

Elements of a Prophetic Voice of Dissent and Engagement

In your hands is another thematic issue of AJISS, one that consists of two main contributions that address the Islamic tradition's prohibition of the homosexual act. Jonathan A. C. Brown's essay analyzes the authenticity of pertinent hadith traditions, whereas Mobeen Vaid's essay explores the Qur'anic perspective. Both articles had their origin in presentations by a number of scholars at a colloquium held at the International Institute of Islamic Thought (IIIT) in Herndon, VA, on November 1-2, 2015. Although an earlier version of Vaid's essay is available online, its original intent and thematic complementarity with Brown's essay on hadith merit its inclusion here. Together, they make crucial contributions to the scholarship that has reopened the question of how the Islamic scriptural and jurisprudential traditions view this particular sexual practice. In the same workshop, I presented my reflections on the stakes of the rise of new pro-homosexual (or at least neutral) laws and cultural formations for Muslim scholarship as well as politics, which I share in a modified form in this editorial essay. In keeping with this issue's theme of sexual ethics, we also include David Finn's critical and extensive evaluation of Aysha Hidayatullah's important *Feminist Edges of the Qur'an* (New York: Oxford University Press, 2014).

Scholarship does not always need to address burning issues; however, scholarship on Islam is often unable to provide the quiet anonymity that serious scholars often crave. What is at stake for American Muslims in the wake of the U.S. Supreme Court's 2015 *Obergefell* decision on gay-marriage, the meteoric rise of homosexual assertiveness over the last few decades in the country, and the sea-change – let's label it “homonormativity” – in cultural and intellectual norms that this decision has ushered in? As Muslims around the world are avid consumers and targets of American culture, norms, policies, and wars on terror – not to mention presidential sermons about the essence of Islam – the repercussions of its culture and norms in this era of globalization and American hegemony are not limited to American Muslims. Yet no one is more di-

rectly affected by the former, nor better placed to most intimately understand and critically evaluate its imperatives or exports. IIIT's aforementioned colloquium intended to do precisely that.

This editorial seeks to frame the political as well as religious issues raised by homonormativity and suggest why and how Islamic norms, despite their origins in what was, as Dreher and his likes have argued (see below), a radically different time and place, remain relevant. As a minority residing under non-Islamic legal norms, Western Muslims may be justified in disarticulating their political and legal stances from their moral, cultural, and religious lives. Without claiming to offer political advice or critique, I wish to highlight the stakes involved in Western Muslims' support for or opposition to same-sex marriage and in the arguments proffered for these positions.

One index of the stakes of the *Obergefell* decision can be found in the sobering words of Rod Dreher, an American Christian and editor of *The American Conservative* magazine, who writes in his bestselling *The Benedict Option*,

The advance of gay civil rights, along with a reversal of religious liberties for believers who do not accept the LGBT agenda, had been slowly but steadily happening for years. The U.S. Supreme Court's *Obergefell* decision declaring a constitutional right to same-sex marriage was the Waterloo of religious conservatism. It was the moment that the Sexual Revolution triumphed decisively, and the culture war, as we have known it since the 1960s, came to an end. In the wake of *Obergefell*, Christian beliefs about the sexual complementarity of marriage are considered to be abominable prejudice – and in a growing number of cases, punishable. The public square has been lost.¹

Whether this is all mere hyperbole remains to be seen; however, the undeniable fact that a large number of conservative Americans felt this way served as one of several reasons why many voted against the Democrats in the fateful 2016 presidential election. The ongoing electoral upset is epoch-making indeed, and yet it only reinforces trends long underway in American politics toward cultural liberalism and political conservatism. After citing the declining religiosity among young Americans (one in three 18-to-29-year-olds have put religion aside), Dreher turns to those who claim to be religious and finds even greater cause for concern. A 2005 sociological study of American teenagers from a wide variety of backgrounds found the most common religious views, regardless of the formal affiliation and denomination, to be a “mushy pseudoreligion” that the researchers labeled Moralistic Therapeutic Deism (MTD). It has five basic tenets:

- A God exists who created and orders the world and watches over human life on earth;
- God wants people to be good, nice, and fair to each other, as taught in the Bible and by most world religions;
- The central goal of life is to be happy and to feel good about oneself;
- God does not need to be particularly involved in one's life, except when he is needed to resolve a problem; and
- Good people go to heaven when they die.

The author highlights the unsettling vindication of these results in the experiences of American Christians at large: “America has lived a long time off its thin Christian veneer, partly necessitated by the Cold War . . . [t]hat is all finally being stripped away by the combination of mass consumer capitalism and liberal individualism.”²

The decades-long ideological shift has made homosexuality not merely an issue of personal choice, but also the newest frontier of human rights, the decisive definition of what it means to be on the right side of history. Late-modern capitalism and its favored ideology of liberal humanism have finally moved to banish the last remnants of interdiction, sanctity, and prohibition from the sovereign path of individual desire.

But, one might ask, have not Muslims in the West lived in substantial numbers for nearly half a century alongside norms that violate their own? Why should Western Muslim intellectuals and ulama not treat this recently established homonormativity as just another such norm? What is it about this issue that poses a greater challenge to people of faith than, say, general sexual promiscuity and non-marital sexual relations?

Some reasons may be suggested as to why the stakes are higher. Homonormativity has arguably sealed the fate of the founding blocks of the American society that had been based upon a bedrock of Christian (lately dubbed “Judeo-Christian”) norms and that have been under attack since the 1960s.³ Barack Obama, who presided over this sea-change during his presidency, expressed the uneasiness of this shift well when he wrote, on the same page of his memoir *The Audacity of Hope: Thoughts on Reclaiming the American Dream*, “our law is by definition a codification of morality, much of it grounded in the Judeo-Christian tradition” and yet “Whatever we once were, we are no longer just a Christian nation; we are also a Jewish nation, a Muslim nation, . . . and a nation of nonbelievers” (p. 218). One may note the paradox reflected in these words: The same category of “non-Christian” that makes room for nonbelievers also affords breathing space to Muslims.

There is little point in disputing the fact that the opposition to homonormativity is often accompanied by an inveterate hatred for Islam and Muslims, an all-encompassing cruelty to all who are not white males, and both planet-threatening and willful ignorance. Lone voices (such as Professor Robert George, see below), notwithstanding, the complicit silence of American conservatives is deafening. To Muslims who simply wish to avoid ending up in concentration camps or that American bombs would stop incinerating ever more people and referring to them as “collateral damage,” allying with the right appears suicidal. Fateful ironies loom over any options American Muslims may adopt. Pious Muslims cannot avoid seeing the Faustian overtones of the bargain they have struck with the left, often by simply keeping silent. The legacy of black resistance and the civil rights movement, whose masterful deployment fuelled the politics of gay rights, also remains American Muslims’ only haven. Yet what has made the United States more hospitable to Muslims at a cultural level than Europe is precisely its lingering Christianity and conservatism, the same forces that, in their current forms, are bent on annihilating them.

Homonormativity aggravates the distance between Islam’s foundational socio-familial makeup and the American legal establishment, such that devout Muslims will be even more likely (whether individually or communally) to construct a cocoon for themselves, thereby disengaging from the larger society as the Orthodox Jews and the Amish have done. The assimilated Muslim mainstream will then become increasingly torn between Islam and the United States, a situation that can only lead them down the path of marginalization and alienation familiar to European Muslims. “All of Germany’s Muslim MPs voted in favour of same-sex marriage,” reads the title of a news-piece from the *Independent*, “whereas German Chancellor, Angela Merkel, leader of the Christian Democratic Union, has faced criticism for opposing the bill and announcing that ‘marriage is between a man and a woman.’”⁴

To many religious American Muslims, the new sexual and gender norms heighten the cost of integration. Whereas anti-racism has been wholeheartedly Islamized as a cause that creates cross-cultural connections and anti-sexism has been embraced in a qualified form, normalizing homosexuality could shake the very foundations of Islamic moral community – unless, of course, this new chasm is met by the creation of sustainable and peaceful prophetic intellectual and counter-cultural movements and alliances.

Apart from pro-gay Muslim activists, two kinds of Muslim opinion leaders have encouraged indifference to the country’s shifting sexual mores and gender norms, which I labeled above as “homonormativity”: (1) those who strategically prioritize the community’s civil rights over religious concerns and (2) those who postulate a sharp separation between the political sphere and social

mores and who hope to be “outside” even while being “inside” the country, perhaps even advocating that the community selectively disengage from the larger culture. Some versions of this option rely on a logic of pragmatic reciprocity. Others have invoked the pluralistic model of pre-modern Islamic tolerance of or indifference to the objectionable practices of other communities to argue that a similar indifference may be justified in this case.

The presuppositions underlying this logic invite further questions. Many scholars of the modern state point out its ability to penetrate and reshape its society’s culture; modern states are not empty political shells, but active agents that shape norms. Supreme Court decisions are not merely temporary dispute resolutions between opposing groups governed by legal formalism, but are actual articulations of norms based on political views that, unless actively challenged, define ethics and morality for American society.⁵ Unlike the pre-modern Islamic world, in which society governed itself through a communally grounded legal tradition that communities could interpret and negotiate, the modern state governs the individual inside and out. Such critics argue that the role of law, culture, and state in the United States cannot be wished away and that the pre-modern Islamic posture of political apathy, which perhaps once made sense in the context of legally pluralistic and minimally intrusive governance, cannot be used to justify Muslim indifference to these tectonic shifts in the American landscape.

It is no wonder, then, that for the vast majority of American Muslim individuals and institutions, American cultural norms are the backdrop and justificatory framework within which Islamic norms are reformed and selected, and not the other way around. According to one recent poll, for instance, 42% of American Muslims showed support for gay marriage.⁶ A 2007 PEW poll revealed that 27% of American Muslims supported homosexuality as a lifestyle and that 61% opposed it. According to the same poll, 50% of Muslims were unsure as to whether the Qur’an was literally true. Another survey put the number of American-born Muslims who abandon Islam at 23 percent. All else being equal, this rate of loss, about half that of Christians, will in all likelihood increase in the next generation due to greater assimilation.⁷

A passive acceptance of homonormativity among conservative Muslims (as among Christians) may be accompanied by vague hopes of a reversal of trends or by a pessimistic view that, morally speaking, the United States is a lost cause, that it is fast traversing the path of decadence already trod by Europe and that there is no stopping it. Regardless, those concerned with the effects of American foreign policy abroad and with political and social justice at home find little choice but to align themselves with the left. Alternatively, some conservative Muslims may ally themselves with conservative Americans in their

moral dissent against the dissolution of sexual and social mores. Princeton University professor and influential Catholic intellectual Robert P. George is a rare and unheeded advocate of such an alliance with American Muslims.⁸ A healthy development of principled conservative interfaith discourse at a political level might have helped temper the right's antipathy toward Islam. The recent swing of American politics in the ultra-right direction appears to have dampened any such hopes for the time being.

In addressing the challenges raised by homonormativity and the emergence of those Muslims who advocate for it, scholars must explore a number of inter-related fronts. The traditional Islamic case against sodomy, conventionally understood as being unanimous, needs to be explored afresh at both the legal and ethico-philosophical levels. But the applicability of these norms to the phenomenon of contemporary homosexuality requires great caution. In order to make a compelling moral and ethical case for the continued relevance and soundness of Islam's norms, scholars must examine the historical conditions that enabled homosexuality's rise as well as the context, meaning, and implications of the relevant pre-modern prohibitions. Finally, such scholarship cannot disregard the human cost of whatever conclusion it reaches or recommendations it makes, and must consider the pastoral and political strategies that Muslims can use to respond to this new homonormativity in an ethical, compassionate, and effective fashion. The two contributions featured in this issue, focused as they are on the exegetical task, are important steps in an ongoing discourse.

In broaching the challenges involved in formulating Muslim intellectual, political, and social responses to homonormativity, we must recognize that traditions of faith in God are tied to divine interdictions whose reasons, they believe, are not always discernible to the human intellect. These interdictions and the social order they envision stand in the way of modernity's evisceration of all limits – limits not just on sexual conduct but also the environment; consumption; aesthetics and beauty; the human body; the realm of passions, desires, and emotions; and interpersonal ethics. Catholics call it “the natural law”; Islamic law has notions of *fitrah* and a natural order of ease and human felicity that is believed to be built into the Sharia.⁹ But this divinely ordained and thus “natural” social order (a contradiction in secular terms), in which marriage is tied to procreation, chastity, and honor, and, more broadly, the virtues of self-restraint, humility, and charity are desirable, is fundamentally at odds with the political and economic order of unbridled self-interest and systematic transgression that defines capitalism (as many economic philosophers from Adam Smith to J. Maynard Keynes¹⁰ have reiterated).

The conditions of late-capitalist modernity, sometimes called *postmodernity*, are structurally suited to such transgression because once projects of transcending natural limits (from the bio-technological refashioning of humans to cloning and age-defying technologies) are normalized, any ethical and creedal system grounded in respecting those natural limits is made to seem irrelevant and irrational. If procreation is undesirable for a planet that is already held to be overpopulated, a lifestyle that seeks pleasure without procreation, whether heterosexually or homosexually, is preferred. Similarly, where a secular welfare state bureaucratically manages all insurances and goods previously furnished by God, the family and community, ranging from laws and guidance to safety nets, marriage and family become inexplicable burdens. Put differently, homonormativity is structurally related not only to ethical and religious decline and the political success of a vocal minority, but also to the fundamental dynamics of late-modern politics and economy.

Muslim thinkers have been only too willing to rethink Islam in a way designed to fit into the (often seemingly erratic) developments of the twentieth century, first the welfare state and then neoliberalism, rather than effectively questioning these developments. This post-hoc approach to change is a result, I argue, of the lack of a political philosophy that could help them envision the larger interests of Islam and its community and help replace the tired language of “catching up with the times” with discourses better grounded in Islam’s own vision. Note that I do not mean here merely the *maqāṣid*-based approach to *fiqh*, which although certainly helpful, in the absence of further checks and balances, can equally be used to justify the instrumentalization of Islamic law for any externally imposed ends. If *fiqh* chooses not to theorize political life in a fashion grounded in a coherent vision, then it nonetheless becomes *politicized* – but in a way that is reactionary and ethically irrelevant.

The Limits of Consent and the Autonomy of the Self

The key issue underpinning homonormativity is consent. Any kind of sex is ultimately permissible, under this vision, so long as it is consensual. Consider the advice given by professionals to those who suffer from “virtuous pedophilia”: to exercise restraint, remain virtuous, and not act on their desire.¹¹ Thus, the concepts of self-control, abstinence, refraining from acting out one’s desire, and living without sexual fulfillment until one’s death are not foreign to the liberal world. What makes this case different from homosexuality, however, is the presumption that children are incapable of expressing consent. And yet intractable philosophical as well as legal problems continue to afflict the conceptualization of consent.¹² As feminist and political theorist Carole Pate-

man argued in her *The Sexual Contract* (1988) and ever since, the very notion of consent becomes meaningless if neither the structural factors (e.g., politics and economy) nor the contractual limitations that individuals place upon themselves are considered.

In the liberal account, consent is an expression of the human self – that mysterious entity which in the modern secular world cannot be judged but which judges all things. Yet the self also has a history. The pre-modern religious self (*nafs*, in the Islamic tradition) was thought to be both the source of all desire and also an object that one had to discipline and cultivate. Human desires were either good or bad; they could be judged by their singular creator, master, and sustainer. Good desires were natural, part of one's *fiṭrah*, and bad ones came from the Devil and had to be resisted. But in nineteenth-century Europe, a number of modernity's "prophets" (from Darwin and Nietzsche to Freud and Weber) killed God to their satisfaction and discovered a new one: the human self, which is supreme and sovereign.

For Kant, the self is autonomous because not only does it choose to act in accord with what is right, but it also defines or discovers for itself what is right. Nietzsche saw through this charade, for once there was no God or God became irrelevant to the discovery of morality (as Kant would have it), the self was both free and inscrutable. Nietzsche thus reasonably declared that all declarations of good and evil and all judgments related to desire were baseless. He taught that all ethics were a tale cooked up by the slaves and the weak to keep the few true men, the "supermen," chained. It is often acknowledged that there can be no morality without God. But what is less understood is that with God there was no inscrutable self, that the self is governed territory. And precisely because the self is governable, there was no need for the sovereign modern state and its projects of refashioning the self. The self was governable under a regime of beliefs and norms that addressed and directed it. According to the Qur'an there was nothing worse than the unrestrained self (*hawā*), for it is the playground of the Devil.

Freud, arguably the greatest prophet of modern unbelief, freed the self from God by theorizing it in terms of a repressed, inscrutable desire, just as God's prophets had explained the human *nafs* and its origin: the divine breath (*rūḥ*). Freud taught that the self was a world unto itself, only a tiny fraction of which comprised discursive reason. He used the analogy of a vast city under the sway of barbarians, only a small castle of which has been conquered by modern science and examined by objective discourse. Only the tip of the iceberg was known to us. Our desires came out of an inscrutable world, the id, that could neither be judged nor disciplined because no knowledge or agency could be superior to the human self.

This is the first element of “consent” – an expression of the sovereign self or psyche that could only have been posited and sustained in a Godless world. Within this world, human desires (*ahwā’*) cannot be judged. Elsewhere, whether in Aristotelianism, Thomism, or Islam, the self is there to be judged, disciplined, and trained, whether according to rational or revelational principles. This is why “homosexuality” could not have existed as a self’s identity in the pre-modern world: In its place, only an assemblage of desires and acts could be found, already judged by scripture and religious traditions as an abomination. Even in the Greek world, Plato considered male-male sex unnatural despite its immense popularity; whether it was good or bad was determined by whether it was natural and good, not simply because it was an irrepressible expression of the self. This is also why Christians and Muslims could relatively easily integrate Greek ethical philosophy, because despite having a radically different theology it did not contradict the Abrahamic notion of the human self as teachable, as a site of the battle between good and evil.

Of course, the secular self does not automatically lead to homonormativity in twenty-first-century America. Certain political and economic conditions of modernity that can be best captured as late-capitalism have led to a world in which desire reigns supreme and the conditions of excessive affluence in “winner” societies – never mind the enormous corresponding deprivation in the “losing” societies – provide the context in which inscrutable desires could be properly worshipped; not merely satisfied, but idolized, legalized, and infinitely extended and explored. And why not, for what else is there in a world that has lost its God and its *raison d’être*? After having demolished the community and the extended family, the biological and nuclear family is merely the latest frontier in the march of capitalism. Whatever else may be said about capitalism, it is inconceivable without secularism, but (like nationalism) it has often been fueled by foolish religious fervor, passion, or discipline.¹³

The non-liberal alternative to the modern, capitalist self was the Marxist self – a place that, while awash with passion for equality and revenge, was fundamentally empty. Capitalism can tolerate a religion that restricts itself to managing the poor, fueling its ideals, justifying its winners and losers, and/or quenching its guilt. But Marxism, bent on ideological consistency and purity, refused to traffic in even this nominal religion. Marxism, ultimately more modern and rational than capitalism, would fall with the rise of postmodernity, a condition best seen as a continuation or logical extension of, rather than a rejection of, modernity.

Unlike capitalism, which promotes greed or expanding desire as a principle and thus leaves the self to freely (“liberally”) choose its own myriad means of satisfaction and extension (limited only by the infinitely disputable principle

of no-harm), the Marxist self sought to limit itself by its dogma of materialism and the desires of which it approved. Having vanquished its nemesis, late capitalism has now overcome politics and democracy as well. The task of “manufacturing consent,” to use Noam Chomsky’s well-known phrase, may have been pioneered by the nation-state in times of war, but global capitalism, in its current neoliberal phase, has dwarfed states and taken over the task of managing mass desires while deepening the illusion of individual choice and freedom. A world set against divine interdictions and sanctions has proven unsustainable not only in the spiritual but also in the material sense, leading us ever faster toward an economic and ecological apocalypse.

The Limits of Historicism and Social Construction

It is widely acknowledged that whereas same-sex sexual activity has been recorded in nearly all past societies, *homosexuality*, the idea that certain persons are to be identified by their sexual preference, on the grounds that this is a fundamental part of their identity, is socially constructed and historically novel. Furthermore, whereas the biological and cultural bases of such desire are debated, science has returned empty-handed from its quest for a “gay gene.” According to the new *ta’wīl*, however, the results are carefully couched in a postmodern framework to draw our attention to the constructedness of all categories.

That homosexuality is a cultural construct as opposed to a biological construct does not mean that it is based on something other than a real, strongly felt, desire. But as Imam al-Ghazali said, “intention,” the basis and determinant of all actions, is semi-voluntary at any given instance. In other words, one cannot instantly purify and simply will to be as pious as one wishes. Our passionate constitution is comparable to our physical one; just as one builds muscle over a long period of time via a process that depends on training, discipline, diet, as well as other environmental and genetic factors, so is our emotional make-up multi-dimensional and only semi-voluntary. From an individual and instantaneous perspective, however, the source of one’s desire may appear moot. The misery of a pious homoerotic individual may indeed be great and is definitely worthy of compassion and support, but one must also be aware of the deployment of such tropes in accounts that are, in fact, key to constructing homonormativity.

Aside from homoerotic desire, which has been documented in almost every society, the homosexual identity that fortifies it as a right is a modern construction. In *The History of Sexuality*, Foucault famously shows that Western society’s views on sex have undergone a major shift over the past few centuries.

Same-sex relationships and desires certainly existed before – but homosexuality was never considered a biological type or social identity. Besides Foucault, various historians have argued that the idea of a homosexual role and stereotypical behavior emerged in late-seventeenth-century England.¹⁴

Psychologists, at that time still working under the remnants of Christian morality but without Christian belief, sought to replace religion and superstition and to categorize all untidy phenomena systematically. In this quest, they recast “sodomy” as a disorder (seen as harmful to the family, which was then regarded as an indispensable engine of national progress). When such vestigial Christian moralism came under fire, homosexuality became a new normal, an identity to which some people were simply biologically wired. Later on, Foucault established the relative novelty (and thus historical contingency) of both “the idea that our desires reveal a fundamental truth about who we are and the conviction that we have an obligation to seek out that truth and express it.”¹⁵

More broadly, postmodernist critique opposes not only sexual truths about oneself, but also truth in general. Religious truths or religious differentiation of gender roles are thus no less constructed than homosexuality. In other words, the postmodern case for homonormativity argues not that it is an essential part of one’s being, but that since there is no essential norm or truth or self, and thus no rational obligation to discipline the self, homonormativity is just as good or bad as any other option.¹⁶

Historians of Muslim societies tell a similar story about the wide attestation of homosexual behavior, but also the absence of anything like contemporary homosexual identity. Khaled al-Rouayheb shows that in the traditional Muslim world, lustful or romantic behavior toward beardless boys was quite common.¹⁷ He quotes countless testimonies to the spread of sodomy and pederasty, to which one may add the following from al-Aqhisari, a zealous seventeenth-century Ottoman reformer who wrote that

In this time, sodomy [Michot translates this as “homosexuality”] has spread in this Muhammadan community and expanded among its Arabs and its non-Arabs, its learned ones and its ignorant ones, its elite and its commonality. It has reached such a point that they are proud of it and blame someone who has no beardless friend (*amrad*), speak evil of him, and say that he is not a human (*adami*) and has no taste (*madhaq*).¹⁸

Such accounts, even when corrected for some reformist exaggeration, serve to call into question the widespread pious romanticization of pre-modern Islamic societies. In particular, the reference to the “learned ones” among the pederasts is significant. Remarkably, despite all the incentives to do so and the

power of custom in Islamic law, the ulama never justified this practice. In fact, denying its prohibition was considered unbelief by consensus, and disagreements revolved only around such issues as whether someone who permitted sodomy with a male slave was a believer or should be excommunicated – not for practicing it, but for believing that it was permissible!¹⁹

Although pederasty was at times widespread, especially among the elite, those who engaged in such behavior never claimed to be a distinct type of individual with distinctive desires. The pious simply deemed them sinners. One might say that Muslims saw this behavior in the same way as drinking wine; there was never a question about its impermissibility, even as some or even many, indulged in it.

But what does this argument about the historicist construction of social categories entail for the Muslim present? Some use an exaggerated dichotomy between modern homosexuality and pre-modern sodomy to deny the applicability of the Qur’anic prohibition of homosexuality.

[Al-Rouayheb’s] seminal work and that of Dr. Scott Kugle clearly indicates that by excluding women and those who do not indulge [in?] the act of anal intercourse, the category of *ma’bun* does not define queer individuals. When will conservative Muslim leaders recognize that paraphrasing legal texts is not helpful today? Muslim academic Dr. Kecia Ali has indicated that past exegetes and jurists addressed superfluous desire that could be channeled towards women instead of the exclusive innate orientation towards member of the same sex.

Past exegetes and jurists operated in the context of age and status asymmetrical relationships between unequal partners. The 14th century exegete Ibn Kathir noted that Muslim leaders, jurists and memorizers of the Qur’an were complicit in *liwat* – anal intercourse inflicted on males that included youth, slaves, or those classified as *ma’buns*.²⁰

Based on the conjecture that the Qur’an and medieval jurists were concerned with condemning the homosexual act primarily, if not exclusively, due to the absence of consent, in terms of its being an abuse of power between unequal partners, and given that contemporary homosexuals feel an “exclusive innate orientation toward member of the same sex,” this argument suggests that the divine judgment expressed in scripture from the Torah to the Qur’an and Hadith is simply outdated. The basis of this unusually harsh scriptural judgment, we are told, was the absence of consent and the subsequent humiliation attached to the inferior party. Vaid’s essay challenges, at great length, the speculation that truly felt inclination was precluded from the Islamic or Biblical classifications of crimes or acts. My concern is with the historical element of

the claim that the nature of pederasty condemned by pre-modern religious traditions is entirely different from the modern, consensual, or uniquely involuntary urges of a homosexual person. I have already pointed out the difficulty – if not the actual impossibility – of pinning down consent. We have every reason to think that consent is also socially constructed, and that a class or race of people can be conditioned to accept and even demand a particular kind of treatment that would be seen as denigrating in other cultures.

The politics of desire and consent remains complicated. For instance, some of those who self-identify as homosexual claim to choose to be who they are even when reprimanded by advocates of homonormativity that such admissions are politically inconvenient.²¹ The primacy of the desiring self and individualism that center the idea of consent are certainly modern; however, we have no way to preclude the possibility that some pre-modern individuals who served as passive partners enjoyed or felt naturally inclined toward such a relationship. More importantly, if scripture and tradition had so harshly condemned sodomy *only* because it meant degradation for the passive partner, or *only* because the latter's consent was socially or structurally conditioned and hence not fully fledged, the same should have been said of concubinage or other heterosexual relationships that scripture did sanction. But clearly rape, which is universally condemned in all traditional law as an act of illegitimate intercourse, is categorically distinct from the case of legitimate but unequal relations, for both the Old Testament and the Qur'an permit sexual relations with one's concubines. Whatever behavior or politics one wishes to endorse today, the Biblical and Qur'anic judgment on sodomy cannot be chalked up to the passive partner's degradation or lack of consent.

We now turn to the class of arguments indebted to a hard Foucauldian (i.e., strong social constructivist) approach to conceptual history, one that postulates the social construction and hence the deconstructibility of all norms. When applied to this case, the argument effectively claims that the concept of male-male sex was identical enough through the 2,500 years that separated the prophets Lot and Muhammad, peace upon them, that the Qur'an, the Sunna, and the subsequent tradition clearly sustained the Torah's judgment against it. Yet once early modern psychologists in Europe invented the category of "homosexuality" as social type several centuries ago, the divine judgment suddenly became ineffective, outdated, irrelevant, and/or inapplicable. According to this view, notions of sex changed significantly only once in recorded history: in early modern Europe.

Implausible as this may sound, the argument is of a piece with a larger category of claims concerning whether divine norms can survive significant conceptual change in history. The post-structuralist, historicist, or deconstructionist

trend in conceptual history popularized since Nietzsche and then Foucault is, in itself, quite useful as a partial tool, a lens through which one can interpret enormously complex developments in human history and that has successfully exposed the universalist pretensions of modernity and positivism. In this view, all concepts have histories or genealogies. But in its strong form this view leads not only to nihilism, but also undoes itself (i.e., every claim of construction is itself a construction). Even atheists are more attuned to truth and in agreement that it is worth searching for than pure constructionists, who, as existentialists, consider the idea of a true God too superfluous to even refute.

According to this strong version of social constructivism, all concepts are in flux and socially constructed: the afterlife, good and evil, and the very notion of the human being all have histories. But – and crucially – since nothing survives historical conceptual ruptures, no religion revealed in the past can affect any meaning or authority outside this historical flux. The notion of one omnipotent and omniscient God, in the historicists' view, is the product of the so-called axial age.

A weaker version of social constructivism would hold that certain types of concepts (say, metaphysical ones) can perhaps survive historical discontinuities, but not social institutions. In other words, specific Qur'anic laws may be deemed outdated without invalidating its general imperatives. This view can yield a critique of the Islamic tradition that, in my view, requires careful and sustained attention by scholars.

Unless one believes that modernity is a unique and singular rupture in human history, an event of such magnitude that God's scripture could not anticipate it, it is still difficult to justify the wholesale a priori rejection of Islamic norms and mores for which many modernists and progressivists argue. This is because the Qur'an offers its own history and philosophy of the secular world, just as the secular world wishes to historicize the Qur'an. Revealed in the seventh century, the Qur'an upholds many of the Torah's central laws, including the prohibition of the homosexual act and usury (*ribā*), given over 1,500 years earlier to Moses, while relaxing some peripheral ones. Consider usury, for an analogy: The Qur'an explicitly chastises the Jews for "their consuming of usury, when they had been prohibited from it" (Q 4:161). One historian of the rabbinical prohibition of usury has chronicled how the Jews upheld and expanded the prohibition of Mosaic law for several centuries, but then started to rationalize it when confronted with the complex Roman commercial expansion in the name of what we might call "*ijtihād*."²²

All of this happened before the sixth century, and so the Qur'anic chastisement can be understood as the divine judicial review of this "*ijtihād*," so to speak. The point here is that the logic of historical, social, and conceptual

change to explain away the prohibition of usury did not serve our Jewish brethren well. Nor did God spare them, it would seem, on account of the “*kullu mujtahid muṣṭib*” (i.e., the Islamic legal principle that every qualified legal reasoner is correct, so long as he or she does his best) principle. Some interdictions, the Qur’an seems to suggest, are meant to permanent.

The Imperative to Draw Reasoned Boundaries

Concepts as well as norms change over time and in a way that baffles as well as humbles systematic scholars and utterly eludes others. Many of our modern concepts, including homosexuality, did not even exist in the recent past. The Qur’an itself abrogated many of the previously revealed divine laws, and historical change may be offered as one explanation for this. But how adequate is historical change as a causal explanation and in what cases? Taking the premise upheld by all Islamic theological schools that God knows the future as well as the past and hence could not have failed to anticipate a changing world requires that the line between which norms or concepts can be discarded and which cannot has to be drawn from within Islamic tradition, based, if you will, on divine cues.

Not all advocates of an Islamic sexual revolution base themselves on scripture or tradition; however, those who believe that that guidance must be sought within divine scripture must grant that its systematic interpretation can only be carried in conversation with the tradition that has preserved it and made sense of it for over a millennium. We must recognize that Islam’s marvelous but imperfect (because human) tradition of legal and theological reflection has never seen such a dramatic change in its long and far-flung existence. Socio-economic conditions have indeed dramatically changed, as has our epistemology itself. And yet all that our belief in the continued guidance of divine scriptures requires, I believe, is that these changes must be traceable and comprehensible. This puts the onus on Islamic scholars and thinkers to document and calibrate both the changes and their implications. Those who deny the significance of this change or the rupture with the past are often excoriated, and deservedly so. What I think is less often appreciated and critiqued is the passive acceptance of certain developments as inevitable, rather than historicizing and hence resisting the necessity of changes that, if accepted, render Islam’s legal and ethical guidance utterly incoherent and meaningless.

If the terms, norms, and criteria imposed by late capitalism, the modern state, and their global transformations are accepted, then Islamic *fiqh* and ethical norms can only become progressively irrelevant. It is this passivity of the Muslim mainstream that I wish to question also in the case of the rise of homo-

normativity. In an overpopulated and over-stuffed late-capitalist world, procreation is neither deemed terribly important nor is it exclusively dependent upon a traditional male-female family. Most Muslims have welcomed the rise of the nuclear family, which is “allergic” to cousins, uncles and aunts, parents and in-laws, along with the modern need to be mobile and independent – a lifestyle that both reflects and requires consumerist capitalism rather than the thick, organic, mutually supportive, and extended families and communities that so many Islamic norms, laws, and mores presuppose. Put differently, the Sharia’s concern, comparable to that of Jewish Halakha and Christian ethics, to protect family, lineage, and sexual virtue are steadily outdated if the terms of capitalism and the modern welfare state are fully embraced. The more functions a secular bureaucracy takes away from the family and organic community, the less relevant the sexual ethics and laws preached by the Abrahamic religions become (I use the qualifier *organic* not in the Durkheimian sense, but rather to distinguish local, mosque-, and neighborhood-based community from the global religious community).

What is at stake in late modernity is not only what Islam is (a private religion or something else), but whether Islamic norms make any sense. The solution advanced by Muslims to many socioeconomic changes has often been no more than piecemeal and reactionary *ijtihad*. Heroic, prophetic struggle against fundamental wrongs and structural corruption is reserved only for the radicals and crazies, as if Islam proper is only the religion of docile, middle-class functionaries. Unless a larger alternative vision of prophetic resistance and rebuilding makes Islam coherent and gives a proactive, visionary edge to *fiqh*, this appears to be our foreseeable future.

Endnotes

1. Rod Dreher, *The Benedict Option: A Strategy for Christians in a Post-Christian Nation* (Sentinel, 2017), 9.
2. *Ibid.*, 10.
3. One watershed event in LGBT history was the Stonewall protest of 1969.
4. Greg Wilford, *Independent*, 2 July 2017, www.independent.co.uk/news/world/europe/angela-merkel-chancellor-germany-same-sex-marriage-vote-lgbt-muslim-mps-berlin-bundestag-cdu-sdp-a7819391.html (accessed 3 July 2017).
5. Brian Leiter, an American philosopher and legal scholar at the University of Chicago Law School, argues that despite what the people are told, the Supreme Court judges’ personal moral and political judgment, rather than formal legal reason, are of decisive importance in how they fulfill their role and how they are appointed. See *idem.*, “Constitutional Law, Moral Judgment, and the Supreme Court as Super-Legislature,” *Chicago Unbound*, 2015, <http://chicagounbound.uchicago>.

- edu/cgi/viewcontent.cgi?article=1976&context=public_law_and_legal_theory (accessed 4 July 2017).
6. According to the Public Religion Research Institute, about 42 percent of American Muslims support same-sex marriage. See Robert P. Jones, "Attitudes on Same-sex Marriage by Religious Affiliation and Denominational Family," 22 April 2015, *Public Religion Research Institute*, <https://www.prrri.org/spotlight/attitudes-on-same-sex-marriage-by-religious-affiliation-and-denominational-family/#.VZ02XcZVikr> (accessed 26 Jun. 2017).
 7. "Hindus, Muslims and Jews Have Highest Retention Rates," PEW Research Center, 5 May 2017, www.pewforum.org/2015/05/12/chapter-2-religious-switching-and-intermarriage/pr_15-05-12_rls_chapter2-02/ (accessed 28 Jun. 2017).
 8. See, for instance, Robert P. George, "Muslims, Our Natural Allies," 2 February 2014, *First Things*, <https://www.firstthings.com/blogs/firstthoughts/2014/02/muslims-our-natural-allies> (3 July 2017).
 9. Islamic thought has historically oscillated between two poles: (1) reasoning that is primarily self-referential or inward-looking, based on the norms derives from revelation, and (2) reasoning that is primarily dialogical and outward-looking, accepting "reason" or "common sense" as the common-ground to persuade non-Muslims of Islam's truth. In this case, I think it is dialogical reasoning that is called for: demonstrating not only what Islam says, but why it says so.
 10. "Capitalism is the astounding belief that the most wickedest of men will do the most wickedest of things for the greatest good of everyone," a statement widely attributed to the influential British economist John Maynard Keynes.
 11. Alan Zarembo, "Many researchers taking a different view of pedophilia: Pedophilia once was thought to stem from psychological influences early in life. Now, many experts view it as a deep-rooted predisposition that does not change," *LA Times*, 14 Jan. 2015, <http://articles.latimes.com/2013/jan/14/local/la-me-pedophiles-20130115> (accessed 28 Jun. 2017).
 12. For studies that highlight problems with the current understandings of consent, see Lila Abu-Lughod, *Do Muslim Women Need Saving?* (Harvard University Press, 2013), and for the argument that free consent requires ending the marriage contract, see Anne Phillips, "Free to Decide for Oneself," in D. O'Neill et al. (ed.), *Illusion of Consent: Engaging with Carole Pateman* (Pennsylvania State University Press, 2008). For recent coverage of the legal issues, see "Campus Rape: The Problem With 'Yes Means Yes,'" *Time*, 29 Aug. 2014, <http://time.com/3222176/campus-rape-the-problem-with-yes-means-yes/>; "'No doesn't really mean no': North Carolina law means women can't revoke consent for sex," *The Guardian*, 24 June 2017, <https://www.theguardian.com/us-news/2017/jun/24/north-carolina-rape-legal-loop-hole-consent-state-v-way> (accessed 28 Jun. 2017).
 13. Consider, for instance, Bethany Moreton, *To Serve God and Wal-Mart: The Making of Christian Free Enterprise* (Harvard University Press, 2010), which shows how subjugating the self to the global corporation, the single most destructive force for the planet, the poor, and democracy, draws on a deeper set of ideals

- about the supremacy of family, the morality of self-reliance, and the evangelical justification of free enterprise.
14. The seminal work of Mary Macintosh (1968), the British feminist sociologist and founder of the modern lesbian and gay movement in the United Kingdom, comes to mind.
 15. A homosexual author (Jesi Egan) grapples with the problem that Foucault's social constructivism argument, so ardently supported by feminists, cuts against the LGBT claim that their identity is biologically determined and hence not a choice that can be influenced. www.slate.com/blogs/outward/2014/03/04/sexuality_as_social_construct_foucault_is_misunderstood_by_conservatives.html.
 16. The questioning of the traditional norms against homosexual behavior need not come from a postmodernist or genealogical perspective, of course; liberal religious activists often couch their claims in terms that draw, often unwittingly, on some kind of moral positivism and human rights discourse that may be theoretically naïve but is often rhetorically powerful.
 17. Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500 – 1800* (Chicago: The University of Chicago Press, 2005).
 18. Ahmad al-Rumi al-Aqhisari, *Against Smoking: An Ottoman Manifesto*, ed. and trans. Yahya Michot (Markfield, UK: Kube Publishing, 2011), 21.
 19. *Ibid.*, 124.
 20. Junaid Jahangir, "Queer Muslims Deserve More Than Scriptural Zealotry," *Huffington Post*, 12 July 2013, www.huffingtonpost.ca/junaid-jahangir/queer-muslims_b_3581159.html (accessed 26 June 2017).
 21. E. J. Graff, "What's Wrong with Choosing to Be Gay? Many gay activists insist that they were born this way, hey. But what about those who choose otherwise?" *The Nation*, 3 February 2014, www.thenation.com/article/whats-wrong-choosing-be-gay/; Brandon Ambrosino, "I Wasn't Born This Way. I Choose to Be Gay," 28 January 2014, <http://www.newrepublic.com/article/116378/macklemores-same-love-sends-wrong-message-about-being-gay>.
 22. Hillel Gamoran, *Jewish Law in Transition* (Hebrew Union College Press, 2008). As a rabbi for Beth Tikvah, I assume that the author belongs to reformed Judaism.

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