Legal Systems and the Effect of Religion Upon Them

By

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Abstract

One can not understate the importance of religion for most people. Faith in a supreme deity, in one form or another, has been a part of most cultures since the dawn of civilization. This fact is evident as well in the development of legal systems across world history. In order to understand the effects of religion upon a State, one must analyze two States which act as complete opposites. By doing so, one is more able to notice the effects major religions have on the judiciary.

By comparing two vastly different cultures one is able to note the influence of religion upon the Judicial System. Specifically, focusing on a comparison between the religious-based Theocracy of Iran with the United States of America's separation of Church and State. By studying the Judicial system of each country, regarding religion's effect on the law, with specific attention to the appointment of judges. By reviewing two Countries with completely opposite views on the role of religion in their legal system and the degree to which that impacts each Country's courts, laws, and the way in which this affects the evolving judiciary.

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Section 1 - Introduction

Religion has been a part of humanity for as long as one could imagine. One of the oldest works of literature discovered is a religious epic poem, *The Epic of Gilgamesh* in 2100 BC. Thus it should be obvious that religion plays a huge role in the life of the average person and the societies in which they live. The presence of religion is seen in governments all throughout history, although how much it influences the State and its legal system varies. A multitude of solutions to this issue have come from a series of different countries. There exist countries such as Iran that intertwine their religion and their government, known as a theocracy. There are countries such as China that actively avoid any and all religions in its state. Then there are countries that mix the two in an effort to afford the most liberties to their people, such as the United States of America. It is through the analysis of these two governments, the United States of America and Iran, and how each addresses the question of religion that we may come to an understanding of the effects their religion, or lack thereof, may have impacted the evolution of their legal systems and legislation.

Section 2 - America

The separation of Church and State is a concept which every American is familiar with, as it is the basis of their Constitution. However, what this means exactly and how it impacts the judicial system may not be clear to the average person. To truly understand what this impact is, one must first return to the origins of the country and the philosophies upon which it was built.

The Founding Fathers were imbued with a deep devotion to religious equality. They held the belief that the government should never establish a singular religion. So true to this cause were they that the First Amendment to the Constitution forbade the establishment of religion as well as the stifling of the exercise of one's religion. The basis is the language in the First Amendment specifying the following; "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…"

The original, and most important, acknowledgment in the First Amendment is the guarantee that the government shall not establish a religion nor can the government restrict one from practicing their own religion. These two are known, in order, as the Establishment Clause and the Free Exercise Clause, which together assure the freedom of religion in the United States of America. These two clauses work in conjunction as a part of, and an extension to, the First Amendment of the Bill of Rights to protect an individual's right to religious freedom. Thus, these two clauses assist in understanding the Founder's belief in the separation of Church and State. The Free Exercise Clause of the First Amendment guarantees exactly what its name implies, to protect one's ability to freely exercise their religion. Protection under this clause requires two specific conditions to be met. One, the actions must be an exercise of their religion being, at a minimum, truly and sincerely motivated by their religious beliefs (Conkle, 93). There

are of course limitations to this, which can be seen in the next requirement. The second qualification is it must meet the substantial burden requirement. The government cannot burden the exercise except under the following, the "government must establish that the burdening activity serves a compelling government interest in the least restrictive way possible" (Library Guides). If an act is religious by nature and not prohibited by undue burden by another law, then the practice is allowed. An example of this in the United States would be one who sincerely believes that the killing of another to be required by their religion. This sort of practice can be prohibited as it is in the Government's interest to keep its citizens alive.

The second clause to be analyzed is the Establishment Clause. This clause is ancillary to the aforementioned Free Exercise Clause, as while the previous prevents impermissible burdens the Establishment Clause prevents any impermissible boons (Conkle, 153). So important is this concept to the Founding Fathers, as stated earlier, that this tenet is the first clause of the First Amendment to the Constitution "Congress shall make no law respecting an establishment of religion..." (Ryman, Hana M.). The Establishment clause works to prohibit the government from unfairly favoring any one religion over the others. This includes, but is not limited to, the establishment of a national religion. It is through this clause that many have coined the term "separation of church and state". Boiled down to its simplest form, this clause was created to prevent the government from actively benefiting any one religion through means such as legislative or monetary support. Though there are cases in which one can receive benefits so long as all receive this benefit, such as all recognized houses of prayer receiving tax exemptions. This can also be seen in the fact that there is a lack of specific religious iconography within governmental buildings or the use of iconography from multiple major religions.

To understand the thought process of the Founding Fathers one needs to understand the beliefs of the philosopher who arguably influenced them the most, the famous John Locke. Locke held many interesting and generally unique views. One such view would be giving religious freedoms to those who do not follow the dominant religion of the state. This can be seen as Locke speaking out against the use of coercive religious truths. This is known as his religious-moral perspective, the antithesis of this view being Saint Augustine's belief that "it is good for individuals to be brought to the truth by any means, including the use of force." (Conkle, 9). Locke spoke out against this idea and gave two reasons for the disestablishment of these coercive ideas. The first prong of his argument against coercion is that "man cannot be forced to be saved" (Conkle, 10). Thus, he says, coerced religious states have no religious value as the coerced individuals will not be truly invested. The second prong is his political-pragmatic argument, wherein he states that in a religiously pluralistic society, religious toleration is politically and pragmatically preferable (Conkle, 10). The theory is that forcing someone to practice a single religion breeds discontent and anger, potentially breaking the civil unity of the State. Contrarily, tolerating and accepting all religious views, even the ones in the minority, gives all people a sense of belonging and acceptance (Conkle, 10). This sense of religious freedom and tolerance was a great influence on the Founding Fathers of America. Locke's idea of religious liberty becomes a huge inspiration for early legislation.

The Founding Fathers are a pivotal starting point for the analysis of religion in the United States and how it functions in conjunction with the law. One such founder, James Madison, is the major author of the Constitution of the United States. James Madison spent many years of his professional life championing the separation of many assorted issues related to governmental

powers. Madison's ideas are best seen in one of his landmark papers, the "Memorial and Remonstrance Against Religious Assessments". In this text, he delivered a wonderfully complex dialogue on religious liberty which included the separation of church and state. Madison, in this address, spoke on the nature of one's personal relationship with God. Madison makes many references to Virginia's Declaration of Rights of 1776. Whereby, he states every man should be free to exercise one's religion as one chooses. It is because of this religious freedom, Madison states, that religion cannot be interwoven with the legal and political systems. Madison believes if a man is to be beholden to his lord he can not be beholden to his government (Founders Online). For this reason, Madison states that man must separate his duties to God from his civic responsibilities. He believed that governments have a tendency towards corrupting religions as opposed to enhancing them(Conkle, 12). It is because of this, Madison declares, that the State should not define an established religion. Madison views the government as generally not competent to declare religious truths (Conkle, 12). He believes this falls outside the domain of the government's power, as it is "an unhallowed perversion of the means of salvation" (Founders Online). This remonstration gained an overwhelming amount of support from the people of Virginia. The bill, which intended to provide "teachers of the Christian religion" a taxpayer-provided salary, was defeated as a result of Madison's rebuttal (Read, James H.). There was clear support for the idea of keeping the State separated from the religious activities of the Church, thereby, preventing the two from needlessly intermingling. If one is to be required to pay their taxes and these taxes are thus used to support religious teachings, especially if one does not follow the specified religion, it must, therefore, be a violation of one's religious liberties. No person, according to Madison, should be forced by the State to support one religion over their

own. James Madison, all throughout the "Memorial and Remonstrance Against Religious Assessments", emphasized how important religious equality is as it "promotes peaceful coexistence and voluntary allegiance to the state" (Conkle, 13). This concept is extremely important for the continuation of the State. Madison stated that a "coercive religious establishment" will lead to division amongst the people potentially including religious based violence and widespread resistance against the State. While a just state that provides ample religious freedom to its people, thus separating religion from government, will survive and experience general cohesion.

Thomas Jefferson, a President and Founding Father, worked diligently to afford these freedoms to the citizens. In response to Madison's "Memorial and Remonstrance Against Religious Assessments", Jefferson's Virginia Act for Religious Freedom of 1786 would be adopted by the people. The legislators would pass Jefferson's act, which prevented coerced religion by any means, such as compelled financial support. Thus making one's religious freedom a natural right. Jefferson held various views as to why religious freedom should be a standard for the United States, but primarily his argument was most influenced by John Locke. Jefferson within the Virginia Act spoke to the core of the issue, "Almighty God hath created the free mind… all attempts to influence it by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness..."(Conkle, 14). Essentially, Jefferson states that because the God he believes in has given people free will they should be allowed to utilize this free will to follow any God they chose, without any Government intervention. The State must not "confer privileges and incapacities on the basis of religious opinion" (Conkle, 14). These two Founders clearly wore their Lockean inspiration on their

sleeves and it is through their legislative efforts that one can better understand the influences of religion on the American legal system. A malleable and constantly evolving system of laws that attempts to embody the true American spirit. It is through the framework and precedent set forth by the Founders that America was able to evolve as it did.

Through the efforts of the Founding Fathers, much of the early religious bias was removed from the American legal system, though its vestiges are still ever-present. One need not look deeply to find allusions, direct references to, and the utilization of the Christian Bible. Since the dawn of this country, Christianity has been the dominant religion of the People. The original English settlers were Protestant, and in due time a wave of Catholic immigrants would arrive. These events established Christianity as the driving, dominant, religious force. Overshadowing the other religion's influence over governmental policies.

Christianity's power over the minds of United States' leaders can be most overtly seen in the multiple images of "God", such as the appearance of "In God We Trust" on the reverse side of all dollar bills. This phrase appears in reference to the official motto of the United States of America. President Dwight D. Eisenhower, in 1956, changed the official motto from"E Pluribus Unum", a message of unity, to "In God We Trust". The change in motto caused little controversy at the time, though there was contention with the phrase later on. The controversy concerning this motto was eventually resolved by the United States Court of Appeals in the case of *Aronow* v. *United States* (9th Cir.1970). The court, in this decision, reasoned that the use of "In God We Trust" as a motto was not an indication of Government sponsorship or the establishment of the Christian Faith. The Court ruled that since the name of God is being used ceremonially or in a patriotic sense, it, therefore"bears no true resemblance to a governmental

sponsorship of a religious exercise" (*Aronow* v. *United States*). The ruling holds that this motto has no coercive power of religion, thus the court found there is no First Amendment violation in the use of God in the national motto. Consequently, this religious reference remains in the national motto to this day.

A similar situation was also presented by the inclusion of the words "under God" in the Pledge of Allegiance. This issue was addressed in a New Jersey Court decision, the case of *American Humanist* v. *Matawan Aberdeen Regional School District* (MON-L-1317-14 2015). The court held there was no violation in this reference to God. The plaintiff, in this case, argued that the utilization of 'God" in the pledge is discriminatory against a non-religious person. The plaintiff argued that this phrase violated the Establishment Clause, as it offered a "boon" to the religious though not for others. The New Jersey judge presiding over the case ruled that there was no cause of action to be had because the term "under God" like "In God We Trust" is engraved into the public consciousness. The Court reasoned that this was nothing more than a ceremonial and patriotic term, having no bearing on actual religious significance. The Court did also hold however that each student, individually or through their parents, must be given the right to abstain from repeating Pledge.

Courts have historically referred to religious images throughout their decisions. Such as when creating the Exclusionary rule with the "The fruit of the poisonous tree" doctrine. The name of this doctrine referenced the widely known biblical event in which Adam and Eve ate from the Tree of Knowledge of Good and Evil. This doctrine holds that any evidence garnered as a result of an original improper collection by the state is excluded and thus rendered moot. Throughout a regular court preceding there can be numerous biblical references. One such

example of which would be an attorney wishing to represent two defendants in a case, which is referred to as dual representation. Courts have used the phrase “no man can serve two masters” (Academic Quoting) when referencing this concept, quoting directly from the Gospels of Luke and Mark.

This religious influence, seen in the naming and general acting conventions of the United States of America’s judiciary, is relatively pervasive. An obvious example of this, familiar to any American citizen, is that of the swearing-in of a witness. The witness is asked by the Judge whether they swear, or make a binding oath to, “tell the truth so help me God”. This being an obvious reference to the Christian God. These witnesses were told to place their right hand upon a Bible, the main text of the Christian faith, and swear to this God in order to assure they are telling the truth. In essence, damning their eternal soul if they were to in fact be lying. This process, while mostly symbolic, is disappearing from the Courts. With people able to swap out the Bible for other items such as the Constitution, and terms such as “Do you solemnly swear or affirm” being used in its place. Thereby eliminating the Bible from the court system and making it so that the oaths apply to any witness as proof they will tell the truth. These new oaths or affirmations are an example of the waning use of a singular religious belief into the more appropriate general oath or affirmation. Still being a shining example of the influence the Christian faith had over the American judiciary.

Over the centuries of evolution, this country's legal system has developed through a multitude of Supreme Court cases. Specifically, a wide array of cases concerning the State and it’s perceived relationship with religion. These cases make clear the effect religion had on the development of civil rights in the country.

In the case of *Engel* v. *Vitale* (370 US 421 1962), the Court addressed the question of whether the school was allowed to hold prayers in the morning before class. The issue at hand was if a nondenominational prayer, or moment of silent reflection, at the beginning of the school day violated the Establishment Clause? The Court decided that the State can not hold prayer in a public school. This is still the case even when the prayer is not a requirement and non-denominational. The Court reasoned that this kind of exposure to prayer violates the student's rights on many grounds. "It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America." (*Engel* v. *Vitale*). The Court ruled that the constitutional prohibition of laws establishing religion meant that the government had no business drafting formal prayers for any segment of its population to repeat in a government-sponsored religious program (*Engel* v. *Vitale*). Also, considering the fact that this event is state-sponsored it too is a violation of the first amendment. Clearly, this case evidences that as time passed the attempts, and mandates, to preserve the separation of Church and State only strengthened. Solidifying America as a government that, while embracing its many religious influences, stays true to not allowing these influences to intertwine with public policy.

Lee v. *Weisman* (505 US 577 1992) is another such case which deals with the violation of the Establishment Clause. In this case, a rabbi was invited to speak at a graduation ceremony. The courts once again decided this violated the Establishment Clause as it was "a state-sponsored and state-directed religious exercise in a public school" (*Lee* v. *Weisman*). Once more,

exemplifying the separation of Church and State. Even if the act can be seen as mostly harmless it can escalate quickly into something worse.

A vitally important case to the development of the body of law surrounding and dealing with the Free Exercise Clause (and subsequently the Valid Secular Policy test) is that of *Cantwell* v. *Connecticut* (310 US 296 1940). In this case, a group of Jehovah's Witnesses, a father and his two sons, were giving out pamphlets and attempting to collect donations for their Church. This was reported to the police as a person or group is required to obtain a license to solicit donations, especially those pertaining to a religious institution. The appellant, Cantwell, argues that the First Amendment, which States must enforce due to the incorporation of the 14th Amendment, is being violated by the aforementioned act. The Supreme Court ruled in this case in favor of the appellant. The Supreme Court decided that since the official has the power to decide whether the specific case is of a religious nature or not, they have been delegated far too much power. This could result in that Official deciding that someone's practice is or is not a religious practice, thus violating the First Amendment's Free Exercise Clause. This is because the official could exceed his authority, in which he could determine that the Jehovah's Witnesses are not a religion. This official could fall prey to their own bias' and unduly burden a religion they personally dislike. A claim which would obviously violate their right to free exercise. This, the Court held, is a violation as the first amendment prevents the Federal and (by the 14th amendment) State government from inhibiting free exercise in any burdensome way.

A review of the Establishment clause was again addressed by the Court in the creation of the "Lemon test". This test originated from the case of *Lemon* v. *Kurtzman* (403 US 602 1971), decided along with the case of *Earley* v. *DiCenso* (400 U.S. 901 1971). In the case of *Lemon* v.

Kurtzman, a law was passed in Pennsylvania that used cigarette taxes to reimburse schools for their purchases of "secular school supplies". The issue arose around the fact that many of the schools being reimbursed were religious schools, specifically of the Roman Catholic denomination. The schools were required to keep separate records identifying secular and nonsecular expenses to receive compensation from the Government (Epstein, Lee, 141). The companion case of *Earley* is one that deals with the supplementing of secular subject teacher salaries. The issue arises from the fact that this supplementation, paid by the state taxes of Rhode Island, is being paid to private school teachers. Though these teachers are made to agree, in writing, that they will not teach any religious subject, 95 percent of the schools that were receiving this assistance were affiliated with the Roman Catholic Church. More so, all 250 of the teachers that have applied worked at a Roman Catholic Church, two-thirds of them even being Nuns (Epstein, Lee, 141). Issues also arose with the fact that if the private religious school has the secular subjects paid for, they now have more money to pay for their religious subjects. Therefore making it difficult to be assured that there would be no religious bias in their teaching of the secular subjects.

The Court combined these cases and decided that they violated the Establishment Clause. During the course of this decision, they create a test that has come to be known as the "Lemon test". This test uses three categories to determine whether or not an act is in violation of the Establishment Clause. The test states that three things must be true for an act to not violate the clause; the statute must have a secular legislative purpose, the principal effect must not enhance or inhibit religion, and it must not foster excessive government entanglement with religion (Epstein, Lee, 142). When applied to these cases it is clear to see why they fail. The two cases

pass the first prong of the test, as they both intend on fostering better secular education. Regarding *Lemon*, the Court did not address the second prong stating that it fails on the third prong. Failing the third prong because it would foster excessive government entanglements. This is due to the fact that the government must keep track of and keep monitoring these records of secular versus religious spending. The Court found that this statute fostered the entanglement that the third prong of the Lemon Test attempted to avoid (Epstein, Lee, 142). This relatively robust test has persisted through the ages, appearing time and time again in relation to Establishment Clause cases, even if in modified or adjusted version (Conkle, 158). This test succeeds in creating a relatively clear distinction between what does and does not violate the Establishment Clause. This is especially true when one considers the lack of clearer standards that existed before this case.

Furthering the effort in regards to the separation of Church and State is the process by which Judges are selected. This is a result of the fact that the candidate's religion plays no part in their selection process. The selection process for judges in America varies depending on the level of the Judicial position being selected. There are two Judicial levels in the United States of America, namely Federal Judges and State Judges.

The process for a state judgeship has five potential paths. The first path is the judge's election by the people. These elections encompass the first two routes, partisan or nonpartisan. This form of selection through a ballot is common throughout the 50 United States. Though this method was unheard of during colonial times, it was popularized during the presidency of Andrew Jackson (Carp, 103). Historically before 1980 most cases of elected judges were uncontested or new spots, turnovers being filled generally by resignation or retirement (Carp,

103). These kinds of elections were relatively inexpensive and had low visibility, making them rather uncontested and uninvolved for the most part. However after the 1980's the investment in these elections increased exponentially, as evidenced in recent years by the dollar cost having risen by nearly 1,700 percent. In Texas, for a contested Supreme Court position the cost of an election increased from spending typically less than 200,000 dollars (from before 1984) to spending 3.5 million dollars in 2006 (Carp, 105). There arises a detrimental problem with this format of election for a judge. If a judge is to be elected by popular vote they are democratically assigned, which on its face seems to promote democracy. However, the problem is that the judges may become susceptible to favoritism as seen in the case of Brent Benjamin. Thus becoming ensnared by the democratic process as opposed to doing their judicial duties. Judge Benjamin was elected after a nearly 3 million dollar donation from a coal company that was facing a lawsuit. After coming into his position Judge Brent reversed a nearly 50 million dollar judgment against the coal company (Carp, 106).

The third method of selection for a judge is that of merit selection. This form was favored by reformers who were dissatisfied with the nature of the elections. This method was designed to be free from the political bias of the aforementioned elections. Essentially, in this system, the Governor will choose a judge from a selection of candidates. The candidates are chosen by a group consisting usually of attorneys from the local bar association, senior judges, and appointees by the Governor. This newly appointed judge shall serve until a retention election, which will ask voters whether the judge has done a good job based on the judge's record and whether they should be retained. In this manner, the judge's performance may be evaluated by the voters and if the majority is satisfied the Judge has performed well he will retain his position

(Carp, 107). This method generally avoids the issue of judges losing their impartiality due to political interference.

The two other methods of selection processes for a judge is the gubernatorial appointment and the legislative appointment. These two methods of appointment have become relatively sparse. The largest issue is when the judges are selected by the gubernatorial appointment there will always be a certain political bias, the Governer usually picking someone who sides with him politically (Carp, 109). In terms of the legislative appointment, it becomes evident that the legislators are more likely to pick colleagues or old friends. This essentially creates a system where one needs to know someone to be selected for a judgeship (Carp, 109). This form of appointment is clearly unfair as it disproportionately benefits ex-legislators.

The federal selection process is different when compared to the state level. The appointment of Supreme Court Justices starts with the President nominating the candidate and the Senate eventually voting on said candidate. The successful nominee receives the great honor of serving for life as a Supreme Court Justice on the highest court of the land. This appointment is given far more attention and consideration than other federal level appointments as it is the most important of all Judicial nominations (Carp, 129). This is seen in the fact that while all federal judges are technically nominated by the President, rarely is it given such care and attention as the Supreme Court nomination. Other federal judgeships are decided through strong consideration by the White House staff, attorney general's office, certain senators, and intense FBI scrutiny. This selection is then sent to the Senate Judiciary Committee, which will subsequently conduct an investigation on the nominee's ability to stand / the nominee's fitness for the post (Carp, 130). It is dependent on this investigation as to whether this nominee will

make it to final selection. If the committee decides favorably the nominee is sent to the floor of the Senate. Here the Senate gets the final decision as to whether or not this individual will receive the position they were nominated for, decided by a simple majority vote (Carp, 131)

The appointment process for a judgeship at either the Federal level or the State level is incredibly important. This selection shapes the future of the courts and affects the laws of the Country or State for many years. This is a multiple-step, multi-tiered process that requires one to be thoroughly vetted. Important as it will shape the way the justice system, one that has the mandate of assuring the most talented and dedicated candidates be chosen, as this ensures fair and impartial decisions. By doing so one is capable of nearly assuring that the judicial system is not overtly imbalanced while being filled with appropriately capable judges. Significant is the fact that at no point in either selection process is religion intertwined, assuring no one can be denied a position due to their religious beliefs. Neither is any religious leader given the power to nominate or appoint a judgeship.

Section 3 - Iran

Iran, historically called Persia is a country with a storied history ranging from wondrous ancient innovations to modern turmoil. Therefore it is of no surprise that the people would turn their hearts towards religion for comfort. It is, for this reason, that the government would develop into one that prioritizes religion. Iran is a country in which it's religious leader is also the leader of the State. This is more commonly known as a theocracy, being any government that ties together its religious figures as its leaders, thus mixing government and religion.

To understand the legal system of Iran one must first understand the power of the State's head. In the Iranian theocracy he is both a political and religious head, known as the Supreme Leader. The Supreme Leader "exerts ideological and political control over a system dominated by clerics who shadow every major function of the state" (Inside Iran). The Supreme Leader has many representatives that must act on his behalf. These representatives have immense amounts of power, occasionally dwarfing that of the elected president. Furthering the idea that the government does not prioritize democracy, but rather the dominant religion. There have only been two people to have held the position of Supreme Leader since the formation of the Islamic Republic in 1979 (Inside Iran).

The events preceding the Islamic revolution and subsequent installation of the Islamic Republic of Iran can be understood through a few specific events. The first of which was the slow descent of the public's trust in the Shah regime. In 1953 the Iranian people revolted, overthrowing the democratically elected Prime Minister in favor of a monarch (Rostow). These actions paired with the growing distrust of western civilizations empowered the people's faith in Islamic fundamentalism. This trust in the government would not remain strong. In due time, the

belief in government would once again begin to diminish. This waning in trust was the result of a series of combined causes. The understanding and belief of the citizens was that the reigning Monarch had been bending too much to western powers, namely the United States of America. This paired with the oil crisis of 1973, when ,due to an embargo by the exporting countries, the price of oil skyrocketed by nearly 400 percent (The Price of Oil). This brought a quick time of relative prosperity, followed in 1978-1979 by a short, but intense economic drop (The Price of Oil).

These factors stirred together in this witches brew was the catalyst for the Islamic Revolution of 1979. The people had come to view the Shah regime as oppressive, brutal, and overly extravagant (Abrahamian). The decedent and extravagant nature of the regime's head did nothing but inflame these aforementioned beliefs. The people were absolutely enraged. Subsequently, battles between revolutionaries and the current regime would commence around February 9th. Bloodshed proliferated in the streets. This level of violence is to be expected from any revolution that involves overthrowing the established government. The leaders of the government were generally plagued by indecision. The military, almost paralyzed by this kind of indecisive leadership lead to an ever-increasing body count. (Abrahamian). An estimated 2,781 people were killed during the fighting. Upon overthrowing the perceived flawed government the people would install the Islamic theocracy that is still in effect to the modern-day.

Iran's judiciary is heavily invested in the Islamic jurisprudence. This is especially true, as stated previously, after the 1979 revolution. Islamic jurisprudence can be best understood by the Arabic phrase of "Fiqh", translating to mean either "deep understanding" or "full comprehension". This school of thought derives from four main sources, in order of importance

are; the Quran, Hadith, Ijma, and Qiyas. The Quran, obviously, is the most important text in the Islamic faith. It is said to be the words of God, Allah, as dictated by the prophet Mohamud. The Hadith, by extension, is the collection of traditions (sayings) of the prophet Mohamud (Hallaq, 139). The Ijma refers to the consensus of the community, known simply as the people. This is generally in reference to the rules crafted by the caliphate and can be applied to the general heads of state (NEW WORLD). The fifth being the Qiyas, which is a type of analytical reasoning which compares the teachings of the Quran and the Hadith whenever there arises any sort of injunction. In essence, drawing an analogy from the divine to deal with the issues where there are no concrete rules in place.

The Fiqh can be separated into three major categories: the "Hudud, Qisas, and Tazir" (Criminal Law). The hudud, the plural version of hadd, refers to crimes specifically against God. These "limits" are a strict set of rules that the "contravention of which leads to a prescribed and mandatory penalty" (Criminal Law). The Quran lists and outlines a series of hudud crimes and the punishment afforded therein. These hudud crimes have a tendency towards very drastic and severe punishment.One example of these crimes is bringing charges against a chaste woman while not having at least four witnesses to support the allegation against her. Those who commit this crime are to be flogged, hit 80 times, and their word to never be believed again (Quran 24:4). Many such examples of hudud crimes exist and are highly intertwined with the acts of corporal and capital punishment. Those indicted on charges of hudud crimes are incapable of being pardoned by the state or the victim, which is the case with many criminal charges (Criminal Law). The hudud crimes and punishments are set forth and mandated by God, thus being of an immutable nature.

There are a series of crimes and punishments assigned within the Quran. Some of the hudud crimes are easily recognizable. If one is to “wage war against Allah and His Messenger” and “strive...for mischief” they are to be punished from the Quran’s proposed list. This would include execution, crucifixion, amputation of the hands and feet of opposing sides, or the exiling of them from the land (Quran 5:33). Though it states that if the person repents before coming “into the possession of the state thereafter he is cleansed of all the punishments” he would have otherwise been awarded. In a similar vein to the previous enumeration of punishments is one for adultery. The man and woman “guilty of adultery or fornication” are to be flogged, struck 100 times. Then it is stated that the punishments of these people should be taken to, shown and presented to the public (Quran 24:2). If anyone is said to have been slain wrongfully then the deceased's rightful heir is allowed to call for equal punishment not exceeding a life for a life, as dictated in qisas crimes.

The qisas, or retribution, is more concerned with crimes against the person. These include homicide, infliction of wounds, and battery (Criminal Law). Qisas crimes are different from hudud crimes as those indicted on qisas crime charges can have their punishments waived for a few alternatives. The victim or their next of kin can accept diyah (blood money), financial compensation, or even waiving the punishment entirely. If one were to look at this in the context of the American system, these are comparable, in a sense, to torts in relation to private injury. The qisas generally encompasses five crimes or types of crimes. The first is the murder of or the intentional and knowledgable killing of another person. The next is the quasi-intentional killing of a person or voluntary manslaughter, an example being someone going in with the intention of beating someone only, though through the process of doing so, killing them. The third is the

involuntary killing of another person. The final two are intentionally or unintentionally causing physical injury to another (Criminal Law). By having the crime fall into one of these categories it is, barring some form of exigent circumstances, by definition qisas crimes.

The tazir, or chastisement, is similar yet separate from the hudud as the punishments are discretionary. The tazir can be separated into two distinct categories of criminal activity. The first are crimes which are not serious enough to reach the level of a hudud crime, such as thefts below the minimum value stated in the Quran (Criminal Law). The second are crimes that may be specified and thus related to the hudud, but the Quran offers up no form of punishment (Criminal Law). An example of the second category would be that of a general false testimony. While the Quran specifies that this is a crime, it yet gives no obviously discernable punishment. Other kinds of examples for this would include the "breach of trust by a testamentary guardian, false testimony, and usury "(Criminal Law). The tazir implies the attempt at correction or rehabilitation of the offender (Hallaq, 140). These crimes have an assortment of punishments, and no punishment set in stone, due to the fact the qadi or judge decides the punishment. As a result of being left to the judge's discretion, the tazir is extremely variable among the states utilizing Islamic jurisprudence. It generally escapes precise definitions as well as specific punishments due to, once more, the discretionary nature of the topic (Criminal Law). The tazir is also an example of the use of both the Ijma and the Qiyas. Punishments can range from executions, whippings, imprisonment (in Iran), all the way down to simple fines (Criminal Law).

After the reinstatement of Sharia law, what is essentially Islamic Jurisprudence, in 1978, Iran made a few adjustments to it in order to fit the government's powers better. These changes can be seen most simply in three basic changes. The first is that of retaining the ultimate power

over life and death. The enactment of pure sharia law would give this power to the local judges making it so that there is no appeals process in this form. Though, by reserving the right to execute an individual to the government, the State now has essentially created a pseudo-appeals process (Abrahamian, 134). This moves a bit more power to the State and away from the local judges, meaning better general control over cases by the government. The second change was the approval of circumstantial evidence to be used in court cases. Previously, this evidence was not admissible in Islamic courts. Though the admissibility of the circumstantial evidence is, still, left to the discretion of the judges (Abrahamian, 134). Meaning the judge could ignore perfectly reasonable circumstantial evidence if he dislikes it. Allowing for the judge's bias to have some control over what is allowed in court. This is a pushing of power to the judges as opposed to the pulling of power from the judges seen in the previous point. The third, and final modification to "pure sharia law", is that long-term imprisonment is introduced. Long-term imprisonment is legitimized by the state as a form of 'discretionary punishment" (Abrahamian, 134). Ordinarily, imprisonment is not an acceptable punishment in Islamic jurisprudence, as the person is to suffer whatever penalty is prescribed to them and subsequently released.

One would be wise to observe the manner in which the Iranian government effectuates their death penalties and how it observes Islamic traditions. The first form of execution is that of the firing squad, this form of execution was last used in 2008, and is not commonly utilized (Cornell). While the firing squad is the least common, hanging is the most commonly used method of execution. Hanging is in constant use in Iran, as it is a relatively low effort and efficient method of execution. These hanging are oftentimes a public event in which people come to watch the criminal be executed. A theme in some hudud punishments is the action being

witnessed by others, as seen in the punishment for adultery. These public executions continue even though there has been a "2008 judicial moratorium on public executions" (Cornell). There were a total of 60 confirmed public executions in Iran during the 2012 year (Cornell). The hangings are occasionally altered so that the criminal will be flogged before they are hung. There was even a case in which the person was shot before they were hung (Cornell). An interesting and oft unheard of method of execution is that of "falling from a height" (Cornell). This method of execution was last reportedly used in 2008 where an individual was ordered to be thrown from a cliff or other such height (Cornell). While generally speaking the mind may stray to beheading as a common method when thinking of executions, in part as a result of the historic brutality of the French revolutions, it has not been used as a method of execution in Iran since 2001 (Cornell).

While observing and analyzing the punishment of stoning, especially regarding its use in Iran, one would observe a series of inequalities. Similar to public executions there were two "moratoriums" on the use of stoning as a punishment in Iran, one in 2002 and another in 2008 (Cornell). The act of stoning, called rajm, is an intricate process utilizing a series of steps. In the olden tradition, the person is buried in stones (up to their necks if they are a female or their waist if they are a man) and then the stones are cast by the public audience. The stones are to be continuously thrown until the person being executed either dies, is incapacitated, or is able to escape the pit of stones they were encased in (Cornell). If any of the aforementioned three scenarios are fulfilled then the person's punishment is to be considered fulfilled. In Iran however, escape may seem to only be a technical possibility. This is because in 2007 it was found out that a man had apparently escaped the pit, but was still found dead. It was found that he "was still

alive after stoning but his ear and nose had been smashed and slashed. When a forensic medicine specialist confirmed that he was still alive, Mr… [sic] smashed his head with a large concrete block and killed him." (Cornell). Clearly, these punishments are not as readily escapable as one may have previously assumed, especially in Iran.

A glaring imbalance is evident in the way a stoning pit is readied depending upon the person's gender. A woman is encased all the way up to her neck, while a man is only encased up to his waist. In 2010 14 sentences of stoning were handed down by the Iranian government. Of the 14 sentences, 11 of which were women and three were men (Cornell). Stoning was technically not disallowed in the remodeled Islamic penal code adopted in 2013, as the punishment exists under the Quran, it thus may be applied wherever deemed proper. "In February 2013, the spokesman for the Iranian Parliament's Justice Commission, Mohammad Ali Esfenani, told reporters that although stoning was removed from the Penal Code it still exists under shariah which is enforceable under the Penal Code." (Cornell). Similar to hanging, one may potentially be flogged before their stoning, making it more difficult to escape (Cornell). Information about executions in Iran is difficult to obtain. This is due to the fact that Iran has a tendency to keep this information hidden. What is known, however, is as of February 12, 2020, at least 28 people including 2 women were executed. "Though the real number of executions likely ranges higher due to the underreporting by the government" (Cornell). Though in 2019, there were a small number of cases of people being executed for crimes they committed under the age of 18 and/or while mentally disabled (Cornell). There are even reports of Iran executing a woman who killed a man who was attempting to rape her, killing in self-defense (Cornell). The total number of executions is estimated to be around 273 people (Cornell).

Another major aspect of the legal system affected by the theocratic form of government is the selection of judges in Iran. The judiciary is under the control of the Supreme Leader, and thus appoints it's head or chief every five years (The Islamic Judiciary). Uniquely Iranian, the government has bifurcated its courts. The first set of courts, which most are familiar with, is the ordinary and traditional court system. Iran also has a far more vague and obtuse system, in its second set of courts, known as the Islamic Revolutionary Courts. In these courts, one can be tried for ambiguous and ill-defined crimes such as "being unIslamic" (The Islamic Judiciary). The Judiciary is tasked with implementing the Islamic Penal Code, which includes, as stated previously, the punishments of stoning, amputations, and flogging. Iran has the highest ratio of executions proportional to its population (The Islamic Judiciary). Iranian cases have a tendency to be criticized for a lack of evidence in trials and for not adhering, in practice, to fundamental standards of due process (The Islamic Judiciary). Iranian laws reflect a specific interpretation of Shiite jurisprudence, which is not embraced by all Shiite Muslims (The Islamic Judiciary). It has particularly changed family laws, instituted broad discriminatory laws against women, introduced the laws of retribution and toughened the penal code with punishments such as stoning, floggings, and amputations (The Islamic Judiciary).

There are a multitude of cases that could be found regarding the ways in which people are treated in the Iranian justice system. The highly publicized and dramatic cases are a series of readily available examples of the forms of justice that are taking place in Iran. Comparing the extremes allows one to more accurately understand the many ways in which the methods of justice between Iran and the United States differ greatly.

The first of these cases is that of two 17-year-old boys who were secretly punished and executed. This rollercoaster ride of a case sets a serious tone for the roundabout way that justice is executed in Iran. “Mehdi Sohrabifar and Amin Sedaghat, two cousins, were executed on 25 April [2019] in Adelabad prison in Shiraz, Fars province, southern Iran” (Iran Flogged). Neither the accused nor his representation were informed of the decision that they were to be executed. This decision came as a surprise to the accused and their family as they were not warned ahead of time either. The execution of a person under the age of 18 is considered a violation of international law (Iran Flogged). Iran remains amongst the top states in the world for the execution of children (Iran Flogged). The classification of a “child” under international law, a council which Iran is a party to, classifies children as anyone under the age of 18. The family and lawyers of the defendants mentioned above were only informed of the execution when they were told to go forth and collect the bodies of the recently deceased. Forensic analysis performed on the bodies would show that the boys, prior to being executed, were flogged repeatedly (Iran Flogged). These boys had no access to lawyers during their two month holding period for the investigation, in which they were beaten and held by the police. “Amnesty International has recorded the execution of 97 individuals in Iran who were under the age of 18 at the time of the crime between 1990 and 2018. More than 90 others remain at risk of execution” (Iran Flogged). There is an alarming trend in Iranian justice where many juveniles are being executed in secret, with their families only being informed of the execution after the fact (Iran Flogged). The two young boys were both executed on April 25th, 2019.

The case of Zeinab Sekaanvand exemplifies the disproportionate and misogynistic use of justice in the Iranian State. In this case, Sekaanvand was sentenced to execution under the

Quranic policy of qisas. This is because she was accused of and tried for murdering her husband. She was married to her husband at the young age of 15. In this relationship, she was subject to multiple accounts of physical and emotional abuse. He would reject her request for a divorce multiple times essentially entrapping her in the marriage (Victim of Domestic and Sexual Violence). Her husband would be found dead and she (aged 17) would swiftly be arrested for the crime. After being arrested the police would report that she had confessed to the crime (Victim of Domestic and Sexual Violence). It is reported that for twenty days after her confession she was brutally tortured by the police. She was denied access to a lawyer until her very last hearing. It is here she recants her confession and states that it was, in fact, her brother-in-law, who would rape her multiple times, that murdered her husband (Victim of Domestic and Sexual Violence). The courts would not investigate this claim whatsoever and would proceed to find her guilty of murder on the grounds of her earlier confession in which she was not allowed a lawyer. After years of waiting and fighting the case, she would be set to be executed at the age of 24, for a crime she committed at the age of 17. On October 2nd, 2018 she would be executed (Victim of Domestic and Sexual Violence).

Section 4 -Conclusion

Through the applications of justice and the methods by which criminals are executed one can note the different types of bias' present in each country. In Iran, the way justice is applied seems to hold a heavy bias against women and people of any religion other than Islam. This bias can be seen in a few ways, the first being the method by which people are stoned. Men, who could be perceived due to their physical strength to have an easier time at escaping a stoning pile, are only buried up to the waist. Though women, who could be perceived to have a harder time escaping a stoning pit, are buried up to the neck making it nearly impossible to escape. If one were to expect equality and balance, while keeping the same method of execution, each person would be buried up to the same part of the body. This form of bias is not seen in the other methods of execution utilized in Iran, notably hanging being relatively gender-neutral. Though this bias is seen in none of the methods of execution used in the United States of America. Historically lethal injection, electrocution, and even firing squad were gender-neutral forms of execution.

The application of the law shows its bias as well through cases like the previously discussed Zeinab Sekaanvand case. This case placed an undue burden on the female defendant that would not have been placed on a male defendant. This case clearly shows females who stand trial are expected to provide more evidence of their innocence than their male counterparts. The defendant in the Zeinab Sekaanvand case, had her defense testimonies completely ignored when it implicated another person, specifically a man as the perpetrator. All throughout this case, the defendant was denied her rights, most specifically her right to be represented by an attorney. One can not conceive this happening in the United States, where surely at trial the case would be

dismissed, or if not then overturned on appeal due to the Constitutional rights of the defendant being violated.

There is a deep connection between religion and the manner justice is carried out in Iran. If something is disfavored by Islam it is thusly outlawed in Iran. Iran follows an Augustinian model of a religious State, believing it acceptable to convert by force if necessary. Opposed to America's following of the Lockean model which prohibits coercive government interference.

A comparison of the two systems of government and laws results in the understanding that the less the government and the major religion of the state are intertwined, the more freedom the citizens enjoy. As the relationship between the state and religion deepens, the likelihood of more obtuse and inefficient legislation increases.The United States of America's Court decisions declare a clear belief that separating the religious ideas from the secular ones must be done. This results in greater protection of the people's rights afforded by the Constitution. This is ideal as it requires more in-depth discussion and thought in regards to each aspect of a case, balancing the rights of all individuals. This is opposed to making "quick and powerful" legislation regarding the separation of the State and religion. This ensures that each case being argued in court will receive thoughtful and in-depth analysis, with the individual rights of every citizen taken into consideration. An example of this is the government being unable to control the practice of animal sacrifice (*Church of the Lukumi Babalu Aye* v. *City of Hialeah* 508 US 520 1993) as it was aimed too specifically at a particular religion resulting in an undue burden being placed upon this minority religion. This could not be said of Iran. The benefit of Iran's system of merging both the major religion and the State's government is that of legislative mobility. If one wishes to enact quick and powerful policies against a minority religion for one reason or another,

the Iranian government may do so swiftly. Though many issues arise, the most obvious problem being the corruption and violation of human rights. Vile and horrid practices can go absolutely unchecked in the name of being a “good religious practitioner”.

The way in which a State deals with religion has a clear effect on the way their system of government, specifically, the judiciary evolves. When a State fully embraces religion and establishes a state religion, the State is more likely to heavily incorporate these religious concepts into the judiciary. This is most obviously seen in Iran in the fact that its judiciary is heavily based upon the Islamic code of law. Bolstered by that the fact the government may try people for opposing or simply acting in a manner not in accordance with the Islamic faith. Although even when a State attempts to keep itself separated from religion they may still see its effect, although to a much less degree. In the American judiciary, there are many references to the laws and books of the Christian faith. Though deftly avoiding giving any benefits to one religion or inhibiting any other.

In conclusion, the major religion of a State has a relatively great impact on the development of its legal system. This becomes more evident and increasingly potent as the government and religion are more deeply intertwined. The United States of America does a relatively phenomenal job of separating religious bias or favoritism from its legal system. Though this is not to say it is perfect either. There are cases of Christian ideas spreading into the legal doctrines and lingo prominent within the field. Finding a balance between religious ideas and secular laws is of pinnacle import to assuring the American people’s rights are protected. The First Amendment and all its protections afford American citizens much more leeway in their religious freedoms. The same can not be said of Iran and other theocratic forms of government.

While it “protects” those of the majority religion it more so weaponizes the legal system under the pretense of “justice”. The fusing of religion and the judiciary would cause many more overlapping issues. While in one group’s religious texts it states that one may be punished with death for eating a certain type of animal another, more minor, religion may encourage the consumption of the meat. In this, the trampling of the minor religion in favor of the majority will not only occur but be sanctioned and approved by the theocratic State. This would never happen in the form of government employed by the United States of America. While it may be impossible to make a judgment on which system of government is “best”, one can observe which form of government affords its citizens the greater protection of individual rights. This is most evident in the United States of America, as guaranteed by the constitutional mandate to assure to keep religious beliefs separate from laws and legislation. States following this model of separation of Church and State are capable of avoiding the corruptive touch of religious influence.

The two forms of government analyzed lead to the conclusion of how thoroughly powerful the major religion of a state is in the development of its Judiciary and criminal law. The analysis of both Governments immediately demonstrates the effect of religion when incorporated into that Country's legal system. One can state, without any reservation, that whenever a society embraces a majority religion, the larger the effect it will have on the legal system when incorporated into the law. Religion is shown to continuously influence the legal systems of the States they reside. States, as they evolve must decide how to deal with the conflicting religious ideologies of its people. If a State decides to embrace a majority religion and employ it into the State, then it will swiftly become evident that the legal system will match the ideals of the

religion. Though, if a State were to oppose establishing, or assisting, any specific religious ideology they will find the impact upon the judiciary to be minimal. Though in both cases the stain of the majority religion will be noticeable in some ways, even if just minor areas such as the naming conventions.

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