



THE UNIVERSITY *of* EDINBURGH

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (e.g. PhD, MPhil, DClinPsychol) at the University of Edinburgh. Please note the following terms and conditions of use:

- This work is protected by copyright and other intellectual property rights, which are retained by the thesis author, unless otherwise stated.
- A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.
- This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author.
- The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author.
- When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

Life and Limb

Irreversible *hadd* penalties in Iranian criminal courts
and opportunities to avoid them

Antonia Fraser Fujinaga

Doctor of Philosophy
The University of Edinburgh
2013

Declaration

I, Antonia Fraser Fujinaga, declare that this thesis is exclusively my own work and based entirely on my own research, and has never been submitted for any other degree or professional qualification.

Antonia Fraser Fujinaga.

April 2013.

Abstract.

This is a study of *hudud* - Islamic 'fixed penalties' - as they appear in Iranian law and courts. It first presents the codified laws and underlying elements from Twelver Shi'i law (as interpreted by the Iranian legal community) governing the penalties of stoning for adultery, amputation of four fingers for theft, and execution for sodomy and certain variants of fornication (illicit carnal congress between unmarried males and females). It subsequently observes how these laws and concepts are used in practice by analysing previously unavailable court documents pertaining to theft, sodomy, fornication and adultery trials. It thereby seeks to discover opportunities for avoiding these *hadd* (singular of *hudud*) penalties, which are termed 'irreversible' because they change the condemned irrevocably by killing or maiming them.

The material collected suggests several patterns characterising the application of *hudud* in Iran. The law itself provides so many opportunities for lenience that in most cases, irreversible penalties could theoretically be avoided. However, the law is often so vague that judges have enormous discretion about how to interpret and apply it. This is exacerbated by the fact that the codified law is underlain by Shi'i texts which jurists, judges and lawyers acknowledge as the true and authoritative source of law. The law's vagueness necessitates recourse to these texts, but different texts and interpretations thereof can be used in court, leading to unpredictable sentencing. Furthermore, in the cases analysed it was commonplace for laws to be contravened outright. Socioeconomic forces also affected, or were revealed by, some of the cases. As well as many opportunities for lenience, the law contains fundamental obstacles to it, many of which are difficult to abrogate in an 'Islamic Republic' because they originate from authoritative Shi'i texts. Some jurists suggest ways to overcome even these, one being Khomeini's doctrine whereby state interests can override Islamic orthodoxy to protect the Muslim community and hence Islam itself.

The project serves as a 'handbook' of codified Iranian *hadd* law in light of its underlying Shi'i concepts as understood by Iranian legal specialists. Through a systematic analysis of *hadd* cases, it shows how these ideas are applied in practice, and could also have practical applicability in the field of human rights.

Acknowledgements.

The fees for this project were paid by an Arts Faculty Award from the University of Edinburgh, for which I would like to express my gratitude.

I am also grateful to the following individuals from the University of Edinburgh: my supervisor, Andrew J. Newman, for his patience and understanding; Kate Marshall; Alex Thomson; Linda Grieve; Elizabeth Goodwin-Andersson; Liam Forbes; Louise Wilson; Andrew Marsham; Anthony Gorman; Eberhard Sauer; Catherine Keltie; Janet Grant; and Cait Webb.

Additionally I would like to thank Ziba Mir-Hosseini, Lindsay Farmer, and Ali Ansari for helpful advice.

Then there are those who helped me to obtain primary materials, mostly inside Iran but sometimes by linking me to individuals in Iran. Though I am deeply indebted to them because my research would have been impossible without their assistance, I might create problems for them or their families by revealing their identities. I shall thank them individually, letting them know how crucial their help was and how much I admire them.

Finally I would like to extend personal thanks to my parents; Niccolò Stiozzi Ridolfi; Monika Pohle Fraser; Saeko Yazaki; Rafiq Mahmood; Stephanie Solomon; Christine Haunz; my flatmates and other friends in Iran and Edinburgh; Marie Louise Wammen; Rebecca Stengel; and my husband's parents and sister. They all supported me in various ways as I struggled with my research. As for my husband, Koh Fujinaga, he made innumerable photocopies, ordered countless interlibrary loans, never became angry, and never complained about frequent post-midnight dinners when I had to 'finish a thought'. Without his affection, I would not have had the stamina to keep hacking away at this project when it seemed to be going nowhere.

Table of Contents.

1. Introduction.	1.
1. General nature of the project.	2.
2. Organisation.	3.
3. Sources and restrictions.	5.
4. The role of this project with respect to existing studies.	6.
5. Background information.	11.
5.1. Shi‘i law and basic terminology.	11.
5.2. State structures.	15.
5.3. <i>Velayat-e faqih</i> .	16.
5.4. The adoption of Islamised laws.	17.
5.5. Democracy and authoritarianism.	19.
5.6. A note on juristic texts.	25.
<u>Part I: Background.</u>	27.
2. <i>Hudud</i> in the law.	29.
1. Shi‘i law and codified law.	29.
2. No crime without law.	30.
3. Judges and lawyers.	30.
4. Law codes, general regulations and appeals.	31.
4.1. The fragmentary nature of the penal code.	35.
5. <i>Hudud</i> in codified and Shi‘i law.	36.
5.1. <i>Hadd</i> crimes and their punishments.	37.
Table: some aspects of <i>hudud</i> in the penal code.	39.
5.2. Repetition of <i>hadd</i> crimes and execution.	41.
5.3. Execution methods and protocol.	42.
6. Proof.	46.
6.1. Confession.	47.
6.2. Revocation of confession.	50.
6.3. Testimony.	50.

6.4. <i>'Elm-e qazi</i> : the judge's 'knowledge'.	54.
6.5. Evidence other than confession, testimony or <i>'elm</i> .	59.
7. Criminal responsibility.	59.
7.1. <i>Bulugh</i> .	60.
7.2. Doubt and ignorance; ignorance as a defence.	62.
7.3. <i>Ikrah</i> (coercion) and <i>ezterar</i> (distress).	64.
8. <i>Haqq Allah</i> and <i>haqq al-nas</i> .	67.
9. <i>Suqut</i> , repentance and pardon.	69.
9.1. <i>Tabdil</i> (commutation) and <i>takhfif</i> (attenuation).	75.
Concluding remarks.	76.
3. Principles.	77.
1. Basic principles.	77.
2. The general (<i>'amm</i>) and the particular (<i>khass</i>).	80.
3. Lenience.	81.
3.1. Against lenience.	82.
4. No investigation of crimes 'against chastity'.	83.
5. The <i>qa'edeye darr</i> or 'axiom of removal'.	83.
6. <i>Maslahat</i> and other forces for accommodation.	85.
6.1. <i>Qa'edeye molazeme</i> : the reasonability of commandments.	85.
6.2. <i>Maslahat</i> .	86.
6.3. The axiom against causing hatred of the faith.	89.
6.4. <i>Hudud</i> were intended to be applied sparingly if ever.	91.
6.5. Islam is compatible with human rights.	92.
Concluding remarks.	95.
4. Crime-specific regulations.	97.
1. Extent of penetration and testimony to it.	98.
2. <i>Mahduroldamm</i> status.	99.
3. <i>Zena</i> .	100.
3.1. The punishment of children born through <i>zena</i> .	102.
3.2. Incest and rape.	103.

3.3. Rape and murder of underage girls.	105.
3.4. <i>Ehsan</i> .	109.
3.5. Marriage, coercion, and criminal responsibility.	116.
3.6. Pregnancy cannot prove <i>zena</i> .	118.
3.7. Stoning for adultery.	118.
4. Sodomy.	121.
4.1. Alternative punishments for sodomy.	123.
5. Theft.	124.
6. <i>Moharebeh va efsad fi'l-'ard</i> .	126.
Concluding remarks.	129.
<u>Part II: Case studies.</u>	131.
5. Theft cases.	133.
Case 1: amputation sentence carried out.	133.
Case 2: the dangers of collaborating with the authorities.	136.
Case 3: who removed the loot?	141.
Case 4: collaboration in theft prevents the <i>hadd</i> .	146.
Case 5: patterns in written files also emerge in court.	147.
Published rulings.	149.
Concluding remarks.	150.
6. Sodomy cases.	155.
Case 1: acquittal is replaced by a death sentence.	155.
Case 2: blurred boundaries between <i>haqq Allah</i> and <i>haqq al-nas</i> .	158.
Case 3: murder victim is claimed <i>mahduroldamm</i> through <i>lavvat</i> .	160.
Case 4: execution of a minor despite invalid <i>'elm</i> and stay of execution.	162.
Published rulings.	168.
1. Incidence of death sentences	169.
2. Rape versus consensual sodomy.	169.
3. Proof.	170.
4. Use of uncodified Shi'i law.	171.

5. Rape claimants prosecuted.	172.
6. <i>Haqq Allah</i> .	172.
7. Double jeopardy and authorities' involvement.	172.
8. Repentance.	173.
Concluding remarks.	173.
7. Published zena rulings.	179.
1. Type of penalty: incidence and appeal result.	179.
2. Appeals and authorities' involvement.	180.
3. Subjectivity and appeal bias.	181.
4. When are lawyers introduced?	182.
5. Evidence used.	183.
6. <i>Ehsan</i> .	185.
7. Rape, age and male bias.	186.
8. Use of uncodified Shi'i law.	190.
9. Lenience in use.	190.
Concluding remarks.	192.
8. Fornication cases.	195.
Case 1: execution despite evidence of psychological disorders.	195.
Case 2: death sentence for incest with rape claim and <i>enkar</i> .	202.
Concluding remarks.	209.
9. Adultery cases.	213.
Case 1: stoning sentence despite belief in valid marriage.	214.
Case 2: interpretability of coercion in adultery.	218.
Case 3: confession motivated by promises of lenience.	223.
Case 4: commutation of stoning to hanging because of <i>maslahat</i> .	228.
Case 5: hanging for rape takes precedence over stoning for adultery.	230.
Case 6: widely varying judicial opinions.	233.
Case 7: stoning sentence based on co-defendant's confessions.	239.
Case 8: are 'illicit relations' and 'adultery' two different charges?	243.

Case 9: coerced confession.	247.
Case 10: <i>mahduroldamm</i> status and the unreliability of confession.	250.
Case 11: belief in <i>mahduroldamm</i> status prevents <i>qesas</i> .	256.
Case 12: a straightforward acquittal.	258.
Case 13: a straightforward stoning sentence.	259.
Concluding remarks.	261.
10. Conclusions.	269.
1. The incidence of irreversible <i>hadd</i> penalties.	271.
2. Legal interpretability and judicial discretion.	273.
3. Legal infractions.	276.
4. Socioeconomic dimensions.	278.
5. Institutional obstacles to lenience.	279.
6. Final observations.	285.
Bibliography.	289.
Appendices.	355.
Appendix 1: selected original documents with translated excerpts.	357.
Appendix 2: glossary.	383.
Acronyms for laws.	409.

1. Introduction

In recent years, the issue of stoning in Iran has attracted attention in the international media and condemnations by human-rights organisations and international authorities. Other ‘Islamic fixed penalties’ (*hudud*; singular: *hadd*), including execution for sodomy and hand amputation for theft, have received similar censure. However, despite the trickle of information about specific cases and some translation of relevant laws, apparently no unified study of Iranian *hadd* trials, based on primary sources such as court documents, is available to an Anglophone audience. Nor is there any ‘handbook’ to which such an audience can turn to understand the laws used in these trials, their current interpretations, and their origins in Islamic texts, in whose light they could be reformulated.

This project seeks to fill these lacunae by providing this information in a unified manner, using Iranian laws, juristic texts, and primary sources, notably court documents, to present a more comprehensive account of Iranian *hadd* law in theory and recent practice. It also seeks to discover what opportunities defendants have to avoid these amputation or execution penalties, and which obstacles they face (these being the questions that prompted the research). In so doing, the project presents previously unavailable raw data, background information, and analysis in an attempt to add to the current understanding of what Iranian *hadd* laws are, how they are interpreted by legal specialists in terms of their Islamic origins, and how they are used in court.

The project identifies four major patterns characterising *hadd* prosecution in Iran. These are: the discretion with which laws are interpreted and applied, facilitated by the simultaneous operation of Shi‘i law¹ and the codified law which is ostensibly based on it; judicial authorities’ frequent infractions of laws; social circumstances affecting, or revealed by, prosecution; and the presence of institutional obstacles to leniency in the legal system. The first pattern also shows that many legal concepts are not ‘set in stone’ and are discussed extensively by jurists and possibly legislators

¹ For details on *hudud* and Shi‘ism, the prevalent form of Islam in Iran, see section 5.1 below, which also discusses terminology.

(as observed for example in the differences between the 1991/96 penal code and its proposed replacements). The fourth illustrates the difficulty which arises when laws must comply with scripture (or, generally, any text) which is presented as impervious to changing circumstances. This immutability has been contested even within Iran (see section 5.5 below and chapter 3, section 6 and subsections), but remains dominant, hindering reform. Rigidity coexists with interpretability²: considerable flexibility is possible within the dominant ‘scriptural immutability paradigm’, and the extant system even allows ‘workarounds’ for any remaining obstacles to reform, but flexibility is currently at the regime’s discretion.

1. General nature of the project.

Hudud are inalterable penalties decreed for certain crimes by Islamic law, and, through its Twelver Shi‘i variant, enshrined in Iranian law. Some *hudud* consist of flogging. Others involve execution or amputation of limbs, and these are termed ‘irreversible penalties’ here because, by maiming or killing the condemned, they prevent resumption of their previous lives.

This project focuses on the irreversible penalties of stoning for adultery, amputation of four fingers for theft, and execution for sodomy, incest and the fourth instance of fornication³ as presented in Iranian law and criminal trials. It seeks to understand how these *hudud* are manifested in theory (the law and its Shi‘i roots) and practice (trials) in Iran, and to identify opportunities in Iranian (i.e. codified) law and Shi‘i law to avoid these penalties, as well as obstacles to such avoidance.

Hudud are the chosen subject of this project because their non-negotiability makes them more difficult to avoid than negotiable penalties, while their scriptural origins

² Ferrari discusses different models for adaptability of divine law. Islamic law, he observes, has historically favoured interpretation over legislation, but the evolving human agency involved nevertheless permitted considerable adaptability. (References in footnotes are all to sources listed in full in the bibliography).

³ *Zena*, illicit carnal penetration between males and females, exists in several variants. Fornication is *zena* by unmarried individuals. Adultery is *zena* while being married and having ‘access’ to a spouse (a condition termed *ehsan*). Incest is *zena* with blood relatives, and rape is coerced *zena*. Sodomy, instead, is penetration between males.

make them practically impossible to abrogate outright according to the dominant notion of scriptural immutability. *Hudud*, unlike *ta'zirat* (discretionary penalties), cannot be modified because of extenuating circumstances or other considerations; nor can they be waived by injured parties or their heirs and potentially commuted into pecuniary penalties, as with injury or murder⁴. Questioning their validity, or abrogating them, could contradict the constitutionally enshrined (articles 2, 4) notion of God as legislator.

The object is therefore to identify opportunities for leniency despite these obstacles. The discrepancy between *prima facie* severity and potential leniency makes for a more interesting analysis than would be possible for a less challenging law. From a human-rights point of view, irreversible *hadd* penalties are also a priority as targets for the reduction of suffering.

This is not a statistical study: only the officials of the Iranian Judiciary are in a position to know how many *hadd* sentences are issued or implemented, and they do not choose to disclose these figures⁵. It is also not an attempt to capture the essence of Islam or Shi'i law, nor a study of how juristic ideas developed over time. Instead it seeks to describe how *hadd* law is understood by the present-day Iranian legal community (jurists, judges and lawyers), how it is applied and sometimes negotiated in court, and how alternative interpretations of legal elements, recognised by Iranian jurists, could affect trials or even legal reform.

2. Organisation.

The project has two Parts, I and II, devoted to theory and practice respectively.

Part I (chapters 2-4) aims to describe the current legal and conceptual framework surrounding Iranian *hadd* trials. It explains Iranian *hadd* laws and modern jurists'

⁴ For a recent example: Mostafaei, "Dard".

⁵ Sadr, "Raftar"; Qazi, "Aya mojazat"; Abdorrahman Boroumand Foundation; Abrahamian (1999), 215; Mir-Hosseini, "Iran", 100. For similar secrecy about non-*hadd* executions: ICHRI, "Iran's secret hangings", "Iranian Judiciary".

conceptions of their Shi‘i origins, using contemporary Iranian scholarly publications, and, where appropriate, pre-modern works which they cite. Media sources and texts in other languages are used when they add perspective or necessary detail.

Part II (chapters 5-9) analyses 24 recent unpublished theft, sodomy, fornication and adultery cases, supplemented by 166 published rulings regarding the same crimes. The published rulings are included because they elucidate features of the unpublished cases or the legal framework. However, being only rulings rather than multiple documents as the unpublished cases are, they provide only limited information. Also, they were published in Iran and therefore passed through two arbitration processes: the publisher’s selection, and the censor’s approval which would have been required for publication. This, therefore, is not a sample of freely available rulings and cannot reliably represent the overall situation regarding Iranian *hadd* trials. The numbers it generates are perhaps indicative, but not authoritative.

The rulings are nevertheless useful by confirming some mechanisms observed in the unpublished cases. Furthermore, several (not all) published cases were harvested from prisons by lawyers seeking ‘death-row’ prisoners to represent pro bono. This may over-represent the incidence of death sentences, as these cases were selected for *presence* of the death penalty. The published rulings may counteract this bias.

I found no case files for the *hadd* crime of ‘insurrection’ (*moharebeh*), which can carry irreversible penalties (death or amputation of hands and feet), but Part I describes *moharebeh* laws.

Part I is necessary for understanding Part II, and several mechanisms and legal interpretations discussed in Part I resurface in Part II. Since Part I aims to provide a reasonably comprehensive account of the current Iranian *hadd* framework, it also describes laws and mechanisms which do not appear in the cases.

Appendices consist of a glossary (including acronyms for law codes) and some reproductions of court documents with salient portions translated.

3. Sources and restrictions.

The materials for this project were gathered in August-September 2004 and November-December 2007; some were sent to me after 2007 by contacts whom I had met in 2007. I spent years creating the networks of contacts which led me to these documents. This was perhaps the most challenging, and certainly the most time-consuming, aspect of the project.

The unpublished court documents were obtained partly (2004) through court authorities, following lengthy and intense negotiation, and mostly (2007 and later) through individuals involved in the trials. Some cases, being internationally known in terms of basic facts rather than legal details, are potentially identifiable through their ‘stories’. Others went unreported, apparently even in Iran, or are known only superficially. However, to protect those who made the documents available I have chosen a uniform privacy policy, omitting such details as names and case numbers, though this may be futile for better-known cases⁶.

The scope of this project was severely restricted by difficulties obtaining primary sources⁷. I was a lone foreigner with no standing and no contacts, and therefore on the one hand a suspicious character, and on the other, easily brushed aside. Access to institutions and materials was hindered at every turn, and I was frequently suspected of being a spy or a scandal-mongering foreign journalist. Several judges expressed the ideas ‘we are not barbarians who cut off hands, as the foreigners think’ or ‘stoning does not happen any more (it is foreign propaganda)’. There was no available guidance about how to find the necessary documentation, who might have

⁶ Hilhorst and Jansen, “Fieldwork in Hazardous Areas”, 3-4: “By sharing data, risks can develop for informants [and] assistants... Avoiding harm overrules the norm of transparency of (raw) data as researchers are in the first place bound to protect the security of their respondents”.

⁷ Several scholars describe difficulties of research in Iran, including the advantages of being Iranian and disadvantages of being foreign or investigating subjects deemed ‘political’. Karadsheh, 265-6 and footnote 197; Littauer; Suleiman/Anderson, 151-2, 154-6, 163, 165-6; Fazaeli, 14-5; Hegland, 578; Loeffler, 635-7; Rouhani, 690-1; Nadjmabadi, 604; Mir-Hosseini, *Marriage*, 17; Osanloo, “Doing”, 680-2; Iran Emrooz; Amini, “Parvandeha”, 10 (the last source describes an established Iranian journalist’s difficulties obtaining documents or access to courts).

access to it, or how to contact them. Only in winter 2007 and thereafter did I obtain most of the case documents, despite years of earlier attempts and failed strategies.

Some doors remained closed notwithstanding my efforts, and possibly the most important was access to trials. As described in chapter 2, section 4, all trials for offences ‘against chastity’ must, by law, be conducted privately, and authorities have the discretion to hold any trial privately. Iranian lawyers who attempted to allow me into trials were denied permission (and also admitted that this type of trial is uncommon), and with one exception (theft case 5), the only trials I saw, in the court whence I later obtained some documents, were incomplete or, however interesting, unrelated to *hudud*.

Consequently this project must rely on analysis of written documents and, where possible, supplementary information from involved parties. Given the paucity of available documents, this cannot be a quantitative project based on vast amounts of data, revealing the overall incidence of these penalties or popularity of any legal mechanism. It can only be a qualitative study with a tentative quantitative dimension. It can show how laws and concepts are used, but not, with any certainty, how often. This provisional quantitative element provides a suggestion of possible incidence of penalties or mechanisms, which could be further investigated in future.

4. The role of this project with respect to existing studies.

There appears to be no ‘handbook’ available to Anglophone scholars regarding Iranian *hadd* law or its relationship to Shi‘i law; nor is there a unified account of *hadd* trials analysed through primary sources (court documents). This project seeks to fill these gaps, thereby contributing new material to the study of Iranian law.

Existing academic studies intersect with this project in various areas, but none seems to cover the same ground in the same depth. This does not mean that existing works are defective, but merely that this project’s focus differs from theirs.

A few studies disseminated outside Iran deal with Iranian criminal law. Some of these paraphrase portions of codified Iranian law, mostly from the penal code, sometimes with brief descriptions of Shi'i texts or facts about criminal cases not necessarily related to *hudud*. Others delineate the structure of the Iranian judicial system or describe specific issues in penal law, again not necessarily related to *hudud*⁸. As far as can be determined, none is based on court documents or Iranian legal treatises, presents a systematic account of Iranian *hadd* laws or cases, or provides the level of detail and analysis offered here.

For example, Entessar, "Criminal law and the legal system in revolutionary Iran", covers *hudud* only on pp. 96-7. Rezaei, "The Iranian criminal justice under the Islamization project", similarly mentions *hudud* only on pp. 59 and 67-8. Rahami, "Development of criminal punishment in the Iranian post-revolutionary penal code", provides some basic *hadd*-related facts on pp. 595-7 and 600-1. Kusha, *The Sacred Law of Islam*, gives a basic overview of the categories of Islamic criminal law (60-1, 67), describes the post-revolutionary Islamisation of laws, paraphrases some articles of the Constitution, and lists types of courts (142-57). It enumerates some crimes and punishments, including *hudud* (160-2, 275-80), and lists stonings reported by Iranian newspapers between 1980 and 1997. Studies of Iranian criminal law available outside Iran apparently do not go into detail about *hudud* or supply case studies.

Some texts, often associated with human-rights organisations, describe Iranian contraventions of international human-rights standards, sometimes through *hudud*, particularly stoning. They supply basic information, including some legal background, about one or more publicised *hadd* cases, using information available online or through the media⁹. At the more comprehensive end of the spectrum is

⁸ Examples: Asli; Rahmdel; Ghassemi; Gontowska; Entessar; Rezaei, "The Iranian"; Rahami, "Development", "The Constitution"; Lawyers' Committee; Alasti; Farkhondeh; Ghodsi, "Legitimate defence", "Murder"; Mir-Hosseini, "Iran", "Criminalising", "Sharia"; Brajer/Rahmatian; Arjomand, "Shari'a and constitution"; Shams Nateri; Picheca; Mahmoudi, "The informal", "Alternative"; Gholami; Attari et al; Kusha; Tamadonfar; Habibzadeh; Tabari (Keyvan). Mohammadi (Majid) discusses the Iranian Judiciary's political dimensions (chapters 5-6). Baqir as-Sadr displays the greater jurisprudential context of the principles in chapter 3.

⁹ Examples: Amnesty International, "Iran: end", "Iran, the last", "Death penalty", "Iran: demand", yearly Iran reports; Terman; Terman/Fijabi; Iran-e Azad, "Stoning"; ICAS, "Islamic judiciary", "The

Amnesty International's "Iran: end executions by stoning", which Mir-Hosseini (2010) deems "the most comprehensive and reliable study" on stoning¹⁰. It provides translated excerpts from the penal code and another Iranian law code as appendices. On pp. 3-13, it describes some laws and presents known stoning cases in a few sentences each.

Again, Mir-Hosseini usefully describes the problems of such research: "There is little statistical or other data available on court practices in criminal cases and convictions related to sexual offences. The government and judiciary have so far declined to disclose the relevant information... The criminal courts... are carefully kept away from the public eye, and press coverage and reporting of cases are highly controlled. The available information comes from human rights activists, both inside and outside Iran, and international organisations"¹¹. These are the barriers which this project seeks to overcome by going beyond second-hand sources and analysing first-hand materials, whose elusiveness has so interfered with the systematic study of Iranian criminal cases. Obviously the restrictions perceived by Mir-Hosseini and others (section 3) hamper this endeavour, but this project makes at least some inroads into acquiring and analysing these materials and providing more detailed background information than was previously available to an Anglophone audience as far as can be determined.

With respect to existing studies, therefore, this one endeavours to investigate *hudud* in Iran in greater depth in terms of both background information and collected case studies. It seeks to provide a systematic account and analysis, based on first-hand material, of collected *hadd* cases, whether known to the media (as some adultery and sodomy cases are, though without much legal detail) or completely unreported. It concentrates not only on stoning cases but also other *hadd* cases, including theft cases, discussed less by the media and international organisations (all the theft cases, and several non-theft cases, reviewed here were unreported). It discusses not only the

Islamic Regime"; Mir-Hosseini, "Criminalising", "Iran"; Eghtedari; other reports or calls to action by Amnesty International, Human Rights Watch, EU and UN (see bibliography).

¹⁰ Mir-Hosseini, "Iran", 100.

¹¹ Ibid., 100.

‘stories’ of the cases, but also their legal details, and lawyers’ and judges’ differing interpretations thereof during trials. To maximise understanding of these debates and interpretations, it provides background information regarding relevant legal and Shi‘i concepts which resurface in court and can sway the opinions of judges. It thereby also serves as a ‘compendium’ of Iranian *hadd* law in light of underlying Shi‘i law as perceived by modern-day Iranian legal specialists.

By doing all this, the study seeks to provide an overview of the ‘toolbox’ of concepts available when individuals are prosecuted for *hadd* crimes, and how these are used in practice, to identify opportunities for avoiding irreversible penalties. In the course of this analysis, the project discovers various overarching patterns in the interpretation and application of *hadd* law in Iran, as discussed earlier.

Of existing studies, this project is most similar in format to Mir-Hosseini’s *Marriage on Trial* (1993), which analyses divorce cases in Iran and Morocco. Though a study of family law rather than penal law, it analyses relevant laws and provides case studies as this project does. The most striking difference between Mir-Hosseini’s project and this one is of course my inability to attend trials or obtain statistically significant numbers of court files because of the sensitivity of the subject matter. Therefore the statistical element of Mir-Hosseini’s study must perforce be absent from this one, and so must the details of court interaction.

However, some patterns found by Mir-Hosseini also appear in *hadd* cases. These include judges’ discretion to interpret the law, often in view of underlying Shi‘i elements, to issue rulings irrespective of codified law, and the importance of judges’ personal attitudes. In penal cases an additional element emerges. The case studies suggest that startlingly often, judges go beyond idiosyncratically interpreting laws, and simply ignore or contravene them outright.

The nature of the subject matter means that this project has potential practical relevance in the field of human rights. The UN, the EU, human-rights organisations, and international governments have mostly emphasised the Iranian human-rights

record's incompatibility with international standards of human rights, rather than Iran's own legal system and its potentially lenient elements. International organisations have exhorted Iran to comply with foreign laws¹² which do not have the same 'clout' in an 'Islamic Republic' as laws attributed to Islam (though Iran has signed some international treaties such as the Convention on the Rights of the Child, to which it expressed reservations regarding compatibility with Islamic laws).

There is a case for arguing pragmatically that it would be more effective to appeal for leniency through the Iranian regime's own laws than to expect it to comply with a system of principles whose independent validity it does not officially accept (unless they can be rendered compatible with its conception of Islam). This observation has been made by (inter alia) Mir-Hosseini, who also notes human-rights activists' frequent unfamiliarity with the details of Islamic law¹³. The Iranian legal and human-rights community is already alive with discussions of how new interpretations of Islamic sources could accommodate human rights, as observed throughout the project (see especially section 5.5 below and chapter 3, section 6). This ferment has promoted some legal change (such as mothers' conditional custody of children: chapter 3, section 6.2, and section 5.5 below) and could potentially bring more.

Given these conditions, this project seeks to break new ground by offering heretofore unavailable information about the nature and practical implementation of *hadd* law in Iran, since the pursuit of knowledge is valid in its own right, but also by presenting modern-day Iranian legal specialists' ideas regarding opportunities for leniency whose Islamic pedigree would render them more digestible by the Iranian regime than those of entirely foreign or secular origin.

¹² For example, International Observatory for Lawyers; Amnesty International, "Iran: end", "Iran, the last", "Iran: reports"; Council of the EU, three Declarations in bibliography; Human Rights Watch, "Letter to His Excellency", "Letter to UN"; Meydaan, "Practice"; WLUML, "Iran: Sakineh"; Associated Press, "Canadian"; James; Dehghan; Price, "UN committee"; European Parliament; Alasti, 20-3; UN Resolutions 65/226, 64/176, document A/C.3/63/L.40.

¹³ Mir-Hosseini, "Criminalising", 22, 40. See also: Cherif Bassiouni; Ahmad, 10-1, 13; Ford, 503; al-Zuhili, 275; Baderin, "Introduction", xiii, xiv-xvi, xix-xx, xxiii-xxiv, xxxiii; Tamadonfar, 218; Kar, "Iranian law", 8-13; Baderin, "Islam", 9, 11-8, 20, 24; Ghahremanpour, 180, 182, 186; Keddie, 319-20; An-Na'im, "Islam and human rights", 96; Shah, 883; Ford, 525, 530, 532; Copinger-Symes, 59-61; Osanloo, "Whence", 43-4.

The project thereby straddles various disciplines. For example, it concerns a subject which is of interest to human-rights organisations, but provides more detail regarding Iranian (codified) and Shi‘i law than they usually supply; it has a theoretical analysis of Shi‘i legal concepts classifiable within ‘Islamic studies’, but with an emphasis on practical application and current relevance associated with the social sciences. By blending these domains it seeks to provide a detailed and reasonably comprehensive picture of what is happening in reality together with its theoretical underpinnings.

5. Background information.

Some readers may be unfamiliar with the basic facts of Shi‘ism and the attempts to codify its laws in Iran following its 1979 Islamic revolution. The following sections therefore provide background information about the environment in which Iranian *hadd* laws and trials exist. This includes an introduction to the general nature of Shi‘ism and Shi‘i law, emphasising the need to distinguish between scripture and the jurisprudence based on it; an introduction to the concept of *hudud*; a description of state structures and the codification of Shi‘i law, particularly criminal law; and an account of how the political environment can affect the possibilities of legal reform.

5.1. Shi‘i law and basic terminology.

Iran’s official and majority religion is Twelver Shi‘ism¹⁴ (hereinafter shortened to ‘Shi‘ism’, though there are other varieties of Shi‘ism). ‘Shi‘ism’ – adjectival form: ‘Shi‘i’ or ‘Shi‘ite’ – refers to the phrase *shi‘at Ali*, the ‘faction of Ali’, indicating the Shi‘i belief that after the Prophet Muhammad, the rightful leaders of the Muslim community were his cousin and son-in-law, Ali, and his male descendants, termed ‘Imams’ (leaders). The twelfth of these, often termed the ‘Hidden Imam’, went into hiding or ‘Occultation’ (*gheybat*) in 941 AD, and remains alive but unavailable to govern or make legal pronouncements. Hence the term ‘Twelver (*Ithna‘ashari*) Shi‘ism’, since we are still, according to this doctrine, in the reign of the Twelfth Imam. Shi‘ism differs from Sunnism (from *sunna*, ‘tradition’). Most Muslims

¹⁴ Constitution articles 2, 12.

worldwide adhere to one of the four legal schools of Sunni Islam. Sunnis believe that the Prophet gave indications whereby his friend and father-in-law Abu Bakr should succeed him as leader or ‘caliph’ (from *khalifa*, successor) of the Muslims, and that the ‘caliphate’ derives from the community’s allegiance rather than any special right of the Prophet’s lineage to rule¹⁵.

Because the Iranian state sets itself the goal, enshrined in the first four articles of its Constitution, of complying with Shi‘i Islam in all respects including law, it is necessary to grasp the basics of Shi‘i law in order to understand the cases in Part II and their theoretical background in Part I.

The Qur’an (‘recitation’), considered the word of God as revealed to the Prophet Muhammad, is the most important text for all branches of Islam. A minority of its verses are legal; the circumstances of their revelation (*asbab al-nuzul*) are often crucial to their meaning or interpretation, and some abrogate (*naskh*) others.

Also important is the *sunna* (tradition): reports of the behaviour and statements of the Prophet and (only for Shi‘is) the Imams, variously called *ahadith* (singular: *hadith*), *akhbar* (singular: *khbar*), and most often in modern Iranian legal treatises, *revayaat* (singular: *revayat*). These ‘narrations’, as they will be called here, usually include an *isnad* or *sanad*: a ‘chain of transmitters’ having the format ‘A told B told C that the Prophet said or did such-and-such’. Narrations can be evaluated, inter alia, by the reliability of their transmitters. Narrations may therefore have greater or lesser authority, and equally authoritative ones may contradict each other. Narrations have legal authority because the Prophet, his daughter Fatima and the Imams are considered *ma‘sum*: infallibly sinless (often described in the plural: ‘the *Ma‘sumin*’). Nothing they said or did contradicted God’s will, the only question being whether their behaviour was accurately transmitted (and understood).

The Qur’an and narrations are the *nusus* – ‘(authoritative) texts’; singular: *nass* – of Shi‘i law. The term ‘scripture’ will be used here to refer to these texts. However,

¹⁵ See Momen, Halm, Tabataba‘i, Waines (155-72), Williams (192-8), Rippin (vol.1, 103-16), and Stewart (165-74) for basic presentations of Twelver Shi‘ism and its differences from Sunnism.

following Occultation, humans have had to extrapolate scripture to real situations (including those not explicitly covered by scripture) without additional authoritative pronouncements from an Imam. The resulting jurisprudence – *fiqh*, a jurist being a *faqih* – is understood to be human and fallible, and it is important to distinguish it from scripture from the outset. Sometimes current Iranian legal specialists, ranging from judges to jurists, refer to scripture and *fiqh* together as *shar‘*, the term which in English is rendered as ‘shari‘a’, indicating ‘Islamic law’. Often they do this when distinguishing the codified law (*qanun*) from its uncodified origins, namely scripture plus *fiqh*. However, technically the shari‘a includes scripture but not *fiqh*, which is derivative, human and fallible. In this study, wherever it is necessary to refer to scripture and *fiqh* together, whether to paraphrase an Iranian legal specialist’s unified mention of them, to distinguish them from codified law used in court, or to indicate that a legal concept is supported both by scripture directly and by *fiqh* (for example in the elaboration of its details), the term ‘Shi‘i law’ will be employed.

In current Shi‘i thought, *fiqh* is the result of *ijtihad* (‘effort’): the extraction of legal rulings from scripture by a *mujtahid* (one authorised to perform *ijtihad*) through principles of jurisprudence (*usul al-fiqh*) themselves elaborated from scripture; and the sources of Shi‘i law are presented as the Qur’an, the *sunna*, *ijma‘* (the consensus of jurists), and ‘*aql* (reason)¹⁶. Reliance on reason is associated with the tenet whereby God is reasonable and just (chapter 3, section 6.1).

A jurist is also termed *mufti*, meaning ‘one able to issue a *fatwa*’ (legal ruling), and the act of soliciting fatwas is *istifta‘*. The current mainstream Shi‘i position is that every *mujtahid* should elaborate rulings independently based on scripture, not on other jurists’ opinions. This is because any fatwa, however earnest, is potentially flawed, and reliance on potentially flawed rulings to create other potentially flawed rulings magnifies the possibility of error. Anyone other than a *mujtahid* is a *muqallid* (‘emulator’), from *taqlid*, ‘emulation’, and must follow the rulings of a *mujtahid*. Such is the emphasis on fresh scriptural interpretation that *taqlid* of a dead *mujtahid*

¹⁶Momen, 184-8; Newman, *Formative Period*, xiii; Entessar, 94.

is forbidden, since that jurist is unavailable to elucidate his rulings¹⁷. This conflicts with the Iranian state's task of codifying 'Islamic law' because codification crystallises some interpretations, excluding others¹⁸. (The codified interpretations are often from the *fiqh* manual *Tahrir al-Vasileh* of the deceased Ruhollah Khomeini, of whom more in sections 5.2-4).

Since jurists' opinions vary, *fiqh* is not a list of definite provisions so much as a collection of spectra, some narrower and some wider, within which most jurists' (for the present purposes, most current Iranian jurists') opinions lie. Therefore, for any point of law, the spectrum of current Iranian legal opinions will be described alongside the opinion chosen for codification.

Both Sunni and Shi'i jurists have evinced from scripture that there exists a category of crimes called *hudud*, plural of *hadd* – a word generally meaning 'limit', 'boundary', 'restriction', 'extent' or 'level'. *Hadd* crimes are regarded as those for which scripture (the Qur'an and/or narrations) prescribes 'fixed penalties': penalties whose intensity or method cannot be changed once the crimes are ascertained and proven to be *haddi* (the adjectival form of *hadd*). *Hadd* penalties include stoning for adultery and hand amputation for theft, but most *hudud* involve a prescribed number of lashes of the whip. The origins of the *hadd* category include the Prophetic narration "God has established a *hadd* (boundary) for everything and a *hadd* (penalty) for those who transgress this *hadd* (boundary)"¹⁹. Jurists have elaborated various features of *hudud* as opposed to other categories of crime; these minutiae will be explained in chapter 2, sections 5 and 5.1. Though the category *hudud* has recently been questioned, most jurists accept it, and the Iranian penal code follows the common format of both pre-modern (such as the *Lom'e* and the *Sharh-e Lom'e*)

¹⁷ Mohammadi (Abolhassan; hereafter, 'Mohammadi'), 345-51, 355; Halm, 67-71, 101-5; Tabataba'i, 122; Khomeini/Curzu, 183, point 1; Niknam, "The Islamization", 18; Martin, "Religion", 43-5; Kamrava (2008), 169; Arjomand (1980), 156, *Turban*, 13-4, 163, 167, 184, "Introduction" to *Authority*, 5-9, 16-7; Bakhash, 73; Gleave, 24-8; Menashri, 121, 123; Newman, "Khomeini", 573; Mir-Hosseini, *Marriage*, 7; Cole, "Shaykh", 83-4; Dahlén, 70-6, 87-90; Amanat, "From *ijtihad*", 124-5; Walbridge, 4-5; Picheca, 40, 45; Keddie, 19-20, 310; Khatami, 145; Constitution article 2.

¹⁸ Shacht ("Problems", 260) observes: "traditional Islamic law, being a doctrine and a method rather than a code ... is by its nature incompatible with being codified, and every codification must subtly distort it". See also Griffel, "Introduction", 4, 13, 15; Filali-Ansary, 64; Ford, 36-7; Arjomand, "Shari'a and constitution", 160; Tamadonfar, 208.

¹⁹ *Sharh-e Lom'e*, 61; Gilani, 106; Arabiyan, 60; Mo'meni, 152; Shahrudi, 64-5.

and contemporary (such as Khomeini's *Tahrir al-Vasileh*) Shi'i *fiqh* manuals by containing a *hudud* section.

5.2. State structures.

The Iranian revolution of 1979, under the leadership of Ayatollah (high-ranking Shi'i jurist) Ruhollah Khomeini (1902-89), replaced the modernising but repressive Shah (king) with an 'Islamic Republic': a state proposing to comply with Twelver Shi'i Islam while acknowledging popular sovereignty, including such democratic institutions as a constitution, elections and a parliament. The events leading to the revolution, the reasons why it assumed an 'Islamic' form, and post-revolutionary history have been documented in great detail elsewhere²⁰. For the present purposes, it is important to understand how the structure of the Iranian state influences the nature of laws and the chances of legal reform.

The structure of the Islamic Republic is as follows. The head of state is the Leader (*rahbar*), in conformity with the doctrine of *velayat-e faqih* (guardianship of the jurist), of which more below. He appoints many crucial figures including the chief of the Judiciary and the heads of the armed forces and the national broadcasting networks. Members of parliament (*Majles-e Shura-ye Eslami*, 'Islamic Consultative Assembly') are elected by popular vote, as is the President. However, candidates are screened, and often disqualified, by the Guardian Council (*Shuraye Negahban*). This committee, composed of six clerics nominated by the Leader and six lay jurists nominated by the head of the Judiciary who is himself nominated by the Leader, is constitutionally charged with authoritatively interpreting the constitution, overseeing elections, and ensuring that laws approved by the parliament comply with Islamic law and the constitution. It can veto laws for being un-Islamic or unconstitutional. It can thereby thwart popular and parliamentary efforts to reform laws, and in practice has tended to disqualify reformist candidates, often on flimsy grounds, and veto reformist laws. Its veto can be overruled by the 28-member Committee for Discerning the State's Benefits (*Majma'-e Tashkhis-e Maslahat-e Nezam*), often

²⁰ Concerning the revolution: Abrahamian, *Iran between two revolutions*. For post-revolutionary history and politics: Keddie, *Modern Iran*; Mir-Hosseini, "Sharia".

translated as ‘Expediency Council’ (see section 5.4 below), appointed by the Leader, who populates it with change-resistant conservatives. The Leader is chosen, and his activities are confidentially, hence unverifiably, monitored, by the Assembly of Experts (*Majles-e Khobregan*), composed of 86 *mujtahids* popularly elected from among candidates pre-screened by the Guardian Council, itself controlled by the Leader as above²¹. Therefore all popular input is subordinated to symbiotic, mutually replenishing unelected institutions.

The attempt to fuse divine and popular sovereignty permeates the Iranian Constitution, some of whose articles proclaim the latter, some the former and others both, while some declare male-female equality which is contradicted by laws (see e.g. chapter 4, section 3.5) mandating inequalities. Several scholars have noted the difficulties in reconciling scriptural immutability (see section 5.5 below) with the equalities and rights associated with humanistic law²². Current state structures and practices, notably *velayat-e faqih*, subordinate the ‘republican/democratic’ element in ‘Islamic Republic’ to what is presented as the ‘Islamic’ element. Crucially, this system does not necessarily gauge ‘Islamicity’ as loyalty to Islam, but as loyalty to the arguably new doctrine of *velayat-e faqih*, which not all Muslims share.

5.3. Velayat-e faqih.

Khomeini’s concept of *velayat-e faqih* means political rule by Shi’i *mujtahids* or, where possible, by the most learned of them: the *vali-e faqih* (guardian jurist) or *vali-e amr* (guardian of affairs), in other words the Leader: a position held by Khomeini until his death in June 1989 and thereafter occupied by Ali Khamenei²³.

²¹ Constitution articles 62-4, 71-2, 91-9, 107-18, 157; Alfoneh; Muir, “Khamenei”; Mir-Hosseini, “Sharia”, 338-9; Durham University; Freedom House; Abrahamian, “Who’s in charge”; Abdo.

²² Constitution articles 1-8, 7-12, 20-2, 56-9; Zera’at (1383), 301; Bazgir, 210-3; Bakhash, 78-9, 84-5; Arjomand, *Turban*, 185; Picheca, 45-6, 57; Schweizer, 295-6; Ismail, 14, 16; Martin, *Creating*, 123-4, 145 note 87, 199; Cherif Bassiouni, 265; Keddie, 255, 257; Sreberny/Khiabany, 273, 279; Najvan; Göle, 84; Shahidi, 747-54; Fazaeli, 14-5; Tabari (Keyvan), 109-10; Zeydabadi, 381-2, 387; Bucar/Fazaeli; Kusha, 242-51. Re: humanistic views: Mill, *On Liberty*, 85-6, 118, *Subjection*, 133-9, 152-61, 186-91; Locke, 8-14, 73-80, 104-5; Kant, 74.

²³ Sachedina, “The rule”, 139; Halm, 128-9. Arjomand, *Turban*, 179, regards the association of *vali-e amr* with Qur’anic verse 4:59 (the ‘authority verse’, mandating obedience to *ulu’l-amr*, “those in authority among you”) as a case of spurious etymology.

To express it simply, the prevailing doctrine before Khomeini elaborated *velayat-e faqih* in the pre-revolutionary years was that during Occultation, no government is valid because government is the Imam's prerogative and he is unavailable to govern. Furthermore, many other Imamic functions, including the implementation of *hudud*, were in abeyance (*suqut*; adjectival form: *saqet*, 'lapsed'). From the 16th century onwards, Shi'i clerics gradually subtracted various entries from that list of lapsed functions, but although Shi'i clerics – *foqaha* (plural of *faqih*), *'ulama* (plural of *'alim*, 'learned') – were eventually characterised as *na'eb*, 'representatives', of the Hidden Imam in some areas of life, most stopped short of positing themselves as rulers²⁴. Khomeini developed these earlier concepts into *velayat-e faqih*, whose departure from previous mainstream ideas, and aggressive post-revolutionary propagation, have been widely discussed²⁵. Indeed, the endeavour to comply with Shi'i law while running a modern state necessitated additional departures from earlier mainstream ideas and the elaboration of new doctrines to accommodate these.

5.4. The adoption of Islamised laws.

The Islamisation of laws began shortly after the revolution with the suspension of the 1967/75 Family Protection Law (FPL), which had increased male-female equality in marriage and divorce, and continued with the creation of the post-revolutionary Constitution and the amendment of articles of the civil and procedural codes considered incompatible with Shi'i jurisprudence²⁶.

As for criminal law, in 1982 parliament codified prevalent Shi'i juristic positions regarding *hudud* and *qesas* (retribution for murder or injuries) into the *Hudud* and *Qesas* Law (precursor of the 1991/96 penal code, described below), which the Guardian Council approved. But when in 1983 parliament attempted to codify *ta'zirat*, penalties that Shi'i jurisprudence classifies as discretionary, the Guardian Council repeatedly objected that *ta'zirat* are uncodifiable. This was not resolved until

²⁴ Hairi, 59; Amir-Moezzi, 10; Rose, 174-5, 178; Sachedina 1988, 21-2; Momen, 189-191.

²⁵ Menashri, 120-1; Arjomand, "The state", 154-8, *Turban*, 98-105, 136, 148-59, 171, 177-83, "Ideological Revolution", 190-8, 201-3, "Introduction", 1-3, 6-7; Roy, 201-3; Akhavi, 230-45, 256-7, 260-8; Abdo; and many more.

²⁶ Mir-Hosseini, "Sharia", 331-5; Mohammadi (Majid), 136.

1988, when Khomeini (apparently in a published letter to Khamenei) declared *velayat-e faqih-e motlaqeh* (the absolute rule of the jurist), a fortified version of *velayat-e faqih*. It states that all considerations, including Islamic laws, are subordinate to the interests of the Islamic Republic in its capacity as defender and implementer of Islam. In February 1988, the Expediency Council was created and, through a 1989 amendment of article 112 of the Constitution, allowed to override the Guardian Council's veto in the State's interests²⁷.

The 1989 constitutional amendments also reduced the *vali-e faqih's* religious credentials to allow Khomeini's chosen successor, Ali Khamenei, to occupy the position (Khomeini having died in June 1989). Previously the Leader was required to be a *marja '-e taqlid* ('reference for emulation'), an eminent or even supremely acclaimed religious jurist. Khamenei lacked this acclaim, but all *maraji'* (plural of *marja'*), including the previous designated successor Ayatollah Montazeri, were deemed unsuitable because of their political differences with Khomeini. Hence the earlier mainstream conception of religious authority was explicitly separated from political authority through *velayat*²⁸. This is another example of how political considerations overrode previous conceptions of Shi'i orthodoxy.

A new penal code, the *Qanun-e Mojazat-e Eslami* (Law of Islamic Punishments), was ratified in November 1991 except for the *Ta'zirat* section, ratified in May 1996. It had an 'experimental' validity of five years, which was renewed several times, most recently until mid-March 2012. Two proposed replacements for it were drafted. The first, referred to here as the 'penal code bill', was approved by parliament in September 2008 but rejected by the Guardian Council. The second, referred to here as the '2012 penal code', was approved in January 2012 by the Guardian Council,

²⁷ Mo'meni, 73; Sachedina, "The rule", 133-9; Picheca, 53, 170; Ansari-Pour 1997, 335, 342-351; Niknam, "L'Islamisation", 48-62, "The Islamization", 17-9; Enayat, 170; Lawyers' Committee, 11, 13-4, 17-9; Behrooz, 97; Arjomand 1993, 96-8, 103-5, "Shari'a and constitution", 160; Abrahamian 1993, 56-8; Mayer 1993, 119-20, 1996, 269-70, 291; Tabari (Keyvan), 101-2; Akhavi 1996, 262-5; Roy, 206-7; Jahanbegloo, 23; Ghahremanpour, 182; Keddie 2003, 260-1; Clarke, 289; Matsunaga, 325-6; Martin, *Creating*, 170; Tamadonfar, 208-9, 213-5; Mir-Hosseini, "Sharia", 336-9; Constitution articles 110, 112. *Maslahat* and its relationship to the 'absolute rule of the jurist' are discussed in chapter 3, section 6.2.

²⁸ Künkler, 7-12; Kelidar, 89-90; Behrooz, 96-100; Kazemi Moussavi, 299; Arjomand 1993, 98-9, 107-8; Abdo; Abrahamian 1993, 34-5, Tabarestani, 32 (note 2); Akhavi 1996, 265-6; Roy, 206; Mir-Hosseini, "Sharia", 336-9.

who withdrew it in August to rectify errors. It had not yet been signed into law as of 16 April 2013, and the 1991/96 code remained provisionally in force until further notice²⁹. Though the cases in Part II were tried under the 1991/96 code, referred to here as ‘the penal code’, the two subsequent versions illustrate the interpretability and negotiation of various legal elements relevant to *hudud*. Explanations of relevant legal elements will refer to the 2012 code alongside the 1991/96 code, to allow readers to understand *hadd* cases tried under the new code (which, at the time of writing, are still in the future). The penal code bill will be referred to where it illustrates the interpretability of legal elements.

5.5. Democracy and authoritarianism.

The Islamic Republic proposes to accommodate both ‘Islam’ and ‘Republicanism’, that is, democracy or popular sovereignty. Iran’s post-revolutionary political history is complex³⁰, but the question which directly affects the scope for legal reform is whether, and to what extent, the regime’s version of ‘Islam’ allows the ‘republican’ mechanism of popular input regarding laws. As explained earlier, the constitutional vision of ‘Islam’ does allow the option of overriding ‘Islamic law’ in the form of *maslahat-e nezam*, but this flexibility is monopolised by the unelected, conservative-dominated Expediency Council and is not directly accessible to the people or their elected representatives. Also, *maslahat-e nezam* indicates ‘the benefits of the state’, not ‘the benefits of the people’. Under current conditions, this massive potential for change remains largely untapped and is mobilised only if unelected officials decide that the state’s interests coincide with the people’s. This occasionally occurs; for example, a little girl’s death at the hands of her abusive divorced father so horrified public opinion that child custody laws were amended, overriding dominant *fiqh*, to allow divorced mothers custody instead of unsuitable fathers³¹ (chapter 4, section 3.5, explains child custody laws). More usual is the inflexibility illustrated when the reformist *mujtahid* Mohammad Khatami, elected as President in 1997 and 2001,

²⁹ Fararu; Tabnak, October 2012; Golduzian 26; Alborz, “Tamdid”; UN General Assembly, GA/SHC/3925; Paygah, “Layehe”; Hojjati, “Layehe”; ISNA; Bultan; Tasnim; ICANA.

³⁰ For details: Gheissari/Nasr; Mir-Hosseini/Tapper, 9-38, 174-81; Ashraf/Banuazizi; Mohammadi (Majid), chapters 5-6.

³¹ Niknam, “The Islamization”, 20-1.

failed to make substantive changes because his government was hamstrung by unelected institutions³².

However, some reformists, including *mujtahids*³³, argue that Islam not only allows flexibility, but also gives the people, not merely the authorities, access to it. The conflict, therefore, is not simply one of Islam versus democracy, but of authoritarianism (rationalised through the politically dominant and constitutional conception of ‘Islam’) versus popular self-determination. Just as there are secular authoritarianisms, so some Iranian scholars offer anti-authoritarian visions of Islam (indeed, some ally Islam with democracy and *velayat-e faqih* with authoritarianism).

For example, the *mujtahid* Mohsen Kadivar asserts that Islam does not impose hardship or forbid obvious benefits. He argues for the religiously permitted changeability of certain commandments, including those involving harsh penalties and inequalities (see chapter 3, section 6.5), in response to evolving morality and the expiry of those commandments’ past rationales and benefits. He deems Islam compatible with democracy, and characterises *velayat-e motlaqeh-ye faqih* as religiously unjustified arbitrary power for the *vali-e faqih* and his allies to categorise anything they wish as *maslahat-e nezam*, thereby replacing scriptural with state authority. Though *velayat-e motlaqeh* could easily bypass any ‘inconvenient’ scriptural commandment, being at the authorities’ discretion it can facilitate both democracy and repression. Kadivar’s vision instead justifies self-determination by opposing this ‘double-edged’ innovation and positing an accommodating Islam. He has been imprisoned and is now in exile³⁴.

Ahmad Qabel, another reformist *mujtahid* who was imprisoned and has since died (possibly because of insufficient medical assistance in jail), articulated similar positions regarding the changeability of commandments. He wrote extensively against stoning (see chapter 3, section 6.5) and called for a reform of the constitution

³² Gheissari/Nasr, 98-105; Freedom House; Mir-Hosseini/Tapper, 29-36, 174-81.

³³ Despite Iran’s characterisation as a government of mullahs, not all *mujtahids* are part of the regime, which harasses many of them. Künkler; Amirpur; Abdo; CSM; Mir-Hosseini/Tapper, 118-23, 153.

³⁴ Nurizad/Kadivar, “Pasokhha”; Kadivar, “Qabul”; Matsunaga.

and governmental structures to increase popular input. He observed that by thwarting the efforts of Khatami's reformist government, increasing repression, and resisting legal and constitutional reform, Khamenei has convinced most people that the regime cannot be internally reformed, thereby possibly hastening its collapse³⁵.

Likewise the *mujtahid* Mohammad Mojtahed Shabestari, who urges judges who issue stoning verdicts to participate in stoning and witness its cruelty, states that penal commandments are not eternally binding and harsh penalties cause people to loathe Islam. He asks why, if stoning is divine, the regime implements it secretly. He argues that it is not the faith's function to control human interaction minutely, and therefore using human regulations for areas outside religion's purview does not imply the faith's 'imperfection'. Every prophet, he says, arrived into a pre-existing culture, aiming to introduce ethical goals and improve things within existing conditions rather than upending that culture and being rejected. Historical developments may facilitate those greater goals beyond earlier societies' limits, and the fact that those limits once had to be acknowledged is no indication that Islam established them and imposes them now³⁶.

The *mujtahid* Hassan Yousefi Eshkevari, who was 'defrocked' and imprisoned by the regime and relocated to Germany, has also declared the changeability of commandments regulating human interaction, as distinct from those regulating humans' relationship with God. The divine law accords with, indeed enjoins, justice and reason, which the healthy human conscience can detect; but human perceptions of these inevitably vary according to circumstances. The Prophet promoted justice within the possibilities of his environment, and we must promote justice within the possibilities of ours. The conscience of most people worldwide currently rebels against stoning and other harsh penalties, making it difficult to attribute inflexible insistence on these penalties to a God who harmonises with justice and reason. Therefore, he argues, we must either accept that God intended human relations to be governed by (variable) human justice and reason, or abandon the pretence, a mainstay of Shi'ism (chapter 3, section 6.1), that the divine law is reasonable. He

³⁵ Qabel, "Nameh", "Barresi"; Nurizad/Qabel; Behrang; Radio Farda, "Prominent".

³⁶ Mojtahed Shabestari, "Sangsar", "Mosahebe"; Sadri, "Attack".

points out the irony of the regime routinely breaking Islamic laws in the state's interests, but being peculiarly resistant to abrogating penalties which clearly harm those interests and contravene the faith's essential ethos of justice and reasonability. He also argues that since despotism is unjust, current views of justice require democracy, scripture commands no particular governmental structure, and commandments governing human relations are changeable, Islam counters despotism and permits democracy, which could be Islamic by harmonising with Islam's essential values³⁷.

Some senior *mujtahids* have taken dissident positions. Grand Ayatollah Hossein'ali Montazeri, an architect of the post-revolutionary constitution and Khomeini's former heir apparent, was demoted in 1988 for criticising the regime's brutality. From 1997 to 2003 he was under house arrest for stating that the Leader should supervise, not rule, and questioning Khamenei's suitability for the post. He continued to denounce the regime's repression, violence and corruption, including the Takestan stoning (chapter 4, section 3.7) and the 2009 election-rigging, as illegal and un-Islamic, and called for greater accountability and popular representation, becoming a reformist rallying point until his death in 2009³⁸. Grand Ayatollah Yousef Sanei has opposed the regime's violence and illegalities and issued fatwas consonant with many freedoms and equalities found in the Universal Declaration of Human Rights. His home and offices have been physically attacked and conservative institutions have tried to 'defrock' him³⁹.

Non-clerics have also explored Islamic reformism. An early example is Mehdi Bazargan, the first post-revolutionary prime minister, who declared from 1992 until his death in 1995 that God's purpose in sending prophets had been to inform them of His existence and prepare them for the hereafter, not to micro-manage their interpersonal matters. Religion, he argued, offers guidelines for social interaction to promote its essential aims of justice and compassion, but whenever religion is in the

³⁷ Eshkevari, "Ta'mol", "Aql"; Mir-Hosseini/Tapper, 38, 77, 82-100, 114, 154-74; Esfandiari, "Exiled"; Amnesty International, MDE13/22/00, 13/016/2001.

³⁸ Kurzman, 346-8; Mir-Hosseini, "Sharia", 336-7; Mir-Hosseini/Tapper, 103-8; Keddie, 260, 274-5, 283, 309-10; Qazi, "Pasokh".

³⁹ Nurizad/Qabel; Press TV, "Ayatollah"; Abdo; CSM; Payvand, "Iranian reformist".

hands of the powerful, it becomes a tool of oppression and intolerance; consequently people doubt and lose their faith and the religion is hated and thereby weakened⁴⁰. Mostafa Malekian even risks suggesting that popular religiosity is best maintained if no political system claims to rule in religion's name. A religious government can only represent one reading of religion; this hinders the development of religious thought and marginalises, and potentially oppresses, believers in alternative readings. Unlike several Islamic reformists, he questions the feasibility of 'religious democracy': if society is ruled by popular vote, where is the government's 'religiousness' manifested? However, democracy and religion can coexist, since a religious society can be democratically organised. Like Shabestari, Malekian argues that the Prophet began a trajectory of improvement, and it makes sense to keep following this trajectory rather than fossilising for evermore the stage of improvement reached in the Prophet's lifetime. Malekian also distinguishes between a view of Islam which reduces it to *fiqh*, emphasising only the outer meaning of scripture, and one which seeks the spirit behind scripture⁴¹.

Perhaps the best-known Iranian religious philosopher is Abdolkarim Soroush. He and his family have been harassed (his son-in-law was apparently tortured to make him defame Soroush) and he is currently abroad. For Soroush, scriptural interpretability allows human conceptions of God's law to adapt to different conditions. The contingent minutiae of religion, resulting from variable human understandings of scripture, are distinct from religion's essential aims, which are ethical. Democracy opposes tyranny and therefore accords with the ethics also contained in religion. The current regime's brutality, however, encourages hatred of religion⁴².

The treatment of many reformists, including *mujtahids*, illustrates the strength of conservative forces which control crucial institutions, forming a barrier to change. The difficulty of legal reform is one manifestation of this, and the courts' and interrogators' unaccountable discretion is another. For the time being, therefore,

⁴⁰ Mir-Hosseini/Tapper, 65, 68-70.

⁴¹ Malekian, "Hakemiat", "No-andishi".

⁴² Matin-asgari, 103-6, 113-5; Soroush, "Khoda nist"; BBC Persian, "Abdolkarim Soroush"; Mir-Hosseini/Tapper, 67; *Shargh*.

efforts for legal reform and accountability are more likely to succeed if they appeal to the authorities' self-interest (for instance by emphasising the benefits of a better human-rights record in reducing internal and international discontent, thereby promoting stability), refrain from threatening *velayat-e faqih* outright, and operate within the prevailing framework, exploiting its opportunities for lenience and perhaps expanding its borders by small increments. This is not to say that radical restructuring should not be pursued. Reformist scholars' interpretations may occupy a mainstream and practical role in future: the mainstream may enlarge until it includes them, or a 'tipping point' may bring a shift in what is widely, or even authoritatively, perceived as 'Islam'.

It is important to distinguish between jurists' interpretations of any given scriptural commandment's meaning or scope, remaining within the paradigm of *discovering* what Islam prescribes and permits while maintaining sometimes wide latitude within it, and concepts whereby Islam allows scriptural commandments to be altered with changing circumstances. For example, by the first paradigm, jurists might interpret commandments regarding hand amputation as creating such obstacles to implementation (stringent conditions, formidable evidence requirements etc) as to render the penalty highly unlikely but still technically enforceable. By the second, jurists might argue that Islam allows the penalty itself to be altered. For the moment, the framework within which Iranian *hadd* laws (and trials) exist, and could be reformed, is by default the first model (binding but interpretable scripture) with some flexibility to overcome residual scriptural obstacles, as in the second model. The main regime-approved route for such flexibility is *maslahat*, which the Expediency Council monopolises and underexploits as noted above. Consequently this project explores in detail the manifold scriptural interpretations which, while capable of significantly increasing lenience, remain within the dominant framework and are directly relevant to the cases in Part II, while noting more peripheral, even paradigm-shifting ideas where appropriate. *Maslahat* and other forces for accommodation, some more established and others less 'digestible' by the regime, are described in chapter 3, section 6 and subsections.

5.6. A note on juristic texts.

Some jurists represented in this project, such as the conservatives Mo'meni, Sadeghi, Farhangi and Ayatollah Makarem Shirazi and the forward-thinking *mujtahids* Nobahar and Ayatollah Mohaqqueq Damad, have known political inclinations. Most refrain from public political statements, and may hold both lenient and severe positions on different points of law depending on their scriptural interpretations. Importantly, political and juristic positions may not align. For example, Ayatollah Shahrudi, the former head of the Judiciary who tried to suspend stoning (chapter 4, section 3.7) and issued all the stays of execution in Part II, painstakingly used scripture against *'elm-e qazi* (chapter 2, section 6.4), as has the politically conservative Arabiyan, but also denounced reformist parliamentarians for defending 'westernised' journalists and liberals and voiced other conservative opinions. Eshkevari has expressed some anti-gay sentiment. Kadivar has suggested that gay people should remedy their 'defect' medically; so has Ayatollah Montazeri, who has issued some stern fatwas about adultery, sodomy, apostasy, male-female equality, and marriage with non-Muslims. The *mujtahid* Fattah Mortazavi emphasises the shari'a's inherent lenience, declaring for instance that ignorance is a defence and confession demonstrates repentance, nullifying punishability (a radically lenient stance), but is politically conservative and pro-regime. The conservative Ayatollah Gilani, a member of the Assembly of Experts, has juristic positions ranging from the very stern to the very lenient, as does another member, the pro-regime Ayatollah Mar'ashi Shushtari⁴³. Since juristic stances cannot predict political preferences, it is unhelpful to speculate about jurists' unknown political inclinations; however, it is useful to remain aware of the political environment in which trials and legal discussions occur.

⁴³ Payvand, "Reformist"; NCRI, "Brief"; Heidari; Rustazadeh; *Asr Iran*, "Amar"; ABNA; Montazeri, *Resaleh*, topics 80, 2668, 3155-74, 3213-5, "Pasokh"; Radio Farda, "Montazeri", "Matn"; Erdbrink; Gheissari/Nasr, 101; Bashi; Kadivar, "Adam-e javaz"; Eshkevari, "Hamjensgarai"; Mortazavi, 30, 181; IRNA; Iranian parliament library; Baqi; Sahimi; Weblog-e ettela'resani; Mohammadi (Majid), 194; Mir-Hosseini/Tapper, 44, note 10; Gilani, 14-8, 40, 45-46, 63, 75, 98-100, 103-4, 183; Mar'ashi, 92, 101-2, 130, 235.

Analysis of legal elements focuses on modern Iranian juristic texts, because these contain interpretative spectra which are current and could therefore directly affect trials and legal reform. These analyse pre-modern juristic texts and scripture, describing relevant scripture and extant interpretations and sometimes favouring one position. Where possible, I verified the content of these scriptural and pre-modern juristic texts; otherwise I confirmed this content (often verbatim) through multiple modern juristic texts. Where a modern position departs from previous interpretations, or a dormant pre-modern stance affects the scope for lenience, this is noted. Otherwise, the default is that modern and pre-modern texts manifest similar interpretative spectra.

Part I: background

This project aims to identify opportunities for avoiding irreversible (death and amputation) *hadd* penalties in Iran. Part I of the project, consisting of chapters 2-4, provides background information for the case studies in Part II.

Chapter 2 is an overview of Iranian laws affecting *hudud*. It explains what *hudud* and their penalties are, which law codes are used, and how they legislate various aspects of *hadd* application, such as evidence, appeals, and criminal responsibility.

Throughout the discussion, it shows how elements of Shi‘i law, as understood by current Iranian legal specialists, underlie codified Iranian law, and how alternative interpretations of Shi‘i or codified law could maximise lenience.

Chapter 3 covers principles from Shi‘i law which, whether codified or not, can affect the interpretation and application of the laws discussed in chapter 2.

Chapter 4 goes into detail about laws governing particular *hadd* crimes which carry death or amputation penalties in the first instance. Again it explains how these crimes and their various facets are regulated in both Iranian law and current interpretations of Shi‘i law.

The interplay between theory (Part I) and practical application (Part II) should reveal patterns traversing the system governing *hudud* in Iran. Part I shows that both Shi‘i and codified law contain not only harsh elements, notably death or amputation penalties, but manifold opportunities for lenience. The vagueness characterising many of these opportunities is observed in action in Part II, where judges are shown exercising immense discretion in ‘cherry-picking’ interpretations. Some juristic discussions observed in Part I resurface in Part II, showing that not only jurists and legislators but also judges and lawyers negotiate what *hadd* law is and how it could be reinterpreted. Part II also shows that judicial authorities often contravene even explicit laws outright, and confirms the existence of institutional obstacles to lenience as discussed in Part I.

2. Hudud in the law.

To understand the Iranian *hadd* trials analysed in Part II, one must first comprehend not only the laws and principles involved, but also the underlying elements of Shi‘i law and the interpretations of both which are current in the Iranian legal community.

This, the first of three chapters delineating the case studies’ theoretical background, therefore describes codified Iranian laws covering all *hudud*, and the present-day Iranian legal community’s understanding of their origins in Shi‘i law (through their interpretation of scripture and earlier jurists’ writings). Where applicable, subsections discuss alternative interpretations which are absent from codified law but could influence contemporary jurists’ vision of what the law is – thereby potentially facilitating lenient legal reform. This is important because a major aim of this project is to identify opportunities for lenience.

1. Shi‘i law and codified law.

Constitutionally, every law in Iran must comply with Shi‘i law, and legal proceedings must follow codified laws ratified by parliament. However, where these are silent, Shi‘i law may be used directly (articles 2, 4, 167). This acknowledgement of Shi‘i law as the underlying source and authority behind codified law means that in practice Shi‘i and codified law operate in parallel in *hadd* trials, and uncoded scripture, principles of *fiqh*, or fatwas (most frequently from Khomeini’s *Tahrir al-Vasileh*) are used in court and may decisively influence the outcome of trials.

Sometimes the codified law acknowledges this parallel operation by explicitly referring to, or allowing the use of, Shi‘i law; sometimes it is not so explicit but its brevity and vagueness (especially characteristic of the penal code’s *hadd* section but also found in other codes) necessitates recourse to the underlying Shi‘i law. Modern jurists occasionally point out ‘errors’ in the codified law, where Shi‘i law was incorrectly rendered, making judges unsure which law to obey. Judges, lawyers and

jurists often present Shi‘i law as the ultimate legal authority, and codified law as a shorthand rendering thereof¹.

2. No crime without law.

This parallel operation of two legal systems contradicts the principle, familiar in many legal systems, that there is no crime or punishment unless mandated by codified law. This constitutional principle also exists in other laws and a recommendation of the Judiciary. However, some codified laws refrain from legislating various details, either referring judges to Shi‘i law or giving them discretion². The conflict has been noted and mostly lamented by scholars, who have observed that according to the principle of no crime without law, even where the law allows judges to use Shi‘i law, they should refrain; so that the law both grants and denies them that permission³.

3. Judges and lawyers.

Shi‘i *fiqh* indicates that only *mujtahids* can be judges. Article 163 of the Constitution says that judges must fulfil the conditions required by *fiqh*. However, Iranian judges are not necessarily *mujtahids* at all; this was apparently allowed⁴ because insufficient numbers of *mujtahids* were willing to risk their salvation by being judges. Judges take a unified ‘judgeship exam’, but some start their careers by studying in the *howzeh-ye elmiyeh* (seminary where *mujtahids* are trained), while others begin by

¹ Penal code article 110; 2012 penal code article 220; Appeals Law art. 17; Constitution articles 1-4, 163; Bazgir, 30, 133-4, 146, 161, 303; Mo‘meni, 123; Zera‘at (1385), 213, 223-6, 228-9, 232-3, (volume 2) 39-40; Nobahar, “Qavvadi” 150, “Be suye”, 336, “Qachaq”, 189, 195, 198-9, 207, 213-4, “Tanfir”, 135; Mortazavi, 32-3; Amini, “Parvandeha”, 11; Khezr Heidari; De Luce; Lawyers’ Committee, 21-2, 25.

² Penal code article 110; Procedural Code for General and Revolutionary Courts in Criminal Matters (PCCM) article 214; Criminal Procedure Code (CPC) article 247; 2012 penal code articles 2, 10, 12-3 (expressing ‘no crime without law’), 220 (expressing the opposite). Mir-Hosseini, *Marriage*, 207 note 40, observes that polygyny is only implied by Iranian law, not explicitly allowed.

³ Constitution articles 36, 166-7, 169; penal code articles 1, 2, 110, 575, 637; Law Establishing Criminal Courts 1 and 2 and Supreme Court Branches (LECC), article 29; PCCM article 214; CPC article 247; Mohammadi, 295-6; Golduzian, 24, 28-9, 34-5; Hojjati, 359; Nobahar, “Qachaq”, 195, 198; Mohaqqeq Damad, “Mojazat”, 23; Bazgir, 303; Ansari-Pour (2001), 335.

⁴ Permitted by LECC, note to article 38; implied by CPC, note to article 29.

studying law in universities⁵. Of the judges I met in Iran, only one was a *mujtahid*. One Iranian scholar states that only 22.5% of Iranian judges are *mujtahids*⁶.

Mainstream *fiqh* indicates that women cannot be judges, and this is applied in practice. However, recently women were permitted to become assistant investigative magistrates, though not to issue rulings⁷.

The Constitution (article 35) guarantees legal representation in trials, but without specifying *when* lawyers must be provided for suspects. The ‘axiom of interpreting laws to favour defendants’, present in Shi‘i *fiqh* (chapter 3, section 3), suggests that lawyers should therefore be provided immediately upon arrest. Instead, judges may demand lawyers’ exclusion from pre-trial interrogations, and the case studies show that frequently lawyers are introduced belatedly or entirely absent, magnifying the chances of conviction⁸. Sodomy case 1 even shows that judges can view hiring a lawyer as evidence of guilt. Some lawyers have told me about being prevented from seeing their clients, denied access to case files, introduced belatedly without access to information, or prevented from speaking in court. This is confirmed by additional sources, which even describe lawyers being denied entry to their clients’ trials⁹.

4. Law codes, general regulations and appeals.

The codified laws most relevant to *hudud* are the 1979 Constitution; the 1991/96 *Qanun-e Mojazat-e Eslami* (Law of Islamic Punishments), the penal code under

⁵ Khomeini, 244-5; *Lom‘e* (vol.1), 162; Shahrudi, 208; Zera‘at (1383), 265, (1385/2), 248; Niknam, “L’Islamisation”, 53-5, “The Islamization”, 20; Arjomand, *Turban*, 167, 188; Lawyers’ Committee, 16-27; Tamadonfar, 216-7; Constitution article 163; CPC article 29; LECC article 37; communication with judges.

⁶ Jalali-Karveh, 443-4.

⁷ Khomeini, 244-5; Mostafaei, “Bazdasht”; Martin, *Creating*, 156, 158, 167; Esfandiari, “The politics”, 80-3, 89; Walbridge, 11; Sciolino, 115, 124, 208; Keddie, 292, 294; Arjomand, “Shari‘a”, 161; Razavi, 1225, 1230; Mir-Hosseini, “When”, 120; Jeffries; Kalmbach, 43; Lawyers’ Committee, 17, note 33. I met one female assistant judge.

⁸ PCCM article 128. Amnesty International, Iran report 2010, cites instances of detainees denied lawyers, even during trials, following the 2009 election protests. This was often combined with pressure to confess, including torture. For denial of lawyers in non-*hadd* cases, see ICHRI, “Iran’s secret hangings”, “Iranian Judiciary”, “Iranian-American”.

⁹ E.g. Komiteye Gozareshgaran, “Mohammad va Abdollah”; Rah-e Sabz, “Nameye Hossein”; Yeranian, “Iranian activists”.

which the cases in Part II were tried; its successor, the 2012 penal code, which postdates the cases in Part II and is not yet enforceable; the 1911 *Ayyin-e Dadresi-e Keifari*, the Criminal Procedural Code (CPC) containing, inter alia, regulations for interrogation and investigation; the 1989 Law Establishing Criminal Courts One and Two and Supreme Court Branches (LECC); the 1994 Law Establishing the General and Revolutionary Courts (LEGRC), which inter alia determines which courts try which crimes; the 1999 Procedural Code for General and Revolutionary Courts in Criminal Matters (PCCM), regulating, inter alia, trial procedures and courts' jurisdiction by type of trial; the 1991 Directive on the Implementation Regulations for Sentences of Execution, Stoning, Crucifixion, [and] Amputation or Disabling of Limbs, [being] the Subject of Note 1 of Article 28 of the Law Establishing Criminal Courts One and Two (DIRS28/70); the 2003 Directive on the Implementation Regulations for Sentences of Retribution, Stoning, Judicial Killing, Crucifixion, Execution and Flogging, [being] the Subject of Article 293 of the Procedural Code for the General and Revolutionary Courts in Criminal Matters (DIRS293/82); the 1993 Procedural Code for the Pardon and Clemency Commission; and the 1993 Law for Appealing Court Rulings.

The 1991/96 penal code (referred to here as 'the penal code') contains four sections: *hudud* (fixed penalties); *qesas* (retaliation in kind for murder – *qesas-e nafs* – or injuries – *qesas-e ozv*); *diyyat* ('blood money' in lieu of *qesas*); and *ta'zirat* and deterrent punishments. *Ta'zirat* (adjectival form: *ta'ziri*) are discretionary (literally, 'disciplinary') punishments chosen by the judge within boundaries set for each crime not covered by the other three categories. As explained in chapter 1, section 5.4, the 2012 penal code and, where applicable, the penal code bill, a proposed replacement for the 1991/96 code which never became law, will be cited to display the evolution of relevant legal interpretations and to keep readers informed of what will likely be the provisions of the future (2012) penal code.

Constitutionally (article 165) all trials must be open unless the court considers this contrary to public order or chastity or the parties to a lawsuit request privacy. However, PCCM article 188 (contradicting the Constitution) enumerates categories

of trials which must not be public. These include trials for *jarayem-e monaffi-e 'effat* (crimes against chastity: carnal crimes). Iranian lawyers have confirmed the near-impossibility of bringing anyone not directly involved, even non-participant lawyers, into *hadd* trials¹⁰.

Although judges are not obliged to consider judicial precedent, it sometimes appears in rulings, lawyers' defences and legal treatises; there is a narration favouring uniformity of rulings, which article 161 of the Constitution charges the Supreme Court with ensuring. A one-article law was created to solve disparity in rulings. It authorises the Supreme Court's General Council, comprising at least ¾ of Supreme Court judges, to issue legally binding 'uniformity rulings' (*ara'-e vahdat-e ravieh*). The PCCM instructs judges to seek and obey such rulings when detecting similarity among cases¹¹.

There are two types of criminal court. First-class penal courts (*dadgah-e keifari-e yek*) handle cases potentially involving more serious punishments, including any irreversible penalty. Second-class penal courts (*dadgah-e keifari-e do*) try lesser cases¹². The case studies in chapters 5-9 show that in rural areas lacking dedicated criminal courts, cases may initially go to general courts (*dadgah-e 'omumi*).

Not every Iranian penal ruling can be appealed, but any *hadd* ruling or death sentence can, against the more classical position (advocated for instance by Khomeini) forbidding appeals unless judges are proven incompetent or their rulings contain errors of *fiqh*. Appeals, previously prohibited, were introduced by the 1993 Appeals Law. Appeals go to provincial appeal courts unless a ruling contains a death or amputation sentence or other sentences beyond a specified level of seriousness in

¹⁰ Constitution article 165; PCCM article 188; Amini, "Parvandeha", 5, 10; Lawyers' Committee, 34-5, 54; Tabari (Keyvan), 105; communication with Iranian lawyers.

¹¹ Golduzian, 24, 32-4; Niknam, "L'Islamisation", 53-5; BIA, 28-30, 33-4; Ja'fari Langarudi, *Maktabha*, 181; Constitution article 161; one-article Judicial Uniformity Law; PCCM article 270.

¹² LECC articles 5-8.

terms of number of lashes, length of incarceration or amount of blood money or fine; in which case its appeal goes to the Supreme Court¹³.

If a ruling is overturned (*naqz*) by the Supreme Court because of inadequate investigation, it is sent to the originating court for further investigations. If the reason for *naqz* is that the case was tried by the wrong type of court, it is sent to the correct court. In other instances of *naqz*, the case is retried by another branch of the original court (*dadgah-e ham-'arz*, 'equivalent court'), and the resulting 'final' ruling cannot normally be appealed. However, the law allows final rulings to undergo an 'extraordinary appeal' if they demonstrably contain legal flaws. Appealed sentences are suspended until the appeal process is complete¹⁴.

Regarding appeals returning to originating courts for 'further investigations', because the borderline between 'further investigations' and legal flaws can be unclear, cases can return to courts which have already manifested negligence or even hostility. Therefore involving such courts a second time can skew cases away from lenience towards defendants, denying them an objective 'second opinion'. This, termed 'appeal bias' here, is observed in several cases in Part II.

Double jeopardy (being tried twice for the same crime¹⁵) is explicitly permitted to complainants appealing acquittals by LECC article 34, and implied by CPC article 356 and the note to PCCM article 232. This is sometimes used to deduce that it is otherwise prohibited, though apparently no law mandates this. Also, since a quashed ruling requires a retrial, appeal may yield a stricter sentence than the original one¹⁶.

¹³ Appeals Law, article 9 section 2; PCCM articles 232-3; Khomeini, 244-5; Abrahamian (1999), 134; Behrooz, 95; Niknam, "The Islamization", 20; Arjomand, "Shari'a and constitution", 162; Rezaei, 59-60; Lawyers' Committee, 28-9.

¹⁴ LEGRC, article 18; PCCM, article 265, parts 2-4; Appeals Law, articles 15, 17.

¹⁵ "Double jeopardy... guarantees that no citizen can be tried twice for the same crime. Permitting the appeal of an acquittal... runs afoul of the right". Laudan, 3; see also 17, 196-206. This refers to British and American legal systems.

¹⁶ Saberi, 279-80, 292-3; Picheca, 51-2; *E'temad*, "Joz'iat"; Rostami; Kermani.

4.1. The fragmentary nature of the penal code.

Scholars vary in their use of the ‘principle of non-transferability’ or ‘non-association’ (*asl-e ‘adam-e elhaq*) regarding whether regulations assigned to one crime by scripture can be extended to another. For instance, revocation of confession to *zena* (adultery or fornication) carrying the stoning penalty causes it to lapse, and many jurists have used principles of lenience and caution¹⁷ to extend this to any death penalty for *zena*: this is crystallised in the 1991/96 penal code (article 71). Does this extend to any stoning or death penalty (e.g. for sodomy, as some argue), or is it limited to those two instances? The effects of repentance and repetition of crimes are presented in a similarly patchy way¹⁸. There is much scholarly discussion regarding these and similar points¹⁹.

The fragmented nature of the penal code and of many juristic texts, which treat each crime separately, suggests that mostly such transfers are disallowed. However, they sometimes occur. The penal code bill and the 2012 penal code appear more amenable to transfers than the 1991/96 code, and generally contain unified articles describing such regulations. For instance, where the 1991/96 code regulates repetition of each *hadd* crime separately and has the death penalty for the third, not the fourth, repetition of alcohol consumption, the penal code bill and the 2012 penal code simply state that all *hudud* carry the death penalty on the fourth repetition, and that revocation of confession averts any death penalty in *hudud*. Likewise, they contain unified rules regarding proof in *hudud*, specifying any exceptions, rather than regulating proof separately for each *hadd* crime like the 1991/96 code. They also cover pardon, repentance and criminal responsibility with unified regulations²⁰.

¹⁷ These, including the ‘axiom of interpreting laws in defendants’ favour’, are discussed in chapter 3.

¹⁸ Penal code articles 47, 89, 90, 122, 157, 201; *Sharh-e Lom ‘e*, 28.

¹⁹ Mortazavi, 22-3, 26-7, 44-6, 94-5, 102-3, 105, 108, 152-4; penal code bill article 213-2; Zera‘at (1383), 241, 250, (1385) 126-7, 228-9, 235, 243, 246-7, 252, 257, 259, (1385/2), 39-40, 48-9, 62, 89; Shahrudi, 68-9; Nobahar, “Ahdaf”, 152-3, “Qavvadi”, 150, 155, “Qachaq”, 196; Deh Abadi, 46, 60; Khomeini, 327-30, 341-2, 344-5, 351, 354, 357, 369-70, 376-7; *Lom ‘e* (vol.1), 167; *Sharh-e Lom ‘e*, 28-9, 70; Picheca, 40; Lawyers’ Committee, 15.

²⁰ Penal code articles 135-8, 183-8; penal code bill articles 212-1, 212-2, 213-1, 213-2, 213-3, 215-6, 215-7, 215-8, 216-2; 2012 penal code, articles 99, 113, 116-20, 131, 134-5, 139-99 (172 refers to retracted confession), 210-12, 217-8.

5. *Hudud* in codified and Shi'i law.

Jurists ancient and modern are reasonably united in their opinion – supported by narrations – that the characteristics of *hudud* are as follows: *hadd* punishments cannot be commuted, attenuated or modified (being impervious, therefore, to ‘bargaining down’); there must be no delay in their implementation except for specific, scripturally supported reasons (including pregnancy, lactation, and sometimes illness); a certain number of repetitions of the same *hadd* crime carries the death penalty (usually four or three – see section 5.2); *hadd* punishments are halved for slaves (*ta'zirat* are identical for slaves and free people); *hadd* punishments do not vary according to the intensity of crimes; intercession is forbidden in *hudud*; a certain number of confessions or witnesses can prove *hadd* crimes (four for carnal crimes, the default for others being two); and oaths cannot prove *hudud*²¹.

Arguably, the word *hadd* was used by the Prophet and the Imams and in the Qur'an as simply ‘punishment’; indeed, certain axioms containing the term are used for all crimes. Although some modern scholars doubt that Shi'i law mandates a *hudud* category of crimes, most assume that it exists and follows certain rules²².

The penal code defines *hadd* crimes as those whose type and intensity are determined by the shari'a, and, agreeing with most classical jurists, forbids their modification. However, in conformity with one juristic opinion, they can be pardoned by the Leader, except for theft and slander which are pardonable by injured parties under particular conditions (sections 8 to 9.1 below). The penal code bill and the 2012

²¹ Shahrudi, 206-7; Agahei, 118 note 1; Gilani, 9-13, 94-5, 108-11; Zera'at (1383), 228-9, (1385), 119-20; Bazgir, 25-6; Mo'meni, 63, 65-6, 69-73, 152; Deh Abadi, 35; Khomeini, 327, 341, 356, 364-5; Mortazavi, 13; Gorji, 7, 11, 23; *Lom'e*, 245; *Sharh-e Lom'e*, 85; Mohaqqueq Damad, 11, 26; Nobahar, “Ahdaf”, 136, 159, “Qavvadi”, 155-8, “Be suye”, 337, “Qachaq”, 200; Amini, “Parvandeha”, 7-8; Mahmoudi, “Alternative”, 449; *Man La Yahduruhu al-Faqih*, vol. 4, Bab Nuwadir al-Hudud, 74.

²² Nobahar, “Qavvadi”, 141-2, 156-7, “Qachaq”, 195; Tabrizi, 257; Mo'meni, 152. One principle containing the word *hudud* but applied to all crimes is the ‘axiom of removal’ (*qa'edeye darr*), explained in chapter 3, section 5, and appearing in the case studies.

penal code similarly define *hudud*, but allow the Leader to modify *hadd* penalties in certain circumstances, compromising their immutability²³.

5.1. Hadd crimes and their punishments.

The codified law most relevant to the cases in Part II is the *Hudud* section of the 1991/96 penal code, of which each article is based on one or more Shi'i fatwas, often to the exclusion of equally valid alternative interpretations. The crimes covered follow one version of the classical categorisation of *hudud*, and are *zina* (illicit carnal congress between males and females, covering adultery, fornication, incest and rape); *lavvat* (sodomy); *mosaheqe* (lesbianism with genital contact); *qavvadi* or *qiadat* (pimping, or 'bringing people together for *zina* or *lavvat*' with or without payment); *qazf* (slandorous accusations of *zina* or sodomy); *mosker* (alcohol consumption, also termed *shorb-e khamr*); *moharebeh va efsad fi'l-'ard* (insurrection and corruption on Earth); and *serqat* (theft).

Zina has two main varieties: adultery (*zina mohsan/mohsaneh*) and fornication (*zina gheyr-e mohsan/mohsaneh*). *Mohsan* (masculine) and *mohsaneh* (feminine) mean 'possessing *ehsan*', the condition of being married and having 'access' – whose definition is subject to debate – to one's spouse. *Gheyr* means 'not'. Possession of *ehsan* (see chapter 4, section 3.4) distinguishes adultery from fornication. Sodomy also has two varieties: *dukhul* (penetration) and *tafkhez* (foreplay, dalliance). Penetrative sodomy is often called *lavvat-e 'iqabi* ('posterior sodomy').

That list is only one of several possibilities. Some crimes, such as *zina*, are established as *hudud* according to most jurists; others are debated (e.g. pimping) or their precise nature is unclear (e.g. *moharebeh*). The penal code bill includes *hudud* (apostasy, insulting the Prophet, sorcery and heresy) which are not in the 1991/96 code; the 2012 code adds only insulting prophets (punishable by death) to the 1991/96 code's list. Some juristic works, both ancient and modern, describe additional actions, such as bestiality (which some classify as *ta'zir*, others as *hadd*),

²³ Penal code articles 13, 22, 161, 200; penal code bill articles 121-2, 215-1; 2012 penal code articles 15, 219, 279/j/2; Aghaei, 118 note 1.

under *hudud* which are not in codified Iranian laws. Necrophilia sometimes has independent *hadd* status in juristic works; the penal code bill treats it as a variant of *zina* or sodomy²⁴.

The 2012 penal code (articles 220-1) provides for *hudud* omitted from codified laws to be punished according to article 167 of the Constitution, which allows judges to use Shi‘i law if codified laws are insufficient. Article 221 specifies that in such cases, the Leader’s fatwa will be sought and obeyed, and he may delegate another individual to provide the fatwa.

The following table shows *hadd* punishments in the penal code, or, for sodomy, in narrations, since the penal code leaves punishment at the judge’s discretion. Its penalties are death by fire or sword, stoning, being dropped from a height, or being crushed by a toppled wall (with optional posthumous incineration after each punishment). For pimping, males suffer additional exile. For *moharebeh*, the punishments are death, crucifixion, exile, or amputation of right hand and left foot. Numbers, according to column, indicate relevant articles of the 1991/96 penal code, or numbers of witnesses or confessions required to establish guilt²⁵.

²⁴ Nobahar, “Ahdaf”, 141-2, “Qavvadi”, 156-8, “Qachaq”, 189 195-200, 212-4; Gorji, 7; Mo’meni, 72; Shahid, *Qesas*, 112-3; Bazgir, 349, 379; Shahrudi, 208; Khomeini, 379-83; Zera‘at (1385), 217, (1385/2), 271-326; *Lom ‘e*, 262-6; *Sharh-e Lom ‘e*, 181-215; Picheca, 43, 52; penal code bill articles 211-3, 221-3, 221-18, 224-1 to 225-14; 2012 penal code articles 263-4; LEGRC, article 5; Qur’an 5:33 (sura Ma’iddah). For a discussion of *moharebeh* and *efsad*, see Shahrudi, “Mohareb kist?” in *Bayesteha*, 208-309.

²⁵ Penal code articles 82-90, 110, 121-2 129, 131, 138, 140, 157, 174, 179, 190-1, 201; 2012 penal code articles 171, 198-9, 225-39, 243, 250, 266, 279, 283; Qur’an 5:32-3, 5:38 (Ma’iddah), 24:2-4 (Nur); Zera‘at (1383), 230, 252, (1385) 217; Bazgir, 379. The 2012 penal code also omits the scriptural penalties for sodomy, mandating ‘execution’ or 100 lashes according to circumstances.

Some aspects of *hudud* in the penal code.

Crime.	Articles.	Witnesses.	Art.	Confessions.	Art.	Punishment.	Art.
Adultery.	83, 85-7 (63-107).	4.	74, 76-9.	4.	68, 71.	Stoning.	83.
Fornication.	63-107. (73, 88).	4	74-9.	4.	68.	100 lashes.	88.
Incest, rape.	82.	4.	74, 76-9.	4.	68, 71.	Death.	82.
Sodomy.	108-26 (110-1).	4.	117-9.	4.	114-6.	Death: fire, sword, stone, wall or drop.	110.
<i>Tafkhiz</i> .	121.	4.	117-9.	4.	114-6.	100 lashes.	121.
Lesbianism.	127-34.	4.	128.	4.	128.	100 lashes.	129.
Pimping.	135-8.	2.	137.	2.	136.	75 lashes; males, 3months-1yr exile.	138.
Slander.	139-64.	2.	153.	2.	153-4.	80 lashes.	140.
Alcohol.	165-82.	2.	170-3.	2.	168-9, 173.	80 lashes.	174.
<i>Moharebeh & efsad</i> .	183-96.	2.	189.	1.	189.	Death, alternate amputation, crucifixion or exile.	190-1, 195.
Theft.	197-203.	2.	199.	2.	199.	Loss of 4 fingers.	201.

The vagueness about pimping in the penal code (which has only four articles about it), mirroring jurists' confusion, extends to *moharebeh va efsad fi'l-'ard*. There is confusion regarding whether it is one crime or two (*fiqh* books often call it simply *moharebeh*), and what the punishment for *efsad fi'l-'ard* should be if the punishments described in Qur'an 5:33 (and in the Iranian penal code) apply only to *moharebeh*. The conditions for criminal responsibility given in the penal code for all other *hudud* are absent for pimping and *moharebeh*, and the protocols for repentance, pardon, invalidation of penalty (*suqut*), and proof are non-standard in *moharebeh*, further highlighting this confusion²⁶.

In *hudud* involving penetration of the male organ, namely *zina*, sodomy, and pimping which is their facilitation²⁷, the extent of penetration is crucial to the crime according to scripture (see chapter 4, section 1). Unless evidence describes full penetration of the glans, the *hadd* is inapplicable; however, this parameter is omitted

²⁶ Qur'an 5:32-4 (Ma'iddah), 2:11-2 (Baqara); Nobahar, "Qavvadi", 150, 155-8, "Qachaq", 189, 195-201, 212-4, "Ahdaf", 136, 141-2, "Be suye", 336-7; Zera'at (1383), 269, (1385/2), 39-41, 193; Mar'ashi, 236; Khomeini, 376-7; Shahrudi, 208-309; Picheca, 43, 52; penal code articles 135-8, 183-8, 639; penal code bill article 213-2; LEGRC, article 5. *Suqut*, 'lapsing', is explained in section 9.

²⁷ Khomeini, 345; 2012 penal code article 242 note 1.

from the penal code. This is an instance where uncodified Shi'i concepts are used in court as the case studies will show. Fathers and paternal ancestors do not receive the *hadd* for stealing from their descendants according to codified laws and scripture, though mothers do in the penal code, and stealing from parents carries the *hadd*. Paternal ancestors also receive only a *ta'ziri* (discretionary) punishment for *qazf* (slander) of their children, and husbands are unpunished for *qazf* of dead wives whose only heirs are their shared children. (Similarly, paternal ancestors do not receive *qesas* – retribution in kind – for killing or injuring their descendants, but only pay *diyeh*: blood money)²⁸.

Jurists, both ancient and modern, differ concerning death caused by non-death penalties. Some say there is no *diyeh* (blood money) or punishment for killing by correctly administering penalties. Others believe that *diyeh* is payable by public funds²⁹. In cases of erroneous execution, for example through invalid evidence, without wilful error, jurists indicate that *diyeh* is payable by public funds, though witnesses whose false testimony causes execution are liable for *qesas* or *diyeh*. Khomeini holds *diyeh* of those killed in self-defence payable by public funds³⁰.

The penal code mentions compensation for excessive or unjustified punishment or detention, or injuries caused while extracting confession³¹. Constitutionally, damage caused by judicial error must be compensated by the judge or, if he was not at fault, by the State³². However, these laws omit any protocol for death caused by correctly applied non-death penalties.

Opinions differ concerning applicability of *hudud* to non-Muslims. Some forbidden actions, including alcohol consumption, are permitted to non-Muslims if undertaken privately. Some consider infidels exempt from *hudud* except in special cases

²⁸ Khomeini, 362, 420-1, 443; penal code articles 149, 150, 198 part 11, 220; 2012 penal code articles 199, 222 note 1, 232, 260, 269 point 6, 302.

²⁹ *Sharh-e Lom 'e*, 126-7; Nobahar, "Qavvadi", 156; Zera'at (1385/2), 258; *Bihar al-Anwar*, vol. 77, 263.

³⁰ Khomeini, 360, 410, 423; Mo'meni, 134-5; *Sharh-e Lom 'e*, 40-1.

³¹ Articles 578, 579, 587.

³² The Constitution (article 171) also decrees that victims of unjust rulings be rehabilitated and their honour restored. It was invoked, unsuccessfully, in fornication case 1.

including *zina* of an infidel man with a Muslim woman. However, some hold *hudud* applicable to all denizens of Muslim lands or to anyone in non-Muslim lands tried by a Muslim judge. The penal code (article 3) says that the criminal law applies to anyone who commits crimes within Iranian lands, airspace or waters unless other specific provisions exist. The note to article 174, whereby non-Muslims are only punished for alcohol consumption undertaken in public, is such an exception. (The same relationship exists between articles 3 and 267 of the 2012 penal code).

Khomeini says, within a few paragraphs, that it is prudent to apply *hudud* to *dhimmis* (recognised religious minorities in Muslim lands), that they must not publicly commit acts forbidden by Islam, and that *hudud must* be applied to *dhimmis*, leaving his position unclear. Constitutionally (articles 13 and 14), Jews, Christians and Zoroastrians, the only recognised non-Muslim communities in Iran, are subject to their own religious laws regarding personal affairs and religious education within the (unspecified) limits of the law, non-Muslims must be tolerated ‘according to the ethics of Islam’, and their human rights must be respected if they do nothing against Islam or the Islamic Republic. Article 12 accords toleration and some religious autonomy to Sunni Iranians³³.

5.2. Repetition of *hadd* crimes and execution.

In the penal code, most *hadd* crimes carry the death penalty in the fourth instance if the *hadd* was implemented in all three previous instances. This refers to repetition of the same *hadd* crime³⁴.

The penal code mandates death for the third instance of alcohol consumption (*mosker*) and omits regulation of repeated pimping and *moharebeh*, whose disputed *hadd* status, mentioned earlier, is partly caused by juristic silence regarding their repetition³⁵. Unlike the penal code bill and the 2012 penal code, which have one

³³ Penal code articles 3, 174; 2012 penal code articles 3, 267; Constitution articles 12-14; Mohaqqueq Damad, 40; Nurbaha, *Negahi*, 54; Zera‘at (1385), 126-7, 130, 136, (1385/2) 228; Mo‘meni, 130; Khomeini, 332-3, 335, 343-4, 389-91, 418.

³⁴ Penal code articles 47, 89, 90, 122, 157, 179, 201.

³⁵ Nobahar, “Qavvadi”, 150, 155-8, “Qachaq”, 189, 195-201, 212-4, “Ahdaf”, 136, 141-2, “Be suye”, 336-7; Zera‘at (1383), 269, vol.2, 39-41, 193; Mar‘ashi, 236; Khomeini, 376-7.

article determining death on the fourth instance of any *hadd* crime, the 1991/96 penal code does not uniformly regulate repetition of *hudud*, and article 47 says that it is governed by the articles covering each *hadd* crime³⁶. At least one death sentence for repeated alcohol consumption has been reported, but it is unclear whether this involved the third or fourth repetition. In another case with unknown outcome, a person, having survived the third repetition of *mosker*, was tried for the fourth³⁷.

The death sentence for the third instance, not the fourth, of *mosker* comes from narrations; most jurists (including Khomeini) uphold it, though a minority favour the fourth repetition. The mainstream position remains that the repetitions activating the death penalty are three for *mosker* and four for sodomy and *zena*; many jurists apply the four-repetition rule to other *hudud* (but are generally silent regarding *moharebeh* and pimping) with *mosker* as the exception, while others favour a default of three, but, exceptionally, four for *zena* and sometimes sodomy³⁸.

5.3. Execution methods and protocol.

Where execution method is unspecified, hanging is apparently the norm. The law characterises it as the default³⁹.

Many words and phrases for ‘execution’ and ‘hanging’ are used in the law and elsewhere. Execution can be *qatl* (‘killing’, also meaning ‘murder’), *koshtan* (killing), and *e‘dam* (execution); *qesas-e nafs* is, specifically, execution for murder. Hanging can be *halq-aviz* (hanging by the neck), *be dar keshidan* (‘to pull to the gallows’), or *avikhtan be dar* (hanging from the gallows), although the latter can also mean crucifixion, since the penal code gives *avikhtan be dar* (not *salb*, crucifixion) as one of the punishments for *moharebeh* and subsequently describes the procedure

³⁶ Penal code articles 179, 47; penal code bill article 216-2; 2012 penal code article 135.

³⁷ NCRI, “Sentenced”; communication with Iranian lawyer.

³⁸ Khomeini, 334-5, 343-5, 352, 358; Mortazavi, 63-4, 66-7, 105, 153-4; Gilani, 74-5, 122-3; Zera‘at (1383), 238, 259, 264, 269, 293, (1385), 166-7, 252, (1385/2), 83-4; Bazgir, 34-6; Mo‘meni, 164-5; Nobahar, “Ahdaf”, 150, “Qavvadi”, 150, 155-6, “Qachaq”, 196; Gorji, 33, 46, 49, 56, 62; *Lom‘e*, 234, 244, 250, 252; *Sharh-e Lom‘e*, 78, 81, 103, 118; Shahid, *Qesas*, 112-3; Abbasqolizadeh, “Nezam”.

³⁹ DIRS28/70, article 18; DIRS293/82, article 14.

for crucifixion (*salb, maslub kardan*). Other laws⁴⁰ describe the cross as a *dar* (gallows) ‘similar to a cross’ (*shabih-e salib*), to which the condemned is ‘hung’ (*avikhte, avizan karde*). Some scholarly works mention the confusion between a cross and a gallows inherent in the term *dar*, saying that it was formerly a cross but now the word mostly indicates a gallows. In crucifixion, the condemned is tied, not nailed, to the cross, in a way that must not cause death, and left there for three days, though they can be taken down if they die before the three days are complete; if they survive they must be released⁴¹.

Some narrations mandate ‘a blow with a sword’, execution by sword, or ‘a blow to the neck’, with no implement specified, as the punishment for incest, rape, repeated *hudud*, intentional murder, and sodomy. However, reports of executions and the cases reviewed in this project confirm hanging as predominant. It is apparently also standard in *qesas-e nafs*, although certain articles in the *qesas-e nafs* portion of the penal code imply the possibility of other forms of execution by forbidding ‘*qesas* with a blunt implement’ (also in Khomeini’s *Tahrir*) and allowing the murder victim’s heirs to execute the murderer personally after petitioning the Leader. Some jurists, including contemporary ones, believe that murderers should be executed with a sword or similar implement irrespective of murder method, while others allow execution to mimic the murder method. At least two narrations allow the family of someone beaten to death to execute the murderer, but with a sword, without ‘playing’ with them⁴².

⁴⁰ DIRS28/70 and DIRS293/82 (procedural codes regarding various types of execution).

⁴¹ DIRS28/70 articles 18, 25; DIRS293/82 article 14 note 1, article 24; penal code articles 190, 195; 2012 penal code article 283; Khalili, 44-5, 144-5; Khomeini, 377-8; Aghaei, 130-1.

⁴² Zera‘at (1383), 230, 264, (1385) 125, 130; Mo‘meni, 105, 110-3, 121-2; Hojjati, 329; Gilani, 55-6, 71, 119-20; Khomeini, 343, 377-8, 412, 441-2; Mortazavi, 47-8, 50-1; Gorji, *Diyyat*, 34-5, *Hudud*, 25; Bazgir, 156-60; Shahrudi, 348-9; penal code articles 205, 263, 267; 2012 penal code article 437; LECC, article 7; PCCM articles 232-3; lawyers’ letter on stoning, October 2006, section 4; Amini, “Seh sal”, “Atefeh”; Gorji, Mahin; Mostafaei, “Gozareshi”, “Sodur”; Hojjati, “Aya mojazat”; Iran Human Rights, “One man”, “An adultery”; BBC Persian, “Mard”; Meydaan, “Abdollah”; Fathi, “Spate”; Arjomand, *Turban*, 153, 177-83, “Introduction” to *Authority*, 1-3, 16-7, 21, “Ideological Revolution”, 192-7; Akhavi, “Shiite theories”, 145-7; Martin, “Religion”, 40; Qur’an 4:59 (Nisa’).

A usage has developed whereby *e'dam* or *qatl* are understood as 'hanging', though both mean 'execution'⁴³.

The five punishments for sodomy come from combined narrations. Some known rulings order these punishments, but are usually overturned, generally for reasons other than the penalties themselves. The most common punishment for sodomy appears to be hanging, which is absent from narrations and Shi'i law⁴⁴.

The penalty of a hundred lashes for fornication comes from Qur'an 24:2. The stoning penalty for adultery is absent in the Qur'an but present in several narrations, including ones where the Prophet or the Imams applied it⁴⁵.

Considerable energy has gone into defending stoning because it is a 'divine punishment', given that the abandonment of divine commandments is forbidden and implies anything from dereliction of duty to heresy to apostasy. Comparable efforts for its abolition have used arguments ranging from Islamic re-interpretation to the invocation of modern standards of human rights. Yet despite the intense and prolonged struggle over stoning, other punishments (such as 'a blow with a sword' for incest, rape or sodomy) with an equivalent scriptural pedigree have long been ignored without apparent justification or objection⁴⁶.

⁴³ Bazgir, 156-60, 189-90, 205-6, 208, 231; Zera'at (1385), 89, 123-5, 203-4, 223, 225-6, (1385/2), 48, 83-4; Khomeini, 318, 328, 343; Nobahar, "Ahdaf", 152-3; Nurbaha, "Mojazat", 116-7; Mortazavi, 26-7, 50-1, 88, 98, 153; *Lom'e*, 242; *Sharh-e Lom'e*, 70; Gorji, 42-3; Saberi, 308; Mo'meni, 111; Gorji, *Diyat*, 34-5; penal code bill, art. 213-2, note 1; Sadr, "Raftar"; communication with Iranian lawyers; Mostafaei, "Sangsar"; Hojjati, "Aya mojazat"; BBC Persian, "Mard"; Amini, "Parvandeha", 5-8.

⁴⁴ Gilani, 118, 119-21, 126; Hojjati, 359, 363; Zera'at (1383), 234-5, 240-1, 252, (1385), 223-6, 260; Mo'meni, 163-5; Nobahar, "Ahdaf", 144-5; Khomeini, 343; Mortazavi, 98, 101-2; *Lom'e*, 242-3; *Sharh-e Lom'e*, 73; Bazgir, 350-1, 379; Gorji, 44; Iran, "Partab"; Radio Farda, "Do nafar"; Quds; Littauer; Canning; ICAS, "The Islamic"; Council of the EU, "Declaration ... concerning death sentences". The Supreme Court confirmed two sentences of throwing from a height for sodomy in 2007; two men were reportedly sentenced to be stoned for sodomy in 2011.

⁴⁵ See chapter 4, section 3.7 and note 47.

⁴⁶ Zera'at (1383), 230, (1385), 123-5, 203; Gilani, 14-8, 65-6, 71-2, 104; Mo'meni, 110-3, 113-4, 121-4; *Sharh-e Lom'e*, 26-9, 56; Mortazavi, 47-8, 50-1, 98, 101-2; Gorji, 36; Deh Abadi, 63; penal code bill article 221-5 part 5 and note 4; lawyers' letter to Shahrudi re: stoning; Amini, "Boghz", "Dialogha", "Tan-furushi", "Kobra", "Azadi"; Shojaei; Abbasqolizadeh, "Nezam"; Int'l Herald Tribune, "Norway"; Me'marian; Bedashti; Sadr, "Raftar"; Meydaan, "Nameye jam'i"; Gorji, Mahin; *E'temad*, "Joz'iat"; Mostafaei, "Sangsar"; Qazi; VOA Persian, "Safir"; Kar, "A brief history", "Iranian law", 8; WFAFI, "Stoning continues"; Amnesty International, "Iran: end", "Report 2007", 139-41; Association of Iranian Women in the UK, "Memorandum"; Esfandiari, "Iran: stoning";

In other countries, such as Nigeria and Somalia, stoning sentences have contravened Islamic law, for instance by condemning unmarried women who claimed rape. Stoning was insisted upon as part of ‘Islamic law’ whose other commandments were ignored⁴⁷. Stoning may be an iconic indicator of orthodoxy in some Muslim countries, even while other equally ‘Islamic’ laws are contravened.

At least 48 hours prior to any execution, various individuals must be notified, including the condemned person’s lawyer. The condemned must be placed in solitary confinement the night before the execution. These are both sometimes ignored, with lawyers and families only being informed of executions post facto. Executions have occasionally occurred – generally without warning – despite stays of execution from the head of the Judiciary, notwithstanding official statements to the effect that serious penalties require direct approval of the head of the Judiciary before implementation. To some extent disregard for stays of execution occurs because judges are theoretically independent and answerable to nobody but the law, so that not even an order by the head of the Judiciary can compel them. The independence of judges is also the reason why extra-legal moratoria on stoning (chapter 4, section 3.7) do not work: if the law prescribes stoning, it is ultimately illegal for anyone – even the head of the Judiciary – to force judges to avoid it. Additionally, article 170 of the Constitution, contradicting article 167 which forbids judges from ruling by Shi‘i law unless the codified law has been exhausted, prohibits judges from following regulations which contradict Islamic law, and gives anyone the right to demand annulment of such laws. Therefore even legal abrogation of stoning might be ignored by invoking article 170 or met with demands to reinstate stoning⁴⁸.

Council of the EU, “Declaration ... concerning death sentences”; International Covenant on Civil and Political Rights, article 7; Universal Declaration of Human Rights, article 5.

⁴⁷ Malik (*Muwatta*), 345, 347; Niknam, “The Islamization”, 20; Peters, 11; Munson, 283; Sanusi, “Amina”; Amnesty International, “Nigeria: warning”; BBC, “Nigerian woman”, “Sharia court”; Steiner; Onishi; New York Times, “Nigerian woman”, “Rape victim”; Aluko; Al Jazeera English, “Somali fighters”; BBC News, “Stoning victim”; Amnesty International USA, “Somalia: girl stoned”. Northern Nigeria is predominantly Maliki (one of the four schools of Sunni law). Maliki law, unlike other schools, allows pregnancy as proof of *zina*. However, Somalia is predominantly Shafi‘i; Shafi‘i law excludes pregnancy as proof. No school of Islamic law decrees stoning for *zina* while unmarried.

⁴⁸ DIRS28/70 article 5, DIRS293/82 article 7; Constitution articles 167 and 170; Picheca, 53-5, 59; lawyers’ letter to Shahrudi, October 2006, section 4; Campaign-e Beinolmellali, “Hamsar-e Ja‘far”; Radio Zamaneh, “E‘dam”; Amini, “Seh sal”, “Parvandeha”, 4-5, 10-11; Abbasqolizadeh, “Nezam”;

6. Proof.

In Shi‘i law, according to majority opinions, the forms of proof in *hudud* are: confession (made before the judge trying the case, repeated a specific number of times for each crime, and, according to some, in a different trial session for each repetition); testimony (numbers of witnesses are pre-determined for each crime); and, according to some Shi‘i jurists and codified Iranian laws, ‘*elm-e qazi*, the ‘judge’s knowledge’. The phrase ‘*elm-e qazi* is often abbreviated to ‘*elm* (‘knowledge’, or similarly to *scientia*, ‘science’), as it will be here.

To be punishable for a *hadd* crime, a person must have possessed the four characteristics of ‘*aql* (mental sanity), *bulugh* (the age of legal majority), *ekhtiar* (free will) and *qasd* (intention) while committing the crime. The same conditions are necessary for valid confession. These requirements, variously expressed but quite uniform overall, exist in juristic texts and in the *hadd* section of the Iranian penal code. They also appear in the penal code bill and the 2012 penal code, in a small number of unified articles with general validity rather than separately for each *hadd* as in the 1991/96 code⁴⁹. The penal code agrees with narrations whereby pregnancy cannot prove *zina*⁵⁰. However, the 2012 penal code apparently omits this.

Proof is generally held to lapse through contradiction, a position more or less expressed in various codified laws⁵¹.

Int’l Herald Tribune, “Norway”; Esfandiari, “Iran: Activists”; WFAFI, “Stoning continues”; Peyvand, “Parliament”; Me‘marian; Shojaei; Iran Bar Association; Gorji, Mahin; Hojjati, “Aya mojazat”; Iran Human Rights, “An adultery”; BBC Persian, “Mard”; Meydaan, “Abdollah”; Amnesty International, “Iran: end”, “Iran, the last”, “Iran: Amnesty”, 2008 annual report, 160; Human Rights Watch, “Iran: another execution”, “Iran: secret execution”; Soares; Iran – Amnesty International Report 2008; Amnesty International USA, “Background”; Daily Mail, “Iran chops”; Fathi; ICHRI, “Iran’s”; communication with Iranian lawyers.

⁴⁹ Penal code articles 64, 68, 69, 74, 75, 105, 111, 114, 115, 117, 118, 120, 130, 136, 146, 154, 166, 169, 198, 199; Mortazavi, 14, 19, 21-3, 97-102; penal code bill articles 212-1 to 212-3, 213-1 to 213-4; 2012 penal code articles 139-58, 217-8; Zera‘at (1385), 142, 228-35, 240-1, (1385/2), 39-40, 49, 62, 230-3, (1383), 212-9; *Lom‘e*, 46, 233-6, 242-3; *Sharh-e Lom‘e*, 16-9, 46-7, 56, 72-3, 81, 90, 102, 106, 129-30; Gorji, 13-5, 27-8; Nurbaha, *Negahi*, 52-4; Bazgir, 153-9; Mar‘ashi, 101-2.

⁵⁰ Penal code article 73; chapter 4, section 3.6.

⁵¹ Hojjati, 326-7; Mohammadi, 302, 335-6; Shahrudi, 21-2, 32-4; Mar‘ashi, 85; Gilani, 98-100; Mo‘meni, 104-5, 147-8, 163; Khomeini, 314, 320, 339; Mortazavi, 41-2, 44; Gorji, 22; *Lom‘e*, 240;

6.1. Confession.

The default number of confessions to prove a crime is held to be one, but four are required for *zena*, sodomy or lesbianism, and two for other *hudud* except *moharebeh*, provable by one confession. As above, the conditions for confession are *'aql* (sanity), *bulugh* (majority), *ekhtiar* (free will) and *qasd* (intention). Therefore, for example, statements not intended as confessions cannot be counted as such. The conditions for confession are described in the penal and civil codes. Various laws, including these and the Constitution, allow the right to silence and invalidate confession or testimony extracted through methods ranging from trickery to torture⁵². This is supported by a narration from the Imam Ali invalidating confession extracted through fear, threats or violence. Among reformist *mujtahids* (see chapter 1, section 5.5), Ayatollah Sanei reiterated the prohibition of forced confession during the 2009 election protests, and Qabel and Ayatollah Montazeri have declared forced confessions illegal and un-Islamic, berating Khamenei for permitting them⁵³. Coercion removes free will and intention, required for criminal responsibility and valid confession⁵⁴.

The penal code bill accepts claims of forced or 'tricked' confession by default *if* the claims are plausible and not disproven – which gives judges discretion to reject such claims. The 2012 penal code invalidates confessions obtained through physical or psychological torment, but allows legally invalid proof to be used for *'elm-e qazi*, which can override other proof⁵⁵ (see section 6.4).

One of the grounds for confession as proof is the principle of jurisprudence *eqrar al-'oqala 'alaa anfosehem ja'ez*, 'the confessions of legally responsible individuals (*'aql* indicating the mental faculties and maturity) are valid against themselves', also

Shahid, *Qesas*, 112-3; *Sharh-e Lom 'e*, 58; penal code articles 70, 78, 172; Civil Code article 1317; PCCM article 194; 2012 penal code article 184.

⁵² Civil Code article 1262; PCCM article 129; CPC article 125; penal code articles 68-70, 114-6, 128, 136, 153-4, 168-9, 189, 199, 578; 2012 penal code article 171; Constitution article 38; Hojjati, 316; Golduzian, 35, 94-7, 101; Mo'meni, 90, 161; Mortazavi, 19-23; *Sharh-e Lom 'e*, 16, 72, 81, 102; Khomeini, 327-9, 342, 345.

⁵³ Gilani, 35-6; Anderson; Qabel, "Nameh"; Qazi, "Pasokh".

⁵⁴ Zera'at (1383), 216.

⁵⁵ Penal code bill article 213-3; 2012 penal code articles 160-1, 168, 170, 211.

termed *qa'edeve eqrar* (confession axiom). It derives from a statement of the Prophet and allows confessions to incriminate *only* the confessor. Some narrations suggest that in some crimes (notably adultery), but potentially in all, only testimony is acceptable. Nonetheless, many narrations show the Prophet or the Imams ruling by confession; others equate confession with testimony against oneself (hence, according to some, the identical number of confessions and witnesses that prove most crimes). Confession also derives validity from these and Qur'anic verses⁵⁶.

The inability of one person's confession to incriminate another is also decreed by the Civil Code (article 1278) and a written opinion of the Judiciary. Some believe that confessions naming specific partners to *zena* or sodomy can bring prosecution for *qazf* (slander) if their guilt is unproven. Nevertheless, a letter about stoning cases written in October 2006 (Mehr 1385 AP) by several prominent lawyers to Ayatollah Seyyed Mohammad Hashemi Shahrudi, then head of the Judiciary, identifies cases where confessions were used against co-defendants, as confirmed by cases reviewed in this project⁵⁷.

Confessions must be clear, explicit and coherent, removing doubts regarding coercion or pressure, and must not contradict other proof⁵⁸. Also, confessions must be made *nazd-e hakem* or *'end al-hakem*, meaning 'before the judge', according to the penal code (and the 2012 penal code) and various narrations and juristic texts⁵⁹. Confessions are only valid if made before the judge trying the case. This is supported

⁵⁶ Mohaqqueq Damad, *Qava'ed*, 119-60; Aghaei, 47-8; Lawyers' letter to Shahrudi, October 2006, 2; Shahrudi, 48-51, 62-70, 197; Gilani, 35-9, 118, 180, Zera'at (1385), 75, 77, (1383), 217, 234-5, 254; Mortazavi, 19-23, Hojjati, 314-5; Mar'ashi, 22, 93-6; Mo'meni, 92-9; Gorji, 17, 76; *Lom'e* (vol.1), 167; *Sharh-e Lom'e*, 16-9, 156; Qur'an 3:81 (Al-e Imran), 9:102 (Tauba).

⁵⁷ Gilani, 39; Aghaei, 48; Mo'meni, 99; Lawyers' letter to Shahrudi, October 2006, 2; Hojjati, 314-5; Civil Code article 1278; Mar'ashi, 95-6; Zera'at (1383), 217, 254, (1385), 77-9; Khomeini, 329; *Lom'e*, 234; *Sharh-e Lom'e*, 17-9; Mohaqqueq Damad, *Qava'ed*, 119-60. AP means 'Anno Persico' or 'Anno Persarum' ('Persian Year', 'Year of the Persians'), the current Iranian solar calendar. It counts years from the Prophet Muhammad's flight (Hijra) from Mecca to Medina (AD 622) and has the Vernal Equinox (usually the 21st of March) as New Year's Day. It is also termed 'Hejri-e Shamsi', 'Hejri' indicating the Prophet's Hijra, and 'Shamsi' the sun, since its years are solar. Instead, 'Hejri-e Qamari' (Lunar Hejri) is the Islamic calendar which also begins with the Hijra but uses lunar years, approximately 11 days shorter than solar years. Therefore AH (Anno Hegirae, indicating Hejri-e Qamari) years show a progressively greater number than AP years.

⁵⁸ Zera'at (1383), 217-9; penal code article 70; PCCM article 194; 2012 penal code articles 165, 168; Hojjati, 311; Golduzian, 96-7; Deh Abadi, 71; Mortazavi, 19-23; Khomeini, 327-8.

⁵⁹ Gilani, 35-9; Zera'at (1385), 75, (1383), 217, 254-5; Mortazavi, 19-22; Mo'meni, 92; Bazgir, 91-3; penal code articles 68, 114, 199; 2012 penal code article 218 note 2.

by judicial precedent, a circular from the head of the Judiciary, and a legally binding ‘uniformity ruling’ by the Supreme Court’s General Council. However, this is one of the most frequently ignored parts of the law, and invalid confessions are routinely used, including those extracted out of court by officials other than the judge⁶⁰.

The law is silent regarding the necessity that confessions be heard in separate court sessions, but defending lawyers and modern jurists frequently insist upon this, and it is supported by narrations, the opinions of several *mujtahids* including Khomeini and the reformist Montazeri, a recommendation of the Judiciary Office, and judicial precedent which holds that the shari‘a demands it. The case studies will show judges frequently ignoring this requirement. This is facilitated by the fact that although a preceding penal code, the *Qanun-e Hudud va Qesas* ratified in 1982/3 (1361 AP), did insist on separate confession diets, the 1991/96 code does not, and those who uphold this must invoke Shi‘i law⁶¹. The 2012 penal code eliminates this possibility by stating that repeated confessions can occur in one session (article 171, note 2).

There is little doubt that confessions are frequently forced in Iran, by means ranging from trickery to intimidation to torture. Accused persons may also confess in the mistaken belief – sometimes created or encouraged by interrogators – that this will help them or co-defendants. (This, termed ‘reverse plea bargaining’, will appear in the case studies). Lawyers report that judges often discount claims of duress in confession as ‘noise’, believing them overly common. The authorities frequently deny that confessions are forced or detainees mistreated⁶².

⁶⁰ Zera‘at (1385), 80, (1383) 217-8, 223; Lawyers’ letter to Shahrudi, October 2006, 3; Gilani, 35-9; Hojjati, 311; Bazgir, 45-7, 91-3, 127; Saberi, 275-8, 292-3, 297-306; communication with Iranian lawyer; Amini, “Parvandeha”, 9. The case studies display frequent use of such confession.

⁶¹ Lawyers’ letter to Shahrudi, October 2006, part 1, section a; Bazgir, 77-9, 81-2, 352; Zera‘at (1383), 217-8, 251, (1385), 75-7; Gilani, 35-9; Golduzian, 95; Hojjati, 312-3, 318, 361; Nobahar, “Ahdaf”, 148; Mo‘meni, 94-7; Montazeri, topic 3163; Khomeini, 328.

⁶² Saberi, 297-303; Bazgir, 107, 146, 163-6; Qabel, “Nameh”; Picheca, 44, 56; Arjomand (1999), 134; Abrahamian (1999), 215, 223-8; Amini, “Seh sal”, “Parvandeha”, 9; Abbasqolizadeh, “Nezam”; Fa‘alin-e Huquq, “Vaki”; Rah-e Sabz, “Nameye Hossein”; RAHANA, “Nameye estemdad”; Komiteye Gozareshgaran; Mostafaei, “Farda”, “Bazdasht”; Mobasherat; Mayer 1996, 288-90; Tabari (Keyvan), 105; Bucar/Fazaeli, 406, 408, 410 and notes 51, 70; Muir, “Report”; Amnesty International, “Urgent”, “Iran: end”, 4-5, “Iran shows”, “Iran’s report”, annual reports: 2005 (32-3), 2006 (141-2), 2008 (60, 157, 159), 2009 (47); Yeranian; Harrison; Human Rights Watch, “Letter to UN”, “Iran: events”, “Iran: detainees”; Payvand, “Iran’s Judiciary”; Abdorrahman Boroumand Foundation; Iran Solidarity, “Javid”; communication with Iranian lawyers; Soares; Rostami; ICHRI, “Shadow”,

6.2. Revocation of confession (*enkar pas as egrar*).

If confessions are revoked (*enkar ba'd az egrar*, 'revocation' or 'denial after confession'), they invalidate the stoning penalty for *zina*. This is based on narrations. Many jurists, including Khomeini, expand this to any death penalty for *zina*, and some for sodomy or other crimes, through principles of lenience; article 71 of the penal code allows retracted confessions to remove any death penalty for *zina*. According to article 17 of the DIRS293/82, *enkar* (here, revocation of confession) can halt executions even in their final stages if covered by article 71 of the penal code. The role of *enkar* in *suqut* (lapsing) is expanded even further in the penal code bill, which replaces all death penalties in *hudud*, through *enkar*, with 100 lashes (for *zina* or sodomy) or 74 (for other crimes). However, it reinstates these death penalties despite *enkar* if the judge has '*elm* of guilt. '*Elm* overcomes *enkar* in several cases reviewed in chapters 5-9. However, two known Supreme Court rulings declare that '*elm* obtained through confession lapses with *enkar*, citing Ayatollah Golpeyngani's fatwa to that effect⁶³.

The 2012 penal code (article 172) replaces all death sentences in *hudud* with flogging or incarceration through *enkar*. However, article 211 allows '*elm* to override other evidence, potentially including *enkar*.

6.3. Testimony.

Each *hadd* crime can be proven by a specific number of witnesses according to Shi'i law and the 1991/96 and 2012 penal codes. This number, applied also to confessions,

"Imprisoned student", "Iranian-American", "Iran's secret hangings"; RAHANA, "Abdollah", "Amir Kabir"; Amnesty International UK Blogs, "Iran: Farzad"; Bahari; Mokhtari, 613-4; Shahidi, 749; Fazaeli, 17, note 72; Kusha, 238; Iran – Amnesty International Reports 2007, 2008, 2009, 2010; UN reports on human rights in Iran, 2008 (7-8), 2009 (6, 9-10), 2010 (3-5); Qazi, "Pasokh"; for 'reverse plea bargaining': WNN, "Iran" and Amnesty International MDE13/016/2001.

⁶³ Penal code article 71; penal code bill article 213-2 note 1; DIRS293/82 article 17; Mar'ashi, 101; Mo'meni, 134-5, 155-6; Zera'at (1385), 89, 209, (1385/2), 48; Nobahar, "Ahdaf", 152-3; Khomeini, 328, 370; Mortazavi, 24-7; Gorji, 18; Bazgir, 165, 307; *Lom'e* (vol.1), 167; *Lom'e*, 242; Ja'fari Langarudi, *Terminology*, 96, entry 740 (*enkar*); communication with Iranian lawyer; Amini, "Parvandeha", 9.

is called *nesab*, meaning ‘quorum’ or ‘eligible number or quantity’ (as the *nesab* in theft is the minimum stolen value that activates the *hadd*). According to a combination of Civil Code article 1313 and PCCM article 155, the qualifications for witnesses are: legal majority (*bulugh*); mental sanity (‘*aql*’); righteousness (‘*edalat*’); faith (*iman*); legitimate birth (*taharat-e maulad*); absence of any advantage or removal of disadvantage from testifying; absence of enmity between the witness and the parties in the trial; and not being a beggar or a vagrant. Righteousness (‘*edalat*’) must be proven to the court in one of the *shar‘i* (adjectival form of ‘shari‘a’) ways, which are not described in these laws but appear in juristic works to depend mostly on piety, regular prayer and refraining from major crimes. If there is enmity between the witness and any party, testimony of that witness to the *advantage* of that party is accepted. If a potential witness is notorious for vice, even with repentance, their testimony is only accepted following changed behaviour which restores their righteousness (‘*edalat*’) and competence (*salahiyyat*) to testify. If the testimony of any witness contradicts the others’, all testimony is invalid (through the general principle whereby contradiction invalidates proof). Testimony that is revoked or discovered to be false becomes invalid⁶⁴.

A witness is a *shahed* (plural: *shuhud*) and testimony is *shehadat*. However, the term *bayyaneh*, generally meaning ‘proof’, means ‘testimony’ in this context, as does the term *bayyaneye shar‘i/shar‘ieh* (‘shar‘iatic’ testimony). The default number of witnesses to prove anything is held to be two⁶⁵.

⁶⁴ PCCM article 155; Civil Code articles 1317, 1319; penal code articles 74-9, 117-9, 128, 137, 153, 170-3, 189, 199; 2012 penal code articles 181, 184, 197-8; Zera‘at (1383), 226-8, Shahrudi, 34, 54, Mohammadi, 302, 335-6, Mo‘meni, 104-5, 147-8, 163, Nobahar, “Ahdaf”, 147; Khomeini, 317-20; Mortazavi, 41-2; Gorji, 20-1; *Lom‘e* (vol.1), 178-9; *Sharh-e Lom‘e*, 20-1.

⁶⁵ Hojjati, 318, 362; Zera‘at (1383), 248, 289, (1385) 207-8; Ja‘fari Langarudi, *Maktabha*, 44; Shahrudi, 31, 56, 63-4, 197-8; Gilani, 44-5, 62-3, 92, 96, 103-4, 106, 110, 119; Mo‘meni, 129, 133, 149, 151; Nobahar, “Ahdaf”, 147, 152, “Qachaq”, 207; Khomeini, 301, 317, 324, 329-30, 332, 339-40, 370, 373, 425; Mortazavi, 27, 29, 30-2, 43, 46, 79, 86-7, 89-90; Gorji 17, 19, 23-4, 32, 35, 40, 45, 49, 63, 75-6, 79; *Lom‘e* (vol.1), 165-6; *Lom‘e* 234, 237, 241, 243-4, 250, 259; *Sharh-e Lom‘e*, 19, 26, 34, 40, 59, 61, 75, 78, 102, 105; Shahid, *Qesas*, 112-3; Arabiyan, 50-1, 54-5, 59-60, 62-3, 65, 67-8, 70, 73; Ja‘fari Langarudi, *Terminology*, 123 entries 985 (*bayyaneh*), 988 (*bayyaneye jarh*), 991 (*bayyaneye shar‘ieh*); Saberi, 302, 305; CPC article 247; penal code bill articles 213-1, 213-2. *Bayyaneh* can also mean ‘the number of witnesses necessary to prove a crime’. *Nesf-e bayyaneh* (half *bayyaneh*) means half that number, e.g. two witnesses for a crime requiring four.

Many jurists, ancient and modern, hold that witnesses' 'righteousness' must be ascertained before their testimony is accepted, but some only consider investigation to be necessary if '*edalat*' is questioned. The law seems to require prior confirmation of '*edalat*', and witnesses are described as 'righteous men/women' in the penal code⁶⁶. However, the case studies show no instance of '*edalat*' being investigated.

Complicated regulations exist for testimony in general, including those about impugning its validity (*jarh*), but it is unclear whether these apply to the special case of *bayyaneh shar'i*⁶⁷. Indeed, one law explicitly differentiates between the rules for ordinary testimony and for *bayyaneh shar'ieh*, for which 'the conditions determined by the shari'a' (not described) must be used⁶⁸. This, as well as making the rules for 'shar'i' testimony nebulous, is an instance of explicit reference to Shi'i law, assumed to underlie the crystallised and relatively limited surface layer of codified law.

The penal code bill, bereft of requirements for testimony in *hudud* beyond '*edalat*', does not dispel the mystery regarding requirements for *bayyaneh*. However, the 2012 penal code, article 176, sets requirements similar to those of the Civil Code and PCCM, specifying that the judge must ascertain witnesses' eligibility before they testify. Article 175 negates this by allowing judges to derive '*elm*' from witnesses without these requirements, at their discretion.

Confusingly, intention (*qasd*) is omitted as a condition for testimony in *fiqh* texts and Iranian laws. Arguably, if intention is necessary for confession and criminal responsibility, so it must be for testimony. Also, since jurists hold confession and testimony to be of the same nature, confession being testimony against oneself (Qur'an 4:135), it would seem reasonable to assign the same conditions to both⁶⁹. One scholar, noting the absence of intention in many jurists' descriptions of conditions for confession, speculates that this is because intention is so obviously

⁶⁶ Khomeini, 300, 320; Zera'at (1385), 242-3, (1385/2), 52-3, (1383), 252-3, 256; Golduzian, 98-100; Mo'meni, 106-7, 147; Mortazavi, 34-5; *Lom'e* (vol.1), 166, 174; Civil Code art 1313; PCCM art 155.

⁶⁷ PCCM articles 86, 148-72; CPC articles 139-56, 244-7.

⁶⁸ CPC article 247.

⁶⁹ Aghaei, 47-8; Qur'an 4:135; Shahrudi, 68-9, 197; Mar'ashi, 94; Mo'meni, 94-5, 98; Mortazavi, 22-3; Zera'at (1385), 251; Golduzian, 97; *Lom'e*, 179.

necessary that it need not be mentioned⁷⁰; maybe the same applies to testimony. Nevertheless, the absence of an explicit requirement for intention in testimony could allow incidental statements to be used as testimony.

The penal code, the penal code bill and the 2012 penal code require testimony to carnal crimes (*zina*, sodomy and lesbianism) to be based upon direct observation (*moshahede*). This is supported by various narrations requiring witnesses to have seen penetration of the male organ (where applicable) ‘as of the rod into the collyrium bottle’ or ‘the rope into the well’, and to testify to this fact. Having seen anything less – for instance, the suspects in bed together – is insufficient⁷¹. Codified law is less detailed and merely requires observation of the act without requiring witnesses to have observed penetration. However, the penal code gives the penalty for two men or two women lying naked under a blanket (articles 123, 134) as a maximum of 99 *ta‘ziri* lashes; carnal acts other than *zina* between males and females have the same penalty (article 637). This implies that even evidence of considerable intimacy may not justify the *hadd*.

Female testimony in *hudud* is only accepted for *zina*. *Zina* carrying the flogging penalty can be proven through testimony of two righteous men plus four righteous women (assuming they all managed to see penetration!); *zina* punishable by stoning (or, in the 2012 penal code, any death penalty) can be proven by testimony of three righteous men plus two righteous women. (The 1991/96 penal code is unclear about female testimony to *zina* carrying death penalties other than stoning). Several jurists, ancient and modern, agree that if four men testify to a woman’s *zina* and four women to her virginity, she is not punished, and most agree that neither are the witnesses. The idea is that while the men could have seen *zina*, the women may also be truthful because virginity could have grown back; and the doubt created by the contradiction in testimony, insufficient to convict the men of slander (*qazf*), nevertheless exonerates the woman⁷².

⁷⁰ Mortazavi, 23.

⁷¹ See chapter 4, section 1.

⁷² Penal code articles 74-6; 2012 penal code article 198; Mortazavi, 102-3; Zera‘at (1383), 257, (1385), 243, 246-7; Mo‘meni, 101-2, 147-9; Gorji, 22; *Lom‘e*, 177, 240; *Sharh-e Lom‘e*, 58, 102; Hojjati, 326-7; Gilani, 98-100; Khomeini, 339.

6.4. 'Elm-e qazi: the judge's 'knowledge'.

'*Elm-e qazi* (the judge's 'knowledge') is allowed by the penal code as proof in *hudud*, though this is explicit only in the *zena*, sodomy, lesbianism and theft sections. The only articles describing '*elm*' are 105, which is in the *zena* section (but, incongruously, not in its proof section!) and says that the judge must describe the sources of his '*elm*', and 120, in the sodomy section, mandating that '*elm*' be obtained 'by established means' (*az toroq-e mota 'arref*), which are never described⁷³. It is not clear whether the requirement of 'established means' (absent in article 105) applies only to sodomy or to all *hudud*, and similarly whether the requirement for description of '*elm*' (absent in article 120) applies to all *hudud* or only to *zena*. This and the odd placement of 105 are two of this law's many points of confusion.

Furthermore, both 105 and 120 give the right of '*elm*' to *hakem-e shar'*, a judge versed in the shari'a, apparently implying a *mujtahid*⁷⁴. Arguably, therefore, the law excludes non-*mujtahids* from using '*elm*'.

The penal code bill, in its articles describing proof in all *hudud*, permits 'evidence causing clear and sensory (*bayyen va hessi*) '*elm*' for the judge' as proof in *hudud*, requires description of '*elm*' in rulings, and explicitly allows '*elm*' to counteract retraction of confession in *hudud* carrying the death penalty⁷⁵. It provides no additional regulations for '*elm*'. The 2012 penal code retains '*elm*', requires the judge to describe its origins, and gives examples of evidence which could create it (e.g. experts' reports). It explicitly allows '*elm*' to be based on invalid evidence and to override other legally sanctioned forms of evidence⁷⁶. It is therefore less lenient regarding '*elm*' than the 1991/96 code.

⁷³ Penal code articles 105, 120, 128, 199.

⁷⁴ Mir-Hosseini, *Marriage*, 25, 57, 210.

⁷⁵ Penal code bill articles 213-1, 213-2 notes 1 and 4.

⁷⁶ 2012 penal code articles 160-1, 168, 170, 210-1.

The 1991/96 code leaves the reader unsure as to whether *'elm* is an adjunct which plays 'second fiddle' to the other two forms of proof, or whether instead it is a loophole through which the entire complicated edifice of shari'atic proof might fall. Cases reviewed here, which mostly involve *'elm*, suggest the second scenario. This contrasts with the exhortation of Shahrudi, head of the Judiciary at the time of most cases investigated here, to use *'elm* sparingly. He even wrote a detailed essay arguing that scripture does not support the permission of *'elm* in criminal matters for ordinary judges, but only for the Imams or their representative, the *vali-e amr*⁷⁷.

Several reliable narrations portray testimony, confession, and sometimes oaths (though not in *hudud*) as the only valid forms of proof in criminal matters. Other reliable narrations militate against *'elm* in different ways. In some, the Prophet says 'I judge amongst you through testimony, confession and oaths'. Others emphasise the impossibility of proving crimes without adequate confession or testimony; some say that crimes not proven by these means were intended to be 'hidden from the eyes of the Muslims'. In one narration, a man says that if he saw his wife committing *zina* with another man, he would kill them both, whereupon the Prophet reminds him of the necessity of four witnesses even if he saw the crime himself. In two frequently cited narrations, a prophet – whom one of them specifies as David – requests and is granted infallible knowledge of crimes by God despite God's warnings about its negative effects. After realising that this knowledge leads to rulings which contradict evidence, making him appear unjust to his horrified subjects, he asks God to take that knowledge away again. God obliges, declaring that he must henceforth judge by His book, testimony, confession, or oaths. Many other narrations suggest that *'elm-e qazi* is not valid proof in criminal matters, and Ayatollah Montazeri mentions only confession and testimony as valid proof in *hudud*⁷⁸.

Iranian law sometimes appears to mirror this conception of testimony and confession as the only valid proofs in *hudud*, as do judicial rulings occasionally. For instance,

⁷⁷ Iran Bar Association; Shahrudi, "'Elm-e qazi" in *Bayesteha*; Bazgir, 159-66, 176-8, 350-1; Saberi, 275-6, 281-3, 297-300.

⁷⁸ Zera'at (1383), 248; Shahrudi, 46-51, 56-8, 62-70; Montazeri, topic 3163; Gilani, 106; Bazgir, 352; Mortazavi, 91-2; Arabiyan, 59-61, 63-4, 66-8.

five Supreme Court rulings clearly state that only confession and testimony are acceptable forms of proof in *zina*. Article 103 of the penal code says that a person being stoned who escapes from the stoning pit must be released if the crime bearing the penalty (it is not specified if this is only *zina*, but the article is in the *zina* section) was proven through confession but not if it was proven through testimony. ‘*Elm* is not mentioned here, implying that proof can either be confession or testimony. The same applies to article 99, which determines who casts the first stone depending on whether adultery was proven through confession or testimony – without mentioning ‘*elm*. Several law codes omit ‘*elm* in legislating proof. The very absence of any explicit mention of ‘*elm* for *hudud* other than *zina*, sodomy, lesbianism and theft in the 1991/96 penal code also feeds the perception that the status of ‘*elm* as proof is not as established as that of testimony and confession⁷⁹.

Juristic opinions vary not only as to whether ‘*elm* is valid proof but also concerning its nature. Many juristic texts mention only confession and testimony as proof in *hudud*. Some jurists, including Ayatollah Shahrudi, the former head of the Judiciary, oppose the use of ‘*elm* by non-*ma’sum*⁸⁰ judges. Their arguments include the fallibility of judges; the notion that the Imams’ right to rule by ‘*elm* does not automatically apply to ordinary, fallible judges; the idea that excessive discretion in ‘*elm* contradicts various principles of caution and leniency towards the accused⁸¹; narrations showing that the Prophet and the Imams did not actively seek proof of crimes ‘against chastity’ but often discouraged confession, revealing the lenient spirit of Islam; narrations declaring that crimes unproven through testimony or confession should remain hidden; the notion that although the Prophet and the Imams were infallible and therefore presumably knew the truth about crimes, they behaved as if unaware of it, still rendering judgement through confession or testimony; and the

⁷⁹ Penal code article 103; Civil Code volume 3, particularly articles 1321-4; Arabiyan, 70-1; Bazgir, 75-6, 81, 98, 123, 204; Zera‘at (1385), 74; Abbasqolizadeh, “Nezam”. The Civil Code (volume 3, dedicated to proof), the Civil Procedural Code and the PCCM do not mention ‘*elm-e qazi* in discussing proof, although articles 1258 and 1321-4 of the Civil Code mention *amarat* (signs, indications) which can constitute proof.

⁸⁰ *Ma’sum* (innocent, infallible) here indicates the Prophet, his daughter Fatima, and the Twelve Imams, collectively termed *Ma’sumin* (infallible innocents). See chapter 1, section 5.1.

⁸¹ Shi‘i law contains many such principles (see chapter 3), including the axiom of interpreting laws in favour of defendants which, given the doubt regarding whether non-*ma’sum*, non-*mujtahid* judges can convict through ‘*elm*, would favour the option whereby they cannot.

idea that a ruling must contain two elements, namely truth and provability.

Opponents of *'elm* frequently cite a famous narration stating that there are four types of judges – those who unknowingly rule correctly, those who unknowingly rule incorrectly, those who knowingly rule incorrectly and those who knowingly rule correctly – and all but the fourth type go to hell. This implies that the way in which a ruling is produced is as crucial as its correctness, and that a ruling is invalid if based on the judge's assumptions rather than permissible evidence. In other narrations, God says that things unproven by testimony or confession must not be judged by humans in this world but by Him in the next⁸².

Interestingly, although Khomeini generally allows 'the *hakem*', even if not an Imam (it is unclear whether this means any judge or only the *vali-e faqih*), to use *'elm* as long as there is no doubt regarding the crime (which is necessary in all *hudud*), he also says that if there are insufficient confessions to sodomy, the *hadd* is inapplicable but the *hakem* can punish as much as he sees fit. This recalls article 115 of the penal code, whereby insufficient confessions to sodomy allow only a *ta'ziri* (discretionary – 'as much as he sees fit') punishment⁸³. This suggests that despite frequent contrary usage in Iranian courts, Khomeini did not consider *'elm* based on invalid proof to justify the *hadd*. However, in the *qaza'* (judgeship) section of his *Tahrir*, Khomeini allows *'elm* to overcome contradictory testimony or confessions, or even to justify the *hadd* without them (though judges must be *mujtahids*)⁸⁴.

Ayatollah Sanei, instead, holds *'elm* inapplicable in *hudud* because scripture clearly requires sufficient numbers of confessions or witnesses in *hudud*, so although fewer confessions or witnesses could give a judge *'elm*, they cannot justify the *hadd*⁸⁵.

⁸² Shahrudi, 11-5, 20, 22, 24-30, 32-4, 55, 57-9, 62-8, 71-2; Shahrudi (pardon section), 199, 208; Khomeini, 241; Mortazavi, 87, 91-2; Zera'at (1385/2), 206-8, 248; *Sharh-e Lom'eh*, 59; Arabiyan, 47-53, 55-9, 63, 66, 72-4; Nobahar, "Be suye", 336, "Qachaq", 204-5, "Ahdaf", 154-5, 157, 159, 161; Khezr Heidari; Hilli/Cooper, 243.

⁸³ Khomeini, 339, 342, 362; penal code articles 115 and 105; Lawyers' Committee, 15, cites a Friday prayer sermon suggesting the same.

⁸⁴ Khomeini, 245-7.

⁸⁵ Khezr Heidari.

Some narrations and jurists define *'elm* as the Imam's first-hand knowledge after personally seeing a crime, attributing his right to rule by this *'elm* from the fact that he is infallible (*ma'sum*), or that he is God's representative on Earth, or both. Some jurists transfer this right to the Imam's 'representative', without specifying who this is; through *velayat-e faqih* this would be the Leader. Certainly the Imams' right to pardon was transferred only to him. However, Iranian codified laws transfer the right of *'elm* to all judges, who are neither infallible nor the Imams' vicars. The reason for this asymmetry is unclear. Also, some jurists argue that only *'elm* derived from first-hand knowledge is thus transferred, according to the aforementioned narrations⁸⁶. However, all three versions of the Iranian penal code manage to use the *infallible* Imam's ability to use *first-hand* knowledge of crimes to justify the use of *second-hand* knowledge obtained through unspecified means by ordinary, *fallible* judges who are not even *mujtahids*.

Interestingly, the term 'sensory' (*hessi*) which describes *'elm* in the penal code bill⁸⁷ recalls the idea of first-hand *'elm*, though this is undermined by the description of *'elm* as deriving from 'evidence'.

Some, mostly recent, scholars equate a judge's first-hand knowledge of a crime with one person's testimony, suggesting that he transfer the case to another judge and then paralyse any contradictory evidence by testifying. This also obeys the prohibition against judges ruling *contrary* to their personal knowledge. One position, whose incorporation into law would increase lenience, is that in *hudud*, *'elm* is not a third form of proof, but merely the knowledge deriving from valid confession or testimony. This has been used successfully at least once, and some classical jurists derive it from narrations. However, several jurists accept ordinary judges' *'elm* based on evidence other than confession or testimony⁸⁸.

⁸⁶ Shahrudi, 16-9, 38; Shahrudi (regarding pardon), 199, 208; Mar'ashi, 235-7; Gilani, 63, 103-4; Mo'meni, 149-51, 156; Khomeini, 341-2, 373; Mortazavi, 89-92; Zera'at (1385/2), 62, 205; Gorji, 40; *Lom'e* (vol.1), 162, 165; *Lom'e*, 240, 243; *Sharh-e Lom'e*, 59, 75; Arabiyan, 51-5, 64-5; penal code articles 105, 120, 199; penal code bill articles 213-1, 213-2 notes 1 and 4.

⁸⁷ Articles 213-1, 213-2 notes 1 and 4.

⁸⁸ Zera'at (1383), 248, 258, (1385/2), 209, 213, 225-6, 248-9; Shahrudi, 21-2, 53-5, 70; Hojjati, 354-6, 363; Nobahar, "Ahdaf", 149; Arabiyan, 51, 53, 58, 63-7, 69-70, 73-4; Nurbaha, "Keyfar", 128; Saberi, 294-306; Arjomand, *Turban*, 187; Amini, "Parvandeha", 9.

The absence of regulations for *'elm* in the 1991/96 penal code allows it to undermine all strictures of proof in *hudud*,⁸⁹ as the case studies will show. Despite the many arguments from Shi'i law that can be mobilised against this indiscriminate use of *'elm*, the 2012 penal code, instead of restricting or eliminating *'elm*, potentiates it by replacing its predecessor's vagueness with explicit pro-*'elm* pronouncements.

6.5. Evidence other than confession, testimony or *'elm-e qazi*.

Evidence other than confession and testimony is sometimes presented in *hadd* trials and received in different ways. Sometimes it is rejected outright because it does not fit the classical categories of confession and testimony; sometimes it is used or rejected in its own right based on its perceived proof-value; and sometimes it is incorporated into *'elm*, with varying success if the ruling is appealed. In the penal code bill and the 2012 penal code, evidence other than confession and testimony is explicitly allowed as grounds for *'elm*⁹⁰.

7. Criminal responsibility.

Criminal responsibility in Iranian law depends on possession of *bulugh* (age of legal majority), *'aql* (mental sanity), *qasd* (intention) and *ekhtiar* (free will or self-determination, which implies not being forced and, according to some, even lapses with exposure to threats); some jurists add *agahi* (awareness: for instance, of the nature of one's actions, or, especially in criminal law and regarding serious penalties, their forbiddenness and punishment). Children (males under 15 lunar years, females under 9 lunar years) are without criminal responsibility and immune from *hudud*, but can in certain circumstances be subjected to *ta'dib*, 'corrective punishments'. These are sometimes equated with *ta'zirat*, which is why, for instance, the penal code allows *ta'zir* of children for sodomy. Mental retardation removes criminal

⁸⁹ Zera'at (1383), 250, (1385), 96, (1385/2), 52-3, 206; Bazgir, 337-41, 380; Saberi, 275-8, 281-3, 297-300; Kermani.

⁹⁰ Hojjati, 310, 324, 363; Bazgir, 75-6, 337-41; Zera'at (1383), 258, (1385/2), 62; penal code bill articles 213-1, 213-2 note 1.

responsibility, by precluding ‘*aql*, intention and free will; mind-altering substances or altered states of awareness (e.g. hypnosis) also do. All these conditions are represented in juristic texts, and supported by Qur’anic verses and narrations⁹¹.

The famous *hadith-e raf’* (narration of removing or exonerating) lists exonerating circumstances, including accident, ignorance, coercion, distress, and forgetfulness. This narration, among others, is frequently cited in discussions of distress, coercion, and criminal responsibility⁹².

The penal code omits the requirements for criminal responsibility in pimping and *moharebeh*. The penal code bill solves this by requiring *bulugh*, ‘*aql*, *ekhtiar*, *agahi be mozu*’ (awareness of ‘the matter’, the nature of acts) and lack of *ezterar* (distress) for criminal responsibility in all *hudud*. It allows ignorance concerning forbiddenness of acts (*jahl be hormat*) to remove criminal responsibility in *hudud*, but not ignorance of precise punishments. It disqualifies children and the insane from *hudud* but renders them eligible for discretionary disciplinary punishments (*ta’dib*). The 2012 penal code omits distress but requires intention (possibly implying lack of distress) for criminal responsibility. It accepts claims of lacking any condition for criminal responsibility without requiring proof, except in *moharebeh* and coercive carnal acts for which the court must investigate those claims⁹³.

7.1. Bulugh.

The age of *bulugh* – legal maturity, which brings criminal responsibility – in Iranian law (on the basis of Shi’i *fiqh*) is nine lunar years for females and fifteen lunar years

⁹¹ Mortazavi, 14-6, 98-100, 109-10, 124-6, 145-7, 149, 180, 184-6; Bazgir, 87-8, 90-1, 371; Mo’meni, 83, 90-2, 140-1, 163; Khomeini, 342-3, 361; Zera’at (1385/2), 39-41, 230-3, (1383), 214; Gorji, 15, 17, 27, 30, 43; *Lom’e*, 233, 242-3; Shahid, *Qesas*, 85; *Sharh-e Lom’e*, 46-7, 72-3, 90, 102, 106, 129-30; Nurbaha, *Negahi*, 52-4; Nobahar, “Qachaq”, 206, 216-7; Ja’fari Langarudi, *Terminology*, 113, entry 886 (*bulugh*); penal code articles 49, 63-7, 83, 111, 112, 113, 130, 146-7, 166-7, 173, 198; Civil Code art. 1210; 2012 penal code arts 139-58. (The *Sharh-e Lom’e*, a classical juristic text, says that “the shari’a sometimes treats children identically to adults regarding criminal responsibility”).

⁹² Mo’meni, 90; Gorji, 17; Mohammadi, 295; Mar’ashi, 124-5; Aghaei, 145-6; Ja’fari Langarudi, *Terminology*, 212, entry 1690 (*hadith-e raf’*).

⁹³ Penal code articles 136 and 189 (necessary qualities of confession to pimping and *moharebeh*); penal code bill articles 212-1 to 212-3 (parameters of criminal responsibility in *hudud*); 2012 penal code articles 217-8 (same).

for males. Lunar years are approximately eleven days shorter than solar years: girls reach *bulugh* 99 days before their ninth solar birthday, and boys around 14.5 solar years. The apparent attribution of brilliant precociousness to females is odd considering their preclusion from filling certain offices – such as judge, *mujtahid* or head of state – because of their perceived mental shortcomings. However, one scholar, Ja‘fari Langarudi, declares that the ages for *bulugh* are based on purely physical criteria (e.g. nocturnal emissions, fertility) rather than the discernment of right and wrong. This notion undermines the nexus between age and criminal responsibility (namely, mental maturity, since criminal responsibility pertains to the mind and not the body). At these ages, a person is fully responsible for their acts, and eligible for all punishments including death. Iran is a signatory to the Convention on the Rights of the Child (CRC), whose article 37 forbids, inter alia, death sentences for actions committed while under the age of 18 (solar) years; and article 9 of the Iranian Civil Code gives full legal validity to treaties which Iran signs. However, Iran expressed ‘reservations’ to any portions of the CRC deemed incompatible with “the Islamic Shariah”. This piece of cultural sensitivity allows Iran to maintain the status of a signatory to the Convention while continuing to sentence minors to death even for victimless ‘crimes’. Still, article 37 is not on the list of articles which the Guardian Council enumerated as ‘possibly against the shari‘a’. Also, according to article 51(2) of the CRC, “a reservation incompatible with the object and purpose of the present Convention shall not be permitted”. Hence execution of minors is arguably illegal internationally and in Iranian law, though this has not prevented it⁹⁴.

⁹⁴ Penal code article 49; Civil Code articles 9, 1210; Ja‘fari Langarudi, *Terminology*, 113, entry 886 (*bulugh*); Nurbaha, *Negahi*, 52-4; Baiburdi, 19-20, 22; Kar/Vahdati; Kar, “Iranian law”, 8; Picheca, 45; Esfandiari, “The politics”, 80-3, 89; Walbridge, 11; Hashemi, 553, 563-5, 658; Bakhsh, 74, 78-9; Abrahamian (1999), 214-5; CRC, articles 37, 51(2); Mostafaei, “Mohammadreza”, “Gozareshi”; Behrooz, 95; Amnesty International, “Iran, the last”, annual reports 2005 (32-3), 2006 (141-2), 2008 (38, 160), 2009 (42, 49); Iran’s reservations to CRC: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en; Khomeini, 245; Lawyers’ Committee, 17, 25; BBC, “UN chides”, “Death penalty”, “Execution plea”; O’Toole; Eke; Amnesty International, “Iran: worrying trends”, “Iran shows”; Human Rights Watch, “Iran: another execution”, “Iran: revoke”, “Iran: secret”; Soares; Jeffries; Amnesty International USA, “Background”; Iran – Amnesty International Reports 2007, 2008, 2009; Council of the EU, “Declaration ... concerning death sentences”. Some other Muslim countries made similar reservations to the CRC. Apparently the Committee on the Rights of the Child, reviewing Egypt’s compliance with the CRC in 1993, declared that since Egypt had not specifically made reservation to any portion of the Convention mandating gender equality when signing, it must uphold that principle strictly (Hashemi, 565). This arguably applies equally to Iran regarding article 37.

The parameters of criminal responsibility in both Shi'i and codified law emphasise that it is a *mental* state. If external signs of maturity are used only to indicate the mental maturity which brings criminal responsibility, arguably they themselves do not determine criminal responsibility. If, instead, there is insistence that those physical indicators must determine *bulugh*, one can point out that at least currently, they occur significantly later than suggested by classical jurists. For instance, most nine-year-olds are probably incapable of pregnancy, since fertility, an indicator of *bulugh* in girls, generally occurs later than other physical signs of *bulugh*⁹⁵. Unless the ages of nine and fifteen lunar years are indisputable ends in themselves, one could potentially employ psychological or biological data to revise them without contravening Shi'i *fiqh*.

The 2012 penal code retains the ages of 9 and 15 lunar years for *bulugh* (article 146). However, it allows youngsters under 18 to avoid *hadd* or *qesas* penalties if the court rules (consulting specialists if necessary) that their mental maturity was insufficient for full awareness of the crime (article 90). This represents a partial concession to demands for attenuated punishment of minors. However, instead of modifying the ages of *bulugh* outright, it gives judges discretion and shifts the issue to '*aql*', which was already necessary for criminal responsibility irrespective of age.

7.2. Doubt and ignorance: ignorance as a defence.

A necessary component of *zina* is that it must have been committed in the absence of doubt (*shobhe*). This is expressed in the penal code, the penal code bill, the 2012 penal code and various jurists' definitions of *zina* (some, including Khomeini, posit highly implausible forms of doubt as exculpatory), and sometimes appears in court. Doubt can take many forms, including belief in being married to one's partner in *zina*, belief that the person with whom one copulated was in fact another to whom one is married, and ignorance of the forbidden nature of one's actions. Various

⁹⁵ Anderson, Dallal and Must; Whincup et al; Padez, "Social background", "Age"; Henneberg/Louw; Cameron/Nagdee; Bazgir, 87-8, 90-1, 117; Khomeini, 361; Mortazavi, 179; Zera'at (1383), 241, 317, (1385/2) 203-6; Hojjati, 408-9; *Lom'e*, 254-6. Kusha (111-2) explains the Prophet's marriage to the very young A'isha thusly: "in the Hijaz region's warm climate, young girls mature early".

narrations support lenience in cases of doubt in all *hudud*. The penal code (article 66) and the 2012 penal code (articles 119-20, 217-8) accept claims of honest error or ignorance without oath or witness if there is no reasonable ground against them⁹⁶.

The conditions of criminal responsibility described in the 1991/96 and 2012 penal codes and by various jurists include awareness, free will, and intention. There exists the notion that ignorance is a defence in criminal matters. Opinions vary regarding the exculpatory value of different varieties of ignorance, which include *jahl-e hokmi* (ignorance of the law regarding an issue), *jahl be hormat* (ignorance that an action is forbidden) and *jahl-e mozu 'i* (ignorance of 'the matter', that is, the nature or implications of one's actions). Each has been defended by ancient and modern jurists, with support from narrations (including the aforementioned *hadith-e raf'* in which ignorance is one of the valid exculpatory excuses for wrong actions). Jurists frequently argue that even in the least justifiable cases, ignorance introduces doubt (*shobhe*), which undermines punishability (this is the *qa'edeye darr*', the axiom whereby doubt averts punishment, which only the 2012 penal code explicitly codifies; see chapter 3, section 5)⁹⁷. Some modern scholars explicitly allow ignorance as a defence in criminal matters⁹⁸. This can lead to surprising rulings. One man's death sentence for incest with his own daughter was overturned because the Supreme Court felt he might not have known it to be wrong⁹⁹. Other judges discount highly plausible instances of doubt or ignorance, as the case studies will show.

⁹⁶ Penal code articles 63-6; penal code bill article 221-1; 2012 penal code articles 119-20, 217-8, 222, 224; Hojjati, 308-10, 355; Bazgir, 39, 57-8, 213-4; Mortazavi, 14, 17; Mo'meni, 86; Shahrudi, 11; Zera'at (1383), 219, 272, (1385), 62-7, 128, 229, (1385/2), 39-41; Mo'meni, 81-2, 85, 88; Nobahar, "Ahdaf", 148-150; Golduzian, 99; Deh Abadi, 36, 38, 40, 44-5; Khomeini, 321-4, 326, 362; Montazeri, topic 3171; *Sharh-e Lom'e*, 7, 8, 10, 233; Amini, "Parvandeha", 11; Abbasqolizadeh, "Nezam"; Qur'an (Nisa') 4:17.

⁹⁷ Hojjati, 308-11, 355; Khomeini, 321-6, 362; Mortazavi, 30-1, 40; Zera'at (1385), 128, 228-9, (v.2), 39-41, (1383), 214, 253; *Lom'e*, 233-6; Deh Abadi, 36, 38, 40, 44-5, 70-1; Gorji, 13-5, 30; Bazgir, 39, 57-8; Shahrudi, 11; Mo'meni, 81-3, 86, 88, 90; Nobahar, "Ahdaf", 152, 158; Gilani, 45, 180; 2012 penal code articles 119-20, 139, 143, 217-8.

⁹⁸ Mortazavi, 181; Zera'at (1383), 214.

⁹⁹ Zera'at (1385), 62.

7.3. *Ikrah* (coercion) and *ezterar* (distress).

Coercion (*ikrah*) removes criminal responsibility in Shi'i law. The penal code allows coercion in *ta'zirat* (article 54) and escape from natural disasters without mentioning a crime category (article 55) to remove criminal responsibility. Article 39 of the abrogated General Penal Code (*Qanun-e Mojazat-e 'Omumi*) removed criminal responsibility for crimes committed under the influence of 'concrete or abstract compulsion which would normally be unbearable', but there is no such general rule in the 1991/96 code, which gives conditions for criminal responsibility separately for each *hadd* crime. Most jurists consider coercion to exonerate in all crimes except murder, as in the penal code (article 211) and the 2012 penal code (articles 139, 376); some argue that loss of *ekhtiar* (free will) constitutes coercion. Several combined Iranian laws express Shi'i *fiqh*'s general axiom whereby coercion removes criminal responsibility, though patchy legislation could undermine this interpretation¹⁰⁰.

The law does not clearly define *ikrah* (coercion). Regarding non-physical coercion, article 198, section 3 of the penal code allows threats to remove criminal responsibility for theft, creating a potential precedent for other crimes. One politically conservative scholar, Mortazavi, says that threats remove *ekhtiar*, hence criminal responsibility, in all crimes except murder. Regarding levels of coercion below the absolute, article 54, though it does not concern *hudud*, allows 'normally unendurable' hardship to remove criminal responsibility. The 2012 penal code allows 'unbearable coercion' to remove criminal responsibility and requires free will for criminal responsibility in all crimes except murder¹⁰¹.

Jurists have represented many interpretations of *ikrah* occupying widely varying positions on the continua of strict to broad and physical to psychological, and encompassing such things as threats, trickery, hypnosis and the administration of

¹⁰⁰ Penal code, articles 54, 64, 67, 111, 112, 113, 130, 136, 146, 166, 167, 198 section 3, 211; Aghaei, 123-6, 145-7; Zera'at (1383), 176-8; Mortazavi, 16, 18-9, 98-9, 180, 184; General Penal Code, article 39; Ja'fari Langarudi, *Maktabha*, 125; Mohammadi, 295, 303; Mar'ashi, 121-6; Khomeini, 408-10; Shahid, *Qesas*, 40, Mo'meni, 90; Nobahar, "Tanfir", 158, "Qachaq", 205-6, 217; Gilani, 45, 69, 120; Gorji, 15-7, 26, 43; *Lom'e*, 233-6, 242-3; *Sharh-e Lom'e*, 75, 90, 130; Deh Abadi, 46-7.

¹⁰¹ Penal code art. 198 section 3, art. 54; 2012 penal code articles 139, 150, 376; Mortazavi, 180, 184.

narcotics¹⁰². Some judges have declared claims of coercion to be only acceptable if proven; this position seems rare, though not unrepresented, among scholars¹⁰³.

Rape (*ikrah in zena*) of a man by a woman, though acknowledged in the penal code¹⁰⁴, is not universally considered possible by jurists, but many, including Khomeini, would support a man's claim of *ikrah in zena* for various reasons. These include the mere fact that it creates doubt, which undermines punishability; the fact that arousal (with accompanying rigidity) is involuntary; and the fact that *zena*, requiring only penetration of the glans, can be forced on a man with comparative ease¹⁰⁵. To this could be added, although it is absent in the literature reviewed here, that rigidity of the male organ can be chemically (or even mechanically) induced, potentially without consent or knowledge.

Distress (*ezterar*) also removes criminal responsibility according to Shi'i law, since actions undertaken through necessity or fear of harm are distinct from those undertaken through criminal intention. The principle of *fiqh* which embodies this is *al-zarurat tubihu 'l-mahzurat* (necessities remove restrictions), also known as *qa'edeve zarurat va ezterar* (the axiom of necessity and distress). It is connected with the obligatoriness of preserving human life even by breaking lesser commandments¹⁰⁶. It comes from several Qur'anic verses regarding the permissibility of eating forbidden foods under necessity, as well as the aforementioned and frequently cited *hadith-e raf'*, which includes actions motivated by necessity or distress among the nine things for which believers are unaccountable, another Prophetic narration, and one where the Imam Ali acquits a thirsty woman

¹⁰² Hojjati, 310-1, 356; Aghaei, 123-6; Mohammadi, 295, 303; Mar'ashi, 38; Gilani, 45, 69, 120; Zera'at (1383), 231-2, (1385), 131-2; Mo'meni, 81-5, 88-90, 105; Nobahar, "Ahdaf", 149, 153, "Qachaq", 205-6, 216-7; Deh Abadi, 46, 62, 68; Khomeini, 322, 356-7, 408-9; Gorji, 15, 17, 43; Shahid, *Qesas*, 40; *Sharh-e Lom'e*, 90, 130.

¹⁰³ Hojjati, 310; Deh Abadi, 62, 77; Zera'at (1385), 131-2, Gorji, 43; *Sharh-e Lom'e*, 75; Bazgir, 176-8, 348; Najvan, "Barabari".

¹⁰⁴ Article 67, 64. See chapter 4, section 3.2.

¹⁰⁵ Hojjati, 311; Zera'at (1383), 230, (1385), 126-7, 131; Mo'meni, 83, 89-90; Khomeini, 322; Gorji, 15-6; *Sharh-e Lom'e*, 29; Mortazavi, 16.

¹⁰⁶ Farhangi, 90-1, 98-102; Mar'ashi, 122; Mohammadi, 227-30, 232-3; Tabrizi, 260; Mo'meni, 92; Khomeini, 356; *Sharh-e Lom'e*, 70; Deh Abadi, 68; Zera'at (1385/2), 42-6, 61; Nobahar, "Qachaq", 205-6, 216, "Be suye", 336, "Tanfir", 138, 141, 157-8.

who committed *zina* in exchange for water. Distress, as coercion, excuses all crimes except murder¹⁰⁷.

Allied with the principle of distress and necessity, and often considered identical to it, is the principle of avoiding hardship and harm (*qa'edeye nafi-e 'osr va haraj*) deriving from several Qur'anic verses and the Prophet's statement that the faith was intended to be easy for believers¹⁰⁸. Another similar principle is the axiom of no harm (*qa'edeye la zarar*) which is mainly based on a narration, also known to the Sunnis, saying that no harm should be inflicted nor suffered in Islam¹⁰⁹. The penal code occasionally refers to distress and necessity, though, as with coercion, it does not explicitly give them general validity as removers of responsibility in *hudud*¹¹⁰. It can be argued that, in accordance with article 170 of the Constitution, scriptural commandments override even codified law, making the 'distress' axioms binding though uncodified. This might be supplemented by fear for the afterlife produced by the aforementioned narration of the Imam Sadeq, whereby judges who rule incorrectly are bound for the Fire whether they do so intentionally or not¹¹¹.

Certain portions of the Civil Code mention 'harm' (*zarar* or the phrase '*osr va haraj*'). For example, they release wives from their usual obligation to live where their husbands want, if it causes them harm; and they allow annulment or dissolution of marriage given certain conditions harmful to the wife. This could be useful in cases, observed in chapter 9, where husbands force wives into prostitution. Problematically for abused wives, according to article 1131 the right to annul a marriage is immediate and vanishes if its holder does not request annulment upon

¹⁰⁷ Qur'an 2:173, 5:3, 6:119, 6:145; Aghaei, 145-7, 123, 125 note 1; Zera'at (1383), 216-7, (1385/2), 42-6, 61; Hojjati, 68; Mortazavi, 147, 149, 180, 184-6; Ja'fari Langarudi, *Terminology*, 56-7 (entry 424, '*ezterar*'), *Maktabha*, 24, 75, 78, 125, 128-31; Mohammadi, 229, 295, 303; Mar'ashi, 38-9, 51, 124-5; Gilani, 123; Mo'meni, 90, 92; Deh Abadi, 68; Khomeini, 322, 356, 361; Nobahar, "Qachaq", 204-6, 216-7. Qur'anic verses allowing distress to remove criminal responsibility include 2:173, 5:3, 6:119, and 6:145.

¹⁰⁸ Aghaei, 83-4; Ja'fari Langarudi, *Maktabha*, 24, 84, 128, 130; Mohammadi, 230, 232; Nobahar, "Tanfir", 138, 157; Mar'ashi, 38, 51, 54-5. Qur'anic verses supporting the hardship avoidance principle include 2:185, 5:6, 6:152, 22:78, and 23:62.

¹⁰⁹ Mohammadi, 232; Hodkinson, 273; Nobahar, "Tanfir", 158; Farhangi, 100-2; Ja'fari Langarudi, *Maktabha*, 130-1; Amini, "Parvandeha", 7.

¹¹⁰ Penal code articles 49-52, 61, 167, 173, 198 sections 10 and 12; Zera'at (1385/2), 206.

¹¹¹ Shahrudi, 34; Khomeini, 241; Arabiyan, 66-8; Constitution, article 170.

learning of the relevant condition; the definition of ‘immediacy’ depends upon custom (‘*orf va ‘adat*’)¹¹².

Mir-Hosseini found, in her analysis of Iranian divorce cases, that harm is the most common reason for women to petition for divorce, but also the reason most likely to fail, and that judges have enormous discretion in deciding what does and does not constitute harm, which means that the theoretical right of divorce through harm does not necessarily translate into reality¹¹³. In *hudud* too, the judge, aided by the law’s vagueness, can decide whether a form of pressure removes criminal responsibility.

Although the principles of distress and coercion are absent in a general form in the 1991/96 penal code, the penal code bill enshrines both, covering all *hudud*. It also allows claims of confession extracted by physical or psychological pressure (e.g. intimidation), and claims of lacking any condition for criminal responsibility, to be accepted without evidence unless proven false¹¹⁴.

If distress were enshrined explicitly in codified law, as in the penal code bill, discussions regarding whether forms of pressure leading to criminal behaviour (e.g. husbands blackmailing wives into prostitution) were absolute would be moot, because distress does not require absoluteness. However, this opportunity appears to have been missed by the 2012 penal code, which does not mention distress and reverts (article 151) to the more complicated regulations regarding escape from natural disasters etc. that one finds in the 1991/96 code. It vaguely allows illegal behaviour in defence of one’s own or another’s life, liberty, property or honour (article 155), but sets multiple conditions which are open to interpretation.

8. *Haqq Allah* and *haqq al-nas*.

Shi’i *fiqh* posits two categories of crime: *haqq al-nas* (crimes against people) and *haqq Allah* (crimes against God). Jurists debate whether there exists a third category,

¹¹² Civil Code articles 1103, 1114-5, 1130, 1131; Mir-Hosseini, *Marriage*, 35, 57, 210.

¹¹³ Mir-Hosseini, *Marriage*, 67-71, “When”, 119; Amini; “Parvandeha”, 7; Najvan.

¹¹⁴ Penal code bill, articles 212-1, 213-3.

namely crimes against the public. Some regard this as a separate category, while others associate it with either of the other two (with *haqq Allah* because these crimes cannot be forgiven by identifiable individuals, or with *haqq al-nas* because their prevention is beneficial to the people – among other arguments)¹¹⁵.

The most common definitions of *haqq al-nas* and *haqq Allah* are as follows. *Haqq al-nas* crimes have an injured party, the *saheb-e haqq* (holder of the right), with the exclusive right of prosecution and pardon. These rights are heritable and cannot be usurped by the government (which cannot pardon or prosecute against the injured party's will; however, codified law permits incarceration of some pardoned or unprosecuted murderers). *Haqq Allah* crimes are crimes because they contravene divine commandments, whether or not they have victims. The term *haqq Allah* does not indicate that God is a 'victim' of these crimes or needs human help; rather it indicates God's right over humans in His capacity as their master. The conservative Ayatollah Mar'ashi Shushtari declares: "just as the slave's obedience is the master's right, so God has the right to be obeyed by us". Prosecution of *haqq Allah* crimes normally requires no complainant or injured party (as in victimless 'crimes'), nor can they be pardoned by any existing victims. This also means (though some disagree) that injured parties cannot *prevent* pardon in *haqq Allah*, which are pardonable only by the Imam or his representative¹¹⁶.

Opinions differ as to the boundaries and overlap between *haqq Allah* and *haqq al-nas*, with some jurists believing that all crimes are fundamentally *haqq Allah* but those which have both characteristics behave as *haqq al-nas*, others assigning some crimes to one category, some to the other and some to both and then differing in their opinions of correct protocol in cases of 'incomplete dominance', and yet others assigning crimes very clearly to one or the other category. Crimes which attract *qesas* – both *qesas-e nafs* (retribution for murder) and *qesas-e 'ozv* (retribution for

¹¹⁵ Ja'fari Langarudi, *Maktabha*, 6-7; Ma'rashi, 235-6; Hojjati, 352; Zera'at (1383), 248-9, (1385), 208-9; Mo'meni, 57, 63-4; *Sharh-e Lom 'e*, 59.

¹¹⁶ Aghaei, 118, footnote 1; Ja'fari Langarudi, *Maktabha*, 6-7; Shahrudi, 83, 181-2, 204-6; Mar'ashi, 235-8; Gilani, 12, 45, 104-5; Hojjati, 352; Zera'at (1383), 247-9, (1385), 92, 205-6, 208-9; Mo'meni, 56-7, 63, 70, 147, 149-50, 160; Nobahar, "Ahdaf", 151, 160, 162; Mortazavi, 89-90; Gorji, 55; *Lom 'e*, 240, 259; *Sharh-e Lom 'e*, 59, 105; Khomeini, 317, 341, 352-3, 373; penal code article 612.

injuries) – or the equivalent in *diyeh* (blood money) are clearly *haqq al-nas*; *ta'ziri* crimes can be either, depending on their nature, since the realm of *ta'zirat* is so vast (encompassing, essentially, any crime not covered by *hudud*, *qesas* or *diyeh*). The general consensus regarding *hudud* is that they are all *haqq Allah* except slander, which is exclusively *haqq al-nas* in its behaviour, and theft, which is a hybrid and exhibits features of both, being prosecutable only by the owner of the stolen goods but forgivable by them only before the crime's 'establishment' in court. There have been rare modern claims that some *haqq Allah* crimes with victims, notably rape, cannot be forgiven without the injured party's consent, or that the *zina* component of rape (*zina be 'onf*: coercive *zina*) is *haqq Allah* but the '*onf* (coercion) component is *haqq al-nas*¹¹⁷.

Current Iranian law refers to these categories generally in PCCM article 2, but leaves much room for interpretation regarding individual status of crimes; this is another case where frequent use of Shi'i *fiqh* can be expected. Iranian codified laws mirror what seems to be the majority opinion among jurists, including the fuzzy areas. The *haqq al-nas* component of slander is clear in *fiqh* and codified law, but the *haqq al-nas* component of theft is unclear in both. The penal code bill contains in article 121-3 a unified explanation of *haqq Allah* and *haqq al-nas*, indicating that some crimes are only one (such as *zina*) or the other (such as murder and slander) but some (such as theft) are hybrid and are prosecuted only following the injured party request but forgivable by them only before being established in court (it is unclear what crimes other than theft behave in this manner)¹¹⁸. The 2012 penal code occasionally refers to *haqq Allah* and *haqq al-nas*, apparently without a unified overview thereof.

9. *Suqut*, repentance and pardon.

Suqut – 'lapsing' – in *hudud* is a punishment's spontaneous loss of applicability, irrespective of guilt but frequently accompanied by lack of establishment thereof;

¹¹⁷ Aghaei, 118, note 1; Shahrudi, 181-2; Mar'ashi, 236-7; Gilani, 12; Gorji, 55; Sadeghi, 174-80; Zera'at (1383), 248-9, (1385), 92, 205; Mo'meni, 56-7, 63, 70, 147; Nobahar, "Ahdaf", 151, 160, 162; Kadivar, "Hadd"; Khomeini, 317, 352-3, 373; Mortazavi, 90; *Lom'e*, 259; *Sharh-e Lom'e*, 105.

¹¹⁸ PCCM article 2; penal code bill articles 121-3, 215-6 to 8; penal code articles 140, 161, 200; Zera'at (1385), 208-9; Bazgir, 303; Shahrudi, 181-5.

pardon is the decision to forgo punishment despite guilt. Both can occur, inter alia, through repentance. *Suqut* in a different context also means ‘lapsing’ of certain functions of the Imam, including the application of *hudud*, during his Occultation¹¹⁹.

Pardon, *suqut* and repentance behave differently in *haqq al-nas* and *haqq Allah*, as noted earlier¹²⁰.

Several Qur’anic verses mention repentance, and many declare that repentant sinners are safe, without describing a protocol for repentance¹²¹. As in many instances, jurists differ in their interpretations of relevant scripture. Elements of Shi‘i law which have been crystallised into codified law – and some which have not, but might nevertheless help to avoid irreversible penalties – are as follows.

In *hudud*, repentance before testimony has been heard generally causes *suqut*; jurists specify that this can occur before *all* testimony is finished. Some say that judges should delay testimony to maximise opportunities for repentance. Repentance after complete confession, but not testimony, allows the Imam or his representative the discretion of pardon. The penal code allows the judge in that situation to petition the *vali-e amr* for pardon, though the previous ‘*Hudud and Qesas Law*’ allowed judges to pardon directly. (The 2012 penal code essentially mirrors the 1991/96 code in these respects). Repentance before confession causes *suqut*: therefore some hold, through principles of lenience, that claims *following* testimony or confession that repentance *preceded* them still cause *suqut*¹²².

¹¹⁹ Gorji, 39-40; Khezr Heidari; Modarressi (1984), 55-7; Cole in Keddie, 37, 39-40; Sachedina, 20-1; Momen, 127, 186; Hairi, 67; Halm, 57-8; Rippin (vol.1), 113-4; Akhavi, 230-2; Amnesty International, “Iran: end”, 4.

¹²⁰ For mediation in *haqq al-nas*, see Shams Nateri; Mahmoudi, “The informal”; and Gholami.

¹²¹ Qur’an 2:35-9, 54, 159-60 (Baqara), 3:85-91 (Al-i Imran), 4:15-8, 64, 145-6 (Nisa’), 5:39 (Ma’iddah), 6:54 (An’am), 7:153 (A’raf), 9:112 (Tauba), 16:119 (Nahl), 19:59-60 (Maryam), 20:82 (Ta-Ha), 24:4-5 (Nur), 25:68-71 (Furqan), 28:67 (Qasas), 32:20-1 (Sajda), 40:2-3 (Mu’min or Ghafir), 66:8 (Tahrim) among others.

¹²² Penal code articles 72, 81, 125-6, 132-3, 181-2; 2012 penal code article 113; Zera‘at (1383), 222, 228, 261, 265, (1385), 121, 125, 257-60, (1385/2), 89; Hojjati, 131, 318, 365-6; Bazgir, 28-31, 105-6, 142-7, 154-5; Aghaei, 120-1; Shahrudi, 186-99; Mar‘ashi, 84; Gilani, 44-5, 118, 123, 125, 187; Mo’meni, 108-9, 156, 166; Khomeini, 329, 332, 344; Mortazavi, 27-30, 44-6, 108, 152-3; Gorji, 19, 23, 45, 49, 63, 81; *Lom‘e*, 235, 242-4; *Sharh-e Lom‘e*, 25-6, 70, 78, 82, 120; Nobahar, “Ahdaf”, 151-2, 162, “Qachaq”, 206-7; Montazeri, topics 3163-4.

The above protocol applies in the penal code to all *hudud* except slander because it is *haqq al-nas*, theft where repentance or the injured party's pardon causes *suqut* only before 'establishment' in court, pimping for which the law mentions no protocol, and *moharebeh va efsad*, in which repentance is not clearly described but appears to have efficacy only before arrest (perhaps reflecting Qur'an 5:33-4: "The punishment for those who wage war against God... Except for those who *repent before they fall into your power*")¹²³. The confusion regarding *moharebeh* and pimping was discussed earlier. The 2012 penal code (article 113) is clearer, allowing *suqut* through repentance in all *hudud* except slander, but, in *moharebeh*, only before arrest.

Suqut can be independent of repentance, affecting, for instance, death penalties in *zina* through *enkar* (section 6.2). In adultery (it is unclear whether this applies to sodomy) proven by confession, escape from the stoning pit causes *suqut* by implying *enkar*. Similarly, escape of any witness to adultery during stoning implies retraction of testimony, which invalidates it, causing *suqut*. At least one narration posits the same effect in theft, but it is not represented in codified law, and jurists disagree regarding its transferability to other *hudud*. This is ironic because several jurists indicate that this very narration, now disregarded for theft, justifies *suqut* of stoning (as in the 1991/96 penal code), its import having been transferred through principles of lenience¹²⁴.

There exists the argument, amicable to lenience and featured in adultery case 12, that confession implies repentance, because the desire to be punished for an action indicates recognition of its reprehensibility. However, in some narrations the Prophet or the Imams had repentant confessors punished (including by execution). At least

¹²³ Penal code articles 140 note 1, 161 note 3, 163-4, 192, 194, 200; Qur'an 5:33-4 (Ma'iddah); Khomeini, 352-3, 373, 377-8; Zera'at (1385/2), 89, 249-54; Gorji, 55; Nobahar, "Qavvadi", 150, "Qachaq", 196, 206-7; Mar'ashi, 227.

¹²⁴ Penal code articles 64-7, 71, 103, 107, 111, 130, 136, 146, 166-7, 173, 198; Hojjati, 349-50, 357; Bazgir, 300-1, 313-4; Mo'meni, 86, 133-5, 156; Gorji, 18, 36-7, 43; *Lom'e*, 237, 242; *Sharh-e Lom'e*, 40-1, 44, 70; Zera'at (1383), 241, 250, (1385), 89, 209, 212-4, (1385/2), 48; Mortazavi, 24-7, 86-8, 94-5; Gilani, 92-3, 100-1; Nobahar, "Ahdaf", 152-3; Khomeini, 328, 340, 370.

one says that repentance after establishment of a crime does not affect punishment but causes forgiveness by God¹²⁵.

Some narrations and jurists both ancient and modern, including Montazeri, declare that private repentance is better than confession and punishment. This idea is frequently connected with the concept that believers should be shielded from knowing about shameful acts. In some narrations, the Imams lament that the criminal confessed – thereby drawing attention to the shameful act – rather than repenting at home and maintaining the secrecy of the misdeed, since most shameful acts were intended to remain hidden. Other narrations have statements similar to ‘God has drawn a veil over crimes without four witnesses’ or ‘crimes without four witnesses will be judged not in this world but by Me in the afterlife’. This last statement ominously implies punishment in the hereafter for crimes unpunished in life, but other narrations conveying the same concept indicate that authentic repentance brings God’s pardon irrespective of punishment¹²⁶.

Some narrations and pre-modern juristic texts posit a ‘statute of limitations’ for some crimes, notably *zena*, possibly all ‘crimes against chastity’ or all *haqq Allah* crimes. They say that crimes which have gone undiscovered for a certain amount of time – which varies but is often given as five or six months – cannot be prosecuted. Sometimes they add that the perpetrator must have repented or ceased any illicit activity during that time. Jurists vary in their opinions of this idea’s applicability. Some say that *suqut* depends on the perpetrator’s improved behaviour, repentance or both; some attribute *suqut* only to the passage of time, others only to repentance. Some limit this effect to *zena*, seemingly the only crime featured in such narrations; others expand it to other crimes. This idea seems dormant, being absent from codified law and recent fatwas, and a written opinion of the Guardian Council excludes any statute of limitations in *hudud*; the 2012 penal code (articles 104-12)

¹²⁵ Bazgir, 154-5; Shahrudi, 186-8, 191-4; Gilani, 51, 79-83, 118; Nobahar, “Ahdaf”, 149, 151; Mortazavi, 30, 52-3; Mo’meni, 84, 94-7, 156; Gorji, 17, 63; Zera’at (1385), 121, (1385/2), 257; Deh Abadi, 49.

¹²⁶ Bazgir, 30; Nobahar, “Ahdaf”, 151-4, 159; Gilani, 50-1; Mo’meni, 96-7; Mortazavi, 45-6; *Sharh-e Lom’ e*, 26; Montazeri, topic 3166; Shams Nateri, 405.

allows a statute of limitations only in *ta'zirat*¹²⁷. Nevertheless the concept has a scriptural pedigree and its codification would promote lenience.

The role of repentance in crimes judged by *'elm-e qazi* (the majority in our sample) is unclear in codified law. Several jurists posit not the presence of confession but the absence of testimony – combined, according to some, with repentance – as the decisive factor in the Imam's (or his representative's) right to pardon. Others identify repentance, irrespective of proof, as the crucial factor. Yet others declare that since *'elm* is 'knowledge', it is superior to *zann*, 'conjecture', which comes from testimony, so that rulings obtained by this inherently stronger mode of proof are more reliable and should be more difficult to overturn. (Of course, calling something 'knowledge' does not make it so). The prestige of *'elm* is associated with narrations and classical juristic texts (see section 6.4) defining it as *the Imam's first-hand* knowledge. However, Khomeini, as discussed earlier, prioritises *'elm* of an ordinary *mujtahid* (which most judges are not) over other, conflicting evidence. Nevertheless, many jurists who characterise the *'elm* of ordinary (*mujtahid*) judges as stronger than the *zann* deriving from testimony describe this *'elm* as *hessi* – sensory, based on first-hand knowledge – rather than *hads*i – based on guesswork. In the penal code bill (article 215-7) the absence of testimony allows judges to petition for pardon – if they consider repentance genuine (in other words, ironically, they can petition for pardon against their own *'elm* if they have *'elm* of authentic repentance). Still, convicts can apply for pardon directly, and all death sentences except those for murder (which are *haqq al-nas*) can be pardoned by the Leader¹²⁸.

The law, except the new 2012 penal code, is unclear about whether repentance must be judged authentic. Just as judges in many cases in Part II use invalid confessions, forced confessions, revoked confessions or confessions of a co-accused as ingredients of *'elm*, so they sometimes claim discretion to reject repentance which

¹²⁷ Nobahar, "Ahdaf", 153-4; Zera'at (1383), 228, (1385), 119, 259-60; Mortazavi, 45-6; *Sharh-e Lom 'e*, 25-6; Mo'meni, 107.

¹²⁸ Mortazavi, 86-92; Zera'at (1385/2), 205, 207; *Lom 'e*, 240; *Sharh-e Lom 'e*, 59, 75; Arabiyan, 50-8, 64-5, 69-74; Ja'fari Langarudi, *Maktabha*, 31-4, 39-44, 302; Shahrudi, 55; Mo'meni, 149-51, 161; Mar'ashi, 235-6; Procedural Code for the Pardon and Clemency Commission, article 10; penal code bill articles 213-2 note 1, 215-7.

would otherwise cause automatic *suqut*. The penal code's beneficial vagueness is removed by the 2012 penal code, which specifies that repentance must be accepted by the judge¹²⁹. Here, too, the new code is stricter than its predecessor.

The codified law says that religious authorities ministering to convicts prior to execution must encourage them to repent. It is not clear if repentance would prevent execution at this stage, especially in view of Qur'an 4:18 which rejects repentance of lifelong sinners who only repent when death is near¹³⁰. This could, however, be a last-ditch attempt to avert execution, though the 2012 penal code (article 117) again precludes leniency by allowing repentance to be considered only until the ruling is declared final.

Though constitutionally it is the Supreme Leader who pardons, pardon petitions – which can be made by judges, convicts, or their families or lawyers – are sent to the 'Pardon and Clemency Office' (*Edareye 'Afv va Bakhshudegi*) which handles the affairs of the 'Pardon and Clemency Commission' (*Komision-e 'Afv va Bakhshudegi*) consisting of five experts in Shi'i and codified laws chosen by the head of the Judiciary and convening on certain pre-arranged occasions (or, if necessary, additional occasions as requested by the head of the Judiciary). It is governed by the Procedural Code for the Pardon and Clemency Commission. Legally, pardon petitions cause suspension of sentences until their result is revealed. Rejected pardon requests can be resubmitted if the reason for rejection ceases to exist. Apparently the Commission only accepts written defences from lawyers, who cannot speak to its members directly¹³¹.

Various laws, including the Constitution, forbid unjustified incarceration, including that of pardoned convicts, and mandate punishments for officials who perpetrate it¹³².

¹²⁹ Hojjati, 328-9; Deh Abadi, 74-6; Aghaei, 121; Zera'at (1385), 260; Bazgir, 145-7; Amini, "Parvandeha", 4-6; 2012 penal code articles 113, 116.

¹³⁰ DIRS293/82 articles 7, 10; DIRS28/70 article 5; Qur'an 4:18 (Nisa').

¹³¹ Constitution article 110 (11); penal code article 24; Procedural Code for the Pardon and Clemency Commission, articles 1, 4-6, 8, 10-12; DIRS28/70 article 1 note 3, DIRS293/82 article 4; Hojjati, 130-1, 134, 139, 328; Shahrudi, 199; communication with Iranian lawyer.

¹³² Penal code articles 572, 575-6, 583; PCCM article 287; PCP article 356; Constitution article 32; Hojjati, 287; Golduzian, 28-9, 206-11; Mas'ud, 5-7.

Maslahat (here meaning the State's interests) is one of the parameters to be considered by the Leader in granting a pardon, and ultimately he can override all other considerations in the State's best interests¹³³.

9.1. *Tabdil* (commutation) and *takhfif* (attenuation).

The definition of *hudud* includes resistance to commutation or attenuation¹³⁴, as explained in section 5. However, some scholars suggest that from the Imam's right to pardon comes his right to pardon partially or choose alternative penalties; others, including the conservative Ayatollah Gilani, declare that *hudud* might sometimes necessitate modification for political reasons¹³⁵. Under current law, commutation or attenuation could be achieved through pardon followed by a lighter sentence, but sentencing pardoned convicts is forbidden because pardons cancel convictions.

The penal code bill allows commutation of stoning to 'death' (if adultery was proven by testimony) or 100 lashes (otherwise) if certain officials deem it beneficial to the state (*maslahat*), and suggests that pardon may cause modification of *hadd* penalties. The 2012 penal code implies the latter, and allows, in its theft section, for non-*ta'ziri* prison sentences (e.g. for repeated theft) to be waived because of *maslahat*¹³⁶.

Despite the penal code's prohibition of attenuation or commutation in *hudud*, a man sentenced to stoning for adultery (though almost certainly married to his partner in *zina*) was hanged in prison in 2009, without official justification of the illegal commutation of a penalty so staunchly defended as immutable due to its scriptural

¹³³ Procedural Code for the Pardon and Clemency Commission, article 9; Hojjati, 123, 133; Zera'at (1383), 265, (1385), 92; Aghaei, 118 note 1; Mar'ashi, 235-6; Nobahar, "Qachaq", 207, 216-7; Shahrudi, 198, 203-5. *Maslahat* and its equation with Islamic interests are described in chapter 3, section 6.2.

¹³⁴ Penal code article 22; 2012 penal code articles 15, 219; Mo'meni, 66; Aghaei, 118 footnote 1; Hojjati, 119; Gilani, 94-5; Amini, "Parvandeha", 7-8.

¹³⁵ Shahrudi, 195, 198-200, 203-6; Zera'at (1385), 260; Gilani, 94. See chapter 3, sections 6.2-3.

¹³⁶ Penal code bill article 221-5 section 5 note 4, article 227-5; 2012 penal code articles 219, 279/j/2; Nurbaha, "Keyfar", 128.

pedigree¹³⁷. This also possibly happened in adultery case 4 of this project. Such behaviour demonstrates that even laws enthusiastically defended as ‘divine’ are sometimes unceremoniously flouted.

Concluding remarks.

This chapter should have familiarised readers with several basic elements affecting Iranian *hadd* trials. Some laws, either by commission or omission, create obstacles to lenience, of which several will be seen operating in the case studies (Part II). These obstacles include vagueness regarding the timing of lawyers, the absence of a general prohibition of double jeopardy, and the permission of *‘elm-e qazi*, which can be used as a ‘wild card’ to bypass ordinary legal strictures.

The laws governing the cases in Part II contain harshness including these obstacles, but can also be harvested for leniency, sometimes because they explicitly protect defendants (e.g. the rules for confession or criminal responsibility) and sometimes because their vagueness allows interpretability through Shi‘i law. This interpretability is manifested in the extensive discussions among present-day Iranian jurists, many of whom favour lenient legal reform. Theoretically, even in the codified law multiple opportunities for avoiding irreversible *hudud* exist between arrest and conviction. The case studies, however, suggest that judges often ignore these. Furthermore, the new 2012 penal code often resolves this interpretability to the defendant’s detriment, showing that forces for lenient reform are still opposed.

The next chapter describes principles of Shi‘i law (whether codified or not) which could affect the deployment, interpretation and possibly reform of the regulations discussed so far. They too, like the laws described above, contain harshness, but their multiplicity and vagueness allow for leniency.

¹³⁷ Gorji, Mahin; Hojjati, “Aya mojazat”; Iran Human Rights, “An adultery”; BBC Persian, “Mard”; Meydaan, “Abdollah”; Amini, “Parvandeha”, 4-10; Education International; Daily Mail, “Iran chops”; Picheca, 53-5, 59.

3. Principles.

Shi'i law contains various principles, some explicitly enshrined in Iranian law and others not, which judges and legal scholars acknowledge, and which can therefore appear in court. Many govern the interpretation and interaction of legal elements discussed in the previous chapter, and their role is visible in the construction of codified Iranian law. Some can militate against leniency, but others favour it and could promote lenient legal reform.

This chapter explains those principles insofar as they are relevant to *hadd* law and the case studies in chapters 5-9. Sections 1 and 2 discuss basic principles whose interaction yields a strong basis for the presumption of innocence and a 'default setting' of lenience towards defendants. Section 3 discusses more forms of lenience, with a caveat, in subsection 3.1, that Shi'i law also contains severity. Sections 4 and 5 explain two important principles which could further protect defendants. Finally, section 6 and subsections discuss principles and concepts which allow Shi'i law to accommodate evolving morality.

What emerges is that Shi'i sources can be used to construct a potent basis for lenience in criminal law. In fact, many jurists argue that the Prophet and the Imams had a default attitude of lenience (sections 3-4). Judges' harshness observed in chapters 5-9 contrasts with this precedent from their own law. The multiplicity of opinions being currently discussed by Iranian legal specialists shows that many legal concepts are not 'set in stone' and are being subjected to scrutiny and negotiation. This 'dynamism' could be harnessed to maximise leniency in new legal codification.

1. Basic principles.

The following basic principles govern the fundamental conception and organisation of ideas in Shi'i law. Several Iranian legal scholars layer them, as explained hereunder, to create a strong tissue of default lenience in criminal law.

The *asl-e 'adam* – principle of absence – states that since all created things and states of being are preceded by their absence, their presence, not their absence, requires proof. One form of this principle is the default inapplicability of punishments¹.

The *asl-e ebahe*, ‘principle of permissibility’, is the default permission of anything not explicitly forbidden. With these two principles combined, permission can be viewed as an ‘absence’, retaining the default state of permissibility, while a restriction, by modifying these defaults, is a ‘presence’ requiring justification².

The concept of *bara'at* – ‘exculpation’ or ‘exemption’ – is that until a legal obligation is established, no action is enjoined nor any responsibility determined. Absence and permissibility being the default, restrictions and criminal convictions require justification. This means, in criminal matters, that all persons are presumed innocent until proven guilty. In this form, the concept becomes the *asl-e bara'at* – innocence principle, or principle of innocence by default. It is enshrined in article 37 of the Iranian Constitution³. Related to it, and to *ebahe*, is the principle of *sehhat*, whereby acts or transactions are presumed correct until proven otherwise⁴.

The principle of *ehtiat*, meaning ‘caution’ or ‘prudence’, demands that when in doubt, one must act in the manner most likely to be correct. Since it is “better to risk failing to perform a recommended action than ... to risk performing a forbidden action” (Gleave, see note), it is better to free the guilty than execute the innocent, murder being more reprehensible than failure to punish.

In criminal matters, considering innocence by default, *ehtiat* often favours lenience, and several jurists use it to choose the most lenient of equally authoritative options.

¹ Ja'fari Langarudi, *Maktabha*, 53-4, *Terminology*, 51, entry 384; Mohammadi, 287-9, 299; Zera'at (1385/2), 52; Nobahar, “Qavvadi”, 155, 158, “Qachaq”, 195, 198-9, 201.

² Ja'fari Langarudi, *Maktabha*, 65-8, 133, *Terminology*, 108 entry 832; Mohammadi, 287, 290, 294-6; *Sharh-e Lom'e*, 43; Gleave, 35; Qur'an 65:7 (sura Talaq), 17:15 (Isra or Bani Isra'il).

³ Ja'fari Langarudi, *Maktabha*, 47, 122, *Terminology*, 37, entry 271, 49, entry 363, 107-8, entries 831-2; Mohammadi, 287-9, 293-7, 299; Shahrudi, 11; Gilani, 46, 63, 78; Zera'at (1383), 219, (1385), 86; Bazgir, 39; Mas'ud, 5-7; Deh Abadi, 52; Mortazavi, 30-2; Gorji, 79; *Sharh-e Lom'e*, 46-7, 61; Nobahar, “Qachaq”, 195, 198-9; Gleave, 35; Constitution article 37; Qur'an 65:7 (Talaq), 17:15 (Isra or Bani Isra'il); Amini, “Parvandeha”, 9.

⁴ Civil Code article 223; Mohammadi, 329; Ja'fari Langarudi, *Terminology*, 51, entry 381.

A usage exists whereby ‘choosing the side of *ehtiat*’ is equated with ‘favouring lenience’ in juristic texts. For instance, *ehtiat* is the reason most cited for preferring four instead of three repetitions of a *hadd* crime before the death penalty is activated, though the case for three is arguably stronger, and *ehtiat* meaning ‘the greatest possibility of correctness’ would probably favour three. However, *ehtiat* means ‘prudent pursuit of correctness’, not ‘favouring the defendant’, so it can also undermine lenience. For instance, there is doubt regarding applicability of the *hadd* for *zina* between non-Muslims, but some argue that *ehtiat* favours applicability⁵.

When the death penalty is possible, *ehtiat* assumes the heightened status of *qa‘ede* *ehtiat dar khunha* (or *dar dama*), ‘the axiom of caution in matters of blood’, forbidding death penalties until all doubt is removed. This axiom is supported by narrations, including one which says “*hudud* are grounded in lenience and there must be caution (*ehtiat*) especially in the bloods (*dama*)”. This narration also supports the axiom ‘*hudud* are grounded in lenience’ (discussed below). Several jurists use ‘caution in shedding blood’ to allow *enkar* (retraction of confessions) to halt all death penalties for *zina*, not only stoning – a position represented in the penal code and its successor, the 2012 penal code, which extends this to any death penalty in *hudud* and acknowledges the *qa‘ede darr*⁶ (section 5).

Esteshab is the presumption that the last known circumstances remain current. Since, by the principles of ‘*adam, ebahe* and *bara‘at*, one’s default and initial state is innocence, by *esteshab* it is presumed current unless proven to have changed. However, similarly to *ehtiat*, *esteshab* can be inimical to the defendant. For instance,

⁵ Mohammadi, 287, 296, 302, 305, 307-8, 325; Gleave, 36-40; Shahrudi, 11, 67; Bazgir, 337-41, 352; Gilani, 66, 90, 93-4, 122-3, 126, 187, 233; Mo‘meni, 97, 105, 114-5, 129, 149, 155-6, 165; Zera‘at (1383), 214, (1385), 62-3, 92, 251; Mortazavi, 47, 63-4, 66-7; Gorji, 79; *Sharh-e Lom‘e*, 70; Nobahar, “Ahdaf”, 148-50, 158, “Qavvadi”, 155-6, “Qachaq”, 195, 197-201; Khomeini, 300, 322, 325, 328-9, 330, 332, 335-6, 339-40, 343-5, 350, 352, 354, 359, 365, 367, 370, 376, 378-9.

⁶ Bazgir, 31, 337-41, 352; Gilani, 66-7, 74-5, 122; Mar‘ashi, 130; Mo‘meni, 114-5, 122, 152, 165; Zera‘at (1383), 214, 230, 259, 264, 269, 293, (1385), 62-3, 89, 126, 128, 166-7, 229, 252, (1385/2), 83-4; Nobahar, “Ahdaf”, 150, 152-3, 158; Mortazavi, 26-7; penal code article 71; 2012 penal code articles 119-20, 172.

if guilt is deemed ‘established’, it becomes the default and anything which seeks to dislodge it, such as claims of coercion, must provide overwhelming proof⁷.

2. The general (*‘amm*) and the particular (*khass*).

Broadly speaking, in Shi‘i *fiqh* the general cannot abrogate the particular while the particular can modify the general. This means that a general rule can be modified in special circumstances. For example, confessions retain their proof-value (*hojjiat*) even if revoked, but for *zina* carrying the death penalty, revoked confessions exceptionally lose it. Or, according to some jurists, the default for repetition of crimes is embodied in a narration whereby any *kabireh* (major sin or crime) carries the death penalty on the third repetition, but other narrations describing the *fourth* repetition of *zina* modify the general rule in this instance. The concept also allows ‘refinement’ of unclear or general commandments. For example, 100 lashes, the general punishment for *zina* in verse 24:2 of the Qur’an, is refined by narrations ordaining stoning for adultery, a subset of *zina* (*zina* while married).

This relationship between the general and the particular can be advantageous or disadvantageous to suspects in *hudud*: it sometimes creates advantageous exceptions to disadvantageous rules, and sometimes the opposite. Sometimes it goes against *ehtiat* and ‘caution in shedding blood’. Many jurists favour *ehtiat* by allowing *enkar* to prevent execution in *hudud* other than *zina*, or by saying that, given the uncertainty regarding the death penalty for three or four repetitions of *hudud*, the most lenient option – four – is preferable. Others use ‘the general and the particular’ which suggests a default of three repetitions unless authoritative texts indicate four, and a default of *enkar* not preventing execution. The two principles similarly clash regarding punishments for incest, rape and sodomy, especially since the death penalty is absent from some relevant narrations and ‘the general and the particular’ favours the death penalty over no death penalty⁸.

⁷ Ja‘fari Langarudi, *Maktabha*, 25, 46, 48-9, 222, *Terminology*, 36 (entry 269), 51 (384), 37 (271); Mohammadi, 309-14, 325; Deh Abadi, 41; Mortazavi, 86-7; Gorji 63; Shahrudi, 320; Gleave 35.

⁸ Gilani, 74; Zera‘at (1383), 275, (1385), 125; Mo‘meni, 123-4, 164-5; Mortazavi, 66-7, 94-5; Qur’an 24:2 (Nur); lawyers’ letter to Shahrudi, October 2006, part 1-b; penal code article 71.

This interpretability is visible in the differences between the 1991/96 penal code, which mandates death for the third instance of alcohol consumption and allows *enkar* to halt execution only in *zena* (articles 71, 179), and the 2012 penal code. It has death on the fourth repetition of alcohol consumption and allows *enkar* to halt any death penalty in *hudud* (articles 135, 172).

3. Lenience.

There exists the notion, repeated by many scholars both ancient and modern, that the shari'a, or *hudud*, are grounded in lenience, and the default is to favour the accused. The idea of favouring the accused is the *qa'edeye tafsir-e maziq-e qanun be naf'e mottaham*, 'the axiom of interpreting the law's ambiguities in favour of the accused'. The concept of lenience by default is variously expressed in phrases such as *qa'edeye takhfif dar keifar* (the axiom of lenience in punishment), *qa'edeye takhfif dar hudud* (the axiom of lenience in *hudud*), and *qa'edeye banaye hudud bar takhfif* (the axiom whereby *hudud* are grounded in lenience) among others. These interrelated concepts are supported by narrations. In one, for instance, the Prophet declares that it is better to err on the side of lenience than on the side of severity. The Imam Ali's famous letter to Malik Ashtar, when sending him to govern Egypt in 658, says the same thing, as does the aforementioned 'caution in shedding blood' narration⁹. The idea of lenience by default is allied with several principles including the *qa'edeye darr'* (axiom of removal), the *asl-e bara'at* (for the present purposes, innocence by default), *ehtiat* (caution), and *ehtiat dar khunha* (caution in shedding blood).

⁹ Shahrudi, 67; Gilani, 40, 75, 183; *Nahj al-Fasaha*, hadith 119; Zera'at (1383), 248, 251-3, 269, (1385), 62-4, 127-8, 229, (1385/2), 40; Mo'meni, 70, 155; Nobahar, "Ahdaf", 150, 152-3, "Be suye", 336; Golduzian, 99, 104; Deh Abadi, 49, 63, 66; Mortazavi, 30, 40, 66; Gorji, 79; *Sharh-e Lom'e*, 40, 70; Bazgir, 31; Constitution, article 37. See Cherif Bassiouni, 256-7.

3.1. Against lenience.

Attitudes against lenience also exist in *fiqh*, though not all are in codified law. According to several Shi‘i jurists, ancient and modern, various narrations emphasise the intrinsic heinousness of *hadd*-bearing crimes, including victimless ones. Others forbid any delay in implementing *hudud* (unless for a specific reason, such as the necessity to wait before flogging an ill person lest the punishment inflict more than its allotted injury). Some describe the laudability of implementing *hudud*, or decry failure to do so, characterising those who ‘trample’ *hudud* as, among other things, enemies of God, or saying that the community should be purified by shedding the blood of those guilty of ‘corruption’ (*fasad*)¹⁰.

Jurists cite many narrations describing the Prophet’s and the Imams’ implementation of stoning and other heavy penalties, though elsewhere their extreme lenience is invoked by jurists and lawyers urging scrupulousness. Some juristic texts exhibit attitudes contrary to lenience. One, for instance, insists that self-incriminated adultery convicts who escape the stoning pit are free (the majority attitude, seen in article 103 of the penal code) but only if some stones have hit them first, because they must have some torment. Narrations and juristic texts describe many other stern attitudes, whether regarding points of law (e.g. death must not be swift in stoning; confession need not be before a judge; claims of coercion must be proven) or expressed in general terms (e.g. ‘lenience and delay are betrayals of the Imam’s duty in *hudud*’, ‘all are slaves to God and all actions are by His permission, including humans’ use of themselves’, ‘sometimes the wisdom behind commandments is hidden so we must obey them whether they seem reasonable or not’, ‘breaking any established law is equivalent to apostasy’). Even the reformist Ayatollah Montazeri has declared that denying some essentials of religion, such as prayer or fasting, implies apostasy¹¹.

¹⁰ Shahrudi, 184-5; Gilani, 14-8; Mo’meni, 77, 84, 94-7, 114, 126-8, 134-5, 150; Nobahar, “Ahdaf”, 149, 154-5, 157-8, 161, “Qachaq”, 190-1, 201; Mortazavi, 42-3, 96; Dastjerdi, 47; Zera‘at (1385), 132, 218-9, 229, 251; *Sharh-e Lom‘e*, 37; Gorji, 23, 43.

¹¹ Penal code article 103; Mar‘ashi, 101-2; Gilani, 59, 79-84, 90-5, 104; Hojjati, 364; Momeni, 27, 63, 88, 97, 107-9, 115-6, 121-3, 126, 137-41, 147, 158, 160; Zera‘at (1385), 92, 99, 213, 230-1, 249, 251, (1385/2), 52-3, 62; Deh Abadi, 41, 53, 57-8, 63, 66, 69-70, 72, 75, 77; Khomeini, 322-4, 335, 341-3,

Particularly ironic is the idea that it is merciful to apply punishments (including execution) because it prevents wrongdoers' worse punishment in the afterlife (except possibly in *moharebeh*, where earthly punishment is followed by torment in the hereafter but repentance prevents both). This appears in various narrations where people confess to crimes with heavy punishments (such as theft, sodomy or adultery) to be punished in this life rather than the next¹². This attitude, applied in practice, would mean that while stern judges might order harsh punishments through a spirit of retribution, sympathetic judges might do it through compassion.

4. No investigation of crimes 'against chastity'.

Iranian law (PCCM article 43) forbids prosecution and investigation of crimes 'against chastity' without complainants. This is supported by juristic texts including those forbidding interrogation of a woman about the reason for her pregnancy because the shari'a intended such crimes to remain mostly hidden, and narrations wherein the Prophet or the Imams make such statements, discourage confession, or do not seek evidence. The idea is connected to the dismissal of pregnancy as proof¹³. The case studies, however, suggest that crimes 'against chastity' are frequently (illegally) prosecuted by the authorities without complainants.

5. The *qa'edeye darr*' or 'axiom of removal'.

The *qa'edeye darr*' ('axiom of removal') is expressed in a Prophetic narration which says "*idra'u'l-hudud be'l-shubuhah*", meaning, 'avoid (remove, avert) punishments through doubts'; the axiom is therefore also known as *qa'edeye idra'u'l-hudud be'l-*

358-9, 362, 370, 377; Mortazavi, 43-4, 55-7, 78, 86-8, 94-5, 153-4; Gorji, 23, 43; *Lom'e* (vol.1), 167; *Lom'e*, 245; *Sharh-e Lom'e*, 85, 126-7; Nobahar, "Tanfir", 158, 171, "Qachaq", 201, 206; Nurbaha, "Keyfar", 126; Montazeri, topic 80; Ja'fari Langarudi, *Terminology*, 113 (entry 886, 'bulugh'); Shahruddi, 343-7.

¹² Nobahar, "Be suye", 337, "Qachaq", 197, "Ahdaf", 148-52; Mo'meni, 77, 84, 94-7, 126-8, 134-5, 156; Zera'at (1383), 252, 234-5, (1385), 218-9, 225, 234-5; Qur'an 5:33-4 (Ma'iddah), 24:2 (Nur); Gilani, 45, 79-83, 118; Mortazavi, 22, 52-3, 101-2; Gorji, 17; *Lom'e* (vol.1), 167; *Sharh-e Lom'e*, 16-7; Shahruddi, 186-9.

¹³ PCCM article 43; Zera'at (1383), 228; Gilani, 46; Mortazavi, 31-2; *Lom'e* (vol.1), 166-7; Nobahar, "Ahdaf", 148-51, 153, 159-61, 169, "Qachaq", 204-5, "Be suye", 337; 2102 penal code article 241.

shubuhāt (or the alternative form, *todra 'u'l-hudud be'l-shubuhāt*). It states that even the most tenuous doubt renders punishments inapplicable.

It can be a powerful weapon against *'elm-e qazi* (judges' 'knowledge', allowed as grounds for conviction), so that scholars have occasionally bewailed the excessive leniency it facilitates in Iranian courts. Its use has been advocated by various jurists and scholars, including Khomeini, to resolve even the most unlikely cases of doubt in favour of the defendant. According to the *qa 'edeye darr*', any claim of non-consummation of marriage invalidates the stoning penalty (which necessitates consummated marriage) even if the marriage has produced offspring, any claim of coercion, distress, ignorance or error impugns criminal responsibility, invalidating the *hadd*, and doubt regarding proof prevents the *hadd*. The word *hudud* in the axiom is interpreted as 'punishment', and *ehtiat* and 'caution in shedding blood' extend the axiom to any punishment. The narration embodying the *qa 'edeye darr*' is known to both Sunni and Shi'i jurists.

Although the *qa 'edeye darr*' is ubiquitous in judgements, lawyers' defences and scholarly works, its validity has occasionally been doubted because it is based on a *morsaleh* narration (a narration whose chain of transmission is absent or flawed) in Shaykh Saduq's *Man la yahduruhu al-faqih* and because the *ijma'* (consensus of jurists) regarding it is not as uniform as is widely believed. Against this one can argue that, similarly to the *qa 'edeye hormat-e tanfir az din* (axiom against causing hatred of religion, described presently), it is the subject of *ijma' -e 'amali*, 'consensus through action', and *shohrat*, 'fame' or 'wide acceptance', since it is used and cited so frequently in judgements and by jurists including Khomeini and Shahid II (d. 1558). According to some, these two forms of popularity can lend legitimacy to narrations and juristic positions. Also, the axiom is in Ali's aforementioned letter to Malik Ashtar. (There are issues with its chain of transmission, and the crucial sentence, while appearing in the *Bihar al-Anwar*, does not appear in the version of the letter present in the *Nahj al-Balagha*, which however can be characterised as a summary of Ali's pronouncements rather than a full account thereof). It is also embodied in a narration of Ali which says "whenever there is a 'maybe' in *hudud*,

the *hadd* is inapplicable”. Although much can be said about the possible arguments for and against the authority of the *qa‘edeve darr‘*, the fact remains that it is a formidable promoter of lenience, whose validity has been accepted seemingly without question by judges, lawyers, jurists and scholars alike. *Ijma‘* has been claimed for it, and it is frequently described as an established rule of Shi‘i law¹⁴.

Chapters 5-9 show that *‘elm-e qazi* may thwart all opposition, imposing irreversible penalties in cases containing clear illegalities. In other cases, the *qa‘edeve darr‘* has turned the tide against the death penalty, and Supreme Court judges have sometimes used it spontaneously to overturn rulings. Though the *qa‘edeve darr‘* is absent from the 1991/96 penal code, it is paraphrased in the penal code bill (article 213-4) and mentioned explicitly in the 2012 penal code (articles 119-20), though its action is not deemed automatic in *moharebeh*, *efsad*, theft and slander.

6. Maslahat and other forces for accommodation.

According to several, mostly modern, jurists, the following principles promote lenient legal interpretation and facilitate accommodation of Shi‘i laws to evolving morality. They could even inspire lenient legal reform without sacrificing Islamicity.

6.1. *Qa‘edeve molazeme*: the reasonability of commandments.

The *qa‘edeve molazeme* – ‘axiom of connexion’ or ‘axiom of inherence’ – is the idea that divine *ahkam* (commandments) are inherently reasonable, and that, therefore, one can construe the correct commandments through reason even where the law is silent, unclear or contradictory. In its extreme form, this concept characterises reason

¹⁴ *Man La Yahduruhu al-Faqih*, vol.4, Bab Nuwadir al-Hudud, hadith 74; *Bihar al-Anwar*, volume 77, 243; *Nahj al-Fasaha*, hadiths 119-20; Khomeini, 331, 362; Gorji, 15-6, 65, 79; Tabrizi, 257; Saberi, 285, 305; Bazgir, 176-8, 204, 239-40, 337-41, 352; Mortazavi, 30, 40, 44-6, 66-7, 94, 149, 187; Golduzian, 99, 104; Mar‘ashi, 92, 130; Gilani, 13, 63, 98-100, 122, 183; Zera‘at (1383), 214, 219, 222, 224, 232, 234, 251-3, 317, (1385), 62-3, 65, 67, 129, 131-2, 144-5, 161, 217, 229, 251, 258, 260, (1385/2), 39-41, 213; Mo‘meni, 81-3, 85, 88, 113, 125-6, 148-9; Nobahar, “Qavvadi”, 155-7, “Ahdaf”, 149, 152-4, 158, “Tanfir”, 153-4; Deh Abadi, 33-4, 39-55, 61, 64-78; *Sharh-e Lom‘e*, 25, 28, 58, 75, 120, 123, 133; Shahid, *Qesas*, 74, 113; Dutton, 136; Peters, 21-2; Ja‘fari Langarudi, *Terminology*, 399-400, entries 3201-3 (shohrat); Khosroshahi, 251; *Asr Iran*, “Joz‘iat”; Cherif Bassiouni, 256-7; penal code bill articles 213-4; lawyers’ letter to Shahrudi, October 2006, section 1: “‘*elm-e qazi* cannot overcome *todra‘u‘l-hudud be‘l shubuhah‘*”.

as a litmus test of authenticity for narrations: if they appear unreasonable, that is a sign of their inauthenticity. The axiom is also known as *qa'edeeye molazeme beyn-e hokm-e 'aql o shar'*, meaning, 'the axiom of connexion between the commandments of reason and of the shari'a'. It is related to the permissibility to avoid *'osr* and *haraj* (hardship and harm) and the *qa'edeeye la zarar* (no-harm principle), to the notion that injunctions of the divine law are always indicative of intrinsic goodness or badness (*hosn va qobh, hosn va qobh-e zati*) or 'benefits or detriments' (*masaleh va mofassad*) to individuals or to society, and to the idea that since it is obligatory to 'enjoin the good and forbid the bad' (*amr bi'l-ma'ruf wa nahy an al-munkar* or *amr be ma'ruf va nahi az monker*, as in Qur'anic verses 3:104 and 3:110 among others), what is perceived as 'good' by the human mind becomes obligatory, as what the mind perceives as 'bad' becomes forbidden. The reformist *mujtahid* Ahmad Qabel cites narrations deeming reason to be 'God's inner proof'. Against this, there is the idea that sometimes the wisdom behind commandments is not apparent to humans and therefore it is risky to rely excessively on reason for discerning those commandments or the underlying principles. It is generally accepted that some areas, such as *'ibadat* (acts of devotion), are impenetrable to reason, but some extend this to any divine commandment, even in criminal matters, which seems unreasonable but is supported by explicit reliable narrations or clear Qur'anic verses. Some hold that even commandments suggested by reason or considerations of 'benefits and detriments' must be confirmed by scripture¹⁵.

6.2. Maslahat.

Maslaha (plural: *masalih*), or its Persianised version *maslahat*, roughly translates as 'benefit'. Some Sunni (particularly Maliki) jurists developed the concept that the benefit of the community – as a principle variously expressed as *maslaha, istislah*

¹⁵ Qur'an 3:104, 3:110 (Al-e Imran), 7:157 (A'raf) and 9:71 (Tauba); Mo'meni, 73, 122-3; Ja'fari Langarudi, *Maktabha*, pp. 84, 114-5, 117-9, 121-2, 130-1, 133, 158-62; Mohammadi, 227-30, 232-4, 337; Mar'ashi, 35, 37-40, 45-6, 51, 53-5, 57-8, 239; Khosroshahi, 247-50; Gleave, 36-7, 41; *Sharh-e Lom'e*, 47, 79; Nobahar, "Tanfir", 137-9, 144, 155-8, 166-71; Baiburdi, 23-4; Farhangi, 79, 90-2, 100-2; Hodgkinson, 273; Momen, 187; Jafri, 311; Sachedina, 7, 9; Dahlén, 66-7, 73 footnote 37; Halm, 54; Akhtar, 226; Modarressi (1984), 4; Opwis, 64, 78; Keddie, 18, 308; Marcinkowski, 98, 101; Matsunaga, 323, 326-7; Nurizad/Qabel, "Porseshha". Mainstream Shi'i thought is Mu'tazilite in its contention that God and his laws follow reason, justice and natural law.

(discerning benefit), or *salah al-Muslimin* (the benefit of the Muslims), one variant being *masalih al-mursala* ('unattested benefits', in matters for which there is no authoritative text) – is a tool for identifying laws. Though some scholars argue that the Twelver Shi'a classically reject it, modern Iranian jurists acknowledge it¹⁶.

Some scholars emphasise the *mursal* ('unattested') component of the phrase *masalih al-mursala*: these benefits do not contravene sacred laws because the shari'a is silent about them. This idea is further justified by the notion, established among the Twelvers, that the essence of law is the observance of *masaleh* and *mofassad*, and the entire purpose of the sacred law is to protect five things, namely life (*jan*), property (*mal*), faith (*din*), reason (*'aql*) and offspring or lineage (*nasl, nasab*). Further support comes from related principles including the *asl-e ebahe* (default permissibility), the *qa'edeye la zarar* (Islam inflicts no harm) and the permissibility of avoiding *'osr* and *haraj* (hardship and harm). If a principal aim of the divine law is to protect humanity's welfare, the argument continues, it is at least permissible to use their welfare as a basis of legislation wherever scripture is silent; for instance, the infrastructure of the modern Iranian state is based on *maslahat* because no scripture prescribes it. Indeed, one is only bound by explicit scriptural prohibitions, so if anything contains a *mafsadeh* (detriment) unbeknownst to us but nevertheless appears advantageous, we are not culpable for allowing it in good faith. Some, including the conservative Ayatollah Mar'ashi Shushtari, continue that instead of providing individual detailed commandments for all possible contingencies, which would have been cumbersome and inefficient, God provides general principles by which to discern the correct course of action in response to any contingency. As well as being streamlined and efficient, this allows for laws to be tailored to the varying conditions of time and place (*moqtaziyyat-e zaman va makkan*, 'the exigencies of time and place') in matters which are neutral in the eyes of the divine law¹⁷.

¹⁶ Mohammadi, 227-34; Tabari (Keyvan), 106; Dutton, "Sources", 16-20; Waines, 84; Krawietz, 186-7, 190; Jokisch, 121-2, 128; Mar'ashi, 35-6, 38-9, 44, 51; Farhangi, 92; Niknam, "The Islamization", 18; Peters, 19; Akhavi, "Shiite theories", 141; Arjomand, "Shari'a", 160; Shah, 470-1; Ford, 35 and note 159; Khatami, 7. Consult Opwis for details on *maslaha*.

¹⁷ Ja'fari Langarudi, *Maktabha*, 84, 115-9, 121-2, 158-62; Mohammadi, 227-34; Mar'ashi, 35, 37-45, 47, 50-5, 57-60, 239; Khosroshahi, 247-50; Mo'meni, 73; Baiburdi, 23-4; Nobahar, "Be suye", 341, "Qachaq" 199, "Tanfir", 134, 137-8, 156-8; Farhangi, 90-2; Mokhtari, 616, 618; Matsunaga, 325-6.

There exists also the concept of ‘assessing benefits’ (*maslahat-sanji, sanjesh-e maslahatha*), related to the idea of primary and secondary commandments. Primary commandments (*ahkam-e avvalieh; sing. hokm-e avvali*) are the general, default ones, such as the prohibition on consuming alcohol or carrion or the obligations of prayer or fasting. Secondary commandments (*ahkam-e thanaviyyeh; sing. hokm-e thanavi*), a subset of which are ‘distress commandments’ (*ahkam-e ezterari*), are those that apply to special circumstances. An example of a ‘secondary commandment’ is that which prescribes that one’s prayers be shortened and one’s fast be abandoned when one is travelling. The obligation (*wujub*) to consume alcohol, carrion or other forbidden comestibles in order to save one’s life or the life of another is also a *hokm-e thanavi*: since the obligation to preserve (human) life overrides most other considerations, it can transform the forbidden actions which it necessitates into obligatory actions (coercion in murder being an exception to this rule). Again, this is crucial to the concept of *ezterar* (distress) and it is the reason why, for instance, in a famous narration, a woman who committed *zina* in exchange for water was acquitted by the Imam Ali: the necessity to avoid hardship by obtaining water overrode the general prohibition of *zina*. The general idea is that a greater necessity or benefit overrides a lesser one; and this allows less important laws to be broken when they conflict with more important laws¹⁸.

This can ultimately evolve into the doctrine whereby the interests of the Islamic state, as the protector of Islam itself, override all other considerations, so that *maslahat* can even contravene explicit scripture if necessary.

The rationale behind this concept is roughly as follows. Muslims’ paramount obligation is to ensure that God be obeyed and worshipped; in other words, to ensure the survival of Islam. True Islam is of course *Ithna ‘ashari* (Twelver) Shi‘i Islam, and the only country that implements it is the Islamic Republic of Iran. If the Iranian regime were to fall, or if the Iranian state were weakened or attacked, Islam itself

¹⁸ Mar‘ashi, 38-9, 51; Nobahar, “Tanfir”, 133-5, 138-40, 153-9, 160-1, 163-71, “Be suye”, 341, “Qachaq”, 199, 207, 216; Gilani, 86-7, 94; Deh Abadi, 68; Khomeini, 336-7, 367; Mortazavi, 74, 77, 88; Zera‘at (1385), 184-7; Gorji, 33; *Sharh-e Lom ‘e*, 84; Nurbaha, “Keyfar”, 127-8; Baiburdi, 23-4; Farhangi, 79, 98-102, 104; Mohammadi, 227; Shahrudi, 318; Kalmbach, 46; Clarke, 301.

would be endangered by its paladin's affliction. Therefore whatever protects the regime is Islamically obligatory, because it safeguards Islam itself, even if it contravenes individual divine commandments. This is a major element of Khomeini's doctrine of *velayat-e motlaqeh-ye faqih* – absolute rule of the jurist – and it is the *raison d'être* of the *Majma'-e Tashkhis-e Maslahat-e Nezam*, the 'Council for Discerning the Benefit of the State', also known as the Expediency Council. It can force laws through in the State's best interests even though the Guardian Council (who can veto laws for being un-Islamic) deem them incompatible with Islam. For example, in 2003 it amended the Civil Code (article 1169) to give mothers custody of children if fathers were proven unsuitable. Such pragmatism has led to various changes of heart by the government, in matters ranging from contraception and the preservation of pre-Islamic monuments to banking laws and female enfranchisement, as it gradually realised that *maslahat* and practical necessity had to be taken into account. According to several scholars, Khomeini's ideas increased in pragmatism as the Shah's overthrow became ever more desirable, and especially after Khomeini became head of state and encountered the necessity to render that state viable. Nevertheless, conservative voices prevent *maslahat* from causing many radical changes, decrying its indiscriminate use as a wild card to transform the divine law into an entirely human law. The prolonged battle over stoning is a testament to this¹⁹.

6.3. The axiom against causing hatred of the faith.

The *qa'edeye hormat-e tanfir az din* – axiom against causing hatred of the faith – is implicit in a number of Qur'anic verses (including 6:108, which forbids insults to heathen gods lest the infidels retaliate by insulting God, and 3:159, which says that

¹⁹ Mar'ashi, 35-6; Farhangi, 98-104; Gilani, 87, 94; Nobahar, "Tanfir", 140-5, 149-54, 159, 163-71; Kar/Vahdati; Tabarestani, 21-34; Roy, 212-3; Keddie/Monian, 528-32; Abrahamian (1993), 34-5, 54-5, 138-141, (1999), 167, 171-2; Mayer, "The fundamentalist", 119-21, 142; Zubaida, 108-118; Amini, "Parvandeha", 4, 10-11; Niknam, "The Islamization", 17-21, "L'Islamisation", 47-59; Behrooz, 96-100; Roy, 202-14; Clarke, 289; Khomeini/Curzu, 183, point 1; Rajaei, 222-31; Moroni, 233; Mir-Hosseini, "Stretching", 291-2, 298, 313; Ansari-Pour (1997), 335, 342-51; Martin, "Religion", 36-45, *Creating*, 110-1, 173, 199-200; Wright, 268; Lawyers' Committee, 11-4; Menashri, 120, 123-4, 127; Esposito, 3-5, 8-11; Boroujerdi, 14; Esfandiari, "The politics", 83-6, 89; Tabari (Keyvan), 101-2, 106; Schweizer, 293; Khosrovani, 48; Keddie, 287-8, 292, 315; Arjomand, "The state", 156-7, "Shi'ite jurisprudence", 96-105, "Shi'ite Islam", 305, 308-9, 311, 313, 315-6, *Turban*, 100-2, 149, 163-4, 182-3, "Ideological", 201-3, 'Shari'a', 160; Sachedina, "The rule", 133; Krawietz, 186; Mokhtari, 620-1; Ridgeon, 264; Tamadonfar, 208-9, 213-5, 218; Matsunaga, 325-6; Abbasqolizadeh, "Nezam".

the Prophet was lenient and calm since people would have fled from him if he had been stern), narrations (including those forbidding the implementation of *hudud* in enemy lands, or those forbidding excessively long communal prayers lest they discourage attendance) and juristic texts, but it was generally not expressed explicitly until recently. However, the concepts of *maslahat*, the paramount necessity of protecting the faith or the Muslim community, and the divine law's adaptability to the exigencies of time and place (*moqtaziyyat-e zaman va makkan*) in certain respects, as explained above, facilitate the development of new axioms and principles of *fiqh*.

This particular axiom states that, considering the necessity to ensure the survival of Islam, it is desirable to attract people to it and undesirable to endanger it or deter people from embracing it. This 'secondary commandment' overrides all commandments except those whose contravention Islam expressly forbids irrespective of risk or circumstance (including the prohibition of murder, which most jurists do not excuse even under coercion or danger of death, as confirmed by the penal code, article 211, and the 2012 penal code, articles 139 and 376). 'Hatred of the faith' can take various forms ranging from discontent among Muslims, which causes them to doubt their faith, to the implementation of punishments which cause non-Muslims to associate Islam with barbarism. This axiom, expressed or implied not infrequently by Iranians (including Ayatollah Montazeri) calling for change, has apparently caused jurists who regarded stoning as scripturally obligatory, including Khomeini, to recommend its suspension if it damaged the faith and the Muslims (*vahn-e din va Mosalmanan*). Incidentally, the phrase *vahn-e nezam*, 'weakening the State', is used in article 221-5, section 5, note 4 of the penal code bill as the condition allowing commutation of stoning to hanging or 100 lashes²⁰.

²⁰ Nobahar, "Tanfir"; Shahrudi, 195, 203-5; Gilani, 86-7, 94; Zera'at (1383), 242, (1385), 184-7; Khomeini, 336-7; Khezer Heidari; Radio Farda, "Matn"; Mortazavi, 74, 77-8, 88; Gorji, p. 33; *Sharh-e Lom 'e*, 84; Nurbaha, "Keyfar", 128; Farhangi, 98-102, 104; Amini, "Parvandeha", 4, 10-11; Abbasqolizadeh, "Nezam"; Eshkevari, "Ta'mol"; Keddie, 321; Qur'an 3:159 (Al-e Imran), 6:108 (An'am); penal code bill, art. 221-5, part 5, note 4.

6.4. *Hudud* were intended to be applied sparingly if ever.

Some modern jurists, both reformist and deeply conservative and pro-regime, have argued that the requirement for four witnesses in ‘carnal’ crimes indicates that they were meant to be prosecuted rarely – for example if carried out so shamelessly that four people could witness them. (This idea is sometimes accompanied by the notion that some *hadd* penalties, including stoning, existed in pre-Islamic society or in previous Abrahamic religions and were simply confirmed, rather than decreed, by Islam). I have heard this concept cited by several judges arguing that Islamic penal laws are not as brutal and incompatible with modern society as is commonly thought, and that the mere presence of harsh penalties in scripture does not determine under what circumstances and how frequently they should be implemented. One judge, plainly calling the *qat‘-e yadd* (‘hand cutting’) punishment for theft ‘barbaric’, opined that amputation was only for professional thieves repeating the crime an inordinate number of times. Another, giving me the documents for theft case 2, emphasised the large number of complainants and repetitions of theft as exceptionally justifying amputation in that case (though legally these are irrelevant). Yet another judge explained that since witnesses to carnal crimes must legally have seen penetration itself, proof by testimony is impossible and they can only be proven by confession: the punishment is for the idiocy or shamelessness of confessing. This is an example of reliance on uncodified Shi‘i law: narrations require witnesses to have observed penetration (chapter 2, section 6.3), but the penal code (articles 77 and 117) only requires them to have observed the act without further specifications.

This judge, like many who emphasise the strictness of proof in *hudud*, did not mention *‘elm-e qazi*, which, as the case studies show, can easily bypass these vaunted strictures; nor did he acknowledge the possibility that forced, unintentional or otherwise invalid confessions could be used as evidence. The reformist Grand Ayatollahs Montazeri and Sanei, emphasising the impossible stringency of proof, have speculated that the punishment is only a deterrent or for the shamelessness of confessing; Montazeri has doubted the applicability of *‘elm*. The stringency of proof in *hudud* has been used by reformists to promote leniency, but also by government

officials, judges and pro-regime scholars to emphasise the consequent supposed rarity (or non-existence) of *hadd* sentences such as amputation and stoning, perhaps to counter the image of barbarity created by Iran's use of harsh punishments²¹.

6.5. Islam is compatible with human rights.

Both Iranian and international scholars and authorities have sought to counter the stern image of Islamic law by arguing that Islam is adaptable to the exigencies of the times, that it is inherently lenient, that its commandments which are now considered objectionable were merely the result of social necessity during the early Islamic era and can evolve, or that its criminal laws have been misconstrued. For example, Ayatollah Sanei holds that, considering the principle whereby Islam should be acceptable to believers, laws which are difficult to accept should be reformulated, and of all equally valid scriptural interpretations, those most consonant with current ethics should be chosen. Several scholars have expressed similar views and suggested that some scriptural commandments were intended to apply to all times and places and others were intended as adaptable to different circumstances. Some declare that heavy scriptural punishments (including *hudud*) for crimes represent their maximum penalties, not the penalties they always carry²².

²¹ Nobahar, "Ahdaf", 154-5, 157, 161, "Be suye", 336, "Qachaq", 204-5; Mortazavi, 30; Aghaei, 128-9; Picheca, 44; Niknam, "The Islamization", 20; Iran Bar Association; Amini, "Boghz", "Parvandeha", 2-3, 7, 9-11; Abbasqolizadeh, "Nezam"; Amnesty International, "Iran: end", 3-4; Alasti, 28-9; Shams Nateri, 404-6; Bielefeldt, 245-6; Mazrui, 247; Bucar/Fazaeli, note 51; Kar, "Iranian law", 10; Schacht, *Introduction*, 176-7; Radio Farda, "Matn-e kamel"; Ravayat; Bultan; communication with judges.

²² Nobahar, "Qachaq", 187, 192-3, 199, 204-5, "Be suye", 335-7, 340-1, "Ahdaf", 138-40, 148-59, 161-2; Khezer Heidari; Kar, "Iranian law", 8-13; Baderin, "Islam and the realization", 11-2, 15-18, 21-5, "Introduction", xv-xxiii, xxix-xxx; Khatami, 47-8, 58-60, 88, 93-6, 105-18, 131; Picheca, 43, 56, 58; Menashri, 123-5, 134; Abrahamian (1999), 140; Ibramsa, 10; Mashini; Kar and Vahdati; Sanusi, "The Shariah"; Esfandiari, "Iran: stoning"; Aman; Jeffries; De Luce; Campbell; Muhaqqiq Damad, "International", 287-90; Mokhtari, 616-9; Peters, 18-22; Nassar, 4-5, 7; Daniel Price, 283; Bielefeldt, 241-7; Rezaei, "Islamic sharia", 107, 113-4, 116, 118-24; Schacht, "Problems", 256-61, 267-8, 270-2; Eickelman, 19-20, 23-5; Tibi, 94-5; Kutty, 2-3, 5; Ahmad, 9-14; Fish, 325-6; Takeyh, 288, 291-6; Wright, 260, 263; Filali-Ansary, 61-3, 66; Schweizer, 298-9; Keddie, 17, 269, 281, 293-7, 304-11, 319-21; Hefner, 184-5, 188-9, 195, 197, 200-1; Khadduri, 16; Morgan-Foster, 376, 393-5; Barlow/Akbarzadeh, 418-9; Sardar Ali; Shah; Razavi, 1227-31; Fazaeli, 3-6, 8; Kusha, 94-6, 113, 116-7, 288-9, 293-5; Ahmed, 22-7; Matsunaga, 320-7; Mirbagheri, 312; Mir-Hosseini, "Stretching", 291-2, 298, 313, "The construction", 1-4, 8-14, 20-6, "The politics", 10-15, "Sharia", 362, 365-6.

Occasionally mentioned is the idea that *hudud* are applicable only in a society free of want (and therefore the impetus for crime). This notion, attributed inter alia to Khomeini²³, would entirely remove the necessity for debate regarding the application of irreversible *hadd* penalties.

Another claim is that the harsh scriptural penalties were only intended as deterrents, while their impossibly stringent proof requirements would prevent their actual application. (Again, this overlooks the ease of sentencing allowed by *'elm-e qazi*). *Qesas-e nafs* – retaliation for murder – has been described as an indication of Islam's respect for human life. The emphasis on its deterrent function and the exhortation of the *awliya-ye damm* ('keepers of the blood', the victim's heirs who can demand the murderer's execution, accept blood money instead or pardon completely) to forgive murderers have been presented as signs of the divine law's merciful spirit²⁴.

Sometimes the movement to reconcile Islam with humanistic values manifests itself through novel scriptural interpretations. For example, Qabel and Bazargan have argued, through etymology and scriptural usage, that the word *rajm* indicates banishment, not stoning (though the reformist *mujtahid* Eshkevari counters that some narrations describe 'stones', undermining this interpretation). Some modern scholars (including Bazargan and Qabel) have used similar arguments to interpret 'the thief, male or female, cut off their hands' (Qur'an 5:38) as meaning that the hand is 'marked', or that thieves must be 'cut off' from opportunities to steal. Others declare that the punishments for *zina* were only intended for professional adulterers, meaning prostitutes, or that the punishment for 'women guilty of lewdness' of being 'confined to houses until death takes them or God opens a way for them' (Qur'an 4:15) indicates a quarantine to avoid contagion, the 'way' opened by God being simply repentance or marriage. Some argue that the prohibition against adulterers and idolaters marrying anyone but each other (Qur'an 24:3) indicates that adultery was not intended to be punishable by stoning, whereby they would not survive to

²³ Mottahedeh, 180; Peters, 18, 22; Bielefeldt, 245-6.

²⁴ Tabrizi, 256-60; Amini, "Boghz", "Parvandeha", 10-11; Nobahar, "Qachaq", 204-5, "Ahdaf", 138-40, 148-59, 161-2, "Be suye", 336; Aghaei, 128-9; Mashini; Iran Bar Association; Esfandiari, "Iran: stoning"; WLUML, "Iran: we are"; Khezr Heidari; Bielefeldt, 245-6.

marry. (In a similar spirit but regarding women's rights, Muhammad Abduh, a reformist 19th-century Egyptian Grand Mufti and Islamic modernist, famously argued that since the Qur'an allows polygyny contingently on the husband's ability to treat his wives equally (4:3) and elsewhere declares that men cannot treat their wives equally (4:129), it implicitly forbids polygyny)²⁵.

Several scholars have claimed that Islam is lenient, egalitarian and completely compatible with democracy, human rights and personal freedoms, which it anticipated centuries before the Enlightenment, and that its patriarchal misinterpretation by self-serving authorities or adulteration by culture-bound custom have caused its misconception as a force for inequality and minute control of personal matters. Compatibility of Islam with democracy often associates 'consultation' (*shura*) as in Qur'an 3:159 ("consult them in affairs") and 42:38 ("those who ... conduct their affairs by mutual consultation") with democracy, an idea enshrined in article 7 of the Iranian Constitution and supported by Ayatollah Montazeri. However, there also exists the argument that Islam offers another version of human rights or an alternative form of freedom: not the secular liberty limited only by that of others, but freedom to pursue 'rectitude' and attain a spiritual development that secular models lack. Indeed some scholars characterise absolute freedom as slavery to animalistic desires, and obedience to God as liberation from them by the divine truth. Some add that Islam allows freedom of opinion – as long as those opinions are not contrary to Islam²⁶.

²⁵ Mashini; Bielefeldt, 244-5; Krämer, 31-3; Keddie, 30; Morgan-Foster, footnote 144; Sardar Ali, 450-1; Shah, 483-5; Kusha, 109-10; Eshkevari, "Aql"; Qabel, "Barresi", "Porseshha"; "Misconception": <http://www.misconceptions-about-islam.com/cut-off-hands-theft.htm>; Universal Unity: http://www.universalunity.net/Punishment_For_Theft.htm; Quran Inspector: http://submission.org/d/x/Quran_Inspector_EN_AR.html#4; Qur'an 4:3, 4:15, 4:129 (Nisa'), 5:38 (Ma'iddah), 24:3 (Nur).

²⁶ Khosroshahi, 177-8, 184; Nobahar, "Qachaq", 187, 192-3, 199, 204-5, "Be suye", 335-7, 340-1; Kar, "Iranian law", 8-13; Khezr Heidari; Abdo; Baderin, "Islam and the realization", 11-2, 15-18, 21-5, "Introduction", xv-xxiii, xxix-xxxii; Khatami, 7-8, 10, 16, 24-5, 42, 44-8, 65-6, 72-3, 75-9, 88, 93-6, 103-23, 128, 131; Menashri, 123-5, 134; Arjomand (1981), 313-4; Newman, "Khomeini", 579-81; Kant, 72-8, 124; UN Economic and Social Council, "Report", paragraph 16; Aman; Jeffries; De Luce; Campbell; Kadivar, "Political rights", 115; Salimi, iv-ix; Javadi Amuli, 16-7; Khamini'i, 45-50, 54-8; Martin, *Creating*, 101-3, 140-1, 172; Esfandiari, "The politics", 81-2; Mokhtari, 616-9; Boroujerdi, 15; Bielefeldt, 241-7; Rezaei, "Islamic sharia", 107, 113-4, 116, 118-24; Akhavi, "Shiite theories", 141-3, 150; Akbarzadeh, "General Introduction", 8-13; Mayer, "The universality", 316, "The respective", 78-80, 84, 96, "The Islam", 0-1, 6-8, 13, 27; Kamrava (2006), 133; Mazrui, 250-1; Eickelman, 19-20, 23-5; Kutty, 2-3, 5; Ahmad, 9-14; Takeyh, 288, 291-6; Hamdi, 134, 136, 138;

Several scholars, including the reformists Kadivar and Qabel, argue that Islamic law is flexible because its essence is binding, while its details are adaptable to circumstances, especially if, like stoning, they were absorbed from pre-Islamic praxis (*ahkam-e emza'i*, 'endorsed commandments') rather than being introduced by Islam (*ahkam-e ta'sisi*, 'decreed commandments'). (Ayatollah Mar'ashi dismisses this, arguing that Islam's endorsement renders even pre-Islamic laws authoritative; however, they can be overridden through *maslahat*). Some, including the reformists Malekian and Mojtabeh Shabestari, argue that Islam introduced ethical goals and improved upon existing conditions within the limits of its environment, and this improvement should not be abandoned where the Prophet left off²⁷.

Concluding remarks.

Several principles of Shi'i law promote lenience. Some could easily shape legal usage or reform without departing significantly from extant law. Others, incorporated into a judicious bid to minimise 'harm' or 'harm to the regime', could bring radical change while maintaining an Islamic pedigree, thereby solving the problem of permitting lenience while maintaining an Islamic state. It is clear from the extensive

Turam, 160-1, 163, 165, 176; Filali-Ansary, 61-3, 66; Esposito/Piscatori, 50-1; Kepel, 257; Jahanbegloo, 26; Keddie, 17, 269, 281, 293-7, 304-11, 319-21; Hefner, 184-5, 188-9, 195, 197, 200-1; Faqir, 335, 337-8, 340; Khadduri, 15-6; Osanloo, "Whence", 43; An-Na'im, "Islam and human rights", 402-3, "Islam and int'l law", 78; Barlow/Akbarzadeh, 417-9, 421; Sardar Ali; Shah; Ford, 38-9, 51-2; al-Zuhili, 79-84, 86-91, note 54; Hashemi, 556, 564, 566, note 98; Rehman, 571-2, 583-6, 594; Berween, 602-6; Afrasiabi, 66; Sanusi, "The Shariah"; Afsaruddin, 98-100; Fazaeli, 3-6, 8; Tamadonfar, 205; Razavi, 1227-31; Chase, 6; Kusha, 95; Kalmbach, 43; Ahmed, 22-7; Matsunaga, 320-7; Mirbagheri, 311-3, 315; Mir-Hosseini, "Stretching", 291-2, 298, 313, "The construction", 1-4, 8-14, 20-6, "When", 121, "The politics", 10-15, "Sharia", 362, 365-6; Constitution, article 7; Qur'an 3:159 (Al-e Imran), 42:38 (Shura).

²⁷ Schacht, "Problems", 258-62, 271; Mojtabeh Shabestari, "Mosahebe"; Malekian, "No-andishi"; Eshkevari, "Ta'mol"; Kadivar, "Qabul"; Nurizad/Kadivar; Qabel, "Barresi" (part 5); Nurizad/Qabel; Baqi; Rezaei, "Islamic sharia", 115-24; Mir-Hosseini, "The politics", 10; Opwis, 69-72, 74-5, 78; Mokhtari, 616-8; Bielefeldt, 233-4, 241-3, 246; Akbarzadeh, "General Introduction", 8-9; Peters, 18-20; Eickelman, 19-20; Kutty, 3; Takeyh, 291; Filali-Ansary, 69; Esposito/Piscatori, 53; Martin, *Creating*, 102; Schweizer, 301; Keddie, 294, 304, 307-8; Hefner, 195; Faqir, 335; Morgan-Foster, 374, 393-6; An-Na'im, "Islam and human rights", 401-2; Barlow/Akbarzadeh, 413, 417-9, 421; Sardar Ali, 425-7, 429-30, 435-6, 448, 455-9, notes 154-5; Shah, 461-2, 470, 472-7, 485; Baderin, "Introduction", xxi, xxix, "Islam", 15-7, 21-3; Kar, "Iranian law", 9-10; Ahmed, 25-7; Razavi, 1228-9; Mirbagheri, 312; Matsunaga, 320-9; Mir-Hosseini, "The construction", 1-4, 8-14, 21-6, note 12; Nobahar, "Be suye", 336, 340-1. Given the male surplus in several Muslim countries and the problems of overpopulation, one could justify polyandry through *maslahat* just as some justify polygyny when the opposite problems exist (Shah, 483-5; Fish, 316-9, 321-2, 324).

discussion among modern Iranian jurists that avenues for maximising lenience are being explored and could, if the authorities collaborated, facilitate lenient reforms.

4. Crime-specific regulations.

While chapters 2 and 3 explained, respectively, laws and principles affecting all *hudud*, this chapter describes regulations specific to *hadd* crimes which can carry irreversible penalties in the first instance. It begins by discussing conditions affecting multiple crimes (sections 1-2), and then gives definitions and regulations for each crime in turn.

Unless footnotes refer to codified laws, these definitions and regulations come from Shi'i law as explained by modern Iranian jurists, and, where applicable, earlier jurists to whom they refer. Where footnotes to basic definitions give both codified laws and scholarly sources, this indicates that those juristic sources agree with those codified laws, and any exceptions (e.g. parameters in juristic texts absent in codified law) are pointed out.

Reliance on Shi'i law (as presented by Iranian jurists) is necessary in discussing these crimes and punishments because, as explained earlier, the codified law is often vague and implies reference to Shi'i law, which legal specialists acknowledge as ultimately authoritative. The case studies (chapters 5-9) also show that judges and lawyers routinely use Shi'i law. Often, especially for basic definitions, the codified law mirrors the consensus of Shi'i jurists. With more complex issues, the codified law represents one of several positions derivable from Shi'i law, and not always the most lenient one.

As well as rendering the case studies in chapters 5-9 comprehensible by providing a compendium of relevant rules, this chapter also discusses important obstacles to lenience. For example, gender inequalities in divorce and child custody laws hinder lenience in the case studies, and the definition of rape as 'coercive *zina*' can facilitate prosecution of those who report rapes but cannot prove coercion.

The discussion also reveals the sheer complexity of many parameters governing these *hudud*, and the consequent proliferation of juristic opinions about them. This

multiplicity, which can favour lenience, contrasts with the simplistic harshness observed in several forthcoming case studies. It also contains the possibility of an equally Islamic, but more lenient, code of laws.

1. Extent of penetration and testimony to it.

Crimes involving penetration of the male organ (sodomy, *zena* and pimping) depend on the glans being entirely hidden. Various narrations require evidence to *zena* or sodomy to describe penetration ‘as of the rod (*mīle*) into the collyrium bottle (*sormedan*)’ or ‘the rope into the well’ and to remove any doubt regarding coercion¹.

A consummated marriage, which creates *ehsan* (access to a spouse²), also requires full penetration of the glans. Not even children prove consummation, because pregnancy could have occurred through non-penetrative insemination. Though implausible, parthenogenesis is accepted by several pre-modern and modern jurists including Khomeini, and two court rulings acquit pregnant women (one found to be a virgin) of *zena* because non-penetrative insemination was not disproven³.

These parameters are given in far greater detail in Shi‘i juristic works than in the penal code, which merely requires observation of the carnal act, not specifically of genital contact or its extent, in witnesses to carnal crimes (articles 77, 117, 128; similarly, penal code bill, article 213-2). Likewise it makes *ehsan* dependent on copulation (article 83) without specifying full penetration of the glans. The 2012 penal code explicitly requires direct observation (articles 182, 199) and penetration of the glans (articles 222, 232, 234).

¹ Zera‘at (1383), 251-2, (1385), 96, 104, 217, 223, 243; Mo‘meni, 81-4, 90, 103-5, 128-9, 148-9, 151, 154, 161, 163; Khomeini, 306-7, 322, 324, 327, 329-30, 342, 345; *Lom‘e* (vol.1), 175, (vol.2), 233-6, 242-4; *Sharh-e Lom‘e*, 7, 10, 20, 31-4, 59, 72, 82; Deh Abadi, 39; Mortazavi, 31-2, 40-4; Gorji, 13, 15-6, 19-20, 42; Bazgir, 337-41; Hojjati, 358, 362; Nobahar, “Ahdaf”, 148-9; Clarke, 298.

² See section 3.4 below.

³ Mo‘meni, 103-4, 128-9, 148-9, 151, 154, 161; Khomeini, 306-7, 324, 329, 345; *Lom‘e*, 236, 244; *Sharh-e Lom‘e*, 31-5, 58, 82; Zera‘at (1385), 96; Deh Abadi, 39; Gilani, 45-6; Mortazavi, 31-2; Gorji, 19; Hojjati, 321-2; Bazgir, 201-3; Clarke, 295.

2. *Mahduroldamm* status.

Mahduroldamm means ‘whose blood is forfeit’; *damm* is blood and *hadar* is ‘expendable’. The concept is relevant to *hudud* whenever *hadd* crimes also involve murder. Since a few such instances occur in the case studies, *mahduroldamm* status should be explained.

The idea of *mahduroldamm* is that some people deserve to die, for instance by committing crimes carrying the death penalty or being enemies of God, and their murder is therefore unpunishable. According to article 295, section j, note 2, of the penal code, a murderer who proves *belief* in the victim’s *mahduroldamm* status in court cannot be executed for the murder, but must pay *diyeh* (blood money) if the belief was incorrect, and nothing if it was correct. In April 2007, six militiamen were reportedly acquitted by the Supreme Court on the basis of this article, after murdering five people whom they believed ‘morally corrupt’. Two, killed for having an illicit love affair, were in fact married to each other, but the killers were acquitted because they did not know this⁴.

There is a narration in which a man says that if he found his wife committing adultery with another man, he would kill both, and the Prophet retorts that four witnesses would still be necessary to prove the pair’s guilt. This narration is used to argue that a husband can kill his wife caught in adultery, but must prove guilt or be executed. Furthermore, he must have seen the required amount of penetration, and can only kill the woman if he knows she consented. Another narration says that whoever breaks into a house with the intent of theft or debauchery is *mahduroldamm*. Only wives (and their lovers), not other relatives, can be killed if caught in adultery; and a wife who witnesses her husband’s adultery not only cannot punish him but receives eighty lashes for slander if she divulges what she saw. (A man can perform *li’an* – divorce through his oaths that his wife committed adultery and her oaths to the contrary – if he suspects his wife’s infidelity but cannot prove it; wives have no such option). The concept of *mahduroldamm* has other applications:

⁴ Penal code articles 184, 226 and 295 note 2; Sepehri.

for instance, there is no *qesas* (execution for murder) for killing apostates, who are *mahduroldamm*, and injuries suffered while unjustifiably attacking another person are ineligible for retribution because the aggressor's limbs are *hadar*. *Koffar-e harbi* – infidels who are enemies of Islam – are also *mahduroldamm*. In the codified law, article 630 of the penal code allows a man who catches his wife in adultery to kill both parties if he knows the woman consented, and if not, only the man⁵.

The concept of *mahduroldamm* is in the penal code bill and the 2012 penal code. Both also specifically allow the murder of wives and their lovers caught in adultery⁶.

Regarding case studies, the defendant in adultery case 10 was apparently forced to confess to adultery with a man to exonerate her husband of his murder. Adultery case 11 and sodomy case 3 also display the *mahduroldamm* concept in action.

3. *Zena*.

Zena is illicit penetration between a man and a woman. It has multiple 'variants', including adultery (*zena* while married), incest (*zena* with blood relatives), and rape (coercive *zena*). These, and other parameters, are discussed in subsections 3.1-8. The analysis of *zena* and its implications reveals the interpretability of relevant scripture, and unearths contradictions and institutionalised inequalities within the law.

Definitions of *zena* frequently recurring in contemporary Iranian juristic texts, themselves paraphrasing older juristic texts, are as follows. *Zena* is the anterior or posterior penetration of a woman by the generative organ of a man who is forbidden to her, so that its glans is entirely hidden, in the absence of doubt, coercion or distress, and in the presence of *bulugh* (the age of majority), *'aql* (mental sanity), *ekhtiar* (free will), *qasd* (intention) and awareness that the act is forbidden (these are the conditions of responsibility). *Zena* is either adultery, where the conditions of

⁵ Gilani, 105-6; Shahrudi, 64-6; Mo'meni, 151-2; Khomeini, 410, 418-9, 424; Zera'at (1383), 301; *Lom 'e*, 241, 267, 291-2; Shahid, *Qesas*, 89; *Sharh-e Lom 'e*, 61, 215; Amini, "Parvandeha", 7; Civil Code article 1052; penal code article 630.

⁶ Penal code bill article 313-1; 2012 penal code article 303.

ehsan apply and the punishment is stoning (*rajm, sangsar*), or fornication, where they are absent and the punishment is a hundred lashes. Special variants are rape (coercive *zena*), incest with blood relatives, *zena* with one's father's wife, *zena* with a Muslim woman (for non-Muslim males), or *zena* repeated the fourth time (some say the third) after the *hadd* has been applied for the previous three (some say two) instances. These carry the death penalty. (The codified law, apart from the new 2012 penal code, does not mention the glans or distress, and prescribes death on the fourth repetition. It otherwise reproduces these parameters. The 2012 penal code, article 222, does mention the glans).

Zena is proven by: four confessions made before the judge trying the case, while under the conditions of responsibility enumerated above, and, according to some jurists, made in four separate court sessions; or the testimony, describing full penetration of the glans, of witnesses, four male, or three male plus two female or, according to some, two male plus four female in *zena* punishable by flogging, if the witnesses possess '*adalat* (righteousness), which according to some must be established before testimony can be heard; or, according to some, '*elm-e qazi*. This means either the judge's personal knowledge through seeing the crime, or his conjecture of the crime, deriving either from the two other forms of proof (confession or testimony), or, in another interpretation, from any form of evidence. Pregnancy cannot prove *zena*. In *zena* proven by confession, any death penalty, but no other penalty, lapses with retraction (*enkar*) of confession; furthermore repentance after confession gives the Imam or his representative the discretion of pardon. In *zena* proven by testimony, repentance before the testimony has been completely heard causes the *hadd* to lapse. (The codified law, apart from the 2012 penal code, reproduces these parameters except that it does not mention four confession hearings, specify that '*adalat* must be previously established, or define '*elm*. The 2012 penal code denies the need for four confession hearings, fails to mention pregnancy, requires establishment of '*adalat*, and gives '*elm* sweeping powers: see chapter 2, section 6.4)⁷.

⁷ Penal code articles 63-97, 578; PCCM article 155; Civil Code articles 1262, 1317, 1319; CPC articles 125, 151-4; Constitution article 38; 2012 penal code articles 160-1, 168, 170, 171 note 2, 176, 210-1; Qur'an 24:2 (sura Nur); Khomeini, 300, 317-22, 327-9, 341-2, 345, 373; Zera'at (1383), 216,

Article 637 of the penal code mandates a *ta'ziri* (discretionary) penalty with a maximum of 99 lashes for 'actions against chastity' not amounting to *zina*. Some jurists combine narrations to yield a minimum of 30, and a maximum of 99 lashes ('one stroke below the *hadd*'), for lesser variants of *zina* or sodomy⁸.

3.1. The punishment of children born through *zina*.

In Iran, by default, children born of *zina* do not belong to their parents' lineage, and therefore cannot bear their surnames, be financially maintained or educated by them, or inherit from them. (The exceptions are children conceived through error or coercion, assigned to the lineage of the coerced or misled parent). 'Illegitimate' offspring are denied a *shenasnameh*, the main identity document used in Iran, and therefore many basic rights. Because they do not 'belong' to their parents, they can be forcibly removed from their parents' homes to *Behzisti*, welfare and social service agencies. Furthermore, parents can publicly deny their 'illegitimate' children with impunity, while they are punished with eighty lashes for denying their 'legitimate' children. *Taharat-e ma'ulad* – 'purity of birth', meaning 'legitimacy' – is a necessary qualification for judges and the head of state, positions permanently off-limits to 'illegitimate' individuals irrespective of ability. 'Legitimacy' is also necessary for witnesses. Rejection of testimony is part of the punishment for slander as in Qur'an 24:4 ("flog them with eighty stripes, and reject their testimony ever after"), whereas 'illegitimate' individuals, even if 'righteous' and otherwise qualified, are excluded as if they were criminals. Parents of 'illegitimate' offspring, if the death penalty does not apply to them, will only suffer the temporary sting of the whip for creating them, while those children are punished for the rest of their lives for others' misdeeds before their birth. This is, in its way, an irreversible punishment, which also

226-8, 248, 252-3, 256, 258, (1385), 242-3, (1385/2), 52-3, 62, 205, 209, 213, 225-6, 248-9; Golduzian, 35, 94-8-100-1; Mo'meni, 81-8, 90, 104-7, 147-51, 156, 161, 163; Mortazavi, 14-6, 19-23, 34-5, 41-2, 89-92; *Lom'e* (vol.1), 162, 165-6, 174, 178-9; *Lom'e*, 233-6, 240, 243; Shahrudi, 16-9, 21-2, 34, 38, 53-5, 70; Shahrudi (same book, pardon section), 199, 208; Mohammadi, 302, 335-6; Nobahar, "Ahdaf", 147, 149; Gorji, 13-5, 20-1, 40; *Sharh-e Lom'e*, 16, 20-1, 59, 72, 75, 81, 102; Gilani, 35-6, 63, 103-4; Hojjati, 316, 354-6, 363; Mar'ashi, 235-7; Arabiyan, 51-5, 58, 63-7, 69-70, 73-4; Mohaqqueq Damad, 12-3, 23-33, 36-40; Montazeri, topics 3156-71.

⁸ Penal code article 637; Khomeini, 343-5; *Sharh-e Lom'e*, 79, 106.

contravenes the established principle of individual responsibility, expressed in various Qur'anic verses and narrations⁹.

3.2. Incest and rape.

Incest and rape are defined as varieties of *zina*, incest being 'zina with blood relatives' (*zina ba maharem-e nasabi*) and rape being 'coercive zina' (*zina be 'onf/ikrah*). The penal code simply prescribes execution (*qatl*) for both. Narrations mostly mandate execution with a sword, 'a blow to the neck' without specifying an instrument, or 'a blow with a sword', sometimes with the qualifications 'to the neck' or 'whether it kills or not', sometimes followed by lifelong incarceration for survivors, sometimes not. At least one narration prescribes stoning for incest, for which some jurists believe that the Imam can choose between stoning and the sword-related punishments. Nevertheless, executions for incest or rape generally occur by hanging, which narrations do not mention¹⁰.

Apart from blood relatives (*maharem-e nasabi*) there are two other types of relatives: relatives by marriage (*maharem-e sababi*) and by milk (*maharem-e rezai*). The Civil Code (article 1032) defines blood relatives as siblings, parents and their antecedents or siblings, and offspring and their descendants. *Sababi* relatives (article 1033) are one's spouse's blood relatives or one's blood relatives' spouses. *Rezai* relatives (article 1046) are those who have drunk the same person's milk, as well as the producer of said milk. Marriage is forbidden with all *nasabi* and *rezai* relatives and most *sababi* relatives¹¹.

⁹ Penal code article 142; Civil Code articles 884, 1164-7 and 1313; 2012 penal code articles 140, 247; Khomeini, 245; Behrooz, 95; Zera'at (1383), 216, (1385/2), 206; Nobahar, *Qawa'id*, on personal responsibility; Vahidmanesh; Pourzand; Syed; Hashemi, 549; Sardar Ali, 431 and note 37; Shah, 477, 496; Dalacoura, 236; Zuhili, 80; Berween, 603; Afrasiabi, 66; Hujjati Kirmani, 105-6; Qur'an 24:4 (Nur), 53:38 (Najm), 35:18 (Fatir), 5:105 (Ma'iddah), 41:46 (Ha Mim Sajda or Fussilat), 49:13 (Hujurat); 4:79 (Nisa'). (Some Western nations perpetrate similar injustices, e.g. British Nationality Act 1981, sections 2, 3(6)c; 2002 Nationality, Immigration and Asylum act, contravening ICCPR 26 and UDHR 2, 25.2).

¹⁰ Penal code article 82; 2012 penal code article 225/a; Gilani, 65-6; Zera'at (1383), 230, 232, (1385), 123-5, 130; Mo'meni, 114; Mortazavi, 47-8, 50-1; Gorji, 25; *Sharh-e Lom'e*, 26, 28-9; Bazgir, 153-6, 159-68, 176-8; Mar'ashi, 237; Mo'meni, 121-2; Montazeri, topic 3159; Khomeini, 332-3.

¹¹ Civil Code articles 1031-3, 1045-9; Zera'at (1383), 231, (1385) 127.

A common juristic opinion, represented in codified law, is that only incest with *nasabi* relatives (plus one's father's wife) carries the death penalty. Jurists frequently insist on certainty of the blood tie and the parties' awareness thereof, exercising 'caution in shedding blood'¹² (chapter 3, section 1).

Rape contains two elements: *zina* and coercion (*'onf, ikrah, ejbar*). Some jurists point out that *ikrah* need not be physical. Most consider any claim of *ikrah* in *zina* to be acceptable by default, without proof, as does article 67 of the penal code. A minority insist that coercion be proven, since the default is lack of coercion¹³.

In several known cases, women who reported rapes could not prove coercion and were punished for *zina*; sometimes they named attackers, who denied everything and were released, undermining the women's rape claims. (The 2012 penal code, article 218, note 1, may limit this by requiring further investigation of accused rapists who deny responsibility). Women who report rapes or consistently claim *ikrah* are frequently called *zanieh* (fornicatress) in court documents even if ultimately acquitted as coerced. In one case, a girl who reported a rape supported by video evidence was convicted because her prior loss of virginity meant that she was a 'loose woman' who must therefore have consented to *zina*. Some minors have been condemned to death for incest despite consistently claiming rape. Risks in reporting rape exist not only in Iran but in other countries where rape is defined as *zina* plus coercion, for example Pakistan, Mauritania and Nigeria. In October 2008, a 13-year-old Somali girl (probably unmarried) reported her rape to the authorities and was publicly stoned to death for *zina*. The risk of reporting rapes is magnified by the severe penalty (death) for rape: acknowledging coercion potentially means having to execute accused rapists. This can be solved by declaring the woman's rape claim sufficient to exonerate her but not to convict her alleged attacker without additional proof. Khomeini advocates this¹⁴.

¹² Zera'at (1383), 229-31, (1385), 126-8; Hojjati, 330-1; Gilani, 64; Mo'meni, 113-6; Khomeini, 332; Mortazavi, 47-8; Bazgir, 153-6, 159-68, 258-60; Gorji, 25; *Sharh-e Lom'e*, 26.

¹³ Penal code article 67; 2012 penal code article 225/d; Zera'at (1385), 130-2, (1383), 232; Saberi, 304-6; *Lom'e*, 236; Khomeini, 329; Mo'meni, 105; Bazgir, 176-8; Hojjati, 310, 356; Gorji, 15-6.

¹⁴ Hojjati, 310, 356; Zera'at (1383), 232, (1385), 131-2; Bazgir, 159-61, 176-8, 290-1, 293-4; Mo'meni, 105; Khomeini, 329; Gorji, 15-6; *Lom'e*, 236; Saberi, 304-6; Quraishi, 303-4; Amini,

Article 67 accepts rape claims by males or females, implying that females can rape males. However, article 82 only prescribes death for male rapists. Jurists debate whether female rapists can be executed. Some say they can, others not, since the death penalty is inapplicable by default. Some argue that the masculine *zani* in article 82, though perhaps resulting from the legislator's unconscious assumption of masculinity, only indicates a male, and principles of lenience, including 'caution in shedding blood', therefore exclude females. The 2012 penal code has no provision for females raping males and implies that rapists are male¹⁵.

3.3. Rape and murder of underage girls.

The problem of the rape and murder of underage girls reveals gender and age inequalities that many jurists dislike but consider scripturally established, which hinders their removal. The analysis of relevant laws highlights the obstacles to reform created by the dominant 'scriptural immutability paradigm'.

Article 82 of the penal code, prescribing death for 'coercive *zina*', does not mention age. Article 63 defines *zina* as an action between a *man* and a *woman*, potentially implying that the act is only *zina* if *both* partners are *adults*. Article 83 decrees the stoning penalty for 'a) *zina* of a [married] man and b) *zina* of a [married] woman with a *balegh* [adult] man', specifying that a married woman is flogged, not stoned, for *zina* with an *underage* boy. This implies that *zina* can have one underage partner, and the specification '*balegh*' for a woman's partner in *zina* but not a man's implies that a man's punishment does not depend on his partner's age. The penal

"Parvandeha", 9; Abdel Wedoud; New York Times, "Nigerian woman", "Rape victim"; Al Jazeera English, "Somali fighters"; BBC News, "Stoning victim"; Amnesty International USA, "Somalia"; Bloch; Mydans; communication with Iranian lawyers.

¹⁵ Penal code arts 67, 82; 2012 penal code articles 225/d, 229; *Sharh-e Lom'e*, 29; Zera'at (1385), 126-7, 131-2, (1383), 230; Gorji, 15-6. This unconscious assumption of masculinity, also seen in the next section where blood money for 'humans' is assumed to apply to males only, is common in Iranian laws and juristic texts. For example, in Civil Code articles 1049-50 and 1056-8, 'somebody' or 'people' refer to males, while women have to be specified as such, implying two categories: 'people' and 'women'. Khamini'i ("Individual rights" p. 47) likewise writes of 'people' and 'their wives'. Ironically, this characterisation of females as 'the other' contradicts what is known of mammalian biology, whereby the male is a modified female: Jolly, 235; Carr and Norris, 138; Müller, 305; Squires, 138.

code explicitly requires *bulugh* in both partners, with specific exceptions, for sodomy but not *zina*. Still, because article 63 arguably requires that both partners be adults, some say that the law decrees no specific punishment for *zina* (including rape) with an underage girl (though the 2012 penal code, article 222 note 2, considers *zina* to have occurred even if one partner was underage, without specifying gender).

Most jurists hold that a man does not suffer the full *hadd* for *zina* with an underage girl; because rape is defined as a type of *zina*, there is confusion between consensual *zina* and rape in this respect. Jurists offer several reasons why *zina* – or potentially rape – involving a small girl does not attract the full *hadd*, sometimes accompanied by the argument that since the default is lenience towards the accused and ‘caution in shedding blood’ forbids death penalties unless clearly applicable, there is no death penalty for rape of underage girls unless explicitly mandated by law¹⁶.

One reason offered is that ‘*aql* and *bulugh* of both parties is necessary to the definition of *zina*’; this is partially supported by narrations using the word *marah*, ‘woman’, or describing men not receiving the full *hadd* for *zina* with the insane or underage. In other, equally reliable narrations, men receive the full *hadd* for *zina* with underage girls. However, they were overridden by those indicating a lesser penalty, because of ‘caution in shedding blood’¹⁷. This creates a precedent for choosing the most lenient option in the absence of other determining factors.

Another reason offered is that the *ehteram* – respect – due to a *saghireh* (‘small’, meaning underage girl) or a madwoman is less than that due a fully grown, sane woman, so that crimes against them are less heinous; this is why slander of the underage or insane carries no *hadd* (as in article 146 of the penal code) and presumably why Khomeini favours *diyeh* over *qesas* for their murder. Yet another argument, supported by narrations, is that the pleasure deriving from the act, whether for the man or for the girl, is inferior to that afforded by *zina* between adults. Some draw a parallel with *zina* of a married woman and a small boy, which only carries

¹⁶ Gilani, 78; Bazgir, 38-9; Mo’meni, 122-3, 137-9; Mortazavi, 52; Zera’at (1385), 142; Gorji, 27-8; *Lom ‘e*, 238; *Sharh-e Lom ‘e*, 28, 46, 56; Abbasqolizadeh, “Nezam”.

¹⁷ Bazgir, 153-9; Mo’meni, 122-3, 137-9; Mortazavi, 52; Zera’at (1385), 142; Gorji, 27-8; Sharh, 28.

the flogging penalty for her because a small boy cannot experience as much pleasure from *zena* as a grown man, and by failing to give a large amount of pleasure, the woman has committed a less reprehensible crime. This intriguingly implies a ‘pleasure principle’ – whereby the heinousness of crimes derives from the amount of pleasure they give – almost diametrically opposed to the more familiar ‘harm principle’, whereby only harmful acts are crimes. Finally, there exists the minority argument that ‘*onf* (coercion) of minors is impossible because coercion implies overcoming resistance, and children are defenceless¹⁸.

Though *sodomy* with underage boys carries the death penalty, implying punishability irrespective of the other party’s age, the consensus is that this is specific to sodomy. Some jurists consider rape of a minor worse than rape of an adult, but even they mostly concede that since scripture does not conclusively indicate the death penalty for rape of underage girls, and scriptural commandments cannot be overturned merely because they seem unreasonable, this act cannot carry the death penalty¹⁹.

A minority nevertheless advocate the full penalty. One scholar simply declares that child rape is worse than adult rape, and cannot carry a lighter punishment. Another bewails the absence of an explicit punishment for child rape as “one of the penal code’s greatest flaws”, pronouncing both *fiqh* and the codified law defective in this regard. Even Khomeini holds that *zena* of a man with an underage girl carries the full *hadd*²⁰. In a published ruling, a man pursues the death penalty for his 6-year-old daughter’s rapist, arguing that child rape is especially heinous; but the Supreme Court insists that the law decrees otherwise²¹. In another ruling, however, a man is sentenced to death for raping an eight-year-old girl, but it is unclear whether she had reached the age of nine lunar years²². Lunar years being approximately eleven days

¹⁸ Gilani, 78; Bazgir, 38-9; Mo’meni, 122-3, 137-9; Zera’at (1385), 142, (1385/2), 193; Khomeini, 423; Mill, *On Liberty*, 10-21, 85-108, *Utilitarianism*, 257; Bentham, 170-2, 178-82; Beccaria, 34-5, 43, 45, 49, 85-8, 98; Russell, 237-8; penal code articles 146, 621.

¹⁹ Mo’meni, 122-3, 158; Bazgir, 153-9, 350-1; Khomeini, 342-3; Mortazavi, 99; *Sharh-e Lom’ e*, 28; penal code articles 111-2.

²⁰ Bazgir, 153-9; Zera’at (1385), 142; Khomeini, 333-4; Gorji, 27.

²¹ Bazgir, 268-9.

²² Saberi, 277-8.

shorter than solar years, she would have reached *bulugh* 99 days before her ninth solar birthday.

If underage girls are raped and also murdered, the possibility that their rape does not carry the death penalty creates additional problems. In both Shi‘i and codified law, the blood money (*diyeh*) for a murdered female is half that of a male. If a male rapes and murders an underage female, to have him executed her family must pay his family half the blood money of a ‘free human’ (meaning, of course, free male), a prohibitive amount, to compensate them for his loss, because his life is worth twice that of the girl he raped and murdered²³. (Here, ‘free’ means ‘not a slave’).

Blood money for murdered men, expressed in Shi‘i and codified law as 100 camels or equivalent values, is approximately 50,000 pounds or 77,000 US dollars for 1391 (2012-3). *Diyeh* for intentional (not accidental) murder must be paid within a year unless agreed otherwise. It is unclear if such limits apply to compensation for a murderer’s execution, and whether a murdered woman’s family owes *diyeh* if they accept the victim’s *diyeh* but the murderer does not pay it and is executed²⁴.

Most jurists favour halved female *diyeh*, though at least two pre-modern jurists opposed it. In modern times, the reformist Grand Ayatollah Sanei supports equal *diyeh* irrespective of gender. The Qur’anic verses (2:178, 4:92, 5:45) concerning *qesas* and *diyeh* do not mandate inequality, though 2:178 decrees equivalence in *qesas* (retaliation for murder) – free for free, slave for slave, female for female. This has not prevented men from being executed for murdering women and vice versa, and the consensus is that no additional money is due if a woman is executed for a man’s murder. It is frequent for Qur’anic commandments to be refined by narrations, and this has happened for *diyeh*. Some narrations prescribe unequal *diyeh*; others

²³ Penal code articles 209, 258, 300-1; Khomeini, 416-7, 473-4; Gorji, *Diyyat*, 37, 40, 75-6; Shahid, *Qesas*, 59; Baiburdi, 12-14, 18-9; Mostafaei, “Dard”. Monetary rewards for murdering females may encourage suicidal male relatives to enrich their families by murdering wealthy women.

²⁴ Penal code articles 257, 297-8, 302; Khomeini, 473-4; Gorji, *Diyyat*, 37, 40, 45; Baiburdi, 12; *Lom‘e*, 295-6; Mortazavi (vol.3), 13-8, 21-3, 26-7; Brajer/Rahmatian, 2; Mo‘avvenat; BBC News, ‘Iran lawyer’. The value of 100 camels apparently derives from a narration where God waived the Prophet’s grandfather’s promise to sacrifice one of his sons in exchange for 100 camels (Brajer/Rahmatian, 3, note 2). The victim’s family can demand more or accept less.

merely fix *diyeh* for ‘free humans’ as 100 camels, but were assumed to intend ‘male’ by ‘human’. Arguments for unequal *diyeh* have included women’s inherent inferiority, men’s role as breadwinners, necessitating greater compensation, and analogy with women’s halved status in testimony and inheritance. But some have suggested that *diyeh* is one of those commandments whose details vary with the exigencies of time and place, and that since women’s role in society has now changed, their *diyeh* should be equal. Sanei declares the ‘breadwinner’ rationale flawed because retired, unemployed or disabled men receive full *diyeh*. For Sanei, all humans have identical intrinsic value and Islam’s ‘default setting’ of equality can only be modified by specific scriptural texts, none of which support unequal *diyeh*²⁵.

Despite appeals to logic or changed circumstances, jurists have had difficulty arguing away these asymmetries (indeed halved female *diyeh* persists in the 2012 penal code). This illustrates the tension between the ‘scriptural immutability paradigm’ and the quest for adaptability discussed in chapter 1, sections 5.2 and 5.5. Some of the rationales offered for these inequalities invoke a morality which no longer resonates with many Iranians, including jurists.

3.4. Ehsan.

Eligibility for stoning depends on possessing *ehsan* during *zena*, therefore being *mohsan* or *mohsaneh*. *Mohsan* and *mohsaneh* (masculine and feminine respectively) in general usage mean ‘devout’, ‘abstemious’, ‘chaste’, or ‘free’ (not a slave), with etymological roots meaning ‘fortified’ or ‘entrenched’. Regarding adultery, however, *ehsan* means being free and in a consummated permanent marriage, or, for males, having a slave girl with whom one may copulate and has done so, and having ‘access’ to that spouse or slave girl. The nature of ‘access’ is the subject of debate²⁶.

²⁵ Baiburdi, 12-24; Shahid, *Qesas*, 59; Gorji, *Diyyat*, 75-6; Khomeini, 416-7, 473-4; *Lom’e*, 271, 296; Mortazavi (vol.2), 30-3; Najvan; Khezer Heidari; De Luce; Jeffries.

²⁶ Mo’meni, 128; Mortazavi, 52; Dutton, 98-100; Wortabet and Porter, 61; Steingass, 21; Malik, 216-7; Muslim, book 7, hadiths 2819 and 2874; Halm, 138; Mir-Hosseini, “The construction”, note 10. Shi’i, but not Sunni, law allows ‘temporary marriage’ (*nika mut’a*) with a pre-determined ‘expiry date’; it can last anywhere from a few hours to 99 years. A man may only have four simultaneous permanent marriages, but any number of temporary wives.

Temporary marriage does not create *ehsan*, and slavery is probably irrelevant in contemporary Iran²⁷; so for practical purposes, only permanent marriage creates *ehsan*. It must have been consummated by frontal penetration entirely concealing the glans while possessing *'aql* (sanity) and *bulugh* (majority), and according to some, also *ekhtiar* (free will) and *qasd* (intention). Jurists' lists of these conditions vary, but generally include *'aql* and *bulugh*. Some jurists believe that all or some of these conditions need only apply to one partner; others require all in both. *Ehsan* lapses if any condition that initiates it subsequently disappears. *Ehsan* can exist for one partner only: for example, slaves, the underage and the insane lack *ehsan*, but, according to some, can create it in their spouses²⁸.

Article 83 of the penal code describes *ehsan* as the condition of men or women who, while mentally sane, have copulated with their permanent spouses and remain able to do so. Age is not mentioned, though 'man' and 'woman' could imply *bulugh*. Article 85 says that a *roj'i* (revocable) divorce does not remove *ehsan* from either spouse, while a *ba'en* (irrevocable) divorce does. Article 86 says that lack of 'access' to one's permanent spouse through "travel, incarceration or similar exculpatory conditions" precludes stoning²⁹.

Since *ehsan* requires consummation, jurists consider claims of no consummation, and therefore no *ehsan*, valid unless proven false through testimony or confession describing penetration of the glans (they do not mention *'elm*), and insist that children do not prove consummation. This is not in the codified law, which some jurists lament, arguing that the law should accept any unfalsified claim of no *ehsan*³⁰.

The most controversial and interpretable element of *ehsan* is 'access'. Impossibility of copulation clearly removes 'access', as in article 83 of the penal code. However, article 85 says that a revocable divorce does not liberate either spouse from *ehsan*. In

²⁷ Scripture allows slavery, but contemporary Islamists and Muslim governments mostly ignore this. Griffel, "Introduction", 14-5; Morgan-Foster, 369, note 17; Sardar Ali, 429, 457; Mortazavi, 52; Matsunaga, 323; Kusha, 109, 155, 294.

²⁸ Khomeini, 324-5; Mo'meni, 128-30; Mortazavi, 52; Zera'at (1385), 138-9; Gorji, 29-30; Hojjati, 316; *Lom'e*, 236; *Sharh-e Lom'e*, 31-2, 34-5, 37; Abbasqolizadeh, "Nezam".

²⁹ Penal code articles 83, 85-6.

³⁰ Zera'at (1383), 237; Mo'meni, 129; *Lom'e*, 236; *Sharh-e Lom'e*, 31-2, 34-5.

a revocable divorce, the husband, but not the wife, may resume the marriage at any time during the wife's waiting period (the three 'monthly cycles', or, after menopause, three months, during which a divorced wife cannot remarry)³¹. If only the husband has 'access' to the wife during this time, not vice versa, why does she have *ehsan*?

Some jurists explain this through husbands' unilateral conjugal rights, whereby husbands have the right of copulation with their wives but not vice versa. Men's *ehsan* therefore hinges on *their own* ability to copulate with their wives; women's *ehsan* depends on *their husbands'* ability to copulate with them even if they do not. Therefore a wife remains under *ehsan* following a *roj'i* divorce because her husband could resume their marriage if he wanted to, even if the wife cannot. A small minority of scholars object to this, saying that since a wife's access to her husband is necessary for *ehsan*, a *roj'i* divorce liberates her, though not him, from *ehsan*; and the idea of mutual 'access', favoured by some jurists, is expressed in article 83 of the penal code, though partially negated by article 85. In any case, some narrations declare that a *roj'i* divorce does not remove *ehsan* from either spouse, and most jurists agree, and also assign the right of copulation only to husbands³².

The Civil Code implies husbands' conjugal rights, declaring that while wives generally lose the right to financial maintenance by husbands through failure to perform their 'marital duties' (which, though listed, do not explicitly include copulation), they can refrain from copulating with husbands afflicted by venereal diseases. This supplements the implication of unilateral conjugal rights of penal code article 85³³.

Husbands' unilateral conjugal rights undermine the concept of marital rape: by raping his wife, a man would only be taking what is rightfully his. Furthermore, some jurists, lawyers and even judges (see adultery cases 1-3) have suggested that

³¹ Penal code articles 83, 85-6; Civil Code articles 1143, 1148-51.

³² Zera'at (1383), 234, (1385), 139, 141-2, 154-5, 149-50, 155; Mo'meni, 71, 129-30; Bazgir, 206-10, 244-6; Khomeini, 325-6; Mortazavi, 52, 55-8; Gorji, 29-30; *Lom'e*, 236-7; *Sharh'e Lom'e*, 31, 34-5, 37; Mir-Hosseini, *Marriage*, 32-4.

³³ Civil Code articles 1106, 1108, 1127; penal code article 85.

ehsan depends on continued copulation rather than its mere possibility, so extended chastity within a marriage removes *ehsan*³⁴. By this interpretation, a man could force *ehsan* on his wife by raping her.

Since the impossibility of copulation between spouses removes *ehsan*, various obstacles to copulation are held to remove it also, though opinions vary as to whether they remove it in their own right or only because they prevent copulation. This issue can become rather complicated.

It is generally agreed that absolute, intranscendible physical separation of spouses – through incarceration of one partner, for instance – precludes copulation and removes *ehsan*. There are narrations which support this; others declare spouses in different cities bereft of *ehsan*. Beyond this, the matter becomes vague and to some extent it bifurcates between the possibility that distance itself removes *ehsan*, and that difficulty of reunion, not mere distance, removes it. The second possibility also involves potential parameters of time and intention³⁵.

Some jurists and judges hold that a specific distance between spouses removes *ehsan* irrespective of its causes or ease of reunion. That distance is sometimes given as the *hadd-e tarakhos* ('limit of permission', from *rukhsa*, 'licence'), which removes *ehsan* according to some narrations. It is the same distance which removes the normal duties of prayer and fasting, inaugurating the permission for the shortened 'travellers' prayer' and exempting travellers from fasting.

Some jurists express the *hadd-e tarakhos* as the point beyond which one cannot hear the call to prayer in one's town of residence (*vatan*) or see its inhabitants. At that point, one officially becomes 'a traveller', subject to the regulations for travellers. Others define a traveller as a person whose minimum 'round trip' is eight *farsakhs* or *farsangs*; this means that as soon as a person is four *farsakhs* or *farsangs* from their

³⁴ Zera'at (1385), 155; Lawyers' letter to Shahrudi, October 2006. Some northern Nigerian penal codes exclude marital rape "because of implied consent" (Peters, 15), as did India's penal code until 2006 (Ahmed, note 68).

³⁵ Hojjati, 317, 336-8; Bazgir, 243-4; Mo'meni, 129; Khomeini, 325; Mortazavi, 57-8; Zera'at (1385), 139-42, 153-5; Gorji, 29-30; *Lom 'e*, 236; Sharh'e *Lom 'e*, 31, 34.

home, they automatically become ‘a traveller’ because four further *farsangs* separate them from their home. In terms of *ehsan*, this means that spouses four *farsangs* apart lose *ehsan*. The definition of the *farsang*, an ancient unit often characterised as the distance covered by an hour’s walk, has varied considerably according to time and place, but contemporary jurists equate four *farsangs* with roughly 21.5 or 22 kilometres. This is confirmed in some Supreme Court rulings and a written recommendation of the Judiciary office, though no such thing is present in the codified law. Some scholars point out that in very large cities with a diameter greater than the *masafat-e shar’i* (‘legal distance’, a synonym for the distance of *tarakhos*), a couple more than four *farsangs* apart might still be within their *vatan* – place of habitation – which could conflict with conceptions of *tarakhos* which hinge upon leaving the *vatan*. Some nevertheless declare that the ‘doubt’ (*shobhe*) involved in such cases activates the *qa’edeye darr* (‘axiom of removal’), whereby doubt favours the accused³⁶.

Some narrations declare that *ehsan* depends on a man’s access to his wife day and night, or at the beginning and end of each day. This could broaden the territory of *ehsan* to intercontinental proportions for those with access to swift modes of transport. Opinions based on these narrations mostly posit ease of reunion as the determining factor, allowing *ehsan* to survive distances greater than four *farsangs* if spouses can reunite ‘morning and night’. Some interpret such narrations as meaning that even access at times other than ‘morning’ and ‘night’ cannot create *ehsan*³⁷.

It is also possible that one does not lose *ehsan* by voluntarily making reunion or copulation impossible in order to commit *zina* whilst bereft of *ehsan*. This has support from a narration whereby the prayer obligation is not removed by travel

³⁶ Hojjati, 317, 336-42; Bazgir, 230-2, 243-55; Mortazavi, 58; Zera’at (1383), 235, (1385), 139-40, 153-4; *Sharh-e Lom’eh*, 34; Saberi 292-3; Opwis, 68-9; Houtum-Schindler, 584-6; “Travel Fiqh”: <http://www.islamic-laws.com/travelfiqh.htm>; Makarem Shirazi, *estefta’at* (solicited legal opinions): <http://www.makaremshirazi.org/english/estefta/?mit=391>, <http://www.makarem.ir/english/estefta/?mit=480>. The *farsang*, *parsang* or *farsakh* is a unit deriving from the ancient *parasang* which is variously defined as a number of cubits, royal cubits or stadia or as an hour’s walk (similarly to the league, another anthropic unit originating from the distance covered by an hour’s walk). Interestingly, in former times the definition of the *farsang* as an hour’s walk meant that in some regions, hilly areas had shorter *farsangs* than flat areas (Houtum-Schindler).

³⁷ Mo’meni, 129; Khomeini, 325; Mortazavi, 57-8; Zera’at (1385), 139, 141, 154-5; Gorji, 29; *Lom’eh*, 236; *Sharh-e Lom’eh*, 31, 34; Bazgir, 243-55.

undertaken with the purpose of removing it. However, a written opinion of the Judiciary office declares intention irrelevant, specifying that a woman who intentionally commits *zena* four *farsangs* from her husband is ineligible for the stoning penalty; some court rulings display the same attitude. Another potential parallel with the prayer obligation (not discussed in the texts available) is that it is not removed by habitual travel, necessitated for instance by work or recurrent nomadism. This, applied to *zena*, would exclude loss of *ehsan* by commuters or travellers on ‘business trips’, who could therefore still be stoned for adultery committed on those travels. The prayer obligation is also not removed by travel with a forbidden purpose (e.g. gambling), so if the norms for prayer were transferred to *ehsan*, such travel would not remove *ehsan*³⁸.

Jurists agree that whatever makes copulation physically impossible, such as incarceration or impotence, removes *ehsan*. Some doubt that illness alone can preclude copulation and hence *ehsan*, but most consider illness an obstacle, and some court rulings accept illness, advanced age or weakness as removers of *ehsan*. One ruling even accepted that a man’s wife’s refusal to copulate with him, for fear of endangering her pregnancy, removed his *ehsan*. The conservative Grand Ayatollah Nuri Hamedani (b. 1926) specifies that spouses lose *ehsan* if they have no carnal congress because of bad marital relations³⁹.

Can obstacles to *ehsan* be purely psychological, however? Scholarly works, and most often the writings of lawyers, occasionally mention psychological obstacles. One Supreme Court ruling (echoing Ayatollah Nuri Hamedani’s opinion) declares *ehsan* absent because disharmony between spouses prevented carnal relations, though it is unclear whether the disharmony or the chastity removed *ehsan*. The possibility of an emotional dimension to *ehsan* may depend on the terms used to define ‘access’ between spouses. Sometimes *jama* ‘, copulation, is used; sometimes *dastresi* or other words meaning ‘access’ are employed; but sometimes one finds *tamatto* ‘, *estemta* ‘,

³⁸ Zera’at (1385), 153-5; Hojjati, 317, 336-8; Bazgir, 244; Makarem Shirazi, *estefā* ‘: <http://www.makarems Shirazi.org/english/estefā/?mit=391>;

“Travel *Fiqh*”: <http://www.islamic-laws.com/travel/fiqh.htm>.

³⁹ Bazgir, 206-10, 244-6; Mo’meni, 129; Khomeini, 325-6; Mortazavi, 57-8; Zera’at (1385), 139, 154-5; Gorji, 29-30; *Sharh-e Lom ‘e*, 34; Abbasqolizadeh, “Nezam”.

or similar words indicating ‘pleasure’, ‘enjoyment’ or ‘fruition’. If *ehsan* depends on ‘enjoyment’, some lawyers argue, it lapses through bad marital relations. Nonetheless, ‘enjoyment’ may only mean ‘carnal enjoyment’, indicating none other than copulation⁴⁰.

Lawyers are likely to support the notion of abstract impediments to *ehsan*, which provides additional ammunition in favour of their clients. For example, in a letter to Shahrudi, then head of the Judiciary, in October 2006, a group of prominent lawyers defending adultery convicts declared that *ehsan* depends not only on carnal access, but also on healthy marital relations. Some of their clients were in forced or abusive marriages but could not obtain divorces, thereby, they argued, losing *ehsan*. Others were in loveless marriages which they could not escape, and some no longer had carnal relations with their husbands; again *ehsan* was deemed lost there. In cases where husbands forced wives to commit crimes, including the prostitution which later caused their stoning sentences, this coercion by husbands proved that the marriage was abusive and therefore *ehsan* was absent. Finally, some of their clients organised or participated in their abusive husbands’ murders: marriages so abusive as to drive wives to murder cannot have maintained *ehsan*⁴¹. This introduces the interesting scenario whereby one can be stoned to death for adultery, but by subsequently having one’s husband murdered by a third party, one avoids stoning by impugning *ehsan*. In other words, in such a case adultery plus murder potentially carries a lighter penalty than adultery alone.

While the notion of abstract impediments to *ehsan* promotes leniency, the consensus favours the possibility of copulation, not emotional enjoyment, as the key to *ehsan*. The penal code bill (article 221-6) and the 2012 penal code (article 233 note 2) confirm this by defining the possibility of *jama‘ az tariq-e qobol* – anterior copulation – as the maintainer of *ehsan*. For psychological impediments to affect trials, they would have to be enshrined in law.

⁴⁰ Mortazavi, 57-8; Zera‘at (1383), 235, (1385), 153-5; Bazgir, 244.

⁴¹ Lawyers’ letter to Shahrudi, October 2006; Amini, “Parvandeha”, 6-7.

Interestingly, the 2012 penal code only describes *ehsan* (article 233 note 2) with reference to sodomy, only tangentially mentioning it regarding *zina* (article 228: punishment for *zina* without *ehsan*). This may be associated with the decision to omit references to stoning in the new code, while still allowing stoning sentences indirectly (see section 3.7 below).

3.5. Marriage, coercion, and criminal responsibility.

Marriage is an '*aqd*' – a contract between consenting parties – while divorce is an '*iqā'*' – a unilateral prerogative (in this case, of dissolution by the man). Men hold the reins of marriage according to the Qur'an (2:237, 4:34) and at least one narration. Iranian wives must petition for divorce in court, proving specific justifications. Divorce is not automatic for men: divorces must be approved in court and can be challenged by wives, and Mir-Hosseini found in her study of Iranian divorce cases that judges often pressurise male divorce applicants. Nevertheless, men have the final say regarding divorce, even if it means negotiating or making sacrifices, e.g. promising maintenance payments to wives. (Khomeini writes that wives need not be aware of divorce, much less consent, for it to be valid). Women (unless their marriage contracts include a divorce clause) always need the approval of someone else – their husband or a judge – to secure a divorce. Furthermore, although the father's suitability can now be challenged in court following 1998 and 2003 amendments to Civil Code article 1169 by the Expediency Council (chapter 3, section 6.2) and both divorced parents have theoretical visitation rights, by default fathers have custody of children older than seven. (Book 8, Section 3, of the Civil Code is devoted to 'the father's and paternal line's natural custody' [*velayat-e qahri*] over children). If their mother cannot prove their father's unsuitability, she loses them at that age after divorce, and immediately upon remarrying irrespective of age. But wives cannot force divorce on husbands even by relinquishing their children.

Aside from holding the reins of divorce, men have additional rights including the right to chastise disobedient wives, the right to cease financial maintenance if wives unjustifiably ignore their marital duties, and the right to have escaped wives forcibly

returned to the marital home. The Civil Code (article 1105) explicitly characterises the husband as the head of the household⁴².

All this introduces a potential element of distress (*ezterar*) or even coercion (*ikrah*) into any marriage where the husband forces the wife into illegal acts (including adultery). It is not only the immediate pressure to commit individual illegalities that is relevant, but the fact that the wife cannot escape the enforcer of illegal activity. If she leaves without a divorce, she can be forcibly returned; even if she obtains a divorce, she loses her children unless the court accepts her husband's unsuitability, which may be difficult (see adultery case 1). In adultery cases 2-3, men lived off their wives' enforced prostitution, frequently beat their wives and children, and might have prostituted the children had the wives escaped. The wives remained only to protect their children, but were condemned to death for adultery.

For women in forced marriages, the law's invalidation of marriages undertaken without consent could be advantageous. However, the right to have invalid marriages annulled lapses if not claimed 'immediately' (a parameter determined by 'custom')⁴³. Removing this condition could protect such women from stoning by liberating them from *ehsan* – and even potentially from their abusive marriages.

Mir-Hosseini discusses a radical and useful, but hitherto dormant, alleged opinion of Ayatollah Khomeini regarding divorce: if a woman's request for divorce is denied by her husband, this denial demonstrates 'hardship', which is grounds for divorce, and the marriage can be dissolved through the *la zarar* (no harm) principle⁴⁴.

⁴² Civil Code articles 1103, 1105-12, 1114-22, 1125-49, 1169-70, 1173-4, 1180-1; Constitution article 21; Qur'an 2:237 (Baqara), 4:34 (Nisa'); Niknam, "The Islamization", 20-1; Mir-Hosseini, *Marriage*, ix-x, 35-40, 55-60, 63, 65-71, 129-30, "The construction", 7-8, "When", 121; Modarressi Tabataba'i, 14, 19-21; Aghaei, 88-9; Picheca, 45-6; Khomeini, 131; Amini, "Parvandeha", 7-8, 11; Abbasqolizadeh, "Nezam"; Najvan; Sardar Ali, 439-41; Hashemi, 553-5. Regarding wives' enforced return home: Mir-Hosseini, *Marriage*, 41, 43-4, 46-7, 49-50, 52-3, 58-60. Ibid 57-8: marriage contract stipulations allowing wives' divorce (Civil Code article 1119) may be ignored in practice.

⁴³ Civil Code articles 1064 and 1070; Amini, "Parvandeha", 6-7, 11; Abbasqolizadeh, "Nezam"; lawyers' letter to Shahrudi, October 2006; Samgiss, 70-1 (discussing forced marriage in Iran).

⁴⁴ Mir-Hosseini, "When", 117-8, 125-6. Khomeini's intervention apparently ensured inclusion of 'hardship' as grounds for divorce in the Civil Code.

3.6. Pregnancy cannot prove *zina*.

Most Shi‘i jurists agree that pregnancy cannot prove *zina*, and the penal code excludes unmarried women’s pregnancy as proof. Jurists generally exclude it irrespective of marital status, and some criticise the penal code’s mention of ‘unmarried’ status. Some, including Khomeini, add that pregnant individuals cannot be questioned about their pregnancy, because by default nobody must be interrogated. This is not explicit in codified law but implied by the prohibition against investigating ‘crimes against chastity’ (chapter 3, section 4). Jurists further explain that pregnancy cannot prove penetration of the glans or disprove coercion⁴⁵.

Nevertheless, the case studies show that pregnancy is often used to prove *zina*, frequently as an ingredient of ‘*elm*. This contradicts Khomeini’s opinion whereby only correct confession or testimony (he does not mention ‘*elm*) can prove *zina*⁴⁶.

Instead of fortifying the penal code’s prohibition of pregnancy as proof, the 2012 penal code omits any mention of it.

3.7. Stoning for adultery.

Stoning for adultery, and its protocol, come from narrations, although some posit a lost Qur’anic ‘stoning verse’⁴⁷. The condemned are directed to wash themselves as corpses are washed (as if they were already dead), and are then wrapped in the shroud in which they will be buried without additional washing (the removal of bloodstains is not obligatory). They are buried in a pit, men up to the waist and women up to the bosom (deeper burial makes escape more difficult). Then they are stoned by those present, who include the judge, any witnesses, and a varying

⁴⁵ Hojjati, 321; Gilani, 45-6; Mo’meni, 129, 154; Zera‘at (1385), 96; Nobahar, “Ahdaf”, 149; Deh Abadi, 39; Khomeini, 329, 345; Mortazavi, 31-2; Gorji, 19; *Lom‘e*, 236, 242, 244; *Sharh-e Lom‘e*, 31, 34, 58, 82, 84; Penal code article 73.

⁴⁶ Khomeini, 329.

⁴⁷ Gilani, 90-5; Mo’meni, 84, 94-7, 99, 114, 125-8, 134-5, 156; *Sharh-e Lom‘e*, 16-7, 20, 37; Nobahar, “Be suye”, 336, “Ahdaf”, 149, 157-8; Deh Abadi, 57-8; Mortazavi, 52-3, 86-7; Khomeini, 340; Zera‘at (1385), 104; Shahrudi, 66-9; Arabiyan, 59-60; Mohaqqueq Damad, 11-3, 36-40; Malik, 345-6; Dutton, 57, 123-4, 163, 216-7; Stewart, 130-3; Mashini.

minimum number of other ‘believers’ (three according to some jurists, as few as one according to others). After they die, the prayer of the dead is performed over them and they are buried. If adultery was proven through testimony, the witnesses must cast the first stones; if through confession, the judge who condemned them casts the first stone. No protocol is given for adultery proven through *‘elm*. The absence of the judge or the witnesses does not prevent stoning, although escape of witnesses during stoning invalidates the conviction. Escapees from the pit are returned and stoned if adultery was proven by testimony, but released if it was proven by confession (escape implying retraction of confession). Again, no protocol is given for *‘elm*, and jurists differ on this point. Stones used in lapidation must not be so small as to be ineffective (or, according to some, to delay death excessively), nor large enough to kill immediately. Some say this is intended to inflict sufficient suffering; others attribute it to the precise wording of narrations⁴⁸.

As a ‘cruel and unusual’ punishment, stoning has attracted much controversy, and considerable efforts have been made to abolish it, while the authorities have frequently dismissed reports of stoning or denied that stoning occurs at all in Iran. Khomeini is claimed to have supported the suspension of stoning. In December 2002 the head of the Judiciary issued a moratorium on stoning, whereby stoning sentences were not to be implemented. However, the law was not changed, and a man and a woman were stoned in Mashhad in May 2006. Efforts were made to conceal that stoning: local newspapers published the news of their ‘execution’ (*e‘dam*) without mentioning how it occurred, and the woman’s death certificate gave ‘execution’ as her cause of death, although her autopsy report described it as ‘cerebral haemorrhage caused by impact of a hard object’. Investigations revealed that cemetery records gave ‘stoning’ as the woman’s cause of death. When activists broadcast this news, the spokesman of the Judiciary denied the stoning. A man was stoned (and apparently finished off with a concrete block when he failed to die) in July 2007 in Aqche Kand, a village outside Takestan in Qazvin province, following a ruling based on *‘elm-e qazi*. The authorities initially denied that stoning. Three men were

⁴⁸ Penal code articles 98-107; DIRS28/70 articles 23-5; DIRS293/82 articles 7, 10, 21-3; Gilani, 90-4, 92-3, 104; Mortazavi, 13, 46, 86-8, 94-5; Zera‘at (1385), 204; Mo‘meni, 65-6, 133-5; *Lom‘e*, 237-8; *Sharh-e Lom‘e*, 40-1, 43; Hojjati, 349-50, 357; Gorji, 36-7.

reportedly stoned in Mashhad in December 2008, though one apparently escaped the pit and was released. In February 2009 a man sentenced to be stoned for adultery was instead hanged, prompting debate about the permissibility of this commutation. There were reports that a man was stoned in a prison yard in Rasht in March 2009. The controversy regarding stoning has not prevented stoning sentences from being issued even recently: for instance, a 2006 stoning sentence has been denied by the authorities; two sisters were reportedly sentenced to be stoned in August 2007; a woman's stoning sentence was upheld by the Supreme Court on 4 August 2008, one day before a press conference (see below) which prompted rumours that stoning had been suspended; and a husband and wife were apparently sentenced to be stoned for *zina* in January and June 2009. Reportedly four women were secretly stoned in October/November 2012⁴⁹.

There has been some discussion in Iran about possibly omitting stoning from the new penal code. The conservative Ayatollah Makarem Shirazi reportedly said in December 2002 that in certain circumstances, stoning could be replaced by other punishments, and in June 2009 the head of the parliamentary judicial commission told journalists that the commission had concluded that the law could omit stoning since this would be in the nation's best interests and Islam severely restricts it, making it extremely rare. However, stoning was not removed from the penal code bill but only rendered conditionally commutable to flogging or hanging. On the 5th of August 2008, Alireza Jamshidi, the spokesman of the Iranian Judiciary, announced in a press conference that of the nine known stoning convicts at the time (eight women

⁴⁹ Eskhevari, "Ta'mol"; Amini, "Parvandeha", "Tan furushi"; *E'temad*, "Joz'iat"; Tabnak; Mostafaei, "Sangsar"; Abbasqolizadeh, "Nezam"; Melli-Mazhabi; communication with discoverer of Mashhad stonings; Alasti, 20-3, 30; Iran Human Rights: "Revised"; WLUMML, "Iran: we are"; Iran: Amnesty International Report 2009; Int'l Herald Tribune, "Norway"; Esfandiari, "Iran: activists"; BBC, "Iran 'adulterer'"; Bastani; Amini, "Dialogha", "Boghaz"; Shojaei; Gorji, Mahin; Hojjati, "Aya mojazat"; Iran Human Rights, "An adultery"; Meydaan, "Abdollah"; BBC Persian, "Mard"; PressTV, "Iran"; BBC News, "Iran denies"; Reuters, "Iran"; Amnesty International, "Iran: announcement", "Iran: demand", "Iran: end", "Report 2007", 139-41, "Report 2008", 160, "Iran: Amnesty"; Association of Iranian Women, "Memorandum"; Esfandiari, "Iran: stoning"; Kar/Vahdati; Coomaraswamy, 186 (item 1004); Council of the EU, "Declaration...death sentences", "Rasht"; Solomon/Fassihi; BBC, "Iran executes"; Iran Focus; Iran Times International; Kar, "A brief history", "Iranian law", 8; AWID; Meydaan, "Nameye jam'i"; Me'arian; Lawyers' letter to Shahrudi, October 2006 (section 4); *Asr Iran*, "Joz'iat"; Iran Bar; Rostami; Kermani; Mokhtari, 613-4, 618-9; Peters, 20; Arjomand, "Shari'a and constitution", 163-4; Osanloo, "Whence", 43; UDHR, article 5; ICCPR, article 7 (Iran signed it before the revolution); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment: frequently cited as incompatible with stoning, though Iran did not sign it.

and one man), two had been pardoned and two had had their sentences commuted to incarceration or flogging, while the other five sentences were being reviewed by the Pardon and Clemency Commission. This led to announcements in the foreign press that Iran had suspended stoning. However, the suspension of some individual sentences did not mean the suspension of stoning itself, and Jamshidi explicitly denied that stoning would be, or could be, abolished. Indeed, stoning sentences were issued and implemented thereafter⁵⁰.

Article 221-5, section 5, of the penal code bill identifies stoning as the penalty for adultery. Note 4 allows its commutation to hanging if testimony exists, otherwise to 100 lashes, if the case prosecutor deems stoning dangerous to the State's interests. (*Elm* is associated with confession and greater lenience). The 2012 penal code, in article 229, specifies 100 lashes as the penalty for *zina* without *ehsan*, but mentions no penalty for *zina* with *ehsan* (adultery). While this appears to be an abrogation of stoning, and judges could use it to avoid stoning, it is merely an omission, since it specifies 'without *ehsan*' rather than mandating 100 lashes for *zina* in general. Omissions are covered in articles 220-1, which state that *hudud* not covered in the penal code are subject to article 167 of the Constitution, whereby judges can rule by Islamic or *fiqhi* sources wherever the law is silent. Article 221 specifies that in such instances, the Supreme Leader's guidance will be sought. In other words, the 2012 code ostensibly bows to human-rights demands by not mentioning stoning, but allows it indirectly and refrains from abrogating it.

4. Sodomy.

According to several scholars, the word *lavvat* (sodomy) comes from the name of the prophet Lut (the Biblical Lot), whose people were famed for it (though he refrained). Sodomy is the penetration of a man by another's generative organ, concealing the glans entirely, in the absence of coercion or distress and while possessing sanity, majority, free will, intention and awareness that the act is forbidden. Without such

⁵⁰ Sadr, "Raftar"; Shojaei; Bedashti; Me'marian; Amini, "Boghz"; AFP, "Iran", "Stoning"; AWID; BBC, "Iranians"; Telegraph, "Iran suspends"; Reuters, "Iran suspends"; Amnesty International, "Iran: announcement"; Times of India; Iran: Amnesty International Report 2009.

penetration, the act is not sodomy but *tafkhez*, whose penalty is a hundred lashes and, in the fourth instance (or third according to some), death. (The 1991/96 penal code does not mention the glans, merely differentiating between penetration and non-penetration; the 2012 penal code mentions the glans). Most jurists, using various scriptural texts, allow the judge to choose between the following penalties for sodomy: stoning, burning, death by sword, throwing from a height, and crushing by a toppled wall – all with optional subsequent burning of the corpse. (The penal code only gives the judge discretion without specifying penalties, implying recourse to Shi‘i law; the 2012 penal code merely prescribes ‘execution’). These penalties apply irrespective of consent: coerced parties are exonerated, but sodomistic rape carries the same penalties for the rapist as does consensual sodomy. Minors receive a *ta‘ziri* (lesser ‘discretionary’) punishment for sodomy. Sodomy or *tafkhez* are proven by four valid confessions, or the testimony of four ‘*adel* (righteous) men who have personally seen (*moshahede*) them, or, according to some, ‘*elm*. The *hadd* lapses with repentance before confession or completed testimony; after confession, repentance allows the Imam or his representative the discretion of pardon⁵¹.

Some narrations describe the intrinsic heinousness of sodomy; some jurists have concurred, saying for instance that sodomy is worse than *zena* because copulation between men and women is allowed under the correct circumstances, while copulation between men is not, and because a town (the Biblical Sodom, only mentioned as ‘the city of Lut’ in the Qur’an) was destroyed because of sodomy but not for *zena*. A narration of Ali even equates sodomy with apostasy (*ertedad*). (Incidentally, other narrations and juristic opinions equate other *kabireh* [major] crimes, or even doubt regarding the certainties [*mosallamat*] of the faith and its commandments including the validity of the stoning penalty, with apostasy). In another narration, the Imam Sadeq explains the extreme reprehensibility and prohibition of sodomy by saying that if it were allowed, men would copulate with each other, women would become redundant, and the population would be

⁵¹ Penal code articles 108-26; 2012 penal code articles 232-4; Qur’an 6:86 (An‘am), 7:80-4 (A‘raf), 11:69-83 (Hud), 15:51-77 (Hijr), 21:71, 74-5 (Anbiya) 22:41-4 (Hajj), 26:160-74 (Shu‘araa), 27:54-8 (Naml), 29:23-35 (‘Ankabut), 37:133-8 (Saffat) 38:12-4 (Sad) 50:12-4 (Qaf), 54:33-40 (Qamar); Mo‘meni, 160-1; Mortazavi, 96-102; Zera‘at (1383), 251-2, (1385), 217-35; Gorji, 42-4; *Lom‘e*, 242-3; *Sharh-e Lom‘e*, 72-3; Nobahar, “AhdaF”, 144-5; Bazgir, 337-41; Hojjati, 358.

dangerously reduced⁵². This oddly implies that most (all?) men desire sodomy. The depopulation argument also creates a strange precedent for promoting sodomy and lesbianism when overpopulation is problematic and reduced procreation is desirable.

4.1. Alternative punishments for sodomy.

As mentioned earlier, several narrations give ‘a blow with a sword’ as the punishment for sodomy, incest and rape, some without specifying an implement for this ‘blow’⁵³. Narrations allowing retracted confession to invalidate stoning for adultery have been used to justify not only invalidation of any death penalty for adultery, but also, through principles of lenience, for sodomy. Could the same principles not promote ‘a blow with a sword’ instead of the more definitely fatal punishments for sodomy, given that the ‘blow’ need not be struck with the blade of the sword?

The penal code bill and the 2012 penal code, which also do not incorporate ‘a blow with a sword’, differ considerably from the 1991/96 penal code regarding sodomy. Both decree death (*qatl, e’dam*) for coercive or married (*mohsan*) active parties to sodomy, and otherwise, 100 lashes; but always death for consenting passive parties. The greater penalty for passive parties, supported by the reformist Ayatollah Montazeri, exists in narrations, as does the penalty of 100 lashes for unmarried sodomists⁵⁴. The phrase ‘one stroke below the *hadd*’ to describe 99 lashes for lesser variants of sodomy (see section 3) implies 100 lashes, not death, as the punishment for sodomy⁵⁵. The use of dormant minority opinions to change sodomy penalties radically, as here, creates a precedent for further change – for instance by instituting 100 lashes for unmarried sodomists, removing the greater penalty for passive parties, and generally choosing the most lenient option for every crime.

⁵² Mo’meni, 126, 158-61; Mortazavi, 96; Zera’at (1385), 218-9, 229; Nobahar, “Ahdaf”, 154, “Qachaq”, 190-1; Khomeini, 358-9.

⁵³ Zera’at (1385), 125, 223-5, 230; Mortazavi, 98, 101-2.

⁵⁴ Zera’at (1385), 223-5; Gorji, 43-4; Mo’meni, 163; Montazeri, topic 3172; penal code article 110, penal code bill article 221-19; 2012 penal code article 233.

⁵⁵ Khomeini, 343-4; *Sharh-e Lom’e*, 79.

5. Theft.

Verse 5:38 of the Qur'an says 'the thief, male or female, cut off their hands'. In Shi'i *fiqh* this becomes amputation – in the first instance – of four fingers, excluding the thumb, of the right hand, provided that many conditions – as many as twenty according to some jurists – are met. The reason given for the removal of four fingers rather than the entire hand is that the palms are two of the body parts which touch the ground in *sajda* (prostration during prayer), and some narrations interpret the Qur'anic verse 72:18, 'the places of prostration are for God alone', as meaning that those body parts – 'the places of prostration' – are God's and must not be removed. Some narrations also show the Imam Ali using this argument in judging thieves.

The conditions for criminal responsibility for theft include the standard ones – *aql*, *bulugh*, *ekhtiar* and *qasd* – and in the penal code and juristic works, lack of *ezterar* (distress) and freedom from threats are also specified. Additional conditions, which must all be present for the *hadd* to be applicable, include the following: the thief must know that the property belongs to another and that stealing it is forbidden; the thief must not be the father of the owner of the property (some also exonerate slave-owners stealing from their own slaves, and some specify that offspring receive the *hadd* for stealing from their parents as do mothers for stealing from their offspring, but some exonerate mothers as well as fathers for theft from their offspring); the value of the property must reach the *nesab* (quorum) of a quarter of a dinar or 4.5 'grains' of gold; the theft must not be motivated by need or occur during a famine; the intent must have been theft, not borrowing; the goods must not be governmental or public property, which has no individual owner; the goods must have been placed in a *herz*, a protective enclosure or container which could be reasonably expected to protect them; and the thief must have personally broken into this *herz* – even if aided by another – and removed the property, so that if one person breaks it open and another removes the goods, neither can receive the *hadd*. Furthermore, the *hadd* is not established if the thief is arrested after breaking into the 'enclosure' but before leaving it. Theft can only be prosecuted following a request by the *saheb-e mal* (owner of the [stolen] goods), and if the owner has not forgiven the thief, gifted the

property to them, sold it to them, or had it returned after the theft but, according to some, before prosecution (though the penal code mentions no ‘expiry date’ for return of the goods preventing the *hadd*). Also, the *hadd* lapses if the thief repents before theft is established (it is not clear if ‘established’ means proven in court or merely prosecuted; if the first, repentance during the trial could potentially cause *suqut*, ‘lapsing’). Theft is proven by two ‘righteous’ witnesses; or two intentional, unforced confessions made in a state of mental sanity before the judge trying the case; or, according to the penal code, *‘elm-e qazi* (many do not mention this; Khomeini only mentions it incidentally while discussing the necessity of the owner’s complaint for prosecution, not in the section about proof of theft). Furthermore, a person who confesses to theft once must return the goods allegedly stolen, but does not receive the *hadd*. Repentance or the injured party’s pardon does not prevent amputation after theft is ‘established’. Assistance in theft, or theft which does not fulfil all the *haddi* criteria, has only a *ta‘ziri* penalty. According to narrations, the Imam can pardon theft established by confession if there is no complainant, and if it is proven through testimony, the escape of witnesses during implementation of the *hadd* causes it to lapse, being equivalent to retraction of testimony⁵⁶.

The 2012 penal code omits some of these conditions. It mentions famine but not intent to borrow, need, or distress as exonerators. Its ‘deadline’ for prevention of the *hadd* through repentance (which the judge must accept), return of stolen goods to their owner, or owner’s pardon is ‘establishment’ of the crime. It retains the 1991/96 code’s penalties for theft⁵⁷.

Some jurists and government authorities have declared anaesthesia permissible prior to amputation, arguing that the punishment is loss of fingers, not attendant pain, and the *asl-e ebahe* (permissibility by default) allows anything not explicitly forbidden. Some have proposed reattachment of the severed limbs, though others have countered that it would reduce the punishment to a meaningless formality⁵⁸.

⁵⁶ Penal code articles 197-203; Khomeini, 360-75; Aghaei, 127-9, 128 footnote 2; Mortazavi, 176-202; Gorji, 64-89; *Sharh-e Lom‘e*, 129-66; Zera‘at (1383), 250, 313-39, (1385/2), 187-270; Hojjati, 405-29; *Lom‘e*, 254-60.

⁵⁷ 2012 penal code articles 113, 116, 268-79.

⁵⁸ Hojjati, 426; Zera‘at (1383), 335-6, (1385/2), 258.

The former head of the Judiciary, Ayatollah Shahrudi, has written an essay on the reattachment of limbs after *qesas-e 'ozv* (retribution in kind for injuries) and another on anaesthesia during corporal punishments; some of the arguments investigated there are also relevant to the issue of reattachment following *hadd* amputation. Since in the final analysis the scriptural punishment for theft is the removal of fingers, and their subsequent reattachment is not explicitly forbidden and the default is the permissibility of actions (*asl-e ebahe*) and the inapplicability of punishments (in this case the continued absence of fingers), one can make a rather tenuous claim in favour of reattaching fingers lost through amputation for theft⁵⁹.

Amputation, once infrequently reported and claimed to be exceedingly rare, may be on the rise. A judge told me that he witnessed it once; there were reported instances in February 2007, October 2010, October 2011, and January 2013, another (involving foot amputation for the second instance) in December 2011, and a few others described in the media⁶⁰. In theft case 1, amputation was implemented, apparently without being reported.

6. *Moharebeh va efsad fi'l-'ard*.

Although court documents for *moharebeh va efsad fi'l-'ard* ('insurrection and corruption on Earth') cases were not available for this study, one of its aims is to provide background information for all *hudud* carrying irreversible penalties. Furthermore, laws governing *moharebeh*, like some of those described earlier, shed light on an important greater issue. In this case, it is the vagueness of the law, permitting great latitude in accusing dissidents of *moharebeh* whether or not they bore arms. Therefore the regulations for *moharebeh* are given below. Future projects could focus on *moharebeh* cases if any became available.

⁵⁹ Shahrudi, 311-47; Khomeini, 457.

⁶⁰ Aghaei, 128-9; Picheca, 44; Niknam, "The Islamization", 20; Qazi; VOA Persian, "Safir"; Saffari; RAHANA, "Qat'-e pa"; Guardian, "Iran cuts"; Radio Zamaneh, "Yek e'dam"; Mehr; Ferran; Daily Mail, "The Sharia saw"; personal communication with judges.

In the penal code, *moharebeh va efsad fi'l-'ard* – treated as one crime – encompasses armed robbery, highway robbery, the use of weapons to terrify the public, and armed insurrection against the state. It also covers membership or support – even if one has not personally undertaken violent action or borne arms – of any group involved in armed insurrection against the state or formulating plans to overthrow it.

Furthermore, membership or support of any group *allied* with another group having the above description is *moharebeh va efsad*, even if the first group has not used weapons or plotted against the government. Supplying such groups with resources including weapons, explosives, funds and equipment is also *moharebeh va efsad*. An armed component is therefore unnecessary in *moharebeh va efsad*: membership or perceived support of a group having any perceived allegiance with armed anti-governmental organisations also counts as such. The punishments for this crime, at the judge's discretion, are execution, crucifixion, amputation of right hand and left foot ('cross-amputation'), or exile.

A crucial point is whether *moharebeh va efsad fi'l-'ard* is one crime or whether *efsad fi'l-'ard* – 'corruption on Earth' – stands independently of *moharebeh* – 'insurrection' – and if so, whether 'corruption on Earth' can firstly include actions unrelated to the overthrow of government, and secondly attract the same punishments as *moharebeh*. Although *moharebeh va efsad fi'l-'ard* appears as one crime in the penal code, it is unclear whether it is 'insurrection *and* corruption on Earth' or 'insurrection *and/or* corruption on Earth'. Also, one of the procedural codes (determining which crimes are to be tried in which courts) refers to 'insurrection *or* corruption on Earth', implying that they could be separate. The vague boundaries of this crime give judges considerable discretion regarding whether an act counts as *moharebeh* and/or *efsad fi'l-'ard*⁶¹.

In Shi'i *fiqh* there is also confusion regarding the dual nature of the crime. Jurists often identify the use of weapons as a necessary part thereof, and apply the punishments of Qur'an 5:33 – the origin of the concept of *moharebeh va efsad fi'l-'ard* – to *moharebeh*, making it unclear whether that is shorthand for the entire

⁶¹ Penal code articles 183-8; LEGRC, article 5.

phrase of which the ‘corruption’ element is merely an adjunct. A few contemporary jurists have noted the older jurists’ silence regarding *efsad fi’l-’ard* and called for any lewdness not covered by other *hudud* – for instance, the maintenance of co-educational swimming pools or ‘houses of feasting’, or the promotion of drugs or shamelessness – to be punished as *efsad fi’l-’ard* with the same penalties as *moharebeh*, including death. Some have declared that exile can occur in prison, which separates the criminal from their place of residence. Some consider *moharebeh* as a subset of *efsad fi’l-’ard*, so that every *mohareb* is also a *mofsed fi’l-’ard* (corruptor on Earth). At least one narration punishes kidnappers who sell free individuals as *mofsed fi’l-’ard*, but it is not clear if they are also *mohareb*. In the early post-revolutionary period there were apparently several executions for ‘corruption on Earth’ – defined as ‘crimes of sufficient proportions to encourage and propagate corruption on Earth, causing misery to the masses’ – for such diverse actions as assassinating revolutionaries, appropriating public funds, belonging to dissident groups, hostility or insults against Islam or the Revolution, and collaboration with Israel. More recently, *moharebeh* and/or *efsad* sentences, including death and amputation sentences, have been issued and occasionally implemented for mugging, insurrection, armed robbery, drug smuggling, membership of opposition groups, street protest, blogging, and sending emails about human-rights violations. It is not always clear if these punishments, especially for non-violent actions, were administered for *moharebeh*, *efsad*, or both⁶².

The penal code bill has a section about *moharebeh va efsad fi’l-’ard*, similarly to the penal code, but differentiates between the two. *Moharebeh* must have a public element and an armed element, and its punishment depends on damage inflicted.

⁶² Qur’an 5:32-4 (Ma’iddah), 2:11-2 (Baqara); Nobahar, “Qachaq”, 197-200, 212-4; Zera‘at (1383), 248-9, 295-308, (1385/2), 39-41, 193; Mar‘ashi, 236; Gilani, 227-45; Khomeini, 375-9; Mohaqqueq Damad, 11; Mortazavi, 13; Gorji, 7; *Lom‘e*, 260-2; *Sharh-e Lom‘e*, 168-79; Shahrudi, 208-309; Aghaei, 129-31; Picheca, 43, 52; Abrahamian (1999), 124-5, 210-11; Arjomand, *Turban*, 186; Qazi; VOA Persian, “Safir”; Radio Farda, “Ejraye hokm”, “Do nafar”; Rah-e Sabz; Iran Human Rights, “Amputation”; Komiteye Gozareshgaran; Mostafaei, “Farda”, “Piramun”, “Davud”; Amnesty International UK Blogs, “Iran: Farzad”; Education International; Daily Mail, “Iran chops”, “The Sharia saw”; Yeranian; Fathi; Sanati; Pannier; ICHRI, “Moharebeh”, “Student”, “Shadow”, “Widespread”, “Authorities”, “Abdolfattah”, “Protestor”; RAHANA, “Number”, “CHRR”; Wall Street Journal, “Dissident”; Iran Human Rights Voice, “Moharebeh”, “Charge”; Reporters Without Borders, “Two bloggers”; Anvari; Alinezhad; Mostaghim; UN General Assembly reports A/65/370 p. 5 (II-B9), A/64/357 p. 9 (IV-B30).

Efsad is any action which compromises public order or the national economy, and has the same penalties as *moharebeh* (execution, cross-amputation or exile). The 2012 penal code has a section for *moharebeh* and one for *baghi* (tyranny/rebellion) *va efsad fi 'l-'ard*. *Moharebeh* again must have a public and an armed element, and is punished by 'execution', crucifixion, cross-amputation or exile. *Baghi va efsad* need not involve weapons but must aim for large-scale destabilisation. It encompasses such varied acts as microbial warfare, creating 'centres of corruption and fornication', and 'spreading lies', and carries the death penalty⁶³.

Concluding remarks.

Chapters 2-4 provided background information regarding Iranian *hadd* laws and their interpretations by jurists. Chapters 2-3 addressed laws and principles governing all *hudud*, and this chapter described more detailed regulations regarding individual *hadd* crimes carrying irreversible penalties (death or amputation) in the first instance. The codified law's vagueness, and the multiplicity of sometimes conflicting scriptural interpretations, facilitate the discretion seen in the case studies of Part II. This can cause harshness if judges employ severe interpretations, but it could also promote lenient legal reform (e.g. sections 3.5, 3.7) if alternative interpretations became mainstream.

This chapter also displayed various institutionalised obstacles to lenience. These include the characterisation of rape as '*zina plus coercion*', potentially endangering those who report rapes (chapter 6, published rulings, section 5; chapter 7, section 7), and gender, age and 'legitimacy' discrimination. The inequalities in marriage, divorce and child custody laws are particularly relevant to adultery trials (e.g. adultery cases 1-3). Though not all these obstacles appear in the case studies, they combine to illustrate the difficulties in requiring laws to comply with scripture presented as inalterable irrespective of evolving morality. This is visible through laws governing child rape, stoning, and amputation, which some modern jurists, though themselves Shi'i Muslims, find incompatible with their own morality.

⁶³ Penal code bill articles 228-1 to 228-13; 2012 penal code articles 280-9; Gilani, 240-5.

Part II expands on the theoretical material in Part I by showing it ‘in action’, but also displays additional dimensions of *hadd* prosecution, such as the authorities’ legal contraventions, which are better observed through real cases, providing a fuller picture of how *hudud* operate in Iran today.

Part II: case studies.

Part I of this project (chapters 2-4) described the laws and principles affecting *hudud* in Iran, and contemporary conceptions of their Shi'i roots. Part II (chapters 5-9) analyses Iranian trials for *hadd* crimes carrying irreversible penalties, supplemented by published rulings regarding the same crimes, namely theft, sodomy, fornication and adultery. Chapters are arranged by crime. Part II shows how the concepts from Part I, including opportunities for, and obstacles to, lenience, are interpreted and applied in court.

Part II covers unpublished cases and published rulings. Unpublished cases are those for which I obtained multiple unpublished court documents, often supplemented by information from individuals involved. (The exception is theft case 5, based entirely on court attendance and discussion with the judge). The amount of detail in these cases reveals many facets of how legal concepts are applied in court.

Published rulings come from two collections of court judgements. Despite supplying less detail than unpublished cases, they corroborate or expand patterns observed in the unpublished cases. They also give some indication of the incidence of punishments, e.g. stoning. These numbers apply only to the limited sample, and cannot therefore be extrapolated to represent the whole country, for which overall data are unavailable. However, they suggest possible tendencies which could be investigated in future.

Chapters 5 and 6 (theft and sodomy) begin with unpublished cases and continue with published rulings. Chapter 7 differs from the others by containing only published *zina* rulings. This is because the number of published *zina* rulings was large enough to merit their own discussion. Furthermore, many published rulings did not exclusively concern adultery or fornication, because they involved multiple defendants, some married and others not. Because published *zina* rulings are all in chapter 7, chapters 8 and 9 (fornication and adultery) only cover unpublished cases.

For each unpublished case, known facts are described, and then salient points are analysed. The presentation of cases is cumulative: a mechanism discussed at length in one case may be noted briefly as also occurring in a subsequent one, or instead greater discussion may occur after several cases have displayed multiple manifestations of the same mechanism. Published rulings, whether following unpublished cases (chapters 5-6) or constituting the entire chapter (7), are instead arranged by theme.

Every chapter concludes by showing how the mechanisms identified contribute to the four major patterns characterising Iranian *hadd* trials. As explained in chapter 1, these are: the interpretability of laws and consequent judicial discretion; legal infractions; socioeconomic circumstances; and institutional obstacles to lenience. The first two patterns are associated with the fact that both Shi‘i and codified law contain opportunities for lenience, whose application however is at the authorities’ discretion. Socioeconomic factors do not appear in all cases, but where they do they constitute an important theme. Chapters 6-7 (and to some extent chapter 5) include the additional theme of incidence of penalties. Successive chapters build upon each other, displaying the manifold ways in which specific mechanisms contribute to overall patterns.

As explained in chapter 1, section 3, limited access to sources precludes a nationwide statistical analysis. Nevertheless, the repeated recurrence of themes suggests that they may traverse the system of Iranian *hadd* prosecution.

5. Theft cases.

This chapter analyses five unpublished Iranian theft cases and nine published theft-related rulings, displaying practical applications of several elements from Part I. The manifold ‘micro-patterns’ characterising these cases contribute to the broader patterns discussed throughout the project: the interpretability of laws, judicial authorities’ legal infractions, socioeconomic dimensions of prosecution, and fundamental obstacles to lenience in the legal system, as well as the additional tentative theme of incidence of penalties. This coalescence into greater patterns will be discussed after all the cases have been analysed.

Unpublished cases.

Case 1: amputation sentence carried out.

Esfahan, 2003.

This case is important because it involved the implementation of the supposedly rare penalty of hand amputation for theft. Most legal conditions for the penalty were apparently present, showing that if such penalties are in the law, their implementation will occasionally be legally unavoidable. However, the man who lost his fingers never had lawyers, which is a legal flaw since lawyers are constitutionally guaranteed (chapter 2, section 3). The events of the case unfolded as follows.

A man reported a mobile, tape recorder and fax machine stolen. Two men, ‘A’ and ‘B’, were found with the phone and arrested. The mobile and the fax machine, also found in A’s possession, were returned to their owner, but the tape recorder had apparently been sold. When interrogated, both men said that B was innocent of theft and had only been given the mobile, unawares, by A. Though both were tried together, B was acquitted through the *asl-e bara’at* (in Shi’i penal law, the presumption of innocence) unaccompanied by codified laws.

Suspect A confessed twice (sufficient in theft), in court, to taking the objects, alone, from their owner's unlocked house, and selling the tape recorder to another man. This meant that the two conditions of the property being in a *herz* – enclosure – and of the same person breaking into the *herz* and removing the property were fulfilled. Furthermore, the value of stolen goods was deemed to reach the *nesab* (threshold for applicability) and the injured party had requested the *hadd* if applicable. Since the crime had been proven by correctly formatted confession and the conditions for the *hadd* were present, A was sentenced to *qat'-e yadd*: amputation of four fingers. He was also sentenced to return the tape recorder or provide compensation. Its alleged buyer, never captured, was sentenced in absentia to six months in jail and 74 lashes for knowingly purchasing stolen goods, on the sole basis of A's confession.

The Supreme Court confirmed A's sentence as compatible with *mavazin-e shar'i va qanuni* – the standards of the shari'a and codified law. Following various bureaucratic procedures, the amputation sentence was carried out in a park, with a forensic specialist and an ambulance team standing by, and with orders for A to be released once his injuries healed. The entire process, from the first court hearing to the amputation, took approximately six months.

Several issues transpire from this case.

- 1) Although the conditions for amputation are advertised as impossibly stringent, if they are considered fulfilled, amputation will naturally follow. As long as these penalties are in the law they may sometimes be applicable.
- 2) Failure to provide even a court-appointed lawyer for the defendant is incompatible with article 35 of the Constitution, which guarantees legal representation. This was apparently a strict judge (he confirmed an amputation sentence in case 3, rejecting a declaration of repentance that legally prevented the *hadd*) but still there were opportunities for A to avoid confession or use repentance to prevent the loss of his fingers, and the absence of a lawyer meant that he was denied these possibilities.

3) The judge's interpretation of '*herz*' is questionable. Article 198, note 1, of the penal code describes a *herz* as an enclosure protecting goods from theft. Jurists elaborate on this (see chapter 4, section 5) by saying that the enclosure must be reasonably expected to protect the goods; likewise, article 198, section 15, specifies a 'commensurate enclosure'. Khomeini even declares that pickpockets are only liable for amputation (assuming the stolen amount meets the *nesab*) if the pockets whence they steal are hidden or have a closing such as a zipper which would require efforts to open; the contents of an ordinary pocket are not sufficiently *mahfuz* (protected) for it to be considered a 'commensurate enclosure'¹. In this case, goods were stolen from an *unlocked* house, which arguably was not a 'commensurate enclosure'.

4) Amputation is presented as contingent upon the complainant's request thereof, but the law does not require it. Article 200, part 1, of the penal code requires the injured party's initiative in prosecution for theft; through part 2, amputation is inapplicable if the injured party forgives the thief before prosecution. The most lenient interpretation of this is that injured parties can first forgive, then prosecute, thereby retrieving their goods without inflicting amputation. It does not, however, require complainants' demand for amputation: by default, amputation is applicable unless complainants have pardoned before prosecution. This judge makes non-applicability the default, requiring an additional condition – complainants' request – before amputation is applicable. It adds another opportunity, absent from codified law, to avoid amputation. However, it still gives complainants the discretion to override this added lenience, as happened in this and the next case.

5) The conviction in absentia of the tape recorder's alleged buyer, based exclusively on A's confessions, contravenes the prohibition against using one person's confessions to incriminate another².

6) The use of the *asl-e bara'at*, without accompanying codified laws, and the phrase 'the standards of the shari'a and codified law' display Shi'i law's perceived independent relevance to trials.

¹ Khomeini, 367.

² See chapter 2, section 6.1.

7) Article 198, note 4, of the penal code says that “if the thief returns the stolen goods to their owner, the *hadd* is inapplicable”, without specifying a time limit for this mechanism. The defendant returned two of the three stolen objects, but was unable to return the tape recorder, which had been sold. A lawyer might have prevented amputation by having the tape recorder traced, confiscated and returned (or obtaining and ‘returning’ an identical one).

8) While the total value of stolen goods apparently exceeded the *nesab* of a quarter of a dinar, two items – the mobile and the fax machine – were returned to their owner before the trial, thereby removing themselves from the total amount. Only the tape recorder remained. Again, a lawyer could have investigated whether it, alone, fulfilled the *nesab*.

Case 2: the dangers of collaborating with the authorities.

Esfahan, 2002-4.

This case has characteristics in common with the previous one, including the absence of lawyers and the importance attributed to complainants’ request of the *hadd*. Similarly to the previous case, it shows that collaboration with the authorities in *hudud* institutionally incriminates the collaborator. It adds the possibility that defendants might believe that collaboration will be rewarded with lenience. It also shows the importance of judges’ attitudes towards defendants.

A man was arrested following investigations regarding stolen cars and multiple shop robberies. With a companion charged only as an accomplice, he confessed to the police and collaborated on a grand scale, revealing many locations of the thefts and even taking police officers there and demonstrating their methods.

Some incriminating items (e.g. stolen goods described by the complainants and lock-picking or cutting equipment) were found among the accused men’s possessions or with buyers of stolen goods, who confessed to buying them from the defendants.

Several complainants recognised the suspects in identity parades. The property stolen in each theft was apparently many times greater than the *nesab* that activates the *hadd*. The evidence suggested that a gang of four men, of whom two remained at large, had committed the thefts.

The defendants were prosecuted on the request of 89 complainants, of whom 60 also testified and 25 requested the *hadd*. As in the previous case, there were no lawyers.

In court, retracting their pre-trial confessions, both men denied most of the thefts, and also denied having taken police to the scenes of their thefts, although several complainants testified to seeing them there on those occasions, and the associated police reports bore the signatures of the defendants and the accompanying officers. In court they only admitted to thefts for which the complainants had waived the *hadd*, and one for which the goods were found in their possession, undermining denial. The primary defendant, having confessed to approximately 70 thefts before the trial, only admitted to 12 in court.

On the basis of the evidence, the judge declared '*elm*' ('knowledge', which permits conviction) of the men's guilt of some of these crimes. Where there was insufficient evidence, the men were acquitted through the *asl-e bara'at* as expressed in article 37 of the Constitution. Where the complainants had pardoned the thieves or only requested return of their goods, the judge complied with those requests. But regarding the thefts for which there was sufficient evidence *and* the complainants had requested the *hadd*, the judge, finding that the conditions for the *hadd* were all present, sentenced the primary defendant to amputation plus return of the stolen goods or compensation, through articles 198 to 201 of the penal code. The accomplice received a lesser 'discretionary' (*ta'ziri*) sentence.

The Supreme Court overturned the amputation sentence. It questioned the use of '*elm*' when testimony and confession proved theft directly. Also, since two members of the gang of four were unavailable, it was uncertain that the man sentenced to amputation had personally broken into any *herz* *and* removed its contents. Finally, since many of

the complainants had not requested the *hadd*, it had to be clarified on whose request it was ordered. The case went back to the original court for revision.

In response, the first judge explained that the thefts occasioning amputation had been those for which the required conditions existed *and* the injured parties had requested amputation. The conditions had been proven through *'elm* deriving from testimony plus other evidence. He did not address the issue of the *herz*.

The Supreme Court, insisting that *naqz* (quashing) required a new ruling, requested this of the original judge, also ignoring the problem of the *herz*.

When I was in this court, this was the most recent stage of the trial, and I do not know how it later developed. The judge told me that because of the large number of thefts and complainants, the man deserved amputation, a rare punishment reserved for the worst criminals. His justification of the penalty through the unusually multifarious nature of the crime contradicts the mechanism of the *hadd*, which is activated through fulfilment of its conditions irrespective of additional seriousness of the crime (chapter 2, section 5). This explanation is also undermined by the fact that he had issued the ruling in case 3 (confirmed by the judge from case 1) less than a month before sentencing this man, and case 3 involved only one theft, prosecuted by three, not 89, complainants. Furthermore, his colleague from case 1 had issued an amputation sentence for a single petty theft with one complainant. Interestingly, this judge told me that there was a 'trend' whereby the Supreme Court generally overturned amputation rulings, and he was, on this occasion, going to combat this.

The trial up to this point had occupied well over a year, though the suspect was tried almost a year after arrest.

Issues revealed by this case:

- 1) As in case 1, the suspects were unconstitutionally denied lawyers.

2) There were sixty witnesses to the thefts cumulatively; but given the large number of thefts, were there at least two witnesses³ to at least one theft which certifiably carried the *hadd*? This was never made clear. The need for such crucial clarity was submerged by the impressive number of witnesses, and there was no mention of their '*edalat*' ('righteousness', required for valid testimony) or other legally required qualifications. All these were legal infractions.

3) It was not proven that the defendant had breached the *herz* and removed the goods in any specific instance of theft. This had the most realistic chance of preventing amputation, but the absence of a lawyer precluded insistence on this point.

4) The *hadd* was only ordered for thefts where *haddi* (adjectival form of *hadd*) conditions (chapter 4, section 5) were deemed established and complainants requested amputation, displaying the same lenient interpretation seen in case 1, and shared by the Supreme Court, whereby amputation depends on complainants' request. Again, this added condition is not in the law.

5) There is confusion surrounding the applicability of pardon in theft. As discussed in case 1, point 4, the penal code (article 200, section 2) says that amputation is applicable if "the injured party has not forgiven the thief before lodging a complaint". This implies, without stating it explicitly, that injured parties can forgive, thereby preventing amputation, but subsequently prosecute. Here, some complainants pardoned the defendant or only requested the return of their stolen property, and the judge ruled that for thefts from those complainants, amputation was inapplicable. However, they were still classified as *complainants*, implying that a person can pardon a thief but still prosecute them to retrieve stolen goods without inflicting amputation. In fact, the note to article 200 says that after *sobut* (establishment) of *haddi* theft, neither pardon nor repentance can prevent amputation. This implies that until 'establishment', pardon and repentance *can* prevent amputation. However, 'establishment' is not defined in codified law. Therefore in the next case we shall see

³ Theft is proven by two witnesses, two confessions or '*elm*'.

different interpretations of it, ranging from the moment of arrest to the issue of a ruling which the judge deems 'correct'.

6) Once the first ruling was overturned, the case went back to its original judge. For him to reconsider his ruling would have required an admission of error before the exalted Supreme Court judges and his colleagues in his own court. This bias is compounded by the judge's unsympathetic stance: he emphasised his moral duty to pursue the man's punishment with any means at his disposal. Given these conditions, the appeal did not constitute a 'second opinion'.

The law (see chapter 2, section 4) allows an appealed case to be returned to its original court if its ruling was overturned because of insufficient investigation. However, as observed in this case, a judge's vested interest in proving himself right can hinder investigations which could suggest that his original ruling was wrong and the initial investigations careless. Also, issues other than mere 'investigation' can be involved but subordinated to the perceived main issue of 'insufficient investigation' which leads to revision by the same court. Therefore the legal permission of revision by the originating court can vitiate the objectivity of appeals and constitute a bias.

7) The judge had considerable personal investment in the case. His stated reason for exceptional applicability of amputation, the large number of thefts and complainants, is not in the law and was undermined by the fact that he ordered amputation in case 3 which lacked these features. His decision had less to do with the law than with his contempt for the defendant, which was clear from his manner, his adversarial attitude towards the Supreme Court for overturning his rulings, and his insistence that he would pursue amputation with every tool available. This partiality indicates a blurring of the roles of judge and prosecutor also seen in case 5 below. His mention of the Supreme Court's tendency towards lenience in theft foreshadows the high proportion of overturned execution sentences among the published rulings in chapters 6 and 7.

8) As case 1 also shows, suspects of *hadd* crimes do not obtain lenience by co-operating with the authorities. Here the suspects' extensive collaboration only incriminated them. It is possible that in pre-trial custody they learned of the perils of co-operation from fellow inmates, which might explain their sudden about-face when the trial began. This is similar to what apparently happened in fornication case 2 and adultery case 5.

Case 3: who removed the loot?

Esfahan, 2002-3.

In the previous two cases, goods were assumed to have been removed from an 'enclosure' without much investigation of the parameters involved. This case shows that when these parameters are investigated, they are highly interpretable.

The events of the case are as follows. Three men were suspected of stealing from a shop; only two, Suspects A and B, were arrested. Their pre-trial confessions matched those made in court, where they had a court-appointed lawyer.

The men confessed more than twice in court. Their confessions described the following details. All three suspects had made a hole in the wall of the shop. Suspect A and Suspect C, who had escaped arrest, had placed some merchandise into a sack and tied it to a rope. Suspect B had stood on the roof and pulled everything up; then all three had taken the goods away on a motorcycle.

Suspect A stated in court that he had repented immediately after his crime, saying "I was a fool" and "I made a mistake" but also explicitly declaring "I repented". Nevertheless, the judge – who also tried case 2 – declared '*elm* and *yaqin* (certainty) of his guilt. Finding that his act of placing the goods in the sack and tying them to a rope constituted their removal from the *herz*, he sentenced A to hand amputation.

His lawyer appealed, citing various flaws in the judgement. 1) While Suspect A had confessed to perforating the wall, he had not confessed to removing the goods, but

only to tying them to a rope. The lawyer cited from Khomeini's *Tahrir al-Vasileh* (his treatise on Shi'i law) to confirm that the *hadd* only applies to those who have breached the *herz and* removed its contents. 2) All property stolen by A and B was returned, and the complainants had officially withdrawn their complaint and pardoned all suspects. 3) Suspect A not only claimed to have repented immediately after the crime – before arrest and prosecution, therefore – but announced this in court, before the ruling was issued, and therefore before the crime had been 'established'. This, by article 200, part 5, of the penal code, automatically prevented amputation. 4) Suspect A was severely addicted to narcotics, and, motivated by impellent need for them, committed theft under *ezterar* (distress), which prevents amputation by article 198, part 10, of the penal code.

Accepting these arguments, the Supreme Court overturned the ruling, declaring that under these conditions amputation would contradict 'the standards of the shari'a and codified law'. The case was sent for retrial to an equivalent court, presided over by the judge from case 1. (Incidentally, the Supreme Court branch which overturned this ruling also confirmed that of case 1).

During these new hearings, both men declared that Suspect B had not perforated the wall or pulled up any goods, but had merely waited for the others by the 'getaway' motorbike. This contradicted their confessions in the initial trial, whereby he had pulled up the goods, and all three suspects had perforated the wall.

Furthermore, A, whose theft was deemed *haddi* because he had previously confessed to tying the sack to a rope for B to pull up, changed his confessions, claiming to have stood on the roof and pulled the goods up. This worked against him, because the second judge, in contradiction with the first, declared that it was not placing the goods in a sack and tying them to a rope which constituted their removal from the *herz*, but, indeed, the act of pulling them out of the shop. The judge, again invoking the *Tahrir al-Vasileh*, said that since the same man had attacked the *herz* and removed its contents, that condition for amputation was fulfilled.

The judge also used the *Tahrir* to claim that addiction to drugs did not constitute *ezterar*. (The *Tahrir* seems not to specifically exclude addiction from the definition of *ezterar*, merely giving famine as an example thereof⁴). The shop owners' pardon came too late, occurring *after prosecution*. (Here, prosecution, not 'establishment', is identified as the moment when pardon loses effectiveness).

The judge declared that such statements as 'I was a fool' and 'I made a mistake' were not identical to repentance, and that since the supposed repentance had occurred after 'establishment' of the crime, that is, *after A's arrest*, it could not prevent the *hadd*. (Note this judge's conception of when 'establishment' occurs, contrasting with the interpretation by the lawyer, accepted by the Supreme Court, whereby 'establishment' means issue of the ruling). Since the judge had '*elm* of the crime and all *haddi* conditions, the man was again sentenced to amputation, with the possibility of appeal, through penal code articles 105 and 197-201. (Incidentally, this judgement was issued the day after the amputation sentence from case 1 was implemented following a ruling by the same judge).

The lawyer appealed again, and the case went to the same Supreme Court branch which had overturned the first ruling. The Supreme Court judges agreed with the second judge's idea of what constituted removal of goods from a *herz*. However, this cast A's repentance in a new light. Because the first ruling was flawed, it had never 'established' *haddi* theft, which had only been 'established' when the second ruling was issued. Any repentance made or announced before that would normally avert the *hadd* automatically. For these judges, contrary to the opinion of the retrial judge, 'establishment' of the crime occurs when a valid ruling *correctly* assesses its *haddi* nature: yet another, even more lenient, interpretation of 'establishment'.

Since this claim of repentance would normally prevent amputation, only the judge's '*elm* that the repentance was false could still allow it. Quoting directly from the ruling: "Since the esteemed court has '*elm* of the theft, does it also have '*elm* that

⁴ Khomeini, 361, 367.

[A's] repentance is false? Through *al-hudud todra' be'l-shubuhah*⁵, if the court convicts [A] without *'elm* of the falsity of his repentance, there will be dire consequences in the afterlife. Therefore the judgement is overturned and the case is returned to its originating court; and if that court has *'elm* of the falsity of [A's] repentance, it can issue another amputation sentence, which this court is prepared to confirm. If not, it should issue a suitable ruling". This document is dated a year and three months after the first ruling.

This is the last document available regarding this case, and we do not know A's ultimate fate. However, the extant documents, and the dialogue between the judges involved, shed light on several interesting issues.

- 1) The use of extra-legal texts and ideas (e.g. the *qa'edeye darr'* and Khomeini's *Tahrir*) again confirms Shi'i *fiqh*'s influence on rulings alongside codified law.
- 2) The technicalities of the *herz* were crucial here, and the documents are full of repeated and minutely detailed explanations of exactly who performed which act in the course of the theft. By *haddi* standards, identical crimes with identical amounts of harm and responsibility can carry radically different penalties on the basis of these technicalities. The emphasis on the *herz* also demonstrates that amputation is for physical theft limited by what humans can carry out of an 'enclosure' before being caught, whereas potentially enormous thefts perpetrated through computers or other non-physical means (e.g. fraud) cannot attract this penalty. (Even theft with animal assistance is only counted as 'supervision' of theft by article 198, note 2, of the penal code, so it is unclear whether removal of goods with machinery would be *haddi* theft). Because the *shar'i* (adjectival form of 'shari'a') parameters for 'theft' originate in an era remote from ours, they exclude thefts which can transcend the limits of that era through technology particular to this one. While including petty theft most probably carried out by relatively impoverished individuals, they do not cover potentially gigantic 'white-collar theft'.

⁵ The 'axiom of removal' (literally, 'doubt averts punishment'); see chapter 3, section 5.

3) This case illustrates the lack of consensus regarding the mechanics of the *herz*, and the crucial role played by different, though perhaps equally feasible, interpretations of its parameters. The first and second local judges had almost opposite conceptions thereof. Luckily for B, his changed confession during the new trial kept him outside the shifting definitions of ‘removing the contents of the *herz*’, while A’s altered confessions did precisely the opposite by keeping him within the moving boundaries of the *hadd*.

4) Both men’s confessions during the second trial contradicted those in the first, but there was no mention of consequent invalidation (generally, contradiction invalidates proof). Each set of confessions was accepted as evidence in its own right in each trial, even though confession was the only form of evidence in both trials.

5) Despite valid confessions in each trial, made in court more than twice per trial, both judges incorporated these confessions into ‘*elm*’ instead of using them as direct proof. This is even more noteworthy since in both cases confession was the only form of proof, so the judges’ ‘*elm*’ cannot have been superior to the *zann* (conjecture) created by confession. Yet ‘*elm*’ apparently gave them the right, even according to the Supreme Court, to reject repentance which ordinarily would have automatically averted the *hadd*. Judges’ ability to upgrade knowledge based exclusively on one of the ‘classical’ forms of proof (confession or testimony) to ‘*elm*’, without additional evidence, obviously endangers defendants, potentially sweeping away all the strictures and advantages applicable to ‘lower’ forms of ‘knowledge’.

6) Since article 200, part 5, of the penal code simply says that repentance before ‘establishment’ of the crime causes *suqut* (invalidation) of the *hadd*, it is not clear whether ‘*elm*’ can overturn that *suqut*. The Supreme Court invoked the *qa‘edeye darr*’ (the axiom ‘doubt prevents punishment’) in overturning the last ruling. In the presence of two equally likely possibilities, one causing an irreversible punishment and the other not, the *qa‘edeye darr*’ would favour the second possibility, and so would the ‘axiom of interpreting laws to favour defendants’ and similar principles explained in chapter 3. The second judge’s, and the Supreme Court’s, permission of

the harsher choice clearly contradicted these principles. Incidentally, while rejecting ‘indirect’ repentance (“I was a fool”) the second judge disregarded the suspect’s explicit statement “I repented”, displaying both severity and carelessness.

7) As this and the previous case show, it is unclear when repentance, pardon and return of stolen goods lose their ability to avert the *hadd*. The penal code gives no ‘expiry date’ for *suqut* following return of stolen property, so technically its return should have prevented an amputation sentence, but did not. Also, as discussed in cases 1 and 2, the codified law can be interpreted as allowing repentance and pardon to prevent amputation until ‘establishment’ of the crime, which the law does not define. Here, the Supreme Court’s definition of ‘establishment’ as ‘the issue of a correct ruling’ is more lenient than the second judge’s view that it occurs upon arrest. The second judge’s opinion that pardon and return of stolen property only prevent amputation *before prosecution* mirrors Khomeini’s *Tahrir* which says the same thing⁶. This means that the stern stance of the *Tahrir* overrode the more lenient possibilities permitted by the codified law. The ability of uncodified sources to override codified law demonstrates the tenuous authority of the codified law compared to Shi‘i law, of which it is deemed an imperfect shorthand version.

Case 4: collaboration in theft prevents the *hadd*.

Esfahan, 1995.

This case only requires brief discussion, being notable only for containing no amputation sentences. Various men were accused of several crimes including rape, sodomy, assault and theft (of, inter alia, another tape recorder). Some thefts clearly involved breaking into locked homes. The two men accused of theft confessed before trial and subsequently in court, where all defendants had lawyers. There was other evidence, including medical reports, complaints by locals, and the discovery of stolen goods; *‘elm* was therefore cited as the basis of the ruling. The two men were sentenced to public hanging for rape (not stoning, despite being married: see adultery

⁶ Khomeini’s *Tahrir* (p. 373) allows the return of stolen goods to prevent amputation before prosecution but not after, and pardon to prevent it before prosecution.

case 5); they had other sentences including discretionary penalties for some thefts and restitution of stolen goods. The Supreme Court confirmed this ruling.

Although some of the thefts involved breaking into an ‘enclosure’ and stealing its contents, amputation was never mentioned. The death penalty does not override amputation: penalties (with some *ta‘ziri* exceptions) must be arranged so as not to undermine each other if possible, as expressed in the penal code and Khomeini’s *Tahrir*⁷. Because thefts were collaborative, it was assumed to be unproven that either suspect had breached the enclosure and removed its contents. The same mechanism appears in the case below and some published rulings. However, the same uncertainty was ignored in case 2, further highlighting judges’ discretion.

Case 5: patterns in written files also emerge in court.

Esfahan, 2004.

The only complete *hadd*-related trial I saw in Iran unfolded as follows. A weeping young man was brought into the courtroom with his equally distraught aged parents. The judge perused some papers and stated that the boy, bereft of previous convictions, had confessed before interrogators to having stolen two carpets accompanied by an accomplice. He then addressed the terrified boy, asking him whether he knew the punishment for theft. A long pause followed; I expected the judge to cite the amputation penalty. However, when the boy failed to speak, the judge flipped through his copy of the penal code and began enumerating various permutations of *ta‘ziri* fines and flogging and incarceration penalties. The rest of the trial consisted of negotiations regarding the optimal proportion of each of the three types of punishment in view of the boy’s personal situation and the extent of attenuation allowed through article 22 given his obvious repentance and lack of a criminal record. The boy and his parents protested that his kidney problem precluded flogging to the back, that his wife would leave him if he were imprisoned, and that they would have to sell their modest abode to cover any heavy fines. A mutually agreeable compromise was reached whereby incarceration would be waived in

⁷ Penal code, articles 47, 98; see also 48. Khomeini, 447-8.

exchange for a fine of 100,000 tomans and twenty lashes to be administered to the back of the legs, avoiding the kidney area. The boy and his parents departed much relieved, loudly and enthusiastically thanking the judge and praising one of the Imams, whose birthday was approaching, for his intercession.

After everyone had left, upon questioning the judge I discovered why he had immediately cited *ta 'ziri* penalties as 'the punishment for theft'. Because the boy had had an accomplice, the assumption was that one person had not broken into the *herz and* removed the goods; therefore the theft was automatically reclassified as *ta 'ziri*. This was not stated explicitly in court, and the judge told me that the default was for thefts to be presumed *ta 'ziri* because of the stringent *haddi* conditions. The presence of multiple and particularly stringent conditions for amputation may be one of the reasons for the apparent rarity of amputation rulings in Iran.

This judge's relatively understanding disposition towards the defendant, which even permitted negotiations with him and his parents, led to a light penalty and failure to press the point of whether or not one person had indeed profaned the *herz and* removed the goods – a point which was pressed in case 3 and ignored in case 2 even though multiple participants were involved. The judge's discretion means that his personal inclinations could lead him in either direction, as illustrated by case 2 and both fornication cases, and as Mir-Hosseini observed in divorce cases⁸.

Importantly, the boy never confessed in court. His confessions were technically invalid because they occurred out of court. However, they were used as direct evidence of guilt, and the question of their validity never arose. Furthermore, the boy had no lawyers despite the guarantee of legal representation (chapter 2, section 3). In fact, in all the court sessions I was allowed to attend, most of which were irrelevant to the project, lawyers were absent and pre-trial confessions were used. In other words, the patterns of confession and frequent absence of lawyers observed through written court files also emerged in every court session I attended. Another example of this is a trial hearing where the accused man (again without a lawyer) denied his

⁸ E.g. Mir-Hosseini, *Marriage*, 63, 65, 67-71, 75-7, 218 (note 36).

pre-trial confessions, protesting his innocence, and the judge disregarded this by declaring him “a liar – a liar and an addict” although no drug-related charge was being heard.

Overall, the hearings I witnessed suggested not only that pre-trial confession was standard and its denial frequently disregarded, but as in the above example, judges often presumed guilt, their emotional assessments of the defendants appeared important in their attribution thereof, and their role resembled that of prosecutors rather than impartial arbiters.

Published rulings.

Nine published theft rulings are available. None contain amputation sentences. Some give only limited information regarding the case, leaving some details unknown⁹.

The rulings reveal the following issues.

1) In four cases, the charge was *sherkat dar serqat*, meaning ‘collaboration in theft’. As in cases 4 and 5, the ‘collaboration’ element appeared sufficient to avert the *hadd*, in contrast with cases 2 and 3 where the charge was also ‘collaborative theft’ but the *herz* was investigated. Only one ruling even mentions *haddi* conditions, which were deemed absent with no explanation. This case involved a lone thief, so the ‘collaboration’ obstacle was intrinsically absent. Two rulings explicitly mention breaking and entering, but the issue of the *herz* does not arise. All this shows the discretion with which conditions for amputation can either be assiduously investigated or presumed absent at the earliest opportunity.

2) One ruling relies only on testimony, but makes no mention of ‘*edalat*’ (righteousness) of witnesses. Two rulings rely exclusively on confession; in one, confessions clearly occurred out of court, and in the other (again involving theft of a tape recorder!) the location of confessions is unspecified. The one using confessions out of court cites the prohibition of using one person’s confessions to incriminate

⁹ Saberi, 225-39, 384-6; Bazgir, 161-3.

another, using these otherwise invalid confessions only against their originators; however, another ruling uses one person's confession against another. Six rulings imply *'elm* by including evidence other than confession or testimony, but only one explicitly mentions *'elm*. It relies exclusively on proof other than confession or testimony, and since it is an appeal ruling, we can see that the Supreme Court approved the *'elm* as *mota 'arref*, meaning 'obtained by acceptable means' (as required by article 120 of the penal code).

3) In two cases, Shi'i law was used without codified law cited alongside it.

4) One case involved theft of an irreplaceable, potentially priceless artefact from an ancient mosque – an act automatically disqualified from the *hadd* because the property stolen was public¹⁰ and because the mosque, being open and accessible, did not constitute a *herz*. Instead, in case 1, an unlocked house was considered a *herz* and a man consequently lost four fingers over a tape recorder. As discussed in case 3, the fulfilment of the *haddi* conditions, not the seriousness or moral dimensions of theft, determines eligibility for amputation.

Concluding remarks.

As reiterated in the beginning of this chapter, four major themes characterise Iranian *hadd* trials. The issue of incidence of penalties also occasionally arises and is foreshadowed here. The 'micro-patterns' observed in these theft cases contribute to these larger patterns in the following ways.

Interpretability and judicial discretion.

The interpretability of laws, and consequent judicial discretion, were manifested in several areas. In cases 1 and 2 amputation was declared contingent on the complainants' request thereof; this lenient interpretation is not specified in the codified law. The interpretability of when repentance, pardon or return of stolen

¹⁰ Article 198, point 16, of the penal code excludes the *hadd* for theft of governmental, public or religious endowment property.

goods could prevent the *hadd* before ‘establishment’ of the crime was displayed in cases 2 and 3. Interpretations ranged from ‘establishment’ occurring upon arrest to its delay until a ‘correct’ ruling is issued; similar variations in timing applied to pardon and return of stolen property, affecting the chances of avoiding amputation.

The parameters of the *herz* are also highly interpretable, as observed particularly in case 3, where judges held opposite conceptions of what constituted removal of goods from the ‘enclosure’. The *herz* in case 1, an unlocked house, would arguably not have justified amputation according to Shi‘i jurists. The *herz* parameters prevented amputation in cases 4 and 5 and most of the published rulings: because there were multiple suspects, it was assumed that it could not be determined whether any particular suspect had breached the *herz* and removed the goods. On the other hand, in case 2, failure to determine this parameter did not prevent an amputation sentence.

‘Elm is both an eminently interpretable concept and a tool giving judges discretion. In case 3, even the Supreme Court conceded that *‘elm*, at the judge’s sole discretion, could override the normal action of repentance in preventing amputation.

All this displays the interpretability of many parameters and judges’ discretion in applying them. Other instances of discretionary interpretation are the judge’s rejection, in case 3, of repentance as incorrectly phrased, and of addiction as a form of ‘distress’ just because Khomeini’s *Tahrir* does not explicitly mention it. This decisive use of a *fiqh* treatise exemplifies a major source of interpretability: the parallel operation of codified and Shi‘i law in court. Uncodified Shi‘i legal elements or fatwas were used independently of codified law in cases 1 and 3 and some published rulings. In case 3, the *Tahrir* even overrode codified law, precluding legally permissible opportunities to avoid amputation through pardon and return of stolen goods.

Judicial discretion is also manifested in the importance of judges’ personal attitudes. In case 5, the judge’s sympathetic stance benefited the defendant. Cases 1-3 involved

the same severe judges pursuing amputation. The judge's personal insistence on amputation was particularly obvious in case 2.

Legal infractions.

In cases 1, 2 and 5, defendants were illegally denied lawyers; in cases 1 and 2, this meant that important legal arguments were not made. Laws governing confession were broken in cases 1 and 5 and some published rulings; testimony regulations were contravened in case 2 and one published ruling. In case 2, the presence of breached 'enclosures' was used as proof that one particular suspect had breached them and removed the goods, though this was not proven. The discretion allowed through *'elm* in case 3 allowed repentance norms to be disregarded: this is an example of *'elm*, interpreted as giving the judge discretion, being used as a tool to contravene laws.

Social dimensions.

Because legally amputation applies only to physical theft limited by how much a person can carry from an 'enclosure', it includes petty theft mostly linked to low socioeconomic status. It excludes more sophisticated fraud or computerised theft involving much greater values and more privileged individuals, including politicians and powerful corporate figures¹¹. By specifying physical theft, amputation laws target poorer individuals while sparing wealthier ones.

Institutional obstacles to lenience.

These theft cases display some ways in which the system is weighted against lenience. One is appeal bias, observed in case 2 when the case went twice to the same court. An appeal assessed by the authority that one is appealing against is meaningless. Other institutional obstacles are the confusion of the roles of judge and prosecutor, seen in cases 2 and 5, and the swiftness of some trials, seen in case 1 and

¹¹ Regarding huge, unpunished fraud by government officials: Kusha, 272-3, 290-1. On widespread corruption: Maleki, 20.

observed again in chapter 8¹². Yet another is the mechanism of ‘reverse plea bargaining’ seen in case 2. Because in *hudud*, confession invariably incriminates confessors, suspects who confess in the belief – sometimes encouraged by interrogators, as seen in chapters 6 and 9 – that this will be rewarded with lenience thereby doom themselves. The coexistence of confession as proof and the belief in lenience as a reward for confession increases the possibility of conviction in *hudud*.

A crucial obstacle to lenience observed through cases 1-3 is that the amputation penalty exists in the law, and therefore, no matter how stringent its conditions, judges can occasionally demand it. Its scriptural origin (Qur’an 5:38) hinders abrogation. Furthermore, as noted earlier, it is contingent upon physical characteristics which not only limit it to forms of petty theft linked to low socioeconomic status, but are unconnected to some moral dimensions of the crime. In one published ruling, the theft of an irreplaceable historic artefact did not attract amputation because of technicalities; in case 1, instead, a man lost four fingers over a mass-produced tape recorder. Even injured parties’ prerogatives are overridden by technicalities of timing, which can overrule pardon.

This dissociation between harmfulness of the crime and severity of punishment, combined with that punishment’s apparent irremovability, illustrates the difficulties created when rules originating in one environment are considered obligatory in another (see chapter 1, section 5.5).

Incidence of penalties.

The absence of amputation sentences in the published rulings and cases 4 and 5, plus the judge’s assertion in case 2 about the Supreme Court’s tendency to overturn them, foreshadow the tentative indications regarding incidence of penalties observed in the published rulings of the next two chapters. They suggest that irreversible *hadd*

¹² Reportedly, 49 days elapsed between crime and execution in a murder case from November 2011: see Iran Human Rights, “One man”. ICHRI, “Iran’s secret hangings”, has examples of brief trials in non-*hadd* cases. Ayatollah Montazeri has declared that the blurring of the roles of judge and prosecutor invalidates trials (Qazi, “Pasokh”).

penalties may be relatively rare and overturned on appeal significantly more often than lesser penalties.

6. Sodomy cases.

This is the second of five chapters presenting case studies of Iranian *hadd* trials arranged by crime. It discusses four sodomy (*lavvat*) court cases and 36 published sodomy rulings, displaying practical application, and often misapplication, of laws and principles discussed in chapters 2-4. These cases continue some themes observed in the previous chapter, such as the use of confession and *'elm* and the arbitrary deployment of laws. They also introduce themes particular to carnal crimes, such as the degree of penetration which classifies a carnal act as sodomy.

These cases, building on those in the previous chapter, indicate certain tendencies characterising the implementation of *hudud* in Iran. As in theft cases, they crystallise into four main patterns: arbitrariness deriving from vague laws, legal contraventions, socioeconomic implications, and the system's obstacles to lenience. The additional issue of the incidence of penalties, foreshadowed in the previous chapter, also arises here. The way in which the individual, smaller patterns coalesce into the larger ones will be discussed in the conclusion, following analysis of the cases.

Unpublished cases.

Case 1: acquittal is replaced by a death sentence.

Esfahan, 1999-2000.

This case highlights the mechanism whereby an overturned ruling leads to a retrial which may cause a heavier penalty than the original one (in this case, death). It displays the discretion surrounding judges' assessment of evidence, and broaches the issue of children's testimony, which is used contrastingly in the next case.

A boy, aged nine, told his parents that his employer, a wealthy local dairy farmer, had raped (*tajavoz*) him. The employer was tried for coercive sodomy (*lavvat be 'onf*), which he always denied. He admitted to bathing the boy and accidentally scalding him with hot water, accounting for burn marks on his back. Medical

evidence could not prove rape, to which the only direct references were the boy's claims which did not specifically mention penetration. The man was acquitted of rape, but sentenced to lesser *ta'ziri* (discretionary) penalties for 'acts against chastity' plus compensation for burns.

The boy's parents appealed the acquittal, which was overturned because of insufficient attention to "the shari'a (*shar'*) and the law". The retrial court, seeking additional medical opinions, concluded that while the medical evidence, consisting of muscular laxity in the crucial area without the abrasions normally indicating forcible penetration, could not prove rape, neither could it *disprove* rape. As additional evidence the court cited the man's attempts to bribe the boy's family to prevent prosecution, his flustered attempts to deny various things (e.g. bathing the boy) and invent conspiracy theories during his second trial, making himself appear guilty, and *the fact that he hired a lawyer* to defend him. Claiming '*elm*' ('knowledge' – chapter 2, section 6.4), it sentenced him to death by public hanging, citing articles 120 (permission of '*elm*') and 112 (death for sodomy with underage boys) of the penal code and sodomy topic 3 of Khomeini's *Tahrir al-Vasileh*¹. The man appealed; the case went back to the same Supreme Court branch that had already overturned his acquittal, which confirmed the sentence. We do not know if it was implemented. The entire process, from complaint to final confirmation, took approximately a year and seven months.

Here are the salient issues involved in this case.

1) A crucial difference between *lavvat* (sodomy), carrying the death penalty, and similar crimes carrying only 100 lashes or *ta'ziri* penalties is that *lavvat* requires establishment of full penetration of the glans (chapter 4, sections 1 and 4). The only evidence indicating *lavvat* was the nine-year-old boy's account, using the words *lavvat* and *tajavoz*, whose technical meanings were not necessarily clear to him, without describing penetration itself. Given the punishment for sodomy (death), the choice is therefore between executing men based only on children's testimony and

¹ Topic 3 (p. 342) allows judges (who, on p. 245, must be *mujtahids!*) to use '*elm*' in sodomy.

releasing potential child rapists to avoid executing them, thereby failing to protect children against molesters. The middle ground represented by the *ta'ziri* penalties in the first ruling is available, but is fragile and can be undermined by *'elm* on appeal. If the middle ground were specifically regulated, such cases would be firmly in the realm of *ta'zir*, eliminating the risk of ignoring children's complaints to avoid executions, but averting death sentences based on insufficient evidence.

2) The use of the defendant's employment of a lawyer as evidence against him is particularly intriguing. Absence of a lawyer can be disastrous (cf. theft case 1), but hiring one can give the impression of having 'something to hide'.

Farkhondeh describes negative stereotypes of deceitful lawyers and their corrupt, wealthy and guilty clients in the Iranian media, and the accompanying apparently widespread notion that judges resent the presence of lawyers. This is corroborated by Mir-Hosseini's analysis of Iranian divorce cases. She found only two cases involving lawyers, and "in both instances it had an adverse effect and was looked upon unfavourably by the judge"². This exemplifies how theoretical rights may not be upheld in practice: here the defendant was harmed by his insistence on his constitutional right.

3) Since the Supreme Court's role in appeals is merely to confirm or overturn rulings and order retrials, appeals can result in harsher sentences than the original ones. This happened here, exemplifying both the possibility and the dangers of double jeopardy (chapter 2, end of section 4).

4) After appeal of the death sentence, the case went to the same Supreme Court branch which had initially overturned the man's acquittal, thereby expressing its belief that he should be executed. This displays the bias against the accused, also seen in theft case 2, existing in the appeal system. Here it was not even the result of the legal permission for the same court to revise appealed cases because of 'insufficient investigation' (chapter 2, section 4).

² Farkhondeh, "Rule of law", 9; Mir-Hosseini, *Marriage*, 31; Mohammadi (Majid), 186.

5) The use of the phrase ‘the shari‘a and the law’ and the *Tahrir* to support a death sentence exemplifies Shi‘i law’s role in criminal trials.

6) This ruling was based on *‘elm*, relying on very little, ambiguous medical evidence plus accumulated statements which did not prove the crucial parameter of penetration. The Supreme Court accepted the judge’s discretion to decide that this tenuous evidence gave him sufficient *‘elm* to justify a death sentence.

7) This is an example of hanging, absent in Shi‘i law, being chosen as the execution method for sodomy. If stoning were similarly uncodified, would judges prescribe hanging for adultery? If the five scriptural penalties for sodomy were codified, would they be defended as ardently as stoning?

Case 2: blurred boundaries between *haqq Allah* and *haqq al-nas*³.

Tehran, 2004-6.

The evidence in this case was similar to that in the previous one, yet the previous defendant was condemned to death and this one was acquitted. This contrast, while adding to the discussion of children’s testimony and extent of penetration, also continues the theme of arbitrariness deriving from the law’s vagueness and interpretability, observed in the previous chapter. Another theme continued from the previous chapter is judges’ treatment of complainants’ wishes as relevant though they are technically irrelevant in ‘crimes against God’.

A man went to the police with his twelve-year-old son, who said he had been kidnapped and raped in a park by three men. There was clear medical evidence of rape. Police tracked down a suspect, who admitted to being with two other men when they kidnapped and raped a boy, but denied participation.

³ *Haqq Allah* are ‘crimes against God’, impervious to complainants’ pardon; *haqq al-nas*, ‘crimes against humans’, allow complainants’ pardon.

In court, the child identified the suspect as the man who had ‘done a bad thing to me’, but the suspect said that only his companions had committed rape. Only afterwards were lawyers introduced. Soon the boy’s father declared that since his son could have incorrectly identified the suspect as his rapist, he pardoned him unconditionally, withdrawing his complaint. The court declared that irrespective of the legally irrelevant pardon and withdrawal, the suspect was acquitted for lack of *dalil-e shar‘i va qanuni*, ‘*shar‘i* (adjectival form of *shar‘*) and legal grounds’.

Mysteriously, despite the father’s pardon, his lawyer appealed the acquittal. The Supreme Court confirmed it, citing the suspect’s uniform denial of sodomy, the pardon, and the possibility of mistaken identity. The case, from the police complaint to the confirmation of acquittal, lasted a year and six weeks.

These are the salient issues transpiring from this case.

1) Again, acquittal was appealed seeking increased severity.

2) As in the previous case, the child never described penetration of the glans (‘he did a bad thing’), and the suspect uniformly denied sodomy. The medical evidence was stronger than in the previous case, but yielded no death sentence. Doubt about the assailant’s identity was perhaps more credible than doubt surrounding the mechanics of penetration, present in the previous case, and the father’s legally irrelevant pardon also subjectively favoured acquittal. However, the contrast between this and the previous case highlights judges’ discretion to assess similar evidence.

3) Sodomistic rape is *haqq Allah*: ‘God’s rights’, prosecutable independently of injured parties and unpardonable by them (chapter 2, sections 8-9). Therefore the father’s pardon was irrelevant, as declared by the first court. However, immediately after it the suspect was acquitted, and the Supreme Court listed it among the reasons for confirming the acquittal. The Supreme Court explicitly, and the first court perhaps implicitly, treated rape as partially *haqq al-nas* (‘rights of humans’,

pardonable by injured parties). This apparent influence of the harm principle (crimes are such because they cause harm) overrode Shi‘i and codified law.

4) Again we find the phrase *shar‘i va qanuni*, implying the *shar‘* as a source of law alongside or underlying the codified law.

5) Finally and very importantly, this case shows the belated introduction of lawyers. The suspect had no lawyers during pre-trial interrogation and even during the first stages of his trial where evidence was heard; they were only introduced at the end, to defend him after all statements were taken. The fact that in this particular case he was released is irrelevant. Given the frequency with which pre-trial confessions are used as crucial evidence, and the explicit legal validity of confessions made in court, failure to introduce a lawyer immediately upon arrest can cause defendants to incriminate themselves irrevocably without legal counsel, despite their constitutional right to it. Explicit legislation mandating provision of lawyers upon arrest would prevent this de facto negation of their constitutional right.

Case 3: murder victim is claimed *mahduoldamm* through *lavvat*.

Esfahan, 2001-3.

The concept of *mahduoldamm* – a person whose blood is forfeit because they committed a capital crime – appears in action here for the first time. It highlights the tension between the letter of the law, which allows *belief* in a murder victim’s *mahduoldamm* status to exonerate the murderer, and the judge’s contention that the capital crime (in this case, sodomy) be proven. This either-or situation, whereby either the murderer or the victim is guilty, resurfaces in chapter 9 (adultery cases).

A murder suspect confessed to the murder in self-defence. He claimed the victim, with three companions, had attempted to rape his cousin, then raped him (the suspect), and finally attacked him with a knife and chain to stop him from alerting the police, dying in the altercation. In all the suspect’s trials and appeals, the self-defence claim was dismissed and judges focused on whether rape had *actually*

occurred, rendering the victim *mahduoldamm* through commission of a capital crime (coercive sodomy), thereby downgrading his murder to unauthorised execution carrying no death penalty (chapter 4, section 2). However, the law (article 295/j/2) excludes the death penalty, though still prescribing punishment, even if the murderer *erroneously believes* the victim to be *mahduoldamm* and proves that belief, not the reason thereof.

The cousin's attempted rape had been witnessed and halted by passers-by. It could not be prosecuted since the boy was underage, his father and 'natural guardian' was abroad, and his mother, not being his 'natural guardian', could not prosecute on his behalf. However, judges used this attack to support one participant's conviction for disturbing the peace. Independent corroboration and *acceptance* of the suspect's claim of his cousin's attempted rape by the victim (and companions) could have supported his claim of rape by the *same individuals*, thereby saving his life though he could still receive heavy penalties; but he was sentenced to death because he could not prove his rape.

Here are some salient issues of this case.

1) Judges' discretion allows dramatically differing rulings regarding *mahduoldamm* status. Judges may emphasise suspects' belief in it⁴ or may instead insist on establishing its reality, against article 295/j/2. In a published *zina* ruling (which cites the *Tahrir*), a man found his wife in bed with another man and killed him. He was only sentenced to pay *diyeh* (blood money) because of his possibly erroneous belief that the victim was *mahduoldamm*; his wife was acquitted of adultery, which she denied, receiving only a *ta'ziri* punishment for illicit relations⁵.

2) Legally, claims of coercion are acceptable by default except in murder, and rape claims alone cannot justify accused rapists' execution⁶. The same mechanism,

⁴ One published *zina* ruling sentences a murderer only to *diyeh* because he claimed the victim had raped his mother: Saberi, 67-8.

⁵ Saberi, 94-5.

⁶ Chapter 2, section 7.3; chapter 4, section 3.2.

whereby doubt exonerates defendants without incriminating named attackers, here could have prevented the death penalty for all parties. A published ruling embodies this mechanism by clearing a boy of passive *tafkhez* (sodomy minus penetration) because he claimed coercion, without thereby convicting his putative aggressors⁷.

Here, instead, the emphasis shifted from failure to disprove belief in rape to failure to prove rape. This recalls case 1, where failure to *disprove lavvat* through medical evidence facilitated a death sentence. Both imply presumed guilt.

3) The judge's discretion is also shown in his acceptance of the cousin's attempted rape but not the suspect's belief that the same attackers were *mahduroldamm*.

4) The suspect's cousin's and his mother's inability to prosecute his attackers exemplifies not only the male bias of the law, whose dismissal of mothers is termed 'natural', but also the system's inadequacy to protect children without male relatives to defend them. Prosecution was additionally prevented by the prohibition, cited by the judge, against prosecuting 'crimes against chastity' without complainants (chapter 3, section 4), used here to deny rights, but elsewhere ignored (as in several forthcoming cases) when it could have prevented prosecution by the authorities!

Case 4: execution of a minor despite invalidation of 'elm and stay of execution.
Kermanshah, 2006-7.

In this case, a boy was executed, notwithstanding a stay of execution, for acts allegedly committed while under the age of *bulugh* (legal maturity). The judge's 'elm of his guilt was based on testimony which was invalidated because the witnesses retracted it. Therefore this case displays authorities contravening multiple laws with impunity, and showcases the remarkable powers attributed to 'elm.

Several teenage boys allegedly complained to the police that an age-mate, with accomplices, had repeatedly raped them years before, when they were all around 13

⁷ Bazgir, 345-8.

years old, threatening various repercussions if they reported him. Under interrogation he agreed to tell the truth only if the prosecutor promised lenience in return. He then confessed to several instances of rape followed by intimidation. In court, he denied these confessions as coerced, as did his co-defendants. No complainants appeared in the first two trial hearings. Three of the six individuals listed as complainants – the others being various government offices – appeared in the third session, withdrew their testimony as coerced, and requested that all charges be dropped.

The judge, pontificating lengthily about Islamic morality and the heinousness of the *alleged* crimes, claimed *'elm* and sentenced the boy to public execution by one of the methods (chapter 4, section 4) prescribed by *fiqh* (Islamic jurisprudence). He cited articles 108, 110, 111 and 120 of the penal code and sodomy entries 1, 3 and 4 of Khomeini's *Tahrir al-Vasileh*⁸. Evidence given was testimony, confession, the suspect's penal precedents for assault and brawling, his bad reputation, and his possession of prohibited items including "a satellite dish, video tapes and CDs, a sword, and albums containing photographs and negatives" (some items were described as 'obscene').

In court, the suspect had a lawyer, whose arguments the judge dismissed. The argument that the suspect was underage was overridden by the judge's contention that the boy had been 16, therefore over the age of criminal responsibility (*bulugh*) for boys (15 lunar years: chapter 2, section 7.1), during the crimes, though all reports indicated a much earlier time. Objections to the use of invalid confession and testimony, retracted and never occurring in court, were countered by the judge's insistence that these had given him *'elm* ('knowledge'), superior to other forms of evidence which only allow *zann* ('conjecture').

In acquitting the other defendants for insufficient age or evidence, the judge cited the *qa'edeye darr* ('doubt prevents punishment'), 'the shari'a's insistence on caution and lenience in *hudud*', 'caution in shedding blood', and article 37 of the

⁸ Definition of sodomy; proofs of sodomy including *'elm-e qazi*; death for the adult partner in sodomy with children (Khomeini, 342-3). The judge considered the boy an adult.

Constitution embodying the *asl-e bara'at* (presumption of innocence)⁹. The complainants were acquitted of passive sodomy because they claimed coercion, and were likely bereft of *ekhtiar* (free will).

The Supreme Court confirmed the sentence, briefly declaring that the evidence justified *'elm*. Another lawyer took the case and requested an extraordinary review; the head of the Judiciary granted a stay of execution to allow further investigations. However, without any warning to his lawyer or family, the boy was hanged at dawn in prison slightly over a year after the initial complaint. His family were only informed when they were instructed to collect his body.

Here are some important issues emerging from this case.

1) The suspect only confessed after seeking the prosecutor's help. The possibility of confession in the belief that collaboration will be rewarded is discussed in chapter 2, end of section 6.1, theft case 2, and adultery case 3. This authorities' use of trickery to extract confessions to crimes carrying the death penalty displays a mechanism opposite to 'plea bargaining', whereby swift confession incriminates the confessor instead of securing lenience.

2) Court documents claim that complainants initiated prosecution spontaneously; however, some of them claimed in court that their testimony was coerced and false. Maybe their testimony was correct, and withdrawn through fear of reprisals. However, as suggested also by the fact that two complainants were prosecutors' offices and by the disregard for law and protocol¹⁰ permitting the secret execution, the case, similarly to fornication case 1, was possibly initiated illegally by the authorities¹¹ who interrogated suspected sodomists, of whom some evaded the charges by claiming rape, and then pretended there were complainants. When a confession of sodomy is extracted, the confessor's only chance to escape execution may be a rape claim.

⁹ All explained in chapter 3.

¹⁰ For instance, lawyers must be notified 48 hours before executions (chapter 2, section 5.3).

¹¹ 'Crimes against chastity' are unprosecutable without complainants (case 3, point 4; chap. 3, part 4).

The condemned boy's lawyer suggested he was possibly prosecuted as revenge over a private conflict, which spiralled out of control once the authorities were involved. Although the truth is unknown, the acceptability of testimony as sole proof in *hudud* facilitates conviction through false accusation if the required number of witnesses make sufficiently detailed statements; and through *'elm*, any requirements for testimony, including that it not be withdrawn, can be overridden, as happened here.

3) This ruling, like many others, was based on *'elm*, its grounds being invalid versions of the other two types of proof (confession and testimony) combined with vague indicators of the defendant's generally criminal nature.

All confessions were invalid because they occurred out of court, and further invalidated by claims of coercion. All testimony occurred out of court; the testimony of three witnesses was invalidated by being withdrawn in court, and further compromised by claims of coercion. That of the remaining three was neither confirmed nor withdrawn in court because they did not appear. It was also invalid because they did not constitute the *nesab* (required number) of four witnesses. Furthermore, it is unclear whether testimony, similarly to confession, is valid only if heard in court. On this point one can either favour the defendant – a principle discussed in chapter 3, sections 1 and 3 – by dismissing testimony heard out of court, or not. Additionally, testimony can only prove sodomy by referring to the same instance thereof; but the complainants testified to different rapes with different victims. Witnesses' *'edalat* (righteousness: chapter 2, section 6.3) was never investigated. Hence all testimony and confession was invalid for multiple reasons. There was no medical evidence, given the passage of years between the alleged crimes and the trial, and no investigation into claims of torture.

Therefore the judge's claim of *'elm* apparently relied on no valid evidence, but he declared *'elm* intrinsically superior to other forms of proof. He used a philosophical

classification of gradations of knowledge¹² to attribute authority to his *'elm* because the *term* happened to coincide on that scale with the name of a superior form of knowledge. Importantly, the association of the penal with the philosophical *'elm* originally refers to the *'elm* of the infallible Imams. Furthermore, many jurists stress that *'elm* must be sensory (*hessi*), not based on guesswork, and even jurists allowing *'elm* to ordinary judges insist that they be *mujtahids*: jurists authorised to interpret the sacred law. This judge, like most Iranian judges, was not (chapter 2, sections 3 and 6.4, middle of section 9). Despite all this, the Supreme Court accepted the judge's claim of *'elm* as a matter of definition.

The judge (possibly feeling obliged to acknowledge the technical definition of sodomy) even specified that his *'elm* was of complete penetration of the glans, which none of the evidence demonstrated or even mentioned. Instead, in some published rulings below, judges ruled against the death penalty despite medical evidence of penetration and confessions to sodomy, rape or penetration (*dukhul*), finding that such evidence could not prove that the glans had been entirely hidden. This contrast illustrates judges' immense discretion in assessing proof.

The success of *'elm* in this case exemplifies its ability to avoid the strictures of proof and even survive the invalidation of its own grounds – a feat also accomplished in fornication case 2.

4) This is an example of a claim that statements made out of court were extracted forcibly by the authorities.

5) Although it is unlikely that this would carry the day, a claim related to the 'statute of limitations' might have bolstered the defendant's case. His crimes allegedly

¹² For example see Akhtar, where the term *'ilm al-yaqin* ('certain knowledge') means 'certainty'. Momen, 187, discusses the gradations of knowledge applied to the extrapolation of rulings from the Qur'an and narrations, but uses *qat* (certainty) as the form of knowledge superior to *zann*. In the court documents available, judges often combine these terms in phrases such as *'elm, qat' va yaqin* (knowledge and certainty), suggesting association of their *'elm* with the superior epistemological qualities of 'certainty' as conceived in philosophical gradations of knowledge.

occurred a minimum of six years before his trial, and there are narrations forbidding prosecution for acts more than five or six months old (chapter 2, section 9).

6) At the latest time referred to in any descriptions of rape, the suspect would have been 14 years old. Therefore his execution violated Shi'i and codified law. Even if he was 16, as the judge claimed, his execution, as in fornication case 1, contravened article 37 of the Convention on the Rights of the Child, to which Iran is a signatory (chapter 2, section 7.1).

7) As in other cases, the judge's use of the *Tahrir*, the *qa'edeye darr*, caution in shedding blood, and the concept of lenience in *hudud* shows Shi'i *fiqh*'s independent role as a source of judgements. Here, however, lenient portions of Shi'i *fiqh* were used selectively and did not benefit the boy who was ultimately hanged, although there is a strong case for arguing that they should also have applied to him.

8) Some of the evidence against the prime defendant, vaguely indicating loose morals, was entirely unrelated to the charges. Evidence appears to have been used quantitatively rather than qualitatively: a large collection of irrelevancies and emotional appeals was deployed in lieu of conclusive evidence, compensating for imprecision with sheer bulk.

9) Here is an example of the perceived necessity to clear rape claimants of passive sodomy. Though in this case their claim of coercion exonerated them, the very possibility of trying those who report a rape means that complaining of rape could result in punishment, as shown by some published sodomy and *zina* rulings.

10) Again a person was hanged for sodomy and not executed by one of the five scriptural methods (chapter 2, section 5.3) prescribed by his sentence.

11) A theme which permeates the debate over Iran's human-rights record is the authorities' powerlessness to disregard 'Islamic laws'¹³. However, here the

¹³ See e.g. chapter 2, section 5.3; chapter 4, section 3.7; Mayer (1996), esp. 269-72.

authorities broke several of their own laws. Using inadmissible evidence, they sentenced a person to death for crimes allegedly committed when he was under 18 and had almost certainly not reached *bulugh*. Although the ruling sentenced him to be publicly executed in one of the ways described in scripture and *fiqh*, he was secretly hanged in prison, despite a stay of execution, and without regard for protocol, since his lawyer was not advised 48 hours prior to his execution as required by law (chapter 2, section 5.3). The hurried, secret execution suggests that the authorities were determined to eliminate him even if it meant presenting objecting parties with an irreversible *fait accompli*. In this respect, and also as regards the flawed evidence, this case recalls that of Delara Darabi, who was suddenly executed for a murder allegedly committed at age 17 despite a stay of execution granted to allow the examination of crucial evidence which the authorities had previously disregarded. In her case too it was speculated that protocol was ignored to circumvent the possibility of protests and preventive measures that a 48-hour warning might have allowed¹⁴.

The authorities' abdication of responsibility through claims that humans are powerless to ignore 'divine laws' and that judges are duty-bound to apply codified laws is undermined by the pragmatism suggested by their disregard of their own supposedly intranscendible rules. This pragmatism could equally well promote lenience, thereby avoiding domestic and international diplomatic problems related to Iran's human-rights record. This would obey the axiom against causing hatred of the faith and the concept that the regime is authorised to break individual commandments to preserve itself (chapter 3, section 6.3 and end of section 6.2).

Published rulings.

The 36 published sodomy rulings available¹⁵ contain themes which expand upon those observed in the unpublished cases. These include the use of evidence and Shi'i law, the presence of double jeopardy, and the authorities' initiative in prosecution.

¹⁴ Amini, "Seh sal"; Soares, "Delara"; Human Rights Watch, "Iran: secret execution"; communications with two individuals with first-hand knowledge of the case.

¹⁵ Saberi, 44-6, 309-13, 317-9; Bazgir, 330-48, 350-5, 357-91, 394-404, 409-10, 413-4.

They also introduce mechanisms not seen in the unpublished cases, such as the use of repentance and the prosecution of rape claimants. These combine with the themes from the unpublished cases to fortify the image of the larger themes, permeating the case studies, of legal interpretability, legal infractions, socioeconomic factors and institutional obstacles to lenience.

The number of published rulings also gives a tentative impression of the incidence of death penalties and of rape versus consensual sodomy cases. These will be examined first, followed by the themes mentioned above.

1) Incidence of death sentences.

Almost half (17) of the 36 cases involve death sentences, but only four are known to have been confirmed. In this sample, first-instance courts are as likely to decree death penalties as non-death penalties, while the Supreme Court is twice as likely to overturn death sentences as non-death sentences. However, the Supreme Court's leniency could be cancelled out by local judges conducting retrials. Both of these patterns are corroborated in the next chapter and recall the judge's statement in theft case 2 about the Supreme Court frequently overturning amputation sentences. There could indeed be such a 'trend' for both death and amputation sentences.

Only four death sentences explicitly prescribe one of the five scriptural execution methods (chapter 2, sections 5.1 and 5.3; chapter 4, section 4). Of these, only one, prescribing throwing from a height, was definitely confirmed. Other death sentences prescribe either hanging or simply execution by unspecified method.

2) Rape versus consensual sodomy.

Of the 36 published sodomy rulings, 30 involve coercive sodomy (*lavvat be 'onf*), as do all the unpublished cases available. Of these, 26 explicitly involve underage boys, aged between 4 and 15, with their fathers as complainants; where *bulugh* was doubtful, boys aged 15 were considered underage. In two cases the charge was

clearly consensual sodomy and in the others it is unclear. Though rape, having a victim, is clearly a crime, consensual sodomy also carries the death penalty and is at least occasionally prosecuted.

3) Proof.

No rulings involved *bayyaneye shar'i* (four men's eyewitness testimony).

23 rulings mention medical evidence, usually combined with invalid confession or children's statements. In ten cases where medical evidence indicated sodomy, the defendants were only found guilty of *tafkhez* (punishable by 100 lashes) or 'illicit relations', because the evidence could prove penetration, but not *full* entry of the glans. This doubt averted fourteen death sentences, either because medical evidence was held insufficient to prove that extent of penetration, or because confessions to penetration omitted this detail.

22 of the 36 rulings involved confession, explicitly valid in only two cases. 20 clearly involved invalid confessions; 12 had no confessions; and in the remaining two, it is unclear whether confessions existed. The most common cause of invalidity was that confessions occurred out of court; they were often retracted in court, sometimes with claims of coercion.

All death sentences relying only on invalid confession were overturned, again suggesting greater lenience of the Supreme Court than first-instance courts. However, the results of the subsequent retrials are unknown. The fact that *naqz* (quashing) is not a reprieve, since it only causes a retrial, is illustrated by a case where a non-death sentence, based mostly on invalid confession, was overturned but replaced by the death penalty following retrial. Nor does acquittal guarantee safety: an acquittal and a *ta'ziri* sentence were appealed by the authorities pursuing the death penalty. Both rulings were confirmed, yet again suggesting the Supreme Court's greater lenience. However, they illustrate two dangers: the danger caused by allowing double jeopardy, and the danger of allowing the authorities to act as

complainants even regarding crimes ‘against chastity’, a status giving them permission to appeal acquittals, extended here to non-acquittals.

13 of the 36 rulings are explicitly, and seven others implicitly, based on *‘elm*. Five others mention *‘elm*, for instance by bewailing the judge’s failure to use *‘elm* for greater severity: overall, 25 rulings involve *‘elm* in some way. Sometimes *‘elm* explicitly overrode invalidatory conditions including invalidity of confession, or sentences were confirmed *because* they were based on *‘elm*, defined as a superior form of knowledge according to the ranking of knowledge gradations, unconnected to the term *‘elm* in criminal law, discussed in case 4. In one case this occurred where complainants retracted their testimony, as in case 4. This respect for *‘elm* is almost theological in its convolution: once *‘elm* is established in the judge’s mind, it survives invalidation of its initial causes.

About half the rulings involving *‘elm* contain death sentences, which are as likely to result from *‘elm* based only on invalid confession as *‘elm* encompassing additional evidence. However, they are mostly overturned, while non-death penalties are more frequently confirmed. This mechanism, observed also in the next chapter, suggests greater lenience by the Supreme Court than the unpublished cases do.

In 18 cases, children’s testimony was used as evidence. In seven of these, medical evidence was absent or inconclusive, and confessions were either absent or invalid. No death sentences resulted only from children’s statements. However, one death sentence, confirmed, was based on a child’s testimony supplemented only by confession out of court, denied in court.

4) Use of uncodified Shi‘i law.

Twenty rulings mention uncodified elements of Shi‘i law. Five cite the *Tahrir*; nine use the *qa‘edeye darr*, often invoked by the Supreme Court. Other concepts used include the *asl-e bara‘at* without supporting laws, caution in shedding blood, *eqrar al-‘oqala* (confessions incriminate only confessors: chapter 2, section 6.1), and

phrases with the element *shar'*, indicating standards of Islamic law. Emphasis on full penetration of the glans, unspecified in codified law, also exemplifies reliance on Shi'i law.

5) Rape claimants prosecuted.

In eight cases, rape claimants were tried for passive sodomy or the Supreme Court recommended that they be tried, and in two cases, teenage boys' descriptions of rape were interpreted as 'confessions' to *lavvat* and they were condemned to flagellation.

6) *Haqq Allah*.

In five cases, complainants unsuccessfully attempted to drop all charges. Three had death sentences, two overturned, one confirmed; the others prescribed flogging. The impossibility of retracting charges illustrates a crucial element of *haqq Allah*: they are crimes because they contravene scripture, not because they harm people.

7) Double jeopardy and authorities' involvement.

Several fathers of underage alleged rape victims appealed the defendants' acquittals or non-death sentences, pursuing the death penalty. This was rarely successful. Sometimes complainants' right to appeal non-death penalties was denied because these were not acquittals. This implies that double jeopardy is forbidden except through complainants' appeal of acquittals (though no law is cited in this regard), and that acts unproven as *lavvat* can be renamed and punished as 'illicit relations', *tafkhez*, or 'acts against chastity', preventing retrial and execution for the same acts. However, in adultery case 8, a woman was tried twice for the same acts with different names.

In four instances, the authorities appealed, against the principle that crimes 'against chastity' are only prosecutable by complainants, and illustrating the authorities' 'crusading' attitude.

8) Repentance.

Repentance is mentioned in seven cases, occurring during confession except in one case. Only two show investigation into repentance: in both it contributed to *naqz*. One ruling explicitly mentions that since the timing of repentance is unclear and repentance before confession prevents the *hadd*, the *qa 'edeye darr'* gives the defendant the benefit of the doubt by assuming repentance preceded confession. Another shows indirect expressions of repentance (e.g. "I made a mistake") undermining punishment, though in theft case 3 'indirect' repentance was rejected.

Concluding remarks.

Some themes found in these sodomy cases, such as disregard for the laws of evidence and uncertainty regarding legal representation, also appeared in the previous chapter. New themes are introduced, including technicalities particular to carnal crimes (e.g. penetration, rape). Whether new or continued from the previous chapter, these themes combine to fortify the impression of the four larger patterns permeating the system, as explained at the beginning of the chapter.

Interpretability and judicial discretion.

As in theft cases, uncodified elements of Shi'i law and fatwas – particularly from Khomeini's *Tahrir* – were used in sodomy cases. Sometimes this promoted lenience; for instance, the *qa 'edeye darr'* and 'caution in shedding blood' favoured lenience in published and unpublished cases. However, in case 3 the *Tahrir* contributed to a death sentence, and in case 4 lenient Shi'i principles were used to benefit some defendants but not the one who was hanged, though they applied equally to him.

An example of the arbitrariness allowed by having two highly interpretable systems – Shi'i and Iranian codified law – coexisting is the treatment of penetration. In Shi'i law, punishability for sodomy requires proof that penetration covered the glans

completely (chapter 4, section 1), though codified law omits this detail. In several published rulings, medical evidence of penetration was overridden because this required *extent* of penetration was not proven – even where suspects confessed to penetration without mentioning this detail. By contrast, in case 1, medical evidence did not prove any penetration, let alone of the required extent, and no evidence described penetration, yet the judge claimed ‘*elm* of full penetration of the glans. This degree of discretion is facilitated not only by ‘*elm*, but by the codified law’s omission of the parameters of penetration. Clearer legislation might limit this particular form of discretion.

The same applies to execution methods. The penal code leaves the judge discretion, but Shi‘i narrations are interpreted as specifying a choice between death by sword, stoning, throwing from a height, burning, and crushing by a toppled wall. Most sodomy cases in this chapter instead involved hanging, which is absent from narrations. As discussed in case 4, the authorities often emphasise their inability to contravene scripture; yet these narrations are routinely contravened.

Discretion is also exemplified by the fact that in most published rulings, repentance was ignored altogether, yet where it was investigated, it proved a most versatile tool of lenience. Repentance, if used judiciously, can almost guarantee avoidance of irreversible *hadd* penalties (chapter 2, section 9). However, judicial discretion means that it is often ignored outright.

‘*Elm* allowed immense discretion in published and unpublished cases. In case 4 and some published rulings, ‘*elm* overcame invalidation of its own grounds, and was assigned inherently superior authority to other forms of knowledge through spurious association with a philosophical ranking of types of knowledge. In case 1, the ambiguous medical evidence was used in opposite ways by the first and second judges: one emphasised that it could not prove rape, while the other insisted that it could not disprove rape. As in theft case 3, the Supreme Court accepted the second judge’s discretion regarding ‘*elm*. Case 2 had virtually identical evidence to case 1, but yielded an acquittal, further emphasising the discretion of ‘*elm* in case 1. In case

3, the judge's discretion allowed him to accept that the suspect's cousin had been attacked by the murder victim, while claiming *'elm* that the same man had not also attacked the suspect.

'Elm for ordinary *mujtahid* judges is only tenuously justifiable through Shi'i sources (chapter 2, sections 3 and 6.4). Nevertheless, non-*mujtahid* judges in these cases used *'elm*, defined it spuriously as a superior form of knowledge, and allowed it to override laws and basic principles of logic.

Legal infractions.

Laws contravened include those governing testimony, confession, age, execution protocol, and stays of execution. *'Elm* was frequently used as licence to contravene laws, as in theft cases.

Despite the prohibition, present in Shi'i and codified law, of prosecuting crimes 'against chastity' without complainants (chapter 3, section 4), in several published rulings authorities initiated prosecution and appeal. This is especially inimical to lenience when judges 'crusade' against perceived iniquities, as observed in theft case 2 and the forthcoming three chapters. This 'crusading' attitude appeared here in case 4, where authorities acted as complainants and possibly coerced confession and testimony to facilitate prosecution.

The explicit law of *mahduroldamm* status was contravened in case 3, where the judge insisted that the suspect prove his rape. This mechanism will reappear in adultery case 10, while adultery case 11 displays literal application of the *mahduroldamm* law.

Interestingly, in case 2 the Supreme Court considered the injured party's pardon as relevant when legally it was not: a rare legal infraction promoting lenience.

Social dimensions.

There is little overt sign of socioeconomic factors in these cases. However, it is notable that most of the published rulings involved fathers reporting their underage sons' rape. In several instances, defendants claimed that the fathers had fabricated these charges because of personal feuds. If a statistical study were possible, it would be informative to calculate the proportion of child rape to other crimes tried by courts. A significantly high incidence of child rape trials might suggest widespread use of children as pawns in adult conflicts.

Institutional obstacles to lenience.

Institutional obstacles to lenience observed in sodomy cases (some also seen in theft cases) include appeal bias (appeals returning to the same court), double jeopardy, and the possibility that a lenient penalty or acquittal will be replaced by a harsher penalty, even death, following appeal and retrial. This last occurs because when rulings are overturned, cases are 'reset' by a new trial even without new evidence. Also, while the law specifically permits complainants to appeal acquittals, it does not explicitly forbid appeals of non-acquittals or by non-complainants. This uncertainty gives the authorities discretion to tolerate both. Vague laws also create uncertainty about whether acts tried as sodomy, then reclassified and punished as 'illicit relations', can be retried as sodomy, allowing double punishment for the same acts. This issue resurfaces in chapters 7 and 9.

Another theme of theft and sodomy cases concerns lawyers. In theft cases, some defendants were denied lawyers. Here, in case 2, lawyers appeared belatedly, after interrogation and after evidence had been heard in court. This is because the constitutional guarantee of lawyers does not specify when they should be introduced. This reappears in subsequent chapters.

As discussed in case 1, and section 3 of the published rulings, the unavailability of penalties other than death for sodomy is problematic when children's testimony is

the only evidence of rape. Judges must choose between issuing death sentences based only on children's testimony, and releasing potential rapists. Laws explicitly connecting children's testimony to *ta'ziri* penalties would remove this difficulty, reducing death sentences without releasing possible rapists.

The phenomenon of 'reverse plea bargaining', whereby defendants might confess believing that they will be rewarded with lenience but instead are invariably incriminated, emerged in the previous chapter. It surfaced here in case 4, where the suspect only confessed after asking the interrogator to promise lenience in return. It will reappear in adultery case 3.

Two themes encountered in this and the next chapter are anti-female bias and the prosecution of rape claimants. The first appears in case 3 where the mother was forbidden to prosecute her son's attacker, and will resurface in the next three chapters, manifesting itself in many ways including unequal female rights to divorce and child custody (chapter 9) which facilitate prosecution. The second, appearing in published rulings in this and the next chapter, is the result of defining rape as 'sodomy plus coercion' or '*zina* plus coercion'. Consequently the burden of proof may be placed upon the rape claimant, who can be punished for sodomy or *zina* if they cannot prove coercion.

As in theft cases, the most fundamental obstacle to lenience in sodomy cases is that they can involve irreversible penalties. Though most cases here concerned rape, it is important that some published rulings involved consensual sodomy, which carries the death penalty irrespective of coercion. In fact, since coercion only exonerates the coerced, it is possible, as discussed in case 4, for individuals accused of sodomy to claim rape, thereby exonerating themselves (perhaps) but facilitating interrogation of another person. The death penalty for consensual acts exemplifies the difference between conceptualising 'crimes' as harmful acts (chapter 4, section 3.3) and as infractions of scriptural commandments irrespective of harm.

Incidence of death penalties.

An additional theme from the published rulings is that while approximately half the sodomy trials in the sample resulted in death sentences, the Supreme Court overturned most of these and was twice as likely to overturn death penalties as other penalties. This pattern, foreshadowed in chapter 5, is corroborated in the next chapter, concerning published *zina* rulings.

7. Published *zena* rulings.

The previous two chapters discussed both published and unpublished theft and sodomy cases. Because published *zena* (fornication or adultery) rulings were so numerous, this chapter discusses the 121 published *zena* rulings available¹ separately from unpublished *zena* cases, treated in chapters 8 and 9. Adultery and fornication rulings are combined because multiple defendants were often tried together for different variants of *zena*.

Some themes characterising these rulings occurred in previous chapters. These include the use of evidence, uncertainty surrounding legal representation, the treatment of rape and extent of penetration, and the possible incidence of irreversible penalties. Other themes are particular to *zena*, for example *ehsan*, the condition of having ‘access’ to a spouse, which determines eligibility for stoning.

1. Type of penalty: incidence and appeal result.

Almost half the rulings (56 of 121) contain death sentences; of these, over half (30) prescribe stoning. However, the Supreme Court is known to have confirmed only 14 death sentences on appeal, and overturned 36, over half (the rest having unknown appeal status). Stoning sentences were most likely to be overturned (20 out of 30); only 7 were definitely confirmed on appeal, the other appeal results being unknown.

This, despite the limited nature of the sample, suggests two things. 1) Despite the rarity of recent known stoning executions, death sentences for *zena*, including stoning sentences, may not be uncommon. 2) However, the Supreme Court seems most likely to overturn death, especially stoning, sentences on appeal, indicating that it could be more lenient than first-instance courts. This is corroborated by the fact that non-death sentences in the sample were approximately twice as likely to be confirmed as overturned on appeal. The Supreme Court may be more averse to confirming death sentences, particularly stoning sentences, than non-death sentences.

¹ Bazgir, 44-327, Saberi, 67-8, 81-5, 94-5, 275-308, 331-4.

The Supreme Court's possible greater lenience was also mentioned in theft case 2 and observed in the previous chapter's published sodomy rulings. However, like those, some of these published *zena* rulings show overturned death sentences reinstated following retrial, or lesser penalties appealed, overturned, and replaced by death sentences (including stoning). This recalls sodomy case 1, where the dairy farmer's acquittal was replaced by a death sentence following retrial. The Supreme Court's greater lenience may be cancelled out if local courts have the final say, especially if they are as bent on harsh penalties as the judge in theft case 2.

Married rapists were generally sentenced to *qatl* (death; method unspecified) for rape, not stoning for adultery, even if *ehsan*² was deemed proven. This resurfaces in adultery case 5.

2. Appeals and authorities' involvement.

The law allows complainants to appeal acquittals, without explicitly allowing or forbidding any other form of double jeopardy (chapter 2, section 4). However, complainants appealed both acquittals and non-acquittals, though mostly unsuccessfully. Also, authorities, e.g. prosecutors, initiated appeal in 10 cases, again mostly unsuccessfully. Only rarely was the law cited to disallow double jeopardy where not explicitly permitted by law, implying a general permission of double jeopardy from the law's failure to prohibit it overall.

However, in two cases, complainants' right to appeal acquittals was denied outright because the charge was *haqq Allah*, not *haqq al-nas*³, though in one case the charge was rape, which at least two modern jurists consider partially *haqq al-nas* because it involves an injured party⁴. In other words, uncodified interpretations overrode codified law (complainants' right to appeal acquittals).

² 'Access' to a spouse, determining eligibility for stoning for adultery (chapter 4, section 3.4).

³ 'Crimes against God' vs 'crimes against humans', which only injured parties can prosecute or pardon (chapter 2, section 8).

⁴ Nobahar, "Ahdaf", 151, 160, 162; Kadivar, "Hadd".

Some rulings were expressed as acquittals of *zena* followed by sentences for lesser crimes (illicit relations, acts against chastity), allowing appeal of the acquittal portions. This, noted in published sodomy rulings, introduces the issue of whether one can be tried twice for the same acts with different names, or whether acts reclassified under lesser charges cannot be retried as *zena*. Both alternatives appear in these rulings. The issue affects adultery case 8, whose defendant was flogged for ‘illicit relations’, then condemned to be stoned for the same acts renamed ‘*zena*’.

Defendants apparently have no clear norms to invoke against the authorities’ appeal, as the law does not unequivocally prohibit this. If the law were interpreted as forbidding double jeopardy with one exception (complainants appealing acquittals), such appeals would be eliminated. However, this would ironically make it riskier for defendants to be acquitted than to receive reversible penalties (e.g. flogging, incarceration), because only acquittals would allow complainants’ appeal and possibly harsher sentences following retrial.

In five cases the authorities clearly initiated prosecution. In three cases, hospitals reported unmarried girls whose pregnancy they discovered. A further ten cases clearly show the authorities intervening, whether by appealing sentences or by issuing recommendations. For example, in one case the Supreme Court, in its ruling following appeal of a death sentence for incest passed on a girl aged 12 and her brother aged 15, bewailed the fact that their remaining young brother was not also tried for incest on the strength of the first brother’s confessions⁵. Such intervention, especially initial prosecution, contravenes the prohibition of prosecuting crimes ‘against chastity’ without complainants⁶.

3. Subjectivity and appeal bias.

Eight cases show subjective assessments clearly influencing sentences. In two cases, girls’ reputations for insufficient piety were used to dismiss their rape claims; in another, a man was acquitted of rape because of his reputation as a pious ‘pillar of

⁵ Chapter 2, section 6.1: one person’s confession cannot incriminate another.

⁶ Chapter 3, section 4.

society'. At least two judges expressed resentment over their rulings' appeal and sought to have them reinstated. This shows emotional investment in rulings and increases the riskiness of the 'appeal bias' whereby overturned rulings are sent to their originating judges for retrial: judges resenting appeal are unlikely to 'back down' even if their rulings' flaws are pointed out.

Emotional assessments may also influence prosecution. In two cases the initial complainants were 'the God-fearing people of the area' who reported locals to the authorities. One of these complaints resulted in two stoning sentences, confirmed on appeal, and the other yielded a *ta'ziri* (discretionary) penalty, overturned on appeal because the Supreme Court recommended stoning. One brother reported his pregnant unmarried sister, who consistently claimed violent rape but received the *hadd* of 100 lashes. Two sisters reported a third sister and their father for incest, leading to death sentences for both, confirmed on appeal despite accounts of the girl's rape.

4. When are lawyers introduced?

In most rulings there is either no mention of lawyers or no mention of when they were introduced; however, five rulings make it clear that lawyers only appeared during the trial, after all preliminary investigations had occurred and 'confessions' (taken out of court, therefore invalid) had been made (as in sodomy case 2 and adultery cases 9 and 10). Even if defendants have court-appointed lawyers during their trials – which, as in theft cases 1 and 5, does not necessarily happen, and is unknown for most rulings – they will not be informed before the trial of the danger of making statements interpretable as 'confessions' which, though invalid, will probably incriminate them. This problem is known to Iranian human-rights activists⁷.

⁷ For example: Radio Zamaneh, "Nameye Shirin"; Fair Family Law.

5. Evidence used.

Of the 121 rulings, 97 (80%) involve confession; but only 15 of these have clearly valid confession⁸, made four times in court, even if not in four separate sessions (as some jurists prefer). Of those, four involved reports of rape, repeated in court as accusations but used as ‘confessions’. Since a ‘confession’ to ‘*zina plus coercion*’ (as rape is defined) does not legally incriminate the ‘confessor’, these four are subtracted from the number of valid confessions and added to the invalid confessions, leaving only eleven clearly valid confessions.

In one case confession occurred in court, but fewer than four times; in another it occurred in court but was retracted, leading to an illegal stoning sentence⁹, later overturned. 17 cases feature confession clearly made out of court, but not explicitly denied in court; several of these ‘confessions’ were descriptions of rape. 15 cases have confessions out of court, retracted in court; 16 feature confessions out of court, retracted in court with claims that they were coerced¹⁰, usually by beatings or intimidation (one man described being held by interrogators for four days) but sometimes trickery, including promises of lenience or even acquittal in exchange for confession. One lawyer argued unsuccessfully that the defendant’s immediate confession justified *takhfif* (attenuation). The notion of rewarding swift confession or collaboration with lenience, familiar in some legal systems, occasionally appears in *hadd* cases where the opposite mechanism operates. (See chapter 2, end of section 6.1; theft case 2; sodomy case 4; adultery case 3).

Invalid confessions were either used – in 30 cases – as the direct basis of rulings, without explicit claims of ‘*elm-e qazi*’ (‘judge’s knowledge’), or as ingredients of ‘*elm*’. Sometimes they were used though their invalidity was pointed out; for instance, one defence lawyer showed that confessions had never reached the *nesab* (minimum required number) of four, but the Supreme Court ignored this, confirming the death sentence because confessions existed.

⁸ Chapter 2, sections 6.1-2 (confession regulations).

⁹ Penal code article 71: retraction of confession prevents death penalties for *zina*.

¹⁰ Confessions extracted through coercion or trickery are invalid: chapter 2, section 6.1.

38 rulings explicitly used *'elm*. In 24 it relied either on invalid confession exclusively (19 cases), or invalid confession plus pregnancy (5 cases), which legally cannot prove *zina*; in one case *'elm* was based on 'no valid testimony or confession' but it is unclear what proof existed. *'Elm* was never based entirely on valid confession, but in one case it included valid confession plus 'other evidence'. In seven cases *'elm* was implied by the absence of other legally valid proof; in two, *'elm* was declared impossible. 37% of these rulings rely on *'elm*, 31% explicitly; 39% mention it.

In nine cases, *'elm* was dismissed as a form of proof, through statements that only valid confession or testimony can prove *zina*. This indicates the unclear position of *'elm* in *hudud* (chapter 2, section 6.4).

However, five rulings explicitly declare that *'elm* potentiates rulings, being an intrinsically superior form of knowledge to the *zann* (conjecture) allowed by other evidence. This refers to a categorisation of types of knowledge, unrelated to the coincidental use of the term *'elm* in criminal law, wherein *'elm* outranks *zann* in closeness to certainty (*qat'*, *yaqin*; see sodomy case 4, point 3). Sometimes fatwas are cited to support this. In many other cases, judges accord *'elm* special status in dismissing doubts which would otherwise save lives.

One arena illustrating the lack of consensus regarding *'elm* is that of retracted confessions. Some rulings explicitly state that retraction of confession, which normally prevents death penalties for *zina*, cannot do this if the judge has *'elm*. Others declare that, as in a fatwa of Grand Ayatollah Golpeygani (b. 1917) cited in two rulings, *'elm* based on confession lapses with its retraction. In one case, lawyers' invocation of the Prophet and the Imams' emphasis on lenience and concealment of crimes against chastity convinced the Supreme Court to overturn a ruling; the Supreme Court added that the *khass* (specific) action of *enkar* (retraction of confession) overcame the *'amm* (general) permission of *'elm*¹¹. The fact that neither

¹¹ See chapter 3, section 2 (general and particular), adultery case 3.

scenario – *enkar* overcoming *'elm* or *'elm* overcoming *enkar* – appears in the codified law allows these opposite opinions to be accorded the force of law.

A third possibility is that invalid confessions justify *ta 'ziri* penalties, not the *hadd*. It appears in three cases with invalid confessions, where judges ordered *ta 'ziri* penalties, declaring the *hadd* inapplicable although the court was aware of *zena*. Significantly, in one of these cases the defendant rashly appealed her *ta 'zir* sentence, which was overturned on the basis that stoning was the correct penalty.

6. *Ehsan*¹².

Mere numbers show equally likely disregard for males' as females' *ehsan*. However, the sample shows a marked preference for thorough questioning of males regarding *ehsan*, acceptance of males' denials thereof, or emphasis on its unproven status for males. Instead, *ehsan* was mostly presumed in females without investigation. Only one female was questioned about *ehsan* in her first-instance trial, though with only one question. Only for males did courts declare *ehsan* absent without mentioning why, or accept unsubstantiated denials thereof, while *ehsan* was only declared absent in females's first-instance trials with specific proof. Often, later investigation disproved women's *ehsan*, presumed by first-instance judges. Sometimes clear obstacles to *ehsan* were ignored: one woman's stoning sentence was confirmed though her husband was incarcerated, hence inaccessible.

Ehsan was almost exclusively connected to the physical possibility of copulation. Mostly it was deemed absent through physical separation, with frequent citation (sometimes from Khomeini's *Tahrir*) of the distance of four *farsangs* (~22km), absent in the codified law, as the vital parameter. Motive of separation was irrelevant. Other obstacles to copulation despite proximity – e.g. illness, impotence – were sometimes considered, especially (for females) on appeal. Non-consummation of marriage and awareness of being married, though legally important, were mostly

¹² See chapter 4, sections 1, 3.4.

ignored, as was marital chastity. Emotional obstacles to *ehsan* were never accepted with one possible partial exception where they coexisted with physical obstacles.

The interpretation of *ehsan* as depending on male, not mutual, ‘access’ is illustrated by a case where a woman remarried because, having been abandoned by, and had no contact from, her husband for years, she presumed herself divorced. She was found bereft of *ehsan* only because her husband (who appealed her flogging sentence unsuccessfully, pursuing stoning) was fortuitously in prison when she remarried. What mattered was not her lack of access to her husband, or belief in being divorced, which both legally remove *ehsan*, but *his* lack of access to her. Her predicament recalls that of Jewish *agunot*¹³. Exclusive emphasis on *male* ‘access’, male rights to polygyny, and wives’ inferior divorce rights (chapter 4, section 3.5) are doubly unfair when considered alongside the famous narration whereby females have nine times more carnal desire than males¹⁴. If this is so, the *qa’ edeye molazeme* (axiom of divine laws’ reasonability) should presuppose greater female access to carnal pleasure, not subjection to polygyny or enforced chastity by husbands they cannot divorce. The male bias in this case is emphasised by the fact that the husband was never prosecuted for abandoning his wife¹⁵.

7. Rape, age and male bias.

Those who report rape risk being tried for *zena*. This occurred in twenty cases, against only five where rape claims prevented prosecution. Some sentences, including death sentences, for *zena* were overturned on appeal because the Supreme Court noticed that ‘confessions’ to *zena* were descriptions of rape; some women were tried for *zena* but acquitted because their rape claims were not disproven. However, in eleven cases, punishments resulting from rape claims were confirmed

¹³ An *aguna* (‘chained’ – plural, *agunot*) is a woman whose unavailable husband cannot grant her a *get* (divorce), for example because he has disappeared without being confirmed dead. (Similarly, a *mesorevet get* – plural *mesoravot get* – is a person whose husband refuses to divorce her, since halachically divorce requires the husband’s free will). *Agunot* are in limbo: they can neither enjoy marriage nor leave it and remarry. Abel, 2; Levy; Cwik; Silberberg; VidYid; Yefet, “Unchaining”, 442-51.

¹⁴ *Wasa’il al-Shi’a* (vol.20), 63, text 25042; *al-Kafi* (vol.5), 338, text 1.

¹⁵ Forbidden by Qur’an 4:129, Civil Code articles 1106-7; see also Civil Code articles 1129-30, penal code articles 64, 66, 83b.

on appeal. These were mostly sentences of 100 lashes for young unmarried girls, with some *ta'ziri* sentences when rape claims or retracted confessions were allowed to avert the *hadd*; but in one case the confirmed sentence was death for incest.

Very common is the scenario where a female as young as 9 claims rape, and both she and her accused rapist are given *hadd* sentences; however, he appeals and is acquitted, while her sentence, generally 100 lashes, is confirmed, sometimes because defloration or pregnancy incriminate her, though legally they cannot prove *zina*. Disregard for female rape claims often exonerates accused rapists while justifying the claimants' punishment, although article 67 of the penal code exonerates rape claimants by default. This can be avoided by the mechanism, observed in three cases, whereby a woman's rape claim exonerates *her* but cannot, by itself, justify execution of the accused man (chapter 4, section 3.2).

One man was condemned to death for raping a girl who had almost certainly not reached legal maturity (9 lunar years, but 15 for boys). However, in several other cases the disparity in male and female *bulugh* (legal majority) ages meant that girls barely over 9 were sentenced for *zina*, sometimes to death, while boys under 15 were exonerated through age and men escaped death¹⁶ for raping girls under age 9. Men also escaped death by claiming that girls barely over 9 had consented to *zina*. If nine-year-olds are held capable of consenting to *zina*, there is clearly no such notion as 'statutory rape' activated by youth irrespective of consent; instead, the opposite mechanism operates whereby the victim's youth benefits the rapist. For instance, one man argued that his six-year-old daughter's rapist deserved the death penalty, since her young age aggravated his crime. This was rejected through the opposite argument: her young age made her rape undeserving of the death penalty.

Another prominent age-related theme is that of *zina* between men and much younger teenage girls, typically relatives half their age or less. In all ten cases following this pattern, the female defendants, all unmarried, were 18 or younger, except one aged 19. In only one instance, a rape case, the girl aged 11 was exonerated; in the others,

¹⁶ Chapter 4, section 3.3: rape of underage girls arguably does not carry the death penalty.

including three rape cases, the girls' *hadd* of 100 lashes was confirmed on appeal. Meanwhile six of the men, all married, were acquitted or had their sentences overturned recommending exoneration; one was given *ta 'zir*, one received the *hadd* of 100 lashes in a rape case, and two received stoning sentences (not in rape cases). Two accused rapists were acquitted, one received a *ta 'ziri* penalty and one received the *hadd* of 100 lashes. Though rape carries the death penalty, no accused rapists received it and two were exonerated, while only one rape claimant went unpunished.

A few examples are informative. One girl aged 14 reported a rape and was sentenced to 100 lashes, confirmed on appeal, possibly because pregnancy incriminated her. Her accused rapist, her brother-in-law who confirmed her detailed rape account in and out of court, had his sentence overturned because, not asked that particular question, he did not specifically mention complete insertion of the glans (required for *zena* by narrations but not codified law) and pregnancy could have occurred without penetration. These doubts favoured him but not her. In two cases, girls aged 13 were punished for *zena* with older men. In one, the man was a brother-in-law clearly able to take advantage of his young relative, and both defendants' sentences were confirmed. In the other, the girl was prosecuted by the authorities for unmarried pregnancy, and the married man, aged 32, who admitted to impregnating her was exonerated on appeal by his failure to mention penetration of the glans, while the girl's *hadd* of 100 lashes remained. The Supreme Court argued that she was only medically examined after parturition (the hospital having reported her for giving birth there) and therefore might have remained a virgin until childbirth, having absorbed the man's seed without sufficient penetration. This doubt, applicable to both parties, benefited only the man.

In another case, which has the added element of using the authorities to impose virtue on relatives ultimately to their detriment, a brother reported his unmarried 19-year-old sister for bearing the child of their other sister's husband. She claimed rape effected through choking, violence and death threats, and received the *hadd*. The man, aged 35, confessed to *zena* with a number of excuses including *being forced into it* by the girl and being the victim of a conspiracy, and was exonerated of

adultery and given a *ta'ziri* penalty. Again pregnancy, which cannot prove penetration, incriminated the girl but not the man, whose claim of 'rape' by his young relative was accorded greater credibility than her claim of rape by him. Only one woman was acquitted on the basis that pregnancy cannot prove *zina* – a principle enshrined in the penal code (article 73).

Other systems might consider an abusive power dynamic in such cases, especially those involving particularly young girls and older relatives. These girls generally cited false promises of marriage, trickery, intimidation or rape as the reasons for *zina*, but were mostly deemed, simply, guilty. Instead lenience favoured significantly older males who, given their presumably greater familiarity with the public sphere, could probably 'work the system', while the girls often displayed considerable naïveté through statements like 'he said he would marry me and I believed him, but I repent and accept my punishment'. Frequently the girls themselves or their families initiated prosecution, apparently believing that this would force the men to keep their promises of marriage, but instead unintentionally endangering the girls.

Although quantification of such a subjective parameter is problematic, 51 rulings exhibit various degrees of male bias. This can be a male advantage in the law, such as women's difficulties in divorcing and thereby shedding *ehsan* even when abandoned, girls' lower *bulugh*, and men's exclusive right of polygamy¹⁷. It also appears through illegal use of evidence incriminating only females (defloration and pregnancy). Finally, it can result from judges' discretion whereby prejudice can seep into rulings. Instances of male bias are described throughout this chapter.

The existence of male bias does not mean that men are never treated harshly or women never treated leniently. Four women were not prosecuted after reporting men for tricking them into consensual *zina*. Some rulings display severity against men or lenience benefiting women. Importantly, while most known recent stoning sentences

¹⁷ One man illegally remarried without his existing wife's consent (Family Protection Law 1975, article 16, especially item 1; Marriage Law 1931, articles 5-7; Mir-Hosseini 1999, 192-6: parts of these codes remain valid) but prosecuted her for adultery (i.e. for taking another partner, which he himself had done).

involve women, mostly men are known to have suffered stoning since the 2002 moratorium¹⁸. Despite frequent male bias, stoning for *zena* pertains to ‘human rights’, not exclusively ‘women’s rights’.

8. Use of uncodified Shi‘i law.

52 cases feature uncodified elements of Shi‘i law or Shi‘i jurists’ writings. The most common are Khomeini’s *Tahrir*; Khomeini’s or Golpeygani’s fatwas; the *qa‘edeye darr*’; the *qa‘edeye eqrar*; the *asl-e bara’at*; caution in shedding blood; and the *masafat-e shar‘i* (legal distance) of four *farsangs* removing *ehsan*. Narrations and other principles were sometimes employed. Only once was the argument raised that rulings should rely exclusively on codified law¹⁹. Shi‘i law frequently supplemented, and sometimes overrode, codified law.

The use of *Haqq Allah*, a concept of Shi‘i *fiqh* only briefly mentioned in codified law, in several cases illustrates the difference between humanistic and scripturally circumscribed laws. Rape victims’ pardons of accused rapists always failed because rape is a form of *zena*, which is *haqq Allah*. In one instance the conflict is particularly clear: an alleged rapist subsequently married his victim, who pardoned him, announcing her desire to live with him. The Supreme Court insisted that he must die because *zena*, being *haqq Allah*, is unpardonable even by its victims. Rape as an infraction of ‘God’s rights’ overrode the victim’s wishes.

9. Lenience in use.

Twenty-six rulings show strong evidence overridden by lenient legal elements, including repentance, the strictures of confession including insistence on four court sessions, ‘*elm* lapsing with *enkar*, doubt regarding penetration despite pregnancy, acceptance of unproven claims of coercion or no *ehsan*, and erroneous belief in being married. The *qa‘edeye darr*’ (‘doubt prevents punishment’) sometimes averted death penalties through tenuous doubts.

¹⁸ See chapter 4, section 3.7.

¹⁹ See chapter 2, sections 2, 6.1, and chapter 3.

Some rulings exemplify how a battery of lenient options can avert the death penalty. One woman made valid confessions to adultery, confirming that she had a permanent husband with whom she could copulate. She appealed her stoning sentence, declared repentance and retracted her confessions. The Supreme Court overturned her sentence for three reasons: retraction of even valid confession automatically invalidated the *hadd*; she claimed to have left the marital home and since Khomeini's *Tahrir* specifies that four *farsangs*' distance removes *ehsan*, stoning was inapplicable; and her declaration of repentance introduced the possibility that she had repented *before* confession was complete²⁰, creating doubt, which activated the *qa'edeye darr*'. In another case, by merely seeing a photograph of the accused woman's elderly husband the Supreme Court accepted that he could be impotent, casting doubt on the wife's *ehsan*, again through the *qa'edeye darr*'.

One defence lawyer successfully appealed a death sentence by arguing that severity, especially in the death penalty, contradicts Islam's emphasis on lenience and concealment of crimes against chastity. Uncodified Shi'i concepts triumphed over the first-instance judge's whimsical use of evidence.

Another ruling shows painstaking investigation of the accused man's *ehsan* and criminal responsibility, recalling narrations where the Prophet or the Imams practised similar caution. Still the Supreme Court overturned the stoning sentence because the four sessions of confession consisted merely of exiting and re-entering the court on the same day, which was deemed insufficient. Meanwhile the female defendant's clear, consistent rape claim was ignored and she received 100 lashes. This exemplifies judges' enormous discretion to apply or ignore even uncodified legal strictures – such as the requirement for four sessions, observed in three rulings – and asymmetrical treatment of defendants, often displaying male bias.

Such lenience, often favouring accused rapists, contrasts starkly with the more frequent disregard for lenient laws.

²⁰ Repentance before completed confession prevents the *hadd* (chapter 2, section 9).

Concluding remarks.

The themes characterising these 121 *zena* rulings combine with those in previous chapters to suggest that vague laws underlain by highly interpretable Shi'i concepts permit considerable judicial discretion, and that authorities often contravene laws. Furthermore, some elements of the system, such as double jeopardy and the uncertainty regarding legal representation, hinder lenience.

It is difficult to discern socioeconomic elements in these rulings because they reveal little about their defendants. However, some social mechanisms do emerge. One is male bias, whereby subjective cultural influences facilitate harsher sentencing of females than males in identical circumstances, often in contravention of laws (e.g. the invalidity of pregnancy as proof). This is sometimes combined with a large age difference between significantly older men, often relatives, and frequently very young, apparently naïve girls, the former usually being treated more leniently than the latter. The girls or their families may demonstrate naïveté by initiating prosecution (sometimes against errant 'suitors') only to have it backfire. These tendencies suggest underlying social patterns. Another is the enforcement of 'virtue' by relatives, neighbours or even hospitals by reporting 'vice' to the authorities.

A mechanism shared with theft and sodomy cases is the authorities' role in initiating prosecution (even, illegally, in crimes 'against chastity') and interfering with trials, and their 'crusading' attitude, use of subjective assessments, and emotional investment in rulings. This increases the riskiness of appeal bias when cases go twice to the same court.

Other shared characteristics are the routine use of invalid confession, often retracted with claims of coercion or fatuous promises of lenience, and the frequency of '*elm*' based on invalid evidence (including pregnancy, particular to *zena*). '*Elm*' sometimes 'potentiates' the proof-value of evidence while remaining immune to outside assessment. The classical image of *hudud* proven by *n* male witnesses or confessions,

and therefore devilishly difficult to establish, is replaced by one of proof dominated by invalid confession and *'elm*.

As in the previous chapters, uncodified Shi'i concepts or fatwas were used in court. Here this usually promoted lenience. In some cases, the lenient options offered by both codified and Shi'i law were exploited almost shamelessly, in contrast with others where obvious avenues of lenience were disregarded, again highlighting the interpretability and consequent discretion characterising the system. The presence of multiple interpretations of legal concepts shows that not only jurists but also judges and lawyers are party to the debates about what *hadd* law really is: a fluidity that could potentially make lenient interpretations mainstream in future.

Particular to *zena* are the minutiae of *ehsan*, which resurface in chapter 9. *Ehsan* hinges on many interpretable parameters which are only briefly mentioned in the codified law. Therefore conflicting interpretations thereof draw from different uncodified sources, often determining whether defendants live or die. The same applies (also in sodomy cases) to the extent of penetration, whose uncodified parameters can determine the outcome of trials.

Regarding incidence of penalties, these rulings mirror almost exactly the pattern seen in published sodomy rulings (foreshadowed in chapter 5). First-instance death sentences were common, but overturned far more frequently than non-death sentences, suggesting that the Supreme Court may be more lenient than first-instance courts. Here, stoning sentences, though common in first-instance rulings, were particularly likely to be overturned on appeal.

Because of the sheer number of published *zena* rulings available, not all individual sub-themes discussed here will surface in the unpublished *zena* cases presented in the next two chapters. However, the three *zena* chapters complement each other, and often overlap, to show many facets of the broader patterns which operate in *zena* trials and indeed, as seen in theft and sodomy cases, in *hadd* prosecution generally.

8. Fornication cases.

Fornication (copulation between unmarried males and females) is usually punishable by flogging under Iranian law. The two cases described hereunder involve special cases of fornication carrying the death penalty, namely, the fourth repetition in case 1, and incest in case 2 (chapter 2, section 5.2; chapter 4, section 3.2). The first defendant was hanged, while the second was ultimately exonerated.

This, the fourth of five case-study chapters, corroborates some themes from previous chapters. They include the use of invalid confession and judges' arbitrary claims of *'elm* (unregulated 'knowledge' which allows conviction) based on inadmissible evidence. A notable element in both cases is how low socioeconomic status facilitated neglect and abuse, causing behaviour which was prosecuted in contravention of laws governing criminal responsibility. The four overarching themes noted in previous chapters, namely judicial discretion caused by legal interpretability, contravention of laws, institutional obstacles to lenience, and socioeconomic dimensions of prosecution, are all manifested in these two cases.

Case 1: execution despite evidence of psychological disorders.

Mazanderan, 2004.

This case culminated in a public hanging. Its information comes from court papers and other documents from a lawyer representing the executed girl's family, supplemented by the family's statements to that lawyer and to another individual.

The defendant was a girl aged approximately 16 years and 11 months when executed. When she was five years old, her parents divorced. Subsequently her mother died in a car accident, one of her brothers drowned, and her father and surviving brother became homeless addicts; thereafter she mostly lived with her aged grandparents. These traumas caused a sudden decline in academic performance, as shown in her school records, accompanied by psychological problems. Locals considered her insane, and without competent care she drifted into illicit activities.

During the last three years of her life, she was arrested eight times. Aged thirteen, she was sent by the police to a social welfare office, where a psychiatrist diagnosed her with various disorders including cyclothymia, hypersexuality, borderline personality disorder, and pseudo-hallucinations, and prescribed medicines that she soon abandoned. She was interned on at least four other occasions in similar institutions. She once received 99 *ta'ziri* (discretionary) lashes for lesser carnal misdemeanours and was thrice flogged 100 lashes as the *hadd* for fornication: once at age 13 before her psychiatric diagnosis, once at age 14, and once ten days before her fifteenth birthday.

Less than two weeks before the girl's final arrest, local police produced an unsigned letter purportedly from local inhabitants. Describing her as a recidivist fornicatress and a bad influence on local schoolgirls, it urged firm action against her. This letter, presented as the impetus for prosecution, is mentioned in both rulings of the case. However, another letter, signed by 43 local residents including respected individuals, was submitted to the court before sentencing but is not mentioned in either ruling. It urged the authorities to abandon prosecution because the girl was mentally unstable and intermittently insane, and therefore bereft of criminal responsibility. Similarly ignored was a letter from the girl herself, submitted from prison as grounds for appeal on the day of her initial death sentence, referring the court to the residents' affidavit of her insanity and medical reports of her psychiatric disorders available in various welfare offices.

The girl was tried alongside another young unmarried woman also accused of fornication, and three much older men accused of illicit relations with them. The men denied all charges and were released; the girls confessed and were detained.

The trial opened the day after the girls' arrest. The primary defendant (who was eventually hanged) confessed to *zena* with two of the men, sometimes in exchange for money, during the first four sessions of the trial¹. Only during the fifth session, where she also confessed, was her court-appointed lawyer introduced. The

¹ Confession to *zena* (fornication or adultery) must occur in court (chapter 2, section 6.1).

judgement was announced in the sixth session, twenty days after the arrests. The first girl was sentenced to death for the fourth instance of fornication, the second, who had also confessed in court four times, to 100 lashes for fornication, and the men to 95 lashes for the lesser crime of ‘illicit relations’. On the same day, the first girl appealed as described above.

The girl’s relatives claim that the judge who issued her death sentence personally travelled to the Supreme Court to ensure confirmation of his ruling. In any case, the Supreme Court confirmed the sentence just over a month after it was issued. The girl appealed the Supreme Court’s ruling, as allowed by law, and also lodged a pardon request. Both legally should have halted her execution until their results were announced². Nevertheless, before either request was considered, she was publicly hanged a month and 12 days after the confirmation of her sentence and precisely 105 days after her arrest. Witnesses report that during her execution, the first-instance judge declared that she had lodged no further appeal.

Immediately after her execution, townsfolk submitted another affidavit, bearing 44 signatures, reiterating their belief in her mental problems and consequent loss of criminal responsibility. The presence of two such ignored affidavits lends credibility to the girl’s family’s contention that the only letter which the court considered, the unsigned complaint, emanated not from local residents but from the authorities (as possibly happened in sodomy case 4).

Within two months of the execution, a lawyer began representing the girl’s father and brother pro bono in their complaint to the ‘Prosecution Office for Violations by Government Workers’ against the judge. This lawyer’s arguments recall common themes encountered in other cases, particularly the hazy boundaries of ‘*elm-e qazi*’ (‘the judge’s knowledge’, allowed as proof) and judges’ disregard of laws.

² Appeals Law, article 15; Law Establishing the General and Revolutionary Courts, article 18; Procedural Code for the Pardon and Clemency Commission, article 10, note 1; DIRS293/82, article 4; DIRS28/70, article 1, note 3.

The grounds for sentencing presented by the first-instance judge, and accepted by the Supreme Court, were confession and *'elm-e qazi*. The judge pointed out that the defendant confessed in five court sessions, including the penultimate hearing where 'a court-appointed lawyer was present', and cited articles 63, 64, 68-70, and 90 of the penal code, the first five defining *zina* and the requirements for valid confession to it – including, of course, mental competence – and the last prescribing death for the fourth instance of *zina*. He continued that these confessions also gave him *'elm* in accordance with articles 105 and 120 of the penal code. Finally he condemned her to death by public hanging. The Supreme Court confirmed that because she had confessed, the sentence was legally correct.

The new lawyer emphasised that article 105 is not in the proof subsection of *zina* laws³, but, incongruously in the subsection entitled 'method of implementation of the *hadd*'. This, the lawyer argued, shows that *'elm* is not valid proof in *zina*.

The contrast between this and the judge's attitude is evident considering that he cited article 120, which is in the sodomy section of the penal code, as well as article 105 to justify his use of *'elm*. By citing an article which is not in the *zina* section, he implied general applicability for both articles irrespective of their position, thereby choosing the interpretation which maximally extends the territory of *'elm-e qazi* rather than benefiting the defendant⁴.

Having tenuously undermined *'elm*, the lawyer attacked the remaining evidence, namely confession. The girl's documented insanity, argued the lawyer, not only invalidated her confessions⁵ but deprived her of criminal responsibility⁶. Her very persistence in carnal activity despite repeated flogging, amounting to 399 lashes in two years, indicated lack of the self-control whereby a sane person would abandon such dangerous activities.

³ See chapter 2, section 6.4.

⁴ This contravenes the axiom of interpreting laws in favour of defendants (see chapter 3, section 3).

⁵ *'Aql* (sanity) and *ekhtiar* (free will) are enumerated in article 69 of the penal code as necessary for making a valid confession to *zina*.

⁶ Article 64 of the penal code includes *'aql* (sanity) and *ekhtiar* (free will) as conditions for eligibility for the *hadd* for *zina*.

The lawyer pointed out that though the defendant was aged 16 when tried, as attested by her identity documents and school records, her first-instance ruling did not mention her age while the Supreme Court ruling described it as 22. Though 16 is well above the age of *bulugh*⁷ for girls in Iran, the common practice of delaying execution of minors until they are 18 would have meant, argued the lawyer, that if her correct age had been acknowledged, she might have survived, albeit in prison, long enough to allow additional investigation during her lifetime rather than posthumously. The lawyer also cited the ban on execution of minors in article 37 of the Convention on the Rights of the Child, which Iran signed and which article 9 of the Civil Code therefore inglobates into Iranian law. The lawyer cast this as a method of ‘buying time’ rather than a bar to execution, but did not mention that Iran did not make reservation to article 37, which is therefore arguably binding⁸.

The lawyer concluded that failure to report the defendant’s age correctly and to investigate mental insanity, and execution despite pardon and appeal requests, could be readily connected to the extraordinary speed and sloppiness with which the case was handled, and constituted, even refraining from speculation regarding the judge’s motives in expediting the proceedings, at least grave negligence requiring *diyeh* (blood money), the judge’s prosecution through article 171 of the Constitution, and (posthumous) rehabilitation of the girl⁹.

The complaint went to the *Dadgah-e ‘Ali-e Qozzat*, the ‘High Court for Judges’. Before being addressed, it was archived and labelled “*in parvandeḥ makhtumeh e ‘lam mishavad*” (this case is declared closed) without further explanation. The judge’s career was unimpaired.

To summarise, the following salient issues arise in this case:

⁷ *Bulugh* (chapter 2, section 7.1) is the age of legal majority and criminal responsibility: 9 lunar years for girls, 15 for boys. Lunar years are approximately 11 days shorter than solar years.

⁸ Legal details in chapter 2, section 7.1.

⁹ Constitution, article 171: moral or material losses caused by judicial error must be compensated by the judge if he is at fault, otherwise by the state; in all cases the defendant’s honour must be restored.

1) Similarly to many others, this case demonstrates the fuzzy boundaries and lack of legal regulation of *'elm-e qazi* (though the potentially advantageous fuzziness caused by the bizarre placement of article 105 is unfortunately absent in both proposed new penal codes). It is intriguing that despite the presence of sufficient confessions in court, the judge declared that they gave him *'elm* – a strategy that in previous cases was used to lend greater force to rulings with shaky evidence, though in this case the challenge to the validity of confession was never addressed by either court. Notably, the lawyer, by first invalidating the use of *'elm* itself and only thereafter casting doubt on the validity of the confessions, implied that *'elm* can be based on faulty proofs, or at least that the authorities assessing the grounds for the judge's prosecution might maintain so. If not, the lawyer could simply have pointed out the confessions' invalidity and consequent ineligibility as proof, whether independently or through *'elm*.

2) Failure to record the girl's age correctly not only indicates the sloppy and possibly dishonest (according to the girl's family) handling of the case, but also meant that she was denied the likely delay of execution that might otherwise have given the new lawyer time to intervene within her lifetime. The age problem also highlights the fact that arguably, CRC article 37 is legally binding in Iran.

3) The girl apparently had no lawyers until the fifth trial diet – in other words, the proceedings ensured that even according to the most stringent norm for confession requiring four separate court sessions¹⁰, the girl would incriminate herself before meeting a lawyer. Furthermore, the speed of the trial, which began the day after the girl's arrest, would have precluded preparation of a defence. She was denied her constitutional guarantee¹¹ of representation. Laws were also broken through failure to consider documentary evidence of insanity, which invalidates confession and removes criminal responsibility, and the girl's (pre-emptive?) execution before all avenues of appeal and pardon had been exhausted.

¹⁰ Chapter 2, section 6.1, explains various positions regarding rules for confession, including the preference for a separate court session for each confession required (for *zena*, four).

¹¹ Article 35 of the Iranian Constitution guarantees the right to a lawyer.

4) The male defendants were convicted of ‘illicit relations’ only through the females’ confessions, implying that the judge considered the prohibition of using one person’s confession against another¹² applicable only in *hudud*, not in *ta‘zirat*. This contradicts the interpretation of this rule as covering all crimes.

5) Under a different system, the defendant might have been characterised as a victim – a socially and mentally disadvantaged child bereft of guidance during her formative years and easily abused by older men – rather than a criminal, while her co-defendants might have received far greater opprobrium and harsher sentences than they did. Though the men were illegally punished for ‘illicit relations’, their lesser initial charge, contrasting with the girls’ greater *haddi* charge, may indicate male bias and the role of prejudice in determining prosecution – especially as the males and females were accused of relations *with each other*.

6) The unjustified closure of the prosecution initiative against the judge starkly exemplifies the authorities’ awesome arbitrary power, further substantiating theories of personal intervention by officials while illustrating the authorities’ unaccountability and the practice of disregarding laws when expedient.

The speed and selective use of proof characterising this trial, combined with disregard for laws and probable vitiation by local authorities’ personal prejudices against the girl, suggest this as another possible instance of authorities’ ‘crusading’ against ‘corruption’ and initiating prosecution for ‘crimes against chastity’, forbidden by both Shi‘i and codified law¹³.

¹² Article 1278 of the Civil Code limits the influence of confession to the confessor, as does the *fiqh* principle *eqrar al-‘oqala ‘alaa anfosehem ja‘ez* (chapter 2, section 6.1).

¹³ Iranian codified law and Shi‘i law forbid prosecution and investigation of crimes ‘against chastity’ without complainants (chapter 3, section 4).

Case 2: death sentence for incest with rape claim¹⁴ and *enkar*¹⁵.

Markazi, 2004-5.

In this case, a girl aged 18 was sentenced to death for incest but ultimately exonerated after appeal and retrial. The facts of her case come from court documents plus information from the lawyer who handled her appeal, a social worker in the centre where she eventually went for rehabilitation, and an individual who spoke to the judge and court-appointed lawyer involved in her initial trial.

Almost every member of the girl's family had penal precedents. Her father was serving a life sentence for drug smuggling and her mother had frequently been in prison, where the girl had consequently lived with her on several occasions from the age of three. She was entirely illiterate, never having been to school. Prostituted by her mother from early childhood, she had eight penal precedents beginning from the age of eleven, all related to carnal misdeeds, and had been flogged at least five times, once as *hadd* and four times as *ta'zir*, by the time of this trial.

At the age of 16 she was given in 'temporary marriage' to a man who prostituted her as a source of income for himself and his permanent wife¹⁶. She was arrested when his house was raided as a 'centre of corruption', and charged with participation in organising this establishment. The complainant was the 'office for combating social depravities' (*edareye mobareze ba mafased-e ejtema'i*).

During a pre-trial interrogation session (where her confessions, being out of court, were invalid), the girl, presenting her lifelong abuse as 'extenuating circumstances', described her prostitution before her temporary marriage, causing the birth of three children of unknown paternity, and subsequently by her temporary husband (who kept the proceeds; she had avoided pregnancy through contraceptive pills). In a

¹⁴ Rape claims exonerate 'confessors' to *zina* (penal code, article 67).

¹⁵ Retraction of confession, which averts death penalties in *zina*.

¹⁶ Temporary marriage, with an 'expiry date' fixed in advance in the marriage contract and a maximum term of 99 years, is allowed by Shi'i law and the Iranian civil code (articles 1075-7, 1113). It cannot create *ehsan*, the condition of having 'access' to one's *permanent* spouse, which determines adultery and therefore eligibility for stoning (see chapter 4, section 3.4). Therefore the girl was ineligible for stoning.

session two days later, also out of court, she described being prostituted by her mother from the age of nine and raped by two of her brothers from the age of ten. She specifically used the word ‘*tajavoz*’, ‘rape’, describing how her brothers hit her if she resisted. Both brothers were arrested and confessed to raping her, again out of court. All three were charged with incest. In court they denied incest, saying they had confessed in fear of being beaten, while admitting to non-penetrative carnal activities together. The girl again described her prostitution by her temporary husband. She was represented by a court-appointed lawyer who only saw her once before the trial.

Approximately four months after the initial investigation, the judge issued his ruling. The evidence used against the girl was as follows. 1) She confessed to incest with her brothers. 2) She confessed at least four times to *zina* (though the *hadd* for *zina* is applicable through four confessions to *the same* instance thereof, while her confessions were to various instances of *zina*, most of them not constituting incest). 3) She had penal precedents, all for illicit carnal activity. 4) She had produced three children (although she clearly described these pregnancies as unrelated to the much earlier coerced incest). 5) Her brothers confessed to incest with her. 6) In court, she and her brothers confessed to illicit relations.

None of the evidence legally justified the death penalty for incest. Pregnancy and co-defendants’ confessions are invalid as proof¹⁷; most instances of *zina* mentioned in her ‘confessions’ were not incest, and the same applies to her penal precedents and ‘illicit relations’. Her invalid confession to incest was further invalidated through retraction. In court, she only confessed to ‘illicit relations’ and forcible prostitution by her husband.

Nevertheless, the judge claimed ‘*elm* and sentenced her to death by hanging for incest, 100 lashes for ordinary fornication, and five years’ *ta‘ziri* incarceration for organising a house of vice. Although she had only confessed once to incest (with rape), her confessions to different episodes of *zina* which did not constitute incest were counted towards the total of four, and then the death penalty *for incest* was

¹⁷ Chapter 4, section 3.6; chapter 2, section 6.1.

applied as if all these confessions had been to incest through the misleading association of the two phrases ‘she confessed four times to *zena*’ and ‘she confessed to *zena* with her brothers’. Her penal precedents were similarly used as evidence of *incest* though none of them involved incest. Her retraction of confession to incest was rejected because the judge claimed that his ‘*elm* overcame *enkar*’; and the rape claim accompanying her lone ‘confession’ to incest, which exonerated her through article 67 of the penal code, was never mentioned.

As for her brothers, the judge simply declared that since they had retracted their confessions to raping their sister, and since according to article 71 of the penal code any death penalty for *zena* lapses with retraction of confession, through that article as well as article 37 of the Constitution (innocence by default), the *asl-e bara’at* (same) and the *qa’edeye darr*’ (doubt removes punishability), they were acquitted of incest.

This is an extraordinary example of the sweeping powers of ‘*elm* and the unequal deployment of legal elements. The only reason why *zena* carried the death penalty for the girl was because it allegedly occurred *with her brothers*; none of her other alleged acts carried the death penalty. She was sentenced to death for incest with her brothers, who, according to the court, had not committed incest with her. ‘*Elm* created two incompatible yet coexisting realities, one of which necessitated an execution. The court applied *suqut* (lapsing of punishment) through *enkar* to her brothers, whose criminal record was no better than hers and who had confessed to rape, while ignoring this principle with regard to the girl whose circumstances were identical except that her confession was to *being raped*. Confession only incriminates the confessor; but the brothers’ confessions which, when retracted, were deemed incapable of incriminating them were nevertheless used against *another person*.

A reliable source who spoke to the girl’s court-appointed lawyer reveals that he only saw her once before the trial. He declared that given the choice, he would have refused such an obviously guilty client, since a lawyer’s job is to assess whether a person is guilty, and then defend them if they appear innocent. Clearly this is incompatible with the guarantee of a fair defence irrespective of apparent guilt, and

with the notion that a lawyer's task is not to assess guilt (that function belongs to the judge) but to use every opportunity to defend their client.

The lawyer further argued that he could not, with a clean conscience, instruct his client to lie in court by retracting confessions that clearly showed her guilt; and that since she had borne three 'illegitimate' children and confessed more than four times in court to prostitution enforced by her temporary husband, the lawyer was powerless to argue her innocence. Again, the lawyer confused her prostitution and pregnancies with the issue of incest, ascribed to a time prior to these, and failed to cite the flaws in confession. He said that the girl's possibly low IQ would not remove criminal responsibility, which does not lapse through ignorance of the law. Here he was simply mistaken, as ignorance of the law does remove criminal responsibility¹⁸. Furthermore he confused ignorance with insanity and coercion, which remove criminal responsibility and invalidate confession. The lawyer's incompetence and subjective assessment of guilt facilitated conviction.

A new lawyer took the case to appeal, acting alongside the first, using the following arguments. 1) Confession to incest occurred only once. 2) It was accompanied by claims of rape, which exonerated the girl by article 67 of the penal code and the *qa'edeye darr*'. 3) The judge, by combining the propositions 'she confessed four times to *zena*' and 'she confessed to incest', misleadingly conflated confessions to different instances of *zena* with strangers, which cumulatively occurred more than four times but could not prove any single instance of *zena*, with the girl's sole confession to incest (with rape), thereby falsely indicating four confessions to incest. 4) Even regarding prostitution, criminal responsibility was doubtful because there had always been *ikrah* (coercion) or at least *ezterar* (distress) involved. A young girl, placed under the overwhelming power of irresponsible and unscrupulous adults all her life, was ordered to commit *zena* by persons on whom she depended for food and shelter. Here the lawyer cited a narration regarding *ezterar*, where the Imam Ali acquitted a thirsty woman of *zena* committed in exchange for water¹⁹. 5) The girl retracted her confession, which prevented punishability through article 71, and

¹⁸ See chapter 2, section 7.2.

¹⁹ See chapter 2, section 7.3.

introduced an important requirement for *'elm*, namely, that it be based on truth (see chapter 2, section 6.4). Incest is a special case of *zina*, requiring the correct identification of the other party. Exoneration of the girl's brothers implied acknowledgement of a reality whereby incest between them and their sister never occurred; this is incompatible with the reality in which incest occurred, and yet according to this reality, which the judge presented as impossible by acquitting her brothers of incest, the girl must die. Either incest occurred and all participants must die – except, of course, any possibly coerced party – or it never happened and nobody was punishable for it. 6) Even ignoring the controversy among jurists regarding whether non-*ma'sum*, non-*mujtahid* judges may rule by *'elm*, its grounds must be comprehensible to others, because provability, as expressed by Ayatollah Shahrudi²⁰ in his book, is necessary for *'elm* to be valid. Furthermore, some jurists maintain that *'elm* only comes to a judge from personally witnessing a crime. The lawyer cited the opinions of three jurists including Ayatollah Shahrudi, as well as judicial precedent showing *'elm* being found unjustified by higher courts, therefore demonstrating that it must be justifiable to others. 7) The charge of incest was introduced without complainants, during investigations for pimping, despite the prohibition against prosecuting crimes 'against chastity' without complainants. 8) Prison officials had suggested the girl's potentially very low IQ and mental age of eight as obstacles to criminal responsibility. 9) Considering the girl's deficient upbringing and lifelong abuse, she should be considered a victim, not a criminal.

The new lawyer told me that the girl's brothers possibly retracted their confessions after learning in prison that *enkar* precludes execution for *zina*. If they did rape their sister, her retraction implies her realisation that her rape claim would be used against her, and her only chance of escape was to exonerate her tormentors.

The Supreme Court accepted some, not all, of the new lawyer's arguments. It accepted that *'elm* must be based on reality, declaring that since the appellant's brothers were acquitted of incest, there was no named partner to the girl's incest and her death sentence was incorrect. It questioned whether *'elm* could survive *enkar*,

²⁰ The head of the Judiciary when this case was tried. The *Ma'sumin* are the Prophet and the Imams; Islamically, only *mujtahids* (Islamic jurists) can be judges. See chapter 2, sections 3 and 6.4.

without providing a definitive answer (perhaps because the law offers none). It accepted that the girl had probably not organised the 'house of corruption', and confirmed only the sentence of 100 lashes for fornication (with strangers brought by her temporary husband), ignoring her possibly low IQ and the 'distress' argument. Regarding incest and brothel organisation, the case was sent for retrial.

The retrial judge also ignored any suggestion of low IQ and consequent lack of criminal responsibility. Rejecting any intimation that her social disadvantages and the fact that she always acted under orders affected her responsibility for illicit behaviour, he indulged in a lengthy and flowery disquisition regarding proper Islamic morality to be followed irrespective of adversity. However, he accepted that the retraction of her confession to incest nullified the *hadd*, and that article 37 of the Constitution (innocence by default) required acquittal if guilt remained uncertain. Therefore she was only punishable for the 'illicit relations' to which she had confessed in court. She was sentenced to three years' incarceration for participation in a 'house of vice' followed by eight months' rehabilitation in a welfare centre.

Tests administered soon after this ruling revealed her IQ as 75. If, as repeatedly requested, such examinations had been conducted before sentencing, she might have immediately been found bereft of criminal responsibility.

In brief, the issues raised by this case are as follows.

1) This case continues the theme of overlooked obstacles to criminal responsibility. The girl's low IQ was never investigated before sentencing, and her rape claim was consistently dismissed. Extenuating circumstances and *ezterar* (developed extensively in Shi'i law, but mostly absent from codified law) were also ignored. Even the judges who eventually blocked her death sentence dismissed any diminished responsibility deriving from lifelong abuse and the fact that she had always acted under orders from adults with power over her. Like the girl in the previous case, she might have been considered a victim under a different system.

2) This case displays the extraordinary powers attributable to legally unregulated *'elm*, which here posited two conflicting realities. Furthermore it illustrates various competing opinions regarding *'elm*, including the position whereby it cannot be assessed by others even if unprovable, and the opposing opinion whereby unprovable *'elm* is invalid. It is interesting to observe participants' diverse assessments of *'elm*. For example, the argument that *'elm* cannot overcome retraction of confessions, initially rejected, ultimately prevented the girl's execution, but the larger issue of whether *'elm* can be based entirely on invalid proof was not properly addressed.

3) Like the previous case, this one displays the crucial role of subjective assessments (by both judge and lawyer).

4) Neither age nor the possibility of a 'statute of limitations' was offered as a reason to exonerate the girl, the first because her age, which in some systems pertains firmly to childhood, is above the very low age of *bulugh* for girls, and the second perhaps because it is an obscure juristic possibility. Some narrations, however, do posit a statute of limitations²¹, and there is no reason to ignore them if other scriptural commandments are used.

Another defence that was ignored was the idea, present in both Shi'i and codified law but only partially developed by the lawyer, that crimes against chastity cannot be prosecuted without complainants. The Supreme Court ignored this point, which could have been emphasised more through citation of laws and narrations. If authorities could be 'complainants' for this purpose, the prohibition would be redundant; its existence implies that the girl's prosecution was illegal.

5) Male bias, possibly present in the previous case, almost certainly operated in this one. Identical conditions were used to exonerate males and condemn a female to death – in fact, an additional condition affecting the girl, namely the rape claim, should have protected her but was completely ignored.

²¹ Chapter 2, section 9.

6) Parts of Shi‘i law were employed with varying results. The Supreme Court ignored distress as a remover of criminal responsibility, and the idea of a ‘statute of limitations’ was never mentioned, but the *qa‘edeye darr*’ was used by the first judge – together with the *asl-e bara‘at* – in acquitting the girl’s brothers of incest and successfully by the second lawyer in exonerating her. Also, some interpretations of ‘*elm*’ propounded by the new lawyer were accepted by the Supreme Court – which questioned its ability to overcome *enkar*, and agreed that it must reflect reality and be provable to others – in preference to those used by the first judge. This debate necessarily occurred entirely within the arena of Shi‘i law, since the codified law is silent regarding the details of ‘*elm*’.

Concluding remarks.

Both of the cases presented here involve mentally compromised girls from underprivileged, abusive or neglectful families, condemned to death by hanging (rather than the methods described in narrations²²) for acts committed while under the age of 18, by courts that overlooked evidence of their mental problems.

Both cases display disregard for laws: in the first, laws regarding criminal responsibility, appeals and pardon requests, and possibly valid prosecution of crimes ‘against chastity’ were ignored with fatal results, and in the second, laws governing valid prosecution, rape claims, confession and its retraction, and again criminal responsibility were bypassed but then partially reinstated in time to save the defendant. Both cases raise the issue of improper legal representation and confusion between the roles of judge, lawyer and prosecutor (cf. theft cases 2 and 5). Both exemplify the extent to which ‘*elm*’, undefined and unregulated, can become a ‘wild card’ capable of deflecting any objection, leap-frogging any legal obstacles, and prevailing over the limitations of physical reality (did incest occur or not?) while remaining impervious to external assessment. In both cases, contending interpretations of ‘*elm*’ confronted each other.

²² Chapter 2, section 5.3; chapter 4, section 3.2.

Both cases show that no matter how clearly obvious legal flaws are pointed out, the authorities' unaccountability allows them to overlook even the clearest inconsistencies and illegalities. Nothing compels them to obey their own laws. Case 1 dramatically displays the system's unaccountability, given that appeals against it are assessed by other tentacles thereof²³. This is why the 'high court for judges' could block the judge's prosecution without justification. Appeals are only successful, even partially as in case 2, as a concession by the authorities.

All these mechanisms are facets of the frequently interlocking major themes delineated in previous chapters: that judges may interpret vague laws with immense discretion; that judicial authorities also frequently break laws; that socioeconomic circumstances may be intimately associated with prosecution; and that the system contains inherent obstacles to lenience.

One such obstacle is that 'extenuating circumstances' do not exist in *hudud*, because they are 'fixed penalties' whose applicability depends on fulfilment of technical parameters (chapter 2, section 5). Though criminal responsibility was arguably absent in both cases, even by *hadd* standards, because of (ignored) mental problems (chapter 2, section 7), the fact of having always lived with neglect and abuse is more difficult to fit into the stringent *hadd* parameters. If the concept of *ezterar* (distress), derivable from Shi'i law, were more clearly incorporated into codified law, this could allow such socioeconomic disadvantages to be considered. *Ezterar* allows punishability to lapse if circumstances which do not constitute absolute removal of free will nevertheless make it very difficult to abstain from illicit acts (chapter 2, section 7.1).

Another obvious obstacle is the very existence of the death penalty, present in scripture, for acts which may be victimless (repeated fornication) or may result from coercion. This once again indicates the discrepancies which can arise when laws rooted in the morality of one era are deemed obligatory in another.

²³ Mayer, "Universality", 314: "Iran's courts [are] an arm of the regime's apparatus of repression".

Many patterns emerging from these cases – for example, the authorities’ arbitrariness and unaccountability, their initiative in prosecution, their disregard for laws including those governing evidence and criminal responsibility, *elm*’s ‘wild-card’ quality, improper legal representation, and execution of minors – also appear in earlier chapters. The next chapter, analysing adultery trials, displays other facets of their application. It also continues the theme of socioeconomic disadvantage intersecting with criminal trials, and of uncertainty regarding what can be considered ‘coercion’ or ‘distress’, removing criminal responsibility.

9. Adultery cases.

This, the last of five case-study chapters, analyses the court documents (and sometimes additional information from lawyers) for thirteen Iranian adultery trials. They involve some issues specific to adultery, including the stoning penalty and *ehsan*¹, which determines eligibility for stoning. They also share themes observed in chapters 5-8, notably the pervasiveness of conviction through *'elm-e qazi* (the judge's 'knowledge') often based on invalid evidence. Some cases reveal the inequalities inherent in divorce and child custody laws and how they facilitate women's prosecution for adultery: these are obstacles to lenience inherent in the law. Also revealed are the intersections of socioeconomic conditions, such as poverty, illiteracy, addiction and ethno-linguistic background, with prosecution.

The manifold themes present in adultery cases build on the previous case-study chapters to complete the picture of how the theoretical elements presented in Part I (chapters 2-4) are deployed in practice. The fundamental characteristics of this system, as noted throughout the project, are the interpretability of laws due in great part to the simultaneous operation of Shi'i and codified law; the frequency of legal infractions; the intersection of socioeconomic circumstances with prosecution, where applicable; and the presence of inherent obstacles to lenience in the law. The overall impression is that the system surveyed in Part I, while containing some formidable obstacles to lenience, also provides opportunities to avoid most irreversible *hadd* penalties, though judges may disregard these in choosing less lenient interpretations or contravening laws outright. The extensive debates among jurists observed in Part I are seen among judges, lawyers and even (in case 1 below) Ayatollahs in this and other case-study chapters.

Because of the multiple, intersecting themes linking these cases with each other, no linear sequence of them is entirely satisfactory. This is one possible order which, it is hoped, allows themes to lead into each other and cumulatively fortify each other. The sheer volume of information available for each case precludes description of all

¹ The condition of being married and having 'access' to one's spouse (chapter 4, section 3.4).

details of the cases, but every case is given a description presenting its salient elements, followed by a discussion of its important themes.

Case 1: stoning sentence despite belief in valid marriage.

Qazvin, 1999-2008.

This case shows how interpretations pertaining entirely to Shi'i law can crucially affect sentencing. It also shows how inequitable divorce and child custody laws, described in chapter 4, section 3.5, can remove women's control over events that culminate in their prosecution. This represents one of the system's institutional obstacles to lenience.

The case involved two individuals, A, female, and B, male, convicted of adultery with each other. We are mainly concerned with A because B's case file is unavailable. A, an illiterate member of a linguistic minority with no knowledge of Persian, had an arranged marriage to a man whose narcotic addiction and consequent financial irresponsibility endangered the family's survival. She returned to her parents' house, remaining there for eight months, and sued for divorce. Though a husband's addiction and failure to provide financial maintenance are legal grounds for divorce, the court rejected her petition because her children needed a mother, whereas fathers have custody of children after divorce.

B, a family friend with a wife in another village, convinced A that by deserting her husband's home she could obtain a divorce 'in absentia'. She therefore consented to be taken to B's village 300 km away, but had no carnal relations with him. After some time, B produced A's identity certificate with her husband's name erased as 'proof' of her divorce. They were married by a cleric; A, unable to write her name, signed the marriage contract with a fingerprint. The pair lived openly as husband and wife, being acknowledged as such by locals. They produced a son who received identity documents, which can only be obtained by 'legitimate' children², further contributing to A's belief in the validity of her new marriage.

² See chapter 4, section 3.1.

During a visit to A's original town, A and B were spotted by A's first husband, who had them arrested. Under interrogation, A explained that she had divorced her first husband and married B. Her statements were used as 'confessions' to adultery. When the pair were tried, the judge combined these with the existence of their son to claim *'elm* ('knowledge'), and sentenced them to be stoned. It is unclear whether any confessions occurred in court (confessions out of court being invalid), or when the pair had access to their court-appointed lawyers.

Following appeal, the ruling was overturned on the basis of non-investigation of *ehsan*, and sent to *the same court* for retrial. To investigate *ehsan*, the court interrogated B's first wife, who said that she had never prevented B from copulating with her. This was used as evidence of B's *ehsan*. A, interrogated again, said that she had not seen her first husband for eight months prior to departing with B and that her first marriage had been chaste because of mutual dislike and her husband's illness. This was used as evidence that A's prolonged chastity, being voluntary, did not remove *ehsan*, though the standard position among Shi'i jurists is that intention is immaterial to loss of *ehsan*, and the codified law is silent on this point³.

Another stoning sentence ensued. It was confirmed on appeal on the basis that *ehsan* had been established. A, awaiting execution in prison, was discovered by two lawyers who took her case. All ordinary appeals having been exhausted, they requested an extraordinary review as permitted by law (chapter 2, section 4).

Their defence refers to Shi'i concepts including the Imams' lenience and treatment of *hudud* as mostly deterrents, the *qa'edeye darr* (the axiom whereby 'doubts prevent punishment'), and the principle of 'caution in shedding blood'⁴. Concerning A's erroneous but genuine belief in her marriage to B, they cited Khomeini's legal treatise, the *Tahrir al-Vasileh*, which agrees with articles 64-6 of the penal code⁵ that punishment depends on criminal responsibility, including awareness that one's acts

³ Chapter 4, section 3.4; chapter 7, section 6.

⁴ Chapter 3, sections 1, 3, 5, 6.4.

⁵ *Tahrir*, volume 4, *zina* topics 7 and 8. Similarly, Montazeri, *zina* topic 3171.

are prohibited. They contested the judge's illegal use of pregnancy as proof (chapter 4, section 3.6), and cited Khomeini's opinion that intention is irrelevant in losing *ehsan*. They argued that A had only confessed to copulating with B while farther than the 'legal distance' (4 *farsangs*, approximately 22km) from her husband, which removed *ehsan*. Furthermore A had lost *ehsan* by not copulating with him for eight months before departing with B, and their mutual hatred also removed *ehsan*⁶.

The lawyers also submitted legal opinions (fatwas) from three Ayatollahs, confirming these arguments. Additionally they submitted new testimony from A's and her first husband's relatives confirming that A had not seen her husband for eight months before departing with B, and that mutual loathing precluded physical or emotional intimacy even while they lived together.

Through a literate cellmate, A sent a pardon request expressing her repentance for acts that she had believed licit. She was pardoned five months later with no reason given (though her release was illegally delayed). Her lawyers speculate that the Ayatollahs' input was crucial.

These courtroom debates about *ehsan* and criminal responsibility, using Shi'i concepts absent from the codified law, show how the vagueness of the codified law necessitates reference to the highly interpretable Shi'i law. Similar mechanisms appeared in previous chapters, e.g. the uncertainty regarding penetration in sodomy cases. Other themes from previous chapters include contravention of laws (e.g. pregnancy as proof), institutional obstacles to lenience in the system (e.g. appeal bias, unequal divorce laws), and arbitrary use of *'elm* and evidence. These themes emerge in the following ways.

1) The root of A's problem was her inability to divorce her husband although his addiction and failure to support his family were legal grounds for divorce. If permitted to divorce her husband, she would have lost *ehsan*. Her new marriage would also have been valid, protecting her and B from stoning. Furthermore, if

⁶ Chapter 4, section 3.4 (parameters of *ehsan* and their interpretations).

mothers and fathers had had equal child custody rights, the court's argument that A's divorce should be denied to avoid depriving her children of their mother would have been untenable. The civil code now awards mothers custody when fathers are proven unsuitable⁷, but A's husband's shortcomings were disregarded. This is an example of theoretical rights being denied. It also shows in action the institutionalised inequalities outlined in chapter 4, section 3.5.

2) The appeal bias noted in previous chapters also appears here. By sending the case to be retried by the court which had already overlooked crucial issues to arrive at a stoning sentence, the authorities denied the pair a true, unbiased appeal. As explained in chapter 2, section 4, the law permits cases to return to their original courts if their sentences are overturned because of 'insufficient investigation'. However, as observed in theft case 2, reasons for overturning the ruling may be classified as 'investigation flaws' but in fact involve other issues which are thereby not subjected to a 'second opinion'. Here, such an issue is *ehsan*. The original court's 'additional investigation' of *ehsan* involved its unorthodox interpretation of *ehsan* depending on intention. The assessment of *ehsan*, criminal responsibility and other parameters did not involve only accumulation of additional data ('investigation') but also interpretation, and revision by the same court meant that these other crucial dimensions were not given a second opinion. As observed in sodomy case 1, appeal bias may also operate when cases go twice to the same Supreme Court branch: this is unrelated to the law about 'insufficient investigation'.

3) The courts repeatedly ignored portions of both Shi'i and codified law regarding the role of awareness in criminal responsibility, though the evidence for honest error at least on A's part was overwhelming, and Khomeini (also, incidentally, Montazeri) describes a similar situation – *zina* committed in the belief of being married – as removing criminal responsibility (as does article 224 of the 2012 penal code set to replace the 1991/96 penal code under which these cases were tried).

⁷ Civil code, note to article 1169.

4) Different conceptions of *ehsan* confronted each other through the arguments of judges and lawyers. Three obstacles to *ehsan* were discussed: extended lack of copulation (as opposed to the impossibility thereof); distance, though the 4-*farsang* parameter is not in the codified law; and, most controversially, incompatibility between spouses, cited by the lawyers and posited by some jurists as a barrier to *ehsan* irrespective of copulation⁸. The judge declared intention relevant to loss of *ehsan*. The lawyers used the more common juristic opinion, seen also in judicial precedent⁹, whereby motivation is irrelevant to the evaporation of *ehsan*.

5) Crucial debates between judges and lawyers occurred entirely in the arena of uncodified Shi‘i law, exemplifying the notion that ‘the shari‘a’ is the law, contravening the codified principle of ‘no crime without law’¹⁰. Here the debates even involved three high juristic authorities (the Ayatollahs), showing that interpretations coming from a purely Shi‘i standpoint can ultimately have more ‘clout’ than codified laws. This displays the tension between the idea of interpreting scripture afresh in every case (continuous *ijtihad*) and the concept of a calcified law which crystallises one interpretation (chapter 1, section 5.1).

6) *‘Elm* bypassed many doubts regarding *ehsan*, criminal responsibility and proof. Pregnancy was illegally used as proof, and it is unclear whether A’s confessions occurred in court, as legally required. They also lacked the requirement of *qasd* – intention – because they were not intended as confessions (chapter 2, section 6.1). In other words, *‘elm* was a tool to contravene laws.

Case 2: interpretability of coercion in adultery.

East Azerbaijan, 1997-2009.

The previous case showed inequitable divorce and child custody laws (chapter 4, section 3.5) facilitating prosecution for adultery. This case continues that theme, showing how women can be condemned to death because of events over which the

⁸ See chapter 4, end of section 3.4.

⁹ Judicial precedent for this is described in chapter 4, section 3.4, and chapter 7, section 6.

¹⁰ See chapter 2, sections 1 and 2.

law denies them control. In common with the previous case, it also illustrates the interpretability of *ehsan* and criminal responsibility, which here were assessed without considering psychological parameters and the lack of self-determination caused by divorce and child custody laws.

The events of the case are reconstructed from court documents and additional information from the defendant's most recent lawyer. According to these sources, the defendant confessed under interrogation to facilitating her husband's murder, and a man confessed to the murder. Because the woman described, as extenuating circumstances, her forcible prostitution by her husband, enforced by violence against her and their children, she was charged with adultery. She was condemned to *rajm* (stoning) following incarceration for complicity in murder, while the man was condemned to *qesas* (retribution, here meaning execution) for murder but ultimately escaped execution because an agreement was reached regarding blood money.

According to the materials available, the woman's husband's addiction made him too debilitated to contribute to the family's expenses, which were significantly increased by the cost of his drugs. Therefore he prostituted his wife. Her prostitution was the family's only source of income. He frequently beat his wife and children; his eldest daughter described the children's mistreatment as 'a tool to tame my mother', suggesting blackmail. The mother had once left her husband, but returned fearing that, without his only source of income, he might prostitute the children: she submitted to prostitution to shield them. Her attempts to obtain help were unsuccessful because her husband came from a respected family and her claims about him were dismissed.

The convicted murderer was one of the wife's 'clients' who grew to love her and her children. As the husband's violent outbursts escalated, the defendants decided that his murder was their only option. The wife lured him outside and her co-defendant murdered him and hid his corpse.

The following evidence was used against the woman: both defendants' confessions before the police and in court; the statements of the woman's children, made in defence of both suspects; the police report describing the scene of the crime; and the victim's autopsy report. It is unclear how many confessions occurred in court, and therefore impossible to know whether they were valid. Considering the authorities' propensity to gloss over the invalidity of confession, we cannot assume four confessions in court. The man's confessions were illegally used against the woman. Her 'confessions' to *zina* were all presentations of extenuating circumstances made in pursuit of clemency, and therefore bereft of *qasd* – intention – which is legally required for confession.

The children's statements in favour of both defendants, whom they pardoned of the murder, were invalid as 'testimony' for various reasons including insufficient age¹¹, but possibly used for '*elm*', though the ruling mentions neither '*elm*' nor article 105 which permits it. They could only have been legally used as sources of 'additional information', as allowed by law for disqualified testimony. However, this may not apply to *hudud*¹².

In court, the woman denied *zina* with the convicted murderer. The court conceded that she was therefore unpunishable for *zina* with him, but insisted that she had 'confessed' to *zina* with large numbers of unknown men on her husband's orders, and remained punishable for this.

The woman was represented by a lawyer in court, but it is unknown whether the lawyer was available to her before the trial; previous chapters featured belated introduction of lawyers. The lawyer argued that the woman's adultery was coerced by her husband. However, the court rejected this on the basis that although the first instance of prostitution might have been forced, the woman could then have gone to the authorities and sought recourse against her husband; while she admitted that the

¹¹ Penal code articles 74-5, 77, 117, 128; civil code articles 1210, 1313; PCCM article 155; penal code bill article 213-2 note 3; Hojjati, 362; Mo'meni, 103-5, 148-9, 161, 163; Nobahar, "Ahdaf", 148-9; Khomeini, 306, 329-30, 342, 345; Mortazavi, 40-1; Zera'at (1385), 45-8, 98, 104, 223, 243, (1383), 211; Gorji, 20; *Lom 'e* (vol.1), 175, (vol.2) 235, 242; *Sharh-e Lom 'e*, 20, 59, 72.

¹² CPC article 146; PCCM article 156.

prostitution continued for ten years. This lengthy period afforded ample opportunity to escape, with the authorities' assistance, and failure to do so implied consent.

The court also rejected the idea that the husband's narcotic addiction crippled the marriage, undermining the woman's *ehsan*. In her confession, the woman had admitted to copulating with her husband on the day of the murder, thereby proving that he was able to copulate and she consequently possessed *ehsan*.

The court, rejecting all defences, condemned the woman to stoning for adultery, and the man to death for murder plus a hundred lashes for fornication. He eventually escaped execution by agreeing on blood money (*diyeh*) with the victim's brother.

By the time the woman's last lawyer harvested her case from prison, she had made three unsuccessful pardon requests. The lawyer lodged another. Its progress was followed by the prison authorities who, understanding her circumstances, did not wish her executed. After spending considerably more than her allotted eight years in prison, she was pardoned and promptly released by the sympathetic prison authorities (compare case 1, where release was delayed). The reasons for pardon are unknown because the Pardon and Clemency Commission did not reveal them.

The main issues represented in this case are as follows.

1) Iranian divorce and child custody laws discriminate against wives and mothers. Wives need either their husbands' consent or a court order to secure a divorce. A court order requires grounds, and is more difficult to obtain in reality, as shown by case 1 and Mir-Hosseini's study of Iranian divorces, than the law suggests¹³.

The court rejected the claim of coercion (*ikrah*) by arguing that the woman could have escaped from the husband who prostituted her. However, given the difficulty of securing a divorce despite valid grounds, she was not free to leave. Even if she had obtained a divorce, her husband would have had custody of their children unless he

¹³ See chapter 4, section 3.5; chapter 2, section 7.3.

were proven unsuitable (case 1, point 1), which is unlikely because his family's prestige gave him credibility. Since his only form of income was prostitution and he regularly beat his children, his wife had reason to fear that if she departed, he would prostitute the children to support himself and his addiction. Therefore her choice was between enduring prostitution herself, and endangering the children. Even if she had fled without a divorce, she would legally have been guilty of *nushuz*, insubordination, and liable to be forcibly returned to her husband¹⁴.

All these conditions mean that 'adultery' was not the result of free will (*ekhtiar*), which is a necessary component of criminal responsibility¹⁵. However, the court shifted the emphasis from whether free will was absent, to whether absolute coercion was present. The codified law does not clearly delineate the parameters of coercion, but Shi'i jurists present a wide spectrum of interpretations thereof, including the purely psychological (e.g. threats). Furthermore, Shi'i texts clearly describe another parameter which removes criminal responsibility: distress (*ezterar*), which is associated with the principle of 'avoiding hardship and harm' (*nafi '-e 'osr va haraj*), does not have the absoluteness which some attribute to coercion, and would more easily have exonerated the defendant. This concept, ignored by the court in this case and only vaguely described in current codified law, clearly removes criminal responsibility in the penal code bill but not in the 2012 penal code¹⁶. This shows how differing interpretations of Shi'i sources can surface not only in court but in the 'cherry-picking' process of legal codification.

The woman's predicament shows how divorce and child custody laws can remove self-determination, while restrictive interpretations of unclear codified criminal responsibility laws can convict as if self-determination had been present, excluding equally credible interpretations of free will derivable from Shi'i texts.

¹⁴ See chapter 4, section 3.5.

¹⁵ Chapter 2, sections 7, 7.3. Qur'anic verses 2:173, 5:3 and 6:145 allow forgiveness of infractions not resulting from 'wilful disobedience'.

¹⁶ Chapter 2, section 7.3.

2) *Ehsan* was deemed present because the woman had copulated with her husband on the day of his murder. If the court's interpretation was that the existence of copulation, rather than its possibility alone, maintains *ehsan*, then by the same token the woman in case 1 should have immediately been found bereft of *ehsan* through prolonged chastity. What the court did not say, however, is that *ehsan* depends on anything other than physical copulation, and specifically 'healthy marital relations', as argued by the woman's lawyer¹⁷. If a marriage where the husband is addicted to narcotics, beats his wife and children, prostitutes his wife, and not only fails in his legal duty to support his family but is purely parasitic on them, still creates *ehsan* because the wife and husband copulate or can copulate, then *ehsan* has nothing to do with healthy marital relations. This is an example of how conceptions of *ehsan* differ widely, and how its more lenient interpretations, championed by lawyers, may not resonate in court.

3) Evidence was used illegally. The woman's confessions, like those of the woman in case 1, were intended as presentations of extenuating circumstances. Being therefore unintentional, they were invalid. The man's confessions illegally incriminated the woman, and the legal value of the children's statements is also dubious¹⁸.

4) Like the woman in case 1, the defendant belonged to a linguistic minority.

Case 3: confession motivated by promises of lenience.

Fars, 2004-6.

This is a third example of how divorce and child custody laws remove self-determination, facilitating prosecution for adultery. It also illustrates the mechanism, discussed in chapters 5 and 6, of 'reverse plea bargaining', whereby interrogators extract confessions through false promises that this will be rewarded with lenience, but instead confession invariably incriminates the confessor. It furthermore contains

¹⁷ The argument of *ehsan* depending on psychological factors echoes the lawyers' letter to Shahrudi about stoning cases, already cited several times: chapter 2, section 6.1; chapter 4, section 3.4.

¹⁸ Chapter 2, sections 6.1, 6.3.

the suggestion that stoning might be disregarded because of *maslahat*: the state's best interests¹⁹. This mechanism appears even more forcefully in the next case.

Ultimately, the case demonstrates how easily the law can be interpreted to favour defendants. Many conditions were identical to those in the previous two cases, but the defendant was exonerated on appeal, while the previous two were always found guilty by the courts though eventually pardoned.

According to the case file, a man's house was raided as a 'centre of corruption', here indicating a brothel. He confessed to forcing his wife into prostitution as part of the operation. Under interrogation she held out, refusing to confess until she was promised that if she did, she would be released. When she confessed, she said two things: "I performed acts against chastity to a small degree" and "my husband forced me to be at certain individuals' disposal". She claimed coercion and never mentioned *zina* or penetration. Furthermore the confession, already invalid because it occurred out of court, did not reach the *nesab* (legally necessary number) of four repetitions. Finally, she retracted it in court, citing the interrogators' promises of lenience which had led her to confess. The court, considering her failure to report her husband as 'facilitation of vice', used this as evidence of adultery, though 'facilitating *zina* or *lavvat*' is a separate *hadd* crime, namely, *qavvadi* (pimping). Combining this with her 'confession' and her husband's, the court claimed '*elm* and sentenced her to death by stoning for adultery.

As in the previous case, the woman's husband, as both spouses described, beat her violently and prostituted her for profit, and she had repeatedly left home but always returned because of her two children. She knew that in the event of a divorce, they would go to their father, thereby risking prostitution.

This woman was not from a linguistic minority. Both spouses described their acts as necessitated by extreme poverty. The woman's *ehsan* was apparently never investigated. It is unclear whether she had a lawyer for her initial and appeal trials.

¹⁹ Chapter 3, sections 6.2-3; chapter 4, section 3.7.

When the first ruling was issued, though the majority favoured stoning, a minority gave a different judgement: that in accordance with articles 68 and 71 of the penal code, since no confession had occurred in court and the confession had been retracted anyway, stoning was inapplicable. It is informative to see how easily a stoning sentence could have been avoided if the law had been followed literally.

The sentence was confirmed on appeal with very little explanation, on the basis that the majority judges' *'elm* was *mota 'arref* (obtained by acceptable means) because it was based on confessions and other evidence. Two new lawyers accepted the case and requested an 'extraordinary appeal', as in case 1, citing legal flaws.

Their arguments were as follows. 1) The woman had never confessed to adultery, but only to unspecified illicit relations. 2) The confessions occurred out of court, fewer than four times, only following promises of lenience (therefore 'unintentionally'), and were retracted in court; therefore they were invalid. The lawyers cited a circular of the Judiciary, judicial precedent, and juristic opinions regarding the invalidity of confessions made out of court. 3) The woman's claim of coercion (through the husband's physical violence) exonerated her. 4) The judges' *'elm* was invalid, being based on legally inadmissible evidence. This contravened three fundamental principles, namely: a) the precedence of the particular (*khass*), here the action of *enkar* (retraction) and the confessions' initial invalidity, over the general ('*amm*'), represented here by the general permission of *'elm*; b) the principle of interpreting laws in favour of defendants²⁰, applicable because the lenient interpretation whereby *'elm* cannot overcome *enkar* or depend on invalid evidence overrides the unfavourable alternative that it can; and c) the prohibition against interpreting penal laws broadly. (This axiom is not cited in other materials available, so its precise meaning is unclear). The presence of clear laws invalidating certain forms of evidence would be meaningless if they could simply be disregarded through *'elm*. 5) Jurists disagree regarding whether anyone other than the *Ma 'sumin* ('infallible innocents', i.e. the Prophet and the Imams; singular: *ma 'sum*), or at least *mujtahids*

²⁰ For these two principles, see chapter 3, sections 2 and 3. See chapter 7, end of section 5, for similar use of 'general and particular'.

(jurists authorised to interpret the sacred law), can rule by *'elm*. Some declare that non-*ma'sum* judges must rule by confession or testimony even after personally seeing the crime. Many narrations describe the Prophet and the Imams refusing to convict without valid evidence. By using *'elm* based on invalid evidence, the judges employed greater discretion than the *Ma'sumin*, ignoring their lenient example. 6) The applicability of *'elm* in *zina* is debatable, which is why article 99 of the penal code, regarding the protocol for stoning, provides regulations regarding adultery proven by confession or testimony, but not *'elm*²¹. 7) The minority ruling, which followed the law in a straightforward manner, undermines the inevitability of the majority ruling. 8) Evidence of pimping cannot prove adultery. 9) Though *ehsan* was not investigated, there were barriers to it, including prolonged marital chastity caused by mutual hatred, also illustrated by the woman's multiple escape attempts. 10) If the woman were stoned, not only would her children be orphaned, but they would be forever tainted by the opprobrium of having a mother executed for adultery. Considering their grinding poverty and addicted, criminal and violent father, this would probably destroy their chances of being accepted by society and making an honest living, leaving them no choice but to turn to crime. Therefore the judicial system would, ironically, create more criminals.

Unlike similar defences (except the novel invocation of pragmatism in the lawyers' final argument) from earlier cases, these were successful: the sentence was overturned and replaced with 99 lashes following retrial.

The following are the major issues raised by this case.

1) Many defences used here (e.g. invalidity of unintentional confessions, marital disharmony removing *ehsan*, psychological parameters for criminal responsibility in prostitution) are identical to those employed in the previous cases, yet they were successful here and not there. This demonstrates judicial discretion, not only at the local level but all the way up to the Supreme Court. Some of this discretion was due

²¹ Chapter 2, section 6.4.

to differing interpretations of codified law, but in other areas the outcome depended entirely on interpretations of Shi‘i law, which varied between cases.

2) This case manifests the possibility, seen in earlier chapters, of confession being extracted through fatuous promises of lenience. This highlights the difference between systems which reward swift confession through ‘plea bargaining’ and those in which it invariably dooms the confessor.

3) *Ehsan* was initially not investigated. Chapter 7 suggested that this may be common, and other adultery cases will display the same tendency.

4) As in case 1, *‘elm* alchemically allowed unpromising material to transcend its limitations, overriding various Shi‘i and codified laws and principles.

5) The minority ruling represents a literal, straightforward reading of the law, informed by the axiom of favouring defendants. Some judges do interpret the law in this way. This will also surface in the minority rulings in cases 4 and 8 and the outcome of case 12. The common disregard, observed throughout the case studies, of the lenient legal elements presented in Part I of the project is therefore not inevitable.

6) The combination of this and the previous two cases should constitute solid evidence of a mechanism whereby the unequal rights ingrained in divorce and child custody law can deny women control over events for which they are later prosecuted for adultery. This is an intersection of an institutional obstacle to lenience – those legal inequalities – and the vagueness of laws governing criminal responsibility. The attribution of self-determination in such cases depends on the judge’s choice of interpretation regarding free will and coercion, drawing from the wide variety of options in codified and uncoded scripture and Shi‘i jurisprudence.

7) The lawyers’ final pragmatic argument can be classified either as an irrelevancy entirely unrelated to the law, or as a masterful stroke of persuasion with the potential to alter judicial policy. The next case will show the same concept expressed more

explicitly as *maslahat*, enabling stoning to be commuted to hanging though current codified law does not allow this.

Case 4: commutation of stoning to hanging because of *maslahat*.

East Azerbaijan, 2009-10.

This case displays the possibility, opposed to the inalterability of *hudud* as ‘fixed penalties’, of overriding codified law by commuting stoning to hanging for explicitly pragmatic reasons. It also continues themes already observed, such as the difficulty of shedding *ehsan* by divorcing, and the discretion to disregard flaws in evidence by using *‘elm*.

The defendant was a married woman whose husband was murdered. A man was tried separately for the murder, but his case file is unavailable. The woman was accused of adultery with him, and in her documentation he is referred to as ‘murderer and adulterer’, implying established guilt.

The woman’s first-instance ruling shows a majority opinion from three judges, and a minority opinion, with only one signatory. The majority opinion states that she confessed, leaving out how many times and whether in or out of court; it also cites a video, showing the accused woman engaging in carnal relations with the accused man. It mentions her claims that her husband had refused to copulate with her for the past two years. However, it dismisses this claim because it occurred at an advanced stage of the trial and contradicted her co-defendant’s confessions. Claiming *‘elm*, it sentences her to be stoned for adultery, immediately commuting this to hanging because of the Judiciary’s recommendation that stoning not be carried out in the best interests (*maslahat*) of the nation.

The minority ruling, in sharp contrast, declares that the defendant never confessed. Since there were also no witnesses, the minority judge considered guilt as unproven and recommended acquittal of adultery but possibly trial for the lesser offence of ‘illicit relations’ if sufficient grounds existed.

Unfortunately, further developments of this case are unknown.

The themes outlined above are displayed by the case as follows.

1) There is a serious contradiction between the majority and minority opinion regarding whether or not the woman confessed to adultery. Her attempts to exonerate herself by describing her enforced chastity were apparently deemed ‘confessions’, again showing that incidental statements can be used as confessions (as in fornication case 2 and all above cases) despite the requirement for intention in confession²².

2) This ruling, like many others in the case-study chapters, was based on ‘*elm-e qazi*. However, by saying that in the absence of confession or testimony the woman must be acquitted of *zena*, the minority judge implied that only these two are valid proofs of *zena*, while conceding that the available forms of evidence might potentially prove the lesser misdemeanour of ‘illicit relations’. It is particularly interesting that in this case, exceptionally, there was evidence that might constitute solid proof of *zena*, namely the video. The minority judge implicitly dismissed ‘*elm* outright as proof of *zena* (a position discussed in chapter 2, section 6.4), displaying the uncertain position of ‘*elm* despite its permission in codified law.

3) As in the previous case and several in chapter 7, *ehsan* was not thoroughly investigated. Furthermore, the woman’s claim of enforced chastity was dismissed through the unorthodox argument that it was made too late in the trial. It could have been argued, as in cases 1 and 3, that *absence*, not *impossibility*, of copulation removed *ehsan*. However, another interpretation²³ has *ehsan* depending on a husband’s access to his wife, not vice versa. Accordingly, the non-performing husband placed his wife under *ehsan* by having the ability to copulate with her even if he chose not to. As explained in Mir-Hosseini’s *Marriage on Trial*, it is difficult for wives to obtain divorces without their husbands’ consent²⁴, and therefore this

²² Penal code, article 69.

²³ See chapter 4, section 3.4.

²⁴ See chapter 4, section 3.5.

woman had little or no chance to extricate herself from the marriage that forced *ehsan* upon her without fulfilling what a different system would consider her conjugal rights. Her options were, essentially, chastity or death.

4) This case directly displays, in court documents, the possibility of subordinating scriptural commandments to *maslahat*. Stoning is considered potentially harmful to ‘the interests of the nation’ as an internationally decried human-rights violation²⁵. However, other executions for victimless or minor crimes have been internationally condemned, not only stoning. Therefore the same pragmatic rationale could be used to reduce executions overall. Substituting stoning with hanging is as much an abrogation of scriptural commandments, rationalised through *maslahat*, as replacing either with flogging or incarceration.

5) The defendant came from a region whose autochthonous language is unrelated to Persian. It is unclear whether she knew Persian; still, this is another case involving a member of a linguistic minority.

Case 5: hanging for rape takes precedence over stoning for adultery.

Esfahan, 2000-1.

The previous case showed stoning replaced by hanging for explicitly pragmatic reasons. Here this was also done, but without a reason given. A married rapist was sentenced to hang though the codified law does not specify an execution method for rape and the marriage element made stoning the legally correct method if *ehsan* were established. There are two possible reasons for the substitution. Either the law was simply ignored, or it was interpreted as prescribing a lighter sentence for adultery plus rape than for adultery without rape. As in theft and sodomy cases, this would indicate that intensity of punishment is unrelated to harm wrought by the crime, depending instead on technicalities (the ‘enclosure’ in theft, explicit proof of extent of penetration in sodomy, and here, the law’s arbitrary assignment of a lighter penalty for a more harmful act).

²⁵ See chapter 4, section 3.7.

Other previously encountered themes include the belated introduction of lawyers, the swiftness of legal process (fornication case 1, theft case 1), and the possibility, seen in fornication case 2, of defendants being ‘coached’ in prison to retract confessions.

According to the case file, three men, incriminated by much forensic and medical evidence, were arrested for kidnapping and raping a woman. They confessed out of court, without lawyers who were only introduced during the trial, and in three court sessions, corroborating the details of the woman’s account. However, in the fourth session they claimed instead that she had voluntarily prostituted herself to them. Investigations showed that she was wealthy, with a spotless record, a high income and very long working hours at her aunt’s business, all of which made prostitution unlikely. The men, appealing to the court’s mercy, retracted their new confessions in a later session, attributing them to other inmates’ ‘coaching’ in prison to avoid the death penalty by ‘denying everything’. Though they later reiterated the prostitution story, they were sentenced to death by hanging, though one, being married, was legally eligible to be stoned for adultery. The ruling was based on ‘*elm-e qazi*’ obtained through confessions “fulfilling the *nesab* (necessary number) required by the *shar‘* and the law, and made ‘*end al-hakem* (before the judge)” and additional evidence. It was confirmed on appeal 75 days after the men’s arrest.

Several issues emerge from this case.

- 1) The swiftness of the entire process (occupying 75 days) recalls other cases including theft case 1 and fornication case 1.
- 2) As in several previous cases, including theft case 1, sodomy case 2, and fornication case 1, lawyers were only introduced once the trial opened, and pre-trial confessions contributed to ‘*elm*’. Though there was other evidence in this case, it substantiates fears regarding belated introduction of lawyers.

3) Uncharacteristically, great care was taken to indicate that confessions fulfilled the *nesab* and occurred in court. There were four confessions in court, even in four separate sessions, meeting the strictest requirements, though pre-trial confessions were also used. The accumulation of forensic and other evidence resembles that seen in secular courts.

4) The complainant, unlike rape claimants in earlier chapters, was apparently never tried for *zina*, and article 67 (acceptability of rape claims) was cited in the ruling. However, like the suspects, she underwent background checks. Had her record been less than spotless, would this have contaminated her rape claim?

5) In retracting their ‘prostitution story’, the suspects invoked the court’s mercy. Two also spontaneously confessed to breaking the Ramadan fast, an action unrelated to their charges. Perhaps these were attempts to ingratiate themselves to the court in the erroneous belief that honesty and collaboration would be rewarded, suggesting belief in the possibility of ‘plea bargaining’ (case 3 and previous chapters) when the opposite mechanism operates.

6) In fornication case 2, the girl’s new lawyer suggested (though not in court) that her brothers possibly retracted their confessions of rape after being ‘coached’ in prison to avoid execution by retracting their confessions. This case further supports this possibility.

7) In chapter 7, end of section 1, it was mentioned that ‘death’ for rape apparently overrides stoning for adultery. In theft case 4 also, death sentences were issued for ‘rape while possessing *ehsan*’, but *ehsan* and stoning were not discussed. Here, similarly, one suspect was married, but *ehsan*, adultery or stoning were never mentioned. Article 98 of the penal code (*zina* section) decrees that punishments be arranged to avoid undermining each other if possible. Unlike scripture, which specifies sword-related punishments for rape, article 82-d merely prescribes ‘execution’ for rape. Achieving this by stoning would have obeyed article 98. It is

possible that, despite the insistence elsewhere on stoning as a ‘divine penalty’, it was simply ignored here.

However, Shi‘i and codified laws, which prescribe, respectively, death by sword and ‘execution’ (by unspecified method) for rape, do not specifically mention married rapists. They can therefore be interpreted as excluding stoning for rape, assigning adultery with rape a lighter sentence than adultery without rape. Though in this particular case this caused comparative leniency, it also shows that more harmful acts are not necessarily connected with more severe penalties.

This dissociation of harm inflicted with severity of penalty was also observed in theft and sodomy cases, where technicalities, not harm inflicted, determined the severity of penalties. It was also discussed in chapter 4, section 3.3, regarding the lighter penalty for raping underage girls than adult women. All this illustrates an important difference between legal systems where crime and punishment are associated with harm, and a system where acts are criminal and punishable depending on scripture, irrespective of harm caused.

Case 6: widely varying judicial opinions.

West Azerbaijan, 1998.

Ehsan and *‘elm* are governed by complex, interpretable parameters, and their precise nature is therefore debatable. Since neither is described in detail in codified law, courtroom debates regarding both often draw from current interpretations of Shi‘i law. The interpretability of *ehsan* is illustrated by cases 1-4 above, and the discretion characterising *‘elm* surfaces in cases 1, 3 and 4 and in previous chapters. This case displays the multiplicity of opinions that judges can produce about both of these concepts in the course of a single trial.

According to the available documentation, the defendant in this case was arrested following her husband’s murder. She confessed to the police, out of court, once each to four instances of *zena* with the confessed murderer. She was thrice condemned to

be stoned, the ruling being overturned each time. Finally her case went before the General Council of the Supreme Court, which overturned the stoning sentence for insufficient evidence of *ehsan* and invalid grounds for '*elm*', but again sent it for retrial. Further developments are unknown.

During the first trial, the woman denied *zena*, retracting her previous confessions, but was sentenced to a prison term for complicity in murder and stoning for adultery with her co-defendant. He was sentenced to death for murder and 99 lashes for 'illicit relations' with her. The judge, who used the man's confessions as part of the evidence against the woman, therefore had 'certainty' (*yaqin*) of her adultery with a man who had not committed adultery with her (only 'illicit relations'). This evokes fornication case 2, where the girl was sentenced to death for incest with brothers cleared of incest with her. Furthermore, the judge referred to 'four confessions to *zena*', but they were one confession each to four different instances of *zena*: even if they had occurred in court, they would not have legally proven any single instance of *zena*. Confessions to separate instances of *zena* were similarly conflated in fornication case 2. Without valid confession or testimony, the ruling implicitly, though not explicitly, came from '*elm*'.

The Supreme Court overturned the sentence because retracted confessions averted *rajm*, and *ehsan*, never investigated or established, was questionable since the woman and her husband's *ekhtelafat* (discord) had brought them close to divorce.

The Supreme Court, therefore, not only allowed *enkar* (retraction of confession) to override '*elm*', but also posited *ehsan*'s disappearance through 'discord'. This is noteworthy, being the only case available where judges, as opposed to lawyers, affirmed a necessary emotional component of *ehsan* (see cases 1-3 above and chapter 4, section 3.4).

The case was retried by a second court. It listed evidence which, apart from the pre-trial confessions, was unrelated to carnal offences. It declared that the only possible explanation for the defendants' cooperation in the murder was an adulterous relation

between them, and that the woman's retraction of her pre-trial confessions could be dismissed as an attempt to escape stoning, presumably after being 'coached' about *enkar* in prison (see fornication case 2 and case 5 above). It continued that the woman possessed *ehsan* because she lived with her husband. It therefore reinstated stoning. This ruling, like several others, always referred to the defendants as *zani* (adulterer) and *zanieh* (adulteress), implying the presumption of guilt.

This ruling was also overturned by the Supreme Court. Its reasons were: 1) the evidence was mostly unrelated to *zena*; 2) *enkar* averted the *hadd*; 3) the woman's shared residence with her husband was unrelated to *ehsan*, concerning which she was never questioned. The court emphasised 'discord' between spouses, which reduced the possibility of *ehsan*.

The case went to a third court, where the woman responded negatively to all questions, including obvious ones such as whether she had ever known her husband. The court attributed this to being 'coached', while in pre-trial detention, to 'deny everything'. It used this to undermine her credibility and therefore all her previous denials. It also noted that when asked what relationship she had with her husband, she responded 'normal', which demonstrated *ehsan*; therefore it condemned her to *rajm* again through article 105 (permission of '*elm*') of the penal code.

The ruling, appealed again, went to the same Supreme Court branch, which again declared it unjustified because confession had been invalidated through retraction (*enkar*). Discerning an insoluble difference between itself and the various branches of the local court whence the three rulings had originated, it referred the case to the General Council of the Supreme Court for an authoritative opinion.

The diverse positions presented by members of the General Council informatively portray the interpretability of several parameters of this case (and therefore many other *zena* or *hadd* cases). The main arenas of difference between these judges were: 1) whether or not '*elm*' trumps *enkar*, and even if not, whether '*elm*' with additional proof survives *enkar*; 2) whether '*elm*' depends on provability or instead resides only

in the judge's *vojdan* (conscience) and *nafs* (self) though inexplicable to others; 3) what is the nature of *'elm*, and whether the *Ma'sumin*'s emphasis in many narrations on mercy, pardon and concealment of crimes, and various lenient principles, should always lead the court to favour lenience over *'elm* even where tenuous doubt exists; and 4) the nature and proof of *ehsan*. The judges made much use of Shi'i law, in the form of narrations, fatwas of jurists including Khomeini, and axioms including the *qa'edeye darr* ('doubt prevents punishment') and the *hudud*'s basis in lenience (chapter 3, sections 1, 3-5).

Regarding the first point, some judges insisted that *'elm* can survive *enkar* especially if confession is not the only element of *'elm*. Others insisted, quoting narrations or axioms (e.g. the *qa'edeye darr*') urging lenience, that *enkar* takes precedence, especially since the default is non-punishment. They added that suspects might confess to *zina* without knowing its technical definition, only realising later that their act was not *zina*. (This happened in case 9 below).

Regarding the second point, both positions appeared. Staunch opponents of provability insisted that when personally hearing a confession, judges develop insights which cannot be conveyed to others because they are not based on a simple computation of the relative merits of evidence – and therefore judges can derive *'elm* even from one confession. In other words, they advocated leaving death sentences entirely up to judges' inexpressible subjective impressions. This is particularly ironic here because none of the three judges who condemned the woman to death personally heard her confessions.

Other judges insisted that provability is necessary to avoid excessive discretion, that not even the infallible *Ma'sumin* acted on their presumably superior capacity for insight until valid fourfold confession or testimony had been heard, that they frequently pardoned anyway, and that the law, by requiring judges to explain the sources of their *'elm*, establishes provability as a necessary characteristic of *'elm*.

Regarding the third point, the judges' debates were a microcosm of the different possible positions regarding *'elm* as discussed in chapter 2, section 6.4. Interestingly, those emphasising lenience and advocating restrictions on *'elm* frequently cited Shi'i law, while the proponents of unfettered *'elm* did not. This implies that the scriptural basis for unfettered *'elm* of non-*mujtahid* judges is weak, and that since the codified law gives immense discretion regarding *'elm*, one can only counteract it by resorting to Shi'i law.

Some judges insisted that confessions must occur not only before the judge, but in four separate court sessions (a requirement absent from the codified law). Some, drawing attention to the term *hakem-e shar'* (a judge of the shari'a) present in the codified law's permission of *'elm*, argued that only *mujtahids* fully qualified (*jame' al-sharayet*) for judgeship, therefore not all *mujtahids* and certainly not non-*mujtahid* judges, can rule by their *'elm*. The aficionados of *'elm* retorted that the law could not possibly have been referring only to this very small group. Some judges characterised *'elm* as the judge's knowledge from personally seeing a crime; others pointed out that since this rarely happens, this was not the law's intention.

Some judges held the three first-instance judges in this case to have confused their *zann*, probable conjecture, with *'elm*, a superior form of insight²⁶ that was merely claimed but not actually obtained. Instead, the proponents of *'elm* as an inherently superior form of knowledge made the nebulous argument that the details of the crime, even those unrelated to *zina*, were so hair-raising that they left little doubt about the pair's thoroughly immoral disposition, so they must also be adulterers. They also insisted that the community must be purged of such a *fased* (corrupt) person – merely positing the defendant's *fasad* (corruption) without proving it.

Some opposed the requirement for confession used in *'elm* to be independently valid. Others emphasised (similarly to the Supreme Court branches that overturned these rulings) that the rule whereby *enkar* prevents stoning should be taken at face value irrespective of other indications of guilt. Opponents countered that only initial

²⁶ Use in court of this philosophical ranking of knowledge types is discussed in sodomy case 4, chapter 2, section 9, and chapter 7, section 5.

confessions (out of court) are reliable, because they occur before the defendant has had a chance to be ‘coached’. (This could also apply to the right to see lawyers, who can ‘coach’ clients to avoid, or retract, confession).

Regarding the fourth point, some judges indicated that the defendant should have been thoroughly questioned regarding *ehsan* in the manner of Ma‘ez bin Malek²⁷, but was not, her answer of ‘normal’ regarding her marriage being insufficient. Other judges emphasised the palette of indirect ‘evidence’ of *ehsan*: the woman was married, lived with her husband, and had admitted to ‘normal’ relations with him (without mentioning the technicality of penetration).

Finally, of the 35 members of the Council, a majority of 19 voted to overturn the ruling for the following reasons. 1) The ingredients of ‘*elm*’ were only invalid confessions plus the woman’s contradictory answers, implying fear, confusion or ‘coaching’ and therefore guilt, during her final trial. Doubt (*shobhe*) remained, undermining punishability. Furthermore, confession – the only basis of ‘*elm*’ – was retracted, precluding ‘*elm*’. 2) Shared residence and some interaction with a spouse do not create *ehsan*.

This case, despite its unclear conclusion, displays practically the full spectrum of opinions regarding ‘*elm*’, *ehsan* and the role of lenience in deciding sentences. The vagueness of relevant codified laws necessitates frequent use of highly interpretable Shi‘i concepts, giving judges considerable discretion and militating against uniformity of sentencing. In this case, failure to mobilise *fiqh* and scripture to defend unassailable ‘*elm*’ by non-*mujtahid* judges also indicates its weak position in Shi‘i law and therefore the possibility of undermining it in future laws. Ultimately, through the General Council’s ruling, the case exemplifies the potential for lenience and favourable ‘nitpicking’ present in both Shi‘i and codified laws.

²⁷ A man who, having confessed to adultery before the Prophet, was exhaustively questioned about all relevant parameters including *ehsan*, criminal responsibility and penetration. This exemplifies the *Ma‘sumin*’s punctiliousness regarding applicability of *hudud*.

Case 7: stoning sentence based on co-defendant's confessions.

Khuzestan, 2005-7.

In the previous case, multiple conceptions of *'elm* confronted each other in court, ultimately showing how interpretable *'elm* is and how uncertain its scriptural basis. Here, some of the same interpretations of *'elm* appeared, and the questions were raised of who is allowed to use *'elm* (chapter 2, section 6.4) and indeed who is qualified to be a judge (chapter 2, section 3). However, the lenient interpretations were unable to overcome the conception of *'elm* as giving the judge unassailable discretion to rule by his ineffable intuitions.

The individuals involved lived in an area where some tribal customs persist. The accused woman had entered an arranged marriage at an early age, and had only one child, born in the first year of her marriage. Her husband's employment kept him far from home for days at a time. What both defendants' confessions describe is that the woman's husband entered his house and found the murder suspect there, talking to his wife. The ensuing struggle caused the husband's death. The suspects hid the body, escaped, and contracted a temporary marriage. The man also pursued a divorce 'in absentia' (*talaq-e ghiyabi*) for the woman²⁸, to marry her permanently – he was at this point maintaining the pretence that her husband remained alive.

The pair were tracked down and arrested. The woman, under interrogation, confessed to collaborating in her husband's murder. The man, expressing repentance and begging for help, confessed to the murder and to *zena* with the woman before her husband's death. The woman confessed only to carnal relations with him after their temporary marriage, always denying any prior physical relationship.

The *awlia'-e damm* (victim's heirs) requested *qesas* (retribution for murder), and the man was condemned to public execution provided that the underage heirs' *diyeh* (blood money) portion were paid, plus 100 lashes for fornication and assorted *ta'ziri* (lesser 'discretionary') penalties for acts surrounding the crime. The woman was

²⁸ The idea of a divorce 'in absentia' also appeared in case 1, suggesting some level of popular belief in it, and rendering the male defendant's good faith more plausible.

sentenced to stoning plus *ta'ziri* penalties for acts related to the murder (collusion and concealing evidence). The grounds for convicting them were as follows: their 'true confessions' to illicit relations and *zena*, both 'explicit' and 'implicit'; the deceased man's autopsy, revealing causes of death corroborating these confessions; and the reports produced by the investigations involving the recovery of the corpse and the man's capture. It is noteworthy that the pair's confessions were assessed as 'true' before the ruling was issued, and that some of them are described as 'implicit', indicating that intentionality is irrelevant to the efficacy of confession. '*Elm-e qazi* was not mentioned explicitly, but article 105 of the penal code was cited.

The Supreme Court confirmed the ruling, declaring that the first court had received '*elm* of the crimes. A new lawyer took the woman's case (further developments regarding the man's case are unknown) and, as in cases 1 and 2, requested an extraordinary appeal based on the first ruling's contravention of the law. The new lawyer's arguments were two. 1) The woman never confessed to *zena*, only acknowledging carnal relations with the man *after* being widowed and contracting a temporary marriage with him. The only confessions to *zena* before the husband's demise were the man's, incriminating the woman against *eqrar al-'oqala*²⁹ (Civil Code article 1278, expressing the same prohibition of using one person's confession against another, was not mentioned). 2) *Ehsan* was not investigated or even mentioned, despite two potential obstacles. These were: a) the woman's husband's regular long absences; and b) the fact that, in a tribal society where it was the norm to produce many children, the couple only had only one son, born in the first year of their marriage, substantiating the woman's claims of prolonged chastity caused by mutual dislike. The woman, furthermore, had a 'forced marriage' (*ezdevaj-e ejbari*).

The lawyer concluded that it is illegal for judges to override the laws of evidence by claiming '*elm* through invalid evidence. This contravenes the spirit of lenience and prudence embodied by the *qa'edeye darr*' and the Imams' caution in refraining from applying *hudud* through invalid evidence. If the infallible Imams did not use their '*elm* in the presence of incomplete evidence, how, the lawyer asked, can non-*ma'sum*

²⁹ The principle whereby confessions only incriminate the confessor (chapter 2, section 6.1).

and non-*mujtahid* judges³⁰ do so? If judges can override laws regarding invalid evidence, why do those laws exist?

The Supreme Court's Discernment Committee (which assesses eligibility for 'extraordinary appeals') overturned the stoning sentence and sent the case for re-trial – but only on a technicality³¹, without addressing the lawyer's arguments. The retrial court contested this technicality. Because it thereby declared the Discernment Committee's judgement erroneous, the case went to another Discernment Branch of the Supreme Court. It overruled the technicality. Its ruling was final, and further developments are unknown. Therefore, the new lawyer's extraordinary appeal, based entirely on the content of the case, was undermined with unappellable finality because of considerations related exclusively to form, while the serious flaws related to content were entirely ignored.

The following are the major issues raised by this case.

1) This is another stoning sentence using '*elm*' with legally invalid grounds. The lawyer asked why evidence is regulated if invalid evidence can be used anyway through '*elm*'. The decisive factor is the judge's discretion to decide whether or not a piece of invalid evidence gives him insight into the crime. This is akin to saying that the judge's personal discretion overrides the law. In other words, this is the opposite of the rule of law.

Failure to favour the defendant in instances of doubt also contravenes principles of lenience (the lawyer cited the *qa'edeye darr*') including innocence by default, embodied in article 37 of the Constitution.

The lawyer interestingly pointed out that the judges were neither infallible nor *mujtahids*. This refers to the debate regarding whether individuals other than the *Ma'sumin* are allowed to rule by their '*elm*', or if they are, whether non-*mujtahids* can

³⁰ *Ma'sum* (innocent, infallible) here means the Prophet and the Imams (collectively known as the *Ma'sumin*). *Mujtahids* are jurists authorised to interpret the sacred law.

³¹ The reason given was that the initial trial had occurred in the wrong type of court.

do so³². Although the position in the penal code, almost certainly lifted wholesale from Khomeini's *Tahrir*, is that "the *hakem-e shar'* ... can rule by his '*elm*'", this is only one of many possible positions, and neglects to define the qualifications of the *hakem-e shar'*. The phrase indicates a judge of the shari'a, that is, a *mujtahid*, and Khomeini's work from which the text is taken insists that only *mujtahids* can be judges³³. In other words, article 105 derives from a work which only allows *mujtahids* to use their '*elm*', but is used by non-*mujtahid* judges as permission to use their '*elm*' because the phrase *hakem-e shar'*, taken out of context, is applied to any judge. By pointing out that the codified law contravenes Shi'i law, the attorney illustrated the tension between the codified law and its acknowledged origin.

2) Shi'i law was invoked – but only by the lawyer. This reflects the vagueness of the codified law. The judges used that vagueness to give themselves ample discretion to the detriment of the accused. The lawyer, unable at times to locate well-known principles in the law precisely because of its vagueness, could only derive them from Shi'i law. The problem with this necessity to rely on Shi'i law is that paradoxically, uncodified portions thereof are not legally enforceable. Therefore, everything depends on judges' personal discretion, again undermining the rule of law.

3) This case contains no mention of *ehsan* or its investigation. As in the previous case, the lawyer emphasised the *Ma'sumin's* punctiliousness regarding *ehsan*, citing distance and chastity (the first more frequently accepted than the second) as obstacles to *ehsan*. However, the issue of which barrier was most acceptable was rendered moot by the judges' failure to pay any attention to *ehsan*, and the later focus on technicalities overshadowing content.

4) The clear legal flaws in this case were ignored when confirmation of the sentence was allowed to depend on technicalities. Once a Discernment Branch issues its final ruling, this cannot be appealed except by intervention of the head of the Judiciary. This can be considered an inherent obstacle to lenience in the system.

³² See chapter 2, section 6.4.

³³ Khomeini, p. 245, requires judges to be *mujtahids*.

5) The man's pleas for help during confession make it possible that he believed, as in cases 3 and possibly 5, sodomy case 4 and theft cases 1 and 2, that cooperation would be rewarded.

6) This woman apparently had some literacy; it is unclear whether she spoke any Persian. Like so many other defendants, she belonged to a linguistic minority.

Case 8: are 'illicit relations' and 'adultery' two different charges?

East Azerbaijan, 2006-10.

Here, as in the previous two cases, judges' disagreements regarding *'elm* reveal its interpretability and uncertain footing. *'Elm* was again based on invalid evidence (mostly, as in other cases, invalid confession). This case also expands on the theme of double jeopardy which arose in chapters 6 and 7.

Again, the defendant was a woman accused of adultery, possibly with the man found guilty of her husband's murder and two other men, and collusion in murder. A particularly intriguing element is that she received 99 lashes for 'illicit relations' with the two men other than the convicted murderer, and then was tried months later for the apparently separate crime of adultery, apparently with no partners named, in connexion with some or all of the events treated in her original trial.

There was no valid confession. The complainant in the adultery case was, illegally³⁴, the provincial prosecutor. The judges, as in cases 3 and 4, were divided into a majority who condemned her to stoning through *'elm*, and a minority supporting acquittal. The majority cited three interrogation sessions where she confessed to adultery; again, we have fewer than four confessions, taken out of court, used as a conduit for *'elm*. The confessions of her co-accused, the men flogged earlier for illicit relations with her, were illegally used against her. The majority judges also cited the woman's 'severe moral degeneration' as additional fodder for *'elm*. The minority judges, however, declared that there was no valid proof of adultery

³⁴ See chapter 3, section 4.

according to Shi‘i and codified law, and that the *‘elm* of the majority was not obtained *az toroq-e mota‘arref* (in the commonly accepted manner), echoing the vague wording of article 120 of the penal code (which is in the sodomy section).

Another important point raised by the minority is that the woman had already been flogged for illicit relations, and that since nobody can be twice tried or punished for the same acts (a plea known in some systems as ‘autrefois convict’), her prosecution was illegal.

The woman’s defence lawyer pointed out that there was no valid evidence against her, since her confessions had occurred out of court, fewer than four times; he also insisted that fourfold confession to *zena* requires four separate trial diets. He rejected the co-defendants’ confession as valid evidence. He pointed out the authorities’ failure to ascertain the defendant’s *‘aql* (sanity) and *ekhtiar* (free will) when taking her confessions – the mention of *ekhtiar* may indicate the unreliability of confession taken out of court because it can be coerced. He cast doubt on the woman’s *ehsan*, as her husband’s narcotic addiction prevented copulation³⁵. Finally, he appealed to the *qa‘edeye darr*³⁶.

The Supreme Court confirmed her sentence on appeal. Only the appeal documentation reveals that the woman had not only never confessed in court, but had retracted her confessions in court, denying adultery; and furthermore that she never confessed, whether in or out of court, to any form of carnal relationship with the man found guilty of her husband’s murder (as opposed to the two involved in her trial for illicit relations). The very fact that these two important things were never mentioned by the majority judges in the first-instance court starkly exemplifies their selective use of evidence. Also, this is an example of judges’ frequent habit of mentioning confessions while leaving out crucial information about them: the first-instance majority judges did not specify that confession occurred only three times. They never mentioned retraction, and glossed over the fact that all confessions occurred out of court and were therefore invalid.

³⁵ As in case 1, a husband’s addiction legally justifies divorce.

³⁶ The ‘axiom of removal’, whereby doubt prevents punishability (chapter 3, section 5).

Confirming the stoning sentence, the Supreme Court raised no counterargument against the lawyer's defences, merely pronouncing the first-instance majority judges' *'elm* to be *mota 'arref* without explaining why. The woman applied for a pardon, whose results are unknown.

The themes delineated earlier are displayed by this case as follows.

1) As in several cases, *'elm* rested on invalid evidence, overcoming numerous objections without the judges justifying this. The evidence consisted of invalid confessions, co-defendant's confessions, and the judges' impression of the woman's moral character. *'Elm* overrode all this, and also doubts regarding *ehsan*, with no justification given. Though the law provides rules for correct confession and testimony, invalid versions thereof can become stepping-stones for *'elm*, because this is not explicitly forbidden.

2) The authorities' unaccountability is displayed by their failure to address the lawyer's arguments or justify confirmation of the ruling. This, as well as their 'crusading' attitude observed also in chapters 5-8, is illustrated by their illegal prosecution of a 'crime against chastity' and by their behaviour surrounding the husband's murder. His heirs pardoned his confessed murderer and the woman (convicted only of complicity, which does not carry the death penalty). Facing an outcry against the stoning sentence, the authorities declared that her death sentence was for murder (not complicity!) and that she had received no stoning sentence. The documents available contradict these assertions. According to article 219 of the penal code, whoever executes a murderer without the consent of the victim's heirs must be executed for murder. This would be the authorities' position, according to their own laws, if they executed this woman for murder.

3) It is unclear where the minority judges found the prohibition against double jeopardy, as they cited no laws to support it. Complainants' permission to appeal acquittals has sometimes been interpreted as prohibiting other forms of double

jeopardy³⁷. If the general prohibition on double jeopardy is entirely uncodified, its invocation as a disembodied principle indicates that alongside the readily identifiable origin of the codified law, namely Shi'i law, there is another more nebulous one: either common sense, or a body of uncodified principles perhaps deriving from other legal systems (which could also explain belief in 'plea bargaining' although the opposite mechanism operates in *hudud*).

4) The Supreme Court's only engagement with objections was a statement that the minority judges, by opposing double jeopardy, were mistakenly treating *zina* and illicit relations as the same charge. Everything depends on whether the *acts* initially called 'illicit relations' were the same which were later called 'adultery'. The confessions of the two men tried for *illicit relations* with the woman were used as proof of her *adultery*, making it clear that at least some events were the same. The question is whether there were other events not mentioned in the first trial, and the unavailability of all case documents makes this unclear. This is exacerbated by the fact that the stoning sentence was issued not for *zina* with particular individuals, but with unnamed 'strange men'. The judges could therefore claim that the 'strange men' were not those with whom she had illicit relations, nor the convicted murderer, with whom she never confessed to carnal relations. In any case, the documents available indicate no proof of carnal acts other than those for which she was flogged.

The law³⁸ suggests that carnal crimes exist in two variants, one with, and one without penetration (which narrations, not the penal code, specify must conceal the glans entirely) and *haddi* proof; and that the first subsumes the second, cancelling its punishment as observed in some published sodomy and *zina* rulings (chapters 6 and 7). *Ta'ziri* carnal crimes are presented as lesser variants – either by nature or by insufficient proof – of *haddi* carnal crimes. To wit, article 68 prescribes *ta'ziri* flogging for *zina* with fewer than four confessions: the act is acknowledged as *zina* but carries a *ta'ziri* penalty in this instance. Sometimes it is advantageous for 'illicit relations' to be considered a variant of *zina* or sodomy, because punishment supposedly protects convicts against double jeopardy (a norm ignored in this case).

³⁷ See chapter 2, section 4; chapter 6, published rulings section 7; chapter 7, section 2.

³⁸ See chapter 4, sections 1, 3 and 4.

Other times it is disadvantageous because it allows flogging of potentially innocent individuals even if their original (*haddi*) charge is unproven.

5) This woman, like those in cases 1 and 2, belongs to a linguistic minority and spoke no Persian when arrested and tried.

Case 9: coerced confession.

East Azerbaijan, 2000-6.

Information about this case comes from its court documents viewed in the presence of the lawyer who eventually secured the defendant's acquittal; this lawyer also supplied additional information. Because I could only see the documents in the lawyer's office, I do not have every detail about chronology, bureaucratic protocols or laws cited in the rulings. Nevertheless, the case is noteworthy because it corroborates accounts of forced confession, seen in so many previous cases, with a specific account of how confession was coerced.

Like the previous case, this one displays the authorities' 'crusading' attitude in assiduously pursuing conviction, often by exploiting the discretion offered by *'elm*. This appeared throughout chapters 5-8. Also notable are the social dimensions of this case. The small-town environment where it occurred helped to spark the prosecution and meant that even the judge was prejudiced against the defendant.

The defendant was another illiterate woman from a linguistic minority. A neighbour with a grudge against her husband murdered him during her absence. The wife and the neighbour were arrested as suspects. The neighbour confessed to the murder, leading police to the hidden murder weapon. The victim's family, convinced of the woman's adultery by local gossip, promised to pardon the murderer if the woman were executed, but to demand his execution otherwise. Since his life depended on her incrimination, he claimed that they were lovers and she had instigated the murder so they could marry. She was charged with adultery and complicity in murder.

The trial was conducted in Persian, of which she understood little. According to her last lawyer, gossip regarding the neighbour's frequent presence in her house had spread throughout their small town to the extent that the judge himself was prejudiced against her. She denied adultery, only describing the neighbour as a nuisance who made unsolicited phone-calls and visits. However, the judge, producing a written 'confession' that she could not read, affixed her fingerprint to it by physical coercion. A prison guard witnessed this and later testified.

The woman's court-appointed lawyers were never allowed to be alone with her, as they later declared in court. The police station, court and prison being physically close together, the judge posted sentinels throughout the complex to alert him of the lawyers' approach, and imposed his representatives' presence whenever the lawyers met their client.

In court, the woman always denied adultery, describing the neighbour's unwelcome phone-calls, visits and unsuccessful physical assault. She declared her confessions false and forced. However, the judge overrode this with *'elm*, using her forced, retracted confession, the neighbour's confession, his frequent visits and phone-calls, and his description of her white undergarments and mole-covered body to claim 'knowledge' of her adultery. She was sentenced to five years' incarceration for complicity in murder, plus hanging for adultery. The neighbour was sentenced to 100 lashes for fornication, plus hanging for murder. The ruling was confirmed on appeal, though the woman's hanging penalty was 'corrected' to stoning.

Before the woman's prison term had elapsed, an execution date was set and preparations were made for stoning. Alerted by the woman's relatives, Shahrudi, then head of the Judiciary, faxed a last-minute stay of execution to the prison.

The case was transferred to another judge who found the ruling unjustified by the available evidence according to the *qa 'edeye darr'*, and enumerated the following flaws. The woman's confession, according to her own statements and those of the prison guard, was coerced and subsequently retracted. The neighbour's descriptions

of her moles and underwear were irrelevant. Moles covered her face and visible parts of her body, making their presence likely elsewhere; and in rural areas, all undergarments are white. Hence these apparently intimate revelations demonstrated nothing. The neighbour's vested interest in incriminating the woman prejudiced his testimony³⁹. The woman spoke almost no Persian when tried, and was confused by the word '*zena*'. She vaguely associated it with touching or conversation between unmarried partners, therefore perceiving the neighbour's unwanted attentions as '*zena*'. Furthermore, her only description of physical contact with him involved his unsuccessful assault, admitting no consent on her part. Finally, the first judge had not convincingly described how the evidence could produce '*elm* of adultery, against the requirement for '*elm* to be adequately justified.

The case was taken by a new lawyer. Following a new appeal, the initial ruling was overturned and the case was retried by a third judge who decided on acquittal.

However, the woman suddenly contacted her lawyer, saying that preparations for stoning were under way again. The powerful first judge had delayed the final issue of the new judge's acquittal. The lawyer arrived in court and refused to leave until the acquittal was officially issued. To placate locals who considered her guilty, the defendant was fined for illicit relations and released. She moved to another city, finding herself ostracised by the townsfolk including her children, whom her husband's family had in their custody and had prejudiced against her.

Again, although some bureaucratic details of this case are unclear because of limited access to its documentation, it illustrates important issues.

- 1) This is a documented instance of forced confession – a possibility discussed in other cases. The difference is that here, an official described the coercion.
- 2) '*Elm* again transformed an amalgam of invalid evidence into a death sentence, as observed throughout the case studies in this and previous chapters.

³⁹ Civil Code article 1313; PCCM article 155.

3) *Ehsan*, never investigated, was perhaps assumed because the woman was married.

4) Personal inclinations and social dimensions were paramount in this case. The first, hostile judge, whose role was conflated with that of a prosecutor (discussed in theft case 5), almost managed to stone the woman even after his ruling was overturned and an acquittal drafted. He also illegally attempted to stone her before her prison term had elapsed. The personal inclinations of public officials, including the sympathetic prison guard, the new judge, and even Shahrudi, were decisive in the woman's eventual release. Influenced by gossip, her husband's family convinced the murder suspect to incriminate her, sparking her prosecution for adultery. Though eventually acquitted, she was punished to placate local opinion, and her relationship with her children was destroyed by the townspeople's prejudice against her. Her illiteracy and limited Persian, including her unfamiliarity with the term '*zena*' (see case 6), facilitated her conviction. These things show that personal inclinations can be more important than law in determining the outcome of a case, which can also be crucially influenced by social context.

Case 10: *mahduoldamm* status and the unreliability of confession.

West Azerbaijan, 2006-8.

Similarly to the previous case, this one displays the potential importance of social setting in court cases. It also reintroduces the concept of *mahduoldamm* ('whose blood is forfeit'), seen in sodomy case 3. Legally, murder in the belief, whether correct or not, that one's victim was *mahduoldamm* through commission of a capital crime does not carry the death penalty (chapter 4, section 2). Here, as in sodomy case 3, the judge overrode this law by insisting that the truth of *mahduoldamm* status be demonstrated, thereby endangering the life of the victim's alleged partner in adultery.

The events of this case are reconstructed through court documents and extensive information from one of the two lawyers who took it to appeal. This lawyer believes,

against current legislation, that confession alone is insufficient proof of guilt in criminal matters because it can so easily be forced. This case exemplifies that danger.

According to available documentation, a fully clothed man was found dead in the house of the woman subsequently tried for *zena*, who suffered stab wounds. The murder victim and the woman were neighbours whose houses were within earshot of each other. The woman's brother and husband readily confessed to murdering the victim to clear their family's honour. According to the men's confessions, the brother first saw the murder victim in his sister's house by looking through the window. He fetched the husband, who worked a considerable distance away, and they obtained knives, entered the house and attacked the pair. However, the victim's relatives declared that the commotion accompanying his murder occurred approximately ten or fifteen minutes after he had left home, which did not allow time for the brother to fetch the husband, suggesting premeditation. Also, the men's confessions describe the man as naked and caught in the act of *zena*, but he was found fully dressed, and there was no medical investigation of *zena*.

The woman said that the men had attacked her and the victim in the act of *zena*, and that her misdeeds justified the attack. A court-appointed lawyer was only introduced after the third session of her trial. Her confessions to *zena*, accompanied at least once by a rape claim, in four court sessions (only two with a lawyer present) were used as proof of adultery. *Ehsan* was perfunctorily established because 'she had a husband'. Her rape claim was ignored, as were her statements, concurring with those of her brother and husband, whereby the husband worked in a different village and usually slept at home only two nights a week (thereby removing *ehsan* from his wife). The woman was sentenced to death by stoning. Her husband and brother were deemed ineligible for *qesas* (retribution, here meaning execution for murder) because of their belief in the victim's *mahduoldamm* status, and even *diyeh* (blood money in lieu of *qesas*), because the court considered *mahduoldamm* status proven.

Two new lawyers appealed the sentence, which was overturned. They emphasised the inconsistencies between the confessions, describing the man as naked in the act

of *zena*, and the fact that he was found fully clothed. They indicated that the short time between the man's departure from home and his attack undermined the men's account. They drew attention to the woman's ignored rape claim, and her loss of *ehsan* through her husband's absence. They declared that the absence of lawyers in all but two court sessions contravened the legal guarantees of representation and rendered all confessions made without lawyers automatically invalid⁴⁰, leaving only two potentially valid confessions made in court.

Finally, they introduced a new element, namely, the woman's claim that her brother had forced her to confess in court. In a letter dictated from prison (she herself, as in several previous cases, was illiterate and belonged to a linguistic minority) she explained that her brother had told her to prevent his and her husband's *qesas* by confessing to *zena*, thereby transforming the murder into a justifiable 'execution'. He had threatened that if she did not confess to *zena*, she would be killed upon leaving prison, either by him or, if he were executed, by other relatives. She also emphasised her unawareness of the punishment – stoning – that she risked by confessing to *zena*.

Because of these conditions, the lawyers argued, the woman's confessions were bereft of several necessary qualities. They were made without *qasd* – intention to confess – or *ekhtiar* – free will – which article 69 of the penal code requires for valid confessions. They included a rape claim, which according to article 67 averts the *hadd*. They were now retracted, thereby losing their validity according to article 71. Finally, the woman declared herself unaware of the punishment for adultery, which exonerated her by default through article 64.

Most of these arguments (rape claim, retraction, possible coercion of confession, possible absence of *ehsan*) were accepted by the Supreme Court, which overturned the ruling and sent the case back to the first court (another example of appeal bias) demanding investigation of whether the distance between the man's workplace and

⁴⁰ Constitution articles 35 and 161; PCCM article 186, particularly note 1 emphasising the obligatoriness of lawyers for those accused of crimes carrying penalties of '*qesas-e nafs, e'dam, rajm* or life imprisonment'. The lawyers also cite a *vahdat-e ravieh* (uniformity of judicial procedure) ruling invalidating confessions made without lawyers to crimes carrying the death penalty.

home constituted the *masafat-e shar'i* ('legal distance') of four *farsangs* which removes *ehsan*.

However, the court also indicated that if the woman were acquitted of *zina*, the men would have to pay *diyeh* for the victim, whose *mahduroldamm* status would have been false. Furthermore, if they had not even believed him to be *mahduroldamm*, they could be executed. The problem is that article 630 of the penal code allows a man to murder another whom he sees committing *zina* with his (the murderer's) wife (and also to murder the woman if he 'has *'elm*' of her consent to *zina*), while the men's arrival at the house already armed indicates that the husband had decided on the murder *before* observing the couple in flagrante. The judges argued that only a husband, not a brother, can make this decision after witnessing *zina*. However, even if the men's account was true, the decision to murder the pair had been made after *only the brother* had seen *zina*.

The law does not clarify whether murder carries the death penalty if the victim is later proven *mahduroldamm* even though the murderer(s) did not ascertain this properly. If the pair had been committing *zina* but the husband's knowledge thereof was incorrectly formatted because only the brother had seen *zina*, could the murderers nevertheless escape *qesas*? The Supreme Court allowed for this possibility. Consequently the men hoped to escape *qesas* through the woman's conviction for *zina*: by this rationale, either they or she should be executed.

During the retrial that followed *naqz* (quashing) of the original ruling, the woman retracted all her confessions and repeated all the statements made in her letter. The court ascertained that the distance between her home and her husband's place of work exceeded four *farsangs*, and therefore broke *ehsan* whenever the husband was away (as he was when the murder victim entered their home – further impugning the brother's ability to fetch him in 10 or 15 minutes). However, while the trial was still under way, the defendant explained to her lawyers that because of her brother's threats, she must reluctantly fire them, since she would rather die than face her

relatives' wrath. This recalls her brother's statement: "where we come from, people believe that anyone with a shred of honour should kill someone like that".

The lawyers could only obey this extorted request, but wrote a letter to Ayatollah Shahrudi, then head of the Judiciary, explaining the reasons against stoning her. She was pardoned two years later.

The important themes in this case are as follows.

- 1) Again, the defendant was an illiterate member of a linguistic minority. As in the previous case, additional social dimensions proved crucial. The traditional environment in which the defendant lived meant that she was intimidated into sacrificing herself to save her male relatives, under threat of being killed anyway if they were executed and she were not. The intimidation was potent enough that she fired her lawyers, preferring to be executed rather than face her relatives' revenge.
- 2) As mentioned already, one of the woman's lawyers believes that confession (though a mainstay of proof in Shi'i law) cannot independently prove guilt in criminal matters, especially when the death penalty is possible, because it can easily be forced or distorted through intimidation. This case exemplifies this mechanism, reminding us that the authorities are not the only ones that can influence confessions. Not only are confessions out of court unreliable because of possible unrecorded coercion by interrogators, but confessions in court can also be psychologically coerced⁴¹. There is a known case⁴² where a woman declared that her husband had been visiting her in prison, pressurising her to confess, and had her stoning sentence overturned by the Supreme Court. This is therefore a documented mechanism, acceptable to the Supreme Court as a reason to overturn a sentence.

⁴¹ See Dehghan, "Iranian woman", and Mobasherat, "Final verdict", where a woman sentenced to be stoned confessed on national television and Amnesty International declared that televised confessions are frequently coerced.

⁴² Bazgir, 230-2.

The lawyer's opinion regarding confession illustrates the tension between a model whereby law must comply with immutable scripture, and one whereby it accommodates human needs. Confession as proof has strong scriptural support. If the authorities insist that those scriptural commandments are non-negotiable, or mainstream interpretations thereof are binding, then even strong objections to this use of confession will be fruitless. However, concepts of legal flexibility, some of which are acknowledged by the regime⁴³, could potentially promote reforms.

3) As in cases 3, 7 and 9 and chapter 7, section 6, *ehsan* was initially not investigated, being assumed because of marriage, though this was rectified later.

The treatment of *ehsan* is interesting. The Supreme Court clearly prioritised the distance-dependent concept of the boundaries of *ehsan*, rather than the time-dependent parameter of access between spouses 'morning and night'. Neither is in the codified law, and both originate from Shi'i law⁴⁴, illustrating the notion that it underlies and supplements the codified law. The temporal parameter, with a comparable scriptural pedigree to the distance parameter, would have instantly removed *ehsan* without any investigation of distance. However, as observed in chapter 7, section 6, in none of the published rulings available is the time parameter used, while the phrases 'four *farsangs*' and '*masafat-e shar'i*' make multiple appearances. Usage has allowed the distance parameter to overshadow the equally valid time parameter.

This and earlier cases' treatment of *ehsan* show how malleable the concept can become when the law describes it vaguely and varying interpretations of Shi'i law are therefore mobilised in court. It is crucial, however, that such a flexible set of parameters can spell the difference between stoning and flogging.

4) As observed in case 1 and chapters 5 and 6, appeal bias operated: the case went back to the originating court for retrial, negating the 'second opinion' of appeal.

⁴³ See chapter 3, sections 6.2-5.

⁴⁴ See chapter 4, section 3.4.

5) In some cases, documentation indicates that suspects had lawyers, but not when they met their clients. Here, the rulings indicate that the defendant had a court-appointed lawyer, but other documents show that the two only met at the fourth trial diet, after she had already confessed twice to *zena* in court. This demonstrates that suspects without lawyers risk accidentally incriminating themselves (as in previous cases featuring incidental ‘confessions’). It also implies that whenever a ruling does not mention lawyers, or specify when they appeared, they may have been absent or arrived belatedly.

6) This case juxtaposes the men’s execution if the woman is innocent, and the woman’s (by stoning) if the men are to escape *qesas*. This mirrors the similar juxtaposition possible in rape cases, where this impasse can be avoided by a dual application of the benefit of the doubt (chapter 4, section 3.2). As in sodomy case 3, the law’s insistence on belief, rather than truth, of *mahduoldamm* status was overridden, endangering the woman’s life. Instead, in the next case the same law was applied literally, showing how judges’ discretion can lead them to interpret laws differently or even override them.

Case 11: belief in *mahduoldamm* status prevents *qesas*.

Esfahan, 2004.

As in the previous case, *zena* and murder were intertwined, because the murdered man’s *mahduoldamm* status depended on *zena* with the murderer’s wife. Here, however, the law was followed literally: the man’s belief in *mahduoldamm* status, not his ascertainment thereof, protected him from *qesas*, without thereby necessitating the woman’s execution. The events of this case, reconstructed from court documents, are as follows.

A woman and four men were arrested after lengthy investigations into a man’s murder. The woman and two of the men, her husband and brother, confessed under pre-trial interrogation; the husband also confessed during one court session. According to all these statements, the woman had engaged in *nazdiki* (intimacy) with

the victim during her husband's regular long work-related absences from home. Penetration, *zena* and the glans were never mentioned. The husband, discovering the affair, made his wife summon the victim and murdered him in collaboration with the other men.

The trial spanned only twenty days. In his ruling, the judge cited various laws regarding *zena*, murder, attempted murder and *diyeh*, without mentioning '*elm*' or article 105. The husband's absence during adultery, if any, meant, according to the judge citing article 295, note 2, of the penal code, that he could not ascertain the victim's *mahduroldamm* status in reality; therefore *diyeh* remained payable (it would have lapsed with proof of *zena*). However, his *belief* in the victim's *mahduroldamm* status was sufficient to undermine *qesas*. The husband's absences also deprived his wife of *ehsan* during *zena*, reducing her penalty to 100 lashes. She and the two men who never confessed (and whose denials the judge dismissed as 'irrelevant') also received prison terms, as did the husband for the 'public disorder aspect' of the murder⁴⁵. The grounds for these sentences were given as the confessions of the woman, her husband and her brother, the victim's autopsy, and his friends' and workmates' statements. Appeal status is unknown.

The main issues raised by this case are as follows.

1) Although '*elm*' was neither directly nor indirectly mentioned, only the husband was found guilty by legal means, namely, one confession in court (sufficient to prove murder). The wife was convicted because of her confessions out of court and her husband's and brother's confessions; her brother, through his confessions out of court and the others' confessions; and the other two men were incriminated exclusively by co-defendants' confessions. All physical proof being related to murder, the only evidence with any plausible ability to prove *zena* was the wife's confession, which occurred once, out of court, describing consent but not penetration of the glans. Instead, in some published rape and sodomy rulings (chapters 6 and 7),

⁴⁵ Penal code article 612, contravening the *haqq al-nas* ('the right of humans'; see chapter 2, section 8) nature of murder.

failure to mention the glans explicitly overrode substantial amounts of evidence far exceeding the proof of *zina* in this case.

2) However, claims of physical separation were easily accepted as removing *ehsan*, and the woman was at least cursorily questioned regarding consent to *zina*.

3) The swiftness of the trial recalls theft case 1, fornication case 1 and case 5 above.

4) The husband's belief in the victim's *mahduroldamm* status undermined *qesas*, although he never claimed to have seen *zina*. This contrasts with sodomy case 3 and the previous case, where truth, not belief, was deemed necessary to counteract *qesas*.

Case 12: a straightforward acquittal.

Tehran, 2006-7.

Many foregoing cases, in this and previous chapters, show how failure to apply the law literally facilitates conviction. In this chapter, cases 3 and 6, and regarding *ehsan* and *mahduroldamm* status, the previous case, display the potential for lenience offered by the law. This case demonstrates how the straightforward use of legal strictures regulating evidence, particularly confession, without incorporation into arbitrary '*elm* can easily prevent irreversible *hadd* penalties.

The defendants were not members of linguistic minorities.

According to the court documents and the accused woman's two defending lawyers, a man reported his wife and her alleged lover to the authorities. Both were interrogated. The woman made detailed confessions, describing intimate parts of the man's body; he denied everything. Both were tried, and represented by two competent lawyers. The woman retracted her confessions in court. The judges, declaring insufficient grounds for '*elm*, acquitted the pair. Their reasons were: the woman's retraction of her confessions, which averted the *hadd* irrespective of the detail presented; the man's denial; and the *asl-e bara'at* (presumption of innocence).

The woman's husband appealed the acquittal, which the Supreme Court confirmed. To the first court's reasons for acquittal they added the motive behind the woman's confession, apparently caused by pangs of conscience. This implies the scripturally supported idea that confession demonstrates repentance⁴⁶, rarely seen in court files.

These are the salient issues of this case.

1) The woman's detailed confessions and additional, verifiable evidence might have yielded *'elm*, but did not, showing how easy acquittal can be if the law is followed literally and the vagueness of the *'elm* laws is not used to contravene other laws.

2) The Supreme Court judges mentioned the woman's motives for confessing as being relevant to her acquittal. Even relatively obscure scriptural concepts may resonate with judges.

3) Both rulings in this case mention no laws apart from one procedural regulation. Concepts, not laws, are cited. The judges ruled according to known concepts of Shi'i law, showing its independent authority in court.

Case 13: a straightforward stoning sentence.

East Azerbaijan, 2008-9.

The main relevance of this case is to show that although straightforward use of lenient laws can easily produce acquittal, as in the previous case, nevertheless the law does allow stoning provided that certain conditions are met. In most cases analysed, execution or amputation sentences were only possible because the law was misused. However, as in this case, legal conditions may occasionally be fulfilled, and if this happens, irreversible *hudud* can be unavoidable (recall theft case 1).

⁴⁶ See chapter 2, section 9.

According to the available documentation, the defendants, a man and a woman married to each other, confessed in court more than the required four times. The woman confessed to prostitution motivated by extreme poverty. CDs of ‘obscene films’, apparently made by the husband in desperate pursuit of income, were used as additional proof. The couple’s *ehsan* was presumed because they were married and living together, and they were sentenced to stoning for adultery. The man was also sentenced to hang for sodomy, to which he had confessed in connexion with an episode of attempted extortion, again motivated by poverty. The ruling was officially based on ‘*elm*’, and cited article 105, despite the valid confessions; possibly ‘*elm*’ was used to accommodate the additional evidence represented by the ‘obscene films’.

The sentence was confirmed by the Supreme Court on the basis that confessions in court exceeded the necessary four and the CDs provided additional evidence permitting ‘*elm*’. The man was executed the same year, but it is unclear whether by hanging or stoning. Possibly hanging for sodomy was allowed to override stoning for adultery, as in case 5 with rape, though the codified law gives the judge discretion regarding execution methods for sodomy, and stoning is one of the scriptural punishments for it. Hanging possibly accorded better with *maslahat*, as discussed in case 4. Perhaps only the man was executed because his sodomy charge provided the alternative of hanging.

The court documents never mention *ikrah*, although the couple’s activities were apparently prompted by desperate poverty. Need prevents the *hadd* for theft and, according to a famous narration, potentially for *zina* also⁴⁷. It could have been argued that the pair’s illicit acts were performed under conditions of *ikrah* or distress, because their attempts to gain lawful income had all been thwarted. They lived without electricity or running water, owed ruinous amounts of money from failed attempts to make a living, and had no reliable method of obtaining food.

This case demonstrates that stoning is legally enforceable as long as its requirements are met. *Ikrah* and *ezterar*, caused by poverty, were arguably present; this can be

⁴⁷ See chapter 2, section 7.3 (Ali acquitting a thirsty woman of *zina* committed to obtain water).

considered a legal flaw. However, the common legal flaws regarding evidence were absent, and therefore one can imagine instances where both flaws are missing. If, as in this case, defendants confess four times in court and possess *ehsan*, there is little recourse against their execution.

No matter how frequently irreversible *hadd* penalties can be avoided by manipulating opportunities for leniency, their presence in the law means that they sometimes cannot be argued away. This can therefore be deemed a fundamental obstacle to lenience in the system. Only legal reform can eliminate these penalties definitively.

Concluding remarks.

These adultery cases reveal some issues already encountered in previous chapters and introduce new mechanisms. All of these combine with themes observed in previous chapters to consolidate the impression of major tendencies characterising the application of *hudud* in Iran.

As mentioned in chapter 1, throughout the case-study chapters, and at the beginning of this chapter, four general patterns traverse the case studies. One is that the law's considerable interpretability allows a high degree of judicial discretion. This occurs to a great extent because the codified law is vague, necessitating recourse to the underlying, but eminently interpretable, Shi'i law. It also reveals that the discussion about how scripture and *fiqh* should be represented in codified law and thereafter interpreted, so prevalent among jurists as observed in Part I, also involves judges and lawyers who can use quite divergent interpretations. Another pattern is that judges often contravene laws outright, often, though not always, using *'elm* to facilitate this. A third mechanism is that social dimensions can often influence, or be revealed by, the development of these cases. Finally, the trials analysed show that under all the layers of interpretability, there are portions of the law which clearly oppose lenience. These can only be removed by radical reforms challenging the position whereby immutable scriptural commandments (and/or established interpretations thereof) override human requirements.

The themes found in these cases coalesce into the four broader patterns as follows – bearing in mind that these patterns are interlocking, and some mechanisms in the cases affect more than one of these.

Interpretability and judicial discretion.

Some areas of the codified law are so vague that they are open to a wide variety of interpretations or necessitate reference to Shi‘i law to make sense of them. This means that sometimes the courtroom debates about certain elements of a case will occur almost entirely in the arena of uncodified Shi‘i law. In these adultery cases, this was observed through judges’ and lawyers’ discussions concerning the parameters of penetration, *‘elm*, *ehsan*, *ikrah* (coercion) or *ezterar* (distress), and criminal responsibility intersecting with awareness, intention, and various gradations of coercion. The discussion of *‘elm* revealed its uncertain scriptural footing, in view of doubts about its use by ordinary judges and narrations limiting *‘elm* to the *Ma‘sumin* or displaying the Prophet and Imams’ lenience. However, the use of *‘elm* in this and previous case-study chapters revealed the almost unlimited discretion which some judges insist it gives them.

The uncertainty of many parameters meant that sometimes radically different sentences were issued in cases with very similar circumstances. Minority rulings also showed how easy a lenient sentence would have been if the law had been deployed literally. In case 12, the evidence could have been used for *‘elm* as in other cases but was not; the minority rulings in cases 3, 4 and 8 show the lenience promoted by straightforward uses of codified law; and cases 2 and 3 had almost identical circumstances but opposite results (though the defendant in case 2 was eventually pardoned). Invalid confession was routinely used, but occasionally (as in case 5) great care was taken to follow its regulations carefully. In most cases, a literal application of the codified law would have produced lenience, but *‘elm* and judges’ discretion mostly prevented this.

Legal infractions.

Disregard for the laws of evidence, particularly confession, was common throughout the cases, and many featured failure to investigate *ehsan*, which can determine whether the defendant lives or dies. As in previous chapters, the authorities sometimes adopted a ‘crusading’ attitude which led them not only to illegally prosecute crimes ‘against chastity’ without complainants, but to contravene laws in their quest for conviction (e.g. in cases 8 and 9). Judges’ discretion is also displayed in their differing treatment of *mahduroldamm* status in sodomy case 3 and adultery case 10 compared to adultery case 11: where they contravened the letter of the law, this resulted in death sentences.

Several defendants in the sample spoke no Persian, yet were tried without interpreters. This not only facilitated conviction but contravened the law⁴⁸.

Disregard for laws is apparently common outside criminal trials too: for example, the defendant in case 1 was denied a divorce despite legal grounds for it, resulting in stoning sentences for two people. This agrees with Mir-Hosseini’s findings in *Marriage on Trial* about judges’ discretion in divorce trials, sometimes leading to theoretical rights being overlooked.

‘Elm, whose scriptural pedigree is shaky as discussed above, was often a tool for contravening laws, particularly those governing evidence.

An interesting legal infraction is the substitution of hanging for stoning. Though in case 5 it possibly indicated a legal interpretation rather than disregard for laws, in cases 3 and 4 *maslahat*, meaning here ‘state interests’, was cited as justification for ignoring the scriptural penalty of stoning which has elsewhere been so vigorously defended precisely because of its scriptural origin (chapter 2, section 5.3; chapter 4, section 3.7). This is a precedent which could radically favour lenience even by

⁴⁸ Nine-article “Law concerning the translation of statements and documents in trials and offices”, ratified on 10 June 1937 but still in force, following several post-revolutionary amendments.

eliminating irreversible *hadd* penalties altogether while maintaining an ostensible Islamic pedigree (chapter 3, section 6.2).

Social dimensions.

The social setting of cases 9, 10 and 13 clearly affected the legal process. In case 9, the small-town environment allowed gossip to influence the initiation of prosecution and the judge's pursuit of conviction, also displaying the arbitrary power that officials can have in a small community. In case 10, concepts of family honour and revenge led the defendant to make false confessions. In case 13, illegal activity was motivated by extreme poverty, and the defendants' inability to find alternative modes of survival suggests possible inefficiencies in the welfare system⁴⁹, though judicial discretion (as above) meant that this was not considered 'coercion' or 'distress', which remove criminal responsibility. Also suggesting problems with poverty relief, cases 2 and 3 combine with fornication case 2 to display the interaction of narcotic addiction, poverty, family abuse and prostitution. The forcibly prostituted women, prosecuted as if independently responsible for their 'misdeeds', were in the grip of deep-rooted social forces which they could not control.

It is documented that poverty and the proximity of Afghanistan and Pakistan, having porous and lawless borders with Iran, have facilitated the spread of two intertwined problems in Iran: prostitution and addiction to narcotics (especially heroin and opium, which are widespread among the poor and in prisons, such that most Iranian AIDS cases are caused by sharing infected heroin needles). Studies have suggested that narcotics and poverty are overwhelmingly responsible for prostitution and that 90% of prostitutes in Iran suffer from psychological infirmities often caused by abusive families – as observed in cases in this and the previous chapter. A reformulation of prostitution not as a crime but as a social problem deriving from poverty, narcotics and abuse, with prostitutes recast as 'victims' to be rehabilitated rather than 'sinners' to be punished, would reduce death sentences. To some extent this change from 'sinner' to 'victim' is observed in the authorities' attitude to drug

⁴⁹ Payvand, "Iran's Ministry"; Maleki, 3, 20-1.

addicts and HIV-positive individuals through recent programmes for their rehabilitation and containment of the AIDS epidemic⁵⁰.

Another social dimension revealed by these cases is the disproportionate representation of members of linguistic minorities, often illiterate, among stoning convicts. Limited availability of materials precludes investigation into whether this indicates a greater national tendency. However, seven of the nine available stoning (and 11 death) sentences for adultery originate from the two Azari provinces. The presence of so many stoning sentences from the same area may indicate a cultural or personal bias. Furthermore, illiteracy often correlates with poverty, which may not only facilitate illegal activity but also reduce undereducated people's ability to defend themselves in court.

Institutional obstacles to lenience.

This sample of adultery cases displays institutional obstacles to lenience also observed in previous chapters. These include appeal bias (appealed cases tried twice by the same court), the phenomenon of 'reverse plea bargaining' whereby suspects may confess in the erroneous belief that this will help them, brief trials, double jeopardy, and belated introduction of lawyers, facilitated by the Constitution's failure to specify when they must be provided. Double jeopardy, as in published sodomy and *zena* rulings, took the additional form of allowing multiple convictions (case 8) for the same acts under different names. These things could occur because the law, while permitting complainants to appeal acquittals, does not explicitly prohibit other forms of double jeopardy or multiple convictions for the same acts re-categorised with different names.

Also surfacing in all case study chapters was *'elm*, which, only vaguely defined in the codified law, allowed judges the option of upending the entire structure of defendants' legal safeguards, being frequently used as licence to contravene

⁵⁰ Nobahar, "Qachaq", 204-6, 216-7; Samgiss, 68-73; Navai, 83-7; Kusha, 223-9; Abu-Raddad et al, 119-26, 202; Keddie, 289; personal communication with HIV researchers at Shiraz University of Medical Sciences and Gerash HIV and Hepatitis Research Centre, November 2007.

practically any law. The permission of *'elm* in the law, especially to issue death and amputation penalties, can be construed as a fundamental obstacle to lenience. If alternative scriptural readings were codified, *'elm* could be circumscribed or even forbidden to ordinary judges (chapter 2, section 6.4).

An additional institutional obstacle appeared in case 7, where technicalities diverted the case into a stage of irremediable finality despite multiple legal flaws which were not addressed.

Case 10 raised the issue that confession may be inherently unreliable because it can be coerced not only by the authorities, but by other agencies including relatives. This recalls sodomy case 4, where testimony was possibly the result either of coercion or of conspiracy resulting from a private grudge. Allowing death or amputation sentences to depend entirely on these easily manipulated forms of evidence can be characterised as another inherent obstacle to lenience in the system.

Cases 1-3 revealed a web of inequalities entrenched in the law. Women who were legally incapable of escaping their marriages, and who would in any case have had to abandon their children with abusive husbands, had little choice but to submit to enforced prostitution. However, other parts of the law, severely interpreted by judges, condemned them as if they had had full control over their actions, and consequently, criminal responsibility. Those inescapable marriages also placed them under *ehsan*, making their enforced 'misdeeds' punishable by death. (This becomes even more noteworthy considering interpretations of *ehsan* hinging on unilateral male conjugal rights: a woman can be placed under *ehsan* by a husband who does not, but could, copulate with her, and who can also take multiple wives⁵¹). If one factors in the prevalence of forced marriage, often early in life⁵², one can readily understand that some women have precisely no control over the events leading to their death sentences, and that the law perpetuates this to a large extent.

⁵¹ Explained in chapter 4, section 3.4.

⁵² Samgiss, 70-1; lawyers' letter to Shahrudi, October 2006. Civil Code articles 1064 and 1070 make the validity of marriage dependent upon consent, but the right to annul vitiated marriages lapses if not immediately invoked (chapter 4, section 3.5). This too penalises undereducated women (as many of the defendants were in this sample).

The most fundamental obstacle to lenience regarding these irreversible *hadd* penalties is of course that they exist in the law. As demonstrated by case 13, though most stoning convictions can be argued away by pointing out legal flaws, especially the routine disregard for the laws of evidence, there can always be cases where the legal conditions, no matter how stringent, are met. In such cases it is nigh impossible to argue the penalties away. In case 13 as in theft case 1, there were perhaps legal flaws unrelated to evidence: the insufficiently protective ‘enclosure’ in theft case 1, and the diminution of criminal responsibility caused by poverty in case 13. However, the more commonly disregarded evidence protocols were followed. If a person freely undertook an extramarital affair and then, tormented by conscience, confessed four times to adultery in court, stoning might be legally unavoidable for that person.

Considering this matter alongside case 5, one can discern an important issue. In case 5, as in some published *zina* rulings in chapter 7, hanging for rape took precedence over stoning for adultery, though marriage made stoning a possibility. If this means that adultery plus rape has a lighter penalty than adultery minus rape, this indicates that harm wrought on other parties is unconnected to severity of punishment. This is further highlighted by the fact that in cases of coerced prostitution, the ‘victims’ of adultery, the husbands, had enforced the adultery, which was punished not because it harmed these ‘willing victims’ (indeed it provided them with financial support) but because it contravened the authorities’ interpretations of Shi‘i law.

What all this means is that the law institutionalises irreversible penalties not in response to a rationale whereby harm correlates with punishment, but in deference to interpretations of scripture, sometimes displaying more lenience for more harmful than for less harmful acts. As with the lighter penalty for rape of underage girls than adult women (chapter 4, section 3.3; chapter 7, section 7), which some jurists powerlessly decry as perverse, this displays the difficulties in deriving laws from texts considered immutable irrespective of evolving morality.

10. Conclusions.

Hudud (singular: *hadd*; literally, ‘boundaries’) are ‘non-negotiable Islamic penalties’ for certain crimes. Some *hadd* crimes carry death or amputation penalties, and these are here termed ‘irreversible’ because they prevent the condemned from resuming their previous lives. This project was originally prompted by the question of how individuals tried in Iran for crimes carrying irreversible *hadd* penalties might preserve their lives or limbs by avoiding those penalties.

To address this question, Part I (chapters 2-4) of the project presented a previously unavailable ‘compendium’ of relevant Iranian laws and contemporary Iranian legal specialists’ understanding of their Shi‘i origins, in whose light they can be interpreted or even modified. Part II (chapters 5-9) analysed recent Iranian trials for theft, sodomy, fornication and adultery, showing how the theory of Part I is interpreted and applied. By providing a detailed account of how *hadd* laws are conceived by the Iranian legal community (jurists, judges and lawyers) today, and through a systematic analysis of primary sources, notably court documents, the project attempted to fill a gap in the study of Iranian law.

Severely limited access to materials (chapter 1, section 3) hindered a statistical analysis of the frequency of these penalties or the prevalence of any given legal mechanism. This is because criminal court files are not available freely in Iran.

However, the available materials allowed some insight into what Iranian *hadd* laws are, how the contemporary legal community interprets them and their Shi‘i origins, and how in several instances they have been applied, and often reinterpreted, in court. Despite the limitations of source materials, the patterns revealed by the case studies became credible because they appeared repeatedly and were often traceable to assorted scholarly interpretations of laws described in Part I. These patterns fell into four major categories.

The first is that the law is highly interpretable. This is observed through the multiple interpretations presented in Part I, displaying a lively scholarly debate regarding some topics. It may even affect legislators, as illustrated by the differences between the 1991/96 penal code and its proposed replacements, the penal code bill and the 2012 penal code, and in the occasional amendment such as the conditional award of custody to mothers or the introduction of female assistant judges (chapter 2, section 3; chapter 4, section 3.5). Interpretability resurfaces through the immense judicial discretion seen in Part II. To a large extent this interpretability is due to the fact that two legal systems operate simultaneously: Iranian codified law, and Shi'i law, its ostensible origin, as understood by the Iranian legal community (chapter 2, section 1). As observed throughout the project, this means that not only can lacunae in the often vague codified law be filled by referring to Shi'i law, but sometimes the two systems come into conflict when scholars, lawyers or judges appeal to portions of Shi'i law which appear to confound analogous parts of the codified law. However, both systems are sufficiently fluid to allow the widely varying interpretations observed in the case studies even when only one system is being used.

The second pattern is that judges and other judicial authorities often contravene laws outright. This happens even for very explicit laws.

The third pattern is that socioeconomic factors can affect, or be revealed by, *hadd* prosecution. This is manifested in various ways, ranging from judges' anti-female bias, to the criminogenic effects of poverty or narcotic addiction, to the apparently high incidence of stoning sentences against illiterate members of ethno-linguistic minorities. Socioeconomic factors do not appear in all cases, but where they do, they seem to represent a notable characteristic of the system.

The fourth pattern is that the legal system contains institutionalised obstacles to lenience. Some are procedural: for instance, double jeopardy is not clearly forbidden, there is uncertainty regarding *when* suspects must be provided with lawyers, and appeals can go twice to the same court, negating the 'second opinion' quality of an appeal. Others consolidate inequalities. These include marriage, divorce and child

custody laws which give women inferior rights and may force them into illegal acts; the definition of rape as ‘*zina* (fornication/adultery) plus coercion’, rendering rape claimants prosecutable if they cannot prove coercion; and the punishment of ‘illegitimate’ children. Some, not all, of these obstacles have scriptural origins, making them difficult to abrogate without compromising the currently dominant view of scriptural immutability (chapter 1, section 5.5).

Though a reliable statistical analysis was impossible, some inkling of patterns regarding incidence of penalties emerged from a combined study of unpublished court documents and published rulings. Since the question ‘how often do these penalties occur’ is among the first posed to me about this research, I shall begin this final summary by presenting, in section 1, these tentative patterns about incidence.

Thereafter the four major patterns outlined above will be discussed, in sections 2-5, through representative examples from the ‘micro-patterns’ which emerged throughout the project. The minutiae of the cases analysed combined to yield these four broader patterns. Because of the large number of ‘micro-patterns’, not all can be recounted here, but some examples will show how the greater patterns emerge.

Some of the micro-patterns cross boundaries. For example, ‘*elm-e qazi*, the ‘judge’s knowledge’ (chapter 2, section 6.4) which the law allows as grounds for conviction without defining or regulating it, manifests itself as a vague transfer from Shi‘i to codified law (pattern 1), allowing discretion, but also as a tool to contravene laws (pattern 2), thereby constituting a formidable obstacle to leniency (pattern 4).

1. The incidence of irreversible *hadd* penalties.

Though some unpublished cases, including all theft cases, came from courts directly, several were harvested from prisons (chapter 1, section 2), potentially over-representing how easily *hadd* prosecution can lead to death sentences.

The 166 published rulings analysed may show a more reliable pattern. Half the sodomy and *zena* rulings contain death sentences issued by first-instance courts, but most of these were overturned on appeal by the Supreme Court. This is particularly visible in stoning sentences: they account for half the death sentences in the sample of 121 *zena* rulings, but two thirds of them were overturned on appeal. This suggests considerably greater lenience by the Supreme Court than first-instance courts. However, since overturned sentences are retried by another first-instance court, this possible greater lenience may be subsequently cancelled out. It is unclear whether this happened in the cases represented by published rulings, because retrial results were usually unknown.

As for theft, none of the published theft rulings contain amputation sentences, mostly because collaboration in theft was held to remove a necessary condition for amputation: that the thief must have broken into the ‘enclosure’ (*herz*) surrounding the goods, and also removed them. Collaboration meant that it was uncertain whether one participant had performed both actions. This also happened in theft cases 4 and 5, where collaboration instantly removed eligibility for amputation without further investigation, suggesting that courts may frequently be lenient in this regard. The judge in theft case 2 referred to the Supreme Court’s ‘tendency’ to overturn amputation sentences, which combines with the proportion of overturned published execution sentences to suggest possible comparative leniency by the Supreme Court.

Nevertheless, in three unpublished theft cases judges insisted on amputation, and in one, it was implemented. Chapters 6, 8 and 9 show several confirmed death sentences, of which some were implemented. Reports of irreversible *hadd* implementation are rare, the Supreme Court may overturn most such sentences, and even first-instance courts may frequently avoid irreversible *hadd* sentences (as in theft cases 4 and 5). Still, the presence of several such sentences, some implemented, in this sample reminds us that while these penalties remain in the law, they may be carried out.

2. Legal interpretability and judicial discretion.

Despite the principle of ‘no crime without law’ (chapter 2, section 2), Shi‘i law not only forms the theoretical basis of codified *hadd* law, but is viewed as the authoritative law (chapter 2, section 1). Therefore, as observed throughout the project, scholars and even legislators engage in extensive debate about how Shi‘i concepts should be interpreted and codified. The case studies show that Shi‘i law may supplement unclear codified laws, or even be used independently in court¹.

Furthermore, both Shi‘i and codified law are highly interpretable, the first because it involves differing readings of scriptural texts which are themselves interpretable, numerous and sometimes apparently contradictory, and the second because it is frequently vague and overly brief. (This suggests that it is a ‘shorthand’ for Shi‘i law). Therefore, contending interpretations can appear even when only one system is being used.

In several cases, parameters determining the applicability of death or hand amputation were so vaguely defined in the codified law that courtroom debates about them occurred mostly in the arena of Shi‘i law. For example, in theft cases, the parameter of the *herz* (enclosure) whence goods must be stolen to activate the amputation penalty, and similarly what constituted removal of goods from the *herz* and when theft was ‘established’, removing the ability of repentance or pardon to prevent amputation, were subject to complex discussion during trials. Different judges’ interpretations of these crucial parameters varied greatly, and uncodified elements, for example Khomeini’s treatise of Shi‘i law *Tahrir al-Vasileh*, were mobilised in court. In adultery cases, *ehsan*, the condition of being married and having ‘access’ to one’s spouse, was similarly debated on the basis of differing interpretations of Shi‘i sources because it is only perfunctorily defined in the penal code. This meant that eligibility for stoning (which *ehsan* determines) depended on

¹ Mir-Hosseini’s *Marriage on Trial* likewise found codified and Shi‘i law operating in parallel in Iranian divorce cases. For example, on pp. 183-90, interpretations from Shi‘i law were crucial in determining whether a marriage remained in force.

judges' choice of what uncodified material to use as the basis of their sentences, and how to interpret that material.

Similarly, what constitutes *ikrah* (coercion) or *ezterar* (distress), which remove criminal responsibility according to Shi'i sources (chapter 2, section 7.3), is not clearly explained in current codified law. Therefore such factors as narcotic addiction, psychiatric problems, extreme poverty, abusive families, and blackmail (for example in adultery cases 2 and 3 where mothers submitted to prostitution to protect their children from a similar fate) were overlooked in several cases when assessing criminal responsibility and therefore punishability. Many of these pressures would have easily fit into the definition of 'distress', which current codified law does not explicitly apply to *hudud*. The interpretability surrounding distress is further illustrated by the fact that though it is omitted from the *hadd* articles of the 1991/96 and 2012 penal codes, the penal code bill cites distress as a remover of criminal responsibility in all *hudud*.

'Elm-e qazi, the judge's 'knowledge' which allows him to convict, emerges throughout the case studies as probably the greatest obstacle to lenience in *hudud*. The codified law mentions it briefly, without describing, regulating or limiting it. Consequently judges use it with utmost discretion, interpreting it in many cases as licence to disregard legal strictures including those governing evidence. Several, even Supreme Court judges, characterise *'elm* as ineffable intuition which resides only in the judge's mind and therefore cannot be questioned by anyone. (For example, see theft case 3 and an extract from its documentation in Appendix 1). However, this interpretation of *'elm* is only tenuously connected to scripture, which can readily be construed as limiting it to the infallible Imams or at most their representative (according to the regime's doctrine, this is the Leader of the Islamic Republic, currently Ali Khamenei). This is why the case studies are replete with conflicting interpretations regarding *'elm*, its nature, and sometimes (as in adultery case 6), whether it applies at all. Lenient interpretations could have been used to limit *'elm* in new laws, but the 2012 penal code fails to do this and instead potentiates *'elm* (chapter 2, section 6.4).

Shi'i concepts treated as crucial in some cases, though uncodified, were ignored in other comparable cases as an effect of *'elm*. This was combined with great variation in the use of evidence. For example, the extent of penetration determines eligibility for the death penalty in sodomy and adultery according to narrations but not the penal code. Judicial discretion meant that in some (particularly sodomy) cases, both published and unpublished, there existed medical evidence of penetration, detailed confessions to penetration, or both, but the judge ruled against execution because it could not be proven that the *extent* of that penetration had been sufficient. Here, uncodified narrations overrode medical evidence or the codified norms for confession. In other cases, medical evidence did not prove penetration and suspects denied it, but judges claimed *'elm*, even going so far as to declare knowledge of the full extent of penetration, because the absence of medical evidence could not disprove penetration. Personal discretion overrode both codified and Shi'i law.

The discretion permitted by *'elm* promoted uncertainty even independently of whether Shi'i sources were being used. For example, the codified norms governing proof were overridden by *'elm* in some cases and not in others.

The common thread linking all these individual mechanisms is that they are evidence of a system in which personal discretion is paramount in determining whether defendants will be condemned to death or hand amputation. The fluidity of the system and consequent unpredictability of rulings and influence of extra-legal elements recalls Mir-Hosseini's findings² in her study of Iranian divorce cases, *Marriage on Trial*. As in that study, in criminal cases too the judge's subjective impression of defendants was found to be crucial to sentencing. This was displayed for example in cases where judges and other authorities adopted a 'crusading' attitude against perceived 'vice', negating the judge's role as an impartial arbiter. For instance, in theft cases 2 and 3, sodomy case 4, both fornication cases, and adultery

² For instance, on pp. 67-71, two cases are compared to show how important judicial discretion is in determining what constitutes 'harm', which legally justifies a divorce. The first divorce petition, citing regular physical maltreatment, was rejected partly on the basis of a Shi'i narration. Instead, in the second case the judge accepted that the wife's being made to work in a restaurant abroad constituted 'harm', and granted the divorce. The previous footnote gives another pertinent example.

cases 8 and 9 as well as several published *zena* rulings, the authorities' crusading attitudes led them to pursue conviction aggressively, even by illegal means. In theft case 5, the judge's sympathetic attitude meant that crucial elements which could have determined amputation were not investigated. Whether to the defendant's advantage or detriment, the system of *hadd* application in Iran does not represent the rule of law, whereby the result of trials depends on a uniform code of rules and similar conditions yield similar outcomes.

3. Legal infractions.

Throughout the case studies, codified (and Shi'i) laws of evidence (chapter 2, section 6 and subsections) were routinely disregarded. Almost all confessions used were legally invalid, and valid confession was a rarity in both published and unpublished cases. On the rare occasions where testimony was used, its protocols, such as the investigation of the witnesses' qualifications including 'righteousness' (*'adalat*), were ignored. Invalid evidence was either used in its own right, or as a conduit for *'elm*. *'Elm* itself was often a tool for contravening laws, whether governing evidence or other areas of law, such as repentance, criminal responsibility, *ehsan*, or the technicalities determining hand amputation for theft (chapter 2, section 7 and subsections, section 9; chapter 4, sections 3.4, 5). Often conditions whose investigation the law demands (e.g. *ehsan*, collaboration in theft which may render amputation inapplicable) were left uninvestigated. This was frequently combined with claims of *'elm* focusing on other areas of the law, and therefore these ignored areas were sometimes not pointed out even on appeal.

Legally, 'crimes against chastity' cannot be prosecuted without complainants (chapter 3, section 4). However, in several cases investigation for sodomy, fornication or adultery was initiated by the authorities. Authorities not only initiated prosecution but sometimes pursued it by appealing acquittals or sentences which they deemed insufficiently harsh. In some cases, sources suggest that the authorities fabricated complaints purportedly emanating from third parties. For example, in fornication case 1 prosecution was ostensibly initiated by a complaint letter from

local inhabitants, but it was unsigned and belied by two affidavits signed by local inhabitants requesting that prosecution be abandoned.

Another legal infraction seen in several cases was the absence of lawyers, which contravenes the constitutional guarantee of legal representation (chapter 2, section 3). In some cases, such as theft case 1 whose amputation sentence was carried out, the absence of lawyers meant that legal arguments were not addressed which could have undermined irreversible penalties.

Other, similarly explicit legal elements were ignored in several cases. These include stays of execution, execution protocols, the effect of appeal in suspending sentences, rape claims which legally prevented the claimant's prosecution, the prohibition of using pregnancy as proof, and laws forbidding execution of underage individuals (chapter 2, sections 4, 5.3, 7.1; chapter 4, sections 3.2, 3.6). As mentioned already, the 'crusading' attitude adopted by some authorities prejudiced their impartiality and made them more prone to disregarding laws to secure conviction.

An interesting legal infraction is the substitution of stoning with hanging in adultery cases. This notably occurred in case 4, where the sentence immediately commuted stoning to hanging because of *maslahat* (the state's best interests). Pragmatic reasons were also suggested against stoning in case 3. It is documented that at least one man condemned to be stoned was in fact hanged; the penal code bill allowed stoning to be commuted to hanging or flogging in the nation's interests, and the 2012 code refrains from mentioning stoning altogether (chapter 4, section 3.7). What this means is that despite the vigorous defence of stoning as a 'divine penalty' (see also chapter 2, section 5.3), pragmatic arguments have been given an Islamic pedigree that allows it, and other 'problematic' scriptural elements, to be disregarded. (Similarly, the scriptural penalties for sodomy and incest, though not in codified law, were almost universally disregarded in the cases analysed). Though most legal contraventions observed in the case studies were inimical to lenience, this one sets a precedent which favours lenience. It rests on arguments, drawn from Shi'i law by

contemporary jurists (chapter 3, section 6.2), which could even permit irreversible *hudud* to be removed from the codified law altogether.

4. Socioeconomic dimensions.

Socioeconomic dimensions of prosecution were particularly visible in chapters 8 (fornication) and 9 (adultery). In these cases, extreme poverty, addiction, abusive families, neglect, notions of family honour, and the prejudicial effects of small-town gossip were all seen affecting trials. For example, in adultery case 10 the defendant made false confessions to shield family members and escape her relatives' revenge. In adultery case 9, prosecution was initiated because of local gossip, which had also prejudiced the judge against the defendant. Fornication case 2 showed the effect of addiction and poverty manifested in a family's prostitution of their young daughter. Addiction and poverty were similarly seen causing forced prostitution in adultery cases 2 and 3. As observed in the conclusion to chapter 9, the interaction of poverty, narcotic addiction, psychological problems and prostitution is well documented.

Male bias, the mechanism whereby judges might sentence females more harshly than males given the same circumstances, is another social force observed in chapters 7 and 8. In chapter 7, section 7, a set of social tendencies emerged, including the frequency of relationships between much older worldly men, who could 'work the system' and be exonerated, and significantly younger, apparently gullible girls who were often condemned in the same cases. This was combined sometimes with the girls' or their families' mistaken belief that the law could bring refractory 'suitors' to heel. Subjective assessments of propriety and piety affected prosecution in several cases described in chapter 7, section 7, which sometimes involved hospitals, neighbours or relatives reporting individuals for 'depravity'. Male bias can also be detected in both fornication cases. On the other hand, recent stoning executions have mostly targeted males (chapter 4, section 3.7), reminding us that irreversible *hudud* are not exclusively relevant to women's rights but generally to human rights.

The sample of adultery cases displayed another social dimension, namely a strong prevalence of illiterate members of linguistic minorities among those sentenced to be stoned. Illiteracy often correlates with poverty and therefore an environment more conducive to addiction and crime. It was also associated in several cases with rural, comparatively traditional areas. The large proportion of stoning cases from the Azari provinces may indicate some level of provincial bias. It is very difficult to ascertain whether this is a sign of a greater national tendency, but lawyers harvesting cases from prison searched nationwide, not only in these provinces. It is possible that certain traditional norms made judges in rural areas or outlying provinces more likely to favour stoning. One cannot be certain with the limited information available.

Theft cases contain another social dimension. Because the amputation penalty for theft depends, in both codified and Shi'i law, on the thief breaking into a physical 'enclosure' (*herz*) and removing its contents, the penalty applies only to physical theft. Therefore it targets petty theft (as in theft case 1, where the man suffered amputation for stealing a tape recorder) while sparing 'non-physical' theft, such as fraud or computer-mediated theft whose magnitude, unlimited by what can be physically carried from an 'enclosure', could be immense.

5. Institutional obstacles to lenience.

The case studies displayed several obstacles to lenience which are procedural or embedded in the law. These included appeal bias (whereby appealed cases went to the same court twice, negating the 'second opinion' of an appeal), the extreme brevity of some trials which precluded a proper defence, and the confusion between the roles of judge and prosecutor seen for example in theft cases 2, 3 and 5, adultery case 9 and fornication case 1. Another is the mechanism termed 'reverse plea bargaining' whereby confessions were made in the erroneous belief, sometimes encouraged by the authorities, that it would be rewarded with lenience (e.g. adultery case 3; theft case 2; sodomy case 4; chapter 7, section 5). Instead, because confession is a main form of proof in *hudud*, it invariably incriminated confessors.

Additionally, both confession and testimony can be the result of coercion, intimidation or conspiracy (e.g. adultery cases 3, 9 and 10, sodomy case 4). Because of this, their status as sufficient justification for death or amputation penalties represents another obstacle to lenience, as pointed out for confession by the lawyer in adultery case 10. However, their scriptural origin makes it very difficult to prevent their use as sole sources of evidence in *hudud*.

The law permits complainants to appeal acquittals (chapter 2, end of section 4; as in sodomy case 1 where acquittal was replaced by a death sentence), but is silent regarding other forms of double jeopardy, e.g. whether non-acquittals can be appealed or non-complainants can appeal. This meant that in several cases, non-acquittals were appealed seeking increased severity, or non-complainants appealed with the same goal. Legally, crimes ‘against chastity’ cannot be investigated or prosecuted without complainants, and the ethos of relevant Shi‘i sources is that such crimes should be concealed and efforts should not be made to uncover and prosecute them (chapter 3, section 4). However, the authorities frequently prosecuted such crimes without complainants and then appealed acquittals or light penalties in pursuit of the death penalty (e.g. chapter 7, section 2). In these cases, the authorities acted as complainants in crimes ‘against chastity’, and then used complainants’ appeal prerogatives to make sure these crimes were punished severely. This contradicts the ethos of those Shi‘i texts, but is made possible because the law does not make it absolutely clear that authorities cannot be complainants, or that non-complainants cannot appeal.

Similarly, the law does not expressly prohibit individuals from being tried and sentenced for acts categorised under *ta‘zirat* (discretionary penalties lighter than *hudud*) and retried and sentenced again for the same acts reclassified under *hudud*. Therefore in adultery case 8, a person flogged for certain acts was later sentenced to death following another trial for the same acts reclassified from ‘illicit relations’ to ‘adultery’. The lawyers argued against punishing a person twice for the same acts, even if reclassified from *ta‘zir* to *hadd*, but could not find a specific law to support this – another apparent lacuna in the law.

Also inimical to lenience is the definition of rape as ‘coercive *zena*’ or ‘coercive sodomy’. Though legally rape claims exonerate claimants by default (chapter 4, section 3.2), judges may use their discretion to decide that when the ‘coercion’ element of rape is unproven, the ‘*zena*’ or ‘sodomy’ element remains and the rape claimant can be punished. For example, in fornication case 2 the defendant was sentenced to death despite always claiming rape, and several published sodomy and *zena* rulings feature rape claimants prosecuted, including those who took the initiative in reporting rapes.

Another obstacle to lenience is the fact that though the Constitution (article 35) guarantees legal representation, it does not specify when lawyers must be provided. This means that lawyers, even when they were provided (which did not always occur), were in several cases introduced only after suspects had incriminated themselves. Though confession is invalid in *hudud* unless made before the judge trying the case (chapter 2, section 6.1), confession taken during pre-trial interrogation was routinely (and illegally) used to condemn suspects. This is exacerbated by the possibility of coerced confession, seen clearly in adultery case 9 but claimed in several other cases. Lawyers were frequently introduced only at the trial, and when trials were brief, this did not give them the opportunity to familiarise themselves with the case and formulate a proper defence.

The law’s omission of the time parameter for legal representation means that suspects can be denied lawyers until it is too late, while the authorities can claim to have fulfilled the law by eventually providing lawyers. ‘*Elm-e qazi*, which as discussed above is often used as licence to bypass laws, can contribute by allowing judges to claim that pre-trial confession, though invalid in itself, gave them ‘insight’ into the crime. Therefore conviction can be secured through potentially forced pre-trial confessions by appealing to laws which give judges latitude (the permission of ‘*elm* and the guarantee of a lawyer without a timing parameter).

This reintroduces the issue of *'elm*, which as a source of almost unlimited judicial discretion is a major obstacle to lenience contained within the system. Most of the death and amputation sentences observed throughout the project would have been impossible without *'elm*, because *'elm* was used to overcome the ordinary strictures of the law such as the invalidity of pre-trial confession or the ability of repentance to preclude the *hadd* in certain circumstances. As observed earlier and in chapter 2, section 6.4, there is little scriptural justification for permitting ordinary judges to use *'elm* in this way. 'Ordinary judges' here means judges who are not infallible (*ma'sum*) – a quality possessed only by the Prophet and the Imams, whose *'elm* is the only *'elm* expressly permitted in scripture. But judges in Iran are not only fallible but also mostly not even *mujtahids* (jurists authorised to interpret scripture), a qualification that Shi'i jurists including Khomeini consider absolutely necessary in judges (chapter 2, section 3). Therefore the current use of *'elm* in Iranian *hadd* trials, one of the most formidable obstacles to lenience observed throughout the case studies, rests on multiple layers of uncertainty and could easily be prevented through legislation based on a different reading of the Shi'i sources which are the law's ostensible origin – though the 2012 penal code fails to do this.

The inequalities inherent in marriage, divorce and child custody laws were observed as inimical to lenience in chapter 9. In cases 1-3, wives were sentenced to death partially as a result of these laws. In case 1 the court's argument for denying the wife a divorce was that it would have caused her children to lose their mother. This would have been untenable had wives been able to obtain custody of their children without proving their husbands' unsuitability. The difficulty in proving this is demonstrated by the fact that in case 1, the husband was indeed unsuitable given his addiction to narcotics and failure to support his family financially: both legal grounds for divorce and unsuitability for custody. Had the wife been able to divorce, she and her co-defendant could not have been sentenced to death for adultery.

Divorce and custody laws decisively affected cases 2 and 3, where wives could not leave husbands who forced them into prostitution, thereby causing them to be condemned to death for adultery. This was combined with the fact that even if

divorced, they would have had to leave their children with men who might have prostituted them, having no other source of income. Meanwhile their criminal responsibility was considered intact because judges used their discretion to decide that the wives' and children's abuse did not constitute 'coercion'. However, especially given the prevalence of forced marriage in the rural areas where many defendants lived, it is clear that inequalities embedded in various laws can permit women to be condemned to death for acts over which they have absolutely no control, hence in some fundamental sense no criminal responsibility.

Another inequality inherent in the law is the different age of criminal responsibility for males and females. This meant, as discussed in chapter 7, section 7, that in several cases girls aged barely over 9 were condemned, sometimes to death, for *zina* while boys barely under 15 were unpunished for rape, purely because of their youth.

The most basic obstacle to avoiding death and amputation penalties in *hudud* is of course the fact that these penalties are enshrined in the codified law (through Shi'i law) and are difficult to remove because of their scriptural origins. As discussed regarding adultery case 13, no matter how stringent are the conditions governing these penalties, while they remain in the law there is always the possibility that in some small proportion of cases all the legal conditions will be fulfilled, rendering these penalties inevitable.

Furthermore, applicability of these penalties often depends on technicalities rather than the amount of harm inflicted, and increased harm does not necessarily correlate with heavier penalties. Amputation for theft, as explained earlier, depends on conditions which target petty theft while excluding potentially much larger corporate or governmental fraud or indeed the theft of irreplaceable works of art which are deemed 'public' (chapter 4, section 5; chapter 5, conclusion, 'social dimensions'). Consensual sodomy carries the death penalty (chapter 4, section 4), while rape of underage girls (chapter 4, section 3.3) arguably does not. Also, rape of underage girls is punished more leniently than rape of adults because of prevailing interpretations of technicalities. Adultery carries the death penalty even if enforced by its 'victim', as

in adultery cases 2 and 3 where husbands forcibly prostituted their wives. Injured parties are in many cases powerless to pardon criminals because the crimes involved, including rape, are classified as ‘crimes against God’ (*haqq Allah*, literally ‘the right of God’). Punishability depends not on harm inflicted, but on contravention of scriptural interpretations and fulfilment of technical specifications.

Many procedural obstacles to lenience are unconnected to scripture and could therefore be removed easily. However, the obstacles which derive from scripture (including reliable narrations prescribing stoning, or Qur’anic verse 5:38 which apparently mandates hand amputation for theft) are difficult to abrogate because of their scriptural origins. As explained in chapter 3, section 6 and subsections, some jurists have used scripture to argue that certain Islamic laws are permitted to change according to time and place, that some interpretations of scripture are the result of patriarchal or cultural bias, or that certain inequalities and penalties can justifiably be removed to benefit the community. Khomeini’s doctrine of the ‘absolute rule of the jurist’ (chapter 3, section 6.2) even declares it Islamically obligatory to disregard sacred laws if they endanger the community. The regime accepts this doctrine to the extent that there is a committee, the ‘Council for Discerning State Benefits’, whose task is to decree when state interests (*maslahat*, ‘benefits’) can override Islamic laws.

Some jurists reject this mechanism because it substitutes divine with human laws. However, its existence as a current doctrine of the Islamic Republic means that potentially, any obstacle to lenience, even if scripturally based, can be removed on ostensibly Islamic grounds.

Perhaps more radical is the idea (chapter 2, section 9) that during the Occultation (*gheybat*) of the Twelfth Imam, who is in hiding and therefore unavailable to legislate, *hudud* are in abeyance (*suqut*). Grand Ayatollah Sanei, for instance, believes that this is so and that crimes during Occultation are to be punished by *ta‘zirat* (discretionary penalties)³. This, he says, would be an easy way to resolve the

³ Khezr Heidari. See also Gorji, 39-40; Modarressi (1984), 55-7; Cole in Keddie, 37, 39-40; Sachedina, 20-1; Momen, 127, 186; Hairi, 67; Halm, 57-8; Rippin (vol.1), 113-4; Akhavi, 230-2; Amnesty International, “Iran: end”, 4.

conflicts about stoning and other irreversible *hudud*. However, such a position might conflict with *velayat-e faqih*, the idea that during Occultation, it is licit for qualified Islamic jurists, or the most qualified individual jurist, to govern (chapter 1, section 5.3). The existence of the Islamic Republic depends on this doctrine, which states that the Imam's function of government is not lapsed but rather entrusted to qualified jurists⁴. *Suqut*, therefore, would have to be framed in such a way as to include the Imam's function of implementing *hudud* but not that of government. The idea of *hudud* only being applicable in a society free of want (chapter 3, section 6.5) might circumvent *hudud* without jeopardising *velayat-e faqih*.

6. Final observations.

Iranian codified *hadd* law provides theoretical opportunities to avoid irreversible *hadd* penalties in almost all cases, and if it were scrupulously applied as it is written, lenience could easily follow. Even in the unlikely event of the required number of witnesses (two for theft, four for 'carnal' crimes) testifying, defendants with adequate legal representation could avoid irreversible penalties by declaring repentance before the testimony was finished. Self-incrimination through confession could, obviously, theoretically be avoided by simply not confessing, and if the authorities wished to maximise lenience, they could easily do so by not prosecuting carnal crimes without complainants, accepting rape claims as obstacles to punishment, refraining from illegally using pregnancy as proof, and employing the other manifold opportunities to avoid meting out irreversible *hadd* penalties. The complicated parameters governing such things as *ehsan*, criminal responsibility, penetration and amputation for theft, cursorily mentioned in codified law but laid out in great detail in Shi'i scripture and juristic works, could likewise prevent almost all death and amputation sentences in *hudud* if used judiciously.

However, this is not what emerges from the documents available. The cases reviewed suggest that because the law is unclear, complicated parameters for *ehsan*, theft and so on are sometimes interpreted in ways which facilitate conviction, or their

⁴ Enayat, 160-3; Kelidar, 82; Momen, 190, 194-5; Halm, 56-8; Martin, *Creating*, 115-24.

subtleties are simply ignored. Suspects may not know their legally sanctioned opportunities to avoid punishment, because they commonly have no lawyers or are only given lawyers after having unknowingly incriminated themselves. They do not necessarily have the luxury of not confessing, because confession may be extracted out of court through intimidation, trickery or even physical coercion. The fact that this is technically illegal does not prevent it from happening, and some of the cases analysed (e.g. fornication case 1, sodomy case 4, adultery case 8) show judicial authorities engaging in very clear illegalities with impunity (e.g. executions despite stays of execution, or suppression of appeals as in fornication case 1). The cases reviewed suggest that the authorities, judges but also prosecutors, interrogators and other officials, sometimes do illegally prosecute carnal crimes without complainants, do illegally use pregnancy as proof, do illegally fail to provide lawyers, and contravene many laws no matter how explicit they are. Sometimes they break the law without providing an ostensible justification, and sometimes they rationalise this through *'elm-e qazi*, one of the most formidable tools for judicial discretion and obstacles to lenience in *hudud*.

In addition to all this, the cases available suggest that other legally entrenched concepts, such as the inequalities embedded in divorce and child custody laws, can cause defendants to have no control over the circumstances that culminate in their prosecution. Furthermore, social forces may make prosecution or conviction more likely. Judges may be biased by cultural assumptions or local gossip, false confessions may be enforced by relatives, and poverty or abusive families may leave vulnerable individuals no option but to engage in illegal behaviour.

In short, the available material suggests that although the Supreme Court may exhibit greater leniency overall than first-instance courts, by frequently overturning death or amputation sentences, the system's potential for lenience is not always fully exploited. To a large extent, legal reforms with a solid basis in Shi'i texts could easily reduce the outlets for discretion and minimise the applicability of irreversible *hadd* penalties without compromising Islamicity. This is observed through the scholarly debates about how Shi'i concepts could be reinterpreted and codified, and

seen in the ways in which legislators codify alternative or even radical interpretations. For example, the supposedly non-negotiable scriptural penalty of stoning was rendered commutable in the state's best interests (*maslahat*) in the penal code bill and omitted (though not abrogated!) in the 2012 penal code. This extensive discussion among Iranian scholars, legislators and human-rights activists could potentially promote the creation of more lenient, though still Shi'i, laws. Enforcing compliance by judicial authorities is another issue altogether. It could be promoted by appeals to self-interest. If state policy were to avoid human-rights faux pas for diplomatic reasons or to reduce internal discontent, individual officials might be persuaded to behave in such a way as to comply with that policy, thereby safeguarding their positions within the system.

Even if every law, and the behaviour of every official, were calibrated for maximum leniency, penalties with strong scriptural support would be difficult to abrogate outright without challenging the notion of eternally binding scriptural commandments. With those penalties enshrined in law, they could, however infrequently, still be applicable if their admittedly stringent conditions were fulfilled.

The arguably radical concepts described in chapter 3, section 6 and subsections, could provide ways to avoid these penalties altogether while remaining within an Islamic framework⁵. Where possible, novel scriptural interpretations could be used. Where this presented problems, the concept of *maslahat* could be employed. After all, Khomeini's doctrine of subordinating Islamic laws to state interests includes the proposition that it is *Islamically obligatory* to do so in defence of the Islamic state and therefore Islam itself. This doctrine is current (chapter 3, section 6.2), and could, at the regime's discretion, be used to eliminate every possibility of irreversible *hadd* penalties without officially declaring 'divine laws' incorrect. Similarly, to minimise discontent nationally and internationally, it could eliminate various inequalities and limitations on harmless acts mandated by prevailing scriptural interpretations.

⁵ The conundrum facing the Islamic Republic is aptly expressed by Olivier Roy: "how to secularize politics in a society which cannot afford to reject its heritage and origin: an Islamic Revolution" ("The crisis", 215-6). See also Mayer, "Islamic rights", 271, 291-3, and Martin, *Creating*, 199 ("without visible enforcement of the shari'a their political ideology may become nebulous [and fail to provide] cohesive identity").

This could create a ‘bypass valve’ whereby a system which declares itself Islamic could justify side-stepping apparently ‘problematic’ portions of Islamic scripture, thereby potentially achieving the flexible responsiveness to changing circumstances available in humanistic law. This would be a more roundabout way of permitting flexibility than those employed by scripturally unconstrained systems. The theoretical and structural differences between these two models would remain, as would the constant danger of harsher scriptural interpretations re-emerging; but the end results, including the possibility of avoiding certain penalties, could converge.

However, legal reform, whether based on literal or alternative scriptural readings or invoking justifications for greater flexibility, depends on whether the regime decides that reducing or eliminating irreversible *hadd* penalties is important enough to justify this endeavour. The regime’s failure to exploit lenient opportunities in the 2012 penal code, which in many ways is sterner than its predecessor, shows that the forces against such reform remain potent. So does the regime’s treatment of many reformist jurists whose ideas, discussed in chapter 1, section 5.5, propose paths for Islamic flexibility other than the ‘governmental’ tool of *maslahat*.

Difficulties in obtaining primary materials prevented this project from making authoritative statements about *all hadd* cases or even a statistically significant number of *hadd* cases involving execution or amputation. This is regrettable and could not, given the circumstances, be helped for the time being. Later studies, unfettered by such limitations, could shed more light on whether the mechanisms exhibited by this sample of cases are prevalent or exceptional, and whether additional patterns exist. For now, however, we have at least a reasonable impression of what codified Iranian *hadd* laws are, how contemporary Iranian legal scholars, lawyers and judges understand them and trace them to Shi‘i sources, and some ways in which they have been applied in practice. The fact that the mechanisms displayed by this documentation reinforced each other across different cases suggests that even through this admittedly limited sample, some important features of *hadd* prosecution can be identified if only in a tentative manner.

Bibliography.

Persian-language sources:

Abbasqolizadeh, Mahbubeh. "Nezam-e qaza'i dar tangna". *Zanan*, Tir 1386 AP* (June/July 2007), pp. 14-8.

Aghaei, Mohammad Ali. *Ayat al-Ahkam-e Huquqi (Madani – Keifari)*. Tehran: Khatt-e Sevvom, 1380 AP (2001/2).

Alborz. "Tamdid-e ejraye Qanun-e Mojazat-e Eslami". 19 December 2010. <http://www.alborznews.co/view/8785.aspx> Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrLj>.

Alinezhad, Masih. "Dozdihaye seh hezar miliardi ro nabayyad kesh dad, amma kesh-o-qows-e javanak-e zurgir bar balaye dar lezzat darad". 20 January 2013. <http://masihalinejad.com/?p=5796> Archived at <http://www.webcitation.org/6EvgqGFsG>.

Amini, Asieh. "Atefeh faqat 16 sal dasht". *Zanan*, October 2004. <http://www.zanan.co.ir/social/000405.html>. Opened 20/1/08. Copies with author.

Amini, Asieh. "Azadi pas az 13 sal-e delhoreye sangsar". *Rooz*, 4 May 2009. <http://www.roozonline.com/persian/news/newsitem/article/13-16.html> Opened 28/10/11. Archived at <http://www.webcitation.org/62mjHygMt>.

Amini, Asieh. "Boghze tabrik baraye hazf-e sangsar". *Rooz*, 23 June 2009. <http://www.roozonline.com/persian/news/newsitem/article/-d77f7137b4.html> Opened 7/12/11. Archived at <http://www.webcitation.org/63lbL7UQv>.

Amini, Asieh. "Dialoghayi az yek safar-e 'sangin'". *Meydaan*, 11 July 2007. <http://www.meydaan.org/showarticle.aspx?arid=283&cid=46> Opened 7/12/11. Archived at <http://www.webcitation.org/63lbozJfU>.

Amini, Asieh. "Kobra Najjar dar astaneye azadi". *Rooz*, 20 January 2009. http://www.roozonline.com/archives/2009/01/post_11128.php (opened 5/4/09, copies with author). Now available at http://edaamna.blogspot.com/2010/03/blog-post_8309.html and

- <http://www.chrr.biz/spip.php?article3170> and archived at <http://www.webcitation.org/63lckL9cX>.
- Amini, Asieh. "Parvandeyaye 'sang'in!". *Zanan*, Tir 1386 AP (June/July 2007), pp. 2-11.
- Amini, Asieh. "Payan-e pish-furush-e yek ruspi-e kuchak". *Zanan*, March 2005. <http://www.zanan.co.ir/social/000468.html>. Opened 20/1/08. Now available at <http://www.shabakeh.de/archives/individual/000145.html#more> and archived at <http://www.webcitation.org/63tYqSkz8>.
- Amini, Asieh. "Se sal ba Delara Darabi". *Rooz*, 3 May 2009. <http://www.roozonline.com/persian/news/newsitem/article/-4d076d8319.html>. Opened 12/12/11. Archived at <http://www.webcitation.org/63tDrpRv9>.
- Amini, Asieh. "Tan furushi-e madaram tanha rah-e nejat-e ma bud". *Rooz*, 6 June 2007. http://adv.dirroots.info/spip.php?page=imprimer&id_article=4382. Opened 5/4/09. Archived at <http://www.webcitation.org/63ldmG1vI>.
- Anvari, Amir Hadi. "Vaqti joz shaneye ma'mur-e e'dam panahgahi nist". 20 January 2013. <http://www.anvarionline.net/?p=2695>. Archived at <http://www.webcitation.org/6EvhJvFQ1>.
- Arabiyan, Asghar. "E'tebar-e 'elm-e qazi va chaleshaye pish ro". *Borhan va Erfan*, year 3, number 7 – spring 1385 AP (2006), pp. 47-77.
- '*Asr Iran*. "Amar va arayesh-e siyasi-e montakhaban-e majles-e hashtom dar marhaleye dovom-e entekhabat". 27 April 2008. Archived at <http://www.webcitation.org/6EuWt6MKq>.
- '*Asr Iran*. "Joz'iat-e takan dahande az parvandeye sangsar-e Takestan". 5 August 2007. <http://www.asriran.com/view.php?id=22804>. Opened 28/10/11. Archived at <http://www.webcitation.org/62miyV9zs>.
- Baiburdi, Soheila. "Tafavot-e zan o mard dar diyeh". *Borhan va Erfan*, year 3, number 7 – spring 1385 AP (2006), pp. 9-26.
- Baqi, Maryam. "Nezam bayyad tasmim begirad: goftogu ba Ayatollah Mar'ashi". 23 July 2007. <http://shahrvandemroz.blogfa.com/post-78.aspx>. Archived at <http://www.webcitation.org/6EvhUi4EQ>.
- Bazgir, Yadollah. *Qanun-e Mojizat-e Eslami dar Ayyeneye Araye Divan 'ali-e Keshvar*. Tehran: Entesharat-e Bazgir, 1382 AP (2003/4).

- BBC Persian. "Abdolkarim Soroush dar Landan, ruh-e Popper bar faraz-e Tehran".
14 July 2009.
http://www.bbc.co.uk/persian/iran/2009/07/090714_mg_sorosh_london_after_ir88.shtml Archived at <http://www.webcitation.org/6EvhkHvq6>.
- BBC Persian. "Mard mahkum be sangsar be dar avikhte shod". 19 February 2009.
http://www.bbc.co.uk/persian/iran/2009/02/090219_pm_stoning_iran.shtml.
Opened 7/12/11, archived at <http://www.webcitation.org/63leDTJYZ>.
- Bedashti, Sanazollah: "Tavaqqof-e ejraye noh hokm-e sangsar, do hafte pas az ebraz-e negarani-e vokala". Meydaan, 6 August 2008.
<http://www.meydaan.com/wwShow.aspx?wwid=1000>. Opened 7/12/11,
archived at <http://www.webcitation.org/63lfBTmhh>.
- Behrang, Kamyar. "Mojtahed-e bi parva, Ahmad Qabel". 16 October 2012.
Archived at <http://www.webcitation.org/6Evhtsyvw>.
- Bultan News. "Mojazat-e sangsar as qanun-e jadid-e Eslami hazf shod". 16 February 2013. Archived at <http://www.webcitation.org/6EgifePEA>.
- Campaign-e Beinolmellali-e Huquq-e Bashar dar Iran. "Hamsar-e Ja'far Kazemi: bedun-e inke be man o vakilesh beguyand u ra e'dam kardand". 24 January 2011. http://persian.iranhumanrights.org/1389/11/kazemi_executed_jan/
Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrMH>.
- Eshkevari, Hasan Yousefi. "'Aql-e bashar va 'elm-e nabi'". 30 November 2010.
<http://yousefieshkevari.com/?p=1359> Archived at
<http://www.webcitation.org/6EvjDF7rV>.
- Eshkevari, Hasan Yousefi. "Hormat-e shar'i-e hamjensgarai". 3 September 2012.
<http://yousefieshkevari.com/?p=3073> Archived at
<http://www.webcitation.org/6EvjKNeVz>.
- Eshkevari, Hasan Yousefi. "Ta'moli dar hokm-e 'sangsar' ba faqihan". 31 August 2010. <http://www.roozonline.com/persian/news/newsitem/article/-917fc35206.html> Archived at <http://www.webcitation.org/6EJmfRn7E>.
- E'temad*. "Joz'iat-e parvandeye do khahar mahkum be sangsar". 4 February 2008.
<http://www.iran-uk.com/article.php?id=25092> Archived at
<http://www.webcitation.org/63lg93pJM>.

- Fa'alin-e Huquq-e Bashari va Demokrasi dar Iran. "Vakil-e zendani taht-e shekanjehaye jismi va ruhi-e bazjuyan-e Vezarat-e Ettela'at". 15 October 2010. http://hrdai.blogspot.com/2010/10/blog-post_5252.html Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrMQ>.
- Fair Family Law. "Sodur-e Keifarkhast baraye Nasrin Sotudeh ba 3 etteham, va didar-e hamsar-e vei ba ra'is-e koll-e dadgostari". 18 October 2010. <http://fairfamilylaw.info/spip.php?article1657> Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrMZ>.
- Fararu News*. "Qanun-e jadid-e Mojazat-e Eslami bargasht khurd". 31 August 2012. Opened 16/1/13. Archived at <http://www.webcitation.org/6DYkRuAvJ>.
- Farhangi, Mohammad Hossein. "Manabe' va mabani-e moshtarak-e feqh va huquq-e hakemiyat". *Borhan va Erfan*, year 3, n. 7 – spring 2006, pp. 79-106.
- Gilani, Mohammad Mohammadi. *Huquq-e Keifari dar Eslami*. Tehran: Entesharat al-Mahdi, 1362 AP (1983/4).
- Golduzian, Iraj. *Huquq-e Jaza'i-e Ekhtesasi*. Tehran: Entesharat-e Daneshgah-e Tehran, 1382 AP (2003/4).
- Gorji, Abolqasem. *Diyat*. Tehran: Entesharat-e Daneshgah-e Tehran, 1380 (2001/2).
- Gorji, Abolqasem. *Hudud, Ta'zirat va Qesas*. Tehran: Entesharat-e Daneshgah-e Tehran, 1381 AP (2002/3).
- Gorji, Mahin. "In bar dar Sari: mard dar astanehye sangsar". Radio Farda, 31 January 2008. http://www.radiofarda.com/content/f2_stoning_Sari/432845.html. Opened 7/12/11; archived at <http://www.webcitation.org/63ljAX6BX>.
- Haji Deh Abadi, Ahmad. "Qa'edeye Darr' dar feqh-e Emamiyyeh va huquq-e Iran". *Feqh-e Huquqi*, Year 2, Autumn 1384 AP (2005), pp. 33-82.
- Heidari, Mohammad. "Vazifeye hameye ma, huzur dar jebheye morede niaz-e nezam-e moqaddas-e Eslami ast". 1 October 2012. <http://sedayar.blogfa.com/tag/%D8%AF%DA%A9%D8%AA%D8%B1-%D8%A7%D8%B5%D8%BA%D8%B1-%D8%B9%D8%B1%D8%A8%DB%8C%D8%A7%D9%86> Archived at <http://www.webcitation.org/6EvjpiEr1>.

- Hojjati, Mehdi. "Aya mojazat-e haddi qabel-e taghiir ast?". 20 February 2009. <http://www.hojjati-lawyer.blogfa.com/author-hojjati-lawyer.aspx>. Opened 22/4/10. Archived at <http://www.webcitation.org/616KkhrMi>. Clearer copies with author.
- Hojjati, Mehdi. "Layeheye Mojazat-e Eslami pas az 1000 ruz be istgah-e akhar resid". 27 July 2011. <http://www.hojjati-lawyer.blogfa.com/author-hojjati-lawyer.aspx> Opened 5/1/12. Archived at <http://www.webcitation.org/616KkhrMi>. Copies with author.
- Hojjati, Mehdi. *Qanun-e Mojazat-e Eslami dar Nazm-e Huquqi-e Kanuni*. Tehran: Misaq-e 'Edalat, 1384 AP (2005/6).
- ICANA (Islamic Consultative Assembly News Agency). "Neshast-e barresi-e 'Akherin tahavvolat-e Qanun-e Mojazat-e Eslami' bar gozar mishavad". 5 March 2013. <http://vista.ir/news/7416237> Archived at <http://www.webcitation.org/6Eu6oRdzn>
- Iran*. "Partab az bolandi, mojazat-e 2 adam-roba". 24 May 2007. <http://www.iran-newspaper.com/1386/860303/html/casual.htm#s700407> Opened 7/12/11; copies with author (caching forbidden).
- Iran Bar Association news, "Ejraye ahkami mesle sangsar bayyad bana bar salahdid-e riasat-e qovv-e qazaiyye anjam shavad". 21 June 2007. www.iranbar.org/far01p55.php Opened 22/4/10. Copies with author.
- Iranian parliament library, museum and document centre. Minutes of the fourth parliament (1992-6), session #331, page 2. Archived at <http://www.webcitation.org/6ELFpg4n5>
- IRNA. "Asas va payeye estevar-e din bar mehvar-e velayat-e faqih ast". 12 November 2011. Archived at <http://www.webcitation.org/6ELG0zsbB>
- ISNA (Iranian Students' News Agency). "Ra'is-e koll-e dadgostari-e Khuzestan: Qanun-e jadid-e Mojazat-e Eslami mored-e niaz-e kollieye maraje'-ye qaza'i ast". 14 February 2013. Archived at <http://www.webcitation.org/6EgifepEA>.
- Ja'fari Langarudi, Mohammad Ja'far. *Maktabhaye Huquqi dar Huquq-e Eslam*. Tehran: Entesharat-e Ebn Sina, 1353 AP (1974-5).
- Ja'fari Langarudi, Mohammad Ja'far. *Terminolozhi-e Huquq*. Tehran: Ketabkhaneye Ganj-e Danesh, 1367 AP (1988-9); Thirteenth Edition, 1382 AP (2003/4).

- Kadivar, Mohsen. “Adam-e javaz-e erbat-e jensi va ezdevaj ba hamjens”.
<http://kadivar.com/?p=9491> June-July 2012. Archived at
<http://www.webcitation.org/6EvkG8iPM>.
- Kadivar, Mohsen. “Hadd-e shar‘i, haqq Allah va haqq al-nas”. 19 July 2012.
<http://kadivar.com/?p=9364> Archived at
<http://www.webcitation.org/6EIP5vjPd>.
- Kadivar, Mohsen. “Qabul nadashtan-e barkhi ahkam az jomleye sangsar”.
<http://kadivar.com/?p=8089> 29 May 2011. Archived at
<http://www.webcitation.org/6EvkQF90X>.
- Kar, Mehrangiz, and Soheila Vahdati. “Cheshm-andaz va chaleshaye campaign-e ‘qanun bi sangsar’”. *Iran Emrooz*, 10 July 2007.
<http://zanan.iran-emrooz.net/index.php?/zanan/more/13459> Opened 20/8/11.
 Archived at <http://www.webcitation.org/619IGiLzu>.
- Kermani, Alireza. “Zani dar زندان-e Tabriz dar astaneye sangsar shodan ast”. Radio Farda, 17 June 2010.
http://www.radiofarda.com/content/f4_Mohammadi_stoning_women_Tabriz_vahdati/2074222.html. Opened 7/12/11. Archived at
<http://www.webcitation.org/63lm1veX7>.
- Khabarnameye Amir Kabir. “Afv-e Mokarrameh Ebrahimi, zan mahkum be sangsar dar Takestan”. 17 March 2008.
<http://www.autnews.info/archives/1386,12,0008409> Opened 9/9/08. Copies with author.
- Khalili, Mahyar. *Tarikh-e Shekanje: Tarikh-e Koshtar va Azar dar Iran*. Tehran: Ghasidehsara, 2003 (1381 AP).
- Khezr Heidari, Fahimeh. “Ejraye sangsar dar gheybat-e Emam-e Ma’sum ja’ez nist”. *E’temad-e Melli*, 26 April 2008. <http://www.asriran.com/view.php?id=40929>
 Opened 18/8/11. Archived at <http://www.webcitation.org/619LArJlQ>.
- Khomeini, Ruhollah Mousavi. *Tahrir al-Vasileh* (volume 4). Translated by Hojjatoleslam Mousavi Hamedani. Qom: Dar al-‘Ulum, 1386 AP (2007/8).
- Khosroshahi, Qodratallah (editor). *Falsafeye Huquq*. Qom: Mo’asseseye Amuzeshi o Pazhuheshi-e ‘Emam Khomeini’, 1378 AP (1999/2000).

- Komiteye Gozareshgaran-e Huquq-e Bashar. "Mohammad va Abdollah Fatehi sobh-e farda dar زندان-e Esfahan e'dam khahand shod". 16 May 2011.
<http://chrr.biz/spip.php?article14424> Opened 20/8/11. Archived at
<http://www.webcitation.org/616KkhrMz>.
- Letter to Ayatollah Shahrudi from lawyers defending stoning cases. October 2006.
 Copies with author.
- Malekian, Mostafa. "Hakemiat-e dini, no-andishan-e dini, jonbesh-e eslah-talabi".
Baztab-e andishe, Mehr 1379 AP (September-October 2000), number 7.
<http://www.ensani.ir/fa/content/90443/default.aspx> Archived at
<http://www.webcitation.org/6EvkaW5O7>.
- Malekian, Mostafa. "No-andishi-e dini va mas'aleye zanan". *Baztab-e andishe*, Tir
 1379 AP (June-July 2000), n. 4.
<http://www.ensani.ir/fa/content/90237/default.aspx> Archived at
<http://www.webcitation.org/6Evkkbu1b>.
- Mar'ashi Shushtari, Mohammad Hassan. *Didgahhaye No dar Huquq-e Keifari-e Eslam*. Tehran: Nashr-e Mizan, 1373 AP (1994/5).
- Mashini, Farideh. "Dar Qor'an mojazat-e sangsar chist?". *Zanan*, Tir 1386 AP
 (June/July 2007), pp. 12-3.
- Mas'ud, Gholamhossein. *Ayyin-e Dadresi-e Keifari: Qararhaye Mahdud Konandeye Azadi*. Tehran: Amir Kabir, 1374 AP (1995/6).
- Mehr news. "Hokm-e qat'-e yadd dar Shiraz anjam shod". 24 January 2013.
<http://www.mehrnews.com/detail/News/1799193> Archived at
<http://www.webcitation.org/6Evl9dnVW>.
- Melli-Mazhabi. "Sangsar-e chahar zan dar sokut-e khabari". 3 November 2012.
 Archived at <http://www.webcitation.org/6EuOIad7G>.
- Me'marian, Omid. "Ta vaqti sangsar dar qanun ast, ejra' ham mishavad: goft o gu ba Shadi Sadr". *Meydaan*, 30 Mordad 1387 AP (20 August 2008).
<http://www.meydaan.net/wwShow.aspx?wwid=1024> Opened 30/8/08.
 Archived at <http://www.webcitation.org/619MhUsGr>.
- Meydaan. "Abdollah Farivar, mahkum be sangsar, dar زندان-e Sari be dar avikhte shod". 1 Esfand 1387 AP (19 February 2009).

- <http://meydaan.net/Showarticle.aspx?arid=762> Opened 21/8/11. Archived at <http://www.webcitation.org/61AJdP5Bj>.
- Meydaan. "Mokarrameh Ebrahimi, mahkum be sangsar, afv shod". 27 Esfand 1386 AP (17 March 2008). <http://www.meydaan.com/Showarticle.aspx?arid=502> Opened 21/8/11. Archived at <http://www.webcitation.org/61AJsCAne>.
- Meydaan. "Nameye jam'i az vokalaye dadgostari be Shahrudi: tavaqqof-e ejraye hokm-e sangsar ra qanun konid". 29 Mehr 1385 AP (21 October 2006). <http://www.meydaan.net/wwShow.aspx?wwid=105> Opened 22/4/09. Archived at <http://www.webcitation.org/61AKS4dLU>.
- Mo'avvenat-e Huquqi va Omur-e Majles (Legal Department of the Iranian Parliament). "Jadval-e nerkh-e diyeh 1391". <http://hvm.ir/files/law/dyye1391.pdf> Archived at <http://www.webcitation.org/6EvlgDMuP>.
- Mohammadi, Abolhassan. *Mabani-e Estenbat: Huquq-e Eslami ya Osul-e Feqh*. Tehran: Entesharat-e Daneshgah-e Tehran, 1375 AP (1996/7).
- Mohaqqeq Damad, Mostafa. "Mojazat-e 'amal-e monaffi-e 'effat dar Qor'an". *Majalleye Tahqiqat-e Huquqi* N. 43: Spring-Summer 1385 (2006) pp. 11-57.
- Mohaqqeq Damad, Mostafa. *Qava'ed-e Feqh*. Tehran: Markaz-e Nasher-e Olum-e Eslami, 1377 AP (1998/9).
- Mojtahed Shabestari, Mohammad. "Mosahebeye Radio Zamaneh ba Mojtahed Shabestari dar bareye huquq-e bashar". 21 December 2008. <http://mojtahedshabestari.blogfa.com/post-12.aspx> Archived at <http://www.webcitation.org/6EvlqEoNF>.
- Mojtahed Shabestari, Mohammad. "Sangsar-e ensan be nam-e khoda?" 13 July 2010. <http://www.irangreenvoice.com/article/2010/jul/13/5243> Copies with author.
- Mo'meni, 'Abedin. *Huquq-e Jaza'i-e Ekhtesasi-e Eslam*. Tehran: Entesharat-e Khatt-e Sevvom, 1381 AP (2002/3).
- Montazeri, Hossein'ali. "Pasokh be porseshhaye feqhi (masa'el-e jensi)". 2 October 2007. Archived at <http://www.webcitation.org/6Evm9oKre>.
- Montazeri, Hossein'ali. *Resaleyeh Tozih al-Masa'el, ba Eslahat va Ezafat*. Tehran: Entesharat-e Sarayi, 1381 AP (2002-3).

- Mortazavi, Fattah. *Sharh-e Qanun-e Mojazat-e Eslami (Mabani-e Feqhi)* (3 volumes). Tehran: Entesharat-e Majd, 1380 AP (2001/2).
- Mostafaei, Mohammad. "Bazdasht-e 29 wakil-e dadgostari". 4 August 2011. <http://www.modafe.com/NewsDetail.aspx?Id=714> Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrN8>.
- Mostafaei, Mohammad. "Dard o delhaye Amaneh Bahrami". 2 August 2011. <http://www.modafe.com/NewsDetail.aspx?Id=711> Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrNH>.
- Mostafaei, Mohammad. "Davud Fardbache az etteham-e moharebeh raha shod". 21 Dey 1388 AP (11 January 2010). <http://mohegh.blogfa.com/post-293.aspx> Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrNP>.
- Mostafaei, Mohammad. "Farda do nafar be jorm-e moharebeh dar Esfahan e' dam khahand shod". RAHANA, 16 May 2011. <http://www.rahana.org/archives/39884>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrNY>.
- Mostafaei, Mohammad. "Gozareshi az parvandeeye mottaheman zir-e 18 sal dar Iran dar entezar-e chubeye dar – Zahra Ja'farzadeh". 25 April 2009. <http://mohegh.blogfa.com/post-63.aspx>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrNh>.
- Mostafaei, Mohammad. "Mohammadreza Haddadi be etteham-e ertekab-e jorm dar kudaki ruz-e chaharshanbeh e' dam khahad shod". 3 Khordad 1388 AP (24 May 2009). <http://mohegh.blogfa.com/post-86.aspx> Opened 20/8/11. <http://www.webcitation.org/616KkhrNp>.
- Mostafaei, Mohammad. "Piramun-e e' dam-e Mohammadreza Ali Zamani va Arash Rahmanipour be etteham-e moharebeh". 9 Bahman 1388 AP (29 January 2010). <http://mohegh.blogfa.com/post-302.aspx> Opened 20/8/11. <http://www.webcitation.org/616KkhrNy>.
- Mostafaei, Mohammad. "Sangsar va e' dam-e qaribolvoqu'-e yek zan o mard tar Tabriz". 20 May 2009. <http://www.mohegh.blogfa.com/post-83.aspx>. Opened 20/8/11. <http://www.webcitation.org/616KkhrO6>.

- Mostafaei, Mohammad. "Sodur-e hokm-e e'dam va ejra'ye an dar zarf-e do ruz". <http://mohegh.blogfa.com/post-93.aspx>. 9 Khordad 1388 AP (30 May 2009). Opened 20/8/11. <http://www.webcitation.org/616KkhrOF>.
- Najvan, Shirin. "Barabari-e jensiyati khasteye mast". *Zanan*, Tir 1386 AP (June/July 2007), pp. 23-4.
- Nobahar, Rahim. "Ahdaf-e mojazatha dar jarayem-e jensi mostowjeb-e hadd dar huquq-e keifari-e Eslam". *Nameye Mofid*, No. 23: Autumn 1379 AP (2000), pp. 133-62.
- Nobahar, Rahim. "Barresi-e qa'edeye feqhi-e hormat-e tanfir az din". *Yadnameye shadravan-e Doktor Mahdi Shahidi*, special issue of *Majalleye Tahqiqat-e Huquqi*, Autumn-Winter 1384 AP (2005/6), pp. 129-171.
- Nobahar, Rahim. "Barresi va naqd-e adeleye hadd budan-e qavvadi". *Borhan va Erfan*, year 3, number 7 – spring 1385 AP (2006), pp. 149-169.
- Nobahar, Rahim. "Be suye mojazathaye har che ensanitar". *Collected Papers of the International Conference on Human Rights and the Dialogue of Civilizations*. Qom: Mofid University Publications Institute, 2001; pp. 325-42.
- Nobahar, Rahim. "Qachaq-e zanan baraye ruspigari az manzar-e amuzeshhaye Eslami ba negah be moqarrarat-e beinolmellali va huquq-e Iran". *Modarres*, Series 10, Number 3: Autumn 1375 AP (1996), pp. 187-220.
- Nurbaha, Reza. "Keyfar-e marg, bovad ya nabovad?". *Yadnameye Shadravan-e Doktor Mahdi Shahidi*, special issue of *Majalleye Tahqiqat-e Huquqi*, Autumn-Winter 1384 AP (2005/6), pp. 115-128.
- Nurbaha, Reza. *Negahi be Qanun-e Mojazat-e Eslami*. Tehran: Nashr-e Mizan: Nashr-e Dadgostar, 1377 AP (1998/9).
- Nurizad, Mohammad, and Ahmad Qabel. "Porseshhaye bi-rahmane va pasokhhaye 'alemane (Ostad Ahmad Qabel)". 30 July 2011. Opened 6/3/13. <http://nurizad.info/?p=5970> Archived at <http://www.webcitation.org/6Evmgbudm>.
- Nurizad, Mohammad, and Mohsen Kadivar. "Pasokhhaye ostad Mohsen Kadivar be porseshhaye Mohammad Nurizad". <http://nurizad.info/?p=11036> 8 November 2011. Opened 24/1/13. Archived at <http://www.webcitation.org/6EvmvZuHO>.

- Paygah-e Ettela'-resani-e Basij-e Huquqdanan. "Layeheye Qanun-e Mojazat-e Eslami be Majles baz migardad". 5 September 2010.
<http://basijuristics.ir/NSite/Fullstory/?Id=54>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrOO>.
- Pourzand, Leili. "Huquq-e kudak az didgah-e qavanin-e Iran". Gozaar, 20 October 2007. <http://www.gozaar.org/persian/articles-fa/3692.html> Opened 5/3/10. Archived at <http://www.webcitation.org/63logHYrQ>.
- Qabel, Ahmad. "Barresi-e hokm-e rajm" (8 parts). 19 March 2011.
http://ghabel.blogspot.com/2011/03/blog-post_19.html Archived at <http://www.webcitation.org/6EvnKVabU>.
- Qabel, Ahmad. "Nameh be Rahbar-e Jomhuri-e Eslami-e Iran". BBC Persian, 10 June 2005. http://www.bbc.co.uk/persian/iran/story/2005/06/050601_ahmad-qabel-letter.shtml Copies with author.
- Qazi, Fereshteh. "Aya mojazat-e qat'-e dast dar pish ast?". *Rooz*, 19 November 2009.
<http://www.roozonline.com/persian/news/newsitem/article/-d7d95f9e2c.html>.
 Opened 7/12/11. Archived at <http://www.webcitation.org/63lmxAUkg>.
- Qazi, Sufia. "Pasokh-e Ayatollah Montazeri be ezharat-e rahbar: e'teraf-e fard aleyhe khudesh mo'tabar nist". 4 September 2009.
<http://www.rahesabz.net/story/1850/> Archived at <http://www.webcitation.org/6Evncli3E>.
- Quds*. "Az suye qozzat-e sho'beye dovom-e dadgah-e keifari-e ostan-e Fars: 2 javan-e sheitan seffat be partab az bolandi mahkum shodand". 2 January 2008.
<http://www.qudsdaily.com/archive/1386/html/10/1386-10-12/page58.html#0>
 Opened 7/12/11. Archived at <http://www.webcitation.org/63lnPE1Ut>.
- Radio Farda. "Do nafar be 'partab az bolandi' mahkum shodand". 10 January 2008.
http://www.radiofarda.com/content/o2_exectuion/429528.html. Opened 7/12/11; archived at <http://www.webcitation.org/63lkINVAk>.
- Radio Farda. "Ejraye hokm-e qat'-e dast-e rast va paye chap dar Zahedan". 16 Dey 1386 AP (6 January 2008).
http://www.radiofarda.com/content/f3_zahedan_amputation/429121.html.
 Opened 21/8/11. Archived at <http://www.webcitation.org/61ANr0bGj>.

- Radio Farda, “Matn-e kamel-e so’al-e Radio Farda va pasokh-e Ayatollah Montazeri dar bareye hokm-e sangsar”, 13 July 2007:
<http://www.radiofarda.com/content/backgroundfullpage/402146.html>
Archived at <http://www.webcitation.org/6EvnlGEgR>.
- Radio Farda. “Montazeri: Sangsar dar Takestan, bar khelaf-e mavazin bud”. 13 July 2007.
http://www.radiofarda.com/content/f2_stoning_Montazeri_answer/402142.html
Archived at <http://www.webcitation.org/6EvnsWbge>.
- Radio Zamaaneh. “E’dam-e sizdah nafar dar زندان-e Qezel Hesar”. 7 June 2010.
http://zamaaneh.com/news/2010/06/post_13391.html. Opened 20/8/11.
Archived at <http://www.webcitation.org/616KkhrOW>.
- Radio Zamaaneh. “Nameye Shirin Ebadi be Nasrin Sotudeh”. 18 October 2010.
http://zamaaneh.com/analysis/2010/10/post_1594.html Opened 20/8/11.
Archived at <http://www.webcitation.org/616KkhrP5>.
- Radio Zamaaneh. “Yek e’dam va chahar qat’-e dast dar Esfahan”. 9 October 2011.
<http://radiozamaaneh.com/news/iran/2011/10/09/7504> Archived at
<http://www.webcitation.org/6EvoBHC79>.
- RAHANA. “Nameye estemdad-e hamsar-e Ja’far Kazemi زندانی mahkum be e’dam”. 16 May 2010. <http://www.rhairan.in/archives/12692>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrOf>.
- RAHANA. “Qat’-e pa va dast-e do sareq dar زندان-e Adel Abad-e Shiraz”. 12 December 2011. <http://www.rahana.org/archives/46519> Opened 11/1/12. Archived at <http://www.webcitation.org/64dAG6vfm>.
- Rah-e Sabz. “Nameye Hossein Khezri, زندانی mahkum be e’dam, be sazmanhaye huquq-e bashari”. 5 November 2010. <http://www.rahesabz.net/story/26741/>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrOo>.
- Ravayat News. “Saranjam hazf-e sangsar az Qanun-e Mojizat-e Eslami”. 21 January 2013. Archived at <http://www.webcitation.org/6EuW8FGdi>.
- Rostami, Nilufar. “Sakineh Mohammadi dar astaneye marg ba sang”. Rooz, 23 June 2010. <http://www.chrr.biz/spip.php?article9987> Opened 7/12/11. Archived at <http://www.webcitation.org/63lnfXEmP>.

- Rustazadeh, Siavosh. "Isa Farhadi, qorbani-e haleqeye Karaj". 27 September 2012. Archived at <http://www.webcitation.org/6EvoNs6vG>.
- Saberi, Nur Mohammad (editor). *Gozideye Ara'ye Dadgahhaye Keifari*. Tehran: Entesharat-e Ferdowsi, 1381 AP (2002/3).
- Sadeghi, Mohammad Hadi. *Jarayem Aleyhe Ashkhas*. Tehran: Nashr-e Mizan, 1382 AP (2003/4).
- Sadr, Shadi. "Raftar-e diplomatik-e qovve-i ke qarar ast qazaiyyeh bashad!". Meydaan, 10 August 2008. <http://meydaan.net/ShowArticle.aspx?arid=631> Opened 21/8/11. Archived at <http://www.webcitation.org/61APUYI4P>.
- Shahid I (Shams al-Din Muhammad b. Makki al-'Amili); translated by Alireza Feyz and Ali Mohazzeb. *Tarjomeye Ketab-e Lom'e* (2 volumes). Tehran: Entesharat-e Daneshgah-e Tehran, 1369 AP (2000/1).
- Shahid II (Zayn al-Din b. 'Ali b. Ahmad al-'Amili); translated by Hamid Masjedsara'i. *Tarjomeye Nemudari-e Sharh-e Lom'e* (volume 9: Hudud). Qom: Entesharat-e Huquq-e Eslami, 1385 AP (2006/7).
- Shahid II and Mohaqqueq Hilli, translated by Abolhassan Mohammadi. *Qesas: tarjomeye ketabi az 'Masalek al-Afham' ta' lif-e Shahid Thani va 'Sharaye' al-Ahkam' ta' lif-e Mohaqqueq Hilli*. Tehran: Chapkhaneye Daneshgah-e Tarbiat Mo'allem, 1361 AP (1982/3).
- Shahrudi, Mahmud Hashemi. *Bayestehaye Feqh-e Jaza'*. Tehran: Nashr-e Mizan, 1378 AP (1999/2000).
- Shojaei, Mitra. "Sangsar: az tavaqqof-e ejra' ta taghiir-e qanun". Deutsche Welle: az qalb-e Europa. 6 August 2008. www.dw-world.de/dw/article/0,2144,3543253,00.html. Opened 9/9/08. Archived at <http://www.webcitation.org/61AQ6KEhy>.
- Soroush, Abdolkarim. "Khoda nist, be Khoda qasam Khoda nist, nist". February-March 2011. http://www.drSoroush.com/Persian/By_DrSoroush/P-NWS-13891200-KhodaNist.html Archived at <http://www.webcitation.org/6EvozwkW>.
- Tabnak. "Ahmadinezhad: S-A mahkum be sangsar nashode". 19 September 2010. <http://www.tabnak.ir/fa/pages/?cid=120694>. Opened 16/8/11. Archived at <http://www.webcitation.org/61AQJ4rbY>.

- Tabnak. "Hazf-e sangsar az Qanun-e jadid-e Mojazat-e Eslami". 11 October 2012. Opened 16/1/13. Archived at <http://www.webcitation.org/6DjBOCZIR>.
- Tabrizi, Ayatollah Mohammad Taqi Ja'fari. *Tahqiq dar do nezam-e huquq-e jahani-e bashar (az didgah-e Eslam va Gharb) va tatbiq-e an do bar yekdigar*. Tehran: Daftar-e Khedmat-e Huquqi-e Beinolmellali-e Jomhuri-e Eslami-e Iran, 1370 AP (1991/2).
- Tankaboni, Farid (editor and translator). *Rahnamai-e Ensaniyyat – Ahadith va Tarjomeye Ketab-e Nahj al-Fasaha*. Tehran: Daftar-e Nashr-e Farhang-e Eslami, 1374 AP (1995-6).
- Tasnim News. "Shuraye Negahban be hazf-e 'rajm' as Qanun-e Mojazat-e Eslami irad nagereft". 1 March 2013. Archived at <http://www.webcitation.org/6EsWPDocB>.
- Vahidmanesh, Parvaneh. "Bar-e 'eshqi ke mal-e man nist". Komiteh-ye Gozareshgaran-e Huquq-e Bashar, 8 October 2008. <http://chrr.biz/spip.php?article2489> Opened 7/12/11. Archived at <http://www.webcitation.org/63lo5RVtk>.
- Voice of America Persian news. "Safir-e Jomhuri-e Eslami dar Espanya az qavanin-e qat'-e dast o pa dar Iran defa' kard". 10 February 2008. <http://www.voanews.com/persian/news/a-31-2008-02-10-voa17-61742442.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61AQk3gEP>.
- Weblog-e ettela'-resani-e Doktor 'Abedin Mo'meni. "List-e jebheye mottahad-e Osulgaraian". Date unspecified. <http://majlis9.blogfa.com/post-15.aspx> Archived at <http://www.webcitation.org/6EuXlcccC>.
- Zera'at, Abbas. *Qanun-e Mojazat-e Eslami dar Nazm-e Huquqi-e Kanuni*. Tehran: Qoqnus, 1383 AP (2004/5).
- Zera'at, Abbas. *Sharh-e Qanun-e Mojazat-e Eslami: Bakhsh-e Hudud*. (2 volumes). Tehran: Qoqnus, 1385 AP (2006/7).

English-language sources:

- Abdel Wedoud, Mohamed Yahya. "Rape victims fear being jailed in Mauritania". CNN, 21 December 2010. http://articles.cnn.com/2010-12-21/world/mauritania.rape_1_victims-sharia-law-unfpa/2?_s=PM:WORLD. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrPD>.
- Abdo, Genevieve. "Re-thinking the Islamic Republic: a 'conversation' with Ayatollah Hossein 'Ali Montazeri". *The Middle East Journal*, n. 55 (Winter 2000), pp. 9-24.
- Abdorrahman Boroumand Foundation. "Iran: in support of the international campaign against the death penalty". 22 February 2011. <http://www.iranrights.org/english/newsletter-18.php> Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrPM>.
- Abel, Yehudah. "The plight of the 'Agunah and conditional marriage". A working paper of the Agunah Research Unit, University of Manchester. <http://www.mucjs.org/MELILAH/2005/1.pdf>. Opened 7/4/11. Archived at <http://www.webcitation.org/616KkhrPV>.
- ABNA (Ahlul Bayt News Agency). "Ayatollah Shahrudi: Turkey seeking to promote 'liberal Islam'". 25 August 2011. <http://abna.ir/data.asp?lang=3&Id=261694> Archived at <http://www.webcitation.org/6Evfqdr3j>.
- Abrahamian, Ervand. *Iran between two revolutions*. Princeton: Princeton University Press, 1982.
- Abrahamian, Ervand. *Khomeinism: Essays on the Islamic Republic*. London: I. B. Tauris, 1993.
- Abrahamian, Ervand. *Tortured Confessions: Prisons and Public Recantations in Modern Iran*. Berkeley: University of California Press, 1999.
- Abrahamian, Ervand. "Who's in charge?" 6 November 2008. <http://www.lrb.co.uk/v30/n21/ervand-abrahamian/whos-in-charge> Archived at <http://www.webcitation.org/6Evg7v6Pq>.
- Abu-Raddad, Laith J, Francisca Ayodeji Akala, Iris Semini, Gabriele Riedner, David Wilson, and Ousama Tawil. *Characterizing the HIV/AIDS Epidemic in the*

Middle East and North Africa: Time for Strategic Action. Washington: The World Bank, 2010.

AFP. "Iran to scrap death by stoning". 6 August 2008.

<http://afp.google.com/article/ALeqM5iZ7aTbPW-vzYtgdxmx1O5Iok-CMQ>.

Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrPe>.

AFP. "Stoning to be omitted from Iran penal laws". 25 June 2009.

<http://shahrzaad.wordpress.com/2009/06/25/stoning-to-be-omitted-from-iran-penal-laws/>. Opened 20/8/11. Archived at

<http://www.webcitation.org/616KkhrPn>.

Afrasiabi, Kaveh L. "I shall remain an attorney committed to human rights". *UN Chronicle* no. 1 (2004), pp. 66-7.

Afsaruddin, Asma. "Views of *jihad* throughout history". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 97-101.

Afshari, Reza. "An essay on scholarship, human rights, and state legitimacy: the case of the Islamic Republic of Iran". In *Human Rights Quarterly*, vol. 18, no. 3 (August 1996), pp. 544-93.

Ahmad, Ali. "The role of Islamic law in the contemporary world order". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 3). London: Routledge, 2006, pp. 9-19.

Ahmed, Aziza. "Dual subordination: Muslim sexuality in secular and religious legal discourse in India". *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 7.

Akbarzadeh, Shahram. "General Introduction". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 1). London: Routledge, 2006, pp. 1-14.

Akhavi, Shahrough. "Contending discourses in Shi'i law on the doctrine of *Wilayat al-Faqih*". *Iranian Studies*, vol. 29, no. 3-4, Summer/Fall 1996, pp. 229-68.

Akhavi, Shahrough. "Shiite theories of social contract". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: Stanford University Press, 2007, pp. 137-55.

- Akhtar, Sayyid Wahid. "The Islamic concept of knowledge". *Al-Tawhid*, Vol.XIII No. 3. <http://www.al-islam.org/al-tawhid/islam-know-conc.htm>. Archived at <http://www.webcitation.org/63xzjTQY2>.
- Alasti, Sanaz. "Comparative study of stoning punishment in the religions of Islam and Judaism". *Justice Policy Journal*, vol. 4, no. 1 (Spring 2007), pp. 1-38. http://www.cjci.org/files/comparative_study_0.pdf Opened 8/10/09. Archived at <http://www.webcitation.org/616KkhrPv>.
- Alfoneh, Ali. "The Revolutionary Guards' role in Iranian politics". 1 September 2008. <http://www.aei.org/article/foreign-and-defense-policy/regional/middle-east-and-north-africa/the-revolutionary-guards-role-in-iranian-politics/> Archived at <http://www.webcitation.org/6EvgSyyvGE>.
- Al Jazeera English. "Somali fighters stone 'rape victim'". 2 November 2008. <http://english.aljazeera.net/news/africa/2008/11/2008111201216476354.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61ARTeUDC>.
- Aluko, Mobolaji E. "The unfizzled Sharia vector in the Nigerian state". March 2002, http://www.nigerdeltacongress.com/uarticles/unfizzled_sharia_vector_in_the_n.htm. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrQ4>.
- Aman, Fatemah. "Islam and Human Rights". Radio Free Europe, August 21, 2006. <http://www.rferl.org/content/article/1070707.html>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrQD>.
- Amanat, Abbas. "From *ijtihad* to *wilayat-i faqih*: the evolution of the Shiite legal authority to political power". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: SUP, 2007, pp. 120-36.
- Amanat, Abbas. "In Between the Madrasa and the Marketplace: The Designation of Clerical Leadership in Modern Shi'ism", in Arjomand, Saïd Amir (ed.), *Authority and Political Culture in Shi'ism*. Albany: State University of New York Press, 1988, pp. 98-132.
- Amir-Moezzi, Mohammed Ali. *The Divine Guide in Early Shi'ism: the Sources of Esotericism in Islam*. Albany: State University of New York Press, 1994.

- Amirpur, Katajun. "People have started believing in their own strength". 30 January 2010. http://en.qantara.de/wesite.php?wc_c=6977 Opened 25/1/2013.
Archived at <http://www.webcitation.org/6EvgzoKdr>.
- Amnesty International. "Death penalty/stoning". AI Index: MDE 13/015/2009. 24 February 2009.
<http://www.amnesty.org/fr/library/asset/MDE13/015/2009/fr/2a4eac90-d433-493e-be49-27399b73e21d/mde130152009en.pdf>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrQM>.
- Amnesty International. "Iran: Amnesty International outraged at reported stoning to death and fears for victim's co-accused". 9 July 2007.
<http://www.amnesty.ie/content/iran-amnesty-international-outraged-reported-stoning-death-and-fears-victim%E2%80%99s-co-accused> Opened 20/8/11.
Archived at <http://www.webcitation.org/61AS0ORCg>.
- Amnesty International. Iran – Amnesty International Report 2007.
<http://www.amnesty.org/en/region/iran/report-2007> Opened 12/12/11.
Archived at <http://www.webcitation.org/63unTPAOX>.
- Amnesty International. Iran – Amnesty International Report 2008.
<http://www.amnesty.org/en/region/iran/report-2008> Opened 12/12/11.
Archived at <http://www.webcitation.org/63undhyQA>.
- Amnesty International. Iran – Amnesty International Report 2009.
<http://www.amnesty.org/en/region/iran/report-2009> Opened 12/12/11.
Archived at <http://www.webcitation.org/63unmwrxK>.
- Amnesty International. Iran – Amnesty International Report 2010.
<http://www.amnesty.org/en/region/iran/report-2010> Opened 12/12/11.
Archived at <http://www.webcitation.org/63unyCA1w>.
- Amnesty International. "Iran: Announcement of suspension of stoning a welcome step if carried out". 6 August 2008. <http://www.amnesty.org/en/for-media/press-releases/iran-announcement-suspension-stoning-welcome-step-if-carried-out-2008080> Opened 19/8/11. Archived at <http://www.webcitation.org/61ASDVCp5>.
- Amnesty International. "Iran: Demand judiciary halts stoning: Sakineh Mohammadi". 7 August 2009. AI Index number: MDE 13/082/2009.

- <http://www.amnesty.org/en/library/asset/MDE13/082/2009/en/7fdb4e30-712a-4fca-b807-1365834fcd17/mde130822009en.html> Opened 20/8/11.
Archived at <http://www.webcitation.org/616KkhrQV>.
- Amnesty International. "Iran: end executions by stoning". 13 January 2008.
<http://www.amnesty.org/en/library/asset/MDE13/001/2008/en/2b087fb2-c2d2-11dc-ac4a-8d7763206e82/mde130012008eng.pdf>. Opened 13/12/11.
Archived at <http://www.webcitation.org/63upQkeUa>.
- Amnesty International. "Iran: reports of latest Ashtiani TV 'confession' condemned". 10 December 2010. <http://www.amnesty.org/en/for-media/press-releases/iran-reports-latest-ashtiani-tv-%E2%80%98confession%E2%80%99-condemned-2010-12-10> Opened 20/8/11. Archived at <http://www.webcitation.org/61AShLWyW>.
- Amnesty International. "Iran 'shows contempt' for human rights by rejecting UN recommendations". 17 February 2010. <http://www.amnesty.org/en/news-and-updates/iran-039shows-contempt039-human-rights-rejecting-un-recommendations-20100217> Opened 20/8/11. Archived at <http://www.webcitation.org/61ASu5QMf>.
- Amnesty International. "Iran's report to UN paints a distorted picture on human rights". 12 February 2010. <http://www.amnesty.org/en/for-media/press-releases/iran%E2%80%99s-report-un-paints-distorted-picture-human-rights-20100212> Opened 21/8/11. Archived at <http://www.webcitation.org/61ATArO7x>.
- Amnesty International. "Iran, the last executioner of children". 27 June 2007. Index number: MDE 13/059/2007.
<http://www.amnesty.org/en/library/info/MDE13/059/2007> Opened 20/8/11.
Archived at <http://www.webcitation.org/616KkhrQe>.
- Amnesty International. "Iran: worrying trends in use of death penalty". 24 February 2006. <http://www.amnesty.org/en/library/info/MDE13/020/2006>. Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrQn>.
- Amnesty International. MDE 13/016/2001, 21 May 2001:
<http://www.amnesty.org/fr/library/asset/MDE13/022/2000/fr/de754763-de0a-11dd-a3e1-93acb0aa12d8/mde130222000en.pdf> Copies with author.

Amnesty International. MDE 13/22/00, 9 August 2000:
<http://www.amnesty.org/fr/library/asset/MDE13/022/2000/fr/de754763-de0a-11dd-a3e1-93acb0aa12d8/mde130222000en.pdf> Copies with author.

Amnesty International. "Report 2005: The State of the World's Human Rights". 24 May 2005. <http://www.amnesty.org/en/library/info/POL10/001/2005/en>
Opened 7/12/11.

Amnesty International. "Report 2006: The State of the World's Human Rights". 22 May 2006. <http://www.amnesty.org/en/library/info/POL10/004/2006/en>
Opened 7/12/11.

Amnesty International. "Report 2007: The State of the World's Human Rights".
<http://archive.amnesty.org/report2007/> Opened 7/12/11.

Amnesty International. "Report 2008: The State of the World's Human Rights".
<http://archive.amnesty.org/report2008/press-area/en/air08-en-low-res.pdf>
Opened 7/12/11.

Amnesty International. "Report 2009: The State of the World's Human Rights".
<http://report2009.amnesty.org/en/download> Opened 7/12/11.

Amnesty International. "Nigeria: warning over Sharia courts after Safiya Hussaini acquittal". 25 March 2002.
http://www.amnesty.org.uk/news_details.asp?NewsID=13699 Opened
21/8/11. Archived at <http://www.webcitation.org/61ATUN2ew>.

Amnesty International. "Urgent Action: Death penalty/stoning". UA33/08, 6 February 2008. <http://www.iranrights.org/english/document-1086.php>
Opened 20/8/11. Archived at <http://www.webcitation.org/61AVHWdM9>.

Amnesty International UK Blogs. "Iran: Farzad Kamangar (part 2), his testimony". 18 January 2009. http://blogs.amnesty.org.uk/blogs_entry.asp?eid=2498
Opened 20/8/11. Archived at <http://www.webcitation.org/61AVXkdDA>.

Amnesty International USA. "Background information: stop child executions in Iran". Month unknown, 2010. <http://www.amnestyusa.org/our-work/countries/middle-east-and-north-africa/iran/background-information-stop-child-executions-in-iran> Opened 20/8/11. Archived at
<http://www.webcitation.org/61AVnEUgR>.

- Amnesty International USA. "Somalia: girl stoned was a child of 13". 31 October 2008. <http://www.amnesty.org/en/for-media/press-releases/somalia-girl-stoned-was-child-13-20081031> Opened 20/8/11. Archived at <http://www.webcitation.org/61AVzDG3u>.
- Anderson, Bendix. "Ayatollah Watch". PBS, 22 September 2009. <http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2009/09/ayatollah-watch.html>. Opened 25/10/11. Archived at <http://www.webcitation.org/62i7q2gWj>.
- Anderson, Sarah E., Dallal, Gerard E., and Must, Aviva. "Relative weight and race influence average age at menarche: results from two nationally representative surveys of US girls studied 25 years apart". *Pediatrics*, Vol. 111, No. 4 (April 2003), pp. 844-850.
- An-Na'im, Abdullahi A. "Islam and human rights: beyond the universality debate". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 399-407.
- An-Na'im, Abdullahi Ahmed. "Islam and international law: toward a positive mutual engagement to realize shared ideals". In Mashood A. Baderin (Ed), *International and Islamic Law*. Aldershot: Ashgate, 2008, pp. 71-8.
- Ansari-Pour, "Iran", in *Yearbook of Islamic and Middle Eastern Law*, vol. 3, 1996 (1997), pp. 335-53.
- Ansari-Pour, "Iran", in *Yearbook of Islamic and Middle Eastern Law*, vol. 6, 1999-2000 (2001), pp. 327-44.
- Arjomand, Saïd Amir. "Ideological revolution in Shi'ism". In Arjomand, Saïd Amir (ed). *Authority and Political Culture in Shi'ism*. Albany: State University of New York Press, 1988, pp. 178-212.
- Arjomand, Saïd Amir. "Introduction: Shi'ism, authority, and political culture". In Arjomand, Saïd Amir (ed), *Authority and Political Culture in Shi'ism*. Albany: State University of New York Press, 1988, pp. 1-22.
- Arjomand, Saïd Amir. "Shari'a and constitution in Iran: a historical perspective". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: Stanford University Press, 2007, pp. 156-64.

- Arjomand, Saïd Amir. "Shi'ite Islam and the Revolution in Iran". In *Government and Opposition*, vol. 16 (1981), pp. 293-316.
- Arjomand, Saïd Amir. "Shi'ite jurisprudence and constitution making in the Islamic Republic of Iran", in Martin E. Marty and R. Scott Appleby, *Fundamentalisms and the State*. Chicago: University of Chicago Press, 1993, pp. 88-109.
- Arjomand, Saïd Amir. "The state and Khomeini's Islamic order". In *Iranian Studies*, vol. XIII, no. 1-4, 1980, pp. 147-64.
- Arjomand, Saïd Amir. *The turban for the crown: the Islamic revolution in Iran*. New York: Oxford University Press, 1988.
- Ashraf, Ahmad, and Ali Banuazizi. "Iran's tortuous path towards 'Islamic liberalism'". *International Journal of Politics, Culture and Society*, vol. 15, no. 2, winter 2001, pp. 237-56.
- Asli, Mehrdad Rayejian. "Iranian criminal justice system in light of international standards relating to victims". *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 14/2 (2006), pp. 185-207.
- Associated Press. "Canadian-sponsored resolution against Iran passes". 21 November 2007.
http://www.ctv.ca/CTVNews/TopStories/20071121/iran_canada_071121/
 Opened 20/8/11. Archived at <http://www.webcitation.org/616KkhrQw>.
- Association of Iranian Women in the UK. "Memorandum from the Association of Iranian Woman in the UK". 31 March 2003. <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmfaff/405/405we15.htm> (parliament site). Opened 20/8/11. Archived at <http://www.webcitation.org/61AWONx6d>.
- Attari, A, S Dashty and M Mahmoodi. "Post-traumatic stress disorder in children witnessing a public hanging in the Islamic Republic of Iran". *Eastern Mediterranean Health Journal*, vol. 12 no. 1/2 (2006), pp. 72-80.
- AWID (Association for Women's Rights in Development. "Subject: Iran: death by stoning suspended ... but still legal!". 8 August 2008.
<http://staging.awid.org/eng/Issues-and-Analysis/By-AWID-Initiative/Iran->

- [Death-by-stoning-suspended-but-still-legal](#) Opened 20/8/11. Archived at <http://www.webcitation.org/61AWcFelz>.
- Aziz, Talib. "Fadlallah and the remaking of the Marja'iyah". In Linda S. Walbridge (Ed.), *The Most Learned of the Shi'a: The Institution of the Marja' Taqlid*. New York: Oxford University Press, 2001, pp. 205-15.
- Baderin, Mashood A. "Introduction" to Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. xiii-xxxvi.
- Baderin, Mashood A. "Islam and the realization of human rights in the Muslim world: a reflection on two essential approaches and two divergent perspectives". *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 5.
- Bahari, Maziar. "118 days, 12 hours, 54 minutes". *Newsweek*, 30 November 2009, pp. 32-41.
- Bahlul, Raja. "People vs God: the logic of 'divine sovereignty' in Islamic democratic discourse". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 1-14.
- Bakhash, Shaul. *The Reign of the Ayatollahs: Iran and the Islamic Revolution*. New York: Basic Books, 1984.
- Baqir as-Sadr, Muhammad (translated and with an introduction by Roy Parviz Mottahedeh). *Lessons in Islamic Jurisprudence*. Oxford: Oneworld Publications, 2003.
- Barlow, Rebecca, and Shahram Akbarzadeh. "Women's rights in the Muslim world: reform or reconstruction?" In Mashood A. Baderin (Ed), *International and Islamic Law*. Aldershot: Ashgate, 2008, pp. 411-24.
- Bashi, Golbarg. "Interview with Ayatollah Montazeri". 11 November 2003. <http://www.payvand.com/news/06/mar/1067.html> Archived at <http://www.webcitation.org/6EvhcGLtP>.
- Bastani, Hassan. "Going to the highest levels of brutality". Roozonline, 1 August 2007. <http://www.roozonline.com/english/news3/newsitem/article/going-to-the-highest-levels-of-brutality.html>. Opened 7/12/11. Archived at <http://www.webcitation.org/63luKd3Wy>.

- BBC News. "Death penalty in Iran 'vice' case". 22 December 2004.
http://news.bbc.co.uk/2/hi/middle_east/4118727.stm. Opened 21/8/11.
Archived at <http://www.webcitation.org/61DQ0LBN2>.
- BBC News. "Execution plea over Iran youths". 25 August 2005.
http://news.bbc.co.uk/2/hi/middle_east/4184598.stm. Opened 21/8/11.
Archived at <http://www.webcitation.org/61DQ0LBNJ>.
- BBC News. "Iran 'adulterer' stoned to death". 10 July 2007.
<http://news.bbc.co.uk/2/hi/6288156.stm> Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBNY>.
- BBC News. "Iran denies execution by stoning". 11 January 2005.
http://news.bbc.co.uk/2/hi/middle_east/4166137.stm Opened 21/8/11.
Archived at <http://www.webcitation.org/61DQ0LBNi>.
- BBC News. "Iran executes two men by stoning". 13 January 2009.
http://news.bbc.co.uk/2/hi/middle_east/7826018.stm Opened 21/8/11.
Archived at <http://www.webcitation.org/61DQ0LBNr>.
- BBC News. "Iranians suspend death by stoning". 5 August 2008.
http://news.bbc.co.uk/2/hi/middle_east/7543791.stm. Opened 26/8/11.
Archived at <http://www.webcitation.org/61DQ0LBO0>.
- BBC News. "Iran lawyer in 'blood money' plea". 22 October 2009.
<http://news.bbc.co.uk/2/hi/8320937.stm>. Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBO9>.
- BBC News. "Nigerian woman fights stoning". 8 July 2002.
<http://news.bbc.co.uk/2/hi/africa/2116540.stm>. Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBOI>.
- BBC News. "Sharia court frees Nigerian woman". 25 March 2002.
<http://news.bbc.co.uk/2/hi/africa/1891395.stm>. Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBOR>.
- BBC News. "Stoning victim 'begged for mercy'". 4 November 2008.
<http://news.bbc.co.uk/2/hi/7708169.stm>. Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBOa>.

- BBC News. "UN chides Iran over human rights". 21 December 2004.
http://news.bbc.co.uk/2/hi/middle_east/4114621.stm. Opened 21/8/11.
 Archived at <http://www.webcitation.org/61DQ0LBOj>.
- Behrooz, Maziar. "The Islamic state and the crisis of Marja'iyat in Iran". In
Comparative Studies of South Asia, Africa and the Middle East, vol. XVI no.
 2 (1996), pp. 93-100.
- Bentham, Jeremy. *The Principles of Morals and Legislation*. New York: Prometheus
 Books, 1988.
- Berween, Mohamed. "Non-Muslims in the Islamic state: majority rule and minority
 rights". In Mashood A. Baderin (Ed), *International Law and Islamic Law*.
 Aldershot: Ashgate, 2008, pp. 599-610.
- BIA (Islamic Republic of Iran, Bureau of International Affairs of the Judiciary). *An
 Introduction to the Legal System of the Islamic Republic of Iran*. Tehran:
 Nashr-e Tose'eye Iran, 1386 AP (2007).
- Bielefeldt, Heiner. "Muslim voices in the human rights debate". In Shahram
 Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic
 Studies* (vol. 4). London: Routledge, 2006, pp. 226-54.
- Bloch Kohat, Hannah. "Blaming the victim". *Time*, 20 May 2002.
<http://www.time.com/time/magazine/article/0,9171,238673,00.html>. Opened
 21/8/11. Archived at <http://www.webcitation.org/61EFfts7>.
- Boroujerdi, Mehrzad. "The paradoxes of politics in postrevolutionary Iran". In John
 L. Esposito and R.K. Ramazani (Ed), *Iran at the Crossroads*. New York:
 Palgrave, 2001, pp. 13-27.
- Brajer, Victor, and Morteza Rahmatian. "From diye to value of statistical life: a case
 study for the Islamic Republic of Iran". Paper presented at the Economic
 Valuation of Caspian Environment (Caspian EVE) Training Program,
 November 13-18, 2005, Ashgabat, Turkmenistan.
<http://www.caspianenvironment.org/newsite/DocCenter/Traning/Caspian%20EVE/Supporting%20Papers/Session%2010%20B%20Paper%20%28English%29.pdf>.
 Opened 20/8/11. Archived at <http://www.webcitation.org/61EFxZkrk>.

- Bucar, Elizabeth M., and Roja Fazaeli. "Free speech in Weblogistan? The offline consequences of online communication". *International Journal of Middle Eastern Studies*, vol. 40, no. 3 (August 2008), pp. 403-19.
- Burney, Samya, and Kerry McArthur. "Crime or custom? Violence against women in Pakistan". Report prepared for Human Rights Watch, 1999.
<http://www.hrw.org/legacy/reports/1999/pakistan/>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBOs>.
- Calder, Norman. "Accommodation and revolution in Imami Shi'i jurisprudence: Khumayni and the classical tradition" (1982), in Ian Edge (ed.), *Islamic Law and Legal Theory*. Aldershot: Dartmouth, 1996.
- Cameron, N, and Nagdee, I. "Menarcheal age in two generations of South African Indians". *Annals of Human Biology*, vol. 23(2) (Mar-Apr 1996), pp. 113-9.
- Campbell, Deborah. "Iran's quiet revolution". *Ms Magazine*, winter 2007.
<http://www.msmagazine.com/winter2007/iransquietrevolution.asp> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBP1>.
- Canning, Paul. "Updated: Iranian men to be stoned to death over gay sex". Pink News, 18 January 2011. <http://www.pinknews.co.uk/2011/01/18/iranian-men-to-be-stoned-to-death-over-gay-sex/> Opened 11 March 2012; archived at <http://www.webcitation.org/6656pS931>.
- Carr, James A., and David O. Norris. "The gonads", in Norris, David O., and James A. Carr, *Endocrine disruption: biological bases for health effects in wildlife and humans*. Oxford: Oxford University Press, 2006, pp. 135-59.
- Chase, Anthony. "The transnational Muslim world, the foundations and origins of human rights, and their ongoing intersections". *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 1.
- Cherif Bassiouni, Mahmoud. "Protection of diplomats under Islamic law". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 243-67.
- Clarke, Morgan. "Children of the revolution: 'Ali Khamene'i's 'Liberal' views on *in vitro* fertilization". *British Journal of Middle Eastern Studies*, vol. 34, no. 3 (December 2007) pp. 287-303.

- Cole, Juan R. "Imami Jurisprudence and the Role of the Ulama: Mortaza Ansari on Emulating the Supreme Exemplar", in Keddie, Nikki (ed), *Religion and Politics in Iran: Shi'ism from Quietism to Revolution*. New Haven: Yale University Press, 1983, pp. 33-46.
- Cole, Juan R. I. "Shaykh Ahmad al-Ahsa'i on the sources of religious authority". In Linda S. Walbridge (Ed.), *The Most Learned of the Shi'a: The Institution of the Marja' Taqlid*. New York: Oxford University Press, 2001, pp. 82-93.
- Coomaraswamy, Radhika. "Integration of the human rights of women and the gender perspective: violence against women". UN Commission on Human Rights report, 27 February 2003. <http://www.awf.or.jp/pdf/h0040.pdf> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBPA>.
- Copinger-Symes, T.R. "Is Osama bin Laden's 'Fatwa Urging Jihad Against Americans' dated 23 February 1998 justified by Islamic law?" In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 213-34.
- Council of the European Union. "Declaration by the Presidency on behalf of the EU concerning death sentences in Iran". 7 February 2008. http://www.ambafrance-ir.org/article.php3?id_article=649. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBPI>.
- Council of the European Union. "Declaration by the Presidency on behalf of the EU on repeated violations of human rights in Iran". 19 December 2008. <http://lexuniversal.com/en/news/7269>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBPR>.
- Council of the European Union. "Declaration by the Presidency on behalf of the EU concerning the execution by stoning in Rasht, Iran". 30 April 2009. http://www.ambafrance-ir.org/article.php3?id_article=882. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBPpa>.
- CSM (Christian Science Monitor). "Iran move to defrock dissident Ayatollah opens rifts in theocracy". 6 January 2010. <http://www.csmonitor.com/World/Middle-East/2010/0106/Iran-move-to-defrock-dissident-ayatollah-opens-rifts-in-theocracy> (Part 1, archived at <http://www.webcitation.org/6Evi4qgwk>);

- <http://www.csmonitor.com/World/Middle-East/2010/0106/Iran-move-to-defrock-dissident-ayatollah-opens-rifts-in-theocracy/%28page%29/2> (Part 2, archived at <http://www.webcitation.org/6EviBpMmS>).
- Cwik, Marc S. "Agunah divorce problem in Jewish society: exploring the possibility of an international law solution". *Wisconsin International Law Journal*, vol. 17 (1999), pp. 109-44.
- Dahlén, Ashk. *Islamic Law, Epistemology and Modernity: Legal Philosophy in Contemporary Iran*. New York: Routledge, 2003.
- Daily Mail. "Iran chops off hands and feet of five robbers and hangs 23 criminals in 2008". 11 January 2008. <http://www.dailymail.co.uk/news/article-507727/Iran-chops-hands-feet-robbers-hangs-23-criminals-2008.html>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBPj>.
- Daily Mail. "The Sharia saw: The terrifying device Iran uses to chop off criminals' fingers". 30 January 2013. <http://www.dailymail.co.uk/news/article-2270619/Sharia-saw-Iran-releases-pictures-brutal-amputation-machine-chopping-mans-fingers-bid-clamp-election-dissent.html> Archived at <http://www.webcitation.org/6EviMbCV0>.
- Dalacoura, Katerina. "Violence, September 11 and the interpretations of Islam". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 235-9.
- Dastjerdi, Hossein Vahid (translator). *Nahj al-Fasahah – Height of Rhetoric: Translation of Nahj al-Fasahah, Wise Sayings of the Holy Prophet*. Qom: Ansariyan Publications, 2007.
- Davar, Zahra. "Independence and economic rights of women". In Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003, pp. 209-27.
- Dehghan, Saeed Kamali. "Iranian woman taken home to 'confess' on state television". *The Guardian*, 10 December 2010. <http://www.guardian.co.uk/world/2010/dec/10/iran-sakineh-mohammadi-ashtiani>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBPs>.

- De Luce, Dan. "Iran girl's murder spurs debate over blood money". WeNews, 1 December 2003.
<http://oldsite.womensenews.org/article.cfm/dyn/aid/1619/context/archive>.
 Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBQ1>.
- Durham University, Centre for Iranian Studies. "Understanding Iran's Assembly of Experts". November 2006.
<http://www.dur.ac.uk/resources/iranian.studies/Policy%20Brief%201.pdf>
 Archived at <http://www.webcitation.org/6EviXkH4c>.
- Dutton, Yasin. *The Origins of Islamic Law*. Richmond: Curzon Press, 1999.
- Dutton, Yasin. "The sources of Islamic law: an overview". Unpublished paper, 1999.
- Education International. "Kamangar appeal sidelined by notorious prosecutor". 19 February 2010. <http://old.ei->
[ie.org/rights/en/articleshow.php?id=198&theme=rights](http://old.ei-) Opened 21/8/11.
 Archived at <http://www.webcitation.org/61EGBcKhZ>.
- Eghtedari, Goudarz. "Islamic Republic of Iran and execution for adultery and homosexuality". Paper presented at the Center for Iranian Research Analysis (CIRA) Conference, Atlanta, 1997.
[http://web.archive.org/web/20010615192731/www.ihrw.org/CP/cirapaper.p](http://web.archive.org/web/20010615192731/www.ihrw.org/CP/cirapaper.pdf)
[df](http://web.archive.org/web/20010615192731/www.ihrw.org/CP/cirapaper.pdf) Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBQA>.
- Eickelman, Dale F. "Inside the Islamic reformation". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 1). London: Routledge, 2006, pp. 15-25.
- Eke, Steven. "Iran 'must stop youth executions'". BBC News, 28 June 2005.
http://news.bbc.co.uk/2/hi/middle_east/4725959.stm. Opened 21/8/11.
 Archived at <http://www.webcitation.org/61DQ0LBQJ>.
- Enayat, Hamid. "Iran: Khomeini's concept of the 'Guardianship of the Jurisconsult'". In James P. Piscatori, *Islam in the Political Process*. Cambridge: Cambridge University Press, 1983, pp. 160-80.
- Entessar, Nader. "Criminal law and the legal system in revolutionary Iran". *Boston College Third World Law Journal*, volume 8 (1988), pp. 91-102.
- Erdbrink, Thomas. "Protests flare at 2 Iranian campuses". *Washington Post*, 5 March 2008. <http://www.washingtonpost.com/wp->

- <http://www.webcitation.org/6EvigWVdj> Archived at <http://www.webcitation.org/6EviwkEga>.
- Esfandiari, Golnaz. "Exiled Iran religious scholar calls for debate on nuclear safety". Radio Free Europe, 31 March 2011. http://www.rferl.org/content/interview_exiled_iran_religious_scholar_debate_nuclear_safety/3542999.html Archived at <http://www.webcitation.org/6EviwkEga>.
- Esfandiari, Golnaz. "Iran: activists call for end to practice of stoning". Radio Free Europe, 25 October 2006. <http://www.rferl.org/content/article/1072293.html>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBQR>.
- Esfandiari, Golnaz. "Iran: stoning of convicted man draws strong reactions". Radio Free Europe, 13 July 2007. <http://www.rferl.org/content/article/1077610.html>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBQa>.
- Esfandiari, Haleh. "The politics of the "women's question" in the Islamic Republic, 1979-1999". In John L. Esposito and R.K. Ramazani (Ed), *Iran at the Crossroads*. New York: Palgrave, 2001, pp. 75-92.
- Esposito, John L. "Introduction: from Khomeini to Khatami". In John L. Esposito and R.K. Ramazani (Ed), *Iran at the Crossroads*. New York: Palgrave, 2001, pp. 1-11.
- Esposito, John L., and James P. Piscatori. "Democratization and Islam". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 44-58.
- European Parliament press release. "MEPs condemn stoning sentence on Iranian Sakineh Mohammadi Ashtiani". 8 September 2010. <http://www.europarl.europa.eu/en/pressroom/content/20100907IPR81610/html/MEPs-condemn-stoning-sentence-on-Iranian-Sakineh-Mohammadi-Ashtiani>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBQj>.
- Faqir, Fadia. "Engendering democracy and Islam in the Arab world". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 332-42.

- Farkhondeh, Sepideh. "Rule of law, authoritarianism and theocracy in Iran: the role of secular specialists in law". Unpublished paper, Sciences Po Institute, Paris, November 2006. Copies with author.
- Fathi, Nazila. "Spate of executions and amputations in Iran". *New York Times*, 11 January 2008.
<http://www.nytimes.com/2008/01/11/world/middleeast/11iran.html>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBQs>.
- Fazaeli, Roja. "Contemporary Iranian feminism: identity, rights and interpretations". *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 8.
- Ferran, Lee. "Iran uses machine to amputate criminal's finger in public". *ABC News*, 29 January 2013. <http://abcnews.go.com/blogs/headlines/2013/01/iran-uses-machine-to-amputate-criminals-finger-in-public/> Archived at <http://www.webcitation.org/6EvjSHuPa>.
- Ferrari, Silvio. "Adapting divine law to change: the experience of the Roman Catholic church (with some reference to Jewish and Islamic law)". *Cardozo Law Review*, n. 28 (2006-7), pp. 53-65.
- Filali-Ansary, Abdou. "Muslims and democracy". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 59-72.
- Fish, M. Steven. "Islam and authoritarianism". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 299-331.
- Ford, Christopher A. "Siyar-ization and its discontents: international law and Islam's constitutional crisis". In Mashood A. Baderin (Ed), *International and Islamic Law*. Aldershot: Ashgate, 2008, pp. 19-53.
- Freedom House. "Freedom in the world 2012: Iran".
<http://www.freedomhouse.org/report/freedom-world/2012/iran> Archived at <http://www.webcitation.org/6Evja2QSI>.
- Ghassemi, Ghassem. "Criminal punishment in Islamic societies: empirical study of attitudes to criminal sentencing in Iran". *European Journal of Criminal Policy and Research*, vol. 15 (2009), pp. 159-180.

- Gheissari, Ali, and Vali Nasr. "Iran's democracy debate". *Middle East Policy*, volume 11, no. 2, summer 2004, pp. 94-106.
- Ghods, Ebrahim. "Legitimate defence in the criminal law of Iran and Islam". *Journal of Criminal Law*, vol. 67 (2003), pp. 349-58.
- Ghods, Ebrahim. "Murder in the criminal law of Iran and Islam". *Journal of Criminal Law*, vol. 68 (2004), pp. 160-9.
- Gholami, Hussein. "Restorative traditions in violent conflicts in Iran". In Hans-Jörg Albrecht, Jan-Michael Simon, Hassan Rezaei, Holger-C. Rohne, and Ernesto Kiza (Eds), *Conflicts and Conflict Resolution in Middle Eastern Societies – Between Tradition and Modernity*. Berlin: Duncker & Humblot, 2006, pp. 457-70.
- Gleave, Robert. "Akhbari Shi'i *usul al-fiqh* and the juristic theory of Yusuf b. Ahmad al-Bahrani"; in Gleave, Robert, and Eugenia Kermeli (Eds), *Islamic Law: Theory and Practice*. London: I.B. Tauris, 1997, pp. 24-45.
- Göle, Nilüfer. "Contemporary Islamist movements and new sources for religious tolerance". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 1). London: Routledge, 2006, pp. 79-96.
- Gontowska, Maria. "Human rights violations under the Sharia'a [sic]: a comparative study of the Kingdom of Saudi Arabia and the Islamic Republic of Iran". Unpublished honours dissertation, Pace University, 2005.
http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1010&context=honorscollege_theses&sei-redir=1#search=%22gontowska%20human%20rights%20violations%22.
 Opened 21/8/11. Archived at <http://www.webcitation.org/61EGPFB1p>.
- Griffel, Frank. "Introduction". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: SUP, 2007, pp. 1-19.
- Griffel, Frank. "The harmony of natural law and shari'a in Islamist theology". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: Stanford University Press, 2007, pp. 38-61.
- The Guardian*. "Iran cuts off man's hand for stealing". 24 October 2010.
<http://www.guardian.co.uk/world/2010/oct/24/iran-thief-hand-cut-off>
 Archived at <http://www.webcitation.org/6EvjgfTHD>.

- Habibzadeh, Jafar. "The legality principle of crimes and punishments in the Iranian legal system". *Global Jurist Topics*, vol. 5 (2005), issue 1, article 1.
- Haeri, Safa. "A fate worse than Saudi". In *Index on Censorship*, vol. 23 no. iv-v, 1994, pp. 49-51.
- Hairi, Abdul-Hadi. *Shi'ism and Constitutionalism in Iran*. Leiden: E. J. Brill, 1977.
- Halm, Heinz. *Shiism*. Edinburgh: Edinburgh University Press, 1991.
- Halper, Louise. "Disputed societies, transformative states: politics of law and gender in republican Turkey and Iran". *Hawwa*, vol. 5, issue 1 (2007), pp. 90-110.
- Halper, Louise. "Editor's foreword". *Hawwa*, vol. 5, issue 1 (2007), pp. 1-9.
- Hamdi, Mohamed Elhachmi. "The limits of the Western model". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 134-8.
- Harrison, Frances. "Inside Iran's most notorious jail". BBC News, 14 June 2006. <http://news.bbc.co.uk/2/hi/5077180.stm>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBR1>.
- Hashemi, Kamran. "Religious legal traditions, Muslim states and the Convention on the Rights of the Child: an essay on the relevant UN documentation". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 535-68.
- Hefner, Robert W. "Public Islam and the problem of democratization". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 181-205.
- Hegland, Mary Elaine. "Zip in and zip out fieldwork". *Iranian Studies*, vol. 37, n. 4 (December 2004), pp. 575-83.
- Henneberg, M, and Louw, G. "Average menarcheal age of higher socioeconomic status urban Cape coloured girls assessed by means of status quo and recall methods". *American Journal of Physical Anthropology*, volume 96(1) (1995), pp. 1-5.
- Hilhorst, Dorothea, and Bram Jansen. "Fieldwork in Hazardous Areas". Disaster Studies, Wageningen University, 2005. <http://www.disasterstudies.wur.nl/NR/rdonlyres/E08690FD-1923-4358->

[B3B4-FBA2F7734B91/34587/Fieldmanualcompressed.pdf](http://www.webcitation.org/61DQ0LBR9). Opened 20/8/11.

Archived at <http://www.webcitation.org/61DQ0LBR9>.

Hilli, Jamal al-Din Hasan b. Yusuf b. Ali b. al-Mutahhar; translated and edited by John Cooper. “Allama al-Hilli on the Imamate and Ijtihad”. In Arjomand, Saïd Amir (ed), *Authority and Political Culture in Shi‘ism*. Albany: State University of New York Press, 1988, pp. 240-9.

Hodkinson, Keith. *Muslim family law: a sourcebook*. Beckenham: Croom Helm, 1984.

Holliday, Shabnam. “Khatami’s Islamist-Iranian discourse of national identity: a discourse of resistance”. *British Journal of Middle Eastern Studies*, vol. 37, no. 1 (April 2010), pp. 1-13.

Houtum-Schindler, Albert. “On the length of the Persian farsakh”. *Proceedings of the Royal Geographical Society and Monthly Record of Geography*, New Monthly Series, Volume 10, No. 9 (September 1888), pp. 584-8.

Hujjati Kirmani, Muhammad Javad. “Survey of the similarities and differences of human rights in Islam and in the West”. In Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003, pp. 97-106.

Human Rights Watch. “Iran: another execution of juvenile offender”. 13 October 2009. <http://www.hrw.org/news/2009/10/13/iran-another-execution-juvenile-offender>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBRI>.

Human Rights Watch. “Iran: detainees describe beatings, pressure to confess”. 8 July 2009. <http://www.hrw.org/news/2009/07/08/iran-detainees-describe-beatings-pressure-confess>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBRR>.

Human Rights Watch. “Iran: events of 2009”. January 24, 2010. <http://www.hrw.org/en/world-report-2010/iran>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBRa>.

Human Rights Watch. “Iran: revoke death sentences for juvenile offenders”. 4 November 2009. <http://www.hrw.org/news/2009/11/03/iran-revoke-death->

- [sentences-juvenile-offenders](#). Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBRj>.
- Human Rights Watch. "Iran: secret execution of juvenile offender". 1 May 2009. <http://www.hrw.org/news/2009/05/01/iran-secret-execution-juvenile-offender>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBRs>.
- Human Rights Watch. "Letter to His Excellency Sayyed Mahmoud Hashemi Shahrudi on stoning in Iran". 10 July 2007. <http://www.hrw.org/en/news/2007/07/10/letter-his-excellency-sayyed-mahmoud-hashemi-shahrudi-stoning-iran>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBS6>.
- Human Rights Watch. "Letter to UN member states: condemn human rights violations in Iran". 11 November 2009. <http://www.hrw.org/news/2009/11/11/letter-un-member-states-condemn-human-rights-violations-iran>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBSG>.
- Ibramsa, Habeeb Rahman. "Muslim modernists and new hermeneutic approach to the Prophetic tradition: special reference to the injunction of *sariqah* and *hirabah*". Paper presented at the AMSS 34th Annual Conference "Muslims and Islam in the Chaotic Modern World: Relations of Muslims among Themselves and with Others", 30 September to 2 October, 2005. <http://www.amss.net/pdfs/34/finalpapers/HabeebRahmanIbramsa.pdf>. Opened 3/12/11. Archived at <http://www.webcitation.org/63fwUG7yU>.
- ICAE (International Committee Against Execution). "Bizhan Fathi, letter to Ban Ki-Moon". 27 May 2011. <http://notonemoreexecution.wordpress.com/2011/05/27/bizhan-fathi-letter-to-ban-ki-moon/>. Opened 13/12/11. Archived at <http://www.webcitation.org/63v2GfABN>.
- ICAS (International Committee Against Stoning). "An update on Iran stoning case Sakineh Mohammadi Ashtiani and her lawyer Houtan Kian". 8 July 2011. <http://stopstoningnow.com/wpress/4347>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBSY>.

- ICAS (International Committee Against Stoning). "Islamic Judiciary apparatus prepares to stone a man and a woman in Orumiya". 23 December 2010. <http://stopstoningnow.com/wpress/4311>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBSH>.
- ICAS (International Committee Against Stoning). "Sakineh Mohammadi Ashtiani is given leave from prison to bid her mother farewell". 14 July 2011. <http://stopstoningnow.com/wpress/4349>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBSq>.
- ICAS (International Committee Against Stoning). "The Islamic Regime of Iran is to execute two young men for homosexuality by stoning". 16 January 2011. <http://stopstoningnow.com/wpress/4323>. Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBSz>.
- ICHRI (International Campaign for Human Rights in Iran). "Abdolfattah Soltani: according to law and shari'a, throwing rocks or breaking windows do not constitute 'moharebeh'". 9 February 2010. <http://united4iran.org/2010/02/abdolfattah-soltani-%E2%80%9Caccording-to-law-and-sharia-throwing-stones-or-breaking-windows-do-not-constitute-%E2%80%98moharebeh%E2%80%99%E2%80%9D/>. Opened 20/8/11. Archived at <http://www.webcitation.org/61EGdTYAh>.
- ICHRI. "Authorities attempt to crush remaining active human rights NGOs". 6 January 2010. <http://www.iranhumanrights.org/2010/01/authorities-crush-ngos/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBT7>.
- ICHRI. "Imprisoned student reveals details of unfair prosecution". 22 February 2010. <http://www.iranhumanrights.org/2010/02/iran-imprisoned-student-reveals-details-of-unfair-prosecution/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBTG>.
- ICHRI. "Iranian-American prisoner's family: TV confessions fake and under duress". 6 January 2012. http://www.iranhumanrights.org/2012/01/amir_hekmati/ Opened 11/1/12. Archived at <http://www.webcitation.org/64d6BnZeD>.
- ICHRI. "Iranian Judiciary must reverse American citizen's death sentence". 9 January 2012. <http://www.iranhumanrights.org/2012/01/hekmati-death->

- [sentence/](#) Opened 11/1/12. Archived at <http://www.webcitation.org/64dDM5LyI>.
- ICHRI. "Iran's secret hangings: mass unannounced executions in Mashhad's Vakilabad prison". January 2012. <http://www.iranhumanrights.org/wp-content/uploads/secretexecutionsjan2012-en.pdf> Opened 11/1/12. Archived at <http://www.webcitation.org/64d5eIjzE>.
- ICHRI. "Moharebeh and corruption on earth charges for student activist Amin Valian". 4 February 2010. <http://www.iranhumanrights.org/2010/02/moharebeh-and-corruption-on-earth-charges-for-student-activist-amin-valian/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBTP>.
- ICHRI. "Protestor in danger of execution as Iran flouts human rights standards". 3 March 2010. <http://www.iranhumanrights.org/2010/03/protestor-danger-execution/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBTY>.
- ICHRI. "Shadow of extra-judicial executions looms large over dissidents". 31 January 2010. <http://www.iranhumanrights.org/2010/01/dissident-executions/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBTh>.
- ICHRI. "Student facing execution for throwing rocks". 8 February 2010. <http://www.iranhumanrights.org/2010/02/valian-student-sentenced-to-death/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBTq>.
- ICHRI. "Widespread arrests of women's rights activists, female journalists and relatives". 5 January 2010. <http://www.iranhumanrights.org/2010/01/arrests-womens-activists/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBTz>.
- IHRV (Iran Human Rights Voice). "Charge of moharebeh (waging war) for an email on human rights violation". 3 February 2010. <http://www.ihrv.org/inf/?p=3684> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBU7>.
- IHRV. "Moharebeh charge against an accused from Ashura day unrest". 18 January 2010. <http://www.ihrv.org/inf/?p=3565> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBUG>.

- International Herald Tribune / The Associated Press. “Norway says Iran to halt stonings after Western protests”. Wednesday, June 20, 2007.
<http://www.ihf.com/bin/print.php?id=6239562> Opened 9/9/08. Archived at <http://www.webcitation.org/61DQ0LBUP>.
- International Observatory for Lawyers. “Appeal for the immediate release of Javid Houtan Kian, Lawyer of Sakineh Mohammadi Ashtiani, Iran”. 14 October 2010. <http://www.observatoire-avocats.org/en/2010/10/14/mr-javid-houtan-kian-iran/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBUX>.
- Iran-e Azad. “Stoning to death in Iran: a crime against humanity carried out by the mullahs’ regime”. <http://www.iran-e-azad.org/stoning/women.html> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBUG>.
- Iran Emrooz. “Censorship on stoning news in Iran: part of the interview with Shadi Sadr by Iran Emrooz”. 31 October 2006.
<http://meydaan.net/English/showarticle.aspx?arid=76&cid=46> Opened 12/12/11. Archived at <http://www.webcitation.org/63tVDI2sD>.
- Iran Focus. “Dissidents say man ‘secretly’ stoned to death in Iran”. 11 March 2009.
<http://www.iranfocus.com/en/human-rights/dissidents-say-man-secretly-stoned-to-death-in-iran-17386.html> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBUp>.
- Iran Human Rights. “Amputation sentence of one person and public flogging of another carried out in southwestern Iran yesterday March 3”. 4 March 2010.
<http://iranhr.net/spip.php?article1606> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBV0>.
- Iran Human Rights. “An adultery [sic] convicted man was hanged in northern Iran”. 20 February 2009. <http://iranhr.net/spip.php?article946> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBVA>.
- Iran Human Rights. “One man was hanged in public in Western Iran – a young girl carried out the execution”. 3 November 2011.
<http://iranhr.net/spip.php?article2357> Opened 5/1/12. Archived at <http://www.webcitation.org/64U08RPY3>.

- Iran Human Rights. "Revised: two people stoned to death in Mashad, northeast of Iran, on Friday December 26". 30 December 2008.
<http://iranhr.net/spip.php?article869> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBVI>.
- Iran Solidarity. "Javid Houtan Kian's letter from prison". 2 March 2011.
<http://iransolidarity.blogspot.com/2011/03/javid-houtan-kians-letter-from-prison.html> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBVR>.
- Iran Times International. "Man stoned to death in Rasht". 8 May 2009.
<http://www.highbeam.com/doc/1G1-199990833.html> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBVa>.
- Ismail, Salwa. "Islamism, re-Islamization and the fashioning of Muslim selves: refiguring the public sphere". *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 3.
- Jalali-Karveh, Mahmoud. "Theory and practice of arbitration as a peaceful means of dispute settlement in the Iranian legal system". In Hans-Jörg Albrecht, Jan-Michael Simon, Hassan Rezaei, Holger-C. Rohne, and Ernesto Kiza (Eds), *Conflicts and Conflict Resolution in Middle Eastern Societies – Between Tradition and Modernity*. Berlin: Duncker & Humblot, 2006, pp. 429-46.
- James, Nathan. "Gay Iranian men sentenced to die by stoning". GBM, 20 January 2011. <http://gbmnews.com/wp/?p=5319> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBVj>.
- Jaseb, Hossein, and Mostafavi, Ramin. "Iran suspends hanging sentence in stoning case". Reuters, 17 January 2011.
<http://www.reuters.com/article/idUSTRE70G36T20110117> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBVs>.
- Javadi Amuli, Abdullah. "Sources of human rights in Islam". In Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003, pp. 1-41.

- Jeffries, Stuart. "The troublemaker". *The Guardian*, 2 June 2006.
<http://www.guardian.co.uk/world/2006/jun/02/iran.guardianhayfestival2006>
 Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBW1>.
- Jokisch, Benjamin. "Ijtihad in Ibn Taymiyya's *fatawa*"; in Gleave, Robert, and Eugenia Kermeli (Eds), *Islamic Law: Theory and Practice*. London: I.B. Tauris, 1997, pp. 119-37.
- Jolly, Allison. *Lucy's legacy: sex and intelligence in human evolution*. Harvard University Press, 2001.
- Kadivar, Muhsin. "Political rights of people in Islam". In Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003, pp. 107-23.
- Kalmbach, Hilary. "Social and religious change in Damascus: one case of female Islamic religious authority". *British Journal of Middle Eastern Studies*, vol. 35, no. 1 (April 2008), pp. 37-57.
- Kamali, Mohammad Hashim. "Punishment in Islamic law: a critique of the Hudud bill of Kelantan, Malaysia". *Arab Law Quarterly*, vol. 13 (1998), pp. 203-34.
- Kamrava, Mehran. *Iran's Intellectual Revolution*. Cambridge: CUP, 2008.
- Kamrava, Mehran. "The civil society discourse in Iran". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 1). London: Routledge, 2006, pp. 118-42.
- Kant, Immanuel. *Perpetual Peace and Other Essays*. Translated by Ted Humphrey. Indianapolis: Hackett, 1983.
- Kar, Mehrangiz. "A brief history of grassroots struggles to end stoning". 6 August 2007. <http://www.meydaan.com/english/showarticle.aspx?arid=320> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBWA>.
- Kar, Mehrangiz. "Iranian law and women's rights". *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 9.
- Karadsheh, Rose Marie. "Creating an international criminal court: confronting the conflicting criminal procedures of Iran and the United States". *Dickinson Journal of International Law*, vol. 14, issue 243 (winter 1996), pp. 243-89.

- Kazemi Moussavi, Ahmed. "The institutionalization of *marja'-i taqlid* in the nineteenth century Shi'ite community". *The Muslim World*, vol. 84 no. 3-4, July–October 1994, pp. 279-99.
- Keddie, Nikki R. *Modern Iran: Roots and Results of Revolution*. London: Yale University Press, 2003.
- Keddie, Nikki R. and Farah Monian. "Militancy and religion in contemporary Iran", in Martin E. Marty and R. Scott Appleby, *Fundamentalisms and the State*. Chicago: The University of Chicago Press, 1993, pp. 511-38.
- Kelidar, Abbas. "Ayatollah Khomeini's concept of Islamic government", in Alexander S. Cudsi and Ali E. Hillal Dessouki, *Islam and Power*. London: Croom Helm, 1981, pp. 72-92.
- Kepel, Gilles. "Islamism reconsidered". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 3). London: Routledge, 2006, pp. 251-8.
- Keshavarzian, Arang. "Regime loyalty and *bazari* representation under the Islamic Republic of Iran: dilemmas of the Society of Islamic Coalition". *International Journal of Middle Eastern Studies*, vol. 41, no. 2 (May 2009), pp. 225-46.
- Khadduri, Majid. "Islam and the modern law of nations". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 3-17.
- Khamini'i, Muhammad. "Individual rights in Islam". In Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003, pp. 43-59.
- Khashan, Hilal. "The new world order and the tempo of militant Islam". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 3). London: Routledge, 2006, pp. 259-79.
- Khatami, Mohammad. *Islam, Liberty and Development*. Binghamton: Institute of Cultural Studies, 1998.
- Kohlberg, Etan. "Imam and Community in the Pre-Ghayba Period", in Arjomand, Saïd Amir (ed.), *Authority and Political Culture in Shi'ism*. Albany: State University of New York Press, 1988, pp. 25-53.

- Krämer, Gudrun. "Justice in modern Islamic thought". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: Stanford University Press, 2007, pp. 20-37.
- Krawietz, Birgit. "Darura in modern Islamic law: the case of organ transplantation"; in Gleave, Robert, and Eugenia Kermeli (Eds), *Islamic Law: Theory and Practice*. London: I.B. Tauris, 1997, pp. 185-93.
- Künkler, Mirjam. "The Special Court of the Clergy (dadgah-e vizheh-ye ruhaniyat) and the Repression of Dissident Clergy in Iran". 13 May 2009. Available at <http://papers.ssrn.com/sol3/papers.cfm?abstract-id=1505542>.
- Kurzman, Charles. "Critics within: Islamic scholars' protests against the Islamic state in Iran". *International Journal of Politics, Culture and Society*, vol. 15, no. 2, winter 2001, pp. 341-59.
- Kusha, Hamid R. *The Sacred Law of Islam: a case study of women's treatment in the Islamic Republic of Iran's criminal justice system*. Aldershot: Ashgate, 2002.
- Kutty, Faisal. "Issues in Islam: Islamists and the West; coexistence or confrontation?". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 3). London: Routledge, 2006, pp. 1-8.
- Laudan, Larry. *Truth, Error, and Criminal Law: an essay in legal epistemology*. New York: Cambridge University Press, 2006.
- Lawyers' Committee for Human Rights. "The Justice System of the Islamic Republic of Iran". New York: Lawyers' Committee for Human Rights, 1993.
- Levy, Yael V. "The Agunah and the missing husband: an American solution to a Jewish problem". *Journal of Law and Religion*, vol. 10 no. 1 (1993-4), pp. 49-71.
- Lippman, Matthew, Sean McConville and Mordechai Yerushalmi. *Islamic Criminal Law and Procedure: an Introduction*. New York: Praeger, 1988.
- Littauer, Dan. "Update on stoning execution case in Iran". *Gay Middle East*, 27 January 2011. <http://www.gaymiddleeast.com/news/news%20261.htm> Opened 20/8/11. Archived at <http://www.webcitation.org/61EGrM2Ti>.
- Locke, John. *The Second Treatise on Civil Government*. New York: Prometheus Books, 1986.

- Loeffler, Agnes G. "The double-edged foreign connection". *Iranian Studies*, vol. 37, n. 4 (December 2004), pp. 633-42.
- Mahmoudi, Firouz. "Alternative sanctions in Iranian penal law". In Hans-Jörg Albrecht, Jan-Michael Simon, Hassan Rezaei, Holger-C. Rohne, and Ernesto Kiza (Eds), *Conflicts and Conflict Resolution in Middle Eastern Societies – Between Tradition and Modernity*. Berlin: Duncker & Humblot, 2006, pp. 447-55.
- Mahmoudi, Firouz. "The informal justice system in Iranian law". In Hans-Jörg Albrecht, Jan-Michael Simon, Hassan Rezaei, Holger-C. Rohne, and Ernesto Kiza (Eds), *Conflicts and Conflict Resolution in Middle Eastern Societies – Between Tradition and Modernity*. Berlin: Duncker & Humblot, 2006, pp. 411-28.
- Makarem Shirazi, Naser. "Meaning of Limit of Tarakhus" (Estefta').
<http://www.makaremshirazi.org/english/estefta/?mit=391> Opened 21/8/11,
 archived at <http://www.webcitation.org/61DQ0LBeO>.
- Makarem Shirazi, Naser. "Megacities and their Limit of Tarakhus" (Estefta').
<http://www.makarem.ir/english/estefta/?mit=480> Opened 21/8/11; archived at
<http://www.webcitation.org/61DQ0LBeX>.
- Maleki, Abbas. "Oil Economies and Social Welfare: Iran". CeSPI / Institute of Caspian Studies, March 2009.
<http://www.caspianstudies.com/article/maleki/Iran%20Oil%20Economies%20and%20Social%20Welfare%20CeSPI.pdf>. Opened 16/11/11. Archived at
<http://www.webcitation.org/63Fq3BpIA>.
- Malik ibn Anas. *Al-Muwatta*. Translated by Aisha Abdurrahman Bewley. London: Kegan Paul International, 1989.
- Marcinkowski, Muhammad Ismail. "Al-Kulaini and his early Twelver Shi'ite *hadith* compendium *Al-Kafi*: selected aspects of the part *Al-Usul min al-Kafi*". *Islamic Culture*, vol. 74i, 2000, pp. 89-125.
- Martin, Vanessa. *Creating an Islamic State: Khomeini and the Making of a New Iran*. London: IB Tauris, 2000.
- Martin, Vanessa. "Religion and state in Khumaini's *Kashf al-Asrar*". In *Bulletin of the SOAS*, vol. 56i, 1993.

- Matin-asgari, Afshin. “Abdolkarim Soroush and the secularization of Islamic thought in Iran”. *Iranian Studies*, volume 30, numbers 1-2, Winter/Spring 1997, pp. 95-115.
- Matsunaga, Yasuyuki. “Mohsen Kadivar, an advocate of postrevivalist Islam in Iran”. *British Journal of Middle Eastern Studies*, vol. 34, no. 3 (December 2007), pp. 317-29.
- Mavani, Hamid. “Analysis of Khomeini’s proofs for *al-Wilaya al-Mutalqa* (Comprehensive Authority) of the jurist”. In Linda S. Walbridge (Ed.), *The Most Learned of the Shi‘a: The Institution of the Marja‘ Taqlid*. New York: Oxford University Press, 2001, pp. 183-201.
- Mayer, Ann Elizabeth. “Islamic rights or human rights: an Iranian dilemma”. In *Iranian Studies*, vol. 29, no. 3-4, Summer/Fall 1996, pp. 269-96.
- Mayer, Ann Elizabeth. “The fundamentalist impact on law, politics, and constitutions in Iran, Pakistan, and the Sudan”, in Martin E. Marty and R. Scott Appleby, *Fundamentalisms and the State*. Chicago: University of Chicago Press, 1993, pp. 110-51.
- Mayer, Ann Elizabeth. “The Islam and human rights nexus: shifting dimensions”. *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 4.
- Mayer, Ann Elizabeth. “The respective roles of human rights and Islam: an unresolved conundrum for Middle Eastern constitutions”. In Saïd Amir Arjomand (Ed), *Constitutional Politics in the Middle East with Special Reference to Turkey, Iraq, Iran and Afghanistan*. Oxford: Hart, 2008, pp. 77-97.
- Mayer, Ann Elizabeth. “The universality of human rights: lessons from the Islamic Republic”. In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 4). London: Routledge, 2006, pp. 307-20.
- Mazrui, Ali. “Globalization and cross-cultural values: the politics of identity and judgement”. In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 1). London: Routledge, 2006, pp. 242-54.
- Menashri, David. “Shi‘ite leadership: in the shadow of conflicting ideologies”. In *Iranian Studies*, vol. XIII, no. 1-4, 1980, pp. 119-45.

- Meydaan. "Practice of soning [sic] is in our laws; interview with Shirin Ebadi". 19 January 2007.
<http://meydaan.net/English/showarticle.aspx?arid=133&cid=46> Opened 20/8/11, archived at <http://www.webcitation.org/61EH1pMIj>.
- Meydaan. "Stoning not in contrast with human rights! Interview with Mohammad Javad Larijani". 25 July 2007.
<http://meydaan.com/English/showarticle.aspx?arid=310&cid=46> Opened 20/8/11. Archived at <http://www.webcitation.org/61EHDkW03>.
- Mill, John Stuart. *On Liberty and The Subjection of Women*. London: Penguin, 2006.
- Mill, John Stuart. *Utilitarianism*. Glasgow: Collins, 1982.
- Mirbagheri, Farid. "Narrowing the gap or camouflaging the divide: an analysis of Mohammad Khatami's 'Dialogue of Civilisations'". *British Journal of Middle Eastern Studies*, vol. 34, no. 3 (December 2007), pp. 305-16.
- Mir-Hosseini, Ziba. "Criminalising sexuality – zina laws as violence against women in Muslim contexts". In Mir-Hosseini, Ziba, and Vanja Hamzić, *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts*. Women Living Under Muslim Laws, 2010, pp. 19-48.
- Mir-Hosseini, Ziba. "Family Law", section iii: "In Modern Persia". *Encyclopaedia Iranica*, volume 9, 1999, pp. 192-6.
- Mir-Hosseini, Ziba. "Iran". In Mir-Hosseini, Ziba, and Vanja Hamzić, *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts*. Women Living Under Muslim Laws, 2010, pp. 81-115.
- Mir-Hosseini, Ziba. *Marriage on Trial: A Study of Islamic Family Law*. London: I. B. Tauris, 1993/2000.
- Mir-Hosseini, Ziba. "Sharia and national law in Iran". In Otto, Jan Michiel (Ed), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden University Press, 2010; pp. 319-71.
- Mir-Hosseini, Ziba. "Stretching the limits: a feminist reading of the *Shari'a* in post-Khomeini Iran". In Mai Yamani (Ed), *Feminism and Islam: Legal and Literary Perspectives*. Reading: Ithaca Press, 1996, pp. 285-319.

- Mir-Hosseini, Ziba. "The construction of gender in Islamic legal thought and strategies for reform". *Hawwa*, vol. 1, issue 1 (2003), pp. 1-28.
- Mir-Hosseini, Ziba. "The politics and hermeneutics of hijab in Iran: from confinement to choice". *Muslim World Journal of Human Rights*, vol. 4, issue 1 (2007), article 2.
- Mir-Hosseini, Ziba. "When a woman's hurt becomes an injury: 'hardship' as grounds for divorce in Iran". *Hawwa*, vol. 5, issue 1 (2007), pp. 111-26.
- Mir-Hosseini, Ziba, and Richard Tapper. *Islam and Democracy in Iran: Eshkevari and the Quest for Reform*. London and New York: I.B. Tauris, 2006.
- "Misconception: Islam and the Quran orders hands to be cut off for theft".
<http://www.misconceptions-about-islam.com/cut-off-hands-theft.htm> Opened 21/8/11; archived at <http://www.webcitation.org/61DQ0LBdx>.
- Mission Free Iran. "Letter from the children of Sakine Mohammadi: We stretch out our hands to the people of the whole world: protest against our mother's stoning". 26 June 2010. <http://missionfreeiran.org/2010/06/26/sakine-children/> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBWI>.
- Mobasherat, Mitra. "Final verdict not yet decided on Iranian woman sentenced to stoning". *CNN*, 13 May 2011.
<http://edition.cnn.com/2010/WORLD/meast/09/28/iran.stoning.case/index.html?eref=edition> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBWR>.
- Modarressi, Hossein. *Crisis and Consolidation in the Formative Period of Shi'ite Islam*. Princeton: The Darwin Press, 1993.
- Modarressi Tabataba'i, Hossein. *An Introduction to Shi'i Law*. London: Ithaca Press, 1984.
- Mohammadi, Majid. *Judicial Reform and Reorganization in 20th century Iran: State-building, Modernization and Islamicization*. New York and Abingdon: Routledge, 2008.
- Mokhtari, Shadi. "The search for human rights within an Islamic framework in Iran". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 613-23.

- Momen, Moojan. *An Introduction to Shi‘i Islam*. New Haven: Yale University Press, 1985.
- Morgan-Foster, Jason. “A new perspective on the universality debate: reverse moderate relativism in the Islamic context”. In Mashood A. Baderin (Ed), *International and Islamic Law*. Aldershot: Ashgate, 2008, pp. 365-97.
- Mostaghim, Ramin. “In Iran, two muggers caught on video are hanged”. Los Angeles Times, 20 January 2013.
<http://articles.latimes.com/2013/jan/20/world/la-fg-iran-hanging-20130121>
 Archived at <http://www.webcitation.org/6EvmNts2H>.
- Mottahedeh, Roy P. “Afterword”. In Abbas Amanat and Frank Griffel (Ed), *Shari‘a: Islamic Law in the Contemporary Context*. Stanford: SUP, 2007, pp. 178-81.
- Muhaqqiq Damad, Mustafa. “International humanitarian law in Islam and contemporary international law”. In Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003, pp. 253-93.
- Muir, Jim. “Khamenei’s brother attacks reformist purge”. 12 January 2000.
http://news.bbc.co.uk/2/hi/middle_east/600741.stm Archived at
<http://www.webcitation.org/6EvmWPgU8>.
- Muir, Jim. “Report slams Iran rights abuses”. BBC News, 7 June 2004.
http://news.bbc.co.uk/2/hi/middle_east/3782793.stm. Opened 21/8/11.
 Archived at <http://www.webcitation.org/61DQ0LBWa>.
- Müller, Werner A. *Developmental Biology*. New York: Springer-Verlag, 1997.
- Munson, Henry. “Islam, nationalism and resentment of foreign domination”. In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 271-86.
- Muslim ibn al-Hajjaj. *Al-Musnadu al-Sahihu bi Naklil Adli*, volume 7 (Kitab al-Hajj). English translation, University of Southern California.
<http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/muslim/007.smt.html#007.2801>. Opened 20/8/11. Archived at
<http://www.webcitation.org/61DQ0LBWp>.

- Mydans, Seth. "Sentenced to death, rape victim is freed by Pakistani court". *New York Times*, 8 June 2002.
<http://www.nytimes.com/2002/06/08/international/asia/08RAPE.html> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBWz>.
- Nadjmabadi, Shahnaz. "From 'alien' to 'one of us' and back: field experiences in Iran". *Iranian Studies*, volume 37, number 4 (December 2004), pp. 603-12.
- Nassar, Ahmad E. "The International Criminal Court and the applicability of international jurisdiction under Islamic law". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 4). London: Routledge, 2006, pp. 1-10.
- NCRI (National Council of Resistance in Iran), "Sentenced to death for drinking alcohol". 6 February 2008. <http://ncr-iran.org/en/ncri-statements/human-rights/4749-sentenced-to-death-for-drinking-alcohol> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBX8>.
- NCRI. "Brief on Iran No. 1214" (particularly item 3, "New Chief Judge"). 23 August 1999. http://www.iran-e-azad.org/english/boi/12140823_99.html Retrieved 16/1/13. Archived at <http://www.webcitation.org/6DjJOfpCC>.
- Newman, Andrew J. *The Formative Period of Twelver Shi'ism: Hadith as Discourse Between Qum and Baghdad*. Richmond: Curzon, 2000.
- Newman, Graeme. "Khomeini and criminal justice: notes on crime and culture". *The Journal of Criminal Law and Criminology*, vol. 73, no. 2 (1982), pp. 561-81.
- New York Times. "Nigerian woman condemned to death by stoning is acquitted". 26 March 2002. <http://www.nytimes.com/2002/03/26/world/nigerian-woman-condemned-to-death-by-stoning-is-acquitted.html> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBXH>.
- New York Times. "Rape victim stoned to death in Somalia was 13, UN says". 4 November 2008.
<http://www.nytimes.com/2008/11/05/world/africa/05somalia.html> Opened 20/8/11. Archived at <http://www.webcitation.org/61DQ0LBXR>.
- Niknam, Azadeh. "The Islamization of law in Iran: a time of disenchantment". *Middle East Report*, vol. 29 part III/212, 1999, pp. 17-21.

- Onishi, Norimitsu. "Mother's Sentence Unsettles a Nigerian Village". New York Times, 7 September 2002.
<http://www.nytimes.com/2002/09/07/world/mother-s-sentence-unsettles-a-nigerian-village.html> Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBXa>.
- Opwis, Felicitas. "Islamic law and legal change: the concept of *maslaha* in classical and contemporary Islamic legal theory". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: Stanford University Press, 2007, pp. 62-82.
- Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003.
- Osanloo, Arzoo. "Doing the 'rights' thing: methods and challenges of fieldwork in Iran". *Iranian Studies*, volume 37, number 4 (December 2004), pp. 675-84.
- Osanloo, Arzoo. "The measure of mercy: Islamic justice, sovereign power, and human rights in Iran". *Cultural Anthropology*, vol. 21, issue 4, pp. 570-602.
- Osanloo, Arzoo. "Whence the law: the politics of women's rights, regime change, and the vestiges of reform in the Islamic Republic of Iran". *Radical History Review*, issue 101 (spring 2008), pp. 42-58.
- O'Toole, Pam. "Iran rapped over child executions". BBC News, 27 June 2007.
<http://news.bbc.co.uk/2/hi/6244126.stm>. Opened 26/8/11. Archived at
<http://www.webcitation.org/61DQ0LBXi>.
- Otto, Jan Michiel (Ed). *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden University Press, 2010.
- Padez, C. "Age at menarche of schoolgirls in Maputo, Mozambique". *Annals of Human Biology*, volume 30(4), July-August 2003, pp. 487-95.
- Padez, C. "Social background and age at menarche in Portuguese university students: a note on the secular changes in Portugal". *American Journal of Human Biology*, volume 15(3), May-June 2003, pp. 415-27.
- Pannier, Bruce. "Iran: criminals lose hands and feet as Shari'a law imposed". Radio Free Europe, 7 January 2008.

- <http://www.rferl.org/content/article/1079325.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBXr>.
- Payvand. "Iranian reformist cleric, Ayatollah Sanei, disowned by hardliners". 2 January 2010. <http://www.payvand.com/news/10/jan/1008.html> Archived at <http://www.webcitation.org/6EvnB0gEA>.
- Payvand. "Iran's Judiciary Chief admits human rights violations in detention centres". 5 May 2005. <http://www.payvand.com/news/05/may/1044.html>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBY0>.
- Payvand. "Iran's Ministry of Welfare and Social Security policies still based on charity: social welfare researcher announcing the increasing subsidy escaping rate". 4 March 2008. <http://www.payvand.com/news/08/apr/1022.html>. Opened 16/11/11. Archived at <http://www.webcitation.org/63FqK0ecf>.
- Payvand. "Parliament speaker reiterates Khatami's constitutional rights". 21 October 2001. <http://www.payvand.com/news/01/oct/1061.html> Archived at <http://www.webcitation.org/666F5Hlpc>.
- Payvand. "Reformist Islamic Revolution Mujahideen Organization rues Shahroudi's response to majlis". 2 September 2001. <http://www.netnative.com/news/01/feb/1046.html> Retrieved 16/1/13. Archived at <http://www.webcitation.org/6DjD6X30r>.
- Perry, Glenn E. "Huntington and his critics: the West and Islam". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 3). London: Routledge, 2006, pp. 231-50.
- Peters, Ruud. "The reintroduction of Sharia criminal law in Nigeria: new challenges for the Muslims of the north". In Tellenbach, Sylvia (Ed), *Beiträge zum Islamischen Recht IV*. Frankfurt: Peter Lang, 2004, pp. 9-22.
- Pickthall, Mohammed Marmaduke. *The Meaning of the Glorious Qur'an: An Explanatory Translation*. London: Ta-Ha Publishers, 1930.
- Press TV. "Ayatollah Sanei no longer qualified: clerical body". 2 January 2010. <http://edition.presstv.ir/detail/115179.html> Retrieved 17/1/13. Archived at <http://www.webcitation.org/6DI2rX6dm>.

- Press TV, "Iran denies stoning claims". 9 July 2010.
<http://edition.presstv.ir/detail/134025.html>. Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LB9>.
- Price, Caitlin. "UN committee urges Iran to respect rights obligations". Lex
 Universal, 11/22/2007. <http://lexuniversal.com/en/news/3537>. Opened
 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBYI>.
- Price, Daniel. "Islam and human rights: a case of deceptive first appearances". In
 Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in
 Islamic Studies* (vol. 4). London: Routledge, 2006, pp. 278-93.
- Quraishi, Asifa. "Her honor: an Islamic critique of the rape laws of Pakistan from a
 woman-sensitive perspective". *Michigan Journal of International Law*,
 volume 18 (Winter 1997), pp. 287-320.
- Qur'an Inspector. "Chapter 4: Women (Al-Nesa')".
http://submission.org/d/x/Quran_Inspector_EN_AR.html#4. Opened 2/12/11.
 Archived at <http://www.webcitation.org/63eHpi4cU>. Copies with author.
- Radio Farda. "Prominent Iranian dissident cleric Ahmad Ghabel dies". Radio Free
 Europe, 23 October 2012. [http://www.rferl.org/content/iran-ahmad-ghabel-
 dead/24748342.html](http://www.rferl.org/content/iran-ahmad-ghabel-dead/24748342.html) Archived at <http://www.webcitation.org/6Evo3CeLr>.
- Rahami, Mohsen. "Development of criminal punishment in the Iranian post
 revolutionary [sic] penal code". *European Journal of Crime, Criminal Law
 and Criminal Justice*, vol. 13/4 (2005), pp. 585-602.
- Rahami, Mohsen. "The Constitution as means of conflict prevention in the Middle
 East with a view to the Iranian experience". In Hans-Jörg Albrecht, Jan-
 Michael Simon, Hassan Rezaei, Holger-C. Rohne, and Ernesto Kiza (Eds),
*Conflicts and Conflict Resolution in Middle Eastern Societies – Between
 Tradition and Modernity*. Berlin: Duncker & Humblot, 2006, pp. 471-91.
- RAHANA (Reporters and Human Rights Activists of Iran). "Abdollah Momeni's
 harrowing account of torture and false confessions in prison". 9 September
 2010. <http://www.rahana.org/en/?p=6909>. Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LB9R>.

- RAHANA. "Amir Kabir student, Farzan Hakimzadeh held in Gohardasht prison". 4 March 2010. <http://www.rahana.org/en/?p=1455> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBYZ>.
- RAHANA. "CHRR member under pressure to accept moharebeh charge". 25 Feb. 2010. <http://www.rahana.org/en/?p=1120> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBYi>.
- RAHANA. "Number of journalists and netizens in prison now tops 65". 9 Feb. 2010. <http://www.rahana.org/en/?p=442> http://en.rsf.org/iran-number-of-journalists-and-netizens-09-02-2010_36342 Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBYr>, <http://www.webcitation.org/61EHRmiHR>.
- Rahmdel, Mansour. "International judicial criminal cooperation in combating narcotic drug crimes in Iranian law". *European Journal of Crime, Criminal Law & Criminal Justice*, vol. 10/4 (2002), pp. 294-302.
- Raja, Salman Akram. "Islamisation of laws in Pakistan". *South Asian Journal*, vol. 1, no. 2 (October-December 2003), pp. 94-109.
- Rajaei, Farhang. "A Thermidor of 'Islamic Yuppies'? Conflict and compromise in Iran's politics". In *Middle East Journal*, vol. 53, no. 2, Spring 1999, pp. 217-31.
- Razavi, Shahra. "Islamic politics, human rights and women's claims for equality in Iran". *Third World Quarterly*, vol. 27, no. 7 (2006), pp. 1223-37.
- Rehman, Javaid. "Accommodating religious identities in an Islamic state: international law, freedom of religion and the rights of religious minorities". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 571-97.
- Reporters Without Borders. "Two bloggers face possible death penalty". 28 January 2010. http://en.rsf.org/iran-two-bloggers-face-possible-death-28-01-2010_36231 Opened 21/8/11. Archived at <http://www.webcitation.org/61EHamnoB>.
- Reuters. "Iran suspends four planned stoning executions". 5 August 2008. http://www.rferl.org/content/Iran_Suspends_Stoning_Executions/1188610.html Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBZ9>.

- Rezaei, Hassan. "Islamic sharia and cyberspace: reflections on the interactions of sharia and Iranian society in cyberspace". In Tellenbach, Sylvia (Ed), *Beiträge zum Islamischen Recht IV*. Frankfurt: Peter Lang, 2004, pp. 105-24.
- Rezaei, Hassan. "The Iranian criminal justice under the Islamization project". *European Journal of Crime, Criminal Law & Criminal Justice*, vol. 10/1 (2002), pp. 54-69.
- Ridgeon, Lloyd. "Introduction: Iranian intellectuals (1997-2007)". *British Journal of Middle Eastern Studies*, vol. 34, no. 3 (December 2007), pp. 261-5.
- Rippin, Andrew. *Muslims: Their Religious Beliefs and Practices*. London: Routledge, 1990.
- Rose, Gregory. "Velayat-e Faqih and the Recovery of Islamic Identity in the Thought of Ayatollah Khomeini", in Keddie, Nikki (ed), *Religion and Politics in Iran: Shi'ism from Quietism to Revolution*. New Haven: Yale University Press, 1983, pp. 166-88.
- Rouhani, Farhang. "Multiple sites of fieldwork: a personal reflection". *Iranian Studies*, vol. 37, number 4 (December 2004), pp. 685-93.
- Roy, Olivier. "The crisis of religious legitimacy in Iran". In *Middle East Journal*, vol. 53, no. 2, Spring 1999, pp. 201-16.
- Russell, Bertrand. *An Outline of Philosophy*. London: Allen and Unwin, 1927.
- Sachedina, Abdulaziz. "The rule of the religious jurist in Iran". In John L. Esposito and R.K. Ramazani (Ed), *Iran at the Crossroads*. New York: Palgrave, 2001, pp. 123-47.
- Sachedina, Abdulaziz Abdulhussein. *The Just Ruler in Shi'ite Islam*. Oxford: Oxford University Press, 1988.
- Sadri, Mahmoud. "Attack from within: dissident political theology in contemporary Iran". 13 February 2002.
<http://web.archive.org/web/20030226124152/http://kadivar.com/Htm/English/Reviews/reform.htm> Archived at <http://www.webcitation.org/6EvoZ7hGA>.
- Saffari, Esfandiar. "Friday prayer leader calls for reinstating public punishment in Iran". *Rooz*, 5 April 2007.
<http://www.roozonline.com/english/news3/newsitem/article/friday-prayer->

- [leader-calls-for-reinstating-public-punishment-in-iran.html](#). Opened 21/8/11.
Archived at <http://www.webcitation.org/61DQ0LBZI>.
- Sahimi, Muhammad. "Tehran Bureau: Who's in charge?" 29 June 2010.
<http://www.irannewsnow.com/2010/07/tehran-bureau-whos-in-charge/>
Archived at <http://www.webcitation.org/6EvohNW78>.
- Salimi, Husayn. "Introduction" to Organization for Islamic Culture and Communications, Directorate of Research and Education, Centre for Cultural-International Studies. *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*. New Delhi: Kanishka, 2003, pp. i-xi.
- Sanati, Kimia. "Intolerance marks Sunni student's death sentence". IPS News, 9 February 2008. <http://ipsnews.net/news.asp?idnews=41247>. Opened 21/8/11.
Archived at <http://www.webcitation.org/61DQ0LBZR>.
- Sanusi, Sanusi Lamido. "Amina Lawal: sex, pregnancy and Muslim law". September 2002, from http://www.nigerdeltacongress.com/articles/amina_lawal.htm
Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBZa>.
- Sanusi, Sanusi Lamido. "The Shariah and the woman question". *Weekly Trust* (Kaduna), 18 September 2000.
<http://www.hartford-hwp.com/archives/34a/081.html> Opened 21/8/11.
Archived at <http://www.webcitation.org/61DQ0LBZj>.
- Sardar Ali, Shaheen. "Women's human rights in Islam: towards a theoretical framework". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 425-60.
- Schacht, Joseph. *An Introduction to Islamic Law*. Oxford University Press, 1982.
- Schacht, Joseph. "Problems of modern Islamic legislation". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 4). London: Routledge, 2006, pp. 255-77.
- Sciolino, Elaine. *Persian Mirrors: The Elusive Face of Iran*. New York: Free Press, 2005.
- Sepehri, Vahid. "Iran: Supreme Court upholds principle of morality killings". Radio Free Europe, April 23, 2007.
<http://www.rferl.org/content/article/1076041.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBZr>.

- Shah, Niaz A. "Women's human rights in the Koran: an interpretive approach". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 461-96.
- Shahidi, Hossein. "Iranian journalism and the law in the twentieth century". *Iranian Studies*, vol. 41, no. 5 (December 2008), pp. 739-54.
- Shahshahani, Sepehr. "Politics under the cover of law: can international law help resolve the Iran nuclear crisis?" *Boston University International Law Journal*, vol. 25 (2007), pp. 369-426.
- Shakir, Mohammad Saeed. *The Glorious Qur'an with Translation and Transliteration*. Qum: Ansaryan, 1998.
- Shams Nateri, Mohammad Ebrahim. "Formal and informal means of conflict resolution in murder cases in Iran". In Hans-Jörg Albrecht, Jan-Michael Simon, Hassan Rezaei, Holger-C. Rohne, and Ernesto Kiza (Eds), *Conflicts and Conflict Resolution in Middle Eastern Societies – Between Tradition and Modernity*. Berlin: Duncker & Humblot, 2006, pp. 401-10.
- Shargh. "Democracy and rationality: an interview with Abdolkarim Soroush". December 2003. <http://www.dr.soroush.com/English/Interviews/E-INT-20031200-1.htm> Archived at <http://www.webcitation.org/6EvoqS0vJ>.
- Silberberg, Naftali. "The Agunah". From Chabad.org, http://www.chabad.org/library/article_cdo/aid/613084/jewish/The-Agunah.htm Opened 21/8/11. Copies with author.
- Soares, Claire. "Delara Darabi: 'Oh mother, I can see the noose'". The Independent, 4 May 2009. <http://www.independent.co.uk/news/world/middle-east/delara-darabi-oh-mother-i-can-see-the-noose-1678543.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBa9>.
- Solomon, Jay, and Farnaz Fassihi. "Iran rights envoy assails U.N. censure". Wall Street Journal, 19 November 2010. <http://online.wsj.com/article/SB10001424052748703374304575623040167164392.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBaI>.
- Somra, Gena, and Mitra Mobasherat. "Son pleads for help as mother awaits stoning in Iran". *CNN World*, 26 July 2010. <http://articles.cnn.com/2010-07->

- [06/world/iran.stoning_1_ayatollah-khamenei-mina-ahadi-supreme-leader? s=PM:WORLD](http://www.webcitation.org/61DQ0LBaR) Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBaR>.
- Spellberg, Denise. "Islam in America: adventures in neo-Orientalism". *Review of Middle East Studies*, vol. 43, no. 1 (Summer 2009), pp. 25-33.
- Squires, E. James. *Applied Animal Endocrinology*. Cambridge, MA: CABI, 2003.
- Sreberny, Annabelle, and Gholam Khiabany. "Becoming intellectual: the Blogestan and the public political space in the Islamic Republic". *British Journal of Middle Eastern Studies*, vol. 34, no. 3 (December 2007), pp. 267-86.
- Steiner, Susie. "Sharia Law: Susie Steiner explains the Islamic legal system which has sentenced a Nigerian woman to be stoned to death". *Guardian*, 20 August 2002. <http://www.guardian.co.uk/world/2002/aug/20/qanda.islam>. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBaa>.
- Stewart, P.J. *Unfolding Islam*. Reading: Garnet Publishing, 1995.
- Suleiman, Yasir, and Paul Anderson. "'Conducting fieldwork in the Middle East': report of a workshop held at the University of Edinburgh on 12 February 2007". *British Journal of Middle Eastern Studies*, vol. 35, no. 2 (August 2008), pp. 151-71.
- Syed, Safir. "The impact of Islamic law on the implementation of the Convention on the Rights of the Child: the plight of non-marital children under Shari'a". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 499-533.
- Tabarestani, Cyrus. "Fundamental contradictions of the Islamic Republic of Iran: an Iranian view". In *Capital and Class*, vol. 49 (1993), pp. 19-35.
- Tabari, Azar. "The Role of the Clergy in Modern Iranian Politics", in Keddie, Nikki (ed), *Religion and Politics in Iran: Shi'ism from Quietism to Revolution*. New Haven: Yale University Press, 1983, pp. 47-72.
- Tabari, Keyvan. "The rule of law and the politics of reform in post-revolutionary Iran". *International Sociology* vol. 19, no. 1 (March 2003), pp. 96-113.
- Tabataba'i, 'Allamah Sayyid Muhammad Husayn. *Shi'ah* (translated by Sayyid Husayn Nasr). Qum: Ansariyan, 2004.

- Taheri, Amir. "Divine law and human rights". In *Index on Censorship*, vol. 12 (1983), pp. 19-21.
- Takeyh, Ray. "The lineaments of Islamic democracy". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 287-98.
- Tamadonfar, Mehran. "Islam, law, and political control in contemporary Iran". *Journal for the Scientific Study of Religion*, vol. 40, no. 2 (June 2001), pp. 205-19.
- Tehran Times. "Judiciary still examining Sakineh Ashtiani case". 18 January 2011. http://www.tehrantimes.com/Index_view.asp?code=234309. Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBaj>.
- Telegraph. "Iran suspends execution by stoning". 5 August 2008. <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/2507499/Iran-suspends-execution-by-stoning.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBar>.
- Terman, Rochelle. "The Stop Stoning Forever Campaign: A Report". Women Living Under Muslim Laws, November 2007. http://www.meydaan.net/UserFiles/File/Terman_stoning-2.pdf Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBb1>.
- Terman, Rochelle, and Mufuliat Fijabi. "Stoning is not our culture: a comparative analysis of human rights and religious discourses in Iran and Nigeria". The Global Campaign to Stop Stoning and Killing Women, March 2010. http://www.stop-stoning.org/files/Terman_Fijabi.pdf Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBb9>.
- Tibi, Bassam. "Islamic law/shari'a, human rights, universal morality and international relations". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 3). London: Routledge, 2006, pp. 88-109.
- Times of India. "Iran clerics say death by stoning may be stopped". 29 December 2002. <http://timesofindia.indiatimes.com/articleshow/32782776.cms> Opened 30/9/09. Copies with author.

- “Travel Fiqh”. <http://www.islamic-laws.com/travelfiqh.htm> Opened 21/8/11; archived at <http://www.webcitation.org/61DQ0LBeF>.
- Turam, Berna. “The politics of engagement between Islam and the secular state: ambivalences of ‘civil society’”. In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 158-80.
- United Nations Economic and Social Council, Commission on Human Rights. “Question of the Violation of Human Rights and Fundamental Freedoms, Including Policies of Racial Discrimination and Segregation, in All Countries, with Particular Reference to Colonial and Other Dependent Countries and Territories: Report of the Sub-Commission Under Commission on Human Rights Resolution 8 (XXIII): Specific Human Rights Issues”. E/CN.4/Sub.2/2003/NGO/15, 14 July 2003. <http://www.unhcr.org/refworld/pdfid/3f4f5ad96.pdf> Opened 21/8/11. Copies with author.
- United Nations Economic and Social Council, Commission on Human Rights. “Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights: Effective Functioning of Human Rights Mechanisms”. E/CN.4/2003/NGO/225, 17 March 2003. <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.2003.NGO.225.En?Opendocument> Opened 21/8/11. Archived at <http://www.webcitation.org/61EHqnTxx>.
- United Nations General Assembly. “Global development goals should not be pursued in isolation from human rights”. Document GA/SHC/3925, 22 October 2008. <http://www.un.org/News/Press/docs/2008/gashc3925.doc.htm> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBbh>.
- United Nations General Assembly. “Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran”. Report number A/63/459, 1 October 2008. <http://www.unhcr.org/refworld/publisher,UNGA,,,490032342,0.html> Opened 21/8/11. Archived at <http://www.webcitation.org/61EHzfKch>.

- United Nations General Assembly. Resolution number A/RES/64/176, 26 March 2010. "Situation of human rights in the Islamic Republic of Iran".
http://ap.ohchr.org/documents/alldocs.aspx?doc_id=16980 Opened 21/8/11.
 Archived at <http://www.webcitation.org/61DQ0LBbq>.
- United Nations General Assembly. Resolution number A/RES/65/226, 10 February 2011. "Situation of human rights in the Islamic Republic of Iran".
<http://www.un.org/Depts/dhl/resguide/r65.shtml> Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBby>.
- United Nations General Assembly. "Situation of human rights in the Islamic Republic of Iran". Document A/C.3/63/L.40, 30 October 2008.
<http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/63/L.40> Opened
 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBcG>.
- United Nations General Assembly. "The situation of human rights in the Islamic Republic of Iran: report of the Secretary-General". Report number A/64/357, 23 September 2009.
<http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/357> Opened 21/8/11.
 Archived at <http://www.webcitation.org/61DQ0LBcP>.
- United Nations General Assembly. "The situation of human rights in the Islamic Republic of Iran: report of the Secretary-General". Report number A/65/370, 15 September 2010. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/535/32/PDF/N1053532.pdf?OpenElement>,
<http://www.un.org/Docs/journal/asp/ws.asp?m=A/65/370> Opened 21/8/11.
 Archived at <http://www.webcitation.org/61DQ0LBcX>,
<http://www.webcitation.org/61DQ0LBcg>.
- Universal Unity. "Punishment for theft in the Quran". 2000.
http://www.universalunity.net/Punishment_For_Theft.htm Opened 21/8/11;
 archived at <http://www.webcitation.org/61DQ0LBe6>.
- Usmani, Muhammad Taqi. "The Islamization of laws in Pakistan: the case of *Hudud Ordinances*". In *The Muslim World*, vol. 96 issue 2 (April 2006), pp. 287-304.
- VidYid.com. "Rabbis release IAF Romania crash agunos". 27 August 2010.
<http://vidyid.com/rabbis-release-iaf-romania-crash-agunos-2.html> Opened
 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBcp>.

- Waines, David. *An Introduction to Islam*. Cambridge: CUP, 1995.
- Walbridge, Linda S. "Introduction: Shi'ism and authority". In Linda S. Walbridge (Ed), *The Most Learned of the Shi'a: The Institution of the Marja' Taqlid*. New York: Oxford University Press, 2001, pp. 3-13.
- Wall Street Journal. "Dissident Iran rises". 30 December 2009.
<http://online.wsj.com/article/SB10001424052748703510304574626453406091222.html> Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBcy>.
- WFAFI (Women's Forum Against Fundamentalism in Iran). "Stoning continues in Iran unabatedly". 2004. <http://www.wfafi.org/Stoning.htm> Opened 21.8.11. Archived at <http://www.webcitation.org/61DQ0LBd7>.
- Whincup, PH, Gilg, JA, Odoki, K, Taylor, SCJ, and Cook, DG. "Age of menarche in contemporary British teenagers: survey of girls born between 1982 and 1986". *British Medical Journal*, volume 322(7294), 5 May 2001, pp. 1095-6.
- Williams, John Alden. *The Word of Islam*. London: Thames and Hudson, 1994.
- WLUML (Women Living Under Muslim Laws). "Iran: Sakineh Mohammadi Ashtiani's 'confession' condemned". 10 December 2010.
<http://www.wluml.org/node/6861> Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBdF>.
- WLUML. "Iran: we are not ashamed of stoning!". 30 September 2007.
<http://www.wluml.org/node/4096> Opened 21/8/11. Archived at
<http://www.webcitation.org/61DQ0LBdO>.
- WNN (Women's News Network). "Iran: advocates speak out as human rights attorney is exiled to remote prison". 13 June 2012.
<http://womennewsnetwork.net/?p=16561> Copies with author.
- Wright, Robin. "Islam, democracy and the West". In Shahram Akbarzadeh (Ed), *Islam and Globalization: Critical Concepts in Islamic Studies* (vol. 2). London: Routledge, 2006, pp. 258-70.
- Würth, Anna. "The normativity of the factual: on the everyday construction of shari'a in a Yemeni family court". In Abbas Amanat and Frank Griffel (Ed), *Shari'a: Islamic Law in the Contemporary Context*. Stanford: SUP, 2007, pp. 165-77.

- Yefet, Karin Carmit. "Unchaining the *agunot*: enlisting the Israeli constitution in the service of women's marital freedom". *Yale Journal of Law and Feminism*, vol. 20 (2008-9), pp. 441-503.
- Yefet, Karin Carmit. "What's the constitution got to do with it? Regulating marriage in Pakistan". *Duke Journal of Gender Law and Policy*, vol. 16 (2009), pp. 347-77.
- Yeranian, Edward. "Iranian activists face execution as 'Enemies of God'". *VOA News*, 11 August 2010. <http://www.voanews.com/english/news/middle-east/Iranian-Activists-Face-Execution-as-Enemies-of-God-100464324.html>
Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBdX>.
- Zeydabadi-Nejad, Saeed. "Iranian intellectuals and contact with the West: the case of Iranian cinema". *British Journal of Middle Eastern Studies*, vol. 34, no. 3 (December 2007), pp. 375-98.
- Zubaida, Sami. "Is Iran an Islamic state?". In Beinin, Joel and Joe Stork (ed.), *Political Islam*. London: I. B. Tauris, 1997, pp. 103-19.
- Al-Zuhili, Sheikh Wahbeh. "Islam and international law". In Mashood A. Baderin (Ed), *International Law and Islamic Law*. Aldershot: Ashgate, 2008, pp. 79-93.

Sources in other languages:

- Amir Ebrahimi, Masserat, and Ziba Jalali Naini. "I giovani alla ricerca dello spazio perduto". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 59-65.
- Beccaria, Cesare. *Dei Delitti e delle Pene*. Milano: Mondadori, 1991.
- Daneshpour, Javad. "Cervelli in fuga sognando California". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 75-8.
- Ghahremanpour, Rahman. "L'arrocco iraniano". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 179-87.
- Hurr al-'Amili, Muhammad b. Hassan. *Wasa'il al-Shi'a* (volume 20). Qom: Mo'asseseye Al al-Beyt, 1409 AH*.

- Ibn Babawaih al-Qummi, Abu Ja'far Muhammad b. Ali (Sheikh Saduq). *Man La Yahduruhu al-Faqih* (volume 4). Qom: Entesharat-e Jame'eye Modarresin, 1413 AH.
- Jahanbegloo, Ramin. "Chi comanda in Iran". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 21-7.
- Khomeini, Ruhollah. "Due Decreti" (Two Decrees). Translated by Silvia Curzu. In *Oriente Moderno*, vol. 62 (N.S. 1), 1982, pp. 183-8.
- Khosrovani, Firouzeh. "La scuola degli ayatollah". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 45-52.
- Kulayni, Abu Ja'far Muhammad b. Ya'qub b. Ishaq. *Al-Kafi fi 'Ilm al-Din* (volume 5). Edited by Ali Akbar al-Ghaffari. Tehran: Dar al-Kutub al-Islamiyya, 1377-9 AH (1957-60 AD).
- Majlesi, Muhammad Baqir ibn Muhammad Taqi. *Bihar al-Anwar*, volume 77. Tehran: Dar al-Kutub al-Islamiyya, 1966 (1386 AH).
- Memarian, Omid. "Guardare Desperate Housewives a Tehran". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 161-5.
- Moroni, Ferminia. "*Kashf-e Asrar*, o la fenomenologia di uno spirito inquieto". In *Oriente Moderno*, N.S. 12 (73) vii-xiii, 1993 (1995), pp. 229-39.
- Navai, Ramita. "Le vie della droga". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 79-87.
- Niknam, "L'islamisation du droit pénal à l'épreuve des réalités en Iran" (The Islamisation of penal law as a test of realities in Iran), in *Revue des Mondes Musulmans et de la Mediterranee*, vol. 85/86 (1999), pp. 47-62.
- Nobahar, Rahim. *Qawa'id Fiqh al-'Oqubat*. Awaiting publication.
- Picheca, Giulio. "Analisi della situazione giudiziaria in Iran attraverso la casistica emersa nella prassi rivoluzionaria", in *Oriente Moderno*, vol. 62 (N.S. 1), 1982, pp. 37-59.
- Samgiss, Banafsheh. "Poveri giovani". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 67-73.
- Schweizer, Gerhard. *I persiani da Zarathustra a Khomeini*. (Translated from German to Italian by Roberto Menin). Milano: Garzanti, 1986.

Zarmandili, Bijan. "Il gioco delle tre carte". In *Limes: rivista italiana di geopolitica*, 2005 n. 5: *L'Iran tra maschera e volto*, pp. 35-44.

Iranian laws:

2012 Penal Code; 2011/12. <http://mohammadijudge.blogfa.com/category/1> Opened 15/2/12; archived at <http://www.webcitation.org/65U3S9am7>.

Civil Code; 1928.

Constitution; 1979.

Criminal Procedural Code (CPC); 1911.

Directive on the Implementation Regulations for Sentences of Execution, Stoning, Crucifixion, [and] Amputation or Disabling of Limbs, [being] the Subject of Note 1 of Article 28 of the law Establishing Criminal Courts One and Two (DIRS28/70); 1991.

Directive on the Implementation Regulations for Sentences of Qesas, Stoning, Qatl (execution), Crucifixion, E'dam (execution) and Flogging, [being] the Subject of Article 293 of the Procedural Code for the Public and Revolutionary Courts in Criminal Matters (DIRS293/82); 2003.

Family Protection Law (Qanun-e Hemayat-e Khanevadeh, FPL); 1975.

General Penal Code (Qanun-e Mojazat-e 'Omumi); 1973.

Law Concerning Translation of Statements and Documents in Trials and Offices; 1937.

Law Establishing Criminal Courts 1 and 2 and Supreme Court Branches (LECC); 1989.

Law Establishing the Public and Revolutionary Courts; 1994.

Law for Appealing Court Rulings; 1993.

Marriage Law (Qanun-e Ezdevaj); 1931.

Penal Code (Qanun-e Mojazat-e Eslami); 1991/96.

Penal Code bill (Layehey Qanun-e Mojazat-e Eslami). Available at <http://www.iranbar.org/ph21k.php#18> (opened 26/8/11, archived at <http://www.webcitation.org/61DQ0LBef>), http://www.dadkhahi.net/law/Ghavanin/Ghavanin_Jazae/layehe_gh_mojazat

[_eslami.htm](#) (opened 17/8/11, archived at <http://www.webcitation.org/61DQ0LBeo>).

Procedural Code for the Pardon and Clemency Commission; 1994.

Procedural Code for the Public and Revolutionary Courts in Criminal Matters (PCCM); 1999.

Other laws, declarations or treaties:

British Nationality Act 1981. <http://www.legislation.gov.uk/ukpga/1981/61> Opened 21/8/11. Archived at <http://www.webcitation.org/61DQ0LBex>.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984; entered into force 26 June 1987).

<http://www.hrweb.org/legal/cat.html> (opened 21/8/11; archived at

<http://www.webcitation.org/61DQ0LBf6>). Signatories and status:

http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=IV-9&chapter=4&lang=en#Participants Opened 21/8/11.

Archived at <http://www.webcitation.org/61EIw50Md>.

Convention on the Rights of the Child (CRC).

<http://www2.ohchr.org/english/law/crc.htm> Opened 21/8/11. Archived at

<http://www.webcitation.org/61DQ0LBfE>.

Text of Iran's reservations to it:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en. Opened 21/8/11. Archived at

<http://www.webcitation.org/61EJ5JGup>.

International Covenant on Civil and Political Rights (ICCPR).

<http://www2.ohchr.org/english/law/ccpr.htm> Opened 21/8/11. Archived at

<http://www.webcitation.org/61DQ0LBfN>. Ratification status:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en Opened 21/8/11. Archived at

<http://www.webcitation.org/61EJPXsxv>.

Nationality, Immigration and Asylum Act 2002 (UK).

<http://www.legislation.gov.uk/ukpga/2002/41/contents> Opened 21/8/11.

Archived at <http://www.webcitation.org/61DQ0LBfW>.

Universal Declaration of Human Rights (UDHR).

<http://www.un.org/en/documents/udhr/index.shtml> Opened 21/8/11. Archived

at <http://www.webcitation.org/61DQ0LBff>.

Dictionaries:

‘Amid, Hassan. *Farhang-e Farsi-e ‘Amid*. Tehran: Amir Kabir, 1382 AP (2003/4).

Aryanpur (Kashani), Abbas and Manoochehr. *Farhang-e Jibi-e Farsi be Englisi*.

Tehran: Mo’assesey-e Entesharat-e Amir Kabir, 1375 AP (1996/7).

Ghaffari, Seif. *Farhang-e Alborz: Farsi-Englisi*. Tehran: Alborz, 1382 AP (2003/4).

Haim, Soleiman. *Farhang-e Mo’asser-e Yek-jeldi-e Farsi-Englisi-e Haim*. Tehran:

Farhang-e Mo’asser, 1382 AP (2003/4).

Imani, Abbas. *Farhang-e Estelahat-e Huquq-e Keifari*. Tehran: Aryan, 1382 AP (2003/4).

Sadeqi, Hossein Mir-Mohammad. *Vazhenameye Huquq-e Eslami*. Tehran: Nashr-e Mizan, 1376 AP (1997/8).

Samimikia, Masouduzzafar, and Forooz Azarfar (Hendizadeh). *Farhang-e Huquqi: Farsi – Englisi*. Tehran: Entesharat-e Dashtestan, 1377 AP (1998).

Shirazi, Mortaza Ayatollahzadeh, and Azartash Azarnoush. *Majma’ al-Loghat:*

Farhang-e Mostalahat be Chahar Zaban: Arabi – Farsi – Faranseh –

Englisi. Tehran: Daftar-e Nashr-e Farhang-e Eslami, 1374 AP (1995/6).

Steingass, Francis Joseph. *Comprehensive Persian-English Dictionary*. New Delhi:

Munshiram Manoharlal Publishers, 2000.

Wortabet, John, and Harvey Porter. *Hippocrene Standard Dictionary: Arabic-*

English, English-Arabic. New York: Hippocrene Books, 1995.

*NB: ‘AP’ (‘Anno Persarum’, ‘Anno Persico’) refers to dates according to the Persian solar calendar, also called ‘Hejri-e Shamsi’, ‘solar Hejri’. ‘AH’ is ‘Anno Hegirae’, referring to dates according to the Islamic lunar calendar, also called ‘Hejri-e Qamari’, ‘lunar Hejri’. ‘Hejri’ refers to the Prophet Muhammad’s ‘Hijra’, migration from Mecca to Medina in 622 AD, the first year of both calendars.

Appendices.

The two appendices provided consist of scanned images of some selected original documents related to the cases, with salient portions translated (appendix 1), and a glossary (appendix 2) explaining specialised concepts or terms used in the main text as well as basic terms and ideas related to Islam or Shi‘ism, familiarity with which might help non-specialist readers to comprehend the entire text.

Appendix 1 is provided to give readers at least a nonzero exposure to the primary materials analysed in the case study chapters; Persian speakers will be able to understand these primary texts themselves, but a translation of salient portions of each text is provided for those who cannot read Persian.

Appendix 2 exists to allow readers to remind themselves of the nature of basic or specialised concepts whenever necessary. Its position at the very end of the entire text is chosen to permit easy reference to it by merely lifting the back cover thereof. Where applicable, indications will be given of what chapters and chapter sections explain each term or concept in the greatest detail. These indications are given in the format chapter:section, so that for example a concept explained in chapter 4, section 3.4, will have at the end of its entry the numbers ‘4:3.4’, with the colon coming after the chapter number and full stops preceding subdivisions of chapter sections. On the last page of the glossary (appendix 2) is a list of acronyms used for Iranian law codes throughout the project.

Appendix 1: images of selected original documents.

This appendix consists of a small selection of images of original documents, offering one page for each of the twelve cases represented. Each image is preceded by an explanation of its nature and a translation of salient portions thereof, indicated by square brackets, arrows or lines, depending on the format of the original texts, in the images themselves. In conformity with the privacy and safety policies outlined in chapter 1, section 3 and footnote 6, all information, such as names, dates, places or case numbers, which could facilitate identification of individuals involved in these cases has been excised from the images presented here. It is hoped that the opportunity to see at least some original documents will compensate, however slightly, for the unfortunate lack of transparency necessitated by paramount considerations of safety and privacy.

Since these documents often have little or no punctuation, this has been added into the translation where necessary, to render the texts comprehensible. It is noteworthy that sentences used in these documents are frequently long and convoluted. Where they do not close parenthetical clauses, the translated text has been edited to rectify this, again in the interests of comprehensibility.

Any specialised terminology appearing in these texts is defined in the glossary which is positioned after this appendix; this is done to avoid cluttering the translations of these original documents. Readers are directed to refer to the glossary if they come across unfamiliar terms. All specialised concepts or terms appearing in these documents and their translations have also been explained in the main text of the project, and the glossary indicates which parts thereof, where applicable, explain each term or concept.

Theft case 1: amputation implementation report.

Areas indicated by large square brackets and arrows read:

“*Qat‘-e yadd* (amputation of fingers)” [and lower down] “Because of the confirmation of the sentence by the Supreme Court and the second *qat‘-e yadd* sentence, the aforementioned was transferred to the police for implementation of the sentence at [time] PM on [date], and the above sentence was carried out at [time] PM on [date] in [name] Park in the city of [name]”.



پستال

شماره - / /

تاریخ - / /

پست در درجه یک
جمهوری اسلامی ایران
شهرستان

بسمه : محترم سرپرست قروانی مجتمع قضائی جانی دادگستری
اعلام وقایع

موضوع : خودکشی اغتصاب فرار فوت

ختم اغتصاب معرفی پس از فرار غیره

غیبت در مخصی

موضوع: [قطع بد (وکیل)]

سلام علیکم

احتراماً، عطف به / بیرون حکم

زندانی ~~.....~~ فرزند ~~.....~~ سن ~~.....~~ سال

جنسیت مرد زن ابعیت ایران الهام برکت + موارد استعمال

میزان محکومیت یکسال حبس + ... در تاریخ ...

درخواست کسور تا خبر درجهت اجراء حکم بد

کیر اوش یکمیلی ... در بارگ شهرستان

شد فرستم حقوق در ساعت ...

رونوشت :

مدیر کل محترم زندانهای استان

استحضار و ادا امر مقتضی در دادگاه ...

ریاست حفاظت اداره کل زندانهای استان

رئیس محترم بازرس زندان مرکز

Theft case 2: excerpt from the first-instance ruling.

Underlined portions read:

“In court sessions, the defendants denied most of the thefts, and although ... they had personally led officials to the locations of the thefts and even shown them their methods in a detailed manner there, in court they utterly denied most of the thefts and although they had identified the locations thereof, they declared that they had never gone there”.

و انجام می‌گردد و نهایتاً در خردادماه اقدامات مأمورین به نتیجه رسیده و متهمین و همراه یک دستگاه اتومبیل بنز قهوه‌ای رنگ سرقتی دستگیر و دو نفر متهم دیگر متواری که از تاریخ متواری شدن آنها و دستگیری این دو نفر متهم سرقت‌های مشابه از کسبه سطح شهر بکلی قطع گردیده، متهمین پس از دستگیری با همکاری پرسنل اداره آگاهی و قبل از اعلام شکات به محل‌های سرقت‌ها شخصاً اعزام گردیده و محل سرقت را به مأمورین نشان داده که پس از حضور سارقین در محل سرقت مالباختگان مطلع از دستگیری سارقین گردیده و صورتجلسات شناسائی محل سرقت‌ها نیز که به گواهی متهمین و شکات رسید در پرونده‌ها ضبط می‌باشد پس از آن شکات پیگیر موضوع گردیده در تحقیقاتی که بعمل آمده و در پرونده و صورتجلسات دادگاه خصوصاً منعکس گردیده متهم با توجه به اینکه اکثر آزاراننده بوده و با اینکه اموال سرقتی را از متهمین زمانیکه از مغازه خارج می‌نموده‌اند از آنها می‌گرفته و به داخل اتومبیل حمل می‌نموده و لذا به مشارالیه معاونت در سرقت تفهیم که در سرقت‌های انجام شده از آقایان

معاونت داشته مضافاً اینکه علاوه بر ده فقره معاونت در سرقت یکفقره اموال سرقت شده از آقای را که ارتباطی با سرنهائی که معاونت داشته ندارد از سارق اخذ نموده و اقدام به فروش آن نموده که جرم مستقلی بوده و تفهیم اتهام فروش اموال سرقتی نیز به وی انجام گردیده است، در جلسات دادگاه متهمین منکر اکثر سرقت‌ها بوده و علی‌رغم اینکه محل‌های سرقت‌ها را بدون اینکه شاکی اطلاع از دستگیری متهمین داشته و یا مأمورین قادر به مراجعه به پرونده‌های آنها نبوده شخصاً مأمورین را به محل سرقت‌ها برده و حتی نحوه ارتکاب را در محل آن دقیقاً اعلام که شاکی با مراجعه متهمین و مأمورین مطلع از دستگیری آنها گردیده متهمین اکثر سرقت‌ها را در جلسه دادگاه به طور کلی منکر گردیده و علی‌رغم اینکه محل سرقت را شناسائی نموده‌اند اظهار داشته که اصلاً به محل سرقت عزیمت ننموده که شکات شهودی را معرفی و از آنها در حضور متهمین در جلسات دادگاه استشهاد بعمل آمده که حضور متهمین را گواهی نموده‌اند حتی متهمین علی‌رغم اینکه بعضی اموال مسروقه متعلق به شکات کشف و تحویل آنها گردیده منکر شده‌اند از آن جمله آقای و آقای که یک قطعه از دستگاه کامپیوتر سرقت شده از آقای در تصرف کشف و تحویل شاکی شده همچنین اموال از آقای کشف و در اختیار مالخر بوده که تحویل شاکی شده لیکن متهم بکلی منکر بوده در خصوص شناسائی محل سرقت از آنها نیز مدعی است باشاکی یا مأمورین به محل عزیمت نموده در صورتیکه زمان حضور متهم از محل سرقت از آقای مدتی منتظر گردیده‌اند که شاکی شخصاً در محل حاضر گردیده است و یا شکایت آقای که متهم محل سرقت را شناسائی و اقرار نموده که چکبائی که از شاکی سرقت نموده‌ایم را سوزانده‌اند ولیکن در جلسه دادگاه منکر شناسائی محل بوده و سرقت را

Theft case 3: excerpt from second Supreme Court ruling.

Underlined portions read:

“Before the case went to the later court, and before the second court had established theft carrying the *hadd*, the defendant in the case expressed his repentance, contrition and regret in the first court.... Therefore his declaration of regret and repentance occurred before establishment of the crime, meaning a theft which carried the *hadd*. Does the esteemed court, which has ‘*elm*’ of theft, also have ‘*elm*’ that the repentance of the defendant, Mr [name], was feigned and untrue? By *al-hudud todra’ be’l-shubuhah* [*qa’ edeye darr*’], if it does not have ‘*elm*’ of the defendant’s insincerity in declaring repentance, condemning him to the *hadd* for *serqat* will have consequences in the afterlife. Therefore the esteemed court’s ruling is overturned, and the case is sent back to [it]; and if it has ‘*elm*’ of the defendant’s insincerity, it can again issue a *qat’-e yadd* sentence on the basis of its ‘*elm*’, and this [Supreme Court] branch is prepared to confirm it. If not, let it issue an appropriate ruling”.

Sodomy case 1: excerpt from retrial ruling.

Underlined portions read:

“Normally, when penetration occurs and the resulting abrasions and lacerations have disappeared, the muscle remains loose and widened.... The absence of lacerations and abrasions does not disprove penetration, though slender individuals’ muscles are generally more flaccid than those of more proportionate persons, and the sphincter is no exception.... Medically speaking, penetration cannot be completely ruled out”.

Sodomy case 2: excerpt from Supreme Court ruling.

Underlined portions read:

“[Considering the complainant’s] declaration of unconditional pardon of [the defendant] after stating that he had no certainty that [he] had committed the crime which was the subject of the complaint and that there was the possibility that his son had mistakenly identified the defendant, and [also considering] the suspect’s defences during the preliminary investigations and in court, and his denial of sodomy with the complainant’s young child, the appealed ruling with respect to the defendant’s acquittal of sodomy is correct and was issued without flaws, and is [therefore] confirmed”.



اعتراض نامبرده بدیوانعالی کشور ارسال و به این شعبه ارجاح گردید .

هیئت شعبه در تاریخ بالا تشکیل گردید پس از قرائت گزارش آقای

نظریه ختبی آقای دادیار دیوانعالی کشور اجمالاً مبنی بر عقیده به نقض دادنامه شماره -

// دارم مشاوره نموده چنین رای میدهم .

بسمه تعالی

با عنایت به مندرجات پرونده و تحقیقات انجام شده و نحوه شکایت اولیه شکای (آقای

فرزند ۱۲ ساله اش) و اعلام بعدی شکای مبنی بر اینکه شکایتش علیه متهم

است و نهایتاً اعلام رضایت بی قید و شرط نامبرده از ضمن اعلام اینکه قطع و یقین نسبت به

ارتکاب موضوع شکایت توسط دارم و احتمال اشتباه فرزندم (در خصوص شناسایی متهم

وجود دارد و نحوه مدافعات متهم در مراحل تحقیقات مقدماتی و جلسه دادرسی و انکار بزه انجام

لواظ با فرزند خود رسماً شکای دادنامه تجدیدنظر خوانسته بی خصوص برائت متهم از بزه لواط صحیح و خالی

از اشکال صادر شده و ایرام میگردد .

شعبه دیوانعالی کشور

مستقلاً :

رئیس

Handwritten signatures and notes at the bottom of the page, including the name 'مستقلاً' and other illegible text.

Sodomy case 3: excerpt from first-instance ruling.

Underlined portions read:

“Regarding the other charge against [name], son of [name], of aggression and disturbing the public peace, considering the comprehensive investigations regarding his character and behaviour in the area and the statements of [the murder suspect’s underage cousin], son of [name] (although the aforementioned, his natural guardian, did not lodge a complaint), describing the behaviour of the late [murder victim] and [the person charged with disturbing the peace] when, together with [name], they were riding a motorcycle along the river towards [location], and, after dismounting, they assaulted him with the intention of rape, though because of his resistance and the presence of several individuals, they released him... his guilt is established”.

NB: the murder suspect claimed to have been raped on the riverbank by the same individuals, but though their attempted rape of his cousin was accepted by the judge, this was not allowed to lend credibility to the murder suspect’s rape claim.

... ناظرین بر قفسه و چگونگی درگیری بلحاظ عدم احراز وقوع بزه معنونه حکم برائت مشارالیه را صادر و اعلام	
میشاید ، در خصوص اتهام دیگر فرزند <u>داثر به تعرض به افراد و سلب آرامش عمومی ، بنا</u>	
رعایت به تحقیقات موصح مأمورین پهرواصون و رعیت اخلاقی و رفتار وی در محل و اظهارات <u>فرزند</u>	
(ص ۲۵۶) هر چند که مشارالیه بلی قحری او شکایتی نکرده اند) در مورد چگونگی برخیزود	
مرحوم	با وی به هنگامیکه به اتفاق از کنار رودخانه بطرف <u>با</u>
متورسبگت در حرکت بودند و پس از پیاده کردن از موتور ضمن ایراد ضرب عمدی قصد عمل لواط به عنفرا با او	
داشته اند که با مقاومت در مقابل آنها و حضور چند نفر او را با کلاهات و اظهارات <u>(ص ۲۲۷)</u> در	
نرد مأمورین و گزارش مورخ / / مدیریت آگاهی شهرستان <u>مجرمیت نامبرده محرز است ، با در نظر</u>	
گرفتن شخصیت مجرمانه متعم مستندا " به ماده ۶۱۸ قانون تعزیرات و رعایت ماده ۱۸ قانون مجازات اسلامی پس	
تحلیل پنج (۵) ماه حبس تعزیری و سی (۳۰) حربه شلاق با استناد ماده ۱۶ قانون صا الذکر از جهت تنمیم	
مجازات به دو (۲) سال تبعید در شهرستان <u>محکوم مستطاب. رای صادره حضوری و ظرف بیست روز از</u>	
تاریخ ابلاغ قابل تجدید نظر خواهی در مرجع محترم دیوان عالی کشور میباشد. / ب	
رئیس شعبه	محاکم عمومی شهرستان
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

نوم شماره ۵۶۳۳۰۱۱۴۸۴ دفتر طرح و برنامه ریزی

Fornication case 2: excerpt from first-instance ruling.

Underlined portions read:

“She denied incest, but admitted to illicit relations, not amounting to *zena*, with her brothers. Her brothers, named [A] and [B], denied the charge (incest) in court, but admitted to illicit relations other than *zena*.... Notwithstanding the [female] defendant’s denial of incest in the court session on [date], [considering]... the fact that she produced three illegitimate children between the ages of 14 and 18,... her explicit and multiple confessions to *zena*, occurring more than four times, during the preliminary investigations and in court,... her implicit confession that ‘my brothers and I had illicit relations other than *zena*, [involving] touching of the body and carnal enjoyment, [but] no form of penetration occurred’,... and her brothers’ explicit and implicit confessions to incest (with her) before they retracted [those confessions], the court and the judge have ‘*elm* of incest... and her retraction of confession is disregarded and does not cause *suqut* of the *hadd* penalty because of the ‘*elm* obtained.... She is condemned to death for incest.... [As for] the second and third accused persons, [A] and [B], sons of [name], concerning incest, considering their retraction of confession in court, the legislator has decreed, through article 71 of the penal code, that whenever a person confesses to *zena* and then retracts that confession, if the confession was to a form of *zena* carrying the penalty of death or stoning, with retraction of confession the *hadd* of execution or stoning lapses; therefore, in this regard, the defendants’ penalty, namely death, lapses, and through article 37 of the Constitution, the narration *todra’ al-hudud be’l-shubuhah* [*qa’edeye darr’*], and the *asl-e bara’at*, the defendants are acquitted [of incest]”.

زنا یا محارم را منکر، لیکن ارتباط نامشروع در حد دون زنا با برادرانش را پذیرفته و اقرار نموده است و سایر اظهارات قبلی را مجدداً تکرار و تأیید نموده است و نیز برادران متهمه به نامهای و موضوع اتهامی را زنا یا محارم را در جلسه رسیدگی منکر شده اند و لیکن رابطه نامشروع در حد غیر از زنا را پذیرفته و اقرار نموده اند فلذا دادگاه صرفنظر از انکار زنا یا محارم متهمه در جلسه رسیدگی / / اولاً به لحاظ اشتهار متهمه به انجام عمل نامشروع زنا و زایمان سه فرزند نامشروع در سنین ۱۴ تا ۱۸ سالگی و اقرار صریح وی به عادی شدن عمل نامشروع زنا و اشاعه فساد و فحشاء دوماً، اقرار صریح و متعدد بیش از چهار بار در جلسات تحقیقات مقدماتی و دادگاه در جلسات قبلاً آماده به زنا یا محارم و اقرار صمیمی وی بدین توضیح که: با برادرانم در حد رابطه نامشروع غیر از زنا لمس بدن، ارضاء باسن ارتباط داشته و هیچگونه دخول صورت نمی گرفته و منی خود را بیرون می ریخته اند سوماً، سوابق کیفری نامبرده که مطلق دادنامه های بیوست پرونده سه مرتبه متهمه به حد زنا و شلاق تعزیری محکوم شده و حکم اجراء گردیده است و از پنج فقره سابقه کیفری دیگر نیز دادگاه اطلاعی ندارد، لیکن متهمه در جلسه مورخ / / صحت پذیرفته ۱۵۲ پرونده اظهار داشته است که هشت فقره سابقه کیفری ارتباط نامشروع دارم چهارماً اقرار صریح و صمیمی قبل از انکار برادران متهمه به زنا یا محارم (زنا یا ...) و سایر قرائن و امارات موجود در پرونده در مورد زنا یا محارم برای دادگاه و قاضی پرونده علم حاصل گردیده است و دفاعیات وی و وکیل تسخیری متهمه و انکار بعد از اقرار وی مسموع نبوده و باعث سقوط مجازات حد به علت علم حاصله نگردیده است، بزهکاری وی در این قسمت و سایر اتهامات مرتبه برای دادگاه ثابت و محرز است، فلذا مستنداً به مواد ۶۳، ۶۴، بند الف ماده ۸۲، ۸۸، ۸۹، ۱۰۵، بند الف و ب از ماده ۶۳۹ مجبوراً از قانون تعزیرات اسلامی بدفعیت ماده ۷۱ از قانون مجازات اسلامی و همچنین رعایت ماده ۵۴ قانون آئین دادرسی کیفری، متهمه را به مجازات اعدام از حیث زنا یا محارم نسبی و تحمل یکصد ضربه حد زنا غیر محصنه به جهت ارتباط نامشروع با مردان اجنبی و به تحمل پنج سال حبس تعزیری با احتساب ایام بازداشت قبلی محکوم می نماید، متهمان ردیف دوم و سوم بنامهای و فرزندان از حیث زنا یا محارم به توجه به انکار نامبردگان در جلسه دادرسی، قانونگذار در ماده ۷۱ قانون مجازات اسلامی مقرر داشته هرگاه کسی اقرار به زنا کند بعد انکار نماید در صورتی که اقرار به زنا باشد که موجب قتل یا رجم است یا انکار بعدی حد قتل و رجم ساقط می شود فلذا در این قسمت مجازات متهمان که همان قتل است ساقط و به استناد اصل ۲۷ قانون اساسی و حدیث التدرء بالثبوت و اصل اصالة البرائة در این قسمت حکم بر برائت نامبردگان صادر و اعلام می نماید، لیکن به لحاظ اقرار آنان به این عمل و ارتباط نامشروع در حد غیر از زنا به استناد ماده ۶۸ و ۶۲۷ قانون مجازات اسلامی و رعایت ماده ۴۷ قانون مجازات اسلامی و رعایت ماده ۵۴ قانون آئین دادرسی کیفری حکم بر محکومیت هر یک از متهمان به نامهای و به تحمل هشتاد ضربه شلاق بابت اقرار به زنا یا محارم و بعد انکار آن و تحمل نمودن نه ضربه شلاق بابت رابطه نامشروع در حد دون زنا صادر و اعلام می نماید. رأی صادره ظرف بیست روز قبل تجدیدنظرخواهی در محاکم محترم تریبالی کشور میسر نماید

رئیس شعبه محاکم عمومی

Adultery case 1: excerpt from female defendant A's pardon petition.

Underlined portions read:

“I was a simple, illiterate country girl. When I was 13, I was married off to my cousin, who took me to [town] with him. He was an addict who made no financial contribution and did not discharge any of the duties of a husband. Several times I fell out with him and went to my father's house. The last time, I went to court and requested a divorce. I was estranged from my husband for eight months, during which I awaited the court's decision, and in those eight months I had no type of relation with him, as all our relatives knew. During that same time, Mr [B], a neighbour and friend of my husband's, promised to help me to divorce my husband. He told me that in order to obtain a divorce 'in absentia', I would have to be 'absent' from home. He took me to [town] with him and two weeks later he showed me a paper and said: 'I have obtained your divorce in absentia'. He later took me to the registry in the town of [name] and contracted a permanent marriage with me. Being illiterate, until our arrest I thought we were husband and wife. We lived for several years in [town] and my first son, [name], has an identity document [*shenasnameh*]”.
[NB: only 'legitimate' children can obtain a *shenasnameh*].

بسمه تعالی	«در پاسخ شماره و تاریخ ثبت نامه رسیده را بنویسید.»
فرستنده:	موضوع نامه: درخواست عضویت
گیرنده: مقام معتمد رعیری	نام پدر:
	نسبت با گیرنده:

بسمه تعالی

خدمت مقام معتمد رعیری، ولی امر مسلمین - مصلح العالمین
 بابت درخواست عضویت در هیئت معتمدین - کما فی الجاهل
 در تاریخ ۱۲/۱۲/۱۳۸۰ مورخه ۱۲/۱۲/۱۳۸۰
 در تاریخ ۱۳/۱۲/۱۳۸۰ مورخه ۱۳/۱۲/۱۳۸۰
 در تاریخ ۱۴/۱۲/۱۳۸۰ مورخه ۱۴/۱۲/۱۳۸۰
 در تاریخ ۱۵/۱۲/۱۳۸۰ مورخه ۱۵/۱۲/۱۳۸۰
 در تاریخ ۱۶/۱۲/۱۳۸۰ مورخه ۱۶/۱۲/۱۳۸۰
 در تاریخ ۱۷/۱۲/۱۳۸۰ مورخه ۱۷/۱۲/۱۳۸۰
 در تاریخ ۱۸/۱۲/۱۳۸۰ مورخه ۱۸/۱۲/۱۳۸۰
 در تاریخ ۱۹/۱۲/۱۳۸۰ مورخه ۱۹/۱۲/۱۳۸۰
 در تاریخ ۲۰/۱۲/۱۳۸۰ مورخه ۲۰/۱۲/۱۳۸۰
 در تاریخ ۲۱/۱۲/۱۳۸۰ مورخه ۲۱/۱۲/۱۳۸۰
 در تاریخ ۲۲/۱۲/۱۳۸۰ مورخه ۲۲/۱۲/۱۳۸۰
 در تاریخ ۲۳/۱۲/۱۳۸۰ مورخه ۲۳/۱۲/۱۳۸۰
 در تاریخ ۲۴/۱۲/۱۳۸۰ مورخه ۲۴/۱۲/۱۳۸۰
 در تاریخ ۲۵/۱۲/۱۳۸۰ مورخه ۲۵/۱۲/۱۳۸۰
 در تاریخ ۲۶/۱۲/۱۳۸۰ مورخه ۲۶/۱۲/۱۳۸۰
 در تاریخ ۲۷/۱۲/۱۳۸۰ مورخه ۲۷/۱۲/۱۳۸۰
 در تاریخ ۲۸/۱۲/۱۳۸۰ مورخه ۲۸/۱۲/۱۳۸۰
 در تاریخ ۲۹/۱۲/۱۳۸۰ مورخه ۲۹/۱۲/۱۳۸۰
 در تاریخ ۳۰/۱۲/۱۳۸۰ مورخه ۳۰/۱۲/۱۳۸۰

سال درج شده	زنگنه	شماره نامه
دارد		
در این قسمت چیزی ننویسید.		
شماره و تاریخ ثبت نامه		
نظریه و امضای مسئول		

Adultery case 7: excerpt from the lawyer's petition for an 'extraordinary appeal'.

Underlined portions read:

“The most important point which was ignored by the first-instance judge and the esteemed Supreme Court judges is that my client not only never confessed to *zina* before her late husband's death in any court session, but vehemently denied it. In the absence of any confession, even taken by the police, the esteemed first-instance judge used the confessions of [the co-defendant], the murderer of my client's husband, combined with my client's confessions to having contracted a shar'iatric temporary marriage with [the co-defendant] 50 days after her previous husband's demise and having subsequently begun a carnal relationship [with him], to obtain 'elm, and issued a stoning sentence. This justification, which is completely contrary to the two established axioms of fiqh *eqrar al-'oqala 'alaa anfosehem ja'ez* and *todra' al-hudud be'l-shubuhahat [qa'edeye darr'*], not only cannot comply with legal requirements but contradicts the spirit which informs the penal code regarding *zina*. How can a legislator who in article 68 [of the penal code] decrees complete invalidation of the *hadd* (and not derivation of 'elm) for those who confess fewer than four times, and who in article 71 mandates lapsing of death or stoning penalties for *zina* following retraction of confession, permit the issue of a stoning sentence based on the confession of someone other than the defendant? Given that the *hadd* is not established through the testimony of three witnesses or three confessions by the perpetrator, and that witnesses who are fewer than the shar'iatric *nesab* [of four], are characterised as *qazef* [punishable slanderers], how, in such a situation, can a non-*ma'sum* judge rule by his 'elm?”

به نام خدا

ریاست محترم هیات تشخیص دیوان عالی کشور

احتراما به استناد تبصره 2 ماده 18 قانون تشکیل دادگاههای عمومی و انقلاب و با عنایت به موارد مشروحه زیر در خواست دارم رای صادره در مورد موکلم، خانم
به تاریخ / / در پرونده کلاسه / / توسط شعبه دادگاه عمومی شهرستان
استان صادر و توسط شعبه دیوان عالی کشور در تاریخ / / تایید و در
تاریخ / / به اینجانب ابلاغ شده است را نقض و ضمن دستور توقف اجرای حکم "رجم"، نسبت
به رسیدگی مجدد اقدام فرمایید.

1. مهمترین نکته ای که مورد توجه قاضی دادگاه بدوی و قضات محترم دیوان عالی کشور قرار نگرفته، این است که موکلم در هیچیک از مراحل دادرسی نسبت به وقوع زنا پیش از فوت شوهر مرحومش نه تنها ایدا اقراری ننموده بلکه آن را قویا انکار کرده است. در فتندان هرگونه اقراری، حتی در نزد مراجع انتظامی، قاضی محترم دادگاه بدوی، اقرار بر قاتل همسر موکلم را به همراه اقرار بر موکلم نسبت به جاری ساختن صیغه شرعی میان خود و آقای ، 50 روز پس از مرگ همسر سابقش و برقراری رابطه جنسی پس از آن مستند علم خویش قرار داده و اقدام به صدور حکم رجم نموده است. چنین استنادی که کاملا خلاف دو قاعده مسلم فقهی اقرار العقلای انفسهم جایز و تدرا الحدود بالشبهات است نه تنها نمی تواند مستند و واحد شرایط مقرر قانونی باشد بلکه خلاف روح حاکم بر قانون مجازات اسلامی در باب زنا است. قانونگذاری که در ماده 68، اقرار خود شخص به زنا، کمتر از چهار بار را موجب سقوط مطلق حد می داند (و نه مستند علم) و در ماده 71 نیز انکار پس ا اقرار را موجب سقوط حد رجم و قتل می داند، چگونه ممکن است جواز صدور حد رجم آن هم با اقرار شخص دیگری را صادر کند؟ زمانی که با شهادت 3 نفر و 3 بار اقرار مرتکب، حد اثبات نمی گردد و شهود کمتر از نصاب شرعی قاذف شناخته می شوند، چگونه است که قاضی غیر معصوم در چنین حالتی می تواند به علم خود عمل نماید؟! قضات محترم بدوی و دیوان عالی کشور نه تنها موارد بالا را

Adultery case 9: stoning implementation announcement (though the defendant was ultimately reprieved).

Underlined portions read:

“For collaborating in the murder of the late [husband], [she] was sentenced to five years’ *ta‘ziri* incarceration.... The implementation of the incarceration penalty has caused the stoning penalty to be delayed, which is not legally permissible: imprisonment is not necessary in such circumstances. It has therefore been arranged that the stoning sentence of the condemned be implemented on Wednesday the [date] at 4 PM in the office of [locality] prison in the presence of those local authorities whose attendance is legally necessary for stoning to be carried out”.



سرپرست محترم اداره زندان

با سلام و احتراماً بر اساس رای صادره از شعبه ۱۱ ریاست محترم دادگستری استان جهت استحضار
 به اعدام از طریق حلق آویزی محکوم گردیدند که شعبه محترم دیوان عالی کشور
 با اطلاع اعدام از حلق آویزی بد اجراي حدیج ملادری بدوی را تأیید و اجراء نموده است
 انشاءالله مشارالیهان به اتهام معاونت در قتل عمدی محکوم
 تحمل پنج سال حبس تعزیری محکوم گردیده که حسب اعلام اداره کل حقوقی و تدوین قوانین
 جمهوری اسلامی ایران اجرای مجازات حبس موجب تأخیر در اجرای رجم گردیده که قانوناً
 جایز نبوده و اجرای مجازات حبس در این مورد لازم نیست و به همین منظور مقرر گردیده
 مفاد حکم در خصوص رجم محکوم علیها در روز چهارشنبه مورخه / / ساعت چهار بعد
 از ظهر در محل اداره زندان با حضور شایعات مدعی که حضور ایشان در اجرای رجم
 مطابق قانون لازم است میسرود اجرا گذاشته شود لذا در راستای تأمین امنیت اجرای حکم مذکور
 دستور امر مقتضی را صادر و هماهنگی های لازم را مبادول و از جهت رعایت مقررات قانونی کما
 در براسم فوق حضور داشته باشید نسبتاً مراتب اجرای حکم در موعد مذکور به محکوم علیها
 ابلاغ خود X

- روانست بند ۱
- ۱۱ ریاست محترم کل دادگستری استان جهت استحضار
 - ۱۲ سرپرست محترم دادگستری جهت استحضار و حضور در محل اجرای حکم
 - ۱۳ قاضی محترم صادر کننده رای جهت استحضار و حضور در محل اجرای حکم یا معرفی نماینده جهت حضور در موعد اجرای رجم
 - ۱۴ امام جمعه محترم شهرستان جهت استحضار و حضور در محل اجرای حکم
 - ۱۵ فرماندهی محترم جنگ هوایی جهت اطلاع و حضور در محل اجرای حکم و ایجاد هماهنگی با اداره زندان در جهت اجرای مفاد حکم
 - ۱۶ یونگی محترم قانونی جهت اطلاع و حضور در محل اجرای حکم
 - ۱۷ وکیل محترم تسخیری محکوم علیها جهت اطلاع و عندالاشکاف حضور در محل اجرای حکم

Adultery case 11: excerpt from first-instance ruling.

Underlined portions read:

“It seems that the first defendant, according to his explicit statements in court and bearing in mind the murder victim’s rape [*tajavoz*] of his wife, believed the murder victim to be *mahduoldamm*. However, given his wife’s consent to *zena*, her husband’s absence during these acts, and the murderer’s inability to ascertain the victim’s *mahduoldamm* status, the court considers his case consonant with article 295, note 2, of the penal code, according to which, as well as articles 297-8, 302 part a, 304 and 612 of that law, he is sentenced, regarding the personal aspect of the crime, to payment of the full *diyeh* to the victim’s *awlia’-e damm*, and regarding its public aspect, to eight years’ *ta’ziri* incarceration. Regarding the charge[s] against the second defendant, considering that her acts of *zena* coincided with her permanent husband’s travels, she is acquitted of adultery on the basis of article 82 of the penal code, and sentenced to a hundred lashes as the *hadd* of *zena* and one year’s *ta’ziri* imprisonment through articles 63-4, 68-71, 80 and 88-9, and the note to article 612, of the same law”.



(۴)

اول، دوم و سوم در اداره آگاهی و در محضر دادگاه و با توجه به معاینات انجام شده و صحنه بازسازی شده قتل که فیلم ویدیوئی آن ضبط گردیده و صرفنظر از دفاعیات بلاوجه متهمین ردیف سوم و چهارم و انکار متهم ردیف سوم در جلسه رسیدگی اتهام ایشان را محرز و مسلم دانسته و نظر به اینکه متهم ردیف اول حسب اظهارات صریح خود در جلسات دادگاه و با توجه به تجاوز مقتول به همسر ایشان، اعتقاد به مهدور الدم بودن مقتول، داشته است لیکن با توجه به رضایت همسر ایشان در انجام زنا و در دست نبودن شوهرش به هنگام انجام عمل و عدم توانایی اثبات مهدور الدم بودن مقتول توسط قاتل، دادگاه مورد را منطبق با صدر تبصره ۲ ماده ۲۹۵ قانون مجازات اسلامی دانسته و مستندا به ماده و تبصره فوق الاشعار و مواد ۲۹۷، ۲۹۸، بند الف ماده ۳۰۲، مواد ۶۱۲، ۳۰۴ قانون مجازات اسلامی وی را از باب جنبه خصوصی به پرداخت یک دیه کامل در حق اولیاد مقتول و از باب جنبه عمومی به تحمل ۸ سال حبس تعزیری محکوم مینماید و در خصوص اتهام متهم ردیف دوم دادگاه با توجه به اینکه عمل زنا انجام شده در زمان مسافرت همسر دائمی ایشان به وقوع پیوسته مستندا به ماده ۸۶ قانون مازالذکر از اتهام زنا محصنه مبرا بوده و مستندا به مواد ۶۳، ۶۴، ۶۸، ۶۹، ۷۰، ۷۱، ۷۰، ۷۱، ۸۰، ۸۸، ۸۹ و تبصره ماده ۶۱۲ وی را به تحمل یکصد ضربه تازیانه بعنوان حد زنا و تحمل یکسال حبس تعزیری محکوم مینماید و همچنین هریک از متهمین ردیف سوم و چهارم و پنجم را مستندا به تبصره ماده ۶۱۲ قانون مجازات اسلامی به یکسال حبس تعزیری محکوم مینماید و در خصوص اتهام مقتول فرزند ساله دایر بر ایجاد مزاحمت تلفنی، برقراری رابطه نامشروع و انجام عمل زنا با توجه به قتل وی مستندا به بند اول ماده ۶ قانون آئین دادرسی دادگاههای عمومی و انقلاب در امور کیفری مصوب ۱۳۷۸/۶/۳۱ قرار موقوقی تعقیب صادر و اعلام میگردد. رای صادره حضوری و ظرف مدت ۲۰ روز از تاریخ ابلاغ قابل تجدید نظر خواهی در دیوان عالی کشور میباشد. /ع

رئیس شعبه محاکم عمومی

Adultery case 12: excerpt from Supreme Court acquittal confirmation.

Underlined portions read:

“Considering the contents of the case file, particularly the statements, combined with denial of confessions, of [the female defendant] in court with regard to the charges, the motive and reason for her confessions in previous stages [of the case], and the male defendant’s denial [of the charges] in all stages... their acquittal contained no fundamental flaws with respect to the regulations and principles of the legal process, and the appeal of Mr [name], the female defendant’s husband, against the male defendant’s acquittal is ineffective in causing the appealed ruling to be overturned”.



جمهوری اسلامی ایران

قوه قضائیه

دیوان عالی کشور

دادنامه

کلاس: / /

برانت نامبرده کان از زنای محصن و محصنه صادر و اعلام میدارد پس از ابلاغ رای شاکی و همسرش به رای صادره اعتراض و پرونده به دیوان عالی کشور ارسال و به این شعبه ارجاع گردیده است.

هیئت شعبه در تاریخ بالا تشکیل گردید پس از قرائت گزارش آقای عضو ممیز و اوراق پرونده و

نظریه کتبی آقای دادیار دیوان عالی کشور اجمالاً مبنی بر ابرام دادنامه شماره -

// تجدیدنظر خواسته مشاوره نموده و به جهت حدود اختلاف و شرکت جناب آقای

عضو معاون شعبه به اکثریت چنین رای میدهد +

((رای))

با توجه به محتویات پرونده بویژه اظهارات توام با انکار نسبت به مورد اتهام در محضر دادگاه و علت

و انگیزه اقرار خود در مراحل قبلی و لحاظ انکار متهم (در تمامی مراحل ، رسیدگی دادگاه

محترم کیفری استان و عدم اخراج بزه انتسابی به دایر بر زنای محصن با و

صدور حکم بر برانت آنها اشکال اساسی از جهت رعایت اصول و قواعد دادرسی ندارد و اعتراض آقای

همسر متهمه بر برانت متهم هم موثر در نقض دادنامه تجدیدنظر خواسته نیست لذا با استناد به بند الف ماده ۲۶۵

رونوشت برابر اصل است
دفتر شعبه دیوان عالی کشور

قانون این دادرسی کیفری رای معترض علیه در مورد مذکور ابرام میگردد

رئیس شعبه دیوان عالی کشور :

عضو معاون :

ایران محمدرضا پهلوی

Appendix 2: Glossary.

Numbers indicate ‘chapter: section’ where each term is explained, where applicable.
(Or, for case study chapters, ‘chapter: case’).

Absolute rule of the jurist. Synonymous with velayat-e motlaqeh-ye faqih (qv).

‘Adam. Absence. See asl-e ‘adam. 3:1.

‘Adel. Righteous; possessing ‘edalat (qv; righteousness).

Adultery. Zena while possessing ehsan (qv; being married and having ‘access’ to one’s permanent spouse). Its punishment is stoning to death. 2:5, 2:5.1, 4:3, 4:3.7.

Agahi. Awareness. Sometimes considered necessary for criminal responsibility, for instance as awareness of the forbiddenness of one’s actions; see ‘jahl’. 2:7.

Ahadith (singular: hadith). Narrations (qv).

Ahkam (singular: hokm, qv). Commandments.

Akhbar (singular: khabar). Literally, ‘reports’, ‘news’. Narrations (qv).

‘Ali (ibn Abi Talib). The cousin and son-in-law of the Prophet Muhammad; the first Shi‘ite Imam, and, through his wife, the Prophet’s daughter Fatima, progenitor of the line of Twelve Imams whom the Twelver (Ithna‘ashari) Shi‘a characterise as the rightful leaders of the Muslim community. ‘Ali is the source of many narrations (qv) used in Shi‘i law and therefore relevant to this project.

Al-zarurat tubihu’l-mahzurat. ‘Necessities remove restrictions’. See qa‘edeye zarurat va ezterar. 2:7.3.

‘Amm. General, as opposed to the particular (khass, qv). Particular exceptions can modify general rules. 3:2.

‘Aql. Reason; the mental faculties; mental sanity. In penal law, ‘aql is mental sanity and is a necessary condition for criminal responsibility and therefore punishability. It is also necessary for valid confession or testimony. In jurisprudence, it refers to reason, which in Shi‘ism is considered a valid source of law. 2:6, 2:6.1, 2:6.2, 2:7, 3:6.1 and note 15.

Asl-e ‘adam. The ‘principle of absence’, whereby all things are considered as being preceded by their absence, and therefore the absence, not the presence, of a condition must be presumed until its presence is incontrovertibly proven. Punishability and guilt are among those things which are presumed absent until proven present. 3:1.

Asl-e ‘adam-e elhaq. Principle of non-association or non-transferability, whereby the fact that a commandment or condition applies to one crime or situation does not by itself mean that it should be extended to others. 2:4.1.

Asl-e bara’at. The principle whereby there is no obligation unless established by (sacred) law. In penal law, the phrase is often used as ‘the presumption of innocence’. 3:1.

Asl-e ebahe. The ‘principle of permissibility by default’, whereby all things are permissible unless the divine law specifically prohibits them. 3:1.

Asl-e sehhat. The principle whereby transactions are presumed correct and valid unless proven otherwise. 3:1.

Authority verse. Verse 4:59 of the Qur’an, which says “obey God and His Messenger and those in authority among you (ulu’l-amr)”. ‘Those in authority’ has been interpreted by the current Iranian regime’s doctrine of ‘velayat-e faqih’ (qv) as

indicating the Supreme Leader, who fulfils the Hidden Imam's functions during his Occultation and is authorised to govern on his behalf. 1:5.3 and note 23.

Avikhtan be dar. Hanging (literally, 'hanging from the gallows'). 2:5.3.

Awlia'-e damm (singular: vali-e damm). Literally, 'holders of the blood'. The heirs, minus the spouses, of a murdered person, who have the right to exact qesas of the murderer, accept diyeh in lieu, or pardon the murderer. 3:6.5.

Aya (plural: ayat). A verse of the Qur'an. 1:5.1.

Ayatollah (literally 'sign of God'). A title given to high-ranking Shi'i mujtahids (qv). Above it is Ayatollah al-'Uzma (Grand Ayatollah) or Marja'-e taqlid (source of emulation; see 'taqlid'), and below it is Hojjatoleslam (proof of Islam).

Balegh(eh). A person who has reached the age of bulugh (balegh: masculine; balegheh: feminine). 2:7.1.

Bara'at ('exemption'). The idea that there is no obligation unless mandated by (sacred) law (see asl-e bara'at). 3:1.

Bayyaneh, bayyaneye shar'i. In hudud, testimony of the number of witnesses required to prove a particular crime (for example, four for adultery, fornication, lesbianism and sodomy, two for theft). See also 'nesf-e bayyaneh'. 6.3.

Bulugh. The age of legal majority. In Shi'i and Iranian law, this is nine lunar years for girls, and fifteen for boys. It is necessary for criminal responsibility and therefore punishability, at least in hudud (a person possessing bulugh is punishable even by the death penalty). It is also necessary for valid confession or testimony. 2:7.1.

Caution in shedding blood. The idea that death penalties are prohibited unless all doubt of their applicability has been removed. It is supported inter alia by a narration

saying ‘the hudud are grounded in lenience and prudence must be favoured especially where blood is to be shed’. 3:1, 3:3.

Continuous ijtiḥad (ijtiḥad-e mostamarr). The notion that the legal opinions, based on the authoritative texts (nusus; plural of nass) of the divine law, of jurists must not be the subject of additional ijtiḥad by other jurists, who instead must formulate their own fatwas ‘from scratch’ with ijtiḥad based on those nusus in response to istifta’ or in rendering judgement. This is to avoid a ‘Chinese whispers’ effect whereby interpretations of interpretations are treated as if they had the same authority as original nusus, which are the only authoritative basis for action. 1:5.1.

Damm. Blood. It appears in such phrases as ‘awlia’-e damm’ and ‘mahduroldamm’.

Dar. Regarding execution, gallows (or cross, see ‘salb’). See ‘avikhtan be dar’. 2:5.3.

Dhimmi. Member of a recognised religious minority (‘people of the Book’: Jewish, Christian, Sabian, or in Iran, Zoroastrian) in Muslim lands, protected and potentially eligible for Heaven (Qur’an 2:62, 5:69, 22:17) but lacking some rights. 2:5.1.

Diyeh (plural: diyyat). ‘Blood money’ which injured parties or their heirs can claim for injuries or murder if they waive qesas. 2:4, 2:8, 4:3.3.

Double jeopardy. Being tried twice for the same crime. Iranian law allows complainants to appeal acquittals, which in European-derived legal systems is double jeopardy; it does not explicitly permit or forbid other forms of double jeopardy. 2:4.

Dukhul (literally, ‘entry’). Penetration of the male organ. This is necessary for consummation of marriage (hence ehsan), zena or lavvat to have occurred. Specifically, the male organ must have penetrated so that its glans is entirely hidden, or consummation, zena or lavvat has not occurred; and any evidence of these crimes must describe complete penetration of the glans. 2:5.1, 4:1.

Ebahe. Permissibility by default. See *asl-e ebahe*. 3:1.

‘Edalat. Righteousness. It is required in witnesses, and arguably should be ascertained before their testimony can be accepted. 6.3.

E‘dam. Execution. 2:5.3.

Efsad, efsad fi’l-‘ard. Vice, corruption; corruption on Earth. See ‘*moharebeh*’.

Ehsan. The condition of being in a consummated (see *dukhul*) permanent marriage (see ‘temporary marriage’) and having ‘access’ to one’s permanent spouse. ‘Access’ is a very contentious parameter, which at least involves the possibility of copulation (and therefore disappears with physical separation of spouses) but may involve other things such as healthy marital relations according to some lawyers or even jurists. A person who has *ehsan* and commits *zina* is guilty of adultery (*zina mohsan/mohsaneh*) and liable for the penalty of being stoned to death. A person who commits *zina* without having *ehsan* is only guilty of fornication (*zina gheyr-e mohsan/mohsaneh*) which carries the penalty of 100 lashes. 2:5, 2:5.1, 4:1, 4:3, 4:3.4.

Ehteram. Respect. A reason given for the lighter penalty for rape of underage girls is that they are not due the same ‘*ehteram*’ as adults. 4:3.3.

Ehtiat. Caution. Choosing the course of action most likely to be correct. 3:1.

Ehtiat dar *khunha/dama*’. ‘Caution in shedding blood’ (*qv*).

Ejbar. Coercion (also ‘*onf, ikrah*’). See *ikrah*. 2:7, 2:7.3, 4:3.2.

Ekhtiar. Free will. It is necessary for criminal responsibility and therefore punishability. *Ikrah* (coercion) is the removal of *ekhtiar*. *Ekhtiar* is also necessary for making valid confession or testimony. 2:6, 2:6.1, 2:6.3, 2:7, 2:7.3.

‘Elm. ‘Knowledge’, ‘insight’. It is a form of knowledge defined as higher than ‘zann’ (conjecture) on the scale whose apex is qat‘ or yaqin (certainty). In penal law, it is used as a shorthand for ‘elm-e qazi (qv), the ‘knowledge of the judge’.

Unfortunately, since it is called ‘elm, a word associated with reliable insight, some jurists and judges claim that ‘elm-e qazi is by definition more authoritative than the mere ‘zann’ deriving from other forms of proof. 2:6.4, 2:9.

‘Elm-e qazi. The ‘knowledge of the judge’, allowed by Iranian law and, arguably, Shi‘i law as a mode of proving hadd crimes. Being unregulated by law, it is very vague, which means that judges can define their most tenuous ‘gut feelings’ as ‘elm, and then ascribe to this insight the reliability of ‘elm (qv) as defined on a scale of certainty. 2:6.4.

Enkar. Generally, ‘denial’, including denial of guilt of a crime. It also has the specific meaning of ‘retraction of confession’, which causes suqut (qv) of stoning, or, in Iranian law, any death penalty for zena and, according to some, for lavvat (sodomy) also. 2:6.2.

Eqrar. Confession. 2:6.1.

Eqrar al-‘oqala ‘alaa anfosehem ja’ez. See ‘qa‘edeye eqrar’.

Estemta‘. A variant form of tamatto‘ (deriving pleasure, in this context, from marriage, thereby maintaining ehsan, qv). See tamatto‘. 4:3.4.

Esteshab. The principle of assuming that the last known condition of things remains true. 3:1.

Expediency Council. The council created after Khomeini’s promulgation of ‘velayat-e motlaqeh-ye faqih’ (qv) to override the vetoes of the Guardian Council (qv) in the best interests of the state (maslahat, qv). Its Persian name is ‘Majma‘-e Taskhis-e Maslahat-e Nezam’ (the council for discerning the benefit of the State). 3:6.2.

Ezterar. Distress. It also means a condition whereby compliance with laws causes hardship. Jurists give it varying abilities to remove criminal responsibility, but certain narrations indicate that it does. 2:7.3, 4:3.5, 9 case 2.

Faqih. A jurist of Islamic law, capable of fiqh (jurisprudence). Also, 'the faqih' is, according to the doctrine of 'velayat-e faqih', the head of the Islamic Republic. 1:5.1.

Farsang (farsakh, parasang). An ancient unit of distance defined either as a multiple of other ancient units (cubits, royal cubits or stadia) or as an hour's walk. Four farsangs are commonly called the 'hadd-e tarakhos', which removes ehsan among other things; this distance is given in contemporary Iranian sources as approximately 21.5 or 22 km. 4:3.4.

Fasad. Corruption, vice; see 'moharebeh'.

Fased. Corrupt, inclined to vice, possessing 'fasad'. See 'moharebeh'.

Fatwa. The legal opinion of a scholar (mufti, mujtahid) qualified to issue them. 2:4.

Fiqh. Islamic jurisprudence. 1:5.1. See 'nusus', 'ijtihad', 'shar'.

Fornication. Zena without ehsan (qv). It is normally punishable by 100 lashes, but on the fourth repetition it carries the death penalty, and incest and rape, also variants of fornication, carry the death penalty too. 2:5, 2:5.1, 2:5.2, 4:3, 4:3.2.

Ghayba (gheybat, occultation). The doctrine whereby the Twelfth Imam is alive but in hiding; therefore we are in his reign but he cannot be consulted. 1:5.1, 2:9.

Golpeyгани, Grand Ayatollah Lotfollah Safi (b. 1917). A prominent religious scholar. His fatwa (qv) whereby 'elm based on confessions lapses with their retraction (enkar) is sometimes cited in court rulings. 2:6.2, 7:5.

Guardian Council. A body whose task is to investigate the compatibility of any laws passed by the Iranian parliament (Majles) with Islamic law, and which can reject laws and demand their revision if they are insufficiently Islamic or contravene the divine law. Their veto, however, can now be overridden in the 'best interests of the State' (maslahat-e nezam) by the Expediency Council, created following Khomeini's promulgation of 'velayat-e motlaqeh-ye faqih' (qv) in 1988. 5:5.2, 3:6.2.

Hadar. Expendable. See 'mahduroldamm'.

Hadd (plural: hudud; literally, 'limit', 'boundary'). Islamic 'fixed penalties' which the divine law determines for a certain group of crimes. See 'hudud'. 1:5.1, 2:5-5.1.

Hadd-e tarakhos. The 'limit of permissibility' after which ehsan is lost and a person officially becomes 'a traveller', being exempt from fasting and only obliged to perform the shortened 'travellers' prayer'. It comes from the word 'rukhsa' (licence). Some jurists hold the hadd-e tarakhos to be four farsangs (qv), and some hold it to be a point beyond one's vatan (qv) when one can no longer see its inhabitants or hear its call to prayer. 4:3.4.

Hadith. Synonymous with narration (qv).

Hadith-e raf'. Literally, 'narration of exoneration' (raf' meaning exoneration). It is a famous narration listing the nine things which remove criminal responsibility. They include coercion (ikrah) and distress (ezterar). 2:7, 2:7.2, 2:7.3.

Halq-aviz. Hanging (literally, 'neck hanging'). 2:5.3.

Hanafi. One of the four Sunni schools of law, the others being Maliki, Hanbali and Shafi'i. 2:5.3, note 47.

Hanbali. See 'Hanafi'. 2:5.3, note 47.

Haqq (plural: huquq). Right (e.g. human rights, ‘huquq-e bashar’).

Haqq Allah. The ‘right of God’. Crimes which are such because they break divine commandments, irrespective of whether they have injured parties or cause any harm. They are prosecutable without complainants (with the exception of crimes ‘monaffi-e ‘effat’, qv), and pardonable by the vali-e amr (qv). Their victims, if any, do not have the authority to pardon. 2:8.

Haqq al-nas. The ‘right of humans’. Crimes which are such because they have an injured party (saheb-e haqq, qv) whose initiative is necessary for prosecution and who can pardon the guilty party or, if applicable, accept diyeh in lieu of qesas. Theoretically not even the vali-e amr can usurp these rights, including that of pardon, though some argue that he can if it benefits the State (see ‘velayat-e motlaqeh-ye faqih’, ‘Guardian Council’). 2:8.

Haraj. Harm. See ‘osr.

Haram. Forbidden. See jahl.

Herz. In theft (serqat), an ‘enclosure’ which can reasonably be expected to protect goods. A person who breaks into the herz and also removes the goods from it is guilty of serqat-e haddi (theft carrying the hadd) and eligible for hand amputation. A person who did only one of these things is not. 4:5, 5 (theft) cases 1 and 3.

Hidden Imam. The Twelfth Imam of the Ithna‘ashari Shi‘a, believed to be in Occultation (hence the term ‘hidden’). 1:5.1, 2:9.

Hojjiat. Proof-value. For instance, testimony is said to lose its ‘proof-value’ by being retracted and thereby invalidated, and proof generally loses hojjiat through contradiction with other proof. 2:6, 3:2.

Hokm (plural: ahkam). Commandment or legal directive.

Hokm-e avvali. Primary commandment, corresponding to the ‘amm (qv). These are general commandments, which however may be suspended or modified in particular situations by ‘ahkam-e thanaviyyeh’ (secondary commandments) or ‘ahkam-e ezterari’ (rules applying to situations of distress). See hokm-e thanavi, ezterari. 3:6.2.

Hokm-e ezterari. ‘Distress commandment’, which, in times of distress, overrides ordinary commandments. See hokm-e avvali, hokm-e thanavi. 3:6.2.

Hokm-e thanavi. Secondary commandment, which in specific circumstances can modify or even suspend a hokm-e avvali (qv). For instance, consumption of normally forbidden food or drink (e.g. alcohol) becomes *obligatory* if it is necessary to save one’s own or someone else’s life; this is the hokm-e thanavi which in this instance overcomes the normal hokm-e avvali. 3:6.2.

Hormat. Forbiddenness. See jahl.

Hudud (singular: hadd; literally, ‘limits’, ‘boundaries’). Islamic ‘fixed penalties’ decreed by the divine law for a specific group of crimes. In current Iranian law, these crimes are zena (adultery or fornication), sodomy, false accusations of zena or sodomy, pimping, lesbianism, alcohol consumption, theft, and ‘insurrection and corruption on Earth’ (see ‘moharebeh’). Hudud by nature cannot be attenuated, commuted, bargained down or in any way altered. 1:5.1, 2:5-5.1.

Idra’u’l-hudud be’l shubuhah. See ‘qa’edeye darr’.

Ijtihad. Literally ‘effort’. In Islamic law, a qualified jurist’s independent reasoning to extrapolate laws and principles from the primary texts (nusus: Qur’an and narrations) of the divine law. A person qualified to perform ijihad is called a ‘mujtahid’. 1:5.1.

Ikrah. Coercion (also ‘onf, ejbar). It removes ekhtiar (free will) and with it, criminal responsibility. Confessions taken under ikrah are also invalid. Rape is coercive zena (zena plus ikrah); sodomistic rape is coercive sodomy. 2:6.1, 2:7, 2:7.3, 4:3.2, 4:3.5.

Imam. Literally, ‘leader’. For Sunnis this means prayer leader; for Shi‘ites it means one of a line of successors to the Prophet Muhammad as leaders of the Muslim community. Different Shi‘i groups posit different numbers of Imams; the largest group, the Twelvers (Ithna‘ashari), prevalent in Iran, believe in Twelve Imams. They are Ali, cousin and son-in-law of the Prophet Muhammad, and eleven descendants of Ali and the Prophet’s daughter Fatima, ending with the Twelfth Imam. 1:5.1.

Isnad. ‘Chain of transmission’ of a narration (qv). It is the list of individuals who transmitted the narration from one to the other going back to the one who first witnessed the events it describes. The reliability of narrations therefore depends to a large extent on each transmitter’s reputation for memory, honesty and so on. 1:5.1.

Istifta’ (plural: istifta’at). Soliciting fatwas (qv: legal opinions) from muftis (qv).

Ithna‘ashari Shi‘a. Arabic for ‘Twelver Shi‘a’ (qv).

Jahl. Ignorance. E.g. ‘jahl be mozu’, ‘ignorance of the matter’ (of the nature of one’s actions); ‘jahl be hormat’ (unawareness that one’s deeds are illicit); ‘jahl be hokm’ (ignorance of the commandment/law regarding one’s actions). These forms of ignorance can all be a defence in hudud. 2:7.2.

Jarayem-e monaffi-e ‘effat. Crimes ‘against chastity’ (see ‘monaffi-e ‘effat’).

Jorm. Crime (plural: jarayem).

Khabar (plural: akhbar). Literally, ‘report’, ‘news’. Narrations (qv).

Khamenei, Ayatollah Seyyed Ali Hosseini. Iran's current 'Supreme Leader', after Khomeini; characterised as the 'vali-e amr' (qv). See velayat-e faqih. 2:1.

Khass. Particular, as opposed to 'general' ('amm, qv). 3:2.

Khomeini, Grand Ayatollah Seyyed Ruhollah Mostafavi Musavi (1902-89). The Shi'i jurist who led the 1979 Iranian revolution that installed the present regime. He was the first vali-e faqih (qv) of the Islamic Republic, and his *Tahrir al-Vasileh* is extensively used in current law and trials. See velayat-e faqih. 1:5.1-4.

Lavvat (lavvat-e 'iqabi). Sodomy (punishable by death). 2:5, 2:5.1, 2:5.3, 4:4, 4:4.1.

La zarar. 'No harm' – the principle whereby no harm is to be inflicted or suffered in Islam. It derives from a narration that says the same thing. 3:6.1-2.

Lex talionis (literally, 'the law of retaliation'). The principle of 'an eye for an eye', equivalent to qesas (qv), whereby murder or injuries are punishable by retribution in kind (execution for murder or infliction of equivalent injuries). 2:4, 4:3.3.

Lunar years. Years determined by the phases of the moon rather than the position of the Earth with respect to the sun. The Islamic calendar uses lunar years, which are approximately eleven days shorter than solar years. Ages of bulugh (qv) are given in lunar years. 2:7.1; 2:6.1 note 57.

Ma'ez bin Malek. A man who, according to a famous narration, spontaneously confessed to adultery before the Prophet, who painstakingly questioned him regarding every parameter of his criminal responsibility, awareness of the forbidden nature of his actions, marriage, access to his wife, and crime itself including extent of penetration. The Prophet attempted to send Ma'ez away, but Ma'ez insisted on confessing four times, approaching the Prophet from different directions, to adultery, claiming that he wanted to be purified of his sin. When all doubts were removed, Ma'ez was sentenced to be stoned to death. He escaped from the stoning pit but was

felled by a camel bone thrown by a member of the audience and lynched by the assembled multitude. When the Prophet heard of this, he lamented that this had happened, since his escape from the pit signified retraction of his confessions and therefore invalidated the death penalty. He therefore ordered the diyeh (blood money) for Ma‘ez to be paid to his heirs from the beitolmal (public fund). This narration is used to support many things, including parameters of criminal responsibility, ehsan, zena, penetration, confession, and the effect of its retraction or escape from the stoning pit in causing suqut (qv). Chapter 9, case 6.

Maharem (nasabi, sababi, reza’i). Relatives (singular: mahram). Maharem-e nasabi are blood relatives, with whom incest carries the death penalty. Maharem-e sababi are relatives by marriage. Maharem-e reza’i are ‘milk relatives’, meaning those who have drunk the milk of the same person (with additional conditions), who become ‘milk relatives’ to each other and to the producer of the milk. Marriage with all blood and milk relatives and most sababi relatives is forbidden; most jurists say that incest only carries the death penalty if committed with blood relatives. 4:3.2.

Mahduroldamm. ‘Whose blood can be shed with impunity’. From ‘damm’, blood, and ‘hadar’, ‘expendable’. A person whose murder is not punishable by death because they merit death already, for example by having committed a crime carrying the death penalty. Iranian law forbids the death penalty even for those who kill someone in the *mistaken* belief that they were mahduroldamm, if that belief is proven in court. If the belief was mistaken, they must still pay diyeh, and if not, even diyeh lapses. 4:2, 6 (sodomy) case 3, 9 (adultery) cases 10, 11.

Mahfuz. Literally, ‘protected’ or ‘hidden’. In theft, this refers to adequate protection of stolen goods by the ‘herz’ (qv). If they are not sufficiently ‘mahfuz’ by the herz, their theft does not carry qat‘-e yadd (qv; hand amputation penalty). 5 (theft), case 1.

Mahqunoldamm. ‘Whose blood is protected’; opposite of ‘mahduroldamm’ (qv). 4:2.

Majles (literally: ‘assembly’). The Iranian parliament. 1:5.2.

Majma‘-e Taskhis-e Maslahat-e Nezam. Expediency Council (qv). 1:5.2-5, 3:6.2.

Makarem Shirazi, Naser (b. 1924). Prominent Iranian Shi‘i jurist. Though conservative in some respects, he declared stoning commutable if necessary. 4:3.7.

Malik Ashtar. A man whom ‘Ali (qv) sent to govern Egypt. In doing so he gave him a letter which, among other things, embodies the qa‘ede-ye darr’ (qv) and the concept of erring on the side of lenience rather than on the side of severity. 3:3, 3:5.

Maliki. One of the four Sunni schools of law, the others being Shafi‘i, Hanafi and Hanbali. 2:5.3, note 47.

Maqzuf. The victim of qazf (qv). 2:5.1.

Masalih (singular: maslaha, maslahat). Benefits. 3:6.2.

Masalih al-mursala. Unattested benefits; benefits for which there is no authoritative divine text (nass). The idea that when the divine law is silent on a particular point, it is licit to use the benefit of the community as a source of law. 3:6.2.

Maslahat. Literally, ‘benefit’. It can refer to the idea that one rationale behind laws, which can be used if it does not contravene known divine injunctions, is the promotion of benefits and the reduction of harm. In recent parlance, following the promulgation of ‘velayat-e motlaqeh-ye faqih’ (qv) and the creation of the Expediency Council (qv), it can mean ‘the State’s benefits’, which must be sought, and its opposite prevented, even at the cost of contravening divine laws. ‘Maslahat sanji’, ‘assessing benefits’, means prioritising greater over lesser benefits. 3:6.2.

Ma‘sum. Innocent, infallible. An epithet of the Prophet, his daughter Fatima and the Twelve Imams, termed the ‘Ma‘sumin’ (qv). 1:5.1. See ‘Sunna’.

Ma'sumin. The Prophet, his daughter Fatima and the Twelve Imams (see Ma'sum).

Milk relatives. See 'maharem'.

Mofsed (f'l-'ard). Person guilty of 'efsad fi'l-'ard', 'corruption on Earth'. It is unclear whether this crime is the same as 'moharebeh' (insurrection) or a separate crime, and if so, whether or not it carries the same penalties as moharebeh. 2:5.1, 4:6.

Mohareb. Person guilty of 'moharebeh' (qv), 'insurrection'. 2:5.1, 4:6.

Moharabeh va efsad fi'l-'ard. Insurrection and corruption in Earth. It is unclear whether this is one crime or two, and if two, what 'corruption on Earth' is and whether it carries the same penalties (execution, crucifixion which may be survived, amputation of right hand and left foot, or exile at the judge's discretion) that Qur'an 5:33 decrees for the crime interpreted as either 'moharebeh' or 'moharebeh va efsad fi'l-'ard'. 2:5, 2:5.1, 4:6.

Mohsan(eh). Possessing ehsan (qv). Mohsan is masculine, mohsaneh is feminine.

Monaffi-e 'effat. 'Against chastity'. Crimes 'against chastity', meaning those with a carnal component such as adultery, fornication, sodomy or lesbianism, legally and according to the divine law cannot be prosecuted or investigated without complainants. However, this is often ignored. 3:4, 2:4.

Monker. A person who denies a crime or retracts their confession to it. 2:6.1-2.

Morsal (feminine: morsaleh). Having no supporting text; for instance, narrations (qv) without an isnad (qv). It is also in the phrase 'masalih al-mursala' (qv). 3:5, 3:6.2.

Moshahede. 'Seeing'. In hudud, having seen penetration of the male organ so that the glans is entirely hidden. If this has not occurred, zena or lavvat (and by extension qavvadi, qv) has not occurred either, because dukhul (qv; penetration) is part of their

essence. Testimony must be to having *seen* this extent of penetration, and testimony or confession must describe it. 4:1.

Mosker. Alcohol consumption, punished by 80 lashes and carrying the death penalty on the third, not the fourth, repetition according to most jurists. Some posit the third repetition as normal and the fourth as exceptional; others, the opposite. 2:5.1, 2:5.2.

Mufti. A person qualified to issue fatwas (qv).

Mujtahid. A person qualified to perform *ijtihadh*. Jurists mostly agree that only mujtahids can be judges. 1:5.1, 2:3.

Muqallid. One who cannot perform *ijtihadh*, and must therefore perform *taqlid* (qv).

Mut‘a. Literally ‘pleasure’; often used to mean ‘nika mut‘a’ (qv).

Mu‘tazila (adj. ‘Mu‘tazilite’). An Islamic school of thought which posits that God behaves reasonably, and therefore divine laws are compatible with reason.

Mainstream Twelver Shi‘i thought is Mu‘tazilite, and accepts ‘aql (qv; reason) as a tool to discern correct sacred laws. See ‘qa‘edeye molazeme’. 3:6.1, note 15.

Na‘eb. Representative; according to *velayat-e faqih* (qv), the *vali-e faqih* (qv). 1:5.3.

Naqz. ‘Quashing’ of a ruling. 2:4.

Narration. A report of the actions or words of the Prophet and the Twelve Imams.

Narrations are legally binding, and together with the Qur’an, they form ‘nusus’, the authoritative texts of the divine law, whose interpretation is ‘fiqh’ and ‘ijtihadh’.

Narrations are also known as *ahadith* or *akhbar* (singular, *hadith*, *khbar*). 1:5.1.

Naskh. Abrogation; for instance, of earlier Qur’anic verses by later ones. 1:5.1.

Nass (plural: nusus). Authoritative texts of Islamic law, namely, the Qur'an and the Sunna (as contained in narrations). Together these are 'the shari'a' (qv). Fiqh is based on their study and extrapolation of laws and principles from them. 1:5.1.

Nesab. Quorum. The minimum quantity necessary. It can refer, for example, to the number of confessions or witnesses required to prove a particular crime, or to the minimum value of stolen goods before qat'-e yadd (qv) is applicable. 2:6.3, 4:5.

Nesf-e bayyaneh (half testimony). Half the number of witnesses required to prove a crime (for instance, two witnesses to zena, which requires four). 6.3, note 65.

Nika mut'a. Temporary marriage (nika meaning 'marriage', and mut'a meaning 'pleasure'). It is allowed in Twelver Shi'ism though not in Sunni Islam. It is marriage with a fixed 'expiry date' which can be anywhere from an hour to 99 years from the date of the contract. It involves fewer obligations than permanent marriage; for instance, it does not have the same obligations of financial maintenance whereby the husband is responsible for financially supporting the wife. A man is allowed only four permanent wives contemporaneously, but as many temporary wives as his financial means allow (since he must pay dowries to them). 4:3.4 and note 26.

No crime without law. The principle that no action is to be deemed a crime unless performed after being defined as such by law. It is known in European-derived legal systems as 'nullum crimen sine lege'. 2:2.

No punishment without law. The principle that no punishment must be implemented unless mandated by law for actions deemed criminal by laws which antedate them. It is often rendered in European legal systems as 'nullum crimen, nulla poena sine lege praevia' (no crime or punishment without preceding law). 2:2.

Occultation. The doctrine whereby the Twelfth Imam is alive but in hiding, and therefore we are in his reign but he cannot be consulted. A 'lesser occultation' (gheybat-e soghra) occurred in 874 AD; during this time, the Twelfth Imam was

reachable through four successive intermediaries (sofara; singular: safir) but could not be directly contacted. With the death of the fourth safir in 941 AD, the ‘major occultation’ (gheybat-e kobra) began, and there remained no way of consulting the Imam even indirectly. There subsequently developed doctrines of quietism, whereby in the Imam’s de facto absence, no government was legitimate and many of the Imam’s functions, including implementation of hudud, had lapsed (saqet, qv). This was gradually reversed, and the culmination of this process was velayat-e faqih (qv). It is believed that the Hidden Imam will eventually reveal himself again. 1:5.1, 2:9.

‘Onf. Coercion. See ikrah. 2:7.3, 4:3.2.

‘Orf, ‘adat, ‘orf va ‘adat. Custom. 2:7.3, 4:3.5.

‘Osr: hardship, harm. 2:7.3.

Penal code bill (Layehey Qanun-e Mojazat-e Eslami). A proposed replacement of the 1991/96 penal code (Qanun-e Mojazat-e Eslami, ‘law of Islamic punishments’). The Guardian Council rejected it; it was superseded by the 2012 penal code. 1:5.4.

Qa‘edeye eqrar (the ‘axiom of confession’). The axiom ‘eqrar al-‘oqala alaa anfosehem ja’ez’ (the confessions of legally responsible persons are valid against themselves). It gives validity to confessions while also limiting that validity to confessors, thereby prohibiting incrimination of one person through another’s confession. 2:6.1.

Qa‘edeye darr’ (‘axiom of removal’). The axiom ‘idra’u’l-hudud be’l-shubuhah’ or ‘todra’u’l-hudud be’l-shubuhah’ (doubt averts punishments). 3:5.

Qa‘edeye hormat-e tanfir az din. The ‘axiom against causing hatred of the faith’, a principle of fiqh recently discussed in its own right. 3:6.3.

Qa‘edeye la zarar. The ‘no-harm principle’, whereby no harm is to be inflicted or suffered in Islam. It derives from a narration that says the same thing. 3:6.1-2.

Qa‘edeye molazeme. The principle whereby divine laws accord with reason. Some even claim that if divine laws do not, they must be false. It is generally accepted that certain divine commandments, notably those in the realm of ‘ibadat (prayer and other acts of devotion), are exempt from being assessed through reason. 3:6.1.

Qa‘edeye nafi-e ‘osr va haraj. The axiom of avoiding harm. It removes criminal responsibility for illicit acts (except murder) performed to avoid these. 2:7.3.

Qa‘edeye tafsir-e maziq-e qanun be naf‘-e mottaham. The axiom of interpreting the law’s ambiguities in favour of the defendant. 3:3.

Qa‘edeye zarurat va ezterar. The ‘axiom of necessity and distress’ whereby necessity renders permissible what would normally be forbidden. 2:7.3, 3:6.1-2.

Qanun. (Codified) law. 1:5.1.

Qanun-e Mojazat-e Eslami. ‘Law of Islamic penalties’; the penal code. 1:5.4, 2:4.

Qasd. Intention. It is necessary for valid confession and criminal responsibility. 2:7.

Qat‘. Certainty. See ‘elm.

Qat‘-e yadd (‘hand-cutting’). The hadd penalty for theft. In the Qur’an (verse 5:38) it is ‘cut off their hands’; some schools of Islamic law interpret this as removing the hand at the wrist or even the elbow. Twelver Shi‘i and current Iranian law interpret it as amputation of four fingers, minus the thumb, of the right hand. 2:5.1, 4:5.

Qatl. Killing; often used as ‘murder’ or ‘execution’. 2:5.3.

Qavvadi. Pimping; bringing people together, irrespective of payment, for zena or lavvat. It is punished by 75 lashes and, for males, also exile of three months to a year. Since it is facilitation of crimes involving penetration, its testimony must be based on ‘moshahede’ (qv) and confession must describe penetration of the glans. 2:5.1, 4:1.

Qaza’. Judgeship (see ‘qazi’).

Qazf. A person guilty of qazf. 2:5.1.

Qazf. False testimony regarding sodomy or zena (qv) or a false accusation thereof; punishable with 80 lashes; the only hadd which is entirely haqq al-nas (qv). 2:5.1.

Qazi (plural: qozzat). Judge. Shi‘i jurists generally insist that only mujtahids (qv) can be judges, but this is not currently enforced in Iran. 2:3.

Qesas. Retribution in kind for murder (qesas-e nafs) or injuries (qesas-e ‘ozv). The injured party or, in murder, their heirs can decide whether to exact qesas (infliction of equivalent injuries or, for murder, execution), accept diyeh (blood money) instead, or pardon the aggressor outright. 2:4, 2:5.3, 2:8, 4:3.3.

Qesas-e nafs. Execution for murder. 2:4, 2:5.3, 2:8, 4:3.3

Qesas-e ‘ozv. Retribution in kind for injuries by means of inflicting equivalent injuries on the aggressor. 2:4, 2:8.

Qur’an. Literally, ‘recitation’. The most important text of Islam. It is believed to have been revealed to the Prophet Muhammad by God and the Archangel Gabriel, and it contains laws which are binding on Muslims as well as parables and stories. It is divided into chapters (suwar, singular: sura) which contain verses (ayat, singular: aya), several of which are of a legislative nature. Some verses abrogate (naskh, qv) others, eliminating their legislative force; therefore in order to discern laws from the

Qur'an one must, inter alia, know when and in what circumstances (because context can affect the meaning and interpretation of words) they were revealed. 1:5.1.

Rajm. Stoning to death; the hadd penalty for adultery. 2:5, 2:5.1, 5.3, 4:3.7.

Revayat (plural: revayaat). Narration (qv).

Rukhsa. Licence. In the context of penal law it is relevant to the hadd-e tarakhos (qv) which is crucial, inter alia, to ehsan (qv).

Rule of the jurist. Synonymous with velayat-e faqih (qv).

Sabet. 'Established' (of a crime proven in court). See 'sobut'.

Saghireh (masculine: saghir). An underage girl, whose rape apparently does not carry the death penalty. 4:3.3.

Saheb-e haqq. Owner of the right. An injured party in haqq al-nas, who has the right to initiate prosecution, pardon the criminal, and, if applicable, accept diyeh in lieu of qesas (qv). 2:8.

Saheb-e mal. In theft (serqat), the owner of the stolen goods. 4:5.

Salb. Crucifixion; one of the penalties for moharebeh va efsad fi'l-'ard. It may, but does not necessarily, cause death. The term 'dar' (gallows) may also indicate 'cross'. Persons crucified for three days must be released if they survive. 2:5.1, 5.3; 4:6.

Sanei, Grand Ayatollah Yusef (b. 1937). A prominent Shi'i scholar, liberal on many points and recently at odds with the Iranian regime. He has emphasised that coerced confession is invalid, and opposed halved blood money (diyeh, qv) for women and the use of 'elm-e qazi (qv) in hudud. 1:5.5, 2:6.1, 2:6.4, 4:3.3.

Sangsar. Persian term for ‘rajm’ (qv; stoning to death for adultery).

Saqet. Lapsed; having undergone suqut (qv). 2:9.

Sareq. Thief. 2:5.1, 4:5.

Serqat. Theft (punishable with amputation of 4 fingers). 2:5, 2:5.1, 4:5.

Shafi‘i. One of the four Sunni schools of law; see Maliki. 2:5.3, note 47.

Shahed (plural ‘shuhud’). Witness. 6:3.

Shahrudi, Grand Ayatollah Seyyed Mahmud Hashemi (b. 1948). The head of the Judiciary when most cases in Part II were tried. Sometimes politically conservative though often juristically liberal. For example, he opposes the use of ‘elm-e qazi in criminal law, and issued all the stays of execution mentioned in Part II, which were sometimes ignored. 1:5.6, 2:6.4, 4:3.7, 4:5.

Shar‘, shari‘a (adjective: shar‘i, shar‘iatic). A term commonly used to mean ‘Islamic law’, but technically referring only to nusus (qv): scripture (the Qur’an and the Sunna/narrations) as opposed to fiqh, which is jurisprudence based on them. 1:5.1.

Shehadat. Testimony. 6:3.

Shi‘a. Literally, ‘faction’; in this context, the ‘faction of ‘Ali’ (Shi‘at ‘Ali), namely those who believe that the leadership of the Muslim community after the Prophet should have gone to his cousin and son-in-law, ‘Ali, instead of being determined by consensus as the Sunnis (who favoured the leadership of the Prophet’s father-in-law Abu Bakr) believe. There are various Shi‘i (the adjectival form of Shi‘a) groups, positing various numbers of Imams (leaders of the community) who followed the Prophet and ‘Ali. Here, we are concerned with the Twelver Shi‘a (qv). 1:5.1.

Shorb-e khamr. Alcohol consumption, punishable with 80 lashes. 2:5, 2:5.1.

Shuhud (sing. 'shahed'). Witnesses. 6.3.

Sigheh. Term indicating temporary marriage. See 'nika mut'a'.

Sobut. 'Establishment' of a crime in court. It is also a crucial point in theft, since after sobut, the injured party can no longer pardon the thief. 2:9, 4:5, 5 case 3.

Sodomy (lavvat). Penetration, to the extent that the glans is fully concealed, of a man by the organ of another man. It carries the death penalty. 2:5, 2:5:1, 4:4, 4:4.1.

Sunna. Literally, 'tradition'. The behaviour and words of the Prophet and the Imams, as recounted in narrations (qv). It can create precedents for law. The Prophet and the Imams (Ma'sumin, qv), being both infallible and innocent, never contravened the divine law; therefore anything they did was indisputably licit, though some things they did were merely permitted, not obligatory. 1:5.1.

Sunni. Literally 'of the tradition'. The most numerous branch of Islam, itself divided into four schools of law (see 'Maliki'). Though the matter is more complicated than this, one main division between the Sunnis (or 'ahl-e Sunnat', 'those of the tradition') and the Shi'a (qv) is that the Shi'a favoured 'Ali as a successor to the Prophet for leadership of the Muslim community, and his descendants to succeed him in that role, while the Sunnis favoured selection of the Caliph (khalifa: successor, leader of the Muslim community after the Prophet) by consensus. Another difference is that while the Sunnis use only hadiths (qv) connected to the Prophet, the Shi'a also use those connected to the Imams (qv). The fact that the Sunnis are named for 'tradition' does not mean that the Shi'a do not also have their equivalent 'traditions' (sunna, qv); indeed, many narrations (qv) of both schools overlap.

Suqut. 'Lapsing', 'abeyance', 'invalidation', 'inapplicability'. In penal law, it refers to the inapplicability of punishments caused by specific circumstances, including

repentance made at the right time, claims of coercion, or retraction of confession to zena punishable by death. In another context it refers to the abeyance of the Imam's functions during his Occultation (ghayba, gheybat). 1:5.1, 2:9.

Sura (plural: suwar). A chapter of the Qur'an.

Ta'dib. Didactic or disciplinary penalties, similar to ta'zir (qv) and sometimes identified with them, but with the express purpose of teaching the miscreant, usually a child or insane person, to behave properly. They are generally light. 2:7.

Tafkhiz. Sodomy minus penetration, punishable with 100 lashes. 2:5, 2:5.1, 4:4.

Tahrir al-Vasileh. A *fiqh* treatise written by Ayatollah Khomeini. It plays an important role in current Iranian law, though it also contains positions absent from codified law. Portions of the Tahrir are often cited in court whether or not they appear in current codified law. 2:1.

Tamatto'. 'Gaining pleasure'. Ehsan (qv) depends on tamatto' between spouses. It is unclear if this means merely physical copulation or also additional forms of enjoyment including psychological ones, as some lawyers and jurists argue. 3:4.

Taqlid. Deference to a mujtahid's opinions regarding divine law by a person (muqallid) not authorised to perform ijtihad. 1:5.1.

Ta'zir (plural: ta'zirat; adjective: ta'ziri). Discretionary penalties (see also ta'dib). In the classical law they are at the judge's discretion, but in Iranian codified law, each crime with a ta'ziri penalty has a maximum and minimum sentence between which the judge can choose. Islamic penal law generally posits four categories of punishments: hudud, qesas, diyeh and ta'zirat, the last referring to crimes and punishments not covered by the other three. 2:4, 2:5.

Temporary marriage. See 'nika mut'a'.

Todra'u'l-hudud be'l-shubuhah. See 'qa'edeye darr'.

Twelfth Imam. The twelfth of a line of successors to the Prophet Muhammad as leaders of the Muslim community according to the Twelver Shi'a. He is believed to be in Occultation (qv), and hence is also known as the Hidden Imam. 1:5.1, 2:9.

Twelver Shi'a. The Shi'i group now prevalent in Iran, which posits a line of twelve Imams, beginning with 'Ali, as rightful leaders of the Muslim community. 1:5.1.

Ulu'l-'amr. 'Those in authority among you' from Qur'anic verse 4:59; interpreted as the plural of 'vali-e amr' (see 'authority verse', 'vali-e amr'). 1:5.3, note 23.

Vali-e amr. 'Guardian of affairs'. According to an apparently spurious interpretation of Qur'anic verse 4:59 (the 'authority verse') by the current Iranian regime through the doctrine of 'velayat-e faqih' (qv), the person who fulfils the Hidden Imam's functions, including government, during his Occultation. 1:5.3 and note 23.

Vali-e damm (plural: awlia'-e damm). See Awlia'-e damm.

Vali-e faqih. 'Guardian jurist', authorised to rule on the Hidden Imam's (qv) behalf as his na'eb (representative) according to velayat-e faqih (qv). 1:5.1.

Vatan. 'Homeland'; re: ehsan, one's town of residence. See 'hadd-e tarakhos'. 4:3.4.

Velayat-e faqih. The 'rule/guardianship of the jurist'; a doctrine developed by Khomeini, building on earlier developments in the same direction. It states that since the Hidden Imam is not available to discharge his functions, including that of governing the Muslim community, the best representatives to perform these functions during his Occultation are those most versed in Islamic law, namely, foqaha (plural of 'faqih', 'jurist'). Furthermore, if one excels the others in learning, he is paramount among them. This doctrine, whose departure from earlier

mainstream attitudes has been discussed by scholars, is a keystone of the Iranian regime's justification of its own existence: without it, the previous quietistic doctrines of the Imam's functions being in abeyance (suqut) might prevail. 1:5.1.

Velayat-e faqih-e motlaqeh. The 'absolute rule of the jurist'. A fortified version of 'velayat-e faqih', promulgated in 1988 by Khomeini. It states that since the Islamic Republic upholds true (Twelver Shi'i) Islam, whose preservation is paramount, anything which strengthens the regime or prevents damage to it is Islamically licit and obligatory even if it contravenes other Islamic laws. 3:6.2.

Yaqin. Certainty. See 'elm.

Zani, zanieh (masc, fem). Someone who has committed zena (qv).

Zann. Conjecture. See 'elm.

Zena. Illicit carnal congress between males and females not married to each other. If married to someone else, they are guilty of adultery which carries the penalty of stoning to death, and if not, they are guilty of fornication, which carries the penalty of 100 lashes but the death penalty on the fourth instance. 2:5, 2:5.1, 4:1, 4:3.

Zena ba maharem-e nasabi. Incest (with blood relatives), which carries the death penalty. See 'maharem'. 4:3.2, 8, case 2.

Zena be 'onf, zena be 'onf o ikrah/ejbar. Rape. See ikrah.

Zena(ye) mohsan(eh). Adultery, punishable by stoning. Zena(ye) gheyr-e mohsan(eh) is fornication. See zena, ehsan, rajm. 2:5.1, 4:3, 4:3.4, 4:3.7.

Zarar. Harm. See la zarar, qa'edeye nafi'-e 'osr va haraj. 2:7.3.

Zarurat. Necessities. See 'qa'edeye zarurat va ezterar'. 2:7.3.

Acronyms for laws:

CPC: Criminal Procedural Code (1911).

DIRS28/70: Directive on the Implementation Regulations for Sentences of Execution, Stoning, Crucifixion, [and] Amputation or Disabling of Limbs, [being] the Subject of Note 1 of Article 28 of the law Establishing Criminal Courts One and Two (1991).

DIRS293/82: Directive on the Implementation Regulations for Sentences of Qesas, Stoning, Qatl (execution), Crucifixion, E'dam (execution) and Flogging, [being] the Subject of Article 293 of the Procedural Code for the General and Revolutionary Courts in Criminal Matters (2003).

FPL: Family Protection Law (1975).

LECC: Law Establishing Criminal Courts 1 and 2 and Supreme Court Branches (1989).

LEGRC: Law Establishing the General and Revolutionary Courts (1994).

PCCM: Procedural Code for the General and Revolutionary Courts in Criminal Matters (1999).