Is Aid Conditionality the Answer to Antigay Legislation? An Analysis of British and American Foreign Aid Policies Designed to Protect Sexual Minorities

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IS AID CONDITIONALITY THE ANSWER TO ANTIGAY LEGISLATION?

AN ANALYSIS OF BRITISH AND AMERICAN FOREIGN AID POLICIES DESIGNED TO PROTECT SEXUAL MINORITIES

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INTRODUCTION

On December 6, 2011, Secretary of State Hillary Clinton marked International Human Rights Day by giving an historic speech extolling the international community to stand up and protect the rights of lesbian, gay, bisexual, and transgender (LGBT) persons. Before representatives of four-dozen nations, Secretary Clinton declared emphatically, “Gay rights are human rights, and human rights are gay rights.”1 Such a clear and unequivocal statement, which not only described the United States’ vision for safeguarding the rights of LGBT people but also pushed the international community to take action to protect sexual minorities, was without precedent in the United States. Never before had the country, with its own mixed record on gay rights,2 stepped forward to provide leadership in the fight to achieve equality for LGBT persons around the world.

Clinton’s speech followed a similar proclamation by British Prime Minister David Cameron, announcing at a Commonwealth Heads of Government meeting in Australia a month prior that LGBT rights, for the first time, would be a factor in the disbursement of British foreign aid. Soon thereafter, the United States also began drafting a policy that would overlay onto Clinton’s pronouncement, in which it too declared that the way in which countries treated their LGBT citizens could impact foreign aid money and other forms of assistance. For those familiar with the plight of LGBT people internationally, Cameron and Clinton’s remarks were a welcome first step that could, if properly implemented, encourage broader national and international action to fight LGBT discrimination and violence. Though many countries and international bodies had begun to take steps to ensure minimal standards of protection for LGBT people within their own boundaries, few nations had attempted to directly influence the ways in which other countries treated their sexual minorities.

In this Article, I will explore and critique these two policies, which, though important steps forward in the international fight against homophobia and discrimination against sexual minorities, are at present inadequate to broadly affect policy changes in the myriad nations currently harming their LGBT citizens, or those nations attempting to further abrogate the rights of sexual minorities. First, I provide an overview of international LGBT rights, in the context of treaty law, bilateral agreements, and case law in domestic and international tribunals. I pay particular attention to two seminal cases – Dudgeon v. United Kingdom in Great Britain and Minister of Home Affairs v. Fourie in South Africa, which provide a framework for understanding how national courts use international law when deciding questions of LGBT rights. Next, I describe the recent push to codify antigay laws in countries around the globe, and the troubling pattern of legislators in those nations receiving direct strategic assistance from American religious organizations. This push has resulted in the passage of several laws that severely criminalize homosexual activity, including legislation in several nations that would make homosexual acts punishable by death. Third, I discuss the policies outlined by the United States and United Kingdom that would respond to these national pushes against LGBT rights, and the resulting domestic and international reactions that such policy pronouncements provoked. Finally, I critique these policies, describing better mechanisms by which both nations, individually and in concert, could more effectively protect the rights of LGBT persons and provide support and assistance for organizations already fighting this battle on the ground.

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II. INTERNATIONAL LGBT RIGHTS – A LEGAL OVERVIEW

The international community has only quite recently began to articulate a framework under which LGBT rights fit within the broader question of international human rights; even compared to other group-specific rights, such as the rights of children, women, or religious minorities, the fight for international LGBT rights is particularly nascent. As LGBT persons lack explicit protection, by nature of their sexual orientation or gender identity, in many of the international community’s documents governing fundamental human rights protections, much of the global community’s understanding of “international” LGBT rights have involved implying rights from broader protections against general discrimination, guarantees of “equality,” or protection against infringement of basic privacy rights. Though international organizations—United Nations, European Union, and Organization of American States among them—have begun to speak loudly against the persecution felt by many LGBT people around the world, other nations, particularly Arab Muslim African states, have retrenched their own antigay views, preventing many of the large, most diverse international bodies from addressing even the most minor questions of LGBT rights protection. Until 2011, when the first, and to date only, UN resolution calling for an end to discrimination against LGBT persons narrowly passed the United Nations Human Rights Committee, it had been left to domestic and international courts, along with regional treaties, to define the true contours of international LGBT rights.

The “founding documents” of international human rights—including the Universal Declaration of Human Rights, the International Covenant on Civil and

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11 Even the Secretary General of the United Nations, South Korean Ban Ki-Moon, has spoken forcefully against discrimination and violence against LGBT persons. See Ban Ki-Moon Urges Respect for Gay Rights, BBC NEWS (Jan. 29, 2012), http://www.bbc.co.uk/news/world-africa-16780079 (“Confronting these discriminations is a challenge, but we must not give up on the ideas of the universal declaration [of human rights.”].
13 These moves have been reinforced by the codification of antigay laws in both Russia and China. See Michael Schwirtz, Anti-Gay Law Stirs Fear in Russia, N.Y. TIMES (Feb. 29, 2012), at A14.
Political Rights, and the European Convention of Human Rights—are virtually silent on the explicit question of sexual orientation and gender identity expression. These documents, all drafted and ratified before 1970, came at a time when few countries had even decriminalized same-sex activity, let alone provided legal recognition for those who identified as LGBT. The more general rights provided by these documents, however, such as rights to be free from capricious discrimination, have been used as baseline rights that have laid the groundwork for the modern rights of LGBT persons. A notable exception to this lack of explicit rights conferral is, perhaps unsurprisingly, found in the 2000 European Union Charter of Fundamental Rights, which explicitly prohibited discrimination based on a person’s sexual orientation. This has had a modeling effect to some extent, as nations seeking to join the European Union must align themselves with this fundamental rights pronouncement. The 2004 additions to the European Union all enshrined anti-discrimination measures, either through law or the national constitution, and some of those nations seeking membership in the future, even in nations where homosexuality remains somewhat taboo, have begun the process of codifying anti-discrimination even without the guarantee that such laws will mean definitive membership in the European Union.

Most scholars of international human rights thus point to court cases, rather than treaties, as providing the first true articulations of LGBT rights that are grounded in the context of international human rights law. The first major such case, Dudgeon v. United Kingdom in 1981, involved a challenged to the criminalization of male-on-male homosexual activity in Northern Ireland. The European Convention on Human Rights at the time lacked even a general guarantee of “equality under the law,” but the Court found that such criminalization violated Dudgeon’s right to “respect for his private life,”

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18 See infra note XX and accompanying text.
19 This is similar to the United States, where the Fourteenth Amendment’s guarantee of “equal protection under the laws” did not contemplate protections for women or gay persons, but has been used to extend rights to those groups as the jurisprudence around the Amendment has developed. U.S. Const. amend. XIV; see also United States v. Virginia, 518 U.S. 515 (1996) (in which the United States Supreme Court used the Equal Protection Clause to strike down a ban on female cadets at the Virginia Military Institute); Lawrence v. Texas, 539. U.S. 558 (2003) (holding that the Equal Protection Clause prohibited Texas from criminalizing consensual sexual activity between two adults).
21 A primary example is the Czech Republic, which enshrined LGBT anti-discrimination laws in 2001 as it prepared to accede to the European Union. This law could be seen as having a logrolling effect, as in 2006 the nation passed further LGBT rights initiatives, including a registered cohabitation law. See Czech MPs Approve Gay Rights Law, INT’L LESBIAN & GAY ASS’N EUROPE (Mar. 16, 2006), http://www.ilga-europe.org/home/guide/country_by_country/czech_republic/czech_mps_approve_gay_rights_law.
an enumerated right of the Convention.\textsuperscript{24} \textit{Dudgeon}, while precedent-setting, did not put the European Court of Human Rights at the forefront of legal recognition for gay and lesbian persons;\textsuperscript{25} Northern Ireland’s law was out-of-step with the rest of Western Europe, which saw widespread decriminalization of same-sex activity in the mid-to-late 1970s, and the court used \textit{Dudgeon} to pull in outlier states, “bootstrapping-up” rights to a minimal level of protection rather than articulating new rights that were heretofore nonexistent in many of the other states throughout the region.

Such bootstrapping-up would remain a hallmark of the European Court of Human Rights, as well as in many other courts confronting the question of LGBT rights.\textsuperscript{26} The European Convention on Human Rights, when updated in 1999, added a general ban on discrimination.\textsuperscript{27} Though no explicit protection for sexual orientation or gender identity was added, sexual orientation was referred to as a presumed-protected category in an official explanatory report of the document.\textsuperscript{28} Thereafter, courts interpreting the Convention have been more likely to find implied protection for sexual minorities within other rights guaranteed by the document, but have continued to generally find such protections when a majority of nations covered by the document have already extended such rights domestically: two specific examples include the 2003 \textit{van Kuck} case,\textsuperscript{29} in which the Court protected a German transsexual woman’s right to health insurance coverage for gender-reassignment surgery, and the 2007 \textit{Baczkowski v. Poland} case, in which the court found that the Polish government could not ban a gay pride parade in Warsaw on account of freedoms of assembly and association, as well as an anti-discrimination rationale.\textsuperscript{30}

The transnational European courts, while expanding the rights of LGBT persons, have not made those rights wholly coextensive with those of heterosexual persons and couples. The court has not-yet expanded the rights of adoption, civil partnerships or same-sex marriage to GLBT persons,\textsuperscript{31} and has also not expressed a fundamental right for same-sex partners, even those married in their home jurisdiction, to immigrate together into a European nation as a heterosexual couple would.\textsuperscript{32} The

\begin{itemize}
\item \textsuperscript{24} European Convention on Human Rights, art. VIII.
\item \textsuperscript{25} I use LGB purposefully, as transgender persons lacked many legal protections in even the most liberal nations when \textit{Dudgeon} was decided in 1981. \textit{Cf. P v. S and Cornwall Cnty. Council} [1996] (in which the European Court of Justice found that employment discrimination laws protected transgender workers).
\item \textsuperscript{26} This is not true in all nations, however. \textit{See infra} notes XX – XX and accompanying text (discussing South Africa’s “trajectory of history” approach to LGBT rights jurisprudence).
\item \textsuperscript{27} European Convention on Human Rights, art. XIV, updated 1999.
\item \textsuperscript{28} See Sanders, supra note 23, at 3.
\item \textsuperscript{29} European Court of Human Rights (2003) \textit{van Kuck v. Germany}, no. 35968/97.
\item \textsuperscript{30} European Court of Human Rights (2007) \textit{Baczkowski v. Poland}, no. 1543/06.
\item \textsuperscript{31} European nations have increasingly done so via legislation, however. including Belgium, see Gareth Harding, \textit{Belgium Legalizes Gay Marriage}, UNITED PRESS INT’L (Jan. 31, 2003), http://www.upi.com/Business_News/Security-Industry/2003/01/31/Belgium-legalizes-gay-marriage/UPI-46741044012415/ (with 91 of the 122 members of Belgium’s parliament voting in favor).
\item \textsuperscript{32} Case C-267/06 \textit{Tadao Maruko}, judgment of Apr. 1, 2008. \textit{See also} Helmut Graupner, \textit{The Case Tadao Maruko}, ILGA-EUR. ANN. CONF. (Oct. 31, 2008),
\end{itemize}
general disposition to pull in outliers has allowed European courts to establish a baseline of rights for many sexual minorities, though this has not translated necessarily to broader acceptance in countries, particularly post-Soviet Eastern European nations and the post-Yugoslavia Baltic states. The European bootstrap-up temperament has recently found itself used by other transnational courts, however. In 2012, the Inter-American Court of Human Rights issued the court’s first-ever ruling banning sexual orientation discrimination, Atala v. Chile, when it ruled that Chile was required to pay damages to a judge denied custody of her daughters due to her sexual orientation. The Organization of American States (OAS) includes several nations that have already legally eliminated sexual orientation discrimination, but also includes the United States, Mexico, and many smaller nations which have not yet done so on a national level. Time will tell whether the Atala ruling will find its way into domestic court rulings in the OAS nations that have not yet recognized such anti-discrimination measures.

The bootstrap-up approach, while dominant in the international LGBT rights context, has been eschewed by several national court systems. In certain court decisions, the inquiry has not been “Have a majority of other nations also recognized this right?” but rather “Has there been a general trajectory in the international community in favor of conferring this right?” This rights-oriented approach has allowed nations to cite to international law as favoring certain decisions, such as equal marriage rights for same-sex couples, even though far fewer than a majority of nations have codified such a right. A prime example is the South African case which declared that same-sex couples have a constitutional right to marry, Minister of Home Affairs v. Fourie.

South Africa in general presents an interesting case study for the question of same-sex rights, as their post-apartheid constitution is one of the few in the world that protects the rights of persons based on their sexual orientation. Suit was brought in the Constitutional Court, pursuant to the guarantees of equality under the law and barring discrimination based on sexual orientation explicitly described in the South African Constitution, seeking a declaration that the nation’s marriage law, limiting the


33 Post-Soviet eastern European nations have led the charge in codifying antigay discrimination in Europe during the past decade. See Petras Valda, Lithuania Mulls Anti-Gay Law, Baltic Course (Nov. 15, 2010), http://www.baltic-course.com/eng/baltic_news?doc=6193.


35 Canada, Brazil, Argentina, and Colombia are notable examples.

36 The proposed American law, The Employment Non-Discrimination Act (ENDA), has languished in committee for six years, though it has gradually increased its cosponsorship, with 203 members of the U.S. Congress sponsoring the bill in 2010. See H.R. 3107 (111th Cong.), Employment Non-Discrimination Act of 2009, http://www.govtrack.us/congress/bills/111/hr3017 (showing 203 cosponsors of the legislation, which was ultimately defeated in a House Committee).


38 SOUTH AFRICAN CONST., sec. 9(1).
union to a “husband and wife union” of one man and one woman, was unconstitutional. Unlike many situations in which a party is seeking the expansion of rights, and might point to the respect for such rights in the international community, here the parties opposing the expansion of rights repeatedly decried such an expansion of the definition of marriage as outside the mainstream of the global community – at the time, only four other nations had legalized equal marriage rights for same-sex couples, and many countries were enshrining explicit bans on gay marriage into their constitutions and statutes.

The South Africa Constitutional Court, however, dismissed the international arguments presented by the opposition, and instead articulated a unanimous decision proclaiming that international law, despite so few countries having legalized same-sex marriage, compelled a decision in favor of marriage equality. Justice Albie Sachs, writing for the Court, rejected the idea that the international community’s defining of marriage between a man and a woman was itself a normative judgment. While international law protected heterosexual marriage, Justice Sachs argued, it “does not do so in a way that necessarily excludes equal recognition being given now or in the future to the right of same-sex couples to enjoy the status, entitlements, and responsibilities accorded by marriage to heterosexual couples.” Though other nations might explicitly ban same-sex marriage, the international community has deliberately chosen not to do so when it has defined what it means to be a family, including in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In one of the most-quoted passages of his opinion, Justice Sachs grounds the Fourie decision as consistent with the evolutionary nature of international law, a process that insists upon expanding the rights of persons rather than excluding individuals from civic life. He writes:

Indeed, rights by their nature will atrophy if they are frozen. As the conditions of humanity alter and as ideas of justice and equity evolve, so do concepts of rights take on new texture and meaning. The horizon of rights is as limitless as the hopes and expectations of humanity. What was regarded by the law as just yesterday is condemned as unjust today. When the Universal Declaration was adopted, colonialism and racial discrimination were seen as natural phenomena, embodied in the laws of the so-called civilized nations, and blessed by as many religious leaders as they were denounced. Patriarchy, at least as old as most marriage systems, defended as being based on biological fact and which was supported by many a religious leader, is no longer accepted as the norm, at least in large parts of the world. Severe chastisement of women and children was tolerated by family law and international legal instruments

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39 See Roper v. Simmons, 543 U.S. 551 (2005) (in which the United States Supreme Court, in determining the legality of executing juvenile criminals, surveyed a number of foreign jurisdictions and found that the overwhelming majority had abolished juvenile capital punishment – leading the Court itself to also ban such punishment).
42 Id. at ¶ 105.
then, but is today considered intolerable. Similarly, though many of the values of family life have remained constant, both the family and the law relating to the family have been utterly transformed.\textsuperscript{43}

Sachs’ approach, which I define as focused on the “trajectory of history,” and that of other Courts that have couched their vision of LGBT rights in similar terms, has been denounced as a “one-way ratchet,” in which international law acts as a floor for rights, and by which countries can expand what they call “rights” ad infinitum.\textsuperscript{44} Justice Sachs’ opinion’s language fed directly into this perception, through his statement “[t]he horizon of rights is as limitless as the hopes and expectations of humanity.”\textsuperscript{45} Such criticism, however, is common among those scholars, judges, and commentators who are skeptical in general of the use of international law within domestic jurisprudence.\textsuperscript{46} The concern has not borne itself out in other nations that have legalized same-sex marriage through the courts, however, as those decisions have generally turned on questions of domestic law and constitutionalism, rather than a comparative study (utilizing, for example, a “country-counting” approach to determine how many nations have articulated a particular right and how many nations have explicitly or implicitly rejected such a right) to determine the dominant approach of the international community when faced with similar questions.

Both approaches, whether the bootstrap-up style of many international tribunals or the trajectory of history jurisprudence that has been used by some domestic courts, have provided the international LGBT rights movement with legal legitimacy and have advanced the rights of sexual minorities. However, both have been widely utilized in nations that are either themselves not homophobic, or nations that have chosen to join transnational and international organizations in which a majority of member countries recognize gay rights. In many other parts of the world, particularly throughout southwest Asia and much of Africa, LGBT persons are vilified domestically, and international and transnational pressures that have pulled in outlier nations in the European Union or Organization of American States are absent.

III. THE PRESENT STATE OF ANTI-LGBT LEGISLATION AROUND THE WORLD – ITS CAUSES, EFFECTS, AND MODERN RE-ENTRENCHMENT

What is popularly described as the “modern gay rights movement” is relatively young and has predominantly been focused on procuring domestic rights for LGBT persons within their own home country. Many gay rights advocates and historians of

\textsuperscript{43} Id. at ¶ 102.
\textsuperscript{44} Roger Alford, International Law in the South Africa Gay Marriage Case, OPINIO JURIS (Dec. 2, 2005 01:11 AM), http://lawofnations.blogspot.com/2005/12/international-law-in-south-africa-gay_02.html (“If international and comparative law does not support the expansion of rights, it will be discounted. If international and comparative [law] does support the expansion of rights it will be used as confirmation of what the Constitution requires.”).
\textsuperscript{45} Fourie at ¶ 102.
\textsuperscript{46} United States Supreme Court Justice Antonin Scalia, for example, is an outspoken opponent of looking to such international legal regimes when analyzing American law. See Roper v. Simmons, 543 U.S. at 574 (Scalia J., dissenting).
the modern gay rights movement point to the Stonewall Riots, three days of violence and protest following a June 28, 1969 police raid on New York’s Stonewall Inn, as the birth of the movement both in the United States and around the world. In its short history, the movement to ensure equality for LGBT persons has seen many successes; marriage equality and civil partnership laws in over twenty nations, enshrining antidiscrimination laws in over sixty countries, and in general creating a level of social acceptance for LGBT persons and their families.

The victories of the LGBT movement, however, particularly in Europe, Oceania and the Americas, frame this discussion only insofar as they provide stark contrast to the plight of LGBT persons in many nations around the world. In seventy-six countries, it is illegal to engage in same-sex conduct, with penalties including fines and prison time. In five of those nations – Iran, Mauritania, Saudi Arabia, Sudan, and Yemen – a person can be put to death for engaging in sexual conduct with a person of the same sex. In many nations, these laws result in few arrests and even fewer convictions, mostly serving as a signal for social disapproval of homosexuality in general. In others, however, they pose a real threat to LGBT people, and those perceived by others to be LGBT or that speak out in favor of LGBT rights.

Many of the current anti-LGBT laws around the world arise from one of three geneses. A number are remnants of colonial powers imputing their social norms into the legal structures of the colonized nation, and such laws thereafter remaining a part of the legal fabric after independence. Still other countries that are governed under religious law, such as Shariah, strictly interpret such codes in a way that makes any same-sex activity illegal: each of the five countries in which homosexual acts are punishable by death, for instance, have judicial codes based on conservative Islamic

47 Such a description, while accepted and likely accurate, largely obscures a historically robust push for LGBT rights, most notably to decriminalize same-sex acts, which found its first success in France in 1791, and soon thereafter in the Netherlands in 1811. See infra note XX and accompanying text.


50 Id.

51 See Anti-Gay Group in Liberia Issues Hit List, Threatens to ‘Get Them One by One’, Wash. Post (Apr. 3, 2012), http://www.washingtonpost.com/world/africa/anti-gay-group-in-liberia-issues-hit-list-threatens-to-get-to-them-one-by-one/2012/04/03/gIQA8UVwsS_story.html (describing the attempt by anti-gay activists in Liberia to publish a “hit list” of known homosexuals, as was done the year prior in Uganda, and engage in a terror campaign of LGBT persons in the country).

52 For a short treatment of this view, see Anti-gay Law is Offshoot of British Colonialism, TIMES INDIA (Mar. 22, 2012 08:29 PM), http://articles.timesofindia.indiatimes.com/2012-03-22/india/31224332_1_anti-gay-law-decriminalisation-colonialism.
The third, smaller genesis of anti-LGBT laws also has a religious component – support for the drafting and passage of such laws by conservative evangelical organizations that engage with antigay politicians and community organizations to pass bills targeting homosexual acts and LGBT persons.

Though evangelical groups have ministered in Africa and Asia for decades, their impact on the laws of such countries had for many of those years been far less pronounced than their religious missionary work. As such groups have gained stature and funding throughout the region, however, they have themselves begun to enter the policymaking process, by providing logistical support, legal advice, and money to antigay organizations and politicians. Such assistance, though present for many years, was first truly exposed in 2010, when a Ugandan Member of Parliament, David Bahati, introduced legislation that would make the nation the sixth in the world to punish homosexual acts by death. This law would have allowed homosexual acts to be punished by twenty years in prison, while “aggravated homosexuality,” which included encouraging children to enter the homosexual lifestyle, or attempting to get married to a person of the same sex, could mean execution. The bill, referred to in the media as the “Kill the Gays” bill, was ultimately tabled indefinitely, but it soon thereafter emerged that Bahati, along with some of his Ugandan supporters and fellow MPs, had been engaged in a longstanding relationship with an American-based organization known as The Fellowship, which provided support for missionary activities as well as technical support for the legislation itself in the country. Bahati himself stated that the idea from the bill “sprang from a conversation with members of The Fellowship in 2008.” Certain Fellowship members deny their involvement, but the group’s former president, Richard Carver, confirms the organization was “actively involved in Uganda,” and had close ties to the lawmakers introducing this legislation.

Though Uganda remains one of the most visible examples of such antigay laws being introduced with the assistance of foreign, predominantly American evangelicals, it is not alone – since 2009, groups like The Fellowship have successfully helped pass

56 Id.
57 Lucas Grindley, Kill the Gays Bill Back and Moving Faster than Before, The Advocate (July 29, 2011), http://www.advocate.com/News/Daily_News/2011/07/29/Kill_The_Gays_Bill_Is_Back_And_Moving_Faster_Than_Before/ (describing Bahati, a parliamentary backbencher, and his continued attempts to pass a bill that would punish homosexuality (and its promotion) with significant jail time if not execution).
59 Id. The quote further describes the need to push an antigay bill in Uganda as a comparative necessity, “[b]ecause it was too late in America to propose such legislation.” Id. at A7.
60 Id.
similar anti-LGBT bills in Burundi and Rwanda, and nearly-identical legislation has been introduced in Kenya, Tanzania, and Malawi. Despite the outcry caused by these policies, and widespread denouncement by politicians, jurists, activists, and many religious leaders, such laws have continued to be introduced.

As nations and international bodies have been faced with this increasingly hostile climate for LGBT people in many nations, they have taken varying steps to prevent such laws from taking effect and protect the people at whom they are targeted. These steps work in concert with one another, from “naming and shaming” countries engaged in such activities in the United Nations or other international bodies, to compiling and releasing in-depth research on the evolution of anti-LGBT sentiments and laws around the world, to bilaterally pressuring countries to roll back such laws. The next part of this paper will focus on the latter, in particular the new, parallel pronouncements by the United States and United Kingdom that foreign aid disbursements from both nations will, for the first time ever, take into account the way LGBT people are treated under the law.

IV. LGBT RIGHTS AS A COMPONENT OF FOREIGN AID: THE UNITED STATES’ AND UNITED KINGDOM’S RESPONSE TO STATE-SPONSORED ANTIGAY DISCRIMINATION AROUND THE WORLD.

A. British Policy

Since David Cameron became British Prime Minister in May 2010, having entered into a coalition government between his center-right Conservative Party and Nick Clegg’s left-leaning Liberal Democrats, the British government has positioned itself as an ally to the LGBT community, both in Britain and abroad. In addition to supporting all major advances in LGBT rights since 2000, including the 2010 Equality Act, Cameron’s government has begun consultation on same-sex civil marriage, and despite backlash from socially-conservative members of the coalition within parliament, the government insists that the question is not when, but rather how, a same-sex marriage act will be introduced. Cameron’s actions at home have reflected a British

61 Though the Malawi bill ultimately died, see infra Part IV.
62 See supra note 11.
63 See UN LGBT Report, supra note 49.
64 For a more general analysis on the Clegg-Cameron coalition relationship, see Cameron, Clegg Open New Coalition Era for Britain, REUTERS/EURACTIV (May 12, 2010), http://www.euractiv.com/elections/cameron-clegg-open-new-coalition-era-britain-news-494083.
population increasingly in favor of gay rights as a general matter, and extending marriage rights to same-sex couples in particular.\textsuperscript{67}

Not surprisingly, then, Cameron’s decision to wade his government into the international waters of LGBT rights received an enthusiastic welcome from many in the United Kingdom, particularly those who had called on the British government to take a more active approach to ensuring the rights of LGBT people in nations with which British does significant trade or provides significant aid.\textsuperscript{68} In October 2011, Cameron publicly announced, at the Commonwealth Heads of Government meeting in Australia, that his government would begin tying its development aid to Africa to the human rights actions of those nations toward LGBT people.\textsuperscript{69} The policy, which had been in place since the summer but not previously announced publicly, followed a series of public remarks made by Cameron that singled out the behavior of specific African nations toward their LGBT citizens; for instance, in June 2011 remarks in front of LGBT activists in London to celebrate Gay Pride, he announced that he was proud of his government’s pressure on the former Prime Minister of Malawi, Bingu wa Mutharika, who had in April 2011 condemned homosexual acts in his nation.\textsuperscript{70}

Cameron’s announcement, however, was not followed by specific policy descriptions by the British Home Office, or by pertinent government ministers, except to reiterate that the country would consider eliminating all or part of a nation’s British aid if that country enacted new policies that targeted LGBT people, or continued to turn a blind eye to the demonization of LGBT people. The Liberal Democrats, Cameron’s coalition partner in Parliament, described the policy as “another positive step taken by the British government in promoting LGBT rights at an international level . . . [T]he British tax payer is no longer willing to give financial aid to countries

\textsuperscript{67} James Park, \textit{More Support Gay Couples Marrying in the UK Than Oppose}, PinkNews (Mar. 10, 2012), http://www.pinknews.co.uk/2012/03/10/more-support-gays-marrying-in-the-uk-than-oppose-it/ (showing that only 32 percent of registered voters oppose same-sex civil marriage, but that support for marriage equality has not yet hit 50 percent of the public, a result of significant numbers of undecided voters).


\textsuperscript{69} Id.

\textsuperscript{70} Cameron, in part, was claiming responsibility for Mutharika’s pardon of a couple, one a gay man and the other a transgender woman, who had been arrested for committing “unnatural offenses” and sentenced to fourteen years in prison. See Godfrey Mapondera & David Smith, \textit{Malawian Gay Couple Jailed for Fourteen Years}, GUARDIAN (May 20, 2010), http://www.guardian.co.uk/world/2010/may/20/malawian-gay-couple-jailed-14-years; see also Malawian Gay Couple Pardoned, Released From Jail, HUFFINGTON POST (May 29, 2010), http://www.huffingtonpost.com/2010/05/29/malawi-gay-couple-pardoned_n_594451.html (quoting President Mutharika’s pardon statement as saying “[t]hese boys have committed a crime against our culture, against our religion, and against our laws . . . . However, as head of state, I hereby pardon them) (emphasis added). Much of the media cited United Nations Secretary-General Ban Ki-Moon or South African President Jacob Zuma, not Cameron, as the major forces responsible for convincing Mutharika to pardon the couple, and the Secretary-General was present at Mutharika’s press conference announcing the pardon. Id.
where LGBT rights are not recognized.”71 The Foreign Office was even starker, stating “if countries can afford to prosecute and imprison people for consensual relations, then they can clearly afford to lose aid.”72

1. Domestic and International Responses

Cameron’s announcement, though a surprise to many, was consistent with his government’s desire to serve as a leader in protecting the rights of LGBT people around the globe. Such ideological consistency did not serve to blunt the strong reactions, both domestically and abroad, that came immediately after Cameron’s Australia pronouncement. Antigay governments denounced the new policy as inconsistent with African values, while LGBT advocacy organizations expressed worry at the unintended consequences of such a policy.

The response of African nations ranged from blame-shifting and indignation to threats to unilaterally disengage from British foreign aid programs. Several governments, including Ghana, Uganda, and Nigeria, the latter a strategic petroleum partner in Britain’s comprehensive energy policy, were “so outraged by Cameron’s gay rights appeal that they have [] suggested that the UK halt all aid transfers.”73 Such responses to external LGBT rights activism is not new, however; Cameroonian Foreign Minister Henri Eyebe Ayissi personally lodged a protest against the EU’s funding of LGBT groups in his country, and called on the head of the EU delegation, Raoul Matues, to immediately cease funding to LGBT groups because they violated the laws and norms of his nation.74 The Nigerian government, further undeterred by Britain’s threat, pushed through its parliament a bill to increase the penalties for homosexual activity.75 Uganda’s David Bahati, the Member of Parliament who had sponsored the “Kill the Gays” bill, reintroduced the measure after its defeat in the prior session of parliament, but eliminating the death penalty as possible punishment for same-sex

71 Canning, supra note 68, at 3.
72 Id. at 4.
sexual activity. A Ghanian minister called for the arrest of every gay person in the country. Malawi, which in addition to Cameron’s public shaming the previous June had also seen its aid cut by Britain the year before for reasons unrelated to gay rights, nonetheless blamed local LGBT rights advocates for its prior aid cut. Though such initial reactions were somewhat dialed back by those ministers and officials in charge of directly engaging with the British Foreign Office, some of the more virulently antigay nations, those Cameron had specifically hoped to coax into acting, seemed likely to retrench themselves in antigay behavior.

Antigay governments were not the only groups opposed to Cameron’s policy. Many LGBT rights organizations, in the UK and abroad, were themselves skeptical of the new aid rule. The Kaleidoscope Trust, a UK-based international LGBT rights group that had consistently praised Cameron and coalition partner Nick Clegg for their work on gay rights issues, was guarded in its assessment, describing aid conditionality, or tying the disbursement of foreign aid to one or several policy actions, as “a complex and sensitive issue . . . [that] can be counter-productive and lead to the scapegoating of the gay community.” Other groups were more direct, stating that they categorically opposed aid conditionality.

Even those organizations who generally supported the British government’s actions were displeased that “they most of the time failed to consult with the community at the centre of the issues.” Kenyan gay rights activist David Kuria, whose home country is not welcoming to LGBT people but was not seen as a primary target of the UK’s policy, called in particular for coordination between those activists on the ground and those calling for change externally, most notably to prevent additional maltreatment of sexual minorities. He described his fears in jarring terms: “Can you imagine the glee in a corrupt regime having to scapegoat their misappropriation of resources on aid cut because they have not accepted ‘men-to-marry-other-men?’”

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79 Canning, supra note 68, at 5.
80 Id. (citing Adelbisi Alimi of the Coalition of African LGBT Persons in Europe, who stated, “[i]n 2008, a group of African LGBT met and really consider this issue. This really divided us as many people believed that this will further increase hatred and scapegoating of the LGBT community. Others believed this is a positive step as the African leaders depend on aid from the western world”).
81 Id. at 6.
A lack of consultation and coordination were not the only sources of criticism. Noted Ugandan gay rights activist Frank Mugisha had an even more elementary complaint; he feared this particular aid condition because his nation would not cease its vilification of LGBT people, and he feared for the survival of his fellow impoverished citizens, who relied on international aid in order to survive.\(^4\) Nigerian Joseph Sewedo Akora, Director of the Nigerian Initiative for Equal Rights, not only feared “this strategy of aid cut[t]ing could] exacerbated human rights violations on the ground,” but further saw Britain’s policy as neo-colonial, imperial hegemony by the European global north\(^5\) believing that many nations will use this as an impetus to wholly disengage from foreign aid.\(^6\)

Echoing the undercurrent of Cameron’s domestic and international critics, Jamaican gay rights activist Maurice Tomlinson described Britain’s policy as simplistic and ill-conceived, stating “Britain is certainly capable of and should employ more sophisticated approaches to address homophobic governments,” including giving aid to LGBT organizations on the ground, restricting the ability of antigay politicians and public figures from traveling to the UK, and public condemnation of nations engaged in such behavior.\(^7\) She further seemed to agree with Akora’s imperialism contention. “It took years for Britain’s contagion of homophobia introduced as anti-buggery laws and Victorian morality to poison entire countries against their citizens. This condition will not be remedied by a quick-fix injection (or retention) of aid.”\(^8\) Laying the blame for Africa’s homophobia (and really, that of every former British colony, including Tomlinson’s notoriously homophobic home of Jamaica) on the doorstep of the British government was not likely the reception Cameron expected from those invested in LGBT activism.\(^9\)

B. American Policy

The Obama Administration, like its counterpart in the United Kingdom, also projected itself as an ally to LGBT people during its first several years in office. President Barack Obama had campaigned on a platform to improve the lives of gay people, from ending the military’s “Don’t Ask, Don’t Tell” policy—which he successfully accomplished\(^9\)—and using the resources of the Executive Branch to fight homophobia against youth\(^9\)—which he successfully implemented—to passing an employment non-discrimination bill that would outlaw discrimination on the basis of both sexual

\(^{4}\) Canning, supra note 68, at 5.

\(^{5}\) Id. (“I am afraid that this strategy will buttress the concept of neo-colonialism in the global south”).

\(^{6}\) Id. (“Should they succeed in this endeavor, this aid cut strategy will be counter-productive.”).

\(^{7}\) Id. at 5-6.

\(^{8}\) Id. at 6.

\(^{9}\) But see


orientation and gender identity expression—both of which the administration has not yet advanced. Unlike Cameron, however, Obama had not couched this support for the LGBT community in international terms during his campaign; perhaps in recognition of a world-weary American voting public that had grown tired of American action abroad and was in general skeptical of foreign aid and assistance. During his first several years in office, this lent his LGBT political activity a distinctly domestic air; his administration, for example, expressed only passive, lukewarm support for the loosening of immigration restrictions for LGBT families.

The Obama Administration began to take a more public international role in LGBT rights in 2010, emanating from the State Department under the direction of Secretary of State Hillary Clinton. In 2010, the State Department had instructed its international embassies, particularly those in nations with widespread and virulent antigay sentiment, to engage with LGBT rights as part of their comprehensive human rights strategy. The government had also thrown its weight and support behind a South African-backed resolution in the United Nations General Assembly’s Human Rights Council, which called for the High Commissioner for Human Rights to “prepare a report on how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.” The resolution, which passed over the strenuous objections of Islamic and African nations, became the first codified statement in favor of the rights of LGBT people to pass a body of the United Nations.

Despite this general behind-the-scenes support for LGBT rights in the international community, it came to many as a surprise when Secretary Clinton dedicated the totality of her December 2011 speech marking International Human

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92 Cf. ENDA Timeline: Broken Promises, GetEqual (July 22, 2010), http://getequal.org/blog/2010/07/22/enda-timeline-broken-promises/ (describing the perceived “betrayal” of the Obama Administration in failing to pass the ENDA policy, for which he proclaimed support during the presidential campaign).
94 Accord Steward Patrick, Dispelling Myths About Foreign Aid, CNN (Jan. 25, 2012), http://globalpublicsquare.blogs.cnn.com/2012/01/25/patrick-dispelling-myths-about-foreign-aid/ (finding that Americans do support some forms of foreign aid, but that a majority supports cutting international financial support, though such anti-aid views are coupled with fundamental misconceptions as to how much money the United States government actually spends on aid—Americans think they spend far more on other countries than they actually do).
98 Id. The debate was not without controversy, however, as a number of African and Asian nations, including the entire delegation of the Organization of Islamic States, walked out. The bare minimum number of nations required to pass the resolution, 23 of the 45 present, voted in favor.
Rights Day to the cause of LGBT equality, and the fight against the marginalization, vilification, and violence targeted toward LGBT persons in nations around the world. Unlike Cameron’s remarks, which quickly described only the British government’s policies moving forward, Clinton’s speech began with laying a foundation for understanding gay rights within the broader context of international civil rights struggles—those against racism, sexism, religious persecution, and those of indigenous people, children, and disabled persons—proclaiming, simply, that “gay rights are human rights, and human rights are gay rights.”

Only after laying this framework did Clinton begin to discuss the ways in which the United States understood its position in the fight for LGBT rights around the world, and how it would go about realizing that position. In doing so, she explicitly recognized that the United States has not itself fully realized equality, and needs to also improve its own domestic policies toward LGBT people. Though Clinton recognized the work of South Africa in passing its resolution against LGBT-related violence, and further commended the Inter-American Commision on Human Rights for creating a task force to investigate abuses against LGBT people in the Organization of American States, it was clear in the tone of Clinton’s speech, and the subsequent programs developed by the Obama Administration, that the United States would take a leadership role in pushing pro-LGBT international policies.

Unlike Cameron’s pronouncement, which only described cutting aid as punishment to nations that harm LGBT people, and even then only when dealing with African nations, the Obama policy is more expansive, and utilizes a carrot-and-stick approach. As a threshold matter, for the first time aid decisions will take into account the country’s climate toward LGBT people. LGBT rights were for the first time, at least in principle, wholly integrated within America’s comprehensive human rights policy. Further, the State Department outlined a number of discreet programs that were designed to engage with civil society on the ground, policymakers in antigay nations, and improve recourse for individuals facing violence and threats of harm in their home countries. All such international policies would be coordinated by a task force within the State Department, overseen by the diplomatic corps. Such programs include providing every American embassy with a toolkit with LGBT-specific information, including contact information for in-country LGBT rights organizations. This information would be supplemented by a program, announced but not yet fully developed, to provide emergency support to persons and organizations who are targeted.

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99 See Clinton Speech, supra note 1.

100 Id.

101 This statement was notable, as Clinton and Obama themselves have both failed to support the entirety of the LGBT community’s policy prescriptions, as both publicly oppose civil marriage equality, a stark difference between them and their counterparts in the Cameron government.


104 Baer, supra note 96, at 4-5.
or harmed based upon their support for LGBT rights, for instance leaders of pro-equality groups in antigay nations.\textsuperscript{105} This emergency support would include new asylum and refugee policies that were specifically written to take into account antigay discrimination and threats as a condition by which a person could seek asylum or refugee status in the United States. Additionally, American officials would engage in direct lobbying of foreign policymakers who were considering antigay bills, such as David Bahati’s anti-homosexuality bill in Uganda. Such lobbying efforts, however, seemed almost exclusively designed to prevent antigay laws from going into effect, rather than encouraging policymakers to enact pro-equality measures.\textsuperscript{106}

Finally, and perhaps most critically, Secretary Clinton announced the creation of a Global Equality Fund, designed to provide logistical and financial support to civil society organizations fighting for LGBT rights in inhospitable nations.\textsuperscript{107} This fund would be seeded with $3 million USD, provided by the United States government, but with the explicit goal of attracting other nations and nonprofit funding organizations in the United States and internationally to also provide funding and support.\textsuperscript{108}

1. Domestic and International Responses

Clinton’s speech, like Cameron’s announcement a month prior, was widely praised in the United States, by LGBT rights activists and international aid organizations alike.\textsuperscript{109} The National Gay and Lesbian Task Force, an American organization that focuses only on domestic LGBT rights,\textsuperscript{110} praised the decision as “the first ever U.S. government strategy dedicated to combating the abuse of LGBT people abroad.”\textsuperscript{111} Similarly, the International Gay and Lesbian Human Rights Commission was encouraged by the specificity with which Secretary Clinton discussed actual situations of violence and denigration,\textsuperscript{112} and remarked that the new policy’s strength

\textsuperscript{105} Id. at 5.
\textsuperscript{106} This is consistent with the tone of Clinton’s speech, in which she stated “it should never be a crime to be gay.” \textit{Clinton Speech, supra} note 1. The focus seemed consistent with a bootstrapping-up approach, pulling in outlier nations that had not set a sufficient floor of rights for its LGBT persons.
\textsuperscript{107} Id.
\textsuperscript{108} Id. (“We have hope that others will join us in supporting [the Global Equality Fund].”). There is no indication, however, that the Department has actively sought out any partnerships or additional funding separate from this seed money. A critique of this approach is discussed in Part V, infra.
could be found in being a direct “response to on-going and very severe discrimination and violence.”\textsuperscript{113} Even organizations and officials that generally oppose conditionality in foreign aid found Clinton’s speech and the resulting policies to bridge the gap between direct conditionality and vague aspirational platitudes.\textsuperscript{114} The specificity with which Clinton both described the problem, and thereafter outlined the particular actions to be taken by the American government, may have been inspired by the haphazard way in which Cameron went about describing his government’s policy, and it may have further benefited by governments and detractors of LGBT rights targeting their ire toward Cameron and the British government.

Clinton’s speech, and its attendant policy prescriptions, was not without domestic detractors, however. Texas Governor Rick Perry and former Pennsylvania Senator Rick Santorum, at the time both candidates to run against President Obama in the November 2012 elections, denounced the planned actions as an attempt to enshrine “special rights for gays in foreign countries,” an activity that was “not worth a dime of [American] taxpayer[] money.”\textsuperscript{115} Many antigay evangelicals, like the Family Research Council’s Peter Sprigg and television pastor Pat Robertson, decried Obama’s actions as well. Robertson found it “appalling that the United States of America would try to force the acceptance of homosexuality on other nations but at the same time [] would not force them to take care of their religious minorities,” a statement made without supporting data or information.\textsuperscript{116} Similarly, Sprigg described the actions as “throw[ing] the full weight and reputation of the U.S. behind the promotion overseas of the radical ideology of the sexual revolution,” while also acting outside the bounds of international law, because of what he called “no universally-accepted international statement which declares homosexual conduct to be a human right.”\textsuperscript{117}

Such domestic criticisms were widely expected, as Sprigg, Robertson, and others had long opposed any action toward empowering or bettering the lives of LGBT people, in America or abroad. They and other evangelicals had in fact been intricately intertwined with the authoring and promotion of many of the laws, particularly in Africa, that strengthened legal penalties against LGBT individuals and those who advocated for LGBT rights.\textsuperscript{118}

Clinton’s policy did not receive nearly the same universal condemnation as did Cameron’s announcement only a month prior. Part of that could be due to the

\begin{itemize}
\item\textsuperscript{113} Id.
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We do not believe that foreign assistance as a whole should be hinged on any single issue, but rather that LGBT issues be included in existing mechanisms that review a country’s human rights and governance record as part of assistance determination . . . It is [in part] for that reason that Clinton’s speech is important. She did not shy away from asserting that the U.S., with all its own imperfections, stands for civil rights for gay people globally.
\end{quote}
\item\textsuperscript{116} Gollust, \textit{supra} note 111, at 3.
\item\textsuperscript{117} Id.
\item\textsuperscript{118} See \textit{supra} notes 54-60, and accompanying discussion.
\end{itemize}
widespread denouncement of Cameron’s policy by affected nations; after loudly protesting the United Kingdom, they may not have felt it necessary to provide such strong language against the United States. It could further have resulted from the Obama Administration stating unequivocally that it was not tying foreign aid distribution directly to the treatment of LGBT rights, and that anti-LGBT policies would be only a “factor” in U.S. foreign policy decisions and aid disbursements. Criticism of Clinton’s speech and the policy was somewhat more muted than it was against Cameron, though the anger felt by other nations was clear. A senior advisor to Ugandan President Yoweri Museveni remarked “I don’t like her tone at all” when asked his thoughts on Clinton’s speech, calling homosexuality “anathema to Africans,” and telling the Secretary to address problems in America before “lecturing” the rest of the world. Church leaders in Kenya, the United States’ largest recipient of aid in sub-Saharan Africa at $750 million USD per year, stated simply “[w]e don’t believe in advancing the rights of gays,” a view widely held amongst the Kenyan populace. These statements, however, tended to come from lower-level officials or non-governmental actors, as opposed to the more direct criticisms from government ministers and spokespersons after Cameron announced Britain’s policy. This remained true, as nearly a month after Clinton’s speech, Liberian President Ellen Johnson Sirleaf’s press secretary stated that the American policy would not prevent Sirleaf from vetoing any attempt to legalize homosexuality. Certain nations refused comment altogether. Russia and other American allies that have poor records in LGBT rights, such as Saudi Arabia (where homosexuality remains punishable by death), did not speak on the record against the American policy in the two months following Clinton’s announcement.

This is not to say the administration is unable to point to policy successes after Secretary Clinton’s speech. The day after Clinton’s pronouncement, Malawi announced it would be “reevaluating” its own recently-enacted anti-LGBT legislation. The State Department seemed to recognize, however, that Secretary Clinton’s speech and the administration’s new policy was not designed to incite confrontation—it did not threaten to cut aid, nor was it a naming and shaming endeavor against certain countries, unlike Cameron’s policy and statement—but rather to signal American encouragement of LGBT rights around the world. Clinton herself seemed to recognized the uphill nature of this pro-LGBT pronouncement; when asked how the speech went,

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119 See, e.g., Gollust, supra note 111.
121 Id. at 3.
123 It remains unclear, however, how great a role the Cameron government’s policy also played in this decision.
she responded by saying she was pleased none of the representatives of the forty-nine countries in attendance walked out.

VI. A CRITICAL ANALYSIS OF THE AMERICAN AND BRITISH POLICIES

The Cameron Government and Obama Administration policies have both, for the first time in either nation’s history, signaled a concerted decision to take action against the violence, discrimination, and fear harming LGBT persons around the world. Each policy, however, marks a first step that by itself is insufficient to curb antigay violence in laws in even one nation, let alone throughout much of the world. For Britain, the policy itself is too undefined and amorphous to project a unified vision of international action. The United States’ policy, on the other hand, reflects a “go it alone” attitude of international human rights engagement that is unsustainable, inefficient, and ineffective – it lacks a roadmap by which it also pulls in other nations and international organizations to also provide direct assistance.

As a foundational matter, both the United States and United Kingdom’s decisions about which countries to engage in is fraught with the same political calculations as other human rights decisions. Such concerns explain, for example, why both countries have been quick to denounce anti-LGBT bills in Malawi, a country of fourteen million in southern Africa, while it has been far more measured in criticisms of Russia, which has seen many municipalities, including Saint Petersburg, pass bills banning speaking about any LGBT issue in public. While it would be naïve to suggest either nation disregard these calculations, it would be just as naïve to pretend that the disparities in such reactions do not have perceptual effects in the countries that the United States and United Kingdom are denouncing.

Four major critiques outline the most startling problems with the British and American policies.

A. A Bare-Bones Pronouncement: The Information Deficit in Britain’s Approach

Despite the strong language from David Cameron, and those at the Foreign Office involved in implementing any international aid conditionality based on LGBT rights, there has been little indication of how the British Government would actually


126 This includes Nigeria. While both the United States (see Obama Fights Anti Gay Bill, http://www.forbes.com/fdc/welcome_mjx.shtml), and the European Parliament (see European Parliament Calls on Nigeria to Reverse Anti-Gay Laws, http://www.pinknews.co.uk/2012/03/16/european-parliament-calls-on-nigeria-to-reverse-anti-gay-laws/) have denounced Nigeria, Cameron and his British government have not. Nigeria is considered a British “strategic petroleum partner,” leading some to believe that Cameron will only use his capital to fight anti-gay discrimination when it does not have any effect on British trading markets. Cf. Bate & Tren, supra note 73, at 4.
implement this new policy. Would nations that pass antigay laws lose all British aid? If not, would the amount of aid lost depend on how egregious those laws were? For instance, would a nation that made homosexuality a crime punishable by a prison term of up to five years lose an amount of aid similar to a nation that made the crime punishable by death? Did the policies themselves actually matter, or could the fact that a nation’s parliament was even considering such a bill mean a decrease in British assistance?\textsuperscript{127} Even the territorial nature of the policy lacked definition: would Cameron confine his fight against homophobia and anti-LGBT policies just to Africa, the only region the government had noted in its pronouncements? Why would the Government hamstring itself to only operate in Africa, when Asia and even other European nations were engaging in similar antigay legislating?

Such explanatory information is fundamental if the British Government is to be taken seriously in actually \textit{implementing} a pro-LGBT international agenda, rather than just being seen as \textit{posturing} against homophobia and antigay bigotry. It is easy for Cameron and his Government to speak out against the idea that a person could be killed for being gay – for all (or nearly all) British citizens, such a crime naturally evokes moral outrage. For a country undertaking strict austerity measures, statements against government spending, particularly foreign aid,\textsuperscript{128} can be popular. For instance, the Daily Mail, long an opponent of foreign aid in any form, went so far as to describe Cameron’s policy as “an ingenious way out of several commitments [Britain] can no longer afford.”\textsuperscript{129}

Cameron’s refusal to engage policy specifics allows his pronouncement to be all things to all constituencies. LGBT voters see it as a piece of a larger equality agenda, while social conservatives view it as a throwaway to LGBT voters, an important voting bloc in Cameron’s coalition. Internationalists are encouraged by its statement in favor of foreign action to assist repressed persons. For all practical purposes, however, Cameron’s government has not turned his foreign aid statement in Australia into concrete policy. It remains mere ideation until it is acted upon and actualized.

\textbf{B. Perceptual Reality – A Refusal to Take Cameron’s Threat Seriously}

Intrinsic to the lack of definition in the actual British “policy” on intervention is a refusal by other countries to take the policy as a serious threat to its international aid budget. Such refusal has been born out by reality – despite Cameron’s pronouncement in Australia, and the continual advancement and passage of antigay bills in several African countries, Britain has not yet shut off (or even changed) its aid disbursement to these countries in any way. Such perception harms Britain’s ability to affect a pro-LGBT agenda in these nations in the future, as national leaders, parliamentarians, and other public officials are unlikely to take other British announcements seriously.

\textsuperscript{127} Such a policy would actually be consistent, though, with Cameron’s stated goal of fighting not just anti-LGBT laws, but also the pervasive social homophobia and political scapegoating suffered in silence by many LGBT people.

\textsuperscript{128} Cf. Patrick, \textit{supra} note 94.

Though Britain has engaged in some semblance of “naming and shaming,” particularly against Liberian President Ellen Johnson Sirleaf’s statements against LGBT rights in March 2012,\footnote{Scott Baldauf, Liberia’s President Sirleaf Defends Country’s Anti-Gay Laws, CHRISTIAN SCIENCE MONITOR (Mar. 20, 2012), http://www.csmonitor.com/World/Keep-Calm/2012/0320/Liberia-s-President-Sirleaf-defends-country-s-anti-gay-laws.} it went no further – startlingly from a government that three months later threatened to cut foreign aid to any country harming its LGBT people, the statements put out by both Cameron and the British Foreign Office lacked any declaration that the passage of any such anti-LGBT law would impact Liberia’s future British aid. Even more shockingly, Sirleaf’s statement occurred during a meeting with former British Prime Minister Tony Blair.\footnote{Sirleaf later walked back her statement, but, critically, Britain did not publicly condemn her proclamation before she did so. See Liberian President Backs Off Statements About Gay Rights, Pledges to Block Extremist Legislation, TOWLEROAD (Apr. 11, 2012), http://www.towleroad.com/2012/04/liberian-president-backs-off-statements-about-gays-said-she-would-block-extremist-legislation.html,}

The lack of action has further emboldened African politicians, who have engaged populist homophobic sentiments by framing their anti-LGBT crusades as a fight against the imperialist imposition of western values. Heads of State, such as Zimbabwe’s Robert Mugabe, decry pro-LGBT sentiments as an affront to African values,\footnote{Mugabe went so far as to tell Prime Minister Cameron to “go to hell” after his public pronouncement. See To Hell With You’ Over Gay Rights, Mugabe Tells Cameron, VANGUARD (Feb. 25, 2012), http://www.vanguardngr.com/2012/02/to-hell-with-you-over-gay-rights-mugabe-tells-cameron/} an argument that finds sympathy amongst a large percentage of the population. Even in South Africa, where equal marriage rights have been the law for nearly seven years, much of the nation remains vehemently opposed to homosexuality, and incidents of antigay attacks and killings remain high.\footnote{Though such hate crimes also occur at high rates in nations where public approval of homosexuality remains high.} The Cameron government’s refusal to take action, despite their rhetorical posturing, reinforces this populist narrative, and such vitriol could contribute to real violence against LGBT persons in these countries, eliminating any of the good made possible by Cameron’s initial pronouncements.

C. A Drop in the Bucket – America’s Attempt to Fight International Homophobia with a Mere $3 Million USD

Though the United States’ policy does not suffer from the dearth of details fatal to the effectiveness of Great Britain’s, the details that do exist are themselves problematic.

First, both the lack of funding and its lack of explicit direction present seriously implementation problems. Even in the underfunded world of LGBT organizations, $3 million divided amongst not only countries, but also grassroots organizations within those countries, simply lacks the power to build any semblance of strategic infrastructure. The federal government has little engagement on the ground with LGBT organizations, and determining the most appropriate and likely effective target
groups to fund will prove difficult, particularly as those organizations often attempt to fly somewhat under the radar for fear of reprisal. One way to solve this problem would be to use this money to fund international organizations already on the ground, which could liaise with organizations with whom they are already working. An organization with American funding, despite its support from the United States government, will find itself with a target on its back from local and national anti-LGBT activists; international organizations already have such targets.

Though Secretary Clinton stated in her International Human Rights Day speech that this newly-created Global Equality Fund would seek funding from other nations and international actors, further statements about the fund and America’s support of international LGBT groups have been described as though the fund is a strictly American engagement. If the only funder remains the United States Federal Government, building upon whatever successes come out of the initial $3 million disbursement becomes difficult. Continual funding of a couple of international or country-specific LGBT rights groups might help make small strides in those particular areas, but is nowhere near transformative. It might help organizations sustain, but will not ensure their ability to build.

D. Going it Alone . . . Again: An Americentric Approach to International Problem Solving Enters the Realm of LGBT Rights

By far the most troubling aspect of the Obama Administration’s policy is its lack of interaction with international organizations and existing global human rights structures; relationships that could serve to multiply the impact that any American dollars could have on their own. As noted above, Clinton’s announcement of a Global Equality Fund might be better termed an American Engagement Fund; there has as of yet been no mention of another nation contributing to the fund, or of America making any request that they do so. This is despite the explicit statements by leaders of other nations that they too want to provide financial and structural assistance to further international LGBT rights. Most indicative of this Americentric approach is the fact it has failed to work with Britain, a major strategic ally that announced a nearly identical policy just one month before the United States did.

Describing the vilification of LGBT people as a problem only the international community can solve, by working in concert with one another, and then refusing to engage with that international community in order to do so showcases a fundamental

134 See Clinton Speech, supra note 1; cf. Baer, supra note 96, at 3-6.
135 Baer, supra note 96, at 5.
136 And, to be fair to the implementing policymakers, even small strides that foster pro-LGBT sentiments in these nations are nothing to scoff at.
138 The United States does seem slightly more blameworthy here, however, as Britain’s announcement preceded Secretary Clinton’s by nearly one month.
disconnect between the United States’ rhetoric and its policy reality. Neither the United States, nor the United Kingdom for that matter, can provide leadership in solving international LGBT rights if no one else follows.

CONCLUSION

Even when compared with the relatively young push to foment particular forms of international human rights, the fight for LGBT equality is particularly nascent. As nations begin to impute the rights of sexual minorities into the broader protections of human rights documents, nations and transnational organizations, particularly in Europe and the Americas, have begun to guarantee minimal levels of protection against discrimination and violence for their vulnerable LGBT citizens. Recognizing this abject lack of legal protection, the United States and Great Britain have articulated plans that are designed to put direct pressure on nations that refuse protect LGBT persons. Both acts, while admirable starts in creating a foundation for international engagement in LGBT protection and empowerment, require significant changes to truly prove effective. The Cameron government needs to be willing to actually live up to its promises made, and fill in the missing pieces to turn a pro-LGBT pronouncement into an actual pro-LGBT international policy. The United States needs to think critically about how it is choosing to fund its engagement in these nations, and, more fundamentally, needs to seek out the assistance of other nations and international bodies whose expertise can help develop clear, administrable policies that can begin to make a difference on the ground. 2011 was a revolutionary year in pro-LGBT rhetoric. It will take at least several more, and the concerted effort of a wide array of groups and nations, before such rhetoric turns the corner and there exists an actual, practical sea change in LGBT rights.