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Beyond Misfortune and Fault:
Islam, Same-Sex Sexuality and Liberation

By

NADEEM MAHOMED

A dissertation submitted in fulfilment for the Degree
of
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Supervisor: Professor Farid Esack

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Abstract

The aim of this dissertation is to analyse some of the prominent elements that constitute the discussion of same-sex sexuality among Muslims such as the distinction between sexual acts and identities and its effect on the construction of sexuality in Muslim societies, the religious and legal permissibility of particular sexual acts, and the intersection between the struggle for justice and equality and sexuality. The theoretical framework for this study is based on postcolonialism and queer theory. I argue that a fundamental rethinking of sex and sexuality in Islam and in Muslim societies needs to transpire in order for a more equitable state of affairs to come into existence. The current prejudice associated with same-sex sexuality requires a considered and erudite overhaul of how sexual relationships and gender are constructed in Islamic ethics and Muslim societies. I first consider the effect of sexual identities, namely a homosexual identity, and the consideration of same-sex sexual acts on the Muslim imagination. The notion of unnatural sexual impulses, sinful desires and the interrelationship between various sexual crimes are important considerations in the discourse on sexual diversity among Muslims. Second, I critically assess the argument in favour of same-sex marriages in Islam based on the assumption of stable identities and the inherent righteousness of a human rights framework. I assess the legal tools used set out some of the challenges of the human rights discourse which influences the struggle for homosexual rights and raise some question as to the efficacy of this strategy or mode of resistance and acceptance. Third, I focus on the nexus between sexual diversity, secularism and empire as sites of contestation and collaboration that continue to influence articulations and constructions of how to be Muslim and be also part of a sexual minority. Fourth, I attempt to chart a way forward for queer Muslims and argue in favour of protecting the conceptual and social space of the ‘closet’ as a liberatory and protective domain for queer Muslims where it is possible to balance both the demands of one’s faith and the expression of one’s sexuality.
Introduction

Long before puberty...I remember being attracted to certain boys...As a medical student, the first reference bearing definitely on the subject of sexual inversion was a manifestation of the criminal depravity of ordinary or insane people [...] I felt that this teaching must be based on some radical error or prejudice or misapprehension, for I knew from my own very clear remembrance of my own development that my peculiarity was not acquired, but inborn; my great misfortune undoubtedly, but not my fault.

-Dr. E. S (1897)

The above quotation is a record of a certain “Dr. E. S.” on his experience of having same-sex sexual desires. His account states that he was aware of his sexuality from a young age and that the social and medical responses available at the time were neither sufficient nor appropriate in explaining his sexuality. Instead of attempting to gain further insight into the spectrum of human sexuality, the approach was to insist that same-sex sexual attraction was both an expression of criminality and abnormality. Our understanding and construction of sexuality has changed and evolved over time and the history and process by which same-sex sexuality has been explained, explored and expressed has indeed been varied.

The existence of same-sex sexual attraction and sexual acts, particularly male same-sex sexual relationships, has a long history within both classical and contemporary Islamic discourse. However, one will be hard pressed to find any discussion on the notion of an

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2 The material on Islamicate same-sex sexuality is dominated by discussions of male same-sex sexuality. There are instances where female same-sex sexuality is mentioned but usually as an aside. In some instances the same arguments made in relation to male same-sex sexuality are applicable to female same-sex sexuality although not always. This dissertation at times will focus primarily on male same-sex sexuality, however, for the most part it attempts to engage with the issue more generally and therefore it is not limited to male sexuality. For specific discussions on female same-sex sexuality and Islam and Muslim societies see Sarah Husain, ed., Voices of Resistance: Muslim Women on War, Faith & Sexuality (Emeryville: Seal Press, 2006), 226-243; Samar Habib, Female Homosexuality in the Middle East (New York: Routledge, 2007); Indrani Mitra, “‘There is no sin in our love’: Homoerotic Desire in the Stories of Two Muslim Women Writers,” Tulsa Studies in Women’s Literature 29(2) (2010): 311-329.
exclusive innate, identity based and dispositional same-sex sexuality and its associated sexual acts in Muslim discourse prior to the recent past.\(^3\) Negative permutations of homosexuality as a sexual disposition and lifestyle emerged initially within modernising Muslim societies and Islamist movements as an unnatural sexual disposition and during the initial period after the discovery of HIV, the indication that there is a concrete link between homosexual male sex and AIDS as a form of divine punishment also obtained currency.\(^4\) Gay and Lesbian Muslim activism was born in the 1990s in predominantly Western Muslim societies. It is a recent phenomenon that some queer Muslims have challenged the normative jurisprudential view that a licit same-sex relationship is impossible. In addition, some of these queer Muslims venture further and seek to have exclusive and publicly recognised same-sex relationships which are consistent with the religious life of a Muslim.\(^5\) The reason for this is both the desire to obtain public recognition and freedom together with its associated benefits as well as to break free from the prejudice and shame connected to same-sex sexuality.

In Islam, sex and sexual relations are considered within the context of a larger religious methodological framework called the Shari’ah. The sources of the Shari’ah are primarily the Qur’an, the Sunnah or the Prophet Muhammad’s traditional precedent as codified in the Hadith\(^6\) and various jurisprudential sources.\(^7\) The legal rulings emerging from this systematic

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\(^3\) The discussion on same-sex sexuality in relation to identities and acts are discussed in more detail in Chapter 2.


\(^6\) “The normative legacy of the Prophet Muhammad is known as the Sunna, and, although it stands second to the Qur’an in terms of reverence, it is the lens through which the Qur’an is interpreted and understood. For much of Islamic history, the unit through which the Sunnah was preserved, transmitted, and understood has been the Hadith.[…] report[s] describing the words, actions, or habits of the Prophet.” (Jonathan Brown, *Hadith: Muhammad’s Legacy in the Medieval and Modern World* (Oneworld: Oxford, 2009), 3.
framework influence the position of sex and sexuality in Islam. However, this is only one dimension of the larger contemporary discourse on same-sex sexuality in Islam.

The aim of this dissertation is to analyse some of the prominent elements that constitute the discussion of same-sex sexuality among Muslims such as the distinction between sexual acts and identities and its effect on the construction of sexuality in Muslim societies, the religious and legal permissibility of particular sexual acts, and the intersection between the struggle for justice and equality and sexuality. I do not intend to do engage in arguments on whether particular sexual acts are or should be permissible or impermissible. I also do not conduct any form of qur’anic exegesis as the content of the Islam’s religious sources such as the Qur’an and Hadith regarding same-sex sexuality is not within the purview of this work.

Where Are You Hiding; From Where are You Gazing?

The theoretical framework for this study is based on postcolonialism and queer theory. Queer theory is succinctly captured in the following definition:

> Queer theory has three characteristics: the emphasis on the construction of sexuality; the element of plurality, which needs to be present in any reflection; and the idea of ambivalence or the fluidity of sexual identities. ⁸

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⁷ Those sources from which the law may be derived, in addition to the Qur’an and Sunnah, are: (1) consensus (*ijma*), which is sanctioning instrument representing the community of Muslims that provides legal and epistemological certainty on a legal ruling; and (2) analogical reasoning (*qiyas*), which by the process of reasoning an existent conclusive ruling provides the basis on which a similar legal case may be solved (Wael B. Hallaq, *Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997), 75, 83.

This appreciation for diversity and the view that heterosexuality is not the universally normal are important considerations in this study. Queer theory also relevantly challenges “a linear mode of conduction and transmission: there is no exact recipe for a queer endeavour, no a priori system that taxonomizes the linkages, disruptions, and contradictions into a tidy vessel.”

In this dynamic and hybrid way of non-linearity, postcolonialism offers the academic and rational basis on which to adopt a consistent criticism of sexual identities and sexuality and its relation to political, legal and societal implications within Muslim societies. The theoretical and argumentative thrust of the study is to question the invented European – and by implication American – “notions of ‘civilization’ and ‘culture’ and their commensurate insertion in a social Darwinist idiom of ‘evolution’, progress’, ‘advancement’, ‘development’, ‘degeneration’, and most important, decadence and ‘renaissance’” in relation to Muslims, same-sex sexuality and liberation. The texts consulted and analysis provided for this study will be undertaken from this perspective. The subaltern, the unspoken entity on the margins, the queer orientated object is the central montage in this study. In this regard, I think it is equally important to appreciate that religion has the capacity to support a just notion of pluralism. Farid Esack states in regard to pluralism and Islam:

Inclusivity was not merely a willingness to let every idea and practice exist. Instead it was geared towards specific objectives, such as freeing humankind from injustice and servitude to other human beings so that they might be free to worship God.

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Key to this project is also an attempt to articulate inclusivity in such a way that it translates into freedom from both systemic oppressions and homophobia and the ability to be free to enter into sexual relationships.

What is the Roadmap?

The dissertation is divided into five chapters including the Introduction. In the second chapter, I critique and analyse the construction of and distinction between sexual identities and sexual acts and how they relate to both pre-modern and contemporary Muslim societies. The dynamics involved in how the distinction is utilised to characterise queer Muslims and the association of notions of unnaturalness and criminality with same-sex sexual sexuality will also be discussed.

In the third chapter, I continue to critically assess the argument in favour of same-sex marriages in Islam based on the assumption of stable identities and the inherent righteousness of a human rights framework and probes the question of whether a sexually friendly Islamic jurisprudence has the ability to provide some sort of religious legitimisation for homosexual Muslims or whether the construction of such a religious jurisprudence in itself is subject to incorporating problematic heteronormative practices dominated by a Euro-American or Western epistemological structure.

In the fourth chapter, the politics of same-sex sexuality during the colonial period will be looked at. I will argue that colonialism had a detrimental effect in influencing the sexual epistemology of the colonised, in this case Muslims and homoeroticism in particular. I also argue that the contemporary struggle for gay liberation is easily manipulated to serve a not
entirely benign agenda of dominant powers and could serve as a mechanism to further marginalise certain people including both straight and queer Muslims.

In the fifth chapter, I attempt to chart a way forward for queer Muslims which does not necessarily depend on mechanisms of regulation and social consensus. I argue in favour of protecting the conceptual and social space of the ‘closet’ as a liberatory and protective domain for queer Muslims where it is possible to balance both one’s faith and social demands and the expression of one’s sexuality.

In all the chapters I argue that a fundamental rethinking of sex and sexuality in Islam and in Muslim societies needs to transpire in order for a more equitable state of affairs to come into existence. The current prejudice associated with same-sex sexuality requires a considered and erudite overhaul of how sexual relationships and gender are constructed in Islamic ethics and Muslim societies.

A Note on Content, Terminology, Translation and Transliteration

I generally make use of the term ‘same-sex’ to refer to the desires and sexual acts which are directed to a person of the same sex. However, when I refer to people, usually accompanied with another identity such as ‘Muslim’, I use the term ‘queer.’ The term is sufficiently broad to encompass all people who depart from the heterosexual paradigm even though some may not identify as homosexual. I also use the terms ‘homosexual’ and ‘gay’ in contexts where these terms are necessary.
In instances where Arabic words have been used I followed the IJMES system for transliteration. However, for convenience, I have not made use of diacritical markings except to indicate the hamza (ʼ) and ʿayn (ʾ) except where the diacritical markings are found in the sources. Where applicable I have inserted English translations in parenthesis.
Chapter 1

To Be and to Act: Sexual Acts, Desires and Orientation

How can you put up with what people are saying to your son’s discredit and their insinuations that the caliph does with him what is done with women?

-Al Maqrizi (Ittiʿaz al-Hunafaʾ, 2:272)\(^{12}\)

The purpose of this chapter is to discern the effect of sexual identities, namely a homosexual identity, and the consideration of same-sex sexual acts among Muslims. There is no doubt that this is a controversial issue and has concrete bearings on how one articulates the “homosexual” or the “same-sex sexual” problem for Muslims. I will attempt to do two things: First, demonstrate through the relevant sources that there has been an evolution or transformation of sexual acts and sexual desire into sexual identities, independent of but not unrelated to any sexual acts performed, and a translation of a homosexual identity into a “community” whose coordinates are somewhat vague and elusive. The first step is to provide a brief overview of the constructionist model of sexuality and an analysis of the work of Khaled El-Rouayheb,\(^{13}\) Joseph Massad,\(^{14}\) Afsaneh Najmabadi\(^{15}\) and Dror Ze’evi\(^{16}\) with a view to outlining some of the important aspects regarding sexual positioning and identities in Muslim societies. It is important to concede that this approach may not offer a comprehensive account of the historic reality of pre-modern Muslim societies and the subsequent changes but it will be argued that it does present us with a sufficient, if not optimum, representation of

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12 This quotation is attributed to a noble among the Fatimids who attempted to incite the vizier against the Fatimid caliph al-Zafir (d. 1154) by insinuating a sexual relationship between the vizier’s son Nasr bin ʿAbbas and the caliph. See Everett K. Rowson, “Homoerotic Liaisons among the Mamluk Elite in Late Medieval Egypt and Syria,” in *Islamicate Sexualities: Translations across Temporal Geographies of Desire*, (Cambridge: Centre for Middle Eastern Studies, 2008), 209.


14 Massad, *Desiring Arabs*.


sexuality in pre-modern Muslim societies and the changes that took place with the advent of modernity and contact with European manners and customs.\textsuperscript{17}

Second, I will also comment on other related matters or concerns that are crucial to any discussion of same-sex sexual desire and conduct and Islam and/or Muslims particularly in contemporary discourse. The notion of unnatural sexual impulses, sinful desires and the interrelationship between various sexual crimes are important considerations in the discourse on sexual diversity among Muslims. I will analyse some popular religious material (written, oral and visual) that brings these notions to the fore and critique the positions which are - or at least becoming - the popular and orthodox standpoint on same-sex sexuality.

**Sexuality Defined: From Acts to Identities**

There have been various writings and theories that either argue in some way or form for a distinction between sexual acts and identities or suggest that identities are informed by and created on the basis of sexual acts. In some instances this distinction is not neatly drawn and it transpires that some writers tend to be more subtle in the treatment of this subject.\textsuperscript{18}

\textsuperscript{17} To the extent that I discuss and consider pre-modern Muslim societies, I draw on scholarship that is limited to the central Islamic lands which does not include Africa and Southeast Asia.

\textsuperscript{18} For example, certain scholars such as Carla Freccero and David M. Halperin have critiqued the distinction between identities and acts based on a particular reading of Michel Foucault’s work as false. See: Louise Fradenburg and Carla Freccero’s “Caxton, Foucault, and the Pleasures of History,” in *Premodern Sexualities*, ed. Louise Fradenburg and Carla Freccero (New York: Routledge, 1996), xvii where they argue that the privileging of historical rupture over continuity in respect of sexuality is spurious; David M. Halperin *How to Do the History of Homosexuality* (Chicago: University of Chicago Press, 2002), where he argues against the thesis that “before the modern era sexual deviance could be predicated only of acts, not of persons or identities” and suggests that links between sexual acts and a sexual subjectivity could have been made (29-32). For an overview review of these and other works relating to pre-modern or early modern same sex sexualities, see Mario Digangi, “Queer Theory, Historicism, and Early Modern Sexualities,” *Criticism*, 48(1) (2006), 129-142
There is a difference in attitude between the “essentialists”\textsuperscript{19} and the “constructionists”\textsuperscript{20} on the issue of sexuality, a difference I do not intend to discuss at any great length. Suffice it to say, I will assume the position of the constructionist as valid,\textsuperscript{21} at least in so far as it relates to the wider discussion of sexuality in the pre-modern Muslim world and its evolution to the contemporary period.

Sexuality is a cultural and/or social construct which “represents the appropriation of the human body and of its physiological capacities by an ideological discourse” and “[a]ccording to Foucault, sexuality is not a thing, a natural fact, a fixed and immovable element in the eternal grammar of human subjectivity, but that “set of effects produced in bodies, behaviours, and social relations by a certain deployment” of “a complex political technology.”\textsuperscript{22} This as much is clear from the constructionist idea of sexuality which submits that sexuality indeed has a history which is culturally constructed and therefore malleable.


\textsuperscript{21} I assume the position that terms and identities such as ‘heterosexual’ and ‘homosexual’ may have come to denote that which is normative in the former case and that which departs from the ‘normal’ in the latter and have been socially and medically constructed. However, this should not be taken as an assertion about sexual desire and acts which have existed in human history without the implications associated with the words ‘homosexual’ and ‘heterosexual’. See Ellen T. Armour, “Planetary Sightings? Negotiating Sexual Differences in Globalization’s Shadow,” in \textit{Planetary Loves: Spivak, Postcoloniality, and Theology}, ed. Stephen D. Moore and Mayra Riviera (New York: Fordham University Press, 2011).

\textsuperscript{22} David M. Halperin “Is There a History of Sexuality?” \textit{History and Theory} 28(3) (1989): 158.
Mary McIntosh (d. 2013) in her pioneering essay, “The Homosexual Role”, published in 1968, argues that homosexuality is not a stable condition but rather functions as a particular social role that categorises the deviant and abnormal behaviour of a section of society. In this regard, certain societies utilise the role and label of the “homosexual” to police conduct so as to demarcate that which is permissible from that which is not and to ensure that the population does not veer close to that which is considered deviant. More importantly, McIntosh accentuates the distinction between homosexual acts and the manner in which a society reacts and thinks of such acts. In this regard, while there may be much homosexual acts in many societies the specific “role” of homosexuality, which is present in Western societies at least from the seventeenth century, does not exist in all societies. To search for an independent and objective homosexual source is similar to tracing “the aetiology of “committee chairmanship” or “Seventh Day Adventism” as of “homosexuality”.”

Michel Foucault (d. 1984) is one of the vital thinkers who constructed and articulated sexuality in terms of relations of power and social structures. He ventured a similar argument in expanded form that the homosexual was a nineteenth century development due to a fixation with taxonomic classification. Foucault viewed this as part of the development of disciplinary power and hegemony. While Foucault and McIntosh date the invention of the homosexual and the birth of a new sexual order to different time periods (the nineteenth and seventeenth century respectively), both saw the role of the homosexual as an invention of policing sexual conduct within a larger framework of power relations and legal and social constructed demarcations of the normal. Commenting on McIntosh’s analysis, Jeffrey Weeks

23 Mary McIntosh, “The Homosexual Role,” *Social Problems* 16(2) (1968): 183-184
24 Foucault, *A History of Sexuality*
frames the constructionist view of McIntosh as asserting three cardinal points: (1) a distinction between homosexual conduct and homosexual grouping; (2) a distinction between the pre-modern and the modern; and (3) a distinction between heterosexuality and homosexuality. These distinctions have become a pivotal part of understanding the changing notions of sexuality and how the differences between homosexuality and heterosexuality have been configured.

Khaled El-Rouayheb contends that pre-modern Muslim society lacked the concept of “homosexuality” and furthermore limitedly accepts what he terms the “McIntosh-Foucault” thesis. El-Rouayheb suggests that with respect to the penetrated party in male same-sex sexual conduct, the hypothesis offered by the McIntosh-Foucault thesis is tenuous to defend since it was common to ascribe the term maʾbuṭ to the passive sexual participant which denoted that the person suffered from an abnormality or disease due to his desire to be

26 Jeffrey Weeks, “The ‘Homosexual Role’ After 30 Years: An Appreciation of the Work of Mary McIntosh,” *Sexualities* 1(2) (1998): 131-152. It is worth noting Weeks’ emphasis on the meanings that are socially constructed around notions of sex and sexuality: “The really interesting issue is not whether there is a biological or psychological propensity that distinguishes those who are sexually attracted to people of the same gender, from those who are not -- that can safely be left to those who want to cut up brains, explore DNA, or count angels on the point of a needle. More fundamental are the meanings these propensities acquire, however or why ever they occur, the social organisations that attempt to demarcate the boundaries of meanings, and their effect on collective attitudes and individual sense of self.” (137)

27 As indicated earlier, the constructionist model of sexuality underpins much of my arguments and perspective in this dissertation. However, a proviso in this regard is necessary. I do not reject the essentialist position which posits that a person’s sexual proclivities (notably being homosexual, bisexual, or heterosexual) constitutes an unchangeable part of a person’s identity which is biologically determined. I concede that to some extent biological influence may probably affect a person’s sexual preference. For a recent evaluation which is supportive of the biological argument see Simon LeVay, *Gay, Straight, and the Reason Why: The Science of Sexual Orientation* (Oxford: Oxford University Press, 2012. LeVay’s work is rich in detail and offers a persuasive argument supporting the notion that sexual orientation is determined principally on the basis of an interface between genes, sex hormones, and the cells of the developing body and brain. Nonetheless, I support the opinion that socio-cultural influences have an undeniable impact on how sexual preferences and sexual conduct is understood, interpreted and enacted within human societies.

28 El-Rouayheb, *Before Homosexuality*, 9-11. El-Rouayheb’s study focusses on the Middle East and Turkey during the early Ottoman period. In addition, the attention is on material (poetry, legal manuals, other treatises and documents) that was produced by a literary and usually elite class of men in the urban centres of the Ottoman Empire.

penetrated.\textsuperscript{30} In this sense, there seems to be far less discontinuity between the pre-modern conception of abnormality associated with same-sex sexuality and the modern treatment of homosexuality as a pathological condition. However, it is with regard to the active sexual participant that El-Rouayheb finds the McIntosh-Foucault thesis to offer a more reasonable explanation for the treatment and conceptualisation of same-sex sexuality in pre-modern Muslim and Arab society since the act of desiring or actually penetrating another male was considered sinful but it was not considered in any negative way to be constituent of a person’s identity or psychological make-up. El-Rouayheb continues to provide an interesting and detailed account of the various ways and manners in which same-sex desire and sexuality was expressed and treated in the pre-modern Muslim and Arab landscape of the Middle East and Near East which seems to blur the stark distinction which he makes in respect of abnormal and negative connotations attributed to the passive sexual partner and the active participant.\textsuperscript{31}

The major thrust of El-Rouayheb’s thesis is that while same-sex sexual acts took place and same-sex attraction was expressed, these were articulated and viewed through various cultural milieus. The judgement on such sexual attraction and conduct depended on and oscillated between the masculinity of the ‘active’ partner and the emasculation of the ‘passive’ partner in male sexual anal penetrative intercourse; penetrative and non-penetrative intercourse; and whether the attraction was passionate but platonic or sensuous and erotic.\textsuperscript{32} The identities of the parties, usually an adult male and a younger youthful boy also were an important dimension to these sexual relationships. These social attributes provided the same-

\vspace{1em}

\textsuperscript{30} El-Rouayheb, \textit{Before Homosexuality}, 6, 16, 43-46.
\textsuperscript{31} El-Rouayheb divides his discussion on same-sex male desire and sexuality into three aspects: pederast same-sex sexual attraction and sexual conduct; aesthetic same-sex sexual attraction, and religious proscriptions on anal sex between men. The chapters are aptly termed: “Pederasts and Pathics”; “Aesthetes”; and “Sodomites”. The major sources he utilises in his work are historical, literary and religious writings.
\textsuperscript{32} El-Rouayheb, \textit{Before Homosexuality}, 153.
sex sexual act and attraction with its meaning and were strongly attached to considerations of masculinity.\textsuperscript{33}

The existence and toleration of homoeroticism and same-sex sexuality including the general leniency displayed towards same-sex sexual conduct was not only prevalent in the urban centres of the Ottoman controlled Middles East and Near East which El-Rouayheb discusses but also in South Asia. A similar attitude toward homoeroticism and same-sex sexuality coloured the Indian landscape.\textsuperscript{34} Same-sex attraction was not considered extraordinary and although same-sex sexual acts were considered unlawful they were not regarded as any different from that of illegitimate heterosexual sexual interactions. It was common for scholars to have considered the sin of \textit{zina} (heterosexual intercourse by parties that have not entered into a recognisable legal bond such as marriage) as more serious or equal to that of \textit{liwat} (same-sex anal penetrative intercourse)\textsuperscript{35} perhaps since the former would allegedly have had worse repercussions for society. What this demonstrates is that classical Islamic law distinguished between those sexual relations which were permissible—sex within a monogamous or polygynous marriage, concubinage and for the Shi‘ites temporary marriages (\textit{muʿtah})—and those which are prohibited; its aim was never to deny the

\textsuperscript{33} These details are set out comprehensively by El-Rouayheb. As a summarised general example, the love epic of Sultan Mahmud and Ayaz demanded as much attention as that of Layla and Majnun (Fakhruddin ʿIraqi, \textit{Divine Flashes}, trans. William C. Chittick and Peter Lamborn Wilson (New York: Paulist Press, 1982), 83-86). At the Mughal court the eccentric Sufi Sarmad was welcomed with his Hindu male lover (Nathan Katz, “The Identity of a Mystic: The Case of Sa‘id Sarmad, a Jewish-Yogi-Sufi Courtier of the Mughals,” \textit{Numen} 47(2) (2007)) and Fakhrudin ʿIraqi’s love of a young adolescent resulted in his journey to India and into the world Indian Sufism (Annemarie Schimmel, \textit{Mystical Dimensions} of Islam (Chapel Hill: University of North Carolina Press (1975)). In certain Sufi circles the admiration of beardless boys was encouraged but there were those who disapproved of such behaviour and issued stern warnings regarding the real seductive power young men have on other men. It was considered unlawful to look at the male face that was not covered by a beard (El-Rouayheb, \textit{Before Homosexuality}, 95-118). For a more general discussion on sexuality in the traditional Islamic world see Abdelwahab Bouhdiba, \textit{Sexuality in Islam} (London: Saqi, 2004).

\textsuperscript{34} Ruth Vanita and Saleem Kidwai eds., \textit{Same-Sex Love in India} (New York: Palgrave, 2001), 107-352. This volume contains many examples of poetry and literary writings which are translated into English with accompanying introductions and commentaries by the editors. The purpose of the book is to provide a selection of homoerotic verse and writing that expresses the rich tradition of same-sex sexuality in India.

\textsuperscript{35} Kecia Ali, \textit{Sexual Ethics and Islam}, 75-77.
natural urge of sexual desire. It never considered any of the sexual sins as unnatural but rather sought to regulate the sexual lives of people. This decisive attempt to regulate sexual conduct was heavily influenced by the patriarchal nature of the society and much of what was considered legitimate was based on a very historically contextualised social conception of morality. In fact, Muslim society could anthropologically be considered to have been socially accommodating towards the dynamics of same-sex desire, attraction and intimacy."36

To some extent pre-modern Muslim societies were generally segregated according to gender. The homosocial environment which was a characteristic of these societies underwent a change with the advent of colonialism and the modernisation of Muslim societies. Two studies provide an important contribution to understanding the historical modification of sexuality from the pre-modern to the modern.37 In Iran, Afsaneh Najmabadi argues that with the onset of modernity and greater interaction with Europeans homoeroticism and same-sex liaisons, particularly among men, came to be considered as regressive and led to the heteronormalization of sexuality and the reconfiguration of the public space and family. This turn of events altered the sexual imaginings of men, women and the nation by portraying male penetrators in same-sex sexual conduct as effeminate and encouraging women to

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36 Stephen O. Murray and Will Roscoe’s volume *Islamic Homosexualities* and J.W Wright Jr.’s and K.Rowson’s work on *Homoeroticism in Classical Arabic Literature* go some way in demonstrating a framework of sexuality, homoeroticism, and same-sex sexual conduct through historical and literary material in primarily pre-modern Muslim societies but also in contemporary societies such as Pakistan and Indonesia. Although these works, particularly the former, is problematic in its account of how it manages to connect the sexual sensibilities of the medieval age with contemporary sexual mores it nonetheless provides a useful account of same-sex sexuality in Muslim discourse and society.

37 For a comprehensive overview of the history of sexuality in the Middle East see Leslie Peirce, “Writing Histories of Sexuality in the Middle East,” *The American Historical Review*, 114(5) (2009): 1325-1339. Peirce considers the studies of Najmabadi and Ze’evi as important in bridging the history of Middle Eastern sexuality from pre-modern to modern times (1335-1336).

represent themselves as modern wives to their family men. This also led to the corrosion of homosocial female bonds. This process of transformation also resulted in the solidification of gender binaries.\textsuperscript{39} In the Ottoman region, Dror Ze’evi argues that during the eighteenth and nineteenth century the eclectic sexual behaviours found in the Ottoman region as recorded in medical, legal and mystical writings as well as European travelogues was subsequently downplayed.\textsuperscript{40} The primary impetus for toning down or softening the representation of sexual mores in the Ottoman region was the criticism and insults of Europeans regarding Islamicate sexualities, specifically homoeroticism.\textsuperscript{41} With the demise of Ottoman political control, the heteronormalization of the social environment emerged.\textsuperscript{42} This discomfort with homoeroticism and same-sex relations among men was not limited to the Iranian and Ottoman landscape but also gained currency in the Arab world and Turkey after the demise

\textsuperscript{39} Najmabadi, \textit{Women with Mustaches}, 34-39, 47-48, 55-60, 124-125, 176-177, 237-238.

\textsuperscript{40} Ze’evi, \textit{Producing Desire}.

\textsuperscript{41} The production of European travelogues about the Orient functioned as an important resource and mechanism to represent (or in many instances to misrepresent) the sexual mores of the people inhabiting non-Western lands. For example, the cavalier attitude towards same-sex sexuality, the homosocial environment and the sexual lives of both men and women in urban Ottoman centres was represented as depraved, deviant and lacking in moral righteousness. Ze’evi states the following: “In Europe things began to change in the course of the seventeenth century. A new heteronormal morality was beginning to form in people’s minds. Sexual acts and proclivities were divided into natural and unnatural, normal and abnormal, Christian and heathen. This was coupled with and affected by a new political attitude toward the Ottoman Middle East.…. [T]he Topkapi palace becomes a den of sexual intrigue and repressed urges, where sultans and viziers spend their time ogling young pages with unveiled passion and scheming to seduce them. The pages, in turn, work their charms to ensnare rich old patrons, enjoying their presents, patronage, and, eventually, a share of their fortune and power…. [S]exual depravity is by no means restricted to men alone. Although men are allowed to marry several women and have sex with as many concubines as they wish, their wives are “accounted the most lascivious and immodest of all women, and engage in the most refined and ingenious subtleties to steal their pleasures.” Debauchery, then, is rampant… [m]ale-to-male sex is thus rampant. No longer a personal predilection of individuals, in Western travel literature it has become much more—a disease of the state, a corrupt form of government. Four-fifths of the state’s government ministers are slaves bought for the pleasure of the sultan, with no qualifications for government except their good looks. But sodomy is only one manifestation of the depravity that has lodged itself in the Ottoman soul…. Lacking a moral compass, living in blissful ignorance of right and wrong, Turks, Arabs, and Orientals are presented as beyond the boundaries of “moral” civilization. Governed by sodomy and debauchery, their only law is social and political domination. In the absence of an innate moral code, social etiquette and the behavior of people depend on their positions in the social order. The powerful and the mighty are allowed everything; the poor and the meek, nothing.” (152-158).

\textsuperscript{42} Ze’evi, \textit{Producing Desire}, 167-171.
of the Ottoman Empire and South Asia. However, while the somewhat tolerant environment and relative permissiveness regarding same-sex relations altered, the identity of the homosexual did not yet figure prominently in these societies. The attitudes towards same-sex sexual acts still tended to be perceived through the framework of male penetrative sex and pederasty.

Joseph Massad accepts the validity of the categories of same-sex sexual relations on pre-modern Muslim society as valid for contemporary Arab and Muslim societies. Massad states that the “advent of colonialism and Western capital to the Arab world has transformed most aspects of daily living; however, it has failed to impose a European heterosexual regime on all Arab men, although its efforts were successful in the upper classes and among the

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44 I deal with the colonial impact on Islamicate sexualities in somewhat more detail in Chapter 3 of this dissertation. However, the significant contributions of Najmabadi and Ze’evi regarding the effect of the interaction between Muslim and European societies and the colonial infringement is that during the Enlightenment period in Western Europe and the beginning of the colonial project the discourse on sexuality and sexual behaviour altered: “the one-sex paradigm had been replaced by a clearer two-sex one, the hazy boundaries between heterosexual and homosexual had solidified, new conceptions of sex and power had replaced older notions, and a set of new scripts had emerged to control deviant sexual behavior (Ze’evi, Producing Desire, 168)”. These changes contributed to the construction of a fixed sexuality (with assigned gender roles) together with heteronormativity as its central feature of normal, natural and righteous sexuality. Same-sex sexuality was deemed as a deviant aberration from this norm. Muslims in Ottoman and Persian regions produced a sexual morality that responded to both European critiques of alleged Oriental licentiousness and incorporated European sexual mores in a unique way. Sexuality became much more restrained with homoerotic discourse becoming ostracised. Ze’evi states that “[d]uring a relatively short span of time an entire cultural silencing mechanism was galvanized to cleanse the discourse of anything deemed sexually improper” (Ze’evi, Producing Desire, 170). This “silencing mechanism” included the state but also writers, publishers, artistic persons and the ulema (clergy). The effects of these changes continue to affect the contemporary discourse and practice regarding gender and sexual relations.

45 Massad deals almost exclusively with male homosexuality.
increasingly Westernized middle classes.”

Massad is a strong critic of the gay and lesbian liberation agenda. He argues that the “Gay International” through exporting its Western notions of strict sexual identity and orientation to the Arab and Muslim world creates gays and lesbians or homosexual individuals where none existed. This has the ironic result of repressing same-sex desires and conduct that do not cohere or assimilate into the epistemological understanding of Western sexuality. By attempting to universalise a particular sexual identity construction peculiar to the West, the “Gay International” has incited a discourse on homosexuality in the Arab and Muslim world that has resulted in the negative impact on traditional conceptions of sexuality that either “heterosexualise” certain individuals who indulge in same-sex sexual conduct (usually the ‘active’ participant) or offer little protection, in fact increasing the possibility of attack, to other individuals (usually the ‘passive’ participant).

This “imperial mission” on the part of the Gay International, he argues, is part of the larger Orientalist agenda of manipulating Arab and Muslim sexual constructions and morality to conform to Western modes of decency and morality. The major criticism that Massad has with gay and lesbian rights groups is the assumption that – or a concerted effort to – equate sexual acts with a sexual identity. Massad states:

"[I]t is the very discourse of the Gay International, which both produces homosexuals, as well as gays and lesbians, where they do not exist, and represses same-sex desires and practices that refuse to be assimilated into its sexual epistemology…. [T]his discourse assumes prediscursively that homosexuals, gays, and lesbians are a universal category that exists everywhere in the world and, based on this prediscursive axiom, the Gay International sets itself the mission of defending them by demanding that their rights as homosexuals be granted where they are denied and be respected where they are violated…. [I]t is…[the] perceived desires of instability in the desires of Arab and Muslim men that the Gay International

46 Massad, Desiring Arabs, 172. This claim by Massad is not without contention given the arguments by Ze’evi and Najmabadi on the impact the European encounter had on Muslim societies regarding same-sex sexuality.
47 Massad defines the “Gay International” as organisations dominated by white Western males such as the International Lesbian and Gay Association [ILGA] and the International Gay and Lesbian and Human Rights Commission [IGLHRC]. Massad, Desiring Arabs, 161.
48 Massad, Desiring Arabs, 188-190.
seeks to stabilize, as their polymorphousness confounds gay (and straight) sexual epistemology. [T]he assumptions underlying the mission of the Gay International demand that these resistant “Oriental” desires, which exist, be re-orientated to and subjected by the “more enlightened” Occident.49

Massad’s scepticism of the gay liberation movement, the essentialisation of sexual identities and a serious indictment of Orientalism may be justified and perhaps shed fresh light on the stabilising effect of sexual identities in Arab and Muslim societies. Nonetheless, Massad’s hypothesis is somewhat glib in that he erases all form of diversity in current queer theology and jurisprudence.50 The idea of human fragmentation, where the subjective self is not a singular unified entity with an apparent identity based on post-Enlightenment modern individuality can be invoked to express the fluidity and polymorphous nature of sexual desire, attraction and conduct.51 The queer and cultural studies theorist Elspeth Probyn provides such a supposition that human beings constitute multiple and contradictory desires and discourses which results in movement from one identity to another:

Desire is productive; it is what oils the social; it produces the pleats and the folds which constitute the social surface we live on. It is through and with desire that we figure relations of proximity to others and other forms of sociality. It is what remakes the social as a dynamic proposition, for if we live within a grid or network of different points, we live through the desire to connect to them differently.52

Desire is never static and sexuality is thus never constant. The object of sexuality may deceptively conceal the underlying dynamic of desire, attraction and sexual conduct that is always in flux beneath a *prima facie* constant object of desire. The effect of Massad’s critique is that it is complicit in a sexual and epistemological essentialism. It essentialises the sexual

49 Massad, *Desiring Arabs*, 163-164.
act suggesting that there is a uniform sexual act that cannot be transposed to a uniform sexual identity. Massad argues that,

[b]y inciting discourse about homosexuals where none existed before, the Gay International is in fact \textit{heterosexualising} a world that is being forced to be fixed by a Western binary. Because most non-Western societies, including Muslim Arab societies, have not subscribed historically to these categories, their imposition is eliciting less than liberatory outcomes: men who are considered “passive” or “receptive” parties in male-male sexual contact are forced to have one object choice and identify as homosexual or gay, just as men who are the “active” partners are also forced to limit their sexual aim to one object choice, either women or men. As most “active” partners see themselves as part of a societal norm, heterosexuality becomes compulsory given that the alternative, as presented by the Gay International, means becoming marked outside the norm—with all the attendant risks and disadvantages of such a marking. Also, most Arab and Muslim countries that do not have laws against sexual contact between men respond to the Gay International’s incitement to discourse by professing anti-homosexual stances on a nationalist basis.\textsuperscript{53} …The so-called passive homosexual…will find himself in a double bind: first, his sexual desires will be unfulfilled because he will no longer have access to his previously available sexual object choice (i.e., exclusively active partners, as in the interim they will have become heterosexual); and second, he will fall victim to legal and police persecution as well as heightened social denigration as his sexual practice becomes a topic of public discourse that transforms if from a practice into an identity.

Massad’s outlining of same-sex sexuality in the contemporary Arab Muslim world is problematic. For Massad male same-sex sexuality constitutes a single sexual act (male anal penetrative sexual intercourse) by an exclusively “active” participant and an exclusively “passive” participant where the “active” participant always has a sexual object choice in either a man or a woman while the “passive” participant always only has a single sexual object choice who is the “active” male. In addition to the obvious problems of not considering other existing forms of male same-sex sexual intimacy, the very real possibility of heterosexually identified men continuing to indulge in same-sex sexual activity, and the possibility of a “passive” sexual participant also having an additional sexual object choice in

\textsuperscript{53} Massad argues that this incitement to discourse by the Gay International results in police harassment in some cases and could lead to anti-homosexual legislation in some countries and countries that already have unenforced laws begin to enforce them.
the form of women, Massad’s delineation of male same-sex sexuality results in the creation of a sexual economy where typology of various sexual acts – a taxonomy of sexual practice – develops and results in forcing names onto “acts even with the alibi of presenting multiplicity”.

As such, the relationship between sexual acts, sexual identity and the naming of such acts and identities is causally linked and complex. In the very least, it could be suggested that the gay identity is not merely an “universalisation” of a sexual identity via the “Gay International agenda” but is also simultaneously an identity exported through globalisation; that is through the increasingly interconnected world of information, cultural exchange, tourism (both benign and voyeuristic), money, media and multiple socio-political identities.

Another criticism of Massad’s argument is that his position tends to reaffirm existing patriarchal power relations in Muslim societies which are problematic. It is true that in many of these societies the establishment and expansion of family bonds and relations are seen as essential and since there is no legal recourse to having same-sex relations, the only option available is having sex outside the perimeters of the family, the law and recognised sexuality. However, “[a]t a great disadvantage in such arrangements are the wives and the unwed male partners, both of whom remain subordinate in a hierarchical and patriarchal system […].” The presence of this unequal relationship which Massad wants to protect perhaps should not be the exclusive manner of sexual availability for queer people. An additional problem with Massad’s analysis is that it forces people who engage in same-sex sexual conduct to choose between either accepting the current situation - which he seeks to protect - or embrace a

56 Samar Habib, “Introduction: Islam and Homosexuality,” in Islam and Homosexuality, ed. Samar Habib (Santa Barbara: Praeger, 2010), xxx
homosexual identity and suffer the consequences of the violence which come with the adoption of such an identity. The inability at attempting to chart a dignified way forward does not offer much hope for many queer Muslims and Arabs.

Between the (Un)Natural, Criminality and Pity

Sheikh Yusuf Qaradawi, a prominent contemporary jurist, says the following on homosexuality in his book of positive law, *The Lawful and Prohibited in Islam*:

> We must be aware that in regulating the sexual drive Islam has not only prohibited illicit sexual relations and all ways which lead to them, but also the sexual deviation known as homosexuality. This perverted act is a reversal of the natural order, a corruption of man’s sexuality, and a crime against the rights of females. The spread of this depraved practice in a society disrupts its natural life pattern and makes those who practice it slaves to their lusts, depriving them of good decent taste, decent morals, and a decent manner of living.\(^{57}\)

In Qaradawi’s articulation of the phenomenon of “sexual deviation known as homosexuality” one can witness the collapse of two separate concepts. The construct of a sexual identity which merely implies concrete sexual desire and attraction is authoritatively translated to also mean sexual conduct. A more drastic articulation of this perspective is a statement by the Jamiatul Ulema South Africa a leading South African organization of Islamic religious scholars, regarding homosexuality. Among other things it states the following:

> My beloved brother! You are certainly aware that the sin of homosexuality is haram [prohibited]. But do you know how serious this crime is and just how despicable it is in the sight of Allah Ta'alā [God, the Most High]? Just imagine, my brother, that when it is against the very nature of man, nay even of animals, what is the position of the person who indulges in it! Is such a person unaware that Allah Ta'alā in all His Grandeur, Might and Power - is watching him while he indulges in his haram act? Is he not aware

\(^{57}\) Yusuf al-Qaradawi, *The Lawful and Prohibited in Islam*; Qaradawi , 1982: 169
that Allah Ta'ala has the power to send down upon him a swift and severe
punishment or even seize him while he is involved in it? What will his
position be when he appears before his Rabb [Lord] on the day of Qiyamah
[judgment]?...The acts of homosexuality and) lesbianism are certainly a
perversion and a serious deviation from the inherent nature of man. These
acts of defiance against human nature are also even viler and uglier than
adultery. There is consensus among both Muslims and the followers of
other religions that lesbianism and homosexuality are evil and filthy
practices. Thus it is not surprising to find that Islam so vehemently
prohibits it and adopts such a severe attitude against it. Among the evil
consequences of this sin are the many deadly and contagious diseases that
result from it. Some of these illnesses are such that medical science - with
all its might, power and advanced technology - has failed to combat or even
fully comprehend, let alone cure it. Certainly no one is able to rise above
the will of Allah Ta'ala and escape His wrath!58

The charges of unnatural sexual desire and sexual conduct, the inclusion of
homosexuality with other crimes such as adultery, theft, murder, and alcohol consumption,
and the argument that the legitimisation of homosexuality is similar to the legitimisation of
adultery, fornication or paedophilia are common tropes in the contemporary mainstream
religious discourse.

The solidifying and concretisation of sexual identities, notably an exclusive and
minority homosexual identity juxtaposed against a normative majoritarian heterosexual
identity, results in two circular discursive realities which feed each other. The existence of the
insult against a sexual identity that is based on gender preference instead of a preference in
sexual roles results in the construction of the homosexual identity.59 The articulation of such
an identity was impossible in pre-modern Arab and Muslim societies where the object of

58 Jamiatul Ulema South Africa, *Homosexuality and Lesbianism*
http://www.jamiat.co.za/library/homosexuality_and_lesbianism.htm. This hyperlink was accessed
during late 2011 and has been recently removed. The Jamiatul Ulema South Africa is an established
religious group of scholars that was founded in 1923 as the Jamiatul Ulema Transvaal. The
organisation proclaims to be the representative of South African Muslims, or at least a substantial
portion of the South African Muslim population in the north of the country and it has a Deobandi
religious outlook. Abdulkader Tayob and Wolfram Weisse eds., *Religion and Politics in South Africa:
praise, ridicule, prohibition and permission depended most heavily on typologies of sexual acts and not preferences of gender even though sexual acts were contextualised within categories of gender differentiation. Gender preference replacing the penchant for sexual roles has resulted in – or at least significantly contributed to – a more serious, vociferous and malicious insult against an identity exclusively based on homo gender preference which in turn is constructed in reaction to such an insult.\textsuperscript{60} Neo-traditionalists and contemporary conservative Muslim scholars in turn react to homosexuality with far more rigidity and fewer nuances than pre-modern legists to the issue of same-sex sexual conduct. The implication is that homosexuality is no longer seen through the pre-modern lens where same-sex attraction and same-sex sexual conduct has varying degrees of permissibility or prohibition and although certain manifestations of same-sex sexual conduct (such as same-sex male anal penetration) may be strictly prohibited (like heterosexual adultery and fornication or zina) it is no less natural than illicit heterosexual intercourse. However, the contemporary situation results in jurisprudential opinions (fatawa) on homosexuality stating that same-sex desire and same-sex sexual conduct are unnatural, abnormal and perverse.

This turn of the discourse towards the unnatural has an uncanny resemblance to the conservative and traditional Christian notion of natural sex. There are two basic assumptions

\textsuperscript{60} The conscientiousness of a sexual act as a peculiar – or what can be termed as a queer – practice begins with an insult. The insult can either be directed toward a homosexual identity or at a same-sex sexual act for it to form an essential component of a same-sex sexual subjectivity or a homosexual identity or also function as the motivation for the construction of a particular identity on the basis of sexuality. The notion of the ‘insult’ has become a recurring and constant characteristic of homosexuality and included within the language of insult in this regard are religious slurs against homosexuals. Didier Eribon’s illuminating literary study \textit{Insult and the Making of the Gay Self} affirms this notion of insult in relation to the homosexual subjective self: “One of the consequences of insult is to shape the relation one has to others and to the world and thereby to shape the personality, the subjectivity, the very being of the individual in question.” (Didier Eribon, \textit{Insult and the Making of the Gay Self} (London: Duke University Press. 2004), 15).
that this position makes.\textsuperscript{61} First, it assumes an essential essence inheres in a man and a
woman which results in different social beings, and second, the assumption that heterosexual
sexual desire and sex is an integral component of human nature.\textsuperscript{62} Any departure from these
essential characteristics is a perversion of the natural state. The famous adage ‘God created
Adam and Eve; not Adam and Steve’ is an inelegant idiomatic phrase that has come to
represent the unnaturalness of same-sex coupling and sex. For long the Church has taught
that sex is dangerous and needs to be carefully and tightly regulated and for some the ideal
solution is total abstinence and the renunciation of sex.\textsuperscript{63} The weight placed on heterosexual
vaginal sex was immense and then too the primary purpose of the sexual act was and in some
cases still continues projected as procreation.\textsuperscript{64} Some of these elements are also part or have
gradually been accepted as part of the Islamic legal tradition. They have thus come to form
part of a matrix of morals and sensibilities which govern sexuality in Muslim societies. The
emphasis on essential gender differences, the regulation of sexual conduct and the
prominence of heterosexual sex are things Muslims are familiar with. However, it is the
particular slur of “unnatural”, and the extreme opinion of viewing same-sex desire and sexual
conduct as worse than other inappropriate sexual conduct such as adultery and fornication,
that is somewhat novel. Given the temperate handling of sexuality and the more relaxed

\textsuperscript{61} It is important to be clear that I do not suggest that these positions are specific to Christianity or
certain theological expressions of the Christian faith. It may even be the case that these positions are
part of the discussions of sexuality or have influenced or have become part of the discourse of other
faith traditions including Islam.

gender differentiation in Christianity, Judy Tobler says the following: “the idea that male and female
are different and, moreover, associated with ‘good’ and ‘bad’ respectively, can already be detected in
the creation myths… the oppositional categories of male and female underlie other dualistic notions
that are interpreted in ways that are both gendered and unequal, and these are perpetuated by the
androcentric perspective of ‘male’ as the norm of humanness and ‘female’ as the subordinate ‘other’
that deviates from the norm.” Judy Tobler, “Beyond a Patriarchal God: Bringing the Transcendent

\textsuperscript{63} Paul Germond, “Heterosexism, Homosexuality and the Bible,” 195.

\textsuperscript{64} Ronald E. Long, Men, Homosexuality, and the Gods: An Exploration into the Religious
Significance of Male Homosexuality in World Perspective (New York: Harrington Park Press, 2004),
90-96.
position of how homoerotic desire and same-sex sexual conduct was treated in pre-modern Muslim societies the insult of unnatural is a curious mode of attack.65

The approach taken by contemporary religious scholars focusses on reframing the issue of homosexuality as a sin among other sins that does not exclude a person from Islam on the basis of either having same-sex erotic desires or acting on those desires. If a person does act on those desires then he or she will simply be a sinner. I will concentrate on three statements made by contemporary religious scholars located in North America: Sherman Jackson, Hamza Yusuf and Yasir Qadhi.

**Statement 1: Hamza Yusuf**

Hamza Yusuf is an American convert who co-founded the Zaytuna Institute in the Bay Area, California. He pursued studies in the Middle East and North Africa and subsequently has become an influential traditional Islamic scholar and preacher in North

65 The instantiations of same-sex desire as a natural component of masculinity still continue to exist in some parts Muslim societies. In article outlining the dynamics of sonic gatherings and masculinity in Pakistan’s North-West Frontier Province, Magnus Marsden highlights the role and accommodation of same-sex desire: “The sexually charged atmosphere of the play is invested with a further layer of complexity: Male beauty is openly discussed at these events. Dancers are described as beautiful, especially handsome young men are showered with gifts of money, and older men who dance with beautiful boys are sometimes teased by the crowd for dancing with their ‘wives.’ On the one hand, the appreciation of male beauty is said to be a marker of ‘humanity’ (insaniyat)—it, too, is evidence that a man is not bored and ‘awaiting death’ but, rather, injected with a sustaining ‘love of life.’ ‘All men like boys,’ I am often told, ‘because the appreciation of beauty is a God-given natural thing.’ Talk of such attraction is not confined to a concealed or subordinate discourse but, rather, considered central to the proper affective constitution of Chitrali men. On the other hand, older men who are reputed to have openly sexual thoughts about, interests in, and even relations with younger men are not considered ‘likers of boys’ (daq xosei ʿak) but those who ‘play with children’ (bacab ʿaz), a stinging term of abuse in contemporary Khowar. As in the case of mahfil musicians, public displays of male–male physical attraction are seen by some Chitrals as corrupting the morality of their society and inciting dangerous types of divisive emotion, notably, jealousy. Yet the appreciation of male beauty is considered one further way in which, during the course of appropriate performative events such as plays, men can demonstrate that they are capable of being ‘light’ and ‘lovers of life’ rather than ‘heavy’ and ‘bored’.” Magnus Marsden, “All-male Sonic Gatherings, Islamic Reform, and Masculinity in Northern Pakistan,” *American Ethnologist* 34(3) (2007): 473–490.
America and internationally. At a panel on “Rethinking Islamic Reform” hosted by the Oxford University Islamic Society in 2010, the issue of homosexuality is raised. Yusuf first states that there are issues on which Muslim societies do not align with liberal democracies and one of those things is homosexuality. He says that those who have homosexual tendencies are accepted within the faith but acting on homosexuality is prohibited in the Qur’an. In addition, rectal intercourse is prohibited and it is seen as harmful to both women and men. Muslims cannot change these positions as “it is known by all Muslims” and cannot be “waffled or fudged”. He concludes by suggesting that we should, however, humanise people, and have mercy on them and that the laws of Islam are not obligatory for those who do not follow the religion.

Statement 2: Sherman Jackson

Sherman Jackson is an African-American scholar and the King Faisal Chair of Islamic Thought and Culture and Professor of Religion and American Studies and Ethnicity at the University of Southern California. He is a notable academic on Islam and has taught at numerous institutions in North America. At a forum titled “Cultivating an Indigenous Muslim Culture” held at New York University in 2009 he was asked a question if there is a place for gay Muslims. Jackson states that he undertakes to answer the question in a way that could also function as an embrace. He states that one of the cardinal principles of Sunni Islam (without intending to be sectarian) is that there is no excommunication of people on the basis of behavioural indiscretions. For example, committing adultery or consuming wine does not make a person a non-believer due to the commission of that act. Similarly, an individual who

66 Hamza Yusuf, http://sandala.org/about/hamzayusuf/
67 Islam and Homosexuality - Shaykh Hamza Yusuf, http://www.youtube.com/watch?v=5idZNhc-iqc
68 University of Southern California, Faculty and Staff, http://dornsife.usc.edu/cl/faculty-and-staff/faculty.cfm?pid=1038031
indulges in homosexual behaviour is not disqualified from Islam. So there is a place for them, Jackson continues to say, and they should be accepted as brothers and sisters who behave in a way that does not meet God’s pleasure. He provides an example of a man who consumed alcohol during the time of the Prophet Muhammad and his companions brought him to the Prophet and punished and cursed him on account of his alcohol consumption and the Prophet admonished his companions not to curse the man because he loves God and the Prophet. The point Jackson makes is that gay Muslims should be treated with a degree of empathy. However, he firmly rejects any space for gay Muslims if it involves changing the ruling on homosexual acts. There is no place for a person who is a homosexual and asserts that it is acceptable in Islam. The position of the homosexual is exactly the same as the adulterer and alcohol consumer. Homosexuals can be Muslims but they are bad Muslims and standards of behaviour cannot be altered to accommodate people with frailties. Islam, according to Jackson, cannot be redefined in this way.

Statement 3: Yasir Qadhi

Yasir Qadhi is a religious scholar who teaches at colleges and is involved with the administration of an Islamic religious educational institute called the Al-Maghrib Institute which has locations throughout the United States of America. The Deen Show is an Islamic television programme with an evangelist ethos and Qadhi appears as a guest on the programme. The host of the show is “Eddie” who has experienced the darkness of the world and has found the light of faith. This journey has been converted into a film titled From Dunya to Deen and is advertised during the Deen Show programme breaks. Eddie opens the

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69 Jackson makes it clear that he draws a distinction between “acts” and “tendencies” since according to him people are not judged according to tendencies but according to acts since a tendency does not make one a commissioner of acts.
70 Is There A Place For Gay Muslims?, http://www.youtube.com/watch?v=HislwWhyU34
71 Al-Maghrib Institute, Instructors, http://almaghrib.org/instructors/yasir-qadhi#profile
programme by stating that there is a question from an “as not yet” Muslim and “our brothers in humanity” want to know what Muslims think. He presents a question by Steve which asks simply what the problem is with God creating some men to like men and women to like women. Qadhi says criticising homosexuality is a sensitive issue since it is seen as similar to being a racist. One of the commandments, according to Qadhi, is that sexuality is an innate desire that is legitimate, permitted, and “completely allowed” to be enjoyed within the confines of marriage. Islam unlike some other religious traditions does not consider it evil and only necessary for procreation. God instilled in us the internal desire to eat drink and procreate and these desires can be manifested in either a permissible or impermissible way. In respect of sexuality, God and the Prophet wanted us to have good healthy sexual lives within marriage and created us from male and female and created spouses for us that we may find in each other love and comfort. Qadhi continues to extol the benefits of marriage and family and states that if a marriage is sound so is the family and if the family is sound so is society. The family as the building block of society needs to be protected. Couples should live together until they die and divorce should be exceptional.

Qadhi reiterates that extra marital affairs are not allowed and “finding pleasure within the same gender is an unnatural manifestation of a natural urge” and a major crime. Qadhi rejects the claim that having certain desires and temptations makes it permissible to act upon them. He provides the example of a kleptomaniac and mass murderer and in a show of macho heterosexism he and the host gleefully admit to their attraction to beautiful women which affects their ability to concentrate. Following from this, Qadhi frames same-sex desire as harmful in the same way that lusting over numerous women is harmful particularly for a married man.
Qadhi’s solution for the person experiencing same-sex desires is to “block it” and channel it in a permissible manner. He provides two options: either one manages to control the sexual desires and channel it towards a person of the opposite sex and finds happiness within the confines of marriage or if this is not possible then to remain celibate and battle these sexual desires like the kleptomaniac, mass murderer, and alcoholic. However, having these sexual desires does no disqualify a person from being a Muslim.

At this point the host seeks affirmation that it is called “sodomism” or “sodomy” and then asks Qadhi to relate a personal experience of a person who came to him with this problem. Qadhi says that he has received anonymous emails from people who were too embarrassed to express their sexual concerns but one man approached him personally and since he did not act on his desires he was not embarrassed to confront him in this manner. This man was not averse to women but his sexual attraction to men was greater. His parents orchestrated a possible marriage match for him with a woman he knows. Qadhi said in this case, since he was not completely sexually averse to women, he advised him to pray to God for assistance and act upon what he feels thereafter. The person is now happily married according to Qadhi.

In the final part of the programme the host and Qadhi discuss the negative effects of sex, nudity and pornography on society. The rampant display of sexuality, nudity and pornography, according to Qadhi, has led to the desensitisation of things such as sexuality and modesty and has led to promiscuity of both the “natural and unnatural” kind. The host also remarks that in Islam a man should not gaze at the thigh of another man and today in locker rooms men strut around naked. Finally, both Qadhi and the host state that satisfaction and contentment can only be found in obedience to God and the pleasures of this world,
including sexual promiscuity, are temporary. In the final frame, the host smiles in an upbeat and self-help tone says: “Be good, do good, peace be unto you”.\(^\text{72}\)

These three episodes reaffirm certain elements that continue to frame the question of same-sex sexuality for most Muslims. First, the queer person is not disqualified from being a Muslim on the basis of his or her desires. Second, the queer person who acts upon his or her sexual desires is committing a sin similar to consuming alcohol, committing adultery, stealing, or committing murder. As such, the person is considered a sinful Muslim. Third, there is a distinction between desire and actions. A person may not be responsible for his or her desires but is responsible for his or her actions. As such, it is the queer Muslim’s responsibility to curtail and control his or her desires so as not act upon them and either should remain celibate or enter into heterosexual marriage if possible. Fourth, there is no possibility of legitimising same-sex sexual conduct or lessening the moral opprobrium associated with such conduct. Fifth, same-sex desire is either implied to be peculiar and abnormal or expressly stated to be unnatural.

The combination of these responses constitutes the contemporary retort to the question of same-sex sexuality or homosexuality. However, these responses are inadequate to confronting the very serious issue of sexual desire and sexual conduct. To limit sexual conduct and satisfaction to the paradigm of marriage which has been reconfigured to align with contemporary Western notions of monogamous heterosexual marriage does not address or remotely solve the issue of particular types of sexual desires that depart from the heterosexual model. For example, in Muslim societies the issue of contracting a marriage with or between minors, polygyny, and concubinage in pre-modern societies, is not relegated

\(^{72}\) How to deal with homosexual urges The Islamic solution with Yasir Qadhi TheDeenShow YouTube, http://www.youtube.com/watch?v=0zK_Csl_hjs
to the realm of abnormal behaviours or divorced from the wider sexual framework. I do not intend to suggest that the solution may be in legitimising same-sex sexual conduct from a religious legal perspective, if that is even indeed possible, but rather that perhaps the emphasis on ‘abnormal’, ‘different’, ‘prohibition’ and ‘sin’ relating to same-sex sexual conduct requires some rethinking. A more subtle approach, similar to the approach of pre-modern Muslim societies, in interpreting and reacting towards same-sex sexual conduct is necessary. The almost inevitable prejudicial, pitiful and condescending response that is common in Muslim societies towards men and women who either are suspected of harbouring same-sex sexual desires or acting upon them or visibly display their sexuality requires attention which is not addressed by the normative responses documented above. It may be the case that Muslim societies, particularly in majority Muslim countries, do not interpret sexuality in the same way or form as the West or countries heavily influenced by an American or Eurocentric liberal sexual vision, and as such the social denigration of same-sex sexuality may not be as virulent as what is witnessed in certain conservative locations in the West. Sexual relations, whether between men or women, or between the same sex, however, is usually governed by unequal power relations and in the case of the latter in secrecy. The notions of sex and sexuality and the sexual framework which governs many Muslim societies require a fundamental rethinking about relations of power, visibility, family and kinship ties and sexual conduct.

73 The situation may be different in some instances with respect to concubinage since “[m]odern Muslims, especially in the West, have devoted little attention to thinking about or discussing the religious, ethical, and legal issues associated with slavery, resorting instead to apologetic and denial.” (Kecia Ali, Sexual Ethics in Islam, 43). An example of this is Muhammad Asad’s insistence on interpreting the Qur’anic phrase ma malakat aynanukum (those whom your right hands possess) which refers to those slave women who men, as their masters, have sexual access to, as only having sexual access in the event that the relationship is sanctioned through marriage and not slavery alone (Muhammad Asad, The Message of the Qur’an (Gibraltar: Dar Al-Andalus, 1980), 106.
Chapter 2

Law and Life: Sex, Marriage, Family and Jurisprudence

When you look at these two true men embracing
don’t think that you are witnessing a sin.
...In this duet of beseeching and tenderly replying
the two friends made love to each other.

-Shaykh Muhammad ibn Muhammad Pir (Haqiqat al-Fuqara)\textsuperscript{74}

Shaykh Muhammad Pir (d. 1662) tells the story of a Sufi mendicant by the name of Shah Hussain (d. 1599). Shah Hussain was smitten by a Hindu youth by the name of Madho.\textsuperscript{75} In this couplet Shaykh Muhammad Pir informs the Hussain’s followers who witnessed some of the love-play between Hussain and Madho to not consider such acts as sinful and defends their intimacy on the grounds of spiritual initiation into the Sufi path. The centrality of religious permissibility and ritual comes out even in this instance of what could be considered an eccentric spiritual act. This concern to know whether something is permitted is one of the central questions that confront many Muslims when they are affronted with a controversial or sensitive issue. They ask “what does Islam say about it?” What the questioner usually means is whether there is a justification for a particular action in the Shari‘ah or Islamic law.\textsuperscript{76} Given that both a homosexual identity and same-sex sexual conduct is before us, the motivation is how one can find a congruent fit between a sexual orientation and a faith that seemingly disavows same-sex sexual conduct. The consequence of this challenge results in a problematic relationship with important juridical principles in Islam

\textsuperscript{74} This couplet forms part of a longer poem titled \textit{Haqiqat al-Fuqara} (The Truth of those Impoverished by Love) detailing the life of a Punjabi poet by the name of Shah Hussain. (Translation by Scott Kugle in Scott Kugle, “Haqiqat al-Fuqara: Poetic Biography of “Madho Lal” Hussayn,” in \textit{Same-Sex Love in India}, eds. Ruth Vanita and Saleem Kidwai (New York: Palgrave, 2000), 150-151).

\textsuperscript{75} For a detailed account of Shah Hussain’s life and his relationship with Madho within the context of Sufism and sexuality see Scott Kugle, \textit{Sufis and Saints Bodies: Mysticism, Corporeality, and Sacred Power in Islam} (Chapel Hill: University of North Carolina Press, 2007), 181-220.

\textsuperscript{76} “For contemporary Muslims grappling with same-sex attractions, the key question is not: what have (some) Muslims done? but rather: what may Muslims do? or, even more generally: what does “Islam” allow?” (Ali, \textit{Sexual Ethics in Islam}, 80). This approach is not limited to enquiries about same-sex desires but is usually the approach of many Muslims to a host of issues they are confronted with.
including the claim that certain sexual conduct is permissible even though it is considered unlawful.

The first part of this chapter analyses the argument that attempts to justify and legitimise homosexuality and homosexual unions in terms of Islamic law. A discussion of the legal tools used and the assumptions made in this argument will be examined and the position of marriage in Islam will be briefly interrogated. The second section will set out some of the challenges of the human rights discourse which influences the struggle for homosexual rights and raise some question as to the efficacy of this strategy or mode of resistance and acceptance. The framework of human rights touches upon how sexual rights are articulated both legally and socially and whether sexual rights, or at least particular expressions of sexuality, are a human rights issue or a private and culturally dependent issue.

‘Yes, I do’ But to What?

Scott Siraj al-Haqq Kugle is the first scholar to comprehensively tackle the issue of same-sex sexuality from a serious and holistic religious perspective arguing that a homosexual orientation and Islamic faith are not mutually exclusive but compatible. Kugle identifies himself as a gay male Muslim convert and a scholar. He first set out a textual analysis of problematic verses of the Qur’an relating to the Prophet Lot contending that the traditional and majoritarian interpretation of such verses prohibiting same-sex sexual conduct are not in

77 While there may be a few others who have made limited arguments for the religious acceptance of homosexuality in Islam Kugle’s attempts have been the most comprehensive, coherent and detailed. His work is also becoming the primary foundation for queer Muslims to depend on in rereading and reinterpretting religious texts and doctrines. See, for example, Muhsin Hendricks, “Islamic Texts: A Source for Acceptance of Queer Individuals into Mainstream Muslim Society,” The Equal Rights Review 5 (2010): 31-50
accord with the spirit of Islam and the diversity of God’s creation and therefore untenable.

In an ensuing article Kugle expands his critique of the traditional view on same-sex sexuality by arguing for a different perspective that is inclusive of diversity in God’s creation and other noble attributes such as compassion and empathy. He also argues that a positive understanding of orientations and identities may provide an alternative way of understanding religious texts that could assist in constructing a same-sex positive approach to religion.

Subsequently to that Kugle authored a book in which he argues that “[w]hat matters is not the sex of the partner with whom one forms a partnership, as long as that partnership is contractual on par with legal custom. Rather, what matters is the ethical nature of the relationship one has within the constraints of one’s internal disposition, which includes sexual orientation and gender identity.” He further poses the seemingly rhetorical question “[b]ut why would God create passionate love between two persons who cannot find the legal means to consummate their love in a relationship?” and continues to set out an alternative comprehensive methodological legal argument justifying from the traditional sources (usul) not only that same-sex sexual conduct is not positively and categorically criminalised in Islam but that same-sex sexual attraction and conduct is permissible. The section of Kugle’s

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82 Kugle, Homosexuality in Islam, 189.

work that is of interest to the current project is his assessment of Fiqh (jurisprudence)\textsuperscript{84} with a view of reforming the Shari’ah (law).

Kugle’s argument hinges on three principal premises: (1) there is no *ijma*’ (consensus) on the issue of punishment for same-sex sexual conduct\textsuperscript{85}, (2) the medieval jurists approached the issue of same-sex sexuality through the prism of acts and not orientation (ibid 178), and (3) the effective cause (’illa) for the prohibition of same-sex sexual conduct has morphed and as such in light of the objectives of the law (*maqasid al-shari’ah*) and the benefit for human society (*maslahah*) the position on same-sex sexual conduct and desire should be one of accommodation.\textsuperscript{86}

The claim that there is no juridical consensus on the issue of punishment of same-sex sexuality is not contentious. A superficial reading of the legal literature on the subject sufficiently demonstrates that while there is juridical consensus (*ijma*’) on the criminalisation of same-sex sexual conduct (particularly *liwat* or male anal penetrative sexual intercourse) there is uncertainty in the corporeal punishment to be meted out to persons guilty of same-sex sexual conduct.\textsuperscript{87} However, Kugle attempts to circumvent this problem by resorting to the other two arguments.

\textsuperscript{84} *Usul al-Fiqh* is the legal theory by which the two primary scriptural sources, the Qur’an and *Sunna*, are extrapolated to new situations by means of *qiyas* (analogical reasoning) which in turn is provided with certainty by *ijma* (juridical consensus) (Daniel Brown, *A New Introduction to Islam*. Oxford: Blackwell. 2004) 124. ‘*Fiqh*’ refers to the positive law and technically means Islamic jurisprudence. Its literal meaning is ‘understanding’ or ‘knowledge’ (Ian Richard Netton, *A Popular Dictionary of Islam* (Richmond: Curzon, 1997), 83.

\textsuperscript{85} Kugle *Sexuality, Homosexuality in Islam* (Oxford: Oneworld 2010), 159

\textsuperscript{86} Kugle *Sexuality, Homosexuality in Islam*, 181-183

\textsuperscript{87} Khaled El-Rouayheb, *Before Homosexuality*, 118-128. Dror Ze’evi argues that during the latter part of Ottoman rule, the gravity of legal punishments associated with sexual acts, including same-sex sexual conduct, was lessened as compared to classical Islamic law. However, the requirements to satisfy an offence for a particular sexual were also made less burdensome (Dror Ze’evi, “Changes in Legal Sexual Discourses: Sex Crimes in the Ottoman Empire,” *Continuity and Change* 16 (2001):
In setting the framework for a homosexual friendly (or sexually-sensitive) *Fiqh*, Kugle imports the principles of the school of *maqasid* as an established methodological perspective in legal theory, first elucidated by Abu Hamid al-Ghazali (d. 1111) and later developed by Abu Ishaq al-Shatibi (d. 1388). The methodology of this approach predicated the *sine qua non* of the *maqasid* (objectives) of the law (*shariah*) on human reason. As such, although an action may be deemed permissible (*mubah*), recommended (*mustahab*), lawful (*halal*), objectionable (*makruh*), or unlawful (*haram*), its status can change according to the context in which it is considered and judged by human reason. Human reason is cloaked in the mantle of *ijtihad* (independent judicial reasoning) to provide it with a semblance of authority. This approach lacks the rigour of the traditional jurisprudential epistemological process where a scholar had to constantly refer to the cause (*sabab*), effective cause (*'illah*), intention.
(niyyah), objective (qasd), or to the wisdom (hikmah) mitigating or underpinning a command, permission, or prohibition (hukm).  

The maqasid methodology makes it essential to take into account the social and human environment and develop and interpret the law through reasoning, investigation and logical analysis. The human environment becomes a source of law and the pertinent question is whether the human environment has been given its important ranking in the priorities of Islamic jurisprudence that it is allegedly entitled to. In this regard, Fiqh is co-opted into the secular modern project as a liberal tool and transforms into a flexible, rational and arbitrary legal methodology that raises human reason to a pedestal higher than that of God's intention. The human condition, vis-à-vis, the human environment, becomes the primary source and precedent of legal development. The result is that God's intention necessarily has to accord with human reason and not vice versa. The move towards a maqasid approach to Fiqh has

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90 Tariq Ramadan, Radical Reform, 60. Ramadan calls this traditional jurisprudential epistemological process a “piecemeal” approach and suggests that the maqasid al-sharia develops a more holistic perspective on dealing with Fiqh. It is important, however, to note that the challenge of methodological rigour is common in most arguments for legal reform in Islam. In this regard, Kugle presents one of the better attempts – perhaps even more successful – than other similar efforts particularly relating to women’s marital rights. For an example of this see Azizah al-Hibri, “An Introduction to Muslim Women’s Rights” in Windows of Faith: Muslim Women Scholar-Activists in North America, ed. Gisela Webb (Syracuse: Syracuse University Press, 2000), 51-71; and Azizah al-Hibri, “Islam, Law, and Custom: Redefining Muslim Women’s Rights,” American University Journal of International Law and Policy, 12(1) (199): 1-44. For a critical analysis of Hibri’s arguments for marital reform in Islamic law see Kecia Ali, “Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Law,” in Progressive Muslims: On Justice, Gender, and Pluralism, ed. Omid Safi (Oxford: Oneworld, 2003), 163-189.

91 Ramadan, Radical Reform, 76.

92 My treatment of the maqasid al-shar’iah here only extends in so far as it relates to its usage by Kugle. The theory of maqasid is a complex area of Islamic legal theory or usul al-Fiqh and a comprehensive treatment of its various dimensions is beyond the scope of this project. The five traditional “objectives” which constitute the higher objectives of the law are protecting life, private property, mind, religion and offspring (Wael B. Hallaq, A History of Islamic Legal Theories, 112.) In order to highlight the prevalence of the maqasid in contemporary religious legal discussions it is interesting to note how it is utilised and expanded upon to include modern concepts such as freedom. At a seminar on the theme of “Islamic Legal Priorities” Shaykh Muhammad al-Ghazali said the following: “There need to be additions to the five essentials of the Law […]. The five essentials might serve as criteria for [ruling on] secondary issues which we face; however, in order to regulate the order of the state, there has to be a guarantee of freedoms.” Yusuf al-Qaradawi says in a similar vein:
been gaining momentum in the twentieth century with many scholars utilising its framework and tools, either explicitly or implicitly.\footnote{David Johnston, “A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl al-Fiqh,” \textit{Islamic Law and Society} 11(2) (2004): 233-282. Johnston states: “This essay examines one aspect of Muslim legal theory, uṣūl al-Fiqh (“the roots” or “foundations of jurisprudence”) in the twentieth century: the interplay between reason and revelation in the process of discovering and applying God's law to the changing conditions of modern society. My thesis is that mainstream Muslim reformers have tentatively embraced a paradigm shift, from the classical orthodox position (Ash‘arī) in which the human mind simply discovers the rulings (al-ahkām) of divine law and extends them to new cases on the basis of consensus (ijmāʿ) and analogical reasoning (qiyās), to a position in which reason, now empowered to discern right from wrong and to ferret out the ratio legis behind the divine injunctions - a distinctly Mu‘tazilī predilection - is granted the privilege and responsibility to make legal rulings according to the spirit of shari‘a (literally, its aims, or purposes, maqāṣid al-shari‘a).” (234)}

By attempting to establish a homosexual friendly religious jurisprudence, or a \textit{Fiqh} that is both authentic and caters for sexual realities, Kugle accepts the delineation of modernity’s conceptualisation of sexual identity. The effect of grounding sexual orientation as the bedrock for legal analysis results in stabilising the dynamism of sexuality. In this sense, the fluidity of the interrelations between sexuality and identity, of sexual acts and erotic relationships which is a characteristic of medieval jurisprudence and literature is solidified and bounded into a discourse about sexual identities and its associated sexual acts. By stabilising and “normalising” sexual relations in the mould of modern Western tastes as a loving relationship between two parties which is essentially monogamous, Kugle gentrifies sexual relationships to mirror modern and to some extent Western sensibilities. Parallel to the novel construction of sexuality is a gentrified liberal \textit{Fiqh} that serves as a religious sanction for both secular modernity and a definite sexual orientation and its accessory sexual acts as a regulated concrete lifestyle. The effective cause (‘illa) of forbidding same-sex sexual conduct

“I believe that there is a type of \textit{maqāṣid} which has not been given its due… where are freedom, equality and justice and of what value are they? This also calls for reconsideration.” The above excerpts are quoted in Gamal Eldin Attia, \textit{Towards Realization of the Higher Intents of Islamic Law: Maqāṣid al-Shari‘ah: A Functional Approach} (London: The International Institute of Islamic Thought, 2007), 83-84. For a broader analysis of the \textit{maqāṣid} approach and its history see Ahmad al-Raysuni, \textit{Imam al-Shatibi’s Theory of the Higher Objectives and Intents of Islamic Law} (London: The International Institute of Islamic Thought, 2005).
in the classical legal tradition was that it is analogous to unregulated or non-contractual opposite-sex sexual conduct which results in illegitimate children. However, “sexual intercourse between consenting adult homosexual Muslims is analogous to sexual acts that do not have the potential to create pregnancy and illegitimate children” and as such the sexual intercourse cannot be analogously compared (qiyas) to illicit heterosexual intercourse.\(^\text{94}\) As a result, the logical conclusion of this line of reasoning would unlock the doors of marriage (nikah) and temporary marriage (mut‘ah) to same-sex couples and this is proposed by Kugle as sufficient legitimisation of same-sex sexual intercourse. However, interestingly the issue of polygamy does not feature in Kugle's adapting of the heterosexual marriage for a strictly monogamous homosexual pairing. The effect of this acrobatic legal performance is the secularisation of the shari‘ah where the aim is no longer a supposed discovery of God's intention but a positive exertion to rationally work out certain rational and increasingly secular legal principles that is secondarily ascribed to God as an aside. This is not to suggest that the classical jurists did not grapple with discerning God's law or did not formulate legal pronouncements and principles to some degree on the basis of reason, evidence, and investigation. However, the disparity between the pre-modern and the modern in this regard seems to be located in the manner in which the investigative motive is articulated. Kugle is not alone in the enterprise of utilising Fiqh as a jurisprudential legitimisation process to accommodate the peculiar effects of modernity which results in interesting paradoxes.\(^\text{95}\)

\(^{94}\) Scott Kugle, *Homosexuality in Islam*. 183

\(^{95}\) Johnston states: “The maqasidi perspective points instinctively to a divine text contextualized by God for a seventh-century target audience. If the historicity of the Qur'an is acknowledged (by Fazlur Rahman and many since then), then Islamic legal theory, now irreversibly “purposive,” may perhaps develop a new, consistent methodology that responds to the needs of Muslims in their present context. Scholars such as Ebrahim Moosa, Mohammad Hashim Kamali, and Soualhi Younes have recently published articles illustrating this strategy. Each one observes that the specific rulings of the text (which were context-specific) will have to be revised in certain instances. Another scholar who illustrates a maqasidi strategy, amply quoting from traditional sources yet with a postmodern hermeneutical twist, is Khaled Abou El Fadl.” (David Johnston, “A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl al-Fiqh,” 280). See Ebrahim Moosa, “The Poetics and Politics,” *The Journal of Law and Religion* 15(1) (2000); Ebrahim Moosa, “The Dilemma of Human
Kecia Ali lucidly and eloquently poses some of the challenges that face any argument that seeks to legitimise legally and religiously same-sex desires, actions and unions. Marriage in Islamic law is firmly based on the position of gender differentiation and hierarchy. In the architecture that governs the legal expression of sexuality the possibility of same-sex partners indulging in lawful sexual acts or entering into a recognised and regulated relationship such as marriage is unimaginable. One of the conditions or pre-requisites of marriage is that a man marries a woman and no other. The legal fixation on certainty of genders and gender roles is well documented. Even in the case of the hermaphrodite, the law functions in such a manner as to determine the sexuality of the gender ambiguous person with certainty. Two further issues which Ali draws attention to is that firstly if one assumes that same-sex sexual desires are not innate and therefore not God-given then the only possibility is for a person to remain celibate if he or she is to not commit a sin and the opposite assumption of sexual desire as innate and God-given and therefore requires a legitimate form of expression results in a tenuous relationship with religious texts and doctrines. Secondly, the challenges facing same-sex marriages are connected to the same challenges facing the struggle for a more egalitarian regime that governs the relationship between heterosexual parties. In fact, some of these latter concerns, according to Ali, are “necessary precursors” to


96 Ali, Sexual Ethics in Islam, 75-96.
97 Ali, Sexual Ethics in Islam, 92-93.
any endeavour at reconfiguring the institution of marriage to be compatible with same-sex relationships.\(^{100}\) The question posed by Ali is a valid one: “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?” and whether an answer to this question can possibly lead to solving an otherwise “unpalatable” and “unacceptable” situation with two binary options: either remain sexually celibate or be a conscious sinner.\(^{101}\)

Ali’s erudition in detailing these important arguments and her exposition of the nuances of the legal tradition and the difficulty of attempting to co-opt it into a larger homosexual and sexuality sensitive agenda is both persuasive and valid. The question which Ali poses above has not been addressed in any comprehensive manner. Any potentially viable legal reformist approach to the issue of same-sex sexuality would need to take into account and respond to these challenges and concerns. Furthermore, I think two additional comments may be helpful in this regard when thinking about same-sex sexuality from a religious legal perspective: first, the connection between anal sex between men (\textit{liwat}) and male same-sex sexual conduct; and second, the link between gender inequality and sexuality and the connection between sexuality and gender.

The act of anal penetration is generally considered as sinful either between two men or between a man and a woman. The perpetration of the act warrants punishment in Islamic law especially if the parties are not married to each other. The act of anal penetrative sex between two men or \textit{liwat} is usually associated strongly with same-sex sexual behaviour.

\(^{100}\) Ali, \textit{Sexual Ethics in Islam}, 95.

\(^{101}\) Ali, \textit{Ali, Sexual Ethics in Islam}, 90.
among men. This is understandable given that the classical legal texts judged acts and not desires or orientations. In addition, the defamatory consequences attached to being considered as one who is penetrated anally also adds to the dimension of insult issued against parties involved in a particular sexual act in a particular manner. However, the truth is that same-sex sexual conduct can, and in reality does, include many other actions besides anal penetrative sex. The automatic association between the two—male same-sex sexual actions or even “homosexuality” and anal penetrative sex—is problematic and untrue. It is argued that one of the reasons, among others, that there is less legal condemnation associated with same-sex female relations is due to the inability of one woman to penetrate another. The absence of male anal penetrative sex within a same-sex relationship may alter the dynamic of

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102 This is not only the case in Islamic law. The history of civil criminal law in secular countries also associates the act of sodomy with male same-sex sexual conduct. In fact, while Islamic law is quite specific about the sexual act itself, these other laws tend to be much broader and include other sexual in addition to anal sex. For example, a Missouri law, the context of which according to Martha C. Nussbaum is directed at same-sex actors states “Deviate sexual intercourse means any act involving the genitals of one person and the mouth, tongue, or anus of another person, or a sexual act involving the penetration, however, slight, of the male or female sex organs by a finger, instrument, or object done for the purpose of arousing or gratifying the sexual desire of any person. (quoted in Martha C. Nussbaum, From Disgust to Humanity: Sexual Orientation & Constitutional Law (Oxford, Oxford University Press, 2010), 62.) In South African, section 20A of the Sexual Offences Ac No. 32 of 1957, stated: (1) A male person who commits with another male person at a party any act which is calculated to stimulate sexual passion or to give sexual gratification, shall be guilty of an offence. (2) For the purposes of subsection (1) ‘a party’ means any occasion where more than two persons are present. For a discussion on same-sex sexual conduct in South Africa see Marc Epprecht, “‘Unnatural Vice’ in South Africa: The 1907 Commission of Enquiry,” The International Journal of African Historical Studies 34(1) (2001): 121-140. The above section of the act has been repealed and sodomy and other same-sex sexual acts were decriminalised by the Constitutional Court of South in 1998 (National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6 (CC); 1998 (12) BCLR 1517 (CC)) and in 2004 the Constitutional Court declared the Marriage Act No. 25 of 1961 as unconstitutional for excluding same-sex partners from its ambit (Minister of Home Affairs and Another v Fourie and Another (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC)).

103 Aleardo Zanghellini, “Neither Homophobic Nor (Hetero) Sexually Pure: Contextualizing Islam’s Objections to Same-Sex Sexuality,” in Habib, ed., Islam and Homosexuality, 277-287.

104 The problematic association of anal sex with male same-sex sexual conduct is also a feature of Jewish law. Rabbi Steven Greenberg argues that if the prohibition extends to anal sex only, then there are numerous other sexual acts which homosexual men can engage in. See Rabbi Steven Greenberg, Wrestling with God and Men: Homosexuality in the Jewish Tradition (Madison: University of Wisconsin Press, 2004), 84-85, 179-180, and 245-246. For a an analysis of anal sex in relation to heterosexual sexual conduct in Muslim and Jewish religious texts see Ze’ev Maghen, After Hardship Cometh Ease: The Jews as Backdrop for Muslim Moderation (Berlin: Walter de Gruyter, 2006), 161-209.

105 Ali, Sexual Ethics in Islam, 80.
how the relationship is considered.\textsuperscript{106} Perhaps a reconsideration of male same-sex sexuality simply as analogous to anal penetrative sex could yield a discussion or environment that is less scornful even if it may not be completely accepting. In this regard, it would be interesting to see what changes, if any, could come about in the legal and wider religious discourse by divorcing the issue and question of anal penetrative sex from the wider gamut of same-sex sexual conduct.

The concept of marriage in Islamic law is based on dominion, control and gender differentiation.\textsuperscript{107} These key components are not considered by Kugle in any depth in his reconfiguration of the marital bond for a monogamous homosexual union. The concepts of gender and sexual equality and mutual rights are foreign to traditional Islamic legal discourse in respect of sexuality and there is a general absence of notions of consent and mutuality. The notion of rights and equality are fairly new innovations in how marriage is thought about by Muslims.\textsuperscript{108} Ziba Mir-Hosseini provides a succinct explanation of the marriage bond:

\textsuperscript{106} El-Rouayheb tackles the issue of sodomy from a legal perspective in his work on male same-sex sexuality in the pre-modern Ottoman period (El-Rouayheb, Before Homosexuality, 111-151). El-Rouayheb argues that the legal proscription relating to anal sex among men was the prohibition of a particular act. The pre-modern and classical jurists compared anal penetrative sex between men to illegal vaginal intercourse between a man and a woman and not “homosexuality” and “heterosexuality”. While the jurists differed on which prohibited sexual act was worse, they were in agreement on the prohibition of both (El-Rouayheb, Before Homosexuality, 126-127). The significant point in El-Rouayheb’s work is that anal penetrative sex between men is not wholly constitutive of male same-sex desire and sexuality. Sexual intimacy and desire can exist without the presence of penetrative sex.

\textsuperscript{107} Ali demonstrates the various unequal and patriarchal aspects of the law governing sexual relationships and marriage (Ali, Sexual Ethics in Islam). Ali also analyses how the institutions of marriage and concubinage in early Islam were similarly constructed using the same concepts of ownership and dominion. A husband is to his wife as a master is to his slave (Kecia Ali, Marriage and Slavery in Early Islam (Cambridge: Harvard University Press, 2010)).

In classical Fiqh texts marriage is not a sacrament, but a civil contract to render sex between a man and a woman licit; sex outside this contract constitutes zina, which is defined as a crime subject to punishment. The contract is called ‘aqd al-nikah (‘contract of coitus’) and is patterned after the contract of sale, which served as the model for most contracts...The contract places a wife under her husband’s qiwama, a mixture of dominion and protection, and produces a set of fixed rights and obligations for each party, some supported by legal force, others by moral sanction.  

Al-Ghazali summarises the marriage contract as follows:

It is enough to say that marriage is a kind of slavery, for a wife is a slave to her husband, she owes her husband absolute obedience in whatever he may demand of her, where she herself is concerned, as long as no sin is involved.

This conceptualisation of marriage governs the relationship between men and women in Islamic law. During the colonial period the patriarchal, sexist and heteronormative notions that governed women and marriage in Islamic law were further entrenched. Since law was now transformed into a singular legal code that had the force of the state apparatus behind its execution, the establishment of a fossilised law became rooted.

Mir-Hosseini argues that women were thought of primarily in terms of sexual beings in the religious legal texts and more recently Islamic feminist thinkers have managed to subvert this perspective by considering women’s social experience and thereby severing the link between gender inequality and sexuality. However, to start thinking of same-sex marriages as a plausible option, not only the link between inequality and sexuality requires severing but also the connection between gender and sexuality. Sexuality needs to be liberated from gender. For as long as gender remains an important component in how

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111 Mir-Hosseini, “Sexuality and Inequality,” 133.
112 Mir-Hosseini, “Sexuality and Inequality,” 141-143.
relationships are managed and regulated in terms of Islamic law, ethics and morality, the real possibility of a Muslim same-sex marriage being accepted or even grudgingly tolerated by the wider community is improbable. Deemphasising the relationship between gender and sexuality and also ensuring the equality and increasing the agency of parties in a sexual relationship are difficult tasks.¹¹³

Is Sex a Right? Prejudice, Democracy and Human Rights

Kugle recognises the impact of modernity as a positive force in that secular modernity provides Muslims with the opportunity to liberate their sexual selves from the fetters of religious dogmatism and patriarchy.¹¹⁴ Kugle seems to think that modernisation and democratisation will create a space for homosexual Muslims within its structures of sexual power and gender and sexual categorisation. “In secular democracies”, Kugle writes, “the context is one in which same-sex intercourse is not a crime, in which homosexuality is not defined as a mental illness by health professionals, and in which same-sex couples have the same legal rights as heterosexual couples to partnership or even marriage. In this context, it is in the interest of justice and welfare of Muslims for Muslims to stop viewing homosexual members of their community as sinners and to cease viewing consensual homosexual

¹¹³ Although slightly removed from discussions among Muslims, the following critique of marriage and sexuality by Marvin M. Ellison, from a Christian perspective, is informative, enlightening and perhaps applicable to any rethinking of sexuality in Islam: “This point cannot be overemphasized: although the exclusion of same-sex couples from marriage is an injustice that needs correction, the trouble with marriage does not lie primarily in this exclusion. The problem lies in marriage itself or, more precisely, in the institutionalizing of compulsory heterosexuality. Therefore, the larger problematic is how a religious tradition has fostered fear of sexuality, legitimated male control of women’s lives, and promulgated compulsory (patriarchal) marriage in response, thereby causing great damage, first, by reinforcing gender oppression and placing women tightly under male authority and control; second, by making alternatives to sexist and heterosexist relationships seem unimaginable; and, third, by decolonizing sexual nonconformists as moral deviants and “enemies of God” whose bodies and lives could then be excoriated with impunity. (Marvin M. Ellison, Making Love Just: Sexual Ethics for Perplexing Times (Minneapolis: Fortress Press, 2012), 67.

¹¹⁴ Kugle, Homosexuality in Islam, 233.
intercourse as criminal.” By “welfare of the Muslims,” Kugle means *maslahah* (benefit of the public) as a legal maxim by which something may be judged as permissible or not in jurisprudence so as to avoid harm (*mafsadah*). The benefit of revising the traditional view on same-sex sexual conduct or homosexuals and accommodating homosexuality is to erase the friction that may or often arises between Muslims and their non-Muslim counterparts in a secular constitutional democracy on the issue of homosexuality and this has the added benefit of promoting “integration and greater cooperation on meaningful issues of political, social, and ethical importance to society as a whole” and would lessen the extent of the harm caused to gay and lesbian Muslims. In this regard, *maslahah* is viewed as the benefit that can accrue from the reading of a secular liberal constitution or other laws and not necessarily the Qur’an and *Sunnah* together with the positive religious law (*Fiqh*). This necessitates the question of whether the *grundnorm* for Muslim minorities in secular liberal constitutional democracies is secular law and not the corpus of religious law and ethics (*shari’ah*). While in secular liberal constitutional democracies the *shari’ah* may still function as the symbolic source of all social law (it may continue to remain the concrete source for religious ritual action (*`ibadah*)) the outcome of an investigation of an issue on the basis of the *maqasid al-sharia* may depend on the constitution of the secular state. In considering a new effective cause (*`illa*) Kugle ventures so far as to consider the social and political reality in which homosexuals are protected and provided with the same rights as their heterosexual counterparts as a factor to be considered. Kugle’s attempt at fostering a positive way forward by utilising a rights based approach has its advantages particularly in Western contexts. However, the project of reinterpreting the religious tradition with the aim of

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118 It is important to note that while Islamic law is not binding and has no state authority in this context (Muslims living in Western societies), it continues to be used as a source of legitimisation for many Muslims in respect of how they conduct and manage their lives.
rediscovering or emphasising certain ideals which are conducive to a liberal and contemporary context is a double-edged sword.\(^\text{120}\) The enunciation of a subversive opinion and position which is based on the foundation of both a problematic and medieval religious intellectual tradition and a modern structure of individual rights, freedoms and identities is precarious and somewhat incoherent and may potentially not yield the results one had forecasted.

It is clear that Kugle’s primary audience are Muslims living in Western secular liberal democracies. In this sense, he may escape Massad’s criticism of exporting Western constructs of sexuality into the Arab-Muslim world thereby engendering a sexual imperialism that endangers the very people it seeks to protect by implanting an alien sexual ontology. Kugle makes a brave demand for Muslims to confront the issue of bias towards homosexuality and same-sex sexual conduct in religious ethics and law and also makes a concerted effort at engaging with the classical Islamic intellectual tradition intent on discovering that surely God cannot prejudice against people who are sexually attracted to their same sex. How effective his plea and effort will be cannot be speculated on at this stage. However, what is problematic is that this is acquired through an admission that the secular modern project is both ethical and just. Kugle does not question the legitimacy of the concept of a solid and stable sexual orientation or the existence of homophobia in secular liberal democracies or perhaps any potential or actual dilemmas in articulating an Islamic homosexual discourse that is so heavily intertwined with secularism, modernity, human rights as an existential reality, and democratisation. The construction of a right on the basis of sex and sexual object-choice is

\(^{120}\) Sa’diyya Shaikh sums up some of the problems of a rights based approach in respect of Islamic feminism but the critique is appropriate in this context as well. She states that a “pure rights-based approach is limited by the fact that it often deals with the symptoms of inherited structures of patriarchal discourse without necessarily or rigorously interrogating the nature, roots, and assumptions of the structures—in other words, the causal factors informing such structures.” (Sa’diyya Shaikh, *Sufi Narratives of Intimacy: Ibn ’Arabi, Gender, and Sexuality* (Chapel Hill: University of North Carolina Press, 2012), 223.)
not universally accepted. In many Muslim societies, the notion of homosexual rights does not configure as a component of a rights structure that calls for greater freedoms and equality.\(^{121}\) This is not to suggest that the absence of sexual rights from the human rights agenda in Muslim societies should remain unchallenged. While it may not be on the top of the agenda of many Muslim majority societies, the problematic practices and state laws relating to gender, sex, and sexuality do require serious attention.\(^{122}\) However, the importance of the family institution, the pressure to enter into a marriage and the stigma associated with a visible sexual life that departs from the tradition heteronormative model needs to also be sensitively addressed in any discourse on sexual rights in Muslim societies. The notion of an essentialist sexual orientation and disposition is on the rise in Muslim societies with the associated sexual struggles of queer people and the conservative backlash against the intrusion of such sexual constructs\(^{123}\) and while the introduction of stable and solid identities

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\(^{121}\) According to Abdullah al-Ahsann “[o]ne may obviously find a significant difference on the issue of the extent of individual’s freedom of choice. While the UDHR [Universal Declaration of Human Rights] stands for absolute freedom of individual choice, the Qur’an advocates certain fundamental values. Islamic shari‘ah, for example, doesn’t permit enacting laws to allow sexual relations outside the institution of marriage, or allow marriage between two members of the same sex. The HRW [Human Rights Watch] also reports every year about discrimination in Muslim countries on these issues, yet any observer of political developments in Muslim countries would agree that these are not fundamental problems of human rights violations in Muslim countries. This is because the demands for gay rights and the right of consensual sex outside of marriage are not popular demands in Muslim countries. The main predicament related to the issue of human rights in Muslim countries, like many other countries in the world, is individual freedom of speech and political opinion.” (Abdullah al-Ahsann, “Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC’s Cairo Declaration of Human Rights,” *Journal of Law & Religion* XXIV (2009): 570. For a discussion and an analysis of human rights in Islam, particularly a comparison between human rights in international law and in the Muslim world including the Cairo Declaration see Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder: Westview Press, 2007).

\(^{122}\) It is pertinent to note that the issue of homosexuality and same-sex sexuality has a long tradition of revulsion and prejudice in the West. In liberal democracies, particularly constitutional democracies, the path to removing the various legal censures on same-sex sexual conduct and homosexual identities has been a long road which has managed to decriminalise sodomy and same-sex sexuality and broaden the framework of rights available to people but the struggle for equality still continues. See, for example, Nussbaum, *From Disgust to Humanity*.

may come as a relief and confirmation for those Muslims who desire to live a visible and exclusive homosexual life it may also at the same time destabilise the fluid sexual matrix which many men in these societies inhabit and may place them in a dilemma of either forsaking their traditional role as a member of a family and community or diminishing that part of their sexuality which is now defined by identity politics.\textsuperscript{124}

Kugle’s project also seems to be vulnerable to the same critiques levelled against liberal feminism by radical feminists, Marxist feminists and critical race feminists. By concentrating on the plight of homosexuals in predominantly secular liberal democracies from a formal standpoint of equality, the marginalised voices of those who are attracted to the same-sex or indulge in same-sex sexuality and concomitantly suffer with the consequences of colonialism, imperialism, racism and global capitalism are ignored. The relationship between homophobia and empire, between sexual prejudice and structures of power and inequality is unattended to.

While there is a need to transform the existing Islamic environment to be more tolerant of same-sex sexual desire and homosexual relationships, this need is not necessarily met by legislating positive law recognising the viability of same-sex desire and sexual relationships through the prism of a liberal political and social project. This project inherently has a parochial and paternalistic tendency to civilise unfamiliar ways of knowing and

\textsuperscript{124} Massad articulates the problem as follows: [M]en who are considered the “passive” or “receptive” parties in male-male sexual contacts are forced to have one object choice and identify as homosexual or gay, just as men who are the “active” partners are also forced to limit their sexual aim to one object choice, either women or men. As most “active” partners see themselves as part of a societal norm, so heterosexuality becomes compulsory given that the alternative, as presented by the Gay International, means becoming marked outside the norm—with all the attendant risks and disadvantages of such a marking (Massad, \textit{Desiring Arabs}, 188). Max Kramer sees some validity in this critique of gay and lesbian liberation in Muslim societies which is rooted in a rights-based approach (Max Kramer, “Sexual Orientation,” 154).
experiencing. Western feminists, and some Muslim feminists, have been culpable of approaching the subject of gender equality and women’s rights from this vantage point without due consideration of the internal socio-economic, political, religious and cultural workings of Muslim societies, both in minority contexts and in Muslim majority countries.

The critique Shaikh offers regarding some feminists in this respect is applicable here to the issue of some LGBTQ activists, academics and organisations that address the subject of same-sex sexuality in Muslim societies:

Western feminists who claim to be generally cognizant of questions of diversity persist in making sweeping claims about Muslim women or Islam without engaging the necessary levels of complexity and specificity. This type of reductionism is not unrelated to an increasing presence of Islamophobia globally. Such Western discourses on Muslim women are also often predicated on unquestioned cultural, social, and political assumptions that do not allow for the engagement of specific Muslim societies on their own terms.

The possibility that some people who have same-sex sexual desires and indulge in same-sex sexual conduct in Muslim societies do not identify as gay or homosexual socially and who also do not consider themselves as sinners that need to be punished by the State or

125 Uday Mehta, Liberalism and Empire: A Study in Nineteenth Century British Liberal Thought (Chicago: University of Chicago Press, 1999) 201. Uday Mehta argues that thinkers within the liberal political ethos managed to endorse the venture of Empire and imperialism because inherent in liberal thought is the notion that experiences of the unfamiliar need to be contained, subsumed and improved in light of the values of the liberal Empire. Sabah Mahmood endorses this view in respect of analysing the unfamiliar, particularly in regard to her fieldwork as a feminist among Muslim women in Egypt: “A similar orientation is also operative, I believe, in our feminist certainty that women’s sensibilities and attachments, particularly those that seem so paradoxically inimical to what we take to be their own interests, must be refashioned for their own well-being. Personally, it was this certainty that came to dissolve before my eyes as I became enmeshed within the thick texture of the lives of the mosque participants, women whose practices I had found objectionable…I had approached the study of this movement with a sense of foreknowledge of what I was going to encounter, of how I was going to explain the women’s ‘intransigent behavior’ in regard to the ideals of freedom, equality, and autonomy that I myself held so dear. Over time, I found these ideals could no longer serve as arbiters of the lives I was studying because the sentiments, commitments, and sensibilities that ground these women’s existence could not be contained within the stringent moulds of these ideals…My prejudices against their forms of life (or, for that matter, theirs against mine) could not be reconciled and assimilated within ‘a cosmopolitan horizon’.” (Saba Mahmood, Politics of Piety: The Islamic Revival and the Feminist Subject (Princeton: Princeton University Press, 2005) 198.

126 Shaikh, Sufi Narratives of Intimacy, 22.
by God in the afterlife should not be discarded. This binary of positions does not reflect the more complicated reality. The media attention devoted to a few incidents of punishment or prejudice related to executions or terms of imprisonment relating to same-sex sexuality fails to acknowledge the more complex nature of sexuality and its treatment in Muslim societies.  

In addition, the stereotypical view of Islamic law as an oppressive instrument; the primary purpose of which is to subjugate a population, particularly women and homosexuals, adds to the biased picture created around Muslim societies, the operation of diverse legal systems and human rights.

The reification of the tools of liberalism—liberty, equality, fraternity and autonomy—as the only worthy moral framework in which liberation and progress can be executed has the potential of demeaning and further marginalising the lived realities of some queer Muslims whose relationship with traditional Islam and/or their choice to maintain closeted sexual lives is both important and essential. Furthermore, to establish and endorse a concrete way of entering and maintaining same-sex sexual relations via religious law curtails the religious person’s sexual conduct. It legitimises by restricting the sociality of the body, or the sexual queer self.

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129 Judith Butler similarly argues that “no doubt, marriage and same-sex domestic partnerships should certainly be available as options, but to install either as a model for sexual legitimacy is precisely to constraint the sociality of the body in acceptable ways.” (Judith Butler, Undoing Gender (New York: Routledge, 2004), 26). In respect of the human rights versus cultural rights debate, Max Kramer (154) crisply sums up the value in not adopting a particular human rights based approach to same-sex sexuality in the Muslim societies: “The discussions that oppose human rights in favor of cultural rights should open the door to a reciprocal influence in terms of circulation and translation, one that presently does not exist at all in the economy of sexuality and social identity. As long as the majority of international gay organizations spread throughout the world an essentialist view of same-sex sexuality, confined within its historical chronotope, the debate about the biological model or the social construction of same-sex sexuality must be spatiotemporally reorientated during its vacation (or its incursions) in the Muslim world. As much as the Muslim handling of same-sex sexuality calls for an uncompromising critique, it has, at least, the advantage of offering a different perspective from that of
Chapter 3

The Normal and Abnormal: Treading a Just Sexual Path in a Postcolonial Context

Papa: This damn country [Britain] has done us in. That’s why I’m like this. We should be there. Home [Pakistan].

Nasser: But that country’s been sodomised by religion. It’s beginning to interfere with the making of money. Compared with everywhere [...]; it’s a little heaven, here.

-Hanif Kureishi (My Beautiful Laundrette)\textsuperscript{130}

Hanif Kureishi’s screenplay, My Beautiful Laundrette, is about a gay romance between Omar, a young British-born Muslim man of Pakistani descent, and Johnny, a young working-class British lad. Together they open a laundrette and conduct a passionate sexual relationship. The screenplay is set in Margaret Thatcher’s Britain during the 1980s and addresses many issues that resonate with immigrants from previous colonies. While Omar’s family is not particularly religious they try hard to adopt the lifestyle and new freedoms which their adoptive country offers them. However, regardless of how much effort is employed they still tend to feel out of place; a diasporic community not fully accepted by the country of their previous colonial master. During the same period General Muhammad Zia-ul-Haq (d. 1988) was spearheading a conservative political Islamisation project in Pakistan.

The dialogue above captures the predicament of the colonial immigrant: Yearning for an imagined homeland and also seduced by the attractions of the new liberal Western location that refuses to completely accept you as part of the club.

The image of sodomy as a violent act which defiles one’s integrity and destroys that which is good is a powerful metaphor in the context of Omar’s and Johnny’s sodomist lovemaking. Religion is queered and regarded as the disruptor of capitalist and material Western minority thinking, which makes all homoerotic cultures dependent on gay identity.” (Max Kramer, “Sexual Orientation,” 154).

\textsuperscript{130} Hanif Kureishi, My Beautiful Laundrette (London: Faber and Faber, 2001).
progress and freedom. In the same way, Omar’s and Johnny’s intimacies violently disrupt sexual, racial, religious and class boundaries. These social, political and economic realities and the queer subject are interconnected and implicate the politics of desire and liberation.

This chapter will focus on the nexus between sexual diversity, secularism and empire as sites of contestation and collaboration that continue to influence articulations and constructions of how to be Muslim and be also part of a sexual minority. The purpose is not to provide a comprehensive or exhaustive examination of the issues at hand but rather, I hope, to demonstrate some of the challenges facing contemporary sexual ethics and its relationship to power as well as initiate some pertinent questions in considering the colonial and postcolonial legacies of our current sexual economy.

The first part of this chapter is an attempt to think through the framework within which sexual diversity was constructed during the colonial period. The purpose is to demonstrate the tangible ways in which the colonial encounter influenced the modern construction of sexuality in Muslim societies and perhaps also initiated the trajectory that led to the formation of sexual identities and correlated prejudices such as homophobia. The second part will deal with how a gay rights agenda has the potential to be utilised as a tool of empire and imperialism and other exclusionary and prejudicial discourses that have as its purpose the marginalisation of the ‘Other’, including the Muslim subject.

Good or Bad Sex: Colonialism, Modernity, Religion and Sex

Ahmed Ali’s classic novel *Twilight in Delhi* is a nostalgic tale set in nineteenth century Delhi between two revolutionary moments: subsequent to the collapse of the last
Mughal emperor, Bahadur Shah Zafar (d. 1862), and prior to the rise of the independence movement which culminated in the violent partition of the Indo-Pak subcontinent. In the novel, Ali depicts a scene after the early morning prayers on the day of Eid at the Jama Masjid in Old Delhi. He says:

When the prayer ended they all began to embrace, falling on each other’s necks, pressing the chests together warmly. All those who knew one another went through this show and expression of affection. And the lovers found the opportunity of their lives. A middle-aged man quoted these lines to a young man with arms open for an embrace:

‘It is the day of Eed, my dear,
Ah come, let me embrace thee.
It is the custom and besides
There’s time and opportunity…”

Ali, in his novel, depicts most movingly and melancholically the loss of a culture and way of life in the city of Delhi that was altered with the culmination of the Rebellion of 1857. This moment is presented as a vestige of a pre-modern cultural Indo-Islamic milieu that was in the process of a traumatic disruption at the hands of colonialism. The above incident, although of a literary nature, demonstrates that a context and environment for the expression of same-sex attraction and love existed in Muslim societies. In this respect, there seems to be two distinct issues which are discussed in relation to Muslim societies: (1) the existence, culture and toleration of homoeroticism in Muslim cultures; and (2) the religious prohibition of same-sex desire and sexual conduct and its impact on the agency and freedom of people who experience such desires and/or act upon such desires.

The argument that alleges that the failure of Muslims and/or Islam to deal adequately and progressively with homosexuality compared to other faiths, particularly Christianity and

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Judaism, is due to its failure to come to terms with secularism, the acceptance of difference and the adoption of values expounded by a liberal ethos fails to consider seriously whether the pre-modern attitude towards sexuality, has anything to offer our current engagement with such issues. Secularism is made normative by centralising it as the core of modern society: Talal Asad articulates the normative secular thesis as “in order for a society to be modern it has to be secular and for it to be secular it has to relegate religion to non-political spaces because that arrangement is essential to modern society.” In this sense, secularism is simply not the cultivation of a space emancipated from the fetters of religion but also a mechanism which regulates the use and normative face of religious discourse and practice. Some Muslim academics argue for a positive acceptance of such a secular framework suggesting that Islamic jurisprudence should be sufficiently malleable to cater for liberal Western democratic contingencies that affect sexual minorities and should be considered within a wider framework of universal human rights. Integral to these claims is the notion that ‘mainstream’ Islam requires a reformation that will assist both Muslims and institutions of the faith to come to terms and accept the legitimacy of sexual diversity.

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137 Kugle, *Homosexuality in Islam*, 3, 185, 188.

138 Habib, *Islam and Homosexuality*, xxii

The secular project together with its earlier precursor, modernity, inflicted a severe trauma on pre-modern Muslim societies. The civilising mission of colonial powers sought to reconstruct a Muslim subject that was both acquiescent to the colonial order as well as one that imbibed the mores and moral sensibilities of his or her European overlord. British colonialism in the Indian subcontinent imposed an assault on homoerotic poetry and the homosocial culture of Muslim India which was also prevalent in many other Muslim contexts. During the nineteenth century, the same period Ali’s novel is set in, modern homophobia developed in colonial India and was cultivated by an array of mechanisms including laws, educational policies, and rewriting the indigenous literature, particularly Persian-Urdu poetry. This is not to suggest that there did not exist any discrimination or societal disapproval of same-sex desire and sexual conduct in pre-modern India under Muslim rule, but what seems evident is that a homophobia that was somewhat marginalised and perhaps not very effective in pre-colonial India became dominant particularly among the educated and urban classes who were integrated into the colonial administration. This development was a result of a European puritanism and in this instance it was the ethical code of Victorian England that provided the political and moral compass for instituting a dominant heteronormative social environment. Some Hindu and Muslim subjects of the colonial order attempted to rewrite their literary legacy. One such zealous reformer was Muhammad Husain Azad (d. 1910) who attempted to cleanse Urdu poetry of its homoerotic themes of male same-

140 “The term India as we know today was coined very recently in 1947 with the creation of Pakistan and India as separate nations… despite the fact that political and global powers define barriers of geography. Pakistan, India and Bangladesh have had a shared culture for an extended period of history…The term ‘South Asia’ is fraught with problems and covers a larger area which includes Sri Lanka, Nepal, Bhutan and Maldives.” (Rohit K Dasgupta, “Queer Sexuality: A Cultural Narrative of India’s Historical Archive,” Rupkatha Journal on Interdisciplinary Studies in Humanities 3(4) (2011): 652.

sex love and desire. The discomfort that the literary legacy and pre-modern social and sexual customs evoked during the colonial period is evident from the literature of the time. In a short story by Pandey Bechan Sharma (d. 1967), a young Hindu man disapproves of his friend’s new love interest who is another younger man. In showing his disapproval of this relationship, he says: “[He] is disgraced on all sides. Everyone says that the shadow of Muslim poets has fallen on this [Hindu]. The idiot ignores his own culture and pure religion and runs about after ‘idols’.” It is interesting that the disapproving character inverts the classical polemical Muslim slur against Hindus’ as idolaters or *buthparast*. Here, the Muslim male becomes the idolater for being beguiled and captivated by male beauty and the Hindu faith is reimagined as a pure religion that has no place for such depraved idolatrous behaviour.

More recently, in 2001, members of two NGO’s in the northern Indian city of Lucknow, who were involved in sexual health initiatives and HIV & AIDS awareness programmes for men who have sex with men were arrested after a complaint that the organisations and its members were involved in “running a gay club racket”. There was an attempt to link one of the accused, a Muslim, with the Pakistani Intelligence and militant groups operating in Kashmir. More intriguing were the sentiments of the police officers towards the Muslim accused who said that “he was trying to destroy [India] by promoting homosexuality” and that “Hindus don’t have these practices – these are all perversions of the Muslims.”

144 The Bharosa Trust and the Naz Foundation International.
Anjali Arondekar examines sexuality in the colonial record by analysing anthropological literature, legal documents and cases, literary material and pornography in pre-partition India during the period 1843 to 1920. In doing so, she places sexuality at the core of her project in reading colonial material. The conclusion Aronderkar comes to is that colonialism and its attendant institutions, such as the introduction of a laws criminalising certain sexual acts including sodomy, and colonial knowledge production processes influenced how the colonised think about and express their sexuality.

In this regard, one should be careful of romanticising the pre-colonial era. Nonetheless, there is a difference between the homophobia before colonialism and after colonialism besides the proposition that pre-colonial disapproval of same-sex desire and sexual conduct was less invasive than its modern counterpart. This is best formulated by Walter Andrews and Mehmet Kalpakli in their work on love poetry in the early modern Ottoman period. There is a difference between thinking “My body, like everyone else’s, is urging me to do things that my society, and perhaps my God, forbids”, and thinking, “My mind and body is subject to desires that expert knowledge tells me normal, mentally healthy people do not have.” Premodern social and religious thinking was more like the former and modern thinking more like the latter. The current discourse on sexual diversity during the

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147 Arondekar interestingly notes the extensive impact of colonialism on contemporary sexual politics in India. For example, during the recent fight to have the colonial sodomy laws repealed, activists and lawyers argued, based colonial records and writings, that there existed a positive indigenous Hindu attitude to same-sex sexual conduct in pre-colonial India. She says that in order for sodomy to be recognisable, “it must be corroborated, its form sedimented in a history of recall that neither the witnesses nor the evidence can sustain. We must know and not know the colonial record, not once, but twice. Such a reading radicalizes our understanding of the historical turn by recording the “cognitive failure” at the heart of both our past and present readerly attempts and by making the distinction between success and failure indeterminate. To archive such an account is to record a different history of sexuality.” (Anjali Arondekar, *For the Record*, 178-179).

148 Walter Andrews and Mehmet Kalpakli, *Age of Beloveds*, 15. It is also imperative to be aware that same-sex desire in pre-colonial Muslim societies was not without its difficulties and hierarchies.
pre-colonial period and the prevalent and official Muslim perspective now demonstrates this difference in outlook in that the contemporary religious approach seems to depart from the pre-modern position and adopt the sensibilities of present notions of sexual identity, stable sexuality, and sexual pathology.¹⁴⁹ The colonial legacy has certainly influenced the Muslim religious position but that is for another discussion.

It is important to also be aware of the orientalist and colonial discourse that was constructed around apparent eastern sexual laxity. Joseph Boone in his essay “Vacation Cruises; or the Homoerotics of Orientalism” documents the sexual politics which governed and obfuscates masculine European travels to the Near and Middle East. Drawing on travelogues and Western male narratives, Boone says, “[i]n those narratives where the occidental traveller, by virtue of his homosexuality, is *already* the other, we have seen how the presumed equivalence of Eastern homosexuality and occidental personal liberation may disguise the spectre of colonial privilege and exploitation encoded in the hierarchy of white man/brown boy.”¹⁵⁰ This form of romantic orientalism was quite pervasive and is also evident in the works and attitude of Foucault. Foucault saw a link between ancient Greek homosexuality and to male same-sex sexual conduct in North Africa and the Muslim world. In this sense he equated pre-modern Hellenism with modern Muslim societies. His travels to Tunisia where he indulged in the services of young Arab men and sexual partners in both the French tourist colonies and the Arab community informed his opinion of Muslim society as a tolerant haven of homosexuality and the expression of same-sex desire. Foucault did not seem to recognise the insidiousness of the sexual tourism culture which had long been a

¹⁴⁹ This aspect is discussed in more detail in Chapter 1 and Chapter 2.
hallmark of colonial domination and European travel in the Muslim world. In fact, in response to gender segregation and discrimination at a political march populated by people of Middle East descent, Foucault justified such actions in light of a positive homosociality and homoeroticism or the “subtle mixture of friendship and sensuality [and] sexuality.” It is obvious that Foucault constructed an orientalist vision of a sexually permissive orient from a Eurocentric vantage point. This construction cracked subsequent to the Iranian revolution when the Islamic government criminalised homosexuality and imprisoned and executed many who did not fit within its strict heterosexual sexual code.\footref{Janet Afary and Kevin B. Anderson, \textit{Foucault and the Iranian Revolution: Gender and the Seductions of Islamism} (Chicago: Chicago University Press, 2005), 138-144.} 

Fitting-In or Speaking Out: Post-colonialism, Empire, Homophobia and Liberation

While Islam may perhaps be a part of the apparatus of perpetuating homophobia, the presence of homophobia does not transpire in isolation. A politicised homophobia usually infuses emotion, sexuality and political violence.\footref{Tom Boellstroff, “The Emergence of Political Homophobia in Indonesia,” in \textit{Homophobias: Lust and Loathing across Time and Space}, ed., David Murray (Durham: Duke University Press, 2009), 127.} Homophobia is a socially produced form of discrimination located within relations of inequality and therefore is intimately intertwined with other forms of discrimination such as racism, sexism and political and cultural Western hegemony. The benevolence towards sexual minorities in the West along the lines of liberal discourses on multiculturalism and diversity is closely aligned to issues of controlled normalisation of relationships (same-sex marriages) and a malignant politics of “recognition and incorporation”, which is dependent on “ever-narrowing parameters of white racial privilege, consumption capabilities, gender and kinship normativity, and bodily integrity.”\footref{Jasbir Puar, \textit{Terrorist Assemblages}, xii.}

\footref{Janet Afary and Kevin B. Anderson, \textit{Foucault and the Iranian Revolution: Gender and the Seductions of Islamism} (Chicago: Chicago University Press, 2005), 138-144.}  
\footref{Jasbir Puar, \textit{Terrorist Assemblages}, xii.}
The formation of a global gay identity based on notions of Western, particularly American, ideals of upward mobility, financial success, fashion and sexual expression is notable.\(^{154}\)

The discourse on Muslims and sexual diversity is problematic for many reasons. The question of how sexual diversity is articulated in the West and its linkages with colonialism, racism, modernity and religion has been discussed. Moreover, the popular belief that Muslims in general, both as minorities and in Muslim majority societies, are adverse to same-sex sexuality and oppression and victimhood extends to all people who harbour same-sex desires or indulge in same-sex sexual acts ignores key factors in determining agency, mobility and oppression. The blanket assumption of Muslim homophobia is based upon a crude perspective that pitches a sexually liberal and tolerant West against a sexually oppressive intolerant religion and its adherents. In addition, it is important to take into account the privileges of class, marital status, gender expression, financial independence and mobility in determining how and who the marginalised are.\(^{155}\)

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\(^{154}\) In discussing the globalisation of gay identities, Dennis Altman makes the following observations: “It has become fashionable to point to the emergence of the “global gay,” the apparent internalization of a certain form of social and cultural identity based upon homosexuality. He—sometimes, though less often, she—is conceptualized in terms that are very much derived from recent American fashion and intellectual style: young, upwardly mobile, sexually adventurous, with an in-your-face attitude toward traditional restrictions and an interest in both activism and fashion. Images of young men in baseball caps and Reeboks on the streets of Budapest or Sao Paul, of ‘lipstick lesbians’ flirting on portable telephones in Bangkok or demonstrating in the streets of Tokyo—none of which are fictitious—are part of the construction of a new category, that is part of the rapid globalization lifestyle and identity politics, the simultaneous disappearance of old concepts and invention of new ones…the impact of Western-style consumerism, as in the growth of luxurious discos in a number of places or the development of overtly gay saunas very different from traditional bathhouses [is not adequately emphasized]. Another significant indicator of its impact is the development of a gay/lesbian press (for example, in Mexico, Brazil, Hungary, and Hong Kong), which is almost always related closely to both a commercial world (for advertising revenue) and enough political freedom to escape censorship. But perhaps the most significant is the emergence of gay/lesbian political groups.” (Dennis Altman, “Rupture or Continuity? The Internalization of Gay Identities,” in Hawley ed., Post-Colonial, Queer, 20-21).

\(^{155}\) Anissa Helie, “Risky Rights? Gender Equality and Sexual Diversity in Muslim Contexts,” in Helie and Hoodfar, eds., Sexuality in Muslim Contexts, 300-309.
The West is conceived as the utopian abode of sexual freedom and liberty. The “prominence of sexual rights and freedoms within narratives of ‘European’ identity” which inform the interconnected issues of “the culturalization of citizenship and the escalating criticism of Islam, mounting to Islamophobia”\(^{156}\) in European states such as the Netherlands contribute to the imagining of a liberated, modern and secular West and backward, oppressive, and traditional Islam. This space of liberty, modernity, secularism and sexual openness, it is argued, needs to be protected from immigrant communities, particularly Muslims. In the Netherlands, emigration applicants are exposed to pictures displaying same-sex sexual conduct such as kissing. Depending on the reaction of the applicant he or she would be considered willing and ready to live in democracy by displaying modern sensibilities if he or she reacts favourably to the pictures. The equation of sexual freedom with modernity and liberty suggests that the acceptance of gay rights is essential to a progressive modern view. However, this policy seems to be directed to potential immigrants from the global South, particularly the poor and working, since the emigrant applications from certain countries or people who earn above a minimum threshold are exempt from such a procedure.\(^{157}\) This policy, based on a discourse of sexuality, functions as a mechanism that regulates the inclusion and exclusion of people and Muslims are set up as the traditional not-modern subjects.\(^{158}\)

The effect of this exclusionary discourse has a severe impact on queer Muslims within European societies and cities. Fatima El-Tayeb traces how Muslim Europeans have been


\(^{157}\) Judith Butler, *Frames of War* (London: Verso, 2009), 105-106. In addition to those who earn more than €45,000 annually, citizens of the following countries are excluded from this procedure: European Union, Switzerland, US, Canada, Australia, New Zealand, and Japan. Butler also takes notice of the identification of gay politics with notions of modernity and progress which also expresses a clear anti-Islamic position.

framed as threatening and not un-European. Using Amsterdam as her research location, El-Tayeb demonstrates how the gentrification of the city, in line with the neoliberal restructuring of urban spaces, has resulted in a confrontation between an assumed white gay community against an assumed straight Muslim community. By overlooking class as a relevant factor in this conflict, the Muslim subject is constructed as homophobic and violent. The effect of this framing has resulted in the exclusion of queer Muslims from public debates on the question of Islam and homosexuality since the identity of queer and Muslim do not cohere in the Dutch imagination.\textsuperscript{159}

The rise of a gay right-wing and what can be termed as a gay-Islamophobia within Europe which considers the Oriental Arab and Muslim as an outsider, with a ‘queer’ orientation for the perverse, displays the shifting discourse on what is considered queer. In this sense, to be Muslim or Arab is “to be become Oriental” which, according to a prominent queer theorist Sarah Ahmed “is both to be given an orientation (by the Occident) and to be shaped by the orientation of that gift”\textsuperscript{160} and in the case of a queer Muslim the queerness of the orientation is considered all the more perverse. In fact, the badge or identity of Islam, of being Muslim, acts as a block to “motility” or the ability to “extend the bodies reach”\textsuperscript{161} in an environment that has a vested interest in maintaining “straight lines” which includes adopting the norms of the West. Ahmed suggests that “the normalization of heterosexuality as an orientation toward ‘the other sex’ can be redescribed in terms of the requirement to follow a straight line, whereby straightness gets attached to other values including decent, conventional, non-violent, direct and honest. The naturalization of heterosexuality involves the presumption that there is a straight line that leads each sex toward the other sex, and that

\textsuperscript{161} Ahmed, \textit{Queer Phenomenology}, 142.
“this line of desire” is “in line” with one’s sex.” In this way heterosexual happiness depends on the persecution of the other; its happiness depends on the social wrong of exclusion. In recent times this straight line has been expanded to include very specific forms of sexuality that measure up or are structured in a similar way as monogamous heterosexual relationships. The premise for this inclusion is the confident but somewhat misguided assurance that contentment, pleasure and liberation can only be found in particular forms. Ahmed provides the example of John Stuart Mill and other utilitarian thinkers who advanced the ethical notion that the “greatest happiness of the greatest number” is the most moral axiom to decipher which acts are ethical and righteous. Utilitarian thinkers utilised this principle in support of the colonial and imperial missions in Africa and Asia. Mill argued that the costs of empire outweigh the benefits for the coloniser. Happiness, in Mill’s view, is a barometer for civility. In his work History of British India Mill suggests that greater happiness would be guaranteed by colonial governance in India because the pace of civilisation would be quickened by the importation of British norms and customs both in the sense of technology and morality. In respect of morality, this included reforming the gender dynamics and sexual structures of India. In short, Mill simply wants to bring a greater degree of happiness to the unfortunate ‘native.’ Similarly, the modern heteronormative power structures are concerned with the happiness of the unfortunate queers, of those who do not ‘fit’ into the civilising modes of creating and maintaining kinship relations. The good life according to this perspective necessitates that heterosexual love becomes the possibility and also the guarantee of happiness. To this extent, concessions have been made to include

162 Ahmed, Queer Phenomenology, 70-71.
165 Ahmed, The Promise of Happiness, 90. The inverse also could mean that the potential for same-sex sexual happiness results in heterosexual unhappiness. This is lightheartedly represented in the pop music video Call Me Maybe, where an adolescent girl is attracted to a boy of about the same age and
sexual minorities into the arena of heterosexual happiness. If a same-sex relationship looks similar to a heterosexual one (in that it is stable, monogamous, suburban and integrates with the current consumer orientated economy), in short a gentrification of a vulgar sexual disposition, then it has the potential to be co-equal with, or something close to that, of normative heterosexual relationships. I cautiously accept that this is an important form of recognition for a persecuted minority but it certainly raises many questions.

I will briefly sketch out some of these concerns. First, this form of inclusion functions at times in tandem with the nefarious workings of empire. On 28 October 2009, President Barack Obama signed into law the National Defense Authorization Act of 2010 which expanded the hate-crime law to include crimes based on sexual orientation, gender and gender identity. This was rightfully hailed as an important step to providing safety measures for a minority that usually does not have the law on its side. However, there was very little criticism from LGBTQ (lesbian, gay, bisexual, transgender and queer) quarters on another aspect of the Act which provided for a $680 billion dollar budget for the US military, the highest ever, that was increasing its military presence in Afghanistan and maintaining a morally dubious military and political position in Iraq. It is important to be cognisant of and further examine the connection that permits a state to extend protection to a marginalised minority of citizens within its borders and yet at the same time facilitate violent military actions against people and maintain oppressive geographical and political occupations outside its borders. The example of the Abu Ghraib scandal is telling here. The mainstream claim across the conservative-progressive divide was that the sexual torture meted out to the Iraqi prisoners was particularly degrading and/or particularly effective as an instrument of military attempts to give him her phone number so that a relationship may blossom. However, at the end of the music video the boy hands over his phone number to a male band member which the girl is a part of resulting in a stunned look, an awkward moment, and heartbreak for the straight girl.

tactics because homosexual sex is forbidden in Islam and there is a strong religious and social taboo regarding homosexuality in the Middle East. The object of analysis and interrogation are not the American soldiers who committed the acts of torture or the military structure that condoned its performance but rather the tortured Muslim subjects who were tortured in a particular way due to their perceived sexual sensitivities. That the acts of torture that were perpetrated were extremely homophobic is not usually mentioned. In this conversation, the most homophobic American—or by extension Westerner—is still better or more tolerant than the sexually repressed Muslim. This perspective is not new even though it may be applied in this case to a new set of events. This type of Orientalist discourse has a long history in respect of Muslim societies. The example of Lord Cromer, the British Consul in Egypt during the latter part of the nineteenth century, advocating for the unveiling of women as a step towards liberation and modernity while back in Britain opposing the campaign for women’s suffrage is demonstrative of how in respect of women, the most misogynist European male is still considered remarkably as more sensitive to women’s well-being and liberation than a Muslim man.

167 Jasbir K. Puar, “Abu Ghraib: Arguing against Exceptionalism,” Feminist Studies 30(2) (2004): 526-527. Puar summaries her conclusions based on the evidence as follows: “1) The sexual acts simulated are all specifically and only gay sex acts. (2) Homosexuality is taboo in Islamic cultures; therefore these are the worst forms of humiliation for Muslims to endure, insinuating that these forms of torture would be easier for other, less homophobic populations to tolerate. The reference to "taboo" also works to discount the presence of gay-identified Muslims in Arab societies, what Joseph Massad terms the gay Arab international. (3) American tolerance for homosexuality is elevated in relation to Islamic societies, as symptomaticized by the unspecific, ahistorical, and generalized commentary on the taboo of homosexuality for Muslims. (4) The enactment of ‘gay sex’ constitutes the worst form of torture, sexual or otherwise. (5) Therefore the Iraqi prisoners, having endured the humiliation of gay sex, are subjects worthy of sympathy-an emotive response more readily available than a sustained political critique of the U.S. occupation in Afghanistan and Iraq. (6) The question of race and how it plays out in these scenarios is effaced via the fixation on sexuality; gender is also effaced when the acts are said to originate from a homophobic military culture instead of a misogynist one. (7) Sexuality is isolated within the individual as opposed to situated as an integrated vector of power. (8) The language favoring gay sex acts over torture once again casts the shadows of perversity outside, onto sexual and racial others, rather than contextualizing the processes of normativizing bodily torture. (9) Technologies of representation work to occlude the lines of connectivity (sexual, bodily, proximity, positionality) between captors and prisoners.” (532-533).

168 This incident is mentioned in Leila Ahmed, Women and Gender in Islam: Historical Roots of a Modern Debate (New Haven: Yale University Press, 1992), 153 and in Sa’diyya Shaikh,
Another example is the recent slogan of gay tolerance in Israel as evidence of Israel’s civility in comparison to the surrounding Arab barbarity and the marketing of Tel Aviv as a gay tourist destination masks the brutal occupation that Israel continues to maintain over the Palestinians. This attempt at showcasing a false sense of openness, justice and freedom is termed ‘pinkwashing.’\textsuperscript{169} However, this politics of exclusion and inclusion (marking visible gay Israeli life and silencing Palestinian resistance, dissent and identity) has an effect on Palestinian queers as well. Amal Amireh indicates how the visibility and voice of Palestinian queers are determined by Israel’s use of them for its colonial project. In some circumstances, a Palestinian may be permitted to speak when he or she extols the virtues of Israel’s gay friendly attitude and denigrates the prejudice and hardship he or she suffered in Palestinian communities or in the occupied Palestinian territories. In this instance Israel is the liberator of the oppressed Palestinian whose culture is dominated by hate and violence. However, in relation to Palestinians who do not represent themselves as victims and whose struggle for sexual equality is accompanied by an anti-racist and an anti-colonialist rhetoric, Israel attempts to silence these Palestinian voices. In both instances, they are either allowed to speak or forced to be silent on the basis of how their Palestinian identity relates to Israel irrespective of their commonality as queer people.\textsuperscript{170}

Second, does this sort of recognition by integration impose a heteronormative structure on sexual minorities in the same way that empire and colonial power impose a

\textsuperscript{169} For queer activism against the policies of Israel and support for the Palestinian liberation struggle see Sarah Schulman, \textit{Israel/Palestine and the Queer International} (Durham: Duke University Press, 2012) and Jasbir K. Puar and Maya Mikdashi, \textit{Pinkwatching And Pinkwashing: Interpenetration and its Discontents} (Jadaliyya 2012), http://www.jadaliyya.com/pages/index/6774/pinkwatching-and-pinkwashing_interpenetration-and-

social and political structure upon its subjects? So in order to sit at the dinner table of the civilised, one must dress appropriately, one must sit in the right way, eat in the correct fashion, utilise the proper cutlery, indulge in suitable conversation, and imbibe the good manners of the hosts. The question that arises is whether there is an alternative; an alternative that both follows “straight lines” but also departs from them significantly. For some, including many Muslims, following “straight lines” provide “access to heterosexual networks in order to survive, which might mean appearing to live a certain kind of life … [which] is necessary…” ¹⁷¹ Nonetheless, queer bodies seem to continuously inhabit their societies and families in a peculiar manner even if it is by way of what appears to be limiting or restrictive. The important question of how those who have same-sex desires or partake in same-sex sexual conduct define their kinship ties and relationships is crucial and it is unlikely that the heteronormative option is the only one available.

Finally, it is imperative that those who identify as or stand in solidarity with queer, LGBTQ, or people with alternative sexual dispositions to be aware of the importance of resistance and the struggle for justice for all. Judith Butler, in refusing to accept a prize for civil courage because of its association with racism and anti-Muslim sentiments said the following:

We all have noticed that gay, bisexual, lesbian, trans and queer people can be instrumentalized by those who want to wage wars, i.e., cultural wars against migrants by means of forced Islamophobia and military wars against Iraq and Afghanistan. In these times and by these means, we are recruited for nationalism and militarism. Currently, many European governments claim that our gay, lesbian, queer rights must be protected and we are made to believe that the new hatred of immigrants is necessary to protect us. Therefore we must say no to such a deal. To be able to say no under these circumstances is what I call courage. ¹⁷²

As people on the margins, it is important for queer individuals and organisations to identify with others who in many instances occupy further peripheries and ensure that a struggle for justice includes a desire for justice for all.

A Self-Critique and the Subalterns of the South

There is a burgeoning of critical queer and postcolonial scholarship on the issue of gay liberation and empire as this dissertation demonstrates. However, one of the criticisms against this trend is that it does not sufficiently take into account heteronormative ideologies and the violence which such ideologies represent in postcolonial societies. In conclusion, we would like to present a version of this important critique and respond to it. In a recent article, Nikita Dhawan states:

Even as I fully support recent trends in critical scholarship to deprivatize religion and contest coercive secular politics, my concern is to trace how the sole focus on queer racism and homonationalism in the global North neglects how supposedly conflicting ideologies of heteronormative nationalisms on both sides of the postcolonial divide in fact collaborate with each other.173

Dhawan argues that both empire and the anticolonial nation are heteronormative in nature. By concentrating primarily or exclusively on the subject of Western domination and violence in respect of queer subjectivities and politics, the same sort of violence in the global South is ignored.174 In this regard, the "violence experiences by these 'sexual subalterns'" in the global South does not feature in the postcolonial debate. In addition, Dhawan states that the all too often criticism in postcolonial studies that the increased persecution of sexual minorities is due to their increased visibility and adoption of Western identities and symbols

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is disingenuous since identities, symbols and visibility are common to all transnational movements. The use of the colour red by Marxists, the wearing of crucifixes by Christians and the adoption of short hairstyles by feminists, for example, are travelling symbols akin to rainbow flags and pride parades in respect of transnational queer activism. To deposit blame on a sexual minority for its increased persecution due to its increased visibility is similarly odious to suggesting that a female victim of rape or sexual assault is blameworthy due to her increased visibility by way of her clothing apparel, appearance and/or movements.¹⁷⁵

Dhawan's strident critique is both important and valid. The embracing of symbols and adoption of identities are irresistible in a porous and increasingly globalised world. While this assimilation of Western identities and symbols may be one of the causes for a more virulent attack on sexual minorities in the Muslim world, it should not be construed as an excuse for such violent behaviour. However, the emergence of these forms of identity politics do pose challenges in societies where there is an existing prejudice towards same-sexuality as a deviant behaviour introduced by the West irrespective of how accurate such an attitude may be. The balancing act that is required is to ensure that one is both cognisant and appreciative of the complex and contradictory ways in how powerlessness and resistance plays out. The margins oscillate depending on the context.

In this regard, while we accept that the failure to adequately respond to the persecution of sexual minorities in Muslim societies is a troubling concern, we also are aware that any solution or protest should be accompanied by an understanding of both the local societal context and logistics and subjective queer circumstances as well as an awareness of how transnational discourses on "liberation" and "equality" are easily manipulated to advance

¹⁷⁵ Nikita Dhawan, “The Empire Prays Back”, 210-211.
domination and violence of a different variety. To choose between either sexual liberation or political/religious cultural repression or constraint or vice versa is not a worthy choice. What is required is a "multidirectional critique" which is a critique of both homonationalism and the heternormative structures of the West and postcolonial societies. In this way, a politics which has as its subject the marginalised, particularly the marginal queer subject, is given prominence rather than a politics of partial protest which privileges certain oppressions and dominations as more important than others.

176 The notion of a multidirectional critique is advanced by Nikita Dhawan as a "politics of critique that is directed at coercive practices across the secular-religion divide. It would entail contesting hegemonic heteronormativity as well as homonormativity, imperial as well as anticolonial discourses." Nikita Dhawan, “The Empire Prays Back”, 195.
Conclusion:
Where to From Here?

That life is a trap we’ve always known: we are born without having asked to be, locked in a body we never chose, and destined to die. On the other hand, the wideness of the world used to provide a constant possibility of escape...consequently we are more and more determined by external conditions, by situations that no one can escape and that more and more make us resemble each other.

-Milan Kundera (*The Art of the Novel*)

The purpose of this project was twofold: First, it attempted to highlight and analyse the various components (sexual identities and acts, legal position of same-sex sexual conduct, and the struggle for liberation) which form pertinent parts of the discourse on same-sex sexuality among Muslims. These elements are not exhaustive of the discussion but they are integral in reshaping or rethinking sex and sexuality in the contemporary world. Second, the intention was to connect the links between constructions of sexuality, legal discourse and liberatory discourses and to demonstrate that each dimension informs or should inform the way we consider each singular component. In doing so, I drew on a variety of resources to articulate the substance of these issues and to articulate some insights that could perhaps be useful in thinking about the relationship between same-sex sexuality and Muslims and/or Islam that is not solely focussed on either renegotiating fault or blame for sexual tendencies or on pitying the sexual situation of particular people.

My intention in this concluding chapter is to provide a possible resolution of some sort, be it temporary or longer lasting, that could potentially provide a manner of inhabiting both a Muslim religious and social identity and also have a space to express one’s same-sex sexuality. I think it is important to think of possible solutions beyond the myriad critiques and intellectual challenges offered. While the latter is essential to any critical discourse, the former is also a way of ensuring that critical enquiry is accompanied by an attempt to offer solutions beyond the articulation of challenges and concerns.

Before I do so, I would like raise some questions based on the discussion and analysis thus far which I think are significant for the future of same-sex sexuality and Muslims: How

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can the liberation of homosexual Muslims contribute constructively to the critique of empire and its presence in Muslim societies? Can the struggle for recognition be sustained without approximating the very forms of heterosexuality that is the cause of prejudice and discrimination? What types of alternative kinships are possible, which are not organised by the desire for reproduction, or the desire to be like other families, or by the seduction of “being alike”? I think in this regard pre-modern Muslim societies may have something valuable to teach us. It would seem that any liberatory effort in this regard cannot be based on an unbridled celebration of diversity without taking into account the historical legacy of sexuality in Islam and Muslim societies and it also cannot strictly be a continuity with the past or pre-colonial Muslim condition, since both these approaches do not challenge religious and political centres and orthodoxies.

In or Out: In-Between Visibility and Opacity

Kundera’s words are a melancholic echo of a past where identity could be avoided or invented, when the world was wide and it was possible to physically cast of a life in one location and begin a new one in a distant land where the experience of being a stranger was revitalising. This expanse also allowed indigenous forms of being and living to survive. These sentiments may border on the nostalgic or a romantic idea of the past but it allows one to ponder and ask whether it is possible to live a private life in a world that is increasingly becoming interconnected and the need to share information about various aspects of oneself on social networking forums or other public avenues is fast becoming the norm, if it has not yet already achieved normative status. With this in mind, I will attempt to provide a possible way for queer Muslims who, for whatever reason, cannot live an open sexual life or prefer not to disclose or share a part of their sexual selves with others.

Stephen O. Murray states that there is a “will not to know” regarding same-sex sexuality in Muslim societies and that “there is a common Islamic ethos of avoidance in

178 Ahmed. The Promise of Happiness, 114. A version of this question with similar wording is posed by Ahmed.
acknowledging same-sex and sexualities.” Tilo Beckers contrasts this with the “will to show” as the dominant ethos surrounding same-sex sexuality in the West. The ‘coming out’ narrative forms an important part of gay identity in the West. It is that moment by which a homosexual individual announces himself or herself to the world as fundamentally a person whose sexual constitution and disposition is distinct from the dominant heterosexual paradigm and aligns himself or herself with a sexual identity that has implications for not only one’s sexual life but also for how one inhabits the world more generally. On this account, the inability of many Muslims to come out of the closet, due to a combination of factors such as religious proscription, familial loyalty and cultural taboos and norms, designates the failure of these Muslims to fully realise their sexual selves and to be liberated.

It has been documented in various empirical studies that queer Muslims have a complicated relationship with same-sex sexuality and usually move between visibility and vocality on the one hand, and invisibility and silence on the other. In this respect the ‘closet’ is operational in Muslim societies, however, it not only functions as a site of silence...
and shame but also as a space of empowerment, protection and opacity that enables queer Muslims to identify with and be involved with both their religious community and sexual selves including other queer people.

Same-sex sexuality, whether as a sexual identity or a typology of sexual acts and/or inclinations, is a “theology of mistresses and hidden lovers”, of the memories of meaningful love affairs that contribute to our humanity, of a redemption which is a “praxis of our past and a sexual praxis which accommodates the effects of the love and the sexual life of peoples bodies.”\textsuperscript{184} In their work on psychoanalysis and relationships titled \textit{Intimacies}, Leo Bersani and Adam Philips interrogate the concepts of sexuality and selfhood, among others, which inform people’s intimate relational experiences. Bersani states that “[e]very theory of love is, necessarily, a theory of object relations. Love is transitive; to conceptualize it is to address not only the question of how we choose objects to love, but also, more fundamentally, the very possibility of a subject loving object.”\textsuperscript{185} In this sense, the object (in this case the same gender) is not the only love which needs to be considered but also how the subject himself or herself interprets his or her love and desire and how it is transcribed onto another.

How to relate and how to be are important considerations in this exercise. Bersani interprets Foucault to mean “when he told gays not to be proud of \textit{being gay}, but rather to learn to \textit{become gay}, he meant that we should work to invent relations that no longer imitate the dominant heterosexual model of a gender-based and fundamentally hierarchical relationality.”\textsuperscript{186} A controversial undergraduate course titled “How to be Gay: Male Homosexuality and Initiation” designed by literature professor David M. Halperin at the University of Michigan sought to study “how men \textit{who already are gay} acquire a conscious identity, a common culture, a particular outlook on the world, a shared sense of self, an awareness of belonging to a specific social group, and a distinctive sensibility or subjectivity.”\textsuperscript{187} Halperin has subsequently published a book titled \textit{How to Be Gay} which follows a similar trajectory as his undergraduate course. In short, Halperin argues that “[g]ay identity—gayness reduced to identity or understood \textit{as} identity—fails to realize male

\textsuperscript{184} Marcella Althaus-Reid, \textit{The Queer God} (London: Routledge, 2003), 133.
\textsuperscript{185} Leo Bersani and Adam Philips, \textit{Intimacies} (Chicago: Chicago University Press, 2008), 72.
\textsuperscript{186} Bersani and Philips, \textit{Intimacies}, 44.
homosexual desire in its unpredictable, unsystematic ensemble. It answers to only a single dimension of gay male subjectivity.\footnote{Halperin, \textit{How to be Gay}, 70.} For Halperin same-sex sexual desire is only one aspect of a homosexual identity or a queer subject and it cannot holistically express the sum of what it means to be gay. He draws on a host of cultural symbols such as music, film and theatre, particular physical traits such as aesthetic sensibilities, camp behaviour and the importance of the maternal figure to demonstrate what elements are overlooked by identity politics which are essential to gay subjectivity and culture. Halperin’s argument is interesting but also provocative given the already existing tensions surrounding the distinction between sexual identity and sexual acts. However, Halperin’s point that the inadequacy of sexual identities to accurately describe and locate people is worthy. In addition, the nearly universal reality of acting without telling, of being and becoming without confessing are attributes that could be argued to be common traits of queer Muslim subjectivities.

This form of queer redemption, the reconfiguration and flux of intimate love and sexual relations and becoming can take place in an intercessional, conceptual and social space, often termed the ‘closet.’\footnote{I concede that the term ‘closet’ is not unproblematic. The ‘closet’ has often been criticised, and in one permutation termed “the defining structure for gay oppression in this century,” and rightly so. The closet has generally been understood as a site of oppression and a covering for homosexual shame. In this respect, the domination of sexual minorities, rested for the most part on the invisibility of homosexual people, people who were queer behind closed doors but heterosexual in public. It is important to clarify that I do not propose the invisibility and exclusion of queerness or homosexuality from the public realm. However, the words of Eribon are important when taking into account any critique of the closet: “The closet has so often been denounced by gay activists as a symbol of shame, of submission to oppression, that we have forgotten or neglected the extent to which it was also, and at the same time, a space of freedom and a way – the only way – of resisting, of not submitting to normative injunctions. And for many gays it is that still. In a certain sense, it was a way of being ‘proud’ when everything pointed toward being ashamed.”} I concede that the term ‘closet’ is not unproblematic. The ‘closet’ has often been criticised, and in one permutation termed “the defining structure for gay oppression in this century,” and rightly so. The closet has generally been understood as a site of oppression and a covering for homosexual shame. In this respect, the domination of sexual minorities, rested for the most part on the invisibility of homosexual people, people who were queer behind closed doors but heterosexual in public. It is important to clarify that I do not propose the invisibility and exclusion of queerness or homosexuality from the public realm. However, the words of Eribon are important when taking into account any critique of the closet:

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\hfill

\footnote{Halperin, \textit{How to be Gay}, 70.}

\footnote{The \textit{hammam} – or traditional public bathhouse – can be considered as the physical representation of a queer heterotopia (Ibrahim Abraham, “The Veil and the Closet: Islam and the Production of Queer Space,” \textit{Queer Space: Centres and Peripheries} (Melbourne: Monash University, 2007), 3.}

\footnote{Sedgwick, \textit{Epistemology of the Closet}, 70.}
It is also a way to cope with competing demands or identities and construct some sort of personal coherence in the larger arena of one’s life. Since “psychological coherence” particularly between sexual desires and actions or identities and religious and cultural prescriptions and identities “is in the eye of the perceiver and not some objective quality of the identities under scrutiny;… although any individual will be influenced by the prevailing social representations of the identities in question, they can arrive at their own conclusion about their ultimate compatibility. In this regard, the closet offers a more flexible space for people to negotiate the compatibility of their identities and various selves.”

Like sexual identities and its associated vocabulary, the term ‘closet’ has come to us with a considerable amount of baggage in how it has been articulated and explained in Western parlance on sexuality. Marlon Ross argues that the ‘closet’ is primarily a white European discourse that has little, if any, relevance to other races, ethnicities or cultures and that this overriding metaphor has truncated a proper engagement with issues of class and race. While this critique is valid, I think the important point to remember is that silence and visibility or the lack thereof do not always function linearly. The idea of inhabiting a closed oppressive space until such time that one has the courage and ability or the financial and social independence to ‘come out’ is what makes the idea of the ‘closet’ so particularly Western in its explanation of how queer selves exist in society. I would suggest an alternative, perhaps even subversive, reading of the closet. Nicholas De Villiers argues through the works of Foucault, Barthes and Warhol, that there are ways to resist the metaphor and confessional discourse associated with the closet. De Villiers “interrogates the viability of the metaphor of the closet and puts forth a concept of ‘opacity’ as an alternative queer strategy or tactic that is not linked to an interpretation of hidden depths, concealed meanings, or a neat exposition between silence and speech…Strategies [or ‘games of truth’] are specific to particular historical, cultural, and discursive situations and can have different intentions and effects. It may well be that a strategy’s ‘motivation’ is part and parcel of a homophobic logic of shame, self-loathing, and petit-bourgeois concern for privacy. But this

194 Nicholas De Villiers, Opacity and the Closet: Queer Tactics in Foucault, Barthes, and Warhol (Minnesota: University of Minnesota Press, 2012).
does not prohibit its effects from being productively queer.”

He recognises strategies of ‘opacity’ that reject and deconstruct the binary of either you are ‘in’ or ‘out’ and allows for a more fluid, relaxed and diverse approach to queer space. It is this notion of opacity that is useful in this context. My usage of the term ‘closet’ is used in this sense of ‘opacity’ and the reason it maintains the term is for explanatory convenience.

Ebrahim Moosa’s notion of Ghazali’s dihliz may be a useful way to explain or better understand the function of the closet. The dihliz signifies a liminal space between the door (bab) and the house (dar). It is an intermediate space between the external (zahir) and the internal (batin) and is permeated by the influences of both the arenas it stands between belonging to both but identifying with neither (Moosa 2005:48). In this sense, it is not an insular space, but a dynamic and porous alternative to public life, where a queer body is not automatically isolated from public life but where it ventures for comfort and repose and where desires are expressed, bodies meet and sexuality is flaunted. This heterotopia is beyond the scope of regulation, the purview of Fiqh and the religious and political power structures.

The articulation of a constant inflexible sexual identity, the establishment of an exclusive sexual orientation, the attempt at a jurisprudential justification of same-sex sexual conduct and intimacy, possibly forces people out of this subliminal space and threatens the viability of this heterotopia. The attempt to rearticulate queer sexuality in terms of heteronormative institutions (as Kugle attempts to do with a gay-friendly Fiqh) is an effort towards conformity with the ‘normal’ and dominant discourse. This effort is important in challenging the dominant discourse which excludes the sexual Other. However, the importance of the closet as a dynamic redemptive queer space beyond the punishing and disciplinarian eyes of religious authority and political power should neither be underestimated nor ignored. Similarly, the liberation of Muslim women does not coalesce with the judicial removal of the institution of hijab both physically in the way of personal space and interactions and socially by way of public and private women’s spaces. In fact, exclusive spaces for women, including the hijab, can act as a liberatory space for women, particularly in patriarchal societies.

De Villiers, Opacity and the Closet, 6.
In her investigation on the custom of veiling, Fadwa El Guindi argues that “veiling in contemporary Arab culture is largely about identity, largely about privacy – of space and body... [T]he two qualities, modesty and seclusion, are not adequate characterizations of the phenomenon as it is expressed in the Middle East. In their social setting, veiling proxemics communicate exclusivity of
is a point that also applies directly to gay and lesbian rights organisations or governments or organisations that have a presence in Muslim societies. A New York Times article tellingly sets out the usually hassle free lives of queer Pakistanis and the work of an indigenous gay and lesbian organisation in protecting and addressing the concerns of queer people. It also mentions the unhappiness of the local gay and lesbian community when the American embassy in Islamabad held a LGBT pride celebration. The occurrence of this occasion sparked some outrage among the wider population in a generally conservative country. A local activist summed up this occasion of American support and promotion of equal rights as follows: “the damage that the U.S. pride event has done is colossal...just in terms of creating an atmosphere of fear that was not there before. The public eye is not what we need right now.”

It is fitting to conclude with an account by Boellstorff of a factually tenuous and incommensurable queer life.

Arno’s birthday slametan was held on November 28, 1997, in a little town where he lived, which is located about twenty miles outside Surabaya.... Arno’s friends came in from all over Surabaya (and his boyfriend all the way from Bali) to meet not at Arno’s homed but at a rented home of another gay man, tucked away on a small street on the far side of town. Its small front room had a low ceiling, lit by a single long fluorescent light bulb and decorated with a quotation from the Qur’an (the ayat kursî) alongside photos of the president and vice president. Here Arno could hold his paradoxical gathering – a private slametan – safe from the eyes of family and neighbours, away from the public yet under the indifferent gaze of religion and nation.

rank and nuances in kinship status and behavior. Veiling also symbolizes an element of power and autonomy and functions as a vehicle of resistance. (Fadwa El Guindi, Veil: Modesty, Privacy and Resistance (New York: Berg, 2000), xvii.

199 In The Religion of Java, Clifford Geertz identified the communal feast or slametan as central to Javanese experiences of Islam. Geerts noted that the slametan resolves incommensurability by acting as an open ‘kind of social universal joint, fitting the various aspects of social life and individual experience together’ (1960:11). He further notes that ‘a slametan can be given in response to almost any occurrence one wishes to celebrate, ameliorate, or sanctify...There is always the special food...the Islamic chant, and the extra – formal-high-Javanese speech of the host...Most slametans are held in the evening...Upon arrival each guest takes a place on the floor mats...When the host has completed the [formal introductory speech], he asks someone present to give the Arabic chant prayer...The preliminaries completed...the serving of the food begins.’” (Tom Boellstorff, A Coincidence of Desires: Anthropology, Queer Studies, Indonesia (Durham: Duke University Press, 2007), 159, and Clifford Geertz, The Religion of Java (Glencoe: Free Press, 1960), 11-13.)
Twenty-four men sat in a circle inside the crowded room, their backs pressed to walls. Some of Arno’s gay friends had been cooking all afternoon. From the kitchen, they emerged to place food in the center of the circle…The room fell silent as one of Arno’s friends began to speak, clearly but informally, in Indonesian…”Well, we are here to celebrate Arno’s birthday. He won’t tell us exactly how old he is, but in any case we’re here on his behalf.” The assembled guests laughed gently. “So let’s take a few moments to pray, each following our own beliefs and praying in our own way. Let’s pray for the good fortune and health of Arno. Begin now.” A few moments passed in silence with heads bowed. “Okay, that’s enough. Now everyone please eat a lot!” Arno moved to the center of the circle and, taking a large pastry server in hand, cut off the tip of the “rice mountain” [nasi gunung], putting it on a plate with other food items. Everyone sat quietly: Arno was free to give this first serving to the person of his choice. Turning around on his knees he approached his boyfriend and gave him the plate as they kissed each other on the cheeks. Approving murmurs reverberated around the circle. Plates were passed around and everyone moved in to eat.

Most slametans involve neighbours, but Arno’s slametan grouped together men meeting on the basis of gay subjectivity. In place of Javanese narrative coupled with an Arabic chant, obligatory even in the Hindu slametans held by Tengger Javanese (Hefner 1985), these gay participants spoke Indonesian and prayed silently, “each in their own way” inhabiting – not resolving – incommensurability. Arno’s slametan was a space of coincidental timing that brought gay men together at the social margins. It made no appeal for social inclusion and did not invoke the potential of a gay Muslim public. Yet it drew from mainstream religious practice and also national discourses of individuality, national language, and religious egalitarianism. On another night, Arno would hold other events to celebrate his birthday with family members, co-workers, and neighbours. On this evening, however, a gay world of faith came into being in a little room around a mound of rice.200

While the notion of the closet and the account above may come across as a seemingly powerless state of affair, there is a delicate and understated form of religious empowerment at present. The Prophet Muhammad is reported to have replied when asked what is good: “Consult your heart for the good is that which appeases the soul and calms your heart. Sin is

200 Boellstorff, A Coincidence of Desires, 158-160. Boellstorff concludes from his anthropological study on religion and homosexuality in Indonesia that “whether gay Muslims uphold heteronormativity (for instance, by seeing their homosexual desires as sinful, marrying heterosexually, or stating that they plan to marry), or destabilise it on some level (for instance, by seeing their homosexual desires as God given or saying that they will not marry heterosexually), to date no point of commensurability between the “languages” of Islam and gay subjectivity has been reached. Yet gay lives exist and are lived every day; what we find is a habitation, not a resolution, of incommensurability.”
that which troubles you inwardly and causes embarrassment and vexation in your heart, even if people provide you with all the possible juridical justifications."  

In this subliminal space, queer Muslims operate on a personal religious platform that is beyond the misgivings blame and misfortune of public and orthodox religious discourse and in this regard, as al-Ghazali says, “the jurist...pays no attention to anything but the tongue. As for the heart, that is outside the jurist’s authority.”

In conclusion, it is important to clarify that I do not propose the complete invisibility and exclusion of queerness or homosexuality from the public realm. This project is an effort to ensure that it is a part of continuous academic discussion and activist efforts. In addition, the closet is not proposed as the definitive liberatory space, a type of glamorous existential location for queer Muslims, or a panacea against the prejudice consistently faced by queer Muslims. Rather, the question is whether the closet, in this context can – and I contend that it can – be understood as a voluntary but vital expression of fragmented selves, of multiple identities and polymorphous sexual existences that refuse to be co-opted into the dominant discourses of power and authority. The closet can then, in fact, function as a prophetic voice on the periphery, a mode of existence that refuses to be allured by the trappings of “normative” practice. It is also perhaps the only empowering space for many queer Muslims where it is possible to preserve a balance between their religion, sexuality and society even if such a balance is tenuous and incommensurable at best.

201 This hadith is reported by Ibn Hanbal and al-Darimi and is quoted in Tariq Ramadan, *Islam, the West and the Challenges of Modernity* (London: The Islamic Foundation, 2001), 236-237.
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