

# CHAPTER 8

## CRIME AND RECONCILIATION: WOMEN'S PEACE INITIATIVES IN THE ISLAMIC REPUBLIC OF IRAN

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In the immediate aftermath of the 1979 revolution, the Islamic Republic of Iran was forged on a set of compromises by politically diverse actors. Since 2005, many Iranians have been confronted with the State's increasing authoritarianism, and the dismissal of rights and republican values. A renewed politicization of rights-based claims by the Iranian government has pushed activists to formulate new strategies to assert demands, seek redress and be heard.<sup>1</sup> In doing so, Islamic values appear to re-emerge, but they take shape through hybrid Islamic and civil – State institutions that have materialized in the post-revolutionary era.

This chapter highlights the work of groups and individuals who have reframed the discourse of redress based on Islamic principles of mercy, justice and compassion, as well as the idea of humanity. With specific attention to the Iranian penal code and the criminal sanctioning provisions that permit *gozasht* (forbearance), I show how social workers, lawyers and even State officials draw from Muslim sacred texts and practices in the pursuit of restorative justice,

peacemaking and reconciliation. In doing so, I also demonstrate how debates in Iran have moved beyond questions of the compatibility between Islam and human rights. Instead much on-the-ground activism consists of the pragmatic mobilization of the State's regulatory mechanisms, in tandem with the cultivation of local values in a new era of rights politics. Women, I argue, are at the forefront of this sort of activism for a number of reasons. The first is due to the long tradition of activism on behalf of women going back to the early twentieth century.<sup>2</sup> In addition, because of the reformulation of the legal system after the Revolution, women have had to learn to navigate the legal system in ways that men have not. This engagement with judicial institutions has given women much more experience with the legal system.<sup>3</sup>

### Women at the Vanguard of Reform

The pragmatic mobilization of discourses that are local and not based on rights has been at the forefront of activism in Iran since the 1979 revolution, and women have been at its vanguard ever since. One reason that women play key roles in activism is that women in Iran have been fighting against discriminatory laws for several generations now. As the State marriage laws delegate greater control and ownership over family matters to males, women have literally become legal actors in marriage dissolution, custody and other family law issues. This is because the main avenues for seeking redress for family or marital grievances rest with the court system. As a result, women have become increasingly savvy players who have not only learned how to make use of their none-too-explicit nor broad civil and family rights, but have, through necessity, forged the legal avenue for reform. Because of this, many commentators on Iran have argued that women, and women's rights activists are the vanguard of reform. However, unless we understand the underlying political and ideological logics of the discriminatory laws and discursive nature of women's roles in the Islamic republic, it is hard to understand how women advocate for improvements in their lives, where advocacy is coming from, or indeed, how we identify advocacy when we see it.

Immediately after the 1979 Revolution, the politicization of 'women's rights' discourses – as Western, hyper-individualized and un-Islamic – engendered new ways of approaching discriminatory or unfair practices towards women in family or marital situations. Over two decades of reintroduction of civil family laws through Islamic verification, however, the re-judicialization of women's status seemed to sanction women's appeals for redress through a discourse of Islamic and civil (or Islamico–civil) rights. The use of Islamico–civil rights discourse was most prominent during what is now referred to as the 'reform' period under the presidency of Mohammad Khatami, 1997–2005. Grievances were markedly couched in rights claims. Women's rights and human rights concerns were the concerns of an increasingly vocal civil society and a president who sought to participate in the international community.

During this time, we also saw the formation of rights groups that challenged government agencies on their promises, constitutionally based, and thereby Islamically validated, to address the people's grievances. This was a period when President Khatami had mounted a campaign to build civic, legal and regulatory support with the aim of growing the participatory nature of an Islamic democracy. He spoke unabashedly of rights – women's rights and human rights – because for his administration there was no conflict there with Islamic principles. And where the laws of the Islamic Republic were not in accordance with human rights laws, his government supported research and debate on how to go about changing the laws of the Islamic Republic. One example I have written about elsewhere is the Center for Women's Participation (CWP), a ministerial-level office within the executive branch, whose legal scholars studied the concordance between Islamic principles and the Convention on the Elimination of Discrimination Against Women (CEDAW).<sup>4</sup> Members of the CWP then briefed and lobbied the Iranian Parliament to ratify it. Although the CWP succeeded in its objective to have the Iranian Parliament ratify CEDAW, the Council of Guardians, the oversight body that evaluates whether laws passed by Parliament satisfy Islamic strictures disagreed with Parliament and dismissed the ratification.

Despite such seeming failures on the part of Khatami's reformists, Khatami's activities were important because he changed the discursive position of rights, which, in the aftermath of the 1979 Revolution, took rights-talk to be part of a broader project of Western imperialism. What was striking in the period from 1997 to 2005 were the growing networks of groups and individuals – to say nothing of the non-governmental organizations (NGOs) and independent newspapers – that sprouted up throughout the country to mount challenges based on women's rights and human rights without any debate on the compatibility between human rights and Islam. 'There is no question that they are in accordance,' a lawyer in Iran's Islamic Human Rights Commission told me back in 1999, 'our Declaration of Human Rights in Islam simply confirms that we have verified this'. Thus, during the Khatami era, discourses on women's rights and human rights flourished as activists did not need to anchor their claims on the question of compatibility with Islamic values. Khatami's rule of law approach became the subject of challenges by more conservative groups.

### **Beyond Rights Activism**

Profiting from the 2006 US announcement of support for regime change in Iran, the Ahmadinejad government (2005–13) once again invoked the revolutionary-era association of rights discourses with imperialist threats and targeted domestic rights groups for their local activities. Since that time, Iranian human rights activists have come under new kinds of governmental scrutiny and surveillance. Today such activists are viewed by some government officials as threats to national security, and they fall under an ever-expanding definition of that term.

Iranian activists meanwhile continue advocating, increasingly at great personal risk, for change under these new conditions. Many take the position that their advocacy is based on Iranian laws and simply call for enforcing the existing legal codes. Even so, such activists risk falling under suspicion of having a political allegiance with the West and regime change policies, even with the new US administration.

While governmental crack-downs since June 2009 further dampened hopes for reform, activities continued. As a result of government scrutiny of rights-based activism, moreover, they have multiplied in form and scope. However, this is not a chapter on government responses to activism. Instead, this chapter focusses on non-state actors who operate in the context of the government repression of human rights-based activism. That is to say, this chapter explores on the nature of humanity and what it means to be human in a context where redress does not take shape solely in the form of human rights-based discourses.

Human rights theories contend that rights precede the state because humans possess dignity, and solely because of that quality, human beings have certain inalienable rights. The puzzle that international human rights laws present is that the primary entity available for guaranteeing that humans have rights is the state.<sup>5</sup> Indeed critiques of human rights laws, theories and practices find that human rights enforcement requires or depends on States and State recognition of the humanity of individuals inside their borders.<sup>6</sup> However, by moving beyond human rights to humanity, especially in the context of authoritarian States, I ask whether it is possible to recognize the humanity of another person when the State, as the grantor of rights, might not. In a sense, the question that my research poses is whether we can move beyond the human rights framework as our sole index for humanizing others. As a result, in my work, I am increasingly interested in patterns or practices that do not name human rights, but at the same time seek to broaden and deepen the terrain of what it means to be human, and to seek a sort of recognition based on that quality of humanity.

### Humanity's Appeal

'At first they would throw stones. But then we would reach them with appeals to their humanity', recounted Sepideh, a social worker at the The Society for Protecting the Rights of the Child (SPRC), a Tehran-based NGO.<sup>7</sup> Sepideh worked with a larger network of NGOs, lawyers and social workers to assist in what largely amounts

to anti-death penalty activities in Iran – the country with the highest per capita rate of execution. Sepideh was describing her attempts to talk to bereaving families of victims who had lost a son, a daughter, a brother, or other family member through a homicide. Iran's criminal justice system allows next-of-kin to pursue their cases through *qisas* (retributive punishment), but it also allows for the possibility of *gozasbt* (forbearance).

In 1994, the Iranian government ratified the United Nations Convention on the Rights of the Child, which was approved by the governmental body that vets all laws for their conformity with Islamic principles, the Council of Guardians.<sup>8</sup> In tandem with the country's ratification of this convention, the Islamic Republic licensed the creation and operation of organizations to support underage defendants in death penalty cases. Among them was the SPRC, which also came into being in 1994. The main goals of the SPRC are to:

Publicize and promote the principles of the International Convention on the Rights of the Child. With the help of its volunteer members, the Society strives to introduce, convey and promote these rights to the Iranian public in order to remove subjective and objective obstacles to the fulfilment of the rights of children. The Society strives to take effective steps towards establishing a suitable basis for the improvement of the general living conditions and the physical, mental, emotional and social growth of the children of this land.<sup>9</sup>

The organization works in three primary fields of advocacy for children: including legislation, enforcement and social.<sup>10</sup> While the SPRC sponsors many activities to foster the rights of children,<sup>11</sup> one of the areas of involvement that I focus on here is that of protecting juvenile offenders, sometimes from the death penalty.

Sepideh recounted her advocacy work with the organization that uses the very word 'rights', but avoided using this language in describing her approach to speaking with families of victims. When I asked her about this, she reflected on the notion of rights and noted that these grieving families are thinking about their own right of

retribution. They are not thinking about the right of the defendant to live, and if she starts talking about rights in a purely legalistic way, it seems 'to distance or sterilize the issue at hand'. I asked her what she meant by that, and she continued:

When we talk about rights, we are referencing individuals, but it seems to take them out of the context of their social lives, their problems and what led to the incident. If we talk instead about how the mother of the victim lost a child, and if she pursues retaliation, there will be another mother who loses a child, it seems to address the humanity of the other person. Something that for us seems to be more persuasive because it shows that this mother has something in common with that other mother.

Sepideh's description of her efforts at advocacy fit well with SPRC's overall emphasis on the broad goals of the welfare of children. Her strategy for this advocacy, however, drew from an approach that centred on the human connection between the victim's and defendant's mothers and sought to touch upon the human connection of a mother's sympathy for another mother.

In some cases, such as in the one above, organizations might send social workers to speak to members of victims' families to attempt to negotiate their forbearance – forgoing their right to exact in-kind punishment. Defence attorneys and even government agencies have also come on board to form a sort of 'cottage industry' of groups and individuals working against the death penalty through the logics of Islamic principles of forgiveness, as well as, the international human rights conventions. In the increasingly politicized context in which hardliners gain support by aligning their political opponents with Western human rights defenders, many activists have taken a different tack, one which aims to highlight the Muslim nature of the forbearance, moving away from a discourse of rights towards one of humanity. As Samira, an attorney, told me in November 2007:

We cannot explicitly talk about ending the death penalty. This is why the CRC has proven useful. We start with juvenile

defendants and can refer to Iran's own normative legal structure and its ratification of the CRC as a part of this.<sup>12</sup>

In this context, activists deploy Islamic principles both embedded in the Iranian legal system and in the minds of pious Muslim families to address sociocultural and economic problems that might otherwise yield harsh criminal sanctions or complete societal neglect. One key consideration in this chapter is to understand how activists and legal practitioners use the Islamic mandate of forgiveness in their advocacy, especially in light of the politicization of the language of human rights in Iran today. Iranian restorative traditions may offer the site for internal reform as well.<sup>13</sup> Iranian activists and leaders make reference to their restorative justice traditions as part of a wider trend to reduce over-criminalization and work towards *solh* (reconciliation).<sup>14</sup> Such alternatives to penal sanctioning include informal mediation and discretionary remedies, such as financial reparations that aim to be compensatory and rehabilitative. Such practices are bound up with Islamic sacred texts as well as local customs that sometimes even pre-date Islam. However, it is significant that these local practices possess a strategic importance in a context where there has been a governmental backlash of mobilization around human rights concerns. Local activists seek other ways of approaching the issue of the death penalty. This may in part be a pragmatic approach to addressing an issue of human suffering, but it is also an attempt to call attention to and to cultivate indigenous belief systems.

Sepideh went on to explain that the most difficult part of her job was to gain access to the families of victims, many of whom did not want to be persuaded to forgo their right of retribution. 'At the beginning, they are too hot', she explained, 'so we have to wait until some time passes and they have a chance to grieve'. When some time would pass, often after several attempts, Sepideh would be able to see the families. She would tell the victims' families that while they have a right to retribution under the law, forgiveness is the will of God and that the peacemakers forgive and leave the rest to the judgment of God. I tell them that they can be merciful, this is what God



commands, that being merciful will bring about peace'. This peace is not just a peace that aims to bring about reconciliation between parties, she told me, but 'peace in the heart of the individual'.

### Mercy in Islam

According to Muslim scriptural texts, two of God's main qualities come from the words for mercy, *Ar-Rabman* and *Ar-Rahim*, meaning 'The Most Gracious' and 'The Most Merciful'. These two attributes are mentioned in the phrase recited at the beginning of 113 chapters of the Qur'an: 'In the name of God, the Most Gracious, the Most Merciful.' For Muslims, this phrase, known as the *bismillah*, is a constant reminder of God's never-ending mercy and the vast rewards awaiting the followers of the 'right path'. It also makes up the first *ayat* (verse) of the Qur'an, which is referred to as *Sura al-Fatiha*, translated as 'The Key Chapter' or 'The Opening Chapter'. Over 35 verses of the Qur'an employ the *bismillah* that serves as a reminder to Muslims of the obligation to be just and compassionate in their dealings with one another.<sup>15</sup> While mercy and forgiveness are not entirely interchangeable concepts, Islamic mercy encompasses forgiveness.<sup>16</sup>

Mercy has deep roots in the sacred texts that compel Muslims to forgive, to turn the cheek and not to seek revenge or retributive punishments. In the context of retaliation, one of the most significant verses of the Qur'an that speaks to forbearance is:

We ordained therein for them: 'Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.' But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (no better than) wrong-doers (Q5:45) (Yusufali, trans.).

The first sentence recognizes the harm done and that the penalty is retaliatory punishment. If, however, the person wronged remits, this itself will be a form of reparation for the injured party. However, in

the same verse, the injured party is admonished not to go too far astray of exact punishment, as this would render the injured party an offender as well. Thus, the point of this verse is to show that there is a limit on punishment – it must never exceed the harm done. By not exacting in-kind punishment, there are rewards as well. Another of the most often quoted verses from the Qur'an associated with the act of forbearance is:

O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty (Q2:178) (Yusufali, trans.).

In this verse as well, the right of in-kind punishment is confirmed, but again with the encouragement of forbearance. It is also here, in this verse, that the wrong-doer is encouraged to seek reconciliation with reparation and appreciation. In the final line, again the Qur'an warns against punishment or compensation that exceeds limits. Scholars who have studied this verse, taking it together with the whole of the Qur'an, have suggested a deeper meaning.<sup>17</sup> Indeed it references a period in which tribal warfare induced a never-ending cycle of violence. In such contexts, where one act of injustice was met with another, often greater act, the response was never in-kind, but far beyond. Religious scholar Abdulaziz Sachedina suggests that when taken in its context, this verse compels a remission of violence and counsels proportionality that aims to end the cycle of violence. Thus, in his interpretation of 2:178, Sachedina states:

Reconciliation flows from forgiveness and willingness on the part of the victim to forego retribution as an end in itself. From the Koranic admonition to forgive and accept compensation, it seems retributive punishment is worth pursuing only to the extent that it leads to reconciling (*shifa' al-sudur* = 'healing

the heart') the victim and wrongdoer, and rehabilitating the latter after his or her acknowledgement of responsibility.<sup>18</sup>

Taken together, these as well as numerous other verses of the Qur'an compel Muslims to forgo the right of exacting punishment. Indeed throughout the Qur'an, believers are compelled to forgive others for transgressions, even the ultimate one, the killing of a loved one, as the above verses reflect.

The issue of forbearance in such contexts cannot be separated from compassion, mercy, and the ultimate objective in Islam, justice. Scholar of Islamic mysticism, *Sufism*, and *Shi'ism*, Reza Shah-Kazemi, links the values of compassion and mercy with justice in stating, '[T]he capacity to act with compassion in no way conflicts with the demands of justice; rather it is an intrinsic aspect of justice, conceived ontologically'.<sup>19</sup> Shah-Kazemi conceives of the ontological relationship between compassion, mercy and justice in his reading of one of the most sacred *Hadith*, the compiled works of 'Ali ibn Abi Talib, whose words and letters were collected in the tenth century CE by Sayyid Sharif al-Radi in one volume entitled *Nahj al-Balaghah* (Peaks of Eloquence). 'Ali, as the Prophet Mohammad's cousin and son-in-law, is considered by Shi'i Muslims to be his rightful successor and first of the 12 Shi'i *Imams*.<sup>20</sup> He was also an important figure for *Sunnis*, as the fourth caliph. Among the hundreds of letters and writings that make up the *Nahj al-Balaghah*, one letter stands out for its contemplation on justice. This is the letter 'Ali ibn Talib wrote to Malik al-Ashtar appointing him governor of Egypt. This epistle, number 52, is regarded by Muslim scholars as a source of inspiration for the ideal Islamic governance and ethical principles, not only ideal for a ruler, but as a guideline for all Muslims.

Shah-Kazemi suggests that the letter expounds on the nature of justice and governance in Islam. In a section entitled, 'The Compassion of Justice', Shah-Kazemi argues that to act with compassion is inherent to justice. After a discussion of several key Qur'anic verses dealing with mercy, Shah-Kazemi shows that while the Qur'an recognizes that anger is present when one has been wronged, a leader must master that fury in order to achieve the

higher purpose of justice – ‘the wrathful side of the nature of things is not denied here, but it is clearly subordinate to the higher ontological purpose of mercy’.<sup>21</sup> Shah-Kazemi continues:

One is therefore more ‘real’ insofar as mercy predominates over wrath, spiritually, within one’s own soul and morally, in one’s conduct; and it is in the very nature of justice, conceived in this sacred manner, to tend towards compassion wherever possible, even though there must also be a place for rigorous application of corrective penalty where this is unavoidable.<sup>22</sup>

Building on Imam ‘Ali as a source of understanding, justice and mercy, scholar of Islam, Leonard Lewisohn focusses on the issue of forbearance in the same volume. Since ‘Ali is such a significant figure for Shi’i Muslims and over 90 per cent of Muslims in Iran are Shi’i, it is no surprise, then, that ‘Ali’s *Nahj al-Balaghah* is a key text for Iranians. Lewisohn finds, moreover, that the notion of forbearance has deep roots in the Persian Sufi tradition<sup>23</sup> related to the Persian spiritual *futuwwat* (chivalric tradition) for whom ‘Ali is the founding father. In the *futuwwat*, ‘Ali is ‘celebrated as being the incarnation of God’s mercy, tolerance, forgiveness and generosity’ and ‘the epitome of courage, generosity and selflessness’.<sup>24</sup> The *futuwwat* were not a mere sect; the *futuwwat* were an indivisible feature of the sociocultural history of the *Sufis* throughout the Middle East.<sup>25</sup> Lewisohn states that numerous stories from the Persian chivalric tradition feature ‘Ali as ‘an expert in conflict resolution’.<sup>26</sup> Lewisohn notes that there was a significant difference of opinion between the chevaliers of the Sufi order and the Muslim jurists, especially on the application of the laws of retribution, in which the chevaliers held a more ‘relaxed attitude toward its application’.<sup>27</sup> ‘Ali’s moral qualities are highlighted as virtues worthy of emulation because his conduct reflects ‘a finer justice based on love’.<sup>28</sup> Lewisohn recounts several stories of how ‘Ali forgave offenders and granted mercy over punishment. These anecdotes of a higher justice, he suggests, are stressed by Persian Sufi scholars. Citing a set of anecdotes by one such scholar, Suhrawardi, Lewisohn explains that ‘Ali’s idea of retribution

as in the verse from the Qur'an quoted above (2:178), advises a "healing of the heart" rather than a lust for punishment'.<sup>29</sup> In Iran, thus, we can trace the lineage of the legal formulation of forbearance, which takes its modern form through a legal mechanism in the penal codes as *gozasht*, not only to the sacred text of the Qur'an, but also to Imam 'Ali and the Persian Sufi tradition.

### Iranian Criminal Sanctioning and the Principle of Forbearance

According to the penal code, certain crimes permit forbearance on the part of the victim or victims' families. Thus *gozasht* is the legal expression of the Islamic mandate of forgiveness that might have consequences for peacemaking and forms of advocacy that we may not be aware of if our focus is solely on human rights-based activism. In classical Shi'i *fiqh* (jurisprudence), crimes are divided into three categories of punishment: *hudud*, *qisas* and *diya*. *Hudud* are 'crimes against God' for which amnesty is effectively impossible.<sup>30</sup> Crimes of homicide and bodily harm against individuals are separated according to appropriate punishments – those subject to retributive punishments (*qisas*) and those corresponding to financial compensation (*diya*). Such crimes include battery, assault, murder and manslaughter. In a shift from Western legal frameworks, these crimes and their corresponding punishments are classified as crimes against individuals as opposed to crimes against society.<sup>31</sup>

In crimes subject to the punishment of *qisas*, *Shi'i fiqh* and the corresponding Iranian legal code affirms reciprocal death for homicide in intentional deaths or *diya* in unintentional homicides. The Iranian Penal Code stipulates that the surviving heirs of a murder victim may also decide whether to demand in-kind retribution or forgo this right (*gozasht*).<sup>32</sup> In cases where the victim's next of kin does permit the offender's life to be saved, thus offering *gozasht*, the offender will not be automatically freed. The offender may still be subject to a criminal sentence as a sanction in conjunction with the public prosecution.<sup>33</sup> In the 1991 revisions to the Iranian Penal Code, a section was added to recognize that there is

harm, not only to the individual plaintiff, as the earlier revisions to the Penal Code acknowledged, but now, there is recognition that the public is also harmed. Thus, in addition to the private harm, for which *qisas* or *diya* may be appropriate depending on intent, there is also a public harm, for which the State prosecutor may pursue a remedy on behalf of the general public.<sup>34</sup> *Gozasht* is possible in multiple kinds of sanctioning, not only murder, and it can affect the outcome of a separate State prosecution, including leniency in sentencing.

The involvement of victims' families in the enforcement of retributive punishments confirms the State's concerns with victims' interests.<sup>35</sup> Thus, unlike the US and other Western legal systems in which private tort claims are settled separately from criminal sanctions, in the Iranian Penal Codes, prosecution of murder by the State and an unlawful death suit by the family of the victim occur together. When the family of the victim has the right to seek retribution, *qisas*, there is technically no *diya*. These are two separate causes of action, the former based on intent, the latter on an unintentional harm. However, the parties often make financial arrangements, but in the view of the courts, these are extra-legal arrangements. *Gozasht*, then, is codified forbearance, which can be seen as, and may even become, a form of private forgiveness.

Thus, one of the questions I have in mind in this chapter is what conditions have to be present for someone who has been wronged to give up or remit this right of retaliation? Of course, this depends on what we take forgiveness to mean. Philosopher Charles Griswold has considered the depth and breadth of the concept of forgiveness.<sup>36</sup> While Griswold sees forgiveness as an elusive subject, he also sees it as a moral relationship between a person wronged and a wrong-doer. His central argument is that forgiveness comes with terms attached; it is not unconditional, but 'is governed by norms'.<sup>37</sup> In this context, forgiveness can have a formal or official quality, perhaps like the codified forbearance discussed earlier. Forgiveness, moreover, is the elimination of revenge.<sup>38</sup> According to Griswold, traces of resentment may still be present, but this does not block an act of forgiveness. Instead, Griswold states, in forgiveness, one gives up the need or urge

to seek revenge. I take Griswold's argument to apply in the case at hand. Forgiveness may be the elimination of revenge, or as is the case here, foregoing the right of retaliation. Griswold explores six conditions that make forgiveness possible: (1) acknowledgement of wrong-doing; (2) repudiation of the action; (3) communication of regret or apology; (4) rehabilitation; (5) understanding of wrong-doing; and (6) a narrative explaining the act in question.<sup>39</sup> There is plenty of debate on the nature of forgiveness, which may be beyond the scope of this chapter.<sup>40</sup> There is, however, some agreement that forgiveness may bring about reconciliation between two parties. And, for a person who forgives, it may bring the consolation of personal peace.

### Face and Forgive

Maryam had a decision to make. Her brother, Behrouz, had been killed. They lived near *Yaft Abod* in an area called, *Shadabod*, not far from *Maydun-e Azadi*, Freedom Square. Maryam was a school teacher in her mid-30s when her youngest brother died at the age of 21. She was married and had her own three sons. However, as the only daughter in the family, she had grown into a nurturing and mothering role to her brothers because their own mother had passed away six years earlier. As Maryam described it, theirs was a 'traditional family', and 'our family is very much with feelings and I took care of my brothers when my mother died'.

Maryam had to decide whether to forgive her brother's assailant who was now awaiting either death or her forbearance. Although the Penal Code requires the entire family to reach accord for retribution, Maryam explained to me why it was, in the final analysis, up to her: 'I am very important in this family. The decision about what to do was mine. To be happy in a family, you have to make the woman *ghaneb* (satisfied).' However, it was not just her role in the family that made her the final arbiter of whether the family forgave her brother's assailant. In fact, her father and brothers looked to her for comfort after they had lost their mother. They also looked to Maryam to do what a mother would do. Maryam explained as much. 'Because we had lost our mother, this gave me a lot of influence; I was the one who

made all the decisions.’ However, because Behrouz was so young when their mother died, Maryam’s relationship to her youngest brother took on even more of a mothering role. She felt the pressure, not just of her own pain of loss, but also that of having to represent their deceased mother’s wishes. ‘I became sick and my father saw that my illness was making me suffer, and my father did not want me to be sick.’ Initially, the family was in agreement, Maryam related:

At first, all of my family wanted execution. We all wanted *qisas* and nothing more because my family is very religious and we believe in God. We believed that the Qur’an stated that if someone kills, then *qisas* is the just punishment.

Maryam then recounted how little by little, her brothers and fathers began to change their minds. Members of the community in which they lived, from which both the deceased and the assailant hailed, came and talked to the family, as did members of the *ulama* (Islamic scholars). Maryam continued, ‘over time, my brothers and father, who were all religious, began to feel that opting for *qisas* could influence our *ruh* (soul), and make us angry, and influence us to teach our children to be vengeful.’

Soon, Maryam became the lone holdout in the decision to forgive her brother’s murderer. ‘My father said “if Maryam is satisfied, then I forgive”’. Yet, she could not reconcile herself with the advice and the pleas of their wider relations. At this time, she told me, she hardly went out or spoke with anyone because she felt that everywhere she went, people were always trying to get her to change her mind, ‘they would say, “your father is satisfied to forgive”, and then they would ask me to do the same’. She went on, ‘even to our extended family, I would say, “You don’t feel the pain and suffering that I do; my brother was about to get married; his voice is still in my head.” And it would make me mad – their insistence that I forgive. Then my father saw that I was so angry and he would say no, “I just want the law”’.

Indeed the case went on this way until the day of the planned execution. Maryam was the sole member of her family who did not agree to forgive, and the family was going to go ahead with their



legal right to retributive punishment. Maryam went with her father to the prison. Iran's Penal Codes require the family of the victim to be present at the execution. Such executions are carried out just before dawn with crowds usually gathered outside the prison walls. Maryam went with her father that day because she was the sole person who wanted the death sentence carried out and thus played an important role in what was about to happen. She described the scene to me. 'Just outside of Evin [prison], there were many, many people because they were going to execute four people, so about one thousand people were there.' Maryam then described in painstaking detail the way in which another mother's wails gave her pause for the first time since her brother's death:

I heard the scream of a woman. It is in my ears still. There were many women screaming and crying, but one stayed in my mind. I asked my brother who was outside the prison grounds who that was. He said this is someone who is going to lose her son, someone like you is going to execute her son.

The mother's wails continued as Maryam approached four large, athletic men. Maryam said, 'I asked them, "Why are you here?" and they said "We want to execute the murderer of our brother."' Maryam responded instinctively: 'What? That's so sad! His mother is really crying in a bad way and they said, "Our mother is also crying – and the pain really hurts. And a mother is not really like a sister.'"

However, the grief and raw pain of the woman she heard was getting to Maryam. Now inside the prison yard, Maryam could still hear the wails. She suddenly began thinking about the possibility of relieving that woman of her pain. And as they brought out the defendants, she saw how small and youthful they appeared. 'Ali, her brother's assailant was crying as he held a picture of Behrouz to his chest. The scene that lay before her became heavy and she was starting to see the scenario differently. Now, when she considered the other families and other defendants, she started to think outside of her own personal desire for revenge and began to feel a sense of pain for the defendants, too. She went to the brothers and said if they agree to

forgive, then she would as well. At first they were hesitant, but she would not stop pleading with them and discussing the importance of forgiveness and how she could see that they would never feel ease and calm or peace after killing someone, even if that person killed their brother. She said that she would forgive and that is what would bring peace, not just to her mind, but to her family and community. In the end, both Maryam and the brothers gave in and decided to forgive. Both families also accepted a financial settlement in exchange.

It was in seeing and feeling the humanity of the others, the mothers crying, that made her question, for the first time in many months, her desire to seek retribution. 'She is a mother and I am a mother. Suddenly I became aware of how she must be suffering too, maybe even more than me.' Maryam's reflection, raised once she faced the suffering of another, made her conscious of the effect her action was going to have as well. Up until then, she did not want to see or think about the pain of others, those whose suffering she would intensify by seeking retaliation. She recalls: 'I was in pain. I could not think about them. Not until I heard that mother's screams.'

Maryam's sudden reflection of herself in the mother of the boy about to be executed signified a consideration on her part for the humanity of the other. In order to be able to forgive, the person forgiving needs to be able to imagine himself or herself in the place of the other, which is what Griswold states is 'the recognition of the shared nature of humanity'.<sup>41</sup> Maryam's attitude similarly reinforces what Levinas has referred to as being conscious of the face of the other in your actions, 'the face speaks to me and thereby invites me to a relation'.<sup>42</sup> For Levinas, it is in the face of others that humans can see themselves and be compelled into action, '[T]he other faces me and puts me in question and obliges me.'<sup>43</sup> In one relevant section, Levinas speaks of the religious commandment against murder:

The first word of the face is the 'Thou shalt not kill'. It is an order. There is a commandment in the appearance of the face, as if a master spoke to me. However, at the same time, the face of the Other is destitute; it is the poor for whom I can do all and to whom I owe all.<sup>44</sup>

For Levinas, the human face encompasses the living presence of the other. A person as social and ethical entity creates a bond with another. This connection is an appeal to a relational ethics, 'the face presents itself and demands justice'.<sup>45</sup> It was not until Maryam literally faced the pain of the other that she was able to understand her actions because she was now enveloped in the totality of another's living presence, which she had the power to deny.

### Conclusion

Forgiveness is a foundational value in Islamic societies. Forbearance, moreover, is the responsibility of the individual. That is, religious teachings encourage victims of tortious acts to forgive rather than to seek revenge. In some societies, this supplication has moved beyond mere scriptural entreaty to legality. For instance, in the Islamic Republic of Iran, where European criminal codes were adopted as part of the government's State-building processes almost 100 years ago, this religious entreaty was codified. Today some scholars in Iran's academic and theological communities are making use of the scriptural values of forgiveness to engender new debates and to construct avenues towards an epistemology of humanity with an emphasis on Irano-Islamic principles.

Critics may find that while such values encourage individuals to play more proactive roles in furthering the core humanitarian commitments of human rights, as long as forgiveness is conceived as a praiseworthy virtue and not an enforceable obligation, it plays an ambivalent role with regard to human rights, just as the pardon does in Western Judeo-Christian law. This chapter explored the foundational Islamic principle and the history of its codification and legal rationalization to consider whether forgiveness in a different context may engender individual action in line with humanitarian values and perhaps even human rights.

## Notes

1. In June of 2013, Iranians elected a seemingly more moderate president, Hassan Rouhani. Whether the new administration will be able to provide a more moderate political agenda and a shift in the government's stance on human rights, however, remains to be seen.
2. Janet Afary, *The Iranian Constitutional Revolution, 1906–11* (New York: Columbia University Press, 1996).
3. Arzoo Osanloo, *The Politics of Women's Rights in Iran* (Princeton: Princeton University Press, 2009).
4. Ibid.
5. Arzoo Osanloo, 'The measure of mercy: Islamic justice, sovereign power, and human rights in Iran', *Cultural Anthropology* 21/4 (2006), pp. 570–602.
6. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1973), pp. 267–304.
7. The names of most interlocutors are pseudonyms. The interviews excerpted here took place on 18 November 2007, 8 September 2009 and 13 July 2010.
8. Upon ratification on 13 July 1994, Iran took a general reservation stating that it 'reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic laws and the international legislation in effect'. Available at <http://www.icrc.org/ihl.nsf/NORM/301345982738E9FB> C1256402003FCA24?OpenDocument (accessed 11 January 2014).
9. SPRC brochure. Translation by the author. See also, <http://www.irsprc.org/aboutsociety/mainpage.aspx?lang=En> (accessed 18 December 2013).
10. Accordingly, in these three contexts, SPRC attempts to support the creation of new laws, to advocate for the reform of existing laws that render Iran in conflict with the CRC, to work towards the enforcement of existing laws that protect children, and to train and educate families, organizations and individuals about child protection. See note 8.
11. The SPRC partakes in activities that are directly referenced by the CRC, including education, information, training, health care and consultative services for families, as well as practical assistance for children injured as a result of social and natural disasters and living under difficult conditions such as poverty.
12. Samira, Personal interview, (21 November 2007).
13. Firouz Mahmoudi, 'The informal justice system in Iranian law', in Hans-Jorg Albrecht, Jan-Michael Simon, Hassan Rezaei, Holger-Christoph Rohne and Ernesto Kiza (eds), *Conflicts and Conflict Resolution in Middle Eastern Societies: Between Tradition and Modernity* (Berlin: Duncker & Humblot, 2006), pp. 411–28.
14. Hussein Gholami, 'Restorative traditions in violent conflicts in Iran', in Hans-Jorg Albrecht et al. (eds), *Conflicts and Conflict Resolution in Middle Eastern Societies*, pp. 457–70.

15. Mohammad E. Shams Nateri, 'Formal and informal means of conflict resolution in murder cases in Iran', in Hans-Jorg Albrecht et al. (eds), *Conflicts and Conflict Resolution in Middle Eastern Societies*, p. 404, n. 22; Reza Shah-Kazemi, *My Mercy Encompasses All: The Koran's Teachings on Compassion, Peace and Love* (Berkeley: Counterpoint Press, 2007).
16. Khaled Abou El Fadl, Joshua Cohen and Deborah Chasman, *Islam and the Challenge of Democracy* (Princeton: Princeton University Press, 2004).
17. Some scholars have argued that attention to reading of the Qur'an should rest on its broad aims. Such scholars suggest that the *maqasid*, or the higher goals of Islam, are justice, and that a comprehensive study of Islam requires a reading that is consistent with this highest-of-all-objectives. See, for instance Mohammad Hashim Kamali, *Maqasid al Shariah Made Simple* (Herndon: IIIT Books, 2008).
18. Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (New York: Oxford University Press, 2001), pp. 111–12.
19. Reza Shah-Kazemi, 'A sacred conception of justice: Imam 'Ali's letter to Malik al-Ashtar', in M. Ali Lakhani (ed), *The Sacred Foundations of Justice in Islam: The Teachings of 'Ali ibn Abi Talib* (Bloomington: World Wisdom Inc., 2006), p. 83.
20. A *Shi'ite* is literally a partisan of 'Ali. The designation of *Imam* in Shi'i Islam is very different from that in Sunni Islam. *Imam* among the Shi'i is a beatific title given only to the leaders considered to be the rightful spiritual and political successors of the Prophet. *Sunnis*, in contrast, use the term *imam* to refer to a person with religious training and in a leadership position such as in a mosque.
21. Shah-Kazemi has also published a compilation of the verses from the Qur'an that deal with mercy; see Shah-Kazemi, *My Mercy Encompasses All*. In this chapter, he cites the following verses from the Qur'an: *My mercy encompasseth all things*, 7:156; *The Lord has prescribed for Himself mercy*, 6:54. See Shah-Kazemi, 'A sacred conception of justice', p. 83.
22. Shah-Kazemi, 'A sacred conception of justice', p. 83.
23. Lewisohn notes that *Sufis* are generally not *Shi'is* except in Persia (now Iran) after the rise of the *Mujtabids* in the Safavid era in the late sixteenth century CE.
24. Leonard Lewisohn, 'Ali ibn Abi Talib's ethics of mercy in the mirror of the Persian Sufi tradition', in M. Ali Lakhani (ed), *The Sacred Foundations of Justice in Islam*, pp. 117–18. The term selfless is also a reference to a person who forgoes his or her right. One who forbears, or takes an exception from his or her self/right, is thus selfless and self-excepting.
25. Lewisohn, 'Ali ibn Abi Talib's ethics of mercy', p. 119.
26. *Ibid.*, 120.
27. *Ibid.* On this point, see also Henri Corbin, *Traites Des Compagnons – Chevaliers: Recueil de sept 'Fotouwwat-Nameh'* (Teheran: IFRI, 1973), p. 5. Corbin notes that the term, *futuwwat* (chevalier) is the Arabic equivalent of the term *javanmardi* in Persian. Writing in 1973, Corbin makes the point that the ideas associated with the *futuwwat* seem to bring about a renewed interest in Iran ('*semblent connaitre un regain d'interet en Iran*').

28. Lewisohn, 'Ali ibn Abi Talib's ethics of mercy', p. 126.
29. *Ibid.*, 127.
30. Iran's Penal Code lists eight crimes subject to *budud*: sodomy, drinking alcoholic beverages, adultery, falsely accusing someone of adultery, lesbianism, pandering, special cases of theft, and crimes against the State, such as unlawful rebellion. It should be noted that these crimes are rarely prosecuted.
31. In most modernized legal systems, including the Western, codification of private tort or personal injury law arises from the tribal customary laws of earlier periods.
32. Iranian Penal Code, Article 258.
33. Iranian Penal Code, Article 612.
34. This was actually a reversion back to the 1925 Penal Code. From 1983–90 there was no possibility of public prosecution.
35. Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003), p. 83.
36. Charles L. Griswold, *Forgiveness: A Philosophical Exploration* (New York: Cambridge University Press, 2007).
37. *Ibid.*, p. xv.
38. *Ibid.*, p. 20.
39. *Ibid.*, pp. 49–51.
40. The literature on forgiveness is vast and spans numerous disciplines. Some important works in the context of politics and crime include Martha Minow, *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998); Desmond Tutu, *No Future without Forgiveness* (New York: Doubleday/Image Pub., 2000).
41. Griswold, *Forgiveness*, p. 5.
42. Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, transl. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969), p. 198.
43. *Ibid.*, p. 207.
44. Emmanuel Levinas, *Ethics and Infinity: Conversations with Philippe Nemo*, transl. Richard A. Cohen (Pittsburgh: Duquesne University Press, 1985), p. 89.
45. Levinas, *Totality and Infinity*, p. 294. Given Levinas's contention of the face as a living presence, it is important to consider that the Iranian criminal justice system requires victims' families to be present before the offender whose life they seek to take.