

ARTICLES

LYRICAL ASSAULT: DANCEHALL VERSUS THE CULTURAL IMPERIALISM OF THE NORTH-WEST

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*I would go to Jamaica, but there is so much “gay-bashing.”
For the first time in my life, I was ashamed to be Jamaican.*

I have come to realize the power of music. We all remember the lyrics of some songs verbatim, despite the passage of time, recalling where we were, who we were with, and what we were doing when we first listened. Music crosses borders—it generates emotions and feelings which transport us to a different place and time. Moreover, music has insurgent sociopolitical power—among other things, it can rally the masses, encourage affiliations, and demarcate normative boundaries. As a vehicle of easily digestible messages, music not only entertains, but it speaks volumes even when played quietly. “Music is not mere entertainment but ideological weaponry”¹ For these reasons, music creates lasting impressions. As with perspectives generated by other art forms, the impressions created by music can range from positive to negative. It is for this reason, specifically the power of music to concretize a lasting *unfavorable* impression, that I have become increasingly concerned about the opinions held by some in the North/West about my island home.

Recently, I found myself defending my country of origin, the place I think of as my cultural home, to my cherished friend. He and his partner

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¹ CAROLYN COOPER, SOUND CLASH: JAMAICAN DANCEHALL CULTURE AT LARGE 75 (2004) [hereinafter COOPER, SOUND CLASH].

were ruminating upon places to which they might travel as an out gay couple. They referenced Jamaican dancehall music² as “hateful” and the reason for their reluctance to vacation in Jamaica. I had to admit, however, that in Jamaica, as in many places, being closeted was likely the easiest and safest strategy. While American tourists are privileged to some extent in Jamaica due to the currency and passports they carry, gay tourism has yet to become a niche market in Jamaica as it has elsewhere.³

Indeed, recent media attention driven by skilled gay rights activists in the United Kingdom and the United States⁴ has brought much unwanted attention to the island previously known more for its beaches and rum than for social marginalization. Jamaica, a country whose musical productivity far outstrips its population,⁵ has come under the glare of the Western progressive gaze and been dubbed “one of the worst” countries with respect to homophobia⁶ due to the unsolved murders of two gay rights activists,⁷

² “Dancehall” describes a location primarily used for hearing music in Jamaica—it is the space so named, despite the fact that it is not typically a hall but rather an enclosed space where a sound system is set up to play reggae music. The second use of the term “dancehall” is to define a genre of reggae music that emerged after the roots reggae success of groups like Bob Marley and the Wailers, Third World, Burning Spear, Culture, and Black Uhuru. “Dancehall” as distinct from its predecessor genres of reggae is seen as “slack,” sometimes base and certainly “downtown” as opposed to “uptown.” It is the “people’s” music, just as roots reggae before it, but with an even more urban feel and a less spiritual aspiration. The hallmark of dancehall is the often rough DJs voice performed over prerecorded rhythm tracks. In this vein, it has a distinct similarity to American hip-hop but with a Caribbean, and indeed, a distinctly Jamaican flare. See STEVE BARROW & PETER DALTON, *THE ROUGH GUIDE TO REGGAE: THE DEFINITIVE GUIDE TO JAMAICAN MUSIC FROM SKA THROUGH ROOTS TO BASHMENT* 446 (Jonathan Buckley ed., 2004) (1997); LLOYD BRADLEY, *REGGAE: THE STORY OF JAMAICAN MUSIC*, 121–22 (2002).

³ *Out Traveler*, the travel magazine produced by the publisher of *Out Magazine*, recently discussed several popular Caribbean tourism destinations for gays, but considered Jamaica a “nexus of negativity” towards homosexuals. See Kenneth Kiesnoski, *Caribbean Snapshot: Gay and Lesbian Travelers Continue to Frequent Caribbean Ports Despite the Region’s Less-Than-Welcoming Reputation*, *OUT TRAVELER*, Nov. 15, 2006, available at http://www.outtraveler.com/exclusives_detail.asp?did=531. See also Michelle Higgins, *On the Seas and in the Mainstream*, *N.Y. TIMES*, Oct. 29, 2006, at E6 (“There are still destinations that gay cruises avoid; one is Jamaica, where two gay-rights activists have been murdered in the last two years.”). In 2004, Sandals Resorts ended its twenty-three year policy banning same-sex couples from its couples-only resorts in Jamaica. It had turned away a lesbian couple as recently as 2003. See Katie Zezima, *Sandals Resorts Ends Single-Sex Policy*, *N.Y. TIMES*, Oct. 24, 2004, at E3. However, Sandals still does not plan to market to gay and lesbian travelers. One executive said, “Same-sex couples can come, but we’re not interested in promoting it.” See *Sandals Continues to Expand All-Inclusive Offering*, *HOTELS*, Jan. 1, 2005, at 20.

⁴ See Baz Dreisinger, *Activists Take on Culture’s Anti-Gay Lyrics*, *L.A. TIMES*, Sept. 18, 2004, at E4 (“Citing Beenie Man, Buju Banton, Elephant Man, Vybz Kartel, and four other dancehall acts with songs that describe acts of violence against ‘batty men’ (slang for homosexuals), the British gay rights group OutRage! has led a heated campaign against this strain of reggae, which it calls ‘murder music.’”); Kenneth Partridge, *Buju Banton Has Message of Love, Hate*, *HARTFORD COURANT*, Nov. 22, 2005, at D4 (“Outside [a Buju Banton concert] on York Street [in Connecticut], protesters held signs and chanted, ‘Hey, hey, ho, ho; homophobia’s got to go!’ as fans lined up to see the show. The protest was spearheaded by the Queer Political Action Committee of Yale . . .”).

⁵ NORMAN C. STOLZOFF, *WAKE THE TOWN AND TELL THE PEOPLE: DANCEHALL CULTURE IN JAMAICA* 4, 8 (2000) (indicating that the Jamaican recording industry is “now one of Jamaica’s most important economic sectors” and that “the dancehall industry provides access to jobs, the opportunity to achieve relatively great success, and a means to sell one’s labor and products on the foreign market.”).

⁶ Tim Padgett, *The Most Homophobic Place on Earth?*, *TIME*, April 12, 2006, available at <http://www.time.com/time/world/article/0,8599,1182991,00.html> (basing that statement on an interview with Rebecca Schleifer, author of *HUMAN RIGHTS WATCH, HATED TO DEATH: HOMOPHOBIA, VIOLENCE AND JAMAICA’S HIV/AIDS EPIDEMIC* (2004) [hereinafter *HUMAN RIGHTS WATCH*] who, in speaking about homophobia in Jamaica, states “‘Jamaica is the worst any of us has ever seen’”). See *HUMAN RIGHTS WATCH*, *supra*, at 13 (listing significant social and legal challenges faced by LGBT individuals and finding fault in a homophobic culture and national leadership).

dancehall lyrics promoting violence against homosexuals,⁸ and a culture perceived to be indulgent of anti-gay and lesbian proclivities.⁹

In attempting to navigate this discussion with my friends, I realized that I was profoundly conflicted—I understood their positions, but wished it were not so. They knew vaguely of “some homophobic music” which they conflated with a pervasive Jamaican homophobia. In so doing they also reduced the breadth of Jamaican popular culture not only to reggae music generally but to the dancehall genre of such music specifically. The next step was easy, the assumption of a pervasive agreement amongst the Jamaican citizenry with the messages carried in dancehall music. I insisted

⁷ On June 9, 2004, Brian Williamson, one of Jamaica’s few gay activists, was found murdered in his home; a crowd gathered outside his home immediately after the murder are reported to have cheered. Apparently, some sang “Boom Bye Bye,” a popular Buju Banton song about killing gay men. HUMAN RIGHTS WATCH, *supra* note 6, at 2; Gary Younge, *Troubled Island*, THE GUARDIAN, April 27, 2006, at 6. On November 30, 2005, Steve Harvey, a prominent gay and AIDS activist in Jamaica, was abducted and killed. His attackers reportedly asked if he was homosexual before killing him. Gary Younge, *Jamaican Gay Activist Shot Dead After Being Abducted*, THE GUARDIAN, Dec. 6, 2005, at 17.

⁸ Buju Banton, “Boom Bye Bye”:

Enitaim Buju Banton com [Anytime Buju Banton comes]
Battybwoy git op ahn ron [Faggots get up and run]
A gonshat, mi hed bak [A gunshot, yikes]
Hie mi tel im nou, kruu, iz laik . . . [Hear me tell him now, crew, it’s like . . .]
Boom, bai bai, iina battybwoy hed [Boom, bye bye, in a faggot’s head]
Ruud buai no promuot no naasi man [Rude boys don’t promote nasty men]
Dem hafi ded. [They have to die.]
Tuu man ichop ahn robop [Two men hitch up and are rubbing up]
Ahn a lie dong iina bed [And are laying down in bed]
Ogop uan aneda ahn fiilop leg [Hug up one another and feeling up legs]
Sen fi di matic ahn di Uzi instead [Send for the automatic and the Uzi instead]
Shuut dem, no come ef wi shuut dem [Shoot them, don’t come if we shoot them] . . .

“Chi Chi Man [Gay Man],” by TOK:

From dem a par inna chi chi man car [Once they get together in a gay men’s car]
Blaze di fire mek we bun dem! (Bun dem!) [Blaze the fire, let’s burn them! (Burn them!)]
From dem a drink inna chi chi man bar [Once they drink in a gay bar]
Blaze di fire mek we dun dem! (Dun dem!) [Blaze the fire, let’s burn them! (Kill them!)]
Rat tat tat every chi chi man dem haffi get flat die [Rat-tat-tat every gay man will have to die]
Get flat, mi and my niggas ago mek a pack [Die, me and my niggas will make a pact]
Chi chi man fi dead and dat’s a fact. [Gay men must die and that’s a fact.]

“Log On,” by Elephant Man (HUMAN RIGHTS WATCH, *supra* note 6, indicates that “log on” is “[a] dance with foot motion as if squashing a cockroach—the lyrics boast about crushing gay men.”)

Lag aan, ahn step pan chi chi man [Log on, and step on queer men]
Tep pan im laik u uol cleat [Step on him like an old cloth]
Daans wi a daans a bon out aal friiki man [We’re dancing to burn out all freaky men]
A daans wi a daans ahn krosk out aal bingi man [We’re dancing to crush out all queer men]
Du di waak, mek mi si di lait ahn di touch dem faas [Do the walk, show me your lighter and torch fast]
Lag aan, ahn tep pan chi chi man [Log on, and step on queer men]
Lag aan, fram yu nuo se yu no iki man [Log on, once you know you’re not an ickie man]
Lag aan, ahn tep pan chi chi man [Log on, and step on queer men]
Daans wi a daans ahn a bon out aa’ friiki man [We’re dancing to burn out all freaky men.]

HUMAN RIGHTS WATCH, *supra* note 6, at 75–78.

⁹ Homosexuals in Jamaica report suffering violence, which police are often indifferent to and sometimes perpetrate. Homosexuals report being forced out of their homes and communities, either due to fear of violence or eviction; homelessness is a common problem. Men who are known or believed to be gay are sometimes denied health care and the use of public and private transportation. Many homosexual men and women also maintain heterosexual relationships to conform to societal pressures. For example, “[i]n 1997, the mere suggestion that a task force was considering whether condoms should be issued to inmates and staff as part of HIV/AIDS prevention efforts in prison prompted a violent rampage and derailed HIV education efforts for years . . . [C]orrectional officers—apparently offended by the implication that by distributing condoms they, themselves, were also having sex with men—walked off their jobs.” See HUMAN RIGHTS WATCH, *supra* note 6, at 14.

this music was but a sliver of all that is Jamaica and that they would, indeed, have a wonderful vacation if they chose to give Jamaica a chance. Ultimately, however, I ceded defeat as my friends decided to travel to another tropical destination in the Pacific, despite the fact that this trip would likely require both greater expense and travel time. Dancehall had turned them off Jamaica.

As my vociferous pleadings went unheeded I was left to ponder why I cared so much about my friends' vacation plans. Admittedly, tourist revenue is an important part of the Jamaican Gross Domestic Product, contributing much needed foreign currency to the national economy,¹⁰ but I knew there were many other tourists who would flock to Jamaica unencumbered by sociopolitical concerns of any sort—tourists looking to escape their banality, assuming and expecting Jamaica to be an island paradise.¹¹ Of course, the reality of an island paradise is elusive and while pleasure and escapism can be purchased in vacation packages one week at a time, the situation for the majority of citizens of developing nations like Jamaica is that they too dream of a paradise somewhere far away.¹² Indeed the stark reality facing many Jamaicans is vividly captured in the music of the island, not just dancehall. Perhaps it is this musical confrontation that is off-putting to foreigners unaccustomed to thinking of Jamaica as anything less than a tropical utopia. In attempting to mitigate this confrontation between my friends and what they deemed Jamaican culture, I found myself contemplating the navigation of spaces.

I. DECLARING THE SUBJECTIVE

As a person born in Jamaica, raised largely in Canada, and now residing in the United States, I often find myself in the awkward role of mediator—racial, ethnic, and cultural. Perhaps that is the lot in life for those of us who yearn for a home, but it is also slightly more complex than that. As an academic, working at the crossroads of law, cultural studies, and critical race theory, it also raises the specter of authenticity. Specifically, the legitimacy of belonging is implicated when one straddles identities, boundaries, and statuses. Whilst I have never thought of myself as an insider, I must acknowledge that I am also not quite an outsider either.

¹⁰ See US DEPARTMENT OF STATE, BACKGROUND NOTE: JAMAICA, available at <http://www.state.gov/r/pa/ei/bgn/2032.htm> (noting Jamaica's main industries as "[t]ourism, bauxite and alumina, processed foods, sugar, rum, cement, metal, chemical products."). See also *Trade, and Environment Database, Jamaican Tourism Impacts*, AMERICAN UNIVERSITY SCHOOL OF INTERNATIONAL SERVICE, <http://www.american.edu/ted/jamtour.htm> (last visited July 30, 2007) (detailing the impacts of Jamaican tourism on the island. "Tourism is both Jamaica's largest foreign exchange earner and one of its fastest growing industries.").

¹¹ For a wonderful examination of the tourist culture and its embeddedness within global socio-economic and colonial systems, see *Life and Debt* (New Yorker Films 2001). For more information, see <http://www.lifeanddebt.org/> (last visited July 30, 2007).

¹² See Camille A. Nelson, *Carriers of Globalization: Loss of Home and Self Within the African Diaspora*, 55 FLA. L. REV. 539, 540–41 (2003) [hereinafter Nelson, *Carriers of Globalization*]. They seek a place where they might comfortably and peacefully fit in relative socio-economic comfort. This, however, is an elusive quest, as many Jamaicans abroad find themselves the "unwanted" migrants of many Northwestern locations in the increasing Jamaican Diaspora. See Nelson, *Carriers of Globalization*, *supra*, at 551, 554. See also Hope Lewis, *Lionheart Gals Facing the Dragon: The Human Rights of Inter/National Black Women in the United States*, 76 OR. L. REV. 567, 594–99 (1997).

My privilege as a middle-class academic places me squarely in the precarious position of studying, analyzing, and advocating for the social positioning of “my people,” whoever they might be (Jamaican, Canadian, African-American, women, people of color, etc.), and, consequently, myself. It is therefore important for me to acknowledge the subjectivities I bring to bear on this interrogation of dancehall—to my mind there are few universals but there is individual truth for each of us in context. Accordingly, I am wary of trampling on another’s truth or, even worse, being the conspirator lurking “inside” “informing” as she translates. I heed the warning of bell hooks [sic]: “Cultural studies could easily become the space for the informers: those folks who appear to be allied with the disadvantaged, the oppressed, who are either spies or there to mediate between the forces of domination and its victims.”¹³

Having already situated myself as a mediator of sorts, it is my greatest hope that I do not appear to be a spy. However, in declaring my affiliations I am torn—I certainly do not wish for my beloved Jamaica to be unjustly denounced and relegated to a global space of derision, but I also embrace a spirit of acceptance, not merely tolerance, for sexual minorities. Nonetheless, as someone who was educated in Canada and the United States, I must recognize my subjective position in this exploration of the cultural and legal significance of dancehall, especially given my attention to matters beyond my immediate geographic and sociopolitical context. I am cognizant of othering “my people” and our/their music by the very fact of my studying us/them. As Dr. Carolyn Cooper, a professor of literary and cultural studies at the University of the West Indies,¹⁴ Mona commented with reference to her study of Jamaican culture: “[S]ubjection to analysis is yet another form of containment; a clear sign that ‘High Culture’ is successfully appropriating the ‘low’ in an act of restrictive scholarship.”¹⁵

Charges of scholarly appropriation are certainly possible, especially given the inevitable disconnect between music, its performance and the written word. Whether one can successfully analyze music without responding in kind remains to be seen.¹⁶ Moreover, the vantage point I occupy as a legal scholar attempting to analyze the import of dancehall might similarly complicate this investigation. Situating myself, as I have, in the midst of what might seem to be interdisciplinary academic mayhem requires one final confession. I must recognize the inevitable process of assimilation which has not only granted me access to academia but also acculturated me in its values. At the very least, those of us who are “outsiders” can perform as “insiders” as an essential part of mastering our

¹³ BELL HOOKS, *YEARNING: RACE, GENDER, AND CULTURAL POLITICS* 9 (1990).

¹⁴ Dr. Cooper is also the director of the Institute of Caribbean Studies and coordinator of the University’s International Reggae Studies Centre.

¹⁵ CAROLYN COOPER, *NOISES IN THE BLOOD: ORALITY, GENDER, AND THE “VULGAR” BODY OF JAMAICAN POPULAR CULTURE* 171 (1995) [hereinafter COOPER, *NOISES IN THE BLOOD*].

¹⁶ See COOPER, *NOISES IN THE BLOOD*, *supra* note 15, at 117–18 (cautioning that such an analysis can reduce “dynamic processes of cultural production that are designed purely for experiential pleasure . . . to a disempowering discourse that can appear to reduce live(d) art forms to stripped-down, boxed-in, museum pieces.”).

job.¹⁷ Aptly, I am forced therefore to address the ironies raised in the lyrics of Bob Marley when he criticized the “social institutions of Babylon¹⁸—the interrelated religious, educational and penal systems, [perceived as dysfunctional],”¹⁹

Build your penitentiary,
We build your schools
Brain-wash education to make us the fools²⁰

Beyond this “mis-education,”²¹ or “head-decay-shun”²² in Rasta patois, I am cognizant of being criticized as worse than an informer, but as a parasite. Marley, the iconic roots reggae sensation, was antagonistic toward the product and the producers of institutional education. Instead of encouraging entrance into the bastions of “higher” learning, he advocated a “truth”-based system of education whereby the “children” would be schooled in lessons of freedom and liberty, rather than containment and assimilation.²³

Babylon system is the vampire
Sucking the children day by day.
Babylon system is the vampire
Sucking the blood of the sufferers.
Building church and university
Deceiving the people continually.
Me say them graduating
Thieves and murderers,
Look out now

¹⁷ Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN’S RTS. L. REP. 297 (1992) (discussing the duality of outsiders’ perspectives in the legal context). See Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1267–70 (2000); Devon W. Carbado & Mitu Gulati, *Tenure*, 53 J. LEGAL EDUC. 157 (2003).

¹⁸ Babylon, in Rasta patois, denotes the “oppressive State.” To rail against Babylon is to rail against “the formal social and political institutions of Anglo/American imperialism.” See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 121.

¹⁹ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 122.

²⁰ BOB MARLEY AND THE WAILERS, *Crazy Baldhead*, on RASTAMAN VIBRATION (Tuff Gong 1976), as cited in COOPER, NOISES IN THE BLOOD, *supra* note 15, at 122.

²¹ LAURYN HILL, *THE MISEDUCATION OF LAURYN HILL* (Ruffhouse 1998). See also CARTER G. WOODSON, *THE MISEDUCATION OF THE NEGRO*, 1 (2006) (“The ‘educated Negroes’ have the attitude of contempt toward their own people because in their own as well as in their mixed schools Negroes are taught to admire the Hebrew, the Greek, the Latin and the Teuton and to despise the African.”).

²² According to Dr. Cooper, this terminology is “the cunning inversion of the English word ‘education,’ [it] is antithetical to the cultural practices of Rastafarians, whose chant against Babylon has biblical resonances of the fall of Jericho.” See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 121.

²³ In his song “Babylon System,” Marley rails against traditional education and advocates rebellion:

We refuse to be
What you wanted us to be.
We are what we are
That’s the way it’s going to be.
You can’t educate I
For no equal opportunity
Talking about my freedom
People freedom and liberty.
Yeah!
We’ve been trodding on the winepress
Much too long
Rebel, rebel.

BOB MARLEY AND THE WAILERS, *Babylon System*, on SURVIVAL (Tuff Gong 1979), as cited in COOPER, NOISES IN THE BLOOD, *supra* note 15, at 123.

Sucking the blood of the sufferers.
Tell the children the truth.²⁴

I do not consider the American or Canadian education from which I have benefited as the only learning that has been formative of my worldview. Rather, as a student of Marley and other Jamaican social poets, it is my hope to bridge this perceived gap between high and low education in this article. Neither mode is superior and both are enriching. It is therefore my aspiration to approach this project as both a North-Western scholar and one cognizant and critical of my (mis)education and (a)culturation within the “shitstem.”²⁵ Accordingly, in this endeavor I hope to work from the inside out, both institutionally and personally, as an “upsetter”²⁶ and an academic “soul rebel.”²⁷ My attempt to suggest a workable solution to the problematic categorization of Jamaica as “the most homophobic place on earth”²⁸ is complicated by my positioning within an educational system which remains exclusive, my residence within a socioeconomic empire that does not utilize such nomenclature to describe itself, and my having benefited from a Canadian educational system which has Commonwealth connections and therefore manifests the legacy of Her Majesty’s colonial system. Despite all this, or perhaps

²⁴ COOPER, NOISES IN THE BLOOD, *supra* note 15, at 123.

²⁵ “Shitstem” is the Rasta Jamaican term for Babylon’s system. See LAURIE GUNST, BORN FI’ DEAD: A JOURNEY THROUGH THE JAMAICAN POSSE UNDERWORLD xv (1999) (discussing the gang or Jamaican posse mentality, which is an offshoot of “Jamaica’s violent political ‘shitstem’ (as the Rastafarians long ago dubbed it)”).

²⁶ In Jamaica, an “upsetter” is a disturber of sorts, always the prevaricator ensuring the system is not exclusive.

²⁷ Similarly, the “soul rebel” is Marley nomenclature for a spiritual revolutionary. As the lyrics to “Soul Rebel” go:

I’m a rebel, soul rebel.
I’m a capturer, soul adventurer.
I’m a rebel, soul rebel.
I’m a capturer, soul adventurer

See the morning sun, the morning sun,
On the hillside.
If you’re not living good, travel wide,
You gotta travel wide.
Said I’m a living man,
And I’ve got work to do.
If you’re not happy, children,
Then you must be blue,

I’m a rebel, soul rebel.
I’m a capturer, soul adventurer.
Do you hear me?
I’m a rebel, rebel in the morning.
Soul rebel, rebel at midday time.

BOB MARLEY AND THE WAILERS, *Soul Rebel*, on SOUL REBELS (Trojan 1970), available at <http://www.thirdfield.com/html/lyrics/soulrebel.html>.

²⁸ Tim Padgett, *The Most Homophobic Place on Earth?*, TIME, April 12, 2006, available at <http://www.time.com/time/world/article/0,8599,1182991,00.html> (basing that statement on an interview with Rebecca Schleifer, author of HUMAN RIGHTS WATCH, *supra* note 6). See also HUMAN RIGHTS WATCH, *supra* note 6, at 11–12 (“Violence against men who have sex with men, ranging from verbal harassment to beatings, armed attacks, and murder, is pervasive in Jamaica In some cases, the police attack them and promote homophobic violence by others. Women who have sex with women are also targets of community violence and police harassment; and, as with men who have sex with men, their complaints of violence are often ignored by police.”).

because of it, I find the recent media frenzy²⁹ surrounding homophobic lyrics in Jamaican dancehall music to be a multifaceted issue begging for interdisciplinary and contextual analysis.

II. INTRODUCTION

While I question the accuracy and the rationale for such a controversial descriptor of Jamaica, I do agree that the outstanding musical engine at the center of this debate has much to rectify when it comes to the messages sent by some dancehall artists about homosexuality as well as gender, women and sex.³⁰ Additionally, dancehall music often features lyrics that

²⁹ See, e.g., Claire Allfree, *Rock & Pop: Trouble in the Dancehall*, THE INDEPENDENT, Nov. 26, 2004, at 17; Dreisinger, *supra* note 4, at E4; Hugh Muir, *Ceasefire Brokered in Reggae Lyrics War*, THE GUARDIAN, Feb. 5, 2005, at 4; Alexis Petridis, *Pride and Prejudice*, THE GUARDIAN, Dec. 10, 2004, at 4; Carol J. Williams, *Anti-Gay Climate Breeding Violence in Jamaica*, L.A. TIMES, Jan. 9, 2005, at A18.

³⁰ COOPER, *NOISES IN THE BLOOD*, *supra* note 15, at 142 (“Eschewing respectability, the DJs operate subversively at the low end of the scale of accepted social propriety. Their privileged subjects are DJing itself, and sexuality. Heterosexuality most often requires a precise listing of body parts, almost exclusively female, and an elaboration of their mechanical function Verbal and sexual skill are often indistinguishable.”). See STOLZOFF, *supra* note 5, at 106 (“[W]omen were now more a focus of attention than ever before, but they were still being treated as sexual objects rather than sexual agents. While a few songs from this period did deal with a male DJ’s love and respect for women, feminist critics are right to point out that many more songs are actually filled with misogyny and sexual violence aimed at women. Women’s body parts become objects of lurid fantasies of male desire for sexual dominance, as evidence in countless songs such as Shabba Ranks’s ‘Love Punaany’ (i.e., Love Vagina).”) For example, the lyrics to a song by Don Youth and Spagga include:

Give me di naany now
 Wan di naany now
 Give me likkle naany, cho
 Why you a gwaan so
 In di pum-pum business you haffi physically fit
 You haffi love di gal make dem feel it.

Stolzoff’s footnotes to this section clarify that “[n]aany is a shortened form of *punaany*, a Jamaican term for vagina that is roughly the equivalent of ‘pussy’ in American vernacular” and that “[p]um-pum is a synonym for *punaany*.” Stolzoff calls this a “typical example of slackness . . . romanticiz[ing] rough sex” *Id.* at 214, 271. Another pertinent example of a sexist and x-rated song includes “*Nah Apologize*,” by popular dancehall artist Sizzla:

Girls dem sexy, and dem p[u]ssy fat
 Yeah all di girls, di boys dem looking at
 Some bwoy bow down, BOW DOWN DOIN WHATT!
 Nothing in this world could never have mi doin dat
 I don’t care if dem ban mi
 Cause mi seh fi bun b[a]t[ty]man yuh caan wrong mi
 Yo mi nuh born ova England a real African this
 Real real real Rastaman this, BOOM!
 Rastaman don’t apologize to no battybwoy
 Yuh diss black people then mi gun a shot yuh bwoy
 Gimme di whole a di girls cause a dem have up di joy
 Inna di Lake of fire mi dash yuh bwoy
 Rrrrrrr! We apologize to no b[a]t[ty]bwoy
 Diss King Selassie then mi gun will shot yuh bwoy
 Inna di Lake of fire mi dash yuh, AH HOY!
 Gimme di girls because a dem have up di joy
 Gwaan like dem smart gwaan like dem crotty
 Shoot dem inna dem head dem too, f[u]ckin nasty
 Di gal dem have di p[u]ssy and di stiff titty and di cute face
 And di bwoy dem walk pass it
 Damn its di lyrical praise, diss a we mek dem fret
 Inna di Biblical days we used to stone dem to death
 WHOA! Di sexy girls dem mi sex
 a weh mi seh bun b[a]t[ty]man dont vex, damn!

SIZZLA, “*Nah Apologize*” lyrics, available at <http://www.allthelyrics.com/song/809968/>.

advocate violence. Of this subset of dancehall, I will focus upon lyrics that could be interpreted as advocating violence against homosexual men and women. Exploration of these lyrics reveals a curious sociocultural phenomenon at work both in their musical production and in the orchestrated efforts of North-Western activists to only boycott dancehall music deemed homophobic. The stance assumed in much of the dancehall in question is blatantly heteronormative, revealing a hypermasculinist posture of sexual defiance. “Heteromascularity”³¹ is presented as the only legitimate version of Jamaican manhood. It is my sense that the lyrics of dancehall reveal an attempt to gain respect in the contested space that is the dancehall. The dancehall thus becomes a zone for the cultural creation of Jamaican masculinity, replacing the church, the political sphere, and traditional systems of education in the framing of what it means to be a man in Jamaica and a Jamaican man in the world.³² However, it is curious that the international controversy surrounding dancehall did not take on global dimensions until men, gay men in particular, felt themselves threatened by the lyrics. The fact that women, poor people, and political outsiders might similarly be imperiled by the music was inconsequential and no proposed boycotts were suggested to highlight their plights. When those in the so-called “first world” decided to speak out against dancehall, they exerted empowered male voices from the former colonial metropolitan centers to quash offensive voices in former territorial spaces. Moreover they did so in defense of alternative lifestyles, but masculine lifestyles nonetheless. As such, even those marginalized by their sexual orientation exercise classist, sexist, and neo-colonial prejudices in their selection of worthy causes.

In this article, I examine the ways in which remnants of colonial imperatives interact with insurgent post-colonial masculinist manifestations of national identity in the realm of the sexual. Like other identity constructs, nationality and masculinity are similarly created and often policed.³³ With respect to nationality, the “imagined political community”³⁴ is cast in both sexual and gendered terms, despite the dynamism of the concepts themselves.³⁵ Beyond this, homosexuality is conceptualized in Jamaica as something residing outside the borders of the physical nation-state and is excluded from the constructed notion of the nation. There is no conceptual space for homosexuality in Jamaica—there is no public space for homosexuals, nor is there a notion of gay rights.³⁶ Calls for the same

³¹ M. Jacqui Alexander, *Not Just (Any)Body Can Be a Citizen: The Politics of Law, Sexuality and Postcoloniality in Trinidad and Tobago and the Bahamas*, 48 FEMINIST REV. (1994), at 5, 7 (in examining Trinidad and Tobago and the Bahamas, Alexander remarks that “[c]itizenship . . . continues to be premised within heterosexuality and principally within heteromascularity.”).

³² See STOLZOFF, *supra* note 5, at 5 (referencing an article which appeared in *The Gleaner*, a prominent Jamaican newspaper, claiming that “For the first time, Jamaican popular music far outweighs the combination of church, politics, and the educational system in power and influence.”).

³³ CARL F. STYCHIN, A NATION BY RIGHTS: NATIONAL CULTURES, SEXUAL IDENTITY POLITICS AND THE DISCOURSE OF RIGHTS 2 (1998) (recognizing the versatility of the modern nation despite the fact that it is a “social construction that emerged at a particular historical moment in Western consciousness.”).

³⁴ BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM 6 (2006).

³⁵ STYCHIN, *supra* note 33, at 1–2.

³⁶ COOPER, SOUND CLASH, *supra* note 1, at 27. However, these matters are changing slowly, as evidenced by Dr. Cooper’s comment that “Jamaican society is undergoing fundamental change on the

are seen as “imported” foreign impositions.³⁷ As such, there can be no gay ambassadors in the contested space of Jamaican cultural production. The international musical envoy is defiantly heterosexist. As Jamaican national consciousness has been constructed in opposition to colonial, namely British, imperialism, the result has been a revolutionary hyper-masculine posture that is constrained by notions of heteromascularity.

Jamaicans are proud of this revolutionary stance and of their history of resistance, which is most clearly demonstrated by the Maroon heritage and legacy.³⁸ There is a similar determination to avoid “bowing,”³⁹ to thereby remain independent of North-Western assimilationist norms which would undermine the “essence” of a free Jamaica. Despite the profound role of Nanny, the fierce rebellious female leader of the Maroons,⁴⁰ much of this modern bravado is constructed as excessively masculine with its phallogocentric preoccupation with sexual acumen, abundance, and the glorification of violence.

Part III of this article will engage the recent international controversy surrounding homophobic dancehall lyrics. Part IV will situate this controversy within a historical context and highlight the latent issues of colonization lurking just beneath the surface. An essential part of this analysis will be to “localize” this controversy by exploring the distinctly Jamaican context in which these dancehall artists emerge. Thereafter, I will explore the potential of what I will call “lyrical assault” as a legal tool to address what others have dubbed “murder music.”⁴¹ Necessarily, however,

contentious matter of homosexuality.” Dr. Cooper does concede that fellow cultural theorist Professor Andrew Ross is correct in his statement that “[t]here is virtually no literature on homosexuality in Jamaica.” COOPER, SOUND CLASH, *supra* note 1, at 29 (quoting ANDREW ROSS, *Mr. Reggae DJ, Meet the International Monetary Fund*, in REAL LOVE: IN PURSUIT OF CULTURAL JUSTICE 60 (1998)).

³⁷ See STYCHIN, *supra* note 33, at 13–15; COOPER, SOUND CLASH, *supra* note 1 at 25–26 (Dr. Cooper especially pays “attention to the resulting sound clashes that do occur when indigenous Jamaican/dancehall values cross borders and enter cultural spaces that cannot accommodate them” and points out “the cultural relativity of the insider’s versus the outsider’s reading of Jamaican popular culture.” She argues that “given the historical context of a dislocating politics of Euro-American imperialism in the region, ‘hard-core’ Jamaican cultural nationalists are likely to resist a re-examination of indigenous values that is perceived as imposed on them by their imperial neighbour [sic] in the North.”).

³⁸ Dr. Cooper describes this legacy as “the insurgent culture of marronage that is the shared heritage of diasporic Africans in the black Atlantic/Caribbean.” COOPER, NOISES IN THE BLOOD, *supra* note 15, at xii. The Maroons successfully evaded the British slavocracy for over eighty years and even helped slaves escape into the mountains. They eventually forced a treaty with the colonial overlords. For a history of the rise and evolution of the Maroons, see KARLA LEWIS GOTTLIEB, “THE MOTHER OF US ALL”: A HISTORY OF QUEEN NANNY LEADER OF THE WINDWARD JAMAICAN MAROONS 1–22 (2000).

³⁹ I use this term “bowing” advisedly. It is simultaneously a term for “kowtowing” or buckling to pressures for conformity and, in the Jamaican dancehall context, it is a term of art for cunnilingus, which is supposedly abhorred by “real men” as a form of subservience to women. See COOPER, SOUND CLASH, *supra* note 1, at 100 (remarking upon the “slack” lyrics in dancehall which condemn cunnilingus, Dr. Cooper writes, “[d]espite the recurring protestations in the lyrics of the DJs that they do not ‘bow’—that is engage in oral sex—one instinctively knows that they are protesting too much. There is a thin line between pub(lic) discourse and private pleasure/duty.”).

⁴⁰ Nanny is an elusive but renowned figure who was reputed to have overseen (or participated in; accounts differ) the fighting against the British colonists in Jamaica in the eighteenth century. Her grave is still considered a sacred place, and in parts of Jamaica she is revered as a folkloric and historic hero. GOTTLIEB, *supra* note 38, at 20–21, 22–29. See also COOPER, SOUND CLASH, *supra* note 1, at 147 (discussing Nanny of the Maroons and her legendary defeat of the British).

⁴¹ Referring to Peter Tatchell’s “Stop Murder Music” campaign, which effectively forced a “settlement” with some Dancehall artists in July 2007. See Alexandra Topping, *Victory for Gay Rights Campaign as Reggae Star Agrees to Ditch Homophobic Lyrics*, THE GUARDIAN, July 23, 2007, at 7, available at

this Part will also recognize that the “reading” and translation of the lyrics of these artists in the international setting reveal both a political discourse of gay rights⁴² which does not resonate in the Jamaican context and a quasi-Imperial posture of the North-West which belies the fiction of a post-colonial Jamaica. Part V thus analyzes the manifestations of cultural imperialism which temper my proposed tort of lyrical assault so that free speech is fostered along with independence for Jamaica and its artists. Part VI concludes with recommendations for the encouragement of an organic, indigenous, Jamaican tolerance and eventual acceptance of multiple sexual identities as manifested in gay rights. To achieve these ends, it is essential, in my view, that the anti-sodomy laws operative in Jamaica be repealed.

III. IT IS ONLY A SCANDAL IF IT IS INTERNALIZED AS WRONG

It was my intention to denominate the recent controversy surrounding Jamaican dancehall music as a “scandal.” However, I realized that this term not only betrayed my subjective views of the matter but also presupposed a negative Jamaican internalization of the controversy. Scandals are only those incidents which scandalize the subject. If the subject decides not to own the issue, there really is no scandal. Since scandal is not unilateral—it cannot be imposed, but must be internalized—the issue discussed below is thus more properly characterized as a groundswell of North-Western activism attempting to scandalize Jamaica and its music.

A few years ago, British gay rights activist Peter Tatchell and others from the U.K. gay rights organization OUTRAGE! successfully brought international attention to homophobic lyrics in dancehall music.⁴³ Their “Stop Murder Music” campaign lasted fifteen years⁴⁴ and proved remarkably successful, resulting in the “cancellation of hundreds of concerts and sponsorship deals, costing the artists in excess of £2.5 m[illion].”⁴⁵ “The goal of the “Stop Murder Music” Campaign [was] to organize public support against these performers and convince sponsors and concert venues to remove their financial support.”⁴⁶ Together with

<http://music.guardian.co.uk/news/story/0,,2132464,00.html>. The details of this settlement will be discussed later in this article.

⁴² See STYCHIN, *supra* note 33, at 14 (elaborating upon the social construction of a homosexual-heterosexual binary and the manner in which this “ethnic/essentialist” logic plays on in western gay-rights discourse).

⁴³ See Peter Tatchell, *Reggae Stars Renounce Homophobia*, PETERTACHELL.NET, Jun. 13, 2007, <http://www.petertatchell.net> (select Pop Music hyperlink on left panel tool bar; follow Reggae Stars Renounce Homophobia hyperlink) (last visited Sept. 20, 2007).

⁴⁴ This is the length of time that a campaign was run specifically against dancehall artist Buju Banton whose song, “Boom Bye Bye,” encourages the shooting of gay men. See lyrics *supra* note 8. It was a matter of great importance to gay rights advocates, therefore, to “bring him into line.” However, as Tatchell remarks, the general “Stop Murder Music” campaign has raged against dancehall artists for fifteen years. Topping, *supra* note 41.

⁴⁵ Topping, *supra* note 41.

⁴⁶ See *Reggae Artists Pledge to Ban Anti-Gay Lyrics*, GLAAD.ORG, June 15, 2007, <http://www.glaad.org/eye/ReggaeBan.php> (Dec. 30, 2007). See also *Dancehall Reggae Artist Under Fire for Anti-Gay Lyrics*, NPR.ORG, Aug. 6, 2004, <http://www.npr.org/templates/story/story.php?storyId=3837073> (noting the difficulty cracking the U.S. market which Beenie Man might experience, despite his “glowing profile in *The Washington Post*,” as his “homophobic lyrics led Scotland Yard to intercept him at Heathrow Airport . . . for questioning, and a London club cancelled a show for fear of protests by gay rights groups.”) (last visited Nov. 5, 2007).

protests launched by U.S. gay rights advocacy groups like Gay and Lesbian Alliance Against Defamation (“GLAAD”) and Gay Men of African Descent (“GMAD”), these campaigns proved immensely successful and achieved notable success in the prevention of highly popular dancehall acts from gaining spots on television programs and in leading to the cancellation of various concerts in both the United Kingdom and United States.⁴⁷ The victory culminated in what has been denominated the *Reggae Compassionate Act*.⁴⁸ In essence, this compromise between North-Western gay rights advocates and Jamaican dancehall artists seeks to prevent the use of homophobic lyrics in reggae music.⁴⁹

Remarking upon the success of these North-Western gay rights activists in quashing homophobic manifestations of Jamaican dancehall in North-Western venues, Dr. Andrew Ross draws an insightful analogy. His comments highlight the nature of the campaign against Jamaican dancehall and emphasize similar controversies with respect to other identity-based campaigns in strictly North-Western contexts:

Many commentators who had explained away rappers’ lyrical flights about killing cops as an escapist or therapeutic fantasy of the oppressed regarded the[se] song’s targeting of gays as an oppressor’s fantasy and thus as an abhorrent incitement to real violence. Even when such songs were perceived as a desperate attempt on the part of the downpressed black male to retain power, any kind of power, over his immediate environment, the condemnation of battyboy-bashing was as sharply pronounced as the censure of misogyny, its structural counterpart in hip hop.⁵⁰

Perhaps the convergence of North-West versus territorial South and of masculine sexual politics versus feminist allegations of misogyny aligned to win the day. In contrast, there are only limited successes with hip-hop music, such as the recent decision by some artists to cease using the “N-word” in rap.⁵¹ More revealingly, there has not been as successful a campaign to rid hip-hop of misogynist language that degrades women, black women in particular, as there has been to rid dancehall of homophobic lyrics.

It is no accident that hip-hop has yet to see a pro-women or anti-misogyny victory similar to the recent dancehall *Reggae Compassionate Act*. Goodwill aside, the powers that be have yet to mount the type of broad-based economically driven boycott campaign that was so successful against Jamaican dancehall artists. The decision to allow self-regulation of offensive hip-hop lyrics in the North-Western context is curious in its

⁴⁷ See ANDREW ROSS, REAL LOVE: IN PURSUIT OF CULTURAL JUSTICE 59 (1998).

⁴⁸ For details of the settlement see *infra* note 90. See also *Reggae Artists Pledge to Ban Anti-Gay Lyrics*, *supra* note 46; Tony Grew, *Gay Bashing Reggae Performers Promise to Stop the Hate*, PINK NEWS, Jun. 13, 2007, <http://www.pinknews.co.uk/news/articles/2005-4626.html> (last visited Dec. 30, 2007).

⁴⁹ See Topping, *supra* note 41 (“[Buju] Banton is the latest in a series of high-profile artists, including Beenie Man and Sizzla, to sign the declaration after worldwide protests from gay rights groups As well as monitoring the actions of artists who have signed up to the act, activists have vowed to continue their campaign against four artists who have not: Elephant Man, TOK, Bounty Killa, and Vzbz Kartel.”).

⁵⁰ See ROSS, *supra* note 47, at 59.

⁵¹ See *infra* note 98 for a discussion of renewed efforts.

maintenance of some sort of artistic agency, however constrained. This is all the more remarkable given the denial of artistic agency reflected in the *Reggae Compassionate Act*, an agreement which prevents the signatory dancehall artists from making “homophobic statements in public, releas[ing] new homophobic songs or authori[zing] the re-release of previous homophobic songs.”⁵² Admittedly, the *Act* states that “[t]here’s no space in the music community for hatred and prejudice, including no place for racism, violence, sexism or homophobia.”⁵³ But these sentiments belie the fact that the central purpose of the over decade long campaign was not the liberation of women from the lyrical persecution or sexist violence also manifest in dancehall lyrics but a concern regarding the persecution of men, albeit sexual minorities, launched by other men in the former colonial strongholds. It is therefore my opinion that part of what was subtext in this fifteen year struggle was a fight over how Jamaican manhood, masculinity more particularly, would be internationally defined. We have a striking intersection of (inter)nationalism and masculinity.

IV. “EVERYTHING IS LOCAL”—LOCALIZING JAMAICA IN CONTEXT

In the European context it has been suggested that “the emergence of print culture . . . served to constitute an imagined sameness between authors and audiences, which came to replace religion as the central marker of identity.”⁵⁴ In the local Jamaican context it cannot be said that religion has been replaced at all.⁵⁵ Rather, an essential part of the creation of an independent Jamaican identity is the intersection of religion and nationality to form an “authentic” and righteous Jamaican-ness.⁵⁶ This notion of the nation includes both traditional Christian denominations such as Baptism, Anglicanism, Catholicism, Methodism, and Pentecostalism and also various sects of Rastafarianism,⁵⁷ each with their own unique beliefs and practices.

⁵² See Topping, *Victory for Gay Rights Campaign*, *supra* note 41.

⁵³ *See id.*

⁵⁴ *See id.*

⁵⁵ Jamaica has the most churches per capita of any nation. *See* Petridis, *supra* note 29.

⁵⁶ For conscious lyrics proclaiming the righteous positioning of the “Dread,” meaning Rastas, in the sociopolitical milieu, *see* the lyrics of Marley’s “*Time Will Tell*,” stating:

Jah would never give the power to a baldhead

Run come crucify the Dread

Time alone, oh! Time will tell,

Think you’re in heaven, but you’re living in hell.

BOB MARLEY AND THE WAILERS, *Time Will Tell*, on KAYA (Tuff Gong 1978), available at <http://www.lyrics.net/read/b/bob-marley-lyrics/time-will-tell-lyrics.html>.

⁵⁷ *See* COOPER, *NOISES IN THE BLOOD*, *supra* note 15, at 120–21 (“The transmitters of reggae . . . are by and large committed to a belief structure, Rastafarianism, whose roots are in Africa, in Jah, Haile Selassie, the Emperor of Ethiopia. The themes of their messages are rooted in their despair of dispossession, their hope is in an African or diasporan solution. As a result, their messages emerge as an ideology of social change.” (quoting Erna Brodber & J.E. Greene, *Reggae & Cultural Identity in Jamaica* 26 (Sociology Department, University of the West Indies at St. Augustine, Working Paper Series C. No. 7, 1981)). “The Rastafari movement emerged in the 1930s . . . [and] can be traced to independent Afro-Jamaican preachers such as Leonard Howell, who was among the first of these pastors to establish the claim that Haile Selassie, the then-newly crowned emperor of Ethiopia, was the returned Messiah . . . Howell and other Rastafari elders were influenced by the teachings and social activism of Marcus Garvey. The warner role fused with Garvey’s more overt political anticolonialism,

This pious national identity has traditionally been mirrored in Jamaican music in the form of slave chants, mento melodies, radical reggae, and other types of Jamaican resistance music.⁵⁸ As Dr. Ross recognizes, “At the

black nationalism, pan-Africanism, and belief in the repatriation of the former slaves.” See STOLZOFF, *supra* note 5, at 78. Rastafarianism became more popular among the urban poor in the 1940s, and became more widely accepted in the 1960s. *Id.* at 79–80. For a detailed history of Rastafarianism, see generally ENNIS B. EDMONDS, *RASTAFARI: FROM OUTCASTS TO CULTURE BEARERS* (2003).

⁵⁸ Jamaican music evolved from the combination of African chants with English instruments and dances. African slaves in Jamaica adapted and modified English dances and music by incorporating African elements. “The mento song genre that accompanied the music and dance derived from several different African chanting and vocal styles as well as a number of European melodies and harmonizing techniques. The lyrics of the songs were very topical, filled with . . . protests against oppressive conditions, and satirical commentary aimed at both the slaveholders and the slaves themselves. These lyrics were often delivered in a highly coded manner, using witty double entendres to disguise the subversive messages.” See STOLZOFF, *supra* note 5, at 26. Laws were passed in an attempt to limit the slaves’ singing and dancing, but the slaves generally ignored these laws and continued to express themselves musically, maintaining their cultural identities and engaging in “everyday forms of resistance.” See *id.* at 29–30 (quoting JAMES SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* (1990)). The popularity of mento music continued after emancipation. *Id.* at 34. In the 1930s, jazz and swing came to Jamaica, often played in the dancehalls alongside mento music. *Id.* at 35. During and after World War II, music from other Caribbean nations and from the United States influenced Jamaican music as well—especially American rhythm and blues (“R&B”). *Id.* at 38–39. In the late 1940s and early 1950s, the sound system emerged as a popular way to listen to and share music. *Id.* at 40–45. The sound systems grew in popularity and began playing in dancehalls in the 1950s. *Id.* at 47–48. As competition among the sound system operators grew, the deejays began “toasting,” or “creat[ing] interesting verbal sounds, delivered in a rhyming verse” over the music to maintain interest and distinguish themselves. *Id.* at 55–56. By the late 1950s, after many sound-system operators had begun producing their own R&B records due to a dearth of American R&B music, the musical genre of ska had evolved. *Id.* at 58–59. In the 1960s, the dancehall and sound systems were central to youth culture and its views, especially the burgeoning Rastafarianism. *Id.* at 63. The dancehalls became a central “site of ideological production fueled by . . . black nationalism, Rastafari, and other transnational cultural influences . . . [It] became a weapon in the struggle for liberation for the black masses.” *Id.* at 76. The late 1960s saw the rise of rocksteady, a style with a slower pace and more drum and bass than ska. Rocksteady’s increased emphasis on vocalists provided opportunity for the expression of “Rastafari consciousness and Black Power ideology.” *Id.* at 89. Reggae arose around the same time, and soon became internationally popular. *Id.* at 94. Reggae was “a contradictory combination of optimism, as a result of reggae’s growing international stature, and the lower classes’ growing frustration with the status quo . . . [A] mood of protest rooted in a ‘positive vibration’ of ‘peace and love,’ coupled with a growing pessimism about Jamaica’s sociopolitical system, was reflected in the increasing popularity of Rasta, which reached its full flower in the 1970s.” *Id.* at 94–95. This sense of rebellion is reflected in reggae lyrics from that time. For example:

Cause life must be somewhere to be found
Instead of concrete jungle
Where the living is harder

BOB MARLEY AND THE WAILERS, *Concrete Jungle*, on *CATCH A FIRE* (Tuff Gong 1973), available at <http://www.lyrics.net/read/b/bob-marley-lyrics/concrete-jungle-lyrics.html>.

We refuse to be
What you wanted us to be.
We are what we are
That’s the way (way) it’s going to be.
You can’t educate I
For no equal opportunity
Talking about my freedom,
People freedom and liberty!
Yeah!
We’ve been trodding on the winepress
much too long
Rebel, rebel.

BOB MARLEY AND THE WAILERS, *supra* note 23.

Why do you look so sad and forsaken?
When one door is closed, don’t you know other is open?
Would you let the system make you kill your brotherman?
No, no, no, no, no, no! No, Dread, no!
Would you make the system make you kill your brotherman?
(No, Dread, no!)

high-water mark of its international influence, reggae became *the* sound of cultural justice worldwide, its waxy mix of righteous dissidence and jubilant hope ringing with moral claims for equal rights and justice for all.”⁵⁹ Dancehall, as the most recent evolution of roots reggae, is part of the legacy of this “rebel music.”⁶⁰ Indeed, both roots reggae and dancehall

Would you make the system get on top of your head again?

(No, Dread, no!)

Well, the biggest man you ever did see was—was just a baby.

BOB MARLEY AND THE WAILERS, *Coming in from the Cold*, on UPRISING (Tuff Gong 1980), available at <http://www.elyrics.net/read/b/bob-marley-lyrics/coming-in-from-the-cold-lyrics.html>.

Emancipate yourselves from mental slavery;

None but ourselves can free our minds.

Have no fear for atomic energy,

‘Cause none of them can stop the time.

How long shall they kill our prophets,

While we stand aside and look? Ooh!

Some say it’s just a part of it:

We’ve got to fulfill de book.

BOB MARLEY AND THE WAILERS, *Redemption Song*, on UPRISING (Tuff Gong 1980), available at <http://www.elyrics.net/read/b/bob-marley-lyrics/redemption-song-lyrics.html>.

I don’t want no peace

I need equal rights and justice

Got to get it

Equal rights and justice

Everybody want to go to heaven

But nobody want to die

Everybody want to go up to heaven

But none o them want to die . . .

What is due to Caesar

You better give it on to Caesar

And what belong to I and I

You better give it up to I . . .

Everyone heading for the top

But tell me how far is it from the bottom

Nobody knows but

Everybody fighting to reach the top

How far is it from the bottom

PETER TOSH, *Equal Rights*, on EQUAL RIGHTS (Columbia 1977), available at <http://www.lyricstime.com/peter-tosh-equal-rights-lyrics.html>.

Said it was 96 degrees in the shade

Ten thousand soldiers on parade

Taking I and I to meet a big fat boy

Sent from overseas

The queen employ

Excellency before you I come

With my representation

You know where I’m coming from

You caught me on the loose

Fighting to be free

Now you show me a noose

On the cotton tree

Entertainment for you

Martyrdom for me

96 degrees in the shade

Real hot in the shade

THIRD WORLD, *1865 (96° in the Shade)*, on 96° IN THE SHADE (Mango 1977), available at http://www.jamaicalyrics.com.ar/lyric-96-degrees-in-the-shade_1374.html.

⁵⁹ ROSS, *supra* note 47, at 35–36.

⁶⁰ “Rebel Music” being a reference to Tuff Gong, Bob Marley’s nomenclature for his artform, most notably captured in his song “*Rebel Music (3 O’Clock Road Block)*”:

Oooooowwwwww

Rebel Music

A rebel music

Oooooowww

artists frequently reference biblical verse, scripture lessons, and Rastafarian interpretations of the same, together with the proclamations of Ethiopia⁶¹ as a cultural homeland.⁶² In addition to being danceable and aesthetically pleasing to the ear, this music often takes strong positions on controversial subjects like politics, violence, sex, and sexuality.

Jamaican music, therefore, serves the nation as it effectively manages the populace—it is a social agenda set to a rhythmic backdrop even when its only function is to provide welcome distraction from work and woes. Jamaican music is further an important economic and political vehicle emerging as it did “from a provincial folk music to the status of a national artform in the period of postcolonial Jamaica’s push for economic autonomy.”⁶³ This is a particularly Jamaican performance as the island’s musicians are accorded a certain cachet as the “voice of the people.”⁶⁴ Elsewhere I have described these artists as the “social poets” of Jamaica⁶⁵ and indeed, “[i]n Jamaica it is virtually a cliché to observe that musical performers are the most influential voices among the general population.”⁶⁶ In this way, dancehall artists perform the work of the nation by helping to “organiz[e] actual social relations.”⁶⁷

Rebel music
 How wha happenin to ya
 Oh why can't we roam this open country
 Tell me why can't we be what we wanna be?
 We want to be free
 Three o' clock
 Road Block, road block
 Hey how we givin it to ya
 And hey mister cop I ain't got no
 As I would say hey mister cop ain't got no
 Hey mister cop I ain't no birth certfificate on me now
 Hey how we givin it to ya
 Oooooowwwwww
 A rebel music
 Rebel music

BOB MARLEY AND THE WAILERS, *Rebel Music (3 O'Clock Road Block)*, on NATTY DREAD (Tuff Gong 1974), available at <http://www.lyricsandsongs.com/song/173785.html>.

⁶¹ Anthony B, a dancehall artist known for his conscious lyrics, entreats worship of Ethiopian ruler Haile Selassie:

Every entertainer tek dem baptism
 Show to di world dat dem a Rastaman
 Anthony B, Little Devon have joined di gang
 Risto Benjie, Buju Banton
 Accept Selassie as the Almighty One.

ANTHONY B., *One Thing*, on REAL REVOLUTIONARY (Greensleeves 1998), as cited in COOPER, SOUND CLASH, *supra* note 1, at 57.

⁶² See COOPER, SOUND CLASH, *supra* note 1, at 57 (referring to Rastafarian entertainers as righteous in their oppositional politics and mining of the King James version of the Bible. Dr. Cooper indicates that “enemies of the Jamaican people are imaged as long-ago entities Sodom and Gomorrah of the Old Testament and Babylon of the New.”).

⁶³ ROSS, *supra* note 47, at 35–36.

⁶⁴ Dreisinger, *supra* note 4, at E4 (“[Buju] Banton . . . [is] a musician who has evolved into a profound lyricist known as ‘the voice of Jamaica.’”). See ROSS, *supra* note 47, at 38 (referencing the dancehall DJ as the “much maligned and self-styled ‘voice of the people.’”).

⁶⁵ Nelson, *Carriers of Globalization*, *supra* note 12, at 547.

⁶⁶ ROSS, *supra* note 47, at 38.

⁶⁷ STYCHIN, *supra* note 33, at 3 (speaking to the manner in which the nation, although constructed, and therefore a fiction, organizes societal relations).

Indeed Norman Stolzoff describes dancehall as “the most potent form of popular culture in Jamaica.”⁶⁸ By governing cultural production amongst the youth, dancehall is tremendously important especially in a quasi-colonial atmosphere under which Jamaicans are still attempting to exert both independence and sovereignty on the world stage.⁶⁹ Dancehall reigns supreme as “a field of active cultural production, a means by which black lower class youth articulate and project a distinct identity in local, national, and global contexts.”⁷⁰

Essential to any identity articulation is the decision of who is in and who is out. Dancehall, by effectively negotiating cultural boundaries, is an important delineator of sexual difference and “these are the very boundaries around which its power coheres.”⁷¹ Stated differently, constructions of identity are contingent upon an oppositional framework that excludes whatever is deemed antagonistic to the identity itself: black cannot be white, woman is not man, the physically challenged are not able-bodied, and gay is not straight. In this way, “‘homosexual’ difference is indispensable to the creation of the putative heterosexual norm.”⁷² Under these simplistic binaries, identity becomes dichotomously defined. The dominating identity, the norm, gains privilege through its contingent exclusion of the “other.” Indeed, without the other, the privileged identity loses meaning and suffers a corresponding loss of power.

Again, the power of Jamaican dancehall is that it engages musically and lyrically in identity construction and maintenance. Unfortunately, it constructs Jamaican nationality so as to exclude sexual minorities altogether. Of course, there is a chicken-or-the-egg debate to be acknowledged: while dancehall is certainly not the origin of this exclusion, it nevertheless plays a part in the creation and maintenance of the sociocultural fabric of Jamaica. Moreover, the disconcerting work of dancehall is to police these socio-cultural boundaries at a grass-roots or street level.⁷³

The very notion of policing boundaries, national or sexual, whether metaphorical or literal, raises the specter of an exclusive rather than inclusive nationality. At times the boundaries are drawn along blood lines with ethnicity and race framing much of this essentialist nationalist discourse.⁷⁴ If there is to be a national essence, an authentic citizen, there

⁶⁸ STOLZOFF, *supra* note 5, at 1.

⁶⁹ See ROSS, *supra* note 47, at 38–39 (stating “Who governs the reproduction of culture among the educable youth is a concern for any state, but above all for an effectively recolonized state whose sovereign capacity to direct its own social, cultural, and economic life has been eroded so radically over the last two decades, as it fell into the Third World ‘debt trap’ common to so many postcolonial nations.”).

⁷⁰ STOLZOFF, *supra* note 5, at 1.

⁷¹ Alexander, *supra* note 31, at 5–6.

⁷² *Id.* at 6.

⁷³ See STOLZOFF, *supra* note 5, at 8 (“[T]he social relations of dancehall productions are to a great extent structured by the same social variables found in Jamaica’s national economy: massive exploitation, racism, sexism, homophobia, and violence”).

⁷⁴ See BEN KIERNAN, *Twentieth-Century Genocides: Underlying Ideological Themes from Armenia to East Timor*, in THE SPECTER OF GENOCIDE: MASS MURDER IN HISTORICAL PERSPECTIVE 29, 33–37 (Robert Gellately & Ben Kiernan eds., 2003) (stating that “[g]enocidal regimes often proclaim a need to ‘purify’ not only a race but a territory,” and providing examples of attempts to define a nation or

must simultaneously be an inauthentic non-citizen. Nationality is finite.⁷⁵ As with any limited or restricted space, exclusions form part of the national agenda. Defining homosexually as inauthentic and as excluded from the nationalistic terrain of the Jamaican landscape is constitutive of, and is in turn constituted by, cultural representations, including music. Music has the power to articulate identity through the production of a “lived sense of cultural identity.”⁷⁶ In this sense, the musical message, in addition to being entertaining, defines and confines the “other.”

Whereas for the modern Western nation, or what I refer to as the North-West, “the other” to be excluded is cast as uncivilized,⁷⁷ this is not necessarily the case in developing nations like Jamaica. Instead, the particularity to be expelled, or excluded, is often that which resonates as foreign or imperial or both.⁷⁸ David Murray has recognized that a neo-colonial state faces different obstacles in constructing its national identity, given that it “must overcome the racialized and sexualized predispositions of national models of identity that were built out of and against colonized populations.”⁷⁹ This neo-colonial or post-colonial fiction highlights the economic, political, and cultural forces of globalization which further shape the formation of a national identity, especially for the developing world and small island nations like Jamaica. It is not uncommon for the burgeoning, supposedly post-colonial nation “to be shaped by what it had opposed.”⁸⁰

Thus, globalization, for many nations like Jamaica, is both a blessing and a curse. It is a tide against which resistance is futile. Certainly, Jamaica has seen steady improvement in social progress, as indicated by relative per capita poverty levels, growth in the middle class, and increasing foreign investment.⁸¹ However, globalization has also meant shifting economic, political, and technological currents that constrain or weaken national positions.⁸² Carl Stychin writes, “Central to globalization has been the

geographical area, or justify expansion of territory, by exterminating persons of other races or religions). See also STYCHIN, *supra* note 33, at 4 (commenting on the manner in which the nation has served as the “primary arena for the articulation of racist ideologies,” which resonate based on the “belief in a common blood bond shared by its members”).

⁷⁵ See STYCHIN, *supra* note 33, at 4 (citing PETER FITZPATRICK, “We Know What it is When You Do Not Ask Us:” *Nationalism as Racism*, in NATIONALISM, RACISM AND THE RULE OF LAW 3 (Peter Fitzpatrick ed., 1995)).

⁷⁶ STOLZOFF, *supra* note 5, at 15–16 (referencing the work of Paul Gilroy).

⁷⁷ STYCHIN, *supra* note 33, at 4.

⁷⁸ See *id.* (“The nation is constructed as the universal in opposition to what appears other to it, an other that is defined in terms of particularity.”).

⁷⁹ David A. B. Murray, *Homosexuality, Society, and the State: An Ethnography of Sublime Resistance in Martinique*, 2 IDENTITIES 249, 252 (1996).

⁸⁰ Alexander, *supra* note 31, at 15.

⁸¹ See THE WORLD BANK, JAMAICA: THE ROAD TO SUSTAINED GROWTH 39, 165 (2003); *Human Globalization, Impact of Globalization—Jamaica*, HUMANGLOBALIZATION.ORG, <http://humanglobalization.org/latinams/doc/GlobLatAmJamaica.doc> (last visited July 26, 2007).

⁸² See Fitzpatrick, *supra* note 75, at 17 (commenting upon the universalizing tendency of globalization, “[f]inance and fiscal policy may present a more convincing global semblance, but no matter how mediated through international markets or institutions, the impetus for these things comes from a comity of (some) nations, and it is just as much an imposition on the excluded as the ruthless suppression of the barbarian was in Hegel’s scheme.”); Craig Calhoun, *Nationalism and Civil Society: Democracy, Diversity and Self-Determination*, in SOCIAL THEORY AND THE POLITICS OF IDENTITY 306 (Craig Calhoun ed., 1994) (commenting upon the competing tensions created when nations desire both economic development and democratic ideals, “The constraints and demands imposed by the effort to

increasingly free movement of capital and the integration of states into a world economy where the economic levers are no longer controlled by national governments.”⁸³ Political levers often accompany these external economic initiatives. Foreign investment does not come free of costs.⁸⁴ Interest rates are not the only concern of finance ministers; the contingencies attached to the flow of capital and infrastructure investment projects include inquiries into a host of national policies and programs including environmental inquiries, human rights concerns, and political affiliations.⁸⁵ Further, there is increasingly a North-Western push for an encompassing political discourse and rights talk.⁸⁶

This North-Western (particularly American) framing of equality talk as rights talk is not translatable in other international contexts. Indeed, an essential part of the difficulty with the North-Western response to certain dancehall lyrics was the assumption that the notion of gay rights had similar traction in a Jamaican context. Putting aside the normative question of whether the concept of gay rights should carry similar currency in a Caribbean context, it is apparent that part of the problem with this whole lyrical debate revolved around the North-West’s expectation that Jamaica

compete in this global economy were and are frequently cited as reasons for limiting or postponing the project of increasing democratic participation.”); STYCHIN, *supra* note 33, at 5.

⁸³ STYCHIN, *supra* note 33, at 5.

⁸⁴ ROSS, *supra* note 47, at 46 (noting that globalization has had dire consequences for Jamaica and has “amounted to the de facto recolonization of the island state.”)

⁸⁵ For example, the Canadian oil company, Talisman, sold its very profitable holdings in the Sudan after being accused of supporting a violent political regime through its investment. See Bernard Simon, *A Canadian Oilman Gives In*, N.Y. TIMES, Nov. 10, 2002, at C2. See also *Canadian Oil Firms Accused of Funding Sudan Civil War*, CANADIAN BROADCASTING COMPANY, Nov. 10, 2000, <http://www.cbc.ca/canada/story/1999/10/26/sudan991026.html> (last visited Dec. 30, 2007). Similarly, safety concerns over the food and products it manufactures forced China to agree to improve its safety standards to keep from losing valuable international markets. See Associated Press, *China Agrees to Raise Its Product Standards*, N.Y. TIMES, Aug. 27, 2007, at A9. Political alliances can also be costly. In the 1970s, Jamaican Prime Minister Michael Manley had a friendly and cooperative relationship with Cuban leader Fidel Castro; that relationship generally, and a September 1979 speech in which Manley praised Cuba and Castro specifically, resulted in a denial of large loans to Jamaica by the United States. See EVELYNE HUBER STEPHENS & JOHN D. STEPHENS, *DEMOCRATIC SOCIALISM IN JAMAICA: THE POLITICAL MOVEMENT AND SOCIAL TRANSFORMATION IN DEPENDENT CAPITALISM* 205 (1986). More recently, Venezuelan President Hugo Chávez’s political alliance with Iran and outspoken animosity towards the United States has cost Venezuela international influence and opportunities. See *The Empire Fights Back; Venezuela and the U.N.*, THE ECONOMIST, Oct. 21, 2006, available at http://www.economist.com/displayStory.cfm?Story_ID=E1_RDVPRVPG#login (online subscription needed).

⁸⁶ The North-West no longer colonizes in the name of religion, civilization, or racial and ethnic inferiority. Rather, colonial initiatives operate under the guise of democratization efforts, which interestingly reveal a tension when undemocratic individuals are democratically elected. For example, Hugo Chávez, the democratically elected president of Venezuela, has shut down television media that criticized his regime and has attempted to abolish presidential term limits and take private property by government decree. These anti-democratic moves (among other things) have made him quite unpopular with the United States government. See *An Opposition Gagged; Venezuela*, THE ECONOMIST, June 2, 2007, available at http://www.economist.com/world/la/displaystory.cfm?story_id=9257733; *President for Life?; Venezuela*, THE ECONOMIST, August 18, 2007, at 32. Similarly, democratically elected President Evo Morales, of Bolivia, has attempted to manipulate his nation’s highest court in an attempt to “implant a totalitarian regime” according to the Bolivian Supreme Court. See *Friends, Not Clones; Bolivia*, THE ECONOMIST, June 9, 2007, available at http://www.economist.com/world/la/displaystory.cfm?story_id=9303968. As such, North-Western democratic initiatives in the Southern hemisphere and the developing world reveal a disguised preference for not just the democratic process itself, but also for the outcome of the utilization of this same process. As with other colonizing efforts, control and power figure prominently in these global political efforts.

adopt the same framework for understanding gay and lesbian legal issues as the North-West.

Jamaicans, however, have always insisted on dancing to the beat of their own drum: this is part and parcel of our nationally constructed identity. Rebelliousness is somewhat of a national virtue, especially in defiance to the United Kingdom and America.⁸⁷ Of course, “[w]hile globalization may undermine the claims to universality of nation, the nation state also responds to the global.”⁸⁸ This counterresponse is clearly evident in the recent “settlement” achieved between Jamaican dancehall artists, their management, and North-West advocates behind the “Stop Murder Music” campaign and other gay rights campaigns that targeted Jamaican dancehall music as a proponent of homophobia.⁸⁹ This settlement is even more important when viewed in light of the *Reggae Compassionate Act*⁹⁰ and all the frenzy surrounding its potential enactment in Jamaica and whether the artists, who are the act’s signatories, will abide by its terms, since refusing to honor its terms would put their music and marketability in obvious jeopardy in overseas markets.⁹¹

Marketability is especially important in the context of Caribbean territories. In an increasingly competitive international marketplace, governments of small island nations like Jamaica are deeply concerned with enhancing the salability of their culture for purposes of economic development. Unless a certain amount of commodification and packaging takes place, developing nations cannot compete for vital offshore capital investments and sell their goods and services in the international marketplace.⁹² Therefore, while music might be produced by a musician to further his or her art form and as part of a personal musical journey, any commercial success depends on the packaging, management and essential commodification of the product, especially in a saturated overseas market.

⁸⁷ See COOPER, SOUND CLASH, *supra* note 1, at 147 (discussing the historic origins of the Jamaican “indigenous tradition of heroic ‘badness’” memorialized in Nanny of the Maroons, Paul Bogle, and Sam Sharp as demonstrative of a “militant antislavery, antiestablishment ethos”).

⁸⁸ STYCHIN, *supra* note 33, at 6.

⁸⁹ For details of the settlement see *infra* note 90. See also *Reggae Artists Pledge to Ban Anti-Gay Lyrics*, GLAAD.ORG, June 15, 2007, <http://www.glaad.org/eye/ReggaeBan.php> (last visited Dec. 30, 2007); Tony Grew, *Gay Bashing Reggae Performers Promise to Stop the Hate*, PINK NEWS, June 13, 2007, <http://www.pinknews.co.uk/news/articles/2005-4626.html> (last visited Dec. 30, 2007).

⁹⁰ The *Reggae Compassionate Act* is an agreement brokered in March 2007 by OutRage! and the Black Gay Men’s Advisory Group (both of which are British gay rights groups), along with J-FLAG (Jamaican Forum for Lesbians, All-Sexuals and Gays), with several Jamaican reggae artists who had performed songs with homophobic lyrics. In it, the artists agreed to make music which would “contribute positively to the world dialogue on peace, respect, and justice for all” and to “not make statements or perform songs that incite[d] hatred or violence against anyone from any community.” As of this writing, artists Beenie Man, Buju Banton, Capleton, and Sizzla have signed the Act. See *Reggae Compassionate Act*, PETERTATCHELL.NET, <http://www.peteratchell.net/popmusic/reggaecompassionatescan.htm> (last visited Sept. 16, 2007).

⁹¹ See Teino Evans, *Artistes Not ‘Compassionate’ to the Act--Reggae Artistes Want Clauses Changed*, JAMAICA STAR, June 29, 2007, available at <http://www.jamaica-star.com/thestar/20070629/ent/ent1.html>; Teino Evans, *Women ‘Act’ on Men’s Behalf*, JAMAICA GLEANER, July 1, 2007, available at <http://www.jamaica-gleaner.com/gleaner/20070701/ent/ent3.html>. See also *Beenie Man Wire*, TOPIX, <http://www.topix.net/wire/who/weenie-man> (last visited Nov. 15, 2007); *Sizzla News*, TOPIX, <http://www.topix.net/who/sizzla> (last visited Nov. 15, 2007) (blog and forum activity regarding reggae artists’ agreements not to promote homophobia).

⁹² See STYCHIN, *supra* note 33, at 6.

The process of commodification impacts both demand and supply. Local Jamaican music industry experts are cognizant of who and what might sell at home and abroad. Just as with any other industry, there is necessarily much thought put into the economics of the music industry. The more interesting feature of the Jamaican music industry is its prolific nature and ability to transcend the physical borders of the island. While the massive movement of Jamaicans around the world undoubtedly helps create a ready-made market of migrants of the Diaspora⁹³ starved for a little piece of home, it is also more than that.

Since Bob Marley, the “first third world superstar,”⁹⁴ rose to fame as an international ambassador for Jamaica, the status of reggae music and curiosity about Jamaican culture has increased exponentially. Today, the worldwide sale and distribution of Jamaican music is a billion dollar industry.⁹⁵ Boosted by the increasing North-Western interest in “world” and “global” music, reggae and its subgenre dancehall have found listeners and audiences all over the world. It remains to be seen, however, whether dancehall which has lyrics that often defy ready comprehension outside of Jamaica, will have the lasting impact of roots reggae.

The permanence of this dancehall music will largely depend on not only its entertainment value but also whether the North-West will accept some of the messages, meaning, and performances it promotes. Specifically, while the spiritual overtones and even the revolutionary and rebellious lyrics of roots reggae resonated in the North-West as righteous struggles for human rights,⁹⁶ the hypermasculinist and heteromasculinist imagery and personas of some dancehall artists rub many North-Westerners the wrong way.⁹⁷ While debates about misogynist hip-hop lyrics persist,⁹⁸

⁹³ Orlando Patterson, professor of Sociology at Harvard University and former advisor to late Jamaican Prime Minister Michael Manley, estimates that “between a quarter and a third of all Jamaicans live abroad, most in the United States.” See Orlando Patterson, *The Roots of Conflict in Jamaica*, N.Y. TIMES, July 23, 2001, at A17 (calling Jamaica a “transnational society” and noting that most expatriate Jamaicans maintain strong ties with their home country). See also Nelson, *Carriers of Globalization*, *supra* note 12, at 541 (discussing migration patterns of Jamaicans). See also STYCHIN, *supra* note 33, at 5 (noting that “[t]he free movement of capital is closely connected to the mobility of persons. Instantaneous communication and global travel have resulted in widespread economic migration and new diasporic communities . . .”)

⁹⁴ *Reggae: National Geographic World Music*, NATIONAL GEOGRAPHIC, http://worldmusic.nationalgeographic.com/worldmusic/view/page.basic/genre/content.genre/reggae_775 (last visited July 26, 2007) (“Jamaican reggae phenomenon Bob Marley was truly the world’s first ‘Third World Superstar’: a pop icon for the whole world.”)

⁹⁵ Worldwide sales of reggae recordings have been valued at about \$1.2 billion USD annually; an estimated twenty-five percent of that, or \$300 million USD flowed to Jamaican musicians and producers, and live performances in Jamaica netted an additional estimated \$50 million USD. See Roland Henry, *Jamaican Music is a Multi-Billion Business, But Tax Avoidance High*, JAMAICA OBSERVER, Jan. 22, 2006, available at http://www.jamaicaobserver.com/news/html/20060121T200000-0500_97063_OBS_JAMAICAN_MUSIC_IS_A_MULTI_BILLION_BUSINESS_BUT_TAX_AVOIDANCE_HIGH.asp.

⁹⁶ ROSS, *supra* note 47 at 35–36 (referencing the comments of former Prime Minister of Jamaica, the late Michael Manley that “reggae went beyond ‘parochial boundaries’ and achieved a global reach precisely because it was “the spontaneous sound of a local revolutionary impulse.”)

⁹⁷ ROSS, *supra* note 47 at 53–54 (“While the advent of slackness in the dancehall was partly the result of an unofficial ban on conscious reggae, it was also a parochial expression of popular culture, and raucously vernacular to the degree to which it alienated an entire generation weaned on reggae’s push into the international music field.”)

⁹⁸ For example, in August of 2007, protesters in more than a dozen cities around the United States gathered to object to misogynistic and derogatory lyrics in hip-hop music. The use of the words “bitch”

the combination of homophobia, violence, misogyny, and sexual performance featured in some dancehall lyrics act to construct Jamaica's most famous export as an exclusively heterosexual and hyper-masculinist good—by default, heteromascularity therefore becomes Jamaica's most pervasive export.⁹⁹ Because musical exports reveal as much about their place of origin as they do about the artist and artistry, the insistence of some dancehall artists on articulating controversial postures is worthy of exploration. Equally compelling is the question whether these articulations are controversial locally.

and “ho” to describe women was among the chief complaints. Azam Ahmed, *Rallies Put Hip-Hop on Notice; Protesters Decry Offensive Lyrics*, CHI. TRIB., Aug. 8, 2007, at C1. Reverend Al Sharpton and music producer Russell Simmons are among the supporters of the call to eradicate misogynistic and derogatory words from hip-hop music. Alana Semuels, *Sharpton to Hit Street to Clean Up Rap*, L.A. TIMES, May 3, 2007, at C3. For example, popular rapper 50 Cent's song “I Get Money” includes the following verses:

have a baby by me; baby
 be a millionaire
 i write the check before the baby comes,
 who the fuck cares?
 Im stanky rich. . .
 You can call this my new shit
 but it ain't new though
 I got rid of my old bitch
 now I got new hoes

50 CENT, *I Get Money*, on CURTIS (Universal 2007), available at <http://www.metrolyrics.com/i-get-money-lyrics-50-cent.html>.

Rapper Eminem's song “Kill You” includes strong images of violence against women as well as strongly misogynistic language:

(AHHH!) Slut, you think I won't choke no whore
 til the vocal cords don't work in her throat no more?!
 (AHHH!) These motherfuckers are thinkin I'm playin
 Thinkin I'm sayin the shit cause I'm thinkin it just to be sayin it
 (AHHH!) Put your hands down bitch, I ain't gon' shoot you
 I'ma pull you to this bullet, and put it through you
 (AHHH!) Shut up slut, you're causin too much chaos
 Just bend over and take it like a slut, okay Ma?
 “Oh, now he's raping his own mother, abusing a whore,
 snorting coke, and we gave him the Rolling Stone cover?”
 You god damn right bitch, and now it's too late
 I'm triple platinum and tragedies happen in two states
 I invented violence, you vile venomous volatile bitches . . .

EMINEM, *Kill You*, on THE MARSHALL MATHERS LP (Interscope 2000), available at <http://www.elyrics.net/read/e/eminem-lyrics/kill-you-lyrics.html>.

⁹⁹ ROSS *supra* note 47 at 37 (“Reggae music is probably the country's most famous export, but because of the lack of industry structure . . . it has not maintained the stability required for sustained state or corporate investment in its export potential (estimated . . . at \$2.5 billion).”). Music production and sales accounted for approximately four percent of Jamaican GDP in the late 1990s. Henry, *supra* note 94. One estimate puts the worldwide sales of reggae albums at \$1.2 billion USD in the late 1990s; by way of comparison, Jamaica's total exports for 2005 were valued at \$1.5 billion USD. Henry, *supra* note 95; U.S. DEPARTMENT OF STATE, *supra* note 10. See STOLZOFF, *supra* note 25, at 115 (“As agriculture and mining, traditionally Jamaica's two most important economic sectors, have declined, attention has shifted to tourism and the entertainment industry, a sector where Jamaica enjoys a unique niche in the international market . . . [D]ancehall culture is big business, both locally and globally. The Recording Industry Association of America estimates ‘that between 1992 and 1993, twenty-seven million units of reggae albums were sold in the United States, earning revenue of approximately \$270 million dollars.’ While no such reliable estimates are available for dancehall in Jamaica, there can be little doubt that it is one of the most productive sectors in the overall economy, as evidenced by the PNP's recent efforts to collect data on this ‘nontraditional product.’” (internal citation omitted)).

V. LOCAL MACHISMO AND TRAPPINGS OF THE FORMER MASTER

Much of what is controversial about dancehall is its advocacy of “conspicuous displays of masculine symbols of power (women, cars, money).”¹⁰⁰ Given the preeminent social positioning of dancehall in Jamaica as a producer of cultural values, this vivid display of hyper-heteromascularity is problematic. As a “multidimensional force,” “the dancehall [is] an alternative field of production” and “must contend with the larger political-economic system in which it is embedded.”¹⁰¹ This is the point at which the local cultural production of dancehall comes to represent the nation to the world.¹⁰² Dancehall as a performance of “Jamaican-ness” thus has the power of international definition. In becoming part of the repertoire of what is considered Jamaican, dancehall defines a nation in exclusive ways which manifest a defense of Jamaican “collective heterosexual honor.”¹⁰³

While it has been asserted that sexuality is a “volatile symbol” used in the construction of national identity,¹⁰⁴ from an aspirational perspective Jamaican nationals striving for respect and status on the world stage may also have something to do with what Mosse characterizes as bourgeois morality parading as respectability.¹⁰⁵ “Policing the sexual” is not just about sex, rather it embeds “powerful signifiers about appropriate sexuality, about the kinds of sexuality that presumably imperil the nation and the kind of sexuality that promotes citizenship.”¹⁰⁶ It is thus ironic that in its very attempts at post-colonial liberation and assertion of sovereignty, Jamaican cultural performance qua dancehall dons the very same trappings of imperialism that were forced upon Jamaica for generations—in essence, Jamaicans have bound themselves with their former master’s twine. As Alexander observed, “It would be difficult to map the minute and nuanced ways in which colonial hegemonic definitions of masculinity and femininity insinuated themselves throughout the variety of political, economic, social and cultural structures in history.”¹⁰⁷ One is left to ponder whether there has been an emergence of indigenous Jamaican values in this realm, as distinct from inherited, or imposed, colonial dictates about sexuality, gender and specifically masculinity. As will be stressed below, the Jamaican adoption of the British criminal formula and methodology with respect to what is referred to over time “as the abominable act of buggery” displays a rather blunt adoption of a hegemonic colonial discourse surrounding what are deemed “unnatural acts.”

¹⁰⁰ STOLZOFF, *supra* note 5, at 11.

¹⁰¹ *Id.* at 1, 8.

¹⁰² See STYCHIN, *supra* note 33, at 3 (“The success of ‘nation’ . . . rests in large measure on how it has managed to camouflage its constructedness . . . [L]ike social constructions more generally, it is always . . . it is always in process.”).

¹⁰³ See COOPER, SOUND CLASH, *supra* note 1, at 167.

¹⁰⁴ See STYCHIN, *supra* note 33, at 9 (quoting David Beriss, *Introduction: “If You’re Gay and Irish, Your Parents Must Be English,”* in 2 IDENTITIES 189, 191 (1996)).

¹⁰⁵ See G.L. MOSSE, NATIONALISM AND SEXUALITY 9 (1985); see also STYCHIN, *supra* note 33, at 9, 12.

¹⁰⁶ See Alexander, *supra* note 31, at 6.

¹⁰⁷ See *id.* at 11.

In conforming to the traditional norms of their former imperial masters in spite of shifting and conflicting modern norms, post-colonial nations tend to exhibit hypermasculine cultural appropriations. In other words, “by replicating (and reifying) those norms of Western nationalist respectability,”¹⁰⁸ nations like Jamaica seek to demonstrate that they are ready for independence and self-governance in accordance with the terms forced upon them. In this way, “the state moves to police the sexual and reinscribe inherited and more recently constructed meanings of masculinity and femininity” in order to demonstrate the requisite evolution from “savage to civilized,” thereby demonstrating its capability for self-governance.¹⁰⁹ Black nationalist masculinity is but a “colored” reflection of former colonial masculine images.

Herein lies the significance of socialization into British norms. . . .

In order to demonstrate that it had ‘graduated from all schools of constitutional, economic and social philosophies’, and that it could comport itself with ‘discipline dignity, and decorum, with the eyes of the world upon us’, Black nationalist masculinity needed to demonstrate that it was now capable of ruling, which is to say, it needed to demonstrate moral rectitude. . . .¹¹⁰

The logic of masculinist signification might be even more emphatic the lower one falls on the pecking order. In other words, in order to gain respect, those in the lower classes need to authenticate themselves according to the criteria set by the upper classes and, by extension, the former colonizer. As such, it could be that much of the machismo posturing so prevalent in dancehall music stems from masqueraded attempts at heteromasculinist signification.

It has been speculated that the way in which marginalized men authenticate and legitimate themselves is through displays of excessive masculinity, be that through misogynistic proclamations or homophobic rants.¹¹¹ In either case, it is the heterosexual ultrasexual womanizer who is applauded for his ability to manage many women whilst simultaneously acquiring guns, cars, and money that is nationally valorized.¹¹²

At the individual level, then, one might expect masculinity to operate in the ways that legal scholar Frank Rudy Cooper describes in his article, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*.¹¹³ Cooper’s overall thesis is that popular representations of heterosexual black men in the U.S. alternate between a Bad Black Man, who is animalistic, sexually depraved, and crime-prone, and a Good Black Man, who distances himself from blacks and emulates

¹⁰⁸ See STYCHIN, *supra* note 33, at 12.

¹⁰⁹ See Alexander, *supra* note 31, at 6, 12.

¹¹⁰ See *id.* at 12–13 (internal citation omitted).

¹¹¹ See Murray, *supra* note 78, at 252 (remarking that Martiniquais state-supported cultural productions contain “highly gendered imagery reinforcing a stereotypical ‘hypermasculine’ male”).

¹¹² See STOLZOFF, *supra* note 25, at 11 (stating that the gangster lifestyle based on conspicuous displays of masculine symbols of power and willingness to use violence to achieve desired ends, has become a model of the good life for thousands of youths in the ghetto).

¹¹³ Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853 (2006).

whites.¹¹⁴ However, the call to emulate normative white men is simultaneously the trap of defining masculinity as the dominance of those below you in the various identity hierarchies be that race, gender, sexuality or socio-economic status.¹¹⁵ Heterosexual black men therefore subordinate women and gay men as compensation for their own denigration.¹¹⁶ Cooper thus says that “[g]iven the systemic pressures for black men to emulate normative masculinity by exercising dominance over others, hip-hop’s misogyny and homophobia appear to be an instance of compensatory subordination.”¹¹⁷ While there are differences between Jamaica and the U.S. and dancehall and hip-hop, the two musical genres do appear to operate in accordance with a particular understanding of masculinity, a model which constitutes and is constituted by misogynist and homophobic domination and sometimes violence. This is the masculinity that Karen Pyke denominates “hyper-masculine.”¹¹⁸ Legal scholar Angela Harris pushes the definition further and defines hypermasculinity as “a masculinity in which the strictures against femininity and homosexuality are especially intense and in which physical strength and aggressiveness are paramount.”¹¹⁹ Extrapolating from this individualized conception, this article examines forms of hypermasculinity and compensatory subordination at the level of the nation and its broad cultural forms.

No nation wants to be perceived as effeminate—feminine perhaps, but certainly not as “not-manly.”¹²⁰ Carl Stychin notes the volatility of appropriating a national identity and recognizes that “[n]ations have been historically constituted in gendered and sexualized terms. . . .”¹²¹ Curiously, within this articulation, there is an additional articulation, which at first glance seems at odds with a sexualized and gendered discourse. In articulating a national identity, citizens simultaneously seek to constitute “normalcy” within their borders.¹²² National norms of decency and morality conveniently define certain types of sex as deviant and people who engage in such behavior as foreign to the national citizenry.¹²³

The response of many Jamaicans to the demands for discontinuance of homophobic lyrics was to either cast these demands as “foreign” or seek to minimize Jamaican homophobia through global contextualization.¹²⁴ These

¹¹⁴ *Id.* at 857.

¹¹⁵ *Id.* at 896.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 901.

¹¹⁸ See generally Karen D. Pyke, *Class-Based Masculinities: The Interdependence of Gender, Class, and Interpersonal Power*, 10 *GENDER & SOC’Y* 527 (1996) (describing working-class men’s hypermasculinity as characterized by an emphasis on aggressiveness and physicality as compensation for an inability to claim aspects of the idealized masculinity).

¹¹⁹ Angela Harris, *Gender, Violence, Race, and Criminal Justice*, 52 *STAN. L. REV.* 777, 793 (2000).

¹²⁰ See *id.* (noting the role of symbolism in articulating a national masculinity which is “properly heterosexual”); see also STYCHIN, *supra* note 33, at 12 (referencing the “threat of the effeminized non-Western state”).

¹²¹ See STYCHIN, *supra* note 33, at 7.

¹²² See *id.* at 9 (noting that fixed notions of sex and gender roles were crucial and that “anything that could be construed as undermining that fixity was constructed as the nation’s other.”)

¹²³ See *id.* (indicating that homosexuality was constructed as other to the self constitution of the nation).

¹²⁴ See Gary Younge, *Troubled Island: In Jamaica, where politicians are openly homophobic and song lyrics incite violence against gay people, coming out can be fatal*, *THE GUARDIAN*, Apr. 27, 2006, at G2.

comments reveal that “[s]ame sex sexuality is deployed as the alien other, linked to conspiracy, recruitment, opposition to the nation, and ultimately a threat to civilization.”¹²⁵ By ignoring any articulations for gay rights in Jamaica and correspondingly ignoring the plight of gays, lesbians, and transgendered Jamaicans, these responses ascribed a foreign interloper status to those decrying the lyrics in question, essentially explaining that “gay-bashing has not been politicized [in Jamaica] because homophobia is widely accepted throughout the society.”¹²⁶ This normative construction

available at <http://www.theguardian.co.uk/gayrights/story/0,,1762155,00.html>. (quoting Professor Cooper as saying “Compared to a big city like New York, you could say Jamaica is homophobic. . . [b]ut not compared to, say, Kansas or smalltown USA. Buju Banton is no less homophobic than George Bush.”) *Id.* (quoting Jamaican Senator Burchell Whiteman’s comments about the Human Rights Watch Report “We are certainly not about to respond to any organisation external to this country that may want to dictate to us how and when to deal with the laws of our land.”). See Elena Oumano, *Jah Division: Free speech, cultural sovereignty, and human rights clash in reggae dancehall homophobia debate*, VILLAGE VOICE, Feb. 15, 2005, <http://www.villagevoice.com/music/0507.oumano,6111822,22.html> (“Immediately following the one-two punch of ‘Stop Murder Music’ and HRW’s report, Jamaican’s usually fractious society linked arms—churchman with Rastaman, policeman with ruffneck. Together as one, the nation informed the world. . . . ‘First yuh must clean up yuh own backyard before yuh come clean up a next man own, and fi dem backyard more dirty than our own.’”) (last visited Dec. 30, 2007); Petridis, *supra* note 29 (A famous Jamaican radio DJ for Irie FM dismisses the report of homophobic violence in Jamaica as the work of “a ridiculous gay rights group talking all kinds of crap.”); *Jamaican Dancehall Artiste Defends Homophobic Lyrics*, CARIBBEAN NET NEWS (Oct. 25, 2006), <http://www.caribbeanetnews.com/cgi-script/csArticles/article/000038/0038877.htm> (“Beenie Man has hit out at critics who accuse him of homophobia, insisting Jamaican culture is far less prejudiced than in Israel.”)

¹²⁵ *Jamaican Dancehall Artiste Defends Homophobic Lyrics*, *supra* note 124.

¹²⁶ See STOLZOFF, *supra* note 5, at 8. Stolzoff notes,

[D]ancehall is not only important to poor blacks but central to the society as a whole, because Jamaicans of all races and classes define themselves in relation to it. For the lighter-skinned middle and upper classes, glossed as *uptown* people, opposition to dancehall has galvanized their sense of cultural superiority—hence, their right to govern—because they think it demonstrates black lower-class cultural inferiority and lack of morality However, for the black lower classes, glossed as *downtown*, dancehall provides a medium through which the masses are able to ideologically challenge the hegemony of the ruling classes and state apparatuses. Dancehall is thus a marker of a charged cultural border between people of different races and class levels. *Id.* at 6.

Homosexuality is considered more dangerous in “downtown” areas, which have a higher black population, and is apparently somewhat more tolerated in “uptown” areas, where more elites (and whites) live. Lady Saw, a female dancehall artist, has condemned the tourist industry for promoting homosexuality. Other Jamaicans have said that cultural globalization is influencing attitudes towards homosexuality, noting that international travel and popular (American) media, like television shows “Will and Grace” and “Queer as Folk,” promote more positive images of homosexuality. Jamaican politicians have rejected the Human Rights Watch report and other international efforts to condemn homophobia in Jamaica as foreign attempts to interfere with Jamaican affairs. See generally HUMAN RIGHTS WATCH, *supra* note 6.

A March 8, 1993 letter sent by “Free Thinker” to the editor of THE DAILY GLEANER, which Dr. Cooper reproduced in SOUND CLASH, indicates this “remain closeted” mentality:

I understand that GLAAD, the homosexual group has local connections, so this letter may be of interest to them.

The actions of their American and British counterparts against Buju Banton and Shabba Ranks and others, may be influencing people, but they are not winning friends, especially not here in Jamaica.

I hold no brief (pun intended) for either performer, [sic] as a matter of fact, my tastes in music run to jazz, the classics and oldies from the 1950s, 1960s and 1970s. *However, I do defend the right of these performers to hold their own opinions.*

Homosexuals (I refuse to call nor consider them as “gay” as they seem a dour bunch) are, I believe, free to carry on their affairs as they see fit, so long as they keep it away from me. I find their sexual preference distasteful, to say the least. At the same time, I do not advocate violence against them and prefer the “live and let live” policy.

On the other hand, whenever any interest group begins to attack the freedom of opinion and expression of others, there I draw a line.

postulates that Jamaicans are black and heterosexual, while homosexuals are white and foreign. To reinforce the concept of a virile, stubborn Jamaican masculinity, “same sex sexuality is deployed as the alien other.”¹²⁷

In dichotomizing the response in this way, the defenders of homophobic lyrics easily polarize the debate. Given the rampant anti-colonial and anti-foreign sentiments that developed under years of imperial rule, the conflation of colonization with foreigners and foreigners with whites is all too easy. As Dr. Carolyn Cooper has stated, once the issue becomes one of Jamaican nationalism, the unification of many Jamaicans against foreign meddling is to be expected.

The international marketing of reggae is raising fundamental questions about cultural identity, cultural autonomy and the right to cultural difference. On the issue of sexual preference, Jamaican society is itself slowly moving in the direction of giving visible cultural space to homosexuals. However, given the historical context of a dislocating politics of euro-american imperialism in the region, ‘hard-core’ Jamaican cultural nationalists are likely to resist any re-examination of indigenous values that is perceived as imposed on them by their imperial neighbour in the North.¹²⁸

While I agree with Dr. Cooper’s assessment of the Jamaican nationalist response to the dancehall controversy, I question her inclusion of the traditional exclusion of homosexuality from Jamaican cultural space as an indigenous norm. From the perspective of legal indoctrination, with its implicit education and symbolic functions, the criminalization of sodomy is the direct descendant of British colonial rule in Jamaica. Dr. Cooper, along the same lines, also critiques Jamaican “badmanism”—the donning of a gangster persona in music and life—as “a theatrical pose that has been refined in the complicated socialization process of Jamaican youths who learn to imitate and adapt the sartorial and ideological ‘style’ of the heroes and villains of imported movies.”¹²⁹ I posit that Jamaican homophobia is an

I would caution these members and supporters of GLAAD to watch out for the back lash that no doubt will eventually come, as many other persons are not as moderate as myself and they may see a resurgence of overt hostility from fans of these highly popular entertainers.

My advice to homosexuals is to feel pleased at your progress and increased acceptance but do not push your luck. Your continued freedom to enjoy your chosen lifestyle just may depend on your acceptance that not everyone shares your belief.

COOPER, SOUND CLASH, *supra* note 1, at 51–52 (emphasis added). See also STYCHIN, *supra* note 33, at 9.

¹²⁷ STYCHIN, *supra* note 33, at 9. Philip Dayle remarks: “In Jamaica nationalism trumps sexual orientation and race trumps sexual orientation. So when faced with nationalism and race together, issues of sexual orientation don’t stand a chance.” Younge, *supra* note 124, at G2. Professor Cooper further notes,

Powerful organizations of homosexuals in the North Atlantic like GLAAD [The Gay & Lesbian Alliance Against Defamation] seem to be playing the role of imperial overlords in the cultural arena. Their heterophobic politics make little allowance for culture-specific definitions of norms of appropriate sexual behaviour [sic]. The homogenizing imperative of global political correctness effaces cultural difference in a new imperialism of ‘liberal’ ideology. Caroline Cooper, *Lyrical Gun: Metaphor and Role Play in Jamaican Dancehall*, 35 MASS. REV. 429, 444–45 (1994) [hereinafter Cooper, *Lyrical Gun*].

¹²⁸ See Cooper, *Lyrical Gun*, *supra* note 127, at 445.

¹²⁹ See COOPER, SOUND CLASH *supra* note 1, at 146–47.

analogous sociocultural pose similarly refined from and imitative of traditional North-Western norms of sexual respectability.

Specifically, could there be a corresponding socialization of colonial homophobic norms which contests desired post-colonial aspirations? With respect to black masculinity and femininity, “the ‘hegemonic repertoire of images’ . . . have been forged through the histories of slavery and colonization in order to identify the sexual inheritances of Black nationalism as well as its own inventions.”¹³⁰ An essential part of this repertoire was the notion of the black slave as hypersexual breeder—male slaves could be reduced to mere sexual studs and female slaves were prized for their fecundity and rapacious sexuality.¹³¹ Historically, heterosexuality was incentivized for black slaves because homosexuality would not be profitable for a slavocracy,¹³² as no issue would be produced.¹³³ Thus, so-called indigenous Jamaican homophobia may instead be yet another well-engrained foreign imposition.

The unfortunate criminalization of this expression of homosexuality is a colonial vestige of English domination. Edward Said commented that “little notice [had been] taken of the fact that the extraordinary global reach of classical nineteenth and early-twentieth-century European imperialism still casts a considerable shadow over our own times.”¹³⁴ This article is one attempt at such recognition. Rather than break the shackles of colonialism, the Jamaican legislature has refused to remove the provisions restricting sexual freedom, instead choosing to ascribe to this badge of colonialism a respectability that it does not deserve.

VI. LOCALIZING THE LAW—IS IT REALLY LOCAL IF IT’S PART OF A COLONIAL PAST?

In Jamaica, consensual sex between adult men is criminalized as the “abominable act of buggery.”¹³⁵ Section 76 of the Offences Against the Person Act conflates sex between men with sex with animals and punishes both gay sex and bestiality with imprisonment and hard labor for up to ten years.¹³⁶ The law articulates sex between men as freakish and perverse in the very nomenclature of the relevant section.¹³⁷ Sex between men is listed under “unnatural offenses,” a descriptor that blatantly fixes heterosexuality

¹³⁰ See Alexander, *supra* note 31, at 11.

¹³¹ See Camille A. Nelson, *American Husbandry: Legal Norms Impacting the Production of (Re)productivity*, 19 YALE J. L. & FEMINISM 1, 10 (2007).

¹³² *Slavocracy* refers to the “ruling group of slaveholders or advocates of slavery, as in the southern United States before 1865.” AMERICAN HERITAGE COLLEGE DICTIONARY OF THE ENGLISH LANGUAGE 1695 (3d ed. 1996).

¹³³ See Alexander, *supra* note 31, at 6 (“[S]ome bodies have been marked by the state as non-procreative, in pursuit of sex only for pleasure, a sex that is non-productive of babies and of no economic gain.”)

¹³⁴ EDWARD SAID, *CULTURE AND IMPERIALISM* 7 (1993).

¹³⁵ Offences Against the Person Act, § 76, L.N. 111/2005, available at <http://www.moj.gov.jm/laws/statutes/Offences%20Against%20the%20Person%20Act.pdf> (“Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with an animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.”).

¹³⁶ See *id.*

¹³⁷ See *id.*; Alexander, *supra* note 31, at 9.

as the natural measure of appropriate sexuality.¹³⁸ The law also proscribes attempted “unnatural offences,”¹³⁹ the section under which buggery is listed. There is a further catchall provision denominated as “Outrages on Decency.” Specifically, Section 79 of the Offences Against the Person Act provides an expansive basis upon which to criminalize men who have sex with men. The language is broad and allows for much discretion in the policing of male sexuality.

Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term of not exceeding two years, with or without hard labour.¹⁴⁰

In examining the ways in which “[h]eterosexuality has been nationalized,”¹⁴¹ Alexander examines the ways in which non-procreative sex has been criminalized in other small island nations.¹⁴² Observing the effects of internationalization and increasing globalization, she notes that “the effects of political and economic international processes provoke a legitimation crisis for the state which moves to restore its legitimacy by recouping heterosexuality through legislation.”¹⁴³ Imbedded within this, however, is post-colonial paradox, as the very laws seized upon in an independent Jamaica are a clear colonial throwback to the imperial order.

Specifically, post-independence Jamaica merely chose to adopt the criminalization fixed by these sections as previously enforced by the imperial authority.¹⁴⁴ By maintaining the logic and essence of these provisions, the post-colonial Jamaican legislators chose to reinscribe the very same colonial sexual imperatives—that is, sex for procreation is prized and profitable for the building of the nation state.¹⁴⁵ Thus Jamaican

¹³⁸ See Offences Against the Person Act, § 76, L.N. 111/2005, available at <http://www.moj.gov.jm/laws/statutes/Offences%20Against%20the%20Person%20Act.pdf>; Alexander, *supra* note 31, at 9.

¹³⁹ See Offences Against the Person Act, § 77, L.N. 111/2005, available at <http://www.moj.gov.jm/laws/statutes/Offences%20Against%20the%20Person%20Act.pdf> (“Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.”).

¹⁴⁰ See Offences Against the Person Act, § 79, L.N. 111/2005, available at <http://www.moj.gov.jm/laws/statutes/Offences%20Against%20the%20Person%20Act.pdf>.

¹⁴¹ See STYCHIN, *supra* note 33, at 11.

¹⁴² See Alexander, *supra* note 31, at 5.

¹⁴³ See *id.* at 7.

¹⁴⁴ LAWS OF JAMAICA, Vol. 5, *Unnatural Offences*, § 66 (1938).

¹⁴⁵ A review of the pre-independence provisions indicated that very little has changed over time. While the criminalization of the “abominable act of buggery” as an unnatural act remains static, the potential penalty is lessened insofar as the mandatory minimum of a three year sentence is removed. Section 69 of the 1953 Act reads:

Whoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the Court, to be kept in penal servitude for a term not exceeding ten years, and not less than three years, or to be imprisoned and kept to hard labour for a term not exceeding two years. LAWS OF JAMAICA, Vol. 6, *Unnatural Offences*, § 69 (1953).

provisions relating to same-sex sexuality have a long neo-colonial historical legacy. Indeed, the aforementioned sections of the Offences Against the Person Act “[resemble] the first civil injunctions against sodomy that was legislated in 1533 in Henry VII’s parliament.”¹⁴⁶

But even in contemporary times, the unfortunate reality is that gays and lesbians in Jamaica continue to be terrorized by penal provisions that criminalize alternative forms of sexuality.¹⁴⁷ Indeed, the Jamaican press publishes the names of men so charged, thereby putting their lives at risk.¹⁴⁸ This attempt at cultural heterosexist shaming perpetuates a climate of sanctioned harassment that carries the force of law. These laws embolden the police to harass gays and lesbians by wielding the threat of criminal punishment.¹⁴⁹ In the best case scenario, the hostile climate resulting from the “absence of any visible lesbian and gay movements in the Caribbean”¹⁵⁰ produces only extorted silence and prevalent closeting.¹⁵¹ In the worst case scenario, such sanctioned harassment produces incidences of violence against gays and lesbians, escalating to acts of murder.¹⁵²

One of the interviews in the Human Rights Watch report sheds further light on the issue. Although the interviewee, someone with ties to law enforcement, erroneously portrays the murder of gay men in Jamaica as crimes of passion within the gay community, his comments reveal widespread incidences of “overkill” of gay men:

[A]buse of gay men is by gay men. From my experience, all gays are killed in the same way. If you go to a crime scene, you can tell if a person is gay or straight by how they are killed. Gay men, they are more brutally slain—by a knife, strip them up.¹⁵³

Such violence is reflective of Jamaica’s volatile colonial past. Given the legacy of the colonial legal system, it is remarkable that Jamaicans have essentially erased the concept of indigenous homosexuality, promoting instead the notion of “colonial contamination,”¹⁵⁴ which situates homosexuality as a foreign concept and the societal exclusion of homosexuals as organic. While remnants of colonization are deplored and routed out as localized examples of imperial domination and exploitation of the “sufferers,”¹⁵⁵ the laws criminalizing homosexuality are paradoxically

¹⁴⁶ See Alexander, *supra* note 31, at 8.

¹⁴⁷ See HUMAN RIGHTS WATCH, *supra* note 6, at 21–27.

¹⁴⁸ See HUMAN RIGHTS WATCH, *supra* note 6, at 23.

¹⁴⁹ See HUMAN RIGHTS WATCH, *supra* note 6, at 18–21.

¹⁵⁰ See Alexander, *supra* note 31, at 21.

¹⁵¹ See HUMAN RIGHTS WATCH, *supra* note 6, at 25–26.

¹⁵² See HUMAN RIGHTS WATCH, *supra* note 6, at 27–31.

¹⁵³ See HUMAN RIGHTS WATCH, *supra* note 6, at 30.

¹⁵⁴ See STYCHIN, *supra* note 33, at 11 (noting that postcolonial articulations often employ theories of colonial contamination “wherein homosexuality is attributed to the white colonizer” who has further exploited the colonial subject sexually).

¹⁵⁵ This is a reference to the poor masses in Jamaica; those occupying the lowest rung on the socio-economic ladder. See Bob Marley’s lyrics of *Babylon System*, railing against traditional education and advocating rebellion:

Babylon system is the vampire
Sucking the children day by day.
Babylon system is the vampire
Sucking the blood of the sufferers.

upheld and applauded as righteous examples of respectability,¹⁵⁶ “as if the colonial masters were still looking on, as if to convey legitimate claims to being civilized.”¹⁵⁷ Not having dismantled the underlying presuppositions of British law, Black Nationalist men, now with some modicum of control over the state apparatus, continue to preside over and administer the same fictions.¹⁵⁸

VII. LYRICAL ASSAULT—EXPLORING THE EXTRAPOLATED POSSIBILITIES

A lyrical gun is the metaphorical equivalent of a literal gun.
Words fly at the speed of bullets and the lyrics of the DJ hit hard.
In this context, the word ‘lyrical,’ belonging to the domain of the
verbal play and fantasy, become a synonym of ‘metaphorical.’¹⁵⁹

I have argued elsewhere that some words, especially racist words and words intentionally used to marginalize individuals and communities, are abusive.¹⁶⁰ Professor Delgado characterizes such words as “words that

BOB MARLEY AND THE WAILERS, *Babylon System*, on SURVIVAL (Tuff Gong 1979), reprinted in COOPER, NOISES IN THE BLOOD, *supra* note 15, at 123.

¹⁵⁶ Jamaican justice minister, K.D. Knight, has said that the laws criminalizing buggery (usually enforced only against homosexuals) will not be repealed, because they are based on a moral imperative that has not changed. See *Jamaican Minister Opposes Gay Reforms*, BBCNEWS.COM, Dec. 16, 1998, <http://news.bbc.co.uk/2/hi/americas/236512.stm> (last visited Jan. 2, 2008). Some Jamaican officials have interpreted international pressure to repeal the buggery laws, which criminalize homosexual sexual activity, as unjustified meddling. Dionne Rose, ‘*We Won’t Be Bullied’— Gov’t Says It Has No Plan To Repeal Buggery Laws; Denies Anti-Gay Allegations*, JAMAICA GLEANER, Nov. 18, 2004, available at <http://www.jamaica-gleaner.com/gleaner/20041118/lead/lead1.html> (“‘We find the approach of this organization [Human Rights Watch] unacceptably insensitive,’ Information Minister Burchell Whiteman said’ . . . ‘We also as the duly elected representatives of the people feel that it is the people who must set our agenda in respect of the legislation which we pass or the repeal of any existing laws. We are certainly not about to respond to any organisation, external to this country, which may want to dictate to us how and when to deal with the laws of our land,’ said Senator Whiteman.”). See Garwin Davis, *Homophobia Remains High: Gays Remain in Seclusion, Health Officials Worry Homophobia*, JAMAICA GLEANER, Jul 26, 2001, available at <http://www.jamaica-gleaner.com/pages/gay/homophobia.html> (“But despite the concerns of health officials, the government appears no closer to repeal the country’s homosexual laws. Prime Minister P.J. Patterson last year at a People’s National Party (PNP) conference in Kingston declared that not under his watch would there ever be the repealing of laws as it relates to homosexuality. Mr. Patterson again last month raised eyebrows when on a live radio programme he saw it fit to declare his sexuality to the nation. ‘My credentials as a life-long heterosexual person are impeccable,’ Mr. Patterson said. ‘Anybody who tries to say otherwise is not just smearing but is engaging in vulgar abuse.’”).

¹⁵⁷ See Alexander, *supra* note 31, at 14.

¹⁵⁸ See *id.*

¹⁵⁹ Dr. Cooper states that, “[t]he image of the ‘lyrical gun’ vividly illustrates the function of metaphor and role-play in contemporary Jamaican dancehall culture. ‘Lyrical’ is not a word that one would ordinarily use to describe a gun; ‘lyrical’ is the language of poetic introspection, not willful extermination. ‘Lyrical gun’ is a quintessential dancehall term, the language of subversion and subterfuge: mixing things up, turning them inside out and upside down.” Dancehall artist, DJ Shabba Ranks uses the term “lyrical gun” in his song “Gun Pon Me.” See COOPER, SOUND CLASH, *supra* note 1, at 154. Dr. Cooper also entitled the chapter in her book, SOUND CLASH, most directly devoted to analyzing lyrics deems violent or homophobic “Lyrical Gun.” See COOPER, SOUND CLASH, *supra* note 1, at 145.

¹⁶⁰ See RICHARD DELGADO, WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING (1982), reprinted in CRITICAL RACE THEORY: THE CUTTING EDGE, 159–68 (Richard Delgado ed., 1995). See also Camille A. Nelson, *Breaking the Camel’s Back: A Consideration of Mitigatory Criminal Defenses and Racism-Related Mental Illness*, 9 MICH. J. RACE & L. 77, 80 (2003) (recognizing the abusive and deleterious mental health effects of racism and arguing for the acknowledgment the mitigatory potential arising from those effects in the criminal defense context) [hereinafter Nelson, *Breaking the Camel’s Back*]; Camille A. Nelson, *(En)raged or (En)gaged: The Implications of Racial Context to the Canadian Provocation Defense*, 35 U. RICH. L. REV. 1007, 1018

wound.”¹⁶¹ This methodology, when transferred to the nebulous context of art, becomes complicated by the possibility of misunderstandings in the “reading” of the art form; the metaphorical is elusive in its grasp. Moreover, the traditional response of free speech has even greater resonance, if the words are truly not meant to be “fighting words,”¹⁶² but rather as figurative points of departure for deeper reflection or merely an “ambiguous vacillation between the literal and the metaphorical. . . .”¹⁶³

Given the symbolic significance of the lyrical gun and the prevalence of a combative tenor in much of dancehall music, I wonder whether tortious possibilities exist which might address this violent tendency. Specifically, if a lyrical gun is legitimately posited as the appropriate metaphor for some dancehall lyrics, is there a similar legitimacy to a corresponding conceptualization of lyrical assault? This section briefly explores the potential extrapolation of traditional assault doctrine to the realm of the lyrical.

The potential of assault doctrine cannot be examined without first recognizing the doctrine’s underpinning in the tort of battery. Battery is the harmful or offensive personal contact that results from an act intended to cause the plaintiff to suffer such contact.¹⁶⁴ The essence of battery as nonconsensual touching is captured in the *Restatement of Torts* by the formulation that the defendant must actually intend the “harmful or offensive contact.”¹⁶⁵ The intentional tort of assault acts as an overlay to this doctrine.¹⁶⁶

Assault protects “[t]he interest in freedom from apprehension of a harmful or offensive contact.”¹⁶⁷ Unlike battery, the focus of the tort is not upon the contact itself, but rather the “protect[ion] against. . . a purely

(2002) (arguing for a racial contextualization of the Canadian provocation defense and explaining that “[a]cts or insults which are provocative due to the accused bearing the burden of racism, or other systematically oppressive forces . . . may properly be seen as provocative.”) [hereinafter Nelson, *(En)raged or (En)gaged*].

¹⁶¹ See DELGADO, *supra* note 160, at 159–68 (Richard Delgado ed., 1995).

¹⁶² “‘Fighting’ words [are] those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (holding that the state statute under which petitioner was convicted, which prohibited calling other persons by derogatory names in public, was a valid limit on the constitutional right to free speech).

¹⁶³ See COOPER, *SOUND CLASH*, *supra* note 1, at 157.

¹⁶⁴ See RESTATEMENT (SECOND) OF TORTS § 13 (1965).

¹⁶⁵ See DAN DOBBS, *THE LAW OF TORTS* § 24 (2000).

¹⁶⁶ RESTATEMENT (SECOND) OF TORTS § 21 states:

- (1) An actor is subject to liability to another for assault if
 - (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
 - (b) the other is thereby put in such imminent apprehension.
- (2) An action which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

¹⁶⁷ See WILLIAM L. PROSSER ET AL., *PROSSER AND KEETON ON TORTS* § 10 (5th ed. 1984).

mental disturbance.”¹⁶⁸ At its core, the assault doctrine therefore finds fear in the form of apprehension¹⁶⁹ of physical injury or unwanted touching.¹⁷⁰

At this point it would seem that the tort of assault might provide a legal vehicle in which to engage homophobic dancehall lyrics. Certainly any gays and lesbians listening to this music in a crowd, or indeed in a dancehall, might reasonably be apprehensive and concerned for their physical safety, especially if they were out or outed. Indeed, if this tort is to be at all useful or practical in addressing homophobic lyrics, an essential calibration must be made to include sexuality within the construction of the reasonable person.¹⁷¹

Just as I have advocated for the avoidance of an (e)racized reasonable person in other contexts,¹⁷² I analogously wish to situate sexual orientation as an identity which should be infused—appropriately and without bias—into the construction of the reasonable person in this context. As such, in order to successfully claim assault on the basis of sexual orientation, the reasonable person against which the plaintiff’s apprehensions will be measured should not be abstracted to the point of being without sexual orientation, gender, class, or race. Identity matters as to how one perceives threats to one’s person. Furthermore, this identity-based assessment of fear must be contextualized to reflect the realities of the site where the tortious encounter takes place. For a gay man or a lesbian, this “fear factor” might be heightened in a predominantly heterosexual, and certainly heterosexist, environment versus a predominantly queer setting.

Admittedly, there are three doctrinal obstacles which may prevent the operation of the tort of lyrical assault. First, the assault doctrine is conceptually founded upon notions of intent, hence the nomenclature of the “intentional tort of assault.” This is generally thought to mean that the assault is directed at a specific person. There has been, however, some movement away from this rigid stance with respect to the specificity of intent in the overlapping doctrinal area of culpable incitement.

In *McCullum v. CBS Inc.*,¹⁷³ the infamous 1980s tort case regarding heavy-metal rocker Ozzy Osbourne, the court refused to find any liability on the part of the songwriter or the record company. The plaintiffs sued Osbourne and CBS Records, Inc. alleging that the song “Suicide Solution” caused the decedent to commit suicide while listening to the lyrics of the

¹⁶⁸ See *id.* (noting that the tort of assault is the first recognition of a mental, rather than physical, injury given that there is a “touching of the mind, if not the body”).

¹⁶⁹ *Apprehension* is defined in *Restatement* § 24, which states, “In order that the other may be put in the apprehension necessary to make the actor liable for an assault, the other must believe that the act may result in imminent contact unless prevented from so resulting by the other’s self-defensive action or by his flight or by the intervention of some outside force.” See *RESTATEMENT (SECOND) OF TORTS* § 24.

¹⁷⁰ See *id.* (recognizing that an assault “may constitute any act of such a nature as to excite an apprehension of a battery”).

¹⁷¹ See PROSSER, *supra* note 167, at 44 (“[A]pprehension must be one which would normally be aroused in the mind of a reasonable person.”).

¹⁷² See, e.g., Nelson, *Breaking the Camel’s Back*, *supra* note 160; Nelson, *(En)raged or (En)gaged*, *supra* note 160; Camille A. Nelson, *Considering Tortious Racism*, 9 DEPAUL J. HEALTH CARE L. 905 (2005) [hereinafter Nelson, *Constituting Tortious Racism*].

¹⁷³ See *McCullum v. CBS, Inc.*, 249 Cal. Rptr. 187 (Ct. App. 1988) (nineteen-year-old John McCullum shot and killed himself while lying in bed listening to Osbourne’s music).

album.¹⁷⁴ Seizing upon the second of the conceptual obstacles, the court focused upon the imminence of the assault, reasoning, “[T]here is nothing in any of Osbourne’s songs which could be characterized as a command to an *immediate* suicidal act.”¹⁷⁵ “None of the lyrics relied upon by plaintiffs, even accepting their literal interpretation of the words, purport to order or command anyone to any concrete action at any specific time, much less immediately.”¹⁷⁶

The promising note for the expansion of the specificity of intent is the court’s recognition that the relevant test was whether the music had been directed to the goal of bringing about the imminent suicide of *listeners*, not the suicide of a specific person. The court noted that in order to justify a finding of culpable incitement, it must be established “(1) that Osbourne’s music was *directed and intended* toward the goal of bringing about the imminent suicide of listeners *and* (2) that it was *likely* to produce such a result. It is not enough that [the decedent’s] suicide may have been the result of an unreasonable reaction to the music; it must have been a specifically intended consequence.”¹⁷⁷

I suggest that the proper method for assessing the specificity of intent should be expansive and contextual. It is helpful for my proposal of lyrical assault that the court in *McCollum* recognized that lyrics can speak to multiple listeners and that there need not be a directed target of lyrical incitement in order for culpability to attach. In the case of homophobic lyrics, this expansive reading should be contextualized—the issue of who the lyrics speak to has significant cultural resonance. Certain lyrics are more persuasive in certain contexts. If the context is already one of open homophobia, the possibility of lyrical incitement or lyrical assault is greater.

Likewise, the second doctrinal element can be addressed through a similarly situated contextual assessment. As already mentioned, the intentional tort of assault has a temporal aspect. The apprehension of harm must be imminent, meaning the harm feared must be temporally proximate.¹⁷⁸ An assault is an act that is intended to and does place the plaintiff in apprehension of immediate non-consensual touching that would amount to battery.¹⁷⁹ The subjective positioning of this assessment should inform the doctrinal outcome. In other words, I argue that the doctrine should be read from the perspective of the plaintiff subjected to homophobic lyrical assault. If he or she recognized the lyrics as causing an apprehension of harm, this prong of the test should be satisfied. Once the plaintiff apprehends an imminent battery either from the defendant’s purpose or by perceiving a substantial certainty that a trespassory tort will occur,¹⁸⁰ the defendant can be liable for assault.

¹⁷⁴ See *id.* at 190–91.

¹⁷⁵ See *id.* at 193 (emphasis added).

¹⁷⁶ See *id.*

¹⁷⁷ See *id.*

¹⁷⁸ See RESTATEMENT (SECOND) OF TORTS § 21.

¹⁷⁹ See ROBERT E. KEETON, ET AL., TORT AND ACCIDENT LAW 94 (4th ed. 2004).

¹⁸⁰ See *id.* at 95.

The final doctrinal hurdle is the traditional assertion that words alone cannot constitute assault.¹⁸¹ Typically, for words to be considered assaultive they must not operate in isolation—instead, they must be considered in combination with a tortfeasor’s show of force or other action.¹⁸² Thus, “[w]ords do not make the actor liable for assault unless together with other acts or circumstances they put the other in reasonable apprehension of an imminent harmful or offensive contact with his person.”¹⁸³ Again, the salience of contextualized self-assessment is readily apparent.

Words do not operate in isolation and it is proper that they be circumstantially interpreted. The circumstances in which words are spoken or sung are important to the reasonable assessment made by a victim. Toward this end, however, it cannot be emphasized enough that the reasonable person proposed as a victim of assault must necessarily have an identity—both the imminence of the harm and the force of the offense turn upon this calculus. Furthermore, the acts and circumstances which inform the tenor of the words, implicate the proper assessment of the words themselves. Whether the act and circumstances betray homophobia, for instance, is highly relevant. This is the legal context in which a DJ’s calls to “put your hands in the air if you want to kill battymen” must be heard. When hands fly into the air with chants of approval there is the clear potential for the commission of a lyrical assault.

Perhaps even greater possibility for the tort of lyrical assault exists through a caveat in this “words alone” doctrine. Doctrinally, “a person may be held liable for participating in the tort of assault and battery although he encouraged or incited the commission of the tort merely by words.”¹⁸⁴ Notions of encouragement and incitement might be particularly fruitful as many of the lyrics in question amount to what might be colloquially referred to as “sicking on.” In *Hargis v. Horrine*,¹⁸⁵ for instance, an

¹⁸¹ See generally 6 AM. JUR. 2D *Assault and Battery* § 97 (2007).

¹⁸² See *id.*

¹⁸³ See *id.* The Restatement takes a similar approach: “Words do not make the actor liable for assault unless together with other acts or circumstances they put the other in reasonable apprehension of an imminent harmful or offensive contact with his person.” See RESTATEMENT(SECOND) OF TORTS § 31 (1965). A comment to this section states that this is the law “even though the *mental discomfort* caused by a threat of serious future harm on the part of one who has the apparent intention and ability to carry out his threat may be far more emotionally disturbing than many of the attempts to inflict minor bodily contacts which are actionable as assaults.” *Id.* at § 31 cmt. a (emphasis added).

¹⁸⁴ See AM. JUR. 2D *Assault and Battery*, *supra* note 181, at § 97.

¹⁸⁵ See *Hargis v. Horrine*, 323 S.W.2d 917 (Ark. 1959) (holding that a husband could be liable for his wife’s assault on another woman, even if he never physically assisted her in the assault, but merely provoked it through words). See also *Costner v. Adams*, 82 Ark.App. 148 (Ark. Ct. App. 2003) (citing *Hargis* for the rule, “Liability for an assault or assault and battery is not necessarily restricted to the actual participants; any person who is present, encouraging, or inciting an assault and battery by words, gestures, looks, or signs, or who by any means approves the same, is in law deemed to be an aider and abettor and liable as a principal, and such person assumes the consequences of the act to its full extent as much as the party who does the deed.”); *Gann v. Jones*, 1988 WL 34095 (Tenn. Ct. App. 1988) (citing *Hargis*). In *Gann*, the plaintiffs alleged that the defendants incited one “Charles” to assault and kill their decedent by telling Charles, “[the decedent] is responsible for Ryan Reed’s medical condition.” *Id.* Ryan Reed was a thirty month old boy who was brought to the hospital for injuries. *Id.* The complaint alleged that the defendants had knowledge that Charles had a propensity for violence and improper use of firearms. *Id.* It further alleged that the words were uttered with the intent to cause injury to the decedent, and that they “encouraged, advised, and directed [Charles] to commit said assault and battery.” *Id.* While the lower court dismissed the complaint for failure to state a claim, the court of appeals reversed, citing the rule from *Hargis* and holding that the defendants could be held

Arkansas court held that a husband could be liable for the injuries suffered by the plaintiff as a result of his “sicking on” of his wife.

Furthermore, it has been recognized that words must be interpreted in light of their circumstances and may, therefore, count as an assault. The existence and force of the threat or offense are to be based on contextual reality, not abstracted legal formalism. In one sense there is no such thing as a “words alone” case; all words occur in a social context and that context may reinforce and add substance to the verbal threat.¹⁸⁶ Indeed, the *Restatement* modifies the traditional rule with respect to “words alone” by recognizing that threatening words may be sufficient to constitute an assault when they are accompanied by actions *or circumstances* that put the victim in reasonable apprehension of imminent battery.¹⁸⁷ As such, there is indeed conceptual space in the assault law doctrine for an identity-based “reality check” to account for an “assessment of a hostile environment . . . based upon [their] lived reality.”¹⁸⁸

But even if the doctrinal hurdles to a tort of lyrical assault might be surmountable, there is an even more compelling reason for the rejection of this approach. The imperatives of latent cultural imperialism lurk just beneath the surface and need to be brought to light. If the North-West was to beckon the force of its laws against the small island nation of Jamaica and its creation of dancehall music, what sort of imperial precedent would be set or more likely, reinforced? The so-called First World would be yet again flexing its muscles—this time in the legal sphere—to control and divest a burgeoning nation of its collective voice and the profits thereby derived. As Edward Said commented with respect to the connection of artistic interpretation to notions of empire:

It is difficult to connect these different realms, to show the involvements of culture with expanding empires, to make observations about art that preserve its unique endowments and at the same time map its affiliations, but, I submit, we must attempt this, and set the art in the global, earthly context. Territory and possessions are at stake, geography and power.¹⁸⁹

VIII. CULTURAL IMPERIALISM—AN IDEOLOGY OF TRANSLATION (LITERAL V. METAPHORICAL) / LOST IN TRANSLATION

Inevitably, the attempt to evaluate music in its literal form misses the mark to some extent. Responding in kind, musically, or at least artistically, would undoubtedly be preferable to the “privileging of the scribal mode.”¹⁹⁰ Instead, it should be recognized that “dancehall music is an

liable because their words were “a proximate cause of the assault and battery which resulted in the death of [the decedent]. *Id.*

¹⁸⁶ See *Johnson v. Bolinger*, 356 S.E. 2d 378, 381 (N.C. Ct. App. 1987) (“I’ll get you” spoken by a pistol wearing tortfeasor may be tantamount to an assault even though the weapon is not drawn).

¹⁸⁷ See RESTATEMENT (SECOND) OF TORTS § 31.

¹⁸⁸ See Nelson, *Considering Tortious Racism*, *supra* note 172, at 952 (2005).

¹⁸⁹ See SAID, *supra* note 134, at 7.

¹⁹⁰ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 117.

organic part of [the] total theatre of Jamaican popular culture and must be read with the same sophistication that other modes of performance demand.”¹⁹¹

The reggae songwriter’s art is a dynamic process in which words, music and dance are organically integrated within an afrocentric aesthetic. The composition and performance of lyrics is multi-modal; by contrast, artificial transmission of the reggae songwriter’s lyrics as transcript is monologic and thus somewhat counterproductive.¹⁹²

The lineal act of writing down lyrics distorts the performance process. In the attempt to ‘catch the words’ and pin them down for close inspection one can develop a somewhat antagonistic relationship to the music.¹⁹³

“Translation is clearly an ideological issue.”¹⁹⁴ It therefore aligns to the cultural understanding of the reader. It is difficult for us to divest ourselves of our culture in reading any text or appreciating any lyrics—culture thus conceived is the lens through which we engage the world. But as Edward Said noted, “scarcely any attention has been paid to . . . the privileged role of culture in the modern imperial existence.”¹⁹⁵ That is, modern nationalist cultural agendas are necessarily informed by the legacy of colonialism.

Thus, contemporary echoes of empire manifest in numerous ways. Cultural imperialism¹⁹⁶ can simply be the “domination of other cultures by products of the US [or UK] culture industry.”¹⁹⁷ However, more robust definitions define cultural imperialism as:

the sum of the processes by which a society is brought into the modern world system and how its dominating stratum is attracted, pressured, forced, and sometimes even bribed into shaping social institutions to correspond to, or even promote, the values and structures of the dominating centre [sic] of the system.¹⁹⁸

It is precisely this sly illusion of metropolitan worldliness as “authoritative” and “humane” strikingly juxtaposed against supposed rural backwardness of which I am wary. While conceding that the cultural manifestation of homophobia resonant in some Jamaican dancehall music is combative, assaultive, offensive, and therefore problematic, I loathe the idea that only the developed world, the former imperial world order, knows

¹⁹¹ See COOPER, SOUND CLASH, *supra* note 1, at 152.

¹⁹² See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 117 (internal citation omitted).

¹⁹³ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 117.

¹⁹⁴ See Cooper, *Lyrical Gun*, *supra* note 127, at 444.

¹⁹⁵ See SAID, *supra* note 134, at 5.

¹⁹⁶ See *id.* at 9 (“[I]mperialism’ means the practice, the theory, and the attitudes of a dominating metropolitan center ruling a distant territory; ‘colonialism,’ which is almost always a consequence of imperialism is the implanting of settlements on distant territory.”).

¹⁹⁷ See “Cultural Imperialism” as defined by Washington State University’s American Studies Site, <http://www.wsu.edu/~amerstu/pop/cultimp.html> (last visited Jan. 2, 2007).

¹⁹⁸ See CULTURAL IMPERIALISM AND ITS CRITICS: RETHINKING CULTURAL DOMINATION AND RESISTANCE 3 (Bernd Hamm & Russell Smandych eds., 2005) (quoting HERBERT SCHILLER, COMMUNICATION AND CULTURAL DOMINATION (1976)) (internal citation omitted).

best. By decrying Jamaican displays of cultural homophobia as backward, apolitic, and archaic, the agenda is set externally not just by foreign powers, but by foreign powers who have proven their untrustworthiness and penchant for exploitative power plays. I am not alone in this fear.

A whole range of people in the so-called Western or metropolitan world, as well as their counterparts in the Third or formerly colonized world, share a sense that the era of high or classical imperialism, which came to a climax in [] “the age of empire” and more or less formally ended with the dismantling of the great colonial structures after World War Two, has in one way or another continued to exert considerable cultural influence in the present.¹⁹⁹

I therefore applaud Jamaicans for their counter-colonial rebellious resistance against the maintenance of empire as it is manifested in the politics of silencing. Jamaicans are no longer part of the per se empire, and accordingly the fine tradition of Maroon resistance must continue, even in the realm of dancehall. To do otherwise would be to capitulate to empire, that relationship by which one state controls the sovereignty of another.²⁰⁰ While I do not believe that the protection of gay rights is a particularism morphed into the rhetoric of metropolitan domination,²⁰¹ I am concerned about the manner in which homophobic sentiments are curbed. My preference would be for an organic homegrown emergence of pro-sexual choice appreciation, not an externally waged campaign of cultural domination. The latter expression strikes the chord of adherence to “notions that certain territories and people *require* and beseech [cultural] domination, as well as forms of knowledge affiliated with domination.”²⁰² In this regard, Dr. Cooper charges the North-West with cultural arrogance. She writes:

The cultural arrogance of the new politically correct liberals is thus no different in kind from the cultural arrogance of old world imperialists who knew that Europe was the centre of the world and “far out” territories were just waiting to be discovered. Xenophobia is no less a phobia than homo-phobia. But all phobias are not created equal. Some (hetero)-phobias are more politically correct than others.²⁰³

Such a perspective is in keeping with Jamaican resistance of Empire. Indeed much reggae music has the goal of “demythologizing” the heroes of empire and relegating them to the position of common criminals.²⁰⁴

¹⁹⁹ See SAID, CULTURE AND IMPERIALISM, *supra* note 134, at 7.

²⁰⁰ See *id.* at 9 (quoting MICHAEL W. DOYLE, EMPIRES (1986) that “Empire is relational, formal or informal, in which one state controls the effective political sovereignty of another political society. It can be achieved by force, by political collaboration, by economic, social, or cultural dependence. Imperialism is simply the process or policy of establishing or maintaining empire.”).

²⁰¹ See CULTURAL IMPERIALISM AND ITS CRITICS, *supra* note 198, at 4 (“Cultural imperialism rests on the power to universalize particularisms linked to a singular historical tradition by causing them to be misrecognized as such.”).

²⁰² SAID, CULTURE AND IMPERIALISM, *supra* note 134, at 9.

²⁰³ See *id.*

²⁰⁴ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 123. For instance, see Bob Marley’s lyrics in Redemption Song and Slavedriver:

Old pirates yes they rob I

However, the campaign's enforced "universality" is a personal source of concern.

Returning to the controversy with some dancehall lyrics, Dr. Cooper properly notes that "[t]here is a presumption of a "universal" (English) language of transparent meaning."²⁰⁵ This is confounded in the Jamaican context where a long tradition of musical role-play exists.²⁰⁶ As such it can be difficult for non-Jamaicans to properly translate and comprehend culturally coded, indigenous art forms as the literal and the metaphorical have national significance.²⁰⁷ The very meaning can thus be lost in cross-cultural translation.

It is noteworthy that Jamaican airwaves are subject to strict censorship laws which have prevented the broadcast of controversial songs like "Boom By-By."²⁰⁸ But despite strict censorship, the popularity of dancehall performances highlight the complexity of the Jamaican musical context as

Sold I to the merchant ships
 Minutes after they took I
 From the bottomless pit
 But my hand was made strong
 By the hand of the almighty
 We forward in this generation
 Triumphantly
 All I ever had, is songs of freedom
 Won't you help to sing, these songs of freedom
 Cause all I ever had, redemption songs
 Redemption songs

BOB MARLEY AND THE WAILERS, *Redemption Song*, on UPRISING (Tuff Gong 1980), available at <http://www.thirdfield.com/html/lyrics/redemptionsong.html>.

When will this payday be?
 For these retired slaves
 You beat my grandmother in the fields
 Rape her and call her a prostitute
 Fill the land with colored pay bills
 From an outlaw's race
 Chuh!
 When will this payday be?

....
 Backra Master the table is turned
 When will this payday be?
 For these retired slaves

CULTURE, *Payday*, on PAYDAY (Sanctuary Records 2000), available at <http://www.allreggae.lyrics.com/>.

Ev'ry time I hear the crack of the whip
 My blood runs cold
 I remember on the slave ship
 How they brutalized our very souls
 Today they say that we are free
 Only to be chained in poverty
 Good god, I think it's all illiteracy
 It's only a machine that make money

BOB MARLEY AND THE WAILERS, *Slave Driver*, on CATCH A FIRE (Tuff Gong 1973); available at <http://www.thirdfield.com/html/lyrics/slave.html>.

²⁰⁵ See SAID, CULTURE AND IMPERIALISM, *supra* note 134, at 8.

²⁰⁶ See COOPER, SOUND CLASH, *supra* note 1, at 153 (analyzing the "nom-de-guerre of many DJs" as originating in the fantasy world of gunslinger Hollywood movies).

²⁰⁷ See COOPER, SOUND CLASH, *supra* note 1, at 153. (Commenting upon the difficulty of cross-cultural interpretations, Dr. Cooper remarks that "role-play in contemporary Jamaican dancehall culture makes it difficult sometimes for outsiders to accurately decode local cultural signs. Fusion of the literal and the metaphorical can confuse the issue.")

²⁰⁸ See COOPER, SOUND CLASH, *supra* note 1, at 168. Dr. Cooper prefers this spelling of the infamous Buju Banton song because part of the mistranslation of the lyrics was the adding of the more ominous 'e' at the end of 'by' to signify the song's murderous intent.

a site of dissemination and artistry. It is precisely this context which is difficult to export and translate in the abstract. “The decontextualized export product is transmitted with no reference to its culture-specific meanings. In this process, norms of public propriety in Jamaica are often violated,”²⁰⁹ while the music is exported by corporate engines seeking profit in every corner of the earth.²¹⁰

By subjecting dancehall lyrics to academic or foreign analysis, an elitist ordering takes place. “[I]n order to ‘fix’ the text for rereading, one is forced to make an educated guess and simply grab a meaning. This ordering academic enterprise, with its subjects controlled by the analytic imperative, can become another bastion of establishment Babylon that must be chanted down.”²¹¹ Dr. Cooper makes this point using the infamous dancehall song “Boom By-By,” by Buju Banton, also known as Mark Anthony Myrie, the self-styled “voice of the people.” Dr. Cooper’s scholarship has analyzed “the controversial reception of Buju Banton’s notorious anti-homosexuality song, whose resonant boom has echoed across continents.”²¹²

IX. GLOBAL POLITICIZATION OF CONSCIOUSNESS MEETS THE VOICE OF THE JAMAICAN PEOPLE

Dr. Cooper writes that “. . . collaboration of North American and Jamaican homosexuals marks a new stage of politicization of consciousness outside of, and within Jamaica, around issues of heterophobia.”²¹³ The recent controversy about homophobic dancehall lyrics has created a furor both at home and abroad with “[t]he international marketing of reggae . . . raising fundamental questions about cultural identity, cultural autonomy and the right to cultural difference.”²¹⁴ Jamaicans of all walks of life are talking and engaging the difficult and polarizing topic of sexuality and, more specifically, masculinity.

With an adept ability to tie together the interrelated strands of the international controversy surrounding dancehall, Dr. Cooper highlights the struggle that unfolded between gay-rights groups in the UK and the US and Jamaican dancehall artists. She posits an authentic Jamaican worldview versus an international market lacking the cultural tools for lyrical translation and decoding. Moreover, the international market is subjected to

²⁰⁹ See COOPER, SOUND CLASH, *supra* note 1, at 168.

²¹⁰ It is worth noting the manner in which “Boom Bye-Bye” even came to be the iconoclastic symbol of homophobic dancehall. Recorded by Buju Banton when he was a young sixteen-year-old but never popularly released, the record company with whom Banton recorded this song was quick to release it to the international market as soon as Buju became an international dancehall sensation. It turns out that they too were interested in a quick profit, no matter the cost to Buju, his fans, and gays and lesbians. “This producer marked the tune, which Buju Banton may otherwise have decided not to release, to capitalize on his rising fame.” In many ways, this story reveals that even these “mouthy” dancehall DJs are often used as pawns and manipulated in ways that have deep historical significance. See STOLZOFF, *supra* note 5, at 178.

²¹¹ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 117.

²¹² See COOPER, SOUND CLASH, *supra* note 1, at 158.

²¹³ See Cooper, *Lyrical Gun*, *supra* note 127, at 168.

²¹⁴ See Cooper, *Lyrical Gun*, *supra* note 127, at 27.

manipulation and is increasingly beholden to politicized foreign gay rights organizations:

The fate of Buju's "Boom By-By" in the *outernational* market, particularly in the United States and United Kingdom, where highly politicized groups of male and female homosexuals wield substantial power, is a classic test case of the degree to which Jamaican cultural values can be exported without censure into a foreign market. It also raises the issue of language in DJ culture, and the separation of aesthetic and ideological issues that can arise in the exporting of Jamaican music. Non-Jamaicans can appreciate the aesthetically appealing noises of the music without understanding the words. Once they understand the words, they may not be able to accept the cultural message in the music. They may reject the music altogether. How should the reggae artist respond to this ideological/marketing problem? Adapt the message to suit the export market, sacrificing authenticity for airplay? Should the artist do one kind of song for the local market and another for export? Or should the reggae artist risk censorship in order to maintain the cultural integrity of the Jamaican worldview?²¹⁵

The scope of the above quote reveals that Carl Stychin was correct in noting that "[t]he relationship between the national and the global . . . is multidimensional."²¹⁶ Within this framework of local versus foreign, where what is indigenous is determined to be authentic, the controversy surrounding homophobic lyrics is easily marginalized or minimized as imported. For example, Sheriff H.C. Strider declared in the first Emmett Till trial, "We never have any [racial] trouble until some of our Southern niggers go up North, and the NAACP talks to them, and they come back home [to Mississippi]."²¹⁷ Likewise, Dr. Cooper notes that "[t]he impetus to publicly protest in Jamaica the heterophobia of "Boom By-By" seems to have come from Europe and North America, where groups like the Gay & Lesbian Alliance Against Defamation (GLAAD) gladly turned the song into a cause (in) célèbre."²¹⁸

While I do not doubt the veracity of the statement, it locates the struggle for equal rights for homosexuals as a foreign concept, an alien discourse not authenticated by Jamaican norms. It also conveniently plays into the trope of Euro-domination, which resonates as true in many contexts, but for which this attribution obscures a central truism. Namely, that Jamaican society does not lack politicized gays and lesbians and their supporters, but rather their voices have been sufficiently marginalized and silenced to a whisper compared to their North-Western brothers and sisters.

²¹⁵ See COOPER, SOUND CLASH, *supra* note 1, at 170.

²¹⁶ See STYCHIN, *supra* note 33, at 6.

²¹⁷ *Eyes on the Prize: Awakenings* (PBS television broadcast 1987), available at http://www.pbs.org/wgbh/amex/eyesontheprize/about/pt_101.html (providing a transcript of the documentary). Sheriff Strider is playing solitaire during the interview.

²¹⁸ See COOPER, SOUND CLASH, *supra* note 1, at 167.

It is precisely this silencing which needs to be addressed, not the contrived nature of the local debate.²¹⁹

Interestingly, however, the notion of cultural sovereignty is contaminated by the Jamaican Diaspora, itself a reaction to contested sovereignty. The ability of diasporic communities to mobilize and confront the nation is exemplified by dynamic exchanges between Jamaicans at home (a yard)²²⁰ and in the Diaspora (a foreign). This article forms part of this dialogue, but it is a complication of the concept of the sovereign nation by one who seeks entry into a debate which has (inter)national resonance. In fact, the very ability of OutRage! and other North-Western gay rights groups to mobilize involved the translation services of Jamaicans, often in the North-West.²²¹ Such transnational mobilization “challenges the coherence and homogeneity of national identity,” thereby destabilizing the very notion of home and abroad.²²² Such “collaboration of North American and Jamaican homosexuals marks a new state of politicization of consciousness outside of, and within, Jamaica around issues of heterophobia.”²²³ However, the dynamics of North versus South which are at work raise the specter of a retributive neo-imperial process of domination which echoes past misdeeds.²²⁴ Specifically, with the increase in asylum claims made on the basis of anti-homosexual persecution,²²⁵

²¹⁹ See COOPER, SOUND CLASH, *supra* note 1, at 167. Indeed, Dr. Cooper notes that dancehall is the ironic genesis of much discussion about gay rights in Jamaican society as “Jamaican society has been forced to confront openly the taboo subject of homosexuality within our community.”

²²⁰ “A yard” is a Jamaican colloquialism for “at home on the island,” as opposed to away from home or abroad, often stated in Jamaican as “a foreign.”

²²¹ See COOPER, SOUND CLASH, *supra* note 1, at 167 (commenting upon the rumor that the lyrics to Buju Banton’s “Boom Bye-Bye” were translated for the Gay and Lesbian Alliance Against Defamation (GLAAD) “by a migrant Jamaican homosexual living in New York.”)

²²² See STYCHIN, *supra* note 33, at 5 (referencing Ali Rattansi, *Just Framing: Ethnicities and Racism in a Postmodern Framework*, in SOCIAL POSTMODERNISM: BEYOND IDENTITY POLITICS 250 (Linda Nicholson & Steven Seidman eds., 1995)).

²²³ See COOPER, SOUND CLASH, *supra* note 1, 167–68.

²²⁴ See STYCHIN, *supra* note 33, at 6–7 (quoting Eve Darian-Smith, *Law in Place: Legal Mediations of National Identity and State Territory in Europe*, in NATIONALISM, RACISM, AND THE RULE OF LAW 27 (Peter Fitzpatrick ed., 1995) (“In this way, ‘transnationalism can be interpreted as a neo-imperialist process, requiring as much as any form of nationalism an abstracted other through which to define itself as a coherent force.’”)).

²²⁵ Refugees from Jamaica have been granted asylum in the United Kingdom, Canada, and the United States based on the dangers arising from the severe homophobia in their native country. See *Homophobes Stabbed and Slashed Me*, BBC NEWS WORLD EDITION, Oct. 18, 2002, http://news.bbc.co.uk/2/hi/uk_news/2339021.stm (last visited Sept. 18, 2007); Colin Freeze and Marina Jimenez, *Gangsters’ Victims Seek Haven in Canada*, SATURDAY SPECIAL: *Changes to Refugee Laws Spawn Wave of Claimants Fleeing Crime and Lawlessness in their own Countries*, THE GLOBE AND MAIL, Sept. 18, 2004, at A1; John Leland, *Gays Seeking Asylum Find Familiar Prejudices in U.S.*, N.Y. TIMES, Aug. 1, 2001, at A10. See also Martin Bentham, *Asylum is Granted to Jamaicans—Because They’re Gay*, SUNDAY TELEGRAPH, Oct. 13, 2002, at 1 (“Two Jamaican homosexuals have been granted asylum in Britain on the grounds that their lives are in danger because of ‘severe homophobia’ in their country. At least seven other men from the Caribbean are claiming asylum because of their sexual orientation, while a tenth has obtained exceptional leave to stay. The cases are among the first successful asylum claims since a House of Lords ruling in 1999 which stated that ‘particular social groups,’ including homosexuals, could qualify for refugee status.”). One Jamaican man who received asylum in Britain said that the police did nothing about attacks on homosexuals, and that he “would be dead now in Jamaica.” *Id.* Other homosexual asylum seekers from Jamaica state that gay people in Jamaica have been murdered with machetes; one asylum seeker had lost his last two partners to fatal homophobic attacks. *Id.* Lesbians from Jamaica have claimed asylum in Western countries based on similar circumstances. See *If you’re gay in Jamaica, you’re dead*, THE GUARDIAN.COM, August 2, 2004, <http://www.guardian.co.uk/g2/story/0,,1274067,00.html> (“Janet, a thirty-eight-year-old lesbian from Jamaica who has claimed asylum in the UK, is still waiting for a decision on her case from the Home

those traditionally socio-legally excluded from the normative Jamaican citizenry might occupy international locations from which neo-imperial pressure can be brought.²²⁶ The question arises, however, of whether by moving into the Diaspora, those of us who no longer live in Jamaica can appreciate the messages of dancehall without the static interference of ascribed foreignness. Through whose cultural lens do we now translate the lyrics?

X. REWIND—HOLD-UP²²⁷ A.K.A. MIGHT WE RE-READ THE LYRICS?

Essentially, there is artistry involved in both the creation and interpretation of any art form. Speaking to this interpretive freedom, Bob Marley commented upon the manner of reading his lyrics by stating, “You have to play it and get your own inspiration. For every song have a different meaning to a man. Sometimes I sing a song and when people explain it to me I am astonished by their interpretation.”²²⁸ Accordingly, there might be an interpretive chasm between an artist’s intentions and a listener’s translation. Perhaps the musical genre should not be taken so literally.

Making the connection between the 1970’s metaphorical “loaded 45,” Shabba Rank’s lyrical gun and Buju Banton’s mimicking of the sound of gun-fire, Dr. Cooper insists that “[d]espite Buju Banton’s explicit reference to what sounds like frighteningly literal gunfire . . . ‘Boom By-By’ nevertheless does assume metaphorical significance.”²²⁹ Furthermore, given the possible reading of the gun as a symbolic penis, Dr. Cooper urges a new reading of this controversial song “as a celebration of the vaunted potency of heterosexual men who know how to use their lyrical gun to satisfy their women.”²³⁰

While interesting and creative, this rereading of “Boom By-By” fails to take into account the very contextual interpretation of which Dr. Cooper is an advocate. I agree that anything is possible, but when combined with the Jamaican culture, which Dr. Cooper herself recognizes as making slow

Office. ‘Whatever happens, I can’t go back to Jamaica,’ she says. ‘I’d rather die in the UK than be sent back.’ There are scars all over her body from the beatings she has received, part of the evidence she has submitted to immigration caseworkers . . . The year before she left Jamaica, she was coming home from a party when two men held up her taxi at traffic lights, forced her out of the car, demanded oral sex and raped her. ‘I couldn’t believe it the first time I saw a gay couple at a train station here being openly affectionate to each other,’ she says. ‘There were lots of people around but none of them started beating or abusing the couple. Coming here, I felt safe for the first time.’”) (last visited Jan. 17, 2008).

²²⁶ See STYCHIN, *supra* note 33, at 7 (remarking that migration has allowed those who have been historically “othered” to occupy national spaces with transformative potential for the conception of nation).

²²⁷ This tactic of “holding-up” is used by dancehall DJs to achieve a “forward.” A popular song is started that gets the crowd going. Once the crowd is sufficiently excited, the DJ insists that his “sound system” stop the music for a moment. During this brief pause, the DJ entices the crowd, teasing them lyrically with his words or another song until they beg for more of the former. See STOLZOFF, *supra* note 5, at xii-xvi (describing the back and forth between DJ and partying “massive” in the Jamaican dancehall).

²²⁸ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 118 (quoting Basil Wilson & Herman Hall, *Marley in His Own Words: A Memorable Interview*, EVERYBODY’S MAGAZINE, July 1981, at 24).

²²⁹ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 118.

²³⁰ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 159–60.

progress in the face of “‘hard-core’ Jamaican cultural nationalist norms which “resist any re-examination of indigenous values [which exclude] ‘cultural space to homosexuals,’”²³¹ I very much doubt this optimistic analysis. Furthermore, recognizing the central role of music videos and artist interviews in the “total theatre of Jamaican popular culture,”²³² I am struck by the violent overtones in the Boom By-By video, including the mimicry of shooting a weapon, especially when combined with the interview of an admittedly young Buju Banton who steadfastly stands by his homophobic lyrics.²³³ Still, I admire the attempt of Dr. Cooper to contextualize seemingly impossibly homophobic language. Perhaps my ears have the static interference of having lived too long in the North West, but in my opinion, hers is a Herculean attempt to make a scholarly argument in the face of great odds and much evidence to the contrary.²³⁴ The passage below “explicate[s] how language conveys culture-specific meanings.” In so doing, Dr. Cooper does acknowledge that homosexuals are often victimized in Jamaican society, but she attempts to situate the lyrics in question contextually as more benign than foreign ears have allowed.²³⁵

This privileging of the literal to articulate the abstract is not always understood by non-native speakers of Jamaican. Thus, taken out of context, the popular Jamaican Creole declaration, “all batty-man fi dead,” may be misunderstood as an unequivocal, literal death-sentence: “all homosexuals must die.” Read in its cultural context, this battle cry, which is appropriated by Buju Banton in “Boom By-By,” primarily articulates an indictment of the abstraction, homosexuality, which is rendered in typically Jamaican terms as an indictment of the actual homosexual: The person (the homosexual) and the project (homosexuality) are not identical.²³⁶

As I alluded to at the outset, there are times when we must recognize that there is as much to be gleaned from “downtown” street education as

²³¹ See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 27.

²³² See COOPER, NOISES IN THE BLOOD, *supra* note 15, at 27.

²³³ See *The Darker Side of Black* (Arts Council of Great Britain 1993) (film on file with the University of Southern California library).

²³⁴ See *About J-FLAG: Where We Are*, JAMAICAN FORUM FOR LESBIANS, ALL-SEXUALS AND GAYS, <http://www.jflag.org/about/index.htm> (last visited Jan. 2, 2008) (“Due to the potential for violent retribution, we cannot publish the exact location” of the J-FLAG office in Kingston); HUMAN RIGHTS WATCH, *supra* note 6, at 2 (reporting that crowds celebrating the murder of Jamaican gay rights activist Brian Williamson sang Buju Banton’s song “Boom By By”). The Human Rights Watch report also states:

Jamaican dancehall music, a powerful cultural force in Jamaican society, reflects and reinforces popular prejudices against lesbians and gay men. Many dancehall musicians perform songs that glorify brutal violence and killing of men and women who do not conform to stereotypical gender roles, and celebrate their social cleansing from Jamaica. HUMAN RIGHTS WATCH, *supra* note 6, at 12-13.

²³⁵ See COOPER, SOUND CLASH, *supra* note 1, at 160.

²³⁶ See COOPER, SOUND CLASH, *supra* note 1, at 160. Furthermore, Dr. Cooper suggests that there might actually be a cathartic role, and hence a valuable pressure valve function, to violent and homophobic lyrics, particularly in “oral cultures like Jamaica.” See COOPER, SOUND CLASH, *supra* note 1, at 159. Such talk may serve the therapeutic function of substituting for more dangerous violent action, thereby providing a mechanism for the control of violence in a socially accepted way. See COOPER, SOUND CLASH, *supra* note 1, at 159. As such, the lyrics can be read as not an incitement to violence, but as a beneficial release of violent energies.

there is from “uptown” higher education. Despite the tremendous respect I have for the pioneering work and commentary of Dr. Cooper, it is my opinion that she has made a simple matter of the lyrical indictment of homosexuality and homosexuals into a complex endeavor of academic intellectualism. While I wish it weren’t so, I think that when Buju Banton sings “*Boom, bye bye, in a faggot’s head, Rude boys don’t promote nasty men, They have to die,*”²³⁷ he means it. When Elephant Man says, “*Log on, and step on queer men, Step on him like an old cloth, We’re dancing to burn out all freaky men, We’re dancing to crush out all queer men*” and TOK says, “*Gay men must die and that’s a fact,*”²³⁸ they’re true to their word and when Beenie Man said “*I’m dreaming of a new Jamaica, me come to execute all the gays*”²³⁹ he is articulate enough to know what he is saying. It is inconsequential to *the listeners*—gays and lesbians in particular—whether he speaks of a particular gay person, or abstracted gays and lesbians more generally. Dancehall artists, especially those with international acclaim, did not get where they are by accident and did not achieve success inadvertently. They are as smart and shrewd as we; and as academics, we ought not to deny their agency or savvy in navigating controversial cultural spaces. They are not radically out of step with their local markets or constituencies and are perfectly capable of nuanced subtleties when they so desire.

Indeed, the recognition of a local climate that often victimizes homosexuals is exactly the unfortunate context in which these lyrics must be read. And while I agree with Dr. Cooper’s acknowledgement that “[t]his victimization of homosexuals is part of a continuum of violence in Jamaican culture . . . [and that] even the suspicion of [homosexual] intent do put the individual at risk,”²⁴⁰ the argument that what Jamaicans loathe is the practice, not the person, is of little comfort to those who engage in the practice, especially when there is such ready slippage between the act and the person—conflation of anal sex with homosexuality is all too common. For many, all that comes to mind when they consider homosexuality is homosexual sex—the identity becomes shorthand for the sexual activity. Moreover, simple analogies to race relations reveal the fallibility of this argument. A charge of racism would nevertheless be leveled against someone who hates a behavior he or she attributes to blacks but denies hating blacks themselves.

I agree with Peter Tatchell, therefore, that there would be vocal outcries—and outrage, if you will—if the music in question was arguably racist and the artists were white. He states, “Imagine the outcry if gay singer Elton John released a record urging the lynching of black people? He’d be kicked out of the music industry and be prosecuted for incitement

²³⁷ See HUMAN RIGHTS WATCH, *supra* note 6, at 75.

²³⁸ See HUMAN RIGHTS WATCH, *supra* note 6, at 78.

²³⁹ See Matilda Egere-Cooper, *Beenie Man: ‘I’m Not Homophobic’; Jamaican Dancehall Star Beenie Man Tells Matilda Egere-Cooper his Violently Anti-Gay Lyrics Have Been Misunderstood*, THE INDEPENDENT, Aug. 11, 2006, at 14 (London).

²⁴⁰ See COOPER, SOUND CLASH, *supra* note 1, at 160–61.

to racial hatred and murder.”²⁴¹ The music in such a case of racial hatred would likely be interpreted literally, not metaphorically. I am not convinced that we would tolerate the lyrical, metaphorical, or symbolic in an arguably racist context. This begs the question of why we would condone similar hatred when addressing questionable speech directed at gays and lesbians.

XI. CONCLUSION

Despite my hope that dancehall rid itself of anti-gay and lesbian lyrics, I still wonder, “Why target Jamaican music?” Of all the places on Earth to focus on, why Jamaica? Unfortunately, such homophobia is in no way unique to Dancehall, Jamaica or the Caribbean. Indeed Iranian President Mahmoud Ahmadinejad recently claimed that “In Iran, we don’t have homosexuals, like in your country.”²⁴² Iran, by law, however punishes sex between men by death.²⁴³ Therefore, given the existence of state and/or religiously sanctioned execution for homosexuality in many countries around the world,²⁴⁴ one is led to question the fascination of North-Western gay rights advocates with Jamaica. Is it because of the relative powerlessness of Jamaica – does this rationale even make the justification more acceptable? Or is the focus based upon the construction of Jamaica as a welcoming vacation destination, a play-place for affluent westerners. Perhaps if Iran, or other Middle Eastern countries with similar policies, lacked political power or oil those countries might also face the wrath of the North-West on the basis of homophobia. Furthermore, if we in the North-West wished to vacation in Pakistan, Zambia, Gambia, Bangladesh, Sudan or the United Arab Emirates, for example, those countries also might be demonized on the basis of cultural homophobia. Perhaps it is the exportation of homophobia from Jamaica that is the problem and which has led to the heightened attention given to homophobia as it is manifested in Jamaica.

As such, the answer might be that Jamaica’s prolific production and export of its music is threatening to some in the West, especially when the message is inconsistent with contemporary North-Western ideals. But given that the Third World and developing nations continue to play catch-up in just about every sector possible, it is curious that the one—and perhaps

²⁴¹ See Peter Tatchell, *Black Hate Singers Urge: Kill Queers*, PETERTATCHELL.NET, <http://www.petertatchell.net> (follow the “Pop Music” hyperlink in the left-hand frame; scroll down to the article hyperlink) (last visited Jan. 2, 2007).

²⁴² Helene Cooper, *Facing Scorn, President of Iran Is Defiant to His Critics*, NYTIMES.COM, Sept. 24, 2007, http://www.nytimes.com/2007/09/24/world/worldspecial/24cnd-iran.html?_r=3&oref=slogin&oref=slogin&oref=slogin (last visited Jan. 15, 2008).

²⁴³ *Iran’s Sodomy Law, Reading Between the Lines*, INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION, <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=754> (“Iran’s penal code considers sexual intercourse between members of the same sex to be a crime punishable by death for men and by lashings for women. Any man found guilty of having penetrative sex with another male should be killed, whether the sex is consensual or not. It does not matter whether the other party is a minor or an adult.”) (last visited Jan. 15, 2008).

²⁴⁴ See *Sodomy Laws around the World*, SODOMYLAWLS.ORG, <http://www.sodomylaws.org/index.htm> (last visited Jan. 15, 2008).

only—area in which Jamaica outstrips the North-West is targeted for boycott and approbation.

What responsibility does the North-West bear and what should they take, considering that the underpinnings of the cultural homophobia that infects Jamaica is a vestige of colonial systems of domination and forced cultural assimilation? The British overlords were the originators of the modern day “buggery” laws; should they also be the overlords and masters of their demise? There are raced and classed overtones to much of the debate that has been outlined above. Cultural imperialism is manifest in the focus of the campaigns and the very actions taken. We in the so-called developed world often act as if we know best, attributing an infantile characteristic to the so-called developing world. These sentiments are enhanced when the metropolis dictates to the former colonies—there the interweaving of race, sex, gender and class conspire to create a complicated entanglement.

Indeed, upon reviewing the website of Peter Tatchell,²⁴⁵ founder of OutRage!,²⁴⁶ a number of things become apparent. To be sure, Mr. Tatchell is very committed to the human and civil rights issues he has identified and has been consistently involved in various struggles of marginalized peoples around the world for over 40 years. With respect to OutRage!’s activism over dancehall, however, a question nevertheless arises: Upon entering the site and scrolling through the various articles posted, one in particular caught my attention. The hyperlink to “Black Hate Singers Urge: Kill Queers”²⁴⁷ was curious in that it blatantly racialized the singers, the lyrical assaulters, but did not racialize the victims of these arguable hate crimes. By doing so, the author has encoded race as a divisive issue, despite the fact that most of these artists live and work in Jamaica where the racialization of homophobia would be far from obvious; in other words, the issue would likely be one of black on black violence. Accordingly, due to the racialized, classed, and colonial imperatives percolating just beneath the surface of many foreign calls to “Stop Murder Music,” I am wary of the imposition of foreign cures for Jamaican ills. Instead, I would prefer the support of indigenous and local remedies that are culturally tailored and organically grown.

Jamaicans cannot depend on the former and present colonial powers to fashion culturally appropriate equal rights strategies. The cure to the homophobia that plagues my cherished homeland must be authentically Jamaican and homegrown in a manner which incorporates the beauty and love that is the Jamaican spirit—“Out of Many, One People.” After all, in many other areas of Jamaican life there is an easygoing spirit of “live and let live.” If Jamaicans take these mottos to heart, the result may not just be

²⁴⁵ See Tatchell, *Black Hate Singers Urge: Kill Queers*, *supra* note 241. Peter Tatchell is a human rights campaigner from the United Kingdom.

²⁴⁶ Information on Mr. Tatchell’s website indicates that in 1990 he was a co-founder of the group OutRage!, which was organized to be a “radical queer rights direct action movement.” See *Biography—40 Years of Human Rights Campaigning 1967–2007*, PETERTACHELL.NET (follow the “Biography” hyperlink in the left-hand frame, then the “Biography—40 Years of Human Rights Campaigning 1967–2007” hyperlink) (last visited Jan. 2, 2008).

²⁴⁷ See Tatchell, *Black Hate Singers Urge: Kill Queers*, *supra* note 241.

a Jamaicanized version of the infamous American “Don’t Ask, Don’t Tell” policy, but hopefully a more culturally “yard”-derived tolerance and eventual acceptance and appreciation of our gay and lesbian brethren and sistren.

It is my suggestion that as a first step for acceptance of an organic gay, lesbian, and transgender rights discourse the buggery laws still operative in Jamaica and many other West Indian nations must be repealed. These laws, a vestige of Jamaica’s colonial past, ironically maintained, should form no part of the ongoing construction of 21st century Jamaican identity.