

# Book Review

*Islamic Law and Muslim Same-Sex Unions,*  
**Junaid Jahangir and Hussein Abdallatif.**  
Lanham: Lexington Books 2016.  
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The last decade has witnessed an extensive number of offerings on the subject of same-sex sexuality in the context of Islam. These offerings now include some scholarly responses to the arguments furnished by advocates for integrating LGBTQ people and their rights within a religious framework. This rich output demonstrates the increasing importance that sexual identity and sexual diversity is playing in the public sphere globally; the recognition of same-sex marriage in the first Asian nation, Taiwan, is an example of this. More importantly it demonstrates the initiatives of LGBTQ Muslims, in becoming more vocal and visible in their lives, as well as their activism and their engagement with the Islamic legal tradition. Amongst the many monographs and articles on same-sex eroticism and Islam, there are some which specifically make the case for the permissibility of same-sex marriage in Islam.<sup>1</sup> Jahangir's and Abdallatif's work fits into this genre and complements it insofar as it exclusively focuses on aspects of the Islamic legal tradition to put forward a case for the legitimacy of same-sex unions within the ambit of the *shariah*.

In essence, the core proposition, for which the authors argue, is a conservative one: same-sex sexual conduct should be permissible within the confines of a marriage contract or some type of legal sanction which amounts to the Islamic recognition of same-sex Muslim unions. It is conservative in that it seeks not only the acceptance of same-sex sexual conduct and relationships but also that its permissibility is conditional

1 See: Scott Kugle, 2010, *Homosexuality in Islam* (Oxford: Oneworld); and Hassan El Menyawi. 2012, "Same-sex marriage in Islamic law." *Wake Forest Journal of Law & Policy* 2(2): pp. 375-531.

upon certain limitations; a religiously recognised legal contract. The aim is to furnish an approach to the relevant – problematic to some – parts of the legal tradition that *prima facie* seem to prohibit, categorically, same-sex erotic behaviour and intimacy. This approach entails deconstructing the content of these texts and arguments to discover underlying assumptions regarding sexuality, exploitation, disease and dispositions, which can change the way in which we view the applicability of these texts and arguments in relation to contemporary examples of loving, compassionate and consensual relationships between people who are sexually orientated towards others of the same sex.

The foundational premises upon which the authors' arguments are anchored are delineated in the first chapter by way of four clarifications. On an issue where assumptions regarding sexual identity, the etiology of same-sex desire and the nature of sexual conduct are particularly relevant, these clarifications are especially important in understanding the argument. In some ways, if one is not in general agreement with these clarifications or not convinced that these clarifications have any relevance to the prohibition of same-sex sexual unions or conduct, then it is probable that the reader may not be persuaded by the analysis that follows. These four clarifications state up front the things that have the potential to open up a space for same-sex unions in Islamic law. First, queer Muslims are constitutionally orientated towards members of the same sex. Second, the qualitative and pertinent dimension of their sexual relations is one of equality, consent, and compassion and not exploitative same-sex practices which were a feature of pre-modern Muslim societies and still feature in some majority Muslim societies. Third, there is no such thing as an alleged congenital defect which served as a prism through which receptive anal sex was viewed in the pre-modern period. Fourth, there is an appreciation that same-sex sexual intimacy is diverse and cannot be reduced to the act of male anal penetration.

Jahangir's and Abdellatif's analysis begins with the Qur'an and is followed by the hadith tradition, a discussion on heterosexual anal intercourse and finally a discussion on Islamic jurisprudence that comprises the last three chapters of the book. The crux of the argument comprises a few important

strands which feature throughout the book in examining scripture and legal texts. According to the authors, a contextual and linguistic analysis of the qur'anic verses on the people of Lot renders a plausible reading that the men of the people of Lot (who possibly had wives) were not subject to divine chastisement for homosexual conduct *per se* (the kind outlined in the clarifications section as worthy of accommodation). That chastisement was for conduct that constitutes the anal rape of unwilling or "non-receptive" men. Following on from this, the authors argue – by drawing on and critiquing the Hadith and legal literature – that classical Muslim scholars articulated diverse views relating to same-sex sexuality and their opinions on the prohibited nature of same-sex sexual conduct, particularly anal sex, was "based on their assumptions on human sexuality and sociocultural values of their times" (122). Furthermore, the question of same-sex legal relationships was not comprehensible to them, for various reasons. These reasons included the asymmetrical power imbalance which usually existed in such relationships, for example, the practice of pederasty or intergenerational relationships. A second reason was that the medical understanding of same-sex sexual desire was regarded in some cases as being synonymous with disease. Then there was a lack of appreciation of the psychological need for intimacy and companionship by people who are constitutionally orientated to people of the same sex. Accordingly, since sex outside of a legal relationship was condemned as unlawful and the question of same-sex legal relationships did not arise historically on the basis of the contextual and linguistic understanding of the Lot verses, the tentative nature of the relevant Hadith traditions and the limitations of the classical jurisprudential view on same-sex desire and queer people; sexual expression and intimate companionship between members of the same sex are therefore not prohibited because of any inherent evil and such acts and companionship can be legitimised through a legal contract.

The authors are exceedingly competent in engaging with the source material and providing a comprehensive examination of the relevant qur'anic verses, the *Tafsir* and Hadith literature and the works of Muslim scholars – past and present – on the issue of same-sex desire and sexual conduct. They demonstrate a notable ability to move seamlessly between

various works, and to weave a specific representation from the source material and at the same time bring forth elements they build upon to support their argument. The authors attempt, in a way similar to Muslim feminist engagements with the Islamic intellectual tradition, to recognise the need for Muslims, including queer Muslims, to live according to divine prescriptions. At the same time they need to wrestle with the tradition so that it is intelligible to human reason, protects human dignity and diversity and is inclusive of the marginalised.

Although Sunni sources and perspectives dominate in the book, the authors seriously consider Shi'i works and views and also make brief references to Ahmadi writings; this is commendable in demonstrating that queer Muslims come from all sects and that Islam is not restricted to a Sunni worldview. More importantly, the authors include female same-sex sexuality in their discussion; something which is lacking in many earlier works. Most of all, the authors take the human dignity and welfare of queer Muslims as their starting point, which in this reviewer's view is essential for approaching the subject. Far too often, Muslim scholars talk about same-sex sexuality without foregrounding these elements in their approach.

It is evident that the authors' project is a revisionist or progressive one which engages with the Islamic legal tradition to advance an understanding of the tradition in relation to same-sex sexuality that enables the possibility of a legal framework for queer Muslims to experience intimacy and companionship that is acceptable both within the Islamic tradition and the religious community. However, the issue that Islamic law does not view transgressions of personal autonomy as necessarily unlawful in cases of legally recognised opposite sexual relationships is something which is not sufficiently addressed by the authors, particularly given the prominent place that coercion and power imbalances play in their understanding of why same-sex relationships were deemed unlawful in the Islamic legal tradition. This may have deliberately been avoided by the authors.

*Islamic Law and Muslim Same-Sex Unions* is necessary reading for anyone who has an interest in the subject of sexual diversity and the Islamic tradition. However, an introductory primer on the Qur'an and

Islamic law may be useful for those readers who are not familiar with the technicalities of these disciplines. The book is easy to navigate but it would have been useful to have a more developed index system that includes qur'anic verses, Hadith reports and subject titles in addition to the existing index which mainly includes proper names of people. A more developed index would make it easier for the reader to refer to and locate specific details.

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