

# *Review Essay*

## **Letting Live in Revolutionary Iran**

**Forgiveness Work: Mercy, Law, and Victims' Rights in Iran**, Arzoo Osanloo, Princeton, NJ: Princeton University Press, 2020, ISBN 978-0-691-17203-3, 339 pp.

The criminal laws of the Islamic Republic of Iran are organized around the right of the victim. In cases of murder and other intentional injuries, the judiciary recognizes the victim's next of kin or the victim as a private plaintiff with the right to retribution (*qisas*). The injured party confronts the perpetrator in court and decides whether to demand retaliation or forgo it in lieu of a monetary compensation (*diya*). If they choose *qisas*, they are legally bound to witness the punishment. In cases of forbearance, the maximum sentence that the state can levy for murder is three to ten years. While the rates of capital punishment in Iran continue to be among the highest in the world, the majority of murder cases culminate in forgiveness. Why would an aggrieved party forgive when the law gives them the right to retribution?

Arzoo Osanloo's exemplary study of law and society in Iran suggests an answer lies in the political theological force of mercy. Forgiveness traverses juridical and extra-judicial fields of violence and subjectivation. It suspends the scripturally sanctioned and legally protected right to retribution and reactivates ethical tendencies of culture

toward conflict resolution and social reproduction. *Forgiveness Work* demonstrates that the forces that have compelled the codification of *qisas* as a modern right, have also invested the juridical apparatus and the society with an unregulated tendency toward mercy. While observing the right to retribution, judicial officials seek to secure a settlement short of an eye for an eye. In the social field, the compulsion to forgive has prompted an unofficial yet highly regimented campaign against retribution and particularly the death penalty. In what Osanloo distills as “forgiveness work,” social workers, rights activists, cultural producers, and cause lawyers aim at ending cycles of social and legal violence through forgiveness. They take up, redirect, or oppose scripture, custom, law, and the arts, as well as social media technologies, international rights groups, and US-funded propaganda networks, rendering forgiveness advocacy a site of cultural transformation and the reinvention of religion and politics.

*Forgiveness Work* builds on Osanloo’s earlier study of gender and rights discourse, *The Politics of Women’s Rights in Iran* (2009). It masterfully synthesizes over ten years of ethnographic and archival research with theoretical debates on law and society, Islam, Iran, ethics, and the everyday. Osanloo contributes to what Michael Jackson calls “existential anthropology” by attending to the interpsychic, more-than-human, material and atmospheric relations that bind individuals, families, and communities together and to the state as parties capable of taking or sparing a life.<sup>1</sup> Within these binds, she locates what we might call the existential condition of possibility of law and forgiveness. Osanloo invites the reader to appreciate the affective intensities of justice and mercy not simply as discrete objects of knowledge, in arguments and narratives, but as constitutive elements of a form of life, through writerly form and affect. This methodology exemplifies a philosophical commitment to the irreducibility of histories and rationalities of legal and social praxes from their larger linguistic, cultural, and ethical surroundings, and hence predicaments.

*Forgiveness Work* is organized in eight chapters that are equally divided in two parts. Part I elaborates on the legal process by focusing on adjudication of murder cases that are predominantly within families and acquaintances. It demonstrates how the criminal code animates juridical practice and is, in turn, animated by the courts to avert retribution and secure forgiveness. The first two chapters offer an account of criminal codes and procedures. The brief history of *qanun* (law, code) sits apart from debates on modern law and the state in Iran or Islamic societies. Instead, Osanloo theorizes Iran’s Islamic criminal code by drawing on the anthropology of law in primitive societies. The law and judicial practice are shown to reflect codes of honor, reputation, gender roles, and sexual conduct that animate Iranian society. In response to contemporary sciences, however, the final version of the code (2015) has adopted a discourse of leniency and “restorative justice” (*edalat-e tarmimi*) that aims at reform and rehabilitation. In bringing together divergent moral and legal mandates, Osanloo highlights the expansive powers of judges in the system. In the absence of juries as the representatives of “the public,” judges

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<sup>1</sup>Jackson, *Lifeworld*.

are tasked with determining the facts of the case and assigning criminality. It is within their power to override facts established by confession and witness testimony by relying on their own expert perception, speculative reasoning, and ethical care for parties, which are institutionalized in the process as *elm-e qazi* (“judge’s knowledge”).

Chapters 3 and 4 elaborate on challenges and possibilities internal to the law’s simultaneous promotion of retributive and restorative justice. In some cases, such as those of partial injury, the technical difficulty of inflicting partial injury in retaliation leads to forgiveness. In others, the courts use the slow pace of the bureaucratic process to cultivate a relationship of recognition between victims and perpetrators and draw on it to secure forgiveness. While elaborating on these inconsistent tendencies, Osanloo highlights the gap between the broad mandates of *shari’a* and the limited authority of *qanun* even within the courts. Translated as “Islamic principles,” *shari’a* is animated in the discourses of Shi’i jurists in the seminaries yet is available in the courts even if simply as a reference. *Qanun* is an interpretation of *shari’a* for the purpose of governance.

Osanloo theorizes the fusion of *shari’a* with the technologies of the modern state as layering effects of modern bureaucracy. Anthropologist Ensing Ho has argued that the layering effect bestows a schizophrenic quality to the state.<sup>2</sup> Osanloo, however, rationalizes the contending retributive and restorative tendencies in terms of hybridity. While productive, this analysis imposes a limit on theorizing the ethnographic insights of the book. It is not always clear whether the outcome of a case is the result of bureaucratic confusion or what Osanloo distills as “the logic” of the system. For example, the book offers evidence that suggests the imposition of supplementary *public* sanction for murder encourages forgiveness. However, Osanloo does not elaborate on how this evidence runs counter to the book’s theorization of mercy as a corollate to the privileging of victim’s right.

Part II builds on theories of complex societies with multiple discursive rationalities to analyze the social field as “semi-autonomous” from the state. Chapters 5 and 6 elaborate on the distinct rituals of forgiveness advocacy by attending to the individuation of the victim through what the law grants them as a singular right to kill. Osanloo masterfully discerns the therapeutic agency of time in this process. Time enables a victim to face the fear and unease that accompanies the decision to take a life. It allows the perpetrator and activists to stir compassion in the victim. The passage of historical time, moreover, opens to non-progressive and non-teleological time of the unconscious and the divine. In distinct interactions with social others, with the alterity of the self, and with God, victims cultivate a capacity to mourn loss and render the *shari’a*-sanctioned and state-protected law of *qisas* inoperative through forgiveness.

In addition to Islamic “ethico-religious” tendencies toward mercy, *Forgiveness Work* is rich with examples of Iranian and Persianate discursive resources of forbearance.<sup>3</sup> These include the everyday tropes of *ashti* (resolution and peace making) and *javanmardi* (chivalry). Performance artists who demonstrate the transformative

<sup>2</sup>Ho, *The Graves of Tarim*.

<sup>3</sup>Izutsu, *Ethico-Religious Concepts in the Qur’an*.

capacities of the arts in Chapter 7 draw on the genres of *ta'ziyeh* (passion plays), *naqqali* (storytelling), and recitation of poetry to conjure empathic subjectivities averse to capital punishment. The distinct sensibilities that compel social actors to contribute to a culture of mercy supports Osanloo's argument of the semi-autonomy of the social field. These centrally include a distinct awareness of the sociogenesis of crime as the result of gender, sexual, and economic inequalities. Part II demonstrates social disparities as a central motivation of forgiveness advocacy through activists' interventions in cases where wives and/or daughters are convicted of murdering their allegedly abusive family patriarch.

Osanloo theorizes the distinct rationality of forgiveness work in terms of both a humanitarian ethic of care and human rights discourse. Humanitarianism locates individuals in their communal, social, and political relations and appeals to the discretionary power of these networks to secure a life condemned to death. It is "anthropological" in the sense that it renews the concrete bonds of human culture. Rights discourse, in contrast, appeals to the abstract notion of "the human" characterized by fundamental rights. It appeals to the humanistic aesthetic sensibility and public rationality of liberal modernity and demands the protection of those rights.

The political tension between the state and society, and between the divergent politics of humanitarian and human rights, comes to the fore most explicitly in Chapter 8 in the analysis of lawyers who take on the defense of those condemned to retribution. Activist lawyers such as Nasrin Sotoudeh, Mohammad Mosafaei, and Mohammad Ali Foroughi occupy a distinct position in the Islamic Republic. As members of the court, they advance the law to secure the life of their client. As forgiveness advocates, they mobilize social and political pressure on the state and at times the victimized party to save their client's life. As they move further away from the courts into society, and as they move away from humanitarian care for situated actors to a principled appeal to abstract rights, they pose a threat to the law as such. They emerge as the members of the court that suggest that Iran's Islamic laws fall short of social ideals of justice and mercy. As a result, they come to face the charge of "waging war against God and state" (*moharebeh*) according to the same laws that has condemned their clients to death.

The reference to the category of *moharebeh* in the book's concluding chapter circles back to presentation of *hudud* ("crimes against God") in Chapter 1. Both discussions demonstrate that while related, "the public" and "the private" in the post-revolutionary criminal code are irreducible to domains of human interaction that is carved out and enacted by modern law. The private right of the victim and the right of the public alike are not simply founded upon a divine order of things, which is arguably true about the philosophies of natural law in secular societies, but are co-constituted in relation to the presence of God in the social world as reflected in the penal code. The criminal laws are organized around the private rights of the victims not only in contrast to the rights of the public but also in contrast to the rights of God.

*Forgiveness Work* theorizes the difference between the Islamic and the liberal state by conceptualizing the former as a hybrid of primitive and modern law that is the product of a distillation of *shari'a* for modern statecraft. Osanloo's theorization gen-

eratively transcends the limits of secular and liberal epistemologies that view Iran in light of the unique distinction between the public and private in liberal secularism. In contrast to the scholarship bent on emphasizing the similarities of Iran with western societies, Osanloo's rich ethnographic analysis highlights the competing legal rationalities internal to Iran. However, Osanloo does not reflect on her own theorization of the radically modern yet primitive political theology of the penal code that, in addition to recognizing victims' right to retribution, grants God protection within the laws of the state. The tension between the conflation of religious and political authority, "primitive" and modern law, as well as social and divine rights remain undertheorized in the analysis of hybridity. The limitations of the rationalities of law and the state have been at the center of Iran's revolutionary politics for over a century. Political infighting in the Islamic Republic and the state's suppression of recurring protests point to ongoing limits of juridical and political discourse. However, the analysis of these limits exceeds a purely ethnographic theorization. As I have suggested elsewhere, Osanloo's synthesis of "incontemporaneous" and competing paradigms in terms of legal hybridity leaves no theoretical space for considering the historical nature of law and the state as well as debates about them.<sup>4</sup>

Nonetheless, *Forgiveness Work* demonstrates that the Islamic Republic directly and explicitly involves the modern citizenry in the state's calculus of criminality and violence. The legal foregrounding of the victim incorporates otherwise extra-judicial experiences of loss into the juridical logic of state sovereignty, thereby blurring the distinction between the juridical and the extra-judicial domains of human sociality. "[T]he state implicates its citizens in its logic for settling disputes, regardless of whether they exercise the right or forgo it; the state is never completely absent from extra-judicial modes of accountability, such as performative redress or commemoration of loss" (pp. 52–3).

The revolutionary project of *islami-sazi* (Islamicization) of Iran has been an interpretative challenge, but not only for outside scholars and domestic critics. The revolutionaries who picked up what Roy Mottahedeh dubbed "the mantle of the prophet" also inherited a developing nation and a modernizing state.<sup>5</sup> Today, Shi'i clerics, devout law makers, judges, administrators, and the lay public are caught in negotiating the epistemological and ethical gaps between Islamic and modern sources of the self and society. They do so as these gaps are politicized between secular and religious reformers and the Shi'i *ulama* on the one hand, and within the folds of the Shi'i *ulama* on the other. The latter is reflected in the unprecedented and exceptional *political* authority of one cleric (presently Ayatollah Ali Khamenei) over all others as Iran's "supreme leader."

In addressing this unique situation, *Forgiveness Work* offers an opportunity to reflect on a long-standing focus on ideology in the analysis of the state and on a more recent turn away from the questions of the state toward the study of heterogeneity of Iranian society. Early debates on the revolution generally ignored the moderns' inherence of tradition

<sup>4</sup>Odabaei, "Law, Society, and the Anthropology of the Incontemporaneous Contemporary."

<sup>5</sup>Mottahedeh, *The Mantle of the Prophet*.

when they addressed “Islam” as a revolutionary or nativist ideology. While drawing on the secular conceptual apparatus of European historiography, they offered an analysis of Islam and modernity that largely ignored European debates on secularization, political theology, and modernity. Today, the focus on ideology extends beyond Islam to address nationalism of the late-Qajar and Pahlavi periods. While important, the study of ideology falls short of theorizing the epistemological and political crises to which the racial and religious politics of reform and revolution provide an answer. The turn away from the question of Islam and the state to the heterogeneity of post-revolutionary society, which is often staged in contrast to narrow representations of Iran in Euro-American discourses, similarly abandons the predicaments of politics, law, and ethics to polemical debates.

*Forgiveness Work* moves away from the analysis of ideology by foregrounding the epistemological and ethical sources of law and politics. It offers an explicit theory and ethnographic elaboration of the relationship between law and society. Osanloo theorizes the universality internal to the law in relation to that of Shi’i jurisprudence, thereby addressing “Islam” as something other than a sectarian ideology. She locates both the Islamic Republic and social praxis in excess of the state in their shared condition of possibility in ethical, religious, and aesthetic discourse. The reader does not have to agree with specific arguments to appreciate the book’s profound psycho-political and political-theological insight into the relationship between the law and subjectivity. Justice and mercy cut across juridical and extrajudicial fields of violence and subjectivation and connect the psychic and social lives of individuals, families, and communities with the unthought and affective lives of society and the state.

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