

Marginal Islam: Reconfiguring the *Ummah*

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Abstract

This article fundamentally makes an argument for considering the margins as an important component to both understanding and enriching Islam as a religious tradition. It provides an assessment of how the margins are at once inconspicuous and transformative – of how life on the margins can contribute to navigating ethical dilemmas. Finally, it presents a reflection on marginalities as the portal through which the ummah can negotiate difference in a productive way.

Are the Margins Important?

This article grew out of a reflective presentation I delivered on the ways in which my own modest work intersects with some scholarly streams on the description and ambit of Islam within the discipline of Islamic Studies, or what is more recently termed within the academy as the Study of Islam. I have made a concerted effort to deal with issues relating to the intersection of the ethical and legal in contemporary Muslim societies: how the Islamic tradition (*turath*) has been imagined and received, and how it is perceived, conceived, and produced in the present from the perspective of the margins. In other words, it is an examination of how Islam is constructed through the interplay between the centres and the margins. In this brief article, I venture an argument for the value in exploring a potential relational engagement between marginalities-cum-minority tendencies on the one hand, and centres of orthodoxy, orthopraxy and religious normativity on the other. The purpose of this

argument is not to deliver judgment on beliefs or practices in Islam, but rather, to explore the potential limits, if any, of the category “Islam”. In short, it is not an assessment on whether certain credal beliefs or rituals are properly Islamic or not, but a proposition that Islam is more than what is determined by consensus or ideological and/or numerical dominance.

In orthodox epistemological and ontological constructions, the majority (*jamhur*) view, or the present dominant custom, canon or prevailing consensus, is deemed correct.¹ This applies to both minority or majority tendencies in that within each tendency or sectarian milieu a consensus or orthodoxy forms that reflects what is considered appropriate and legitimate for purposes of credal belief, ritual and practice. However, minority tendencies generally have to deal in some way with the majority’s claims to “Truth”, and in turn, this engagement affects how it views itself; in many instances its urgencies are determined by the manner in which the majority tendency regards them. The extent of the burden of justification is not the same for the majority tendency. For example, two tendencies or minority communities that have been the subject of my research – LGBTIQ+ or queer Muslims and Ahmadi Muslims – both employ substantial time and effort attempting to demonstrate their “Muslimness”; that they are indeed Muslims, that the charges of apostasy or heresy levelled against them are either inaccurate or that which the majority tendency considers a definitive factor for their exclusion from the house of Islam can in fact be accommodated by reading the tradition in an alternative way. Consequently, instead of going about their way with confidence and determining their faith on their own terms, they feel the need to first prove their credentials in some way. I am not in this context concerned with the status of the truth claims that either of these

1 G. Hourani. “The Basis of Authority of Consensus in Sunnite Islam,” *Studia Islamica* 21 (1964), p. 13 and W. Montgomery Watt. *Islamic Creeds: A Selection* (Edinburgh: Edinburgh University Press, 1994), p. 4. For a more detailed analysis on ‘*ijma*’ (consensus) see Wael B. Hallaq’s *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1999), pp. 75–81 and Aron Zysow’s *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood Press, 2013), pp. 113–158.

groups make, nor what the orthodox position claims to be 'right'. Nor am I perturbed by the communal need to demonstrate religious belonging. I am, however, interested in the potential that the discourse on the margins has to enrich and contribute to the discussions in the centre, if the centre would only be amenable to hearing what the margins have to say, or, in some instances, even just acknowledging that a margin exists.

The Inconspicuousness of Marginality

I will interrogate/mull over/focus on two examples to make clear both the opacity and the importance of the margins. The first is the queer Muslim case for the accommodation of sexual diversity.² In order to appreciate the nature of this issue, it is imperative to understand the background to sexual ethics in Islamic law as well as modern reactions to this. The pre-modern classical Islamic legal tradition generally determines the lawfulness of sex on the basis of a legal recognition of a marriage contract or concubinage based on gender (the biological male/female binary), social status (the various abilities of a free person and enslaved person to marry, including the permissibility of concubinage), and religious identity (categories of religious communities that a Muslim man can marry into).³ In short, within the legal framework, a free heterosexual Muslim man had, and theoretically still has paramount capacity in all the above categories. He can wed up to four women concurrently (including women who come from religious communities recognised as "People of the Book", and hold an unlimited number of enslaved women

2 For the most comprehensive arguments put forward in favour of sexual diversity and same-sex sexual relationships within the Islamic tradition and specifically in terms of Islamic law, see: Scott Siraj al-Haqq Kugle. *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims*. Oxford: Oneworld, 2010; Hassan, El-Menyawi. "Marriage in Islamic Law." *Wake Forest Journal of Law and Policy* 2, no. 2 (2012): 375-532; and Junaid Jahangir and Hussein Abdullatif. *Islamic Law and Muslim Same-Sex Unions*. Lanham, MD: Lexington Books, 2016.

3 Kecia Ali. "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," in Asifa Quaraishi and Frank E. Vogel (eds.) *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, Cambridge, US: Harvard University Press, 2008 p. 11-45; and Kecia Ali. *Marriage and Slavery in Early Islam*. Cambridge, US: Harvard University Press.

as concubines (irrespective of their religious identity). Furthermore, his sexual access to these women is legally guaranteed without much regard for consent on the part of the women. In more recent times, these categories and the premodern notion of what constituted consent have been critiqued or jettisoned to reflect contemporary ethical notions and reflect the ordering of the heteronormative nuclear family unit in the modern period without significant contemplation on what this could mean for making sexual relationships more just overall. For example, the institution of concubinage as a recognised form of gendered ownership and sexual access, the legitimacy of corporeal punishment meted out to wives, and the symbolic representation of the payment of dower by the husband as an exchange for his exclusive sexual access to his wife's body, have all been inconsistently treated. While the implications of these legal matters have been conveniently and largely ignored by modern Muslims, there has been no resolution on what an Islamic sexual ethics for Muslims in our current time would entail.

It is at this juncture that the existence of the claim by queer Muslims for inclusion into the matrix of acceptable sexual relations provides a path to transcend these historical and socially constructed requirements. The queer Muslim argument, in essence, is a demand to replace these hierarchical, heteronormative and androcentric assumptions and understandings of sex and sexuality with a cluster of ethical considerations that aim to achieve equity between the parties and ensure that consent and agency are always present, with the parties sharing responsibility for the consequences of their relationships. Accordingly, the arguments furnished by queer Muslims de-emphasize the categories of gender identity, social status, and religious affiliation, and in the process also contribute towards reforming sexual ethics for Muslims generally. In other words, the merits of the argument presented by queer Muslims for a just sexual ethics beyond the immediate scope of its intended purpose of sexual inclusivity has the ability to also transform sexual ethics for heterosexual relationships – even if it is rejected by orthodox iterations of the faith. In the words of Sarah Ahmed, a scholar of modern critical theory: “What kinds of alternative kinship stories

are possible which are not organised by the desire for reproduction?"⁴ I would add: Or the desire for authority and ownership of sexual processes by one gender over another?

What is crucial to understand is that approaching the pertinent issue of sexual ethics in Islam in relation to Islamic jurisprudence necessarily implicates the matter of queer sexual relations. Opening up the legal framework to the dignified recognition of queer relationships automatically also expands the platform for heterosexual relationships to be less bound by hierarchical and androcentric norms and more concerned with the dignity of the individual parties within the relationship. Any rethinking and reform of these norms that exclude or reject the voice of queer Muslims is not only incomplete and inconsistent, but also devoid of the rich insights that queer Muslims bring to the discussion.

The queer Muslim argument urgently motivates for normative ethical mores for all (both queer- and heterosexual- identifying individuals) that make central what Kecia Ali, the Islamic legal scholar, calls a "meaningful consent and mutuality which is crucial for a just ethics of sexual intimacy"⁵ and which it is worth noting is substantively absent in the Islamic legal treatment of what constitutes lawful sexual conduct. At the same time, the arguments presented recognise the need to remain open to interruption and new ways of doings and writings and perspectives through both a retrieval of the past legacy and our current context. This is an indication that we should not close off our own horizons to learning from the past. That we should also be cognisant of the possibility of the historical in some ways becoming marginal in relation to the present condition, either for better or worse.⁶ An example of the former is the

4 Sara Ahmed. *The Promise of Happiness*. Durham: Duke University Press, 2010, p. 114.

5 Kecia Ali. *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. London: Oneworld Publications, 2006, p. 151.

6 Some of the questions that arise in this process were also articulated in some way by scholars of South Asian literatures, history and religions when they attempted to critically analyse related Indic and Persianate linguistic concepts such as *Srngara*, *Isqh* and love. What relationship do concepts of love or sex have to their own societies? What happens when concepts live on in different socio-historical contexts? Do concepts overlap, or do they occupy different areas of meaning? What happens when a person uses or

manner in which human development on the basis of age was historically perceived with greater elasticity in respect of what constitutes the “child” and what the “adult”.⁷ Our predecessors vested both legal capacity and liability (including the capacity to enter into sexual relationships) earlier than late adolescence. A further example is the expansive premodern Islamicate notion of sexuality that did not fixate upon stable orientations but rather the naturalness of diverse sexual desires and the fluidity involved in the shifting objects of desire. This meant that the sexual identity of a person was of little consequence because same-sex desires did not constitute an unnatural or unusual occurrence. These insights have the potential to shatter our current modern fixed notions or orthodoxies of gender definiteness, categorical sexual orientations, and static constructions of the human person that could in turn engender an openness to explore potentially different ways of understanding the human condition and the Islamic tradition across time and space.⁸

Dealing with marginality also makes one more attuned to what is rendered invisible. It makes one appreciate that what is written is at the same time shadowed by the unwritten – the subtext. The witnessing of the *clearly present* is a reminder of the obscure absent. The instruments of recognition, such as law and custom, often by implication exert a dichotomous effect: while it affords recognition to some, it limits the acknowledgement of others. A recent example here is the process through which certain elements and tendencies of a community are privileged over

plays with a voice of the opposite or the same sex? What happens when contexts change? Have pre-modern concepts and tensions survived in modern society, or have new ones arisen? How do modern individuals, male, female and non-binary, react and use traditional idioms? Has the modern state and its promise of individual rights made ‘love’ or ‘sex’ easier or more difficult? (Francesca Orsini. “Śṛṅgāra, 'Ishq, Love: The Many Meanings of Love in South Asia,” in *Modern Asian Studies*, Feb., 2002, Vol. 36, No. 1 (Feb., 2002), pp. 99-102).

7 Philippe Ariès. *Centuries of childhood*. New York: Vintage Books. 1962; and Suzanne Shanahan. “Lost and Found: The Sociological Ambivalence Toward Childhood.” *Annual Review of Sociology*, 33(1), 2007, p. 407-428.

8 Khaled El-Rouayheb. *Before Homosexuality in the Arab-Islamic World, 1500-1800*. Chicago: University of Chicago Press, 2005; and Thomas Bauer. *A Culture of Ambiguity: An Alternative History of Islam*, New York: Columbia University Press, 2021, p. 183-213.

others in the legal process of recognition. In the South African context, the Muslim Marriages Bill is illustrative. The Muslim Marriages Bill (MMB) is a draft legislative proposal to effect state recognition and regulation of Muslim marriages in accordance with a smorgasbord interpretation of Islamic family law.⁹ The initiative was undertaken post-1994 in the early days of South Africa's new constitutional dispensation. This was to correct the prejudices of the country's racist past wherein Muslim marriages, among other religious marriages, were not recognised by the State unless separately performed and registered in terms of South African law. There has been much debate on the need of such a legislative intervention in Muslim marriages as well as whether the content authentically represents Islamic law; whether it provides sufficient protections for Muslim women, and is constitutionally compliant. However, these dimensions of the debate are not relevant to the larger discussion in this article. What is of concern is that it has hardly been recognised, at least officially, that the MMB ignores the margins. The parties involved in drafting, debating and reviewing the MMB have worked under the auspices of an overarching heteronormative, racialised Sunni order. The MMB makes no provision for the recognition of the relationships of queer Muslims, who contest the orthodox heterosexual configuration of sexual relationships, or of African Muslims, who may also fall within the ambit of the Customary Marriages Act.¹⁰ These exceptions clearly suggest that for the MMB, the only Muslims envisioned to be sufficiently Muslim are heterosexual Indian and Coloured Sunni Muslims. Furthermore, the MMB shows a notable absence of representation – both in content and in the circumambient discussions – from Muslim minorities such as the Shi'a and Ahmadi communities. This begs the question of the status of

9 For a history on the recognition of Muslim marriages in South Africa and an analysis of the legal dimensions of the matter see: Wesahl Domingo. "The Case of the Recognition of Muslim Personal Law in South Africa: Colonialism, Apartheid and Constitutional Democracy," in "The Sociology of Shari'a: Case Studies from around the World," New York: Springer, 2015, pp.175-195; and Waheeda Amien. "Judicial Intervention in Facilitating Legal Recognition (and Regulation) of Muslim Family Law in Muslim-Minority Countries: The Case of South Africa," in *Journal of Islamic Law at Harvard Law School* (2020) pp. 65-114.

10 120 of 1998, as amended.

these minorities on the margins of Muslim life in South Africa from the perspective of the State as well as within the larger Muslim community. An awareness of this exclusion of some through the recognition and acceptance of the majority forces us to grapple with the implications of this allegedly progressive instrument of recognition that in a democratic and pluralistic South Africa makes no provision for queer Muslims to enter into a recognised Muslim *nikah*, nor recognises and acknowledges the entanglement between African customary marriage practises and Islam. Moreover, sectarian minorities are left out of the debate entirely, not considered sufficiently Muslim to fall within the ambit of either the MMB, or South African family law in general.

In the above paragraphs we concentrated on how a specific marginal tendency (in this case, queer Muslims) that is rejected as heretical by the majoritarian tendency can influence and enrich the area of sexual ethics in Islam by asking critical questions and making a concerted effort at transforming sexual relationships into more just unions. We also briefly touched on the historical processes of construction and why it is important to consider or retrieve the historical legacy with a view to understanding context and appreciating the tools of change. Finally, we assessed how attempts at recognition and legitimation can also at the same time ignore and exclude those on the margins. In the second part of the article, I will focus on the issue of how various tendencies – often with contradictory notions of what Islam is – can come together and constitute a community of difference that is held together by Islam.

The *Ummah* and Difference

The question I would like to explore here is this: How is a community or the *umma* constituted through difference, ambiguity, contradiction, and capaciousness?

In some of my earlier works I have wrestled with the ethics and poetics of community making, which in turn is also a possible avenue of tradition- or meaning- making. I have also grappled with the question of what the limits of Islam as a category of both critical analysis and belonging would be. To make space for competing representations of

Islam within the realm of the same community as well as allowing for a relational engagement between different approaches to Islam requires a model that is not fixed on coherency, homogeneity and orthodoxy. Sectarian and at times, orthodox, configurations of community present static homogenous communities deprived of vibrant creativity and diversity. Investigating the histories of both the Ismaili and Ahmadi communities in South Africa compelled me to reassess this dominant understanding of community. John Caputo, a philosopher of religion, eloquently sums up this sentiment :

“Communities are defined in terms of unity; the capacity of individuals to swallow their differences and to come to common divergence, to stand as ‘one’. So defined, a community resists otherness ... and it ends up adopting ex communicative practices. That is why we need another idea of community ... one which is conceived in terms of its capacity to tolerate difference, its openness to the other.”¹¹

To put it another way, the ability to hold at once contradiction, ambiguity, incommensurability and difference in meaningful ways renders the notion of community dynamic. This approach provides the ability and option for all Muslim minorities (and, in some way, aren't all sects or ideological positions a minority at some place, or time, or context?) to lay claim to an Islamic heritage and to ground their arguments in an Islamic discourse without the requirement that it be considered accurate by other Muslims either for purposes of salvation or for purposes of correct practice. That is to say, there will be multiple and often competing discourses on the nature of the ‘true’ Islam. However, part of the construction of a cosmopolitan, plural, ambiguous, perhaps even intractable, community is acknowledgement of its fragmentation. Muslims in one space and time – whatever and wherever and whenever that may be – often come into contact with other Muslims who interpret and practise Islam in disparate fashions. Often debates ensue about the nature of ‘real’ Islam and about who

11 John Caputo. “Beyond Aestheticism: Derrida’s Responsible Anarchy,” in *Research Phenomenology* 18 (1988), 69.

is licensed to speak on Islam's behalf. Consequently, the *umma* – in part or whole – plays an indispensable role in affirming and subverting existing genealogies of power both from within the tradition (by offering various and discordant readings of the tradition) and also by way of it inhabiting a changing world as Muslims.¹² This is a productive process where an attempt at understanding the “other” (margin or centre) begins with first appreciating the context of the horizon to which a tendency aspires. More importantly, it is the generation of new meaning that is produced through conversation and engagement. The end result is a collective shaping of Islam even if neither position reflects the exactitude required by the other party or aligns with all the elements of that process.¹³

This understanding of Islam is based not on a problem that needs to be resolved (a problem of identity or inclusiveness) but rather, Islam as an emotion – a way of inhabiting the world through affect, ritual, and tradition that remains expansive enough to include all who have a claim to it. Put more crisply by Talal Asad:

“The question is not ... whether or not one can ever have a better or more inclusive definition of religion (or of the secular, for that matter); the crucial question is how, by whom, and for what purpose a definition is required, and what the implications of that concept are for particular forms of life.”¹⁴

The inquiry should not be about what sort of correct creed or ritual practice is required for admission into this community of faith. Such an

12 This sentiment is expressed by Salman Sayyid in the following way: “being in a relationship with other Muslims through which we learn and unlearn what being Muslim means or should mean. One can only be a Muslim in one’s own way, as other Muslims are Muslims in their own way. The social nature of this ‘one’s own way’ cannot be easily set aside. There is no monadic Muslimness. Being a Muslim means to partake in social practices which are constitutive of being part of a community.” *Recalling the Caliphate: Decolonization and World Order*, London: Hurst & Company, 2014, p. 178.

13 The principle of interpretive listening as distinct from listening to identify the speaker’s intent so as to specifically reproduce the meaning of the speaker’s words so that it aligns with the intent is an approach that can be applied to communities.

14 Talal Asad. “Thinking About Religion Through Wittgenstein.” *Critical Times*, 3:3, December 2020, p. 428.

inquiry may have some use for a tendency to differentiate themselves from other Muslims, or to indicate what the requirements are for salvation in the hereafter. However, for purposes of community construction in our corporeal world, it would be counter-productive. To answer Asad's question, the implication of crafting a definition of Islam as per my thesis in this article would be at the minimum a recognition and ideally an acknowledgement and acceptance of the inexorable intimacy between the centre and the margins within the *umma* in a way that will not reproduce established hierarchies and orders and the exclusion of those who dissent from the prevailing orthodoxy, but is open to exploring the limits of Islam – both communally and discursively as a historical community.

Two monographs published over the last few years provocatively and resourcefully speak to this broader notion of Islam: Shahab Ahmad's *What is Islam: The Importance of Being Islamic*¹⁵ and Thomas Bauer's *A Culture of Ambiguity: An Alternative History of Islam*.¹⁶ Ahmad argues that an understanding of Islam as an orthodox discursive tradition with law and legally sanctioned ritual at its centre is historically misleading and impoverished. It results in a disservice to the capaciousness, cosmopolitanism, and playfulness of the Islamic tradition and civilisation in that what many modern Muslims construe as marginal in terms of creed, aesthetics, literature and ritual were in fact central to the experience of Islam and inhabiting the world as a Muslim. Ahmed specifically concentrates on the examples of picture making, wine drinking, Sufi pantheism, philosophical intellectual exclusiveness, and homoerotic poetry, among other things, in arguing that the notions of continuous orthodoxy that have come to prevail more recently are incongruent with the historical reality of the premodern period and the historical experience of Islam as more than orthodox faith governed through the prism of Islamic law. In essence, I interpret Ahmad's argument to mean that limiting the boundaries of Islam to contemporary orthodoxies and

15 *What is Islam: The Importance of Being Islamic*, Chicago: Chicago University Press, 2015.

16 *A Culture of Ambiguity: An Alternative History of Islam*, Columbia: Columbia University Press, 2021.

fixing those perimeters are an act of primitivism and violence when in fact an Islamic irredentism is necessary. Bauer's work functions parallel to Ahmad's. His central argument is that Islamic culture produced an appreciation of ambiguity as its central epistemological and social value. Through an analysis of Islamicate texts and historical material, Bauer argues that this valuing of ambiguity enabled pre-modern Muslim societies to negotiate diversity, credal differences and human behaviour in more humane and productive ways than the quest of certainty that characterised Christian Europe. In Bauer's words:

"This lack of "religious" wars and of executions of heretics was not the result of clerical oppression or forced standardisation of religion by rulers. It was the result of a suspension of all claims to an exclusive truth – a suspension that was largely successful due to an intensive training in ambiguity. To put it even more pointedly: The Western way was to eliminate ambiguity. This necessarily led to competing claims to the one and only definite truth. The only way out from the inevitable consequence of violence was the attempt to domesticate these competing claims (for instance, by democratic procedures, which also accomplished a sort of suspension of truth). In contrast to this, the way of classical Islam was to begin one step ahead – to have already domesticated ambiguity. If ambiguity can be domesticated only, not eliminated, one can avoid struggles over the truth."¹⁷

Bauer's assessment, as Ahmad's, is that the culture of Islam was explicitly unorthodox and clearly prized ambiguity. The premodern culture of Islam and, for the most part, the people who populated those societies, were intensely interested in the project of knowledge but understood that in order for the community to survive and exist together through a common language of mutuality but not homogeneity, it required a move towards regulating and incorporating difference, rather than attempting to annihilate it.

To conclude, I would like to make this final point: The margins have the possibility of contributing meaningfully to expanding regimes of truth, and there is value in applying our minds with empathy, criticality and due consideration to those contributions. To recognise marginality is to acknowledge both the limitations of certain disciplinary and

17 Bauer, p. 260.

regulatory measures to effectively execute an ethics of mutuality, and the importance of contributing towards a community infrastructure that is able to hold difference without the violence of excommunication or exclusion. The historical processes involved in understanding sectarian differences allow us to appreciate that while we seek the universal, the historically contingent troubles us and pushes us to understand that while the texts, including sacred texts, have the capacity of tremendously rich liberatory readings, it also requires the audacious effort at liberating those texts from the alleged permanency of majoritarian interpretations. Historical investigation coupled with critical analysis of how centres emerge and how margins are created demystifies the certainties of hallowed orthodoxies to reveal how certain texts or interpretations became authoritative and others not. It likewise reveals cultural assumptions, socio-political expediencies, the solidification of beliefs and positions which come into being – sometimes suddenly, and in some instances with neither prior reflection nor any consultation preceding it, though all with varying claims to an Islamic authenticity.

The portal to recognising and appreciating the importance of ambiguity, community (*ummah*) and the infinite richness of the texts that yield a plurality of meanings, is accessed primarily, if not exclusively, through marginal representations of, and claimants to, Islam. The modern desire to decide meanings definitively, demarcate stable boundaries, enhance orthodoxies as exclusively authentic of a diverse tradition, to control futures through agendas of reform that narrow rather than widen “the precious baggage, the inescapable burden, of experience”¹⁸, is an effort at constriction and contraction which, in the long arc of Islamic history, would be intellectually disappointing and socially vicious.

18 Norman Calder. “The Limits of Islamic Orthodoxy,” in Farhad Daftary (ed.) *Intellectual Traditions in Islam*, London: IB Taurus, 2000, p. 66-85.