

The “Invention” of Lesbian Acts in Iran: Interpretative Moves, Hidden Assumptions, and Emerging Categories of Sexuality

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This article describes and explains the current official status of lesbianism in Iran. Our central question is why the installation of an Islamic government in Iran resulted in extreme regulations of sexuality. The authors argue that rather than a clear adoption of “Islamic teaching on lesbianism,” the current regime of sexuality was “invented” through a series of interpretative moves, adoption of hidden assumptions, and creation of sexual categories. This article is organized into two sections. The first sets the scene of official sexuality in Iran through a summary of (1) the sections of the Iranian Penal code dealing with same-sex acts and (2) government support for sexual reassignment surgeries. The second section traces the “invention” of a dominant post-revolutionary Iranian view of Islam and sexuality through identifying a number of specific interpretive moves this view builds on.

KEYWORDS *lesbianism, Islamic Republic of Iran, transsexuality, sexual ethics, Qur’an*

Before the 1979 Islamic revolution, back in the years when I worked as a judge in Iran, consensual sexual relations between adults did not figure in the country’s criminal code. The revolution enacted a version of Islamic law, which is extraordinarily harsh even by the standards of the Islamic world.

—Shirin Ebadi, Iranian lawyer and recipient of the Noble Peace Prize (2010)

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There is value to exploring a specific context when considering the influence of Islam on discourse about and performances of sexuality. In this article we focus on post-revolutionary Iran, which is the authors' area of expertise, as well as a place that is well known for restrictions on same-sex behaviors. Our study could take many forms. If our purpose was merely to demonstrate the repression of lesbians in Iran, ample evidence is available. Such an essay would cite Iran's infamous laws that support the death penalty for legally proven same-sex behaviors. It could focus on the widespread sexual repression implied in Iranian President Ahmadinejad's 2007 inflammatory public statement that "in Iran, we don't have homosexuals" (Tait 2007; Fathi 2007). Or it could explore the most recent chapter of sexual repression in Iran according to some journalists and LGBT (lesbian, gay, bisexual and transgender) advocates: the support of sexual reassignment surgeries to eradicate homosexuality entirely (Najmabadi 2005b; Tait 2005; Ellison 2008; Fathi 2007).

Although we will consider all of this evidence, the purpose of our article is not primarily to critique civil rights in Iran, but rather to describe the interpretative moves necessary to support the current Islamic regime of regulating sexuality in Iran, described by Shirin Ebadi in the opening epigraph. Our central question is, why did the installation of an Islamic government in Iran result in extreme regulations of sexuality? Our central argument is that specific interpretive decisions related to Islamic sources, concepts, and modes of reasoning have "invented" the current dominant logic of sexuality in Iran, which constraints the lives of Iranian lesbians.

It is not our aim here to provide a thorough critique of Islamic arguments against same-sex acts or identity. We leave that to other scholars working out of progressive Muslim stances (e.g., Kugle 2010; Habib 2007; Shannahan 2009). Our point is to describe how the rhetorical origins of contemporary Iranian sexuality are not grounded merely in Islamic sources, but in particular decisions about how to re-read, re-interpret, and apply them in specific ways. This is not merely a theoretical argument. If the morality of specific forms of sexual identity are conceived differently in Iran than, for example, in North America, advocacy for Iranians who do not fit a heteronormative model may not be as simple as asserting a universal gay or lesbian subject. In fact, as we will show, the assumption of universal sexual subjectivity can lead to an Orientalist misunderstanding of sexuality in Iran (Massad 2007). In terms of practical effect, it also runs the risk of over-politicizing sexuality as the thing that makes Iranians (and even Muslims) different from "us" (Westerners).

REGULATING SEXUALITY IN IRAN

The non-specialist is likely familiar with the policing of sexuality in Iran through two dimensions of Iranian law often covered in Western media:

punishment of same-sex acts in the Penal Code and the permissibility of sexual reassignment surgeries.

The Iranian Penal Code on Same-Sex Acts

Although in the early twentieth century, same-sex desire and practice was to some extent tolerated in Iran (Najmabadi 2005a; Ebadi 2010), after the Islamic Revolution, same-sex acts became illegal through codification of a particular interpretation of *shari'a* (Islamic law). In the Iranian Penal Code, Articles 108–126 deal with the punishment for sodomy (*lavat* in Persian and *liwat* in Arabic), defined in Art. 108 as “sexual intercourse with a male.”¹ Although punishment is technically left up to the discretion of the *shari'a* judge (Art. 110, 120), for adults, the maximum punishment for consensual sodomy is death (Art. 109–111). Sodomy has a high burden of legal proof: it requires either four men to give eyewitness testimony (Art. 117) or for the accused to confess four times (Art. 114). This burden of proof means that any consensual sex between two adults should not find its way into the courts. For the same reason, sodomy laws that existed in 12 U.S. states as recently as 2003 were rarely used to prosecute anyone.²

Same-sex behavior between two women is dealt with in Articles 127–134 of the Iranian Penal Code. The law defines lesbianism, referred to as *mosa-beqeb* in Persian, as “same-sex relationship between women with genital contact” (Art. 127). Proving lesbianism requires the same legal proof in court as sodomy (Art. 128, Art. 114–126). Punishment for female–female sex acts, however, differs from sodomy: the first three times it is proven in court by four witnesses (Art. 128), 100 lashes are prescribed for each party involved (Art. 129). The fourth time the act is proven in court, the penalty is death (Art. 131). Again, final punishment is left up to the judge (Art. 133), and repenting before testimony is given can suspend the sentence. Lesser punishment is proscribed for two unrelated women who “stand naked under one cover without necessity” (Art. 134).

The International Gay and Lesbian Human Rights Commission (IGLHRC) points out a number of ways in which the Iranian Penal Law is problematic. For example, the code discusses sodomy in the same section as rape, sexual assault, and incest. This implies that all same-sex actions are defined as not only deviant, but violent. Rape and sodomy charges are often joined, which makes it more difficult for LGBT and women’s rights defenders to advocate for those accused. Even the highly publicized 2005 case of the public hanging of two boys has been complicated by reports that the charge was rape of a minor, not consensual same-sex intercourse (Kim 2005; Puar 2007, ix–xi). Activists Hossein Alizadeh and Grace Poore describe the challenge of how to respond to cases of public execution of young men on combined charges of sodomy and rape as follows:

If LGBT rights groups assume they are gay and mount a campaign to stop the targeting of gay men, they risk relying on unofficial information, putting others in the country at risk, and being insensitive to the fact that perhaps a rape was committed. If women's rights groups remain silent, they risk tacitly agreeing that execution for charges of rape is acceptable and ignore the targeting of same-sex sexuality. Also, if we question the accused men's innocence, we run the risk of capitulating to the Iranian government's campaign of framing charges to carry out homophobic assassinations. If we assume their innocence and defend them unquestioningly, we play into the cultural bias against victims of rape who are routinely disbelieved. (Alizadeh & Poore 2007)

These same activists and others claim Iranian authorities have used sodomy laws to discredit and frame outspoken political opponents, through charges of "morality crimes."³

Religious Permission and Regulation of Sexual Reassignment Surgeries

Anti-sodomy laws are only part of the story of Iranian sexual rights. It turns out that while gays are prosecuted as sexual deviants, transsexuals are not only allowed in Iran, their transition through sexual reassignment surgery is sanctioned by Iranian authorities.⁴ With the blessing of members of the ruling Shi'i *ulama*, hundreds of transsexual men and women have gone through this operation. They are able to legally change their gender and obtain identity cards indicating their new gender (the document does not indicate the previous sex of the holder).

Muhammad Karimnia, an Iranian cleric who has written a book on sexual reassignment surgeries and *fiqh*, points out "globally, approximately four to six people in every 100,000 are diagnosed as trans patients. This is a statistic common for every nation. In Iran, for example, between 28,000 to 48,000 people are assumed to have this problem" (Karimnia 2010, 28). In terms of the differences between MtF (male-to-female) and FtM (female-to-male) procedures, anecdotal evidence suggests Iran follows the international trend that the procedure is more common among men (MtF). Karimnia, for example, notes that the records of one Tehran clinic show that between 1987–2001 200 of the procedures were MtF (74%) and only 70 FtM (26%) (Karimnia 2010, 88).

Although permission for surgical remedies for intersexuals (individuals who exhibit both male and female physical traits, sometimes referred to as hermaphrodites) has precedence in medieval texts, Ayatollah Khomeini provided the first *fatwa* (legal opinion) supporting sexual reassignment surgeries as a treatment for transsexuality in modern Iran (Khomeini 2000). Many other influential ayatollahs in Iran now support sexual reassignment

surgeries, but this is by no means the only legal opinion on this issue.⁵ It should also be noted that justification for sexual reassignment surgeries for transsexuals is not limited to Iranian or Shi'i clerics.⁶ But given Khomeini's immense influence on not only post-revolutionary Iranian law but also on the moral teachings among leading Iranian Shi'i clerics, Khomeini's ruling on the validity of sexual reassignment surgeries is largely unchallenged by Iranian authorities. In addition, and in contrast to same-sex acts, sexual reassignment surgery is not mentioned in the Qur'an or the *hadith*. There are no grounds on which to justify its categorical prohibition, thus the issue is open to debate and ruling by *fatwa*.

This legal status of sexual reassignment surgeries means a transsexual is categorized as having a treatable medical disorder. The Iranian state medical office, like all governing bodies of the Islamic Republic, is mandated to abide by *shari'a*. Thus, definitions and protocols for sexual reassignment surgery are federally regulated. As elsewhere, the question of who gets to be a "candidate" for this transition is complexly determined by medical, legal, and economic protocol as well as by religious views, and *not* by the individuals who may or may not desire surgical procedures related to gender identity (Bucar & Enke 2011, 304–305).

Iranian surgeons follow the World Professional Association for Transgender Health (WPATH) protocols for determining appropriateness (and in Iran, the legality) of surgery, including the requirement that the patient receive a psychiatric diagnosis of gender identity disorder. For one to obtain legal permission for a gender reassignment operation and a new birth certificate (with the new assigned gender), an applicant must provide medical proof for her/his gender-identity disorder. In many cases if the patient cannot afford the entire cost of the operation, the government agrees to pay for expenses partially or in full. According to recent reports from Tehran-based journalists, the Iranian government provides financial support for up to half the cost of surgeries in the form of loans from Imam Khomeini Charity Foundation (Nasseri 2008; Barford 2008).

Early Explanations for "Confused" Iranian Sexual Politics

How are these two positions simultaneously possible, one prohibiting homosexuality and the other supporting transsexuality, and what can this tell us about local Islamic discourse of sexuality in Iran? Two answers are most offered in documentaries (Shayesteh 2006; Eshaghian 2008), scholarship (Najmabadi 2005b; Bahreini 2008),⁷ and among LGBT activists (Ireland 2007; Graham 2010).⁸ The first is that these two positions are in fact not logically compatible. Proponents of this view argue that Iranian authorities are beginning to "liberalize" their position on sexual freedom by authorizing sexual reassignment surgeries. Take an article that ran in the *New York Times* in

2004, "As Repression Eases, More Iranian Change Their Sex," which states: "After decades of repression, the Islamic government is recognizing that some people want to change their sex, and allowing them to have operations and obtain new birth certificates" (Fathi 2004).

This celebratory portrayal of Iran's attitude toward transsexuality was quickly replaced by the new dominant explanation: the Iranian position on transsexuality is a way to eradicate homosexuals through gender reassignment. In other words, one of the ways that a lesbian can avoid persecution according to the Iranian Penal Code is to undergo the process of gender re-assignment (thus choosing a gender identity in accordance to their sexual orientation). In a 2005 article in the London-based *Guardian*, a prominent Iranian doctor, who by his own account has performed 320 sex reassignment surgeries between 1993 and 2005, asserts "in a European country . . . he would have carried out fewer than 40 such procedures over the same period" (Tait 2005, np). The reason for the inflation of procedures, according to the surgeon, is that Iran's strict ban on homosexuality creates for homosexually inclined people "a pressure to change their sex."

These explanations, however, do not do justice to the complicated manner in which Islamic epistemologies and ethics have been used to justify official policies on sexuality in Iran. They also neglect that Islamic discourses at play in Iran are not necessarily general, but rather depend on a specific attempt to codify the strictest interpretations of *shari'a* within a particular political context. In the section that follows, we explain how the current dominant Iranian discourse on sexuality—which builds a thick wall between transsexuality and homosexuality—is religiously constructed. Our focus is on the specific interpretive moves that are made in reference to sacred texts. Legal reasoning makes these two positions not only logically compatible, but also mutually reinforcing.

DEVELOPMENT OF ISLAMIC JUDGMENTS OF LESBIAN ACTS

The issue of what "Islam says about lesbianism" is complicated. For one, the idea of a codified, self-contained, singular version of "Islamic law" is a modern and Western notion, supported by European orientalists in the late nineteenth and early twentieth centuries who envisioned a "Muslim world" with a particularly stubborn form of canon law (Khalafallah 2005, 38). In truth, classical Islamic legal thought has always entailed a process of readjustment and application not only of the rules, but also mechanisms for applying the message of Islam to specific real life challenges facing Muslims. Second, and regardless of what contemporary Iranian clerics assert, there is no specific reference to "homosexuals" or "lesbians" in the Qur'an or classical work of law. In part, this is an issue of terminology. There is no Qur'anic term that is an exact cognate of homosexual or lesbian.⁹ Even the

now common Persian words for same-sex behaviors (*lavat* and *mosabeqeb*) are legal terms invented within a particular interpretative framework (Schmitt and Sofer 1992, 49).

Nevertheless, there is a majority view that Islam forbids homosexuality categorically. In this section, after providing an overview of possible sources for support of homosexuality in sacred texts, we trace the “invention” of contemporary view that a Muslim and gay identity are not compatible. Our point is not that the resources for a position against homosexuality do not exist in Islam, but that its moral and legal condemnation is not a simple application of revelation. It is the result of particular interpretation that emphasizes some Islamic epistemologies and ethics over others. Our aim is to describe where anti-same-sex views originated and why they were accepted as authentically Islamic in Iran.

In general, Islam views human sexuality as positive: it both acknowledges sex as a human need and as potentially embodying virtues such as kindness, reciprocity, and generosity. The Qur’an is clear that sexuality was part of Allah’s plan for human life. The account of the “fall” of Adam and Eve (who is unnamed in the Qur’an) is not blamed on sex or sexual desire (20:115–121). Sexed bodies not only exist in heaven, sexual desire does as well. Verse 52:20, for instance, depicts a sexually blissful heaven where the righteous reside.

Sex and sexual desires are neither sinful nor shameful. Many Islamic scholars, even those Islamic studies scholar Barbara Stowasser would categorize as “fundamentalists” (Stowasser 1994, 6–7), celebrate sexual intimacy as an important part of a full human life and as a positive expression of Allah’s will.¹⁰ For example, the *hadith* scholar ‘Ali Muttaqi (d. 1567) elaborates the advantages of “sexual play” as follows:

A man’s sexual play with his partner, when accompanied by sincere intent, causes him to be rewarded by Allah. As the Prophet is reported to have said, “Allah is pleased with a man’s playing with his wife, and records a reward for him and makes a worthy provision in the world for him because of it.” (as quoted in Kugle 2003, 193)

Prophet Muhammad is even described as having sexual desires in a well-known *hadith* in which he declares, “Three things were made beloved to me in this world of yours: women, perfume, and prayer” (as quoted in Kugle 2003, 192). Women also deserved sexual satisfaction. Muslim jurists acknowledge the virtues of “foreplay” and female orgasms, even independent of procreative aims (Kugle 2010, 63; Ali 2006, 7).

Nonetheless, Islamic jurists do not teach that sex is good under all circumstances. Specifically, moral sexual activity is limited to a legally married man and woman. As Iranian Ayatollah Murtaza Mutahhari (d. 1979) argued in the late 1960s, limiting sex to within marriage allows one spouse to be

"the cause for the wellbeing of the other." He contrasts this to complete sexual freedom, where one's spouse "gets in the way of that person's 'fun' like a prison guard" and the family becomes resented (Mutahhari 1992, 14). In legal discourse, the term *zina* is used to refer to illicit sex between unmarried partners. Sex is therefore good, because it is crucial for a fully human life, but morally regulated, because it is powerful and therefore potentially dangerous.

It is appropriate to ask if something that looks like our contemporary understanding of "homosexual," "lesbian," or even "sexual orientation" exists in early Islamic sources. The Arabic term *luti*, one who commits male anal intercourse, is used widely by jurists beginning as early as the classical period, but it does not exist in the Qur'an itself. In fact we will see below that it was invented by jurists based on a very specific reading of the story of Lot (Lut in Arabic). Neither is a term for lesbian used in the Qur'an, nor the notion that someone's sexual desires indicate something fundamental about their identity, inner dispositions, or a fixed sexual orientation.

The Qur'an assumes what we would today call heterosexuality, which is not surprising given that family structures in the early Muslim communities were based on marriages between men and women, and procreation was an important goal. Nevertheless, progressive Muslim scholars have argued that the Qur'anic affirmation of diversity of humanity could be extended to ground an Islamic affirmation of diverse sexualities, including lesbian. This argument for Islamic support of homosexuality involves linking the Qur'anic declaration of the perfection of the human form (15:29, 23:7, 95:4, 40:64) with Qur'anic acknowledgment of different tribes and nation (49:13), male and female genders (35:11, 53:45, 3:36, 4:1), and various inner dispositions (17:84, 30:22) to affirm non-heterosexual forms of subjectivity.

The Islamic position against gay and lesbian behavior likewise involves specific hermeneutical moves. We identify four: (1) narrowly reading of the term *fabisha* to define same-sex behavior as immoral, (2) linking of same-sex acts (*liwat*) to illicit sex (*zina*), (3) extending the Qur'anic discussions of male-male intercourse to women, and (4) establishing a punishment for same-sex acts.

Establishing the Immorality of Same-Sex Acts

Just like Christian and Jewish thinkers use scriptural evidence in the story of Sodom (Genesis 19:4–8 and Judges 19:22–24) to condemn same-sex acts,¹¹ Islamic thinkers who interpret same-sex acts as immoral do so based on a particular reading of the story of Lot in the Qur'an, verse 7:80–81. This verse condemns the disobedience of the people of Lot to Lot's authority over them with a particular focus on how Lot's directive to provide hospitality

to a stranger is not only ignored, male strangers are treated violently by demanding they submit to male-on-male sex acts.

We also (sent) Lot: he said to his people: “Do you commit lewdness [*fabisha*] such as no people in creation (ever) committed before you? For you practice your lusts on men in preference to women: you are indeed a people transgressing beyond bounds.”

In other verses we are told the people of Lot’s disobedience took the form of murder and robbery (29:29), and progressive scholars argue that the condemnation of the Lot’s Tribe in 7:80 is for general disobedience to Allah, not necessarily only, or even primarily, for the rape of the strangers. This interpretation is supported by using an inclusive meaning of *fabisha*, which Yusuf Ali translates above as “lewdness.” In its broadest semantic meaning, *fabisha* is a Qur’anic term for strongly condemned immoral behavior that is pursued for egoistic goals. It is used throughout the Qur’an to refer to immoral behavior but it is not necessarily sexual (e.g., Qur’an 3:135, 7:28, and 17:32). By combining a holistic reading of the Qur’an with this broad meaning of *fabisha*, progressive Islamic thinkers argue,

the story of Lot is not about homosexuality at all. Rather, Lot criticizes using sex as a weapon and condemns acts that are coercive, like rape. This is a critique of male sexuality driven by aggression and the urge to subjugate others by force, not of male homosexuality in particular. It is incidental to the story that his guests, who are the targets, are male. . . . Jurists who have interpreted the story to be about homosexual acts have missed the point. (Kugle 2010, 56)

However, the prevailing opinion in early *tafsir* (interpretation is that Lot) was primarily concerned with forbidding sex between men. The commentary of al-Tabari (d. 923) on this verse is typical in that it assumes *fabisha* (immorality) in 7:80 refers specifically to the type of sexual acts (male–male) mentioned in 7:81:

The transgression [*fabisha*] that they approach, for which they were punished by Allah, is “penetrating males sexually” [*ityan dbukur*]. The meaning is this: it is as if Lut were saying “You are, all of you, you nation of people, coming to men in their rears, out of lust, rather than coming to those that Allah has approved for you and made permissible to you from the women. You are a people that approach what Allah has prohibited for you. Therefore you rebel against Allah be that act.” That is what the Qur’an means by going beyond the bounds [*israf*] when Lut said, *You are a people who go beyond all bounds*. (al-Tabari as quoted in Kugle 2003, 204)

Note the circular reasoning at play in this interpretation: al-Tabari begins with the assumption that same-sex actions are the most important example of immorality, and uses this to ground his own interpretation that the verse condemns same-sex actions.

This sort of interpretation, also found in the Qur'anic commentaries of Zamakhshari and Ibn Kathir, requires two interpretative moves. The first is a sexualization of the Qur'anic term *fabisha*. As already noted, throughout the Qur'an this term is used to refer to the immoral pursuit not only of sex, but also food, wealth, and power. Early commentators like al-Tabari, however, assumed that only the act of anal sex was the *fabisha* referred to in 7:80–81. The second interpretive move is to determine that the very nature of the act of anal sex was immoral, versus the particular case mentioned in 7:81 in which it was an act of violence. The other types of acts *fabisha* referred to in the Qur'an (food, wealth, and power) are not necessarily problematic in and of themselves. The defining characteristic of *fabisha* is that these ends are pursued for egotistical reasons to such an extent that an individual forgets her duties to family, friends, community, and, most importantly, to God. Considering male–male intercourse as itself immoral (*fabisha*) is thus a very narrow application of the term *fabisha*.

Coining the Term *Liwat/Lavat* and Associating it to *Zina*

Islamic jurists approach the sacred texts with a practical concern: How might specific revelations guide the life of actual Muslims? Based on early Qur'anic commentators' interpretation that same-sex actions are the most important type of *fabisha* in 7:80–81, medieval legal jurists coined the term *liwat* to refer to "the act of the people of Lot." Although this term does not exist in the Qur'an itself, its creation and usage "cemented the close association of Lot's Tribe with male anal intercourse" (Kugle 2010, 50) and established a juridical basis for the category *luti*, individuals who engage in *liwat*. In Persian it is rendered as *lavat*.

Medieval jurists including al-Dhahabi (d. 1348), Abu Talib Makki (d. 996), and Ibn Hajar Haytami (d. 1567) also explicitly linked *liwat* to *zina*, the term used to refer to illicit sex acts outside of marriage. This can be seen in lists of major sins compiled by medieval Muslim jurists. For example, of the 17 major sins (enormities) Iraqi scholar Abu Talib Makki identifies, two are of the genitals: *zina* and having "sex in the manner of the people of Lot" (quoted in Ali 2006, 76). This association was dealt with differently by different jurists. For example, Hanifi jurists tend to argue that heterosexual illicit sex is categorically different from same-sex acts, but the majority of Shafi'i jurists consider these acts are legally equivalent. This latter opinion allowed *liwat* to be defined not only as immoral, but also as a *hadd* crime (such as theft or murder) with punishment specified in the Qur'an. Significant for the case of lesbianism is that *zina* is a *hadd* crime, punishable by death by

stoning or one hundred lashes. This is the punishment codified for lesbianism in Iranian penal code, as discussed above.

Extending *Liwat* to Lesbianism

The modern opinion that lesbianism is addressed in the Qur'an is based on a specific interpretation of verse 4:15–16, which becomes the basis for legal punishments for lesbian sexual behaviors, referred to as *sibaq* (the Arabic word for rubbing or pounding):

If any of your women are guilty of lewdness [*fabisha*], take the evidence of four (reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or God ordain for them some (other) way. If two men among you are guilty of lewdness [*fabisha*], punish them both. If they repent and amend, leave them alone; for God is Oft-returning, Most merciful.

Just as with 7:80–81, a narrow semantic meaning of *fashida* must be used in order to interpret this verse as referring to same-sex acts. In fact, commentators who interpret this verse as addressing female same-sex acts do so only by reading it as an elaboration of 7:80–81. If read in isolation, even if we assume that the immorality referenced in 4:15 is sexual, it could just as easily refer to heterosexual sex outside of marriage, including fornication and adultery. Given the Qur'an heterosexist assumptions mentioned earlier, this is actually more likely. However, modern interpretators follow an early trend in *tafsir* to read 4:15 and 7:80–81 together, extending the judgment of male sodomy to the genital acts of two women. The legal reasoning at play goes something like this: if in 7:80–81 *fabisha* is defined as male sex acts and if women addressed in 4:15–16 are guilty of *fabisha*, then these women have committed the female equivalent of sodomy, which is tribadism.

A challenge to the interpretation that this verse is condemning female–female sex is raised when we consider the Arabic pronouns used to refer to people in this passages. Verse 4:15 uses the Arabic plural for women, rather than the Arabic dual form. This means rather than specifically two women, which is possible in Arabic and would seem more fitting if the revelation addresses acts between two women, women as a group are discussed, implying the acts are of the women, but not necessarily between two of them. Another Arabic pronoun raises questions about interpretation. Despite the translation above of 4:16 as addressing “two men among you,” the Arabic used in 4:16 is the “inclusive dual,” which can refer to males or females. Thus “there has been disagreement among commentators as to whether this verse refers to two men or a male-female pair” (Ali 2006, 81). If the *fabisha* mentioned in 4:16 refers to heterosexual acts, this strengthens the

case that in 4:15 the reference is to heterosexual *zina*, not female same-sex behavior.

While it is not difficult to find *hadith* addressing same-sex behavior between men, the *hadith* rarely mention the issue of female–female sexual behavior. Islamic jurisprudence also rarely discusses woman–woman sexual activity. Several factors contribute to this silence: because of legal concerns with kinship, virginity, rape, and paternity, penetration is legally more important than the physical acts associated with female–female sexual behaviors and thus of more often discussed by jurists.

Exceptions include the medieval religious scholars like Ibn Hajar Haytami (d. 1567), who includes same-sex behaviors between women in their lists of major sins. Ibn Hajar enumerates sexual offenses as follows:

Illicit sex between a man and a woman [*zina*]; anal intercourse between men [*liwat*]; having intercourse with livestock; having anal intercourse with a female stranger; tribadism [*musabaqat al-nisa*], which is a woman doing with a woman something resembling what a man would do with her. (Ibn Hajar, *Enormities*, #338-342, as translated in Ali 2006, 75)

Establishing Punishment and Same-Sex Behavior as a Sign of Deviancy

Sex-same behaviors are punishable by death in nine countries around the world where constitutions are purportedly *shari'a*-based including Afghanistan, Mauritania, Nigeria, Pakistan, Saudi Arabia, Sudan, United Arab Emirates, Yemen, and of course Iran. The death penalty gets associated to same-sex acts through a specific interpretation of the Qur'an, application of selective precedence in *hadith*, and analogical reasoning (*qiyas*).

Although punishment for *liwat/lavat* is arguably not addressed in the Qur'an, a "punishment" is mentioned in 4:15–16 that gets associated to same-sex acts.¹² Since what this punishment is not elaborated in verse 4:15–16, jurists look to the *hadith* to determine the proper punishment. One *hadith* from Abu Dawud's collection, with questionable authenticity,¹³ in which the Prophet declares that if two men are found committing the "act of Lot's people" both active and passive partners should be sentenced to death (Zollner 2010, 200). According to another report, while Abu Bakr was caliph, one of his military commanders asked how to punish a man who "does the act of the Tribe of Lot." Since the Prophet had left no example to follow on this issue, his companions, including 'Ali who Shi'a believe was the first imam after the Prophets death, discussed the issue. It was 'Ali who declared "this is a sin that only one community practiced [the Tribe of Lot], and God did to them [a punishment] that you all know. I think that we should burn him with fire" (al-Qurtubi as quoted by Kugle 2010, 135). 'Ali refers here to the raining

down of the burning stones on the People of Lot mentioned in the Qu'ran (15:75). For Shi'i jurists, this *badith* serves as a precedent for execution as a punishment for sodomy and tribadism; however, they place conditions on enforcement, which are codified in the current Iranian Penal Code. For example, the Shi'i jurist al-Hilli (d. 1277) required four eyewitnesses to the act (al-Hilli 1974, 1862–1864). This is codified in Art. 117.

Given that the Iranian Penal Code offers punishments for same-sex behaviors based on punishments specified for *zina*—Qur'anic verse 24:2 specifies 100 lashes for *zina* and *badith* report that the Prophet sentenced stoning as punishment for *zina*—jurists used analogical reasoning (*qiyas*) to apply punishments for heterosexual fornication *zina* to same-sex acts. The jurist al-Shafi'i, for example, concludes, "He [who commits *liwat*] should be punished with the *hadd* penalty for fornication by reason of juridical analogy [*qiyas*]" (as quoted in Kugle 2010, 151).

Depending on what aspect of the fornication is seen as analogous, this reasoning might be less sound for female same-sex acts. If *zina* and *liwat/lavat* are *hadd* because they are both "penetrative sexual acts" with some one other than a spouse, then female same-sex acts do not apply. The fact the Iranian Penal Code punishes men and women differently for same-sex acts complicated things further. The Iranian law is based on the common interpretation the anal penetration is somehow more sinful than the types of behaviors associated with female same-sex interactions. Take the following 2006 statement of the Egyptian Islamist Qaradawi on Al-Jazeera's *Shari'a and Life*: "If we speak for example of the crime of adultery per se and then there are things that are a prelude to adultery. So tribadism is similar to the prelude to adulterous intercourse . . . so therefore there is a difference . . . in punishment between these two things" (Al-Jazeera 2006 translated by Kugle 2010, 296). For Qaradawi, female same-sex behaviors are analogous to foreplay that could lead to *zina* but not *zina* itself. In a similar way "thighing" is treated as a more minor sin than illicit penetration in Shi'i religious manuals for conduct and purification. This reasoning grounds different punishment for men and women engaged in same-sex acts in the Iranian penal code.

There is a tension in how the Penal Code deals with same-sex acts. On one hand, there is a focus on acts alone, so that the punishment is for specific sexual behaviors, not for being homosexual or having a gay or lesbian identity. But on the other hand, some conception of sexual identity is necessary to judicially establish death as the proper punishment for *liwat/lavat* and tribadism. The law cannot ask for the renouncement of natural sexual urges since sexual desire and pleasure are not sins. Same-sex behaviors must therefore be conceptualized as unnatural. Thus, when the death penalty is codified in Iran, as the proper punishment for same-sex behaviors, it establishes a legal basis from the argument for the existence of a category of citizens that are sexual deviants.

CONCLUSIONS

Even if we want to judge the current Iranian regime of sexuality as "repressive" or "backwards," there are reasons we should exercise caution. This judgment could be made more precise if we first take the time to understand the logic the official Iranian position on sexuality rests on, which allows both for the criminalizing of same-sex behaviors and the support of sexual reassignment surgery. Our argument has been that official position on sexuality in Iran does not represent Islam per se, but rather is constructed out of Islamic sources in a process of invention. By invention we do not mean "to make up something false," or even "make up something completely new," that is, without historical or doctrinal precedent, but rather, "to produce through experimentation or interpretation." In this way, every *fatwa* can be seen as an invention in that it is based on a particular interpretation.

The Iranian *ulama* did not make up things that did not exist. *Liwat* has a long history in Islamic thought. However, certain interpretations get emphasized and others lost in official Iranian positions on sexuality. It is through specific interpretative decisions that genital acts between individuals of the same sex are united, judged, and harshly punished in the name of Islam in Iran. This distinction is important because it allows a critique of the official Iranian stance on sexuality without a wholesale condemnation of Islam.

Qur'anic commentators, for example, help to invent official Iranian sexuality when they assume 7:80 (committing abomination) was primarily concerned with forbidding sex between men. Legal jurisprudence helps justify official Iranian sexuality through creating the term *liwat/lavat* and associating it with *zina*. Medieval scholars and contemporary Islamists contribute by using analogy (*qiyas*) to link female same-sex acts in 4:15 (women who are guilty of lewdness), to male *liwat* in 7:80. In post-revolutionary Iran, authorities invent official sexuality when they codify punishments of some sexual behaviors as *hadd* and give permission for others such as sexual reassignment surgery. This means the Iranian *ulama* brought forward only the most extreme forms of *fiqh* on same-sex actions. Even though there are conditions stipulated in Iranian law that provide opportunities to the judges in the religious courts to apply a less severe punishments for the guilty party, these judges are not discouraged by the government from issuing the death penalty.

A second reason we might want to proceed with caution is that the official Iranian position on sexuality may not be best understood through the lens of homonormative lesbian and gay liberation. LGBT, for instance, has become more than just an acronym in the West, but also a waiting line with T ("trans") as the last sexual dissent to gain rights because it is presumably the least normative and the most queer (Bucar & Enke 2011, 316). This assumes some sort of continuity between gay/lesbian and trans which is not compatible with the current Iranian regime of sexuality that

supports sexual reassignment surgery and punishes proven same-sex acts with death. In Iran transsexuality and homosexuality are defined as radically different. With post-revolutionary *fatwas* on “gender identity disorder,” some sexualities are now categorized as illness (transsexuals), while others remain classified as morally perverse (homosexuality).

The claim that Iranian authorities are attempting to erase homosexuals through surgical procedures (as discussed in section one) does not do justice to the complicated manner in which Islamic epistemologies and ethics have influenced contemporary views of sexuality in Iran. When read against the modern history of the Middle East parallels can be drawn between sexual identities and the Islamic veil’s political significance. In the early twentieth century, the veiling of Muslim women became a symbol for both the West and East as a status of Islam in a nation. In recent years, gay, lesbian and trans are showing up almost as often as women in the Western media’s coverage of Iranian repression, where specific human rights at stake are no longer women’s rights, but LGBT rights, and the litmus test of modernity is the acceptance of homosexual identity. Unfortunately the over-exposure of such media coverage in the Western news does not necessarily help the cause of the homosexuals or transsexuals in Iran. It makes them more visible, which makes the religious authorities work harder to appear tough on all non-normative sexuality.

Nevertheless, there is evidence that supports a few conclusions about Lesbianism in Iran. First, the codification of *shari’a* law in Iran has done lesbians no favors. It has established as a very specific position on Lesbian acts and erased the interpretative moves and hidden assumptions of this position, claiming it as “*the* Islamic position.” These laws make open lesbian “lifestyle” all but impossible.

Second, given the harsh punishments for proven repeated same-sex acts, the accusation of lesbianism has proven a powerful tool against any female dissent in Iran. It allows the Iranian authorities to imprison, prosecute, and even execute for moral crimes individuals targeted for their political views and activism.

Finally, the Penal code deals with female same-sex acts differently that male same-sex acts, arguably more leniently. This demonstrates both a greater concern with male homosexuality as a challenge to sexual patriarchal heteronormativity, as well as a possible space for a private lesbian identity.

NOTES

1. The translation of the Penal Code is the authors’. We consulted the original Persian of the Penal Code on two websites from the Iranian Supreme Court: <http://www.ghavanin.ir/detail.asp?id=1232> and www.dadgostary-tehran.ir as well as the English version published by the UN Refugee Agency (UNCHR). www.unhcr.org/refworld/pdfid/4d384ae32.pdf. See also Safra Project, “Country Information Report: Iran” (London: Safra Project: 2004) available at www.safraproject.org/.../SP_Country_Information_Report_Iran.pdf.

2. In *Lawrence v Texas*, 539 U.S. 558 (2003), the U.S. Supreme Court in a 6–3 ruling, struck down the sodomy law in Texas.

3. For more information on the legal status of homosexuality in Iran see http://www.bbc.co.uk/persian/world/2011/08/110722_ptv_pargar_63.shtml (in Persian) and Iranian Queer Organization <http://www.irqo.org/>. For more information about specifically lesbian behavior in religious rulings see *Mahkameh e Eslami, Ghavanin e Hoghoghi Hamjensgaraei Zanan dar Iran, mosabeghe* (in Persian) http://www.mahkameeslami.blogspot.com/2010/12/blog-post_3831.html and "Mojazat e hamjensgaraei zanan" [punishment for lesbianism] (in Persian) <http://forum.iranproud.com/showthread.php?84956>.

4. Najmabadi was the first scholar to draw attention to the issue of transsexuals in Iran in her English language publications (2005b, 2008, 2011). Her forthcoming book, *Sex-in-Change: Configurations of Gender and Sexuality in Contemporary Iran* will likely shape the future of the field of sexuality in modern Iran (forthcoming 2012). In her essay "From Perversion to Pathology," Raha Bahreini (2008) makes an argument similar to this article's in terms of the Iranian categorization of perversion and disease for different sorts of subjects, although she clearly advocates for a particular Western form of sexual freedom. Muhammad Mehdi Kariminia, an Iranian cleric who attended *madrasa* (Islamic seminary) in Qom, has written an extensive treatment of sexual reassignment surgeries in Islamic law in Persian (2010). Elizabeth Bucar has published an essay comparing religious justification in Iran for sexual reassignment surgeries with Catholic denouncements of this practice (2010). Work has also been published describing and critiquing of representation of Iranian transsexuals in Western media (Bucar & Enke 2011; Bucar forthcoming 2012) and film (Shakerifar 2011; Khesthi 2009).

5. Ziba Mir-Hosseini provides a translation of Ayatollah Seyyed Yusef Madani Tabrizi practical treaty on moral problems, which deals in part with sex change operations. Madani allows for sex change operations only in the cases of an intersexed individual, for whom "there is a possibility of either maleness of femaleness." But he does not give permission for surgery or hormones treatment for a transsexual: "If they have resorted to this nonlawful action, they have sinned; as to religious duties, they are bound by those incumbent prior to the change in their appearance" (Ziba Mir-Hosseini 1999, 35–37). His stance against sex change operations is most likely grounded in the Quranic sura 4:119 in which Satan's promises cause humans to literally alter the creation of Allah. Sex change operations are seen by Madani simultaneously as a mutilation of healthy bodies and interference in God's creation.

6. In 1988 a fatwa was issued by the Egyptian Grand Mufti Sayed Tantawi, the highest Sunni authority in Egypt, endorsing the sex change of an al-Azhar medical student as a way to treat what was called his psychological hermaphroditism (*al-khunutha an-nafsiya*). The fatwa begins by recounting a hadith, in which the Prophet says God did not create any disease without also creating its cure, the exception being old age. The fatwa reads in part as follows:

These and other noble hadiths on treatment grant permission to perform an operation changing a man into a woman and vice versa, as long as a reliable doctor concludes that there are innate causes in the body itself, indicating a buried [*matmura*] female nature, or a covered [*maghmura*] male nature, because the operation will disclose these buried or covered organs, thereby curing a corporal disease which cannot be removed, except by this operation. . . . It is permissible to perform the operation in order to reveal what was hidden of male and female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, when a trustworthy doctor advises it. It is, however, not permissible to do it at the mere wish to change sex from woman to man, or vice versa. (Skovgaard-Petersen 1997, 330–331)

7. Najmabadi has tempered her initial read of Iranian sexual reassignment surgery as an imposed cure for (or erasure of) homosexuality (see Najmabadi 2008).

8. Arsham Parsi, who runs the Toronto-based Iranian Railroad for Queer Refugees, claims 40% of the sexual reassignment surgeries are performed on men and women who are gay and have the surgery under familial and social pressure (Graham 2010). Actual figures are impossible to determine because few individuals would admit to being gay in Iran given the harsh punishment under law and if they did admit this identity they would no longer be eligible for a sexual reassignment surgery since clerics are careful to strictly differentiate between homosexuality and transsexuality.

9. The Qur'an is available in English through translation. In this article, we provide the reader with excerpts from Yusuf Ali's popular translation/interpretation, which is used in many Muslim homes (Yusuf Ali 2010). This translation, however, is not perfect, and has its own assumptions about sexual ethics, which will be clear in some of his translations of key concepts discussed below. Alternative English

translations are A. J. Arberry's well-respected version, often assigned in introductory college courses on Islam (Arberry 1996) and, for readers of Arabic, N. J. Dawood's version, which has the advantage of including a parallel Arabic text (Dawood 2006).

10. An important exception is Fakhr al-Din Razi (d. 1209). See Kugle 2010 for elaboration, 49–56.

11. For an excellent critical reading of the history of sodomy in Christian theology see Jordan (1998).

12. In isolation the word “punishment” in 4:16 is open to interpretation and is made more ambiguous by the qualification “or God ordain for them Some (other) way.” The verse also leaves ample room for repentance and redemption: “If they repent and amend, leave them alone; for God is Oft-returning, Most merciful.” Moreover, the mention of death 4:15–16 is only in the context of confirming the individual to their house until death.

13. Barbara Zollner has argued that this hadith is questionable since it is not found in the canonical collections of al-Bukhari or al-Muslim (Zollner 2010, 200).

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