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The Great Refusal:
The West, the Rest, and the Geopolitics of Homosexuality

By

Jason L. Ferguson

A dissertation submitted in partial satisfaction of the

requirement for the degree of

Doctor of Philosophy

in

Sociology

and the Designated Emphasis

in

Critical Theory

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Marion Fourcade, Co-Chair
Professor Loïc Wacquant, Co-Chair
Professor Catherine Albiston
Professor Raka Ray

Fall 2020

Abstract

The Great Refusal:
The West, the Rest, and the Geopolitics of Homosexuality

By

Jason L. Ferguson

Doctor of Philosophy in Sociology

Designated Emphasis in Critical Theory

University of California, Berkeley

Professor Marion Fourcade (Co-Chair) and Loïc Wacquant (Co-Chair)

The Great Refusal: The West, the Rest, and the Geopolitics of Homosexuality is a mixed-method, multi-scalar study comprising three chapters that investigate state regulations of sexuality. I use cross-sectional *and* longitudinal multiple correspondence analysis (MCA) of cross-national data from 175 countries between 1970 and the present, data that I collected and coded myself (this is the first MCA used in this dynamic, cross-temporal fashion). I supplement this global, quantitative analysis with local ethnographic and interview data collected over 18 months from the Dakar Tribunal, the largest court in Senegal, and from foreign embassies, international organizations, and local gay rights groups operating in Senegal. Chapter 1 argues that the world is sharply *divided between a great embrace and a great refusal* of homosexuality, a division that has grown *more, not less striking* over time. This division, I show, is primarily structured by the economic, political, and symbolic capital of nations, their national trajectories, as well as their racial and colonial legacies. Chapter 2 shifts down in scale, showing that the same divisions among nations *paradoxically reappear within* nations—and these are particularly evident in conflicts over the precedence of local claims versus international ones, which pit public-facing judges and prosecutors against international-facing ministry of justice officials. Western interventionism, I argue, further exacerbates these divisions, fueling local resentment and a backlash against the West, gay rights, and gay people. Chapter 3 dives even deeper into the work of courts and judges, but adds a comparative dimension by investigating how judicial institutions construct and punish women and men, in cases of abortion and homosexuality (or "acts against nature"). I show how judges' opposition to both of these crimes is rooted in a logic of social and biological reproduction; I further show how judges proceed to make moral distinctions between two types of guilty offenders, *redeemable* and *lifestyle offenders*. In this chapter, another kind of empirical divide comes to the fore between how judges construct and punish women in cases of abortion on the one hand and men in cases of homosexuality on the other. Through the lens of sexuality, this work also tackles two broader global phenomena—namely, postcolonial resentment and resentment against political liberalism. Finally, I suggest that the backlash to the liberal order reveals a contradiction in liberalism itself as nations push back against liberalism's universality by deploying liberalism's own values of diversity, multiculturalism, and respect for cultural difference.

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Berkeley, December 2020

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Introduction

The Gay Divide

In some places in the world today, homosexuality is punishable by death. In other places, sexuality is a non-issue. Global politics shape national laws on intimate matters of sexuality in general, and on homosexuality in particular – but how, exactly, does that happen?

Over the last three decades, the world has witnessed unprecedented transformations in the regulation of homosexuality. Gay sex and gay marriage, gay adoption and parental rights have become a firm legal reality for many same-sex loving communities across the globe. And yet, as of 2017, seventy-two nations remained steadfast in their refusal to follow this liberalizing trend, choosing to keep their anti-sodomy provisions on the books, fining, jailing, even killing those who transgress them. Some nations have even heightened the criminalization of homosexuality, portending not only a persistent but a growing regional if not global illiberalism. Witness Uganda's "Anti-Homosexuality Bill" (2014), Brunei's death-by-stoning law (2014), Russia's anti-gay propaganda ban (2013), and so on.

This dissertation, *The Great Refusal: The West, the Rest, and the Geopolitics of Homosexuality*, is a mixed-method, multi-scalar study which mates the theories of John Meyer's world society and Pierre Bourdieu's field analysis. Meyer's neo-institutional scholarship leads us to expect global convergence and consensus around the regulation of homosexuality, as governments and their peoples embrace "world culture," a liberal ethos that affirms the right to sexual self-determination. I turn to Bourdieu's relational sociology as a framework, however, to analyze together world culture trends and countertrends, to map patterns of convergence and divergence in the global field of nations. I use cross-sectional *and* longitudinal multiple correspondence analysis (MCA) of cross-national data from 175 countries between 1970 and the present, data that I collected and coded myself. MCA, a statistical method developed in France, and featured prominently in the work of Bourdieu and his associates, but rarely taught in the United States, is used here for the first time in a dynamic, cross-temporal fashion. I supplement this global, quantitative analysis with local ethnographic and interview data collected over 18 months from the Dakar Tribunal, the largest court in Senegal, and from foreign embassies, international organizations, and local gay rights groups operating in Senegal.

The dissertation is composed of three interrelated, yet stand-alone chapters (or papers). Chapter 1 argues that the world is sharply *divided between a great embrace and a great refusal* of homosexuality, a division that has grown *more, not less striking* over time. This division, I show, is primarily structured by the economic, political, and symbolic capital of nations, their national trajectories, as well as their racial and colonial legacies. Chapter 2 shifts down in scale, showing that the same divisions among nations *paradoxically reappear within* nations—and these are particularly evident in conflicts over the precedence of local claims versus international ones, which pit public-facing judges and prosecutors against international-facing ministry of justice officials. Western interventionism, I argue, further exacerbates these divisions, fueling local resentment and a backlash against the West, gay rights, and gay people. Chapter 3 takes on a comparative framing to compare legal decision-making in cases of homosexuality and abortion. I dive into court archives and into the rationales of judges to show the *moral distinctions* they make between *redeemable offenders* and (irredeemable) *lifestyle offenders.*

The dissertation moves from Bourdieu's more general concept of social space to his more specific concept of fields. Chapter 1 uses the social space framework to map (1) the structural

relationships among different laws that regulate homosexuality, (2) the relative positions of nations based on the set of laws they have, and (3) the distribution of social properties (capitals and socio-demographic characteristics) that best account for (1) and (2) and thus which best reveal the underlying principle of stratification. In Chapter 2, I move to a field-specific analysis, in particular the interaction between the global field of human rights and the national field of the Senegalese judiciary. In this analysis, my concern moves beyond the correspondence between the structure of legal practices and the structure of social properties to investigate more concretely struggle and contestation between global human rights actors (foreign embassies, intergovernmental organizations, and international non-governmental organizations) and the Senegalese judiciary (Ministry of Justice officials, prosecutors, and judges). In Chapter 3, I investigate comparatively judicial decision-making in cases of acts of against *and* abortion to understand what each offense represents to the state. By adding this comparative lens, I shed light on the broader *reproductive* aims of the state in regulating sexuality and what if anything is unique about state repression of same-sex desire.

How are we to understand the concept of 'sexual regulation'? This work conceptualizes sexual regulation in two ways. Chapter 1 considers sexual regulation as law on the books, i.e., laws passed by politicians. Chapters 2 and 3 consider the interpretation and application of those laws by Ministry of Justice officials, prosecutors and judges in the juridical field. How the law is applied may align with or contradict written law. There are myriad other forms of sexual regulation not discussed in this work like policing practices or social regulations in various institutions, like schools and the family.

Why Sexuality? Race, Colonialism and the Civilizing Process

What is so special about sexuality? Why is sexuality such a noxious site of local *and global* struggles? In his little known text from 1911 on sex education, Emile Durkheim (1911) offers a deceptively simple observation, that sex is something "mysterious" and "cannot be grouped together with the acts of day-to-day life" (p. 142). Most obviously, sexuality touches on one of the most intimate spheres of social life—reproduction and the family. And, as Foucault (1978) would note, sexuality is what allows the state to control bodies and populations, making it particularly vexed terrain.

But sexuality has also long been a key site of boundary-making as well. At least as early as the 18th century, European clerics and philosophers, statesmen and scientists tied the civilizational status of nations to sexual practices. Freud (2010) famously linked the concepts to argue that civilization sprung as a byproduct of the repression of Eros, as individuals redirected sexual energies into edifying cultural activities like art, music, literature and science. Elias (1994 [1939]) pushed forward this line of thought, contending that the "civilizing process" accompanied increased repression of the sexual instinct, shrouding it in shame, forcing it behind the scenes of public life and into the confines of the bourgeois family (Elias 1994, p. 154). According to Elias, the bourgeois classes, consolidating their power in 18th and 19th Europe, were the central drivers of a new sexual ethic in European societies, what Elias called, an "inner worldly asceticism" (Elias 1998, 204-205).

> *The rising bourgeoisie opposed the code of good manners with a different pattern of civilization, a moral code*. It was this code, which surrounded the whole area of sexuality as one of the largest danger zones of human existence with a differentiated,

> finely-meshed fence of prohibitions, the strict observation of which was treated as the touchstone of the bourgeois respectability of families as well as their individual members (Elias 1998, 204-205).

At first, the new sexual ethic distinguished the rising bourgeoisie from the morally loose aristocracy and the lower classes *within nations*. And, in time, it slowly percolated down the class structure to become a national ethic and then a European ethic. The consolidation of this ethic represented the attainment of "civilization." "The concept of civilization," Elias opines, "indicates quite clearly in its nineteenth-century usage that the process of civilization—or, more strictly speaking, a phase of this process—had been completed and forgotten" (Elias 1994, p. 88-89).

As the age of imperialism took off, the bourgeois sexual ethic came to distinguish Europeans from those in other parts of the globe, especially, those in the countries Europe colonized. Ideas about sex and sexuality shaped notions of racial and national belonging, as they marked supposed differences between the White European and the Other (Frühstück 2014). During their colonial exploits, Europeans often encountered social organizations of sexuality at odds with their newly-constituted ethic, including practices like polygamy, female husbandry, and homosexuality (Munro 2012). For European intellectuals and colonists, these practices in many parts of the world proved the "primitiveness" of non-Western peoples, a mark of their social, cultural, even evolutionary inferiority (Murray & Roscoe 2001; Greenberg 1990). Western scientific discourse about racial difference was built on and made legible through discourses about sexual difference (McClintock 1993; Frühstück 2014; Sreenivas 2014). "[S]exuality itself had long been called 'the African sin'…" (McClintock 1995, p. 113). Adorno and Horkheimer (2007 [1944]) see in this sexual othering a "false projection" or "pathic projection," whereby Europeans placed onto subordinate groups that which they sought to disavow and suppress within themselves (p. 154, 158).

Homosexuality in particular was a key axis of social distinction for Europeans, who viewed the accepted homosexual practices of many non-Europeans as evidence of racial inferiority (Bleys 1995, p. 145-92). Najmabadi (2005) records the lasting impact of these views on 19th century Iran. "By the early 19th century, Iranian men had become acutely and increasingly aware that Europeans considered Iranian older man-younger man love and sexual practice a vice" (ibid., p. 33-34). This anxiety over European judgement led to denial and disavowal of the homoerotic element, for example, in visual representations and love poetry. This transmuted homoeroticism into "masqueraded heteros," constituted the homo/hetero binary, and "redefined homosexual desire from natural to unnatural and abominable, blaming it on the undesirable social practice of women's seclusion and gender segregation" (ibid., p. 55).

While Europeans saw particular sexual practices as signs of racial belonging, they also endeavored to impose their sexual ethic onto the other "races," taking global the *civilizing process*, internationalizing struggles around the regulation of sexuality (Hyam 1991; Bleys 1995). As Elias describes it, "[p]eople only wanted to accomplish this process for *other nations*…They wish above all to disseminate it…" (Elias 1994, p. 88-89). And thus, colonial powers criminalized homosexuality in their colonies. This was a pivotal moment in the colonial confrontation, an early play of domination within what Steinmetz (2016) calls a "colonial field," whereby specific laws and practices were extended from the colonial metropoles to the colonies. Britain, for example, introduced Section 377 into the Indian Penal Code in 1860, a model anti-sodomy law. "Its influence stretched across Asia, the Pacific islands, and Africa, almost everywhere the British imperial flag flew" (Gupta 2013, p. 87). History matters. Modern-day criminalizations of

homosexuality across the former British, as well as French, empires are "alien legacy," a result of colonial imposition (Gupta 2013; Sanders 2009; Frank et al. 2009*a*; Asal, Sommer, and Harwood 2012; Han and Mahoney 2014). The colonial antecedents are the necessary background we need to understand contemporary global conflicts around homosexuality.

And yet the civilization bar keeps moving. By the late 20th century, former European colonial powers had shifted radically—*contemporary Europeans now believe the right to engage in same-sex practices is a fundamental human right* (Sanders 1996; Waites 2009; Petchesky 2000). This new conceptualization however has become *a new marker of civilization* and acceptance of gay rights is a "pink" litmus test of one's belonging (Rahman 2014), functioning as "a new racism" (Binnie 2004). The "deployment of queer rights both at home and abroad" Rahman (2014) tells us "operates in a 'homocolonialist' fashion that renders resistant populations inferior in relation to superior Western values…" (p. 283). Indeed, Weber (2016) minces no words in stating that the "gay rights holder" "makes possible (neo)colonialist/(neo)imperial sexualized orders of international relations that divide the world into 'normal states' and 'pathological states' depending on how well these states treat their homosexuals" (p. 2). More ominously, Puar's (2007) concept of "homonationalism" suggests Western nations use their pro-gay laws to strengthen their own national identity, to challenge (Muslim) immigration, and to justify imperialism by demonizing non-Western peoples as anti-gay, and thus in need of reform. Bleich and Morgan (2019) refer more broadly to this phenomenon, found beyond the domain of sexuality, as "leveraging identities," where social distances between three or more groups are exploited strategically for political purposes. Sexuality has long been central to global processes and to dynamics between nation-states. The current global divisions and contestation around sexuality, in general, and homosexuality, in particular, have history, a history haunted by race, colonialism, and cultural imperialism.

Structure of the Dissertation

Chapter 1

Is today's world more united or divided in its legal stance toward same-sex practices and rights than before? How do global politics shape national laws on intimate matters of sexuality in general, and homosexuality in particular? Theorists of world culture have long argued nations will converge in how they regulate homosexuality, affirming a right to sexual self-determination. Less problematized, however, is persistent, and in some cases, increasing criminalization of homosexuality in parts of the world. Drawing on data from 174 countries between 1970 and 2015, this paper innovates, first, by using cross-sectional and longitudinal multiple correspondence analysis (described in general terms herein) to examine an uncommonly broad set of laws regulating homosexuality. Second, I mate John Meyer's world society with Pierre Bourdieu's theory of social space to map the rising polarization in national approaches to gay rights. Nations fracture along two main dimensions of opposition: (1) an absolute criminalization of homosexuality; and (2) a relative criminalization of homosexuality (i.e., distinguishing between different kinds of crimes). I argue these divisions are not random but patterned and structured by the relative social position of nations in the global hierarchy, a hierarchy expressed through deep disparities of economic capital, geopolitical clout and connectivity, national trajectories, and racial and colonial legacies. Despite earlier predictions the world has become more, not less, polarized over time and the tight link between laws and social position more, not less, striking. In turning to

the evolution of social space I highlight broader macro-structural and institutional contexts that help to explain dynamics of polarization and the creeping backlash against gay rights.

Chapter 2

How does world culture reverberate in the attitudes and practices of legal actors in local contexts? Recent scholarship points to a global divide in the regulation of homosexuality, torn between liberal and illiberal nations with conflicting worldviews. Drawing on archival, interview and ethnographic data from Senegal, I show the global divide is also a local one, reflected within a single nation's judiciary. In Senegal's divided judiciary, judges and prosecutors adhere to a logic of popular representation, rejecting world culture and supporting the criminalization of homosexuality, in keeping with the demands of the Senegalese "people." Ministry of Justice officials, meanwhile, tend toward a logic of international imitation, accepting world culture and tacitly tolerating homosexuality. This cleavage drives a phenomenon I call *decoupling in reverse*, whereby the Ministry of Justice draws on world cultural scripts to circumvent the court and subvert quietly its nation's criminalization. Finally, the conflicting logics of these two groups stem from their respective source of legal and social accountability, as well as proximity to world culture institutions. Despite conflict over world culture in Senegal, this paper spotlights not world culture's weakness, but its persistent strength, its ability to bear down and to disrupt the coherence of the law, splitting the judiciary into counterpoised factions.

Chapter 3

How do judges account for their legal decision-making in cases of abortion and homosexuality? What can their accounts tell us about the broader aims of the state? Drawing on court archives and in-depth interviews from the Dakar Tribunal, Senegal's largest court, I explore the single-eyed concern with the reproduction of the nation, both biological and social, that underpins legal decision-making. Against this backdrop of reproduction, I argue, magistrates make moral distinctions between what I call *redeemable offenders* and *lifestyle offenders*. Redeemable offenders do not challenge the reproductive order of society and fit one of three frames: 1) duty to family, 2) experience of victimization, and 3) performance of regret, all frames that secure the court's clemency. Lifestyle offenders, on the other hand, defy these frames and openly flout the state's reproductive aims, and thus receive the harshest punishment. These offenders represent two types of social pollution, one internal and one external to the nation. And yet, if in principle these classifications can apply equally to those charged with abortion and homosexuality, in practice this is not the case. For a striking puzzle exists in the data: women found guilty of abortion tend to be constructed as redeemable offenders, facing very light or totally suspended sentences; men found guilty of homosexuality, in stark contrast, are more often considered lifestyle offenders and must reckon with the full force of the law. These findings offer insights into the relationship between gender and sexuality, as well as the dual crises of youth and masculinity in a contemporary postcolonial West African city. This paper innovates by bringing together several distinct lines of inquiry: the comparison of the criminalization of abortion and homosexuality; the focus on a misdemeanor court and judicial decision-making; and the study of a penal system in a francophone West African context.

Chapter 1

The Great Refusal: The West, the Rest, and the Geopolitics of Homosexuality, 1970-2015

Over the last three decades, the world has witnessed unprecedented transformations in the regulation of homosexuality. Gay sex and gay marriage, gay adoption and parental rights have become firm legal realities for many same-sex loving communities across the globe (Adam 1995; Adam, Duyvendak, and Krouwel 1999; Inglehart 2000; Inglehart & Welzel 2005; Dehesa 2010). And yet, as of 2017, seventy-two nations remained steadfast in their refusal to follow suit, continuing to maintain anti-sodomy laws which impose fines, imprisonment, even death. Some nations have heightened criminalization and tightened persistent intolerance in a trend that portends growing regional if not global illiberalism. Russia's anti-gay propaganda law (2013), Uganda's "Anti-Homosexuality Bill" (2014), Brunei's death-by-stoning law (2014) are only a few examples. This reality challenges the optimistic tale of a sweeping global liberalization in gay rights, the end to a repressive sexual history.

But is today's world more united or divided in its legal treatment of same-sex love and desire? What accounts for global polarization in national approaches to gay rights? World society theory has long held that nations would reform their laws in line with a world culture that champions the right to sexual self-determination (Strang and Meyer 1993; Meyer et al. 1997; Meyer and Rowan 1997; Frank and McEneaney 1999; Frank and Meyer 2002; Frank, Boutcher, and Camp 2009; Frank, Camp, and Boutcher 2010; Frank and Moss 2017). Today, however, the vision of a united world faces a troubling reality—the great global convergence toward liberalism has not happened (Beckfield 2010; Cobb 2014). Emergent scholarship, from inside and outside world society theory, reveals a countertrend, a world divided, a challenge to the liberal order (Zakaria 2007; Beckfield 2010; Bánkuti, Halmai, and Scheppele 2012; Ambrosio 2016; Mishra 2017; Hadler and Symons 2018; Levtisky and Ziblat 2018; Schofer, Lerch, and Meyer 2019). Witness Brexit, the rise of authoritarian leaders, the accession of far-right parties to governmental power. Homosexuality is no exception—evidence points to increasing polarization in attitudes and laws (Hadler and Symons 2018), what *The Economist* has dubbed the "gay divide."[1]

This paper expands world society theory by confronting an anomaly—namely, the pattern of steady resister and reactionary nations that refuse world culture's stance on gay rights. My aim is to take stock of the increasing complexity, the new patterns of regionalization, the current dynamics of illiberalism. Bridging John Meyer's world society theory to Pierre Bourdieu's theory of social space, I re-conceptualize world society not as a site of diffusion and isomorphism, but as a social space of polarization. The logic of social space, and its companion relational method of multiple correspondence analysis (MCA), offer a complement to the study of world culture processes. Following its tradition of cross-national, longitudinal analyses, I created and analyzed a dataset of national laws relating to homosexuality and socio-demographic properties across 174 countries between 1970 and 2015. Whereas most world society studies rely on regression-based statistics, MCA offers unique advantages: it allows us to map in two dimensional space the global gay divide; it allows us to portray visually the continuum along which nations fall between *a great embrace and a great refusal of world culture*. But my application of this method extends beyond

[1] https://www.economist.com/leaders/2014/10/09/the-gay-divide

earlier uses, including Bourdieu's, by investigating the evolution of social space, tracking simultaneously the development of convergences with world culture, as well as divergences from it.

Studying the "gay divide" poses unique empirical demands for cross-national research, however. Early world society scholarship for instance focused among other things on sodomy laws alongside other laws such as rape, adultery, and child sexual abuse (e.g., Frank, Hardinge, and Wosick-Correa 2009; Frank et al. 2010). Studies focusing exclusively on homosexuality considered sodomy or same-sex union statutes in isolation (Kollman 2013). Few incorporated anti-discrimination laws, bans on incitement to discourse, hate crimes legislation, and/or adoption rights (notable exceptions, Ayoub 2016; Hildebrandt, Trüdinger, and Wyss 2018; Velasco 2020). But the study of the gay divide requires an even more robust set of measures, one that addresses explicitly anti-gay legislation. Although not exhaustive, as I discuss below, the data in the analyses presented here include to my knowledge the most expansive set of pro-gay *and* anti-gay laws in the current literature on homosexuality viewed globally.

I begin by reviewing the literature on the checkered spread of gay rights. I then discuss several frameworks for studying global polarization. Next I introduce Pierre Bourdieu's theory of social space, noting how I deploy this framework to analyze the divided world. I then present the longitudinal data I collected. I follow this with a methodological discussion of MCA, a relational statistical method used to address the multidimensionality of social phenomena indissolubly linked and therefore denatured when studied in isolation.

My central claims are as follows. First, I establish the social fact that our world is deeply divided in its legal treatment of homosexuality. Nations fracture primarily along two dimensions of opposition: (1) an absolute criminalization of homosexuality and (2) a relative criminalization of homosexuality (i.e., distinguishing between different types of crimes). More importantly, whether a self-assured embrace or a great refusal or a moderate accommodation, national approaches to gay rights have social conditions of possibility. Put plainly, I argue that the *legal distance* between nations expresses simultaneously a *social distance*. Beyond salient individual factors like religion, democracy, globalization or network tie, laws on homosexuality also reflect the *relative social position of nations in the global hierarchy*, a hierarchy expressed in stark inequities material, institutional, and historical in nature, a hierarchy that overlaps with broader geopolitical tensions. What is more, optimistic predictions notwithstanding, the world has become more not less polarized, and the tight link between laws and social position are more not less striking over time. Finally, I highlight the particular macro-structural backdrop to the emergent polarization, as well as the illiberal institutional contexts that help account for the recent heightening of anti-gay legislation. In pointing to our fractured world, however, this work does not aim to discard world culture theory, but rather to show its persistent strength and evolution.

WORLD CULTURE AND ITS DISCONTENTS

Liberal Trends: A Global Transformation in the Regulation of Homosexuality

In the fifty years after Stonewall, scholars have investigated the steady rise of gay and lesbian rights around the world (e.g., Adam, Duyvendak and Krowel 1999; Altman 2001; Binnie 2004; Barclay, Marshall and Bernstein 2009). In fields from sociology to history to cultural studies,

this literature has brought to light the myriad factors that help to explain this striking trend: the rise of capitalism and wage labor (D'Emilio 1983; Adam 1995); socioeconomic modernization and the erosion of traditional values about gender, sex, religion, family and work (Inglehart 2008; Alexander, Inglehart et al. 2016); the strengthening of democracy accompanied by more educated, secular and urbanized populations (Inglehart & Baker 2000; Adamczyk & Pitt 2009; Stulhofer & Rimac 2009); local activism, elite mobilization, and specific legal and policy histories (Haider-Markel and Meier 1996; Wald, Button and Rienzo 1996; Barclay and Fisher 2003).

Although the aforementioned domestic explanations provided an important piece of the puzzle on gay rights, other research, most notably in sociology and political science, began to consider how global and transnational norms also have their role to play. Presaging the rise of a global consensus, neo-institutionalists maintained nations would become more uniform and united, converging on a common model, conforming if not in practice, then in ceremony, to a single world culture (Meyer and Rowan 1977; Strang and Meyer 1993; Meyer et al. 1997). Drawing on Weber's ([1905] 2002; [1921] 1978) notion of rationalization, scholars define world culture as a rationalized ethos rooted in a belief in progress and universality, freedom and individualism (Boli and Thomas 1999; Schofer 2003; Frank et al. 2010; Schofer, Hironaka, Frank, and Longhofer; 2012 Mathias 2013). Emerging in the West, this ethos has long been linked to Western liberalism (Frank et al. 2007; Meyer 2009, p. 78; Drori and Krücken 2009, p. 21; Frank et al 2010). David Frank and colleagues invited a generation of scholars to consider the rise of world culture through the lens of sexuality (Frank and McEneaney 1999; Frank et al. 2009*a*; Frank et al. 2009b; Frank et al. 2010; Frank and Moss 2017; Velasco 2020). By tracking the repeal of sodomy laws, these scholars proved that world culture theory holds even when applied to the most intimate realm—sex. New state policies protecting sexual expression and sexual liberty came into being, as societies shifted from an ancient concern for collectives—the nation, tribe, and family—to a modern concern with the rights of individuals as independent and free-willed actors (Frank and McEneaney 1999; Frank and Meyer 2002; Frank et al. 2009*b*; Frank et al. 2010). These rights were to be protected by a law that assured "equal" and "free" personhood (Meyer and Jepperson 2000; Lechner and Boli 2000; Meyer 2009). Global professionals and global institutions spread this ethos, or world culture, driving a "sweeping revolution in criminal-sex laws" across national territories (Frank et al. 2009*a*; Frank et al. 2009*b*; Frank et al. 2010, p. 867; Schofer et al. 2012).

Figure 1 shows the rate of decriminalization over the last half-century: the percentage of countries that decriminalize homosexuality rose from roughly 40% in 1970 to 60% today. Political scientists have also traced how transnational norms (or 'world culture') around gay rights propelled positive change cross-nationally by heightening "norm visibility" and exposure to gay communities through the close links between international organizations and local LGBT groups (Ayoub 2016). Norms offer activists something to mobilize around and pressure nations to see themselves through a common standard and to conform. This is evident when, in passing pro-gay legislation, governments draw a link to other nations that have passed similar laws and rhetorically nod to "international standards of human rights" (Kollman 2013). In 2016, the government of Nauru decriminalized homosexuality to be in line with its international treaty obligations and to show progressive leadership.[2] Nations may recognize gay rights for more instrumental reasons as well, as in the case of EU applicants many of whom decriminalized homosexuality in order to join the EU, a case I discuss in greater detail below.

Whereas world society theory tended to foreground the importance of links to global institutions, Kollman directed our attention to the specific cultural conditions necessary for

[2] https://www.reuters.com/article/us-nauru-lgbt-lawmaking-idUSKCN0YM0AF

transnational norms to be seen as legitimate, for "social learning" to occur, for local lawmakers to internalize gay rights norms. For his part, Ayoub clarifies the centrality of ties between local LGBT organizations (norm brokers) and global institutions (norm entrepreneurs) who work together to give transnational LGBT rights local issue salience in a particular country. Without denying domestic factors, the transnational norm literature innovated by pointing to the role of global processes in shaping domestic policies in general, and gay rights in particular. This paper is similarly concerned with the global. But their important contributions notwithstanding, these works have focused mainly on the diffusion of pro-gay legislation: Frank et al. analyzing mainly sodomy laws, Kollman same-sex partnership laws, and Ayoub a five-category ordered scale of various pro-gay laws. However, they do not attend to the steady rise of explicitly anti-gay laws, especially in the Global South. This brings me to a second strand of literature.

Illiberal Countertrends: A Challenge to World Culture

Much of the work on transnational norms has sought to understand why nations moved in a decidedly liberal direction. And yet, liberal trends have slowed. By the early 2000s, the upward trend in decriminalization begin to flatten, stagnating at roughly 60% (Figure 1). Moreover, new counterforces are on the march fueling new divisions and "illiberal world models" (Hadler and Symons 2018). Empirical evidence of polarization is mounting. At the United Nations, many member states resist including a right to same-sex marriage in the non-discrimination clause (Waites 2009), seeing liberalization as Western imposition (Saiz 2004; Voss 2017). Challenger states "argue that there is a potential 'Clash of Civilizations' and that the West is trying to not only create new rights but impose those rights upon others" (Voss 2017, 19). And despite signing international human rights treaties, many regional intergovernmental organizations (IGOs) outside the West still refuse to incorporate sexual orientation and gender identity into their human rights declarations (Langlois 2014). Simply put, the embrace of world culture is not happening everywhere. But what accounts for this resistance?

A great deal of work points to a variety of explanations, from a lack of modernization and economic development to the strength of old traditions and religious beliefs, that is, the strength of traditionalist and survivalist cultures over secular-rational and self-expressive ones (Inglehart and Baker 2000). Nationalism and colonial heritage play their role as well (Buss and Herman 2003; Asal et al 2013). In line with transnational norm literature, scholars have shown that in countries where global norms lack local legitimacy, gay rights will be slow to take hold (Kollman 2013). Resistance to gay rights is often founded on claims to religious freedom, national and moral sovereignty, as well as autonomy, arguments grounded in the belief that law must express majoritarian values, what Durkheim ([1893] 1997) calls the collective consciences (O'Dwyer and Schwartz 2010; Ayoub 2014; Wilkinson 2014; Horvath 2016; Frank and Moss 2017). States that effectively link sexual politics to national identity, legitimacy, and the social hierarchy provide rich soil for anti-gay policies (Symons and Altman 2015). In Poland, for example, the tight link between religion and national identity allows religion to be used to frame gay rights as an external foreign force (Ayoub 2014). In Eastern Europe, Dwyer and Schwartz (2010) point to the added impact of illiberal elites, antigay rhetoric, weak EU-conditionality and party systems. In Russia, a discourse of traditional values has been deployed to implement anti-gay propaganda laws (Wilkinson 2014). Anti-gay social movements, like American evangelicals, often mobilize in countries outside the West like Uganda (Kaoma 2013). And while many countries in the Global South have refused to decriminalize homosexuality, opposition to gay rights can also circulate

close to the Western core, fueled by churches, political parties, think tanks and governments (see Browne and Nash (2014) on Canada and Great Britain; Fassin (2010, 2014) on France; Zivi (2014) on the United States). And this only adds grist to the mills of non-Western defenders of anti-gay resistance.

Another strand of literature suggests that anti-gay policies reflect a *backlash* against global gay rights norms and the normative pressures coming from the agents of world culture, Western nations and institutions (Fassin 2010; Rao 2015; Massad 2007). Indeed, before local populations begin to make claims for gay rights, rights discourse can fuel "anticipatory countermobilizations" by social conservatives who react preemptively to what is happening in the global environment (Dorf and Yaroo 2014; Weiss 2013; O'Dwyer 2013). Research beyond LGBT politics provides support for this finding. For instance, Bail et al. (2018) have shown that increased exposure to opposing views can lead individuals to hold ever more strongly to the views they already have, or worse, move toward even more extreme positions. Strikingly, the authors found this digging in more often among conservatives exposed to liberal views (Bail et al. 2018). This point echoes the qualification Ayoub (2016) makes when he suggests that increased visibility of LGBT rights may ultimately lead to momentary backlash. Though for Ayoub, this backlash may still (paradoxically) lead to progressive change, by increasing the visibility of LGBT issues and laying a foundation for future success.

Anti-gay rhetoric and policies may be also used instrumentally for statecraft. In such instances, what scholars call "political" or "state homophobia" become tools in local power struggles for purposes of governance and security and for diverting attention from national crises, like high unemployment, economic stagnation and slow growth (Bosia and Weiss 2013). "State homophobia" exploits local homophobic sentiment by connecting sexual minorities to foreignness (often the West) in order to solidify support (El-Menyawi 2006; Pratt 2007; Bosia and Weiss 2013). The effectiveness of such tactics depends on how populations perceive the "foreign" and the normative pressures coming from mainly Western societies and institutions.

This illiberal-trend literature has contributed significantly to our understanding of why nations failed to embrace gay rights. This literature has several defining features. First, these studies tend to be national case studies comparing at most at a handful of countries. Such specificity offers deep insights into country-specific dynamics, but it also leads to conclusions that fall back on domestic explanations alone, such as religion, nationalism, or local party politics and interests as impediments to change. Yet this misses how global dynamics may also be at work in movement in anti-gay directions just as they are in movement in more pro-gay ones. Second, the illiberal-countertrend literature focuses mainly on legal stagnation (e.g., O'Dwyer 2013), anti-gay political movements, the sources of local, population-level resistance to gay rights (e.g., Weiss 2013; Ayoub 2014), as well as the political uses of homophobia (Bosia and Weiss 2013). But, like the liberal-trend literature discussed above, it largely ignores explicitly anti-gay laws on the books. Notable exceptions are Wilkinson's (2014) case study of Russian anti-propaganda laws and Koama's (2013) study of the "Kill the Gays" bill in Uganda. These exceptions however like the rest of the countertrend literature are mainly of single case studies, not cross-national comparative analyses of anti-gay laws in their relation to pro-gay laws over time. Third, both the liberal-trend and illiberal-countertrend literature isolate individual explanatory factors to explain variation in gay rights—either religion, economic development, nationalism, links to world society institutions or acceptance of global norms, and so forth. But they leave underexplored the deeper structural divisions that lie beneath differences in how nations regulate same-sex love and desire.

Thus, my approach builds on and departs in several ways from earlier work. Using cross-national and longitudinal data, I consider a more robust set of pro- and anti-gay legislations. And I add to this a global structural perspective, one that lays out a topographic and relational explanation for the growing gay divide. In a nutshell, instead of emphasizing how individual attributes impact the outcome of a single law (Figure 2), I show how when they are taken together these attributes bring to light something important about the overall structure of relations among nations. I argue that the relative positions of countries vis-à-vis one another in terms of their approach to gay rights actually reflects the unequal (social) positions of power of those countries in the global hierarchy (Figure 3). This missing link of the social position of nations places inequality and hierarchy at the heart of the ongoing conversation about gay rights. It responds to critiques of earlier work, especially work on transnational norms that deemphasized "conflict, power and resistance" (Cobb 2014, p. 290) in favor of a consensus-driven story of transmission and institutionalization (Buttel 2000; Finnemore 1996; Hirsch 1997; Koenig and Dierkes 2012; Cobb 2014). As a consequence, I do not take for granted "transnational norms" and "international standards of human rights" as ideal concepts without making known the real relations of power that lie beneath national approaches to gay rights and that are at play in the global struggle for gay rights, relations that have engendered a politics of resentment that fuel the global gay divide.

FRAMEWORKS FOR STUDYING POLARIZATION

Sociologists have grappled recently with the question of division in a variety of ways. First, scholars have proposed the imagery of network ties along which ideas and policies do or do not flow. These ties, like friendship or organizational membership, link social actors and shape social action. To explain polarization, recent scholars have highlighted how segmented networks can lead to enormous variation in outcomes—i.e., imitation within, but differentiation across different network clusters (Granovetter 1978; Watts 2002; Centola and Macy 2007; Centola 2015). This may be due to "choice homophily," where individuals mimic only those to whom they are similar, which leads to differentiation across culturally dissimilar groups (e.g. Carley 1991; Mark 1998; Centola et al. 2007; Flache and Macy 2011; Dandekar et al. 2013; DellaPosta et al. 2015). Segmented networks lead to segmented practices (Aral and Van Alstyne 2011; Centola 2011; Cowan 2014; Miller and Prentice 2016;). Beckfield (2010) has demonstrated rising regional segmentation in terms of IGO memberships, which has contributed to global fragmentation and heterogeneity. I include shared IGO memberships in my analysis, not as direct network ties, but as one of the properties of nations. As will become clear below, my findings show similar patterns of hyper-regionalization, patterns evident in the tight correspondence between IGO membership and different national approaches to gay rights.

The second approach is more cultural, considering the roles of meaning and interpretation, as well as power, prestige, and proximity. Going beyond simple network contagion models, the theory of "associative diffusion" wrestles with the interactional process of meaning making that drives cultural variation (Goldberg and Stein 2018). Variations in practice may be based not on differences in the network ties individuals share, but on what those practices mean and signal to others. An individual may take up smoking, for example, not because friends to whom she is tethered smoke, but because of what smoking signals to the community and means to her, like "defiance" (ibid. p. 10). This attention to the meaning of practice dovetails with discussion below of how, for some nations, gay laws can signal adherence to or defiance of world culture.

Other recent scholarship has drawn on Gabriel Tarde's theory of imitation to explain global polarization. In examining Google search terms, Bail et al. (2019) show how national power and prestige, as well as cultural proximity between nations, are linked to patterns of polarization. The authors find that citizens in low power and prestige countries generally follow the interests and practices of those in high power and prestige ones. But this relationship occurs largely within cultural boundaries, silos of geographic, linguistic, and historical commonalities. Countries are more likely to imitate more powerful ones if they share the same religion, language, or colonial heritage (e.g., former French colonies imitating France). Thus, imitation occurs within a linguistic group, e.g., from France to the Ivory Coast, while polarization will be found between linguistic groups, e.g., Francophone versus Anglophone.[3] These silos also point to the existence of a variety of regional and geographically proximate tastemakers, led by regional powers like China, Turkey and Saudi Arabia. Bail et al.'s attention to the significance of power and prestige, cultural boundaries, and regional tastemakers has strong echoes in my findings below. But there are important ways in which this explanation is not generalizable to the highly contentious terrain of laws on homosexuality I study (as opposed to Google searches). I find that a nation's power and prestige do matter for accounting for its approach to gay rights. But I also find that greater distance between nations in terms of power and prestige the less likely weaker nations are to imitate more powerful ones, with some exceptions as we will see. And while cultural boundaries matter, the unifying lines do not work the same. Take for example shared language, which in Bail et al.'s model places France and Senegal in a mimetic relationship, while opposing Senegal and Nigeria. Quite the opposite for laws on homosexuality—France and Senegal are diametrically opposed, while Senegal and Nigeria are much closer together. As we will see, colonial heritage matters differently in the case of homosexuality than in the case of Google searches. Instead of France and Senegal's shared (albeit unequal) colonial heritage pulling them closer together, it is Senegal and Nigeria's shared experience as colonized nations that helps explain their similarity.

A third contender is recent currents in world society literature. Recall that world society theory has shown how global scripts permeate, exerting normative pressure on nations, pushing them to converge on 'world culture' (Meyer and Rowan 1977; Strang and Meyer 1993; Meyer et al. 1997). These scripts dictate rules and offer templates for social action, driving isomorphism at the individual, institutional and national levels (Meyer et al. 1997). Faithful imitation of these scripts offers legitimacy in the eyes of others (Meyer et al. 1997). Although world society scholarship has traditionally sought to explain convergence on world culture, an emergent strand is beginning to grapple with persistent—and rising—deviations from it: "counterpoint variations" among "outlier" nations that have expanded restrictions on sodomy based on claims to national sovereignty and religion (Frank and Moss 2017); slow adoption due to low levels of exposure to LGBT norms (Velasco 2020); attacks on academic freedom, universal education and female enrollment, and the social sciences found in countries with membership in illiberal organizations (Schofer, Lerch, and Meyer 2019); and new restrictions on foreign funding to non-governmental organizations put in place to protect against foreign influence which is linked to anti-Western discourse and illiberal organizational membership (Bromley, Schofer, and Longhofer 2019). Explanations for polarization are usually due to differences in linkages to the world culture system (global professionals, IGOs, and INGOs), as well as the rise of illiberal organizations. As I show below, my findings will also highlight the important role played by illiberal organizations in the

[3] Linos (2011) finds politicians are more likely to imitate laws in countries that are perceived by voters as culturally familiar and geographically proximate.

global gay divide, but does so within a more robust relational framework for theorizing polarization.

A Social Space Approach

The fourth approach constructs the world as a multidimensional social space and examines the correspondence between the structure of social practices and the structure of social properties. Developed by French sociologist Pierre Bourdieu, the social space approach, alongside its signal method of multiple correspondence analysis (MCA), is particularly well-suited to studying global variation. Many thinkers have taken Bourdieu up in scale from the national level, including Bourdieu himself (Bourdieu and Wacquant 1999; Bourdieu 2000). Bourdieu at the global level shares many of the same features as Bourdieu at the national level (Pouliot and Mérand 2013). While most studies that take Bourdieu global draw on his field theory (e.g., Guilhot 2005; Steinmetz 2008; Go 2008; Pouliot 2010; Dezalay and Garth 2011; Krause 2014; Buchholz 2016; Brundage 2018), few draw on his more general and more all-encompassing concept of social space (Lebaron 2008; Fourcade, Lande and Schofer 2016).

Social space is Bourdieu's most powerful concept, a first principle from which he derives other concepts like fields (a subspace of social space), capital and habitus. The bulk of social action (practice), Bourdieu notes, can be conceptualized as unfolding in a multidimensional space (Wacquant and Akcaoglu 2017). Analytically, social space investigates the distributions of social practices and resources, and the relation between these within a given society (Steinmetz 2016). Through an empirical investigation of social space, we can clarify (1) the structural relationships among different practices—i.e., which practices hang together (co-occur) and which fall apart; (2) the relative position of the agents based on the social practices they do and do not share; and, most important, (3) the distribution of relevant social properties (capitals and socio-demographics) that best account for (1) and (2), and thus, reveal the underlying principle of stratification. The task of the investigator is to identify these social properties that present themselves as the structuring forces that shape practices.

As a "system of (sociologically) relevant differences," the logic of social space is not based on individual variables and their independent effects, but rather on *relations* and *positions*.[4] Each position in social space is defined in its relation to another and the objective is to map empirically these relations.[5] To formulate this more concretely, any single social practice, agent, or property cannot be understood except by placing each in relation to other practices and properties.[6] In addition to being relational, the social space approach is also positional (topological) (Fourcade 2007). Social reality is represented as a multidimensional space of positions. Putting these together, agents—their practices and their properties—are defined by proximity and distance, overall and relative position in social space (Wacquant 2018).

Causality within this framework is what Bourdieu called "structural causality," a causality lying not in independent effects of independent variables, but rather in the overall structure of relations and in the interplay of interdependent and interacting positions, practices and properties

[4] Bourdieu, Pierre. "Some reflections about the use of correspondence analysis." Unpublished Lecture.
[5] The relational logic embodied in the concept of social space, and fields, migrated to Bourdieu through Leibniz and Cassirer (Wacquant 2018), but also has echoes of Elias' ([1969] 1983; [1970] 1978) concept of *figurations.*
[6] "Relationalism" opposes "substantialism," which refers to attributing phenomena that appear or surround an object to a fundamental quality or substance of that object rather than in its relation to others (Emirbayaer 1997).

(Fourcade 2007).[7] As Abbott (1991) noted,

> …regarding social causes as independent is more than a little disingenuous. Causality is nearly always joint…No social cause ever acts alone in a human system; gender never does anything without having other variables along for the ride.…looking at the social world not in terms of simple variables but in terms of complexes of variables may be not only more important than we think, but may be all we are able to do (Abbott 1991, p. 226).[8]

Let us take the example of a majority Muslim country, consistently found to be negatively associated with pro-gay legislation. Non-relational frameworks, which presume independence of covariates and seek to isolate independent effects, often lead scholars to assert that for example, all else equal, majority Muslim countries are more anti-gay than majority Christian ones. But to quote Abbott again: "Nothing that ever occurs in the social world occurs 'net of other variables.' All social facts are located in contexts" (Abbot 1997, p. 1152). Social space makes visible this context, attending to the "ontological embeddedness or locatedness of entities within actual situational contexts" (Emirbayer 1997, p. 289). As seen in the analyses below, the majority Muslim variable always appears—year after year—in a thicket of other measures, measures which jointly give an account of what structures national approaches to gay rights. The majority Muslim variable is positioned close to other measures that help to contextualize its meaning, measures like low per capita GDP, low globalization, high foreign pressure, and former colony, measures which co-constitute what it means to be a Muslim nation today.

Arguing for the "ontological embeddedness" of Muslim with the postcolonial condition, queer theorist Rao (2015) observes that "institutionalized homophobia" in many majority Muslim nations is bound up with the postcolonial predicament and is not only about religion, per se. Rather it is about "the desire of anti-colonial elites to construct virile, masculinized nationalists capable of overthrowing the colonial yoke—a task that entailed the erasure of indigenous traditions of androgeneity and same-sex desire" (p. 359). Variable-driven causality leads to what Halberstam (2011) would lament as "clumsy characterizations of Islam as deeply homophobic," and an uncritical, taken-for-granted assumption of a "relationship between gay tolerance and liberal democracy" (p. 161-162).

Bourdieu's concept of social space has rarely been used at the global level (see Fourcade et al. 2016; Steinmetz 2016 for notable exceptions). Fourcade et al. (2016) have used the social space approach to investigate the distribution of political practices (e.g., membership in civic associations, volunteering, and participation in political activities like strikes and boycotts) within and across nations, considering how different political practices cluster together, which political practices are prominent within different national polities, and how countries 'do politics'

[7] Bourdieu, Pierre. "Some reflections about the use of correspondence analysis." Unpublished Lecture.

[8] A similar logic is evident in feminist scholarship, which has long emphasized the salience of joint effects and intersecting social categories. The concept of "intersectionality" (Crenshaw 1989) argues, for instance, that categories like race and gender cannot be isolated from one another and that their effects are not additive—i.e., the impact of being a black woman on social outcomes is not simply the sum of being Black and being a woman, but rather is something different altogether. This draws scholars' attention to the interlocking nature of systems of gender, race, class and sexual oppression (Collins 1986). McClintock (1995) articulates a similar point about the interdependence of social variables by considering their construction, showing how, for example, racial categories always require discourses about gender, sexuality and class for their construction.

differently. My analysis is the first to add to this global social space framework a longitudinal dimension, attending to the dynamics evolution of social space.[9]

By situating countries in a "social space," I ask the following:

- **[Space of Laws]** *How do social practices hang together (i.e., how are national laws on homosexuality distributed into a multidimensional space based on their co-occurrences and what is the logic of that distribution)?*

- **[Space of Nations]** *How are social agents positioned vis-à-vis one another in terms of their social practices (i.e., how are countries positioned in relation to one another based on the kinds of laws they have)?*

- **[Space of Properties]** *How do social properties account for the patterns among agents and social practices (i.e., what is the logic, or underlying structuring factors, that push some countries close together and pulls others further apart)?*

- **[Space-Time]** *How have these patterns evolved over time? What are the dynamics of the space?*

RESEARCH DESIGN

To operationalize the principles of social space, I turn to multiple correspondence analysis (MCA), a subset of methods known as geometric data analysis (GDA), developed by Jean-Paul Benezecri (1969) and popularized by Bourdieu (e.g., 1984, 1990, 1996). While the bulk of the literature on world culture uses regression-based methods (Frank and McEneaney 1999; Frank et al. 2009*b*; Frank et al. 2010; Frank and Moss 2017; Hadler and Symons 2018), and to a lesser extent, network analysis (Beckfield 2010), this is the first study to use MCA, a method well suited to modeling the global gay divide. Few studies, including Bourdieu's, have used this technique at the global level. Notable exceptions are Fourcade et al. (2016) discussed above and Pouliot (2016). Pouliot (2016) looks at how states' diplomatic practices (functional contributions, permanent mission resources, and policies advocated) correlate with their standing in two multilateral organizations, the United Nations and the North Atlantic Treaty Organization.

A semi-inductive method, MCA is designed to highlight multivariate relationships among

[9] *On the difference between social space and fields.* Social space is Bourdieu's overarching concept from which the concept of fields is derived. Fields exists in a particular subsection of social space. They are arenas of social action which are institutionally bounded and demarcated, where there are field-specific capitals required for entry, where specialists elaborate a set of rules of the game, and where agents struggle over and work to accumulate field-specific forms of capital (Wacquant and Akcauglu 2017). I employ the general concept of "social space." In contrast to a field analysis, nations in this analysis are not part of a demarcated and autonomized arena with institutionalized boundaries, as would be the case if I were considering how countries voted on gay rights provisions within the bounded institution of the United Nations. Nor are there specialists developing rules of the game, nor are nations oriented toward each other as in a *game*, with specific rules all must follow, with a field specific form of capital held and struggled over by agents. Elsewhere I use field theory to examine the bounded global field of human rights and the specific struggles between actors (nations, IGOs, and INGOs) within that field (AUTHOR, Forthcoming).

different measures in a way that brings into relief the structure of those relationships (for a wide range of uses of the method, see e.g., Bourdieu 1984; Harcourt 2002; Bearman and Parigi 2004; Tabachnick and Fidell 2007; Breiger 2009; Fourcade, Lande and Schofer 2016;). Thus, MCA differs from other methods (like regression-based techniques such as event history analysis) in that it does not look for independent effects of a set of variables on a single outcome. Rather MCA groups multiple variables and cases, and represents those relationships in a two-dimensional space, where relative position and distance are meaningful. MCA is able to show groupings of countries in time around their approaches to gay rights. It does this by formalizing the distance between countries based on multiple variables (here laws) and visualizing those distances. That is to say, MCA portrays the similarities and differences between the way that countries do and do not pass legislation on gay rights over time. MCA allows the observation of complex relationships that are not reducible to linear relationships (Fourcade et al. 2016). Describing the goal of correspondence analysis, Emirbayer and Johnson (2008) write that the method

> [p]ermits the plotting of a two-dimensional representation of the interrelationship among multiple sets of elements (e.g., positions, position-takings). The advantage of this method is that both sets of relationships can be mapped simultaneously onto the same space, thus showing how each set of elements is positioned by means of its association with the other. This visual device allows one to grasp intuitively, in terms of spatial distribution upon a map, formal patterns of relationships among elements of a particular order (e.g., positions), while simultaneously seeing how these are arrayed relative to similar patternings on the other order of social phenomena (e.g., position-takings) (p. 33).

As a dimension reduction method, MCA is similar to principle components analysis, but uses categorical rather than continuous variables, and it shares affinities with log-linear analysis, latent class analysis and cluster analysis (Greenacre and Blasius 2006; Boelaert and Ollion 2018). As a factorial method, MCA performs a singular value decomposition on the correspondence matrix, such that the number of dimensions is reduced by creating orthogonal components comprised of the variables. The relational logic of social space comes to statistical life as MCA graphically represents rows (individuals) and columns (variables) of a matrix in such a way that their plotted location and relative distances are meaningful (LeRoux and Rouanet 2010). More specifically, "[t]he distance between individual points reflects the dissimilarities between response patterns of individuals" (LeRoux and Rouanet 2010, p. 152). One unique feature of MCA lies in its extensive visualization that is at the heart of the method. Benzécri developed two transition equations that take the researcher from the initial space of practices to the space of individuals, and second, from the space of individuals to the space of properties, i.e., socio-demographic measures that do not construct the space, but are projected onto the space as mean points to interpret the patterns found in the space of practices and individuals (LeRoux and Rouanet 2010, p. 41).[10]

MCA takes a different approach from previous studies of cultural variation and global processes, such as regression (e.g., Frank et al. 2009), network analysis (e.g., Beckfield 2008, 2010), clustering (e.g., Bonikowski and DiMaggio 2016), or factor analytic techniques (e.g., Inglehart 1997; Inglehart & Baker 2000). Using regression, world society scholarship has explored how changes in ties to world culture (e.g., global professionals, IGO and INGO membership) lead

[10] See Le Roux and Rouanet (2010, p. 41) for Benezecri transition formulas in MCA.

to adoption of world culture outcomes (e.g., decriminalization of homosexuality). Beckfield (2003, 2010) used network analysis, whose relational logic closely aligns with MCA, to show how IGO network ties have become more polarized by region over time. Bail et al. (2018) creatively combine network analytic techniques and negative binomial regression to predict diffusion of Google search terms within country dyads. For their part, Bonikowski and DiMaggio (2016) study complex patterns of division in "Americans' national self-understanding." Innovatively applying cluster analysis, a method with some affinity to MCA, they are able to identify different forms of nationalism(s) that go beyond "conventional distinctions between ethnocultural and civic nationalism" (p. 949). Inglehart used factor analysis to identify a minimum set of latent factors, or underlying cultural differences, between nations from a variety of different practices and beliefs of individuals within nations. This leads to constructs such as "materialist" and "post-materialist" societies.

Unlike factor analysis, MCA's goal is not only to identify underlying common factors among practices, but also to compare the distribution of those practices with the distribution among individuals who exhibit them and the distribution of the social properties of those individuals. The *mapping and visualization* of these three interrelated social spaces, made possible by Benzécri's transition formulas, distinguishes MCA from factor analytic techniques (Le Roux and Rouanet 2010). Both MCA and network analysis are structuralist methods that represent relations visually. But whereas network analysis offers an interactional structuralism (based on direct ties), MCA offers a positional structuralism (based on relative positions) (Fourcade et al. 2016). In contrast to regression-based methods, MCA has few modeling restrictions and is inductive in the sense that it examines the structures and patterns that emerge from empirical distributions in statistical data. There are no assumptions (in terms of the normality, homoscedasticity, multicollinearity, or independence), no sample size requirements, no probabilities, no hypothesis testing, no tests of significance or inferential objectives. In line with Bourdieu's theory of social space, and fields:

> Contrary to regression analysis, MCA does not presume that there exist independent and dependent variables. It does not seek to prove a hypothesis or a model either. Yet it would be wrong to conclude that the technique is merely descriptive. In the relational style of reasoning, uncovering the associations that comprise the social whole is a necessary part of explanation. MCA seeks to grasp the whole system of social relations involved in a given case….MCA helps identify those modalities and/or individuals that vary together; that is, the distribution of selected characters across a given population of interest (Pouliot 2016, p. 229).

My use of MCA, however, is the first to push beyond Bourdieu's and conventional uses by adding a longitudinal dimension, which allows for the mapping of change over time. These results follow how the space of social practices, social actors, and social properties emerged and evolved. In the analysis, 2015 is defined as the base year and prior years as supplementary cases. MCA tracks year-by-year the movements within and across all three spaces that led to the current state of polarization.

I run the MCA on national laws in 174 countries from 1970-2015, and thus, the nation is the unit of analysis. There are two types of variables used in the MCA—active and supplementary. For my purposes, laws on homosexuality are active variables that construct the space (i.e., they are the basis for the variance calculations). Given that the first goal of MCA is to understand how different practices "hang" together, that is, their patterning of co-occurrence across multiple cases,

the MCA must include a range of active variables each with at least two categories to have variation.[11] Step 2 presents countries that map onto, or correspond to, those laws. In step 3, I will add supplementary country-level descriptors to interpret the oppositions I find in the space of laws and space of nations. Step 4 performs a longitudinal multiple correspondence analysis for the period 1970-2015 to show changes in all three spaces over time.

Data[12]

Active Variables.[13] Active variables are the variables whose response patterns are used to construct the space and which are used to calculate the estimated variance, as well as the specific contributions of each response to the variance. Ten laws on homosexuality represent active variables, each having two response categories for 174 countries in the dataset.[14] These include: criminalization of homosexuality, coded as criminalized (GAYILLEGAL) or decriminalized (GAYLEGAL); the right to same-sex marriage (GAYMARRIAGE); the right to gay civil unions (GAYUNION); the rights of gay couples to adopt (ADOPT); a ban on incitement to hatred based on sexual orientation (INCITE); constitutional prohibitions on discrimination (CONSTITDISCR); a ban on employment discrimination (EMPDISC); hate crimes legislation (HATE); proposed anti-gay propaganda laws (ANTIGAYPROP); and an increase in penalties for homosexuality (HIGAYPENALITY). Cases where there is no such legislation are coded with a "NO" in front of the value labels. Data are taken from the International Lesbian and Gay Association.[15]

Supplementary Variables. Though not used to construct the space, supplementary variables are status measures that aid in interpreting the variance and patterns found in the space of active variables. *Socio-demographic Characteristics.* Gross Domestic Product Per Capita (GDPpc) is coded into seven categories, 0-2K, 2K-5K, 5K-10K, 10K-20K, 20K-35K, 35K-50K, and 50K and above. These data are in constant 2010 dollars and were taken from The World Bank.[16] Foreign Pressure (ForPressure) is coded on a four-point scale from very low to very high. Specifically, this variable measures amount of diplomatic pressure, the withholding of aid, trade restrictions, territorial disputes, and sanctions that are brought by one or more foreign governments with the goal of forcing a policy change. Data are taken from the Political Risk Services Group.[17] Majority religion is coded as Protestant, Catholic, Muslim, or other religion. Region is coded as Africa, Asia,

[11] A difference from regression models where you have one "outcome" variable and several predictor variables.
[12] All data are yearly and longitudinal for the time period 1970-2015. In parentheses are the labels for each variable as they appear in the MCA figures.
[13] Note that I only focus on black letter law and do not consider other areas of state regulation that may be important for the regulation of homosexuality (for example, see Margot Canaday's (2011) work on immigration law, the military and welfare policy). These data also do not parse out different levels of enforcement of laws on homosexuality—for example, so called "dead laws" that exist on the books but that are not put into practice. "Dead laws," however, are not always dead, as they can create ambiguity about enforcement and keep people guessing. The existence of a legal statute, even if not enforced or only occasionally enforced, may still function as a form of social control (e.g., see Stern and Hassid (2012) for work on deliberate legal uncertainty and ambiguity in the context of China's authoritarianism).
[14] There are no missing data for active variables (laws) used to construct the space and to determine its variance. I have full information for all of the countries.
[15] Carroll, Aengus, and Lucas Mendos. 2017. "State-sponsored Homophobia." International Lesbian, Gay, Bisexual, Transgender and Intersex Organization. https://ilga.org/state-sponsored-homophobia-report-2017-ILGA
[16] https://data.worldbank.org
[17] https://www.prsgroup.com

Caribbean, Latin America, Eastern Europe, Central Asia, North Africa and the Middle East, and the West.[18]

Globalization Measures. There are four measures of globalization taken from the 2013 KOF Index of Globalization.[19] Each measure is on a scale from a low of 1 to a high of 100. I recode each measure into five cut points—very low (1-20), low (21-40), medium (41-60), high (61-80), and very high (81-100). Economic globalization (EconGlobal) captures the amount of trade, foreign direct investments, portfolio investments, income payments to foreign nationals, import barriers, mean tariff rates, taxes on international trade, and capital account restrictions. Cultural proximity (CultureProx) describes proximity to the West and includes data on the number of McDonald's restaurants per capita, number of Ikea stores, and the trade in books as a percent of GDP. Political globalization (PoliGlobal) includes traditional geopolitical measures, such as number of embassies in country, membership in international organizations, participation in the U.N. Security Council Missions, and number of signed international treaties since 1945. Overall globalization (Globalization) is a composite measure of the other types; however, economic globalization receives the most weight.

Colonial Legacy.[20] Whether a country was a former colony is coded as former colony (FormerColony) or never colony (NeverColony). The former colonial overseers of a country are coded as follows: Spanish colony (SpanishColony), Belgian colony (BelgiumColony), British colony (BritishColony), Portuguese colony (PortugueseColony), French colony (FrenchColony). Membership in the former Soviet Union (USSR) is also included. In addition, I constructed a measure of settler colonialism (EuroPop). This variable represents the percentage of white Europeans living in a European colony in 1900 and is coded 1-10% (EuroPop<10%), 11-50% (EuroPop11-50%), and over 50% (EuroPop>50%).[21] This measure helps to distinguish between countries (like Ghana) that were primarily used for extraction of resources (natural and/or human) and countries (like South Africa) where the colonial authority sought to settle permanently.

Attitudes Data and Law-Attitudes Gap Measure. Data include attitudes toward homosexuality taken from the aggregated World Values Survey (WVS) and European Values Survey (EVS), based on respondents' answer to the question 'Is homosexuality justifiable' on a scale of 1-10 (1=never justifiable; 10=always justifiable).[22] I calculate the median score for each country. I create a new indicator variable for each country that is coded into one of five categories depending on their median value, a median value of 1-2, 3-4, 5-6, 7-8, 9-10. From there I created a series of law-attitudes interaction measures, which combine the measure for median attitudes

[18] Marshall, Monty, Ted Gurr, and Keith Jaggers. 2013. "Political Regime Characteristics and Transitions, 1800-1912." Center for Systemic Peace. https://www.systemicpeace.org/inscrdata.html

[19] Dreher, Axel, Noel Gaston, and Pim Martens. [2008] 2013. *Measuring Globalisation - Gauging its Consequences*. New York: Springer. https://www.kof.ethz.ch/en/forecasts-and-indicators/indicators/kof-globalisation-index.html [accessed 15 May 2014].

[20] Ibid.

[21] Acemoglu, Daron, Simon Johnson, and James Robinson. 2001. "The Colonial Origins of Comparative Development: An Empirical Investigation." *American Economic Review* 91:1369-1401. https://economics.mit.edu/faculty/acemoglu/data/ajr2001 [accessed 02 February 2014].

[22] Inglehart, R., C. Haerpfer, A. Moreno, C. Welzel, K. Kizilova, J. Diez-Medrano, M. Lagos, P. Norris, E. Ponarin & B. Puranen et al. (eds.). 2018. World Values Survey: All Rounds - Country-Pooled Datafile Version: http://www.worldvaluessurvey.org/WVSDocumentationWVL.jsp.

with the measure for whether homosexuality is legal or illegal. For example, one variable might read GayJust1_2.Illegal, which means that for a given country the median score on the 'homosexuality is justifiable' question is between 1 and 2 and homosexuality is illegal for that country. On the other hand, a variable might read GayJust1_2.Legal, which indicates that for another country the median score on the 'homosexuality is justifiable' question is between 1 and 2, but homosexuality is legal for that country. This constructed measure gets at the countries that have a law-attitudes gap, i.e., laws on homosexuality that are out of touch with public attitudes toward homosexuality.

Intergovernmental Organizations. These data include membership in inter-governmental organizations (IGO) and selected regional and global treaty regimes.[23] These data include membership status in the following IGOs: Organization of Economic Cooperation and Development (OECD) is coded member or non-member; European Union (EU) is coded member, applicant, or non-member; North Atlantic Treaty Organization (NATO) is coded member or non-member; Council of Europe (COE) is coded member or non-member; Asia-Pacific Economic Cooperation (APEC) is coded member or non-member; Association of Southeast Asian Nations (ASEAN) is coded member or non-member; Southeast Asian Nations (SEATO) is coded member or non-member; Organization of American States (OAS) is coded member or non-member; Southern Common Market (MERCOSUR) is coded member/associate member or non-member; Organization of Petroleum Exporting Countries (OPEC) is coded member or non-member; Arab League (ARABLG) is coded member or non-member; International organization of the French-Speaking World (FRANC) is coded member/observer or non-nonmember; Organization of African Unity (OAU) is coded member or non-member; Economic Community of West Africa (ECOWAS) is coded member or non-member; Organization of the Islamic Conference (OIC) is coded member or non-member.[24]

Membership in Illiberal Intergovernmental Organizations. Scholars have identified IGOs that challenge the liberal world order on various grounds, including religion, culture, tradition, as well as political and national identity. These organizations are transnational and often support an alternative social, political or economic order to that preferred by most Western governments. I follow D'Anieri (2014); Bromley, Schofer and Longhofer (2019); Schofer, Meyer, and Lerch (2019) in identifying specific IGOs with an illiberal (geo)political agenda. As we shall see, the rise of illiberal anti-gay politics overlaps strikingly with membership in illiberal IGOs and member leaders who have come out vocally against liberalism and the West. I collected data on membership (by year) in these organizations: Shanghai Cooperation Organization (SCO), Collective Security Treaty Organization (CSTO), Commonwealth of Independent States (CIS), Bolivarian Alliance for the Peoples of Our America (ALBA), Association of Southeast Asian Nations (ASEAN), and Organization of the Islamic Conference (OIC). On the one hand, membership in these organizations can be seen as an indication of a nation's overall attitude toward liberalism; on the other, membership in these organizations can also represent the sites/networks along which illiberal legislation flows.

[23] Pevehouse, Jon, Timothy Nordstrom, and Kevin Warnke. 2004. "The COW-2 International Organizations Dataset Version 2.0," Conflict Management and Peace Science 21:101-119. http://www.correlatesofwar.org/data-sets/IGOs [accessed 30 October 2012].
[24] Ibid.

The Shanghai Cooperation Organization (SCO) was created in 2001. The central shapers of this organization are China and Russia, but the full roster of core members also includes Kyrgyzstan, Kazakstan, Tajikistan, Uzbekistan (India and Pakistan became members in 2017), with additional members with observer or dialogue partner status (Lanteigne 2018). In 2016, President Erdogan of Turkey signaled his country's potential application for admission as "his government continued to distance itself from the West" (ibid., p. 123). The SCO developed as a challenge to Western (especially American) hegemony and liberal democratic values (Lanteigne 2006). As Lanteigne (2006) notes, the Chinese wanted in the SCO "an internal 'smokeless war' against perceived 'liberal elements' seeking to destabilize Chinese society…" (p. 617). This organization seeks to reinforce regime stability and global multi-polarism, local norms and values, and to offer pushback against trends in liberalization and democracy promotion, as well as Western (American) domination (Chung 2004; Ambrosio 2008).

The Collective Security Treaty Organization (CSTO) is a Russia-led military alliance created in 1992, just after the collapse of the Soviet Union. Made up of Eurasian and Central Asian countries who are former members of the Soviet Union, the alliance seeks in part to counter the power of the North Atlantic Treaty Organization (NATO), in general, and the United States in particular. "American diplomacy and military operations…," Weinstein (2007) points out, "have played a hand in strengthening the CSTO and expanding its mandate beyond cursory matters of military cooperation" (p. 168).

The Commonwealth of Independent States (CIS) is another Russian-led group made up of nine member states, mainly former Soviet Union countries, which emerged after the fall of the Soviet Union. Like the SCO, this organization pushes back against the spread of Western liberalism in Eurasia, and is used by "authoritarians to expand their executive power, facilitate international security cooperation, and generate counter norms that erode their standing commitments to international human rights conventions" (Cooley and Schaaf, p. 184). The CIS has also been key in validating elections in ways that supports authoritarianism (Libman and Obydenkova 2018). As Cooley and Schaaf (2017) note, "For Moscow, its set of counternorms is increasingly emphasizing the importance of traditional values, religion, and a strong anti-LGBT agenda to push back against the encroachment of perceived "Western moral decay" in the Eurasia region" (p. 184).

Made up nine core member states, The Bolivarian Alliance for the Peoples of Our America (ALBA) was founded 2004 by Hugo Chavez of Venezuela and Fiedel Castro of Cuba as a "counter project to US dominated neoliberal trade initiatives," including free trade agreements (De la Torre 2017, p. 1272). The organization champions populism, sovereignty, anti-imperialism, Latin American and Caribbean integration, and Bolivarian socialism (De la Torre 2017; Libman and Obydenkova 2018).

The Association of Southeast Asian Nations (ASEAN) is a regional organization of ten states founded in 1967, described by Acharya (2003) as a "collective retreat from postcolonial experiments in liberal democracy…" (p. 378). It prefers "illiberalism over liberal, democratic aspirations" (Kuhonta 2006, p. 339) and created instead an "illiberal peace," prioritizing "sovereignty and non-interference" and supporting "illiberalism in the region" (Kuhonta 2006, 337-338), thus creating a "situation where political reform in terms of human rights and democracy is given short shrift" (339).

The Organization of Islamic Cooperation (OIC) was established in 1969 to support solidarity and cooperation among the 57 mostly Muslim-majority member states. The leading OIC countries, like Saudi Arabia, Iran and Pakistan, follow a conservative strand of Islam, and have

resisted human rights. Resistance is rooted in concerns about both religion and state-centric organization of OIC which emphasizes sovereignty over supra-national regimes of human rights (Kayaoglu 2013).

Selected Regional and Global Treaty Regimes. Finally, I include signatory status in the following treaties: Geneva Conventions (GENEVA) is coded signed or not signed; International Covenant on Civil and Political Rights (ICCPR) is coded ratified, signed only, or not signed; First Optional Protocol to the ICCPR (ICCPR1) is coded signed or not signed; American Convention on Human Rights (ACHR) is coded ratified, signed only, or not signed; African Commission on Human and Peoples' Rights is coded ratified, signed only, or not signed; Declared Recognition as Compulsory the Jurisdiction of the International Court of Justice (ICJ) is coded signed (declared) or not signed (no declaration).[25]

THE GREAT DIVIDE

I begin with an empirical puzzle. Imagine if our world enjoyed *perfect convergence* in national approaches to gay rights, then Figure 4 is what the space of laws (and its corollary, the space of nations) would look like. Overlapping points signal that all four laws co-occur in all four countries, or put differently, all four countries have the same four laws. Now consider the opposite scenario, that our world was *perfectly divergent*, then Figure 5 is what the space of laws (and its corollary the space of nations) would look like. No overlapping points signal that no laws co-occur in the same country, i.e., none of the countries share the same laws.

Figure 6 shows the actual space of laws for 2015 and answers the puzzle above. Ours is a divided world, marked by pockets of convergence and pockets of divergence. Two striking oppositions are evident: a north-south opposition based on the *absolute criminalization of homosexuality* (Dimension 1); and an east-west opposition based on a *relative (or type of) criminalization of homosexuality* (Dimension 2). Figure 7 shows the percentage of the variance explained by the first 10 axes of the MCA. The first two axes (Dimension 1 and 2) account for the most variation, but with Dimension 1 explaining the greatest portion of variance, more than three times that of Dimension 2, 39.64% and 12.12%, respectively (Table 2). While the variance of the first two axes account for 52.8% of the variance of the cloud, the Benzécri cumulated modified rate equals 100% (Benzécri 1992, p. 412).[26] I retain the first two axes for analysis.

The Space of Laws

Dimension 1 reflects a vertical divide in the *absolute criminalization of homosexuality*, i.e., the extent to which countries protect or punish sexual minorities (Figure 8). The top of the space represents the pro-gay pole, the height of world culture, with extremely liberal laws, including, the

[25] Ibid.

[26] The Benezécri modified rates are not rates of variance, but an index of the importance of the axes, somewhat akin to an index of an effect in a regression context. More concretely, the modified rates index a departure from sphericity, i.e., from the standard form of a circle where all eigenvalues are equal (Le Roux and Rouanet 2010, p. 40). Put differently, this tells us how much the active variables (laws) are responsible for stretching the space (or "cloud") in different directions away from the perfect circle that would exist under conditions where all axes had equal variance. The more stretched the space, the more patterned the co-occurrences among active variables.

right to marry (GAYMARRIAGE), to adopt (ADOPT), and to live constitutionally free from discrimination (CONSTIDISCR). As illustrated by the propinquity of these laws, countries that grant one of these rights tend to grant them all. Descending along Dimension 1, we arrive in a zone of still liberal, though slightly less robustly progressive laws. The laws in this area include prohibition on inciting hatred based on sexual orientation (INCITE), followed by a lesser substitute for marriage in gay civil unions (GAYUNION) and a continued commitment to special protections for gay people, namely, hate crimes legislation (HATE). Midway between world culture's apex and the x-axis sits the prohibition on employment discrimination against gay and lesbians (EMPDISC). The distant position of this law relative to its more northerly neighbors suggests it is more common, and thus, less distinguishing. As we approach the center of the graph, also known as the barycenter, decriminalized homosexuality (GAYLEGAL) stands alone. Though this middling zone does not criminalize homosexuality, it also does not recognize gay relationships or provide targeted protections. Its more central location on the graph means this law is more common among countries. Moving further down, crossing below the x axis, we slide into the anti-gay pole defined by the criminalization of homosexuality (GAYILLEGAL). But this pole is itself polarized along another dimension (Dimension 2) from east to west (Figure 9). This horizontal divide reflects a divide in the *relative criminalization of homosexuality*. To the east appears anti-gay propaganda laws (ANTIGAYPROP), referring to proposed laws criminalizing public discussions of homosexuality often in educational institutions and the media, what I will call a "culture-based" criminalization. Further down and centered along Dimension 2, we find laws that criminalize the practice of homosexuality (GAYILLEGAL). Further down and further west, we find laws that introduce new, more severe penalties for same-sex practices (HIGAYPENALITY), what I call a practiced-based criminalization. Taken together, dimensions 1 and 2 confirm the divided world hypothesis.

Although I have complete data on laws for all countries, one question that could be asked is how sensitive the model would be to an omitted variable, that is, how stable is the variance if we remove certain variables. No doubt, the model changes if you take out variables used to build it and an important task is to identify a broad set of laws that get at the variation in legal regulations of homosexuality globally. Nevertheless, I tested the stability of the laws I have included. I conducted a conservative test by removing those laws that contribute the most to the construction of the axes and to the variance and checked how correlated the old and new axes are. To examine the stability of the MCA, I considered the proportion of the variance of the cloud that is due to each law on Dimension 1 and Dimension 2 (Table 3). I did this by omitting and rerunning the analysis without GAYUNION, which contributes most to the variance of Dimension 1 and without HIGAYREG, which contributes most to the variance of Dimension 2, 17.4% and 35.3%, respectively. I then correlated the old and new Dimension 1, and then the old and new Dimension 2. For Dimension 1, the correlation is 0.99 and for Dimension 2, the correlation is .84. Thus, even after omitting the laws that contribute most to the variance of each dimension, the correlation between the old and new axes remains large, and thus, the shape of the cloud remains relatively unchanged.

The Space of Nations

Next I examine the polarization through the space of nations. In other words, I will show how nations are positioned vis-à-vis one another based on their legal approaches to gay rights. I

organize my discussion around four ideal positions—*protectors, moderates, steady resisters, and reactionaries* (Figure 10).[27] I do not present these as rigorous classifications meant to capture discretely each country or allow each to find a home in a single classification. These categories are *topological*, not *typological*, emphasizing only their relative positions within the space not absolute belonging to a specific group, highlighting the extent to which they neighbor or adjoin, sit close to or far from other regions.

Protectors sit atop the global social space, embodying the pro-gay ideals of world culture. They protect sexual minorities from discrimination and accord legal recognition to non-heterosexual relationships. Sweden tops the zone of protectors. A small group of countries follows close below, many of which were among the first in the world to open marriage to same-sex couples—the Netherlands (2001), Belgium (2003), Canada (2005), Spain (2005), and South Africa (2006). Trailing not much further behind are Norway, Iceland, the United Kingdom, France, and Ecuador. *Moderates* cluster closer to the center of the graph. These countries have more tempered laws: some have introduced only one modest protection for gays and lesbians like a ban on employment discrimination (e.g., Bosnia and Herzegovina); others have only decriminalized homosexuality and nothing more (e.g., Azerbaijan, Benin, Japan, Jordan, and South Korea).[28] Further down Dimension 1 is the zone of s*teady resisters*, made up of countries that have remained steadfast in their resistance to decriminalization or any form of gay rights: e.g., Belize, Ghana, Jamaica, and Malaysia. East-west, along Dimension 2, two groups of *illiberal reactionaries* appear. On the far right, we have the *illiberal cultural reactionaries* that have proposed legislation to criminalize talk of homosexuality through anti-gay propaganda laws (e.g., Russia). On the far left, we have the *illiberal practice reactionaries* (e.g., Algeria and The Gambia) that have introduced heightened forms of criminalization of same-sex practices. I explore the characteristics of these ideal types below.

The Space of Properties[29]

Already in the space of countries we begin to intimate the underlying logic of the structure. But let's now turn to examine the specific social forces that structure and pattern that divide, those national characteristics that determine on which side nations fall. What distinguishes the protectors from the steady resisters, the practice- from the culture-based reactionaries? Are national approaches to gay rights determined by nations' various capital endowments?

Four maps illustrate these structuring forces: a map of socio-demographic properties (Figure 11); a map of levels of globalization (Figure 12); a map of membership in intergovernmental organizations (Figure 13); and a map of international treaty regimes (Figure 14). It is important to note that the measures that most define the polarization in the space of laws and the space of nations are those measures located at the extreme edges of Dimension 1 and Dimension 2. However, the role of the measures located close to the center, neither positive or negative in its

[27] Figure 8 must be seen as overlying the previous map of laws, as well as all subsequent maps. Proximity among countries suggests similarity in national approaches to gay rights.

[28] I provide the full list of countries with overlapping points (and thus labels) in Table 4.

[29] All maps should be seen as overlying one another. I have separated them into four different maps for ease of reading. These maps also should be seen as overlying the previous map of laws and the map of countries. The projection of these variables is the projection of the mean point of the subcloud of individuals. These supplementary variables must be understood as multi-correlational, not causal. They are not, strictly speaking, control variables in the experimental sense.

association, still matters. As Bourdieu remarks, "[t]he central position, non-significant statistically, may be very significant sociologically…" Measures that cluster at the center of the space where the axes meet, also known as the barycenter, define the least the dimensions of difference between countries and their positions on homosexuality. They tell us which factors do not distinguish nations in terms of their approaches to gay right.

The Great Embrace: Protectors and Moderate Nations

Recall that the pro-gay zone, located to the north, above and just below the x-axis, consists of protectors and moderates. Figure 11-14 show us the social properties defining the nations in this zone. They are wealthier than their less liberal counterparts. They rank high on democracy (Democracy.VH), and they are deeply enmeshed in the global network of intergovernmental organizations with an average membership in IGOs of more than one standard deviation above the mean (IGO.Count>1σ) (Figure 11). Perhaps as an indicator of their superior geopolitical connectivity, they enjoy low to very low levels of foreign pressure (ForPressure.L; ForPressure.VL) from other nations, i.e, diplomatic pressures, withholding of aid, trade restrictions, territorial disputes, and sanctions. By religion, they are Christian, with protestant-dominated countries slightly more liberal than Catholic ones (Figure 11). And they colonized the world. But if they were themselves colonies, they were likely European settlement colonies with a white population in 1900 of 11 to 50% (EuroPop>11-50%) or over 50% (EuroPop>50%). Settlement colonies with high percentages of Europeans in 1900 concentrate in South America—Argentina (60%), Uruguay (60%), Bolivia (30%), Ecuador (30%), and Colombia (20%), with the notable exception of South Africa (22%) (Figure 11). In addition to other forms of difference, a racial stratification in the divided world is evident. They score high to very high on all globalization measures—economic, political, cultural, and overall (Figure 12). They are members of elite global institutions, such as OECD, EU, NATO, MERCOSUR, and COE (Figure 13). And most of these countries have signed and ratified international treaties, including, the Declared Recognition as Compulsory the Jurisdiction of the International Court (ICJ), American Convention on Human Rights (ACHR), International Covenant on Civil and Political Rights (ICCPR), First Optional Protocol to the ICCPR (ICCPR1), and General Agreement on Tariffs and Trade or Membership in the World Trade Organization (GATT) (Figure 14). Local attitudes toward homosexuality vary (Figure 11). Countries at the apex of world culture are generally extremely tolerant with relatively high median scores (7-8 out of 10) on the question 'is homosexuality justifiable' (GayJust7_8). Law aligns with public sentiment—a high median attitudes score and decriminalized homosexuality (GayJust7_8.Legal). However, populations toward the lower end of the pro-gay zone are not as tolerant. Their median attitudes fall between 3 to 4 (GayJust3_4) and 5 to 6 (GayJust5_6). Homosexuality is nevertheless decriminalized in this zone as indicated by the interaction terms (GayJust3_4.Legal; GayJust5_6.Legal) despite more negative attitudes. More liberal legislation, however, is absent in this zone, which is consistent with its lower levels of national tolerance. Let's now consider each group in more detail.

Protectors

Protectors sitting at the apex of the graph as paragons of world culture are wealthy and highly democratic and boast the highest median levels of tolerance of homosexuality (GayJust7_8.Legal) (Figure 11). They have the highest levels of globalization across all

measures—political, economic, cultural and overall (Figure 12). They belong to the most powerful global institutions—the OECD, EU, and NATO (Figure 13). For the most part, there is a striking alignment between positive population attitudes toward homosexuality and liberal laws. Nations at the top tend to be more Protestant than Catholic, but always Christian (Figure 11). With the exception of South Africa, Uruguay, and Ecuador, they are wealthy, western and white. Many protectors are former European colonial powers (e.g., Belgium, Denmark, France, the Netherlands, Norway, Portugal, Spain, the United Kingdom) or European settlement colonies (Canada) with European populations greater than 50 percent in 1900 (EuroPop>50%) (Figure 11). In addition to other distinguishing features, race and colonial history also structure the legal divide. Countries I call protectors Ayoub calls (2016) "first-mover states" and Kollman (2012) "pioneer states." I have chosen the term "protector" for it directs attention to the content of the laws and avoids the normative pitfalls encountered in the other two terms which imply movement toward an ideal destination.

Moderates

Among moderates, those centered at the neutral locus, who have introduced only one pro-gay protection, they tend to also have relatively high levels of democracy (Democracy.H), but are poorer on average than their more liberal counterparts, with a per capita income closer to $5K and $10K (Figure 11). They tend to have high, as opposed to very high, levels of economic (EconGlobal.H) and overall globalization (Globalization.H) (Figure 12). In contrast, moderates who fall slightly lower along Dimension 1 and who have only decriminalized homosexuality, tend to be even poorer on average, with a per capita income of less than $5K (Figures 10 and 11). With medium levels of democracy (Democracy.M), they are also further away from the West culturally (CultureProx.L) than the slightly more pro-gay moderates (Figures 11 and 12). Many are located largely in Africa and Asia and are mainly former French and Belgian colonies. Both groups have populations largely intolerant of homosexuality (GayJust1_2), a point they share with the anti-gay pole below, as we will soon see.

The EU and its Applicants

Shaped predominately by the protector nations, the European Union (EU) has moved aggressively since the 1990s to solidify sexual minority rights in all member states since the 1990s. The EU outlawed discrimination in employment and vocational education (Wintemute 2005, p. 190). The Council of Europe and European Court of Human Rights outlawed sexual orientation discrimination (Graupner 2005, p. 122-123). And, most importantly, the EU demands that new applicants abandon anti-sodomy laws as a condition of entry (Kochenov 2007; Gerhards 2010), forcing all to be in line with the EU Treaty of Amsterdam's (1997) anti-discrimination clause (Bell 1998, p. 65), and creating what O'Dwyer (2013) calls the "EU effect."

EU applicant nations (EU.applicant) are located midway between EU members (EU.Member) and non-EU members (EU.NonMember), suggesting their middle and indeterminate position (Figure 8). Between 1970 and 2015, governments around the world struck down their anti-sodomy laws at a rapid rate (Figure 1), but the biggest surge came between 1990 and 2010, as new democracies in Eastern Europe emerged from the fall of the Soviet Union. These newly formed democracies applied to the EU, reaching for the promise and profits of membership.

And yet, while they mimicked world culture by decriminalizing homosexuality, a requirement of entry, they eschewed the fuller set of protections and recognitions offered by protectors. Why might this be the case? One potential explanation is this: they were bound by the attitudes of their populations. Despite decriminalization, EU applicants have low tolerance for homosexuality, falling between median tolerance scores of 1 to 2 (GayJust1_2.Legal) and 3 to 4 (GayJust3_4.Legal) (Figure 15). In general, it is Eastern European countries that are located closest to the most stark law-attitudes gap—that is, decriminalized legal regime despite the lowest tolerance of homosexuality (GayJust1_2.Legal) (Figure 11). Noteworthy here are the countries found at the bottom left of the graph with similar tolerance scores but which have not decriminalized homosexuality. The lack of a relationship between attitudes and law in EU applicant (postcommunist) nations echoes strikingly what other scholars have found (e.g., O'Dwyer 2013).

EU applicants are structurally located at the center of the divided world, carrying within them that division. They are tethered to two opposing constraints, institutional demands of the EU on the one hand, public opinion on the other. This runs counter to one of the core tenets of world culture - that its biggest impact is on the minds of the people who first embrace it and then put pressure on their governments to change laws in accordance with it. These findings overlap with what others have found (O'Dwyer and Schwartz 2010; O'Dwyer 2013). Some scholars suggest that EU pressure may have even increased homophobic sentiment and ignited a political backlash (Kochenov 2007; O'Dwyer and Schwartz 2010; O'Dwyer 2013), though there is little evidence that attitudes were once formerly pro-gay prior to EU ascension and became anti-gay thereafter due to EU stipulations.

As fledgling Eastern European nations once part of the USSR, EU applicants have a different trajectory from that of Western Europe. They are outsider-insiders, never a part of the original postwar Western liberal project that affirmed the right to privacy, allowed the flourishing of identity-based social movements, and ultimately, expanded gay rights. Accordingly, attitudes toward homosexuality in these nations are much more unfavorable than in Western ones. In fact, they are more similar to other former Soviet Union countries, for example, those who are members of CIS and CSTO and have all proposed Russian-style anti-gay propaganda laws, developments I explore below. Recent EU applicants have an average median score on the question 'is homosexuality justifiable' of 2.5 (out of 10), with 10 representing 'always justifiable' and 0 'never justifiable', a score similar to the CIS and CSTO countries' average of 1, while Western Europe boasts an average of 8.5.

EU applicants in Eastern Europe exhibit *patterns of normative isomorphism* (DiMaggio and Powell 1983), using a pro-gay legal stance to move closer to the EU in order "to gain external legitimacy and improve reputation" as Ayoub (2015) explains (p. 293). Eastern European countries, sandwiched between rivals (Western Europe and Russia), have much to gain—economic support and security—from aligning themselves with the EU. What is more, what Ayoub calls "new-adopter states," "are more dependent on transnational resources because they often have less access to such resources at home, and foreign donors are more likely to perceive new adopters as worthy of their funding" (Ayoub 2015, p. 293). But for EU-applicants, it is not only the aims of elite lawmakers that matter (Dezalay and Garth 2011), but also the physical proximity to Western Europe and the idea of belonging to a European community that makes possible their EU candidacy. Central Asian, Middle Eastern or African nations have no chance of gaining entry into the EU due to geography, and perhaps also culture and religion, and therefore may not have the same structural incentives to de-constitute their sovereignty and go against collective sentiment.

Thus, EU applicants are striving, refashioning their laws to meet the explicit and implicit cultural demands for membership in the EU, drawing themselves closer to the field of power they hope one day to join.

EU applicants are reminiscent of the "new petite bourgeoisie" in Bourdieu's (1984) *Distinction*. This hopeful class is oriented upward and uses law to gain higher global status and distinction. Located at the center of the global social space, they are torn, driven by aspiration toward the great embrace, but held down by history and values in the great refusal. As Bourdieu writes about the new petite bourgeoisie sandwiched between the bourgeoisie and the working class:

> Equidistant from the two extreme poles of the field of the social classes, at a neutral point where the *forces of attraction and repulsion* are evenly balanced, the petit bourgeois are constantly faced with ethical, aesthetic or political dilemmas *forcing* them to bring the most ordinary operations of existence to the *level of consciousness and strategic choice*. In order to survive in *the world of their aspirations* they are condemned to *'live beyond their means'* (Bourdieu 1984, 345, my italics).

"To live beyond their means," or in the case of the EU applicants, to live beyond their history and values.

South Africa, located firmly among the protectors, even higher than EU applicants, presents a similar case, signaling a historic break and a reaching for acceptance among high status nations. Emerging from decades of apartheid and majority white rule, South African elites desired to cement the nation's image as a leading democracy, not only in Africa, but worldwide. It decriminalized homosexuality in 1998 and prohibited discrimination based on sexual orientation in its constitution (Palmberg 1999). In Figure 10, as I will discuss below, we see that by 2000, South Africa led the world as the most committed to gay rights, along with Norway, Denmark, The Netherlands, Iceland, Sweden and Spain. In 2006, it became the first African nation, and fifth worldwide, to extend marriage and adoption rights to same-sex couples, providing full equality with heterosexuals.[30] And yet, South Africans too were living "beyond" their values. As late as 2008, the South African population remained steadfast in its opposition to homosexuality: over 80% of the voting-age population considered it to be always wrong.[31] Turning again to Bourdieu's example of the aspiring petite bourgeoisie, both the EU applicants and South Africa have been "constantly attentive and sensitive, hypersensitive, to the slightest signs of the reception given to their self-representation" (Bourdieu 1984, p. 345).

The Positive Signal of Gay Laws

Numerous scholars have highlighted law's symbolic dimension. In addition to expressing collective sentiments, and the ethical and moral beliefs of a group (Edelman 1992; Edelman,

[30] Ottosson, Daniel. 2009. "State-sponsored homophobia. A world survey of laws prohibiting same-sex activity between consenting adults." The International Lesbian, Gay, Bisexual, Trans and Intersex Association. https://ilga.org/downloads/ILGA_State_Sponsored_Homophobia_2010.pdf [accessed 09 December 2012].
[31] Roberts, Benjamin, and Vasu Reddy. 2008. "Pride and prejudice: Public attitudes toward Homosexuality." *HSRC Review*. http://www.hsrc.ac.za/uploads/pageContent/1607/Pride%20and%20Prejudice.pdf [accessed 30 August 2013].

Erlanger, and Lande 1993; Durkheim [1893] 1997; Albiston 2005, 2010; Kalev, Dobbin, and Kelly 2006), law can also signal an acceptance of and adherence to broader institutional and/or cultural norms (Edelman 1992; Meyer 2009), what Meyer calls "dominant symbolic frames." As Meyer (2009) argues, "[n]ational laws become an important symbol of the acceptance" of "perceived universal principles," granting global legitimacy to the nation-state (p. 327).

The relative social position of nations is key to understanding law's potential signaling function. For protector nations, which are overwhelmingly wealthy, western and white, pro-gay laws can have a positive signaling function, sending a message that they exhibit moral leadership, embody liberal Western values of freedom and modernity, liberty and democracy, and are defenders of human rights. Recent scholars of LGBT rights have made similar claims. The passing of gay partnership laws in Europe, for example, signaled modernity and enhanced the image of states in the eyes of other European nations (Paternotte and Kollman 2013, Paternotte 2015). Passage in one European nation, especially, a well-respected one, then allowed local activists in another to shame and pressure their local authorities to follow suit (Kollman 2007). In fact, transnational activists have sought to explicitly link "the LGBT norm to membership in *modern* Europe" (Ayoub 2016, p. 31). For EU applicants, overwhelmingly up-and-coming nations, especially, in Eastern Europe, pro-gay laws function as positive signals to world culture institutions, used strategically to gain access to powerful intergovernmental and non-governmental organizations, to secure legitimacy on the European stage, and to "signal" in the words of Ayoub "their state's modernity to external observers" (Ayoub 2016, p. 119). I build on these insights below by showing that anti-gay laws too send signals to the global environment, albeit negative ones.

The Great Refusal: Steady Resisters and Reactionaries

Located further below the barycenter, in the anti-world culture zone, are the steady resisters, and practice- and cultural reactionaries who have simply refused to follow world culture by decriminalizing homosexuality (steady resisters) or have gone further and heightened criminalization either through increased penalties (practice reactionaries) or through proposed anti-gay propaganda laws (cultural reactionaries). On average, all of these nations are poorer than their more liberal neighbors (Figure 11). They are more likely to be located outside of the West, in Asia and Africa, the Caribbean and the Middle East. They are largely postcolonial nations, former colonies of Belgium, France and Great Britain. As regards religion, they are also distinct, including, majority Buddhist and Hindu (OtherReligion) and Muslim countries. Less globalized and more isolated, these countries experience very high levels of foreign pressure from other nations (ForPressure.VH) (Figure 11 and 12). What is more, they betray a slight streak of resistance, having failed to sign or ratify international human rights treaties, including the Geneva Conventions (GENEVA.No), the International Covenant on Civil and Political Rights (ICCPR.NO), and the First Protocol of the International Covenant on Civil and Political Rights (ICCPR1.No) (Figure 14). To be clear, signing or ratifying any of these treaties would not indicate a particularly strong world cultural orientation (or pro-gay legal stance), as is evidenced by the central location close to the barycenter of these measures (ACHR.Ratif, ICCPR1.Sign, ICCPR.Ratif, GENEVA.Sign). Put differently, signing or ratifying these treaties is not correlated strongly with pro-gay legislation. But to not sign or ratify is a slightly more distinguishing act, an act associated closely with extremely illiberal gay laws. Countries in the anti-gay pole are also not

well-represented in powerful global institutions (Figure 13). They do not have deep ties to IGOs. Their membership is largely restricted to regional IGOs and illiberal IGOs that often stand in direct contention with the West, such as the Arab League (ARABLG), the Organization of the Petroleum Exporting Countries (OPEC), the Organization of African Unity (OAU), as well as the Commonwealth of Independent States (CIS) and the Collective Security Treaty Organization (CSTO).

Steady Resisters

Midway Dimension 2, directly in the center of the anti-gay pole, are the steady resisters who have simply refused to decriminalize homosexuality. They are located mostly in sub-Saharan Africa, the Caribbean, and North Africa and the Middle East (Figure 11). They share other features that distinguish them from their liberal counterparts. They score lower on democracy (Democracy.L), are among the poorest of nations with a per capita income of less than $5K, and are more likely to be majority Muslim. But these nations also stand in an historically distant and contentious relationship with the liberal West. Many are postcolonial countries, former British, French, and Belgian colonies, but not white settlement colonies, and thus, had a low percentage of Europeans in their territories in 1900 (less than 10%) (Figure 11). Among the least globalized, many are pariahs, faced with very high levels of diplomatic pressures from other countries (ForPressure.VH), a point perhaps echoed in their relatively low (IGO.Count<0σ) and very low (IGO.Count<-1σ) IGO-connectivity scores. Finally, the populations in the steady resister nations have the lowest median tolerance scores of between 1 to 2 (GayJust1_2). More importantly, their rejection of homosexuality is reflected in the law, which uniformly criminalizes homosexuality (GayJust1_2.Illegal and GayJust3_4.Illegal).

Illiberal Cultural Reactionaries

Illiberal cultural reactionaries are located at the eastern-most end of the anti-world culture pole, defined by limits on speech about homosexuality through anti-gay propaganda laws. But they are unique among the reactionaries, exhibiting high cultural proximity to the West (CultureProx.H) and somewhat higher GDP per capita (10K-20K.GDP), as both measures are pulled in the direction of the cultural reactionaries (Figure 11). The country at the heart of the cultural reactionaries is Russia, as Russia's anti-gay propaganda laws served as a model for other like-minded nations. Most of these nations were part of the former Soviet Union and today are members in two Russia-dominated regional organizations, the Commonwealth of Independent States (CIS) and the Collective Security Treaty Organization (CSTO) (Figure 8). CSTO is a Russia-led military alliance created in 1992, just after the collapse of the Soviet Union. Made up of Eurasian and Central Asian countries who are former members of the Soviet Union, the alliance seeks in part to counter the power of the North Atlantic Treaty Organization (NATO) in general, and the United States in particular. "American diplomacy and military operations…," Weinstein (2007) points out, "have played a hand in strengthening the CSTO and expanding its mandate beyond cursory matters of military cooperation" (p. 168).

But the wave of anti-gay propaganda laws that cultural reactionaries proposed comes as no surprise. This is the zone of the greatest disconnect between law and attitudes (GayJust1_2.Legal)—where countries score extremely low on the 'homosexuality is justifiable'

scale, and yet have decriminalized homosexuality (Figure 11). Their attitude scores are similar to those at the other end of Dimension 2, where homosexuality is not only criminalized, but where increased penalties for homosexuality have been introduced. This extreme law-attitudes gap may help to account for why we find a cultural, if not a penal, criminalization of homosexuality.

"The past is never dead," wrote Faulkner, "[i]t's not even past." Just as for protectors and the EU applicants, history and national trajectory matter for the cultural reactionaries as well. The specific context and macro-historical change of a nation and region can lead to nationally-specific and highly differentiated trajectories and patterns of diffusion of various cultural practices (Fishman and Lizardo 2013).

In 1918, shortly after the Bolshevik revolution, Russia decriminalized homosexuality. But Stalin recriminalized the practice in 1933 and it remained so throughout the Soviet territories until the end of the Cold War. During the Cold War, as the sexual revolution ripped through Western nations, the Soviet Union experienced silence and censure around the topic in public discourse (Baer 2009). Communism and homosexuality maintained an antagonistic relationship. Communist parties linked homosexuality to capitalist decadence. "Soviet information controls created (for the "normal" majority) the impression that homosexuality was a vice of Western capitalism" (Healey 2001, p. 256). Communist revolutions in Yugoslavia, Cuba and China all clamped down on same-sex sexual practices. In Cuba, masculinity became intimately linked to the revolution's conception of the "New Man," an austere and hardworking socialist firmly placed in opposition to liberals and decadent capitalists, chief among them the United States (Peña 2005).

The public silence on homosexuality in the Soviet Union began to weaken with perestroika in the 1980s as censorship restrictions loosened. And with the fall of communism in the early 1990s, the former Soviet territories quickly decriminalized homosexuality: Ukraine (1991), Estonia (1992), Latvia (1992), Russia (1993), Lithuania (1993), Belarus (1994), Moldova (1995), Kazakhstan (1997), Tajikistan (1997), Kyrgyzstan (1998), Azerbaijan (2000), Georgia (2000), and Armenia (2003).[32] New post-Soviet nations largely account for the upward trend in the number of countries that decriminalized homosexuality evident in the 1990s.

But in many post-Soviet nations, decriminalization and the rapid insertion of homosexuality into public discourse was accompanied by public unease. This was acutely the case in Russia:

> The sudden appearance of homosexuality in the midst of Russian society incited denunciations of Western influence as well as Spenglerian interpretations of Russian history, in which homosexuality, imagined in terms of effeminacy and emasculation, appeared as a symptom—and a metaphor—of the decline of post-Soviet Russia in general and of the post-Soviet male in particular (Baer 2009, p. 2).

Russia's lost status and territory after the Cold War produced anxiety, an anxiety about a nation in decline, bowed before Western victory. This, some have suggested, fueled a neo-traditionalism in Russia and a "collective amnesia about sexual and gender dissent" that "preserved and promoted the neo-traditional myth of Russia's "purity" between a diseased West and a depraved East" (Healey 2001, p. 256).

[32] Turkmenistan and Uzbekistan are the only former Soviet countries that chose to criminalize homosexuality in the wake of the fall of communism.

> The sustained denial that homosexuality existed in Russia remained a strikingly neo-traditionalist feature of late-Soviet thinking about same-sex love….The suppression of Russia's historical and cultural memory about same-sex love and the pretense that Russia was innocent of both Western perversion and more "primitive" depravity constituted a significant element in the gender politics of the sanitized "folkloric national identities" that communism promoted (Healey 2001, p. 256).

This is why today Western and Russian LGBT rights NGOs are seen as vehicles through which Western liberalism is smuggled into the country and through which a Western challenge to Russia's political authority (ostensibly through meddling in Russian elections) is mounted.

If EU applicants represent the rising petite bourgeoisie in Bourdieu's story, then Russia represents the declining petite bourgeoisie.

> Convinced that they owe their position, albeit diminished, to a 'simple', 'serious', 'honest' life, the declining petit bourgeois express in all areas the most austere and traditional values…Their refusals, expressing resentment against the new morality, its showy pretension, its laxity in manners of money (use of credit), child-rearing, or *sex*, are no less significant (Bourdieu 1984, p. 350, my italics).

And thus, as EU applicants strive upward toward a great embrace, Russia and the nations still within its geopolitical orbit hunker down in a great refusal.

In 2013, Russia was the first of the cultural reactionaries to propose an anti-gay propaganda bill. And there is strong evidence that *legislative sharing* has occurred among these cultural reactionaries. They all appear to have anti-gay propaganda bills quite similar to Russia's and all proposed their bills after Russia passed its bill in June 2013. As noted by the NGO Human Rights First, "…Russia's brand of discriminatory propaganda legislation has taken root outside its borders" and "has become a chief Russian export."[33] The other nations that have proposed anti-gay propaganda laws fall largely within the post-Soviet Russian sphere of influence—Armenia (2013), Belarus (2013), Georgia (2013), Kazakhstan (2013), Latvia (2013), Moldova (2013), Ukraine (2013), and Lithuania (2014). They are members of the Commonwealth of Independent States (CIS) and the Collective Security Treaty Organization (CSTO).

Article 1 of Russia's propaganda law, "On the Protection of Children from Information Harmful to their Health and Development', amends Article 5 of the Federal Law by making it illegal to provide children with any information 'propagandising non-traditional sexual relationships'.[34] Specifically, Article 2 amends Article 14 of the Federal Law that concerns the basic rights of children that requires authorities to safeguard the moral and spiritual health of children by restricting their access to information deemed detrimental. Article 3 introduces a new offense under the name "propaganda of non-traditional sexual relationships among minors." Harsher sentences will be imposed for information disseminated over the internet.

These laws all refer in some way to protecting children and the family from "non-traditional sexual relationships," as this notion is described in the Armenian law as well. In Belarus, the Liberal Democratic Party suggested that "under the guise of protecting the rights of sexual minorities, is the promotion and advocacy of homosexuality, especially among minors, thus

[33] http://www.humanrightsfirst.org/sites/default/files/HRF-Fact-Sheet-Spread-of-Anti-LGBT-laws.pdf
[34] https://www.article19.org/data/files/medialibrary/37129/13-06-27-russia-LA.pdf

destroying the family and public morality."[35] In Kyrgyzstan, the bill went further by making "all information regarding 'nontraditional sexual relationships' illegal, whether in the presence of minors or not."[36]

Illiberal Practice Reactionaries

Illiberal practice reactionaries are located at the western edge of the anti-world culture zone along Dimension 2. These nations have not only refused to decriminalize homosexuality, but have actually heightened penalties for the crime. As a group, their cultural proximity to Western culture is much lower than the cultural reactionaries (CultureProx.VL) (Figure 10). They are members of regional organizations such as the Organization of Petroleum Exporting Countries (OPEC), the Arab League (ARABLG), the Organization for African Unity (OAU), Economic Community of West African States (ECOWAS), and the Organization of Islamic Cooperation (OIC) (Figure 13).

Economically, most of these nations are suppliers of raw materials and providers of labor power. This is the global working class "and it should not be forgotten that a class which, like the working class, is only rich in its labor power can only oppose to the other classes—apart from the withdrawal of its labor—its fighting strength…" (Bourdieu 1990, p. 384). And, thus, like the working class, the illiberal practice reactionaries located at the bottom of social space "have only two options, loyalty to self and the group … or the individual effort to assimilate the dominant ideal which is the antithesis of the very ambition of collectively regaining control over social identity…" (ibid.).

Colonial legacy is a key factor structuring the global space. Practice reactionaries are all former colonized countries in the Global South, and tend to be former British, not French, colonies (e.g., Malawi, The Gambia, Uganda, Nigeria, and Brunei) with the exception of Algeria. Despite certain instances in the French colonial context, the British colonists were far more expansive in the criminalization of homosexuality in their colonies, leaving behind what many call an "alien legacy" (Sanders 2009; Gupta 2013; Kaoma 2013). This could be one reason these countries appear distinct in their anti-gay legislation today. In addition, Western evangelicals have exported homophobia as practice and policy to other countries (Johnson and Kaoma 2013). While this may help to explain Malawi, Uganda and parts of Nigeria, it does not for majority-Muslim nations like The Gambia and Brunei.

The Negative Signal of Anti-Gay Laws

Just as pro-gay laws send positive signals, so anti-gay laws send negative ones. For *steady resister* and *reactionary* nations, largely poor and postcolonial, anti-gay laws can send a message meant to assert sovereignty, autonomy and pride, and most importantly, express anti-Western sentiment. As Baer (2009) notes, "in Russia—as in many other non-Western societies—the homosexual is deeply implicated in a cultural contest with the West" (p. 6). Take for instance The Gambia, located among the practice reactionaries, whose former leader Yayah Jammeh, made his mark with draconian laws and incendiary comments about homosexuality. In October 2014, the president signed into law the Criminal Code (Amendment) Act of 2014, which heightened criminalization, attaching a life sentence for "aggravated" homosexuality, i.e., a repeat offense. A year later, President Jammeh had this to say about homosexuality: "If you do it [in Gambia] I will

[35] http://www.humanrightsfirst.org/sites/default/files/HRF-Fact-Sheet-Spread-of-Anti-LGBT-laws.pdf
[36] http://www.humanrightsfirst.org/sites/default/files/HRF-Fact-Sheet-Spread-of-Anti-LGBT-laws.pdf

slit your throat…If you are a man and want to marry another man in this country and we catch you, no one will ever set eyes on you again, and no *white* person can do anything about it" (my italics).[37] The use of "white person" in Jammeh's diatribe points directly to a reaction against the West. Another example is Uganda, also a former British colony. Its anti-gay bill was quite explicit in its reactionary anti-Western sentiment. In 2014, the "Anti-Homosexuality Bill" passed parliament and approved a life sentence for same-sex relations. The text of the bill reads: "This Bill further aims at providing a comprehensive and enhanced legislation to protect the cherished culture of the people of Uganda, [and the] legal, religious, and traditional family values of the people of Uganda against the attempts of *sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda*" (my italics).[38] Or, finally, Nigeria, another practice reactionary, which passed an "Anti Same-Sex Marriage Law" in 2013. Given the illegal status of homosexual relations at the time, this bill appears as much a signal of refusal of the West as a response to any real threat of gay marriages occurring or gaining official recognition. It is also a prime example of what Weiss (2013) calls "anticipatory countermobilization," where the "sins being cited are demands like same-sex marriage—not (yet?) voiced locally in any serious way, let alone historically contested" (p. 161).

The use of the term "Same-Sex Marriage" in Nigeria's bill, President Jammeh's reference to "white person," and the Ugandan bill's conjuring of "sexual rights activists seeking to impose their values…on the people of Uganda" all suggest how and why heightened illiberalism in the regulation of homosexuality must be understood relationally, specifically here for practice reactionaries, in its relation to whiteness, colonialism and the West.

Towards a More Divided World

But what historical trajectory did nations follow to this divided world? How has this space and its correspondences evolved over time? The present analysis draws on longitudinal MCA, which maps the evolution of the position of laws, nations and national characteristics over time. In the discussion of change, I have chosen to highlight four additional time points from before the year 2015: 1970, as the beginning of the data; 1985, a few years prior to a world historical event in the collapse of the Soviet Union; 2000, roughly ten years after the start of the fall of the Soviet Union and a few years into the new post-Communist world; and 2010, two years after the global financial markets were severely shaken and The Great Recession hit, events which dealt a definitive blow to the allure of Western invincibility and the reality of Western hegemony.[39]

In 1970, we lived in a bipolar world defined by a status quo of either criminalized or decriminalized homosexuality with no further regulations (Figures 16-20). By 1985, a new law that bans incitement to discourse appears, setting in motion a tide of liberal legislation. This first departure from the status quo set a new standard. In 2000, we see three additional pro-gay laws land onto the legal landscape, expanding protections for gay citizens through constitutional bans on discrimination, hate crimes legislation, and gay unions. The tight clustering of these laws means this is a very distinct legal profile of a select group of nations. Movement so far has followed world culture prediction in single a direction toward the pro-gay zone. Yet between 2000 and 2010,

[37] https://www.washingtonpost.com/news/worldviews/wp/2015/05/12/gambias-president-threatens-to-slit-the-throats-of-gay-men/?utm_term=.c0befb53d9d2

[38] Bill No. 18 "The Anti Homosexuality Bill," 2009, Memorandum, Uganda.

[39] I do not present intervening years due to space constraints.

illiberal legal activity begins to stir, as penalties for gay sex heighten (HIGAYPENALITY). Nevertheless, new pro-gay laws, this time gay adoption and gay marriage, are cemented. But between 2010 and 2015, we see another illiberal counterforce sweep the globe in anti-gay propaganda.

Figures 21-25 consider the above evolution in laws through the changing positions of the countries that pass them. As noted, in 1970, only two real groups of nations existed, those that did and those that did not criminalize homosexuality. In 1985, Norway is the first country to pass a prohibition of incitement to hatred based on sexual orientation, separating itself from the pack to become a world culture agenda setter. In 2000, Norway continued its upward climb, joined by other nations. The protectors (Denmark, Iceland, Netherlands, Norway, Spain and South Africa) led the pack, followed closely by another cluster that includes Switzerland and Romania, Israel and Canada. By 2010, the array of nations that have moved toward a great embrace of gay rights is staggering. But by 2015, we see reactionary nations bucking the trend, as well as steady resisters standing their ground on continued criminalization.

Now let's take a deeper dive into the characteristics of the countries that have moved in different directions and those that stayed put (Figures 26-30).[40] In 1985, we see that the types of countries that begin to move first toward the pro-gay zone of world culture are wealthy countries and countries with high levels of cultural proximity to the West; NATO and COE members; countries with high IGO connectivity and protestant countries; as well as countries that despite a low level of tolerance for homosexuality already in 1985 had decriminalized homosexuality. By 2000, a wider range of countries start to follow suit including countries that are very tolerant (7-8 on a scale from 1 to 10), highly globalized, Western, and democratic. 2010 shows the continued upward sweep of nations with more and more nations ascending, even less affluent ones.

By 2015, we see that there is not only movement up toward world culture, but the trace lines also show strong movement of a set of characteristics to the right, in the direction of the cultural reactionaries, and somewhat less pronounced movement out to the left, in the direction of the practice reactionaries. Figure 30 zooms in on this horizontal movement in the anti-gay zone along Dimension 2. The results here echo those above, but they offer another insight as well. The black dots represent the position of the variables in 2015, while the light grey dots represent the prior position of that measure in previous years (2000 and 1985). As we can see, there was a striking change in position specifically for the illiberal organizations (CSTO, CIS, SCO). In fact, these illiberal organizations moved drastically to the right between 2000 and 2015, toward the zone of the cultural reactionaries. The other variables that moved all closely align with membership in these specific organizations, as in East Europe and Central Asia, the law-attitudes gap, high cultural proximity and even very high foreign pressure. While movement toward the pole of the practice reactionaries is not as stark, we nevertheless see movement in the following measures: countries with the lowest levels of attitudes toward homosexuality and criminalized regimes of homosexuality, member states of the Arab League, Muslim nations, countries with low levels of democracy, countries that were members of the OAU, OPEC, and the illiberal OIC, African and North African and Middle Eastern countries, and former British colonies. It is important to note that the most dramatic movement, the real source of polarization, comes from both the cultural and practice reactionaries, *as well as* the protector nations, all of whom radically departed from the bipolar status quo of the world in 1970.

[40] For ease of reading, I do not include all of the labels for the national characteristics in this graph, but only for certain points, to give a sense of the characteristics behind the dynamics of change in this space.

Once considered agents of liberalism, IGOs are now taking on a more illiberal character. Whereas liberal IGOs like the EU dominated in earlier decades and led the pro-gay charge, illiberal IGOs have gained ground and have played a crucial role as loci of anti-gay legislation. These findings echo emerging world society scholarship on the connection between country membership in illiberal IGOs and reactionary anti-liberal policies. Bromley, Schofer and Longhofer (2019) find that membership in these same IGOs (OIC, CIS, and SCO) correlates with new government restrictions on foreign funding of local NGOs. Schofer, Meyer, and Lerch (2019) find that membership in CIS and ARABLG correlate with attacks on academic freedom, female and overall school enrollment, as well as the social sciences.[41]

These dynamics have several important implications for how we think about the evolution of world culture and points not to world culture's weakness, but its transformed nature and persistent strength in an increasingly polarized world. The first concerns the *constitution of world culture*. The first nations to pass pro-gay legislation actually constituted world culture and its approach to same-sex sexuality. There was not an *a priori* transhistorical norm of world culture hovering like platonic forms waiting to be adopted. Gay rights, rather, were ideals produced by their very implementation. Nations at the top of social space were not the first to move toward an "international standard" of gay rights, but were first to construct them as such. As the movement of nations showed (Figures 21-25), this small group of agenda setters included the Netherlands, Norway, Denmark, and Sweden in the very earlier years. Once that ideal solidified internally, it was then offered and imposed as a "universal," "international," and "transhistorical" standard for the rest of the world.[42] This helps put into context the findings by Ayoub (2016) who found that for the old EU-member states of Western Europe (EU-15) domestic factors (associated with "affluent modernity") mattered more for the spread of pro-gay laws, whereas for the new EU-applicant nations of Eastern Europe, transnational processes (and visibility of LGBT issues) mattered more. "Domestic resonance," he writes, "is more important for diffusion in the EU-15 because LGBT visibility came earlier in this subset of states, when international norms concerning LGBT rights were less ingrained elsewhere" (p. 112). For EU-applicant (EU-12) nations, the "diffusion is of LGBT legislation is influenced by a host of transnational and international variables" (ibid.). What that means is this: Western European nations constituted a set of new international norms based on organic processes within their own countries, while change in EU-

[41] One difference, however, is ALBA. In terms of gay rights, ALBA nations have not followed the illiberal trend. One potential reason is that ALBA's illiberal opposition is more economic than cultural. The central target of ALBA's ire is the free trade initiative of the West (and the US more specifically).

[42] John Meyer speaks with incisive candor about the roots of world culture (i.e., liberal views of human rights) and the origin of its putative "transnational" and "international" character. Christianity was the original world culture—a transnational, universalist, and totalizing ontological system (Meyer 2009, p. 79). *Transnational*, because it expanded beyond national boundaries, creating a "unified symbolic structure encompassing a wide variety of cultures and people," generating a high level of homogeneity across vastly distinct contexts (ibid.). U*niversalist*, because those inside and outside its sphere of influence were implicated in its doctrine. And a *totalizing ontological system*, because it answered questions about reality, humanity, and the purpose and significance of life. Christianity was the cultural scheme to which all 'ought' aspire. Not only did the Christian Church provide answers, it prescribed actions. Today, the transitional, universalist, and totalizing ontological system of Christianity has been replaced by world culture, ideas about individual freedoms, civil liberties, and human rights. And yet, Meyer adds in a Durkheimian sleight of phrase: "We should not be misled by the view that modern authority structures are "secular" rather than "religious." Authority structures define the sacred and relate to it the profane. Whether the sacred involved transcendent deities (Jehovah, God, and Allah) or transcendental concepts (equality, freedom, rights and livelihood) at its ultimate root is irrelevant, for the sacred in a sociological sense is always religious. Thus, the "secular" content of the world polity's ontological structure is no less religious than that of the Christian church" (ibid., p. 79-80).

applicant nations was due to "transnational and international" factors, or put more concretely, outside influence coming largely Western Europe. The reference to "transnational and international" obscures 1) the source of these ideas, 2) the direction in which they flow, and 3) the differential relations of power between the senders and recipients—all factors that my social space analysis seeks to make plain.

The second implication is that from 1970 to 2015 the was a *formalization of the regulation of homosexuality*, which becomes more legalistic, more rationalized. What once was subject to an informal social control (for example, in the family) is now brought under a formal rule of law (the state). Newly codified laws are proliferating which seek to regulate homosexuality in new ways and bring it under increasing state control. This formalization of sexual regulation, reflecting a colonization of the *Lebenswelt* of same-sex sexual relations, reaffirms world culture theory's original argument about Weberian rationalization and bureaucratic forms endemic to modern life. What is perhaps novel however is we find this trend occurring in both liberal and illiberal directions. And this brings me to a final and related point.

The third implication we should note draws our attention to a distinction between the *form* and the *content* of world culture. On the one hand, world culture scripts have hitherto implied a liberal content (Frank et al. 2007; Drori and Krücken 2009, p. 21; Meyer 2009, p. 78; Frank et al. 2010), values championing disenfranchised entities, including the natural environment (Frank et al. 2007), women, children, and ethnic and racial minorities (McNeely 1995; Bradley and Ramirez 1996; Berkovitch and Bradley 1999), and, most important for this analysis, sexual minorities (McNeely 1995; Bradley and Ramirez 1996; Meyer et al. 1997; Berkovitch and Bradley 1999; Frank and McEneaney 1999). On the other hand, world culture also cohered in a particular form, that is, in rationalized structures forged out of loose social groupings (Drori, Meyer and Hwang 2006; Hwang & Powell 2009) and in governing bodies that became bureaucracies of intentional (sovereign) social action (Meyer & Jepperson 2000). Until recently, the two—form and content—have been linked. Liberal values (content) cohered in rational bureaucratic institutions, in particular IGOs and INGOs (form), and then traveled to nations around the globe through those forms. But today we see the rise of rational bureaucratic IGOs that challenge liberalism in the name of sovereign actorhood. "Liberalism is obsolete," Putin intones. Form has uncoupled from content. Nations now use world culture forms (e.g., IGOs) to challenge world culture content. And as in the case of the cultural reactionaries, where there is evidence of *legislative sharing*, illiberal IGOs (like liberal ones) may play a key role in challenging gay rights and spreading anti-gay laws.

Accounting for the Gay Divide

What conclusions can we draw? Why do some nations follow while others resist gay rights? The social space approach shows that a nation's stance on gay rights corresponds tightly to its global position of dominance, based on level of economic capital, geopolitical clout and connectivity, its national trajectory, as well as its racial and colonial history. In a nutshell, it is a nation's relative power in the global environment that matters for understandings its legal strategies.

Nations that strongly embrace gay rights exist largely in the most structurally *dominant* positions, positions defined by distinguishing features that signify a nation's immense power and capital endowments including highest per capita GDP, highest levels of globalization, legacy as a former colonial power, and membership in the most powerful IGOs whose membership is limited to the wealthiest nations, mainly in the West. Nations that steadily resist gay rights are in the most

structurally *dominated* positions with the least amount of power in the global order of things on all these dimensions. Many are poor nations located in the Global South (mostly Africa, Asia, the Caribbean, and the Middle East), former colonized lands with the highest levels of foreign pressure and the lowest levels of globalization. And they are members of weaker regional NGOs.

Nations falling in between the extremes in terms of national power also tend to fall in between the extremes on gay rights. Here countries are in a more unsettled position and may move in various directions. But based on these findings, the more a country shares key features with the Western-core of Europe, the more likely it is to move in the direction of the protectors the fastest. Even the promise of belonging plays a role. EU applicants, in relation to core EU-member states, are in a dominated position, which is reflected in in their legal regime. But their initial move to embrace a modicum of gay rights is tied to their actual social propinquity to the Western world culture, as well as their aspirational ascendancy to full Europeanness. The prospect of membership in exclusive Western-based IGOs (and the rewards that come from it) can work to incentivize an embrace gay rights. The cultural reactionaries present a different case. They are distinguished by their ties to the former USSR. They do not only have a relatively low IGO connectivity, they are also members of explicitly illiberal organizations. Despite higher levels of cultural proximity to the West, they are nations antagonistic to the West for historical reasons who have experienced a decline in their standing after the fall of the Soviet Union. Countries moving toward this pole are likely to share this history.

What these findings tell us is this. First, national positions correspond starkly to legal strategies on homosexuality. Second, countries that look more like the West tend to embrace gay rights sooner. But the more the defining features of Western society are elusive, the more countries resist or move in the opposing direction.

The Source of the Dynamics of Social Space

What macro-structural phenomena help explain the dynamics of polarization? What animates these patterns found in the global gay divide? Some may argue that the anti-gay movement illustrated above may be simply a sign of the beginning process of institutionalization of gay rights. Time and continued empirical research will tell. But a look at the broader forces at work suggests the challenge to gay rights may not be a momentary aberration, certainly for some countries, and are explained by broader macro-structural shifts.

Decline of Western Hegemony. First, I find support for the classical international relations argument that by the 2000s the global Western hegemony begins to wane, especially in the wake of the 2007-2008 financial crisis. A fundamental change has taken place in the macro-organization of the global climate. More countries are daring to position themselves against the West, boldly offering alternative models. In the afterglow of the Cold War rejecting the authority of liberalism was more difficult. But today the viability of the "That is not us" doctrine is ascendant, fueling illiberal countertrends, threatening to upend core Western values like gay rights.

Hyperregionalization. Coinciding with the decline of Western hegemony is a growing regionalization. There is no longer a homogenous and uniform center, but a polarized world with clustered regional centers within which anti-gay laws prevail. My findings echo the findings on regional fragmentation in IGO memberships (Beckfield 2010), on regional cultural tastemakers in terms of Google search terms (Bail et al. 2019), and on illiberal regional IGOs' challenge to

liberalism in education (Schofer, Lerch and Meyer 2019) and pushback against foreign funded NGOs (Bromley, Schofer and Longhofer 2019. Often the same nations are at play: e.g., the West, China, and Russia. Indeed, the global gay divide as seen in the MCA shares an uncanny parallel with the broader geopolitical divisions and disputes between the West, on the one hand, and Russia, China, and nations in Africa and the Middle East on the other; and to a lesser extent between Western and Eastern Europe, increasingly countries like Poland and Hungary.

Legitimization of the Collective Will. The third macro-structural explanation for these trends is that countries are perhaps becoming more responsive to their citizens as they resist Western liberalism, especially in the Global South. For steady resisters and reactionary nations, the attitudes of the people are largely in line with their laws. Low levels of acceptance offer more solid ground for anti-gay governments to stand on, framing the issues as part of the process of democratization. As we saw in the case of the post-Soviet Union nations, located close to a law-attitudes gap, these will be slow to follow suit and will be likely to issue a corrective to laws that have moved beyond the public sentiment in the form of new modes of criminalization. This may come in the form of not only anti-gay propaganda laws, but also bans of pride parades and LGBT NGOs, and so forth.

Global Gay Rights Interventionism. The impact of each of these may be exacerbated by global interventionism. Pro-gay ideas and legislation, as Kulpa and Mizielinska (2011) remind us, originated in and emanated from Western Europe. Beginning in the 1990s, sexual rights became a global priority, as scholars and activists reinterpreted earlier human rights conventions to include gay rights (Heinze 1995; Wintemute 1995; Petschesky 2000; Wintemute and Andenaes 2001; Corrêa et al. 2008, p. 29; Waites 2009; Kollman and Waites 2009; Swiebel 2009; Burack 2018). This new conceptualization of homosexual practices, premised upon individualism, connected to a discourse on rights and spread internationally (Adam et al. 1999; Drucker 2000; Altman 2001; Binnie 2004; Kulpa and Mizielinska 2011). Today protector nations and international organizations push for gay rights around the world (Kollman and Waites 2009; Swiebel 2009). Even Western-based corporations increasingly threaten to boycott anti-gay countries,[43] arguing that LGBT discrimination hurts business.[44] The geopolitics of gay rights extends to diplomacy. During the Obama administration, the United States integrated LGBTQ advocacy into its foreign policy (Encarnación 2016), though the US's involvement in this area began as early as the 1990s (Burack 2018; for a general history of transnational LGBT activism, see Thoreson 2014). Even development aid has been weaponized, with some Global North countries cutting or threatening to cut aid to countries mainly in the Global South that criminalize homosexuality or whose treatment of sexual minorities counts as particularly egregious (Sarpong 2012; Ewins 2011).[45] And protectors pump money into countries through financing of transnational advocacy networks (Keck and Sikkink 1998). They are among the largest contributors, for example, to the Global Equality Fund, a U.S. State Department-led initiative started in 2011 by the State Department under Secretary Clinton to support sexual minority civil society organizations in over 80 countries.

[43] https://www.forbes.com/sites/rachelsandler/2019/05/06/brunei-rolls-back-gay-death-penalty-after-a-month-of-global-protest-and-boycotts/#2a030a056c0b

[44] https://www.weforum.org/agenda/2017/01/why-so-many-businesses-support-lgbt-rights/

[45] Kates, Jen. 2014. "The U.S. Government and Global LGBT Health: Opportunities and Challenges in the Current Era." *The Henry J. Kaiser Foundation*. Available from: https://www.kff.org/global-health-policy/issue-brief/the-u-s-government-and-global-lgbt-health-opportunities-and-challenges-in-the-current-era/ [accessed 14 March 2017].

Contributors include Canada, Denmark, France, Iceland, the Netherlands, Norway, Sweden, and Uruguay.[46] The United States itself is a curious case, exporting world culture abroad, while lagging behind other more liberal nations at home (Figure 8). Between 2011 and 2015, the Global Equality Fund supported LGBT-focused civil society organizations in over 80 countries with roughly $24 million, 8.5% of which went to sub-Saharan Africa in 2015 alone. By 2015, it offered a total of 75 grants to 80 countries.[47] These funds include small grants, emergency assistance, and technical assistance (Global Equality Fund Annual Report 2015). Perhaps, this puts into context emerging restrictions on foreign funding of NGOs by member states of illiberal IGOs (Bromley, Schofer and Longhofer 2019).

Future Research

Future research might look at laws on transgender rights, for example, access to legal name change, hormone therapy, and sex change operations. Expanding analyses to consider transgender laws could yield new insights and new global patterns, especially considering countries like Iran that have more liberal laws on transgenderism than they do on homosexuality. Another area of further study would be to include non-sexuality related areas explored by world society literature, for example environmental protections, women's rights, trade or education policy, to see if similar patterns hold. Do they manifest the same structure of opposition? Does social position explain divergence in those laws in a similar way to laws on homosexuality or is the space structured according to a completely different logic and completely different forms of capital? Do the same set of structuring factors account for the oppositions? How tightly do legal positions align with broader geopolitical divides? Further research comparing a larger set of laws in different domains would potentially allow one to generalize and make predictions across domains if similar patterns are found. But one should not assume that the patterns that hold here in the domain of homosexual regulation should hold in other domains. One important feature of MCA is that it can be used to inform case selection. For example, further studies could use the position of nations to motivate case selection and consider how, for instance, a nation's position in the global structure impacts local processes (e.g., social movement struggles), or the extent to which the global stratification is refracted at the local level.

We can no longer take for granted what once was. In these unsettled times, a wave of anti-liberalism continues to rattle the liberal post-Cold War order. This year the Russian parliament moved to ban same-sex marriages[48] and the newly re-elected Polish President Duda suggested "LGBT ideology" was worse than communism.[49] Recent political events and trends also provide evidence that polarization is not a singularly "gay" phenomenon: a broader trend in illiberalism is afoot within nations (e.g., Trump in the United States, Bolsanaro in Brazil, Erdogan in Turkey) and between them (e.g., Brexit). A direct refusal of certain liberal Western values is evident. Anti-liberal trends are seen as well in the gains of far-right parties in national elections, such as *The National Rally* in France (*Le Rassemblement National)* or the *Alternative for Germany (Alternative für Deutschland)*. Nations resisting world culture do so today with greater ease, sensing the

[46] https://www.state.gov/globalequality/support/index.htm
[47] There were several multi-country grants.
[48] https://www.brusselstimes.com/all-news/belgium-all-news/politics/122473/russian-parliament-moves-to-legalise-ban-on-same-sex-marriages/
[49] https://www.nytimes.com/2020/07/30/world/europe/LGBT-free-poland-EU-funds.html

growing anti-liberal sentiment. The *doxa* of liberalism is being attacked. The liberal orthodoxy is losing in power and in appeal to heterodoxy, with potentially dramatic consequences for the international regime.

And yet, as we contemplate the predicament of anti-gay nations, we should keep several things in mind. First, the global gay divide maps seamlessly onto the broader geopolitical divisions in the world today—between the West, Russia, China and outspoken anti-Western countries in Africa and the Middle East—divisions that extend beyond sexuality. Second, I would ask for "analytic empathy." That is, we need to keep firmly in mind the evidence the MCA brought to light—that there is an otherwise invisible structure of global inequality beneath national approaches to gay rights, an inequality that is always quietly at stake in debates about gay rights. In light of this structural inequality, I would caution us to consider in what ways anti-gay illiberalism may be rooted, in part, in a "politics of resentment" that is tied to a feeling of misrecognition captured in Fanon's words "[h]e who is reluctant to recognize me is against me" (Fanon 1967, p.193). "Such a tortured figure," Mishra (2017) reminds us, "often ended up searching for a native identity to uphold against the maddeningly seductive but befuddling West; and enumerating Western vices seemed to confirm the existence of local virtues" (p. 141). Lastly, I would encourage us to see that the challenges call for solutions bigger than just pumping money and more NGOs into illiberal places; in addition to money and moving in to act, *we must step back* to consider the larger scope of our interventions into the uniquely fraught area of sexuality, in its relation to law, social organization and justice.

Table 1. Studying Global Processes and Cultural Variation/Polarization

	Explanation of Polarization
Network Analysis	Interactional structuralism—Focus on specific network ties and network segmentation in shaping social action.
Cultural Approaches	Focus on the role of meaning and interpretation, as well as power and prestige differentials between nations and cultural similarity
World Society	Focus on specific factors, namely, visibility of norms and links to world society
Social Space Approach	Positional structuralism—Identifies the correspondence between social practices and social properties.

Table 2. Eigenvalues and Benezécri Modified Rates for each axis.

Axis	Variance of the axis (eigenvalue)	% of explained variance	Cumulated % of explained variance	Benzécri's modified rates (%)	Retained according to Kaiser's criterion
1	0.396	39.6	39.6	98.9	X
2	0.131	13.1	52.8	1.1	X
3	0.095	9.5	62.2	0.0	
4	0.092	9.2	71.5	0.0	
5	0.073	7.3	78.8	0.0	
6	0.066	6.6	85.3	0.0	
7	0.052	5.2	90.6	0.0	
8	0.040	4.0	94.6	0.0	
9	0.028	2.8	97.4	0.0	
10	0.026	2.6	100.0	0.0	
Total	1.000	100.0	100.0	100.0	

Table 3. Contributions of active variables to the variance of each axis

Laws	Variable Name	Axis 1	Axis 2
Legality of homosexuality	gaylegal	6.9	26.7
Increased penalties for the homosexuality	higaycrim	0.8	21.9
Anti-gay propaganda laws	higayreg	0	35.3
Civil unions	gayunion	17.4	0.4
Same-sex marriage	gaymarriage	15.6	4.8
Employment discrimination	empdisc	13.4	4.5
Constitutional ban on discrimination	constitdiscr	5.1	0.7
Same-sex adoption	adopt	12	5
Hate crimes law	hate	12.3	0
Ban on incitement to discourse	incite	16.4	0.6

Table 4. List of countries with overlapping points.

(Total=14)^	(Total=43)*	(Total=53)†	
Bosnia and Herzegovina	Azerbaijan	Afghanistan	Tanzania
Bulgaria	Bahamas	Angola	Togo
Cape Verde	Bahrain	Bangladesh	Trinidad and Tobago
Costa Rica	Benin	Belize	Tunisia
El Salvador	Burkina Faso	Bhutan	Turkmenistan
Italy	Cambodia	Burundi	United Arab Emirates
Macedonia	Central African Republic	Cameroon	Uzbekistan
Mexico	China	Chad	Yemen
Montenegro	Congo	Comoros	Zambia
Mozambique	Cuba	Egypt	Zimbabwe
Poland	Democratic Republic of the Congo	Eritrea	
Slovakia	Djibouti	Ethiopia	
Taiwan	Dominican Republic	Ghana	
Venezuela	East Timor	Guinea	
	Equatorial Guinea	Guyana	
	Gabon	India	
	Guatemala	Iran	
	Guinea-Bissau	Iraq	
	Haiti	Jamaica	
	Indonesia	Kenya	
	Ivory Coast	Kuwait	
	Japan	Lebanon	
	Jordan	Liberia	
	Laos	Libya	
	Lesotho	Malaysia	
	Madagascar	Maldives	
	Mali	Mauritania	
	Mongolia	Morocco	
	Nepal	Myanmar	
	Niger	Namibia	
	North Korea	Oman	
	Panama	Pakistan	
	Paraguay	Papua New Guinea	
	Peru	Qatar	
	Philippines	Saudi Arabia	
	Rwanda	Senegal	
	Sao Tome and Principe	Sierra Leone	
	South Korea	Singapore	
	Suriname	Somalia	
	Tajikistan	Sri Lanka	
	Thailand	Sudan	
	Turkey	Swaziland	
	Vietnam	Syria	

Note: See Figure 10.

Figure 1. Percentage of Countries Decriminalizing Homosexuality, 1970-2015

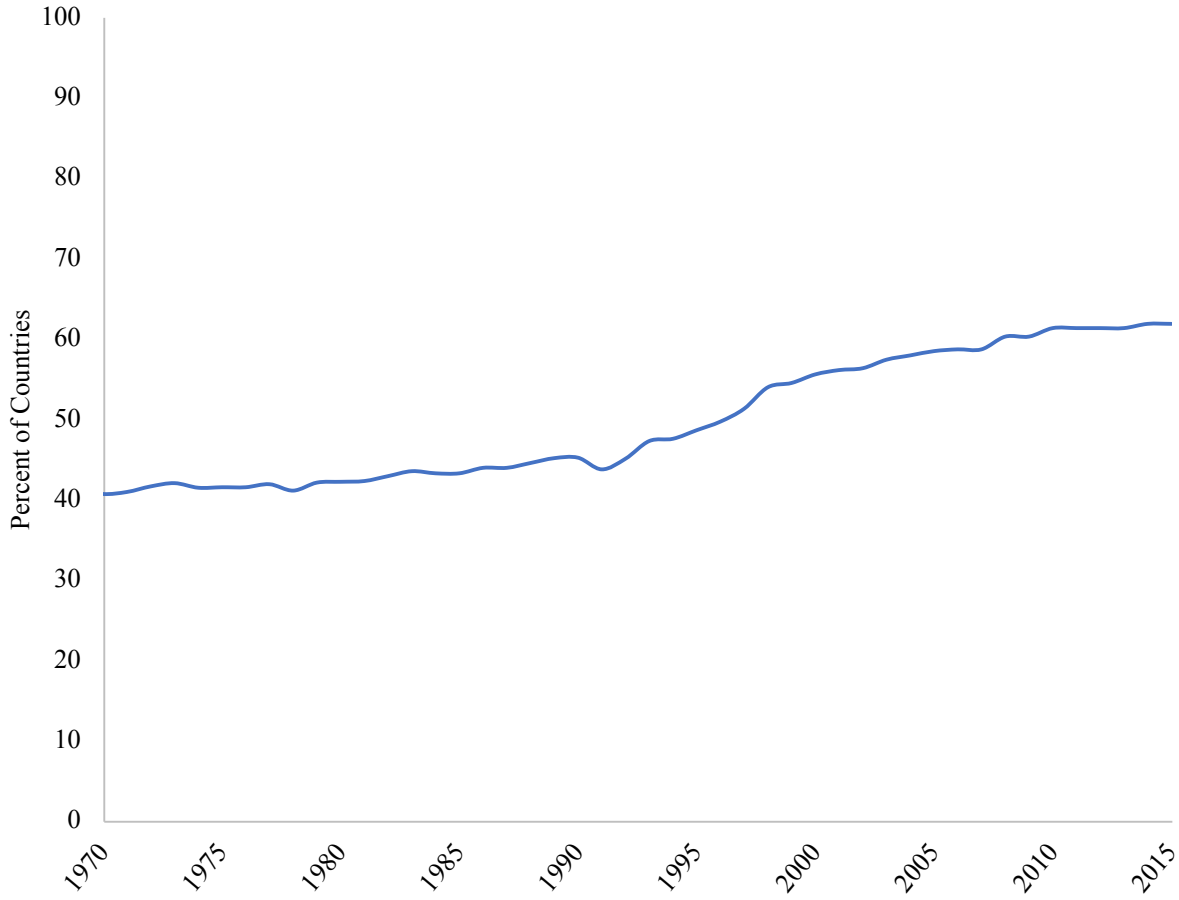


Figure 2. Previous models explaining national approaches to gay rights (variable-centric)

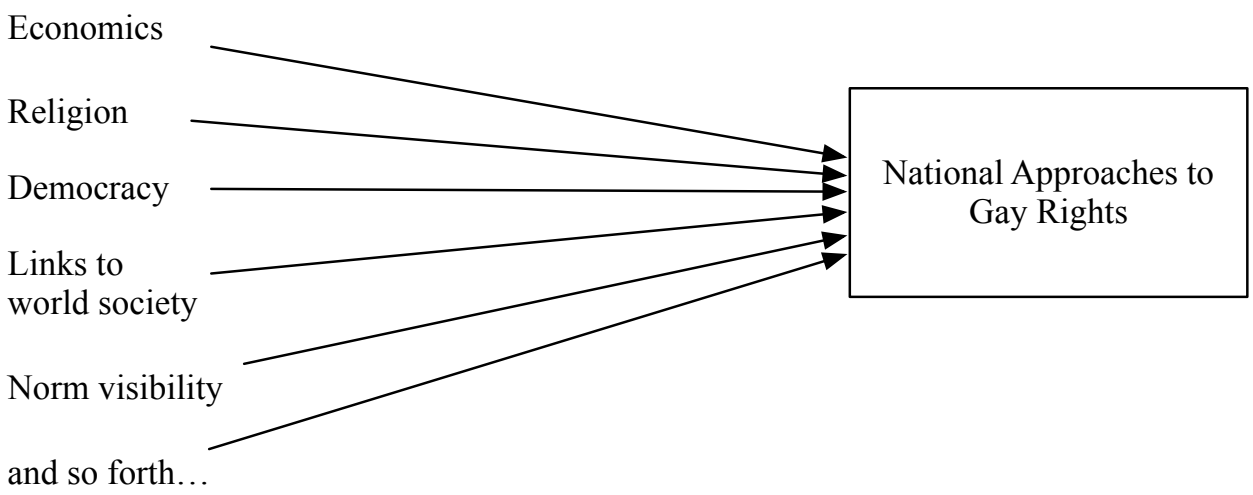


Figure 3. The Missing Link – The relative position of nations

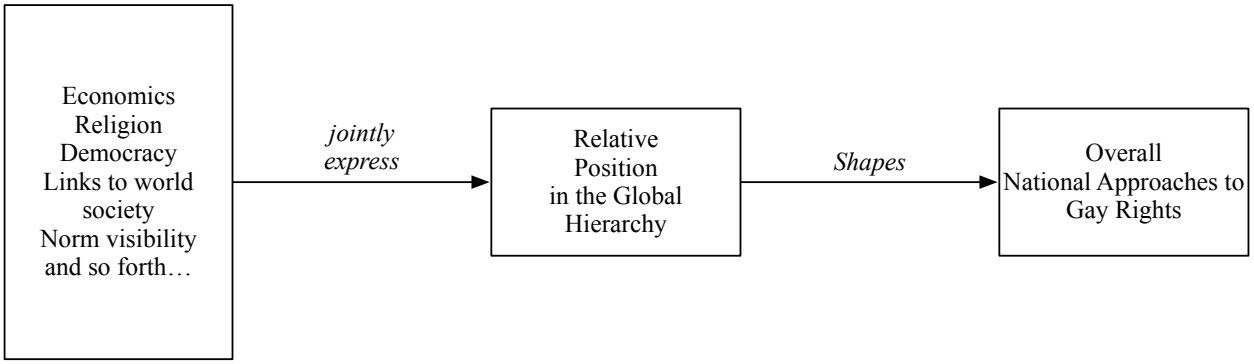
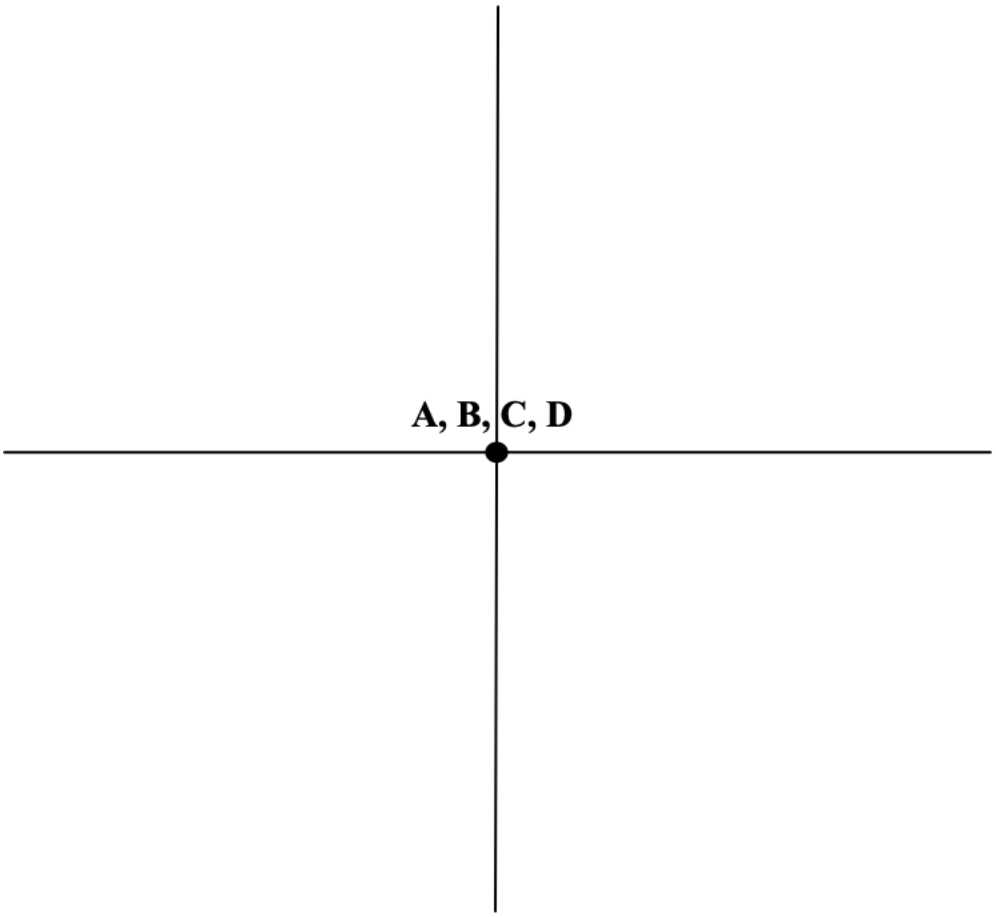
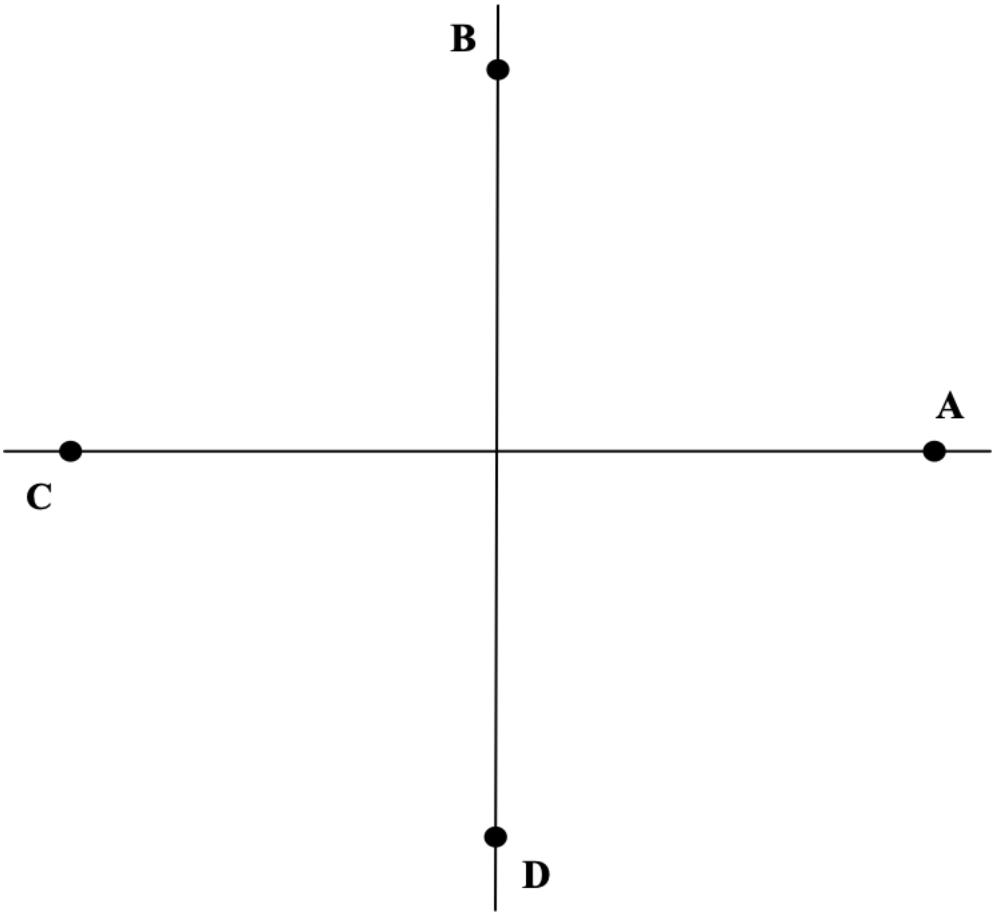


Figure 4: Global Space under conditions of perfect convergence



Countries A, B, C and D all share the same laws.

Figure 5. Global Space under conditions of perfect divergence



Countries A, B, C and D do not share any of the same laws.

Figure 6. Space of Laws: Axis of Absolute Criminalization

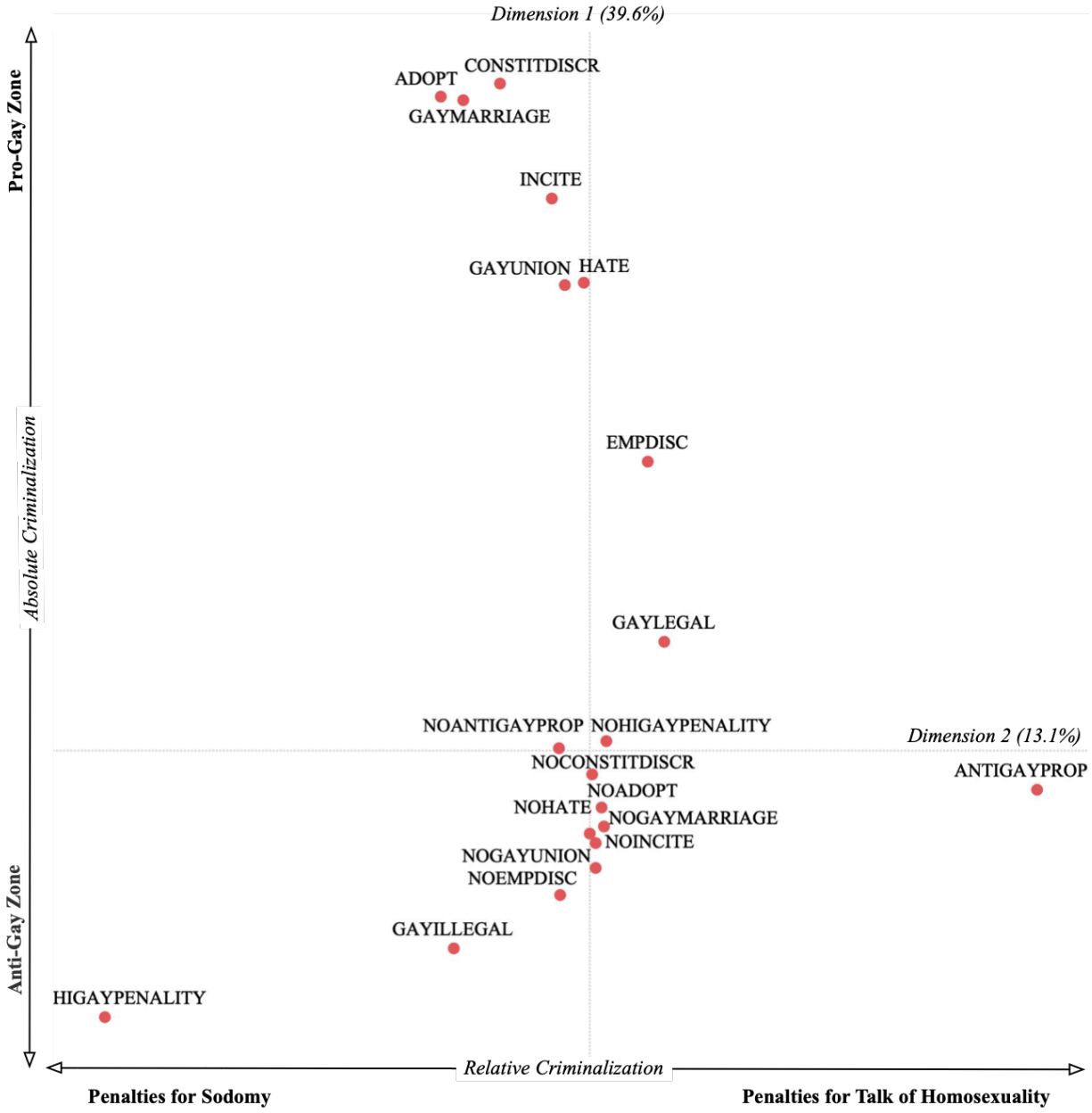


Figure 7. Percentage of the variance explained for each axis

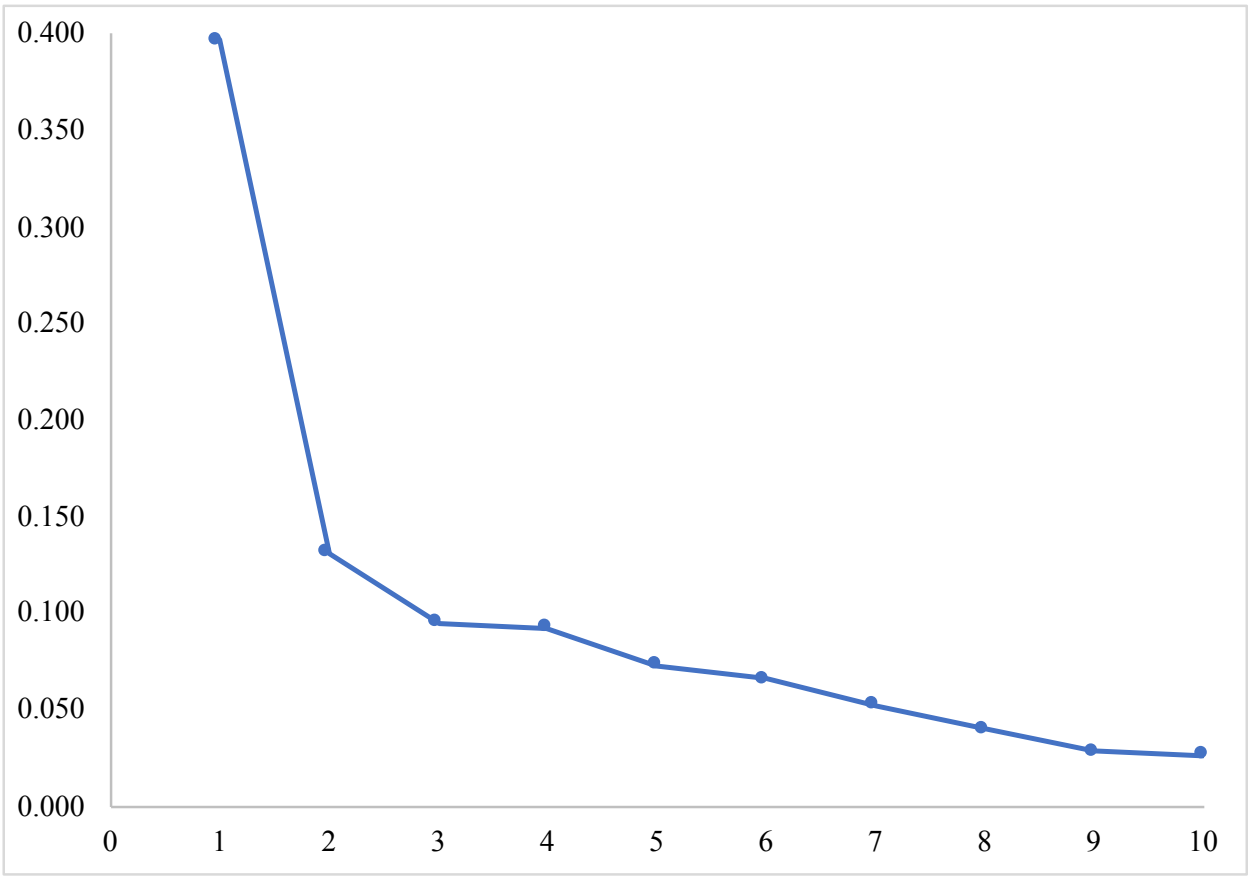


Figure 8. Space of Laws: Axis of Absolute Criminalization

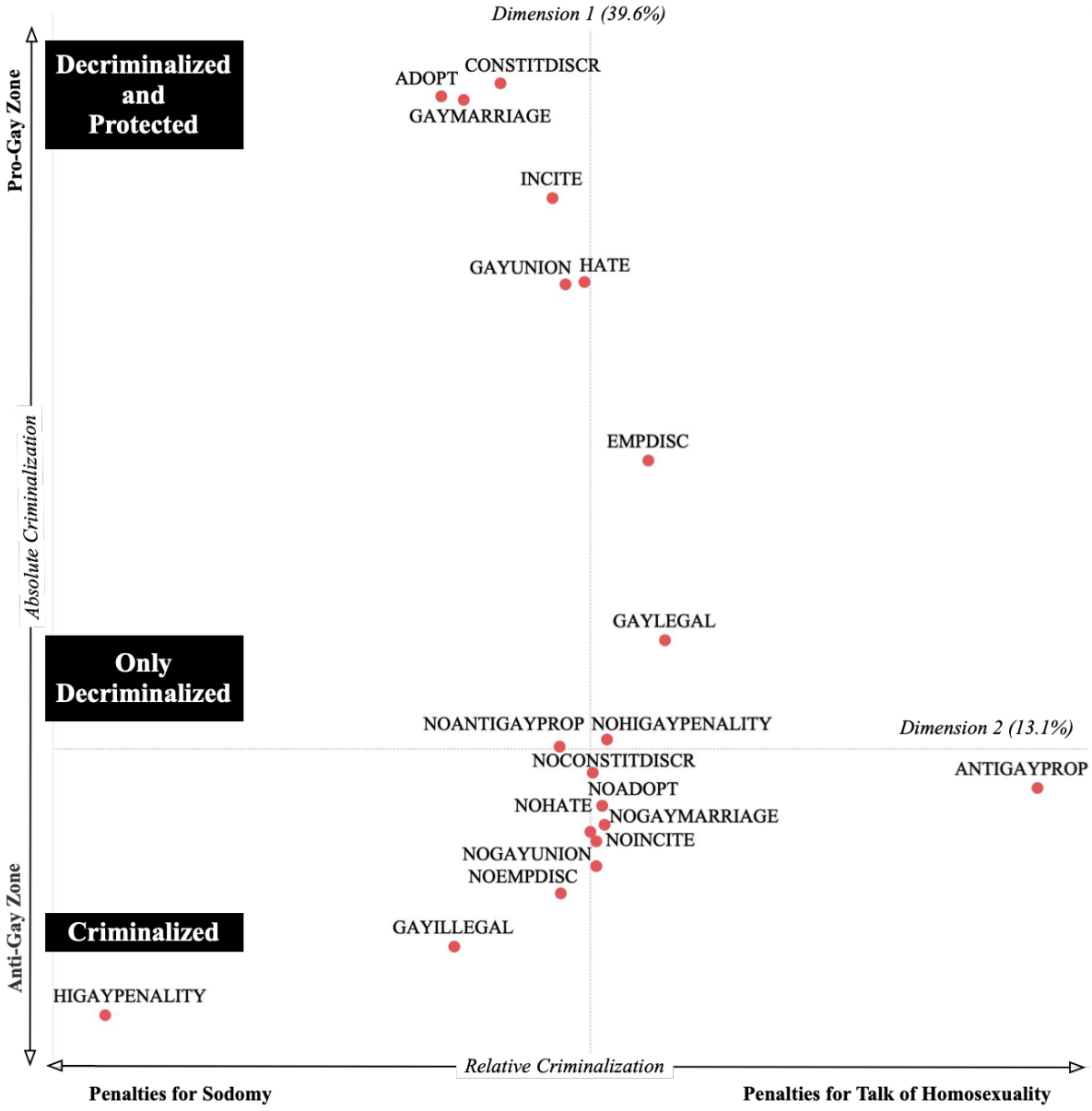


Figure 9. Space Laws: Axis of Relative Criminalization

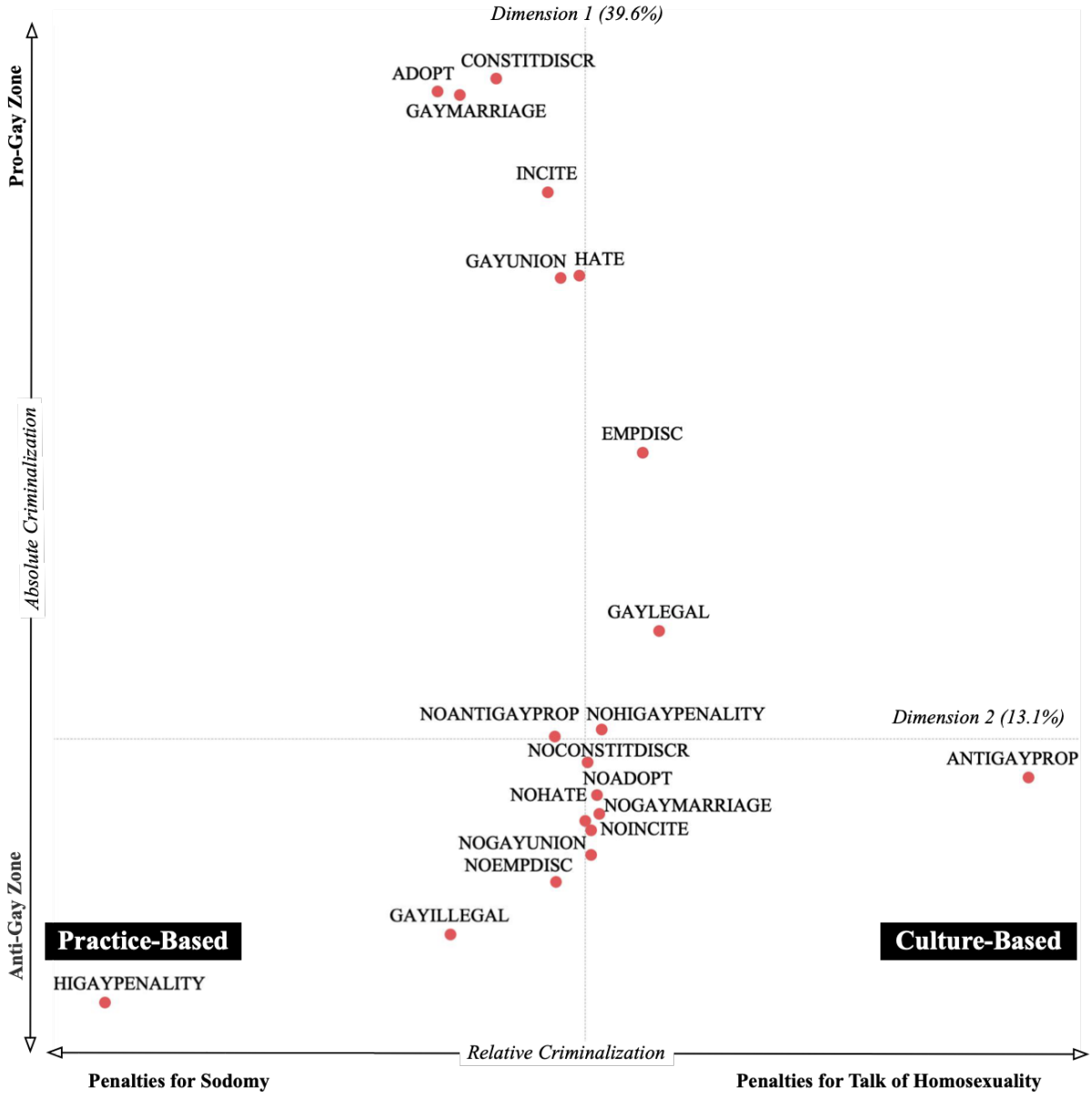


Figure 10. Space of Nations, 2015

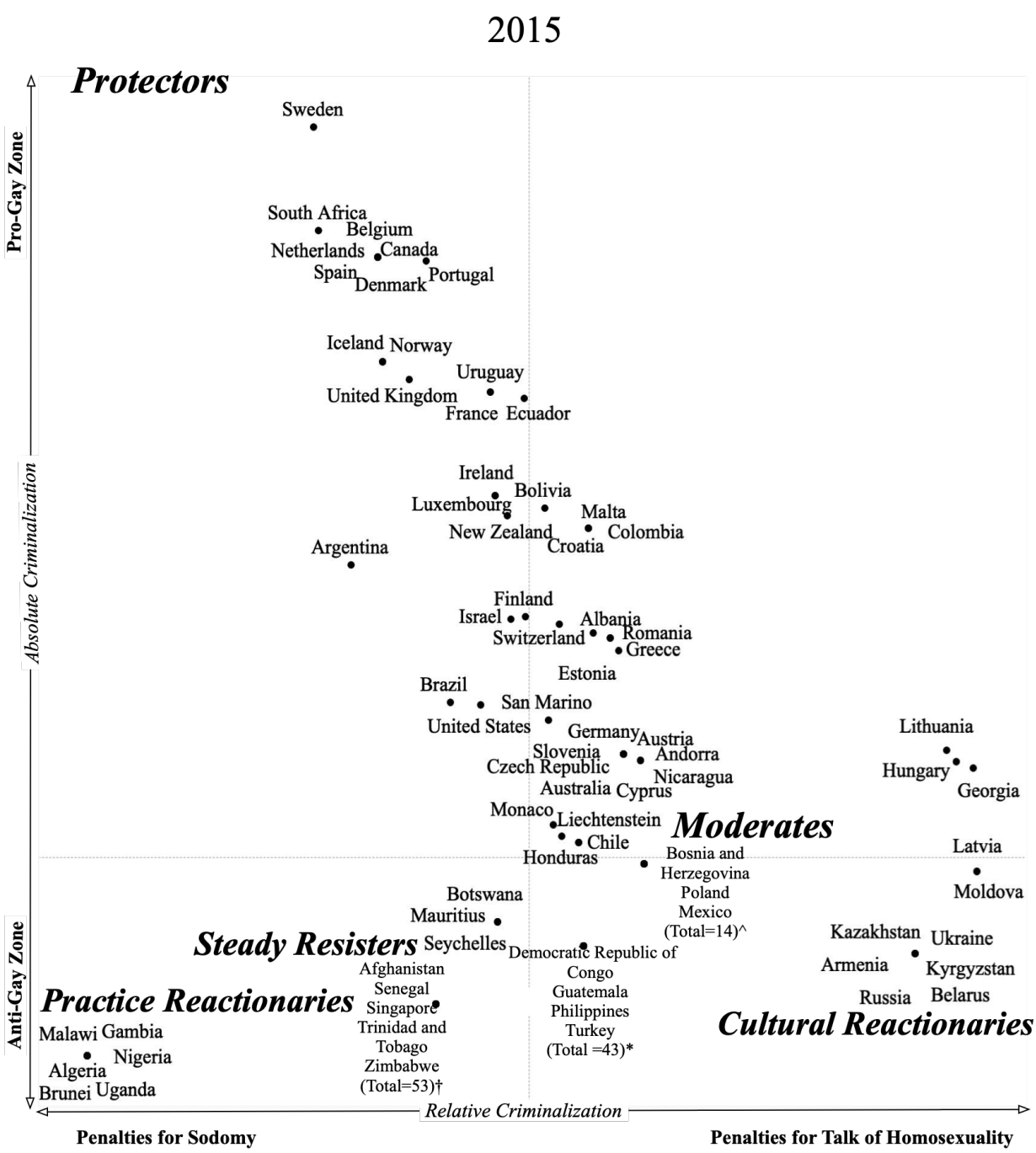


Figure 11. Socio-Demographic Map

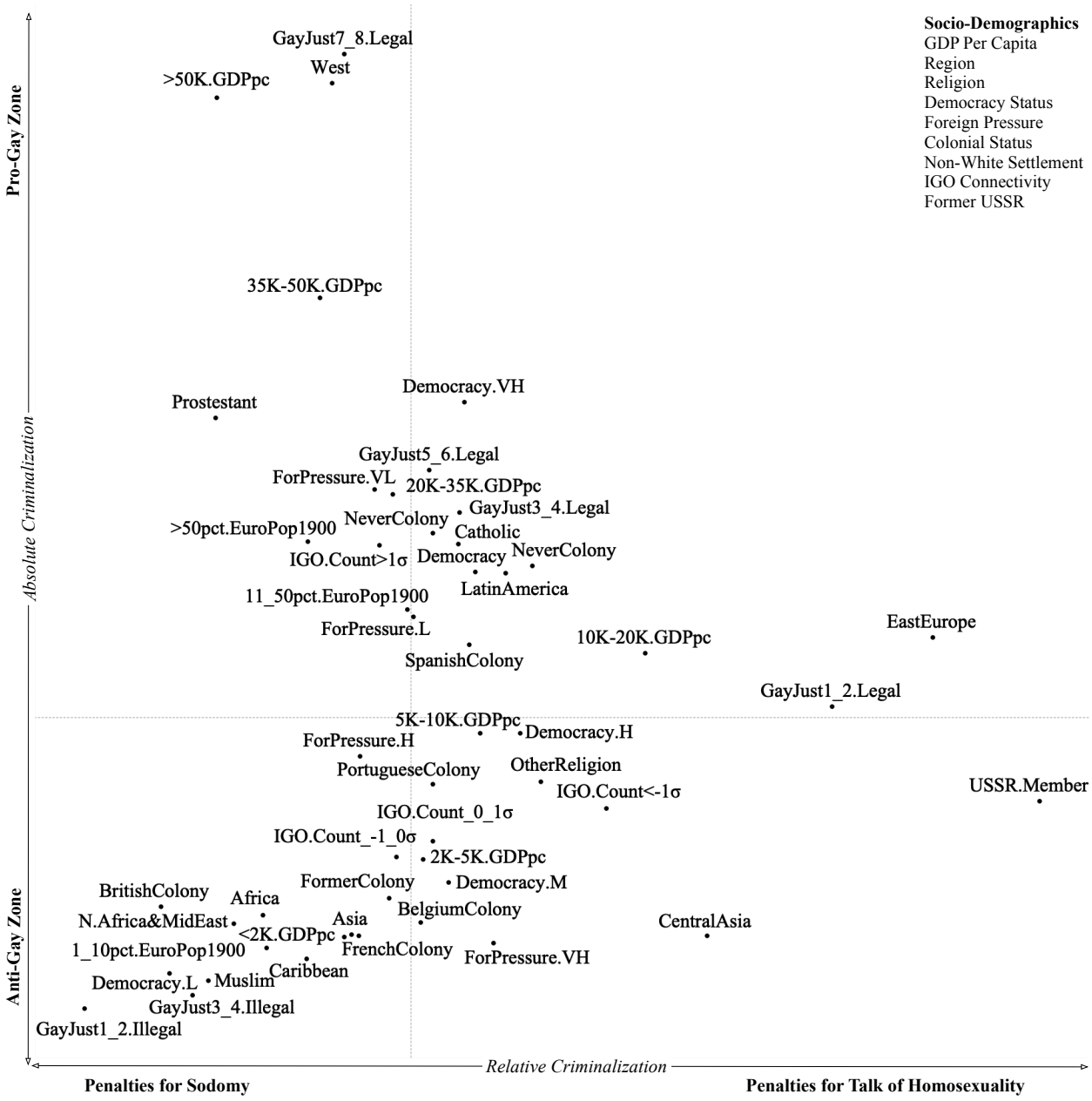


Figure 12. Globalization

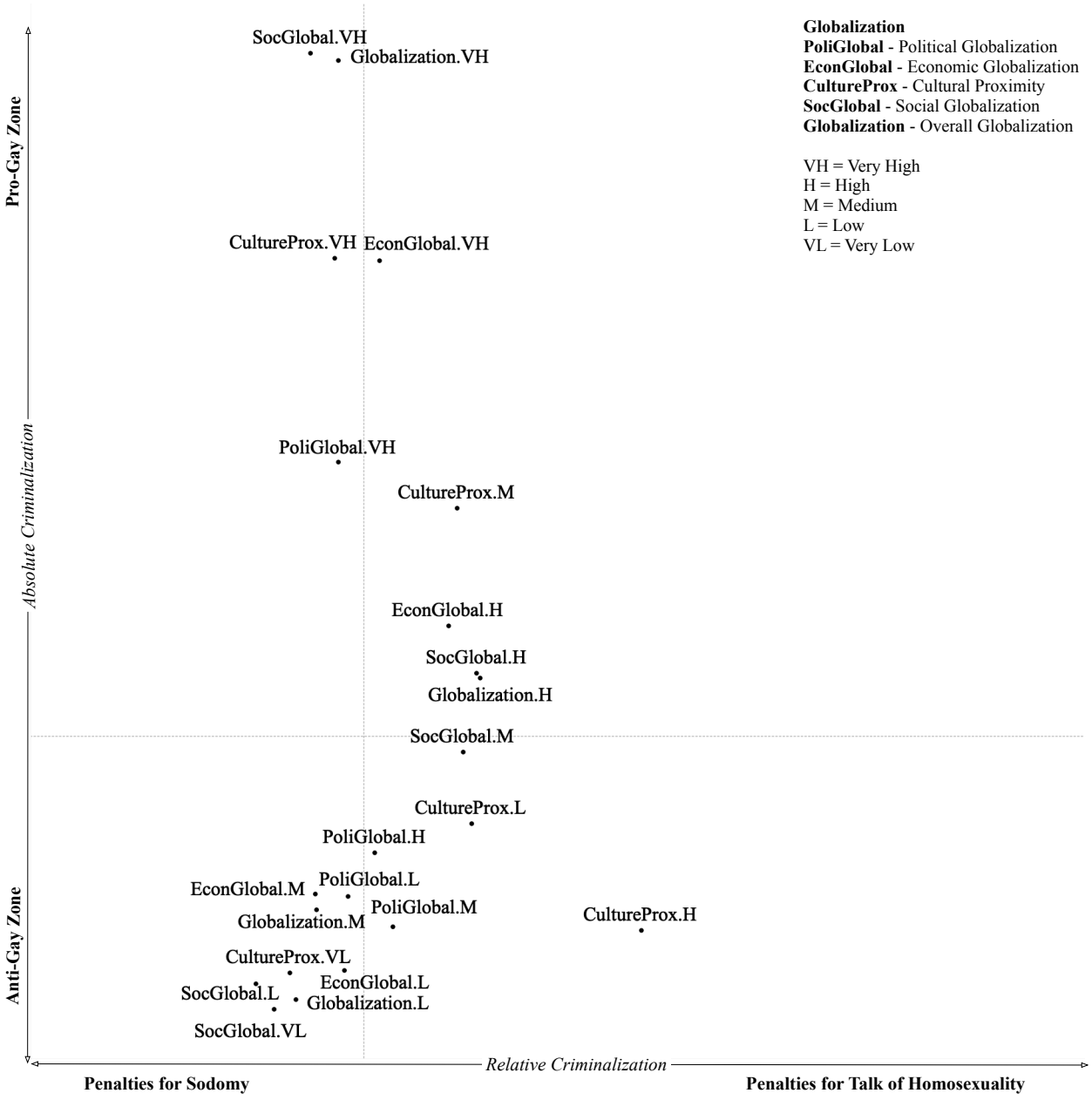


Figure 13. Institutional

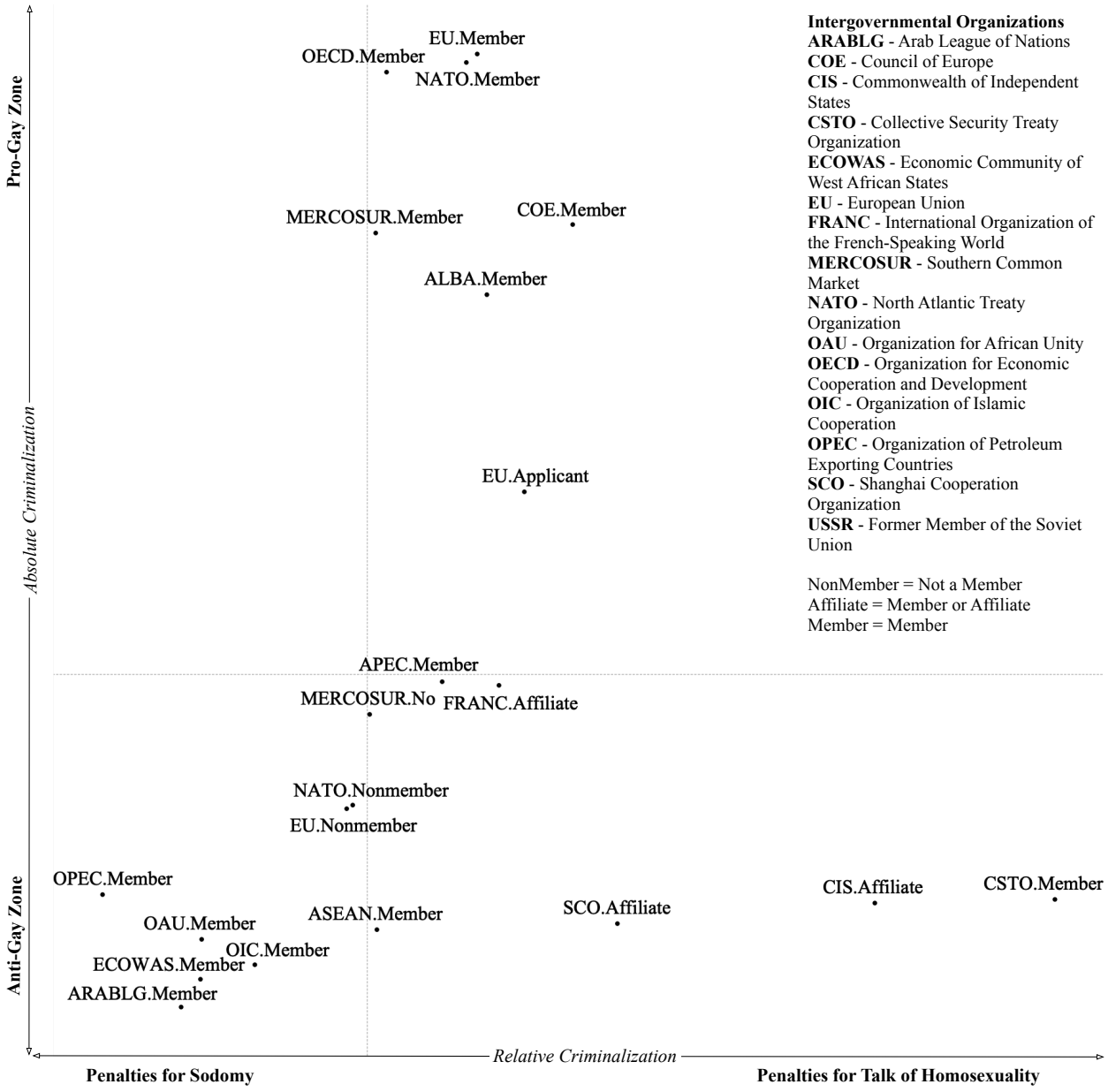


Figure 14. Treaties

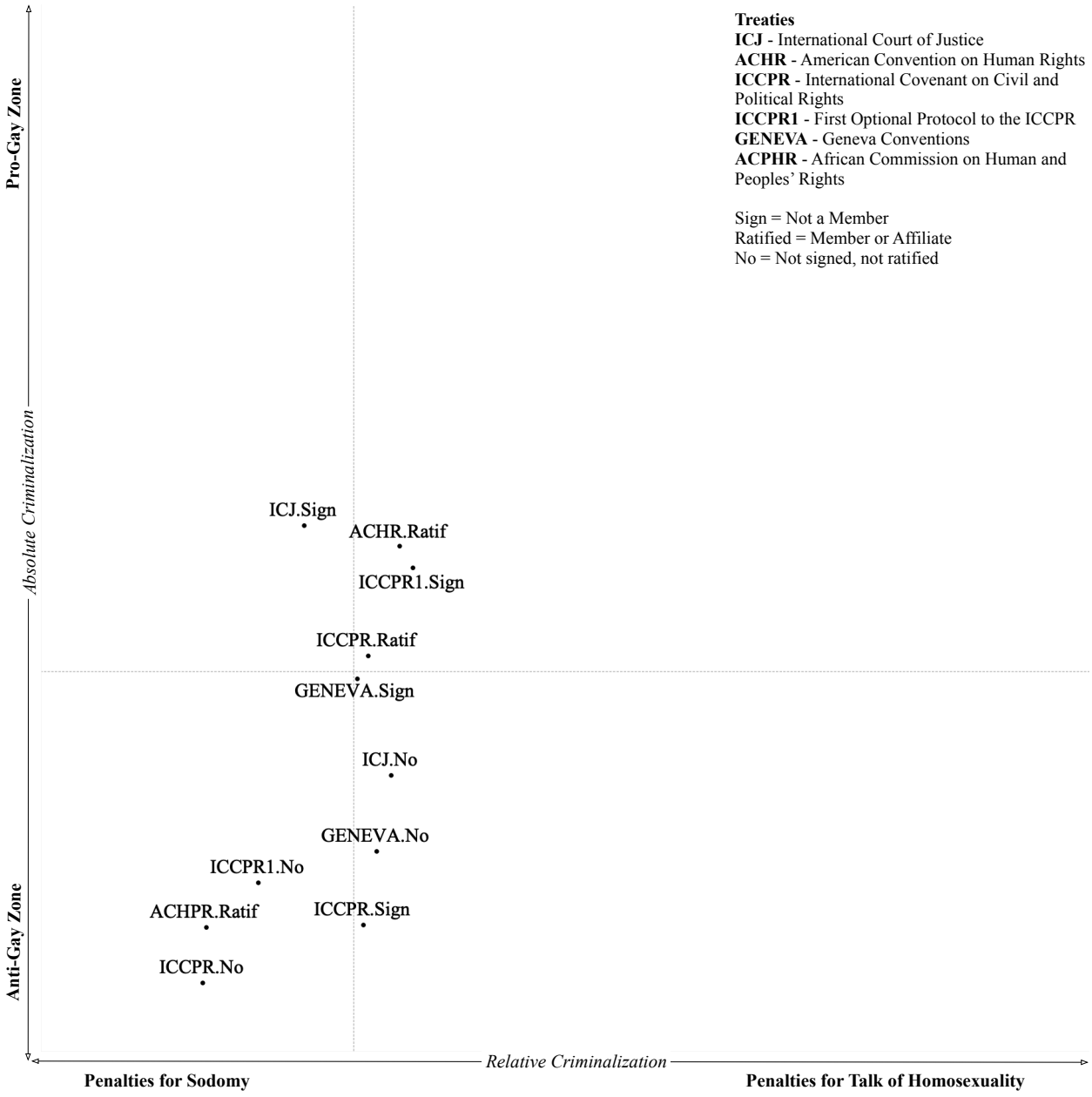


Figure 15. EU Applicants

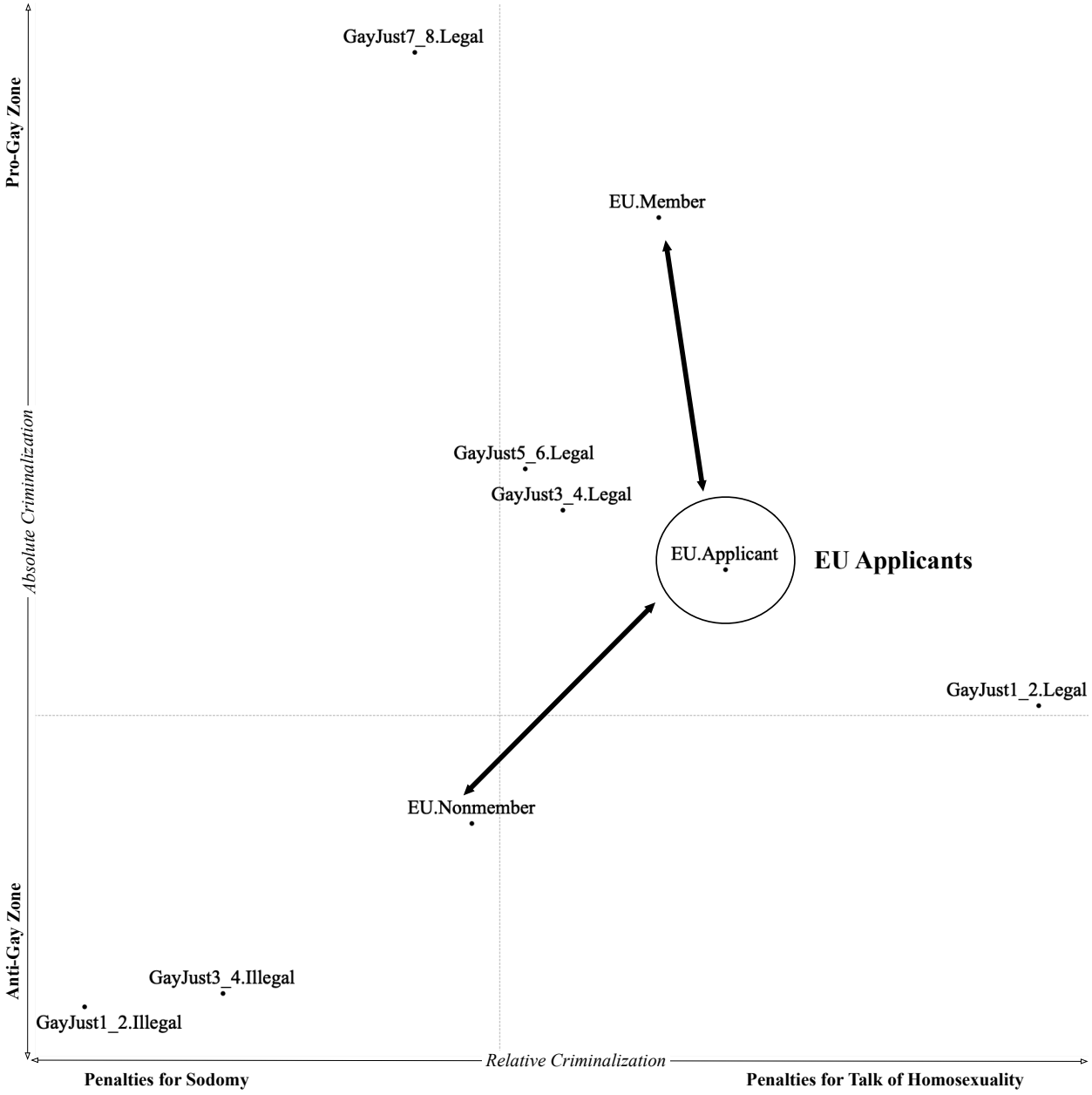


Figure 16. Movement of Laws, 1970

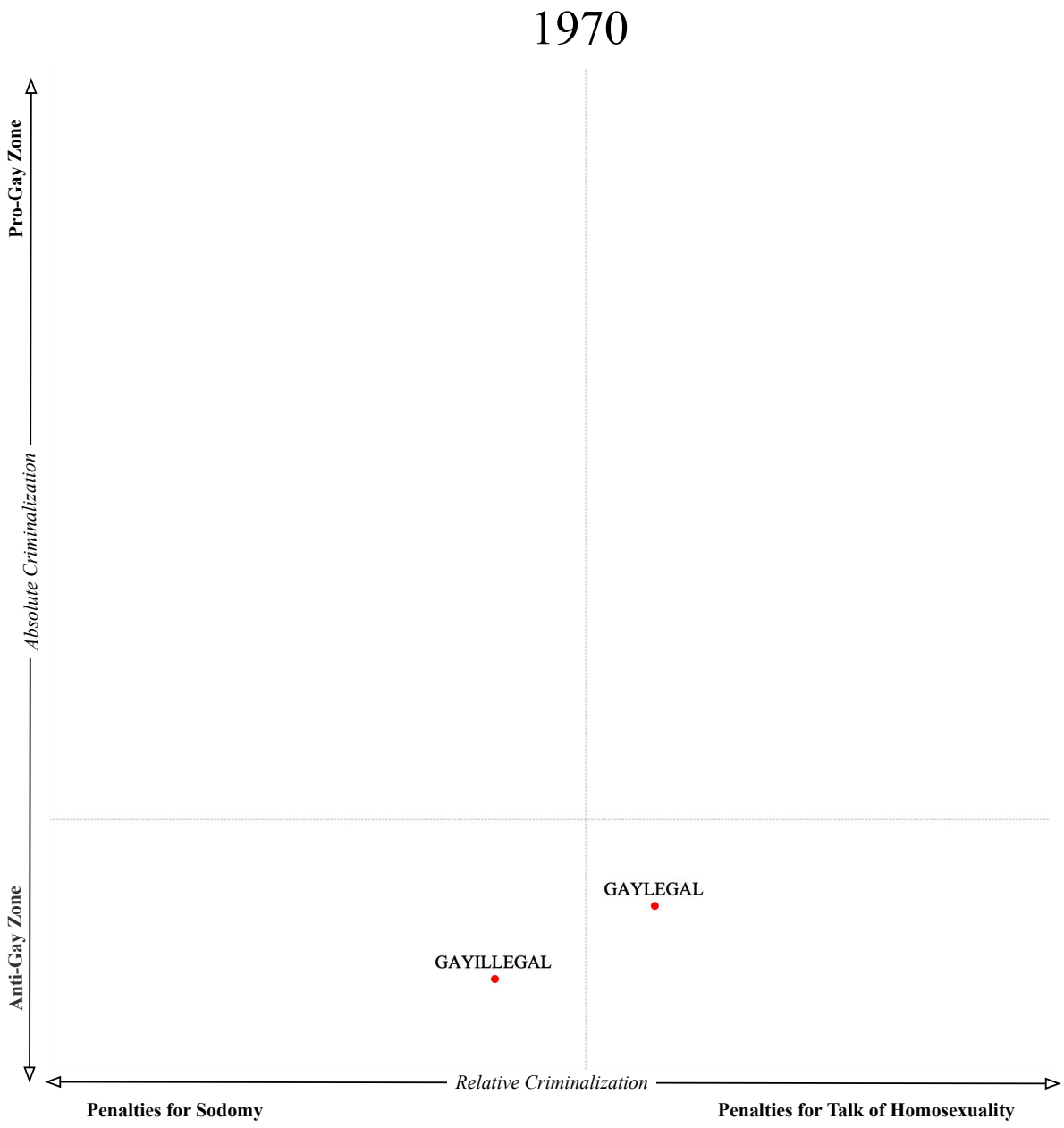


Figure 17. Movement of Laws, 1985

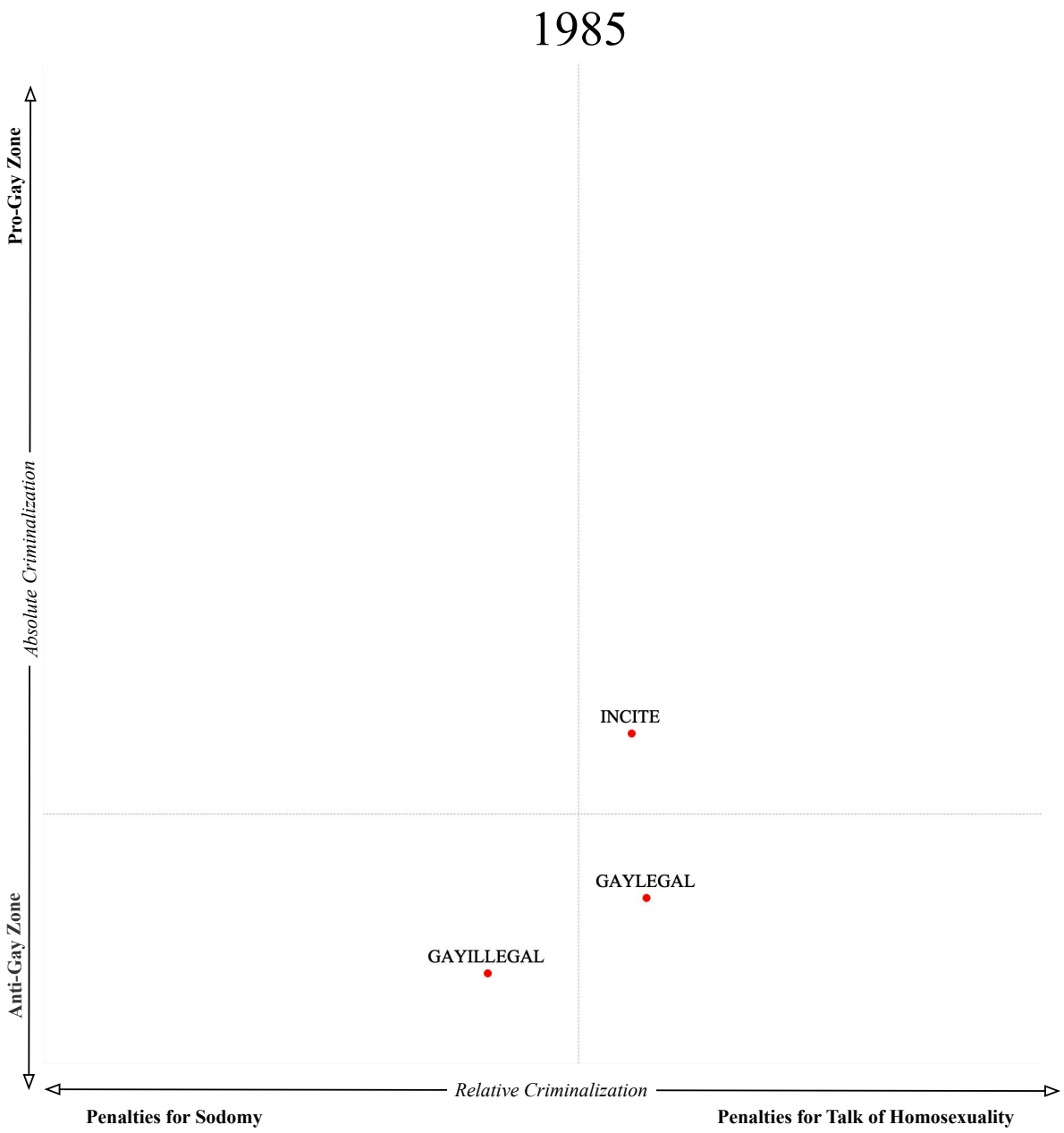


Figure 18. Movement of Laws, 2000

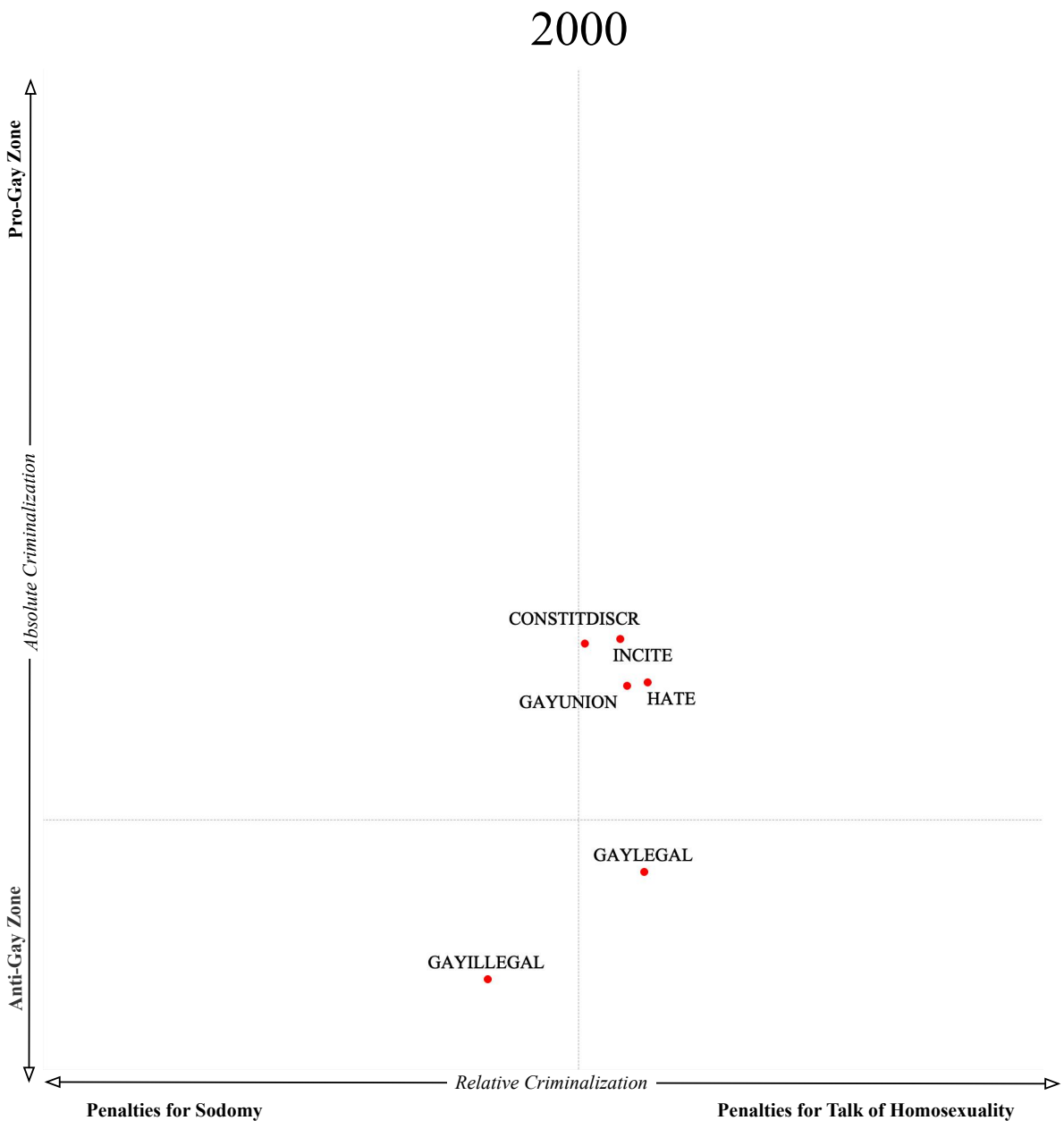


Figure 19. Movement of Laws, 2010

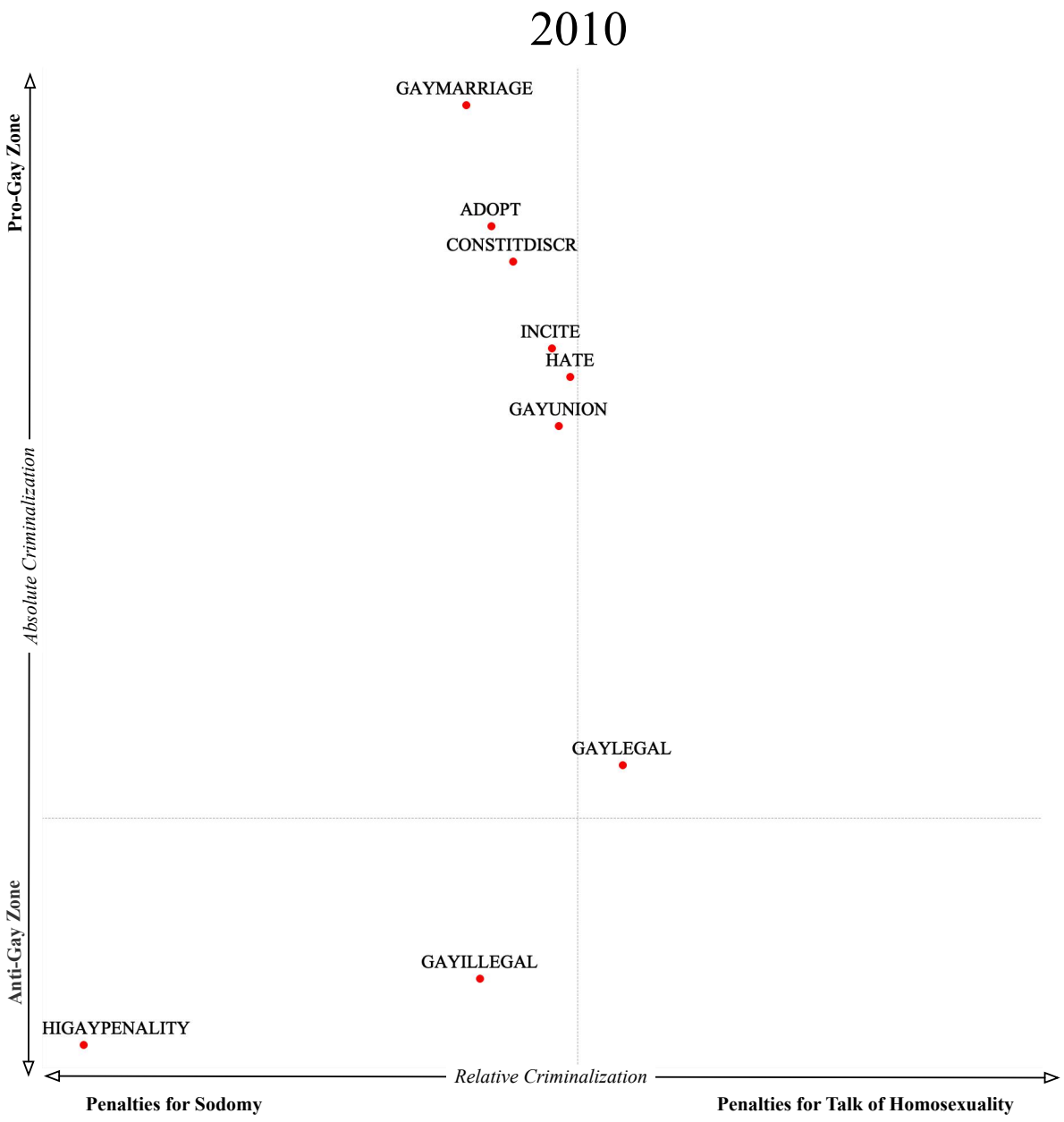


Figure 20. Movement of Laws, 2015

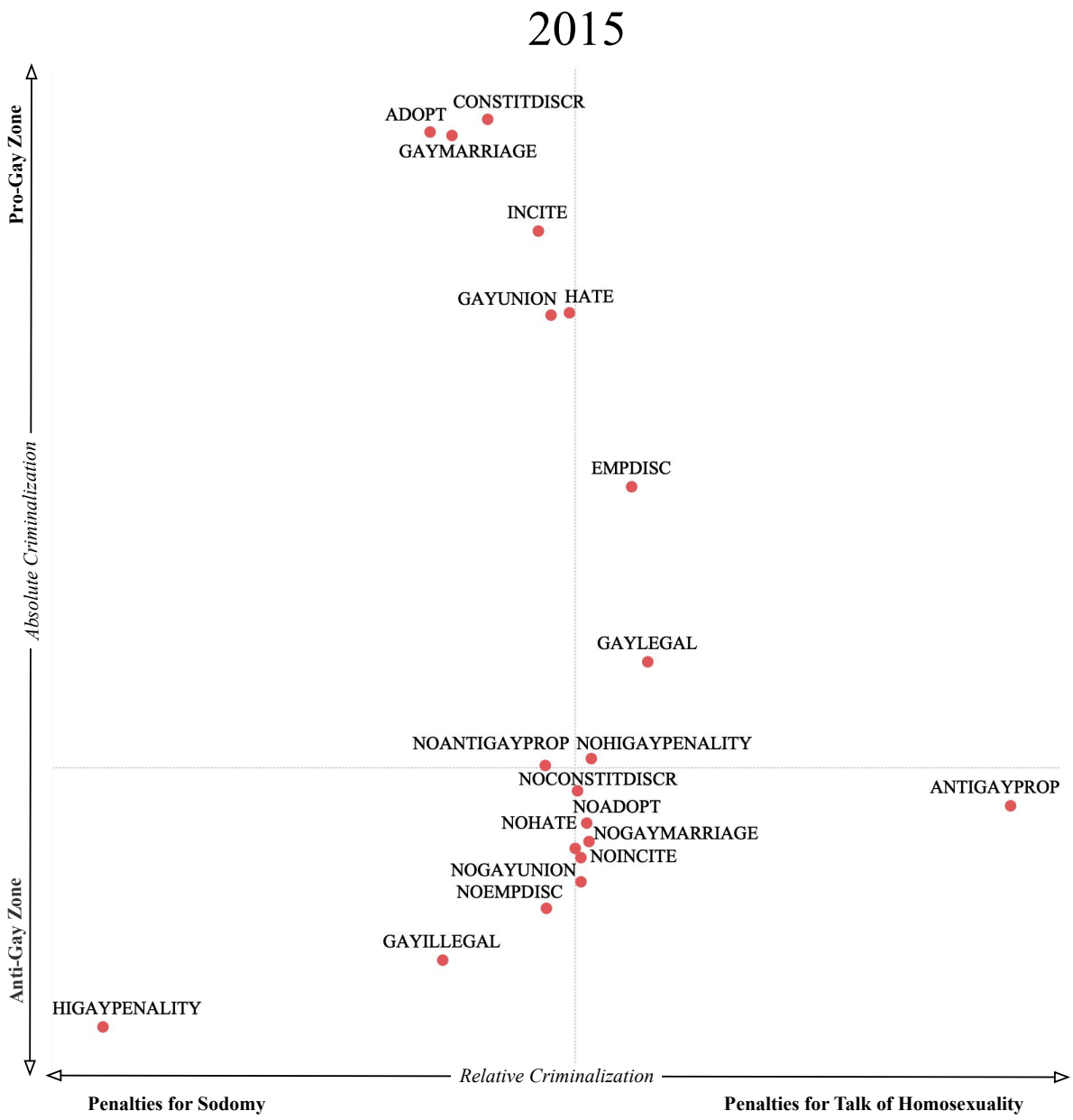


Figure 21. Movement of Countries, 1970

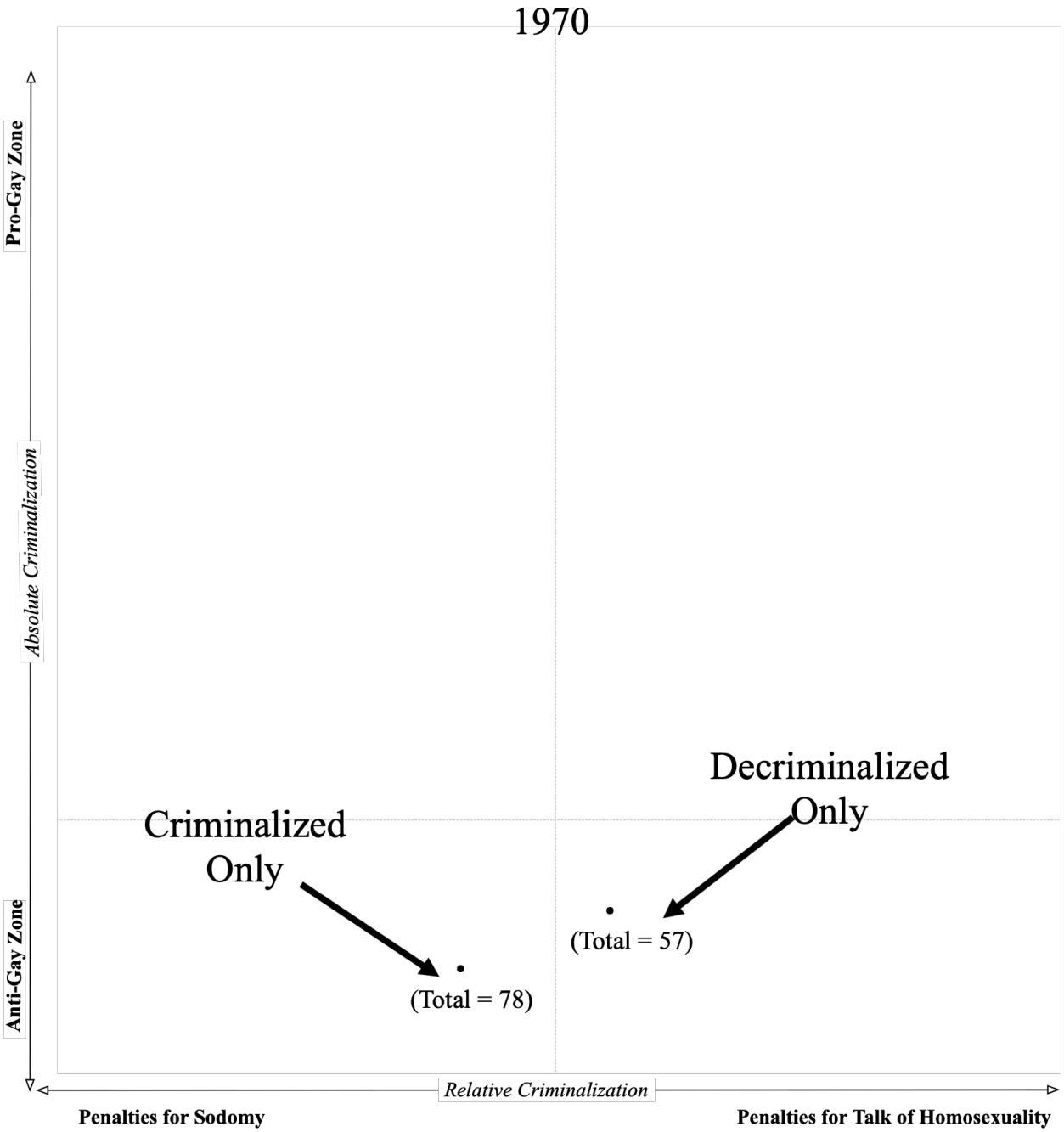


Figure 22. Movement of Countries, 1985

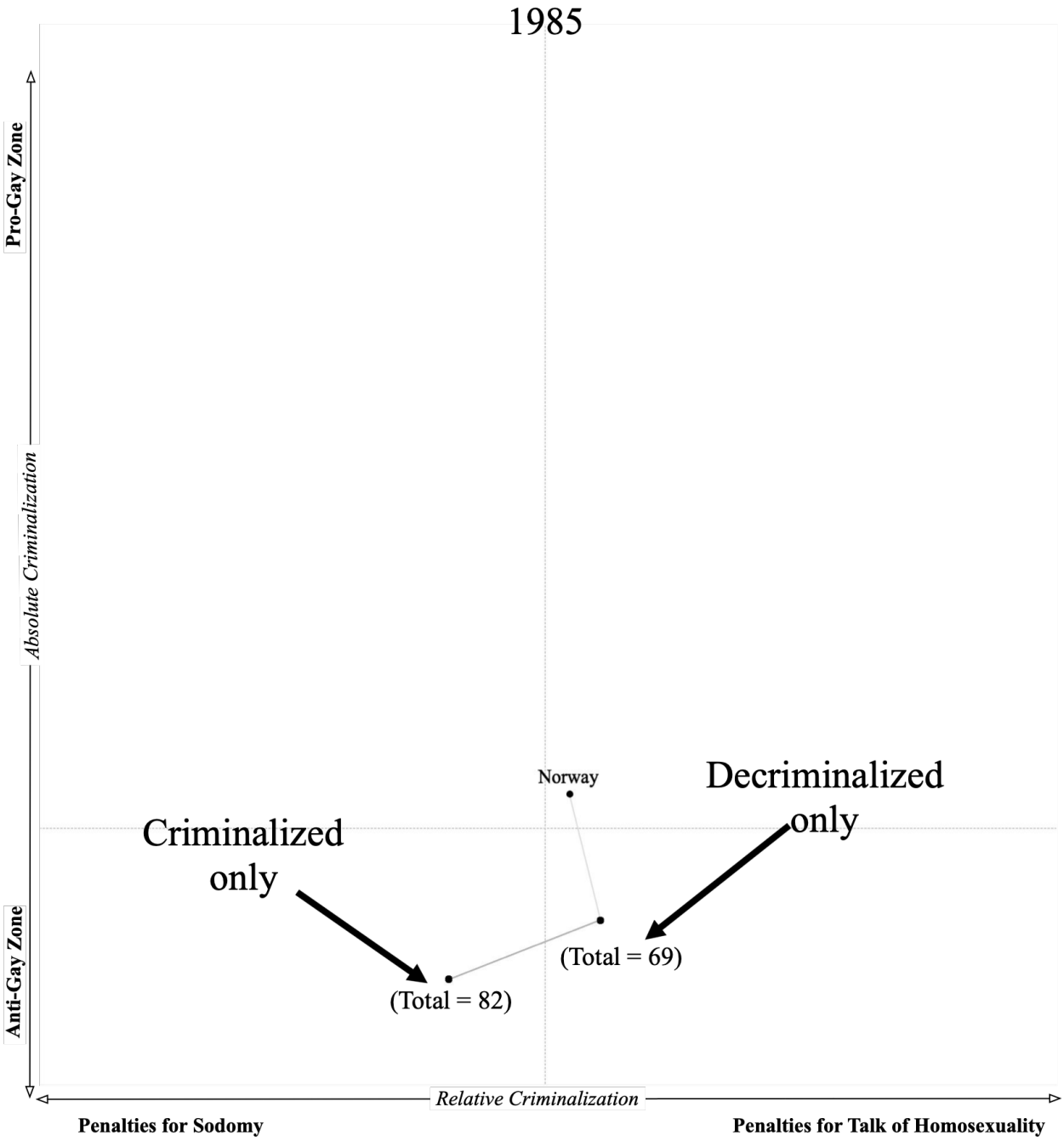


Figure 23. Movement of Countries, 2000

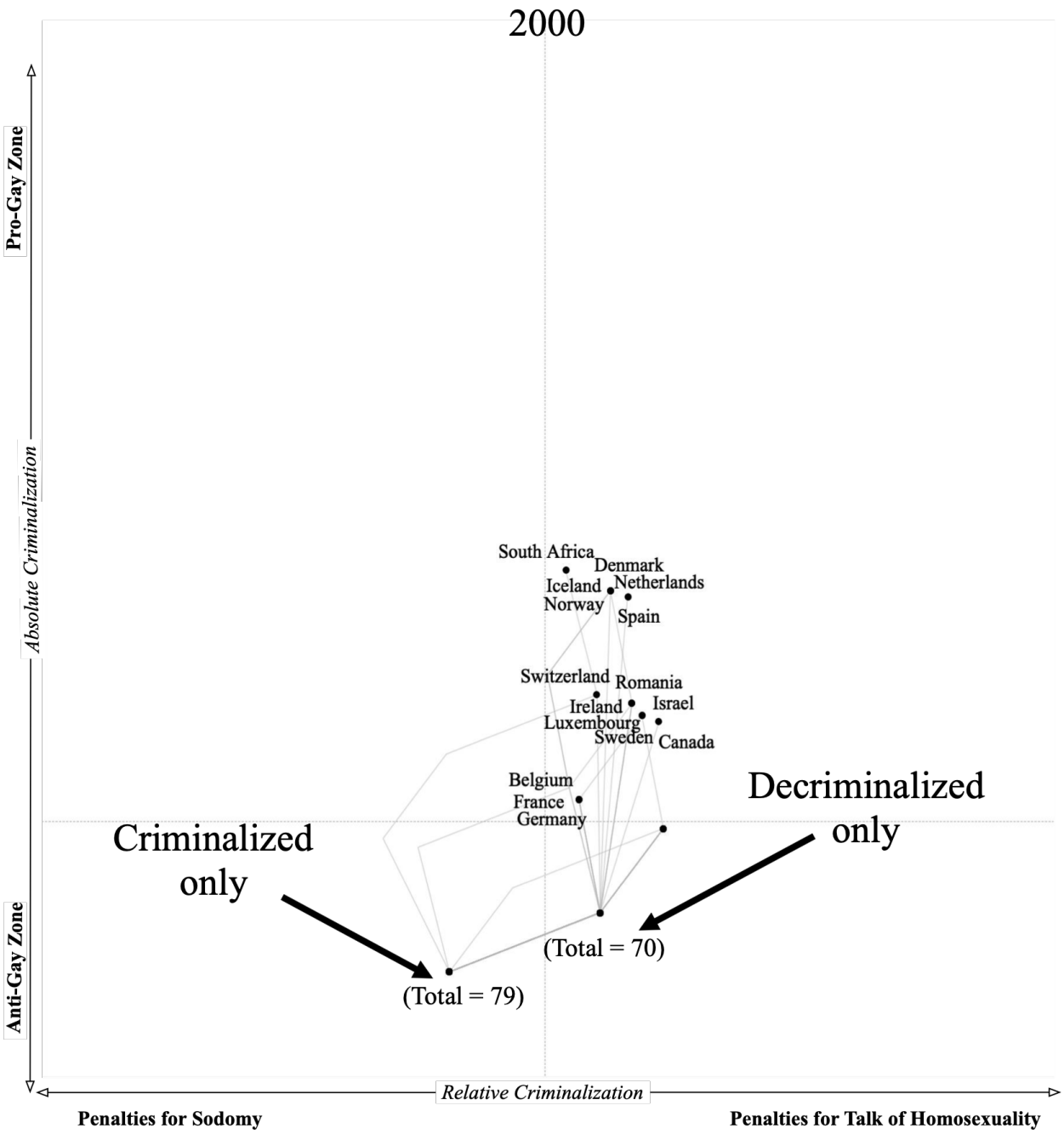


Figure 24. Movement of Countries, 2010

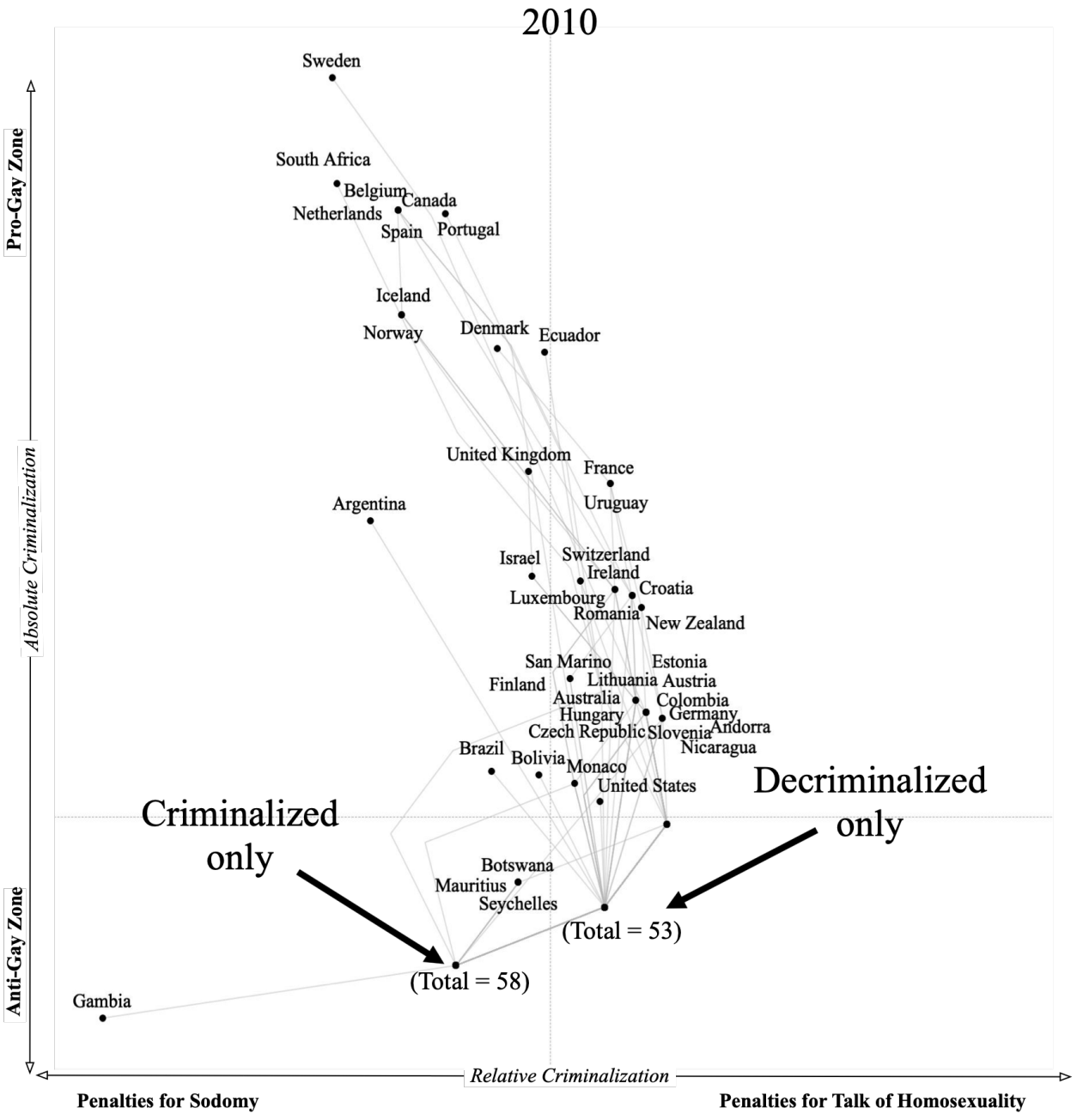


Figure 25. Movement of Countries, 2015

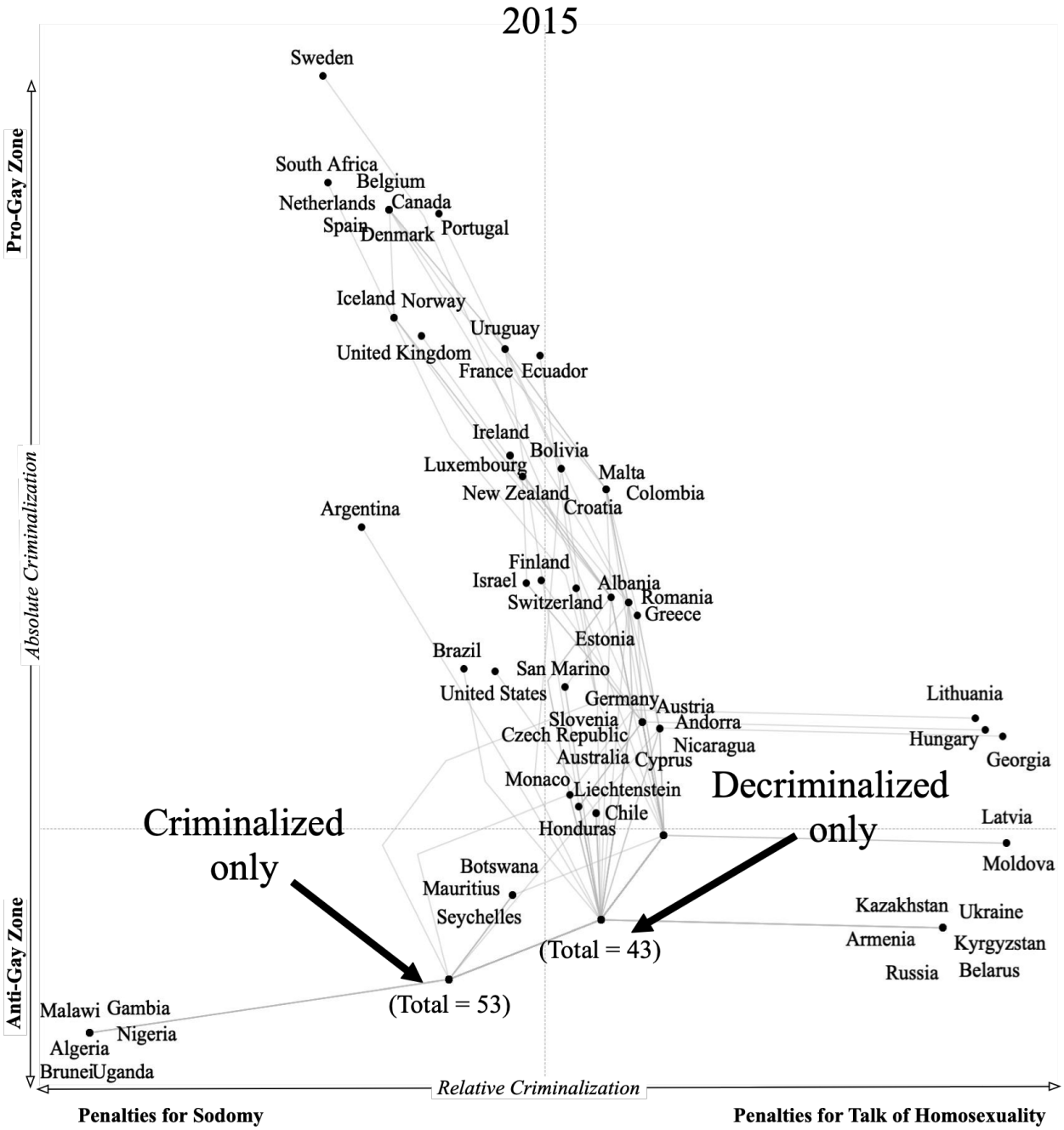


Figure 26. Movement of Structuring Factors, 1985

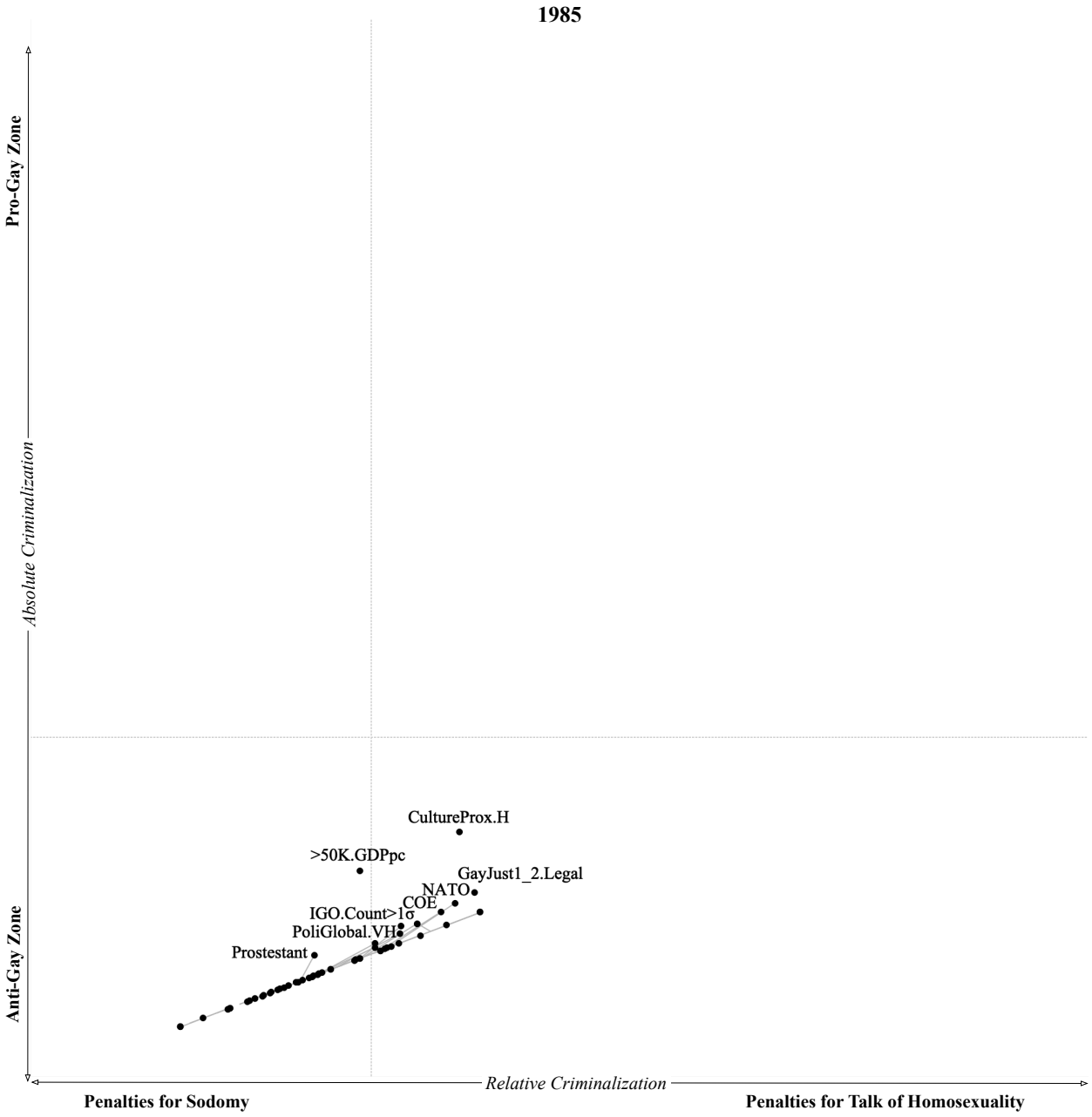


Figure 27. Movement of Structuring Factors, 2000

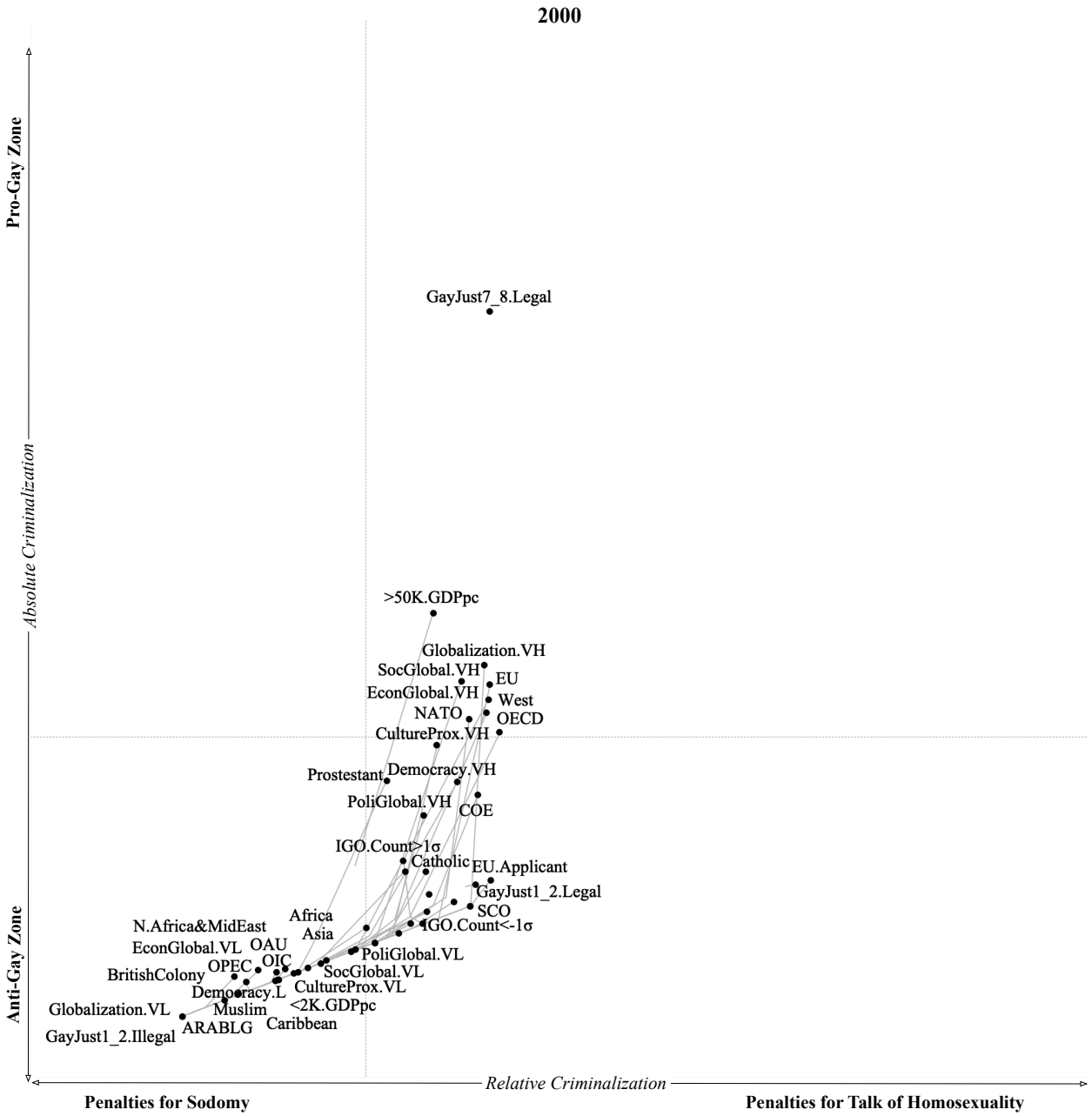


Figure 28. Movement of Structuring Factors, 2010

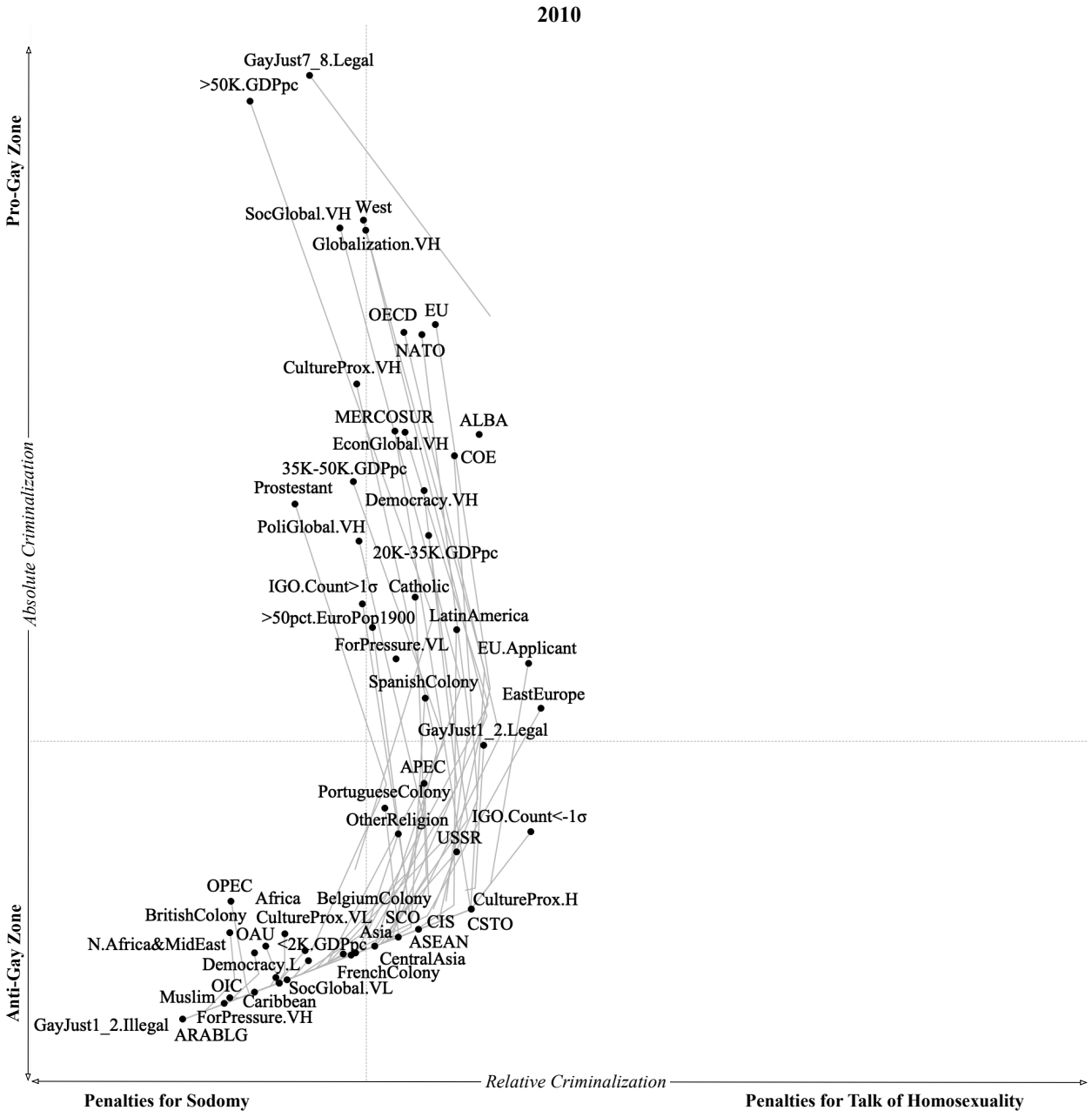


Figure 29. Movement of Structuring Factors, 2015

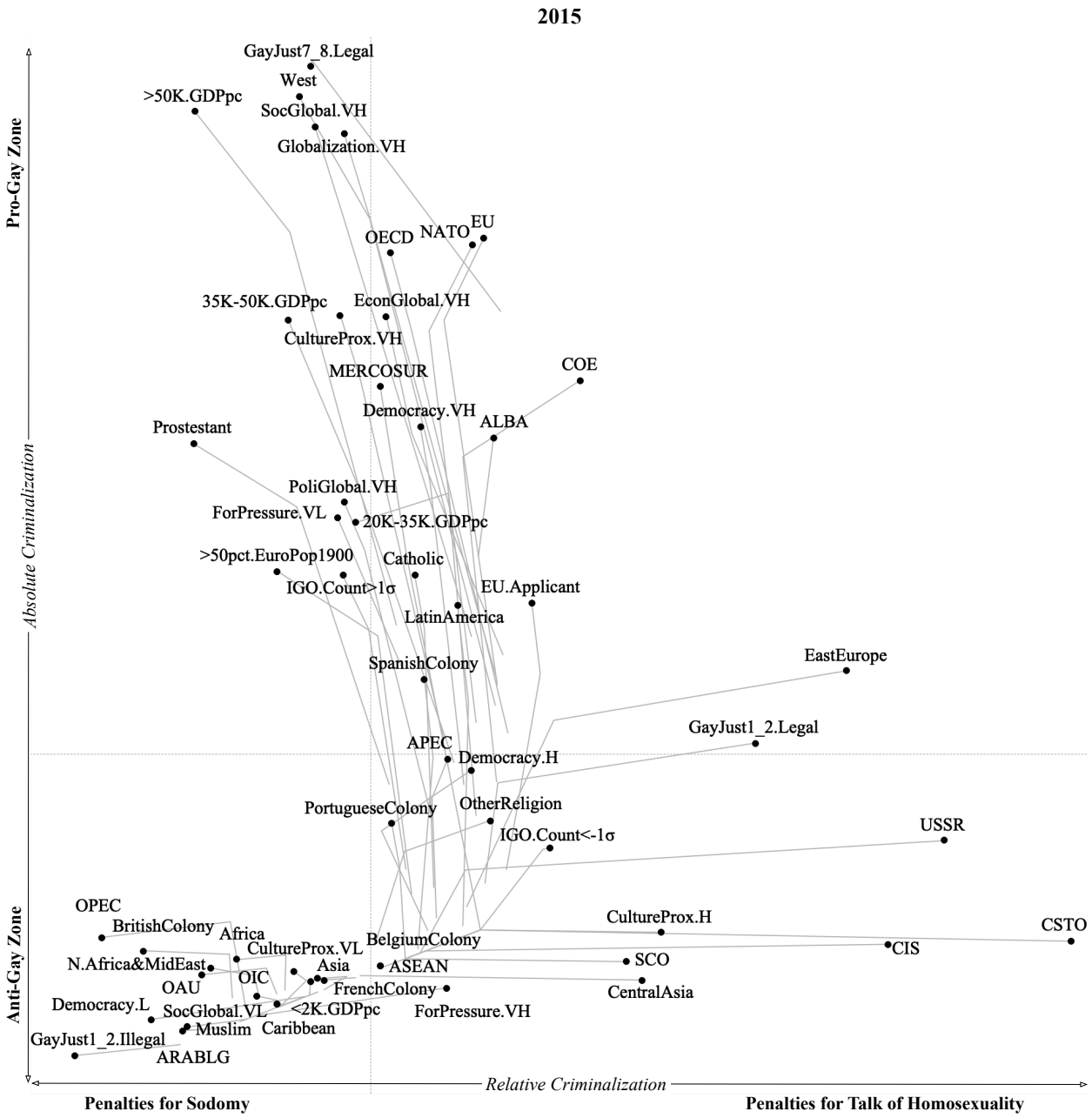
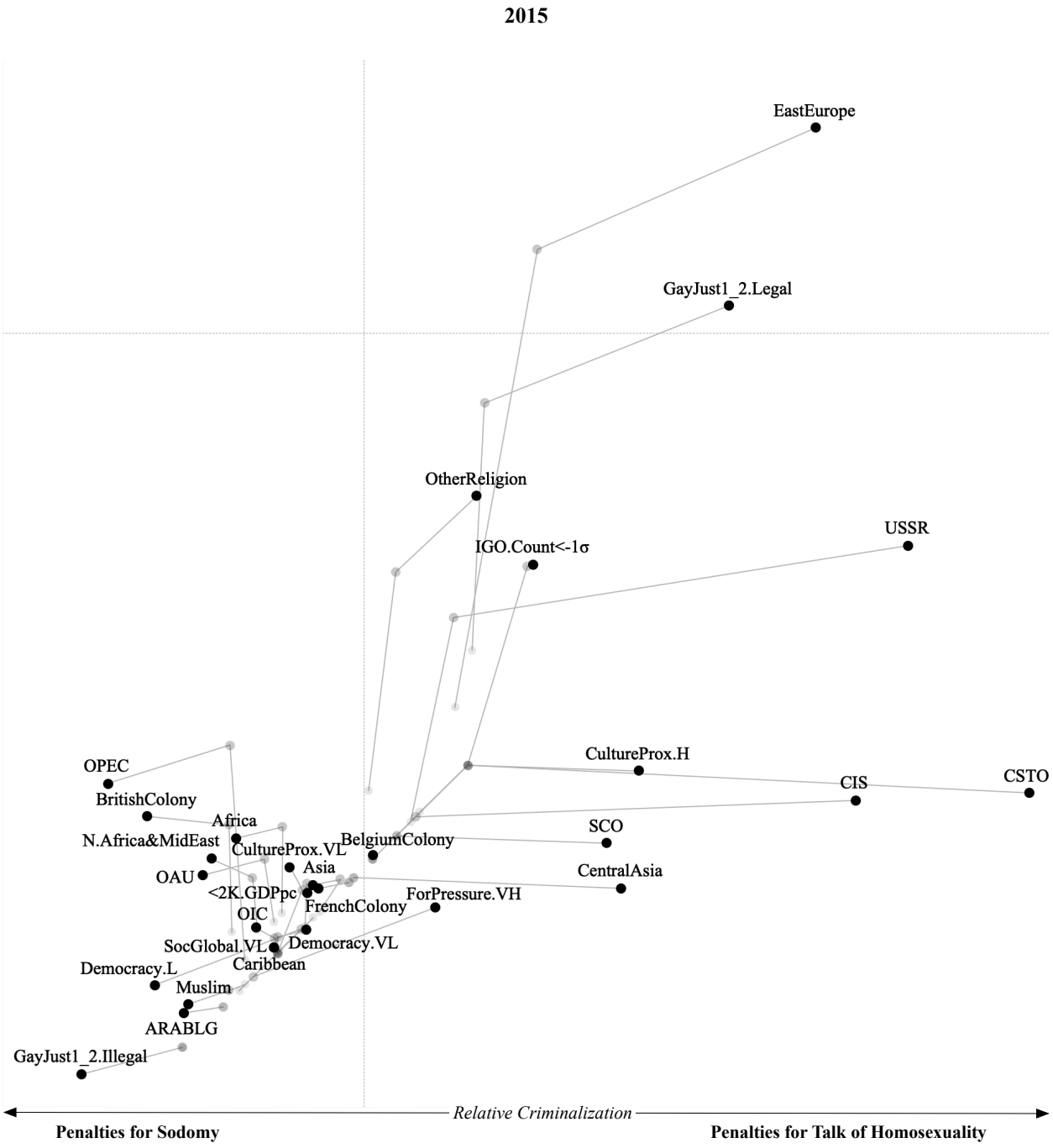


Figure 30. Movement of Structuring Factors, 2015 – the Anti-Gay Pole



*Appendix 1: Legend for the socio-demographic characteristics

Regions:
Caribbean - Caribbean
CentralAsia - Central Asia
West – West (Western Europe, United States, Canada, New Zealand, and Australia)
LatinAmerica - Latin America
EastEurope - Eastern Europe
Asia - Asia
Africa - Sub-Saharan Africa
N.Africa&MidEast - North Africa & Middle East

Colonial Country:
PortugueseColony - Portuguese Colony
BelgianColony - Belgian Colony
SpanishColony - Spanish Colony
FrenchColony - French Colony
BritishColony - British Colony
NeverColony - Never Colony

Colonial Status:
FormerColony - Former colony
NeverColony - Never a colony

European Settler Colonialism:
EuroPop>50% - Over 50% European population in 1900
EuroPop11-50% - 11- 50% European population in 1900
EuroPop<10% - 1- 10% European population in 1900

Per Capita GDP ($):
<2K.GDPpc - Per Capita GDP less than 2K
2K-5K.GDPpc - Per Capita GDP 2K-5K
5K-10K.GDPpc - Per Capita GDP 5K-10K
10K-20K.GDPpc - Per Capita GDP 10K-20K
20K-35K.GDPpc - Per Capita GDP 20K-35K
35K-50K.GDPpc - Per Capita GDP 35K-50K
>50K.GDPpc - Per Capita GDP over 50K

Religion:
Protestant - Protestant
Catholic - Catholic
OtherReligion - Other Religion
Muslim - Muslim

Democracy:
Democracy.VH - Very High Democracy

Democracy.H - High Democracy
Democracy.M - Medium Democracy
Democracy.L - Low Democracy
Democracy.VL - Very Low Democracy

Soviet Union Membership:
USSR.Member - Former member of USSR
USSR.NonMember - Not a member of USSR
Foreign Pressure:
ForPressure.VH - Very High Level of Foreign Pressure
ForPressure.H - High Level of Foreign Pressure
ForPressure.L - Low Level of Foreign Pressure
ForPressure.VL - Very Low Level of Foreign Pressure

Total Membership in IGOs (in Standard Deviations):
IGO.Count>1σ - IGO Memberships over 1 SD above mean
IGO.Count<1σ - IGO Memberships between 0 and 1 SD
IGO.Count<0σ - IGO Memberships between -1 and 0 SD
IGO.Count<-1σ - IGO Memberships less than -1 SD below mean

'Gay is Justifiable' Median Score (1=Never Justifiable; 10=Always Justifiable):
GayJust1_2 = Median score 1-2
GayJust3_4 = Median score 3_4
GayJust5_6 = Median score 5_6
GayJust7_8 = Median score 7_8
GayJust9_10 = Median score 9_10

'Gay is Justifiable' Median Score BY Legal Homosexuality:
GayJust1_2.Legal = Median score 1-2 and legal homosexuality
GayJust3_4.Legal = Median score 3-4 and legal homosexuality
GayJust5_6.Legal = Median score 5-6 and legal homosexuality
GayJust7_8.Legal = Median score 7-8 and legal homosexuality
GayJust9_10.Legal = Median score 9-10 and legal homosexuality

'Gay is Justifiable' Median Score BY Illegal Homosexuality:
GayJust1_2.Illegal = Median score 1-2 and Illegal homosexuality
GayJust3_4.Illegal = Median score 3-4 and Illegal homosexuality

Chapter 2

"There is an Eye on Us": International Imitation, Popular Representation and Decoupling in Reverse in the Regulation of Homosexuality

On July 21, 2015, police stormed a residence in the Aliou Sow District of Dakar, Senegal, arresting seven men for "acts against nature."[50] The brazen arrest scandalized the nation, unleashing renewed torrents of homophobia, reinvigorating debates about morality, Western influence and specters of a "homosexual lobby." The Senegalese people demanded swift prosecution. News of the arrest swept the globe.[51] Human Rights Watch, an international non-governmental organization based in New York City, put out immediately this statement: "The absurd conviction of these seven men for *acts that should never be a crime* is sadly not an aberration, but reflects the Senegalese government's broader discrimination against the LGBT community. Unless this case is quickly quashed, it will be a blight on Senegal's international standing for a long time to come." Behind the scenes, Western embassies, international public health and human rights groups organized food and clothing, money and medication for the incarcerated seven. They hired attorneys, monitored local press, and met secretly with government officials to push for the men's release. To no avail. All seven received six months in prison. Although the efforts of global institutions failed, their efforts reveal the high global stakes of the criminalization of homosexuality. They reveal the watchful eye of world society. But how does world society's watchful eye reverberate in the attitudes and practices of legal actors in local contexts?

World society entails a vision of our world, not as anarchic, but as bound together, converging on a shared ethos, "a collective cultural cosmology," a single *world culture* rooted deep in a tradition of Western liberalism, a tradition that extends its reach across the globe. Today, this vision stands against a troubling reality—the great global convergence toward liberalism predicted by the theory of world society has not happened (Beckfield 2010; Cobb 2014). A rising polarization, a swelling backlash rattle the post-WWII and post-Communist orders (e.g., Zakaria 2003; Bánkuti, Halmai, and Scheppele 2012; Ambrosio 2016; Mishra 2017; Levtisky and Ziblat 2018). Witness Brexit, the rise in authoritarian leaders, the accession of far-right parties to governmental power. And homosexuality is no exception to this trend. Consider the increasing polarization in attitudes and laws on homosexuality (Hadler and Symons 2018). Observe the media coverage warning of a global "gay divide" (e.g., The Economist; Pew Research).[52] As of 2017, seventy-two nations refused to decriminalize homosexuality. Some even ramped up attacks against same-sex love and desire—Nigeria's "Same-Sex Marriage Prohibition Bill" (2013), Russia's anti-gay propaganda law (2014), Uganda's "Anti-Homosexuality Bill" (2014), or Brunei's introduction of the penalty of death by stoning (2015).

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[50] All translations from the French are mine.

[51] Headlines in major Western newspapers around the world sounded off: "Jailing of Gay Men in Senegal Poses Setback to HIV Fight in Africa": https://www.reuters.com/article/us-africa-aids/jailing-of-gay-men-in-senegal-poses-setback-to-hiv-fight-in-africa-idUSKCN0QV1OZ20150826; "Chasse aux homosexuels au Sénégal":

[52] https://www.economist.com/leaders/2014/10/09/the-gay-divide;
https://www.pewresearch.org/global/2013/06/04/the-global-divide-on-homosexuality/

And yet, world society still matters. World society—its institutions and its culture—does not stand idle as nations thwart the rights of sexual minorities, as they arrest, jail, or kill them for *"acts that should never be a crime."* World society steps in, exerting its force on law makers and law enforcers through a vast network of Western embassies, intergovernmental organizations (IGOs) and international non-governmental organizations (INGOs).

But what happens when world society arrives on the local scene? My argument is that the effects of its interventions are complex. Most importantly, world society turns global divisions into local ones, igniting and inflaming polarization not just between nations but also *within* nations. Drawing on a case study of Senegal, where homosexuality remains illegal, I show how world society's interventionism severs the juridical field into two counterpoised factions, its backers in the Ministry of Justice and its detractors in the lower courts. This reveals a vertical axis of division in the juridical field between high versus low levels of juridical capital.

To begin, the response by Ministry of Justice officials reveals a deep affinity with world society and an internationalist vision of human rights. Moreover, officials emphasize acts not identity when discussing their country's ongoing criminalization. Perched high in the judiciary and facing world society, Ministry officials tend toward a *logic of international imitation*. What is more, they are the source of what I call "decoupling in reverse," drawing on world cultural scripts in cases of "acts against nature" to circumvent the courts and quietly bypass their own country's repressive law. "Decoupling in reverse" is the mechanism through which the culture of world society sneaks in. In stark contrast, the response of lower court prosecutors and judges to world society's pro-gay advocacy is one of resistance—exemplified by heightened vigilance in court cases, stirrings of resentment, claims of cultural specificity and 'African values', assertions of sovereignty, and a self-image as defenders of the collective consciousness. These magistrates, located at the lower echelon of the juridical field and facing outward toward the public, operate in a *logic of popular representation*. The dominant logic each groups follows depends on its position within the judicial hierarchy, the main source of its legal and social accountability, and its proximity to world society.

But I argue something more—that it is precisely world society's presence and pro-gay advocacy in Senegal that has made homosexuality the site of positioning for or against the West. Put differently, world society's recent demands for decriminalization have not only inflamed the issue of homosexuality in Senegal, which enjoyed tacit tolerance in earlier decades, they have also driven magistrates and the public to use "acts against nature" cases as a site for drawing symbolic boundaries and for channeling broader resentments against the West, resentments that touch on anger over colonialism and its present legacies, economic inequality, and cultural disregard and domination, and even migration.

WORLD SOCIETY AND THE DIVIDED WORLD HYPOTHESIS

Neo-institutional scholarship, in the tradition of John Meyer (Meyer and Rowan 1977; Strang and Meyer 1993; Meyer et al. 1997), has tracked the dramatic rise of a "world society," embodied in Western-style institutions and policies, promoting a liberal ethos of sovereign actorhood and rationalized individualism. World society is defined by world cultural scripts that produce and imbue modern actors—defined as individuals, organizations, *and* nation-states—with social agency, an agency that does not have its source in any transcendental authority (god) or

natural forces. These modern actors are themselves "the authorized centers and sources of all social action" (Meyer and Jepperson 2000, p. 105).

Emphasizing "individual rather than diffuse corporate or state authority," these world cultural scripts are deeply tied to "the liberal model of sociopolitical organization that has dominated the post-World War II epoch" (ibid., 108). The impact of world culture scripts in the modern era is three fold: for individuals, they created a sense of identity that is tied to one's own human capacities (Schneider & Stevenson 1999, Frank & Meyer 2002); for organizations, they forged rationalized formal structures out of loose social groupings (Drori et al. 2006; Hwang & Powell 2009); for nations, they turned governing bodies into bureaucracies of intentional social action (Meyer & Jepperson 2000).

Originating in Protestant and Anglo-American countries (Meyer & Jepperson 2000, p. 109), these scripts quickly spread beyond the West after 1945, reshaping "the structure and behavior of nation-states, organizations, and individuals worldwide" (Schofer et al. 2012, p. 1; Meyer and Jepperson 2000). Intergovernmental and international non-governmental organizations deserve the most credit for diffusing these scripts.

Nations must adopt these scripts to be considered legitimate in the global environment. All this drives global convergence. For example, today most nations have constitutions and central governments with specialized ministries (Kim, Jang, and Hwang 2002); they have a tripartite military structure with an army, air force and navy (Finnemore 1996, p. 336-7); they collect and report of data on the population and the economy, they have formal mass education institutions (Meyer, Ramirez and Soysal 1992); they have similarly structured university systems with near identical curricula despite wide variation in national labor markets (Meyer 2007); they have a formal legal system, with diverse areas of legal specification, such as administrative, family, trade, and criminal law; and they increasingly ensure protections for the environment (Frank, Longhofer, and Schofer 2007), the rights of women, children, and ethnic and racial minorities (Bradley and Ramirez 1996; Berkovtich & Bradley 1999; McNeely 1995).

In the case of sexuality, world culture ushered in a new "cultural opportunity structure" that valorized the individual over collectives (families, tribes, or nations), thereby constructing a vision of an empowered actor imbued with sexual agency (Strang and Meyer 1993; Meyer, Boli, Thomas, and Ramirez 1997; Meyer and Rowan 1997; Frank and McEneaney 1999; Frank and Meyer 2002; Frank, Boutcher, and Camp 2009; Frank, Camp, and Boutcher 2010; Frank and Moss 2017). More concretely, world culture empowered persons to make legal claims to sexual freedom in the name of sovereign actorhood. In this paper, I refer to 'world society' to describe the Western nations within which world culture scripts originated, as well as the global institutions and international organizations that promulgate liberal world culture.

But an emerging body of scholarship has put forward a 'divided world hypothesis', taking stock of recent challenges to world society and world culture.[53] Scholars have observed a "growing disintegration, fragmentation, heterogeneity and regionalization" in the world polity system (Beckfield 2010, p. 1051-1052). In the area of homosexuality, scholars have noted a rise of "illiberal world models" since the mid-2000s (Hadler and Symons 2018, p. 23; Beyrer 2014; Kretz 2013). The expansion and recognition of LGBT rights at the United Nations has met increasing challenges from member states (Saiz 2004). Perhaps, this is one reason why the UN has not moved

[53] This article is a second test of the divided world hypothesis. In the first article, I show through statistical analyses that in contrast to world culture theory the world is divided in its laws on homosexuality, and has grown increasingly more divided over the last 40 years. I reveal the hierarchy in the relative position of nations, positions rooted in the economic and political capital of nations, national trajectories, as well as race and colonial legacy.

to include a right to same-sex partnerships within its non-discrimination clause (Waites 2009). Regional organizations too are pushing back. ASEAN member states have refused to incorporate sexual orientation and gender identity (SOGI) into the ASEAN Human Rights Declaration, despite signing on to other human rights treaties (Langlois 2014). Religion, culture, and nationalism play a salient role (Buss and Herman 2003). Russia emphasizes "moral sovereignty" to challenge human rights norms around sexuality by arguing that human rights norms need to live with and take into consideration "traditional values," meaning that they must work around those majoritarian values, especially, in public contexts (Wilkinson 2014; Horvath 2016). This becomes the basis for Russia's anti-gay propaganda law, which criminalizes public discussions of homosexuality with minors or in the presence of minors (Wilkinson 2014). Some scholars point out that illiberal nations make similar claims to universality as liberal ones, noting that the majority of the world's population does not approve of homosexuality (Voss 2017). Challenger states "argue that there is a potential 'Clash of Civilizations' and that the West is trying to not only create new rights but impose those rights upon others" (Voss 2017, 19). But it is not simply those nations far outside of the West, in Asia or Africa, that are resisting world culture's stance on homosexuality. The divisions over homosexuality are found even closer to the Western core of world culture, in places like Poland, Latvia, and Slovenia (O'Dwyer and Schwartz 2010; Ayoub 2014). Even at the heart of the West, local, national and transnational illiberal opposition to LGBT rights abounds (see Browne and Nash (2014) on Canada and Great Britain; Fassin (2010, 2014) on France; Zivi (2014) on the United States).

HOMOSEXUAL REGULATION IN THE GLOBAL FIELD

But global divisions around homosexuality have a history haunted by race, colonization, and cultural imperialism. Since the 18th century, sexual discourses fueled European constructs of race (Foucault 1978, 1989; Stoler 1995, 2002; McClintock 1995). European colonists and missionaries, scientists and philosophers saw oft-accepted practices of homosexuality in Africa and elsewhere as evidence of racial inferiority (Greenberg 1990; Bleys 1995; Murray & Roscoe 2001; Najmabadi 2005; Munro 2012; Frühstück 2014; Sreenivas 2014).

During colonization, many colonial powers criminalized homosexuality in their colonies (Gupta 2013; Sanders 2009; Frank et al. 2009*a*; Asal, Sommer, and Harwood 2012; Han and Mahoney 2014). After former colonies gained their independence, many kept their colonial-era sodomy laws, making today's criminalization an "alien legacy" (Gupta 2013).

cBut by the late 20th century, the former European colonial powers shifted radically—and came to view a right to engage in same-sex practices as a fundamental human right (Sanders 1996; Waites 2009; Petchesky 2000). This new conceptualization of homosexual practices premised upon individualism and connected to a discourse on rights spread internationally (Drucker 2000, Adam et al. 1999, Altman 2001, Binnie 2004; Kulpa and Mizielinska 2011). Scholars and activists made sexual rights a global priority, reinterpreting earlier human rights conventions to include gay and lesbian rights (Heinze 1995; Wintemute 1995; Petschesky 2000; Wintemute and Andenaes 2001; Corrêa et al. 2008, p. 29; Waites 2009; Kollman and Waites 2009; Swiebel 2009; Burack 2018). Today, Western nations and international organizations push for gay rights around the world (Thoreson 2014; Kollman and Waites 2009; Swiebel 2009). So too do Western-based corporations

who increasingly threaten to boycott anti-gay countries,[54] arguing that LGBT discrimination hurts business.[55]

The geopolitics of gay rights even extends to diplomacy (Thoreson 2014). During the Obama administration, the United States integrated LGBTQ advocacy into its foreign policy (Encarnación 2016), though the US's involvement in this area began as early as the 1990s (Burack 2018; for a general history of transnational LGBT activism, see Thoreson 2014). Even development aid has been weaponized, with some Global North countries cutting or threatening to cut aid to certain countries that criminalize homosexuality or whose treatment of sexual minorities counts as particularly egregious (Kates 2014; Sarpong 2012; Ewins 2011).[56]

The Organon of Fields

According to Bourdieu (1975, 1984, 1990, 1991, 1998), a field is a distinct and semiautonomous arena of social action defined in relational terms manifested by a polar opposition. Requiring a specific and minimum form of capital for entry and participation, one's position in a field is determined by one's overall volume and relative composition of the various capitals accumulated by agents. All fields have a set of more or less institutionalized rules and regulations. Most importantly, fields are spaces of action and of struggle, a struggle for imposition of the dominant species of capital and for the right of "legitimate nomination," the right to determine the principle lens through which agents of the field perceive the world. For Bourdieu, the field is always a site of power and conflict among those who stake out opposing positions.

Many thinkers have taken Bourdieu up in scale from the national to the international level, including Bourdieu himself (for example, Bourdieu and Wacquant 1999; Bourdieu 2000). These works include studies of, for example, colonialism and imperialism (Steinmetz 2007, 2008, 2016; Wilson 2016); empire (Go 2008; 2011); global humanitarianism (Krause 2014; Dromi 2016; Petzke 2016); global professionals involved in the transnationalization of economics (Fourcade 2006); the literary field and the global market of translation (Sapiro 2008, 2010); democracy promotion and human rights (Guilhot 2005); global visual arts field (Buchholz 2016); international humanitarian and criminal law (Hagan and Levi 2005); internationalization of the social sciences (Heilbron, Guilhot, and Jeanpierre 2008; Gingras and Heilbron 2009; Guilhot, 2016; Heilbron, 2014); trends toward hyperscientization at the EU central bank (Mudge and Vauchez 2016); diplomacy (Pouliot 2016; Brundage 2018) international market of expertise (Dezalay and Garth 1998; 2011); transnational legal field and international commercial arbitration (Dezalay and Garth 1995, 1996); and Western exportation of economic policy and international human rights law (Dezalay and Garth 2010).

Governing Homosexuality in the Global Field

What does field theory have to contribute to explaining social struggles over the meaning and government of homosexuality worldwide? I draw on Go (2008) who describes a "global field"

[54] https://www.forbes.com/sites/rachelsandler/2019/05/06/brunei-rolls-back-gay-death-penalty-after-a-month-of-global-protest-and-boycotts/#2a030a056c0b

[55] https://www.weforum.org/agenda/2017/01/why-so-many-businesses-support-lgbt-rights/

[56] It would be wrong to assume that the global field of homosexual regulation is only made up of a pro-gay West and an anti-gay rest. Western-based national and transnational groups, most notably, religious groups, are also involved, as seen in the case of US-based Christians who push for anti-gay legislation in foreign countries (Kretz 2013).

as a worldwide arena in which statees or other actors (corporations, nongovernmental institutions, international organizations) compete with each other over "species of capital" and over "the rules of the game" (p. 207). Like Bourdieu's field theory, global fields integrate both material and cultural dimensions of social life and pays close attention to relationality, struggles among actors, and relative positions of power (Go and Krause 2016, p. 15). In the case of governing homosexuality in a global field, consequential actors include national governments, intergovernmental and non-governmental organizations, including development agencies, public health outfits, religious groups, human rights advocates, and even businesses. These entities exert different kinds of field effects through various mechanisms: e.g., writing and implementing laws, pressuring federal governments and judiciaries, monitoring local practices, writing reports, releasing press statements, showing up in court to sway local and international opinion, supporting local social movements, and taking economic actions against countries. The diverse actors remind us that the global field approach attends to "new forms of non-territorial and multilateral power" (Go and Krause 2016, p. 16).

Several forms of capital matter in the global field of homosexual regulation. Nations, international non-governmental organizations (INGOs), intergovernmental organizations (IGOs), and businesses with high levels of economic capital have more resources to dedicate to shaping national laws on homosexuality globally. They are better able to use their economic power as leverage to persuade and push nations to conform. Political capital also matters. Countries that have strong diplomatic ties to other nations and a powerful voice inside powerful IGOs and INGOs will wield greater influence in the global debate around homosexuality.

Struggles define all field relations. There is the concrete struggle over what laws nations should have on the books concerning homosexuality. But there are deeper struggles over nations' ability to impose onto the social world what Bourdieu calls "categories of perception," what Michele Lamont (2017) calls "criteria of evaluation," or what Wacquant (2017) calls "consequential categorization," i.e., symbolic power. This symbolic struggle, Bourdieu tells us, is over "who gets to speak and name" (Bourdieu 1990, p. 26). All actors will compete to impose symbolic systems that prioritize their own *values* and *interests* in order to improve their own *standing* in a material and symbolic hierarchy. World society institutions, as structurally dominant actors with high economic and political capital, have the clear upper hand, because they have the resources to spread and impose their "categories of perception" globally. If world society struggles to *impose* its categories of perception (symbolic domination), dominated nations struggle to *resist* that imposition (symbolic resistance). As Go and Krause (2016) note, "The 'rules of the game' are most often set, and protected, by the dominant actors, while subordinate actors eventually come to challenge those rules…" (p. 9).

I contend that Bourdieu's field analysis, which emphasizes struggles, adds to John Meyer's critical story of world culture, which emphasizes diffusion and imitation, by showing that we should not simply see nations as passive recipients of world culture scripts but as actors in a field. Field analysis inserts back into the analysis a different kind of actorhood and agency that is not foregrounded in Meyer, namely *struggle*, *resistance*, and *power*. In a global field of homosexual regulation, as I construct it here, a battle wages between pro-gay nations, IGOs and INGOs, on the one hand, and anti-gay ones, on the other, especially those in the Global South, who actively refuse to adopt world cultural scripts around gay rights. And yet, as I show, anti-gay nations are not monoliths. In the case of the postcolonial African nation of Senegal, there is clear evidence of *within-state variation* in the juridical field in terms of receptivity to world culture in the exercise (though not the letter) of the law. There is a stark link here to McDonnell's (2017) "Patchwork

Leviathan," where states are conceptualized as "composites of *fractious* subunits that may differ vastly in foundational organizational capacities and the institutional rules of the game guiding their actions" (my italics, 503).

The Global Field in Senegal: World Society Confronts the Senegalese Judiciary and the People

Figure 1 illustrates the positions and relationships among key actors involved in the struggle over homosexuality in Senegal. World society institutions—IGOs, INGOs, and Western embassies—that defend and diffuse world culture in Senegal are represented at the top of the graph, a position signifying their high endowments of economic and political capital. Embassies deal with diplomacy, while INGOs and IGOs operate mainly in the area of human rights, international development, and public health. They are largely based in Western cities and tied financially and politically to Western nations: e.g., Amnesty International (London), Human Rights Watch (New York City), the United Nations AIDS (Geneva), United Nations High Commissioner for Human Rights (Geneva), the European Union Delegation of Human Rights (Geneva), and European and North American embassies.

In Senegal, world society institutions encourage the Ministry of Justice (henceforth, the Ministry) to intervene in court cases and to direct prosecutors not to pursue cases of acts against nature. As discussed below, the Ministry works closely with world society institutions, who support it financially. Thus, the Ministry is accountable and tries to be responsive to their partners when contacted about arrests. And while Ministry officials are largely sympathetic to concerns about gay rights, they nevertheless must walk a fine line between intervening on behalf of world culture and respecting local law.

Below the Ministry sit the courts, its judges and prosecutors (henceforth, magistrates). Unlike the Ministry, which faces world society, magistrates face the public, structurally located closer to and held more to account by the people. Here world culture is most ardently challenged. Magistrates consider themselves representatives of the people and defenders of Senegal's sovereignty. The "people" here refers to the local population and the local press (located at the bottom of the Figure 1), who widely condemn homosexuality and who show up in court. While the "people" are not actors in the field, judges and prosecutors struggle in their name—this is the *logic of popular representation*. The religious field operates similarly, whereby the pious followers are not actors in the religious field, even though the actors in the religious field struggle in their name (Bourdieu 1991).

THE CASE

A postcolonial, majority Muslim, francophone African democracy, Senegal sits at the intersection of three geopolitical communities, making it a noteworthy case to examine how world culture reverberates in a local context. First, with a 95% Muslim population, it belongs to the larger Muslim world (Coulin 1988, p. 164). Second, Senegalese scholars and the government have long championed African political and cultural unity (see Snipe 1998; Harney 2004), indeed, its founders enshrined this commitment in the Constitution (Fall 2009, p. 20). Third, Senegal has deep historical ties to France, largely because of Dakar's status as the capital of French West Africa. Intellectual ties to the Hexagon run deep (Coulin 1998; Verdin 2010). Its legal, political, educational, cultural and administrative structures are modeled after France's (Coulin 1988). A

special "friendship and association with the people of France" was even penned into the original Constitution (Fall 2009, p. 21).[57] And it is the base of operation for many Western and non-Western international organizations (e.g., the UN High Commission of Human Rights regional office). Finally, in a region marked by perpetual political strife, Senegal shines as a stable democracy, with an active civil society and religious and ethnic tolerance (Gellar 2005).

As this story shows, the conflict in Senegal is not between democracy and the absence thereof, but rather between two visions of democracy, one rooted in a liberal ideology of rights and sovereign individualism, the other in an (at the moment) illiberal *will of the people*. For the *will of the people* rejects homosexuality and any right to sexual self-determination. In 2013, when Pew researchers asked the question 'Should society accept homosexuality', 96% of the Senegalese population answered 'no', tied with Uganda and Ghana.[58] In 2014/2015, AfroBarometer data showed Senegal with the lowest level of acceptance of homosexuality (3%) for all Africa (Figure 2).[59] What a striking disjuncture between Senegal's strong ties to the West and its staunch illiberalism around the question of homosexuality. Perhaps, it is because Senegal is so exposed to world society institutions that its legal apparatus is so intolerant of the practices world culture strives to defend.

Origins of the Criminalization of Homosexuality in Senegal

In accordance with the will of the people, same-sex sexual acts are criminalized under Article 319.3 of the Penal Code with a sentence of up to five years. The law reads:

> Whoever will have committed an lewd or act against nature with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs.[60] If the act was committed with a person below the age of 21, the maximum penalty will always be applied.

While the law stipulates "lewd" acts or "acts against nature," it clearly targets exclusively homosexuality. For example, all the court cases I found in the archives involved homosexuality, i.e., not a single case involved, i.e., non-traditional sex among heterosexual couples.

But Senegal's criminalization does not simply reflect the current will of its people, but also the previous will of its former French colonial overseers. Recent scholarship had traced anti-sodomy laws in the Global South to colonial-era laws (Gupta 2008). In Senegal, this criminalization was also a colonial bequest, an "offense," in the words of Senegalese legal scholar Fatou Kiné Camara, "that comes from elsewhere" (Camara 2007-2008). On May 6 1877, the

[57] For example, Senegalese politician Blaise Diagne was the first sub-Saharan African to be elected to the French government in 1914; Senegal's first president Léopold Sédar Senghor was the first Black member to be inducted into France's prestigious Académie Française; Abdou Diouf, second president of Senegal, was president of the International Organization of the Francophone world; Senegalese intellectuals, like Alioune Diop, dubbed the Black Socrates, founded the famous political, cultural and literary magazine *Présence africaine* in Paris in 1947 (Verdin 2010).

[58] http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/

[59] Afrobarometer: Would strongly dislike having a neighbor that is homosexual.

[60] In U.S. dollars, this amounts to roughly $200 to $2500, or between 476 and 5952 times the minimum wage for general workers and between 540 and 6756 times the minimum wage for agricultural workers. This is a hefty fee in a country where 30% of the population in 2011 lived below the international poverty line of $1.25 (in purchasing power parity terms) per day (World Bank 2013).

French colonial administration passed Article 331.3 of the French penal code for its West African territory, prohibiting "improper acts" or "acts against nature" with an individual of one's own sex who was younger than 21 years old and simultaneously introducing a different age of consent for homosexual and heterosexual liaisons (Camara 2007-2008).[61] On July 30, 1960, one year before Senegal's independence, the French passed another law increasing punishment for "indecent exposure" in cases of "acts against nature with an individual of the same sex." This time the law did not stipulate an age limit, which effectively extended the criminalization of homosexuality to adults (Camara 2007-2008). This new law portended Article 319.3 of Senegal's 1965 penal code, passed for the first time five years after independence from the French. The 1965 penal code included both the old stipulation about same-sex occurrences between adults and minors, as well as the new stipulation for same-sex acts committed among adults.

A Public-Facing Tribunal

The Tribunal of Grande Instance in Dakar, Senegal (henceforth, Dakar Tribunal) is one of eleven such tribunals in Senegal, which handle more serious misdemeanors and crimes.[62] The Dakar Tribunal is the nation's largest court of Grande Instance, accounting for roughly 70% of cases nationwide. Like most of Senegal's institutions, it is modeled after France.

Judges and prosecutors are located at the heart of the Dakar Tribunal, their respective chambers occupying opposing sides of the building. The tribunal is a *public-facing institution*, as magistrates preside in a public courtroom. Although local judges and prosecutors are not elected, they feel accountable to the people, because both the public and the media attend trials to witness the spectacle of justice and to make sure justice is served. For judges and prosecutors, their legitimacy comes from the spectator public that assembles in their courtrooms, the local press that covers their trials, and the local culture within which they are embedded. The press is a really important voice of the people. The press covers these cases widely and disproportionally to their number and their importance. And the press acts as a mediating institution between the courts and the general citizenry.

The courthouse is always crowded and busy, as thousands pass through each day to attend trials, search for lawyers, or see judges and prosecutors. In interviews, magistrates spoke extensively about the difficulties and social pressures they face, not from the state, but from the public and their social networks. They are bombarded in their offices by citizens seeking help with everything from judicial matters and bureaucratic problems to unemployment and financial hardship. Belonging to a privileged group, family, friends, neighbors, distant acquaintances, even strangers see them as well-connected and powerful, with an influence extending far beyond the law. Prosecutors face the greatest disturbances, given their power to decide whether or not to prosecute a case. In order to cope, most prosecutors have automatic locks on their doors and buzzers to permit entry. Judges do not have buzzers, but some did have to manually lock the door in order for us to have an uninterrupted interview. This highlights their deep ties to the people, and also constitutes a major source of disturbance in the daily routine of magistrates.

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[61] Original Text: "Sans préjudice des peines plus graves par les alinéas qui précèdent, ou par les articles 332 et 333 du présent code, sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 4000à 1 million de francs quiconque aura commis un acte impudique ou contre nature avec un individu de son sexe mineur de 21 ans." (Décret du 19 november 1947, JO AOF 1947 : 1232)

[62] One of three branches of government, the judiciary consists of three levels of courts: 1) the Supreme Court, Constitutional Court and the Court of Audits at the superior level; 2) six appeals courts at the second degree; and 3) eleven Tribunals of Grande Instances.

But proximity to the people extends beyond the work environment. The majority of magistrates studied in Senegal, not France, part of a new nativist, not old colonial elite. Few have lived or traveled extensively in the West or worked for international organizations before becoming magistrates. Their emotional and social distance from the West is stronger than in previous generations of similarly educated people. Officials at the Ministry of Justice also studied at Senegalese (or African) universities, but their careers are distinguished through working at large international (often human rights) organizations, both in Senegal and abroad.

All magistrates must complete a Master's in Law and two years at the Center for Judicial Training in Dakar before becoming a judge or prosecutor.[63] The Ministry presents potential magistrates to the office of the President of the Republic for approval. The *Conseil Supérieur de la Magistrature,* a high council of the judiciary housed in the executive branch, then recommends candidates for appointment. The president holds ultimate appointing authority. Candidates are assigned to either the bench or the prosecutor's office based on a mix of factors—exam results, availability, and personal connections. These two positions—the bench and prosecution—are fairly interchangeable in magistrates' eyes. And in stark contrast to the US system, judges begin their careers directly after their studies, and thus could be as young as 25.

Judges, on the one hand, are irremovable, theoretically nominated for life. They are accountable only to the law and speak forcefully about their independence. They must remain impartial, cannot belong to a political party or union, and cannot strike. Prosecutors, on the other hand, are under the direct authority of the Ministry of Justice, whose task it is to give instructions to prosecutors about how to interpret the law. But the Ministry *cannot forbid* prosecutors from prosecuting a case, though it *can compel* them to prosecute. Prosecutors stressed this again and again when it came to cases of homosexuality, revealing, as I show below, a core tension between the Ministry and the prosecutor's office.

This raises an important question about the leverage the Ministry has over magistrates. Magistrates cannot be fired unless they break the law. The Ministry's real power comes from its ability to reassign magistrates to a post in an unfavorable location. Magistrates are often reassigned to a different tribunal every few years for "necessity of service," though female magistrates, especially if married, rotate less. Magistrates consider the threat of rotation to an undesirable location, usually to a rural area, to be a main source of leverage over them.

Normally, magistrates are assigned to cases based on need, i.e., there is no division of labor based on specialization. As with French civil law courts, each case has one lead judge and two assistant judges with no jury. All judges serve at different times as head and assistant judges, with the head judge responsible for the bulk of pre-trial preparation. Judges hear roughly 75 to 100 cases per day, one or two days per week. They begin at 8am and often work until 2 or 3am. They are required to clear the docket before the next day. This is largely due to the 48-hour stipulation, which says a person can only be held up to 48 hours before being sentenced (though in practice, this is not always the case). Prosecutors handle fewer cases per day, but appear in court more regularly. Since 2009, the total number of cases has generally increased year to year, driven by intensifying urbanization and an attendant rise in crime (Figure 3). From 2009 to 2016, the Dakar Tribunal case load spiked 38%. In 2013, it reached a high of 7412 cases, before falling to just under 7000 cases in 2016.

A World-Society-Facing Ministry of Justice

[63] The path for lawyers is different. Lawyer earn their Masters in Law, but take a different examination, which is organized by the Bar of Senegal. After passing that exam, he or she will enter a law practice directly.

For its part, the Ministry belongs officially to the executive branch and the Minister of Justice is appointed directly by the President of the Republic. The Ministry of Justice is charged with several core tasks, including: directing how the law is to be interpreted; the supervision of the different services and functions of the judiciary; coordination and evaluation of all justice sector professional and organizational activities; the training of magistrates, archivists, and other court professionals; overseeing human rights; preparing periodic human rights reports for regional and international human rights institutions; and safeguarding the fundamental rights of detainees. In short, it is responsible for making sure the nation's courts function well.[64]

But unlike the courts, the Ministry is a world-society-facing *institution*.[65] Its building, which was a gift from the Americans whose embassy occupied it for many years, is not open to the public. It sits behind locked gates and is heavily guarded by the military. What is more, much of the Ministry's work is supported financially by world society institutions in the Global North.[66]

Although part of the Ministry's job is to give directives about how the prosecutor's office should interpret the law, those directives are not often followed in cases involving homosexuality. And, of course, prosecutors have the law on their side. This explains why prosecutions of homosexuality continued unabated under the tenure of a Justice Minister who opposed its criminalization. How the Ministry dealt with this—recoupling in reverse—will soon become clear.

DATA AND METHODS

This paper draws on a total of 18-months of fieldwork (during 2015, 2016 and 2017), where I conducted archival research, in-depth interviews, and ethnography at the Dakar Tribunal of

[64] The Ministry has also played a major role in several high profile international cases, most notably, the 2016 special tribunal, the Extraordinary African Chambers, within the Senegalese court system that tried the former Chadian president Hissene Habré, charged with crimes against humanity. In 2013, after an order from the International Court of Justice in The Hague, Senegal, in conjunction with the African Union, set up a special tribunal, the Extraordinary African Chambers, within the Senegalese court system to prosecute and try Habré. The trial was noteworthy, as it was the first instance where "the courts of one country prosecuted the former ruler of another for alleged human rights crimes," and "the first universal jurisdiction case to proceed to trial in Africa." The editorial board dubbed this "A Milestone for Justice in Africa." https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal.

[65] The Ministry of Justice officials are typically the agents they talk about-- people who have been trained in the west, who have had jobs in international organizations, and who come back with this symbolic capital from abroad. There is more than just a difference in the position within the juridical field between MJ officials and magistrates, these are different kinds of people. Magistrates are more locally trained, come from lower classes (don't have data on this). Ministry officials who come from the cosmopolitan elite with a very different social trajectory and social network. It is not just their connection to different audiences but also their very making and social trajectory. (See Dezalay and Garth 2002, p. 9).

[66] Some recent examples include the following. In 2011, the Ministry received 8 million dollars from The World Bank for a project to improve the functioning of the justice system.[66] In 2008, the Spanish Agency for International Development and Cooperation offered a 1,16 million Euro to the Ministry. Between 2007 and 2009, the European Union's Development Fund contributed 7,9 million Euros to improve efficiency and access in the judiciary, in addition to funding new equipment and training. The United States Agency for International Development has also contributed equipment and training, and has worked closely with the Senegalese government to identify the needs and areas of reform. In 2010, the European Union gave another 7,9 million Euros to relieve pressure on the Dakar tribunal and strengthen courts outside of the capital city—including building a new appeals court in Casamance, renovating and reconstructing the regional tribunals in Thiès, Kaolack, and Saint Louis, supporting digitization of court documents and processes, and supporting ongoing reforms. République du Sénégal, Ministre de la Justice, "Programme Sectoriel Justice," http://www.justice.gouv.sn/fr/programmes-et-projets/programme-sectoriel-justice [date accessed 15 May 2017].

Grande Instance, Senegal's largest tribunal located in its capital and its most populous city. I collected official court judgements for "acts against nature", prostitution, and abortion.[67] This allowed me to situate homosexuality within a broader context of cases involving gender, the family and sexuality. Lower court case records are not yet digitized, nor are they organized by type of crime, but they are organized by year and by type of case (criminal or civil). I collected judgements going back to 2000; however, I report here on cases between 2009 and 2015, as records for this period are most complete. In addition to the lower court, I also collected appellate cases for "acts against nature" between 2010 and 2016.

US State Department estimates roughly ten criminal cases per year of homosexuality in Senegal—such a small number of cases ironically creates opportunity for intense media scrutiny. In the lower court, at least 55 people were charged and prosecuted for homosexuality in Dakar between 2009 and 2015.[68] Why so few arrests? High levels of social stigma and legal sanction, as well as the private nature of these acts, are just several reasons why historically there are never many arrests for homosexuality in any place or time. As Sanders (2009) notes, "Laws against consenting homosexual acts are very difficult to enforce in any systematic way. Most arrests involve some public activity, lack of consent or the involvement of minors…" (Sanders 2009, p. 18). In the US, Eskridge (2008) showed "[t]he 1880 Census reported that only sixty-three prisoners were then incarcerated for crimes against nature in the entire country" (23). In Senegal, arrests for "acts against nature" usually result from denunciation, where someone very close— an aggrieved lover, a suspicious neighbor, or even a family member—reports to the police.

The individuals brought before the court share striking similarities. They are mostly men under 30. They are overwhelmingly poor.[69] Court records show they are unskilled and live far from the city center and coastal middle- and upper-class enclaves. In contrast to middle-class professionals or the upper class, these men do not have the *privilege of privacy*—they are less likely to have their own rooms and to live alone, and thus, more likely to engage in same-sex practices in precarious environments, like public spaces or in shared living quarters where the risk of discovery increases. The vast majority of men arrested are Senegalese, with the exception of one Ivorian, one Gabonese, and one Spaniard, but the latter was involved with a local. The absence of more cases involving Westerners is striking and suggests either that the Senegalese state is less interested in regulating the practice itself and more interested in preventing it among the native population, or that the government wants to avoid problems with its foreign partners.

On average, prosecutors recommended a sentence of 33.5 months. The average sentence judges gave was 36.4 months. The difference between recommended sentences and actual sentences is not substantial, possibly indicating a like-mindedness among prosecutors and judges. The slightly higher average for actual convictions reflects the twelve cases that were dropped.

I conducted forty interviews with people who work within or in relation to the Senegalese judiciary. First, I interviewed twenty-six people who belong to the Senegalese judiciary, including sixteen judges (out of roughly forty), six prosecutors (out of twelve), one archivist, two officials at the Ministry of Justice, and one defense attorney who worked on a major "acts against nature" case. I had to submit separate written requests for access to archives, prosecutors, and judges, and

[67] Suh (2018 and 2019) investigates the fraught intersection of national and global politics as they come together in post-abortion in Senegal, where abortion is illegal.

[68] These are the cases for same-sex relations among consenting adults only. These do not include cases involving minors only, which are processed in a separate court, cases between a minor and an adult, or cases of rape. I have chosen to limit the sample to this group in order to more closely examine the regulation of homosexuality without other intervening crimes like rape or sex with minors.

[69] In a forthcoming article, I examine this prosecutorial divide more closely.

each request was followed up by an in-person interview with the head archivist, the head prosecutor, and the tribunal president, respectively. I chose magistrates from the cases I collected in the archives. I sampled in this manner to ensure I spoke with people who had experience working on these cases. Not all magistrates I sampled, however, experienced world culture intervention in the case(s) they worked on. Given my interest in judges and prosecutors' judicial orientation toward and prior experience with these cases, as well as their experience with and attitudes toward world culture intervention, I wanted to make sure I included as many individuals who presided over these types of cases. With the relatively small number of these cases, however, a random selection of judges would not have ensured enough coverage. But given the largely random assignment of judges to cases based on scheduling and need, and given that I spoke with sixteen out of roughly forty judges, nearly 40%, I do not believe biases in the sample are a major issue.

Interviews with magistrates lasted between one and five hours, and many stretched over multiple days, as many encouraged me to return again to talk more. They were held in the interviewees offices between 9 and 5pm during the week. Our conversations were wide-ranging. I opened the interview by asking them a little about their personal background, their studies, why law, and whether there was a tradition of law in their family. I then asked them about their judicial philosophy, how they engage with foreign and international law, and their own foreign experiences. I asked them about what cases they considered to be most difficult, sensitive, and controversial, and which of these they personally worked on. We discussed their views on human rights and involvement by outside parties. I asked open-ended, in-depth questions about the kinds of cases they worked on, homing in on the three types of cases I collected in the archives—homosexuality, prostitution and abortion. Our discussions also encompassed more general discussions about legal training, the legal system and the law, and even extended into the realms of art and literature.

Second, I interviewed eleven individuals from international, national and local organizations. These included embassies, and human rights and public health organizations. I identified these individuals because of their work on behalf of sexual minorities in Senegal. These interviews lasted roughly one to two hours and were usually held on site at their places of work.

I also spoke with three individuals who were arrested and imprisoned for "acts against nature," and one lawyer who worked on such a case. These interviews offered a third perspective on interventionism and world culture from the standpoint of those on whose behalf intervention occurred.

Finally, in addition to formal interviews, this paper draws on ethnographic experience. I spent 500+ hours at the Dakar courthouse, in multiple archives and in the offices of judges and prosecutors. While I did not do \participant observation inside the courtroom, I went to the courthouse at least three days a week for at least five hours a day. In addition to the fieldwork in the courthouse, I also draw on a prior nine months of field experience working in one Senegal's largest peer-led public health associations for men who have sex with men. During my fieldwork, seven members of the organization were arrested, the seven men whose story opens this paper. I witnessed here firsthand the local manifestations of the global struggle around homosexuality.

THE WEIGHT OF WORLD CULTURE

While many countries refuse to decriminalize homosexuality, thereby rejecting a core tenet of world culture, world culture still matters. World culture still haunts the globe, exerting indirect and direct pressures, pressures that reverberate into legal practices on the ground.

Funding is one of the most basic ways world culture arrives on a local scene is through foreign support for LGBT rights organizations by governments or transnational advocacy networks (Keck & Sikkink 1998; Thoreson 2014; Burack 2018). These organizations can range in mission from public health to human rights. A prime example and a major global player in this area is the United States-based Global Equality Fund, started in 2011 by the State Department under Secretary Clinton. Between 2011 and 2015, the Global Equality Fund supported LGBT-focused civil society organizations in over 80 countries with roughly $24 million, $2,033,860 of those dollars going to sub-Saharan Africa in 2015 alone. By 2015, it offered a total of 75 grants to 80 countries.[70] These funds include small grants, emergency assistance, and technical assistance (Global Equality Fund Annual Report 2015).

Reflecting the diverse set of actors involved in the global field of homosexual regulation today, the fund is also supported by a large base of partners from governments, non-profits and private industry.[71] Other organizations involved in this field include Amnesty International and COC Nederland. In addition to these LGBT-focused funds, there are a plethora of organizations whose work is not primarily in LGBT advocacy, who nevertheless support local LGBT communities in myriad ways, for example, development institutions and international public health organizations, notably, World Bank, United Nations AIDS and the United States Agency for International Development. Many of these actors are active in Senegal.

Public Shaming. World culture also exerts pressure on countries through penning articles condemning the treatment of LGBT people in news outlets (like the New York Times, The Guardian or the BBC) in their press releases, and in their human rights reports. After the 2015 arrest in Dakar, headlines in Western newspapers sounded off: in Reuters, "Jailing of Gay Men in Senegal Poses Setback to HIV Fight in Africa"[72]; in Huffington Post France, "The Hunting of Homosexuals in Senegal: Enough!"[73] Human Rights Watch, a major NYC-based human rights organization, published a press release interpolating directly Senegalese authorities with the title "Senegal: Quash Conviction of 7 for 'Acts Against Nature'."[74]

Legal Interventionism. But world culture's reach runs deeper still. It intervenes directly in legal battles in specific nations. For instances, world culture institutions 1) pressure government authorities to decriminalize homosexuality and/or to not prosecute these cases and 2) support individuals arrested by paying for counsel and providing food, clothing, and medicine to them in jail, and even organizing asylum in some cases. As early as 2009, the United Nations, along with the French and Swedish Embassies representing the European Union, mobilized to secure the release of nine gay men who were arrested for alleged "acts against nature."[75] As late as July 31, 2015, in the case that opened this paper, a network of national and local public health groups, foreign embassies and international human rights organizations, including the Dutch and US

[70] There several multi-country grants.

[71] Including nations like Argentina, Australia, Chile, Croatia, Denmark, Finland, France, Germany, Iceland, Italy, the Netherlands, Montenegro, Norway, Sweden, and Uruguay. In addition, there are many organizations that provide funds as well, including the Arcus Foundation, the John D. Evans Foundation, FRI: the Norwegian LGBT Organization, the MAC AIDS Fund, Deloitte LLP, Royal Bank of Canada, Hilton Worldwide, Bloomberg L.P., the Human Rights Campaign, Out Leadership, and United States Agency of International Development.

[72] https://www.reuters.com/article/us-africa-aids/jailing-of-gay-men-in-senegal-poses-setback-to-hiv-fight-in-africa-idUSKCN0QV1OZ20150826

[73] https://www.huffingtonpost.fr/jeanluc-romero/condamnation-homosexuels-senegal_b_8020282.html

[74] https://www.hrw.org/news/2015/08/28/senegal-quash-conviction-7-acts-against-nature

[75] https://news.un.org/en/story/2009/01/287752-un-working-ensure-release-gay-men-jailed-senegal

Embassies, Amnesty International, UN Human Rights Council, and the European Union, played a similar role.

THE MAGISTRATES: POPULAR REPRESENTATION

Judges and prosecutors are well aware of foreign meddling in the local politics of homosexuality. In such cases, world society appears as a set of eyes gazing and casting aspersions upon the local judicial process and upon Senegal's sovereignty and democracy. How do magistrates view this intervention? How does it shape their judicial decision making?

Increased Vigilance

Magistrates are not much intimidated by the scrutiny of world society. But they do respond to it. When I asked Prosecutor B what happens when he learns foreign actors are interested in a case he is working on, he responded "it makes you more *vigilant*." Another prosecutor elaborated on what vigilance looks like in this context. Describing the foreign actors' influence, Prosecutor C states:

> [t]he influence they could have is if we [decide to] prosecute a case, it is important/necessary that we are really certain about the facts. [Because] tomorrow one could be called upon to give an account**.** So one cannot be lax with the judicial proceedings. If there are facts that are not very clear, we will let it go. But if we pursue the case, it's because the facts are very solid. Every time there is a case like that, at the international level… we concentrate much more on the facts of the case. We will do our maximum [Prosecutor C].

Prosecutor A echoed this sentiment:

> "[I]f we pursue someone for homosexuality just because he was walking down the street in a woman's outfit, and in the file we say what he did…You see? We have to be a little bit more exact because *there is an eye on us*."

There is an "eye on us" reminds us of the sentiment expressed by Human Rights Watch referring to the threat to "Senegal's international standing." And yet, there is not a simple capitulation on their part, but an increased sense of vigilance awakening the vigilance of international actors.

Rupture of Equality

Magistrates believe world cultural interventionism undermines their constitution's principle of "equality of treatment."

> We renounce these types of interventions. We are not in agreement. Do you know why? Fundamentally, this creates a *rupture of equality* among the people. Because you are homosexual, for example, if you committed an infraction, everyone must

> intervene. And if someone just steals something to eat? Do you see…no one intervenes because it is not in their interests…that is not normal. It is a *rupture of equality*. And with the law, everyone is [should be] equal before the law. There should not be a privilege for some and not for others. It is not normal [Prosecutor F].

This comment reveals several dimensions to the magistrates thinking. First, magistrates are deeply suspicious of the intentions behind foreign intervention. They do not, it would appear, believe the West is well-meaning, simply championing the downtrodden, defending the rights of the oppressed and castaway. Instead, they see a selective attention based on the West's own cultural priorities. Magistrates are not blind to the reality that international entities do not intervene in other types of cases like abortion, which remains highly criminalized.

But the turn to the economic — "so if someone just steals something to eat" — is a particularly interesting move. For it raises implicitly the issue of Senegal's poverty and suggests a callousness on the part of Western organizations to the struggles of the poor, too preoccupied with the identity politics important to their citizens back home. In a discussion with an official from the U.S. Embassy, he stated astutely that in 2013 when President Obama brought up gay rights in his discussion with the President of Senegal, Macky Sall, he did so because it was "something that was important to Americans." A provocative, yet unsurprising statement. His suggestion is this: Western leaders' condemnation of mistreatment of gays and lesbians in other countries is really about domestic politics: it is a way for politicians to distinguish themselves politically and shore up their base at home.

Foreign Imposition

Magistrates also believe world culture interventions represent a "homosexual lobby" that wants Senegal to decriminalize homosexuality and pass gay marriage, a belief only reaffirmed by foreign embassies' and international organizations' involvement in legal cases. [76] The press has played an outsized role in crafting this narrative. Local newspapers write brazenly of the "foreign homosexual lobbies" "forcing the government to put in place a project of decriminalization of homosexuality,"[77] warning of the "risks of compromising the juridical order" of Senegal.[78] As Senegalese scholar Mbaye (2018) suggests, the Senegalese press considers homosexuality a form of imperialism that thrusts foreign values onto an unwilling population (p. 297; see Mbaye 2018 for fuller analysis of media discourse concerning the perceived threats of the "homosexual lobbies").

In an interview published in an online magazine *Dakaractu*, Serigne Mbacké Ndiaye, the former Minister and spokesperson for former President Abdoulaye Wade, discussed the

[76] See for examples: http://www.slateafrique.com/137331/senegal-dépénalisation-homosexualite-lobbies
https://www.dakaractu.com/Wade-a-ete-combattu-par-des-lobbies-homosexuels_a28913.html
https://www.setal.net/HOMOSEXUALITE-AU-SENEGAL-Alerte-danger-au-President-et-au-peuple-senegalais_a14715.html
http://www.seneweb.com/news/Societe/lobbies-homosexuels-notre-confrere-jacques-ngor-sarr-menace-de-mort_n_91992.html

[77] http://www.slateafrique.com/137331/senegal-dépénalisation-homosexualite-lobbies

[78] https://www.setal.net/HOMOSEXUALITE-AU-SENEGAL-Alerte-danger-au-President-et-au-peuple-senegalais_a14715.html

international "homosexual lobbies," notably France, that attacked Wade during his presidency and tried to make him accept the legalization of homosexuality.[79] He frames France's intervention into the politics of homosexuality within the context of larger military and economic tensions. He states that:

> These homosexual lobbies have always asked our president to decriminalize homosexuality. Worse, they wanted to make Saint-Louis [city in the north of Senegal] a location where they come to celebrate tranquilly their [gay] marriages before returning home. Personally, I had the chance to be present in France, next to the [Senegalese] president, when a Senegalese woman sent by the homosexuals came to advocate for her cause. And then the *Western powers, notably France, never forgave Wade for ending the French military diktat in our country*. But, above all, it was the fact that the port would be used by Dubai Ports World *to the detriment of the Bolloré, a French economic power*. He [Wade] also theorized south-south cooperation because before Wade, the other Senegalese presidents received instruction [orders] from the West and aligned themselves often with the positions of great powers be it France, the United States or others.

In this confounding excerpt, Ndiaye shifts abruptly from the issue of homosexuality to the general dominated position of Senegal, economically, militarily, and culturally. He moves from a discussion of "homosexual lobbies" pressuring former president Wade to decriminalize into a discussion concerning how the West and France bore a grudge against him for unrelated economic and military reasons. What Ndiaye implicitly suggests is either 1) the issue of homosexuality is just part of a larger story of imposition, or 2) perhaps more cynically, that complaints about Senegal's treatment of homosexuals were simply a ruse, deployed as a tool to shame Senegal because of its economic and military decisions.

A senior prosecutor highlighted the pressure faced by the courts, saying "[i]t is to tell you that justice [the judicial system] is sometimes confronted with pressure. It's up to us as a prosecutor or judge to balance things out and enforce the law in those cases." The frustration expressed by a young magistrate during our interview is palpable here:

> It's true that I am relatively open. But I tell myself that it is not because one thinks one way that one must impose that way of thinking onto others. You guys consider this as [inaudible]. Thus, limit yourself to yourself. Do not try to *impose* this on others.

The question of imposition also came up during a conversation about President Obama's aforementioned state visit in 2013, in which the topic of Senegal's criminalization arose and made headlines around the country and even in the foreign press.[80] Perhaps, what stuck most with the Senegalese people from that meeting were Senegalese President Sall's subsequent remarks, widely

[79] https://www.dakaractu.com/Wade-a-ete-combattu-par-des-lobbies-homosexuels_a28913.html

[80] The New York Times reported "Senegal Cheers its President for Standing Up to Obama on Same-Sex Marriage"; https://www.nytimes.com/2013/06/29/world/africa/senegal-cheers-its-president-for-standing-up-to-obama-on-same-sex-marriage.html; Le Monde spoke of a "Shock of cultures, shock of continents." https://www.lemonde.fr/afrique/article/2013/06/27/a-dakar-choc-des-cultures-entre-barack-obama-et-macky-sall-sur-l-homosexualite_3438210_3212.html

reported by journalists, in which he declared: "I will never compromise the values of Senegal. I will never accept being manipulated by foreign powers. I said it to the president of the United States, that certain practices will not thrive in Senegal.[81]

But the Catholic magistrate did not believe Obama was sincerely in favor of gay rights. Rather, as he intimated in our discussion, he believed Obama was forced to take this position because of "the homosexual lobby."

> Prosecutor: Did he really believe in what he said?
> Interviewer: Who?
> Prosecutor: Obama.
> Interviewer: Obama, yes, certainly.
> Prosecutor: Or was it *the lobby* who pushed him to say this?
> Interviewer: You think it was a lobby who pushed him or forced him?
> Prosecutor: Yes. [Eyebrows raised, he nods his head knowingly]. You never hear them attacking male circumcision [because] there is a people very influential in the world that practices it.
> Interviewer: What people?
> Prosecutor: [He smirks.]
> Interviewer: Are you talking about Jewish people?
> Prosecutor: [He nods in agreement.] That's why you will never hear this program. But it's a mutilation.
> Interviewer: But do Muslims not practice this as well?
> Prosecutor: Yes, but at the origins it was the Jews. For the Catholics, it is not obligatory.

The connection this prosecutor draws between homosexuality, Obama and the Jewish people is reminiscent of racist conspiracy theories about liberal Jews pulling the strings of world politics from behind the scenes (Webman 2011). The remark betrays how deeply felt the sense of foreign imposition is when it comes to Western involvement in the local politics of homosexuality. For this Catholic prosecutor, gay rights are part of a larger Western project, connected to the Jewish people, and presumably also, the State of Israel. In his essay on political homophobia, political scientist Michael Bosia notes that "[a]s the apparatus of the state is increasingly disaggregated and pressured by Western interests, buoying the nuclear family also means associating moral deviance with colonial, Western, or Jewish specters amidst the swirl of change and crisis" (Bosia 2014, p. 267).

Economic Hostage Taking

Frustration over foreign imposition is tied to the belief that Western governments use development aid as a weapon to promote gay rights. This linking of foreign imposition to development aid was expressed in an op-ed written by Aliou Tall, president of the *Reseau Africain*

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[81] http://www.seneweb.com/news/Politique/macky-sall-sur-l-rsquo-homosexualite-laq_n_176927.html; https://www.leral.net/Sur-l-homosexualite-Macky-Sall-dit-Je-ne-vais-jamais-compromettre-les_a167334.html. "Je ne vais jamais compromettre les valeurs du Sénégal. Je n'accepterai jamais d'être manipulé par les puissances étrangères. Je l'ai dit au president des USA (Obama), que certaines pratiques ne pourrount prospérer au Sénégal."

de defense des usagers, des consommateurs et du citoyen (RADDUC), where he called on Senegalese authorities to remain vigilant after the legalization of gay marriage in France.[82]

> It is up to each state to set the standards and incriminations necessary to defend the aspirations and identity of its nation. Homosexual lobbies and their NGO intermediaries will do everything in order that our countries, *dependent on development aid*, will be branches for their pro-gay laws.[83]

International donors have threatened to cut development aid if recipient countries persecute LGBT people (Kates 2014). Britain has both threatened and in some cases actually withheld aid from countries over their laws criminalizing homosexuality (Sarpong 2012). Sweden and the United States threatened the same after Uganda introduced its Anti-Homosexuality Bill in 2014. U.S. Senator Ron Wyden of Oregon, chairman of the International Trade Subcommitte of the Senate Committee on Finance suggested taking away Uganda's trade benefits under the African Growth and Opportunity Act (Ewins 2011). In the case of the US State Department, there was an open push to link foreign assistance to the promotion of LGBT rights abroad.[84]

As a poor nation, Senegal is heavily dependent on financial support from Global North countries who produce and disseminate world culture. The sense of being trapped by global forces comes through quite strongly in my discussion with a fairly seasoned judge in his mid-forties.

> I don't want to hide it from you. There is a *resistance*, justified or not, of the judges to applying certain international conventions that… the judges consider are contrary to the social realities of their country. Because often they say to themselves the conventions are fine—we have ratified them—at the limit they are things that have been *imposed upon us*… Often these conventions are signed under the conditions *if you do not sign you will not have financing for this or that*… etc. Thus, one cannot hide that the *underdeveloped countries we pay a price* for all of that. *You sign or you will not receive financing* for this or that. Because the international community will consider that you are not in *alignment* with it. And only the countries in *conformity* with, that respect this right or that right will have access to financing.

An official at the Ministry of Justice also voiced concern over being held captive and left no ambiguity about the perceived economic pressures faced by Senegal.

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[82] "Objet de l'association : promotion internationale et vulgarisation des droits fondamentaux inhérents à tout être humain, en particulier la défense des droits de l'individu en tant qu'usager, consommateur et citoyen ; le RADUCC se donne pour mission de développer une synergie internationale pour mobiliser les compétences de personnes physiques et morales et réaliser des actions en faveur de la démocratie de l'Etat de droit, de la bonne gouvernance et du respect des droits de l'individu en Afrique." https://www.gralon.net/mairies-france/paris/association-reseau-africain-de-defense-des-usagers--des-consommateurs-et-du-citoyen-raducc-paris_W751221128.htm

[83] https://www.setal.net/HOMOSEXUALITE-AU-SENEGAL-Alerte-danger-au-President-et-au-peuple-senegalais_a14715.html

[84] See Robbie Corey-Boulet's article in *The Atlantic* entitled "The Obama Administration's Bold but Risky Plan to Make Africa Gay-Friendly: https://www.theatlantic.com/international/archive/2012/03/the-obama-administrations-bold-but-risky-plan-to-make-africa-gay-friendly/254086/

> The donors come and say, [in a mocking tone] "we are giving you this and that, and so you need to do this and that. If you don't sign [the treaty], you will not have the right to these funds."

While examples from other nations exist, in Senegal's case, I found no evidence of cuts or threats to cut development aid due to its criminalization of homosexuality and/or treatment of homosexuals. Rather it is the *specter* of aid withdrawal that rankles, not its reality. More interesting, however, than whether Senegal is or is not faced with a real threat is what the perceived threat reveals about national economic anxieties, in general, and the economic dimension to the struggles in the global field of homosexual regulation, specifically. Recall Axel Honneth's strong claim that "even distributional injustices must be understood as the institutional expression of a social disrespect" (Fraser and Honneth 2003, p. 114). The threat of cutting much needed aid to a poor nation and its people is not simply a question of an economic *maldistribution* of resources, but in fact expresses a deeper social disrespect, a misrecognition of Senegal's culture that is expressed through an economic maldistribution. The global struggle for and against gay rights plays itself out within the theatre of global material inequality. And for postcolonial nations in the Global South, like Senegal, the push for gay rights is always viewed through the lens of this inequality.

The Will of the People

Magistrates see themselves carrying out not only the law of the land but also the will of the people in cases involving homosexuality. They are strengthened in their conviction that they are protecting the interests of the local population against foreign influences. Prosecutor A insisted that:

> If it's homosexuality…a man and a man, or a woman and a woman being together, here society does not accept that. One even made it an infraction. And if one takes two people like that and we fail to prosecute them, that creates a problem. Because not only is it punished by the law, but the society does not accept it.

Prosecutors consider themselves the guardians of the collective consciousness.

> *We are the bearers*... That permits us at the trial to recall the fundamentals of the social order, because we are equally the *lawyers of society*, to remember that there are some things that our society will never accept. Because that is not part of our culture, not part of our education.

In fact, prosecutors continually emphasized their role as the "lawyers of society," whose primary job is to maintain public order, an order which would be upended if a case of homosexuality were to go unprosecuted. Durkheim resounds clearly here in the logic of the magistrates, who function in a mode of *mechanical solidarity*. As the "lawyers of society," the prosecutors must defend and protect the people against the crimes that attack it, crimes that "offend the strong, well-defined states of the collective consciousness" (Durkheim [1893] 1997, p. 39).

> The prosecutor is *society's lawyers*. When there is a crime, a crime that is committed and a disturbance of public order, it is up to the prosecutor to *fix* that…It

is the prosecutor who is there to make a decision *on behalf of the Senegalese people* [Prosecutor].

Not only do they see themselves as responding to the demands of the people, but they also believe they are maintaining public order. "If we do not prosecute these [acts against nature] cases," one prosecutor assured me with steady resolve, "there will be *riots by the people*." What the "people" want, intimates this prosecutor, is an expiating punishment, a "passionate feeling" let loose by punishment (Durkheim [1893] 1997, p. 52).

Both prosecutors and judges guard fiercely their independence and determination to carry out Senegalese law. Prosecutors tended to frame the issue as one of independence from the Ministry of Justice, and emphasize that the Ministry does not have authority to forbid them from prosecuting, as I discussed above. "It is true that with the Minister of Justice, there is hierarchy. But the Ministry cannot come to tell us, 'no, you cannot prosecute'" [Senior Prosecutor]. Judges, who are immovable, framed the issue as one of *sovereignty*. As one judge put it, "[c]riminal law is a sovereign right. It is a law that each country has a right to keep for itself." Another maintained "Criminal law," another maintained, "it's the sovereignty of the state."[85] Judges echoed prosecutors' resistance to the Ministry as well.

Thus, prosecutor and judges, structurally located close to the people, fashion themselves as the defenders of the collective consciousness, claim cultural specificity and 'African values', and assert collective sovereignty over and against the Ministry of Justice and the West's attempts to safeguard the individual right to sexual self-expression.

This struggle between the promoters of the liberal values of world culture and Senegalese magistrates does not offer a smooth story of Bourdieusian "symbolic violence." Bourdieu describes symbolic violence as the imposition onto dominated groups' categories of perception not of their own making, but to which the dominated consent. Bourdieu writes: "Symbolic violence is the coercion which is set up only through the consent that the dominated cannot fail to give the dominator (and therefore to the domination)…" (Bourdieu 170).

But we do not have the consent of the dominated. Judges and prosecutors actively refuse the categories of perception imposed upon them. These postcolonial subjects do not "misrecognize" the "symbolic violence" enacted by Western institutions and Western conventions. Rather they meet it with their own "symbolic resistance."

Backlash

Magistrates are hostile to world culture's pro-gay stance. Some suggest that world society's interventionism has actually produced backlash among magistrates and a heightened negative response in court cases, especially, in those cases with increased global scrutiny and intervention.

Interviewer: And in the case of human rights? Is it also seen negatively when there is an intervention?
Prosecutor: Yes, *it is seen negatively*, especially, in the case of homosexuals. Yes, it is seen badly.

[85] In fact, it is more in cases of a specific class of laws (namely those touching on the family and sexuality) that sovereignty is most invoked, for other areas of penal law, for example, counterterrorism laws, high levels of collaboration with the U.S. military exist. United States Department of State, *Country Reports on Terrorism 2017 - Senegal*, 19 September 2018, available at: https://www.refworld.org/docid/5bcf1f8413.html [accessed 26 June 2019]

> Interviewer: Ok, it's seen negatively. What does that mean exactly?
> Prosecutor: *Often the sentence can be a little severe*… for in these types of cases, the people [magistrates] are hostile….
> Interviewer: What do you mean they are hostile?
> Prosecutor: *They are less conciliatory*. *They manifest a hostility* in relation to that [intervention].

Indeed, this hostility may be one reason why, according to this prosecutor, defense attorneys never use 'human rights' as a defense. Wide-eyed, placing heavy emphasis on the word 'never', one prosecutor recalled:

> I have *never* heard of a lawyer arguing human rights in a case of homosexuality, because, socially, it is seen negatively. If you see a lawyer defending someone for acts against nature … it is of two types—either [they argue] there was no infraction because [the defendant] did not do what [prosecutors] accused him of doing; or [they] ask for clemency. But you will *never* see someone arguing that [the defendant] has a *right* to do this. And if one *did*, the judge would condemn him [the defendant] without question [Prosecutor].

Being "for the people" is being decidedly against world culture and human rights, which are both toxic in this court of law. This is strong evidence not for world culture's symbolic domination, but of the local judiciary's symbolic resistance to world culture and its pro-gay categories of perception.

But there is a second dimension to the backlash against world culture within the judiciary. As I discussed above, there long existed a traditional third-gender figure associated with homosexuality in Senegal. Anthropologists showed it once met with tolerance and played a distinct social role. In a noteworthy exchange, a prosecutor brought up the *gor-jigeen* during our interview.

> Prosecutor: A few years ago, people did not speak a lot about it [homosexuality]. *There were not these NGOs that wanted us to legalize it*…. It existed in the society, but people did not talk about it, because they did not feel threatened by it. *People started to go on attack when the Europeans and the Westerners wanted to impose it here in Senegal*, *[wanted] that we legalize it*…. But that is not to say that that does not exist here. It has always existed.
> Interviewer: Was it accepted?
> Prosecutor: *Tolerated*. People did not make a problem out of it. I will give you an example. You know at the *ceremonies*? You see men who have feminine behaviors…. All the time…when we were kids we saw that in society. But when we saw that it made us laugh. We call it *gor-jigeen*. We'd say "that's a gor-jigeen, ha ha ha." And that's it…. But *there was not a sentiment of rejection*. *We did not see them condemned in court*…. We were raised like that.

Invoking the figure of the *gor-jigeen*, this prosecutor argues homosexuality did not always cause such an uproar. Rarely did you see such cases before the court, he noted. Few felt threatened by it. But world society disrupted the delicate balance, the tacit tolerance afforded to the *gor-jigeen*. European and Western pressures to decriminalize led to an incitement to discourse, an increase in

homophobia, and an increase in arrests. In 2012, *The Atlantic* published an article entitled "The Obama Administration's Bold but Risky Plan to Make Africa Gay-Friendly," warning that American interventionism in support of LGBT rights in sub-Saharan Africa has led to backlash directed at sexual minorities.[86] In Egypt, historian Joseph Massad (2007) maintains, international gay organizations' attempts to increase tolerance for homosexuality have fueled anti-gay rhetoric and policies more repressive than those that preceded them. As the once private topic of sexuality was thrust into public view, he argues, national leaders began to assert new views and policies about homosexuality that had previously gone unspecified.

Indeed, homosexuality once enjoyed tacit tolerance in Senegal (Gorer 1935; Murray and Roscoe 1998; Niang 2004; Mbaye 2018). Urban spaces, especially, Saint-Louis and Dakar, long boasted same-sex loving communities, the latter being dubbed the "Gay city of West Africa" (Gamble 1957; Crowder 1959; Davidson 1998; Teunis 2001; Author 2017). As early as the 1930s, anthropologist Geoffrey Gorer (1935) wrote about homosexuality through the figure of the *gor-jigeen*, literally "man-woman" (in the Wolof language). Originally applied to a specifically gender-transgressing figure, the term later referred to homosexuals in general. According to scholars and novelists, the *gor-jigeen* were once seen as integral to Senegalese society, playing female roles in traditional dance troops, serving as confidants to powerful women's social and political associations, and presiding as masters of ceremonies in everything from baptisms to weddings (Niang 2004; Mbaye 2013; Mbaye 2018). The *gor-jigeen* even appear in their traditional roles in Senegalese literature. This figure surely complicates the story behind Senegal's criminalization, which I explore in forthcoming work.

THE MINISTRY OF JUSTICE: LOGIC OF INTERNATIONAL IMITATION

Senegal's Ministry of Justice (Ministry) must also confront world society. In fact, world society institutions reach out directly to the Ministry when arrests occur, avoiding direct contact with the prosecutors and judges working on the case.[87] The Ministry will then be expected to reach out to the court, including to the head prosecutors and tribunal presidents who will then relay the message to prosecutors. A representative at the Ministry explains the pressure the Ministry faces.

> It is not easy. One *interpellates* us often, often, often. We respond. We have our arguments. But it happens again and again. They come and say, for example, that our law, it does not respect this or that convention [Ministry of Justice Official].

Public Acts, Not Personal Identity

Unlike tribunal prosecutors and judges, the Ministry's stance on homosexuality and its legality is more complicated and contradictory, perhaps reflecting the reality of being called to account for their laws by Western partners. As I show below, what matters for the Ministry's interpretation of the law are *acts, not the identity*.

[86] https://www.theatlantic.com/international/archive/2012/03/the-obama-administrations-bold-but-risky-plan-to-make-africa-gay-friendly/254086/

[87] In another paper, I discuss how world culture institutions learn about these cases, how they decide when to intervene and their differing strategies of intervention, and how they work with local social movement actors on the ground.

> Ministry of Justice Official: Sometimes they [Western embassies and IGOs] say the penal code does not respect the principle of liberty of sexual orientation. And we give our arguments [in writing].
> Interviewer: Like what?
> Ministry of Justice Official: Here in Senegal, *homosexuality is not penalized*, [that is] the *fact of being gay*. The fact of being homosexual. *It is the behavior that could outrage the public or attack public morals that is penalized*. There are homosexuals here in Senegal, who the people know, who go to restaurants, who walk around.
> Interviewer: But there are people in prison because of homosexuality.
> Ministry of Justice Official: For having, maybe, a behavior that outraged the public or that was an attack on public morals. Maybe it was that…. But what I want to say is that what is there, in a purely juridical sense, is that homosexuality is not penalized. Thus, it is the behavior… [inaudible] from the homosexual person that could be possibly sanctioned. This is really something important that you researchers, you should know.

Two striking features emerge from this exchange. First, the Ministry official reveals clearly his world cultural orientation when he utters the phrase "the principle of liberty of sexual expression." He does not do so mockingly, but rather to argue that Senegal respects this principle. The concept of "liberty" is embedded deep in world culture's valuation of individual freedoms over collective duties. Human rights activists prefer the term 'sexual orientation', because it presents sexuality as "a fundamental aspect of our underlying human nature" with both a sexual and affective component, making it a useful term on which to base legal claims (Waites 2009, p. 144-145).

Second, while the Ministry is not advocating directly for decriminalization, its official position separates homosexual identity from homosexual acts, suggesting only the latter when done in public is criminalized. What is more, the Ministry's tactic of arguing that criminalization only happens when people "outrage the public," which is meant to be understood here as acts that are committed in public or in front of other people who could witness them, is an attempt to reconcile the Ministry's insistence that it respects human rights with its ongoing criminalization of homosexuality. But, of course, this is far from the reality. People do go to prison for committing "acts against nature." And few cases involve individuals caught publicly in the act.

In practice, the line between "acts" and "identity" blurs, for rare are the cases when police officers catch two individuals *in flagrante delicto*. Thus, they depend on indices of identity that can substantiate the claim that acts occurred. For example, in the case that opened this paper, police reported having found pornographic films on the men's tablet and love messages between men, and they indicated that one man "recognized being effeminate."

The Minister of Justice, Champion of Gay Rights

Shifting the focus to Senegal's (now former) Minister of Justice, we see an even more striking orientation toward world culture. From 2013 to 2017, Sidiki Kaba, a decorated jurist with a strong human rights pedigree, was Senegal's Minister of Justice. Kaba belongs to an older guard of Senegalese intellectuals, studying law, philosophy and modern literature at the University of Abidjan in the Ivory Coast, then business law at the University of Dakar in Senegal. He made his career working to promote and protect human rights in Africa. He began his career with the

Senegal office of Amnesty International in 1979. From 1990 to 1997, he was a representative of the International Federation of Human Rights (FIDH) to the African Commission on Human and Peoples' Rights, a transnational judicial body charged with protecting individual and collective rights on the African continent. He also served on the Senegalese committee of Human Rights from 1995-1997. From 1987-1995, he was the Vice President of the National Organization of Defense and Human Rights, one of Senegalese first human rights organizations. From 1998 to 2001, he was the Vice President of FIDH. From 2001 to 2007, he presided as the organization's first non-French president.

In a speech at FIDH in 2009, Kaba publicly signaled his strong support for gay and lesbian rights (which did not disqualify him from becoming the Minister of Justice several years later). He stated with a poetic rhythm not easily conveyed in the English translation:

> any individual, whatever he may be… whatever his belief, whether she is a woman, whether he is a child…whether he is a homosexual, whether she is a lesbian… we must grasp the same *liberty*… This struggle is for us.[88]

Again in 2009, after the arrest of nine members from a local, peer-led public health association that worked to educate gay men about safe sex, Kaba gave an interview to the television channel *France 24*, a global French news outlet. Following the verdict of the Senegalese tribunal, which sentenced each of nine men to five years in prison, he stated: "As for the state, which prides itself on defending democracy and human rights, it would be better for it to embark on the path of decriminalizing homosexuality."[89]

According to officials at several Western embassies and human rights organizations operating in Senegal, Kaba continued his support for gay rights during his tenure as Minister. "Kaba is in a difficult position…," one embassy official remarked, but "I believe that the Minister has tried to influence the way that 319.3 is exercised. Let me put it this way. I do not think the Minister of Justice has directed anyone in the law enforcement to pursue these cases…. High authorities are not actively pursuing these cases." The president of a local gay rights group echoed this view: "The Minister has now said if you bring two people to me saying that these two people were having sex, at the same time bring the guy who intruded upon those people's private life."

But the problem is "the people," as one official at an international human rights organization adamantly declared when describing how they work behind-the-scenes with the Ministry of Justice to shield individuals from prosecution for "acts against nature":

> … the [current] Minister of Justice, as well as the prior Minister of Justice (Aminata Toure) *have all been trained in human rights work.* They are sympathetic. But you just have to be discrete. You don't want the population to say that there is an international organization doing the promotion. *The problem is the people*.

Eschewing a unifying *mechanical solidarity* based on resemblances, where an individual "does not belong to himself" but to the collective, where he is "literally a thing at the disposal of society," and where traditional group beliefs matter most, the Ministry favors a regime of *organic solidarity* premised upon the sanctity, or cult of the individual (Durkheim [1893] 1997, p. 85).

[88] https://www.youtube.com/watch?v=40ArBkgRj2A
[89] https://www.fidh.org/fr/regions/afrique/senegal/Senegal-L-Etat-doit-depenaliser-l

> There is indeed one area in which the common consciousness has grown stronger, becoming more clearly delineated, viz., in its view of the individual. As all other beliefs and practices assume less and less religious a character, the *individual becomes the object of a sort of religion*. We carry on the worship of the *dignity of the human person*… (Durkheim [1893] 1997, p. 122).

This cult of the individual ushered in under organic solidarity brings about a new "cultural opportunity structure" that recognizes and respects individual rights, including the right to sexual self-determination (Frank and McEanearney 1999).

DECOUPLING IN REVERSE

Neo-institutional theory has long emphasized the importance of INGOs and IGOs in diffusing world culture to nation states. But the theory has long recognized that national governments do not often faithfully implement these new models. Rather there is a process of "decoupling," where national governments adopt laws on paper that they do not carry out, or where they make cosmetic changes in form but not in content (Meyer and Rowan 1977; Meyer 1997; Meyer 2000).[90] Meyer and Rowan (1977) famously refer to this as "myth and ceremony" of formal structures decoupled from actual practices. Adoption is only symbolic without real world impact (for further discussion see, Anderson-Levitt 2003; Hannan and Freeman 1989; Edelman 1992; Covalski and Dirsmith 1983). Decoupling can occur because national governments lack a desire to implement the policies they have written (Lim and Tsutsui 2012) or because they do not have the skills or the resources to do so (Meyer, Boli, Thomas and Ramirez 1997).

If national governments fail to faithfully implement world culture models, then how is genuine change be possible? In Meyer's model of world society, illustrated in Figure 4, real change does not usually come through world society's direct influence on the State; for the State, as discussed above, often implements superficial changes (Meyer and Rowan 1977). Rather world society has its greatest and most enduring impact on local populations, as non-state advocates and other external constituents push pressure governments beyond formal policy toward enacting real reforms in line with world culture, often through IGOs and INGOs promoting a discourse of empowered actorhood (Meyer and Rowan 1977; Bromley and Powell 2012). In the case of human rights, Hafner-Burton and Tsutsui (2005) show the paradoxical power of the states' "empty promises" to abide by their formal international human rights commitments, which actually "empowers non-state advocates tools to pressure governments toward compliance" (1378). In Figure 4, the solid bold line is the line that leads to real influence and adoption (not decoupling), while the dotted line represents superficial adoption, "myth and ceremony" (decoupling).

And yet, in Senegal, we need another model to show the influence of world society, because there is no decoupling. Senegal has firmly refused to align itself with world culture by decriminalizing homosexuality. But there is a process of what I call "decoupling in reverse" at work, specifically, in the Ministry of Justice under Kaba. Decoupling in reverse will occur when an institution refuses to conform its laws in line with world culture, but nevertheless shows an opening toward it on the ground in the implementation (*if not the letter*) of the law. Here law-on-the-books rejects world culture but, law-in-action can symbolically enact it—Meyer's "myth and

[90] A great deal of this literature focuses on external pressures toward rationalization and bureaucratization in organizations (Frank and Meyer 2002; Boli 2006)

ceremony" (Meyer and Rowan 1977), *but in reverse*. A similar process is described by Bromley and Powell (2012) who refer to the case where an organization "walks the walk," but does not "talk the talk." What this means more precisely is that organizations adapt their official practices, but not their official policies. The main example cited by the authors is Snellman (2011) who calls this "closet conformity," drawing on the example of Finnish corporations that pay lip service publically to the stakeholder model, while adopting quietly a Wall Street-style shareholder model.

Figure 5 lays out the specific world society process model for Senegal. In Senegal, there is no "myth and ceremony," no decoupling by the State. World society attempts to diffuse world culture to the Senegalese State and to the people, but fails on both fronts. The Senegalese legislature has simply refused to decriminalize homosexuality, without the "myth and ceremony." And the population has not embraced world society's stance on homosexuality (97% view it as never justifiable). What is more, the population has put pressure on the State and the local courts to continue criminalization, in a sharp rebuttal to the work of IGOs and INGOs.

Decoupling in reverse is the mechanism through which world society manages to get through. Due to Kaba and the Ministry of Justice's world society orientation, Western embassies and international human rights organizations have worked behind the scenes with the Ministry in acts against nature cases. As a senior prosecutor stated, "The embassies, when they do it [intervene], they go through the Ministry of Justice." Delegates at a European human rights organization also reach out directly to the Minister in cases involving homosexuality:

> The Minister of Justice… he is also a human rights defender… and he has even facilitated at times the situation where we have our concerns about legal cases against homosexuals… [T]he minister was asked to give instructions to the magistrates to be maybe a little bit less strict when applying the law.

Local gay rights organizations are well aware of this high-level, behind-the-scenes advocacy work and its importance to those detained. The president of a local social movement organization confirms:

> The embassies are very involved. …I felt that Embassy 1's involvement deserves to be congratulated. The involvement of Embassy 2 deserves to be congratulated as well. …every time they were in meetings, every time, they tried to see how they could support, how they could help…. And I know the advocacy they did at the highest level…at the level of the president and the Minister of Justice. We cannot do that.

The president recognized that the financial resources and development aid Western embassies provided to Senegal, in general, and to the judiciary, in particular, may be a major source of its influence.

> Interviewer: Do you think that [their interventions] hold weight?
> President of local social movement organization (Local SMO): Ah, yes, of course. …[W]e are not in a very developed country, we are supported by other countries. There is a lot of support. *There are global funds*.
> Interviewer: And what does it mean that there is a lot of support?

> Local SMO: *They support. They give money to countries to construct schools, to contribute to health [care]*… I know that our government listens very well to the embassies. I know that embassies do not force the government to release people. But it's someone, an authority asking another authority to release people who have not done anything wrong. And it's comprehensive. They are released.

Reliable data on cases involving international intervention are difficult to gather. Both the Ministry and global organizations are very secretive for fear of drawing the ire of the public. However, through my conversations with magistrates, foreign embassies, human rights organizations, and local social movement actors, a picture developed of when these interventions were likely to be successful. Three key elements emerged as necessary conditions for success: international organizations needed to be informed, the information had to come soon after the arrests, and the interventions had to be done with discretion.

Informing Allies. The first point is an obvious one: "you really have to inform the allies" of an arrest, the president of the local SMO stated. But, more importantly, this information needs to arrive *quickly after the arrest*, while individuals are still held in jail, that is, before they are taken to the courthouse to be formally prosecuted.

> What I say, in these kinds of cases, [is that] we must quickly inform the CNLS, ANCS, and first of all the people we work with. And inform the embassies with whom we work here at the country level. When you inform the embassy of [X country], quickly they will call Sidiki Kaba. They have the telephone number [for Kaba]. They will ask 'Did you hear, what can you do?' And [because] it is an embassy that has called to inquire [about the matter], they will necessarily do something [Local SMO].

Speed. Speed matters too. Once a case reaches the prosecutor's office, it enters the realm of the tribunal. It is extremely difficult to get local prosecutors, the "lawyers of society," to drop the case and nearly impossible to persuade judges to not uphold the law if the facts of the case are compelling. Thus, the best option appears to be for the Ministry of Justice to secure a release while the individuals are still in police custody, before the case ever arrives at the prosecutor's office, as the odds are better that the case will not go to trial.

Discretion. Third and most important to successfully intervening in the law is *discretion*. "They do not do it in an open way," the senior prosecutor reminds me about the embassies' strategies. Embassies, international human rights organizations and local social movement actors are all well aware of the importance of discretion. After the 2015 arrest that opened this article, a committee was formed that included members from all of these groups. In their post-meeting written communique, the authors noted that the goal is to "advocate with discretion. It is possible for the organizations and embassies to do advocacy work with the Senegalese authorities in a discrete and non-public manner." In a section entitled "Legal Assistance," the authors also note that organizational presence at the trial is preferable, "but only if the member of staff is Senegalese (or at least from the sub-Saharan region)." This is a striking moment when race and nationality subtly enters into the picture. This sentiment was echoed by an embassy official who lamented that, in the same case, "[t]here were some Americans who turned up at the court hearing, people who were obviously foreigners, I think they were white," which, he suggested, "was just a bad idea." He goes on to state: "The X Embassy will not make a public statement about any cases. That

would be stupid. Article 319.3 cases are mentioned in meetings with the Minister. But we don't go in their waving our fingers. Our approach is to look for common ground."

Finally, international organizations must *work closely with local organizations*. In fact, it is of the utmost importance that they do not appear to be leading, but rather to be *following*. The local organizations with whom international organizations appear to work most closely are largely within the field of public health. What this suggests is that international organizations are aware of, and sensitive to, the negative optics of Western intervention, despite their continued and pivotal involvement. This discretion is vital because there is concern in the country that outside forces, as we heard from magistrates, are attempting to decriminalize homosexuality in Senegal. As the president of a local SMO argued, it is "because in the minds of the Senegalese, it is the West that is attempting to push homosexuality on them." Thus, discretion in their advocacy work is key, "they must not be visible on the ground," but "they can call Macky Sall [President of the Republic], they can call Sidiki Kaba."

THE LOGIC OF LEGAL PRAXIS

There is a great divide in how Dakar tribunal magistrates, on the one hand, and Ministry officials, on the other, approach the legality of homosexuality and consider Western intervention. Put simply, tribunal magistrates (judges and prosecutors) challenge the universalism of world culture in general and homosexual rights in particular. They emphasize a particularistic vision, insisting on a culturally-rooted view of "rights," a view in line with their customs, traditions and sense national distinction.

> We say 'ok, rights of man', but not everything Westerners say counts as 'rights of man'. Because, in reality, if you look at the rights of man there are some sensitivities…. What is necessarily a right here [in Senegal], like polygamy… is not a right in the United States or in France. It is actually a crime! Do you see what I mean? However, [here] a man is free to have as many wives as he wants. And this [too] is a right of man… of a variable type based on region, convictions, etc… [Prosecutor A].

Magistrates distinctly reject the *evolutionary world culture* model and put in its place the *clash of civilizations* model of Huntington and the model of *multiple modernities* (Eisenstadt 2000).

> Often in regards to certain [international] conventions, especially those having to do with mores, for example, the things that are showing a tendency to be legalized or to legitimate acts against nature… I can tell you if there is a convention ratified by Senegal, in this direction, by which one invokes the 'rights of man', *'liberty',* or I don't know what, the judges will not be ready to apply that convention. Because they will say to themselves, it is against, first, the social reality, and also, their spirituality.[91] We know that there are *elites* who are concerned with international

[91] Despite this reference to 'spirituality', religion played a minor role in how magistrates conceived of and articulated Senegal's criminalization. They emphasized repeatedly that Senegal is a secular (*laïque*) country. This reveals how France's distinct secular political heritage continues to shape Senegal today. For magistrates, secular means two things: 1) people are free to choose and to practice their religion; and 2) no religious law (e.g., Islamic law) exists in Senegal.

> rights of public *liberty* and other things, who are going in this direction. But for an African judge still, there is a resistance that is necessary…given the sociological and spiritual reality [Judge A].

The cleavage between "elites" (like those working at the Ministry) and magistrates resounds in the above passage. If Ministry officials embraced the term "liberty", magistrates view it with skepticism. In their eyes, international conventions and elite ideas about "public liberty" work against the "sociological and spiritual reality" of the Senegalese people.

Senegalese magistrates thus tend toward a *logic of popular representation*. They insist on judicial independence and national sovereignty, rely on morality and concepts of 'African values', harbor deep resentment toward local elites and world society, and see themselves as defenders of the collective (i.e. Senegalese) consciousness. They have no qualms about prosecuting and sentencing individuals to prison, emboldened by the idea that both tradition and the letter of the law are on their side. In stark contrast, the Ministry of Justice tends toward *international (world cultural) imitation*, despite being at odds with the local public sentiment. They embrace human rights for sexual minorities and attempt to shield individuals from prosecution when possible.

Magistrates and Ministry of Justice officials appear to draw on different forms of legal authority (Weber ([1964] 1978). In attempting to reconcile its position with Senegal's criminalization, the Ministry draws on a *legal-rational authority,* focusing on a technical distinction between "acts" versus "identity." Only acts are criminalized under Article 319.3. The reliance on the precise letter of the law suggests the impersonal order of a legal rational authority. Magistrates, on the other hand, work within the framework of a distinctly more *traditional authority*, rooted in passion, emotion and long-held beliefs. They invoke repeatedly the "will of the people," "spirituality," "culture," and "the fundamentals of the social order."

Interestingly, a similar schism emerged between the lower court and the appellate court in the case that opened this paper of the seven men sentenced to six months in prison for "acts against nature." In his official written judgement, the lower court judge drew on police reports, citing as evidence of "acts against nature" the love messages between men, men naked in the shower, a bag of condoms, lube and oil, pornographic films on a tablet, and even effeminate behavior. This evidence was enough for the judge to hand down a conviction to the seven of six months in prison.

And yet, the higher-level appeals court judge failed to see these indicators of sexual identity as evidence of sexual acts, and ultimately found the men not guilty.[92] The appellate judge argued:

> the simple fact that the investigating officers found them [the defendants] in a position that they qualified as 'compromising' and discovered condoms, lubricant cream, and pornographic films…*does not suffice for retaining their culpability in*

As evidence of this division between church and state, they cited legalized prostitution in Senegal. But, in the case of homosexuality, magistrates emphasized that it goes first and foremost against African culture and traditions and its "social reality." Although it is beyond the scope of this article, magistrates framed the criminalization of homosexuality as about a social, rather than an individualistic, ethics, as about an ethics of duty, rather than of rights, a duty to the reproductive aims of the family, tribe, nation, and humanity itself. This has a distinctly nationalistic, not religious, tenor.

[92] The possibility of outside influence behind the scenes cannot be ruled out, however. In its report "Senegal: Land of Impunity," Amnesty International noted that the new verdict came "[a]fter many protests by national and international human rights organizations, including Amnesty International…" https://www.amnesty.org/download/Documents/36000/afr490012010en.pdf [Downloaded 07Sept2020].

> *relation to acts against nature*…. In order to enter a conviction, *it is necessary to have found the defendants while committing the acts punishable by the law*; but, except for the 'compromising' position of which they speak, without giving details that could characterize them, there is no element that allows qualifying them in the sense that the law requires for their sanction.

The Structural Position within the Legal Field and the Habitus of Legal Actors

What might account for these differing logics? The source of legal legitimacy is potentially one important explanation. Magistrates are structurally located closer to the population (see Figure 1). For them, legitimacy comes more from the local culture within which they are embedded, the local media that covers their trials, and the spectator public that assembles in their courtrooms. For the Ministry, which is more insulated from the population, legitimacy comes largely from world society, Western governments and international organization that are an important source of funding. The Ministry works with them on everything from construction of new tribunals and training of court officials to digitizing court records. Thus, it is possible that the Ministry's more nuanced stance aims at appeasing Western backers and the global community, with which it closely works.

Another potential, though less powerful, explanation may be professional habitus. All of the local tribunal prosecutors and judges I interviewed were located at the bottom of the legal field, below the Ministry, below the supreme court, and below the court of appeals. In many ways, they are the foot soldiers of justice, overburdened with adjudicating hundreds of cases a day. Most entered their profession in their 20s directly after their studies. All studied at Senegalese universities, few traveled or lived extensively in the West, few worked for international organizations, and few had special training in human rights. Despite their elite status nationally, these magistrates are closer to the population, feel and express more its collective sentiment than those at the Ministry. Some judges expressed disdain about "elites" higher up, and in particular, the Minister who was seen as too close with the West.

The Ministry does have a more explicitly Western *internationalist* vision of human rights, which diverges starkly from that of the lower courts. The reason for this divergence, according to the official at the Ministry, stems from training in human rights, in other words, their *professional habitus*.

> I: And would you say that the Ministry's vision of human rights in Senegal is the international vision?
> Ministry Official: *Exactly* [he proclaimed with verve]. When I was a judge… I [once] dismissed the national law in a decision and applied [instead] an international convention, because the convention was much more respectful of the [defendant's] rights…And the [other] judges said to me 'you are crazy.' But I was familiar with the issues surrounding the question of human rights. I was involved in it. I knew how it worked. I said [to them], the Senegalese state has committed itself [to certain conventions] …. *But I had special training in human rights.* The *majority of judges, roughly 95%, have not received any a special training in human rights.* And, therefore, we [at the ministry] need to develop a training program or reinforce the capacities of Senegalese judges [in this area].

International NGOs and Western embassies also referenced this gap in training and experience in human rights as one of the major impediments to protecting sexual minorities and reducing criminalization. The professional trajectory into an appointment of the Ministry of Justice is often through training and prior work in international organizations in the area of human rights.

The defense attorney in the case of the seven made a similar point about the difference between the lower court and the court of appeals, suggesting that environment, structure of accountability, and professional habitus play a major role.

> The decisions given by the [lower court] judges are decisions given by people who can be wrong. Now, *at the level of the appeals court, judges are much more competent*. And the *setting is also not the same* as at the Tribunal of Grande Instance…. When you come to the Tribunal [the lower court] for a hearing in Courtroom 1, you have a *courtroom full of people, there are a lot of people, the tension is there*. Now, at the level of the court of appeals, the tension is eased. No one is there. It's relaxed.

Indeed, appellate court cases are not usually attended by the public. They occur largely behind closed doors and out of public view. They are more distanced from the population and carry out deliberations with far less fanfare.

Foreign embassies, international organizations, and local social movement actors all echoed the idea that officials at the Ministry of Justice had a different orientation and professional habitus than local prosecutors and judges. According to several officials at a Western embassy, "education and experience abroad are an important factor in explaining the private views on article 319.3." According to them, high officials in the government, especially those who had studied in France and abroad, were all on the same page about article 319.3. Rather "it is more at the lower level, of the *petits fonctionnaires*, if I may, and the neighborhood police, that there is more abuse and violation of individuals' rights…" An associate at a global human rights organization made clear the professional habitus divide that structures the division judiciary: "Of course, the president and the Minister are people who travel, who are of a certain intellectual level, who understand the evolution of society and who admit that the phenomenon exists in Senegal..." The sentiment expressed by world society actors is illuminated by Sapiro (2018) in the following passage: "The more a national field occupies a dominated position in the international space, the more the dominants in this field tend to occupy positions turned toward the international…capable of imposing models imported to their country from abroad…" (Sapiro 2018, p. 10).

The schism between within the Senegalese judiciary represents a schism between two positions in the juridical hierarchy, two logics of legal praxis, two sources of accountability, two stances toward world culture, two modes of solidarity, two forms of legal authority, two types of sovereignty, and, perhaps, two visions of democracy (Table 1).

DISCUSSION

All around the world, pro-gay laws have been passed along the lines of world culture. Senegal, however, has refused world culture, has refused the liberalizing trend of decriminalizing homosexuality. And nevertheless, this world culture has not refused it. World Culture still matters,

still haunts it and its judicial process, dividing the local judiciary. More strikingly, the coming of world culture produces a counter-reaction. It leads to spirals of resentment due to international interference, both of which feed upon themselves. That resentment bubbles up in the discourse of prosecutors and judges. *Feelings* matter for Senegalese magistrates, for *feelings* fuel their response to world society. As world society bears down on Senegal, magistrates experience it as "an institutional rule or measure that…violates deep-seated claims on the social order," "as a social injustice" (Honneth 2003, p. 130). Put differently, world society's arrival on the juridical scene is an *injury*, a form of *misrecognition* of Senegal's democracy, of the dignity, self-determination, and life-situation of the Senegalese people. Francis Fukuyama (2018) speaks of a "politics of resentment" existing in the symbolic and affective realm, mobilized by those who feel their "group dignity has been affronted, disparaged, or otherwise disregarded" (Fukuyama 2018, p. 6).

But this resentment responds to more than the immediate attempts at imposition by Western nations. A longer history of oppression and material inequality animates it. In *Age of Anger,* essayist Pankaj Mishra (2017) considers rising illiberalism and resentment among people in the Muslim world. Having been colonized by the West and having had the West held up as a model to aspire to, they are continuously denigrated by Western governments in their home countries and as immigrants in the West. "Such a tortured figure often ended up searching for a native identity to uphold against the maddeningly seductive but befuddling West; and enumerating Western vices seemed to confirm the existence of local virtues" (Mishra 2017, p. 141). In a provocative argument, it may be a sentiment of being locked out of the fruits of the West, Mishra suggests, that drives both anti-Western sentiment and the return to tradition. In short, what is at stake in the confrontation between world society and magistrates is not simply resistance to imposed categories of perception, but also the struggle for social esteem, respect, and regard, in short, the struggle for recognition. For a postcolonial African nation like Senegal, the struggle is to "liberate the black man from the arsenal of complexes that germinated in a colonial situation" (Fanon 2008, p. 14).

The imposition of Western-style models of sexuality into non-Western nations is nothing new. Paradoxically, however, former colonial powers of the Global North now define tolerance of homosexuality as the mark of "modernity." "While the *premodern* West attacked the Muslim world's alleged sexual licentiousness" in earlier epochs, writes historian Joseph Massad, "the *modern* West attacks its alleged repression of sexual freedoms" (Massad 2002, p. 375, my italics).[93] The West may have changed the specific values it now attempts to impose, but the reality of imposition remains unflinching. This history helps us understand the contemporary struggles around homosexual regulation in the global field.

And yet, the postcolonial irony is this: the criminalization of homosexuality in Senegal and many other nations of the Global South are 'alien legacies' (Gupta 2008). Europeans were horrified by the sexual diversity they found in the Global South during the 18th, 19th, and 20th centuries of discovery and imperialism. They used this sexual diversity in part to justify cultural and physical domination. Today, however, former colonial powers are trying to decriminalize a practice they themselves condemned and criminalized in their overseas territories, while the former colonies ironically are defending this colonial bequest.

Finally, considering the predicament of anti-gay nations, nations where a Western vision of gay rights simply does not have traction, I would ask, first, for "analytic empathy" – that is, we need to understand the contradictory meaning of practice at the ground level. I would also

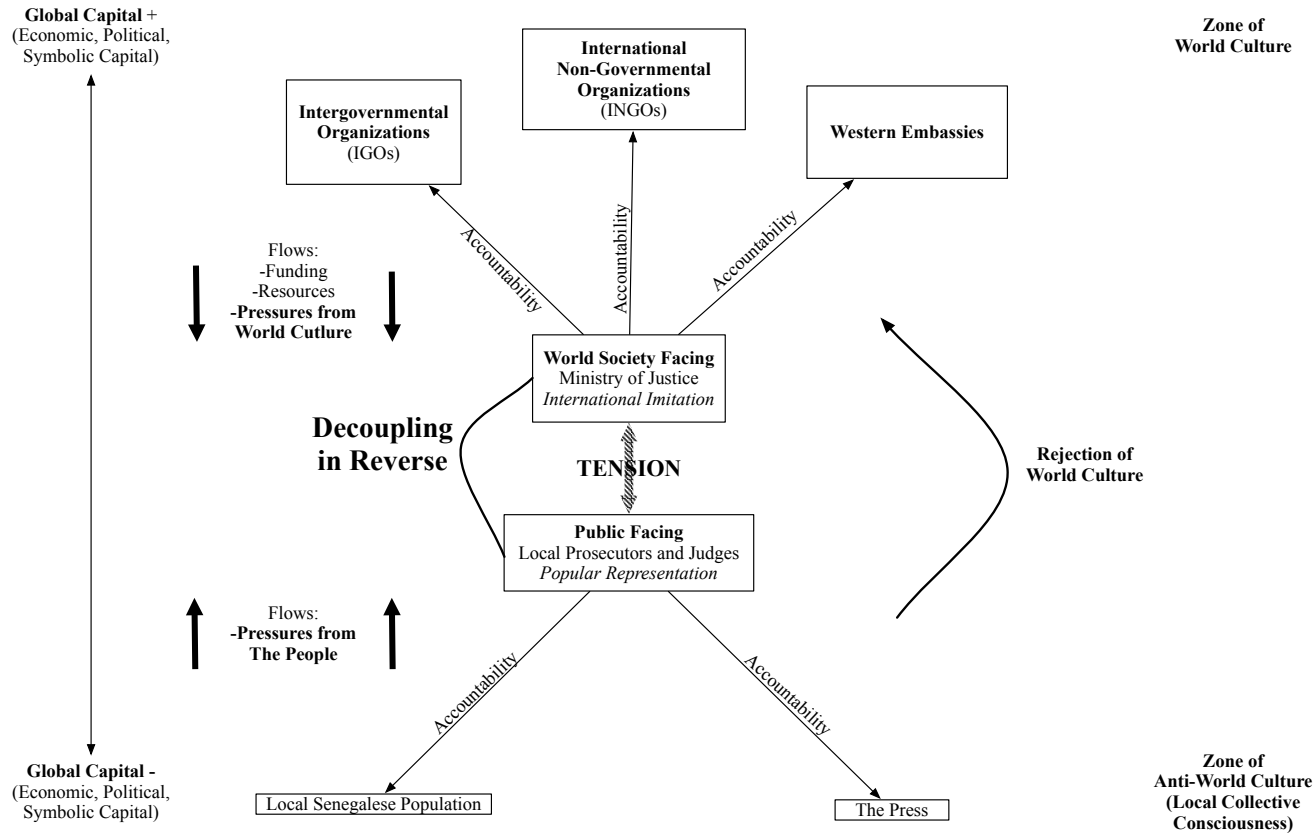
[93] Jaspir Puar's (2007) insightful work suggests Western nations use their pro-gay laws to strengthen national identity, challenge (often Muslim) immigration, and justify imperialism by demonizing non-Western peoples as anti-gay, and thus, uncivilized and unmodern.

encourage us to see that the challenges call for solutions bigger than just pumping money and more NGOs into illiberal places; in addition to money and moving in to act, *we must step back* to consider the larger historical scope of our interventions and the unintended consequences that can result from our interventions into the uniquely fraught area of sexuality, in its relation to law, social organization and justice.

Table 1. The Juridical Divide (Senegal)

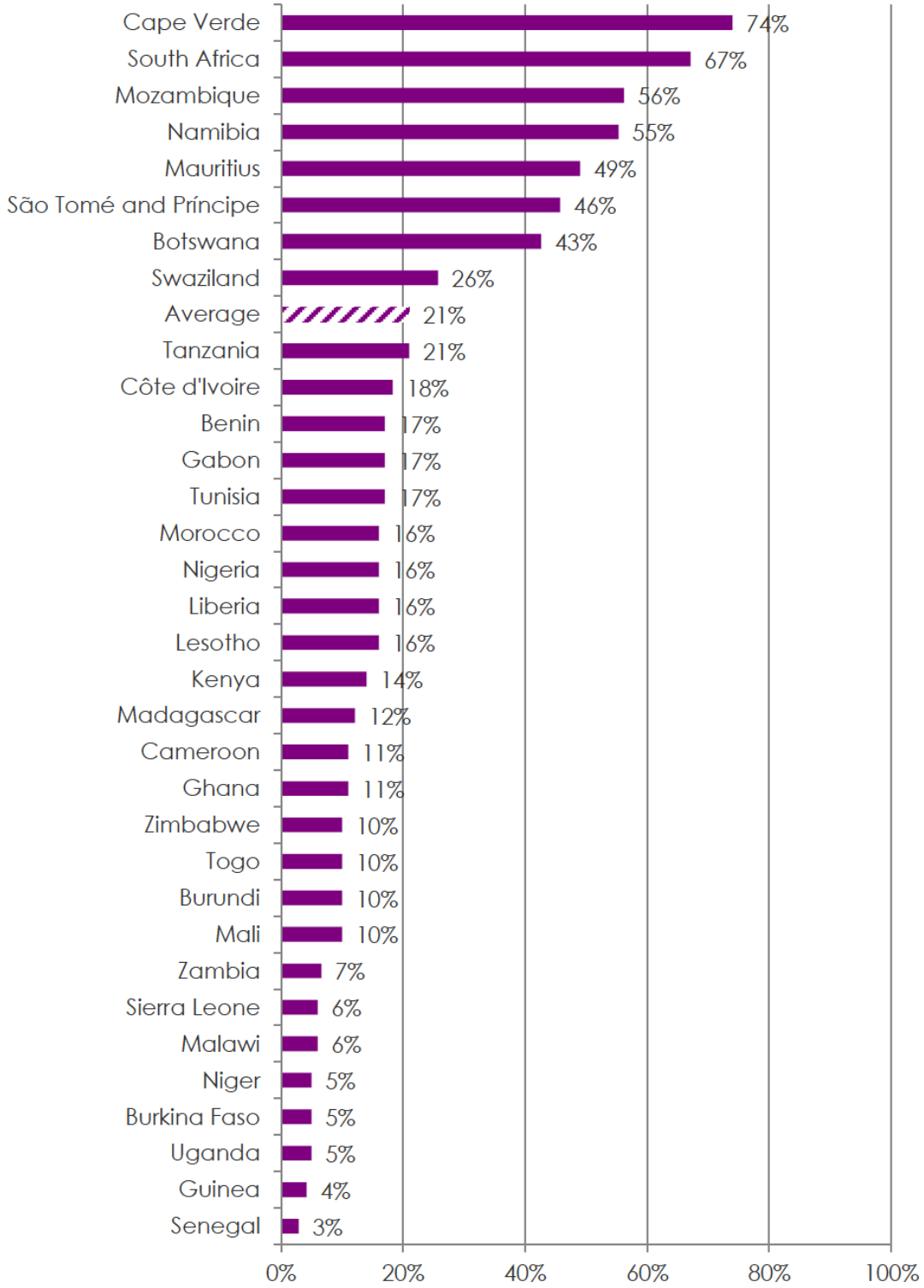
	Prosecutors and Judges	**Ministry of Justice**
Position in the Judiciary	Low	High
Accountability	Public-Facing	World Culture Facing
Logic of Legal Praxis	Popular Representation	International Imitation
World Culture Orientation	Refusal	Tacit Conformity (Decoupling in Reverse)
Legal Authority	Traditional	Legal/Rational
Mode of Solidarity	Mechanical	Organic
Sovereignty	Collective	Individual
Vision of Democracy	Illiberal	Liberal

Figure 1. World Society Confronts the Senegalese Judiciary and the People (Operating in Senegal)



Note: This figure shows the relationship between world society institutions, the judiciary, and the public in Senegal. The figure captures the flow of funding, resources, and the flow of pressures, as well as the sources of accountability for legal agents.

Figure 2. Tolerance of homosexuals 2014/2015



Source: Afrobarometer 2014/2015
(%of respondents who say they would “strongly like,” “somewhat like” or “not care” if they lived next to homosexuals)
Figure 3.

Total Number of Court Cases at the Dakar Tribunal, by Year

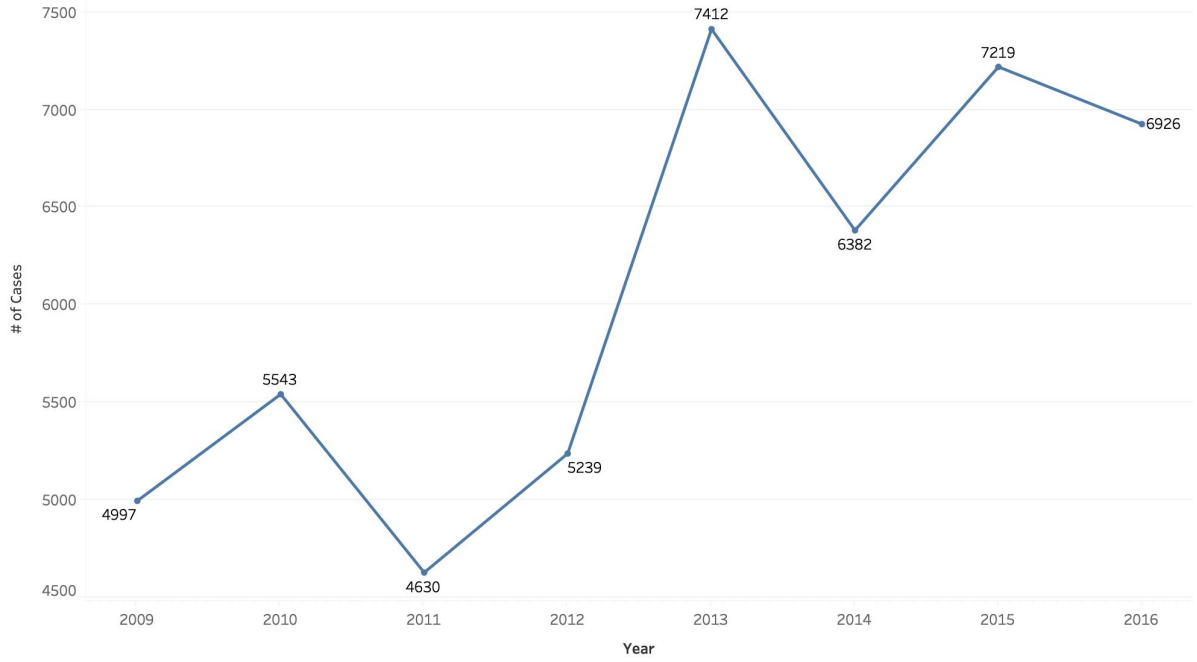


Figure 4. Decoupling – The Legitimation Structure of World Society (General Model)

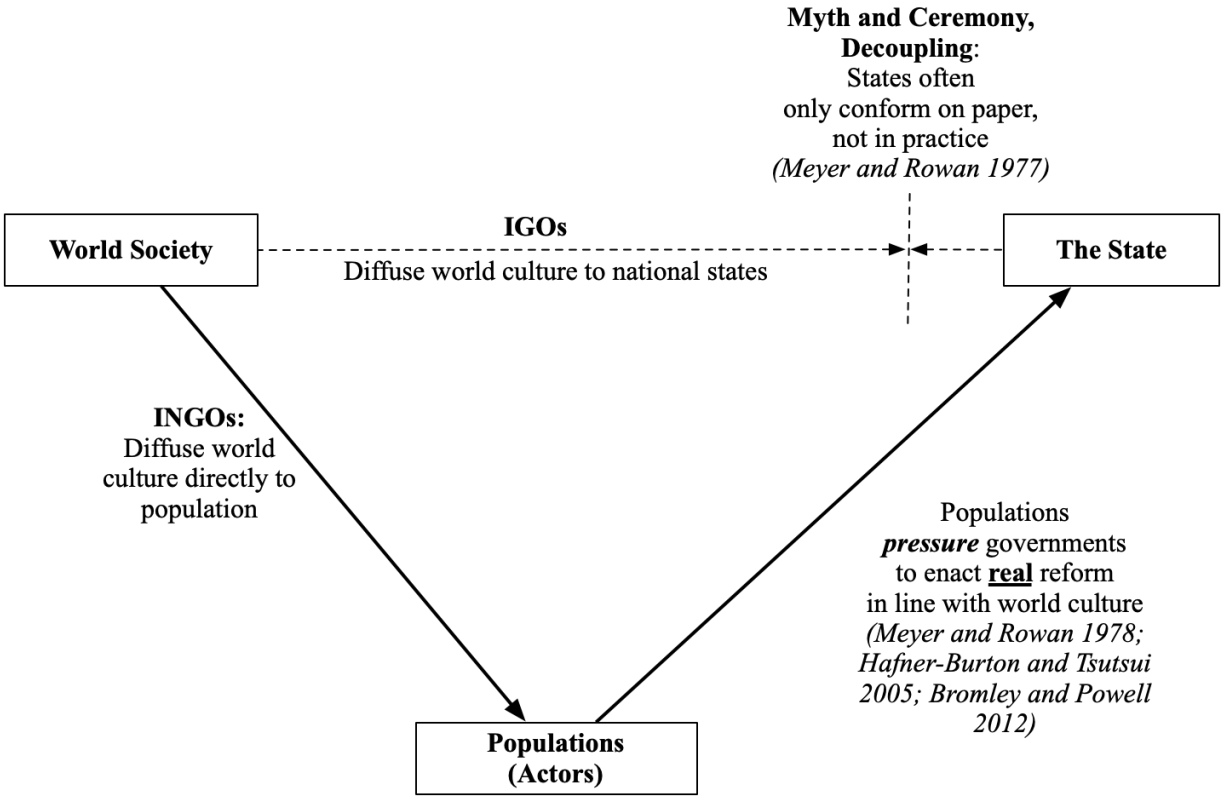
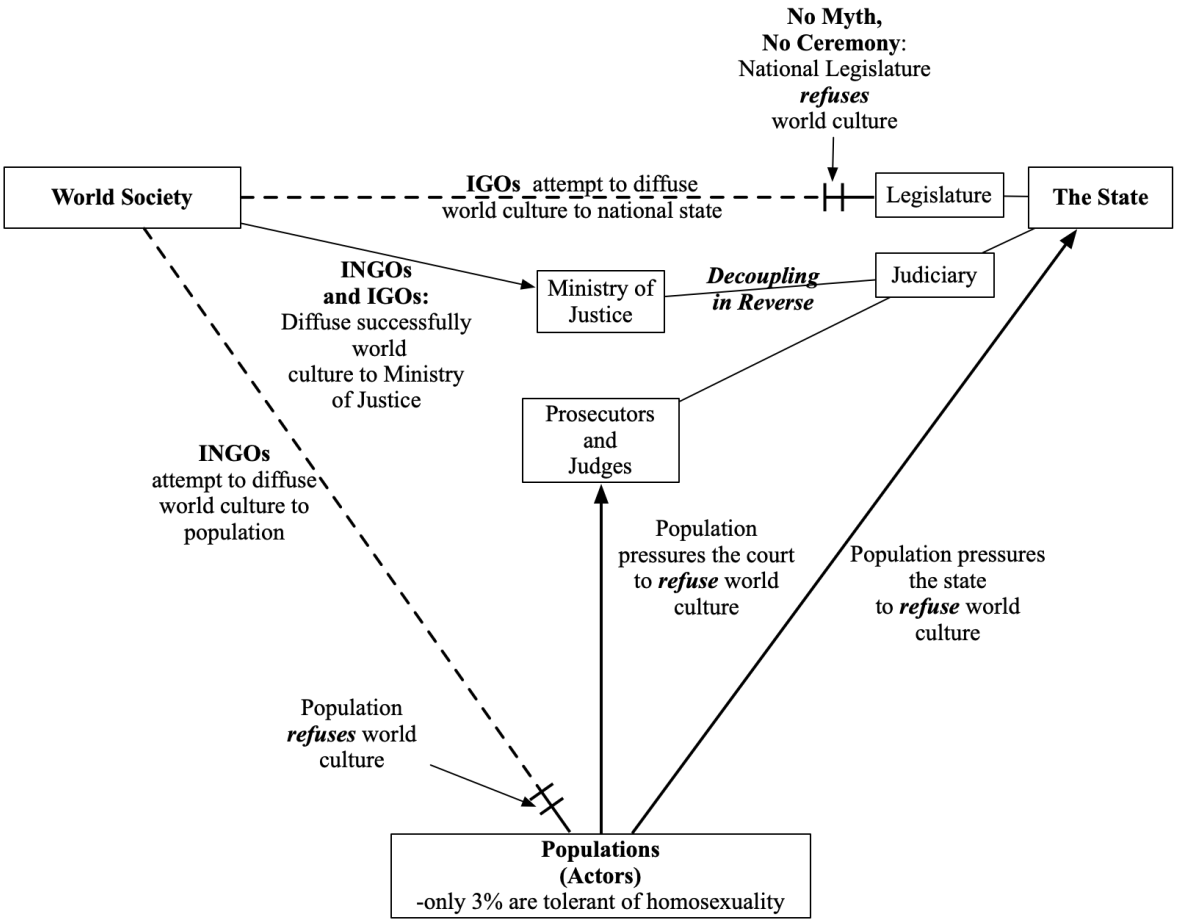


Figure 5. The Case of Decoupling in Reverse



Chapter 3

"The Extinction of the Race": Abortion, Homosexuality and the Reproduction of Senegal, 2009-2015

Scene one. The parents of a young woman force her to marry a man whom she neither knows nor loves. The man lives abroad having emigrated several years prior in search of better fortunes. In his absence, the young woman continues secretly her longtime affair with a childhood sweetheart. One day she becomes pregnant. Fearing the wrath of her parents and the stigma of her community, she decides to terminate the pregnancy. She consults a friend who also recently had an abortion and who recommends the same retired nurse she used, an older man who does the procedure to earn income to support his family. The young woman is six months pregnant at the time she has the abortion. Complications ensue. She is rushed to the hospital, where doctors denounce her to the police. A few months later three judges decide her fate—they find her guilty, but suspend her sentence so she serves no prison time.

Scene two. One summer morning a woman goes to her neighborhood police station with a surprising intent: to denounce her son and six of his friends for "acts against nature" (or homosexuality). She purchases gasoline for two police cars and accompanies the officers to a house, a popular spot where her son and his friends regularly meet. They arrive around 10am, but the mother urges the officers to sit tight, promising that by afternoon "more will come." Around 5pm, the officers knock on the door and force their way into the residence, trailed by the mother who is yelling "they are all homosexuals." The police report to have caught the men in flagrante delicto*, brazen offense: four stark naked in the shower, two in the sexual act, bottles of lube and used condoms strewn about. Confiscated tablets and cellphones reveal further the depths of their guilt, gay erotic films and love messages between men. At the trial the seven men vehemently deny the charges. The mother who denounced the men fails repeatedly to appear as a witness before the court. A panel of three judges nevertheless sentences the men to six months in prison.*

How do judges account for their legal decision-making in cases of abortion and homosexuality? What do their punishments signify, what meanings do they produce, what messages do they communicate to all who bear witness? The regulation of sex has long been a feature of group life across a wide array of social and political formations. From Marx ([1885] 1978) and Engels ([1884] 1978), Freud ([1930] 1962) and Lévi-Strauss [1949] 1969, to Rubin (1975) and Foucault (1978), social theorists have shown the enduring national interests in sex and sexuality. Groups, be they families, clans, tribes, nations, or modern states have used prohibitions on sexual practices to support culturally-rooted interpretations of the body and its sex, to construct gender, to direct human procreative potential, to build solidarity, and to draw symbolic boundaries between in-groups and out-groups (Rubin 1975; MacKinnon 1982; West and Zimmerman 1987; Schilt and Westbrook 2009).

Drawing on court judgements and in-depth interviews, this paper examines the regulation of sexuality in the largest misdemeanor court in Senegal, the Dakar Tribunal. Through a comparative framework, I unpack the justificatory schemas that shape judicial decision-making. In contrast to earlier work, my focus is not on popular rhetoric or political discourse, not on the actions of local activists or civil society, not on state policies or laws on the books. Rather I train my gaze on the everyday practices of lower-court penal officials, the foot soldiers of justice who decide innocence and guilt, who mete out the punishments everyday alleged offenders must endure. I consider this all within a francophone West African context, an empirical landscape that has remained largely unexplored, especially, at the scholarly intersection of law and society, gender and sexuality, and the state.

My central claims are as follows. In cases of abortion and homosexuality, judges are guided by a logic of biological and social reproduction. Against this backdrop, they make moral distinctions among the guilty, between *redeemable* and *lifestyle offenders*. Through a demonstrated duty to family, a public performance of regret, or an experience of victimization, redeemable offenders fit in and do not defy the logic of reproduction, and thus are granted a modicum of clemency by the court. Duty to family concerns an individual's level of familial embeddedness and obligation. Performance of regret refers to the extent to which the court can publicly extract remorse and obedience from the defendant. Victimization refers to the experience of negative social conditions to which judges can point to explain the illicit behavior. Lifestyle offenders, on the other hand, defy these frames; they are self-affirmed and unrepentant about their crimes, openly flout the state's reproductive aims and incur the full weight of the law's punishing hand in return.

These offenders represent two types of social pollution, two distinct threats to the social order. The delicts of redeemable offenders are viewed as internal pollutants, attacks that originate from within, and are repairable by, the body politic. The delicts of lifestyle offenders, however, represent an external threat, an attack from without, incarnating specifically Western values that push against society's external boundaries and threaten its self-image and coherence. This is where the global meets the local, where specters of a polluting Western force come to haunt Senegal's juridical field: first, in the figure of the selfish woman rejecting children out of vanity and convenience; second, in the figure of the self-affirmed and unrepentant homosexual morally unmoored from the constraints and reproduction of the social body. In principle, anyone accused of abortion or homosexuality could potentially be classified as fitting either one of these ideal types.

And yet, a striking empirical disparity surfaces from the data on sentencing and is further born out in judges' own accounts. In stark contrast to men found guilty of homosexuality, women found guilty of abortion face far lighter sentences and nearly one-half have their sentences suspended; judges quickly dismissed the single case of female homosexuality for lack of evidence. More often than not, the Senegalese woman who has an abortion is constructed as redeemable, seen as driven by desperation and necessity, burdened by regret, and deserving of the court's clemency. She is defined symbolically against the Western woman who seeks out abortion without just cause. On the other hand, men who engage in homosexual activity tend to fall into the latter category of lifestyle offender. They represent a far greater threat to the social order. Simply put, these moral categories are not equally applicable to those accused of abortion and homosexuality, to women and men.

There is little doubt that these crimes both break the law and offend the collective conscience; yet it is the sex among men that most riles and most defies and most stirs the penal passions of the court. It is male same-sex desire, not abortion (or female homosexuality), that is the greater pollutant and thus punished most vigorously. As I argue, through this comparative lens

we can see how male bodies and male sexuality are a crucial, yet underappreciated, site of the politics of reproduction. More precisely still, the bodies of poor young Senegalese men below the age of thirty and without families are central to the construction, maintenance and reproduction of the nation, to ideas about its authenticity and to its ongoing coherence and order.

My claims build on and extend the feminist focus on the centrality of women to the politics of reproduction. Studies of reproduction have tended to focus almost exclusively on state policies as they pertain to women, from contraception to childbearing and childrearing. Few studies endeavor to address men, their social and sexual practices as key sites of reproduction (Almeling 2015, p. 424). And scant research looks comparatively at the regulation of homosexuality alongside the regulation of women's reproduction. By leveraging this comparison I tease out the specific kind of threat each signifies to the social order and to the state's reproductive aims. And I highlight how it is through the regulation of homosexuality that *all* men—their bodies and their sexuality—get controlled and become instruments of a politics of reproduction once thought the sole purview of women.

Lastly, this study offers a rare look inside an African penal system, specifically, Senegal's largest misdemeanor court. This focus on a francophone postcolonial nation is uncommon. And there is a dearth of research on the law, courts, and punishment in Africa. To the extent work on Africa exists, it largely focuses on prisons and confinement, truth and reconciliation commissions, and international criminal courts and war crime tribunals (see Bernault 2000; Savelsberg 2015; Savelsberg and Nyseth Brehm 2015). However misdemeanor courts and their officials have never been the object of study. Moreover while studies exist focusing on the public health, social movement or human rights dimensions of abortion and homosexuality in Africa, little work considers these in light of penal practices—the who, how and why of punishment.

PUNISHMENT AND SOCIETY

What theoretical frameworks can we bring to bear on the empirical puzzle highlighted by the opening vignettes? An historical materialist approach to sexual regulation begins with Marx's pronouncements about "the natural division of labor in the sexual act" and "the latent slavery in the family" (Marx [1845] 1978). A less essentializing materialism would consider, as Engels ([1884] 1978) does, how the emergence of private property led, for instance, to the institutionalization and imposition of monogamy (Reich [1936] 1986). One may also consider how the state withholds goods and services like healthcare from those with aberrant sexual behaviors (Butler 1997). The lineage of Weberian institutionalism would grapple with how bureaucracy enables greater state penetration into individuals' sexual lives, greater capacity for tracking and controlling aberrant sexual practices, and greater ability to produce discourses about and ultimately construct sexual deviants (Foucault 1978; Greenberg and Bystryn 1984; Canaday 2009).

But to address sexual regulation through a Durkheimian lens is to begin with the affective and symbolic dimension of group life that animates and stands behind materialist and bureaucratic forms of regulation; it is to attend to culture and the collective conscience; it is to speak of purity and pollution, of the sacred and the profane (Durkheim [1893] 1997; [1912] 1995). If crime, Durkheim told us, is that which offends the collective conscience, then punishment is that which harnesses and concentrates its power and expresses its moral outrage. Punishment is expiative and irrational, a "passionate reaction graduated in intensity" rooted in a deeply felt emotion aimed at not only the offender but the wider social world (Durkheim [1893] 1997, p. 48). Nowhere is the

expressive and productive power of punishment more on display than in the realm of sex, the true crime of passion.

Numerous scholars have drawn on a Durkheimian framework to elaborate on punishment's symbolic and communicative import, its ability to draw symbolic boundaries, to constitute and to classify individual subjects and groups, and to produce social meaning (Douglas 1966; Erickson 1966; Smith 2008; Wacquant 2009). Setting aside the purpose of retribution and rehabilitation, this tradition emphasizes how punishment is meant to direct and shape what and how people ought to think and feel about the social world and social practices (Garland 1990, 1991). As Garland contends,

> Punishment is, on the face of things, an apparatus for dealing with criminals—a circumscribed, discrete, legal-administrative entity. But it is also, as we have seen, *an expression of state power*, *a statement of collective morality*, a *vehicle for emotional expression*, an economically conditioned social policy, *an embodiment of current sensibilities*, and *a set of symbols which display a cultural ethos and help create a social identity*….What appears on its surface to be merely a means of dealing with offenders so that the rest of us can lead our lives untroubled by them, is in fact a social institution which helps define the nature of our society, the kinds of relationships which compose it, and the kinds of lives that it is possible and desirable to lead there" (Garland 1990, p. 287, my italics).

Drawing on this framework, I look to juridical judgements and practices to understand what messages are conveyed about Senegalese society and the state. As I contend, the state through the capillary of the low level misdemeanor courts uses punishment not primarily to punish, but to define who rightfully belongs and who does not, making moral distinctions which articulate and reaffirm its social and biological reproductive aims.

Substantivized Law and Sentencing

We may think of courts as formal rational systems, and such systems are often rewarded by the West, but in fact there are substantively rational underpinnings always, especially in the area of criminal law, and especially in the area of sexuality. Partly rooted in Weber's ([1921] 1978) distinction between formal-rational law and substantivized law, a second strand of literature this study engages concerns extra-legal factors that influence sentencing decisions. Formal-rational law follows legal rationalism and adheres closely to the letter of the law. Sentencing guidelines are one example of this type of rationality in the modern era (Savelsberg 1992). Substantivized law, also referred to as responsive law, however takes account of extra-legal factors and local norms in deciding sentences (Savelsberg 1992; Nonet and Selznik 1978). Substantivized law claims to avoid the inequalities that emerge from a blind application of the law that nominally treats everyone equally but leads often to very unequal outcomes.

The vast literature on sentencing in the United States has identified myriad extra-legal factors shaping judicial decision-making. The social status and stereotyping of defendants, for example, plays a major role in sentencing, most notably their racial background but also other characteristics like gender and class (Farrell and Holmes 1991; Zatz 2000; Steen, Engen, and Gainey, 2005), so too do the intersectional identities of defendants (Curry & Corral-Camacho, 2008; Doerner & Demuth, 2009; Steffensmeier & Demuth, 2000, 2006). These function largely

through biased views of the defendant's likelihood of rehabilitation or recidivism, of his or her blameworthiness and overall danger to the community, as well as other constraints (Kramer & Ulmer 2009). The racial and socio-economic characteristics of judges also has been associated with sentencing patterns (Wooldredge 2010). Local formal and informal organizational culture can also lead to convergence in sentencing patterns within specific courts (Eisenstein et al. 1988). This research considers the importance of the specific working conditions and communities of the court (Flemming, Nardulli, and Eisenstein 1992). How judges relate to other legal agents (e.g., lawyers and prosecutors), as well to the broader community also matters, e.g., context of the court and its members, as well as its local jurisdiction. Although the greatest variation in sentencing is at the individual level (Ulmer 2012), the specific court and social context too can matter (Thomson and Zingraff 1981; Peterson and Hagan 1984): e.g., caseload and resource levels (Ulmer and Bradley 2006); jail space (Ulmer and Johnson 2004); and the demographics of the legal actors within and affiliated with the courts (Farrell, Ward and Rousseau 2009), especially that of judges (Steffensmeier and Hebert 1999).

The bulk of this literature encompasses mainly quantitative and U.S.-based studies that seek to isolate individual factors that correlate with sentencing (Ulmer 2012, p. 34). But as Ulmer (2012) notes, "[e]ven if we had real-time date on charging, conviction, and sentencing outcomes, and detailed case and defendant attributes, this would not directly tell us what was going on *in courtroom workgroup members' heads*…" (p. 34, my italics). Following Ulmer's call for a qualitative dive into the "heads" of court officials, I tie patterns in sentencing to judges' own accounts of their legal decision-making. Substantive rationality and responsive law do not simply seek to attenuate formal law's harshness but rather to make moral distinctions that send a message to the community about what type of threat the guilty represent.

SEXUALITY AND STATECRAFT

Policing sexuality has long been a constituent feature of group life. In "The Traffic in Women," Gayle Rubin (1975) lays bare the history of group investment in the regulation of sexuality, a regulation encompassing at once the control of women's reproductive capacity and the repression of homosexuality. Building on the work of Lévi-Strauss ([1949] 1969), Rubin argues that archaic kinship structures imposed a strict regime of exogamous heterosexuality (i.e., prohibition on incest and homosexuality) in order to be able to freely trade their women with other tribes in return for strategic alliances and favors, peace and solidarity with one group against one's enemies (Rubin 1975). Today modern states also seek control over sex but in an attempt to discipline individual bodies and better govern populations in order to leverage their productive forces (Foucault 1978). This is evident in the emergence of disciplines like statistics and demography which seek to meticulously count and measure human life from birth to death. During the age of Western imperialism, sexuality became a "boundary marker of empire" as specific gender and sexual practices signified primitive or civilizational status (McClintock 1995; Murray and Roscoe 2001; Munro 2012; Frühstück 2014; Schiebinger 2004; Sreenivas 2014; Bleys 1995; Najmabadi 2005; Hyam 1991). In Europe of the 19th and 20th centuries, fascists and nationalists linked abnormal, non-procreative forms of sexuality to national decline and racial impurity, which ultimately led to the exclusion of homosexuals (and Jews) as sexual outcasts (Mosse 1985). In fact, the exclusion of homosexuals was tied to a larger project that sought at once to reify the sexual division of labor, relegating women to domesticity and idealizing them as stand-ins for the nation,

while also supporting the homosocial bonding among men considered a key ingredient of national strength (ibid.). By the 20th century, states of all political persuasions drew on their expanded bureaucratic capacity to solidify sovereignty over women's reproduction and to police sexual practices (e.g., Rubin 1984; MacKinnon 1982; Brown 1992; Canaday 2009; Luker 1984; Pateman 1988; Kligman 1998; Roberts 1998; Puri 2016; Stychin 1995; Eskridge 2008; Zilney and Zilney 2009).

The Burden of Representation and the Politics of Reproduction

Long held to be "containers," "transmitters," and "symbols" of the nation, women have been a battleground and instrument of political struggle. This is especially true in postcolonial countries where gender was a key site of contestation. Colonialists justified imperialism with claims that indigenous traditions oppressed women; anti-colonial nationalists used that tradition to construct an identity in opposition to Western modernity (Mani 1987; Chatterjee 1993). In *A Dying Colonialism* Fanon highlights how in Algeria the French attempted to "unveil the women [and] make of them an ally in the work of cultural destruction" (Fanon [1959] 1965, p. 49). Ironically, the French attempts to politicize the veil and turn it into a sign of a backward Algerian culture only naturalized and hardened a previously "inert element" of culture. "To the colonist offensive against the veil," Fanon surmises, "the colonized opposes the cult of the veil.…" (ibid., 47). Debates about the *sati* in India similarly came to reflect the contestations between the 'civilizing mission' and an indigenous 'tradition' (Mani 1987). Within anti-colonial movements women came to represent the "inner domain of sovereignty." This required the invention, valorization and ossification of a so-called native "tradition" (Chatterjee 1993, p. 117). Forced to embrace the superior material modernity of the West in their outer lives, nationalists increasingly asserted a superior inner tradition, culture and spirituality. This "selective modernity," accepting the material benefits of the West while rejecting its traditions, was a bulwark against a total loss of identity (Aderinto 2015). These issues even split nationalist movements internally with a liberal national wing seeking to "emancipate" women in line with the West as part of a modernization process and conservative anti-modern cultural nationalists pushing "traditional" roles for women (Kandiyoti 2004). Even more contemporary debates about women's sexual practices in postcolonial nations are framed through the lens of a "recovery of a suppressed national culture" (Tambiah 2005).

Thus, women carry the "burden of representation," their bodies marking the contours of the physical and symbolic territory (Mostov 1995; Yuval-Davis 1997, p. 45). Hence the "politics of reproduction" are especially fraught (Ginsburg and Rapp 1991; Kligman 1998), for "women's bodies as incubators are instrumental to the maintenance of the external and internal boundaries of the nation" (Mostov 1995, p. 519). The politics of reproduction is always a politics of the state and state-making (Le Naour and Valenti 2003), state and/or citizenship contributing "not only to changing reproductive practices, but also to the creation of new kinds of political actors and subjectivities, in domestic and international arenas" (Gal and Kligman 2000, p. 15-16). What Brown (1992) calls the masculine state "controls and regulates the sexual and reproductive construction and condition of women," as "male social power" is increasingly located in and harnessed by it (p. 29). Debates about reproduction help political entities constitute themselves, their authority and their legitimacy.

In the politics of reproduction, most notably in Christian countries, abortion has pride of place. National debates about abortion in particular are wide-ranging, and often encompass a struggle over morality and mortality, over the proper aspirations for women and men in society,

and over the role and control of sexual behavior and sexuality, particularly that of women in modern life (Luker 1984; Ginsburg 1989). In many countries, the state's interest in abortion has been linked to pro-nationalist aspirations. In 19th-century United States, for instance, anti-abortion discourse reflected Anglo-Saxon anxieties about swiftly changing gender roles and maintaining the reproductive advantage needed for continued racial domination (Beisel and Kay 2004). In France, scholars have shown how anti-abortion politics shifted away from religious objections toward pro-natalist arguments reflecting anxieties about depopulation and the desire to celebrate the virtues of Republican motherhood (Pedersen 1996). Huber (2017) points to France's mounting concern about having a large enough army for national defense in case of a future war with Germany. The Vichy regime instituted France's most severe anti-abortion law, defining abortion a crime "against the society, the state, and the race" (Marguet 2014).[94] For Senegal the pro-natalist bent of its former French colonial overseers directly shaped its abortion laws (Knoppers, Brault and Sloss 1990). Abortion frames vary across countries (Boyle, Longhofer and Kim 2015) and abortion rights activists are often attuned to which frames most resonate where when they craft their strategies (Ferree 2003).

But scholars have expanded the notion of "reproduction" beyond the biological (e.g., inception, conception, pregnancy, and birth) to include social processes (e.g., childcare, economics and state power) (Murphy 2012; Almeling 2015). Ginsburg and Rapp (1991) refer to reproduction as the full set of "events…related to ideas and practices surrounding fertility, birth, and childcare, including the ways these figure into understandings of social and cultural renewal" (p. 311). Almeling (2015), however, calls for rethinking reproduction as not simply a series of "events" that happen exclusively to women, but rather as a broad set of social processes that extend beyond women's bodies to include other diverse areas, for instance, the bodies and practices of men, as well as law and economics. "Reproduction is the biological and social process of having *or not having children*" (Almeling 2015, p. 430, my italics). I draw on this expanded definition of reproduction to show that not only the criminalization of abortion but also the policing of male bodies and the proscribing of male homosexuality is fundamentally linked to a politics of reproduction, biological and social.

Homosexuality, Pollution and the State

Much legal scholarship has investigated the regulation of homosexuality from multiple vantages, from questions of jurisprudence and constitutionality at the district, federal and high court levels (Barnett 1973; Stychin 1995; Eskridge 2008; Zilney and Zilney 2009; Richards 2009; Puri 2016) to policing practices and rates of incarceration (Mitchel 1969; Himmelstein and Brückner 2011; Meyer, Flores, Stemple et al. 2017; Robinson 2020). And like abortion, this regulation can occur in a vast array of state bureaucracies beyond the penal branch, like social welfare agencies, the military, and immigration offices (Canaday 2009). And like abortion, the sanctioning of homosexuality also has a state-making character. States regulate homosexuality to produce their own effect, to help "sustain the illusion that states are a normal feature of social life, unified and rational entities, intrinsically distinct from society, and indispensable to maintaining social order" (Puri 2016, p. 4). Today, this regulation becomes ever more important given the weakening stature and power of the state due to the forces of globalization and neoliberalism. What scholars call "political" or "state homophobia" have become tools in local power struggles for

[94] Loi n° 300 du 15 février 1942.

purposes of governance and security or for diverting attention from national crises like unemployment, economic stagnation or slow growth (Bosia and Weiss 2013). Moreover, drawing on pre-existing anti-gay sentiment, politicians use "state homophobia" to tie sexual minorities to foreign others (usually Western) (El-Menyawi 2006; Pratt 2007; Bosia and Weiss 2013). By governing sexuality the state appears central to social life: the criminalization of homosexuality shows "states continue to thrive by leaning heavily on sexuality's arguable potential to engender widespread social chaos" (Puri 2016, p. 5).

Unlike abortion, homosexuality has been strongly tied to discourses of deviance. The very category of the 'homosexual' functioned as a form of social labeling and control (McIntosh 1968). More broadly, debates about homosexuality encompass ideas about contagion and pollution (Meiu 2020). Mary Douglas (1966) argued pollution ideas are used to "bind men and women to their allowed roles" (p. 174). The aim of punishment then is to separate out the polluting forces, to distinguish between the sacred and profane, to draw symbolic boundaries and to create order in an untidy world. "Many ideas about sexual dangers," Douglas reminds us, "are better interpreted as symbols of the relation between parts of society, as mirroring designs of hierarchy or symmetry which apply in the larger social system. What goes for sex pollution also goes for bodily pollution" (ibid., p. 4). What is more, she suggests that perhaps "no other social pressures are potentially so explosive as those which constrain sexual relations" (ibid., p. 194). Sex is never pollution free, Douglas notes. And thus bodies are key sites of pollution. Indeed, "the symbol of the body's boundaries is used in this kind of unfunny wit to express danger to community boundaries" (ibid., p. 152).

In addition to fears about pollution, the sanctioning of homosexuality may also be rooted in what Nussbaum (2005) calls "the politics of disgust." Disgust reflects a rejection of indulging in sexual activities that are outside of the "natural" order of things, based on personal appetites and "dishonorable passions" without a clear procreative end (Eskridge 2008). Pollution and disgust both exemplify how opposition to "acts against nature" (homosexuality) is crucial for the maintenance of internal coherence and the symbolic boundaries of groups. "Punishment," then, "becomes encoded through discourses about purity, pollution, ordering, and the sacred. The emotional register includes not only anger as Durkheim originally proposed but also disgust, shock, pity, and contempt" (Smith 2008, p. 176).

The Comparative Dimension

Few studies have considered comparatively legal-decision making in cases of abortion and homosexuality. Scholars have shown strong empirical associations in population attitudes regarding abortion and homosexuality, with traditional views of gender roles often accompanying disapproval of homosexuality (Dunbar et al. 1973a, 1973b; Minningerode 1976; Weinberger & Millham 1979; Thompson et. al. 1985; Bleich 1989; Stark 1991; Black et al. 1998; Hicks & Lee 2006). Modernization theorists distinguish between traditional societies with survivalist orientations which restrict abortion and homosexuality, and secular-rational societies with self-expressive orientations which do not (Inglehart and Baker 2000). The former are defined as largely preindustrial societies where men dominate and rigid gender hierarchies prevail, where kinship and religion are essential organizing principles of everyday life. The latter countries are mostly advanced industrial economies with more gender egalitarianism and less focus on the family and religion. World society theory also shows how greater links to liberal global institutions correlate with more egalitarian laws on gender and homosexuality (Frank, Camp, and Boutcher 2010; Frank

and Moss 2017; Pandian 2018). But few studies compare directly the criminalization of these two domains in practice in the court of law: that is, how judges think about these practices, how they make decisions, and how these crimes are punished.

DATA AND METHODS

This paper draws on 18-months of fieldwork (during 2015, 2016 and 2017), where I conducted archival research, in-depth interviews, and ethnographic oberservation at the Dakar Tribunal of Grande Instance, Senegal's largest misdemeanor court located in its capital and most populous city. I collected official court judgements for cases of "acts against nature" and abortion. Lower court case records are not yet digitized, nor are they organized by type of crime, but they are organized by year and by type of case (criminal or civil). I collected judgements going back to 2000; however, I report here on cases between 2009 and 2015, as records for this period are most complete. I conducted in-depth interviews with one court archivist, 16 (out of roughly 40) judges and 6 (out of roughly 12) prosecutors. Interviews lasted three to four hours and often stretched over multiple days. In interviews, I sought to gather holistic accounts of the life of the court and the work of judges. I approached these interviews wanting to understand judges' work, their backgrounds and trajectories, their cases and legal decision-making schemas. In addition to court officials, I also interviewed officials at the Ministry of Justice, as well as staff at Western embassies, intergovernmental organizations, international NGOs to round out my understanding of Senegal's juridical field. All translations from the French are my own.

INTRODUCING THE CASE

Located in West Africa, Senegal is a 95% Muslim nation, an emerging democracy, and former French colony. The capital city of Dakar is the former capital of the French West African territories. Article 305 of the Penal Code criminalizes abortion with six months and two years in prison and a fine of between 20,000 and 100,000 CFA.[95] Senegal's law is based on both the French law of 1810 (art 317) and the Vichy-era law of 1939 (art 87) (Knoppers, Brault and Sloss 1990). Together, these laws criminalized abortion in the French colonies on all grounds with the exception of saving the mother's life. Such an exception however required the recommendation of three physicians, one of whom was to be court appointed (Knoppers, Brault and Sloss 1990). Senegal carried over the French-era prohibition into its 1965 Penal Code after independence. Today's abortion law is so extreme that in 2014 judges did not allow a ten year old girl who was raped and carrying twins to have an abortion.[96] In Dakar, roughly 31 women were tried for abortion between 2009 and 2015.

Article 319.3 of the Penal Code penalizes "acts against nature," which mainly refers to homosexuality, with one to five years in prison and a fine between 100,000 to 1,500,000 CFA.[97]

[95] In U.S. dollars, this amounts to roughly $40 to $200.

[96] https://www.theguardian.com/global-development/2014/apr/04/sengalese-law-bans-rape-survivor-aborting-twins

[97] In U.S. dollars, this amounts to roughly $200 to $2500, or between 476 and 5952 times the minimum wage for general workers and between 540 and 6756 times the minimum wage for agricultural workers. This is a hefty fee in a country where 30% of the population in 2011 lived below the international poverty line of $1.25 (in purchasing power parity terms) per day (World Bank 2013).

As we can see, the recommended sentence for abortion is lower than for homosexuality, so too are the potential monetary fines one must pay. Similar to abortion, Senegal's law on homosexuality was also a colonial bequest. In 1877, the French colonial administration passed Article 331.3 of the French penal code for its West African territory, prohibiting "improper acts" or "acts against nature" with an individual of one's own sex who was younger than 21 years old and simultaneously introducing a different age of consent for homosexual and heterosexual liaisons (Camara 2007-2008). On July 30, 1960, one year before Senegal's independence, the French passed another law increasing punishment for "indecent exposure" in cases of "acts against nature with an individual of the same sex." This time the law did not stipulate an age limit, which effectively extended the criminalization of homosexuality to adults (Camara 2007-2008). This new law portended Article 319.3 of Senegal's 1965 penal code, passed for the first time five years after independence from the French. The 1965 penal code included both the old stipulation about same-sex occurrences between adults and minors, as well as the new stipulation for same-sex acts committed among adults. In the lower court, at least 53 people were charged and prosecuted for homosexuality in Dakar between 2009 and 2015.[98]

But who is brought before the law? Tables 2 and 3 present a brief demographic look. On average, women prosecuted for abortion at the Dakar Tribunal are young, low skilled and poor. Their average age is 24; the majority of cases are of women younger than 24 (58%), followed by women 25-34 (39%) and those over 35 (3.2%). On average, the women who appear before the court are outside the formal labor market. A little over half of all women worked in elementary occupations; and over 85% of those women worked in their own homes or as domestics in other people's houses.[99] Women in the professional classes are absent. Although these data are limited, the picture that emerges is of young women toward the bottom of the socio-economic distribution. The profiles are similar in the case of homosexuality. On average defendants are under 30 and clustered in the lower social strata. They are nearly all men (92%) with over a third (35.4) working in the lowest occupational bracket, "elementary occupations" and another third working in "craft and related trades" (31%).

Why do these rough proxies for class matter? Poor people's lives, especially in urban spaces, tend to be more crowded and afford less privacy. In contrast to the middle- and upper classes, poor people who want to engage in homosexual acts do not have the *privilege of privacy* and do so at great risk: they are less likely to live alone or to have their own space, less likely to live in wealthier enclaves with more tolerant neighbors or neighbors from more tolerant Western countries who might turn a blind eye. Instead, these individuals are more likely to engage in same-sex practices in precarious environments, like public spaces or in shared living quarters where the risk of discovery increases. The vast majority of men arrested are Senegalese, with the exception of one Ivorian, one Gabonese, and one Spaniard (who was involved with a local). The absence of more cases involving foreigners and Westerners suggests either that the Senegalese state is less interested in regulating the practice itself and more interested in preventing it among the local population, or that the government wants to avoid problems with its foreign partners. Similarly, for abortion, middle- and upper-class women are likely to be able to travel abroad to procure an abortion or to pay top dollar for an experienced and competent doctor, rather than find someone

[98] These are the cases for same-sex relations among consenting adults only. These do not include cases involving minors only, which are processed in a separate court, cases between a minor and an adult, or cases of rape. I have chosen to limit the sample to this group in order to more closely examine the regulation of homosexuality without other intervening crimes like rape or sex with minors.

[99] Most of the women in this group are "housewives" and are likely outside of the formal labor market.

without a medical license to perform the procedure, which is more likely to lead to complications and thus more likely to land the person in the hospital with complications, and thus in court.

How exactly do cases finally end up in court? Arrests for "acts against nature" often result from denunciations, where someone close—an aggrieved lover, a suspicious neighbor, or even a family member—reports to the police. Sometimes blackmail or a dispute over money or material goods can flair up and spill into the public sphere. Similarly for abortion, denunciations play a central role, usually arising when post-abortion complications land the women in the hospital. As one judge told me:

> If the procedure goes well, you won't see anyone, but it is when the procedure does not go well that you will see people [in court]…when you go to the doctor to get treated, it'll be the doctor who denounces you…Where the girl goes to get saved, it is those people who will denounce her.

If everything goes well, women will rarely appear in court. And yet as Suh (2018; 2019) argues in her extensive research on post-abortion care in Senegal, hospital staff and health workers often seek to shield women who come in for post-abortion care from police and the courts by reclassifying post-abortion cases as miscarriages. This is an important factor as to why there are relatively few cases of abortion in the courts.

MORAL DISTINCTIONS AND THE REPRODUCTION OF SENEGAL

Recall that my aim is to understand judicial decision-making and what these decisions tell us about the broader aims of the state. I take for granted that judges are not guided simply by cold formal rationalism. Beyond the law as it is written I consider judges' own interpretations and applications of the law, as well as how they answer the question of how and why to punish.

"Nature has its rules"

The domains of abortion and homosexuality strike at the very core of the nation-state. Senegalese magistrates articulate their understanding of these crimes on primarily reproductive, not simply religious grounds; indeed, many attempt to hold firm to an ideal of *laïcité* and refuse the role of religion altogether. The ideal of *laïcité* is an inheritance from France for whom secularism is definitional of citizenship.

> The expression we have here in Senegal is *laïcité*. For us, the magistrates, the law is not Islamic, it is not Christian, it is not occult. It is a law based on the fundamental principle of *laïcité*. I, a Muslim magistrate, or another colleague, a Christian with whom I will discuss, we will not react according to our Muslim sensibility, or his Christian sensibility. But simply according to what the law allows.

Another judge responded aggressively after I probed him several times on the role religion played in these highly sensitive cases: "We do not apply Sharia Law. We are a *laïque* country. We do not apply the Muslim law," he declared somewhat defiantly. Magistrates generally rejected talk of religion as guiding their decision-making but they expressed more openly something else—

nature and reproduction. "Nature has its rules [and] one needs to respect them," one judge proclaimed in a matter-of-fact tone. Discussing the problem of abortion, another judge emphasized with exaggerated disbelief a fear that if abortion were legal many married women who did not want children would decide (unilaterally) not to have them.

> If we permit women to have legal abortions, you are going to see *even* married women who do not want children…with or without the consent of their husbands having abortions.

The emphasis on "married woman" signals the belief that married women ought to have children out of a sense of duty. The judge takes for granted married women's reproductive duties. His objection is not couched on obviously religious grounds but on reproductive ones. A female judge proclaims that her opposition to homosexuality "is about progeny," but that "abortion too puts an end to life." She expands on her opposition to homosexuality as follows:

> I, as a woman who wants children, who has children…. [She trails off not finishing her sentence, letting out instead a light yet audible laugh underneath her breath before continuing]. In couples with [only] men or [only] women there will not be any children. They cannot have children…. What is certain is a woman cannot secrete sperm. With two men, there will be sperm but no children. With two women, there will be eggs but no children.

In the statement above, the judge expresses concern about the reproductive dimensions of homosexuality. As Senegalese scholar Lamine Ndiaye (2011) put it in his piece on clandestine abortion, we have to "understand that in Senegal, in any case, both fertility and contraception suffer the repercussions of a set of beliefs and socio-cultural values which have the particularity of overvaluing procreation and the female ability to ensure, *to the community*, a large offspring. Moreover, it is these strongly anchored social representations that are at the origin of the remarkable difficulties in moving behavior and mentalities" (p. 1). Ndiaye, continues :

> Great is the desire of African women and men to have a posterity that ensures posteriority. In the Wolof milieu of Senegal, for example, the child has a double meaning. He is the one who illuminates the marital home, the family substratum. Beyond this perspective, he is the one who condenses a whole series of past, present and future stories. It is the very symbol of continuity and of immortality, the symbolic extension which, being in limited space and time, exists in space and in time lasting in an imaginal infinity.

Although religion is usually taken for granted, the logic of reproduction figures prominently in judges' thinking. Against this backdrop of reproduction, as I explore below, judges do not simply decide innocence or guilt, they make further distinctions among the guilty based on who presents the greatest threat to the logic of reproduction.

The Redeemable Offenders

Magistrates use three frames to assess offenders' threat and to construct them as worthy or unworthy of the court's moderation and clemency. The three frames include a duty to family, the performance of regret, and experiences of victimization. What the successful application of any of these frames to guilty parties suggests is a reproductive order that remains unthreatened and intact.

Duty to Family

Again and again duty to family came up as a leitmotif motivating judges' decision-making. They expressed an overarching concern with whether the defendant was embedded in and contributing to the family. Highlighting the need to contextualize each case, one judge stated: "I look at the family situation, the context in which they live. The *number of wives* he has, the *number of children*, the work that he does." Another judge put it this way: "The circumstances of the individual, like if the person has a *family*, *children*. It is true the penalty is there [in the law] but we distribute the penalty based on *these* elements here." Even after towing a hardline in a case of homosexuality, when I pressed a senior judge on whether there was any disagreement among the panel of three judges and what factors she herself considered, she qualified her earlier position and raised the frame of the family as an explanation for not giving an even harsher sentence.

> I : No, there was no disagreement [among the judges], because the facts were established. There was no doubt [about guilt].
> Me : And why a sentence of two years? Why not longer?
> I : There was a mister and *he was married*, *he had two wives*. We take into account a lot of factors before condemning. Yes, certainly, he committed [acts against nature], he was guilty of the acts that one accused him of. But…he was married *already* at that point. He *already* had children … You see a little? There are a lot of factors.

At first, the judge did not want to concede that any external factors mattered. But she finally did, arguing she did not give him an even longer sentence because the man already had a family. Equally important is the double use of "already," which suggests he had *already* fulfilled his reproductive duties by marrying and having children. His engagement in homosexuality is therefore less threatening to the social order, perhaps even provisional.

We find further evidence of this in the sentencing data (Table 4). In general, men over the age of 35, who are more likely to have families receive the shortest sentences on average, followed by men between the ages of 18-24, followed by the longest average sentence carried by young adult men between the ages of 25 and 34, precisely the age when men are expected to marry and have children.[100] This discrepancy ties into broader concerns about youth, threat, and masculinity, on the one hand, and what Diouf (2005) calls the triple crisis of the family, the nation, and the state, on the other. In 2015, a full three-quarters of Africa's population was under the age of 35.[101] But these numbers accompany high youth unemployment, economic precarity, and a lack of opportunities for self-fulfillment for young people. In response, youth are growing more restless

[100] Lagarde, Pison and Enel (1996) found that the age of first marriage for men in rural Senegal increased between 1955-1964 and 1985-1992 from 25 to 34 years for men.
[101] https://www.un.org/en/africa/osaa/peace/youth.shtml

and frustrated, threatening the social order. No longer are they viewed optimistically through the lens of national hope and aspiration. As Diouf (2005) points out, there is a moral and civic panic around youth, their bodies and behaviors, including sexuality.

> "The dramatic irruption of young people in the public and domestic spheres seems to have resulted in the construction of African youth as a threat, and to have provoked, within society as a whole, a panic that is simultaneously moral and civic. At issue are the bodies of young people and their behavior, their sexuality and their pleasure" (ibid., p. 3).

And yet masculinity figures prominently in this crisis over youth. In the hysteria over youth, "the penis seems to bear (in the literal and figurative sense) the economic and social dream of success and the nightmares of failure" (ibid., p. 10). As Melly (2017) writes about contemporary Senegal, "[t]his ongoing economic crisis, in turn, has generated profound social uncertainty, as adulthood, marriage and the establishment of families are delayed or put on hold indefinitely; gendered role and normative values are questioned; and the legitimacy of both nation and state are undermined" (p. 137). In the context of this broader crisis the hypersanctioning of specifically *young male bodies* engaged in homosexual behavior is an amplification of a more general social anxiety around (male) youth in modern Africa, anxiety about their violence and decadence, anxiety over whether they are fulfilling and are able to fulfill their duty to reproduction. Senegalese "link the stability of the family and the nation to the exploits of men" (ibid., p. 136).

As is clear, it is not simply a crude biological but also social reproduction at stake. And judges here consider what impact prison will have on the individual's ability to sustain their family.

> There are a lot of things that play a role. If the person has four *children*, if he is not educated, if he is the only person who works in his *family*.... Because that is not the function of the penalty…condemning one person and making suffer five other people. That makes no sense. *That is not the function of the penalty*. These are the things that I think about when I take into account the administration of the penalty. It is important to take the social conditions into account.

High fertility rates, large families, high unemployment and general economic precarity which befall many Senegalese people certainly factor into how judges perceive who all will bear the costs of punishment.

Performing Regret, Extracting Shame

My fieldwork at the tribunal overlapped with the Muslim holiday of Eid-al Adha, also known as Tabaski in Senegal, which celebrates the story of Ibrahim's willingness to sacrifice his son in accordance with God's command. In Senegal, the celebration is one of the biggest, marked each year by festivals, large family gatherings and the slaughter of a sheep. It is a time when people are encouraged to be kind and gracious. During this period in 2016, my interviews at the tribunal were met with more interruptions than usual. For several days, colleagues knocked and then promptly entered magistrates' offices (the knock was just a courtesy to let you know "I'm coming in"). Immediately, they launched into a lively exchange of "balma ak's" which seemed to stretch on for minutes. As one judge described it,

> After the festival of Korité, Tabaski, people come by each other's office to present each other their vows. Everyone does this with those who are of close relations. It is an obligation. "Balma ak"—people say this in order to ask each other for forgiveness for the wrongs they have done.

The exchange of "Balma ak's," a Wolof phrase that expresses regret and requests forgiveness, is a culturally-rooted practice and obligation that echoes the expressions of regret and requests for forgiveness performed by defendants. In the courtroom, these performances matter to judges and shape how they view defendants. One judge describes what she looks for in cases of acts against nature.

> Judge : It depends…on the attitude of the people when they come before the bar.
> JF : Attitude, what do you mean ?
> Judge : It is about regret. Because, for me, the penalty, it is to rectify, to correct. If a person does not regret [their actions], you have to punish them more than if a person expresses regret.

In explaining why he chose to suspend the sentence of a woman he found guilty of abortion, the judge averred "[w]e said to ourselves we have to pardon her because it was an error that she committed…It was because she was young, she was in school, and *she really recognized her error, she asked for forgiveness*." When I inquired how another panel of judges landed on the sentence it did in a case of homosexuality, he replied: "Because, often for me, if you come with a spirit of 'yes, I have *recognized my mistake* and I *ask* for forgiveness, I will be a lot less severe than if you come and say 'no [I didn't do it]' but the facts are there."

The acceptance of guilt has a performative significance in the courtroom too. If defendants perform the suggestion is that judges will go easier on them. Thus, the punishment is not simply about the crime committed. Acts of contrition mitigate punishment's full force because the individual's proclamations of regret allow the court to extract publicly a display of shame and obedience, thereby reaffirming the rightness of the law and reconstituting the reproductive social order. To publicly "recognize one's mistake" is to validate and justify the set of collective beliefs that have labelled such actions crimes. As Fassin (2018) writes about the two interwoven principles of modern legal theory:

> [T]he question of liability exceeds the legal frame; it includes a moral dimension of accountability toward oneself and others, a psychological dimension of culpability, which implies accepting the guilt for the act committed, and a philosophical dimension of responsibility, which brings free will and determinism in tension. (Fassin 2018, p. 109)

Thus, two key frames emerge that qualify a guilty party as a redeemable offender—showing a direct investment in the biological and/or social reproduction of the (heterosexual) family and the ability of judges to publicly extract shame and obedience. The third frame is the experience of victimization that judges can point to in order to rationalize non-normative behavior.

Experience of Victimization

An experience of victimization shapes profoundly the moral distinctions judges make, especially in cases of abortion. Narratives of victimization and lack of agency impact judges' thinking. Judges tended to view the choice of abortion as a choice of desperation. "Given a choice, [a woman] would not abort. Abortion is the last defense." Indeed, they consider it unfathomable that a woman would want to have an abortion. As one judge pointed out: "Often we are not too severe with the *victim*, [because] they are already *victims*."

When I asked a judge to reflect on disagreements that had come up in cases of abortion and homosexuality after it is clear the person is guilty, his response was illustrative if somewhat surprising.

> JF : Are there ever any discussions or disagreements among the judges in the case of abortion ?
> Judge : In the case of abortion, yes, sometimes a judge will say, 'yes, but she was *very young* or the fetus was *not that far along*', or something similar.

Although Senegal's law on abortion is among the world's strictest, judges take into consideration the very things the law does not when administering punishment. This echoes a similar disconnect between Senegal's abortion laws and post-abortion care practices on the ground highlighted by Suh (2018; 2019).

In addition to youth, another experience of victimization brought up frequently has to do with Senegal's high level of out-migration, where many young men emigrate legally or illegally to make money to support their families in Senegal. This frequently leads to complicated issues as wives are left behind often for several years.

> Now to have an abortion because my husband is abroad and my boyfriend got me pregnant. You see there are other parameters that are important to keep in mind. We, Africans, we live in countries where there a lot of immigrants. And often it is the people who spend twelve years abroad and the woman is left here all alone. It's complicated. And the human is human. And the woman who gets herself pregnant by the friend of her husband or I do not know whom, she experiences total shame because of that and she will want to end the pregnancy… Often when you see an abortion there is something wrong, that is, someone [the woman] is trying to flee a shame that makes one want to have an abortion.

Judges are sensitive to the social suffering and stigma the offender will likely face in the community. In the interview below, a reference to the "sanction of the people" points to this extra-judicial punishment. And it reveals the specific role of the "people" in regulating women and their sexuality.

> There is the *sanction of the people*. This person, she is already suffering, already because of the abortion. And there is the second sanction. Is it necessary to reject her? If she had another choice, would she have aborted? … Would she have done this is she had another choice? Also is this person young? Or is this person old and she is the mother of a family and has kids? Or is she is alone at home with her three

> or four children and she aborts? She has the *sanction of the people* that is added and then [should] we give her a severe punishment [he asks palms up with an air of disbelief]?

In discussions about abortion, judges frequently brought up the case of rape as being worthy of special consideration and clemency. Again the logic of judges is strikingly at odds with the law on this account, which specifically disallows abortion in cases of rape. Recall the example of the Senegalese authorities not allowing an abortion in the case the rape of a ten-year-old girl who was carrying twins.

> We judge based on what she says and if it is morally very clear. That's why if she says 'I was raped' that will matter more than if she says she did it [just] because she wanted to have an abortion. If she did it because she did not have a choice…

Again, judges appear repeatedly to take into consideration in their sentencing the very things that the law still highly condemns, suggesting at least in the case of abortion a counterbalancing of the laws-on-the-books which is highly restrictive.

Judges offered a different victimization narrative for those found guilty of homosexuality. The first expressed that inactivity and economic precarity could be the source of the misbehavior. She showed herself open to the possibility that: "The *young* are more exposed. There is *unemployment*. It is connected to *inactivity*, especially homosexuality, a lot of young think it is a way to earn money." The connection between homosexuality and prostitution is a well-worn trope, especially in Senegal and throughout the Global South. But the judge's words show as well that youth itself can be considered a kind of vulnerable social condition that warrants a modicum of the court's clemency. As I alluded to above, the sentence discrepancies by age align with this concern (Table 4): men younger than 24 served more time than those over 35, but less time than those 25-34, suggesting the very young may be partly shielded from the even longer sentence of their slightly older counterparts. Notably in cases where there is an age difference of 10 years or more between the parties involved, it is the older party that will get a slightly longer sentence by roughly 5 months. Although it is beyond the scope of this paper, early discussions about the criminalization of homosexuality in Senegal (both under the French and after independence) were often couched in a discourse about the protection of youth (Camara 2007-2008).

Another female judge also raises the question of whether there was a history of sexual abuse that many have led the offender to engage in same-sex acts.

> What brought him to do that? How did he grow up? In what conditions was he raised? In his childhood was he the victim of a rape? Was he not the object of sexual abuse that brought him to this today?

It is worth noting that when judges discussed homosexuality, they usually referred to men. As in the example above, the judge used masculine pronouns. This tracks with the vast majority of cases of "acts against nature," 92% of which concern men, not women. Only four women were brought before the court on charges of homosexuality, all as part of the same case. The charges were dismissed due to lack of evidence. The judge in this case had this to say about why they were found not guilty.

> For the guys, it was really established. For the girls, they denied it saying it was *just among girls*, everything was among us girls, they said. They said they went to a club together. For me that happened when I was at the university. Some girls and I went out to a club together. That could lead to confusion and that could create doubt [in people's minds]. They were in a night club. Because someone said there were two girls who were kissing each other. The witness did not arrive at the audience. …

The framing of what occurred among these women as just "among girls" is striking given that these women were not girls but between the ages of 24 and 32. Moreover never did I hear a judge say it was just "among boys." Nor has the failure of a witness to show up to court prevented men from being found guilty of acts against nature. Literature on same-sex sexual relations among women has often pointed to the state's silence on and reluctance to consider sex between women due to phallocentric understandings of sex and ideas about women's passivity (Leck 2016). Despite relatively few cases, there is an emerging pattern in the data to suggest that women's sexuality may not primarily be regulated by the state but by the broader social world—i.e., family and community. Hence the relative lack of cases of female homosexuality. And many judges noted again and again the familial and social stigma women bore if they had an abortion which suggests that the court sees the social sphere as an important arbiter of punishment.

Missing Frames

Two frames are absent from judges accounts, the public health and medical frames. In the case of abortion, these frames emphasize the potential medical consequences of too harsh a criminalization which would push the practice further into the shadows, meaning more women will die due to unsanitary practices and lack of access to competent medical professionals to perform abortion. Scholars have investigated the various frames within which abortion rights resonate. Boyle, Longhofer and Kim (2015) identify three global frames—a women's rights frame, a medical frame, and a religious, natural family frame. Interestingly, none of these frames figure prominently into judicial judgement in abortion cases. The literature on homosexuality too has often pushed a public health and medical frame to suggest that criminalization only pushes gay people further into the shadows and makes them less likely to get tested and to protect themselves, which could potentially lead to a public health crisis given high rates of bisexual behavior in Senegal among men who have sex with men (MSM).

As a point of contrast, judges *all* mobilized the public health argument to defend legalized prostitution, which is legal and regulated in Senegal, a singular case in a majority Muslim, West African nation. A judge offers a well-rehearsed defense of prostitution on public health grounds: "If you prohibit prostitution, do you think prostitution is going to end? We wanted to avoid clandestine prostitution. We know we cannot prohibit certain women to prostitute themselves because for certain women it is about survival. Sometime it is women divorced who have children; I never saw a woman doctor or judge who is a prostitute'. It is always women who are at the bottom of society. Clandestine prostitution ….the risk to propagate AIDS. …. And we are polygamous so that man will give it his multiple wives." Here we also here echoes of the victimization frame.

The Lifestyle Offenders

But what happens when guilty defendants have refused family life, express no regret, and do not fall into any victim narrative? What happens if, as in the case of lifestyle offenders, they openly flout the law and challenge the authority of the court? The fundamental difference between redeemable and lifestyle offenders is that the latter are tied to an external threat, a foreign pollutant invading authentic Senegalese life, while the former constitute an internal threat originating in and reconcilable with the nation. A female magistrate expresses this sentiment.

> In contrast to *Western societies* where abortion is sometimes *done for the physique*, because after I have children I will have *a morphology that changes*, or [where it is done] because I didn't have time because I am stressed with work, *here* [in our country] this is really not case, because *here* we always have the grandmother who can help with the child. We love children, even if afterwards we have a morphology that changes, we are always happy to have children. It's natural. It feminizes us even more.

We see here that specters of the West haunt Senegal's juridical field as magistrates draw a symbolic boundary between Senegalese and Western women, noting that the latter will have an abortion for aesthetic (i.e., selfish) reasons. While judges were primed already to consider the plight of women and their difficult circumstances, they were suspicious and worried about abortion being used as it ostensibly is used in the West, as a lifestyle choice. To return to the words spoken earlier by a judge, "If one permits women to have legal abortions, you will see married women who just don't feel like having children with or without the consent of their husbands" having abortions. If judges believe that a woman has committed an abortion for an unjust, i.e., selfish, reason she would be seen as even more guilty, as a lifestyle offender.

The specter of the West emerges for homosexuality as well. Real homosexuals, one judge affirms, "[i]n general, they leave, they, they leave, homosexuals, those who *affirm their homosexuality*. In general, they *leave to go abroad*." Another judge elaborates on the difference between Senegal and the United States (and the West more generally):

> Maybe there are a lot of homosexuals here. But *they do not dare show themselves*. It is not like *where you are from* [the US, where] everyone assumes who they are….Here it is not the same. Because where you are from, you live *your own little lives*, *alone and by yourself*. But here we live *with the family*, *with the community*. There is *solidarity*.

This illustrates what some of the bigger issues at stake in the debate about homosexuality in Senegal—family, community and social solidarity. Discussions of solidarity often appear in discussions of its breakdown in the face of global and market forces, especially as they upend traditional social bonds and ways of living. The judge's words also point to the logic of a right to privacy at the foundation of Western-based claims to gay rights, "you live your own little lives, alone and by yourself," which she presents as a form of alienation. The implication here is that within the landscape of Senegalese cultural life and organization, privacy, as an individual right *or a practical reality*, does not exist and more importantly is not viewed as ideal. Privacy means

disconnection and detachment, isolation and alienation; it means forfeiting one's moral duty to the collective and one's solidarity.

The portrait of the paradigmatic lifestyle offender came firmly into view in 2009 during a case of acts against nature which received widespread attention in Senegal and internationally.[102] The case was unique because nine men, between the ages of 22 and 31, were prosecuted. The case was widely publicized in the local and international press. International NGOs and foreign governments voiced their discontent. More scandalously, all nine men admitted to being homosexual and in coupled, marriage-like relations (likely a first in Senegalese legal history). As the written judgement states: "That the defendants all *recognized* before the bar of the tribunal having practiced sexual relations with people of the same sex…" The judgment notes further that each defendant has "*declared being a homosexual*" and admitted to having *"practiced acts against nature with multiple partners…"* Scattered throughout there are references to "gay comrades" and "gay friends," a rare appearance in court documents, which usually refer exclusively to "acts against nature" not subjectivities. For the crime of homosexuality, the men received the maximum possible sentence of five years, the longest sentence given during the period under investigation.

But this case was also notable because it charged the men with operating an illegal organization that had the goal of "bringing together homosexuals" and worse "promoting their actions by distributing condoms for homosexual couples," as well as encouraging "solidarity and mutual aid between them," thereby "constituting an criminal association with regard to the aforementioned provisions." The men were all members of a local public health association called AIDES-Senegal, a group affiliated with and supported by AIDES, a major French AIDS advocacy non-profit founded in 1984 by Daniel Defert, the longtime partner of Michel Foucault. The peer-led association, one of several in Senegal, focuses on the health of men who have sex with men (MSM). At the time of the arrest, the group did not yet have its official status (which it received in 2012), but was widely recognized both by local and international public health organizations for its work in Senegal's MSM community. The men were not only charged with acts against nature but with running a "criminal organization" as well. They received an additional three years for this crime. The combination of unapologetic and self-affirmed gayness as well as the seemingly organized nature of their homosexuality led to a combined eight-year sentence. What is more, the men received a fine staggering in its amount of 500,000 CFA, which is roughly 1000 US dollars. (In most legal cases, individuals usually pay a nominal fee that is largely seen as covering the costs of the court fees, but does not signal an additional punishment).

This case is an extreme example of the legal system's aim of extracting shame and obedience from defendants and what happens when those efforts are frustrated. First, there was the issue of the open defiance of the court by the nine men (backed by international outcry and human rights organizations), who neither denied, apologized for or showed any remorse for their actions. Second, the men were not married, several of them stating defiantly that they were coupled and lived together in a marriage-like arrangements, what court documents referred to as "concubinage," with other men. These lifestyle offenders—young, unmarried, self-affirmed and unrepentant "gay" men—were waging war on society, not only offending the collective conscience, but openly challenging the court and flouting the state's reproductive aims.

[102] https://www.afrik-news.com/article15135.html; https://www.advocate.com/news/2009/01/10/nine-men-convicted-homosexual-acts-senegal; https://www.reuters.com/article/africa-aids-idUSL1N11115520150826

Protecting Women, Punishing Gays

To this point, I have considered the moral distinctions that emerge in judges' thinking about guilty defendants. Yet, there is a curious puzzle buried in the data on sentencing and born out in judges' accounts: women are treated far more leniently by the court in cases of abortion than men are treated in cases of homosexuality; they face far lighter sentences or no sentence at all. While in theory, both women (in cases of abortion) and men (in cases of homosexuality) can be constructed as redeemable or lifestyle offenders, in practice, this is not usually the case. The guilty do not fall equally into deserving and undeserving camps.

Tables 4 and 5 show the striking discrepancy: women received on average 3.6 months for abortion and nearly half of all guilty verdicts were *suspended*, meaning they never served any time despite being found guilty; men received on average 35 months for homosexuality and guilty verdicts are never suspended. Recall that abortion carries a sentence of six months to two years and homosexuality between one and five years. This discrepancy in suspensions is in part the product of the written law. According to the Senegalese penal code, women who have abortion can receive a suspended sentence if the judge sees fit, while this is not an option in the case of acts against nature, which already shows how the written law itself constructs these crimes as fundamentally different. But the average sentence for abortion still lies under the minimum sentence stipulated by the law.

To understand why abortion sentences are suspended so often, and why the average sentences in cases of abortion and acts against nature are so sharply divergent, I return to judges own accounts of the distinctions they make between these two cases. As one judge articulated, "for acts against nature, it is something different [from abortion]. Nothing can explain it." Despite the law and religion condemning both practices, it is homosexuality that is looked on with the more opprobrium not just by the courts but by society.

> At the heart it is more social and cultural than religious. Homosexuality for example. Islam prohibits homosexuality. Islam prohibits abortion. But especially here in Senegal, people accept abortion more than homosexuality. Which means that the cases of abortion are frequent but you do not hear any noise about that. We pursue it, that is true, because the law condemns it. But you will not see Jamra or another denounce a woman who has an abortion or denounce a hospital that does an abortion or a doctor or a nurse who does an abortion. Because at the level of society it is not very very bad.

Those who have committed the crime of homosexuality are rarely constructed as victims. In addition to social and cultural stigma, a discourse of morality also creeps in as judges seek to explain why abortion is punished less harshly than homosexuality, another example of the real moral distinctions legal officials are engaged in making. In comparing homosexuality to abortion cases, a judge stated:

> Judge : There morality plays a bigger role. You know here it is not tolerated. That's why morality plays a much bigger role in this case here.
> JF : In what ways a bigger role ?
> Judge : It is a lot more severe.
> JF : Why ?

> Judge : Well it is like I said, it's the people who do not accept it, "acts against nature."

A Catholic magistrate in his late 30s returns to the theme of reproduction while he is discussing global human rights interventions into local court cases involving homosexuality. He gets at the heart of the difference between these two types of cases.

> I : Because when one looks at it in relation to the gravity, I esteem that homosexuality is worse than abortion. Because there, it is the negation of everything, everything that we learned. And equally, *the negation of the human race*. Because a society that does not reproduce itself cannot renew itself.
> JF : And in the case of abortion, you effectively have the same situation.
> I : No, but there, there is only one person….And I dare even to say to people who are crying human rights, human rights, the rights for the homosexual, of men to love other men, they do not even realize that at the same time they violate the fundamental right of humanity. Because what are we going to do to conceive if there are couples always with two individuals of the same sex. There will be no more conception. And at the limit what will we have is *the extinction of the race*.

That this magistrate reserves such arguments only for homosexuality and not for abortion, which could easily fall within a similar logic, is noteworthy and suggests just what homosexuality and its regulation is meant to signify, the message it is meant to send. Although abortion is a clear violation of the law, judges are able to find mitigating circumstances in the case of women, which make them redeemable. Thus, judges *mark* women but then let them go, showing that they are still part of the body politic, the collective. In the case of homosexuality, on the other hand, individuals are perceived more often as lifestyle offenders, *persona non grata*, traitors to the nation. But these findings suggest that it is not simply same-sex acts, but a *politics of reproduction that guides the judicial frameworks and decision-making*. This is why men engaging in non-reproductive sex is punished more harshly than heterosexual women who have abortions. This is why men who are in their prime marriage and reproductive years are punished more harshly than those who are much older and much younger.

DISCUSSION

What ought we to make of this social and judicial bifurcation? The first implication of these findings is consistent with feminist discussions about the growing need to treat gender and sexuality as different units of analysis. In "Thinking Sex," Gayle Rubin (1984) departed markedly from her earlier arguments in "The Traffic in Women." In that earlier work, Rubin had drawn a stark connection between gender oppression and sexual repression, noting that the two are fundamentally linked through the traffic in women. But in 1984 Rubin contended sexuality has become much more hotly contested than gender, subject to the most irrational discourse and the harshest sanction. Now separating gender and sexuality into distinct analytic frameworks, she noted that sexual repression is not simply a derivation of gender oppression. As Ward and Schneider (2009) put it, Rubin's "later work famously argues that the force of sexual normalcy cuts across multiple systems of privilege and oppression…and frequently sits at the heart of

national and global struggles" (p. 433). In this regard, women who have an abortion still uphold a more foundational norm of reproductive politics: heterosexuality. Those engaging in homosexuality challenge that norm.

But Rubin (1984) also turns our attention to the uniquely *irrational hysteria* surrounding sexuality, in general and homosexuality in particular. This is illustrated in judges' own fears and gay panic. In response to my question whether there were ever any disagreements among judges in cases of abortion and homosexuality, a judge stated the following:

> J F : Are there ever any discussion or disagreements among the judges in the case of abortion ?
> I : In the case of abortion, yes, sometimes a judge will say yes, but she was very young, or the fetus was not that far along, and so …
> J F : And in the case of homosexuality?
> I : No, there is never any discussion like that. There might be a discussion if one of the judges is not sure that the defendant actually committed the crime, the act. But not in the sense of ok we should forgive him, or the things have has developed in the direction of accepting this…or that it is necessary that we change our minds. Never in that direction.
> J F : Any why do you think that is?
> I : *Because one will think that the others [other judges or the public] will think that he or she is gay*. *Because you are scared people are going to think you are a part of the group that does this kind of thing.* That is why people do not discuss a lot and do not take a position in relation to this …. I am not sure you understand me. *When you defend these people, someone will say "this mister, is he himself not also someone who does this type of thing"?*

The personal implication of a judge's own sexuality in his or her decision suggests the extreme anxiety around homosexuality, and the way in which being too lenient runs the risk of calling the judge's own heterosexuality into question. This is a twist on the "gay panic" defense. Here it is not the defendant but the supposed arbiter of justice who panics and punishes perhaps more harshly as a form of "impression management" (Goffman 1959).

The second implication concerns the aforementioned crisis of youth comingled with a crisis of masculinity. In Senegal, masculine identity is under siege as men are increasingly unable to provide for their families and fulfill the idealized role of breadwinner (Perry 2005; Matlon 2016). The broader context of structural adjustments, globalization, and neoliberalism that has befallen Senegal, upending its traditional gender system and increasing economic precarity, also plays a role. As Melly (2017) notes, "various routes to masculine adulthood and urban permanence—particularly bureaucratic work, university education, and transnational migration—had been eroded by economic austerity measures, internal political shifts, and narrowed international regulations" (p. 47). Affirmed homosexuals, lifestyle offenders, become the visible symbols of this undoing of social life, the failure of masculinity. And they are also a reminder of the forces of globalism from the West that are seen as the main culprit of general social upheaval. This is especially the case in major urban centers in the Global South. Scholars have traditionally only considered the crisis of masculinity's impact on relations between men and women, in particular in the context of heterosexual marriage (e.g., Meeker and Meeker 1997; Perry 2005). But the consequences of a crisis of masculinity is also present in the punishment of the love and desire

between men, as broader social anxieties are displaced onto homosexuality.

Another factor behind these patterns implicates Senegal's relationship with the global environment. In Senegal, the Western presence is ubiquitous. In recent years, the Western press, Western governments, and Western-based non-governmental organizations have voiced loudly their opposition to Senegal's criminalization of homosexuality. For example, President Obama and Prime Minister Trudeau mentioned the decriminalization of homosexuality and gay rights during their respective visits with President Sall of Senegal. But nowhere do you see the same level of outcry or direct intervention into the juridical field in cases of abortion. In fact, there is a great ambivalence and even conservativism around issues of abortion in Western development organizations. International organizations do not intervene on behalf of abortion rights in Senegal, and in fact, in the case of the US, much of the push is toward a pro-natalist and anti-abortionist policy. One extreme version of this it the "global gag rule" that prevents NGOs that take US funds from offering abortions, supporting legal reform toward abortion rights, or referring people to abortion services. NGOs cannot even use their own funds for these purposes if they receive any money from the US. As further evidence of the US ambivalence concerning abortion the State Department's yearly human rights report for Senegal makes no mention of arrests and imprisonment of women for abortion; however, these numbers are provided for cases of homosexuality. On the other hand, juridical advocacy work on behalf of abortion rights is pursued largely by local Senegalese organizations, most notably the organization of women jurists, *Association des Femmes Juristes Sénégalaises.* Thus, some of the differences in how abortion and homosexuality are treated may be linked to a heightened backlash against homosexuality caused by global interventionism.

CONCLUSION

The politics of abortion and homosexuality have again reared their heads in the liberal West, which is facing increasing far-right activity and a resurgent illiberal collective sentiment. As of this writing, in the United States, many fear the Supreme Court sits on the precipice of a rightward tilt that may threaten the robustness of abortion and gay rights if not overturn them completely.

This paper has grappled with the sociology of the state, the politics of reproduction, gender and sexuality, and courts, crime and punishment in a postcolonial context. The cases of abortion and homosexuality I argued are both about sexual regulation and both tied to a politics of biological and social reproduction. But as I showed it is homosexuality that garners the greatest sanctioning by judges. The moral distinctions judges make between deserving redeemable offenders and undeserving lifestyle offenders in practice describe a distinction between women who have abortions and men who engage in homosexuality, respectively. And undergirding this distinction is also the distinction local and foreign values.

This work contributes to the sociology of law by highlighting the complicated ways in which laws on the books get translated and enacted in the courtroom, often in the case of abortion in ways that run counter to the written law. It contributes to the sociology of the state by expanding the scope beyond the regulation of women and their bodies to understand the politics of reproduction. Instead I point to how the regulation of male bodies, in particular, the regulation of male-male sexual relations are equally central to the state's politics of reproduction. To the literature on gender and sexuality, I show that the regulation of male bodies is an equally important site of the politics of reproduction and also that, following Rubin (1984), the state appears more

anxious and punitive in its relation to non-normative sexuality than to women's reproductive behavior, suggesting that oppression of women and the oppression of homosexuals may require two different analytic lenses. Finally, I aimed to contribute to work on African penal systems through the unique lens of gender and sexuality. My focus on in-depth interviews with magistrates provides a rare peak into the everyday workings and inner worlds of low-level court officials in a postcolonial, West African city in a Francophone nation.

Table 1.

	Redeemable Offenders	**Lifestyle Offenders**
Relation to the Reproductive Order	No Challenge	Challenge
Pollution Threat	Internal	External (Foreign/Western)
Punishment	More Lenient	More Severe
Case Type (Ideal)	Abortion and Homosexuality	Abortion and Homosexuality
Case Type (Real)	More Abortion	More Homosexuality

Table 2. Socio-Demographic Characteristics (Abortion Cases)

Variable means and standard deviations		
	Mean	*SD*
Age	24	5.4
Age (%)		
18-24	58.1	-
25-34	38.7	-
35+	3.2	-
ISCO-08 Occupational Classifications (%)		
Managers	0	-
Professionals	3.3	-
Technicians and Associate Professionals	0	-
Clerical Support Workers	0	-
Services and Sales Workers	7	-
Skilled Agricultural, Forestry and Fishery Workers	0	-
Craft and Related Trades Workers	3.5	-
Plant and Machine Operators and Assemblers	0	-
Elementary Occupations	60	-
Armed Forces	0	-
Other		
Student - College	16.7	-
Student - High School	10	-

Table 3. Socio-Demographic Characteristics (Homosexuality Cases)

Variable means and standard deviations		
	Mean	*SD*
Male (%)	92.3	-
Age	28.7	8.3
Age (%)		
18-24	32.7	-
25-34	50	-
35+	17.3	-
ISCO-08 Occupational Classifications (%)		
Managers	0	-
Professionals	4.2	-
Technicians and Associate Professionals	2	-
Clerical Support Workers	4.2	-
Services and Sales Workers	6.3	-
Skilled Agricultural, Forestry and Fishery Workers	0	-
Craft and Related Trades Workers	31.2	-
Plant and Machine Operators and Assemblers	4.2	-
Elementary Occupations	35.4	-
Armed Forces	0	-
Other		
Student - College	8.3	-
Student - High School	4.2	-

Table 4. Sentencing (Acts Against Nature)

Variable means and standard deviations		
	Mean	*SD*
Average Sentence (in months)	35.1	38.2
Average Sentence (in months) by Age		
18-24	30.9	40
25-34	47	41
35+	16.3	17.6
Average Sentence for Older Party (in months)*	15.8	16.5
Average Sentence for Younger Party (in months)*	10.3	12.8
% of Cases Dismissed**	30.1	-
% of Cases Suspended	0	-
*Note: Average sentence for older and younger parties in cases where the age discrepancy was larger than ten years.		
**Note: Dismissed cases refer to those where the defendant was found not guilty.		

Table 5. Sentencing (Abortion)

Table 6. Sentencing (Abortion)		
Variable means and standard deviations		
	Mean	*SD*
Average Sentence (in months)	3.6	3
% of Cases Dismissed*	6.4	-
% of Cases Suspended	48.3	-
**Note: Dismissed cases refer to those where the defendant was found not guilty.		

Acts of Resistance

The Great Refusal's aim was to convince you that in sharp contrast to the idea of a sweeping global liberalization of sexual regulation hoped for by gay activists and promised by world culture theory, our world is deeply divided in its legislative treatment of same-sex love and desire, and the divisions have grown more, not less striking over time. Chapter 1 set the global stage, illuminating global patterns of fracture and polarization, distinguishing between two axes of opposition: first, an axis of *criminalization* that runs between a great embrace and a great refusal, of gay rights; second, an axis of the *type of criminalization* that runs between criminalizing the practice and criminalizing the talk of homosexuality. I further showed that those divisions were not random but structured, structured by the social position of nations, that is to say, by their raw economic power and geopolitical capital, by their national trajectories and geopolitical aspirations, and by their racial and colonial legacies.

And yet, the story did not end there. For the liberal pro-gay nations, located mainly in the Global North, do not sit idly by as illiberal anti-gay ones, arrest, jail, or even kill their sexual minorities. Instead pro-gay nations harness their superior social positions and their vast resources to impose their will on the world. And the question this raised is this: what happens when the liberal agents of "world culture" arrive to intervene in a nation's local legal scene, especially, a nation in the postcolonial Global South? As I argued in Chapter 2 the presence and interventions of pro-gay nations and institutions turn global divisions into local ones, they undermine local democratic structures and the collective conscience, and they, paradoxically, fan the flames of resentment against the West, against gay rights, and against gay people. We see this clearly inside Senegal's judiciary, where a world society-facing Ministry of Justice pursues a politics of quiet accommodation while the public-facing court is driven by a politics of resentment against the West. And in Chapter 3, I show how court magistrates make moral distinctions between redeemable women and irredeemable men in cases of abortion and homosexuality, which have profound impacts on who gets punished and how.

Struggle between the West and postcolonial nations like Senegal around the question of homosexuality reveals not a smooth Bourdieusian story of "symbolic violence." Bourdieu describes symbolic violence as the imposition onto dominated groups' categories of perception not of their own making, but to which the dominated consent. Bourdieu (1997) writes that through the mediation of categories of perception:

> "Symbolic violence is the coercion which is set up only through the consent that the dominated cannot fail to give the dominator (and therefore to the domination)…" (p. 170).

But we do not have the consent of the dominated. Judges and prosecutors actively *refuse* the categories of perception imposed upon them. These postcolonial subjects do not "misrecognize" the "symbolic violence" enacted by Western institutions and conventions. Rather they meet it with their own "symbolic resistance." They meet it with what Homi Bhabha calls an "insurrectionary" or "Fanonian violence." Fanon's striking words, written for *El Moudjahid* in 1958, still ring true today.

> And we here touch upon a psychological problem which is perhaps not fundamental but which enters into the framework of the dialectics that is now developing. The

> West, whose economic system is the standard (and by virtue of that fact oppressive), also prides itself on its humanist superiority. *The Western "model" is being attacked in its essence and in its finality. The Orientals, the Arabs, and the Negroes, today, want to present their plans, want to affirm their values, want to define their relations with the world.* The negation of the political *beni-oui-ouism* [yes-mannism] is linked to the refusal of economic *beni-oui-ouism* and of cultural *beni-oui-ouism*. It is no longer true that the promotion of values passes through the screen of the West. It is not true that we must constantly trail behind, follow, depend on someone or other. (Fanon 1964, p. 125)

Fanonian violence is a great refusal, a rupture, a break with the categories of perception of the West, a resistance to those who have wielded their economic power and political might to impose upon, to shape and reshape, epoch after epoch, the ideas and practices and destinies of people in far-flung places. The notion of Fanonian violence also draws out another central element of this story: affect.

> Fanonian violence…is part of a struggle for psycho-affective survival and a search for human agency in the midst of the agony of oppression. It does not offer a clear choice between life and death or slavery and freedom, because it confronts the colonial condition of life-in-death. Fanon's phenomenology of violence conceives of the colonized—body, soul, culture, community, history—in a process of "continued agony [rather] than a total disappearance."" (Bhabha 2004)

Feelings are the understated leitmotif of this sociological analysis. The "deep story," as Hochschild describes, focuses on precisely this affective dimension (Hochschild 2016, p. 135). Feelings fuel and animate the struggle for and the resistance to gay rights. As Durkheim long ago taught us, laws are bound up with collective emotions: they are markers of one's humanity and generate strong feelings of righteousness and resentment. Laws are collective feelings made manifest. Laws on homosexuality are wrapped up with and elicit *emotion*. In our divided world order, disregard for one nation's laws unleashes resentment and a struggle for recognition. We must move beyond a strictly materialist explanation of the current illiberal moment, one too often framed as rooted in anxiety about deindustrialization and globalization. Instead attention to the symbolic and affective realms matters, a "politics of resentment" matters as leaders and their constituents are mobilized by a feeling that their dignity has been disrespected and disregarded.

In *Age of Anger,* Mishra (2017) looks at the rising illiberalism in the Muslim world through the framework of resentment of a people who are frustrated, who have been colonized by the West and who have had the West held up as a model to aspire to, but who have been continuously denigrated by Western governments, in their home countries and as immigrants in the West. Applying Dostoyevsky's words to modern-day Muslims, Mishra describes "a society that assimilated European ways through every pore only to realize it could never be truly European" (ibid., p. 141). "Such a tortured figure often ended up searching for a native identity to uphold against the maddeningly seductive but befuddling West; *and enumerating Western vices seemed to confirm the existence of local virtues*" (ibid., p. 141). In a provocative argument, Mishra suggests that it is the feeling of being locked out of the West that drives both anti-Western sentiment and the return to tradition.

But feelings of resentment are not confined to the postcolonial world. Resentment propels illiberal trends inside the West, including Britain's vote to exit the European Union, the election of authoritarian leaders in Hungary and Turkey, Italy and Brazil, or the accession of the first far-right party to the German parliament, as well as gains of similar parties in Sweden, the Netherlands, and France, to say nothing of the rise of Donald Trump in the United States. The Tea Party voters in Arlie Hochschild's account resent feeling like "strangers in their own land." They vote for conservatives who give expression to their sense of being aggrieved and being left behind by democratic elites who they feel only care about protecting minorities. This is the "unexpressed and often inexpressible malaises" of which Bourdieu (1999, p. 627) spoke. Brown (2018) tells a somewhat different story. Revising Nietzsche's story of resentment, whereby the weak and humiliated valorize a "slave morality," white (male) rage and resentment are not about the injuries inflicted upon them by neoliberal policy, but rather about a feeling of "displacement" and "dethronement," which is "not mainly experienced as economic decline but as lost entitlement to politically, socially, and economically reproduced supremacism" (ibid., 69). "…[R]ight wing rage against "political correctness" and "social justice" is fueled by the dethronement of whites, especially white men, across class" (ibid., 69).

Illiberal Contradictions

And yet, traditional distinctions between the far right and the progressive left are no longer so neat in the West. Today, there are internal contradictions emerging within far right parties creating illiberal contradictions. Historically, support for gay rights and immigration stood easily under the banner of sacred liberal values, inspired by a tradition of legal multiculturalism and constitutionalism (Joppke 2017). But evidence gathers that the old traditional Christian far right is giving way to what Brubaker (2017) calls a new "modern secularist" far right for whom gay and lesbian rights (like women's rights) act as markers of the West's exceptionalism, progress and civilization. All things Islam presumably is not. Acceptance of homosexuality is fast becoming a litmus test used to argue against immigration, especially, from predominantly Muslim countries. Openness toward homosexuality and openness toward Muslim immigration are coming increasingly into conflict. For example, Germany's *Alternative für Deutschland*, a deeply anti-immigrant party, is headed by Alice Weidel, a supporter of gay civil unions and a lesbian in a domestic partnership raising two children. In the most recent election, Marine Le Pen of the *Rassemblement National* won increasing favor from France's lesbian, gay, bisexual and transgender (LGBT) communities, who openly supported her, as she vowed to protect them from Islamic extremists. Finally, there was Donald Trump's embrace of the LGBT community in the wake of what was called a terrorist attack at the Pulse nightclub in Orlando, Florida, by a Muslim American. The strategic weaponization of "gay rights" against Muslims was inaugurated, however, in 2001 in the Netherlands by famed Dutch politician, Pim Fortuyn, who was both gay and virulently anti-Muslim. He became the face of the 21st century far right as he pushed for the end of immigration. His party went on to win 17.3 percent in general election in 2002 after he was assassinated. Other far-right people like Geert Wilders of the Partij voor de Vrijheid (PVV) pushed the gay platform after Fortuyn's death. Hekma and Duyvendak (2011) suggest that while the far-right did not at first embrace the gay issue fully, over time the effect of the far right's pro-gay stance impacted the entire political spectrum, pushing both the right and the left toward a pro-gay stance. Moffitt (2017) discusses "liberal illiberalism" of the radical right wing in Northern Europe, whereby they rearticulate gays and lesbians as part of the citizenry that must be defended,

"presenting themselves as defenders of liberty, free speech and 'Enlightenment values'" (p. 112). The phenomenon is largely confined to the far right in Western not Eastern and Central Europe, which still follow the traditional path (see example, Stakic 2015). Conversely, the left is divided over whether to prioritize a sometimes conservative multiculturalism over the rights of sexual minorities and women.

This opens up other areas of inquiry about *where sexuality fits into today's new nationalism*. Are gays and lesbians more open to far-right parties? How are far right parties dealing with potentially more gay and lesbian constituents? How is the traditionally liberal gay community reacting to far right gay members? Have far right parties changed concretely when it comes to LGBT issues, have they increasingly weaponized homosexuality to create a wedge between two oft-associated liberal values—that of tolerance toward gays and tolerance toward immigrants, most notably here, those from Muslim nations that do not share these countries views on homosexuality? How do gay people themselves feel relative to immigrants, especially, immigrants who are more conservative on the topic of homosexuality? And where do gay immigrants especially from more conservative countries fit in and how do they feel their belonging? In line with my dissertation, these questions place sexuality at the heart of law, politics, and international affairs, and connects it to the bigger issues of our day – postcolonial resentment and the global backlash against political liberalism. But this work also contributes to deeper debates about how sexual politics thrives as a key site of social struggle and symbolic boundary-making between individuals, political entities, and nations.

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