

Introduction

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'Justice' (*edalat*) has long been central to Iranian political culture. From the ancient Persian theory of the 'circle of justice' (*daire-ye edalat*) to the demands for a 'house of justice' (*edalatkhaneh*) during the Constitutional Revolution of 1906, the demand to nationalise the Iranian oil industry ending with the August 1953 US-UK engineered coup, and finally the centrality of social justice (*edalat-e ejtema'ie*) and the rule of law (*hokumat-e qanun*) to the ideology of the 1979 Revolution.

However, there is little to no consensus on the precise meaning of 'justice' among Iranians. As a result, it has been interpreted in a variety of conflicting ways across different political and religious traditions both inside and outside Iran. What many views of justice share is a belief in the basic equality of all human beings, though this leaves many questions unanswered such as equality in what terms? What is the relationship between equality and liberty? How are tensions between individual and societal rights to be resolved? What is the relationship between equality and justice? What is the source of equality? These questions have resonated at various times in modern Iranian history and have led to protracted legal and constitutional disputes on the meaning of principles such as 'equality before the law' or the proper relationship between social justice, private property and taxation.¹ As a human rights review focused on practical issues, however, this collection does not attempt to grapple with these philosophical questions and operates on the assumption that to be morally acceptable a society's institutional order must treat its citizens justly.² Broadly speaking, this means that there is formal equality in the legal and political sphere and some measure of substantive equality - or at least measures to tackle gross inequality - in the socio-economic sphere. Thus, this review focuses on two dimensions of justice in contemporary Iran. First, legal justice: issues pertaining to the rule of law, the independence of the judiciary, the legal profession and how adequately the law protects fundamental human rights. Second, social justice: issues pertaining to issues such as poverty, inequality, labour rights and access to health and education.

Legal justice

The contributions in this section of the issue examine some aspects of the legal system in Iran and its relationship to the principle of justice. It is important to note that legalism and the rule of law have been central to the rhetoric of legitimacy in the Islamic Republic. After the 1979 Revolution Ayatollah Khomeini denounced the secular legal system of the Pahlavis and pledged his commitment to a distinctly Islamic conception of legality on which the new order should be based. He declared the Persian New Year 1360 (1981-1982) the 'year of the rule of law' (*sal-e hokumat-e qanun*), maintaining that 'all the Prophets since the beginning of the world have come for the establishment of the law (*qanun*) and Islam has come for the establishment of the law'.³ The declaration paved the way for the introduction in that year of a codification of the Law of *Hodud*⁴ and *Qesas*⁵ derived from Shi'a jurisprudence (*fiqh*) replacing the secular penal code of 1926, to which new chapters (*Diyat* and *Ta'azirat*) were later added. Steps were also taken to Islamicise the judiciary culminating in 1991 in the abolition of the procuracy (*dadsara*) and a reversion to the traditional sharia court model in which the functions of prosecutor, investigator and judge were combined in the person of the judge, a move which seriously compromised the independence of the judge in legal proceedings.⁶

The current judiciary has three branches. First, the public courts in charge of criminal and civil cases. Second, revolutionary courts, whose judgements are final and cannot be appealed in any cases that in some way undermine the Islamic Republic, such as crimes against national security. Third, the special clerical courts which handle crimes committed by the clerics with judgements that are final and accountable to

¹ For example, Sheikh Fazlollah Nuri's campaign against Article 8 of the Supplementary Law of 1907 which was to establish 'equality before the law' of Muslims and non-Muslims. In the end Article 8 established equality before state law (*qanun-e dawlati*) implicitly leaving the inequality of non-Muslims in the sharia untouched, see Hadi Enayat *Law, State and Society in Modern Iran: Constitutionalism, Autocracy and Legal Reform 1906-1941* (Palgrave Macmillan): 63-66. For debates under the Islamic Republic involving the tension between land reform, private property and taxation see Asghar Shirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic* (I.B Tauris, 1997): 237-9.

² Thomas Pogge, 'Rethinking Justice and Equality', *Social Europe Journal*, March 15, 2011. Available at: <http://www.social-europe.eu/2011/03/rethinking-justice-and-equality/>

³ Said Amir-Arjomand, *After Khomeini: Iran under His Successors* (Cambridge University Press): 23.

⁴ The *hodud* offenses constitute the core of Islamic penal law. These are crimes which are punished by 'divine right' and are therefore fixed and specified in the Quran and the Sunna. Their distinguishing feature is that they are violations of the claims of God (*haqq allah*) and not the claims of people (*haqq al-nass*) which apply to private persons. The *hadd* crimes are theft, banditry, unlawful sexual intercourse, an unfounded accusation of unlawful sexual intercourse, drinking alcohol and apostasy.

⁵ *Qesas* means 'retaliation'. It is a principle of Islamic criminal law which deals with the claims of private persons (*haqq al-nass*) and regulates cases of bodily harm and homicide. Under *qesas*, which is similar to the principle of *Lex Talionis* (eye for an eye) found in other legal traditions, the victim (or their family) can demand retaliation, blood money (*diya*) or they can pardon the offender.

⁶ 'Procuracy' is the word used to describe the office of the public prosecutor (procureur) in the French civil law system on which the Iranian legal system was based.

the Supreme Leader. Article 156 of the Islamic Republic's Constitution enshrines the independence of the judiciary.⁷ However in practice, the Iranian judicial system lacks independence and has become a vital instrument in implementing the will of the Supreme Leader. For example, the Head of the Judiciary is appointed by the Supreme Leader who is charged with the appointment of the Head of the Supreme Court as well as the Minister of Justice. Furthermore, as several of the contributors to this review show, the legal system is characterised by extreme arbitrariness, judicial lawlessness, the enforcement, or at least selective enforcement, of brutal *hodud* punishments, the undermining of independent legal representation, the widespread use of torture, other egregious violations of due process, and mass prison killings in the 1980s which on any definition amount to crimes against humanity.⁸

Pressures from Iranian civil society as well as numerous international human rights reports published mainly during the 1990s and early 2000s prompted the government to restore the procuracy and make other mild attempts at reform from the early 2000s during Mahmoud Hashemi Shahroudi's tenure as head of the judiciary (2000-2009).⁹ Indeed, the establishment of the rule of law was one of the main pillars of President Mohammad Khatami's platform in 1997.¹⁰ Khatami identified the legal system as one of the most dysfunctional and abusive components of the Islamic Republic, which he emphasised, was clearly violating its own constitution.¹¹ Ironically, these very same institutions were instrumental in repressing the reform movement, manifested in the early 2000s, mainly in the shape of the judiciary shutting down reformist newspapers and the Guardian Council vetoing reformist bills.¹² Consequently, the judiciary became highly politicised during the presidency of Khatami and emerged as the main guardian of the unelected institutions (or 'deep state') in Iran.¹³ The situation deteriorated again with the crackdown on the Green Movement and its leaders during the 2009 post-election uprising, manifested in the mass show trials which followed, the widespread use of torture and rape in the course of the suppression and deaths of young protestors in the notorious Kahrizak prison and the confiscation and imprisonment of hundreds. At the height of the protests in June 2009, new regulations were introduced that, in effect, nullified Prime Minister Mohammad Mosaddeq's 1955 law guaranteeing independence for the Bar Association. Although the regulations were later suspended, they were replaced by a new bill of attorneyship which, if passed, could transform the Bar Association into a branch of the judiciary removing its independence and with it one of the main due process safeguards remaining in the legal system.¹⁴ This bill is the latest in a series of attacks on the independence of the legal profession, beginning after the revolution and continuing through the 1980s and 1990s, which, as Matine-Daftary shows in this review, has seriously undermined the long established right of defence in the criminal courts in Iran.

Another recent development is the 2012 promulgation of a revised penal code, originally commissioned by Shahroudi in part at least in the light of growing international criticism of the provisions of the old law (highlighted in the international arena by the Sakineh Ashtiani case).¹⁵ The revised code has been touted by the government as an improvement on the older version and one that broadly complies with international human rights standards.¹⁶ In reality, it employs a great deal of sophistry and vaguely worded articles to retain and even enhance many of the negative features of the old code such as stoning for adultery, arbitrary decision-making by judges (*elm-e qazi*),¹⁷ discriminatory provisions against women and religious minorities and the criminalisation of political dissent through vaguely worded crimes such as *moharebeh* (warring with God) and *efsad-e fel arz* (sowing corruption on earth).

⁷Iran Human Rights Documentation Centre, The Constitution of the Islamic Republic of Iran, <http://www.iranhrdc.org/english/english/human-rights-documents/iranian-codes/3017-the-constitution-of-the-islamic-republic-of-iran.html?p=20>

⁸ See the findings of the Iran Tribunal at: <http://www.iranhrdc.org/english/human-rights-documents/ngo-reports/iran-tribunal/index.1.html>

⁹ Mahmoud Hashemi Shahroudi (b.1948) was previously the head of the Supreme Council for the Islamic Revolution in Iraq. He was appointed by Ayatollah Khamenei as the Head of Iran's judiciary from 1999-2009. He is currently a member of Iran's Guardian Council.

¹⁰ Mohammad Khatami (b.1943) is a Reformist politician who served as President of Iran from 1997-2005.

¹¹ On Khatami's attempts to establish the rule of law see Keyvan Tabari, 'The Rule of Law and the Politics of Reform in Post-Revolutionary Iran', *International Sociology* 2003: 18-104.

¹² Ibid: 100.

¹³ Similar to the term 'state within a state' the term 'deep state' (*derin devlet*) is a term originally used by Turkish leftists and Islamists to refer to authoritarian and anti-democratic elements within the Turkish state (referring primarily to the army, judiciary and security forces).

¹⁴ On this issue see Mohammad Hossein Nayyeri, 'Iranian Bar Associations: Struggle for Independence', Iran Human Rights Documentation Centre, 28 November 2012, <http://www.iranhrdc.org/english/publications/legal-commentary/100000211-iranian-bar-associations-struggle-for-independence.html#U39kyFhdUm8>

¹⁵ Sakineh Ashtiani was sentenced to death by stoning for the crime of adultery in 2006. After a concerted international campaign initiated by her family which seriously embarrassed the Iranian government her sentence was suspended in 2011. She was eventually released from prison in March 2014.

¹⁶ For an English translation of the new code as well as other Iranian law codes go to <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/index.1.html>

¹⁷ On the concept of *elm-e qazi* see Drewery Dyke (this review). For a more detailed explanation see the report by Human Rights Watch 'Codifying Repression'. (2012) Available at: http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf

This cursory examination of the rule of law in Iran leads to serious concerns around access to justice as reflected in a recent global rule of law index produced by the World Justice Project in which Iran ranked 82nd of 99 countries, a low ranking confirmed by the findings of this issue of Iran Human Rights Review.¹⁸

Social justice

Social justice was a central component in the ideology of the revolution of the Islamic Republic generally and the rhetoric of social justice has remained central to the discourse of successive Iranian administrations, opposition movements, as well as of the Supreme Leader.¹⁹ Backed by Article 29 of the Islamic Republic constitution, the leaders of the Islamic Republic have often boasted that in this area Iran is the envy of many developing countries, citing its impressive performance especially in the areas of poverty reduction and the provision of physical infrastructure to deprived areas. Critics of the Islamic Republic have questioned these claims by casting doubt on the veracity and reliability of essential data. Indeed, statistics published by various state agencies are often contradictory or lack detailed coverage.²⁰ Data on the balance sheets of public enterprises as well as on the accounts of *bonyads* (charitable trusts set up after the revolution which control an estimated 20-40% of Iran's GDP) are not available to the public.²¹ Therefore, observations in terms of macro-economic criteria for measuring social justice are somewhat tentative.

Since the revolution there have been several bouts of economic populism and redistribution which have had mixed results. Some scholars (including contributors to this review) have argued that levels of absolute poverty fell during the first 10 years after the Revolution and although they have fluctuated since then, poverty has generally decreased over the past 35 years.²² This was most apparent in the deprived rural areas where there were notable improvements in social services such as health, education and the provision of infrastructure such as water and electricity.²³ But whilst absolute poverty has been reduced, the Islamic Republic has fared worse in terms of reducing relative poverty (or inequality).²⁴ The Gini Index of inequality in Iran has for the most part remained at the higher end for developing countries (i.e. Iran has generally been more unequal than most other middle-income and developing countries).²⁵

While there is a debate on which is more important, absolute or relative poverty, a common trend across many societies is that as absolute poverty decreases, relative poverty becomes more important as a *political* issue. This is particularly relevant to Iran where the legitimacy of the state has often been based more on redistribution than wealth creation.²⁶ The corrosive effects of inequality are now well-documented; in brief, it tends to create social grievances and instability at the bottom and rent-seeking and corruption at the top.²⁷ The reasons for the failure to tackle inequality successfully are complex and may be attributed to a number of factors. The successive waves of botched privatisation and cronyism under Rafsanjani,²⁸ particularly intensified under Ahmadinejad's²⁹ administration, are partly to blame.³⁰ The problems with privatisation are in turn a result of the weakness of the rule of law described above. In addition, the effects of sanctions and rampant inflation exacerbated by economic mismanagement and corruption can also be cited as factors. Indeed, the fact that inequality increased dramatically during Ahmadinejad's first term, when oil prices reached new heights, fuelled suspicions of wide-scale corruption.³¹ Social mobility has also been stymied by growing inequality of opportunity in the area of education.³² Finally, another feature of the Islamic Republic undermining its rhetorical drive for social justice has been the crackdown on labour activists and trade unionists. Independent trade unions are a vital instrument in achieving social justice and reducing inequality. The repression of trade unions has been a consistent feature of the Islamic Republic since 1979 – independent trade unions are banned and labour activism has been

¹⁸ World Justice Project: <http://data.worldjusticeproject.org/#/index/IRN>

¹⁹ See Aiello (this review). This was particularly reflected in the writings of Ali Shariati but also in speeches by Ayatollah Khomeini.

²⁰ Jahangir Amuzegar 'Iran's Economy: Status, Problems and Prospects', Woodrow Wilson International Conference Paper, November 16, 2004. Available at: <http://www.wilsoncenter.org/sites/default/files/JahangirAmuzegarFinal.pdf>. Also see Aiello (this review).

²¹ Ibid.

²² See Djavah Salehi Isfahani (this review).

²³ Ibid. On the provision of health services under the IRI see Milani and Rezai (this review). Also see Eric Hoogland, 'Thirty Years of Islamic Revolution in Rural Iran', *Middle East Report*, Volume 39, Spring 2009. Available at: <http://www.merip.org/mer/mer250/thirty-years-islamic-revolution-rural-iran>

²⁴ See Aiello and Salehi-Isfahani (this review).

²⁵ The Gini index measures inequality from 1 to 100 from equal to unequal. In 2005 Iran scored 38 while Egypt scored 32 (Kevan Harris, 'Iran's Labour Flashpoint', *The Iran Primer*, February 17th, 2011.) Available at: <http://iranprimer.usip.org/blog/all/Kevan%20Harris?page=1>

²⁶ Djavah Salehi Isfahani, 'Iran: Poverty and Inequality Since the Revolution', Brookings Institute Opinion, January 29, 2009. Available at: <http://www.brookings.edu/research/opinions/2009/01/29-iran-salehi-isfahani>

²⁷ See Thomas Piketty, *Capital in the Twentieth Century* (Harvard, 2014), Joseph Stiglitz, *The Price of Inequality* (Penguin, 2013) and Richard Wilkinson and Kate Pickett, *The Spirit Level: Why Equality is Better for Everyone* (Penguin, 2010).

²⁸ Akbar Hashemi Rafsanjani (b.1934) was the President of Iran from 1989-1997. He is currently head of the powerful expediency council (*majmue-ye takhsis-e maslahat-nezam*).

²⁹ Mahmoud Ahmadinejad (b. 1956) was the President of Iran from 2005-2013.

³⁰ On privatization in Iran see Arjomand, *After Khomeini*: Chapters 3 and 8

³¹ Salehi-Isfahani, 'Poverty and Inequality' (para 10).

³² Salehi-Isfahani (this review).

repressed, often violently, and replaced with state-controlled Islamic worker boards. These organisations have policed dissent and directed worker grievances into more manageable forms.³³ This was another growing trend during Ahmadinejad's term and continues under the present administration.

In light of the above and the evidence provided by the contributions to this issue, the Islamic Republic of Iran is encouraged to:

1. Take the necessary steps to ensure independence of the judiciary.
2. Abolish the death penalty, including stoning and juvenile executions, as well as all corporal punishments.
3. Take effective legal measures to safeguard equal access to state organs and officials regardless of gender, religion, ethnicity, race, or economic means.
4. Accept a visit to the country by the UN Special Rapporteur on the situation of human rights to Iran and other special procedures of the UN Human Rights Council.
5. Safeguard access to social welfare including the highest standards of labour rights.
6. Amend the Penal Code to remove vague references and establish clear definitions for offences against the national and international security of the country in such a manner that does not violate Iran's commitment to rights of free speech and assembly.
7. Continue all efforts to guarantee effective social welfare, coverage and services free of ethnic, religious or gender discrimination.
8. Continue efforts to reduce poverty and increase access to education, healthcare and economic welfare.
9. Continue to improve programmes and policies aimed at advancing all rights of women and children.
10. Continue to improve just and equal access to economic, social and cultural rights of all citizens in Iran, both in main and marginal communities.

³³ Kevan Harris, 'Iran's Labour Flashpoint', *The Iran Primer*, February 17th, 2011. Available at: <http://iranprimer.usip.org/blog/all/Kevan%20Harris?page=1>