

# Iran: The Formation of Trans Identity and Possible Paths Toward the Acceptance of Greater Gender “Deviance”

Sohayl Vafai\*

**Abstract:** The Islamic Republic of Iran is painted by “Western media” as a peculiar site for the legality and regulation of sex reassignment surgery and transgender and transsexual identities. This Article argues that Iran’s position on trans issues is not as peculiar or phenomenal as Western media frequently claims. In Section I, I provide a general history of gender and sexual performance in Qajar Iran. I then explain how Iranian-Western interactions helped create heteronormalization in Iran. Finally, I discuss the Islamic Republic of Iran and its effect on formulations of gender and sex. In Section II, I discuss Iran’s legal-medical-religious sex reassignment framework for those who identify as trans. In Section III, I discuss trans advocacy in Iran, including why trans persons largely seek entitlements rather than rights. In Section IV, I argue that Iranian trans and other gender “deviant” persons are the best situated to affect their situation. I explore the possibilities of liberatory approaches and activism that utilize (1) coalitions that engage and mobilize multiple identity groups, (2) language that allows for new meanings and representations of identity, and (3) Ayatollah Khomeini’s fatwa on sex reassignment surgery.

## TABLE OF CONTENTS

Introduction .....	2
I. History .....	6
A. Gender and Sexuality in the Qajar Dynasty .....	6
B. Western-centric Heteronormalization .....	8
C. The Islamic Republic of Iran and Khomeini’s Fatwas .....	15
D. Sex Reassignment Surgery in the Islamic Republic of Iran .....	19
II. Sex Reassignment Bureaucracy .....	23

III. Trans Lives and Advocacy in Iran .....	26
IV. Moving Forward .....	29
Conclusion .....	33

## INTRODUCTION

“Western media”<sup>1</sup> generally paints the Islamic Republic of Iran as a peculiar site for the legality and regulation of sex reassignment surgery and transgender identity.<sup>2</sup> This Article argues that Iran’s position on trans issues is not as peculiar or phenomenal as Western media has frequently claimed.<sup>3</sup> As recently as the Qajar dynasty (Iran, circa 1785-1925), gender was understood differently than it is in today’s Iran. During the Qajar dynasty, same-sex relations between old(er) and young(er) men were not only common, but also celebrated in literature and other cultural sites.<sup>4</sup> Females sported thin mustaches to evoke the beauty of young men and their bodies were at times indistinguishable from male bodies in the

---

DOI: <https://doi.org/10.15779/Z38KW57J2Q>

\* Sohayl Vafai, J.D., UC Berkeley, School of Law; B.A., *summa cum laude*, University of Maryland, College Park. Many thanks to Seval Yildirim and the students of her spring 2017 Islamic Law seminar at the UC Berkeley, School of Law, for insightful feedback on the initial draft of this Article. I must also thank Russell K. Robinson, whose fall 2016 Race, Sexuality, and the Law seminar at the UC Berkeley, School of Law, inspired me to write this Article, and the editors of the Berkeley Journal of Middle Eastern and Islamic Law for their incredibly helpful suggestions, comments, and edits.

1. In this Article, “Western media” loosely refers to American and European media.

2. See generally Elizabeth Bucar & Anne Enke, *Unlikely Sex Change Capitals of the World: Trinidad, United States, and Tehran, Iran, as Twin Yardsticks of Homonormative Liberalism*, 37 FEMINIST STUD. 2, 301 (2011) (hereinafter, “Bucar & Enke, *Unlikely Sex Change Capitals of the World*”) (collecting and discussing various Western news articles about Iran’s sex reassignment policies); see also Nadia L. Farjood, *Film Explores Sex Changes in Iran*, THE HARVARD CRIMSON, Mar. 4, 2011, <http://www.thecrimson.com/article/2011/3/4/sex-iran-country-grungras> (hereinafter, “Farjood, *Film Explores Sex Changes in Iran*”) (discussing the “unusual permissibility of . . . sex-change operations in the otherwise conservative [Iran]”).

3. See Bucar & Enke, *Unlikely Sex Change Capitals of the World*, *supra* note 2, at 301; Farjood, *Film Explores Sex Changes in Iran*, *supra* note 2.

4. See Afsaneh Najmabadi, *Mapping Transformations of Sex, Gender, and Sexuality in Modern Iran*, 49 SOC. ANALYSIS 2, 54, 59 (2005) (hereinafter, “Najmabadi, *Mapping Transformations*”) (“[W]e know of many figures who as adolescents were ‘kept’ by prominent men of state and in time, as adult men, became prominent statesmen themselves;” however, by the end of the nineteenth century, “depictions of male beauty and male-male loving couples completely disappear.”); *infra* n.92 (explaining that the beloved in Qajar-era poetry was frequently male).

artwork and photographs of the era.<sup>5</sup> At the end of the Qajar dynasty, Western influences helped reorient Iranian sexual desire and create heteronormative genders.<sup>6</sup> While Western influence on Iranian sexuality and gender propelled trans- and homo-phobia, it also opened new spaces for female bodies.<sup>7</sup>

After the Qajar dynasty, the advent of sex reassignment surgery allowed intersex and trans persons to alter their sex.<sup>8</sup> In fact, as early as 1963 or 1967, Ayatollah Khomeini, a Shi'a scholar who later became the Supreme Leader of post-revolutionary Iran, published a fatwa, which is a religious decree, that permitted intersex persons to receive sex reassignment surgery.<sup>9</sup> To Khomeini, knowing one's sex was important because, in Iran, one's sex determines the religious, social, legal, and cultural duties one owes oneself, one's family, and one's society.<sup>10</sup> Then, as now, sex was largely indistinguishable from gender and sexuality in the Iranian state; in particular, religious scholars conflated these three

---

5. Najmabadi, *Mapping Transformations*, *supra* note 4, at 55-60.

6. *Id.* at 61 ("By the early nineteenth century, elite urban Iranian men had become acutely and increasingly aware that Europeans considered older man-younger man love and sexual practices very prevalent in Iran and that they considered it a vice. . . . In response to European accounts and attitudes, Iranian men began to dissimulate, deny, and disavow same-sex practices, a practice that contributed to a radical reconfiguration of structures of desire by introducing a demarcating line distinguishing homosociality from homosexuality.").

7. *Id.* at 69 ("Male non-sexual sociality was in fact perceived by women as coterminous with public life and patriotic virtue, a model of citizen bonding, a domain not to be disavowed but opened up to the female presence by accepting women as capable of similar asexual bonding with men. As masculinized women, they could partake in the politicized male homosociality of modern citizenship. Male homosexuality, on the other hand, was called for by women to be abandoned as a condition for the reform of family and marriage.").

8. *See id.* at 72.

9. Compare Afsaneh Najmabadi, *Transing and Transpassing Across Sex-Gender Walls in Iran*, 36 *WOMEN'S STUD. Q.* 3-4, 23, 26 (hereinafter, "Najmabadi, *Transing and Transpassing*") (stating that Khomeini issued his fatwa as early as 1967) with Elizabeth Bucar, *Bodies at the Margins: The Case of Transsexuality in Catholic and Shia Ethics*, 38 *J. RELIGIOUS ETHICS* 4, 601, 605 (hereinafter, "Bucar, *Bodies at the Margins*") (stating that Khomeini issued his fatwa as early as 1963).

10. *See* AFSANEH NAJMABADI, *PROFESSING SELVES: TRANSEXUALITY AND SAME-SEX DESIRE IN CONTEMPORARY IRAN*, 177, 192 (2013) (hereinafter, "NAJMABADI, *PROFESSING SELVES*") ("The designation of male and female in classical fiqh is distinctly related to the observance of topic-dependent rules. These distinctions are not identical to and do not perform the same work as biological sex taxonomies. For instance, a person of ambiguous genitalia can become assigned a 'ritual gender/sex' so that s/he would follow the rules of one gender/sex.").

characteristics.<sup>11</sup> Moreover, Islamic scholars generally do not define intersex as a viable sex category; instead, intersex persons' sex is viewed as indeterminate and problematic. Islamic scholars have grappled with the "indeterminacy" of sex in intersex persons for centuries and devised different rules for defining an intersex person as male or female.<sup>12</sup> Thus, it is unsurprising that Khomeini would support sex reassignment surgery in the case of intersex persons.<sup>13</sup>

The possibility of sex reassignment surgery also opened a new door to non-intersex people, individuals who, upon birth, were determined male or female. They, too, could now change their sex, and some did.<sup>14</sup> At first, the medical advancement that allowed for sex reassignment surgery from male-to-female or female-to-male was seen as a miracle of God and a wondrous creation.<sup>15</sup> Those who changed their sex were initially placed in the same category as intersex persons.<sup>16</sup> Over time, however, sex reassignment surgery for those born with a seemingly fixed sex—that is, those other than intersex—was seen as immoral.<sup>17</sup> Transsexuality was placed in the same category as homosexuality, which was connected with criminality.<sup>18</sup> In part because of this connection, contemporary Iranian trans persons generally disavow homosexuality, which, in turn, more distinctly defines homosexuality as a category of sexuality and, ironically, creates space for greater gender and sexual

---

11. *See id.*

12. *See generally* Paula Sanders, *Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law*, in *WOMEN IN MIDDLE EASTERN HISTORY: SHIFTING BOUNDARIES IN SEX AND GENDER* 74-95 (Nikki Keddie & Beth Baron, eds., 1991) (explaining how medieval Islamic law allowed for only male or female sexes and the various ways in which Islamic scholars gendered intersex individuals as male or female).

13. *See* NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 177.

14. *See id.* at 2.

15. *Id.* at 38.

16. *Id.*

17. *See id.* at 81-83, 144.

18. *See id.* at 114. For example, Najmabadi discusses how reporters described Mahin Padidarnazar, a nineteen-year-old woman on a widely-covered trial for murdering her "girlfriend" in 1973. *See id.* at 75-119. Najmabadi writes, "Mahin embraced the labels offered to her by the reporters and . . . referred to herself as a same-sex player, a lesbian, and as a girl-in-body, a boy psychologically. The press, however, continued to debate whether she were a same-sex player or a *dau-shakhsiyati* (of double personality). *Dau-shakhsiyati* was an ambiguous category, at times used to refer euphemistically to bi/homosexuals. . . . at the same time, this term also had begun to be used to refer to transsexuals, distinguishing them, though not always consistently, from *dau-jinsiyati*, which was a term more often used for intersex individuals."

variance in Iran.<sup>19</sup>

Eventually, however, transsexuality was redefined and recognized as a legitimate identity by the Iranian state. At the urging of Maryam Khatoon Molkara, a trans woman, Khomeini issued a fatwa in 1984 that allowed for sex reassignment surgery for those with a seemingly determined sex.<sup>20</sup> Khomeini's fatwa formed the basis of a complex and ever-evolving legal-medical-religious framework that trans persons must navigate to obtain sex reassignment surgery in Iran today.<sup>21</sup> Within this framework, trans persons are able to advocate for entitlements that allow them to live in further conformance with their gender or sex.<sup>22</sup> For many trans persons, however, the familial, societal, and governmental pressures to conform to heteronormativity and perform the gender that is linked with the sex they are assigned at birth is unbearable, and some trans persons leave Iran.<sup>23</sup>

In Section I, I provide a general history of gender and sexual performance in Qajar Iran. I then explain how Iranian-Western interactions created Western-centric heteronormalization in Iran. Finally, I discuss the creation of the Islamic Republic of Iran and its effect on legal, religious, and cultural formulations of gender and sex, including the effect of Khomeini's fatwas. In Section II, I outline Iran's legal-medical-religious sex reassignment framework for those who identify as transgender. In Section III, I discuss trans advocacy in Iran, including why trans persons seek entitlements rather than rights. In Section IV, I argue that Iranian trans and other gender "deviant" persons are the best situated to affect their situation. I explore the possibilities of liberatory approaches and activism that utilize (1) coalitions that engage and mobilize multiple identity groups, (2) language that allows for new meanings and representations of identity, and (3) Ayatollah Khomeini's fatwa on sex reassignment surgery.

---

19. *See id.* at 209.

20. This Article adopts Maryam's last name as it appears in Robert Tait, *A fatwa for freedom*, THE GUARDIAN, Jul. 27, 2005, <https://www.theguardian.com/world/2005/jul/27/gayrights.iran> (hereinafter, "Tait, *A fatwa for freedom*") (spelling Maryam's last name as "Molkara"). *But see* NAJMABADI, PROFESSING SELVES, *supra* note 10, at 158 (spelling Maryam's last name as "Mulk-ara").

21. Najmabadi, *Transing and Transpassing*, *supra* note 9, at 5.

22. NAJMABADI, PROFESSING SELVES, *supra* note 10, at 211.

23. *See, e.g.*, Shuka Kalantari, *Transgender Iranian Refugees Are Struggling to Outrun Prostitution and Violence*, VICE NEWS, Apr. 10, 2015, <https://news.vice.com/article/transgender-iranian-refugees-are-struggling-to-outrun-prostitution-and-violence> (hereinafter "Kalantari, *Transgender Iranian Refugees Are Struggling to Outrun Prostitution and Violence*").

## I. HISTORY

Non-normative gender performance and sexuality, at least according to current Western understandings of the non-normative, extend further back in Iranian history than the Qajar dynasty (circa 1785-1925).<sup>24</sup> Nevertheless, this Section begins with the Qajar dynasty because this period marks the end of the non-normative and the beginning of heteronormativity in Iran, which was redefined by the Pahlavi dynasty and, later, the Islamic Republic of Iran.

### A. *Gender and Sexuality in the Qajar Dynasty*

Afsaneh Najmabadi writes about Carla Serena's 1877 journey to Iran. In Serena's account of her trip, she described how Princess 'Ismat al-Dawlah made her up:

First she covered my eyebrows across the forehead with mascara and turned each of them into a bow-shape, then she dyed my eyelashes . . . [drew] a thin shade of a mustache over my lips, which is apparently considered one of the beauty marks for an Iranian woman's face.<sup>25</sup>

Serena noted that a woman made up in the manner outlined above was "the epitome of womanly beauty in Iranian eyes."<sup>26</sup> Her descriptions indicate that a unibrow and thin mustache were attractive qualities for Qajari women. The thin mustache that women wore replicated the "much-celebrated sign of a young man's beauty."<sup>27</sup>

Young men, or *amrads*, were in a transitory space. They would become full-fledged men with full beards, the most important visual marker of Iranian maleness.<sup>28</sup> Adult men (with beards) would initiate sexual relationships with young men (with mustaches or no facial hair) until the young men grew beards themselves.<sup>29</sup> Other than the beard, "[s]ometimes the only way one can distinguish male from female in visual representations [of Qajari people] is by the style of headgear."<sup>30</sup> Najmabadi writes that the same descriptions—such as "moon-faced, cypress-statured, narcissus-eyed, ruby lips, bow eyebrows, black scented hair, narrow waist, were used to depict male and female beauty."<sup>31</sup>

---

24. Najmabadi, *Mapping Transformations*, *supra* note 4, at 54.

25. *Id.* at 55 (citation omitted).

26. *Id.* (citation & internal quotation marks omitted).

27. *Id.* at 57.

28. *Id.*

29. *See id.* at 59.

30. Najmabadi, *Mapping Transformations*, *supra* note 4, at 59.

31. *Id.*

Regardless of their outwardly appearance, Qajari women generally were of limited agency.<sup>32</sup> In fact, patriarchal attitudes were not unique to the Qajar dynasty and “antecede [and do not necessarily cohere with] the emergence of Islam,”<sup>33</sup> which was the dominant faith in Qajar Iran and is the state religion of the current Islamic Republic of Iran.<sup>34</sup> In this context, Qajari women’s appearance as young men is not an example of Qajari gender “deviance,” but perhaps an example of patriarchy’s prevalence and particularized form in Qajari society.

Complicating the narrative further, Najmabadi argues that gender as a binary between men and women is a “modern imperative” that does not map onto Qajar Iranians.<sup>35</sup> Indeed, “male-ness in nineteenth century Iran . . . [was] distinct from manhood, but not in reference to womanhood.”<sup>36</sup> Najmabadi further argues that our “contemporary binary of gender translates any fractures of masculinity into effeminization.”<sup>37</sup> However, in Qajar Iran, “a young adolescent male and an adult man desiring to be the objects of desire for adult men . . . were *not* equated with effeminacy.”<sup>38</sup>

Describing Qajari men’s relationships as same-sex also problematically “implies an opposite sex, indeed a very modernist concept in many societies, including the Islamicate world, emerging along such other ideas as ‘complementarity of the sexes’ over the past couple of centuries and in the course of abandoning the idea that man

32. *Id.* (“Although being a woman and being an amrad were both positions that demarcated manhood, there was a sense of abjectness, of being at the bottom, that was associated with women but did not pertain to amrads.”); see also Susynne M. McElrone, *Nineteenth-Century Qajar Women in the Public Sphere: An Alternative Historical and Historiographical Reading of the Roots of Iranian Women’s Activism*, 25 *COMP. STUD. S. ASIA, AFR. & MIDDLE E.* 297, 302 (hereinafter, “McElrone, *Nineteenth-Century Qajar Women*”) (“Conceptions of and the status of [Qajari] women [in the 1800s] also varied according to area, religion, class, and ethnicity; however, the patrimonial framework of both state and society ensured that Iranian women were universally subordinate to men.”).

33. Farhad Kazemi, *Gender, Islam, and Politics*, 67 *SOC. RES.* 453, 454 (2012).

34. See Nahid Yeganeh, *Women, Nationalism and Islam in Contemporary Political Discourse in Iran*, 44 *FEMINIST REV.* 3, 4 (1993) (hereinafter, “Yeganeh, *Women, Nationalism and Islam*”) (“Since the sixteenth century Shiism has been the dominant branch of Islam [in Iran] . . .”).

35. Afsaneh Najmabadi, *Beyond the Americas: Are Gender and Sexuality Useful Categories of Analysis*, 18 *J. WOMEN’S HIST.* 11, 14 (2006) (hereinafter, “Najmabadi, *Beyond the Americas*”).

36. *Id.*

37. *Id.*

38. *Id.*

and woman were of the *same* essence, with woman as an imperfect man.”<sup>39</sup> In this sense, one could say that “all sexual practices [in Qajar Iran] were same-sex practices . . . .”<sup>40</sup>

Importantly, while the narratives surrounding Qajar Iran may imply that women were asexual beings whom men acted upon, there is evidence suggesting that some Qajari women engaged in “same-sex” behavior or, at least, had “same-sex” desire.<sup>41</sup> Further, Qajari women were not “powerless dolls,” as one author described them,<sup>42</sup> but rather exercised agency, even if it was limited in scope and size compared to the agency of Qajari men.<sup>43</sup>

Ultimately, understanding, or attempting to understand, gender and sexuality in Qajar Iran from a historical and contextual perspective poses conceptual difficulties for modern scholars.<sup>44</sup> What this Subsection aims to illustrate are some of the ways in which gender and sexuality operated (or did not operate) in Qajar Iran so that one can understand the significance of Western-centric heteronormalization in Iran.

#### B. Western-centric Heteronormalization

In the nineteenth century, Qajar Iran was a site of Western-centric heteronormalization. The century marked an increase in Iranian men travelling to Europe and Europeans traveling to Iran, creating interactions that effectively changed desire and gender construction in Iran.<sup>45</sup> To the Western eye, and in particular the British eye,<sup>46</sup> young

39. *Id.* at 17.

40. *Id.*

41. See NAJMABADI, PROFESSING SELVES, *supra* note 10, at 58 n.60 (“In nineteenth-century Qajar texts, the word *malhafah* (covering sheet) is used, possibly indicating the jurisprudential definition of two naked women under the same sheet.”); see also Najmabadi, *Beyond the Americas*, *supra* note 35, at 15-16 (writing that Kathryn Babayan’s work on “women’s relationships in Safavid Iran (sixteenth through early eighteenth centuries) has mapped out how the discourse of love, separation, and sorrow from Sufi devotional literature was rearticulated by an adult woman to narrate her love for another adult woman”).

42. BADR OL-MOLUK BAMDAD, FROM DARKNESS INTO LIGHT: WOMEN’S EMANCIPATION IN IRAN, 8 (F.R.C. Bagley, trans. 1977).

43. See Afsaneh Najmabadi, *Women’s Worlds in Qajar Iran Digital Archive and Website: A Report*, 12 J. MIDDLE E. WOMEN’S STUD. 246 (2016) (“[M]any women from the histories of the Qajar period lived culturally rich and active lives, including as writers and poets, calligraphers and painters, religious leaders, and, in the final decades, as social critics and activists.”).

44. See generally Najmabadi, *Beyond the Americas*, *supra* note 35.

45. Najmabadi, *Mapping Transformations*, *supra* note 4, at 61.



male Qajari dancers were cross-dressers, and men holding hands, embracing, and kissing in public were interpreted as open shows of homosexuality, which Westerners viewed with negativity and disgust.<sup>47</sup>

On the other hand, Iranian accounts of Britain, for example, described beautiful young men and women who paraded themselves in public parks.<sup>48</sup> In these accounts, Britain is described as a paradise.<sup>49</sup> Rizaquli Mirza, a Qajar prince, wrote about sexual desire in the face of public displays of not only men, but also women following his 1835 visit to the British Consul in Beirut.<sup>50</sup> At a reception, the British Consul's wife, whom he described as the "moon of England," sat on his one side, and a young man sat on his other side.<sup>51</sup> The prince wrote, "I did not know if I should look at the lady or pay attention to the youth."<sup>52</sup> The prince's accounts marked the beginning of a larger shift in Iran toward heteronormative formulations of gender and sexuality.

Although Najmabadi writes that Westerners and Iranians were both concerned about one another's opinions,<sup>53</sup> in response to Western accounts and attitudes, "Iranian men began to dissimulate, deny, and disavow same-sex practices, a process that contributed to a radical reconfiguration of structures of desire by introducing a demarcation line distinguishing homosociality from homosexuality."<sup>54</sup> In other words, Iranians felt the need to explain to Western visitors that the public displays of affection they saw between men was not, in fact, homosexuality, but rather, homosociality.<sup>55</sup> As a result, a language for homosexuality was developed in response to its rejection. Homosociality was described as a site devoid of homosexuality, but homosociality allowed the continuance of homosexuality so long as that homosexuality was veiled under the guise of homosociality.<sup>56</sup>

---

46. As discussed below, Britain had extensive political and economic ties with Iran.

47. Najmabadi, *Mapping Transformations*, *supra* note 4, at 61. (discussing how European accounts sneered at Qajari gender performance and perceived homosexuality).

48. *Id.* at 63-64.

49. *See, e.g., id.* at 65 ("[T]he promised rewards in paradise included both female and male young creatures[; however,] . . . in Persian love poetry composed by male poets—the beloved was most frequently male.").

50. *Id.* at 64.

51. *Id.*

52. *Id.*

53. Najmabadi, *Mapping Transformations*, *supra* note 4, at 64.

54. *Id.* at 61.

55. *Id.*

56. *Id.* at 62.

At the same time, the revered Qajari sign of maleness and power, the beard, was being replaced by a shaved European look. In response to men shaving their beards, clerical leaders issued edicts prohibiting shaving.<sup>57</sup> The clerics “repeatedly” issued these edicts, suggesting that their edicts did not stop the beard shaving.<sup>58</sup> This shaving appears connected to the shifting of Iranian desire and its re-centering around Western formulations of desire. The beard no longer functioned as a culturally, socially, and politically important symbol to differentiate between young and old men in part because women were now desired in European ways. In fact, while the beloved in Persian poetry was frequently male, the beloved shifted to female at the same time that Iranian exposure to Europe and the West generally increased.<sup>59</sup>

Najmabadi speaks to the reeducation of Iranian men in Britain. Men did not court the Iranians. Instead, women “courted them, surrounded them at parties, conversed and flirted with them, invited them persistently to dance with them, and took them to plays, operas, and other entertainment.”<sup>60</sup> Europeans interacted with Iranian men as if they shared heteronormativity. As Najmabadi writes, “the act of seeing men *with* women in public became profoundly transforming, not only with regard to gender distinctions but also with regard to sexual meanings.”<sup>61</sup> That is, Iranian men could see women as objects of desire not because they were versions of men, but rather because they were of a different gender.<sup>62</sup>

It is important to place Qajar Iran’s relationship with Western powers in political and economic context to better understand the influence that these powers had on Iranian society and how gender and sexuality were reconfigured more broadly in Iran. Parvin Paidar, under

---

57. *Id.* at 65. In general, “clerics handled religious and civil matters, and the state handled cases of murder, robbery, and other forms of violence.” Janet Afary, *Civil Liberties and the Making of Iran’s First Constitution*, 25 COMP. STUDS. OF S. ASIA, AFR. & MIDDLE E. 341, 341-42 (2005).

58. See Najmabadi, *Mapping Transformations*, *supra* note 4, at 65. One can imagine that the Qajari clergy reacted negatively to such drastic foreign-inspired changes in society because of their potential to unmoor the clergy’s power. See Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 4 (“[A]lthough it was also the state religion, historically Shiism maintained its autonomy. The Shii clergy have in consequence enjoyed an independent following amongst the population.”).

59. Najmabadi, *Mapping Transformations*, *supra* note 4, at 65.

60. *Id.* at 66.

61. *Id.*

62. See *id.* (“Thus began a radical heteronormalization of Iranian sensibilities.”).

the penname Nahid Yeganeh,<sup>63</sup> explains that in the nineteenth century:

Russian territorial intrusions in Iran resulted in the annexation of several northern provinces. The commercial and political concessions gained by the Russians fueled rivalry with the British over trade and territory [in Iran] and throughout the nineteenth and twentieth century Britain, too, succeeded in signing advantageous political and commercial treaties with the rulers of the Qajar dynasty. . . .<sup>64</sup>

Iran's major political and economic ties to Britain perhaps influenced the way Iranians reacted to (1) Britain's attitude toward perceived homosexuality in Iranian society and (2) Britain's formulations of gender and sexuality. Other influences that may have played a role in reshaping Iranian gender and sexuality include American and French Christian missionaries,<sup>65</sup> the gradual adoption of Western-style education,<sup>66</sup> and the dispersion of Western ideas through new modes of communication, such as "printing presses, the telegraph, and a popular periodical press."<sup>67</sup>

The significant changes to gender and sexuality in Iran also occurred in the backdrop of political upheaval. Near the end of the Qajar dynasty, a constitutional movement "resulted in the Constitutional Revolution of 1906-1911 and the establishment of a constitutional monarchy."<sup>68</sup> Paidar explains:

The military and political superiority of Russia and Britain, and the state's capitulation to these foreign powers became a significant cause for concern amongst various sections of Iranian society. Successive Qajar regimes responded to Western aggression with complacency and weakness and their inability to protect Iran's interest resulted in the development of an oppositional movement against the state. This movement articulated its diverse objectives in the demand for a constitution in Iran to limit the incompetence and excesses of the Qajar monarchs and bring about parliamentary rule and democracy. The constitutional movement represented an alliance of influential urban groups including the Shii clergy, the business community and the secular intelligentsia.<sup>69</sup>

---

63. See Parvin Paidar, *Gender of Democracy: The Encounter between Feminism and Reformism in Contemporary Iran*, Democracy, Governance and Human Rights, Programme Paper Number 6, United Nations Research Institute for Social Development, at 54 (2001) (noting that Nahid Yeganeh is Parvin Paidar's penname).

64. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 3.

65. See McElrone, *Nineteenth-Century Qajar Women*, *supra* note 32, at 305.

66. See *id.* at 305-11.

67. *Id.* at 301.

68. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 4.

69. *Id.* at 3-4.

One aim of the revolution was to enable Iran to challenge “Western intrusion and manipulation.”<sup>70</sup> Nonetheless, while the revolution was successful in establishing a constitutional monarchy, the revolutionary leaders were unable to hold onto power.<sup>71</sup>

In 1921, Reza Shah Pahlavi, who received vital support from the British government, overthrew the Qajar rulers through a successful military coup, establishing the Pahlavi dynasty.<sup>72</sup> Reza Shah introduced reform measures such as legalizing “unveiling, prov[iding] . . . free education, and the opening up of employment opportunities for women.”<sup>73</sup> Paidar writes that the “ambition of the state . . . in instituting these changes was to achieve national progress through the legal construction of women as social participants, educated mothers and subservient wives.”<sup>74</sup> Speaking more directly to this last goal, Iran’s Civil Code of 1936 “endorsed polygamy, gave the right of divorce and custody to men, [and] prohibited women from travelling or entering into education and employment without their husband’s permission.”<sup>75</sup>

In 1941, British and Russian forces expelled Reza Pahlavi for his alleged Nazi sympathies and split Iran between Soviet- and British-occupied territories.<sup>76</sup> Replacing Reza Pahlavi was his son, Mohammad Reza Shah.<sup>77</sup> Then, in the early 1950s, the CIA successfully orchestrated a plan conceived by MI6 to overthrow the democratically-elected Iranian Prime Minister Mohammad Mosaddeq.<sup>78</sup> This plan was hatched in part because of Mohammad Pahlavi’s failure to stop the expansion of the prime minister’s growing political power,<sup>79</sup> and in reaction to the nationalization of the Anglo-Iranian Oil Company in 1951 in what America and Britain viewed “as the growing influence of the Soviet Union and communist ideology in Iranian politics.”<sup>80</sup> Following Mosaddeq’s fall, the “rule of the Shah was consolidated and the British

---

70. *Id.* at 4.

71. *See id.*

72. Emily Blout, *Iran’s Soft War with the West: History, Myth, and Nationalism in the New Communications Age*, 35 SAIS REV. OF INT’L AFF. 33, 34-35 (2015) (hereinafter, “Blout, *Iran’s Soft War*”).

73. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 5.

74. *Id.*

75. *Id.*

76. Blout, *Iran’s Soft War*, *supra* note 72, at 35.

77. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 5.

78. Blout, *Iran’s Soft War*, *supra* note 72, at 35.

79. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 5.

80. Blout, *Iran’s Soft War*, *supra* note 72, at 35.

and American governments continued to benefit from the . . . policies of his state.”<sup>81</sup>

At the same time, a growing women’s movement led to a revision of family laws. As a result of the Family Protection Law of 1967 and 1975:<sup>82</sup>

Divorce and custody were brought into the jurisdiction of the courts and the grounds on which women could initiate divorce were somewhat extended; polygamy was addressed by requiring the husband to apply to the court for permission to take a second wife and have the consent of his first wife; and the minimum age of marriage was raised to twenty for men and eighteen for women[; and]. . . [a]bortion was also legalized in certain circumstances.<sup>83</sup>

Paidar argues that the changes to family law during the Pahlavi dynasty “concentrated on curbing the excesses of male power in the family rather than fundamentally shifting it;” in other words, “Pahlavi gender policy did not aim to remove patriarchal relations, [but] simply to modernize them.”<sup>84</sup>

In part, Western-influenced heteronormalization inspired the “modernization” of gender laws during the Pahlavi dynasty. Iranian modernity insisted on a “regime of compulsory heterosexuality that was to underwrite normative heterosexuality.”<sup>85</sup> To achieve their agenda, Iranian modernists called for an end to gender segregation and for the unveiling of women.<sup>86</sup> The veil became a site of focus in part because it was connected to gender segregation, which modernists argued created sites for homosexuality.<sup>87</sup> Gender segregation and its connected veiling, then, explain away and forgive the apparent or supposed homosexuality of prior times. The consequence of gender segregation, so the argument goes, is frustrated heterosexuality, which appears as homosexuality.<sup>88</sup> This logic also allowed Iranian modernists to argue that heterosexuality

---

81. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 5-6.

82. *Id.* at 6.

83. *Id.* (internal citation omitted).

84. *Id.*; see also Mehran Tamadonfar, *Islam, Law, and Political Control in Contemporary Iran*, 40 J. SCI. STUD. RELIGION 205, 210 (2001) (hereinafter, “Tamadonfar, *Islam, Law, and Political Control*”) (discussing the secularization policies of the Pahlavi dynasty, which undermined the role of the clergy and led to the creation of an extensive secular court system).

85. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 6.

86. Najmabadi, *Mapping Transformations*, *supra* note 4, at 67.

87. See *id.*

88. See *id.* at 68.

was natural and was perverted by gender segregation.<sup>89</sup>

Desegregating men and women was not only a way to modernize Iranian society in the way of the West and to redeem Iran from its most visible sign of “backwardness,” but it was also a way to present Iranians as heterosexuals, at least in the public eye and to the Western eye.<sup>90</sup> Indeed, in what appears to be embarrassment, modern Iranian society buried other signs of its homosexual-appearing past.<sup>91</sup> For example, popular renditions of Hafiz’s collection of poems, *Divan*, were “illustrated with female[s] . . . , characters that it is hard to believe were in Hafiz’s imagination.”<sup>92</sup> Generally, however, many Iranians saw the formal Pahlavi-era modernization reforms as illegitimate given the Pahlavi dynasty’s foreign backing, the clerics’ relentless opposition,<sup>93</sup> and the Pahlavi dynasty’s forceful suppression of “nationalist, socialist and independent feminist movements and [intolerance of] secular democratic civic activities and associations.”<sup>94</sup>

Regardless of the opposition that the Pahlavi dynasty faced, the Pahlavi era saw profound changes in the way women were viewed. Post-Qajari Iranian women became the indelible site and mark of modernity. In a sense, “the project of women’s emancipation involved a ‘heterosocial promise’ by modernist men, hailing woman to remove herself from the world of women, from female bonds, and join the modern man in his effort to give birth—jointly—to a new nation.”<sup>95</sup>

89. See NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 60.

90. Najmabadi, *Mapping Transformations*, *supra* note 4, at 67.

91. It should be noted that this modernization effort was not entirely successful at rerouting Iranian gender and sexual understanding. For example, Iran’s prime minister in the last decades of Mohammad Riza Shah’s reign was rumored a homosexual and a figure of modernity’s (and the West’s) excesses. See Najmabadi, *Mapping Transformations*, *supra* note 4, at 68. He was always cleanly shaved and linked with older men of Qajari past who shaved their beards even though they had reached adulthood and were capable of carrying a beard. See *id.* at 59, 68. Such men were among the most despised in Qajari society in part because they pointed to manhood’s fragility. *Id.* at 59.

92. Najmabadi, *Mapping Transformations*, *supra* note 4, at 68; see also Wendy Desouza, *The Love That Dare Not Be Translated: Erasures of Premodern Sexuality in Modern Persian Mysticism* in *RETHINKING IRANIAN NAT’LISM & MODERNITY*, 67, 71 (Kamran S. Aghaie & Afshin Marashi, eds., 2014) (“Paul Smith, in his detailed survey of gender translations by British scholars of Hafez’s *ghazal* (no. 8), noted the transformation of a male Turkish slave into a ‘lovely maid’ . . . .”) (citation omitted).

93. See Tamadonfar, *Islam, Law, and Political Control*, *supra* note 84, at 210.

94. Haideh Moghissi, *Islamic Cultural Nationalism and Gender Politics in Iran*, 29 *THIRD WORLD Q.* 541, 545 (2008) (hereinafter, “Moghissi, *Islamic Cultural Nationalism*”).

95. Najmabadi, *Mapping Transformations*, *supra* note 4, at 69.

Najmabadi claims that women “haggled over” the terms of men’s heterosocial promise by demanding that men desexualize their homosociality.<sup>96</sup> Companionate marital relationships became the heart of the modern nation-building project.<sup>97</sup> Male non-sexual sociality became a patriotic virtue and one that was opened up to females by “accepting women as capable of similar asexual bonding with men.”<sup>98</sup> These developments coincided with people “living longer and fertility rates dropp[ing], [and] marriage bec[oming] more than an institution for procreation” as women demanded more emotional and sexual intimacy.<sup>99</sup> As women became more sexually assertive, they also became “less tolerant of men’s extramarital affairs, both heterosexual and homosexual.”<sup>100</sup>

Ultimately, the heteronormalization of Iran reformulated the country into a somewhat Western space, with more similar gender and sexuality structures. In an effort to achieve this new nation, homosexual-appearing behavior was degraded, effectively cast aside, and the performance of gender changed. This modernization project, however, was not successful at snuffing out the non-normative. Homosexuality and non-binary gender performances continued to appear in Iranian society. Following the Iranian Revolution in 1979, the newly formed Islamic Republic of Iran inherited the gender and sexuality “dysfunctions” of modern Iran, and it had to deal with these issues within the framework of a new political Islam.

### C. *The Islamic Republic of Iran and Khomeini’s Fatwas*

Prior to the Iranian Revolution, Shi’ism rose as a “popular political force” and included an “appeal to women to reject ‘Westernization.’”<sup>101</sup> The Shi’i clergy argued that women were exploited as “sex objects” as a byproduct of Iran’s economic and cultural dependence on the West.<sup>102</sup> Paidar argues that “the radical demand for the overthrow of the Pahlavi regime and its gender policies found credence with both religious and secular women because it promised political freedom, economic equality,

---

96. *Id.*

97. *See id.* at 67-68

98. *Id.*

99. Janet Afary, *The Sexual Economy of the Islamic Republic*, 42 *IRANIAN STUDS.* 5, 5-6 (2009).

100. *Id.* at 7.

101. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 7.

102. *Id.*

social justice, cultural integrity and personal fulfillment.”<sup>103</sup> This demand “resulted in massive participation of women in the Iranian Revolution of 1979 which brought about the overthrow of the Pahlavi dynasty and the establishment of the Islamic Republic.”<sup>104</sup> By problematizing cultural imperialism, “a new [so-called] ‘revolutionary’ and ‘authentic’ Muslim culture was constructed which appealed to wide sectors of the urban population.”<sup>105</sup>

Ayatollah Khomeini, the Supreme Leader of the Islamic Republic of Iran, oversaw the adoption of the 1979 Constitution of the Republic, which contained 175 articles.<sup>106</sup> The Constitution upended the prior constitutional monarchy and “struggles with the dichotomy . . . between notions of popular sovereignty and the sovereignty of God.”<sup>107</sup> Article 56 of the Constitution states in part:

Absolute sovereignty over the world and man belongs to God, and it is He who has placed man in charge of his social destiny. No one can deprive man of this God-given right, nor subordinate it to the interests of a given individual or group.<sup>108</sup>

However, perhaps “[c]ontrary to this very article of the Constitution, the regime asserts that the sovereignty of God on earth is exercised by his deputies, the Shi’i clergy.”<sup>109</sup>

As Mehran Tamadonfar argues, “[e]ven without the politicization of the Islamization process, the task of returning to the Islamic law is difficult and often impossible, largely due to a lack of consensus about what constitutes the law and where the law originates from.”<sup>110</sup> Consider that Islamic law generally consists of two sources: *Shari’ah* and *fiqh*. Tamadonfar explains:

The *Shari’ah* is the divinely ordained universal law. In contrast, the *Fiqh* has evolved through the contributions of Muslim jurists in their efforts to interpret and apply the *Shari’ah*. Thus, the *Fiqh* lacks the universal validity of the *Shari’ah* and remains temporal. The *Shari’ah* has primary and secondary sources. Although there are serious disputes over their authenticity and scope, Muslims agree that the Quran and Muhammad’s traditions (*Sunnah*) constitute the primary sources of the *Shari’ah*. Depending on sectarian and denominational traditions, others follow such

103. *Id.*

104. *Id.* (internal citation omitted).

105. *Id.*

106. Tamadonfar, *Islam, Law, and Political Control*, *supra* note 84, at 206.

107. *Id.*

108. *Id.* (citation & internal quotation marks omitted).

109. *Id.*

110. *Id.* at 209.



sources as *Hadith* (Muhammad's sayings), *Ijma* (communal consensus), *Qiyas* (analogy), *Ijtihad* (independent judgment), *Ravayat* (Imams' sayings), *Istihsan* (juristic preference), *Istislah* (public good), *Istishab* (continuance or performance), and *Urf* (customs or usage) . . . Even within the same sectarian tradition, the scope, significance, and meaning of these sources may vary. By *Ijma*, some Shi'i Muslims mean the consensus of the community at large, others the consensus of the clergy. Clearly, the Sunnis and Shi'is have often disagreed on the authoritative interpretation of the Quran, even on some matters as the nature of political authority. Unlike the Sunnis, the Shi'is authenticate the *Sunnah* mainly on the basis of what is reported or acknowledged by one of their Imams. Believing in the right and ability of man to self-govern within the confines of Islam, the Sunnis stress *Ijma* and *Ijtihad*. For the Shi'is to concede the infallibility of the community (in *Ijma*) or the jurists (in *Ijtihad*) undermines the position of the Imam and his power to make law by divine ordinance.<sup>111</sup>

Of the 6,236 verses of the Qur'an, the "majority are concerned with religious duties and ritual practices . . ." <sup>112</sup> Thus, Islam's secondary sources are significantly important in defining the law.<sup>113</sup> Given the position of the clergy in Shi'a tradition, the Iranian Revolution gave the clerics an opportunity to not only "reassert the Shari'ah," but also "their own role as the guardians of Islamic law."<sup>114</sup>

Controversially, the 1979 constitution does not rely solely on or, in some instances, at all on *Shari'ah* and *fiqh* sources.<sup>115</sup> Article 167 of the Constitution states in part that judges are to rely primarily on codified laws that are passed by parliament and approved by the Guardian Council.<sup>116</sup> In the absence of these codes, "[judges] are allowed to use reputable Islamic sources, which presumably include the *Fiqh* and *Fatwas*,"<sup>117</sup> which are religious decrees.<sup>118</sup> The clergy support this construction of the Constitution by relying on doctrines of *Maslahat* (laws that must be accepted out of interest) and *Zarurat* (laws that must be accepted out of necessity).<sup>119</sup> These doctrines derive their validity "from the idea that the basic purpose of legislation in Islam is to secure

111. *Id.*

112. Tamadonfar, *Islam, Law, and Political Control*, *supra* note 84, at 209.

113. *See id.*

114. *Id.* at 210.

115. *See id.* at 212-13.

116. *Id.*; *see also* Moghissi, *Islamic Cultural Nationalism*, *supra* note 94, at 549-53 (discussing the political system of the Islamic Republic of Iran).

117. Tamadonfar, *Islam, Law, and Political Control*, *supra* note 84, at 212-13.

118. *See id.* at 206.

119. *See id.* at 212.

the welfare of the people by promoting their benefits and by protecting them against harm.”<sup>120</sup> Relying in particular on the doctrine of *Maslahat*, Khomeini argued that “[t]he government is empowered to unilaterally revoke any *Shahri’ah* agreements which it has concluded with the people when these agreements are contrary to the interest of the country or Islam.”<sup>121</sup> As an example, Khomeini stated that the government “can prevent hajj, which is one of the important divine obligations, on a temporary basis, in cases when it is contrary to the interests of the Islamic country.”<sup>122</sup> Following Khomeini’s line of thought, post-revolutionary Iranian officials “have since adopted what amounts to a mountain of laws, statutory instruments, and resolutions that have no demonstrable relationship to the *Shari’ah*.”<sup>123</sup>

Khomeini also emphasized the absolute power of the Supreme Leader.<sup>124</sup> Following the Usuli school of jurisprudence, Khomeini espoused the view that all Shi’i Muslims are divided into two classes: “the experts and the laymen.”<sup>125</sup> The Usuli doctrine holds that it is the duty of the laymen to emulate the experts.<sup>126</sup> Thus, Khomeini not only “openly claimed but also effectively exercised absolute authority.”<sup>127</sup> Tamadonfar writes that it was “usual for [Khomeini] to make a decision and have it implemented without consulting anyone.”<sup>128</sup> In this way, Khomeini “dominated the legislative agenda and violated administrative and legal procedures to achieve his goals.”<sup>129</sup> While Khomeini had seemingly inviolable power, his successor and the current Supreme Leader Ayatollah Khamenei “does not wield such powers.”<sup>130</sup> Power is now “concentrated in the hands of the clerical class and their supporters rather than in the person of the Supreme Leader.”<sup>131</sup> Given this backdrop, Khomeini’s fatwas on sex reassignment surgery held weight that

---

120. *Id.* at 213 (discussing in more detail the scope of the doctrine of *Maslahat*).

121. *Id.* (citation & internal quotation marks omitted).

122. *Id.* (citation & internal quotation marks omitted).

123. Tamadonfar, *Islam, Law, and Political Control*, *supra* note 84, at 214.

124. *Id.* at 215 (discussing the historical roots of the doctrine of clerical absolutism).

125. *Id.*

126. *Id.* However, not all Muslims generally or Shi’a Muslims specifically follow this doctrine. *Id.* Some believe that there is “no monopoly of spiritual knowledge or holiness to intervene between man and God.” *Id.*

127. Tamadonfar, *Islam, Law, and Political Control*, *supra* note 84, at 215.

128. *Id.* at 216.

129. *Id.*

130. *Id.*

131. *Id.*

superseded other sources of law and that likely hold more weight than fatwas traditionally did or that similar fatwas would hold today.

*D. Sex Reassignment Surgery in the Islamic Republic of Iran*

Family and gender laws drastically changed following the formation of the Islamic Republic of Iran. The Family Protection Act of the Pahlavi era was nullified on the grounds of “incompatibility with the Shari’ah” and new laws were adopted, such as “mandatory gender segregation in public, professional exclusion of women from certain positions, restricted access to education, and a forced dress code.”<sup>132</sup> However, the government gradually reinstated a number of Pahlavi-era laws and policies in part due to lobbying from the Islamic women’s movement and independent verdicts issued by high-ranking clerics.<sup>133</sup>

One of the most notable moments in post-revolutionary Islamic writing on gender occurred in 1984 when Khomeini issued a fatwa to a trans woman, Maryam Khatoon Molkara.<sup>134</sup> Molkara was a trans activist since the Pahlavi era. For example, in 1974, she met with the then-Queen of Iran Farah Pahlavi to obtain her support for trans causes.<sup>135</sup> Molkara, however, faced an uphill battle. In 1976, the Medical Association of Iran (MAI), a state-affiliated organization of physicians, declared that sex-change operations were ethically unacceptable except in the case of intersex persons.<sup>136</sup> After years of unsuccessfully petitioning the Iranian government so that she could legally change her sex,<sup>137</sup> and in a changing legal landscape hostile to trans individuals, Molkara decided to take a bold approach. Although the exact happening of the events is told somewhat differently in different tellings,<sup>138</sup> one account states that Molkara went to Khomeini’s compound donning a man’s suit and a beard, carrying a copy of the Qur’an, and with shoes tied around her

---

132. *Id.* at 211.

133. Yeganeh, *Women, Nationalism and Islam*, *supra* note 34, at 11 (discussing the scope of changes to family and gender laws).

134. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 6; *Human Rights Report: Being Transgender in Iran*, OUTRIGHT ACTION INTERNATIONAL, at 7 (2016) (hereinafter, “*Human Rights Report*”) (discussing how Iranian law “fails to recognize the gender identity of any trans individual who is not granted access, does not wish, or cannot afford to pursue [gender confirmation surgery]”).

135. *Human Rights Report*, *supra* note 134, at 7.

136. Najmabadi, *Transing and Transpassing*, *supra* note 9, at 26.

137. *See Human Rights Report*, *supra* note 134, at 7.

138. *Compare, e.g.,* Tait, *A fatwa for freedom*, *supra* note 20 with NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 60 and Bucar, *Bodies at the Margins*, *supra* note 9, at 606.

neck, a cultural symbol meaning that one is seeking shelter:<sup>139</sup>

As she approached...[Khomeini's] compound, armed security guards pounced and began beating her. They stopped only when Khomeini's brother, Hassan Pasandide, witnessing the scene, intervened and took Molkara into his house.

There, Molkara—then bearded, tall and powerfully built—hysterically tried to explain her predicament. “I was screaming, ‘I’m a woman, I’m a woman’,” she says. The security guards, fearing Molkara was carrying explosives, were anxious about the band wrapped around her chest. She removed it to reveal the female breasts underneath. The women in the room rushed to cover her with a chador.

By then, Khomeini's son, Ahmad, had arrived and was moved to tears by Molkara's story. Amidst the emotion, it was decided to take Molkara to the supreme leader himself. On meeting the near-mythic figure in whom she had invested such hope, Molkara fainted.

“I was taken into a corridor,” Molkara says. “I could hear Khomeini raising his voice. He was blaming those around him, asking how they could mistreat someone who had come for shelter. He was saying, ‘This person is God's servant.’ He had three of his trusted doctors in the room and he asked what the difference was between hermaphrodites and transsexuals. What are these ‘difficult-neutrals’, he was saying. Khomeini didn't know about the condition until then. From that moment on, everything changed for me.”

Molkara left the Khomeini compound with a letter addressed to the chief prosecutor and the head of medical ethics giving religious authorization for her—and, by implication, others like her—to surgically change their gender. It was the fatwa she had sought.<sup>140</sup>

The fatwa stated, “In the name of the Almighty. God willing, sex reassignment if advised by a reliable doctor is permissible.”<sup>141</sup> This fatwa changed the course of trans progression in Iranian society more than any other single event. It allowed trans persons to change their sex and gave trans persons religious acceptance. Only Khomeini, the “politically unchallenged supreme authority after the 1979 revolution until his death in 1989” could set in motion the process that “culminated in new state-sanctioned medico-legal procedures regarding transsexuality.”<sup>142</sup>

---

139. See Tait, *A fatwa for freedom*, *supra* note 20. (The symbol of the shoes around one's neck is “redolent of Ashura, the Shi'a festival depicting the heroism of the third Imam Hossein.”).

140. *Id.*

141. *Human Rights Report*, *supra* note 134, at 8.

142. Najmabadi, *Transing and Transpassing*, at 27; see also J. Lester Feder, *Why Iran's Mullahs Bless Sex Reassignment*, BUZZFEED NEWS, Dec. 26, 2016, [https://www.buzzfeed.com/lesterfeder/why-irans-mullahs-bless-sex-reassignment?utm\\_term=.ujBwBqmx#.fbMAyrx3](https://www.buzzfeed.com/lesterfeder/why-irans-mullahs-bless-sex-reassignment?utm_term=.ujBwBqmx#.fbMAyrx3) (outlining the legal and medical processes that formed following Khomeini's fatwa).

Although media accounts of Molkara's encounter with Khomeini paint Khomeini's fatwa as a sudden and emotionally charged issuance,<sup>143</sup> Khomeini had issued a similar fatwa almost two decades prior, as early as 1963 or 1967.<sup>144</sup> At the time, however, Khomeini was a dissident living in exile in Iraq, and his fatwa had no influence over the policies of Iran.<sup>145</sup> It is also unclear whether the 1960s fatwa related only to intersex persons or also to trans persons. Najmabadi writes that the fatwa "sanction[ed] sex-change" generally,<sup>146</sup> whereas Elizabeth Bucar writes that the fatwa applied to intersex persons only.<sup>147</sup> Regardless, although the fatwa may not have specified whether it applied to intersex persons only, in practice, it did.<sup>148</sup> Further, if Molkara's claim that Khomeini did not know of trans individuals prior to his encounter with Molkara is accurate, Khomeini may not have specified to whom his fatwa applied because he may have imagined it applicable only to intersex persons.<sup>149</sup>

If Khomeini had not already conflated or associated intersex persons, who have a long history of discussion in Islamic literature,<sup>150</sup> with trans persons, he did so by the time he issued his 1984 fatwa.<sup>151</sup> Molkara's account suggests that Khomeini viewed both intersex and trans individuals as suffering from a "medical issue" that sex reassignment surgery could resolve. Khomeini's linkage of intersex and trans persons is unsurprising given the accounts of sex change prior to

143. See, e.g., Tait, *A fatwa for freedom*, *supra* note 20. In Tait's article, Molkara is quoted as saying that Khomeini was unaware of trans persons until Molkara's visit. *Id.* Molkara's claim is unlikely given the popular media accounts of trans persons that preceded 1967. See NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 38 (explaining that sex change was international news in the late 1940s).

144. Najmabadi, *Transing and Transpassing*, *supra* note 4, at 27; *but cf.* Bucar, *Bodies at the Margin*, *supra* note 9, at 605 (Bucar states that Khomeini issued his fatwa as early as 1963 rather than 1967, which is the date Najmabadi uses.).

145. Najmabadi, *Transing and Transpassing*, *supra* note 9, at 26.

146. *Id.*

147. Bucar, *Bodies at the Margin*, *supra* note 9, at 605 ("As early as 1963 Khomeini indicated that sex change surgery was permissible according to Shariah. But like much of the discussion in earlier *fiqh*, for Khomeini, this permission applied only to intersexuals.") (mistake in original).

148. See *Human Rights Watch*, *supra* note 134, at 7 ("In 1984, . . . [Molkara] wrote a letter to Ayatollah Khomeini's office (which passed to him through his representative Ayatollah Janati), but the answer she received from Khomeini's office concerned intersex rather than trans experiences.").

149. See Tait, *A fatwa for freedom*, *supra* note 20 ("Khomeini didn't know about the condition until then.") (internal quotation marks omitted).

150. See NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 177.

151. *Id.* at 6.

1984. At first, sex change referred to intersex transformations, and the Iranian media saw such change as wondrous<sup>152</sup> and a sign of God's power.<sup>153</sup> When accounts of trans persons undergoing sex change were first reported, they were placed in the same category as intersex persons.<sup>154</sup> The doctors Khomeini allegedly consulted prior to his issuance of the 1984 fatwa were perhaps influenced by the rhetoric that conflated intersex and trans persons. Later jurisprudence, however, distinguishes between intersex and trans persons.

As Najmabadi explains, "jurisprudential discourse on transsexuality that began as an elaboration on intersex discourse now approves of transsexuality on the discretionary grounds that it has not been specifically forbidden in the Qur'an."<sup>155</sup> This discourse reasons that people have a physical body and a soul.<sup>156</sup> In many people, there is harmony between the two.<sup>157</sup> In some, there is disharmony.<sup>158</sup> Sex surgery, then, can create harmony where there is disharmony.<sup>159</sup> Such harmony is particularly important in a heteronormative society like the Islamic Republic of Iran, where the dictates of religion and society prescribe different performances and duties for different sexes.<sup>160</sup> These same concerns over sex accompanied intersex individuals as well, which is why ways to define an intersex person as male or female is an extensively explored topic in Islamic literature.<sup>161</sup> However, the Islamic Republic of Iran does not require nor recommend sex reassignment surgery for trans persons "unless a religiously observant transsexual fears falling into sinful deeds,"<sup>162</sup> which likely means engaging in sex acts with a member of the same sex.<sup>163</sup>

Either following his 1984 fatwa to Molkara or his 1960s fatwa,

---

152. *Id.* at 38.

153. Najmabadi, *Transing and Transpasing*, *supra* note 9, at 28.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. Najmabadi, *Transing and Transpasing*, *supra* note 9, at 28.

160. See, e.g., Paria Gashtili, *Is an "Islamic Feminism" Possible?: Gender Politics in the Contemporary Islamic Republic of Iran*, 41 *PHILOSOPHICAL TOPICS* 121, 136 (2013).

161. See *supra* note 12.

162. Najmabadi, *Transing and Transpasing*, *supra* note 9, at 28.

163. See Suzanne M. Marks, *Global Recognition of Human Rights for Lesbian, Gay, Bisexual, and Transgender People*, 9 *HEALTH & HUM. RTS.* 33, 34 (2006) ("Iran . . . [has] laws calling for the execution of 'practicing homosexuals.'").

Khomeini recorded his opinion on sex change operations in a highly influential book of collected legal opinions or fatwas.<sup>164</sup> His opinion stated, in part, with Najmabadi's additions in a parenthetical and brackets:

The prima facie (*al-zahir*) view is contrary to prohibiting the changing, by operation, of a man's sex to that of a woman or vice versa; likewise, the operation [in the case] of a hermaphrodite is not prohibited in order that s/he may become incorporated into one of the two sexes. Does this [sex change operation] become obligatory if a woman perceives, in herself, the inclinations which are among the type of inclinations of a man [literally the root/origin inclinations of a man], or some qualities of masculinity; or if a man perceives, in himself, the inclinations or some qualities of the opposite sex? The prima facie view is that it [sex change] is not obligatory if the person is truly of one sex, and changing his/her sex to the opposite sex is possible.<sup>165</sup>

The phrase "contrary to prohibiting" in the opinion has shaped "the dominant views among top Iranian Shi'ite scholars and, most importantly, [has] defined the legal procedures for gender/sex reassignment."<sup>166</sup> Further, the phrase "not obligatory" allows for the possibility of acquiring a certificate of transsexuality without any hormonal or somatic changes; however, this interpretation is the subject of much "contestation between trans people and various state authorities."<sup>167</sup> While Iranian trans activists argue that they need not undergo hormonal or somatic changes, state authorities disagree,<sup>168</sup> perhaps because they fear that such an approach would allow for sex and marriage between same-sex individuals.

Ultimately, Khomeini's fatwas on sex change started a broad legal-medical-religious framework that is continuing to undergo transformations today.

## II. SEX REASSIGNMENT BUREAUCRACY

In addition to overturning MAI's 1976 declaration that sex-change operations are unethical, Khomeini's 1984 fatwa set in motion new

---

164. Najmabadi places the date of the book as 1967 or 1968. See Najmabadi, *Verdicts of Science, Rulings of Faith: Transgender/Sexuality in Contemporary Iran*, 78 *Social Research* 533, 542-43 (hereinafter, "Najmabadi, *Verdicts of Science*".) Bucar, however, claims that the book was published after Khomeini wrote his fatwa to Molkara. See Bucar, *Bodies at the Margin*, *supra* note 9, at 606.

165. Najmabadi, *Verdicts of Science*, *supra* note 164, at 542-43.

166. *Id.*

167. *Id.* at 543.

168. See *id.*

bureaucratic processes to control the transition of sex.<sup>169</sup> In today's sex-reassignment bureaucracy, an applicant for sex reassignment must consult with the Tehran Psychiatric Institute (TPI), receive four to six months of psychotherapy, and undergo chromosomal and hormonal tests to determine whether the applicant is transgender and suffers from "gender identity disorder."<sup>170</sup>

Following the period of psychotherapy, the applicant enters a multi-step confirmation process controlled by a TPI Commission, which is comprised of a lead psychiatrist, a secondary psychiatrist, and a supervising psychologist.<sup>171</sup>

First, the Commission reviews the applicant's case report, which is produced by the applicant's social worker during his or her psychotherapy sessions.<sup>172</sup> Second, the Commission interviews the caseworker to better understand the case report.<sup>173</sup> Third, the Commission interviews the applicant to evaluate the case report's veracity.<sup>174</sup> Fourth, the Commission approves or denies the applicant's case.<sup>175</sup> If the case is approved, the Commission sends it to the Legal Medicine Organization of Iran (LMOI).<sup>176</sup>

For the case to move forward, the LMOI must approve the applicant's "gender identity disorder" and issue a permit for the applicant's sex change.<sup>177</sup> With the permit, the applicant can obtain hormonal treatment, sex reassignment surgery, basic health insurance from the state, financial assistance (for housing and partial cost of sex reassignment surgery), and exemption from military service.<sup>178</sup> After the applicant changes his or her name, the applicant can also receive new national identification papers to close the bureaucratic discord between the applicant's sex and the state's recording of it.<sup>179</sup>

Although the state—through its institutions, such as the TPI—lends legitimacy to the classification of "trans," the criteria it uses to determine

---

169. Najmabadi, *Transing and Transpassing*, *supra* note 9, at 26.

170. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 14.

171. *Id.* at 17.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 17-20.

176. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 17.

177. *Id.* at 20.

178. *Id.*

179. *Id.*



who fits into the category is a matter for debate.<sup>180</sup> For example, during the psychotherapy stage, an applicant is judged on his or her appearance. Whether the male-to-female applicant is dressed like a normative Iranian woman, or the female-to-male applicant is dressed like a normative Iranian man, weighs heavily in the government's decision.<sup>181</sup> The examiners may look at whether the applicant is wearing a manly or womanly watch, and whether the applicant has shaven or unshaven legs.<sup>182</sup> Further, normative gender-based questions are asked to determine the legitimacy of one's candidacy for sex reassignment. These questions can include: Do you squeeze a toothpaste tube from the middle or from the bottom up?<sup>183</sup> These questions treat sex and gender as synonyms. What it appears examiners are looking for are signs that one is a "false" trans applicant based on the performance of normative gender, which is seen as inextricably tied to one's "true" sex.

Many applicants rehearse narratives that fit into gender stereotypes that psychologists expect.<sup>184</sup> Nonetheless, psychologists may have differing biases. An examiner may enter a therapy session already "convinced" that an applicant is trans because the examiner believes that only a "real" trans person would undergo the incredibly complicated and invasive sex change process.<sup>185</sup> Others examiners are hostile and actively try to dissuade trans persons from transitioning.<sup>186</sup>

Ultimately, the site of bureaucracy is just one of many areas through which trans persons must shape their lives. A trans person's access to bureaucratic legitimacy is limited by the criteria involved in determining who is trans and by the actors who assess and provide their stamp of approval to a person's trans identity. Iranian trans lives are generally much more complicated than the bureaucratic processes that attempt to control them suggest. Iranian trans persons are also not silent objects that wait to be acted upon by the state. Many trans persons exercise their agency as religiously- and bureaucratically-recognized entities to achieve

---

180. *Id.* at 16-17.

181. *Id.* at 17.

182. NAJMABADI, PROFESSING SELVES, *supra* note 10, at 17.

183. *Id.*; *see also id.* at 307-08 n.6 ("The presumption is that females are neat and press from the bottom; males just squeeze the toothpaste randomly, usually from the middle.").

184. *Id.* at 23.

185. *Id.* at 22-23. Najmabadi complicates the narrative that only "real" trans persons would apply for a certificate. Some, for example, may seek a certificate to end harassment from police-enforced gender norms. *See id.* at 23.

186. *Id.* at 24. Relatedly, not all clerics agree on whether transsexuality is distinct from homosexuality. NAJMABADI, PROFESSING SELVES, *supra* note 10, at 172-73.

their goals.

### III. TRANS LIVES AND ADVOCACY IN IRAN

Being trans in Iran presents many challenges for the trans person, their family, the government, and society-at-large. In particular, trans identity questions the strict gender binary prescribed by Iranian society. As a result, even the legitimacy provided by the bureaucracy and Khomeini's fatwa cannot shield Iranian trans people from the scorn of hetero-enforcing citizens and law enforcement, who police gender performance. As discussed above, trans persons were first associated with intersex persons and with the marvelous creation of God. Later, however, they were connected with homosexuality and criminality.<sup>187</sup> This later connection is a dangerous one for trans persons.

In heteronormative societies like Iran, masculinity is important to a man's identity. However, this masculinity is fragile and under constant threat. As Marilyn Frye explains:

Masculinity involves the belief that, as a man, one is the center of a universe which is designed to feed and sustain one and to be ruled by one, as well as the belief that anything which does not conform to one's will may be, perhaps *should* be, brought into line by violence.<sup>188</sup>

Transgender persons are frequently targets of violence.<sup>189</sup> Najmabadi explains that one transgender woman's father and brothers gave her the option to marry a woman or be killed.<sup>190</sup> Other transgender women are pressed by their families to enter military service.<sup>191</sup>

187. Najmabadi explains that this shift occurred in part as a result of popular newspaper reports on crimes committed by non-gender conforming individuals and the media's subsequent demonization of the non-normative. See NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 80-83. Male homosexuality in particular is connected to pederasty, rape, and murder. *Id.* at 82. But female homosexuality was not given a similarly criminal connection until Padidarnazar's sensationalized trial. See *supra* note 18. Moreover, the emergence of academic and vernacular sexology and psychology in Iran transformed transsexuality into a diagnostic and moral category. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 144. This pathologizing of transsexuality led to its classification as a deviant sexuality. *Id.* Thus, transsexuality was categorically affiliated with homosexuality and criminality. See *id.*

188. MARILYN FRYE, *Lesbian Feminism and the Gay Rights Movement: Another View of Male Supremacy, Another Separatism*, in *THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY* 128, 142 (1983).

189. See, e.g., Kalantari, *Transgender Iranian Refugees Are Struggling to Outrun Prostitution and Violence*, *supra* note 23 (detailing the violence Iranian trans persons face both in Iran and in the countries they escape to, such as Turkey).

190. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 271.

191. *Id.* ("Most commonly, [parents] press their son to go for his compulsory

One way transgender persons avoid police violence or harassment is by carrying certificates from the TPI or LMOI that identify them as trans. If police stop or arrest a trans person for looking non-normative, the trans person can free him- or herself by showing the police officer the certificate.<sup>192</sup> To further curb the violence of being associated with the non-normative, many Iranian trans persons publicly disavow homosexuality and non-normative gender performances.<sup>193</sup> In this way, many trans persons associate themselves with heteronormativity.

Iranian trans activists generally seek entitlements rather than rights in part because of their alignment with a heteronormative prerogative.<sup>194</sup> Najmabadi further explains this entitlements approach by comparing the Iranian women's movement with Iranian trans activism:

The formation of the women's movement through a conception of rights and with a primary focus on changing laws that discriminate against women have shaped its politics of engagement (or boycott of engagement) with the state through the legislative house of the Majlis. The fact that trans activists do not make claims on the Majlis speaks to the shape of trans self-identification as a body seeking entitlements, not rights and because the process of change through legislation is a volatile and prolonged one, arduous and often with dubious results.<sup>195</sup>

The entitlement approach has brought the trans community some success. By working with their physicians and the Iranian Welfare Organization, for example, many trans persons receive letters of referral for surgeries and other treatments.<sup>196</sup> Although the process of seeking entitlements is tedious and requires advocates within governmental institutions, trans activists have successfully navigated rough bureaucratic terrains with confidence and persistence.<sup>197</sup> One victory came in November 2011, when legislation was passed exempting transgender individuals from military service not on the basis of mental health disorder, as was previous practice, but rather on the basis of glandular disorder.<sup>198</sup> This characterization of trans persons as suffering

---

military service, hoping that army service will provide the masculinizing impetus.”)

192. *Id.* at 166-67.

193. *Id.* at 161-62.

194. *Id.* at 211.

195. Afsaneh Najmabadi, *Is Another Language Possible?*, 2 HIST. OF THE PRESENT 169, 176 (2012) (hereinafter, “Najmabadi, *Is Another Language Possible?*”).

196. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 212.

197. See Najmabadi, *Is Another Language Possible?*, *supra* note 195, at 176 (“Not only do trans activists lobby various governmental offices on an almost daily basis, they also appeal to the offices of the highest positions of governmental power—including the Office of the President and the Office of the Supreme Leader—to plead their case.”)

198. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 202.

from a glandular disorder is problematic for a number of reasons. It presents trans identity as an affliction and an abnormality and presumes the normality of cisgender identity. Moreover, categorizing trans persons as suffering from a non-mental health disorder did not change the psychiatric process required to change one's sex. Instead, the legislation had a more practical effect. Categorizing trans persons as mentally ill rendered them unemployable.<sup>199</sup> However, employers generally see glandular disorders—such as “hermaphroditism”—as benign.<sup>200</sup>

The fact that trans activists developed relationships with officials in multiple venues within the government, however, did not shield trans individuals from mistreatment and abuse.<sup>201</sup> In the 2000s, Iran's Minister of Health and Tehran's Chief of Police were particularly harsh toward trans persons.<sup>202</sup> Accordingly, the arrests of trans persons, likely for non-conformity with decency laws surrounding one's appearance, noticeably increased.<sup>203</sup> It was around this time that one of President Mohammad Khatami's Vice-Presidents, Mohammad Ali Abtahi, contacted Molkara, who was still involved in the trans activist community, and encouraged her to start a non-governmental organization for transgender persons.<sup>204</sup> With the help of several government officials, the Iranian Society for Supporting Individuals with Gender Identity Disorder (ISSIGID) was formed in 2008.<sup>205</sup> Once the ISSIGID and its local chapters began to respond to the needs of transgender persons, the trans activism of earlier years diminished.<sup>206</sup> This is in part because many activists were focused on obtaining entitlements rather than rights, and the ISSIGID serves as an entitlement-seeking arm.<sup>207</sup> Many post-operative trans persons who were involved in activism prior to sex change surgery “disappeared” from the activist scene,<sup>208</sup> perhaps because the activists had achieved their goal: to change their sex.<sup>209</sup>

The desire to move on with one's life and end the violence and

---

199. *Id.*

200. *Id.*

201. *See* Najmabadi, *Is Another Language Possible?*, *supra* note 195, at 176.

202. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 223.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.* at 225.

207. *See id.* at 223-26.

208. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 225.

209. However, it is important to note that even post-operative trans persons face the accusation of inauthenticity and threats of or actual violence. *See id.* at 270.

abuse surrounding appearing non-normative also explains why some who may not be trans—people who may be better described as lesbian or gay—desire to or actually change their sex.<sup>210</sup> An Iranian marriage imperative in particular defines many of the discussions around changing one's sex.<sup>211</sup> Male-male or female-female partners may feel pressure to change their sex to “salvage a threatened relationship.”<sup>212</sup> Since heteronormative identities are the only state-sanctioned identities available to individuals in Iran, and the pressure to conform to these identities is intense, one can also imagine that some individuals who experience same-sex sexual desire may misidentify or confuse that desire with trans identity.<sup>213</sup>

Ultimately, Iranian trans activism, even if largely relegated to pre-operative trans persons and for the utilitarian purposes of transitioning, is brave and startling. Iranian trans activists are politically savvy and deftly use their bureaucratically- and religiously-sanctioned agency to further their interests.

#### IV. MOVING FORWARD

The potential for future activism around gender and sexuality in Iran includes the expansion of entitlements or rights for those who are non-binary and those who engage in same-sex activities. In this Section, I explore the possibilities of liberatory approaches and activism that utilize (1) coalitions that engage and mobilize multiple identity groups, (2) language that allows for new meanings and representations of identity, and (3) Khomeini's fatwa on sex reassignment surgery.

As Shannon Minter explains in a pre-World War II American context, “The dominant understanding of what it meant to be gay . . . was not based on same-sex behaviors or desires, as it is today, but on one's gender presentation or gender status.”<sup>214</sup> The logic Minter describes still

---

210. *See id.* 6-7.

211. *Id.* at 7 (Najmabadi describes marriage in Iran as constituting “an enactment of adulthood out of adolescence. While socioeconomic changes have pushed the average age of first marriage for men and women alike to beyond their mid-twenties, unmarried persons live as they are not yet adult.”).

212. *Id.*

213. *See id.* at 248 (“While some trans narratives were structured around ‘I always knew I was . . . ,’ many other narratives, whether those of MtFs or FtMs, were focused around years of struggle for self-cognition, defined sharply by the delineating line between trans- and homosexuality.”).

214. Shannon P. Minter, *Do Transsexuals Dream of Gay Rights? Getting Real about Transgender Inclusion*, in *TRANSGENDER RIGHTS*, 141, 147 (Paisley Currah, et al., eds.

operates today. For example, when one is attacked on the street for “being gay,” one is not engaging in a same-sex act. Instead, one appears gender non-conforming, and that is likely what triggers a heteronormative person’s violent reaction.<sup>215</sup> In this way, gender, sexuality, and sex are connected. In the Iranian context, the state and society largely view and treat gender, sexuality, and sex as inextricably tied such that they are largely indistinguishable. Any performance that is non-normative on one of these three axes implicates the other axes. Thus, it is difficult to imagine a gender or sexuality liberatory movement that does not engage with all three axes. Presently, however, Iranian trans activism does not seem to include gays and lesbians.<sup>216</sup> Nor does such activism necessarily aim to root out larger systems that create oppression.<sup>217</sup> Nonetheless, consider the possibility of a coalitional movement comprised of trans, gay, and lesbian activists that acknowledges intergroup and intragroup differences, does not elide these differences, and recognizes and organizes against a common oppressor.

Anna Carastathis suggests that “identity groups are productively conceptualized as coalitions by virtue of their internal heterogeneity and the tacit or explicit creative acts through which they are organized and represented as unified.”<sup>218</sup> She adds that “identities are also potential coalitions, in the sense that when viewed intersectionally, they illuminate interconnections and interrelations, as well as groups for solidarity, that reach across and reveal differences within categories of identity.”<sup>219</sup>

---

2006).

215. *See id.*

216. *See* NAJMABADI, PROFESSING SELVES, *supra* note 10, at 248 (“Often [trans persons’] disavowal of homosexuality out of transsexuality verges on homophobia.”). Gays and lesbians in Iran may also not want to align themselves with trans activists.

217. *See id.* at 209, 211 (discussing trans activists’ focus on entitlements rather than rights).

218. ANNA CARASTATHIS, INTERSECTIONALITY: ORIGINS, CONTESTATIONS, HORIZONS, 184 (2016) (hereinafter, “Carastathis, INTERSECTIONALITY”).

219. *Id.* at 185; *see also* Sohayl Vafai, *Sinthasomphone: A Case Study of Legal Discourse’s Inability and Refusal to Hear Intersectional Injustice*, L. CULTURE & HUMAN., 1, 7, <https://doi.org/10.1177/1743872118762110> (Mar. 14, 2018) (citations omitted) (“Relying on [Kimberlé] Crenshaw’s seminal articles on intersectionality, Carastathis argues that intersectionality is a provisional concept that speaks to the invisibility, fragmentation, and subjugation of persons with characteristics that coincide and are inseparable but that society treats as distinct and separable.”); *see generally* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 140 UNIV. CHI. LEGAL F. 139 (1989); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

However, coalitions that “presuppose the fixity of coalescing groups—and the homogeneity of collective identities—elide intragroup differences” and “naturalize politicized identities, constructing the boundaries between groups as pre-given and obscuring their genealogies.”<sup>220</sup> Carastathis argues:

Our ability to align and coalesce with people “outside” our movement who do not identify with its superordinate sexual and gender identities—yet to whom “the majority of us are connected . . . by blood, by class, and by spirit”—is contingent on recognizing, celebrating, and organizing meaningfully on the basis of the intersections within. For this to happen, “the dialogue we must engage in” has to be “about the truth of who we are, the whole truth.”<sup>221</sup>

Carastathis, then, outlines the basis for a coalitional movement that recognizes and engages in conversations about intergroup and intragroup differences and finds commonality in marginality and oppression.<sup>222</sup> Such a coalitional movement could benefit activists in Iran. Najmabadi writes that gays and lesbians in Iran are expressing interest in organizing similarly to trans activists.<sup>223</sup> It remains to be seen, however, if and how Iranian activists will organize and work together around issues of gender and sexuality in the future.

New uses of Farsi terms and imported language can help create and delineate identity and also help in the realization of coalitional movements. Homosexuality in particular is inextricably linked with criminality in its Iranian understanding. The homosexual position is also one of degradation. Men who engage in same-sex sexual practices or who are perceived as homosexual are referred to as *kuni*, which literally means, “anal” or *hamjinsbaz*, which means “same sex player.”<sup>224</sup> Women who engage in same-sex sexual practices or who are perceived as homosexual are also referred to as *hamjinsbaz*.<sup>225</sup> However, academic and vernacular discourses from the West introduced the terms “gay” and “lesbian,” which some Iranians have appropriated and use to describe

220. *Id.* at 184-85.

221. *Id.* at 185 (quoting Carmen Vázquez, *Spirit and Passion*, in *QUEERLY CLASSED: GAY MEN AND LESBIANS WRITE ABOUT CLASS* 121, 133 (Susan Raffo, ed., 1997)).

222. *See id.* at 174 (discussing the American group Somos Hermanas and its mobilizing with Nicaraguan women “on the basis of what Cathy Cohen has termed a ‘shared marginal relationship to dominant power’”) (quoting Cathy J. Cohen, *Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?*, 3 *GLQ* 437, 458 (1997)).

223. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 186.

224. *Id.* at 303.

225. Najmabadi, *Is Another Language Possible?*, *supra* note 195, at 173.

themselves.<sup>226</sup> The words “gay” and “lesbian” allow these Iranians to distance themselves from the degrading effect of the terms *kuni* and *hamjinsbazi* and their stigmatization.<sup>227</sup> Najmabadi claims that some Iranian gay diasporic communities also disassociate themselves from these terms by identifying themselves with the word *hamjins-gara’i*, which means, “same-sex inclination.”<sup>228</sup> This use of vernacular more clearly delineates “gay,” “lesbian,” and “*hamjins-gara’i*” as alternative identities to those otherwise available.<sup>229</sup> In this space, Iranian gender and sexual “deviants” can form new sites of activism around identities of “gay,” “lesbian,” or “*hamjins-gara’i*”—which may not necessarily cohere with Western or the Iranian gay diasporic communities’ understandings of these terms<sup>230</sup>—and potentially create other identities or identity markers. Otherwise, identity formation and coalition building around “*kuni*” and “*hamjinsbazi*” is lacking perhaps because of the negative connotations that these words carry.<sup>231</sup>

The law also presents opportunities for change. Khomeini’s fatwa opened a door to a temporary home for gender “deviants” who wish not to change their sex. Khomeini writes, in part, “The prima facie view is that it [sex change] is not obligatory if the person is truly of one sex . . . .”<sup>232</sup> Thus, trans activists argue that one can acquire a certificate of transsexuality without being required to undergo any hormonal or somatic changes.<sup>233</sup> While the Iranian authorities do not like this situation, they cannot overrule the plain language of Khomeini’s fatwa.<sup>234</sup> However, it is unclear whether this “loophole” is, in fact, being used or how the state would react if activists tried to take Khomeini’s permissive language to its full logical conclusion.<sup>235</sup>

226. *Id.*

227. *See id.*

228. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 121.

229. *But see* Najmabadi, *Is Another Language Possible?*, *supra* note 195, at 174 (suggesting that (1) “gay,” “lesbian,” and “trans” mean different things in different historical and contextual sites and (2) we need to ask how these differences may “affect a different politics of transnational solidarity”).

230. *See* NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 122.

231. Notably missing from this conversation is a discussion of bisexual identity. Academic discourse on bisexual identity (rather than what might be considered bisexual sexual behavior) in Iran is not robust.

232. NAJMABADI, *PROFESSING SELVES*, *supra* note 10, at 174.

233. *Id.*

234. *See id.* at 175.

235. “New Religious Thinking” and the emergence of “Islamic Feminism” provide further opportunities for alternative understandings of Khomeini’s writings and Islam



## CONCLUSION

From the mustache-wearing Qajari woman to the beardless modern Iranian man who desires women who are feminine according to Western aesthetics, the history of gender in Iran is a complicated one. Ironically, some Western media accounts have criticized Iran as repressive toward gays and lesbians. However, Western forces played a significant role in reconfiguring Iranian sexuality and engendering repulsion toward homosexual-appearing behavior. Popular media accounts also do not credit the important role Iranian trans activists have played to better their own lives. The conversation between government officials in Iran and trans activists is ongoing and there is potentially room for new actors—those we might consider gays and lesbians—to enter the scene.

---

more generally. See Ziba Mir-Hosseini, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*, 32 *CRITICAL INQUIRY* 629, 636-43 (2006). The discourse of "New Religious Thinking" makes "a distinction between religion and religious knowledge" and argues that "whereas the first is sacred and immutable, the second—including Islamic law—is human and evolves over time because of forces external to religion itself." *Id.* at 636. Relatedly, the discourse of "Islamic Feminism" sees "no inherent or logical link between Islamic ideals and patriarchy, no contradiction between Islamic faith and feminism . . ." *Id.* at 639-40.