chapter three

Sodomites

The Controversy over Gazing (Nazar)

Descriptions of the physical features of the beloved loomed large in the love poetry of the Arab-Islamic Middle East in the early Ottoman period. Poets typically dwelled on the eyes, skin, cheeks, neck, hair, figure, and gait—among other things—of the portrayed woman or boy. The descriptions, if taken as realistic representations of actual emotions and experiences, presupposed a fair amount of “looking” or “gazing” (nazar). However, such a taking in of the charms of women or beardless youths was deeply problematic from the perspective of Islamic law. To be sure, the love poetry was often not taken realistically. The Meccan scholar Ibn Ḥajar al-Haytāmi (d. 1566), one of the most prominent jurists of the early Ottoman period, based his conclusion that love poetry was religiously permissible on the following principle:

Amorous verse is not an indication of having looked with lust; as a rule the poet says it by way of making his poetry more delicate and to exhibit his craftsmanship, not because he is really in love . . . The composition of amorous verse is a craft, and the intention of the poet is to produce attractive discourse, not the verisimilitude of what is mentioned.¹

The idea that “poets say what they do not do” thus made room for a peaceful coexistence between the sensual ideals often celebrated in love poetry and the rather more austere ideals upheld by religious jurists. As argued in the previous chapter, poets did not always “say what they do not do,” but the assumption that they did so “as a rule” allowed them to express a fondness for wine, women, or boys, without compromising themselves.² Had it not been for this view of poetry, the coexistence would presumably have been more problematic than it was. The drinking of alcoholic beverages was strictly forbidden by the recognized interpreters of Islamic law, and transgressors were in principle liable to flogging. The visual appreciation (istilṣān) of a “foreign” woman (i.e., a woman who was neither a close relative nor a wife or concubine) was also legally out of bounds. There was broad agreement
among the jurists of the period that a man was not allowed to look at a woman who was not his wife, concubine, or close relative, except for specific purposes such as witnessing in a legal case, medical treatment, or teaching. In fact, the jurists of the period tended to agree that young women especially should veil their faces in public, precisely to prevent men from contravening this very principle.

Some jurists held, more controversially, that the same strictures should apply to looking at beardless youths. According to Ibn Ḥajar al-Haytamī, “There are beardless boys who surpass women in beauty and so are more tempting . . . and so more deserving of prohibition.” Both women and youths were suspected sources of temptation (māṣīnmat al-fītnah), and consequently neither looking at (al-nāzar), touching (al-lams), nor being alone with (al-khālwah bi) them was allowed: “The most correct [view is] that all of this is prohibited with a woman or a beardless boy, even if lust is absent and one does not fear temptation, by way of severing the means of vice as much as possible.” If youths, in contrast to women, were not ordered to veil themselves, this was merely due to the practical necessity for them to associate with adult men to learn the various sciences and crafts. As to the idea of the Platonic contemplation of handsome youths, Ibn Ḥajar’s opinion was unequivocal:

The claim that there is nothing prohibited in looking at them by way of contemplation (iṭībāran) is a satanic interpolation . . . There are plenty of other and more marvelous things that may be contemplated, but those who are wicked in soul and corrupt in reason and religion, and who do not comply with religious law, Satan suggests this to them in order to make them fall into what is worse than it [i.e., than looking].

A position similar to Ibn Ḥajar’s was propounded by the Syrian scholar and mystic ʿAlwān al-Ḥamawī (d. 1530). In a work devoted to the religious-legal provisions of looking, he wrote:

Looking at the beardless youth is prohibited, whether he is handsome or not, with lust or without it, whether one fears temptation or not . . . Some of them [scholars] qualify [the ruling], and say: It is permissible when one does not fear temptation, and prohibited when one fears it. Other scholars say: If he is handsome it is prohibited to look at him, otherwise it is not. It is more circumspect to block the openings and sever the means [of vice], and to avert the eyes from the beardless boy except for transactions such as teaching a science or a craft, and similar instances of necessity.
Both scholars could adduce several elements of the religious tradition in support of their position. Traditions warning against the temptation posed by beardless youths were numerous, some of them attributed to prominent religious figures of the early Islamic period, others to the Prophet Muḥammad himself. One tradition related that the Prophet prohibited men from gazing at beardless boys, and another that Muḥammad himself had seated a handsome young member of a visiting delegation from the tribe of Qays behind him so as to avoid looking at him.¹⁰ Both traditions were considered to be of dubious authenticity, but they could be buttressed by other traditions, relating how a venerable figure of the early Islamic period such as Sufyān al-Thawrī (d. 778) had fled from a handsome youth in a bath saying that he saw a devil with every woman and seventeen devils with every beardless youth; how Āḥmad ibn Ḥanbal (d. 855), founder of the Ḥanbalī school of law, advised a visiting friend who had brought along a handsome sister’s son not to bring him along on future visits and not to walk with him on the streets, lest he expose himself to malicious rumors; and how Ābū Ḥanīfah (d. 767), founder of the Ḥanafī school of law, had seated a handsome student of his behind him “for fear of betrayal by the eye.”¹¹ The declared purpose of such appeals to the deeds and sayings of venerable predecessors was to underline that no one ought to consider himself immune to temptation and exempt from the prohibition of looking at boys. According to ʿAlwān al-Ḥamawī: “Perhaps the wicked souls will tell their possessors: Your looking is free from obscenity and lust and you do not have a [tempting] devil; to him is replied: O conceited self-deceiver, do you have more piety than the outstanding Companions [of the Prophet]?”¹² Ibn Ḥajar concurred: “And alike in everything we have mentioned is the look of the righteous, scholars, teachers, and others.”¹³ The emphasis on the universality of the prohibition should probably be seen against the background of the frankly elitist arguments in defense of practices such as listening to music and contemplating human beauty. Mystics who defended these practices often held that the relevant religious rulings should take into account the spiritual station of the persons involved. Listening to music, for instance, could very well be prohibited (ḥarām) to warm-blooded young commoners (for whom it was likely to lead to sin), while being indifferently permitted (mubah) to others, and positively recommended (mandūb) for the mystic.¹⁴

The view that looking at youths was prohibited to adult men was a minority opinion within the Shāfiʿī school of law, apparently first formulated by the jurist Yahyā al-Nawawī (d. 1277), and hence often referred to as “the way of al-Nawawī” (ṭariqat al-Nawawī). It was a controversial view, and most

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Shāfī’ī scholars seem to have followed “the way of al-Rāfi’ī,” named after another prominent jurist of the school, ‘Abd al-Karīm al-Rāfi’ī (d. 1226), who, more conventionally, held that looking at youths was permitted in the absence of lust. Ibn Ḥajar al-Haytamī and ‘Alwān al-Ḥamawī were two prominent exponents of the position of Nawawī in the early Ottoman period. They were, however, not unique. The Meccan scholar Muḥammad ‘Alī ibn ‘Allān (d. 1648), for instance, quoted approvingly the verdict of al-Nawawī:

> It is prohibited to look at a beardless boy if he is handsome, whether [the onlooker] fears temptation or not. That is the correct view held by those who examine the question thoroughly . . . because he is as a woman, for he is desired as she is desired, and his beauty is similar to a woman’s beauty, and indeed many of them [beardless boys] are more attractive than many women. Indeed they are more worthy of prohibition, since it is easier to gain access to vice in their case than in the case of women.¹⁵

Similar views were also voiced in the lifetime of ‘Abd al-Ghānī al-Nābulusī (d. 1731), who devoted a virulent polemic to refuting an unnamed contemporary jurist who would prohibit outright looking at beardless youths.¹⁶ Nābulusī insisted that the basic position of religious law as regards looking at humans in general was permission (ibaḥah), and that this general principle should be circumscribed only when there were clear indications in the Qur’ān or Sunnah (i.e., the sayings and doings of the Prophet Muḥammad) that something was taboo (ʿawrah), or when looking was associated with illicit lust. The face of a male youth was, by common consent, not taboo, and hence the proposed prohibition would be based on the second point. The criteria for establishing the presence or absence of lust was, to be sure, a problematic matter, on which jurists themselves did not agree. But, said Nābulusī, in any case no one was in a better position to judge than the onlooker himself, and it was not permissible to claim that one knows whether others look with lust or not. Rather, one was obliged to think well of one’s fellow Muslims unless there was weighty evidence to the contrary. Several jurists, Nābulusī added, had taken to the reprehensible practice of issuing general prohibitions—whether on the question of listening to music, of looking at youths, of drinking coffee, or smoking tobacco—that were not based on sound juridical principles, but merely out of a moralistic conviction that wickedness and depravity was widespread. In fact, Nābulusī specifically mentioned both Ibn Ḥajar al-Haytamī and ‘Alwān al-Ḥamawī as examples of this kind of scholar.¹⁷ His opinion of them, though concealed beneath outward manifestations of respect, is apparent from his advice to a student who wanted to study some of the works of ‘Alwān al-Ḥamawī with him. Nābulusī advised the student...
to study the works of Ibn ‘Arabī instead. The works of ‘Alwān al-Ḥamawī, Nābulusī said, with their focus on reprehensible customs and practices, would induce the young student to adopt a disparaging and faultfinding attitude toward his fellow Muslims.\textsuperscript{18}

The weakness of the argument of Nābulusī was that it also applied to looking at women. Many jurists held that women’s faces were not taboo.\textsuperscript{19} Hence, the very same argument used by Nābulusī to establish that looking at beardless youths was in principle permissible would also establish that looking at “foreign” women was in principle permissible. To a majority of scholars at the time, such a conclusion would not have been acceptable. Even within Nābulusī’s own Ḥanafī school of law, which did not regard a woman’s face as taboo, jurists nevertheless asserted that “in the present age,” with the prevalence of immorality and depravity, young women especially were obliged to veil themselves in the presence of men.\textsuperscript{20} A scholar who wished to maintain the permissibility of looking at youths would have to argue for a basic difference between looking at youths and looking at women. Indeed, Nābulusī alludes to such a difference on more than one occasion: looking at the opposite sex was more likely to give rise to lust than looking at the identical sex; a man’s sexual desire for a woman was “natural” (\textit{tabī‘ī}), whereas his desire for a beardless boy—by implication—was not.\textsuperscript{21} Such statements look deceptively like modern assertions to the effect that “homosexuality” is “unnatural,” and it ought to be remembered that Nābulusī was an outspoken defender of the passionate love of boys, and obviously did not regard sensitivity to the beauty of beardless youths as abnormal. The appeal to nature should be seen within the context of the overall controversy. As in the case of the realist and idealist perspectives on love, both sides in the juridical dispute were appealing to propositions which separately were regarded as truisms, but which were potentially in conflict with one another. On the one hand, it was widely believed that sexual intercourse, and the attraction leading to it, ought in principle to occur between a male and a female, and that sexual attraction or intercourse between men or between women was at variance with the divinely sanctioned order of things. In the juridical literature, it was repeatedly asserted that neither the anus nor the male was created for the purpose of being sexually penetrated. The (false) supposition that homosexual intercourse is unknown among animals, repeatedly heard in Western history from antiquity to the present, was also not foreign to the premodern Middle East. According to Ibn Ḥajar al-Haytāmī: “We do not find a male animal who copulates with his like.”\textsuperscript{22} On the other hand, there was an equally widespread conviction that beardless youths posed a temptation to adult men as a whole, and not merely to a small minority of deviants.

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Perhaps the most striking evidence for this belief is the ruling of the Mālikī school of law concerning minor ritual ablution (wudu\textsuperscript{a}). One of the items that negate the state of ritual purity and necessitate wudu\textsuperscript{a} is, according to authoritative manuals of the school, touching with lust the flesh of that “which is normally the object of lust (mā yush\textsuperscript{a}hab\textsuperscript{a} \textsuperscript{ā}\textsuperscript{ā}\textsuperscript{ā}\textsuperscript{ā}\textsuperscript{ā})” or that “which normally gives rise to pleasure (yal\textsuperscript{a}t\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}d\textsuperscript{a}).” Thus, commentators of the manuals explained, a man would negate his state of ritual purity if he touched with lust the skin of an unrelated woman, but not an animal, a child, a corpse, or another bearded man. Mālikī scholars of the early Ottoman period repeatedly confirmed that a man would negate his state of ritual purity if he touched with lust the skin of a beardless or downy-cheeked youth, since they fell under the category of that “which is normally the object of lust.”\textsuperscript{23}

To be sure, it is not logically inconsistent to hold that a phenomenon is “unnatural” and yet common. But by emphasizing one rather than the other of these claims, diametrically opposed positions could be reached on a specific issue. Scholars who wished to prohibit looking at boys emphasized their feminine attractiveness, thus assimilating their case to that of women: “and that is because he is a suspected source of temptation like women”; “because he is a suspected source of temptation, for he is as women when talk is of the beautiful of face and the tender of body.”\textsuperscript{24} Alternatively, those who insisted that looking at boys was permitted as long as it was not linked to lust emphasized the masculine gender of the boy and thus assimilated him to the bearded adult: “because he is a male similar to the bearded”; “and a man may look at another man, even a handsome beardless youth, except for what is between the navel and the knees.”\textsuperscript{25}

Most jurists in the early Ottoman period dissented from the view that looking at youths was prohibited. The dominant position, even among Shāfī\textsuperscript{i}s, was to permit it in the absence of lust.\textsuperscript{26} To that extent, the beardless youth was to be treated as an adult male. However, traces of anxiety remained, and the permission was often qualified. Ibn ʿĀbidīn, after discussing the issue of looking at youths and concluding that it is permissible in the absence of lust, nevertheless added that “it is clear that it is more circumspect not to look at all.”\textsuperscript{27} The Egyptian Ḥanbalī jurist Maṣūr al-Buhūṭī (d. 1641) cited the ruling of his school that “it is permissible . . . for a man to look at what is not taboo [i.e., what is between the navel and the knees] of another man, even a beardless boy,” but almost immediately added: “but if the beardless boy is beautiful and temptation is to be feared from looking at him, it is not allowed to make a habit of looking at him.”\textsuperscript{28} The qualifications sometimes explicitly
ruled out notions of an aestheticist appreciation of boyish beauty. The Egyptian-based Ḥanbali scholar Marʿī ibn Yūsuf al-Karmī (d. 1624) quoted the prominent and controversial Ibn Taymiyyah (d. 1328) as stating that “he who repeatedly looks or gazes at the beardless boy and says ‘I am not looking with lust’ is lying.” The Egyptian Shafīʿi scholars Shams al-Dīn Muḥammad al-Ramlī (d. 1596) and Ibrāhīm al-Bājūrī (d. 1860), two representatives of “the way of al-Raḍī,” both cited a fourteenth-century jurist of their school as saying: “Many people look at the beautiful beardless boy while delighting in his beauty and loving him, and think that they are free from sin since they confine themselves to looking without desiring fornication (al-fāhishah), and they are not free [from sin].” In the same vein, the Egyptian Mālikī jurist ʿAbd al-Baqī al-Zurqānī (d. 1688) quoted an authority of his school as saying: “And they [scholars] have agreed upon the prohibition of looking at him [the beardless boy] with the intention of obtaining pleasure and delighting the eye with his charms.” Adult men’s interaction with boys was the object of juridical restrictions that were absent in the case of interaction between adult men. The prominent Palestinian jurist Khayr al-Dīn al-Ramlī (d. 1671) opined that a father could force his legally mature son to reside with him, and restrict his freedom of movement, if the son was still a handsome youth (ghulām sāhib). Several Ḥanafi scholars deemed that it was disapproved (makruh) for a comely beardless or downy-cheeked youth to function as leader (imām) of communal prayer. As has been mentioned, the Mālikī school ruled that touching a beardless or downy-cheeked youth with lust negated a man’s state of ritual purity. Shafīʿi jurists of the period asserted that, even if looking at boys was not prohibited, touching them or being alone with them was, again by analogy with unrelated women. Thus the Egyptian jurist ʿAlī al-Zayyādī (d. 1615) said: “Being alone with him [the beardless boy] or touching a part of his body is prohibited even according to the way of al-Raḍī.” ʿAlī ibn Yūsuf al-Karmī cited the opinion that “being alone with, and sleeping next to, a handsome beardless youth is [prohibited] as in the case of a woman.” Though it seems to have remained a minority view among jurists, the idea that looking at, and being alone with, a beardless boy was prohibited was influential enough to be reflected in the belles-lettres of the period. One of the “arguments” attributed to the downy-cheeked youth in ʿAlī al-Dabbāgh al-Mīqārī’s literary disputation—discussed in the previous chapter—is that “looking at him [the beardless boy] is prohibited while looking at me is permitted . . . being alone with him is prohibited as in the case of the unrelated woman.” Indeed, the controversy over looking seems to have been echoed outside scholarly circles. The Aleppine biographer Ibn al-Ḥanbalī mentioned Sodomites.
a local maker of sanbūsak (i.e., small meat pies) who was “inclined to loving youths, so if it was said to him: Are you a Rāfī’ī or a Nawawī? he would answer: Rāfī’ī.”

**Liwāṭ in Islamic Law**

The apprehensions concerning looking at, touching, or being alone with women or youths was in large part due to these acts being considered “preliminaries” (muqaddimāt) of what was, by common agreement, one of the “major sins” (kabā’ir). Fornication (zinā) was indeed considered to be inferior only to unbelief (kufr or shirk) and murder (qatl) in gravity. Islamic law treats it as a transgression against “a right of God” (haqq Allāh)—as opposed to transgressions against the rights of other humans (haqq ādamī)—for which a prescribed punishment, a hadd, had been revealed in the Qur’ān or the Sunnah. In juridical works on positive law (furū’), anal intercourse between men (liwāṭ) was invariably discussed within this context. The four acknowledged schools of law in the Ottoman Empire differed somewhat in their assessment of the penalty for liwāṭ, and it is therefore appropriate to discuss each of them separately.

**Ḥanafī**

The Ḥanafi school of law occupied a special position by virtue of being the official school of the Ottoman Empire. Predominant in Turkey, the school also had adherents among the Arabic-speaking Sunnī Muslims of the Empire, the majority of whom, however, were Shāfī. Of the four Sunnī schools of law, the Ḥanafī was unique in that it did not consider liwāṭ to be a variety of fornication, and thus not liable to hadd at all. The rationale behind the ruling was in part definitional: the school simply defined zinā as vaginal intercourse between two persons legally forbidden to each other. Anal intercourse, between two men or between a man and a woman, was different, argued the jurists of the school, both in that the desire leading to it (usually) came only from the active party, and in that it did not have the same consequences for which zinā had been forbidden. Furthermore, the punishment for zinā was specified by revelation, while the punishment meted out to liwāṭ by the Companions of the Prophet varied: some burned them alive, others threw them off the highest building in the city, others demolished a wall above them, etc. Though such examples suggest a more severe punishment for liwāṭ than for zinā, the somewhat scholastic conclusion of Ḥanafī jurists was that liwāṭ should then be punished by discretionary chastisement (ta’zir), and this was
usually less severe than *hadd*. For instance, if chastisement took the form of whipping, the number of lashes should not exceed thirty-nine, which is one less than the lowest number of lashes in a case of *hadd*. The form of chastisement was in principle left to the discretion of the presiding judge. The punishment most often suggested by the jurists of the period was whipping and/or imprisonment, with the proviso that repeat offenders could—and according to others should—be put to death. In the various Ottoman codes of law (*qanun*), which in theory constituted the basis for the rulings of state-appointed judges within the Empire, the punishment for active sodomy tended to be a fine, the heaviness of which depended on the perpetrator’s marital status (married men were punished more severely than unmarried) and his economic condition. Passive sodomy usually merited a discretionary number of whip lashes, and a fine.40

*Shāfi‘i*

Followers of the Shāfi‘i school of law were predominant in Syria, Lower Egypt, Western Arabia (the Hijaz), and amongst the Sunnis of Iraq.41 The school considered *liwāt* a variant or subtype of *zina*, but the punishment prescribed was somewhat peculiar. In the case of illicit vaginal intercourse, the offender, if *muhšan*—that is, if he or she was in a state of *ihšān*, having once consummated a legally valid marriage—was liable to death by stoning. If not *muhšan*, the punishment was one hundred lashes (fifty for the slave) and banishment for a year. In the case of anal intercourse, whether between two men or between a man and a woman (who was not his wife or concubine), the punishment was the same, except that the passive, penetrated partner was never liable to stoning. The somewhat peculiar reason given was that the anus is not included in the state of *ihšān*. The Egyptian scholar Sulaymān al-Bujayrimī (d. 1806) explained that “the state of *ihšān* is irrelevant to he who is penetrated in his anus, since there is no conceivable way of licitly inserting a penis into an anus in order for the state of *ihšān* to effect a difference in the punishment prescribed for him [the passive partner].”42 The implicit reasoning seems to have been the following: the state of *ihšān* means that one has had access to licit vaginal intercourse, and this should satisfy the normal “phallic-insertive” urges of the man and the “vaginal-receptive” urges of the woman. A man who is *muhšan* and yet assumes the “active” or “insertive” role in an illicit sexual relationship is therefore being particularly willful and merits a harsher punishment than he who is not *muhšan*. However, in the case of voluntary subjection to anal intercourse, it is questionable whether being *muhšan* similarly makes the transgression any more willful and hence more heinous.
Shāfī’ī jurists of the period sometimes mentioned, but did not adopt, a different ruling based on a tradition attributed to the Prophet: “Those whom you find committing the act of the people of Lot, kill the active and the passive partner.” The tradition was considered to be sound (ṣaḥīḥ), and was included in three of the six collections of traditions that Sunnī Muslims considered especially authoritative. However, there was no straightforward connection between a particular sound tradition and the ruling of a school of law. Jurists could, for instance, explain away one tradition by appealing to another. They could also press the point that a tradition which would legitimate the execution of Muslims had to be not only sound but also impeccable, and the tradition calling for the execution of the active and passive partner was not included in the two most authoritative collections of ḥadīth (by Bukhārī and Muslim). The ruling of the Shāfī’ī school was based partly on analogy with heterosexual fornication, and partly on other traditions. One such tradition had the Prophet Muḥammad say: “If a man has intercourse with a man, the two are [to be considered] fornicators,” and another had the third caliph of Islam, ʿUthmān, acting upon the advice of the Prophet’s son-in-law ʿAṭīf, ruling that a lūṭī who was not muḥšan was liable to a hundred whip lashes. These latter traditions were, however, not included in a comparably authoritative collection. In the late nineteenth and early twentieth centuries, the Salafī movement in the Islamic world would launch an attack on juridical scholasticism and call for a return to the textual sources of Islamic law. The movement was inspired by earlier scholars such as Ibn Taymiyyah (d. 1328) and his disciple Ibn Qayyim al-Jawziyyah (d. 1350), and the Yemenis Muḥammad ibn Ismāʿīl al-Amīr (d. 1768) and Muḥammad al-Shawkānī (d. 1834). From the perspective of such “purist” critics of legal scholasticism, the explaining away of the ḥadīth calling for the killing of both the active and the passive sodomite was wrong-headed. 

Hanbali

In the early Ottoman Arab Middle East, the Ḥanbalī school was numerically of less importance than the Shāfī’ī or the Ḥanafī. There were followers of the school in various parts of geographic Syria, such as Baʿalbak, Nablus, and Damascus. However, the major concentration of Ḥanbalīs was in the central Arabian highlands of Najd, which was outside effective Ottoman control and which in the eighteenth century became the center of the revivalist Wahhābī movement. According to the ruling of the school, liwaʿ was to be punished as illicit vaginal intercourse: if the offender was a muḥšan the punishment was stoning to death, otherwise one hundred lashes (fifty for a slave). As in the
case of the Shāfiʿī school, a more severe punishment based on the abovementioned tradition was sometimes cited. However, it was again overruled by reference to the same traditions on which the Shāfiʿī ruling rested. All the major Ḥanbalī juridical works produced in the early Ottoman period expounded the rule that liwāt should be punished as illicit vaginal intercourse. This applies to the works of the Egyptian-based jurists Marʾī ibn Yūsuf al-Karmī (d. 1624), Maḥṣūr al-Buhūtī (d. 1641), and ʿUthmān al-Najdī (d. 1686), and the Damascene-based Mūsā al-Ḥajjāwī (d. 1560) and ʿAbd al-Qādir al-Taghlībī (d. 1723). The works of these jurists are still considered authoritative by present-day Ḥanbalīs, but some modern scholars of the school, presumably influenced by Ibn Taymiyyah, Ibn Qayyim al-Jawziyyah, and the later Salafī movement, seem to have departed from their ruling concerning liwāt and to have adopted the more severe punishment, according to which offenders are to be executed regardless of marital status.47

Mālikī

The Mālikī school was predominant in North Africa and Upper Egypt.48 It was unique among the four Sunnī schools in distinguishing between the punishment of anal intercourse between a man and a woman (who is not his wife or concubine) and between two men. The former was to be punished as illicit vaginal intercourse, while the latter made the offenders liable to unconditional stoning. Contrary to the assertions of the article “Liwāt” in the Encyclopaedia of Islam, it was thus the Mālikī school and not the Ḥanbalī that had the most severe ruling on sodomy between men among the Sunnī schools of law, at least in the early Ottoman period.49

Imāmī Shiʿī

The Imāmī or “Twelver” Shiʿī school of law was not recognized within the Ottoman Empire.50 There were nevertheless followers of the school in Iraq, eastern Arabia, Jabal ʿĀmil in what is today southern Lebanon, and (as a clandestine minority) in the Holy Cities of Mecca and Medina. The Imāmī Shiʿī school of law is more severe than even the Mālikī school when it comes to liwāt. It prescribes the death penalty (the manner of death is left open) for both partners, regardless of marital status. Non-anal intercourse between men, which all the Sunnī schools regard as a minor sin punishable by discretionary chastisement, is considered a major sin and is punishable by one hundred lashes, and four-time offenders are to be executed. Though this was the considered position, Shiʿī jurists often mentioned and discussed even more
severe punishments. It is perhaps natural to ask why the Shi`i school of law is more severe on this point than the Sunnî schools. It is, however, difficult to answer such a question. Shi`i jurists, like their Sunnî counterparts, simply appealed to the opinions of previous jurists of their school, and to the traditions they recognized as authoritative. However, simply citing these factors as an explanation of the different rulings is clearly not very satisfying, since this merely invites the further question of why the traditions recognized by the Shi`i school are more severe than those recognized by the Sunnî schools. In any case, the Shi`i ruling on liwât goes back at least to the thirteenth century, when the scholar al-Muṣaqqiq al-Ḥilli (d. 1277) composed the influential law-manual Sharâ`i` al-Islâm. To pursue the origins of the comparative severity of the rulings is thus well beyond the scope of the present study.

The cited rulings of authoritative Islamic jurists on liwât offer a corrective to the view, expressed for instance by V. Bullough in his Sexual Variance in Society and History, that “Islam” regards homosexual sodomy as a less serious crime than heterosexual fornication, and that the punishments it lays down for the activity are “ambiguous.”51 Bullough’s opinion seems to have been based on a few translated manuals of Ḥanafî law, and he supported it by claiming that the only passage in the Qur`an which could be interpreted as specifying the punishment for homosexual conduct was: “If two of you commit it, then hurt them both; but if they turn again and amend, leave them alone, verily, God is easily turned, compassionate” (4:16). The phrase “the two of you” translates the Arabic al-ladhân, which is the dual masculine form of the relative pronoun. In the immediately preceding verse (4:15), the Qur`an speaks of “those of your women who commit adultery.” This has led some Islamic commentators to interpret Qur`an 4:15 as referring to sexual intercourse between two women, and Qur`an 4:16 to sexual intercourse between two men. Bullough pointed out that the stipulated sentence seems to be both ambiguous and mild, repentance on the part of the perpetrators apparently relieving them of punishment. However, the Qur`anic passage he invoked was simply not considered by Islamic scholars to be the basis for legal opinions on the punishment for sodomy. First, as Bullough himself acknowledged, not all scholars understood the verse as applying to homosexual intercourse. In fact, even Ḥanafî commentators, whom one might expect to have exploited the verse in defense of their school’s peculiar ruling on liwât, interpreted the verse as applying to fornication between a man and a woman.52 Second, even the Qur`anic commentators who did hold that the verse originally applied to liwât quickly added that the punishment mentioned had been abrogated (mansûkh) by later passages which called for the flogging or stoning of fornicators, including sodomites.53
Legal conviction of unlawful intercourse presupposed either voluntary confession, or witnesses to the act of penetration. The minimum number of witnesses required for conviction of *liwāt* was four according to the Shāfī‘ī, Ḥanbalī, Mālikī, and Imāmī Shi‘ī schools, and two according to the Ḥanafī school (since it did not regard *liwāt* as a case requiring *hadd*). The witnesses were to be ‘*adl* (“of good character”—that is, not to have committed major sins themselves, or persevered in minor ones), free (as opposed to slaves), male, and Muslim. They had to testify to having seen the genital contact; having seen the couple together under a blanket, for instance, is not enough. It has often been remarked that the stipulated preconditions make conviction for unlawful intercourse practically impossible. However, this was not regarded by jurists as regrettable. According to the Medinese-based scholar ‘Alī al-Qāri’ al-Harawī (d. 1614): “It is a condition that the witnesses [necessary for a conviction of fornication] are four . . . and this is because God the Exalted likes [the vices of] his servants to remain concealed, and this is realized by demanding four witnesses, since it is very rare for four people to observe this vice.”

Far from encouraging people to denounce their fellows, the jurists explicitly upheld the ideal of “overlooking” or “concealing” (*satr*) the vices of others, except in cases of repeated and unabashed transgressions. The Egyptian scholar and mystic ‘Abd al-Wahhab al-Shāra‘ī (d. 1565), for example, thanked God that he was able to fulfill his obligation to regularly “conceal” the vices of his fellow Muslims who were not ostentatious in their transgressions of divine law. It was thus generally agreed that witnessing in a case of *zinā* was “contrary to what is most appropriate” (*khilāf al-awlā*). The same applied to confession; it was best for the offender to refrain from publicizing his misdeed, and to repent in silence.

The Islamic jurists also operated with the principle that the scope of *hadd* punishments should be reduced as much as possible by evoking the possibility of unintentional transgression caused by a confusing “resemblance” (*shubhah*). The principle was based on a saying attributed to the Prophet: “Ward off *hadd* punishments as much as you can,” or according to a different version, “Ward off *hadd* punishments with resemblances (*shubhāt*).” *Shubhah* could arise, for example, if a slave claimed that he or she had been forced to commit fornication by his or her master; when a recent convert to Islam or a Muslim from an isolated or outlying area claimed that he was unaware of the prohibition; or if a man had sexual intercourse with his father’s female slave, or anal intercourse with his own wife or concubine. A few jurists even held that prostitution constituted a *shubhah*, since paying a woman for sex might be taken to “resemble” the dowry paid by the groom to his bride.
Hanafi jurists, who were well aware that the other schools held hadd punishments to be applicable to liwât, nevertheless claimed that there existed a consensus to the effect that discretionary chastisement (taʿzîr) rather than hadd was applicable in case a man had anal intercourse with his male slave, because of a mitigating shubhah. Thus, the Hanafi Mufti of Aleppo Muh.ammad al-Kawakibi (d. 1685) wrote:

If, however, he commits liwât with his male slave, or female slave, or wife, then he is by consensus (ijmâʿ) not liable to hadd, since there are those who deem it is permissible [to do so] on the basis of the saying of the Exalted [Qur’an 23:6 and 70:30]: “Except for their wives or what their right hands possess.”

This was contradicted, however, by the jurists of the other schools who asserted that shubhah did not apply to male slaves. Liwât with a male slave was consequently to be considered as equivalent to liwât with any other man. It was often underlined that there was a binding consensus (ijmâʿ) among scholars that the Qur’anic verses that allow a man to have sexual intercourse with his slaves only applied to female slaves. The very fact that the jurists were eager to point this out suggests that the interpretation that they wished to disallow had, at one time or other, been voiced, and was possibly still advanced outside of scholarly circles. The Hanafi jurist Haṣkafî asserted that a person who interprets the relevant Qur’anic verses as legitimizing liwât with a male slave was to be regarded as an apostate (murtadd). Yet, other jurists of the same school, such as Ibn ʿĀbidîn, stated that a person who claims that liwât with a male slave is permissible is not thereby to be considered an unbeliever. This would make liwât with a male slave equivalent, from a Sunnî point of view, to “temporary” (mutʿah) marriage (which is allowed by the Shiʿî school of law): both were prohibited, but a person who upholds its permissibility is not an unbeliever. Other Hanafi jurists specified that it is anal intercourse with a female slave or wife that could be claimed to be permitted without falling into unbelief. In any case, this whole line of thought was said to be one of the things that are “known [by scholars] but should not be made known [to people in general]” (yuʿlam wa lâ yuʿlam).

The condemnation of liwât, and most probably the word itself, may be traced to the Qur’an. On several occasions, the Qur’an refers to the peculiar vice of the people of Sodom to whom the Prophet Lot (Lût) had been sent (translations by E. H. Palmer):

7:81–82—and Lot, when he said unto his folk, “Will ye commit abomination such as no creature ever did before you? Lo, ye come with lust unto men instead of women. Nay, but ye are wanton folk.”
26:165—when their brother Lot said to them . . . “Do ye approach males of all
the world and leave what God your Lord has created for you of your wives?
nay, but ye are people who transgress.”

27:55—And Lot when he said to his people, “Do ye approach an abominable
sin while ye can see? do ye indeed approach men lustfully rather than women?
nay! ye are a people who are ignorant.”

29:29—And Lot when he said to his people, “Verily, ye approach an abomi-
nation which no one in all the world anticipated you in! What! do ye approach
men? and stop folks on the highway? and approach in your assembly sin?”

The Qur’an (11:77ff.; 15:61ff.) also relates that God sent “messengers” (traditionally interpreted as angels in human form) to Lot, and that the inhabitants
of the town “hurried” to the host, presumably to rape his guests. Lot offered
his own daughters to the aggressive townsmen instead but was rebuffed.
Thereafter God destroyed the people of Lot with a rain of “stones of baked
clay,” and by “making their high parts their low parts”; the latter was usually
interpreted to mean that their land had been raised up to the sky and then
turned upside down. Both forms of divine punishment were reflected in the
otherwise peculiar above-mentioned penalties for liwāt: burning the perpe-
trators alive, throwing them down from the highest part of a city, or demol-
ishing a wall over them. Interestingly, the relevant passages of the Qur’an do
not specify which sexual acts had been committed by the people of Lot. Nev-
ertheless, from an early period, Muslim jurists identified “the act of the peo-
dle of Lot” (fi’l qawm Luṭ) with anal intercourse, to the extent that in juridi-
cal terminology liwāt could be used to refer to anal intercourse between a
man and a woman.

Several sayings (ḥadīth) attributed to the Prophet Muḥammad are also se-
verely condemnatory of liwāt. Two of these have already been mentioned,
one demanding the death penalty for both partners and the other classifying
liwāt as zīnā. In addition, one may cite the following:67

That which I fear most for my people (ummati) is the act of the people of Lot
[variants of this tradition ascribe this status to other vices such as fornication
or drinking wine].

If sodomites (al-lūṭiyah) become common, God, the Glorious and Exalted,
will wash his hand of mankind and not care in which abyss they perish.

May God curse he who commits the act of the people of Lot.

God, the Glorious and Exalted, has no regard for a man who has intercourse
with a man or a woman in her anus.

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Four will face the anger of God and witness the wrath of God: men who adopt the antics of women; women who adopt the antics of men; he who commits bestiality; and he who sodomizes men.

As regards the last tradition, it is noteworthy that “men who adopt the antics of women” and “he who sodomizes men” (al-ladhī ya‘tī al-rijālı) are assumed to belong to different categories. The vices that tradition ascribed to the people of Lot were numerous, and a few sources did include the vice of “using henna and adorning themselves like women.”68 Yet their dominant image as presented by commentators of the Qur’ān was not one of effeminacy but rather of aggressive masculinity. The objects of the Sodomites’ desires were, on one account, said to be strangers passing through their areas. In the popular fifteenth-century commentary of “the two Jalāls” (Jalāl al-Dīn al-Maḥallī and Jalāl al-Dīn al-Suyūṭī), the phrase “stop folks on the highway” (taqṭā’un al-sabīl) was interpreted as sexual assault on travelers.69 Some commentators explicitly stated that the people of Lot only sodomized strangers (kānu l-‘ašīna dhālika ‘illa bi-al-ghurabā).70 According to other traditions, the people of Lot were pederasts. Qur’ānic commentators of the period apparently agreed that the angels who visited Lot and whom the Sodomites wanted to rape had assumed the form of handsome, beardless youths.71 Abū al-Su‘ūd Efendi (d. 1574), the Ottoman Grand Mufti, explained that the Qur’ān spoke of the people of Lot having intercourse with “men” (rija‘l) rather than “youths” (ghilmān) by way of emphasizing the despicable nature of their deed, and not—one may infer—because the sodomized were actually adults.72 The traditions according to which “the people of Lot” raped strangers and sodomized boys were, of course, not irreconcilable. According to one much-cited tradition, they started to sodomize strangers as a way of driving visitors and immigrants from their prosperous land, and then started to become addicted to the vice after having raped handsome, beardless youths. Some accounts had Satan assume the form of a wise old man recommending sodomy as a way of getting rid of strangers; other accounts had him assume the form of a very handsome youth who was the first “victim” of the policy and who thereby corrupted the tastes of the Sodomites; and yet other accounts had him play both roles.73

The jurists’ discussion of liwāṭ sometimes included brief considerations on whether it was more or less grave a sin than zinā between a man and a woman. Given the rulings of their school, the opinion of Mālikī and Imāmī Shī‘ī jurists could not be in doubt. To jurists of the other schools the question was in principle open, though most of them seem to have agreed that liwāṭ was the more abominable of the two. It should be emphasized that what
was being compared was not “homosexuality” and “heterosexuality,” but “anal intercourse between men” and “illicit vaginal intercourse between men and women.” Non-anal intercourse between men was, at least for all the Sunnī schools of law, not as grave a sin as illicit vaginal intercourse between a man and a woman. The arguments adduced in discussions of the relative gravity of the two acts tend to fall into the following three types:

(i) Appeal to religious tradition: The Egyptian scholars ‘Abd al-Wahhāb al-Sha‘rānī (d. 1565) and ‘Alī al-‘Azīzī al-Būlāqī (d. 1658) both emphasized that the Qur’anic verses and the sayings of the Prophet which condemn liwāt are, on the whole, more severe in tone than those which condemn zina. The Ḥanbali Marī ibn Yusuf al-Karmī also considered liwāt more reprehensible than zina, and based his judgment on the fact that “some” scholars held that the former should be punished more severely than the latter. A tradition related by the Shi‘ī scholar Muḥammad al-Hurr al-‘Āmilī (d. 1693) said: “The inviolability (hurmah) of the anus is greater than the inviolability of the vagina, and God destroyed a people because of the inviolability of the anus and did not destroy anyone because of the inviolability of the vagina.”

(ii) Appeal to the repulsiveness of liwāt: Several scholars asserted that liwāt is “contrary to natural disposition” (muḥarram ṭab‘an), in the sense that it is repulsive to people of “sound character” (al-ṭab‘ al-salīm), whereas zina is not. The same belief would seem to be presupposed by several commentators of the Qur‘an when they stated that the act pioneered by the people of Lot was something that was so abominable that it had not occurred to humans before that time. Abū al-Su‘ūd Efendi explained the absence of liwāt in the pre-Sodomite era in terms of its “completely abominable character, for the agreement of all individuals of mankind in shunning it [until then] is only because it is what disgusts dispositions and repels inclinations.” Again, it bears emphasizing that it is liwāt and not “homosexuality” that was said to be contrary to “sound character.” In accordance with juridical terminology, liwāt would not include instances of non-anal intercourse between men, but could easily apply to anal intercourse between a man and a woman. The statement that liwāt is repulsive to someone of “sound character” is therefore most safely interpreted to mean that anal intercourse is repulsive to those of “sound character,” regardless of whether two men or a man and a woman were involved. Such an assumption does not, however, by itself imply that the people who committed the act were thought to be pathologically abnormal. The term “sound character” is hardly a purely descriptive medical term. Like the term dā‘ discussed in chapter 1, it can often be used in an almost purely evaluative sense. The Egyptian scholar ‘Abd al-Ra‘ūf al-Munāwī (d. 1622) explicated the claim that liwāt is contrary to sound character in the
following manner: for the passive partner the inducement to commit the act was either effeminacy or a pathological itch in the rectum; for the active agent, it was the rational faculty’s subservience to animal desires. In the latter case, the failing was thus clearly of a moral rather than pathological character. The idea that the people of Lot behaved “animalistically” (bahāmiyyah) in pursuing sexual pleasure with no regard to the divinely sanctioned purpose behind intercourse—progeny and “fortification” against fornication—was repeatedly asserted in the Qur’anic commentaries of the period. To be sure, there was a potential tension in condemning an act as unnatural and hence absent from the animal kingdom, and condemning its perpetrators as “animalistic.” Presumably, we are dealing with another expression of the above-mentioned tension between believing that liwāt is contrary to the natural order of things, and that liwāt is a common temptation to be kept in check by reason and religion (which animals lack).

(iii) Appeal to consequences: The Egyptian Shāfī’i jurist ‘Alī al-Shabrāmailisi (d. 1676) judged liwāt to be less reprehensible than zinā, since it did not result in the confusion of lineages. The Ḥanbalī scholar Muḥammad al-Saffārīnī (d. 1774) considered liwāt to be more heinous than zinā if the two acts were compared in isolation, but added that zinā was the graver sin in respect of the consequences, since it led to the confusion of lineages. Ḥanafī jurists also referred to this difference between liwāt and zinā in their arguments for their school’s position that the former sin was to be punished by discretionary chastisement rather than hadd. The same point was cited by Sha’rānī as a possible argument in favor of the superior gravity of zinā, though he himself adopted the contrary conclusion. Another remark by Sha’rānī is interesting in that it allows a glimpse of a more concrete difference in the respective consequences of liwāt and zinā: “People are not as zealously protective of the male, and do not venture to kill the one who sodomizes him, as they are zealously protective of free women if someone commits fornication with them.” Sodomy might have been considered more reprehensible than fornication by a majority of jurists, but it could very well have been both easier and safer in a premodern, gender-segregated society in which private vengeance was possibly a more immediate threat than state action.

Liwāt in Paradise?

The discussion of the comparative gravity of liwāt and zinā was related to the question of the rationale behind their prohibition by God. As regards illicit vaginal intercourse, the reason adduced was invariably the danger of a confusion of lineages (ikhtilāt al-ansāb). It was often remarked by jurists that zinā
was thus prohibited by all communities (milal), and not just the Islamic. To the extent that rational arguments were given for the prohibition of liwāt, these appealed to the aforementioned belief that the divinely sanctioned purpose of sexual intercourse was to propagate the species. According to the Egyptian scholar ʿAbd al-Raʿūf al-Munāwī (d. 1622):

Everything created by God in this world He has made suitable for a specific function and so is not suitable for anything else, and He has made the male for [sexual] activity and the female for [sexual] passivity and has instilled in both of them the desire for procreation and the continuity of the species, so the person who reverses [this order of things] counteracts this divine wisdom. The Egyptian scholar Sulaymān al-Jamāl (d. 1790) cited the following opinion:

God, the Blessed and Exalted, created man and instilled in him the desire for intercourse to ensure the continuity of the species and the peopling and prosperity of the world, and made women the object of sexual desire and the source of offspring; so if man abandons them and turns instead to other men, he dissipates and exceeds and contravenes because he puts something beside the proper place and locality for which it has been created, because the anus of men is not a place for childbirth, which is the purpose of this desire in man.

According to the Egyptian-based scholar Muḥammad Murtaḍā al-Zabīdī (d. 1791):

It [i.e., liwāt] is worse than zinā because zinā is the placing of the seed in a fertile recipient in an improper way and is like planting in someone else’s land . . . and in the case of liwāt the seed is destroyed, and its perpetrator is like those of whom God has said that they “destroy the tillage and the stock” [Qurʾān 2:205], and for this reason He has condemned the people of Lot for “dissipation” (isrāf), saying, “Lo, ye come unto men instead of women. Nay, but ye are wanton folk (musrifīn).”

Muḥammad al-Hurr al-ʿĀmilī related a Shiʿī tradition according to which ʿAlī ibn Abī Ṭālib had been asked by a heretic (zindiq) for the reason behind the prohibition of liwāt. ʿAlī supposedly answered: “If carnal penetration of a boy (ityān al-ghulām) were permitted, men would dispense with women, and this would lead to the disruption of procreation and the inoperativeness of vaginas (taʿīl al-furūj), and from allowing this much evil would arise.” The proposed justification for the prohibition of liwāt would of course not hold in a world in which there was sexual intercourse but no childbirth. Such a world was, according to premodern Islamic tradition, paradise. While the
Qur’ān speaks somewhat vaguely of the (male) believers being “wed” to hou-ris who were beautiful, loving, and virginal, the religious tradition elaborated on the sexual nature of this wedlock to an extent that many modern Muslims find distasteful: each man would receive dozens, perhaps even hundreds, of beautiful maidens; he would receive the potency of a hundred men; each maiden would be passionately fond of copulation and her hymen would be reconstituted after each intercourse. Several scholars also discussed the issue of whether sodomy could be present in paradise. The issue was raised by one of the most prominent Ḥanafī jurists of the early Ottoman period, the Egyptian Zayn al-‘Abidīn ibn Nujaym (d. 1563) in his al-Ashbāh wa al-naṣā’īr. With laconic brevity, he sketched three possibilities:

[1] The prohibition of liwāt is established by reason and so it will not be found in heaven; [2] and it has been said, [the prohibition is established solely] by revelation and so it will be found in it; [3] and it has been said, God the Exalted will create a group whose upper half will be like males and whose lower half will be like females; and the correct [position] is the first.  

It is not clear what is meant by the assertion that liwāt will not be found in heaven if its proscription is established by reason. As later commentators of this passage pointed out, the dominant theological position amongst Sunnī Muslims held that nothing can be religiously proscribed by reason alone. At most, human reason may comprehend the rationale behind some of the prohibitions established by divine revelation. This is precisely what was attempted by the scholars who cited God’s purpose behind instilling sexual desire in mankind, and their arguments do not imply that liwāt would be absent in heaven. In any case, the grounds that Ibn Nujaym gave in other works for preferring the first conclusion have nothing to do with liwāt being prohibited by reason independently of revelation. In his al-Bahr al-rā’iq, an authoritative commentary on a compendium of Ḥanafī law, he appealed to the fact that the Qur’ān deplored liwāt and indirectly called it a “foul deed” (khabīthah). The problem with this argument, as pointed out by the Egyptian scholar ʿAbd al-Hamawī (d. 1687) in his commentary on Ibn Nujaym’s al-Ashbāh wa al-naṣā’īr, is that it does not follow from a thing being denounced in such terms that it would not be found in heaven. Wine is called a satanic “filth” (rijs) in the Qur’ān, but is nevertheless promised the believers in paradise. Ḥamawī himself grounded the absence of liwāt from paradise in the thesis that people will not have anuses in the hereafter, since they will not defecate. A similar resolution of the issue was offered by a prominent pupil of Ibn Nujaym, Muḥammad al-Tumurtāshī (d. 1595). The fact that such a conclusion was regarded as satisfactory suggests that what was at issue was anal, rather
than homosexual, intercourse. This may also be inferred from the remark of Ibn ‘Abidin to the third of the alternatives mentioned by Ibn Nujaym; the idea that God would create beings who were male from the waist up, but with female sexual organs: “This has nothing to do with the issue since the dispute concerns anal intercourse (al-ityān fī al-dubur).” Ibn ‘Abidin here seems to identify liwāṭ with anal intercourse and to dismiss the question of the gender of the penetrated partner as irrelevant. This was in accordance with especially Ḥanafī usage: Ibn Nujaym spelled out the principle that “anal intercourse with the unrelated woman is also liwāṭ.” However, the jurists’ use of the term was not entirely consistent. Ibn ‘Abidin himself commented thus on Ḥaṣkafī’s assertion that liwāṭ is to be considered more reprehensible than zinā: “Intercourse with males cannot be made permissible, in contrast to intercourse with females, which becomes legal through marriage or procurement [of a concubine].” The implication here is clearly that liwāṭ is something a man commits with another man. On this account, the luṭi is someone who commits sodomy with men, not women. Commenting on the perceived irrelevance of the third alternative of Ibn Nujaym, the Egyptian Ḥanafī scholar Ahmad al-Taḥṭāwī (d. 1816) stated that “the interest of the luṭi is in the lower half and if it is like a female his interest will not be met.” In juridical texts, the meaning of liwāṭ constantly oscillates in this way between the two senses of “anal intercourse between men” and “anal intercourse between men.” An emphasis on the bodily organs involved implied that the term could be extended to cover anal intercourse between a man and a woman; an emphasis on the gender of the people involved suggested that other forms of sexual intercourse between men could be termed liwāṭ. A similar ambiguity seems to have been characteristic of the medieval European concept of “sodomy,” which could even (in contrast to liwāṭ) be applied to cases of bestiality or oral intercourse.

Another locus classicus for the question of whether liwāṭ could be among the pleasures of paradise is the following passage describing an eleventh-century debate on the issue:

There occurred a discussion between Abū ‘Alī ibn al-Walīd al-Mu’tazili and Abū Yūsuf al-Qazwīnī concerning the permissibility of intercourse with the boys of paradise (al-wildān). Ibn al-Walīd said, “It is not precluded that this should be part of the pleasures of paradise because of the cessation of its evil consequences, since it has been prohibited in this world because it involves the disruption of procreation and because it [the anus] is the outlet of noxiousness (adhā), and these [procreation and excrement] are not to be found in paradise; for the same reason drinking wine will be permitted since it will not
involve intoxication, boisterousness (‘arbadah), and the paralysis of reason, and so there is nothing to preclude the permissibility of taking pleasure in it.” So Abū Yūsuf said, “The inclination to males is a flaw (‘ahlah) and is vile (qabıh.) in itself because it [the anus] is a place that has not been created for intercourse, and for this it [liwāt] is, in contrast to wine, not permitted by any law, and it [the anus] is the outlet of impurity (hadath), and paradise is free from flaws.” So Ibn al-Walīd said, “The flaw is [to want] to be polluted with noxiousness (adhab), and if that is absent nothing remains but taking pleasure.”

Ibn al-Walīd al-Mu’tazilī (d. 1086) initially put forth the reasons for thinking that the prohibition of liwāt will not carry over into the next world: the prohibition is based partly on the this-worldly end of sexual intercourse, namely procreation, and partly on the “uncleanliness” of the anus. Neither factor would be relevant to a world in which sexual intercourse was for pleasure only, and in which there was neither procreation nor excrement. In the attempt to counter this argument, Abū Yūsuf al-Qazwīnī (d. 1095) made a claim that may look like a “modern” disqualification of homosexuality as perverse: “The inclination to males is a flaw, and is vile in itself.” Such an understanding of the claim is, on closer consideration, questionable. Abū Yūsuf stated that “the inclination to males is a flaw” because the anus has not been created for being sexually penetrated and is the outlet of noxious excrement. What appears at first sight as a disqualification of “homosexuality” is actually a disqualification of the desire to phallically penetrate the anus. This is indeed the way in which the statement is understood by the opponent who protests that the inclination to males is only a flaw to the extent that it involves polluting oneself with “noxiousness,” a clear reference to the excrement that a person would normally not want to touch with any part of his body. Both Abū Yūsuf’s argument and Ibn al-Walīd’s rejoinder apply equally to the desire to sodomize a woman. The desire to sodomize men is thus a “flaw” in the same sense as the desire to sodomize women. By contrast, the whole discussion presupposes that the desire to sodomize is not a “flaw” in the same sense as the desire to be sodomized. It would without doubt have seemed very outlandish to hold a serious discussion on whether the pleasures awaiting male believers in paradise could include being sodomized by beings especially created for that purpose.

The Iraqi scholar Maḥmūd al-Ālusī (d. 1854) took issue with the position of Ibn al-Walīd al-Mu’tazilī, and did so in terms that make it clear that the desire to sodomize was not regarded as a “flaw” in the same sense as the desire to be sodomized. Ālusī took Ibn al-Walīd al-Mu’tazilī to be denying that
_liwāt_ is “contrary to natural disposition,” and countered by wondering whether Ibn al-Walīd would want to be anally penetrated in paradise. “If he wants today to be anally penetrated tomorrow, then the man is quite likely a _maʾbūn_,” that is, he would suffer from a pathological condition that it is safe to assume would not be present in paradise. Alūsī continued by pointing out that it would not help Ibn al-Walīd to “invoke the distinction between the active and the passive partner, as cannot but be clear to the clear-minded.”

Alūsī could hardly be claiming that someone who wants to sodomize boys in the future is also a _maʾbūn_ now. Given the meaning of the term _maʾbūn_ explicated in the first chapter of this study, such a claim would make no sense. His point is rather that once it is established that a passive sodomite has an unsound character and that paradise is free from character flaws, then it follows that there will be no passive sodomites, and hence no sodomy, in paradise. The whole issue of why the desire to sodomize should be regarded as a “flaw” is neatly sidestepped.

Maḥmūd al-Alūsī’s rejection of the idea that sodomy might be allowed in paradise seems to have been the most common verdict of scholars of the period who debated the issue. His opinion was, as has been seen, shared by Ibn Nujaym, Muḥammad al-Tumurtāshī, and Aḥmad al-Ḥamawī, and the verdict of these scholars was cited by others such as Muḥammad ‘Alāʾ al-Dīn al-Ḥaṣkaʿī, ‘Abd al-Ghanī al-Nābulusī, and Aḥmad al-Ṭaḥṭāwī. It should be mentioned, however, that some scholars were not as eager to preclude the possibility. The following words by the prominent Egyptian scholar Muḥammad al-Hafnī (d. 1767), who was Rector (Shaykh) of the Azhar from 1758 to his death, must have given the reader the impression that the question was open:

It has been said: _liwāt_ is not permissible in paradise because of its filthiness; and it has been said: it is permissible, and the mentioned reason has been countered by pointing out that there is no filth or reproduction in paradise.

At least one scholar of the period was prepared to defend the thesis that _liwāt_ with boys would be part of the pleasures available to believers in paradise. The Turkish scholar Muḥammad Zirekzade (d. 1601) invoked the following two Qur’anic verses in support of the position:

76:19—And there shall go round about them eternal boys; when thou seest them thou wilt think them scattered pearls.

41:31—And ye shall have therein what ye call for.

Taken together, Zirekzade argued, the two verses suggested that boys would be sexually available to men in paradise: “The verse [76:19] implies that there
will be handsome beardless boys in paradise, and it is implausible (baʿid) that they will not be sexually desired.” However, Zirekzhâde’s position was far from being the standard one, and it was cited by the later Turkish scholar Ismâ’il Haqçi al-Bûrsawî (d. 1724) with the rejoinder that the conclusion is “not acceptable to those of sound heart and right-thinking mind.” Bûrsawî argued that the phrase “go round about them” in the first Qur’anic verse suggested that the boys were servants rather than catamites, and that the people of paradise would simply enjoy looking at “their beauty and radiance.” The second verse promised believers whatever they desired in paradise, but it was possible (yajûz) that liwât would not be desired by the people of paradise.

The discussion concerning whether liwât could exist in heaven was linked to the somewhat enigmatic figure of the boys of paradise (wildân). These are referred to in the following passages of the Qur’an, describing the blissful condition of the believers in the hereafter:

52:24—And round them shall go boys of theirs, as though they were hidden pearls.

56:17—Around them shall go eternal youths, with goblets and ewers and a cup of flowing wine.

76:19—And there shall go round about them eternal boys; when thou seest them thou wilt think them scattered pearls.

Muslim commentators of the period mentioned different suggestions as to who these boys of paradise were. They could be the sons of the believers, or possibly the children of the unbelievers who died before puberty. The dominant interpretation, however, was that the boys were specially created by God, like the houris, to serve the believers. In the case of the boys, the service was, as has been seen, usually not thought to be of a sexual nature. Yet the commentators did not shy away from the fact that the verses seem to present the physical beauty of the boys as one of the attractions of paradise. In the Qur’anic commentary of “the two Jalâls,” the verses, which have been bracketed in what follows, are explained thus:

(And around them) for service (shall go) slave (boys of theirs, as though they were) in handsomeness and delicateness (hidden pearls). (And there shall go round about them eternal boys) in the form of boys who never grow old; (when thou seest them thou wilt think them) because of their handsomeness and dispersal in service (scattered pearls).

Sulaymân al-Jamal, in a supercommentary on the mentioned work, explained what is to be understood by “eternal”:
That which is meant by their being eternal is not changing from the condition of boys in respect of their tenderness (tariwah) and handsome physique (husrn qadd), in contrast to the boys of the world who change as they grow older.\textsuperscript{105}

In the Qur’anic commentary of Abû al-Suûd Efendî, the relevant verse is explained in the same spirit:

(And there shall go round about them eternal boys,) that is, forever persevering in their tenderness and beauty; (when thou seest them thou wilt think them scattered pearls) because of their handsomeness, clear complexion, and radiant countenances.\textsuperscript{106}

According to some commentators, the term mukhalladûn, which is usually understood to mean “eternal” or “never-changing,” could also be understood to mean “bearing earrings (khild),” so that the phrase wildûn mukhalladûn may be translated either as “eternal boys” or as “boys with earrings.”\textsuperscript{107}

Of course, the first—more usual—reading did not preclude that the ever-youthful boys would be “adorned with rings, bracelets, earrings, and beautiful clothes.”\textsuperscript{108}

The boys of paradise were widely assimilated to the beauty-ideal celebrated in the belles-lettres of the period. As has already been indicated on more than one occasion in the foregoing chapter, love poetry sometimes compared the beauty of the beloved to that of the paradisiacal youths. The wildan were also represented as one of the attractions that a believer could look forward to in the hereafter. The Shî’i scholar Nîmatallah al-Jazâ’irî (d. 1702), reminding his reader how earthly pleasures pale in comparison with the pleasures awaiting in paradise, wrote:

If you are among those who are slaves to their sexual organs, then [keep in mind the Qur’anic verse (44:54)]: “We shall wed them to bright and large-eyed maids”; and if you are among those who gaze, then [keep in mind the Qur’anic verse (76:19)]: “And there shall go round about them eternal boys; when thou seest them thou wilt think them scattered pearls.”\textsuperscript{109}

According to the Damascene scholar Ḥasan al-Bûrînî (d. 1615), who was said by a contemporary to have “an inclination to boys,” “The attractions available in paradise are of many forms, including boys and houris.”\textsuperscript{110} The biographer Muḥammad Khalîl al-Murâdî (d. 1791) mentioned a poetic eulogy of the Prophet Muḥammad composed jointly by three eighteenth-century scholars, in which one of the lines is as follows:

So I do not ask except for an intercessor [i.e., the Prophet] who will lead me to the boys of paradise by his guidance.\textsuperscript{111}
A verse in a poetic elegy by the Aleppine scholar ‘Abd al-Rahmān al-Ba’lī (d. 1778/9) likewise stated:

And around him [the deceased] are boys and youths (al-ghilmān wa al-wildān) adorned like hidden and scattered pearls.¹¹²

The Qur’an was thus understood as simultaneously condemning sexual intercourse between men in the severest terms and depicting handsome youths as one of the otherworldly rewards awaiting the male believers. This could hardly have failed to appear to aesthetically inclined scholars as a confirmation of their own sympathies for the chaste love of beauty.

The Meaning of Liwāt

On the basis of the severe religious-legal rulings on liwāt, it would appear reasonable to claim that “Islam” prohibits “homosexuality.” Having established this, the profuseness of homoerotic poetry and anecdotes in Arab-Islamic literature may be seen as an indication that “in practice” homosexuality was nevertheless indulged or tolerated in Arab-Islamic societies. Yet, as stated at the outset of this study, such an interpretation seems to simplify a more complex picture. None of the schools of law operate with a concept of “homosexuality.” From a juridical perspective, a lūṭī is someone who commits a specific act. His desires or inclinations are in principle irrelevant; he does not become less of a lūṭī if he commits the act for payment, or merely to satisfy a curiosity rather than out of desire. Even a victim of heterosexual or homosexual rape could, in a strict sense, be regarded as a fornicator or sodomite, though duress qualified as a “resemblance” (shubhah) that removed legal liability for the act. Thus, the Ḥanbalī jurist Buhūṭī asserted that “there is no hadd punishment if a legally mature woman is forced to commit fornication, or a passive sodomite is forced to commit sodomy.”¹¹³ The same point would seem to be presupposed when Shāfi’ī jurists claimed that duress does not make fornication permissible; it simply removes legal liability, apparently in the same way that a minor cannot be prosecuted for fornication though he or she is not permitted to commit it.¹¹⁴ According to the Damascene Ḥanafī jurist Ibn ‘Abidīn, accusing a victim of rape of being a fornicator does not amount to a false accusation of unlawful intercourse (qadlf), because “duress obviates the sinful nature of the act, but not its being fornication.”¹¹⁵ Not all contemporary jurists would have agreed with Ibn ‘Abidīn. Jurists of the Mālikī school included consent in their definition of liwāt, and accusing a victim of rape of being a lūṭī was thus deemed libelous.¹¹⁶ However, the disagreement was based on a scholastic quibble about whether voluntariness
should be included in the formal definition of *liwāṭ*, and not on any fundamental difference in the concept. There was agreement on all sides that a person who commits *liwāṭ* for pecuniary reasons is as much of a *lūṭ.* as someone who commits it for pleasure. There was also agreement among the jurists that a person who experiences recurrent desires to commit *liwāṭ* but does not act on them, or who intends to commit it but never gets the chance, is not a *lūṭ.*

*Liwāṭ* is narrower than homosexuality in another sense. In the four Sunnī schools of law, it referred specifically to anal intercourse rather than to “homosexual” acts in general. Kissing, caressing, and intercultural intercourse between males were considered reprehensible acts that merited chastisement, but were not cases of *liwāṭ.*

The standard manuals on Islamic law were quite explicit about this point. An authoritative Ṣ̄̄hāfī manual thus defined *fornication* (*ẓinā*) as “the illicit insertion of the penis into a vagina” (*ṭīḥ al-dbakar bi-fārj muḥarram*), and added that inserting the penis into “the male or female anus is as [inserting it into] the vagina, according to the school” (*wa dubur ḍhakar wa unthā‘a ka-qubul ʿalā al-madḥhab*). It went on to state that ḥadd punishments did not apply in the case of intercultural intercourse (*muḥfākhadhah*) and other things that do not involve penetration (*mimmaʿ lā ṭīḥ fīhī*) such as intercourse between women. A standard Ḥanbāli manual also defined *fornication* as “committing the abomination in the vagina or anus” (*fiʿl al-faḥishah fī qubul aw dubur*), and went on to specify that it is a precondition for the application of ḥadd punishments that the glans is inserted (*ṭagḥīb al-līḥafah*) into either orifice. A standard Mālikī manual defined *fornication* as a “legally mature Muslim’s insertion of the penis into a human vagina that is not allowed to him,” thus explicitly excluding cases of nonpenetrative sex such as intercourse between the thighs (*lā ghayr fārj ka-bayn fakh-dḥayn*). The manual specified that “insertion” (*ṭīḥ*) meant the introduction of the glans (*ṭagḥīb ḥṣaḥafah*) into the orifice, and sodomy (*liwāṭ*) was then specified to be the introduction of the glans into the anus of a male (*idkha ʿilā ḍhakar dbakar*). Ḥadd punishments were stated not to apply to sexual intercourse between women “since there is no penetration” (*lī-adām al-ṭīḥ*).

Ordinary, nontechnical usage was, as has been seen in the first chapter, not as strict. Juridically, however, a person who accused another of being a *lūṭ.* on the grounds that he had kissed, caressed, or had intercultural intercourse with a boy would be liable to eighty lashes for false accusation of unlawful intercourse. According to the Ḥanafī, Ṣ̄̄hāfī and Ḥanbāli schools, anal intercourse between a man and a woman (other than a wife or concubine) and anal intercourse between two men were instances of the same type of transgression, and merited the same punishment. By contrast, sexual intercourse between women (*ṣīḥāq*) was considered an independent transgression and
was not assimilated terminologically, or in terms of punishment, to anal intercourse between men.

In assessing the gravity of a sexual sin, the mode of intercourse was more important than the genders of the partners. Illicit vaginal intercourse between a man and a woman was a graver sin, and was punished more severely, than kissing, caressing, or intercrural intercourse between men, or sexual intercourse between women. The latter acts, which did not involve phallic penetration of the vagina or anus, were apparently not considered by Sunnī jurists to be “major sins” (kabā‘ir) at all.121 The Egyptian Shāfī‘ī jurist Sulaymān al-Bujayrimī (d. 1806), after expounding the rulings of his school on zinā and liwā‘, added that nonpenetrative sexual intercourse such as “intercrural intercourse (mufākhadhah) or hugging or kissing” were not major sins unless done repeatedly, and should be punished by discretionary chastisement, which ought to be milder than the least severe hadd punishment.122 The Shāfī‘ī jurist Muḥammad al-Khaṭīb al-Shirbīnī (d. 1570) likewise stated that discretionary chastisement, and not hadd, applied to cases of intercrural intercourse, inserting the penis in orifices other than the anus or vagina such as the navel [sic!], the “preliminaries” of intercourse (which in light of the preceding presumably refers to kissing and fondling), or intercourse between two women.123 Even the otherwise severe Ibn Ḥajar al-Haytāmī conceded that “kissing, fondling, and intercrural intercourse (mufākhadhah) are minor sins (ṣaghā‘ir),” but added that they became major sins if done with the wife of a neighbor, illustrating the general principle that a minor sin, such as nonpenetrative sex, becomes a major sin in conjunction with another minor sin such as abusing the trust of a neighbor.124 He went on to assert that looking with lust at a boy did not contravene the juridical status of being “of good character” (ʿadl), which made one eligible to be a witness in a court of law.125 The Egyptian Mālikī scholar Muḥammad al-Dasuqī (d. 1815) made the same point: isolated instances of looking with lust at a woman or beardless boy did not disqualify one from being a witness in a court, though making a regular habit of it (al-idmān) did. The principle applied in general to the antecedents of fornication—in other words to all nonpenetrative sexual acts (wa hiya mā ʿadā al-ilāj).126 Another Egyptian Mālikī scholar, ʿAbd al-Bāqī al-Zurqānī (d. 1688), likewise asserted, in the context of discussing the issue of looking at beardless boys, that “the transgression of the eye is a minor sin which is atoned for by overall obedience to the law.”127 The underlying principle assumed by Zurqānī was that major sins required repentance to be wiped off the sinner’s debit side on the Final Reckoning, while minor sins did not. The latter would be compensated for by simply avoiding major sins. Even if the minor sins were committed repeatedly and willfully (maʿal-īsqrār), they would
be compensated for by supererogatory works, even if the perpetrator did not repent.\textsuperscript{128} It was in this spirit that scholars tended to understand the Qur’anic dictum that “good works remove evil works” (11:114).\textsuperscript{129} Some scholars believed that the “venial faults” (lamam) mentioned in the following Qur’anic verse: “Those who shun great sins and iniquities, all but venial faults, verily thy Lord is of ample forgiveness” (53:32), referred specifically to nonpenetrative sexual acts.\textsuperscript{130} In accordance with such a scaling of the seriousness of sins, jurists envisaged situations in which one would be religiously obliged to perform a minor sin to ward off a more serious situation. For instance, the Egyptian jurist Shiḥāb al-Dīn Aḥmad al-Ramlī (d. 1550) was asked whether it was permissible for a lover to kiss an unrelated woman or a boy if, in line with accepted medical theory, he feared that he would die if his passion remained frustrated. Ramlī answered that kissing the object of one’s passion in such a situation was not only permissible but actually a duty, and that it was incumbent on the beloved woman or boy to allow this.\textsuperscript{131}

Falling in love with a boy was widely considered to be an involuntary act, and as such outside the scope of religious condemnation. Many, perhaps most, religious scholars were prepared to concede that a person who died from unconsummated love for a boy could earn the status of a martyr (shahīd), which would guarantee him a place in heaven. The “martyrs-of-love” tradition, mentioned in the previous chapter, though perhaps never completely uncontroversial, seems to have been regarded as respectable by most scholars. In the fifteenth century, its authenticity was upheld by influential experts on hadith such as Ibn Ḥajar al-‘Asqalānī (d. 1449) and Muḥammad al-Sakhāwī (d. 1497), and it found its way into al-‘Jāmi‘ al-saghir, a very influential compilation of traditions by Jalāl al-Dīn al-Suyūṭī (d. 1505). In the popular topically arranged reworking of Suyūṭī’s compilation by the Meccan-based scholar ʿAlī al-Muttaqī al-Hindī (d. 1567/8), entitled Kanz al-ʿummal, the tradition appeared in the section on “laudable character traits and acts.”\textsuperscript{132} Discussions of the tradition in the early Ottoman period tended to dissent, explicitly or implicitly, from the view of Ibn Qayyim al-Jawziyyah (d. 1350), who dismissed it as an outright fabrication.\textsuperscript{133} Scholars who were widely regarded as specialists in the field of hadith, such as al-Medinese ʿAlī al-Qārī al-Harawi (d. 1614), the Egyptian Muḥammad al-Zurqānī (d. 1720), the Damascene Iṣmāʿīl al-ʿAjlūnī (d. 1749), and the Indian-born, Egyptian-based Muḥammad Murtaḍā al-Zābīdī (d. 1791), judged the saying to be authentic, though within that general category there was some uncertainty as to whether its line of transmission should be classified as “good” (ḥasan) or “weak” (daʿīf).\textsuperscript{134} Even scholars who were otherwise influenced by Ibn Qayyim al-Jawziyyah and his teacher Ibn Ṭaymiyyah, such as Muḥammad
al-Saffārīnī and Muḥammad al-Shawkānī, seem to have been content to leave the issue of authenticity open, rather than expressly denying it. Authors of works on love, such as Dāwūd al-Anṭākī (d. 1599), the Ḥanbalī jurist Marʿī ibn Yūsuf al-Karmī (d. 1624), and Muḥyī al-Dīn al-Ṣalṭī (d. 1702), also accepted the tradition, though in the first two cases, note was taken of the existence of the controversy. It was possible to argue that the tradition applied only to heterosexual love. This was the position of Zābīdī and the Egyptian scholar ‘Abd al-Raḥfīl al-Munāwī (d. 1622), who both asserted that the saying only applied to “what could conceivably be the object of licit sexual intercourse,” thus excluding a man’s love for a boy. However, this seems to have been a minority opinion. The stricture proposed by Munāwī was explicitly rejected by the Rector of the Azhar college Muḥammad al-Ḥafnī (d. 1767), who insisted that the martyrs-of-love tradition applied “even if [the man’s love was] for a beardless boy, in accordance with the works on positive law and contrary to the commentator [i.e., Munāwī].” Ḥafnī’s reference to the works on positive law (fūrū’) reflects the fact that the authoritative works of the Shāfī‘ī school to which he belonged regularly included a discussion of the various kinds of death that conferred martyr status on the deceased. Their conclusion was almost invariably that a man who dies from passionate but chaste love should be seen as a martyr, whether his love was for a woman or a boy. Ibn Ḥajar al-Haytamī, one of the most prominent Shāfī‘ī jurists of the early Ottoman period, opined as follows:

If he [a man] looks licitly at the beardless boy, as in the case of the involuntary glance, and passionate love for the boy results, and he is chaste and keeps the love secret, it is not implausible that it should then be said that he is a martyr, since there is no transgression involved.

The equally authoritative Shāfī‘ī jurist Shams al-Dīn Muḥammad al-Ramlī (d. 1596) concurred. As mentioned in the previous chapter, he stressed that the martyrs-of-love tradition applied to the love of boys as long as it was involuntary:

If we assume that the love is involuntary in the sense that he [the lover] cannot choose to end it, then there is nothing to prevent him from gaining martyrdom, since in that case there is no transgression involved.

A student of Ramlī, Sultān al-Mazzāḥī (d. 1665), reiterated the opinion in unambiguous terms:

The considered ruling of our teacher al-Ramlī and others is not to differentiate between beardless boys and others, the premise being chastity and keeping the love secret.
A host of other jurists expressed their opinion that the martyrs-of-love tradition also applied to the love of boys.\textsuperscript{142} The following passage by the Rector of the Azhar at the time of the French occupation of Egypt, \textquote{Abdallah al-Sharqāwī (d. 1811), is representative:}

Among the martyrs . . . [is] one who dies from passionate love if he refrains from transgressions of religious law . . . and keeps the love a secret . . . whether the passionate love is for what could become available for licit intercourse or not, such as a beardless boy, according to authoritative verdicts. And the assertion of some [scholars] that loving him is a transgression and that he can never become available [for licit intercourse] and thus cannot lead to martyrdom should be understood to pertain to voluntary love, whereas if the love is involuntary, chaste, and kept a secret, in cases where he is [involuntarily] led to love a beardless boy, or is [legally] allowed to look, and love takes hold of his heart without willing what is not permitted, and this leads to his death, then there is no disagreement in his obtaining martyrdom. And how appropriate are the words of the poet:

\textit{The lovers\textquoteright torment in this world is enough, by God Hell shall not torment them thereafter!}
\textit{Rather, eternal paradise shall be their adorned home, to be enjoyed by them in reward for their patience.}
\textit{How could it be otherwise, and they have loved chastely and kept their love secret? Thus attests the tradition . . .}\textsuperscript{143}

In the literary anthology of the Ottoman Grand Vizier Rāghib Pāshā (d. 1763), a discussion of the martyrs-of-love tradition follows immediately after the extract from Mulla Şadrā\textquotesingle{s} sympathetic exposition of the nature of the Platonic love of boys. Scholars who were positively inclined toward chaste pederastic love, such as Ḥasan al-Būrīnī and \textquote{Abd al-Ghanī al-Nābulusī, also referred to the tradition, and may be assumed to have thought that it applied to the love of boys.}\textsuperscript{144}

Composing pederastic love poetry, far from being considered to be \textit{liwāt,} was actually permitted by most jurists of the period. This was the conclusion of Ḥanafī and Shāfi\textquote{‘}i jurists who discussed the issue.\textsuperscript{145} Their verdict was that love poetry of a boy or a woman was permissible, as long as his or her identity was not specified. The following statement is from an authoritative handbook of Shāfi\textquote{‘}i law glossed by the Egyptian scholar Aḥmad al-Qalyūbī (d. 1658):

\textit{It is permissible to say or recite poetry, and to listen to it, except if it involves defamation or obscenity or portraying a specified (\textit{mu\’ayyanah}) woman, or a}
specified \( \text{mu’ayyan} \) youth [Qalỳūbì: i.e., a beardless boy], in which case such things are prohibited . . . in contrast to portraying without specifying [Qalỳūbì: the woman or beardless boy] because composing love poetry \( \text{al-tashbìb} \) is a craft and the aim of the poet is to produce attractive discourse, not the verisimilitude of what is mentioned.\(^{146}\)

The Ḥanafì scholar Muḥammad Murtaḍā al-Zabīdī concluded his treatment of the issue with a similar verdict:

al-Rafì’ì [i.e., ‘Abd al-Karîm al-Rafì’î (d. 1226)] has said: . . . saying love poetry of women and boys \( \text{al-tashbìb bì-al-nisà wa al-ghilmaàn} \) without specifying identity \( \text{min ghayr ta’yìn} \) does not contravene the status of being \( \text{’adl} \) [i.e., eligible for being a witness in a court of law], since the aim of the poet is to produce attractive discourse, not the verisimilitude of what is mentioned. The author of \( \text{al-Imtā’ fì ahkâm al-sama’à} \)—Kamāl al-Dīn al-Udīwī (d. 1348/9)] has said: This is the position favored by enquiry, and if I were to cite the poetry of exemplary scholars, and examples of their listening to this kind of poetry, it would be plentiful, and God knows best.\(^{147}\)

The discussions of the Ḥanafì and Shāfi‘ì jurists often took note of an alternative opinion, expressed by some older jurists of their schools, which forbids love poetry of boys regardless of whether their identity is specified or not. This latter position was apparently still endorsed by jurists of the Ḥanbalì and Imāmî Shī‘î schools, who constituted a minority within the Arabic-speaking areas of the Ottoman Empire. Such jurists permitted saying love poetry of a woman if she was a wife or concubine, or if her identity was not specified, but held that composing love poetry of a boy was always out of bounds.\(^{148}\) The Imāmî Shī‘î scholar Za‘īn al-Dīn al-‘Āmilî (d. 1358), for instance, commenting on a manual of law which stated that it was prohibited to say love poetry of a specific woman not available for licit intercourse, added:

And exempted by the phrase “not available for licit intercourse” \( \text{ghayr muhâlalab labu} \) is a wife or concubine, the implication being that saying love poetry of them is permissible . . . and the saying of love poetry of a boy is prohibited absolutely, since the object is prohibited [to the poet].\(^{149}\)

The Ḥanbalì scholar Muḥammad al-Saffārînî (d. 1774) also asserted that saying love poetry of a boy is prohibited, “whether the identity of the beardless boy is specified or not.”\(^{150}\) He explicated the term “licit poetry” as “that which is free from the defamation of Muslims, and from descriptions of
The Ḥanbalī and Imāmī Shīʿī jurists thus assimilated the case of saying love poetry of a boy to that of saying love poetry of a specified woman who was not a wife or concubine. Both cases were deemed impermissible, since they involved portraying a passionate love for what is not available for licit sexual intercourse. Of course, the position involved a “realist” or “deflationary” reduction of passionate love to lust. In retort, it was possible to claim, as did ʿAbd al-Ghanī al-Nābulusi, that there was nothing reprehensible in loving a boy chastely. In his Gḥāyat al-maṭlūb, Nābulusi mentioned the permissibility of pederastic love poetry in the context of defending the chaste love of boys, and devoted a chapter of the work to mentioning respectable scholars and saints who fell in love with women or boys and expressed their amorous feelings in verse. Most jurists who argued for the permissibility of pederastic love poetry, however, chose to defend their opinion on other grounds, despite the fact that many of them were committed to the idea that the involuntary love of a boy did not involve a transgression of religious precepts. Instead, they rejected the opinion that pederastic love poetry was prohibited by appealing to the belief that poets need not be referring to real-life boys or to genuine emotions. The proffered justification gave a particular twist to their position. A statement such as “saying love poetry of an unspecified boy is permissible” could be interpreted to mean that it is permissible to say love poetry of a real boy as long as his identity is not revealed. However, the suggested interpretation seems to be ruled out when the permission is grounded on the belief that poetry is usually fictional. Most jurists, while resisting a position which would make much of the poetry of the age illicit, were apparently not willing to fully endorse the view that there was nothing wrong with feasting one’s eyes on a handsome beardless boy, or the view that passionate love was entirely different from plain lust.

The position of mainstream Ḥanafī and Shāfiʿī jurists thus seems to have been that saying pederastic love poetry is permissible if it is a display of poetic skills, rather than an expression of genuine amorous inclinations for a particular boy. This position may have been much closer to the position of Ḥanbalī and Imāmī Shīʿī jurists than is apparent at first sight. The latter’s stated principle that saying love poetry of a boy is forbidden “whether the boy’s identity is specified or not” need not have been incompatible with the position that only love poetry of a real boy is prohibited, whereas love poetry which portrays a fictitious love for an imaginary boy is not. There is reason to believe that some Ḥanbalī jurists understood their school’s position in that alcoholic beverages, a beardless boy, or a specified woman not available for licit intercourse.”

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way. For example, Marʾī ibn Yūsuf al-Karmī (d. 1624) composed the following lines, in which the gender of the portrayed beloved is revealed by the reference to beard-down (ʿidhār):

By my soul! He with whom I have so many pending banquets, and for the love of whom I have so many a censurer and critic!
On his cheeks there are two roses, and his beauty-spot is like musk of charming description, and the mouth is smiling.
His locks of hair are as night, and the appearance of his face as day revealed to beaming hearts.
So worthy of praise! On his cheek flows beard-down (ʿidhāran) to which my chaste (ʿudhrī) love attends.
It is surprising that I’ve managed to keep his friendship, which to me is necessary in love,
When there is an abyss between me and a lovers’ union (wisāl), and separation from him is my constant companion.¹⁵³

Karmī’s juridical verdict was as follows:

And also not eligible for being a witness in court is a poet who is excessive in praising when paid and in rebuking when not paid, or who says poetry which involves praising alcoholic beverages or beardless boys or a specified woman not available for licit sexual intercourse, and he is thereby a sinner (fāsiq), and the relating of such poetry [by others] is not prohibited.¹⁵⁴

On the face of it, such a verdict should have precluded the verses just cited. It is possible, however, that the proscription was intended to apply to those who routinely composed such poetry, and not to those who made one or two contributions to the genre. The term “poet” (shāʿir) in the quotation from Karmī could, in other words, be intended to refer to full-time practitioners, and not to anyone who composed a poem. This would, for instance, be in line with the verdict of the Ḥanafī jurist Ibn ʿĀbidīn, which was that only excessive preoccupation with love poetry was improper. “Small amounts of such poetry is unobjectionable,” Ibn ʿĀbidīn added, “if the intent is to display witticisms, subtleties, nice comparisons, and elegant expressions, even if it is of physiques and cheeks.”¹⁵⁵ It is also possible that Karmī did not intend his remark to apply to cases where there was no real boy at all, and the poem was just a means of exhibiting a scholar’s literary skills. In his tract on love entitled Munyat al-muhibbin wa bughyat al-ʿāshiqīn, Karmī, after citing many poems said of beardless or downy-checked boys, added this comment:

¹⁴⁴ CHAPTER THREE
Eminent scholars and exemplary religious leaders have often indulged in this art of verse and love poetry, as is known to those who are acquainted with their books, and this is not a blemish or fault on their part, for their likes are too dignified for such shortcomings, rather this is part of their noble nature and due to their knowledge that poetry is the art of the eloquent and cures the heart of ailments.\textsuperscript{156}

Karmī went on to cite several of his own love poems, which conform to the standards of the time in portraying the unreciprocated, chaste love of a woman or boy.\textsuperscript{157} Karmī’s understanding of the principle that saying love poetry of a boy is prohibited may have been shared by some İmāmī Shī‘ī scholars. Several Shī‘ī scholars and poets, such as Bahā’ al-Dīn al-‘A ’āmī (d. 1621), Ibn Ma’tūq al-Ḥuwaysī (d. 1676), and Ibn Ma’sūm (d. ca. 1708), composed pederastic love poetry despite the apparent ruling of their school on the matter.\textsuperscript{158} Indeed, the above-mentioned jurist Zayn al-Dīn al-‘A ’āmī concluded his discussion of the religious-legal status of love poetry by making the following point:

\begin{quote}
It could perhaps be said that . . . saying love poetry of someone unspecified is an art, and that the aim of the poet is to exhibit his skills in that art, not the verisimilitude of what is mentioned, and thus it should not be held to contravene the status of being \textit{‘adl}, and on the assumption that it is permissible, too much of it is reprehensible.\textsuperscript{159}
\end{quote}

\section*{Ideals and Practices Revisited}

The condition that the poet should not specify the identity of the beloved was, as has been shown in the previous chapter, often disregarded. Jurists were aware of this fact. Ibn Ḥajar al-Ḥaytamī, for instance, wrote that “some libertine poets set up hints which lead to identification [of the beloved] and this is undoubtedly like [straightforward] specification of identity.”\textsuperscript{160} The previous chapter also gave examples of religious scholars who themselves composed such love poetry: ‘Abd al-Ghanī al-Nābulusī composed a poem with his colleague Aḥmad al-Ṣafādí in which they gave away the identity of the beloved Rabāḥ al-Khayyāṭ; the Iraqi scholar ‘Abdallah al-Suwaydī alluded to the name of the youth from Mosul—Ṣāliḥ—to whom his petition in rhymed prose and verse was dedicated. Other examples are not hard to come by. The Egyptian scholar and poet Yūsuf al-Ḥafnī (d. 1764) taught at the Azhar college in Cairo, and was the younger brother of the Rector of the institution, Muḥammad al-Ḥafnī (d. 1767). His \textit{Dīwān} includes several

\textit{Sodomites} \textsuperscript{145}
instances of poetry that mention the name of the male beloved. An example is the following couplet:

O moon, you have let my heart taste the cup of love, so be generous and
hold back the swords of harshness.
I am melting from love—enough harshness! O Aḥmad, has my love not elicited your good will?\(^{161}\)

Other poems by Ḥāfīz seem to provide good examples of what Ibn Ḥajar called “setting up hints that lead to identification,” such as the following lines:

I offer my soul to the one whom I ardently love, but will not name him for
fear of the mocker.
His beginning in code is one-eighth of the following, and the last of his let-
ters is a tenth of the third.\(^{162}\)

The poet is here using the system of letter-code (ḥisāb al-jummal), whereby each letter of the alphabet has a conventional numerical value. The poet is al-
luding to the name Aḥmad, which in Arabic is written with four letters with the following numerical values:

\[
\begin{align*}
A &= 1 \\
H &= 8 \\
M &= 40 \\
D &= 4
\end{align*}
\]

Other religious scholars were linked by ties of friendship to offending poets. For instance, Ḥasan al-ʿAttār, who was Rector of the Azhar college in Cairo during Edward Lane’s sojourn in the city, was a close friend of the poet Ismāʿīl al-Khashshāb (d. 1815), whose poetry often ignored the restrictions set up by jurists. It was in fact ʿAttār who collected his friend’s poetry into a single volume.\(^{163}\) The following couplet, ʿAttār wrote, was said of a youth called Sharaf whom al-Khashshāb was said to have loved:

I fell in love with one whose glances are lethal yet languid; a succulent
branch; a handsome form; slender.
When my censurer foolishly blames me for fancying him, I reply: “By God,
that’s my honor (sharafī).”\(^{164}\)

This was not the only such poem of Khashshāb’s that ʿAttār reproduced. A similar couplet was composed of a singer named Waḥāb:

By God, a delicate fawn; ravishing; handsome; if he sings for us he cures morbid worries.
Whenever his luminous guise shines on my companions, I say to them:
“There! The beloved appeared (waḥāb)!"\(^{165}\)

On one occasion when the poem itself does not specify the identity of the beloved, ʿAttār himself informed the reader that the poem was said of a
certain young scribe called ʿAlī ibn Muḥammad whom Khashšāb loved passionately.  

It may appear that we are once again in the position we were in at the beginning of this study. Having established that the recognized interpreters of Islamic law held that an act was not permissible, we are faced with abundant evidence that it was nevertheless indulged in openly, by belles-lettres who had close personal ties with religious scholars, and often by religious scholars themselves. However, it is important to resist the temptation to use an anachronistic concept such as “homosexuality” to characterize the transgression committed. That concept is simply not fine-grained enough to capture certain distinctions that are essential to understanding the attitude of urban, literate Arab Muslims in the early Ottoman period. The belles-lettres and scholars were not openly committing liwāt. They simply composed love poetry that mainstream jurists held to be inappropriate. This transgression was hardly considered to be a major sin. It is difficult to believe that having intercrural intercourse with a boy was considered to be a minor sin, whereas saying chaste love poetry of a specified boy was considered a major sin. As mentioned previously, committing a minor sin was not held to be incompatible with the status of being an “upright” (adl) person whose testimony is acceptable in a court of law, and such a sin was held to be atoned for by overall obedience to the law—unless it was committed repeatedly or habitually to such an extent that it would outweigh a person’s pious deeds.

To be sure, Ibn Ḥajar al-Ḥaytamī did mention “saying love poetry of a boy even if his identity is not specified” as a major sin in a work entitled “Warnings against Committing Major Sins” (al-Zawa‘īr an iqtīrāf al-kabā‘ir). However, as the title suggests, the work was avowedly of a homiletic nature, rather than an authoritative work of law. Ibn Ḥajar included all sins that could be said to meet one of the criteria for being a major sin that had at one time or other been suggested by jurists, and this led him to enumerate 467 major sins, whereas the great majority of Islamic scholars who tried to number major sins ended up with a number between seven and thirty. Ibn Ḥajar was clearly not committed to the idea that all 467 listed sins should indeed be considered major sins. For instance, refraining from marriage (al-tabattul) is included in Ibn Ḥajar’s work as a major sin (number 241) simply because a saying attributed to the Prophet had cursed those who did not marry, and some scholars had suggested that an act qualified as a major sin if it had been cursed in the Qur’an or in a ḥadīth. Ibn Ḥajar himself pointed out to the reader that the position of the Ṣafa’ī school to which he belonged was that choosing to remain unmarried was not even a sin, let alone a major one. Ibn Ḥajar listed playing backgammon in al-Zawa‘īr as a major sin.
(number 444), and though his ensuing discussion made it clear that many jurists disputed such a severe assessment of the act, he refrained from explicitly endorsing their view. However, in his major juridical work, Tuhfat al-muhtaj fi sharh al-Minhaaj, he simply stated “it is a minor sin” (wa huwa min al-sagha’ir). Similarly, looking with lust at a beardless boy, or at a woman other than a wife or concubine, is mentioned in al-Zawajir as a major sin (numbers 242 and 245), though Ibn Hajar himself pointed out that the considered position of jurists was that “the antecedents of fornication” were minor sins, and added that judging them to be major sins without additional qualification was “very implausible (ba’id jiddan).” Saying love poetry of an unspecified boy was listed in al-Zawajir as a major sin because one jurist had held it to disqualify the poet from being a witness in court, and incompatibility with being a witness in court was another proposed criterion for being a major sin. However, Ibn Hajar went on to cite a host of other Shafi’i jurists who believed that saying love poetry of an unspecified boy was permissible, and hence not even a minor sin.

The fact that an act is listed in Ibn Hajar’s al-Zawajir as a major sin is thus far from sufficient to show that it was actually considered to be a major sin by Islamic jurists, or indeed by Ibn Hajar himself. Ibn Hajar’s assessment of the gravity of the sin of composing love poetry of a specified boy appears in a somewhat different light in a work on love by the Egyptian-born scholar Abd al-Mu’in ibn al-Bakka’ (d. 1630/1). In the summer of 1565, less than a year before he died, Ibn Hajar was visited by Ibn al-Bakka’ in his home in Mecca and told him the following story: a man loved a youth named Badr, who fell ill and died on a night in which the moon (badr) was full. The lamenting lover addressed the following couplet to the moon:

Your namesake is in his grave, and you still shine thereafter, O moon?!
Would that you had been eclipsed, this being your wearing black at his loss!

That night, said Ibn Hajar, a lunar eclipse did take place, whereupon the overwhelmed lover died as well. Of course, even the strictest jurists allowed a person to cite the illicit poetry of others. Yet, the tone in which the story is related suggests that the reader is meant to feel sympathy for the unhappy lover, rather than conclude that he has committed a major sin by alluding to the name of his beloved. After relating several such stories of people who died from passionate love, Ibn al-Bakka’ wrote: “It is desirable, indeed it is a duty, to assist the beloved and aid the yearner, and so it has been said: It is the duty of any man of honor to support the passionate lover morally and with money, and if not, with prayer.”

Indeed, there is more direct evidence from juridical works themselves
which suggest that composing forbidden love poetry was deemed to be at most a minor sin. The Damascene Ḥanafī jurist Ibn ‘Abidīn seems to have held that love poetry was permissible, unless it was cultivated to an inordinate degree or the poet specified the identity of the beloved woman or boy, in which case it was reprehensible (makrūḥ) if the woman or boy was alive at the time of composition. An act that is deemed “reprehensible” (makrūḥ) is not, strictly speaking, prohibited (ḥaram), and committing it thus cannot be called a sin at all, not even a minor one. If one of the four recognized schools of law held the composing of such poetry to be at most reprehensible, then it is very unlikely that the other schools would have held it to be a major rather than minor sin.

A handbook of Shāfi‘ī law glossed by the Egyptian jurist Ahmad al-Qalyūbī expounded the principle that witnesses in a court of law should not have committed major sins or persevered in committing minor sins. The handbook gave as examples of major sins manslaughter, fornication, sodomy, drinking alcohol, and stealing, and as examples of minor sins looking at what one is not permitted to look at, telling a harmless lie, and making remarks that were slanderous (ghibah) without amounting to false accusation of serious crimes (qadhf). The handbook then proceeded to state that playing backgammon (al-nard) is prohibited, as is playing chess for money, playing or listening to most musical instruments, and composing poetry which involves the defamation of Muslims or portrays a specified boy or a woman not available for licit intercourse. Qalyūbī commented thus on the statement that playing backgammon is prohibited: “That is, it is one of the minor sins, like what follows from what will be mentioned (ay wa min al-sagḥā‘ir ka-al-ladhī ba‘dahu mimmā ya‘tī).” Qalyūbī’s phrase is crucially ambiguous. He could be referring to all of the sins that follow, or only to the sin that is mentioned immediately after playing backgammon, playing chess for money. However, the latter reading would suggest that Qalyūbī believed that the other sins—playing or listening to musical instruments, and composing poetry that involves defaming Muslims or specifying the beloved woman or boy—were not minor sins. This is very unlikely. Playing or listening to musical instruments, especially wind and string instruments, was prohibited by most jurists. However, other juridical sources reveal that it was held to be a minor sin that did not disqualify the perpetrator from being a witness in a court of law unless he or she did it habitually. Ibn Ḥajar, who belonged to the same school of law as Qalyūbī, wrote a work dealing mainly with the religious status of playing and listening to musical instruments. One chapter of the work is devoted to discussing whether such acts should be considered a major or minor sin. The conclusion of the chapter was unequivocal:
To sum up, the authoritative verdict of our school is that this is one of the minor sins as long as it is not habitual to such an extent that the perpetrator’s transgressions outweigh his compliance with the law, in which case it would be like a major sin in being incompatible with being an upright person and in annulling legal testimony.  

Ibn Hajar characteristically included the composing of poetry which involves the defamation of Muslims in his *al-Zawājīr* as one of the major sins (number 456), but his ensuing discussion makes it clear that the standard position of jurists was that it was a minor sin, and thus only disqualified the person composing such poetry from being a witness in court if done habitually:

> To say without qualification that defamatory poetry annuls legal testimony is implausible, since verse is like prose . . . and thus it should be said that if he [the composer of defamatory poetry] does it excessively, or becomes infamous for such activity, or defames in a manner that is not compatible with being an upright person, by saying things which it is a major sin to say, then his testimony is annulled. However, if he does not defame excessively, and does not become infamous for such activity, and does not say things which it is a major sin to say, then his testimony is not annulled.

The considered opinion of Shāfiʿī jurists thus seems to have been that playing backgammon, playing and listening to musical instruments, and composing defamatory poetry were minor sins. Since an influential handbook of Shāfiʿī law mentions composing love poetry of a specified boy or woman not available for licit sexual intercourse in the same breath as the other three sins, it seems reasonable to conclude that it too was considered to be a minor offense.

The fact that religious jurists disapproved of playing backgammon, listening to musical instruments, or saying love poetry of someone who was not available for licit sexual intercourse of course does not imply that these activities were not an important and visible part of popular culture. Indeed the evidence of travel literature clearly suggests that such activities were as popular in the Arab world in the early Ottoman period as they are now. Then as now, ordinary believers seem to have been able to acknowledge the religious authority of the jurists while at the same time resisting a wholesale adoption of their austere outlook and way of life. In the sixteenth century many jurists expressed their disapproval of the new habit of drinking coffee. In the following century tobacco was introduced into the Middle East and was likewise met with suspicion by many jurists. In both cases, there was obviously little that jurists could do to stop the spread of the habit. An illustration of how
ordinary believers could respect the authority of jurists and yet refuse to obey them on such matters is provided by the chronicler ʿAbd al-Raḥmān al-Jabarti (d. 1825/6). According to Jabarti, the prominent Mālikī jurist ʿAlī al-ʿAdawi (d. 1775) was “very unyielding in matters of religion” (shādīd al-shakīmah fī al-dīn), and was given to “commanding the good and proscribing the bad.” He held smoking tobacco to be prohibited, and when word got around that he was approaching, people would hastily pack away their pipes and hide them from him. Even the de facto ruler of Egypt between 1760 and 1773, ʿAlī Bey, would, according to Jabarti, hide his pipes before ʿAdawī was to enter his presence. Jabarti of course intended the story to illustrate the respect that was accorded the jurist by high and low. However, he inadvertently also illustrated how both high and low had no intention of giving up smoking simply because particularly zealous scholars held it to be forbidden.

It is certainly legitimate to speak of a divergence between the austere ideals expounded by religious jurists and the less austere ways of society at large. However, it is equally certain that it is distortingly simplistic to assimilate the case of “homosexuality” to that of playing backgammon or listening to musical instruments, as one more type of behavior prohibited by Islam but tolerated in Islamic society. Some aspects of what today might be called “homosexuality”—falling in love with a teenage boy and expressing this love in verse—were tolerated or considered to be peccadilloes by most religious scholars. Other aspects, such as repeatedly and flagrantly flouting the religious ban on sodomy, could easily have incurred the censure of ordinary “lay” believers, not to mention severe or capital punishment. The case of two young men convicted of sodomy in Damascus in mid-December 1807 serves as a reminder of the possible consequences. On the order of the governor of the city, they were executed by being thrown off one of the minarets of the Umayyad mosque.