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Following a debate that took place at the Assembly of Muslim Jurists of America (AMJA) in 2016 regarding how American Muslims could maintain their commitment to Islam's normative position on marriage and sexuality while also practically navigating the political challenges in the United States associated with defending Muslims' safety and religious rights against rising Islamophobia, Yaqeen Institute published a scholarly debate on the subject between Dr. Jonathan Brown and Dr. Shadee Elmasry. Dr. Brown, who had already published his views elsewhere, stridently upheld the orthodox Islamic sexual norms while, following other leading American Muslim scholars, advocated the path of political accommodation to secure reciprocal rights for Muslims as a religious minority. Dr. Shadee Elmasry argued that no such accommodation is warranted. Given the subsequent cultural and political developments, Dr. Brown no longer holds this position. He agrees that his earlier treatment of the subject has been rendered obsolete by Supreme Court rulings that entrench and enforce understandings of sexual and gender identity in law. We have decided, therefore, to archive this article and hope to address this topic in the near future, inshaAllah.



LGBTQ and Islam Revisited: The Days of the Donald

JONATHAN A. C. BROWN

with a response by **SHADEE ELMASRY**

Author Biography

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When it comes to LGBTQ and Islam, there are two main questions. First, what is the position of Islam towards the LGBTQ issue? Second, what should the positions of Muslims in the U.S. be towards gay rights and those advocating for them? Dr. Jonathan A.C. Brown offers his perspective on both in “LGBTQ and Islam Revisited: The Days of the Donald”, with a contrasting response by Dr. Shadee Elmasry.

There are many positions right, left, and center of those presented by the two authors, but this is meant to foster a healthy discussion on the nuances and tensions to be considered in crafting a path forward.

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I recently returned from teaching at the wonderful [Ihsan Program](#) in Istanbul (I highly recommend this for young Muslims), where, as usual, students peppered me with questions about how Muslims should deal with the ‘LGBTQ issue.’ I have presented my position several times before, [once](#) in *Variety*, [once](#) at ImanWire in the aftermath of the tragic Pulse Nightclub shooting, and [again](#) in an effort at rebutting counterarguments. But so frequently does this come up, and so acutely does it draw in so many salient and contested threads of Muslim (and American) society and politics, that I thought it would be useful to address this question once again in written form.

There are two main questions in this knot. First, what is the position of Islam towards the LGBTQ issue? Second, what should the positions of Muslims in the U.S. be towards gay rights and those advocating for them? (Here I want to be very clear: I am only talking about this question in the American setting. What I say may be useful for Muslims in other countries, but I am in no way advocating what I suggest here for Muslims everywhere.)

Islam and Homosexuality

From an Islamic perspective, the LGBTQ issue is not one question but several distinct ones. First of all, there is the issue of same-sex attraction. Second, there is the question of actual sexual activity. And finally, there is the question of gender identity.

Attraction & Love

The nature of attraction and, along the same lines, love, are serious matters. They deserve examination in and of themselves, and they also have important ethical dimensions and consequences. But why a person is attracted to one sex or the other, and whether or not a person’s love for another person is “real” are not *shariah* issues. In great part this is because Muslim scholars understood the origins of desire and emotion to be either beyond one’s control or to be moldable over time by practice and discipline; this was a matter of ethical improvement in order to avoid falling into sin. The emotions or desires were not sins themselves, nor did

they have any legal consequences. As the famous Sufi al-Junayd (d. 910) explained, “A human being is not blamed for what is in their nature. They are only blamed if they act on what is in their nature.”¹ As I already presented [elsewhere](#), in the context of sexuality and sexual relations, the *shariah* is concerned with acts, not with feelings, affections, attractions, or inclinations. Only when emotions and desires manifest themselves in speech or actions are sins committed and prohibitions violated.

In fact, pre-modern Muslim scholars frequently understood that same-sex attraction could be perfectly ‘natural’ (Disclaimer: I don’t support the following observation, I am just reporting it). For example, the case of men being attracted to young boys was ‘natural’ in the sense that it did not represent some moral deviance or manifest some abomination; it was simply a man being attracted to the beauty (*jamāl*) of a young boy... the same quality of beauty found in women.² Famously conservative medieval Muslim jurists wrote folios of poems expounding their love, sometimes their obsession, for male friends and companions. Whether or not a desire or attraction is ‘natural’ or not, whether a person is born with that inclination or not, is irrelevant in the *shariah*. If certain actions are prohibited, then whether or not one desires them is inconsequential, whether that desire is inborn or acquired.

Sexual Acts

It is in the realm of actions that the bulk of Islam’s answer to the LGBTQ question lies. According to the *shariah*, sexual acts outside of a legitimate relationship (i.e., marriage) are prohibited, though the punishments for various acts have differed dramatically. As has been made [abundantly clear](#), the *shariah* as understood and practiced by centuries of Muslim states and scholars had no interest in poking into people’s private sex lives or punishing what seems to have been the widespread phenomenon of same-sex relationships. The policy was basically ‘Don’t ask; Don’t tell.’ But there remains little doubt that same-sex sexual acts, in particular sodomy,

¹ *Al-insān lā yu‘ābu bi-mā fī ṭab‘ihī innamā yu‘ābu idhā fa‘ala bi-mā fī ṭab‘ihī*; Abū Nu‘aym al-Iṣbahānī, *Ḥilyat al-awliyā’*, 10 vols. (Beirut: Dār al-Fikr, 1996), 10:269.

² Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World 1500-1800* (Chicago: University of Chicago Press, 2005), 115-6.

have been, and remain, categorically prohibited in Islam (see for a review of the evidence from the [Qur'an](#), [Sunnah](#), and [Muslim legal discourse](#)).

Some Muslim academics in the West (often identifying themselves as Progressive Muslims) have argued against this prohibition, claiming that it was either the result of a misreading of scripture or that society has moved beyond the context of such prohibitions. Some Progressive Muslim arguments agree that marriage is required for licit sex in Islam. But they add that there is nothing in Islam that says that marriage has to be between opposite genders. Marriage is a contract in Islam, they point out, and so there is nothing prohibiting two men or two women from signing one. These scholars point to the Islamic legal principle that ‘The presumption in contracts and transactions is permissibility.’

The problem with this argument is that, although marriage in Islam has the form of a contract (it’s an agreement between two parties, and these parties can place conditions as part of their agreement), it’s not just any contract. It deals with the primal matters of reproduction, child-rearing, and the most fundamental of all human relationships. Hence, in books of Islamic law, the presumption of permissibility in contracts appears alongside another crucial principle, shared by all schools of law: ‘The presumption for sexual access is prohibition (*al-aṣl fī al-abḍā’ al-taḥrīm*).’³ So only sexual relationships explicitly permitted by the Qur'an and *Sunnah* are allowed. Addressing the argument that the sexual practices of other religious traditions should be allowed by Muslims on the basis of the presumption of permissibility in human affairs, Ibn al-Qayyim (d. 1351) retorts, “The presumption for sexual access is prohibition, except for what God and His Messenger ﷺ have permitted (*al-aṣl fī al-furūj al-taḥrīm illā mā abāḥahu Allāh wa rasūluḥu*).”⁴

³ This maxim on sexual access is found phrased as such by both the Shāfi‘ī scholar al-Suyūṭī (d. 1505) and the Ḥanafī scholar Ibn Nujaym (d. 1562). See Jalāl al-Dīn al-Suyūṭī, *al-Ashbāḥ wa’l-naẓā’ir*, ed. Muḥammad al-Mu‘taṣim al-Baghdādī (Beirut: Dār al-Kitāb al-‘Arabī, 1414/1993), 135; Ibn Nujaym, *al-Ashbāḥ wa’l-naẓā’ir*, ed. Muḥammad Muṭī‘ al-Ḥāfiẓ (Beirut: Dār al-Fikr, 1983), 74.

⁴ Ibn Qayyim al-Jawziyya, *Aḥkām ahl al-dhimma*, ed. Yūsuf Aḥmad al-Bakrī and Shākir Tawfīq al-‘Ārūrī (Dammam: Ramādī li’l-Nashr, 1418/1997), 715.

Gender Identity & Reassignment

Finally, on the question of fluidity of gender identity, in one sense the *shariah*'s stance is quite progressive. Based on the Qur'anic verse that includes “those who have no desire” (Qur'an 24:31) among those categories of men around whom women do not have to wear *hijab*, and on the authentic *hadiths* that describe the Prophet ﷺ allowing an effeminate male (*mukhannath*) to sit in private with the women of his household,⁵ Muslim scholars concluded that there was no sin or punishment for a male who was naturally effeminate (or a female who was naturally masculine in her mannerisms), provided that he or she was not actively affecting this behavior. Scholars differed on a related question. One position, advocated by Imam al-Nawawī (d. 1277), held that, because “this is the nature (*khilqa*) in which God created him,” an effeminate male/masculine female was not required to alter their behavior. A second position held that such a person should still do their best to change their mannerisms. This second stance was advocated by al-Munāwī (d. 1622) and Ibn Ḥajar (d. 1449), who nonetheless excused those people who were unable to change their mannerisms even after trying their best.

The case of someone trying to take on the airs of the opposite gender not because this was his or her natural disposition but because he or she wanted to, was very different. This person is engaged in imitating (*tashabbuh*) the opposite sex, an act that the Prophet ﷺ severely criticized in sound *hadiths* (though he also explicitly said that such a person should not be killed).⁶

Here it's important to note that ‘imitating’ the opposite sex has always been understood as contextual by Muslim scholars. How a man or woman dresses or acts depends on their local culture. What is masculine in one culture might be feminine in another. So whether a person is affecting the mannerisms or dress of

⁵ *Ṣaḥīḥ Muslim: kitāb al-salām, bāb man ‘al-mukhannath min al-dukhūl ‘alā al-nisā’*; *Sunan of Abū Dāwūd: kitāb al-libās, bāb fī qawlihi ghayr ulū al-irba*.

⁶ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, 12 vols. (Damascus: Dār al-Qalam, 2000), 13/14:413-4. For the *hadith* from Ibn ‘Abbās criticizing *tashabbuh*, see *Ṣaḥīḥ al-Bukhārī: kitāb al-libās, bāb ikhrāj al-mutashabbihīn min bi'l-nisā' min al-buyūt*; *Sunan of Abū Dāwūd: kitāb al-adab, bāb fī al-hukm ‘alā al-mukhannathīn*; *Jāmi‘ al-Tirmidhī: kitāb al-adab, bāb mā jā'a fī al-mutashabbihāt bi'l-rijāl min al-nisā'*. The *hadith* prohibiting killing such a person is found in the *Sunan of Abū Dāwūd: kitāb al-adab, bāb fī al-hukm fī al-mukhannathīn*, and *kitāb al-libās, bāb fī qawlihi ghayr ulū al-irba*.

the opposite sex can only be known in the context of the specific customs (*‘āda*) of their society. As Ibn Ḥajar notes, “How many people there are among whom the dress of their women does not differ at all from the dress of their men?”⁷

In another important sense, however, the *shariah* position falls far from the ‘progressive’ mark. The Qur’anic and Prophetic exemption for men who have no desire for women is not some recognition of a third gender or a validation of same-sex acts. These effeminate men, or men who are not attracted to women, are still men in the eyes of the *shariah* in every other aspect (*mutatis mutandis* true for women).⁸

On the issue of surgery to change someone’s gender, Muslim scholars have a surprising diversity of views. By far, the dominant opinion among Sunni scholars is that it’s impermissible. In 1989, the Muslim World League's *Fiqh* Academy declared sex-change surgery prohibited except in the case of the *khunthā mushkil*, namely an adult person who has no distinguishing gender markings of any sort (rare indeed). In such a case, the person’s subjective gender identity is literally the only thing to go on. But this ruling did not acknowledge the reality of someone believing subjectively that their gender was different from their biological sex if that biological sex was clear.

A few Muslim scholars have disagreed. In 1967, the Ayatollah Khomeini (d. 1989) and the former Grand Mufti of Egypt, Jād al-Ḥaqq (d. 1996), seem to have endorsed sex-change surgery under certain conditions, namely situations in which psychiatric experts had concluded that a person’s gender really did not accord with their biological sex. A subsequent Grand Mufti of Egypt, Sayyid Ṭanṭāwī (d. 2010), issued a *fatwa* in 1988 that allowed the surgery if doctors testified that it was the only cure for a person’s gender dysphoria, which the *fatwa* viewed as a

⁷ Ibn Ḥajar, *Fath al-Bārī sharḥ Ṣaḥīḥ al-Bukhārī*, ed. ‘Abd al-‘Azīz Bin Bāz and Muḥammad Fu’ād ‘Abd al-Bāqī, 16 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 10:408; ‘Abd al-Ra’ūf al-Munāwī, *Fayḍ al-qadīr sharḥ al-Jāmi‘ al-ṣaḥīḥ*, ed. Ḥamdī al-Damardāsh Muḥammad, 13 vols. (Mecca: Maktabat Nizār Muṣṭafā al-Bāz, 1998), 10:4996-7.

⁸ See Ibn Qudāma al-Maqdisī, *Mughnī*, ed. ‘Abdallāh al-Turkī and ‘Abd al-Fattāḥ al-Ḥuluw, 12 vols. (Cairo: Hujr, 1986), 7:462. Al-Qurṭubī explains that “*al-tābi ‘īn ghayr ūli al-irba min al-rijāl*” (Qur’an 24:31) has been understood as mentally challenged men with no desire for women, *mukhannaths*, eunuchs, old men, etc.; al-Qurṭubī, *al-Jāmi‘ li-ahkām al-Qur’ān*, ed. Muḥammad Ibrāhīm al-Ḥifnāwī and Maḥmūd Ḥāmid ‘Uthmān, 20 vols in 10. Cairo: Dār al-Ḥadīth, 1994), 6:523-4.

psychological disorder. But none of these *fatwas* really engaged the question of whether diagnosing gender dysphoria (or “psychological hermaphroditism”) as a disorder was acceptable in Islamic law.⁹ Shia scholars have been more open to the idea due to a conception of identity that lends more weight to subjective psychological opinion, though many Shia scholars remain highly skeptical (stating that gender reassignment surgery only involves a superficial change to the body and does not alter the person’s actual gender).¹⁰

Muslims and Gay Rights in America

The second component of the Islam and LGBTQ issue is how Muslims (here I’m talking about Muslims in the U.S.) should deal with the question of LGBTQ rights. The bone of contention is relatively straightforward: numerous core elements of various LGBTQ identities and lifestyles are prohibited in Islam and are deemed by the religion to be individually and socially harmful. But at the same time, LGBTQ groups are some of the only activists in the U.S. who have consistently stood by Muslims and advocated for their rights as they’ve suffered the dual traumas of the security state and Islamophobia. What should Muslims in the U.S. do? Reciprocate by supporting LGBTQ rights in the U.S., rights such as gay marriage, protection from discrimination in the workplace, and access to bathrooms according to an individual’s gender self-identification, even though this facilitates acts clearly condemned by Islam? Or refuse to support rights that would facilitate such things, fulfilling the Muslim duty to ‘enjoin what is right and forbid what is wrong’?

Muslim leaders and organizations (and here I’m talking about individuals and groups that self-identify as Muslim) have taken four different positions on this question: unquestioned embrace, rejection, neutral, and what I call RACCIO (Rights Affirmation/Common Cause/Islamic Orthodoxy).

⁹ See Jakob Skovgaard-Petersen, “Sex Change in Cairo: Gender and Islamic Law,” *The Journal of the International Institute* 2, no. 3 (1995). This can be found [here](#).

¹⁰ Ja’far Subhānī, “Taghyīr al-Jins fī al-Sharī’a al-Islāmiyya,” in *Aḥkām Ṣalāt al-Qaḍā’: wa-yalīhi Khams Rasā’il Fiqhīyya* (Qom: Mu’assasat al-Imām al-Ṣādiq, 2013).

Unquestioned Embrace

One approach, taken by Muslim groups that openly identify as ‘progressive,’ is to embrace and support the LGBTQ movement completely. This position breaks with the historical consensus of Islamic law and ethics by judging a wholesale acceptance of the LGBTQ vision to be totally compatible with Islam. Indeed, they see a [full affirmation of LGBTQ rights](#) as a moral imperative for Muslims, citing commandments in the religion to stand up for justice and against discrimination.

Rejection

This is the opposite of the previous position, and it is the one taken by numerous prominent Muslim imams and scholars in the U.S. It rejects any cooperation with LGBTQ rights groups and refuses to advocate for rights that either are prohibited in Islam or that facilitate Islamically prohibited acts.

This Rejectionist camp is not simply a spoiler. It asserts that real harm will result from the LGBTQ wave. First, Rejectionists argue that, beyond the divine proscription of much of the LGBTQ agenda, many of its aspects are inherently socially harmful (for example, that they lead to relationships and family structures that are unnatural and ultimately socially damaging; that indulging the subjective definition of self called for by transgender activists breaks down the objective, biological lines that society needs to function, etc.). Second, the Rejectionist camp points to the real risk that support for, and engagement with, the LGBTQ movement is a very slippery slope to Muslims accepting the moral legitimacy of all LGBTQ demands, in time even coming to view them as licit in Islam.

Indeed, Rejectionists see the call for Muslims to join anti-conservative Republican/Trump alliances in which LGBTQ rights play a central role as part of a long-term strategy to foster a watered-down, ‘moderate’ Islam palatable to center-left and progressive urban Americans (i.e., Democrats). Rejectionists argue that ‘activism’ and ‘civil rights’ in the American context are not the unquestionably positive causes that many claim. They can be Sirens luring communities of faith away from scripturally-based moral commitments. Rejectionists point to a 2004

[RAND report](#) on how positioning “modernism and secularism as counterculture options for disaffected Islamic youth” should be part of a strategy by Western institutions to promote “appropriate Islamic partners” who advocate a “moderate, democratic, peaceful, and tolerant social order.” Others in the Rejectionist camp have [argued](#), accurately, that prominent liberal and Democratic Party funders are consciously promoting Muslim ‘activists’ in order to move Islam in America towards a Progressive view of religion and society.

Neutralism

Another approach advocated by some mainstream Muslim leaders has been to do *tawaqquf*, or to refrain from taking any position, on the issue of LGBTQ rights. I think that this is not really a separate approach, since in the context of debates over LGBTQ rights, those advocating Neutralism would simply be lumped in with Rejectionists.

Rights Affirmation/Common Cause/Islamic Orthodoxy (RACCIO)

Ok, I just made up this acronym, but it seems useful and accurate. The RACCIO position holds that Muslims in the U.S. should affirm and advocate for many (but not necessarily all) LGBTQ rights, not because of a *quid pro quo* they-stood-by-us-so-we-have-to-stand-by-them logic, but rather because Muslims in the U.S. and LGBTQ groups seek protection for the same rights and, ironically, arguably have a common vision for the country’s future (I’ll explain below). But, crucially, Muslims should advocate for these rights while strenuously affirming that many aspects of LGBTQ lifestyles are indisputably religiously prohibited in Islam.

According to the RACCIO position, American Muslims should support the right of gay marriage under U.S. law not because we condone homosexual behaviors but rather because Muslims and LGBTQ groups have the same goal, namely a notion of marriage in which laws are not influenced by Western-European/Christian cultural mores. Same-sex marriage is unacceptable to conservative Christianity and

Judaism, as it is to Islam. But from the perspective of mainstream, conservative Christian culture, gay marriage and Muslim marriage occupy the same space in that they are both repugnant. Long before Christians were concerned about gay marriage they were busy condemning what was viewed as an inconceivable barbarism: polygamy. Remember, the Republican Party was founded not just to combat slavery, but to end the “twin barbarisms” of slavery and polygamy (specifically Mormon polygamy). And we have to remember that Muslim marriages (i.e., *nikahs* conducted according to the *shariah*) were, well into the 20th century, considered reprehensible and legally invalid if conducted in Britain and the U.S. simply because they were “potentially polygamous.”¹¹ The idea of polygamy was so horrendous to American society that, in 1878, the Supreme Court [allowed restricting](#) people’s rights simply because they belonged to a religion in which polygamy was allowed... even if those people themselves did not practice polygamy (as the Court wrote, to consider such people’s belief that polygamy was permissible in their religion as a legitimate “tenet of religion,” even if it were not practiced, “is to offend the common sense of mankind”).

The reality is that America is not a Judeo-Christian country in which Muslims can join with an Abrahamic mainstream in a unified condemnation of the liberal, LGBTQ threat. Muslims and their marriages are just as repugnant to many conservative Christians in this country as LGBTQ folk are. Make no mistake about it: we are all monsters in the eyes of many American conservative Christians. The solution is to collectively advocate for a legal understanding of marriage that allows for the maximal flexibility of individuals to enter with one another into those contractual relationships that facilitate sharing property, child-rearing duties, access to insurance, rights of survivorship, etc.

Rejectionists object to the RACCIO position because it involves Muslims ‘enjoining the wrong’ instead of ‘enjoining the right.’ But, as I have argued [elsewhere](#), the duty of Muslims to enjoin right and forbid wrong is far from categorical. In Islamic civilization and under *shariah* rule, Muslim scholars allowed non-Muslim subjects to engage in marital practices that they considered

¹¹ See W.E. Beckett, “The Recognition of Polygamous Marriages under English Law,” *Oxford Law Quarterly Review* 48 (1932): 341-73.

grossly reprehensible when Muslims could easily have put an end to them. Muslim scholars allowed this because these practices were part of the religious practices of those non-Muslim communities. I concede that LGBTQ lifestyles are not part of any religion that I know of and thus not entitled to some *dhimmi* protection under Islamic law. But neither are Muslims in the West in any position of authority or power to restrict the actions of others. In fact, if one imagines a range of situations from, on one extreme, Muslims being in a position of total power, able to shape social life as their religion sees fit, and, on the other extreme, a Muslim stuck in a lifeboat with a devil-worshipping, obsessive pork-eating murderer, which extreme are we closer to? Does the Muslim in the lifeboat refuse to row with the devil worshipper because s/he disagrees with the devil worshipper's beliefs and lifestyle? This is an absurd hypothetical, but its point is clear. Restrictions on Muslims' rights, constant pressure from the security state, and the long-running and increasingly severe Islamophobia in American society (now ensconced in the White House) seem to me to have resulted in a situation more analogous to being stuck in a lifeboat than anything else. Muslims, LGBTQ activists, Latino American activists, and numerous other minorities find themselves under common attack and in need, once again and perhaps more than ever, of solidarity and coalition.

Rejectionists also, quite rightly, worry that cooperating with LGBTQ groups will lead to Muslims ultimately granting Islamic religious approval to LGBTQ lifestyles (I am guessing I am not alone in having met Muslims who would never condone adultery or wine drinking but who vociferously demand the full recognition of 'Queer Muslims'). This is where the last aspect of RACCIO comes into play. Even as they partner with and support LGBTQ groups, Muslims should affirm amongst themselves, and explicitly state when asked by others, that Islam prohibits same-sex acts and same-sex *nikah* (Muslim religious marriage), and places major restrictions on the subjective definition of gender identity.

Rejectionists have warned for some time that LGBTQ groups will not abide such affirmations of Islamic orthodoxy and will, sooner or later, oblige Muslims to morally condone LGBTQ lifestyles. If this is true, then it's a demand to which Muslims cannot and should not accede. First of all, protection against discrimination in the American public square should not come at the cost of any

group compromising on its constitutionally protected freedom of religious belief if such a belief is neither burdensome or demonstrably harmful to others. Second, since when does affirming one another's rights require affirming the moral or religious validity of their actions or beliefs? If it did, then any group who wanted to aid Muslims in the face of Islamophobia would have to affirm the moral validity and truth of Islam, which is an absurd notion.

The RACCIO position is a middle ground and, like any mean, it is difficult to tread. It requires sharp moral reasoning and an understanding that supporting some things, or some things in certain ways, does not entail supporting all things, or all things in all ways. For example, I'm frequently asked by Muslim student groups about how they should respond to invitations to participate in Gay Pride parades, which can be... let's just say, a little bit too edgy for Muslims' sense of public propriety and modesty. My response: Don't lapse into thinking that supporting someone's rights is an all-or-nothing relationship. Let's imagine a comical 'Muslim Rights Parade,' where Muslims parade with burqas and long beards, angrily chanting and condemning physical contact between sexes outside of marriage, decrying pork and alcohol. Would we expect our allies from the LGBTQ community and other groups to march with us? Of course not. They'd be understandably uncomfortable with some of these 'expressions of Muslimness.' Similarly, Muslims can affirm their support for LGBTQ rights, commit themselves to being present at other rallies and at efforts to lobby lawmakers, etc. without participating in events that might be outside the Muslim comfort zone.

Finally, I believe the RACCIO position is correct because it doesn't just stress what Muslims in the U.S. are against, but also what we're for. One of the most intense and long-running debates in American history is whether the United States is a White (Protestant) Christian country in which religious and racial minorities are welcome as long as they know their place, or if it's a country in which there is no ruling racial or religious majority but only a common framework of rights and a vision of equal liberty in which all are welcome provided they affirm the rights and liberties of others. The first vision has never been able to, and still cannot, accept real demographic, religious, or moral diversity. The second embraces this diversity and makes it a strength. It's also a vision not too different from the one that

Muslims held for many centuries. It seems like the vision that Muslim Americans should fight for now.

Response by Dr. Shadee Elmasry

I was asked by Dr. Jonathan Brown to author a response to his article, *LGBTQ and Islam Revisited: The Days of the Donald*. I am in total agreement with the first half of the article. His exposition of the Sacred Law's position on LGBTQ sex, desire, and gender identity are excellent summaries that I recommend to everyone. In the second part, he outlines four positions Muslims might take towards LGBTQ groups in general, and gay marriage in specific, then argues for a hybrid position he names RACCIO (Rights Affirmation/Common Cause/Islamic Orthodoxy). Below I comment on the four positions, but the bulk of my paper consists of a rebuttal of RACCIO. Quotes from Dr. Brown's article are indented. Italics within the indented sections are his; bolding is mine.

The First Three Positions

Unquestioned Embrace

Not only is this position erroneous, it actually puts one outside of Islam, which is the most dangerous type of error for anyone who cares about their *deen*. *Istibāḥa* refers to making *halal* what Allah made *haram* through explicit and widely disseminated transmission. It is in essence saying that the Qur'an is wrong, which by necessity entails disbelief. This is why the stakes are so high on this issue.

Rejectionism

This is, in essence, my position, and I would like to make a few additional comments on Dr. Brown's accurate summary.

Firstly, the foundation. The roots of this position lie in a very strong conviction that we will all meet Allah on the Day of Resurrection. You may say: many people believe this; so how is it a factor? The real question is: by what scale will He judge us? Traditionalism (or Orthodoxy) is that we only know what Allah wants from us by the meaning of the words He revealed to His Messenger ﷺ. Therefore, the only salvation is to study the Book and act upon it. The matter is not just about

‘being nice,’ or even merely having a good intention. You will note that Modernist and Reformist groups will constantly seek to turn traditional Muslims away from the written text, belittling that as a form of dumb literalism meant for the masses. But textualism has been the way of the Muslims from the onset of the Islamic community. Thus, at the heart of my rebuttal is the insistence upon consistency with the text and the letter of the law.

Secondly, this position is often, if not always, wrongly linked to hate and oppression. The assumption (or willful ignorance) that being against same-sex activity and refusing to support gay marriage means that we intend some sort of harm against LGBTQ people is simply erroneous. Rather, our discourse simply revolves around what we as Muslims are allowed or not allowed to do. Being prohibited from supporting a cause does not, by any logic or stretch of the imagination, equate to an intent of oppression, harm, or violence. Nobody has a right to my emotional support or political advocacy. Therefore, when I withhold them, neither have I done wrong nor is anyone being oppressed (see [this article](#)).

Neutralism

This approach involves taking no position. While it is not the crux of the paper, I would make a *tafsīl*, or distinction, here, between scholars and laypeople. Laypeople may not be in the position to—or possess the ability or the forum in which they can—state their opinion, but scholars, I believe, are obligated “to clarify it (the *deen*) to the people” (Qur'an 3:187). If a matter can potentially result in *kufir*, then it should take a very high priority amongst imams, speakers, and scholars. Such contentious issues are likened to cavernous pitfalls in the road; they must be warned about. If a scholar knows such a pitfall exists and says nothing, it is a crime about which he or she will be asked by Allah on the Day of Judgment.

Rebuttal of RACCIO

Dr. Brown’s fourth position—Rights Affirmation/Common Cause/Islamic Orthodoxy—constitutes the heart of the paper. It is an original idea that utilizes *tafsīl*—distinction—distinguishing between theological positions and political

strategies. It seeks to negotiate a way by which Muslims can maintain political relevance without forgoing their beliefs. The intent is laudable, and the effort to interact with the larger society is closer to the *sunnah* than the approach of *Aṣḥāb al-Kahf* (People of the Cave), which involved a complete withdrawal from society. The portions I take issue with are in bold.

The RACCIO position holds that Muslims in the U.S. should affirm and advocate for many (but not necessarily all) LGBTQ rights not because of a *quid pro quo* they stood-by-us-so-we-have-to-stand-by-them logic but rather because Muslims in the U.S. and LGBTQ groups seek protection for the same rights and, ironically, arguably have a common vision for the country's future...Muslims should advocate for these rights while strenuously affirming that many aspects of LGBTQ lifestyles are indisputably religiously prohibited in Islam.

A vision generally includes an end-result or end-goal. I can see how we might overlap with other groups on specific issues, but I cannot see how an Islamic vision would involve anything LGBTQ, but let us not jump to conclusions and continue reading.

According to the RACCIO position, American Muslims should support the right of gay marriage under U.S. law not because we condone homosexual behaviors...

Herein lies the main drawback of the theory. Any type of advocacy under any political or legal structure involves a form of legislation. Legislation, as is well known, cannot be for anything prohibited. We may not be obligated in certain contexts to advocate for the Sacred Law, but we most definitely are prohibited from advocating anything that contradicts it. "Whosoever does not legislate by what Allah judged, these are the oppressors" (Qur'an 5:45). And we cannot even support such legislation: "The curse of Allah is on whosoever aids a deviant" (Bukhari & Muslim). This is known as *īwā'*, to support something prohibited.

It would not matter what benefit comes from such legislation or advocacy. And commonsensically, no Muslim disobeys God and His Messenger ﷺ unless they

are tempted to by some form of perceived benefit, and clearly there is currently great benefit in alignment with LGBTQ activists (at least on the coasts and urban centers). At this point, Dr. Brown introduces the three ingredients of his proposal, beginning with Common Cause.

The Common Cause Argument

Dr. Brown clarifies the common vision of Muslims and LGBTQ groups by claiming:

Muslims and LGBTQ groups have the same goal, namely a notion of marriage in which laws are not influenced by Western-European/Christian cultural mores.

To begin, I must say that this is quite a stretch. Who amongst Muslims in America is adversely affected by the current marriage laws? Are any of the pillars of a valid *nikah* outlawed? Do township civil marriages require anything *haram*? The answer is no. So how exactly are Muslims suffering? The only thing that I can think of is the law against polygamy. But let us see if that is what Dr. Brown intends.

Same-sex marriage is unacceptable to conservative Christianity and Judaism, as it is to Islam. But from the perspective of mainstream, conservative Christian culture, gay marriage and Muslim marriage occupy the same space in that they are both repugnant.

It does not matter what conservative Christians think. What matters is the law of the land, which as it stands, does not obstruct a Muslim from fulfilling the *sunnah* of marriage according to our precepts. He continues:

Long before Christians were concerned about gay marriage they were busy condemning what was viewed as an inconceivable barbarism: polygamy. Remember, the Republican Party was founded not just to combat slavery, but to end the “twin barbarisms” of slavery and polygamy (specifically Mormon polygamy). And we have to remember that Muslim marriages (i.e., *nikahs* conducted according to the *shariah*) were, well into the 20th century,

considered reprehensible and legally invalid if conducted in Britain and the U.S. simply **because they were “potentially polygamous.”**

The key word here is “were.” This is great history, but ultimately irrelevant because this was all in the past. I proudly stand fully by the Sacred Law and against attacks on polygamy. But it’s still history and does not affect me today. So let’s keep reading.

Muslims and their marriages are just as repugnant to many conservative Christians in this country as LGBTQ folk are. Make no mistake about it: we are all monsters in the eyes of many American conservative Christians.

First, this statement is too broad and it paints a false picture. The basic marriage between one Muslim man and one Muslim woman is not repugnant to anyone. Only second, third, and fourth marriages are.

Second, if I am not allowed to marry a second wife, is that oppression? If so, then why did Imam Malik permit women to stipulate in the marriage contract that their husband could not take a second wife? If this was an injustice, then it would be an invalid clause and not one Malik would have approved of.

Third, let’s be honest, where is polygamy on the Muslim community’s to-do list? I would think it’s not that high. But even if it was—and people are free to make it a cause if they want to—it should be done in the right way. Partnering with a group who build their identity around an act for which an entire city was destroyed, is not the path of *tawfiq*. This I can guarantee. “Verily Allah only accepts from the *muttaqīn* (God-fearing).” The verse means that, whatever you do, Allah will only accept it if you do it right.

Fourth, LGBTQ folks would also view polygamous Muslim marriages as repugnant! In the Obergefell hearings, Justice Samuel Alito [went back and forth](#) with Mary Bonauto, the attorney arguing against the Defense of Marriage Act:

Alito: Suppose we rule in your favor in this case, and then after that a group of two men and two women apply for a marriage license, would there be any ground for denying them?

Bonauto: I believe so, Your Honor...the States would rush in and say that when you're talking about multiple people joining into a relationship, that that is not the same thing we've had in marriage, which is on the mutual support and consent of two people...And I would assume the States would come in and say that there are concerns about consent and coercion.

The current argument against polygamy that can be found on LGBTQ blogs is that same-sex attraction is immutable (you're born that way); polygamy is not. Nobody is born requiring multiple spouses. As it stands, the LGBTQ position is against polygamy.

I'm afraid many educated Muslims on the East and West Coasts have fallen into the trap that everything non-Christian is our ally. This is not the case. Liberals, including those who identify as LGBTQ, are using Muslims as part of their diversity hammer to crush the white conservative establishment.

The solution is to collectively advocate for a legal understanding of marriage that allows for the maximal flexibility of individuals to enter with one another into those contractual relationships that facilitate sharing property, child-rearing duties, access to insurance, rights of survivorship, etc.

Then establish a generically worded platform that would allow for this. And even that might be problematic as one would still be seeking legislation for what Allah prohibited. If I was banned from selling *kufis* and *topis*, then advocated for a new law that removed all restrictions from commercial goods, that would still be unlawful from a *sharia* standpoint, because "no restriction on any goods" is not the *sharia's* position. Drugs and alcohol are prohibited goods. And so to advocate for a redefinition of marriage that has the single requirement of consent and agreement, I would still be advocating a concept that is un-Islamic.

Imagine a hypothetical country in which alcohol and Zamzam water were both illegal. Would you support the right to sell alcohol just so that you can then ride on the coattails of that precedent to get Zamzam legalized too? The path to good cannot be through something bad. “Verily, Allah only accepts from the pious” (Qur'an 5:57), “Allah is pure and does not accept anything except the pure” (Muslim & Ahmad).

Rights Affirmation

Dr. Brown asserts that, “...under *shariah* rule, Muslim scholars allowed non-Muslim subjects to engage in marital practices that they considered grossly reprehensible when Muslims could easily have put an end to them.” The key word here is “allowed.” That is very different from advocated or legislated. This *qiyās* is faulty. Muslims also did not destroy Buddha statues, and in Upper Egypt all sorts of pagan idols and shrines. Allowing something does not set a precedent for advocating for that thing.

Dr. Brown argues that Muslims in the West are not “in any position of authority or power to restrict the actions of others.” Nobody is saying restrict! We’re saying don’t advocate! The two are very different! Again, this a faulty *qiyās*.

He also uses the analogy of being in a lifeboat with a devil-worshipper. First, we are not in a life-or-death situation, and on this account alone, the analogy fails and stands rejected. Second, rowing is *halal*! Redefining marriage is not! You can work with anyone if the thing you’re doing is *halal* and good. Perception might be an issue, but technically, the action would be sound and accepted by Allah. But in the current situation, no Muslim’s life is at stake; we are not being oppressed; and the action item being proposed is sinful. RACCIO is not adding up.

Restrictions on Muslims’ rights, constant pressure from the security state, and the long-running and increasingly severe Islamophobia in American society (now ensconced in the White House) seem to me to have resulted in a situation more analogous to being stuck in a lifeboat than anything else. Muslims, LGBTQ activists, Latino American activists, and numerous other

minorities find themselves under common attack and in need, once again and perhaps more than ever, of solidarity and coalition.

First, what rights are Muslims in America currently denied? Are there any laws prohibiting us from anything required in our religion? Are Muslims, *en masse*, being killed or driven from their homes? There are occasional tensions for sure, but have they reached the level that require rendering an otherwise unlawful thing lawful? The harm must be objectively demonstrable at a mass level, but the vast majority of what we see is the opposite of this. In general, Muslim men and women are going about their daily business and returning home without incident.

Second, when we take a dispensation in the Sacred Law, that dispensation must guarantee the alleviation of the hardship. Can it be demonstrated that supporting the LGBTQ lobby in general and gay marriage in specific will stop angry Trump supporters from heckling Muslim women in public places? I think not.

Third, if all of this was the case, and Executive Orders began coming down prohibiting basic needs, then Muslims should enter a coalition for that specific item, not provide wholesale support for a particular group and everything they want.

Islamic Orthodoxy

Even as they partner with and support LGBTQ groups, Muslims should affirm amongst themselves, and explicitly state when asked by others, that Islam prohibits same-sex acts and same-sex *nikah* (Muslim religious marriage), and places major restrictions on the subjective definition of gender identity.

This position will cause cognitive dissonance in those who adopt it. Beliefs and political stances must be aligned and should not contradict the Sacred Law or else one will internalize this contradiction and never be able to escape the agitation that dissonance causes. Separating what you believe religiously from what you support politically is the very eye of secularism.

Rejectionists have warned for some time that LGBTQ groups will not abide such affirmations of Islamic orthodoxy and will, sooner or later oblige Muslims to morally condone LGBTQ lifestyles. If this is true, then it's a demand to which Muslims cannot and should not accede.

Correct. And even in the Qur'anic narrative they sought to "remove them from your city"; this verse is repeated twice to emphasize the point (Qur'an 7:82, 27:56). We also should remember the very clear warning that the Qur'an gave to the Muslims in Medina: that compromising on matters of religious belief with the followers of other religions is a slippery slope to adopting their religions (Qur'an 2:120), given the reality that there is always pressure on a societal minority to conform to and assimilate with the norms of the dominant culture. If this reminder from the Qur'an regards assimilation with the People of the Book, what then about people of no scripture at all?

...since when does affirming one another's rights require affirming the moral or religious validity of their actions or beliefs?

It does not, but if this argument is meant as a justification for Muslims to "partner with and support LGBTQ groups," it is irrelevant because "affirming their moral validity" was never the accusation. The accusation is that *īwā'*, the act of supporting what Allah prohibited, is itself prohibited, even if I announce that I don't believe in it. The Sacred Law only allows the *haram* to become *halal* in cases where life or limb (dire need at the physical level) are at stake, and evidence of neither has been presented.

...supporting some things, or some things in certain ways, does not entail supporting all things, or all things in all ways.

I agree. And how will we determine this? When Allah expressly forbids something, the presumption is an absolute prohibition. However, if there is another proof-text (a *qarīna*) that shows that in some circumstances it is allowed, then we now know: it's *haram*, but in this case it's *halal*. A simple example: the Prophet ﷺ banned robes that drag. Later on, Sayyidna Abu Bakr complained that his thin physique caused his garment to slip and drag. The Prophet ﷺ reassured him that he wasn't

doing it out of arrogance. Therefore, we now know that the prohibition is on dragging garments out of arrogance. So I ask: where is the proof-text indicating that I, as a Muslim, can legislate for something *haram*?

From another angle, the *sharia* does not limit *whom* we can support; but it does limit *what* we can support. I would have no problem defending anyone—Jew, Christian, LGBTQ activist, or Satan-worshipper—against injustice or supporting them in claiming their rights, as Allah and His Messenger ﷺ have defined injustices and rights. If a Satan worshipper was being robbed before my eyes, it would be obligatory on me as a Muslim to stop the robbery if possible. If an LGBTQ activist was starving in front of me, it would be obligatory for me to feed him. In these cases, the identity/beliefs/religion of the individual are not relevant. But when I say such things as “support LGBTQ groups,” I have now placed their ideas and their doctrines at the forefront, and that is not legitimate in the sight of Allah.

Finally, I believe the RACCIO position is correct because it doesn't just stress what Muslims in the U.S. are against, but also what we're for.

What exactly are we for? Anything non-Christian? I would be wary of this because anytime you trade away a known entity for what is unknown, you have no clue what will fill the void. Usually, it's something bad (case in point: Arab Spring). With Christianity, we at least know what we're dealing with. We have ample precedent (Abyssinia and many other examples). But this is a moot point because America is already post-Christian; it is just a matter of getting rid of the final remnants. But in such a world, there are no absolute notions of anything. Rights and injustices become arbitrary. Even if Muslims were to gain every single desired right in such a world, is existence amidst moral chaos really what we want? I would rather exist with minor limitations in a more stable world.

Further—and I am sure Dr. Brown did not intend this—I would consider the above line a hit below the belt, because it subtly implies that Rejectionists are merely against things, and have no positive vision of their own. I would first argue that clarifying what one is against takes priority over what one is for. In the starting

point of our entire religion, the testimony of faith, we negate false gods, before affirming the one true God. Al-Hasan al-Basri said, “The best *dhikr* is stopping where Allah prohibited.”¹² Imam Malik, when he was asked who the people of the *sunnah* are, replied, “They are those who cannot be accused of being part of any heretical group,” namely they rid themselves of falsehoods, therefore all that remains is the Truth.¹³ Ibn al-Qayyim has an amazing statement: all people love to do the good; the hypocrites and the sinners do good, but it is only the *muttaqīn* who avoid the bad. My point is that when people emphasize limits and push away wrongs, it should be celebrated, and we should not internalize this notion that when a Muslim says “*haram*” that he is some retrograde character that we roll our eyes at. Again, I am not saying that this was Dr. Brown’s intent, but this statement might be understood that way.

Secondly, we have a vast vision. I have articulated on many occasions a basic philosophy for Muslim action. Our politics is that of the oppressed as Allah and His Messenger ﷺ have defined oppression. Socially, our mission is to establish upright communities—family units that revolve around the mosque—in which the ailments of society—suicide, divorce, racism, drugs, anxiety, loneliness, addiction, harassment, ignorance, joblessness—are noticeably reduced, thereby serving as a living demonstration of what Prophetic Guidance has to offer humanity. I am not even a major proponent of proselytizing. Rather, if we can simply clean up our own house, this by itself has the potential to be a living *da’wa* that the entire society can see—supported by objective, statistical data that reflects decreases in the aforementioned ills. The integrity of this mission would be completely compromised by advocating something whose prohibition is *ma’lum min al-din bil-darura*—known in the religion by necessity.

One of the most intense and long-running debates in American history is whether the United States is a White (Protestant) Christian country in which religious and racial minorities are welcome as long as they know their place, or if it’s a country in which there is no ruling racial or religious majority but only a common framework of rights and a vision of equal liberty in which

¹² Al-Ghazālī, *Iḥyā’ ‘ulūm al-dīn* (Beirut: Dār al-Jīl, n.d.), 1:392.

¹³ Qāḍī ‘Iyāḍ, *Tarīb al-madārik*, ed. ‘Abd al-Qādir al-Ṣaḥrāwī (n.p., n.d.), 2:41.

all are welcome provided they affirm the rights and liberties of others. The first vision has never been able to, and still cannot, accept real demographic, religious or moral diversity. The second embraces this diversity and makes it a strength. **It's also a vision not too different from the one that Muslims held for many centuries.**

Some people note the freedoms the Ottomans gave to the people they ruled; so long as various groups paid their taxes and didn't challenge the political order, they could do as they pleased. But this analogy fails on two grounds. Firstly, the Ottomans were ruling. They were not subjects. And secondly, they did not simply establish a world where everyone could do what they wanted as long as they did not hurt anyone else. They used the power of the state to actively promote Islam and the Sacred Law, and many peoples under the Ottomans entered into Islam as a result of these efforts. Thirdly, permitting a thing to be is quite different from promoting it, supporting it, or collaborating with those who support it.

It seems like the vision that Muslim Americans should fight for now.

If it's worth fighting for, then we need more certainty than this. The facts are the following: that advocating for gay-marriage falls in the category of legislation; that legislation contrary to Divine command is prohibited; and that neither life nor limb are being threatened such that this prohibition would be rendered permissible. Of this, I am certain. "Take what is certain and leave what gives you doubt," said the Prophet ﷺ.¹⁴ He also taught us that "wrong is what irritates the heart, and right is that with which the soul finds comfort."¹⁵

The Way Forward

Respectful Disbelief and Non-Support

Emotions ran high in the early years of Islam in Mecca. Finally, Qur'an was revealed on the matter: "Do not curse those they worship besides Allah so that they do not curse Allah out of animosity and with ignorance" (Qur'an 6:108). We have

¹⁴ *Jāmi' al-Tirmidhī: kitāb ṣifāt al-qiyyāma, bāb 60.*

¹⁵ *Ṣaḥīḥ Muslim: kitāb al-birr wa'l-ṣīla wa'l-adab, bāb tafsīr al-birr wa'l-ithm.*

here a policy given to us by our Lord to treat disbelievers with respect, and this is what informs our above position of withholding support while neither oppressing nor insulting.

Honesty Leads to Originality

So-called Progressive Muslims have come up with the most unoriginal ideas I have ever seen. They involve literally nothing more than cutting and pasting from the Liberal left. Original ideas do not come from people who capitulate and imitate. The way forward will only be forged by those who are honest about what the text says and bring that honesty to their society. They will at first be mocked and tossed aside, and maybe persecuted, but if they remain steadfast, persistent and resilient, they will eventually carve out a space for themselves and all of their beliefs and practices. That space will end up being a haven for people we do not even know are searching. For those who place *taqwa* as their top priority, support will come “from where you know not.”

Avoiding Tunnel Vision

Why do we think that activism as we know it today is the only way to impact society? A stance against supporting the LGBTQ lobby may close hundreds upon thousands of doors. But as the Persian saying goes, ‘When God closes a door out of wisdom, He opens another out of mercy.’

When situations become constricted, the strategy is to take our focus off of ourselves and turn it to others. “Allah is constantly in the aid of a servant, so long as the servant is in the aid of his brother.”¹⁶ Believers are never alone. There is an All-Powerful God watching and seeing who in fact is offering practical benefit to people. “As for the froth of the sea, it disappears, but that which benefits people remains in the earth” (Qur'an 13:17). When I look at the segments of society that truly need our help, I see that they do not particularly care about the issues Progressive Muslims obsess over.

¹⁶ *Ṣaḥīḥ Muslim: kitāb al-dhikr wa'l-du'ā' wa'l-tawba, bāb faḍl al-ijtimā' 'alā tilāwat al-Qur'ān....*

On the poverty front, the amount of work that is required is beyond comprehension. And given current economic trends, things are likely only going to get worse for a lot of people. We should worry less about the intellectual fads of the elite on campuses, Twitter, and the Huffington Post, and keep our eyes focused on the downtrodden, knowing that Allah is watching, and that the people who bring actual benefit to people will be firmly established by Allah on the earth, *wa law kariha al-mushrikūn; wa law kariha al-kāfirūn*.

I thank and commend Dr. Jonathan Brown for inviting me to respond to his article. Within certain parameters, the scholars of the past compartmentalized their differences, and so, as their students, we ought to imitate them. I believe this pair of articles represents a good exercise and example in civil discussion, debate, and disagreement.