Fragmentation in the Iranian Court System

With 34 members of the press behind bars, the Islamic Republic of Iran has one of the highest numbers of journalists per capita in prison. The imprisonment of journalists is one of the ways in which the regime in power in Iran ensures that it will stay in power. The court system is a key component in silencing this political opposition. In Judicial Independence in An Authoritarian Regime: The Case of Contemporary Spain, Jose J. Toharia shows that authoritarian Spain had a weak independent ordinary judiciary in order to legitimate the regime, but it also had a parallel set of special tribunals where the politically salient cases were tried. Similar to what Toharia describes in Spain, the real power lies in Iran’s special tribunals. One strong example of this is the body of cases the cases of journalists who are critical of the regime. These journalists tend to be sent to special security courts known as Revolutionary Courts while rudimentary cases, like divorce cases, are sent to the ordinary courts. Through an examination of cases involving journalists I will show that Iran uses the Revolutionary Courts to silence opposition while having an independent ordinary court system that tries bread and butter cases in order to legitimize the regime.

To show how Toharia’s theory can be applied to Iran, I will provide an overview of Toharia’s findings in Spain. Through an examination of the construction of the court system in Iran it will become apparent that Iran has a fragmented court system consisting of ordinary courts and special security courts. Then by looking at appointment rules in Iran, I will show that judges in the ordinary lower courts are independent of the regime while judges in the special tribunals are controlled by the regime. Next through an investigation of cases involving


journalists I will show that the revolutionary courts are where the real action happens and suppression of political dissent takes place. Last I will look at a divorce case that occurred in the ordinary court system to show that the ordinary court system exists to try basic cases and legitimate the regime.

Toharia’s theory of fragmentation is the basis for my argument regarding Iranian courts. Toharia looks at lower-level courts in Spain to show that judges in these courts are independent. The reason these ordinary court judges are allowed to be independent is because of their lack of power. Instead, the special tribunals have the majority of the power and they are closely supervised by the regime. Thus, Toharia finds that the court system in Spain is fragmented, having a parallel set of separate courts. Toharia discovers that the ordinary courts exist to legitimate the regime while parallel courts exist to suppress political dissent, ensuring the regime stays in power.

Toharia looks at judge ideologies, appointment rules and the legal cases tried in the different courts to provide evidence for his theory. Toharia uses judge ideologies by surveying judges’ views on protection of civil liberties, the death penalty, divorce, and the use in courts of languages other than Castilian to support his belief that judges are independent in lower courts. Additionally, Toharia turns to appointment rules to further prove this point. Toharia finds that the judiciary is generally a self-selecting body and appointments are based on technical qualifications rather than ideology at all levels with the exception of the highest posts. But the independence that these judges enjoy is not significant. The ordinary courts only control a small

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3 Toharia, 475.  
4 Toharia, 475.  
5 Toharia, 475.  
6 Toharia, 476.  
7 Toharia, 476.  
8 Toharia, 474.  
9 Toharia, 484.
amount of legal cases which are largely disputes between private parties and have little impact on the larger social environment. Instead, the special tribunals try the politically important cases. The special tribunal courts take cases regarding labor, economic and commercial relations, and state security. Unlike the ordinary courts, the judges in these tribunals are freely appointed and removed by the government. Through the use of the tribunals Spain was able to curb political mobilization of people and institutions while claiming to have rule of law with the weak independent ordinary courts. Even though the regular judiciary is weak, it is still independent, which allowed authoritarian Spain to claim it had rule of law.

Toharia concludes with a discussion of two dimensions of legal systems: competence allowed to the ordinary jurisdiction and the relationship of judges to the political system. In regards to competence allowed to the ordinary jurisdiction, Toharia differentiates between a comprehensive judiciary (judicial power lies completely in the ordinary courts) and a fragmented judiciary (judicial power is fragmented into a variety of unrelated tribunals). For the second dimension, Toharia makes the distinction between an independent and dependent judiciary. For example, in a democratic system the judiciary is comprehensive and independent while in an authoritarian regime is likely to have a judiciary that is fragmented and independent. Therefore, I will apply Toharia’s theory to Iran and show that Iran has a fragmented court system allowing the ordinary courts to be independent, while having another set of courts that make the real decisions. The ordinary courts legitimize the regime while the special courts suppress political opposition.

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10 Toharia, 486.
11 Toharia, 487.
12 Toharia, 487-494.
13 Toharia, 495.
14 Toharia, 495.
15 Toharia, 495.
16 Toharia, 495.
17 Toharia, 495.
The structure of the Iranian court system shows that special security courts exist parallel to the ordinary courts. The Supreme Judicial Council is the highest ranking judicial body in Iran and the governing body of the Iranian judicial system.\textsuperscript{18} The Council has authority over the interpretation of \textit{shari’a} law and controls the appointment, suspension, and dismissal of all judges in Iran.\textsuperscript{19} The five member Council must be comprised of learned scholars of Islamic law, who have studied Islamic jurisprudence, and whose authority has been confirmed by the Supreme Leader (Grand Ayatollah Ali Khamenei).\textsuperscript{20} Additionally, the Supreme Council is the Chief Justice of the Supreme Court and the General Prosecutor.\textsuperscript{21} The Supreme Council does not usually try cases, though it has the final word on capital punishment sentences. The highest actual court in Iran is the Court of Cassation, also known as the Supreme Court.\textsuperscript{22} With the direction of the Supreme Council, the Court of Cassation supervises the lower courts and makes sure there is uniform judicial policy in Iran.\textsuperscript{23} The lower courts in Iran are known as the public courts which take care of both criminal and civil cases.\textsuperscript{24} The criminal public courts are divided into two categories: first class criminal courts and second class criminal courts.\textsuperscript{25} The first class criminal courts deal with cases where conviction usually carries the death penalty, long term imprisonment, and substantial fines.\textsuperscript{26} The second class criminal courts try minor crime cases that usually have to do with failure to follow the rules and regulations that exist in Iran.\textsuperscript{27} The decisions that are handed down in the first class criminal courts can theoretically be appealed to

\textsuperscript{19} Entessar, 98.
\textsuperscript{20} Entessar, 98.
\textsuperscript{21} Entessar, 98.
\textsuperscript{22}Entessar, 99.
\textsuperscript{23} Entessar, 99.
\textsuperscript{25} Entessar, 99.
\textsuperscript{26} Entessar, 99.
\textsuperscript{27} Entessar, 99.
the Court of Cassation, but in practice this is hard to do.\textsuperscript{28} Cases that involve capital punishment are appealed to the Supreme Judicial Council, not the Court of Cassation.\textsuperscript{29} The first class criminal court decisions are final and cannot be appealed because the decisions are seen as light.\textsuperscript{30} The civil public courts are divided into four groups: the first level civil courts, the second level civil courts, the independent civil courts, and the special civil courts.\textsuperscript{31} The special civil courts mainly deal with family law cases relating to divorce and child custody.\textsuperscript{32} The public courts would be comparable to the ordinary courts that Toharia refers to in Spain.

In addition to the regular court system, there exist special tribunals. These tribunals consist of the Revolutionary Courts and the Special Criminal Courts of the Clergy.\textsuperscript{33} The Revolutionary Courts were originally established after the 1979 Revolution to expedite the trials of enemies of the Revolution.\textsuperscript{34} The Revolutionary Courts were placed in major towns and districts determined by the head of the judiciary.\textsuperscript{35}\textsuperscript{36} Immediately after the revolution, corporal punishment dictated by these courts were carried out by \textit{komiteh} (morality police) and their militias.\textsuperscript{37} The most common form of execution was by firing squad.\textsuperscript{38} The Revolutionary Courts are essentially security courts and have become used to try: crimes against Iran’s security, crimes which wage war on God, narcotics smuggling, assassination attempts on Iran’s political and religious leaders, plunder of the public treasury, hoarding and profiteering, spying for foreigners,

\begin{itemize}
\item \textsuperscript{28} Entessar, 99.
\item \textsuperscript{29} Entessar, 99.
\item \textsuperscript{30} Entessar, 99.
\item \textsuperscript{31} Sial. “A Guide to the Legal System of the Islamic Republic of Iran.”
\item \textsuperscript{32} Sial. “A Guide to the Legal System of the Islamic Republic of Iran.”
\item \textsuperscript{33} Sial. “A Guide to the Legal System of the Islamic Republic of Iran.”
\item \textsuperscript{34} Entessar, 100.
\item \textsuperscript{37} Abrahamian, 125.
\item \textsuperscript{38} Abrahamian, 126.
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and acts that support opponents of the Islamic Republic.39 According to an Iranian-American who was tried in a Revolutionary Court for propagating against the state, the court does not give a sentence until the trial.40 After, the sentence is given the defendant has time to explain why they are innocent and why the charges should be dropped.41 Then the judge questions the defendant on his activities in Iran.42 Finally, the defendant is sentenced.43 The Special Criminal Courts of the Clergy were also establish after the 1979 Revolution, but to push out members of the clergy who were not supportive of the Islamic Republic's policies.44 Currently, they continue to punish the misdeeds committed by the clergy.45 The special tribunals, especially the revolutionary courts, create a fragmented legal system allowing the politically conflictive cases to be tried outside of the regular courts.

An examination of the appointment rules in Iran will show that the judges in the ordinary courts are independent from the regime while those in the special tribunals are subject to the will of the regime. The Supreme Judicial Council consists of five members two of whom are appointed by Supreme Leader and three who are appointed by judges of various Islamic courts.46 The President of the Court of Cassation must be a mujtahids (learned member of Islamic law) and appointed by the Supreme Leader.47 Iran’s legal system is an inquisitorial system, therefore in the public courts the judge is the prosecutor, the jury, and the arbitrator.48 In the public courts, the judges are religious judges. These judges have to be nominated by the Qum

39 Entessar, 100.
40 “Inside Iran’s Revolutionary Court.” NPR, April 14, 2009.
41 “Inside Iran’s Revolutionary Court.”
42 “Inside Iran’s Revolutionary Court.”
43 “Inside Iran’s Revolutionary Court.”
44 Entessar 100.
46 Entessar, 99.
47 Entessar, 99.
Theological Seminary and appointed by the Supreme Judicial Council. The appointment of judges for the lower courts does not rely directly on the Supreme Leader, giving them some independence from the regime. The technical qualifications for the Iranian judges are not as clear as in the Spanish case (a competitive examination is taken in Spain) but the fact that these judges have to be nominated by the Qum Theological Seminary provides some evidence that nomination might be merit based. Like the case of Spain, the higher level posts are more dependent on the regime, being appointed by the Supreme Leader himself.

The appointment rules of the Revolutionary Courts are completely at the discretion of the regime in power. The Revolutionary Courts are supposed to consist of a three member panel with a religious judge appointed by the Supreme Leader, a civil judge approved by the religious judge, and an individual “trusted by the people” also approved by the religious judge. In practice the religious judge controls the court and in many cases the tribunal only consists of the religious judge. The religious judges in the Revolutionary Courts are normally clerics with little legal knowledge. These clerics’ lack of legal training contributes to why defendants are rarely allowed to have defense lawyers. When these courts were created after the Revolution of 1979, they provided final decisions with no right to appeal until this rule was changed in 1988. Usually proceedings take place in secret and the decisions are largely arbitrary. Most judges keep these trials short and some only last mere minutes. The Special Criminal Courts of the Clergy operate under similar conditions as the Revolutionary Courts. They are at the discretion

49 Entessar, 99.
50 Entessar, 100.
51 Entessar, 101.
52 Rezeai, 62.
53 Abrahamian, 125.
54 Rezeai, 62.
55 Rezeai, 62.
56 Abrahamian, 125.
of the Supreme Leader and generally act in an arbitrary fashion. The direct selection of the judges of these courts by the Supreme Leader shows the power the regime has over these courts. The appointment rules of the ordinary courts and the special tribunals are in accordance with Toharia’s theory and show that the ordinary courts (mainly the public courts) are free from the political power in place while the special tribunals (mainly the Revolutionary courts) are tightly controlled by the government in power.

To further the application of Toharia’s theory to Iran, I will now look at cases involving journalists. These cases involving journalists who are critical of the regime in power in Iran to demonstrate that the Revolutionary Courts try politically important cases in an effort to suppress political dissent. I was unable to find information on the actual proceedings that went on in a case in a Revolutionary Court involving a journalist because of the limited information Iran lets out and the fact that revolutionary courts are supposed to be secret. Consequently, I rely on smaller bits of information on imprisoned journalists rather than one detailed case.

For a period of time, cases involving newspapers and journalists were not tried in Revolutionary Courts. Instead, cases involving the press primarily went to press courts where a jury would vote on whether to shut down the newspaper. In 1999, legislation was enacted that put the press under the jurisdiction of the Revolutionary Courts. The Iranian government has periodically cracked down on journalists around elections and during opportunities that could empower the opposition. An example of this was during the time of the disputed 2009

57 Rezeai, 63.
The most recent government crackdown on freedom of expression in Iran was in February 2011. Then the government arrested journalists to ensure the revolutions in Tunisia and Egypt would not spread to Iran. Still, Iran continues to arrest journalists it sees as a threat to the stability of the regime. Currently, Iran is tied with China in having the most journalists imprisoned at 34.

By examining six cases of imprisoned journalists I show that Iran’s Revolutionary Courts are used to suppress political dissent. Nazanin Khosravani is a reformist journalists who writes for variety of newspapers, including the Norooz and Sarmayeh (reformist papers), who was arrested by intelligence ministry officials and imprisoned. On April 19, 2011, five months after she was arrested, she was finally charged by a Revolutionary Court in Iran of anti-government propaganda and activities threatening national security due to her reporting. She was sentenced with six years in the infamous Evin prison, known for torturing its prisoners. Journalist Issa Saharkhiz was also sentenced by a revolutionary court for his journalistic activities. Saharkhiz was arrested in 2009 and sentenced to three years in prison for anti-government propaganda, but in 2011 his sentence was extended for journalistic activities that he took part in prior to his arrest. Mohammad Sedigh Kaboudvand is another example of a journalist being arrested in Iran. He is head of the Human Rights Organization of Kurdistan and managing editor of the

61 Afkhami, Artin & Gladstone, Rick. “Pattern of Intimidation Is Seen in Arrests of Iranian Journalists and Bloggers.”
62 Afkhami, Artin & Gladstone, Rick. “Pattern of Intimidation Is Seen in Arrests of Iranian Journalists and Bloggers.”
63 Afkhami, Artin & Gladstone, Rick. “Pattern of Intimidation Is Seen in Arrests of Iranian Journalists and Bloggers.”
64 Afkhami, Artin & Gladstone, Rick. “Pattern of Intimidation Is Seen in Arrests of Iranian Journalists and Bloggers.”
66 “Regime continues to crack down on journalists, media freedom defenders.”
67 “Regime continues to crack down on journalists, media freedom defenders.”
68 “Regime continues to crack down on journalists, media freedom defenders.”
70 “Regime continues to crack down on journalists, media freedom defenders.”
71 “Regime continues to crack down on journalists, media freedom defenders.”
weekly Payam-e-Mardom. In 2007, a Revolutionary Court sentenced him to 11 years in prison for acting against national security and engaging in propaganda against the state. Later, Kaboudvand’s lawyer was imprisoned as part of a governments crack down on lawyers who defend journalists and political prisoners. Some journalists have even been sentenced to death by the revolutionary courts. Adnan Hassanpour, the former editor of Aso (a Kurdish-Persian weekly), was convicted in 2007 of anti-state charges and sentenced to death. Fortunately, his case was repealed and in 2010 his sentence was reduced to 15 years in prison. Bloggers are subject to the same punishments as traditional journalists as seen in the case of Mohammad Pour Abdollah. Pour Abdollah, a Tehran University student, and blogger was sentenced to three years in prison by a revolutionary court for “illegal congregation, actions against national security, and propagating against the Islamic Republic of Iran.” In his blog, Pour Abdollah had criticized the political, social, and economic conditions in Iran. In 2010, Reports without Border’s Press Freedom award winner, Abdolreza Tajik was sentenced to six years in prison by a Revolutionary Court for his involvement in Center for Human Rights Defenders and for propagating against the Islamic Republic of Iran. Tajik’s sister was subsequently imprisoned for her interview with BBC, regarding her brother’s treatment during his detention. Her sentence was a year and a half in prison for “acting against the establishment and creating anxiety for public opinion.”

This plurality of cases (which all took place in Revolutionary Courts) makes it evident that politically salient cases are left to the special courts and in the case of Iran the Revolutionary

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73 “Regime continues to crack down on journalists, media freedom defenders.”
74 “2010 prison census.”
75 “2010 prison census.”
76 “2010 prison census.”
77 “2010 prison census.”
78 “2010 prison census.”
80 “6-year sentence for human rights activist Abdolreza Tajik.”
81 “6-year sentence for human rights activist Abdolreza Tajik.”
Courts. The critical writing (reformist papers and blogs) produced by these journalists makes it apparent that these cases are politically conflictive. The imprisonment of one of the journalist’s lawyers and the sister of one of the journalists further shows how threatening Iran sees journalists and their supporters. Additionally, all journalists were sentenced with multiple years in jail which displays that the regime is concerned about their actions and sees them as politically threatening, and therefore politically important. The actions of these journalist and the charges brought on them by the Revolutionary Courts make it apparent that these courts are used to silence political opposition as the journalists were either reformist and/or critical of the situation in Iran and the charges consisted of propagating against the state. Therefore, the Revolutionary Courts are compliant with Toharia’s theory as they are under the control of the regime and responsible for the politically important cases.

In order for Toharia’s theory to entirely hold true it must be proven that the ordinary courts only have jurisdiction of “bread and butter” or basic cases that serve to legitimize the regime. By looking at a divorce case in one of Iran’s special civil courts it will become apparent that the ordinary courts are powerless, as they are only have authority of a small number of politically unimportant cases. In Iran, women must pursue counsel in a family court to achieve a divorce.82 A judge can grant a woman a divorce if she can prove her husband is not fulfilling the marriage contract or a provision of the law and that reconciliation in impossible.83 The case I am examining involves a woman named Goli whose divorce case was tried in Tehran’s Municipal Family Court.84 Goli filed for a divorce from her husband because of his absence for almost the

83 Osanloo, 195.
84 Osanloo, 191.
entirety of their marriage. Goli was unable to afford a lawyer, but was able to use the family law code herself to write petitions and to make oral testimonies. She followed the appropriate procedures required to get a divorce; she waited six months and prepared a reasonable claim of non-maintenance as dictated by the Iranian law codes. Goli was also prepared to make a second claim of absenteeism if her initial claim was insufficient for the judge to grant her a divorce (since her husband had been absent for over six months). In court, the judge reiterated to Goli that a marriage could only be dissolved under certain circumstances and that he was to determine whether her circumstance qualified for one. In her testimony, Goli used the civil codes to prove that she had justification to ask for a divorce, claiming that her husband did not provide for her. The judge followed the law and Goli was granted a divorce based on her evidence of lack of maintenance. Goli’s story demonstrates how Iranian women can use the courts to achieve divorce when their husbands violate the terms of their marriage.

Through Goli’s case it can be seen that the ordinary courts rely on a system of procedure based in law to determine result of basic cases like divorce. The judge even claimed he had guidelines he had to follow to grant Goli a divorce, which she sufficiently fulfilled. This divorce case shows that ordinary courts have jurisdiction over “bread and butter” cases. Divorce cases would almost always be tried in the ordinary court system, while cases involving the critical speech of journalists are usually left to the Revolutionary Courts. These courts are powerless but based on their appointment rule independent. According to Toharia, independence is what is

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85 Osanloo, 192.
86 Osanloo, 192.
87 Osanloo, 192.
88 Osanloo, 192.
89 Osanloo, 193.
90 Osanloo, 193.
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92 Osanloo, 193.
necessary to legitimize a regime through rule of law not power. Furthermore, these ordinary courts provide for basic cases allowing private disputes of ordinary citizens to be reconciled which adds to the legitimacy of the regime. This case serves as a contrast from the journalist’s cases where a judge arbitrarily says they are propagating against the state.

The evidence that I have found support’s Toharia’s theory as applied to Iran. Additional information is needed for a complete application of Toharia’s theory to Iran. For example, Toharia was able to survey judges in Spain to gauge their ideologies, similar information on Iranian judges is needed to further prove Toharia’s theory in Iran. Additionally, more “bread and butter” cases, like contract cases, that take place in the public courts would provide more evidence of the lack of power held by the ordinary courts and their role of legitimizing the regime. The structure of Iran’s court system shows that Iran has fragmented judiciary with ordinary courts and special tribunals. The ordinary courts appear to be independent of the regime because of their nomination requirement by the Qum Theological Seminary and their appointment by the Supreme Judicial Council, while the Revolutionary Court judges are appointed directly by the regime. By looking at journalists’ cases in the Revolutionary Courts it became apparent that the Revolutionary Courts were used to try politically conflictive cases and suppress political dissent. By contrast, through the examination of a divorce case in a public court it becomes apparent that the ordinary courts try basic cases in order to legitimize the regime. The public courts follow procedures based on law while the Revolutionary Court cases are more or less arbitrarily decided with convictions such as propagating against the state. Overall, the cases show that Toharia’s theory holds in Iran, the ordinary courts are independent and powerless serving to legitimize the regime while the special security courts (mainly the

93 Toharia, 495.
Revolutionary Courts) try the politically important cases, silencing the opposition and ensuring the regime stays in power.

Comment [SW32]: nice job working with the evidence available to you. The comparison between the public courts and the Revolutionary courts works well to support your argument. ’a bit repetitive in places.