

WHAT A FOCUS ON 'FAMILY' MEANS IN THE ISLAMIC REPUBLIC OF IRAN

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Introduction

In September 2008, the Iranian parliament returned a bill containing proposed amendments to Iran's civil code of marriage and family under the title of 'Family Protection', to the parliamentary commission for further study. Domestic and international women's rights groups celebrated a victory resulting from their mutual efforts to oppose the bill that would further impede women's rights in marriage and other matters of personal status in the context of the family. The bill, introduced by the government's executive branch in August 2007, was then sent to the Legal and Judicial Commission of the Iranian parliament for review. With the commission's approval of the bill almost a year later, on 9 July 2008, the bill was to be sent to the full parliament for a vote that would make it law.

Among numerous controversial articles in the bill were nos. 22 and 23. Article 22 aimed at abolishing the requirement to register temporary marriages (*sigheh*) by suggesting that registration of temporary marriage would be subject to procedures yet to be promulgated by

the Ministry of Justice. By removing the existing requirement to register temporary marriages with the Office of the Registrar, the bill would move the jurisdiction for regulating temporary marriages to the exclusive purview of the executive branch. Eliminating the registration requirement would potentially remove any financial or legal protections for women in temporary marriages as well as for any children born into them.

Article 23 sanctioned polygamy for a man based solely on his ability to prove to a judge that he possessed the financial means to support multiple wives and treat them equally. The article, however, did not delineate that parameters of adequate financial resources to support multiple wives, nor did it define the meaning of equal treatment of multiple wives. Indeed, with this provision, the existing requirement to obtain the consent of the first wife in order to enter into a second marriage was excluded, apparently supplanted by the husband's proffer of evidence to the court. For reasons that will become clear at the end, this chapter will deal primarily with these two provisions of the bill, even though there are other problematic articles, including a tax on the dower or bride price (*mahr*) and the potential criminalisation of women's marriages to foreign nationals.¹

In an outpouring of dissent, spanning from Qom to Los Angeles, Western women's rights activists and members of the Iranian Shia *'ulama* criticised key articles within the bill as acting against women's interests, Islamic principles and protection of the family alike. This coalition effectively prevented the bill from moving to a final vote of parliament, and saw it sent back to the commission, which then formed a special committee to further research and review the proposed bill.

While this decision was seen as a victory for women's rights and activism, it was only part of an on-going struggle to define the nature of the Islamic state by regulating women's bodies and lives through legal debates about the concept of family. Since the 1979 revolution that ushered in the Islamic Republic, guardians of the state have made family a central focus of legislation and regulation, having deemed it the foundation of society, and women – *keeyan-e khamenevadeh*,

or 'crowning jewels' of the family, would be regulated to preserve the family's honour and dignity.

In this chapter, I will consider how the notion of family and women's roles in it have shaped both reformist and hardline attempts at the consolidation of power since the start of what has come to be termed the reform period (1997–2005). This struggle emerges in the context of a deepening battle to define the nature of governance, and concomitantly, the authority to interpret Islamic guidelines (Sharia) within it. What will become clear is that current debates about the status and rights of women take shape in a broader field of struggles for power by groups with conflicting ideas of the Islamic Republic. These disputes reveal the different ideologies of governance that have emerged since the revolution, and concern questions about Islamic principles and their relationship with republican forms of governance.

In what follows, I will re-examine the situation of women as a trope for the post-revolutionary state. In doing so, I will highlight how various state actors characterise this trope differently, at times as 'women's status' and at others as 'women's rights'. I argue that the choice of words here is intentional and carries with it distinct ideological meaning. Next, I trace the shift in language from 'rights' to 'status' as it emerged in revolutionary discourse, especially in 1979. I then consider how the presidency of Mohammad Khatami (1997–2005) placed a different emphasis on women, with the intention of strengthening the participatory institutions of the Islamic republic. In order to do so, I analyse the Centre for Women's Participation, an executive branch office charged with supporting women's rights. In the section that follows, I examine how the 2005 election of Mahmoud Ahmadinejad to the presidency brought about a change in the discourse surrounding women's issues, while maintaining the focus on the same presidential office, now bearing a new name: the Centre for Women and Family Affairs. In the final section, I return to my initial interest, the debates around the proposed changes to the Family Protection Bill, which highlight how the current administration is attempting to make changes to the law consistent with its view of Islamic government as opposed to Islamic republic.

Shifting Discourses: Women's 'Rights' and 'Status'

Women's status has been an important trope in Iran and much of the world, as a measure of modernity and social advancement. Mohammad Khatami's rise to the presidency in 1997 ushered in unprecedented levels of participation by women in the post-revolutionary period, and Iranian women witnessed a change in the emphasis on their status. This shift was characterised by the executive's increased emphasis on women's civil and political participation. This move, I argue, emerged in tandem with Khatami's broader goals of building and strengthening the legal instruments and civil bodies of the state, giving the 'republican' organs of the Islamic Republic some much-needed institutional, structural and procedural-expression. Khatami's attention to the rule of law redirected the state's (or at least the executive's) focus on women, as well. Khatami's government moved beyond a concern with women as wives and mothers exclusively to an added interest in them as individuals, citizens and political beings endowed with rights.

This shift is not immediately evident, given the nature of much of the international media's attention to Iran, and the seemingly persistent depiction of the Iranian woman as oppressed. The changes are also difficult to discern and to differentiate from the long history of women's activism and struggles for equality in Iran, particularly in the pre-revolutionary period. Sometimes the most remarkable aspects of this shift appear in ordinary practices – and only once those practices are considered in the context of the immediate aftermath of the Iranian revolution, and women's place therein, can the seemingly routine appear extraordinary. As an anthropologist, I had my first encounter with such 'unremarkable' practices of legal institution-building in the first years of the Khatami presidency, when I encountered a family-law attorney in Tehran and explained to her that I was interested in exploring how women in Iran are finding their 'rights' through Sharia. This was an attorney whose legal career began well before the revolution; she was quite well-known, had authored many articles and books, and her representation was so highly sought-after that her suite of offices was filled with clients

right up to the end of the evening. She responded with dismay, telling me:

This is a law office and I am a lawyer. We have civil codes in Iran and civil courts. I do not deal in Sharia; I deal in the law (*qanun*).

If you want to understand how laws work, you need to go to the court to see for yourself. You need to see for yourself how women are getting their rights.

So, where was the 'Islam' in these laws through which women were struggling, as expressed in the many articles I had been reading as a graduate student? This is not to say that Islam was absent, but that there was, here in this lawyer's response and during much of the Khatami period, an emphasis on *qanun* over Sharia, which was quite significant if one had an understanding of the period immediately after the revolution – particularly as far as women's status was concerned – and even more important when considering the unresolved debates over the nature of the state.

Revolution: from Rights to Status

Many know of the 1979 Iranian revolution, where images of women became symbolic of a political and social change. This was a revolution in large part against the excesses of Western societies, aimed to turn the country back to some 'indigenous' values. This struck a chord with a broad cross-section of the population, far from religious groups alone. While the revolution is sometimes called 'Islamic' this is actually a misnomer, as it leaves out this important component of the revolution: the many secular nationalists that came together with religious groups to overthrow a 'monarchy' and establish a representative government through what became ultimately an Islamic *republic*. This was a grand compromise, whose effects continue to until today. Among those effects was the visible politicisation of 'rights talk' and the mobilisation – by both state and non-state revolutionary actors – of the Iranian woman as a symbolic counter to the Western woman.

By 'politicisation' I refer to the deployment of the language of rights by numerous revolutionary factions, which was seen at that time (1979) as redolent of the ills of Western individualism, one which overlooked the fact that that the basis of a healthy society was the family and that individuals' needs had to yield to greater social and familial concerns. Rights talk in this context became a verbal index for a sense of entitlement without responsibility, thought to be the source of much of the ills of Western societies, which were characterised by excess and anomie. The politicisation of this rights talk was most poignantly brought to bear on activists in March 1979, when by the tens of thousands Iranian women and men flooded urban centres to protest the repeal of a Shah-era Family Protection Act (1967, rev. 1975) that had given women some rights in marriage dissolution and child custody, and other possible legal setbacks, including mandatory veiling, which was imposed in the end, and the revocation of female suffrage, which was not. In protest of these actions, women fought back with the help of American activists like Kate Millet, who was their keynote speaker for the protests that coincided with International Women's Day (9 March). They held up signs in Persian and English to make their grievances known: 'Equality' and 'Women's Rights' (Millet 1982). For these actions, the protestors were dubbed 'Western puppets', and attacked. It is here where we first begin to see some of the fissures within the popular struggle to remove a monarchy. Just what was to emerge was as yet uncertain, and the populace was divided. It is also here that we begin to see the association of a language of rights with Western excesses and imperialism, where the language of rights (*buquq*) began to be disassociated from the language of status (*moghatat*). Thus we see a discursive shift away from an emphasis on women's rights (*buquq-e zan*) to one on women's status (*moghatat-e zan*), which also signals an important transition in the perceived roles for women — that their roles as mothers and wives should be foremost, and regulated by the state to meet the broader aim of producing a healthy society.

And this was what in part caused my surprise when the lawyer I met in Iran told me to look at the civil codes and laws, and this further inspired my interest in understanding how they operate, because

in the initial months after I arrived in Iran, I was again and again surprised to find that my interlocutors, many of them pious Muslim women, many of them supportive of the Islamic Republic, used renewed, post-revolutionary rights talk, referencing as their source of rights not Islamic principles, but law. How did this come about?

In 1979, revolutionary discourse mobilised the Iranian woman as a symbolic foil to the Western woman — we see that for the pious Muslim Iranian woman, the Western woman was objectified, commodified, hyper-sexualised and thus unemancipated and oppressed. The 1983 Veiling Act was legislated in tandem with a discourse of rehabilitating the Iranian woman and restoring her to a place of respect. The *chador* was symbolic, not just of the renewed piety of the Iranian woman, but also of a collective shift among Iranian women, in the name of the whole country — a political shift toward a religio-national idea of Iran that represented the triumph of the revolution over Western values so symbolised by the Pahlavi monarchy. Many are already familiar with this story, and it is not my aim here simply to repeat what has already been said.

Instead, I want to think further about the significance of improving women's status, symbolically and even materially, as a primary revolutionary aim. By placing women's issues in central focus, the resulting government would now, could now, be held accountable for promises to improve women's status and to rehabilitate the population. Soon after the revolution, we saw many scholarly and journalistic accounts of how women in Iran were relegated to the *andaruni*, 'indoor spaces', or to going backwards or to medieval time. The persistence of a language of binary oppositions, referenced and made comprehensible to audiences outside Iran by exiled elites, trained and educated in the US and Europe, offered credible, seemingly objective and generalisable accounts of what was happening. Most importantly, these depictions fit well within the repertoire of orientalist Middle Eastern women: exotic, fundamentalist Muslim, oppressed and in need of saving.

Back in Iran, however, these accounts did not correspond with the visibility of women in public spaces, in civil society, including working outside the home, and in government. Around this time,

from the mid-1980s to perhaps the late-1990s, we also saw a shift in scholarship. New depictions of women's lives recognised very different empirical situations. Some of this was attributed to the political situation and material conditions, including the war with Iraq, which was taking a severe political, economic and human toll. As a result, women were performing well beyond the roles prescribed for them as financially-maintained wives and mothers, roles idealised by the leading Shia *ulama* now holding the reins of governmental control.² Some scholarship and journalistic essays on this topic reflected material changes and conditions, but by and large revealed them as a change in women's status brought on by new readings of Islamic texts, even an Islamic feminism that was leading the way. Many scholars, themselves Iranian exiles, would attribute the shifts in status to the work women like them had done, the paths they had paved before the revolution. Today, some authors, pundits and bloggers credit the successes of the women's movement to the strength of Iranian women – almost as if they possessed some biologically-conferred fortitude that somehow set them apart from women in the rest of the Middle East, or for that matter, the world.

While no one can deny the persistence and strength of Iranian women, both in and outside Iran, here I am interested in understanding the existing means of social change, reform, resistance and dissemination that women and women's advocates are using. That is to say, the literature referred to above provided analyses of governmental and religious prescriptions, both administrative and theoretical, with regard to women's place in family, state and society. However, we also saw and continue to see extensive scholarship unravelling the novel, complex, contradictory, even unpredictable nature of the Islamic Republic of Iran. Yet many of the prescriptive accounts of women's lives and status leave out of consideration the tensions, complexities or possibilities inherent in the indefinite and indeed evolving nature of the state. How could that be? How could our understanding of the state, of government and its institutions, be so rich and textured, and account for changes, opportunities and even possibilities, while our understanding of women's rights or roles or status remains so flat, level, stagnant and unidirectional?³

Thus, one of the goals of my work in general has been to make sense of the processes and institutions that shape the spaces for advocacy, legal or otherwise, for women's and human rights. But I have also aimed to place analyses about this novel enterprise, the Islamic Republic of Iran – the first modern religious state – alongside discussions of the status of women. Some of the changes in women's status, roles and rights emerge from the possibilities or opportunities created – unwittingly, perhaps – by the hybrid state institutions. Thus attention to legal processes and institutions can provide important revelations not just about disputes, but about the politics of law, rights and gender relations, and about the operation of power, both legally and extra-legally.

To understand this, it is important to consider the formation and reformation of some legal and political institutions born of this seemingly contradictory form of state, the Islamic Republic. Indeed, it was more than just contradictory, in 1979, it was also an unknown quantity, and what it would become was not clear to anyone. In the mid-1980s Richard Cottam noted, 'after several years of revolution, there is still no accepted developmental strategy for achieving this esoteric end' (1986: 61). There was no certainty about the final nature of the state at the time of its formation, nor is there finality for what it might still become. In my work, situating the shifting meaning of rights talk in social, political and legal contexts has become a methodological concern, since it shapes the nature and consequences of the claims people make on the Islamic Republic, and in only ten years there have been several shifts in the meaning and effect of rights discourses. What was entitled the Islamic Republic of Iran was to some a transitional period before achieving the 'pure' Islamic government of Ayatollah Khomeini. But the institutions and meaning of the 'republic,' which emphasised the popular nature of the revolution, remained a philosophical and academic inquiry for much of the first 20 years of post-revolutionary Iran, in part due to the war and the charismatic leadership of Khomeini.

One important component contributing to the shifts in rights talk is the legislative, law-making body, which in Khomeini's thesis for governance did not exist.⁴ There was no need for 'man-made laws'

as only God's law would matter, and thus the legislative body was to be dissolved. According to Khomeini: 'The Glorious Quran and the *Sunnah* contain all the laws and ordinances man needs in order to achieve happiness and the perfection of his state' (1981: 17). When the provisional government of the new Islamic Republic attempted to 'purify' the laws by repealing legislation and the legal codes, however, confusion over how to adjudicate the laws of God caused such a severe outcry that over time some laws were re-authenticated by the governing bodies of the Islamic Republic, and codified.⁵ More importantly, as Zubaida has pointed out,

codified law is the law of the state, and the judge is a functionary of the state who has to arrive at a judgement from the codes and procedures determined by it rather than by autonomous judgement through reference to sacred sources and the principle derived from them (2005: 134).

The codified form of the law is significant in that it disrupts the historical power of Islamic judges to use a certain level of discretion in assessing the cases before them. Legislative authority, too, was to an extent reinstated, though in a very limited form. For Khomeini, the legislative body constituted one of the three branches of government, but was to act simply as a planning body (1981: 28).

So it becomes important that despite an anti-Western revolution in which a new government dissolved the legislature, disbanded civil courts and repealed civil codes, little by little, the Islamic Republic reestablished civil courts as a venue for adjudication and reinstated civil codes as the formal expression of the law.⁶ All of these factors in the legal system have tangible, manifest consequences for the conceptualization of rights. And it was all done after Khomeini had nullified and invalidated code law, including the important Family Protection Act mentioned earlier. The legal blending disrupted the conventional symmetry between Sharia and state-administered law that had existed for many years. Through codification, Sharia was given unambiguous legal force for the first time ever (Mir-Hosseini 1993). If the combining of Sharia and civil law was a reflection of the compromises among

these disparate groups, it was also an effect of the final outcome of the revolution: that the entity that came to fruition after the revolution was neither a pure, 'traditional' expression of Islam, nor a copy of the European state model, but something different, something new. In the end, it was Islam that was made to accommodate to the republican state framework, as it did, it produced (and reauthenticating) liberal subjects in various segments of society, especially the legal. Even while the post-revolutionary government made women's issues the grounds on which political disputes over governance were fought, those disputes took shape in discourses and gave way to institutions that were conspicuously liberal, through the nation-state as a republic. The institutions of the state comprise the tangible apparatus of everyday life and shape the patterns of practice, even if the content of such practice is premised on Islamic principles. As apparatuses of a republic, the institutions of the state require subjects to operate in a liberal framework, particularly when interacting with those institutions.

So it was with this understanding, perhaps, that the lawyer with whom I spoke insisted I go to the courts, where it was so apparent that women and men, judges and adversarial parties alike were discussing their rights, not their status. As individuals interacted with these state institutions, they were also gaining expertise in legal matters, sometimes new, sometimes renewed, as they were both regulated by civil processes and yet beholden to Islamic principles. It is here, then, that I redirect the reader's attention to the remarkable unremarkability of the law offices, where the civil processes mediated by lawyers seem very ordinary to observers unfamiliar with this history, and yet are emblematic of this important shift back to a call for rights – now legitimised by Islamic principles.

Khatami's Rule of Law: from Status to Rights

It was not until the mid-1990s, after the war had ended and Khomeini had died, that debates about the nature of the state, legal processes and renewed discourses of rights, no longer blemished by the taint of imperialism, began to enter into newly-emerging public spaces. Such rights talk was nurtured and encouraged during the Khatami

presidency. Women were also participating in dialogue and debate, challenging the statist promulgations of their status and roles in numerous arenas, such as newspapers and magazines, but also in venues as diverse as non-governmental organisations, scriptural reading groups, courts, their places of work and even government ministries. These 'dialogical sites', I have argued elsewhere, have emerged as productive effects of the intersection of Islamic guidelines and republican principles.⁷

One such emblematic site is the Centre for Women's Participation. In 1991, then-President Ayatollah Hashemi Rafsanjani suggested the establishment of a centre for women's affairs under the office of the president. Upon approval by Iran's Supreme Council of the Cultural Revolution (SCCR),⁸ on 1 December 1991, Rafsanjani appointed the first presidential adviser on women's affairs, who also was also charged with heading the first Centre for Women's Affairs. The Centre's website states the early aims of its mission: 'This office shaped its activities with the aim of enhancing and promoting women's status and improving their capabilities to flourish their talents for the development and growth of Islamic society.'⁹

In 1998, President Khatami elevated the Centre to a cabinet-level portfolio, quadrupled its funding, and gave it a new name, Centre for Women's Participation (CWP). The new mission of the CWP was women's civil, legal and political education. The head of the CWP, Zahra Shojaee, was Iran's representative to the United Nations on women's issues, and among its many projects the CWP worked with legal specialists, experts in both international law and Islamic jurisprudence (*fiqh*), in determining the compatibility of the Convention on the Elimination of Discrimination Against Women (CEDAW) with Islamic principles. The CWP lobbied Iran's parliament to pass CEDAW. In the end, however, Iran's parliament did not ratify the convention because the Council of Guardians, a body that determines whether laws passed by parliament are in conformity with Islamic principles, overrode parliament and rejected the CWP's briefs arguing that CEDAW is in agreement with Islamic principles.

The CWP's pamphlets lay out its aims with considerable attention to the public roles that women could have in addition to their roles in

the family. In one of its last pamphlets, published in 2004, the CWP lists its objectives as:

1. Promotion of women's participation in various spheres of human endeavors by expert and technical review of the issue and presentation of recommendations to the Cabinet, Islamic Consultative Assembly, Women's Cultural-Social Council and other legislative bodies for the purpose of formulating legislation and regulations and adoption of policies;
2. Presentation of advisory opinions to the President on the issues relating to women by acquiring precise understanding on the situation of women and drawing up their desirable living situation;
3. Studying practical ways for strengthening the leadership and educative role of women in the family along with enhancement of their leadership role at the higher levels of society;
4. Presentation of proper strategies with a view of raising general awareness and knowledge of women and enhancing their intellectual and reasoning capacity;
5. Presentation of a role model for Muslim women;
6. Understanding of women issues and problems in the society, family and workplace and amendment of relevant legislation [by] proposing new legislation for solving their problems.¹⁰

A review of the CWP's functions reflects a desire to focus on women's participation and leadership roles in society. Another notable feature of the CWP's aims is its repeated objective of liaising with the legislative and executive bodies of government in support of their aim to improve women's lives. In their stated objectives, the CWP also seeks to bring about change by proposing new legislation. Interesting in all of this is the wording of objective three in which the CWP highlights and distinguishes two realms of participation for women, 'in the family' and 'at the higher levels of society'.

Another example of the CWP's focus on rights and the rule of law is a pamphlet entitled 'Human Rights of Women', in which the CWP lists no fewer than 41 'legal measures and modifications made to the law by the Islamic Republic of Iran', in support of 'raising the

issue of human rights [to] help boost sensitivity of people and governments toward discrimination against women and make them not to be negligent.¹¹

Efforts on behalf of women during Khatami's reform period were not only top-down, however. Attention to the effects of legal processes can further clarify how rights talk inevitably re-emerged in the post-revolutionary period. In addition to reformists' attention to the rule of law and to women's political and civil participation, another important component of the re-legitimation of rights talk during this period derived from the reinstatement of civil courts and the repackaging of Islamic principles in civil codes. Part of the reason for this, I have argued elsewhere, is that the civil laws which derive from Sharia maintain the right of marriage dissolution as a contractual right of husbands.¹² As a result, a system that requires women to build and prove their legal cases, and thus to convince a judge to delegate the husband's right to dissolve the marriage to them, led women to gain legal understanding with respect to using the system and juridical knowledge in the context of Islamic precepts. The same is not true for men, who did not have to petition the court in order to dissolve their marriages. These legal processes also served to resituate women as individuated citizens, responsive to the state's civil courts, beyond their roles as wives and mothers accountable only to their husbands, as had been imagined for them in the immediate post-revolutionary period.

Ahmadinejad's Backlash: from Rights to Status

Five years after I had started following legal cases and initiatives in various law offices and courts, I asked one of my legal interlocutors how she thought the laws were being adjudicated. This was in 2005, just as Ahmadinejad was starting his first term of office. She responded:

Five years ago, I thought women did not know their rights. There are laws on the books, good laws, but women just did not know how to use them. Today, I think women know their rights, but they forget their duties.

The successes of women in litigating marriage dissolution cases, alongside increased social and political participation, were leading some social conservatives to call for more regulation. More precisely, hardliners were appealing for more constraints on the adjudication of women's rights in marriage and turning their attention instead to women's status in the family, as they called on women to abide by their duties rather than seeking out their rights.

This shift became readily apparent when, soon after the inauguration of Mahmoud Ahmadinejad, the President's office changed the Centre for Women's Participation to the Centre for Women and Family Affairs (CWEA). The CWEA's redesigned website indicates the shift in concerns from women's rights to a greater focus on their status as wives and mothers. According to the Center's website:

With the start of the ninth government, Dr Ahmadinejad proposed a broader idea on the social and religious necessities and the central role of women in the stabilization of families. He therefore expanded the centre to the Centre for Women and Family Affairs ...¹³

In what it sees as a historic expansion of its agenda, the CWFA states:

In addition to the protecting the human dignity of women in Islam and emphasizing on their positive presence in the different social, managerial, political, cultural, economic and scientific fields, it also emphasizes their role as centre of passion and love for nurturing humans and as the main survival factor in for morality in the society.

The website goes on to explain that 'in 2005, the Centre developed its functions from "women participation" to "women and family affairs", listing its primary functions as:

1. Studying and examining the situation of women and families by conducting research (in cooperation with universities and research

- centers) on ways of improving their status in accordance with Islamic principles;
2. Establishment [of a] liaison with all ministries and other stakeholders in planning activities relating to women and families with a view to coordination and improving current and future programs;
 3. Planning and coordinating with NGOs and presenting general and common policies for their activities;
 4. Liaising with the Commissions of the Islamic Consultative Assembly (Majlis) and its representatives in order to exchange views and to influence legislative trends on women and family issues;
 5. Establishment of constant relationships with Women's Cultural and Social Council for the purpose of covering government's efforts with the policies and guidelines of the Council;
 6. Following up the efforts to secure fair allocation of resources to various regions of the country with a view to supporting activities and efforts of women and families in different parts of the nation;
 7. Establishment of relations with statistical centers in the country and abroad for the purpose of collecting the information relating to women and families as well as of analyzing it for timely and appropriate use;
 8. Taking necessary actions for active presence of women in international forums and seminars relating to women and families, as well as taking required actions with a view to enhancing presence of women in cultural and sports activities in Iran and abroad;
 9. Presenting advisory comments to the president, governmental and legislative bodies with respect to the issues and problems affecting women and families;
 10. Presenting necessary reports regarding the activities of the Center to the President and following up his directives until achieving the [desired] result.¹⁴

Here it is evident that the CWFA has not altogether abandoned its outreach and its objective of influencing legislation, but has reformulated its primary policy objective, and hence its lobbying mission, from women's participation to a focus on women's status in family affairs.

Each of the ten functions listed above reiterates the aim of supporting women in the context of 'women and families'. The text delineates and defines support for women in the context of their status in families, and through that role, their upholding of the social moral order, but does not see women as individuals outside of this context.

Of course the shift in tone and mission of the women's centre, from political participation to concern with status in families, is just one example of the broader shift away from the individualized discourse of rights. Just after the revolution, such discourses seemed to be proscribed because of their association with the ills of Western society and the Pahlavi era's attempts to emulate them. Then a seeming re-emergence of rights-based strategies for improving women's lives grew alongside a wide-ranging emphasis by the Khatami government on the rule of law and the development of institutions commonly associated with popular governance. Republican institutions grew in tandem with justifications about their compatibility with Islamic principles for guiding the populace and the Islamic Republic's own mission of self-governance.¹⁵

With the ascendance of Mahmoud Ahmadinejad to the presidency, another seeming shift has taken place. While today Iranians continue to employ discourses of rights, such discourses increasingly carry with them grave consequences amidst fraught and often volatile political situations. Indeed, the effects of contemporary discourses of 'regime change' that highlight women's rights in their aims are used by Iran's increasingly authoritarian leaders against what are, on the one hand, domestic, internal reform movements, such as the One Million Signatures Campaign, or on the other hand international calls for Iran to abide by treaties that it has signed and ratified, even post-1979, such as the Convention on the Rights of the Child.¹⁶ This is because as the attacks are framed increasingly in ideological terms, the response is to further delineate and restrict the range of possibilities for women calling for improvements in their lot, a response that is also ideological and binary, and thus not only occludes but even critically shifts the on-the-ground possibilities for women. This leaves us with a backlash against rights groups and with competing calls for improvements in women's status, but not necessarily rights. Indeed, after 12 June 2009,

as in 1979, rights activists and the very discourse of rights are characterized by state forces as the indices of such groups' aims of fomenting a type of 'velvet revolution'. The indictments issued by the Islamic Republic against those who protested at the 12 June elections demonstrate this.¹⁷ While many activists today feel that the success of the reform period has been thwarted by recent events, there are enduring socio-legal effects of the attention paid to the rule of law, in particular when we return to the proposed Family Protection bill and the most recent developments since it was sent back to the Legal and Judicial Commission of parliament.

Re-asserting women's 'rights' in the family: on the aftermath of the 2007 Family Protection bill

On 26 November 2009 the rapporteur for the Legal and Judicial Commission issued a statement notable for its legal inefficacy, its jargon and its evasion of specific problematic issues. As reported by the Islamic Student News Association, the spokesman, the MP from the town of Malayar, Amin Hossein Rahimi, stated that the special committee had completed its research on the Family Protection bill and had sent it to the Commission.¹⁸ The special committee was formed in response to the large outcry caused by the bill, Rahimi stated. He went on to explain that the committee had reviewed the bill in consideration of its main aim, that of 'strengthening the family':

Having considered this paramount aim, the special committee determined that the taking of another wife was not consonant with the express goal of strengthening the family, and thus a second marriage would be prohibited without the consent of the first wife.

He continued:

Because of the outcry over this article, the special committee issued new regulations for a second marriage without the consent of the first wife, which could be permissible in very limited circumstances, where special misconduct was found, such as that

which would result in five years in prison or in cases where the wife has abandoned the family.

The rapporteur of the legal and judicial commission stated that if the wife does not possess any of these difficulties, and the husband marries another woman, there is a punishment of prison that has been rendered for this. In addition, he will not be permitted to register this [second] marriage. That is to say, there are many additional legal consequences in addition to the fact that the perpetrator will be guilty of having committed a crime.

In these two paragraphs, the parliamentary spokesman for the commission decidedly addresses the outpouring of dissent, and even notes the influence of this opposition in reconsidering the provisions of the bill and considerably revising the article, now proposing to make such a second marriage both a crime and a civil legal transgression.

The rapporteur then raised the issue of whether in cases like this the marriage contract is invalid or not. He continued that in the Family Protection bill, the debate is procedural and no debate about the substantive nature of the validity of the marriage took place. This issue is a matter of Islamic guidelines and jurisprudence (Sharia and *fiqh*), into which we did not enter. However, if a man marries again without attaining the aforementioned conditions, he will be punished and his wife has the right to petition for dissolution of the marriage.

In this, one of the most interesting parts of the statement, Rahimi defers certain matters of validity, even in the face of illegality, to Islamic jurists. That is to say, even though the commission has proposed to criminalise the taking of a second wife without the permission of the first, he defers to the *ulama* on the issue of whether the marriage is still considered valid, even while suggesting that the first wife would have the right to ask that her marriage be dissolved. The interesting move here is the distinction made by Rahimi between law and procedure, on the one hand, and jurisprudence on the other. As

law-makers, the members of the commission will provide procedures, even while deferring judgment on the substantive issues which the commission is regulating.

The final two paragraphs of the statement from the commission's spokesman refer to temporary marriage, which the Family Protection bill, under Article 22, attempted to deregulate. These two paragraphs will be considered together, since the unstated but clearly related opinions of the commission in the first paragraph are both reiterated and broadened in the second.

Next, the MP from Malaya raised the matter of temporary marriage in the aforementioned bill, saying that the bill which the judiciary and the executive proposed did not make any mention of temporary marriage, except that it was stated that the registration of temporary marriage would be regulated according to memoranda to be issued by the executive's office. However, the majority of the Legal and Judicial Commission of parliament believes with regard to this issue that such memoranda speaking to the registration of temporary marriage can in no way be used as a basis for the regulations of temporary marriage. In reality, if necessary laws for this must be approved; however, in the debates about the Family Protection bill, for which we are recording law, we understand family as permanent marriage, and in Islam and in our regulations, permanent marriage is foundational and it is that which creates the family. Thus, in the Family Protection bill, with regard to permanent marriage, the type of regulations we considered were those that would offer strength to the family.

The rapporteur of the legal and judicial commission in conclusion reflected that temporary marriage is an issue that from the perspective of Sharia is permissible; however, it has specific conditions which are restricted and exceptional. Thus, individuals cannot undertake temporary marriage under any conditions, unless this effort is undertaken clandestinely. Given that temporary marriage is not consistent with a family and is not a part of marriage from the perspective of strengthening the family, it

was not an issue of emphasis in Islam, and we did not see any need to consider making laws for it in this bill. If it does exist, however, only under special conditions is it possibly to carry out. In conclusion, if a man would like to register his temporary marriage, he must follow the laws consistent with the laws of obtaining another wife. To better explain, temporary marriage can only be registered given the consent of the first wife, unless a man clandestinely enters into the temporary marriage.

There are two issues which it is important to address here: first, the issue of separation of powers, to which Rahimi very subtly refers when speaking of the governmental authority for regulating temporary marriage. The commission did not, in this bill, consider issuing regulations for temporary marriage because the aim of its proposals is to strengthen the family and not only does temporary marriage not do that, but according to the statement, a marriage entered into temporarily does not constitute a family. Moreover, the spokesman suggests that the commission had at least considered the executive's proviso (Article 22) that it would issue guidelines for temporary marriage and defiantly states that temporary marriage, while not within the purview of this bill, is something to be regulated. According to him, the majority of the commission's members are of the opinion that such guidelines should come in the form of law from the government's law-making body, and not the executive.

The rapporteur then continues to discuss temporary marriage, even after establishing that it does not fall under the definition of family, let alone family protection, and thus is not a matter for the bill under consideration. He reiterates that while temporary marriage is permissible under Sharia, it is allowable only under very specific and narrow circumstances, here suggesting that even if it is allowable, it is undesirable except under very strict conditions. This is interesting in that in the earlier paragraphs, Rahimi deferred matters of substantive Sharia to the *'alama*, but here opines quite definitively on temporary marriage.

But it is the final two sentences of his statement that are indeed ground-breaking. Having established that the commission is of the

opinion that temporary marriages should be regulated by parliament, and registered, he then concludes by saying that even in the case of temporary marriage, in order for a man to register it, he must follow the laws which cover the taking of a second wife. That is, he must obtain the first wife's consent, effectively putting temporary marriage on a par with second marriage. Presumably, or at least arguably, if the husband does not obtain the first wife's permission, and marries clandestinely – which is the only way it could be done if he does not seek to register it – then she would have the right to apply for dissolution of the marriage were she to find out about either such a clandestine temporary marriage, or a temporary marriage to which she had refused to consent. In the final analysis, however, Rahimi does not suggest any consequences in cases where men do not register their temporary marriages and carry them out clandestinely.

Conclusion

The tensions that exist in Iran do so at the intersection of two primary state ideologies: Islam and republicanism. The laws in question here are a new cultural product, which I refer to as 'Islamic-civil' laws. Understanding how such laws operate helps us to appreciate better the basis of current tensions and indeed of possibilities within Iran. It also leaves us with some new, perhaps slightly discordant results: women are at the vanguard of reform and women's status has improved in some circumstances. Today women have some legal rights that they did not have prior to the revolution. In addition, there are more young women in university, in the workforce, and in higher governmental and administrative positions than before. Some of this, I have argued, has resulted from the discourse of improvement in women's status as an important revolutionary aim, but it is also an effect of new civil and legal institutions, which women, by some measure, have been active in mobilising, as in cases of marriage dissolution and child custody, and even the very public protests against the new Family Protection bill. But it is also in the seemingly small actions, such as the advice given in lawyers' offices or the legal knowledge produced by women using the courts, as well as in informal networks, whether

women's reading groups, Quranic or otherwise, or extra-legal work in NGOs, or social workers creating safe-houses for indigent women. These everyday activities in which women are getting on with their lives, when taken together, constitute and shape the field of possibilities for socio-legal changes in women's lives. To be a bit more precise, I return to my earlier statement on the observation of seemingly unremarkable practices: I do not mean to suggest that the 'small actions' are insignificant, but rather, that they are often no more than procedural operations in the laws or knowledge of government regulations through which women and other access their rights and are empowered as citizens.

What I hope to have demonstrated with these examples is that the backlash to reformists, their rights talk and these social movements for change in the Islamic Republic emerged well before the 12 June elections. However, the world came to see the limiting factors of reform in the government's violent crackdown after those elections. Criticisms of rights discourses have again emerged at the forefront of the threat that has now been rescripted from imperialism to 'regime change' and now to 'velvet revolution'. The indictments against persons said to be active in fomenting such revolution are substantiated by claiming that they are involved in women's rights and human-rights campaigns. The deeper issue is a sharp divide and an increasingly violent battle over the nature of governance today: Islamic government (*bukumat-e Islami*) or Islamic Republic (*yombhuri-e Islami*).

Notes

- 1 Later revisions to the bill changed some of the article numbers referred to here. The entire version of the bill referred to here can be read, in Persian, at <<http://www.online-law.ir/news26.php>>, accessed 11 December 2009. There are other problematic provisions: Article 25 imposes a tax on the dower paid to the wife. While this amount is legally owed to the wife at the time of the marriage, women often do not receive it; it is frequently paid only when the marriage is dissolved, and gives a wife leverage against her husband should she have no justiciable grounds for dissolution. Taxation of the dower therefore potentially reinforces a husband's financial power over his wife during their marriage, and hinders her becoming financially autonomous at the time of a

divorce. In addition, this provision of the bill imposes on women additional procedural impediments to marriage dissolution. Article 46 criminalises the marriage of a foreigner to an Iranian woman without proper authorisation. The foreign man is subject to imprisonment for between 90 days and a year, and the woman if she married of her own free will, her father, if he gave permission and the marriage officials could all be sentenced as accomplices.

2 Most notable among these was Mutahhari (1981).

3 Interestingly, one scholar, Naghibi (2007), relegates some responsibility for the lack of depth in scholarship to some Iranian exiles who have worked in tandem with neo-conservatives to co-opt feminist work. At the same time, feminist scholars are aware of the ways in which liberal feminists have benefited at home (or in exile) by pitching their lot with the colonial overseer. In this way, feminism has been deployed in the service of colonial enterprises.

4 Not all the Shia *'ulama* agreed with Khomeini's thesis on Islamic governance. While some did agree that a final authority on Islamic guidelines should lead the nation, for others the features of governance expressed in the republican model, with Islamic laws rationalised in codes, were offensive to the essential values of Islam. Similar disagreement existed in Iran's first constitutional revolution, but the thesis of *Velayat-e Faqih* (Guardianship of the Jurist) was intended to address the concerns brought out in the previous era. Debates on this issue persist. See Soroush (2000) and Salimi (2003).

5 Pajdar (1995) details the confusion in adjudicating marriage dissolution. Zabaïda (2005) discusses the disorder that ensued in drafting penal sanctions.

6 This blended legal system grew out of struggles to determine how to put into operation this unique system where Islam and a republican model of government intersect. Not all of the Shia *'ulama* agreed with Ayatollah Khomeini's thesis on Islamic governance. For detailed discussions see Arjomand (1988).

7 This is the main focus of my book, *The Politics of Women's Rights in Iran* (2009).

8 The SCCR is a governmental body created soon after the revolution to purge social and cultural institutions, and is charged with expanding and promoting Islamic culture throughout society. It is the primary body regulating the universities and other educational and academic institutions in Iran, for the broad purpose of enriching public culture; see at <<http://www.iranculture.org/en/index.php>>, accessed 30 June 2010.

9 See at <<http://www.women.org.ir/en/pages/content.php?id=546>>, accessed 30 June 2010.

10 'Centre for Women's Participation, at a glance', Presidential Office, August 2004. The pamphlet also lists 15 'functions', all in tandem with the aims of 'presenting practical strategies for increasing women's participation'.

11 Centre for Women's Participation, March 2003.

12 Osanloo 2006.

13 See at <<http://www.women.org.ir/en/pages/content.php?id=546>>, accessed 30 June 2010.

14 See at <<http://www.women.org.ir/en/pages/content.php?id=97>>, accessed 30 June 2010.

15 Khatami pointed this out numerous times during his presidency, most notably during the first-ever city-council elections of 1999, which were part of a strategy to decentralise power and allow for greater local self-government, as envisioned in the constitution of the Islamic Republic.

16 One commentator provides a similarly political basis for the introduction of the 2007 Family Protection bill: 'There are many speculations about the reasons the bill has been passed at this time. Some argue that it is the Iranian regime's response to an increasingly powerful women's movement in Iran and their battle to change discriminatory laws, including polygamy. Others claim that the threat of a US military strike against Iran creates an environment of uncertainty, which, combined with an economic crisis and political and social repression, provides a fertile climate for the patriarchy in power in Iran to bring the anti-family bill into public discourse' (Amani 2008).

17 Indictments can be read in English at <<http://www.qlineorientalist.com/IranRises/the-indictment/>> and <<http://www.qlineorientalist.com/IranRises/the-complete-text-of-the-indictment-of-the-second-group-of-accused-in-the-project-for-a-velvet-coup/>>, both accessed 17 December 2009.

18 Iranian Students News Agency, 9 August 2008, at <<http://www.isna.ir/ISNA/NewsView.aspx?ID=News-1194709&Lang=P%AO>>, trans. the author, accessed 11 August 2010.

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4

RETHINKING THE DIFFERENCE BETWEEN FORMAL AND INFORMAL MARRIAGES IN EGYPT*

Nadia Sonneveld

Presenting: Anthony and Cleopatra's Love Story

In the film *Memoirs of a Teenage Girl* the issue of informal marriages is represented by a love story resembling that of Anthony and Cleopatra. Gamila, a young schoolgirl from Cairo's wealthy upper-middle class, wonders why people have eliminated romanticism from their lives. Admiring Cleopatra, who she thinks was strong precisely because of her romanticism, Gamila often dreams that she is living the life of the ancient Ptolemaic Queen. In one dream, a knight on a white horse tells her that if they ever meet again, the fame of their love story will surpass that of Anthony and Cleopatra's.

During a school trip to Upper Egypt, Gamila is stunned when she meets the Anthony of her dream in real life, so feeling certain that she has met him before, she calls him Anthony and herself Cleopatra. Gamila and Anthony, whose real name is Raouf, fall in love, and while Gamila keeps their relationship a secret from her parents, Raouf is