

An Islamic Foundation for Human Rights

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Abstract: Can the human rights we recognize today be derived from the central Muslim text, the Qur'an? I will argue that they can, but that this requires reconceptualising the believer's relationship to revelation. On the standard view, the believer is bound by all prescriptions in the Qur'an. By contrast, I will argue that the Qur'an prescribes two distinct kinds of norms—thin norms and thick norms—and only the latter have normative force here and now. With this novel framework for understanding Qur'anic norms on the table, I address two barriers to grounding human rights in the Qur'an: the problem of *omission*, according to which there are rights that we want to recognize that are seemingly missing in the Qur'an, and the problem of *rejection*, according to which the Qur'an seems committed to rejecting some rights that we do want to recognize. I will argue that both problems can be overcome.

Many Muslim-majority countries today face a dire, or rapidly deteriorating, human rights situation. This situation makes pressing a longstanding question about whether Islamic nations can adopt a contemporary human rights framework, i.e., a framework endorsed by liberal nations and encoded in a document such as the Universal Declaration of Human Rights (UDHR).¹ Yet, how we answer such a question depends on which perspective we occupy. Are we taking for granted the legitimacy of the moral code and laws endorsed by conservative Muslims nations, and putting the question to a theory of human rights? In particular, is the question whether a theory of human rights can accommodate cultural and religious diversity, and particularly the values and lifestyle endorsed by conservative Muslim states such as Iran, Pakistan and Saudi Arabia? Or are we asking instead whether *Islam* has the resources to support a commitment to the values endorsed by a contemporary human rights framework?

The present paper takes for granted the legitimacy of our current human rights framework, broadly understood, and thus the moral code it embeds. All references in the paper to a ‘current’ or ‘contemporary’ human rights framework pick out the human rights framework endorsed in the Universal Declaration of Human Rights (and more generally, the framework accepted in contemporary liberal societies). Yet this usage is compatible with a recognition that there may be important differences between what various liberal groups take our contemporary human rights to be.

This paper also assumes that the purpose of a theory of human rights is to lay down norms that capture minimum standards for that treatment which all human beings are owed as a matter of justice, and that the UDHR is a document that enumerates many (if not all) such norms.ⁱⁱ It then asks whether Islam can be reconciled with such a framework. But the paper then goes beyond asking merely whether Islam can be rendered *compatible* with our contemporary human rights framework, and instead addresses a deeper question: it asks *whether* and *how* revelation—and specifically, the Qur’an—can ground the kind of human rights framework that we recognise today (i.e., it asks whether and how human rights can be derived from the moral norms prescribed in the Qur’an). Importantly, the paper asks only whether our contemporary human rights framework *can* be grounded in the Qur’an, rather than also whether it is *in fact* grounded in the Qur’an.ⁱⁱⁱ An answer to the first question is not an answer to the second. An answer to the latter question requires also showing that the norms prescribed by the Qur’an are *true or correct* because they are in fact prescribed by God, and this is a task that lies outside of the scope of the present paper.

The paper’s project is important for at least two reasons. First, if the human rights we recognise today can be grounded in Islamic scripture, then we can hold the moral and legal codes endorsed by Islamic states to an *internal* standard: an Islamic standard that could not be easily

dismissed without an argument that undermines its legitimacy. This in turn could pave the way for avoiding future human rights abuses in Islamic countries. Second, an Islamic grounding for human rights would provide Muslims, and particularly groups (such as women, or homosexuals) who suffer human rights abuses on a regular basis in some Islamic countries, with the tools to intellectually as well as practically resist oppressive political forces without eschewing their Muslim identity.^{iv}

I will argue that the Qur'an can indeed ground the human rights that we recognise today. Building on previous work^v, I will show that the moral code embedded in our contemporary human rights framework can be derived from a certain set of Qur'anic norms in a way that is independent of any particular interpretation of the Qur'an. This independence is crucial for dialectical purposes, and in particular, for the goal of convincing—or least putting pressure on—those inclined to endorse Islamically inspired inegalitarian norms of morality and social conduct. If one hopes to have traction with Muslims inclined towards a less egalitarian interpretation of the Qur'an, it would not help to propose that our contemporary human rights framework can be grounded in the Qur'an *only if* one accepts an alternative, egalitarian interpretation. By contrast, my proposal for grounding human rights in the Qur'an should be compelling even for those who endorse radically divergent interpretations of the Qur'an.

If contemporary human rights can be grounded in the Qur'an, then *a fortiori*, our contemporary human rights framework is compatible with the Qur'an. But the claim of compatibility is much weaker than the grounding claim: our contemporary human rights framework can be rendered trivially compatible with the message of the Qur'an even if none of the human rights that we recognise today can be grounded in the Qur'an, so long as the message of the Qur'an does not contradict a norm implied by our human rights framework. By contrast, an

omission in the Qur'an poses a *prima facie* challenge if our project is not merely that of rendering the message of the Qur'an compatible with human rights, but that of grounding human rights in the Qur'an.

Islam, of course, does not consist only in the Qur'an. While the Qur'an is generally taken to be God's word, the *hadith*, which consists in the sayings and practices attributed to the prophet Muhammad, also contributes to the basis for *Shari'a*, or Islamic law (together with consensus among Muslims). Yet, 'Islam' arguably denotes something even broader, something that encompasses Islamic practice more generally, even if aspects of that practice cannot straightforwardly be derived from the Qur'an, *hadith*, or any consensus of the *umma*, or Muslim community. However, for present purposes, I focus exclusively on the Qur'an for two reasons. First, only the Qur'an is taken by the majority of Muslims to be the revealed word of God.^{vi} While other derived sources, such as the *hadith* and the consensus of the Muslim community, also form the basis for *Shari'a*, these sources—in part because they fall short of constituting the direct and infallible word of God—are more contentious. There is, for example, disagreement between various Islamic schools over the authenticity of the *hadith*.^{vii} The existence of such disagreement makes focusing on the *hadith* for the purpose of grounding human rights in a universally recognised Islam not very effective. By contrast, insofar as all Muslims take the Qur'an to be divine, the Qur'an provides us with a common denominator amongst all Muslims, and so at least to some extent licences talk of a unified 'Islam'. Relatedly, showing that the Qur'an can support a contemporary human rights framework suffices for showing that Islam, as a unified entity, can support that framework. Second, insofar as this project aims to be persuasive, showing that the human rights that liberal societies recognise today can be derived from the core Muslim text that is considered to be the word of God—the Qur'an—is most likely to have leverage with

conservative Muslims inclined to reject one or more of these rights. Showing that human rights can be grounded in the Qur'an thus provides us with a potent tool for resisting human rights violations in Muslim countries.

I will provide an indirect argument for the conclusion that contemporary human rights can be grounded in the Qur'an, by addressing two central challenges to deriving human rights from the Qur'an. The first is the problem of *omission*: there are rights we recognise that are seemingly such that no basis for them can be found in the Qur'an. An example is the right against being enslaved. The second problem is that of *rejection*: the Qur'an is seemingly explicitly committed to rejecting some rights that we do recognise, such as the right to equality before the law. I will show that both challenges can be overcome if we adopt a non-standard account of the normative force of the Qur'an.^{viii} It is well known that the message of the Qur'an is divided into the 'Meccan' message and the 'Medinan' message, where the first was revealed to the prophet Muhammad through the angel Gabriel (*Jibril*) in Mecca, and the second in Medina. I have argued elsewhere that the distinction between the Meccan and Medinan messages tracks a distinction in two distinct types of norms in the Qur'an: thick norms that tell us *how to be*, and thin norms that tell us *what to do*. On my account, only the Meccan verses have normative force for us here and now, whereas the Medinan verses provide us with data for how Meccan prescriptions were to be implemented in 7th Century Arabia, and thus provide us with a guide for implementing Meccan prescriptions in our present context.^{ix} Importantly, this account does not take a stand on the question of which is the right interpretation of the Qur'an; I instead argue for its legitimacy on grounds that appeal to the structure of the Qur'an, as well as the context in which the text was gradually revealed.

I proceed as follows. In §1 I discuss what human rights are more generally, how they might be grounded, and how they show up in the Qur'an. In §2 I discuss in detail how the problems of

omission and rejection pose a barrier to grounding our contemporary human rights framework in the Qur'an. In §3 I present and motivate my non-standard account of the normative force of the Qur'an. In §4 I show how the problems of omission and rejection can be overcome.

§1 Human Rights in the Qur'an

Human rights are *rights* or *entitlements* that impose obligations on others. For example, the right to privacy (Article 12 of the UDHR) entails a *prima facie* duty on the part of others to refrain from invading my privacy, and the right to life (Article 3 of the UDHR) likewise entails a *prima facie* duty on the part of others to not take my life. The rights in question—and their corresponding duties—have high priority, but they are not absolute. For example, one's human right to privacy or freedom of movement may be suspended if one is under investigation or is convicted.^x Human rights are nevertheless inalienable in the sense that they cannot be easily forfeited or voluntarily given up, and they are universal in the sense that all human beings have them.

How might human rights be grounded? We might here distinguish between an epistemic ground and a metaphysical ground. A metaphysical ground tells us what makes it the case that there are human rights, whereas an epistemic ground is the means through which we might discover or know of human rights. With respect to metaphysical ground, options abound. Some hold that human rights are grounded in legal enactments. On such a view, no human rights exist prior to an enactment of a proper legal mechanism. On an alternative view, we have human rights simply in virtue of being human, i.e., human beings have such rights inherently. On yet another view, human rights are bestowed by God.^{xi} This third alternative would plausibly be the one endorsed by proponents of divine command theory, both in Islamic and other traditions. Indeed, if one takes the United States Declaration of Independence (1776) at face-value, then it seems

committed to the view that human rights are granted by (and thus presumably grounded in) God. It states that *all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness*. A similar view is endorsed by the Universal Islamic Declaration of Human Rights: “Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.”^{xii} Yet, a commitment to a theistic framework does not make inevitable (or entail) the view that human rights are metaphysically grounded in God or God’s actions. One might instead adopt the view that God’s message provides merely the means through which we may *discover* human rights. On such a view, God’s message is an epistemic ground for truths that are true independently of God and may even be discoverable through reason alone.^{xiii} A divine metaphysical ground for human rights plausibly doubles as a divine epistemic ground if we have knowledge of the metaphysical ground. For example, if the Qur’an is a metaphysical ground for human rights, and declares that all human beings have the right to life, then it is also an epistemic ground, for knowledge of the Qur’an’s message would inform us of the human right to life.

I intend to show that the Qur’an provides at least an epistemic ground for human rights, and it is in this sense that our contemporary human rights framework can be derived from the Qur’an. Showing that the Qur’an provides an epistemic ground for human rights is enough to achieve the political objectives of my project. First, it shows that the message of the Qur’an is not at odds with our contemporary human rights framework, and so Muslims need not compromise their faith in order to endorse the full range of human rights that are recognised today in liberal

societies. Second, and even more importantly, it shows that the Qur'an can *support* a contemporary human rights framework.

My argument leaves open whether the Qur'an also provides a metaphysical ground for human rights. Whether it does turns on a longstanding debate in the Islamic tradition on whether revelation merely conveys truths that are also discoverable through reason alone, or whether God, and so revelation, *makes it the case* by divine decree that norms prescribed by the Qur'an are true or correct. Islamic thinkers have occupied a variety of positions on this question, on both philosophical and theological grounds, and adjudicating between these positions is a task that goes beyond the scope of the current paper.^{xiv} I thus restrict my aim to that of demonstrating that the Qur'an can provide (at least) an *epistemic* ground for those human rights that are recognised today in liberal societies.

In the next few sections, I will show that the problems of omission and rejection identified above can be overcome. Yet, a preliminary question remains: does the Qur'an contain the concept of a 'right' at all? There is reason to think that it does. The Qur'an is explicit that one can have rights against other people, as in the following passage where the 'needy' have a right to be helped by the rich:

And in their wealth and possessions (was remembered) the right of the (needy,) him who asked, and him who (for some reason) was prevented (from asking). (51:19)^{xv}

There is perhaps also some evidence that the Qur'an recognises the concept of a 'human right' specifically:

[T]ake not life which God hath made sacred except by way of justice and law: thus doth He command you that ye may learn wisdom. (6:151)

While what is stated in the above passage is a command, and not explicitly a right, the claim that that which God has declared or made sacred is inviolable except as a matter of justice or law (e.g., in self-defence or perhaps capital punishment) suggests that the Qur'an recognises a right to life, and thus *a fortiori*, a human right to life.

In the discussion that follows, I take for granted that the Qur'an contains the concept of a right, as well as the concept of what we might call a 'human right', namely a universal right that has high priority and so can be suspended (if at all) only in the most exceptional circumstances.

§2 Omission and Rejection

In this section I discuss how the problems of omission and rejection pose an obstacle to deriving our human rights framework from the Qur'an. I will argue for the possibility of (epistemically) grounding human rights in the Qur'an indirectly by showing that these problems can be overcome.

Let us begin with the problem of omission. Again, the problem of omission poses an obstacle to grounding human rights in the Qur'an in the following way: there are human rights we recognise in our contemporary framework that seem to have no basis in the Qur'an. That a human right seems to have no basis in the Qur'an does not pose a challenge to the compatibility of that human right with the message of the Qur'an, but it does undermine the claim that the human right in question can be derived from the Qur'an. And there do seem to be such human rights. For example, the UDHR prohibits slavery. Article 1 of the Declaration states that "[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and

should act towards one another in a spirit of brotherhood.” Yet, there is no ban on slavery in the Qur’an.

This is not to say that the Qur’an does not encourage freeing slaves. It does. See for example:

It is not righteousness that ye turn your faces Towards east or West; but it is righteousness- to believe in Allah and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves. (2: 177)

And what will explain to thee the path that is steep? (It is:) freeing the bondman. (90: 12-13)

Both verses indicate that freeing a slave constitutes a righteous deed. But these verses stop short of supporting a *human right* against being enslaved: a righteous deed may be supererogatory, and not something one is required to do as a matter of duty. That the Qur’an does not seem to support a *right* against being enslaved poses a *prima facie* problem for grounding the human right against being enslaved in the Qur’an.

Unlike the problem of omission, the problem of rejection does pose a problem even for the *compatibility* of the message of the Qur’an and our human rights framework. The problem of rejection arises because the Qur’an seems committed to rejecting rights that are recognised in our contemporary framework. For example, according to Article 7 of the UDHR, “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.” Yet, the Qur’an

discriminates between men and women in the legal domain. I discuss two areas in which such discrimination is evident: legal norms governing testimony and legal norms governing inheritance. Let us begin with the case of testimony. The second chapter of the Qur'an (*Al Baqara* or 'The Cow') states the following:

O ye who believe! when ye deal with each other in transactions involving future obligations in a fixed period of time reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as God has taught him so let him write. Let him who incurs the liability dictate but let him fear his Lord God and not diminish aught of what he owes. If the party liable is mentally deficient or weak or unable himself to dictate let his guardian dictate faithfully. And get two witnesses out of your own men and if there are not two men then a man and two women such as ye choose for witnesses so that if one of them errs the other can remind her. (2: 282)

On the standard reading of the passage, the Qur'an prescribes a norm in tension with our contemporary norm (encoded in the UDHR) that both men and women are equal before the law.^{xvi} On the face of it, the verse suggests that a woman's testimony is worth half as much as a man's testimony in legal contexts that concern financial contracts.^{xvii} Because both Islamic law and social practices in Muslim societies often ultimately derive support from the Qur'an, the norm in question has had significant uptake. In several Muslim-majority countries, women's testimony does not have the legal status afforded to men's testimony. While some Muslim nations have laws and social practices that regard women's testimony as less valuable in the particular case of financial contracts, the verse is often used to support inequality with respect to testimony not merely in the

case of financial contracts, but in all cases where legal testimony might be required.^{xviii} Similarly, let us consider verse 4:11, which has been taken to prescribe a system of inheritance that enjoys wide endorsement in Muslim communities:

Allah (thus) directs you as regards your children's (inheritance): to the male a portion equal to that of two females: if only daughters two or more their share is two-thirds of the inheritance; if only one her share is a half. For parents a sixth share of the inheritance to each if the deceased left children; if no children and the parents are the (only) heirs the mother has a third... (4:11)

As with verse 2:282, verse 4:11 suggests that men and women are not equal before the law, for the (Islamic) law prescribes that they be treated differentially before the law, with women in most cases inheriting less than a man in the parallel situation. However, differential treatment on its own is not sufficient for a violation of the human right to equality before the law. In both cases, we also need the caveat that women's testimony is worth less *simply because they are women*, or women inherit less *simply because they are women*.

The caveat is needed, for without it, it is possible that there is a legitimate reason that warrants differential treatment. For example, we can imagine a hypothetical (even if implausible) scenario where women as a class are barred from a certain type of expertise, for example, the ability to understand medical information, or the ability to understand financial contracts, which would be relevant for understanding the Qur'anic norm prescribed at 2:282. If women as a class were barred from the ability to understand financial contracts, and could do so only in groups (i.e., if assisted by other women), then a norm that implied that a woman's testimony was worth less

than a man's testimony would perhaps be justified, and would not violate the human right to equality before the law, for plausibly, that norm holds only when all else is equal, i.e., when there are no legitimate reasons for unequal treatment.

What has been perceived as a legitimate reason for unequal treatment has arguably shifted over time. For example, earlier commentaries on verse 2:282 argued that women were more prone to error than men due to their natures, and the 20th century Islamic scholar Sayyid Qutb claimed that a woman's motherly instincts undermined her ability to be objective for the purposes of providing testimony.^{xix} Both types of explanation would be seen as illegitimate today. The claim that women are by *nature* more forgetful and less objective would be met with shock and incredulity today, especially in liberal circles. Yet other Islamic scholars and apologetics appeal to other contingent reasons for the difference in legal status afforded to a woman's testimony compared to a man's, such as a woman's relative lack of freedom of movement and social acceptability of a woman's participation in a public domain. As Fadel (1997, p. 194) writes: "[i]nstead of the cliché that in Islamic law, a woman's word is worth half of a man's, a more meaningful characterization of Islamic evidentiary discrimination against women would be that medieval Islamic law imagines legal disputes taking place across a public-private continuum. Because public space is regarded as men's space, the admissibility of women's testimony gradually decreases as the nature of the claim acquires more and more of a public quality." Whether this latter reason justifies the differential treatment of men and women in the domain of legal testimony depends on whether a woman's restricted freedom of movement relative to a man is itself justified. And from a contemporary point of view, it is arguably not justified. Indeed, Article 13 of the UDHR affirms the right to freedom of movement without reference to gender.

Likewise, various explanations have been offered for the differential treatment of men and women in the case of inheritance. According to one popular line of reasoning, women's lesser share in inheritance relative to men is justified because women do not provide for anyone, whereas men provide for the whole family.^{xx} Like in the previous case, this justification is no longer applicable, assuming it ever was.^{xxi} Women, at least in contemporary liberal societies, do bear the burden of providing financially for themselves and their families, and indeed, often work a "double shift", doing paid work outside the home and unpaid work inside.

Taken at face-value then, the above verses seem to prescribe norms that go against the human right to equal treatment before the law, for at least in our present context, there seems to be no legitimate reasons for the differential treatment of men and women in the cases of testimony and inheritance. In the next sections, I will show how adopting an alternative framework for understanding Qur'anic norms can resolve the problems of omission and rejection.

§3 Understanding Qur'anic Norms

I have argued in my previous work that Qur'anic prescriptions are divided into two types: norms that prescribe *how to be* and norms that prescribe *what to do*.^{xxii} Let us call a norm that tells us how to be a 'thick norm' because it employs thick evaluative concepts. Examples of thick evaluative concepts include *courageous*, *cruel*, *kind* and *forgiving*. By contrast, let us call a norm that tells us what to do a 'thin norm' because it employs thin evaluative concepts. Examples of thin evaluative concepts include *right*, *permissible*, *bad*. I have also argued that only verses that prescribe thick norms have universal normative force and thus bind us here and now; verses that prescribe thin norms have a normative force that is conditional on certain social circumstances. In broad strokes,

my argument for putting a constraint on which norms in the Qur'an have universal and timeless normative force, and which do not, rests on two related claims.

First, there is a rough mapping of thin and thick norms onto the Medinan and the Meccan messages, respectively.^{xxiii} The Meccan message consists of verses revealed in Mecca, where the Muslim community was initially smaller and where Mohammed started his ministry. By contrast, the Medinan message consists of verses revealed in Medina, where Mohammed eventually moved in 622 C.E. in order to escape an assassination plot, and where the Muslim community was larger and had a more complex demographic. The mapping is rough, for it is not the case that that *every* Medinan prescription prescribes a thin norm, and likewise, it may be the case that some Meccan prescriptions prescribe thin norms. Take for example verse 4:135 from *An-Nisa* or 'The Women':

O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.

The verse was revealed in Medina, yet it prescribes how to be, i.e., that one should stand for justice.

Second, we have an explanation available for *why* the verses that prescribe what to do are largely Medinan, while the verses that prescribe how to be are largely Meccan. Mohammad began his ministry with the Meccan message, where a Muslim community did not yet exist. As a result, the Meccan message was not concerned with rules that govern everyday interactions between Muslims. It focused instead on belief in the one true God, Allah, the afterlife, and universal and

unspecific-to-situation commands, such as the commands to be just and charitable. The Meccan message was rejected by the people in Mecca (where Muhammad began his ministry), prompting—along with Muhammad’s move to Medina—an eventual shift in the content of the message revealed by Muhammad. It was in Medina that Muhammad established the first Muslim city (*medina*) and a new social order. As a result, Meccan verses and Medinan verses differ not merely in where they were revealed, but in their content.

The Medinan message is conditional on social circumstance in a way that the Meccan message is not. Whereas Meccan verses tend to be generic (i.e., not pertaining to particular situations) and egalitarian, Medinan verses are often, at least by contemporary standards, inegalitarian, sexist, sometimes promote violence, and generally specify norms that govern very specific situations. These features of the Medinan message point to the *contingency* of this message: this message was revealed in response to contingent circumstances pertaining to a new social order. Take, for example, the Qur’anic verse that is widely taken to sanction polygyny:

To orphans restore their property (when they reach their age) nor substitute (your) worthless things for (their) good ones; and devour not their substance (by mixing it up) with your own. For this is indeed a great sin. If ye fear that ye shall not be able to deal justly with the orphans marry women of your choice two or three or four; but if ye fear that ye shall not be able to deal justly (with them) then only one or (a captive) that your right hands possess. That will be more suitable to prevent you from doing injustice. (4:2-3)

Taken in historical context, this verse in fact advocates a mechanism for social justice, and in particular, the welfare of women and children in a society without any other safety net. This

Medinan verse was revealed after the battle of Uhud, which was responsible for the deaths of a number of men from the nascent Muslim community, and which in turn left many women without support. What is the sense in which the revelation of this verse is contingent? It is contingent in the sense that had there not been women who required basic support, the verse probably would not have been revealed. The Meccan message is not contingent in this way. Meccan verses tend to be prophetic and often refer to the day of judgement and to God's unity. They, moreover, tend to prescribe virtues rather than specific instructions. Here are typical examples of Meccan verses. The first is from Chapter 112 (*Surah Ikhlas*):

Say: He is God, The One and Only; God, the Eternal, Absolute; He begetteth not, Nor is He begotten; And there is none Like unto Him. (112: 1-4)

The second is from Chapter 17 (*Surah Al-Isra*):

Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them, but address them in terms of honour. (17: 23)

The two related claims above provide an explanation for why the Qur'anic norms that prescribe what to do should not be taken as binding us here and now without further argument, whereas the Qur'anic norms that prescribe how to be should be taken to have normative force for us here and now. The explanation stems from the fact that the what-to-do verses are predominantly Medinan and were revealed in response to contingent circumstances pertaining to a new social order, unlike

the Meccan verses. The circumstance of revelation points towards a philosophical distinction between two types of norms: contingent norms that prescribe what to do and universal norms that prescribe how to be. This philosophical distinction then permits us to treat what-to-do verses as contingent on social circumstance even when they occur in the Meccan message, and how-to-be verses as having universal normative force even when they occur in the Medinan message.

Yet, why shouldn't we treat the thick how-to-be norms as also contextual? While my argument does not *entail* that thick norms have universal normative force while thin norms do not, at least two further considerations support a distinction in normative force between thick and thin norms. First, taking both types of norms to be context-dependent renders the Qur'an as a whole into a historical document rather than a text that at least in part functions as a guidebook for how Muslims ought to live today.^{xxiv} Second, taking both types of norms to hold universally at all times and places entails a potentially problematic redundancy: if the thin norms—norms that are in the context of the Qur'an ways to implement the thick Meccan norms—also hold universally, then why have the thick norms at all? We thus have reason to treat the thick and thin norms differentially, even independently of the Meccan and Medinan verse distinction.

Does my proposal require that we ought to simply ignore those what-to-do verses (and the thin norms they express) that mainly constitute the Medinan message? Such a proposal would be problematic, for it would render the Medinan message largely irrelevant and thus dispensable for the contemporary Muslim. But my proposal does not entail that the thin norms are irrelevant for us today: the thin norms serve as a partial guide for how to apply the thick norms. Given information about the context in which the Medinan verses were revealed, we can come to understand how the thin norms expressed by those verses were the best way for people in 7th century Arabia to implement the thick norms expressed by the Meccan norms. And this in turn

enables us to better understand those thick norms. This moral understanding in turn allows us to correctly apply those thick norms to the radically different circumstances we now find ourselves in. Thus, the thin Medinan norms inherit their conditional force from being appropriate expressions of what to do in a particular time and place, given the unconditional thick norms expressed by the Meccan verses.

I am not the first to appeal to the distinction between the Meccan and the Medinan message in the service of an egalitarian cause. This difference was exploited by Mahmoud Mohamed Taha in his important work *The Second Message of Islam* (1987). Taha argues that modern Islamic law ought to be grounded in the Meccan message. Following Taha, Abdullahi Ahmed An-Na'im argues that Meccan message is the true message of Islam, and can provide the basis for an Islamic reformation (see, especially, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (1990)). While my project is inspired by the work of both Taha and An-Na'im, it takes an approach distinct from theirs in two fundamental respects.

First, while I appeal to the distinction between Meccan and Medinan verses, the more fundamental distinction that does the work in my argument is the distinction between norms that prescribe how to be and those that prescribe what to do. The distinction between the Meccan and the Medinan messages and the fact that these messages roughly map onto the two distinct types of norms explains why there would be a distinction between two types of norms marked in the Qur'an, even if the mapping turns out to be imperfect (i.e., even if some Meccan verses prescribe norms that tell us what to do rather than how to be, just as some Medinan verses may prescribe verses that tell us how to be). Second, unlike Taha and An-Na'im, I do not take the Meccan message to be the true message of Islam while treating the Medinan message as irrelevant to Islam as practiced today. On my view, both messages are relevant and have equal claim to being God's

word. Yet, they play distinct roles. While it is the thick norms expressed predominantly by Meccan verses that bind us here and now, the thin norms expressed by Medinan verses, along with the distinctive relationship (that I have argued) obtains between the Meccan and Medinan verses, provides us with a blueprint for how to implement Meccan norms today. For example, verse 4:2-3 (above) which concerns the treatment of orphans tells us how strong our duty of care towards orphans ought to be, which then enables us to come up with similar provisions in the present day.

§4 Grounding Human Rights in the Qur'anic Framework

How does the above framework for understanding the norms prescribed by the Qur'an solve the problem of omission? Recall that according to the problem of omission, we recognise human rights in our contemporary framework that seem to have no moral or legal basis in the Qur'an. For example, as discussed above, there seems to be no straightforward way to derive the human right against being enslaved from the Qur'an, even if the Qur'an encourages the freeing of slaves.

My proposed framework for understanding the norms in the Qur'an provides a way of deriving from the Qur'an the human right to not be enslaved. To see how, we need to look first at the Meccan message. The Qur'an commands us to be just:

God commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion. (16:90)

We can then ask whether slavery is consistent with acting justly towards all human beings in our present context. To answer this question, we require information about the present context. And this information is readily available. For example, the UDHR is an expression of a moral outlook

that reflects contemporary social and material conditions. It is not simply a report of moral sentiments: it is a codification of a contemporary moral understanding.^{xxv} And the UDHR recognises the right not to be enslaved. Moreover, the fact that the Qur'an strongly encourages freeing slaves suggests that the practice was frowned upon, even if not declared straightforwardly unjust, even in 7th century Arabia. We can thus derive the thin norm that one ought not to enslave others from the Meccan norm that prescribes justice. More generally, once we have the distinction between thick and thin Qur'anic norms in place, we can derive the relevant thin (more specific) norms for our contemporary context from the relevant thick (more abstract) norms.

However, one might object at this stage that it is not clear that the moral outlook expressed by the UDHR is shared by everyone today. Very conservative Muslim countries (such as Iran or Saudi Arabia) may not recognise the human rights that we, in liberal nations, might want to recognise today. If that is so, then it is not clear that we can derive the norm against being enslaved from the thick norm that prescribes justice, for conservative and illiberal Muslim countries arguably take the requirements of justice to be different from the requirements of justice in liberal nations (even if illegitimately).

I have a two-fold reply to the objection. First, our evidence for thinking that the moral outlook expressed by the UDHR is not shared by Muslim countries like Saudi Arabia and Iran is really just evidence concerning their governments. And governments notoriously do not always reflect the moral outlook of a nation. Second, we now have some empirical data that suggests that there is widespread support for the human rights recognised by UDHR internationally.^{xxvi} This is as we might expect, as globalization has diminished cultural differences among nations.

We have now seen how my framework for understanding the norms prescribed by the Qur'an can solve the problem of omission. But how does the framework solve the problem of

rejection? According to the problem of rejection, recall, the Qur'an is committed to rejecting some of those human rights that we recognise today.

Like with the problem of omission, we can solve the problem of rejection by asking what the thick norms prescribed by the Meccan verses (such as the command to be just) require of us today. We can ask, for example, whether the justice norm can support inequality in the value of a woman's testimony relative to a man's testimony, or inequality in how inheritance is distributed. And again, we can look to the UDHR for an expression of our current moral outlook. The UDHR tells us that there is a human right to equality before the law. Moreover, we are not bound by the thin norms of inheritance and testimony prescribed by the Qur'an, both of which are prescribed by the Medinan message, since we have seen that those norms are contingent in a way that the thick norms prescribed by the Meccan message are not.

The above response, however, gives rise to the following objection. Our strategy for solving the problem of rejection suggests that the thin norms of inheritance and testimony prescribed by the Qur'an were in fact just in 7th Century Arabia. It thus suggests that there was no basis for a human right to equality before the law in 7th Century Arabia. But surely if human rights are really high priority and universal, then human beings have *always* had them. Perhaps even worse, our solution to the problem of rejection suggests that it was *correct* to treat men and women differently when it came to inheritance and the value of their testimony in 7th Century Arabia.

In response, I propose that we should draw a distinction between *morally ideal* norms and *morally correct* norms. Not all norms prescribed by the Qur'an are morally ideal, but they are nevertheless correct for a specific social and political milieu. And we can view the norms governing testimony prescribed at 2:282 and the norms governing inheritance at 4:11 as norms that are mere "stepping-stones" to the ideal norm, yet *correct* for the context of 7th century

Arabia.^{xxvii} To see how the ideality of a norm might come apart from its correctness, consider the analogy of the strategic voter. Suppose that there are three eligible candidates in an election: A, B and C. Now suppose that from a certain subject's political perspective, candidate A is the ideal candidate given various considerations, but is very unlikely to get elected. Candidate B is less-than-ideal, but nevertheless an improvement on Candidate C, and has a much better chance of being elected and defeating C. If our subject votes strategically, they should therefore vote for candidate B. Likewise, it could be argued that in 7th Century Arabia, a stepping-stone norm was more likely to succeed than an ideal norm, and the norms that govern both inheritance and testimony can be construed as stepping-stone norms: both norms are arguably an improvement on the pre-existing social order.^{xxviii}

The idea that the norms prescribed by revelation come apart from the what may be ideal or true is not new to Islamic thought. In Ibn Tufayl's novel *Hayy Ibn Yaqzan*, the protagonist Hayy discovers moral and spiritual truths through reason alone, but he finds that he cannot communicate these thoughts to others, for they are not in a positive to receive them. These unenlightened others require the help of revelation to guide them.

Hayy now understood the human condition. He saw that most men are no better than unreasoning animals, and realized that all wisdom and guidance, all that could possibly help them was contained already in the words of the prophets and the religious traditions. None of this could be different. There was nothing to be added. There is a man for every task and everyone belongs to the life for which he was created. "This was God's way with those who came before, and never will you find a change in the ways of God"...Hayy Ibn Yaqzān and his friend Absāl now knew that even this aspiring group fell short and could

be saved only in their own way. If ever they were to venture beyond their present level to the vantage point of insight, what they had would be shattered, and even so they would be unable to reach the level of the blessed. They would waver and slip and their end would be all the worse. But if they went along as they were until overtaken by death, they would win salvation and come to sit on the right.^{xxix}

Ibn Tufayl's tale suggests a distinction between stepping-stone norms communicated through revelation and ideal norms, where the ability to follow ideal norms is the result of insight. The distinction has an interesting implication for my proposed account. It seems to entail that the (epistemic) grounding of human rights in the Qur'an is contingent, for the full set of these rights can be derived from the thick, predominantly Meccan, norms only in conjunction with a contemporary moral understanding. They thus could not be derived in 7th Century Arabia or in medieval Islamic societies. This result, however, does not undermine the universality or timelessness of human rights from an Islamic point of view insofar as my proposal concerns only an *epistemic* ground. The implications for the status of human rights are perhaps more radical if revelation is also taken to be a metaphysical ground as per divine command theory. While a thorough discussion of the implications of revelation as a metaphysical ground for human rights goes beyond the scope of this paper, one might be tempted to say 'so much the worse for divine command theory'. My focus in the present paper has been to demonstrate merely that the Qur'an *can* provide an *epistemic ground* for human rights, with the hope that such a demonstration might help reverse the trend of human rights abuses in illiberal Muslim nations.

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ⁱ Adopted by the UN General Assembly in 1948, the UDHR is the first document that lays out fundamental and universal human rights.

ⁱⁱ Cf. An-Naim (1987). As An-Naim writes, the “provisions of the UDHR enjoy special moral and political weight and can be used anywhere in the world to support claims to at least the underlying principles of its main provisions.” (503). The Universal Islamic Declaration of Human Rights (UIDHR), drafted by the Islamic Councils in Paris and London in 1981, was the first modern *Islamic* document on human rights. Yet even at the time the document was widely recognised as insufficiently comprehensive. It is also incompatible with basic tenets of modern approaches to human rights, and was not the product of a consensus decision by Islamic states. Later attempts to draft Islamic legal frameworks for human rights have improved on the UIDHR in some respects, but arguably remain inadequate as complements to existing international human rights law (cf. Almahfali and Avery (2023)).

ⁱⁱⁱ Grounding has become a topic in its own right in contemporary metaphysics. While my use of the term ‘grounding’ may not be inconsistent with its metaphysical use, I do not intend to suggest that human rights can be grounded in the Qur’an in the metaphysical sense of ground.

^{iv} In a similar vein, An-Nai’m (1987: 500) writes: “Woman’s movements, and liberal political forces in general, have taken root and are expected to struggle to maintain their achievements and resist regression under Islamization. The best way for doing this, I suggest, is through what may be described as alternative Islamization through the reformation of Shari’a.”

^v See Amijee (2023a) and Amijee (2023b).

^{vi} While the predominant contemporary Muslim view about the authorship of the Qur’an is that the Qur’an consists in God’s infallible word, the question of the origins of the Qur’an has long been contested in scholarly circles. For a recent treatment of this issue, see Soroush (2018), who argues that the author of the Qur’an is not God, but Mohammad, and that revelation is an account of Mohammad’s dreams.

^{vii} See, for example, Hallaq (1999) for a helpful and critical discussion of the debate over the authenticity of the *hadith*.

^{viii} As I will show, that the account of the normative force of the Qur’an that I propose is non-standard does not undermine the suasive goal of the project (the proposal is meant to be amenable to even conservative Muslims). This is because the grounds for the non-standard account cut across the conservative-liberal divide.

^{ix} See Amijee (2023a).

^x Cf. Nickel (2019).

^{xi} Nickel (2019) writes that “[o]ne way that a normative status could be inherent in humans is by being God-given.” Yet it seems to be that these two ways of grounding a normative status can be pulled apart: a normative status may be inherent because essential, or a normative status may be inherent because God-given.

^{xii} See the Universal Islamic Declaration of Human Rights, adopted by the *Islamic Council of Europe* on 19 September 1981/21 Dhul Qaidah 1401.

^{xiii} See, for example, Ibn Tufayl’s tale *Hayy Ibn Yaqzan*. Ibn Tufayl’s protagonist *Hayy* discovers all or most truths through reason. But not everyone is endowed with such rational insight, and there is thus also a need for revelation.

^{xiv} See Adamson (2015: Chapter 2) for a helpful overview of the variety of positions occupied on this question in the Islamic world.

^{xv} All translations of Qur’anic verses are from A. Yusuf Ali.

^{xvi} A divine norm that states that a woman’s testimony should be taken as less reliable simply because she is a woman is in direct conflict with the norms that govern testimonial justice. The norms that govern testimonial justice demand that women should not be treated as less credible simply because they are women. Yet, the divine norm in question prescribes just that.

^{xvii} For a detailed discussion and resolution of the tension between verse 2:282 and the contemporary norms that govern epistemic justice, see Amijee (2023b).

^{xviii} Cf. Saeed (2018: 115).

^{xix} See Fadel (1997) for references and further discussion.

^{xx} See for example, Bello (2015: 272): “It may be submitted that, in the Islamic scheme of society, women are free from usual economic responsibilities. They are not legally required to provide for anyone, not even themselves. If they do not have independent resources, they are to be fully maintained by their able male relatives... Thus, it would appear discriminatory, indeed, if men and women were given the same or equal financial responsibilities.”

^{xxi} Such a justification seems to assume falsely that *all* women have a man who can support them financially.

^{xxii} See Amijee (2023a) and Amijee (2023b).

^{xxiii} Cf. An-Na’im (1990) for a detailed characterization of the distinction between the Meccan and Medinan messages. An-Na’im develops the view of his teacher Mahmoud Muhammed Taha, who was executed in 1985 in Sudan for sedition and apostasy.

^{xxiv} I develop this criticism in detail in Amijee (2023a).

^{xxv} The UDHR has been criticized recently for not representing a truly global perspective on human rights. For example, An-Naim (2021: 108) claims that the UDHR is a “culturally and ideologically relativist, geopolitical project”. However, An-Naim’s use of the label ‘UDHR’ is broader than my own, for he writes: “I use the term UDHR as a metaphor for the entire international rights system developed since the 1945 adoption of the UN Charter, including all regional systems, international organizations and institutions, and governmental and nongovernmental organizations.” (113). By contrast, I use ‘UDHR’ to refer just to the document drafted in 1948, and not to the institution that has been built around it.

^{xxvi} See, for example, the 2018 Global Advisor Survey on Human Rights run by Ipsos.

^{xxvii} See Amijee (2023a) for a detailed response to this type of objection. It is worth noting that the appeal to the distinction between morally ideal and morally correct norms succeeds only if status inequality is not prescribed by thick norms, independently of context. If it were, it would be harder to claim that the norms prescribed at 2:282 and 4:11 are mere stepping-stones, and correct for the context of 7th century Arabia, but not ideal. However, in the absence of evidence to the contrary, the burden of showing that my argument can be blocked in this way lies with those inclined to oppose it.

^{xxviii} Cf. Shah (2006: Chapter 1). For example, Shah writes with respect to inheritance: “Before Islam, women had no rights of inheritance generally. Rather they themselves were the part of a husband’s estate to be inherited. Arab society was tribal and patriarchal and so was the custom of inheritance.” (38)

^{xxix} Ibn Tufayl (2003: 165).