FATWAS AND FAGS: VIOLENCE AND THE DISCURSIVE PRODUCTION OF ABJECT BODIES

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A recent New York Times article sports the headline, *Iraq's Newly Open Gays Face Scorn and Murder*, and describes the violent backlash against the growing "gay subculture" that arose in the wake of the United States's security interventions in Iraq.[1] Such rhetoric establishes gay as a nascent community, rendered undeniably visible by violence and threats of physical harm. This visibility is typified by the political work of Iraqi LGBT, an Iraqi-led United Kingdom based organization that advocates for equal rights within Iraq.[2] Although activist discourses express outrage that the killings remain largely unaddressed in spite of democratic rule, violence is not actually incongruous with the current juridico-democratic structures installed by the United States in Iraq.

In 2005, Ayatollah Sistani, an independent religious scholar with a considerable base of Shiite supporters in Iraq, issued a fatwa on his website, www.sistani.org, that condemned *al-lowat*, a term later translated by activist groups and news media as "homosexual" or "gay."[3] The fatwa, an interpretation of the Qur'an and the Prophet Muhammed's teachings, has the potential to define everyday practices and modes of being for that religious leader's followers. Although any Muslim can technically follow any fatwa, the norms and practices of their particular community will

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[1] Timothy Williams & Tariq Maher, *Iraq's Newly Open Gays Face Scorn and Murder*, N.Y. TIMES, Apr. 8, 2009, at A1.

[2] About, IRAQI LGBT, http://iraqilgbt.org.uk/about/ (last visited Nov. 15, 2010).

[3] Sistani Removes 'Death Fatwa' to Gays, IRAQI LBGT (May 12, 2006, 21:54 GMT) http://iraqilgbtuk.blogspot.com/2006/05/ sistani-removes-death-to-gays-fatwa.html.

determine whether they carry it out.[4] While Western media gravitated toward this fatwa as the primary cause of the violence directed against homosexuality, Human Rights Watch, which recently published an extensive report on the violence, could find no direct causal link between the fatwa and the violence.[5] The report acknowledges that in late 2005, the website, which showcased the fatwa in question in this Article, responded to a question asking "what is the judgment for sodomy?" by calling it forbidden and calling for punishment.[6] However, the report relates that "[The fatwa] received little or no notice in the Iraqi press."[7] Rather, the report cites testimony that attributes the predominance of the violence to the Mahdi Army who "[turned] its attention at irregular intervals since 2004 to what it saw as sexual immorality in Iraq."[8] In the case of contemporary Iraq, both Sistani's religious exegesis and the Mahdi Army's rhetoric reflect a trajectory of conservative morals around sexuality that emerged with the rise of Islamism in the late 1970's and which came about as a result of the Iranian Islamic Revolution.[9] However, religious rhetoric cannot simply bear the responsibility for propagating violence. Instead, such rhetoric reflects what Raymond Williams termed "structures of feeling" or affect: tropes of emotion that inhabit and reflect lived experiences.[10] In Williams's estimation, structures of feeling, rather than world view or ideology, are concerned with "meanings and values as they are actively lived and felt."[11] The fatwa, rife with its condemnation of homosexuality, was issued in the political and juridical context of the Iraqi democratic transition. In this environment, the fatwa's very rhetoric operates affectively to produce and regulate anxieties around sexuality, morality and national identity.

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[4] *See* HUMAN RIGHTS WATCH, THEY WANT US EXTERMINATED: MURDER, TORTURE, SEXUAL ORIENTATION AND GENDER IN IRAQ 47–48 (2009), *available at* http://www.hrw.org/sites/default/files/reports/iraq0809web.pdf.

[5] *See id.* at 5.

[6] *Id.* at 48.

[7] *Id.*

[8] *Id.*

[9] JOSEPH MASSAD, DESIRING ARABS 192 (2007).

[10] RAYMOND WILLIAMS, MARXISM AND LITERATURE 128–35 (1978).

[11] *Id.* AT 132.

The fatwa's language effectively claims that same-sex sexual relations are destabilizing to family, kinship and the nation, thus establishing an ideal that must be rigidly maintained. [12] In response to one man's plea asking why gays in particular were being targeted, the torturers responded: "[Gays] work with the Zionists, with the Americans. They are spies. We need to get rid of them. God sent us from heaven to make everything good, to reform society. We're killing gays getting rid of them to make society clean from bad things."[13] Gays were therefore symbolically standing in for a collective threat against a unified Iraqi ideal. In her book, *Excitable Speech*, Judith Butler traces the relationship between subject formation and language and asks, "Is our vulnerability to language a consequence of our being constituted within its terms?"[14] If we consider ourselves to be formed within and through language, then legal discourses operate to define subjects as subjects of the law. However, to understand how a religious fatwa can be interpreted as legitimate legal code, we must trace the very language deployed by the fatwa.

A genealogy of homosexuality that traces the relationship between rhetorical instances of the term—in news media and in legal code—as well as the violence that is inflicted on gays, can account for the way discourses of knowledge can render certain bodies killable within a democratic state.[15] In this Article, I contextualize Ayatollah Sistani's fatwa within Iraq's juridico-democratic transition and analyze the fatwa's efforts to mobilize religious discourse and state institutions to carry out its violent mandate. Following this close reading, I study the fatwa's material effects, including

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[12] In Frantz Fanon's eloquent estimation, "violence alone, violence committed by the people, violence organized and educated by the people's leaders, makes it possible for the masses to understand social truths and give the key to them." FRANTZ FANON, THE WRETCHED OF THE EARTH 118 (Penguin Books 1965) (1961).

[13] Matt McAllester, *The Hunted*, N.Y. MAG., Oct. 12, 2009, at 24.

[14] JUDITH BUTLER, EXCITABLE SPEECH 2 (1997). For more on the relationship between subject formation and language, see FRANZ FANON, BLACK SKIN WHITE MASKS 109–40 (1967); Louis Althusser, *Ideology and Ideological State Apparatuses*, *in* LENIN AND PHILOSOPHY 127, 170–86 (Ben Brewster trans., 1971).

[15] Here, and throughout this paper, I rely on Michel Foucault's term "killable" as it is employed within a bio-political model of society. A body is killable when the mechanisms of society are oriented to make certain bodies live in a certain way, while other bodies are allowed to die. *See* MICHEL FOUCAULT, SOCIETY MUST BE DEFENDED 239–63 (Mauro Bertani et al. eds., David Macey trans., 1997) [hereinafter FOUCAULT, SOCIETY]; MICHEL FOUCAULT, THE HISTORY OF SEXUALITY, VOL. I: AN INTRODUCTION 135–59 (1990) [hereinafter FOUCAULT, HISTORY OF SEXUALITY].

the physical violence it propagates and how such rhetoric ultimately shapes an identity politics for those targeted homosexual and transgender people.

I. IRAQ: THE STATE OF VIOLENCE

A report issued in 2006 by the United Nations Assistance Mission in Iraq (UNAMI) highlights the systematic targeting of homosexuals.[16] The report claims that though homosexuality is not condoned in Iraqi society, "homosexuals are protected under Iraqi law."[17] Very few statistics have been collected on the killing of these homosexuals and much of the reporting is anecdotal. The report relates that at least five homosexual men were kidnapped from the Shaab area, while:

> Attacks on homosexuals and intolerance of homosexual practices have long existed [. . .] they have escalated in the past year. The current environment of impunity and lawlessness invites a heightened level of insecurity for homosexuals in Iraq. Armed Islamic groups and militias have been known to be particularly hostile towards homosexuals, frequently and openly engaging in violent campaigns against them.[18]

According to Iraqi LGBT, twenty-six of their members have been killed, including two minors—eleven-year-old Ameer and fourteen-year-old Ahmed—who were murdered in 2006.[19] They were killed "because of their alleged sexual orientation even though both were reportedly forced into child prostitution."[20] Two other women were killed in Najaf, "also because of their alleged sexual orientation."[21] According to an account by Hassan, a member of the activist organization, sixty-three members of Iraqi LGBT have been tortured by militias.[22]

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[16] United Nations Assistance Mission in Iraq [hereinafter UNAMI], *Human Rights Report 1 November–31 December 2006* (Jan. 16, 2007), *available at* http://www.uniraq.org/FileLib/misc/HR% 20Report%20Nov%20Dec%202006%20EN.pdf.

[17] *Id.* at 26.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 26–27.

[22] Iglhrc, *Iraq: Torture, Cruel, Inhuman and Degrading Treatment of LGBT People*, INT'L GAY AND LESBIAN HUMAN RIGHTS COMM'N (Apr. 20, 2009, 13:37 EST),

More recently, a news report in a United Arab Emirates paper, *Al Arabiya*, describes the depth of involvement that religious organizations have had in the killings. A recently instated militant organization, *Ahl al-Haq* (the Followers of Truth) circulated several lists in the city to advocate the murder of homosexuals, describing them as prostitutes.[23] Furthermore, while attacks have been particularly numerous in Shiite neighborhoods such as Hurriya, So'la and Sadr in Baghdad, many Sunni clerics have also instituted their own injunctions against homosexuality on Iraqi television.[24]

In addition to this religious sanction of violence, the state police have had little accountability. While police officials and members of the Interior Ministry condemn the extra-judicial killing of citizens as punishable by law, few proactive efforts to identify and eliminate the violence have been made[25]. Khalaf Abdul Hussein from the Legal Affairs Office at the Police Station in Sadr City told Al Arabiya:

> We, like everyone else, have heard rumors about these cases, but we can't comment on something that is not evidence, and there is no evidence for these crimes either in terms of motivation or in terms of the nature of the criminal acts. We do not know the motives of the killers and we do not know the intentions of those killed.[26]

This quote lies in distinct contrast to the systematic form that the torture has taken on, ranging from lacerations and gunshots to the Iranian gum technique, which a prominent Iraqi human rights activist describes as:

> [T]he *Ameri* gum, which is an Iranian-manufactured glue that if applied to the skin, sticks to it and can only be removed by

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http://iglhrc.wordpress.com/2009/04/20/iraq-torture-cruel-inhuman-and-degrading-treatment-of-lgbt-people/ [hereinafter IGLHRC]. For the original Arabic version of the article, see Hayyan Neyuf & Ali Al-Iraqi, *Bodies of 7 Gays in Baghdad Morgue,* AL ARABIYA (Apr. 20, 2009), http://www.alarabiya.net/saveprint.php? print=1&cont_id=71071.

[23] *Id.*

[24] *Id.*

[25] *Fears over Iraq gay killing spate*, BBC NEWS ONLINE (Apr. 13, 2009), http://news.bbc.co.uk/2/hi/7996487.stm. For anecdotal evidence provided by Iraqi LGBT, see *Terror Campaign Against Lesbian, Gay, Bisexual and Transgender Iraqis Continues Unchecked by Iraqi Government,* IRAQI LGBT (Nov. 15, 2009, 23:49 GMT), http://iraqilgbtuk.blogspot.com/2009/11/terror-campaign-against-lesbian-gay.html.

[26] *Id.*

> surgery. After they glue the anuses of homosexuals, they give them a drink that causes diarrhea. Since the anus is closed, the diarrhea causes death. Videos of this form of torture are being distributed on mobile cellphones in Iraq.[27]

In spite of claims by state-sponsored police that the violence directed against homosexuality is isolated and anecdotal, the actual form of that violence, as with the *Ameri* gum technique, systematically targets embodied signifiers of sexuality, including genitalia. The disjuncture between official rhetoric and instances of physical harm reflects a dynamic interplay between the tortured bodies of homosexuals and transgender targets and configurations of national identity filtered through juridical and legal systems.

II. RELIGIOUS RHETORIC AND IRAQI LAW: BODIES THAT MATTER AND BODIES THAT DON'T

Within Iraq's legal milieu the tenuous rights of individuals who engage in same-sex sexual practices are regulated by ad hoc tribunals and state police involvement. The International Lesbian, Gay, Bisexual, Trans and Intersex Association's report, "State-Sponsored Homophobia- A World Survey of Laws Prohibiting Same Sex Activity Between Consenting Adults" states:

> Iraq reinstated the Penal Code of 1969 after the American invasion in 2003. The Penal Code does not prohibit sexual activities between consenting adults of the same sex. However, as the country is under war, and law enforcement is not functioning properly, death squads operate in the country, killing homosexuals.[28]

The United Nations High Commissioner for Refugees (UNHCR) further corroborates how a state of impunity in Iraq establishes consensual homosexual conduct between adults as a crime in spite of Iraqi law.[29]

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[27] *Id.*

[28] Rex Wockner, *Polis: Iraqi LGBT Executions Have Begun*, GAY & LESBIAN TIME, Apr. 23, 2009, *available at http://www.gaylesbiantimes.com/?id=14499.*

[29] UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES [hereinafter UNHCR], ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF IRAQI ASYLUM-SEEKERS, 193–95 (2009), *available at* http://reliefweb.int/rw/RWFiles 2009.nsf/FilesByRWDocUnidFilename/EGUA7RYS5Afull_report.pdf/$File/full_report.pdf.

Homosexual conduct is mentioned only in paragraph 393 of the 1969 Iraqi Criminal Code, which continues to be enforced, under the title, "Rape, Homosexual Acts (*Liwat*) and Assault on Women's Honor (*Hatk el 'Ard*)."[30] It reads, "Any person who has sexual relations with a woman against her consent or has homosexual relations with a man or a woman without his or her consent is punishable by life imprisonment or temporary imprisonment."[31] In addition to this particular law, other general provisions offer great leeway to both state-sanctioned police and armed militias:

> • Paragraph 401 punishes "Any person who commits an immodest act" [*fi'lan moukhillan bil haya*] in public with up to six months in prison.
>
> • Paragraph 402 punishes "any person who makes indecent advances to another man or woman" [*man talab oumouran moukhalifa lil aadab*] with up to three months in prison.
>
> • Paragraph 501 punishes "any person who washes themselves in a city, town or village in an indecent manner or appears in a public place in an indecent state of undress" by up to 10 days' detention or a fine.
>
> • Paragraph 502 imposes the same punishment on "any person who loiters in a public place or observes such a place with indecent intent or for an indecent purpose."[32]

This disjuncture between the legal code, official rhetoric and the material violence on the ground complicates precisely who, or rather *what* is targeted. Rather than targeting homosexuals, the violence, in all its forms, effectively identifies homosexual *bodies*. For Michel Foucault, sexuality became codified as a field in the nineteenth century because it could operate as a corporeal, therefore individualizing force that disciplined bodies[33]. According to Foucault, "the notion of 'sex' made it possible to group together, in an artificial unity, anatomical elements, biological functions,

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[30] PENAL CODE Law No. 111 (Iraq), *available at* http://www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=120120012516407&PageNum=20.

[31] *Id.* For the English translation, see HUMAN RIGHTS WATCH, *supra* note 4, at 27; *see also* CRIMINAL CODE: LAW NUMBER 111 OF 1969 AND ITS AMENDMENTS (Nabeel Abdelrahman Hiyawi, ed., 3d ed. 2008).

[32] *Id.*

[33] FOUCAULT, HISTORY OF SEXUALITY, *supra* note 15, at 154–55.

conducts, sensations and pleasures."[34] Paragraphs 393, 401, 402, 501 and 502 knit the body, actions and indecency, including indecent use of the body, indecent exposure of the body and indecent relations between bodies. Such laws set a precedent for codifying violence in response to indecency.

In addition to this individualizing imperative, sexuality came to possess a procreative function that was concerned with "the multiple unity of the population."[35] Throughout this Article, the use of the term "body" accounts for the targets of violence, without taking for granted a singular or unified identity that is the "subject" of this violence. The body operates as a site in which material difference is monitored, regulated and enacted. "Bodies" in turn reference the role that violence plays in grouping the bodies targeted into a massified population.

The very discourse of homosexuality in Iraq is complicated by the fact that news and research reports translate relevant terms from Arabic into English. A discourse in which terms like *mithliyya*, *mishliyaat* and *jins* become "homosexuality" and "gay" reflects a rhetorical paradigm that renders the violence in terms comprehensible to English-speaking audiences. Despite multiple Arabic reference points, the bodies that are rendered homosexual or gay in these reports become legible within a neoliberal paradigm of identity politics.[36] The Human Rights Watch report, *They Want Us Exterminated,* reported on the usage and transmission of this vocabulary:

> All the survivors we interviewed told us they first heard 'gay' with that purport after the US invasion in 2003. Most said it had come to Iraq through the Internet or Western media, particularly TV and films. Its use cuts across classes: a doctor and a high-school dropout each employed it in talking to us about themselves. The men integrated the English word seamlessly into Arabic speech. The recent deployment in Arabic of mithli (plural mithliyeen) as a neutral, non-condemnatory equivalent of 'homosexual' in English has not taken strong root in Iraq. Most of the men, if they were familiar with it at all, said it was rare. 'All of us use 'gay' among ourselves, never mithli,' a gay hospital employee told us. 'Even doctors in speaking to each

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[34] *Id.* at 154.

[35] FOUCAULT, SOCIETY, *supra* note 15, at 251.

[36] Terms, including "Jinnsiyyah, jins, mithliy, suhaq," among others, toggle between historical use and contemporary parlance. *See* MASSAD, *supra* note 9, at 37, 126, 172, 179, 416.

> other won't use the Arabic word for it—they'll sometimes say 'homosexual' in English.'[37]

While the report stresses that "desires, erotic acts or emotional relationships between people of the same sex" existed prior to the importation of these terms, I would like to focus on the phenomenon not as a foreign inclusion, but to address the productive and performative power of the transmission of language.[38] The political resonance of these English language terms situates Iraqis targeted for same-sex sexual behavior or gender nonconformity within a history of sexuality bound to sexual liberation.[39] For Foucault, language and discourse operate by sustaining certain forms of knowledge at the expense of others.[40] Situated within these structures, such knowledge forms must be investigated through genealogical means, a practice that illuminates how certain truths come to be understood within a historical context.[41] In the case of the violence occurring in Iraq, this genealogical method tracks the shift in targeted violence that occurred in the wake of a 2005 fatwa condemning *al-lowat*, another Arabic euphemism for gay or homosexual. The presence of this term operates differently from other terms, because it alludes to the tribe of Lot and their failure to abide by sexual mores, a fact most resonant in Joseph Massad's *Desiring Arabs* (where the term also denotes the act of sodomy).[42] In the next section, I investigate the relationship between the term *al-lowat* and religious discourse to reveal how bodies and Iraqi juridical law become concatenated with identity formations.

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[37] HUMAN RIGHTS WATCH, *supra note 4, at 9.*

[38] *Id.*

[39] For a historical account of LGBT politics, see generally GEORGE CHAUNCEY, GAY NEW YORK: GENDER URBAN CULTURE AND THE MAKING OF THE GAY MALE WORLD 1890–1940 (1994); JOHN D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES 1940–1970 (1983). For critiques of neo liberalism, homonormativity and queer politics, see LISA DUGGAN, THE TWILIGHT OF EQUALITY?: NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY (2003); JASBIR PUAR, TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES (2007).

[40] *See* MICHEL FOUCAULT, ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES 199–211 (Routledge 2d ed. 2001) (1970); MICHEL FOUCAULT, THE ARCHAEOLOGY OF KNOWLEDGE AND THE DISCOURSE ON LANGUAGE 1–17 (A.M. Sheridan Smith trans., 1972) [hereinafter FOUCAULT, ARCHAEOLOGY].

[41] For more on genealogy as a mode of interrogating history, see FOUCAULT, ARCHAEOLOGY, *supra* NOTE 40.

[42] MASSAD, *supra* note 9, at 108.

term *al-lowat* and religious discourse to reveal how bodies and Iraqi juridical law become concatenated with identity formations.

III. SEXUALITY AND RELIGIOUS EXEGESIS: FROM FAMILY TO STATE

Tracing the term "homosexual" through the recent violence locates it within Ayatollah Sistani's interpretation of Islamic law. The fatwa was taken down from this prominent Shiite cleric's website amidst criticism from Western activist organizations.[43] Currently, a screenshot of the fatwa can be located on Iraqi LGBT's website, http://iraqilgbtuk.blogspot.com, which replaces the term *al-lowat* (one that recurs throughout the fatwa) with "homosexuality" and "homosexual."[44] I do not wish to take for granted these terms as stable identity markers, but instead seek to investigate their power to perform and inscribe difference, rendering certain bodies killable. To do so I shall investigate how bodies are implicated in the production of violence vis-à-vis intimate acts of same-sex relationality, as with instances of rape or the use of the *Ameri* gum. Rather than simply pin down a meaning for the term homosexuality and further subjugate certain bodies, I wish to recast the grammar of intimacy in order to offer other modes of conviviality rooted in negativity and negation. It is not sufficient to merely recuperate the negative valence of terms like "homosexuality" in Iraqi discourses, but rather to explore what sort of work that negativity engenders within Iraq and elsewhere.

The anxiety around homosexuality extends from the family sphere to the state, to troubled notions of state citizenship and national belonging. In her analysis of the role of women in Iraqi reconstruction, Nadje Al-Ali describes the way women participate in nationalistic processes. Women, and by extension their families, signify ethnic and national group identity by reproducing the boundaries of those groups and participating in the biological reproduction of members of those groups.[45] In Iraq, women were historically encouraged to replace the male work force that had been depleted during the Iran-Iraq war between 1980 and 1988 as well as encouraged to "'produce' more Iraqi citizens and future soldiers. The

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[43] HUMAN RIGHTS WATCH, *supra* note 4, at 48.

[44] Sistani, *supra* note 3.

[45] *See* Nadje Al-Ali, *Reconstructing Gender: Iraqi Women Between Dictatorship, War, Sanctions and Occupation*, 26 THIRD WORLD Q. 739, 741 (2005); NIRA YUVAL-DAVIS & FLOYA ANTHIAS, GENDER, NATION, STATE (1989).

greatly from the ideal propagated by the fatwa. Not only do many multi-family households have at least one widow, Al-Ali also highlights a 2003 United Nations Children's Fund (UNICEF) report that reveals nearly sixty percent of households in Basra were headed by women in 2003.[47] Despite these non-normative family structures, tribal rhetoric and questions of honor and family shame remain pervasive. The Human Rights Watch report states, "The pressure to 'be a man' begins at home. Violence enforces it. Many we spoke with pointed to the intense patriarchal values of tribal structures, in which each member's conduct can inflect the status of the entire extended unit."[48] Saddam Hussein's regime, particularly in the wake of sanctions after the 1991 invasion of Kuwait, nurtured tribal hierarchies. [49] In fact:

> Saddam's regurgitated version of tribal legal principles took possibly its most damaging form in 1991, when he amended the Criminal Code to read (in paragraph 128) that "The commission of an offence with honorable motives or in response to unjustified and serious provocation by a victim of an offence is considered a mitigating excuse." This provision is still in place.[50]

Testimony by Sheik Salal Al-kaabi, one of the elders of Sadr City reflects the privileged position that honor killings have in Iraqi penal code: "[W]e have heard that the tribes, to whom these perverts belonged, declared their lives worthless and allowed their death."[51] Each member of the family, both men and women, bears responsibility for sustaining the nation by upholding family honor. This rhetoric underscores that the violence committed against bodies deemed homosexual effectively reorients relationships within normative Iraqi kinship structures. Addressing these terms as a form of bodily capacity considers not only the body's ability to *be* homosexual, but also its capacity to produce meaning for the family and for the Iraqi nation.

Ayatollah Sistani's fatwa does not merely function as religious exegesis; it violently enacts the law, and in doing so, actually fulfills state goals for securitization. Violence represents the instrumental means by

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[47] *Id.* at 749.

[48] HUMAN RIGHTS WATCH, *supra* note 4, at 44.

[49] *See* Faleh A. Jabar, *Shaykhs and Ideologues: Detribalization and Retribalization in Iraq, 1968–1998*, MIDDLE E. REP., Summer 2000, at 28.

[50] HUMAN RIGHTS WATCH, *supra* note 4, at 42.

[51] IGLHRC, *supra* note 22.

which power can be mobilized and deployed toward a fixed end.[52] Though violent means often entail physical violence, violence in the Iraqi context operates by wresting power from others to sustain one's own community. For Sistani, to violently enact the law is to seize hold of the mechanisms of governance over a population, a particularly noteworthy point considering the fatwa was issued in the wake of significant democratic transition.

IV. A STATE IN TRANSITION: VIOLENCE AS THE BASIS FOR PEACE AND SECURITY

Samera Esmeir's work on the juridico-democratic transition in Iraq underscores such instrumental use of violence as a means toward eradicating any other forms of violence that threaten security.[53] For Esmeir, the juridical is the primary organizing force in post-Cold War era transitions to democracy, and such juridical structures are tasked with maintaining security institutions that uphold "world peace."[54] Esmeir follows Foucault's notion of war as a productive force that mediates amongst different relations of power.[55] Foucault reverses Carl von Clausewitz's aphorism to argue that "politics is the continuation of war by other means."[56] Power in this mode is exercised in institutional mechanisms rooted in government. The means by which the United States occupied Iraq, while not an official declaration of war, drew on the rhetoric of the "War on Terror" to justify protecting and upholding democracy in the United States and within Iraq. In this context, the mechanisms used to secure a country do not simply replace previous forms of the law in Iraq. Rather, specific security mechanisms violently enforce juridical code to normalize individual bodies in order to

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[52] For a thorough engagement of the instrumental force that violence takes on, see HANNAH ARENDT, CRISES OF THE REPUBLIC 103–84 (1972). While Arendt describes violence as a force that is not natural, I have demonstrated ways in which it can be considered ontological by way of naturalized power relations.

[53] *See* Samera Esmeir, *The Violence of Non-Violence: Law and War in Iraq*, 34 J.L. & SOC'Y 99 (2007).

[54] *Id.* at 101.

[55] *Id.* at 107.

[56] MICHEL FOUCAULT, *Two Lectures*, *in* POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–1977 78, 90 (Colin Gordon ed., Colin Gordon et al. trans., 1980).

regulate the population as a whole.[57] In the Iraqi context, such normalization demands that individual bodies become massified to fulfill neoliberal notions of peace, or risk being perceived as a destabilizing threat to the social order. In this manner, the cycle of violence wages on, since peace is possible only after threats are eliminated through these violent means. While democracy's claims for peace seem to contradict the current state of affairs in Iraq, violence effectively becomes the basis for securing the nation. Efforts by the United States to install rule of law, draft a constitution and install protections for human rights sustain a cycle of brutality by codifying violence as the necessary short-term response against threats to state security.[58]

The juridical structures in Iraq, including legal code and religious jurisprudence, sustain violence as the necessary means to security. The second article of the Iraqi Constitution asserts that "Islam is the official religion of the State and is a foundational source of legislation."[59] Iraq's recently enacted constitution installs Shariah law, a legal framework based on Islamic jurisprudence and Quranic exegesis that sanctions religious fatwas. Although research by Södertörn University in Stockholm indicates that the extent to which actual state laws uphold Sharia is still in dispute,[60] such ambiguity provides Sistani's fatwa with great leverage within Iraq to mobilize a community of followers and establish authority using religious discourse. The tenuous connection between the state's legal code and individual party affiliations means that religious exegesis can produce a particular idea of how the state's juridical structures may operate. Consequently, the very language of the constitution opens up the possibility for religious exegesis to take form as legitimate coda. Sistani's rhetoric mobilizes preexisting structures of power within the Iraqi government and civil society to achieve this goal of legitimacy. In doing so, they gain control of the coalition government's stated intentions for democratic rule and peacemaking and configure those goals to suit their own ends. As such, the fatwa does not simply operate as an ideological apparatus that maps

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[57] *See* MICHEL FOUCAULT, SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLEGE DE FRANCE 1977–1978, 11 (Michel Senellart et al. eds., Graham Burchell trans., 2007).

[58] *See* Esmeir, *supra* note 53.

[59] IRAQI CONSTITUTION §1, art. 2, *available at* http://www.uniraq.org/documents/iraqi_constitution.pdf (official translation).

[60] Basam al-Shara'a, *Baghdad Gays Fear for Their Lives*, IWPR (Nov. 3, 2006), http://www.iwpr.net/report-news/baghdad-gays-fear-their-lives.

difference, but effectively determines who can be a viable member of Iraqi society and who is deemed threatening to the security of the state.

V. SISTANI'S FATWA: PERFORMING DIFFERENCE, ENACTING VIOLENCE

The fatwa's rhetoric locates the boundaries and conditions for belonging within intimate kinship structures. The fatwas were issued on Sistani's website and posed as a series of questions,[61] a rhetorical frame that mobilizes an affiliative audience invested in Sistani's authority.[62] The question and answer format mirrors an exchange that could happen between a religious leader and his follower. This rhetorical frame is significant because it lends power to the speech that is uttered. Following J.L. Austin and Judith Butler's discussion of the performativity of language, a speech act is efficacious and can produce material change in both speaker and listener when the circumstances and the relationship between speaker and listener are conditional (as in the case of a judge, who utters a condemnation and thus sentences a prisoner).[63] The legal effect of this utterance enables language to assume a dynamic function and actually *perform*. The fatwa's structure subsumes the reader within a subservient role to the questioner's religious authority.

The first two inquiries of the fatwa define the homosexual in relation to the family unit and within Iraqi society; the third defines homosexuality as a term;[64] the final two questions demand judgment.[65] The first question asks whom the homosexual may marry after committing homosexual acts, while the second differentiates between differing forms of homosexuality before and after adulthood.[66] The terms of adulthood and

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[61] The text of the rhetorical frame used to be available via Sistani's website athttp://www.sistani.org/html/ara/main/index-istifta.php?page=4 =ara&part=4, but has been removed. For a reposted image of what was previously posted on Sistani's website, see al-Uzma Seyyid Ali al-Sistani, Sistani Fatwa, http://photos1.blogger.com/blogger/6771/1563/1600/sistani-fatwa.jpg (last visited Jan. 28, 2010) [hereinafter al-Sistani].

[62] *Id.*

[63] *See* J.L. AUSTIN, HOW TO DO THINGS WITH WORDS (J.O. Urmson & Marina Sbisa eds., 1975); BUTLER, EXCITABLE SPEECH, *supra* note 14, at 17.

[64] al-Sistani, *supra* note 61.

[65] *Id.*

[66] *Id.*

marriage are fraught with familial structures of kinship and these very intimacies define the individual and structure their role within Iraqi society. The fatwa equates homosexuality with a transgression of these key kinship structures. Since the family is the symbolic foundation of Sistani's Islamic state, the fatwa's rhetorical force lies in its ability to seize control of the state apparatus vis-à-vis the family.[67] The fatwas emphasize that these family units must be protected from any perceptible threat.[68] Regulating the family in this manner represents Sistani's effort to control the means by which normalized bodies can be reproduced.

In Sistani's fatwa the term *al-lowat* is derived from the Qur'an, and marks the boundary between what is permissible and what is punishable for an individual and a society as a whole.[69] *Al-lowat* denotes a member of the tribe of "Lot," and the fatwa taps into sharia law to invoke negative valences of the Qur'an's treatment of homosexuality to underscore the fact that homosexuality can be historicized, and is therefore material and punishable.[70] Homosexuality is produced in the fatwa as a tangible element that can be regulated, as opposed to an abstract condition of identity or a mere physical act.[71] The third fatwa reads:

> su'al 3: ma ma'na al-luwaat?
>
> Al jawab: al-luwaat howa idkhaal aalat al-thakar min al-insan fee mithlih
>
> Question 3: What is the meaning of al-lowat?
>
> Answer: Al-lowat is defined by a penetrative act between men[72]

The question asks, "What is the meaning of *al-lowat*?" The term refers to a tribe that was condemned for adultery, rape and same sex sexual practices and is also a colloquial term for males who engage in same-sex sexual

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[67] *Id.*

[68] *Id.*

[69] I draw on my own translation of the fatwa to determine how its rhetoric constituted particular bodies as the necessary targets of violence.

[70] al-Sistani, *supra* note 61.

[71] *Id.*

[72] *Id.*

practices.[73] The term braids together the individual body and the massified bodies of an entire society, who are understood in contemporary usage as metonymically attached to the homosexual. Situating the condemnation of homosexuality within history constructs a genealogy of homosexuality that predates the fatwa. Although homosexuality may not have been systematically targeted in recent history in Iraq, the fatwa indicates that it was at one point punishable and aligns itself with that particular interpretation.[74] Following the other questions, which refer to "*fa'il al-lowat*" and "*a'mil al-lowat*" to describe the "work" or "production" involved in *al-lowat*, the third fatwa describes *al-lowat* as a form of bodily capacity.[75] Thus, *al-lowat* is also bound up in a certain kind of productive force. It does not just describe an activity, but engenders difference through the very actions entailed by its enactment. Producing difference through the penetrative act effectively creates an identity, and the homosexual becomes a reiterative performance that is both rhetorically signified and physically *enacted.*

The fatwa's inquiry, "What is the meaning of *al-lowat*?" considers homosexuality as ontological, while the answer *creates* a body onto which this homosexuality and the violence can be mapped. The term *ma'na* denotes "meaning" or "definition," so that in addition to asking, "What is the meaning of the word *al-lowat*?" the question also implicitly asks, "What meaning does this word create for its object?" Deploying the term, *ma'na,* sutures this meaning to a body, and the body effectively becomes the material site of that difference. As opposed to asking "who is gay?" the fatwa asks "what is gay" and produces the body as a primary component of a homosexual being; "being" and "becoming" homosexual are the main elements in this dynamic. Someone must "be" homosexual—the one who is targeted by the fatwa—while another individual always already risks "becoming" homosexual. The individual who risks becoming homosexual in this case is Sistani's follower, who is always staving off risk of identification by eliminating others. To posit *al-lowat* as *knowable* implies that homosexuality can be affected and manipulated as a set of relations between bodies.

The fatwa describes the physical means by which a body can be known and represents a process that braids violence with intimacy. Homosexuality is described as the insertion (*idkhal*) of the implement or

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[73] MASSAD, *supra* note 9, at 107–15.

[74] al-Sistani, *supra* note 61.

[75] *Id.*

technology (*alat*) of man (*al-thakar min al insaan*) in his likeness (*fee mithlih*). The response does not easily locate one particular member or the other as homosexual. Instead, the act of penetration *produces* homosexuality. Furthermore, the fatwa defines the parties implicated in the act as *al-thakar min al insaan* and *mithlih*.[76] In colloquial Arabic *al-thakar min al insaan* denotes a "male member of the human race." The implication here is that man can always be located within a broader population. The second term, *fee mithlih*, "in his likeness," is a turn of phrase that states that a "male member of the human race" is committing a penetrative act with "his likeness." In other words, the rhetoric grounds the body of the male member as a plurality within the act. *Mithlih,* which is the root for *mithliyyah*, literally means sameness, and is a contemporary term for homosexuality. [77] That the word *mithlih*—referenced in the fatwa—and *mithliyyah* share a common root goes beyond mere coincidence. Rather, exposing a common root for a colloquial gay term traces a social history of homosexuality that reveals a shadow archive alongside the fatwa's condemnatory history of the term.[78] The term reveals that the language around homosexuality is not merely static or that power relations are one-sided, but offers possibilities for the interplay within language itself.

To make sense of a form of intimacy that knits together violent repulsion and physical proximity, Julia Kristeva's notion of abjection explicates the threatening relation between bodies.[79] For Kristeva, abjection

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[76] *Id.*

[77] MASSAD, *supra* note 9, at 163. Joseph Massad offers the following on the term:

> Words for homo- or heterosexuality were also invented recently as direct translations of the Latin original: "'mithliyyah"' or sameness in reference to homosexuality, and "'ghayriyyah"' or differentness in reference to hetero-sexuality. Arab translators of psychology books (except for translators of Freud who coined the term "'mithliyyah"') as well as Arab behavioral psychologists had adopted in midcentury the European expression "'sexual deviance",' translating it literally as al-shudhudh al-jinsi, a coinage that [...] remains the most common term in monographs, the press, and polite company to refer to the Western concept of "'homosexuality".'

Id.

[78] While this analysis exists beyond the scope of this paper, I want to suggest perhaps that there are possibilities for unbraiding the terms from their negative valences and oppressive roots in a counter discourse of resistance in much the same way that queer has historically operated in western paradigms

[79] *See* JULIA KRISTEVA, POWERS OF HORROR: AN ESSAY ON ABJECTION 1 (1982).

represents a process that indexes the limits of the self in relation to a threatening, yet proximate abject body.[80] The abject "is not an ob-ject facing me . . . The abject has only one quality of the object—that of being opposed to *I*."[81] The self can be separated out from an objectionable other, but to mark the division between the two, the self must constantly be in tension and bound intimately to that other. The one suspected to be homosexual is situated firmly within the realm of the abject. However, in order to commit violence, the torturer must approach this threshold of abjection and thus risk becoming homosexual. In the case of rape, or the *Ameri* gum torture, the genitalia is targeted and then violated. Homosexuality is as much bound to the body engaging in the penetrative act of torture as it is for the body that is penetrated, which destabilizes predominant Orientalist notions of the penetrating body as one that can maintain its heterosexuality, while the penetrated partner is made to be homosexual.[82]

Situating the act in this manner, with its shifts between the individuated body and the massified population to which that body is tied, offers up a bio-political model of security in which the apparatus of the state is concerned with effectively regulating aleatory factors within society. These random elements represent a threat to the population as a whole, and are posited in the fatwa as the penetrating and penetrable bodies. In Foucault's bio-political society, the primary mode of the state is the will "to 'make' live and 'let' die," an imperative in which the state seizes control of the biological components of life, including population statistics, and reproductive rights and technologies—in an effort to manage and control the life of its citizens and direct certain members towards death.[83] In the case of Iraq, the fatwa represents a political effort by Sistani to efface the diversity of religions and groups in order to assert the primacy of his sect of Shiite Islam. Homosexuality is construed as a threat that destabilizes family kinship structures, and is subjected to a regulating code in which it is possible and even necessary for homosexuals to die in order to sustain the population as a whole.

Homosexual bodies represent a threat precisely because they threaten to destabilize kinship structures. If homosexuals cannot be

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[80] *Id.*

[81] *Id.*

[82] *See*, MASSAD *supra* note 9.

[83] FOUCAULT, SOCIETY, *supra* note 15, at 241-43.

incorporated into family units as the first two fatwas demand, then they must be eliminated. This may explain claims by police in Sadr City, who blame families for the killing of their "openly gay" sons.[84] It is a simple measure to tie families to the violence when their violent actions can ostensibly situate shame and honor as the boundaries of Iraqi citizenship. Such violent erasure is naturalized as a response to state threats which are rooted in the contagious quality of bodies to affect and *be* affected. Jasbir Puar's move towards affect as a relational modality articulates the manner in which violence can circulate between bodies.[85] Rather than focus on the over-determined quality of contagion in relation to bodies that are simply excluded from society, "all bodies can be thought of as contagious or mired in contagions."[86] In other words, bodies infect and infiltrate other bodies with sensation, and betray expectations of loyalty and affiliation to effectively mark who may belong and who can be excluded.[87] It is not merely that homosexual bodies must be eliminated because they risk spreading homosexuality throughout Iraqi society. Homosexual bodies also affirm the vitality of the population through the very fact of their elimination and erasure. The more homosexual bodies that are killed, the safer and better equipped heternormative bodies can be—in this manner, homosexual bodies become intimately tied to those who commit atrocious acts of violence.

The performative work of the fatwa maps the potential for a body to *be* homosexual; it is this potential that is punished through brutal killings. In the fatwa's response to the question, "*ma ma'na al-luwaat*?" or "what is the meaning of al-luwaat?" homosexuality is described as "the insertion of the implement or technology of man in his likeness."[88] The penetrative act describes the way in which homosexual bodies can be produced through intimate relations with normalized bodies. The statement speaks to an assortment of penetrative acts that cohere as a phallus engaged in acts of violent intimacy. The response does not privilege one particular member or

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[84] Timothy Williams & Tareq Maher, *Iraq's Newly Open Gays Face Scorn and Murder*, N.Y. TIMES, Apr. 7, 2009, at A1, *available at* http://www.nytimes.com/2009/04/08/world/middleeast/08gay.html.

[85] PUAR, *supra* note 39, at 205–208 (describing one genealogy of affect that traces relationship to bodies).

[86] *Id.* AT 172.

[87] *Id.*

[88] al-Sistani, *supra* note 61.

the other as homosexual. Instead, the penetrative act produces homosexuality as a potential force that can infiltrate either body through these very acts. Situating the act in this manner implicates both men in the reiterative production of homosexual bodies. Violence operates through the penetrative act to maintain difference, and in doing so, reifies the borders between the normalized and homosexual bodies.[89]

VI. RHETORICAL AND MATERIAL FORMS OF VIOLENCE

The material form that this violence takes on is bound within intimate relations between bodies, and enacted under these very conditions of intimacy. Arjun Appadurai reminds us that social and physical proximity, instead of deterring racialized violence, often perpetuates killing.[90] His analysis of the Rwandan genocide illustrates how violence operates on the body to produce difference among members of the same community.[91] The penetrative acts involved in violence, including killing, torture and rape, "involve the use of the body to establish the parameters of this otherness, taking the body apart so to speak, to divine the enemy within."[92] Violence possesses the ability to retrieve knowledge that is already legible (i.e., the homosexual body is seen having sex, or its gender presentation makes it identifiable as homosexual) and thus self-evident. However, the violence is often deployed as a strategy to mark difference that actually signifies homosexuality, despite the absence of visible markers. The "enemy within" not only refers to the body of the other, but also affirms that the perpetrator of violence is always at risk of being implicated in the homosexual act. Suggesting this use of the phallus makes a claim on the body of the other as something that is knowable through acts of penetration.

The body becomes known through the act of penetration, and this penetrable knowability confirms the body of the other as homosexual. Sexuality is not an identity, but a relational mode between bodies that redefines what it means to belong and sustain affiliation with the state. Violence does not actually mark the line between who is homosexual and who is not, but rather secures that line around the general population to protect and define them against the "other." The physical proximity that

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[89] *See generally* ARENDT, *supra* note 52.

[90] *See generally* Arjun Appadurai, *Dead Certainty: Ethnic Violence in the Era of Globalization*, 10 PUB. CULTURE 229 (1998).

[91] *Id.* at 230–233.

[92] *Id.* at 233.

such penetrative acts of violence demand is threatening. Kristeva explains that the process of differentiating the self from that which is not the self entails a mode of being rooted in negation:

> There looms, within abjection, one of those violent, dark revolts of being, directed against a threat that seems to emanate from an exorbitant outside or inside, ejected beyond the scope of the possible, the tolerable, the thinkable. It lies there, quite close, but it cannot be assimilated.[93]

Abjection describes a process by which bodies are rendered distinct from each other, and this separation is predicated on an undesirable quality.[94] Sistani's interpretation of homosexuality as a performed act underscores a primary aspect of abjection which depicts a threat to the body as one that emanates from "an exorbitant outside or inside":[95] homosexuality is an excess that cannot be located, and as such, it is always at risk of endangering the body. The threat is material, and though ejected, remains in tension with the purportedly stable body of the penetrator of violence. However, that body is always at risk of being homosexual, rendering the stability of this "homosexual-to-be" a fiction. The threat is ejected beyond the threshold of the normalized into the realm of the (im)possible, the (in)tolerable and the (un)thinkable. This understanding of abjection helps us investigate how difference is produced vis-à-vis the normalized body, which is otherwise hailed as a stable, intelligible marker against which the abject is created. Because such stability is a hallucination, the threatening quality of the abject is precisely that it reveals the inherently unstable nature of the body.

Violence is not simply directed against a homosexual by a non-homosexual. Rather, those who commit the violence operate as "homosexuals-to-be," and the violence in turn is directed against someone *becoming-homosexual.* Within the juridical structures and social milieu that the fatwa produces, the penetrative act, rather than delineating between homosexuals and non-homosexuals, marks the porous boundary between a body that is homosexual, and a body that is not *yet* homosexual. The ambivalence expressed in the definition demonstrates the risk that homosexuality poses to Sistani's followers. Though the fatwa's presumed

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[93] KRISTEVA, *supra* note 79, at 1.

[94] *Id.*

[95] *Id.*

audience consists of loyal followers, they are treated as part of the condemnable and abnormal population. The attractive force of desire that draws the homosexual-to-be to the becoming-homosexual exists in dialectical relation to the intentional form of disgust. Such affect is considered simultaneously "dangerous and contaminating and thus something to which one cannot possibly remain indifferent."[96] It is this idea that results in violence. To eliminate any possibility that they might be implicated in these homosexual acts, homosexuals-to-be must destroy any possibility of their participation and effectively eliminate the homosexual population. In order to dissolve the threat posed by the other, the militias who commit the violence must make it readily apparent that it has been eliminated.

VII. EXEGESIS AND JURISPRUDENCE: VIOLENCE AND THE WORD

To mark the killings as a regulating strategy, Sistani's follow-up question establishes that violent death is the necessary response to homosexuality and homosexual acts.[97] Robert Cover's foundational work on the violent effects of juridical interpretation reveals the legal process by which knowledge-making becomes implicated in the production of violence. Cover states, "These interpretations . . . are not only 'practical,' [but] they are, themselves, practices."[98] The fatwa, institutionalized in the law, is already part of the cycle of violence in Iraq, and thus the very act of interpretation becomes a violent act in practice as well. The rhetorical force

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[96] SIANNE NGAI, UGLY FEELINGS 336 (2005). Negative affect offers an interpretive strategy for the violence at hand. Such negativity provides a framework for understanding how bodies, subjected to violence, can respond to this violence with community and activist networks tied to neoliberal forms of political organization—and in Foucauldian terms, reconstitute the discourse around homosexuality. Sianne Ngai offers a useful definition for negative affect like disgust, whereby emotions are "interpretations of predicaments" that operate as signs that render visible the issues at hand. *Id.* at 3. For Ngai, an "ugly feeling" such as disgust has a signifying property that indexes the limits of the actions undertaken against particular bodies marked by the fatwa. *Id.* The political potential of such negative affect is to "read the predicaments posed by a general state of obstructed agency with respect to other human actors or to the social as such" ." *Id.* This collectivity did not come about in a predictable or natural manner, but is tied to the particular *form* of the killings. Hence, the formation of collectivity must be understood through the juridical level as well as through the material effects on the body.

[97] al-Sistani, *supra* note 61.

[98] Robert Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1611 (1986).

of the fatwa offers up a particular understanding of the physical acts of violence as productive forces. The fifth fatwa reads:

> Su'al 5: Ma howa hokm al-lowat wa al-sahag
>
> Al jawab: haram. Wa yu'agab fa'ilhohma bal yagtal fa'il al-lowat ashad gatleh
>
> Question 5: What is the judgment for sodomy and lesbianism?
>
> Answer: Forbidden. And whomever committed the act shall be punished, and in fact he who committed the homosexual act/homosexuality should be killed in the most severe way.[99]

Sistani's exegesis, underscored by the use of *hokm,* "judgment" in the language of the fatwa,[100] implies a specifically religious ruling. Sistani's fatwa offers an interpretation of religious texts and underscores the condemnation of those acts as both forbidden and punishable. The fifth question marks a shift from defining an act to carrying out the judgment against homosexuality in a measurable way.[101] To be "killed in the most severe way," is to consolidate the power of death in the body long after it is actually dead.[102] Thus, the performative work that the dead body enacts is completely bound up in the form that violence takes on.

The effective manner in which violence is deployed is not merely limited to eliminating all vestiges of homosexuality. In fact, the extent to which the violence proliferates bodies counters the very notion that homosexuality can be done away with. The fatwa's efficacy lies in the way its material violence reifies difference to produce the fiction of a stable other, and in so doing, reinforces the fiction of a stable self for those who perpetuate the violence. The implication here is that the stable self is a fiction, and that self is constantly at risk of being implicated as homosexual. That is to say, the penetrative practices that the killers employ are, in and of themselves, queer acts of penetration. In this way, the fatwa creates a state of flux for its followers, who must constantly stave off being targeted as homosexual while occupying a state of becoming-homosexual. It is this

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[99] al-Sistani, *supra* note 61.

[100] *Id.*

[101] *Id.*

[102] *Id.*

very tension that is constitutive of violence, and in a bio-political mode, "killing or the imperative to kill is acceptable only if it results not in a victory over political adversaries but in the elimination of the biological threat to and the improvement of the species or race."[103] The "severe form" that the killing takes correlates to the degree to which biological improvements to Iraqis (in regards to the perception of the family unit as typifying Iraqi citizenship) must be measured.[104] According to Foucault, the improvement of a species or race is not simply marked by the death or elimination of the other, but by the fact that life itself is improved and made purer.[105] The rhetoric that Sistani puts forth situates homosexuals as a biological threat precisely because they threaten the existence of his religious forces and their ability to reproduce normalized bodies within heteronormative kinship structures. The violence advocated in the fatwa, rather than effacing homosexual bodies, amplifies their visibility. Homosexuals continue to proliferate as the brutal killings increase, and paradoxically, Sistani's forces measure their progress toward a pure state by this very body count.

The violence takes on a systemic form and further reifies difference when it is incorporated into preexisting networks of law-making. Sistani's fifth question marks the point at which rhetorical violence is put into practice by members of Sistani's forces through juridical institutions.[106] Sistani hails the threat posed by homosexuality as always prepared to inculcate his followers, and claims that this contagious and affective quality that homosexuality assumes threatens the vitality of the state. Sistani's followers align themselves with the omniscient questioner (to resist association with the homosexual acts, and avoid being designated as killable) by engaging in trials and executions of homosexuals. Robert Cover offers a useful framework to address how such violent behavior operates within a broader system of the State:

> Such a routinization of violent behavior requires a form of organization that operates simultaneously in the domains of action and interpretation. In order to understand the violence of a

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[103] FOUCAULT, SOCIETY, *supra* note 15, at 256.

[104] For more on Foucault's notion of racism and the relationship between race, violence and the state see MICHEL FOUCAULT, "SOCIETY MUST BE DEFENDED": LECTURES AT THE COLLEGE DE FRANCE 1975–1976 255–56 (David Macey trans., 2003).

[105] "*Id.* at 256.

[106] al-Sistani, *supra* note 61.

> judge's interpretive act, we must also understand the way in which it is transformed into a violent deed despite general resistance to such deeds; in order to comprehend the meaning of this violent deed, we must also understand in what way the judge's interpretive act authorizes and legitimates it.[107]

To shift from what Cover terms the separate domains of action and interpretation to the judge's interpretive act requires complicity with the public that the fatwa is addressing. The judge's (or in this case, Sistani's) interpretation becomes an action because it carves out a discourse of homosexuality that did not previously exist, and to which his followers subscribe. The ability to critique the fatwa's very shift is obfuscated by a mandate which capitalizes on anxieties about national security. In addition to serving as a study of how normalized practices of violence set the stage for Sistani's violent fatwa, the fifth question offers a framework for the performative practice of Sistani's utterance and its relationship to state-level practices of regulation.[108] By engaging in violence, the Al-Badr Corps draw themselves ever closer to the threatening bodies they seek to eliminate.[109] To actually practice the law, Sistani's followers must engage in violent means, despite assumptions that democratic rule is inherently nonviolent. Members of the Corps, through religious courts and execution-style killings, transform the rhetorical force of the fatwa into a set of discrete acts.

The interpretive force of the fatwa carries with it the legitimacy of religious exegesis and consequently sanctions the execution-style killings. Religion defines people's practice, as well as their daily lives; the killing in effect becomes a way of fulfilling religious ideals set by Sistani. Trials presided over by clerics are held in *Husseiniyas* (Shia mosques), and these mosques offer an intimate space where community members congregate to worship and socialize. Hosting the trials in this setting reveals the necessarily relational aspect of the fatwa. The fatwa's efficacy lies in its ability to tap into and manipulate preexisting social networks, galvanizing local communities to carry out violence against its own members. Sistani's

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[107] Cover, *supra* note 98, at 1614.

[108] al-Sistani, *supra* note 61.

[109] The Al-Badr Corps have been described as "a shadowy militia affiliated with the Supreme Islamic Iraqi Council (formerly known as the Supreme Council of the Islamic Revolution of Iraq or SCIRI), and based, during most of the Saddam era, in Iran. The Badr Organization has engaged in death-squad killings and other egregious human rights abuses since 2004." HUMAN RIGHTS WATCH, *supra* note 4, at 47.

invocation relies on these local institutions and networks to implement the fatwa:

> Gays and rapists face anything from 40 lashes to the death penalty [...] Mohammed al-Saidi, one of the self-appointed judges in Sadr City believes that homosexuality is on the wane in Iraq. "'Most [gays] have been killed and others have fled",' he said. Indeed, the number who have sought asylum in the U.K. has risen noticeably over the last few months. Saidi insists the religious courts have a lot to be proud of, "'We now represent a society that asked us to protect it not only from thieves and terrorists but also from these [bad] "deeds.'[110]

Tapping into this juridical system is an effort to uphold a normalized ideal of the Iraqi state as free from thieves, terrorists and now the "bad deeds" of homosexuality that threaten everyday Iraqi life. Homosexuality is not simply a passive or inherited identity, but a set of practices that are disturbingly antithetical to supposed norms.

The judges preside over informal courts and draw on their authority as local religious leaders to legitimate the violence. In their rulings, the judges equate homosexuality with stealing and terrorism to connote a set of practices that threaten local security.[111] These courts purport to represent society and in so doing overtake the Iraqi state's legal apparatus. Per Mohammed al-Saidi's ruling, the courts frame homosexuality as an illegal practice that transgresses Islam.[112] This interpretation of Sistani's words effectively carries out the fatwa's imperative, cohering the violence within juridical code. In the context of these informal trials violence is normalized and carried out systematically on behalf of the religious fatwa, whose authority is predicated on state security.[113] While Al-Saidi claims progress in the regulation of homosexuality, his statement elides anecdotal evidence by Iraqi LGBT, and more formal statistics by non-governmental organizations ("NGOs") that demonstrate a marked rise in killings.[114] This disparity addresses the significance of institutions and institutional practices in lending credence to the juridical form of violence to protect society.

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[110] al-Shara'a, *supra* note 60.

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *See* UNAMI, *supra* note 16, at 26–27.

VIII. BIOPOLITICS AND BODILY REGULATION

If the injunction of biopower is the "right to make live and let die,"[115] then how do we make sense of a political power that calls for and demands death, and furthermore, exposes its own citizens to the risk of death? The answer lies in the injunctions made by officials against the very existence of homosexuality. Newsweek cited responses by Iraqi officials to these targeted killings, who maintain that the dearth of statistics on homosexuality is due to the negligible size of the population and that these targeted killings are "barely mentioned in Iraq."[116] Furthermore, other individuals who may not have committed a visible act are targeted, including friends and family. Framing the population as such constitutes a form of racialized violence. According to Foucault, this racialization represents "a way of introducing a break into the domain of life that is under power's control: the break between what must live and what must die."[117] This racialized violence is marked directly on the bodies as the penetrative acts of rape, beheadings, and gun shot wounds that all speak to forms of intimacy. Appadurai highlights the intimacy that such a proximate boundary elicits: "this violence is a horrible effort to expose, penetrate and occupy the material form—the body—of the ethnic other."[118] The racialized violence finds its form in the corpse.

The corpses index the limits of the militia members' own bodies. These militia members remain alive and outside homosexuality only insofar as these corpses continue to proliferate. The strategies deployed by Sistani for mapping difference onto the Iraqi body represent an effort to mark the boundaries between populations. Their physical dismemberment, as well as the visual spectacle they produce, effectively sustains an already normalized cycle of violence within Iraq. A key component of Foucault's notion of racism is that the "very fact that you let more die will allow you to live more."[119] The increased efforts to police homosexuality have led to a marked rise in killing. Not only will the relative number of normalized bodies increase in relation to homosexual bodies, but those normalized

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[115] FOUCAULT, SOCIETY, *supra* note 15, at 241.

[116] Lennox Samuels, *Don't Ask, Don't' Tell, Do Kill*, NEWSWEEK, Aug. 26, 2008, *available at* http://www.newsweek.com/id/155656.

[117] FOUCAULT, SOCIETY, *supra* note 15, at 254.

[118] Appadurai, *supra* note 90, at 239.

[119] FOUCAULT, SOCIETY, *supra* note 15, at 255

bodies will also achieve greater vitality. The death of the other race does not merely guarantee the security of the normalized race, in fact, the death of the inferior, degenerate, or abnormal race guarantees that life will be "healthier and purer."[120] Ultimately, the proliferation of bodies as corpses underscores Sistani's effort to gain political control over what constitutes citizenship and belonging within the state. The relationship between those who kill and those who are killable is not therefore a political or social relationship, but a biological one.[121] The threats to the state are not simply diffused. Instead, a desire for a vital state is fulfilled. Sexual difference is simply the means by which Sistani galvanizes a religious minority and seizes control over the state apparatus in an effort to consolidate its control over structures of government. The proliferation of these corpses indexes the limits of Sistani's authority over the state, and serves as a measure of the "success" of his regulatory apparatus. Furthermore, the visibility of corpses as spectacle pushes the discursive limits of the law; these are bodies produced by the state as racialized.[122] Through violent disemberment, bodies are made to be regulable as an undifferentiated mass through state-sanctioned violence. Such racism, according to Foucault, is bound up in the biological processes of normalization. If we are to consider the relationship between bodies as a biological one, it is possible to understand the violence not simply as epistemic, but ontological as well; because the fatwa recasts the framework around sex, sexuality and the body, those bodies are always already subjected to violence.

As the violence takes on corporeal excess, bodies are subjected to physical dismemberment, burning, and beheading and are left strewn in the streets. These bodies, now corpses, remain in their communities as intimate visual reminders of the risk homosexuality poses to Sistani's community. The corpse marks the transition of the homosexual body produced in the fatwa into a body deemed non-threatening by Sistani's forces. The corpses are not simply static objects, and Kristeva reminds us that the corpse represents "[a] border that has encroached upon everything."[123] This border sustains the tension between the militia's potential to become homosexual and marks the threshold of those declared to be homosexual. Thus, the act

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[120] *Id.*

[121] *Id.*

[122] See Michel Foucault, "Society Must Be Defended": Lectures at the College De France 1975-1976, 239-264 (David Macey trans., 2003); Achille Mbembe, "Necropolitics, 15 *Public Culture* 1,"11-40 (Libby Meintjes trans., Winter 2003).""

[123] KRISTEVA, *supra* note 79, at 3.

of penetration called on by the fatwa marks a tenuous boundary between the perpetrators and the subjects of violence.

The fatwa traffics in the negative affect associated with the abjected bodies to contain the surplus of contaminating sexual energy in the unstable body of the becoming-homosexual.[124] It is not one person's desire for another that must be regulated. Instead, the desire that circulates within a particular form of sexuality discussed in the fatwa—as a kind of physical intimacy between bodies—must be moderated and ultimately exterminated. The disgust toward homosexual bodies propagated by proponents of normative family structures and rooted in the fatwa's rhetoric of exclusion and belonging produces collectivity by drawing the abject bodies in close proximity to each other, re-emphasizing the kinship structures the fatwa seeks to uphold.

The boundaries between the corpse and those of the penetrator operate as a horizon. The temporality of these boundaries is defined not simply as "always approaching death" but by the constant risk of "becoming homosexual" for the bodies that kill.[125] The proliferation of dead homosexual bodies as corpses in the visual field intimates and demands a different understanding of how bodies operate. Those declared to be homosexual by the fatwa, and the violent acts committed against them, are always already approaching death. This tension effectively restages the borders and boundaries of belonging within the state because these corpses are not suddenly identifiable within a group, but are bodies represented as a form of queer collectivity.[126]

Communities are so severely policed that many cannot leave their homes for fear of being targeted, and others remain sequestered in safe houses. Safa, a gay man from Najaf, fled to Ammara due to fears that he might be targeted: "Nowadays, we don't dare be seen in the neighbourhoods [sic] where we used to live. It is too dangerous for anyone known to be gay or to have had a homosexual past."[127] Safa's statement serves as a reminder that in spite of the rise in violence there is a tacit acknowledgement that homosexuality existed prior to the intervention of

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[124] For a genealogy of affect, including its relationship to emotion, race and the body see PUAR, *supra* note 39, at 195--96, 207-08.

[125] *Id.* at 1-11.

[126] *See* SARA AHMED, QUEER PHENOMENOLOGY: ORIENTATIONS, OBJECTS, OTHERS (2006).

[127] Sven Rabatzky, *Three Iraq Safe Houses Forced to Close*, GAY REPUBLIC DAILY, Nov. 6, 2007, http://gayrepublic.org/index.php?name=News&file=article&sid =2084.

the United States in Iraq. In the current state, homosexuality demands a degree of knowability bound up with physical violence. Knowledge of a person's homosexual past or gay identity is not an inherent truth, but rather a constructed component of ontological violence. Safa's testimony marks the temporal boundaries of homosexuality in Iraq that the fatwa elides by tapping into the negative valences of homosexuality in Islam. Homosexuality is rendered ahistorical; the fatwa refuses to account for this prior acceptance of difference, and more significantly, cannot acknowledge that it posed no risk to society prior to efforts toward securitization. Instead, the rhetorical force of the fatwa demands that Safa and others flee for their lives to seek asylum and assistance from transnational activist LGBT organizations. An organization like Iraqi LGBT is possible only because of this violence. A history that includes a tacit acknowledgement of homosexuals would not necessarily politicize a group organized around identity. Instead, violence operates as a productive and creative force that organizes bodies around the very mode by which they are sought out and killed.

IX. CONCLUSION: FROM BODIES TO CORPSES; VIOLENCE AND NEGATIVE AFFECT; QUEER COLLECTIVITIES AND IDENTITY POLITICS

The *New York Times* article mentioned at the beginning of this Article writes astoundingly of an emergent gay community even as the visual spectacle of the corpses offers us alternate modes of affiliation and mechanisms for community formation. The affiliation between these bodies, consolidated by the media and various activist blogs, coheres these bodies as part of an LGBT community of victims rather than simply disposable homosexual bodies. The community of victims that has consolidated primarily under the umbrella, Iraqi LGBT, refers to the UK-based activist network established by Ali Hilli, an Iraqi who was displaced due to the violence.[128] The name also refers to a network that operates safe houses in Iraq and works with homosexual Iraqi refugees to repatriate those displaced by the violence.[129] For Sistani, what started as an effort to eliminate a threat transformed into a strategy for community building rooted in identity politics, a strategy in which Sistani's forces are fully complicit.

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[128] Who We Are, Iraqi LGBT, http://iraqilgbt.org.uk/who-we-are/ (last visited Nov. 15, 2010).

[129] What We Do, Iraqi LGBT, http://iraqilgbt.org.uk/what-we-do/ (last visited Nov. 15, 2010).

The fact that an organization like Iraqi LGBT confronts the violence transforms the historically situated *al-lowat* in the fatwa into a counter-narrative of political resistance; the political valences of "gay" and "homosexual" are likewise transformed.

Iraqi LGBT has mobilized images of corpses to frame the terms of their suffering within western paradigms, which illustrates a shift from bodies to identity politics. Such violent depictions carry captions such as "New Video Footage Show the [T]reatment of LGBT People In Iraq by Police"[130] to differentiate themselves from other acts of violence committed in Iraq. They deploy these graphic images to raise awareness of the homophobic murders in Iraq. The violence makes possible a form of politics rooted in the negative. Iraqi LGBT relies on these homosexual bodies, now also tortured and penetrated corpses, to convey what words simply cannot. The blog makes a claim for community in its pleas for assistance, urging users to donate money to assist LGBT activists in Iraq.[131] The site hails an imagined and sympathetic community of users, the outside world.[132]

This demand for help represents a demand to be acknowledged as "Iraqi LGBT" with the attendant rights and privileges accorded on a transnational level, including the right to hail an affiliated community for assistance. In contrast to prior expressions of homosexuality, it is only with the advent of violence that such political organization is possible or even necessary. Despite this fundraising prompt's urgent call for LGBT collectivity, it is the organization's depictions of torture that are ultimately meant to galvanize a group of disparate users toward collective action and halt the violence that persists in Iraq. Iraqi LGBT relies on the transmissive, contagious quality of these bodies to affect users. Such affect reverberates from the images and video,[133] and is intended to inspire the viewer into participating in collective action (i.e., donate money). The collective action produces a form of affiliation contingent upon sympathetic relations amongst viewing bodies and killable homosexual bodies.

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[130] New Video Footage Show the treatment of LGBT People in Iraq by Police, IRAQI LGBT (Jan. 25, 2008), http://iraqilgbtuk.blogspot.com/2008/01/new-video-footage-show-treatment-of.html.

[131] How You Can Help, Iraqi LGBT, http://iraqilgbt.org.uk/how-you-can-help/ (last visited Nov. 15, 2010).

[132] *Id.*

[133] *New Video Footage, Iraqi LGBT, supra note 130.*

In viewing this violence we can be outraged, but we must remain critical of these attempts at identity politics because such calls for LGBT rights risk positing a universal, dare we say, normalized body: a homosexual body that is only intelligible through violence. The idea that gays in Iraq are "newly open"[134] reifies a neoliberal project that situates homosexual bodies in relation to the set of libratory practices and ideologies that installed the cycle of violence in Iraq. To be "newly open"[135] is to be locked in a closet whose key is caught in an ongoing contest between activist organizations and those perpetrating the violence. If these bodies are unable to claim identity for themselves, and instead fulfill other narratives so as to garner assistance and attain asylum, then these alleged practices of liberation effectively reinscribe new interpretive forms of violence.

Having traced a genealogy of homosexuality in Iraq, we arrive at an identity politics that arises directly from the fatwa's imperative to render certain bodies killable. The fatwa's discursive production of a homosexual body makes it a regulable body. However, these bodies remain active in and of themselves. They operate affectively and reconfigure forms of relationality that rely solely upon homonormative identity politics. The precise manner in which such identity politics operate is part of a larger project, but it is significant to simply trace the production of homosexual bodies and their proliferation as corpses. This contagious quality of the corpses frustrates efforts by Sistani and his forces to sustain a vital Iraqi state bound to normalized kinship structures by suturing the visual spectacle of the corpses to a broader community of LGBT. Ultimately, the act of penetration demanded by the killing: to behead, to impale, to shoot, to rape a body, implicates the perpetrator as always already within the bounds of the abnormal body they wish to jettison from Iraq. As a consequence, the bio-political impulse to make killable in an effort towards a more secure state is dismantled and subverted by the very mechanisms employed by the killers.

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[134] *See* Williams & Maher, *supra* note 84.

[135] *See id.*