

Sexual Ethics and Islam

Feminist Reflections on Qur'an, Hadith,
and Jurisprudence

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SEXUAL ETHICS AND ISLAM

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and for my children; may their instructor prove as capable.

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In March 2005, European scholar Tariq Ramadan alluded to this double-standard in his eloquent and persuasive (but controversial) call for a moratorium on *hadd* punishments for *zina*. But in nations where "consensual adult sex" is not punished, regardless of its compliance with religious law, there are still very important matters to be discussed.³⁷ The Qur'anic and classical jurisprudential boundaries of what counts as licit and illicit have already been redrawn, for all practical purposes, by Muslim acceptance of the abolition of slavery and, therefore, of slave concubinage. The double-standard that was operative in the past (even if, in practice, it applied only to men wealthy enough to take more than one wife or own concubines) has largely disappeared as a matter of law, with the increase in monogamy and the disappearance of slave concubinage as a legal option. *Zina* can be redefined for the twenty-first century as sex between partners not married to one another. But what element of marriage legitimizes sex and differentiates it from *zina*? Do dower payment and a unilateral right by the husband to dissolve the union at his whim (regardless of whether or not this is the usual practice) make marriage moral? Is religious marriage, a voluntary contract without civil registration, sufficient to make sex licit, without consideration of national laws that enforce certain property relationships? Ultimately, where does lawfulness rest? These are not flippancy questions, but serious attempts to think about what transforms sex into something licit. What is God's stake in marriage?

5 Don't Ask, Don't Tell: Same-Sex Intimacy in Muslim Thought

Illicit sex between a man and a woman (*zina*);
anal intercourse between men (*liwat*);
having intercourse with livestock (*ityan al-bahā'im*);
having anal intercourse with a female stranger (*ityan al-mar'a al-ghaybiyya fi dubḥāhā*);
tribadism (*musāḥaqat al-nisā'*), which is a woman doing with a woman something resembling what a man would do with her;
and a husband having intercourse with his wife's corpse.
From Ibn Hajar Hayatani's list of *Enormities* #338–343¹

The excerpt above forms part of one of the many lists of major sins, or enormities (*kabā'ir*), compiled by medieval Muslim scholars.² Sometimes ranked in order of importance, at other times listed thematically, the entries combine theological and social sins. Sexual offenses frequently occupy prominent places in these compilations, though always below the gravest sin of associating others with God (*shirk*) and often below the sin of disrespectfulness toward one's parents. These lists are still influential today, as evidenced by Nuh Keller's inclusion of two such lists, including Ibn Hajar's sixteenth-century version, as appendices to his late twentieth-century translation of the medieval Shaf'i legal manual *Reliance of the Traveller*. Other lists, such as that of fourteenth-century hadith scholar al-Dhahabi, are readily available in print in Arabic.³

Al-Dhahabi's influential *Enormities* (*al-Kabā'ir*) contains seventy sins, with extensive evidence from Qur'an and hadith presented to illustrate the gravity of each act and justify its inclusion in his list. Of this number, only a handful relate to

sex; of these, the most serious is *zina* (#10), illicit sex between a man and a woman, followed directly at #11 by *liwat*, or anal intercourse between men. (The term *liwat* is derived from the name of the Prophet Lot; most Qur'anic discussion of same-sex acts between men refer to the attempt by male townsfolk to molest Lot's angelic visitors.) This entry also includes a brief reference to tribadism.⁴ Other relevant entries include #21, slander (*qadhi*) of a chaste woman;⁵ #34, condoning or tolerating a wife's transgressions;⁶ and #35, employing or acting as a *muhallil*.⁷ A woman's *nushuz* (recalcitrance) toward her husband, which could involve sexual refusal or mere disobedience, is the least serious of the sex-related enormities included, at #47.⁸

Tenth-century Iraqi scholar Abu Talib Makki, whose list Keller also includes, limits his compilation "solely to sins explicitly designated as enormities by the primary texts."⁹ He divides his seventeen item list into deeds of the heart, of the tongue (including "slander of a chaste person who is a free, adult Muslim"¹⁰), the stomach, the genitals, the hands, the feet, and the whole body. There are "two [sins] of the genitals and they are *zina* and having anal sex in the manner of the people of Lot."¹¹ This joining of *zina* and *liwat* – with *zina* always mentioned first – is a common feature of the lists of al-Dhahabi, Makki, and Ibn Hajar.

Ibn Hajar's list is not selective, but rather comprehensive. While Makki itemizes seventeen enormities, and al-Dhahabi seventy, Ibn Hajar lists hundreds, divided into sections. His objective, according to Keller, "is to warn readers against any act that an Islamic scholar has classified as an enormity."¹² The sexual offenses listed in the portion of Ibn Hajar's list devoted to crimes (*jima'at*) include "*zina*, *liwat*, having intercourse with livestock; having anal intercourse with a female stranger; tribadism, which is a woman doing with a woman something resembling what a man would do with her; and a husband having intercourse with his wife's corpse."¹³ This grouping begins with reference to *zina* and *liwat*, the primary sexual sins signaled by al-Dhahabi and Makki, and encompasses several other acts as well, including tribadism, which merits a brief mention in al-Dhahabi's discussion of *liwat* but does not appear

in Makki's list. Aside from the exclusion of acts related to marriage, which appear in a separate section of Ibn Hajar's list, there is no easily discernible logic joining these items. The section includes both acts subject to *hadd* punishments and those subject to discretionary chastisement; acts involving two persons of the same sex, two persons of the opposite sex, and one person with an animal; acts that are forbidden because they are intrinsically sinful, as is the case with intercourse with an animal or a corpse, and those where the problem is not the act itself, but the lack of a proper legal relationship between the parties, as in the case of *zina*. While there are no circumstances under which bestiality or necrophilia can lawfully be performed,¹⁴ in the case of *zina*, there would be no sin in the intercourse had the participants been married to each other.

What categorization applies to the same-sex¹⁵ sexual acts described in the passage? This question itself presupposes a category that may not be relevant. Ibn Hajar deals with *liwat* and tribadism or lesbianism (*musahagat al-nisa'*) individually and separately, not as instances of a broader sin called homosexuality. However, as I noted above, tribadism appears briefly in the section al-Dhahabi devotes to *liwat*, suggesting that they have something important in common. What, though, of the acts? In the case of anal sex, the act itself may be an enormity, regardless of who engages in it; Ibn Hajar condemns anal sex between men (*liwat*) as well as anal sex between a man and a female "stranger" – that is, a woman who is neither his wife nor his slave and over whom he has no sexual rights. In the section on marriage, Ibn Hajar also condemns a man having anal sex with his wife (though, in what is potentially an oversight, he makes no mention of a man having anal sex with his slave concubine). Tribadism is another story. Frottage is perfectly permissible between legitimate partners (a man and his wife or his concubine), so his prohibition of "a woman doing with another woman something resembling what a man would do with her" is not based on the impermissibility of the act itself. As in the case of *zina*, it is the lack of a lawful tie between the parties that renders the act illicit. Could there be circumstances under which such a tie could legalize otherwise permitted sexual acts between two

women or two men? For the vast majority of Muslims, and certainly for Ibn Hajar and his colleagues, this is a ludicrous question; a licit same-sex relationship is a categorical impossibility. Recently, however, some self-identified queer Muslims have challenged this view, affirming the naturalness of their sexual orientation as divinely granted and seeking to consider whether it might be possible to construct a religiously valid bond between two men or two women that would legitimize sex between them. The desire on the part of some self-identified gay and lesbian Muslims to have exclusive and publicly recognized same-sex relationships, and to do so in a way that falls within an "Islamic" framework, is without precedent in Muslim history.

In describing this as a recent development, I do not mean to imply that there have not been previous instances of sexual activity, potentially including long-term affective relationships, between individuals of the same sex. What differs is the attempt made by some to reconcile a "homosexual" identity with a Muslim identity, and to legitimize same-sex intimate partnerships within the constraints of Islamic religious discourse. Their desire to have sexual relationships that break conventional Islamic rules but that aspire to the highest standards of Muslim ethics, as they understand them, exists in tension with vital theological and juridical principles aside from those forbidding illicit sex. The two most salient principles are that one should not expose sinful behavior, whether one's own or another's, and that it is a greater offense to deny certain rules than to break them. Taken together, these rules render any discussion of same-sex sexual intimacy a risky proposition, and make adherence to the "don't ask, don't tell" status quo appealing for many. For others, however, the tacit toleration of illicit same-sex activity, provided one does not seek public affirmation of any intimate relationship, represents deep hypocrisy and a flagrant violation of other ethical principles.

After providing a brief survey of how the texts treat sexual activity between two men or two women, this chapter will consider the way modern Muslim thinkers from a variety of perspectives approach the relationship between sexual orientation, sexual acts, and sexual identities. The view that exclusively homosexual

desire is innate in some individuals – a core argument of those seeking acceptance of gay and lesbian identity – has made inroads even among some relatively conservative Western Muslim thinkers, but the implications of this acceptance have not been fully delineated. Those who view sexual orientation as inborn but suggest that same-sex desires can never be fulfilled lawfully confront the problem of divine injustice, particularly where they also argue for the importance of sexual satisfaction as a human need. On the other hand, those who argue that innateness conveys permissibility do not satisfactorily address either the macrocosmic principles of male/female partnership expressed in scripture or the ahistorical nature of their claims to an innately gay orientation, claims which ignore the diversity of historical and contemporary understandings of sexuality. In either case, the minority Western movement for acceptance of a gay Muslim identity, and the reaction to it, has implications for intimate relationships in all segments of Muslim communities, including between men and women in marriage. For this reason, no discussion of sexual ethics can avoid the issue of same-sex intimacy.

History

Although most Muslims would acknowledge that sexual activity between persons of the same sex exists in Muslim-majority societies, this concession is frequently accompanied by an insistence that homosexuality is "western" or "modern," and certainly "un-Islamic."¹⁶ Writing in 1993, Khaled Duran stated confidently that there were "no self-proclaimed gays in Muslim countries" and that no movement toward the acceptance of homosexuality or gay identity was taking place among Muslims.¹⁷ Yet contemporary insistence on the forbiddenness of homosexuality aside, a number of scholars have suggested "that one might consider Islamic societies ... to provide a vivid illustration of a 'homosexual-friendly' environment in world history."¹⁸ According to Scott Kugle, "when one looks through the historical and literary records of Islamic civilization, one finds a rich archive of same-sex desires and expressions, written

by or reported about respected members of society: literati, educated elites, and religious scholars."¹⁹ Another scholar states, more bluntly: "same-sex relations between men are ubiquitous in the medieval Arabo-Islamic textual universe."²⁰ Khaled Al-Rouhayeb, insisting on nuanced readings of texts from different genres, calls for close attention to the varieties and registers of competing discourses, allowing for some types of homoerotic desire and even activity to be celebrated, and others, including those resulting in penetration, to be condemned.²¹

Although medieval Muslim sources give the impression that homoerotic desire and sexual activity of some type between males was a normal, if religiously illicit, part of elite Muslim life, there is comparatively little on female homoeroticism in Qur'an, hadith, or interpretive texts. Although literary and, to a lesser extent, legal texts include some discussion of sexual acts between women – usually *sihaq* or *musahhaqa*, "rubbing" or "pounding" – most discussion of homoerotic acts focuses on male/male sexual activity.²² Several factors contribute to the silence surrounding female same-sex activity. Perhaps the most important is simply that many legal effects of sex depend on penetration by a penis. In the few cases where sex between women is mentioned, the legal discussion revolves around what punishment, if any, is to be imposed by the authorities as well as whether compensation equivalent to dowry must be paid if hymeneal rupture has occurred. Legal discussions of male/male sex acts, by contrast, never mention dowry, focusing not only on punishment but also more mundane issues such as the necessity for ablutions after penetration and the possible impediments to marriage created by same-sex liaisons.²³

In any event, whatever textual sources reveal about the prevalence of same-sex intimate relations, the fact that some Muslims have engaged in homoerotic activities does not mean it is religiously legitimate to do so. For contemporary Muslims grappling with same-sex attractions, the key questions is not: what have (some) Muslims done? but rather: what may Muslims do? or, even more generally: what does "Islam" allow?²⁴ Some leave Islam entirely, while others choose to separate sexuality from religion, considering themselves Muslim but acknowledging

that their sexual acts or identities are not acceptable from a religious perspective. Still others choose to actively grapple with religious precepts in order to attempt to reconcile a Muslim identity with a gay or lesbian one.

Bypassing Islamic legal thought (which, as will be seen below, does not seriously consider the possibility that any same-sex relationship could be lawful), such reconsideration usually begins with the Qur'anic discussion of male and female same-sex acts. There are numerous hadith of varying degrees of authenticity addressing *liwat* in a harshly condemnatory fashion; hadith collections also condemn lesbian acts on those rare occasions they mention them. Scholars interested in developing a framework of tolerance and acceptance for same-sex relationships usually ignore hadith entirely or address specific reports only to discredit their authenticity. The Qur'an itself becomes the basis for new interpretations, which again focus on male/male sex. There is no consensus as to whether the Qur'an even mentions female same-sex activity. It might or might not be the subject of Surah 4, verse 15, which orders that, with the incriminating testimony of four witnesses, "those (fem. pl.) among your women who approach lewdness (*al-fahisha*)" are to be "confined" to houses until death claims them, or God ordains for them some (other) way.²⁵ The precise relationship of the provisions of this verse to those on *zina* has been a topic for much debate. Does the verse "ordaining" flogging abrogate the one ordering confinement, or does this verse refer to a punishment for same-sex acts distinct from that for illicit sex between a man and a woman? This verse does not specify "two women," which would have been possible using the dual form. Immediately following, Surah 4, verse 16 also addresses illicit behavior, using the masculine/inclusive dual "two ... from among you." As with all dual or plural masculine forms in Arabic, it can include both male and female, and there has been disagreement among commentators as to whether this verse refers to two men by contrast with the preceding verse, which specifies only females (though not two women), or a male-female pair, also grammatically possible.²⁶ Male same-sex acts, however, are mentioned on several occasions in conjunction with the story of the Prophet Lot,

which is the constant referent for both classical and contemporary discussions of all same-sex sexual activity.

Contemporary scholars disagree sharply about the Qur'anic perspective on same-sex intimacy and desire as presented in the Lot story. Duran presents the conventional view when he states that the Qur'an "is very explicit in its condemnation of homosexuality, leaving scarcely any loophole for a theological accommodation of homosexuals in Islam."²⁷ In contrast, Kugle argues that "the Qur'an does not address homosexuality or homosexuals explicitly[.]"²⁸ Rather, the sacred text (like the jurists' writings) addresses particular acts, saying nothing about "identities" and very little about desires. The revisionist attempt to promote a new, more inclusive view of Qur'anic teachings on same-sex sexual acts, desires, and orientations relies on a distinction between the Qur'anic condemnation of particular same-sex acts, in this case those of the townsfolk in the Lot story, and the possibility of divine acceptance of other forms of same-sex relationships.

In order to interpret the Lot story as something besides an "explicit ... condemnation of homosexuality," scholars have used two main approaches. First, they have explored other aspects of the Lot story beyond the issue of same-sex acts. Second, they have argued that even if the acts were problematic, they were objectionable due to a factor other than those involved being of the same-sex. As to the first point, the commentarial tradition and conventional wisdom have erred, Amreen Jamal shows, by placing undeserved emphasis on sexual deviancy as the particular sin of Lot's people.²⁹ Building on Jamal's work by painstakingly assessing the work of several prominent pre-modern exegetes, Kugle demonstrates that "Word-for-word replacement in classical commentaries has given rise to the dubious equation of the divine punishment of Lot's people with a condemnation of homosexuality and juridically enforceable punishments for same-sex acts."³⁰ The transgressions of Lot's community were far more extensive and far-reaching than sexual misconduct. Spiritual corruption has been reduced to sexual transgression, undeservedly narrowing the divine guidance contained in the stories of Lot's people.

Although these scholars make a compelling case for understanding the sexual transgressions of Lot's people in a larger context of disbelief and moral turpitude, I am less convinced by their suggestion, echoed by a number of advocacy groups, that the townsfolk's behavior was objectionable not because they sought same-sex intercourse but due to other considerations including their lack of concern for Lot's visitors' consent.³¹ The argument that the Qur'an objects not because the men in question sought same-sex intimacy but rather because they intended non-consensual violation rests on an assumption that consent is necessary for an ethical or lawful sexual relationship. However, elsewhere in the Qur'anic text, as with female captives ("what your right hands possess"), consent is not always relevant to the formation of licit sexual relationships. Further, Lot offers his daughters to the marauding townsfolk without any indication that their consent mattered.³² The daughters' lack of consent is quite striking, whether it is to simple paternally sanctioned sexual use by the would-be rapists or to marriage as a licit sexual outlet for the men. Kugle argues that this is not a case of valuing male over female, but rather guests over family members "who happen to be female."³³ One could argue that in the case of premodern patriarchal societies, only paternal consent mattered. In that case, could Lot have offered his sons to the men with equal impunity?

The more significant obstacle to reinterpretations of the Lot story is that the Qur'anic text seems to object clearly to the men's sexual object choice: these men approach men *in preference* to those whom God created to be their mates.³⁴ One way of getting around this objection would be to argue that men who would otherwise choose female partners were opting to seek sex with men – this argument would be compatible with the view, expressed by some queer Muslim authors, that there are men created to take male mates, a notion I discuss below. There is strong justification for reading the Qur'an to suggest that males and females are created to mate with one another, and any *choice* to deviate from that path is blameworthy.

One cannot understand premodern Muslim scholars' interpretations of the Lot story without considering how their

views on same-sex desire and sexual activity differ in crucial ways from those held by modern Westerners, including some Muslims. Their concerns were largely for actions, not orientations. That is not to accept the once-conventional view that any "homosexual" identity is a purely modern invention, and premodern thinkers knew only acts. Premodern texts, as scholarship in other contexts has shown, can present specific sexual acts as "more or less related to sexual dispositions, desires, and subjectivities."³⁵ Even where specific identities were associated with the performance of particular acts, these were not consistent across time and place, nor are they identical to contemporary notions of "homosexual," "gay," or "queer." The exegetes and jurists' understandings of male/male sexual activity do not take into account the possibility of a partnership where both men consider themselves "gay,"³⁶ but rather presuppose an age- and status-stratified asymmetrical relationship between unequal partners.

There are crucial similarities between classical Greek and Roman views on male/male sex and the norms (and practices, so far as historians can tell) of elite medieval Muslim culture. Muslims in the region generally accepted the ancient Mediterranean model, based on hierarchical notions of peneration, where no stigma except perhaps that of profligate attaches to an adult male who penetrates but where a free adult male who allows himself to be penetrated suffers stigma.³⁷ Even a preference for male youths over and above female partners, explored satirically by ninth-century litterateur al-Jahiz in his famous essay "Maids and Youths,"³⁸ did not make a man "homosexual" in the sense that Duran or Kugle uses the term. Male desire to penetrate desirable youths (generally, although not always, defined as "beardless," *amrad*) was perfectly normal – if never lawful – and not necessarily indicative of a deviant subjectivity, desire, or a particular sexual orientation.³⁹ The commonplace, not pathological, nature of such desire is illustrated by *Reliance of the Traveller's* passing mention of the "handsome beardless youth" in its discussion of circumstances under which it is permissible or impermissible for a man to look at a female who is not his wife, slave, or kinswoman. Notably, Keller omits

this portion of the text from his late twentieth-century English translation.⁴⁰

Don't ask, don't tell

Despite the widespread medieval acceptance of same-sex desire between men and attractive male youths, Muslim thinkers took for granted that such sexual relations were neither licit nor possible to legitimize. Yet the explicit condemnation of same-sex sexual activity in medieval Islamic legal thought and by most contemporary Muslim thinkers has been tempered by tacit tolerance for its practice, provided some degree of discretion is observed. As Abdelwahab Boudhiba argues, "The fact that homosexuality" – he means same-sex acts – "was always being condemned proves only one thing: neither the religious nor the social conscience could put an end to practices that were disapproved of by Islamic ethics but to which in the last resort society closed its eyes."⁴¹ Steven Murray, discussing both male/male and female/female sexual relations in present-day Muslim contexts, has referred to this unwillingness to acknowledge what is an open secret as "the will not to know."⁴² While certainly some aspects of this logic governing same-sex encounters is specific, the overall logic of refusing to point out sins that are not crimes is not unique to same-sex sexual intimacy. Rather, it is part and parcel of a general insistence on not attempting to pursue potentially incriminating information about one's fellow Muslims or to disclose it about oneself.

The unwillingness to seek out and condemn instances of same-sex sexual activity, the preference to let them pass by, if not unnoticed then unnamed and therefore unpunished, makes sense where same-sex sexual activity, like any sexual activity outside of marriage, is considered a criminal and therefore punishable offense. For this reason, "don't ask, don't tell" norms make sense at a practical level, as a strategy to avoid persecution and prosecution. In North America and Western Europe, however, the situation is fundamentally different. In modern Western contexts, the question emerges of the Muslim population's

reactions to the larger scale acceptability of same-sex relationships in the broader society. While some Muslim leaders have been outspoken opponents of "gay rights," a few Muslim organizations and individuals who avoid addressing same-sex sexual intimacy from a religious perspective have come out in favor of tolerance and even acceptance of gays and lesbians as a matter of civil or human rights. In doing so, they sometimes make an analogy between discrimination against Muslims and discrimination against sexual minorities.⁴³ For example, the president of the Muslim Canadian Congress endorsed same-sex marriage legislation in early 2005, declaring that "It is incumbent upon us, as a minority, to stand up in solidarity with Canada's gays and lesbians despite the fact that many in our community believe our religion does not condone homosexuality."⁴⁴ Her remarks implicitly distinguish between Muslims, on the one hand, and gays and lesbians, on the other: although both are minorities, she does not acknowledge any potential overlap between the categories. Yet she leaves a space open for interpretation, claiming not that Islam "does not condone homosexuality," but merely "that many in our community believe" that to be the case.

Muslim discussions of "other people's homosexuality" are less controversial than intra-Muslim dynamics when some Muslims desire or adopt a "gay" identity (as opposed to merely selecting a sexual partner of the same sex).⁴⁵ Moderate and liberal Western Muslim discourses display an acceptance of the notion of innate sexual orientation but do not question traditional religious prohibitions of same-sex activity. The "don't ask, don't tell" philosophy informs views such as those presented in the Muslim Women's League position paper, "An Islamic Perspective on Sexuality." In a subsection on "Homosexuality," it states that:

Human beings are capable of many forms of sexual expression, orientation and identification. The existence of such variety again is not found in any other species and thus further demonstrates our uniqueness among God's creations. The potential for behavior, such as homosexuality, does not mean that its practice is lawful in the eyes of God. Therefore,

individuals are expected to control themselves and not act on their desires if such action is contrary to the guidelines of Islam. Homosexuality, like other forms of sexual relations outside of heterosexual marriage, is thus prohibited.⁴⁶

The statement goes on to imply that individuals should not seek to "prosecute or judge" those known to engage in "prohibited acts," only conviction through witnessing or confession can allow for "punishment by the State." In the absence of punishment, those who engage in such acts "will then deal with the consequences of their behavior in this life and will be accountable to God on the Day of Judgment. How He ultimately judges is known only by Him." The most obvious aim of this statement is to argue against the imposition of punishments for "homosexuality," but since this is an American group, writing in the United States, the question of punishment is effectively moot. More relevantly, the exhortation not to "prosecute or judge" maintains the fiction of social harmony and adherence to rules by not exposing behavior "contrary to the guidelines of Islam."

In seeking to avoid public acknowledgment of same-sex sexual activity, the Muslim Women's League statement continues the traditional legal stance toward same-sex behavior; in other respects, however, it departs quite dramatically from the classical understanding that governed discourses surrounding same-sex attractions in acknowledging not only the possibility of an exclusively homoerotic "orientation" but also its potentially God-given nature. This view is shared by a number of Muslim groups from across the socio-political spectrum; not only Muslim gays and lesbians seeking a "theological accommodation" of their sexuality, but also some conservative Muslims who strongly oppose any such accommodation, agree on the modern idea that homosexual orientation is an inborn component of the human psyche.⁴⁷ The question of whether the innateness of desire requires an acceptance of same-sex sexual activity, however, is subject to strong disagreement.

Conceding the naturalness or God-giveness of an exclusively same-sex oriented desire puts conservative scholars into a logical bind. An essay by British Muslim Abdal-Hakim

Murad, "Fall of the Family," exemplifies the perils of this approach. Murad accepts "homosexuality as an innate disposition" in some (though not all) cases, seeing a potential biological basis for it. Yet, like the Muslim Women's League, Murad stresses that there are no circumstances under which an individual with homosexual "tendencies" – which he likens to the impulses of a pyromaniac "mental patient" – can lawfully act on his or her desires. The only religiously acceptable option for someone with a homoerotic orientation is permanent chastity: Murad sees it as a test from God. His stance coincides with the Muslim Women's League statement that "individuals are expected to control themselves." However, this expectation of self-control as a defense against sexual sin runs contrary to what is prescribed not only by most medieval texts, but also by Murad elsewhere in the same essay, which focuses primarily on male/female sexual misconduct. He argues in favor of sex segregation in daily life where practical, to assist in maintaining sexual morality by suppressing opportunities for illicit sex; most individuals, he claims, are not super-moral figures who can reject temptation when freely accessible.⁴⁸ (Ironically, he does not consider the effects of sex segregation on those who are exclusively attracted to members of the same sex.) Even in a largely temptation-free society, there must be lawful outlets into which sexual desire can be channeled.⁴⁹ For heterosexuals, this lawful channel is marriage, but for those with exclusively homoerotic desires, there can be no lawful satisfaction of desire. (Most medieval Muslim authors did not confront this precise problem, at least insofar as the desire for attractive male youths was generally not considered solely a desire for them; it was the same desire as that directed toward women, and could therefore be sated with lawful partners.)

If one accepts that exclusive desire for partners of the same sex is (at least in some cases) natural and divinely originated, *and* acknowledges, as Murad does, that long-term abstinence from all sexual contact will likely fail for most individuals, then one presumes that most Muslims with orientations toward members of the same sex *will* commit transgressions. The stress on not discussing these sexual acts creates a safe space for

transgression to occur without challenging the normative view that such relations are forbidden. At the same time, while such relative freedom to act has some benefits, it also puts individuals in danger from the usual concomitants of illicit liaisons (with partners of whatever sex), including not only the spread of HIV and other sexually transmissible diseases but also the unethical behavior of possibly betraying marriage vows and, indeed, one's self-respect.

The naturalness of same-sex desire for certain individuals constitutes the basic point of departure for queer-positive Muslim organizations. As the Rainbow Crescent website declares, in what is presented as an appeal to "Logic and Reason," "being Gay is not a matter of choice – but rather a divinely created reality." The exclusion of "Gay people" "from Islam ... would be excluding a whole dimension of The Creation and this would in fact undermine any claim by Islam to be The Truth (which it is)."⁵⁰ This tactically shrewd position removes the element of choice from the equation; gay (and lesbian) Muslims cannot be blamed for something innate. As intended by some gay-positive Muslim discourses, the acceptance of the view that sexual orientation is not a matter of choice but rather divine decree creates a space for queer Muslims to press for religio-legal acceptance of same-sex relationships, however unlikely widespread acceptance of this view seems as of this writing.

However, aside from the social difficulties such a strategy faces, the "just created that way"⁵¹ discourse of sexual identity is a fundamentally ahistorical move, and requires one to ignore the complex ways in which same-sex desire and practices have operated in other times and places. What accounts for the fact that men's sexual desire for other men in the past – or in non-Western Muslim contexts today – is not viewed as "innate" in the same way? A Foucauldian approach, recognizing the historicity of desire and its representations in social and individual contexts, is attractive for historians and scholars concerned with understanding the past.⁵² How does it work, though, to transform the present and shape the future, if one is concerned with determining God's stance on sexual licitness and following it? Jeffrey Weeks argues convincingly for understanding sexual identities as

"necessary fictions" and "historical inventions," and themselves "sites of contestation,"⁵³ but how does this matter to a Muslim concerned with whether God approves of his or her partner choice and form of relationship? Is there a middle ground between essentialist and constructionist views of sexual orientation and desire, where Muslims can grapple with same-sex sexual orientation – their own or that of other Muslims? Is it possible to think that individuals are neither "created" to think and act in a particular way nor do they simply "choose" a homoerotic orientation? What does the view of "the erotic as highly socially malleable"⁵⁴ mean when one confronts the Qur'an which is both a timeless text and a historically contextualized one?

There is broad agreement among Muslim thinkers that individuals bear moral responsibility for any sexual acts that they engage in by free choice and that illicit desires themselves do not result in any culpability before God. If one accepts the view that homoerotic desire is neither freely chosen nor inherently blameworthy, but can have no licit satisfaction, then one is left with the untenable stance that those who desire a satisfaction that cannot be obtained through licit means are, through no fault of their own, destined to choose between a celibate life devoid of sexual gratification and one of sexual release obtained through sin.⁵⁵ Both options are unpalatable. One avoids having to choose between these unacceptable alternatives if one rejects either the innateness of homoerotic orientation or the inherent sinfulness of all same-sex intimacy. If one holds that same-sex desire is not innate but rather constitutes freely chosen debauchery (as in the case of the men of Lot's story), then one does not confront the issue of divine injustice in creating individuals without providing the means for them to fulfill lawfully their basic human need for sexual expression. Yet this notion that an exclusive same-sex sexual attraction is freely chosen is problematic for a variety of reasons, including its lack of conformity with the expressed experience of modern Western queer individuals.

The other alternative is to accept, in contrast to the near totality of Muslim thinkers, that homoerotic desire is innate *and* that its satisfaction through lawful means is possible. This view requires tricky exegetical maneuvering around the male/female

dynamics of various Qur'anic verses describing creation and mating,⁵⁶ but can be reconciled with the view that same-sex acts become reprehensible or forbidden when, and only when, same-sex intimacy is freely chosen as a transgressive act by those who would ordinarily seek satisfaction with different-sex partners. It is only in this case, where same-sex desire is viewed as not sinful because it is part of a divine plan, that recognition and legitimization of intimate partnerships between same-sex couples becomes an objective.

Murad's terminology proves helpful in thinking about this new perspective. He does not identify those who have or act on same-sex desires as homosexuals, considering private behavior outside the realm of social concern. Rather, he uses the intriguing, if awkward, term "homosexualist," reserving it for those who seek to make same-sex intimacy a publicly respectable form of socio-sexual partnership. In this, he revalidates the conventional view that illicit sexual activity is a matter between an individual and God but that challenges to religio-legal regulations constitute a major transgression. Monogamous marriage between two men or two women, in its insistence that same-sex relationships can be licit, is a more disturbing prospect than multiple casual sexual relationships that, even if they constitute something of an open secret, nonetheless do not directly challenge the prohibition of same-sex intimacy.⁵⁷

Same-sex marriage

Muhammad Abdul-Ra'uf, writing in 1977, declares that "toleration of an evil leads to other evils. First, we condone public exposure [of women's bodies]; next dating and easy mixings; next, pre-marital 'games', extra-marital relations, and open marriages; next, the elevation of homosexuality to an acceptable moral status; and next, uni-sex marriages. Where, and when, shall we stop?"⁵⁸ In this litany of increasingly serious "evils," same-sex marriage is the worst Abdul-Ra'uf can imagine. Yet, aside from the question of what makes it an evil – divine censure being the obvious answer for Abdul-Ra'uf – the notion of relative

seriousness of sinful acts is an interesting one to apply to the case of same-sex intimacy. The acts he discusses as "evils" are uniformly consensual acts; there is no mention of rape, sexual abuse of children, or any other inherently coercive practice, such as non-consensual marriage or slave concubinage – practices which would undoubtedly violate his twentieth-century sensibilities, but which were widely accepted by Muslim scholars of preceding centuries.⁵⁹ Just what about same-sex marriage makes it so threatening that it becomes the pinnacle of all sexual sins?

When Abdul-Ra'uf was writing in the 1970s, same-sex marriage was not even on the horizon for nascent gay-rights movements in the West. A few years into the twenty-first century, marriage between persons of the same sex has gained legal standing in several places in Europe and North America, including the U.S. state of Massachusetts. The notion of marriage of a man to a man or of a woman to a woman is completely outside the frame of reference for classical Muslim jurists. Most do not even consider it a possibility in order to dismiss it. Even where it is mentioned, it is merely as a brief disqualification in terms of who can marry. The definition of *nikah* in the *Durr al-Mukhtar*, a seventeenth-century Hanafi commentary on an earlier legal manual, makes a claim regarding gender as relevant to marriage:

[*Nikah*] according to jurists is a contract which is productive of an exclusive right of enjoyment, i.e., which validates the enjoyment by a man, of a woman, with whom marriage is not prohibited by reason of any legal impediment. Thus are excluded (from the objects of enjoyment) a male, an idolatress, a hermaphrodite – because of the possibility of the hermaphrodite's being a male – prohibited females,⁶⁰ a *jinn* woman, and a watery person [*insan al-ma'*] because of the difference of genus.⁶¹

This text definitively sees maleness as an impediment to marriage with another male, so much so that hermaphrodites are forbidden as marriage partners on the grounds that they might be male. (Note, of course, that this formulation assumes every individual has one true sex, even if ambiguous genitalia and secondary sex characteristics make it difficult or impossible

to determine.) Marking it as a text of its time, the text also rejects marriage between a man and a female spirit (*jinn*) or "a watery person." Notably, while the gender of the *jinn* is specified as female – presumably, the prohibition against marriage to a male applies to the *jinn* as to the human – the prohibition of marriage to "a watery person" is gender-neutral. It is not the lack of gender fixity but "the difference of genus" that renders merpeople unsuitable as marriage partners, apparently.

In Muslim history, the relationship between sex, gender, and desire is far more complex than simplistic binary regulations would suggest. Rusmir Musić, writing of "an essential ambiguity" within Muslim legal categories, argues that "Islam's jurists repeatedly allow for exceptions, though they profess to be preserving immutable boundaries ordained by God." While in some ways these ambiguities should open up space for a queer project, they do not function in the jurists' works to create such a flexible system. Rather, "the uncertainties allowed by Islamic jurists, otherwise interested in neatly ordering all aspects of life, predominantly serve to preserve a power hierarchy benefiting men."⁶² A brief discussion of classical legal treatment of hermaphrodites and the modern question of sex-change operations make clear both the room for accommodations in the Islamic sex/gender system and the limits to that ambiguity. While there is space for (temporary) ambiguity in the realm of sex – meaning biological determinations of maleness or femaleness assigned to a particular body – there is little tolerance for ambiguity in sexuality – that is, with whom a person of a particular sex may have sexual contact.⁶³ The connection between bodily sex, socially ascribed gender, and sexual "orientation" is crucial.

Classical and medieval texts accept the existence of cases where assigning sex to a particular body, and therefore gender to a particular person, is not automatic. While a number of tests and tactics allowed for resolution of the question in most such cases, in the stubborn instance of the "problematic hermaphrodite" (*khuntha mushtak*), the jurists failed in their attempts to assign gender to what Paula Sanders calls the "ungendered body." In modern understandings, some jurists adopt a similar framework to justify sex-change operations as not correcting an

indeterminacy but rather realigning body with reality – in effect, uncovering the “real” or “true” sex of the person in question. Some progressive scholarship has viewed these operations as a watershed, but the acknowledgement of the existence of transsexuals is not more of a challenge to the standard jurisprudential discourse of sex/gender than that of the hermaphrodite in classical and medieval discourses; nor is a person of ambiguous sex a challenge to the binary system once properly categorized.⁶⁴

The danger from transgendered individuals is less about biological sex than about sexuality and its licit exercise.⁶⁵ Some of those who objected to one Egyptian surgery, where Sayyid became Sally – and to her reclassification as a woman – did so on the grounds that the relevant factor was not that of Sally’s innate sense of gender but rather of sexual object choice. That is, it was not that Sayyid really was a woman, but that Sayyid wanted to have a woman’s body in order to be able (lawfully) to have sex with men.⁶⁶ Specifically, she (or rather, he, because in the view of those who opposed the reclassification, there had been no change, only mutilation) “was fundamentally a *khawal*, that is, an effeminate man who is willing to play a passive, female role in sexual intercourse with other men.”⁶⁷

Returning to the subject of same-sex marriage, it becomes clear that the impermissibility of formalized same-sex relationships is only partially due to a prohibition on same-sex sexual activity. Same-sex marriage fundamentally challenges the basic structural premises of marriage as a contract. It is not just in the sex *act* that male and female are differentiated, but in the legal control over said act, in the legal right to claim it, in the legal right to form the relationship permitting it. I have shown that the boundaries of licit sex in Islamic jurisprudence – a man with his wife or his own female slave, both of whom are in some sense “owned” – require an exclusive dominion as a correlate of lawful sex. Male owners may have sex with female slaves but not (lawfully) with male slaves, and female owners may not have sexual access to their slaves of either sex. Men are the only ones permitted to be “owners” in this sense, and only women may be “owned.” Ultimately, Murad and Abdul-Ra’uf are correct: same-sex marriage represents a more fundamental challenge to norms

governing sexuality than does any type of illicit or clandestine union, precisely because viewing such a union as a *marriage* challenges the definition of licitness itself.

The legal structure of Islamic marriage is predicated on a gender-differentiated allocation of interdependent claims, which would be thrown into chaos by a same-sex union. In the standard contractual understanding of marriage, the husband holds *milk al-nikah*, control of the marriage tie, and the wife has a claim to dower and the obligation of sexual exclusivity and availability. Several early jurists considered the possibility of whether these rights and duties could be reallocated – whether a woman could pay a man a dower, for example, and retain control over sex and divorce – and agreed unanimously that such a reallocation is not permitted. Not only are husbands’ and wives’ rights distinct, but each role is fundamentally linked to the sex/gender of the person exercising it. A woman cannot wield control of the marriage tie; a man cannot be contractually bound to sexual availability to his wife. Thus, following that logic, it would not be possible for one woman to adopt the “husband” role and the other to adopt the “wife” role in the marriage of two women. The self-contained logic of the jurisprudential framework does not permit such an outcome.⁶⁸

Conclusion

Same-sex intimacy cannot be separated from discussion of other topics in sexual ethics because the rules making a same-sex marriage unthinkable emerge not primarily, or at least not exclusively, from an explicit prohibition of same-sex activity but rather through the legal construction of marriage and sexual relationships as both gendered and hierarchical. Many of the same things that would be necessary to make marriages more gender-egalitarian would be necessary precursors to any attempt to think about same-sex partnerships. Of course, this is one reason that some will argue that such attempts to reform marriage do in fact lead inexorably down a slippery slope to same-sex marriage. The measures necessary to reformulate the

nexus of marriage in the direction of egalitarian and fully mutual relations between men and women do not remove serious obstacles to the legitimization of same-sex acts, above all the notion that male and female are created to be mates for one another. However, if one sets aside macrocosmic issues, however compelling, and turns to ethical and legal reflection, one must ask whether there is some absolute standard on which same-sex intimacy can be compared to other forms of intimate partnership. Are consensual, exclusive, and long-term same-sex unions morally worse than slave concubinage, or serial marriage and remarriage? Are they worse than abusive marriages?⁶⁹ The issue of consent in weighing the ethicalness of certain acts has relevance far beyond the issue of same-sex relationships. The comment made by "an American Muslim" on the Muslim WakeUp comment boards discusses sex outside of marriage. She does not expand her point to same-sex relationships, but others do. She is unable to understand how a consensual adult relationship between a man and a woman if committed to one another could be wrong, even outside of marriage, because she is operating under a fundamentally different logic of licitness than the medieval jurists. Indeed, the jurists saw a consensual relationship between two free men as significantly worse – and deserving of *hadd* punishment for both parties – than a coerced relationship between a man and his male slave.⁷⁰ Such sexual use was not lawful, but the master's ownership sufficiently resented his ownership of a female slave to give rise to a legal protection. A recent news report described a Saudi man who has wed nearly five dozen women and girls in his lifetime (and divorced all but the last four).⁷¹ He has clearly acted in a legally valid, if reprehensible, manner. However, two men or two women who live together in a lifelong pseudo-marital union, remaining faithful, cannot be said to have acted lawfully according to jurisprudential rules – but have they done something unethical? Is lawfulness a prerequisite, if not a sufficient guarantor, of ethical behavior? Confronting same-sex sexual relationships and acts challenges us to define sexual lawfulness and ethical sex for all intimate partnerships, including those between men and women.

6 "Reduce but do not destroy": Female "Circumcision" in Islamic Sources

"I as Imam would like, with my colleagues, to turn to the Islamic world, particularly in Africa, and inform people that female genital mutilation is prohibited. It is a matter of abuse and violation of the female body and is quite clearly forbidden according to Islam."

Swedish Muslim leader Sheikh Omar Ahmed, November 2003¹

"Circumcision is obligatory for every male and female. [For men,] it consists of cutting the foreskin of the glans of the penis, while female circumcision consists in cutting the clitoris and is called reduction."

Reliance of the Traveller, classic Shafi'i legal manual²

Who determines whether a particular practice is Islamic? Is it God, via the literal words of the Qur'an? The Prophet and, secondarily, his Companions, as their statements and actions have been recorded in books of *hadith*? Should such determinations be based on the judgment of the religiously trained scholars, the *ulama*, who interpret these sources in works of exegesis and jurisprudence? Or perhaps what is Islamic might be better identified with the actual practice of Muslims rather than any normative ideal. In that case, what happens when practices vary dramatically among Muslims, or when what Muslims do contravenes the authoritative texts? When views have shifted over time, do earlier ideals or practices have more weight or does the contemporary state of affairs take precedence? Much of the confusion and imprecision in Muslim and non-Muslim discussions of controversial issues results from a lack of clarity about the scope of the claims made.

27. suggests that he may be overstating the relevance of biology. Of course, there is still the social issue of imputations surrounding honor.
28. Moosa, "The Child Belongs to the Bed," on illegitimacy in South Africa, p. 174.
29. Nomani, *Standing Alone in Mecca*, p. 295. This "Bill of Rights" was republished (pp. 155–6) along with an essay by Nomani, "Being the Leader I Want to See," in Abdul-Ghatur, *Living Islam Out Loud*. For the mosque Bill of Rights, see *Standing Alone in Mecca*, p. 293 and "Being the Leader I Want to See," pp. 153–4.
30. See chapter 6 for discussion of another example where a self-identified religious authority makes a declaration that ignores the dominant stance of all Sunni *madrabit* even as it echoes majority Muslim sentiment.
31. Coulson makes the point that the Islamic "law concerning sexual behavior is based upon an entirely different, almost diametrically opposite, approach" to that adopted by "most Western legal systems" which do not concern themselves "with sexual relations between consenting adults in private." ("Regulation of Sexual Behavior under Traditional Islamic Law," p. 64) Leaving aside the question of whether Coulson's characterization of "most Western legal systems" is accurate, he is certainly correct with regard to the theory: consensual relationships are a matter of divine regulation, though if they do not come to anyone's attention, they are not a matter for government intervention.
32. AmericanMuslim, in "Comments: The Fatima Incident," comments page to Mohja Kahf, "Sex and the Umma: The Fatima Incident," at http://www.muslimwakeup.com/sex/archives/2004/11/the_fatima_inc_1.php#more, last accessed 04.19.06.
33. On these categories and their use, see Abou El Fadl, *Speaking in God's Name*, p. 97.
34. Of course begging the question of how they were expected to apply across the board even in previous centuries.
35. Peirce, *Morality Tales*, p. 353.
36. Michael Cook addresses this problem, along with a number of related issues, in *Forbidding Wrong in Islam*.
37. And in any case, "legal coercion is a flawed instrument for securing moral persuasion." Saneh, "Shar'iah Sanctions and State Enforcement," p. 161. Unlike Ramadan, who acknowledges discrimination in the application of *hadd* punishments, Saneh ignores women's vulnerability and the disparities in punishment. These are highlighted by Sidahmed, "Problems in Contemporary Applications of Islamic Criminal Sanctions."
2. On the genre, see Rowson, "The Categorization of Gender and Sexual Irregularity in Medieval Arabic Vice Lists."
3. Al-Dhahabi, *Al-Kaba'ir* for biographical information on al-Dhahabi, see *al-Kaba'ir*, pp. 9–14 and Keller, *Reliance of the Traveller*, p. 1045. Discussion of enormities occurs in mainstream modern circles as well.
4. Al-Dhahabi, pp. 60–70.
5. Al-Dhahabi, pp. 105–6. On *qadhf* and the Qur'anic connection to *zina*, see chapter 4.
6. Al-Dhahabi, pp. 155–6.
7. Al-Dhahabi, pp. 157–9. A *muhallil* is a man who agrees to marry a woman then divorce her after consummation in order to make it possible for her to remarry a husband who has divorced her absolutely.
8. Al-Dhahabi, *Al-Kaba'ir*, pp. 201–9. On *nushuz* more generally, see chapter 7 and works cited there.
9. Keller's note, *Reliance of the Traveller*, p. 990. See Keller, p. 1033, for a biographical sketch of Abu Talib Makki.
10. Keller, *Reliance of the Traveller*, p. 991. My translation.
11. Keller, *Reliance of the Traveller*, p. 991. My translation. Keller translates as "Two are of the genitals: (12) adultery; (13) and sodomy."
12. Keller, *Reliance of the Traveller*, p. 966.
13. Keller, *Reliance of the Traveller*, p. 986; my translation here differs from that in the epigraph by leaving *zina* and *hwat* untranslated.
14. Ibn Hajar specifically condemns a man having sex with his wife's corpse, making clear that it is the act of intercourse with a dead body that constitutes an enormity. If the text referred to any woman's corpse, one might mistakenly attribute the prohibition of intercourse to the lack of the legal tie between the parties required for any touching, let alone sex, to be licit. Of course the deceased wife is no longer really a person, and so the marriage does not actually exist after her death, but most jurists grant a man the dispensation to see and touch his dead wife's body in order to wash her corpse. If intercourse with the wife's corpse is forbidden, though touching her for purposes of final ablution is permitted, intercourse with another woman's corpse is even more strongly forbidden, given that an unrelated man may not touch a woman even to perform the pre-burial washing.
15. I use "same-sex" as a neutrally descriptive term, sidestepping important controversies over the appropriateness of terms such as lesbian, gay, homosexual, and queer that are largely beyond the scope of this essay. Recently, some have advocated use of the Arabic phrase *al-mithliyya al-jinsiyya* ("homosexuality" in its literal sense of sexual sameness), while others have suggested that *shudhuh jinsi* (sexual queerness) is a useful phrase. In any case, I will use the term "sex" to denote the categories male and female, while recognizing that there is a debate over whether the use of sex to denote biology and gender to denote socially and culturally determined aspects of behavior takes account of the constructed nature of seemingly natural "sex." On this, see the discussion of hermaphrodites and sex-change operations, below.
16. See, e.g., Dunne, "Power and Sexuality in the Middle East." On the attribution of "deviant" behavior to the Other, and particularly the attribution of deviant sexual practices to Muslims by Westerners, see Uebel, "Re-Orienting Desire." "The vice of sodomy," according to
1. Keller, *Reliance of the Traveller*, p. 986. This translation is mine, based on Keller's presentation of the Arabic text, and differs in several aspects from Keller's English rendering. For Keller's biographical sketch of Ibn Hajar, see p. 1054.

- Crusader literature of the time, was "not only tolerated in Muslim society, but actively encouraged and openly practiced." (p. 241) Although Uebel does not ask this question, it occurs to me to wonder in what ways the current scholarship positing a "homosexual-friendly" Islamic past draws on, and contributes to, the same type of generalizations.
17. Duran, "Homosexuality and Islam," p. 183. Even more recently, none of the twenty-one chapters in Thumma and Gray's *Gay Religion* discusses Muslims, and the only mention of Islam is in passing in a footnote (p. 6, n. 1). The founding of several organizations in the 1990s and the first years of the twenty-first century (al-Fatihah, the Yusef Foundation, Queer Jihad) by Muslims living in the West both signaled and furthered a shift in the discussion. The emergence of the Internet as a vital educational and organizational resource has contributed to the increased social and intellectual presence of gay and lesbian (and, to a far lesser extent, bisexual and transgendered) Muslim individuals and groups. Most likely, if research on a similar volume were to begin today, at least one organization would be mentioned.
 18. Kugle, "Sexuality, Diversity, and Ethics," p. 198. Of course, as Kugle goes on to argue, homosexuality is an anachronistic term.
 19. Kugle, "Sexuality, Diversity, and Ethics," pp. 197-8.
 20. Maiti-Douglas, "Tribadism/Lesbianism," p. 124. This begs the question of who gets to be a "man" - how maleness and masculinity were constructed is a crucial issue. See also Rowson, "Gender Irregularity as Entertainment."
 21. Al-Rouhayeib, *Before Homosexuality in the Arab-Islamic World, 1500-1800*.
 22. The term *sihaq* is sometimes considered to be derogatory, as *liwat* clearly is. Neutral descriptive terminology adopted by some contemporary Arab activists includes masculine and feminine variants of "homosexual." Helem, "Fihrist al-'ibarat al-'arabiyya." Thanks to Ariel Berman for sharing the magazine reference with me.
 23. On mundane consequences of even illicit sex, see chapter 4. However, marital prohibitions could be engendered, in some views, by sexual touching falling far short of intercourse; in such a case, the same rules could apply to same-sex contact between women, making their omission notable.
 24. And this, of course, returns us to the question of how to define what is "Islamic" - discussed in chapter 6.
 25. My modification of Abdullah Yusuf Ali's translation. On this matter, see Maiti-Douglas, "Tribadism/Lesbianism," p. 123.
 26. One may also infer that the verse addresses two men if one accepts that it addresses an exclusively male audience; Q. 4:16's "from among you" could theoretically be inclusive of women, but it stands in contrast to Q. 4:15's "from among your women."
 27. Duran, "Homosexuality in Islam," p. 181.
 28. Kugle, "Sexuality, Diversity, and Ethics," p. 219. See also Hidayatullah, "Islamic Conceptions of Sexuality," pp. 277-9.
 29. Jamal, "The Story of Lot."
 30. Kugle, "Sexuality, Diversity, and Ethics," p. 204.
 31. See, for example, the website of a South African organization called "The Inner Circle." http://www.theinnercircle-za.org/index_files/page0002.htm, last accessed 06.27.05.
 32. Biblical comparisons might be fruitful, both with reference to the story of Lot and also the parallel story of the Levite's concubine in Judges, chapters 19-21. I was made aware of this latter parallel through Azam, "Sexual Violence in Islamic Law."
 33. Kugle, "Sexuality, Diversity, and Ethics," p. 215. See also p. 224.
 34. Q. 23:165-6.
 35. Halperin, *How to do the History of Homosexuality*, p. 41; italics in original.
 36. What Martha Nussbaum and Juba Sivola argue for the Greeks holds just as true for medieval Muslims: "Seeing that it was possible for the Greeks to think differently of things that many moderns have regarded as natural or even necessary helps us to remove the false sense of inevitability of our own judgments and practices." Nussbaum and Sivola, "Introduction," in *idem*, eds., *The Sleep of Reason*, p. 10.
 37. See, e.g., Dover, *Greek Homosexuality*. As David Halperin has argued, with respect to the ancient Greeks, "The physical act of sex itself presupposed and demanded ... the assumption by the respective sexual partners of different and asymmetrical sexual roles (the roles of penetrator and penetrated), and those roles in turn were associated with social distinctions of power and gender - differences between dominance and submission as well as between masculinity and femininity." Halperin, *How to do the History of Homosexuality*, p. 147. See also Broton, *Love Between Women*, p. 2, for the remark that "Roman-period writers presented as normative those sexual relations that represent a human social hierarchy. They saw every sexual pairing as including one active and one passive partner, regardless of gender, although culturally they correlated gender with these categories." Quoted in Halperin, p. 56. See also Walters, "Invading the Roman Body," esp. p. 31; Dover, "Classical Greek Attitudes to Sexual Behavior," and, on Muslim discussions of male desire to be penetrated, Rowson, "Gender Irregularity," p. 53; and Rosenthal, on *ubrah*, "passive male homosexuality," (p. 45) in "Ar-Razi on the Hidden Illness."
 38. Published as "The Pleasures of Girls and Boys Compared," in Colville, trans., *Sobriety and Mirth*, pp. 202-30. This essay also appears as "Boasting Match over Maids and Youths," in *Nine Essays of al-Jahiz*, trans. Hutchins, pp. 140-66. See also, in the same volume, "The Superiority of the Belly over the Back," pp. 167-73. Hutchins' translation should be used with caution; see A.F.I. Beeston's detailed review in the *Journal of Arabic Literature*, pp. 200-9. On the genre, see also Rosenthal, "Male and Female: Described and Compared."
 39. See Rowson, "Gender Irregularity," p. 60 and, for comparison, Dover, "Classical Greek Attitudes to Sexual Behavior," p. 25. The difference between the two settings is not the naturalness of men's attraction to younger males but the illicitness of this desire in a Muslim context.
 40. Keller, *Reliance of the Traveller*, p. 512. See also Maghen, *Virtues of the Flesh*, p. 261 on abluion after touching boys.
 41. Boudhiba, *Sexuality in Islam*, p. 200.
 42. Murray, "Woman-Woman Love in Islamic Societies," p. 102.
 43. Debra Mubashshir Majeed, who describes herself as a "recovering

- homophobe," writes insightfully on certain parallels between same-sex marriage and polygamy in "The Battle Has Been Joined." Like others who write on this topic, Majeed drafts her categories in such a way as to assume the question of gay marriage does not apply to Muslims.
44. Muslim Canadian Congress press release, "Human Rights for Minorities not up for Bargain: Muslim Canadian Congress endorses Same-Sex Marriage legislation."
45. See, for a brief personal account, Sa'ed, "On the Edge of Belonging."
46. Muslim Women's League, "An Islamic Perspective on Sexuality."
47. As Kugle puts it, "[C]ontemporary Muslim moralists are not insulated from modernity, even as they depict gay and lesbian Muslims as corrupted by modernity." Kugle, *Sexuality, Diversity, and Ethics*, pp. 197-8.
48. Murad, "Fall of the Family."
49. Rather, a desire that arises in relation to an unlawful source should be channeled in a lawful direction, as reflected in the Prophet's counsel that a man who is aroused by a woman he sees should go home and have sex with his wife.
50. Rainbow Crescent, "Consider the Following: Logic and Reason." Capitalization in original.
51. Jakobsen and Pellegrini, *Love the Sin*, use the phrase "born that way" to describe the essentialist position on sexual orientation and identity. I choose "just created that way" to emphasize the external, divine intentionality of the creation of a human being with a particular set of desires.
52. "One effect of (mis)understanding the history of sexuality as a history of the discourses of sexuality has been to preserve the notion of sexuality as a timeless and ahistorical dimension of human experience, while preserving a notion of discourse as a neutral medium of representation. A second effect has been to draw a deceptively simple and very old-fashioned division between representations, conceived as socially specific and historically variable products of human culture, and realities (sexual desire, in this case, or human nature), conceived as something static and unchanging. Foucault, I argue, was up to something much more novel, a radically holistic approach that was designed to avoid such hoary metaphysical binarisms. His aim was to foreground the historicity of desire itself and of human beings as subjects of desire." Halperin, *How to do the History of Homosexuality*, p. 9.
53. Weeks, *Invented Moralities*, pp. 98-9. See, for a brief survey of modern American views as to whether same-sex or same-gender desire is innate or chosen, the essays by Jeannine Gramick and Robert Gordis, along with associated materials, under the heading "Are Homosexual and Bisexual Relations Natural and Normal?"
54. Jeffrey Weeks, "The Rights and Wrongs of Sexuality," p. 21.
55. Hidayatullah, "Islamic Conceptions of Sexuality," p. 279 points out that "the notion that Islam tolerates homosexual tendencies but not behaviors points to an inconsistency in Islamic allowances for the satiation of 'natural' sexual desire."
56. On the "macrocosmic" dimensions of sex, gender, and marriage, see Murata, *The Tao of Islam*, pp. 143-202.
57. Of course, I do not mean to imply that promiscuity is in any way characteristic of same-sex sexual activity; I am merely making the point for contrast.
58. Abdul-Ra'uf, *The Islamic View of Women and the Family*, p. 35. Quoted in Smith, "Women in Islam," p. 532, n. 14. Abdul-Ra'uf elaborates on the "inherently indisputable evil and filth of homosexuality for its own sake" in his *Marriage in Islam: A Manual*, pp. 71-2.
59. Notably, even sources that discuss non-consensual crimes such as rape seem to be virtually silent about "incest in the normal English sense, whereas the 'milk-incest' peculiar to Islam is a recurrent preoccupation." Van Gelder, *Close Relationships*, p. 83.
60. That is, women who are too closely related to be potential marriage partners.
61. Haskafi, *The Durr-ul-Mukhtar*, trans. Dayal, pp. 1-2. In the style of many commentaries, the words of the commented-upon text are incorporated into the commentary. Dayal keeps them distinct through the use of bold-faced type, but I have not retained that feature here, considering it an unnecessary distraction.
62. Music, *Queer Visions of Islam*, p. 4. While I agree with Music on this point, I am not convinced of the prospects for success of his "search for queer-affirmative Qur'anic messages that have been hidden by centuries of biased interpretations." (p. 5) Rather, I think this topic is analogous in an important way to that of male privilege and patriarchy in the Qur'an. One cannot simply blame everything on bad interpretation. See chapter 7. On hermaphrodites, see Sanders, "Gendering the Ungendered Body," and Cigliardo, "Historical Development of the Legal Doctrine."
63. On this point, see Najmabadi, "Truth of Sex." The article's summary reads: "While trans-sexuality in Iran is made legitimate, homosexuality is insistently reiterated as abnormal."
64. Skovgaard-Petersen, *Defining Islam for the Egyptian State*, pp. 319-34; Harrison, "Iran's Sex Change Operations." See Najmabadi, "Truth of Sex," for a cogent critique of this celebratory discourse. See also Music, *Queer Visions*, p. 10.
65. Skovgaard-Petersen, *Defining Islam*, p. 334. Dupret summarizes this case, presents further developments, and considers its implications in "Sexual Morality at the Egyptian Bar."
66. Skovgaard-Petersen, *Defining Islam*, p. 321.
67. Skovgaard-Petersen, *Defining Islam*, p. 326.
68. In a marriage between two males, would each spouse retain the right to marry three additional husbands? Imagine the chaos that would result if Husband A and Husband B each independently married Husband C. Presumably, in a lesbian marriage, both women would have to remain monogamous - but if pregnancy is not a possibility, and there would be no need for determinations as to paternity, then what would be the rationale for female monogamy? I raise these questions not to be flippanant or absurd, but because thoroughly working through their implications can give insights not only about same-sex intimacy but also about expectations in male/female marriage.
69. Kugle wonders eloquently about this at the same time he assumes that it goes without saying that consent is vital for good (in the sense of ethical, divinely approved) intimate relationships.
70. Schmitt, "*Tawatim fiqh*."
71. BBC News, "Saudi sets sights on 60th bride."