Ministry committee recommended making surrogacy available to same-sex couples to only a narrow and restricted extent. Health Ministry, Recommendations of the Public Committee for the Legislative Evaluation of Fertility and Birth in Israel (May 2012). In 2014, the Ministry of Health issued a draft bill that, if passed, will lift the existing restrictions and make surrogacy an option for gays. Memorandum to Embryo Carrying Agreements Law (Agreement Authorization & Status of the

Ruti Kadish has rightly argued that the nature of the struggle also contributed to its success in that it focused on “soldiers and mothers.” Gays’ struggle for equality in military service (i.e., for the right to be soldiers) is prominent in this context, as is the struggle of lesbians for the right to be mothers. Gays and lesbians were thus demanding to participate in roles that Zionism had designated for men and women.⁴¹ In this respect, many dimensions of the struggles for equality can indeed be claimed to have preserved, and not challenged, the existing social order; they guaranteed rights primarily for those who wished to and could participate in that social order, in the context of both the fight for recognition of the family unit and the struggle for equality in military service. An in-depth discussion of the tension between the preservative character of these struggles (in conditioning rights on belonging to the institutions that are part of the existing social order) and their transformative aspect (in their potential to change these same institutions) is beyond the scope of this article.⁴² However, the fact that these struggles focused on institutions that lie at the center of the Zionist-nationalist ethos, such as the army and family, can explain the role that rights in this context began to play later on, along the axis of homonormativity, homonationalism, and pinkwashing. For example, the notion of a family unit based on two male partners or two female partners

Newborn Child) (Amendment of Definition of Intended Parents and Execution of an Agreement Outside Israel) (No. 2), 2014, HH 886, 916 (Isr.).

40. Adoption of Children Law, 5741–1981, 35 LSI 360 (1980–1981) (Isr.). However, see Attorney General, HaYoetz HaMishpati LaMemshala - Hoda'a Laltonut [Guidelines for Adoption] (2008) (Isr.), available at <http://lgbtlaw.tau.ac.il/node/458>.

41. Ruti Kadish, *Israeli Lesbians, National Identity, and Motherhood*, in Sappho in the Holy Land: Lesbian Existence and Dilemmas in Contemporary Israel 223 (Chava Frankfort-Nachmias & Erella Shadmi eds., 2005).

42. In the family context, see Gross, *Challenges*, *supra* note 23. In the context of the army, see Gross, *Sexuality, Masculinity, Military, and Citizenship*, *supra* note 20. On the dilemmas of the issue of marriage in the Israeli context, see Dan Yakir & Yonatan Berman, *Nisuim Bein Bnei Oto HaMin: Haomnam Hekhrekhhi? Haomnam Ratzui? [Same-Sex Marriage: Is It Really Necessary? Is It Really Desirable?]*, 1 Ma'asei Mishpat [Tel Aviv U. J.L. & Soc. Change] 169 (2008) [Hebrew]. It should be noted that while the case law bases recognition of same-sex couples on the normative model, in two 2010 decisions, the Tel Aviv labor court took a more flexible approach to the conditions for recognizing a partnership when the same-sex partners maintained separate residences and had not exposed their relationship because they had not yet “come out.” See LC (TA) 3075/08 Doe v. Makefet Pension & Benefits Ctr. (Jan 31, 2010), Takdin Legal Database (by subscription) (Isr.); PFC (TA) 3438/09 Edry v. Tel Aviv Municipality (Aug. 16, 2010), Nevo Legal Database (by subscription) (Isr.).

challenges the heterosexual-patriarchal social order, which is constructed on the gendered division of family and labor roles. At the same time, however, it also affirms the familial social order of domestic partnership and the conditioning of rights on this relationship. In addition, the fact that a significant amount of the opposition to LGBT rights was expressed by public figures associated with the orthodox and ultra-orthodox religious establishment contributed to the particular positioning of this struggle: on the one hand, the religious opposition impeded the possibility of enacting progressive legislation due to the government coalition structure,⁴³ while on the other hand, it also marked the issue as a cause tied to liberalism and even anti-religiosity. In this way, LGBT rights became one of the principal signifiers of the battle for liberal democracy in Israel.⁴⁴

II. THE APPROPRIATION OF GAY RIGHTS AS A FIG LEAF FOR ISRAELI DEMOCRACY

To understand the role of gay rights as potential indicators, internally and externally, of democracy and liberalism in Israel, it is vital to recognize the discrepancy between Israel's image as a liberal democracy (regardless of whether this image actually exists or Israel seeks to advance it) and the reality that Israel does not easily fit into this model. While this is not the appropriate forum for delving into the many problems of Israeli democracy, it is important to note that a range of factors undermine the basic tenets of democracy in Israel, including—in the context of the Occupied Territories—consent of the governed, free elections, and civic equality. Many would agree that the current regime governing Israel and, notably, the Occupied Territories allocates rights on an ethnic, and not civic, basis.⁴⁵

43. For a recent incarnation of the struggle between religious parties opposing LGBT rights legislation and parties that perceive and present themselves as “liberal” or centrist groups attempting to advance such legislation, see Jonathan Lis, *Lapid Presses Gay Rights Bills – to ‘Brother’ Bennett’s Dismay*, Haaretz, Dec. 12, 2013, <http://www.haaretz.com/news/national/.premium-1.563034>.

44. On the LGBT issue as one of the symbols of the religious-secular cultural wars in Israel and on the rhetorical value of tolerance in this context for liberal Zionism, see Alisa Solomon, *Viva la Viva Citizenship: Post-Zionism and Gay Rights*, in *Queer Theory and the Jewish Question* 149 (Daniel Boyarin et al. eds., 2003).

45. Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (2006).

Moreover, the long-term military occupation of the Territories has involved severe dispossession of and discrimination against the civilian population under its rule.⁴⁶ Scholars have pointed out that the liberal democratic model is incompatible with the character of Israel, not only because of what occurs in the Occupied Territories, but also due to the ethnic nature of Israel within the Green Line and the fact that Israel constitutes an ethnic democracy⁴⁷ or, for those who hold this to be an oxymoron, an “ethnocracy.”⁴⁸ The role played by gay rights in the effort to position and brand Israel as a liberal democracy must be understood against this background as well as in light of the criticism of Israeli human rights policy.

Gay rights have played a central role in the branding of Israel, internally and externally, as a liberal democracy for a number of years—serving, in the words of Justice Amit, “as one of the measures of Israel as a liberal-democratic state.”⁴⁹ On the international level, from the end of the 1990s, the Israeli Foreign Ministry and consulates were making discernible use of gay rights for public relations purposes, and this documented practice has only intensified in recent years.⁵⁰ Over the years, this has included the

46. See Orna Ben-Naftali, Aeyal Gross & Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territories*, 23 *Berkeley J. Int'l L.* 551, 551–614 (2005) (describing dispossession in areas such as land, water, and rule of law).

47. Sammy Smooha, *Ethnic Democracy: Israel as an Archetype*, 2 *Isr. Stud.* 198 (1997).

48. Yiftachel, *supra* note 45. For a comprehensive discussion, see Aeyal Gross, *Demokratia, Etniut VeKhukatiut BeIsrael: Bein “HaMedina HaYehudit” Ve“HaMedina HaDemokratit”* [Democracy, Ethnicity, and Constitutionalism in Israel: Between the “Jewish State” and the “Democratic State”], 2 *Sociologia Yisraelit* [Israeli Soc.] 647 (2000) [Hebrew]; Aeyal Gross, *Global Values and Local Realities: The Case of Israeli Constitutional Law*, in *An Inquiry into the Existence of Global Values: Through the Lens of Comparative Constitutional Law* (Dennis David, Alan Richter & Cheryl Saunders. eds., forthcoming, 2015).

49. See APA 343/09 Jerusalem Open House for Pride & Tolerance v. Municipality of Jerusalem (Sept. 24, 2010), Nevo Legal Database (by subscription) (Isr.), ¶ 55 of Justice Amit’s opinion.

50. See Brian Whitaker, *Pinkwashing Israel*, Al-Bab (June 17, 2010), <http://www.al-bab.com/blog/blog1006b.htm>; Sarah Schulman, *A Documentary Guide to Pinkwashing*, Huffington Post Blog (Nov. 29, 2011), http://www.huffingtonpost.com/sarah-schulman/israelpinkwashing_b_1132369.html; see also *Pinkwatching Israel*, <http://www.pinkwatchingisrael.com> (last visited Nov. 7, 2014) (functioning as an “online resource and information hub for activists working on BDS” [Boycotts, Divestments, and Sanctions] within queer communities to expose and resist Israeli pinkwashing); Israeli Laundry, <http://www.israelilaundry.org/category/pinkwashing> (last visited Nov. 7, 2014).

publication of official brochures by the Foreign Ministry detailing gay rights in Israel,⁵¹ organized events such as the “Out in Israel” events conducted by the San Francisco Israeli consulate,⁵² and activities organized by pro-Israel lobby groups that make explicit use of the gay cause in an attempt to improve Israel’s global public standing. The strategy is to address subjects that diverge from the Israeli-Palestinian dispute in general, particularly the gay cause, to generate support for Israel, especially amongst liberals who tend to champion the Palestinians but whose exposure to the gay issue could improve Israel’s international image. This is the goal, for example, of the iPride project, which was initiated by the pro-Israel lobby group “Stand With Us,”⁵³ as well as other projects that have appropriated

(documenting incidents of pinkwashing). Some critics, especially the Israeli Laundry website, do not stop at simple documentation of Israel’s use of LGBT rights as propaganda, but also link their criticism of the phenomenon to a call to boycott Israel in general and events that deploy LGBT issues for propaganda purposes in particular. On this issue, see Jasbir Puar, *Israel’s Gay Propaganda War*, *Guardian*, July 1, 2010, <http://www.guardian.co.uk/commentisfree/2010/jul/01/israels-gay-propaganda-war>; Sarah Shulman, *Israel/Palestine and the Queer International* (2012).

51. See, e.g., *Gay Israel*, Israeli Ministry of Foreign Affairs (Dec. 7, 2011), http://mfa.gov.il/MFA/IsraelExperience/Pages/Gay_Israel.aspx (declaring that Israel is amongst the most accepting states for the LGBT community); Israeli Ministry of Foreign Affairs, *Gay Rights in Israel*, available at http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/LGBTBrochure.pdf (“Israel is one of the most inclusive societies in the world for the lesbian, gay, bisexual, and transgender (LGBT) community The Gay Revolution of the 1980’s brought Israel’s LGBT community full recognition of their human rights, as well as legal and social equality to individuals and families.”).

52. *Israel Celebrates LGBT Culture in Gay Area*, S.F. Gate (Apr. 6, 2010), <http://www.sfgate.com/entertainment/article/Israel-celebrates-LGBT-culture-in-Bay-Area-3268044.php>. This event, like similar ones, generated protests and boycotting, the claim being that it is an attempt to whitewash (or “pinkwash”) Israel’s policy on the Palestinians. See Schulman, *Israel/Palestine*, *supra* note 50, at 116–17 (stating that the reason for protesting is “the orchestrated propaganda campaign to sell Israel to U.S. queers based on certain rights for Israeli gays despite atrocities in Gaza and the West Bank”); see also *Campaign Case Study: San Francisco Frameline “Out in Israel” Film Festival*, Israeli Laundry (July 11, 2011), <http://www.israelilaundry.org/2011/11/07/campaign-case-study-san-francisco-frameline-out-in-israel-film-festival> (describing protest efforts at “Out in Israel” event organized by Palestinian LGBT organizations).

53. Mel Bezalel, *Gay Pride Being Used to Promote Israel Abroad*, *Jerusalem Post*, July 6, 2009, <http://www.jpost.com/Israel/Article.aspx?id=144736>. In this context, see the materials on the website of the Stand With Us organization, including, for example, *LGBT Rights in Israel and the Middle East*, Stand With Us (2013), <http://www.standwithus.com/booklets/lgbt/index.html> (addressing the state of LGBT rights in Israel and comparing it to the situation in Arab states).

the gay cause for Israeli propaganda purposes and rebranding.⁵⁴ The Israeli Foreign Ministry is also involved in these efforts, seeking to recruit the gay community in promoting Israel,⁵⁵ on the one hand, and disparaging Iran, on the other.⁵⁶ The Israeli government's investment in the gay tourism campaign,⁵⁷ which warrants a separate discussion in itself,⁵⁸ is prime evidence of the state's use of the gay cause in its branding endeavor. Given this, these initiatives are clearly part of an attempt to present Israel as a liberal democracy, to gain approval (especially from liberal quarters that are often critical of Israel), and to censure the Arab and Muslim world, particularly the

See also *Size Doesn't Matter*, <http://www.sizedoesntmatter.com/tag/pride> (last visited Oct. 29, 2014) (describing and showing images of a Gay Pride Parade in Jerusalem as part of a pro-Israel public relations campaign); *Size Doesn't Matter, Israel: Small Country, Big Pride*, Vimeo (Jan. 16, 2011), <http://www.vimeo.com/18933370> (showing two same-sex couples on dates and describing Israel as a place "where love has no boundaries").

54. One example is the Blue Star Agency, which is engaged in the effort to rebrand Israel. Picture No. 1 is taken from the Agency's website. *Gay Rights*, blueStar, <http://www.bluestarpr.com/military-gay-rights-israel.html> (last visited Oct. 20, 2014). *See* Blue Star Agency, *Israel: Gay Oasis* (2010), <http://www.youtube.com/watch?v=ftIzxmTBhQ&feature=youtu.be>. The Agency recently changed its stated objective from public relations to educational activities. *About Us*, blueStar, <http://www.bluestarpr.com/about-us.html> (last visited Oct. 29, 2014).

55. Gili Izikovich, *Assi Azar Yovil Campein Shel Misrad HaKhutz Al Kheihem Shel Homosexualim BeIsrael [Assi Azar Will Lead Foreign Ministry Campaign on Life for Homosexuals in Israel]*, Haaretz, Oct. 25, 2011, <http://www.haaretz.co.il/news/education/1.1530704> [Hebrew]. Gal Uchovsky, *Left and Gay in Israel*, The Jerusalem Post, Feb. 11, 2011, <http://www.jpost.com/Opinion/Op-Ed-Contributors/Left-and-gay-in-Israel>. *See also* Noam Sheizaf, *Hasbara: Why Does the World Fail to Understand Us?*, +972 (Nov. 13, 2011), <http://972mag.com/hasbara-why-does-the-world-fail-to-understand-us/27551/> (discussing an Israeli Foreign Ministry brochure that called upon representatives of the gay community to volunteer to do public relations work abroad).

56. *See* Barak Ravid, *Israel Recruits Gay Community in PR Campaign Against Iran*, Haaretz, Apr. 20, 2009, <http://www.haaretz.com/news/israel-recruits-gay-community-in-pr-campaign-against-iran-1.274422>.

57. For the discussion of this campaign, see text accompanying *infra* note 195.

58. *Campein Tayarut Geya BeTel-Aviv—Misrad Hatayarut Yashkia 170,000 Shekel [Tel-Aviv Gay Tourism Campaign—Tourism Ministry Will Invest NIS 170,000]*, The Marker (July 22, 2010), <http://www.themarker.com/misc/1.592180> [Hebrew]; *Magaei HaMakhshev: Atar Internet Imshokh Geiz LaAretz [Computer Contacts: Website Will Draw Gays to Israel]*, Ynet (Mar. 11, 2013), <http://www.ynet.co.il/articles/0,7340,L-4355192,00.html> [Hebrew].

Palestinians and Iran. In this respect, the gay cause has been turned into an Israeli propaganda tool (see Picture No. 1).

PICTURE 1: WHERE IN THE MIDDLE EAST CAN GAY OFFICERS SERVE THEIR COUNTRY?⁵⁹



Exemplifying this are Prime Minister Binyamin Netanyahu's speech before the UN General Assembly in 2009, when he spoke of the persecution of homosexuals in Iran,⁶⁰ and a similar statement he

59. *Where In the Middle East Can Gay Officers Serve Their Country?*, blueStar, <http://www.bluestarpr.com/military-gay-rights-israel.html> (last visited Feb. 21, 2014).

60. Prime Minister Benjamin Netanyahu, Speech to the UN General Assembly (Sept. 24, 2009), *available at* <http://www.haaretz.com/news/prime-minister-benjamin-netanyahu-s-speech-to-the-un-general-assembly-1.7254>.

made following the Gaza flotilla incident. In the latter, Netanyahu urged peace activists to

[g]o to the places where they really oppress women, hang homosexuals in town squares, places where there are no human rights. Go to Teheran. Go to Gaza. Anyone for whom human rights are truly important needs to support liberal democratic Israel.⁶¹

Especially given the gap between Netanyahu's use of gay rights abroad and his silence on the issue at home,⁶² this is a compelling illustration of the attempt to use LGBT rights (as well as women's rights) as a fig leaf for Israeli democracy. This is to steer the debate away from Israel's human rights violations in the Occupied Territories, and, similar to Justice Amit's JOH opinion, present it as a liberal democracy in contrast to its neighbors, particularly the Palestinians and Iran. Another prominent example of this is a speech given by then-Israeli Ambassador to the United States, Michael Oren, at the 2012 Equality Forum in Philadelphia⁶³ and statements he made in an interview on the same occasion. Oren declared that Israel has always been committed to gay rights and that, even prior to 1967, Israel fought for these rights⁶⁴—yet these assertions disregard the

61. Roni Sofer, *Rosh-Haamemshala LeKantzler Austria: Shepeiley Shalom Ilkhu LeTehran [PM to Austrian Chancellor: Peace Activists Should Go to Tehran]*, Ynet (June 23, 2010), <http://www.ynet.co.il/articles/0,7340,L-3909837,00.html> [Hebrew].

62. See Barak Ravid, *When It Comes to LGBT Rights, the PM Doesn't Even Talk the Talk*, Haaretz, Dec. 15, 2013, <http://www.haaretz.com/blogs/diplomania/.premium-1.563623>. Stating that the author does not recall Netanyahu ever saying "homosexual" or "lesbian" in Hebrew, but does recall at least ten instances in which the Prime Minister spoke about "gays" in English in speeches in the United States and before the U.N.:

In Israel, Netanyahu flees from LGBT issues as though they were on fire, but abroad he enjoys using the community for propaganda purposes in his war against a nuclear Iran. In almost every speech he has made in the United States or Europe, Netanyahu points out that in Iran they hang gay people in the public square, while in Israel we have gay pride parades. *Id.*

63. Natasha Mozgovaya, *LGBT Rights in Israel: "Pinkwashing" Oppression of Palestinians or Illuminating the Middle East?*, Haaretz, May 6, 2012, <http://www.haaretz.com/news/diplomacy-defense/lgbtrights-in-israel-pinkwashing-oppression-of-palestinians-or-illuminating-the-middle-east-1.428480>.

64. Laura Goldman, *Metro Interviews Israeli Ambassador to the United States Michael Oren*, Metro (May 3, 2012), <http://www.metro.us/philadelphia/local/article/1142153--metro-interviews-us-ambassador-to-israel-michael-oren> (quoting Oren as saying, "Israel has always had a commitment to gay rights. The Israeli

actual legislation that was in force until 1988 and the fact that Israel, as a state, never took action on the matter, certainly not during the period Oren referred to. In a later speech, Oren took things even further, wrongly claiming that Israel's 1948 Declaration of Independence includes an explicit prohibition on discrimination based on sexual orientation.⁶⁵ As described above, only in the 1980s and 1990s did change begin to emerge in this area, due to the relentless action of gay community activists and a limited number of politicians who supported their efforts.⁶⁶

Pro-Israel propaganda initiatives in this context have appeared in social media as well. Thus, for example, the IDF Spokesperson posted a photograph⁶⁷ of two male soldiers walking hand-in-hand during Gay Pride Month on its Facebook page with the comment that the IDF treats its soldiers equally,⁶⁸ but it soon emerged that the photo had been staged.⁶⁹ Similarly, the Foreign Ministry posted a picture of the "Welcome to Jerusalem" sign painted in the rainbow flag colors on its Facebook page in honor of the gay pride parade. This was later revealed to be a private initiative, and moreover, not only were the gay pride colors painted over, but a police investigation was opened into the matter.⁷⁰ In one more embarrassing

Declaration of Independence guaranteed equality for everyone irrespective of sex. We have made a lot of progress, but we want to continue to advance. In the Middle East, we are in a tough neighborhood for gay rights.").

65. See Ambassador Michael Oren, Speech at AIPAC LGBT Reception (2013), available at <http://www.youtube.com/watch?v=YcigqTWvGaY&feature=youtu.be>.

66. See Aeyal Gross, *Michael Oren Pinkwashes the Truth about Israel and Gay Palestinians*, Haaretz, May 9, 2012, <http://www.haaretz.com/opinion/michael-oren-pinkwashes-the-truth-about-israel-and-gay-palestinians-1.429248>.

67. The picture received 21,061 "likes" and 14,887 "shares" on the Israeli Defense Force's Facebook page. *Israel Defense Force's Photos*, Israel Defense Force Profile, Facebook, <http://www.facebook.com/photo.php?fbid=425165480839661&set=a.250335824989295.62131.125.249070831305&type=1> (last visited Oct. 19, 2014).

68. *Id.* See Lital Levin, *Tzahal Mitgaeh BeKHayalim Homoim [IDF Is Proud of Its Gay Soldiers]*, Haaretz, June 12, 2012, <http://www.haaretz.co.il/news/politics/1.1729640> [Hebrew].

69. Lital Levin, *Report: IDF Staged Photo of "Gay Soldiers" on Facebook Page*, Haaretz, June 13, 2012, <http://www.haaretz.com/news/diplomacy-defense/report-idf-staged-photo-of-gay-soldiers-on-facebook-page.premium-1.436234>.

70. Danny Zak, *"Pesel HaGa'ava" BeYerushalayim: HaMishtara Khokeret — Misrad HaKhutz Meyakhtzen [Jerusalem's "Pride Sign": Police Investigating—Foreign Ministry Publishing]*, Mako (Aug. 5, 2012), <http://www.mako.co.il/pride-news/local/Article-f02f7592d73f831006.htm> [Hebrew].

incident, a video clip was released and circulated on the internet, telling the story of a gay activist who had supposedly tried to join the pro-Palestinian Gaza flotilla but had been rejected due to his sexual orientation. The aim was to use the issue to condemn the Palestinians and present support for them as clashing with human rights.⁷¹ The video was soon exposed as a hoax and the alleged activist an Israeli actor who had never tried to join the flotilla.⁷²

Thus, whether in the context of successful public relations campaigns or clearly ludicrous initiatives, we are witnessing the use of gay rights not only to brand Israel as a progressive liberal democracy, but also to differentiate it from Islamic states, which are presented as homophobic. At the global discourse level, these efforts are aimed also at justifying the war on terror: they seek to divide the world into “enlightened” and “primitive,” with gay rights functioning as one of the parameters of this distinction. Homonormativity—which is manifested in the recognition of gay military service and family life through legal rights—is both a precondition for homonationalism and encompassed therein; both are necessary for the use of gay rights as propaganda, a practice known as “pinkwashing.”

Israel’s resort to gay rights as propaganda is no new phenomenon. As early as 1999, during Netanyahu’s first tenure as prime minister, his office sent a letter to the “World Congress of Gay and Lesbian Jewish Organizations” bringing to its attention expressions of homophobia in the Palestinian Authority.⁷³ This move was strikingly at odds—and also criticized as such—with Netanyahu’s silence in response to homophobic statements and actions of his own government ministers as well as of Israel’s

71. See *Who You Get in Bed With—Human Rights, Gay Rights*, YouTube (June 23, 2011), http://www.youtube.com/watch?feature=player_embedded&v=vhmBbGFJleU.

72. Barak Ravid, *Did Netanyahu’s Office Distribute a Fake Video Against the Flotilla?*, Haaretz, June 28, 2011, <http://www.haaretz.com/news/diplomacy-defense/did-netanyahu-s-office-distribute-a-fake-video-against-gaza-flotilla-1.370030>. For more on how this incident unfolded, see Benjamin Doherty, *Getting to the Bottom of marc3pax, Israel’s Gay Flotilla Hoaxer*, Electronic Intifada (May 5, 2012), <http://electronicintifada.net/blogs/benjamin-doherty/getting-bottom-marc3pax-israels-gay-flotilla-hoaxer>; Robert Mackey, *Israeli Video Blog Exposed as a Hoax*, The Lede, N.Y. Times Blog (June 27, 2011), thelede.blogs.nytimes.com/2011/06/27/israeli-video-blog-exposed-as-a-hoax.

73. Aeyal Gross, *Eifo Bibi VeEifo Friendly? [Where Is Bibi and Where Is Friendly?]*, Pink Time, 8 (May 1999) [Hebrew].

president during Netanyahu's term.⁷⁴ It was the subject of criticism at the time,⁷⁵ and objection to this practice was voiced in Israel before the phenomenon gained global attention.⁷⁶ In recent years, the use of gay rights for propaganda purposes has intensified and become more coordinated, while also attracting greater attention—as well as counter-activism—on the international level, where it has been labeled pinkwashing.⁷⁷ Pinkwashing has become the standard term

74. *Id.* For example, during Netanyahu's term as prime minister, Education Minister Zevulun Hammer prohibited the broadcasting of an episode of *Open Cards*, a youth magazine series produced by the public educational television network, because it dealt with gay youth. The broadcast was allowed only after the Supreme Court had been called upon to intervene. See HCJ 273/97 Society for the Protection of Personal Rights for Gays, Lesbians & Bisexuals in Israel v. Minister of Educ., Culture & Sport 51(5) PD 822 [1997] (Isr.).

75. Gross, *Eifo Bibi VeEifo Friendly*, *supra* note 73.

76. See, e.g., Yair Qedar, *HaKhaem BeVarod [Life in Pink]*, Haaretz, May 28, 2008, <http://www.haaretz.co.il/misc/1.1327918> [Hebrew] (quoting this author talking about gay rights as becoming a fig leaf for Israeli democracy and being promoted in Foreign Ministry posters and warning against becoming “poster boys” for Israeli democracy).

77. Originally, this term (like “greenwashing” from environmental rights) was used in reference to corporations that purport to support women with breast cancer but in fact profit from their illness. On how the term came to be used in the Israeli-Palestinian context, see Schulman, *Israel/Palestine*, *supra* note 50, at 135. While the term “pinkwashing” was already in use and documentation and criticism of the phenomenon had already appeared even in the international media, a turning point in the level of international scrutiny and awareness of the issue and term was the publication of an article on the subject in the *New York Times* by Sarah Schulman, an American researcher, author, and activist. Sarah Schulman, *Israel and 'Pinkwashing'*, N.Y. Times, Nov. 22, 2011, at A31, available at http://www.nytimes.com/2011/11/23/opinion/pinkwashing-and-israels-use-of-gays-as-a-messaging-tool.html?_r=1. A translation of the article into Hebrew appeared in the *Haaretz* daily newspaper in Israel. The publication of the article generated significant criticism, reaction, and discussion, some of which were directed specifically at Schulman's article and some more broadly at the subject in general. See Peter Lloyd, *Sarah Schulman Sparks Online Debate with 'Pinkwashing' Theory*, Diva (Dec. 2, 2011), <http://www.divamag.co.uk/category/news/writer-sarah-schulman-sparks-online-furore-with-%27pinkwashing%27-theory.aspx>. For criticism of the article, see James Kirchick, *Pink Eye*, Tablet (Nov. 29, 2011), <http://www.tabletmag.com/jewish-news-and-politics/84216/pink-eye>. Examples of the persistence of the debate include the discussion in the July 2012 issue of *Tikkun*. *Debating Pinkwashing*, Tikkun (July 2012), <http://www.tikkun.org/nextgen/debating-pinkwashing>; see also Michael Luongo, *Pinkwashing's Complicated Context*, Gay City News (Jan. 4, 2012), gaycitynews.com/pinkwashings-complicated-context (discussing the background of and controversy over the term “pinkwashing”). On the background to the publication of the article and the responses to it, see Philip Weiss, *How Sarah Schulman Managed to Get 'Pinkwashing' into the New York Times*, Mondoweiss

for describing the practice of using gay rights for propaganda and is part of the global discussion of the LGBT issue in Israel.⁷⁸ In Part VI, I will return to the pinkwashing debate in general and focus particularly on the internal Israeli context.

The burgeoning international interest in the matter can be attributed not only to Israel's comprehensive and concerted efforts but also to growing global concern, especially since 9/11, with states' use of gay rights; with the role gay rights play in distinguishing allegedly "modern," "progressive," and "enlightened" states (as opposed to other states) and the states' appropriation of these rights for this purpose;⁷⁹ and, more broadly, with the connection between

(Feb. 6, 2012), mondoweiss.net/2012/02/how-sarah-schulman-managed-to-get-pinkwashing-into-the-new-york-times.html. The article has been cited as one of the reasons for Prime Minister Netanyahu's refusal to accept the New York Times' invitation to publish an article of his own in its pages. See *PM Adviser's Letter to "New York Times"*, Jerusalem Post, Dec. 16, 2011, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=249724>. For criticism of the data presented by Schulman, see Yoav Sivan, *Confessions of a Pinkwasher*, Huffington Post, (Dec. 15, 2011) http://www.huffingtonpost.com/yoav-sivan/confessions-of-a-pinkwasher_b_1138412.html.

78. It is possible that the term "pinkwashing" is not the most appropriate term insofar as it is based on the term "greenwashing," which is used in reference to corporations that purport to be "green" but in fact are not environmental-friendly. In the Israeli context, however, what is generally being referred to is the appropriation of developments in the field for the purpose of promoting the nationalist agenda. Yet the term has become accepted and applied, and moreover, expressions like those made by Oren even justify the term. Currently, the term plays a central role in the global discussion of the LGBT cause in Israel and Palestine. On this discussion and related activism, see the Special Issue of *GLQ: Queer Theory and the Question of Israel/Palestine*, 16 *GLQ: J. Lesbian & Gay Stud.* (2010); see Jasbir Puar, "The Center Cannot Hold": *The Flourishing of Queer Occupation Activism*, Huffington Post, Mar. 10, 2011, http://www.huffingtonpost.com/jasbir-k-puar/the-center-cannot-hold-th_b_991572.html; Schulman, *Israel/Palestine*, *supra* note 50. For a critique of how the U.S. pinkwashing debate has less to do with the realities of queerness in Israel/Palestine and more to do with the utility of pinkwashing in claims to queer space in the United States, see Jason Ritchie, *Pinkwashing, Homonationalism, and Israel-Palestine: The Conceits of Queer Theory and the Politics of the Ordinary*, Antipode (2014), available at <http://onlinelibrary.wiley.com/enhanced/doi/10.1111/anti.12100/>.

79. Katherine Franke, *Dating the State: Moral Hazards of Winning Gay Rights*, 44 *Colum. Hum. Rts. L. Rev.* 1 (2012). Franke notes how conservative elements in the United States, who usually oppose LGBT rights, have made opportunistic use of the issue in criticizing Iranian policy and Ahmadinejad's statements (which were quoted by Justice Amit in the JOH decision), to vilify Iran and present it as intolerant and primitive. In other places in the world, the concept of recognizing LGBT rights is used by the homo-national-normative

the state and homosexuality within the discussion of homonationalism. In this respect, Israel's appropriation of LGBT rights is part of a broader global phenomenon, in that it is seeking not only to "whitewash" its image but also to justify its war with the Palestinians (as part of the global "war on terror" discourse), which is presented as a war for "Western" values of freedom, including gay rights. The success of this strategy is evident, for example, in an op-ed in *The Advocate*, one of the world's foremost gay publications, in which the author argued that "[r]egardless of what happened in 1948 and whether or not the Palestinians have any validity in their argument about state sovereignty, etc.," Americans and especially the LGBT community need Israel and should support it because of its human rights record and especially its gay rights record, which is especially commended given Israel is "surrounded by countries such as Iran, where homosexuality is punishable by death."⁸⁰

I refer to this process as "appropriation" because the state co-opts rights that the gay community in Israel attained through tremendous effort, in most instances through court proceedings against the state's representatives, and the state uses these rights for its propaganda needs and to promote Israel's image as a liberal democracy. Thus, the state smugly lauds itself for rights and achievements that it actually resisted. Although the courts may be one of the branches of the state apparatus, it is the executive branch that is boasting about achievements and rights it actually fought against.

An even graver form of such appropriation, which I will not discuss in great detail here, is the co-opting of Palestinian LGBTs by

anti-immigration discourse, which is also at times Islamophobic. See Dean Spade, *Under the Cover of Gay Rights*, 37 N.Y.U. Rev. L. & Soc. Change 79 (2013) (discussing how gay and lesbian rights serve as cover for state violence in the American and Israeli contexts). For a discussion of this issue in the Dutch context, see Suhraiya Jivraj & Anisa de Jong, *The Dutch Homo-Emancipation Policy and Its Silencing Effects on Queer Muslims*, 19 Fem. Legal Stud. 143 (2011); Fatima El-Tayeb, "Gays Who Cannot Properly Be Gay": *Queer Muslims in the Neoliberal European City*, 19 Eur. J. Women's Stud. 79 (2012); Sarah Bracke, *From 'Saving Women' to 'Saving Gays': Rescue Narratives and Their Dis/continuities*, 19 Eur. J. Women's Stud. 237 (2012).

80. James Duke Mason, *Why LGBT People Around the World Need Israel*, *The Advocate* (July 9, 2014), <http://www.advocate.com/commentary/2014/07/09/op-ed-why-lgbt-people-around-world-need-israel>. For another example of the use of gay rights as a propaganda tool for Israel within the U.S. context, see Max Blumental, *Grindr in Hebron: A Dispatch from the Last Debate*, *Mondoweiss* (Mar. 10, 2014), <http://mondoweiss.net/2014/03/grindr-dispatch-debate.html>.

falsely presenting Israel as protecting them and rescuing them from abuse in the Palestinian Territories.⁸¹

In order to understand the conditions in which this appropriation occurs, we must look at the internal developments in Israel and examine the changes that LGBT rights politics has undergone in recent years in general and, in particular, the part played by the *Barnoar* gay youth center attack in this context and the reactions to this event.

III. THE TEL AVIV BARNOAR GAY YOUTH CENTER SHOOTING

On August 1, 2009, at 10:40 p.m., a masked gunman entered the offices of the LGBT Association on Nahmani Street in Tel Aviv, where the *Barnoar* gay youth center was conducting a youth activity. The gunman shot randomly and repeatedly in all directions, killing Nir Katz, a twenty-six-year-old volunteer counselor, and Liz Trubishi, a sixteen-year-old girl participating in the activity. Twelve other participants were injured, some critically.⁸² The attack set off shockwaves both inside and outside the gay community, particularly because it was directed at youth in a place that was supposed to be a safe haven for them. The gunman's identity remains unknown. The

81. For a report on the baseless claims being made that Israel offers asylum to gay Palestinians, see (despite the misleading title) Kathleen Peratis, *For Gay Palestinians, Tel Aviv Is Mecca*, Forward (Feb. 24, 2006), forward.com/articles/1125/for-gay-palestinians-tel-aviv-is-mecca. On the failure to provide such asylum and the subject of gay Palestinian asylum-seekers, see Michael Kagan & Anat Ben-Dor, *Nowhere to Run: Gay Palestinian Asylum Seekers in Israel* (2008), http://www.law.tau.ac.il/Heb/_Uploads/dbsAttachedFiles/NowheretoRun.pdf. For a critical discussion of the "sanctuary" provided by Israel to gay Palestinians, see Jason Ritchie, *How Do You Say "Come out of the Closet" in Arabic?: Queer Activism and the Politics of Visibility in Israel-Palestine*, 16(4) GLQ: J. Lesbian & Gay Stud. 557 (2010). For a discussion of how this narrative serves homonationalism, see Jason Ritchie, *Black Skin Splits: The Birth (and Death) of the Queer Palestinian*, in *Queer Necropolitics* 111 (Jin Haritaworn, Adi Kuntsman & Silvia Posocco eds., 2014). For criticism of the Israeli use of LGBT Palestinians, see the interview with Haneen Maikey in Morten Berthelsen, *Stop Using Palestinian Gays to Whitewash Israel's Image*, Haaretz, Oct. 1, 2009, <http://www.haaretz.com/news/stop-using-palestinian-gays-to-whitewash-israel-s-image-1.6887>. See also Amel Amireh, *Afterword*, 16(4) GLQ: J. Lesbian & Gay Stud. 635 (2010) (discussing the challenges military occupation, racism, and homophobia pose for discussions of queer issues in the Palestine/Israel context).

82. On the attack, see the collection of news reports at *Retzakh BaBar-Noar [History of Murder at Bar-Noar]*, HaAgudah, <http://www.glb.org.il/he/history/articles.php?categoryID=974> (last visited Nov. 7, 2014) [Hebrew].

fatal shootings generated numerous responses: shock, trauma, and upheaval within the gay community and beyond; condemnations from politicians across the political spectrum, in some cases evolving into statements of support for the gay community; spontaneous protests such as a march held on the night of the attack and a quasi-official rally in which some of the politicians who had responded to the incident participated; public debate over whether the attack could be referred to as a homophobic incident without knowing the gunman's identity;⁸³ and public debate over the issue of closeted celebrities and the legitimacy of outing, explicit or implicit/implied.⁸⁴ Yet alongside the show of support for the community was the homophobia behind the incident itself and in the comments on the Internet in praise of the attack.⁸⁵ Additionally, the response to the incident exposed the difficulties LGBT youth often experience with their families.⁸⁶ The homophobia of the families of some of the victims in the attack was illustrated most radically by the inability of one injured youth to go home immediately after the shooting because his sexual orientation had been revealed.⁸⁷ Some of the responses also expressed "liberal homophobia," where a distinction is made between the public and private spaces; Homosexuality is accepted or tolerated only in the

83. For reports on the attack and responses to it, see Coby Ben-Simhon, *HaShigra SheAkhrei HaRetzakh BeMoadon Hanoar HaHomo-Lesbi "Bar-Noar"* [The Routine after the Shootings at the "Barnoar" Gay-Lesbian Youth Center], *Haaretz*, Dec. 30, 2009, <http://www.haaretz.co.il/misc/1.1297349> [Hebrew].

84. See Aeyal Gross, *Pulmus HaPratiut, HaAron Vehaouting: Al HaHomophobia HaLiberalit* [A Polemic on Privacy, the Closet, and Outing: On Liberal Homophobia (the Uncensored Version)], *HaMishteh* (Aug. 13, 2009), aeyalgross.com/blog/?p=59504 [Hebrew]. Eventually, the famous personalities around whom this controversy revolved came out of the closet, most of them during the year that followed the *Barnoar* attack. See Aeyal Gross, *Shana Khalfa: HaPetza Patuakh—VeHaaron?* [A Year Has Passed: The Wound Is Still Open—and the Closet?], *Ynet* (Aug. 1, 2010), <http://www.ynet.co.il/articles/0,7340,L-3928122,00.html> [Hebrew].

85. *HaTokbekim SheTzunzeru – Partzufa Shel Hamedina* [The Comments that Were Censored—The Face of the State], *Walla* (Aug. 2, 2009), news.walla.co.il/?w=/1/1530512 [Hebrew].

86. Gali Ginat, *VeIma Yoda'at? HaYeri Hotzi Et HaNearim MeHaaron* [And Does Mother Know? The Shooting Outed the Youth from the Closet], *Ma'ariv-NRG* (Aug. 3, 2009), <http://www.nrg.co.il/online/1/ART1/924/875.html> [Hebrew].

87. Noa Kushrak, *HaPigua BaBar Noar: "Hitkasharti LeAba VeSiparti SheNiftzati, Hu Amar: Sote, Khaval SheAta Lo Met"* [The Attack at the Barnoar: "I Called Dad and Told Him I'd Been Hurt, and He Said, Pervert, Too Bad You Didn't Die"], *Haaretz*, Dec. 1, 2009, <http://www.haaretz.co.il/news/education/1.1292727> [Hebrew].

latter.⁸⁸ Such liberal homophobia was perceptible in the attempts to deny any connection between the attack and homophobia, on the grounds that the gunman might have acted for personal reasons, as though shooting indiscriminately at LGBT youth in a gay youth center—even if by a lone gunman whose hatred is rooted in his or her own private history—can be detached from the social constructs of heterosexism and homophobia.⁸⁹ This version of liberal homophobia reemerged when four years after the events, the police detained suspects in the shooting and disclosed that according to its investigation, the gunman had gone to the *Barnoar* center after having learned that his younger minor brother had been sexually assaulted by the center’s manager, with the purpose of getting revenge for this act.⁹⁰ While this finding later emerged to be false, the suspect released, and the indictment against him withdrawn,⁹¹ some of the commentaries following the release of this information sought to negate the relationship between the attack and homophobia, arguing that the disclosures about the circumstances of the attack

88. To fully understand “liberal homophobia,” we must consider the centrality of the private/public distinction in liberalism along with the correlation of homosexuality/heterosexuality to this divide. See Aeyal Gross, *Israel’s Liberal Homophobia*, Haaretz, June 17, 2013, <http://www.haaretz.com/opinion/.premium-1.530329>. For a discussion of the role of the separation of the private and public in liberalism, see Michael Walzer, *Liberalism and the Art of Separation*, 12(3) Pol. Theory 315, 317 (1984). For the correlation between the homosexuality/heterosexuality divide and the private/public divide, see Eve Kosofsky Sedgwick, *Epistemology of the Closet* 72–73 (1990).

89. Another expression of liberal homophobia emerged in the outing debate that followed the shooting attack, with the resurfacing of catchphrases about sexual orientation being a “private matter,” ignoring the fact that only one type of sexual orientation is considered private whereas heterosexuality is always public and that homosexuality is categorized as “private” in a way that helps keep it in the “closet.” See Amalia Ziv & Aeyal Gross, *Omanut HaKriya HaQuirit Shel Eve Kosofsky Sedgwick [Eve Kosofsky Sedgwick’s Art of Queer Reading]*, 37 Theory & Criticism 275, 277–78 (2010) [Hebrew].

90. These facts were then incorporated into the indictment in this case, CrimC (TA) 14507/13 State of Israel v. Palisian (July 8, 2013) (unpublished). In the indictment, the prosecution stated that the accused had decided to kill the *Barnoar* manager and others present at the center due to his anger at the sexual injury caused to his brother and hostility towards the sexual orientation of the manager and the other attendees. See *id.* ¶ 5. The indictment was withdrawn once it emerged that the evidence on which it had been based was false. Decision No. 7, CrimC (TA) 14507/13 State of Israel v. Palisian (Mar. 10, 2014) (decision to withdraw indictment); CrimC (TA) 18794-03/14 State of Israel v. Khankishiev (May 29, 2014) (indictment of the state witness in the case against Palisian, for giving false information to the police).

91. CrimC (TA) 14507/13 *State of Israel v. Palisian*.

prove that the motivation was personal revenge and not homophobia. These were yet again arguments that indiscriminately shooting at LGBT teenagers at a gay youth center could be disconnected from the social structures of heterosexism and homophobia, as though a narrative about a person whose brother has allegedly been sexually assaulted by a gay adult within a gay organization and who then sets out to indiscriminately shoot at LGBT teenagers is not one of homophobia.⁹²

For the purpose of this article, I will discuss two effects generated by the *Barnoar* attack on the political level. The first touches on the external dimension of the LGBT community's relations with national politics, and the second relates to internal community politics.

IV. THE RISE OF THE NEW HOMONATIONALISM AFTER THE BARNOAR ATTACK

I claim that the shooting at the *Barnoar* gay youth center and the reactions to this attack constituted a significant crossroads in the relations between the state and the gay community in Israel. The transformations in this area have been part of a long-term process, but the attack and responses to it represented a turning point in that process.

In examining this issue, it is important to recall that historically, it had been primarily politicians from the left who supported the gay community in Israel. In difficult times, such as during the controversy over the Jerusalem gay pride parade,⁹³ support for the community came almost exclusively from left-wing

92. For a discussion of these responses and a critique, see Gross, *Israel's Liberal Homophobia*, *supra* note 88 (citing Dan Margalit, *Elbon, Kina'a VeSina'a Shel Yekhidim Neged Yekhidim [Humiliation, Jealousy, and Hatred of Individuals Toward Individuals]*, Israel Hayom (June 12, 2013) [Hebrew] ("A hate crime? No, it's humiliation and jealousy and hatred of individuals toward individuals.") [author's trans.]); see also Aeyal Gross, *Israel Celebrates Gay Pride, but Struggle for Equal Rights Persists*, Haaretz, June 7, 2013) <http://www.haaretz.com/news/national/.premium-1.528334> (addressing and criticizing the responses to the police investigation).

93. On the disputes surrounding the Jerusalem gay pride parade, see Zvi Triger, *Discriminating Speech: On the Heterophilia of Freedom of Speech Doctrine*, 19 Cardozo J. of L. & Gender 349, 356–65 (2013) (discussing the history of Jerusalem's gay pride parade).

politicians.⁹⁴ Things began to change even prior to the *Barnoar* incident, as the issue gradually moved to the center of the political map. One of the first signs of this shift was the appearance of then-Foreign Minister from the centrist *Kadima* party Tzipi Livni at the gay pride events about two months before the attack.⁹⁵ However, the shooting at the gay youth center was a turning point, when the LGBT cause became associated also with parts of the political right. The universal condemnation of the *Barnoar* attack enabled right-wing pro-LGBT politicians to “come out” as supporters of the LGBT community and be seen as spearheading the gay struggle.

PICTURE 2: A POSTER FROM THE TEL AVIV GAY PRIDE EVENTS, JUNE 2012. THIS PICTURE APPEARED ON THE MAIN SIGN HUNG IN HONOR OF THE GAY PRIDE EVENTS IN RABIN SQUARE (PHOTOGRAPH: ZIV SADEH).



This development occurred at a point when LGBT politics—mainly gay politics but, to a certain extent, lesbian politics as well—had established links with national politics and, in particular, municipal politics. Beginning in 1999, the Tel Aviv

94. See Aeyal Gross, *Politika Gea, Politikat Smol [Proud Politics, Leftist Politics]*, HaMishteh (Nov. 16, 2006), aeyalgross.com/blog/?p=25277 [Hebrew].

95. Livni's appearance at these events can be watched on her website. Tzipi Livni, <http://www.tzipilivni.co.il/?p=721> (last visited Oct. 16, 2014).

Municipality became a sponsor of the gay pride parade and subsequently became its principal organizer. The Municipality's support for the gay community reached a peak with the opening of the Tel Aviv municipal gay community center, which closely coordinates between the municipal establishment and the LGBT community establishment.⁹⁶ This process led to a concentration of power along the seam connecting the community center, which enjoyed support from the municipality and access to its resources, and certain community organizations that collaborated with the center. If in the past, mainstream gay politics expressed itself by appealing to normative politics—a situation that Amit Kama has termed selling gays “wrapped-up” in cellophane,⁹⁷ the new homonormative politics made the move towards what can be called the politics of joining forces with the establishment. Thus, in the immediate aftermath of the *Barnoar* attack, two trends became intertwined: the first, the enhancement of gay rights as a fig leaf for Israeli democracy and as signifying alleged liberalism; and the second, the ascent of (primarily) gay establishment politics. The latter could arise only from a position of normativity—not only gender and behavioral, but also political.⁹⁸ These processes had been developing

96. On these processes and the place of the gay center, see Chen Misgav, *Radical Activism and Autonomous Contestation “from Within”: The LGBT Community Center in Tel Aviv*, in Companion for the Geography of Sex and Sexuality (Gavin Brown & Katherine Browne eds., forthcoming, 2015); Adi Moreno, *Geim BaMerkaz: Meshilut Neo-Liberalit VeTahalikhei Individualizatzia BeRei Kehilat HaLahata*^b BeIsrael [Gays in the Center: Neoliberal Governability and Individualization Processes through the Prism of the LGBT Community in Israel] (M.A. Thesis, Tel Aviv University, Aug. 2011) [Hebrew]; Nurit Alfasi & Tovi Fenster, *A Tale of Two Cities: Jerusalem and Tel-Aviv in an Age of Globalization*, 22 *Cities* 351, 361–62 (2005).

97. Amit Kama, *Limkor Homo BeTzelofan: Dimui'im Homosexuali'im BaTikshoret BeIsrael* [Selling a Wrapped-Up Homosexual: Gay Images in the Israeli Media], in Had Pe'amy: Gay & Lesbian Arts & Culture Mag. 6 (1998) [Hebrew]. For criticism of the politics of “normal” in the Israeli LGBT context, see Aeyal Gross, *HaItan VeHaAron: Dfusei Tikshoret Shel Homoim Me'et Amit Kama – Bikoret Sefer* [Book Review: The Newspaper and the Closet: Israeli Gay Men's Communication Patterns by Amit Kama], 43 *Megamot* 599 (2004) [Hebrew]; Raz Yosef, *The National Closet: Gay Israel in Yossi and Jagger*, 11 *GLQ: J. Lesbian & Gay Stud.* 283, 285–86 (2005). For criticism of homonormative politics in the U.S. context, see Michael Warner, *The Trouble with Normal* (1999). In support of these politics, see Andrew Sullivan, *Virtually Normal* (1996).

98. Amit Kama's article illuminates the relationship between the community and the establishment. It analyzes the processes of appropriation, assimilation, and “domestication” of the gay-lesbian community and the process by which the community negotiated with social and legal institutions in order to ensure rights and obligations in the framework of the existing social system of

for many years, but were accelerated, as detailed below, by the reaction to the *Barnoar* attack because of the door it opened to right-wing politicians and because it occurred when a right-wing government was in power.

The rally held in the wake of the shooting attack cannot be reduced to one message. Alongside speakers representing the injured victims and their families, there were also speakers who were critical and spoke of the connection between various forms of oppression and discrimination.⁹⁹ Yet the rally did perhaps mark the marriage of homonormative politics and national politics after a long period of courtship and was therefore a significant moment in the emergence of Israeli homonationalism. Prominently absent from those invited to speak at the rally, were some of the left-wing politicians who had been longstanding supporters of the community over the years, such as Zahava Gal-On, from the *Meretz* Party, Dov Khenin from the *Hadash* Party, Shelly Yachimovich from the Labour Party, and even Tzipi Livni, who had spoken at a smaller gathering on the day after

normative citizenship. Amit Kama, *Parading Pridefully into the Mainstream: Gay and Lesbian Immersion in the Civil Core*, in *The Contradictions of Israeli Citizenship: Land, Religion and State* 180 (Guy Ben-Porat & Bryan S. Turner eds., 2011). Illustrating the complexity of the issue of domesticity and lack of consensus is the controversy over the Tel Aviv Independence Park functioning as a meeting place for gays, with a community representative supporting, from within the municipal establishment, a normative, or perhaps “normalizing” stance. In this case, Yaniv Weizman, founder of the Israel Gay Youth and member of the Tel Aviv city council, supported the stance that “the historic role” of the park as a meeting place for casual sex “was over.” The criticism of this concept asserted that it represents only “people who stepped out of the closet and into a penthouse.” Ofri Ilany, *TA Gay Community Says City Trying to Evict Them from Cruising Site*, *Haaretz*, Nov. 23, 2009, <http://www.haaretz.com/print-edition/news/t-a-gay-community-says-city-trying-to-evict-them-from-cruising-site-1.3647>; see Dafna Hirsch, *Homotopia: Gan Ha'Atzmaut BeTel-Aviv [Homotopia: Independence Park in Tel Aviv]*, in *A Different Sex: An Israeli Queer Anthology* (Aeyal Gross, Amalia Ziv & Raz Yosef eds., forthcoming) [Hebrew]. Thanks to Ofri Ilany for pointing out the relevance of this controversy.

99. See Aeyal Gross, *Harvey Milk Was Here*, *Zeek* (Oct. 25, 2009), <http://zeek.forward.com/articles/115761/> [hereinafter Gross, *Harvey Milk*] (citing Nitzan Horowitz, Speech at Rabin Square Rally (Aug. 8, 2009), <http://www.glb.org.il/he/news/articles.php?articleID=1125>; Nora Grinberg, Speech at Rabin Square Rally (Aug. 8, 2009), <http://www.glb.org.il/he/news/articles.php?articleID=1131>) (“MK Nitzan Horowitz and musician Ellyott Ben Ezzer, addressed the link between discrimination based on sexual orientation and gender identity and discrimination against migrant workers, Palestinians, and others . . . [T]ransgender activist Nora Grinberg discussed how . . . the acceptance of gay people . . . is offered only to the extent that they act [normatively.]”).

the attack¹⁰⁰ but was not amongst the rally's speakers.¹⁰¹ The only exception was former *Knesset* (Israeli parliament) Member Yael Dayan, from the *Meretz* Party, who did speak at the rally. In contrast, politicians from the right did speak at the rally, including *Likud* government ministers Gideon Sa'ar and Limor Livnat.¹⁰² The participation of right-wing politicians and the state president at the rally represented the new homonationalistic politics. It seemed that the fantasy of gay politics had come true: a broad political array of supporters, not only from the left, was standing alongside the gay community, including the state itself through its national institutions. At the same time, it was a nightmare of gay politics, for under the new homonationalism, the improvement of gay rights is a fig leaf for Israeli democracy and requires the adoption of homonormativity as well.

Exemplifying this was Education Minister Gideon Sa'ar speaking at the rally about equality for gays and lesbians as one of the cornerstones of Israel as a free society.¹⁰³ Yet, is the notion of a "free society" consistent with Israel's policy in the Occupied Territories, of occupation and dispossession of a civilian population, which was implemented by the government in which Sa'ar was a member? There is also apparent inconsistency between the idea of Israel as a free society and other actions that Sa'ar, as a government minister, is directly responsible for, such as removing from the official curriculum any instruction of the *Naqba*, the Palestinian understanding of Israel's establishment in 1948 and of the creation of Palestinian refugees at that time as a disaster for their nation.¹⁰⁴ It is

100. Her appearance at this gathering can be seen at *Tzipi Livni BaEruah HaHizdahut Im HaKehila HaGeva B'Tel Aviv* [Tzipi Livni at the Identification Event with the Gay Community in Tel Aviv], YouTube (Aug. 2, 2009), <http://www.youtube.com/watch?v=HEJ15pnTdmg>.

101. For an in-depth discussion of the rally, see Gross, *Harvey Milk*, *supra* note 99.

102. For the texts of all the speeches made at the rally, see GLBT.org, <http://www.glbt.org.il/he/history/articles.php?categoryID=984> (last visited Dec. 4, 2014).

103. For the text of Sa'ar's speech, see Address by the Minister of Education Gideon Sa'ar—Solidarity Rally in Rabin Square (Aug. 18, 2009), cms.education.gov.il/EducationCMS/Units/Shefi/Hitpatchut/NeumHasr2009.htm (stating that leaders and public figures must commit to protecting the image and future of Israel as a free society and that doing so requires protecting persons from discrimination and violence based on sexual orientation).

104. See Sar HaKinuch: HaNakba? Lo BeBeit Sifrenu [Minister of Education: The Nakba? Not in Our School], Nana 10 (July 22, 2009), news.nana10.co.il/Article/?ArticleID=651906 [Hebrew]; Or Kashti, *Israel Pulls*

particularly interesting to note how Sa'ar's commitment to incorporating content related to equality and the gay cause into the public education system clashes with his stance on teaching the *Naqba*; We should certainly question the gay community's part in this mutual embrace with a politician who ostensibly takes stances of equality regarding the gay community but discriminatory stances on similar points regarding other minorities.

Given this discrepancy between politicians' liberalism and their concept of "freedom" vis-à-vis the gay community and the freedom-negating dimensions of their stances in other contexts, it is important to stress that the presence of right-wing government ministers at the rally (and, more broadly, their support of the gay community), as well as Prime Minister Netanyahu's visit to the *Barnoar* center after the attack,¹⁰⁵ enables these politicians to perceive and present themselves as liberal and democratic even if in other areas, they perpetuate policies that are neither. Without in any way detracting from the sincerity of their positions on LGBT issues, this stance fits in with the construction of Israel's image as a liberal democracy and thereby constitutes another layer in the use of gay rights as a fig leaf for Israeli democracy. It allows these politicians and the public at large to feel enlightened and liberal even if these ideals are not manifested in other contexts. This stance removes the LGBT rights cause from the broader context of democracy and human rights; the cause is thus interwoven with homonormativity and homonationalism as described by Duggan and Puar, while the LGBT identity is reduced to solely a matter of their own rights.¹⁰⁶

Textbook with Chapter on Nakba, Haaretz, Oct. 19, 2009, <http://www.haaretz.com/print-edition/features/israel-pulls-textbook-with-chapter-on-nakba-1.5858>.

105. Avi Cohen, *Netanyahu BePgisha Im Netzivei HaKehilla: Tomech UMizdaheh* [Netanyahu in a Meeting with Members of the Community: Support and Identify], Ynet (Aug. 6, 2009), <http://www.ynet.co.il/articles/0,7340,L-3757897,00.html>.

106. This type of LGBT identity politics is discussed—and criticized—in Amalia Ziv, *Performative Politics in Israeli Queer Anti-Occupation Activism*, 16 GLQ: J. of Lesbian & Gay Stud. 537 (2010) [hereinafter Ziv, *Performative Politics*]; Kalai, *supra* note 10. Ziv and Yonay attempt to point to other concepts of identity politics, which, according to Yonay, will be a queer politics of identity that does not entail seclusion within one identity but, rather could enable us to understand what other minorities and oppressed groups experience. See Yuval Yonay, *Mabat Quiri Al HaSikhsukh HaAravi-Yehudi* [A Queer Look at the Arab-Jewish Conflict], 19 Theory & Criticism 265, 274 (2001) [Hebrew] [hereinafter Yonay, *A Queer Look at the Arab-Jewish Conflict*].

It is also important to note that homonormative politics and Israeli national politics (which uses gay rights as a liberal-democratic fig leaf) teamed up only after advances in gay and lesbian family rights. These legal developments, in conjunction with technological and social developments, facilitated the formation of gay and lesbian family units based on the nuclear family model. The increase in available options in this field and their growing use by lesbian and gay couples¹⁰⁷ are amongst the factors leading to this collaboration (Picture No. 2 shows the centrality of this issue on the main poster that was hung in Rabin Square for the 2012 Tel Aviv gay pride events). Certainly, leading a “normative” life does not necessitate normative conceptions about the preferability of such a life. But the demands for recognition of the normative life (e.g. marriage and parenthood) are constructed on a hierarchy of social institutions like marriage and parenthood and on the rewards of certain lifestyles. Thus, recognition of these lifestyles is part of the normative message.

What we are witnessing, then, is the disassociation of support for LGBT rights from general liberalism in the area of human rights. Gay rights have begun to play a new role on the political landscape—the new right-wing-gay politics¹⁰⁸ as an integrated part of homonationalist politics. One expression of the new homonationalism, as well as the extraction of the LGBT rights cause from a broader substantive context of democracy and human rights, was the founding of a gay faction within the right-wing *Likud* Party. Until 2011, there had been gay factions only in the leftist *Meretz* and *Hadash* parties. In that year, however, gay factions were founded in the Labor Party, centrist *Kadima* Party, and right-wing *Likud* Party.¹⁰⁹ On the eve of the 2013 elections, the right-wing parties

107. This is seen in, amongst other things, the increase in same-sex parenthood not only amongst lesbians but also gays. See Danna Harman, *The Trials and Treasures of Tel Aviv's Gay-by Boom*, Haaretz, Feb. 18, 2013, <http://www.haaretz.com/news/features/the-trials-and-treasures-of-tel-aviv-s-gay-by-boom.premium-1.504343> (noting the increase in parenthood among gay couples).

108. On homo-conservative politics in the U.S. context, see Richard Goldstein, *Homocons: The Rise of the Gay Right* (2003).

109. See Ophir Bar-Zohar, *Israel's Gay Community Making Inroads into Political Mainstream*, Haaretz, Mar. 6, 2012, <http://www.haaretz.com/print-edition/features/israel-s-gay-community-making-inroads-into-political-mainstream-1.416735>; Renana Leviani, *HaTaim HaGeim BaKnesset Yotzim MeHaaron – Lo Rak BaSmol [The Gay Factions in the Knesset Are Coming out of the Closet—Not Only on the Left]*, Mako Pride (Dec. 23, 2011), <http://www.mako.co.il/pride-news/local/Article-3d33b7d349a6431006.html> [Hebrew]. See also Kobi Nachshoni, *Yozma: Homoim Datiim Mitpakdim LaBait*

(particularly *Likud*) used the LGBT cause in their campaign propaganda in a sort of “internal pinkwashing” endeavor, where right-wing politicians “legitimized” the gay community in order to use it for their own legitimization as ostensible liberals and progressives.¹¹⁰ This “mainstreaming” of LGBT politics, while a seemingly welcome process, is actually evidence of the new homonationalism and LGBT rights politics that can supposedly emerge as part of the nationalist ideology but not a general progressive agenda. This mainstreaming can be attributed to, amongst other things, the success of LGBT rights politics in ensuring that the more “normative” elements of the gay community (in terms of politics and gender) are no longer socialized as a discriminated-against minority. This, in turn, has led to their ability to more easily identify with nationalist values and diminished their sense of solidarity with other minority groups (including both minority and

HaYehudi [Initiative: Religious Gays Joining Bayit HaYehudi Party], Ynet (July 5, 2012), <http://www.ynet.co.il/articles/0,7340,L-4251587,00.html> (reporting on the religious, right-wing Bayit HaYehudi Party’s organized membership drive) [Hebrew]. According to the report, the membership drive was initiated by the religious gay organization *Havruta*. Further discussion is certainly warranted on the connection between the rise of the new homonationalism and the growing visibility of religious LGBTs that is manifested in the establishment of organizations representing this public. Needless to say, there is no one uniform political stance espoused by religious gays as a group. And while coming out in the religious context has radical potential, because of the complex relations between politics, religion, and nationality in Israel, it is likely to also be part of the upsurge in new homonationalism.

110. See Dany Zak, *Limor Livnat VeHaLikud Osim Pinkwashing [Limor Livnat and the Likud Are Pinkwashing]*, Mako Pride (Jan. 10, 2013), <http://www.mako.co.il/pride-news/local/Article-7e1cc3081232c31006.htm>; Jonathan Lis, *Milchemet HaLikud BeChauvinism UBeHomophobia [The Likud’s War on Chauvinism and Homophobia]*, Haaretz, Jan. 4, 2013, <http://www.haaretz.co.il/news/elections/trueornot/1.1900329> [Hebrew]; Aeyal Gross, *After a Global Tour, Pinkwashing Comes Home*, Haaretz, Jan. 11, 2013, <http://www.haaretz.com/opinion/after-a-global-tour-pinkwashing-comes-home.premium-1.493462>; Aeyal Gross, *Human Rights Are Part of the Fight for Gay Rights*, Haaretz, Dec. 17, 2013, <http://www.haaretz.com/news/national/.premium-1.563894>. Meetings that representatives of the gay community held with right-wing *Likud* MKs, some even associated with racist comments, led to controversy on this background. See Gross, *After a Global Tour*, *supra* note 110; Guy Erlich, *Feigele: Gal Shel Bikoret BaKehila HaGea BeIkvot HaMifgash Im Feiglin BeBeit HaAguda [“Feigele”: A Wave of Criticism in the Gay Community over the Gathering with Feiglin at the Association Center]*, City Mouse (Feb. 14, 2013), at 22 [Hebrew]. The centrist *Yesh Atid* Party, led by Yair Lapid, also uses gay rights as a marker that supposedly distinguishes it from its right-wing and religious coalition partners. See Lis, *supra* note 43.

disadvantaged groups within the broader LGBT community as well as those outside that community).¹¹¹ In the Israeli context, greater identification with nationalist values is usually in tension with the rights of Palestinians—be they Palestinian citizens of Israel, or even more so Palestinians from the Occupied Palestinian Territory.

The evolution of LGBT rights politics as part of the nationalist ideology and not as a general progressive agenda is not unique to Israel. This shift has come about in various places in Europe, where at times, LGBT rights politics is integrated into right-wing politics and Islamophobia.¹¹² In these conservative campaigns, homosexuals are “enlisted” alongside “good citizens” against what is perceived as a threat to “Western” citizenship. This process, which uses the struggle for LGBT rights to distinguish “us” as liberal and democratic as opposed to the “enemy,” makes LGBT rights not necessarily identifiable, any longer, with progressive politics. Indeed, at times, quite the contrary is true: this process lies at the very heart of conservative homonationalist politics in both Europe and Israel, and in perhaps a similar trend, support for same-sex marriage is growing amongst conservatives in the US.¹¹³

111. Grinberg, *supra* note 99 (arguing that the narrative of the mainstream LGBT rights movement in the wake of the murder portrayed only gays and lesbians who look, sound, and behave like “regular” straight people, largely ignoring feminine gay men, butch lesbians, genderqueers, transgender men and women, and others who do not fit neatly within the heteronormative order).

112. See Franke, *supra* note 79 (noting that conservatives in the United States have used issues of LGBT rights to criticize Iran); Jivraj & Jong, *supra* note 79 (looking specifically at the Dutch context); El-Tayeb, *supra* note 79 (looking at Amsterdam as “exemplifying the European metropole as a site of pseudo-homophile Islamophobia”). One example, in the specific context of the Netherlands, was gay right-wing politician Pim Fortuyn, who was murdered in 2002 and whose supporters took an even more racist, anti-Islamic line after his murder. Jivraj & Jong, *supra* note 79, at 147–48; see also Bracke, *supra* note 79 at 237–39 (noting that Fortuyn called for the “emancipation” of Islamic women in an article titled “Islam is a Backward Culture”). One of the leaders of the Likud gay faction even pointed to Fortuyn as exemplifying the lack of justification for the left’s monopolization of this area. Leviani, *supra* note 109. In 2014, the group also hosted an international convention of LGBT activists in conservative parties that was held in Israel. Judy Maltz, *For Gay Right-Wingers, Life Is Doubly Difficult*, Haaretz, June 13, 2014, <http://www.haaretz.com/news/national/premium-1.598597>.

113. See Sheryl Gay Stolberg, *Republicans Sign Brief in Support of Gay Marriage*, N.Y. Times, Feb. 25, 2013, <http://www.nytimes.com/2013/02/26/us/politics/prominent-republicans-sign-brief-in-support-of-gay-marriage.html> (discussing the support of prominent Republicans for marriage equality during the Proposition 8 case before the Supreme Court).

V. THE NEW “DEAL” AND ITS OPPONENTS

Much criticism has been leveled at the above-described developments on the internal Israeli level that are connected to Israel's use of LGBT rights as propaganda. While these developments are supposedly part of an endeavor to secure broader support for LGBT rights, they have obscured the link between various forms of oppression and the need to fight for equality and freedom for all. They facilitate an identity-based struggle and claim rights based on the homonormative model, while at the same time jeopardizing the potential of a struggle that challenges the heterosexual-patriarchal-nationalist social order and the connection amongst its various components.¹¹⁴ As such, it appears that this is the “deal” that materialized following the *Barnoar* youth center attack, based on, amongst other things, the desire to “leverage” the incident to gain support for the gay community:¹¹⁵ the community representatives would put on a normative face and, in return, would be supported by the state (even if only declaratively). The question that arises is who benefits from this deal and who loses out—and at what cost?

In analyzing the developments that followed the *Barnoar* attack, Yair Kedar, a prominent Israeli gay activist, journalist, and filmmaker, claimed that the “imaginary alliance” that formed between the gay community and the Israeli establishment was bolstered following the shooting. Although the attack exposed the alliance's weakness, it also intensified the establishment's embrace, creating a state of “mutual benefit” or, as Kedar noted, a win-win situation.¹¹⁶ Yet does the commitment to democracy and equality also lose out in this arrangement, given the community's collaboration in creating a fig leaf for Israeli democracy and the accompanying need to “cover” anyone who is unable or refuses to play the homonormative role? This is an important price that must be taken into account: the

114. On the connection between the patriarchal order and the heterosexual order, see Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, in *Blood, Bread, and Poetry* (1986). On the connection between this order and the nationalistic order, see Gross, *Sexuality, Masculinity, Military, and Citizenship*, *supra* note 20, at 136–38, and accompanying references.

115. On the attempt to leverage the sympathy that came in the wake of the attack, see, for example, Hilo Glazer, *Gal Uchovsky BeMail LaKEhila HaGea: Kach Temanfu Et HaAhada HaTziburit* [*Gal Uchovsky in an Email to the Gay Community: This Is How to Leverage the Public Sympathy*], City Mouse (Oct. 16, 2009), http://www.mouse.co.il/CM.articles_item,778,209,41207,.aspx [Hebrew].

116. Yair Kedar, *Imperiat HaGa'ava* [*The Gay Empire*], Haaretz, June 7, 2010, <http://www.haaretz.co.il/opinions/1.1205681> [Hebrew].

need to cover and silence anyone who does not conform to the gay community's role in the deal, i.e., gender, behavioral, and political normativity. This cost is embodied in the need for the community "establishment" to keep quiet about injustices perpetrated by the state establishment to the human rights of others, specifically in the context of the Occupation, and its muzzling of anyone who deviates from this silence or from the normativity (in various spheres) embodied in this silence, with anyone voicing criticism of the "deal" branded a rabbleroising "spoilsport." Indeed, Shiri Eisner describes, from the perspective of Israeli bisexual politics, an understanding of certain events, when activists who sought to convey messages that deviated either gender-wise or politically from the gay mainstream were forced to fight for their place and voice and were sometimes excluded and silenced.¹¹⁷ In addition to the matter of who wins and who loses in the "deal," it is also important to note its limitations: the LGBT community receives only limited state support in return for its embrace of the establishment. In practice, only a small proportion of the promises made by politicians in the wake of the *Barnoar* attack were honored, and many dimensions of inequality still prevail, specifically in areas such as marriage and parenthood rights.¹¹⁸ It is important to stress that this discussion does not seek to call into doubt the importance and achievements of the community organizations, the potential of collaborating with the municipal and national establishments, the good intentions of the parties to the

117. Shiri Eisner, *Love, Rage and the Occupation: Bisexual Politics in Israel/Palestine*, 12 *J. Bisexuality* 80 (2012). For instance, Eisner describes an incident at the 2009 Jerusalem pride event where bisexuals were excluded from the roster of speakers. According to Eisner, security guards violently stopped her and other activists when they tried to get hold of the microphone on stage at the event. *Id.* at 107–15. For a specific discussion in the context of the aftermath of the *Barnoar* attack, see *id.* at 115–20. On the danger that the gay citizen, who is protected in the framework of "rights fetishism," will withdraw from progressive politics—especially when the entities that granted him rights promote a policy that infringes on the human rights of others in contexts such as immigration and the war on terror—on the background of neoliberal economics that stresses the privatization of the responsibility for others. See Carl Stychin, *Same-Sex Sexualities and the Globalization of Human Rights Discourse*, 49 *McGill L.J.* 951, 967–68 (2004); see generally, *Gay Shame* (David M. Halperin & Valerie Traub eds., 2010) (discussing how those who cannot or do not want to belong to normative gay politics may turn to politics of shame, due to non-normative identities or identifications).

118. See Jonathan Lamaze, *Shana Akhrei HaRetzakh BaBar-Noar - Ma Kara LaHavtakhot HaGdolat? [A Year after the Attack at the Barnoar—What Happened to All the Big Promises?]*, *The Pink City* (July 25, 2010), <http://www.glb.org.il/he/aguda/articles.php?articleID=1437>.

“deal,” or the sincerity of certain politicians—right-wing as well—in their support for the LGBT community. The questions being asked are what is attained, for whom, and at what cost.

Criticism of the “deal” was expressed in disputes over community events conducted before and after the rally following the shooting. The first list of speakers released prior to the rally seemed overly homogenous to many, with its almost exclusively Jewish, *Ashkenazi* (i.e., Jews of European, rather than Middle-Eastern, origin or descent), and male representation. The debates over the identity of the speakers were part of a broader dispute over whether the *Barnoar* attack should be treated as an isolated and uncommon occurrence or be set in a wider context of homophobia and transphobia as well as violence in general, including the violence of the Occupation.¹¹⁹ The tensions that arise in these issues of representation reflect the tension existing between homonormative politics, on the one hand, and queer politics, on the other, which seeks to challenge the normative order and deconstruct the essentialist structure of identities.¹²⁰ In any event, although the list of rally speakers was eventually modified to broaden the representation, many still saw it as too “establishment” and including too many public figures who condemn violence while in practice participating in violent policy (mainly against Palestinians). Moreover, although the

119. For reactions that sought to situate the attack in the context of violence, including the violence of the Occupation, see Tamara, *Homophobia Hi Gizanut [Homophobia Is Racism]*, Ha'Oketz (Aug. 5, 2009), <http://www.haoketz.org/2009/08/05/הומופוביה-היא-גזענות/> [Hebrew]; Iddo, *Shana Meaz HaLyla Hahu [A Year Since that Night]*, Speech at the Pride Parade (July 30, 2010), <http://www.justjlm.org/443> [Hebrew]; Dori Manor, *Gam Anakhnu Hainu LeMiut Gizani [We Have Also Become a Racist Minority]*, Haaretz, Aug. 9, 2009, <http://www.haaretz.co.il/opinions/1.1274818> [Hebrew]; Itay Waldman, *Kshekorim LaKhasheka Maspik Peamim VeMaspik Khazak, Hi Baa [When You Call the Darkness Enough Times and Loudly Enough, It Comes]*, Time Out Aug. 6–13, 2009, at 40–41 [Hebrew]; Gross, *Harvey Milk*, *supra* note 99. For criticism of this stance, see Avner Bernheimer, *HaKorban Haba: Homo Mefursam BaAron [The Next Victim: A Famous Gay Man in the Closet]*, Mako Pride (Aug. 12, 2009), <http://www.mako.co.il/pride-culture/magazine/Article-a259719973e0321004.htm> [Hebrew]. In this context, it should be stressed that there are obviously important differences between the circumstances and forms of oppression and violence, and they should not be flattened. It is also well known that homophobic murders occur in other countries too, where the political context is very different. Nonetheless, this in no way negates the ability or need to conduct a structural analysis of homophobic violence within the broader context of racism, violence, and killings in Israel and the Occupied Territories.

120. On queer politics and its connection to queer theory, see Annemare Jagose, *Queer Theory: An Introduction* (1997).

rally organizers had diversified the list of speakers, the organizers themselves were in fact representative of only one group within the community: Jewish male homosexuals, with the majority most likely *Ashkenazi*.¹²¹ The tension between these conceptions found expression in the rally itself, in the inconsistency between the homonationalistic discourse, on the one hand, and the speeches made by politicians and artists, on the other, about discrimination against LGBTs in the context of discrimination against other groups (such as Palestinians and migrant workers) and how Israeli society's acceptance of LGBTs hinges on the extent to which they are perceived as "normative" despite the history of LGBT activism challenging the normative order.¹²²

121. I note that the majority is *most likely* Ashkenazi because their surnames are not a guarantee of their ethnic origin, especially in the case of those who are of mixed ethnicity.

122. Speakers who made such statements included: MK Nitzan Horowitz; the singer Ellyott (Sharon Ben-Ezer); and activists Nora Greenberg and Sami Zeibak, with the latter speaking about the dual discrimination Palestinian gays like him experience. For the texts of the rally speeches, see GLBT.org, *supra* note 102. Some of the descriptions of the rally ignored these speakers, including the Palestinian speaker. For example, Gil Hochberg wrote that "the tragic deaths of the two young homosexuals, one lesbian and one gay, was immediately hijacked to promote a hyperpatriotic agenda." Gil Hochberg, *Introduction: Israelis, Palestinians, Queers: Points of Departure*, 14(4) GLQ: J. Lesbian & Gay Stud. 493, 494 (2010). Hochberg did recognize the fact that some of the speakers called for understanding homophobia in the wider context of violence, hatred, and fear; yet in contrast to the politicians that she cited extensively and by name, the more critical voices remained anonymous and marginalized in her discussion. In addition, her pronouncements on the identities of the murdered victims were problematic, and there is need to be cautious about asserting what is only conjecture. *Id.* In the media, it was reported at length that Liz Trubishi regarded herself to be heterosexual and wrote as much in her diary. See Smadar Shir, *Nisharti Im Khor BaLev [I Remain with a Hole in My Heart]*, Yediot Aharonot—Seven Days, Nov. 20, 2009, at 50 [Hebrew]. Similarly, Nir Katz lived with his same-sex partner at the time he was killed, but for at least part of his life, he identified as bisexual; yet as opposed to Trubishi's heterosexuality, this was not discussed at all in the public sphere. See Nir Katz, *Ein Davar Kaze Bisexualit!* [There Is No Such Thing as Bisexuality!], Our Colors (Aug. 11, 2005) [Hebrew], <http://www.tapuz.co.il/Forums2008/Articles/Article.aspx?ForumId=929&aId=58872> (ironically titled). For a discussion of this dimension, see Eisner, *supra* note 117, at 120. Moreover, Hochberg (and others) noted that there was no Palestinian speaker at the rally, despite the fact that a Palestinian speaker did participate, although he was not allotted much time. Former MK Issam Machul's request to speak at the rally was refused, something that should be criticized, as he would have been a prominent Israeli-Palestinian speaker (see Machul's letter of protest to the Tel Aviv rally organizers, *HaDemkratia Eina Nitenet LeKhaluka [Democracy Cannot Be Divided]*, The Communist Party of Israel,

Indeed, most positions of power in the community “establishment” are held by Jewish, male homosexuals, the majority apparently *Ashkenazi*, and not lesbians, transgender persons, or bisexuals. As Hagai Kalai has shown, even those women who do hold pivotal positions in community organizations are not in the upper echelons of decision-making regarding such matters as the contents of the pride parade.¹²³

<http://maki.org.il/q-456/> [Hebrew]. Moreover, representatives from the Palestinian gay women’s organization *Aswat* were not allowed the opportunity to speak either. See Schulman, Israel/Palestine, *supra* note 50, at 139. On the refusal to allow Machul to participate and, in contrast, the participation of Sami Zeibak, the Palestinian gay male speaker, see Yaniv Halperin, *Ein BaAtzeret Bitui LaMigzar HaAravi* [There Is No Expression of the Arab Sector in the Rally], *Go Gay* (Aug. 8, 2009), <http://www.gogay.co.il/content/article.asp?id=8535> [Hebrew]. For a description of the disputes surrounding the rally, see Shai Greenberg & Neta Achituv, *Sipur HaAron* [The Story of the Closet], *Ha’ir*, Aug. 14, 2009, at 42 [Hebrew]. In the framework of the latter piece, Itzik Srur, the LGBT Association’s spokesperson, explained that the background to the refusal to allow Machul to participate was the reluctance to link the rally to the Occupation, and the discussion contrasts this with the participation of Zeibak, which was ignored by some of those who wrote about the rally.

123. See Hagai Kalai, *HaBikoret Hi Legitimit VeAnakhnu Behekkhet (Lo) Mkshivim La* [The Criticism Is Legitimate and We Are Definitely (Not) Listening], *Sexual Relations—Reflections of (Wo)men on Gender* (May 5, 2012), meandiscourse.wordpress.com/2012/05/05/gay-pride-and-homo-nationalism [Hebrew]. On the debates within the gay community about women’s lack of representation in organizations and events, see Ilan Lior, *Female Members of Israel Gay Youth Organization Accuse Its Leaders of Excluding Women*, *Haaretz*, Oct. 28, 2012, <http://www.haaretz.com/news/national/female-members-of-israel-gay-youth-organization-accuse-its-leaders-of-excluding-women.premium-1.472771>; Tsafi Saar, *HaDeot HaKdumot Shel HaKehila HaGeva* [The Prejudices of the Gay Community], *Haaretz*, Jan. 7, 2013, <http://www.haaretz.co.il/gallery/mejunderet/1.1901982> [Hebrew]. Moreover, it is unclear whether those enjoying these positions of power actually appreciate the privileges of their identity or the fact that Arab and Mizrahi women, transgender persons, and bisexuals have a harder time attaining positions of power. From their privileged positions, they at times even bemoan women’s absence from community activities (see, for example, Yair Qedar, *Gal Uchovsky Masbir Lama HaKehila HaLesbit Hi Kehila Khalasha* [Gal Uchovsky explains why the lesbian community is weak], YouTube (July 3, 2009), <http://www.youtube.com/watch?gl=SN&feature=related&hl=fr&v=2HimGVhYObg> (blaming the weakness of the lesbian community on a) its failure to put pressure on its potential leaders to come out of the closet and b) for placing other matters above the importance of the movement without giving any thought to the obstacles to positions of power faced by those who don’t belong to the metaphorical “old boy’s club” or to the fact that non-inclusive representation that presents itself as representing the community in its entirety (and not the demand for proper representation made by those who are excluded) is what in fact divides the community). See Iris M. Young, *Justice and the Politics of Difference* 116 (1990)

Thus, externally, the *Barnoar* youth center attack was a turning point, entrenching the “deal” as well as the new homonationalism. The flipside of the coin is that internally, the events following the attack—which would have presumably unified the community in its fight against homophobia—in fact deepened the rift amongst community activists. A chasm split radical queer politics and the not-so-new coalition of homo-national-normative politics that had now expanded to include the right wing as well. Since 2001, radical and queer blocs had been participating in the gay pride parades. But in June 2010, ten months after the *Barnoar* attack, three separate pride parades were held for the first time: a small parade called “Bringing the Parade Back to the Community” (or alternatively “Parading for a Change”) was held simultaneously to the municipality parade, while earlier in the day, an alternative radical march called “Just Before Pride” was held, with a few hundred participants.¹²⁴

It should be noted that LGBT politics has a history of activism challenging the normative order. This began already with the 2001 gay pride parade, when a group marched under the banner “There Is No Pride in Occupation.” This march launched the “Black Laundry” group, which set the parameters for activism that continues to this day in the field in various shapes and forms, even though the group itself has disbanded.¹²⁵

The tensions leading up to the 2010 gay pride events were an expression of the growing divisiveness in the community and hostility towards opponents of the “deal,” who were viewed as doomsayers. Prior to the parade, activists associated with the community

(addressing how those who demand representation are accused of divisiveness, instead of those who are truly exclusionary).

124. See Noa Kushrak, *Larishona Itkaimu Hayom Shloshe Mitzadei Ga'ava beTel Aviv [For the First Time Three Pride Parades Will Be Held in Tel Aviv]*, Haaretz, June 11, 2010, <http://www.haaretz.co.il/news/education/1.1206462>; Ken LeMitz'adim, *Lo LeAlimut [Yes to Parades, No to Violence]*, Go Gay (June 10, 2010), <http://gogay.co.il/item.php?id=7652> [Hebrew]. On the background to the alternative parades and organizations, see Eisner, *supra* note 117, at 122–25; Moreno, *supra* note 96. See also Hagai Kalai, *Shave? Lihot Ge'e! Al Shnei Mitzadei Ga'ave BeIrKtana Akhat [Is It Worth It? Be Proud! On Two Pride Parades in One Small City]*, Sexual Relations—Reflections of (Wo)men on Gender (June 9, 2011), meandiscourse.wordpress.com/2011/06/09/the-radical-lgbt-parade [Hebrew] (discussing the different parades and their politics).

125. See Ziv, *Performative Politics*, *supra* note 106; Dalit Baum, *Women in Black and Men in Pink: Protest Against the Israeli Occupation*, 12 Soc. Identities 563 (2006).

establishment were concerned that radical/queer/leftist groups would try to “occupy” and take over the parade with radical leftist messages. This concern grew following the Gaza flotilla incident, in which nine Turkish citizens were killed by Israeli Army soldiers while taking control of one of the flotilla ships.¹²⁶ This incident occurred only a few days before the pride parade was set to be held, and a fear arose that radical activists would march in the parade with Palestinian or Turkish flags.¹²⁷

In an effort to contend with these various tensions, on the eve of the parade, different activists and organizations drew up a sort of covenant, in which they all declared their commitment to a pluralism of opinions and to freedom of speech during the parade and pledged not to engage in violence.¹²⁸ The opposition to the presence of the radical left at the parade and the rise of the new homonationalism were expressed in the fact that the right-wing group *Im Tirtzu* (“If You Will It”) distributed Israeli flags at the parade, while various activists handed out stickers declaring “I’m a Proud Zionist.”¹²⁹

VI. THE CRISIS OF QUEER POLITICS

To a significant extent, the choice to hold a community parade parallel to the municipality-sponsored gay pride parade and an alternative-radical parade earlier in the day took the place of the presence of the radical-queer bloc at the central pride parade. This replaced the tradition of a radical bloc marching in the parade, as in the 2001 parade, when a group of activists (which subsequently formed the Black Laundry group) marched under the “There Is No

126. On the flotilla incident and legal questions it raises, see George Bisharat, Carey James & Rose Mishman, *Freedom Thwarted: Israel’s Illegal Attack on the Gaza Flotilla*, 4 Berkeley J. Middle Eastern & Islamic L. 79 (2011); Daniel Benoliel, *Israel, Turkey and the Gaza Blockade*, 33 U. Pa. J. Int’l L. 615 (2011); Douglas Guilfoyle, *The Mavi Marmara Incident and Blockade in Armed Conflict*, 81 Brit. Y.B. Int’l L. 171 (2011).

127. Yaniv Weizman, *Neged Ha“Quirim HaRadikalim” [Against the “Radical Queers”]*, Go Gay (June 9, 2010), <http://gogay.co.il/item.php?id=7647> [Hebrew].

128. See *Yes to Parades, No to Violence*, *supra* note 124.

129. In this year, the debates over the pride parades took place concurrently to the debates over sexuality and nationalism surrounding the Berlin and Toronto gay pride events. See Aeyal Gross, *Israeli GLBT Politics Between Queerness and Homonationalism*, Bullybloggers (July 3, 2010), <http://bullybloggers.wordpress.com/2010/07/03/israeli-glbt-politics-between-queerness-and-homonationalism>.

Pride in Occupation” slogan. The Black Laundry group may have ceased to exist as such, but this march, taking place in the shadow of the Second Intifada and attracting great attention, created a “queer counterpublic,” as described by Amalia Ziv, which is manifested in the continued persistence of the alternative discourse.¹³⁰

This counterpublic has transformed over the years. Queer politics in Israel in the 2000s was characterized by an attempt to challenge the hegemonic identity categories by identity dynamism or fluidity and by a rejection of monolithic binary identities.¹³¹ The radical activism that sustained the queer counterpublic did not manage to avoid identity politics. This period saw the resurgence of identity politics amongst groups within the gay community who sought a visible presence mainly in relation to the gay male hegemony that purported to represent the LGBT community. Arguably, the rise of homonormativity and homonationalism actually reinforced identity politics due to the need of groups excluded from this normativity and groups opposing it to struggle for representation and equality (in the sense of both recognition and redistribution) for their members.¹³² This was reflected in the activism of groups from which many of the queer activists had originated, for these groups tended to be organized more around identities than queer politics, which is founded on a political stance and identification. Thus, there was a mushrooming of organizations representing excluded groups, such as transgender persons and bisexuals. In this process, identity politics dismantles queer politics anew. In the pride parades after 2001, these politics were embodied in groups such as the Black Laundry and blocs that followed in its footsteps: the pink-black bloc of queer, radical, anarchistic, and other activists. At a later point, these politics were dismantled to a certain extent, albeit for the good of the (in itself important) representation of excluded groups, on which activists placed greater emphasis.¹³³

130. Ziv, *Performative Politics*, *supra* note 106, at 552–53. Ziv borrows the term “counterpublic” from Michael Warner. Michael Warner, *Public and Counterpublics* (2002) (describing the queer counterpublic as having “alternative discursive gender norms [that] constructed a world of fluid and elective gender while its political practices constructed a world in which sexuality supplanted nationality as a primary axis of identity and belonging”).

131. Ziv, *Performative Politics*, *supra* note 106, at 546–52.

132. On recognition and redistribution, see Nancy Fraser, *From Redistribution to Recognition? Dilemmas of Justice in a “Post-Socialist” Age*, 212 *New Left Rev.* 68 (1995).

133. Thus, for example, Shiri Eisner described how the community that consolidated around the “black-pink” bloc shifted its focus to transgender politics

Given the non-representation of these groups in the hegemonic gay discourse, their need for visibility and representation is obvious, and the purpose of this discussion is not to disregard or diminish the importance of such visibility.¹³⁴ The radical and alternative parades held in 2010 and 2011 were certainly evidence of the formation of a political coalition amongst those opposing the normative-nationalist-gay hegemony;¹³⁵ however, the discourse that surrounded them attested also to the resurgence of identity politics—this time, of the excluded groups.¹³⁶ As Amalia Ziv has noted, the division between identity politics and identification politics in this context can be challenged, and identity politics is not necessarily bound to an essentialist conception of identity.¹³⁷ The overall message of the radical and alternative parades demonstrates how identification politics can, in fact, reemerge out of the identity politics of excluded groups. A tension exists between identity politics' delineation of boundaries between groups, on the one hand, and its potential, on the other hand, to serve as the basis for identification politics or, in the words of Yonay, which might at first sound oxymoronic, "queer identity politics" (author's trans.) that is not

and how she and other activists moved from queer politics to bisexual politics. Eisner, *supra* note 117, at 91–93.

134. For a discussion of how the all-encompassing fluidity of identities in queer politics made it possible to create a group identity based on flexible identifications that enabled people to simultaneously occupy identity categories considered mutually exclusive, see Ziv, *Performative Politics*, *supra* note 106, at 550–52.

135. For a posting calling for participation in this parade, see Pnina Moldovano, *Zot Lo HaMesiba Sheli [It's Not My Party]*, Ha'oketz (June 8, 2011), <http://www.haoketz.org/2011/06/08/זאז-אל-המסיבה-שלי/> [Hebrew].

136. Eisner described the 2011 parade as including—alongside a group of anarchists and a group of clowns against the Occupation—the presence of groups representing bisexual identity, BDSM practices, and *Mizrahi* queer identity. Eisner, *supra* note 117, at 130. In contrast, Chen Misgav described the transformation of the "Trans in the Center" group operating out of the Tel Aviv municipal gay community center, from identity politics to queer activism, and even though it was originally intended as a "home" for the transgender community, it became a center for radical activism that includes queer, feminist, and transgender agendas. Misgav, *supra* note 96. Misgav also discusses the radical parades held in 2010 and 2011.

137. Ziv, *Performative Politics*, *supra* note 106, at 546–50, 554 n.5 ("I employ the term *politics of identification* to refer to political activism for a cause that is not directly one's own, that is, a struggle to lift the oppression or secure rights or freedoms for a group to which one does not belong—a struggle that nevertheless predicates and grounds itself on a relation of identification . . .").

based on isolation within a single identity but rather fosters solidarity with other excluded groups.¹³⁸

When considering the ascent of identity politics, it is important to recall also the emergence of Palestinian LGBT and queer groups, including the Palestinian gay women's group *Aswat* in 2002¹³⁹ and the Palestinian queer group *alQaws* in 2007,¹⁴⁰ with the latter growing out of a Palestinian group active in the Jerusalem Open House.¹⁴¹ While a full discussion of Palestinian LGBT and queer politics is beyond the scope of this article,¹⁴² it should be noted that this development is unique from the fragmentation processes described here, in light of the exclusion and oppression of the Palestinian population in Israel and the Occupied Territories and the

138. Yonay, *A Queer Look at the Arab-Jewish Conflict*, *supra* note 106, at 274–75. See also Yuval Yonay, *Etniut Quirit? Lekakh MiTeoria Shel Miniut LeDilemot Shel Solidariut BeOlam Rav-Tarbuti [Queer Ethnicity? A Lesson from Sexuality Theory on Dilemmas of Solidarity in a Multicultural World]*, 80 Pub. Space 100 (2008) [Hebrew] [hereinafter Yonay, *Queer Ethnicity*] (considering how queer identity can help bridge the tension between liberal universalist politics and a politics of difference).

139. The group defines itself as constituted of lesbian, bisexual, transgender, intersex, questioning, and queer women. *Aswat* Palestinian Gay Women, <http://www.aswatgroup.org/en> (last visited Nov. 9, 2014).

140. The group defines itself as a group of gay, lesbian, bisexual, transgender, questioning, and queer Palestinian activists. *alQaws* for Sexual & Gender Diversity in Palestinian Society, <http://www.alqaws.org/siteEn/index/language/en> (last visited Nov. 9, 2014).

141. See Haneen Maikey, *Signposts from Al Qaws: A Decade of Building a Queer Palestinian Discourse*, *alQaws* (Mar. 4, 2013), <http://alqaws.org/articles/Signposts-from-alQaws-A-Decade-of-Building-a-Queer-Palestinian-Discourse>.

Alongside these groups, there is also Palestinian queer group “Palestinian Queers for BDS (PQBDS),” which focuses its activism on the boycott on Israel. See *Palestinian Queers for Boycott, Divestment, & Sanctions*, <http://www.pqbds.com> (last updated June 18, 2012).

142. See Haneen Maikey, *The History and Contemporary State of the Palestinian Sexual Liberation Struggle*, in *The Case for Sanctions Against Israel* 121, 121–29 (Audrea Lim ed., 2012) (discussing the larger historical context of the development of the queer Palestinian movement); Gil Z. Hochberg, Haneen Maikey, Rima, & Samira Saraya, *No Pride in Occupation: A Roundtable Discussion*, 16(4) GLQ: J. Lesbian & Gay Stud. 599, 599–610 (2010) (reflecting a roundtable discussion in which local Palestinian queer activists in Israel and the occupied Palestinian territories discussed activism in these organizations). For a discussion of the connection between Palestinian LGBT politics and the question of pinkwashing and homonationalism, see Jasbir Puar, *The Golden Handcuffs of Gay Rights: How Pinkwashing Distorts Both LGBTIQ and Anti-Occupation Activism*, *Feminist Wire* (Jan. 30, 2012), <http://thefeministwire.com/2012/01/the-golden-handcuffs-of-gay-rights-how-pinkwashing-distorts-both-lgbtqi-and-anti-occupation-activism/>.

complex relations between this population and the Israeli state. Nonetheless, it is also part of the process in which the potential of queer politics that is not based on identity clashes with the renewed politics of identity. But it should be stressed: nothing stated here detracts from the importance of such forms of organization.

The entry into the Hebrew discourse of the term "*Lahatab*," the translation of the Anglo-American term "LGBT," represented an attempt to include bisexuals and transgender persons in the community, alongside gay men and lesbians. Indeed, the crisis of queer politics is reflected in, amongst other things, the expanding "alphabet soup" of identities, as more and more letters representing identities are added (such as intersex persons, which are represented by the letter "I" in English and the letter *aleph* in Hebrew).¹⁴³ While the need to add letters to represent excluded identities signifies their entry into the discourse of identity politics and representation, their growing number attests to the impossibility of such representation. In the past, when there were insufficient awareness and recognition of the identities represented by the letters "B" and "T," "the gay & lesbian community" was the commonly used term. Similarly, today, there are identities that are excluded from the letters currently in use (for example, genderqueer and pansexual). These identities, alongside others whose existence or exclusion has yet to be acknowledged, can justifiably be expected to demand representation. An even clearer expression of the crisis is the addition of the letter "Q" to the LGBT acronym (the letter *kuf* in the Hebrew counterpart). In recent years, it has become common to use the Hebrew acronym "*Lahatab'aq*" (a translation of LGBTQI), as an alternative to "*Lahatab*" ("LGBT" in English). Use of this term, which is supposedly more inclusive and integrates the "queer," has in fact at times served as a sort of signifier of radical politics as opposed to establishment politics. Yet using this term also signals radical politics' (perhaps paradoxical) departure from the queer politics that the "Q" is supposed to represent as well as from the queer counterpublic.¹⁴⁴ Instead, there has been a move

143. For more on this and the limitations of this practice, see Sangeeta Budhiraja et al., *Spelling It Out: From Alphabet Soup to Sexual Rights and Gender Justice*, in *Development, Sexual Rights and Global Governance* 131, 131–44 (Amy Lind ed., 2010) (discussing the history of the alphabet soup of identities in the sexual rights and gender justice movements, and the limitations of this practice).

144. I refer here to the use of "Q" to represent "Queer." In the American context, it sometimes represents "Questioning," but the parallel Hebrew letter does not have this meaning in Hebrew.

towards identity politics that, in the end, in emphasizing identity and representation (in response to the rise of homonormativity, amongst other things), comes full circle and entrenches identity politics anew, after its deconstruction. The use of LGBTQI is supposedly more inclusive, and the expression (unlike LGBT) includes also intersex persons and, especially, queers with the letter “Q.”¹⁴⁵ But adding the letter “Q” to the LGBT acronym, as though it represents an additional specific identity that must be counted alongside the others, strips queer of its meaning as an anti-identitarian idea that rejects essentialist identity—and thereby turns queer into just one more identity demanding representation. This comes at the expense of its potential to replace identity politics with identification politics and as a political stance.¹⁴⁶ Furthermore, it constitutes a withdrawal from the radical notion of challenging fixed identities that are based on sexual orientation or gender and a diminishment of the critical value of the queer idea.¹⁴⁷

The invitation to the 2011 radical parade that was organized as an alternative to the municipal gay pride parade¹⁴⁸ illustrates just how far the radical discourse—which sought to offer an alternative to homo-national-normative politics—has drifted from the potential of queer politics. On the invitation, the radical parade was described as necessary “because the municipal parade marches for equality amongst identities and not for the difference amongst them” and the invitation was directed at anyone who values “freedom over

145. On how the multiplicity of letters signifies representation of more groups but also creates confusion, see Ma’ayan Yahbes, *L”H, LH”T, LHT”B, LHTB”K [LG, LGT, LGTB, LGB, LGTBQ]*, Time Out, June 7–14, 2012, at 18 [Hebrew]. For additional discussions of the subject attesting to the conceptual confusion—over the interpretation of “A,” the meaning of “queer” in this context, and the infinite potential of letters and the randomness in setting their boundaries—see, for example, Dany Zak, *Ani Shayakh LeKehilat HaLHT”B — Lo HaLHTBA”K [I Belong to the LGBT Community—Not the LGBTQ Community]*, Mako Pride (Mar. 22, 2012), <http://www.mako.co.il/pride-news/local/Article-769136a2b6a3631006.htm> [Hebrew]; and in the response to Zak, see Shiri Eisner, *HaQuirim HaA-Miniim VeHaBisexualim Hem Khelek Mehakehila HaGey [The Asexual Queers and Bisexuals Are Part of the Gay Community]*, Mako Pride (Mar. 25, 2012), <http://www.mako.co.il/pride-news/local/Article-afe3b419c984631006.htm> [Hebrew].

146. On such a meaning to the queer idea, see Eve K. Sedgwick, *Tendencies* 8–9 (1994).

147. On the queer idea, see Annemare Jagose, *supra* note 120, at 129–31.

148. See *HaMits’ad HaRadikali [Radical March]*, Facebook (Oct. 26, 2014, 9:35 AM), <http://www.facebook.com/events/112977572123113> [Hebrew].

equality.”¹⁴⁹ This underscores the tension between the queer politics of identification and deconstructing identities, on the one hand, and the identity politics manifested in the invitation, on the other: in contrast to what was stated on the invitation, I maintain that instead of marching *for* the difference amongst identities, it would be radical, or at the very least “queer,” to march *against* the idea of dividing people into random (and certainly binary and hierarchical) categories of identity that put up artificial boundaries between people, particularly when privileges and discrimination are allocated in accordance with those categories. The notion of freedom *within* these identities, rather than freedom *from* these identities, remains trapped within the frame of identity politics. It raises no questions about the identity categories themselves. The outcome, in essence, is that the radical alternatives are susceptible to the queer criticism of liberal conceptions of freedom made in the context of gay and lesbian identity politics.¹⁵⁰ The desire to stress difference between identities—even if it originates in welcome opposition to the notion that everyone must align themselves with the normative (or perhaps “homonormative”) standard or, alternatively, in opposition to the preference of certain identities over others—is likely to reinforce the division into the identity categories, which serves heteronormative patriarchy and neoliberalism. While the queer idea does not ignore the existence of identities or the fact that privileges and discrimination are allocated across them, it does treat these identities critically.

Moreover, there is the problematic rejection of the idea of equality, which appears to be grounded on a representation of the choice spectrum in the LGBT struggle as stretching from a liberal

149. It should be noted that the 2011 radical parade was accompanied by an *Equal to Whom?* campaign as an alternative to the municipal parade's *Worth It to Be Gay* campaign (see Tel-Aviv Pride Parade, <https://www.facebook.com/media/set/?set=a.359834580726570.83799.359827034060658&type=3> (last visited Dec. 4, 2014)), and included interesting queer contents and identity deconstruction. See *Shave LeMi? Campaign HaTeguvah Shel HaMits'ad Haradikali* [*Equal to Whom? The Reactionary Campaign of the Radical March*], Facebook, <http://www.facebook.com/lo.shave>. On the two parades and their respective campaigns, see Aeyal Gross, *Hizdamnut LePolitika Quirit* [*An Opportunity for Queer Politics*], Ha'oketz (June 10, 2011), <http://www.haoketz.org/2011/06/10/%D7%94%D7%96%D7%93%D7%9E%D7%A0%D7%95%D7%AA-%D7%9C%D7%A4%D7%95%D7%9C%D7%99%D7%98%D7%99%D7%A7%D7%94-%D7%A7%D7%95%D7%95%D7%99%D7%A8%D7%99%D7%AA/> [Hebrew].

150. Criticism of such concepts of freedom is theoretically grounded particularly in Foucault's work. Michel Foucault, *The History of Sexuality—The Will to Knowledge* (1976); Foucault, *supra* note 22.

notion of equality based on assimilation, at the one end, to absolute rejection of the idea of equality in favor of a notion of “freedom,” at the other end. In fact, a notion of freedom unaccompanied by a substantive notion of equality takes us back to the difficulties noted by critics of the liberal notion of freedom since Marx, thus sounding like liberal or even neoliberal identity politics.¹⁵¹ Under the class paradigm, there are those who see identity politics as serving neoliberalism at the expense of the class struggle.¹⁵² Others, however, stress the importance of identity politics in its liberation from the old basic premises and as transgressive politics that links every personal issue to politics and endows it with a new collective value while enabling existing identities to be undermined.¹⁵³ A queer approach that regards identities from a critical perspective, that understands the importance—in Nancy Fraser’s terms—of both recognition and redistribution,¹⁵⁴ will not necessarily reduce identity politics to neoliberalism or reject identity politics; rather, such an approach will be critical of an identity politics that sanctifies essentialism and identitarian politics of representation while discarding the notion of equality in favor of stressing the “difference” and “freedom” of identities.¹⁵⁵ In fact, many criticize the narrow and formal conception of equality adopted in the LGBT struggle on the grounds that a substantive notion of equality would acknowledge difference among people and not measure them according to the hegemonic standard. A radical conception of equality would relate to class and economic inequalities as well.¹⁵⁶

151. It is clear to me that this was not the intention of the organizers and participants in the radical parade, but I do think that at times the attempt to formulate radical politics does fall into this trap.

152. See, e.g., Danny Gottwein, *Zehut Neged Ma'amad: Rav-Tarbutiut KeIdiologia Neo-Liberalit [Identity Versus Class: Multiculturalism as a Neoliberal Ideology]*, 19 *Theory & Criticism* 241 (2001) [Hebrew] (discussing the tension between identity politics and the class struggle in the Israeli context).

153. See Yehuda Shenhav, *Ptakh Davar: Zehut BeKhevera Post-Leumit [Notes on Identity in a Post National Society]*, 19 *Theory & Criticism* 5 (2001) [Hebrew] (discussing the importance of identity politics in the Israeli context). For a discussion and review of the different aspects of this debate as it took place in the Israeli context, see Yonay, *Queer Ethnicity*, *supra* note 138, at 100–04.

154. Fraser, *supra* note 132.

155. On differences between various versions of identity politics that include criticism anchored in political economics and for a critical discussion of the criticism of identity politics, see Duggan, *supra* note 16, at 79–88.

156. Duggan, *supra* note 16, at 20–23 and accompanying text; see also Urvashi Vaid, *Irresistible Revolution: Confronting Race, Class and the Assumptions of LGBT Politics* 1–31 (2012) (addressing the limits of the equality

Given this, equality and freedom do not contradict. Freedom without equality amounts to the adoption of the liberal idea of abstract rights, and equality without freedom amounts to the adoption of notions from liberal thought that warrant criticism, because they do not give account to the fact that without equality the ability to exercise freedom remains unequally distributed, and mostly lies with the “haves.”¹⁵⁷ A queer conception of equality would, of course, reject the notion of measuring equality by a hegemonic standard that purports to be universal,¹⁵⁸ and it should recognize “equal difference” that is based not only on similarity but also on what is different. Reinforcing, on the one hand, the essentialist message that “difference” amongst people is based on arbitrary categories while rejecting, on the other, any need for substantive equality undercuts the critical potential of queer thought.

Clearly, there is no single meaning or content to the term “queer,” which has a long and complex history. Yet the critical opportunity embodied in queer politics is missed when the discourse of identities and of “freedom without equality” is adopted uncritically.¹⁵⁹ That being the case, queer politics contends with homonationalist politics from this place of crisis; the rise of homo-national-normative politics is generating a counter-reaction that is in fact characterized by an intensified renewal of identity politics¹⁶⁰ that is likely to come at the expense of the queer endeavor

concept within the LGBT movement in the American context); Conrad ed., *Against Equality*, *supra* note 17 (critiquing the mainstream LGBT movement’s focus on marriage and military service and its reluctance to advocate for LGBT people in prison). Although this compilation edited by Conrad is entitled *Against Equality*, its editor in fact advocates that equality “in the narrow sense dictated by neoliberalism,” as opposed to “equality” as a whole, should be rejected. *Id.*

157. Also within liberal thought, there are those who criticize this dichotomy. For example, Ronald Dworkin has asserted that as opposed to the idea of “freedom as license” to do as I please, the notion of “freedom as autonomy” examines the question of a person’s status as autonomous and equal. Ronald Dworkin, *Taking Rights Seriously* 259–65 (1977).

158. Young, *supra* note 123. On “queer politics of identity,” see also Yonay, *Queer Ethnicity*, *supra* note 138 (considering how queer identity can help bridge the tension between liberal universalist politics and a politics of difference).

159. For a discussion of queer thought’s potential to contribute to concepts of identity through its refusal to recognize any one concept of identity as “correct” so that it will not become a means for supervising the identity and conduct of community members, and on the attempt to develop politics of queer identity, see Yonay, *Queer Ethnicity*, *supra* note 138; Yonay, *A Queer Look at the Arab-Jewish Conflict*, *supra* note 106.

160. An example of the intensification of identity politics in the context of sexuality is the demand made of privileged “allies” to shut their mouths, Shiri

and its radical potential¹⁶¹—unless identity politics becomes politics of identification. So long as it engages in the splitting-up of identity politics into groups, queer politics will struggle to effectively oppose the mainstreaming of community politics and the hegemony of homonormativity.

VII. DILEMMAS FOR QUEER POLITICS

When considering this struggle, it is important to recall that queer politics, which is critical of collaboration with the establishment, faces a situation in which it is supposedly easy to dismiss the mainstreaming of gay and lesbian politics or LGBT politics and simply try to distance itself from this process. In reality, LGBT politics, even in its queerest variations, must contend with issues of acceptance, recognition, and legitimacy. In our world, notwithstanding the understanding that these identities are social constructs, people interpret themselves and others according to such categories as gay, lesbian, bisexual, and transgender, and symbolic and material privileges and discrimination are allocated according to these identities. Hence, the importance of sending a positive message regarding these identities to people, particularly youth who interpret and experience themselves as such, has been broadly acknowledged even if, from a utopian perspective, some of us would point to the need for liberation from, rather than within, these categories. Accordingly, two tensions arise. The first touches on the dilemma between the desire for legitimacy, acceptance, and recognition, on the

Eisner, Ani *Muda/t La Privilegiot Sheli – Ma Akhshav? [I Am Aware of My Privileges—What Now?]*, Black Purple—Love, Rage, Pride (Aug. 24, 2012), <http://bidyke.wordpress.com/2012/08/24/אני-מודעת-לפריווילגיות-שלי-מה-עכשיו/> [Hebrew].

161. On how the response to homonormativity cultivates amongst its opponents a contest of “oppression” between identities, see Leehee Rothschild, Lecture at The Twelfth Annual LGBTQ Studies and Queer Theory Conference, Tel Aviv University: (An)other Sex 12 (May 2012) (on file with author). On the radical potential of queer politics, amongst other things, in challenging the stability of identity categories without completely abandoning them, see Cathy Cohen, *Punks, Bulldaggers, and Welfare Queens—The Radical Potential of Queer Politics?*, 3 GLQ: J. Lesbian & Gay Stud. 437 (1997). See a similar observation by Jack Halberstam, that “once upon a time, the appellation ‘queer’ named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns.” Jack Halberstam, *You Are Triggering Me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma*, Bully Bloggers (July 5, 2014), <http://bullybloggers.wordpress.com/2014/07/05/you-are-triggering-me-the-neo-liberal-rhetoric-of-harm-danger-and-trauma/>.

one hand, and the fear of mainstreaming and being caught in a bear hug with the establishment on the other. This dilemma lies at the heart of LGBT politics.¹⁶² A second tension exists between the need for affirmation of these identities and the need for their deconstruction in order to achieve freedom not only within them but also from them. The latter tension is related to the tension between identity politics that emphasizes boundaries between people and identity, on the one hand, and politics that sees itself as a basis for boundary-crossing identification politics on the other. Ignoring these tensions can lead to reductive conceptions of LGBT rights politics and the abandonment of queer theory's potential not only as criticism but also as a tool of critical thought and theory.¹⁶³

A need for critical thought and critique arises also in the context of the pinkwashing debate in both the international arena and Israel. This debate is at times plagued by a polarization that misses the complexity of the current position of LGBT rights in Israel and elsewhere. Some critics of pinkwashing decry the appropriation of gay rights by the Israeli state and assert either that Israel is not as gay-friendly as it professes to be or else does not truly recognize gay rights. At the same time, these critics assert that the state of gays or their rights is not as dire in the Arab world or Palestinian society as Israel and others purport.¹⁶⁴ Reactions of this type were prominent following the *Barnoar* youth center attack. Some of the responses addressed the shock that followed the incident with the claim that Israel is in no way progressive with regard to LGBT rights and as homophobic as any other society.¹⁶⁵ Many reactions to the attack

162. For a discussion of this dilemma, see Urvashi Vaid, *Virtual Equality* (1995).

163. On this difference, see Aeyal Gross, *Where LGBT Rights and Nationalism Meet*, 972 *Magazine* (Apr. 20, 2011), 972mag.com/where-lgbt-rights-and-nationalism-meet/13515 (discussing Eric Fassin's argument that we should have not have to make a choice between sexual democracy and racial democracy).

164. For examples, see Schulman, *Israel/Palestine*, *supra* note 50 (discussing Israel's attempts since 2005 to "rebrand" itself as LGBT friendly, despite little real change in cultural attitudes, particularly among religious conservatives); Berthelsen, *supra* note 81 (noting the growth of LGBT organizations in the Arab world and arguing that progress on LGBT rights in Palestine has been undermined by the lack of a strong, central state to protect individual rights).

165. For example, see *Queers Respond to Tel-Aviv Homophobic Violence, Call for BDS Against Israel*, BDS Movement (Aug. 24, 2009), <http://www.bdsmovement.net/2009/queers-respond-to-tel-aviv-homophobic-violence-call-for-bds-against-israel-517>, a statement released by several Israeli and international LGBT groups and individuals after the attack. The statement

tried, justifiably, to set it in the broader context of homophobia, xenophobia, and violence.¹⁶⁶ But it is important to realize that some of those who criticized the attempts to present Israel as a progressive society responded to the appropriation of LGBT rights by erasing the advances that had been made. Certainly there is homophobia in Israel; certainly there is no full rights equality; and certainly, inequalities persist despite the advances in equal rights for the LGBT community. Yet it cannot be denied that relative rights equality has been attained in Israel, in particular by circumventing the institution of marriage, and that homophobia notwithstanding, there is also a considerable extent of openness and acceptance in Israel. All of these achievements are the result of many hard battles waged by the community, and acknowledging them in no way obscures their limitations, their appropriation by the state, or the continued persistence of discrimination and homophobia. On the contrary: it is precisely so that we may understand the role played by these achievements as a fig leaf for Israeli democracy that they must be admitted, along with their limitations, and not denied. To properly grasp the discrepancy between the acceptance of gays and lesbians (more so than transgender persons and bisexuals) in certain quarters and the racism and exclusion directed at the Palestinian public, this acceptance must be recognized and explored, regardless of its limitations. Moreover, the simplistic assertion that Israel does not recognize LGBT rights not only erases the LGBT community's activism and achievements, but also fails to discern the fig-leaf role of gay and lesbian rights and the role of the "acceptance" of gays and lesbians in the self-perception and presentation of right-wing politicians and, more broadly, of Israel as liberal and thereby, in the continuation of the Occupation.

stresses that members of the LGBTQ community suffer from violence and discrimination in Israel as in all other parts of the world. This is certainly undeniable, especially in light of the *Barnoar* attack. Yet a statement of this type ignores the existence of different degrees of violence and discrimination, the relative diminishment of discrimination in Israel, and the relatively minimal incidence of violence prior to the attack. Thus, while it may be justified to set the *Barnoar* murders in the context of violence in Israel in general as the statement did, this nonetheless illustrates how the desire to refute the relative openness in this area in Israel fails. In denying this relative openness, the statement misses the opportunity to discuss the inconsistency between this openness and the ongoing violence of the Occupation. This statement—which opens with rage over the murders and ends with a call to boycott Israel—exemplifies the reductionism that flattens all forms and levels of violence and exclusion and makes the statement itself incoherent.

166. See *supra* notes 119, 122, and accompanying text.

In addition, in focusing the pinkwashing criticism on the claim that Israel is not gay-friendly and does not recognize gay rights, on the one hand, and that the state of gays or their rights in the Arab and Muslim world, and Palestinian society in particular, is not as bad as it is sometimes presented, on the other hand, this line of argument is the mirror-image of the Israeli propaganda claim: it internalizes the official Israeli claim and challenges it on factual grounds rather than focusing on the fact that the state of LGBT rights in Israel, however good or bad it may be, in no way deflects the state's human rights violations and deprivation of democracy in other contexts, especially in the context of the Occupation. Thus, the mirror-image of pinkwashing itself is produced; the counterclaim falls into the trap of reductive discourse that seeks to diminish the genuine advances in gay rights in Israel and disregard or erase homophobia and other forms of oppression based on sexuality that do exist in Palestinian society or the Arab world.¹⁶⁷ Again, it is important to stress that homophobia and discrimination persist in Israel and the racist discourse that presents Israel as enlightened as opposed to the Arab-Muslim-Palestinian world must be countered. We also must not overlook the extent to which the Israeli Occupation is a factor in the situation of Palestinian LGBTs, beyond the matter of the asymmetry between an autonomous state and occupied territory. Yet highlighting the fact that there are no valid laws in the West Bank against "sodomy" or the existence of Palestinian LGBT and queer organizations, while ignoring the homophobia and complex status of these organizations in their relations with both Israel and the Palestinian Authority, constitutes a type of pinkwashing in itself and constructs a reductive and uncritical discourse. A critical analysis would inquire into the boundaries of the openness and equality towards LGBTs in Israel—in terms of the scope of the rights granted as well as the scope of those who enjoy these rights. There is no doubt that Tel Aviv is generally less friendly to Palestinians, work immigrants, and asylum-seekers than it is to Jewish Israelis, regardless of sexual orientation or gender identity. Factors such as ethnicity, race, and class must also surely play a role. Also to be taken into account is the extent to which the relative freedom enjoyed by LGBTs in Israel is contingent on belonging to a hegemonic group or the ability to pass as belonging to one of these groups or to "cover"¹⁶⁸ signs of belonging to non-hegemonic identities: To what

167. See *supra* note 165 and accompanying text.

168. On "covering" in this context, see Kenji Yoshino, *Covering: The Hidden Assault on Our Civil Rights* (2006).

extent does “gay-friendliness” in Israel and, specifically, in Tel Aviv correlate to these dimensions and is it restricted by other factors?¹⁶⁹ There are important differences between the reductionism of pinkwashing and that of anti-pinkwashing activists. The former operates within the framework of state propaganda discourse, which seeks to perpetuate the Occupation and silence critics whereas the latter serves as a rhetorical tool for opponents of the Occupation. Notwithstanding these differences, the absolute claim that only those LGBTs who belong to hegemonic groups benefit from Israeli openness and rights suffers from a reductionism that makes it the mirror image of pinkwashing.

A critical discourse that examines the Israeli state’s appropriation of LGBT rights will explore the complexity of LGBT rights in Israel, recognizing that even if these rights are more accessible to the hegemonic groups, they are not accessible *exclusively* to them. Such a discourse will facilitate a discussion of LGBT rights in Israel without labeling it in advance as homonationalist or pinkwashing: the challenge before us is how to talk about LGBT rights without being part of the appropriation process. There is a need to develop a discourse that will also enable such talk in arenas engaged in criticism of homonationalism.¹⁷⁰ In this context, it is important to note that despite the tendency to sometimes view LGBT rights as solely serving the hegemony, there are instances in which they are actually of special significance to weak and excluded groups. An illustrative case is when the Nazareth District Court, sitting on an appeal of a family court decision, granted inheritance rights in public housing to a man who had lived for decades with his now deceased male partner in Kiryat Shmona, a peripheral town in

169. See Hagai Kalai, *Friendly, Talui LeMi? [Friendly, Depends on to Whom?]*, Ha’oketz (Nov. 8, 2011), <http://www.haoketz.org/2011/11/08/פרנדלי-תלוי-למי/> [Hebrew]; Hagai Kalai, *Zarim BeBaytam: Mishtor Merchavi VeHapolitika HaKvirit [Strangers in Their Own Home: Spatial Regimentalization and Queer Politics]*, Erev Rav (July 9, 2012), erev-rav.com/archives/18937 [Hebrew].

170. For a broader discussion of this issue as well as a critical discussion of a position that views highlighting Belgian acceptance of refugees based on sexual orientation as a form of problematic instrumentalization of gay rights for nationalist purposes, see Gross, *Where LGBT Rights and Nationalism Meet*, *supra* note 163. For criticism of excessive use of homonationalism as a public relations tool to a point where rights struggles are likely to be paralyzed, see Aleardo Zanghellini, *Are Gay Rights Islamophobic? A Critique of Some Uses of the Concept of Homonationalism in Activism and Academia*, 21 Soc. & Legal Stud. 357 (2012).

Northern Israel, both geographically and socio-economically.¹⁷¹ This case exemplifies how at times the recognition of same-sex partners' economic rights can be no less important—and perhaps even significantly more so—to the socio-economic and geographic periphery. Wealthy partners from the center of the country are more aware of their rights and have access to legal counsel; thus, there is a greater chance that they will make a will. This case also highlights the inaccuracy of describing the LGBT rights discourse in Israel as accessible only to Jews from a certain socio-economic class as well as the fact that recognizing a partnership (or marriage in other contexts) can have particular material significance for people from the socio-economic periphery. Therefore, in the context of legal rights and recognition of partnerships, as well, critical queer thought would facilitate a complex discussion of the many, at times contradictory, meanings of social phenomena and rights.

This discussion cannot ignore the critical discourse on how LGBT identities in themselves are often considered biased paradigms rooted in a Western liberal conception of LGBT identities and rights that is not necessarily suited to the context or needs of other societies, including Palestinian society.¹⁷² Similarly, the discussion of LGBT rights and coming-out issues, as well as the invocation of recognition of LGBT identities, the rights of those who identify as LGBT, and the extent to which those individuals come out of the closet, may suffer

171. CC (Nz), 3245/04, *Estate of S.R. v. State Attorney-General*, PM 2002(2) 521 (2004) (Isr.).

172. See Lynn Darwich & Haneen Maikey, *From the Belly of Arab Queer Activism: Challenges and Opportunities*, Bekhsoos (Oct. 12, 2011), <http://www.bekhsoos.com/web/2011/10/from-the-belly-of-arab-queer-activism-challenges-and-opportunities> (describing the struggle activists face in forming a discourse regarding LGBT/queer movements in Arab societies that adequately reflects the movements' realities and embodies their struggles); see also Maikey, *Signposts from Al Qaws*, *supra* note 141 (discussing the importance of an LGBT discourse that focuses on the "uniqueness of the experience and the local context, understanding the structure of sexuality and the attitudes around it in the Palestinian society and cautioning from importing strategies which are often irrelevant to our reality"); Haneen Maikey & Sami Shamali, *International Day Against Homophobia: Between the Western Experience and the Reality of Gay Communities*, Bekhsoos (May 23, 2011), <http://www.bekhsoos.com/web/2011/05/international-day-against-homophobia-between-the-western-experience-and-the-reality-of-gay-communities/> (discussing and critiquing the "tendency to generalize western experiences as the most correct and the sole experiences for others to be measured against"); Ritchie, *Pinkwashing*, *supra* note 81, at 568–71 (noting that "[t]he assumption that the emergence of self-identified Arab queers is a straightforward result of the colonial imposition of Western values is, at best, naïve.").

from the same biases. Many authors have noted the restrictive, and not only liberating, dimension of the prevalent global identity discourse, as well as how concepts of LGBT rights are likely to be part of a global neoliberal privatization of rights and homonormative agenda that, along with the imperialistic and racist social order, constitutes gay rights that distinguish between “progressive” and “civilized” cultures and “barbaric” cultures.¹⁷³ In order to understand the complex role of LGBT rights and their link to the rise of homonormativity and homonationalism, these dimensions must be taken into account. A comprehensive discussion of these issues is beyond the scope of this article. It must be stressed, however, that this analysis, in my opinion, in no way negates the fact that people who are construed—or construe themselves—as belonging to these identities, anywhere in the world, as well as people who feel no connection to the LGBT identities but whose sexual practices are identified with them, require protection from persecution and discrimination in a range of social and political contexts. This holds true even if the Western models of identity, rights, and “coming out” are not necessarily always suited to their particular circumstances.¹⁷⁴

I have discussed how the pinkwashing criticism can at times suffer from reductionism and emerge as a mirror image of the Israeli propaganda claim. Yet some of those who criticize the critical pinkwashing discourse in fact flatten it themselves. This occurs

173. See Anna M. Agathangelou et al., *Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire*, 100 *Radical Hist. Rev.* 120 (2008); see also Stychin, *supra* note 117, at 967–68 (stating that “it is easy for gay politics to become politically conservative in an era of gay marriage and same-sex partnership benefits. These arguably assimilationist political moves also lead to the construction of some “queers” as rights undeserving—the dangerous, and the uncivilizable”); Franke, *supra* note 79 (noting that government officials in countries like Israel have employed the concept of recognizing LGBT rights for the purpose of bolstering their public image and promoting a homonationalist, homonormative discourse). For a discussion of the way in which rights claims made by white LGBTs disregard questions issues of race and racism, see Damien W. Riggs, Priscilla, (White) Queen of the Desert (2006).

174. For a discussion of these questions, see Aeyal Gross, *Queer Theory and International Human Rights Law: Does Each Person Have a Sexual Orientation?*, 101 *Am. Soc’y Int’l L. Proc.* 129 (2007); Amr Shalkany, *On a Certain Queer Discomfort with Orientalism*, 101 *Am. Soc’y Int’l L. Proc.* 125 (2007); Rahul Rao, *Third World Protest: Between Home and the World* 176–79 (2010); Aeyal Gross, *Post/Colonial Queer Globalisation and International Human Rights: Images of LGBT Rights*, 4 *Jindal Global L. Rev.* 98 (2013), available at [http://www.jgls.edu.in/JindalGlobalLawReview/PDF1/Aeyal_Gross_\(Chapter-5\).pdf](http://www.jgls.edu.in/JindalGlobalLawReview/PDF1/Aeyal_Gross_(Chapter-5).pdf).

primarily when they read into the criticism of the appropriation of LGBT rights for Israeli propaganda certain premises or claims that are not—or at least not necessarily—present (even if at times, as described above, there are echoes of such claims). Under such readings, the pinkwashing critique is understood as denying the actual state of Palestinians in the Occupied Territories and of LGBT rights in Israel; it is read as embracing a type of conspiracy theory that holds that Israel promotes LGBT rights only to vilify the Palestinians and for propaganda purposes, rather than analyzing how (real and sometimes imagined) advances in this area have been appropriated for propaganda.

In his criticism of the pinkwashing critique, Alon Harel claimed that blaming the Foreign Ministry for Israel's use of gay rights as propaganda to divert public attention from violations of Palestinian human rights is like accusing the Tourism Ministry of using the fact that there is sunshine in Israel to a similar end. He also asserted that we must not assume that the global public is not sufficiently intelligent to realize that the fact that Israel respects gay rights does not mean it respects Palestinian rights as well.¹⁷⁵ I contend that Harel's claim is misguided in two respects. The first is in the comparison he makes to the assertion of sunny weather in Israel: Highlighting the occurrence of a natural phenomenon is not intended to imply that Israel is a liberal democracy that respects human rights. In contrast, the claim regarding gay rights in Israel is thus intended. Its purpose is to convey to Western liberals—even those who are aware of Israel's violation of Palestinian rights—that despite all the problems that they hear about, Israel (allegedly) shares their liberal democratic values and, therefore, should be supported or at least not criticized too harshly. Second, Harel's stance ignores the broader impact of the endeavor to portray Israel as a liberal democracy, which clearly does not lead people to the direct conclusion that Israel is "upstanding" in relation to Palestinian rights because it is "upstanding" in relation to gay rights. The effect is far more complex and part of the molding of Israel's image as a liberal democracy, as a country whose values "we" (Western liberals) can identify with and, therefore, must not condemn. This latter process is what warrants criticism, if we are concerned with how the Occupation undermines democracy in Israel and prevents it from

175. Alon Harel, *Pinkwashing and the Fallacies of Gay Politics*, Hebrew Univ. L. Faculty Blog (May 12, 2012), hebrewu-law.blogspot.co.il/2012/05/pinkwashing-and-fallacies-of-gay.html.

being a liberal democracy. Moreover, the underlying goal of Israel's use of gay rights as "propaganda" and its attempt to depict itself as a liberal democracy because it upholds values of "progress" and "enlightenment," including gay rights, is to reduce the pressure to end the Occupation. In other words, the goal is to enable Israel to continue the Occupation and the human rights violations this entails. Thus, only if we hold gay rights to be more important than Palestinian rights can we be unconcerned with Israel's use of gay rights as propaganda.¹⁷⁶

VIII. HOMONORMATIVITY, HOMONATIONALISM, AND PINKWASHING: THE NEED FOR CRITICAL CONCEPTIONS

Some scholars have noted the masculine conception of the nation-state as being characteristic of Zionism, which sets as one of its ideals the masculine "New Jew" as opposed to the European "Old Jew," who was regarded as emasculated, effeminate, and sometimes even homosexual. Daniel Boyarin¹⁷⁷ and Michael Gluzman¹⁷⁸ have

176. Yehoshua Gurtler has criticized the pinkwashing critique from a different angle, claiming that instead of accusing Israel of pinkwashing, it should be accused of not doing enough for LGBT rights and the opportunity should be used to demand that Israel pay this debt. Yehoshua Gurtler, *The Pink Elephant and the Israeli-Palestinian Conflict*, Haaretz, May 13, 2012, <http://www.haaretz.com/opinion/the-pink-elephant-and-the-israeli-palestinian-conflict-1.430034>. Indeed, part of the problem is that Israel did not actively do enough for LGBT rights. Yet it is doubtful, in my opinion, that there is validity to Gurtler's claim, that recognizing LGBT rights would lead to a general increase in openness and equality in Israeli society and, in this way, would have a positive impact on human rights in Israel in general. At times, quite the opposite is true: as human rights violations in Israel multiply and grow, so does the need for a fig leaf to cover the shame. Thus, as opposed to what we might think intuitively, there is no correlation between the general protection of human rights and the status of LGBT rights. In the present state of affairs, in which Israel appropriates LGBT rights as its fig leaf, gay rights are likely—as I have claimed above in the text—to be used both internally and externally by Israel and politicians to feel and present themselves as very liberal and progressive, all the while they continue to crush Palestinian human rights. Put more bluntly, the liberalism towards LGBT rights serves as a type of smoke vent, which allows people on the right in the new homonationalism to feel liberal and enlightened. It does not lead them to be more democratic in other contexts and, at times, quite to the contrary: it enables them to continue to oppress Palestinians and feel enlightened because they are pro-gay. Therefore, I fear Gurtler's hope to be a hollow one.

177. Daniel Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man* (1997).

discussed at length the ways in which Zionism sought to “cure” the flawed sexuality of the Jewish male. According to Gluzman, the aspiration to physically rehabilitate the Jewish body was anchored in the Jewish national yearning that was formulated in terms of standard masculinity, what Gluzman refers to as “the Zionist yearning for heterosexual masculinity.”¹⁷⁹ Thus, according to Gluzman,¹⁸⁰ the “Zionist body” is a standard masculine body, which has “recovered” from its feminine weakness, and heterosexuality is included in this masculine standardness as part of the nationalist.

However, although at first blush, homosexuality and Zionism seem to be set in opposition, this is not always the case for a number of reasons. First, Judaism’s turn, through Zionism, to masculinity and Muscular Judaism¹⁸¹ occurred at the same time that homosexuality aspired to similar ideals of normative masculinity.¹⁸² In fact, certain expressions of homosexuality do not diverge considerably from Zionism. To a considerable extent, what characterizes homosexuality is in essence the aspiration for masculinity, in the framework of the innate tension in the conception of homosexuality between under-masculinity (due to the conception of homosexuality as crossing traditional gender borders and relinquishing the traditional male role) and over-masculinity (due to the fact that homosexuality is based on a connection between men, which at times emphasizes masculinity).¹⁸³ As a consequence, in many respects, the new Muscular Judaism in fact resembled precisely what it was seeking to escape: the homosexual image of Judaism.¹⁸⁴ This paradox can perhaps explain the complex treatment of homosexuality in Israeli-Jewish nationalism. On the one hand, in the past—perhaps as part of the Zionist nationalist project that sought to

178. Michael Gluzman, *HaKmiha’a LeHetrosexualiut: Zionut VeMiniut BeAltneland* [The Yearning for Heterosexuality: Zionism and Sexuality in Altneland], 11 *Theory & Criticism* 145 (1997) [Hebrew].

179. *Id.* at 148.

180. Michael Gluzman, *HaGuf HaTzioni: Leumiut, Migdar VeMiniut BaSifrut HaIVrit HaKhadasha* [The Zionist Body: Gender and Sexuality in Modern Hebrew Literature] (2007) [Hebrew].

181. This term is associated with Max Nordau. See Max Nordau, *Muscular Judaism*, in *Zionistische Schriften* [Zionist Writings] 380 (1909) (Ger.).

182. George L. Mosse, *The Image of Man: The Creation of Modern Masculinity* 147–54 (1996).

183. This draws on Sedgwick’s discussion of homosexuality as both gender “separatist” and gender “inversion.” See Sedgwick, *supra* note 88, at 86–90.

184. For a deeper discussion of this paradox, see Gross, *Sexuality, Masculinity, Military, and Citizenship*, *supra* note 20. On the complexities of the relationship between Zionism and homosexuality, see Solomon, *supra* note 44.

constitute standard Western nationalism—homosexuality was perceived as an external threat that was identified with the Orient and primitivity. Raz Yosef has explored how the queer—the *Mizrahi* (Oriental) Jew who undergoes (homo)eroticization—and the Palestinian are the “Others” of masculine Zionism, when in fact, they are one of its components but must be denied and labeled as the “Other.”¹⁸⁵ On the other hand, as Ofri Ilany has noted,¹⁸⁶ in later Zionist discourse, alongside a transformation in the meaning of homosexuality in Western society, the tables turned. Homosexuality, which, in the past, had been perceived as an Oriental vice, became a signifier of “our” “Western” enlightenment versus the “unenlightened” Orient. Ilany asserts that in the Israeli context, the necessary condition for legitimizing homosexuality was scrubbing the label clean of its prior link to “Arabness.” The current discourse on homonationalism in Israel must be understood in this context.¹⁸⁷

What emerges, then, is a complex picture, laden with contradictions, of the connection between sexuality and nationalism, with homosexuality signifying at times the threat to the nation and, at other times, identification with the nation or its values. The discourse on homonationalism should recognize these contradictions and examine how (at least some) homosexuals use the state and the nationalism discourse similarly to how the state uses homosexuality.

185. Raz Yosef, *Beyond Flesh: Queer Masculinities and Nationalism in Israeli Cinema* (2004).

186. Ofri Ilany, “*Nega Nafotz BaMizrach*”: *Tiurim Shel Mishkav Zakhar BeThufat HaMandat [Oriental Vice, Oriental Virtue: Homosexuality in the Early Zionist Discourse]*, in *A Different Sex: An Israeli Queer Anthology* (Aeyal Gross, Amalia Ziv & Raz Yosef eds., forthcoming) [Hebrew].

187. *Id.* This should be read more broadly and in the context of the Oriental characteristics of Zionism. See Ella Shohat, *Israeli Cinema: East/West and the Politics of Representation*, at 1–51 (1989). Similarly to Ilany, Yossi David has pointed out that when homosexuality was illegitimate and perceived as a disease, it was considered a phenomenon of “Others” and “primitive” people (including Muslims). Yet once it had gained legitimacy, it was represented as something that reveals the primitivity of “Others” in their failure to accept homosexuality. Yossi David, *Bein Dam LeDam Uvein Din Ldin — Neshef HaMAsekhhot Shel HaKolonializem HaTzioni [Between Blood and Blood and Law and Law—The Masked Ball of Zionist Colonialism]* (Mar. 16, 2012) (on file with author) [Hebrew]. On the ramifications of the conception of LGBTs as European and white for immigrants from the FSU and on the latter’s attitude towards *Mizrahim* and Arabs, see Adi Kuntsman, *Queerness as Europeanness: Immigration, Orientalist Visions and Racialized Encounters in Israel/Palestine*, *darkmatter* (May 2, 2008), <http://www.darkmatter101.org/site/2008/05/02/queerness-as-europeanness-immigration-orientalist-visions-and-racialized-encounters-in-israelpalestine>.

When gays demanded and gained civil rights in Israel based on their military service, they were making use of Israeli militaristic nationalism. The question that arises, of course, is at what cost: To what extent did this reinforce this nationalism in general? More specifically, how did this reinforce the concept of conditioning full Israeli citizenship on military service and the exclusion of part of the population from this citizenship, something in which homosexuals who invoked this discourse in essence participated?¹⁸⁸

The link between concepts of “normal” and “normativity” and of “nationalism,” on the one hand, and sexuality and politics of sexuality, on the other, was the subject of discussion in Israel even prior to the entry of the terms “homonormativity” and “homonationalism” into the discourse. To a significant extent, the current discussions powerfully echo the debates in the early 1990s over homosexual military service in the Israeli Army, when some complained that the community organizations were engaged in presenting themselves as loyal patriots rather than demanding equal rights for all.¹⁸⁹ Today, Israeli propaganda has appropriated the success of that battle, its limitations notwithstanding (as illustrated by Picture No. 1). An additional aspect of homonormativity, which warrants further discussion, is its ethnic dimension. For example, in one of the more prominent contexts manifesting the connection between homonormativity and homonationalism—that of gay military service, as I have noted in the past—two public figures who represent the struggle for equality have been presented in the media and community discourse as two contrasting models of the gay soldier. The one, Uzi Even, was presented as the *Ashkenazi*: a typically masculine, security-oriented officer, whose public coming out in 1993, during an event in the *Knesset*, served as the impetus for

188. My observations echo Ritchie’s argument that whatever “homonationalism” may tell us about how and why images of gay-friendly Israel or Palestinian homophobia circulate in urban centers in Europe and North America, it tells us very little about the everyday realities of queerness in Israel-Palestine. See Ritchie, *supra* note 78. This is part of Ritchie’s critique of “homonationalism” as a theory that has been removed from the concrete socio-historical development and context and inserted into a totalizing framework that is contingent on a dangerously simplistic construction of reality.

189. Gross, *Sexuality, Masculinity, Military, and Citizenship*, *supra* note 20, at 173–81. On the connection between gay identity, globalization, and “normalization” in the Israeli context, see Yishai Blank, *Ein Moledet LeHomoim: Globalizatzia, Peruk Merkhavi VehoGeto HaHomo-Lesbi [There Is No Motherland for Queers: Globalization, Fragmentation, and Gay Ghettos]*, 23 *Theory & Criticism* 83 (2003) [Hebrew].

reform of the Israeli Army's directives. This was in contrast to Yossi Macaiton, who was presented as the *Mizrahi*: problematic, atypical infantry soldier, whose coming out at the 1993 gay pride celebration in the Tel Aviv Sheinkin Park led to his removal from his *Nachal* unit a few months later.¹⁹⁰ The homonormativity (with all of its class, ethnic, and other dimensions) that is represented in Picture No. 2 is a precondition for homonationalism, which, in turn, is incorporated into pinkwashing—as illustrated by the image in Picture No. 1.

Gay participation in both the state and municipal apparatuses is certainly part of homonationalism. As discussed above, the Tel Aviv Municipality—and not the gay organizations—has been the central organizer of the Tel Aviv Gay Pride Parade for many years.¹⁹¹ While LGBT activists do participate in decision-making, it is primarily gay male activists of a certain national and ethnic profile who have entered the municipal establishment in what could be called “homomunicipalism,” which is part of homonationalism.¹⁹² Puar, as noted, has described homonationalism as nationalist homonormativity, wherein domesticated homosexual entities serve as ammunition for the nationalist project.¹⁹³ She bases this on Lisa Duggan's definition of homonormativity as the new neoliberal politics of sex, which, rather than challenging heteronormative premises and institutions, reinforces and affirms them while at the same time ensuring a non-political, privatized gay presence and culture anchored in domesticity and consumption.¹⁹⁴ It is my claim that in order to appreciate the transformations in LGBT identity and rights politics, it is vital to understand that *domesticity and consumption*, although often likely to be interwoven, are also likely—particularly in the gay context—to

190. Gross, *Sexuality, Masculinity, Military, and Citizenship*, *supra* note 20, at 158–61. On the complex place of *Mizrahi* women in the queer community, see Yael Mishali, *Visible Girl Invisible Lesbian/Mizrahi: Gender, Sexuality and Ethnicity in Israel*, in *Invisible Girl* 185, 185–92 (Gun-Marie Fränberg, Camilla Hällgren & Elza Dunkels eds., 2012), available at <http://umu.diva-portal.org/smash/get/diva2:563960/FULLTEXT01.pdf>. On the way in which gay culture in Israel denies ethnic elements that are constitutive of it, see Raz Yosef, *supra* note 185.

191. See Tovi Fenster & Itay Manor, *Ezrahut Ironit Homo-Lesbit BaMerkhav HaTel Avivi VebaYerushalmi [Gay-Lesbian Municipal Citizenship in the Tel Aviv and Jerusalem Space]*, 12 *Sociologia Yisraelit [Israeli Sociology]* 7, 23–26 (2010) [Hebrew]. On the role of the municipality in support for the community, see Alfasi & Fenster, *supra* note 96, at 287–88.

192. See Kalai, *supra* note 123.

193. See Puar, *Terrorist Assemblages*, *supra* note 18.

194. See Duggan, *supra* note 16.

contradict one another. Who is the gay citizen described in the homonormative and homonationalist models? Is he the domestic citizen who seeks a monogamous, committed relationship, marriage, and to raise children? Or is he the consumer who consumes not only (or not necessarily only) linen for his house and toys for his children, but also the commodities that are part of what is seen as the global gay lifestyle: parties, clubs, drugs, gay tourism, and sex? There are two possible forms of homonormativity that can contradict one another, even if both can include a consumption dimension and even if someone can participate in both at different stages in life or even at different times in the day. Alongside the domesticated citizen who leads a (homo)normative life lives the “normative” gay, whose life conforms to what is considered the right way of being gay in terms of what he consumes: his physique, the gym and clubs he frequents, travel to gay tourism sites, the clothes he wears, and the sex he consumes (not necessarily in the sense of buying sex for money but in the sense of sex being integrated into this consumer culture).

The Tel Aviv gay pride tourism campaign, which is criticized as pinkwashing, can clarify the implications this contradiction in the idea of homonormativity has for the discussion of homonationalism and homomunicipalism.¹⁹⁵ The goal of this campaign was to bring to Israel the global gay consumer, whose form of consumption clashes with domesticity and constitutes an additional sphere of profit-making in the global economy. Is the “good gay citizen” evoked in the homonormative/homonationalist narrative the homosexual who serves in the army, marries his partner, raises children, and lives by the parental clock—all of which require that he rise and shine every

195. The campaign website and a newer website are both available online. See Tel Aviv Gay Vibe, telavivgayvibe.atraf.com (last visited Nov. 19, 2014); *GayVibe*, Visit Tel Aviv, <http://www.tel-aviv-gay-vibe.com> (last visited Nov. 19, 2014). The campaign's success is manifested, amongst other things, in Tel Aviv's winning the title of the world's best gay tourism destination for the year 2012, a choice that was criticized as part of pinkwashing. See Ilan Lior, *Pink on the Outside, Gray on the Inside/TA "Best Gay Destination" Title Masks Ongoing Prejudice*, Haaretz, Jan. 13, 2012, <http://www.haaretz.com/print-edition/news/pink-on-the-outside-gray-on-the-inside-ta-s-best-gay-destination-title-masks-ongoing-prejudice-1.407020>; Guy Erlich & Odeya Ganor, *Quir Beofen Bikorti: Tel Aviv Bemet Tova LeGeiz? [Critically Queer: Is Tel Aviv Really Good for Gays?]*, City Mouse (Jan. 20, 2012), http://www.mouse.co.il/CM.articles_item,1627,209,65850,.aspx; Tal Shalev, *Yisrael "HaGe'eh BaOlam," O Stam Tzevua BeVarod [Israel "the Proudest in the World" or Just Painted Pink]*, Walla News (Jan. 6, 2012), news.walla.co.il/?w=90/1891771 [Hebrew].

morning? Or does he go to clubs, engage in casual sex, consume recreational drugs, and live by the nightlife clock?¹⁹⁶

In the summer of 2012, the Tel Aviv gay pride tourism campaign reached the peak of its success, when tens of thousands of gay tourists came to Israel for the Pride Parade.¹⁹⁷ The Hilton Beach in Tel Aviv, which is associated with the gay community, was one of the main centers of congregation and was painted in the pride flag colors. The Tel Aviv Municipality even hung a flag on the beachfront that combined the rainbow flag and the flag of the state of Israel, with a Star of David in the middle. Did this homonationalism include the domesticity aspect or only the consumption dimension, with the Municipality essentially subsidizing homosexuals “cruising” for casual sex? The gay crowd on the beach, which in part represented the gay body and muscle culture, also represented a type of homonormativity that can at times overlap but also significantly clash with the domesticated form of homonormativity. In addition, insofar as the notion of homonormativity is identified with neoliberalism, we can see that the state does not disappear in this context. Instead, homosexuality is incorporated into governmentality, in a combination of neoliberal consumerist ideology and state intervention. In this framework, the state regulates and subsidizes not only the domesticated side of homonormativity but also the non-domesticated, consumption side. Unlike the domesticity dimension of homonormativity, its consumption aspect cannot be taken as the gay version of heteronormativity. We are witnessing, therefore, state appropriation not only of gay partnerships, relationships, or military service, but also of the Hilton Beach, one of the sole surviving remnants of the non-consumerized cruising culture, whose main turf in Tel Aviv was once the Ha’atzmaut Park along the beachfront¹⁹⁸ and which has been appropriated by both the consumer

196. Halberstam has described family time—and creative time—as a heteronormative daily schedule that is characterized by “early to rise” and “early to bed” and is structured according to what are considered children’s needs and health. In contrast, the queer subject deviates from this schedule. Judith Halberstam, *Queer Temporality and Postmodern Geographies*, in *A Queer Time and Place: Transgender Bodies, Subcultural Lives* 10 (2005).

197. Ilan Lior, *Israelis Flock by the Thousands to Tel Aviv’s Annual Gay Pride Parade*, Haaretz, June 8, 2012, <http://www.haaretz.com/news/national/israelis-flock-by-the-thousands-to-tel-aviv-s-annual-gay-pride-parade-1.435237>; Sharon Segel, *Freedom and Partying Mix at Tel Aviv’s Gay Pride 2012*, Huffington Post Blog (June 11, 2012), http://www.huffingtonpost.com/sharon-segel/tel-aviv-gay-pride-2012_b_1587539.html.

198. Hirsch, *supra* note 98, at 1.

culture and the state. Thus, to understand the link between homonationalism and homonormativity, we must look at how the state allows and participates in not only the domesticated aspect of homonormativity but also its consumption dimension, which stands in contradiction or tension with domesticity.¹⁹⁹ The homonationalism illustrated by the flag flying over the Hilton Beach in Picture No. 3 conforms—despite being of a different character—to the homonationalism represented by the soldiers in Picture No. 1. The varying forms of homonationalism, at times contradictory and at times overlapping, entail different conceptions of homonormativity: a “domesticated” conception and a “consumption” conception of heteronormative time that becomes homonormative time in Picture No. 2 and, to a significant extent, in Picture No. 1. Picture No. 3 shows the “consumption” conception of queer time. Both conceptions are caught in the grip of homonationalism.

199. Compare this to Gavin Brown’s discussion, in a different context, of the need to consider the diversity of gay and lesbian economic practices, as part of his critique of how discussions of homonormativity are tied to assumptions about the dominance of neoliberal forms of capitalism. More generally, he discusses how thinking of the concept as uniform and all-encompassing runs the risk of losing any sense of the geographic specificity discussed and of overlooking the uneven and diverging experiences of the processes and practices depending on the spatial context. Gavin Brown, *Thinking Beyond Homonormativity: Performative Explorations of Diverse Gay Economics*, 41 *Env’t & Planning* 1496, 1498 (2009); Gavin Brown, *Homonormativity: A Metropolitan Concept that Denigrates “Ordinary” Gay Lives*, 59 *J. Homosexuality* 1065 (2012).

PICTURE 3: HILTON BEACH, TEL AVIV, JUNE 2012
(PHOTOGRAPH: AEYAL GROSS)



CONCLUSION

In July 2014, a few days after the kidnapping and murder of three Israeli teenagers by Palestinian militants, Mohammed Abu Khdeir, a Palestinian teen, was kidnapped and murdered in East Jerusalem. Jewish extremists eventually confessed to Abu Khdeir's murder.²⁰⁰ In the days leading up to their arrest, however, there were persistent rumors in Israel that this had not been a racism-motivated murder committed by Israelis but, rather, an "honor killing" carried out by the victim's family.²⁰¹ Moreover, the rumor that Abu Khdeir

200. Robert Tait, *Palestinian Teenager Murder: Three Jewish Suspects 'Have Confessed'*, Telegraph (July 7, 2014), <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/10951186/Palestinian-teenager-murder-three-Jewish-suspects-have-confessed.html>.

201. See Robert Mackey, *Rumor and Leaks Fill a Void as Israel Silences Press Over Killings*, N.Y. Times, July 10, 2014, <http://www.nytimes.com/2014/07/11/world/middleeast/rumor-and-leaks-fill-a-void-as-israel-silences-press->

had been murdered for being gay spread widely across the social media and was treated as proven fact.²⁰² Whatever the source of the rumors,²⁰³ they were propagated not just by the far right.²⁰⁴ Posts to Facebook stated with absolute certainty that Abu Khdeir's homosexuality had been the motive behind the murder and that the victim had been at the Jerusalem Open House ("JOH"), which had allegedly released a statement about Abu Khdeir's death. The spread of this rumor reached a point where the Development Director of the JOH felt the need to issue a denial that the teen was known to the organization, even though the JOH had, in fact, never issued any statement about the youth or the murder.²⁰⁵

Yet despite this denial, photographs of Abu Khdeir were posted online with the caption "The Arabs killed him for being gay."²⁰⁶ Even though the people in custody for his murder are, at the time of writing, still officially only suspects, it is important to note that the quick willingness of so many people to believe the rumors is indicative of their desire to deny any possibility of Israeli-Jews being capable of murdering children out of extremist national hatred. Moreover, this willingness to uncritically believe the rumors is also significant in that it branded Palestinians as barbarians and homophobes, who would murder their own children for being gay.

It is difficult to avoid drawing a parallel between the attribution of Abu Khdeir's murder to homophobia and the denial of homophobic motives in the *Barnoar* youth center attack. As discussed

overkillings.html?action=click&contentCollection=Middle%20East®ion=Footer&module=MoreInSection&pgtype=article&r=0.

202. See Mairav Zonszein, "Jewish Extremists" Arrested in Murder of Palestinian Teen in Jerusalem, *+972 Magazine* (July 6, 2014), <http://972mag.com/jewish-extremists-arrested-in-murder-of-palestinian-teen-in-jerusalem/93049/> (reporting on the investigation of six Jewish extremist suspects in connection with the Abu Khdeir murder).

203. Some attributed these rumors to the Israeli police. See Richard Silverstein, *Israeli Police Plant Rumor That Palestinian Murder Victim Was Gay, Victim of Honor Killing*, *Tikun Olam* (July 7, 2014), <http://www.richardsilverstein.com/2014/07/07/israeli-police-plant-rumor-that-palestinian-murder-victim-was-gay-victim-of-honor-killing/>.

204. See Aeyal Gross, *How Pinkwashing Leaves Israel Feeling Squeaky Clean*, *Haaretz*, July 9, 2014, <http://www.haaretz.com/opinion/.premium-1.603731> (describing the spread of the rumor throughout social media).

205. See Lou Chibbaro, *Jerusalem LGBT Center Falsely Linked to Killing of Palestinian*, *Washington Blade* (July 17, 2014), <http://www.washingtonblade.com/2014/07/17/jerusalem-lgbt-center-falsely-linked-killing-palestinian/> (following up with the Executive Director of JOH who expressed outrage that JOH had been used to interfere with the legitimate investigation of Abu Khdeir's murder).

206. Gross, *How Pinkwashing*, *supra* note 203.

in Part III, when the police thought they had caught the perpetrator in the shootings, they initially attributed the attack to a matter of personal revenge and not homophobia, and many people pointed to the circumstances leading up to the attack as supposed evidence that the murder was not a hate crime but an act of personal revenge. The denial of familial and societal homophobia in the *Barnoar* case, on the one hand, and the attribution of the murder of the Palestinian teen to homophobia on the other, illustrates the issues discussed throughout this article, as well as the success of pinkwashing. In the case of the former, pinkwashing was directed at denying homophobia as a motive and replacing it with personal revenge. In the latter case, pinkwashing was manifested in the cleansing of Israel, a supposedly liberal and democratic state, of the guilt of racism by alleging Palestinian homophobia as the reason for Abu Khdeir's murder. The fact that so many Israelis, some of them gay, convinced themselves and others that Abu Khdeir had been murdered by his family for being gay is evidence of the considerable success of this propaganda, not only abroad but also at home.²⁰⁷

These two examples of pinkwashing in operation illustrate and underscore the complexities of the critical queer perspective on the question of how to fight for gay rights without participating in their appropriation as a fig leaf to cover the woeful state of human rights in Israel. From this perspective, the tension between legitimacy and mainstreaming cannot be avoided.

Gil Hochberg has pointed out the need to maneuver between “the hijacking of the discourse on gay rights by uncritical supporters of the Zionist cause,” on the one hand, and “the dismissal of queer politics as secondary in importance to the fight against the Israeli occupation or, worse, as a Western imperialist (Zionist) imposition foreign to Arab culture altogether.”²⁰⁸ I contend that there are other needs that must be added to this: the need to maneuver between the appropriation of LGBT rights as a fig leaf for Israeli democracy and the denial of the achievements in this area; the need to maneuver between the struggle for LGBT equality within Israel and the appropriation of LGBT rights by the state; and the need to maneuver between the demand for recognition and the fear of de-radicalization that is entailed by mainstreaming. Moreover, there is a need to navigate between the colonialist discourse of “saving” Palestinians

207. *Id.*

208. Hochberg, *supra* note 122, at 510–11.

(which is accompanied by sensationalist media reports)²⁰⁹ and the denial—driven by the fear of pinkwashing—of the persecution and accompanying need for asylum that Palestinian and other LGBTs can at times experience. The latter need is even more acute given the approach expressed by Justice Amit in the Supreme Court JOH decision: the conception of gay rights as a measure that marks Israel as a liberal-democratic state and differentiates it from other Middle-Eastern countries. This discourse projects our conceptions of sexuality, identity, and rights in a way that enables us to feel “enlightened,” democratic, and liberal, while denying not only the limitations of the liberal discourse but also all the many reasons why we are not as “enlightened,” democratic, and liberal as the Court decision would have us feel.

209. See *supra* notes 81, 170 (citing sources that discuss overblown reports of Israeli sanctuary offers to gay Palestinians and the use of homonationalization as a public relations tool).