



**“And the Male Is Not like the Female”¹:
Sunni Islam and Gender Nonconformity**

(Part I)

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I. Introduction

In April 2015, Olympic gold medal-winning decathlete Bruce Jenner declared publicly his formal reconstitution as a transgender woman during an interview with Diane Sawyer. Having suffered years of gender dysphoria, Jenner had learned to repress his inhibitions but now felt the suppression disingenuous. Rather than persist in this masculine impersonation, Jenner announced that, moving forward, he would go by the name Caitlyn, be addressed by the feminine pronoun “she,” and dress the part as well. As a member of the notorious Kardashian family, Jenner’s announced gender modification quickly became the subject of intense public debate: Should gender dysphoria be accommodated or treated? Is gender a socially constructed set of roles that only arbitrarily aligns with biological sex, or are gender and sex one and the same? And how should society seek to create space for transgender persons, if it should do so at all?

The impact of Jenner’s public pronouncement cannot be understated. Dubbed as a “turning point”² for the transgender community, Jenner’s interview with Sawyer was watched by an estimated 17 million people,³ making it the most watched 20/20 interview in over 15 years, the most watched interview on any network for a non-sports Friday night in over a decade, and the ninth-most watched interview in television history.⁴ In its wake, political controversies have emerged over transgender accommodation in the public space. Perhaps the most pronounced has been related to North Carolina’s bill mandating individual bathroom use according to sex as identified at the time of birth and not gender identification.⁵ Passed into law in March 2016, North Carolina’s bathroom bill was immediately met with severe public backlash. Citing the “climate created by the current law,” the NBA pulled the annual All-Star Game

² Haley Branson-Potts, “For Transgender Community, Bruce Jenner Interview Feels like Turning Point,” *The Los Angeles Times*, accessed May 28, 2017, <http://www.latimes.com/local/lanow/la-me-ln-for-transgender-community-bruce-jenner-feels-like-turning-point-20150425-story.html>.

³ Itay Hod, “How Caitlyn Jenner Went from Icon to Outcast,” *The Wrap*, accessed May 28, 2017, <http://www.thewrap.com/how-caitlyn-jenner-went-from-icon-to-outcast>.

⁴ Dominic Patten, “Bruce Jenner Interview Ratings Hits Newsmag Demo Record In Live 3,” *Deadline*, April 29, 2015, accessed April 17, 2017, <http://deadline.com/2015/04/bruce-jenner-interview-ratings-diane-sawyer-20-20-1201416149>.

⁵ Elena Schneider, “The Bathroom Bill That Ate North Carolina,” *POLITICO Magazine*, March 23, 2017, accessed April 12, 2017, <http://www.politico.com/magazine/story/2017/03/the-bathroom-bill-that-ate-north-carolina-214944>.

¹ “*wa laysa ’l-dhakarū ka’l-unthā*” (Qur’ān, *Āl ‘Imrān* 3:36).

from North Carolina, relocating it to the transgender-friendly city of New Orleans.⁶ Thereafter, more than 100 executives from top companies jointly signed a letter expressing their opposition to the “anti-LGBT” legislation North Carolina had ratified.⁷ Progressive celebrities, politicians, and cultural critics all quickly joined the fray, entrenching opposition to the “bathroom bill” as a *cause célèbre* of the political and cultural left. Under the weight of mounting pressure, North Carolina lawmakers approved legislature repealing the controversial “bathroom bill” in March 2017, just one year after the bill’s enactment.⁸

The North Carolina case is merely the most visible in what has become a ubiquitous stream of executive litigation and public debate negotiating the future of transgender persons, their concomitant “rights,” and the varying ways in which those rights must be honored by private citizens and public institutions. Indeed, as recently as this past April (2017), the U.S. Supreme Court remanded a transgender rights case back to lower courts,⁹ while the Virginia Supreme Court dismissed a challenge to Fairfax County’s transgender policy.¹⁰

In light of the foregoing circumstances, a conversation has commenced concerning the position of Islam as it relates to the phenomenon of transgenderism. Drawing from hadith reports speaking of the *mukhannath* (effeminate male), some writers have asserted congruities between legal discourse related to the *mukhannath* and transgender persons who also exhibit characteristics that diverge from their constitutional anatomy. Moreover, existing “third-gender” communities in Pakistan (*‘hijras’*) and Indonesia (*‘warjas’*) have only served to intensify this confusion. The current paper, therefore, attends to the topic of gender nonconformity in Sunni Islam. I will begin by establishing terms and conceptions indigenous to the Islamic tradition, then proceed to synopsize the salient legal and moral questions that have occupied

⁶ “NBA moves North Carolina All-Star game over ‘bathroom bill,’” BBC News, July 22, 2016, accessed May 5, 2017, <http://www.bbc.com/news/world-us-canada-36863216>.

⁷ Katherine Peraltak, “Updated list: Who has spoken for, against NC’s new LGBT law,” *The Charlotte Observer*, accessed May 10, 2017, <http://www.charlotteobserver.com/news/business/article69251877.html>.

⁸ Madison Park, Elliott C. McLaughlin, and Jason Hanna, “North Carolina repeals ‘bathroom bill,’” CNN, March 30, 2017, accessed May 3, 2017, <http://www.cnn.com/2017/03/30/politics/north-carolina-hb2-agreement>.

⁹ “U.S. Supreme Court Sends Landmark Transgender Rights Case Back to Lower Court,” Americans United, accessed May 1, 2017, <https://www.au.org/church-state/april-2017-church-state/people-events/us-supreme-court-sends-landmark-transgender>.

¹⁰ Moriah Balingit, “Court dismisses lawsuit by student ‘distressed’ over schools’ transgender policy,” *The Washington Post*, April 13, 2017, accessed May 1, 2017, https://www.washingtonpost.com/local/education/court-dismisses-lawsuit-by-student-distressed-over-schools-transgender-policy/2017/04/13/32035504-2077-11e7-a0a7-8b2a45e3dc84_story.html?utm_term=.2b4860927209.

scholarly writings about gender obscurity. Finally, drawing from the legal and moral questions examined in the paper, I will conclude with a synopsis of Islam’s position as it relates to the various forms of gender nonconformity countenanced by Sunni jurists.

II. Elucidating Terms

The words *mukhannath* and *khunthā* are both derived from the triliteral Arabic root *kh-n-th* which denotes various meanings. Works of lexicography generally explicate the root *kh-n-th* by using the terms *takassur* and *tathannī*, which can both be rendered as “pliability,” “languidness,” or “suppleness.” In a hadith narrated by both al-Bukhārī and Muslim, ¹¹ʿĀʾisha reports that during the Prophet’s¹¹ last moments, he rested with his body falling limp into her lap (*inkhanatha fi hijrī*), using the cognate *inkhanatha* to describe his limbs as having become flaccid, or limp, in her lap.¹² Other definitions speak of an inversion, as one may invert the mouth of an animal skin used for drinking (*ikhthināth al-asqiya*),¹³ a practice that the Prophet forbade.¹⁴

Of the two categories of gender ambiguity drawn from the root *kh-n-th*, only the term *mukhannath* appears in hadith reports. In some reports, the Prophet is recorded as cursing “effeminate men and mannish women (*al-mukhannathūn min al-rijāl wa’l-mutarajjilāt min al-nisāʾ*).”¹⁵ A number of the “cursing” reports include additional instruction to “evict them (i.e., the *mukhannathūn* and the *mutarajjilāt*) from your homes.”¹⁶ In a hadith reported in al-Ṭabarānī, the Prophet describes as cursed in this world one whom “God has made a man then he feminized himself and imitated

¹¹ Muslim etiquette generally follows up every mention of the Prophet Muḥammad’s name, both in speech and in writing, with the honorific supplication “*ṣallā Llāhu ʿalayhi wa sallam*” (‘May God grant him blessings and peace’). Mention of the names of the other prophets is followed by “*ʿalayhi ’l-salām*” (‘Peace be upon him’), while the Prophet Muḥammad’s wives and companions are honored with the phrase “*raḍīya Llāhu ʿanhū/hā/hum*” (‘May God be pleased with him/her/them’). Acronym abbreviations of these phrases have been omitted here only to enhance readability. May God grant blessings and peace to His final messenger Muḥammad and to all the prophets, and may He be pleased with the Prophet’s wives, companions, and those who follow them in righteousness till the Day of Judgment!

¹² See Muḥammad b. Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 1 ed. (Damascus: Dār Ibn Kathīr, 1423/2002), no. 2590.

¹³ See Ibn Manẓūr, *Lisān al-ʿArab*, 1 ed., 6 vols. (Cairo: Dār al-Maʿārif, 1429/2008), 1272.

¹⁴ “Allah’s Messenger ﷺ forbade turning water skins upside down and drinking from their mouths” (*nahā al-nabiyyu—ṣallā ’Llāhu ʿalayhi wa sallam—ʿan ikhtināth al-asqiya*). See Muslim b. al-Ḥajjāj, *al-Jāmiʿ al-ṣaḥīḥ*, ed. Abū Qutayba Nazar b. Muḥammad al-Faryābī, 1 ed., 2 vols. (Riyadh: Dār Tayba li’l-Nashr wa’l-Tawzīʿ, 1427/2006), no. 2023.

¹⁵ *Ṣaḥīḥ al-Bukhārī*, no. 5546.

¹⁶ *Ibid.*, no. 5547.

III. *al-Khunthā al-Mushkil* (The Ambiguous *Khunthā*)

An “ambiguous *khunthā*” is “one who possesses both male and female organs, or one who possesses neither and urinates from an opening in the body.”²⁵ Citing as evidence Qur’ānic verses stating that God “created the two mates—male and female” (*al-Najm* 53:45) and “dispersed from both of them (i.e., the male and the female) many men and women” (*al-Nisā’* 4:1), scholars have maintained that there only exist in reality two discrete genders. Accordingly, they have generally viewed it as desirable to ascertain the true gender of the ambiguous *khunthā* whenever possible. Though various methods of gender determination have been registered in the books of *fiqh*, the most frequently mentioned signifier of gender has been the organ by which urine passes: if it be the penis, then the ambiguous *khunthā* is regarded as a male, and if it be the meatus, then the ambiguous *khunthā* is regarded as a female. If the place of passing urine is anatomically ambiguous, gender can be established by way of secondary features after the onset of puberty such as the growth of a beard, menstruation, the appearance of breasts, and related anatomical developments. It should be noted that once gender is established, the individual is then regarded as either male or female and no longer “ambiguous,” as the qualifier “ambiguous” (*mushkil*) refers to the indistinctness of gender only so long as the individual does not have a clearly established gender.

Relative to *mukhannathūn* (discussed below), the cases of ambiguous *khunthās* are uncommon. Given that the ambiguous *khunthā* includes both those without any genitalia whatsoever, as well as hermaphrodites/intersex persons who possess both male and female sex organs, it is important to distinguish between the two.

Absence of Genitalia

The complete absence of genitalia corresponds to what is clinically referred to as agenesis—penile or vaginal, depending on the gender. Despite the absence of critical male or female sexual organs, agenic individuals generally possess an otherwise normal male or female anatomy. Accordingly, Islamic law regards the presence of discernable male or female anatomical characteristics as sufficient for establishing gender even in the absence of sexual organs. Should genital agenesis be coupled with indeterminate anatomy (such as the lack of both male and female hormones, distinctive male and female features, etc.), then the person would be subject to the same set of considerations outlined in the following section concerning intersex individuals.

²⁵ Ibn Manzūr, *Lisān al-‘Arab*, 1272.

women.”¹⁷ In another “cursing” report, the Prophet states that “three will never enter paradise,” including the “mannish woman” (*al-rajila min al-nisā’*) as one of the accursed three categories.¹⁸ In other reports, a *mukhannath* man named Hīt¹⁹ is said to have had permission to sit in the private assemblies of women—until, that is, he revealed the physical features of one of the women to a man in the company of the Prophet whilst suggesting her to the man for marriage.²⁰ Upon hearing Hīt’s depiction of the woman’s physical features, the Prophet forbade him from the women’s assemblies and, in some reports, banished him to the outskirts of the city. In one hadith related by al-Bukhārī, al-Zuhri (d. 124/741) remarks as a matter of opinion that one should not pray behind a *mukhannath* unless absolutely necessary.²¹ In a report recorded in the *Sunan* of Abū Dāwūd, the Prophet encounters a *mukhannath* who has dyed his hands and feet with henna. Upon witnessing the man’s dyed limbs, the Prophet inquires of others as to why the man has done this, to which they respond, “He imitates women.” Afterwards, the Prophet decides to banish this man to a town called Naqīr.²² In yet other reports related in the *Sunan* of Ibn Mājah and al-Tirmidhī, the Prophet specifies a punishment of twenty lashes for falsely accusing someone of being a *mukhannath*.²³ Finally, in a few lesser-known hadith collections, the Prophet is described as “not entering homes in which a *mukhannath* was present.”²⁴

The foregoing reports inform legal works which, drawing from them, delineate three categories of gender atypical individuals: (1) *al-khunthā al-mushkil* (the ambiguous *khunthā*); (2) *al-mukhannath al-khīlqī* (the congenital *mukhannath*); and (3) *al-mukhannath ghayr al-khīlqī* (the affected, or non-congenital, *mukhannath*). The following sections elucidate this trifurcation.

¹⁷ See Muḥammad al-Saffārīnī, *Ghidhā’ al-albāb fī sharḥ Manzūmat al-Ādāb*, ed. Muḥammad ‘Abd al-‘Azīz Khālīdī, 1 ed., 2 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1417/1996), 2:131-132. See also Sulaymān b. Aḥmad al-Ṭabarānī, *al-Mu‘jam al-kabīr*, ed. Ḥamdī ‘Abd al-Majīd al-Salafī, 1 ed., 25 vols. (Cairo: Maktabat Ibn Taymiyya, 1429/2008), no. 7827.

¹⁸ Ibid.

¹⁹ Hīt is the most common name given for this *mukhannath*, but others have speculated that he was called Māti‘ or Hinb. See ‘Abd al-Raḥmān Ibn al-Jawzī, *Talqīh fuhūm ahl al-athar fī ‘uyūn al-tārīkh wa’l-siyar*, 1 ed. (Beirut: Dār al-Arḥam b. Abī al-Arḥam, 1418/1997), 511.

²⁰ *Ṣaḥīḥ al-Bukhārī*, no. 4069.

²¹ Ibid., no. 663.

²² Abū Dāwūd al-Sijistānī, *Sunan Abī Dāwūd*, ed. Muḥammad b. Ṣāliḥ al-Rājīhī (Riyadh: Bayt al-Afkār al-Dawliyya, n.d.), no. 4928.

²³ Muḥammad b. Yazīd Ibn Mājah, *Sunan Ibn Mājah*, ed. Muḥammad Fu‘ād ‘Abd al-Baqā’, 1 ed., 2 vols. (Cairo: Dār Iḥyā’ al-Kutub al-‘Arabiyya, n.d.), no. 2568 and Muḥammad b. ‘Isā al-Tirmidhī, *Sunan al-Tirmidhī*, ed. Abū ‘Ubayda b. Ḥasan Āl Salmān, 1 ed., 6 vols. (Riyadh: Maktabat al-Ma‘ārif li’l-Nashr wa’l-Tawzī‘, n.d.), no. 1462.

²⁴ See, for instance, Ibn Abī Shayba, *al-Adab*, ed. Muḥammad Riḍā Qahwājī, 1 ed. (Beirut: Dār al-Bashā’ir al-Islāmiyya, 1420/1999), 236, as well as idem, *Muṣannaḥ*, ed. Kamāl Yūsuf al-Ḥūt, 1 ed., 7 vols. (Riyadh: Maktabat al-Rushd, 1409/1988), 5:319.

Of the two phenomena subsumed under the category of ambiguous *khunthā*—absence of genitalia or simultaneous presence of both male and female organs—it is this latter category of physiological androgyny to which the *fuqahā*²⁶ have paid more attention. As previously noted, the principal aim is to arrive at a concrete gender determination despite the presence of both male and female sexual organs. Before puberty, if the ambiguous *khunthā* urinates exclusively from either the male or the female organ, gender is established according to the organ through which the urine passes. Ibn Qudāma (d. 620/1223) cites this as a method agreed upon by scholars (*ajmaʿa kullu man nahfazu ʿanhu*).²⁶ This preliminary step is rooted in two reports. The first is a hadith wherein the Prophet is asked about distributing inheritance to a person with both male and female organs, upon which he instructs that the distribution be carried out in correspondence with “where the urine passes” (*min haythu yabūl*).²⁷ The second report is a response given by the caliph ʿAlī b. Abī Ṭālib, in which he likewise instructs that the distribution of inheritance for one possessing both male and female sexual organs be carried out in accordance with “where the urine passes.”²⁸ The purported hadith of the Prophet is recorded in the *Sunan* of al-Bayhaqī (d. 458/1066) via two separate chains of narration, but its authenticity has been contested. The contemporary hadith scholar Nāṣir al-Dīn al-Albānī (d. 1420/1999) has classified the report as fabricated (*mawḍūʿ*),²⁹ while al-Bayhaqī himself regards al-Kalbī, a key narrator in one of the two chains, as unreliable.³⁰ The second chain relies upon Ibn ʿAdī, a man about whom al-Bayhaqī says, “His chains are among the weakest chains possible.”³¹ Ibn al-Jawzī (d. 597/1200) includes Ibn ʿAdī’s chains in his work on fabrications (*al-Mawḍūʿ ʿat*), elsewhere mentioning that al-Kalbī was a known liar.³² As for the report attributed to Imam ʿAlī, it is recorded in the *Muṣannaḥ* of Ibn Abī Shayba (d. 235/849), and I have not come across any classical works that have questioned its authenticity.³³

²⁶ Ibn Qudāma al-Maqdisī, *al-Mughnī*, 10 vols. (Cairo: Maktabat al-Qāhira, 1388/1968), 6:336.

²⁷ Abū Bakr al-Bayhaqī, *al-Sunan al-kubrā*, ed. Muḥammad ʿAbd al-Qādir ʿAṭā, 3 ed., 11 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1424/2003), 6:427.

²⁸ Jamāl al-Dīn al-Zaylaʿī, *Naṣb al-rāya li-ahādīth al-Hidāya*, ed. Muḥammad ʿAwwāma, 1 ed., 5 vols. (Jeddah: Dār al-Qibla li-l-Thaqāfa al-Islāmiyya, 1418/1997), 4:417.

²⁹ See Muḥammad Nāṣir al-Dīn al-Albānī, *Irwāʾ al-ghalīl fī takhrīj ahādīth Manār al-sabīl*, 1 ed., 9 vols. (Beirut: al-Maktab al-Islāmī, 1399/1979), 6:152.

³⁰ al-Zaylaʿī, *Naṣb al-rāya*, 4:417.

³¹ *Ibid.*

³² *Ibid.*

³³ Ibn Ḥajar al-ʿAsqalānī examines the probative value of transmissions containing the wording “from where the urine passes” in his *Talkhīṣ al-ḥabīr*. In this work, he questions the hadiths that have been mentioned here, but considers this statement of Imam ʿAlī to have a sound

If the urine test proves inconclusive, Sunni *madhhabs* have differed slightly over how then to proceed in determining gender. The majority of jurists accepted secondary examinations in order to ascertain which of the two sexual organs was dominant. This included investigating whether the male or the female organ produced more urine, or in other cases, which discharged urine first.³⁴ Some jurists disagreed with examining the volume of urine if precedence could not be established otherwise, and this is the reported position of Abū Ḥanīfa (d. 150/772) [however, his two principal students, Abū Yūsuf (d. 182/798) and Muḥammad al-Shaybānī (d. 189/805)—known as the “two companions” (*ṣāhibān*) of the school—disagreed].³⁵ The 6th/12th-century jurist Abū Bakr al-Kāsānī (d. 587/1191) regarded this position of Abū Ḥanīfa’s as having been from the “perfection of his *fiqh*.” In his treatment of gender determination, al-Kāsānī includes a report of Abū Ḥanīfa’s displeasure vis-à-vis the variant view of the *ṣāhibān*. When these latter informed their teacher of their position, he retorted, “Have you ever seen a judge weighing urine?”³⁶ Disagreement over urinary volume examination notwithstanding, jurists frequently made use of both sequence and volume as a secondary method for determining gender (with precedence generally being given to sequence). After maturity, scholars differed over which physical development would be regarded as decisive in the event of physiological ambiguities. Some scholars regarded as definitive the form of discharge (seminal or vaginal) released upon arousal, while others took discharge into account alongside features such as the presence or absence of a beard, the size of the breasts, the presence or absence of menstruation, and related indicators. It should be noted that some scholars have also considered sexual attraction (*shahwa*)—in the absence of any form of conclusive biological indicators whatsoever—as a possible indication of gender, though one possessing attraction to both men and women concurrently, or one free of sexual attraction altogether, would remain “ambiguous” (*mushkil*) if no other features were available to establish gender.

Should the above methods fail, the ambiguous *khunthā* remained ambiguous and was not permitted to marry according to the majority of jurists.³⁷ A minority position is

chain of transmission (*isnād ṣāḥiḥ*). See Ibn Ḥajar al-ʿAsqalānī, *Talkhīṣ al-ḥabīr fī takhrīj ahādīth al-Rāfiʿī al-kabīr*, 1 ed., 4 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya: 1419/1989), 1: 355.

³⁴ See Abū Bakr al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ*, 2 ed., 7 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1406/1986), 7:327-330. See also Muḥammad al-Ḥaṭṭāb, *Mawāhib al-Jalīl fī sharḥ Mukhtaṣar al-Khalīl*, ed. Muḥammad Yaḥyā b. Muḥammad al-Amīn al-Shanqīṭī, 1 ed., 7 vols. (Nouakchott: Dār al-Riḍwān, 1431/2010), 6:639-643.

³⁵ al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 7:327-330.

³⁶ *Ibid.*, 328.

³⁷ Ibn Qudāma, *al-Mughnī*, 7:207. See also Muḥammad b. Ṣāliḥ al-ʿUthaymīn, *al-Sharḥ al-mumtīʿ ʿalā Zād al-mustaḥṣin*, ed. ʿUmar b. Sulaymān al-Ḥufyān, 1 ed., 15 vols. (Riyadh: Dār Ibn al-Jawzī, 1422/2002), 12:73.

reported from Imam al-Shāfi‘ī (d. 204/820) allowing the *khunthā* to make a non-retractable gender selection, after which he or she would be required to live by the conventions and abide by the rulings of the chosen gender.³⁸ If physiological gender can be established according to one of the methods mentioned, many current-day *fuqahā’* are of the view that surgery would be permissible to provide a corrective removal of the superfluous sexual organ.³⁹

In summary, Sunni legal schools premise gender determination on the basis of a gender binary—that is, the principle that all individuals are, in essence, either male or female—and that the task at hand with respect to a *khunthā* is determining to which of the two genders he or she properly belongs. The principal means by which this was done in the past was by examining urination, with schools differing over how to adjudicate gender in the event that both organs passed urine. A secondary point of consideration occurred after maturity, when a *khunthā* would be classified as either male or female depending on how he or she developed physically. If any of these methods allowed for discernment, then the *khunthā* would no longer be considered “ambiguous” and instead be ascribed definitively to either the male or the female gender. If the foregoing methods failed to provide clarity, then the *khunthā* would remain “ambiguous” and be considered “agendered,” with marriage—pre-ised intrinsically on the complementarity of the genders—impermissible for such a person.

IV. *al-Mukhannath al-Khilqī* (The Congenital *Mukhannath*)

Unlike the *khunthā*, the *mukhannath* has no anatomical or developmental ambiguities. The *mukhannath* is identifiably and unambiguously male (the conceptual analog to *mukhannath* for a female being the *mutarajjila*), who nevertheless manifests, ineluctably, the mannerisms and affectations of females. These traits may include the pitch of the voice, gait, the involuntary absence of facial hair, and related attributes that may be deemed feminine. The source of this feminine predisposition is considered by the jurists to fall well outside of any reasonable control, with the result that the congenital *mukhannath* is considered blameless insofar as he exhibits traits that are dispositional (*khilqī*) to him and that he has no reasonable ability to change.

³⁸ Badī‘a °Alī Aḥmad, *al-Jawānib al-fiqhiyya al-muta‘alliqā bi taghyir al-jins* (Alexandria: Dār al-Fikr al-Jāmi‘ī, 2011), 117.

³⁹ See, e.g., AMJA Fatwa Committee, “Fatwa-21701 – The Inheritance of a Transsexual Person,” accessed May 4, 2017, <http://www.amjaonline.org/fatwa-21701/info>. This is in contrast to a surgical procedure carried out to modify or remove healthy genitalia as part of a so-called “gender reassignment,” which is prohibited by the consensus of Sunni legal scholars.

In commenting on the hadith of “cursing,”⁴⁰ Imam al-Nawawī (d. 676/1277) states that because this is a “disposition (*khilqa*) upon which God created him,” the congenital *mukhannath* carries “no blame, no rebuke, no sin, and no penalty, and he is excused as he has no hand in that.”⁴¹ Likewise, the Shāfi‘ī jurist al-Shirbīnī (d. 977/1569-70) writes, “Whoever behaves with the affectations of women in his mannerisms and behavior, that is impermissible . . . but if that is his disposition (*khilqa*), then there is no blame.”⁴² Ibn Baṭṭāl (d. 449/1057) states that holding a dispositional *mukhannath* liable for feminine affectations would be akin to holding a person blameworthy for the color of his skin or the shape of his body.⁴³ In his own explanation of the “cursing” tradition, Ibn Ḥajar al-°Asqalānī (d. 852/1449) writes, “Blame for imitating [women] in their speech and gait is specifically for the one who does so deliberately. As for him who, rooted in his created disposition (*min aṣl khilqatihi*), is like that, then he should be ordered to do his utmost to leave his affectations and what he has been habituated to gradually, for if he does not do so and persists in his ways, then he will be subject to blame.”⁴⁴ Unlike Imam al-Nawawī, Ibn Ḥajar asserts an obligation upon the *mukhannath* to endeavor to modify those traits that can, in fact, be normalized. For example, if a man’s walk is effeminate, then perhaps he can correct that through a prolonged attempt at habituating himself to walk without feminine affectations.

The unelected effeminate mannerisms manifested by the congenital *mukhannath* do not, however, give license for him to take on those affectations that are avoidable. While one’s speech or gait may not be the result of conscious volition, the way one dresses or adorns himself is. Accordingly, even the congenital *mukhannath* is barred from adopting the sartorial appearance of women; likewise, the *mutarajjila* is prohibited from taking on the sartorial appearance of men. This may also explain why Imam al-Bukhārī, in his *Ṣaḥīḥ*, places the “cursing” report specifically in the chapter on dress (*kitāb al-libās*).⁴⁵ Aware of the inherent subjectivities corresponding to gender-specific dress codes in different cultures, Ibn Ḥajar mentions that it is indeed possible that a given culture display no difference between the dress of men and women whatsoever. In such a case, Ibn Ḥajar holds that the *mukhannath* would minimally be required to refrain from observing hijab and from covering in accordance

⁴⁰ See section “II: Elucidating Terms,” pp. 4-5 above.

⁴¹ Abū Zakariyyā al-Nawawī, *al-Minhāj fī sharḥ Ṣaḥīḥ Muslim*, 1 ed., 18 vols. (Cairo: al-Maṭba‘a al-Miṣriyya bi’l-Azhar, 1347/1929), 14:164.

⁴² Muḥammad b. al-Khaṭīb al-Shirbīnī, *Mughnī al-muḥtāj ilā ma‘rifat ma‘ānī alfāz al-Minhāj*, ed. Muḥammad Khalīl °Aytānī, 1 ed., 6 vols. (Beirut: Dār al-Ma‘rifa, 1418/1997), 4:573-574.

⁴³ Abū al-Ḥusayn Ibn Baṭṭāl, *Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Abū Tamīm Yāsir b. Ibrāhīm, 1 ed., 10 vols. (Riyadh: Maktabat al-Rushd, 1423/2003), 9:141.

⁴⁴ Aḥmad b. °Alī Ibn Ḥajar al-°Asqalānī, *Fath al-Bārī bi sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Naẓr b. Muḥammad al-Faryābī, 1 ed., 19 vols. (Riyadh: Dār Ṭayba, 1426/2005), 13:381-382.

⁴⁵ *Ṣaḥīḥ al-Bukhārī*, no. 5546, 5547.

with other requirements specific to women.⁴⁶ Likewise, al-Shayzarī (d. 590/1194) states in his manual on market inspection (*ḥisba*) that the *mukhannath*'s beard should not be shaved,⁴⁷ an instruction not altogether uncommon in *ḥisba* works.⁴⁸

Commenting on the hadith of Ḥit, Ibn °Abd al-Barr (d. 463/1071) writes:

Among the jurisprudential [rulings] drawn from this hadith is the permissibility of the *mukhannathūn* entering the company of women, even if they are not their unmarriageable kin (*mahram*). The *mukhannath* for whom remaining in the company of women is not problematic is [the one] known among us today by [the term] *mu'annath* (feminine, effeminate); he is the one who lacks sexual desire for women, nor does he indicate [to others] matters that are [private] to them. This is the *mu'annath mukhannath*, for whom remaining in the company of women is not problematic. But if he comprehends [the distinct] characteristics of men and women as this *mukhannath* (i.e., Ḥit) did in recounting [what he did] in the hadith, then it is not permissible for the women to sanction entry [for such a *mukhannath*] into their assemblies, nor is it permitted for him to enter their company in any way whatsoever. [By comprehending the interactive relations between women and men], he is no longer [considered] from those of whom God has said “the attendants who possess no sexual desire” (Q. *al-Nūr* 24:31). The *mukhannath* is not the one specifically known for committing a (grave) sexual transgression (*fāḥisha*)⁴⁹ and has it attributed to him. Rather, the *mukhannath* is [the one who] possesses acute effeminacy in his disposition to the point of resembling women in his gait, speech, [manner of] looking (i.e., at others), tone of voice, and in his mindset (°*aql*) and behavior, and this is the same whether he possesses the blemish of sexual transgression or not.⁵⁰

⁴⁶ Ibn Ḥajar, *Fath al-Bārī*, 13:381-382.

⁴⁷ °Abd al-Raḥmān b. Naṣr al-Shayzarī, *Nihāyat al-rutba al-ẓarīfa fī ṭalab al-ḥisba al-sharīfa*, 1 vol. (Cairo: Maṭba'at Lajnat al-Ta'lif wa'l-Tarjama wa'l-Nashr, n.d.), 88.

⁴⁸ See, for instance, Muḥammad b. al-Ukhuwwa, *Ma'ālim al-qurba fī ṭalab al-ḥisba* (Cambridge: Dār al-Funūn, n.d.), 156.

⁴⁹ Although Ibn °Abd al-Barr does not expressly use the term sodomy, it is likely that this is a reference to it. See following section entitled “Sexual Relationships for the Congenital *Mukhannath*” for a more detailed treatment of the relationship or lack thereof between effeminacy and sodomy.

⁵⁰ Yūsuf b. °Abd Allāh b. Muḥammad Ibn °Abd al-Barr, *al-Tamhīd li-mā fī al-Muwaṭṭa' min al-ma'āni wa'l-asānīd*, ed. Sa'īd Aḥmad A'rab, 2 ed., 26 vols. (Morocco: Wizārat al-Awqāf wa'l-Shu'ūn al-Islāmiyya, 1410/1990), 22:269-275.

Conspicuous in Ibn °Abd al-Barr's description of the congenital *mukhannath* is his inclusion not only of effeminate mannerisms of gait and speech, but of mindset (°*aql*) as well. Mindset did not figure into the definition of effeminacy for the majority of jurists,⁵¹ who limited their definitions of effeminacy to discrete physical manifestations. Such characteristics included, but were not limited to, effeminate speech, gait, gestures, and related features. In this regard, Ibn °Abd al-Barr's definition of *mukhannath* represents a departure from the norm.

Scholars went to great pains to distinguish the blameworthy, affected character of the non-congenital *mukhannath* from the irreproachable nature of the congenital (*khilqī*) *mukhannath*. Indeed, rarely does a scholar cite the cursing report without making it clear that God's curse is exclusively upon the non-congenital *mukhannath* who has deliberately taken on gender atypical affectations that are not constitutional to his nature. In writing about the congenital *mukhannath*, by contrast, the famous Mālikī jurist Shihāb al-Dīn al-Qarāfī (d. 684/1285) quotes the equally eminent Mālikī scholar Ibn Yūnus (d. 451/1059), who stated that “it is possible that [a *mukhannath*] be upright and God-fearing (*muttaqī*), for there was a *mukhannath* who would enter the home of God's Messenger.”⁵²

The blameless character of the congenital *mukhannath* constituted the basis of a number of legal rulings, some of which are synopsized below.

Sexual Relationships for the Congenital Mukhannath

Jurists often acknowledged, either explicitly or implicitly, a correlation between the behavioral idiosyncrasies of a congenital *mukhannath* related to gait, comportment, and speech, and the possibility—perhaps even the likelihood—that a congenital *mukhannath*'s sexual interest be directed towards members of the same sex. In explaining the hadith of Ḥit, Ibn al-Jawzī writes, concerning the congenital *mukhannath*, “It is said [that they are from] ‘those who possess no sexual desire (*ghayr ulī 'l-irba*),’ meaning, need for women”⁵³—precluding sexual desire for women, but not necessarily for men. Likewise, in his commentary on the same Ḥit report, Ibn Ḥajar writes, “He is called *mukhannath* whether he commits sexual transgression (*fāḥisha*) or not,”⁵⁴ employing the very term for sexual transgression (*fāḥisha*) used in the

⁵¹ In my research I was unable to identify a single scholar echoing the definition furnished by Ibn °Abd al-Barr (with the exception of those who simply cited Ibn °Abd al-Barr's own statement).

⁵² Shihāb al-Dīn al-Qarāfī, *al-Dhakhīra*, ed. Sa'īd Aḥmad A'rab and Muḥammad Ḥijjī, 1 ed., 14 vols. (Beirut: Dār al-Gharb al-Islāmī, 1414/1994), 12:93.

⁵³ °Abd al-Raḥmān Ibn al-Jawzī, *Kashf al-mushkil min ḥadīth al-Ṣaḥīḥayn*, ed. °Alī Ḥusayn al-Bawwāb, 4 vols. (Riyadh: Dār al-Waṭan, 1418/1997), 4:400.

⁵⁴ Ibn Ḥajar, *Fath al-Bārī*, 11:691.

Qurʾān with reference to the people of Lot.⁵⁵ In describing the blameworthy *mukhannath*, the Ḥanafī jurist Badr al-Dīn al-ʿAynī (d. 855/1453) writes, “Al-Qudūrī—may God have mercy on him—states, ‘Do not accept the testimony of the *mukhannath*.’ What is meant by this is the *mukhannath* whose behavior is corrupt, meaning behaving like women in their adornment and dress, imitating them in their actions and speech, and carrying out acts like that of sodomites (*liwāṭa*).”⁵⁶ The Damascene Ḥanafī mufti Ibn ʿĀbidīn (d. 1252/1836) defines the term *mukhannith* (with medial vowel *i* as opposed to *a*, denoting the active rather than the passive participle) as being synonymous with the term *lūṭī*, or sodomite,⁵⁷ though it should be noted that this was a rather uncommon vocalization of the word.⁵⁸

Aside from these inferences of sodomy (*liwāṭ*), it does appear at some point that colloquial use of the term *mukhannath* became synonymous with *maʿbūn*, a term used to describe one who assumes the passive role in male-male anal intercourse. Exactly when this reinterpretation of *mukhannath* assumed idiomatic adoption is difficult to determine, though Khaled El-Rouayheb demonstrates its circulation in both “bawdy-erotic literature” and juristic works, including the writings of the prominent later jurists ʿAlāʾ al-Dīn al-Ḥaṣkafī (d. 1088/1677) and Aḥmad b. Aḥmad al-Dardīr (d. 1204/1786).⁵⁹ Everett Rowson affirms a synonymous usage of the terms *mukhannath* and *baghghāʾ* (a vernacular equivalent of *maʿbūn*) beginning as early as the

⁵⁵ See, for example, *al-Aʿrāf* 7:80.

⁵⁶ Badr al-Dīn al-ʿAynī, *al-Bināya fī sharḥ al-Hidāya*, ed. Ayman Šāliḥ Shaʿbān, 1 ed., 13 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1420/2000), 9:264.

⁵⁷ See here Ibn ʿĀbidīn, *Radd al-muḥtār ʿalā al-Durr al-mukhtār*, 6 vols. (Beirut: Dār al-Fikr, 1992/1412), vol. 4, 69. It should be noted that in *al-Mawsūʿa al-fiqhiyya al-Kuwaytiyya*, this definition is cited from Ibn ʿĀbidīn by way of Ibn Nujaym (d. 970/1563), though Ibn ʿĀbidīn makes no such attribution in his *Radd al-muḥtār*. See *al-Mawsūʿa al-fiqhiyya al-Kuwaytiyya*, Wizārat al-Awqāf waʾl-Shuʿūn al-Islāmiyya, 1 ed., 45 vols. (Cairo: Dār al-Šafwa, 1417/1996), 36:264.

⁵⁸ Many scholars—including those cited in this article—state that the *mukhannath* is explicitly *not* defined by the practicing of a particular sexual transgression (i.e., sodomy), and is instead viewed as an effeminate male on the basis of observable and constitutional features. The late Salafī scholar ʿAbd al-ʿAzīz Ibn Bāz (d. 1420/1999) expressly repudiates what he regards as a modern misconception, namely, that the term *mukhannath* is synonymous with *lūṭī* (sodomite). Additionally, the 18th-century lexicographer al-Murtaḍā al-Zabīdī (d. 1205/1790) writes that the usage of *mukhannath* to refer to an act of sexual indecency was “unknown to the Arabs, is non-existent in their speech, and is not an intended use of the term in *ḥadīth*.” See ʿAbd al-ʿAzīz Ibn Bāz, *Majmūʿ fatāwā Ibn Bāz*, ed. Muḥammad b. Saʿd al-Shuwayʿir, 1 ed., 30 vols. (Mawqīʿ Ibn Bāz, n.d.), 3:369 and al-Murtaḍā al-Zabīdī, *Tāj al-ʿarūs min jawāhir al-qāmūs*, 40 vols. (Dār al-Hidāya, n.d.), 5:241.

⁵⁹ Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: The University of Chicago Press, 2005), 22.

ʿAbbāsīd period.⁶⁰ The famous Arabic lexicographer al-Rāghib al-Iṣfahānī (d. 502/1108) employs the term *mukhannath* in this manner in his belletristic *adab*⁶¹ work entitled *Lectures (Muḥāḍarāt)*. In this work, al-Rāghib records a story of a *mukhannath* who boasts, “We are the best of people, for when we speak, you laugh; when we sing, you delight; and when we sleep, you ride.” Thereafter, this purported *mukhannath* meets an (active-role) sodomite (*lūṭī*) who says to him, “I am better than you, for I am on top (in sexual intercourse) and nearer to the sky,” to which the *mukhannath* responds, “I am humbler than you, being nearer to the ground (i.e., during intercourse as the passive partner, or *maʿbūn*).”⁶²

Despite this development, it is quite clear, given a full accounting of juristic and scholarly writings, that a distinction between congenital and non-congenital effeminacy was maintained, and that moral reprobation was limited to him who took on feminine mannerisms voluntarily (or, in the case of involuntary effeminacy, did not sufficiently work to mitigate those mutable dispositional affects, as per some jurists like Ibn Ḥajar). Colloquial usage only factored in juristically when examining mitigating considerations for suspending a *ḥadd* punishment for slanderous accusation (*qadhf*)—given the socially damaging effects of calling someone a *mukhannath*—or in belletristic literature which held no legal or theological weight to speak of.

Though the sexual attractions of a congenital *mukhannath* may predominate towards the same sex, scholars were unanimous in upholding Islam’s unqualified prohibition of same-sex acts. However, because the *mukhannathūn*—in contrast to the *khunthā mushkil*—are unambiguously male, they are permitted to marry and have sexual relations with females, should they so desire, within the bounds of a religiously sanctioned relationship.

The Imāma of the Congenital Mukhannath

In a tradition recorded in the canonical work of al-Bukhārī, ʿUbayd Allāh b. ʿAdī inquires of the then caliph ʿUthmān b. ʿAffān regarding the *imāma* (or leadership of

⁶⁰ Everett K. Rowson, “The Effeminates of Early Medina,” *Journal of the American Oriental Society* 111, no. 4 (1991), 685-689.

⁶¹ The term *adab* here should not be confused with its colloquial and classical usage denoting moral refinement. In the medieval period, a genre of writings under the heading *adab* comprised works anthologizing poetry, prose, maxims, religious invocations, and more. For a fuller treatment of the subject, see Francesco Gabrieli, “Adab,” in *The Encyclopaedia of Islam*, 2nd ed., accessed June 21, 2017, http://dx.doi.org/10.1163/1573-3912_islam_SIM_0293. See also *Encyclopaedia Britannica*, “Adab,” accessed May 1, 2017, <https://www.britannica.com/art/adab-literature>.

⁶² al-Rāghib al-Iṣfahānī, *Muḥāḍarāt al-udabāʾ wa muḥāwarāt al-shuʿarāʾ*, ed. ʿUmar al-Ṭabbāʿ, 2 vols. (Dār al-Arḳam, 1420/1999), 1:277-278.

the prayer), as prayers were being led by the very people carrying out acts of sedition against the caliphate. In response, °Uthmān advises him to follow others in prayer, because virtuous conduct is worth emulating, and nothing is more virtuous than prayer.⁶³ After the narration concludes, al-Bukhārī cites al-Zuhrī as saying, “In our opinion one should not offer prayer behind an effeminate person (*mukhannath*) unless there is no alternative.”⁶⁴

The use of “*mukhannath*” here by al-Zuhrī is understood to refer to one who has consciously taken on feminine traits, *not* to the one who is congenitally effeminate.⁶⁵ The impermissibility of praying behind a non-congenital, or deliberate, *mukhannath* corresponds to discussions surrounding the permissibility—or lack thereof—of praying behind someone who is morally corrupt (*fāsiq*).⁶⁶ Although many scholars regarded prayer behind such a sinner as reprehensible (*makrūh*), others held it as formally impermissible by default and only permitted it on grounds of necessity. As for the congenital *mukhannath*, his serving as an imam for prayer does not pose any legal difficulties, as there is no moral corruption (*fisq*) associated with his conduct.

Keeping the Company of Non-Mahram Women (Ajnabiyyāt)

A notable dispensation provided by the majority of jurists to the congenital *mukhannath* is the permissibility for him to remain in the company of non-*mahram* marriageable women (*ajnabiyyāt*) whilst unveiled, contingent on the *mukhannath* not possessing any desire (*shahwa*) for women. This permission is rooted in the aforementioned prophetic tradition in which the *mukhannath* Hīt sat in the assemblies of women with the tacit permission of the Prophet. Additionally, the verse in *Sūrat al-Nūr* delimiting specific groups of people in front of whom women are permitted to unveil includes “male attendants who possess no sexual desire (*al-tābi‘īna ghayri ulī ‘l-irbati min al-rijāl*)” (*al-Nūr* 24:31), a reference commonly understood to include congenital *mukhannathūn* amongst others (e.g., the elderly, eunuchs, etc.).⁶⁷ In a number of the Hīt reports, the Prophet’s wife °Ā’isha describes Hīt as having

⁶³ *Ṣaḥīḥ al-Bukhārī*, no. 663.

⁶⁴ *Ibid.*

⁶⁵ See *al-Mawsū‘a al-fiqhiyya al-Kuwaytiyya*, 11:63 as well as 36:267. See also Ibn Ḥajar, *Fatḥ al-Bārī*, 2:578, where Ibn Ḥajar states that al-Zuhrī’s statement is intended for the one who impersonates women deliberately and not the one who resembles women in his mannerisms dispositionally.

⁶⁶ *Ibid.*

⁶⁷ Ibn Qudāma, *al-Mughnī*, 7:104. See also al-Ṭabarī’s *Tafsīr*, in which he cites a report from the Successor °Ikrima (d. 105/723) explaining “attendants who possess no desire” as meaning “a *mukhannath* who does not experience arousal.” Muḥammad b. Jarīr al-Ṭabarī, *Jāmi‘ al-bayān ‘an ta’wīl āy al-Qur‘ān*, ed. °Abd Allāh b. °Abd al-Muḥsin al-Turkī, 26 vols. (Cairo: Dār Hajr li’l-Ṭibā‘a wa’l-Nashr wa’l-Tawzī‘, 1422/2001), 17:270.

been deemed from among those males who “possess no sexual desire (for women).”⁶⁸

A minority of jurists forbade the congenital *mukhannath* from staying in female assemblies, citing the same report concerning Hīt who, after relating the belly folds of one of the women to a man, was thenceforth forbidden from keeping the company of *ajnabiyyāt*. At the conclusion of one of the Hīt reports, the Prophet instructs the women saying, “Do not allow those (i.e., the *mukhannathūn*) to enter into your company.” The use of the third person plural pronoun “those” (*hā’ulā’i*) is interpreted by these jurists as denoting a broader normative proscription, i.e., that the prohibition applies to the *mukhannathūn* as a class and not just to Hīt as an individual—a position held by the Shāfi‘ī⁶⁹ as well as by jurists of the Ḥanafī school.⁷⁰

V. *al-Mukhannath Ghayr al-Khilqī* (The Non-Congenital *Mukhannath*)

Aside from those congenitally predisposed to effeminacy, the category of *mukhannath* includes a second class of people who, unlike the previous group, are not congenitally predisposed thereto but who choose, rather, to adopt such affectations deliberately. In so doing, this second class of *mukhannathūn* are subject to the curse of God as reported in the well-known hadīth, “God has cursed effeminate men and mannish women.”⁷¹ This is because those congenitally predisposed to effeminacy are seen as merely manifesting behavioral patterns that are beyond their conscious

⁶⁸ See, for example, Muslim, *al-Jāmi‘ al-ṣaḥīḥ*, no. 2181.

⁶⁹ See, for example, *al-Bayān fī madhhab al-Imām al-Shāfi‘ī*: “It is not permissible for a eunuch to see the body of an *ajnabiyya*. Ibn Ṣabbāgh stated, ‘unless he be aged and enfeebled such that his sexual desires have gone. And [this is] likewise for the *mukhannath*.’” The eminent Shāfi‘ī jurist Abū al-Qāsim al-Rāfi‘ī (d. 623/1226) reports both the position permitting the *mukhannath* who lacks sexual desire to see *ajnabiyyāt* unveiled, as well as the dominant view reported here. In explicating the dominant position of impermissibility, al-Rāfi‘ī notes in his *al-Sharḥ al-kabīr* that the marriageability of the *mukhannath* factors into the treating of him like any other male (at least in this regard). For details, see Shams al-Dīn al-Ramlī, *Nihāyat al-muḥtāj ilā sharḥ al-Minhāj*, 8 vols. (Beirut: Dār al-Fikr, 1404/1984), 6:187, as well as Abū al-Ḥusayn Yaḥyā b. Abī al-Khayr al-°Imrānī, *al-Bayān fī madhhab al-Imām al-Shāfi‘ī*, ed. Qāsim Muḥammad al-Nūrī, 1 ed., 13 vols. (Beirut: Dār al-Minhāj, 1421/2000), 9:128. See also °Abd al-Karīm b. Muḥammad al-Rāfi‘ī, *al-°Azīz sharḥ al-Wajīz (al-ma‘rūf bi al-Sharḥ al-kabīr)*, ed. °Alī Muḥammad Mu‘awwad and °Ādil Aḥmad °Abd al-Mawjūd, 1 ed., 13 vols. (Beirut: Dār al-Kutub al-°Ilmiyya, 1417/1997), 7:473. Also Abū Zakariyyā al-Nawawī, *Rawḍat al-tālibīn wa ‘umdat al-muftīn*, ed. Zuhayr al-Shāwīsh, 3 ed., 12 vols. (Beirut: al-Maktab al-Islāmī, 1412/1991), 7:23.

⁷⁰ See Muḥammad al-Sarakhsī, *al-Mabsūṭ*, 30 vols. (Beirut: Dār al-Ma‘rifa, 1414/1993), 10:158 and Muḥammad Jamāl al-Dīn al-Rūmī al-Bābartī, *al-°Ināya sharḥ al-Hidāya*, 10 vols. (Beirut: Dār al-Fikr, n.d.), 10:36-37.

⁷¹ *Ṣaḥīḥ al-Bukhārī*, no. 5546.

control—and, therefore, moral agency—whereas those not congenitally *mukhannath* who deliberately take on feminine mannerisms are subject to moral opprobrium on account of their impersonation of gender traits proper to the other sex that are not dispositional to them. Additionally, it was generally understood that many such persons affected effeminacy for the express purpose of carrying out immoral acts, typically as prostitutes offering themselves to other men as the passive partner.⁷²

Scholars classified the non-congenital *mukhannath* as a profligate, and subsumed such persons under the profile of the morally corrupt (*fāsiqūn*). Accordingly, jurists differed over whether one was permitted to pray behind a non-congenital *mukhannath*, admit his testimony in court, eat the meat he slaughtered, or marry upright women to him. To be sure, the act of deliberate effeminacy is no grounds for anathematization (*taḳfīr*) and the non-congenital *mukhannath* indeed remains a Muslim, albeit a sinful one. Moreover, scholars cautioned against using the term *mukhannath* as a derogatory epithet, with the majority of *madhhabs* going so far as to regard it as a slanderous accusation (*qadhf*) categorized under the divinely stipulated *ḥadd* crimes. This classification was rooted in the Prophet’s prescription of twenty lashes for falsely accusing someone of being a *mukhannath*. Aside from a like slur being considered a *ḥadd* offense, early reports indicate that scholars disliked the term’s usage when deployed speculatively, even if done in a non-accusatory context. In one such report, the famous Successor °Aṭā° b. Abī Rabāḥ (d. 115/732) instructed his students to “repeat ritual purification (*wuḍū’*), prayer, and fasting” for having referred to a man with overtly effeminate traits as a *mukhannath* after his departure.⁷³

VI. Conclusions Concerning Gender Nonconformity in Sunni Islam

On the basis of the above discussion, we can make a number of normative assertions concerning Sunni Islam’s position on gender nonconformity:

1. Gender is of two discrete types: male and female.
2. Gender is normatively presumed on the basis of unambiguous biological constitution.
3. In the event of physiological ambiguities, either on account of hermaphroditism or genital agenesis, the Shari°a provides methods by which gender can be established. Should these methods fail, a minority of scholars permit

⁷² See Robert Irwin, “Futuwwa: Chivalry and Gangsterism in Medieval Cairo,” *Muqarnas Online* 21, no. 1 (2004), doi:10.1163/22118993-90000062, 165.

⁷³ Muḥammad b. Ja°far al-Kharā°iṭī, *Masāwi° al-akhlāq wa madhmūmuhā*, ed. Muṣṭafā b. Abī Naṣr al-Shalabī (Jeddah: Maktabat al-Sawādi li°l-Tawzi°, 1412/1992), 316. See also Ibn Abī al-Dunyā, *al-Ṣamt wa ādāb al-lisān*, ed. Abū Ishāq al-Ḥuwaynī, 1 ed. (Beirut: Dār al-Kitāb al-°Arabī, 1410/1989), 126.

the ambiguous individual to make a non-revocable gender selection, after which he or she is treated in accord with the gender chosen, while the majority continue regarding the individual as “ambiguous” (*mushkil*) and consider marriage impermissible for such a person.

4. Mannish behavior (for women) and effeminate behavior (for men) are impermissible if taken on deliberately. If, however, effeminate behavior manifests in a male dispositionally (*khilqatan*)—hence lying outside of his conscious control—then those (unelected) mannerisms are not deemed sinful. The effeminate male (*mukhannath*) is required, by some jurists, to attenuate to the extent possible those traits—such as gait, voice, and other mannerisms—that may be liable to correction through conscious habituation.
5. If male effeminacy is paired with an absence of sexual desire for women, then the effeminate male is permitted to remain in the private company of marriageable non-*maḥram* women (*ajnabiyyāt*) according to the majority of scholars. This permission is contingent on the effeminate male upholding the confidentiality of the women in question, not divulging the specifics of their physique to unrelated men.
6. Aside from the specific permission to enter into the company of non-*maḥram* women, a constitutionally effeminate male (*al-mukhannath al-khilqī*) is regarded and treated as a man in all other respects, subject to the same Shari°a rulings that would apply to any other male. Accordingly, he may lead prayer, testify and bear witness as a man, and marry a woman if he so desires. Conversely, he is required to refrain from *liwāt* (sodomy) and other forbidden sexual acts, even if his lack of desire for women is accompanied by a persistent inclination towards men.
7. It is categorically impermissible for either a male or a female to dress in a manner that conclusively imitates the opposite sex. If men and women in a given culture dress in ways that are indistinguishable, then men must at least abstain from veiling and from covering in other ways that are specific to women.

In light of the normative Islamic categories, prescriptions, and proscriptions examined above, Part II of this study will consider contemporary discourses surrounding the issue of gender identity (in comparison to biological sex), gender roles, and transgenderism with a focus on the multifarious ways in which modern discourses surrounding these topics can or cannot be accommodated given the legal, ethical, and moral boundaries established by the Shari°a.

And Allah knows best.

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