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When Blood Has Spilled: Gender, Honor, and Compensation in Iranian Criminal Sanctioning

This article explores the gender implications of retributive punishment in Iran's criminal justice system with specific attention to the Islamic mandate of forgiveness. Iranian penal codes allow victims' families to forgive an offender through forbearance of their right of retribution. To mitigate or even cancel the retributive component of punishment in numerous crimes, including murder, defendants usually offer compensation. Through a study of the gendered logics of criminal sanctioning, forbearance, and compensation, this article brings to light some of the issues victims' families and defendants face. In doing so, this article explores the debates around one of the formal gender gaps in Iranian laws, unequal compensation in sanctioning, where the amount of reparation for the loss a woman's life is legally half that of a man's. Because of this, some accounts of Islamic criminal processes suggest that female family members are helpless victims or nonactors in legal negotiations. By studying how gendered social relations operate in Iran's criminal legal process, this article finds women playing key roles in family decisions to forgive or not. The examination of judicial processes, moreover, reveals some of the complexity of gender relations, which are not fixed, as static legal texts might suggest. [Islamic law, forgiveness, compensation, gender, Iran]

In a murder trial taking place in Iran's capital, Tehran, a grieving mother called out for justice—retributive justice—to avenge her daughter's untimely and mysterious death. She stood several inches taller than her husband as she took the podium to speak to the judges in Tehran's Grand Courtroom, which hears major murder cases in the province. The large hall-like assembly room, with red curtained walls and cushioned theater seating, was packed with the deceased's family members, law students, journalists, and other observers.

The woman had risen from her seat to respond to the chief judge's question: "What would you like to do?"¹ The students in the room knew that there were only two choices: *qisas* (retaliation) or *gozasht* (forbearance of the right to seek it). Her voice came across the microphone as both strong and defiant, even while she chased back tears and sobs through her guttural pronouncement.

"Qisas," she proclaimed. "My daughter was a good girl. She went to college. She would never do the things he says." The "he" to whom she was referring was the 25-year-old defendant, Hamid, who claimed that the death of the young woman was

an accident or suicide after a night of sex and drugged debauchery.² The defendant claimed the 22-year-old student called him and went to his apartment, where they smoked crystal meth and had sex. Then, according to the defendant, in a fit of drugged suicidal passion, she threw herself off his fifth floor balcony.

The Qur'an strongly encourages Muslims to forgive wrongdoers.³ This scriptural compulsion has found its way into Iran's laws that take *shari'a* (Islamic principles) and distill them into prescriptive form: as code law. In Iran, laws are rife with avenues for forgiveness in a variety of legal arenas. These avenues are codified as forbearance in various judicial contexts, where plaintiffs may forgo their right of retaliation. Some scholars, lawyers, and judges see in *gozasht* an important foundation for the development of informal and extralegal avenues for alternative dispute resolution in both civil and criminal disputes (Mahmoudi 2006a). In some ways, however, the right of forbearance grants to the victim's *awliya-ye dam* (next of kin) an extreme right of punishment and introduces a problematic non-neutral arbiter of law into the determination of appropriate punishment.

Through the unfolding of the case above, I explore the Islamic prescription of forgiveness as it plays out in Iran's criminal legal system, while attending to both the foundational logic of *qisas* and how it operates. In this article, moreover, I consider the history of the legal sanctioning category of *diya* (compensation) through which forgiveness is sometimes mediated, and I explore the contemporary debates about the gendered disparity in valuing compensation for a life. Based on Islamic principles ostensibly derived from the *ahadith*,⁴ though not the Qur'an, a woman's *diya* is half that of a man's. The exploration of the Islamic remedy of *gozasht* should be contrasted with the pardon power, which, as a grant bestowed by the sovereign, is quite different from the kind of legal mechanism I discuss herein. While there may be a quality of pardon, in the notion of *gozasht*, such an act is the exclusive domain of the victim's *awliya-ye dam*, and as such remains a transaction between the two parties (see Osanloo 2006, 2010). As we will see, however, the state retains a right to prosecute on behalf of the public even in cases where the victim's family has exercised forbearance through *gozasht*.

Law, Derrida has noted, is the instrumentalization of the sacred. A study of Iranian criminal sanctioning shows how the sacred principles of *shari'a* come to take shape through legal processes and, in so doing, create new cultural formations such as an Islamico-civil legal system (Osanloo 2009). Thus, I emphasize legal procedures because the operations of law also determine how so-called traditional Muslim practices are being animated, put into practice, and thus, given concrete but not necessarily static form. By looking at procedures, we can also obtain a more nuanced sense of the gendered dynamics of sentencing and the role that individual forgiveness plays. The examination of criminal procedures allows for a reconceptualization of what are sometimes thought of as traditional practices once we access their modern legal forms and operations.

Then, with a discussion of *diya* in Iranian sanctioning (often referred to as "blood money"), it becomes clear that it is more accurately understood as compensation, as in tortious liability in private adjudications between plaintiffs and defendants.

Islamic Criminal Sanctioning: Hudud, Qisas, and Diyat

Broadly speaking, the classical *shi'i fiqh* (jurisprudence) divides crimes into three categories of punishment: hudud, qisas, and diyat (plural). Hudud are "crimes against God" for which amnesty is effectively impossible.⁵ Crimes of homicide and bodily harm against individuals are separated according to appropriate punishments—into those subject to retributive punishments (qisas) and those corresponding to financial compensation (diya). Such crimes include battery, assault, murder, and manslaughter. In a shift from Western legal frameworks, these crimes and their corresponding punishments are classified as crimes against individuals as opposed to crimes against society.⁶

In crimes subject to the punishment of qisas, *shi'i fiqh* and the corresponding Iranian legal code affirm reciprocal death for homicide in intentional murder and diya in unintentional homicides. The Iranian penal code stipulates that the surviving heirs of an intentional murder victim may also decide whether to demand like punishment or forgo it. In cases where the victim's *awliya-ye dam* accepts diya, the charge is effectively pled down to an unintentional murder. Should a man kill a woman and the victim's next of kin demand retribution, *Shi'i* jurisprudence and Iranian law require that they pay one half of the diya to the offender's family because the diya of a male is twice that of a female.⁷ *Gozasht* is possible in multiple kinds of sanctioning, effecting different outcomes.⁸ In cases where the victim's next of kin permits the offender to save his or her life, thus offering *gozasht*, the offender is not automatically freed. The offender is subject to a criminal sentence as a sanction in conjunction with the public prosecution. In the 1991 revisions to the Iranian penal code, a section was added to recognize the dual nature of the harm created by murder (both private and public). In addition to the private harm, for which qisas or diya may be appropriate, there is also a public harm that the state may prosecute on behalf of the general public.⁹

The involvement of the family of the victim in Iranian criminal sanctioning confirms the state's concerns with victims' interests in the enforcement of retributive punishments (Baderin 2003:83). In cases in which diya is at issue, it is effectively monetary payment to compensate the family for injuries "arising from a specific type of tort" (Peters 2005:7). At this point the Iranian criminal sanctioning process brings civil and criminal law proceedings together. Unlike in the United States and some other Western legal systems, in which private tort claims are settled separately from criminal prosecutions, the Iranian penal codes provide for the prosecution of murder by the state and an unlawful death suit by the family of the victim in one proceeding.

In this context, diya is no longer only a criminal sanction, but it also constitutes a bridge between criminal and civil tort sanctioning. Diya is paid by the offending party and, as such, represents compensation for physical injuries analogous to those found in European civil code and British and American common law traditions. When the family of the victim opts for retribution, there is technically no diya, although sometimes parties make extralegal arrangements that allow, in a sense, the defendant to buy his or her life.

Thus, gozasht is a form of private forgiveness, and based on the crime and corresponding punishment, diya may or may not be included. Diya is both a form of punishment and compensation for damages. In a contemporary context, both gozasht and diya are components of an increasingly comprehensive tool kit for alternative dispute resolution.

Iran's Hybrid Criminal Legal System

The institutionalization of shari'a into code law is an important component of legal modernization in many Muslim-majority societies. Contemporary debates around the Islamicized codes expose the struggles to incorporate sacred scriptural texts into national legal forms. In Iran, a study of the historical foundations and present-day effects of codified shari'a allows for a more nuanced understanding of how civil (tortious) and criminal proceedings are blended and how this blended form serves certain logics surrounding punishment and gender disparities in the evaluation of diya.

After the 1906–11 Constitutional Revolution, the newly created monarchical state wrote Iran's first Constitution, which affirmed its accordance with Shi'i Islamic principles (Gholami 1999:213).¹⁰ The codification of shari'a into a comprehensive state law began as early as 1905 and spanned many substantive areas of law. The process of codification brought together principles of code law with shari'a in what ultimately became a hybrid legal system. Conformity with shari'a was always a consideration in the codification of centralized state laws, but these new "Islamic laws" were not actively enforced until after the 1979 Iranian revolution (Gholami 1999:214).

Soon after Iran's revolution of 1906–11, governing institutions began importing civil and penal codes primarily from France and Belgium and revising the legal system (Banani 1961). Up until the 1979 revolution, Iran's criminal codes went through a series of secularizing reforms that systematized offenses and punishments while establishing a hierarchy of courts to adjudicate allegedly criminal behavior and to arbitrate over disputes. The Iranian civil and criminal codes of 1939 and 1940 removed any references to shari'a (Mohammadi 2008:230).

In 1979, a popular revolution removed the ruling monarchy. A coalition of leaders including religious and secular nationalists established a new system of governance: an Islamic Republic. A referendum supported by some 98 percent of the population vested the 'ulama (religious leaders) with great political authority through the power of the *Velayat-e Faqih* (Guardianship of the Jurisprudent). Despite this seeming popular support, the bitter disputes that took place during the drafting of the constitution revealed vast differences in how coalition leaders understood this new system of governance. In this newly envisioned branch of government, the 'ulama would consolidate their power by controlling all judicial, military, and others matters deemed important to the political organization of the state. When Ayatollah Khomeini was elected as the country's highest authority, as the *Vali-ye Faqih* (Ruling Jurist), he moved quickly to dissolve the bases for the existing judicial apparatus and renewed

his call to integrate shari'a into state law. In an apparent revitalization of shari'a principles, Khomeini and the supporting 'ulama called for conformity of state laws to Islamic principles. This was a substantive shift from the previous era in which laws were not to conflict with the shari'a (Gholami 1999:214). Thus, Article 4 of the 1980 Constitution established the Council of Guardians to ascertain that legislative acts indeed conformed to principles of the shari'a.

After the Iranian revolution in 1979, broad changes made to the justice system stemmed from the need to root the institutions of government in Shi'i Islamic traditions. Thus, after the revolution, much of the systematization of the previous era was dissolved and replaced initially with revolutionary *shariat* (Islamic) courts that gave judges broad jurisdiction over the kinds of cases they heard, with marked attention to crimes against the state and the aims of the revolution.

In the postrevolutionary period, the repeal of laws and the closure of many courts, without institutions to replace them, made it difficult for the judiciary to process legal complaints. In an effort to rehabilitate the poor standing and inefficiency of the courts, the judiciary increased the use of alternative dispute resolution practices. Drawing upon what the judiciary felt were principles of *shora* (consultation) rooted in Muslim practices, the judiciary created various councils to house alternative dispute practices. One of the effects of these new councils was greater decentralization of the judiciary (Mahmoudi 2006a:426). This shift toward conflict resolution outside of the courts led to certain procedural changes, including mandating judges to encourage negotiation in disputes.

Between 1982 and 1983, the Council of Guardians reintroduced the penal codes through four laws: (1) the Law Concerning Hudud and Qisas and Other Relevant Provisions, (2) the Law Concerning Diyat, (3) the Law Concerning Islamic Punishments, and (4) the Law Concerning Provisions on the Strength of *Ta'zir*¹¹ (Peters 2005:161). In 1991, the first three laws were brought under one common penal code, with the introduction of a revised chapter on *Ta'zir* in 1996. By the early 1990s, an Islamic criminal justice system was organized through a reintroduction of the civil and criminal procedures. An amendment to the penal code at that time also created a category of public injury in what were regarded up until then as private crimes, including those noted above. For the first time since the revolution, this provision made homicide both a public matter, for prosecution, and at the same time, a private issue, with a plaintiff, much like in a civil unlawful death suit. Thus, in Iranian homicide cases, there is a consolidation of tortious and criminal liability. There are at least two plaintiffs: the public and the next of kin. In such cases, only the latter has a case for retributive punishment; the former makes a case for punishment based on the reasoning of a public harm and the maximum sentence that can be imposed is 10 years imprisonment. Also, unlike most U.S. criminal contexts, the guilt and sanctioning phases of the trial are consolidated.

The code of criminal procedure codifies evidentiary requirements drawn from Shi'i fiqh to prove criminal cases. These include confession by the *eqrar* (accused), *shahadat* (witness testimony), *qassameh* (sworn oath or compurgation), and finally, *elm-e qazi* (judicial reasoning). With regard to the last method, Shi'i fiqh permits a judge

in certain “fixed punishments and death sentences by-way-of-retaliation to sentence on the basis of his own knowledge” (Peters 2005:163). When doing so, however, a judge must state the source of his knowledge in the legal decision.¹²

In what follows, I offer an account of a trial, which I attended, to illustrate how the hybrid legal system in the context of criminal adjudication operates.¹³

Hamid’s Murder Trial

Tehran’s grand courtroom was about to begin a murder trial (see Tehran Emrooz 2007). All who were present rose when the judges entered. Five judges took their seats behind their desks atop an elevated platform. The chief judge on the case, a 40-year veteran of the court, was positioned in the middle of the platform in a hub that jutted out toward the center of the courtroom. The large rectangular-shaped area was detailed in red wall covering and cushioned theater-like seating. Most of the rows of the seats were filled with law students from a local university. An aisle in the middle of the room divided the rows of seats. On the right side of the room, the defendant, the man accused of murdering a young woman, sat in the front row with his attorney beside him. The deceased’s awliya-ye dam, her parents, sat across the aisle, as plaintiffs in the case. A tall wooden podium with a microphone stood at the center of the aisle, facing the chief judge. Another podium was mounted left of the center aisle. Behind it stood the assistant prosecutor, Safar Khaki.

The chief judge convened the hearing with a brief introduction to the case, acknowledged the students, and then turned to the assistant prosecutor to present the state’s case. The courtroom remained silent while Khaki read the lengthy indictment that detailed the events leading up to the young woman’s death, the manner and findings of the investigation, and the charge against the accused: intentional murder. Khaki told the court that on behalf of the people of the province of Tehran, the prosecutor’s office sought the maximum penalty for the alleged crime: a 10-year prison sentence.

Acting as the investigating judge of the European civil tradition, from which Iranian laws are in part derived, the chief judge posed questions to the parties. He first turned to the victim’s family, asked them to approach the podium and to tell the court the punishment they sought for their daughter’s death, *qisas* or *gozasht*. In the latter case, the young man would face only the prison sentence sought by the state. Warily, the parents of the deceased approached the podium at the center of the room. They stood a mere few feet away from the man accused of murdering their daughter. The father stood silently beside his wife, who spoke with a quivering voice: *qisas*. The judge looked at her, and in a tone respectful of her grief, stated the law: “You are aware that you will have to pay one half of the *diya*.” This was to compensate the defendant’s family should the plaintiffs obtain retribution. The reason for having to pay half the *diya* was that the gender of the deceased was female while that of the defendant was male. Because in Iranian law the *diya* of a man is twice that of a woman, the family of the deceased would be liable to pay half of the *diya* should they seek the death of the male defendant to avenge their daughter’s death in the event that the judges found the young man guilty.

The father, openly sobbing, cried, “I would sell my home if I needed to in order to seek justice for the murder of my daughter.” The mother took the microphone and spoke of her daughter, supporting the indictment and refuting the claims made by the defendant, that the young woman had a previous relationship with the defendant, was sexually promiscuous, did not attend university, stayed out at night, and took drugs.

In disputing the claims, the aggrieved mother explicitly asserted her daughter’s honor. In her final remarks, reiterating her stance on *qisas*, the mother vowed to reclaim her daughter’s honor by punishing the person who dishonored her, first by taking her life and then by maligning her character. Far from appealing to the call for Muslims to forgive, the parents in this case were concerned more with avenging the honor of their daughter.

After the emotional testimony, the court took a brief recess. Once reassembled, the court asked the defendant to speak on his own behalf. The defendant rose and gave his version of the story. Throughout his testimony, the judges, although primarily the chief judge, interjected queries about the night in question, including the defendant’s behavior, his relationship with the deceased, and her cause of death. The defendant stated that she was depressed and suicidal and, while under the influence of crystal meth, had climbed outside of the balcony and dangled from a rail. He spoke calmly and straightforwardly as he continued. He said that he had gone into the kitchen, and did not actually see what happened but thought that she must have let go of the railing, perhaps intentionally, or perhaps due to the influence of drugs, because when he came out from the kitchen, she was gone, having fallen five stories to her death. Since the investigation disputed this accounting of the facts, the judges probed much further into these aspects of the events of the young woman’s death, including questioning two witnesses.

Finally, with a view to the defendant’s lawyer, the judges asked the attorney to approach the podium in the center of the room and to explain his presence to the court. In a rare show of courtroom theatrics, the attorney produced a wooden scaffold that depicted the side of the building from which the defendant was to have allegedly thrown the young woman. He succeeded in convincing the judges that there was at least an alternate explanation from that produced by the state’s investigators for explaining the death of the young woman. The judges, having found none of the additional witnesses’ testimonies to be dispositive, decided to suspend judgment until they could gain more information, including a visit to the alleged crime scene.

As interesting as the details of the defense’s theory of blamelessness are, the aspects of this case that I seek to highlight at present are the procedural and the plaintiffs’ roles. Through the telling of his case, we see in the Iranian penal context the dual plaintiff roles: prosecutor and private plaintiff. When understood in this way, the role of the victim’s family is akin to that of a plaintiff in a civil unlawful death suit.

The private complaint now plays on the concerns of the individual and family in the community, reminiscent of tribal customs and practices, and serves a similar role that

tribal retribution played in the premodern era. The concerns of the parents, especially as articulated by the deceased's mother, are the family's dignity and the rehabilitation of the daughter's honor through the sanctioning system. Retributive sanctioning plays the role of restoring the daughter's honor.¹⁴

Women, who have historically borne the weight of maintaining the honor of their kinfolk, are here also liable for upholding the honor of the family. In the case at hand, women are its modern-day enforcers as well.¹⁵ It was hardly a rare scene inside the courtroom, where the female kin of the victim's family sought retribution as the only sanction possible to restore family honor. In the hybrid modern courtroom, the criminal legal context still allows for the avenging of honor by permitting the family members to speak and to partake in the determination of punishment, even before a final decision on guilt.

The persistent concern with honor can be illustrated through proceedings in other contemporary cases as well. For instance, in the summer of 2007, a disturbing murder rattled the residents of an upscale neighborhood in Tehran. The case was recounted to me by a social worker attempting to negotiate for the life of a young woman, the alleged murderess.

The victim, a wealthy elderly widower, was bludgeoned to death by his female domestic. In a gruesome unfolding of the details, the court records and newspapers reported that the domestic lived in the home of the man and was subject to cruel beatings and sexual abuse. It turned out that the woman, who appeared to have no substantial kin relations, killed the man only after years of enduring abuse and after numerous attempts to flee had failed. When social workers prevailed upon the family members of the deceased man to consider *gozasht*, and thus spare the life of the young woman, it was his daughters who objected. They, and not his sons, sought *qisas* and told the court and the social workers that this was important for avenging their father's death and restoring his honorable reputation, and thus the family's honor.

Up until now, the discussion of Islamic criminal sanctioning in Iran's hybrid legal system has been focused on an intentional murder for which the family of the victim can make a legal claim for *qisas* or forgo any private retributive punishment. In another context, however, that of unintentional death (or an intentional death that has effectively been pled down to involuntary death), the family of the victim, or plaintiff, in such cases, may agree to settle through a payment made to them by the defendant as compensation for the death. As stated earlier, although this practice of payment of *diya* to the family of the victim is common in homicide cases, it is technically not permissible in intentional murders because they are categorized under the punishment of *qisas*. When such a transaction occurs, it is the result of extralegal agreements between the private plaintiff and defendant.

Women's Important Roles as Plaintiff-Prosecutors in Criminal Sanctioning

The term *awliya-ye dam* may be understood as family of the victim in criminal proceedings and generally refers to male next of kin, but in practice women's voices are

critical. This is because the males have legal obligations to be financially accountable to the women in the family. As a result, a family that has lost its male breadwinner will have a woman whose voice will figure prominently in the disposition of the case, even if it is not legally stated. In the case above, the mother of the victim spoke out to absolve her deceased daughter of the defamatory statements about her moral character.

In other contexts, female matriarchs play important roles, not as the keepers of the moral order and family honor, but as the putative recipients of compensation. Women are often the decision makers in questions of compensation when it comes to the loss of the male head of household. For instance, in the fall of 2007, I interviewed a woman whose husband had been killed by an automobile while riding his bike. Since the driver of the car was negligent, the state-mandated driver's insurance (which is also connected with *diya*) would not pay the compensation. Esmat had the legal right to forego private prosecution of her claim, but when I spoke her, she told me that she was left a widow with two minor children, so to forego the lawsuit, and thus the *diya*, would leave her without means of providing for them.¹⁶ In such a case, it was Esmat's decision whether or not to forego legal action. In cases such as this, women again play key roles in determining how to proceed with sanctioning.

In yet another case, Nasrin was an elderly woman with six grown children. After her husband met a similar fate by a negligent driver, Nasrin, as the family matriarch, decided how to proceed, despite customs or codes in which male kin were to make the decision. In Nasrin's case, as she alone was economically dependent on her deceased husband's pension, and not the children, she decided how to proceed. In tribal communities, women may not be considered decision makers because male kin are expected to step in to provide for the female family members. However, in Iran's modernized nuclear family structures, especially prevalent in urban areas and common in rural areas (Esmat came from a small rural village outside of Tehran), male-kin cannot be expected to uphold the maintenance practices of an earlier period, despite laws on the books. Today women, as *de facto* heads of households, and not solely grieving widows, are the primary recipients of *diya* and consider the financial and economic qualities associated with *diya* in making decisions about sanctioning.

Thus, looking at *diya* in the context of tort law, one can see the development of a different kind of logic, one familiar to anyone with knowledge of personal injury lawsuits in the United States. In Iran, the state-determined basis of *diya*'s gender disparity rests on an increasingly fictitious worldview that men are sole breadwinners and women do not contribute financially to the household. The logic, flawed though it may be, is not, however, based on an intractable belief in women's biological inferiority; rather, it is founded on an assumption that women's contribution to the household expenses is nonexistent, incalculable, extraneous, or not essential and therefore irrelevant.

In the final section of this article, I tease out how the gendered logics of disparate *diya* play out in Iran today. *Diya* as compensation, rather than punishment, is relevant in all deaths, not just murder.

Diya and Gendered Disparity

In September 2008, rights groups hailed the decision by Iran's insurance ministry to close the gender gap in diya, at least as far as insurance pay-outs for automobile accidents went.¹⁷ This was, however, an important development for gender equality in Iran and was hailed as a success by both religious groups and women's rights advocates. It was still a small step, given the Council of Guardian's denial of a law that established gender parity in diya in 2004.

While in most Muslim-majority societies those responsible for someone's death or other bodily injury must pay diya, in Iran this amounts to between \$US 47,000–62,500 for men and half that for women.¹⁸ This amount is determined annually by the Ministry of the Judiciary. The underlying basis for the gender disparity in diya has its roots in the tribal logic of injury and in-kind compensation and is based on the idea that the death of a man places a greater financial burden on the family. In 2004, Fatemeh Rakei, then head of parliament's Committee for Women's Issues, stated, "This argument is invalid. Today you need two incomes to support a family, and all over Iran women are having to work" (Elliot 2004). This fact led Rakei to take the lead in drafting and getting Iran's parliament to approve the bill that created parity in diya amounts between men and women, arguing it would conform to contemporary social practices. The bill passed through parliament, but the Council of Guardians denied its conformity to Islamic principles and rejected it.

Tribal History of Diya in Iran

While diya is rooted in scripture, a similar social practice of compensation emerged over time from a logic of tribal solidarity among extended families. From these kinship networks, specific norms arose alongside of expectations for appropriate tribal behavior and eventually became informal systems of social control (Kusha 2002:264). In order to prevent feuds between neighboring tribes, codes of conduct regulating intertribal behavior developed. Diya, or something quite like it, emerged through these codes of conduct as a mechanism to end cycles of retaliatory violence between tribes. In a sense, then, diya was a tool of mediation used to settle feuds and, as such, has taken numerous social forms. In Iran's Khouzestan province, for instance, conflicting tribes often settled an intertribal death or other conflict by offering in marriage a young woman from the tribe of the perpetrator to someone in the family or community of the victim (Gholami 2006:461). Likewise, the Lor people, from the Bakhtiari region of Iran, followed a tradition referred to as *khoon-bas* (blood-stop) (461–462).¹⁹ In a *khoon-bas*, after a murder, the perpetrator's family would place a rope around the perpetrator's neck, take him to the victim's family, and allow the victim's family to choose retaliation or an offer of goods. In a third example, the Baluch tribe had a tradition called *patar* (asylum), in which the victim's family could similarly choose to grant forgiveness or to retaliate (462). According to Gholami, in the above traditions, retaliation was rarely chosen and settlement by acceptance of diya was common practice.

Diya used as a means of settling conflicts is the scriptural descendent of these tribal practices, which, while still practiced in some form in tribal areas today, actually

predate Islam (Petrushevsky 1985:136). Like the tribal compensation, diya emerged not to encourage or structure the retaliatory aspects of punishment or the blood feud, but to restrict and end it (Tellenbach 2006). Amid tribal societies, a sense of social solidarity defined an injury to one as an injury to the entire tribe that needed to be avenged (Black-Michaud 1975). Over time, as the social codes of the community changed and tribal systems gave way to modern nuclear families, intentional killings similarly shifted from a “communal into an individual act” (Kusha 2002:266). In some contexts, nation building took over the role of protecting the tribe or family, as informal codes of conduct gave way to concrete legal codes and systems of adjudication. While this process is, of course, uneven, the underlying purpose of diya—community protection—was integrated into a broader system of sanctioning that grew to be a device aimed at discouraging retribution and fostering reconciliation.

Today, victims’ families have the right to accept diya in lieu of retaliation. The codification of this right allows the state to encourage and facilitate it (Baderin 2003:73, Nateri 2006: 406–407). Mahmoudi argues that the trend toward alternative criminal sanctioning in Iran shows a potential to encourage restorative justice; accordingly, the Iranian Penal Code emphasizes the victim’s satisfaction (2006b:455). The codified nature of the Islamic principles and their effects on law further emphasize the merging of Western and Islamic theories of justice, and while the ‘ulama are in disagreement on the gender discrepancies in the diya amount, this imbalance has remained a cornerstone of the shari’a-based laws.

Scriptural Sources

In the Iran, where so much emphasis is placed on concordance of laws with Islamic principles, Member of Parliament Rakei was able to argue that the Qur’an makes no mention of a concrete rate for diya, nor is there any basis for its gender disparity. Only in the ahadith does one find a basis for the claim that diya for a woman should be half that of a man.

The Qur’anic source from which diya is thought to stem is a verse interpreted to encourage Muslims to forego their right of lethal retribution: “But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. . . . In the law of retaliation there is life for you—O you who are endowed with intelligence so you may restrain yourselves” (2:178–179). Jurists and scholars, moreover, have identified a number of other Qur’anic verses that counsel and praise the act of individual forgiveness by the family of the victim. According to Baderin (2003:73), at least one hadith reports that whenever a case of qisas was brought before the Prophet Muhammad, he counseled forgiveness. In Iran, while many contemporary jurists might oppose the imposition of lethal qisas in practice, they claim that its primary purpose is to deter murder. Scholars argue that by encouraging the payment of diya, countries with shari’a-based judicial systems may avoid extralegal acts of revenge and qisas, while encouraging forgiveness (Nateri 2006). In such societies, moreover, the ‘ulama claim that since qisas is provided for in the primary text for Muslims, the Qur’an, it cannot be outright abolished.

Although the Qur'an does not specifically define the amount of diya, interpretation of the ahadith has over time expressed the value of a woman's diya as half that of a man's. Some scholars suggest that this discrepancy emerged after the death of the Prophet Muhammad and after the evolution of diya as a mechanism for forbearance of retribution. In this context, the gender disparity in diya likely grew out of the tribal feudalism that emerged after the Prophet's death (Kusha 2002:261).

The logic of designating women's diya as half that of men's lies partly within the context of Islamic principles of property and inheritance. According to 11th-century jurist Sarakhsi, the discrepancy exists due to the differential capacity of men and women to own property. In property ownership, the female was considered "half of that of a male person" because, while a woman could be the proprietor of land, "the male person combines the capacity to be a proprietor of marriage and of property" (Johansen 1999:206).

A contemporary cleric in the Qom seminary, Ayatollah Azari-Qomi, expressed the logic for a similar gendered disparity in inheritance laws. He asserted that Islamic principles emerged to grant women economic autonomy after a time when patriarchy was the rule throughout most of the world and "the result of women's work belonged totally to men" (Mir-Hosseini 1999:61). In a shift from a time when a woman was chattel, Qur'anic dictates prescribed that women and men would own the property of their respective labor. By the same token, men became and continue to remain duty-bound to provide for the material needs of their womenfolk. Women, thus, could, and technically may, "demand wages from their husbands for breast-feeding and caring for their children. . . [and] cooking and sewing and even for work she does for herself" (61).

Based on the above reasoning, Ayatollah Azari-Qomi further inferred that a woman's diya is established as half of a man's because of the differential inheritance among men and women. Reasoning that the diya is the rightful property of the heirs, Azari-Qomi asserted that the reason for the imbalance in diya is due to the fact that as a result of death, there will be a loss of income. In such a case, "heirs need resources for securing their maintenance, and because if a man is killed his heirs will lose all their resources. Therefore they need higher blood money than for a woman. But if a mother is killed, usually heirs need fewer resources" because women have no legal or religious duty to financially provide for anyone—not even themselves (61).

Public Debates on Diya

In Iran today, the gender disparity in diya continues to be debated among the 'ulama, legal scholars, and general public. As a result, many lawyers I have spoken with over the years have suggested that discrepancies in the codified laws persist in accordance with long-time practices, though they are not rooted in religious sources. Assigning diya as half the amount of that of men rests on the idea that if a woman were to die, it would be less of a financial burden on the family than if a man were to die. This jurisprudential reasoning follows current legal logic, since the victim's awliya-ye dam decides whether to accept diya. As we have seen, the awliya-ye dam, once presumed to be only males, are now in many cases females.



Figure 1: Cartoon from *Zan* (Ansari-Rad 1999)

Some conservative members of the ‘ulama, such as Ayatollah Mahdi Hadavi, maintain that the ahadith have the same legal force as the Qur’an (Elliot 2004).²⁰ Reform-minded ‘ulama, however, have a different way of reasoning and join the calls for gender parity in diya. One notable jurist, who is among the very few of the highest ranked ‘ulama, *marja-ye taqlid* (source of emulation), Grand Ayatollah Yusef Saanei, has stated, “Blood money is the price of a human life, [d]eath occurs when the soul departs the body. As men and women have an equal soul, so should they have equal diya” (Elliot 2004). In an 2007 interview, Saanei reiterated his justification for equal diya, and based it on his knowledge of the Qur’an: “How can we say that women are equal to men, as the Qur’an has decreed, then say that the women’s ‘diya’ is half the sum of the compensation received for killing a man?” (Lutfi 2007).

This jurisprudential debate entered the public space when Iran’s first and only women’s daily newspaper *Zan* (Woman) addressed this issue in a series of articles about Islam, gender, and the discriminatory laws in Iran. The newspaper’s legal expert, Reza Ansari-Rad, trained in Islamic jurisprudence, offered careful readings of the relevant verses of the Qur’an (2:178 and 179, and 5:45) to argue against gender discrimination (Ansari-Rad 1998). Several months later, the newspaper published another critique of the gender gap in diya accompanied by a cartoon depicting a would-be criminal conjuring up the image of half of a woman, since his punishment for assaulting her would only amount to half that of a man’s (see Figure 1) (Ansari-Rad 1999).

Soon after this, the newspaper published another satirical cartoon. In this one, in an armed burglary of a couple’s house, the husband, to save his own life, points to his wife: “Her diyeh is half of mine” reads the caption (Mir-Hosseini 2002:99). Soon after, state officials closed down the newspaper.

In 2007, former president Hashemi Rafsanjani told a group of women that the compensation for men and women should be equal because of the changes in society where women are now equal contributors (Karami 2007). A conservative member of the ‘ulama, Ayatollah Mohsen Gheravaian, agreed that the law diya should be changed (Karami 2007).

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

Although parliament has thus far lost the debate on gender parity in diya, in 2002, advocates were successful in passing a law that made the amount of diya payable to Muslims and Iran's recognized religious minorities, that is, Christians, Jews, and Zoroastrians, equal.

Also, in the summer of 2008, Iran's Insurance Ministry closed the gender gap for compensation in car accidents, as diya is also built into compulsory vehicle insurance. The ministry suggested that in automobile accidents, the role diya plays is to compensate victims, and that compensation should not be related to the victim's gender. Explaining this decision, judiciary spokesman Alireza Jamshidi, stated:

Since the yardstick for payment of blood money in road accidents is the contract concluded between the insurance company and the insured, payment of blood money does not contradict Islamic teachings. Furthermore, since women and men both pay the same premium, they must have equal rights in terms of coverage. [Iran Daily 2008]

This change in diya for women is framed as a purely economic relationship between the driver and the insurance company, explicitly devoid of gender. Since the same money is paid into insurance premiums as is reimbursed, the logic in these cases suggests that diya should be the same. However, this logic is inconsistent with the arguments made by members of the 'ulama regarding the financial responsibility assigned to men. In a car accident, should a man die, the economic void experienced by his next of kin would be the same as if he were to die as a result of murder. Debates on the topic of diya continue today. The dissemination of the ecclesiastical debate in the press, along with activism around the issue of the gender disparity, likely contributed to the changes to the insurance laws.

Varied opinions in the jurisprudential sources provide the competing rationales through which diya takes shape in Iranian legal codes. The classic Shi'i texts afforded higher compensation for males than for females, in accordance with the gendered divisions in social roles at that time. Scholars, intellectuals, and journalists today cite current trends as the basis for closing the gender gap in diya.

While some of the hardline 'ulama argue that a woman's diya should be fixed at half in order to balance a system in which men and women receive wealth and property differently, in practice, this logic does not work. Rarely is it the case that a widow has recourse to her paternal family's funds for survival, and even less frequently does the tribal logic of housing the deceased's wife among the family members of the

deceased take place. Moreover, women are seldom completely provided for by men, and women, in increasing numbers, are the primary earners for their families. If the issue is more broadly defined as one about family survival, then the gendered disparity in diya could be reconsidered in accordance with the exigencies of life in increasingly urbanized and individuated Iran. Since diya often involves negotiation, any dispute-settling sum could attempt to tailor it to the needs of the family, compensating for the economic and affective loss of a deceased family member.

Conclusion

This article is an attempt to better understand the processes of criminal sanctioning in Iran in the aftermath of postrevolutionary Islamicization of penal codes with special consideration to women's key roles in the process. In doing so, this article offers an insight into the workings of the Iranian system of criminal sanctioning, which combines the prosecution of murder by the state and unlawful death suits by the victim's family in one proceeding. In these contexts, sanctioning occurs simultaneously with the finding of facts phase of trials, which is not the case in most U.S. jurisdictions, and it is here that women's voices are heard and indeed listened to most carefully.

Women inhabit important positions in the sanctioning system; in this article, I have focused primarily on women who are victims of crime, as opposed to women as attorneys, social workers, witnesses, and negotiators. I have explored how women are situated in the determination of sanctioning and as recipients of compensation. The socially prescribed relationship between women and family honor continues to affect these determinations, despite formal legal codification of punishment. While diya, which is analytically both compensation and punishment, deems a woman's life worth half that of a man's, women are by and large the recipients of the sum when their husbands are killed. In such contexts, compensation aims at making the family economically whole.

The gendered logics of criminal sanctioning rest in a broader matrix of socially prescribed roles for men and women, at once supported by principlists as a basis for an ideal Islamic society and renounced by reformists as unjust and therefore in conflict with Islamic ideals. These contemporary debates may also illuminate new mechanisms for reform; some that are codified (as in the context of gozasht) and some that are informally adjudicated through negotiation and mediation. This exploration of the underlying motivations for the unequal diya has also shown how reform can happen incrementally, as in gender parity in automobile accident compensation.

Finally, given the realities of contemporary life in Iran and the unraveling of the gendered division of social roles, the debate about closing the gender gap in diya speaks to a larger question about the nature of a true Islamic society, to which some of the leaders of the Islamic republic are intent on returning. Thus, this issue speaks to a much larger contest among the country's leaders about the nature of the Iranian state, deriving from both republican and Islamic principles. For many current leaders, the primary goal of the 1979 revolution was to create an Islamic state. The persistent underlying issue in such debates rests on the concern with whether a "true Muslim

society” requires a replication of the way of life, including gendered social roles, of Muslims during the time of the Prophet, or whether Muslims today may reform certain practices to conform with the exigencies of the contemporary world.

Notes

1. All translations are the author's.
2. Names related to this case are part of the public record, and the author has permission to use them.
3. At least 35 verses of the Qur'an advise people to forgive (Nateri 2006:404n22; Shah-Kazemi 2007). This compulsion is also incorporated in the opening chapter of the Qur'an, *Sura al-Fatiha*, which discusses the *Bismillah*, the phrase, "In the Name of God, the Merciful, the Compassionate." The phrase, also at the beginning of 113 of 114 chapters of the Qur'an, is repeated at least 17 times per day in the course of prayer.
4. Ahadith (pl.) or *hadith* (s.) are reports of the sayings, practices, omissions of the Prophet Mohammad.
5. Iran's penal code lists eight crimes subject to hudud: sodomy, drinking alcoholic beverages, adultery, falsely accusing someone of adultery, lesbianism, panderism, special cases of theft, and crimes against the state such as unlawful rebellion.
6. In most modernized legal systems, tort law arises from tribal customary laws.
7. These requirements are outlined in Articles 209 and 258 of the Iranian penal code.
8. Sometimes the plaintiff's offer of gozasht will dismiss the charge, but other times it will reduce it and thus lighten the punishment.
9. This action is authorized through Article 612 of the Iranian penal code. It was, however, a reversion back to the 1925 penal code. Between 1983 and 1990, there was no public prosecution.
10. The *mahdabs* (classical schools) of Islamic jurisprudence are: four Sunni schools (*Hanafi*, *Maliki*, *Shafi'i*, *Hanbali*); the *Ja'fari* school of Twelver *Shi'ism*, to which Iran ascribes; *Zaydi Shi'ism*, *Ibadi Kharijism*, and the *Zahiri* school.
11. *Ta'zir* are discretionary punishments and serve a deterrent purpose in criminal sanctioning. They usually consist of public offenses considered immoral or threats to security and order, although not expressly prohibited in sacred texts.
12. The penal code construes judge's knowledge in Article 105 as "the certainty that the judge attains from clear evidence in a matter brought to him."
13. I conducted fieldwork during annual visits to Tehran between 2005 and 2010. I conducted participant-observation in this court, in civil courts, law offices, and other governmental and nongovernmental agencies. I interviewed different actors involved, including defense lawyers, prosecutors, judges, victims' families, and social workers.
14. According to Tellenbach, "the most important situation from which a blood feud may arise is the rape of a girl" (2006:639).
15. In his study of feuding in tribal societies, Black-Michaud argues that while men have honor, women "have 'shame' or sexual modesty, the female counterpart

- of and complement to honor, which both they and their menfolk must do their utmost to defend it" (1975:218). Honor affords power, leadership, and prestige in tribal societies (Barth 1965; Black-Michaud 1975).
16. All informants' names in this article are pseudonyms.
 17. Lawyers I spoke with were skeptical about the government's ability to implement equal compensation because the cost of doubling insurance pay-outs for claims associated with women's injuries or deaths would be significant. When I interviewed Mr. Rahimi Esfahani, the head of the Insurance Ministry's Bodily Injury Indemnity Fund in July 2010, he stated that the rule was being implemented.
 18. As of March 2012, diya rates range from 94 to 125 million Iranian rials. The dollar figure is based on an exchange rate of 2,000 Iranian rials to one U.S. dollar. The higher amount accounts for deaths that occur during one of the Muslim holy months (Tehran Emrooz, 2011).
 19. The term *khoon-bas* can also be understood as "truce" (Gholami 2006:461).
 20. The term *conservative* refers to the members of the 'ulama who are *usul-gara* (principlists), adhering to a strict textual reading of the Islamic sources of knowledge. Reformists believe in a dynamic reading of the sources, interpreting them with the exigencies of contemporary life.

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