IBN ḤAZM ON HOMOSEXUALITY. A CASE-STUDY OF ZĀHIRĪ LEGAL METHODOLOGY

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Introduction

This article forms part of an ongoing investigation into the legal thought of the famous 5th/11th century scholar Abū Muhammad ʿAlī Ibn Ḥazm of Cordoba. As is well known, Ibn Ḥazm stood out in al-Andalus as one of the few scholars who openly challenged the supremacy of the fuqahāʾ of the Mālikī school, who had enjoyed a virtual monopoly in matters religious and legal since the 3rd/9th century. Trained as a Mālikī himself, Ibn Ḥazm briefly adhered to Shafīʿism before finally opting for the Zāhirī, or literalist, school of law. Both in his writings and in his public lectures, he attacked the Mālikīs’ reliance on raʾy and their failure to base their legal decisions on the revealed sources: Koran and hadīth. Modern scholarship has mostly focused on this aspect of Ibn Ḥazm’s legal methodology, whereas the

1 A first version of this paper was presented at a symposium on “Aspects of Islamic Law in the Pre-Modern Period”, held in January 2000 at the Institute for Advanced Studies at the Hebrew University of Jerusalem within the framework of a project on “Law and the State in Islam”. I thank the convenors, Professor Yohanan Friedmann and Dr. Nurit Tsafi-ir, as well as the participants in the colloquium. My special thanks go to Dr. Ella Almagor, who acted as discussant, for her insightful comments.


4 Aspects of Ibn Ḥazm’s Usūl are studied in Goldzüier, L, The Zāhirīs. Their doctrine and their history. A contribution to the history of Islamic theology. Translated and
peculiarities in the realm of furû‘, i.e., the concrete legal decisions, have so far received much less attention. In what follows, we shall examine Ibn Ḥazm’s views on homosexuality, both male and female, as a case-study of a Zāhirī view that radically differed from the generally accepted view among the Mâlikîs. It is hoped that this case-study, in combination with a number of others, will enable us to assess to what extent Ibn Ḥazm’s views constituted, or were perceived as, a threat to the Mâlikî religious establishment in al-Andalus. However, before addressing the issue in hand, I shall give a brief survey of the attitudes towards homosexuality that are reflected in the Koran, hadîth, and non-Zâhirî works of fiqh.

It should be emphasized that the legal sources are strictly concerned with a very limited repertoire of sexual acts, not with propensities, identities, or lifestyle. Hence, the term homosexuality in this paper stands for sexual acts between two members of the same gender. See Rowson, E.K., “The Categorization of Gender and Sexual Irregularity in Medieval Arabic Vice Lists”, in Epstein, J. and K. Straub (eds.), Body Guards. The cultural politics of gender ambiguity. New York, London, 50-79 at p. 59.

That Ibn Ḥazm’s views were indeed perceived by the Mâlikîs as a threat is clear from a number of contemporary accounts, such as the text printed in Asín Palacios’s Abenházam, I. 136f. about his expulsion, together with his master Ibn Mufît, from the great mosque in Cordoba, where they taught Zahirism to a sizeable crowd.

There is not, as yet, a satisfactory comprehensive study of Islamic attitudes towards homosexuality. Everett K. Rowson announces the publication of his monograph Homosexuality in Traditional Islamic Culture (forthcoming from Columbia University Press), which will hopefully fill this lacuna. In the meantime, see the lemmata “Siḥâq” (G. H. A. Juynboll) and “Liwât” (ed.) in EI. The latter lemma is reprinted in Schmitt, A. and Sofer, J. (eds.), Sexuality and Eroticism among Males in Moslem Societies. New York, London, etc., 1992, pp. 151-167. Here, the author is identified as Charles Pellat. Schmitt has taken the liberty of deleting the part about sexual contacts between women, stating that it is scandalous that an article which is said to deal with liwât in fact discusses homosexuality. Siḥâq is discussed in detail in an unpublished MA thesis by M. Leemans, Siḥâq en sekse. Lesbische seksualiteit in middeleeuws Arabische literatuur (University of Utrecht, 1995). Some basic works about sexuality in the Muslim world contain scattered references to homosexuality, e.g. Bouhdiba, A., Sexuality in Islam. London, 1998; Bousquet, G.-H., L’éthique sexuelle de l’Islam. Paris, 1966. For a recent work by a Muslim writer (presumably a Shîite) condemning homosexuality and lesbianism, see al-‘Adnânî, Kh., Al-Zind wa’l-shudhûdh fîl-ta’rikh al-‘Arabî. London, Beirut, 1999. AIDS is discussed here as an ancient disease, a punishment that first befell the people of
The Koran on homosexuality

The most commonly used term for homosexual contacts between men in Arabic is fi‘l (or ‘amal) qawm Lût (“the act of the people of Lot”), from which is derived the substantive liwât. The man who indulges in such acts is called lûfî. These terms derive from the Koran, which contains various accounts of the destruction of the people of Lot (i.e., the people to whom Lot was sent as a warner), a story well known from the book of Genesis where the fellow-townsmen of Lot are stoned because of their deviant sexual practices. The same divine punishment is meted out to them in the Koranic account, which set the tone for future discussions of the punishment for homosexual acts, with most legal scholars considering execution by stoning (al-rajm) the appropriate sentence (a) because this was the way in which the people of Lot met their end, and (b) because liwât was assimilated to zînâ: fornication between a man and a woman who is neither his lawfully wedded wife, nor a slave owned by him; the punishment prescribed for zînâ is stoning.

The Koran contains no explicit reference to sexual contacts between women—although Q. 4:15 has been interpreted by some as a ref-

Lot, thereafter the slaves of Pharaonic Egypt, and much later the soldiers of Napoleon’s army who turned to sodomy during their long siege of Acre, having no women at their disposal. A wealth of literature reflecting western ideas about homosexuality in the Muslim world is referred to in Schmidtke, S., “Die westliche Konstruktion Marokkos als Landschaft freier Homoerotik,” Die Welt des Islams 40 (2000), 375-411.


9 See Koran, surâs 7:80-84; 11:74-81; 26:160-75; 27:54-58; 29:28-34, and, less explicit, surâs 15:59-77, 37:133-138, and 54:33-39. In his recent book Islam en homoseksualiteit (Amsterdam, Utrecht, 2001), O. Nahas proposes a different, almost Zâhirî, interpretation of the Koranic passages dealing with the people of Lot: they were destroyed not because they were homosexuals, but for a combination of sins such as bestiality, paedophilia and rape. According to Nahas, the Koranic verses do not deal with loving same-sex couples whose relationships are based on mutual respect and equality.

10 Gen. 19 and 20.
Homosexuality in the hadîth

The hadîth literature fully confirms the negative attitude towards homosexual acts between men that was already encountered in the Koran. In the collection of al-Tirmidhî, for example, we find the following saying attributed to the Prophet: “The thing I fear most for my community is the act of the people of Lot”. Homosexuality is usually discussed in the chapters on hudûd (sing. hadd): the punishments which are clearly defined in the Koran and the hadîth and are therefore not subject to the qâdî’s discretion. Hadd punishments, which vary from flogging to stoning, are imposed for the following offenses: theft, highway robbery, drinking wine, apostasy, slanderous accusation of zinâ, and zinâ itself. Homosexuality, as we shall see, is often considered a form of zinâ, and as such incurs the corresponding hadd punishment: stoning (rajm) for the muhsân, that is: any free Muslim who is married, and flogging for the non-muhsân, i.e., a slave or a free, single Muslim.

The canonical collections are not very explicit about sexual acts between women, for which the terms sahâq, sihdâq, and musdhaqa are used, although there are traditions which condemn women expos-

14 On the etymology of the term, which literally means “rubbing” or “grinding”, see Juynboll, “Sihâk”, 565. Juynboll mentions that although strictly speaking it refers to a sexual act, the term is commonly used to indicate lesbianism, which is a propensity. Rowson consistently uses the terms “tribadism” and “tribade” rather than “lesbianism” or
ing themselves to the gaze and touch of other women. The most telling traditions, however, can be encountered in a number of pre-canonical collections. Thus in a tradition reported by 'Abd al-Razzâq and going back to 'Abd Allah b. Ka'b b. Mâlik, “The Messenger of God cursed the rakîba and the markûba”.

Homosexuality in legal writings

We see, then, that both the Koran and the hadith adopt a very negative stand towards homosexuality between men and, though to a lesser extent, to sexual contacts between women. It is not surprising, therefore, that most of the legal literature also reflects a negative attitude, although different opinions exist among the madhâhib, and within these madhâhib, among their respective representatives. This is due in part to the different approaches adopted by the various schools to the revealed sources. Broadly speaking, we may say that according to the Mâlikîs and the Ḥanbalîs, the required punishment for homosexual acts between men is stoning; the Shâfi'îs hold that the punishment is identical to that for zînâ, meaning that a distinction should be made between someone who is muhsan and someone who is not. The Ḥanafîs, on the other hand, are of the opinion that mere ta'zîr should be applied: a discretionary penalty whose aim is to punish and reform the criminal and to deter the public. As we shall see, this latter view is shared by the Zâhirîs. Whereas most compendia of

“lesbian”, since their connotations correspond exactly with those of the Arabic terms; see “Categorization of Gender,” p. 77, n.36.


18 Rowson, in his “Categorization of Gender”, p. 76 n.23, states that “An apparent exception among some scholars of the Mâlikî school, who are said to have permitted liwât with one’s own male slaves, has been noted occasionally in the secondary literature, but not yet systematically investigated. Such legal arguments would probably rest on analogy to female concubinage—there being no comparable analogy to heterosexual marriage”.

fiqh contain a paragraph on liwât, sihâq is not always dealt with. It was obviously taken much less seriously, presumably because no penetration by a man takes place. 20

Ibn Ḥazm on homosexuality – Ṭawq al-hamâma

Homosexuality is discussed by Ibn Ḥazm in several of his works. People not familiar with his legal views on the topic may yet have read his famous book on love and lovers, Ṭawq al-hamâma fi’l-ulfa wa’l-ullâf, and have got the impression that Ibn Ḥazm was quite tolerant of homosexuality. Not only does he at times give glowing descriptions of handsome men he knew, the work also contains various sympathetic accounts 21 of men smitten with members of their own sex. 22 It has been suggested that Ibn Ḥazm himself was not quite immune to

20 On the “phallocentricity” of discussions of sex, see Rowson, “Categorization of Gender”, passim, and Monroe, “The Striptease”, 119ff. The idea that homosexual contacts between women are a passing fancy, indulged in for want of better and therefore nothing to be unduly worried about seems to be shared by the Spanish scholar A. Arjona Castro who, quoting (apparently with approval) a work on female sexuality by Ramón Serrano Vives, states that “la homosexualidad en la mujer es ocasional, presentando una dirección de la libido predominantemente heterosexual. Esto es ahora así y es probable que en aquellos tiempos [he is referring to the Umayyad princess Wallâda] fuera igual. En la mujer es raro una homosexualidad total, excepto en el caso de malformaciones genitales. Tanto ayer como hoy, algunas mujeres solteras, en aquella época por falta de hombres y la abundancia de concubinas, realizarían actos lesbianos con compañeras del serallo o amigas de sociedad, pero en todo caso como siempre se mantenían la supremacía de la dirección heterosexual”; see La sexualidad en la España musulmana. 2nd ed., Cordoba, 1990, p. 21.

21 Ella Almagor points out that Ibn Ḥazm’s sympathy is reserved for men who are enamoured of men who are their peers, socially and intellectually, and that he is much less tolerant of men whose passions are directed at men, or boys, of a lower social class.

22 See Ṭawq al-hamâma, pp. 79f., 84f., 184f.; pp. 84, 90, 220 in the translation by A. J. Arberry, The Ring of the Dove. London, 1953. These references are only to passages in which the beloved is clearly identified as a man; there may actually be more incidences of same-sex love in the Ṭawq; see the following comments of L. A. Giffen (“Ibn Hazm and the Ṭawq al-hamâma”, in Jayyusi, S. Kh. (ed.), The Legacy of Muslim Spain, Leiden, 1992, 420-442 at p. 433): “It is difficult in some passages to know whether [Ibn Hazm] refers to a male or a female beloved due to the language used there, either inclusive or ambiguous. Complicating the choice of interpretation is the knowledge that some poets referred to the female beloved with a masculine pronoun. Translators have often taken ambiguous or masculine referents in Ibn Hazm for females and so rendered them in the European language. In doing so they may have been compelled to make an arbitrary choice where there was no clue in the context”. I propose to discuss the anecdotes on homoerotic attraction from Ṭawq al-hamâma elsewhere.
the charms of other men. Thus Louis Crompton, in his recent article "Male Love and Islamic Law in Islamic Spain" states that “Ibn Ḥazm admits to being tempted by the beauty of men. On one occasion he dared not attend a party where he would meet a handsome man who attracted him, in order to avoid any occasion for sin”. 23 Arjona Castro goes further and calls Ibn Ḥazm a true, congenital homosexual, though not a practising one. 24 But however sympathetic Ibn Ḥazm may be towards the tormented lover of boys and men, and however much he may admire the physique of certain members of his own sex, his opinion of physical contacts between two males is entirely, and unequivocally negative, as is shown by the following statement in the last chapter but one of the Tawq, which is entitled Bāb qubh al-maʾṣīya, or “Of the vileness of sinning”: “As for conduct like that of the people of Lot, that is horrible and disgusting” (amma fiʾl qawm Lût fa-shaniʾ bashr). 25 Apparently, then, to love or to be in love is one thing, perhaps even a noble thing (provided one does not let oneself go 26), but to act on it is another matter altogether. It should be

23 In Murray, S.O., and W. Roscoe (eds.), Islamic Homosexualities. Culture. History, and Literature. New York, London, 1997, 142-157, at p. 149. The relevant passage, inaccurately paraphrased by the author (who does not seem to have used the Arabic text) may be found in Tawq al-hamāma, p. 226f.; Arberry’s translation, p. 267. For a review of Islamic Homosexualities, see Schmidtke, “Homoeroticism and homosexuality”.

24 “Hay un tanto por ciento pequeño (4%) de estos homosexuales congénitos, que no pueden tener, ni las tienen, relaciones sexuales con la mujer. Incluso dentro de los homosexuales congénitos, algunos no tienen genitalizada su homosexualidad manteniendo sólo su personalidad homófíla. Un caso típico de homosexualidad congénita es el del polígamo cordobés Ibn Hazm (...); see La sexualidad en la España musulmana, 33f. In a later publication, however, Arjona Castro defines Ibn Ḥazm’s homosexuality as belonging to another type: as una homosexualidad “ocasional”. “Son homosexuales bisexuales, cuyo instinto está de ordinario dirigido al otro sexo y sólo de cuando en cuando buscan trato homosexual”. He adds that Ibn Ḥazm probably overcame this tendency; see “La infancia y la sexualidad de Ibn Ḥazm”, in Al-Andalus Magreb III (1995), 143-150 at pp. 149f.


26 Ibn Ḥazm is critical of a promising young scholar from Cordoba whose obsessive love for the singularly handsome Aslam was his undoing. The Tawq (pp. 184f.) contains only a brief reference to this episode, but a much more detailed version quoted on the authority of Ibn Ḥazm may be found in al-Humaydî’s Jadhwat al-muqtabis (ed. Ibrahim al-Abyârî. 2 vols. Beirut, Cairo, 1410/1989), I, 222-226. Whereas in the shorter version Aslam is apparently unaware of the strength of his friend’s passion for him, and is sad to hear of his death, the longer version shows Aslam as being profoundly embarrassed by his admirer’s obsessive attention; he even refuses to visit him on his death bed although one look at him would have saved the unhappy man. The name of the suffering lover is given as Ibn Quzmân in the Tawq, and as Ibn Kulayb in Jadhwat al-muqtabis. P.S. van
added immediately, however, that Ibn Ḥazm applied the same strict standards to heterosexual lovers, and that he advocates chastity and continence instead of succumbing to temptation. The only lawful form of intercourse for a man is within wedlock, or with a slave-woman he owns. For a woman, only intercourse with her husband is lawful.

Interestingly enough, Ibn Ḥazm’s Ṭawq, which deals with virtually all aspects of the phenomenon of love, does not explicitly mention love between women, let alone sex, unless the phrase “I once saw a woman who had bestowed her affections in ways not pleasing to God” (kānat mawaddatuhā fi ghayr dhāt Allāh) refers to this woman’s affections for another woman. Ibn Ḥazm greatly praises the pure quality of this woman’s love, until it turned sour and she became bitter and resentful. It should be noted that this passage, too, occurs in the chapter about the vileness of sinning.

Even though Ṭawq al-hamāma may already have been written after Ibn Ḥazm’s turn from Mālikism—via Shāfi‘īism—to Zāhirism, this is not completely certain and further research is necessary in order to confirm this. We should therefore turn to his Kitāb al-Muḥallā bi l-āthār, the most comprehensive surviving work of Zāhirī fiqh, for a fully-developed Zāhirī opinion on the issue of homosexuality. Be-

Koningsveld believes that this is one of the cases in which the original manuscript of Ṭawq al-hamāma has fallen victim to the copyist’s ill-advised interference with the text; see his “De oorspronkelijke versie van Ibn Hazms Ṭawq al-hamāma”, Sharqiyyât 5 (1993), 23-38 at pp. 28-31. See also Almagor, E., “A Fragment of the Whole: Reflections in the Wake of the Translation of Ibn Hazm’s Ṭawq al-hamāma into Hebrew”, in N. Ilan et al. (eds.), The Intertwined Worlds of Islam. Essays in Memory of Hava Lazarus-Yafeh. Jerusalem, 2002, 59-88 at pp. 75-80.

Ṭawq al-hamāma, p. 209f.; The Ring of the Dove, p. 248f. It is taken as a reference to lesbian love by Crompton, “Male Love”, p. 150, whereas Giffen states that “homo-erotic attachments between women are not a subject of discussion”; see “Ibn Ḥazm and the Ṭawq al-hamāma’”, pp. 433f.

His statement about homosexuality being disgusting is followed by some references to the views of Mālik and some of his followers. He adds, however, that this is not the place to enter into a discussion of the divergence of opinions held concerning the matter. Ibn Ḥazm was apparently already well acquainted with the views of other schools, and Zāhirī opinions are explicitly referred to more than once in the Ṭawq. The fact that he explicitly mentions that ten lashes should be the maximum punishment for indecent kissing of another male, rather than a more severe whipping, may be indicative of Zāhirī influence.

fore we do so, however, it is essential to give a brief outline of the principles guiding Ibn Ḥazm in his search for God’s law.

Ibn Ḥazm’s Zāhirism

As their name indicates, the Zāhirīs advocate the literal interpretation of the revealed sources: the Koran and the Sunna of the Prophet, for God has revealed Himself “in plain Arabic speech” (Q. 26:195). Furthermore, they recognize a restricted form of ijmāʾ, namely that of the Prophet’s Companions, as an additional source of Islamic law. 30 In principle, these are the only sources from which legal opinions may be derived, and other methods such as reasoning by analogy (qiyās), juristic preference (istiḥsān), personal opinion (raʾy), etc. may not be applied since they are too arbitrary. Reliance on the opinions of earlier masters (taqlīd) is not acceptable either; rather, every new case that presents itself is to be examined anew, without reverting to existing jurisprudence. 31 Ibn Ḥazm’s attitude towards homosexuality, both male and female, will be discussed here as an illustration of this system.

Kitāb al-Muhallā

The last volume of Kitāb al-Muhallā contains an extensive discussion of homosexuality. 32 The context is a discussion of forbidden acts which incur a discretionary punishment (taʾzīr). 33 By including it in this section, rather than in that on the hudūd, Ibn Ḥazm makes it clear from the outset that in his view homosexual acts are not something

30 Q. 5:3 (“This day I have perfected your religion for you”) proves, according to Ibn Ḥazm, that ijmāʾ is limited to the contemporaries of the Prophet, for it was in his day that religion was perfected. The agreement of later generations is of no account.
33 Masāʾil al-taʾzīr wa-mā lā ḥadda fi-hi.
that incurs the maximum punishment, i.e., the death penalty or a hun­
dred lashes, since such acts cannot be assimilated to zinâ, as is held
by most fuqahâ’ of the other schools. We shall start with his discus­
sion of homosexual acts between men.

Fîl qawm Lût

Ibn Hazm opens his discussion of fîl qawm Lût by stating that it is
one of the major sins (kabâ’ir), like the consumption of pork, blood,
mayta, or wine; and like zinâ and other sins. He who declares it, or any
of these other things licit, is a kâfir and a mushrik whose lives and
goods may be taken. It is immediately clear, then, that here, as in Tawq
al-hamâma, he condemns homosexuality as an abomination. The dis­
cussion which follows these opening statements may be divided into
three parts, or three stages in the argumentation: (1) description of the
different opinions held by the legal scholars; (2) presentation of the
texts on which the different views are based; and (3) refutation of the
views rejected by Ibn Hazm, and exposition of his own opinion. They
will be discussed here in that order. Rather than give a literal transla­
tion, I shall paraphrase Ibn Hazm’s line of reasoning.

Stage One: Description of the Different Views

Ibn Hazm first lists the different opinions held by the fuqahâ’ with
regard to the appropriate punishment for homosexual acts. All in all,
he sums up seven different opinions, held by seven different groups
of people (jâ’ifas). I present them in the order in which they are given
by Ibn Hazm himself.

1. Both the active (al-alâ) and the passive partner (al-asfal) are
to be burned alive;

2. Both the active and the passive partner should be taken to the
highest spot of the town and be thrown down from it, and are subse­
dually to be pelted with rocks;

3. Both of them are to be stoned, regardless of whether they are
muhsân or not;

4. Both are to be executed, i.e., by the sword;
5. The passive partner is to be stoned, whether he is *muḥṣan* or not, whereas the active one should be stoned if he is *muḥṣan*, and flogged if he is not, with the same number of lashes that constitutes the *ḥadd* punishment for *zīnā*; 34

6. The active and passive partners are equal [meaning that they are equally guilty or responsible; their punishment depends not on their position in the act, but on their legal status; whoever of them is *muḥṣan* will be stoned; whoever of them is not will be given a hundred lashes, as in the case of the heterosexual fornicator (*zānî*)];

7. No *ḥadd* punishment is to be inflicted upon them, and they are not to be executed, but they should be given a *tażîr* punishment. This, as we shall see, is the view shared by Ibn Ḥazm.

Stage Two: The Proof-Texts

Ibn Ḥazm then quotes the texts upon which the different parties base their views. As for the first group, i.e., of those who would condemn the culprits to the stake, Ibn Ḥazm adduces a report ultimately going back to Ibn Sam‘an, who had heard from someone that Khalid b. al-Walid was asked concerning a *muḥṣan* “who was taken the way a woman is taken”. Abu Bakr ruled that he was to be stoned, and the Companions of the Messenger of God followed this ruling. ‘Alī, however, conveyed to the Caliph his opinion that the man should be burned alive. Abu Bakr agreed, and wrote to Khalid b. al-Walid that the man should be burned alive. Khalid carried out the sentence. 35

After this account, Ibn Ḥazm adds several others that deal with burning as a punishment for *liwāt*. Thus according to Ibn Wahb, Khalid only burned the dead body of the homosexual, i.e., after execution by the sword, the reason being that only God can burn someone in the fire as a punishment. And Ibn Ḥabib is quoted as having

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34 Note the negative attitude towards the passive partner (*al-maḥāli bi-hi; al-mankūh; al-asfūl*), who has made himself available for penetration by another man. He will be sentenced to death regardless of his marital status, unlike the *fā’īl* (also referred to as *al-dāl* or *al-nākīh*). According to Rowson, the active partner is perceived as someone whose manhood is not impaired by the fact that he has intercourse with another man, whereas the passive partner he who allows himself to be dominated and penetrated, is stigmatized; see “Categorization of Gender”, passim.

stated that he who burns alive a fā’il fī’l qawm Lūt is not committing a sin. Another report transmitted by Ibn Ḥabīb, this time with an isnād, again deals with Khalīd and Abū Bakr. 36 Ali holds this particular sin to be unforgivable and demands that the perpetrators be burned. He says that no nation ever committed this sin, except one (the reference is, of course, to the people of Lot), and it is well known what God did to them. The Companions agree. Abū Bakr communicates the decision to Khalīd, and others after him, such as Ibn al-Zubayr (the anti-caliph), Hishām b. ʿAbd al-Malik (the Umayyad caliph), and the amīr al-Qaṣrī in ʿIraq 37 are known to have ordered this punishment in their days, burning alive both men involved in cases of liwāt. Ibn Ḥazm quotes a variation on the same story, as he heard it from Ismāʿīl b. Dulaym al-Ḥadramī, the qādī of Majorca. 38

Ibn Ḥazm then moves on to the second view, viz. that homosexuals should be thrown down from a mountain and stoned. He heard the relevant report from the son of the above-mentioned qādī, Aḥmad b. Ismāʿīl b. Dulaym. 39 Ibn ʿAbbās was asked about the hadd for a lūtī, and said: he should be taken up to the highest mountain of the town and be pushed off, head down, and then be pelted with stones.

The third group, of those who hold that the active and the passive partner should both be stoned, whether they are muḥṣan or not, also adduces reports in support of its view. According to the first one, which Ibn Ḥazm heard from Muḥammad b. Saʿīd b. Nabīt, ʿAli stoned a homosexual. 40 Another report has Ibn ʿAbbās ruling that a...

36 The isnād is as follows: Ibn Ḥabīb - Muṭṭarrīf b. ʿAbd Allāh b. ʿAbd al-ʿAzīz b. Abī Hāzīm - Muḥammad b. al-Munkadīr and Muṣāṣā b. Ṣūḥāb b. Ṣaʿd b. al-Salāma. In this account, the nickname of the hapless victim is given as al-fajjāt, which means a woman who is wide between the thighs, the knees, or the shanks; cf. Lane, E. W., An English-Arabic Lexicon (8 vols., London, 1863-1893), VI, 2343. In this case the translation “wide between the buttocks” seems more appropriate.


virgin (al-bikr, in this case a young man who has not previously had sexual relations) who is caught in homosexual acts (yüjadhu 'alá'l-lütiyya) must be stoned. ^41 Ibrâhîm al-Nakhaî is quoted as having said that if anyone deserves to be stoned twice, it is the lütî, ^42 while Rabî'a stated that if a man takes up with a lütî, he will be stoned, and neither his being muhsan nor any other consideration will help him.

Finally, Ibn Hazm cites the statement of al-Zuhri that a lütî should be stoned, whether he is muhsan or not. This view is shared by 'Ali, Sa'd b. al-Musayyab, Abû'l-Zinâd, and al-Hasan. Among the later scholars who accept al-Zuhri's view, Ibn Hazm mentions al-Shâfi'i, Malik, al-Layth b. Sa'd, and Ishâq b. Râhawayh.

The fourth view, i.e., that both partners in the crime of homosexuality should be executed by the sword, is based upon a report by Ibn 'Abbâs (for which no isnâd is provided) to the effect that both the active and the passive partner should be killed.

Ibn Hazm skips the fifth group, and moves to the sixth opinion in the list given at the beginning, viz. that homosexual acts are like zinâ: the muhsan is to be stoned, the non-muhsan is to be flogged with a hundred lashes. Several reports are cited in support of this view. In the first, 'Ata' b. Abi Rabâh ^3 relates that 'Abd Allâh b. al-Zubayr had to try seven men caught in homosexual acts. When he inquired about them, four of them turned out to be muhsan. He ordered them to be taken out of the haram, and they were stoned to death. The three remaining ones were flogged with the number of lashes making up

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^42 This tradition is also quoted by Ibn Abî'l-Dunyâ, Dhamm al-malâhî (in J. Robson, Tracts on Listening to Music, being Dhamm al-malâhî by Ibn Abî'l-Dunyâ and Bawâriq al-ilmî by Majd al-Dîn al-Tâbî al-Ghazâlî. London, 1938), 38, 60. Ibn Abî'l-Dunyâ gives the following explanation of the tradition: "He means that if it were possible for one who had been stoned to come to life after his being killed with the stones, he would be the sodomite. If he were stoned and killed by stoning, then came to life, he would deserve to be stoned another time until he was killed. That is, his sin is too great for one stoning to be enough; contrary to the fornicator (al-zànf), for, as punishment and purification, stoning once is enough for him, while that is not enough for the sodomite". 

the hadd punishment for zinā committed by a non-muḥṣan. Ibn ʿAbbās and Ibn ʿUmar were with Ibn al-Zubayr at the time, and did not dispute his verdict (in other words, they gave their tacit approval).

According to al-Ḥasan al-Baṣrī, a homosexual should be stoned if he is thayyib (i.e., sexually experienced, having been married), but if he is a virgin, he is to be flogged.

Furthermore, there are certain people, says Ibn Ḥazm, who say that the muḥṣan is to be stoned and the non-muḥṣan is to be flogged with a hundred lashes and to be exiled for a year if he is the active partner, the fāʾil. The passive one, the mankāḥ, however, is to be stoned, whether he is muḥṣan or not. This, the fifth view, is that of the Shāfiʿī faqīh Abū Jaʿfar Muḥammad b. ʿAlī b. Yūsuf, he adds.

Finally, Ibn Ḥazm provides documentation underpinning the seventh and last view: that there is no hadd punishment for either partner. He quotes a report about al-Ḥakam b. ʿUtayba, 44 who says that he who commits the act of the people of Lot should be flogged, but not to the extent of a hadd punishment. This, says Ibn Ḥazm, is the view of Abū Ḥanīfa and his followers, and that of Abū Sulaymān (i.e. Dāwūd al-İsfahānī, the “founder” of Zāhirism), “and all of our partisans”. 45 As I mentioned earlier, it is already clear from the fact that he discusses liwāt in his chapter on taʾzīr and not in that on hudūd, that this is Ibn Ḥazm’s own view.

Stage Three: The Refutation

After providing the proof-texts on which the various parties base themselves, Ibn Ḥazm refutes the views cited, except, of course, that of the seventh group. It is especially in this polemical section that we can see how he applies his Zāhirī methodology to the revealed texts.


45 The Muḥallā contains many such tantalizing references to his fellow-Zāhirīs (this is what I take the term ašhābnā to mean). It would make our task of reconstructing the history of Zāhirism a lot easier if we knew who these men were. It should be emphasized that a reference to the view of Dāwūd or other Zāhirīs does not in all cases imply that Ibn Ḥazm shares this view, as will be seen below. For further examples, see my article “Ikhīlīf and the Zāhirī school, with special reference to purity laws”, forthcoming in Jerusalem Studies in Arabic and Islam.
With regard to the first group, those who advocate the burning alive of the homosexual, they argue that this is in accordance with the *ijmā‘* of the Companions, and that this consensus cannot be contradicted. If one objects that ‘Ali, Ibn ‘Abbās, Ibn al-Zubayr and Ibn ‘Umar after them supported stoning and the *ḥadd* for zinā‘, etc. (in other words, that they supported a punishment other than burning) they will say that this cannot be so, because it contradicts their *ijmā‘*. This is all they have to say concerning this, but they have no additional evidence, and even this does not constitute proof, because the only one who transmitted it was Ibn Sam‘ān, who had it from a man who reported—Ibn Sam‘ān did not hear it himself—that Abū Bakr, etc. But all this is *munqatī‘*, for none of these people knew Abū Bakr. Also, this Ibn Sam‘ān is a notorious liar and is described as such by Mālik. Moreover, a sound tradition has the Prophet forbidding burning at the stake as a punishment, because only the Lord of the Fire can punish with fire.

Without stopping to refute the views of the second and third groups, as one might have expected, Ibn Ḥazm skips to the opinion of the fourth group — possibly because of the preceding reference to execution by the sword, which is advocated as the appropriate punishment for *liwāt* by the fourth group. These people, says Ibn Ḥazm, base themselves on a *ḥadīth* going back to Ibn ‘Abbās, who quotes the Prophet as having said that those caught in the act of the people of Lot should be executed, both the active and the passive partner. Ibn Ḥazm quotes several similar traditions with the same content, only to reject them, saying that none of them is sound. The first *ḥadīth*, of Ibn ‘Abbās, contains a weak link, as does the second, of Abū Hurayra. The chains of the remaining reports contain flaws, and they cannot, therefore, be adduced as proof.

Now, if it is forbidden to spill the blood of a *dhimmi* and even that of a *harbi* solely on the basis of such flawed reports, then how can it be allowed to spill the blood of a Muslim, be he iniquitous (*fāsiq*) or contrite (*tā‘īb*)? If any of what they adduce were sound, we, too, would accept this view, and would not oppose it in anything, says Ibn Ḥazm.

Turning back now to those who subscribe to the third opinion, Ibn Ḥazm states: If we look at those who say that the men are both to be stoned, *muḥsan* or not, we see that they argue that this is what God did to the people of Lot, as is said in Q. 11:82f. (“We rained upon
them stones of clay, one after the other”). They furthermore adduce the reports that were mentioned earlier, to the effect that both the active and the passive partner are to be stoned, *muḥšan* or not.

Ibn Ḥazm objects that there is no proof in what they say. As for what God did to the people of Lot, it is not as they see it, for other texts from the Koran (such as Q. 26:181f., 189 and Q. 11:84, 94) make it clear that the people of Lot were punished not for their abomination alone, but also for their unbelief (*kufr*). Therefore, they cannot stone a homosexual unless he is also a *kāfir*. If the people who try them act otherwise, they go against God’s judgement and against the Koranic verse that they cite as proof, since they deviate from the legal ruling it contains. God also says that Lot’s wife shared in their punishment, and anyone endowed with a bit of reason knows that she did not commit the “act of the people of Lot”. Therefore, it is clear and beyond any doubt that the punishment described in the Koran is not for this act alone. If they object that she, Lot’s wife, aided and abetted in their commission of the crime, they must stone everyone who enables this vice as go-between or by pandering. If they do not, they contradict themselves and invalidate their proof based on the Koran, disobeying it.

The Koran also relates that Lot’s fellow-townsmen accosted his guests, whereupon God blinded their eyes. Therefore, they should also blind the eyes of homosexuals, for God did not simply stone them, but blinded and then stoned them. If they fail to do this, they go against God’s judgement concerning homosexuals and invalidate their proof. Also, they must blind the eyes of anyone who accosts another.

Moreover, they should burn alive anyone who tampers with weights and measures, for God burned the people of Shu‘ayb for that crime (see Q. 26:181f., 189; 11:84, 94). Likewise, they should execute anyone who wounds another person’s she-camel, for God destroyed the people of Šāliḥ when they hamstrung the she-camel (cf. Q. 91:11-14). After all, there is no difference between God’s punishing the people of Lot on the one hand—by destroying their eyesight and stoning them because of their abomination—and His burning the people of Shu‘ayb for tampering with weights and measures, or His destruction of the people of Šāliḥ for wounding the she-camel on the other.
After this lengthy refutation (which, it should be emphasized, attacks the prevailing Mâlikî opinion) Ibn Ḥazm turns to the last view, the one espoused by him. According to this view, homosexuality is not punishable by ḥadd. As proof, the people who subscribe to this view use the Koranic verses Q. 25:68f. They add a prophetic tradition to the effect that a Muslim’s blood may be shed for three things only: apostasy, zinā by a muḥsīn, and homicide.

God has forbidden every man, Muslim and dhimmī alike, to kill unless it is justified, and there is no justification but in a revealed text (nasṣ) or in ijmā’. The Prophet forbade taking a life except in the cases of zinā after iḥsān, unbelief after belief, pandering, a third ḥadd conviction for drinking, and highway robbery (hirāba), unless the robber repents. The case of the homosexual is not mentioned among them, so it is forbidden to shed his blood, except if there is a text or an ijmā’ including him in the categories of people who may be killed.

Ibn Ḥazm states that in his view, none of the reports concerning the killing of the homosexual is sound. Moreover, none of the things reported about any of the Companions is valid; the accounts about Abū Bakr, ʿAlī and the Companions are munqatfa. One of them is from the notoriously unreliable Ibn Samān on the authority of an unknown man (majhūl); the other is from someone on whose accounts one cannot rely. As for the reports going back to Ibn ʿAbbās, they have been transmitted to all kinds of unknown people, and the same is true for the riwâya concerning Ibn al-Zubayr and Ibn ʿUmar. One cannot, therefore, rely on the traditions adduced from the Companions with regard to this issue. By contrast, the opinion that there is no ḥadd punishment for the homosexual is reported from al-Ḥakam b. ʿUtayba, who is a well-known and well-connected authority. 47

It follows, then, says Ibn Ḥazm, that the homosexual should not be executed and not be submitted to a ḥadd punishment, for God did not make this an obligation, nor did His Messenger. The status of the homosexual is that of someone who has committed a forbidden act (atā.

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and the Messenger of God has ordered that such people be subjected to correction (taghýr al-munkar bi ’l-yad), in addition to a ta’zîr punishment the amount of which has been fixed by the Messenger of God and which is not to be exceeded. Elsewhere Ibn Ḥazm explains that ta’zîr should not exceed ten lashes. Furthermore, the people should be protected from the harm caused by homosexuals, namely by locking the latter up for an unspecified period of time. 48 Ibn Ḥazm apparently believed that homosexuals should (and could?) be reformed and rehabilitated, and that it was the duty of the community to do so. Unfortunately, he provides no further details about the practicalities of this rehabilitation.

He adduces various texts in support of his view. In the first one, which can be found in Bukhârî’s Šâhîh, Ibn ’Abbâs reports that the Prophet cursed effeminate men (mukhannathîn) and masculine-looking women (mutarajjilât) and said, “Drag them out of their houses”, and he removed so-and-so, and so-and-so, 49 (i.e., from society, by sending them to prison).

The prison sentence is based on God’s saying “but help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression” (Q. 5:2). Everyone knows that keeping away the people of Lot—both the active and the passive partners (al-nâkîhîn wa’l-mankûhîn)—from the people is an act of righteousness and a pious duty, and that leaving them be, i.e. by not interfering, thus in fact letting them carry on as they please, would amount to...

48 In her article “Imprisonment in Pre-Classical and Classical Islamic Law” / Islamic Law and Society 2 (1995), 157-173 at p. 171), Irene Schneider quotes a passage from the Muḥallâ about the injustice of locking up a debtor, and then states: “Ibn Ḥazm criticizes imprisonment for debt because it delays satisfaction of a creditor’s claims. Generally, he emphasizes that no Muslim should be prevented from moving freely on earth unless the Qur’ân and sunna impose such a contraint” (sic). The case we are dealing with here obviously meets that criterion.

49 Al-Bukhârî, Šâhîh al-Bukhârî (ed. L. Krehl and Th. W. Juynboll, 4 vols. Leiden, 1862-1908), Libâs, no. 61, and Abu Dâwûd, Sunan Abî Dâwûd (ed. Muhammad ’Abd al-‘Azîz al-Khâlidî, 3 vols. Beirut, 1416/1996), Adab, no. 4928. In fact, the text says: “and the Prophet removed so-and-so, and ’Umar removed so-and-so”. On the mukhannathîn, see Rowson, E.K., “The Effeminates of Early Medina”, JAO S 111 (1991), 671-693. The way in which Ibn Ḥazm uses the terms mukhannathîn and mutarajjilât seems to imply that these people not only adopt the attire of the opposite sex, but their sexual behaviour as well. He apparently sees a link between physical appearance and sexual preference or behaviour, although Rowson has shown that the mukhannathîn were often heterosexual.
helping them unto sin and transgression. Therefore, they should be made to stop.  

Now some shameless and stupid people may have the audacity to say that refraining from killing them will encourage them in their acts. Yes, says Ibn Ḥazm sarcastically, and the fact that you do not execute every single fornicator—for, after all, some are only flogged—is tantamount to declaring zinā' licit; and your refraining from executing every apostate—for after all, he is saved if he recants—is tantamount to condoning kufr, cross-worship, denouncing the Koran and the Prophet; and your refraining from killing the eater of pork, mayta, or blood, or the imbiber of wine leads you to allow the consumption of pork, mayta, blood, and wine! Their argument helps them as much as the Koranic passage which they cite: “Whosoever helps himself after he has been wronged—against them there is no way of blame” (Q. 42:41). This apparently means that in the case of homosexuality, a wrong has been committed, and acting against it is justified. However, according to Ibn Ḥazm, people should not exaggerate in their zeal to defend the religion of God, and add things that are not part of it: “God forbid that we should legislate corrupt laws, based on our personal views (bi-ʾārâʾīnā). Let us praise God for granting us our adherence to the Koran and the Sunna!” This is obviously aimed at people who want to impose harsh punishments for which they cannot adduce a scriptural basis, as is required by the Zâhirîs.

Intermezzo: Bestiality and Slander

Ibn Ḥazm’s discussion of liwāt is immediately followed by an exposition of the different opinions on men who commit bestiality (man atāʾīl-bahîma). This combination is not unusual; we find it not only in other fîqh works, but also in several collections of āthâr and hadîth. The reason why it precedes the discussion of female homosexuality is probably the fact that both liwāt and ityân al-bahîma are forms of penetrative intercourse, while siḥāq, in the narrowest sense of the word, is not.

50 People should help each other do the right thing and abstain from the wrong thing. Imprisonment is seen by Ibn Ḥazm as the solution. It is clear that he takes the injunction to practice al-amr bi’l-maṣūrūf wa’l-nāhī y’l-munkar very seriously.
The punishments for *ityân al-bahîma* advocated by different groups (which are listed by Ibn Ḥazm in his usual systematic way) range from flogging to stoning or execution by the sword. Some take the marital status of the offender into consideration, whereas others do not. There are differences of opinion also with regard to the fate of the animal that has been interfered with. Some say it has to be killed, but may not be eaten; others do not demand that it be punished in this way. Ibn Ḥazm does not express himself on the fate of the animal, but the man guilty of bestiality should be subjected to a *taʿzîr* punishment—which means that he shall be flogged with no more than ten lashes. He rejects the view of those who demand the *hadd* punishment, since they base themselves on *qiyaṣ*, which is unacceptable. Also, the traditions they adduce in support of their view are weak and cannot be relied upon. Ibn Ḥazm’s own view is based not upon revealed texts which explicitly prohibit the vice—in his view there are no such texts—but upon the tradition which we have already encountered, to the effect that whosoever sees someone committing a munkar must seek to change it. Bestiality is definitely a munkar, and should therefore be punished, though not by a *hadd* punishment.

The discussion of bestiality is followed by a paragraph on the appropriate punishment for someone who slanderously accuses someone of this vice or of homosexuality.

Some hold that the punishment for slanderous accusation (*qadḥ*) of *liwâṭ* or bestiality should be equal to the *hadd* for unproven accusation of *zinâ*, which can amount to eighty lashes. Since we know that Ibn Ḥazm does not accept the comparison between *zinâ* on the one hand, and *liwâṭ* or bestiality on the other, it is not surprising to see that he advocates *taʿzîr*, and not the *hadd*, as punishment for calumnious charges of *liwâṭ* or bestiality.

Ibn Ḥazm then enters into a detailed refutation of what is presented as the Mālikī point of view, viz. that *liwâṭ* is indeed not *zinâ*, but worse than *zinâ*, and that it is therefore the harshest of the *hadd* punishments which should be applied. Ibn Ḥazm reiterates once more that neither in common usage, nor in the Sunna, is the term *zinâ* ever applied to *liwâṭ*. He quotes a prophetic tradition in which *zinâ* with one’s neighbour’s wife is listed as one of the worst crimes. Homosexuality is not mentioned, which invalidates the contention that *liwâṭ* is worse than *zinâ*. 
Following this discussion, there is a paragraph on the number of witnesses required for a conviction in cases of *liwât* or *ityân al-bahlma*. Because Ibn Ḥazm does not regard these acts as forms of *zinā*, he does not require the evidence of four witnesses, as in the case of *zinā*, but only that of two. While on the one hand, then, the punishment for *liwât* as defined by Ibn Ḥazm is lighter than that for *zinā*, a conviction for *liwât* would presumably be easier to bring about if it were up to him, since the testimony of only two witnesses is required. It is interesting that among the ones who state that no fewer than four witnesses should testify, Ibn Ḥazm mentions “some of us”, that is, some fellow-Zâhirîs. This shows that there was no “party-discipline” within the Zâhirî school, and that Ibn Ḥazm held views which differed from those of other literalists, including Dâwûd al-Isfahânî himself. This is, of course, not all that surprising: we see it in other schools as well, even in those that did not as emphatically reject *taqlîd* as the Zâhirîs. Ibn Ḥazm refutes the Zâhirîs’ view in the same methodical way as he does the opinions of adherents to other madhâhib, without sparing his colleagues.

It is only after these three paragraphs that Ibn Ḥazm addresses the issue of *sihâq*.

**Homosexual acts between women**

In this paragraph, as in the preceding ones, Ibn Ḥazm first gives the different views, the texts they are based upon, and a critique of the ones he disagrees with. One party, he begins, says that each of the two women involved in a homosexual relationship should be flogged with a hundred lashes. In support of this view, they adduce a report of Ibn Shihâb al-Zuhrî, who says that the *"ulamâ’* hold, with regard to the woman who performs *rafa* and similar things with another woman,  

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51 See also n. 45 above.
53 For an explanation of this technical term, see the footnote in al-Bundârî’s edition, XII, 403. It apparently refers to women whose pubic area protrudes to such an extent that something resembling intercourse can be achieved. Al-Bundârî adds that sex between women is practiced only in totally decadent societies, or in places where no men are present, e.g. in women’s prisons. In depraved countries and cities such as London, he complains, same-sex marriages have the same legal status as heterosexual ones!
that both are to be flogged with a hundred lashes, the active (al-fā'ila) as well as the passive partner (al-mafūl bi-hā). The same statement is transmitted by 'Abd al-Razzāq, who had it from Ma'mar, who had it from al-Zuhri.

Another group is more lenient. Thus al-Ḥasan al-Bāṣrī saw no harm in a woman inserting something into her vagina, if she does it in order to protect herself from the desire to commit zinā. Al-Ḥasan apparently sees no need for any punishment. However, he seems to be talking about autoeroticism, which is also covered by the term siḥāq. A last group says that saḥq is forbidden (ḥarām), but that the appropriate punishment is not ḥadd, but tażīr. Ibn Ḥazm subscribes to this view.

Ibn Ḥazm states that he examined what al-Zuhri says, about the punishment for each of them being a hundred lashes, and found that there is no proof in it whatsoever, except if one says that just like homosexuality between men is the gravest form of zinā, and therefore punishable with the severest ḥadd for zinā, thus by analogy saḥq, which is the least serious form of zinā, should be punished by the most lenient of the hudūd for zinā, i.e., a hundred lashes.

According to Ibn Ḥazm, however, those who apply stoning for male homosexuality because they consider it graver than zinā, must consider saḥq, too, graver than zinā, and apply stoning, for they are both cases of genital contact (bi'Ufarj) in a way that is never allowed. But most people are not proficient in qiyās, and do not understand the processes of deduction; they do not follow through what they argue, nor do they reason with any consistency, and finally, they do not stick to the revealed texts. Don’t they say, “Al-Zuhri knew the Companions and the great Successors. He only says it on their authority”? Those who consider this act forbidden do not produce any further arguments; they just accept al-Zuhri’s word, as they will do whenever his view corresponds with the opinion they have adopted.

As for us, says Ibn Ḥazm, we consider reasoning by analogy null and void. One must not follow the words of anyone except the Messenger of God. Now, neither saḥq nor raфа constitute zinā, and if they are not a form of zinā, then the ḥadd for zinā does not apply to them either. It is not for anyone to distinguish between more and less seri-

ous acts, according to his personal opinion (ra'î), and to classify the ḥudūd accordingly; this would amount to adding to the ḥudūd of God, and adding precepts to the religion, a thing that God has not permitted, as is clear from His words: “And whoso transgresseth God’s limits, he verily wrongeth his soul” (Q. 65:1).

Ibn Ḥazm repeats that not a single passage in the Koran contains the like of what al-Zuhri states, and neither does any sound tradition. This being the case, there can be no hadd for sahq. If they cite the tradition which has the Prophet saying “Sihāq is zinā between two women”, this does not hold water, for it comes from Baqīyya, a weak transmitter who is in no way connected to Makhūl, nor to Wāthila—both of whom appear further down in the isnād. Therefore, it is munqatf. And even if this tradition were sound, it still does not contain anything on the basis of which a hadd needs to be applied, for in a report transmitted by al-Aslamī, the Prophet defined zinā incurring a hadd punishment as follows: an encounter in which a man illicitly obtains from a woman what he can lawfully obtain from his wife. Zinā, then, is only ever between a man and a woman, and always involves a penis and a vagina.

The Prophet moreover said that the limbs commit zinā, and that the genitals disprove or confirm it. This is of course a reference to ensuing pregnancy, which can obviously result only from contact between penis and vagina. Those who say that male homosexuals commit the gravest kind of zinā must accept this prophetic maxim; they themselves have no text at all that they can adduce as proof. And even if they were to find such a text, they would still be exceeding the boundaries and say improper things. All this, then, disposes of the matter.

Ibn Ḥazm then refers back to the view of al-Ḥasan, who allows a woman to insert an object into her vagina. He says: We consider it wrong, for God says “who guard their private parts (furūj)—save from their wives or the (slaves) that their right hands possess, for then they are not blameworthy, But whoso craveth beyond that, such are the transgressors” (Q. 23:5-7). This verse, of course, applies to men. But whereas they may have lawful intercourse with female slaves, a woman may not sleep with anyone except her husband, to whom it has been allowed in a revealed text. Her bashara is off limits to

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56 Bashara literally means skin, but is used here as pars pro toto for the whole body, and in particular the genital area.
anyone else. If she, now, gives a woman or a man who is not her hus­
band access to her private parts, and does not guard them as required
by the Koran, she allows what is forbidden and disobeys God. Other
than al-Hasan, then, Ibn Ḥazm seems to be referring not to autoeroticism, but to a sexual encounter between two women.

In a tradition found in Muslim’s Ṣaḥīḥ, the Prophet said: A man
shall not look upon the ‘awra of another man, and a woman not upon
those of another woman, and a man shall not join another man in one
garment, and a woman shall not join another woman in one gar­
ment. 57

The Prophet forbade that a woman touch another woman who
wears one garment only, for perhaps she will describe her to her hus­
band and it will be as if he sees her. 58 Also, the Prophet cursed men
who imitate women, and women who imitate men. 59

According to Ibn Ḥazm, these texts are evidently about the prohibi­
tion of a man touching a man, and a woman touching another woman,
without distinction. Touching someone whom it is forbidden to touch
is disobeying God, and it is equally forbidden in both cases, especially if
it is the private parts that are being touched, for then it is a double sin.
If a woman inserts something into her vagina other than what may law­
fully be inserted there, i.e., her husband’s penis or something that stops
the menstrual flow, 60 she is not guarding her private parts, and if she
does not guard her private parts, then her sin will be all the greater.
This invalidates al-Hasan al-Baṣrî’s view on the matter.

A woman who performs saḥq with another woman sins, for she
commits a munkar, and her behaviour should be corrected. Ibn Ḥazm
refers to the same tradition that he cites in his discussion of homosex­
ual acts between men: whoever sees a munkar being committed must
“correct it with his hands”. Such a woman should be subjected by to a
taʿzīr punishment which, as we have seen, cannot exceed ten lashes,
in Ibn Ḥazm’s view. Whether or not muṣāḥaqaṭ should be impris­
oned, like their male counterparts, is not clear.

57 Ṣaḥīḥ Muslim (ed. Muḥammad Fuʿād ‘Abd al-Bāqī, 5 vols. Cairo, 1374/1955), Ḥayd, no. 74. Siddiqi (Ṣaḥīḥ Muslim, rendered into English by ‘Abdul Hamid Siddiqi, 4
59 See n. 49.
60 This remark shows that already in 5th/11th century al-Andalus, women apparently
used something similar to tampons.
The discussion of *sahq* is followed, or rather interrupted, by a paragraph on masturbation. According to Ibn Ḥazm, it is allowed (*mubah*) for men and women alike, since there is no explicit prohibition of it in either the Koran or the Sunna. In fact, there are quite a few *āthār* condoning it. Ibn Ḥazm quotes them, although he personally considers it reprehensible and a moral flaw.

The paragraph on *sahq* closes with the issue of damages to be paid by a woman who deflowers another woman with her finger. Ibn Ḥazm first explains the various existing opinions, along with the texts adduced in support of them. He states that no one demands the *hadd* punishment for this, but some argue that the woman who has caused the damage should pay *sadāq*, a term which usually refers to the dower which becomes a woman's due upon consummation of her marriage. Others believe that both women should be given an exemplary penalty. Ibn Ḥazm, who has found no revealed text justifying either of these actions—least of all payment of the *sadāq*, which is reserved for women entering into marriage—states that the appropriate punishment is *taʿzīr*, since a *munkar* has been committed.

**Conclusions**

Ibn Ḥazm states in no uncertain terms that homosexual acts between men constitute a sin, since they are expressly condemned in the Koran and the Sunna. However, his rejection of *qiyās* prevents him from assimilating *liwāt* to *zinā*: illicit sex between a man and a woman. The punishment prescribed by him is therefore not that which is incurred by *zinā*, viz. stoning or intensive flogging, but a milder one consisting of a maximum of ten lashes and imprisonment with the aim of bringing about the reformation of the sinner. Ibn Ḥazm rejects those reports and traditions which proclaim that *fī īl qawm Lūt* is worse than *zinā*, including certain traditions from the canonical collections.

In the same way that male homosexuality is not assimilated to illicit heterosexual contacts, so homosexual acts between women (*sahq, sihdq*) cannot be compared to them, nor can they be compared to male homosexuality. Nevertheless, *sahq*, like *liwāt*, incurs a *taʿzīr* punishment of up to ten lashes. Whether women, too, will have to serve a term in prison, like the men, is not clear.
It is interesting to compare Ibn Ḥazm’s views with those of his friend and colleague, Ibn ʿAbd al-Barr. This man, who was one of the leading Mālikī jurists of his time, subscribes to the view that both partners in homosexual acts should be stoned. Ibn ʿAbd al-Barr bases his views on a number of traditions that are rejected by Ibn Ḥazm as unreliable. Ibn Ḥazm, then, is more lenient than his Mālikī peer. But although it is tempting to see this attitude as evidence of a more “liberal” attitude towards homosexuality on the part of Ibn Ḥazm—who, it should be recalled, is believed by some modern authors to have had homosexual leanings himself—it is more likely that his views are the outcome of his Zāhirī methodology.

While this one case is not, of course, enough in itself to prove that Ibn Ḥazm’s different approach to the revealed sources led him to conclusions which differed dramatically from those of the Mālikīs, the evidence does seem to point in that direction. This impression is confirmed by two earlier case-studies, in which I found that Ibn Ḥazm’s views with regard to the mobility of women and the position of non-Muslims differed considerably from those of his Mālikī environment. 61 It may be assumed, then, that Ibn Ḥazm’s teachings constituted a serious challenge, even if perhaps not an immediate threat, to the Mālikī establishment of al-Andalus.

**ABSTRACT**

This article discusses the views of the theologian and legal scholar Ibn Hazm of Cordoba (d. 456/1064) on homosexuality. Although reference is made to his literary work Ṭawq al-hamāma, which is rich in anecdotes on homoerotic attraction, the article focuses on Ibn Ḥazm’s multivolume legal tract Kitāb al-Muhallā, a work written from a Zāhirī, or literalist perspective. A step-by-step analysis of Ibn Ḥazm’s legal reasoning on homosexuality, both male (ḥwāt) and female (siḥāq) is provided, and comparisons with the views of other jurist, especially Mālikīs, are made.

Unlike his Mālikī contemporaries, Ibn Ḥazm holds that homosexuality is not to be equated with fornication (zinā), which incurs the death penalty. Instead, he advocates a relatively mild punishment of up to ten lashes for homosexual

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practices, based upon his idiosyncratic interpretation of the revealed sources which is illustrated here. Although Ibn Ḥazm is believed by some modern authors to have had homosexual leanings himself, he categorically condemns sexual contacts between members of the same sex as immoral and sinful, and believes that homosexuals should be reformed.

RESUMEN

Este artículo discute las opiniones de Ibn Ḥazm de Córdoba (m. 456/1064) jurista y teólogo, acerca de la homosexualidad. Aunque se hace referencia a su obra literaria Ṭawq al-ḥamūma, rica en anécdotas sobre atracción homoerótica, el artículo se centra en su voluminosa obra legal zahiri Kitāb al-Muhallā y analiza el razonamiento legal de Ibn Ḥazm sobre la homosexualidad tanto masculina (liwāf) como femenina (sihāq) comparándola con la de otros juristas, en particular, malikíes.

A diferencia de sus contemporáneos malikíes, Ibn Ḥazm mantiene que la homosexualidad no debe equipararse a la fornicación (zina) que incurre en la pena de muerte. Por el contrario, aboga por el relativamente suave castigo de diez latigazos por prácticas homosexuales, basado en su interpretación de las fuentes reveladas tal y como se expone en este artículo.

Aunque algunos autores modernos han insinuado que el propio Ibn Ḥazm era homosexual, él condena categóricamente las relaciones entre miembros de un mismo sexo y mantiene que los homosexuales deben reformarse.