

**THE ROLE OF AESTHETIC AND LEGAL COMMUNITIES IN THE STRUGGLE FOR SEXUAL HUMAN RIGHTS IN POLAND**

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**ABSTRACT**

*Conditions under both communism and capitalism have been devastating for the intersectionality of aesthetic and sexual expression in Poland. Powerful institutions surrounding church and state have been influential sources of repression, relegating citizen sexuality to mere reproduction of new generations of passive consumers under both systems of production. In response to the historic diminution of sexuality and other human rights, aesthetic communities have been persistently contesting these systemic arrangements through creative, legal, urban alliances that have been steadily building utopian enclaves of erotic expression since transition. International sexual rights legislation, dynamics of democratic contention, institutionalisation of gender inequality, the arts in sexual identity formation, fear of sacral feminine sexuality, sexual authenticity and erotic agency, the body as site of artistic resistance, and oppositional encounters among the alienated are some of the factors discussed that provide evidence of flourishing aesthetic cultures of resistance to combat institutionalised suppression of sexuality in the arts and society.*

## BACKGROUND

Poland has experienced overwhelming socioeconomic and cultural changes associated with nearly simultaneous democratic, capitalist, and political transformations that have occurred over the past quarter of a century. While volumes have been written on the economic and social consequences of these “tectonic changes” (Tyszka, 1997), few analysts have chronicled the cultural or sexual ramifications of these recent upheavals. Regardless of system type, conditions under both communism and capitalism have been devastating for the intersectionality of aesthetic and sexual expression in Poland. Powerful institutions surrounding church and state have been influential sources of repression, relegating citizen sexuality to mere obligatory procreative processes for the reproduction of new generations of passive consumers under both systems of production. In response to the historic diminution of sexuality and other human rights, aesthetic communities throughout the Soviet empire composed of performance, design, visual, and other artists were involved in cultural resistance efforts known as the *Samizdat* arts movement. Poland’s own oppositional apparatus dedicated to aesthetic subversion of church and state hegemony has not been dismantled along with the “Soviet Empire”, but has instead been reinvigorated to combat continued institutional efforts to deconstruct sexual pluralism in Poland. Facilitated primarily by integration into the EU, the unusual but concerted resistance endeavor linking law with the visual, theatrical, and literary arts community challenging further constraint upon sexual expression has recently emerged as a unique vanguard in Poland’s process of [re]Europeanisation. In the absence of an effectively-defiant ideological apparatus to combat these conditions, discrete resistance among artists engaged in political contestation through sensual cultural production is being subtly developed as part of what Jackman (1996, p 270) refers to as “acts of sabotage that lie behind the grand theatre of compliance.” This hidden resistance has resulted in an unexpected elective affinity creating artistic and legal alliances that have been steadily building utopian enclaves of erotic expression since transition. Composed of internationally-renowned painters in the conventional visual arts, as well as anarchist avant-garde theatrical performers and writers, these unscripted alliances are together but in distinct ways vehemently contesting coercively-imposed, institutionally-sanitized, heteronormative sexual myopia.

To best explore these contestational processes taking place among creative communities throughout the country, the paper will argue of the primacy of the body as site of identity construction and artistic political resistance (Martin, 1990; Linder, 2001; Addison, 2005; Doyle and Jones, 2006). To that end it will highlight the dynamics of gender inequality in capitalist systems of democracy (Brinton, 1988; McAdam, Tarrow, and Tilly, 2001), examine the functions of emerging aesthetic sensual communities as a conduit for demystifying sacral feminine sexuality (Caputi, 2003), provide an overview of the evolution of international sexual human rights legislation (Elliot, 2005; Feldblum, 2005; Graupner, 2005), describe oppositional encounters among the alienated (Langman, 2006), and the inevitable organisational rigidity (Turner and Horvitz, 2001) in church and state that is brought about as a normative response to threats from artistic and legal communities combating these repressive systemic arrangements through aesthetic cultural production, sexual human rights legislation, and other forms of creative contestation. Before proceeding further, it will be useful to deconstruct the complex conceptual link between sensual aesthetic culture and the historical evolution of the Polish state.

## SEX AND THE COLONISING TOTALITARIAN REGIME

Indigenous non-Western tribal societies in alternatively developed cultural contexts have a significant history of prolific cultural production of sacred artifacts, customs, and rituals that relegate female reproduction and sexuality to the highest levels of spirituality (Caputi, 2003). Oppressive patriarchal colonisers from the West seeking to

exploit these indigenous cultures have, for centuries, engaged in the systematic destruction of nearly all remnants of these *vulvacentric* communities and their ancient practices of female worship taking place among tribal peoples in Africa, India, and the Far East (Kuklick, 1994), and now infiltrating contemporary culture.

The first social scientist to chronicle the role of sexuality in spiritual and cultural production among these indigenous communities was Bronislaw Malinowski (Malinowski, 1927; Malinowski, 1937; Ellen et al, 1988; Young, 2004). Since his ground-breaking methodological investigation on indigenous sexuality first came to the attention of the western world, many studies on community sexuality in creative indigenous cultures have been conducted since that time. These findings have been inadvertently used by colonising forces to weakening social solidarities among cohesive pre-modern tribes celebrating aesthetic and spiritual aspects of female sexual vitality and human reproduction. These indigenous matriarchal cultures were viewed by colonising industrialists as antithetical to exploitative systems of patriarchal capitalism, which were (and continue to be) contingent upon the exclusion of women from all positions of authority including the church, state, reproductive autonomy, and perhaps most importantly, labor markets. (Adkins, 1996; Cheng, 1996; Hakim, 1996; Cockburn, 1991). While highly controversial for its time, Malinowski's anticolonial approach made tremendous contributions to the field by forging the first conceptual link between the functions of human sexuality in the private domain, with the stability of tribal governing authorities in the public domain. Though he remained largely uncritical of the customs he uncovered in his own investigative analyses, British aristocrats funding his fieldwork were appalled at his clear, objective, value-free, ethnographic descriptions of liberating and celebratory sexual polygamous practices taking place among these indigenous tribal communities. According to Young (2004, pp. 356-358):

On the planter's verandah one evening, Malinowski experienced what he called "violent surges of sexual instinct for native girls." [...] Later that evening he had what appears to have been some sort of homoerotic encounter with Diko [an indigenous ethnographic informant]. They were discussing courtship and Diko spoke approvingly of "good" sex, showing the ethnographer with graphic gestures how [indigenous] boys customarily approached a girl for intercourse by first sitting on her knees. Aroused, Malinowski followed Diko to the kitchen. "I asked him whether they knew about homosex. here. He said no, 'kara dika' [bad custom]." [In] an unsigned typed note almost certainly written by William Saville, "You ask me about Malinowsky. I have only heard hints, probably the same that you have heard, about not having got on too well, in some quarters, with Government Officials. [...]The problems he was trying to work out were of the keenest interest to me, but [h]ad he been a man who would enter into the position and minds of another, whether native or white, he could have got twice as much information in one twelfth of the time. A native is not a class room student, and a native likes a bit of fun and a game." Herbert Champion was struck by the anthropologist's remark that "the standard of living of the Papuan was superior to that of the peasants of eastern Europe." This was innocent enough, but Champion also [discredited Malinowski's work by stating] that "Malinowski must have been a [homosexual]." Although he doubtless never read them, Malinowski would have been aggrieved and infuriated by the injustice of these remarks. That he was misunderstood by British officials and missionaries he dealt with cannot be disputed.

Unfortunately, the unique customs Malinowski enthusiastically uncovered surrounding spiritualised sexuality, as well as the community cohesion that these mysterious sexualised magic rituals resulted in, profoundly threatened exploitative colonising sensibilities and interests of expansionist-minded aristocrats who preferred to diminish their significance in tribal life.

Malinowski was not alone in exploring the conceptual link between sex and politics. Anarchists such as Dora Russell (Brooke, 2005) focused society's revolutionary potential upon the liberated body, suggesting that sexuality is the key element in human political cohesion that would eventually emancipate citizens from all state dictatorships at all levels of development around the world. Russell quoted in Brooke (2005) states,

The body is no mere box to hold the mind, but a temple of delight and ecstasy. The emancipation of women and human society were always anchored in the materiality of the body. Women's oppression was founded upon the reduction of female sexuality to reproduction. Public utopia would arise from private utopias [through male and female acceptance] of women's right to sexual pleasure and freedom.

And thus begins, in earnest, a century of regime-based authoritarian attacks upon cathartic sexuality in creative communities to combat what is perceived as a profound threat to the materially-based, patriarchal, phallogocentric, heteronormative, monogamous, hegemonic arrangements that capitalist world systems are contingent upon.

## **SEX AND THE SOVIET TOTALITARIAN REGIME**

The suppression of sexual spirituality and other forms of community-based erotic pluralism in creative cultures is not, of course, limited to imperialist forces in the southern hemisphere. Under Soviet totalitarianism, the USSR also engaged in similar tactics of sensual suppression to eliminate Orthodox Christian veneration of the Madonna among devout citizens. Ritualistic forms of worship of female reproduction and other matriarchal ideologies associated with the cult of the Black Madonna and the birth of Jesus Christ to a Virgin Mother were viewed by dominating forces of the Soviet totalitarian regime as inconsistent with the patriarchal goals of a Communist-dominated new world order (Husband, 1998). Under orders of Lenin, the physical destruction of all houses of Christian worship, as well as sacred images of female divinity written in gold in two-dimensional icons that these cathedrals contained; resulted in the elimination of thousands of priceless cultural objects of veneration of Christian female worship. The anti-clerical policies of the Soviet Union were accompanied by genocidal tactics that, by many accounts, resulted in the torture and murders of millions of religious adherents in Siberian concentration camps known as Gulags (Pospelovsky, 1990). These genocidal policies were implemented by the Communist regime for the purpose (among other complex objectives) of violently thwarting visual cultures perpetuating the cult of the Black Madonna (Begg, 1985) and other forms of female-centred spirituality so popular among Orthodox Christians throughout the Soviet empire.

Soviet attacks upon citizen sexuality, and female reproduction in particular, were not limited to the systematic destruction of the Christian Orthodox Churches and their contents throughout the Soviet empire. Repression and diminution of all forms of human sexuality permeated other aspects of society as well. While Milosz (1990) eloquently described cognitive process associated with totalitarianism, Xian (2004) extends these arguments to include the captured body performing under the Chinese Communist regime that is in operation to this very day. Xian (2004, p. 104) states

Ever since we were children, we have been actors playing our parts in a super theatre, a “National Drama” which is directed by a mysterious will. We follow blindly though we don’t truly understand what it means. We follow it blindly though we don’t truly know what it wants. We know it requires us to attend the same ceremonies and say the unified actor’s lines. Our expressions look alike, we wear masks and our bodies are like wooden figures.

These sentiments of suspended animation and living disembodiment are not limited to the totalitarian terror of China. According to an historical retrospective by Piatrowski (2005) the scale of embodied societal disenchantment in Poland and the entire “Soviet Empire” was so massive, that sexual and other embodied forms of human repression were precisely the conditions that gave rise to the Eastern bloc avant-garde revolution. These emerging communities of creativity contested the imposition of sexually-sanitised, non-sacral, patriarchal, phallogocentric Soviet culture. Portrayed primarily through the oppositional body in the visual and performing arts in what would come to be known as Socialist Surrealism, the artistic community vehemently contested sexual repression under the Communist totalitarian regime, which dictated that human relations (sexual or otherwise) were to be entirely brokered by the state within its highly artificial recreational institutions. Surrealist creative cultural communities, furthermore, used discursive aesthetic devices to effectively circumvent state censorship that prohibited all forms of regime critique, while contesting the artificially-imposed, perpetual scarcity of material goods that were used to legitimate oppressively-institutionalised mechanisms of normative social controls that sought to negate the embodied consuming needs of the public. The censorship of explicit oppositional dialogue and coercively-imposed obedience and servitude to Russian oligarchs only strengthened and diversified Soviet Surrealism in Poland and throughout the Communist “empire”, leading to the development of a variety of sensual aesthetic resistance repertoires including the Theatre of the Absurd (Romanienko, 2007). According to Esslin (1961, p. 316)

In the early 1950s... it appeared as though the Theatre of the Absurd – introspective, oblivious of the social problems and their remedies – was the very antithesis of the political theatre as preached by ...the official arbiters of the arts in the Soviet Union and her bloc. [B]y exploring the perplexity of man confronted by a soulless, over-mechanised, over-organised world, [the Absurd] had not only forecast the essentials of developments such as concentration camps or the bureaucratic tyrannies of totalitarianism, but had in fact described their essence more accurately and more truthfully than any purely naturalistic novel could have done. When [the Absurd was] performed in Poland at the time of the thaw of 1956, the audience there immediately understood it as a portrayal of the frustration of life in a society, which habitually explains away the hardships of the present by emphasising [Soviet delusions for the future]. And it soon became clear that a theatre of such concretised images of psychological dilemmas and frustrations, which transmuted moods into myths, was extremely well suited to deal with the realities of life in Eastern Europe.

The Absurd, Socialist Surrealism, and other aesthetic genres used subtle discursive devices to articulate pseudo-deference to the regime through symbolic (and occasionally genuine) sadomasochistic mutilation of the body in visual, performing, and other arts. Resistance repertoires were not, of course, limited to the demystification of citizen sexuality, but instead sought to expose the hypocrisies of regime elites who did not have to adhere to the same sexual asceticism they imposed upon the Soviet-dominated public. In Poland these contradictory

normative mechanism of social control dictating all forms of sexual expression and related consumption permissible in Communist society were not limited to the state, but were actually exacerbated by the simultaneous hegemony of the unencumbered Catholic Church, who were feared by the Soviet regime due to its ties to the Christian West.

## **SEX AND THE POLISH CATHOLIC FUNDAMENTALIST REGIME**

Poland's most powerful ideological apparatus was, and has remained to be the Roman Catholic Church. This institution once navigated the greatest revolutionary labor movement in contemporary history, and was largely responsible for assisting Poland's Solidarity Union to expedite the process of dismantling Communism throughout the Soviet Union. During totalitarian domination by the regime, the Polish Catholic Church had evolved into a powerful source of political guidance and social support among the devout and atheist alike. After World War II, this institution disseminated profoundly radical liberation theology that empowered citizens trying to surviving the totalitarian regime, while significantly contributing to the highly successful revolutionary fervor of the times (Barker, 1986). Since the onset of material capitalism, the institution has become increasingly rigid and, as a result, deteriorated into an oppressive myopic force that marginalises progressive Catholic factions and centres financial and ideological power in the hands of hateful fundamentalists such as the founder of a media empire, Father Tadeusz Rydzyk. He and other vicious misogynist commentators, through their ultra-conservative national radio broadcasts, routinely degrade and humiliate Polish women in society, having even gone so far so as to publicly refer to ultra-conservative President Kaczynski's wife as smelling like the excrement at the bottom of an outhouse cesspool. As a result of media control possessed by this fringe faction of what Lech Walesa has referred to as pseudo-Catholics, female sacral spirituality has been denigrated, and all forms of sexuality including even procreative heteronormative monogamy have been under attack. Given that Polish women have historically enjoyed relatively egalitarian relations and significant leadership roles within both the Solidarity Labor Movement as well as the Catholic Church, the recent diminution of females in political and religious life spearheaded by Rydzyk is a relatively new cultural phenomenon. According to Campbell (2005), the post-revolutionary importance of women diminishes rapidly after social movement objectives have been fulfilled. In her analysis, she discusses the historic role of women during revolutions and other major political upheavals as one generally involving equal risks and threats under demands for regime change, yet after political objectives have been fulfilled and power shifts have been successfully achieved, women are generally forced to revert back to traditional roles and remain excluded from public life. Media control and related pressure recently articulated by these fringe factions of the Polish Catholic Church in the post-Solidarity era are consistent with Campbell's findings.

In addition to these radical factions of the Catholic Church seeking to exclude women and sacral sensuality entirely from public life, their infiltration into Poland's political party system under proportional representation has resulted in similar institutional upheavals in the arts. Not unlike the dilution of the US National Endowment for the Arts after the Mapplethorpe-inspired sexual moral panic, Ministerial subsidies to Polish artists exploring sensuality through displays of nudity were recently discontinued by the new Ministry of Culture and Memory, while repetitive traditional nationalist historic craftwork in lieu of provocative aesthetic innovation has been rewarded. As Nead (1983) discusses in some detail, nudity in the arts represents a visual system that organises and challenges gender roles and sexuality. Through the elimination of subsidies to artists exploring themes surrounding human sexuality, controlling elements of the Catholic Church influencing aesthetically-uninitiated party apparatchiks controlling significant cultural funds from the EU have, to a certain extent, managed to eliminate resistance repertoires taking place publicly among sensual saboteurs in the arts. These oppressive tactics, instrumentalised

through partnership between Polish church and state, are a phenomenon that can be described as the *institutional dismantling of erotic agency*, which seeks to impose normative controls on citizen sexuality not unlike that experienced under British colonial or Soviet totalitarian regimes. Thus the contemporary collusion of church and state to eliminate support of avant-garde artists whose work explores sexuality is intended to discourage aesthetic dialogue surrounding sensual identity construction, and represents a particularly vehement new form of simultaneous aesthetic and sexual oppression that has been steadily intensifying in Poland during the latest moral panic associated with the Europeanisation.

### **THE PRIMACY OF THE ARTS IN SENSUAL RESISTANCE REPERTOIRES**

These artists do not act alone. There are many parallel institutional processes bolstering their transgressive discursive endeavors. Given the popularity of contemporary protest, the scale of public social movement activities, and the ability of courts to redress personal injustices, it is curious that these contestation forces tend to focus primarily on the arts. As Doyle and Jones (2006) suggest, aesthetic visual culture is the most accessible format to the public, and therefore most threatening to the moral arbiters advancing ideological desexualisation in society. Crowther (1993) suggests that artistic communities represent greater and deeper potential in public contestation processes, offering society a kind of communicative vehicle which other more conventional public modes of debate simply do not allow. Crowther (1993, p.163) states:

The work of art is a symbolically significant sensual manifold, where we have a concrete particular charged with semantic and conceptual energy. It is this fusion of the sensual and the conceptual which enables art to express something of the depth and richness of embodiment in a way that eludes modes of abstract thought such as philosophy.

Communication in the arts, furthermore, can be more immediate, more accessible to diverse audiences, can bridge language and cultural barriers, can more effectively speak to universal sensual experiences of humanity, and can be an important vehicle for expressing various forms of identity construction. These unique human developmental characteristics of the arts can inform and usurp oppressive state ideologies better than any conventional tedious social movement, particularly with regard to the vilification of hedonistic non-reproductive human sexuality. This dialogue can be inherently oppositional. Bell (2002, p. 224) suggests that by the mere imposition of one state ideology, democratic debate almost automatically opens the floor to include oppositional discourses:

Ideologies attempt to impose a particular finite meaning on concepts which are actually open to multiple and often contradictory interpretations, and in doing so their proponents attempt to eliminate the possibility of debate over potential alternative understandings of the world. Ideology offers the tools to chart the contours of global politics and theoretical ammunition to challenge dominant locations.

The unique character of the ideological artist actively participating in social and political resistance through these aesthetic forms of discursive expression taking place in contestational creative communities has also warranted a unique place in democratic debates not limited to mere sexuality. As Trilling (1997, p. 565) points out,

The art-loving public has been fascinated by the artist as rebel. To realize their vision, they must do battle with stifling forces of convention and cultural inertia. History has vindicated these rebels so consistently that art is a chronicle of rule-breaking. The artists claim a privileged official standing because they are outside the system. Two centuries of romantic and modernist rebellion have raised the outsider to the status of a demigod. He or she is the great questioner, the agent of change, the person, by making us think, prevents us from falling into complacency and stagnation.

Whether empowering erotic agency or displaying the sensual oppositional body, ideological communication within artistic communities can, nevertheless, be profoundly influential in contributing to democratic dialogue, particularly under contestational cultural conditions. Members of these creative communities exercising their erotic agency in public is part of a larger international trend of authentic living seeking to resist all forms of normative social controls on human sexuality. This global movement toward emancipatory sexuality is described by Schwartz (2000) as the equitable dispersion of sexual privileges like any other societal resource, toward non-elite populations far beyond white male heteronormative hegemony; in essence a mass social movement toward a radical democratisation of sexuality. Schwartz (2000, p. 219) argues that:

Sexuality, freed by technology from the unintended negative consequences of disease and unplanned procreation, should reach toward its potential of being understood as a form of pleasure. Elite men have taken for granted that they would have, and deserve, unencumbered recreational sex as one of the prerequisites of power. I am encouraging the democratization of sexual privilege. Economically independent women may be the first to avail themselves of this pleasure; but in a utopian society it would be available to everyone who wanted it. In the new century, sex will be more of an appetite and less of a moral crisis. Such a change may make us more humane in interpersonal relations, social programs, and legal institutions.

Given these increasingly global forms of sensual resistance provoking the public into discursive aesthetic expression taking place throughout creative communities around the world, have these new sensual demands actually resulted in more sexual pluralism in contemporary society?

## **EMERGENCE OF INTERNATIONAL HUMAN RIGHTS**

The answer quite simply is, no. The attack on sexual pluralism has, by many accounts, never been greater. New democracies like Poland are particularly vulnerable to conservative resistance, culminating in mass violence at Gay Pride Rallies and other forms of public protests, or worse, post-Communist criminalisation of these events altogether under the guise of public safety. The right to domestic partnerships known as gay lesbian marriage is also contested, not only in the Eastern bloc but even in the most advanced, progressive, industrialised cultures. Worse, those with an alternative sexual orientation are often denied access to occupational opportunities, housing, and other scarce societal resources at all levels of global development. Mass media only exacerbates these problems, by engaging in overt vilification strategies that ambiguously aggregate gays and lesbians with



paedophiles and other criminally insane sexual deviants. In response, visual, performing, and other artists have constructed creative alliances with other marginalised sensual communities to combat these attacks, many of whom advocate that progressive healthy sexual lives are an important part of aesthetic living in free democratic societies. According to Shusterman (2006, p. 217):

A term of varied political deployment, experience in the hands of conservative theorists represents the past's accumulated wisdom that needs to be preserved, but for progressives it signals openness to change and experiment. Whether we allow sexual experience to count as aesthetic experience depends ultimately on the conceptions of aesthetic - sexual experiences we adopt.

Thus, creative communities are an important part of what McAdam, Tarrow, and Tilly (2001) call the *dynamics of democratic contestation*. According to Posel (2005, p. 145)

Sexuality has excited intense anxiety, controversy, and confrontation. If the new [global sexual liberalism] opened spaces for new forms of expression, conversation, and display; the rapidity and enormity of this change provoked refusals and evasions along with new opportunities and ambitions.

To that end, the arts are not alone in their struggle for sexual authenticity. Legislative systems are now being deployed in an attempt to formally intervene in the recent increase in state institutionalisation of repressive sexuality. As a result, the new century has ushered in a new era of sexual human rights legislation to prohibit governments and other *coercive institutions* (Airaksinen, 1988) from engaging in sexual regulatory functions. These legal tactics involve citizens asserting their right to private sexual identity construction and the extension of liberty interests to those with membership among sexual minorities. As stated by Murray and Viljoen (2007),

Even if same-sex intercourse is inimical to [a majority of citizens'] values, the question must be posed whether criminalizing homosexuality is necessary to further these values. Justification can not be derived from popular will [including the] right to equality on [minority group] basis [which] affirms the entitlement of a minority group to full and equal respect [enjoyed by majority group members].

Sex, as argued by Murray and Viljoen, is generally viewed by states as a privacy issue "relegated to the private sphere, where it should be hidden and tolerated grudgingly." Sexual human rights legislation is not only designed to free sexual minorities from discrimination, but is also drafted with the intention of protecting citizens from unwanted sexuality. According to Graupner (2005, pp. 110-112):

Fundamental rights in the area of sexuality would be understood to guard human sexual dignity as a manifestation of... sexual autonomy and sexual self-determination. Correctly understood it enshrines both the right to engage in wanted sexuality and the right to be free and protected from unwanted sexuality, from sexual abuse and violence. States must [grant citizens these protections as well as] protect against interferences from private individuals. Freedom to express one's

sexuality is based upon changing public attitudes toward the sexual behavior in question.

Sexual human rights legislation, therefore, generally grants protections to citizens living in democratic societies that are quite limited, while also sanctioning unwanted forms of sexuality such as prostitution, pornography, and same sex adoption. With so many legislative assurances, why do sexual human rights in new democracies like Poland remain so difficult for sexual minorities to assert?

## **HUMAN RIGHTS ENVIRONMENT IN POLAND**

Despite the misinformation disseminated by contemporary scholarly and media portrayals, Poland is no dilettante when it comes to human rights. On the contrary, Poland was responsible for drafting the first and most progressive constitutional legislation in Europe, to be subsequently emulated by other fledging nations (Pogonowski 2003, pp. 65, 81).

A political programme, republican in nature and advanced for its time, was published in 1551 under the title of *commentarium De Republica Emendada* by Andrzej Frycz Modrzewski (1503-72) called the father of Polish democratic thought. Modrzewski's work is composed of five books. In them, he called for legal equality for all, for an end to the oppression of serfs and the inadequate laws that protect them; and an opposition of all wars and schemes of aggression. The principle that no one could be prosecuted for his religious belief had always been recognized in Poland as a basic right. It became law when the Toleration Act of Warsaw was passed in 1573 by the Sejm [Polish Parliament].

Poland was, in fact, the first European nation-state to formally strive toward an autonomist system of governance (Zamoyski 1987, p. 104):

While the Hapsburg of Austria, the Bourbons of France, the Tudors of England, and every other ruling house of Europe strove to impose centralized autocratic government, ideological unity and increasing control of the individual through a growing bureaucracy, Poland alone of all the major states took the opposite course. The Poles made an article of faith of the principle that all government is undesirable, that strong government is strongly undesirable. This belief was not based on some kind of inherent love of chaos, but on a deeply felt conviction that one man had no right to tell another what to do, and that the quality of life was impaired by unnecessary administrative superstructure. These attitudes - the dislike of authority for its own sake, the rejection of any theory that the public good could be served by exerting pressure on the individual, and the belief that inalienable rights and dignity of the individual – were not new to Poland. They had been in evidence throughout the Middle Ages, and they are very much in evidence at the present time.

Though Poland's pioneering efforts in the development of human rights may be considered by some to be ancient history, the record remains that Poland was the first Western "empire" to advance, through constitutional and other formal legislative means, that the state was to have minimal intervention in the affairs of all citizens,

that humans are created equal, that when decision-making was needed by government leaders it was to be harmonious and without dissention, that ethnic and religious minorities should benefit from equal rights along with the majority of citizens, and that the foundation of its national development was to maintain peaceful relations with the surrounding international community at all times. Wankel (1992, p. 44) states:

Half a millennium ago Poland was one of the world's largest and strongest countries, stretching from the Baltic to the Black Sea. Polish armies even occupied Moscow. However, factors such as liberum veto, under which one dissenting noble could veto important national policies, weakened the ability of central authorities to be effective, and it declined. Eventually, after a series of partitioning annexations of its territory (1772, 1793, and 1795), Poland lost sovereignty. Only after the First World War did it arise again as an independent nation.

Progressive revolutionary thought did not end with formalisation of the Polish constitution. Attempts to recognise serf and religious minority rights on official documents was one thing, but implementing this radical egalitarian progressive world view in fluctuating political conditions between the 13<sup>th</sup> and 17<sup>th</sup> century was another matter entirely. Zamoyski (1987, pp. 25, 149) asserts:

[T]he Confederation of Warsaw, in which the inhabitants of the [Polish] Commonwealth pledged, as equals, to respect each other's religious beliefs and practices, was amended [in 1632]. The new text "graciously permitted" others to practice a different faith. [T]he Jewish community ...was granted a royal charter in 1264, the first of such [progressive] privileges which were to turn it into a nation within a nation. [The] unique absence of violence [against non-Christians in Poland during the Counter-Reformation] stemmed partly from the Polish attitude to religion, partly from an obsession with legality and the principle of personal liberty, and partly from the fact that throughout this period Polish society concentrated on an attempt to build utopia on earth. To the historian...Poland provides an unusual spectacle of an unsophisticated, even primitive society refusing to obey the cultural and economic laws which would have absorbed into the powerful European mainstream, apparently determined to find its own course.

And thus began a long history of revolutionary insurgency for Polish independence, autonomy, anarchist self-rule and self-determination for a nation that, before being partitioned out of existence for a century by neighboring colonisers, Nazi occupation, Soviet totalitarianism, and Catholic hegemonic rule; had implemented progressive policies that were been consistently respectful of its minority populations. Had the innovative nation-state been left to her own devices, the doctrine of self-determination would have surely enabled her to develop the most progressive, pluralistic, libertarian Republic in European history. This pioneering tendency of Polish human rights legislation formally granted the first religious minority rights recognition of Europe to Jews in the 12<sup>th</sup> century, limited the Counter-Reformation of the 15<sup>th</sup> century, brought down Polish feudalism in the 16<sup>th</sup> century, decentralised the power of nobles in the 17<sup>th</sup> century, brought the Kremlin apparatchiks to their knees in the 20<sup>th</sup> century, and is making significant contributions to the sexual minority rights project currently under way.

As peculiar as this historic timeline of political subterfuge and self-determination is in this cultural context, it is not unique to Poland. In 1953 the European Convention for the Protection of Human Rights and Fundamental Freedoms granted rights to minority groups, but no explicit mention was made with regard to human sexuality. In 1966 the United Nations Convention drafted the International Covenant on Civil and Political Rights which was the first to explicitly secure human rights protections for gays. Then in 1995, the Canadian Court was the first democracy that established broad human rights for its citizens regardless of sexual orientation. In 1999, the South African Court sought to remove protections of those discriminating against gays and lesbians. It was not until 2003 that the United States would overturn anachronistic sodomy laws stating there is “no legitimate state interest which can justify intrusion into the individual’s personal and private life.” According to United States sexual human rights legislation known loosely in legal circles as the *Right to Exist* (Feldblum 2006, p. 17):

An individual’s choice to marry, to have (or not have) a child, to engage in satisfying sexual intimacy, or to live in the gender that matches his or her sense of identity all relate to essential self-definition. [The] Constitution places on the state not only a negative obligation not to criminalize the conduct or status in question but also concomitantly, a positive obligation to rectify tilts created by society for those trying to live their authentic selves. We should expect our government not to criminalise the choices and actions that constitute our beings.

According to Tahmindjis (2005, p. 19) sexual human rights legislation has not, to date, necessarily afforded sexual minorities with any profound emancipating privileges, on the contrary, has merely managed to successfully dilute the *privileging of the state* over the private sexual life of the individual citizen. These international treaties, he reminds us, are merely ideological instruments, that must still be legislated at the local level in individual sovereign state jurisdictions. While the hope in Brussels is that all new member states of the EU ratify these international treaties dedicated to the protections of sexual minority rights, domestic legal systems like that of Poland are entitled to modify these human rights instruments to fit the particular cultural orientation of the public:

EU Court of Human Rights recently upheld a transsexual’s right to legal recognition of her new gender, including the right to marry a person of her original sex. It is still up to the state to determine the [future/past] conditions for marriage. There is an overwhelming tendency to rely on cultural “normalcy” which is grounded in heterosexism.

Given the recent decision in the United States to allow gays and lesbian residents of California to enjoy legally recognised marriage, it is anticipated that the struggle to demand broader legal assertion of rights based on sexual orientation within creative communities around the world will continue.

## CONCLUSION

This paper has attempted to demonstrate that an unusual strategic informal partnership is emerging in contemporary societies involving a unique alliance of aesthetic and legislative sexual human rights advocacy around the world. This concerted effort springs from an elective affinity involving aesthetic and legal resistance repertoires taking place among creative communities to combat vehement attacks on sexual pluralism in contemporary society. As these tactics of resistance deploy increasingly sophisticated and provocative legal and

aesthetic mechanisms of discursive dissent, powerful institutions such as church and state in repressive cultural contexts like Poland will invariable become even more rigid in their ideological orientation based on perceived threats from their environment. As eloquently described by Schusterman (2006) the creative saboteurs operating at the intersection of art, sex, and law can nevertheless, “inspire us to greater aesthetic experience and, consequently, to more artistically and aesthetically rewarding performance in our erotic behavior, which surely forms one important dimension of the art of living.” Thus, through the creative alliances taking place simultaneous in art and law, citizens in progressive democratic societies might eventually feel free to engage in the authentic sexual identity construction necessary to optimise human potential for the future.

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