Human Rights and Shari’a: An Essay on the development and use of Shari’a in Islamic States and its meaning for Women in Iran, a country with a history of criticism from Human Rights groups and the United Nations

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I. Introduction

In a written statement submitted by the Research Institute For Rehabilitation And Improvement For Women’s Life (RIWL)1 to the Economic and Social Council of the United Nations (UN), RIWL stated that a country’s economic growth and gender development exist in an on-going continuum. The more economically developed and stable a country is, the more respected and empowered are the country’s women.2 The RIWL uses the Gender Development Indexes (GDI)3 to conclude that, a country that benefits from long term economic prosperity will see an improvement in women’s rights shortly thereafter.4 Therefore, a country must first be economically stable before women’s empowerment takes effect. In RIWL’s analysis of Iran the GDI’s 2002 report ranked Iran 83 of 147 countries, in the medium human development category, whereas before Iran was ranked in the low human development category. In the last 30 years, Iran’s human rights position, regarding the international community, has tremendously improved via the Iranian constitution’s call for social justice for all citizens regardless of gender, religion, ethnic group, or age.5

For Iran, economic prosperity is not enough to raise its ranking on the GDI’s index. Because the GDI uses a strictly numerical formulaic approach to developing its ranking system, the GDI uses a value system based on western standards and fails to consider values from a Muslim women’s perspective. An Islamic state exists under the shadow of Western standards of society, politics, and religion.

The West’s emphasis on secularization of the legal system confronts many Muslims and Islamic states “with a stark, albeit false, choice” either to accept Western ideology, whose secularism is perceived by Muslims as anti-Islamic, or to blindly adhere to Shari’ a, which the West perceives as archaic and oppressive.6 The concept that most of the West is not able to grasp is that all

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1 RIWL is a non-governmental organization with special consultative statues to the UN. The Secretary-General of the UN circulated the RIWL’s statement “The Right to Development”, dated 10 February 2005, on 4 March 2005.
3 GDI rates countries on the basis of the Human Development Report 2002 of the UN. The index ranks Gender-related development, Life expectancy at birth, Adult literacy rate (age 15 and above), Combined primary, secondary and tertiary gross enrolment ratio, Estimated earned income.
4 Id.
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aspects of a Muslim’s life incorporates Islam, without separation of the political, social, and cultural spheres. In addition, the history of Western colonization and Muslim persecution is still ingrained in the Muslim consciousness, resulting in an automatic rejection of Western thought. In order to rectify this dichotomy, we must first understand what Shari’a is and from where it originates.

"Islam" means submission or surrender to God; the same mission of Judaism and Christianity. In addition, Muslims revere Muhammad as the last prophet in a long line of prophets, such as Abraham, Moses, and Jesus, who make up the body of God's message. Logically, one part would not contradict the rest of the body of monotheistic religions; and ideologically it does not for Islam shares the same values as Judaism and Christianity. However, although Judaism, Christianity, and Islam were founded in the same region with the same moral beliefs, each came to very different people. Each of the three monotheistic religions has a very distinct cultural imprint, played out in the world.

II. History and Development of Islam: Roots of the Islamic Republic of Iran

A. Setting the Stage for Islam and Shari’a

Arabia was once the heart of trade, civilization, and monotheistic religions. Before the time of the Prophet Muhammad, the markets of Arabia served an important religious and economic function. The markets originated as religious festivals, acquiring their commercial dimension over time. The location of a deity or idol determined the location of the markets. Mecca was the home of the Ka’ba, which drew tribes from throughout Arabia making Mecca the nucleus of a complex trade network. Here the nomadic and pastoral tribes and cultures of Arabia merged, for all depended upon trade. Surrounded by only desert, Mecca was an oasis of trade, worship, and cultures.

This mercantile culture was also a patriarchal society, where men ruled and women served. In Arabia, men exclusively held the right to inherit property and women were treated as another

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7 Id. at 56
9 "Jews, Christians and Hanifs (a group of monotheists in pre-Islamic Arabia identified with neither Jews nor Christians) in pagan Arabia [all] used the name Allah for God, and there was thus nothing specifically Muslim in the term.” I. P. Petrushevsky, Islam in Iran, 9 (Hubert Evans, trans., Albany: State University of New York Press 1985). It is even "possible that the words 'Muslim' and 'Islam' were actually borrowed from the [Hanifs]." Id. at 13.
10 See, Wael B. Hallaq, The Evolution of Islamic Law, 13 (Cambridge University Press 2005), [Herein after Hallaq].
11 The Ka’ba is a perfectly square building, built by Abraham and his son Ishmael, not long after Abraham made a covenant with God. Today, the Ka’ba still brings millions of Muslims every year to Saudi Arabia. See, Id. at 15. The Quraysh, the tribal confederation at Mecca, maintained order in the area via designating four months of the year were no violence was permitted.
12 See, Id. 16-7, 21. Mecca was where the Prophet was born and reared, where the Qur’an was revealed. The people with whom the Prophet lived had been exposed to the Christians and Jews of the time, thus the Qur’an was “revealed unto [them] the Book with the truth, confirming whatever Scripture was before it . . . so judge between them by what God had revealed, and do not follow their desires away from the Truth. . . For We have made for each of you [i.e. Muslims, Christians and Jews] a law and a normative way to follow.” Id.

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item to trade. Arabian women were often exploited by their fathers, being sold into marriage to the highest bidder, for his benefit. In addition, men freely married and divorced as many wives as they wished. Ex-wives were left with no means to support themselves and were reduced to beg their fathers’ and brothers’ support. By the time Muhammad was born, Arabia had a very distinctive culture of tribal rivalry, commercialism, and male superiority.

B. The Change Brought by Islam

In the early years of Islam, Arabia had a culturally diverse population. The Islamic community was united through their religion via mosques where they gathered every Friday for prayers and sermons. Here new religious ideas were propagated, but it was also the forum to resolve and arbitrate conflicts among the people. Leaders, although lacking formal legal education, did have a "reasonable knowledge of the legal stipulations of the Quran [and a] rudimentary [understanding of the] socio-religious values." Leaders relied upon their own interpretations and knowledge of the new religion to lead the people, entwining traces of pre-Islamic Arabian laws and customs into the developing legal system.

By the second and third century, Islam established a revolutionary regulatory system, founded upon a form of monotheism in a world of polytheistic tribes and Jews. Juxtaposed to the emerging Islamic community, or ulma, were Jewish tribes with their own religious law, similar to Shari’a; however, the Jews did not have political control. Nor did the Christians, who took root only 600 years before Muhammad’s death. Since Islam developed at such a distinct time where many ideas and cultures infiltrated the land of its origin via trade and commerce, Islam from the outset was not distinct from the political world. In fact, Muhammad was not only the religious leader, but also the head of the state, the judge, the commander of the military, the head of a family, a guide, and mentor of the people.

Many pre-Islamic laws were completely revitalized. No longer did the male retain all legal power in Arabia, for "Islam granted wives and daughters substantial rights." The Quran imposed the duty to provide women with financial security and allotted a daughter a share of inheritance equal to one-half of the share of her brother; which was historically “unprecedented in Arabia.” In addition, the Islamic law established financial independence of wives so that "all property acquired by the woman during marriage, or property that she brought into the marriage (including her dowry), remained exclusively hers, and the husband could not claim as much as a hundredth part of it.” Before Islam, a husband would receive a divorce upon his declaration, but the Quran postponed the dissolution of the marriage until three menstrual cycles, and if the wife was pregnant, until the birth of the child. The husband was still obligated to provide

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14 Hallaq at 38.
15 Id. at 33.
16 Id. at 195.
18 Hallaq at 22-3.
19 Id. at 23.
20 Id. and The Meaning Of The Glorious Qur’an, 4:19 ff (Muhammed Marmaduke Pickthall, trans., Idara Isha’at-e-Diniyat (P) Ltd. 1998).
financial and domicile support for the wife until the end of the waiting period, in the hope of reconciliation. In addition, “a divorced woman with a child was to suckle it” for two years, and the father was required to provide for the mother and child during this time. Should the divorced husband want to remarry his former wife, under Shari’a, the former wife must marry and divorce another man before the former wife and husband may remarry. Such a harsh provision is designed to ensure a couple think hard before rushing to a divorce.

It was impossible to wholly reject the legal traditions and custom of pre-Islamic Arabia. Seventh century Arabia was an extremely diverse society that was finally united through a common religion and leader. For a new religion and political system to flourish, it cannot blindly absorb all traces of culture and history. As the religious and political leader, Muhammad instilled values and laws into this diverse community. "Full religious tolerance was the rule” and all other religions, even pagans, were free to practice their faith. During the early development of Islam, tribes were free to incorporate their traditions and legal principles, so long as these followed the principles of God's law.

Muhammad did not call for a socialist society, but one in which equality was an essential ideal. Distinctly pre-Islamic practices, such as prayer and fasting, customary laws of barter and exchange for agricultural products, contract law, and penal laws, survived the new legal and religious system of Islam. Therefore, as Shari’a developed, there was great sensitivity to the traditions of the past. Jurists merged the new laws of the Qur’an with whatever traditions the Prophet did not repeal. As a result the pre-Islamic Arabia's tribal affiliations of male blood ties was replaced with unity of common faith, while also not completely rejecting the traditions of Arabia.

C. Islamic Law and Shari’a

Shari’a is the “divinely ordained way of life,” which prescribes the legal and ethical paradigm for Muslims. Shari’a began with Muslim “scholars and jurists of the second and third centuries of Islam,” (eighth to tenth century C.E). Shari’a is more than a mere system of regulations. It is a normative structure of culture within the Islamic Community; therefore, it is not binding until it is effectuated by state action. Muslims in non-Islamic states are still bound by Shari’a, but via their own voluntary compliance out of religious commitment. Shari’a is derived from four main sources: the Qur’an (divinely revealed text), the Sunnah (the way of the Prophet), the giyas (juristic reasoning by analogy), and ijma (consensus of Muslim scholars).

21 Hallaq at 23.
22 Id.
23 I. P. Petrushevsky, Islam in Iran, 17 (Hubert Evans, trans., Albany: State University of New York Press 1985), [Herein after Petrushevsky].
24 Hallaq at 24.
25 Petrushevsky at 17.
26 Hallaq at 24-5.
27 Id. at 25.
28 An-Na’im at 89.
29 Id. at 53, see also, Isha Khan, Islamic Human Rights: Islamic Law and International Human Rights Standard, 76 (1999), An-Na’im at 1.
30 An-Na’im at 3.
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Muslims believe the Qur'an is the "final and comprehensive revelation which contains all the guidance Muslims need in the public and private, individual, and communal, spheres." The Qur'an, meaning ‘to recite,’ is “a collection of precepts, homilies and discourses” sent down to Muhammad by God through the Angel Gabriel. The Qur'an’s is not a comprehensive code of law, but a collection of lessons and poetry, as are many other holy books. Only 80 of the Qur’an’s more than 6,200 verses denote legal topics, the other 6,120 discuss faith and morality. In addition, these 80 legal verses are not clear; leaving many gaps and confusion regarding whether these normative ideas are obligatory or permissive. In fact, “the Qur'an describes itself as huda, or guidance, not as a code of law”; therefore, leading to more ambiguity in the construction of Shari’a.

The Qur'an was not one coherent book when revealed, but a collection of Surahs. Some were communicated orally, others written down. In addition, the Surahs were revealed at different times between 610-632 C.E., each having a very distinct place within the history of early Islam and Arabia. For example, Surah IV was revealed to Muhammad after a great number of males were killed after a few battles. Because of these deaths, there were many widows and orphans. Surah IV discusses the proper care of widows and orphans, for this was what the Muslims at the time of the revelations needed to know.

After the death of the prophet, the new Islamic society needed a religious and political leader, as well as a legal advisor. At that time, Muslims looked to the sources they had for guidance in continuing to establish the infant religious and political community. The Qur’an, as the word of God given to Muhammad, was first in prestige and sanctity, followed by the Prophet’s hadiths, or the formal narratives of the Prophet and some of his companions. These two bases were the material sources of law, but the latter hadiths were not always clear since the number of hadiths exceed a half million.

Early Muslims looked to the Qur'an, the Prophet, and the Prophet's companions for guidance. Since the Qur’an’s meaning is not easily understood, early Muslims began to follow the practices

31 Dichadomy at 52.
32 Petruschevsky at 82. Gabriel is the same Angel that came to Mary to tell her she was with child, Jesus. Muhammad stated that the Qur'an did not differ from the Bible or the Torah "except in language and form." Id. Consequently, “Islam did not look like a new religion at all.” Id.
33 David Pearl & Werner Menski, Muslim Family Law, 3 (Sweet & Maxwell, 3rd ed. 1998).
34 Id.
35 See, id. The Qur’an has been described as two documents. One deals with social and practical issues regarding the contemporary socio-political situation; the other focuses on the universal spirituality, morality and philosophy of Islam. Karmi at 80-1.
36 In 651 A.D. Zayd B. Thabit was entrusted with the task of piecing together the Qur'an into one book. Petruschevsky at 87.
37 See, Petruschevsky at 91.
38 See, Pearl at 3.
39 Id. at 119.
40 Id. at 104, 106. The issue of how one should hold his or her hand during prayer is told differently by two different hadiths of the Prophet, hence the different manners adopted by the Sunni and Shiite sects. The Qur'an only tells Muslims to pray, not the manner.
41 Dichotomy at 58.
of the Prophet as well as his Companions and the lives of previous prophets, from Abraham to Jesus. Over time, these stories, or hadiths, became so great in number that well studied Muslims, or jurists, were needed to decipher the Qur’an and history, to grade the hadiths and create universal regulations for Islam. The jurists of the second and third centuries of Islam established Islamic ideology as a direct response to the immediate needs of Muslims in that time. The traditions established are founded upon human understanding of the sources of Shari’a, without regard to developing a comprehensive legal system. Even today, Iranian judges are greatly dependent upon the established interpretations of ancient jurists for their rulings.

Different groups of Muslims throughout the Near East embraced different hadiths into their legal tradition. Some hadiths fit better into the area’s current traditions, saving cultures from not completely being lost. In addition, Muslims began to migrate to different regions, carrying with them the Prophetic legacy; interpreted and applied differently in each geographic area.

Hadiths were applied on an individual basis. If one fit naturally, it was tentatively accepted into the system of law, unless a reason to the contrary was shown in another hadith or in the Qur’an. Later, as the Islamic "schools became institutionalized, the normative [hadiths] was stressed more to the exclusion of the practice of law."

D. Shari’a and the Islamic State

It is important to understand that "Islamic law did not emerge out of the machinery of a body-politic, but rather arose as a private enterprise initiated and developed by pious men who embarked on the study and elaboration of law as a religious activity." None could determine the exact law, for it is God’s law; therefore, doctrinal schools developed to compensate for the lack of governmental legal authority. Jurists, not the body politic, became the voices of reason. It was then in the late nineteenth and early twentieth centuries that Islamic law and religious legal institutions were dismantled through industrialization. Accordingly, the entire "class of legal professionals, who mediated another relationship between the masses and what has now become the all-powerful nation-state of modernity, was wiped out." Soon the body-politic replaced jurists as the primary law makers, leaving Shari’a to develop in the context of

42 Hallaq at196.
43 Dichotomy at 58.
44 Id.
45 Khan at 77. Jurists are the Islamic scholars who have studied the Qur’an and the Hadiths in depth.
46 Hallaq at 107.
47 Pearl at 12-3. "[Caliphs] were content to solve problems as and when they arose." Pearl at 7. Slowly gaps were filled until the rise of the Umayyad dynasty in A.D. 661. Id. As Islam expanded geographically, it was greatly influenced by the local culture. Thus the legal concepts of the Byzantine and Persian philosophy inevitably blended with prior Islamic thought.
48 Id. at 10
49 Hallaq at 204.
50 Id.
51 Id.
52 Id. at 205-6.
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politics instead of faith. Consequently, there was a stagnation in the development of God’s law, while the Islamic State’s supremacy increased.

During the Ottoman Empire, Shari'a was the law of religion and the state. Each was independent of the other and at times in contradiction. Shari’a is not a comprehensive and sustainable legal system, but mainly regulates family law. Although Shari’a principles were accessible to all judges and state officials, its accessibility exposed its incompatibility in the modern context. Shari’a’s “major theoretical problems and differences within and between different schools and traditions of Islamic societies," made it impossible for it to influence more than Family Law. In addition, the establishment of the European model of nation-states for Islamic societies has radically transformed the social structures of Islamic states. Overall, Islamic states chose to adopt Western governmental ideology rather than operate in total economic and political isolation.

In an Islamic state, the law is rooted in one of the many schools of Islamic jurisprudence. Thus, the Islamic Law adopted by one state will not necessarily coincide with Islamic Law in another state that has looked to different schools of Islamic thought. Islamic states have been guided by Fatwa's, legal opinions having developed and adapted Shari’a thought, to create their governmental structure and legal system. These schools developed 150 to 250 years after the Prophet's death. However, as states developed and global interdependency has become much more of a concrete reality, states are no longer able to survive in isolation. As a result, Islamic states have mostly only maintained Shari’a in the area of family law.

E. The Iranian Revolution

Since the 1930's, capitalism greatly affected Iran. In 1925, the United Kingdom and United States helped Reza Shah take power during the White Revolution, followed by his son, “the Shah” who fell in 1979. Once Reza Shah was in power, Iran was secularized and capitalism was established. In addition, women were forced out of their traditional veil and an extravagant campaign erupted to convince Iranian women to wear modern Western dress. Overnight, Iran became modernized, marginalizing the traditions of Islam. Capitalism squashed the traditional markets, forcing women into the labor markets to sustain their families.

53 An-Na'im at 12.
54 Id. at 13. Family law for non-Muslims in the Ottoman Empire was regulated by a person's respective religious law.
55 Id. at 14-5.
56 Id. at 15.
57 Id. at 16.
58 Fatwa is an Islamic legal pronouncement issued by a religious law on a specific issue.
59 Id. at 7
60 Id. at 4.
61 Id. at 2.
62 Shadow at 7.
63 Id. at 31.
64 Id. at 34.
65 Dabashi at 220-1.
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In Iran, women employed in social services increased almost 500% from 54,000 in 1966 to 224,000 in 1976.66 Peasant women were forced into labor on family plots because the men migrated to the urban centers “in search of a construction or industrial job” to subsidize the ever increasing cost of living.67 In addition, due to the global market economy, female carpet weavers were suddenly producing a greater number of Iranian carpets.68 On the other hand, wealthy women were also becoming more educated as reflected by the literacy rate increasing from 30% in 1966 to 65% in 1976.69 However, this created a greater socio-economic divide between Iranian women.

Some women quickly integrated into the modern centralized state of the Shah, but the Shah's policies were harmful to her psyche due to the vast fundamental changes occurring in Iranian society.70 As a reaction, in the 1960’s and 70’s, some women began to wear headscarves to symbolize their desire for traditional Islamic values.71 Throughout the revolution of the 1960s and 70s, the majority of Iranian women wore the veil as a symbol of solidarity, uniting against the Shah who was a symbol of oppression and exploitation.72 To women, the veil meant equality among themselves, for during the Shah’s regime only bourgeois women could afford the Western dress and way of life.73 The secularization of Iran and focus on capitalism created a system of class segregation, which is in direct conflict with the heart of Islam, where all are equal before God.

The veil was a means of backlash, as well as a source of identity for Muslim woman, symbolizing their emancipation from the political situation in Iran under the Shah.74 It was a revolt against the new ideas of ‘consumerism’, which explicitly go against Islamic values of not falling victim to worldly possessions.

Today, the Iranian Constitution refers to the family as the fundamental element of society, where the woman is the custodian of this greatly revered unit.75 Iranian women regard the Iranian Constitution as a means of freedom from the service of consumerism and exploitation, as they were under the Shah.76

### III. Human Rights

#### A. Human Rights and the Western Influence

66 Shadow at 8.
67 Id. at 7.
68 Id.
69 Id. at 8.
70 Id. at 9.
71 Id. at 11.
72 The massive demonstration of March 1979 included urban women from all social backgrounds, all veiled and marching together as a cohesive unit against the Shah. Id. at 5, 35.
73 Keddie at 256.
74 Id. at 13.
75 Id. at 93.
76 Id.
In the wake of World War II, on December 10, 1948 the UN adopted the Universal Declarations of Human Rights (UDHR), which "constituted the most sophisticated statement to cover comprehensively the relevant areas of human rights."77 The former UN Secretary-General, Perez de Cuellar, explained: "the common standard of achievement embodied in the Universal Declaration is the birthright of all peoples[, and that] it is [the UN’s] responsibility to make it a living, universal reality."78 As a result, the UDHR creates a universal standard granting individuals a specific set of rights. However, the vast cultural and political diversity of the world makes it virtually impossible to create a single cohesive human rights regime. The UDHR’s grant of rights to individuals undermines some cultural values of community.79 Therefore, to have a productive human rights regime it is essential to understand the people and cultures to whom this standard is applied.

The cultural identity of different people, united by geography, ethnicity, nationalities, and religion, has developed since the beginning of civilization. Cultural distinctions have entrenched the divide between people of the world. Consequently, any external influence may threaten an individual’s sense of self or a community’s sense of identity. The result is a "clash of civilizations,” where one culture becomes combative towards the other in an attempt to preserve its own.80 This is apparent in today’s ever-growing globalistic form, where there appears no limit to Western influence or capitalism’s reach.81 In addition, the very notion of a ‘universal’ body of human rights is a Western idea.82 Naturally, non-Westerners perceive Western influence as a direct threat to their cultural identity and the foundation of their political and social system.83 The “historical consciousness” of non-Western nations are jeopardized by the onslaught of "Western" cultural hegemony.84


79 Since the majority of "global political and security issues are effectively settled by a directorate of the United States, Britain, and France; world economic issues by a directorate of the United States, Germany, and Japan . . . Decisions made at the U.N. Security Council or in the International Monetary Fund [reflect] the interests of the West” and not that of the “desires of the [entire] world community.” Graham E. Fuller, The Future of Political Islam (Council on Foreign Relations, Inc. 2002).

80 Samuel P. Huntington, The Clash of Civilizations and the Remaking of World Order, 22 (Touchstone 1997), n.3.

81 In Mecca, right outside the Ka’ba, stand two ‘golden arches.’ Men and women take a break from their 10 days of prayer during the pilgrimage for a quick Halal burger and fries. During this deeply religious obligatory pilgrimage, the McDonalds of Mecca is flooded with Muslims from every corner of the world, united by one of the many symbols of the West, in the most sacred cities of the world. There are “230 [McDonalds] restaurants conveniently located throughout the Middle East.” www.mcdonaldsarabia .com

82 Id.

83 Id. In addition, anti-Western feeling is compounded by the Israeli-Palestinian conflict.

84 Al-e Ahmad was an ex-communist Iranian intellectual, whose writings purporting Islam as the solution to Iran's problems, created a strong foundation for Khomeini and the revolution. Hamid Dabashi, Theology of Discontent: The Ideological Foundation of the Islamic Revolution in Iran, 83 (New York: New York University Press 1993); see © Alison Swicker Gokal

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In Iran, the loss of a collective identity coincided with the state’s substantial, but artificial, exposure to “manners and matters 'Western'.”\textsuperscript{85} Due to this pressure, the political and intellectual elite of post-revolutionary Iran felt wronged at the hands of the West:

"We have now altogether forgotten the sense of competition. It has been substituted by the sense of helplessness, the sense of servitude. We no longer see ourselves as deserving any right . . . Nay, even if we seek to justify an aspect of our this- or other-worldly affairs we evaluate them on [Westerners’] principles, following the injunction of their advisers and counselors. We study like them; take census like them; do research like them. But even that is all right, because science has assumed a kind of universal methodology . . . But the interesting thing is that we get married like the Westerners do; imitate liberalism like they do; evaluate the world, dress, and write like they do. As if our own principles have all been superseded . . . Yes, now from those two old rivals finally one has ended up cleaning after the circus; the other one runs the show. And what a show! A pornographic scandal, stupefying, stultifying obscenity. So that they can plunder the oil."\textsuperscript{86}

To preserve the remnants of the historical and cultural consciousness of Iran, the state could operate in complete isolation, replace its own culture with the West’s, or ‘balance’ the values of both civilizations so not to sacrifice either’s integrity. The latter is obviously more difficult and takes a great deal of time and understanding; therefore, Iran chose the first and is now beginning to move towards the latter.

B. Iran and Western History over the past 60 years

In 1921, Iran was suddenly transformed by the introduction of an oil economy, followed by the induction of Western culture in a capitalistic form.\textsuperscript{87} The ethos of Muslim Iran was confronted with the realities of globalism. Eventually the U.S. helped overthrow Ayatollah Mosaddeq in 1953 during the “white revolution,” replacing him with what Khomeini called “the evil and illegitimate shah, a puppet of the United States and Israel.”\textsuperscript{88} Khomeini’s interpretation, although biased, is accurate to an extent for the Shah so feared the West’s rejection that he denied the voice of the people of Iran and isolated the Shi’a clergy.\textsuperscript{89} Additionally, U.S. influence and heavy arms sales assisted in establishing a government "that had little incentive to democratize or to heed the interests of its people."\textsuperscript{90}

\textsuperscript{86} Id. at 84, Al-e Ahmad at 53–54.
\textsuperscript{88} Id. at 14-5, 24.
\textsuperscript{89} Id. at 25-6.
\textsuperscript{90} Id. at 28-9.

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Between the fall of Mosaddeq and rise of Khomeini, the religious and political world operated in separate spheres. Reza Shah and Mohammad Reza ("the Shah") "did not break the hierarchical structure or the clergy's tax-collecting powers,"91 because the Shah had an immense amount of "oil money and U.S. financial and military support."92 The Iranian clergy’s relative independence allowed them to gain power that eventually ruined the Shah’s political authority.93 To the Muslim world, the Iranian revolution in 1979 was a: 1) blow to U.S. imperialism, 2) rejection of a US subservient autocrat, 3) victory for Muslim ideologies, rejecting mere imitation of the West, 4) victory for Islam, and 5) victory for non-Western countries.94

Muslims around the world still greatly value the political freedoms of the West and desire democracy, but not at the expense of their religious and cultural identity. This is the fundamental divide surrounding the creation of a universal ethos of human rights. To the Islamic state, such as Iran, complete and blind adherence to the international community equates to the rejection of Islam for the benefits of the West. At the same time, Muslims greatly value equality among sexes, religions, and races.

C. Western and Islamic Human Rights

In 1985, Iran was placed on the UN Commission on Human Rights (UNCHR)’s watch list, until 2002, to assist Iran in bettering its adherence to the UDHR. Ironically, Iran was one of the sixteen countries that drafted the UDHR,95 but since the 1979 revolution, she has had a conflicting relationship with the Western world. This clash is “based on fundamental discrepancies between Islamic law and the universally accepted standards of our international human rights instruments.”96

91 Id. at 114-5.
92 Id. at 114-5.
93 Id. at 15, 117.
94 Id. at 24.
95 Id. at 119. To the Islamic world, Iran is symbolic of Islam’s power against the individualistic and consumerism of Western culture. In effect, as Graham Fuller, former vice-Chairman of the National Intelligence Council at the CIA, contends, Western vitiation of Islamic states has created obstacles to any liberal evolution in Islam. The West’s immense pressure on Islamic communities has catalyzed the creation of Muslim radical foreign legions, responsible for great humanitarian violations throughout the world. In addition, the struggle for oil and economic stability is the source of many Islamic state leaders fearing the wrath of Washington and London. While the Muslim world asserts they are besieged by the West, the West feels threatened by Islam. Today’s ‘War on Terrorism’ is merely a materialization of the history between Islamic states and the West, where both sense they are the direct and indirect targets of the other’s aggression. See, Fuller.
96 The UDHR was drafted by the UN Commission on Human Rights in 1947 and 1948. The states participation in this commission were Australia, Belgium, Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippines, Russia, Ukraine, United Kingdom, United States of America, and Yugoslavia.
97 Khan at 75. Reference to Islamic states as backwards and the negative references to ‘Islamism’ creates a greater divide between Muslims and the West. The term ‘Islamophobia’ was coined in the 1990’s by sociologists and cultural analysts to describe the clash between Western and Islamic ideals. Islamophobia is the irrational fear or prejudice against Muslims and Islam manifested in the rejection and alienation of Muslims form society and the West.
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The UN’s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly in 1979, the same year of the Iranian Revolution. CEDAW sets the international definition of discrimination, as well as outlines national agendas to eliminate inequity against women. Under CEDAW, discrimination against women means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

In sum, CEDAW calls for the equality of women as individuals within a country’s legal system. From a Western perspective, where democracy and individualism are the pillars of all Western states, CEDAW’s call for the equality of both sexes, in theory, can hold no opposition. The idea of equality of all individuals within a Western state is the very foundation of the ideology of the Western world. In contrast, the Islamic world is not founded upon individualism, but upon the idea of community, the ulma, where God is the first priority, followed by family. Under Shari’a, true Islam cannot rally around the individual, for the individual is a mere spec. Instead, individuals make up the community, which is of the greatest importance.

At the center of this cultural debate is the treatment of women. While the Islamic world considers itself a champion of human rights in all areas, Western countries suggest that traditional Islamic law disregards the universal values of women’s human rights. It is undisputed that Islam regards men and women equal in the essence of human dignity, in their accountability for personal actions, and in moral, religious, and property matters. However, the political, governmental, and familial culture of Iranian women is distinct from the cultural lives of Western women.

Unlike the West, Islam reveres the family more than the individual and the Shari’a takes great care to preserve justice, freedom, and equality; not because of ideals of universal truths or natural law, but as prescribed by God through human interpretation of the Qur’an. Under Shari’a, all Muslims, both male and female, are equal under God; it is only a Muslim’s piety that elevates one above another, for “all humans ultimately spring from a single source.” Equality of the sexes is a focal point in international human rights law; however, females do not universally accept the same ideals. Iranian feminists reject Western feminists as role models and "oppose . . .

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97 Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1)

98 Id. at 78.


100 Kamali, at 61. In Islam, every Muslim stands on equal level and the Islamic state has the duty “to protect the life, property and honour of every citizen, irrespective of his caste, creed, colour, religion or social status. . [and] to protect the freedom and individual liberty of every citizen so long as there is no valid reason to curtail it.” For, as "the Holy Prophet (m.p.u.h) said, 'The government is the guardian of those who have no guardian'." The Book on Government (Kitab Al-Imara) Translation of Sahih Muslim, Book 20

101 Mai Yamani, Feminism & Islam: Legal and Literary Perspectives, 91, 22 (New York University Press, 1996) [Herein after Yamani].

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. Western values and lifestyles . . . [instead,] Muslim women [look to] their sisters in Islam," as models of Iranian feminist values.102

For example, in September 1995, Beijing held the fourth World Conference on Women to reaffirm the world’s commitment to equal rights for men and women and to promote the advancement of women.103 Although Iran signed the Beijing Declaration and Platform for Actions104, she made a reservation105. The representatives of the Islamic Republic of Iran found that “the Platform for Action falls short in recognizing [the family unit’s] contributions and the importance of its stability and integrity.”106 In light of this, Iran clarified that their interpretation of paragraph 96 on sexual equality between men and women, was to regard only marital relationships, so as not to promote extramarital sexual activity. Again, Iran clarified that she interprets any use of the term “couples and individuals” to only mean marriage. Iran’s reservation is careful to ensure that its signing of the Beijing Declaration and Platform for Action would not undermine the Islamic reverence of the family and the sanctity of women.107

D. Human Rights, the Qur’an, and Shari’a

1. Historical Significance

Islam was a revolutionary step forward for women from the pre-Islamic paternalistic society where women were the property of their fathers and husbands. Although there were several female goddesses at the time, the vast majority of the over 200 gods were male.108 As stated in the Qur’an, before the time of Islam, female infants were often put to death:

when news is brought to one of them of a female child, his face darkens and he is filled with inward grief. With shame does he hid himself from his people because of the bad news he has had. Shall he retain it in contempt or bury it in the dust? Ah, what an evil choice they decide on.109

In addition, women were sold into marriage and a tribe's honor was linked to a woman's chastity. Men had the right of unrestricted polygamy, whereas women had no divorce or inheritance rights.110 At the time, most non-Christian societies permitted polygamy and it was customary for

102 Id. at 23, 24.
104 The Beijing Conference was the fourth international conference on Women’s rights to reaffirm the fundamental principle set forth in the Vienna Declaration and Programme of Action which calls for universal human rights. The Platform for Action sought to promote and protect the fundamental freedoms of all women.
105 A reservation is a signing country’s statement of exception in the document which they signed
106 35 I.L.M. 401, 477.
107 Id.
110 Karmi at 76.
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women in the Middle East, especially wealthier women, to be veiled and secluded.\textsuperscript{111} Islam introduced "legal protection for women's property and inheritance . . . especially among the poorer and rural classes."\textsuperscript{112} It also stressed the importance of chastity and fidelity in a time where little of this existed.

2. Women and Human Rights in the Qur’an and Shari’a

At face value, the Quranic verses appear to subjugate women, but the Qur’an’s regulations on daily life must be read in its historical context. The verses were revealed at very culturally and historically significant times and the verses are meant to teach different lessons throughout all of human existence.\textsuperscript{113} The Quran’s verses appear to allow gradual change. For example “at the time when women had no inheritance rights, the Qur'an entitled them to half the share of a man," but the current belief is that the Qur’an intended the subsequent equality of women.\textsuperscript{114} In addition, the financial onus was on men to care for their families, therefore, granting them a larger share of inheritance was to assist the men in the care of their mothers, sisters, wives, and children.\textsuperscript{115} At this time, the majority of women did not have the means to earn money on their own. Consequently, the Qur’an appears to grant great reverence to women and the family unity. A woman was not only guaranteed economic care by the males in their family, but through the new inheritance law, she was granted her own economic independence.

Furthermore, the Shari’a grants women "a special rank in society which is not less than a man's if not greater."\textsuperscript{116} Women have the right to vote, be elected, control their finances, choose their profession, and come equally into marriage.\textsuperscript{117} The idea of absolute equality between men and women is believed to force women "to discard their primary responsibilities to their families and cast off their children . . . to grow up into irresponsible and corrupt people."\textsuperscript{118} Iran points to the numerous social problems that exist in the Western world and reasons that if society was

\textsuperscript{111} Keddie at 250.
\textsuperscript{112} Id.
\textsuperscript{113} Islam forbids the mistreatment of a wife and an abusive husband is subject to punishment in Iran. Imam Khomeini, Sahifa-yi Nur, 254 (Vol. 11, 1980). In fact, “beating a wife has no religious legitimacy and is a matter that the legal system must deal with.” This is a point of great contention since Sura Nisa, verse 34 states that a man has power over a disobedient wife. But “disobedient” may have one of three meanings: 1) those women who needed to be reasoned with, 2) those women who need to be caressed, and 3) those women that need to be left alone. Mir-Hosseini at 314. When the words are taken out of context, the truth behind Islam is lost.
\textsuperscript{114} Id. at 75, 311.
\textsuperscript{115} Karmi at 76.
\textsuperscript{116} Azar Tabari & Nahid Yeganeh, In the Shadow of Islam: The Women's Movement in Iran, 78 (Zed Press 1982) [Herein after Shadow].
\textsuperscript{117} In regards to divorce, although a female by default does not have the same rights as a husband she is legally allowed to retain those rights in the marital contract. Nimr at 96. At the divorce, a woman is entitled to domestic wages for any work done during the marriage. Mir-Housseini at 292, 296. Polygamy is allowed under Islamic law, but it is heavily regulated by the Islamic state to ensure all wives are equally treated. Shadow at 48. The practice is rooted in the surplus of women in early Islamic society from the frequent wars. Karmi at 75-6. Since marriage is a natural right for women in Islam, polygamy is justified in granting women the option of marriage. A current wife may bar her husband from the option in the marriage contract, and if not, no man can marry another without the consent of his wife. In addition, the male is responsible for the upkeep of his wife and family and the state will only permit him to marry, up to four wives, if all are treated equally. Shadow at 45.
\textsuperscript{118} Id. at 80.
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regulated by Shari’a, such things would not occur. As a result, the Shari’a’s ban on gambling, drinking, premarital and extramarital sex, and drugs for all Muslims is for the benefit of society, restricting the mechanisms of corruption.119

The Qur’an fundamentally holds human rights at the core of Shari’a, for God “created [humans] and made him of two kinds, the male and the female.”120 The divine grace of man and women’s creation does not discriminate between the two, for:

"Every soul is pledged for what he [or she] has done.” (Qur’an, 52:21)  
"Never will [God] suffer the work of any worker among you to be lost, whether male or female, the one of you being from the other.’ (3:195)  
"Whoever does good, whether male or female, and is a believer, We shall certainly make them live a good life, and We shall certainly give them their reward for the best of what they have done.” (16:97)  
"Surely those who submit [to God], men and women, those who believe, men and women, those who obey, men and women, those who are truthful, men and women, those who are patient, men and women, those who are charitable, men and women, those who fast, men and women, those who guard their modesty, and those who remember their Creator, men and women- God has prepared for them forgiveness and great reward.” (33:35)  

The divine book of Islam ranks men and woman equally in who they are, but prescribes slightly different roles for each.121 However, the most cherished human values are not gender specific. Gender only becomes a differentiating factor to effecting the development of the Muslim community. Once Shari’a is understood in its historical and social context, we can begin to understand God’s law, instead of human interpretation of God’s law, which carries a great deal of historical and cultural baggage. Therefore, any proposed violation of UDHR by the Qur’an is from a lack of understanding and in fact, the Qur’an may serve as an ideal upon which UDHR could rely.

The Qur’an has as much meaning and value today as it did in Muhammad’s time; however, our understanding of the words and language must be understood in context of today’s society. As mentioned in Section II, only eighty of the 6,200 Quranic verses refer to legal topics, and even in those are incomplete to formulate applicable law.122 Therefore, any intimation in the Qur’an of men’s superiority to women, “is not about the natural proficiency of one and the deficiency of another, but is only on account of the responsibli[es]” of the sexes to procure a moral, just, and balanced society.123

The Qur’an states "men are the maintainers of women because God has made some of them excel [over] others, and because of what they spend of their wealth.”124 In effect, this verse told

120 Qur’an at 75:37-39.  
121 See, Kamali at 63.  
122 Pearl at 3.  
123 Kamali at 66.  
124 Qur’an at 4:34.  
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men of early Islam that they were to care and support their wives, mothers, and daughters.125 During the development of Shari’a, the societal structure had women in charge of the family and men’s duty to support it. It was not until the Industrial Revolution of the late nineteenth and early twentieth century that women’s role outside of the home was realized. By the tenth century the Shari’a’s legal theory, as well as the doctrinal schools, were well formed.126 By the thirteenth century, there was little need for Shari’a to continue its development.127

During the development of Shari’a, women knew little about the market place, for it was extraordinarily rare for any woman in the ‘developed world’ to work in the business field. Although Muhammad’s first wife, Khadija, was a good businesswoman, she was the exception to the rule. The Qur’an states that “when you enter into transactions involving a debt . . . bring witnesses from among your men. Should there not be two men, then a man and two women . . . if the one of the two errs, the one may remind the other.”128 Today, this verse is used by many Western feminists to exemplify the clear sexism of the Qur’an and, therefore, Shari’a. However, this verse is exclusively concerning debts, which required clear writing. Women were not often requested as witness due to the high rate of illiteracy and that women were rarely involved in commercial transactions.129 The verse does not preclude a woman’s participation, but given a woman’s little knowledge of and interaction with debts, it would make sense for two people who know little of the creation of a contract to replace one, familiar with the process.130

The Shari’a permits the testimony of one woman, and credits it as full proof, in matters in which women's familiarity and understanding is considered superior to that of men--such as family matters, pregnancy, childbirth and so on.131

The Quran does not impose a prohibition on female testimony, and since today the female literacy rate and understanding of business and commerce is often equal to that of men, female testimony is equivalent under Shari’a, if the Qur’an is read within its historical context.132 The same is true with women in the role of judges. In earlier times women were limited to the judicial role in matters regarding things with which they were familiar, for "God commands you to hand over the trusts to whom they belong."133 The implication is that the Qur’an rejects notions of inferiority, but values knowledge and familiarity in its selection of judges so that any one taking the important position of judge or witnessed is qualified and knowledgable on the subject matter.134

IV. Women in Iran

125 Kamali at 65-6.
126 Hallaq at 122.
127 Id. at 121.
128 Qur’an at 2:282, See also, Kamali at 73.
129 Id. at 67.
130 Id. at 68.
131 Id.
132 Id. at 69.
133 Qur’an, 4:58
134 See, Kamali at 71.
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"Not superior to man, she is certainly no less than him."

A. Rhetoric and Social Thought of Pre-Revolutionary Iran

The first European conquests into the Muslim world avoided Iranian centers due to Iran’s strong resistance to Western conquest. The women of these nomadic Islamic tribes insisted on veiling as a means to form a homogenous state via the unity of classes and genders by emulating early Islamic life. Iran's history and cultural identity depended upon a cohesive country, strong enough to ward off invaders.

Pre and post-revolution rhetoric described the Shah’s policies as pulling “women down from their position as human beings to the level of an animal... turn[ing] women into dolls.” Forcing Muslim women into the cultural roles of a Western woman was devastating to the Islamic psyche. In Islam, women are the educators of society and “the source of all blessings.” Because of the vast campaigns to push consumerism and the extensive advertising of Western beauty products and clothes, the Islamic intellectuals reasoned that the Shah’s political policy turned women into a sexual commodity.

Before the revolution, Dr. 'Ali Shari'ati and Ayatollah Mortaza Motahhari, were considered the most prominent Iranian contemporary Islamic thinkers. By the time of the revolution, their texts became the main source of Shi'a discourse on women, for there was little else that was purely Islamic and not seen as perverted by Western thought. Dr. Shari’ati’s book Fatemeh Fatemeh ast (Fatima is Fatima) became the intellectual backbone of the revolution, revitalized Islamic thought, and reunited Iranian Shi’a Muslims through their faith. In this book, Dr. Shari'ati establishes a very strong non-Western model for women so as to liberate Iranian women from the oppression of Westernization through Islam. Shari'ati believed "Westernized women... are becoming mindless consumers... a creature who shops," and once women understand their pivotal role in the fabric of Islamic society, they will be liberated. Shari'ati also blames Muslim men and "narrow-minded clergy" for the suppression of women by denying

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136 Keddie at 55.
137 Id. at 55-6.
139 Id.
140 Dabashi at 398, Bani-Sadr, Bayaniyyeh-ye Jomhuri-ye Islami, H.
142 Id.
143 Id.
144 Id. at 288. Fatima was the Prophet's daughter and the wife of Ali, the man Shi’as believe to be the direct successor of the Prophet. Fatima is seen as the ideal Muslim, she was very devout, had a strong political voice, was a great Islamic teacher, was a mother, and a wife. Her role in establishing Islam is believed to be fundamental to the establishment of Islam.
145 Id.
them their Islamic rights and imposing, pushing educated women to look to the West for guidance."  

Similar to Dr. Shari’ati, Morataza Motahhari’s book, *The System of Women’s Rights in Islam*, re-examined the Shari’a to counter Western criticism of Shari’a’s position on women. Motahhari argues that UDHR is not universal law because it rejects the philosophies of different religious creeds and is founded on individualism. Islamic philosophy directs Muslims to be part of the ulma, Islamic community. A Muslim’s primary duty is to his or her family and ulma, after the worship of God, which is clearly ignored in the UDHR. In addition, Motahhari notes that “Western women acquired their economic independence only recently on account of the need for cheap labour,” whereas Islam granted women economic autonomy fourteen centuries ago for humanitarian reasons.

**B. The Shah, the West, and the Shari’a**

Shari’a substantially improved the pre-Islamic situation of women, granting women social and economic power. However, the establishment of rights under a religious system is fundamentally different from any universal system of human rights. Rhetoric surrounding international laws of human rights purports that these principles are founded on natural law, which is seen as higher than any religious or governmental law.

Although, humans, by virtue of their humanity are universal, distinctions of gender and religion create undeniable deviations. In Islam, “there are certain Islamic precepts, which apply only to men and others which apply only to women,” and still they share the same religious duties to God and the community. From biology, the deviation in roles of women and men are adjusted. For example, during and after pregnancy, “women can experience extraordinary psychological strains giving rise to depression [and] women are known to be more sensitive and emotional than men,” however this does not “render the woman inferior to man. Allah knows his creation best and has prescribed precise laws in keeping with the nature of man.” In addition, any differentiation between men and women is denied in terms of activity, not gender;

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146 Id.
147 Id. at 290-1.
148 Shadow at 43.
149 The family and the ulma are sources of identify and duty for all Muslims. A man cannot make his pilgrimage to Mecca (which all Muslims must do before they die) until he pays for his mother’s way. In addition, one of the five pillars of Islam is the Zakat, which is an obligatory act of charity given to the needy of the community.
150 Id.
151 Dichotomy at 57.
153 From Imam Khomeini’s message to the Iranian nation and his warning to the heads of states supporting the Shah Sahifa-yi Nur Volume 4, page 60] 11 December 1978 (20 Azar 1357 AHS)
154 Shadow at 44, see also, Raga’ El-Nimr, Women in Islamic Law, 91-3 in Feminism & Islam: Legal and Literary Perspectives (Mai Yamani ed., 1996).
155 El-Nimr, 95. Motahhari argues that "women share the same structure of intelligence and talent [as] men, nevertheless the dominant motive for [a woman’s] action is emotional." © Alison Swicker Gokal
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placing each sex into roles that suit their natural biological and social tendencies.\textsuperscript{156} However, to an Iranian, Western women are believed to be possessions through pressure to become one dimensional 'dolls' of sex and consumption.\textsuperscript{157} Whereas Shari'a holds women as the pillars of the Islamic nation to enlighten and walk united with men.\textsuperscript{158}

Where there is a culture, whose identity is not only founded upon, but also defined by the Shari'a, the Shari'a cannot be ignored in any dialogue imposing universal standards upon these people. Ayatollah Khomeini defines the freedom of the West with the practices of the Shah, which amounted to “a freedom dictated by the West and aimed at luring our youth into corruption.”\textsuperscript{159} This corruption is the temptation of the human body, where women were pawns in the Shah’s regime, forcing them “before the lecherous eyes of men” and barring them from involvement “in the affairs of society or . . . the nation’s problems.”\textsuperscript{160} Memories of the Shah led Iranians to believe that “the Islamic culture has been trampled underfoot” by Western values; therefore, revitalization of the Shari’a was seen as empowering women on the educational and cultural fronts.\textsuperscript{161}

In Iran, Westernization left women with lost self-esteem and little independence.\textsuperscript{162} As evidence, Khomeini noted that under the Shah, “women did not dare come out dressed the way they should. . . Those who wanted to keep their hijab either did not leave their homes at all or they came out only when darkness had fallen, and crept surreptitiously from one place to another.”\textsuperscript{163} To Muslim women, this was not the freedom promised by Western rhetoric on human rights, but suppression. In the Iranian culture, a woman forced to walk in the street without a hijab is similar to a woman in the US forced to show her middrift. Some women may jump at the opportunity, while others will feel ashamed by the exposure. Therefore, Khomeini argued that for Iranians, Islam was the only means to gain equality for women by giving her back her Islamic identity.\textsuperscript{164}

C. Women’s Role and Place in Iran: Zanan, an Iranian woman’s magazine

In February 1992, Zanan, a women's magazine, was launched in Iran to interpret women's role and Shari'a.\textsuperscript{165} Zanan exemplifies the changes in Iran over the last ninety years. The magazine is rooted in the Islamic traditions and Shari'a, and not Western ideology. The editor and founder of Zanan, Shahla Sherkat, stated that "the key to the solution of women's problems lies in four realms: religion, culture, law, and education."\textsuperscript{166} Therefore, to change the traditional roles of

\begin{thebibliography}{99}
\bibitem{156} Shadow at 47.
\bibitem{157} Id. at 49.
\bibitem{158} Id. at 77.
\bibitem{159} 13 Imam Khomeini, Sahifa-yi Nur, 68 (1979).
\bibitem{160} Id.
\bibitem{161} 19 Imam Khomeini, Sahifa-yi Nur, 278 (1979).
\bibitem{162} 9 Imam Khomeini Sahifa-yi Nur, 61 (1979).
\bibitem{163} 19 Imam Khomeini, Sahifa-yi Nur, 29 (1979).
\bibitem{164} 1 Imam Khomeini, Sahifa-yi Nur, 10 (1962).
\bibitem{165} Id. at 286.
\bibitem{166} Id. at 293.
\end{thebibliography}
men and women, a Muslim voice must be rooted in Islam, not in the ideas of the West, which was seen only to pervert Islamic life.

The writers of Zanan use the magazine to explain and examine the traditional roles of women in Islamic society. They explain that a woman’s ‘duty of submission’ to her husband is a misconception, but instead, given the mutuality of human relationships, “a woman is not her husband’s mere subordinate but his partner, companion and aide.”\(^{167}\) This is supported by the fact that a woman may demand wages for her work in the home.\(^{168}\) In addition, since today’s women are much more educated and skilled than at the time of Shari'a's development, it is possible to change the previous thought on marriage to one in which "a healthy relationship [has] no need [for] a superordinate and subordinate'; and 'in many cases women are more to be trusted with the headship of the family.' \(^{169}\)

V. Conclusion

One of the premier scholars of Shari'a, Abdullahi An-Na'im, argues, "the rights of women are commonly seen as a product of cultural understandings."\(^{170}\) As a result, it is essential that the language of the human rights of Muslim women is rooted in Islamic culture. Unless cultural discourse is utilized, allowing a culture’s own understanding to develop standards, the only other option is to impose another culture's understanding.\(^{171}\) This will only result in the clash of civilizations. In addition, since Shari’a is the human understanding of Islam, rooted in a historical context, it would be extremely productive to interpret the components of Shari’a from a modern perspective.\(^{172}\) This would assure the clearest understanding of Islam, as well as human rights in the Islamic world.

For feminists’ success, the focus must be on the differences, not the similarities, of women’s position in the world.\(^{173}\) This forces the awareness of culture and ideology, so as to see feminism from the viewpoint of the women who are being ‘liberated.’ For example, Western feminist ideology is a woman’s autonomy, rejecting hierarchy.\(^{174}\) On the other hand, Iranian women fight for economic and political issues, not as solely interests of their own, but as struggles of their socio-economic class and struggles of their family.\(^{175}\) Thus, Iranian feminism is founded in a national and religious identity, not with the individual.

A ‘feminist’ re-reading of the Shari’a is possible, and apparently inevitable. The barrier too much of the feminist development in Iran is the opposition to Islamic politics.\(^{176}\) Given the recent history between the West and Iran, there is a fundamental resistance to any advancement

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\(^{167}\) Id. at 294.

\(^{168}\) Id. at 295.

\(^{169}\) Id.

\(^{170}\) Dichotomy at 56.

\(^{171}\) Id. at 57.

\(^{172}\) Shadow at 28

\(^{173}\) Id. at 29.

\(^{174}\) Id. at 30

\(^{175}\) See, Mir-Hosseini at 285.

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of "western" values. Therefore, it is essential to journey back to Shari'a texts to understand human rights in an Islamic state.

Shari’a is the “product of human interpretation,” and is therefore a “constantly evolving and changing ethical and legal system, and each generation of Muslim men and women have the right. . . To contribute to that process in terms of their own historical context.” As evidence, Surah 43, verse 1-4 of the Qur'an states, "God ha[s] made the Qur'an in the Arabic language so that human beings may understand. But in its ultimate nature, it is with Us, supreme and wise." Because of the Qur'an’s growth as a text, the Shari’a will grow as well, allowing society to grow from within its knowledge. Muslim men and women must draw upon "their own experiences and knowledge of the world" in reflection of their "historical, economic, political, and social contexts." Therefore, "it is the living community which should decide which view or interpretation of the Qur'an should prevail at any given time," not the current political power that is triumphant in the world.

177 Id.
178 Id. at 58.
179 Dicodomy at 53.
180 Mir-Housseini at 53.
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