

LAW AND WOMEN'S AGENCY IN POST-REVOLUTIONARY IRAN

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Who says that all the intellectual and economic transformations
of the present age are summed up in legal transformations?¹

I. INTRODUCTION

In 1979, a broad coalition of secular and religious Iranians overthrew
the regime of Shah Mohammad Reza Pahlavi.² His father, Reza Pahlavi,

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My thanks as well to Shirin Ahmad-Nia, Yeşim Arat, Attila Aşkar, Hossein Bashiriyeh, Maryam Gorji Broomall, Alfred Donnarumma, Haleh Esfandiari, Bernard Freamon, Shahla Haeri, Fred Halper, Abbas Gorji, Najafgholi Habibi, Nasser Hadian, Ramin Jahanbegloo, Jalaleddin Jalali, Ciğdem Kağıtcıbaşı, Sibel Kamışlı, Mehranguiz Kar, Azadeh Kian-Thiebaut, Elahi Kullaie, Catherine McAuliffe, Abolfazl Mehrabadi, Golnar Mehran, Amir Mehryar, Cordelia Miller, Bill Nelson, M.H. Panahi, Farzaneh Roudi, Hadi Semati, Jaleh Shadi-Talab, Zahra Shojai'i, Mete Soner, Abdulkarim Soroush, Sevinc Yegulalp, and Homa Zanjani. I have also received capable research and language assistance from Justin Arnold, W&L Law '05, Shauna Harrison, W&L Law '04, Ishaak Meeran, W&L Law '03, and Amir Sadeghy, W&L Law '04. I am grateful to librarians Sally Wiant and Linda Newell for their help in tracking down materials. All errors are my own.

Earlier versions of this Article were presented to faculty workshops at Washington & Lee University School of Law, the Koç University (Istanbul) Departments of Sociology/Psychology and International Relations, and Seton Hall University School of Law; to the Columbia University Seminar on Law and Politics and the 2003 Annual Meeting of the Law & Society Association; as well as the Conference on Women's Political Participation in Islamic Countries, jointly sponsored by the Islamic Republic of Iran's Office of Women's Affairs and Allomeh Tabatabai'i University (Tehran). I benefited from and am grateful for comments made by participants in those fora.

I note also that I write here as an outsider to Islam and to religion generally.

¹ 'ABDOLKARIM SOROUSH, *Islamic Revival and Reform: Theological Approaches, in REASON, FREEDOM & DEMOCRACY IN ISLAM: ESSENTIAL WRITINGS OF 'ABDOLKARIM SOROUSH* 26, 28 (Mahmoud Sadri & Ahmad Sadri eds. and trans., 2000). Soroush, who has studied and written on both Western and Islamic epistemology, is also an important political figure. His claim that there can be a democratic and pluralist Islam that contains no inherent political ideology is central to the debate on reform in the Islamic Republic of Iran ("IRI"). In this respect, Soroush may be called the leading post-revolutionary Iranian intellectual, since politicization of Islam was precisely the theoretical move of religious intellectuals of the revolutionary period, such as Ali Shari'ati. See *infra* note 199, at 49–51, 297–98. For more on Soroush, see *infra* text accompanying notes 346–357.

² See NIKKI KEDDIE, *ROOTS OF REVOLUTION* 110–12 (1981) (criticizing the modernization policies of the Shah); see generally SAID AMIR ARJOMAND, *THE TURBAN FOR*

had established a monarchy after a constitutional revolution lasting from 1905 to 1911 failed to bring stability to Persia. Reza Shah was both a modernizer and an autocrat. His modernization efforts succeeded in many ways, but his reforms were not popular. Mohammad Reza Shah was weaker but found a powerful ally in the United States, which encouraged his personal rule after nationalist Prime Minister Mohammad Mossadegh was overthrown in 1953 by a CIA-sponsored coup.³ Between 1953 and 1979, the monarchy was never free of the popular opposition that finally coalesced in the Iranian Revolution of 1979. The Shah fled Iran at the end of 1978, and after a good deal of instability and jockeying for position, the Islamist⁴ forces of Ayatollah Ruhollah Khomeini⁵ prevailed over other elements of the revolutionary coalition, secular and religious, liberal and leftist. The half-century of Pahlavi rule was succeeded by the Islamic Republic of Iran (“IRI”), led by Ayatollah Khomeini.

While the Revolution had mobilized virtually all of Iranian society against the Shah, its aftermath threatened the political, legal, and social situation of women, who had played a powerful part in that battle. In the

THE CROWN: THE ISLAMIC REVOLUTION IN IRAN (1988).

³ See generally STEPHEN KINZER, ALL THE SHAH’S MEN: AN AMERICAN COUP AND THE ROOTS OF MIDDLE EAST TERROR (2003).

⁴ The term “Islamist” has come to describe those who make use of Islam as a political ideology. See, e.g., EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST 136, 138 (Donna Lee Bowen & Evelyn A. Early eds., 2d ed. 2002). I use the term in that way throughout this Article.

⁵ As the most important *marja’-i taqlid* (highest “source of emulation” within the Shi’a religious community) at the time of the Revolution, Khomeini was respected as an authority whose decisions on questions of religion were conclusive for believers. His status as a revolutionary leader, however, suggests that his authority was also political. See Sanam Vakil, *Iran’s Fragile Fault Lines*, 121 POL’Y REV. ONLINE *1 (2003) (reviewing GENEIVE ABDO AND JONATHAN LYONS, ANSWERING ONLY TO GOD: FAITH AND FREEDOM IN TWENTY-FIRST-CENTURY IRAN (2004) (defining *marja’-i taqlid*)). HAMID ALGAR, ROOTS OF THE ISLAMIC REVOLUTION IN IRAN 22, 33, 78 (2001). Khomeini “has been followed in a far more comprehensive sense.” *Id.* at 78.

Most Iranians are Shi’a Muslims who believe that the prophet Mohammad, as well as his daughter Fatima and the Twelve Imams, or religious leaders descended from the Prophet, were infallibly guided, though not themselves divine. HEINZ HALM, SHI’A ISLAM: FROM RELIGION TO REVOLUTION 30–32 (Allison Brown trans., Markus Wiener Publishers, 1997) (1994). The Twelfth Imam vanished about 240 years after the death of the Prophet and is expected to return one day to establish a reign of universal peace and justice. *Id.* at 4, 28–29, 35–37.

Shi’a Muslims are a minority within Islam (most Muslims are Sunnis) and have developed the characteristics of a minority, including a self-reproducing leadership in the form of religious figures whose authority is independent of whatever political entity rules the Shi’a community at any particular moment. SHAHROUGH AKHAVI, RELIGION AND POLITICS IN CONTEMPORARY IRAN 10–12 (1980). At various times in the history of Persian Shi’ism, religious leadership has both abstained from political involvement and been deeply immersed in it. See generally Shahrough Akhavi, *Contending Discourses in Shi’i Law on the Doctrine of Wilayat al-Faqih*, 29 IRANIAN STUD. 229 (1996).

The character of this leadership has been variously understood as substitution, representation, or placeholder for the Twelfth Imam. *Id.* at 231–34, 236. Today, for example, Khomeini is generally referred to in Iran as Imam Khomeini, which carries at least the implication of his inclusion among the holiest figures of Shi’a Islam.

West at least, the threat came to be symbolized by the IRI's imposition, in the name of Islam, of *hejab*, or headcovering, on women appearing in public. Laws regarding marriage and divorce also shed their secular character and became based in religion, and other religious claims were made in respect to women's place in the family, in the workplace, and in politics. These claims were embodied in the laws of the new Islamic Republic. Many feared that the dominant discourse under the IRI would be extremely oppressive to women.⁶

A well-known Iranian feminist now living in the United States, Mahnaz Afkhami, minister for women's affairs under the deposed Shah, writes that, before the Iranian Revolution, "The law as the expression of the will of the state was indispensable to the securing of women's rights in Iran."⁷ This perspective on feminism puts the formal legal regime at the forefront of struggle for the advancement of women.⁸ For good or ill, the attitude of the state toward women's rights determines the condition of women. Afkhami's argument is a statist and formalist one that places responsibility for women's status on the posture of the state, expressed in its law, rather than on the women who live within that legal system.

It is easy to see how Afkhami comes to her position. In February 1979, only weeks after Khomeini's triumphant return from fifteen years of exile, his office made known his belief that the 1967 Family Protection Law ("FPL"), which governed marriage, divorce, and child custody, was non-

⁶ Women occupy diverse economic, social, political, and religious positions throughout the Muslim world. Even so, the Orientalist tendency to essentialize is perhaps nowhere more evident than in the widespread critique of "Muslim women as oppressed and Islam as their oppressor." PARVIN PAIDAR, *WOMEN AND THE POLITICAL PROCESS IN TWENTIETH-CENTURY IRAN* 5-6 (1995). While there has been diversity in Iranian discourse about women, that discourse, like others, is "unified broadly by being situated within a patriarchal framework." *Id.* at 30. *See also id.* at 22-23, 115-16.

⁷ Mahnaz Afkhami, *Women in Post-Revolutionary Iran: A Feminist Perspective*, in *IN THE EYE OF THE STORM: WOMEN IN POST-REVOLUTIONARY IRAN* 14 (Mahnaz Afkhami & Erika Friedl eds., 1994). The position of Minister of State for Women's Affairs was created by the Shah, though he later abolished it in a desperate move to pacify Islamist opposition a few months before his overthrow. Haleh Esfandiari, *The Politics of the "Women's Question" in the Islamic Republic, 1979-1999*, in *IRAN AT THE CROSSROADS*, 75, 79 (John L. Esposito & R. K. Ramazani eds., 2001).

⁸ Throughout this Article, I do not analyze women's experiences in Iran strictly from a rights-based perspective. My thinking is that an account of formal legal rights cannot fully capture the lived experience of women nor their position within Iranian society. Instead of speaking of women's formalized rights under the IRI, I examine what I call the "advancement of women," paying special attention to indicators of women's status such as their control of reproductive life, access to education, equality in labor, pension, and criminal legislation, protection against harassment and violence, and women's role in the so-called public sphere, whether in the labor market or in political action. *See, e.g.*, LAURIE BRAND, *WOMEN, THE STATE AND POLITICAL LIBERALIZATION: MIDDLE EASTERN AND NORTH AFRICAN EXPERIENCES* 4 (1998). The focus is on whether women can both contribute to, and benefit from, economic, social, cultural, and political development. *See THE SECTION FOR WOMEN AND GENDER EQUALITY OF THE BUREAU OF STRATEGIC PLANNING, UNESCO, UNESCO'S GENDER MAINSTREAMING IMPLEMENTATION FRAMEWORK* (2003), available at <http://unesdoc.unesco.org/images/0013/001318/131854e.pdf> (last visited Nov. 9, 2004).

Islamic.⁹ It was subsequently announced that *shari'a* (divine law) would be reinstated in that area, in courts presided over by religious judges.¹⁰ All divorces granted under the FPL were to be considered void, and remarried women and those who had knowingly married them would be considered adulterers.¹¹

The FPL had made divorce easier for women to obtain, given them the possibility of getting custody of children upon divorce, and made family courts civil rather than religious. Thus, the consequences of abrogating the FPL appeared dire. Lost would be procedural restrictions on men's almost unlimited rights to divorce and to enter into up to four marriages concurrently, as well as women's relatively easy access to divorce. Nor would judicial discretion allow judges to continue replacing religious rules on divorce and child custody with more equitable judicial arrangements made in the best interests of children.¹² Now the divorced mother's custody of her sons need last only until their second birthday, and of her daughters, till their seventh; subsequently, custody was to be the father's, if he so desired.¹³

Other post-revolutionary changes were detrimental to women as well. Certain fields of study and of work, like construction, mining, and the judiciary, became closed to women, and married women were not eligible for state scholarships to study abroad unless accompanied by their husbands.¹⁴ Those who injured or killed women were subject to lesser financial penalties than those who committed the same crimes against men.¹⁵ Medieval punishments like stoning adulterers were reintroduced with the adoption of *shari'a*,¹⁶ the age of marriage was lowered to nine,¹⁷ and *mut'a*,

⁹ Ziba Mir-Hosseini, *Women and Politics in Post-Khomeini Iran: Divorce, Veiling and Emerging Feminist Voices*, in *WOMEN AND POLITICS IN THE THIRD WORLD* 142, 145 (Haleh Afshar ed., 1996); PAIDAR, *supra* note 6, at 231–32.

¹⁰ Mir-Hosseini, *supra* note 9; PAIDAR, *supra* note 6, at 366 (defining “*shari'a*”). The *Majles* (the Iranian parliament) never formally repealed the FPL.

¹¹ ZIBA MIR-HOSSEINI, *MARRIAGE ON TRIAL: A STUDY OF ISLAMIC FAMILY LAW* 209–10 n.2 (1993). According to Mir-Hosseini, courts never carried out this harsh provision.

¹² Mir-Hosseini, *supra* note 9, at 145–46, 151; HOMA HOODFAR, *THE WOMEN'S MOVEMENT IN IRAN: WOMEN AT THE CROSSROADS OF SECULARIZATION AND ISLAMIZATION* 13 (Women Living Under Muslim Laws, The Women's Movement Series No. 1, 1999).

¹³ Esfandiari, *supra* note 7, at 80.

¹⁴ PARVIN PAIDAR, *THE GENDER OF DEMOCRACY: THE ENCOUNTER BETWEEN REFORMISM AND FEMINISM IN CONTEMPORARY IRAN* 13 (UNRISD: Democracy, Governance and Human Rights, Programme Paper Number 6 (2001)) [hereinafter PAIDAR, *GENDER OF DEMOCRACY*], available at [http://www.unrisd.org/80256B3C005BCCF9/\(httpPublications\)/A9172CAAB13EA61480256B5E00395FFD?OpenDocument](http://www.unrisd.org/80256B3C005BCCF9/(httpPublications)/A9172CAAB13EA61480256B5E00395FFD?OpenDocument) (last visited Nov. 9, 2004); PAIDAR, *supra* note 6, at 319–20, 325.

¹⁵ SHIRIN EBADY, *HISTORY AND DOCUMENTATION OF HUMAN RIGHTS IN IRAN* 65–66, 68 (Persian Studies Series, No. 18, Nazila Fathi trans., 2000). Note that the author's name is usually spelled Shirin Ebadi. See *infra* text accompanying note 46.

¹⁶ In 1981, interpretation of *shari'a* with respect to family issues was confided wholly to the clergy in the absence of legislation. Elham Gheytaichi, *Appendix: Chronology of Events Regarding Women in Iran Since the Revolution of 1979*, 67 *SOC. RES.* 439, 442 (2000). The penalty of stoning was recently “suspended” at the urging of the European Commission. N. Janardhan, *Suspension of Death by Stoning Boosts Reformists*, Inter Press Service,

or temporary marriage, was reinstated, though many considered it no better than legalized prostitution.¹⁸ Official pro-natalism led to the suspension of state-run family planning programs.¹⁹ Women who objected to *hejab* were removed from their positions on courts,²⁰ as well as their jobs in government service²¹ and private offices.²² In myriad ways, in short, the IRI state turned its back on the advancement of women as a goal and made life more difficult for those who were committed to it.²³ Under a statist

Jan. 11, 2003, available at LEXIS, Nexis Library, INPRES File. The suspension is no doubt linked to the IRI's interest in increasing trade with the European Union. *See id.*

¹⁷ Nine is the Qu'ranic age of puberty. JOHN L. ESPOSITO & NATANA J. DELONG-BAS, *WOMEN IN MUSLIM FAMILY LAW* 15 (2d ed. 2001). If puberty has not occurred, commencement of the marriage is delayed. JAMILA HUSSAIN, *ISLAM: ITS LAW AND SOCIETY* 79 (2d ed. 2004); ESPOSITO & DELONG-BAS, *supra*, at 99. The Iranian Civil Code was amended in 1991 to provide that marriage may not occur until puberty. QANUN-I MADANI [Civil Code] art. 1041 (Iran), translated in THE CIVIL CODE OF IRAN, 152 (M. A. R. Taleghany trans., 1995) [hereinafter Civil Code], available at <http://www.alaviandassociates.com/documents/civilcode.pdf> (last visited Nov. 9, 2004).

Subsequently, the *Majles* adopted legislation to raise the age of marriage for women to fifteen. ESPOSITO & DELONG-BAS, *supra*, at 99. This was later modified to the age of puberty, which is understood in Iran as thirteen. HOODFAR, *supra* note 12, at 15 n.25. Despite the law, the mean age of first marriage during the period of 1976 to 1996 increased from 19.7 to 22.4 years for women and from 24.1 to 25.6 for men. Mohammadreza Hojat and Amir H. Mehryar, *Iran*, in INTERNATIONAL ENCYCLOPEDIA OF MARRIAGE AND FAMILY 948, 950 (James J. Ponzetti, Jr. ed., 2d ed. 2003). In another paper, Mehryar et al. found that "the average age of first marriage of both men and women has gone up by more than two years [since 1986] . . . despite deliberate government policy to remove legal barriers to early marriage and to promote early and universal marriage as basic Islamic values." A. H. MEHRYAR ET AL., INST. FOR RESEARCH ON PLANNING & DEV., MINISTRY OF HEALTH & MED. EDUC., TEHRAN, IRAN, IRANIAN MIRACLE: HOW TO RAISE CONTRACEPTIVE PREVALENCE RATE TO ABOVE 70% AND CUT TFR BY TWO-THIRDS IN LESS THAN A DECADE? 37 (paper presented at Int'l Union for the Sci. Study Of Pop. Conference in Salvador de Bahia, Braz., Aug. 18–24, 2001) [hereinafter MEHRYAR ET AL., IRANIAN MIRACLE], available at http://www.iussp.org/Brazil2001/s20/S20_02_Mehryar.pdf (last visited Nov. 9, 2004).

¹⁸ See Shahla Haeri, *Temporary Marriage: An Islamic Discourse on Female Sexuality in Iran*, in IN THE EYE OF THE STORM, *supra* note 7, at 105, 110–11.

¹⁹ MEHRYAR ET AL., IRANIAN MIRACLE, *supra* note 17, at 1, 6–11.

²⁰ See, e.g., Interview by Azadeh Kian-Thiebaut with Shirin Ebadi, Paris, Fr. (Mar. 1995), quoted in Azadeh Kian-Thiebaut, *From Islamization to the Individualization of Women in Post-Revolutionary Iran*, in WOMEN, RELIGION AND CULTURE IN IRAN 127, 133–34 (Sarah Ansari & Vanessa Martin eds., 2002). Ebadi, the 2003 Nobel Peace Prize laureate, and other women judges were removed from their judicial positions shortly after the Revolution. *Id.*; Interview with Nobel Laureate Shirin Ebadi, IRIN News (Oct. 21, 2003), available at http://www.irinnews.org/report.asp?ReportID=37340&SelectRegion=Central_Asia&SelectCountry=IRAN (last visited Nov. 9, 2004).

²¹ Interview with Dr. Jaleh Shadi-Talab, Director, Women's Studies Center, Tehran University, Tehran, Iran (Oct. 26, 2002) [hereinafter Shadi-Talab Interview].

²² Mehranguiz Kar, *Women's Strategies in Iran from the 1979 Revolution to 1999*, in GLOBALIZATION, GENDER AND RELIGION: THE POLITICS OF WOMEN'S RIGHTS IN CATHOLIC AND MUSLIM CONTEXTS 199–200 n.4 (Jane Bayes & Nayereh Tohidi eds., 2001); HOODFAR, *supra* note 12, at 16.

²³ For an overview of the limitations and restraints imposed on women, and the formalized discrimination against them in the first post-revolutionary decade, see generally Haleh Afshar, *Women, State and Ideology in Iran*, WOMEN LIVING UNDER MUSLIM LAWS, DOSSIER No. 3, June–July 1988, at 42, available at <http://www.wluml.org/english/pubs/pdf/dossier3/D3-10-Iran.pdf> (last visited Nov. 9, 2004).

Afshar provides an interesting example of the development of a nuanced picture of

formalist view, one would expect to find that now, almost a quarter-century later, the condition of women had declined, and that the gender-related statistics used to assess women's situation would support that conclusion.

But that is not the case in Iran. Data on literacy, education, labor force participation, health, and fertility from the United Nations and World Bank all demonstrate trends *favorable* to Iranian women. Indeed, in these crucial areas conditions appear to be better for women than under the Shah, whose FPL was only one of a number of measures introduced by a government that officially sponsored feminism.²⁴ A quick review of some relevant data is useful here.

With respect to literacy, illiterates as a percentage of Iranian women aged fifteen to twenty-four have declined from over one-third in 1980 to less than one-tenth in 2000.²⁵ Over the same period, the illiteracy rate for the entire population of adult women has been cut in half, from about 60% to about 30%.²⁶ As for education, the number of women in secondary school as a percentage of the eligible age group (the only participation in education figure for which data from both 1980 and 2000 is readily available) more than doubled from about 30% to almost 80%.²⁷ (The corresponding figure for young men also increased but not as dramatically.)²⁸ As of 1999, for every 100 boys in primary school, 96 girls were enrolled, indicating that boys and girls were almost equally likely to be learning basic literacy and numeracy skills.²⁹ In 2000, half of all Iranian university students were women,³⁰ as were 60% of entering students,³¹ who were selected on the basis of a difficult nationwide exam.

women in Iran. Writing in a fiery and oppositional tone in the eighties, she has since written of the diversity of women's positions in the IRI and the consequences of their attempts to improve their situations. HALEH AFSHAR, *ISLAM AND FEMINISMS: AN IRANIAN CASE-STUDY* (1998).

A number of women scholars are currently writing about Iran in a manner that interrogates the popular view that post-revolutionary constraints on Iranian women remain unchanged, among them Homa Hoodfar in Canada, Azadeh Kian-Thiebaut in France, Nikki Keddie in the United States, and Ziba Mir-Hosseini in England.

²⁴ The Women's Organization of Iran, a sponsor of the FPL, was created by the Shah's government. Its president was his sister, Princess Ashraf Pahlavi; Mahnaz Afkhami was secretary-general. PAIDAR, *supra* note 6, at 149–50.

²⁵ World Bank, *GenderStats: Capabilities and Human Capital—Iran, Islamic Rep.* [hereinafter *Capabilities/Iran*], <http://genderstats.worldbank.org/genderstats/genderRpt.asp?rpt=capability&cty=IRN,Iran,%20Islamic%20Rep.&hm=home2> (detailing data in Iran and the Middle East and North African region) (last visited Nov. 9, 2004).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Males in school as a percentage of the eligible group went from 52% in 1980 to 85% in 2000. *Id.*

²⁹ United Nations Development Program, *Human Development Report 2001, Iran, Islamic Rep.*, available at http://www.undp.org/hdr2001/indicator/cty_f_IRN.html (last visited Nov. 9, 2004). Gender parity in literacy is considered by UNESCO to be “a significant indicator of the empowerment of women in society.” THE SECTION FOR WOMEN AND GENDER EQUALITY OF THE BUREAU OF STRATEGIC PLANNING, *supra* note 8, at 18.

³⁰ Azadeh Kian-Thiebaut, *Women and the Making of Civil Society, in TWENTY YEARS OF ISLAMIC REVOLUTION: POLITICAL AND SOCIAL TRANSITION IN IRAN SINCE 1979*, at 63

Women now make up 27% of the Iranian labor force, up from 20% in 1980.³² According to a study published by the University of North Carolina Population Studies and Research Center for Asia and the Pacific, the percentage of all Iranian women who are economically active has more than doubled from 6.1% in 1986 to 13.7% in 2000.³³ In terms of health, life expectancy went up by eleven years between 1980 and 2000 for both Iranian men and women.³⁴ With respect to family planning, "levels of childbearing have declined faster than in any other country," going from 5.6 births per woman in 1985 to 2.0 in 2000,³⁵ a drop accomplished by a voluntary, but government-sponsored, birth control program.³⁶

The fact that these improvements have occurred within an Islamic legal regime suggests that formal legal status may not be the key factor determining women's well-being, contrary to the statist/formalist argument of Afkhami. At least, it appears that the existence of an Islamic legal regime does not fully account for women's progress or lack of it. If that is so, what alternate explanation can we offer?

This Article suggests that it is the action and agency of Iranian women, sometimes acting together with men, but mobilizing specifically and consciously as women, that may be a crucial factor accounting for the current favorable trends in their status. Though post-revolutionary Iran presents a context in which religious law historically unfavorable to them prevails, women have successfully made claims upon the state for public goods, including education and health care. Those claims are based upon women's support for the Islamic Republic that they helped establish in the revolutionary period, and upon the crucial role that gender has played in the ideology of the existing state and its founding myth. The IRI, committed though it was to a legal regime with a "pronounced patriarchal

(Eric Hooglund ed., 2002).

³¹ Jaleh Shadi, *Officials Concerned About Controversy Over Women's Employment and Housewifery*, ZANAN, July 2001, No. 77, available at [http://www.netiran.com/?fn=artd\(816\)](http://www.netiran.com/?fn=artd(816)) (last visited Nov. 9, 2004).

³² See World Bank, *GenderStats: Opportunity—Iran, Islamic Rep.*, available at <http://genderstats.worldbank.org/genderstats/genderRpt.asp?rpt=opportunity&cty=IRN,Iran,%20Islamic%20Rep.&hm=home2> (last visited Nov. 9, 2004).

³³ AMIR MEHRYAR ET AL., WOMEN'S EDUCATION AND LABOR FORCE PARTICIPATION AND FERTILITY DECLINE IN IRAN 8 (2002).

³⁴ Capabilities/Iran, *supra* note 25. Life expectancy for females born in 2000 was 70, for males 68, up from 59.2 and 58.5, respectively, in 1986, according to Dr. Hamid Sadeghipour of Tehran University School of Medicine. Alvin Powell, *Iranian Primary Care Produces Big Results*, HARV. GAZETTE, Jan. 21, 2003, available at <http://www.hno.harvard.edu/gazette/2003/01.23/07-iran.html> (last visited Nov. 9, 2004).

³⁵ FARZANEH ROUDI-FAHIMI, POPULATION REFERENCE BUREAU, IRAN'S FAMILY PLANNING PROGRAM: RESPONDING TO A NATION'S NEEDS 1 (2002), at http://www.prb.org/pdf/IransFamPlanProg_Eng.pdf (last visited Nov. 9, 2004).

³⁶ *Id.* at 3. Abortion is legal to save the life of the mother, but the husband's consent is required. Interview with Dr. Amir Mehryar, Director, Institute for Research on Planning and Development, in Tehran, Iran (Oct. 23, 2002). Dr. Mehryar said he knew of no cases where consent had been refused.

bias . . . [considered] to be immutable,"³⁷ nonetheless had to rely upon the active support of women for its creation and continued legitimacy. Thus, despite adopting a variety of retrograde gender policies, the post-revolutionary government also encouraged women to be politically active and in return was required to respond to the demands that women's activism produced.

The activity of women undertaken in an Islamic context has in effect created an Islamic feminism. Though use of that phrase is controversial,³⁸ it is hard to deny that many Iranian women have acted collectively in ways that have enhanced their lives, status, and potential. While their agitation for change has remained largely within acceptable religious bounds, their collective action has expanded those gendered boundaries.

My focus on Iranian women's agency and effectiveness in bringing about positive change since the Revolution is not meant to suggest that the situation for women in Iran is unproblematic. Of course, there continue to be retrogressive elements within the current regime, and the patriarchal framework of Iranian society has not been dismantled. The IRI has not acceded to the Convention on the Elimination of Discrimination against Women ("CEDAW").³⁹ A variety of forms of gender discrimination remain legal in the IRI, including differential valuation of the lives of men and women in criminal cases,⁴⁰ different weight attributed to the testimony of men and women,⁴¹ different punishment for sexual crimes,⁴² different inheritance rights,⁴³ and different rights within marriage and at the termination of marriage.⁴⁴ Despite these many challenges, often it is Iranian women who bring these problems to the forefront of public debate and successfully mobilize for change.⁴⁵

³⁷ ZIBA MIR-HOSSEINI, *ISLAM AND GENDER: THE RELIGIOUS DEBATE IN CONTEMPORARY IRAN* 23 (I. B. Tauris 2000) (1999).

³⁸ Compare Shahrzad Mojab, *The Politics of Theorizing 'Islamic Feminism': Implications for International Feminist Movements*, WOMEN LIVING UNDER MUSLIM LAWS DOSSIER NO. 23/24, July 2001, at 64, 71, <http://www.wluml.org/english/pubs/pdf/dossier23-24/D23-24.pdf> (last visited Nov. 9, 2004) (describing the existence of an "Islamic feminist consciousness" as "questionable"), with Valentine Moghadam, *Islamic Feminism and Its Discontents: Toward a Resolution of the Debate*, 27 SIGNS 1135, 1165 (2002) (concluding that "if feminists should be defined by their praxis rather than by a strict ideology, and if a feminist politics is shaped by its specific historical, political and cultural contexts, then it should be possible to identify Islamic feminism as one feminism among many").

³⁹ Iran, Somalia, Afghanistan, and the United States, *inter alia*, have refused to accede to this international treaty. Barbara Boxer, *CEDAW: Ensuring the Rights of Women in Afghanistan and Beyond*, HUM. RTS. MAG., Summer 2002 (arguing that the United States Senate should ratify CEDAW in order to bring new attention to the treaty and encourage other remaining countries to ratify), available at <http://www.abanet.org/irrr/hr/summer02/boxer.html> (last visited Nov. 9, 2004).

⁴⁰ EBADY, *supra* note 15, at 68.

⁴¹ *Id.* at 90.

⁴² *Id.* at 72–74.

⁴³ *Id.* at 121–22.

⁴⁴ See *infra* text accompanying notes 47–71.

⁴⁵ In this respect, the women's press has been particularly effective, attacking practices like male custody rights over children, polygamy, and inequitable division of property on divorce, and arguing for alternative understandings of religious prescriptions that seem to

These forms of sex discrimination are often justified as stemming from *Shari'a*; yet Shirin Ebadi, the Iranian human rights lawyer who won the Nobel Peace Prize in 2003, maintains that "[t]here is no contradiction between an Islamic Republic, Islam and human rights."⁴⁶ From Ebadi's point of view, a progressive interpretation of Islamic law is compatible with democracy and women's advancement, and a popular movement can achieve it.

Shari'a, the foundation of the IRI's legal regime, has been negotiated, modified, procedurally adapted, and legislatively changed in respect to women in recent years. I use the law of marriage and divorce as one example of that process. First, I discuss the post-revolutionary treatment of marriage at some length in Part I. I examine the formal changes that took place in the area of family law after the Revolution when *Shari'a* became the law of the state. This was followed by the surprising subversion of its formal doctrine in regards to women's status, as much of women's experiences in the area of family law remained unchanged in practice. The subversion of the conservative interpretation of *Shari'a* occurred first through the informal retention of the pre-revolutionary law of marriage and divorce, which carved out more expansive rights for women, and then through the formal re-codification of those pre-revolutionary standards.

Subsequent Parts discuss why this occurred and what it reveals about the agency of women in Iran. In Part II, I begin with an examination of the situation of women before and during the Revolution. In Part III, I consider the impact of the politics of the revolutionary period on the post-revolutionary legal regime, paying particular attention to the crucial roles that women played in the Revolution. I argue that Iranian women were able to build upon the political agency they had acquired during those tumultuous revolutionary times to reorient the IRI's understanding of *Shari'a* in respect to marriage and family, as well as other matters, to the benefit of women. I conclude that Part with a discussion of veiling, the best-known aspect of the IRI's gender policies, and discuss the compli-

support them.

For example, throughout the 1980s, the publication *Zan-i Ruz* [*Today's Woman*] carried headlines like: *With Polygamy, No One Adheres to Islamic Law*, ZAN-I RUZ, July 14, 1984, at 8; *Women Have Grievances with the Lack of Enforcement of the Orders of Family Courts, but We Don't Have Adequate Laws in This Regard*, ZAN-I RUZ, Dec. 2, 1989, at 20 (discussing issues of custody and support); *Family Conflict Is the Primary Cause of Suicide*, ZAN-I RUZ, June 4, 1989, at 5 (addressing the topic of women's suicide); and *A Wife Who Has Worked Hard in My House for Years Is a Partner in My Pension/Benefits*, ZAN-I RUZ, July 18, 1989, at 6.

⁴⁶ Marie Valla, *I Want to Die in My Country*, MSNBC.COM, Oct. 12, 2003, (Interview with Shirin Ebadi, Oct. 14, 2003), available at <http://msnbc.msn.com/id/3158223>. (last visited Nov. 9, 2004). Ebadi expands upon this theme and advocates for all human rights to be put into practice for every person irrespective of race, gender, faith, nationality, or social status. Shirin Ebadi, Nobel Lecture (Dec. 10, 2003), available at <http://nobelprize.org/peace/laureates/2003/ebadi-lecture-e.html> (last visited Nov. 9, 2004).

cated ways in which that issue has come both to symbolize and also impact women's status. In Part IV, I examine the phenomenon of "Islamic feminism" and the attempts to reconceive a religious jurisprudence that eliminates misogynistic tendencies. I conclude that *Shari'a* law is open to reinterpretation through a process of political and social negotiation within its framework, and that Iranian women have been forceful agents of that reinterpretation.

II. THE IRANIAN REVOLUTION AND THE LAW OF MARRIAGE AND DIVORCE

The family is "the fundamental unit of Islamic society."⁴⁷ Within the family context, women have been disadvantaged by *Shari'a*, which permits the husband unilateral divorce,⁴⁸ as well as polygyny,⁴⁹ and, within the jurisprudence of Shi'a Islam that governs Iran, temporary marriage.⁵⁰ Marriage is required of everyone physically and financially suited to it.⁵¹ While marriage is a religious obligation, it amounts to a private and voluntary contract, in which the woman offers her sexual and reproductive capacity, as well as her obedience and companionship, in return for the man's support.⁵²

Marriage is a contract requiring *ijab*, offer; *kabul*, acceptance; and *mahr*, consideration in the form of a nuptial gift.⁵³ The offer is made by or on behalf of the woman,⁵⁴ the man accepts and is then responsible for consideration in the form of dower, which guarantees the woman support in case he dies or divorces her.⁵⁵ The duties and rights of the parties are not the same. The husband is the head of the household,⁵⁶ has the entire

⁴⁷ QANUN-I ASASI [CONSTITUTION] THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN, art. 10 (Iran), translated in 9 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 21 (Albert P. Blaustein & Gisbert H. Flanz eds., 1992) [hereinafter CONSTITUTIONS OF THE WORLD], available at <http://www.webiran.com/iranconst.htm> (last visited Nov. 9, 2004).

⁴⁸ MIR-HOSSEINI, *supra* note 11, at 36–38. Shi'a regulation of *talaq*, men's right to divorce at will, is somewhat more strict than that of the Sunni branch of Islam in its procedural aspects, *id.*; MOOJAN MOMEN, AN INTRODUCTION TO SHI'I ISLAM 183 (1985), but both allow men to divorce their wives unilaterally for any cause or no cause.

⁴⁹ MIR-HOSSEINI, *supra* note 11, at 35.

⁵⁰ *Id.* at 164–65. A man can have as many as four permanent wives and any number of temporary marriages. *Id.* at 34; Ashfar, *supra* note 23, at 45.

⁵¹ ESPOSITO & DELONG-BAS, *supra* note 17, at 14.

⁵² MIR-HOSSEINI, *supra* note 11, at 35–36.

⁵³ HUSSAIN, *supra* note 17, at 83. The consideration need not necessarily be money, though that is traditionally the form of *mahr*. *Id.* at 82–83.

⁵⁴ A woman's first marriage requires her father or paternal grandfather's permission, unless it is unjustifiably withheld or impossible to obtain in which case she may obtain permission from the court. Civil Code arts. 1043–44 (Iran). Consent of the marrying parties is a condition of marriage. *Id.* art. 1070.

⁵⁵ Ziba Mir-Hosseini, *Tamkin: Stories from a Family Court in Iran*, in EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST 136, 138 (Donna Lee Bowen & Evelyn A. Early eds., 2d ed. 2002).

⁵⁶ Civil Code art. 1105.

duty of maintaining his wife⁵⁷ and children,⁵⁸ and providing their domicile.⁵⁹ The husband had the right to all property of the marriage under *shari'a*, but this right has been modified by statute; an Iranian wife may now be entitled to up to one half of the income of the marriage upon divorce.⁶⁰ She has the duty of obedience, *tamkin*, and, if she obeys her husband, the right to be maintained, *nafaaqa*.⁶¹ She has no duty to contribute funds to the marriage or to provide housework or childcare. If she does work outside the home, he must approve of her choice of occupation.⁶²

Her rights to her own property are unaffected by the contract,⁶³ except that it gives her the right to the *mahr*,⁶⁴ the consideration he gave for her performance of the contract. In practice, this sum, though owed, is not often paid at the inception of the marriage. It can be demanded by the woman if the marriage ends on account of the husband's death, his exercise of his right of divorce without cause, or her initiation of divorce for cause.⁶⁵ Aside from this payment however, the wife has no entitlement to alimony or support when the marriage ends, though the husband continues to have the responsibility to support his children, since he remains their guardian even if she has physical custody.⁶⁶ He is entitled to physical custody of the children, boys at two, girls at seven,⁶⁷ though she may have it if the children's health or morals are endangered by putting or leaving them in his custody.⁶⁸

A husband has the power to be a party to up to three other such marriage contracts simultaneously, and so can be a polygynous spouse; he also has the power, known as *talaq*, of repudiating this contract unilaterally.⁶⁹ If he enters into another such contract during the marriage, or if he leaves

⁵⁷ *Id.* art. 1106.

⁵⁸ *Id.* art. 1199.

⁵⁹ *Id.* art. 1107. The husband's domicile is the wife's, unless she has his or the court's permission for an alternative domicile. *Id.* arts. 1005, 1114–15.

⁶⁰ In marriages occurring after 1982, the year when post-revolutionary marriage contracts were issued, the marriage contract contains a stipulation to which the parties consent by signing. This stipulation requires the husband to pay his wife, upon divorce, up to half of the wealth he has acquired during that marriage, provided that the divorce has not been initiated or caused by any fault of the wife. Mir-Hosseini, *supra* note 11, at 57, 210 n.5. Although this stipulation is now printed in every marriage contract, it is not valid unless it bears the signatures of both parties. Both parties retain the right to refrain from signing anything they find unacceptable. *Id.* at 58.

⁶¹ Civil Code art. 1106–08; Mir-Hosseini, *supra* note 55, at 137.

⁶² Civil Code art. 1117.

⁶³ *Id.* art. 1118.

⁶⁴ *Id.* art. 1082.

⁶⁵ HUSSAIN, *supra* note 17, at 82. If she predeceases him, her heirs are entitled to her *mahr*. ESPOSITO & DELONG-BAS, *supra* note 17, at 24. Since her husband is an heir, his *mahr* debt may be reduced by a quarter to a half, depending on whether there are any children. *See id.* at 39.

⁶⁶ HUSSAIN, *supra* note 17, at 94–96.

⁶⁷ Civil Code art. 1169. The right of visitation is guaranteed to the noncustodial parent. *Id.* art. 1174.

⁶⁸ *Id.* art. 1173.

⁶⁹ *Id.* art. 1133; HUSSAIN, *supra* note 17, at 101–02.

her, she continues to have the right to support, and may even have the right to a higher level of maintenance, should he provide it to another wife. But she has no analogous power to enter into other such marriage contracts, nor can she repudiate this one unilaterally, though she may be granted a divorce if he is insane, impotent, or absent.⁷⁰ She may also get divorced with his consent; this is known as *khul'* and requires her to forfeit all or part of her dower.⁷¹ The rights and duties of the marital parties thus are neither equal nor, on the whole, reciprocal.

After the Revolution, as I have noted, one of the first promises of the new government was the reinstatement of *shari'a* in respect to the law of marriage and divorce. Revolutionary adherence to *shari'a* in respect to dissolution of marriage and its consequences changed the law in a manner negative for women of all classes, including those most supportive of the post-revolutionary regime. But at the same time, the constitution of the new Islamic Republic pledged to protect mothers and to preserve families.⁷² This immediately created a conflict with *shari'a*, as Mir-Hosseini points out, for *shari'a* included men's unilateral right to divorce and their right to polygyny, both of which can threaten families. Those claims "subvert[ed] the very sanctity of the family as understood by women, thus going against the Constitution's promises."⁷³ This conflict would play a key role in drawing women into the discourse on their role in the new Iran.

While the Islamic Republic perceived the FPL as non-Islamic and dangerous to women, even many women who supported the IRI did not see it that way. Many were shocked to learn that they could be divorced without cause and without entitlement to further support or the custody of their children. Mir-Hosseini quotes women in the divorce courts in 1980 as saying, "Can he really divorce me if I don't agree? Is this what *shari'a* says?"⁷⁴ Such outcomes not only threatened to alienate believing women from the IRI, but created moral dilemmas for many of its supporters. Even religious judges were taken aback by results like the destitution of a faithful wife entirely dependent upon a man who had exercised his unilateral right to divorce her. Women's unhappiness with the new legal regime's lack of congruence with their domestic lives, and their complaints and resistance, led to amelioration of the law's consequence through procedural modifications. These procedural modifications in practice led to a

⁷⁰ HUSSAIN, *supra* note 17, at 108–09.

⁷¹ MIR-HOSSEINI, *supra* note 11, at 38–39. According to Mir-Hosseini, *khul'* today accounts for more than 70% of divorces granted in Tehran. Mir-Hosseini, *supra* note 9, at 149.

⁷² QAN. ASA., art. 21 §§ 2–3, translated in CONSTITUTIONS OF THE WORLD, *supra* note 47, at 25–26.

⁷³ Mir-Hosseini, *supra* note 9, at 150.

⁷⁴ Ziba Mir-Hosseini, Islamic Law and Feminism: Opening a Dialogue, Walter E. Edge Lecture at Princeton University 11 (Mar. 6, 2003) (text on file with the author), available at <http://www.princeton.edu/WebMedia/lectures/> (last visited Nov. 9, 2004).

relatively swift return to the FPL.⁷⁵ By 1992, the letter of the law was itself changed to duplicate the discarded FPL in text as well as in practice.⁷⁶

As Mir-Hosseini says, "marriage as constructed in law is very different from marriage as lived by ordinary people."⁷⁷ When the differences become too large, it is the legal regime that changes, for lived experience is unlikely to do so. The story of the change in divorce law is a complex one which Mir-Hosseini illustrates brilliantly in her film *Divorce Iranian Style*. As she says, "divorce laws had become the most visible yardstick, after the 'Islamic' dress code, for measuring women's emancipation or oppression in Islam,"⁷⁸ in a "legal system caught between religious tradition and modernity."⁷⁹

This awkward posture was apparent from the very start of the Revolution. Although Ayatollah Khomeini denounced the FPL as un-Islamic in February 1979, the law was not officially repealed, although new religious courts were soon created to hear divorce cases.⁸⁰ In September 1979, under the Special Civil Courts Act, the FPL's family courts were replaced by courts presided over by *shari'a*-trained judges.⁸¹ These courts were denominated "special" because they were free from rules of evidence and procedure, which in practice gave them the same freedom as FPL courts.⁸² This meant that they could be flexible in responding to the "marriage crisis" caused by the re-adoption of *shari'a*. And because no replacement legislation was passed, in practice the FPL remained the guide for answering questions not explicitly dealt with in *shari'a*.⁸³

Throughout the 1980s, comprehensive legislation regulating marriage and divorce remained elusive, with the FPL, administrative regulations, and appellate decisions acting as gap-fillers for procedural questions not addressed by *shari'a*.⁸⁴ Meanwhile, the religious establishment argued with female deputies in the *Majles*, the parliament, and the women's press over what was to be done about "the crisis of marriage."⁸⁵ Not until the reform of IRI family law in 1989 were the sources of law applying to marriage and divorce agreed upon, and legislation passed to rationalize them with existing rules and opinions.⁸⁶ Three years later, the law was

⁷⁵ Mir-Hosseini, *supra* note 9, at 144–47.

⁷⁶ *Id.* at 144.

⁷⁷ Ziba Mir-Hosseini, *Negotiating the Politics of Gender in Iran: An Ethnography of a Documentary*, in *THE NEW IRANIAN CINEMA* 167, 187 (Richard Tapper ed., 2002).

⁷⁸ *Id.* at 179.

⁷⁹ *Id.* at 196.

⁸⁰ See *supra* notes 9–10 and accompanying text.

⁸¹ Mir-Hosseini, *supra* note 9, at 145.

⁸² *Id.*

⁸³ See Mir-Hosseini, *supra* note 9, at 145–47.

⁸⁴ See PAIDAR, *supra* note 6, at 272–77.

⁸⁵ See *Id.* at 284.

⁸⁶ *Id.* at 276. These included the Civil Code of 1931, the FPL, and the Special Civil Courts Act of 1979, as well as other pieces of legislation. MARYAM POYA, *WOMEN, WORK & ISLAMISM*, at xvi (1999).

further amended to create a new family code similar to the FPL though actually going further in protecting women in respect to divorce and custody.⁸⁷ But in the intervening period, women's unhappiness with the introduction of a conservative interpretation of *shari'a* had led to its modification by judicial action in a manner that in effect reinstated the FPL, long before the *Majles* acted to do so legislatively.

For example, in the 1979 Special Civil Courts Act, the *Majles* decreed that a court-issued certificate of divorce would no longer be necessary for a marriage to end. In practice, however, divorce without a court certificate applied *only* if the divorce was based on the consent of both parties.⁸⁸ Thus *talaq*, unilateral divorce ostensibly governed only by the will of the male partner, was made to depend upon judicial intervention in the form of certification.⁸⁹ Moreover, judges in the Special Civil Courts required an arbitration process,⁹⁰ with one arbiter from each side, which could itself delay divorce and allow negotiation between the families of the pair. While a new law was not codified for a decade, the new courts were able to utilize the procedures of the old law when the procedures of the new law were unclear, or could be made to appear so. Hence, if the wife did not consent to the divorce, the state took control of the proceeding, limiting the husband's *shari'a*-based unilateral power of divorce. The husband had to go to court to get the divorce ratified and obtain a certificate to make the divorce legal. Once there, the court could make sure the wife got her *mahr* and that arrangements were in place for the husband to support his children if he did not take custody.

Mahr is due immediately upon marriage, but its payment is deferred at a wife's pleasure.⁹¹ Because the *mahr* is a substantial sum, its payment can sometimes be onerous for the husband.⁹² The demand for *mahr* gives the wife some protection against the inequities of the contract she has entered and to some extent levels the playing field if the marriage breaks down. If the husband wants a unilateral divorce and the wife is not at fault, she is entitled to the *mahr*; this can dissuade him from the divorce or push him to make arrangements for her post-divorce support. Since the

⁸⁷ Mir-Hosseini, *supra* note 9, at 144; POYA, *supra* note 86, at 100–01.

⁸⁸ MIR-HOSSEINI, *supra* note 11, at 55–56. Although court-issued certificates were still usually needed in practice, the requirement was not legislatively reinstated until 1989. PAIDAR, *supra* note 6, at 293.

⁸⁹ MIR-HOSSEINI, *supra* note 11, at 55–56.

⁹⁰ *Id.* at 61. This requirement is based upon the Qu'ranic injunction to mediate between estranged partners. *Id.* at 55–56, 144; PAIDAR, *supra* note 6, at 291.

⁹¹ HUSSAIN, *supra* note 17, at 82. If deferred till her death, the right to *mahr* passes to her heirs; if it has not been paid upon his death, she retains a claim upon his heirs. ESPOSITO & DELONG-BAS, *supra* note 17, at 24. If the *mahr* is not arranged at the time of marriage, it will be assessed by the court, since the marriage, based as it is upon a contract, is invalid if there is no consideration. See MIR-HOSSEINI, *supra* note 11, at 72; Civil Code arts. 1087, 1091.

⁹² Mir-Hosseini, *supra* note 55, at 138; see also MIR-HOSSEINI, *supra* note 11, at 76–77 (citing example from case study of difficulty of paying *mahr*).

husband is required to come to court even when seeking a unilateral divorce, judges can instruct women as to the *mahr* and its use at that time.

Alternatively, a wife can waive the *mahr* in order to get a divorce herself or to get custody of the children, for whose support the husband is responsible regardless of custody.⁹³ Mir-Hosseini explains that very often "the mere threat of a claim for *mahr* is sufficient to induce the husband's consent" to a divorce.⁹⁴ It is an exceptional circumstance in which an Iranian woman actually receives any portion of her *mahr*; however it remains a helpful bargaining tool for women throughout the negotiations of a divorce.⁹⁵

In addition to procedural moves by the Special Civil Courts that in effect amounted to substantive changes in *shari'a* law, there were other changes responsive to women's concerns. The religious marriage contract, in standard pre-printed form, was modified by the *Majles* in 1982 to include a provision delegating to the wife the husband's right to unilateral divorce should he take a second wife without the first wife's consent.⁹⁶ This was the proposal of Ayatollah Khomeini himself who responded to women's complaints about the new divorce law by finding within *shari'a* means to ameliorate its impact.⁹⁷ At the same time, the *Majles* also added a provision to the marriage contract that entitled the divorced wife to claim half of the wealth acquired during marriage so long as divorce was not her fault.⁹⁸ However, Mir-Hosseini's analysis of case studies from the 1980s failed to find any cases where the wife had in fact received any of the marital property.⁹⁹ Once again, this provision may have created a negotiating tool for women. This delegation provided security for newly married women, though it still left women married under the old contract without any recourse other than that which a court might provide in terms of assuring her adequate *nafaaqa* as a co-wife.¹⁰⁰

⁹³ HUSSAIN, *supra* note 17, at 94–96. The leveraging function of *mahr* is reflected in a Persian saying, "*Mahram halal junam azad*, 'Let my *mahr* go and my soul be free.'" Mir-Hosseini, *supra* note 55, at 149.

⁹⁴ MIR-HOSSEINI, *supra* note 11, at 81.

⁹⁵ *Id.* Mir-Hosseini explains that a large majority of Iranian divorces result in divorce by mutual consent, in which the wife forfeits her *mahr*. Women only tend to receive all or part of their *mahr* in exceptional circumstances, including where the husband is adamant on divorce or the wife is prepared to live in a state of marital limbo.

⁹⁶ MIR-HOSSEINI, *supra* note 11, at 56.

⁹⁷ THE POSITION OF WOMEN FROM THE VIEWPOINT OF IMAM KHOMEINI 58 (Juliana Shaw & Behrooz Arezoo eds. and trans., 2001) [hereinafter KHOMEINI], http://www.iranchamber.com/history/rkhomeini/books/women_position_khomeini.pdf (last visited Nov. 9, 2004).

⁹⁸ MIR-HOSSEINI, *supra* note 11, at 57. According to Asghar Ali Engineer, a well-known Muslim intellectual who argues for the reconciliation of Islam and modernity, such a provision for distribution of property after divorce "does not exist in any other Muslim country." Ali Asghar Engineer, *Women and Personal Law in Iran*, available at <http://ecumene.org./IIS/csss40.htm> (last visited Nov. 9, 2004).

⁹⁹ Mir-Hosseini, *supra* note 9, at 147.

¹⁰⁰ In 1992, the *Majles* created a right to wages for housework (*ujrat al-mithl*), a right which protected women regardless of when they had entered the marriage contract. *See id.*

In the early 1980s, the Islamic women's movement was also successful in bringing the issue of discrimination against women in the area of child custody to the fore.¹⁰¹ Under a strict interpretation of *shari'a*, the paternal family of a child had the right of custody over and above that of the mother.¹⁰² In 1985, however, the *Majles* gave the Special Civil Courts the power to shift physical custody (rather than legal custody) of children to the mother, as well as to punish the father or paternal family if they did not abide by such a custodial decision.¹⁰³

Taken together, these judicial practices and legislative modifications created a law and legal practice that closely resembled the provisions of the renounced FPL. In 1992, the *Majles* formally revamped the law of marriage and divorce, in effect reinstating the terms of the FPL, which had in practice never been abrogated.¹⁰⁴

In the 1992 revision of the law of marriage and divorce, the *Majles* explicitly reversed post-revolutionary measures. All divorces now required court approval,¹⁰⁵ rather than allowing private divorce by consent with no formal process other than registration with a notary, a form that had always held the possibility for coercion of the wife. All divorcing couples must go through a process of arbitration.¹⁰⁶ Courts were directed to withhold divorce certification until the husband paid the wife all that was due her, including the *mahr*, unless she explicitly agreed to its waiver.

The 1992 law also added a new right to compensation for the divorced wife, in the form of *ujrat al-mithal*, or wages for the housework she undertook during the marriage.¹⁰⁷ Thus, the post-divorce finances of all women, whenever married, were given some protection by means of court oversight of financial claims on the husband.¹⁰⁸

A new standard marriage contract was also promulgated with provisions which, when signed by both parties, restored the status quo under the FPL. Such provisions allowed the wife to initiate divorce proceedings

at 144; Mir-Hosseini, *supra* note 55, at 145.

¹⁰¹ PAIDAR, *supra* note 6, at 294–97.

¹⁰² *Id.* at 294–95.

¹⁰³ *Id.* at 295–96.

¹⁰⁴ Mir-Hosseini, *supra* note 9, at 144, 147. The FPL was never in any case formally repealed by the *Majles*, though it was “renounced” by the Revolutionary Council, the temporary governing body that came into existence immediately after the Revolution. *Id.* at 144–45.

¹⁰⁵ *Id.* at 144.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* The marriage contract does not require anything of the wife save obedience and sexual services; nonetheless, the assumption behind *mahr* and *nafaaqa* seems to be that the wife will maintain the house in return for being maintained by the husband. Thus, although payment of wages for housework is not explicitly required by *shari'a*, it is not barred, since it is worthwhile labor that is worthy of compensation.

¹⁰⁸ *Id.* In 1997, the *Majles* inflation-indexed the *mahr*, so that it continues to have the value it had at the time of the marriage. Nikki R. Keddie, *Women in Iran Since 1979*, 67 Soc. Res. 405, 418 (2000). This provides protection for women regardless of when the marriage contract was signed.

if the husband did not support her or took a second wife without her consent;¹⁰⁹ or if he was sick, in prison for over five years, an addict, or held some non-respectable job.¹¹⁰ Aside from those added legislative provisions, under the already-codified version of *shari'a*, she was entitled to rescission of the marriage contract in the case of his impotence before the marriage was consummated,¹¹¹ insanity,¹¹² or if a court decided that continuation of the marriage would cause her "difficulty and hardship."¹¹³ She could, with his consent, initiate a divorce, but had to return some portion of the *mahr*.¹¹⁴ These measures duplicated the legitimate grounds for female-initiated divorce under the FPL.

In 1994, the post-revolutionary Special Civil Courts were abolished and family issues, including divorce, support, and child custody arrangements were integrated with other civil matters in a court of unitary jurisdiction.¹¹⁵ Not surprisingly, the unitary jurisdiction courts proved unsatisfactory in efficiently resolving family matters, and this led in turn to the reestablishment of separate Family Courts in 1997, shortly before the election of President Khatami.¹¹⁶ The *Majles* mandated that the new courts have exclusive jurisdiction over these family law matters. Every such court was required to have a woman judge, to counsel the court on these questions, and to weigh in on their final resolution.¹¹⁷ It also enhanced women's rights to custody in cases where the husband as custodial parent is unfit.¹¹⁸ This completed the official restoration of the pre-revolutionary family law regime. But it is important to understand that, in practice, it had never really disappeared, in large part because of women's activism to maintain their existing status.

¹⁰⁹ PAIDAR, *supra* note 6, at 284. The policy of the state also shifted against polygamy when the campaign for family planning began at the end of the 1980s. *Id.* at 285.

¹¹⁰ *Id.* at 284.

¹¹¹ Civil Code art. 1122 § 2.

¹¹² *Id.* art. 1121.

¹¹³ *Id.* art. 1130.

¹¹⁴ *Id.* art. 1146.

¹¹⁵ Mir-Hosseini, *supra* note 9, at 150.

¹¹⁶ ZIBA MIR-HOSSEINI, MARRIAGE ON TRIAL: A STUDY OF ISLAMIC FAMILY LAW, at ix (2d ed. 2000).

¹¹⁷ Keddie, *supra* note 108, at 418. As early as 1982, the need for legal expertise had led to the return of women to advisory posts in family courts, see Haleh Afshar, *Islam and Feminism: An Analysis of Political Strategies*, in FEMINISM AND ISLAM 197, 206 (Mai Yamani ed. 1996), but they did not regain judicial status until 1997, Keddie, *supra* note 108, at 418.

¹¹⁸ This change was a direct consequence of women's agitation around a high-profile case in which a divorced father, known to be a drug addict and to have previously abused his child, got custody of his daughter and killed her. He was then tried and acquitted of her murder. The Arian Golshani case received wide publicity both in Iran and from the international media. Women were outraged and the case was taken up by women members of the *Majles* who introduced reforms to the custody laws. *Iran Versus Iran* (transcript of 60 Minutes, CBS television broadcast, May 10, 1998), available at <http://www.iranian.com/News/May98/60m.html> (last visited Nov. 9, 2004).

In the context of a modern economy in which women were active outside the home in schools and workplaces, the Islamic Republic failed to make positive law of the *shari'a* policy of husband-initiated and controlled divorce. Instead, it eventually reinstated the old regime's approach of putting divorce under the control of the state. Men in the Islamic Republic of Iran could not exercise their *shari'a* rights with impunity because women, so long relegated to a subordinate position within Islam, would no longer allow it. The reassertion of state control over marriage, so soon after it had been disclaimed, was a necessity forced on the regime by its need to retain the support of women. That support was endangered by the traditional view of *shari'a* as confiding control of the marriage relationship to the husband. Hence, it was not the state that created the preconditions of feminism, but feminism that negotiated positive law favorable to women.

To demonstrate the conditions that created the need for women's support, I will next examine the politics of the Revolution, the immediate post-revolutionary period, and the subsequent wartime experience of the IRI.

III. IRANIAN WOMEN BEFORE AND DURING THE REVOLUTION

From 1925 to 1979, Iran was ruled by the Pahlavis, both of whom died in exile. Reza Pahlavi,¹¹⁹ also referred to as Reza Shah, held power from 1925 until 1941, when he was deposed by the Allies,¹²⁰ and his son and successor, Mohammad Reza, ruled from 1941 to the Revolution of 1979. Together, they formally created a structure of modernity that included education, state-regulated family law, political participation, and representation within the public sphere. Although this structure was first conceptualized in the context of Iran's Constitutional Revolution of 1905–11,¹²¹ it had not then been realized.

Reza Shah created a system of public education to which women and girls had access, at least in urban areas and among the wealthy and upper middle class.¹²² He introduced a civil code based on European models, though family law was the one area that remained based in religious law. Nonetheless, he did for the first time require state recognition of marriage, through a registration system,¹²³ thus making marriage and the family a subject of civil, as well as religious, concern. His son, Mohammad

¹¹⁹ Pahlavi, meaning hero, was the surname adopted by Reza Khan after the coup which eventually brought him to power as Shah. ARJOMAND, *supra* note 2, at 62.

¹²⁰ FRAGILE RESISTANCE: SOCIAL TRANSFORMATION IN IRAN FROM 1500 TO THE REVOLUTION 255 (John Foran ed., 1993).

¹²¹ Iran's Constitutional Revolution succeeded in winning a constitution and a constitutional monarchy, but neither was ever fully effectuated. ARJOMAND, *supra* note 2, at 59.

¹²² Keddie, *supra* note 108, at 406.

¹²³ Keddie, *supra* note 2, at 97–98.

Reza, enfranchised women in 1963 and also gave them the right to participate as candidates in elections.¹²⁴

But while this structure was put in place under the Pahlavis, the *re-actualization* of the rights declared—their substance as opposed to form—was not achieved in their fifty-year reign. The democratic content of these formal rights clashed with the authoritarian and elitist nature of the monarchy. Nonetheless, it must be conceded that the formal creation of such rights proved significant in creating a benchmark or floor that the revolutionary state found impossible to ignore, because women insisted upon their recognition.

Although the Pahlavis had sponsored their own version of women's equality,¹²⁵ Iranian feminism was an area dominated by the left opposition to the monarchy.¹²⁶ Thus, there were feminists on both sides of the conflict that led to the Revolution, just as there were modernizers on both sides of that divide. The religious forces within the revolutionary opposition had to attend to women's issues, promising women "real freedom, equality and dignity" in an Islamic Republic.¹²⁷ Additionally, the warnings of the monarchy's supporters that religious forces were opposed to women's rights called forth the response from Ayatollah Khomeini that Islam itself held more benefits for women than Western feminism.¹²⁸ Intended or not, this was a pledge that had to be redeemed when the Revolution succeeded.

The Pahlavis' repression of the left, the monarchy's *raison d'être* since its founding, had channeled much of the opposition to the monarchy into religious mediums. When the opposition to the Shah sought an alternative ideology, religion was available.¹²⁹ Shi'ism was particularly capable of sustaining a revolutionary appeal: its followers, always a minority within Islam though the majority in Iran, looked toward a chiliastic era of peace and justice that, led by a divinely guided Imam, would overturn existing governments to establish divinely approved rule.¹³⁰ Thus, the explicit ideology of at least a significant portion of the revolutionary forces and certainly of the post-revolutionary government was Islamist.

From the feminist point of view, that ideology did not seem promising. But despite a historical tradition of gender oppression, the demand for social justice had to be engaged for the success of a revolution in

¹²⁴ PAIDAR, *supra* note 6, at 144–45.

¹²⁵ Due in part to the integration of women into mainstream structures and the Shah's strict speech and publishing censorship, formation of independent women's groups was stifled. Esfandiari, *supra* note 7, at 11.

¹²⁶ The first mention of female enfranchisement had been in the context of the Constitutional Revolution. *Id.* at 6. The first formal introduction of legislation enfranchising women was by the Communist Party in 1944. *Id.* at 12.

¹²⁷ PAIDAR, *supra* note 6, at 214.

¹²⁸ *Id.* at 213–14.

¹²⁹ See NIKKI R. KEDDIE, *IRAN AND THE MUSLIM WORLD: RESISTANCE AND REVOLUTION* 7 (1995).

¹³⁰ Hamid Dabashi, *The End of Islamic Ideology*, 67 *SOC. RES.* 474, 482 (2000).

which that demand was foremost. Khomeini in fact claimed that social justice was a characteristic of Islam and on that basis both justified his opposition to the Shah and won adherents to his cause. On the other hand, he had first made his opposition to the Shah explicit and public by challenging the Shah's enfranchisement of women.¹³¹ Moreover, the discourse of Iranian Islamists focused upon the Shah's version of state feminism as a corrupting and dangerous influence. Did social justice encompass women's issues in any respect? That was the question posed for the successful heirs of a broad, persistent, and ultimately successful campaign of social upheaval that was the Revolution.

Even secular women who participated in the Revolution did not then raise the question of women's formal rights, precisely because the Shah had supported them. As Parvin Paidar writes, "the end result of the Pahlavi state's female emancipation was seen to be the *gharbzadeh* [westoxicated¹³²] woman of the seventies."¹³³ Yet precisely because the claim was made that the old regime had, despite its feminist pretenses, in fact degraded women, it became the duty of the revolutionaries to advance women's interests. This created a wholly new space for women in the streets, in meetings, in the front lines, and in demonstrations. According to Abdolkarim Soroush, "For the first time, men saw women appearing in the streets, raising their voices and taking part in political activity—and they approved of it."¹³⁴ Iranian women opposing the Shah worked beside unrelated men without risking their self-respect or their social standing; instead, both were heightened. One can see why, for many women, the Revolution itself seemed to promise a new life.¹³⁵

Hence, it is not surprising that women were active in the Revolution; indeed, "[w]omen sometimes constituted more than one third of . . . demonstrators."¹³⁶ This was true not only of students, from whom such opposition might have been expected, but also of women from the popular classes, whose presence in the processions mourning those fallen at the hands of the Shah's forces gave the *chador*, the traditional black cloak, a new political meaning.¹³⁷ Women of all classes, religious and secular, demonstrated

¹³¹ PAIDAR, *supra* note 6, at 142.

¹³² This is the formulation of the pre-revolutionary writer Jalal Al-e Ahmad, whose book *Gharbzadegi* (*Westoxication*) was enormously influential in naming and describing what Iranians perceived as a condition of subjection to the ideology, practices, and discourse of the West. MANSOOR MOADDEL, *CLASS, POLITICS AND IDEOLOGY IN THE IRANIAN REVOLUTION* 148–51 (1993).

¹³³ PAIDAR, *supra* note 6, at 213.

¹³⁴ Interview with Dr. Abdolkarim Soroush, Visiting Professor, Princeton University, in Princeton, NJ (May 7, 2003) [hereinafter Soroush Interview]. Dr. Soroush is now a Fellow of the Ebelin and Gerd Bucarius ZEIT Foundation, Institute for Advanced Studies, Berlin.

¹³⁵ PAIDAR, *supra* note 6, at 218–19.

¹³⁶ *Id.* at 211.

¹³⁷ See, e.g., KEDDIE, *supra* note 108, at 409 (discussing how some secular women in the 1970s returned to wearing the *chador* as a sign of their opposition to the Shah and their solidarity with his popular class opponents).

their political agency by coming out onto the streets in *chador*, making that garb a symbol of opposition to the Shah and his regime. The presence of these women directly confronting the army or police was powerful,¹³⁸ and as a result, despite traditionalist views of women, religious opponents of the Shah, including Ayatollah Khomeini and his followers, “insisted on the legitimacy and even necessity of women’s political mobilization” in the post-Revolution landscape.¹³⁹

Not only did women’s participation have a profound effect on the politics of the era, it had an even deeper effect on women themselves. The sanctioning of their participation by undisputed religious authority changed the traditional view of the place of women in the minds of both women and their families. The idea that women had a place, indeed were *obligated* to take a place, in the public sphere was no longer the diktat of the Shah and his westernizing, modernizing, and corrupt forces. It now became the wisdom of those whose responsibility it was to understand, to interpret, and to command obedience with divine law. The result was the “altered . . . consciousness of many women, and particularly popular class women, about their political potential.”¹⁴⁰

IV. GENDER IDEOLOGY AND THE PRACTICES OF THE EARLY ISLAMIC REPUBLIC

A. *Politics and Gender in the Revolution’s Wake*

Because religious forces gave gender issues a key role in differentiating life under a future Islamic government from the regime of the Shah, after the Revolution succeeded, the “woman question” was immediately on the agenda of the provisional government. But while it remained central to the Islamic revolutionaries’ project, they did not in fact have a clear view of what the aims of that project would be in respect to women. Nor did the Islamists initially conceive that women themselves would have an active and substantial role in the immediate post-revolutionary period. As a result, the gender policies of the early Republic were not made coherently or centrally. Instead, they emerged “through [legislative] debates, *fatavi* [or religious opinions binding on followers] of influential clerics, Friday Prayer Sermons,¹⁴¹ practices of grassroots organizations and personal interventions of Shii leaders and state officials.”¹⁴²

¹³⁸ PAIDAR, *supra* note 6, at 211.

¹³⁹ Keddie, *supra* note 108, at 413.

¹⁴⁰ *Id.*

¹⁴¹ Friday is the Islamic Sabbath and the day for believers to gather for public prayer at a mosque; on other days, they may pray privately. The Friday sermon is thus an opportunity for important religious messages to be conveyed to believers; the leader of Friday prayers in each city is appointed by the government and thus has a political as well as a religious role among local believers.

¹⁴² PAIDAR, *supra* note 6, at 353.

Initially, Paidar says, “[w]omen were praised as revolutionaries . . . [but] afterwards they were asked to go back to their homes.”¹⁴³ As I have noted elsewhere,¹⁴⁴ among the first steps taken by Khomeini upon his return was to denounce as “un-Islamic” the FPL that the Shah’s regime had promulgated to give women new rights in divorce and custody.¹⁴⁵ This was the first of a series of steps taken by the new revolutionary government that were detrimental to women. In the year before the Revolution, the universities were shut down; when they reopened afterwards, they had been “Islamized” and, while women were still allowed a university education, many secular women were ousted from teaching posts and positions within the state bureaucracy.¹⁴⁶ Women judges had to leave the bench and were forced into administrative positions.¹⁴⁷ Moreover, certain careers and educational paths in technical and experimental fields were closed to women, while others were limited by quotas, from 20% to 50%, on the number of women who would be admitted into such courses.¹⁴⁸ All schools below the university level were gender-segregated,¹⁴⁹ as was sport.¹⁵⁰ Perhaps most damaging to the outside view of post-revolutionary Iran, all women above the age of puberty, whether Iranian or not, whether Muslim or not,¹⁵¹ were required to wear *hejab*, covering that left only the face and hands exposed. No group experienced the post-revolutionary changes “so rapidly and thoroughly during the transitional period” as did women.¹⁵²

¹⁴³ *Id.* at 233.

¹⁴⁴ See *supra* text accompanying note 9.

¹⁴⁵ In practice, it was not until August 1979 that *shari’a* was officially declared the law of the IRI; at that time as well, women judges were removed. Adele K. Ferdows, *Women and the Islamic Revolution*, 15 INT’L J. MIDDLE E. STUD. 283, 291 (1983). In October, religious “civil” courts replaced civil family protection courts in handling divorce cases. PAIDAR, *supra* note 6, at 272. However, there was still no actual legislation replacing the FPL. *Id.* at 272–73.

¹⁴⁶ Kar, *supra* note 22, at 170. Note however that the “proportion of women [to men] employed in government ministries remained the same (28%) between 1974 and 1983.” Carla Makhoul Obermeyer, *Reproductive Choice in Islam: Gender and State in Iran and Tunisia*, 25 STUD. FAM. PLAN. 41, 47 (1994). Apparently, women were replaced by other women after the purge of secularists in late 1980 and early 1981.

¹⁴⁷ POYA, *supra* note 86, at 65; see also interviews with Shirin Ebadi, *supra* note 20.

¹⁴⁸ PAIDAR, *supra* note 6, at 319.

¹⁴⁹ POYA, *supra* note 86, at 67.

¹⁵⁰ PAIDAR, *supra* note 6, at 232. Previously, primary schools had not been gender-segregated and private schools at all levels were free to admit both genders.

¹⁵¹ The percentage of Zoroastrian, Christian (mostly Armenian and Assyrian), Jewish, and Bahai Iranians combined was 2% as of 2002. Comparatively, Shi’a Muslims make up 89% of the population, and Sunni Muslims make up 9%. *Iran*, THE WORLD FACTBOOK, at <http://www.cia.gov/cia/publications/factbook/geos/ir.html#People> (last visited Nov. 9, 2004).

The largest of these groups is the Bahai; there were 350,000 in 1986. Library of Congress Country Studies (Feb. 6, 1997), http://lcweb2.loc.gov/frd/cs/iran/ir_appen.html#table4 (last visited Nov. 9, 2004). In 1986 there were an estimated 32,000 Zoroastrians, 50,000 Jews, and 282,000 Christians in Iran. *Id.*

¹⁵² PAIDAR, *supra* note 6, at 232.

Secular women demonstrated against these changes to no avail,¹⁵³ in part because more religious women supported them. A commentator wrote despairingly, "It can perhaps be estimated that the majority of women support Khomeini's stand and interpretation of what their rights and role should be."¹⁵⁴ While these women certainly supported Khomeini, it is unlikely that they supported the notion that they were to return to their homes with fewer rights than they had before the Revolution.

This was a central fact and a critical one, given the political situation immediately after the Revolution. Women's support for the Islamic Republic meant that, despite Khomeini's earlier opposition to the Shah's enfranchisement of women, he did not act to disenfranchise them. Women's support remained key for the Islamists who, despite the important role they played in the Revolution, did not go unchallenged for the post-revolutionary leadership of Iran.

The post-revolutionary consolidation of Khomeini's power in itself may be considered an accomplishment almost equal to the overthrow of the Shah. In fact, writes Moghadam, "it may be said that Iran had two revolutions."¹⁵⁵ The first overthrew the Shah; the second firmly established the Islamic Republic. The first united left and religious forces against the monarchy, while the second revolution hacked the secular left and religious opponents of Khomeini out of the coalition by force and coercion. Just as he had used his immense popularity against the Shah, Khomeini now turned it against the divided left. Khomeini also sought to unite all active Islamist forces behind him, and turned violently against those that resisted.

Achieving the unity and activism of all Islamist forces, which included many women, meant substantial changes in respect to Khomeini's discourse on women. That discourse had shifted dramatically from the time he first came out in open defiance of the Shah in 1962, declaring the enfranchisement of women un-Islamic.¹⁵⁶ The Revolution, he now said, had brought about "an amazing transformation" among women; the extent to which they "served Islam during this period exceeds the service the men have rendered."¹⁵⁷ Now he addressed women as "lion-hearted"

¹⁵³ *Id.* at 235–36.

¹⁵⁴ Adele K. Ferdows, *Shariati and Khomeini on Women*, in *THE IRANIAN REVOLUTION AND THE ISLAMIC REPUBLIC* 128, 132 (Nikki R. Keddie & Eric Hooglund eds., 1986).

¹⁵⁵ Moghadam, *supra* note 38, at 1137.

¹⁵⁶ See generally KHOMEINI, *supra* note 97. By the next year, however, Khomeini conceded that the issue of the vote for women had "initially distracted" him from the real problem with the Shah's political reforms, which was the intention of the Shah "to eliminate Islam." *Id.* at 133. An official short biography of Khomeini, written in both English and Farsi and designed for visitors to the IRI, now refers only to the Shah's omission of Islam from the law with regards to the establishment of provincial and city councils, in discussing Khomeini's first decision to oppose the Shah. *A BIOGRAPHY OF THE AYATOLLAH-AL-UDHMA IMAM KHOMEINI* 3–4 (n.p., n.d.) (pamphlet available to tourists visiting Iran, on file with author).

¹⁵⁷ KHOMEINI, *supra* note 97, at 90.

and called their involvement in politics “one of the blessings of this movement.”¹⁵⁸ Those who had expected, on the basis of his 1962 stance, that women would be disenfranchised, were surprised by the change.¹⁵⁹

During and after the Revolution, the need to mobilize and to retain all his popular support led Khomeini first to urge women’s political activity and then its continuation. He asked women to come out to vote, first for the constitution of the Islamic Republic approved in December 1979, and then in March 1980 for election of candidates who backed him: “Women in the Islamic Republic must vote. Just as men have the right to vote, women too have that right.”¹⁶⁰ Indeed, he went further: for women, voting was a “religious, Islamic and divine duty.”¹⁶¹

In addition to retaining women’s suffrage despite his earlier opposition, Khomeini also addressed other aspects of women’s life in the Islamic Republic in ways that were not predictable given the apparent centrality of traditional gender ideology to his opposition to the Shah. He told women that *shari’a* could in fact give them the right to initiate divorce, pointing out the procedural means whereby a woman could include in the marriage contract a delegation to herself of her husband’s otherwise unilateral right to divorce.¹⁶² He said religion supported women’s activity within the public sphere: “Islam urges women to strive and reach perfection which has no limits, nor does it stop at any point and therefore has granted them the right to serve society as a scholar, inventor, philosopher, teacher, physician, or even an active politician.”¹⁶³ Women were included among candidates for the *Majles*, as well as for local councils, with Khomeini saying, “Today is not like the former period when women of uncertain repute . . . were brought into the Parliament. Women enter the Parliament today, but the circumstances are totally different.”¹⁶⁴ (But women were not part of the non-elected religious part of the government, either in the executive or in the judiciary.)¹⁶⁵

¹⁵⁸ VANESSA MARTIN, CREATING AN ISLAMIC STATE: KHOMEINI AND THE MAKING OF A NEW IRAN 156 (2000).

¹⁵⁹ See, e.g., Guity Nashat, *Women in the Ideology of the Islamic Republic*, in WOMEN AND REVOLUTION IN IRAN 195, 212 (Guity Nashat ed., 1983) (expressing doubt as to whether Iranian women would retain the right of suffrage).

¹⁶⁰ KHOMEINI, *supra* note 97, at 41.

¹⁶¹ Nesta Ramazani, *Women in Iran: The Revolutionary Ebb and Flow*, 47 MIDDLE E. J. 409, 411 (1993) [hereinafter Ramazani] (quoting Khomeini).

¹⁶² MARTIN, *supra* note 158, at 155.

¹⁶³ ELIZ SANASARIAN, PROCEEDINGS OF THE CONFERENCE ON IRAN: A DECADE AFTER THE REVOLUTION 24 (Montclair State University, Oct. 26, 1990).

¹⁶⁴ KHOMEINI, *supra* note 97, at 156.

¹⁶⁵ For more information about the structure of Iran’s government, see CONSTITUTIONS OF THE WORLD, *supra* note 47. The chief figure in Iran’s power structure is the Supreme Leader, who directs the general domestic and foreign policies of the country, serves as the commander-in-chief of the armed forces, controls intelligence and security operations, and appoints judiciary figures. The Supreme Leader is also responsible for appointing six of the twelve members of the Council of Guardians, the body that supervises Parliament, and makes eligibility determinations for those seeking public office. The President, who is

During the Revolution, Khomeini had sought to unify anti-Shah forces, playing down his own ideas of Islamic governance.¹⁶⁶ But from late 1979 through 1983, all the secular opponents of the Shah “were one by one suppressed and eliminated from government.”¹⁶⁷ The radical Islamic opposition was also destroyed as a political force,¹⁶⁸ as Khomeini sought to make his view of Islamic government the sole legitimate political stance. His explicit and continued appeals to Islamist women in the immediate post-revolutionary period ensured their continued loyalty. By then the primary concern of Khomeini and his supporters was the consolidation of Islamic government and the defeat of all those—secular or religious—who opposed it. At the same time that he was alienating secular women, he was continuing to bind Islamist women to his movement.

The secularists' lack of unity made them easy to eliminate. In fact, it is tempting to see some of the Islamist moves against formal components of women's rights introduced by the Pahlavis as promoting this disunity. In this light, many of Khomeini's fiercest actions regarding women can be viewed as brilliant politics, for they split the secular left.¹⁶⁹ Ousting secularists from any power they held based on popular support was a task made easier by the attack on secular women and on the Western feminism that was a hallmark of secularism. By taking steps that secular women opposed, Khomeini divided secular forces by gender. Secular women demanded that their parties oppose Khomeini's move, but the male leadership of those parties were largely unwilling to create a final breach with the powerful and popular leader.¹⁷⁰ They ignored or soft-pedaled his emphasis on the application of *shari'a* to women's lives, while their female counterparts clamored for them to take action and became disaffected when they did not. The secular parties themselves became split and thus weakened. By 1983, with the final elimination of the *Tudeh*, or Communist Party, as a political force, and the subsequent ban on its participation in *Majles* elections the next year, the secular opposition was broken, replaced by the dominance of Khomeini's forces.¹⁷¹

The immediate post-revolutionary steps taken in regard to women thus might, on the one hand, be explained as an attempt to outflank po-

elected, holds the second-highest ranking political position in Iran. There are eight vice-presidents and a cabinet of twenty-two ministers. This Council of Ministers is subject to the confirmation of the Parliament, whose members are elected by the public every four years. Parliament appoints the remaining six members of the Council of Guardians, which is responsible for interpreting the constitution, assessing the compatibility of Parliament's laws with Islamic law, and may veto them. See IRAN CHAMBER SOCIETY, IRANIAN GOVERNMENT: THE STRUCTURE OF POWER IN IRAN, http://www.iranchamber.com/government/articles/structure_of_power.php (last visited Nov. 9, 2004).

¹⁶⁶ MARTIN, *supra* note 158, at 157.

¹⁶⁷ Keddie, *supra* note 108, at 409.

¹⁶⁸ ARJOMAND, *supra* note 2, at 154–55.

¹⁶⁹ PAIDAR, *supra* note 6, at 249–56.

¹⁷⁰ ARJOMAND, *supra* note 2, at 138.

¹⁷¹ *Id.* at 154.

litical enemies, or on the other, as contextualization that saw a difference between the valence of women's political activity in a secular monarchy and in an Islamic republic. Was it opportunism or was it pragmatic growth? In either case, the result, as Paidar says, "was a total reversal of the history of clerical opposition to women's participation in the economy, politics and society."¹⁷² Women's political participation was encouraged at the highest level; their mobilization sanctioned as divine. The gender ideology of the new republic, in other words, was not summed up by a return to *shari'a*. Indeed, aside from mandatory covering, the substance of that ideology had not yet gelled, nor had women's involvement in the politics of Iran been completed with the Revolution.

B. *The Post-Revolutionary Role of Islamist Women*

In the early days of the Islamic Republic, approaches to women's issues were divergent, even contradictory. On the one hand, the regime instituted mandatory *hejab*, purged secular women from government and the academy, and announced reinstitution of *shari'a*.¹⁷³ On the other hand, the government retained women's rights to suffrage, encouraged women's political activity in support of Islamist forces, and demonstrated an unwillingness to implement the most misogynistic aspects of *shari'a* in respect to marriage and divorce.¹⁷⁴ All of this is substantiation of the central fact that the leaders of the Islamic Revolution lacked a coherent view of the role of women in their new society. This created a space for women to begin to fashion that role for themselves.

Khomeini's strategy for supplanting the monarchy's official and feminist-oriented women's organization with Islamic women's organizations created the opportunity for women to become involved in the discourse of post-revolutionary gender ideology. Not content with simply eliminating the political formations of the *ancien regime*, Khomeini encouraged a longer-run approach. He asked Islamist women to remain mobilized in political activity long after the immediate events of the revolutionary downfall of the Shah. His daughter, Zahra Mostafavi, became one of the leaders of the Women's Society of the Islamic Revolution ("WSIR").¹⁷⁵ The WSIR was the new state-sponsored women's organization that worked to influence and organize women in favor of an "authentic" Islamic identity for Iranian women,¹⁷⁶ as well as garner support for the government itself. Other Islamist women, like Fereshteh Hashemi,¹⁷⁷ Zahra Rahnavard,¹⁷⁸

¹⁷² PAIDAR, *supra* note 6, at 257.

¹⁷³ See *supra* Part I.

¹⁷⁴ See *supra* Parts II, IV.A.

¹⁷⁵ Mir-Hosseini, *supra* note 77, at 170.

¹⁷⁶ Gheytauchi, *supra* note 16, at 442.

¹⁷⁷ PAIDAR, *supra* note 6, at 240.

¹⁷⁸ Rahnavard is currently president of the women's university, Al-Zahra, and is the

Shahin Tabatabai,¹⁷⁹ all American-educated,¹⁸⁰ also took leadership roles in representing women's voices in the debate over the existence and then the shape of the gender ideology of the Islamic Republic. Fatemeh Hashemi, daughter of Ali Akbar Hashemi Rafsanjani, later president of the Islamic Republic, became the head of the Women's Bureau of the Ministry of Foreign Affairs and the Women's Solidarity Association of Iran.¹⁸¹ Azam Taleqani,¹⁸² a founder of WSIR¹⁸³ and daughter of Ayatollah Taleqani, who was known for his sympathies with leftist Islamists,¹⁸⁴ was elected to the *Majles*. Azam Taleqani also founded *Payam-e Hajar* (Hagar's Message)¹⁸⁵, a woman's newspaper, which was dedicated to promulgating a view of women approved by the leaders of the Islamic Republic.¹⁸⁶

What looked to the West like anti-women policies were interpreted by religious Iranian women as anti-secular ones. The Revolution had, in fact, encouraged the active participation of women as devout Muslims, a political participation almost unknown to Iran. They first overcame their secular counterparts, who argued for gender equality regardless of the traditions of the *shari'a*, espousing a version of difference feminism that "stressed that the Quran has given different rights and responsibilities to the different creations of God."¹⁸⁷ But, though they agreed that women's

wife of former Prime Minister Hossein Mussavi. See *Notes on Mrs. Zahra Rahnavard Ph.D.*, available at <http://www.sw-asia.com/People/Bio958.htm> (last visited Nov. 9, 2004).

¹⁷⁹ Shahin Tabatabai was one of the first Iranian women to enunciate the difference feminism which has come to characterize the gender ideology of many Islamist women. See Shahin E. Tabatabai, *Understanding Islam in its Totality is the Only Way to Understand Women's Role*, ISLAMIC REVOLUTION, July 1979, reprinted in IN THE SHADOW OF ISLAM 171, 174 (Azar Tabari & Nahid Yeganeh eds., 1982) (on file with author).

¹⁸⁰ PAIDAR, *supra* note 6, at 240.

¹⁸¹ Mir-Hosseini, *supra* note 77, at 170. Fa'ezeh Hashemi, another daughter of former President Hashemi Rafsanjani, headed the Women's Sports Association and was also a popular member of the *Majles*. Ziba Mir-Hosseini, *The Conservative-Reformist Conflict over Women's Rights in Iran*, 16 INT'L J. POL. CULTURE & SOC'Y 37, 42 (2002) [hereinafter *Conservative-Reformist*].

¹⁸² Taleqani was a member of the first *Majles*, and head of the Women's Organization of Iran, the first independent NGO to participate in international women's events. HOOD-FAR, *supra* note 12, at 19. Taleqani's attempts to win another seat in the *Majles* in 1992, 1996, and 2000 were defeated by the Guardian Council, which rejected her candidacy on these occasions. In 1997, she put her name forward as a presidential candidate and was again turned away by the Council, which does not give a reason for its actions. Ziba Mir-Hosseini, *Debating Women: Gender and the Public Sphere in Post-Revolutionary Iran*, in CIVIL SOCIETY IN THE MUSLIM WORLD: CONTEMPORARY PERSPECTIVES 95, 101–02 (Amy B. Sajoo, ed. 2001).

¹⁸³ PAIDAR, *supra* note 6, at 240.

¹⁸⁴ MICHAEL M. J. FISCHER & MEHDI ABEDI, *DEBATING MUSLIMS: CULTURAL DIALOGUES IN POST-MODERNITY AND TRADITION* 155 (1990).

¹⁸⁵ Hagar was the mother of Ishmael, whom Muslims understand to be the son Abraham was told to sacrifice. In the Old Testament, Isaac, born to Sarah, is that son. For Shi'is, Hagar's position thus mirrors that of Fatima, the mother of the martyred Hussein, just as in Christian theology, Sarah mirrors Mary.

¹⁸⁶ Gheytonchi, *supra* note 16, at 440–41.

¹⁸⁷ POYA, *supra* note 86, at 6. For further discussion of feminist jurisprudence and *shari'a*, see *infra* Part V.C.

primary roles were in the family, they also supported women who wanted or needed to work outside the home. In fact, they became advocates for interpretations of *shari'a* more open to the concerns of modernist women than those embraced by pre-revolutionary traditionalists.¹⁸⁸

These women bolstered their advocacy by citing the argument of Khomeini's forces that "true" Islam could provide women with a position superior to that of women who accepted Western feminism, who were oppressed by being constructed as sexual objects and consumers.¹⁸⁹ Islamist women argued that the achievement of women's potential would occur in an Islamic society that "combined equality of opportunity for men and women to develop their talents and capacities and to participate in all aspects of social life, [with] acknowledge[ment of] women's maternal instinct and their essential role within the family."¹⁹⁰

In practice, Islamist women first mobilized women's support for the IRI, then became advocates for the improvement in their status and condition. This shift in emphasis required that women engage the religious establishment with "female-centered interpretations of Islam,"¹⁹¹ becoming innovators in developing an "Islamic feminist theory of women's oppression and liberation."¹⁹² They came to argue that true religious practice would not oppress women or make them lesser persons than men; thus, any practices or laws that did so were not Islamic, but accretions which needed to be shed.

These women leaders were seeking what they saw as gender fairness in the new state, and might not in fact have supported measures like the ousting of women from posts they held under the prior regime or even compulsory *hejab*.¹⁹³ Most did not, however, unite with the secular feminists in opposing such measures. Nonetheless, many of them moved further toward the position of equality rather than difference feminism, their experience leading them to believe that a male-dominated government could not alone be relied upon to take women's interests into account. They were the first harbingers of an "unprecedented Islamic feminist movement,"¹⁹⁴ that only later would join with secular feminism to problematize and re-conceive the position of Iranian women.

¹⁸⁸ HOODFAR, *supra* note 12, at 20.

¹⁸⁹ KHOMEINI, *supra* note 97, at 124–26, 143–46.

¹⁹⁰ PAIDAR, *supra* note 6, at 241.

¹⁹¹ HOODFAR, *supra* note 12, at 3. Hoodfar usefully compares the engagement of religious Iranian women with Islam with the engagement of Western secular women with science and philosophy. Both strategies have been used to benefit women's position in society. The former has allowed Iranian women to "break the male monopoly on interpreting Islamic texts," and similarly, the latter has enabled Western feminists to reformulate conceptual frames of reference in the areas of science and secular philosophy so that they apply to women as well as men. *Id.*

¹⁹² PAIDAR, *supra* note 6, at 240.

¹⁹³ See *infra* Part IV.D.

¹⁹⁴ PAIDAR, *supra* note 6, at 311.

At the same time, while the new government may not have approved of self-conscious feminism, even in its Islamic mode,¹⁹⁵ it maintained its support among women by measures beneficial to the popular classes. These included literacy programs for adults,¹⁹⁶ more widely available public education for both sexes,¹⁹⁷ and accessible primary healthcare particularly focused on healthy mothers and children.¹⁹⁸ These were the kinds of policies helpful to women living in traditional families, who had rejected the Pahlavis' state feminism.

In the struggle against the Pahlavi monarchy, many of these women had come to identify with the revolutionary account of the heroines of Shi'ism, Fatima and Zeinab, the mother and sister of the martyred Imam Hussein, the Prophet's grandson. In this they had been encouraged by the writings of Ali Shari'ati, a sociologist and socialist who became a leading intellectual force in the movement against the Shah. Shari'ati constructed a version of Shi'ism that focused on its utopian and insurrec-

¹⁹⁵ *Id.* Various publications in the Iranian "women's press" have taken divergent positions with respect to feminism. Mir-Hosseini, *supra* note 182, at 96. On the one hand, *Zanan* "made no apologies for drawing on Western feminist sources and collaborating with Iranian secular feminists—both novel and daring in the context of the Iran of the early 1990s." *Id.* at 106. In addition, Noushin Ahmadi Khorasani, editor of *Jens-e Dovvom* (*The Second Sex*), "has no qualms about using the term and placing Iranian women's issues in the context of international feminism." *Id.* at 114. *Jens-e Dovvom*, which has not been licensed as a journal, "is the first women's publication to openly adhere to a secular perspective." *Id.* at 115. On the other hand, a series of articles in *Zan-e Ruz* in 1991 "contend[ed] that 'feminism,' as a movement and consciousness, is alien and irrelevant to Muslim Societies, where Islam grants women their rights. They reject feminism as a concept rooted in the West, where Judaeo-Christian religious traditions imposed such disadvantages on women that they have little choice but to organize themselves." *Id.* at 111. Along the same lines, the editor of *Farzaneh* advocated "establishing the field of Women's Studies in Iran though rejecting organized and independent feminism." *Id.* The editor of *Hoquq-e Zanan* explained her difficulty with the word "feminist" as follows:

Our problem with this term is that it is associated with radical and extreme expressions of feminism; that is, it is [sic] not been understood as [a] women's social movement for equal rights and justice. Feminism is seen as a negative force and its positive contributions have been ignored. We consider ourselves to be advocates of women's rights, and if they call this feminism, then I must say we are feminist, but not in the radical meaning that they say. When we see inequality we want to change it in line with our tradition.

Id. at 114.

¹⁹⁶ The Literacy Movement Organization was created in the revolutionary year and had an enormous impact on women, the rural population, and other sectors previously educationally underserved. The rural literacy rate was estimated at 6% in 1972; by 1986, seven years after the Organization's work began, the rate stood near 48%; by 1996, it had reached about 70%. Mostafa Azkia, *Rural Society and Revolution in Iran*, in *TWENTY YEARS OF ISLAMIC REVOLUTION*, *supra* note 30, at 96–97.

¹⁹⁷ Golnar Mehran, *The Creation of the New Muslim Woman: Female Education in the Islamic Republic of Iran*, 24 *CONVERGENCE* 42, 46–48 (1991). The religious establishment historically opposed education for women, and devout women have often held this position. After the Revolution, however, Khomeini "gave consistent support" to women's education. PAIDAR, *supra* note 6, at 312.

¹⁹⁸ MEHRYAR ET AL., *IRANIAN MIRACLE*, *supra* note 17, at 24.

tionary qualities.¹⁹⁹ As part of that construction, Shari'ati, a prescient thinker, recognized the necessity of intervening in the traditional religious account of women from some position that was not identified with the Shah's discredited version of modern feminism. His course was to say that the Iranian woman "cannot remain what she is. Actually, she does not want to accept modern masks to replace the traditional ones. She wants to decide for herself."²⁰⁰ In his famous lecture on Fatima, later published in book form as *Fatemeh Fatemeh ast (Fatima is Fatima)*, he describes a "new woman" based on the role Fatima played in championing the cause of her son Hussein, whose descendant, the hidden Twelfth Imam, will one day return to establish peace and justice in the world.²⁰¹

Women who were provided with the example of Fatima and Zeinab as the basis for their participation in the struggle against the Shah and for whom veiling was the norm expected the Revolution in which they had participated to better their lives and families.²⁰² The war with Iraq²⁰³ that followed the Revolution required changes in women's roles; it evoked a more conciliatory approach to women than had existed in the immediate post-revolutionary period when ideological rigor was at its peak. Women were involved in assisting in battle areas, in providing food, transport, and medical support, and in distributing arms.²⁰⁴ At home, they aided the wounded, participated in meetings, demonstrations, and conferences to support the war effort, and resettled refugees from the front.²⁰⁵ As a woman interviewed by Maryam Poya said of her activities during that period, "[m]y husband couldn't disagree; it was all for God."²⁰⁶ Even a corps of women combatants was organized, though women never actually fought.²⁰⁷

The war lasted from 1980 to 1988, and decimated the population of young men, husbands, and fathers.²⁰⁸ Iran, though outgunned, could not

¹⁹⁹ See generally ALI RAHNEMA, AN ISLAMIC UTOPIAN: A POLITICAL BIOGRAPHY OF ALI SHARI'ATI (2000) (exploring Shari'ati's life, work, and influence upon Iranian society).

²⁰⁰ ALI SHARI'ATI, FATIMA IS FATIMA (Laleh Bakhtiar, trans., Shariati Foundation and Hamdami Publishers, 1980), available at <http://www.shariati.com/> (follow "Books" link to an English language version) (last visited Nov. 9, 2004).

²⁰¹ *Id.*

²⁰² For a discussion of this phenomenon, see generally Anne H. Betteridge, *To Veil or Not to Veil: A Matter of Protest or Policy*, in WOMEN AND REVOLUTION IN IRAN, *supra* note 159, at 109. According to Poya, the post-revolutionary insistence on women's role in the anti-Shah movement "allowed the Islamic state to justify women's participation in the revolutionary period, despite its stated ideology that women's place is in the home." POYA, *supra* note 86, at 11.

²⁰³ The Iran-Iraq War began in 1980, shortly before the end of the hostage crisis, and lasted through 1988, ending shortly before the death of Ayatollah Khomeini. See generally ROBIN WRIGHT, IN THE NAME OF GOD: THE KHOMEINI DECADE (1989).

²⁰⁴ POYA, *supra* note 86, at 136-37.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 137.

²⁰⁷ PAIDAR, *supra* note 6, at 307.

²⁰⁸ Many hundreds of thousands of Iranians were killed in the course of the eight-year war, and another million were physically and psychologically disabled. POYA, *supra* note 86, at 96-97.

be outmanned, and its strategy was thus to inflict enormous casualties upon an enemy with a smaller population while sustaining severe casualties itself; martyrdom became its most powerful and dreadful weapon.²⁰⁹ To assure the success of the Islamic Republic, it was crucial that women would tolerate the wartime martyrdom of a son or husband. "We should sacrifice all our loved ones for the sake of Islam," Khomeini urged.²¹⁰ Women's support became yet more important in the mid-eighties, when the so-called "war of the cities" brought the war home to Tehran, Shiraz, Isfahan, and other urban areas that were bombed repeatedly.²¹¹

All this led the government to implement policies more favorable to women. An early example of the influence of women and the government's awareness of the importance of their support relates to custody of the children of martyrs. Women's advocates gave publicity to heartrending cases of war widows whose children had been taken from them by paternal relatives.²¹² This was legitimized by the *shari'a* rule that the custody of a widow's children is in her deceased husband's family; if she remarries, she loses all parental rights.²¹³ But at Khomeini's request, the *Majles* in 1985 undertook to ameliorate the rule. The new law allowed the surviving parent, regardless of gender, to have fosterage, or physical custody, of children,²¹⁴ both immediately after the spouse's death and upon remarriage, and to receive the government financial support provided for the war orphans.²¹⁵ Though the deceased father's male relatives retained legal guardianship, the substance of that custody was all but hollow. The pragmatism on display in this move indicated the extent to which the leadership of the IRI was prepared to bend religious practice when retaining the support of women so required it.

An even larger change occurred in respect to women's economic activity. When men did not come home, or came home wounded, their mothers, wives, sisters, and children needed to be provided the means of living in order to ensure continued popular support for the terrible carnage. The impact on women's employment was substantial. More women had to work outside the home, either because their husbands were at the front, or because the galloping inflation of the war years required families to have two incomes.²¹⁶ Women who never had been employed outside the home were encouraged by the state to enter the work force so that they could

²⁰⁹ WRIGHT, *supra* note 203, at 87. Those killed in the war were considered martyrs for the faith. *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* at 133.

²¹² See PAIDAR, *supra* note 6, at 294–97.

²¹³ *Id.*; see generally Keddie, *supra* note 108, at 410.

²¹⁴ Civil Code art. 1171.

²¹⁵ Keddie, *supra* note 108, at 416.

²¹⁶ By the end of the war, the black market rate for dollars was twenty times the official rate, which suggests the extent of inflation. WRIGHT, *supra* note 203, at 177.

support their families.²¹⁷ President Hashemi Rafsanjani even declared that Iran was “in need of a women’s labor force.”²¹⁸

While the early position of the Islamic Republic had discouraged women from working outside the home, this changed quickly. Labor practices favorable to working mothers, such as part-time jobs with significant full-time benefits,²¹⁹ and requirements that workplaces provide day-care,²²⁰ were adopted to make work and motherhood compatible. Moreover, the Islamist ideology of gender segregation enhanced the demand for female teachers, doctors, and social workers.²²¹ Restrictions on subjects that women could study were removed,²²² increasing women’s access to higher education, which had not grown since before the Revolution, when about 30% of university students were women.²²³ While university admissions tended to be salient to urban women, a campaign to improve rural life by bringing health care and literacy to isolated areas was also implemented. This effort focused directly on women and consciously sought to mobilize them to support such efforts. The drive to end poverty required the continued mobilization of women and, as Roksana Bahramitash says, “consolidated [women’s] public presence in Iran’s post-revolutionary environment.”²²⁴

These changes did not occur overnight, nor did they happen smoothly; the decade from 1979 to 1989 was one of revolution and war. In what Nesta Ramazani has called the “revolutionary ebb and flow,” issues of importance to women, such as widows’ pensions and child custody, women’s working conditions and day care, and equal access to education, were raised during the war years.²²⁵ But these were addressed as part of the war effort as a whole. The end of the Iran-Iraq War alleviated the war-time exigencies forced upon the entire society. The political shifts caused by Khomeini’s death in June 1989 also had an impact on women’s situation.²²⁶ Issues that had taken second place to the war effort emerged in the postwar period as primary concerns. In particular, the economy had gone “into a nosedive” during the war years, and became a focus of attention by government and planners once the war ended.²²⁷

²¹⁷ Ramazani, *supra* note 161, at 411.

²¹⁸ *Id.* at 413.

²¹⁹ PAIDAR, *supra* note 6, at 328.

²²⁰ Ramazani, *supra* note 161, at 414.

²²¹ PAIDAR, *supra* note 6, at 326.

²²² In 1986, women were given access to all courses of study in higher education. *Conservative-Reformist*, *supra* note 181, at 39. However, it was not until 2000 that scholarships for study abroad were made available to unmarried women in higher education without the consent of their fathers or guardians. *Id.* at 49–50.

²²³ PAIDAR, *supra* note 6, at 320–22.

²²⁴ Roksana Bahramitash, “Market Fundamentalism versus Religious Fundamentalism”: *Women’s Employment in Iran*, 13 CRITIQUE: CRITICAL MIDDLE E. STUD. 33, 41 (2004).

²²⁵ Ramazani, *supra* note 161, at 409.

²²⁶ Gheytaichi, *supra* note 16, at 445.

²²⁷ Roksana Bahramitash, *Islamic Fundamentalism and Women’s Economic Role: The*

It was only with the end of the war in 1988 that the country could shift its attention from matters of mere survival to those of development and modernization. When Khomeini died, his successors moved in the direction of economic liberalization, opening Iran to the global market and increasing the demand for labor. These policies created both the opportunity and the necessity for women's work outside the home.²²⁸

C. Women's Issues and Law Reform in the Post-War Period

During the war years it had become difficult for the regime to defend practices detrimental or demeaning to women as authentically Islamic. Its female supporters expected the government to redeem the promise that women would fare better in an Islamic Republic than they had in a secular monarchy. In turn, the changes forced upon the religious government by its need to retain women's support also allowed that government to claim that, despite war, Islamic rule in fact provided better conditions for women than had the Shah's program of Western feminism. Such claims of progress of course were part of the regime's arguments for legitimacy, particularly on the international scene. But they also reciprocally gave even more legitimacy to women's ongoing internal demands. Thus, a sort of virtuous circle was created in which the government had to keep its promises to women, leading to women's demands for yet more concessions. In this way, as Mir-Hosseini writes, "the Revolution and its aftermath had empowered Iranian women by gradually opening a space for them to claim their rights . . ."²²⁹

Once the war ended, women not only felt empowered, but also obliged, to discuss their status and establish the continuity of their participation in public life in both politics and employment. Hoodfar writes that the situation of women has always been "central to the debate surrounding the national goal of modernizing and building a strong independent nation in Iran."²³⁰ It became even more so as the exigencies of war gave way to the needs of peacetime growth. A transformation of gender rhetoric and policy began. Women demanded and society agreed that the government should undertake the task of promoting women's social participation as one of its overt goals, rather than simply responding piecemeal to women's issues as it had during the war.

One form this process took was institutional, with the creation of entities within the government that focused on women's issues directly. Until then, women's issues were the purview of government-sponsored quasi-

Case of Iran, 16 INT'L J. POL., CULTURE & SOC'Y 551, 561 (2003).

²²⁸ Devaluation of the currency, privatization, and the decline of social services all impacted the popular classes and made women's employment a necessity in many families. *Id.* at 565.

²²⁹ Mir-Hosseini, *supra* note 77, at 174.

²³⁰ HOODFAR, *supra* note 12, at 26.

NGOs and the women's press.²³¹ In 1987, under then-President Ali Khomeini (who has since replaced Ayatollah Khomeini as Supreme Leader) the government created the Women's Social and Cultural Council as a formal means of providing recommendations to the executive branch on women's issues.²³² Zahra Rahnavard was named its leader.²³³ Its creation was in effect an admission by the conservatives in control of the executive branch that women's issues had an existence independent of those of society at large. Moreover, those issues had to be addressed not only through the mechanism of the *Majles*, whose female representatives might or might not raise particular questions, but in a direct and coherent fashion.

The Women's Social and Cultural Council had an impact on a number of issues. In higher education, it had by mid-1989 succeeded in persuading the regime to lift restrictions on enrollment of women in technical and scientific faculties.²³⁴ In addition, with respect to women's participation in the workforce, the High Council of the Cultural Revolution urged the adoption in 1992 of a policy that "encouraged the integration of women in the labor force and directed attention to their interests and needs."²³⁵

The Bureau of Women's Affairs was created within the President's office in 1991; after President Khatami's election in 1997, it became the Center for Women's Participation.²³⁶ The Center has offices within every ministry and is responsible for attending to the interests of women and for assessing the impact of its work on women. The Center's director, Dr. Zahra Shojai'i, has cabinet status.²³⁷ Her office has proven effective in opening new positions for women in previously male-dominated occupations, such as police enforcement and bus driving, as well as in more traditional government jobs.²³⁸ Khatami also appointed a female vice president, Masoumeh Ebtekar, responsible for environmental issues.²³⁹

Thus, women who were supportive of the Revolution became the first to undertake an institutional challenge to the traditional practices that the Islamic government had initially claimed it would revitalize. They insisted that change for women would not come automatically with the mere

²³¹ Interview with Dr. Zahra Shojai'i, Director, Office of Women's Participation, Office of the President of the Islamic Republic of Iran, in Tehran, Iran (Oct. 20, 2003).

²³² Gheytaichi, *supra* note 16, at 445.

²³³ PAIDAR, *supra* note 6, at 321.

²³⁴ *Id.* at 320.

²³⁵ Moghadam, *supra* note 38, at 1140.

²³⁶ NAHID MOTEE, POPULATION COUNCIL, SCIENTIFIC AND CULTURAL EXCHANGE PROGRAM BETWEEN IRANIAN AND INTERNATIONAL RESEARCHERS app. 4 (2000), at <http://www.iranngos.org/reports/SciCulExch/Women/011ProfilesGovAgenResWo.htm> (last visited Nov. 9, 2004) (profiling Iranian government agencies active in research on women's issues). The entire report is available under "Reports," at <http://www.iranngos.org>.

²³⁷ Interview with Dr. Zahra Shojai'i, *supra* note 231.

²³⁸ *Id.*

²³⁹ Moghadam, *supra* note 38, at 1141.

existence of Islamic government, but would require specific attention and action to women as a discrete group within the polity.

Their success has manifested two very significant consequences. First, every victory gained by women has given them a sense of their power to win even more triumphs. Because secular and religious women both shared the desire for improvements in women's status in the family, the workplace, schools, and society at large, they had an interest in working together to attain that desire. That tactic has been vindicated by the achievement of change. While secular and Islamist women were divided in the eighties, "by the 1990s a form of unity had come about . . . through identification of similar problems and experiences."²⁴⁰ As the secular feminist lawyer Mehrangiz Kar puts it, Iranian women gained "confidence in themselves. With all the sacrifices they made, Iranian women know how much their current and future rulers owe them and that egalitarian rights are part of what is due to them. This demand is no longer that of a group of women; it is a nationwide one."²⁴¹

Second, women demonstrated that democratic change is possible in the IRI and that every change creates the space in which the next can occur. The male-dominated reform movement has not succeeded in other legislative efforts, such as winning a free "press, stopping torture, [ensuring] free election, regulating state-run Radio and TV, making [political] institutions . . . accountable to [the] *Majles*, or the fair trial of political crimes."²⁴² Indeed, the fate of such reform efforts is even more obscure since the February 2004 elections gave conservatives a majority in the seventh *Majles* and divided reformers.²⁴³ Nonetheless, women have experienced numerous successes regardless of the fate of reformers. Iranian women instigated change with respect to marriage and divorce laws even before the 1997 election of the reform-minded President Mohammad Khatami; they have opened up schools, employment, and political office to women; and they have established control over their reproductive lives.²⁴⁴

²⁴⁰ POYA, *supra* note 86, at 138.

²⁴¹ Nouchine Yavari-d'Hellencourt, *Discours Islamiques, Actrices Sociales et Rapports Sociaux de Sexes*, in LES FEMMES EN IRAN 226 (Mouchine Yavari-d'Hellencourt ed., 1998), translated in Keddie, *supra* note 108, at 422.

²⁴² Majid Mohammadi, *Iran's Way of Constitutionalism After 1996: Interpretations of Iran's Constitution by the Judiciary and the Reformers* 3 (unpublished paper presented at the 2003 Annual Meeting of the Law & Society Association, Pittsburgh, Pa., June 5, 2003, on file with the author).

²⁴³ Majid Mohammadi, *Iran[s] Defeated Reformists Are Divided Over What To Do Next*, DAILY STAR (Beirut) (Aug. 22, 2004), available at http://www.iran-press-service.com/ips/articles-2004/august/iran_reformists_22804.shtml (last visited Nov. 9, 2004).

²⁴⁴ The success of the family planning program in Iran has been startling. Almost 75% of married women use contraception, and the rates in urban and rural areas are quite similar (about 77% and 67%, respectively). MEHRYAR ET AL., *IRANIAN MIRACLE*, *supra* note 17, at 2. The success of family planning is all the more surprising because initially, the IRI adopted a pro-natalist position. The current family-planning program was put in place in 1988 after religious authorities affirmed that there was "no Islamic objection (or legal barrier) to family planning." *Id.* at 16.

Such successes have not only substantive, but also procedural, impacts. Each time women have moved in a new direction—seeking to enter previously barred occupations, taking part in sports in which women have not participated, running for offices which women have not yet held—they have evoked a response. Because the regime claims not only divine but also electoral authority, this response cannot be simply a *pro forma* negative. Explanations are demanded, interpretations offered, responses written, and arguments engaged in. Because a basis in religion is also claimed, texts are produced, authorities cited, and rationalizations proffered. Each proffer can, in its turn, be the subject of counterproofs and traverses. Like a public trial, such a conversation creates a process of public engagement, a space of discourse hitherto unknown, and contributes to the legitimization of multiple voices.²⁴⁵ As the sociologist Michael Mann writes, it is precisely because those in power feel it necessary to negotiate with groups within the society that a state has a democratic potential.²⁴⁶ In Iran, the conditions of women's lives became salient and today remain salient to voters judging the success or failure of the regime. This has meant that both the democratic and theocratic elements of the regime have paid attention to women's issues. The issue of veiling, examined in the following section, demonstrates the complex relationship between these competing approaches to women's status.

D. Hejab

1. The Historical Context

Hejab (literally, a curtain) is perhaps the best-known aspect of Iranian women's lives in the post-revolutionary period, but it was a political

The success of the program in both rural and urban areas is based on women bringing services to women. In rural areas, "health houses" are staffed by two *behvarz*, health providers, one male and one female, with the latter responsible for maternal and child health, including family planning. ROUDI-FAHIMI, *supra* note 35, at 4. "The main criteria in selecting a Behvarz are age (16–24 years in the case of girls and 20–28 years for boys), 8 to 12 years of formal schooling, acceptance by the community and commitment to work in their designated village for at least 4 years." A. H. Mehryar, Primary Health Care and Rural Poverty Eradication in the Islamic Republic of Iran (2002) (unpublished manuscript, on file with author). In cities, a volunteer program, staffed by neighborhood women, provides a liaison between residents and the local health clinic. ROUDI-FAHIMI, *supra* note 35, at 7. In both cases, the use of local women gives the family planning program a familiar face.

²⁴⁵ The varied women's press in Iran is a good example of the "cacophony of voices and ideas debating about women" in the public sphere. Mir-Hosseini, *supra* note 182, at 113. In that article, Mir-Hosseini refers to at least ten publications directed to women's issues; this discourse takes place in many voices from the secular feminist (*Zanan*) to the religious feminist (*Payam-e Hajar*) to the explicitly non-feminist (*Zan-e Ruz*), and a good deal between those poles. *Id.* at 99–105. See *supra* note 195 for more detailed examples of the women's press.

²⁴⁶ See generally MICHAEL MANN, THE SOURCES OF SOCIAL POWER: THE RISE OF CLASSES AND NATION-STATES, 1760–1914, at v. 2, 9–10 (1995).

issue long before the Islamic Revolution. The modernization policies of Reza Shah included European dress for men, ordered in 1929,²⁴⁷ and *kashf-e hejab*, the unveiling of women, ordered after he returned from a trip to Ataturk's Turkey in 1934.²⁴⁸ The veil was no longer to be understood as a signifier of modesty, but rather of reaction and backwardness. In 1936, *kashf-e hejab* became mandatory, with police unveiling women in the streets if they appeared in *chador*.²⁴⁹ Little in Reza Shah's fifteen years of change stirred such open opposition as *kashf-e hejab*, which led to rioting that was harshly repressed.²⁵⁰

Hejab became permissible again during the reign of Reza Shah's son,²⁵¹ and as his position became less secure, *hejab* took on a distinct political character as anti-Shah. *Hejab* was then a signifier of resistance, a "way of enacting the revolutionary demand of respect and social value for women . . . a sign of their rejection of forcibly imposed values."²⁵² Some women who had not previously chosen to wear *hejab* did so, as *hejab*'s meaning once again shifted, this time from reaction to revolution and the promise of respect and social value for women.²⁵³

Unveiling was supposed to contribute to modernization, and under Reza Shah, it in effect created the "modern" woman, whose appearance and character was the opposite of the "traditional" woman. For example, the public schools promoted by Reza Shah²⁵⁴ were open to girls and women who were prepared to give up the veil; they thus could become educated. But for women who wore the veil as a sign of purity and chastity and for the families of those women, the public schools themselves came to appear impure and unchaste.²⁵⁵ Homa Hoodfar describes this link between education and unveiling as unfortunate because it allowed conservative forces to "galvanize public resistance to education for women . . . [although] the public's opposition was primarily to unveiling,"²⁵⁶ not to education. Familial adherence to veiling as a form of piety precluded education for many women and instead reinforced their seclusion.

²⁴⁷ Members of the *'ulama* were exempted if the government confirmed their status. HALM, *supra* note 5, at 126. This "completed the process of clericalizing the ulama . . . [who] were defined as having special status and were identifiable through their dress." *Id.*

²⁴⁸ PAIDAR, *supra* note 6, at 105.

²⁴⁹ *Chador* is the traditional covering of Iranian women. See *supra* text accompanying note 137. After Reza Shah's abdication in 1941, the unveiling order was revoked and many women reverted to the *chador*, though they no longer veiled their faces. KEDDIE, *supra* note 2, at 113.

²⁵⁰ MOHAMMAD GHOLI MAJID, GREAT BRITAIN AND REZA SHAH: THE PLUNDER OF IRAN, 1921-41, at 216 (2001).

²⁵¹ KEDDIE, *supra* note 2, at 129.

²⁵² PAIDAR, *supra* note 6, at 214.

²⁵³ *Id.*

²⁵⁴ Keddie, *supra* note 108, at 429.

²⁵⁵ See *infra* text accompanying note 275.

²⁵⁶ HOODFAR, *supra* note 12, at 9-10.

Indeed, for many women, the unveiling order meant that women simply did not leave their houses because they would not be seen “naked” in the streets.²⁵⁷ Many women had previously claimed their right to enter the public space in order to shop, work, visit neighbors, or frequent the *hammam*, or public baths, on its women’s days.²⁵⁸ For these women, middle-class and lower-middle-class, the Shah’s unveiling order had the perverse result of making them *more* secluded and hence more dependent upon men, with less control over their own labor, less access to their own funds, and less mobility. The link between modernity and Western dress diserved these women.

On the other hand, women who accepted that link approved of unveiling as a step on the road to equal rights. Many women of the upper and upper-middle class, whose families depended upon staying in the Shah’s good graces, went out in public unveiled, took advantage of the new educational opportunities on offer, and supported further moves towards equality of rights for women.

The split among Iranian women thus created between those veiled and so excluded from the Pahlavi account of modernity, and those unveiled and so separated from participation in the religious account of tradition, was profound. In 1941 when Reza Shah was forced to abdicate in favor of his son, the ban on the veil was revoked and veiled women could once again appear in public, but by then the damage was done. The veil had become associated by the devout with virtue, by the secular with ignorance. The division thus caused among women would be costly and hard to overcome. As Mir-Hosseini says, by the time of the Revolution, *hejab* had “become a deep wound . . . a major arena of conflict between the forces of modernity and Islamic authenticity, where each side has projected its own vision of morality.”²⁵⁹

After the Revolution, *hejab* took on yet another form, as the appearance of women was considered a key front in the struggle to eliminate the Western forces that had supported the Shah and his father before him. *Hejab* became not only a religious symbol, but a revolutionary one. Thus, on the one hand, Adele Ferdows quotes religious figures as dismissing post-revolutionary protestors against the imposition of *hejab* as “remnants of the Pahlavi regime,” and claiming that return to *hejab* “does not imply suppression or seclusion.”²⁶⁰ Indeed, she points out that many more

²⁵⁷ *Id.* at 10.

²⁵⁸ The *hammam* is a Turkish bath, “which has manifold functions besides allowing people to perform the purification rituals and bathe. The *hammam* is an intense communication center, a powerful information agency exposing the secrets of the families who frequent it.” FATIMA MERNISSI, BEYOND THE VEIL: MALE-FEMALE DYNAMICS IN MODERN FEMALE MUSLIM SOCIETY 123 (1985). According to Hoodfar, visiting public baths was a cherished ritual for many women because it expanded their social circles beyond their immediate family and neighbors. HOODFAR, *supra* note 12, at 10.

²⁵⁹ *Conservative-Reformist*, *supra* note 181, at 41.

²⁶⁰ Ferdows, *supra* note 145, at 292.

women came out on the streets in support of the veil than against it, "represent[ing] the vast majority of Iranian women who, by their sheer numbers, could drown the voices of their 'modern' sisters."²⁶¹

On the other hand, a secular woman, opposed to the Shah, but already working in the state sector at the time of the Islamic Revolution, remembers that in 1980 when *hejab* was made mandatory for women working in government offices,²⁶² secular women carried their scarves and put them on only as they approached their offices.²⁶³ Then they were warned that women who worked for the government should always wear their scarves on the street and were given to understand that they were watched.²⁶⁴ Some wanted to protest and others to resign, and indeed those protests and resignations were the signal for secular women to be ousted from their ministries.²⁶⁵ Secular women like my informant, who stayed on in their jobs, did so at least in part to assure that such women would remain represented within government offices.²⁶⁶ In fact, the *hejab* campaign in government offices was part of the *enghelab edari*, or administrative revolution, by which the revolutionary forces tried to cleanse the bureaucracy of those loyal to the Shah or the Shah's policies.²⁶⁷

Mandatory *hejab* was not instituted until the summer of 1981,²⁶⁸ when clerical forces had, with the onset and resolution of the hostage crisis, won control over the state machinery. But that control was not yet firm, with secularists and leftists still posing a challenge.²⁶⁹ The issue of covering put women in the spotlight, with campaigns against women who did not wear *hejab* that included harassment and even physical aggression.²⁷⁰ At the same time, mandatory *hejab* discomfited the left opposition. In 1983, appearing without *hejab* was made a penal offense and subjected the guilty woman to corporal punishment.²⁷¹ This was often applied in the 1980s, when government-sponsored teams roamed streets looking for *bad hejab*, or bad covering.²⁷²

Both the punishment and such scrutiny is far less routine now, and indeed evokes protest and public comment when it occurs. On a trip to Iran in the fall of 2002, I saw only one person checking for *bad hejab*; that

²⁶¹ *Id.* at 293.

²⁶² PAIDAR, *supra* note 6, at 338.

²⁶³ Interview with a secular activist, in Tehran, Iran (Oct. 2002).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ PAIDAR, *supra* note 6, at 325.

²⁶⁸ Shireen Madavi, *Women and the Shii Ulama in Iran*, 19 MIDDLE E. STUD. 17, 26 (1983).

²⁶⁹ HOODFAR, *supra* note 12, at 16.

²⁷⁰ PAIDAR, *supra* note 6, at 234–35.

²⁷¹ *Conservative-Reformist*, *supra* note 181, at 42.

²⁷² "The new term of 'bad hejab women' was invented to describe women whose *hejab* did not adequately cover them and make them anonymous enough." PAIDAR, *supra* note 6, at 342.

was in northern Tehran, at a highway entrance, and it was cars that were being checked visually. Although my companion, an Iranian woman who was driving, warned me to adjust my scarf to cover all of my hair, we were not stopped nor did I see anyone else stopped. Indeed, a policeman standing nearby seemed to be encouraging cars to pass on without stopping. A few days later, I was told by an Iranian woman living in Canada who had returned to Isfahan for a family visit that she was approached on a bus by a young man who called her “sister” and told her to adjust her headscarf. She reported that she brushed him off and suffered no consequences.²⁷³

Today, *hejab* is the feature of Iranian women’s lives best known to the West. As such it is not only a literal but a figurative veil, for the image of a covered woman remains in the Western imagination an image of oppression, backwardness, and subordination. Nonetheless, behind the veil, Iranian women themselves are far from that stereotype, however retrograde some elements of the society remain. However unappealing, and indeed demeaning, public covering is to women in the West, it is important not to let this fundamentally symbolic gesture veil the reality of Iranian women’s lives from the gaze of outsiders. While *hejab* has become almost fetishized, both in the Islamic Republic and in the West,²⁷⁴ as a symbol of Islam’s approach to “the woman question,” it has not in actuality put an end to the influence of modernity on women’s lives, whether they wear the veil willingly or unwillingly.

Nor has it excluded women from social and political participation; in some cases, it has actually facilitated public participation. Where patriarchal families previously resisted women’s education and employment because they took place within a “corrupt” public space, the Islamic Republic’s commitment to *hejab* and Islamic morality now constructed public space as morally “safe” for women. The religious state power came to be seen as the guarantor of correct social behavior of men and women in non-familial settings like the workplace or university. Hence, for many traditional families, sending girls to school became much more acceptable.²⁷⁵

²⁷³ Interview with Sahnaz X, in Isfahan, Iran (Oct. 29, 2002).

²⁷⁴ One of the first steps of the new *Majles* elected in 2003 with a conservative majority was to begin an inquiry into whether a national dress code was necessary and, if so, of what it should consist. As of August 23, 2004, “Iran’s conservative parliament [was] debating whether to institute a stricter dress code for Iranian citizens,” which critics view primarily as a measure to control women’s dress. Greg LaMotte, *Iran’s Parliament Debates National Dress Code*, VOA (Aug. 23, 2004), at <http://www.payvand.com/news/04/aug/1228.html> (last visited Nov. 9, 2004). For examples of news articles illustrating the fetishization of *hejab* in both Iran and the West, see Marjane Satrapi, *Veiled Threat: France is Set To Ban the Hejab in Schools. But Forcing Girls Not To Wear it is as Bad as Forcing Them To, Says Iranian Exile Marjane Satrapi*, GUARDIAN, Dec. 12, 2003, at 6, available at 2003 WL 64379714; Maura J. Casey, *Behind the Veil with a Nobel Prize Winner*, CHRISTIAN SCI. MONITOR, Oct. 17, 2003, at 1, available at 2003 WL 5256159.

²⁷⁵ See UNITED NATION’S CHILDREN’S FUND, SITUATION ANALYSIS OF WOMEN AND CHILDREN IN THE ISLAMIC REPUBLIC OF IRAN 108 (1993).

Powerful cultural validation was created for the entrance of women from devout traditionalist families into economic, cultural, and political life, an opportunity hitherto limited to those who explicitly accepted modernity in its Westernized form. As Mir-Hosseini writes, “[m]any women in Iran today owe their education, their jobs, their economic autonomy, and their public persona to *compulsory hejab*.”²⁷⁶ The clerical establishment’s unconsidered insistence on *hejab* almost paradoxically enabled women to use the veil for “the purpose of facilitating their public presence (including driving).”²⁷⁷ In other words, the authenticity/morality discourse, anchored in tradition, of the Islamic Republic in respect to the public appearance of women, made possible the modern experience of many women. That is, it facilitated their emergence from private into public life, and from public passivity to individual and collective agency.

On the other hand, of course, for women who already had access to education, to careers, and to public space, the imposition of *hejab* and gender segregation by the revolutionary government was felt sharply and unhappily. Azar Nafisi, the author of *Reading Lolita in Tehran*, describes the alienation and isolation felt by upper-class women after the Revolution, even those like her who had opposed the Shah.²⁷⁸ For Nafisi and many of her female students, public space was “a war zone, where young women who disobey the rules [of *hejab*] are hurled into patrol cars, taken to jail, flogged, [and] fined”²⁷⁹ Such experiences remind us once again that gender, like any other category, is nonessential and thus cross-cut by other categories like race and class.

2. A Taxonomy of Hejab

In practice, *hejab* means female Islamic dress, but there is no single official or uniform version of *hejab*, either in the Muslim world generally or in Iran specifically. In Iran, the requirement of *hejab* is that all parts of the female body be covered in public except for the face and hands.²⁸⁰ There are no exceptions to the requirement of *hejab*, either for non-Muslims or for non-Iranians. Upon arriving by plane in Tehran in the fall of 2002, I immediately encountered airport placards with messages in both Farsi and English addressed to “dear sisters” and invoking a public interest in women’s “modest” dress. Women are, in effect, on notice that the appearance of their bodies is a matter of concern to the government. This is

²⁷⁶ MIR-HOSSEINI, *supra* note 37, at 278.

²⁷⁷ Nayereh Tohidi, *The Issues at Hand*, in *WOMEN IN MUSLIM SOCIETIES: DIVERSITY WITHIN UNITY* 277, 283 (Herbert Bodman & Nayereh Tohidi eds., 1998).

²⁷⁸ AZAR NAFISI, *READING LOLITA IN TEHRAN: A MEMOIR IN BOOKS* 27 (2003).

²⁷⁹ *Id.* Nafisi left Iran in 1997, shortly before the election of Mohammad Khatami as President. *Id.* at 341; Ghetyanchi, *supra* note 16, at 449.

²⁸⁰ This applies to all women who have passed the age of puberty and is encouraged for younger girls as well, who now must wear *hejab* in school, regardless of their age. PAIDAR, *supra* note 6, at 339.

shocking to an American woman, and has the effect of emphasizing that issues concerning women are placed directly into a political space.

A taxonomy of *hejab* reveals that, while covering is mandatory, it is far from uniform. Formally, the *chador*, a long black cloak draped from the top of the head to the ankles, is worn over skirt or trousers and dark stockings, a coat, called *rupoosh* or *manto*, and some form of headcovering.²⁸¹ The *chador* overcoat and headcovering is considered better *hejab* than simply a coat and headcovering and is supposed to be worn by women holding official government positions,²⁸² but, in my experience, this rule is not always followed.

More informally, *hejab* consists simply of a coat worn over trousers, with a headcovering that may be *roosari*, a scarf, or *maqnaeh*, a funnel-shaped tube of cloth, often stretchy, that the wearer puts over her head around her face, draping the wide end over her shoulders. (The *maqnaeh* seems to be a post-revolutionary adaptation²⁸³ and spares the wearer endless adjustments of the scarf to keep the hair covered.) The *roosari* or *maqnaeh* may be black, but is sometimes light-colored, even pastel. According to a university professor who returned to Iran in 2002 after several years' absence, the shift to light-colored scarves and *maqnaehs* is recent and represents a change in the authorities' tolerance of variations in *hejab* in government buildings and elsewhere.²⁸⁴ I also saw very bright *mantos* and *maqnaehs*—electric blue *manto*, red or yellow *maqnaeh*—on female presenters on state-controlled Iranian television, one of the more conservative branches of government. Their dress suggests that even the official stance on *hejab* has grown more relaxed.

The *maqnaeh* and coat, often light-colored, and sometimes covered by a black *chador* with a slightly stiffened sun visor sewn on and invisible ties behind the head to hold it in place, seem to be the uniform of the modern working woman. Various sorts of adornment accompany even this dress. These include gold scarf holders that create a decorative bow beneath the wearer's neck, and frilled light-colored scarves worn beneath the *chador*, creating a colorful edge along the top of the wearer's face. There is variation even in the black *chador*, which may be lightweight fabric or heavy, have a pattern woven into it, or be made of a shimmery fabric that catches the light as the wearer moves.

²⁸¹ A *rupoosh* (also spelled *roposh*) is a "long, loose dress with long sleeves, the dominant form of *hejab* in Iran since 1981." POYA, *supra* note 86, at x. A *manto* is a long coat. IRIN News, *Iran: Special Report on the Changing Role of Women* (Apr. 28, 2003), at <http://www.payvand.com/news/03/apr/1135.html> (last visited Nov. 9, 2004).

²⁸² Siavosh Ghazi, *Emancipation Under the Veils—Women's Rights Makes Headway in Iran, but Much Remains to be Accomplished*, UNESCO COURIER (June 2000), at http://www.unesco.org/courier/2000_06/uk/doss13.htm (last visited Nov. 9, 2004).

²⁸³ POYA, *supra* note 86, at x.

²⁸⁴ Interview with Dr. Golnar Mehran, Professor of Educational Science, Azzahra University, Tehran, in Tehran, Iran (Oct. 24, 2003).

The extent to which the hair is actually covered seems to be the front line of a generational battleground, with young urban women likely to show a good deal of hair both from forehead to crown, and below the scarf if their hair is long. The fit, length, and weight of the coat—shaped to the body or shapeless, above the knees or down to the ankles, thin cloth or thick—also seems to be an area of skirmish, as are makeup, nail polish, nude stockings, bare forearms, and sandals.²⁸⁵ In Tehran in the fall of 2002, I saw a wide variety of *hejab*, from a limited view of the face with the *chador* held across the mouth and barely above the eyes, to tight jeans, fleece vest barely covering the bottom, and a gravity-defying scarf pushed to the back of the head, with long hair showing beneath the scarf down the wearer's back. Outside the cities, among nomadic people and agricultural workers, a loose brightly colored dress with a head-covering that may be a scarf or a sort of toque seems to be acceptable, as are colorful patterned *chadors* that do not extend to the ankles but reveal dark stockings. These forms of dress also seemed common among older women and may reflect what covered women wore before the Revolution. Interestingly then, these women are also likely to reveal legs and heads, but in a manner that is consistent with “tradition.”

At any rate, the notion that covering has a “unifying tendency [among women, because] there is no longer such a gap in the public appearance of women from different classes”²⁸⁶ has some applicability, but in a limited way. There are clearly differences between younger women and older women and between women in “modern” occupations and settings—offices and schools—and those who work in agriculture, textile enterprises, and other more traditional settings. Students and women working in offices seem to wear the coat and trousers, rather than *chador*, while older women wear *chador* more regularly. Women in agriculture and other physical occupations cover themselves in ways that limit their mobility less than the *chador*, which demands that the use of one hand be reserved to holding it closed. There is also a continuing class-based difference between the often minimal *hejab* worn in wealthy north Tehran and the more complete *hejab* worn in less affluent areas of the city.²⁸⁷ Azam Torab describes

²⁸⁵ See, e.g., IRIN, *supra* note 281.

²⁸⁶ Keddie, *supra* note 108, at 411.

²⁸⁷ “The picture that everyone has of Tehran, in which the north is rich, culturally active, westernized and modern, whereas the south is poor, religious, traditional and proletarian Under the Shah, the north and south were completely different worlds, which didn't have any relation to one another. Northern women, for instance, were usually unveiled, while in the south most women wore chadors, or barely went out at all—how could you go out in an environment which was so degraded, where men and women mingled freely, and so on.” Masserat Amir Ebrahimi, *Tehran: Fragmented and Feminized*. Interview with urban sociologist Masserat Amir Ebrahimi (Dec., 2002), in *BAD JENS: IRANIAN FEMINIST NEWSLETTER*, Sixth Issue, at <http://www.badjens.com/newissue/i2.htm> (last visited Nov. 9, 2004).

The terms *shomali* (also spelled *shomal-e-shahr*), northern, and *jonubi* (also spelled *jonub-e-shahr*), southern, have come to be so freighted in this regard that they are used to

speaking with a female religious leader from south Tehran who refers to herself and her neighbors as *ummul-i chadori*, those who wear the *chador*, in distinction to women in northern parts of the city.²⁸⁸ Parvin Paidar refers to the dress of upper and middle-class women as making them “a distinguishable cast[e].”²⁸⁹ Such women are often referred to as wearing *bad hejab* and have been subject to punishment, as Nafisi notes.²⁹⁰ But that depends on the political climate of the moment. In late 2002, there seemed to be little oversight of women’s dress in north Tehran at least, so long as the head was covered and some kind of body covering, however fitted or short, was worn over trousers and extended at least thigh-top.²⁹¹

In the early days of the Islamic Republic, and indeed until the election of President Khatami, there was no public debate about *hejab*. Shortly after Khatami’s election, however, the newly invigorated reformist press began to raise the issue as one implicating democracy, and several sympathetic clergy suggested that wearing *hejab* was not religiously mandatory, however desirable: it might be a sin not to wear *hejab*, but it was not a crime.²⁹² The publisher of one of these articles, Abdollah Nuri, a member of the clergy and a close ally of Khatami, was tried, *inter alia*, for blasphemy and sentenced to five years’ imprisonment.²⁹³ At his trial he had argued effectively and publicly against classifying disagreement as blasphemy and the defense he offered, published in book form, became a bestseller.²⁹⁴ In 2000, a young cleric, Hasan Yusefi-Eshkevari, attended the notorious Berlin conference on reform, where he was quoted as saying that *hejab* should be a woman’s choice.²⁹⁵ Upon his return, he was arrested, tried, and convicted of heresy by a special clergy court; his death sentence was overturned on appeal.²⁹⁶

mean rich/westernized and poor/traditional even in another city, Isfahan (also spelled Esfahan), where the wealthy live in the south and the poor in the north. Farhad Khosrokhavar, *Postrevolutionary Iran and the New Social Movements*, in *TWENTY YEARS OF ISLAMIC REVOLUTION*, *supra* note 30, at 15.

²⁸⁸ Azam Torab, *The Politicization of Women’s Religious Circles in Post-Revolutionary Iran*, in *WOMEN, RELIGION AND CULTURE IN IRAN*, *supra* note 20, at 143, 146.

²⁸⁹ PAIDAR, *supra* note 6, at 342. This signal of class is often on display in Iranian cinema; the recent film, *Crimson Gold*, directed by Jafar Panahi and written by Abbas Kiarostami, both well-known filmmakers, makes this visual point repeatedly. *CRIMSON GOLD* (Wellspring 2003).

²⁹⁰ See *supra* text accompanying notes 278–282.

²⁹¹ There seems to be a new insistence upon *hejab* since the elections of 2004 brought conservatives to the *Majles*. See Keyvan Mehrgan, *Majlis Drafting Dress Code Bill*, *SHARQ*, Oct. 11, 2004, No. 312, at 7, available at [http://www.netiran.com/?fn=artd\(2208\)](http://www.netiran.com/?fn=artd(2208)) (last visited Nov. 9, 2004).

²⁹² *Conservative-Reformist*, *supra* note 181, at 42–43. This mirrors the religious categorization of human actions as required, praiseworthy, permitted, reprehensible, or forbidden; the suggestion is that omitting *hejab* is reprehensible, but not forbidden.

²⁹³ *Id.* at 46–47.

²⁹⁴ *Id.*

²⁹⁵ *Id.* at 48.

²⁹⁶ *Id.* Among others arrested for attendance at the Berlin conference was the most well-known secular advocate for women’s rights, lawyer Mehrangiz Kar, who left Iran

In sum, *hejab* has been both an expression of conservative attempts to limit women's status in the IRI and simultaneously a device through which some women have resisted those efforts. It is deeply symbolic of the aspirations of the most conservative leaders of the IRI, and the fervor with which they will defend that vision. Yet *hejab* has also enabled many women to mitigate conservative attempts to confine their role to the private sphere by facilitating their increased involvement in public life. By modifying the color or style of the traditional *hejab*, some women have created an acceptable and public method of personal expression or even social deviance. At present, there is an ongoing debate in the streets of Iran, quiet but visible, over how a modern Iranian woman should look. The salience of *hejab* throughout Iran's history suggests that the issue will continue to occupy a prominent place in future debates about women's status.

V. THE POTENTIAL OF ISLAMIC FEMINISM

I waste not the labor of any that labors among you, be you male or female—the one of you is as the other.²⁹⁷

A. *Is There an Islamic Feminism?*

Women who identify with Islam and also seek improvement in the lives of women, who are called “modern Islamist women” or “Islamist feminists,” are a relatively new category, but, as a mass phenomenon, Islamic feminism may be more fully articulated in Iran than elsewhere. These women, devout and educated, interrogate the claims of equality in Islam and seek to redeem them throughout life, while erasing the historic gender discrimination that they claim is a product of tradition, rather than of religion. They have created intellectual outlets, like the women's press and a women's religious seminary, theoretical positions, and institutions of daily life, such as spaces for women's sports and shelters for runaway girls. All of these speak to and deal with the issues of women's lives within the context of religion, but religion on the basis of equality and support for women's aspirations. As Hoodfar says, “[t]hrough this strategy, women . . . derail the claim that feminism and issues of legal equity are Western paradigms which aim to undermine the authenticity of Iranian society.”²⁹⁸

Whether there is a theoretical location for these positions within feminism is an interesting question. Patricia Misciagno writes of “de facto femi-

shortly after her release from prison. Interview with Mehrangiz Kar, Fellow, The National Endowment for Democracy, in Washington, D.C. (June 2002).

²⁹⁷ Qu'ran, Sura 3:194.

²⁹⁸ HOODFAR, *supra* note 12, at 3.

nism,” and defines it as “activity that runs counter to the ideology of patriarchy, even while not directly addressing the issue of patriarchy as an ideology.”²⁹⁹ Parvin Paidar, author of the magisterial examination of modern women’s history in Iran, uses the term “feminism” “in its broadest sense to accommodate any type of activism by women focusing on their gender interests within any political or ideological framework.”³⁰⁰ To the extent then that one is willing to look at feminism as practice rather than ideology, the feminist label may well fit those who are creating a discourse of gender equality within a space that has not previously known it.

Many Islamist women in Iran will not accept this appellation, and many Western feminists reject its application to Islamists. Yet there have been significant advances in the status of women in Iran and there is an agenda for further advancement, set by women seeking justice for women. If we can accept the notion of multiple feminisms, of feminisms that are particular, specific, and local in their methods and approaches, but universal in their commitment to the advancement of women, there may be an Islamic feminism as well. This is perhaps not how Western feminism conceives of itself, and perhaps not the way Iranian women think of feminism. Nonetheless, as the Turkish scholar Deniz Kandiyoti, perhaps the first to appropriate feminism for Islam, points out, “feminisms in the Middle East have been both intensely local, grappling with their own histories and specificities, and international, in that they have been in dialogue, both collaborative and adversarial, with broader currents of feminist thought and activism.”³⁰¹

B. Reform and Islamic Feminism

Certainly women have had a major political impact in Iran. The election of President Mohammad Khatami in 1997 and his re-election in 2001 were made possible by the support he worked for, and won, from women. In 1997, Khatami was elected by a vast majority of the total electorate, representing 70% of all voters and an astounding 80% of women voters.³⁰² This kind of electoral unity makes women’s issues salient not only to women, but to the society at large; “the whole political process has become gendered,” as Mir-Hosseini writes.³⁰³ Because these issues are raised as both political and religious questions, they have involved some clerics who, by the nature of their position, are engaged in both politics and religion. As

²⁹⁹ PATRICIA S. MISCIAGNO, *RETHINKING FEMINIST IDENTIFICATION: THE CASE FOR DE FACTO FEMINISM* 70–71 (1997).

³⁰⁰ Parvin Paidar, *Feminism and Islam in Iran*, in *GENDERING THE MIDDLE EAST*, 51 n.1 (Deniz Kandiyoti ed., 1996).

³⁰¹ Deniz Kandiyoti, *Contemporary Feminist Scholarship and Middle East Studies*, in *GENDERING THE MIDDLE EAST*, *supra* note 300, at 1, 8.

³⁰² Kian-Thiebaut, *supra* note 30, at 56.

³⁰³ MIR-HOSSEINI, *supra* note 37, at 273.

Hoodfar writes, “[n]ever in Iran’s patriarchal history have male politicians been so watchful of or attentive to women’s political behaviour and views, which currently appear to threaten the historical[ly] patriarchal Iranian world view.”³⁰⁴

Interestingly, male intellectuals who identify themselves as secular seem to be less aware of the force of women’s issues than are male clerics or religious intellectuals.³⁰⁵ I also found evidence of this on my visit to Tehran in October and November of 2002. I was told by a woman academic of her difficulties in persuading male colleagues, whom she knew to be secular in orientation, to participate in establishing and maintaining an academic entity devoted to scholarship on issues regarding women. “They seem to feel it is not important for them,” she said.³⁰⁶ At a university-based conference I attended in Tehran on women’s political participation, the only questions raised from the floor came in the course of a presentation by a woman academic who argued that a bare minimum of the rights of women had been accepted throughout Iranian society. Thus, she said, there was a need to make demands, similar to affirmative action, to improve this situation.³⁰⁷ This drew criticism from at least two male academics (secularists, I was later told), who responded from the floor that, rather than make demands, women should work together with men. One referred to what he understood to be the disruptive role of affirmative action in America. Secularist men, those least accepting of the Islamist government, seem to have little interest in the women’s movement as such, seeing it as secondary to their own struggle with that government.³⁰⁸

On the other hand, at the same conference, I heard a high-ranking cleric, Ayatollah Mohammad Bojnurdi, speak eloquently to a mixed audience claiming that the equality of men and women is divinely ordained.

³⁰⁴ HOODFAR, *supra* note 12, at 3.

³⁰⁵ Both men and women may be members of the clergy, but there are currently no women in a position higher than that of *mullahs*, who are preachers. The last female *mujtahed*, literally “interpreter,” but also meaning one able to issue a *fatwa*, or religious opinion binding on followers, died in 1977, and no woman has been recognized as a *mujtahed* since. Torab, *supra* note 288, at 150. However, there is a women’s religious seminary in Qom, the Iranian center of Shi’i education, from which such a scholar might come. Kian-Thiebaut quotes its founder, Fatemeh Amini, as saying the seminary’s aim “is to educate women *mujtaheds* as well as women capable of finding solutions to women’s problems, including their social problems.” Kian-Thiebaut, *supra* note 30, at 64.

³⁰⁶ Shadi-Talab Interview, *supra* note 21.

³⁰⁷ Dr. Homa Zanjani, Mashhad University, Presentation at the Conference on Women’s Political Participation, Tehran, Iran (Oct. 20, 2002). Dr. Zanjani’s position with respect to the need for affirmative action in support of women is also that of Shirin Ebadi, who argues for “a quota system for the employment of women in every governmental or non-governmental institution to end discrimination in the workplace.” Shirin Ebadi, *Excerpts from Women’s Rights in the Laws of the Islamic Republic of Iran* (2002), at <http://www.badjens.com/ebadi.html> (last visited Nov. 9, 2004).

³⁰⁸ Mehranguiz Kar, a secular lawyer, addressed this publicly in 1998, in an open letter to a leading male reformer, whose newspaper had featured fifteen successive articles on Iranian intellectuals, all of them men. She asked the editor whether he was aware that half of all Iranians are female. Mir-Hosseini, *supra* note 182, at 117.

In response to questions, Bojnurdi, a former member of the Supreme Judicial Council, offered reinterpretations of well-known *sunnah*, or religious traditions, and *surah*, or *Qu'ranic* verses, that are often quoted to sustain discrimination against women. He said that there was substantial misunderstanding of the equal status of women and a need to end discrimination against them.³⁰⁹ I also met non-clerical religious intellectuals for whom gender issues played a substantial role in their scholarship.³¹⁰ This reinforced my perception that gender issues have become salient in a religious context as part of the reformist movement *within* the Islamic Republic, rather than simply as a revolt against it. This may perhaps explain the relative success of women in respect to their issues, as contrasted with the relative failure of the sector of the reform movement that is directed to political liberalization.³¹¹

In February 2004, parliamentary elections produced a majority for conservatives. While it is too early to know whether that will mean a long-term change in the politics of the IRI, to date the conservatives have made no official moves that impact the social condition of women, though they have established a committee to study the possibility of a national dress code³¹² and taken the phrase "gender justice" out of the new five-year plan for economic development.³¹³

Interestingly, the new *Majles* contains only one less woman than did the previous reform-minded *Majles*.³¹⁴ This suggests that conservatives have assimilated the need to satisfy women voters and may have little stomach for a fight to roll back women's education, workforce participation, political participation, or reproductive rights. As usual, the symbolic issue of *hejab* continues to be the ground on which conservatives express their gender policies. The prospects for the continued societal advancement of women may depend more heavily upon external factors, such as whether tensions with the United States heighten. In that case, the range within which differences of opinion could be publicly expressed in Iran is likely to narrow, to the detriment of all democratic forces within the current political structures.

³⁰⁹ Ayatollah Bojnuerdi, Speech and Interview at the Conference on Women's Political Participation, Tehran, Iran (Oct. 21, 2002) (on file with author).

³¹⁰ For a taxonomy of modern religious intellectuals, see Hamidreza Jalaeipour, *Religious Intellectuals and Political Action in the Reform Movement* 3, Paper presented at the Conference on Intellectual Trends in 20th Century Iran at Princeton University (Oct. 21, 2000), at <http://www.seraj.org/Reform.pdf> (last visited Nov. 9, 2004).

³¹¹ Mohammadi, *supra* note 242, at 3-4.

³¹² See Mehrgan, *supra* note 291.

³¹³ *Interview with Head of Majlis Womens' Faction*, ETEMAAD, Sept. 9, 2004, No. 5386, at 13, available at [http://www.netiran.com/?fn=artd\(2131\)](http://www.netiran.com/?fn=artd(2131)) (last visited Nov. 9, 2004).

³¹⁴ There are now twelve women members compared to thirteen in the previous *Majles*. Zahra Ebrahimi, *12 Women of 7th Majlis: Power Without Authority*, ZANAN, Aug. 2004, No. 110, at 33-40, available at [http://www.netiran.com/?fn=artd\(1915\)](http://www.netiran.com/?fn=artd(1915)) (last visited Nov. 9, 2004).

As I have discussed before, secular and religious women have at least implicitly joined together in calling for improvements in women's status in Iran. Both that demand and its at least partial satisfaction have contributed to the constitution of civil society. Leila J. Rupp and Verta Taylor write that understanding the meaning of feminism in a specific situation requires examination of how women "constructed, sometimes through conflict with one another, a sense of togetherness . . . [among those] who critique female disadvantage, and who work to improve women's situations."³¹⁵ To the extent then that such a framework is apparent in Iran, it is perhaps possible to call this social community "feminist," whether or not all the participants would describe themselves by that term.

C. An Iranian Feminist Jurisprudence?

Because secularism is not an open political force in Iran today, a coherent position aligning religion and women's interests is key to those interested in the advancement of women.³¹⁶ A feminist religious discourse is thus clearly on the agenda. But that requires a substantial rethinking of *feqh*, the jurisprudence of *shari'a*. *Shari'a*, as divine law, is fixed, complete, and applicable to every situation, but its entire substance is never fully knowable to human beings.³¹⁷ So *feqh*, the jurisprudential endeavor of applying divine law to particular situations, is a human enterprise that can never be fully complete. Jurisprudence is thus open to evolution, rethinking, and reform.³¹⁸ Esposito and DeLong-Bas describe *feqh* as "the product of human understanding that has sought to interpret and apply the Divine Law in space and time."³¹⁹ In this light, the search for a feminist jurisprudence aligns with the post-revolutionary movement called *feqh-e puya*, or dynamic jurisprudence, which seeks, one might say, the intent, rather than their literal meaning, of *Qu'ran*, revelation, and *sunnah*, tradition.³²⁰

The new thinking about women and Islam dates back to the revolutionary period of the seventies. Islamists perceived that religion as a vehicle for expressing dissatisfaction with the Shah's government would evoke a broader political response if it included a more modern perspec-

³¹⁵ Leila J. Rupp & Verta Taylor, *Forging Feminist Identity in an International Movement: A Collective Identity Approach to Twentieth-Century Feminism*, 24 *SIGNS* 363, 364 (1999).

³¹⁶ Ziba Mir-Hosseini, *Religious Modernists and the "Woman Question,"* in *TWENTY YEARS OF ISLAMIC REVOLUTION*, *supra* note 30, at 75, 77.

³¹⁷ KHALED ABOU EL FADL, *SPEAKING IN GOD'S NAME: AUTHORITY, ISLAMIC LAW AND WOMEN* 34 (2001).

³¹⁸ *Id.* at 32. As Cherif Bassiouni and Gamal Badr point out in *The Shari'ah: Sources, Interpretation and Rule-Making*, 1 *UCLA J. ISLAMIC & NEAR E.L.* 135, 137 (2002), the important role of *feqh* in effect makes the jurist, a religious scholar, the key figure of Islamic law, as are the judge and legislator in common law and civil law respectively.

³¹⁹ ESPOSITO & DELONG-BAS, *supra* note 17, at 130.

³²⁰ MIR-HOSSEINI, *supra* note 37, at 83.

tive. Then, it would be better equipped to compete with left ideologies for mass support. Delineating a modern position on women was the task of Ayatollah Mortaza Motahhari, who was not only Ayatollah Khomeini's treasurer and contact inside Iran during the latter's exile, but was in effect his emissary to "the young religious middle class," devising for them "an Islamic alternative to Marxism and socialist Islam."³²¹ Motahhari's *The System of Women's Rights in Islam* began as a polemical contribution to the public debate about family that took place with the passage of the Family Protection Law in 1967.³²² It was published in book form in 1974.³²³ His work has since become the "official discourse of the Islamic Republic on gender."³²⁴

Motahhari argues that in Islam, women are not inferior to men, but rather their equals.³²⁵ Some inegalitarian gender practices of Muslim society are linked, he says, to pre-Islamic conditions in the Arab world and thus neither divinely ordained, nor appropriate for modern life. However, gender practices in the West are not the sole alternative; indeed, he believes they may be as oppressive as the pre-Islamic practices condemned by the Prophet. It is within Islam that "the psychology of man and woman" is revealed.³²⁶ The rights and duties of each gender are complementary but different because some differences between the two are innate.³²⁷

Motahhari makes an important distinction between those aspects of gender difference that are innate and those that are conventional. The innate differences are expressed within the family and reflected in various Qu'ranic prescriptions of difference, while the conventional differences are expressed within society. While the innate differences mean that some aspects of family structure are unchangeable, conventional differences may change and even disappear as society changes.³²⁸ Thus, Motahhari's acceptance of the principle of equality and the conventional nature of some (though not all)³²⁹ gender practices was accompanied by a recognition that, in respect to gender, law could be reinterpreted, and a new gender jurisprudence was possible.³³⁰

³²¹ MARTIN, *supra* note 158, at 75.

³²² MIR-HOSSEINI, *supra* note 37, at 24.

³²³ Motahhari, *Woman and Her Rights* (1974), available at <http://www.al-islam.org/WomanRights> (last visited Nov. 9, 2004). Motahhari's book has been translated into English.

³²⁴ MIR-HOSSEINI, *supra* note 37, at 24.

³²⁵ PAIDAR, GENDER OF DEMOCRACY, *supra* note 14, at 19.

³²⁶ Motahhari, *supra* note 323.

³²⁷ Mir-Hosseini, *supra* note 316, at 75.

³²⁸ PAIDAR, *supra* note 6, at 176.

³²⁹ For example, Motahhari essentializes sexuality: men are driven by sexual desire and women, particularly when not sexually experienced, are unable to recognize or defend against that compulsion. Motahhari, *supra* note 323.

³³⁰ *Id.* Sadly, Motahhari died in the early days of the Revolution, a victim of a bombing directed at its leaders. ARJOMAND, *supra* note 2, at 136.

Motahhari's views were consonant with a respected jurisprudential principle that a change in the factual basis of *feqh* may require change or modification in a ruling.³³¹ Such a change does not challenge *shari'a*, which is "eternal and immutable,"³³² but merely makes it applicable to a changed situation. Thus, if social conditions change, *feqh* may change as well, an argument made by Ayatollah Mohammad Jannati, "an articulate advocate" of the argument that jurisprudence "should adapt to conditions of time and place."³³³

Abdulaziz Sachedina, an Iranian scholar living in the United States, further explicates the implication of this principle in the gender context. The methodology of *shari'a* interpretation, he writes, relies upon fundamental principles, or *usul al-feqh*, expressed in specific ordinances, called *akham*, that are incumbent upon believers in particular instances.³³⁴ The fundamental principles are agreed upon, as are the ordinances that flow from them. But the applicability of an ordinance depends upon the characterization of the particular instance, "the actual state of a thing," *mawdu'at*.³³⁵ Shi'is are required to follow a *mujtahid*, or authorized clerical interpreter's understandings of *akham*.³³⁶ But they are not required to accept the *mujtahid's* characterization of the *mawdu'at*, for that is based on "practical knowledge" available to all and not especially accessible to one with legal training. One might analogize this to the common law allocation of law-finding to the judge and fact-finding to the jury.

As Sachedina sees it, this distinction between competence to find law and competence to determine fact opens the question of whether practical knowledge of gender issues is particularly within the domain of those affected by them. He asks whether women do not therefore have a central

³³¹ MIR-HOSSEINI, *supra* note 37, at 113.

³³² *Id.*

³³³ *Id.* at 112.

³³⁴ Abdulaziz Sachedina, *Woman Half-the-Man?: Crisis of Male Epistemology in Islamic Jurisprudence*, available at <http://www.people.virginia.edu/~aas/article/article1.htm> (last visited Nov. 9, 2004).

³³⁵ *Id.*

³³⁶ This is a very free translation of the term *mujtahid* and one that is open to objection since there is in fact no official clerical hierarchy and thus no "authorized" clerical interpreter. People are considered *mujtahids* because their intellect, scholarship, study, and piety lead them to be recognized as capable of *ijtihad*, or the interpretation of religious law. That recognition is accorded by others whose own interpretations have in turn been recognized by their peers. The body of those so recognized has no formal structure; authority and standing are based upon a peer consensus that such authority and standing are appropriate. Those with the highest authority and standing are considered *marja'i taqlid*, or sources of emulation, whose practices and decisions must be followed by their followers who are not capable of *ijtihad*. No *marja* is considered infallible and thus any *ijtihad* is open to debate and revision. See HALM, *supra* note 5, at 120–23.

Marji'yat is not granted hierarchically but by consensus of the *mujtahids*. At the time of the Islamic revolution, there were six living *marja'i*; the list included Ayatollah Khomeini, as well as Ayatollahs Golpaygani, Khoei, Khonsari, Mar'ashi-Najafi, and Shari'at-Madari. All except Khoei lived in Iran. Ziba Mir-Hosseini, *The Islamic State: An Unfinished Project* 5 (2002) (unpublished paper on file with author).

role to play in ascertaining the *mawdu'at* of their situation as “related to sexuality and reproduction, marriage and divorce?”³³⁷ Sachedina’s argument brings home the point that the lived experience of *shari’a*, like that of all law, cannot be essentialized, but demands a multiplicity of interpretations.

Other proponents of *fegh-e puya* reject the idea of natural differences between the sexes, instead arguing that gender roles are “defined and regulated more by familial and social circumstances than by nature [or] divine will.”³³⁸ This position was advanced by the former cleric Mohsen Sa’idzadeh, in the nineties the author of a series of articles in the feminist magazine *Zanan (Women)*, challenging traditional interpretations of *fegh* concerning women.³³⁹ Sa’idzadeh was apparently the first modern cleric to make “an overt attempt to reconcile feminism with Islam,” believing that religion and gender equality are reconcilable.³⁴⁰ His starting point is the strong equality claims of Islam, which allow him to conclude that gender is a social construction, “a relative matter,” and “has no place in the divine realm.”³⁴¹ Hence, those traditions and *fegh* rulings that seem to mandate inequality are either misinterpreted or incorrect. Moreover, Sa’idzadeh argues that the jurisdiction of *fegh* is itself limited by both custom and convention, leaving a great deal of room for social intervention and change.³⁴² But, he says, the application of *fegh* within a new political context in which women are invited to be, and in fact are, politically active, has not yet been undertaken.³⁴³ Subsequently his advocacy of this led to six months of imprisonment in 1998;³⁴⁴ he is no longer considered a member of the clergy and cannot publish as such.³⁴⁵

A non-clerical religious intellectual immensely influential among leading reformists is the philosopher Abdolkarim Soroush. Though not writing a great deal about women directly,³⁴⁶ Soroush suggests interpre-

³³⁷ Sachedina, *supra* note 334.

³³⁸ MIR-HOSSEINI, *supra* note 37, at 249.

³³⁹ *Id.* at 249–50.

³⁴⁰ *Id.* at 249; PAIDAR, GENDER OF DEMOCRACY, *supra* note 14, at 19.

³⁴¹ MIR-HOSSEINI, *supra* note 37, at 262.

³⁴² Sayyid Mohsen Sa'idzadeh, *Fegh and Fiqahat*, 1 UCLA J. ISLAMIC & NEAR E.L. 239, 246–47 (Kambiz GhaneaBassiri trans., 2002).

³⁴³ *Id.* at 240–41.

³⁴⁴ Kambiz GhaneaBassiri, *Hujjat Al-Islam Mohsen Sa'idzadeh: A Contemporary Iranian Cleric on Fegh, Women and Civil Society*, 1 UCLA J. ISLAMIC & NEAR E.L. 229, 234 (2002).

³⁴⁵ Mir-Hosseini, *supra* note 316, at 94.

³⁴⁶ Mir-Hosseini reports that she “could find nothing on women, apart from two paragraphs” in Soroush’s “vast” published oeuvre, but that, in the course of several well-attended lectures delivered in mosques and either transcribed or recorded, he talked at some length about women in Shi’a Islam. MIR-HOSSEINI, *supra* note 37, at 220–21. Since the publication of Mir-Hosseini’s conversations with him, *Zanan* published an interview with Soroush. The interview’s title “Contraction and Expansion of Women’s Rights” was written in reference to his most famous published work, *The Expansion and Contraction of Religious Knowledge*. Interview in *Zanan* with Abdolkarim Soroush (Nilou Mobasser trans., 2000), available at <http://www.seraj.org/zanan.htm> (last visited Nov. 9, 2004).

tive strategies that Islamist women find useful. Soroush separates religious knowledge, the means by which humans attempt to apprehend God, from religion, which comes from God and is finally and completely knowable only by God. This means not only that religious knowledge is relativistic and plural, but also that its efforts are always radically and necessarily incomplete. Soroush's subtext here is that religious knowledge may not be a reliable guide to politics. Religious knowledge itself is plural in form: it may be pragmatic and quotidian, not much more than unexamined practice; it may be gnostic, thus rational and reflective; it may be experiential, ecstatic, and direct.³⁴⁷

Here Soroush at least implies the acceptability of re-evaluating and even reconceptualizing a variety of religious practices, including those "uncongenial to women . . . words that were once acceptable—that no commentator found difficult to interpret or to justify—that are now problematic. They demand a new interpretation or a new defense."³⁴⁸ The misogynistic statements of important religious figures³⁴⁹ are either based upon reasoning or not. If based on reasoning, the reasoning may be incorrect; if not, the reasoning may be correct in one historical era, but wrong in another when conditions differ.³⁵⁰ In either case, a strategy is suggested for destabilizing what may hitherto have been considered the pillars of male dominance within traditional religion.

This is true for jurisprudence as well; it too must be both intellectually evaluated and historicized. Retrograde *fegh* concerning women will not be accepted simply on account of "new justifications [that] defend an outmoded worldview, hoping women will be lured back into accepting them; after all, acceptance is a matter of belief, rather than reasoning."³⁵¹ What he calls "*shari'a* idioms," that is, particular examples of jurisprudence, can be interpreted in two ways: either they are limited to their times and should be extended beyond them only with specific reason, or they are presumed to be universal unless there is a specific reason that they should not be applied. Which of these interpretive modes is appropriate is not a question that can be answered from within the religious text itself, but only by a further exercise of interpretation that is itself a problematization of the idiom: "[t]he search for solutions . . . is decisive and can't be confined to words."³⁵² But such an exercise is essential: "[o]nly then

³⁴⁷ Abdolkarim Soroush, *Types of Religiosity* (Nilou Mobasser trans., 2000), at <http://www.seraj.org/WhatsNew.htm> (last visited Nov. 9, 2004).

³⁴⁸ MIR-HOSSEINI, *supra* note 37, at 223.

³⁴⁹ In the preceding quote, Soroush is referring to the famous discussion of women in the *Nahj ol-Balagheh*, known as "The Will of Imam Ali," for whom Shi'ism, literally, *Shi'a Ali*, or the Party of Ali, is named.

³⁵⁰ MIR-HOSSEINI, *supra* note 37, at 224–25.

³⁵¹ Abdelkarim Soroush, Lecture on Women's Rights, Tehran, Iran (Oct. 15, 1992), in *ISLAM AND GENDER*, *supra* note 37, at 230.

³⁵² *Id.* at 225–26.

can women clarify for themselves where they stand in relation to each view, and where they want to be.”³⁵³

For Soroush, *fegh* is simply one kind of religious knowledge, and by no means the most useful or enlightening. Indeed, he thinks of *fegh* as a rather limited form of religious knowledge,³⁵⁴ and has called it “the lowest-ranking religious science.”³⁵⁵ The current practice of *fegh* is an aspect of pragmatic religion, and as such, less attuned to the larger dimensions of religious knowledge and inadequate to capture much of it.³⁵⁶ Such legalistic practices are unlikely to partake of broader ideas of justice and equality that are both the legacy of the Enlightenment and the underpinnings of the most useful religious knowledge of Islam. In this context, says Soroush, the current women’s movement in Iran reminds Islam of its most fundamental human commitments and renews and refreshes religious knowledge. It should thus be considered a welcome current within the IRI.³⁵⁷

Conservative elements within Iran have moved against both Soroush and Sa’idzadeh; nonetheless, their ideas and writing are well-known, widely discussed, and influential, representing as they do an inclusive and democratic Islamic discourse. They hold the potential for both jurisprudential and political modifications of gender practices that remain inside a context of religious devotion.

VI. CONCLUSION

[I]n no country do women have political status, access, or influence equal to men’s. The sweep of women’s political subordination encompasses the great variety of cultures, economic arrangements, and regimes in which they live.³⁵⁸

Over the past quarter-century in Iran, the concrete and particular facts of modern life—the realities of women’s lives, of modern society, of electoral politics—have interacted with religious tradition, interpretation, and law. The outcome is a society different from that likely to have been imagined by many, perhaps most, of those who sought the Shah’s overthrow or even by those who opposed it.

For many years, at least since the time of Reza Shah, gender was contested, with religion cast as tradition, and secularism as modernity. But in

³⁵³ *Id.* at 230.

³⁵⁴ Soroush Interview, *supra* note 134.

³⁵⁵ MIR-HOSSEINI, *supra* note 37, at 241.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ Najma Chowdhury et al., *Redefining Politics: Patterns of Women’s Political Engagement from a Global Perspective*, in *WOMEN AND POLITICS WORLDWIDE* 3 (Barbara Nelson & Najma Chowdhury eds., 1994).

the revolutionary period and after it, precisely in order for Islamist forces to prevail in a confrontation that claimed to pit tradition against modernity, these hitherto traditional, if not actively anti-modern, forces mobilized women into modern political roles and activities. The implicit, but unavoidable, message was that the modern was not necessarily incompatible with Islamist politics. One must also add to that lesson, the consequences of a claim that a state governed by religion would be just. That gave rise to a demand for justice from those, particularly devout women of the popular classes, who felt it had been denied to them for many years. The lesson of mobilization and the demand for justice were powerful.

Laurie Brand says that in societies where change is "rapid and disorienting," people turn to tradition, but the account they then give of tradition is itself influenced by the nature of the changes they experience:

Thus, what comes to be canonized as "tradition" is as much a result of political/social selection as natural evolution. Indeed, an emphasis on particular aspects of "tradition" and the ignoring of others can in fact pave the way to "a return" to a radical future; that is, a transformative program the outcome of which bears little resemblance to the past that its proponents often invoke.³⁵⁹

In Iran, that process not only created a new account of women, but one that was a product of women themselves. Women, whose agency had been required by the project of revolution, would not concede it once the revolutionary project succeeded; they had that project's very claim to a just society as rationale. As Jane Bayes and Nayereh Tohidi write, "the mobilized and politicized Islamic women [were] not going to allow the male leadership to return them to the 'house of obedience' to play solely wifehood and motherhood roles. Already awakened to their own political agency, these women beg[an] to demand a larger social space, civil rights and equal status."³⁶⁰

While the Pahlavi monarchy had "encouraged a controlled degree of participation by women in formal politics,"³⁶¹ in practice, women's participation under the *ancien regime* was limited to those who had access, both financially and socially, to modern institutions. The Pahlavis' adversaries perceived the involvement of such women as complicity with the undemocratic regime. In fact, the efforts of the Pahlavis in respect to feminism tended to de-legitimize it as an ideology. In the eyes of the monarchy's religious opponents, "Islam and feminism [were] mutually exclu-

³⁵⁹ BRAND, *supra* note 8, at 6.

³⁶⁰ Nayereh Tohidi & Jane Bayes, *Women Redefining Modernity and Religion in the Globalized Context*, in GLOBALIZATION, GENDER AND RELIGION, *supra* note 22, at 40.

³⁶¹ PAIDAR, GENDER AND DEMOCRACY, *supra* note 14, at 21.

sive.”³⁶² For their part, the Pahlavis had seen religion “as the ‘cause’ of society’s backwardness”³⁶³ and, having associated this “backwardness” with the image of the veiled woman, constructed “traditional” Islam as the adversary of women’s rights.

Consequently, after the success of a revolution that seemed in so many ways an antagonistic response to modernity, many concluded that the end of the Pahlavi regime meant the end of Iranian feminism.³⁶⁴ But most women, it appears, had rejected what was offered them by the Shah because it was mostly illusory, and not because, as women, they believed themselves incapable of public participation. Nor, having once accepted active roles within the anti-Shah coalition, did they believe the success of their efforts required repudiation of those efforts; in fact success did not. For a variety of political and social reasons, tactical and strategic, pragmatic and ideological, women’s agency remained crucial even after the immediate success of the anti-Shah alliance. The women who were mobilized by the Revolution did not become secular, but nor would they adopt, or continue in, the roles traditional practice had previously constructed for devout women. Instead, they created new ones bearing, as Brand says, little resemblance to the past,³⁶⁵ except in respect to the visible symbol of *hejab*.

Paradoxically then, the modernist promises to women implicit in the formal changes sponsored by the Pahlavis—education, enfranchisement, and the right to participate in society not only as wives and mothers, but as workers, as political actors, as intellectual forces—could not be redeemed until the monarchy fell. The new conditions for women were not the product of the revolutionary government’s religious ideology and certainly not of its legal regime, but were its pragmatic response to political necessities, manifested in the demands of women, and its stated ideological commitment to social justice. This is not to deny that the regime itself adopted anti-women policies; clearly it did, as the accounts of floggings, stonings, and other medieval practices attest.³⁶⁶ But the agency of women that the Revolution had called forth was not easily discouraged nor could the spaces that had been created for women’s exercise of that agency readily be foreclosed.

³⁶² Afsaneh Najmabadi, *Feminism in an Islamic Republic: “Years of Hardship, Years of Growth,”* in ISLAM GENDER AND SOCIAL CHANGE 59, 76 (Yvonne Haddad & John Esposito eds., 1998).

³⁶³ PAIDAR, GENDER AND DEMOCRACY, *supra* note 14, at 9.

³⁶⁴ For the argument that modernization is indispensable for advancing the status of women in Muslim countries, see Afkhami, *supra* note 7, at 9–11, 13–14. For the argument that secularism is necessary, see FATIMA MERNISSI, BEYOND THE VEIL: MALE-FEMALE DYNAMICS IN MODERN MUSLIM SOCIETY (1985).

³⁶⁵ See *supra* text accompanying note 359.

³⁶⁶ Homa Hoodfar, *Dossier 21: Muslim Women on the Threshold of the 21st Century, Women Living Under Muslim Laws*, (Sept. 1988), at [http://wluml.org/english/pubsfulltxt.shtml?cmd\[87\]=i-87-f226d81549de18253f9cce3ff4045df2&cmd\[190\]=i-190-f226d81549de18253f9cce3ff4045df2](http://wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-f226d81549de18253f9cce3ff4045df2&cmd[190]=i-190-f226d81549de18253f9cce3ff4045df2) (last visited Nov. 9, 2004).

In fact, a complex negotiation took place and continues to take place between the regime, including its most conservative elements, and women who insist upon finding an active and participatory role for themselves in the political, economic, and social life of the IRI. In consequence, the gender practices of the Islamic Republic of Iran have not been wholly dictated by religious precepts codified into the official practice of the state, although that attempt was made; rather gender practices have been forged by the interaction between religious precepts and a society in which women have claimed an increasingly large active and conscious political role.

The relationship of religion, politics, and gender was not set by the religion alone, but was negotiated. Religion has insisted upon gender segregation, symbolized by the partition that *hejab* creates, but it has not been successful in dictating the seclusion of women that gender segregation is understood to have required in some versions of the Islamic past. Politics led to the necessity for women's continued enfranchisement. In the revolutionary context, unlike that of the Pahlavi monarchy, suffrage meant real political participation, hence, political influence. Women themselves, whatever their own conception of social and gender roles, have insisted upon being heard in respect to those conceptions, both creating and participating in an ongoing debate about them. The multiplicity of this negotiation has produced a social account of gender rich in contradiction, but nonetheless dynamic, and progressive in its impact upon a religious law fraught with gender essentialism.

This puts squarely the question of the relationship between formal legal guarantees and the actual existence of the conditions they seek to protect, the conditions within which women can claim gender equity. What are the consequences of law for women themselves? Does a gender-essentialist legal regime that denominates the central importance of women as their capacity to reproduce, both physically and socially, a model family mean that women are constrained from lives and pursuits that transcend, or even deny, the paradigm? Is feminism possible within the restrictions of such a regime? Is the guarantee of formal legal rights the precondition of feminism? Or is it possible for women to negotiate improvements in their status even within a legal regime at best committed to gender difference as a precondition of the understanding of equality, and, at worst, hostile to any notion of gender equality? Does the advancement of women depend on the character of the legal regime, or on the existence of a political space within which women can be heard?

Feminism was an ideology claimed by the Pahlavis, but not realized by them except, in the best case, for a small minority of women. The coalition that defeated the Pahlavi monarchy contained a powerful element opposed to Western feminism and attached to a tradition that at least contained misogynistic elements, if it was not actually in thrall to them. That part of the coalition inherited the power of the state, but it did so on account of that defeat. Through that process, substantial gains were accom-

plished for and by the majority of women. Thus, one has also to question the weight of not only the legal, but also the ideological, claims of both secularism and Islamism, as compared to the specific political context in which either power structure is embedded. My suggestion is that one cannot point to an inherent ability, commitment, or tendency to advance the interests of women in the laws of either secularism or religion, for the praxis of each is determined by context, or more pointedly, by politics. If those politics, for whatever reason, include women, the possibility of their active participation on behalf of their own interests cannot be discounted, whatever the dominant ideology.

Both law and gender are constructed by social assumptions in every society, not only in the West. How those assumptions are produced and how they change is a clue to whether the society can respond democratically to the expectations of those for whom they have ceased to be satisfactory. The future of democratic change in Iran is far from clear, but surely reference to this or that misogynistic law or text is not the whole answer—neither Islam nor the West has a monopoly on those. These questions will only be answered by history; one hopes it will be a history made by Iranian women and men themselves.