

A TRANSNATIONAL FEMINIST INQUIRY ON FAMILY AND DIVORCE LAW IN  
CONTEMPORARY IRAN

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A thesis submitted to the faculty of  
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In partial fulfillment of  
the requirements for  
the Degree

Master of Arts  
In  
Women and Gender Studies

by

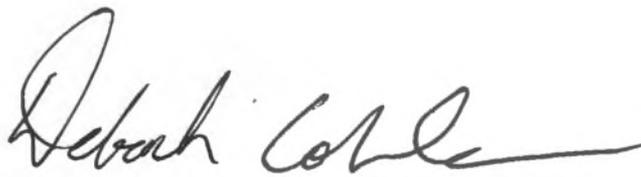
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San Francisco, California

May 2019

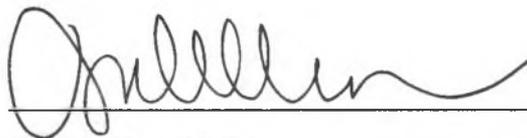
CERTIFICATION OF APPROVAL

I certify that I have read *A Transnational Feminist Inquiry on Family and Divorce Law in Contemporary Iran* by Sarah Jamshidy Boroujerdi, and that in my opinion this work meets the criteria for approving a thesis submitted in partial fulfillment of the requirement for the degree: Master of Arts in Women and Gender Studies at San Francisco State University.



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A TRANSNATIONAL FEMINIST INQUIRY ON FAMILY AND DIVORCE LAW IN  
CONTEMPORARY IRAN

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San Francisco, California  
2019

The methods within my thesis use a transnational, political, and feminist analysis to study divorce practices and family law within Iran since the rise of the Islamic Revolution in 1979. This thesis examines Iranian Civil Codes that are structural within Iranian family courts, while providing a history of political invasions that have led to changes in traditions within Iran after the seventh century Arab Muslim Incursion. My materials include primary sources of Iranian Civil Codes, and secondary sources by Western and transnational feminist scholars who have studied Iranian women's communication with the Islamic Republic through a societal, political, and economic framework.

I certify that the Abstract is a correct representation of the content of this thesis.

  
\_\_\_\_\_  
Chair, Thesis Committee

May 16, 2019  
Date

## PREFACE AND/OR ACKNOWLEDGEMENTS

I would like to thank previous Women and Gender Studies Assistant Professor Evren Savci and current Professor Kasturi Ray for not only guiding me in my work, but for supporting first-generation students like myself who seek to reconcile with and navigate their country's history. I present this work to make my thesis accessible with both the academy and readers looking to navigate and identify with their own country's historical political, religious, and legal developments over the past few hundred years.

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## Introduction

This work discusses the shifting and malleable interpretations of shariah law that result within divorce discourses involving diverging and informal retellings of Islamic jurisprudence (*feqh*). I review how interactions between clerics and women of various socioeconomic localities within post-revolutionary Iranian courts exposes the multifaceted nature of Islamic jurisprudence before and after the revolution. I center both transnational and Western feminist discussions regarding the possibility for gender rights through positive law within the Iranian civil codes, while exposing a (de)centering of postcolonial scholarly accounts of Third World subjects—female divorce applicants and clerics and/or jurists. Through contextualizing the historical rise, and mobilization of Iran's religious and messy political history, I center Iranian women's navigation of and contention with abstracted definitions of shariah through religious attitudes that are dictated by localities and political climates of the time.

## Literature Review

### Overview

Part One of this literature review includes brief definitions of key terms utilized by authors within their work. I position Osanloo's (2009) *The Politics of Women's Rights in Iran* and Mir-Hosseini's (1999) *Islam and Gender: The Religious Debate in Contemporary Iran* to highlight what I argue as Imperial scholarship of post-1979 Iranian encounters with Western researchers—one that propagates epistemologies that progressively center whiteness (Hanssmann 2019). The beginning of Part Two includes politically driven theories of positive law within Osanloo's (2009) fieldwork in Tehran from 1999-2000, as deduced from first-hand, linear, and personalized narrations of divorce applicants within the Tehran Municipal Court. I continue with Mir-Hosseini's (1999) ethnographic encounters with Shi'i clerics Mortazavi and

Sa'idi of the *Payam-e Zan* journal's "Women's Editorial Issue" in *Islam and Gender: The Religious Debate in Contemporary Iran* to center complex positionalities of a Western scholar and Iranian clerics who derive their conclusions on gender equality from different realities and world views. Mir-Hosseini's (1999) recognized scholarship on the Iranian Twelver pilgrimage site of Qom,<sup>1</sup> and accounts of Islamic jurisprudence that are contingent on specified geographies, localities, and time complicates postmodern feminist questions of the possibility for positive law within shariah. The remainder of Part Two will utilize a transnational feminist discussion supported through Moallem's (2015) "The Unintended Consequences of Equality Within Difference," Mohanty's (2003) "Under Western Eyes: Feminist Scholarship and Colonial Discourses" in *Feminism without Borders: Decolonizing Theory, Practicing Solidarity*, and "Final Session with *Payam-e Zan*" in Mir-Hosseini's (1999) *Islam and Gender: The Religious Debate in Contemporary Iran*. Part Three will summarize and contextualize a contemporary transnational feminist discussion of intergenerational trauma that draws from rhetorics of colonisation as the underlying and structural component to understanding Iranian women's status, humanity, and individuality under the Islamic Republic through Abu-Lughod's (2002) "Do Muslim Women Really Need Saving."

### Chapter One

This chapter discovers historical moments within Iran helpful for discerning the contextual development of post-revolutionary implementations of family law. I review the centralization of religious governance and expansion of Islam within Iran with the onset of the seventh century that systematized legislation and divided Islamic law into "revealed law"

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<sup>1</sup> The site of the grand mosque where the shrine of Hazrat-e Ma'sumeh is located. Ma'sumeh was Imam Reza's sister. Imam Reza was the eighth succeeding Imam within the Twelver lineage of Imams (Mir-Hosseini & Tapper 2006: 42) after the death of the Prophet (d. 632).

(*Shari'a*) and jurisprudence (*fiqh*). I then begin with an historical overview of Shiism as a diverging rule of thought from Sunnism beginning with the death of the Prophet (d. 632), while expanding on the “Twelver” theology as an establishment for religious leadership and divine right to political governance. With this, I continue with a historical overview of the Safavid dynasty’s commercial development and solidification of the Shi’ah Twelver (*Ithna ‘Asheri*) School of Law beginning in 1501. This will be followed with a synopsis of the Qajar dynasty’s (1794-1925) national mobilization that led to the formulation of gender roles based on nineteenth-century European influence. I continue with the Qajar state’s bureaucratization of Islam, i.e., through state mandated and codified university educated judges and laws (Osanloo 2009: 256). This historical contextualization of religious development within the Persian Plateau will help comprehend the conception, formulation, and solidification of divorce discourses involving male-authoritative legal interpretations over time. This will be followed with a brief history of Qajar state rulings that gathered diverging ideological views leading up to the Constitutional Movement (1905-1911)—a moment that encapsulated clashing views regarding man-made laws versus shariah. I cover how this movement played a role in promoting egalitarian attitudes that led to a block against the state’s implementation of shariah—primarily with regards to gender hierarchies. With this twentieth-century legal account, I conclude with an overview of “democratic” legal reforms under the Pahlavi era’s autocratic democracy that was cancelled with the onset of the Islamic Revolution. I do not recall this history to historicize or sensationalize the Iranian female subject like many academic accounts, nor to Orientalize her for the university. I present this work on divorce law to make my thesis accessible with the academy and readers—both of which are looking to navigate, reconcile, and identify with their own country’s historical political, religious, and legal developments over the past few hundred years.

## Chapter Two

Part One includes an analysis of post-revolutionary divorce cases and agent producing dialogues between divorcing parties and clerics through a review of the production and filming of *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998). Part Two draws on intersectional feminist conversations from Osanloo's (2009) *The Politics of Women's Rights in Iran* to discuss her fieldwork within Tehran's Special Civil Courts and modes of feminist activism mobilized within private spaces of the women's Quranic sessions (*Jalase-yeh Quran*) to essentially cultivate positive law. Part Three includes a review of the 1980s Iranian judicial system and pedagogical court structure in Mir-Hosseini's (1993) *Marriage on Trial: A study of Islamic Family Law*. This follows with a critique of the convoluted relationship within traditional expectations of marriage as defined by "fiqh," and the legal implementation of matrimonial regimes that widen the gap between theory of Islamic law and actual practice of family law within courtroom structures. In Part Four, I begin with Wadud's (2006) *Inside the Gender Jihad: Women's Reform in Islam* to unpack the multifaceted and linear subjective nature of male Islamic scholarship over primary and secondary religious literature—one that reproduces fixed interpretations and world views regarding Iranian women's status under current Islamic law. I then tie this into Mir-Hosseini's (1999) *Islam and Gender: The Religious Debate in Contemporary Iran* to break down the nuanced encounters resulting between Mir-Hosseini and clerics of *Payam-e Zan* to highlight the concrete yet nuanced presumptions of women's inferiority within Islamic jurisprudence (*feqh*) on behalf of seminary clerics—one that fails to account for complex socioeconomic realities and malleable gender hierarchies within post-revolutionary Iran.

Part Five encompasses a final reflection on *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998) and Mir-Hosseini's (1999) final session with *Payam-e Zan*, along with Ali's (2006) *Sexual ethics and Islam: Feminist reflections on Qur'an, hadith, and jurisprudence*, and Barzoki, Tavakoll, & Burrage's (2015) "Rational-Emotional Divorce in Iran." These sources center and define twenty-first century questions of Iranian women's status under shariah, while exposing the complicated nature of gender relations in contemporary urban and/or rural landscapes. I conclude this thesis with an analysis of the contemporary sociocultural conditions such as extramarital relations, Eurocentric notions of individualism, and greater economic mobility within urban spaces that have provided barriers to marital satisfaction while unintentionally leading to higher divorce rates. As metropolitan city spaces such as Tehran have opened horizons for greater job opportunities in the past twenty years, the economic, social, and political implications involved in changing cultural patterns after 1979 essentially became an extension of rising divorce trends among spouses.

## Part One

### "Positive Civil Law"

Modes of women's agency within courts take hold through the memorization of civil codes for purposes of receiving desired outcomes out of divorce legislation. Positive law includes women's reliances on Iran's legal infrastructure as a pipeline to cancelling marriages and manifesting rights-based discourses (Osanloo 2009: 117). Traditionalists view positive civil law as legal actions among Iranian female divorce applicants that take hold through unnamed "rights-based discourses," (Osanloo et al.) while permitting the dependence of women's rights on individualist philosophies.

### "Fiqh" and/or "Fegh"

Osanloo (2009) and Mohammad and Ghari (2006) spell “fiqh” with an *i* in their work, as Mir-Hosseini (1999) refers to “feqh” with an *e* in *Islam and Gender: The Religious Debate in Contemporary Iran*.<sup>2</sup> “Feqh” and “fiqh” will be used interchangeably throughout this work as they follow the author’s theoretical utilization or seminary educated clerics’ reference to gender and family hierarchies under a legal and religious framework. Clerical Islamic jurisprudence (*feqh*) of Islamic law assigns and constructs specific duties to men through cultural assumptions, limiting the possibility for an equal construction of gender rights to be established within the Islamic Republic. Notions and methodologies of feqh are subject to alteration when clerically implemented within a court (Mir-Hosseini 2003: 2).

*The Politics of Women’s Rights in Iran* translates “fiqh” to “jurisprudence,” and is the discourse of practicing Islamic law (Osanloo 2009: 228). Osanloo provides a malleable definition of fiqh as it applies to the post revolutionary theocratic structure, in two categories—conventional fiqh and dynamic fiqh. Conventional fiqh is absolute<sup>3</sup> and constructionist Islamic jurisprudence based on legal codes, and not subject to changing views due to time, era, age, place, and region, whereas Dynamic fiqh is shaped by these factors (Osanloo 2009: 67). The causes of clerics’ unilateral and personalized subjectivities when interpreting moral codes of feqh within legal practices becomes a pivotal matter of post-revolutionary discussion among legal scholars of Islamic law and divorce discourse, and Shi’i religious practitioners. Osanloo (2009) describes Islamic jurisprudence (*feqh*) as the male cleric’s interpretation of Islamic practice that

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<sup>2</sup> Mir-Hosseini (1993, 1999, 2006) utilizes “feqh” and “fiqh” interchangeably in *Islam and Gender the Religious Debate in Contemporary Iran*, *Marriage on Trial: A Study of Islamic Family Law*, and *Islam and Democracy in Iran*.

<sup>3</sup> The more absolute Shi’i jurisprudence was introduced in the text “Theological Jewels” (*Javaher-al-Kalam*). Ayatollah Molla Mohammad Mahdee Naraqī (1749-1830) promoted a more limited political engagement for the ‘ulama over matters of fiqh (Osanloo 2009: 215).

illustrates the gendered orientation of divorce laws established after the revolution, and the predominantly male authoring of texts regarding Islamic jurisprudence (Osanloo 2009: 204).

Definitions of “fiqh” have historically been reconstructed and reconfigured as “law” or “moral systems.” “Fiqh” is defined as a system of religious and ethical commands and principles that are products of jurists’ interpretation of primary shariah sources (Mohammad and Ghari 2006: 282-283). “Fiqh” is utilized through its relations to the Iranian legal system, particularly as it connects to issues of divorce. Definitions of Shi’i fiqh have attached an importance to the family structure as a primary component of society, where the protection of the family unit embodies the most fundamental concepts in traditional fiqh (Mohammad et al.).

*Islam and Gender: The Religious Debate in Contemporary Iran* translates “feqh” to the means by which contemporary Iranian Shi’i clerics “perpetuate, modify, deconstruct, and reconstruct” notions of gender, one that informs Islamic jurisprudence (Mir-Hosseini 1999: xix). “Feqh” is used as a textbook theme to schematically categorize *Islam and Gender: The Religious Debate in Contemporary Iran* into three sections. The book elaborates on the dominant clerical perspectives, interpretations, and views of gender from pre-post revolutionary theological seminary systems of Qom that continuously shift with regards to Iranian women’s socialites over time and geography (Mir-Hosseini et al.). As Mir-Hosseini defines in *Islam and Gender: The Religious Debate of Contemporary Iran*, Islamic jurisprudence (*feqh*) is modified and reconstructed by post-revolutionary Shi’i clerics (Mir-Hosseini et al.). As Mir-Hosseini (1999) notes, there have been multiple interpretations and “reinterpretations” of religious texts, which serve as outlets for authority to practice particular worldviews regarding women’s autonomy and gender roles. Political views of gender are shaped on the local and national level, while remaining contingent on particular moments within history—all shaping views towards women’s

rights and gender roles. The daily livelihoods of Iranian women at the individual and community level are also to be considered—through their autonomy over education, work, and gender relations (Mir-Hosseini 1999: 3). I argue that all these factors weigh into the ways in which Islamic jurisprudence is practiced by clerics within post revolutionary Iran.

### Difference Between Shariah and “Fegh”

In “Islamico-Civil ‘Rights Talk’: Women, Subjectivity, and Law in Iranian Family Court” and *The Politics of Women’s Rights in Iran*, Osanloo introduces a clarification on the difference between shariah law and feqh practice under socio religious regulations of the Islamic regime. She translates “fiqh” as “jurisprudence” (Osanloo 2009: 228), whereas “shariah” is literally translated to “the path,” or in reference to “Islamic law” (Osanloo 2009: 64). Shariah and feqh clerical interpretations directly weigh in to judges’ decision-making regarding divorce, cancellations of marriage, and discussions of gender roles, while their definitions can provide a framework to understanding courtroom implementations of Iranian civil codes. Yet, as Osanloo (2009) notes, there is a malleability to shariah law. The means by which it was instituted as “enforceable state law” is an “uneven practice,” as shariah’s diverging interpretations results in “a multiplicity of beliefs and practices” (Osanloo et al.). Legal practitioners’ reference to shariah “as law” leads to the homogenizing of modern legal infrastructure and Shi’i theory. In effect, legal practitioners “often fail to consider the implications of this hybrid legal formation, particularly with regard to the impact of civil rules of procedure and its relationship to subject making” (Osanloo 2009: 70-71). As Osanloo (2006) notes, the Islamic revolution unfolded a linearity to definitions of shariah to emerge with regards to gender roles through a clerical gender-specific implementation (Osanloo 2006: 204). This leads definitions of shariah to become linearly prescribed within hearings. Scholarly conversations regarding gender roles prescribed to

women within the court allows readers to examine whether clerics alter fundamental Islamic practices of shariah and fegh to fit their notion of gender norms under the Islamic Republic (Wood 2001: 352, 351).

## Part Two

Moallem (2015) explains “tensions between the discourse of equality and questions of difference” with women’s increasing presence within labor markets, public academic institutions, and religious seminaries (Moallem 2015: 339). This has led to reinvestments in the definitions of growing rates of divorce, short-lived, informal, and unorthodox white marriages<sup>4</sup> and growing numbers of women from rural and traditional lower socioeconomic statuses accessing religious education within Shia theological seminaries (such as *Jami’at al-Zahra*) for the pursuit of religious education (Moallem 2015: 338; 347). Iranian women’s limited participation in political positions has led to a zeal for greater visibility within leading roles (Moallem et al.). Iranian women’s “urge” for visibility under Islamic law can be brought into conversation with the embodied labels of Third-World women<sup>5</sup> as institutionally oppressed victims.

“The Unintended Consequences of Equality within Difference” critically engages with and questions predominant feminist writings on Iranian women that centralize discourses of egalitarianism to better serve as a framework in opposition to Iranian civil codes that maintain the reputation of othering women. The equality discourses utilized Western egalitarian feminist scholarship studying women’s rights function in a linear manner—one that categorizes Iranian

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<sup>4</sup> The cohabitation of couples without formally undergoing legal marital procedure (Moallem 2015: 347).

<sup>5</sup> Moallem (2015) refers to the means by which mainstream media and equality feminists understand women’s issues in Iran. Here, Iranian women are represented as needing to be “saved” through rights-based discourses (Moallem 2015: 338). The question of women’s rights is due in part to colonial modernity, and the civilizing tactics of Westernization projects within the postcolonial era (Moallem 2015: 347).

women's communication with legal apparatuses through "victimization" which leads to unintended consequences in dichotomizing women as a target rather than "active subjects" who hold power to convert their situations within everyday life (Moallem 2015: 335-336). Moallem notes on the Western-feminist disregard of lower-classes statuses that correlated to limited access within legal apparatuses of the Islamic court system (Moallem et al.). This disregard of socioeconomic hierarchies of Iranian women by egalitarian frameworks leads to to an overgeneralized Western-feminist critique on Iranian women; liberal discourses of equality and violence framing Iranian women as violent agents<sup>6</sup> in negotiating their predicaments within a court of law (Moallem et al.).

Moallem (2015) refers to Iranian women's susceptibility to Western scrutiny, where they are equated as victims of male-centric structures under the Islamic regime. She utilizes concepts of Iranian women's relations within public spaces through an analysis of the Pahlavi regime's (1925-1941) Westernization project, one that led to the forced unveiling of women and urban middle and upper class women to participate in public spheres—which effectively marginalized women from lower classes of rural traditional spaces. The Shah regime catalyzed a modernization and Westernization within Iran, formulating religion as a negative and threat to modernity. Through mainstream feminist phrases such as "patriarchal structures" noted by Moallem (2005: 165), many fundamentalists utilize terminology involving patriarchy as an avenue to legitimate their place within society. With this in mind, scholars of family law within contemporary Iran can account for the philosophy of Western feminist scholarship and its recreation of partisan ideologies circling around Iranian women. Yet, the use of the loaded term

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<sup>6</sup> I refer to the negative characterization of Iranian women as portrayed in *Divorce Iranian Style* (Mir-Hosseini & Longinotto 1998), as Iranian female divorce applicants like Ziba and Massi are negatively stigmatized as 'bossy' and irrational subjects looking to find quick reconciliation and closure within the courtroom.

“patriarchy” leads a fictional past to determine the fate of the future (Moallem et al.).

Scholarship that embodies an abstract definition to patriarchy as “ahistorical” cancels out socio-economic relations between couples within various rural and urban geographies (Mohanty 2003: 63).

Understanding the emergence of post-revolutionary female legal and political scholars within Iran who seek to navigate issues of women’s justice beyond discourses of equality can help analyze various socioeconomic backgrounds of class hierarchies that shape political conversations regarding Iranian women’s rights within civil codes (Moallem 2015: 338-340). The presence of Iranian women in public educational institutions and religious seminaries has opened avenues to investments in understanding the operation of post-revolutionary Islamic marriages (Moallem 2015: 339). The gendered divisions of labor among men and women in Iran, and women’s limited participation in political leadership positions has led to “unintended results” of their emerging presence in the labor sector, and a desire for visibility and female leadership in the political and legislative sphere (Moallem et al.).

With regards to Iranian women’s status under the Islamic Republic, and their relations to religion as an entity of “knowledge” to be contested and reformulated (Moallem 2015: 337), it is vital for Moallem to delineate and clarify the exact Western feminist interpretations that are being used to equate Iranian divorce applicants as victims of a globally viewed burdensome religious political system. To understand how Iranian divorce applicants concert their situation under Islamic law in the court (Moallem et al.), scholars must deduce the varied marital socioeconomic factors that compel divorce applicants to interact with clerics with clear motives. i.e, through mastering civil codes and female religious obligations within marital roles. By clarifying and challenging feminist scholarship on women’s divorce rights in Iran, audiences,

readers, and academics can transparently deduce personal narratives that present a true urge for visibility and leadership to challenge the post-revolutionary legislative apparatuses.

“Under Western Eyes: Feminist Scholarship and Colonial Discourses” elaborates on the scholarly interpretation of Third-world women as popularly equated to the religion they are governed by, as unified “Women (meaning all women)” (Mohanty 2003: 29). Mohanty credits Marnia Lazreg’s (1998) critique of “reductionist” scholarly rhetoric on women within the Third-World:

A ritual is established whereby the writer appeals to religion as the cause of gender inequality just as it is made the source of underdevelopment in much of modernization theory in an uncanny way, *feminist discourse on women from the Middle East and North African mirrors that of theologians’ own interpretation of women in Islam*. The overall effect of this paradigm is to deprive women of self-presence, of being. Because women are subsumed under religion presented in fundamental terms, they are inevitably seen as evolving in nonhistorical time. They virtually have no history. Any analysis of change is therefore foreclosed (Mohanty et al.).

It is helpful to note on feminist scholarship over Iranian divorce applicants as operating through categorized representations of “Women” versus “women.” The homogenous group of the Iranian “Woman” is an essentialist and abstract idea. The realities of Iranian “women” encountering systems of power are globally unrecognized. Here, the subject of feminism that encompasses the category “Woman” questions whether Third-World subjects exist as a homogenous entity, and if “women” exist prior to oppression if they are defined as and through their oppression. The logic and science of oppression categorizes the term “Woman” in relation and comparison to marginalized group that naturally exists within systems of power as a social construct. Legal infrastructures that Iranian divorce applicants are in close proximity with is a

determining characteristic of their oppression, as the geopolitical context of their oppression ultimately solidifies their category of “women” in the Third World (Savci 2018a).

Many Western feminist discourses preconceive Iranian women as a conglomerate group, while assuming the existence of native and obsolete power divisions and relations within the regions they are governed by. Western feminist scholarship on Third World women unravels what I would argue as Imperial discourses—one that involves academics acting as the lecturer talking against oppression, while reconfiguring themselves as educated and “liberated” (Mohanty 2003: 38-39). This methodology limits the possibility of fully analyzing historical relations to culture when speaking of women’s status (Savci et al.). The issue with representation is apparent when metropolitan scholarship produces knowledge and (re)presents a larger group of Iranian women encountering family law. Western scholars in effect constitute and homogenize women as a group based on their needs and requirements in relation to the Iranian legal system. Ironically, the very feminist critique that Moallem (2015) notoriously denounces is upheld, as her reference to “women’s position according to Islamic law” reinscribes the Western-feminist linear subjectivity of religion, and treatment of one orthodoxical version of Shi’ah Islam as “the Islam” despite the various religious schools of thought operating in private and public domains within Iran today. Moallem’s (2015) references to “Islamic law” as formulating a desire for visibility gives a separate “entity” to women (as one unit) who are equally afflicted by hegemony (Mohanty 2003: 29), regardless of their varied socioeconomic power relations. I dissect Moallem’s (2015) terminology in this work to represent the essentialization of the Iranian female subject, one that is “adversely” affected by “limitations” of theocracy and orthodox worldviews.

Mir-Hosseini (1999), an Iranian born anthropologist and author of *Islam and Gender: The Religious Debate in Contemporary Iran* acknowledges an academically-privileged narration when describing herself as a “social anthropologist educated and working in the West...guided by a different set of life experiences and academic theories and assumptions” (Mir-Hosseini 1999: 11). Her fieldwork and personal interview exchanges with religious clerics of the Iranian women’s journal, *Payam-e Zan* (The Message of Women) consists of interviews regarding matters of gender roles prescribed by Islamic law. Under religious restrictions and surveillances, Mir-Hosseini’s (1999) fieldwork in Qom, feminist scholarship, and global recognition for the publication of *Islam and Gender: The Religious Debate of Contemporary Iran* presents what I will argue as an Imperial account of often awkward and convoluted exchanges between researcher and subject that is to be acknowledged by scholars studying divorce law within Iran (Wood 2001: 352).

Before Mir-Hosseini’s (1999) interview with the journal *Payam-e Zan*, she takes readers into the clerical background of the *Payam-e Zan* editors, who she labels as “Neo-Traditionalists” due to their advocating for Dynamic jurisprudence and dismissal of equal rights within gender issues. This was due in part to the clerical perception equal rights held as carrying parallels to Western characterizations of egalitarianism (Mir-Hosseini 1999: 83). Within the *Payam-e Zan* journal existed the most active promoters of Neo-Traditionalists advocating for Dynamic jurisprudence, made of groups young clerics who followed Motahari’s<sup>7</sup> view on gender rights (Mir-Hosseini 1999: 8). These *Payam-e Zan* clerics were in charge of the “Houzeh,” which Mir-

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<sup>7</sup> Mir-Hosseini (1999) refers to Murtaza Mutahhery as “Ayatollah Motahari” (Mir-Hosseini 1999: 8). Mutahhery is the author of Islamic seminary text, *Woman and her Rights*, published in 1982. Mutahhery was son of Shaykh Muhammad Husayn Mutahhery, a religious scholar from who Murtaza Mutahhery receive his schooling on theology. Motahherry received his education in Mashhad, Iran at The Educational Centre, from which he moved to Qom to pursue his schooling on Islamic jurisprudence. His studies were supervised by philosophers like Imam Khomeini (Mutahhery 1982: 2).

Hosseini (1999) translates to the “Qom seminaries” (Mir-Hosseini et al.), or “theological college” (Mir-Hosseini 1999: 281). Mir-Hosseini (1999) learned more about the Qom Seminaries (*Houzeh*) during her research partnership with cleric Sa’idi in April 1995—where Mir-Hosseini (1999) was introduced to a *Payam-e Zan* editor, Mortazavi in September of 1995 (Mir-Hosseini 1999: 85). The resulting communications between metropolitan researchers such as Mir-Hosseini (1999) and the *Payam-e Zan* interviewees result in the unplanned results from encounters that poke at and challenge academic accountability within transnational fieldwork (Cohler 2017a; Nagar 2014: 3). I highlight the communication between Mir-Hosseini (1999) and journal clerics and editors Sa’idi and Mortazavi to emphasize a researcher’s accountability for the scholarship reproduced transnationally—and to elaborate on the preconceived micro-views held by researcher and subject before entering formal dialogue within new territory. These microviews are complicated by shifting biases on behalf of both the researcher and the researched—particularly with regards to worldviews on gender rights within Islamic law after 1979.

The documented *Payam-e Zan* interviews represent roadblocks to communication between Mir-Hosseini (1999) and the clerical journal editors Mortazavi and Sa’idi. *Payam-e Zan*’s male clerics and editors Sa’idi and Mortazavi provided a traditional and concrete view to roles of the sexes within Islamic jurisprudence (*feqh*), whereas Mir-Hosseini (1999) argued for a view of Islamic jurisprudence that was contingent on time, space, region. The Iranian editorial’s religious context of current news regarding gender issues was centered on a post-revolutionary Islamic agenda regarding women’s autonomy within matters of divorce law. As Mir-Hosseini (1999) notes, clerics within Iran are subject to their own narratives and postulations that “inform” their profession of jurisprudence, as indoctrinated through seminary education (Mir-Hosseini 1999: 11). With the objective of “readdressing” *feqh* and gender hierarchies, the clerics

of *Payam-e Zan* in communication with Mir-Hosseini (1999) effectively transformed her primary work and published research for their own audience and agenda (Wood 2001: 353). The journal modified their dialogue with Mir-Hosseini (1999) before publication due to the seminary audience *Payam-e Zan* had intended to speak to, through “minor omissions and additions” (Mir-Hosseini 1999: 10).

Contemporary, which I equate to twentieth-century delineations and definitions on/of shariah and feqh within the courtroom setting propagates complexities and nuanced religious interpretations that have effectively convoluted how law has been implemented and institutionalized throughout Iran’s Islamic history. Here, scholarship of divorce discourse within Iran must be (re)analyzed through the arising convoluted relationships that develop between research subjects and Western feminist narrations—a relationship that centers (re)producing epistemologies and scholarship essentializing the Iranian female subject engaging with shariah within courtrooms. As postcolonial scholars like Mir-Hosseini (1999) grapple with the daily livelihoods of women in Iran encountering legislative restrictions due to shariah, the intent for her ethnography in *Islam and Gender: The Religious Debate in Contemporary Iran* inherently (de)centers Iranian bodies directly affected by complex, nuanced, and varied histories, and (re)centers her individual communication with Sa’idi and Mortazavi regarding issues within interpretations of Islamic jurisprudence. Mir-Hosseini’s (1999) continuous challenge of altering readers’ views from extrapolated dialogues between herself and *Payam-e Zan* centers a personalized narrative experience as a Muslim woman seeking to “reconcile feminism with faith,” ultimately (de)centering the subject of critique—Iranian female divorce applicants communicating with the regime’s hegemony.

Mir-Hosseini's (1999) documented accounts of interactions with Sa'idi and Mortazavi in *Islam and Gender: The Religious Debate in Contemporary Iran*, along with her self-indulging narration of journeying through "border crossings" can lead to unethical research practices. Feminist scholars have often lacked accountability in challenging the contextual histories that shape and redefine their interactions with homogenized subjects of analysis—Iranian female divorce applicants and religious clerics. Personal daily encounters between the researcher and subject shaped by community power dynamics, unknown truths, ethics, and boundaries should be centralized within Mir-Hosseini's (1999) academic fieldwork (Cohler 2017a; Nagar 2014: 13) in order to not essentialize, ahistoricize, or homogenize Iranian women encountering legalities within family courts.

Her communication with the Sa'idi and Mortazavi regarding inscribed gender roles according to shariah fails to expand on overarching themes of changing socioeconomic power relationships between Iranian female divorce applicants themselves. Mir-Hosseini's (1999) research for *Islam and Gender: The Religious Debate in Contemporary Iran* magnifies and resorts to concrete power relationships between the "oppressed"—Iranian women, and "oppressors"—socio religious hegemonic controls of the Islamic Republic. Reductive scholarship that labels Iranian women as marginalized due to inherent roles illuminates Western feminist rhetoric, where the "oppressed" encompasses all Iranian women as a conglomerate marginalized community, equally afflicted in their navigation for divorce. As Wood (2001) mentions in her review of *Islam and Gender*, Mir-Hosseini's (1999) one-sided approach and reductive analysis to understanding women's roles "leaves out the outsider" (female divorce applicants) negotiating shariah roles with clerics (Wood et al.). The metropolitan positionality of Mir-Hosseini's (1999) narration results in a blockage in communication between feminist

researchers like herself and Iranian Traditionalists (accepted scholars of the Islamic faith) legally administering shariah—while also convoluting ideas and worldviews towards shariah Western audiences may retain or digest when analyzing her scholarship within Iran.

### Convoluting Relations Between Feminism and Religion

Colonial assumptions within the academy stresses feminists within contemporary Iran to obey a Eurocentric egalitarianism. Their disagreements with religion view the revolution as giving women a subordinating status (Mir-Hosseini 1999: 9). This illuminates the convoluted relationship between feminism and religion. As religion in Iran is embodied through clerical heads of Islamic jurisprudence (*feqh*) “dictating” women’s status, women’s relations to religion and to the West then become “uncomfortable.” Nineteenth-century nationalist campaigns of the Qajar state were embodied through public tactics of anti-Imperialism—one that involved centering women of upper and middle classes as caretakers of the nation. This altered and complicated the “articulation” of gender inequality and feminist consciousness within contemporary Iran (Mir-Hosseini et al.). The nationalist rhetoric of nineteenth-century Iran that inscribed notions of freedom and autonomy on the female body is a stark contrast to feminism within the West that centralizes criticisms of male dominated aspects of culture and religion, while pressuring those of the Third World to conform to their practices. When comparisons to Western egalitarian discourses are centralized within a global context, a ‘discomfort’ arises among post-revolutionary Iranian women who actually embody a progressive political consciousness that not only communicates with shariah within the courtroom, but challenges it.

Mir-Hosseini (1999) attempts to “bridge the gap” between Iranian secularists, religious feminists, and Western feminist narratives through focusing on which authors to exclude and include based on questions of “identity” and “social experience” (Wood 2001: 353; Mir-Hosseini

1999: 114). She centers Iranian feminism as a form of consciousness within contemporary Iran to counter its problematic labeling (Wood 2001: 352). She notes about religious feminism, fed by politics, revolution, and forms of dress as in need of reconciliation at the level of clerical interpretations of shariah (Mir-Hosseini 1999: 272). Critiques of secularism's proximity to feminist actions in Iran illuminates the historical relationship between the pre-revolutionary nation state, and that of its contemporary religious institution. The question for those both within and outside the academy that arises is whether Western scholarship grounds Islamic law within the regime as problematic, and solidifying a subjugating status for Iranian women.

As feminists in Iran are pressured to conform to a secularist feminist discourse, and as Iranian women partaking in feminist efforts are forced to explain their religion and feminism to the world, a renovated perspective in gender politics initiates—one that considers an understanding of Iranian women as agents rather than docile victims of an oppressive regime.<sup>8</sup> This allows for a temporal and time-sensitive transnational feminist critique of gender speculations within post-revolutionary Islamic law. Political activism among Iranian women leads to Mir-Hosseini's (1999) imperially-guided reevaluation of the research subjects' relationship with religion and feminism. Here, family law scholars can speculate where global attitudes of patriarchy originate regarding Iranian women's navigation for agency within the courtroom—whether they arise from divorce law when discussing shariah (Mir-Hosseini 1999:

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<sup>8</sup> In a personal interview conducted with Professor Moallem of the Department of Gender & Women's Studies at the University of California, Berkeley, she notes on feminism's lack of a fixed definition. To Moallem, feminism is alterable and malleable, and can be used to prioritize politics and gender issues. As Iranian divorce applicants utilize Islamic civil codes to gain outcomes they wish to receive out of the law, they find spaces for agency, while remaining "unapologetic" in their plight for divorce. They "creatively" and actively use the Islamic civil codes to create spaces for autonomy within divorce courts, specifically through the contract of marriage, or "marriage gift" (*mahriyeh*) that drives women to expedite and rank their interests. In effect, Iranian women become "political subjects of social change, not objects" during the sociopolitical climate of the Islamic revolution (Moallem 2018).

9-10), or from worldviews regarding the Orient that victimizes Iranian women due to religious attitudes of their time.

In analyzing both metropolitan and Iranian feminist critiques of Iranian women's adherence to sociocultural expectations under the regime, the possibility of Iranian women's resistance and agency through actions of conformity to the Iranian civil codes should be centered in a transnational feminist discussion. Do Iranian women use gendered civil codes regarding bridal portions to find reform within the hegemonic structure of the government, or do they strictly abide under the courtroom terms and restrictions of family law? (Moghadam 2002: 1136) Female subjects encountering nuanced difficulties of communication with clerics within family courts present a site for solidarity among other female subjects within a court of law, while symbolically (de)homogenizing the Iranian woman as a fixed entity. As clerics dictate interpretations and translations of shariah within the court, the centering of gendered policies within marriage laws and clerical rulings from Islamic jurisprudence (*feqh*) is necessary to be highlighted for postmodernists<sup>9</sup> seeking to reconcile with shariah's complex and malleable interpretations—rather than resorting to framing Islamic law as an inhibiting factor to Iranian women's agency within divorce discourses. This also raises the question of feminism's applicability and incorporation into various regional courtroom structures despite Oriental tropes that frame Iranian women as victimized by shariah's regulations.

### Part Three

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<sup>9</sup> I highlight Hemmings' (2010: 97) elaboration on the postmodern "return narrative" centering daily experiences and complex embodied experience that values difference to distract from underlying concerns with inequality (Cohler 2017b). Postmodernist scholarship regarding shariah's communication with women's status within contemporary Iran has centered the possibility of women's agency and independence based on day-to-day actions—actions that present women as separate entities who work, attend school, and engage in everyday relations with the opposite sex within private and/or public spaces. This offers a counternarrative to suppressive depictions of the Orient by Western scholars who frame Iranian women as timelessly and ahistorically oppressed due to hierarchies set by shariah.

Understanding Women's Status in Iran Through Abu-Lughod (2002) and Histories of  
Colonisation

Abu-Lughod's (2002) "Do Muslim Women Really Need Saving" examines the West's interpretation of women's autonomy in the Middle East, one that is usually defined by questioning the "culture of a region, and particularly its religious beliefs and treatment of women" (Abu-Lughod 2002: 784). The article examines the means by which readers analyze difference and whether there is a language involved in revolutions and historical politics that result from colonization by the outside world. The colonial invasions of the Muslim Arab Incursion over the Persian Sassanid Dynasty (637-641 CE) was a deplorable moment in Iran's history that indirectly shaped its relationship and proximity to Islam through nuanced historical practices of retaining and letting go of certain aspects of Islam, which produced a hidden discourse dependent on the political climate of the time (Khanbaghi 2009: 202). Imperialism within the Persian plateau has resulted in a weaving of politically-driven hegemonic practices that center hierarchical relations of gender and class. It is thus necessary for postcolonial scholarship on women's status after 1979 to account for its "messier historical and political narratives" (Abu-Lughod 2002: 785) as pivotal to studying women's rights in contemporary Iran.

Arab imperialism over Persian territory, and the sub practice of acquisition and assimilation<sup>10</sup> of Persian people through cultural erasure is a structural factor and basis for understanding why Iranian women's individuality under the Islamic Republic is subject to question, criticism, and scrutiny. The humiliating political invasions of the Persian Plateau—a cultural genocide of pre-Islamic Iranian culture and literature (through burning and writing Persian texts in the Arabic language) and the resulting "Islamization of Iran" by the end of the

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<sup>10</sup> Hanssmann, Chris. "Nations, States, Borders." Feminist Social Movements. San Francisco State University. March 13, 2019. Class Lecture.

eighteenth century fully shaped and transformed its political boundaries (Khanbaghi 2009: 203-204). The effects of colonisation from the Arab-Muslim Incursion of the seventh century, the loss of Iranian territory due to Russian-Britain forces during the nineteenth-century Qajar Dynasty (Najmabadi 2005: 106), and formulated ideological revolution of 1979 has led Iranians to not only gain a convoluted understanding of their religious identity and history, but to be generalized as culturally ahistorical and docile agents for reform. I argue Imperial feminist scholarship as finding the subjectivization of Iranian women in particular as lucrative through writings that renders them inefficacious in dismantling the legal hierarchies they communicate with. Iranian women's abidance or resistance to post-revolutionary cultural expectations is effectively resourced through epistemologies that sensationalize contemporary Iranian history.

Western criticisms of traditional standards set by the Islamic regime lends an importance to "respecting of differences," a rhetoric that can employ a possible solution (Abu-Lughod 2002: 787). With anxieties of historical colonizations and erasures of culture that have failed to be accounted for, readers can question whether scholars analyzing Islamic law in Iran are in a position to define women's freedom regarding divorce rights—specifically when "first-world feminist empowerments" formulate certain narratives based on the degrading of Persian women (Naghibi 2007: 16). Postcolonial scholarship on contemporary divorce and family law has tampered with the notions of patriarchy in the Iranian legal structure like a broken record. The violences of modernist scholarship on Iranian women's micropolitical actions, i.e. their disrupting and dismantling of the implementations of family legislation by challenging clerical interpretations of shariah, must be accounted for in twenty-first century critiques of Iranian women's socio political practices. Iranian women's lived realities are to be academically

acknowledged without denoting or homogenizing the Orient as a victim of its time, religion, and culture.

## Chapter 1

Contextualizing the nature, rise, and discourse of Shiism within Iran over the past six centuries can help ascertain the centering of male elite who withhold spiritual and religious knowledge to interpret and/or codify Islamic law over time. The Iranian legislative system's definition of what Islamic law should be constituted as, and which gender should interpret law is a result of the structural administering of shariah<sup>11</sup> by accepted scholars of the Islamic faith. The philosophical search for religious wisdom and reason over the history of Iranian Shi'ism becomes the center practice for religious knowledge production carrying through and after 1979. I present this historical background to explain how twentieth-century colonial feminist scholarship has utilized shariah and fiqh to ahistoricize Iranian women based on their own worldviews, realities, and local assumptions—one that is dependent on local attitudes of their time.

### Developments of Islamic Law Over Time: A Disavowal of History

A contextual history of the rise of an “Iranian” Shia Islam within the Persian Plateau is necessary for deciphering the complex implementations and jurisdiction of law within changing societies and localities. This history can help contextualize how particular ideologies and sentiments towards religion and law becomes employed in the contemporary courtroom (Mir-Hosseini 1993: 3). Modernist feminist debates regarding the implementation of shariah within the current Islamic state tends to overshadow the historical formations and rise of Shiism within Iran over the past few centuries—a historical development that formulated the modern context where law and state are a joint apparatus (Mir-Hosseini et al.). The scholarly negation of historical developments of Shiism within Iran's political boundaries leads to ahistorical

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<sup>11</sup> Sacred law, and not subject to question, nor scrutiny (Savci 2018b). Shari'ah law focuses on the jurists under the administration of Islamic law who have mastered the practices of Islam, as done so by the Prophet (d. 632). As Arzoo Osanloo mentions, shariah law means “the path” (Osanloo 2009: 64), and is commonly referred to as “Islamic law” (Osanloo et al.).

assumptions regarding shariah's development by many modernist scholars analyzing Islamic law's conception and institutional rise. It is necessary to note the development of Islam within Iran as not only a political formation, but a social one as well (Mir-Hosseini 1993: 3-4). The nature of Islamic law under the "formative phase" of the Abbasid era (750-1258) led to an emphasized spiritual dimension to Islamic rule within Iran through private scholars who maintained autonomy over religious knowledge without a connection to governance. The shifts of religious rule to that of an Islamic nature due to the Rashidun "Rightly Guided" Caliphs (632-661) within the "Golden Age of Islam" led to the need to define the "science of law" (*'ilm al-fiqh*) to address an elaborate codification of laws after the expansion of Islam within Iran (Mir-Hosseini 1993: 4). The division between the autonomy of private scholars and the arbitration of ultimate divine law separated Islamic law into "revealed law" (*Shari'a*) and jurisprudence (*fiqh*). Elaborations of law through shariah and fiqh led to a systematized and enforceable jurisdiction of legislation (Mir-Hosseini 1993: 5), while ultimately unraveling the complexity within definitions of shariah intergenerationally and through centuries.

I present a set of historical events to encapsulate the rise, formulation, implementation, and organization of religion in Iran. I start with Shiism as a diverging school of thought from Sunnism arising with a political agenda and doctrine, beginning with the concept of the "Twelvers" (*ithna 'ashariyya*) that emerged with non-elected successor Ali (d. 661) after the death of the Prophet (d. 632) (Norton 2018: 36). I then continue with the the sixteenth through eighteenth-century Safavid commercial development and centralization of the Shi'ah Twelver (*Ithna 'Asheri*) School of Law—one that was upheld through the ulama's commercial power at the time. With this, I lay out a brief historical and gender analysis of the Qajar Dynasty's (1794-1925) nationalist campaigns that centered women's private roles familial roles as necessary for

national progress. I then continue with the Qajar state's bureaucratization of religion, i.e., through state mandated university educated lawyers and judges, and state codified Islamic laws (Osanloo 2009: 256). With this history, I turn towards the upheaval of a secular and democratic government promoted with Constitutional Revolution of the early twentieth-century (Mir-Hosseini & Tapper 2006: 12)—one that counteracted to Islamic principles and hierarchies set by shariah.

### Shiism in Iran before 1979

The largest provocation to the unity of Islam stems from the Shi'ite divide from Sunnism, beginning with the significant split of Shi'a and Sunni majorities after the Prophet's death in 632 (Norton 2018: 36). "Shia" translates to the "faction of Ali" (*shiat Ali*) (Campo & Melton 2009: xxv). Shi'a followers believe that Muhammad's cousin, Ali (d. 661) was his successor (*khalifah*)<sup>12</sup> appointed by God (Ayoub 1978: 73). The relations to Shiism as a emblem of political rebellion to the linearity of Islam as with the Umayyad tribe's doctrine of elected succession helps explain diverging schools of thought that arose with certain political agendas and doctrines within contemporary Iran. The sector and/or major known denomination of Shiism, the "twelvers" (*ithna 'ashariyya*), composed of the largest Shiite group within post-revolutionary Iran, magnifies the emphasis on Muhammad's blood relations with the twelve succeeding Imams through his daughter, Fatima (d. 633) (Martin 2004: 624; Ayoub 1978: 23). Shia followers of the "Twelver" theology believe in the miraculous powers assigned to the Imams—members of Muhammad's family who can serve as qualified leaders of the Muslim community through "God's guidance" (Campo & Melton 2009: 23). Twelvers hold that twelve Imams were created from the same divine light as the Prophet (d. 632), where knowledge resting within the temporal

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<sup>12</sup>Ali was one of last of the four Rashidun "rightly guided" successors who shared "legitimate" descendency to the Prophet (d. 632) (Norton 2018: 36).

power of the Imams due to their lived suffering is one that necessitates and validates their right to display leadership and governance (Ayoub 1978: 54, 201).<sup>13</sup> Although the initial Twelver doctrine defines Imams as holding only a spiritual, not a political presence, the doctrine held that the Imams had a personal right to power based on their “nearness to God” (Ayoub 1978: 55). Here, it was the Prophet’s intense love for the Imams and their families<sup>14</sup> that was to be practiced by Shi’a followers for not only salvation, but as evidence of the infallible Imams’ legitimacy to authority. The love the Prophet held for his family and the emulated masculine portrayals by the descending Imams demonstrated the necessity for every male follower to portray a cultural gender performance embodying similar cultivations of masculinity—through implementing an intensified love for his family and community (Pierce 2016: 98-99).

The Shia faith believes that after the death of the Prophet (d. 632) (Norton 2018: 36), the Muslim leadership was not passed down to elected Caliphs as in the Umayyad rules to succession, but rather to Imams—who were the blood-related descendents.<sup>15</sup> It is believed that each Imam was ratified by the previous—beginning with Ali (d. 661), and lasting with Muhammad Mahdi, who resides in Occultation (*gheybat*)<sup>16</sup> (Pierce 2016: 158). During Mahdi’s

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<sup>13</sup> It is important to note on the idea of “redemptive suffering” within the Twelver Shiite practice that was centered on the death of Muhammad’s young grandson, Imam Hussain (*Husayn ibn Ali*), in the battlefield of Karbala (Ayoub 1978: 79, 104). Hussain’s army was captured by an Umayyad army in Karbala, part of Iraq. Yazid, the leader of the Umayyad army requested that Hussain’s army pay allegiance to the caliph, but they resisted. Yazid then sent soldiers to capture Hussain. The martyrdom of Hussain is viewed by Shi’ite Muslims as landing on the night of Ashura, during the last of the ten days of Muharram within the Muslim calendar (Osanloo 2009: 216). The suffering and death of heroic figures such as Hussain within the Shi’ite Twelver ideology (Campo and Melton 2009: 23) presents a certain Persian “poetic exaggeration” as Hussain is referred to as “the person through whom all existence subsists” (Ayoub 1978: 172-173).

<sup>14</sup> The holy family of the Prophet according to Shi’a belief includes the first five infallibles - Muhammad (d. 632), Fatima (d. 633), Ali al-Hasan (d. 669-70), and Ali al-Husayn (d. 680) (Pierce 2016: 98). These five infallibles make up the *ahl al-bayt* (Pierce et al.).

<sup>15</sup> The first transparent teachings regarding the twelve Imams within Shi’a faith began in 900 (Pierce 2016: 22).

<sup>16</sup> Imam Mahdi was known for encountering a “temporary” occultation (*gheyba*) from 873-874 and a long-term occultation in 941. His return marks the end of civilization (Pierce 2016: 158).

absence, the religious scholars (*ulama*) have power to lead the Shia community (Mir-Hosseini & Tapper 2006: 10), while the leading ulama member (*mujtahid*) can practice governing authority over interpreting law from the sources (*ijtihad*).<sup>17</sup> Here, the absence of an infallible leader necessitates within the Shi'a Twelver faith a present male leader to interpret shariah for their community.

### Safavid Dynasty: Economization of Religion

The institutionalization and economization of Ithna 'Ashari Shi'ism during the sixteenth through eighteenth-century Safavid dynasty (Savory 1980: 30)<sup>18</sup> centralized and solidified Shiism as an Iranian state religion in 1501 (Osanloo 2009: 26). In 1501, Shah Isma'il—founder of the Safavid dynasty, became the ruler of the only country within the Muslim majority world that solidified Twelver Shiism as a state religion (Mir-Hosseini & Tapper 2006: 10). The Safavids found “religious advancement” in utilizing traditional principles in family law, while spreading the official Shi'ah religiosity throughout the state (Savory et al.). Safavid property (*vaghf*) donated to religious “experts” (*ulama*) led to a new elite class of Shi'a twelvers to become male scholars of Islamic jurisprudence, where practicing Islamic law and deciding civil matters of marriage and family legislation became the center of religious practice (Savory 1980: 185). The connection and clerical control of the religious class (*ulama*) over the collection and distribution of commerce (*bazar*) allowed the ulama experts of the Jafari (*Ithna 'Ashari*)<sup>19</sup> School of Law to open religious schools for young males residing within Qom to become not

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<sup>17</sup> Late nineteenth-century learned scholars of Islamic principles (*mujtahed*) held jurisdiction to provide individual interpretive rulings regarding Islamic law from the sources (*ijtihad*) (Osanloo 2009: 66, 229).

<sup>18</sup> Safavid rule helped formulate a specified Iranian Shi'ism, a religious discourse in Iran that intertwined of economic, state, and religious principles dating back to the sixteenth through eighteenth centuries.

<sup>19</sup> The “twelvers” (*ithna 'ashariyya*), composed of the largest Shiite sector within post-revolutionary Iran, magnifies the emphasis on Muhammad's blood relations with the twelve succeeding Imams through his daughter, Fatima (Ayoub 1978: 23).

only religious scholars of the Quran, but practitioners of Shi'a ideological reasoning with religion (Newman 2006: 70). This orthodoxical and economically driven religious ideology that was tied to “state loyalty” cultivated from the Safavid dynasty laid the foundations as the first state to implement Shiah dictation regarding women’s status (Savory 2006: 30; Osanloo 2009: 26). Here, the state solidified a fatherly pedagogical structure within religious implementation, where male clerics held autonomy to monitor private matters of marriage along with public “affairs” of day-to-day community life (Newman 2006: 70). It is important to note that the Safavid kings (*shah*) retained spiritual authority as sheykhs, allowing them to gain support within their political administration. Yet, the onset of the 1600s and the nearing end of Safavid rule introduced emerging convoluted relationships between the Shi’a shahs and the ulama. Despite their role as “separate” from politics and government, the ulama still advised rulers so long as the preservation of religion remained (Mir-Hosseini & Tapper 2006: 11).

#### The Qajar State: Nationalism and Religious Ideology

The malleability and altered definitions of shariah within Iran over its rocky history exposes how gender rights are continuously accommodated within the context of Islamic family law within Iran (Osanloo 2009: 67), as they are “neither fixed, given, nor absolute” but rather “negotiated and changing cultural constructs, produced in response to lived realities” (Duderija 2017: 154). Gender ideologies and hierarchies that are implemented, embodied, and socially practiced within different localities in turn informed the practicing of Islamic law (Osanloo et al.). Here, the political and nationalist rhetoric of the nineteenth century introduces an opportunity for feminist scholarship to analyze the malleability of shariah’s designations regarding women’s societal roles after 1979. Transnational feminist scholars such as Najmabadi (1998) have accounted for late eighteenth and early nineteenth-century Qajar nationalist

campaigns calling for women as the gatekeepers and “wombs” of the nation (Naghibi 2007: 41), where women’s national roles as mothers “became a mediating term between two concepts central to modernity: progress and women’s rights” (Najmabadi 1998: 94). As Iranian women of the Qajar feudal system became deduced to mothers of upholding citizens and proliferators of nationalism, the reduced and condensed model of female embodiment and inscription of national expectations illustrated a mimicry and emulation of the free European female subject (Naghibi 2007: 74). Iranian women before the 1905 Constitutional revolution were voiced by Iranian feminists of the twentieth century<sup>20</sup> as living lives as “imprisoned” mothers—essentially ignorant of their freedom (Naghibi 2007: 41). Despite these boundaries, nationalist campaigns called for mothers to educate her children for future prosperity of the nation. According to Naghibi (2007), this idealized narrative of Iranian women during the Qajar state drew direct inspiration from eighteenth-century Western literature<sup>21</sup> on women’s societal roles (Naghibi et al.). From the late 1800s to the early 1900s, Iranian modernists reproduced ideas of sociopolitical change based on Western characterizations that held mothers as propagating educated and patriotic citizens (Naghibi et al.). The issue of Iranian women’s segregation, particularly with regards to education, were highlighted by elite Qajar women of the “andarun”<sup>22</sup>—a privileged class of Iranian women during the late 1800s who called for women’s rights in direct relation to Western women’s rights (Naghibi 2007: 40). The emphasis on Iranian women’s segregation became viewed as a national problem—one that was in part mobilized by Western women’s feminist

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<sup>20</sup> I refer to Naghibi’s (2007) interpretation of 1960s Iranian feminist Badr ol-Moluk Bamdad, who described Iranian women’s lives before the 1905 Constitutional Revolution (Naghibi 2007: 74).

<sup>21</sup> Naghibi (2007) draws from Wollstonecraft’s (1793) *A Vindication of the Rights of Women* to highlight nationalist rhetoric involving domesticity, and mother’s roles of instilling patriotism within the private family sphere (Naghibi 2007: 41).

<sup>22</sup> Najmabadi (2005) defines “andarun” as the inner private life and domain of women, children, and female servant’s life (Najmabadi 2005: 267).

practices, and eventually implemented by Iranian women fighting for women's rights. The consistent political comparison of Iranian women to Western women is what led anti-imperial Traditionalists of 1979 to cancel and wipe out feminist concerns, as feminism was essentially viewed as a "Western movement" (Naghbi 2007: 41-42).

Within the nineteenth-century Qajar dynasty (1794-1925), the *marja'iyat*—known as the ultimate religious authority, rose independent of the state. The *marja'* are those recognized for their acquired respect after lengthy religious schooling and permission to create legal treatises (*risaleh*) for their followers. One category of treatises on "explanations and problems" (*towzih al-masa'il*) includes legal rulings on rituals of prayer, marriage, and divorce (Mir-Hosseini & Tapper 2006: 10). The *maraji*<sup>23</sup> educate others in seminaries<sup>24</sup> (*howzeh*), and two of the most important seminaries are in Qom, Iran and Najaf, Iraq. Since the 1800s, some leading ulama have led politically active lives through deciding matters pertaining to *ijtihad* and *marja'iyat*—with regards to ending oppression and injustice.

With the onset of the Constitutional movement, the political issue that remained was whether the Shi'a religion could make room for man-made legislation (Mir-Hosseini & Tapper 2006: 11) after secular influences that infiltrated from the West. The consistent debt under Naseroddin Shah (1848-1896) and Mozaffaroddin Shah (1896-1907) led to funding from foreign nations through selling industrial and commercial equities. To the religious classes, this act equated to selling the nation and Shi'ism. The 1891 anti-tobacco boycotts resulting due to Iran's sell-off of the British tobacco monopoly led mujtaheds to gain power over Iranian state officials (Osanloo 2009: 66). The Tobacco Concession of 1891, and subsequent protests carried over by leading mujtahid Mirza-ye Shirazi essentially catalyzed the conception of the Constitutional

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<sup>23</sup> Those who live and educate within seminaries (Mir-Hosseini & Tapper 2006: 11).

<sup>24</sup> Collectively referred to as "the circle for religious learning" (Mir-Hosseini et al.).

Revolution of 1905-1911 (Mir-Hosseini & Tapper 12). With the introduction of the revolution by the end of 1905, shifts in power to a centralized state and a law-making legislative branch also instilled anxieties among religious classes who feared their source of funding from religious taxes would diminish (Osanloo et al.).

#### The Constitutional Movement (1905-1911)

After the Russo-Persian Wars ending in 1828 (Sicker 2001: 119, 146), an emerging presence and subsequent influence by European diplomats and military advisors with acquired scholarship in Western political texts played a role in shaping political attitudes within Iran. The Constitutional movement garnered attention from groups like secular liberals and Muslim reformist intellectuals hoping to formulate a constitution that stood for an elected body of legislatures. The goal to move away from the totalitarian rule of Mozaffaroddin Shah (1896-1907) towards secular rule introduced a threat to the religious power within Iran, leading Shi'a clerics to diverge in their positionalities—as seen with Shi'a cleric Sheykh Fazlollah Nuri, who in 1909 opposed the Constitutional Revolution due to the egalitarian and non-Islamic nature of electing a legislative body. This opposition to the Constitutional Revolution was based on its ideological divergence from Islam's view of hierarchical gender statuses within shariah—which separates men and women's status and rights (Mir-Hosseini & Tapper 2006: 11-12). The grounds for this opposition to the Constitutional movement was that man-made legislations could not exist with shariah and the body of ulama who are to control the legislative apparatuses and judiciary (Mir-Hosseini et al.). Those in support of the Constitutional movement and by urge of moderate ministers, required Mozaffaroddin Shah to provide a parliament (*Majiles-e Shura-ye Melli*) and ratify the Belgian influenced 'Fundamental Law' in December 30, 1906 before his death. The secular nature of this law led the ulama to have serious disagreements. The following

‘Supplementary Fundamental Law’ had more Islamic influence, and a requirement for the ulama to approve legislation (Mir-Hosseini & Tapper 2006: 13).

In October of 1907, when Mohammad Ali Shah signed the ‘Supplementary Fundamental Law,’ he garnered Russian aid to initiate a coup against those in favor of the constitution. Then, in 1909, constitutionalists made their way into Tehran and eradicated the shah and Sheykh Fazlollah Nuri. The Iranian Parliament was intact, and the ‘Fundamental Laws’ essentially formulated as the secular backbone of the Iranian constitution until 1979 (Mir-Hosseini et al.) The replacement of absolutist and despotic character of the shah during the upheaval of the 1905-1911 Constitutional revolution—which inherently promoted a secular and democratic system of government over religious power (Mir-Hosseini & Tapper 2006: 12), led clerics to argue against the constitution’s Eurocentric and egalitarian ideals of democracy. The backlash of the 1905-1911 Constitutional revolution included hegemonic power shifts from seminary schooling on Islamic jurisprudence to religious establishments within university law faculty—leading to a bureaucratization of religion through codified Iranian civil codes.<sup>25</sup> The Qajar state’s codification of laws also effectively unravelling the counter-hegemonic rights-based discourses viewed within post-revolutionary courtrooms (Osanloo 2009: 66-67).

I state this history to center how the enactment of legislations and reforms of the Constitutional movement counteracted Islamic principles holding women and men in different social rankings, rights, and statuses under shariah. The disagreements over whether the Iranian government upheld or rejected the idea of man-made law under the Qajar state essentially polarized the implementation of Islamic law due to the diverging political views held by the ulama and the constitutionalists. The shaky and paradoxical nature of Iran’s political and

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<sup>25</sup> The civil codes were interpreted by accredited judges and lawyers within civil courts (Osanloo 2009: 66; Strawson 2004: 880)

religious history from the close of the Qajar state by the early twentieth century shed to light the convoluted nature to Iranian rulership, and a tug-of-war between secular law and shariah.

### Legal Procedures in the Twentieth Century

Before 1927, the collective of judges within Iran were funded and controlled by the clergy, where the implementation of family law within Shari'a courts was guided by judges trained in the Shia Ithna 'Ashari<sup>26</sup> School of Law. Reza Shah Pahlavi's legal reforms aimed at formulating a secular judicial branch composed of modern civil codes became a part of the Iranian Civil Codes of 1928 to 1935. The 1931 'Marriage Law' (*qanun-i izdivaj*) set a Eurocentric tone with articles requiring state mandated registration for marriages and divorces. Marital issues came under the surveillance of state authorities, while paving the way for women to initiate divorces within civil rather than Shari'a courts (Mir-Hosseini 1993: 23-24). The 1967 'Family Protection Law'<sup>27</sup> (*qanun-i himayat-i khanivada*) enacted a complete divergence from shariah. Husbands were no longer able to gain judicial rights to polygamy. The new courts, the "Family Protection Courts," were run by judges educated within modern jurisprudence. The 1967 Family Protection Law drew animosity from clergy members who believed that its enactments diverged from shariah ideologies. It was only in September of 1979 when the 'Special Civil Court Act' under the revolutionary regime removed cases regarding family law from the ordinary civil courts to courts ruled by religious judges (Mir-Hosseini 1993: 25). The

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<sup>26</sup> The Ithna 'Ashari Islamic School of Law' initiated religious clerical training within Shari'a courts, leading to a personalized interpretation and codification of personal status, marriage, and family laws.

<sup>27</sup> 'The Family Protection Bill' was altered by the current Iranian regime so that the principles of the Islamic government can be reinstated within the current legislative system. 'The Family Protection Laws' of Iran were an effect of the shift of politics and economic attitudes during the 1960s and 1970s. Iran's politics and economic strategy mirrored one of a Western style, especially after the 1963 White Revolution, which caused Western industrial expansion within the labor sector. Economic needs of the people were coalesced with need for gender reform, leading women into the paid workforce of the public labor market. 'The Family Protection Law' (1967) provided certain age criteria for marriage, divorce, and polygamy, mirroring a Western practice (Sedghi 2007: 135).

'Special Civil Court Act' systematically reversed the Eurocentric legislations that took hold before 1979.

After 1979, Ayatollah Khomeini's Ithna 'Ashari Islamic School of Law<sup>28</sup> initiated religious clerical training within Shari'a courts, leading to a formalized, linear, and personalized interpretation and codification of personal status, marriage, and family laws. This post-revolutionary institutionalization of religion within courts counteracted to Reza Shah Pahlavi's previously enacted Civil Codes of family law in 1928-1938 aimed at formulating secular legal reform within the judicial system (Mir-Hosseini 1993: 23-4). The codification and interpretation of law after the revolution exposes the malleability of shariah within Iran over time, and the complex navigation by divorce applicants who interpret their own rights under family law.

Traditionalists within Iran after 1979 have historically held a discomfort towards doctrines embodying egalitarian principles of equal rights, which held as a paradox to political implementations of shariah under Khomeini's introduction of Velayat-e Faqih<sup>29</sup> in the Iranian constitution. Republican anxieties and fears of violent despotism that could result with a secular system like that of the Pahlavi era (Mir-Hosseini & Tapper 2006: 177), such as the secularly enacted Civil Codes of family law in 1928-1938 under Reza Shah<sup>30</sup> was cancelled by the onset of the revolution. Transnationally recognized feminist scholarship of Mir-Hosseini (1993, 1999), Osanloo (2006, 2009), and Moallem (2005, 2015) have in effect grappled with and contested anxieties regarding the nature, rise, and state centralization of shariah's implementation under the

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<sup>28</sup> Also called the "Ithna 'Asheri School." This school of thought follows the Shi'ah religiosity of twelve Imams recognized as the direct lineage and descendants from the last Abrahamic messenger, Muhammad.

<sup>29</sup> The guardianship of the jurist (*velayat-e faqih*). "Faqih" refers to those who understand fiqh, or a jurisprudence scholar who provides political instruction. The jurisprudence scholar (*faqih*) is responsible for the guardianship (*velayat*) over the Shi'i Twelver tenants. During the revolution, the guardianship (*velayat*) was given to Khomeini, creating a religious political leadership (Mohsen 1992: 175).

<sup>30</sup> The Civil Codes of family law from 1928-1938 removed autonomy from clerics who provided jurisdiction on marital affairs within courts (Mir-Hosseini 1993: 23-24).

Islamic regime—one that is historically reliant on the religious class's pre-revolutionary influence within politics and government, and the Pahlavi era's attempts to cancel religious autonomy over the political apparatus through a despotic democracy.

## Chapter 2

### Part One

#### Production of *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998)

*Divorce Iranian Style* (Longinotto et al.) began as an “application” by filmmaker Kim Longinotto & Mir-Hosseini in 1997, with submissions to the London embassy in hopes of creating a documentary portraying women’s encounter with family law (Mir-Hosseini 1999: xviii). The project was discussed with officials of the Ministry of Guidance, who had postponed their response to the proposal. The incentive of the film arose from negative responses received by the production crew—responses that shed to light the negative stereotypes that could result from globally televising Iranian women’s day to day actions (Mir-Hosseini et al.). The production of the film would not have commenced without lobbying on behalf of Mir-Hosseini and Longinotto to gain funding from British television executives. In gaining permission from officials to film within the courtroom (Mir-Hosseini et al.), Mir-Hosseini discussed the film project with independent filmmakers in Tehran who rejected Traditionalist frameworks to directing. In communicating with the Ministry of Guidance officials to follow through with the film production, part of Mir-Hosseini’s challenge was convincing the Ministry of Guidance and the Iranian film industry that the movie would cover marital issues in family courts without redrafting a “problematic” Iranian woman (Mir-Hosseini et al.), or sensationalizing twentieth-century Iranian film making. They convinced authorities that the film would present “complex” societies of women, while creating positive images of divorce applicants (Mir-Hosseini et al.). I analyze the attitudes, timing, conception, and lasting impressions left from *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998), along with the microaggressions that can surface in communications between divorcing parties and clerics.

In *Divorce Iranian Style* (Longinotto et al.), the main cleric, Judge Daldahar reminds the first couple that “our religion” detests divorce, and that the court believes women inherently wish to remain married. Women petitioners’ obstacles to overcome in the legal debates were apparent in the film as the first wife in the documentary shares her complaints of her husband’s lack of sanity. Later in the film, sixteen-year-old divorce applicant Ziba, who had an arranged marriage to Bahman, a man over ten years older than herself, presents the complex struggles in continuing her education and finding reasons for filing divorce. Filled with tears and frustration, Ziba uses her husband’s “insanity” as a tool in the courtroom, saying that he must follow through with a “test” (Longinotto et al.). In *Family law in Islam: Divorce, marriage and women in the Muslim world* by Voorhoeve & Ebrary, one can refer to the grounds for judicial divorce, such as the husband’s “insanity” (Voorhoeve & Ebrary 2012: 192). Women like Ziba exhibit a “positive civil law” perspective, or a reliance on Islamic civil codes in divorce court hearings to cancel their marriage (Osanloo 2009: 192). Couples are generally unaware of family law until they “come to confront it unwittingly” (Mir-Hosseini 1999: 104). Ziba’s quick reliance on her husband’s psychological instability as a grounds for separation illustrates the common utilization of positive law within the courtroom.

Ziba’s presence and dominance over courtroom dialogue is refreshing and invigorating. In Bahman’s attempts to show the judge a certification to validate his occupation as a driver “traveling abroad,” she immediately rebuttals his excuse by stating that “nobody’s impressed” (Longinotto et al.). As the documentary continues, another divorce applicant, Massi, uses her husband’s infertility as grounds to cancel her marriage. Her dissatisfactory sexual relations with her husband at the time of their wedding due to her husband’s sterility,<sup>31</sup> the insistence for Mr.

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<sup>31</sup> The ‘The Iranian Marriage Contract’ within the Iranian civil codes allows wives to petition for divorce if they are unable to conceive due to a husband’s infertility (Osanloo 2009: 210).

Jamshidi to find her lost court file on a timely basis, and her husband's delay in paying the marital compensation not once discouraged her in pursuing her divorce claim. Mariam, one of the final subjects of the film, embodies a fearlessness in gaining desired legal resolutions, as she goes as far as tearing up the court document after fears of not being able to gain custody privileges over her younger daughter. Through it all, we find no lawyers, as everyone expresses their own story and viewpoints for grounds of divorce. As Judge Daldahar casually orders Mariam's husband to "fetch" her, and as each divorce applicant tells the cleric their own story to play towards the outcome of the law that they want (Savci 2018d), audiences are left with a theatrical and informal tone established for the judicial process.

Notions of Agency in *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998)

Assumptions of non-Western women as "sexually constrained" can tie into *Divorce Iranian Style's* (Longinotto et al.) focus on the gender divided entrances to the divorce court (Mohanty 2003: 65). The directors deliberately focused on the women's entrance, and a gathering of female court staff members around the table who directed each litigant to wear a proper chador and to remove any signs of makeup. One staff member even makes an effort to tell a woman entering the court to "wipe your lips clean" (*labeto tamiz pak con*) (Longinotto et al.). Emphasis on erasing traces of what is seen as attention-drawing beauty enhancements shows the divorce court's gender specific surveillance, and women's physicality.

This scene can produce conflicting reactions among Western feminists, as women's inability to choose their own bodily covering can be viewed as engaging in a passive manner with the court's policing of women's expression. Scholarly interpretations of female divorce applicants as improper agents in the search for freedom and resistance to government control can be rebutted by Mahmood's *Politics of Piety*. Certain notions of freedom are highlighted when

speaking of what is put on one's body. This alludes the "theory of power," as power already produces ways of dressing in society, while generating ways of dressing as a particular desire. Therefore, one cannot categorize people as oppressed or free based on their covering (or lack thereof), since all members of a society are defined by certain hegemonic inscriptions of power (Savci 2018c). Mahmood (2005) notes on the problematic inconsistency in reading agency as solely a form of resistance to the norm (Mahmood 2005: 23). Societal subjects already live within certain productions of power, and performing agency through resisting norms such as dress codes still signifies resisting power from within an overarching dominant governmental institution.

Concluding Remarks on *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998)

Post-revolutionary divorce cases and dialogues between divorcing parties and clerics within globally recognized films like *Divorce Iranian Style* (Longinotto et al.) still represents a particular narration of divorce dialogue, structure, and implementation of Islamic law within a specific historical moment in Iran. The conception of the film during the late 1990s, and the pivotal moment within Mir-Hosseini's scholarly career reifies the centering of Western-based scholarship and the extrapolation of certain knowledges and epistemologies regarding divorce law. Her efforts to retell and present divorce within a specific locality in Iran for viewers disregards the possible complexities that can arise within courtroom structures that stem from manifold geographic localities and socioeconomic positionalities. As Mir-Hosseini and Longinotto essentialize Iranian divorce applicants through extrapolating from the courtroom particular moments that reproduce and uphold women as instigators of positive civil law, it is important to note the continuously shifting nature of divorce interactions, where Iranian women's communication with family law has significantly altered with the onset of the twenty

first century. As the women in *Divorce Iranian Style* (Longinotto et al.) are presented through archaic tropes that reify Orientalist constructions of Iranian women as religiously oppressed, I argue how this limits the scope of what freedom and agency can encompass for Iranian women within contemporary courtroom spaces—as Eurocentric notions of freedom narrowly define women in their relation to freedom of material expression.

I next bring Osanloo's (2009) *The Politics of Women's Rights in Iran* to review first-hand fieldwork and specific court rulings within Tehran's Special Civil Courts and to dissect the modes of agency that manifest within private spaces of the women's Quranic sessions (*Jalase-yeh Quran*). I identify the nuanced encounters between Osanloo (2009) and members of the Tehran Municipal Court. The interpretations of religious doctrine by Tehrani women in the private Quranic sessions and their negotiations with divorce clerics in the Tehran Municipal Court all formulate how family law is translated by feminist scholarship within Tehran's urban spaces—while centering how the negotiation of women's rights within shariah is itself where we can find moments of Iranian women's agency.

Osanloo's transnational analysis in “Islamico-Civil ‘Rights Talk’: Women, Subjectivity, and Law in Iranian Family Court” (2006: 191–209) and *The Politics of Women's Rights in Iran* magnifies the realities and personal narratives dialogues between clerics and divorce applicants like Gholi Khanoom, who remains in continuous dialogue with Osanloo throughout her hearing in the Tehran Municipal Family Court. Gholi Khanoom, Osanloo's (2006: 191) primary subject of critique in “Islamico-Civil ‘Rights Talk’: Women, Subjectivity, and Law in Iranian Family Court” represents the manifold and complicated interactions between clerics and women. The “moral agency” of Iranian women; their capacity for action, while mastering the specificities of

Islamic civil code, is presented by the descriptive divorce-court procedure encountered by female subjects within a court of law (Mahmood 2005: 210).

Osanloo's fieldwork was conducted in 1999-2000 (Osanloo 2009: 112), when the Iranian government made an effort to combine all of the family cases of Tehran shortly after 1998. The Tehran municipality and family court was in turn located in a single building, on the same street as *Divan-e Aili-ye Keshvar*, the site of the most superior ranking court of the justice system (Osanloo 2009: 111). The setting of the family court according to Osanloo presented spaces outside of the court building from which individuals preparing to enter retrieved free legal advising, met with relatives, or waited for further court hearings (Osanloo et al.). Osanloo's entry into the Tehran Municipal Court and ongoing permission to hear 140 court cases, including custody hearings, was initially leveraged by a journalist, Elham, who presented Osanloo's research goal of studying Islamic jurisprudence to a Tehran Municipal Court judge she had been in contact with (Osanloo 2009: 113). As a researcher from the United States who wrote her fieldnotes in English, Osanloo described her initial permissible entry into the Tehran Municipal Court as potentially problematic and prone to scrutiny due to the likely possibility of generating attention from the judge (Osanloo et al.), more so than from other subjects.

Through the narrative of Goli Khanoom's encounter with Tehran's Municipal Family Court from 1999 to 2000 (Osanloo 2006: 191), a gendered gap is presented on behalf of clerics when legally interpreting women's accessibility to divorce rights. Men hold the right to divorce (*talaq*), while women hold rights to the cancellation of marriage (Mir-Hosseini 1999: 30). Drawing from Article 1129 of *The Civil Code of Iran*, as translated by Amin (1988), Gholi Khanoom attempts to create a justifiable petition for cancelling her marriage based on proof of negligence, along with distance and absence between her and her partner, which are both

pathways to divorce within the civil codes of Iran.<sup>32</sup> Shiah law<sup>33</sup> within the civil codes states that a woman is entitled to initiate a cancellation of marriage if her husband proves a “failure” to provide her maintenance (Mir-Hosseini 1993: 39). Here, Gholi Khanoom is a clear representation of divorce applicants who practice positive civil law, or the heavy reliance on the civil codes to gain individualistic outcomes out of divorce law (Osanloo 2006: 192). Through Gholi Khanoom’s encounter with the Tehran Municipal court system, a personal narration of feminist agency within the courtroom is presented, one that is defined by and translated to positive law.

Gholi Khanoom’s interaction with the civil system represents her status as an autonomous “subject” with individual rights, submitting direct evidence that is fully supported by the law. Although shariah law within the Iranian civil codes allows men grounds for obtaining a divorce without requiring consent from the wife (McGinn 2000-2001: 62), Gholi Khanoom is held accountable for providing accurate documentation proving negligence on behalf of her husband. Her “bridal portion” (*mahr*) that was awarded at the time of marriage becomes a leveraging tool in an attempt to file a cancellation of marriage (Osanloo 2006: 204). Requests for cancellation of marriage and divorce (*talaq*) are independent of each other when considering which gender initiates the request—leading the bridal portion (*mahr*) to become a separate court petition from divorce (*talaq*) (Osanloo 2006: 218). As Gholi Khanoom uses her bridal portion as a tool in the divorce court, she illustrated how judges in the Tehran Municipal Court lay a heavy burden on the female subject to provide full proof and evidence to gain cancellations to marriage.

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<sup>32</sup> *Family Law in Iran* by Sen McGinn (2000-2001), is an essay explaining the specificities of ‘Divorce Law’ within *The Civil Code of Iran* (Basic Documents in Iranian Law, The Civil Code 1928-1936 as amended in 1969 and in 1982-83). Article 1129 under *The Civil Code of Iran* is also translated by Ziba Mir-Hosseini (1999) in *Islam and Gender: The Religious Debate in Contemporary Iran*. Sen McGinn’s essay, *Family Law in Iran*, derives its primary sources from translations provided by Amin, S.H. in *The Civil Code of Iran*.

<sup>33</sup> Civil code of Iran as interpreted by Mir-Hosseini (1993) in *Marriage on Trial* (1993: 39).

Furthermore, female subjects are under constant scrutiny by Islamic Traditionalist subjectivities, as the specificities of the court dialogue and terminology are brought into question. In the aftermath, Gholi Khanoom's dialogue with divorce clerics becomes mirrored to a prosecution process (Osanloo et al.).

As Gholi Khanoom's judge states, "our society and our religion look very badly upon divorce. It is only in extreme circumstances that a woman can seek to end a marriage" under the proper circumstances (Osanloo 2006: 193). Her attempt to cancel her marriage is fully exemplified through a feminist discourse of positive civil law<sup>34</sup> set in place. From her bag, she brings out the book of civil codes, and evidence of the lack of housing support from her husband, who had been absent throughout the court hearing. As mentioned by Osanloo's (2006: 117) narration of Sahar, a twenty-two year old divorce applicant, her confrontation with the divorce lawyers exemplifies a tiresome predicament, one that is strict and precise due to requirement of fully mastering the specificities of the civil codes. Despite Traditionalist's high surveillance, scrutiny, and questioning of women challenging sections of the civil codes that provide men the upper-hand within disputes of marital separation, Gholi Khanoom's interaction with court clerics exemplifies a voicing of concerns through legal outlets. Here, conversations of women's rights in Iran within the family court system are still continuously renovated by the legalities of the state, which may lead to separate outcomes to marriage cancellation petitions (Osanloo 2006: 192).

As female divorce applicants leverage civil codes to prove her rights to marital separation, cultural registers on behalf of male clerics adds heavy burdens, with an underlying negative stigma attached to publically highlighting private marital matters. Yet, Aghajanian and Thomson (2013: 112) note that the increasing trend of divorce rates represents a liberation from

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<sup>34</sup> "The conditions through which women's discourses of rights emerge, even in the context of administering Islamic laws" (Osanloo 2009: 118).

the socio religious expectations of hiding private family matters from the court system.

Traditional expectations of the religio-political system create an immense effect on producing coercive longer marriages at an earlier age. These prolonged marriages at a time of youth could be the underlying catalyst for current increasing divorce rates in Iran, primarily initiated by women.

#### Women's Quranic Meetings (*Jalaseh-ye Quran*)

Osanloo's (2009) chapter "Quranic Meetings: Doing the Cultural Work" in *The Politics of Women's Rights in Iran* analyzes the means by which women within private spaces in Tehran perform religious agency through Quranic meetings (*jaleseh-ye Qur'an*). An informal female-run Quranic meeting allowed women to dismantle the bureaucratization of religion that operates "from the top down" through a trickle down system (Osanloo 2009: 79) of male heads of Islamic jurisprudence codifying religious requirements into legislative apparatuses. The private Quranic meetings presented an osmosis between religious and sociopolitical realms through debates of local, class, gender, urban, and national concerns (Osanloo et al.).

The women in the Quran meetings (*jaleseh-ye Qur'an*) illustrated an individual responsibility when interpreting religious verses, one that was not based on or defined by gendered familial roles prescribed by the regime. They discussed religious passages in a gender neutral term, "ensan" (Osanloo 2009: 93), meaning "human." As human beings, there was a duty for individual thinking that acts on the ability to reason, and to have autonomy over forms of knowledge production regarding women's religious duties. The Quranic sessions refrained from only magnifying the gendered concern of rights of women within the Quran, but utilized the Quran as an ability to catalyze a gender-neutral personal responsibility and action to interpret specific verses. Here, they deduced that Islam does not refrain women from practicing their

individual freedom of interpreting verses, but requires it. Conversations between Quranic verses and women's status under the Islamic Republic as a sight for knowledge production allowed women of the Quranic meetings to proclaim themselves as sociopolitical catalysts of knowledge production regarding Islamic texts (Osanloo 2009: 94-95).

Osanloo's (2009) personal participation within the Quranic Meetings housed in a private home in Tehran, Iran allows readers insight into how domestic spaces can become a site of religious knowledge production amongst women who wish to understand their rights within Islam independent from their rights under the regime. One female member of the meetings by the name of Nahid Hajinouri, a practicing family law attorney within northern Tehran (Osanloo 2009: 98), frequently covered topics on legal issues such as divorce, marital, and financial maintenance. Hajinouri provided descriptions of how the legal process could be maneuvered through mastering family civil codes that permit women to address marital difficulties and reclaim bridal compensation. She refers to Article 1082 of the Iranian civil codes, where a wife becomes the "owner of the marriage portion and can dispose of it in any way and manner that she may like" (Amin 1988: 185). Her description of the bridal portion guaranteed within the civil codes as a "crucial bargaining chip" in the event of divorce allowed Hajinouri to become a spokesperson of legalities while embodying every religious requirement expected of her, through her full body covering and pious etiquette. Hajinouri called for the women of the Quranic meeting to behave as individuals responsible for themselves independent from their roles as caretakers of their family. In doing so, she gave credit to Islam in providing "maritally distressed" women the avenues to obtain compensations for grievances through financial remedies that can initiate desired results from marital disputes (Osanloo 2009: 99-100).

When analyzing female knowledge production of religion within the private spaces of women's Quranic meetings, the Islamic Republic's hegemonic control over means of socio-religious knowledge production slowly disintegrates through women's mastery of Iranian civil codes. As women of the Quranic meetings practiced an individualized freedom in interpreting religious verses and laws regarding marital compensation, they produced their own authentic knowledge of shariah's requirements while refraining from being equated to by clerics as "caretakers of the family."

As divorce applicants enter Special Civil Courts within Tehran, their religious and political knowledge stemming from knowledge of religious scripture and civil codes provides the opportunity to challenge clerical roles that embody a fatherly mediator within matters of Islamic jurisprudence. The knowledge of marital compensations (*mahr*) from the women's Quranic teachings challenges the Islamic Republic's forty-year long hegemonic control of knowledge production that houses clerics as the sole producer of religious cognizance after 1979. As women not only discuss, elaborate on, and collaborate the very specificities of civil codes regarding women's roles and societal expectations, they question male interpretations of codified religious laws that are subject to clerical interpretation and manipulation (Mir-Hosseini 1993: 9). Osanloo's (2009) descriptive analysis of religious knowledge production that manifests within private Quranic meetings compliments a legal anthropological analysis of sociocultural relations between clerics and divorce applicants that are informed by not only the knowledge of law, but the knowledge of religion within private religious meetings.

#### Conclusions on Feminist Agency

Mahmood (2001: 202) explains the mosque movement in Cairo as center for Islamic teachings and female-to-female education on the Islamic code of ethics. This discourse can also

be carried on to the courtroom. As divorce applicants like Gholi Khanoom memorize divorce clauses within the Iranian civil codes when petitioning to cancel her marriage in the Tehran Municipal Court, they practice their rights from within the guidelines of the regime while simultaneously educating other women who are in a process of applying for marital separation. Practices of utilizing civil codes for personally desired outcomes within courts calls to question whether feminist discourses of agency and capacities for action can exist under hegemonic structures of the court system that implements clerically interpreted shariah law (Moghadam 2002: 1136).

### Part Three

#### Mir-Hosseini's (1993) *Marriage on Trial*

The Special Civil Courts (*dadgah-i madani-yi khass*) within Tehran becomes a site to be analyzed through its specific structure during the 1980s (1993: 25). According to Mir-Hosseini's (1993) *Marriage on Trial: A Study of Islamic Family Law*, the Islamic judges (*hakim-i shar'*) oversaw a wide array of disputes within the family structure: divorce, marriage annulments, and the maintenance of wives through the dower (*mahriyeh*).<sup>35</sup> The structural component of the Tehran Special Civil Courts in the late 1980s included a judge trained in Islamic law through seminary college (*hawza-yi 'ilmiyya*), a clerk academically trained in secular law overseeing marital disputes, and a secretariat (*daftar*) in charge of filing court papers (Mir-Hosseini et al.). In order to understand the power of the judge, one must analyze Mir-Hosseini's (1993) explanation of the religious pedagogical structure of the court. Couples enter the room where the

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<sup>35</sup> The "mahriyeh," "mahr," or "dower" refers to a sum of money or golden coins that is promised to the bride when agreeing to marriage. Traditionally in Iran, the number of gold coins that a wife receives can be equivalent to the year of her birth, i.e. 1,988 gold coins for a wife born in the year 1988 (Payvar 2018). The religious purpose of the dower is to tie a financial obligation to the husband to provide maintenance to his wife. Various feminists such as Ali (2006: 3-4) believe the dower to be a tool of leverage and emblem of financial foothold used by divorce applicants at the time of cancelling their marriage.

judge, who sits behind a main large desk, reaches a finalized judgement of marriage cases after lengthy dialogue with the divorcing parties. The informality within the court is illustrated by Mir-Hosseini (1993: 26) through the absence of lawyers and written testimonies, where litigants are left to fend for themselves in reaching a desired outcome in their marital disputes. As Mir-Hosseini (1993) recalls from her fieldwork after 1985 within the Tehran Special Civil Courts, the court clerks replaced the secular judge, leading the clerk to be a subordinate character to the religious authority of the judge (Mir-Hosseini et al.). The judge overseeing marital disputes is often a trainee employed by the Ministry of Justice, despite the lengthy employment of both the secretariat and the clerk, who usually has a greater amount of field experience within a variety of divorce cases. Here, the pedagogical performance of the judge becomes patriarchal,<sup>36</sup> as he embodies a fatherly mediator holding authority over matters of religious jurisprudence, and decisions regarding legal proceedings despite less experience within the field. The patriarchal organization of Tehran's Special Civil Courts highlights rising tensions when the development of Islamic laws clashes with changing financial needs and maintenance of spouses within varied contemporary socio economic realities. In turn, Islamic law within the legal system has led clerics to manipulate the ambiguity within shariah law, while using the court as an "arena" to legitimate their principality and leadership (Mir-Hosseini 1993: 8-9).

Mohammad and Ghari's (2006) article "Autonomy and Equal Right to Divorce with Specific Reference to Shi'i Fiqh and the Iranian Legal System" explains the applicability of fiqh norms within the divorce structure and the limitations that arise when vague religious doctrine regarding fiqh becomes misconstrued and theoretical when implemented into a legislative

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<sup>36</sup> It is important to note on the positioning of the desk within the courtroom. The judge sits behind the desk, while couples face the judge on the opposite end of the table. The judge serves as a patriarchal family member sitting opposite of the couple, and providing marital advice and guidance based on his elevated knowledge regarding matters of shariah within the marital structure.

apparatus. Mohammad & Ghari's (2006) refer to utilization of the term "fiqh" to explain the normative overarching legal and moral structures of society. Fiqh norms were historically viewed as religious and ethical commands that require "rare" legal utilizations by jurists (Mohammad and Ghari 2006: 282), but have become misinterpreted as law within the structural implementations of civil codes since the revolution.<sup>37</sup>

The interpretations of gender roles by Shi'i clerics attaches a morality and family value to the term "fiqh," which is explained as the importance of family as the pivotal basis of society (Mohammad et al.). Family law is seen as a key concept when debating fiqh, as the family structure is explained by the government as needing to be "preserved and protected" (Mohammad and Ghari 2006: 283). Shi'i jurists believe that if the family unit encounters a downfall, the community will fail to function as well, as a successful community is reliant on well-functioning family bonds. Coincidentally, "traditional" fiqh holds for a fundamental preservation and protection of the family to preserve a well functioning society and community (Mohammad et al.). In reviewing the impact of specific interpretations of "fiqh" by clerics, the term "divorce" is in turn seen as an inconvenience to the family unit, a unit meant to be maintained by the structural demands of the Iranian civil codes. As divorce applicants enter dialogue with male jurists, their marital complaints due to economic, sexual incompatibility, etc are disregarded, as the jurist's goal is to preserve the family structure. Thus, mediations between

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<sup>37</sup> As Mohammad & Ghari (2006) note on the unilateral right to divorce on behalf of the husband due to Article 1133's clause "Man may refer to the court and apply to divorce his wife" (Amin 1988: 137), they also refer to divorce as dealt with in great detail within fiqh notions of hardship (*haraj*), where a wife can demand cancelling her marriage due to not being able to bear living with her husband (Mohammad and Ghari 2006: 284). *The Iranian Civil Codes* as translated by Amin (1988) presents Article 1123, where deficiencies in a man due to castration, impotence, and amputation of genital organs provides a wife rights to revocation of marriage (Amin 1988: 135). The fiqh notion of "hardship" (*haraj*) is subjective and "person-dependent" when dealing with divorce, as jurists within the courtroom can use "unlimited discretion" to present a desired outcome, which often involves maintaining the preservation of the family unit within the divorce courtroom (Mohammad et al.).

spouses filing for divorce become futile, as jurists' aims are to preserve the hegemonic family structure.

In Mir-Hosseini's preface to *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, (Mir-Hosseini 1993: 9), she explains how her analysis of divorce cases revealed a contrast between theory of Islamic law and actual practice of codified family law. Tensions manifest between codification of law, orthodoxy of religion, and actual discourse of religious interpretations is elaborated through the "matrimonial regimes" (Mir-Hosseini et al.). By matrimonial regime, Mir-Hosseini (1993: 35) refers to the lack of common ownership of marital goods between husband and wife. Any wealth brought into the marital timeframe remains with the spouses individually (Mir-Hosseini et al.), yet husbands must provide to sustain the well being of wives, regardless of her financial circumstance. Here, complexities arise within codified law with regards to matrimonial regimes. The idea of matrimonial regimes presents a distinct difference between "shari'ah models of harmony" required for marital tranquility, satisfaction, and success, and the diverging marital outcomes that actually occur due to socioeconomic stressors that lead spouses to rely on financial remedies to sustain marital satisfaction (Mir-Hosseini 1993: 9).

By "shariah modes of harmony," Mir-Hosseini (1993) alludes to a similar discussion by Mohammad and Ghari, where Islamic fiqh does not view marriage as divine union, but rather one of spiritual and psychological value where tranquility is intended for each spouse (Mohammad et al.). Here, I bring Mir-Hosseini (1993) and Mohammad and Ghari (2006) into discussion together to highlight tensions arising between fiqh's marital expectations of harmony and the legislative system's implementation of matrimonial regimes. As each party of marriage presents themselves a victim due to financial stressors, marriage laws have initiated a trend in

which divorce applicants attempt to retrieve material compensation (Mir-Hosseini 1999: 119). The idea of seeking divorce based on acquiring one's deserved financial remedy comes from the very concept of a matrimonial regime. Yet, the legal support for one's rights to his or her own property diverges from the essential orthodoxical intentions of fiqh for marriage, which relies on harmony between spouses regardless of individual financial background. Overall, tensions surfacing between the construction of marital laws within the modern legal system and social practices among divorcing couples has led these factors to fail in coinciding with one another. The formulation of Islamic law within Iran has led to a fluidity between moral and legal aspects of human conduct, where religious laws have become open to interpretation and accommodation due to dynamic individual needs and financial circumstances (Mir-Hosseini 1993: 9-11).

#### Part Four

In *Inside the Gender Jihad* by Amina Wadud (2006), she emphasizes her Sufi Islamic studies beginning in Cairo, Egypt, and points to her time in religious study circles (*halaqah*), the center for her fieldwork. She illustrates the dichotomous relationship between infallible<sup>38</sup> religious documentation of the Quran, and the male-oriented teachings<sup>39</sup> of "hadith;" compilations of secondary sources describing stories of the Prophet. The differentiation between unchangeable religious documentations and male interpretations of religious doctrine illustrates the limits of religious texts in providing legal, political, and religious guidance within the contemporary institutional framework of the Islamic regime. As primary religious sources do not cover all of the "basic elements" of how to implement legal systems within the courtroom,

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<sup>38</sup> Concrete religious doctrine, as part of Abrahamic religions—Judaism, Christianity, Islam.

<sup>39</sup> In reference to the predominantly male teachings, transcriptions, and interpretations of the Prophet's (d. 632) teachings and lifestyle. Gendered interpretations refers to the male perspective that is interlaced into the text that is being explained for readers, creating varied interpretations of religious texts such as the Quran, and hadith.

various male jurists have taken on the role of relying on personalized scholarly preferences to explain and translate statements within Islamic law for communities they reside in (Tamadonfar 2015: 32). The “limitations within Islamic law” leads personal status laws (regarding marriage, divorce, inheritance) to be altered by jurists’ religious interpretations within changing socio-economic geographies and localities (Tamadonfar et al.). The relationship between unchangeable religious doctrine and male-oriented interpretations of the Quran in Wadud’s (2006) chapter, “What’s in a Name,” presents a critique of predominantly male interpretations of religious texts that manifest at an intergenerational level. Male interpretations of Shiism describes the gendered politics of knowledge production regarding faith within Iran, while revealing close yet complex relationships between knowledge of Islamic doctrine and clerics’ implementation of Islamic law—a practiced system that ultimately privileges men. The immutability and concreteness of sacred texts in effect becomes “theoretical” due to diverse emerging interpretations of Islamic doctrine (Osanloo 2009: 64). The immutability of religious texts foregrounds the conflicting interpretations that can manifest within courtrooms, as clerics and female divorce applicants translate Islamic law (pertaining to gender roles, duties, and expectations within marriage contracts) differently due to complex socialites.

Wadud’s (2006) description of the certain gendered viewpoints reinscribed when sacred texts are implemented by state authorities explains how Islamic interpretations of gender roles are implemented within divorce court systems in Iran. As Wadud mentions, an interlaced relationship between knowledge of Islamic doctrine and male power in translations of religious texts surfaces, as the power to define Islam is to inherently to have power over it (Wadud 2006: 17). The term “double-talk,” or the “obscurities” in meaning reproduce as the power of language can manifest multiple religious definitions (Wadud 2006: 25). This double-talk “counters”

genuine equality between men and women, as language is used to create an imbalance between gender roles (Wadud et al.). Male privileges are evident when men have the power to define what religion requires through their own language of interpretation (Wadud et al.). As male clerics in Iran hold that the state religion represents equality for the sexes, they portray a linear perspective<sup>40</sup> while exercising the power to define religion within legislative structures under the regime.

In Chapter Six of *Islam and Gender*, Mir-Hosseini covers her time spent with the clerics of the women's journal *Payam-e Zan* in Qom, Iran, a site of theological study among many Shi'ah Twelver clerics of the Ithna 'Asheri School of Law, and the religious pilgrimage site commemorating the burial location of Imam Reza's sister, Fatima "Massoumeh." In the *Payam-e Zan* session that was published in Spring of 1996 (Mir-Hosseini 1999: 172), she found in her dialogue with clerics Mortazavi and Sa'idi a departure from the discourses and implementations of shariah law<sup>41</sup> (Savci 2018c). When I refer to the departure from discourses of shariah emphasized by Mir-Hosseini (1999), I name the contradicting views that emerge among jurists and clerics who administer Islamic law within courts regarding matters of gender roles prescribed by religion. As the journal aimed to analyze the position of women in society through a religious lense, Mir-Hosseini explains how *Payam-e Zan's* editorial on "Women's Issues" sparked a debate regarding navigations for women's rights within concrete Islamic doctrine. I center Mir-Hosseini's final meeting with *Payam-e Zan*, and the main issues that emerged as the clerics held contradicting views regarding the implementation of Islamic law from primary

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<sup>40</sup> This linearity within male cleric interpretations of Islamic law and jurisprudence is due to the need for precedence and seniority of male jurists to take a foothold over religious interpretations of basic theology of Quranic texts (Tamadonfar 2015: 32).

<sup>41</sup> Shariah law refers to sacred law administered by jurists under the government who have mastered Islamic practices as previously performed by the Prophet (d. 632). Only individuals who have become scholars of the Islamic faith are able to work in courts of justice to administer Islamic law (Savci 2018c).

religious literature and established scholarship (Mir-Hosseini 1999: 171). I question how clerics' extrapolated knowledge from religious literature leads to the unintended results of complexity and ambiguity in the administering of Islamic law, with regards to gender hierarchies that play out within marital disputes.

The question raised during Mir-Hosseini and *Payam-e Zan*'s dialogue was if women's rights could be implemented if male clerics' interpretation of *feqh*<sup>42</sup> view women as "inferior," and secondary to men. Mir-Hosseini's dialogue explains how gender roles as interpreted within Islamic jurisprudence (*feqh*) are defined by clerics following the "gender inequality perspective," meaning that various jurists held a worldview of women as "naturally defective, and accepting of oppression" (Mir-Hosseini 1999: 172-174). As Mir-Hosseini (1999) explained to Sa'idi, there are minority perspectives with respect to Islamic jurisprudence, but Islamic jurisprudence is consequently made up by jurists that follow linear and subjective views regarding situated gender hierarchies. The laws that relate to women's status are based on assumptions and theories that need to be unpacked to reveal the overarching male assumption of women's defectiveness within Islamic jurisprudence (*feqh*). The legal structure of marriage according to Mir-Hosseini has been viewed like a "contract of sale" (Mir-Hosseini 1999: 173). Views of women's defectiveness by jurists within Islamic jurisprudence are illustrative in the *Payam-e Zan* clerics' admittance to having "prejudices and biases that stem from social and personal situations, and society's negative view of women" (Mir-Hosseini 1999: 173, 175). Biases on behalf of jurists

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<sup>42</sup> The clerics in *Payam-e Zan* state that women's roles are concrete and unchanging due to Islamic law due and the role of the sexes in "feqh" practice.

manifest themselves due to subjective perspectives<sup>43</sup> that influence the mediations between divorce applicants and themselves.

The *Payam-e Zan*<sup>44</sup> clerics attempt to explain the imbalance of rights of the sexes as not a sign of “defectiveness” among women, but of the varying roles inhabited by the sexes within various familial and socioeconomic backgrounds. The clerics admit to the presumption of women’s inferiority in Islamic jurisprudence (*feqh*). Here, Mir-Hosseini’s (1999) field work centers ambiguity within clerics’ tone in terms of the resulting “accepted opinion” divorce clerics keep of how male and female roles are to be interpreted from Islamic jurisprudence (Mir-Hosseini et al.). This creates an unstable structure within the divorce court as jurists unravel their own difficulty with interpreting civil codes, while also creating spaces for resistance by female divorce petitioners. From Mir-Hosseini’s (1999) scholarship and final session with *Payam-e Zan*, I center the instability and complexity in interpretations of gender roles that result from Islamic jurisprudence—one that leads to mediations between spouses and jurists to be limited when marital resolutions are attempted to be reached, while also presenting a room for agency and resistance by divorce applicants.

In Chapter Six of *Islam and Gender: The Religious Debate in Contemporary Iran*, Mir-Hosseini (1999) found in her discussions with the *Payam-e Zan* journal clerics a straying away from “old wisdoms” of *feqh* practices, or the science that drives the interpretations of religious requirements within shariah law. Views within Islamic jurisprudence that are reinscribed by supporters of gender inequality (that drive assumptions depicting women as inferior) are also

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<sup>43</sup> In Mir-Hosseini’s (1999) communication with *Payam-e Zan* cleric Mortazavi, he admits to the “social and personal situations” of jurists that present prejudices within Islamic jurisprudence (Mir-Hosseini 1999: 175).

<sup>44</sup> *Zan* is defined as “Woman,” the opposite of *mard*, or “man” (Moallem 2005: 195). *Payam-e Zan* is a women’s journal that is edited and reviewed by religious clerics attempting to discuss matters of religion to readers.

accepted by jurists of different worldviews, but these “ideas” are “additions to religion,” as cleric Mortazavi noted in the final session with Mir-Hosseini (Mir-Hosseini 1999: 172). Mortazavi added that there was never a “defectiveness” of women mentioned in fegh. The *Payam-e Zan* clerics attempted to explain this imbalance of rights as a reference to the different roles inhabited by the sexes in familial relations, while utilizing Sunni fegh as a scapegoat to describe the negative stigma associated with women as “defective” within marriage<sup>45</sup> (Mir-Hosseini 1999: 175). The clerics admitted to the presumption of the inferiority of women in fegh, rather than inferiority in women as a concrete “Principle” (Mir-Hosseini 1999: 176). By stating that differences in rights between sexes was not due to inherent nature, but to their roles and duties, the clerics carry an informal tone that is deeply reminiscent of the lack of structure found in the divorce courts and overall justice system (Savci 2018e). Clerical definitions of duties based on one’s sex diminishes avenues for women’s reform when accessing divorce rights, especially within disregards of women’s changing socialites.

The *Payam-e Zan* clerics’ explanation of the imbalance in rights within Islam as differences due to roles and duties presents a fixed entity to gender roles that are solidified through the clerics’ justification of gender roles as “natural” (Mir-Hosseini 1999: 173). Yet, as Mir-Hosseini mentions, the clerics’ presentation of gender roles is a “theological construct,” where matters of family and gender roles shed light on “assumptions and views,” that “tended to remain on an abstract level” rather than bringing in various socialities that affects gender hierarchies (Mir-Hosseini 1999: 114). This disregard for social experiences that transforms gender roles within Islam is utilized by Wadud (2006) in *Inside the gender jihad*. Wadud claims

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<sup>45</sup> Cleric Sa’idzadeh explains Sunni fegh as promoting women’s defectiveness, through the issue of retribution for blood money (*diyeh*), where blood money for a woman is half that for a man because of the woman’s defectiveness (Mir-Hosseini 1999: 175).

that religion is used by clerics and Islamists<sup>46</sup> to “selectively” utilize primary sources for the purposes of excluding women from dominant roles within society. As Wadud holds that the value of male and female roles are composed within a “fixed system,” there is a disregard for values “attributed to those roles” within a broader ethnographic setting that acknowledges gender relationships within family and society (Wadud 2006: 27-28). Concreteness attached to gender roles is a repercussion of “double-talk” within male interpretations of religious texts, which “disrupts” the inherent teachings that can be learned within Islam (Wadud et al.). When women are historically excluded from “primary authority” (Savci 2018a) to interpret religious rulings of primary literature, the exclusion of women from Islamic leadership becomes fundamental, and one that leads to the male-centered societal order present in divorce courts.

Binary Gender Views Through the Context of *Inside the Gender Jihad* and *Islam and Gender:*

*The Religious Debate in Contemporary Iran*

Mir-Hosseini alludes to tensions that arise in discourses of Islamic law that have resonated since the revolution in *Islam and Gender: The Religious Debate in Contemporary Iran*. When religious doctrine is intertwined with the modern nation state apparatus, interpretations of shariah law lead to alterations that have not been seen in the history of Islam (Mir-Hosseini 1999: 7). Here, shari’ah<sup>47</sup> law manifests as a “legal instrument” of the nation state (Osanloo 2009: 64). Mir-Hosseini’s discussion of Islamic jurisprudence among clerics in Qom can be brought into discussion with Wadud’s (2006) *Inside the gender Jihad*, where the Quran acts as the primary source of knowledge, taking on the “word of God.” Conflicts occur when recitations of stories of the Prophet (*hadith*) act as secondary sources subject to predominant

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<sup>46</sup> Government officials who implement authority, rules of law through implementation of religious texts.

<sup>47</sup> According to Khomeini in *Islamic Government: Governance of the Jurist* (1970), shari’ah furnishes proof of the necessity for establishing government. There is an indication that laws were laid down for the purpose of creating a state and administrating affairs of society (Khomeini 1970: 22).

male interpretation at an intergenerational level (Savci 2018a). In effect, the immutability of sacred texts becomes ambiguous and ahistorical when applied to contemporary legislative discourse due to the emergence of diversity in interpretations of Islamic doctrine (Osanloo et al.). As gendered interpretations of Islamic law represents interlaced relationships between knowledge of Islamic doctrine and male power when translating religious texts, the power to define Islam essentially becomes a matter of having autonomy over means of religiopolitical discourses (Wadud 2006: 17).

Wadud utilizes the term “double-talk” to refer to the power in language to produce multiple definitions (Wadud 2006: 25). Double-talk “counters” genuine equality between the sexes, where language is the barrier used to create gender hierarchies within religious translation. There are gendered privileges when one sex holds the autonomy to define what religion requires through a subjective language of interpretation. As male clerics hold that Islam represents equality for the sexes, they portray a gendered perspective while exercising the power to define Shi’a Islam within the confines of Iran. Mir-Hosseini reminds readers of this male power as she decodes Shi’i theory of “*ejtehad*,” where the details of sharia law are uncertain and difficult to interpret (Mir-Hosseini 1999: 12). Therefore, these religious details become matters of “informed opinion” that are only accessible by individuals who hold the sacred knowledge of Islamic source (*mojtahed*). As traditional requirements call for submissions to mojtaheds for religious guidance, clerics who refer to these male scholarly establishments hold the power to define what is Islamic and what is not, ultimately drawing a strict boundary between those who are excluded and included in the authority to interpret religious scripture (Savci et al.).

Within contemporary legislative practices, it is the fundamental exclusions of women in Islamic leadership that leads to a male-centered socio-legislative order present within divorce

courts. When applied to actual practice, the production of Shi'i Islam within Iran inherently results in a convoluted relationship between believers, clerics, and the capacity to take political action within matters of family and divorce law (Mir-Hosseini 1999: 11).

## Part Five

### Women's Social Realities under Islamic Law

The roles of the sexes are explained under Islamic jurisprudence (*fegh*) when analyzing the marriage contract, as Islamic principle sets specific duties for men and women within contemporary Iran. The clerics in *Payam-e Zan* mention to Mir-Hosseini that if one party had less duties, then they had less rights. How can this parallel between “duties” and “rights” of the sexes be explained when understand *fegh* principles? If *fegh* and the marriage contract assigns specific duties to men and women, and if shari'ah is not subject to change or alteration, scholars of family law in Iran must take socioeconomic factors into perspective (Mir-Hosseini 1999: 177).

As judges respond to the demands by spouses, their theoretical guidance cannot be applied to actual practice. In a conflicting aftermath, as the first wife in *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998) requests greater access to telephone privileges, Judge Daldahar merely responds by reminding her of obligations to please her husband. This dialogue contains parallels to the communication between Mir-Hosseini, and the *Payam-e Zan* clerics in *Islam and Gender: The Religious Debate of Contemporary Iran*. As Mir-Hosseini and the *Payam-e Zan* clerics debate the issue of gender hierarchies within Islam, and changing economic realities of spouses, they come from different socialities and world views. The “totality” and concreteness of Islamic principle also does not account for women's present-day growing economic independence (Savci 2018f). Women's changing roles in Iran means that the family structure is subject to alteration as well. This heavily contradicts to the *Payam-e Zan* cleric's

stance of concrete and unchanging female responsibilities in Islamic societies. Similar to the clerics of *Payam-e Zan*, Judge Daldahar does not take into account the different realities of the women in *Divorce Iranian Style* (Longinotto et al.). He heavily relies on the Islamic civil code, stating that the first wife of the documentary must still live with her husband for three months after they are divorce. In effect, Judge Daldahar fails to take into account factors that may interfere with this ruling and mimics a soundboard for each hearing, with pre-planned responses. As clerics heavily focus on the concreteness of Islamic law, social predicaments within the family unit are seen as secondary changes (Savci 2018e). The *Payam-e Zan* clerics even remind Mir-Hosseini that Islam is not responsible for the behavior of men who do not abide by the Islamic principles. This leads scholars to question accountability within Islamic law, and accommodations for changing social conditions in the family unit (Savci 2018f).

#### Changing Social Conditions and Fixed Islamic Principles

The concerned relationship between Islamic law and its implementation is also the question of Kecia Ali (2006) in *Sexual ethics and Islam*. Changing social conditions put a stress on gender relationships within the inalterable shariah law. Here, readers are invited to rethink relationships between social conditions and fixed Islamic principles. The *Payam-e Zan* clerics statement of women's roles as concrete and unchanging due to Islamic law conflicts with the emerging presence of women in arenas of education, which leads to increased financial responsibility and societal independence (Barzoki, Tavakoll, & Burrage 2015: 110). Wives financial contribution alters the order of the family structure, challenging their status and subjecthood of being treated as "half" the financial unit of men (Savci 2018e). If religion solidifies women's roles and releases obligations from economic contribution, a "totalizing" and concrete outlook by clerics turns a blind eye towards socio economic changes that add

complexity and nuances to court cases. As clerics present a totalizing approach to divorce through an immutability of religion (Savci et al.), the question that remains is whether religious laws should be subject to alteration to accommodate for social conditions that emerge for women's newfound financial independence.

#### Catalysts in Rising Divorce Rates

As noted in “Rational-Emotional Divorce in Iran,” recent trends in rising divorce rates are correlated to the potential for women to become financially independent. As economic autonomy becomes the primal catalyst for rising divorce rates, readers can refer back to Kecia Ali's (2006) discussion of the “dower”<sup>48</sup> and how particular Islamic scholars are viewing the marriage gift as a “positive Islamic intervention,” made to provide avenues to female independence within the family structure (Savci 2018f). Yet, the dower is seen by transnational feminist scholars as inscribing an underlying structural and material limitation to women's autonomy over divorce procedures, one that is analogous to Islam's permittance of the husband's “upper hand” to initiate divorce, while wives are left to file for separation by means of court intervention (Wadud 2006: 25). Although I agree to the dower's structural limitation for women's agency within the court, I also view the dower as presenting a space for women to utilize this material proof of the marriage bond as a source to ensure economic security during and after marriage—one that is sourced and utilized through the Iranian civil codes, thus presenting another outlet for divorce applicants to utilize practices of positive civil law.

Despite this legal roadblock, the component of money exchange creates an economic drive for women to apply for cancellations of marriage. Osanloo refers to the law that grants

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<sup>48</sup> During the time of marriage, there is obligation for husband to pay the wife the “dower,” a sufficient compensation for wives if her husband attempts to divorce her with no long-term liability for alimony (Ali 2006: 4). The dower is seen in Islamic discourse as a source of economic security for women by their husbands as his willingness and ability to provide.

women the ability to require “post-divorce maintenance” (*ojrat al-mesl*) during marriage in case husbands initiate divorce (Osanloo 2009: 139). Here, an economic drive is not only prevalent in the dowry at the time of marriage, but is also an insurance and warranty women can uphold as protection during the divorce process. A prevalent economic investment is formulated in the marriage structure that becomes highly leveraged when marital separation commences.

Besides economic independence in women as a primal factor in rising divorce rates, sexual dissatisfaction among married women is a runner up in the study of divorce trends within Tehran’s urban spaces—one that is due to underlying everyday attitudes of patriarchy within Iranian society faced by women that controls aspects of sexual relations between spouses (Barzoki, Tavakoll, & Burrage 2015: 113). As Barzoki, Tavakoll, & Burrage (2015) note in “Rational-Emotional ‘Divorce’ in Iran,” there are highly sensitive social and cultural factors that play a central role in the emotional distancing that leads to higher divorce rates (Barzoki, Tavakoll, & Burrage 2015: 111). The study to understanding “emotional divorce” was conducted in the capital city of Tehran during the twenty-first century, and has deduced that trends of “emotional divorces” superseded legal divorces, with constant increases of divorce rates within the last forty years until 2004. The geographical location, along with its psychological and sociocultural features within an urban city space that add to a “desirable context of individualism” all allude to the complex experiences that can result in emotional divorce (Barzoki, Tavakoll, & Burrage 2015: 108).

Surely, cultural sensitivity to family, religious, and traditional values are influential religio-social factors in trends of divorce, yet varied socio economic livelihoods among Iranian women—including romanticized views of marriage influenced by the West have add complexity and emotional vulnerability to the topic of divorce since 1979. The concept of ‘emotional

divorce,' its criteria of extramarital sexual relationships, and the context for a marital attitudes of egalitarianism must accounted for in order to study rising divorce trends (Barzoki, Tavakoll, & Burrage 2015: 108-112). By 'emotional' divorce, I also refer to the mental stakes involved within increasing sexually-based relationships that initiate impulsive actions towards divorce—impulses that propagate based on “emotional, physical, and psychological tasks” during spousal communication with the divorce process (Barzoki, et al.).

### Conclusion

The post-revolutionary element of radical social change paved the way for a renovated understanding of capacities for women's autonomy, agency, and feminist discourse (positive civil law) in contemporary Iran. Here, the subject of critique by modern feminist research practices is the question of women's accessibility to divorce rights as interpreted under shariah, male cleric's approach divorce, and the court's response to demands by divorcing spouses—all factors that are shaped by the religious attitudes of the time (Savci 2018d). In exposing Mir-Hosseini's conception and production of *Divorce Iranian Style* (Longinotto & Mir-Hosseini 1998) in Part One, I centered the documentary's linear narration of divorce proceedings within a particular time, location, and political climate. The film's portrayal of clerics authoring and interpreting Islamic jurisprudence (*feqh*) regarding marriage, divorce laws, and gender hierarchies ultimately disregards changing current cultural and socioeconomic factors that expose complexities and unpremeditated encounters between divorce applicants and clerics (Mir-Hosseini 1999: 77).

While helpful, Osanloo's (2009) fieldwork in *The Politics of Women's Rights in Iran*, I argue, does not address the convoluted relations arising within discourses of divorce law between feminist researchers in the academy like Osanloo (2006, 2009) and Iranian women seeking

and/or engaging with family law after 1979 within public spheres of the Tehran Municipal Court and private spaces of the women's private Quranic sessions (*Jalase-ye Quran*). In presenting Iranian women's agentic actions of positive civil law that manifest within public courtroom structures and private Quranic sessions, I aim to not essentialize Iranian female divorce applicants encountering divorce, but to explain how knowledge of law can manifest through religious encounters between clerics, divorce applicants, legal jurists, and feminist researchers in the academy—all which expose a theoretical framework to understanding religious knowledge production after 1979.

In Part Three, I presented Mir-Hosseini's (1993) 1980s fieldwork within the Special Civil Court (*dadgah-i madami-yi khass*) in *Marriage on Trial: A Study of Islamic Law: Iran and Morocco Compared*. I brought Mir-Hosseini's (1993) work in *Marriage on Trial: A Study of Islamic Law* into conversation with Mohammad and Ghari's (2006) article "Autonomy and Equal Right to Divorce with Specific Reference to Shi'i Fiqh and the Iranian Legal System" to explain the tensions that arise between Islamic law and changing socioeconomic needs of spouses due to varied interpretations of traditional fiqh. The vague and complex applicability of Islamic law and Islamic jurisprudence (*fegh*) within the divorce court structure due to its theoretical applications unravels barriers and limitations in communications between spouses and clerics—primarily when Islamic law is misconstrued within legal apparatuses.

With Wadud's (2006) chapter "What's in a Name" in *Inside the Gender Jihad*, I laid out the limitations of primary religious texts in providing religiopolitical and legal guidance. Mir-Hosseini's "Final Meeting with *Payam-e Zan*," revealed contradicting views that emerge among clerics regarding matters of gender roles prescribed by religion. Both Wadud's (2006) chapter "What's in a Name?" and Mir-Hosseini's (1999) "Agreeing to Differ: Final Meeting with

*Payam-e Zan*” enhance my argument addressing the male disregard for female and familial social experiences in contemporary metropolitan spaces that transform the very gender roles prescribed by religious clerics. The male-dominated interpretations of religious doctrine that provides arguments regarding restrictions in Islamic law leads to the unpremeditated results of alterations within personal status laws regarding marriage, divorce, and inheritance within Iran’s changing socio-economic geographies (Tamadonfar 2015: 32). I concluded this chapter with a final reflection on *Divorce Iranian Style* (Longinotto et al.), while bringing the film into conversation with Mir-Hosseini’s (1999) *Islam and Gender: The Religious Debate in Contemporary Iran*. This final twenty-first century literature overview covers contemporary sociocultural conditions among Iranian spouses and barriers to marital satisfaction that unintentionally lead to higher divorce rates. I have presented this chapter to ask how political interpretations of Islamic legal codes regarding dower, cancellation of marriage, and divorce (*talaq*) inform women’s contemporary roles in society through a socioeconomic analysis—one that leads spouses to leverage civil codes in their favor.

## Appendix A

### Genealogy

632	Prophet's death. Marks the beginning of split between Shi'a and Sunni majorities (Norton 2018: 36).
637, 641	Decentralization of Zoroastrian administration under the Sassanians with the Arab-Muslim Incursion (Khanbaghi 2009: 202).
632-661	Marks the period of the "Golden Age of Islam," and shift of religious rule to an Islamic nature. This time period led to a need to define the "science of law" ( <i>'ilm al-fiqh</i> ) to address an elaborate systematization to legislation after the expansion of Islam within Iran (Mir-Hosseini 1993: 4).
750-1258	"Formative phase" of the Abbasid era. Introduced an emphasized spiritual dimension to Islamic rule in Iran through private scholars who held autonomy over religious knowledge without a connection to governance (Mir-Hosseini et al.).
1501	Shah Isma'il solidifies Twelver Shiism as a state religion under Safavid dynasty (Mir-Hosseini & Tapper 2006: 10).
1501-1736	Period of Safavid dynasty rulership (Savory 1980: 30).
1794-1925	Period of Qajar dynasty's rulership. Period of nationalist campaigns and state bureaucratization of religion through state mandated university educated lawyers and judges. Period in which the state codified Islamic laws and civil codes (Osanloo 2009: 256).

- 1828 End of Russo-Persian Wars that led to an emerging presence and subsequent influence of European diplomats and military advisors to play role in egalitarian political attitudes within Iran (Mir-Hosseini & Tapper 2006: 11).
- 1891-1892 Political tobacco protest movement in Iran involving religious community of the ulama who held disagreements over Qajar rulership's economic and commercial connection with foreign lands (Moaddel 1986: 520).
- 1905-1911 Constitutional revolution of Iran. Led to shifts in power to a centralized state, and a law-making legislative branch (Osanloo 2009: 66). Includes power shifts from seminary schooling on Islamic jurisprudence to religious establishments within university law faculty. Led to a promotion of a secular and democratic system of government over religious power (Mir-Hosseini & Tapper 2006: 12).
- 1906 'Fundamental Law' is signed by Mozaffaroddin Shah. Led the ulama to have disagreements due to the law's secular nature (Mir-Hosseini & Tapper 2006: 13).
- 1907 Mohammad Ali Shah signs the 'Supplementary Fundamental Law,' leading constitutionalist to overthrow him. The 'Fundamental Laws' formulated a secular structure of the Iranian constitution until 1979 (Mir-Hosseini et al.).
- 1909 Shia cleric Sheykh Fazlollah Nuri opposes the Constitutional revolution due to the egalitarian nature of electing legislative bodies—a practice that went against Islam's

view of gender statuses within shariah (Mir-Hosseini & Tapper 2006: 12).

- 1928-1938 Reza Shah Pahlavi's enacted 'Civil Codes of family law' aimed at formulating secular legal reform within the judicial system (Mir-Hosseini 1993: 23-4). These codes removed autonomy from clerics who provided jurisdiction on marital affairs within courts (Mir-Hosseini et al.).
- 1931 'Marriage Law' (*qanun-i izdivaj*) is enacted. Sets egalitarian tone with articles requiring state mandate registration for marriages and divorces. Marital issues are moved to surveillance under state authorities (Mir-Hosseini et al.).
- 1963 The White Revolution begins, causing Western industrial expansion within the labor sector. Economic needs of Iranian citizens were coalesced with the need for gender reform, leading women into the paid labor workforce (Sedghi 2007: 135).
- 1967 'Family Protection Law' (*qanun-i himayat-i khanivada*) is enacted. This law encapsulated a complete divergence from shariah. Husbands were no longer to gain judicial rights to polygamy, and new courts, the "Family Protection Court" were run by judges educated within modern jurisprudence. This legislation drew animosity and divisions from clergy members who believed that its enactments diverged from shariah ideologies.
- 1979 'Special Civil Court Act' under the revolutionary regime removed cases regarding family law from ordinary civil courts to courts ruled by religious judges (Mir-Hosseini 1993: 25).
- 2008 Iranian parliament court ruling that initiated

a return of the 'Family Protection Act' (1967), leading women's rights within the context of marriage and divorce to be blocked (Voorhoeve & Ebrary 2012: 51).

## Appendix B

Glossary of Key Terms

<i>andarun</i>	The inner private life and domain of women, children, and female servants' life (Najmabadi 2005: 267). Literal translation is "inside."
<i>ayatollah</i>	Mid-ranking religious scholar (Osanloo 2009: 227).
<i>chador</i>	Iranian veil (Mir-Hosseini 1999: 281). Usually worn in black within public settings, covering the body from head to toe.
<i>Dadgah-i Madani-yi Khass</i>	Special Civil Court in Iran (Mir-Hosseini 1993: 223).
<i>daftar</i>	Secretariat.
<i>Divan-e Aali-ye Keshvar</i>	Highest court of justice system in Iran (Osanloo et al.).
<i>diyeh</i>	Blood money.
<i>ensan</i>	Gender-neutral term for "human" (Osanloo et al.).
<i>faqih</i>	Jurist, expert in Islamic jurisprudence (Mir-Hosseini 1999: 281).
<i>fegh</i>	Clerical Islamic jurisprudence of Islamic law (Mir-Hosseini 1993: 224)
<i>ijtihad</i>	Independent judgement in legal and theological subject matters (Mir-Hosseini et al.).
<i>gheybat</i>	Occultation. In reference to the disappearance of the twelfth Imam, Imam Mahdi. The time span of the Imams' known lives ends with the occultation of the twelve Imam. This period is marked by the Shi'a community faithfully waiting for the return of Imam Mahdi—his return signals the end to civilization (Pierce 2016: 22).
<i>hadith</i>	Tradition and sayings attributed to the Prophet (d.

	632) (Mir-Hosseini et al.). Source of law for Muslims (Osanloo 2009: 228).
<i>halaqah</i>	Religious study circles.
<i>haraj</i>	“Hardship.”
<i>hijab</i>	Code of dress (Mir-Hosseini et al.).
<i>houzeh/howzeh</i>	Theological college (Mir-Hosseini 1999: 281), or “seminary.” Known as the “circle for religious learning” (Mir-Hosseini & Tapper 2006: 11).
<i>‘ilm</i>	Knowledge (Mir-Hosseini 1993: 225).
<i>Imam</i>	Translates to “Leader of the Shi’i community.” Used in reference to Ayatollah Khomeini—“one of the Twelve” (Mir-Hosseini 1999: 281). And to the twelve infallible descendents and inheritors of intellect from the Prophet (d. 632) (Pierce 2016: 1).
<i>Ithna ‘Asheri</i>	Shi’ah Twelver School of Law.
<i>jalaseh</i>	Meeting (Osanloo et al.).
<i>jalaseh-ye Qur’an</i>	“Qur’anic meeting,” or “Quranic reading group” (Osanloo et al.).
<i>keeyane khanevadeh</i>	“The jewels of the family.” View of women after 1979 as displaying “family honor and dignity (Voorhoeve & Ebrary 2012: 53). Reference to women as key protectors of family—leading clerics within court to dissuade women from applying for cancellation of marriage.
<i>mahr</i>	“Dower” (Mir-Hosseini 1993: 225). Sum of money or valuable that husband provides or vows to provide for wife during marriage (Mir-Hosseini 1999: 282).
<i>mahriyeh</i>	Bride’s portion (Osanloo 2009: 229).
<i>Majles</i>	The Iranian parliament (Mir-Hosseini et al.).
<i>Majiles-e Shura-ye Melli</i>	Parliament provided by Mozaffaroddin Shah after

	requirements by supporters of the Constitutional movement to enact the 'Fundamental Law' in 1906 (Mir-Hosseini & Tapper 2006: 13).
<i>maraji'</i>	Those who live and teach in seminaries (Mir-Hosseini & Tapper 2006: 11).
<i>marja'</i>	Those recognized for their acquired respect due to lengthy religious schooling. Those able to create legal treatises for their followers (Mir-Hosseini & Tapper 2006: 10).
<i>Marja'iyat</i>	The ultimate religious authority (Mir-Hosseini et al.).
<i>mesl</i>	"Like," or "similar" (Osanloo 2009: 229).
<i>mujtahed</i>	Scholars of Islamic principles who held jurisdiction to provide individual interpretive rulings regarding Islamic law from the sources ( <i>ijtihad</i> ) (Osanloo 2009: 66, 229).
<i>mullah</i>	Member of the religious community (Osanloo 2009: 229).
<i>ojrat al-mesl</i>	Post-divorce maintenance (Osanloo et al.).
<i>qanun</i>	Secular law, not shariah (Mir-Hosseini 1993: 226).
<i>qanun-i himayat-i khanivada</i>	'Family Protection Law' enacted in 1967 (Mir-Hosseini 1993: 25).
<i>qanun-i izdivaj</i>	'Marriage Law' of 1931 (Mir-Hosseini 1993: 23-24).
<i>risaleh</i>	Treatise (Mir-Hosseini & Tapper 2006: 10).
<i>shariah</i> or <i>shari'a</i>	Islamic sacred law and/or guidelines (Osanloo 2009: 230). Law administered by jurists under the government who have mastered Islamic practices as previously performed by the Prophet (d. 632) (Savci 2018c).
<i>Shi'a/Shi'i/Shi'ism</i>	"Shi'a" is the appointed grammatical form of the term. "Shi'i" reflects on the Sunni usage of the term (Pierce 2016: ix). "Shi'a" literally

translates to a “partisan” of one who is not a caliph, who denies loyalty to elected caliphs—part of Sunni belief. Direct “Shi’ism” refers to the adherence to an identifiable Imam and the rebellion that it requires (Pierce 2016: 13). Major Shi’a branches include the Twelvers (*Ithna ‘Ashari*) ‘Seveners’ (*Isma’ilis*) and Zeydis (Mir-Hosseini & Tapper 2006: 10).

*talaq*

Male right to termination of marriage contract (Mir-Hosseini 1993: 227).

*Traditionalist*

Refers to those who utilize a “scripturalist approach” to questions pertaining to religious interpretations. Not to be confused with those who utilize methods within theological and/or philosophical schooling (Pierce 2016: 12).

*Twelvers*

Also known as *Ithna ‘Ashariya*—composed of the largest branch of Shi’a Muslims. They are believers in the “concealment and inaccessibility” of the twelfth Imam, Muhammad al Mahdi. Twelvers of the Shi’a faith believe that the death of the Prophet (d. 632) followed a lineage of twelve Imams—beginning with Ali Ibn Abi Talib, descending from Muhammad, and all seen as representatives of God (Hairi 1977: 57). The list of Imams is as follows—Ali (d. 661), Hasan (d. 669-670), Hussein (d. 680), Zayn al Abedin (d. 712-714), Muhammad al-Baqir (d. 735), Jafar al-Sadiq (d. 765), Musa al-Kadhim (d. 799), Ali al-Ridha (d. 818), Muhammad al-Taqi (d. 835), Ali al-Hadi (d. 868), Hasan al-Askari (d. 873-874), and Muhammad al-Mahdi, who resides in Occultation (*ghayba*) (Pierce 2016: 156-158).

*Twelver Shi’ism*

A specific religiosity implemented within courtroom structures across Iranian governmental systems. The Shi’ah practices that are promoted within the Islamic Republic follow Khomeini’s acceptance of the twelvers - a religiosity within Shi’a faith following the non-election of twelve descending Imams of the Prophet (d. 632). After Muhammad’s first Farewell Pilgrimage, his infallible successors were appointed, including Ali Ibn Abi Talib (d. 661). This began the concept of Twelver Shi’ah Islam (Hairi 1977: 57).

<i>'ulama</i>	Religious community (Osanloo 2009: 230). Actively involved group who partook in political events spanning from the tobacco protest movement of 1891-1892, to the Iranian Revolution of 1979 (Moaddel 1986: 520).
<i>velayat</i>	“Guardian” or “guardianship” (Osanloo et al.).
<i>Velayat-e faqih</i>	Mandate of the jurist (Mir-Hosseini 1999: 282).
<i>White marriage</i>	The cohabitation of couples without formally undergoing legal marital procedure (Moallem 2015: 347).
<i>Zan</i>	Woman (Moallem 2005: 195).

## Appendix C

### Annotated Bibliography

The references (book chapters, peer-reviewed articles, and reviews) are sorted by author in alphabetical order.

#### Book Chapters

Ali, Kecia. "Marriage, Money, and Sex." *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oneworld Pub., 2006.

Ali (2006) introduces the "dower" that is used during the time of marriage—tying financial obligation to husbands (Ali 2006: 4). Dower is important to my work in describing a material source of economic security for women—and the husband's willingness and ability to provide. Dower can be used to explain how the central authority of the Islamic divorce court structure has disregarded changing social realities of marriage under legal and sociocultural norms within Iran's urban spaces. Marriage discourses and traditions surrounding Shi'a Muslim—and other Muslim marriages reconcile with the connection between civil law and religious obligation (Ali 2006: 2). Dower can be unidirectional. The marital practices existing within Pre-Islamic times included paying compensation to the bride's family in order to allow the bride's child be part of the husband's tribe. Money is always allocated to the wife according to Islamic rules. According to Ali (2006), hadith on dower shows that the Prophet pays it to his wife, or the dower ends up with the daughter (Ali 2006: 5).

Mir-Hosseini, Ziba. "Agreeing to Differ: Final Meeting with Payam-e Zan." *Islam and Gender: The Religious Debate in Contemporary Iran*. Princeton University Press, 1999.

Mir-Hosseini (1999), an Iranian born anthropologist describes her own experiences under the Islamic law before and after Khatami's election of 1997—an election unraveling the injustices within the current Iranian civil codes that have branched into Islamic legal actions in the court. Mir-Hosseini's (1999) fieldwork took place in Qom, Iran—site of major seminaries and shrine of Imam Reza's sister, Massoumeh. This chapter elaborates on the complex and often convoluted exchanges and dialogue regarding male interpretations of Islamic jurisprudence (*feqh*) between herself and the *Payam-e Zan* male clerics—Sa'idi and Mortazavi. Islamic jurisprudence (*feqh*) is upheld by Islamic doctrine—and is essentially dependent on changing socioeconomic realities of the time. Based off of Mir-Hosseini's (1999) dialogue with Sa'idi and Mortazavi, the practice of Islamic jurisprudence (*feqh*) is based on understandings of shariah—one that is dependent on time and clerical worldviews (Mir-Hosseini 1999: 181). Mir-Hosseini (1999) attempts to create a bridge between the concrete gender views held by the *Payam-e Zan* clerics, and twentieth-century changes to women's roles within private and public spaces that have challenged Islamic law and jurisprudence (*feqh*).

Moallem, Mino. "The Unintended Consequences of Equality within Difference." *The*

*Brown Journal of World Affairs*, vol. 22, no. 1, 2015, pp. 335–349.

Moallem (2015) notes that Western egalitarian feminist frameworks that study Iranian women's rights function linearly and hypothetically when analyzing their country's political structure, leading to consequences in dichotomizing women as either liberated or suppressed. According to Moallem (2015), imperial scholarship has often framed Iranian women as negotiating their situations under divorce courts as victims of a "patriarchal" regime (Moallem 2015: 336). Moallem (2015) notes the different class backgrounds that are disregarded by feminist critiques on Iranian women's discourses of equality, including the disregard for classes are limited in their access to legal rights within the Iranian court system (Moallem et al.). Western imperial reliances on a "liberal discourses of equality" solidifies a conservative moral framework within academia. Iranian women portrayed within Western scholarship are classified by the West as "passive" in their quest for rights-based discourses under a gender linear regime (Moallem et al.). This leads Iranian women to be homogeneously viewed as "violent subjects," who use means of manipulation, lies, and emotion to receive a desired outcome from the law—while remaining unaffected by socioeconomic, religious, or ethnic statuses (Moallem et al.).

Mohanty, Chandra Talpade. "Under Western Eyes: Feminist Scholarship and Colonial

Discourses." *Feminism without Borders: Decolonizing Theory, Practicing Solidarity*.

Durham; London: Duke UP, 2003. Print.

In "Under Western Eyes" by Mohanty (2003), I bring in her section on "Women and Religious Ideologies." Here, Iranian women under the Shi'i governmental system are characterized by feminist writings' treatment of Islam as an ideology—one separate from the social relations and/or discourses of various societies within ethnographic settings. I elaborate on Mohanty's (2003) requirement to decolonize what I would argue as Imperial feminist scholarship that equates and synonymizes Iranian women to the culture of their society. To Mohanty (2003), there must be an acknowledgement of socioeconomic power relations in any given society. I use her work to examine how the Islamic civil codes are continuously representative of a spiritual yet politicized religiosity after 1979 revolution, one that affects Iranian women communication with and navigation through the divorce system. I use Mohanty's (2003) criticism of the academy as lacking consciousness towards varied socialites to interrogate scholarly homogenization of Iranian women—one that idealizes and sensationalized their nuanced communications with varied levels of the judicial apparatuses through text and film (Mohanty 2003: 28-29).

Osanloo, Arzoo. "Women's Rights as Exhibition at the Brink of War." *The Politics of Women's*

*Rights in Iran*. Princeton University Press, 2009.

Osanloo (2009) analyzes Iranian women's post-revolutionary abidance by the specificities of female marital rights as stated within the Iranian civil codes. My work utilizes Osanloo's (2009) fieldwork within Tehran's Municipal Family Court, and her narration of Gholi Khanoom's experience within the courtroom. A divorce applicant attempting to cancel her

marriage due to her husband's failure to provide maintenance (Osanloo 2009: 104), Gholi utilizes Article 1111 under the Marriage and Family section of the Iranian Civil Code,<sup>49</sup> allowing her to petition the court due to her husband's financial negligence (Osanloo et al.)—a specific example of positive civil law. I elaborate the term positive civil law in my work to explain how the Islamic courtroom structure can be reanalyzed when women convey their rights within realms of family law. Osanloo (2009) analyzes how, when, and through which outlets Iranian women's autonomy is conveyed while questioning how Eurocentric legalities that convey human rights can be transnationally challenged to reconcile with Iranian cultural practices within varying socio-cultural localities (Osanloo 2009: 1) after 1979.

Wadud, Amina. "What's in a Name?" *Inside the Gender Jihad: Women's Reform in Islam*.

Oneworld, 2006.

*Inside the Gender Jihad: Women's Reform in Islam* offers insight into specific humanistic teachings of the Quran that can be utilized into current societal practices (Wadud 2006: 15). Wadud (2006) mentions that injustice that occurs in neglecting to recognize current societal orders is the basis for women's scrutiny in the Muslim world. Wadud (2006) claims that the accumulation of neglect of current societal practices, and theory alone cannot provide an end to gender injustices that occur within male-oriented interpretations of Quranic texts (Wadud et al.). I utilize Wadud's necessitation of women's inclusion within spaces of Quranic interpretations as vital to transforming the gender statuses viewed by court clerics within the post-revolutionary court system. Contemporary definitions by women of the gender roles and/or status within primary religious literature develops a "female inclusive theory" based on authority of interpretation as essential to defining gender roles within Islam (Wadud 2006: 16). Wadud's (2006) "female inclusive theory" is important to my work in finding women's justice and legal reform within the courtroom, as contemporary female interpretations of Islamic jurisprudence (*fiqh*) can shed to light the current politicization of *fiqh* by male reformist scholars within Qom, Iran (Wadud et al.).

#### Peer Reviewed Articles

Abu-Lughod, Lila. "Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others." *American Anthropologist*, vol. 104, no. 3, 2002, pp. 783–790.

Lila Abu-Lughod's (2002) "Do Muslim Women Really Need Saving" examines Western interpretations of women's autonomy in the Middle East—one based on histories of imperialism. The text reviews the means by which we analyze difference and whether there is a language involved in the revolutions and historical politics that come from colonization by the West. I use

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<sup>49</sup> In Mostafa Shahabi's primary translation of "The Civil Code of Iran," Article 1111 states that "In the event of refusal of the husband to pay for her subsistence, the wife may resort to court in which case the court will fix the amount to be paid for subsistence and will adjudicate the husband to pay the same" (Shahabi 2007: 134).

Abu-Lughod's (2002) article to examine how audiences view the idea of freedom pertaining to whether Muslim women "really need saving." The question arises as to whether Western academic elitists are in a position to understand the transnational politics of military invasions between nations of the East and the West, or between political structures within the Orient. Abu-Lughod (2002) questions the Western criticisms of the "culture" of Afghanistan and other countries like Iran, and whether their cultures leads to a globally perceived gendered division. Here, Abu-Lughod (2002) sheds to light the "respecting of differences" of cultures, and whether this can serve as a possible solution (Abu-Lughod 2002: 787).

Aghajanian, Akbar & Thomson, Vaida. "Recent Divorce Trend In Iran." *Journal of Divorce and Remarriage*, Vol. 54, Issue 2, 2013, p112-125.

Aghajanian and Thomson (2013) analyze the increasing divorce rates of the twenty-first century that is retrieved and documented from datas of the Iranian court system. Their article, "Recent Divorce Trend In Iran," illustrates the coalition between the cultural and religious contexts within contemporary Iranian urban societies that communicate with shariah legalities of the court system. Aghajanian and Thomson (2013) analyze traditional family expectations that leads to a decrease in family morality among spouses within the twenty-first century. Iranian couple's gradual shift towards individuality has led to greater trends in divorce within civil courts, marriages at later ages, and greater family planning among spouses. Urban marital practices within Tehran exhibit a shift towards "contemporary" traditions that are synonymous to Western marital practices, i.e. through engaging in friendships with the opposite sex within spousal friend groups. The recent trends in rising divorce rates among contemporary Iranian spouses is a byproduct of Western secular ideology. This adds nuanced social stresses to the traditional role of the jurists, whose goal is to keep spouses together despite social factors at odds with the preservation of marriage.

Mohammad, S., and Ghari S. Fatemi. "Autonomy and Equal Right to Divorce with Specific Reference to Shi'i Fiqh and the Iranian Legal System." *Islam and Christian-Muslim Relations*, no. 3, 2006, p. 281.

The description of Islamic jurisprudence (*fiqh*) is used transnationally within normative systems of moral and legal structures within various Muslim populations (Mohammad & Ghari 2006: 282). The term "fiqh" should not be misinterpreted as a law within modern nation-states like Iran, or as a moral system to implement within settings such as divorce courtrooms (Mohammad et al.). The authors aim to analyze how adaptable and/or applicable fiqh norms are within the Iranian courtroom structure, especially when speaking of matters of divorce. Here, the Shi'ite jurists' views of divorce becomes one of a "unilateral privilege" of the husband based on the applicability of fiqh within varied court cases. Interpretations of Islamic jurisprudence (*fiqh*) by Shi'i clerics attaches a morality to the term fiqh, and an importance to family as the pivotal basis of society (Mohammad et al.). Family law within Iranian courts are a key concept when debating interpretations of fiqh, as the family structure is explained by the government as needing to be "preserved and protected" (Mohammad & Ghari 2006: 283). Here, I create a

religiopolitical intervention by questioning the impact of Islamic jurisprudence (*fiqh*) within courtrooms that leads divorce to be seen as objectionable—an inconvenience to maintaining the family unit.

Najmabadi, A. (2000). “(Un)Veiling Feminism.” *Social Text*, 18(3), 29-45.

I utilize Najmabadi’s (2000) article for my work to explain how Iranian women’s use of power within the courtroom structure is a historical phenomena interlaced with religious, class, and economic status—employing them with greater religiopolitical leverage within the Islamic legal system (Moallem 2015: 335-349). Najmabadi (2000) alludes to feminism’s relations and/or contradictions to Islam are described through its relations with ideals of secularism and modernity. The issue with dialogues between Islam and feminism is the “ahistorical generalizations,” (Najmabadi 2000: 29) where essentialized articulations of the Orient blocks contemporary political questions regarding women’s communication with shariah (Najmabadi et al.). Najmabadi’s (2000) stance of women as “key producers of the Islamic revolution” explains how their roles within civil society take on new definitions, while questioning the concrete jurisdictions of Islamic jurisprudence (*fiqh*) with courts. Emerging female presence within public fields of professional, education, industrial, and political achievements (Najmabadi 2000: 31) has not necessarily led to “organized socio-political movements” post revolution, but “micro-level” realities that require the court to understand spousal needs. The regime’s claim of presenting a religious solution (Najmabadi 2000: 34-35) to societal issues leads divorce applicants to utilize the civil codes to debate and question their roles to jurists.

Osanloo, Arzoo. “Islamico-Civil ‘Rights Talk’: Women, Subjectivity, and Law in Iranian Family Court.” *American Ethnologist*, vol. 33, no. 2, 2006, pp. 191–209.

Osanloo (2006) explains the rights to divorce (*talaq*) and cancellation of marriage between Iranian spouses after 1979. She covers the specific dialogue between a divorce applicant, Gholi Khanoom, and her experience with positive civil law during 1999-2000. The article analyzes Gholi’s socioeconomic position that limited her access to a personal lawyer for trial. Through Gholi Khanoom’s mastering of the Iranian civil codes to gain personal outcomes out of the divorce process, she practices a “rights-based discourse” that had been previously rejected by political rulers during the start of the Islamic Republic (Osanloo 2006: 192-193). “Rights-based discourses,” or a divorce applicants’ reliance on specificities of the Iranian civil codes was popularly equated by jurists as coaligning with Eurocentric ideals of women’s rights, individualism, liberty, and equality of the sexes. As Osanloo (2006) accounts for Iranian women’s individual rights that are influenced by Western women’s rights activism, she asks how women have voiced their demands through “rights-based claims,” despite the rejection by early revolutionary politicians (Osanloo et al.).

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