

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

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In the summer of 2010, international human rights organizations unleashed a worldwide campaign to bring attention to the death sentence by stoning of Sakineh Mohammadi Ashtiani, a forty-three year old mother of two charged with the crime of adultery and as an accessory to the murder of her husband.¹ The sentence was all the more disturbing given that the former Head of the Judiciary, Ayatollah Shahroudi, had issued a decree banning the use of stoning as punishment.²

This campaign was particularly strong in France. When the sentence appeared to be imminent, the French press, human rights activists, politicians, and public intellectuals, most notably Bernard Henri Levy, dispatched letters, statements, and calls to action. The campaign was in part aided by the advocacy of Iranians in the diaspora, and key human rights lawyers in Iran, especially Mohammad Mostafaei, Ashtiani's lawyer until July 2010, when he fled the country out of concern for his own safety. Mostafaei, like other human rights lawyers working inside Iran, was instrumental because he sent details of his cases to human rights organizations and individuals outside of Iran for

INSIDE THE ISLAMIC REPUBLIC

public circulation. His legal know-how also gave important procedural depth to the legal issues and process.

The French press publicized a web campaign to save Ashtiani. Entitled, *Pour [For] Sakineh*, the site released appeals by a number of well-known French politicians, actors, and activists, including then First Lady Carla Bruni-Sarkozy. Other personalities included former Presidents Jacques Chirac and Giscard D'Estaing, French Socialist Leader Ségolène Royal, Minister of Culture, Frederic Mitterrand, actress Isabelle Adjani, and activist Bernard Henri Levy, who spearheaded the initiative. Appeals ranged from calling for consideration of Persian culture to appeals to love and human dignity.

Whatever their motivations, Iranian government officials halted the stoning; some said it was because it was the month of Ramadan, while others claimed that the weighty sentence was being given its due legal consideration. Officials suspended the sentence, but not before state-run television and conservative newspaper, *Kayhan*, ran a story blasting the French women supporting Ashtiani. In a story with the headline, "French prostitutes enter the human rights uproar," the article described Bruni as "this woman with a bad history," who "supports an Iranian woman who has committed adultery during marriage and is an accomplice to the murder of her husband who is sentenced to death, and in fact she also deserves death."³ Iran's Senior Deputy Foreign Minister at the time, Ramin Mehmanparast, attempted to distance the government from the paper's commentary by stating that "insulting the authorities in other countries and using inappropriate words is not approved by the Islamic Republic."⁴

Name-calling aside, the provocative exchange placed in sharper relief the Islamic Republic's renewed emphasis on Islamic principles that began when Mahmoud Ahmadinejad first came to office in 2005. In other words, the public pronouncement of the immorality of the French president's wife underscored a revitalization of the discourse of moral rehabilitation reminiscent of the years just after the revolution. The response was not only intended for foreign actors or the pro-monarchical diaspora, but a growing population of dissenters born of the post-revolutionary government's own edification and tutelage.

For the condemned Ashtiani, death by stoning or by other means was not carried out. In 2006, judicial authorities in her province of East Azerbaijan had also tried Ashtiani for complicity in the murder of her husband, through a charge of disrupting public order. For this, they handed her a ten year prison sentence.⁵ After serving some eight years in prison, in the spring of 2014,

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

Ashtiani was released. The head of the Iranian Judiciary's Human Rights Council, Mohammad Javad Larijani, stated that Ashtiani received a pardon for the remainder of her sentence on grounds of her good behavior in prison.⁶ While the Islamic Republic often appears to ignore or criticize international pleas, and frequently disputes outside assessments of its human rights record, such worldwide attention does seem to have some influence,⁷ although recent debates question just how far that influence extends.⁸

Iranian criminal sanctioning laws are notoriously severe, and in some categories, carry disproportionate penalties for women. As I will argue, women's moral virtue plays a crucial role in the utopian vision of Islamic society envisioned by the religious leaders of the Islamic Republic. In the mindset of these lawmakers, the harsh criminal sanctions serve a deterrent purpose in the broader project of regulating morality and rehabilitating social values, first corrupted by the previous regime, and second undermined by the reformists.⁹ From the start, this rehabilitation was to be borne by women, who were called upon to serve as the representatives of the moral order—at once new and yet part of reclaiming an Islamic utopian cosmology—as they saw it.

Women, of course, were the focus of the post-revolutionary social rehabilitation project when, immediately after the revolution, Khomeini moved to suspend the Family Protection Act of 1967 (rev. 1975). The 1982 enactment of the first of a series of revisions to the penal code, the Law concerning *Hudud* and *Qisas* (Limits and Retribution, respectively) further aimed to reintroduce the element of religious moral sanctioning. Not long after, women were to embody morality physically under the legal authority of the Mandatory Veiling Act (1983). They were, however, to bear this role through broad social reforms, and laws were only one channel for transmitting them to the public.

Constant refinements and debates around what comprises virtue notwithstanding, in the Islamic Republic, women continue to serve as vehicles of social virtue.¹⁰ Alongside an unflagging emphasis on women's morality and societal rehabilitation, Mahmoud Ahmadinejad's government (2005–13) introduced important changes to the Civil Codes on Marriage and Family and to the Islamic Penal Codes, which were widely debated, from the floor of the *Majlis* to the World Wide Web.¹¹ In this chapter, I will examine the latest changes to the criminal codes as they affect women.¹²

Women as agents of social rehabilitation

As I have argued elsewhere, since the revolution, state officials' steadfast attention to women's legal status has served to reinforce particular and often com-

INSIDE THE ISLAMIC REPUBLIC

peting views on how women best serve the aims of the post-revolutionary state.¹³ Exploring how those views have changed with the various different administrations in existence since 1979 allows for a better understanding of changes to the laws as well. An investigation into legal reforms will also allow for reflection on the persistent debates about Islam, the Republic, and how, for the religious leadership, women's roles were to serve in the wider project of producing a utopian Islamic society, despite their discordant views. In the debates about women and their legal status in the post-revolutionary society, moreover, state officials concerned themselves with addressing women's contemporary problems and concerns, while at the same time attempting to emulate an idealized vision of the community of believers during the time of the Prophet.

While Khomeini suspended the pre-revolutionary Family Protection Act upon his return to Iran in February 1979, his discourse about women claimed to elevate women's status to one that was in greater conformity with women's important roles as mothers and wives, according to Islamic principles and traditions. For this discursive shift, Khomeini invoked the image of the Prophet's cherished daughter and Ali's wife, Fatimeh, an important symbol for the revolutionary struggle for justice. For Khomeini and his retinue, women's roles were best served by affording greater attention to the figure of Fatimeh. Law would serve as a vehicle to reshape the conditions in society toward this end.

Many were troubled by the critical changes to the laws affecting women and families, but some secular nationalists and leftists who had rallied alongside the *'ulama* (religious leaders) to topple the monarchy were not immediately concerned by the leadership's restrictions on women's legal status. While some saw themselves struggling for the greater good—overthrowing a monarch—others saw themselves simultaneously challenging the bourgeois commoditization driven by Western capitalism that was overtaking their social and cultural values, and, at the same time, participating in the global anti-colonial and nationalist movements of the 1960s and 1970s. Thus, the turn to Islamic principles to reframe social life, including gender roles, appealed to some as a forthright embrace of local values.

Thus it was that many looked the other way when tens of thousands protested the immediate changes to the laws affecting the rights women had recently won by way of the Family Protection Act (1967), which allowed them to petition the courts for marriage dissolution and custody of children. Many of the protestors likely had benefited from these and other Pahlavi-era modernization programs.¹⁴ The counter-protestors who referred to female

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

dissidents as *gharbzadeh* (“Western-struck”) and attacked them also advanced the narrative of cultural deterioration that Khomeini had mobilized, and conferred it more firmly on the bodies of urban Iranian women.

As a foil to the *gharbzadeh* woman, revolutionary leaders appealed to the person of Fatimeh as the ideal woman for the revolutionary state. Fatimeh’s qualities were earlier recorded by Ali Shariati, an inspiration both to religious and secular revolutionaries. Shariati, a sociologist educated in the West, worried that Western cultural imperialism was threatening native mores. Shariati’s writings on oppression may have been the crucial ingredients that brought leftist and religious groups together. One of the key subjects on which Shariati wrote of oppression was women’s issues. In his important text, *Fatimeh Fatimeh-ast* (Fatimeh is Fatimeh), Shariati employed the image of Fatimeh to emphasize the transcendent qualities of Muslim women. For Shariati, Fatimeh replaced the Western woman as the model modern woman for Iranians and offered an indigenous exemplary of womanhood for Muslim Iranian women.¹⁵

Khomeini described Fatimeh as the ideal figure of femininity. Her birthday replaced 8 March, International Women’s Day, as Iran’s official women’s day. In numerous addresses, Khomeini sanctified Fatimeh as the perfect Islamic woman, whose qualities of justice-seeker, educator of children, and pious Muslim, others should strive to emulate.

Strive to purify your character and to make your friends do likewise. Strive so that you react to the outrages committed against you. In your attempts to uphold all the qualities that make up the great character of woman, be as that unique woman, Hazrat Fatima Zahra, upon whom be peace, was. All of us should take our exemplar from Islam by looking at her and her children, and being as she was. Strive to acquire learning and godliness, for learning is not the preserve of any one person, learning is for all, godliness is for all, and striving to acquire learning and achieve godliness is the duty of us all.¹⁶

In annual speeches on Iranian Women’s Day, Khomeini aimed to demonstrate how Fatimeh speaks to the concerns of the Iranian state. This was especially true during the Iran-Iraq war when the state asked women to send their husbands and sons to the front. As a national trope, Fatimeh displaces and supersedes concerns for gender equality. With Fatimeh’s image, state leaders attempt to move from a discussion of equality before the law to the promotion of the exemplary figure of *Shi’i* female devotion—to family, nation, and ultimately, to God.

According to the Iranian Constitution, family is “the fundamental unit of society.”¹⁷ The ultimate success of the family, and thus the nation, depends on

INSIDE THE ISLAMIC REPUBLIC

women's moral virtue. For this reason, women's honor is a matter of public concern, subject to surveillance and discipline. By recognizing women's roles in nurturing the nation and its citizens, however, the state also acknowledges the potential for women to play more explicit roles in the politics of the nation.

The revolutionary aim of improving society through the rehabilitation of women gave women unexpected social and political power, as improvements in the conditions of women's lives were indicative of the success and legitimacy of the new state. The significant attention Khomeini and other state officials gave to women's issues—as the basis of a healthy society—served to keep a steady focus on women's concerns and the need to improve society through attention to women's status.

The revolutionary leaders' use of women's status as a primary locus of the revolution, literally, the site of the nation's rehabilitation, made women's issues markers of the state's very legitimacy. Discourses about women's objectification stressed the need to focus on women's intellectual development. This, in turn, intensified the focus on women's education and productive social and political participation. The increased attention to women's status led to gains in women's health, literacy, education, and labor force participation. Additionally, women's groups have used the focus on their actions, roles, and comportment to make specific demands for legal redress, especially in the context of family laws, criminal sanctioning, and in broader calls for an end to gender discrimination.

After the revolution, Iran's penal codes along with family laws, which together were considered by Khomeini to fall under the authority of Islamic leaders, were revised in several stages. At first, the leaders introduced these measures as a temporary efforts to introduce the principles of Islamic jurisprudence to law-making on a trial basis. These temporary changes were at long last finalized in June 2013, with debates on the fate of defendants such as Sakineh Ashtianti still looming large. The laws, albeit modified to better accommodate principles of *Shi'i* Islam as interpreted by the leaders of the revolution, remain codified. As we will see, codification has implications for the meaning and procedural administration of laws, even in the context where the laws are derived from Islamic principles.

Iran's hybrid legal system

In early 2012, both the Iranian parliament and its oversight body, the Council of Guardians, passed and approved the revised penal code. In October 2012,

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

however, in an unusual move, the Council of Guardians retracted their earlier approval and set out to further amend the new penal code. The Council of Guardians modified the code in significant ways, then again sent the new penal code to parliament for approval on 1 May 2013. After parliament ratified the penal code a second time, it was sent to the president for signature. Upon the president's authorization, the new penal code was published in the official legal gazette and came into force on 12 June 2013.¹⁸ These events were notable because when the penal codes had been revised soon after the 1979 Revolution, ostensibly to conform to the *Shari'a*, they were considered temporary and extended every five years. With the passage of the 2013 law, the judiciary attempted to finalize the Islamic penal code for the first time since the revolution.

The codification of Islamic principles into law is an important component of legal modernization in many Muslim-majority societies, and the debates around the Islamicized codes expose the difficulties of integrating scriptural texts into a centralized legal system. In Iran, a study of the historical foundations and present-day effects of codified *Shari'a* allows for a more nuanced understanding of how civil (tortious) and criminal proceedings are blended and how this blended form serves certain logics surrounding punishment and gender disparities, especially pertaining to *diya* (compensation).

After the Constitutional Revolution of 1906–11, the new Iranian parliament drafted the country's first Constitution. To construct a centralized body of law, the government imported civil and penal codes primarily from France and Belgium while also asserting the laws' conformity with *Shi'i* Islamic principles.¹⁹ Between the constitutional period and the 1979 Revolution, Iranian criminal codes went through a series of secularizing reforms that systematized offenses and punishments while establishing a hierarchy of courts to adjudicate allegedly criminal behavior and to arbitrate over disputes. By 1939, the Iranian civil and criminal codes no longer contained references to *Shari'a*.²⁰

In 1979, when the popular revolution removed the monarchy, a coalition of leaders, including religious and secular nationalists, established a new system of governance: an Islamic Republic. A referendum vested the *'ulama* with great political authority through the power of the *Velayat-e Faqih* (Guardianship of the Jurisprudent).²¹ In this newly envisioned branch of government, the religious leadership consolidated state power by supervising all judicial, military, and other matters deemed important to the political organization of the state. When Ayatollah Khomeini was elected as the country's highest authority, as the *Vali-ye Faqih* (Ruling Jurist), he moved quickly to

INSIDE THE ISLAMIC REPUBLIC

dissolve the bases for the existing judicial apparatus and renewed his call to integrate *Shari'a* into state law. In an apparent revitalization of *Shari'a* principles, Khomeini and the supporting *'ulama* called for conformity of state laws to Islamic principles.²² This was a substantive shift from the previous era in which laws were not to conflict with the *Shari'a*.²³

Many of the post-revolutionary revisions to the laws arose from the leadership's goal of grounding the institutions of government in *Shi'i* Islamic traditions. Thus, after the revolution, much of the systematization of the previous era was dismantled. For instance, municipal courts that handled a wide range of disputes were initially replaced by revolutionary *shariat* (Islamic) courts that gave judges broad jurisdiction over the kinds of cases they heard, with marked attention to crimes against the state and the aims of the revolution.²⁴

Between 1982 and 1983, the Council of Guardians reintroduced the penal codes through four laws: (1) the Law Concerning *Hudud* and *Qisas* and Other Relevant Provisions; (2) the Law Concerning *Diyat* (plural of *diya*); (3) the Law Concerning Islamic Punishments; and (4) the Law Concerning Provisions on the Strength of *Ta'zir*.²⁵ *Ta'zir* are discretionary punishments that serve a deterrent purpose in criminal sanctioning. They include public offenses of immoral behavior or threats to security and order, for which no punishment is specified in sacred texts. In 1991, the first three laws were brought under one common penal code, followed in 1996 by the introduction of a revised chapter on *Ta'zir*.

By the early 1990s, an Islamic criminal justice system was organized through a reintroduction of the criminal procedures.²⁶ An amendment to the penal code in 1991 created a category of public injury for what were regarded, up until then, as private crimes, including murder. This provision made homicide both a public matter, for prosecution, and at the same time, a private tort, with a plaintiff. Thus, in murder cases, tort and criminal liability are assessed by the same court. First, under a theory of tort, the private plaintiff or family of the victim can make an appeal under the Islamic penal code for *qisas* (retributive sanctioning). Then, the state uses its discretion under the *Ta'zir* provisions to assess the nature of the public harm.²⁷ There are at least two plaintiffs: the next of kin and the public. In such cases, only the former possesses the right to retributive punishment. The state's prosecutor, on behalf of the public, makes a case for punishment based on public interest and deterrence with sentencing ranging from a minimum of three years up to a maximum of ten years imprisonment.

The criminal codes codify evidentiary requirements drawn from *Shi'i fiqh* (jurisprudence) to prove criminal cases. These include *eqrar* (confession) by

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

the accused, *shahadat* (witness testimony), *qassameh* (sworn oath), and finally, *elm-e qazi* (judge's knowledge). With regard to the last method, *Shi'i fiqh* permits a judge in certain "fixed punishments and death sentences by-way-of-retaliation to sentence on the basis of his own knowledge."²⁸ Article 211 of the penal code attempts to define judge's knowledge as "certainty resulting from evidence brought before him," and requires judges to state the evidence that serves as their source of knowledge in the decision.²⁹

The criminal codes of 1982 and 1983 reintroduced the provisions to the laws that, according to some, aim to bring the Iranian laws in line with classical *Shi'i fiqh*. The laws divide crimes into three categories of punishment: *hudud* (crimes against God), *qisas* (retribution), and *diyat* (compensation). As we shall see, with their introduction into the Iranian legal system in the early revolutionary period, these laws made for extreme, sometimes frightening, changes to the degree to which malfeasance was now sanctioned over the previous period.

Changes to zina punishments

The crime of *zina*, or extra-marital intercourse (including adultery and fornication), is categorized under the *hudud* (singular *hadd*) punishments, deemed to be "crimes against God." With the introduction of *hudud* crimes into state law, leaders were attempting to reinscribe a particular moral order onto post-revolutionary society, in line with their discourse of cleansing the moral depravity characterized by the previous rulers.³⁰ By their nature, *hudud*, which literally mean 'limit', suggest specificity with reference to the punishment and the conduct being penalized. They are thus regarded as crimes having fixed punishments. Therefore, with a *hadd* crime, there is, ostensibly, no possible reduction in sentencing, although Iranian law permits appeal. Iran's penal code lists eight crimes subject to *hudud*: sodomy, imbibing (of alcoholic beverages), adultery, false accusation of adultery, lesbianism, pandering, special cases of theft, and crimes against the state such as unlawful rebellion.

In general, the crime of *zina* divides punishments into two categories: death for (separately) married parties and flogging for unmarried parties caught in sexual intercourse. In the latter case, *zina* is not under the *hudud* penalties, but rather is codified in the discretionary deterrent laws, *Ta'zir*. Thus, the 1982 laws re-introduced a penalty of death for *zina*, which had been prohibited in the 1928 revisions to Article 207 of the General Penal Codes (of 1926). The

INSIDE THE ISLAMIC REPUBLIC

1928 amendment carried a prison sentence of six months to three years and gave standing only to the injured spouse.

Until the 1982 laws were introduced, courts seemed to have discretion to rule either with reference to Islamic principles, under Article 167 of the Constitution of the Islamic Republic (1979),³¹ or the pre-revolutionary penal code that had prohibited execution for adultery and other *hudud* crimes.³² The 1982 law not only reinstated the sanction of death, but introduced the penalty of lapidation or stoning (*rajm*) for adulterers.³³ The legal requirements for proving adultery include the concurrent oral testimony of four just (*adel*) mature male eyewitnesses to the act of penetration.³⁴

According to some interpretations of the sacred sources, stoning is the sanction for adultery, but there is hardly a consensus among the *'ulama* on this matter. While some jurisprudential debate on the topic exists, many contemporary scholars have argued that this form of punishment, which is not stated in the Qur'an, is not permissible at all, and that the Iranian penal code is at odds with Islamic jurisprudence on this matter.³⁵ On the other hand, some scholars believe that this punishment is noted in some of the secondary scriptural sources, *ahadith*, and entered into Islamic jurisprudence by way of Talmudic law.³⁶ Others believe that it nevertheless comes from weak or unreliable *ahadith* and thus, is neither fixed nor unalterable.³⁷

Although the *zina* proscription is meant to penalize both men and women, and thus is neutral on its face, there is a discriminatory effect on women adulterers because men can legally have more than one wife, permanent and temporary, while women cannot have more than one husband at any one time. Only in cases where both parties are married would the sanction apply equally. In cases where one partner is unmarried, he or she would instead face the possible sanction of flogging, while the married adulterer could be punished with stoning. Moreover, when a married man is committing adultery with an unmarried woman, he could still marry her to avoid *zina* punishment, while the same is not the case for married women. Flogging is also the sanction when both parties are unmarried, although a general exception to this rule, when it is enforced, is to convince the parties to marry.

It should be noted, however, that the enforcement of stoning is quite rare in Iran, especially since 2002 when then-Judiciary Head, Ayatollah Shahroudi, circulated a memorandum imposing a ban on it. The ban was unenforceable and thus some local judges did in fact issue the sanction, as evidenced by the Ashtiani case.³⁸

In the revised penal codes, the punishment of stoning had initially been deleted. This deletion allowed for the insinuation that the sanction has been

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

removed from the penal codes altogether. Analysts reviewing the new code, however, noted that although it was deleted as a sanction for adultery under *hudud* crimes, later provisions reference stoning, and thus suggest it is still one of the sanctions available to judges.³⁹ Both Article 132, dealing with multiple offenses of *hudud* crimes, and Article 173, addressing confession, mention stoning, and thus appear to preserve it as a penalty.⁴⁰ Moreover, Article 220 of the new penal code refers the punishment of *hudud* crimes not specified in the penal code to Article 167 of the Constitution, which states that in the absence of code law, judges must base their decisions on Islamic sources or legal opinions.⁴¹ Indeed, Article 167 of the Constitution of the Islamic Republic provides the judiciary with powerful recourse to Islamic principles in almost any context.

After the second revisions to the penal code in May 2013, the Iranian government's legal oversight body, the Council of Guardians, clearly reinstated stoning as a penalty for *zina* as Article 225. The penal code defines *zina* in Article 221 as an act of intercourse between a man and woman who are not married to each other, and who have no doubt as to the nature of the relationship.⁴² This broad definition includes intercourse such as rape within its purview. Given this far-reaching definition, it appears that adultery can now be punished through three different methods: as *hadd*, in which depending on the type of adulterous relationship, the penalty can be either the death penalty or, when it is *ta'zir*, flogging.⁴³ Article 225 provides that the punishment for adultery is stoning, but then permits an alternative where it is "impossible" to carry out the execution by stoning.⁴⁴ Thus, although Article 225 reinstates stoning as a punishment for *zina*, it seems to leave the punishment up to the judge's discretion, with the permission of the head of the judiciary, to determine a manner of execution other than stoning, or even 100 lashes. In light of the diverging viewpoints among judges and the *'ulama* on the validity of stoning as a punishment in the jurisprudential sources, Article 225 appears to leave the field open to diverse interpretations. The broad latitude left to judges may also lead to vastly different sentences across the country—from 100 lashes (still the penalty for unmarried persons convicted of *zina*) to execution by hanging or even stoning.

The earlier ambiguity in the first version of the new penal code (January 2012) may have been suggestive of the broader debates between legislators who might have been seeking a compromise and a face-saving way to prohibit stoning without overtly (over)reaching into the domain of Islamic jurists—jurisprudential interpretation of the sacred sources, especially in light of the

INSIDE THE ISLAMIC REPUBLIC

international attention Iran received through Ashtiani's case. Now, however, the amended final version of the penal code (June 2013) clearly restores the sanction of stoning for adultery committed by married persons.

In the next section, I investigate another crucial set of amendments to the Iranian penal codes involving juvenile sentencing, which also have significant impacts on gender.

Qisas and girls: gender disparities in sanctioning under-age defendants

The harsh sentences also apply to youth under the age of eighteen. For criminal liability, the new penal codes set out to establish a determined age for maturity and thus criminal responsibility, which in the laws of the Islamic Republic, vary in different socio-legal contexts. According to the Iranian penal codes, the determination of culpability of an accused depends, in part, on the consideration of the age at which the youth reaches maturity (*sen-e bulug*), which is to be distinguished from the age of majority, considered eighteen under international law. Age, however, is taken alongside of the gender of the accused. Considerations of age, moreover, do not simply evaluate physical age, but mental age, as determined by a judge's knowledge (*elm-e qazi*). The new penal codes break the age of maturity into a complex set of assignments according to the youth's age and gender. Age is given the further consideration of the youth's mental and physical make-up in order to determine whether he or she possessed the necessary element of intent at the time the criminal act was committed.

Perhaps in a partial bid to conform to its international obligations under the Convention on the Rights of the Child (CRC), which Iran ratified in 1994, the new penal codes appear to allow those who were under the age of eighteen when they committed a crime the chance to avoid the death penalty. The pre-2013 penal code stated that youth under eighteen were exempted from criminal responsibility.⁴⁵ The penal code defined a youth as one "who had not reached the age of maturity under Islamic *Shari'a*."⁴⁶ The previous code, however, did not construe the meaning of the clause, "age of maturity under Islamic *Shari'a*."⁴⁷

Given the criticisms, both at home and abroad, of the Islamic Republic's practice of executing juveniles under the age of eighteen, the judiciary took some measures to curb the negative attention. First, the judiciary initiated a mechanism whereby the head of the judiciary was required to sign an order granting permission (*estizan*) for execution to take place anywhere in the country. Using this mechanism, the judiciary often held off signing the order

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

until the defendant had reached the age of eighteen, thus postponing the death sentence. Since the CRC considers the defendant's age at the time of the crime, rather than the time of execution, this was still a violation of international law.

The new penal code excludes from criminal responsibility youth whom it deems immature. Article 146 states that "immature youth have no criminal responsibility." Article 148 provides correctional and security measures for immature offenders. In a significant revision from the old penal code, the new code stipulates the age of maturity for criminal responsibility. Article 147 of the new penal code provides that the age of maturity is nine lunar years (eight years and nine months) for girls and fifteen lunar years (fourteen years and seven months) for boys.⁴⁸ Thus, the new penal code appears to define the age of maturity clause drawing from *Shari'a* sources. This age of maturity conforms to the *Shari'a*. By stating the age explicitly, the new code appears to eliminate the possibility of using other sacred sources that propose older ages for criminal responsibility. Calendar years, however, are not the only measure of maturity. Physical signs may permit the age to be reached earlier if a girl has begun menstruating or a boy has begun producing sperm.

Regardless of the new problems presented by specifying the age for criminal responsibility, some important clarifications to the old penal code do appear. Article 88 of the new law spares youth offenders from the death penalty under the discretionary *Ta'zir* laws. That is, girls under the age of nine or boys under the age of fifteen when the crime was committed will not be executed. The new penal code creates additional age groupings for consideration in criminal responsibility, also disparate between male and female offenders. The new code creates four categories of criminal responsibility based on age. These categories, stipulated in Articles 88 and 89, subject youth offenders to different rules in association with the different categories of punishment: *ta'zir*, *hudud* and *qisas* (*qisas* also includes *diyya*). The following discussion of Articles 88 and 89 will divide the crimes by gender, age, and category of crime. The burden of proof rests solely with the youth, who, having been deemed to have reached the age of maturity, must now argue that s/he does not possess the requisite mental capacity for criminal responsibility.

1. Under nine years old, gender matters only in cases of *hudud* or *qisas*:
 - a. *Ta'zir* offense: Neither boy nor girl will be held criminally responsible. On a discretionary basis, judges may sentence youths to correctional measures, which include surrendering him/her to his/her parents with

INSIDE THE ISLAMIC REPUBLIC

the pledge of reform, sending the youth to a social worker or psychologist, or prohibiting him/her from going to certain sites or seeing specific persons.

- b. *Hudud* and *Qisas* offenses: Article 88 states that boys who are deemed not to have reached the age of majority could be subject to correctional measures, as discussed above. Girls could be held criminally responsible, but only through a very strict reading of the provision as it refers to lunar years. Girls who committed a *hudud* or *qisas* crime under the age of eight (solar) years and nine months will be treated the same as the boys. Girls over eight years and nine months could be found criminally responsible if they are deemed to possess the requisite age of maturity, both physical and mental.
2. Between nine and twelve years old, gender matters only in the cases of *hudud* or *qisas*:
 - a. *Ta'zir* offense: Neither boy nor girl will be held criminally responsible. As above, they may be subject to correctional measures, based on the judge's discretion.
 - b. *Hudud* and *Qisas* offenses: As noted above, there is a stark difference between boy and girl offenders in this category. Again, based on Article 88, a boy who has not reached the age of maturity will be subject to correctional measures. A girl in this age range, however, is said to have reached the age of maturity. She may be subject to the punishments prescribed in the penal codes, unless she can prove that she does not possess the maturity to be held responsible.
 3. For children and juveniles between twelve and fifteen years old, gender matters only in cases of *hudud* and *qisas*:
 - a. *Ta'zir* offense: There is little difference between boys and girls. Generally, youth will be sentenced to correctional measures, as stated above. In severe cases only, a judge may sentence the youth to be held in a Correctional and Rehabilitation Center from between three months to one year.
 - b. *Hudud* and *Qisas* offenses: In such cases, a boy who has not reached the prescribed age of maturity, fifteen lunar years or fourteen (solar) years and eight months will be subject only to correctional measures or, for severe offenses, up to one year in a youth correctional facility. Boys and girls who are deemed to have reached the age of maturity will be subject to adult criminal responsibility.
 4. Juveniles between fifteen and eighteen years old, gender matters only in cases of *hudud* and *qisas*:

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

- a. *Ta'zir* offense: There is little difference between boys and girls, but the severity of the crime is important for sentencing. Generally, youth convicted of minor crimes will be sentenced to no more than two years in a Correction and Rehabilitation Center. The possibility of additional fines and public service sentences exists. For severe crimes, the youth could be sentenced to up to five years in a youth correctional facility.
- b. *Hudud* and *Qisas* offenses: In this context, it is important to note that boys and girls between fifteen and eighteen, who are deemed to have reached the age of maturity, will bear adult criminal responsibility for their offenses.

To the above categorizations, however, an important qualification is attached by way of Article 91 of the new penal code. Article 91 provides the presiding judge in such cases the opportunity to consider maturity in both physical and mental terms, and states:

With regard to crimes punishable by *hudud* or *qisas*, where the accused have reached physical maturity and are under eighteen years old, if they do not understand the essence of the crime committed or its inviolability, or if there is a doubt as to their complete mental growth, then the appropriate measure of punishment shall be accorded with attention to their age, based upon the punishments provided in this chapter.⁴⁹

Thus, Article 91 of the new penal code creates a provision stipulating that under certain circumstances, offenders younger than eighteen may be exempted from *hudud* and *qisas* punishments and sentenced instead to correctional measures, based on the judge's discernment. This is an important application of the judge's knowledge (*elm-e qazi*). In a note to this provision, the penal code requires the court to consult experts or other means necessary to determine mental maturity.

From my fieldwork interviews in the summer of 2012, I learned that judges and some juvenile defenders appreciated this provision in that it allows lawyers to present evidence of a youth's immaturity and thus lack of legal responsibility. A lawyer who worked at the Society for the Support of the Rights of the Child told me, "[i]t opens the hand of the judge to make decisions based on evidence we present."⁵⁰ One judge also mentioned that this could allow for diminishing the gender disparities that exist in the law. The result is a mixed bag. On the one hand, the law allows for judicial discretion, providing judges, as in the context of *zina*, with wide latitude to tailor sentencing to the nuances of a case. On the other hand, this discretion affords judges a great deal of autonomy, opening the

INSIDE THE ISLAMIC REPUBLIC

door to wildly uneven and disproportionate sentencing, even in light of Article 211 stipulating acceptable sources of judge's knowledge.

Another children's rights attorney living outside Iran, Mohammad Mostafaei, is a critic of this law, not only because it diverges from Iran's responsibilities under the CRC, but because it is dependent on each judge. "Instead of having a law strictly based on the age of majority in accordance with the international human rights system and the Convention on the Rights of the Child, this law still leaves too much power in the hands of judges and will lend itself to disparate outcomes in the provinces of Iran."⁵¹ As if responding to this critique, another lawyer working in Iran told me that although this new law is not perfect, "at least this leaves the judges some leeway in making decisions, whereas the previous law did not. And this, in turn, allows us [advocates] to try to persuade the judges."⁵²

In Iran, therefore, the system both codifies laws that are to be implemented by judges serving as functionaries and, at the same time, provides a legal framework for judges to act as Islamic jurists in certain kinds of cases and in some categories of crime. The system of codification, derived from Western law, presides over an ossification of the more fluid jurists' system, where Islamic scholars make decisions based on vast amounts of study and knowledge of the jurisprudential logics of the *Shari'a*. If this system is to work, however, it places a burden on the state to train jurisprudents at the bench. On the other hand, the codification provides a basis for transparency and predictability, both of which are important indicators of the just legal system.

In the final section, I examine the jurisprudential and legal debates over the amount of *diya* (compensation) remitted to men and women in case of accident or death.

*Disproportionate diya*⁵³

Crimes of homicide and bodily harm against individuals are further 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 addition, in crimes subject to the punishment of *qisas*, *Shi'i fiqh* and the corresponding Iranian legal code affirm retributive death for homicide in intentional murder, and *diya* in unintentional homicides. The Iranian penal code stipulates that the surviving heirs of a murder victim (*awliya-ye dam*) may decide whether to demand punishment in-kind or forgo it. In cases where

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

the victim's *awliya-ye dam* accepts *diya*, the charge is effectively pled down to an unintentional murder. The earlier version of the penal code provided that where a man murders a woman and the victim's next of kin demand retribution, the next of kin would also pay one half of the *diya* to the offender's family because the *diya* of a male is twice that of a female.⁵⁴ This is still the case, although it appears that through Article 551 of the new penal code, gender equal *diya*, in some limited contexts, has been introduced. Thus far, this provision does not apply to homicides.⁵⁵

Forbearance (*Gozasht*) is possible in multiple kinds of sanctioning. Sometimes the plaintiff's offer of *gozasht* will dismiss the charge, but other times it will reduce it and thus lessen the punishment. In cases where the victim's next of kin permits the offender to save his or her life, thus offering *gozasht*, the offender is not automatically freed. The offender is subject to a criminal sentence as a sanction in conjunction with the public prosecution. In the 1991 revisions to the Iranian penal code, a section was added to recognize the dual nature of the harm created by murder (both private and public). In addition to the private harm, for which *qisas* or *diya* may be appropriate, there is also a public harm that the state may prosecute on behalf of society as a whole.

The involvement of the family of the victim in Iranian criminal sanctioning confirms the state's concerns with victims' interests in the enforcement of retributive punishments.⁵⁶ In cases where *diya* is at issue, it is effectively monetary payment to compensate the family for injuries "arising from a specific type of tort."⁵⁷ In this context, *diya* is no longer only a criminal sanction, but constitutes a bridge between criminal and civil tort liability. *Diya* is paid by the offending party and, as such, represents compensation for physical injuries analogous to those found in European civil code and British and American common law traditions. When the family of the victim opts for retribution, technically there is no *diya*. Sometimes, however, families negotiate extralegal arrangements that allow the defendant to exchange a sum of money or property for forbearance.

Thus, although *gozasht* is a form of private forbearance and is available for some crimes, *diya* may or may not be included. In addition, *diya* operates as both a form of punishment and a type of compensation for damages. In a contemporary context, *gozasht* and *diya* are among the components used in alternative dispute resolution practices. Some legal scholars argue that by encouraging the payment of *diya*, countries with *Shari'a*-based judicial systems may avoid extralegal acts of revenge, and even lawful in-kind retribution, while encouraging forbearance.⁵⁸

INSIDE THE ISLAMIC REPUBLIC

One of the primary *Qur'anic* sources to which *diya* is linked is a verse interpreted to encourage Muslims to forego their right of lethal retribution: "In the law of retaliation there is life for you—O you who are endowed with intelligence so you may restrain yourselves."⁵⁹ Jurists and scholars, moreover, have identified a number of other *Qur'anic* verses that counsel and praise the act of individual forgiveness by the family of the victim. According to Baderin, at least one *abadith* reports that whenever a case of *qisas* was brought before the Prophet Muhammad, he counseled forgiveness.⁶⁰ However, the *Qur'an* does not specify the rate of *diya*, nor any discrimination based on gender. Only in the *hadith* does one find a basis for the claim that *diya* for a woman should be half that of a man. Further, interpretations of the *hadith* have, over time, continued to express the value of the *diya* for a woman as one-half that for a man. Some scholars suggest that this discrepancy emerged after the death of the Prophet Muhammad and after the evolution of *diya* as a mechanism for securing or paying for forbearance in retributive sanctioning. In this context, the gender disparity in *diya* likely grew out of the tribal feudalism that emerged after the Prophet's death.⁶¹

The gender disparity in *diya* may be based on Islamic principles of property and inheritance. The eleventh century jurist, Mohammad al-Sarakhsi, found that the discrepancy emerged from the varying capacities of men and women to own property. In property ownership, a female was considered "half of that of a male person" because while a woman could be the proprietor of land, "the male person combines the capacity to be a proprietor of marriage and of property."⁶² Ayatollah Azari-Qomi, a contemporary cleric in the Qom seminary, expressed a similar logic for the gendered disparity in inheritance laws. He asserted that Islamic principles emerged to grant women economic autonomy after a time when patriarchy was the rule throughout most of the world.⁶³ In a shift from a time when a woman was chattel, *Qur'anic* dictates prescribed that women and men would own the property of their respective labor. By the same token, men became and remain duty-bound to provide for the material needs of their womenfolk.

Based on the above reasoning, Ayatollah Azari-Qomi further inferred that a woman's *diya* is half that of a man's because of the difference in inheritance among men and women. Because *diya* is the rightful property of the heirs, the imbalance in *diya* arises from the fact that as a result of death, there will be a loss of income. In such a case, "heirs need resources for securing their maintenance, and, because if a man is killed, his heirs will lose all their resources. Therefore they need higher blood money than for a woman. But if a mother

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

is killed, usually heirs need fewer resources.”⁶⁴ Women have no legal or religious duty to provide for anyone—not even themselves.

In Iran today, the gender disparity in *diya* continues to be debated among the ‘*ulama*, legal scholars, and the public.⁶⁵ For instance, *Bohran*, an Iranian television program, aired a similar response to the question of unequal *diya* posed to a member of the ‘*ulama*. He explained that since a man is the breadwinner and a woman is the “help-spender” (*komak kharj*), their *diya* cannot be one and the same. Because men have economic responsibilities that women do not, he explained, their *diya* cannot be equal.⁶⁶ Taking a different tack, a conservative member of the ‘*ulama*, Ayatollah Javadi-Amoli, said in an interview with the Iranian Students’ News Agency (ISNA) that *diya* “is a criterion of the physical body... [it] is not operative in determination of worth and is only an economic tool, not a criterion for determining [the] value [of a person].”⁶⁷ Then, just a few days later, ISNA reported that the rule of equal *diya* in compensation for bodily harm would be implemented.⁶⁸

Lawyers I have spoken with over the years have suggested that discrepancies in the codified laws persist in accordance with long-held cultural practices are not necessarily based on religious views. Assigning *diya* as half the amount of that of men rests on the idea that if a woman were to die, it would be less of a financial burden on the family than if a man were to die. This jurisprudential reasoning follows current legal logic, since the victim’s *awliya-ye dam* decides whether to accept *diya*. As we have seen, the *awliya-ye dam*, once presumed to be only males, are now in many cases females.

This jurisprudential debate entered the public space when Iran’s first and only women’s daily newspaper, *Zan* (Woman), addressed this issue in 1999 through a series of articles about Islam, gender, and the discriminatory laws in Iran. The newspaper’s legal expert, Reza Ansari-Rad, trained in Islamic jurisprudence, offered careful readings of the relevant verses of the *Qur’an*⁶⁹ to argue against gender discrimination.⁷⁰ Some reform-minded ‘*ulama* have also called for gender parity in *diya*. Grand Ayatollah Yusef Saanei, who is among the few *marja-ye taqlid* (sources of emulation), the highest ranked ‘*ulama*, has stated, “Blood money is the price of a human life, [d]eath occurs when the soul departs the body. As men and women have an equal soul, so should they have equal *diya*.”⁷¹ In a 2007 interview, Saanei reiterated his justification for equal *diya*, and based it on his knowledge of the *Qur’an*: “How can we say that women are equal to men, as the *Qur’an* has decreed, then say that the women’s *diya* is half the sum of the compensation received for killing a man?”⁷²

Similarly, former president Hashemi Rafsanjani told a group of women in 2007 that the compensation for men and women should be equal because of

INSIDE THE ISLAMIC REPUBLIC

the changes in society where women are now equal contributors.⁷³ A conservative member of the *'ulama*, Ayatollah Mohsen Gheravaian, likewise agreed that the laws should be modified to make *diyya* equal for men and women.⁷⁴

In compensation for an injury, much like in personal injury laws, the amount of *diyya* is determined by worth or value. Two factors are crucial to making this determination: (1) the utility or purpose of the body part damaged and (2) the cost of the loss or harm to the victim. For instance, if an individual loses a finger, the *diyya* for that finger would be determined by the value of the finger to the individual. The *diyya* for an eye, however, would be higher, as one's eye is defined as more valuable than a finger. In cases of homicide, the victim's family suffers a loss of income as well as affection. While the amount of *diyya* is decided based on the family's needs, in Iran, this evaluation is determined and set annually by the judiciary.⁷⁵

In the summer of 2008, Iran's Insurance Ministry closed the gender gap for compensation in car accidents, as *diyya* is also built into compulsory vehicle insurance. The ministry suggested that in automobile accidents, the role *diyya* plays is to compensate victims, and that compensation should not be related to the victim's gender. Explaining this decision, judiciary spokesman, Alireza Jamshidi, stated that because an individual's agreement with an insurance company has a "contractual basis and both sexes pay equal premiums, the compensation should also be equal and the law is not in contravention of the *Shari'a*."⁷⁶

Closing the disparate rate of *diyya* in this context is framed in pure economic terms, based on the relationship between a driver and the insurance company. Since the same money is paid into insurance premiums, the logic in these cases suggests that *diyya* should be the same. This logic, however, is incompatible with the reasons offered by some *'ulama* regarding the financial responsibility borne by men. Should a man die in a car accident or otherwise, the economic void experienced by his family would be the same as if he were to die as a result of murder.

Debates over the topic of *diyya* continue today. The dissemination of ecclesiastical debates in the press, along with activism around the issue of the gender disparity, likely contributed to the changes to the insurance laws. Varied opinions in the jurisprudential sources provide the competing rationales through which *diyya* takes shape in Iranian legal codes. The classic *Shi'i* texts afforded higher compensation for males than for females, in accordance with the gendered divisions in social roles at that time. Scholars, intellectuals, and journalists today cite current trends as the basis for closing the gender gap in *diyya*.

WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

While some of the hardline *'ulama* argue that a woman's *diya* should be fixed at half that of a man's in order to balance a system in which men and women receive wealth and property differently, in practice, this logic does not work. Rarely is it the case that a widow has recourse to her paternal family's funds for survival, and even less frequently does the tribal logic of housing the deceased's wife among the family members of the deceased take place. Moreover, women are seldom completely provided for by men, and increasingly women are the primary earners for their families. If the issue is more broadly defined as one about family survival, then the gendered disparity in *diya* could be reconsidered in accordance with the exigencies of life in increasingly urbanized, modernized, and individuated Iran. Since *diya* often involves negotiation, any dispute-settling sum could attempt to tailor it to the needs of the family, compensating for the economic and affective loss of a deceased family member.

In any case, the language of Article 551 seems to provide for at least the possibility of equal *diya*: "In all cases of crime (*jenayat*) where the victim is not a man, the difference between the amount of *diya* and the *diya* for a man shall be paid by the state's Compensation Fund for Bodily Harm." This provision comes immediately after a provision affirming that a woman's *diya* in murder is half that of a man's (Article 550). While Article 551 does not appear to apply in private murder cases, the state has provided proportionate compensation in a recent case involving girls in a classroom in which the gas heater exploded, killing two students and badly injuring twenty-seven others.⁷⁷

Conclusion

In the current period where rights activists in Iran are facing a tremendous backlash, their ability to raise awareness both inside and outside of the country, as in the case of Sakineh Ashtiani, is notable. While the leaders of the Islamic Republic appear to ignore international pressure on its laws, the debates that are sparked inside the country, and even among members of the religious leadership, are important because changes to the law must pass through them. Another important consideration is that Iran's hybrid legality has some impact on the procedural format of the cases, such that they can be compared and contrasted with legal systems in other parts of the world. The Islamico-civil legal system, as I have elsewhere called it, is thus not altogether exotic and beyond the reach of Western analysts for scrutiny, precisely because it borrows its framework and indeed some of its laws from Western

INSIDE THE ISLAMIC REPUBLIC

legal systems, notably the French.⁷⁸ Hybrid legality also sets the stage for advocacy and change.

In codifying the laws that are said to be derived from Islamic principles, Iranians give a sort of intelligibility to these principles, but also fix and solidify the very jurisprudential doctrines that were intended to be fluid and accommodating. Before codification, the Islamic principles were historically flexible, constantly debated, and thus contingent and ever changing. The notion that a law cannot be changed because of the *Shari'a* is based on a rather short-sighted, politicized understanding of Islamic principles.

Legal scholars and activists on behalf of women are voicing their opinions through scholarship and public awareness campaigns, not only because of their increasing education and understanding of gender issues in the law, but also because of the role that the post-revolutionary state has assigned to women as signifiers of morality.

Iranian lawmakers have attempted to connect the gender discrimination in the legal system to Islamic principles, while noting the significant moral position Iranian women occupy in the post-revolutionary nation. The emphasis on women, however, also affords them agency to react to unfair treatment and unjust laws. This chapter may not have been uplifting, but the incremental changes (and even the challenges) discussed herein have materialized in large part due to gender activism and social movements that are deeply connected to the dramatic expansion in the negotiating power of Iranian women over the past three decades, and the direction of change is unlikely to shift.

ysis results: a review," *The Journal of Educational Research*, 99: 6, July/August, 2006, pp. 323–37.

4. WOMEN AND CRIMINAL LAW IN POST-KHOMEINI IRAN

1. I would like to express my gratitude to CIRS, especially Mehran Kamrava and Zahra Babar, for organizing the Working Group on Social Change in Post-Khomeini Iran, and to the colleagues who participated. The ideas for this chapter benefited from our insightful round-table discussions. I would also like to thank Mahmood Monshipouri for his editorial guidance. Finally, I gratefully acknowledge the support of The Fetzer Institute for funding the research for this project.
2. The decree was not legally binding, so a few judges did continue to issue the sentence, as in Ashtiani's case.
3. This statement was widely reported in the English language press. See, for instance, Ian Black, "Iranian media warned after paper calls Carla Bruni-Sarkozy a 'prostitute,'" *Guardian*, 31 Aug. 2010, <http://www.guardian.co.uk/world/2010/aug/31/carla-bruni-sarkozy-iranian-media>, last accessed 8 Dec. 2014).
4. Ibid.
5. "Iran: 'Confession,' Stoning Sentence a Mockery of Justice," Human Rights Watch, 10 Apr. 2010, <http://www.hrw.org/news/2010/08/13/iran-confession-stoning-sentence-mockery-justice>, last accessed 14 Dec. 2014. While the judiciary did not explain the grounds on which it dispensed with the stoning sentence, it did make clear that the prison sentence was issued for the charge of disrupting public order.
6. "Javad Larijani gives news of Sakineh Mohammadi's pardon," Radiozamaneh, 18 Mar. 2014, <http://www.radiozamaneh.com/130752>, last accessed 14 Dec. 2014.
7. Arzoo Osanloo, "The Measure of Mercy: Islamic Justice, Sovereign Power, and Human Rights in Iran," *Cultural Anthropology*, 21, 2006, pp. 570–602.
8. The 25 Oct. 2014 execution of Reyhaneh Jabbari ignited debates among activists outside of Iran as to the effects of international advocacy, especially in cases of retribution where the family of the victim is the ultimate decision-maker and not the state. Larijani placed the blame on the international "media blitz." See "Iran blames Western 'media blitz' for execution of Reyhaneh Jabbari," UN Watch, 31 Oct. 2014, <http://blog.unwatch.org/index.php/2014/10/31/iran-blames-western-for-execution-of-reyhaneh-jabbari/>, last accessed 4 Jan. 2015. For debates among activists, see Shadi Sadr, "Why did the international campaigns to save Reyhaneh fail?" BBC Persian Blogs, 4 Jan. 2015, http://www.bbc.co.uk/persian/blogs/2015/01/150104_144_nazeran_jabbari_reihaneh_execution, last accessed 4 Jan. 2015; Mina Ahadi, "Ms. Sadr, Would it not have been better that you maintained the grandiloquent silence in the case of the fate of Reyhaneh?" International Campaign Against Execution, 4 Jan. 2015, <http://notonemoreexecution.org/1393/10/6055/>, last accessed 4 Jan. 2015.

9. The lock on law-making and *Shari'a* interpretation claimed by the conservative factions has broad consequences for authority and social control, while limiting the possibilities for popular and political mobilization.
10. For instance, just after the revolution, virtuous women were asked to stay home to perform their primary roles as mothers and wives. During the war, virtuous women were called upon to enter into the public and private work sectors while the men participated in the front. Throughout the reform period, virtue also meant civic and political engagement.
11. I have explored the post-revolutionary amendments to the civil codes on marriage and family and compared them to the pre-revolutionary family law code. See Arzoo Osanloo, "Framing Rights: Women and Family Law in Pre- and Post-Revolutionary Iran," *New Middle Eastern Studies* 5(2015): 1–18.
12. Since 2007, I have been conducting a research project on the Islamic mandate of forgiveness (*bakhshesh*) in Iran's system of criminal sanctioning, where it is codified as forbearance (*gozash*). In annual research trips to Iran, lasting between one to four months, I have been conducting interviews, archival research, and participant-observation in numerous settings related to this topic. In particular reference to this chapter, in July of 2012, I conducted participant-observation in Tehran's Provincial Criminal Court. With the Court's permission, I sat in on criminal trials, interviewed various parties to cases, reviewed rulings, met with judges, and studied the provisions of the revised Penal Code with the Court's research committee.
13. Arzoo Osanloo, "Contesting governance: authority, protest, and rights talk in post-republican Iran," in Steven Heydemann and Reinoud Leenders, eds, *Comparative Authoritarianisms: Syria and Iran*, Stanford, CA: Stanford University Press 2012, pp. 127–42.
14. Valentine Moghadam, *Modernizing Women: Gender and Social Change in the Middle East*, Boulder, CO: Lynne Rienner, 1993, p. 59.
15. Mino Moallem, *Between Warrior Brother and Veiled Sister: Islamic Fundamentalism and the Politics of Patriarchy in Iran*, Berkeley, CA: University of California Press, 2005, p. 90.
16. From a speech given on 12 Mar. 1985. See *Sahifa-yi Nur*, Vol. 19, p. 120, cited in Ruhollah Khomeini, *The Position of Women from the Viewpoint of Imam Khomeini*, trans. Juliana Shaw and Behrooz Arezoo, Tehran: Institute for the Compilation and Publication of Imam Khomeini's Works, 2001, p. 14.
17. Constitution of the Islamic Republic of Iran 1979, rev. 1989.
18. Mohammad Tavana, "Three decades of Islamic criminal law legislation in Iran: legislative analysis with emphasis on the amendments of the 2013 Islamic penal code," *Electronic Journal of Islamic and Middle Eastern Law*, Vol. 2, 2014, pp. 24–38. This constituted a major undertaking that increased the number of provisions in the penal code by one-third.

19. Amin Banani, *The Modernization of Iran, 1921–1941*, Stanford: Stanford University Press, 1961; Husain Gholami, “The Islamisation of criminal justice and its developments in Iran,” *Tilburg Foreign Law Review*, 7, 1999, p. 213. The codification of *Shari’a* into a comprehensive state law began as early as 1905 and spanned many substantive areas of law.
20. Majid Mohammadi, *Judicial Reform and Reorganization in 20th Century Iran: State-Building, Modernization, and Islamicization*, New York: Routledge, 2008, p. 230.
21. Despite the apparent popular support suggested by a referendum, the bitter disputes that took place during the drafting of the constitution revealed vast differences in how coalition leaders understood this new system of governance.
22. Article 4 of the Constitution of the Islamic Republic (1979) established the Council of Guardians to determine whether legislative acts conformed to the *Shari’a*.
23. Gholami, “Islamisation of Criminal Justice in Iran,” p. 214.
24. In 1979, a separate Revolutionary Court was also created to prosecute people charged with violating the principles of the revolution, thus acting against the values of the Islamic Republic. Such crimes were tantamount to treason and included a wide range of offenses, including terrorism, inciting violence, blasphemy, insulting the leader of the Islamic Republic, and smuggling.
25. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*, New York: Cambridge University Press, 2005, p. 161.
26. Legislators also revised the codes of criminal procedure. Judges began to implement the new criminal procedures on 22 June 2015.
27. These are referred to as Article 612 cases, indicating the provision in the code that provides jurisdiction.
28. Peters, *Crime and Punishment in Islamic Law*, p. 163.
29. A note to Article 211 (1392) specifies acceptable sources of judge’s knowledge (including, expert opinions, site inspection, local investigation, witness statements, and reports by law enforcement officers) and further clarifies that judge’s knowledge cannot be derived from generic perception.
30. For a discussion on the theories behind *hudud* laws, see Wael Hallaq, *Shari’a: Theory, Practice, Transformations*, Cambridge, UK: Cambridge University Press, 2009, p. 311. Hallaq notes that the deterrent value of such crimes serves on a psychological level by becoming engrained in the mindset of potential offenders that their acts, even if not punished in this world, would leave them in “eternal Hellfire” in the next.
31. Article 167 of the Constitution of the Islamic Republic of Iran states:
The judge must endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he must deliver his judgment on the basis

of authoritative Islamic sources and authentic *fatwa*. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment.

32. The General Penal Code of 1926 was first amended in 1928 and saw a series of revisions up to 1973.
33. For an overview of women and criminal sanctioning from the pre-revolutionary to post-revolutionary period, see Maryam Hosseinkhah, "The execution of women in Iranian criminal law: an examination of the impact of gender on laws concerning capital punishment in the new Islamic penal code," Iran Human Rights Documentation Center, 7 May 2012, <http://www.iranhrdc.org/english/publications/legal-commentary/1000000102-the-execution-of-women-in-iranian-criminal-law.html>, last accessed 12 Dec. 2014.
34. Article 199, Iranian Penal Code (2012). For the punishment of flogging, the eye-witness testimony of two men and four women is sufficient. For punishments other than flogging, the testimony of three men and four women is needed.
35. Reza Ansari-Rad, "The conditions of proving the crime of *zina* are extremely difficult," *Zan*, 30 Nov. 1998 (9 Azar 1377), p. 9.
36. See, for instance, Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, Oxford, UK: Oneworld, 2008, p. 312. Kamali notes that the *hadith* that reference *rajm* do not prescribe it as a punishment to be carried out, but rather cite it as an example of a kind of practice carried out by Jewish law.
37. This final point seems to be the compromise reached by the Council of Guardians in the latest amendment to the penal code. See "In place of stoning, can we implement a different order?" Iranian Students' News Agency, 10 Apr. 2012 (22 Farvardin 1391), <http://www.isna.ir/fa/news/91012206145>, last accessed 17 Dec. 2014.
38. Amnesty International's report indicates that "no executions by stoning were known to have occurred but at least ten people remained under sentence of death by stoning." See "Annual Report: Iran 2013," Amnesty International, 23 May 2013, <http://www.amnestyusa.org/research/reports/annual-report-iran-2013>, last accessed 12 Dec. 2014. An earlier Amnesty report estimated that seventy-seven executions by stoning were known to have been carried out in Iran since the revolution, with eight since the 2002 memorandum by then-Head of the Judiciary, Ayatollah Shahroudi. The last stoning known to have taken place in Iran was in 2007. A number of defendants had their sentences commuted from stoning to hanging, while some are in legal limbo awaiting punishment. See "Iran's New Penal Code Retains the Punishment of Stoning," Justice for Iran, 18 May 2013, <http://justiceforiran.org/call-for-action/stoning-new-penal-code>, last accessed 12 Dec. 2014.
39. "Codifying repression: an assessment of Iran's new penal code," Human Rights Watch, Aug. 2012, <http://www.hrw.org/reports/2012/08/28/codifying-repression>, last accessed 12 Dec. 2014.

40. Note 3 of Article 132 specifies that the punishment for *zina* is “either” execution or stoning.
41. Mohammad Hossein Nayyeri, “The question of ‘stoning to death’ in the new penal code of the IRI,” Iran Human Rights Documentation Center, Feb. 2012, p. 4, <http://www.iranhrdc.org/english/publications/legal-commentary/1000000059-the-question-of-stoning-to-death-in-the-new-penal-code-of-the-iri.html>, last accessed 17 Dec. 2014.
42. Mohammad Mostafaei, “Crime of adultery and stoning punishment in Iran’s new criminal code; skills of defense in Hodud crimes,” Universal Tolerance Organization, 1 June 2013, <http://www.universaltolerance.org/en/what-we-do/articles/item/126-crime-of-adultery-and-stoning-punishment-in-iran-s-new-criminal-code>, last accessed 22 Dec. 2014).
43. In Article 224 of the new penal code, *zina* that carries with it the death penalty, but not by stoning, is defined as: incestuous intercourse, intercourse with a step-mother, intercourse between a non-Muslim man and a Muslim woman (in which case the non-Muslim man will be sentenced to death), and finally, forcible rape.
44. Mostafaei, “Crime of adultery and stoning punishment in Iran’s criminal code.”
45. Article 49, Islamic Penal Code (1996). Youth who were exempted from criminal responsibility were sent to “Correction and Rehabilitation Centers” charged with providing juvenile reform and discipline.
46. Note 1 to Article 49, Islamic Penal Code (1996).
47. The old penal code referred to Article 1210 of the Civil Codes to state that the age of maturity is nine lunar years for girls and fifteen for boys.
48. Criticisms for this age of maturity for criminal responsibility abound, as numerous other areas of civic life regard the age of maturity as eighteen, such as obtaining a driver’s license or passport.
49. Article 91, Iranian Penal Code (2012), author’s translation.
50. Personal interview, 15 July 2012.
51. Personal communication, 28 Sep. 2012.
52. Personal communication, 19 July 2012.
53. This section is updated and revised from a section of a previously published article. Arzoo Osanloo, “When Blood Has Spilled: Gender, Honor, and Compensation in Iranian Criminal Sanctioning,” *Political and Legal Anthropology Review*, 35, 2, 2012, pp. 307–25.
54. These were found in Articles 209 and 258 of the earlier (pre-2013) penal code.
55. Tavana, “Three Decades of Islamic Criminal Law Legislation in Iran,” p. 36. Tavana interestingly hints at the possibility of gender equality in compensation for murder. However, during my fieldwork in Tehran’s criminal court in 2014 and 2015, I confirmed that Article 551 does not apply to the *diya* that must be paid to account for gender imbalance in *qisas*. That is, when the family of the victim seeks to execute a man who killed a woman, that family must still pay one half of the *diya* in order to carry out the sentence.

56. Mashood A. Baderin, *International Human Rights and Islamic Law*, Oxford, UK: Oxford University Press, 2003, p. 83.
57. Peters, *Crime and Punishment in Islamic Law*, p. 7.
58. Mohammad E. Shams Nateri, "Formal and informal means of conflict resolution in murder cases in Iran," 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. 401–9.
59. *Holy Qur'an*, 2:178–9.
60. Baderin, *International Human Rights and Islamic Law*, p. 73.
61. Hamid Kusha, *The Sacred Law of Islam: A Case Study of Women's Treatment in the Islamic Republic of Iran's Criminal Justice System*, Aldershot, Hampshire, UK: Ashgate, 2002, p. 261.
62. Baber Johansen, "Contingency in a sacred law: legal and ethical norms in the Muslim fiqh," *Studies in Islamic Law and Society*, 7, Leiden: Brill, 1999, p. 206.
63. Cited in Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran*, Princeton, NJ: Princeton University Press, 1999, p. 61.
64. Ibid.
65. Although parliament has thus far lost the debate on gender parity in *diya*, in 2002, advocates were successful in passing a law that made an equal amount of *diya* payable to Muslims and Iran's recognized religious minorities, that is, Christians, Jews, and Zoroastrians.
66. "Islamic teacher responds to questions about difference of blood money and heritage between men & women," 31 Mar. 2013, <http://lenziran.com/2013/03/31/islamic-teacher-respond-to-questions-about-difference-of-blood-money-and-heritage-between-men-women/>, last accessed 6 Jan. 2015.
67. "Different *diya* between a man and a woman is not the basis for according privilege to a man," ISNA, 11 May 2013 (21 Ordibehesht 1392), <http://www.isna.ir/fa/news/92022113645>, last accessed 6 Jan. 2015).
68. "A man and a woman's *diya* in bodily compensation will be remitted equally," ISNA, 15 May 2013 (25 Ordibehesht 1392), <http://www.isna.ir/fa/news/92022517172>, last accessed 6 Jan. 2015.
69. 2:178 and 179, and 5:45.
70. Reza Ansari-Rad, "*Hooqooq-e jazaae Islami va masalleh-ye qisas va diya ye zan*" (Islamic criminal law and the issue of retribution and compensation for women), *Zan*, 23 Sep. 1998 (1 Mehr 1377), p. 9. Months later, *Zan* published another article critical of the gender disparity in *diya*. The essay was complemented by a caricature depicting a would-be criminal conjuring up the image of half of a woman, since his punishment for assaulting her would only amount to half that of a man's. Reza Ansari-Rad, "*Diya va nakhsb-e zan dar jame'eh ye emrooz*" (Diya and the role of women in society today), *Zan*, 10 Feb 1999 (21 Bahman 1377), p. 5. Later, the

newspaper published another satirical cartoon depicting a burglar inside a couple's house. The cartoon depicts the husband pointing to his wife with the caption: "Her *diyeh* is half of mine." Soon after, state officials shut the paper down.

71. Cited in Tim Elliot, "Blood money: women take on hard-line Islam in a campaign for equal rights," *New Internationalist*, 1 Feb. 2004, <http://newint.org/columns/currents/2004/02/01/blood-money/>, last accessed 12 Dec. 2014.
72. Manal Lutfi, "The woman's mufti: interview with Grand Ayatollah Saanei," *Asharq-Al Awsat*, 6 Apr. 2007, <http://www.asharq-e.com/news.asp?section=3&cid=8554>, last accessed 12 Dec. 2014.
73. Nader Karami, "Grand Ayatollah endorses end to gender discrimination," Roozonline, 3 June 2007, <http://www.roozonline.com/english/news3/newsitem/article/grand-ayatollah-endorses-end-to-gender-discrimination.html>, last accessed 17 Dec. 2014.
74. Ibid.
75. As of Dec. 2015, the rate of *diya* was 165 million Iranian rials, plus an additional one-third for deaths that occur during a Muslim holy month. "The Rate of *Diya* for 1394 has been Announced," Hamshahri Online, 25 Mar. 2015, <http://www.hamshahrionline.ir/details/290575>, last accessed 12 Nov. 2015.
76. "Iran women to get equal 'blood money' in car crashes," Reuters, 27 May 2008, <http://in.reuters.com/article/2008/05/27/idINIndia-33787420080527>, last accessed 7 Jan. 2015.
77. "Girls of Shin Abad receive *diya* equal to that of men," Human Rights Activists News Agency, 29 Nov. 2014, <https://hra-news.org/fa/children/diye-2>, last accessed 4 Dec. 2014.
78. Osanloo, *Politics of Women's Rights*.

5. A REVOLUTION WITHIN TWO REVOLUTIONS: WOMEN AND LITERATURE IN CONTEMPORARY IRAN

1. "Khamenei: Forugh Farrokhzad's death was her saving grace," www.peykeiran.com/Content.aspx?ID=51403, last accessed 12 November 2015.
2. Forugh Farrokhzad, "Tanha Sedast Ke Mimanad" ("It is Only the Voice that Remains"), in *Iman Biyavarim beh Aghaz-e Fasl-e Sard (Let Us Believe in the Dawning of the Cold Season)*, Tehran: Morvarid, 1974, p. 86.
3. Simin Behbahani, "Gypsiesque (13)," in *A Cup of Sin: Selected Poems*, trans. Farzaneh Milani and Kaveh Safa, eds, Syracuse: Syracuse University Press, 1999, p. 75.
4. The Iranian government's tightening grip was not reserved only for writers and poets. Artists of all stripes, human rights activists, journalists, and film directors were subjected to a new wave of repression. For instance, Ja'far Panahi, a prize-winning, internationally acclaimed filmmaker and Muhammad Rasoulof, another filmmaker, were imprisoned. Narges Kalhor, a film director, and the daughter of a senior