

# 13 Towards Epistemic Justice in Islam

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The epistemology of testimony has taken a central place in contemporary philosophical discourse. Amongst the questions that it is concerned with is the following: what are the conditions under which a hearer can learn through testimony? For example, if I were to inform you that the nearest gas station is just around the corner, what would it take for you, as a hearer, to come to learn this information based on my testimony? Plausibly—though not uncontroversially—I must at least know that the nearest gas station is just around the corner,<sup>1</sup> I must be someone who does not generally lie about such things, i.e. I must be reliable, and it should perhaps be the case that you believe that I am reliable. Against this background of norms governing the acquisition of knowledge through testimony, we get the potential for an *epistemic* wrong—a wrong that is done to someone in their capacity as a knower. Suppose that in a board meeting what a woman says is ignored even though she is making a contribution that falls under her area of expertise, and even though she is widely regarded as an expert and thus reliable with respect to her claims in the meeting. That is, suppose that her contribution is ignored simply because she is a woman. In this situation, the woman is wronged in her capacity as a knower, for she is perceived and treated as less credible than she in fact is for reasons that have nothing to do with her credibility. An epistemic injustice occurs when a knower is wronged in this way.

Following Fricker (2007), let us isolate two distinct kinds of epistemic injustice: hermeneutical injustice and testimonial injustice. Hermeneutical injustice concerns shared resources for social interpretation, whereas testimonial injustice concerns testimony. My focus in this chapter will be on the latter as it arises in the Qur'an, and particularly in its second chapter *The Cow* (*Surah Al-Baqarah*). Scholars often point to the following passage as supporting gender inequality with respect to testimony:

O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord,

and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. *And if there are not two men [available], then a man and two women from those whom you accept as witnesses—so that if one of the women errs, then the other can remind her.*

(2:282, emphasis added)<sup>2</sup>

The above verse purportedly supports a divine norm according to which a woman's testimony is worth half that of a man's testimony in the particular case of witnessing financial contracts, and perhaps across the board. Because both Islamic law and social practices in Muslim societies are often ultimately grounded in 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. Moreover, 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 testimony might be required.<sup>3</sup>

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 seems to prescribe just that. Cases where divine instruction conflicts with other independently held norms are by no means restricted to the case of testimony. What God instructs through the Qur'an or through the prophets is often at odds with what we intuitively feel is right or just.<sup>4</sup> However, in the case of testimony, God's putative instruction not only comes into conflict with but also *undermines* the norms that govern testimonial justice. This is because when the divine norm that says that a woman's testimony is worth half that of a man's testimony is endorsed and internalised by Muslim women who then assert it, testimonial justice seems to require—paradoxically—that we take these women to be less reliable compared to men.

Suppose, for example, that a Muslim woman comes to believe that her testimony is not worth as much as a man's testimony on the basis of the Qur'an. She then goes on to live by that edict, and asserts, when necessary, that that is her view. The norms that govern testimonial justice tell us that we should not disbelieve women simply because they are women. Moreover, a Muslim woman's belief that her testimony is worth less than a man's seems to concern a matter of her own values, which are grounded in the broader network of her religious beliefs, and are not a matter of descriptive fact (such as the laws of physics or where the nearest gas station is). As such, there does not seem to be room for a factual error on her part, and so no obvious reason that her testimony should be ignored or taken less seriously. But if we believe her, it follows—from the norms that govern testimonial justice—that we should take her testimony to be worth less than a man's

testimony, as per her own claim. The norms governing testimonial justice thus seem to generate a puzzle: to follow them is to not follow them.

In some of my previous work,<sup>5</sup> I discuss how putatively sexist verses in the Qur'an might be reinterpreted in an egalitarian way. But the puzzle noted above poses a distinct challenge that seems to arise even if there is an available interpretation on which there is no tension between the Qur'an and the norms that govern epistemic justice. To see why, suppose that a feminist interpretation of the Qur'an is available—an interpretation on which the Qur'an does not say that a woman's testimony is worth less than a man's testimony. The mere availability of a feminist interpretation of the Qur'an, however, is dialectically ineffective against someone who endorses the inegalitarian, sexist interpretation. Unless a feminist interpretation is the *correct* one and not merely an available one, a Muslim woman can adopt the sexist interpretation without having made a factual mistake (i.e., the mistake of adopting an *incorrect* interpretation). I have argued elsewhere (see Amijee 2023) that extant attempts to motivate a feminist interpretation of the Qur'an have not succeeded in showing that it is the correct interpretation, and so we cannot appeal to the feminist interpretation to show that a woman who adopts a sexist interpretation has made a factual mistake. Thus, the Muslim woman's adoption of a sexist interpretation—and in particular, an interpretation on which a woman's testimony is worth half a man's testimony—is enough to generate the puzzle.<sup>6</sup>

As I will argue, the solution to the puzzle lies in recognising that the application of Qur'anic norms to a given situation requires getting some relevant facts right, and so is not purely a matter of one's values. As such, asserted divine norms derived from the Qur'an are not subject to the deference characteristically demanded by the norms that govern testimonial justice in cases that concern assertion of value alone.

I proceed as follows. I first discuss the tension that arises between divine instruction and the norms that govern testimonial justice in more detail. In Section 13.2, I discuss some unsuccessful solutions to the puzzle and draw some lessons from them about the shape of an adequate solution. In Section 13.3, I show how the apparent tension between divine instruction and the requirements of testimonial justice as well as the puzzle dissolves once we reconceive the relationship between the believer and the Qur'an. I conclude in Section 13.4.

### 13.1 A Puzzle about Testimonial Injustice

The norms that govern testimonial justice tell us that we should not dismiss or take less seriously the testimony of women simply because they are women. But this is not to say that we should always believe what women say. We should not, for example, simply take the word of a woman who professes to have solved Goldbach's conjecture. We should see whether her claim is supported by the evidence, whether she is generally reliable when it comes to

difficult mathematical problems, and so on. To take a more mundane case, suppose that a friend (who is also a woman) tells me that the nearest gas station is just around the corner. But I know from past experience that this friend is directionally challenged and has often—though with good intentions—given me wrong directions. In this case, I should not simply take my friend's word for where the nearest gas station is located, especially if she is not familiar with the area. Indeed, at the outset of the chapter, I mentioned a number of criteria that may need to be met for a hearer to acquire knowledge through a speaker's testimony.

But if that is right, one may wonder whether a puzzle arises after all. Should we not treat the case where a woman asserts that her testimony is worth less than a man's testimony on par with the case where a woman asserts that she has solved Goldbach's conjecture? If we treat the two cases similarly, then we can defuse the puzzle by showing either that the woman who asserts that her testimony is worth less than a man's is not reliable with respect to the comparative worth of her testimony, or that her claim is falsified by the evidence. The puzzle (as I have sketched it) arises in part because the norms of testimonial justice demand that we should not disbelieve women simply because they are women. But it arises also, and only, on the assumption that there are no other legitimate reasons to disbelieve women who assert that their testimony is worth less than a man's. In order for this latter assumption to hold, the case where a woman asserts that her testimony is worth less than a man's testimony must be importantly distinct from the case where she gives directions to the nearest gas station or the case where she claims to have solved Goldbach's conjecture.

In order to see where the difference between the two cases lies, let us distinguish claims that are evaluative from those that are purely descriptive. Claims of the first kind include 'modesty is the highest virtue', 'murder is wrong', and 'men are more trustworthy than women'. Claims of the latter kind include 'men run faster than women', 'water is H<sub>2</sub>O', and 'birds lay eggs'. Claims of the first kind are claims that concern value because they involve evaluative terms such as 'wrong', 'right', 'better', 'higher', and 'more trustworthy'.<sup>7</sup> By contrast, claims of the latter kind are purely descriptive: they involve no evaluative terms. This distinction between evaluative claims and purely descriptive claims need not be sharp for my purposes. It may be that some claims cannot be classified clearly under either category. Moreover, it may be that some claims appear to be evaluative claims but are in fact descriptive. Take, for example, the claim that men are better than women. But better in what respect? Once the sense of 'better' is precisified—for example, better with respect to lifting weights—it becomes clear that a claim that appears to be evaluative is in fact purely descriptive: it is just the claim that men can lift heavier weights than women. Similarly, some claims may appear to be descriptive which are in fact evaluative.<sup>8</sup>

If the case where a woman asserts that her testimony is worth less than a man's testimony is a case where she makes a claim that concerns only value

(in the above sense) and not fact, then her claim seems immune to being undermined by claims that are purely factual or descriptive. This is because claims that concern only value are not claims about what is the case in the world. Take, for example, the claim that murder is wrong. It is difficult to see how such a claim could be straightforwardly undermined by pointing to a feature of the world or to a worldly state of affairs.

A woman's assertion that her testimony is worth less than a man's testimony is moreover not a claim that can be easily undermined by a competing value claim. To see why, suppose that A and B disagree over whether capital punishment is morally wrong. In this type of case, there is no obvious reason why A's views should be given deference over B's, or vice versa. But in the case of a woman who asserts that her testimony ought to be valued less than a man's, the woman's assertion—at least as it applies to herself—ought to be given deference over a competing assertion. It may be that the woman believes falsely that her testimony is worth less than a man's, but in a disagreement, and absent any other argument or considerations to the contrary, the woman is in a privileged position to make a claim about her own trustworthiness.

The puzzle that I have sketched above thus gets off the ground when we take a woman's assertion of the divine norm to be a claim that concerns only value and take it to be a claim that demands deference. In the next section, I discuss two ultimately inadequate ways to solve the puzzle before introducing my proposed solution.

## 13.2 Unsuccessful Solutions

### 13.2.1 Contextualising Qur'anic Norms

A natural candidate way out of the puzzle generated for the norms that govern testimonial justice is to situate the verse that generates the puzzle in its sociopolitical context and to thus *contextualise* it. If the verse were contextualised, then it would cease to have normative force for us here and now: instead of a universal and timeless prescription to  $\phi$ , we could take the verse to prescribe  $\phi$  for the particular sociopolitical conditions that obtained in 7th-century Arabia.<sup>9</sup> The puzzle would then dissolve, for women who assert that their testimony is worth less than a man's would be making a factual mistake: they would be mistaking a claim that has force only in the sociopolitical conditions found in the 7th-century Arabia for a claim that has force here and now. This sort of mistake would be factual, for it would be a mistake either about what sociopolitical conditions we currently live in, or a mistake about the content of the prescription.

How might one contextualise verse 2:282? Several scholars have endorsed the view that the Qur'an draws a distinction between the worth of a man's testimony and a woman's testimony in only one verse—the one quoted above. In four other cases described in the Qur'an that involve the giving of evidence, no distinction is drawn between men and women.<sup>10</sup> Thus, the prescription

at 2:282 should not be taken as a general claim—a claim that holds in all cases—about the relative worth of women’s testimony. Indeed, Barlas (2002, pp. 189–190) argues that the testimony of a woman is in fact privileged over the testimony of her husband in a case where a man charges his wife with adultery. Barlas argues that if the testimony given by two women were equal in value to the testimony provided by one man across the board, there would not be more value attached to a woman’s testimony (relative to her husband’s) in the case of adultery.

Moreover, proponents of the above line of argument claim that there is a reason why a distinction is drawn between the value of a man’s testimony versus a woman’s testimony at 2:282. They claim that this particular verse concerns financial transactions, and insofar as women in 7th-century Arabia were not involved in such transactions, their testimony was in fact less reliable. El-Ali (2022, p. 236) writes, for example:

[Several scholars] point out that the phrase “so that if one of them forgets/errs the other can remind her” is a reference not to the inferiority of women but rather to the fact that women at the time did not engage in borrowing or lending themselves and were moreover mostly illiterate, making them less effective witnesses than men to a debt contract should a dispute arise.

The contextualising strategy, as applied to verse 2:282, is often applied to other verses that seem to run counter to modern sensibilities. One such example is verse 4:2–3, which has widely been taken to sanction polygyny:

And give to the orphans their properties and do not substitute the defective [of your own] for the good [of theirs]. And do not consume their properties into your own. Indeed, that is ever a great sin. And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses.

(4:2–3)

As Barlas (2002, p. 190) argues, the purpose of polygyny in 7th-century Arabia—a society that had very few social welfare mechanisms—was to secure justice for female orphans. Understood in its context, the verse does constitute a universal and timeless sanction for polygyny but instead prescribes a very specific context-sensitive solution to a very specific problem.

I have argued elsewhere<sup>11</sup> that the contextualising strategy does not work as an adequate solution to the problem of reconciling the text of the Qur’an with a feminist outlook. I will argue here that the contextualising strategy also fails as a way of dissolving the puzzle for testimonial justice discussed in the previous section. I will briefly state two ways in which the strategy fails,

and then elaborate the reasoning in more detail. First, the rationale given for the distinction between the worth of a man's and a woman's testimony seems inadequate. Second, contextualising renders the Qur'an into a historical document and takes away its normative force—a result that would be unacceptable to any Muslim woman who takes at least some of the Qur'an's prescriptions to have normative force for us here and now. Importantly for our purposes, it is a result that would be unacceptable to the Muslim woman today who asserts, on the basis of the Qur'an, that her testimony is worth less than a man's testimony.

Let us begin with the first point. Even supposing that it is true that most women did not engage in commercial transactions in 7th-century Arabia, it is far from clear that this rationale justifies the view that a man's testimony is worth more than a woman's testimony in the restricted case of a financial transaction or more generally. Even if women in 7th-century Arabia did not engage in borrowing or lending, it is certainly not obviously true that all men did: there were men who likely engaged in no transactions (e.g., slaves or simply inexperienced men) or men who engaged in cash-only or barter-only transactions. The testimony of such men would have been unreliable in the same manner as the testimony of women; yet, there is no caveat or provision attached to the verse.

Moreover, it is difficult to believe—especially in the absence of evidence—that *no* women in 7th-century Arabia engaged in borrowing or lending. Women, after all, ran the household and would have come across (directly or indirectly) transactions that pertained to groceries and other household goods. The general prescription in the verse would have surely unjustly discriminated against these women. The same reasoning applies to the point about literacy: not all men were literate (indeed, the prophet Muhammad was illiterate himself) and some women likely were literate. In the absence of evidence that supports the claim that all men in 7th-century Arabia were literate and engaged in transactions that involved lending and borrowing and that women were illiterate and did not engage in such transactions, the explanation that has been offered for the differential treatment of men and women at 2:282 is too quick.

One might argue that even if some women engaged in financial transactions and were literate and some men did not engage in such transactions and were illiterate, the general prescription is nevertheless justified for it captures the majority of cases. But while such a prescription might be fine as a matter of human law,<sup>12</sup> it seems problematic as a matter of God's law: it opens up the possibility that a literate woman with knowledge of financial matters can have her testimony unjustly taken less seriously as a matter of God's decree. But God is just, and so, surely cannot permit such a case.

Putting aside the question of whether the rationale that is typically given for the prescription at 2:282 when the verse is contextualised is successful or not, there is a deeper problem with the contextualising strategy more generally: the strategy renders the Qur'an into a historical document with a

message whose normative force is contingent on the time and place in which the message was revealed. The strategy thus undermines the universal and timeless normative force that Muslims generally take the Qur'an to have. If the Qur'an is contextualised, then no prescription in the Qur'an has normative force for us here and now, because the normative force of the Qur'an is conditional on particular sociopolitical conditions, i.e., those obtained in 7th-century Arabia. And those conditions do not obtain in our present context.

One might argue that the above argument against the contextualising strategy is too quick: surely, we should contextualise only those verses that are problematic (from a contemporary point of view) and take the rest to have normative force for us here and now. But to rely on our own contemporary values in determining which verses to contextualise is problematic, for it undermines the *objectivity* of the message of the Qur'an. The message of the Qur'an is objective in the sense that (most) Muslims take the Qur'an to have a message that does not depend on who is reading it. In this sense, it is unlike a work of art which can have multiple meanings for different people. Even when Muslims disagree about the correct interpretation, they presuppose that there *is* a correct interpretation and that other candidate interpretations are false. But if there is a correct interpretation, then letting our background values about a particular domain (say, gender) play a role in determining whether a norm that concerns that domain (i.e., gender) should be contextualised is problematic: the set of verses that I think ought to be contextualised (given my values) will differ from the set of verses that someone else with different values thinks should be contextualised. But we cannot both be right. Thus, if the objectivity of the message of the Qur'an is to be preserved, we cannot let background values that pertain to a given domain influence how we interpret verses that are about that domain. It may turn out to be the case that a 'value-free' interpretation (in the relevant sense) is not possible. For instance, it may be that all readers of the Qur'an have background values that pertain to gender that are grounded in culture and tradition. If that is right, it would be impossible to isolate the correct set of verses pertaining to gender that should be contextualised, unless we have a standard that is independent of our values for determining which verses have normative force for us here and now and which verses get contextualised. But the contextualising strategy, as usually employed by feminist exegetes, makes no appeal to such a criterion.

Absent an independent criterion that allows us to determine which verses to contextualise, there is no reason why some verses should be contextualised, but not others. The contextualising strategy then threatens to render the entire Qur'an into a historical document—a result that would be unacceptable to any Muslim who takes the Qur'an to prescribe norms that bind us here and now. The strategy thus dissolves the puzzle we began with, but only at the cost of failing to preserve the normative force of the Qur'an for contemporary Muslims.



### 13.2.2 A Factual Disagreement

The candidate solution to the puzzle discussed above relies on its being the case that Muslim women who assert, on the basis of the Qur'an, that their testimony is worth half that of a man's testimony are making a factual mistake—a mistake either about the sociopolitical conditions we currently live in or a mistake about the content of the prescription. But yet another way out of the puzzle would be available if the prescription in verse 2:282 did not concern purely a matter of value, but also pertained to a matter of fact. In Section 13.1, I drew a distinction between claims that concern value and those that concern fact and argued that the puzzle arises in a straightforward manner only if the prescription at 2:282 is a claim of value. This is both because it is not obvious that the claims of Muslim women are owed deference in a matter that concerns *facts* about the relative trustworthiness of men and women with respect to testimony and because a factual claim can be shown to be false on the basis of evidence.

But what if the prescription at 2:282 does not concern only value? If the divine norm prescribed by the Qur'an concerns or is ultimately grounded in a matter of fact, then we can argue that the puzzle does not arise, for we no longer have a case where two value claims—a divine norm and a norm of testimonial justice—conflict.<sup>13</sup> We can reconstrue the two putatively conflicting claims as follows:

**Norm of Testimony:** All else being equal, value a woman's testimony to the same degree as a man's testimony.

**Divine Norm:** Value a man's testimony more than a woman's testimony *because* men's minds are more reliable than women's minds.

That the norm prescribed at 2:282 may have a factual basis is suggested by the verse, whose last line reads 'And if there are not two men [available], then a man and two women from those whom you accept as witnesses—so that if one of the women errs, then the other can remind her'. A proponent of understanding the divine norm as grounded in a fact about the relative reliability of men's and women's minds may reconstruct the argument suggested by the verse as follows:

- P1. Testimony is valuable only to the extent that it is reliable.
- P2. Men's minds are more reliable than women's minds.
- C. Men's testimony is more valuable than women's testimony.

If we understand the norm of testimony and the divine norm as suggested above, then the puzzle does not arise: if men's minds are indeed more reliable than women's minds, then all else is not equal, and we need not put a woman's testimony on par with a man's testimony.

However, the Qur'an, as God's word, is infallible.<sup>14</sup> Yet, whether men's minds are more reliable than women's minds is a matter we can investigate and show the affirmative answer to be false. It is thus problematic to understand verse 2:282 as grounded in a putative fact—the claim is falsifiable and plausibly falsified. But a solution to the puzzle that impugns God's infallibility would be unacceptable to Muslims, and thus no solution at all.

Yet, one might worry: can such an interpretation of verse 2:282 be avoided? I argue that it can. A decision to adopt one interpretation of a verse over another is a political choice: to take a Qur'anic verse as saying that men's minds are more reliable than women's minds—and to take this to be a universal generalisation that holds at all times and in all places—requires that we endorse certain background values that tip the scales towards one reading over another. Thus, what appears to be a purely factual claim is based on a value-laden interpretation, where the relevant values deem women inferior to men. An interpretation that takes the prescription at 2:282 to be a value claim that is grounded in a putatively factual claim is thus not forced on us.

### 13.3 A New Solution

To make way for a new solution to the puzzle, let us return to the problem I highlighted earlier with the contextual strategy. As we saw, the contextual strategy fails as an adequate solution to the puzzle because it threatens to render the Qur'an as a whole into a historical document whose message does not have normative force for us here and now. What we need is a more sophisticated version of the contextual strategy—a version that allows us to draw a principled distinction between those verses in the Qur'an that bind us here and now, and those that do not. As we have seen, in drawing this principled distinction, we cannot rely on our own background values and cherry-pick the verses that we think should have normative force for us. As I argued above, doing so undermines the objectivity of the message of the Qur'an: insofar as Muslims believe that the Qur'an is *the* infallible word of God, background values can interfere with the ability of the reader to grasp this message. In particular, if I have background values that pertain to gender (e.g., feminist values) that I then bring to bear when interpreting a Qur'anic verse that itself pertains to gender, I lose the entitlement to take myself to be converging upon God's message.

But I will argue that we do have an independent standard available that enables us to draw a principled distinction between those verses that have normative force for us here and now, and those that do not. To get at this standard, we need to rely on a distinction between two types of verses in the Qur'an: verses revealed in Mecca, where the Muslim community was initially smaller and where the prophet Mohammed started his ministry, and the verses revealed in Medina, where the prophet eventually moved in 622 C.E. and where he established a social order. The Qur'an as a whole consists in entire chapters (*surahs*) revealed in Mecca or Medina. At the superficial level,

the distinction between Meccan and Medinan verses is simply a distinction that concerns where each type of verse was revealed. But a closer look tells us that there is also a distinction in form and content. Meccan verses are shorter, whereas Medinan verses are long and involved. Meccan verses also tend to be prophetic and often refer to the day of judgement and to God's unity. They, moreover, tend to prescribe virtues. Here is a typical example of a Meccan verse from Chapter 93 (*Surah Duha*)

By the morning light. And the night as it settles. Your Lord did not abandon you, nor did He forget. The Hereafter is better for you than the First. And your Lord will give you, and you will be satisfied. Did He not find you orphaned, and sheltered you? And found you wandering, and guided you? And found you in need, and enriched you? Therefore, do not mistreat the orphan. Nor rebuff the seeker. But proclaim the blessings of your Lord.

(93:1–11)

By contrast, Medinan verses are often legalistic and seem concerned with establishing laws governing the interpersonal domain, including the relationships between men and women. The Muslim community in Medina was larger and had a more complex demographic than the community in Mecca at the beginning of Muhammed's ministry. The Medinan verses can be seen as responding to a specific need that arose after Muhammed's move to Medina—the need to provide a foundation for a new social order. Unlike Meccan verses, Medinan verses often deal with the mundane: questions that concern inheritance, marriage, usury, financial transactions, and the like. Here is a typical example of a Medinan verse from Chapter 4 (*Surah An-Nisa*)

Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah.

(4:11)

Unlike Meccan verses, Medinan verses tend to prescribe norms that pertain to very specific situations.

Importantly for my purposes, the distinction between Meccan and Medinan verses maps onto a distinction between norms that tell us *how to be* and norms that tell us *what to do*. An example of a norm that tells us

how to be is ‘be just’ or ‘be merciful’. By contrast, an example of a norm that tells us what to do is the one specified in the above verse 4:11. The verse provides instruction concerning the division of inheritance. It tells us *what to do* in a very specific circumstance. Let us call a norm that tells us how to be a ‘thick norm’ because it employs (whether explicitly or implicitly) 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*, and *bad*. This distinction between two types of norms, together with facts about the circumstances in which verses prescribing each type of norm was revealed, can now provide us with a standard independent of our values for drawing a distinction between verses that have universal normative force, and those that do not.

The verses that prescribe thick norms have universal normative force—they bind us at all times and in all places—whereas those that prescribe thin norms have a normative force that is conditional on specific social and political circumstances. To see why this is so, we need to look at the form of the prescribed norm, i.e., whether it tells us *how to be* or *what to do*. Norms that tell us how to be are universal, for how we ought to be does not differ from time to time or place to place. By contrast, what we ought to do in a given situation does depend on the time and place. Yet, on my view, the Meccan and Medinan norms are not unrelated: 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. The normative priority this proposal gives the Meccan verses rests neither on independent values nor on textual interpretation. The normative priority is forced on us by the philosophical distinction between norms that tell us *how to be* and norms that tell us *what to do*. The textual distinction between Meccan and Medinan verses simply serves as evidence that the distinction between these norms is marked in the Qur’an.

Does my proposal require that we ought to simply ignore the Medinan chapters, and thus the thin norms that they express? Such a proposal would be problematic, for it would render the Medinan chapters irrelevant and thus dispensable for the contemporary Muslim. But my proposal does not entail that the Medinan chapters are irrelevant to 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. The mature moral understanding which this in turn leads to allows us to properly apply the thick norms to the radically different circumstances we now find ourselves.

To see this structure between the thick Meccan norms and the thin Medinan norms at work, let us return to the Meccan verse quoted above (93:1–11)

that enjoins us to not mistreat the orphan. Even though at the surface level this prescription tells us what to do ('do not mistreat the orphan'), the norm instructs us to be good to orphans.<sup>15</sup> But what does being good to orphans consist in? Verse 4:2–3 tells us how to be good to orphans in the context of 7th-century Arabia: ‘

And give to the orphans their properties and do not substitute the defective [of your own] for the good [of theirs]. And do not consume their properties into your own. Indeed, that is ever a great sin. And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four.

In 7th-century Arabia—a society in which a safety net for the poor was virtually nonexistent—the way to act in accordance with the thick norm that tells us to be good to orphans was to permit men to marry up to four orphan girls, who would then be provided for. But this particular way of caring for orphans and the destitute does not generalise to our context. In our context, perhaps the right thing to do would be to donate to charities or pay higher taxes.

Let us now return to the case of testimony. What thick norm might be relevant to the thin norm prescribed at 2:282, a verse that implies that a man's testimony is worth twice that of a woman's testimony? Of the virtues prescribed by the Qur'an, justice is one of the central ones. The Qur'an says, for example

Surely Allah enjoins justice, kindness and the doing of good to kith and kin, and forbids all that is shameful, evil and oppressive.

(16:90)

The above verse belongs to *Surah An-Nahl*, a Meccan surah. With the thick norm prescribing justice in the background, we can ask ourselves what thin norms ought to govern testimony *today* and *here*, and in particular, whether there ought to be a difference in how a man's testimony is weighted compared with a woman's testimony.

Determining what the thin norms that govern testimony are today and here will depend on ascertaining what circumstances obtain today and here, and deciding how these circumstances bear on the derivation of thin norms from thick norms. But we can now say that those who insist that a man's testimony is worth twice a woman's testimony today are making a mistake either about the circumstances or about how those circumstances bear on the application of a thick norm. That is, they are either wrong about the social and political conditions that we live in, or they are wrong about what the correct thin norm would be today given the thick norm that prescribes justice.

As we have seen, my argument appeals to a crucial difference in the form and content of Meccan versus Medinan verses. 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: (1) 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 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., some Meccan verses may 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); (2) 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. In my view, both messages are relevant and have an equal claim to being God's word. Yet, they play distinct roles. While it is the thick norms expressed 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, provide us with a blueprint for how to implement Meccan norms today.

Let us now return to the puzzle we began with. Recall that the puzzle arises on the assumption that a Muslim woman is making a claim only about value (rather than fact) when she asserts that her testimony is worth less than a man's. But we now have the resources to say that women who endorse, on the basis of the Qur'an, the claim that their testimony is worth less than a man's (and then assert it) are making a *factual* mistake. Moreover, the attribution of this mistake to the Muslim woman does not problematically presuppose that the Qur'an as a whole is a historical document (as I have argued is the case with the contextual strategy discussed above). We thus have a solution to the puzzle that does not threaten the place of the Qur'an for the contemporary Muslim.

I close this discussion by briefly addressing an objection to my proposed solution to the puzzle. In my view, the norm prescribed at verse 2:282 is the correct thin norm for 7th-century Arabia, yet not the correct thin norm for us here and now. Yet, we might ask whether the norm prescribed at verse 2:282 is indeed the correct norm for 7th-century Arabia. As we have seen above, the contextual justification that is often provided—that it was men who engaged in financial transactions in 7th-century Arabia, and that women, because ignorant about financial matters, could not witness financial transactions as competently as men—does not quite work. But the norm makes sense against

the background of pre-Islamic society—a society in which women had very little status relative to men and would not have been permitted as witnesses at all. The norm prescribed at 2:282 can be plausibly construed as a stepping-stone to an ideal norm. It is not itself ideal, but it is the *correct* norm for the context of 7th-century Arabia.

### 13.4 Concluding Remarks

My aim in this chapter has been to address a puzzle that arises for the norms that govern testimonial justice when confronted with a divine norm that supports inequality in testimony between men and women. The puzzle arises when a woman who has internalised the divine norm asserts it. Testimonial justice demands that absent any reason to distrust the woman, we should not treat the woman as less credible simply because she is a woman. Yet, to take the woman seriously paradoxically entails that we take her *less* seriously.

My proposed solution to the puzzle requires that we reconstrue the relationship between the Qur'an and the believer. Instead of a simplistic view on which believers are passive recipients of divine instruction, I have argued that the Qur'an leaves room for us to exercise our own moral understanding. In particular, given the template provided by the relationship in the Qur'an between the thick Meccan norms and the thin Medinan norms, it is up to us to discern what the corresponding thin norms might be for our contemporary context. Against this backdrop of a more sophisticated relationship between the Qur'an and the believer, we can see how a solution to the puzzle that I have discussed for the norms of testimonial justice becomes available.<sup>16</sup>

### Notes

- 1 Among those who endorse the principle that speakers need to know that *p* when they assert *p* in order for a hearer to come to know that *p* on the basis of their testimony are Audi (2006), Burge (1993, 1997), and Schmitt (2006). Lackey (2006, 2008) and McKinnon (2013, 2015) argue against this principle.
- 2 All Qur'anic verses in this chapter are quoted from the Sahih International translation of the Qur'an.
- 3 Cf. Saeed (2018, p. 115).
- 4 See Amijee (2023) for some other instances where there is tension between contemporary egalitarian values and what the Qur'an seems to prescribe.
- 5 See Amijee (2023).
- 6 In Amijee (2023) I express skepticism about whether any feminist interpretation has been shown to be the correct one, rather than merely an available one. The proponent of a competing interpretation that is merely available is likely to be dialectically ineffective against the proponent of the standard interpretation (on the assumption that the standard interpretation is hermeneutically sound), and is left without resources for showing that the standard interpretation should be abandoned.
- 7 We can draw a further distinction between 'thick' and 'thin' evaluative terms. See Väyrynen (2021).
- 8 The fact-value distinction has been problematized by Putnam (2002), amongst others. Challenges to the general distinction between fact and value are, however,

- dialectically irrelevant to my project: if all putatively descriptive facts involve an evaluative component, then the puzzle I discuss for the norms that govern testimonial justice arises straightforwardly.
- 9 See Amijee (2023) for a detailed discussion of the contextualizing strategy for reconciling putatively sexist verses in the Qur'an with a broadly speaking feminist outlook.
  - 10 See Barlas (2002, p. 190). By contrast, Ahmad (2011) writes that there are seven other verses about 'recording evidence' in the Qur'an.
  - 11 See Amijee (2023).
  - 12 Take, for example, the laws against drinking and driving. Not everyone who drinks above the drinking limit and drives will be a dangerous driver, for people differ in their tolerance levels to alcohol. Yet the legal limit applies to all individuals across the board.
  - 13 For the purposes of discussing this candidate solution to the puzzle, I presuppose that the distinction between a claim that concerns value and one that concerns fact is in good standing. Yet, because this is a solution that I will ultimately reject, the burden of showing that the distinction is in good standing lies with those who might endorse this solution.
  - 14 For the purposes of this chapter, I take on board the assumption that the Qur'an is God's infallible word. This is because this is the predominant view held by Muslims today about the authorship of the Qur'an. However, 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.
  - 15 Instructions that are explicitly of the what-to-do form, such as the inheritance laws stated in verse 4:11, cannot be similarly rephrased as how-to-be norms.
  - 16 For discussion and feedback on earlier drafts, thanks to Dominic Alford-Duguid, Michael Della Rocca, Mohammad Saleh Zarepour, Imran Aijaz, Rosabel Ansari, and audiences at the University of Michigan-Dearborn and the Kolloquium für Philosophie in der MENA-Region.

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