The Measure of Mercy: Islamic Justice, Sovereign Power, and Human Rights in Iran

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In the name of God, the Compassionate, the Merciful

—Holy Qur’an 1:1–7

The Muslim invocation to God serves as a reminder of Islam’s concern with justice and compassion. The supplication invites mere mortals to practice kindness and forgiveness in their daily interactions with others. In Iran, the call to compassion is never stronger or more explicit than it is during the holy month of Ramadan. So it was no surprise that during the month of Ramadan in 1999, when a young man was sentenced to death for a controversial killing, shock and outrage stirred the nation and launched sober conversations about the Islamic state, justice, and ultimately human rights.

This article explores how human rights became the discourse through which state actors and individuals came to make sense of this sentence and how it set the stage for broader claims about the legitimacy of the nation-state. The various actors involved employed human rights discourse to make this case into an event. When agents of the state made claims about human rights, they were also making claims about the state’s entry into the modern world and the legitimacy of the Islamic Republic. Indeed, my conversations with Iranians about this event reflected a complexity of views expressed about human rights, Islamic law, and justice among working and middle-class urban residents, some of whom were practicing Muslims and others who were not. These discussions revealed the on-the-ground discursive practices of human rights emerging at that time. Interviews with state agents revealed the politically charged nature of the issue and, in particular, their concerns with discerning local sources for human rights in Iran. By exploring certain conditions through which forces of the Iranian state assert human rights, I argue that this productive and dynamic discursive practice is fundamental to a contemporary expression of sovereign power.
To understand human rights as an expression of sovereign power, I draw from the work of Giorgio Agamben. In *Homo Sacer* (1998), Agamben engages with the writings of early Greek philosophers who found that at its base political life emerges when bare life takes on the capacity by which it can be killed or kept alive by a sovereign entity. The sovereign’s authority to determine who lives and who dies casts the shadow of the political over what may have appeared as bare life or life unadulterated by the political. Drawing from the work Carl Schmitt, Agamben focuses on the state of exception, that is, the state of emergency in which the sovereign is accorded the power to kill with impunity or to let live, a state to which society is constantly prone, as in war. The sovereign’s power of exception establishes sovereign authority and draws bare life into the political realm. Thus with the sovereign exception through the authority to grant mercy or to kill, the sovereign broadens his powers and thereby reduces all life to presocial beings. Agamben calls for greater scrutiny of the sovereign exception, which includes the power to pardon. Here Agamben’s work draws attention to the false separation between premodern and modern modes of power as it highlights the ways in which bare life is also present in modern state practices. This also allows us to question the premodern–modern classifications that are so dominant in social and political analyses of justice systems in Muslim societies. This article examines sovereign power at the intersection of contemporary discursive practices of the authority of exception: human rights and the pardon power. A central concern is what it means “to have human rights” and “to grant mercy” in modern societies.

In the case at hand, I explore how some Iranian state actors employed an Islamic legal device, in codified form, to authenticate a local rationalized discourse on rights. This discourse both validates and delimits the Islamic Republic’s participation in the modern, liberal international human rights arena. I elaborate these points with a story that comes together at the axis of tensions upon which discourses of human rights so often fall: cultural particularism and transnational legal rationalism (e.g., see Mamdani 2000). In the context of complex political wrangling within Iran’s multifaceted state, hard-line state agents move toward universal human rights by actually reclaiming an enlightened heritage and “nativizing” human rights (hoogooq-e bashar) as the measure of Islam’s capacity for mercy (rahat). State actors, moreover, used a feature of the Islamic criminal justice system of just retribution (qisas), which draws on some “premodern” formulations of justice to demonstrate Iran’s appreciation for human rights. This is particularly noteworthy as it came about during the time of a complex political struggle by hard-line and reformist factions in government for control over state institutions and ultimately the role of Islam in governance. Through the staging of a public spectacle of mercy, hard-line forces in the Iranian state emphasized the localization of a discourse of human rights amid critiques of the incompatibility between “modern” human rights and “premodern” Islamic justice. In doing so, these forces delivered a message, not only to their political opponents but also to the Iranian people and the outside
world, that an infrastructure of human rights standards and practices exists in Iran and represents a distinct and embedded practice within that nation’s 1,400-year-old Muslim identity. This powerful message must also be understood in the context of a crisis of legitimacy in Iran and elsewhere in Muslim societies in which “human rights” has become a vital and necessary component of the discourse and politics of democratization.

**The Spectacle of the Scaffold**

In his analysis of the history of public executions, Foucault (1977a) portrays such punishments in 18th-century France not just as judicial penalties but also as political acts that articulated premodern sovereign power. “The spectacle of the scaffold,” as he terms such executions (1977a:47), was a statement on the political authority of the sovereign to mete out justice. Such was the effect of the event that took place on a gray, dimly lit day in Tehran’s Imam Hossein Square on January 2, 2000, when a young man was brought before the scaffold. Uniformed soldiers led the condemned, with his hands cuffed behind him and tears falling down his ghostly white face. Just two weeks after his sentence was imposed and after all appeals had been exhausted, Morteza Amini Moqaddam stood before the thousands who had gathered to watch, to applaud, or to protest his public execution.

Only three weeks earlier, this teenager had been hanging out in that same square joking and laughing with friends. Although it was the holy month of Ramadan, they were lax about the prescribed fasting. At that time, the vigilance over breaking the fast had become rather toned down compared with years past when it was not unusual for people to be arrested for eating, smoking, or even chewing gum in public. Although it is obligatory for Muslims to fast, many do not adhere strictly to the practice. Along with fasting, Iran’s Muslims mark the holy month of Ramadan with spiritual contemplation and acts of mercy, kindness, and generosity.

The young men were perhaps surprised when 22-year-old Hadi Mohebbi approached and told one of them to extinguish his cigarette. As a member of the Basij (Volunteers), a civilian youth brigade that exists with the support and unofficial mandate of Iran’s Supreme Leader Ayatollah Khamene’i, Mohebbi may have felt authorized or even obliged to admonish the young man whose behavior openly defied Islamic guidelines. When the youth ignored Mohebbi’s order, words were exchanged, and a struggle ensued. Suddenly, Moqaddam drew a pocketknife and stabbed Mohebbi in the throat, piercing his jugular vein and causing his death.

Moqaddam was immediately taken into custody. Three days after the incident, after a one-day trial on December 16, 1999, the Islamic Criminal Court declared Moqaddam guilty of murder. A week later, Iran’s Supreme Court confirmed the verdict. The sentence imposed on Moqaddam in Iran’s retributive criminal justice system would be death, unless the victim’s family was to show mercy by opting to take blood money (*dieh*) in exchange for their son’s death.
At the time, I was in Tehran conducting research for a different project and was able to witness how this dramatic event erupted in newspapers and in my conversations with others in the midst of political sparring between conservative and reformist factions of the government. The hard-liners in power were led by Ayatollah Khamene’i, the Vali-e Faqih (guardian of the jurisconsult) or the supreme religious leader (rahbar), who has final authority on all matters relating to Islam and whose authority extends over the judiciary, national security, armed forces, police, and broadcast media. The reformers were headed by Mohammed Khatami, who was president at that time, and his ministers. Iran’s Parliament (Majlis) was controlled by a majority of hard-liners, but significantly, elections were just two months away. Hard-liners adhered more closely to Ayatollah Khomeini’s theory of “Guardianship of the Jurisconsult,” which holds that Islam, as interpreted by offices of the supreme leader, is the final guiding force regarding all matters of governance. Reformists, who in 1997 saw the power of populist support with Khatami’s landslide victory, sought to make changes in the administration of governance to reflect popular demands. Thus, reformists tried to broaden the powers of the elected branches of government and openly questioned the authority of Iran’s unelected governing bodies. To question the principle of Islamic governance was one thing, but to carry out the debates in the press, the one media outlet not in the hands of the hard-liners, was very provocative, for it moved the debate outside the purview of the scholars of jurisprudence and into the hands of laypersons.

This event, moreover, called to task Khatami’s reformist government, which in summer 1999 had appeared impotent in the face of violent attacks by state security forces on students protesting the closure of the reformist newspaper Salaam. In this sharply divided political landscape, the homicide of a member of the hard-line Basij spurred debates among intellectuals and politicians who used the case to express opinions about the legitimacy of the Islamic republican system, particularly with regard to increased demands for secularization and for questioning the place of Islam in political, social, and legal reforms.

When the young man’s sentence was announced, Nategh Nouri, the hard-line speaker of Iran’s Parliament and a former presidential candidate, issued a press release praising the judiciary for swiftly dealing with the murderer of “the martyred member of the Revolutionary Guard’s paramilitary” (Iran Zamin News Agency 1999a). He urged judicial authorities to carry out the death sentence as soon as possible to deter future incidents. The lawmaker’s commendation notwithstanding, the death sentence fuelled the fires of an enormous controversy about Iran’s criminal justice system, both within the country and abroad, and highlighted the divisions within the government with regard to interpretations of Islamic law and its compatibility with modern conceptions of justice. Indeed, just two months earlier, hard-liners had closed the reformist newspaper Neshat for having published an opinion piece denouncing Iran’s death penalty as a form of state-sponsored violence (Baqi 1378 [1999]).
In response to the death sentence, Amnesty International issued an Urgent Action Appeal through its Stop Torture Campaign (Amnesty International Deutschland 1999). International human rights organizations invoked Iran’s participation in treaties that hold states accountable to human rights standards and appealed to Iran’s leaders to reconsider the sentence. They pointed to the rushed trial, the accidental nature of the death, and most important, the fact that the execution of a minor would make the punishment cruel and unusual. Global concern grew as the days went by, but state officials did not seem to be persuaded, and the fate of the young man appeared to be sealed.

In Iran, a debate raged in the press, in the streets, in taxis and coffee shops, and in the privacy of homes. In my research on women’s rights, I found my interlocutors absorbed by the fate of the young man, and during those winter months, I had many conversations about how state officials were treating the condemned prisoner and how this would look to the world outside of Iran. Friends and acquaintances pondered aloud: “Were they really going to hang the boy during Ramadan, the month of mercy and forgiveness?” At a local gym one day, Sunnaz, a well-to-do dentist, asked me if I had heard about the verdict. Sunnaz, whose father was an attorney, clarified what she saw as inconsistencies in the verdict: “The death sentence for that youth is very severe; it was an accident. Do you know that he’s just 17?”

“What do you think will happen?” I asked.

“I am sure that the Supreme Court will hear this case. I don’t know if they will uphold the execution, but this will be very bad for all of us.”

“What do you mean, ‘bad for us’?”

“I mean that Iran’s human rights record in the United Nations is not very good. The UN has criticized Iran for executing people without giving them a fair hearing. This could be another bad situation. All the newspapers said this was a street fight and it led to an accidental death. You can see that Khatami doesn’t have the power to intervene in the decision of the Supreme Court.”

Indeed, in April 1999, at its annual meeting, the UN Human Rights Commission had issued a resolution criticizing Iran’s continued human rights abuses. Iranian Foreign Ministry spokesman Hamid Reza Asefi denounced the resolution as politically motivated and claimed that it failed to appreciate the dynamics of Iran’s Islamic Republic. Asefi declared that Iran relies on its Islamic and cultural values to promote human rights (Tehran Times 1999b). Many, inside the country and beyond, were looking to see how government forces would deal with this issue.

In the weeks that followed, protestors papered the streets with flyers and tore down the makeshift scaffold that government agents had built. Some clerics and scholars of Islamic law questioned the legality of the case. One of my teachers, a clerical expert of Islamic jurisprudence (fiqh), explained that in the specific crime for which Moqaddam was convicted, intent is a key element. This homicide, by all accounts, was an accident. Therefore the crucial element of intent was not met to justify the death penalty.
Despite protests, all-night vigils, and international calls to reconsider the sentence, police forces continued with their plans for a public hanging. On the day appointed for the hanging, the Islamic Republic of Iran Broadcasting Network, which is run by the hard-line factions of the state, broadcast its coverage of the event at dusk. At a moment of the day that coincided with the breaking of the day’s fast (*eftar*) and just after evening prayers when many television sets would be turned on, the network suddenly switched to coverage of the event. I was a guest in the home of a family in central Tehran when our eyes became fixed on the screen. One camera focused on the boy’s frightened face as he cried out for forgiveness, and another camera framed the family of the victim. As the network flipped from interviews with the public to the hanging and back again, the event took on a likeness to reality television. The camera scanned a crowd of more than 4,000 people, while an ambulance stood by to take the body away. The dim lighting conveyed what appeared to be a live broadcast that evening, but we later discovered that the event had taken place earlier that day, at dawn.

Iranian state forces did not hesitate to employ media technology to transmit a spectacular display of sovereign power into homes nationwide. Shocked viewers watched as soldiers brought the young man to a platform where he was to be hanged from a crane fixed on top of a truck only 30 feet from where the homicide had taken place. The family I was with sent the children away as we watched the actions unfold.

Moqaddam, dressed in a prison uniform, stood before an official who read the death sentence aloud and then placed a thick rope cord over his head. The condemned cried out for mercy as friends and family members holding up copies of the Qur’ân called out, “Forgive him; he’s only a boy. . . . For the sake of Islam, forgive him. . . . Islam demands forgiveness.” However, the crowd was divided. On the side of the victim, others shouted, “He should die or he will kill again.”

At this point it might appear that public execution in contemporary Iran is a display of premodern sovereign authority. Instead, I suggest that hard-line factions of the state were using this spectacle to express a modern mode of power at a time when the lively reformist press had begun to launch critiques of Islamic law and were thereby pushing what had been primarily scholarly debates into the public sphere. Indeed, as the spectacle unfolded, the demonstration of power by conservative state actors was revealed not only in meting out justice on the body through spectacle but also in responding directly to such critiques of Islam by annunciating an allegiance to a discourse of human rights.

**Biopolitics and the State of Exception**

As the televised newscast of the public execution took viewers to a reality TV climax, a sudden jerk of the camera shifted the focus to the father of the victim. He had raised his hand in the air, as he called out to halt the execution. He went over to speak with judicial officials to say that he would forgive Moqaddam. The mother
of the condemned, now on screen, was crying tears of joy and sorrow, thanking the victim’s merciful and brave father. The condemned was shown kissing the face and hands of his savior. Reporters from the state’s hard-line news services applauded Islam’s capacity for mercy and forgiveness. Even the soldiers who unbound the grateful Moqaddam joined in the celebration. As they took Moqaddam to prison to await resentencing, the father of the victim told reporters that he wanted to “show the magnanimous face of the militia,” referring to the Basij affiliation of his son (Reuters 2000).

In his later work, Foucault notes that sovereign power was expressed through an emphasis on making life by creating subjects of life. In a shift from mere control over who lives and who dies, the sovereign creates the subjects of life through a “technology of biopower over ‘the’ population as such” (Foucault 2003:247). In this context, law takes on a new purpose. Instead of being solely an expression of the sovereign’s ability to kill with impunity, law now acts as a mechanism for assigning value to life (Foucault 1978:144).

In this case, qisas as a form of exact retribution highlights this life-granting aspect of sovereign power because it allows a victim’s family to pardon the guilty. In Islamic law, retributive punishment is the principle of exacting compensation and takes into consideration the interests of victims.17 The purpose of qisas is to make the family of the victim whole and to restore balance in their lives. In such circumstances, the law permits families to accept blood money as compensation instead of exact retributive compensation. Thus it was through this legal mechanism, drawn from the shari’a (Islamic law), that the hard-line judiciary asserted sovereign power in assigning value to life.

The notion of qisas is interesting in that it allows state officials to encourage the act of pardoning, but pardon ultimately must come from the victim’s family. Thus, the law retains a quality of a private transaction. However, this law is not enforced between the parties themselves; only the sovereign may implement the sanction. Ayatollah Khomeini’s (1981:42) thesis on Islamic government justifies the need for centralized state institutions to implement guidelines set out in the Qur’an and the Sunna.

To clarify how this Islamic legal device came to animate the biopower of state forces, it is important to address how the shari’a was codified by the centralized state and partially removed from the discretion of jurists.18 Codification has its roots in the 1905–11 constitutional revolution. Iran saw its laws systematically codified in the 1920s and 1930s during the wide-scale centralization and rationalization processes that produced a Western-style judiciary (Banani 1961). However, more important here is the recodification of the newly “purified” Islamic laws after the 1979 revolution.

When Khomeini came into power in February 1979, one of the first acts that he undertook was to repeal legislation that he deemed to be incompatible with the true nature of Islam. Calling for an Islamic government (hookoomat-e Islami), Khomeini (1981) and his supporters also dissolved Iran’s Parliament or National
Assembly (Majlis-e melli), arguing that an Islamic state did not need a legislative body to make new laws or Western-style codes to interpret them. What was needed, instead, were principles elaborated from the texts of the Qur’an. In Khomeini’s (1981:27) vision of Islamic government, the legislative authority is derived only from God.19

When the provisional government of the new Islamic Republic attempted to purify the laws by repealing legislation and the legal codes, the confusion over how to adjudicate the laws of God caused such a furor that, over time, quite similar laws were reauthenticated by the governing bodies of the Islamic Republic and codified.20 After the revolution, officials in the new state abolished the penal codes, claiming that these drew too heavily from European models of punishment, and in 1982–83, they ratified a new penal code, the Law of Islamic Punishment, enacted through the legislative authority of the new parliament, the Islamic Consultative Assembly (Majlis-e shura-ye Islami). This codified form of the law is significant as a mechanism of the state’s biopolitics. The reapplication of codified law alongside the newly re-Islamized penal sanctions disrupted the historical power of Islamic judges to use their discretion in assessing the cases before them.21 These criminal sanctions, finalized in 1996, were the ones under which Moqaddam was both sentenced to death and reprieved.

Soon after this event, Iran’s Islamic Human Rights Commission (IHRC) issued a press release expressing its gratitude to the martyr’s family. The IHRC stressed that the “gracious measure which was taken by the martyr’s family was an indication of their commitment to the sublime teachings of Islam and will be definitely rewarded by Almighty God.” The IHRC emphasized that “Islamic society will never forget such a humanitarian measure” (Islamic Republic News Agency 2000).

The term biopolitics refers to a complex set of mechanisms through which human life is reduced to biological operations. The legal mechanism that affords mercy in the Islamic penal system provides a means to determine who lives and who dies and, thus, offers an illustration of biopolitics as sovereign exception. Foucault (1978, 2003:247) explores this new technology of power as regularization, arguing that modern power reemerges through the biopolitical management of the population as a whole, even as the training and disciplining of bodies continue.22

The emphasis of biopolitics on regularization is what I would like to take up in this instance, where instead of only disciplining individual bodies, modern sovereign power is also articulated through the practical mechanisms of state building. Law becomes a normative aspect of social life the function of which becomes increasingly regulatory. The rule of law is a specific regulatory mechanism that inheres in populations at the collective or mass level (Fitzpatrick 1992; Hunt and Wickham 1994; Pashukanis 1978). Laws that aim to protect life based on the fundamental humanity of individuals (i.e., human rights) become important components of this new technology of power in contemporary societies. In doing so, they also invoke yet another feature of sovereign power that is sometimes
naturalized in the literature: the sovereign individual with rights as a founding premise of human rights. 24 Today, the attention of state agents to human rights becomes the material expression of the sovereign’s power to define exception. By claiming to maintain the regulatory mechanisms that protect the most fundamental rights of humans in human rights, state agents—in this case the hard-line factions—most solemnly affirm their legitimacy.

Although concepts of rights have been around for hundreds of years, positive regimes of rights that guarantee state protection to citizens, and in some instances to noncitizens, grew out of nation-building processes in which divinely ordained decrees were replaced by consensus-based laws justified by the belief in sovereign individuality. The idea that rights inhere in humans simply because of a discrete humanity was new in the 18th century that Foucault writes about. Many contemporary scholars have noted the pervasive and enduring quality of this idea today (Glendon 1991; Henkin 1990; Ignatieff 2000; Merry 2006; Rabinow 2002). 25 Louis Henkin describes human rights as the “idea of our time . . . the only political-moral idea that has received universal acceptance” (1990:ix). Henkin recognizes the problems associated with the implementation and enforcement of human rights but also considers the importance of the discourse of human rights: “It is nonetheless significant that it is this idea that has commanded universal nominal acceptance, not (as in the past) the divine right of kings or the omnipotent state” (1990:x).

In the Iranian context, Abdolkarim Soroush has written about the relevance of the human rights discourse to modernity: “As we have stated before, a religion that is oblivious to human rights (including the need of humanity for freedom and justice) is not tenable in the modern world” (2000:128). Some modernist clerics in Iran have also recognized the important connection between the modern nation-state and human rights. For instance, Hojjatoleslam Mohammed Mujtahid-Shabistari, a professor of theology at the University of Tehran, has stated, “If we accept that modernity is a global phenomenon today that is not exclusive to the West . . . then we must accept that the makeup of human relations today necessitates new formations and planning on a global scale. In this sense human rights have become a global concern” (2000:229). Nor was this connection lost on hard-line state agents who sought to promote the legitimacy of their vision of Islamic justice through this event just as they were receiving harsh critical assessments in the press. Significantly, another trial was under way in Iran at that time. This one was of a key figure of the Iranian press, Hojjatoleslam Abdollah Nouri, the managing director of the reformist newspaper *Khordad*, which was later banned. Nouri was tried for publishing articles that offended the principles of the Islamic government. 26

In their post–World War II expression, human rights validate the nation-state and facilitate the participation of numerous actors within the international community (Merry 1997). Scholars who insist that human rights bring about a supranational juridical order and predict the demise of the nation-state fail to see the essential link between human rights and sovereign power (Arendt 1951). This is the point at which Agamben’s work on sovereign power departs from that of
Foucault. Where Foucault is concerned with the regulative aspects of sovereign power in its modern expression as biopower in the production of subjects, Agamben seeks to explore that which Foucault leaves untapped: how sovereign power over the body comes to fix all human life within the bounds of juridico-political power and therefore depletes humanity of its life-making qualities.

For this reason, Agamben turns to the notion of human rights, which signifies an important moment of inscribing the sovereign with the power to define exception—and thus ensconces bare life in the juridico-political. Agamben argues that human rights must be understood as the first instance of marking bare life with the political: “Human rights . . . represents first of all the originary figure for the inscription of natural naked life in the political-juridical order of the nation-state” (2000:19). Thus, assertions by state officials of a nation-state’s human rights standards and practices become a primary legitimating discourse of sovereign power. As it is here, the exception is normalized in positivist regulatory laws.

**Human Rights: State of Legitimacy**

Hard-line forces in Iran’s state used Moqaddam’s reprieve to deliver a powerful message to Iranians and to the international community. The spectacle was a reactivation of sovereign power—not only to define exception but, in this performance of forgiveness, a particular form of exception rooted in the Islamic principle of mercy. Through this event, these state actors subtly acknowledged the importance of engaging the discourse on human rights. Human rights practices are emblematic of the reciprocal relationship between rights and the nation-state. Societies depend on the statist legal apparatus to administer human rights and, in so doing, legitimate the nation-state from the ground up, even while critiquing it.

Although many I spoke with expressed joy and relief at the young man’s reprieve, they also questioned different aspects of the spectacle: its legal efficacy, the role of various state agents and the state-run media, and the message that Iran has human rights. The broadcast media, controlled by hard-line factions of the state, used television as the “expressive art of the modern political order” (Starrett 2003:400) to show the nation, if not the world, that the Islamic Republic can devise and enforce its laws and thereby determine the local shape of human rights, sanctioned by the parameters of its history, culture, and laws. We may never know just what was staged and how much of it (if any) was scripted by state authorities. Throughout the country, discussions of this event continued for weeks afterward. Despite Western preconceptions about life in Iran, public hangings are far from being an ordinary event. The people I spoke to began to wonder how the trial got through the courts so quickly and what made the state-run television broadcast the event with such obvious planning and foresight, for never before had such a spectacle appeared on Iranian television. Legal scholars questioned the efficacy of the judicial proceedings. To obtain the death sentence in a homicide case, intent is a key element that must be proven. A death that occurs during a brawl, as this was, should not have warranted this sentence. The boy’s age was also relevant. His
family claimed that he was only 17, but the date on his birth certificate put his age at 18, old enough to hang for murder.

During dinner the night of the reprieve, we could hardly avoid the topic that so profoundly called for our attention. When Kamran, a mid-level government worker and a supporter of reform, raised concerns about the spectacle, his wife Sonya, a teacher who was also a reformist, replied, “This is Islam. This is Islamic justice according to these clerics. And now the world thinks we do not have respect for human rights.” Kamran’s brother, Ali, interjected, “No, no, they want to show the world that in Iran a person can achieve human rights through Islamic law.” As in the international appeals, when the dinner guests raised questions about the hanging, they also spoke in terms of human rights even as they expressed skepticism: “Why did the father wait until the last minute to accept the blood money? I don’t think he changed his mind just at that moment.” Jamshid, father of Kamran and Ali, added, “They never televised the killings of the people in Evin prison. Why did they do this now? For me, it’s very strange.”

On other occasions, some spoke to me about the incident as an example of Islamic charity and thus an expression of Islam’s compatibility with human rights. Others, however, were more suspicious and even suggested that government agents staged the event. Possibly, some suggested, the event offered state forces an opportunity to show that Islam is benevolent and so provides its own form of human rights. In either case, the most striking aspect of the aftermath of the event was that for many it raised questions about what it means to have human rights. This became a case, above all, about having human rights.

The people with whom I spoke were confronting a contradiction that Buck-Morss has described as “the wild zone of sovereign power” (2000:6), in which the people have legitimated a power over their lives only to find that they have no power over it. Such power takes shape through a circular logic of sovereignty in which the very state forces that preserve the law also create the law and thus have most at stake in seeing the law obeyed. Laws are thereby in the service of state institutions, which are concerned most with protecting their monopoly on lawmaker (Buck-Morss 2000). The agents of the state reveal this power when exercising violence in the name of the law. As Walter Benjamin (1978:279) has observed, state agents reveal a monopoly not only on establishing the law but also in determining the meaning of justice.

A couple of days after the sentence had been declared, the subject of forgiveness, the theme of the month of Ramadan, came up in discussion. At this time, the young man’s future appeared bleak, as the Supreme Court had dismissed his final appeal and affirmed the death sentence. On that day, one of Tehran’s newspapers had printed color photos of the victim’s body. I was having dinner in the home of a middle-class family who lived in a small ground-floor apartment in north-central Tehran. As people passed the newspaper around, Maryam, who considered herself a devout Muslim, raised the question of whether, according to Islam, the sentence was just. Her husband Hossein, a construction supervisor who also considered
himself a practicing Muslim, answered: “We cannot only think about Islam. It’s true we are an Islamic country, but we must show that Islam is not against the human rights of the people. Islam provides for human rights because Islam is concerned with justice. This case has too many problems; it seems very political to me.”

Another guest, Manouchehr, wondered aloud whether agents of the Islamic Republic cared about human rights at all and added, “It seems to me that the hard-liners want to make an example out of someone in order to scare people because of the student riots. In two months we have parliamentary elections.” “Do you think they [the hard-liners] care about that? They are not elected, and they don’t think we can do anything with our votes,” was Hossein’s response. Both men called attention to the political nature of the case, the divisive politics over the interpretation of Islamic law and its relationship to international human rights.

Through these conversations, my informants noted multiple contexts through which the meaning of human rights was taking shape, including the political and legal situation inside the country and the international order. They tied Islam’s capacity for forgiveness to notions of human rights, justice, and state actors. Their questions relating the event to the powers of a fractious state and their concerns for Iran to appear just in the eyes of the world community reveal the conditions through which their competing understandings of human rights emerged. On a number of occasions, my informants stated that Iran ought to abide by human rights. In doing so, they located human rights in universalist models, claiming that Iran should be accountable. Still others, pointing out the irregularities in the case, suggested that the administration of Islamic justice was miscarried and that Iran was not even abiding by its own Islamic human rights standards.

Many I spoke with expressed an increasing awareness of the inconsistencies within the legal and political system of an Islamic republic. They saw how the contradictions embedded in state actions and institutions produced a disordered political body that rarely acted as a coherent whole. The enigmatic nature of the state notwithstanding, there were certain issues on which discordant state entities did express a united front, including Iran’s adherence to a certain kind of human rights as Islamic human rights. Of course how this notion was expressed and what it meant were at issue and in flux, but the concept of human rights itself was not. Even the most strident hard-liners did not reject the idea of human rights itself, only its location.

No matter how inconsistent or disordered the state institutions or how unverifiable the role of hard-line state agents might have been in the making of the event, many of my informants saw the spectacularization of the scene of execution and reprieve as an exertion of state power. Only four months earlier, reformist state officials found themselves to be ineffective in the face of hard-line repression before the nation and the international community when student riots broke out at the University of Tehran. Now, with this latest episode, hard-line state agents
appeared before the masses with a unified message, one that displayed the benevolent possibilities that the Islamic republican system can provide.

The ways in which my informants talked about the incident as a human rights event also suggest a particular reaction to what they perceived to be an exertion of the power of hard-line state agents. Although the spectacle of a hanging stayed by a reprieve may have been an attempt by certain state forces to display and legitimize their power in what they might regard as Islamic terms, my urban middle-class informants often referred to a hybrid notion of human rights or to international norms rather than to Islamic ideals exclusively. These reactions arise from the tensions between Islamic and republican discourses of rights and point all the more to certain common themes in expressions of human rights that coincide with universalist notions. My informants’ collective use of the term human rights to discuss different ways of making sense of the event does not suggest a uniform understanding but a diffuse array of meaning, revealing the unboundedness of the concept while also reinforcing human rights as the discourse of justice in the modern era and, consequently, further fortifying the role of state agents in the administration of justice.

**Geoculture and Human Rights**

An important component of my argument is that this event was taken up as a human rights issue, not just by international organizations or Western-inspired Iranians but by hard-line representatives of the state who saw its unfolding as a defining episode for human rights in postrevolutionary Iran. This is all the more significant given a number of other events that year that state officials had not acted on, including student riots, newspaper closings, and the notorious chain killings of the previous year.32

A few weeks after the incident, I had a meeting with the women’s affairs adviser at the Ayatollah Khomeini Complex’s Organization of Culture and Islamic Relations, a conservative body that interfaces with international organizations and advises on cultural affairs. Although my questions revolved around other concerns, she turned our conversation to the event. She focused on the arrogance of Western human rights organizations and the international press that had written about the event to make Islam and Iranians look “barbaric.”33 Displaying a stack of foreign newspapers, she remarked that journalists interviewed only well-established critics of Iran, not people who understand what the Islamic Republic stands for: “They are opposed to us, trying to brainwash the Western public into thinking that Islam is severe, wild, and barbarous. They need to talk about Islam in this way so they can have an easier time colonizing us, but we won’t let that happen. Go tell them that in Iran there are human rights. We have Islamic human rights that conform to our culture and beliefs.”33 Not only did she view the granting of mercy as evidence that the Islamic Republic of Iran possessed human rights, but she also saw it as a measure of its level of civilization. She was not alone. On the evening
of the reprieve, a joyful taxi driver communicated this to me: “Did you hear? They pardoned the boy. Now the world can see that we are not barbarians and that Islam is merciful.”

The issue or theme of barbarians and the imperialistic West came up frequently in discussions of human rights. Many Iranians expressed the wealth of their civilization through references to pre-Islamic and Islamic sources of human rights. Government representatives stressed that human rights arose from Islam’s ability to civilize pre-Islamic peoples. Others stressed the miscarriage of justice in the legal process, dismissing the statements by state officials about mercy and hence justice. The fact that different groups located different sources for what constitutes civilized society points to a range of perceptions of how justice should be meted out even within a Muslim society. For the state officials and Tehranis I spoke to, the principal measures of a civilized society should be attention to the rule of law and respect for human rights. Human rights became a civilizing discourse. To have human rights meant that Iranians and the Iranian state were not barbaric.

Thus for nation-states that cannot assert international power economically or militarily, the presence of an existing legal infrastructure and human rights standards play key roles in assertions of sovereignty and calls for equal treatment. By practicing human rights, agents of a nation-state demonstrate to the world community that they are among the civilized nations of the world and do not require the civilizing dominance of “the West.” More importantly, human rights as a discourse justifying imperialism draws attention to the contradictions rooted in liberalism. Wallerstein (1995) suggests that the geoculture of liberalism in the modern world system as inherited from the French revolution is “self-contradictory,” in that liberalism’s discourse of equality comes into conflict with its charge to bring rights to others. Today this contradictory logic is evident in Iraq and Afghanistan, where international laws aimed at protecting sovereignty and civilians are abrogated to bring human rights and the rule of law to those very places (see also Esteva and Prakash 2002). Perhaps in distinguishing Iran’s human rights as Islamic, the Iranian official I spoke with above wanted to resist the imperialist potential of such a discourse. Significantly, the apparent willingness on the part of hard-line state forces to be held accountable to international standards is also an indication of their desire to participate in the larger international rights culture despite claims to the contrary. Inasmuch as international review of a state’s actions toward its polity is a limit on sovereignty, only a legitimate state has the ability to enter into treaties that limit sovereignty.

Mercy and Justice in Islamic Human Rights

The woman I spoke with at the Ayatollah Khomeini Complex located Iran’s human rights in Islam, at once beyond and yet beholden to the liberal geoculture of rights. Iranian human rights are embedded in Islamic foundations memorialized in the Islamic Declaration of Human Rights and advocated by the Islamic Human
Rights Commission, the group that issued the press release praising the father of the victim for his commitment to Islam by pardoning Moqaddam. She also illuminated the foundations of Islamic human rights in her statement, “At the core of Islam is mercy.” Emphatic assertions that Iran has human rights raise the question of what it means to have *Islamic* human rights. While a growing and diverse range of scholars today is engaging in legal, theoretical, and ecclesiastical debates on the relationship between Islam and human rights, my concern is with mercy as a foundation for human rights.

Islamic law scholar Abou El Fadl observes that justice is the primary concern in Qur’anic discourse: “The duty to foster justice has been assigned to humanity at large” (2004:21). Citing the Qur’an, he notes that the divine message God gave to the Prophet Mohammed was a gift of mercy to humans. Mercy, however, is not simply forgiveness but it is something that “is tied to a state of genuine perception of others . . . coupled with the need for human beings to be patient with and tolerant of each other” (Abou El Fadl 2004:21). Mercy, which encompasses greater perception and understanding, is a divine mandate for Muslims in their primary duty, which is the pursuit of justice. As such, the Qur’an recognizes and extols the act of pardon in several verses (2:178, 3:134, 5:45), which also include the principle of amnesty.

Iranian cleric and Islam scholar Ayatollah Taleghani, also a prominent political figure at the time of the Iranian revolution, has written about the nature of mercy in Islam through an explication of the *bismillah* (referring to the phrase “In the name of God, the Compassionate, the Merciful”): “In the Qur’an . . . all the *suras* [chapters] [but one] begin with the phrase *bismillah*. . . . This is to remind man that all the teachings and directives of the *Qur’an* come from the Source of truth, the manifestation of compassion” (1982:151). Later, the bismillah is adapted from the Divine to human action:

> In man, compassion is a tender sentiment that gives rise to helpfulness and benevolence, with the result that one takes pleasure in gratifying this sentiment without expectation of further reward. This benign sentiment or human quality . . . lies dormant in man’s inner being. It is awakened and activated by contemplation of the Source of compassion and all it engenders, and by repeating this phrase. Thus, one’s heart becomes a wellspring of compassion, which flows to others through one’s speech and actions. [Taleghani 1982:156]

In their creation of a just Islamic republic, state officials have sought to provide an institutional framework for these ephemeral qualities of Islamic justice and have done so according to positive regimes of rights, an expressed belief in the rule of law, and a stated commitment to human rights, as components of a modern nation-state.

In a study of humanitarian law (laws of war) and Islam, Hojjatoleslam Muhaqqiq-Damad, an Iranian human rights scholar and theologian, notes the Islamic prohibition on revengeful acts: “The retaliatory act is an illegal act done to retaliate another illegal act” (2003:275). He quotes the Qur’an to commend
pardon: “The recompense of evil is evil the like of it; but whoso pardons and put[s] things right, his wage falls on God” (42:40–44). When discussing the treatment of prisoners of war, more specifically, Muhaqqiq-Damad offers the following opinion: “The liberating of the captive out of mercy should be done by the imam before any other ways. And the imam is not allowed to adopt any other way unless it is necessitated for the Muslims’ welfare, for based on the order of Qur’an, this has priority over the other” (2003:286). He then quotes the relevant Qur’anic passages: “O prophet! Say to those of the captives who are in your hands: if Allah knows anything good in your hearts, He will give you better than which has been taken away from you and will forgive you and Allah is forgiving and merciful!” (8:70). Scholarly works like these attempt to reconcile Islam with conceptions of human rights, citing Islamic concerns with mercy.

The official organization created by the hard-line judiciary to elaborate this relationship is the Islamic Human Rights Commission, located in wealthy northern Tehran on the ground floor of an imposing high-rise. In an interview with one of its staff attorneys there, I began with a series of questions to clarify the commission’s understanding of “Islamic human rights.” The attorney dashed out of the room and momentarily returned with a small yellow booklet written in Persian. On the cover page, the pamphlet bore the title “Islamic Declaration of Human Rights” in both Persian and English. When I asked about the differences between the Islamic and UN declarations, she explained that these were so negligible that she did not remember what they were. In response to the next obvious question—“Then what is the point of having a separate document?”—she explained that an Islamic statement of human rights offers the certainty that the tenets are based on the foundations of Islam and that these have been researched and established. She continued, “Sometimes people may mistakenly think that Islamic human rights mean that human rights for Islamic people should be different, but this is not what is meant.” Her approach was not to distance the Islamic declaration from international human rights; instead she suggested that Islamic human rights are so similar that any differences with the Universal Declaration of Human Rights (UDHR) are insignificant. Yet there is a standard of Islamic human rights that serves to distinguish them from the UDHR. Her reading of the Islamic declaration situates Islamic human rights outside of Western-based regimes of human rights. Not only did she gloss over context-based differences, but she highlighted the similarity of the formal structures of human rights in Iran with those of the UDHR. “Both are declarations, the contents of which are laid out in article form,” rendering, in effect, legal entitlements upon citizens, to be guaranteed by appropriate institutions of the state.

In the mid-1990s, the Iranian government came under pressure by international human rights groups to establish a monitoring body within Iran in light of its reluctance to permit outside observers to investigate its human rights practices. In 1994, the head of the judiciary, Ayatollah Yazdi, established the IHRC as a national institution in conformity with UN guidelines. The IHRC was founded for a dual purpose, however. Although one of its early aims was to address concerns with
the lack of national monitoring institutions, another aim was to help Westerners understand human rights through the perspective of Islam.\textsuperscript{41} This was confirmed in my interview with the IHRC staff attorney: “Instead of permitting international bodies to be the sole arbiters of Iran’s human rights record, the Head of the Judiciary commissioned the creation of Iran’s own human rights body, based on Islamic foundations.” On one level, Yazdi organized the IHRC in response to international pressures, but the Islamic Declaration of Human Rights reveals that Iran does not haphazardly accede to human rights. Indeed, Iran has human rights that grow out of and conform to Islamic values, but it is significant that the formal structure of the Islamic declaration mirrors and interfaces with that of the UDHR. My meeting with the IHRC staff attorney ended with her pointing out the positive impact of this organization, particularly on freedom of speech issues: “There has been an improvement in this area of human rights; look at the growth of the newspapers, for instance.”\textsuperscript{42}

In 1999, the judiciary granted independence to the IHRC in response to critics both in and outside of the country. Since then, the commission has been ostensibly free to investigate human rights complaints without oversight by the judiciary. As in any other society, the nature of any organization is defined by the parameters of political and legal feasibility; the results of IHRC’s efforts to monitor human rights remain to be seen. On September 29, 2004, an attorney at the IHRC told me that they receive over ten thousand complaints per year but are staffed to address only a small number of these.

As a liaison to international monitors, IHRC acts as an advocate for Iran’s human rights record, despite its official separation from the government. Its advocacy role points to IHRC’s productive agency in establishing and evaluating Iran’s human rights record. More importantly, IHRC is active in claiming and deploying a particular kind of discourse of human rights in Iran. Human rights in Iran are presented by government forces as the products of an indigenous theory of rights. As an advocate for Islamic human rights, the IHRC acts more as a defender of Iran’s human rights record internationally than as an arbiter. As a body, the IHRC becomes an institution of the rational bureaucratic state and a marker of legitimacy and civilization insofar as it recognizes and protects the dignity of its citizens, as it did in the statement released after Moqqadam’s stay of execution.\textsuperscript{43} Although some of my informants expressed cynicism about the IHRC, the judiciary’s creation of a human rights regime points to a definitive stance on human rights and advances its place as a leader in the “Muslim world.” An interesting feature of this localized expression of Islamic human rights is that it takes shape through a largely rational and institutionalized system of law based on forms and processes strikingly similar to those of the United Nations.

I return momentarily to my discussion with the government representative of the Ayatollah Khomeini Complex described earlier. In her statement about the West’s opposition to Islam, she raised the issue of the death penalty in the United States to offer a comparison to the spectacle of public execution. Referring to
the disproportionate number of African Americans on death row, she said: “In America, there are mostly black people awaiting execution.” Pointing out the unusually long periods that those on death row must wait before being executed, she added, “Even the United Nations see this as a violation of human rights. We don’t need the West to tell us about human rights when we have Islamic human rights, based on mercy.”

Asserting human rights through a highly charged and publicized scene of execution gave hard-line government forces in Iran not only the sensational images with which to capture the public’s attention but also a comparative spectacle with which to measure up to the West, more particularly, the United States. Through this studied contrast, officials of the Iranian state constructed Iran’s human rights both through the West and in opposition to it. By appropriating and reifying terms such as human rights and justice, Iranian state actors located their practices at once in the global and in a distinctly native culture and history, leaving Iran with no need for Western liberalism’s paradoxical logic of imperialism and human rights. However, mercy presents a different conundrum when considered in relation to human rights.

The Measure of Mercy: Human Rights and the Problem with Sovereign Exception

When asked about his sudden decision to pardon his son’s killer, the father of the dead man said, “I just considered the honor of Islam. If I forgave him, maybe millions of people who would watch the news would learn about forgiveness, and that is the message of Islam” (Associated Press 2000). The state’s advocates of Islamic human rights similarly connected human rights to mercy, suggesting that the distinction with Western values lies in Islam’s capacity for forgiveness. What is the relationship between human rights, which is a modern expression of liberal justice, and mercy, which is accorded through the divine authority of revealed law?

Scholars of British and American criminal law have explored the relationship between the concepts of mercy and justice, mostly in the context of the death penalty (Garvey 2004; Hay 1975; Strange 1996; Weisberg 2004). In a colloquium at the North Carolina School of Law, legal scholars came together to discuss this puzzle in the context of former Illinois governor George Ryan’s mass clemency of 171 death row inmates on January 11, 2003. Scholars have suggested that mercy has many meanings and may in fact be incompatible with justice (Garvey 2004; Weisberg 2004). Douglas Hay’s (1975) influential work on public executions in 18th-century England offers an important commentary on mercy as a tool of class control. Where mercy might be seen as sparing a convicted criminal, it also legitimates the power of the ruling class.

In the Iranian context, political control works not only in the economic sense that Hay writes about but also in controlling nonreligious people who dare to offend Islam, as was the case of the young men in this story. The hard-liners’ support of the Basij is a central message of this story. With their official support
for a paramilitary force, hard-line state agents legitimized further disciplining of imperfectly Islamic citizens. In pointing out the potential for class control in the name of mercy, Hay (1975:47) also underscores the insidious nature of legal power: mercy is cruel precisely because it can be denied.

The scholars above have considered mercy as pardon power primarily in the context of the death penalty in 18th-century England and the contemporary United States. In these circumstances, the question of mercy has always been considered as the sovereign prerogative and, as such, as existing outside of the retributive justice system (Sarat 2004). In Iran, however, this legal device exists as a part of the retributive system of justice, as it is the victim’s family who must grant the pardon. In this way, Iran’s qisas permits one to understand mercy in accordance with Garvey’s (2004) notion of atonement, which he sees as a preliminary part of the process of reconciliation between the offender and the aggrieved. In Governor Ryan’s granting of clemency, Alfieri (2004) notes the theological foundations of mercy in U.S. law. Pointing out the growing influence of religious thought in U.S. legal theory, Alfieri encourages death penalty lawyers to further integrate mercy into their advocacy. Although this approach leads to the marriage between theology and civil law, Alfieri argues nonetheless that U.S. death penalty lawyers should “reinstate mercy into the moral paradigm of retribution” (2004:1316). In this context, any ammunition to aid death penalty lawyers in seeking reprieve should be seen in a positive light.

The Iranian context, however, may reveal the underbelly of the paradigmatic shift to overt religious discourse, particularly when that discourse is conflated with human rights. Although it is important to highlight the conflicts surrounding theories of justice and punishment with mercy, these scholars do not highlight what appears, at first, to be a more disturbing aspect of the mercy concept within the modern liberal human rights framework. In the story above, a tension between human rights and mercy emerges when the former is modern precisely because it conjures up an inherent basis of rights. Simply because the boy is human, that is, a sovereign individual with rights, he deserves a reprieve. With the granting of mercy, the power of the sovereign, not the individual with rights, is the necessary precondition.48 In Iran, this underbelly was exposed in the trial of Hojjatoleslam Abdollah Nouri, the editor of the banned reformist newspaper Khordad. During his 1999 trial, Nouri defended himself by using the words of Ayatollah Khomeini and noting that, for Khomeini, the 1979 revolution and the ensuing Islamic Republic emerged out of the people’s desire for freedom: “Freedom was not something given by others; it was provided by divine grace and enshrined in the law. As such it was not man’s to give or indeed take away” (1378 [1999–2000]:121). For him to face charges that violated his essential freedom as a human was to deny him his human rights because such rights precede, and do not depend on, the state. This tension is more apparent in the trials of other reformists, who, upon conviction and imprisonment, were permitted to request a pardon from Supreme Leader Ayatollah Khamene’i. Reformist journalist Akbar Ganji, who in summer
2005 was on a hunger strike to protest the charges against him, was offered a pardon if he would ask for the leader’s grace. Ganji refused, saying that he would not renounce his views, and demanded unconditional release instead (BBC News 2005). Inasmuch as the accused in a premodern conception of justice was required to ask the divinely ordained sovereign to grant mercy, within the modern conception of rights, bare life is drawn into the sovereign’s juridico-political power. Agamben notes that the inclusion of bare life in the political realm constitutes the original, if concealed, nucleus of modern power. That is, while mercy requires a sovereign, sovereign power requires a subject to give rights to. The modes of power that the sovereign works from—discipline and biopolitics—are coeval and enable one another in modern societies (Merry 2001). In the articulation of Islamic modernity, through state institutions that are both republican and Islamic, we see productive expressions of modern sovereign power, even in mercy. Suddenly, the discussion of the sovereign right to kill is situated in a discourse of rights or, to put it as the IHRC did, as a measure of Islam’s respect for human life. The act of granting mercy was, therefore, an expression of Islamic human rights. By situating a story about mercy in the context of Islamic human rights, I locate what Agamben has called the problem of the “intersection between the juridico-political and the biopolitical modes of power” (1998:6–7). Through human rights, bare life is revealed as a priori located in sovereign power and in the production of the individuated subject whose very life is at the basis of all human rights protections. In Iran, where pardon comes, on the one hand, from the statist legal apparatus but, on the other hand, from the victim’s family, there is an even greater power granted to sovereign individuality that grows out of modern sovereign power.

Conclusion

The Islamic Republic of Iran simultaneously mobilizes multiple modes of power in an effort to show how it is authentic and global, modern and Islamic, and perhaps most important, merciful and just. A highly charged story about a stay of execution became a performance of penal justice and a statement on the human rights practices of the Iranian state. By describing how this case became a human rights event and examining its fallout from the perspectives of state representatives and citizens, I have sought to engage the performative and productive aspects of human rights. Drawing on Foucault and Agamben, I suggest that the spectacular performance of Islamic penal justice is an exertion of state power that lends greater credence to the authority of a modern state.

Many of those I talked to in the course of my research attributed the reprieve to a state position on human rights even if this is not as apparent in practice. My aim is to address the constructed nature of human rights and to examine what both state and nonstate actors see to be at stake in possessing human rights (i.e., legitimacy in the global culture). Official statements on Islamic human rights
also disclose a blending of Islam, liberal governance, and discourses of rights. State representatives made use of the debates over this case to express a position on human rights. They wished to demonstrate how civilized their policies were, while at the same time particularizing human rights as native, in that they are rooted in the concept of mercy. In this respect, state forces joined the international community by assenting to a limit on sovereignty, but they did so by locating an authentic Islamic position on human rights and therefore defining the conditions of their joining the international community. In the end human rights are dynamic and shifting discursive practices that are mobilized by individuals and national authorities alike.

Finally, as the measure of Islam’s mercy, Iranian human rights might appear to be premised on acts of grace afforded through the state’s legal apparatus. However, this legal apparatus, which offers protection through what might be termed atonement, shifts some of the authority from state actors to victims and their families, possibly situating sovereign power in Iran differently from that in the Western legal perspective, where pardon is an act of grace afforded only by the sovereign.51

Notes

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For the epigraph, this phrase (Bismillah al-Rahman al-Rahim), often referred to simply as bismillah (In the Name of God), is part of the Sura al-Fatiha, which comes from the first chapter of the Qur’an meaning “the key” or “opening.” The complete Fatiha is recited as part of daily prayers. The prayer was revealed in Mecca and is the most recited portion of the Qur’an. Each day during prayers, Muslims recite it 17 times. As an invocation, the bismillah is often recited alone apart from the rest of the prayer and serves to open events.

1. Foucault (1977b) employs a concept of the “event” primarily as a way to disrupt well-established and taken-for-granted continuities in traditional history and as a tool to ensure that historical events are seen and grasped in their unique singularity and not forced into preestablished patterns of historical understanding. Herein I examine a particular event outside of preformed ideas about Iran’s justice system to refocus its historical significance.

2. Schmitt’s (1985) thesis on the state of emergency is a response to Walter Benjamin’s work on violence. In “On the Critique of Violence” (1978), Benjamin locates a notion of “pure” violence, a violence that could exist outside of or beyond the state. Pure violence is a violence that breaks the relationship between the making and conserving of law. Schmitt’s response is a theory of sovereignty in which there is never a space in which
violence is not related back to the sovereign’s authority. This ultimately is the state of emergency.

3. Although the state itself is not a consistent entity, analytically, there is in Iran a discourse that often refers to a monolithic state-entity among some politicians, the populace, and the press, particularly with regard to the ideological underpinnings of the creation of the Islamic Republic or the ideas that would threaten its legitimacy, such as human rights. Human rights theoreticians and practitioners, insofar as they have sought to mobilize a notion of international rights to perform a check on sovereign authority, have indiscriminately referenced state authorities as seeming whole entities. One may surmise that this is because it is the government, in all of its forms and factions, that is charged with protecting the basic human rights of the people pursuant to the various human rights agreements. This is not to suggest, however, that the people are unaware of this nuance or that in this article references to the state take this to be the case. That some state actors speak on behalf of a seemingly coherent entity is sometimes a part of a political strategy with the precise aim of expressing a unified front, for the very purpose of exerting sovereign power.

4. I am not suggesting that this is the first time in Iran that the term human rights is employed. Iranians’ use of the term goes back to the post–World War II period, with the creation of the United Nations and the Universal Declaration of Human Rights. In the 1960s and 1970s, leftists and nationalists used the term to criticize the inequities of the monarchist regime, and later critics of the Islamic Republic’s leadership also employed the term. What I am noting here is that the term is being picked up by hard-line factions and redeployed as inherent to Islamic justice with its concern for mercy. What this article addresses in particular is the relationship between human rights and mercy. Mercy is also a feature of Western liberal political systems, evident in the executive pardon power.

5. This distinction, often made by Iran watchers critical of the current regime as well as some of my informants, is the binary that I argue against in this article.

6. By suggesting that the Islamic Republic seeks to create Islamic human rights as a “native” discourse, I am referring to the productive potential of cultivating nativeness. I do not contend with the question of whether Islam is indigenous to Iran and Iranians and recognize that this is in itself a highly charged issue.

7. Throughout the world, controversies surrounding the death penalty reveal a nagging tension about punishment and justice in modern societies. Critics of Iran’s retributive justice system, however, often condemn the legal process as well as its sanctioning apparatus precisely to raise questions about modern human rights standards or to illustrate Iran’s failure to comply with them (Afshari 1994, 1995, 2001; Mayer 1995). Others have argued that torture and public executions are indeed products of modernity (Godoy 2004; Rejali 1994).

8. The square where this event took place is named after Hossein, grandson of the Prophet Mohammed and son of the Shi’ite founder. Hossein was martyred at Karbala, and his unjust and untimely death is commemorated by Shi’i Muslims every year through passion plays (ta’zieh) reenacting his martyrdom, processions, and prayer. Fischer and Abedi (1990:167–168) note the specific relevance of Imam Hossein for Iranians who see him as the purveyor of righteous political revolt and an iconic figure of suffering. As will be seen below, hard-liners in Iran’s government referred to the death of Moqaddam’s victim as a martyrdom, thus situating the event within the divided politico-religious terrain.

9. Certain exceptions to the obligation of fasting exist, such as ill health, pregnancy, menses, old age, and travel.

10. Ali, the founder of Shi’ism and the third Sunni caliph, was assassinated on the 19th day of Ramadan. For pious Shi’ites, the month is a period of contemplation for the martyrdom of Ali and by extension, the martyrdom of all in the service of God. For further
discussion on ritualization and the martyrdom of Ali, see Fischer 2003. The month of Ramadan is noted by all Muslims as the month when the Qur’an came down.

11. Some liken the plain-clothed, gun-toting Basij to vigilantes or more extremely, an armed and dangerous militia group. Up to this incident, there was no clear governmental decree creating the Basij.

12. The sentence is similar to that for first-degree murder in the United States in that a guilty verdict requires the finding of intent to kill on the part of the accused.

13. For instance, Hojjatoleslam Mohsen Kadivar, a reformist cleric, stated in an interview with the newspaper Khordad that the theory of Islamic governance as based on the Guardianship of the Jurisconsult, Velayat-e Faqih, is not absolute, and he compared the new Islamic system to the former dictatorship. Kadivar was tried by the Special Clerical Court and sentenced to prison for spreading falsities about the Islamic system and for confusing the public (Tehran Times 1999c). Kadivar, a low-ranking cleric, was primarily a scholar not known for his outspokenness. His sister, however, was married to controversial reformist Minister of Culture and Islamic Guidance Ataollah Mohajerani, whom the Majlis tried to remove from office as well. For an excellent exposition of this period, see Ansari 2000.

14. President Khatami’s first-term minister of Cultural and Islamic Guidance, Ataollah Mohajerani, issued over 280 press licenses in his first year in office and 175 in his second. The year he took office, the total newspaper circulation in Iran was 1.3 million, but by 1999, it was 2.7 million (Iran Daily 1999a).

15. At this time, Iranian intellectual Abdolkarim Soroush was giving public lectures in Tehran and raising excitement about new interpretations of Islam within the contexts of modernity. Such lay intellectuals of Islam were taking their inquiries into Islam beyond the traditional religious jurisprudence (figh-e sonnati) to more dynamic (figh-e puya) and expedient (figh-e maslahati) approaches to jurisprudence, particularly with regard to the relationship between Islam and modernity. In the past, traditional scholars were preoccupied with Islam’s adaptability to modernity, thus conceiving of modernity as a phenomenon external to Islam, but increasingly, scholars in the postrevolutionary period began to interrogate the concept of modernity itself in an effort to highlight and even develop indigenous forms and expressions of modernity (Dahlén 2003:5).

16. On the day the sentence was handed down, the head of Iran’s judiciary, Ayatollah Hashemi Shahroudi, unequivocally gave the Basij legal authority to prevent crimes and preserve the security of the country.

17. The shari’a (Islamic law) prescribes two other kinds of criminal sanctions: (1) fixed punishments (hoodood) are imposed for specified offences that serve a deterrent purpose, and (2) discretionary punishments (ta ’zir) allow for judicial discretion and aim at reforming the offender. Baderin (2003) notes that the three levels of punishment can be interpreted to accommodate modern penal principles.

18. Early Islamic law scholars such as Joseph Schacht (1964) referred to Islamic law as jurist’s law, as opposed to judge’s law. Only jurists who were educated in the scholarly pursuits of the science of jurisprudence (figh) were deemed qualified to make rulings. Such scholars thought that jurists trained in figh had an aversion to a rationalized system of process that permits law to be enforced by judges not trained in the underlying moral considerations embedded in the shari’a (Arjomand 1988:184). Among the early scholars, the administration of shari’a justice was often characterized by its lack of procedural uniformity, what Max Weber refers to as “qadi-justice” (1978). For Weber, moral considerations and a personalized style of process are the characteristic traits of Islamic justice. Later work on Islamic jurisprudence and legal systems has refuted the idea that Islamic law is incompatible with rationalization (Fischer 1990; Messick 1993) and has begun to show Western audiences
the history of rationalization within Islamic law, particularly in Shi‘i jurisprudence (Zubaida 2005).

19. The role of a new legislative assembly would be that of a “simple planning body” that draws up programs for the different ministries (Khomeini 1981).

20. Note that the new state, ultimately, is a republic; this arose from compromise and, to some extent, lack of knowledge about the mechanisms needed to put Islamic government into operation (Arjomand 1988). Paidar (1995) details the confusion in choices of laws and courts in adjudicating divorce, and Zubaida (2005) discusses the disorder that ensued in drafting penal sanctions.

21. It is important to note that this blended legal system grew through struggles to determine how to put into operation this unique system consisting of Islamic and republican institutions. Not all of the Shi‘i ulama (religious scholars) agreed with Velayat-e Faqih, Ayatollah Khomeini’s thesis on Islamic governance. Some strict Islamists agreed that in the absence of Mahdi, some final authority on Islam should lead the nation, but for others, the features of governance expressed in the republican model, with Islamic laws rationalized in codified form, are offensive to the essential values of Islam.

22. In doing so, Foucault reveals a disaffection, more evident in his later work, such as his essay on governmentality (1991), with the premodern–modern binary that his earlier work seems to convey. These processes are coeval workings of sovereign power.

23. Foucault discusses law within the broader concept of the juridical field, of which positive laws are merely one component. Scholarly work on the juridical field engages the productive potential of both the disciplinary powers of law (Fitzpatrick 1992; Hunt and Wickham 1994) and biopower (Agamben 1998). Although the former focuses on individual subjectivity, the latter emphasizes the potential to regulate populations on a mass level. Human rights law and discourse provide precisely these regulative possibilities.

24. In an essay questioning the ideas underlying modern conceptions of torture, Asad points out that cruelty is primarily represented in legal terms, especially in the language of human rights, because the “perpetual legal struggle has now become the dominant mode of moral engagement in an interconnected, uncertain and rapidly changing world” (1997:128).

25. Even while questioning the purported self-evidence of human rights, Rabinow concedes to its pervasiveness: “It is plausible to argue that currently no secular counter-discourse exists that has anything like the legitimacy, power, and potential for successful expansion that the human rights discourse currently possess[es]” (2002:143).

26. Among his alleged offenses was an interview his newspaper published with Mohsen Kadivar, who accused hard-liners of perverting the concept of Guardianship of the Jurisconsult. He compared their interpretation of Khomeini’s notion of Islamic governance to a monarchy, saying that this was not what was intended (Tehran Times 1999c). See also Ansari 2000:184.

27. Although Agamben follows Foucault in the finding that biopower reduces all human life to its biological functions, Agamben locates this point of reduction to bare life much earlier, in the ancient period of the early Greeks, as opposed to Foucault, who locates it in the 17th and 18th centuries. This is relevant here as I consider the nature of biopower as it is reflected in an Islamic device that has been transmuted into rational law as codified in Iran’s penal codes. Furthermore, the pardon offered in qisas complicates a unidirectional and top-down logic of sovereign power as, in the Iranian context, it is the family of the victim that must act in pardoning. For this reason, it is important to consider another conception of the sovereign power, that of the sovereign individual who is the bearer of rights and is, indeed, the subject of human rights. Obviously this principle of sovereignty emerges through the modern liberal juridical system, which necessitates the individuated subject of law.
28. This is not to suggest a seamless relationship between mercy and justice; the last section of this article explores the problematic dynamics between the two concepts.

29. Starrett observes that visual documents act as a discourse of emotional engagement and allow the state to assimilate with the viewing (or reading) audience as a “single rhetorical subject responding to the images with a seemingly sudden and unified outpouring of feeling” (2003:400).

30. For that reason, since Khatami’s election, my informants seldom spoke of the state as a synchronous entity. When they referred to the “Islamic Republic,” or “Iran,” or “the government,” as in the passages above, these terms signified for them specific factions or actors whose posts and personalities were thought to be informed by a set of beliefs that they saw as operating within particular political and ideological realms, such as the hard-liners or reformists. For example, the penal system is operated by the judiciary, whose head, Ayatollah Shahroudi, was thought of as a hard-liner and was referenced as such in the papers and by the people. Thus, my informants referenced Shahroudi, sometimes by name, when speaking of this event or others that involved the judiciary. The head of the judiciary is selected by the guardian of the jurisconsult and not by the president or an elected body.

31. Although the exact nature of the hard-liners’ participation in the act of forgiveness is unknown, the “spectacle making” of the event can be substantiated. The head of the judiciary handed down the verdict, authorized the public hanging, and ordered the execution to take place in the busy public square. State officials closed down the streets and remained on hand to keep the peace. Televising the event was also a state action. The National Radio and Television Broadcasting is a hard-line state-run body directed by the offices of Iran’s supreme leader. In contrast, in April 2002, the Iranian Supreme Court sentenced a man to death for having murdered 16 prostitutes. The sentence was carried out in an inner courtyard of his prison, outside public view, where neither his family nor the families of the victims were present (BBC News 2002).

32. In fall 1998, numerous well-known intellectuals and political dissidents were brutally murdered. Law enforcement forces were slow in investigating the case, but the public speculation that grew from leaks revealed deep divisions within the government institutions. See Ansari 2000:176–180.

33. For example, the Washington, D.C.–based National Council of Resistance of Iran, a nongovernmental organization against the Islamic Republic, issued a press release:

    While the mullahs’ judicial system is so swift in meting out punishment in this case, it has not yet held a single trial [of] the masterminds and perpetrators of the murders of three Christian priests, a series of political murders, and many other heinous crimes, even though the clerical regime has acknowledged that all these criminal acts have been committed by its own Intelligence Ministry agents. [Iran Zamin News Agency 1999b]

34. Other examples of the expression of Iran’s sovereignty can be found, such as its participation in the United Nations, diplomatic representation in most countries of the world, and the existence of national security and defense forces. The human rights regime is an interesting example because, unlike other expressions of sovereignty, human rights have become a distinct trope that defines the flexible nature of sovereignty, in that it is at once an expression of sovereignty and a surrender of it. See Sassen 1996.

35. After the Columbine killings in Denver, Prayer Leader Ayatollah Meshkini used the incident to note that civilization in the West means money, weapons, and luxury, whereas the term in its real sense suggests ethics, morals, and perfection (Tehran Times 1999a).

36. The Islamic Republic of Iran is a signatory to a number of human rights treaties, including the Convention on Economic, Social, and Cultural Rights (June 24, 1975), the Convention on Civil and Political Rights (June 24, 1975), the Convention on the Elimination
of Racial Discrimination (August 29, 1968), and the Convention on the Rights of the Child (July 13, 1994). The last is the only convention signed and ratified by the postrevolutionary government. As a result of its participation in the United Nations, Iran has agreed to allow monitoring by independent human rights observers. Iran was, until April 2002, on the list of countries to which the UN Human Rights Commission sent a special representative, although Iran had not permitted the special representative to visit the country for several years. On April 22, 2002, the commission voted against continuing the special representative’s evaluations of Iran’s human rights record, a decision decried by Human Rights Watch (2002).

37. During that same meeting, my host reminded me of the words of a 13th-century Iranian poet, Sa’adi, enshrined at the UN headquarters in New York: “The sons of Adam are limbs of each other/Having been created of one essence/When the calamity of time afflicts one limb/The other limbs cannot remain at rest/If thou hast no sympathy for the troubles of others/Thou are unworthy to be called by the name of man.” Nor have these words been missed by scholars of Islam and human rights. Iranian human rights scholar Abu Muhammad Asgarkhani (2003:302) opens a discussion on the considerations of human rights and Greek cosmopolitanism with the same verses. While I was in Iran, numerous informants told me about these verses from Sa’adi, which they held to be an indigenous link between Iranian Islamic civilization and human rights. Many also cited the seventh-century work of Shi’ite Imam Ali ibn Abi Talib, Nahj al-Balagheh (Peaks of Eloquence), as a source for human rights in Islam. Scholars have also treated this work as a source for human rights in Islam. See Javadi Amuli 2003.

38. See, for example, Abou El Fadl 2004; al-Sayyid 1995; An-Na’im 1990; Asad 2003; Moussalli 2001; and Soroush 2000. For Iranian scholarly explications of human rights, see Salimi 2003.

39. Abou El Fadl cites 90:17, where the Qur’an charges human beings to exhibit patience and mercy in their interactions with one another, and 43:32, which counsels humans not to overstep their authority by “presuming to know who deserves God’s mercy and who does not” (2004:40).

40. Amnesty International’s (2000, 2001) country conditions reports on Iran for the years 2000 and 2001 note Iran’s reluctance to admit outside monitors. Iran’s Foreign Ministry spokesman Hamid Reza Asefi is quoted as stating that the 1998 report by the special representative for the UN Commission on Human Rights is based on allegations provided by Iranian opposition groups (Iran Daily 1999b).

41. IHRC’s General Secretary Mohammad Hossein Ziaeefar also confirmed this (Payam-e Emrouz 1997).

42. This interview took place in May 1999. By May 2000, the hard-liners had closed down dozens of newspapers, having severely cracked down on the freedom of speech right to which the attorney referred as an example of the improvement of the human rights situation in Iran.

43. For example, in the January 18, 2000 report of the special representative to the UN Commission on Human Rights, the special representative, despite not having been invited to Iran for more than a year, wrote,

The Special Representative has followed the evolution of this commission for some years. Obviously it should be a cornerstone in the establishment of a culture of human rights. The commission is clearly making progress and now seems to be addressing such difficult issues as the need for society to be able to debate the death penalty and, more generally, other public issue which, for some at least, touch on Islamic verities. [United Nations Report of the Special Representative 2000]

44. International court decisions have found prolonged confinement on death row to be cruel and inhuman punishment. See, for example, Dieter 1999.
45. Governor Ryan pardoned four death row inmates and commuted the sentences of 167 others to life in prison.

46. Weisberg (2004) suggests that mercy might be an apology for systemic injustice, whereas Garvey (2004) questions the morality of mercy in a retributive justice system where remission of justice is no justice at all.

47. This was evident in three incidents. First, after he pardoned the boy, the father said that he did so to show the “magnanimous face of the militia.” Second, the speaker of Iran’s Parliament spoke out in favor of the death penalty to send a message to those who defy the Basij. Third, Iran’s supreme Islamic leader, Ayatollah Khamene’i, spoke out after the incident to recognize the legal authority of the Basij.

48. Derrida has also written on this issue:

Forgiveness transcends and neutralizes the law. . . . What counts in this absolute exception from the law, the exception to the law, is situated at the summit or at the foundation of the juridico-political. In the body of the sovereign, it incarnates what founds or supports or establishes, at the top, with the unity of the nation, the guarantee of the constitution, the conditions and exercise of the law. [2001:46]

49. The head of Iran’s judiciary, Ayatollah Shahroudi, as well as former president and recent presidential candidate Hashemi Rafsanjani, the latter of whom Ganji accused of having played a part in the 1998 deaths of Iranian dissidents, both took up Ganji’s cause. Ganji was released from prison on March 17, 2006, after serving a six-year prison term.

50. Writing on torture in Iran, Rejali (1994) has made the claim that torture today is integral to the modern disciplined society.

51. In December 2003, Attorney General John Ashcroft allowed U.S. citizen and Guantánamo detainee Yaser Hamdi to obtain legal representation. Deborah Pearlstein, who directs the U.S. Law and Security Program at Human Rights First, responded as follows:

We welcome the Pentagon’s decision to allow Yaser Hamdi to talk to a lawyer. But we take exception to the idea that the Administration is providing access to counsel merely as a matter of discretion. Some process for evaluating the legality of Mr. Hamdi’s detention—beginning with access to counsel—is a basic constitutional right for U.S. citizens, not a matter of special privilege. . . . For the past two years, this Administration—far more than previous “wartime” executives—has been strikingly effective at keeping the courts out of the business of checking executive power. The Pentagon’s insistence that access to counsel is not required by law, and is available only at the government’s discretion, misses the critical point. The point is that the rule of law is a matter of right, not a matter of grace. [Human Rights First 2003]

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ABSTRACT In January 2000, Iranian government agents hailed a last-minute death sentence reprieve as an expression of Islamic human rights. Officials mobilized a native source of human rights in the invocation of mercy. For some, the proliferation of human rights norms situates a state in the fold of modernity, whereas the “spectacle of the scaffold” suggests a premodern demonstration of sovereign power. Through a study of sovereign power and human rights, this article
questions the seemingly clear-cut divide between premodern and modern forms of justice and suggests that contemporary appeals to mercy as human rights should not be dismissed as being outside modern forms of state sovereignty. [sovereign power, Islamic law, human rights, mercy, Iran]