

**THE LANGUAGE OF COERCION IN THE QUR'AN AND ITS IMPLICATIONS FOR
THE CLASSIFICATION OF RAPE IN ISLAMIC LAW**

by

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TABLE OF CONTENTS

Acknowledgements	ii
Introduction	7
The Vocabulary of Coercion in the Qur'an	8
Literature Review	10
Classification	12
Sex crimes - <i>Zinā</i>	12
Violent crimes - <i>Harābah</i>	19
Property crimes - Theft of virginity	26
Notion of will	30
Prosecuting Rape	34
Proof	34
Punishment	36
Methodology	37
Analysis	43
Q 20:73	43
Q 10:99	45
Q 16:106	52
Q 2:256	58
Q 4:19	65
Q 24:33	70

Conclusion	75
Bibliography	80
Abstract	84
Autobiographical statement	85

INTRODUCTION

This thesis will analyze the language of coercion (*ikrāh*) in the Qur'an in order to help determine how the concept of coercion may figure into the classification of rape, or forced sexual intercourse, in Islamic law. The crime of rape, when classified as *zinā* (fornication),¹ is often difficult to prosecute because of the emphasis typically placed on the socio-legal (namely, marital) relationship of the parties involved rather than the coercive nature of the sexual act itself. The present study of coercion in the Qur'an may help us better understand how current problems in prosecuting rape as a coercive type of fornication (*al-istikrāh 'ala al-zinā*) may be alleviated through an inverse emphasis on its coercive dimension.

This is a quest that first began by asking why it is so difficult for a woman in a Muslim country (this includes Muslim and non-Muslim women) to prosecute her rapist.² Prosecution is extremely difficult because of the classification of rape under *zinā*, which has stringent requirements for proving that illicit sex occurred, with the biggest obstacle being the requirement of four male Muslim witnesses to the crime, which are seldom producible. The conception of *zinā* presumes two consenting participants engaging in illicit sex and does not readily accommodate the possibility of coercion. In light of these problems, I propose to reclassify rape as *ḥarābah*, forcible or violent taking,³ as it is a more relevant and efficacious alternative than *zinā*, for the

¹ This includes premarital sex, extramarital sex, as well as penetrative sex between men

² The following article exhibits several examples of women in the UAE being victimized after reporting a rape: <https://www.independent.co.uk/news/world/asia/rape-victim-dubai-united-arab-emirates-uae-extra-marital-sex-report-detained-in-dubai-police-charity-a7422326.html>

³ See Q 5:33.

following reasons. The first reason is that forcible taking is intrinsic to the nature of rape, which is defined as forcing another person to have sex against their will.⁴ The second reason is that *ḥarābah* more immediately presumes a binary of innocent victim and guilty perpetrator, as opposed to the apparent presumption in *zinā* of co-perpetrators (even if one is coerced). The third reason is that *ḥarābah* has less onerous requirements of proof, which is desirable for effectively prosecuting rape in light of the function of coercion making a clear victim for whom to seek justice.

While there is much scholarship on gender and violence in Islam, few studies deal with the specific problem of rape/sexual coercion from a Qur’anic perspective. The present study is an attempt to help fill this gap by examining the Qur’anic concept of coercion, utilizing lexical-semantic and hermeneutical approaches. I locate and analyze relevant Qur’anic verses in which the vocabulary of coercion is used, and offer a selective survey of their exegeses. The goal is to illuminate a Qur’an-based understanding of coercion in which contemporary jurists might find significant enough reason to reclassify rape as *ḥarābah* on the basis of a coercive nature within Islamic law so that it might be subject to fewer insurmountable obstacles when it comes to prosecution, to ensure that rapists are brought to justice for the sake of the victims as well as the general public.

THE VOCABULARY OF COERCION IN THE QUR'AN

The concept of coercion in the Qur’an is most precisely captured in vocabulary terms derived from the Arabic root *k-r-h*, which carries the basic meaning “to dislike or hate.” The noun

⁴ *Oxford Dictionaries*, s.v. “rape,” accessed November 24, 2018, <https://en.oxforddictionaries.com/definition/rape>

karh (“force”) functions in the accusative (*karhan*) to mean “by force” or “forcedly.” The action “to compel or force” is conveyed in Arabic in the Form IV verb *akraha*. In the Qur’an, the Form IV verb appears (in various conjugational forms, as we shall see) five times in four verses: once each in Q 10:99, 16:106, and 20:73; and twice in Q 24:33.⁵ The latter, in addition to having two verbs, also contains the cognate verbal noun (*ikrāh*), which also appears in Q 2:256 as it declares “no compulsion (*ikrāh*) in religion,” meaning that Islam cannot be forced upon someone, or someone cannot be coerced or compelled into believing against his or her will. The verses Q 10:99, 16:106, and 20:73 likewise refer to force in the context of forcing someone to believe or, in the case of 20:73 to deviate from belief. In Q 24:33 we find the most direct usage of the term with respect to the treatment of women and their sexuality. The core message of this verse and the surrounding verses in Q 24 is that women, both free and righteous slaves, should be married and cared for. It stems from a stigma surrounding women living in poverty, who can face obstacles when trying to marry, signaling that they deserve marriage and protection.⁶ It also suggests that Allah forgives slave girls who are coerced or forced into whoredom or prostitution. Further commentary tells that this use of “to compel” (to whoredom) is a pre-Islamic practice, and also that Allah will not hold slaves responsible for that which they were forced to commit.⁷

⁵ "Corpus Quran Verb Concordance." *The Quranic Arabic Corpus - Verb Concordance*. Accessed April 03, 2018. <http://corpus.quran.com/verbs.jsp>.

⁶ Nasr, Seyyed Hossein. *The Study Quran: A New Translation and Commentary*. New York, NY: HarperOne, an Imprint of HarperCollins Publishers, 2017.

⁷ Ibid.

The present study analyzes the language and exegetical traditions of the above-mentioned six verses containing the vocabulary of coercion, presented below in chronological order: Q 20:73, 10:99, 16:106, 2:256, 4:19, and 24:33.

LITERATURE REVIEW

The most important scholarly study for understanding how and why coerced sexual intercourse came to be classified as it is in classical Islamic law is Hina Azam's monograph *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Azam traces rape back to early Islamic law, and introduces the concept of sexual usurpation, which came from sexuality being treated as a commodity. Her research has a strong focus on Hanafi and Maliki law, comparing and contrasting how these two schools of law view, and thus handle, sexual violence. Additionally, her monograph introduces a significant set of vocabulary instrumental in understanding the themes in this project.

Azam describes and analyzes pre-Islamic Arabian laws, including those of the Jews, that likely influenced the way sexual violence was treated in Islamic law. In pre-Islamic Arabia, *zinā* constituted harlotry and promiscuity. She explores ancient Mesopotamian, Mosaic and Rabbinic, and Roman and Christian imperial legislation. The common denominator, with a focus on free women, is that rape is treated as a property crime against the owner or controller of the rape victims's sexuality, usually her father or husband, which will be discussed further in the section on classification. She quotes Rachel Biale's 1984 study of women in halakhic sources as saying that rape was a "calculated attempt by a man to acquire a woman as his wife against her and her par-

ents' wishes,"⁸ which is found in pre-Islamic Arabic poetry as a competing marriage strategy.⁹ The development of Islamic law came to include all sexual activity outside of marriage under the definition of *zinā*, and was a crime against both culture and God, whereas pre-Islamic *zinā* was far less inclusive.¹⁰

She also analyzes the difference between two words that are used today interchangeably to mean bride: *mahīrah* and *sabīyah*. In classical use, *sabīyah* refers to a bride won through capture, while *mahīrah* refers to one obtained via a contract.¹¹ The concept of stealing women with the intent to marry is present in pre-Islamic Arabian poetry, and was treated as a property crime and an economic loss to the woman's father, as well as something which brings dishonor to the woman's tribe.¹² Another concept that is fascinatingly relevant to this research is a pre-Islamic matrilocal and matrilineal marriage in which a woman had multiple husbands or male visitors from whom she received *ṣadaq* payments.¹³ Azam references W. Robertson Smith's *Kinship and Marriage in Early Arabia*, saying he believed Muhammad's condemnation of this particular form of *zinā* in the Qur'an was actually directed toward this matrilineal arrangement, and that it

⁸ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 35

⁹ Ibid. 53

¹⁰ Ibid. 68

¹¹ Ibid. 54

¹² Ibid. 57

¹³ Ibid. 57

was prevalent in the immediate pre-Prophetic period.¹⁴ It was condemned as no better than prostitution, and Smith says these temporary marriages are what Muhammad called fornication.¹⁵ Muhammed's condemnation of marriage by force is especially important to this study specifically due to the coercive nature of these arrangements. It suggests that Muhammed directly condemned sexual coercion.

Azam also describes her main sources, legal reports (*āthār*) from the collections of the late 2nd/8th and 3rd/9th centuries that contain judgments and opinions of first-generation Muslim legal authorities.¹⁶ She says these reports are difficult to work with in terms of explaining early legal doctrines due to their atomistic and exoteric qualities, focusing on events, judgments, and opinions without enough commentary to assist readers in determining motive.¹⁷

Azam demonstrates that sexual violation in Islam is conceived in “interpersonal, proprietary terms,” but is conceived in Islamic discourse in theocentric terms as a crime against God, and is therefore defined as a type of *zinā*.¹⁸ The Qur’an emphasizes these theocentric ethics as individualist in nature, causing internal dispositions like volition to become “central elements of the individual believer’s connection with God,” which gives notions like consent and coercion legal meaning.¹⁹

¹⁴ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 57

¹⁵ Ibid. 57

¹⁶ Ibid. 63

¹⁷ Ibid. 63

¹⁸ Ibid. 62

¹⁹ Ibid. 62

Classification

Sex crimes - *zinā*

The first classification to discuss is, of course, sex crimes, which is how rape as coercive *zinā* is currently classified. Kecia Ali, in her book *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*, shows that the classification of what sexual activities are licit and illicit were developed by classical Muslim thinkers based on interpretations of the Qur'an and Sunnah.²⁰ Additionally, the configuration composed by premodern Muslim jurists is not the same as the systems of law currently imposed in Muslim majority societies.²¹ Ali points out something critical to this research when discussing Muslim societies today: “The view that ‘consent makes a difference to whether some sexual activity is seen as immoral or not’ is widely shared.”²² However, this is more in relation to arguing that just because sex is consensual does not mean it is allowable under Islamic law. The fact remains that these laws were composed when greater society viewed women as property and sexual objects to be used for men’s pleasure. It is not possible to steal from a woman what the law did not deem hers to begin with.

Ali also references Ibn Ḥajar al-Haytamī’s (d. 974/1556) list of *Enormities*, which is a compilation by medieval Muslim scholars of major sins that are still influential today.²³ The list

²⁰ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 56. Accessed July 31, 2017. ProQuest Ebook Central.

²¹ Ibid. 57.

²² Ibid. 57

²³ Ibid. 75

ranks these sins in order of gravity, with the most serious of sexual offenses being *zinā*.²⁴ Interestingly, sex between men is ranked behind *zinā*. In discourse surrounding homosexual activity, there is mostly silence regarding sex acts between women. An important factor regarding this is that most legal sex acts involve penetration by a penis,²⁵ and since this is not the case between two women, the act is often left out of the discussion. In this way there is some differentiation between rape and sexual violence. A man forcing his penis into a woman's vagina is coercive *zinā*, but the instance of 'Ammār's mother, Sumayyah, who was tied up between two camels and speared in the vagina²⁶ is not, rather it is a form of violence.

Ali quotes modern scholar Muhammad Abdul-Ra'uf who wrote in 1977 that "toleration of an evil leads to other evils. First, we condone public exposure [of women's bodies]." ²⁷ While he goes on to say how that leads to the next thing in a chain reaction, we have to examine the thought behind exposure of women's bodies. Does this mean western wear? Anything other than a burka? Lack of a hijab? It suggests that men are such feral beasts that they cannot control themselves when they see an attractive woman, and she may cause them to sin, and also that rape is about sexual attraction rather than power. This problem is not unique to Islam, but is also

²⁴ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 76. Accessed July 31, 2017. ProQuest Ebook Central.

²⁵ Ibid. 80

²⁶ While the story of 'Ammār and his parents is common in the Tafsirs I analyzed, this detail was specified in the commentary on Q16:106 in *Tafsir Al-Wāḥidī Asbab al-Nuzul*.

²⁷ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 91. Accessed July 31, 2017. ProQuest Ebook Central.

present in the west where teenage girls are not allowed to wear tank tops or shorts to school because a boy might get distracted in math class. Wherever and however the situation is painted, it suggests that women and girls are somehow at fault for the crime of rape, and that by their appearance they actually solicit rape, and thus are not victims but rather complicit in the crime. Ali points out that every evil Abdul-Ra'uf lists is a consensual act, and leaves out rape, child sexual abuse, and other coercive practices.²⁸

Ali also discusses non-consensual sexual contact in the context of Qur'anic hermeneutics around same-sex relations. She refers to an argument by Ibn Hajar²⁹ that the Qur'an does not object to same-sex intimacy, but rather of the intended non-consensual violation, which she says “rests on an assumption that consent is necessary for an ethical or lawful sexual relationship.” However, elsewhere in the Qur'anic text, as with female captives (“what your right hands possess”), consent is not always relevant to the formation of licit sexual relationships.³⁰ This argument is critical to the prosecution of rape because as long as rape can be dowered or married away, it is unlikely to be seen for what it is: a crime against a human being.

In the verse “your wives are a tilth for you,” Q 2:222, Ali points out the made argument that it means men are to tend or cultivate as opposed to own as sexual property, because in that

²⁸ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 92. Accessed July 31, 2017. ProQuest Ebook Central.

²⁹ Ibn Hajar's main objection to same-sex relations, as well as anal sex between men and women, was the lack of a lawful tie between the parties.

³⁰ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 83. Accessed July 31, 2017. ProQuest Ebook Central.

time there was no real land ownership.³¹ There is a significant gap between cultivation and ownership of a person, and yet Ali points out that regardless of interpretation, this Qur'anic verse effectively objectifies women because they are to be acted upon, rather than free to act as their own agents.³² Ali says that this verse was allegedly revealed to settle a dispute between a husband and wife regarding acceptable intercourse positions, and subsequently granted him the right and freedom to do as he pleases, while assuming the wife has no autonomy over her own body.³³

Relevant to this research due to its implication that married women do not possess sexual autonomy and are therefore vulnerable to sexual assault, Ayesha Chaudhry cites a hadith that, in discussion of Q 4:34, says women should not ever be sexually unavailable to their husbands, even if they are at the baking oven or on the back of a camel.³⁴ On one hand this suggests that husbands are not ever to take sex by force, because otherwise women would not be so pressured into being sexually available.³⁵ On the other hand, it really puts pressure on women to be objects of their husbands' pleasure, and reinforces the idea that women are exchanging sexual access to their bodies for financial support. Chaudhry concludes that the meaning of the contexts surrounding Q 4:34 are extremely ambiguous and are used to support both egalitarian and patriarchal in-

³¹ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 130. Accessed July 31, 2017. ProQuest Ebook Central.

³² Ibid. 130

³³ Ibid. 130

³⁴ Chaudhry, Ayesha S. *Domestic violence and the Islamic tradition: ethics, law, and the Muslim discourse on gender*. Oxford: Oxford University Press, 2013. 48

³⁵ Ibid. 48

terpretations.³⁶ This is helpful when researching coercion in the Qur'an as newer generations of moderate Muslims may be more likely to interpret the meaning to be egalitarian, particularly rereading the Qur'an in order to reassess sexual ethics in such a way that coercion becomes the determining factor in reclassifying rape within criminal law.

As Islamic law developed and the definition of *zinā* changed, it grew to encompass all forms of illicit sexual activity, including coercive sexual violence. Most importantly for our understanding of coercion, Azam points out that this mentioned theocentric approach designated the licitness of a sex act according to the will of God, with things like consent marked as less important, citing the example of coercion within marriage as being repugnant but legal.³⁷ This is to say that the will of God is that no illicit sex, consensual or nonconsensual, shall occur, and if it does, the primary violation is the sex act itself, with the coercion falling secondary. Thus, she hypothesizes that the theocentric approach may be “foundational for constructions of rape in Islamic discourse,” with rape being first understood as “coercive *zinā*.”³⁸ This understanding was generally shared among classical Islamic jurists. The concept of will is discussed later on.

With a strong focus on *ḥudūd Allāh*, or the limits/boundaries imposed by God, she notes a development in the meaning of this phrase from denoting a more abstract ethical domain in the

³⁶ Chaudhry, Ayesha S. *Domestic violence and the Islamic tradition: ethics, law, and the Muslim discourse on gender*. Oxford: Oxford University Press, 2013. 54

³⁷ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 69

³⁸ Ibid. 69

Qur'an to becoming a concrete legal rubric in the classical *fiqh* works.³⁹ With this concretization in classical *fiqh* came the articulation of specific punishments for *ḥadd* (sing. of *ḥudūd*) crimes, which are not specified in the Qur'an. According to Mohammad H. Kamali, the terms *ḥadd* and *ḥudūd* have never been used in the Qur'an in the specific sense of punishment.⁴⁰ According to Azam, use of *ḥudūd* in the Qur'an is unspecified, and therefore more communal or determined by culture, whereas its use in the *fiqh* is more narrow and concrete with less room for interpretation.⁴¹

Azam points out that Qur'anic and prophetic teachings established both free and slave women as moral agents responsible for their own actions, and that any man who violated them violated a human subject with an individual relationship with the divine.⁴² With this being the case, the requirements for proving *zinā* in order to impose a *ḥadd* punishment against a rapist are extremely problematic because they lack support for women as human subjects with a divine relationship.

Azam highlights two principles regarding non culpability present in early legal discourse: the first is that coercion (*ikrāh*) effectively lifts the culpability of the victim or the coerced, and the second is that certain internal characteristics such as minority, insanity, and being asleep “im-

³⁹ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 70 The abstract ethical concept refers to a general or non-specific ideas of sexual virtue, according to Fazlur Rahman in “The Concept of *Ḥadd*” prior to a specific legal definition as Islamic law developed.

⁴⁰ Ibid. 71

⁴¹ Ibid. 70

⁴² Ibid. 81

pede legal capacity” so that the victim cannot give valid legal consent.⁴³ Early rulings attributed to the Prophet and his Companions categorized rape as coercive *zinā*, and subject to the same punishments as consensual *zinā*. It was not until three generations later that nonconsensual *zinā* was distinguished from consensual *zinā* by defining it as a form of sexual usurpation requiring a dower.⁴⁴

Violent crimes - *ḥarābah*

The next classification is the one for which I argue, which is rape as a violent crime, or *ḥarābah*.⁴⁵ The Maliki school defines *ḥarābah* as “the act of terrorizing people for the purpose of robbery or other purposes.”⁴⁶ A rapist could certainly be defined as someone who terrorizes others for “other purposes.” Interestingly, some modern scholars consider rapists to be a danger to society, which requires the penalty of *ḥadd al-ḥarābah*, which is forcible and violent taking, based on Q 5:33.⁴⁷ In his article “Rape: A Problem of Crime Classification in Islamic Law,” Azman Mohd Noor says that the Religious Council of Egypt issued a fatwa categorizing rape as an

⁴³ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 82

⁴⁴ Ibid. 93

⁴⁵ *Ḥarābah* comes from the root *h-r-b* meaning “to fight.” It is used in Islamic law to describe a classification of violent crimes, such as armed robbery.

⁴⁶ Rahim, Nik Wajis Nik. *The Crime of Ḥarābah in Islamic Law*. Glasgow Caledonian University, 1996. 63

⁴⁷ Noor, Azman Mohd. "Rape: A Problem of Crime Classification in Islamic Law." *Arab Law Quarterly* 24, no. 4 (2010): 433-434. <http://www.jstor.org/stable/27896105>. Verse 5:33 says “The only reward of those who make war upon Allah and His messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land. Such will be their degradation in the world, and in the Hereafter theirs will be an awful doom;”

act of *ḥarābah*, referring to traditional juristic references.⁴⁸ This is a progressive move that was much needed, considering that Egypt has had a significant problem with mass sexual assaults of women in public since around 2005.

To classify rape as *ḥarābah* instead of *zinā* is much more beneficial for victims because *ḥarābah* does not require four witnesses to prove the offense, but instead would use more modern advances such as DNA testing and other types of forensics,⁴⁹ which is much more likely to achieve an accurate conviction.

Dislodging coercive sex and rape from *zinā* is justifiable because coercion is violent in and of itself, as it is forcing someone to do or not do something by the use or threat of use of violence. Recognizing the inherent violence of coercion is a logical step necessary to reclassify rape as a crime of violence. Noor argues that this classification would be considered a “personal legal opinion” rather than originating from the Qur’an, and is a “dangerous trend since people will regard any simple mistake as *ḥarābah*.”⁵⁰ I disagree with that claim because simple mistakes are not rooted in violent physical force.

Noor claims rape victims should be compensated by the Islamic Law of Tort⁵¹ for “the feeling of perpetual defilement, an overwhelming sense of vulnerability, being distrustful of men and experiencing feelings of shame, humiliation, and loss of privacy and autonomy.”⁵² This seems

⁴⁸ Noor, Azman Mohd. "Rape: A Problem of Crime Classification in Islamic Law." *Arab Law Quarterly* 24, no. 4 (2010): 434. <http://www.jstor.org/stable/27896105>.

⁴⁹ Ibid. 435

⁵⁰ Ibid. 436

⁵¹ Ibid. 438

⁵² Ibid. 437

akin to a victim suing the rapist for damages in civil court, which is separate from criminal court, and in this case, under current circumstances, it only happens in the unlikely case that the rapist is actually convicted of *zinā* in a criminal court. Given that *zinā* is so difficult to prove, and given the advances of modern forensic science, classifying rape as *ḥarābah* is certainly a progressive move.

The Federal Shariat Court of Pakistan made this reclassification in the case of *Rashida Patel v. The Federation of Pakistan*, arguing that a person's honor is their property.⁵³ This should not be confused with treating rape as a property crime, however, because in that case the property is the woman and the owner is the husband or father (this will be discussed next). In this case, the property is the honor and the owner is the rape victim. However, Ahmad argues that the Court does not have the authority to establish new principles of Islamic Law. He further argues that even if the Court did have that authority, it is going against the established norms of the system.

Although I would argue that norms are a societal construct that change and develop over time, Ahmad does make the valid point that Pakistan did not move the provisions regarding rape from the Offense of *Zinā* Ordinance to the Offenses against Property Ordinance, nor did it apply the punishment of *ḥarābah* to rape.⁵⁴ Further, the Court also accepted circumstantial evidence in rape cases, citing an incident where Muhammad forgave a sexual assault victim of her "mistake," and ordered the accused rapist to be stoned without ever requiring of her four witnesses, but

⁵³ Ahmad, Muhammad Mushtaq. "The Crime of Rape and the Hanafi Doctrine of *Siyāsah*." *Pakistan Journal of Criminology* 6.1 (2014): 162. ProQuest. Web.

⁵⁴ *Ibid.* 169

when the actual rapist came forward and confessed, he was forgiven for repenting.⁵⁵ Ahmad rather suggests reinterpreting this incident to become compatible with the structure of *ḥudūd*, calling the attack violence rather than *zinā*, therefore absolving the victim from the need for four witnesses.⁵⁶ This would bring the principle of *siyāsah*, which does allow for circumstantial evidence. Ahmad's criticism of the court seems not to be their final decision in reclassifying rape, but the methodology used (or lack thereof) to arrive at this decision. Perhaps the methodology used in this study might be more agreeable.

Ayesha Chaudhry provides a source useful for its potentially more agreeable methodology, which can be used to help dislodge rape from *zinā*, and reclassify it as *ḥarābah* by using the Qur'an itself. While her texts focuses on Q 4:34, she lists several examples that illustrate how Q 4:34 is interpreted differently in different Muslim countries. Though the verse reads the same in the Qur'an, it seems that the experiences and beliefs of the interpreting communities affect how the verse is interpreted within a legal context. Chaudhry says that the textual (the verses surrounding Q 4:34), historical (how seventh century jurists understood the verse), and cosmological (the expectations pre-colonial jurists had of Q 4:34 and how this determined its derived meanings) contexts are key to understanding the “breadth and boundaries of ethical and legal discussions about the rights of husbands to physically discipline wives in the pre-colonial Islamic tradition.”⁵⁷ This is to reiterate that in order to understand a point in the Qur'an, it is critical to

⁵⁵ Ahmad, Muhammad Mushtaq. "The Crime of Rape and the Hanafi Doctrine of *Siyāsah*." *Pakistan Journal of Criminology* 6.1 (2014): 162. ProQuest. Web.

⁵⁶ *Ibid.* 171

⁵⁷ Chaudhry, Ayesha S. *Domestic violence and the Islamic tradition: ethics, law, and the Muslim discourse on gender*. Oxford: Oxford University Press, 2013. 24

consider the entire chapter for context, rather than pick one verse and interpret its meaning by itself. In addition to understanding the Qur’anic text, it is also important to understand the surrounding commentaries that explain the verses in order to get multiple points of view from the time period in question. As an example, she points out the use of the term *qawwāmūn* as meaning that men have authority, dominance, and maintenance of men over women, while egalitarian interpretations have translated it to mean men are caretakers of women such that the creation of a gender hierarchy is a misinterpretation. Chaudhry suggests that thinkers look past the Islamic tradition and consider alternative possibilities to some of the translations and meanings via the textual context, such as obedience to God over obedience to one’s husband.⁵⁸ In order to look past the Islamic tradition, one must look at the entire chapter, or even the entire Qur’an, rather than taking a single verse and interpreting it minus its context. This will be especially relevant when attempting to reimagine how coercion is used in the language of sexual violence, particularly in how a coerced woman is not responsible for sexual violence or usurpation, and in the suggestion that rape be reclassified, not as coercive *zinā*, but as *ḥarābah*.

Chaudhry writes of the exegetes’ determination in interpreting *wa’dribuhunna* to mean physical violence, which was sometimes interpreted to mean sexual violence, or to tie one’s wife to the bed to “subdue” her in order to have sex. She quotes al-Ṭabarī (d. 311/923) as proposing to interpret Q 4:34 to mean abandoning wives in bed by considering the various lexical meanings of *h-j-r*, and ultimately deciding that the most accurate interpretation was to secure or tether one’s wife, but later exegetes found this interpretation to be “ethically abhorrent,” though they found

⁵⁸ Chaudhry, Ayesha S. *Domestic violence and the Islamic tradition: ethics, law, and the Muslim discourse on gender*. Oxford: Oxford University Press, 2013. 27

violence to be acceptable.⁵⁹

Chaudhry also brings the more creative post-colonial interpretations of Q 4:34. The meanings vary greatly, running the spectrum of permissiveness to beat one's wife all the way to forbidding it completely.⁶⁰ With this, the main takeaway of this book relevant to my research is that writings of the Qur'an, even when accompanied by hadiths, are open to a wide array of interpretation. This should open the door to reclassify rape as a *ḥarābah* crime, which has less rigidity in punishment, rather than *zinā* in the Sharia. Traditionalist post-colonial scholars provide significantly more detail and rationale for their thinking than pre-colonial scholars, but still come to the same conclusion as the pre-colonial thinkers: that men are permitted to beat their wives.⁶¹

Worth noting is post-colonial scholar Ibn Adam, who says that men should not rape their wives, though by saying a husband should not force himself on his wife if she has a legitimate reason, he leaves them vulnerable to rape if they refuse sex without “reasonable cause.”⁶² Neo-traditionalist scholars, who attempt to “balance the authority of a patriarchal tradition while appealing to communities whose members espouse gender-egalitarian values”⁶³ tend to skip over abandonment and admonishment, but permit wife-beating, though with more restrictions than the pre-colonials or traditionalists, allowing it mainly only if the wife has committed sexual disloyal-

⁵⁹ Chaudhry, Ayesha S. *Domestic violence and the Islamic tradition: ethics, law, and the Muslim discourse on gender*. Oxford: Oxford University Press, 2013. 78-79

⁶⁰ Ibid. 136

⁶¹ Ibid. 152

⁶² Ibid. 150

⁶³ Ibid. 157

ty.⁶⁴ There are some neo-traditionalist scholars who draw on the Islamic tradition while condemning domestic violence, such as Hamza Yusuf, who interprets Q 4:34 to mean a symbolic “light tap,” and that anyone who permits violence against one’s wife is a liar who disparages Islam.⁶⁵

Another source that provides useful information with regard to violent crimes in penal and criminal codes in Sharia law is “Criminal Law, Woman and Sexuality in the Middle East” (Sherifa Zuhur), which is the second chapter of *Deconstructing Sexuality in the Middle East*. The thesis of this work is that penal and criminal codes need reform particularly with respect to notions of violence, in order to eliminate the legitimization of discrimination against and human rights violations of women,⁶⁶ which is an umbrella that covers rape. Though influenced by Ottoman and British colonial rule, tribal laws, later systematized as Islamic law, allowed for crimes of retaliation,⁶⁷ such as “honor killings,” which occur when men kill women under the guise of protecting the family’s honor if they decide she has committed adultery or fornication without any type of trial.⁶⁸

Another example is that the legal codes “frequently contain references to the inflamed emotions of males arising from the misdeeds of their womenfolk that result in murder, and allow

⁶⁴ Chaudhry, Ayesha S. *Domestic violence and the Islamic tradition: ethics, law, and the Muslim discourse on gender*. Oxford: Oxford University Press, 2013. 164

⁶⁵ Ibid. 167

⁶⁶ İlkkaracan, Pınar. 2008. *Deconstructing sexuality in the Middle East: challenges and discourses*. Aldershot, England: Ashgate. 17

⁶⁷ Ibid. 18

⁶⁸ Ibid. 19

judges to reduce or do away with sentences.”⁶⁹ To think that the male ego is an involuntary response that cannot be controlled is, at best, an insult to men, and at worst, lethal to women. Further, if inflamed emotions of a rapist are enough to exonerate him as not legally culpable for rape due to diminished volition, his coercion should at least equally exonerate his victim, who did not succumb to any emotional weakness, but rather physical.

Property crimes - theft of virginity

The above-mentioned laws relating to *ḥarābah* also treat rape as a theft of another man’s sexual property. The concept of rape as a property crime is not new, or even unique to Islam. In her book *Against our Will: Men, Women, and Rape*, Susan Brownmiller acknowledges the persistence of the concept of sexuality as property under law.

True, the law has come some distance since its beginnings when rape meant simply and conclusively the theft of a father’s daughter’s virginity, a specialized crime that damaged valuable goods before they could reach the matrimonial market, but modern legal perceptions of rape are rooted still in ancient male concepts of property.⁷⁰ So long as the law treats rape as a property crime against men, it ignores women's bodily autonomy.

Azam compares rape as a property crime (Maliki approach) to rape as a moral transgression (Hanafi approach) using juristic treatises produced by authorities of both legal schools. Maliki and Hanafi jurists alike created nuanced and self-reflexive materials out of the materials of

⁶⁹ İlkkaracan, Pınar. 2008. *Deconstructing sexuality in the Middle East: challenges and discourses*. Aldershot, England: Ashgate. 23

⁷⁰ Brownmiller, Susan. 1976. *Against our will: men, women, and rape*. New York: Bantam Books. 375

the formative period.⁷¹ According to classical jurists, the concept of private property was central. To be free meant to own one's own body,⁷² and a woman could sell the sexual rights to her body to her husband for a dower (*ṣadāq*).⁷³

Maliki jurists were particularly focused on the function of the dower within the contract of exchange, which they consider to be a sale,⁷⁴ which is rooted in the Qur'an in Q 4:24.⁷⁵ Defining rape as property usurpation is in direct contrast to the legal *āthār* of the formative period where it is explicitly referred to as coercive *zinā*.⁷⁶ The key difference in Maliki ideology is that a man who rapes a woman owes her a dower, with no distinction between virgins and non-virgins.⁷⁷ The value of non-virgins does not change in a rape because the virginity is the commodity, which may nullify the idea of consent of a non-virgin.

The two anchoring theoretical principles of rape in Maliki doctrine are that this dower is the "purchase price for sexual benefit"⁷⁸ and that there is equality between divine and interper-

⁷¹ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 117

⁷² Ibid. 119

⁷³ Ibid. 121

⁷⁴ Ibid. 121-122

⁷⁵ The excerpt referenced here is "seek them with your wealth in honest wedlock, not debauchery."

⁷⁶ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 128

⁷⁷ Ibid. 132

⁷⁸ Ibid. 135

sonal rights,⁷⁹ although some jurists prioritized the divine over the interpersonal.⁸⁰

The Hanafis paid far less attention to sexual violence than did the Malikis, but what focus they did have was given to divine rights, not interpersonal.⁸¹ The terminology used in Maliki doctrine for forcible taking (*ghaṣb*) was reserved in Hanafi doctrine for slave women only, and the rape of free women was contained under coercive *zinā*.⁸² The reason for this is that slave women fell under the category of being unable to provide consent, similar to an insane woman or a sleeping woman.

Further supporting the categorization of rape as a property crime, Kecia Ali's thesis confirms the emphasis by traditional Muslim scholars that marriage means women must exchange their bodies for housing and support. This emphasis prompts prospective traditional Muslim husbands to treat women's sexuality as a commodity to be bought and sold. This may make it easier to look at rape as a property crime. Essentially a man pays a dowry to a woman in exchange for autonomy over her body, her sexuality, and her potential claim to a future divorce. Kecia Ali gives logical rationale to explain this, including that "it makes a certain kind of sense that only the husband would be able to release the wife from the marriage" because otherwise women

⁷⁹ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 138

⁸⁰ Ibid. 140

⁸¹ Ibid. 153

⁸² Ibid. 153

could marry men, consummate it, and file for divorce after claiming the dower,⁸³ This exchange assumes women are devious and conniving, and confiscates basic equality out of fear. Ali acknowledges that the jurist logic is that men are paying for a form of control, or using financial provisions in exchange for their wives' obedience, particularly sexual obedience.

Ali references several hadiths that spell out "dire consequences for women who refuse their husbands' sexual overtures."⁸⁴ The authors of these hadiths suggest men do not have the right to force women into sex. They are supposed to voluntarily comply, but do have the autonomy to refuse. She cites modern Muslim author Ibn Jibreen who, in his fatwa does not indicate she has equal sexual rights, but that she is obligated to allow her husband sex anytime he wants it, whereas men are only obligated to give their wives sex at least three times per year, and she accurately generalizes that sex is a male right and a female duty per the Hanafi *fiqh* texts.⁸⁵ Early jurists did not consider marital rape to be possible because a husband has the right to sex from his wife. There is a Hanafi view that says husbands are entitled even to forcible sex (12) though the other schools do not share this.

Ali quotes a Hanafi legal text that says a woman who is divorced three times by her husband, but her husband denies it, is essentially at risk because she has no way to deny him access to her body, though allowing him access would be considered unlawful. It goes on to say that she is allowed to kill him, but only using poison and not a blunt instrument. If he denies that they are

⁸³ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 5. Accessed July 31, 2017. ProQuest Ebook Central.

⁸⁴ Ibid. 9

⁸⁵ Ibid. 13

divorced, he will take what he feels rightfully belongs to him. This way out for the woman has nothing to do with her rights, it is just that the fatwa considers it better for someone to die than for a couple to sexually break a law.

Ali goes further to say that failing to resist her ex-husband would be consenting to illicit sex because now he is a stranger. He would be considered a rapist at this point, and all of this is done without any witnesses. Logically speaking, if marital rape is abhorrent but legal, and failing to resist her ex-husband is illegal, a man who rapes his ex-wife is committing illegal rape (as opposed to legal marital rape).

This fatwa paves the way to seriously question the requirements an unmarried or divorced rape victim faces when seeking justice. The fatwa was created to provide a solution that could not be dealt with in court. A court would take the husband's word and recognize them as married, and if the woman kills him in an obvious way, she would be subject to punishment for murder because she cannot prove anything. Qadi Khan's fatwa essentially grants the woman an illegal but discreet solution. Hanbali doctrine says that in the same situation, she can only resist by non-combative means.⁸⁶

Notions of will

The notion of will is critical when categorizing rape because the act of coercion essentially overrides the will of the victim. There are three wills regarding rape in Islamic law: God's will, the victim's will, and the rapist's will. When a man rapes a woman (or anyone rapes anyone), he acts against the will of both the victim and of God. As discussed, the licitness of a sex

⁸⁶ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 32. Accessed July 31, 2017. ProQuest Ebook Central.

act is determined by the will of God, therefore the illicitness of rape as it is currently defined seems to be first and foremost a crime against God.

The notion of will of the victim currently depends on her status as well as that of her rapist. The will of a married woman whose husband rapes her has no real legal meaning, and his actions are considered repugnant, but legal.⁸⁷ The will of slave women is a very different concept, as the wording in the Qur'an is very clear about not coercing them to prostitution if they wish to remain chaste, although it does not afford their will that same protection if their master wishes to have sex with them, unless, of course, they request their freedom.⁸⁸ An unmarried free woman who is presumed to be a virgin benefits the most from the notion of will. However, her will is considered only as much as the law allows, which, as established, its absence is almost impossible to prove in court.

In order to discuss the notion of will, we must establish that men and women are equal in the Qur'an, and thus a woman's will is of equal importance to a man's will. In her book *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*, Asma Barlas makes a bold claim, which is that the Qur'an is egalitarian and antipatriarchal, which she acknowledges is a difficult thing to establish because there is a tendency to view the differences between men and

⁸⁷ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 69

⁸⁸ Q 24:33

women as evidence of inequality, but she argues that treating men and women identically does not mean treating them equally.⁸⁹

Barlas argues that the description of Islam as a religious patriarchy confuses the Qur'an with a "specific *reading* of it," thus ignoring that it can be read in an egalitarian mode, and that these patriarchal readings collapse God and the Qur'an with the languages used to speak about them.⁹⁰ She goes on further to stress that we must examine who has read sacred texts like the Qur'an, determining the epistemology and methodology of meaning, as well as examining the "roles of Muslim interpretive communities and states (the realm of sexual politics) in shaping religious knowledge and authority in ways that enabled patriarchal readings."⁹¹

She also emphasizes the importance of acknowledging the historical context of the Quran's revelation in the tribal patriarchy of Arabia; in the seventh century these teachings were actually quite egalitarian.⁹² She says that misogynistic readings that favor men over women do not derive from the actual teachings of the Qur'an, but rather from the attempts of exegetes and commentators to essentially use the Qur'an for their own purposes, and therefore we must examine both their past and present methods.⁹³ Barlas challenges herself and readers to "think of dif-

⁸⁹ Barlas, Asma. *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*. Austin: University of Texas Press, 2002. Accessed July 14, 2018. ProQuest Ebook Central. 5

⁹⁰ Ibid. 4

⁹¹ Ibid. 5

⁹² Ibid. 6

⁹³ Ibid. 8

ference itself differently so as to de-link it from biology and also from social hierarchies and inequalities.”⁹⁴

Barlas’ view of equality between the sexes is supported in Massimo Campanini’s *The Qur’an: Modern Muslim Interpretations* (translated by Caroline Higgitt). In discussing the thematic interpretation of the Qur’an, Campanini references Hasan Hanafi’s approach of translating the language of the Qur’an into what he calls a human language of liberation. He quotes Hanafi as saying God and humankind are both values in our consciousness, transforming theology into anthropology in order to change the axis of culture’s direction, further describing God as the “value of justice, of equality between human beings, of liberation and the demands of the oppressed,” and “the liberation of the earth.”⁹⁵ This approach not only supports the notion of equal wills between men and women, but also between humans and the almighty.

Barlas discusses the concept of *taqwā*, or moral personality, arguing that it consists in "our willingness to embrace virtue and refrain from evil by exercising our reason, intellect, and knowledge.”⁹⁶ With this concept, willingness is equal between men and women. The presence or lack of presence of will in the context of *zinā* is what determines if the encounter was rape or not rape.

⁹⁴ Barlas, Asma. *Believing Women in Islam : Unreading Patriarchal Interpretations of the Qur’an*. Austin: University of Texas Press, 2002. Accessed July 14, 2018. ProQuest Ebook Central. 132

⁹⁵ Campanini, Massimo. *The Quran, Modern Muslim Interpretations*. Translated by Caroline Higgitt. London: Routledge, 2011. 73-34

⁹⁶ Ibid. 143

She concludes that differences in the Qur'an are "not meant to establish hierarchies based in race, sex, nationality, or class," and that the differences are an expression of God's will, and because the differences are divine, believers must accept their legitimacy and moral purposiveness.⁹⁷ This concept serves two functions. The first is that God's will is above any other will, because if believers must accept God's will, it must therefore be above any human will. The second is that every believer has equal agency, regardless of the characteristics listed above. This means that an act of rape is a crime against the will of God and the will of the victim, and both of those wills outweigh (even if not equally to each other) the will of the rapist.

Prosecuting rape

Proof

Azam discusses the problem of proving rape in the Hanafi and Maliki schools. According to Hanafi scholars, a woman is only liable for *zinā* if the man is liable for *zinā* because of the penetration requirement, which is to say that *zinā* can only occur if penetration by a penis took place. She is only liable for allowing herself to be penetrated,⁹⁸ therefore cannot be held liable if she did not allow it. Further, a woman is also not liable for *zinā* if there is a lack of consent, but the law of *zinā* would still require the lack of consent be proven by four witnesses.⁹⁹ Azam mentions a critical example to this research, which is that the prophet exonerated a woman who had sex in exchange for water, calling it coercion, and therefore she was not liable for the *ḥadd* pun-

⁹⁷ Barlas, Asma. *Believing Women in Islam : Unreading Patriarchal Interpretations of the Qur'an*. Austin: University of Texas Press, 2002. Accessed July 14, 2018. ProQuest Ebook Central. 146

⁹⁸ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 172

⁹⁹ *Ibid.* 177

ishment.¹⁰⁰ It is not specified that the prophet required four male Muslim witnesses to say she was coerced or lured with water.

Kecia Ali points out how the rules of evidence made proving a charge of *zinā* extremely difficult, which meant that most charges of illicit sex go unpunished. With rape falling under this category, this also meant most rapes go unpunished. The penalties were only enforced by witnesses or confession, but an unproven rape accusation was punishable as a crime of slander, or *qadhf*.¹⁰¹ If a man admitted to the sex but called it consensual, they would both be punished according to *ḥadd* if there were a lack of witnesses to agree it was rape. The odds of there being four adult male Muslim witnesses to testify to an act of penetration were almost zero.

Arguably the biggest challenge to obtaining justice for rape victims is that there must first be proof of *zinā* before there can be proof of nonconsent, and there are only two avenues to prove *zinā* in Hanafī jurisprudence: confession or eyewitnesses.¹⁰² Women were excluded from giving testimony based on an opinion from Ibn Shihab al-Zuhri that says women’s testimony is not accepted in the *ḥudūd*,¹⁰³ and jurists explained this by saying women are “intellectually deficient” per a hadith.

Additionally, *zinā* was considered a victimless crime, and therefore a woman was unable

¹⁰⁰ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 177

¹⁰¹ Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 62. Accessed July 31, 2017. ProQuest Ebook Central.

¹⁰² Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 187-188

¹⁰³ Ibid. 189

to bring charges against her assailant,¹⁰⁴ and it was actually preferable for judges to throw out evidence so that the couple could be found innocent on the basis of the severe punishment.¹⁰⁵ The rape victim could only defend herself against a charge of *zinā* by claiming coercion, thus becoming a defendant in that she has admitted to illicit sex but is unable to prove it was nonconsensual. Azam inarguably calls this a “stunning reversal of roles,”¹⁰⁶ and this role reversal is the very concept that inspired this thesis project.

Punishment

All four Sunni schools deflect *ḥadd* punishment in the cases of uncertainty or *shubha*.¹⁰⁷ Hanafi law has a significant contradiction in deciding when to impose *ḥadd* punishment. A sexual hire contract injects uncertainty into the equation, enough so that jurists would not impose the *ḥadd*, with the reason being the exchange of money for sex being akin to a dower, even though Hanafi law rejects compensation for rape victims due to it being akin to prostitution.¹⁰⁸

Azam goes into great detail regarding the imposition of *ḥadd* punishments for *zinā*. Perhaps the most important takeaway is that *ḥadd* punishments were to be avoided in the presence of doubt, and with rape being included as *zinā*, *ḥadd* punishment should never have been used against rape victims.¹⁰⁹ *Ḥadd* punishments are so severe that doubt is actually preferable so that

¹⁰⁴ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 198

¹⁰⁵ Ibid. 196

¹⁰⁶ Ibid. 198

¹⁰⁷ Ibid. 178

¹⁰⁸ Ibid. 179-180

¹⁰⁹ Ibid. 77

the punishments do not have to be carried out, hence the rigid and almost impossible-to-meet requirements for proving rape. If the requirements are not met, doubt is established and the punishment is avoided.

Noor's study describes the different classes of crimes and their penalties, as well as analyzes the problems of crime classification in Islamic law. *Hadd* crimes have severe penalties which cannot be altered or pardoned, but the evidence is often extremely difficult to produce. By contrast, *ta'zīr* crimes are those that do not have a spelled-out penalty, so the penalty is generally left up to jurists or judges, but evidence to prove *ta'zīr* crimes may come from a wide variety of sources.¹¹⁰ Crimes of *ḥarābah* are types of *ta'zīr* crimes, and thus the flexibility in terms of acceptable proofs may be achievable in a reclassification of rape as *ḥarābah*.

METHODOLOGY

The method employed in the present thesis is to gather and analyze commentary from relevant Sunni Tafsir works from several time periods to find exegetical support to suggest the reclassification of rape as a crime. It will look at six Qur'anic verses containing the word coercion and the commentary on these verses in four major Tafsir works. In addition to analyzing the Tafsir commentary, I will provide rigorous descriptions of each Qur'anic verse. I put these verses in chronological order as established by Theodor Nöldeke,¹¹¹ as well as researched background information on the chapters using Carl W. Ernst's *How to Read the Qur'an*. I chose chronological in order to demonstrate the development of the concept of coercion over time, and then also

¹¹⁰ Noor, Azman Mohd. "Rape: A Problem of Crime Classification in Islamic Law." *Arab Law Quarterly* 24, no. 4 (2010): 421. <http://www.jstor.org/stable/27896105>.

¹¹¹ Ernst, Carl W. *How to Read the Qur'an: A New Guide, with Select Translations*. Chapel Hill: University of North Carolina Press, 2011. 44

organized the Tafsir works in the same order. The study is grouped first by verse, and then by Tafsir. Primary sources will include the Qur'an, Tafsirs, and Sunni legal discourse within the Tafsirs.

I chose the six Qur'anic verses using the Corpus Qur'an online concordance and sorted the roots in alphabetical order to locate the Arabic root *k-r-h*, where I found a total of five verses containing it. I have also included Q 4:19 because of its focus on the effect of coercion on a woman's will, which contains a Form I of *k-r-h*.

The four major Tafsir works studied are from early to medieval time periods, though I do include some remarks from a modern source. Some are used in their original Arabic form, and others have been translated into English. The main Tafsirs surveyed are comprehensive in that they cover all six verses on coercion that are analyzed here, though they do not all necessarily cover every verse in the Qur'an. The analysis will also include some references to other less comprehensive Tafsirs because they also address the issue of coercion, including the analysis of commentaries by modern Islamic scholar, Syed Iqbal Zaheer. Additionally, the Qur'anic verses as well as the Tafsirs will be discussed in chronological order to demonstrate the development of the views on coercion over time.

The earliest work surveyed is *Tanwīr al-Miqbās min Tafsīr Ibn 'Abbās*, a collection of Qur'anic exegeses attributed to the prophet Muhammad's companion 'Abd Allāh Ibn 'Abbās (d.

68/687) as presented by Muḥammad Ibn Ya‘qūb al-Fayrūzābādī (d. 817/1414).¹¹² This work is considered influential on the development of Qur’anic exegesis, and for this reason is used here.

The next work in order of development is *Jāmi‘ al-bayān ‘an ta’wīl āy al-Qur’ān* of Muḥammad ibn Jarīr al-Ṭabarī (d. 311/923) in its original Arabic form.¹¹³ The translations are mine and are developed from a combination of dictionaries and understanding the context of the words. Al-Ṭabarī is a prolific Sunni author also born in Iran. His work is included for this reason, as well as that it is considered the most reliable example from the classical period of Islamic civilization, and is based on the collection of individual exegetical reports transmitted from the Prophet’s Companions, and preserves the views and opinions of many early Islamic scholars.¹¹⁴

The third work surveyed is the Iranian scholar ‘Alī ibn Aḥmad al-Wāḥidī’s (d. 468/1076) *Asbāb al-nuzūl (The Occasions of Revelation)*,¹¹⁵ which is the earliest known work presenting the historical circumstances in which specific Qur’anic verses were sent down to Muhammad. Typical of the genre, al-Wāḥidī’s *Asbāb al-nuzūl* is not a comprehensive sequential commentary on all Qur’anic verses, but rather only comments on those verses that have a known historical

¹¹² Ibn ‘Abbās, ‘Abdullah and Fīrūzābādī, Muḥammad Ibn Ya‘qūb. *Tafsīr Ibn ‘Abbās: Great Commentaries on the Holy Quran*. Translated by Mokrane Guezzou. Louisville, KY: Fons Vitae, 2008. Fīrūzābādī was an Iranian lexicographer who compiled a comprehensive Arabic dictionary, *al-Qamous* and authored multiple other Islamic scholarly works, and to whom *Tafsīr Ibn ‘Abbās* is often attributed, but has problems with the book’s chain of transmission due to a large gap between al-Firuzabadi and the first narrator

¹¹³ Al-Ṭabarī, Abu Jaafar. *Tafsīr al-Ṭabarī: Jāmi‘ al-bayān ‘an ta’wīl āy al-Qur’ān*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001.

¹¹⁴ Nasr, Seyyed Hossein. *The Study Quran: A New Translation and Commentary*. New York, NY: HarperOne, an Imprint of HarperCollins Publishers, 2017. 1928

¹¹⁵ Al-Wāḥidī, Ali Ibn Ahmad. *Asbab Al-Nuzul*. Translator: Mokrane Guezzou. Louisville, KY: Fons Vitae, 2008.

occasion.¹¹⁶ It is included in this project because it is considered one of the best known and most representative works in this genre, and interestingly, four of the five verses in this study receive some commentary in it.

The final major work is the medieval commentary of Iranian-born Fakhr al-Dīn al-Rāzī (d. 606/1210).¹¹⁷ He has a very unique way of expressing his commentary in a chapter-by-chapter way, rather than by verse. He gives great attention to theological and philosophical questions in his commentary, giving additional depth to his Qur'anic exegesis.¹¹⁸ This philosophical approach was common in the medieval period, or the Islamic Golden Age. This source is also in its original Arabic form, with my own translations and interpretations based on comprehension of the language. Al-Rāzī's work is especially interesting because, at the end of his life, he wrote of his experience with all of the branches of theology (*kalām*) and philosophy, "I have not found in them either satisfaction or comfort to equal that which I have found in reading the Qur'an."¹¹⁹

The methodology for this research is inspired by Ayesha Chaudhry's *Domestic Violence and the Islamic Tradition*. Her research demonstrates the wide array of interpretations available regarding potentially controversial Qur'anic verses, which is relevant when analyzing verses containing a form of the word coercion. Chaudhry takes a verse, Q 4:34, commonly used to support

¹¹⁶ Nasr, Seyyed Hossein. *The Study Quran: A New Translation and Commentary*. New York, NY: HarperOne, an Imprint of HarperCollins Publishers, 2017. 1930

¹¹⁷ Al-Rāzī, Fakhr al-Din. *Mufteeh Algrīb - Al-Tafsīr al-Kabīr al-Muwlif*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420.

¹¹⁸ Ibid. 1926

¹¹⁹ Gwynne, Rosalind Ward. *Logic, Rhetoric, and Legal Reasoning in the Qur'ān Gods Arguments*. London: Routledge, 2014. 203

men hitting their wives for disciplinary reasons, and uses her interpretation of other verses like Q 53:39-40 to support alternate meanings. She also researches the opinions and judgements of scholars and exegetes of various time periods to see what they say about her chosen verse. She then confronts the tension she found between gender-egalitarianism and the traditionalist authority. Another of her methodologies is to take the root of her key word that is commonly translated as “to hit,” and look up its derived terms to find that it supports a wide range of meanings including to walk, run, rape, whip/flog, slap, present an example, behead, play the daff, knock on a door, etc.¹²⁰ Chaudhry’s referenced Tafsir works include but are not limited to al-Ṭabarī, al-Rāzī, and Ibn ‘Abbās. She also explains the pliability of the Qur’an,¹²¹ a feature of which I will take advantage in this project. Chaudhry shows how the Qur’an can be reinterpreted to support a more egalitarian approach without losing its structure or authority in the process.

A similar methodological approach to Chaudhry's is that of Asma Afsaruddin in her article “The Hermeneutics of Inter-Faith Relations: Retrieving Moderation and Pluralism as Universal Principles in Qur'anic Exegeses.” She also groups premodern and modern exegetes separately and analyzes their interpretations of two different Qur’an verses. For example, she looks at Q 2:143, which she shows some of the exegetes, including al-Ṭabarī, generally interpret to mean that Islam is a just religion.¹²² She chooses a cross-section of exegetes from the earliest period to

¹²⁰ Chaudhry, Ayesha S. *Domestic violence and the Islamic tradition: ethics, law, and the Muslim discourse on gender*. Oxford: Oxford University Press, 2013. 13

¹²¹ *Ibid.* 200-210

¹²² Afsaruddin, Asma. "The Hermeneutics of Inter-Faith Relations: Retrieving Moderation and Pluralism as Universal Principles in Qur'anic Exegeses." *The Journal of Religious Ethics* 37, no. 2 (2009): 333. <http://www.jstor.org.proxy.lib.wayne.edu/stable/40378048>.

modern times that discuss both of her verses, which I have done as well, and all but one of the Tafsirs I used are in her project (she does not use Ibn ‘Abbās). She also uses the Tafsirs to connect one verse to another, which I will do with some of the verses containing the word coercion. Another approach that we share is the focus on a particular word or phrase directly from the Qur’an. Afsaruddin’s phrase of choice is *ummah muqtaṣidah*, or moderate community. The key difference in our overall approaches is that Afsaruddin organizes her research first by exegete in chronological order, and then discusses both verses in the same section, whereas I organize mine in chronological order of Qur’an verse, and then by exegete, keeping the verses separate from one another. I did not feel that her approach would work as well with five verses instead of two.

Another methodological approach used due to the analysis of individual words is that of Toshihiko Izutsu in *Ethico-Religious Concepts in the Qur’an*. His method is to collate instances of usage of an Arabic term (e.g. *kāfir*, “ingrate, disbeliever”) in the Qur’an and compare the various text-contexts in which the term appears in order to map out its semantic field and assess the range of its meaning across different contexts.¹²³ While Izutsu does not mention using a concordance, one can only imagine that he made use of such a tool to locate the verses relevant to the ethico-religious concepts he studies. For my own study, I have used the concordance available at corpus.quran.com to identify all the instances of *k-r-h* in Form IV that appear in the Qur’an. Like Izutsu, I will present rigorous descriptions of relevant Qur’anic verses in order to determine the semantic field and contextual meanings of coercion. Izutsu uses the Qur’an exclusively, whereas I will use Tafsirs as well. In this way, my methodology combines the semantic analysis of Izutsu

¹²³ Izutsu, Toshihiko. *Ethico-Religious Concepts in the Qur’an*. Montreal: McGill-Queen's University Press, 2002. Accessed July 27, 2018. ProQuest Ebook Central. 20-21

with the hermeneutical surveys of Afsaruddin and Chaudhry.

ANALYSIS

Q 20:73

The earliest verse in this study in terms of chronological order is Q Ṭāhā 20:73, the only verse in this study that comes from the Second Meccan Period.¹²⁴ It comes from the second section of the sura that discusses the story of Moses and the escape of the Israelites from Pharaoh and Egypt.¹²⁵ Q 20:73 is a verse that really needs the surrounding verses for proper context. Leading up to it is the story of Moses standing up to Pharaoh in somewhat of a confrontation. Allah reveals himself to Moses, and commands him to go and confront Pharaoh for his transgressions (Q 20:24). Moses requests to bring along his brother, Aaron. Allah tells Moses of the story of his rescue from his basket in the river, and reminds him of the favor he was shown all of his life. He tells Moses to instruct Pharaoh to let he and Aaron take the Children of Israel with them without torment. Pharaoh argues with him, and mocks him, asking if he will drive him out of Egypt by use of magic (*sihri*). Nasr points out that Moses would have been speaking gently (to

¹²⁴ Ernst, Carl W. *How to Read the Qur'an: A New Guide, with Select Translations*. Chapel Hill: University of North Carolina Press, 2011. 44

¹²⁵ Nasr, Seyyed Hossein. *The Study Quran: A New Translation and Commentary*. New York, NY: HarperOne, an Imprint of HarperCollins Publishers, 2017. 788

Pharaoh) because he raised him and also so as not to provoke him further.¹²⁶ As Moses speaks to Pharaoh, they argue about magic and sorcery. Moses is speaking out against it and in favor of God, Pharaoh, who surrounds himself with sorcerers, refers to the godly miracles Moses performed in days past as magic, which Moses calls lies against God.

In Q 20:70, the sorcerers proclaim their belief in the God of Moses, and in Q 20:71 Pharaoh chastises them and threatens brutal punishment for their belief. This leads us into Q 20:73,¹²⁷ which reads as follows:

Lo! we believe in our Lord, that He may forgive us our sins and the magic unto which thou didst force us (*akrahtanā*). Allah is better and more lasting.

The speakers in this verse are the sorcerers, and it contains Form IV of the verb *k-r-h* to say *akrahtanā*, “you compelled us,” meaning “you [Pharaoh] compelled us [sorcerers]” to perform sorcery and they disdain the “sins and magic” they were forced to perform, and seek God’s forgiveness for doing so.

According to Ibn ‘Abbās, the magicians or sorcerers rejected Pharaoh, acknowledging his power on earth, but rejecting any power he claimed to hold over them in the afterlife. They proclaimed belief in the God of Moses and Aaron, saying that Pharaoh coerced them to learn magic in the first place.¹²⁸ The magicians say that they will not choose worshipping or obeying

¹²⁶ Nasr, Seyyed Hossein. *The Study Quran: A New Translation and Commentary*. New York, NY: HarperOne, an Imprint of HarperCollins Publishers, 2017. 796

¹²⁷ All grammatical information and differentiations comes from the online version of the *Corpus Quran Concordance* unless otherwise noted.

¹²⁸ Ibn ‘Abbās, ‘Abdullah and Fīrūzābādī, Muḥammad Ibn Ya‘qūb. *Tafsir Ibn ‘Abbās: Great Commentaries on the Holy Quran*. Translated by Mokrane Guezzou. Louisville, KY: Fons Vitae, 2008. 356

Pharaoh, but to proceed to do whatever he wishes with them. These actions would be acts of coercion because Pharaoh would be forcing the actions against the will of the magicians.

The magicians trusted God to save them from the consequences of actions of which they were coerced. When drawing parallels between two forbidden acts, illicit magic and illicit sex, we see that a woman also trusts God to spare her from the punishments of illicit sex because it was coerced from her.

Al-Ṭabarī explained that Pharaoh taught them the magic, and they were forced or coerced to perform it; he interpreted the meaning of Q 20:73 to mean they (the magicians) are safe in God, and that God will forgive them of their sins, including sorcery.¹²⁹ This seems like a parallel to sexual slavery in that they were people who were forced to perform a morally wrong task for their master's amusement or entertainment. This is not something they should be punished for.

Al-Rāzī says that the kings of Egypt instructed certain people to learn magic, and when Moses performed the miracles of God (as instructed by God), he was assumed to be a magician as well; these magicians were gathered to oppose Moses when he came to confront Pharaoh.¹³⁰ Al Rāzī's overall tone in his explanation of Q 20:72-76 (which is how he groups the verses) is that everyone is an offender or a criminal in some way, and only by God's forgiveness and mercy can they reach the afterlife. Those who seek God find forgiveness, including for evil acts com-

¹²⁹ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam'a al-Bayan 'an Tawil ay al-Qur'an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. <http://shamela.ws/browse.php/book-7798/16/116>

¹³⁰ Al-Rāzī, Fakr al-Din. Muftteh Algrib - *Al-Tafsir al-Kabir al-Muwlif*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420. <http://shamela.ws/browse.php/book-23635/22/78>

mitted as a result of coercion. Such explanations are very important when reimagining the way Islamic law might treat rape and victims of rape.

Q 10:99

The second verse in this study in terms of chronology of revelation is Q 10:99, coming from the Sura of Yunus or Jonah. In Pickthall's translation of the Qur'an, he says that this grouping of Meccan Suras was most likely revealed during the last four years before the *Hijrah*, or Muhammad's migration to Medina as he attempted to escape persecution in Mecca. Nöldeke's chart of Qur'an Chronology in Canonical order lists Sura 10 as one of the Third Meccan Period.¹³¹ Verse 10:99 reads as follows:

And if the Lord willed, all who are in the earth would have believed together. Wouldst thou (Muhammad) compel (*tukrihu*) men until they are believers?¹³²

The Sūrat Yūnus, as a late Meccan revelation, has strong overtones of frustration with the non-believers or Pagans of Mecca who refused to accept the teachings of Muhammad.

The majority of the Sūrat Yūnus are stories and warnings of what happens to those who do not believe, and explains how even he (Muhammad) cannot make "the deaf to hear even though they apprehend not" (Q 10:42) and that he (Muhammad) is innocent of what they do, meaning he is not responsible for their choice to disbelieve (Q 10:41). Ernst suggests that these

¹³¹ Ernst, Carl W. *How to Read the Qur'an: A New Guide, with Select Translations*. Chapel Hill: University of North Carolina Press, 2011. 44

¹³² This and all verses in this project are translated by Pickthall unless otherwise noted

stories play a specific role, which is to comfort the messenger and reassure him in a time of difficulty and rejection.¹³³

The surrounding text of Q 10:99 are verses that speak specifically about the futility and ineffectiveness of coercing believers to disbelieve: those who deny God in the face of all given revelations,¹³⁴ claims that no soul may believe without Allah's permission,¹³⁵ and the coming salvation of Allah's messengers and chosen believers.¹³⁶ There are claims of Allah's vindication of the truth, and he even tells the story of Moses as distrusted by the Jews, except for those who followed him out of Egypt, who Muhammad says only followed him because of their fear of Pharaoh.¹³⁷ The line between those who choose not to believe because it is their personal choice and those who do believe due to circumstances is somewhat blurry in this Sura. Perhaps this is why Allah chose to first reveal an instruction against the use of coercion or compulsion in this Sura.

The Qur'an text is specifically displaying in this verse that if Allah wanted everyone to believe in and accept Islam, they all would have believed together. There also seems to be an implication that together means "at the same time." He is saying that because everyone did not and does not believe in Islam, Allah did not will that they should. He doesn't say that Allah does not impose his will, but that for everyone to believe the same thing simply is not his will. He asks if

¹³³ Ernst, Carl W. *How to Read the Qur'an: A New Guide, with Select Translations*. Chapel Hill: University of North Carolina Press, 2011. 149

¹³⁴ Q 10:95-98

¹³⁵ Q 10:100

¹³⁶ Q 10:103

¹³⁷ Q 10:83

men should then be compelled or coerced to believe. In this way the coercion would be not only against man, but against God, because God willed that that non-believer should not believe. It is helpful to look one verse beyond into Q 10:100, which specifies that a soul may not be saved without the permission of Allah. The two verses together specify that God chooses who will believe and who will not. If God's will is above that of human will, and God's rights trounce human wishes, then it makes sense that man must not force what God does not will. This calls to mind Azam's discussion of theocentric ethics wherein God's claims take priority over the proprietary claims of humans. However, this does not nullify the right of the coerced to receive justice, whether in the form of forgiveness from God for a coerced disbeliever or a rape victim to see her accuser convicted as well as receive divine forgiveness. A woman thus has a right to reject a sexual proposition (and all the more so when it is illicit sex) and the man does not have the right to force her to submit. While this interpretation affirms the theocentric model, at the same (and in agreement with Azam), we see that implicit in this theocentric model is the right of the person coerced to be free from coercion.

This form of to compel or coerce as written in the original Arabic of Q 10:99 is *tukrihu*, and is Form IV of the verb, which is referencing coercing someone to believe in a religion. In this verse, *tukrihu* is a second-person masculine singular imperfect verb form.¹³⁸ Though unnamed, Muhammad is the grammatical subject of the verb, and Allah is asking him a rhetorical question, therefore he (Muhammad) is not performing the action of *tukrihu*, but God is asking him if he would in an implication that doing so is impossible. The question is not an invitation

¹³⁸ All grammatical information and differentiations comes from the online version of the *Corpus Quran Concordance* unless otherwise noted.

for Muhammad to defy God, but for him to fulfill God's divine will. It would be not only morally problematic to go against God's will, but impossible. Although this is our first verse to deal with coercion, Q 10:99 seems to explain that applied coercion does not change God's will. An individual may violate God's will, but their violation doesn't change that God's will is that someone be allowed to believe and not face punishment for coerced disbelief, and that a woman who was sexually violated does not face punishment.

The English translation of *Tafsir Ibn 'Abbās* uses the word coerce when explaining the verse. Essentially he says that one cannot be coerced to believe in Allah, it must be of the heart with sincerity.¹³⁹ Likewise, it seems that a woman cannot be coerced to *zinā* if it is not in her heart. This makes the point for reclassification of sexual violence and rape because *zinā* is illicit sex, and if she did not desire it in her heart, it should not be considered an illicit sex act on her own part, and she should not be considered complicit in any illicitness associated with the forced action.

This has interesting implications for the role will plays in coercion, and vice-versa. In one sense, it seems that divine will may override human will, in that someone may want to believe, but cannot unless God's will is synchronous with the human will. It also works so that God may will someone to believe, but a man who chooses not to cannot be compelled. Perhaps God could compel, but does not. In this way it seems that God may place divine will on the same level as human will by choice.

¹³⁹ Ibn 'Abbās, 'Abdullah and Fīrūzābādī, Muḥammad Ibn Ya'qūb. *Tafsir Ibn 'Abbās: Great Commentaries on the Holy Quran*. Translated by Mokrane Guezzou. Louisville, KY: Fons Vitae, 2008. 264

Al-Ṭabarī's writing supports this view, saying of Q 10:99 that God wills every soul that believes. He says "He will not believe you, Muhammad. He will not follow you and recognize what you bring, except he whom your God wills to believe you, not by coercion, and not by your desire for that."¹⁴⁰ Muhammad could not and would not coerce or compel a soul that Allah did not will to believe.

In the quote, I believe the "he" the speaker is talking about are the Arabs. In the Tafsir Al-Ṭabarī says that the Arabs were divided between those who accepted Islam and those who did not.¹⁴¹ Based on his explanation, it seems as though God chose who would believe and who would not. The overall nature of God in the Qur'an does not support the idea that God would ever will for a woman to be raped. For this reason, I maintain that a human's right to consent or to reject a proposition is indeed a right to be respected and preserved, and that God wills them to have that right, otherwise God would just will everyone to believe, or perhaps allow humans to coerce non-believers to believe. For God to grant humans free will, he must value it.

Commentary on Q 10:99 is missing from both accessible copies of Al-Wāḥidī. A possible explanation for this is that Al-Wāḥidī was unaware of such an "occasion of revelation" for Q 10:99. In the *asbāb al-nuzūl* genre, tafsirs of this type are selective and partial.

Al-Rāzī gives some more depth to this concept, but in a positive way that does not suggest God divides everyone into whom he wants to believe and whom he does not. He explains not only in 10:99, but in Sura 10, that God did not wish to force or coerce everyone on earth to

¹⁴⁰ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam'a al-Bayan 'an Tawil ay al-Qur'an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. <http://shamela.ws/browse.php/book-7798/12/297-298>

¹⁴¹ Ibid. 12/297-298

blindly submit to him. He says that our (friends/companions/owners) protested saying that everyone is subject to the will of God, but that faith is a choice for the individual.¹⁴²

Here al-Rāzī uses the word *qahran* which means forcibly or by force, and the root of which includes meanings like subdue, overpower, to force, compel, coerce. It is also used to mean the almighty. In this paragraph I believe that he is saying that the meaning of God coming to them (*ma'nā jī'ah Allah*) prevents them from forcing or coercing another to believe or not believe.

He also says that when God created man, he had to also create the capacity for a man to be a non-believer (*kufīr*) so the choice has to also be present. He presents a logical argument that if an unbeliever is able to disbelieve, and God is the creator, then God created the ability to disbelieve.¹⁴³ He goes on further to say, essentially, that God does not treat someone differently who is more likely than another to disbelieve. This gives further cause to the concept of equality in the concept of will, and thus respect for one's right to reject a proposition.

There was limited other discussion of Q 10:99 in the other sources surveyed, but in *The Study Qur'an* the commentary supports the idea that God chose to give people the will to believe or disbelieve. It says that many Muslim theologians argue that God would have compelled people to believe if He wanted to do so. However, in the commentary on verse 100, it says "the blessing of belief itself is contingent on God's allowing His servants to know Him."¹⁴⁴ If God's

¹⁴² Al-Rāzī, Fahkr al-Din. *Mufteeh Algrib - Al-Tafsir al-Kabir al-Muwlif*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420. 17/304

¹⁴³ Ibid. 17/304

¹⁴⁴ Nasr, Seyyed Hossein. *The Study Quran: A New Translation and Commentary*. New York, NY: HarperOne, an Imprint of HarperCollins Publishers, 2017. 563

nature welcomes people to choose to believe, but belief is contingent on God's will, then it must be that it is God's will for people to exercise their own free will to believe or not believe.

The conclusion above supports the concept that women have free will and their own bodily agency.

Q 16:106

The next verse is Q 16:106, which is also from the third Meccan period of the Qur'an¹⁴⁵:

Whoso disbelieveth in Allah after his belief - save him who is forced (*ukriha*) thereto and whose heart is still content with Faith - but whoso fainted ease in disbelief: on them is wrath from Allah. Theirs will be an awful doom.

Sura 16 is the chapter of *An-Nahl*, which translates to "the bee" or "blessings." In this verse is another Form IV version of coercion, *ukriha* or "is forced," and is a passive perfect verb in the third person masculine singular form. It is passive because "*man*" in front of it means "who," and makes a phrase that says "who is forced."

There are a lot of similarities between *An-Nahl* and *Yunas*, which is to be expected because they are both of the late-Meccan time period.¹⁴⁶ It is called the bee because in Q 16:68, the Prophet calls the activities of the bee purposeful and divinely inspired by God. The chapter as a whole provides guidance for believers, and encourages them to be thankful, listing the many things which Allah has provided for them, such as their families, home, land, livestock, and other provisions, listed in Q 16:72, 80-81.

¹⁴⁵ Ernst, Carl W. *How to Read the Qur'an: A New Guide, with Select Translations*. Chapel Hill: University of North Carolina Press, 2011. 44

¹⁴⁶ According to Pickthall, some ancient authorities consider verses 40-128 as having been revealed after the Prophet's arrival in Medina.

An-Nahl also contains some verses that demonstrate equality between the sexes. One such verse is Q 16:97, which begins with “whosoever doth right, whether male or female, and is a believer, him verily we shall quicken with good life, and we shall pay them a recompense in proportion to the best of what they used to do.” This is supportive of my claim that the Qur’an has tones of equality for women, as well as that a woman’s will is to be respected. As the verses get closer to Q 16:106, Muhammad lists several revelations, such as Q 16:94 where he warns believers not to let their feet slip after being firmly planted and thus getting a taste of evil. This verse foreshadows the coming of Q 16:106.

The verse specifies that those who face wrath from Allah are those who find ease in disbelief. Those who are forced or coerced to disbelieve, or rather to claim disbelief, do not find ease in it, but their heart will still be content in their goodness and faith. These people have a will to do good (i.e. believe in Islam or abstain from illicit sex), even when forced to do bad. God spares such coerced people from punishment. What counts is their will, not the act they were coerced to commit. Thus, I argue that the will of the woman is what must carry the most weight in classifying rape, not the illicitness of the act itself that she was only coerced to do.

There is an argument to be made for coercive sex to be treated the same as coercion in religion. There is a trust given to people who were tortured and coerced to renouncing their faith. They are not required to produce four witnesses. Rape victims should be granted this same trust because they too were violated and coerced, though they have their faith and chastity in their hearts. Doing so does not take away from the charge of a crime against God's will, and is in line with a shared theocentric and proprietary ethical approach.

We must also consider the implication of negative intentions in God's eyes versus actions. Azam references several Qur'an verses (Q 26:89, Q 50:33) to establish that physical errors can be forgiven, but [you] are judged by what is in your heart, which is the foundation of God's judgement, saying that it is "possible to distinguish between what a person does and what he or she intends to do. Volition is thus established in the Qur'an as morally significant."¹⁴⁷ This establishment is critical for criminalizing rapists and decriminalizing victims, which cannot happen as long as rape is a form of *zinā*, but can if it is dislodged and classified in principle as a violent (rather than sexual) crime.

Like in the Pickthall translation of the Qur'an, *Tafsir Ibn 'Abbās* also contains the word coercion in his commentary. It says in the Tafsir that the exception to deserving wrath after disbelieving is the person who is coerced into disbelief. The verse was revealed about 'Ammār ibn Yāsir, a man who was coerced to disbelieve in Islam¹⁴⁸ and whose story will be expanded upon in other Tafsirs.

Al-Ṭabarī tells of the story of 'Ammār ibn Yāsir, who was tortured along with his family to renounce Islam. He says that those who are coerced to speak with their tongues and to go against their hearts of faith (*khalafahu qulbuhu bilayman*) have nothing wrong with them, be-

¹⁴⁷ Azam, Hina. *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure*. Cambridge: Cambridge University Press, 2017. 80

¹⁴⁸ Ibn 'Abbās, 'Abdullah and Fīrūzābādī, Muḥammad Ibn Ya'qūb. *Tafsir Ibn 'Abbās: Great Commentaries on the Holy Quran*. Translated by Mokrane Guezzou. Louisville, KY: Fons Vitae, 2008. 344

cause God only takes the worshippers (who have him in) their hearts.¹⁴⁹ It is those who become non-believers or infidels by choice that face the great punishment.

Al-Wāḥidī expands on the story of Ibn Yasser. Additionally, he expands on *Tafsir Ibn ‘Abbās*, referencing that it says this verse on coercion in religion was revealed about ‘Ammār, whose parents were the first two people killed in Islam. He was forced to renounce his faith, but the prophet wiped his tears and told him it is okay to do that under coercion, since his faith was real, and that the verse on coercion was written for the Meccan Muslims who allowed themselves to be coerced by the Quraysh to return to Mecca rather than migrate to Medina.¹⁵⁰

The most intriguing commentary on this verse comes from Al-Wāḥidī when he tells the story of ‘Ammār's mother, Sumayyah. He describes how the idolaters tied her up between two camels and speared her in the vagina,¹⁵¹ a raw act of sexual violence that would, today, fall under the definition of *ḥarābah* rather than *zinā* due to the use of an object instead of a penis.¹⁵² This is a clear act of violence as opposed to lewdness. With a proper paradigm shift, rape can be viewed the same way because in the case of rape, a man uses his penis as a weapon in a clear act of violence against a woman.

¹⁴⁹ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam‘a al-Bayan ‘an Tawil ay al-Qur‘an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. 14/372

¹⁵⁰ Al-Wāḥidī, Ali Ibn Ahmad. *Asbab Al-Nuzul*. Louisville, KY: Fons Vitae, 2008. 102

¹⁵¹ Ibid. 102

¹⁵² Ali, Kecia. *Sexual Ethics and Islam : Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications, 2006. 80. Accessed July 31, 2017. ProQuest Ebook Central.

Muhammad's compassion for 'Ammār and his parents makes a good case for victims of coercion who should not be further victimized by punishments for whatever they were coerced or forced to do. Had the torturers raped Sumayyah with their penises instead of a spear, and had she survived to tell her story, would she be required to come up with four male upstanding witnesses? As Muhammad showed tactile (wiping his tears) and verbal (assuring him he will not be punished) compassion to a victim of coercion, should the Sharia not provide a similar disposition to compassion?

Al-Rāzī calls those who willingly disbelieve in God after having faith “liars” (*kādhībūn*).¹⁵³ He names 'Ammār and his family as among those who were coerced to say they disbelieved even though they had faith in their hearts.¹⁵⁴ He is clear that these people do not face punishment because what is coerced does not count as truth.

This verse has some interesting implications. While the verse appears to protect any Muslim who is faced with the choice of renouncing their faith or dying/suffering severe bodily injury, according to Rosalind Ward Gwynne, most juridical opinion on this verse is that the person coerced to renounce their belief must experience a specific mental reservation found in Q 16:110 known as *jāhadū*, otherwise they are actually committing the sin of renunciation.¹⁵⁵

In the discussion of Q 16:106 in Muhammad M. Khan and Muhammad Taqi-ud-Din Al-Hilall's *Tafsir Ma'ani al-Quran al-Karim*, it says that, like religion, marriage established under

¹⁵³ Al-Rāzī, Fakr al-Din. Muftteh Algrib - *Al-Tafsir al-Kabir al-Muwlif*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420. 20 273

¹⁵⁴ Ibid. 20/273-74

¹⁵⁵ Gwynne, Rosalind Ward. *Logic, Rhetoric, and Legal Reasoning in the Qur'an Gods Arguments*. London: Routledge, 2014. 97

coercion is invalid, citing Q 24:33, and also Hadith No. 79 of *Ṣaḥīḥ* al-Bukhārī, where ‘Ā’ishah asked the Prophet if women should be asked for consent for marriage, and he said yes.¹⁵⁶ The authors go on to say that no legal punishment is inflicted upon a woman compelled to commit illegal sexual intercourse against her will. As the only illegal sexual intercourse would have been extramarital sex, this does not necessarily help the case for marital rape. They again cite Q 24:33 for this commentary. The commentary quotes Ṣafīyah bint ‘Ubayd, who narrated a story of a male slave who tried to seduce a slave girl, and ended up raping her. ‘Umar flogged and exiled the male slave, but not the rape victim.¹⁵⁷

In his discussion of Q 16:106 in *Tafsir Ishrāq al-Ma‘ānī*, modern scholar Syed Iqbal Zaheer mentions multiple scenarios where it is forgivable to either lie or say what a torturer wants to hear while under severe duress. One thing stands out in particular, though, is his quotation of a hadith that says “Accountability is removed off my Ummah for things done by mistakes, forgetfulness or what they are forced to do.”¹⁵⁸ He quotes al-Qurṭubī the jurist who says “being forced” is acceptable as an excuse only when one’s life is threatened, but not when it is not.¹⁵⁹ Although not all instances of rape constitute an imminent threat to one’s life, the physical nature of the attack is such that a threat to life is implied to some degree—and perhaps even heightened if the victim actively resists the assailant’s effort to coerce—and so in the moment of such an attack it

¹⁵⁶ Khan, Muhammad M., and Muhammad Taqi-ud-Din Al-Hilall. *Interpretation of the Meanings of the Noble Quran: In the English Language*. Vol. 4. Lahore: Kazi Publications, 1991. 102

¹⁵⁷ Ibid. 103

¹⁵⁸ Zaheer, Syed Iqbal. *Tafsir Ishraq Al-Ma‘ani*. Bangalore. Iqra Welfare Trust, 1992. 276

¹⁵⁹ Ibid. 276

would be reasonable for a victim to perceive it as an imminent threat to her life. In the experience of the moment, the subjective perception of threat is effectively equivalent to an objective, real threat. Consequently, rape may readily be considered as a life-threatening crime.

Zaheer quotes Abu Ḥanīfah, who warns that this hadith is only in reference to accountability in the afterlife, and may not be an acceptable excuse in the world.¹⁶⁰ Coerced people are just as liable to suffer the earthly consequences of a crime as someone who committed the crime by choice, which is a pessimistic view. The ideal, of course, would correspond to the afterlife, the realm of God's ultimate justice, and according to the hadith provided, this realm is one where accountability is removed from the coerced. It would be preferable for earthly law to model such an ideal whenever possible.

Q 2:256

The next verse in the study is Q 2:256:

Let there be no compulsion (*ikrāh*) in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things.

Here I have used Yusuf Ali's translation¹⁶¹ which uses the word "evil" as the thing being rejected, because this is relevant when considering rape. The word *ikrāh* is used as a verbal noun in the accusative form, translating to compulsion. In Yusuf Ali's translation, we can assume that both rape and consensual but illicit sex would fall under error because truth and error are being used in clear opposition, and anything that is considered correct behavior in Islam would be truth.

¹⁶⁰ Zaheer, Syed Iqbal. *Tafsir Ishraq Al-Ma'ani*. Bangalore. Iqra Welfare Trust, 1992. 277-278

¹⁶¹ Ali, Abdullah Yusuf. *The Holy Quran*. Hertfordshire: Wordsworth Editions, 2000.

Then, one must reject evil in order to believe in God, and believing in God includes (but is certainly not limited to) refraining from both illicit sex and coercion, and this must include coercive sex.

Q 2:256 comes from the Medinan Sūrat al-Baqarah, or the Cow, which was revealed most likely during the first four years after the Hijrah.¹⁶² Muhammad repeatedly speaks directly to the Children of Israel, and it is in Q 2:142-144 that Muhammad changes the direction of prayer from Jerusalem to Mecca. There was extreme tension between the Jews and the Muslims during this time period, which is reflected in the verses of Sūrat al-Baqarah.

The verses are generally directed at Jewish Rabbis in Mecca who, according to Pickthall, felt intellectually superior to Muhammad and tried to influence him.¹⁶³ There is a heavy tone of warning in this chapter, with talk of fighting and even using Bible verses to describe works of Moses to warn the Jews against their disbelief. An example of this is in Q 2:87, where Muhammad references both Jesus and Moses, demanding to know why they grow arrogant and disbelieve in him, Muhammad, when God gave scripture to Moses and the holy spirit to Jesus.¹⁶⁴ As the Sura gets further along and closer to Q 2:256, they taper off from tense warnings to a more instructional tone, giving guidance on various topics related to daily living, such as marriage, divorce, and parenting.¹⁶⁵

¹⁶² Pickthall, Muhammad M., trans. *The Glorious Qur'an: Text and Explanatory Translation*. Elmhurst, NY: Tahrike Tarsile Qur'an. 3-4

¹⁶³ Ibid

¹⁶⁴ Q 2:87

¹⁶⁵ Q 2:221-242

Just before Q 2:256, there is an important section (Q 2:243-53) that prepares Muhammad's community for an attack on Mecca in an attempt to take control from the Pagan tribal leaders.¹⁶⁶ Immediately after, Muhammad calls for a day to come with no trafficking, friendship, or intercession with disbelievers,¹⁶⁷ and then that there is no God but Allah, who owns everything on earth and under heaven.¹⁶⁸ The next verse is Q 2:256, which says there is no compulsion (or coercion) in religion. The overall tone of this section is that the deniers of Islam cannot be coerced to believe in Islam, and according to the previous verses discussed (Q 10:99 and 16:106), this is something already predetermined by Allah.

Additionally, Q 2:256 says that anyone who rejects evil and believes in Allah establishes a firm, unbreakable handhold, which speaks to Muslims who have made that pact, and of whom cannot be coerced to disbelieve. It is this use of coercion that is especially relevant to the type of coercion used to commit sexual violence because it reiterates the futility of attempting to come between a person and what is in his or her heart, as well as the impossibility of altering God's will.

According to Rosalind Gwynne, Q 2:256 does not contain the mental reservation that must be present as evidenced in 16:106.¹⁶⁹ The general consensus is that this verse was written about Muslim children who were raised by the Jewish tribe of Banu Nadir, who were exiled from

¹⁶⁶ Ernst, Carl W. *How to Read the Qur'an: A New Guide, with Select Translations*. Chapel Hill: University of North Carolina Press, 2011. 168

¹⁶⁷ Q 2:254

¹⁶⁸ Q 2:255

¹⁶⁹ Gwynne, Rosalind Ward. *Logic, Rhetoric, and Legal Reasoning in the Qur'an Gods Arguments*. London: Routledge, 2014. 107

Medina for plotting against the Prophet. Due to infant mortality rates, the Ansar¹⁷⁰ would vow that their children would be raised Jewish should they live past infancy. After the establishment of Islam, they would question whether or not they should force their children to live as Muslims.¹⁷¹ It was also revealed to the father of two Christian converts who wanted his boys to become Muslims. Zaheer makes an interesting note that some scholars, including Ibn ‘Abbās, refute the claim of this verse, that it was actually abrogated outside of the Arabian Peninsula by the verses legalizing *jihad*.¹⁷²

Ibn ‘Abbās explains that the people of the Book and the Magians “should not be coerced to believe in the divine Oneness of Allah after the Arabs’ embrace of Islam.”¹⁷³ He says that the part that says “he who rejects evil” was revealed about Mundhir Ibn Sawi al-Tamimi, and Ibn ‘Abbās does not appear to connect compulsion or coercion to areas other than religion.

Al Ṭabarī explains that God forbid them (*fa-nahāhum*) (the Muslims) from coercing the children raised by the Ansar (the helpers) to Islam. Those who enter Islam must enter by their own choice (they choose - *yakhtārūna*).¹⁷⁴

¹⁷⁰ the Helpers, which were locals of Medina, who housed the Prophet and his followers

¹⁷¹ Nasr, Seyyed Hossein. *The Study Quran: A New Translation and Commentary*. New York, NY: HarperOne, an Imprint of HarperCollins Publishers, 2017. 112

¹⁷² Zaheer, Syed Iqbal. *Tafsir Ishraq Al-Ma’ani*. Vol 1. Bangalore: Iqra Welfare Trust, 1992. 218

¹⁷³ Ibn ‘Abbās, ‘Abdullah and Fīrūzābādī, Muḥammad Ibn Ya‘qūb. *Tafsir Ibn ‘Abbās: Great Commentaries on the Holy Quran*. Translated by Mokrane Guezzou. Louisville, KY: Fons Vitae, 2008. 54

¹⁷⁴ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam’a al-Bayan ‘an Tawil ay al-Qur’an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. 4 546-547

Al-Ṭabarī said “we caused them (the Ansar) to be of their religion, and we see that their religion is better than our religion. If Allah comes in Islam, let us deny them.” The Muslim father of two Christian sons asked the Prophet to make his sons Muslims, but Muhammad told the man that he should not coerce (*istikrāh*) them into Islam. He further says that the women of *Jahiliyya* warn that any specifically male children born are to be made of the Jews.¹⁷⁵ He also says that God ordered the Muslims to fight the people of the book in Q 9 (implying that they were not yet ordered to fight them when this verse was revealed). The Prophet also said to allow the children breastfed by the Jewish women to go with them.¹⁷⁶ I am interpreting what he says about this verse to be that the people of the Book (Jews and Christians) are free to choose their own religion, but that Muslims will deny them (before God, as Muslims, and/or as recipients of alms).

In a chain of narrators Al-Ṭabarī referenced ‘Abd al-Razzāq as saying that the Arabs had no religion, and that the Prophet does not coerce the Christians or Jews as long as they pay the tribute. He says it is possible that the meaning is that “there is no compulsion for those who pay the tribute.” He says another possibility is that it is permissible to take the tribute, and “your religion” (Islam) is the right religion, but not to coerce Christians or Jews.¹⁷⁷ God is including non-Muslims (who pay the tribute) in his provision against coercion. How much more would he provide for Muslims against it?

¹⁷⁵ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam’ al-Bayan ‘an Tawil ay al-Qur’an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. 4/548

¹⁷⁶ Ibid. 4/546-548

¹⁷⁷ Ibid. 4/551

Al-Wāḥidī explains that Q 2:256 is the Prophet’s response to a parent who panics when their child departs from Islam for Judaism or Christianity¹⁷⁸ (although it could apply to other religions). Parents fear their child will face hell, and are desperate to coerce their children to believe, but the response is always the same. This response was given both before and after the Prophet was commanded by God to fight the people of the Book. This is to say that even children who were raised Muslim in good Muslim families by good Muslim parents are not to be coerced into believing. This assigns a significant value to free will, yet again. If God does not force people to do something he has deemed to be good (believing in Islam), how much more does he not force people to do something he has deemed bad (illicit sex)?

In his commentary, Al-Rāzī uses the words “*ijbār*” and “*qasr*” as synonyms for coercion.¹⁷⁹ He says that faith is not built on coercion, but on ability and choice,¹⁸⁰ which fall opposite to coercion. The fact that he uses two other words for coercion when discussing a verse that specifically uses a different word, *ikrāh* has interesting implications for the role of coercion in the Qur’an. Neither “*ijbār*” nor “*qasr*” appear in the Qur’an,¹⁸¹ so perhaps al-Rāzī uses them to ensure readers (including jurists) could not twist the meaning of *ikrāh* (intentionally or unintentionally). Perhaps he is using it in the way we might say "coercion or compulsion" in English to encompass several similar meanings.

¹⁷⁸ Al-Wāḥidī, Ali Ibn Ahmad. *Asbab Al-Nuzul*. Louisville, KY: Fons Vitae, 2008. 25

¹⁷⁹ Al-Rāzī, Fakr al-Din. Mufteeh Algrib - *Al-Tafsir al-Kabir al-Muwlif*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420. 1162

¹⁸⁰ Ibid. 1162-63

¹⁸¹ according to the Corpus concordance

Al-Rāzī reiterates that people have been given evidence (for Islam) in the form of the Prophet as well as the Qur'an, even before it was written, and thus there is no way of coercion.¹⁸² If someone chooses Islam, it is a choice made in freedom and subject to that individual's free will. God gives people free will to reject something good (Islam) and free will to reject something bad (illicit sex). In other words, both the commitment to a religion and the choice to grant sexual access to oneself must be given in freedom. People who are coerced to accept or deny a religion are done so under duress, often under torture as we have seen in the Tafsirs, so we can see that the act of coercing someone to do or not do something is a violent act in and of itself, and should be classified as such.

Modern scholar Syed Abul Ala Mawdudi says that the word *dīn* (religion) in the phrase *lā ikrāh fī al-dīn* ("there is no compulsion in religion") is the belief about God and the system of life resting upon it.¹⁸³ He also says it means that the system of Islam itself, and all that it embodies, cannot be imposed by compulsion. Could this include sex? It may be a broad reach, but sexual intercourse would technically fall under the system of Islam, as it is certainly governed by the Sharia, but it is something else that cannot be imposed by compulsion or coercion. Hence, it should not fall under *zinā*, as *zinā* is an act committed as a sin of one's own free will.

He goes on to translate *ṭāghūt* or "evil ones" as a creature who "exceeds the limits of his creatureliness and arrogates to himself godhead and lordship."¹⁸⁴ The three stages of his trans-

¹⁸² Al-Rāzī, Fakr al-Din. Muftēh Algrīb - *Al-Tafsir al-Kabir al-Muwliḥ*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420. 1162-63

¹⁸³ Mawdudi, Sayyid Abul A'la. *Towards Understanding the Quran. Suras 1-3*. Translated by Zafar Ishaq Ansari. Vol. 1. Leicester: Islamic Foundation, 1988. 199

¹⁸⁴ Ibid. 199

gression are 1) *fisq*, or transgression, acknowledging that God is right but disregards it in practice, 2) *kufir*, or infidelity, which is rejecting obedience of God and 3) imposes one's own will on God's world and God's creatures (it does not give the Arabic word for this). It says that anyone reaching this point is *ṭāghūt* and cannot be a true believer unless the authority driving him to behave this way is rejected.¹⁸⁵ It is possible to argue that a rapist is not only a grave sinner but even a *ṭāghūt* insofar as he is disregarding divine command not to commit sexual infractions and going so far as to impose his own will on another of God's creatures.

Q 4:19

The survey of Q 4:19 moves into commentary on sexual acts themselves:

O ye who believe! It is not lawful for you forcibly (*karhan*) to inherit the women (of your deceased kinsmen), nor (that) ye should put constraint upon them that ye may take away a part of that which ye have given them, unless they be guilty of lewdness. But consort with them in kindness, for if ye hate them it may happen that ye hate a thing wherein Allah hath placed much good.¹⁸⁶

The word used to mean "forcibly" or "by force" is *karhan*, an accusative masculine indefinite noun derived of the same Arabic root *k-r-h* as coercion. The force is a thing men used to control women, rather than an action taken against them.

Sūrat al-Nisā', the Women (Q 4) is from the Medinan phase, specifically revealed during the fourth year of the Hijrah, in the months after the battle of Uḥud.¹⁸⁷ Pickthall says that the beginning verses, with their focus on widows and children, came because of the many Muslim

¹⁸⁵ Mawdudi, Sayyid Abul A'la. *Towards Understanding the Quran. Suras 1-3*. Translated by Zafar Ishaq Ansari. Vol. 1. Leicester: Islamic Foundation, 1988. 199

¹⁸⁶ Q 4:19

¹⁸⁷ The Battle of *Uhud* took place in 624 between the Muslims and the Quraish of Mecca

deaths in the battle,¹⁸⁸ which is evidenced by the lengthy verses containing instructions for inheritance. Appropriately named, this Sura deals largely with women's rights in Islam, which, when compared to women's rights in the patriarchal tribal culture of pre-Islamic Arabia, were quite progressive.

Q 4:19 specifically says that it is not lawful to forcibly inherit the women in your family, and that one must consort with them in kindness. In creating this law or rule, the Qur'an is granting autonomy to these women, appearing to make a clear distinction between human beings and non-human property, because only the latter can be inherited or otherwise controlled after the death of its owner. If we remember that the Malikis defined *ḥarābah* as acts of violence committed against humans,¹⁸⁹ Q 4:19 has obvious tones of rape as *ḥarābah* rather than a property crime due to this distinction between humans as sentient beings and non-human property. If a man can inherit his father's house but not his father's wife because his father's wife is granted free will, the forcible taking of the woman (and her free will) should fall under the umbrella of *ḥarābah* crime—crime of violence against a person, while the plundering or forcible taking of his house would be a simple property crime.

At the end of the verse, where Muhammad tells the men to consort with these women in kindness, and that hating them may mean hating something in which Allah has placed much good, it suggests that women are a creation of God containing much good, something worthy not of hate, but the opposite: of love and respect. This also suggests they should be treated fairly un-

¹⁸⁸ Pickthall, Muhammad M., trans. *The Glorious Qur'an: Text and Explanatory Translation*. Elmhurst, NY: Tahrike Tarsile Qur'an. 73

¹⁸⁹ Rahim, Nik Wajis Nik. *The Crime of Ḥarābah in Islamic Law*. Glasgow Caledonian University, 1996. 63

der the law, and that a woman's body is her own property and should also be loved and respected as such.

Interestingly, in Ibn 'Abbās it specifies that the inheriting of wives as property was a pre-Islamic practice. It explains how Allah forbade the practice of taking the rich or beautiful wives without a dowry, as well as charging ransom for an elderly wife for her freedom. However, it does not say that the practice of inheriting wives as property was forbidden absolutely, but only forbidden if forced.¹⁹⁰

The literal translation in what Al-Ṭabarī says is it is not permissible to “inherit the marriage of the wives of your relatives and fathers.”¹⁹¹ This is to say that this verse applies only to married women who have signed and consented to the marriage contract. Additionally, it supports the idea that women are humans, and the property to be inherited (or not inherited) is the marriage, not the wife.

He says that Abu Bakr said that if a son dies, his parents are more deserving of his wife (as opposed to a son inheriting his father's wife).¹⁹² He also said that sons married their dead relatives' wives in ignorance, but then Allah revealed Q 4:19. Clearly, this verse acknowledges the importance of a woman's free will, and it continues after her husband dies. The marriage contract was between the woman and her husband, and when he dies, the contract dies with him, and she is free to sign or not sign a new contract with a new husband if she chooses.

¹⁹⁰ Rahim, Nik Wajis Nik. *The Crime of Ḥarābah in Islamic Law*. Glasgow Caledonian University, 1996. 102

¹⁹¹ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam'a al-Bayan 'an Tawil ay al-Qur'an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. 6 521

¹⁹² Ibid. 6/521-22

Much of Al-Ṭabarī's text explains the details of what the ignorant would do when someone in the family died and left behind a wife, with a common practice being that his relatives would take her dowry.¹⁹³ In one sentence that was difficult to translate, it sounds like he says that one of the reasons men did this was because the women would otherwise be lonely for their husband until they died. He repeats numerous times about the imprisoning or locking up of any heirs and preventing them from accessing their inheritance.

He says that Ibn 'Abbās said to let the women go, and give them part of your inheritance.¹⁹⁴ He says that Abd al Razzāq said the verse means you are not supposed to imprison or lock up your wife.¹⁹⁵ This is likely the scenario where men who inherited the women would try to force them to pay their own ransom in order to get their freedom. He says according to Abdullah, this was done in the time of ignorance, and is not permissible in Islam.¹⁹⁶ Likewise, they could not prevent a woman from marrying.

He explains the meaning of the portion of the verse that says they cannot restrict the woman unless she does something obscene, but that people had varying opinions about what the verse meant by obscene, with some saying obscene means adultery or *zinā*, per Al-Husayn.¹⁹⁷ Ibn Hamid said that according to the hadith of Masoud, obscene is *nushūz*, or disobedience, in

¹⁹³ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam'a al-Bayan 'an Tawil ay al-Qur'an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. 6/525

¹⁹⁴ Ibid. 6/525

¹⁹⁵ Ibid. 6/526-527

¹⁹⁶ Ibid. 6/528-529

¹⁹⁷ Ibid. 6/530-531

which he can take part of her inheritance.¹⁹⁸ Some say the punishment is beating, others say abandonment.

Al-Wāḥidī references the chapter on coercion from Ḥusayn ibn Manṣūr, also saying that his narrators (unnamed) refer to this custom of taking the wife of a family member as pre- and early Islamic, and it was generally financially motivated in order to get the woman's inheritance and/or dower.¹⁹⁹ When this issue was brought to the prophet, he gave the decree that men should not marry the women their fathers married.

This flows on into Q 4:24, where Al-Wāḥidī quotes Abu Sa'īd asking the Prophet if it was acceptable to have sex with married female prisoners of war, which almost certainly would have been coercion or rape, and the Prophet said this was okay. The verse revealed was that all married women are forbidden except for captive women they possessed, not to be confused with slaves or concubines.²⁰⁰ This has huge implications for the notion of will for female prisoners of war, married or unmarried.

As al-Rāzī tends to group his verses together at times and explain the meanings in a more cohesive way. The verses between Q 4:19 and 33 instruct men not to marry the women their fathers have married, when it is okay to marry a slave woman, how to find a chaste wife, and also not to consume another's wealth. Of Q 4:33 al Rāzī says that he knows this verse can be inter-

¹⁹⁸ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam'a al-Bayan 'an Tawil ay al-Qur'an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. 6/530-531

¹⁹⁹ Al-Wāḥidī, Ali Ibn Ahmad. *Asbab Al-Nuzul*. Louisville, KY: Fons Vitae, 2008. 49-50

²⁰⁰ Ibid. 50

preted to mean that parents and relatives can be inherited from (*wurrathaan*).²⁰¹ He says that people are first loyal to their parents and relatives because they created them, saying that submission is the implied (*taqdiru*) meaning.²⁰² It seems that his point is that sons wished to inherit their fathers' wives out of loyalty rather than desire, for he says “your faith in your inheritance is because of loyalty (*walā*’).”²⁰³ He says that the intercourse (*mukhālaṭa*) itself was not meant to be inherited.²⁰⁴ We can deduct from this passage that he is using it to mean sex, or rather that sexual access to a woman’s body is not meant to be passed down from her husband to his son. This is a very important distinction because Al-Rāzī might actually be saying that a woman’s sexuality is not property, but it something that belongs to her rather than her husband. If it belonged to him, perhaps it would be inheritable.

Q 24:33

The final verse in this survey comes from Surat al-Nūr 24, much of which pertains to Muslim home life. The verse containing *k-r-h* in Form IV is Q 24:33:

And let those who cannot find a match keep chaste till Allah give them independence by His grace. And such of your slaves as seek a writing (of emancipation), write it for them if ye are aware of aught of good in them, and bestow upon them of the wealth of Allah which He hath bestowed upon you. Force not (*lā tukrihū*) your slavegirls to whoredom that ye may seek enjoyment of the life of the world, if they would preserve their chastity. And if one force them (*man yukrihhunna*), then (unto them), after their compulsion (*ikrāhihinna*), Lo! Allah will be Forgiving, Merciful.

²⁰¹ Al-Rāzī, Fahkr al-Din. Muftteh Algrib - *Al-Tafsir al-Kabir al-Muwlif*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420. 1735

²⁰² Ibid. 1735

²⁰³ Ibid. 1735-36

²⁰⁴ Ibid. 1736

The first use of the verb *tukrihu* in this verse, is in second person masculine plural imperfect form in the jussive case in the negative imperative mood (“force not!”). The use of masculine plural to address both men and women is recurring throughout the Qur’an.

This verse is important in the declaration of women’s rights. Throughout the Qur’an are comparisons of free women and those whom the right hand possesses (both slaves and concubines). Here in a chapter dedicated to helping Muslims purify their homes and lives, the Qur’an expressly prohibits coercing slave women to have sex (for money) if they would rather preserve their chastity. In this way the Qur’anic text appears to grant bodily agency to female slaves.

While the part of the verse that instructs slave owners to not profit from their slaves bodies is important, it is not as critical to women’s rights and the concept of coercion as the part of the verse that says they must free their slaves, should the slaves request it. This ensures a slave-girl not only sexual autonomy, but for them to be equal to other free women. It is a more all-encompassing freedom than only for them not to sell their bodies to be used by other men in exchange for currency.

The takeaway from the verse as a whole is that women have a recourse against both prostitution and sex with their masters (if they are to be manumitted). For women to have this level of bodily agency, where even a slave woman has the right not to be raped, supports my claim that the Qur’an has an overall posture of condemnation of rape and a broad defense of women who would be forced into illicit sex. Finding this posture evident in the Qur’an supports my claim that the legal culture can and should adopt a similar posture, by treating rape as an act of violence against a presumably innocent woman, rather than an act of lewdness with a presumably guilty woman.

In his commentary on Q 24:33, Ibn ‘Abbās wrote that this verse was revealed about Abdullah Ibn Ubayy forcing his female slaves into prostitution in order to spend the money they earned, as well as to generate more slaves by the children they bore.²⁰⁵

Al-Ṭabarī says that prostitution is adultery, and instructs male slave owners not to coerce their female slaves to commit prostitution, but that anyone coerced to it will be forgiven.²⁰⁶ This applies to both prostitution and adultery, since he considers them the same thing, which may be because they both fall under *zinā*. He says that God will forgive those who are coerced. He does not specify that the four witnesses must be present to prove coercion, he just says that God forgives them. He reminds us that the practice of forcing slaves into prostitution took place before Islam, and is not an Islamic practice.²⁰⁷ The implication of “if they wish to remain chaste” is interesting, because of course adultery is not permitted even if they desire to commit it. The way it is worded, however, suggests that a slave who is agreeable to prostitution is able to do so. I think that the overall tone of the commentary on this particular verse is that the wording in the Qur’an was very clear about not coercing slaves into prostitution.

Al-Wāhidī writes that this verse was written about multiple slaves who were forced into sexual slavery so that their masters could enjoy the money they earned. One writing is that originating from Umar ibn Thabit who said the verse was written about a Muslim slave girl named

²⁰⁵ Ibn ‘Abbās, ‘Abdullah and Fayrūzābādī, Muḥammad Ibn Ya‘qūb. *Tafsir Ibn ‘Abbās: Great Commentaries on the Holy Quran*. Translated by Mokrane Guezzou. Louisville, KY: Fons Vitae, 2008. 452

²⁰⁶ Al-Ṭabarī, Abu Jaafar. *Tafsir al-Ṭabarī: Jam’a al-Bayan ‘an Tawil ay al-Qur’an*. Contributor: Abdullah bin Abdul Mohsen Turki. Dar Hajar Publishing, 2001. 290

²⁰⁷ Ibid.17/290-291

Mu'ādhah. Jabir said that Abd ibn Ubayy had a slave girl named Musaykah that he forced into sexual slavery, and that this was a pre-Islamic practice.²⁰⁸ Mu'ādhah and Musaykah were both slaves of Abd Allah ibn Ubayy. When Allah revealed the verse forbidding adultery, these two slave girls along with four others confronted their slave owners and said adultery was forbidden. It was then that Q 24:33 was revealed so that the slave owners were forbidden from coercing their slave girls to have sex.

Al-Rāzī first brings up the story of the six female slaves who were forced into prostitution. However, then Al-Rāzī says that coercion takes place when intimidation (*takhwīf*) takes place, which requires damage to someone through use of fear.²⁰⁹ Further, he says that the coercion of adultery (*al-ikrāh 'alā al-zinā*) is like/similar to coercion of disbelief.²¹⁰ I think that this is the most important takeaway from his commentary because it implies that whatever the Qur'an says about the wrong of forcing people in religion can apply similarly to understanding the moral wrong of forcing people in sex. This strongly supports the rationale of the present study of coercion (both religious and sexual) in the Qur'an.

Furthermore, it seems that no witnesses are required to prove that compulsion in religion took place, and if the two are alike, why are they not treated the same when it comes to proving one took place? Compulsion in religion takes place with physical force, just like rape, as evidenced by the story of 'Ammār and his parents. Proof that one did not want it to happen could lie

²⁰⁸ Al-Wāḥidī, Ali Ibn Ahmad. *Asbab Al-Nuzul*. Louisville, KY: Fons Vitae, 2008. 119

²⁰⁹ Al-Rāzī, Fakr al-Din. Mufteeh Algrib - *Al-Tafsir al-Kabir al-Muwlif*. Beirut, Egypt: Dar Ihya al-Tarath al-Arabi, 1420. 4181

²¹⁰ Ibid. 4181

only in the will of the victim, whether or not witnesses are/were present. Coercion is often something that is not witnessed, even if the act coerced upon or from the victim is witnessed. The fact that this crime is so physically based works in favor of making it a crime of *ḥarābah*, or violence, especially when we consider how rape is generally a crime of power rather than sexual attraction.

In his commentary, Zaheer uses a version of the Qur'an that uses the word "constrain" as opposed to "force" or "coerce." In this Tafsir the parenthetical words are from al-Zamakhsharī, who specifies that the forgiveness after the constraint is for the victims.²¹¹ He also describes the scenario of Ubayy who wanted his slave girl to become pregnant by his prisoner. He quotes al-Qurṭubī, who said that in "those days a man would pay 100 camels to retrieve his son born through a slave-girl owned by another."²¹² Having learned already that some slave owners, the subjects of this verse, would force their slaves and any children they bore into sexual slavery, one might assume that baby girls born to slave women were kept as future slaves and prostitutes, while slave owners would ransom the boy babies. Zaheer quotes the story of Ubayy from 'Abd al-Razzāq's collection, but another report from al-Zamakhsharī is that Ubayy had six slave girls, and two of them complained against his coercion.²¹³

²¹¹ Zaheer, Syed Iqbal. *Tafsir Ishraq Al-Ma'ani*. Vol 1. Bangalore: Iqra Welfare Trust, 1992. 252

²¹² Ibid. 255

²¹³ Ibid. 255

CONCLUSION

This study has offered a close analysis of what the Qur'an actually says about coercion, in both religious and sexual forms, how popular exegetes have understood its meanings, and how related notions of will—divine and human—affect the moral or criminal culpability of one coerced. While some Tafsir authors go into more depth than others, the exegetes are generally in agreement that coercion removes the responsibility of the coerced for the action he or she was forced to take. Just as religious coercion does not alter the essence of one's willful faith, coercion must not be seen to alter the moral status of a woman who was forced unwillingly into a sexual act. Therefore, a woman who is coerced to have sex is not held responsible for the punishment that is generally assigned to one who commits *zinā*, or illicit sex.

Even the Qur'an itself specifically speaks to the futility of coercing a person to disbelieve, as seen in the surrounding text of Q 10:99. If God has already predetermined who will believe and who will not, and this is something which cannot be altered by man, then that coercion in this form is not only a sin against the victim, but a sin against God. Likewise, a man cannot steal a woman's virginity or her free will when he rapes her. This is not illicit sex, but violent sexual assault.

My study can help fill the gap of missing information regarding coercion as it relates to sexual violence in the Qur'an. My study addresses not only how coercive *zinā* may be more accurately considered a violent act rather than an act of illicit sex, but shows how in the sight of the Qur'an—the premier source of Islamic law—victims are essentially exempt from punishment when they are coerced to perform an act, or someone performs an act on them.

The earliest verse in the analysis, Q 20:73, lays the foundation to establish one of the central claims of this project, which is that victims of coercion are not held liable for their coerced actions. In particular, this verse, as well as Sura 20 as a whole, establishes that victims are absolved when forced to commit an especially bad action, something forbidden in the Qur'an, such as sorcery and magic. The magicians of this chapter specifically state that they do not choose to commit the forbidden act, but they also acknowledge their powerlessness against Pharaoh, and God forgives them.

There are similarities in the commentary of Ibn 'Abbās and Al-Ṭabarī, saying that the magicians believed in God by choice, acknowledged the power Pharaoh had over them on earth, and were ultimately absolved of the consequences of performing acts of sorcery. Al-Rāzī's commentary on the grouping of verses Q 20:72-76 implies that everyone is an offender to some degree, and in need of God's forgiveness, but receives it if they seek God, including for evil acts.

In Q 10:99, the concept of the futility of coercion is reinforced. This is to say, although coercion can be applied externally, it cannot change what is internal, whether that be someone's heart for his or her religion, or her will not to commit a sexual act. Additionally, it establishes that coercion is a crime against God in addition to the victim.

Commentary in Ibn 'Abbās points to the heart as the wall which coercion cannot penetrate, as a heart filled with sincere belief cannot be coerced. Additionally, the conclusion of the claims in Ibn 'Abbās suggests that God may equate divine will and human will by God's own design. Al-Ṭabarī's commentary supports this conclusion, explaining of Q 10:99 that only God wills someone to believe in something or do something, and it is never by coercion. Al-Rāzī shares that while everyone is subject to God's will, faith is still a personal choice, that God creat-

ed human beings with the capacity to either believe or not believe. The Tafsir commentary on Q 10:99 thus illuminates how women can be seen to have free will and bodily agency.

In Q 16:106, people who suffer coercion are again granted forgiveness, with the verse referencing contentment within the heart. If the coerced do not find ease in what they were forced to do, but their hearts are content in their faith, they do not face God's wrath. In this verse volition is established as morally significant: the internal process of the heart versus the external actions performed as a result of coercion.

All four Tafsirs in this study reference the story of 'Ammār ibn Yāsir, though it is Al-Wāḥidī who describes in detail the act of sexual violence inflicted upon Sumayyah, 'Ammār's mother. While she died of her injuries and thus would have received her forgiveness in the after-life, her son received both forgiveness and comfort from the Prophet after he was forced to renounce his faith. The argument here is that the law should follow the Prophet's example, and treat coercion victims in a similar manner.

In Q 2:256, there was the clear distinction between truth and error, evil and belief in God, and the assumption that both rape and illicit sex would fall under error. While Ibn 'Abbās assigns this verse to the concept of coercion in religion only, Al-Ṭabarī and Al-Wāḥidī go into great detail to describe how even parents are forbidden from coercing their children into their religion. They outline that non-believers who pay the tribute do not face coercion, so the logical conclusion is that his devout Muslims would also be granted freedom from coercion. Al-Rāzī says that faith is built on ability and choice, which has positive implications for the notion of will.

Q 4:19 directly speaks to coercion of women, specifically about their rights to their own bodies, with a clear distinction between the inheritance of non-human property but the disal-

lowance of inheritance of women. If women are not property, the rape of a woman cannot be a property crime, which leaves more space for it to be a *ḥarābah* crime.

In Ibn ‘Abbās, there is some explanation of the origins of this practice, which were pre-Islamic. Al-Ṭabarī specifies that the marriage itself is not inheritable, and the conclusion is that it can only belong to the woman who consented to the marriage contract. When the husband dies, the contract is void, and the woman belongs to herself, giving further weight to a woman’s free will. Al-Wāḥidī also discusses it as a financially motivated pre-Islamic practice, and al-Rāzī groups multiple verses together to conclude that the reasoning behind this practice is loyalty of a son to his parents, but that sex cannot be passed down from a father to a son, with implications that a woman’s body belongs to her, and thus is not inheritable.

In the final verse, Q 24:33, there is a bold declaration for women’s freedom as it says slavegirls who desire to remain chaste should not be coerced to prostitution. Ibn ‘Abbās says this verse is about Abdullah Ibn Ubayy, and al-Ṭabarī says that anyone coerced to commit prostitution will be forgiven. This specifically has implications for rape victims and how they are treated in the eyes of the law. He does not mention the witness requirement present under *zinā*.

Al-Wāḥidī references two slaves who confronted their owner for forcing them to commit adultery, and al-Rāzī specifies that coercion takes place when intimidation is used. He also says that coercion of adultery is similar to coercion of disbelief. This strongly supports treating coercive sex in a similar way to that which is seen in the Qur’an regarding coercion in religion, which can help justify a reclassification of rape as mainly a crime of coercion rather than sex.

If scholars can provide the necessary Qur’anic framework to modern jurists, perhaps they may find ways to use traditional Islamic law to protect women who are victims of rape. All of

society would benefit from more consistent removal of rapists from the community, but especially women and children. Good and upstanding Muslim men have the opportunity to use their privilege and voice to protect the more vulnerable members of their societies.

This study has revealed other opportunities for further study, particularly regarding the notion of will for female slaves and for prisoners of war (both married and unmarried) as well as for married Muslim women. There is a great opportunity to expand on Kecia Ali's study to further analyze how much bodily autonomy a married Muslim woman has. There is also room to explore the hadiths in greater detail to find further evidence to support the reclassification of rape, while taking into account the story of Muhammad forgiving a sexual assault victim, ordering her rapist to be stoned, and never requiring her to produce any witnesses. Additionally, further lexical studies of the word coercion would be beneficial, as well as its synonyms that occur in hadiths and Tafsirs.

I have shown here what the Qur'an says about coercion and what some prominent exegetes have said about it. The authority of the Qur'an outweighs that of the exegetes, of course, as the Qur'an is the immutable word of God and exegesis is the product of subjective and cultural-contextual readings. This distinction is important to bear in mind when comparing various exegeses with each other and in light of a direct (re)reading of the Qur'anic text in our own time.

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ABSTRACT**THE LANGUAGE OF COERCION IN THE QUR'AN AND ITS IMPLICATIONS FOR
THE CLASSIFICATION OF RAPE IN ISLAMIC LAW**

by

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This project is an analysis of the language of coercion, or *ikrah*, in the Qur'an to determine how it may figure into the reclassification of rape in Islamic law. It will thoroughly analyze the Qur'anic text for the word coercion in various forms, and compare the different ways it is used in order to move from a shared responsibility of the rape between rapist and victim to one that places it squarely on the rapist. It will advocate for a reclassification of rape in Islamic law to one of *ḥarābah*, or forcible and violent taking, in order to remove the stringent requirements necessary to prosecute crimes of *zinā*, or illicit sex.

AUTOBIOGRAPHICAL STATEMENT

Prior to completing a MA in Near Eastern Languages - Arabic at Wayne State University, Amanda K. Lipske graduated in 2015 from Southern New Hampshire University with a BS in Justice Studies and a certificate from the University of West Florida in the Arabic Language and Culture. She completed an Arabic immersion program in 2015-16 at the Rothberg International School at the Hebrew University in Jerusalem, Israel.