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“He was penetrated like a woman”: the evolution of a Companion report

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Abstract

This study examines the historical evolution of a Companion report detailing the burning of an unnamed man as punishment for assuming the passive role in male–male anal intercourse (*liwāt*). The genesis of this sexual passivity report can be traced back to an earlier incident involving Abū Bakr, in which the apostate al-Fujā’a al-Salamī (d. 11/632) was executed by being burned alive for multiple offences, including apostasy, betrayal, and the slaughter of Muslims. This study investigates the transformation of the apostasy report into one specifically addressing male sexual passivity, analysing how these two accounts converged over time. It explores both the mechanisms and motivations behind their evolution into a punitive report focused on burning a man for his passive sexual role in *liwāt*. Additionally, it considers potential reasons for the development of this report, including the possibility that the phrase “he was penetrated like a woman” was initially used as a rhetorical insult directed at the apostate al-Fujā’a, but gradually evolved in later sources into an association with the crime for which an unnamed man was purportedly punished with burning.

Keywords: apostasy; ‘Alī b. Abī Ṭālib; burning; Companion reports; *ḥadīths*; homosexuality; Islamic law; *liwāt*

Two accounts from the third/ninth century highlight instances of *ḥadd* punishments involving burning an offender alive.¹ The first is recounted by the early Medinese historian al-Wāqidī (d. 207/823) concerning a well-known apostate al-Fujā’a al-Salamī (d. 11/632), who was executed for a range of transgressions, including apostasy, betrayal, and the slaughter of Muslims, henceforth referred to as “the apostasy report”. The second is recounted by the literary scholar and moralist² Ibn Abī al-Dunyā (d. 281/894) concerning an unnamed man in an Arab village who was discovered “being penetrated like a woman” (*yunkaḥu kamā tunkaḥu al-mar’a*), henceforth referred to as “the sexual passivity report”. This study focuses on the evolution of the latter report and its variants, which attribute the

¹ Christian Lange defines the *ḥadd* punishments as “severe, predominantly corporal sanctions”, applied to a core number of offences, including unlawful sexual intercourse (*zinā*), theft, unfounded accusation of unlawful sexual intercourse (*qadhf*), consumption of wine (*shrub al-khamr*), brigandage (*ḥirāba*), and apostasy (*irtidād*). However, the latter offence was contested. “The Ḥanafī and Shī‘ī schools do not regard apostasy as an offence that requires a *ḥadd* punishment regardless of circumstances...”. See *Et*³, s.v. *Ḥadd punishments* (Christian Lange).

² Leonard Librande, “Ibn Abī al-Dunyā: certainty and morality”, *Studia Islamica* 100/101, 2005, 5–42, 8.

order to burn an unnamed offender to Abū Bakr (d. 13/634) at the behest of ‘Alī Ibn Abī Ṭālib (d. 40/661). I suggest that Ibn Abī al-Dunyā may be credited with the dissemination of the sexual passivity report. I trace this report to an earlier report that pertained to a well-known apostate, al-Fujā’a al-Salamī, who was burned for treachery and apostasy. I argue that the sexual passivity report likely evolved from the apostasy report, with a convergence between the two occurring over time. I consider potential reasons for the development of this report, noting that the phrase “he was penetrated like a woman” may have initially served as a rhetorical insult against the apostate al-Fujā’a for his apostasy and treachery, but eventually became a crucial association – specifically, the crime for which an unnamed man was purportedly punished by burning to death, according to later legal sources. Moreover, some jurists as of the fourth/tenth century cited this report in a debate over the punishments for male–male anal intercourse (*liwāt*) to support or oppose the *ḥadd* punishment for this offence, rather than to advocate for burning as the specific form of punishment.

I. The formation of the sexual passivity report

The sexual passivity report is absent from early *ḥadīth* collections such as ‘Abd al-Razzāq al-Ṣan‘ānī’s (d. 211/827) *al-Muṣannaf*, Ibn Abī Shayba’s (d. 235/850) *al-Muṣannaf*, and the *Musnad* of Aḥmad ibn Ḥanbal (d. 241/855), all of which not only included Prophetic reports but also Companion reports.³ It is also not cited in early legal works that address the punishment for *liwāt* offenders, including Mālik’s *Muwatṭa’* (d. 179/795), ‘Abd Allāh b. ‘Abd al-Ḥakam’s (d. 214/829) *al-Mukhtaṣar al-saghīr*, Saḥnūn’s *Mudawwana* (d. 240/855 CE),⁴ *Kitāb al-Aṣl* of al-Shaybānī (d. 189/805 CE), and *Kitāb al-Umm* of al-Shāfi‘ī (d. 204/820 CE). The earliest traces of a report that has any semblance to the sexual passivity report in non-legal works appear in a work of Arabic prose literature (*adab*) – al-Jāḥiẓ (d. 255/868), *Mufaḥkharat al-jawāri wa-l-ghilmān*. In this work, al-Jāḥiẓ cites several reports concerning the various punishments for *liwāt* imposed by the Companions. Among them are two accounts that attribute conflicting forms of punishment to Abū Bakr. According to the first report, Abū Bakr imposed the death penalty by collapsing a wall on the offender. According to the second, Khālīd b. al-Walīd wrote to Abū Bakr “concerning a group (*qawm*) who committed male–male anal intercourse (*lātū*)”, prompting him to “order that they be burned”.⁵ There are two noteworthy details in the latter report that conflict with those found in Ibn Abī al-Dunyā’s sexual passivity report. While al-Jāḥiẓ’s report mentions “a group” of people guilty of “*liwāt*”, referring to the sexual act involving both active and passive male partners, Ibn Abī al-Dunyā’s report specifies that it was a single “man” guilty of sexual passivity, described as “penetrated like a woman”. This raises the possibility that al-Jāḥiẓ was conveying an earlier variant of the sexual passivity report or a variant of a different report altogether – one that relates more closely to Muslims’ attribution of the orders to burn groups of apostates to Abū Bakr. This is plausible, given historical accounts depicting Abū Bakr as warning groups of apostates during the Wars of Apostasy and threatening them with death through extreme

³ Attesting to the limited number of Prophetic *ḥadīths* in early *ḥadīth* collections, Scott Lucas’ analysis of the legal chapters of Ibn Abī Shayba’s *al-Muṣannaf* reveals that “only one in eleven reports is a Prophetic *ḥadīth*”. Scott Lucas, “Where are the legal *ḥadīths*? A study of the *Muṣannaf* of Ibn Abī Shayba”, *Islamic Law and Society* 15, 2008, 283–314, here 286. Similarly, Melchert contends that “the overwhelming majority of entries in the *Muṣannafs* of al-Ṣan‘ānī and Ibn Abī Shayba are not from the Prophet but from Companions and followers”. Christopher Melchert, “Traditionist-jurists and the framing of Islamic law”, *Islamic Law and Society* 8/3, 2001, 383–406, here p. 402.

⁴ On Saḥnūn, see Jonathan E. Brockopp, “Saḥnūn b. Sa‘īd (d. 240/854)”, in Oussama Arabi, David Powers and Susan Spector (eds), *Islamic Legal Thought: A Compendium of Muslim Jurists* (Leiden: Brill, 2013), 65–84.

⁵ al-Jāḥiẓ, *Mufaḥkharat al-jawāri wa-l-ghilmān*, in *Rasā’il al-Jāḥiẓ*, 3 vols., ed. ‘Alī Abū Muḥam (Beirut: Dār wa-Maktabat al-Hilāl, 2002), 2: 169.

measures of burning if they did not cease their apostasy and return to Islam.⁶ Since al-Jāhiz generally did not cite chains of transmission for the reports he included in this treatise, and since this report cannot be corroborated by other early sources, determining its origins is nearly impossible.

II. Ibn Abī al-Dunyā's sexual passivity report

Al-Jāhiz's account may have been the prelude to the fuller sexual passivity report that subsequently developed. One of the earliest documented accounts linking Abū Bakr to the order for the burning of a man as punishment for sexual passivity is recorded by Ibn Abī al-Dunyā in his *Dhamm al-malāhī* (The Censure of Instruments of Diversion).⁷ In it, Abū Bakr purportedly consulted the Companions concerning the punishment for *liwāt* and in the end adopted 'Alī's suggested punishment of burning. Ibn Abī al-Dunyā narrates the following report, with the last three transmitters closest to Abū Bakr and Khālīd b. al-Walīd being: 'Abd al-'Azīz b. Abī Hāzim (d. 184/800) on the authority of Dāwūd b. Bakr [b. Abī al-Furāt] (d. c. 161–170/777–786) on the authority of Muḥammad b. al-Munkadir (d. 130/747) who reported that:

Khālīd b. al-Walīd wrote to Abū Bakr al-Ṣiddīq [asking him] regarding a man in an Arab village discovered being penetrated like a woman (*yunkaḥu kamā tunkaḥu al-mar'a*).⁸ Abū Bakr [reportedly] gathered an assembly of the Companions of the Prophet – peace be upon him – [to consult them regarding the penetrated man's punishment], and among them was 'Alī b. Abī Ṭālib [(d. 40/661)]. 'Alī declared, "This is a transgression which no nation has committed except one, and God did to them what you already know. My considered opinion (*arā*) is that he should be burned to death with fire." The Companions of the Prophet therefore agreed that he should be burned to death with fire. Consequently, Abū Bakr commanded he should be burned to death with fire. Ibn al-Zubayr [r. 683–692] and Hishām b. 'Abd al-Malik [r. 723–743] also burned [the likes of] them to death.⁹

Given that Ibn Abī al-Dunyā was Ḥanbalī, "It comes as no surprise to find that a large number of the traditions cited by him are also contained in the *Musnad* of Aḥmad b. Ḥanbal".¹⁰ However, this report is not one of them.¹¹

⁶ Abū Ja'far Muḥammad b. Jarīr al-Ṭabarī, *Tārikh al-Ṭabarī: Tārikh al-rusul wa-l-mulūk*, 10 vols., ed. Muḥammad Abū al-Faḍl Ibrāhīm (Cairo: Dār al-Ma'ārif, 1960–69), 3:251.

⁷ I am using James Robson's translation of the title here. He notes that *malāhī* comes from the root *lahw*, meaning diversion, pastimes, or instruments of diversion. See 'Abd Allāh ibn Muḥammad ibn Abī al-Dunyā and Aḥmad ibn Muḥammad Ghazālī, *Tracts on Listening to Music, Being Dhamm al-Malāhī*, ed. James Robson (London: The Royal Asiatic Society, 1938), n. 1, 19.

⁸ Ibn Abī al-Dunyā (d. 281/894), *Dhamm al-malāhī*. Ibn Qutayba also includes this formulation, but in the context of a *mukhannath* who was brought to Abū al-'Āj, the governor of Wāṣīt, by an officer to try him for occupying the passive, penetrated role in anal sex, but he dismissed him. In this anecdote, there is a back-and-forth between the governor and his officer. The governor asks, "What is this?" to which his officer responds, "a *mukhannath*". He then asks, "What does he do?" The officer responds, "He is penetrated like a woman". See Abū Muḥammad 'Abd Allāh b. Muslim al-Dīnawarī Ibn Qutayba, *Uyūn al-akhbār*, 4 vols. (Beirut: Dār al-Kitāb al-'Arabī, 1994), 2: 58.

⁹ 'Abd Allāh b. Muḥammad ibn Abī al-Dunyā, *Dhamm al-malāhī*, ed. 'Amr 'Abd al-Min'im Salīm (Cairo: Maktabat Ibn Taymiyya, 1416/1995), 100–01. In addition to condemning music, this work broadly denounces any activities that distract believers from spiritual devotion to God, such as chess, backgammon, gambling, and several illicit sexual practices including male–male anal intercourse.

¹⁰ James A. Bellamy, "The *Makārim al-akhlaq* by Ibn Abī al-Dunyā", *The Muslim World*, 1963, 106–19, 110.

¹¹ While *al-Musnad* does not include this sexual passivity report, it does include two reports that 'Alī Ibn Abī Ṭālib (d. 40/661) burned a group of heretics (*zanādiqa*) alive, along with their books. Aḥmad Ibn Ḥanbal, *Musnad*

Other Muslims also writing in this genre of *dhamm* “censure”, intended to warn believers of instruments of diversion that corrupt moral character, subsequently cite Ibn Abī al-Dunyā’s sexual passivity report. Abū Bakr al-Kharā’iṭī (d. 327/939) includes Ibn Abī al-Dunyā’s sexual passivity report in his *Masāwī’ al-akhlāq wa-madhmūmuhā* (Evil and Blameworthy Traits of Character). Al-Kharā’iṭī’s sexual passivity report is narrated by the same authorities as Ibn Abī al-Dunyā’s, but in addition to Muḥammad b. al-Munkadir, he adds two other traditionists, Ṣafwān b. Sulaym (d. 132/749) and Mūsā b. ‘Uqba (d. 141/758). The content (*matn*) of al-Kharā’iṭī’s report is practically the same as Ibn Abī al-Dunyā’s, with one notable gloss. After reporting that Khālīd b. al-Walīd wrote to Abū Bakr asking about “a man in an Arab village discovered being penetrated like a woman (*yunkaḥu kamā tunkaḥu al-mar’a*)”, al-Kharā’iṭī adds, “and the evidence against him was established”, Abū Bakr gathered an assembly of the Companions of the Prophet to consult them regarding the penetrated man’s punishment.¹² Hence, while the unnamed offender in Ibn Abī al-Dunyā’s sexual passivity report seems to have been punished on the basis of an accusation of sexual passivity, al-Kharā’iṭī’s report includes an additional clause explaining that he was indeed found guilty of sexual passivity on the basis of evidence (presumably an appropriate number of eyewitness testimonies). This gloss reflects the legal requirement of evidence to implement *ḥadd* punishments. Subsequently, the Baghdādī al-Ājurri (d. 360/970) also includes Ibn Abī al-Dunyā’s sexual passivity report, citing his chain of transmitters and essentially the same content in *Dhamm al-liwāt*, his treatise condemning *liwāt*, with a short section condemning *siḥāq*, female–female sexual practices.¹³

Given that Ibn Abī al-Dunyā provides only a partial *isnād* that ends with Muḥammad b. al-Munkadir – who purportedly transmitted this report over a century after the deaths of Abū Bakr and Khālīd b. al-Walīd – it makes an *isnād-cum-matn* analysis impossible. Nonetheless, a close examination of Ibn Abī al-Dunyā’s incomplete *isnād*, the few scattered sexual passivity reports that replicate his *isnād* and report in other works in the *dhamm* genre, and Muslim traditionists’ critiques of this report, yield some insights. A brief *isnād* analysis indicates that there seems to be only one line, rather than different paths of transmission, for Ibn Abī al-Dunyā’s report. While it is difficult to determine with certainty who is responsible for the dissemination of the sexual passivity report, it is plausible that Ibn Abī al-Dunyā himself might be credited with this role. It seems that Ibn Abī al-Dunyā acted out of pious intentions and apparently based his report on earlier traditions. Hence, he could be seen as an “author”, who compiled and reworked earlier texts according to his authorial intentions. Significantly, several Muslim traditionists cite Ibn Abī al-Dunyā’s sexual passivity report along with its chain of transmitters only to criticize its reliability. For example, the prominent traditionist al-Bayhaqī (d. 458/1066) argues that Ibn Abī al-Dunyā’s report is “*mursal*”, literally meaning “sent”, which refers to the fact that one or more transmitters of the *ḥadīth* are missing, resulting in a lack of continuity in the chain of transmission.¹⁴ Al-Khaṭīb al-Baghdādī (d. 463/1071), a leading *ḥadīth* scholar and historian, explains that *mursal* refers

Ibn Ḥanbal, 14 vols., ed. Shu‘ayb al-Arna’ūṭ and ‘Ādil Murshid (Beirut: Mu’assasat al-Risāla, 1995), 4: 336 (no. 2552 and 2553).

¹² Abū Bakr Muḥammad b. Ja‘far al-Kharā’iṭī, *Masāwī’ al-akhlāq wa-madhmūmuhā*, ed. Muṣṭafā Abū al-Naṣr al-Shalabī (Jedda: Maktabat al-Sawādī li-l-Tawzī‘, 1992), 205.

¹³ Muḥammad ibn al-Ḥusayn al-Ājurri, *Dhamm al-liwāt*, ed. Majdī al-Sayyid Ibrāhīm (Cairo: Maktabat al-Qur’ān; Riyadh: Maktabat al-Sā‘ī, 1990), 58.

¹⁴ Abū Bakr, al-Bayhaqī, *al-Sunan al-kubrā*, 11 vols., ed. Muḥammad ‘Abd al-Qādir ‘Aṭā’ (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 8: 405. Subsequently, al-Bayhaqī also argues that this report was narrated on the authority of Ja‘far b. Muḥammad (d. 148/765) on the authority of his father Muḥammad al-Bāqir (d. 114/733) on the authority of ‘Alī “in a story other than this one”, wherein he said, “he should be stoned and burned with fire”. Al-Bayhaqī, *al-Sunan al-kubrā*, 8: 405. Unfortunately, I was unable to find this incident narrated on the authority of Ja‘far b. Muḥammad in another source.

“to a report whose *isnād* is interrupted, meaning that among its narrators is one [or more] who did not hear it from the one whose name comes before his”.¹⁵ In this case, it is clear that several narrators are missing between Ibn al-Munkadir, who lived in the eighth century, and Abū Bakr or Khālīd b. al-Walīd, who lived in the century before him, making it impossible for him to have directly heard the report from either of them. Like al-Bayhaqī, the Ṣāhirī jurist Ibn Ḥazm (d. 456/1064), writing around the same time period, contends that the three chains of transmission (*isnād*) he cites of this report in his legal treatise are all “interrupted” (*munqaṭiʿa*), meaning, not connected “because not a single one of them [the tradents] lived [early enough] to have seen Abū Bakr”.¹⁶ More specifically, the term *munqaṭiʿ* is used to refer to *ḥadīths* that have two or more narrators missing successively.¹⁷ Again, the closest tradents in the chains of transmission of this report to Abū Bakr are: Muḥammad b. al-Munkadir (d. 130/747), Ṣafwān b. Sulaym (d. 132/749), and Mūsā b. ʿUqba (d. 141/758), all of whom passed away in the second/eighth century, more than a century after Abū Bakr died in 13/634. Hence, several narrators are missing between any one of them and Abū Bakr. Later traditionists, such as Ibn Ḥajar al-ʿAsqalānī (d. 852/1449), additionally argued that this report is “very weak” (*ḍaʿīf jiddan*) and, therefore, unreliable.¹⁸

If Ibn Abī al-Dunyā is responsible for the dissemination of the sexual passivity report, as suggested, what might have motivated him to circulate it? To address this question, we must briefly examine Ibn Abī al-Dunyā’s context and life. Ibn Abī al-Dunyā was a prolific writer of Arabic prose literature (*adab*), reportedly authoring between one and three hundred works.¹⁹ Although “he was a traditionist, he was not of the sort whose writings could be used by the *fuqahāʾ* in their work”.²⁰ Instead, he focused on personal piety and asceticism more broadly. For example, in addition to several reports detailing the punishments for offenders of *liwāt*, he includes warnings attributed to the Companions and their Successors against gazing at beautiful prepubescent boys (*ghilmān*) and associating with beardless boys (*murdān*).²¹ Unlike Muslim jurists, he went so far as to declare that “If a man fondles a prepubescent boy (*ghilmān*) between two of his toes out of lust (*yuridu*

¹⁵ Al-Khaṭīb al-Baghḍādī, *al-Kifāya fī ʿilm al-riwāya* (Hyderabad: Idārat Jamʿiyyat dāʿirat al-Maʿārif al-ʿUthmāniyya, 1357), 21. It should be noted that Ibn al-Ṣalāḥ (d. 643/1245) outlines three views on the distinction between *mursal* and *munqaṭiʿ*: (i) *mursal* refers to Successors specifically, while *munqaṭiʿ* refers only to subsequent generations; (ii) that *mursal* refers to Successors specifically, while *munqaṭiʿ* refers to the Successors as well as subsequent generations, and (iii) that the terms *mursal* and *munqaṭiʿ* are coterminous. This third opinion is the one Ibn al-Ṣalāḥ prefers, mentioning that it is widely adopted by the jurists and is the view of al-Khaṭīb al-Baghḍādī. See Ibn al-Ṣalāḥ, *Maʿrifat anwāʿ ʿilm al-ḥadīth*, ed. ʿAbd al-Laṭīf al-Hamīm and Māhir Yāsir al-Faḥl (Beirut: Dār al-Kutub al-ʿIlmiyya, 1423/2002), 132–5.

¹⁶ Abū Muḥammad ʿAlī b. Aḥmad b. Saʿīd Ibn Ḥazm, *al-Muḥallā*, 19 vols., ed. Khālīd al-Rabbāṭ et al. (Beirut: Dār Ibn Ḥazm, 2016), 16: 444.

¹⁷ G.H.A. Juynboll explains that *mursal* was the original category which, with the passage of time, came to be understood as an *isnād* missing a link between a Successor and the Prophet. This is so, because when the *isnād* institution came into being near the end of the first century H (that is, during the lifetime of the Successor generation), any interrupted *isnād* necessarily lacked a Companion. Later, the term *munqaṭiʿ* emerged, denoting an interruption in the *isnād* in general. As *ḥadīth* criticism developed, Juynboll notes, scholars eliminated the confusion by concluding that “every *mursal* is *munqaṭiʿ*, but not every *munqaṭiʿ* is *mursal*”. In other words, it is correct to use *munqaṭiʿ* for *mursal*, but using *mursal* implies a narrower meaning. See G.H.A. Juynboll, “Some notes on Islam’s first *Fuqahāʾ* distilled from early *ḥadīth* literature”, *Arabica* 39, Fasc. 3 (November 1992), 287–314, esp. n. 1, 287.

¹⁸ Ibn Ḥajar al-ʿAsqalānī, Aḥmad b. ʿAlī, *al-Dirāya fī takhrīj aḥādīth al-Hidāya*, 2 vols., ed. ʿAbd Allāh Hāshim al-Madanī (Beirut: Dār al-Maʿārif, 2015), 2: 104. Similarly, the traditionist and Ḥanafī jurist, Ibn Quṭlūbaghā (d. 879/1474) rates this report as “very weak” (*ḍaʿīf jiddan*). Qāsim b. Quṭlūbaghā, *al-Taʿrīf wa-l-ikhbār bi-takhrīj aḥādīth al-ikhtiyār*, 4 vols., ed. Abū Mālik Jihād b. Sayyid al-Murshidī (Cairo: al-Fārūq al-Ḥadītha, 2012), 3: 193.

¹⁹ “Kitāb Dhamm al-Dunyā” by Ibn Abī al-Dunyā, edited and annotated with an introduction by Ella Appelrot Almogor (Dissertation, University of California, Los Angeles, 1973), 1.

²⁰ James A. Bellamy, “The Makārim al-Akhlaq by Ibn Abī al-Dunyā”, *The Muslim World*, 1963, 106–19, 106.

²¹ Ibn Abī al-Dunyā, *Dhamm al-malāhī*, 97–8.

al-shawa), then this is considered *liwāt* (*la-kāna liwātan*)”.²² While he may have intended this as a rhetorical statement, it nonetheless reflects his condemnation of pederastic practices of his time. He particularly favoured writing on “edifying and hortatory themes, a genre generally referred to as *riqāq* or *raqāʿiq*, within which in turn he accords special precedence to themes of piety and *zuhd*”.²³ Much of his work focuses on broader and less rigid concepts, such as fear of God, humility, penitence, and faith in His mercy in the Hereafter.²⁴ Thus, his outlook has been characterized as “ethical traditionalism”, aimed at warning against moral decay and providing guidance for the general public.²⁵

His treatise *Dhamm al-malāhī*, which includes the sexual passivity report, should be understood in the context of third/ninth-century Baghdad, where he was born and lived – a period when the elite were known for indulging in hedonistic behaviours such as gluttony, pederasty, and excessive drinking.²⁶ Notably, caliphs like al-Amīn (r. 808–13) and al-Mutawakkil (r. 847–61) were infamous for “hosting wine-and-dance fueled parties”.²⁷ As Everett Rowson has shown, al-Amīn’s desire for the court eunuchs prompted his mother to dress the court slave girls as boys in an effort to shift his attention to the females of the court, a trend, known as *ghulāmiyyāt* or “boyish girls”, which persisted in Baghdad for at least a generation.²⁸ While this period was marked by libertine tendencies, including pederasty, it also witnessed a rise in religious “orthodoxy”, with “traditionalism” becoming dominant in the ‘Abbāsīd court.²⁹ Ibn Abī al-Dunyā tutored several ‘Abbāsīd princes, including “those who were later to become caliphs as al-Muʿtaḍid [r. 892–902] and [his son] al-Muktafī [r. 902–908]”.³⁰ His instruction may have contributed to al-Muʿtaḍid’s relative restraint, as he reportedly “only drank on Sundays and Tuesdays”.³¹ In light of this context, it is not surprising that Ibn Abī al-Dunyā’s treatise denounces a range of “instruments of diversion”, including music, chess, backgammon, gambling, pigeon-flying, the presence of *mukhannathūn* among women, and male–male and female–female sexual practices.³² Since his main interests lay in piety, morality, and asceticism, his inclusion of these issues in a single treatise is not coincidental. He selected the instruments of diversion of his time, even if some had not been widely condemned yet. His presentation of these topics along with the sexual passivity report detailing the severe punishment of burning for *liwāt* offenders reflects his efforts to address the social ills of his society, which he believed diverted people from spiritual devotion to God and led them to further transgressions.

²² Ibid., 94. It should be noted that the legal definition of *liwāt* is very specific to anal penetration and does not loosely encompass other sexual acts such as fondling, caressing, intercrural rubbing (*tafkhiḍh*), or using a partner’s stomach (*tabṭīn*) or hand to achieve an orgasm.

²³ Appelrot Almogor, “Kitāb Dhamm al-Dunyā”, 2.

²⁴ Appelrot Almogor, “Kitāb Dhamm al-Dunyā”, 2.

²⁵ Majid Fakhry, *Ethical Theories in Islam* (Leiden: Brill, 1991), 151–7.

²⁶ Rudi Matthee, *Angels Tapping at the Wine-Shop’s Door: A History of Alcohol in the Islamic World* (Oxford: Oxford University Press, 2023), 40.

²⁷ Matthee, *Angels Tapping*, 41; Everett K. Rowson, “The traffic in boys: slavery and homoerotic liaisons in elite ‘Abbāsīd society”, *Middle Eastern Literatures* 11/2, 2008, 193–204, esp. 197.

²⁸ Everett Rowson, “The traffic in boys”, 198; Rowson, “Gender irregularity as entertainment: institutionalized transvestism at the caliphal court in medieval Baghdad”, in Sharon Farmer and Carol Braun Pasternack (eds), *Gender and Difference in the Middle Ages* (Minneapolis: University of Minnesota Press, 2003), 45–72, esp. 57.

²⁹ Matthee, *Angels Tapping*, 42.

³⁰ *Et*² s.v. Ibn Abī’l-Dunyā (A. Dietrich).

³¹ Matthee, *Angels Tapping*, 41.

³² Robson, *Tracts on Listening*, 19.

a. Juristic motivation for invoking or rejecting the sexual passivity report in a legal debate

On the basis of Ibn Abī al-Dunyā's sexual passivity report alone, it is difficult to ascertain where he may have encountered it or a variant of it. Additionally, the report does not clearly resemble other reports from which it may have evolved. Nevertheless, given its legal implications, legal texts provide a valuable starting point for investigation. For this reason, I will now turn to the legal corpus for further insights into the formation of Ibn Abī al-Dunyā's sexual passivity report. By the fourth/tenth century, some jurists cited Ibn Abī al-Dunyā's report and his *isnād* to support their argument for the imposition of the *ḥadd* penalty over their opponents' *ta'zīr* penalty, or vice versa. The uses and rejections of the sexual passivity report are best understood in the context of the broader legal debate over *liwāt* punishments. During the first four centuries of Islam, there were intense legal debates regarding the punishment for men convicted of male–male anal intercourse (*liwāt*), partly due to the lack of prophetic legal precedent on the matter.³³ This legal debate occupied and divided Muslim jurists. The various positions in this debate regarding the specific penalty imposed on the man convicted of *liwāt* can be summarized as follows:

1. The *ḥadd* of an unconditional death penalty, regardless of whether the offender met the conditions of chastity (*iḥṣān*) – namely, a duly consummated marriage, freedom, and Islam.³⁴ Some jurists specified that this capital punishment should take the specific form of stoning, while others argued it should take other forms of execution.
2. The *ḥadd* of a conditional death penalty, meaning that the offenders must meet the conditions for *zinā* in order to be punished with the *ḥadd* punishment.³⁵
3. Or a *ta'zīr* punishment, left to the judge's discretion, which during the early period usually involved a number of lashes – ranging from 10 to 100 – and incarceration.³⁶

The first position can be traced regionally to Medina and the Medinese, the second position can be traced to Kufa and Basra in Iraq and was often attributed to many Shāfi'is, Ḥanbalis, and some Ḥanafis, and the third position was attributed to the Zāhiris and some Ḥanafis.

While many reports portray the Companions as condemning male–male anal sex (*liwāt*) and expressing strong disapproval of it,³⁷ many legal reports attributed to them offer conflicting accounts of how they each adjudicated *liwāt* cases. I have argued elsewhere that such conflicting opinions attributed to the Prophet's Companions in the *āthār* and *akhbār* traditions more accurately reflect the legal debates occurring during the formation of these

³³ Since I have already closely examined the formation of the legal reports that attribute the death penalty for *liwāt* offenders to the Prophet, my focus here will be on the formation of this single Companion report. See Sara Omar, *A Genealogy of Early Muslim Discourses on Sex between Men*, forthcoming, esp. chapters 3 and 4.

³⁴ On *iḥṣān*, see EI², s.v. Muḥṣan (John Burton); "The meaning of *iḥṣān*", *Journal of Semitic Studies*, XIX/1, 1974, 47–75; Joseph Witztum, "Q 4:24 revisited", *Islamic Law and Society*, 16/1, 2009, 1–33.

³⁵ For more, see Sara Omar, "From semantics to normative law: treatments of *liwat* (sodomy) and *sihaq* (tribadism) in Islamic Jurisprudence (8th–15th century CE)", *Islamic Law and Society* 19/3, July 2012, 222–56.

³⁶ EI², s.v. Ta'zīr (Dien M.Y. Izzi).

³⁷ For example, Ibrāhīm al-Nakha'ī (d. 96/715) is reported to have contended that *liwāt* is worse than *zinā*. He is supposed to have said, "If anyone should be stoned twice, it should be the sodomite (*lūṭī*)". Al-Ājurri, *Dhamm al-liwāt*, 28; Abū Bakr Ibn Abī Shayba, *al-Muṣannaf*, 16 vols., ed. Ḥamad b. 'Abd-Allāh al-Jum'ā and Muḥammad al-Luḥaydān (Riyad: Maktabat al-Rushd, 2004), 9: 331. This attitude is exemplified by Mujāhid (d. 104/722), who is reported to have said, "Even if the one who commits that act, meaning the act of the people of Lot, bathes with every drop from the sky and on earth, he will remain ritually impure (*najis*)" (Ibn Abī al-Dunyā, *Dhamm al-malāhī*, 98).

traditions rather than the actual opinions of the Companion.³⁸ In this study, I focus on the evolution of the sexual passivity Companion report.³⁹ While this report suggests that Abū Bakr, ‘Alī, and other Companions reached an agreement (*ijmā‘*) on the punishment of burning the passive male to death, other reports complicate this notion of clear “agreement” by highlighting that each of these Companions was associated with applying various forms of punishment for *liwāt* offences.⁴⁰

Hence, conflicting legal punishments were later attributed to Abū Bakr, ‘Alī, and other notable Companions to support the competing punishments for *liwāt* in the broader legal debate. The sexual passivity report’s emergence in the third/ninth century and its subsequent citations in legal texts from the fourth/tenth century reflect historical, social, and legal developments, rather than evidence of an earlier punishment of burning to death *liwāt* offenders. The lack of earlier documentation and the singular line of transmission for this report suggest that it was likely a later development rather than a direct account from the time of Abū Bakr.

One of the earliest jurists to cite Ibn Abī al-Dunyā’s sexual passivity report is the Ḥanafī jurist al-Jaṣṣāṣ (d. 370/981). The Ḥanafīs were divided in the debate over *liwāt* punishments, with some jurists advocating the *ḥadd* of a conditional death penalty, while others argued for a *ta‘zīr* punishment. Remaining true to his personal position of discretionary punishment, al-Jaṣṣāṣ cites the sexual passivity report only to refute its use as evidence in support of the *ḥadd* punishment. Writing almost one century prior to al-Bayhaqī, al-Jaṣṣāṣ contends that the sexual passivity report is “*mursal* because Muḥammad b. al-Munkadir did not live [early enough] to witness them [Abū Bakr and Khālīd b. al-Walīd]”. Hence, it is not appropriate for later generations to cite this report as proof (*ḥujja*) for their legal position.⁴¹ Moreover, besides the fact that this report is unreliable, al-Jaṣṣāṣ contends that “not a single jurist has argued for burning to death with fire”, as an actual punishment for *liwāt*.⁴² Finally, and more importantly, al-Jaṣṣāṣ contends, “It is possible that the man whom Khālīd b. al-Walīd found [penetrated like a woman] was actually an enemy (*ḥarbiyyan*) or among the people of apostasy (*ridḍa*). They burned him and punished him with the excessive means of burning, not on account of that act [*liwāt*], but because he deserved execution on account of his disbelief (*kufīr*)”.⁴³ In other words, al-Jaṣṣāṣ suggests that the offences of the man who was found “penetrated like a woman” and subsequently burned in the sexual passivity report may have been treachery and apostasy, rather than sexual misconduct. Al-Jaṣṣāṣ’s intervention is significant because he not only critiques this report as unreliable but also suggests that the offender was punished specifically for apostasy and treachery, thereby providing hints about the identity of the unnamed man who was burned by Khālīd b. al-Walīd.

Ibn Ḥazm, who also advocated for a discretionary penalty for *liwāt* offenders rather than a *ḥadd* penalty, cites the sexual passivity report solely to refute its veracity based on its disconnected chain of transmitters (*isnād*), thereby rejecting its use as evidence in support of a *ḥadd* penalty. More significantly, Ibn Ḥazm explicitly identifies the unnamed offender in

³⁸ For the full argument, see Omar, *A Genealogy of Early Muslim Discourses*.

³⁹ Ibn Abī al-Dunyā, *Dhamm al-malāhī*, 100–01.

⁴⁰ For example, in one account, Abū Bakr himself suggested stoning, while ‘Alī suggested burning the offender. Ibn Ḥazm, *al-Muḥallā*, 16: 438–9. Yet, in another later variant, ‘Umar and ‘Alī suggested burning while others suggested lapidation. Jamāl al-Dīn al-Zayla‘ī, *Naṣb al-rāya li-aḥādīth al-hidāya*, 5 vols., ed. Muḥammad ‘Awāma (Jedda: Mu‘asasat al-Rayān, 1997), 3: 342.

⁴¹ Abū Bakr Aḥmad b. ‘Alī al-Jaṣṣāṣ al-Rāzī, *Sharḥ mukhtaṣar al-Ṭaḥāwī*, 8 vols., ed. Muḥammad ‘Ubayd Allāh al-Dakhkhān (Beirut: Dār al-Bashā‘ir al-Islāmiyya, 2010), 6: 174.

⁴² al-Jaṣṣāṣ, *Sharḥ mukhtaṣar al-Ṭaḥāwī*, 6: 174.

⁴³ al-Jaṣṣāṣ, *Sharḥ mukhtaṣar al-Ṭaḥāwī*, 6: 174.

the sexual passivity report by name. In one report, he cites al-Kharāʾiṭī's chain of transmitters, ending with Muḥammad b. al-Munkadir, Ṣafwān b. Sulaym, and Mūsā b. ʿUqba, and explains that Abū Ishāq [al-Zajjāj (d. 311/923)] said that the man “found penetrated like a woman” “is named al-Fujāʾa”.⁴⁴ The complete conflation of the sexual passivity report and the apostasy report becomes much more crystallized in the work of the Mālikī jurist Ibn ʿAbd al-Barr (d. 463/1071), which will be examined below. Similarly, the Mālikī jurist Ibn al-ʿArabī (d. 543/1148) includes an account wherein a man was “discovered in an Arab village being penetrated like a woman (*yunkaḥu kamā tunkaḥu al-marʾa*) and his name was al-Fujāʾa...”.⁴⁵ Like Ibn Ḥazm and Ibn ʿAbd al-Barr, Ibn al-ʿArabī identifies the offender burned for his sexual passivity by name, referring to him as al-Fujāʾa. In order to understand this conflation, we first need to examine the earliest historical accounts of the apostasy report.

III. Historical accounts of al-Fujāʾa and the apostasy report

Taking al-Jaṣṣāṣ's suggestion that the offender's crimes in the sexual passivity report are treachery and apostasy, along with Ibn Ḥazm's and Ibn al-ʿArabī's identification of the offender by name as al-Fujāʾa, necessitates further investigation into this individual. Early historical chronicles quickly reveal that al-Fujāʾa was distinctly known for his crimes of treachery and apostasy.⁴⁶ During the Wars of Apostasy (*ḥurūb al-ridda*), Abū Bakr reportedly dispatched 11 commanders and sent them to various Arab tribes to fight them. Among them were Khālīd b. al-Walīd, who was commanded to fight Ṭulayḥa b. Khuwaylid, who claimed to be a prophet among the Banū Asad, and Ṭurayfa b. Ḥājiz, who was commanded to fight the Banū Sulaym (al-Fujāʾa's tribe) and those with them from the Banū Hawāzin. Abū Bakr entrusted each of the commanders with the same letter, encouraging them first to invite these tribes to Islam before fighting them. They were instructed to fight those who resisted. The adult males should be killed by being “burned with fire”,⁴⁷ while the women and their offspring should be captured.⁴⁸ Abū Bakr is also depicted on his deathbed as regretting ordering the burning of al-Fujāʾa. Ibn ʿAbd Rabbih (d. 328/940) recounts that when Abū Bakr approached his death, he reportedly wrote a letter placing ʿUmar b. al-Khaṭṭāb in charge as his successor and outlining some of his regrets. He sent this with ʿUthmān b. ʿAffān and an Anṣārī man so that it might be read out loud to the people. In it, Abū Bakr outlines three regrets concerning things he did, including the burning of al-Fujāʾa: “I wish I had not burned al-Fujāʾa al-Salamī. I should either have killed him instantly or left him alone in sound

⁴⁴ Ibn Ḥazm, *al-Muḥallā*, 16: 440.

⁴⁵ Abū Bakr Muḥammad b. ʿAbd Allāh Ibn al-ʿArabī, *Aḥkām al-Qurʾān*, 4 vols., ed. Muḥammad ʿAbd al-Qādir ʿAṭā (Beirut: Dār al-Kutub al-ʿIlmiyya, 2003), 3: 515.

⁴⁶ Even the prominent traditionist al-Dāraquṭnī (d. 385/995) identifies him as an apostate who was burned to death, with no mention of sexual passivity. See ʿAlī b. ʿUmar b. Aḥmad al-Dāraquṭnī, *Kitāb al-Muʿtalif wa-l-mukhtalif*, 5 vols., ed. Muwaffaq b. ʿAbd Allāh b. ʿAbd al-Qādir (Beirut: Dār al-Gharb al-Islāmī, 2008), 1: 305.

⁴⁷ This punishment of burning apostates with fire may have been modelled on Dhū Nuwās' punishment of the Christians of Najrān who refused to embrace Judaism. Ibn Ḥabīb (d. 245/859) reports that Dhū Nuwās embraced Judaism and called the people to it: “He dug trenches in Najrān and lit them with fire. He called its people to Judaism. They were inheritors of a religion of the religion of ʿĪsā, God bless him. When they refused this, he threw them into the fire, burned the Gospel, and killed about 20,000 of them with the sword, apart from those he burned with fire, or savagely punished.” Abū Jaʿfar Muḥammad b. Ḥabīb, *Kitāb al-Muḥabbār*, ed. Ilse Lichtenstädter (Hyderabad, Maṭbaʿat Jamʿiyyat Dāʾirat al-Maʿārit al-ʿUthmāniyya, 1942), 367. This is Lasse Løvlund Toft's translation. See Lasse Løvlund Toft, “Dhū Nuwās and the martyrs of Najrān in Islamic Arabic literature until 1400 AD”, *Entangled Religions – Interdisciplinary Journal for the Study of Religious Contact and Transfer* 13/2, 2022.

⁴⁸ Al-Ṭabarī, *Tārīkh*, 3: 251.

condition”.⁴⁹ Such early accounts do not depict Abū Bakr as threatening to kill by burning men who were “penetrated like a woman”.⁵⁰

One of the earliest mentions, even if it is brief, of al-Fujā’a’s punishment by burning is by Ibn al-Kalbī (d. 204/819), a historian who spent much of his life in Baghdad collecting the genealogies and history of ancient Arabs. He identifies al-Fujā’a as “Baḥīra b. Iyās b. ‘Abdal-lāh b. ‘Abd Yālīl⁵¹ b. Salama b. ‘Umayra. He is the one whom Abū Bakr burned [to death] for apostasy”.⁵² Here, Ibn al-Kalbī clearly states that al-Fujā’a was burned specifically for his act of apostasy. Likewise, the early Medinese historian, al-Wāqidi (d. 207/823)⁵³ recounts al-Fujā’a’s story in full detail, without any *isnāds*, in his *Kitāb al-Ridda* as follows:

A man from the Banī Sulaym tribe, known as al-Fujā’a b. ‘Abd Yālīl, approached Abū Bakr, may God be pleased with him, and greeted him and said, “O Successor of the Messenger of God, I am a Muslim man who has been following the religion of Islam ever since [I was a child]. I have not changed or exchanged it [for another]. I wish to fight the people of apostasy. I would like for you to aid me [by supplying me] with horses and weapons, so that I might distribute them among my people and my paternal cousins from the Banū Sulaym and join Khālīd b. al-Walīd, so that I can fight with him Ṭulayḥa b. Khuwaylid and his Companions.

He said: So, Abū Bakr, may God be please with him, armed him with ten horses and many weapons, [including] swords, spears, bows and arrows, and he sent ten Muslims to accompany him. He said: Al-Fujā’a left Medina as if he were heading to Khālīd b. al-Walīd, but he left the road to Khālīd and went to the territory of the Banī Sulaym. He sent to some of them, calling them, and they responded. He directed them to those ten with whom he had been sent, and he killed every last one of them. Then he distributed the horses and weapons that Abū Bakr had given him to those who had followed him, the foolish among his people. Then he went on and began killing everyone, sparing neither his own people nor others...

He said: Al-Fujā’a continued doing what he was doing, attracting those who were sexually depraved (*ahl al-da‘āra*) and morally corrupt to join him. This reached Abū

⁴⁹ Aḥmad b. Muḥammad b. ‘Abd Rabbuh, *al-‘Iqd al-farīd*, 9 vols., ed. ‘Abd al-Majīd al-Tarḥīnī (Beirut: Dār al-Kutub al-‘Ilmiyya, 1983), 5: 21; Abū ‘Ubayd Allāh al-Bakrī, *Mu‘jam mā ista‘jam min asmā’ al-bilād wa-l-mawāḍi‘*, ed. Muṣṭafā al-Saqqā (Beirut: ‘Ālam al-Kutub, 1982), 1077; and Ḥamīd b. Zanjawayh, *Kitāb al-amwāl*, 14 vols. in 1, ed. Shākir Fayyād (Saudi Arabia: Markaz al-Malik Fayṣal li-l-Buḥūth wa-l-Dirāsāt al-Islāmiyya, 1986), 1: 347–8. It may be that such accounts helped Muslim scholars reconcile the Prophetic prohibition against a death penalty with burning and the purported account of Abū Bakr commanding the burning of al-Fujā’a, be it for apostasy or passive anal sex. The purported letter includes an admission by Abū Bakr that he burned al-Fujā’a, but it does not specify the crime for which he was burned.

⁵⁰ There is an undeniable resemblance between this phrase and the command in Leviticus 18: 22: “Do not lie with a male as one lies with a woman; it is an abhorrence”. Similarly, the Midrash equates the role of being penetrated with women, stating, “to be like a woman means to be penetrated”. See Michael L. Satlow, “They abused him like a woman’: homoeroticism, gender blurring, and the Rabbis in late antiquity”, *Journal of the History of Sexuality* 5/1, 1994, 1–25, esp. 14.

⁵¹ The vocalization of this name is unclear. According to the editor of Ibn al-Kalbī’s work, it is vocalized as Yālīl. It is also possible that it is Yālayl.

⁵² Hishām b. Muḥammad b. al-Kalbī, *Jamharat al-nasab*, ed. Nājī Ḥasan (Beirut: Maktabat al-Nahḍa al-‘Arabiyya, 1986), 396.

⁵³ It should be noted that Muslim scholars criticized al-Wāqidi and viewed his reports as weak and unreliable. For example, al-Shāfi‘ī is portrayed as having said that “al-Wāqidi’s books are lies (*kadhib*)”, Yaḥyā b. Ma‘īn with saying his “*ḥadīth* should not be recorded”, he is not reliable. Ibn Abī Ḥātim al-Rāzī, ‘Abd al-Raḥmān Ibn Muḥammad, *Kitāb al-Jarḥ wa-l-ta‘dīl*, 9 vols., ed. ‘Abd al-Raḥmān b. Yaḥyā al-Mu‘allimī al-Yamānī (Hyderabad: Dā‘irat al-Ma‘ārif al-‘Uthmāniyya, 1953), 8: 21.

Bakr – may God be please with him – so he went to those who were with him from the Banū Sulaym and others from Qays ‘Aylān and informed them of what al-Fujā’a had done. The Banū Sulaym in particular were extremely distressed and said, “O Successor of the Messenger of God, our conscience has troubled us concerning this. We have surely imitated the actions of God’s enemy [al-Fujā’a], a disgrace that will never be washed away from us...”.

Abū Bakr then wrote to Khālīd, informing him of what al-Fujā’a had done, regarding the weapons he had taken and the Muslims he had killed. He ordered him to send a group to capture him, wherever he may be ... [When al-Fujā’a was captured, Mu‘ādh b. Wāthila said to him], “O enemy of God, you took Abū Bakr’s horses and weapons and used them to kill Muslims, and you became an apostate, [leaving] the religion of Islam. Did you think that Abū Bakr would ignore your actions?” He said: “Al-Fujā’a fell silent and did not say a word...”.

So, Mu‘ādh [b. Wāthila] sent to Khālīd b. al-Walīd, informing him of what had happened and reporting that al-Fujā’a had been captured. Khālīd then directed him to Abū Bakr – may God be pleased with him – so that he might give his opinion concerning [what to do with] him. Al-Fujā’a was taken to Medina. When he stood in front of Abū Bakr, he [Abū Bakr] did not speak to him a single word, and he did not question him regarding what he had done. [Instead,] he called a man from among the Banū Sulaym, named Ṭurayfa [ibn Ḥājiz], and said to him, “O Ṭurayfa, take this enemy of God with you, outside Medina and burn him [to death] with fire”.

He said: Al-Fujā’a was then taken outside [of Medina], firewood was collected for him, his hands and feet were tied, and he was placed in the centre of the wood. Then, the wood was set on fire, and al-Fujā’a burned until he became charcoal.⁵⁴

In many of the verses sung about al-Fujā’a in this early work where his actions are recounted in detail, he is blamed for his having “betrayed” (*ghadara*) and “committed treason against” (*khāna*) Abū Bakr. Significantly, nowhere in al-Wāqidi’s work is al-Fujā’a described as “being penetrated like a woman”.⁵⁵ It should be noted that there is one brief mention of al-Fujā’a attracting men who were “sexually depraved (*ahl al-da‘āra*) and morally corrupt to join him [in his raiding and killing]”.⁵⁶ But even this note does not describe al-Fujā’a as engaging in any debauchery himself, let alone specify the nature of such acts (i.e. what such acts entailed and with whom). The report only seems to describe the types of immoral people he attracted to join him in his betrayal of Abū Bakr and the ruthless killing of Muslims and others.

Other early Muslim historians offer accounts similar to that of al-Wāqidi, though many are much more succinct. For example, the Baghdadi historian al-Balādhūrī (d. 279/892) writes:

And among them [Banū Sulaym b. Maṣṣūr] was al-Fujā’a [d. 11/632]: he is Baḥīr ibn Iyās b. ‘Abdallāh b. ‘Abd Yālīl b. Salama b. ‘Umayra. They said, al-Fujā’a approached Abū Bakr, may God be pleased with him, and said: “Supply me and reinforce me so that I may fight the apostates”. So, [Abū Bakr] supplied him with weapons and [al-Fujā’a]

⁵⁴ Muḥammad b. ‘Umar b. Wāqid (al-Wāqidi), *Kitāb al-Ridda*, ed. Yahyā al-Jubūrī (Beirut: Dār al-Gharb al-Islāmī, 1990), 75–81.

⁵⁵ Al-Wāqidi, *Kitāb al-Ridda*, 78 and 81.

⁵⁶ Al-Wāqidi, *Kitāb al-Ridda*, 77.

went out to capture people, killing Muslims and apostates ... Then Abū Bakr wrote to Ṭurayf b. Ḥājira,⁵⁷ ordering him to fight [al-Fujā'a], so he fought him, and Ibn Ḥājira captured him and sent him to Abū Bakr. Abū Bakr ordered that he be burned near the prayer area outside the city (*muṣallā*). It is also said that Abū Bakr wrote to Ma'an b. Ḥājira to fight al-Fujā'a and that he sent his brother Ṭurayf[a] to him.⁵⁸

Al-Ṭabarī (d. 310/923) offers two longer accounts that resemble al-Balādhurī's account, in which Ṭurayf b. Ḥājira reportedly captured al-Fujā'a and brought him to Abū Bakr who then ordered that a fire be built, according to one account, in the prayer area (*muṣallā*) in Medina and, according to another account, in *al-Baqī'* [Cemetery], where al-Fujā'a was burned to death.⁵⁹ In both accounts, al-Fujā'a is blamed for his acts of betrayal and treachery, robbing and killing Muslims. Like al-Wāqidi, al-Ṭabarī does not include any descriptions of al-Fujā'a as "being penetrated like a woman". Hence, these early historical chronicles do not seem to draw any connection between al-Fujā'a the apostate and al-Fujā'a who was discovered "penetrated like a woman". This direct conflation does not seem to occur until the fifth/eleventh century in Ibn 'Abd al-Barr's legal work.

IV. Conflating the two accounts into the sexual passivity–apostasy report

If early historical chronicles that discuss al-Fujā'a do not indicate that he was additionally known for occupying the passive role in *liwāt*, then how did a report about Abū Bakr ordering the burning of apostates develop into a report about Abū Bakr ordering the burning of an unnamed man for occupying the passive sex role in *liwāt*, at the behest of 'Alī? A close examination of a report in a fifth/eleventh-century Mālikī text, *Faṭḥ al-barr fī al-tartīb al-fiqhī*, reveals a clear conflation between the two accounts. Unlike al-Jaṣṣāṣ and Ibn Ḥazm, who advocated for discretionary punishment in this debate, Ibn 'Abd al-Barr, who was considered "the best traditionist of his time" and was equally distinguished in Mālikī law, followed the standard position of the Mālikī school.⁶⁰ The Medinese position was uncompromising and was exceptional in that it did not change over time on this matter. Mālikī jurists held that *liwāt* offenders should be punished with the *ḥadd* punishment of an unconditional death penalty, regardless of their *iḥṣān* status. Notably, Ibn 'Abd al-Barr cites a variant report in the section pertaining to the punishments for apostasy, underscoring the way in which Ibn Abī al-Dunyā's sexual passivity report was conflated with a report on apostasy. It is worth citing this report here in full:

When al-Fujā'a became an apostate – and his name is Iyās b. 'Abdallāh b. 'Abd Yālīl – Abū Bakr al-Ṣiddīq sent al-Zubayr b. al-'Awwām [to capture] him with thirty horsemen ... [after seizing him] he brought him to Abū Bakr. Then Abū Bakr said, take him out to *al-Baqī'* [Cemetery] – meaning to the prayer area (*muṣallā*) – and burn him to death with fire. So, they took him out to the prayer area and burned him to death. Some biographers (*ahl al-sīra*) claimed that it was reported that he was penetrated like a woman. Ya'qūb b. Muḥammad al-Zuhri mentioned all of this in *Kitāb al-Ridda*.⁶¹ He said, 'Abd al-'Azīz b. Abī Ḥāzim informed me, on the authority of Dāwūd b. Bakr,

⁵⁷ This is likely a copyist's error since al-Ṭabarī and others identify him as Ṭurayf b. Ḥājiz. See al-Ṭabarī, *Tārīkh*, 3: 265.

⁵⁸ Aḥmad b. Yaḥyā b. Jābir al-Balādhurī (d. 279/892), *Kitāb Jumal min ansāb al-ashraf*, ed. Suhayl Zakkār and Riyād Zirkilī (Beirut: Dār al-Fikr 1996), 5676.

⁵⁹ Al-Ṭabarī, *Tārīkh*, 3: 264–6.

⁶⁰ *El*² s.v. Ibn 'Abd al-Barr (Ch. Pellat).

⁶¹ This book by Ya'qūb b. Muḥammad b. 'Isā al-Zuhri, known as Abū Yūsuf al-Zuhri al-Madanī (d. 213/829), has not been published, and it is unclear if it is extant.

on the authority of Muḥammad b. al-Munkadir, that Khālīd wrote to Abū Bakr noting that he found in some Arab villages a man who was being penetrated like a woman. So, Abū Bakr consulted [his Companions] on the matter and ‘Alī was the sternest in opinion among them. He said, “This is a transgression which no nation has committed except one, and God did to them what you already know. My considered opinion (*arā*) is that he should be burned to death with fire”. The Companions of the Prophet therefore agreed that he should be burned to death with fire. They [the Companions] agreed on this and Abū Bakr wrote to Khālīd [informing him of the punishment]. So, he [Khālīd] burned him to death ... [according to others] when Abū Bakr sought their [the Companions’] opinion, they suggested stoning him, but ‘Alī said, “My considered opinion (*arā*) is that he should be burned to death, since Arabs disdain the tremendous shame that would be attached to them from an exemplary penalty as opposed to [execution through the framework of] fixed penalties [*ḥudūd*] (*inna al-‘arab ta’nafu min ār al-muthla wa-lā ta’nafu min al-ḥudūd*)”. So, [Khālīd] burned him to death with fire.⁶²

Here, Ibn ‘Abd al-Barr combines an apostasy report with the sexual passivity report, including them both in a single account. He identifies the apostate who was penetrated like a woman as al-Fujā’a. Interestingly, Ibn ‘Abd al-Barr includes an addition at the very end of this report which has the Companions suggesting punishing al-Fujā’a with stoning, the normative punishment for *liwāt* in the Mālikī school. This additional detail is not found in earlier variants of the sexual passivity report; rather, it specifically conforms to the Mālikī punishment for *liwāt*.⁶³ This addition sheds light on the evolution of this report as it was narrated by various jurists over time, which reflects the ideological and legal disagreements amongst the jurists rather than the actual historical incident itself.

a. Earliest references to al-Wāqidi

While al-Jaṣṣāṣ only hinted at the identity of the unnamed man in the sexual passivity report, specifying the crime for which he was burned to death as treachery and apostasy, later jurists such as Ibn Ḥazm identify the offender in the sexual passivity report by name as al-Fujā’a. Ibn ‘Abd al-Barr not only names him but also combines the crime of sexual passivity and apostasy for the two offenders – an unnamed man and al-Fujā’a – into a single report. Clearly, these jurists were familiar with al-Fujā’a and his infamous reputation as an apostate. Even though jurists continued to cite the sexual passivity report from the fourth/tenth century onwards to either support or oppose the *ḥadd* penalty for *liwāt* offenders, it is not until the eighth/fourteenth and ninth/fifteenth centuries that some scholars cite their source of information for this report. The Ḥanafī jurist and traditionist al-Zayla‘ī (d. 762/1360) is among the earliest jurists I have encountered who cited al-Wāqidi (d. 207/823) as his source for a conflated report on sexual passivity and apostasy. Al-Zayla‘ī first cites al-Bayhaqī as having narrated the sexual passivity report in his *Shu‘ab al-īmān* on the authority of Ibn Abī al-Dunyā, citing his chain of transmitters, ending with Muḥammad

⁶² Yūsuf b. ‘Abd Allāh b. Muḥammad Ibn ‘Abd al-Barr, *Fath al-barr fi al-tartīb al-fiqhī*, ed. Muḥammad al-Maghrāwī (Riyad: Majmū‘at al-Tuḥaf al-Nafā‘is al-Dawliyya, 1996), 1: 242 and idem, *al-Tamhīd li-mā fi al-Muwatta‘a min al-ma‘ānī wa-l-asānīd*, 17 vols., ed. Bashshār ‘Awwād Ma‘rūf, Salīm Muḥammad ‘Āmir, and Muḥammad Bashshār ‘Awwād (London: Mu‘assasat al-Furqān li-l-Turāth al-Islāmī, 2017), 3: 713.

⁶³ For example, Ibn Abī al-Dunyā and al-Kharā‘īṭī do not include this detail. However, some jurists include this additional detail in their legal works to support the *ḥadd* penalty. For example, summarizing the various positions in the legal debate over how to punish those guilty of *liwāt*, the Shāfi‘ī jurist Aḥmad b. Abī Aḥmad al-Ṭabarī, known as Ibn al-Qāṣṣ (d. 335/946–47) cites the sexual passivity report but includes this additional detail as the evidence cited by Mālikī jurists for an unconditional *ḥadd* penalty through stoning. Aḥmad b. Abī Aḥmad al-Ṭabarī, *Adab al-qāḍī*, 2 vols., ed. Ḥusayn Khalaf al-Jubūrī (Ṭā‘if, Saudi Arabia: Maktabat al-Ṣiddīq, 1989), 1: 491.

b. al-Munkadir, and finally cites the content of the report.⁶⁴ Al-Zaylaʿī then explains that “al-Wāqidī narrated it [the sexual passivity report] in his *Kitāb al-Ridda* at the end of the apostasy of the Banū Sulaym [al-Fujāʾa’s tribe]”, subsequently citing a variant of the apostasy report on the authority of Yahyā b. ‘Abd Allāh b. Abī Farwa on the authority of ‘Abd Allāh b. Abī Bakr b. Ḥazm (d. 65/135), who said that:

Khālīd wrote to Abū Bakr informing him that a man was brought to him, against whom he had evidence that established he was penetrated in his anus as a woman is penetrated [in her vagina] (*yūṭa’u fī duburihi kamā tūṭa’u al-mar’a*). Abū Bakr gathered the Companions of the Prophet – may peace and blessings be upon him – and consulted them concerning him [the offender]. ‘Umar and ‘Alī suggested that he should burn him to death with fire, since the Arabs disdain the notoriety that they could derive from an exemplary penalty. Yet others suggested that he should lapidate him. Subsequently, Abū Bakr wrote to Khālīd b. al-Walīd commanding him to burn him to death with fire. So Khālīd burned him to death with fire.⁶⁵

There are several developments in this later variant that are noteworthy: First, the phrase used to describe the offender hints at a shift from an initial insult, a man “penetrated like a woman”, which seems to have been used rhetorically to humiliate al-Fujāʾa for his acts of betrayal and treachery against Abū Bakr, but morphed into a more specific and literal crime for later jurists, a man “penetrated in his anus as a woman is penetrated [in her vagina]”. I will explore this possibility in more detail below. Second, al-Zaylaʿī’s report uses a phrase that is reminiscent of al-Kharāʾiṭī’s gloss of Ibn Abī al-Dunyā’s report, which indicates that Khālīd b. al-Walīd established that the offender had committed the crime of sexual passivity through evidence, rather than punishing him on the basis of an accusation alone. By the eighth/fourteenth century, the evidence for those who wished to punish *liwāṭ* offenders with the *ḥadd* punishment had become well established and necessary, and this variant reflects this development. Third, this report highlights the Companions’ disagreement over the punishment they advised Abū Bakr to adopt for the passive male, with ‘Umar and ‘Alī suggesting a *ḥadd* of an unconditional death penalty through burning and other Companions recommending a *ḥadd* of a conditional death penalty instead, presumably based on the *zinā* model of punishment (stoning for those who have attained *iḥṣān* and lashing for those who have not). The conflicting forms of punishment suggested in this report reflect the legal debate over *liwāṭ* punishments, rather than the purported agreement (*ijmāʿ*) in Ibn Abī al-Dunyā’s report, where the Companions are said to have agreed with ‘Alī to burn the offender. Finally, the chain of transmitters which al-Zaylaʿī cites from al-Wāqidī – Yahyā b. ‘Abd Allāh b. Abī Farwa on the authority of ‘Abd Allāh b. Abī Bakr b. Ḥazm – is not one that al-Wāqidī himself uses in his apostasy report or in the section on al-Fujāʾa.

Al-Zaylaʿī was not the only jurist to identify al-Bayhaqī as transmitting the sexual passivity report on the authority of Ibn Abī al-Dunyā while also citing al-Wāqidī as his source for this report. Other jurists after him followed suit. More specifically, several jurists who, like al-Zaylaʿī, were using or commenting on al-Marghīnānī’s *Hidāya*, including the Ḥanafī Badr al-Dīn al-ʿAynī (d. 855/1451), the Shāfiʿī Ibn Ḥajar al-ʿAsqalānī, and the Ḥanafī Ibn al-Humām (d. 861/1457), all cite al-Wāqidī in relation to the sexual passivity report. While commenting on *al-Hidāya*, al-ʿAynī explains that because of the disagreement among the

⁶⁴ Abū Bakr al-Bayhaqī, *al-Jāmiʿ li-shuʿab al-imān*, 14 vols., ed. Mukhtār Aḥmad al-Nadawī (Riyadh: Maktabat al-Rushd li-l-Nashr wa-l-Tawzīʿ, 2003), 7: 281–2.

⁶⁵ al-Zaylaʿī, *Naṣb al-rāya*, 3: 342.

Companions regarding punishing by fire, Abū Ḥanīfa maintained that *liwāt* was not equivalent to *zinā* and, therefore, did not warrant a *ḥadd* punishment. He cites the same two traditions cited by al-Zaylaʿī, and likewise claims that al-Wāqidī narrated (*rawā*) the sexual passivity report at the end of the section on the apostasy of the Banū Sulaym, in his *Kitāb al-Ridda*.⁶⁶ Similarly, al-ʿAsqalānī, who wrote an abridgement (*mukhtaṣar*) of al-Zaylaʿī's work, cites al-Zaylaʿī's report verbatim, only adding that he believed this report to be "very weak" (*ḍaʿīf jiddan*).⁶⁷ Finally, Ibn al-Humām, who studied with both al-ʿAynī and al-ʿAsqalānī, also authored a commentary on *al-Hidāya*, similar to al-ʿAynī's work. Hence, it is not surprising to see Ibn al-Humām referring to al-Bayhaqī as narrating the sexual passivity report via Ibn Abī al-Dunyā, as well as citing al-Wāqidī as having narrated it in his *Kitāb al-Ridda*.⁶⁸

It is peculiar that it took until the eighth/fourteenth century for al-Wāqidī's name and work to appear as the source of the sexual passivity report, purportedly in the section on the Banū Sulaym and al-Fujā'a's acts of treachery and apostasy. This raises the possibility that al-Zaylaʿī had access to a manuscript of *Kitāb al-Ridda* that is no longer extant and that no one else had seen. Alternatively, it is plausible that al-Zaylaʿī made this connection himself based on the conflated apostasy–sexual passivity report of his predecessors. Once early indications linked the passive male's crime to apostasy and identified the offender as al-Fujā'a, it would not have been far-fetched to suggest that al-Wāqidī himself made this connection, alleging that he narrated the report on sexual passivity at the end of his section on the apostasy of the Banū Sulaym in his *Kitāb al-Ridda*. Therefore, after the association with al-Fujā'a was established during the fifth/eleventh century, it seems likely that al-Wāqidī's apostasy report became conflated with Ibn Abī al-Dunyā's sexual passivity report, resulting in citations of al-Wāqidī's work in the eighth/fourteenth century as the source of this conflated narrative.

b. False accusation (*qadhf*) and the shame associated with the passive male role

While it is possible that the apostasy report is entirely separate from the sexual passivity report, it seems unlikely for two reasons. First, there is significant overlap between the details in the two accounts. Both reports recount an incident in which a man was burned to death under Abū Bakr's orders, albeit for different crimes. Both reports include Khālīd b. al-Walīd as the military commander who was responsible for bringing al-Fujā'a or the unnamed man to justice for his crimes. There are a few differences between the two accounts. The apostasy report identifies the man as al-Fujā'a, while the sexual passivity report does not name the offender. While al-Wāqidī's apostasy report has Abū Bakr writing to Khālīd to inform him about what al-Fujā'a had done, ordering him to send a group to capture him, Ibn Abī al-Dunyā's sexual passivity report has Khālīd writing to Abū Bakr inquiring about how to punish the unnamed offender.

Notably, the main difference between the two accounts is the crime for which the male offender was burned. While al-Wāqidī's apostasy report specifies that the punishment of burning was for his treacherous crimes of apostasy, betrayal, and slaughter of Muslims, Ibn Abī al-Dunyā's sexual passivity report underscores the man's crime of occupying the passive sex role. The apostasy report is found in several major historical chronicles. The earliest accounts of the sexual passivity report, on the other hand, are found in works in *dhamm* genres, dedicated to condemning instruments of diversion and bad moral character, which

⁶⁶ Muḥammad Maḥmūd b. Aḥmad al-ʿAynī, *al-Bināya fī sharḥ al-Hidāya*, 12 vols. (Beirut: Dār al-Fikr, 1990), 6: 257.

⁶⁷ Al-ʿAsqalānī, Aḥmad b. ʿAlī. *al-Dirāya*, 2: 103.

⁶⁸ Kamāl al-Dīn Muḥammad Ibn al-Humām, *Sharḥ fath al-Qadīr ʿalā al-Hidāya Sharḥ bidāyat al-mubtadiʿ* authored by al-Marghīnānī, 10 vols., ed. ʿAbd al-Razzāq al-Mahdī (Beirut: Dār al-Kutub al-ʿIlmiyya, 2003), 5: 251–2.

often include Companion reports or Prophetic reports without full chains of transmission or a rigorous means of verifying their authenticity.

Second and more importantly, several jurists from the fifth/eleventh century and later specifically identify al-Fujā'a as the unnamed man in the sexual passivity report, thereby conflating the two reports. Moreover, some jurists from the eighth/fourteenth century onwards even cite al-Wāqidi as the source of the sexual passivity report. While it is difficult to know with certainty, it is plausible that the apostasy report evolved into the sexual passivity report with Muslims initially using the descriptive phrase, "he was penetrated like a woman" rhetorically to humiliate and insult al-Fujā'a for his acts of betrayal and treachery against Abū Bakr. This assumption is reasonable considering that the passive role in males was socially linked to subjugation and humiliation. Moreover, descriptive phrases sometimes served as insults during the Prophet Muḥammad's Arabia. For example, the insult "yā muṣaffira istiḥī" (lit., O you who [bleaches or] dyes his anus yellow) was coined for males who occupied the passive role in *liwāt*.⁶⁹

The fact that the conflated report specifically depicts al-Fujā'a as a passive male is significant. It sheds light on Muslim scholars' socio-legal perceptions of male sexual passivity as shameful and demeaning. Several early and classical works depict the passive male role as especially loathsome for adult males.⁷⁰ Take for example an early work of lives of the prophets (*qīṣaṣ al-anbiyā'*) by Abū Ḥudhayfa Ibn Bishr (d. 206/821), which attributes to 'Alī the saying, "The punishment for the one who commits the acts of the people of Lot during his youth is that when he reaches old age, he will be afflicted with calling men to [penetrate] him [out of desire for the passive role]".⁷¹ While this report does not specify whether the man who commits the "act of the people of Lot" penetrates other males by force or voluntarily, it distinguishes the active penetrative role from the passive role in male-male anal intercourse, clearly denigrating the male who assumes the passive role. In fact, this report emphasizes how the passive male role is more egregious, carrying a punishment of humiliation rooted in socio-cultural norms that condemn adult males desiring the passive sex role. Even medical treatises portrayed the condition of an adult male desiring to be penetrated by another adult male (*'ubna*) as a pathology, with some physicians contending that it was treatable.⁷²

Tellingly, for many jurists, falsely accusing a man of committing *liwāt* constituted a *qadhif* offence, which is related to slander. In cases where a person falsely accuses another of illicit sexual intercourse and fails to prove the veracity of his charge, the accuser is "liable to the punishment of eighty lashes of the whip [in accordance with Q 24: 4–5]. The accuser stands as one who has lied and is permanently discredited."⁷³ While Mālik, al-Shāfi'ī, and Ibn Ḥanbal include this charge under slander, Abū Ḥanīfa maintained that it is not a prescribed offence, but should nonetheless be punished severely.⁷⁴ The fact that some jurists believed that falsely accusing a man of *liwāt* constituted a prescribed offence reveals not only that

⁶⁹ For more, see Sara Omar, "Gendering sex: delineating the licit from the illicit", *Journal of the American Oriental Society* 145/2, 2025.

⁷⁰ Khalid El-Rouayheb has demonstrated this dynamic in Arab-Islamic societies, and contends that "Male honor was symbolically associated with the biological expressions of masculinity, shame with their diminishment or loss". He adds, "to penetrate phallically is to dominate, subjugate, and ultimately to humiliate". Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500–1800* (Chicago: University of Chicago Press, 2005), 26.

⁷¹ See Abū Ḥudhayfa Ibn Bishr al-Qurashī, *Mubtada' al-dunyā wa-qīṣaṣ al-anbiyā'* (Ms. Huntingdon 388. Bodleian Library, Oxford, 196 v).

⁷² For more, see Omar, *Genealogy of Early Muslim Discourses*, esp. ch. 5.

⁷³ Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (New York: Oxford University Press: 2019), 151.

⁷⁴ Kamali, *Crime and Punishment*, 152–3.

they took seriously such a false accusation, but also, more importantly, that they believed that it had the power to tarnish a man's reputation. Hence, socially, men who engaged in *liwāt* must have been viewed as morally corrupt (*fāsidūn*) and depraved (*fāsiqūn*),⁷⁵ just as those who engaged in illicit sex (*zinā*) were viewed as morally suspect.⁷⁶ Hence, in many legal texts, *qadhf* offences fall under *ḥudūd* punishments and are often related both to the accusation of *zinā* (illicit male–female sexual intercourse) and to the accusation of *liwāt*. This is because the purpose of Islamic law is “to protect the honour and good name of upright individuals regardless of the veracity of the charge, so long as the offence is degrading and humiliating”.⁷⁷

More specifically, while both the active and the passive roles in *liwāt* were prohibited, some early Muslims appear to have believed that the false accusation of *liwāt* applied more strictly to the passive male partner than to the active partner. For instance, when Ibn Ḥanbal's fellow traditionist Ishāq Ibn Rāhawayh (d. 238/853) was questioned about the appropriate punishment for the one who falsely accuses (*yaqdhif*) another man, the questioner was specifically inquiring about the case of a man accused of “seeking a[nother] man to penetrate you like a woman”, (*innakā ta'tī fulānan fa-yaṭa'uka kamā tūṭa'u al-mar'a*).⁷⁸ Already, during the third/ninth century, an adult male who occupied the passive sexual role was viewed socially with disdain and that this phrase, likening a passive male to a woman, was used to insult and slander these men.

Interestingly, rather than directly addressing the punishment for *qadhf*, Ibn Rāhawayh responds by outlining the varying positions on punishing *liwāt* offenders. He includes the following report which contains some semblance to Ibn Abī al-Dunyā's sexual passivity report: “It is narrated that Abū Bakr [punished] by burning [the offender to death] with fire. He reasoned, saying, “This is something with which God has punished a nation [Lot's people?], but with which He has never punished a nation prior to them. Hence, my considered opinion (*arā*) is that it [the punishment] should be applied and they should be burned to death with fire.”⁷⁹ However, Ibn Rāhawayh adds that he personally prefers that “his [the offender's] body should be burned with fire *after* he has been killed, just as ‘Alī Ibn Abī Ṭālib [purportedly] did to a group of apostates. He killed them and [subsequently] burned their bodies with fire.”⁸⁰ Ibn Rāhawayh contends that this form of punishment is better because ‘Alī did not burn the offender alive, while his soul was still inside him, for if he had done this, he would have been punishing the offender with the Lord's punishment. Here, the slander is aimed at accusing a man of sexual passivity “*yaṭa'uka kamā tūṭa'u al-mar'a*”, which is slightly different from Ibn Abī al-Dunyā's formulation, “*yunkaḥu kamā tunkaḥu al-mar'a*”. More significantly, this report is cited in response to a formal charge of *qadhf* against the offender and therefore indicates that the earliest legal attestation to this report was one pertaining to a slanderous accusation and an insult, rather than an actual case of *liwāt*.

In later legal discourses, the active penetrative role in sex continued to be associated with adult men and the passive receptive role with women. For instance, the Ḥanbalī Ibn Taymiyya (d. 728/1328) explains that men were created to desire the active penetrative role because “he is the one who usually desires and seeks” this penetrative role, while the

⁷⁵ For more on how *fisq* relates to both *liwāt* and *zinā*, see Mohammad Mezziane, “Sodomie et masculinité chez les juristes musulmans du IXe au XIe siècle”, *Arabica* 55, 2008, 276–306.

⁷⁶ This of course does not speak to the fact that people nonetheless engaged in both *liwāt* and *zinā*.

⁷⁷ Kamali, *Crime and Punishment*, 152.

⁷⁸ Ishāq b. Maṣṣūr al-Marwazī, *Masā'il al-Imām Aḥmad b. Ḥanbal and Ishāq b. Rāhawayh*, 10 vols. (Riyadh: Dār al-Hijra, 2004), 7: 3751.

⁷⁹ al-Marwazī, *Masā'il al-Imām*, 7: 3754.

⁸⁰ al-Marwazī, *Masā'il al-Imām*, 7: 3754–5.

passive receptive male was “not created with the desire for this [i.e. to be penetrated]”.⁸¹ The use of the passive male role specifically as an insult persists in modern Arabic dialects, such as the Moroccan *zāmil*, as well as in Persian (*kūnī*, from *kūn* or “ass”) and Turkish. In a fourteenth-century Classical Arabic lexicon, Ibn Manẓūr (d. 711/1311) identifies the active male penetrator as *nāʾik* and the passive penetrated male as *manīk*.⁸² In modern Egyptian dialect, *manīk* has transformed into *manyūk* and *mitnāk*, and *manyak* in Lebanese, Syrian, and other Arabic dialects. In Egyptian dialect, the more common *mitnāk* is equivalent to another common insult *khawal*, meaning the passive male in male–male intercourse.⁸³ These vulgar terms for males who occupy the passive penetrated role in sex are used as insults to debase them.⁸⁴

c. Issues with the sexual passivity report

While tracing the formation of the sexual passivity report, several issues should be considered. First, most of the earliest extant *ḥadīth* collections include reports about burning as the form of punishment used to punish apostates,⁸⁵ but they do not recount Abū Bakr’s

⁸¹ Aḥmad Ibn Taymiyya, *Majmūʿat al-fatāwā*, 37 vols., ed. ʿĀmir al-Jazzār and Anwar al-Bāz (Mansoura, Egypt: Dār al-Wafāʾ li-l-Ṭibāʾa wa-l-Nashr wa-l-Tawzīʿ, 2005), 15: 238. Ibn Taymiyya appeals to nature to assign the active penetrative role to men while rejecting the passive penetrated role for men. In sum, God created men specifically to penetrate, rather than to be penetrated. Elsewhere, Ibn Taymiyya asks how women could possibly marry men who were perceived as exhibiting feminine behaviour (*mukhannathūn*), and in later sources were often associated with occupying the passive role in *liwāt*. He contends that the *mukhannath*’s “desire has transferred from his penis to his anus. So he is penetrated like a woman.” Ibn Taymiyya, *Majmūʿat al-fatāwā*, 15: 188. In other words, Ibn Taymiyya questions how women could possibly consider marrying the *mukhannathūn*, who according to his reasoning, desire being penetrated like women and no longer desire occupying the active penetrative role. For more on the *mukhannathūn*, see Everett Rowson, “The effeminates of early Medina”, *Journal of the American Oriental Society* 111/4, 1991, 671–93. Here, the confluence of the tropes of penetration–feminization–domination represents a rhetorical strategy that can be dated to the Romans and to Jewish Hellenistic writers. Michael Satlow, *Tasting the Dish: Rabbinic Rhetorics of Sexuality* (Atlanta, GA: Scholars Press, 1995), 214. Passages such as Genesis Rabbah (63: 10) include the Jewish people’s plea to God that adopts a formulation similar to that which occurs in the sexual passivity report: “Master of the Universe, it is not fair that we should be subjugated to the seventy nations [of the world], but certainly not to this one [Rome] which is penetrated like women”. Commenting on this passage, David Brodsky contends, “The male who is penetrated is equated to a woman and is viewed as inferior. The one who is penetrated is not fit to rule, and it is an added disgrace to be ruled by someone who has been so subjugated himself. For the author, being penetrated by other men makes Roman men, and consequently Rome itself, “like women”. If penetration is a form of “conquest” of the other, then to be conquered by men who themselves have been “conquered is like being conquered by a second-rate empire that itself is subjugated by others”. See David Brodsky, “Sex in the Talmud: how to understand Leviticus 18 and 20 *Parashat Kedoshim* (Leviticus 19:1–20:27)”, in *Torah Queeries: Weekly Commentaries on the Hebrew Bible*, ed. Gregg Drinkwater, Joshua Lesser, and David Shneer (New York: New York University Press, 2009), 157–69, esp. 158. Similarly, Satlow contends that penetration is a form of political domination, which was also related to Roman attitudes towards penetration.

⁸² See Ibn Manẓūr, *Lisān al-ʿArab*, 6 vols. in 1, ed. ʿAbd Allāh ʿAlī al-Kabīr et al. (Cairo: Dār al-Maʿārif, 1982), 6: 4593.

⁸³ Martin Hinds and al-Saʿīd Badawī, *A Dictionary of Egyptian Arabic* (Beirut: Maktabat Lubnān, 1986), 269.

⁸⁴ Hinds and Badawī, *A Dictionary of Egyptian Arabic*, 894.

⁸⁵ For more on immolation as a form of punishment in Islam, see EI³ s.v. Immolation (Christian Lange); Christian Lange, *Justice, Punishment and the Medieval Muslim Imagination* (Cambridge: Cambridge University Press, 2008), esp. 68–9; 204; Andrew Marsham, “Attitudes to the use of fire in executions in late antiquity and early Islam. The burning of heretics and rebels in late Umayyad Iraq”, in Robert Gleave and István Kristó-Nagy (eds), *Violence in Islamic thought from the Qurʾān to the Mongols* (Edinburgh: Edinburgh University Press, 2015), 106–27; Andrew Marsham, “Public execution in the Umayyad period: early Islamic punitive practice and its late antique context”, *Journal of Arabic and Islamic Studies* 11, 2011, 101–36. For doubts about the historicity of ʿAlī’s burning of “heretics”, see W.F. Tucker, *Mahdis and Millenarians: Shiʿite Extremists in Early Muslim Iraq* (Cambridge: Cambridge University Press, 2008), 13.

burning of a man for “being penetrated like a woman”. The burning reports are often associated with Abū Bakr, ‘Alī b. Abī Ṭālib, and Khalid b. al-Walīd. For example, early Muslim traditionists such as al-Ṣan‘ānī (d. 211/827), Ibn Abī Shayba (d. 235/849), and Aḥmad b. Ḥanbal (d. 241/855) include an entire section or several reports on the punishment of burning. Some of these early works such as al-Ṣan‘ānī’s *Muṣannaf* attribute the burning of male apostates to Khālīd b. al-Walīd.⁸⁶ Al-Ṣan‘ānī and Ibn Ḥanbal also include a report that ‘Alī b. Abī Ṭālib found a group of apostates with their books and subsequently commanded that a pyre be constructed and that they be burned on it, along with their books. When Ibn ‘Abbās heard of this, he reportedly said: “If that were me, I would not have burnt them to death, because of the Prophet’s prohibition. Instead, I would have killed them in accordance with the Prophet’s saying, ‘Whoever changes their religion, then kill them’. The Prophet also said, ‘Do not punish [anyone] with God Almighty’s punishment [i.e. fire].”⁸⁷ This report is repeated in Ibn Abī Shayba’s *Muṣannaf*, along with three other reports about ‘Alī b. Abī Ṭālib specifically burning apostates to death.⁸⁸

Even later scholars such as Ibn ‘Abd al-Barr and Ibn Ḥubaysh (d. 584/1188) include accounts of Khālīd b. al-Walīd burning apostates to death. Ibn ‘Abd al-Barr describes an incident pertaining to the apostasy of the tribes of Asad⁸⁹ and Ghaṭafān during the battle of *Buzākha* (11/632). He explains that many captives were captured that day and that Khālīd ordered that a pyre be built. Then a great fire was lit under it, and the captives were cast into the fire. On the authority of Qatāda (d. 117/735), he adds that Abū Bakr fought apostates and “killed [them], captured captives, and burned [them]”.⁹⁰ Similarly, Ibn Ḥubaysh explains that during Abū Bakr’s Wars of Apostasy (*ḥurūb al-ridda*), Ṭulayḥa b. Khuwaylid al-Asadī led an army against Khālīd b. al-Walīd, but fled the battlefield during the battle of *Buzākha*. At the behest of Abū Bakr, Khālīd ordered for a pyre to be built, and he ordered that those captured in this battle be thrown into it alive.⁹¹ Hence, several *ḥadīth* collections and historical chronicles, such as al-Ṭabarī’s history, include reports that associate burning with the punishment for apostasy, not the passive sexual role in *liwāt*.⁹²

Second, in later works, ‘Alī b. Abī Ṭālib reportedly punished *liwāt* offenders with conflicting forms of punishments, including the *ḥadd* of an unconditional death penalty through

⁸⁶ ‘Abd al-Razzāq al-Ṣan‘ānī, *al-Muṣannaf with al-Azdi’s al-Jāmi‘*, 12 vols., ed. Ḥabīb al-Raḥmān al-A‘zamī, 2nd ed. (Johannesburg: al-Majlis al-‘Ilmī; Beirut: al-Maktab al-Islāmī, 1983), 5: 212.

⁸⁷ al-Ṣan‘ānī, *al-Muṣannaf*, 5: 213; Aḥmad, *Musnad*, 3: 155. Al-Shāfi‘ī seems to agree with the prohibition of burning apostates as a means of punishment (alive or dead) on the basis of the Prophetic *ḥadīth* prohibiting humans from doing so. Al-Shāfi‘ī, *al-Umm*, 8: 367.

⁸⁸ Abū Bakr Ibn Abī Shayba, *al-Muṣannaf*, 16 vols., ed. Ḥamad b. ‘Abd-Allāh al-Jum‘a and Muḥammad al-Luḥaydān (Riyadh: Maktabat al-Rushd, 2004), 9: 472–3.

⁸⁹ Interestingly, Ibn Ḥazm includes another account in his literary work that identifies a man from the Banū Asad, a tribe clearly associated with apostasy, as having been punished by burning for sexual passivity. He cites Abū ‘Ubayda Ma‘mar b. al-Muthannā (d. 209/824), who claims that the name of the burned man is Shujā‘ b. Warqā’ al-Asadī, whom Abū Bakr burned “because he was penetrated in his anus as a woman [is penetrated in her vagina] (*yu’tā fi duburihi kamā tu’tā al-mar’a*)”, ‘Alī Ibn Ḥazm, *Tawq al-ḥamāma* (Cairo: Mu‘assasat al-Hindāwī, 2016), 164. This specific phrase, which includes the locus of penetration as the anus, does not appear elsewhere until much later, in the eighth/fourteenth-century work of al-Zayla‘ī. I could not find this association to Shujā‘ in any other work, and Ibn Ḥazm himself does not include it in his legal work, *al-Muḥallā*. There, he identifies the offender in the report associated with burning only as al-Fujā’a.

⁹⁰ Ibn ‘Abd al-Barr, *Fatḥ al-Barr*, 1: 242–3.

⁹¹ ‘Abd al-Raḥmān b. Muḥammad b. ‘Abdallāh al-Anṣārī Ibn Ḥubaysh, *al-Ghazawāt al-dāmīna al-kāmila wa-l-futūḥ al-jāmi‘a al-ḥāfila al-kā‘ina fi ayyām al-khulafā’ al-uwal al-thalātha*. M.S. OR. IB. Leiden University, Levini Warneri Collection (Ex Legato Viri Amplissimi), fol. 23.

⁹² Al-Ṣan‘ānī, *al-Muṣannaf*, 5: 212–15.

stoning,⁹³ casting the offender from a high place (“minaret”),⁹⁴ or the *ḥadd* of a conditional death penalty using the *zinā* model for punishment.⁹⁵ Thus, burning was not a form of punishment that he was reported to have applied to *liwāt* offenders who were found guilty of this crime. In other words, in early *ḥadīth* collections, ‘Alī is reported to have punished only apostates, and not *liwāt* offenders, with burning.⁹⁶ Given that the association of ‘Alī with burning apostates had already been well established in early *ḥadīth* collections, it is not surprising to see the apostasy report name ‘Alī as the Companion who urged Abū Bakr to burn the man who was “penetrated like a woman” in the later sexual passivity report. Moreover, since ‘Alī served as an authoritative figure, whose precedent was cited and used as proof when adjudicating legal cases for which scriptural proofs were absent, it is not surprising that he is portrayed as advocating for various punishments for *liwāt* offenders. The competing reports ascribing conflicting punishments for *liwāt* to ‘Alī and other Companions reflect the competing positions in this legal debate more than any given Companion’s position on this issue.⁹⁷

Third, the Prophet reportedly prohibited Muslims from punishing others with burning,⁹⁸ saying, “It is not permissible for a human to punish [others] with God’s punishment”,⁹⁹ and “Do not burn him with fire, for no one punishes with fire except the Lord of the Fire”.¹⁰⁰ Because of this *ḥadīth* and the prohibition of punishment with fire, many jurists struggled to reconcile such *ḥadīths* with the sexual passivity report, and they were reluctant to use burning as a form of punishment for *liwāt* offenders. Moreover, this discomfort with burning as a punishment was connected to jurists’ doubts about the reliability of the report attributing the burning of apostates to ‘Alī. They considered it *mursal*, lacking a continuous chain of authority.¹⁰¹ Hence, while there are a few instances of early Companions punishing apostates with burning, many later jurists did not specify that *liwāt* offenders should be punished with fire. Instead, proponents of the *ḥadd* punishment for *liwāt* offenders often chose an unconditional death penalty through stoning or a conditional death penalty using the *zinā* model for punishment. Ultimately, even though some jurists cited the sexual passivity report, they did so only to support their *ḥadd* penalty over their

⁹³ Of course, we cannot be sure that ‘Alī did not take the offender’s *iḥṣān* status into account when he punished them with stoning. However, al-Shāfi‘ī seems to have understood this report as implying that ‘Alī punished the offender with an unconditional death penalty through stoning. Ibn Abī Shayba, *al-Muṣannaf*, 9: 330. See also al-Ṣan‘ānī, *al-Muṣannaf*, 7: 363–4; al-Jāhīz, *Mufākharat al-jawāri wa-l-ghilmān*, 2: 169; al-Ājurri, *Dhamm al-liwāt*, 28.

⁹⁴ In another report, reminiscent of the punishment outlined in the Mishna, ‘Alī purportedly punished a *lūṭī* by “taking him to the top of a ‘minaret’ [likely a high place rather than an actual minaret since they did not yet exist during ‘Alī’s caliphate] and casting him head-first, proclaiming, ‘This is how he will be cast into hell fire.’” Al-Jāhīz, *Mufākharat al-jawāri wa-l-ghilmān*, 2: 169.

⁹⁵ In a case of two men found engaged in anal intercourse, ‘Alī purportedly said, “Their *ḥadd* is the *ḥadd* of the one who commits *zinā*. If they have attained *iḥṣān*, they are to be stoned. If they have not attained *iḥṣān*, they are to be flogged”. Zayd b. ‘Alī b. al-Ḥusayn b. ‘Alī b. Abī Ṭālib (d. 122/740), *Musnad al-imām Zayd* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1981), 300. See also Zayd b. ‘Alī b. al-Ḥusayn b. ‘Alī b. Abī Ṭālib, *al-Majmū‘ al-ḥadīthi wa-l-fiqhī*, ed. ‘Abd Allāh b. Ḥammūd al-‘Izz (Amman: Mu‘assasat al-Imām Zayd b. ‘Alī al-Thaqāfiyya, 2002), 229.

⁹⁶ For more on apostasy, see Ahmad Atif Ahmad, *Islam, Modernity, Violence, and Everyday Life* (New York: Palgrave Macmillan, 2009), esp. 147–68.

⁹⁷ Omar, *A Genealogy of Early Muslim Discourses*.

⁹⁸ Al-Ṣan‘ānī, *al-Muṣannaf*, 5: 213; Aḥmad, *Musnad*, 3: 155; and Muḥammad ibn Idrīs al-Shāfi‘ī, *Kitāb al-Umm*, 11 vols., ed. Rif‘at Fawzi ‘Abd al-Muṭṭalib (Cairo: Dār al-Wafā‘, 2001), 8: 367.

⁹⁹ Al-Ṣan‘ānī, *al-Muṣannaf*, 5: 213.

¹⁰⁰ Al-Ṣan‘ānī, *al-Muṣannaf*, 5: 214–15.

¹⁰¹ Ibn ‘Abd al-Barr, Yūsuf b. ‘Abd Allāh b. Muḥammad, *al-Tamhīd li-mā fi al-muwāṭṭa min al-ma‘ānī wa-l-asānid*, 26 vols., ed. Muṣṭafā b. Aḥmad al-‘Alawī et al. (Rabat: Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya, 1967), 5: 304–5 and Ibn ‘Abd al-Barr, *Fath al-Barr*, 1: 243.

opponents' *ta'zīr* penalty, rather than to advocate for burning as an actual punishment for *liwāṭ* offenders.¹⁰²

Finally, the sexual passivity report is peculiar, in that Khālid b. al-Walīd purportedly wrote to Abū Bakr inquiring only about the punishment for the man who was "penetrated like a woman", rather than the punishment for both the passive and the active partners found engaged in the act of *liwāṭ*. Given that Muslim jurists prohibited both roles in *liwāṭ*, it is curious that Khālid would have only inquired about the punishment for only one of the two partners rather than both. The fact that this report portrays Khālid as inquiring only about the passive male is itself telling. Moreover, the way Muslim scholars specifically depict the passive male role as shameful sheds light on their social perceptions of sexual passivity. Simply put, they connected male sexual passivity with subjugation and humiliation.

Conclusion

The apostasy report, which seems to have circulated initially to condemn al-Fujā'a's reprehensible acts of apostasy, betrayal, and slaughter of Muslims, appears to have evolved into an account that described him as a passive male "penetrated like a woman". This is a descriptive phrase that, in the beginning, was likely intended as an insult, since the technical legal term used elsewhere to refer to the passive penetrated male partner in *liwāṭ* is *mafūl bihi*, literally meaning "the one done to". It is therefore not a coincidence that al-Fujā'a became specifically associated with the passive role in these traditions, since this would have been an apt way to humiliate and defame him. Furthermore, it is also not a coincidence that 'Alī b. Abī Ṭālib was cited as the Companion who suggested that the unnamed man found "penetrated like a woman" should be burned to death, since reports found in earlier *ḥadīth* collections had already established that 'Alī advocated burning apostates with fire.

The earliest documentation of punishment by burning to death pertains to apostasy and is found in some of the earliest *ḥadīth* collections from the early third/ninth century, including those of al-Ṣan'ānī, Ibn Abī Shayba, and Aḥmad b. Ḥanbal. However, instances of punishment by burning related to sexual passivity appear in non-*ḥadīth* works, with the earliest example coming from Ibn Abī al-Dunyā in the late third/ninth century. While the apostasy account found in al-Wāqidi's historical chronicle provides a detailed narrative of al-Fujā'a and his acts of treachery and apostasy, Ibn Abī al-Dunyā's report focuses on an unnamed man who was burned for being discovered "penetrated like a woman". In juridical texts from the mid-fourth/tenth century, such as that of the Ḥanafī jurist al-Jaṣṣāṣ, there are hints suggesting that the unnamed man in the sexual passivity report may have been burned for his treachery and apostasy, rather than for any sexual transgression. This idea is reinforced and elaborated upon by subsequent jurists of the same century and the following one, including Ibn Ḥazm, Ibn 'Abd al-Barr, and Ibn al-'Arabī (d. 543/1148), all of whom identify the unnamed sexual offender as al-Fujā'a. In fact, Ibn 'Abd al-Barr combines the accounts of apostasy and sexual passivity into a single report. Meanwhile, traditionists such as al-Bayhaqī narrate the sexual passivity report on the authority of Ibn Abī al-Dunyā, asserting that it is weak and unreliable. It is not until the eighth/fourteenth century that some jurists begin to cite al-Wāqidi as their source for the sexual passivity report, linking it to the account of al-Fujā'a and the apostasy incident. Some Ḥanafī jurists subsequently follow suit, likewise citing al-Wāqidi as their source for the sexual passivity report.

It is likely that, while Muslims circulated the incident of al-Fujā'a, the conflation of his treacherous acts with the derogatory reference to him as a man "penetrated like a woman"

¹⁰² For example, see Ibn Qudāma al-Maqdisī, *al-Mughnī*, 15 vols., ed. 'Abd Allāh al-Turkī and 'Abd al-Fattāḥ al-Ḥilw (Riyad: Dār 'Ālam al-Kutub, 1986), 12: 349–50.

were rhetorical, meant to humiliate him in the eyes of the public. However, this also resulted in the confusion that al-Jaṣṣāṣ attempts to resolve in his work. Hence, while passivity may have initially been used rhetorically to insult al-Fujā'a for his treachery, in later sources it evolved into a crucial association with the crime for which an unnamed man was purportedly punished with burning to death. This transformed tradition – of an unnamed man being penetrated as a woman and consequently punished with burning – has endured and is commonly cited by jurists as Abū Bakr's precedent to support the *ḥadd* of an unconditional death penalty, rather than to advocate for burning as the specific punishment for offenders. Meanwhile, al-Fujā'a's acts of treachery, apostasy, and slaughter of Muslims were relegated to some other incident or were forgotten.

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