

HOMOSEXUALITY IN ISLAM

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*Critical Reflection on Gay, Lesbian,
and Transgender Muslims*

Scott Siraj al-Haqq Kugle



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Preface

Bismillah al-rahman al-rahim ... In the name of God, the compassionate One, the One who cares.

All praise belongs to God, the singular and subtle One, who created the universe and made humankind reflect its diversity. All thanks be to God, who made from one human being two, and from two made many and declared, *we created you all from a male and female and made you into different communities and different tribes*. Glory be to God who made a multitude in which each is unique and urged them to reflect upon their differences, overcome their egoistic judgment of others, and find the good in each reflected in others – *so that you should come to know one another, acknowledging that the most noble among you is the one most aware of God* (Qur'an [Q.] 49:13). Then to God they are called and all return. So let us each revere that God, the forbearing One, the One who is just.

Muslim communities, like all other religious groups, face the challenge of confronting diversity. Like other groups, Muslims hesitate and stumble – sometimes inflicting violence along the way – before dealing justly with people in their diverse ranks who are different in appearance, language, ethnicity, creed, or bodily ability. Among the diverse ranks of people are some who are different in gender identity or sexual orientation. Such people are always a small minority yet they appear in every culture and religious community. This book is about the challenge before contemporary Muslims to acknowledge, understand, and accept the diversity in their midst, especially with respect to sexual orientation and gender identity. It contributes to the ongoing process of meeting that challenge and urges Muslims actively to reconsider prejudices they may hold about gay, lesbian, or transgender members of their communities.

Muslims have profound resources for dealing theologically and ethically with diversity, but often ignore them when facing difference and conflict. In their long history, Muslims have intensively dealt with sectarian differences. Through this debate, the classical Islamic sciences developed one of their best characteristics – the tolerance for diversity of interpretation of sacred texts; this is expressed in the words of Abu Hanifa, the renowned jurist, who is reported to have said, “We know this [position] is one opinion, and it is the best we can arrive at, [but if] someone arrives at a different view, then he adopts what he believes [is best] and we adopt what we believe [is best].”¹ This book invokes that long tradition of tolerance within the faith – which is often ignored or lost in contemporary Muslim communities – in searching for a faith-based response to gay, lesbian, and transgender Muslims.

For many Muslims, dealing with homosexuality or transgender issues is a matter of sin and heresy, not difference and diversity. But when pressed, such Muslims often have no clear idea of what homosexuality means, or simply deny that there are any homosexual people in Muslim families and communities. But there are Muslims who face issues squarely with open minds and humble hearts; they may read this book and grapple with the issues it raises. Even if this book does not convince them, it may encourage them to see the issues in a new light, and in that sense it will have succeeded.

Why talk about gay, lesbian, and transgender Muslims now? We must talk about them because they exist and are suffering – and are increasingly refusing to bear suppression in silence. Some turn to their religious tradition with faith-filled criticism, seeing it as not merely part of the problem but as essential to possible solutions. This book is based upon the experiences and hopes of those who are not content to wait for their Muslim sisters and brothers gradually to come to tolerate them. It offers theological reflection on the insights arising from lesbian, transgender, and gay Muslims’ efforts to build support groups to help them reconcile their sexual orientation and gender identity with the Islamic faith. Their struggle beckons Muslims to pay attention to this minority community’s experiences and insights before dismissing them or opposing them.

In that spirit and hope, I offer this book to the public. In the end, only God knows best. I seek protection with God, the One who opens possibilities (*al-fattah*), the loving One (*al-wadud*), the One with subtle grace (*al-latif*).

Acknowledgements

This book presents my own theological reflections, but it is built upon the experience of many others who have shared their knowledge and wisdom and resources with me. I cannot begin without offering them acknowledgement and gratitude.

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I am especially grateful to my students on the course "Gender and Sexuality in Islamic Societies," offered at Swarthmore College and the University of Cape Town, whose questions helped me frame this study. The book began with an article written while I was teaching at Swarthmore College, an institution that has supported and nourished my growth as an intellectual attentive to ethical and political questions. I am grateful to faculty members at Swarthmore – especially Pieter Judson, Farha Ghannam, Steven Hopkins, Mark Wallace, and Pallabi Chakravorty – who offered me friendship infused with the quest for knowledge.

I have been blessed with the opportunity to learn at the feet of able scholars in many countries, both Muslims who are dedicated to intellectual renewal of their faith and non-Muslims who are deeply knowledgeable about Islam. I can-

not name them here, for some may not want to be associated with a controversial project such as this. Yet I am deeply grateful for their generosity and strive to put all I have learned from them to sincere use in this book. I wish to thank two colleagues in particular from the Progressive Muslim movement who pushed me to think harder about this book and its ethical ramifications. Kecia Ali read the manuscript with the careful scrutiny of a specialist in Islamic law and her suggestions have improved it in countless ways.¹ Amina Wadud has shaped feminist approaches to Islam, and has thereby influenced this book, since gay, lesbian, and transgender people benefit from the strength of the feminist movement.² As both a Muslim interpreter of the Qur'an and as a political ally in the fight against injustice, Wadud has offered this book energy and support for which I am deeply grateful.

I have also been blessed with parents who shielded me from poverty, pushed me always to strive for the truth no matter how dangerous that path may be, and supported me in studying, researching, and writing, even if destiny has taken me beyond the horizons of their own experience. While traveling over those horizons, I have found many friends, comrades, and loved ones. I offer sincerest thanks to my sisters of the heart – Rukhsana, Rubina, Farah, Bushra, and Sa'diyya – who have shown me the true meaning of trust, sincerity, and love. Many friends have shared their own discoveries in research into the topic, and I am grateful to Jamal Bakeer, Faris Malik, Daayiee Abdullah, Rusmir Musić, and Nicholas Heer for their their knowledge and experience. I thank Sameer Ashar, Brett Summers, David Anthony, and Kimee Kimura for their unconditional friendship. My thanks and admiration also goes to those whose courage to speak has shaped this book – those few whose interviews are quoted here and the many others who are not quoted, along with all of those who shared their experiences with me, urged me to write, and helped me find the strength to do so.

Finally, I give a quiet word of thanks to my *murshid*, my spiritual guide, who upholds the spiritual path of those who hold the Prophet Muhammad's most important teaching to be, "All people are God's family, and God loves those most who do the most good for God's family," despite our division into nations, tribes, and factions.³ If any good comes to my human family from researching, writing, and publishing this book, may reward for it accrue to those who urge us toward *ihsan* – to do what is good for others and beautifies their lives. If any harm comes from this, let the sole responsibility be mine, for the opinions in this work are to be attributed solely to me.

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Introduction

O people, we created you all from a male and female
And made you into different communities and different tribes
So that you should come to know one another
Acknowledging that the most noble among you
Is the one most aware of God

Qur'an 49:13

The most noble is the one most aware of God. This is not just incitement for all Muslims to increase their awareness of God – it is also a warning to pursue a policy of social tolerance. The implication of this verse is that no Muslim is better than another because of any of the social categories that we use to classify ourselves, such as race, ethnicity, economic class, or gender. Or even sexual orientation. A gay or lesbian Muslim is no less than a heterosexual Muslim, except by the intangible criterion of pious awareness of God (*taqwa*). A transgender Muslim is no less than other Muslims who have not struggled with their own gender identity and faced the stigma of changing gender classification, except by awareness of God.

Most Muslims cherish reciting this verse to oppose the evils of racial superiority, ethnic chauvinism, and class arrogance. Yet some see this verse as a call to justice that rings far beyond its terse words. Progressive Muslims extend its implied meaning beyond its explicit wording, to condemn also male sexism, gender injustice, and social stigmatizing of homosexuals. This verse is often cited in the internet discussions of members of a support group for Muslims who are lesbian, gay, or transgender in the U.S., called Al-Fatiha Foundation. Its members see themselves as a community of people – like the tribes and communities of the Qur'anic verse – who are a natural result of human diversity as

it is created by God's divine will. Many of them refuse to accept the allegation that they are sinful or perverse or sick, as many Muslim authorities regularly assert. They accept that they are merely human, as are all other Muslim believers, and that God judges them according to their awareness of God. They strive to surrender to God's will, not to the criticism of others informed more by social prejudice than by awareness of God.

This book was inspired by the courageous work of Al-Fatiha Foundation and by the author's involvement in its activities. Discussions with its members and sympathy with their sense of urgency sparked me to write an essay entitled "Sexuality, Diversity and Ethics" in a volume of essays by scholars in the Progressive Muslim movement.¹ That essay questioned whether Muslims needed to condemn fellow believers who were homosexual in order to be faithful practitioners of their religion. This book expands upon that original essay, reflecting systematically and thoroughly on Islam from the point of view of gay, lesbian, and transgender believers. The argument engages the full range of the Islamic religious tradition and its complex texts – from Qur'an as scripture and *hadith* as oral teachings to *fiqh* as legal rulings and the *shari'a* as a rhetoric of orthodoxy. For this reason, the argument becomes rapidly complicated. Yet it can be presented here in this introduction in simple terms and common language.

This book asserts that some human beings simply are homosexual by disposition rather than by choice. There has always been a very small minority of homosexual women and men in every human community, though societies define them in different ways, languages have different terms to describe them, and belief systems have different reactions to their presence. Some societies accept them and some condemn them, but none has ever prevented them from being present – whether openly or under suppression. What causes them to be present is open to question. As a Muslim, I assert that they – like all natural phenomena – are caused by divine will, though biological processes or early childhood experiences are important means by which they come into being. Whether the "cause" is God's creation, biological variation, or early childhood experience, homosexuals have no rational choice in their internal disposition to be attracted to same-sex mates. The Qur'an mentions them obliquely and does not assess them negatively, but it also does not deal with their existence as a minority social group. Instead, the Qur'an addresses the majority who are oriented toward the other sex, that is heterosexuals whose sexual urge can result in procreation and replication of the social order. Where the Qur'an treats same-sex acts, it condemns them only insofar as they are exploitative or violent.

However, the Islamic tradition is based on more than the Qur'an. Later texts, like hadith reports and *fiqh* decisions, stigmatize homosexuals and criminalize

their relationships. The question is whether these negative assessments in oral tradition and jurisprudence are in accord with the Qur'an as scripture, and whether these other non-scriptural sources of authority are authentic and reliable for Muslims. Asking these questions opens the possibility for Muslims to take a reformist approach to their own religious tradition. The reformist or progressive approach must take into account new possibilities for human fulfillment in increasingly non-patriarchal societies like those evolving under democratic constitutions, where Muslims are living as minority communities and fellow citizens. In these new environments, it is possible for homosexual relationships to be based on ethical reciprocity, trust, justice, and love, just as heterosexual relationships ought to be based on these values in the ethical vision of the Qur'an. What 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.

This is the argument of this book in the simplest terms. The argument runs up against resistance from two sources. The first source of resistance is the Islamic tradition's being built on a variety of texts and teachings, some of which support this argument and some of which oppose it. A major task of this book is to assess how primary and essential sources of Islam support this argument while specifying how secondary and inessential teachings that oppose it can be reconciled. The second source of resistance is the patriarchal culture of most Muslims, with its misogynist and homophobic elements. This patriarchal culture is independent of Muslim religious tradition but often finds support in some of its teachings.

The challenge faced by this book is a challenge shared by all reformist and progressive projects within a religious tradition. The challenge is to separate what is imposed by culture from what is essential to faith, on the one hand, and to sift what is essential to faith from what is enshrined in religious tradition, on the other hand. This book is a small contribution to this larger project. It offers systematic theological reflection upon the experience of transgender, lesbian, and gay Muslims, and argues that insights gleaned from their experience are integral to the wider movement of progressive reform among Muslims. Their experiences are being articulated today in ways that were impossible only a decade ago.

There is currently an international network of advocacy and support groups for lesbian, gay, bisexual, and transgender Muslims. Though each is embedded in a distinct national environment, these allied groups share many concerns and exchange ideas. The groups include the Inner Circle in South Africa (for-

merly called Al-Fitra Foundation); Al-Fatiha Foundation in the U.S.; the Salam Queer Community in Canada; Imaan and the Safra Project, both in the U.K.; the Yoesuf Foundation and Habibi Ana Foundation, both in the Netherlands. They focus on building confidence, raising consciousness, and encouraging *ijtihad* – independent or original analysis based on intellectual effort and ethical discretion – in the interpretation of religion and law.² These Islamic groups are found mainly in secular democratic nations with Muslim minority communities where lesbian, gay, and transgender Muslims can voice controversial opinions, appeal for rights, and articulate alternative views of Islam without overwhelming fear of persecution. Chapter 1 will present a case study that demonstrates the urgency and potency of the activist work of these support groups in a courtroom drama in which I was an active participant.

In preparing this book, I have interviewed leaders and participants in these support groups to understand their lifestories, how they came to value Islam despite struggling with Muslim families and communities that rejected them, and how they see Islamic spirituality fueling their activist work. These support groups are possible because of increasing social tolerance of homosexual and transgender people in secular democratic societies, and their members argue for more tolerance within the Islamic tradition upheld by minority communities within these societies. A concern for tolerance is shared by other Muslim scholars in the progressive Islamic movement, and their writings are required reading among members of these support groups. The Islamic legal scholar Khaled Abou El Fadl has stated most clearly the baseline issue of whether Islam can and should be tolerant. “The Qur’anic discourse, for instance, can readily support an ethic of diversity and tolerance. The Qur’an not only expects, but even accepts the reality of difference and diversity within human society ... the Qur’an asserts that diversity is part of divine intent and purpose in creation ... The classical commentators of the Qur’an did not fully explore the implications of this sanctioning of diversity or the role of peaceful conflict resolution in perpetuating the type of social interaction that would result in people *knowing each other* (Q. 49:13) ... In fact, the existence of diversity as a primary purpose of creation, as suggested by the verse above, remained underdeveloped in Islamic theology.”³ Abou El Fadl’s writings on Islamic law are a major force in trying to redress this underdeveloped aspect of Islamic theology, and his ethical clarity and intellectual vivacity have moved me and so many others.

However, Abou El Fadl’s vision of Islam as expecting and accepting diversity exists more in potential than in actuality. Other progressive Islamic scholars have pointed out the limitations of tolerance. Feminist Muslim scholars have continuously pointed out how tolerance of diversity is significantly lacking in Islamic communities with regard to gender, one of the most fundamental

markers of difference in all human communities. The fact that women's dignity and equality are treated as an issue of "minority rights" – when women are numerically equal (or greater than) men and are indispensably central to the well-being of all human communities – is indicative of the depth of the problem and the reluctance of men and the institutions they establish and run to justly deal with it. If Muslims' tolerance of diversity is stretched to the limit regarding women's rights, then imagine how it is stretched to the breaking point in dealing with lesbian, transgender, and gay rights.

But, in reality, justice is not served until comfortable concepts like "tolerance" are stretched to the point where they almost break. People are profoundly different even if they belong to the same culture, religion, community, or even family. Difference based on sexual orientation and gender identity takes us to the extremes of individual identity. It pushes religious mores and family authority to their practical horizons. Yet looking squarely at the issues of sexual orientation and gender identity helps us affirm universal values. It helps us define what it means to be human, to be considered an authentic creation of God, to be imbued with dignity and worth despite chronic social stigma and religious condemnation. Progressive Muslim scholars urge us to recover the tolerance inherent in the Islamic message and to assert a values-based religious ethic. The issue of how religious tradition deals with conflicts over sexual orientation and gender identity is an important test case to find and expand the limits of the Muslim community's response to the challenge of diversity.

This book concentrates upon the Qur'an as the ever-full spring of Islamic belief, practice, and spiritual development. While maintaining a focus on the Qur'an in Chapter 2, the book's scope expands to include hadith in Chapter 3, fiqh debates in Chapter 4, the flexibility of *shari'a* to accommodate same-sex marriage in Chapter 5, and fatwa politics that shape opinions toward transgender experience in Chapter 6. In practice, Muslims base their religiosity upon these sources – oral reports, legal debates, and the rhetoric of contemporary authorities – as much as on the Qur'an itself. In this book, I quote the Qur'an in *italics* in order to set off the meaning of God's speech from other kinds of discourse. Immediately after each quotation from the Qur'an is given the chapter and verse, to facilitate readers looking up the scriptural passages. I have not relied upon any single English translation of the Qur'an, but have rather compared many translations and reconciled them with my own understanding of the Arabic text, as I have sufficient knowledge of the language to do so. The English translations of Qur'an given in this book are my own, though I acknowledge with great respect the translators who have meditated on the Qur'an before me.⁴ For those readers who question the faith of anyone so audacious as to write about homosexuals as part of God's will in creation, I have explained in other

essays how I am a Muslim and what sources in the Islamic tradition nourish my faith.⁵

Many Muslims cling to presumptions when it comes to issues of sexuality and gender, and feel that they already know “what Islam says” without reflecting on whether they have based their opinion on patriarchal culture or knowledge of religion. The theologian Abu Mansur al-Maturidi (died 943) reminds us that in accepting tradition and acting upon it we need to rely on reason: “The human being is specially endowed with the moral responsibility to manage the affairs of the created world, to meet people’s needs through labor, to seek the most beneficial circumstances for their powers of reason and choose what is best for them and while protecting them from what is contrary to this – there is no way to achieve this except by using discernment through reasoned research into the nature of things.”⁶ When we direct discerning reason toward our own religious tradition, we find that many values that we Muslims commonly attribute to Islam do not come from the Qur’an or the Prophet Muhammad’s example but rather from patriarchal culture.

Patriarchy is the ideology instituting the dominance of elder heterosexual males over all others, specifically women of all ages, younger men, and minority males who do not accept patriarchal roles that reinforce masculine power. Patriarchy existed before the advent of the Qur’an and the Prophet Muhammad’s example, both of which challenged patriarchy in some ways. After the Prophet’s death, Muslims inscribed patriarchal values deep into Islamic culture, allowing the Islamic *shari‘a* to compromise the Qur’an’s ethical voice. Because of this, Muslims in the past did not seriously consider the issue of women’s social equality, did not offer dignified roles for lesbian and gay people, and did not countenance transgender people in Muslim communities. Rapid changes in society under the impact of modernity, along with advances in scientific knowledge in fields of psychology, sociology, and genetic biology, make reassessing the classical *shari‘a* a vital necessity. In addition, the voices of marginalized groups – like women, lesbian, gay, and transgender Muslims – insist on justice after such a long-imposed silence. Previously marginalized groups offer important ethical insights toward non-patriarchal interpretation of Islamic scripture, insights not available to those who have not suffered similar experiences of existential exclusion.

The goal of this book is to show that lesbian, gay, and transgender Muslims offer constructive critique of classical Islamic thought. Islamic theology has previously untapped resources to comprehend them and give them a dignified role in contemporary Islamic communities. As al-Maturidi reminds us, our sincere practice of Islam depends upon constant application of discernment through reasoned research into the nature of things. Such research may change

our view of religion depending on new developments in politics, social organization, and scientific understanding. All these things impact our view of sexuality and gender, and demand that we apply reason to scripture and scrutiny to custom.

Reasoned research into the nature of things requires attentive observation of lived reality. The theological reflections offered in this book are informed by interviews with Muslim activists who work with support groups for transgender, lesbian, and gay believers in five different nations on three continents: South Africa, the U.S., Canada, the U.K., and the Netherlands. These activists are very diverse in terms of sexuality, gender, and ethnicity.⁷ Despite this wide diversity, all those interviewed share many things in common besides being not heterosexual. They are Muslims as defined by personal identity or spiritual faith, many of them striving to practice the rituals of Islam in their daily lives to the extent and depth possible in their particular situation. All those interviewed are participants in support groups for lesbian, gay, and transgender Muslims, groups that see religious belief and practice as important factors in the well-being and integrity of their members.

All these interviews were undertaken in “Western” countries, meaning countries that are secular democracies in which Muslims form a minority and in which religious custom (Christian or that of any other religion) does not form an explicit legal basis for national law. In these Western countries, Muslims live as citizens even if they are a religious minority (and often belong to ethnic minorities as well), yet the democratic nature of the state allows them religious freedom to worship according to their conscience. It also allows gay, lesbian, and transgender Muslims to establish support groups with differing amounts of legal protection from their own religious community and family pressure. The fact that those interviewed live in Western secular democracies does not lessen their authenticity as Muslims. Rather, living in the West allows them to speak openly and organize legally around their identity as sexual and gender minorities, and to creatively interpret their religious tradition, Islam, in ways barred to many who live in Muslim-majority nations in the Middle East, Africa, and Asia.

Although this book does not present interviews with these activists, I have based theological reflection about Islamic ethics, norms, and texts upon their insights. In the future, I hope to present their lifestories in their own words in a separate book. These interviews show how transgender, lesbian, and gay Muslims embrace their religious tradition, through personal spiritual experience, through struggle with family and community, and through wrestling with the meaning of scripture. However, in this book I take their insights as lived reality and ask what resources the Islamic tradition has to offer them to help

resolve the conflicts they experience between Islam (as a religion imposed by family, community, and history) and their existential condition as members of a sexual and gender minority. Their narratives were taken as pointers to explore the Islamic tradition and search for resources to build a sex-positive and sexuality-accepting interpretation of Islam which would not reject gay, lesbian, and transgender believers solely because of their gender identity or sexual orientation. The theological approach laid out here is one of progressive Islamic faith, which seeks to protect the vulnerable from suffering and injustice perpetuated by patriarchal religious authorities, not by discarding religion but rather by liberating religion from the domination of these well-entrenched authorities. Thus liberated, the religion can itself become liberating for those who are vulnerable and oppressed, as it was in the beginning.

This requires us to ask whether Islam can be other than what straight Muslims say it must be. This question, so simple on the surface, is actually very complex. To venture an answer requires that we delve into detail about the Qur'an, hadith reports of the Prophet Muhammad's teachings, and fiqh or norms developed by Muslim jurists in medieval times. Those who adhere to Islam as a religious commitment have to deal with these texts, whether they are theologians, specialist scholars, or common believers. Yet simply quoting Islamic texts with regard to transgender, lesbian, and gay believers without critiquing and reinterpreting the texts only perpetuates the injustice done to them in the name of religion.⁸ For this reason, I have endeavored to make the foundation of this study the voices of contemporary Muslims who speak in their own ways and represent their own struggles as gay men, lesbian women, or transgender people whose identification as either male or female does not come easily.

This book has limitations that I openly admit. Whereas many Muslims will see its argument as "radical," some progressive readers may see its argument as "conservative." The book is conservative in that it assumes Islamic belief in the existence of the one God, the sacredness of the Qur'an as the speech of God, and the sincerity of the Prophet Muhammad's mission to spread its message. It is conservative in its aim to nourish the faith of those who hold these beliefs and to help gay, lesbian, and transgender Muslims to find ways to retain their faith despite great obstacles. It is conservative in valuing the principles of the Islamic tradition even as it argues against some of that tradition's normative texts and dominant authorities. Some gay, lesbian, and transgender readers despair at the prospect of a call for acceptance from within the religious tradition, and see religion as part of the problem rather than a resource in its resolution; to such readers this book may seem too conservative or even naive.

There is another aspect of this book's argument that may seem "conservative" to some readers, especially those active in progressive politics and secular

human rights. This book restricts its discussion to people who are homosexual (lesbian or gay) and transgender. It presents a theory of sexual orientation and gender identity that accepts and assumes these categories. It focuses mainly upon homosexuals – gay men whose identity is largely and indelibly shaped by their sexual attraction to other males, and lesbian women whose identity is similarly shaped by sexual attraction to females. It focuses also on transgender people – those born as or perceived to be men but who identify as women (male-to-female transgender) and those born as or perceived to be women but who identify as men (female-to-male transgender). Transgender people are quite distinct from homosexuals but their experience of divergence from patriarchal norms resonates with that of homosexuals. All these categories assume that “gender” is a real category that structures the experience of people, even as they diverge from patriarchal norms built upon gender. Homosexuals diverge from it in that they are sexually oriented toward people of the same gender, and transgender people diverge from it in that they identify as the opposite gender to that which they are perceived or ascribed to be. They all question the norm because of their inherent disposition rather than because of any conscious decision, learned behavior, or curable disease.

To argue as this book does that homosexual and transgender people behave the way they do because of their inherent disposition may strike readers as “conservative.” Lately, intellectual trends in gender and sexuality studies have labeled this argument as “essentialist.” They contrast it with an approach labeled “constructivist” that sees all social categories – including homosexual and transgender (or even male and female) – as inherently unstable and socially conditioned categories. Although such constructivist approaches give us insight into the linguistic flexibility of categories and the great variety of social systems that posit them, these approaches are relatively flimsy as the basis for a call to protect the rights of living persons or to urge religious reform. On the contrary, “essentialist” approaches are more useful to mount a political campaign to actually change social relations rather than just comment upon them.

This book therefore posits that there are real categories of people who can be called gay, lesbian, and transgender. They form identifiable groups because of their inherent disposition which – whatever its original cause – manifests in clearly discernable behaviors. The terms used to describe them may differ from culture to culture or change from era to era (as might the social stigma attached to them), but the fundamental categories are persistent and the psychological processes that push people to manifest behavior that places them in these categories is persistent. So this study takes up these three categories of people as the basis of its analysis.

Of course, there are other categories of people who do not conform to patriarchal norms.⁹ The largest category that I do not discuss in this book is “bisexual.” Why choose to deal with gay men, lesbian women, and transgender people while excluding discussion of bisexuals? The answer has to do with scholarship, with politics, and with religion. This book seeks to make an Islamic and especially Qur’an-based argument for accepting sexuality and gender minorities. In the Qur’an, I find oblique but potent scriptural reference to gay men, lesbian women, and transgender persons; the speech of God does not condemn them but rather observes them as part of a diverse creation, as detailed in Chapter 2. Therefore, theological reflection based on the Qur’an can find firm foundation for these three categories of people.

In the Qur’an, I do not find any such positive acknowledgement of bisexual people, defined as those men or women who feel sexual attraction to both male and female partners and do not find fulfillment with only one or the other. If this book included discussion of bisexuals without a scriptural reference upon which to base a reformist analysis, the theological basis of its argument would be diluted. Other reasons that it does not discuss bisexuals are political and scholarly. Bisexuality is controversial in contemporary gay and lesbian communities, for many see bisexuals as challenging their identities in destructive ways, especially in environments where lesbian and gay people are not secure. Though many groups are established to support gay, lesbian, transgender, and also bisexual people, there is often a sense of resentment against bisexuals because they fulfill same-sex desires while still conforming – at least partially or publicly – to heterosexual norms. When discussion turns to Muslim communities, the political delicacy of this question becomes even more pronounced.

In many Muslim communities, from the classical period to modern nations, a kind of “behavioral bisexuality” is widespread. In societies that are segregated by gender, like many Muslim communities, access to opposite-sex partners is restricted and marriage is expensive, so same-sex acts may be common. Such behavioral bisexuality – in which a male may find sexual release with another male while still desiring fulfillment with a female – is driven not by identity and inner disposition but rather by thwarted sexual urges that find release through means that the actor finds pleasurable but less than ideal. In a patriarchal environment where homosexual identity is severely censured, the same men who behave in bisexual ways might also condemn their same-sex partners, make homophobic statements, or participate in violence against those seen as homosexual. Such behavioral bisexuals do not perceive themselves to be homosexual even though they participate in acts of “situational homosexuality.” In such environments among men, a basic categorical difference is drawn between a partner who takes a penetrating role in intercourse (who perceives himself to be

simply an “active” male who is not blameworthy) and a partner who takes a penetrated role (who is perceived as “passive” and therefore not really male – as effeminate or diseased or sinful). Such a behavioral bisexual desires sexual intercourse with women and may marry and procreate even if he indulges in same-sex intercourse before marriage or while married. When this kind of behavioral bisexuality is common (either because intercourse with females is restricted or because active males expect pleasure from whomever allows her- or himself to be penetrated), it obscures “dispositional homosexuality” wherein a man sexually desires another male or a woman desires another female due to inward disposition. Because analyzing “dispositional homosexuality” within an Islamic framework is the aim of this book, discussion of bisexuality – especially behavioral bisexuality of the type described above – is beyond its scope and also against its grain.

Many books have focused on behavioral bisexuality in Muslim communities and on its effect of creating social categories based upon differential sexual roles for “active” versus “passive” participants in homosexual intercourse and relationships. Such books are written from the perspective of sociology, literature, travelogue, and journalism.¹⁰ But if one takes Islamic theology – and especially the Qur’an – as one’s starting point for making a positive assessment of homosexuality, then this kind of bisexuality is a distraction. It is such behavioral bisexuality that drove classical Muslim jurists to condemn sodomy (*liwat*) with harsh penalties and charge that early heterosexual marriage was a “cure” or preventative measure against it. Some gay Muslim activists who are trained in Islamic theology have even suggested that the Qur’an condemned the Tribe of Lot for acts that fall into this category of behavioral bisexuality, for they were basically married and heterosexual men who engaged in sexual intercourse with men for reasons other than their internal disposition – specifically, they used rape and sexual abuse to assert dominance and humiliate the Prophet Lot.¹¹ This debate will be discussed in detail in Chapter 2. Suffice it to say that, from a basis in the Qur’an, one can differentiate between homosexuality based upon internal disposition and behavioral bisexuality that is most often situational, driven by heterosexual deprivation, penetrative lust, or social aggression.

Of course, not all are bisexual only in behavior. There are also people who are “dispositional bisexual” due to their sexual orientation. They are attracted to both males and females either at the same time (concurrent bisexuality) or in series (sequential bisexuality) in a disposition that is of long duration and deep impact, such that they develop an identity rooted in this attraction and the behavior it shapes. In contemporary Western societies, this type of disposition and subculture is the main reference to “bisexuality.” Meanwhile sociological

research and human rights activists refer to other kinds of behavioral or situational bisexuality as “male-to-male” sex, indicating that such sexual activity is not driven by identity or disposition but rather by other forces. Although the idea that some bisexuals may have an innate disposition that shapes their sexual orientation is closer to the concerns of this study, it is beyond the study’s scope. This study addresses directly the question of whether God intends some men and women to be of homosexual disposition, and if so what the consequence of that insight would be for homosexual Muslims and their co-religionists. It also addresses the related but distinct question of whether God creates some people in the “wrong body” such that their gender identity does not match their ascribed gender, a condition that drives them to transgender behavior to change their ascribed gender to harmonize with their internal identity. But this book does not venture the next step to ask whether God intends some men and women to be dispositionally bisexual. To address that question would call into question the definitiveness of sexual orientation and also the discreteness of gender difference which are assumed by gay men, lesbian women, and transgender people.

These categories – male gender, female gender, and sexual orientation toward one’s own gender – provide the existential terrain upon which gay, lesbian, and transgender people negotiate their identities and life choices. Such people challenge the way patriarchal societies enforce heterosexual behavior to regulate the boundaries between these categories, but they do not challenge the existence of the categories of gender difference (meaning that female and male are real categories that differentiate people on the basis of gender) and sexual orientation differential (meaning that homosexual and heterosexual are real categories that differentiate people on the basis of their object of sexual attraction). In contrast, dispositional bisexuality challenges the idea that these categories are psychologically firm and socially forceful. Therefore, to focus on bisexuality in this study would be to dilute its focus and undermine the political and theological force of its argument.

Every book has limits. I endeavor here only to establish groundwork for discussion of the issues, not to give final verdicts. If we Muslims cannot establish a baseline understanding of lesbian and gay members of our community, then how can we move on to more ambiguous and varied phenomena like bisexuality in all its variations? This study intends to start a dialogue rather than to have the last word or negate other approaches to the issue. This dialogue is only beginning, and it is hoped that others will consider its blind spots or neglected topics to be invitations for their own contribution. Its major goal is to give heterosexual Muslims a new understanding of homosexual and transgender Muslims, and open a new way for homosexual and transgender Muslims to

gain new confidence in themselves within their religious community, its beliefs, and its rituals. That is a large enough task for one book. Non-Muslims can also learn from its arguments about Islam as a religion and its potential for flexible adaptation and progressive change. Bisexuals, though neglected here, can also learn from this book's source-critical approach and liberation theology method; perhaps bisexual activists and scholars representing their experiences will take up these tools in their own search for justice within an Islamic framework, and no doubt when they do they will disagree with some of basic premises of this study. I will be the first to welcome their efforts and read with eagerness their conclusions.

Further limitations are imposed by the need to choose terminology. Those readers familiar with lesbian, gay, bisexual, and transgender politics will notice that I have refrained from using the term "queer." Queer is a term that has been in the not-so-distant past directed against homosexuals in English-speaking environments to insult or punish. In the past two decades, activists and scholars have reappropriated the term "queer" with positive connotations, to describe in one label all varied identities that question patriarchal heterosexuality. In their writings, "queer" means the whole community of lesbian, gay, bisexual, and transgender people along with others who question patriarchal norms. Although some people do identify with the label "queer," many readers find it disorienting, overly intellectual, or polemical. To make this study accessible to the greatest number of people, I persist in using the terms "gay," "transgender," and "lesbian." These terms denote three different kinds of people who have much in common even as they are clearly differentiated from each other, and these terms are more recognizable to general readers. The term "queer" refers to all these varied kinds of people as one single group – those defined as "different" due to sexual orientation and gender identity – in an overtly politicized way to which not all members of those groups subscribe. I have used the term "queer" in previous articles and fully explained its use and nuances there.¹² It is hoped that those who do identify as queer will derive benefit from this book and can adopt its arguments to their own distinctive position even if the book avoids this term.

Some sociological writings use the term "non-heterosexual" as a clinical label to refer to lesbian, gay, bisexual, transgender, and queer persons (often reduced to the acronym L.G.B.T.Q.). While "non-heterosexual" has the merit of being a single-word term, it has the demerit of being defined as a negation – it includes all behaviors that are not heterosexual and all identities that do question the normality of heterosexuality. Therefore, it does not refer to any positive content in the personalities of people who adopt such identities or perform such behaviors; there are consequently no actual people who self-identify as

“non-heterosexual.” To do so would suggest that they strive to be everything that heterosexuals are not, which is not an accurate description of transgender, lesbian, or gay people; their difference from others in their families and religious community has only do to with sexual orientation and gender identity, not with all other values or qualities. They share much with others, even if they are seen as radically “different.” This book tries to facilitate their struggle to assert their common humanity, religious affiliation, and spiritual aspiration while also affirming their difference. To use the term “non-heterosexual” to describe this book’s protagonists would undermine their essential message. The term may be apt in clinical sociology, but is not adequate in the context of theology as in this book.

In short, the book reflects theologically on the struggles of lesbian, gay, and transgender Muslims by examining critically and constructively the Qur’an, hadith, and Islamic legal rulings. It hopes to provide a bridge between Islam as a tradition and Muslims as living people. The interviews I have undertaken have the unshakable authenticity of recording individuals speaking in their own voices of their own existential struggles in their own living contexts. They are traces of personal *jihad* or struggle with one’s commitments. Those interviews are not fully recorded in this book, though it does quote some activists and has based its theological reflection on their insights. But theological reflection does not have the inviolable value of a first-person account of someone’s own experience and is limited by being still in process as one person’s attempt to discover the truth through research and reflection. It is an offering of intellectual *ijtihad* or struggle to ascertain what is right, based on one’s understanding of the Qur’an, the Prophet’s example, jurists’ deliberations, and the Islamic community’s discourse.

Chapter 1

Islam on Trial: A Case Study

When the earth quakes her violent shakings
And the earth bears forth her weighty burdens
The human being declares, “What is with her?”
That day, she speaks of what’s happened with her
All that her Lord has inspired to her
That day people come forward, each differently
To witness their deeds
So whoever does an atom’s weight of good
Sees its consequence
And whoever does an atom’s weight of harm
Sees its consequence

Qur’an 99:1–8

There comes a day in every life when the unwanted truth bursts forth, with dire consequences that send us into upheaval. We usually try to avoid that day, sometimes with indifferent negligence, sometimes with strategic silence, sometimes with lying avoidance. Nevertheless, the truth comes. The Qur’an insists that the day of truth comes, so it is better that we face the consequences now and live up to our responsibilities to God and to our neighbors than to wait until death overtakes us.

In this brief chapter, Surat al-Zilzal or “The Earthquake,” the Qur’an describes the cataclysm of cosmic accountability that will overshadow each of us, surely after death but also certainly, in small forerumbings, in our lives. Events have a way of piling up so that what we strive to avoid comes to slap us in the face and we are shaken violently, suddenly made aware “to see our deeds.” This chapter was one of the earliest revealed to the Prophet

Muhammad, and it conveys a core teaching of Islam: the inevitable accounting of facing God directly – without intermediary, without helper, without excuse.

This chapter is the first of the Qur'an that I remember having read, long before I could read its powerful rhyme in Arabic or understand its potent play of gendered pronouns that give the earth its personified role in the cosmic cataclysm. Reading this single chapter, just eight tense verses, laid the seeds that would later grow into the love of learning Arabic, branch into becoming a professor of Islamic studies, and eventually, many years later, flower into the spiritual aspiration to become a Muslim.

However, I really didn't understand the verse, despite its importance to me, until the day I was called to testify in court in the summer of 2002. Fortunately, I was not standing accused, but was rather called upon as an expert witness. The case was at an immigration court in Arlington, Virginia. The Immigration and Naturalization Service of the U.S. (I.N.S.) was seeking to deport a Moroccan man, twenty years old, whom we will call "Mehdi" in order to keep his identity anonymous. He had overstayed his year-long visa to enroll in college, and was arrested on his community college campus, only weeks after having begun his first semester, only days after the events of September 11, 2001 (9/11). After spending many months in an I.N.S. holding facility, Mehdi applied for political asylum to stay in the U.S., as a homosexual, "because he had been persecuted and abused with the acquiescence of the Moroccan government on account of his sexual orientation."¹ He charged that he fled Morocco after having suffered past persecution and can establish in court "a well-founded fear of future persecution based on his membership in his social group as a homosexual" such that he could appeal against I.N.S. deportation back to Morocco under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the "Convention against Torture." The case was complicated, and the U.S. does not have a positive track record on allowing asylum on the basis of homosexuality. Questions arose not only about the veracity of his story but over the status of homosexuality in Islamic law and culture as it is practiced in Morocco. I was called upon in the case to speak about Islam as a religion and Islamic culture in Morocco, for I had lived and studied there for several years, was writing a book on Islamic law and ethics in Morocco, and taught an undergraduate course on gender and sexuality in Islamic cultures. In addition, I served on the *shari'a* advisory board for an advocacy group that works to support gay, lesbian, bisexual, and transgender Muslims in the U.S., Al-Fatiha Foundation. It was an honor to be called to witness in court, but the experience was a bit of an earthquake for me and shook me from my complacency.

I was accustomed to wearing jeans in a university classroom, but now I was wearing a suit. I was used to having an hour to explain a point about Qur'anic interpretation or Islamic legal reasoning in all its ambiguity and detail, but now I had to answer in sound bites. I took it for granted that students could listen to provocations in my lecture and come back tomorrow to ask for clarification or counter-argument with "the real truth" constantly questioned and refined, but now I had only one chance to speak before a decision was made. Before, I hoped my words would convey information mixed with a little wisdom, but now my words were operations of power, upon which a life depended. I had written about jurisprudence (both Islamic and Western) safely from a scholarly armchair, but now I was implicated from the witness chair in the very exertion of power that I had sought to understand from an observer's safe distance.² It was as if the world had been overturned in an upheaval that revealed some truths that were weighty to bear.

The case in court and my role in it inspired me to write this book. The case brought up many questions that the courtroom proceedings could not address adequately. This book seeks to address them in great detail and in the widest context, for the way we Muslims treat homosexuality and transgender experiences in our communities reveals much about our religious tradition, our practical interpretation of Islam, which may or may not live up to its essential principles and high ideals. In fact, it reveals how we Muslims have allowed many distortions of Islam to conform to cultural prejudices that are deeply ingrained but not inevitable.

The Trial

However discomfoting it was for me to be in court, it was far, far worse for the young man whose hearing it was. After all, he was on trial, not me. Mehdi's own day of upheaval had occurred long before, not in court but in the apparent safety of his family home in a modern city of industry and trade in northern Morocco. He had grown up in a prosperous family, as the only son with four sisters. His father was a merchant marine captain who was a respected community member – both religiously pious and politically conservative – with friends well placed in government and the civic elite. Mehdi grew up hiding his homosexual orientation, owing to fear that revealing it would be dangerous and result in family strife, social ostracism, and bodily harm. In his testimony, Mehdi said, "I never disclosed my sexual orientation to my friends because I knew they would despise me. My friends openly spoke of their desire to kill anyone who was gay, and my personal experiences told me that these were not simply idle threats."³ However, at age thirteen, his mother found him in a

compromising position with a friend, a boy his own age. "As punishment, my mother slapped me twice across the face and held me forcibly while she heated a fork over the stove, which she then pressed against my hand, causing excruciating pain and leaving a scar that I still have. My mother told me that I had committed a very shameful sin, and she threatened to tell my teacher so that everyone at school would know of my sin and, more frighteningly to me, she said that if I met my friend again that she would tell my father." At fifteen, he had a sexual relationship with another adolescent male, a friend of a friend who was visiting his city for the summer. At the end of the summer, the friend left and Mehdi managed to repress his sexual feelings while continuing his schooling.

All this while he heard stories of young gay or lesbian people in his town and how they were treated. When he was thirteen, a teenage girl in his neighborhood was murdered while her parents were gone for the weekend. On going to the scene of the crime, "I noticed that the iron bars had been removed from one of the windows and the phone cable had been cut. I overheard some neighbors talking and saying that the victim was a lesbian woman . . . I also overheard that the police knew it wasn't a robbery because nothing had been taken." Because no one was ever arrested for the murder, he concluded that the victim had been murdered for being a lesbian: an "honor killing" that her own family might have engineered. Three years later, another incident drove the danger of his situation home more clearly. The elder brother of one of his neighborhood friends, like many Moroccans, went to college in Germany and he used to return every summer for vacation. One summer, this friend's brother did not return from Germany. The other college students who came back "told everyone they saw that [he] hadn't returned because they had discovered that he was gay. I heard them say that they were afraid to do anything to him in Germany and that they wished he would return because 'it would be easy to get him in Morocco.'" Everyone knew that the police would look the other way and that in situations of violence directed at gay or lesbian Moroccans "The police would not protect me from violence at the hands of my family or others."

Despite this adverse social climate, or perhaps because of it, Mehdi threw himself into schoolwork. He excelled in math and physics to the point that his family rewarded him with his own bank account and passport in preparation for adulthood. At age seventeen, his parents gifted him a tourist visa to the United States, to spend a summer in New York and broaden his horizons. At this point, he felt confident enough to tell his mother that he was gay: the reasons for this confession were not clear, but could have come from discussion about future marriage plans, from discussion of his past "indiscretions," or simply from a sense of integrity in desiring adult honesty with one's mother.

“My mother’s reaction was dramatic. She turned bright red, hit me in the face, and screamed at me for bringing disgrace to the family. When she prepared to leave the house, I knew that she was going to tell my father, and that terrified me.” He took his clothes, wallet, passport, and all the money from his checking account and fled, staying for ten days at the home of a school friend while making plans to fly to New York.

But it was not so easy to escape confrontation. His father tracked him down and intercepted him in an airport in Europe. The father could not convince him to return to Morocco, so they agreed that they would travel together to New York and complete his trip as planned, then return together to Morocco later. “I was terrified because I could tell that he was angry and intended to punish me, but I did not know what to do. Therefore I let him take my money, my passport, and my return ticket.” But on the second night in New York, he decided to flee a second time. He removed his papers and money from his father’s wallet and hid out in a mosque in Queens. He spent the night at the mosque and then traveled further from New York. He has not seen his father since.

After some months in the U.S., he tried to contact his family indirectly, through the school friend with whom he had stayed upon setting out from home in Morocco. That friend answered the phone, yelled “Faggot!” and hung up. “I realized then that I could never go home to Morocco. My family had ‘outed’ me to the world. If my family were still considering whether to accept me again, they would not have told anyone else of my sexual orientation. The fact that my friend knows that I am gay means that my family has made the decision that I have brought shame on the family that cannot be ignored. I am certain that my family will do whatever it can to rid itself of this shame.” In his deposition to the court, he concluded, “If I am deported to Morocco, my family will find me and punish me, and the authorities in Morocco will not protect me. Apart from the punishment I would suffer at the hands of my family, I know that if I am deported to Morocco I would also be persecuted by the government.”

The role of government and police in the persecution of gay men and lesbian women in Morocco and other Muslim-majority states is controversial. The situation is made more complex by the ambiguous role of religion in law and state. An analysis of the written laws is not enough to understand the actual situation, however, because the police sometimes enforce an unwritten code of morality that is deeply influenced by conservative interpretations of Islam. Further, the police would not interfere with extended families, neighborhood associations, or conservative religious parties who assert moral order at a local level without reference to national law and without the restraint of legal requirements.

Mehdi's lawyer asserted, "The Moroccan government's history of persecuting homosexuals and its refusal to prevent or prosecute such persecution by non-governmental actors demonstrates that my client's fear [of persecution based on sexual orientation] is well founded." The lawyer contended that Mehdi could never take refuge with the police, for gay people are regularly exposed to "humiliation and harassment, at least" and would most likely be handed over to the family patriarch, "to be tortured or killed" at the family's discretion, and called this "state-sanctioned homophobia." Because homosexual sex acts are a crime that is "actively prosecuted in Morocco," homosexuals cannot seek protection from the police, because to do so may lead to arrest and prosecution on charges of homosexuality. "Apart from the danger of imprisonment, most police officers in Morocco are unwilling to protect homosexuals and may even participate in the anti-homosexual violence by committing physical and sexual assault against those suspected of being gay. Once arrested, homosexuals are often subject to physical and sexual assault by the police officers that arrest them, the prison guards who detain them, and even other detainees."

The lawyer's case spelled out the situation in absolute terms, in quick strokes of black and white. This was quite necessary, as under U.S. immigration law, it is very difficult to apply for asylum on the grounds of sexual orientation. The lawyer would have to prove beyond a reasonable doubt that Mehdi, if deported back to Morocco, would face torture or persecution leading to bodily harm either directly by government agents or indirectly with the connivance of government agents. U.S. law in general does not recognize homosexual orientation as grounds for legal protection against discrimination, so applications of asylum must be judged on the grounds of exposure to torture or cruel and inhuman punishment in the home country. Mehdi had not been publicly exposed as gay in Morocco and had not been arrested or suffered systematic discrimination outside his family. Therefore, his lawyer argued that Morocco's social climate, governmental system, and religious tradition are such that Mehdi would suffer bodily harm if deported.

The case raises important questions about how Islam as a religious tradition treats homosexuality. Or, more exactly, how Muslims as religious agents treat homosexual women and men in a systematically negative way that could be categorized as an infringement of their inalienable human rights. The seemingly simple question, "What does Islam say about homosexuals?" is not easy to answer. Islam, after all, has no voice. Only Muslims have voices. Only they speak in the name of Islam, and Muslims speak from distinct social and political contexts that shape how they practice and represent their religious tradition. Islam is a complex tradition with many variations, internal contradictions, and

creative ambiguities. This is true even if those who discuss homosexuality do not normally admit any ambiguity or variation, whether condemning homosexuals or protecting them. I was called to testify in the court hearing to clarify the nature of Islam, its stance on homosexuality, and variations in Islamic practice among Moroccan Muslims.

In my university classes, public speeches, and published writings, I usually assert that Islam does not inherently and essentially condemn homosexuals, especially if homosexuals as people are distinguished from particular sexual acts commonly associated with them. I take this stance because I believe it to be true, and also because this stance can further the cause of internal reform in the Islamic tradition based upon its own intellectual resources and moral principles. However, in the courtroom I found myself answering questions in ways that led to the opposite conclusion: that Islam is deeply patriarchal and enshrines profoundly anti-homosexual sentiments and enforces legal rulings that severely curtail the welfare and human dignity of homosexuals in Muslim communities. My intellectual and moral position against saying that Islam's condemnation of homosexuals is essential to the religion is a response to universal concerns; in response to particular concerns, my testimony in Mehdi's case was that Islam as practiced in Morocco can easily lead to curtailed freedom, systematic discrimination, and bodily harm sanctioned by religion and perpetrated by the state. In court, it did not matter what Islam essentially is or could become in the future – what mattered was how Islam was practiced here and now by one Moroccan youth's family and community. In the interest of justice, one life deserved protection even if it meant seriously simplifying my presentation of Islam. The Qur'an warns us that no life is dispensable: *Whoever kills an innocent life, it is as if he had killed all of humanity. And whoever gives life to one, it is as if he had revived all of humanity* (Q. 5:32).

Reflecting upon this experience, I decided to write this book. It addresses many issues raised by Mehdi's court hearing. These issues came up in court in a highly rhetorical way, to establish whether the U.S. government should offer Mehdi asylum, rather than to determine the true character of Islam in all its complexity. This book aims to determine the true character of Islam, as seen through the experiences of lesbian, gay, and transgender Muslims, people like Mehdi and other activists who advocated for his legal protection. Their experiences urge us to reexamine the Qur'an and other foundational texts that Muslims consider sacred or authoritative in their theological and legal tradition, to determine if Islam is inherently and unavoidably against homosexual or transgender people.

There is an unprecedented new context for this detailed attention to Islam and homosexuality. Since 9/11, the public has grown increasingly aware of the

violent agenda of Muslim extremists, an agenda that consistently includes upholding a death sentence for homosexuals in Muslim communities, whether or not this is stipulated in the national legal code where these communities reside. These events have accelerated discussions between Muslim groups about whether Islam condones such violence, what the real Islamic beliefs and ethics are, and how Islam accords with “secular” notions of universal human rights. At the same time, transgender, gay, and lesbian Muslim activists have begun to speak out more clearly and to establish organizations to encourage new thinking on the issue and support the welfare of vulnerable members of Muslim communities.

There is currently an international network of advocacy and support groups for lesbian, gay, bisexual, and transgender Muslims, as documented in the Introduction. Mehdi got in touch with one of these groups, which advocated his case. While in I.N.S. detention, he had spoken with a representative of Catholic Social Services, which was trying to ensure that the rights of illegal immigrants in detention since 9/11 were being protected, especially those from Arab and Muslim backgrounds. Mehdi told the representative that he had overstayed his visa because of his homosexual orientation and fear of punishment upon return to Morocco; the representative in turn informed a civic organization that advocates for legal protection of gay and lesbian youth, who in turn contacted Al-Fatiha Foundation. That organization helped secure legal representation for Mehdi and helped his lawyer access press articles, expert witnesses, and personal testimonies, including my own, to mount his asylum case. This book is based on the voices, ideals, and insights of lesbian, gay, and transgender Muslim activists who build and run these advocacy groups, as they negotiate their own personal struggles with religion, identity, family, and community and advance their reform-oriented insights into their own religious tradition, to which many still adhere despite overwhelming obstacles. Their experiences put human faces on the abstract issues of sexuality and authority in the Islamic tradition.

Islam on Trial

Since 9/11, Islam as a religion has been on trial in the West, and Muslims have differed sharply among themselves about whether to testify in the courts of journalism and public policy, and over whose testimony is credible. One could argue that Islam has been on trial since 1978, after the Iranian Revolution and subsequent oil crisis derailed Western assumptions about economic progress, slowly pushing secular advances out of the spotlight and casting attention on to religion. These events first pushed the West into uneasy alliances with Sunni

fundamentalists and extremists, from the Wahhabi monarchies of the Gulf states to the Mujahideen and Taliban forces in Afghanistan. The first Gulf War revealed how flimsy that alliance was, as Muslim extremists turned against the U.S. and its allies, globalizing their revolt against local monarchies and authoritarian regimes that tried to rule by a balance of religious rhetoric and secular stability. These political developments overshadowed the crucial issues of women's rights, religious pluralism, and sexual diversity. Militant Muslim extremists raised the stakes with these issues by selectively enforcing elements from the Islamic tradition, driven more by political ideology than by faithful and intellectually honest adherence to tradition; this book terms such a strategy "neo-traditionalist." Militant Muslims from the neo-traditionalist movement vociferously demand a return to patriarchy as authentic religion while condemning with violence as scapegoats any vulnerable people who challenged their authority. The people challenging their authority include women's rights advocates, religious dissenters (in minority or non-Muslim communities, secularist citizens, leftist parties, or free-thinking intellectuals), and homosexuals.

Discussion of Islam and sexual orientation is never neutral and disinterested, even in the best of peaceful times. Our times are far from peaceful and discussion of religion is at the heart of current "culture wars" and justification of violence against innocent people, whether in the guise of terrorism or the uniform of warfare. This makes a book such as this one very tricky to write, perhaps even dangerous. But it makes writing the book now, in this context of Islam on trial, more urgent than it has ever been.

The strategy that this book will use to steer through the minefields of politicized religion and religious politics is to insist on local context and humanizing stories when discussing Islam. In that light, let us return to the hearing of Mehdi and his lawyer's strategy to highlight how Islam persecutes homosexuals, owing to its intrinsic nature and the manner by which it is practiced in Morocco. Mehdi's lawyer cited testimony of the program officer for the North Africa and Middle East region at the International Gay and Lesbian Human Rights Commission (I.G.L.H.R.C.). A practicing lawyer and U.S. citizen of Moroccan ancestry, he conducted fact-finding and research trips to Morocco, Tunisia, and Lebanon during which he interviewed gay and lesbian citizens, along with civic leaders, activists in human rights organizations, and officials at embassies.

His testimony in the hearing reports that "Most orders of Islam, including those practiced in Morocco, view homosexuality as an abomination, a violation of the natural order intended for mankind by Allah. Certain passages of Islam's most sacred text, the Qur'an, are cited as authoritative with respect to Islamic proscriptions against homosexual conduct. In the hadith, a set of writings purporting to set down statements made by the Prophet Muhammad

himself and held by many Muslims to be persuasive authority if not binding guidelines that all Muslims must follow, the Prophet is said to have instructed his followers that homosexuality is a crime punishable by death.⁷⁴ To substantiate this claim, Mehdi's lawyer appended excerpts from guidebooks on Islam written by neo-traditionalists, those who claim to represent "traditional" Islam in new conditions of ideological debate. One such neo-traditionalist, Ahmad Sakr, writes that, "As far as homosexuality is concerned, Islam prohibits it completely and condemns it. Any male person who practices it is to receive the penalty in this world as well as in the hereafter. Any society that condones homosexuality is to be penalized all together: those who practice it, those who condone it, and those who defend it. In as much as Islam prohibits the practice of homosexuality among male persons, it also prohibits the sexual relationship of females among themselves. It is an abnormal behavior and it leads to psychological, moral, medical, social and religious abnormalities to the individuals and to society."⁷⁵ Ahmad Sakr quotes from the Qur'an to illustrate his condemnation of male homosexuality but not his condemnation of lesbians, and we will investigate why in Chapter 2. This unusual textual maneuver alerts us at the outset that representing what Islamic tradition says is not as simple as neo-traditionalists would like us to think.

In supplementing the arguments above, Abd al-Rahman Doi cites the Qur'an and also hadith. "Sodomy or homosexuality is an unnatural act of sex to satisfy one's passion ... The Prophet is reported to have said, 'If a man commits an act of sex with a man, they both are adulterers and if a woman commits such acts with a woman, then both of them are adulteresses [for whom the punishment is death].' Homosexuality is on the increase in the civilized Western world and homosexual clubs and unions are founded in the various countries of Europe and America that had only a few years ago considered homosexuality to be a major crime. If this is the sign of civilization, freedom and liberation, the less said the better."⁷⁶ The neo-traditionalist scholar cites hadith that claim to communicate verbatim teachings of the Prophet Muhammad, but does not discuss the troublesome issue of how to assess the authenticity of these reports or reconcile their multiplicity and mutual contradictions, a topic we will investigate in Chapter 3. Without such critical and progressive engagement with scriptural and legal texts, both Muslims and non-Muslims will treat as authoritative the narrow and shallow view of neo-traditionalists like the two cited above. They were presented during the hearing as authoritatively defining Islam's condemnation of homosexuality.

However, the full context of Islamic legal rulings is far more complicated. They are based upon the Qur'an and hadith, but were deduced from these texts through a process of rational analogy shaped by cultural assumptions and

political expedience over a three-century-long process. Both Sunni and Shi'i orthodoxies represent the cumulative collection of legal decisions, the *shari'a*, as the immutable expression of God's will, based on the Qur'an and the Prophet Muhammad's directives.⁷ Behind this representation, however, lies the fact that the *shari'a* encompasses diversity between different interpretations as well as disagreement on the details of rulings and debate about the principles of deducing rulings themselves. Far from the monolithic façade that neo-traditionalists present, Islamic law of the classical period provides varied rulings about homosexual acts which embody deep and unresolved differences of opinion, as we will explore in Chapter 4. In addition, Islamic law is rarely applied directly in modern nation states with a Muslim majority. Most nation states with a Muslim majority enforce legal systems based on parliamentary legislation, autocratic command, or bureaucratic protocol; their rules and laws may be influenced by Islamic custom or ethics, but cannot realistically be said to enforce the *shari'a* in its classical form. Their rules and norms must be designed to govern all citizens in secular life, whereas the *shari'a* is designed to guide Muslims (in sacred ritual as well as secular interaction) and does not apply at all to non-Muslim citizens of nations even if the majority of citizens are Muslim by belief or heritage. In addition, the *shari'a* cannot be applied at all as enforceable law in Muslim minority communities, such as those living in pluralistic secular democracies in Europe, North America, and South Africa.

Many Muslims disavow opening up debate about unresolved differences of opinion from earlier times and shy away from controversial debates. Perhaps they feel it would damage people's piety to discuss difficult topics, as if the acknowledgment of ambiguities might shake people's faith. Or perhaps they do not feel qualified to return to the sources of theological debates, and deny the qualifications of others who do. This reticence toward open, frank discussions of diversity is even more acute when the issues involve sex and sexuality. Many contemporary Muslims feel shame in talking about sex. However, none of these attitudes is really Islamic, and when we look back at the theologians and jurists of Islam's classical age we may be amazed how bold and open they were. No topic was too insignificant or too intimate to discuss, and enlightened discussion illuminated by returning to the Qur'an could be trusted to increase the faith of those involved, even if they could not agree on a particular topic's resolution.⁸

There is no better spokesperson for this attitude and its practical application than Ibn Hazm (died 1064). He was a theologian and jurist, who wrote a commentary on the Qur'an and composed studies of legal issues that argued for continuing scrutiny of hadith and juridical logic in their application. He was an

ethicist and social critic, who tried to integrate insights from philosophy and logic into theological debate. Informed by his active participation in politics and his abiding interest in literature, Ibn Hazm was one of the only Muslim theologians to put forward a deep psychological understanding of human nature which reveals how and why we fall in love. I summon him as a guide in the endeavor of this book.

Ibn Hazm was an interpreter of the Qur'an who was quite sensitive to issues of gender and sexuality and was relentless in exploring the contradictions in his community's conclusions about the sacred text. For instance, he held that women could be Prophets and upheld his opinion in detailed readings of the Qur'an itself, even though most in his patriarchal society believed that women were inherently inferior to men (in physique, in reason, and in piety) and therefore God would never entrust to women the authority of bearing divine messages to humanity.⁹ Ibn Hazm was primarily educated and raised by women who were highly skilled in intellectual and artistic pursuits, so his experience allowed him to critically appraise and boldly disagree with the biases of his patriarchal culture, even though they were deeply inscribed in his religious tradition.

On such delicate issues, he outspokenly assessed his community's differences of opinion, both theological and legal, and critiqued any drive to close down debate. For instance, Ibn Hazm believed that homosexual acts were a crime, but totally disagreed with other Muslim jurists about the reason why this was so and the rationale for the penalties such acts incurred. He asserts that the punishment for homosexual acts as a crime is not based upon the Qur'an. This book will address his legal opinion in detail in Chapter 4. His is an important and subtle argument that urges us, now almost one thousand years after his lifetime, to reassess popular notions in Muslim communities about the acceptability of gay, lesbian, and transgender believers in their midst and at their margins.

Above and beyond his specific legal rulings or scriptural interpretations, Ibn Hazm acknowledged that love is love, whether it is hetero- or homosexual in orientation. He was an avid fan of love poetry and acknowledged that much of the best poetry written by Muslims was homoerotic, addressed by male poets to a beloved who is also male. In his famous study of Andalusian love poetry, *The Neck Ring of the Dove*, he mingles homoerotic love poetry with hetero-oriented love poetry, making no distinction between them and recognizing them all as beautiful expressions of love. In his study of Ibn Hazm's life and influence, the ethicist Abu Laylah notes that "Ibn Hazm knew the weakness of human nature and the strength of temptations. Concerning the sins and faults which emerge from physical temptations, and which inhibit faith and doctrine,

we find that Ibn Hazm is tolerant and forgiving. He is sympathetic with men who love women, even with men who love boys [sic].”¹⁰ Abu Laylah says “men who love boys” because of the Platonic framework in which same-sex attraction was understood in medieval Islamic culture, in which men usually (but not exclusively) fell in love with younger men or men who had not yet reached socially defined maturity.¹¹ As Ibn Hazm demonstrates, many Muslim authors, ethicists, and intellectuals saw hetero- and homoerotic love as being equally love. Both approaches were valuable as love, and both were potentially a spiritual training ground for loving God. This is an issue they considered independently from whether specific sex acts were legal or illegal.

Ibn Hazm may not agree with the arguments of this book, but were he alive today I have confidence that he would see the wisdom in posing the arguments. He eagerly probed the consensus of his Islamic community, testing their arguments against the touchstone of research and fearlessly raising objections to the conclusions of common piety and chauvinistic self-righteousness. In his era when holding slaves was common and legal he defended their inherent human rights; in his society which was a kingdom based on aristocratic privilege he argued that the state should provide all people free education.¹² He also argued that Islam must be practiced in accord with scientific observation and disciplined reason, calling upon the resources of logic and philosophy. In his world-embracing optimism, he saw all knowledge – whether it came from sacred or secular disciplines of learning – as leading to a greater knowledge of God and a greater appreciation of divine wisdom in the perpetual creation and re-creation of the world in which we live.

Ibn Hazm’s influence was largely lost after the passing of Arab Andalusia. Many elements of the brilliant Spanish Islamic culture were embraced by Morocco and other North African Muslim societies that shared with it common roots and complex interactions. But Ibn Hazm’s influence is largely suppressed, because he was critical of the Maliki school of law that dominated North Africa; no community currently follows his teachings based upon the Zahiri school of law. Rather, Ibn Hazm’s insights were left as a written legacy for later generations, as potential pointers for later reformists who might find in them inspiration and guidance in totally altered situations. The case of Mehdi reveals just how altered contemporary situations have become from the classical Islamic times of Ibn Hazm. As Moroccans, Mehdi’s community and family continue to live out the Islamic culture inherited from Arab Spain, yet the relations of power between the Euro-American West and the Arab Islamic world have radically changed. In that light, we return to the court case at hand.

Local Realities and Global Interactions

For an example of the complexity of the contemporary situation, we may note that Mehdi grew up in a constitutional monarchy that preserves some elements of traditional Islamic governance tempered by modern European practice introduced through French and Spanish colonial domination. The Moroccan king rules as a descendant of the Prophet, but shares symbolic power with a parliament. In the court hearing, this was expressed as: “The legal system of Morocco is based on Islamic law, with some areas (i.e., business law) supplemented by French and Spanish civil law. The personal laws which govern marriage, inheritance, filiations and sexual relations are all based on Islamic law.” The Moroccan law forbidding homosexual acts may embody Islamic social ethics but does not enforce in detail the rulings of the *shari‘a*. As interpreted by the Maliki legal school that dominates the North African region, sexual penetrative acts between men should be punished according to the rules for fornication outside of marriage: lashing for an unmarried perpetrator and death for one already married. In contrast, Moroccan law stipulates that homosexual activity is illegal pursuant to section 489 of the Moroccan Penal Code, which specifies a penalty of six months’ to three years’ imprisonment and a fine of 120–1,000 dirhams (approximately U.S.\$1,040–8,700).

Homosexual activity, however defined – as a major sin in religious law or a crime in secular law – is a crime actively prosecuted in Morocco, as shown by evidence from newspapers, court trials, and personal testimonies. If held in police custody, homosexual Moroccans often face abuse, as attested by a staff member of A.L.C.S. (Association de Lutte Contre le S.I.D.A., a Moroccan association to combat the spread of A.I.D.S.) who has collected testimony of gay men and male sex-workers, who were sometimes raped in police custody and forced to have anal or oral sex against their will with the arresting officers. Those who end up in jail often face a worse regime of abuse: rape by prison guards or even being “rented out” by the guards for coerced sex with prison officials or other inmates.¹³ Police often charge alleged homosexuals with moral offenses that are less burdened by proof of actual sex acts, such as obscene behavior, public lewdness, contempt of monotheistic faiths, or “abuse and exploitation of Islam” (a crime usually applied to fundamentalists, extremists, and terrorists). Even without active police prosecution, the laws exist as a threat hanging over anyone who is alleged to be or perceived to be a homosexual, rendering them vulnerable to harassment, exploitation, or blackmail by community members or government representatives.

Moroccan government representatives disavow these assertions of a hostile or dangerous climate for homosexual men and women. Many Moroccan

intellectuals would support the government spokespersons. I was fortunate to participate in a masterclass on feminism with Fatima Mernissi, the renowned sociologist from Morocco's premier university and advocate for women's rights in Islamic communities. When I brought up the subject of homosexuality to ask her advice on the project of writing this book, she answered firmly that there was no persecution of homosexuals in Morocco. She even denied that there had ever been systematic persecution or suppression of homosexuals in Islamic history more broadly conceived. In Islamic culture, she asserted, sex is a private matter and not a matter for public discussion. The problem, she stated, is that in recent years globalization of culture, satellite television, and internet access have caused sex to invade the public space, eroding the previous ethic of tolerance under silence.¹⁴ Of course, many Moroccan homosexuals lead their lives without coming to violent harm in prisons, without being persecuted by family or neighborhood, without being condemned by religion. But they do so under the cover of silence, always in fear of being exposed to the discourses of power: family honor, religious respectability, and state authority.¹⁵

However, the religious climate among Moroccans, in their home country and adopted diasporic homes, is drifting toward fundamentalist ideological versions of Islam and a militant rejection of modernism as capitulation to Euro-American dominance. Morocco's authoritarian monarchy has been a buffer against this trend, which has been felt much more strongly in Egypt, the Levant, and the Arabian Peninsula (and which has caused an outright civil war in neighboring Algeria). Upon the ascension to power of King Mohammad VI in July 1999, there were hopes for liberalization, widening of democratic participation, and progressive reform of family law. However, there was also fear that in order to strengthen his fragile position he might pass restrictions on social and moral issues in order to take the wind out of fundamentalist sails and bolster the Islamic legitimacy of his rule. One easy way to do this is by restricting women's ambition to achieve greater legal protection and cracking down on homosexual activities. The new King of Morocco seems to be resisting this option. In 2004, he supported a major reform of family law (called the "Moudawana"), which had been heavily informed by Islamic legal norms, reforms that give women greater equality with men in matters of marriage, divorce, and child custody. Yet, though these reforms are significant for women who marry, they leave homosexual men and women just as vulnerable to persecution by the state and victimization by families as they were before. In contrast to the Moroccan King, though, the Egyptian regime under President Hosni Mubarak has lately pandered to Islamic fundamentalists through high-profile arrests of gay men to buttress the authority of his autocratic regime.¹⁶

Fatima Mernissi pointed out that rhetoric that stigmatizes homosexuality as a pathological disease and outright attacks on homosexual persons are both “warning signs” of fundamentalist movements gaining strength (whether in Christian, Jewish, or Islamic contexts). There are disturbing signs that Morocco is affected by the region-wide rise of Islamic fundamentalism that finds an easy target in homosexuals. In 1999, the popular Arabic magazine *al-Majallah* focused an issue on the topic of homosexuality in Islamic countries. An interview was solicited from an Islamic scholar from al-Azhar, the pre-eminent Islamic university in Egypt, which is widely respected in the wider Sunni world; his call for the execution of all homosexuals was published in *al-Majallah*, which is widely available in Morocco. Its contents were reprinted the next week in the Moroccan daily *al-Ittihad al-Ishiraki*, the newspaper sponsored by the Union Socialiste des Forces Populaires (U.S.F.P.), the governing political party at that time and the main outlet for opinions on policy.¹⁷ The Moroccan newspaper reports, like those elsewhere in the Arabic-language press, have been sensationalist and lurid to the point of framing homosexuality as Satan worship that threatens Islam.

Beyond Rhetoric to Personal Realities

The testimonies of a court hearing – whether in Cairo or in Virginia – do not reflect everyday reality. Trials mark unusual circumstances that come to the attention of the state. Mehdi was unusual in fleeing from his family and having the means to run far, not just across international borders but to the U.S. Most Moroccan youth have to find quieter means of coping with the limitations placed upon them by family, community, and state in the name of religion and moral order. However, the unusual nature of court hearings can reveal quotidian realities of social life. The way Mehdi’s mother used family honor to shame her son into obedience is routine in Islamic families, as is her seamless interweaving of religious imagery into the coercive fabric of family control. From the interviews with gay, lesbian, and transgender Muslim activists that inform this book, it is clear that disentangling family expectations from religious beliefs is very difficult – for many it may be impossible – but it is the key to reconciling one’s homosexual orientation with one’s Muslim identity. We also observed how Mehdi’s mother branded him with fire, a kind of family punishment that resonates with the Islamic past when companions of the Prophet, a few years after his death, punished an allegedly homosexual man with death by fire, as we will investigate in Chapter 4.

Mehdi’s story also reveals to us how homosexuals in Muslim communities are silenced by shame and never given an opportunity to rationally discuss

their sexuality, openly interpret their own religion, or express their own sense of morality based on their experiences of faith. For this reason, this book was written only after long interviews with lesbian, gay, and transgender Muslim activists who, by fortunate opportunity, intense ethical struggle, and great personal risk, have carved out a space in their outer lives and inner consciences to reconcile their homosexuality with their Islamic faith. Their insights emerge from the dark background of silence forced upon their many others sisters and brothers who, for lack of opportunity, education, or audacity, never arrive at a place of critical reflection about the interaction of their sexuality and their faith. We have observed how Mehdi escaped from his father and took refuge in a mosque, a strange irony that resonates with many others interviewed for this study. Though some gay, lesbian, and transgender Muslims may abandon their faith, many others refuse to relinquish their identity as Muslims. They retain their religious belief in the revelation of the Qur'an and their personal practice of Islamic rituals, even as they are persecuted or ostracized in their religious communities. The activists upon whose insights this book is based are those who have not relinquished the struggle, though they may be at very different places in the long journey of reconciling Islamic faith with homosexual or transgender experience.

They are the voices of men and women who have founded and run support groups for lesbian, gay, and transgender Muslims, groups like al-Fatiha in the U.S. which helped successfully secure asylum for Mehdi. His court hearing ended with the I.N.S. lawyer, who was commissioned to persuade the judge to deport Mehdi, arguing for the judge to uphold his asylum request, having been thoroughly convinced of the honesty of his story and the gravity of the danger that would face him if he returned. The judge concluded the court hearing by congratulating Mehdi on his courage, welcoming him as a legal resident of the U.S., and hoping that he would abide by the law in order to qualify for American citizenship in a few years.

Mehdi walked from the courthouse shaking his head in disbelief. "These past years are as if I had been living in black-and-white," he said, "but now, slowly, I'm beginning to see color again." He is currently living in the brightest colors possible – he passed his general education qualifying exams, has qualified for scholarships to begin college, and plans to study accounting and finance. "At this moment, although life is a little bit hard between school and work, I cannot complain. This great country gave me what my own country – Morocco – could not give. People who were complete strangers came to rescue me from a terrifying jail and opened their house to me, while the others helped raise money to cover my expenses while my case was pending." Some earthquakes destroy

while others remove obstacles, shaking down mountains that previously seemed unmovable. Some upheavals, while terrifying, cause hidden truths to be revealed with a clarity that only comes through trial. In the end, *Whoever does an atom's weight of good sees its consequence, and whoever does an atom's weight of harm sees its consequence* (Q. 99:7–8).