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**Musaddiq's Conception of Constitutionalism**  
*Based on his arguments before the court that tried him in 1953.*

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**abstract:** Mohammad Musaddiq's views on constitutionalism in Iran are worthy of consideration for several reasons: he was the leader of the secular liberal movement National Front, he was a participant-observer from the very first parliament, the Majles, and he was, arguably, Iran's foremost constitutional lawyer. As Iranian constitutionalism was a young and evolving experiment, Musaddiq's conception of it could have been expected to change over time. This proved especially true when he assumed the responsibilities of governance as Prime minister during the critical years of the nationalization of Iran's oil. The challenge of dealing with the competing centers of power would shape Musaddiq's notion of what was practical under the existing constitutional monarchy in Iran. He had a unique opportunity to articulate his thoughts on this subject when forced to prepare for his trial a month after his overthrow in August 1953. In Musaddiq's arguments before the court, as this paper will attempt to show, he addressed the core issues of Iran's constitutionalism comprising the roles of the monarch, the executive branch, representative assemblies, and direct channels for the exercise of popular sovereignty. What emerged as his prescription was a constitutional monarchy where the Shah would be a symbolic and ceremonial figure, the powerful Prime Minister and his cabinet would be accountable to the Majles, the Majles would be the ultimate locus of power, and the electorate would be well informed through the free exchange of diverse opinions and actively vigilant to keep the legislators responsive.

**keywords:** Iran\* Musaddiq\*Constitutional Law of Iran\*1906 Constitution of Iran

## BACKGROUND

### A Special Man

In the hundred year history of Iran's 1906 Constitution no person has expressed views on its meaning more comprehensive and consequential than Mohammad Musaddiq. This was in part due to his longevity as a particularly qualified participant-observer. The following is an attempt at a narrative of the pertinent points in Musaddiq's life as *he* would have sketched it. (In a broader study, his critics' views would have to be taken into account in equal detail as would such matters as Musaddiq's statecraft and foreign policy when he was Prime Minister. These worthy subjects are, however, beyond the specific scope chosen for this study.)

When Musaddiq was about 25 years old, he was asked by the reigning monarch, Mohammad 'Ali Shah Qajar (1907-1909), to help resolve the "misunderstanding" between that absolutist king and Ayatollah Seyd Abdullah Behbahani, the leader of the Constitutionalists. Musaddiq explained to the Shah that Behbahani "has opened a shop (*dukan*) and sells a product which is Constitutionalism and people are buyers. If you sell the same product, his shop will be boarded up and not only his customers but customers of other shops will also come to you." The Shah responded to Musaddiq's blunt comment with a descriptive colloquialism of his own: he said Musaddiq's "head exuded the odor of the green (political) stew (*qurmeh sabzi*)."<sup>1</sup>

Indeed, Musaddiq was himself in the Constitutionalist camp. He had joined two political groupings, *jame'-yi adamiyat* and *majma-i ensaniyat*<sup>2</sup> He had been elected to the First Majles as a deputy from the class of Notables (*ayan*) of Isfahan but his credentials were rejected as he was younger than the required age of thirty<sup>3</sup>.

Isfahan chose Musaddiq in part because his wife was a land owner in that electoral district<sup>4</sup>. Similarly, Mohammad Ali Shah's acquaintance with Musaddiq also spoke of his being closely related to the Qajar King through his mother. From his late father who belonged to Iran's premier Mandarin family, the Ashtiyani, Musaddiq inherited his high position as the chief Tax Officer (*mustawfi*) of Khorasan at the ripe old age of 14<sup>5</sup>.

This privileged man was also exceptionally diligent. When Mohammad 'Ali Shah bombarded the Majles and brought Iran's Constitutionalism to a halt, Musaddiq left to study, first finance in Paris (1909-1910) and, after two years, law in Neuchatel, Switzerland (1910-1914). Upon graduation four years later, Musaddiq was so successful as a young apprentice lawyer, who even made appearances in Swiss courts<sup>6</sup> that he decided to make this his life career. A trip to Iran in 1914 and the impossibility of return during World War One postponed this plan<sup>7</sup>. Instead, Musaddiq pursued scholarship and teaching in law in Iran.

What and where he taught and what he wrote were as solid a basis as any for making him a superb Iranian constitutional jurist. His lectures in his class at Iran's sole modern school of law, The School of Political Science (*madreseh-yi ulum-i siyasi*) were later published as *Rules in Civil Courts* (*dastoor dar mahakem-i huquqi*)<sup>8</sup>. His other books in this period included *Extraterritoriality and Iran (capitulacion va iran)*, and *Parliamentary Laws in Iran and Europe*

(*huquq-i parlemāny dar iran va urupa*). (Afshar, 1986: 82-84) This is only a partial list; there were others<sup>9</sup>.

There was no constitutional court in Iran. Instead, Musaddiq would show his talent in government service, especially as a deputy in the Majles which was the agency entrusted to interpret the Constitution. Before that, however, Musaddiq made another trip to Switzerland in 1919, as soon as the end of the WWI permitted. Musaddiq's hope of resuming his legal career in Switzerland was dashed as its residency requirement for citizenship had been increased to 10 years due to the influx of the War refugees. Musaddiq became a businessman instead. When he was called back to Iran in 1920, to assume the post of the Ministry of Justice<sup>10</sup>, he accepted only so as to be able to organize his affairs for a permanent stay in Switzerland<sup>11</sup>.

On his way to Tehran, however, the notables of the province of Fars chose Musaddiq as the replacement for his uncle, the departing Governor Abdulhusain Farmanfarma. It was in this post that Musaddiq took it upon himself to offer another piece of historic advice on a weighty matter of the State to the new Shah. When Ahmad Shah cabled to him the appointment of a new Prime Minister Seyd Zia Tabatab'i, Musaddiq chose not to publicize it and, instead, sought to change the Shah's mind<sup>12</sup> because, Musaddiq believed, Seyd Zia had been appointed under duress applied by the British<sup>13</sup>. Musaddiq did not succeed, but Seyd Zia also failed in his attempt to arrest Musaddiq and soon his government fell<sup>14</sup>.

Musaddiq did not return to Switzerland. He was appointed to several high government positions. As the Minister of Finance he pursued the modernization goal of Constitutionalism by drastic financial reforms<sup>15</sup>. He gained further executive experience as the Governor of the Province of Azerbaijan<sup>16</sup>, then Minister of Finance, and later Minister of Foreign Affairs<sup>17</sup>. These were short term assignments, each lasting a few months<sup>18</sup>, but they established him as a popular candidate for the Majles from Tehran. Through the next two sessions of the Majles, the Fifth (1923-25) and the Sixth (1925-27), Musaddiq became a national figure.

Musaddiq soon made his mark on Iran's Constitutionalism in two events. When Ahmad Shah cabled the Majles, in April 1924, to dismiss the Prime Minister, Sardar Sepah (the future Reza Shah), Musaddiq played a key role as a member of a group of deputies who defied the Shah. They journeyed to the village of Boom-i Hen outside of Tehran where Sardar Sepah had retired and brought him back to the capital and power<sup>19</sup>. About a year and half later, however, when the Majles was about to appoint Sardar Sepah the new Shah, Musaddiq was a leading deputy who opposed it, arguing in a landmark speech on October 31, 1925 that as a Shah, Sardar Sepah would be a dictator.<sup>20</sup>

Musaddiq later refused Reza Shah's offer to be his Prime Minister as he believed he would not have any independence<sup>21</sup>. Upon the expiration of the Sixth Majles, Musaddiq had to go into internal exile for the next 14 years of Reza Shah's reign, and he was briefly jailed<sup>22</sup>. He was completely shut out of public political discourse. The silence that Reza Shah's rule imposed on the outspoken and opinionated Musaddiq was unprecedented; but, the roar of his latent response would be heard<sup>23</sup>.

After Reza Shah abdicated, Musaddiq was elected in 1943 as the first deputy from Tehran to the 14<sup>th</sup> Majles. This was considered to be the highest elective office in Iran. Musaddiq's preeminence among the major surviving figures of the pre-Reza Shah era was due to

several factors. Some luminaries (such as Hasan Taghizadeh) had been tainted with their association with Reza Shah, some (such as Seyd Zia) had the reputation of being too close to foreign powers, some (such as Ahmad Qavam) were believed feared by the new Shah, while others (such as Hussain Ala) were too closely associated with this king. This left only one person who could compete with Musaddiq for popular leadership: Hussain Pirnia (Mo'tamen al Molk), but he declined to become engaged in politics again<sup>24</sup>. Unlike him, Musaddiq still had the proverbial fire in his belly<sup>25</sup>.

Musaddiq's popularity was enhanced by the positions he took in the 14<sup>th</sup> Majles. He opposed the extraordinary powers given to American financial advisers<sup>26</sup>, he relentlessly pursued major cases of embezzlement by high government officials<sup>27</sup>, and he castigated Reza Shah's old associates for their wrongdoings at his behest. Musaddiq's major accomplishment, however, was denying the demand for an oil concession by the Soviet Union in October 1944, while using the context to open the struggle against the British oil concession in Iran.<sup>28</sup> Musaddiq valued his position in the Majles so much that he declined the offer to become Prime Minister<sup>29</sup> because he would not be promised return to his Majles seat after his fall<sup>30</sup>.

Qavam, who became Prime Minister to suppress the Soviet-supported movements in Azerbaijan and Kurdistan in 1946, assumed so much power that he controlled the elections to the 15<sup>th</sup> Majles. As they were not free, Musaddiq boycotted them<sup>31</sup>. When the elections for the 16<sup>th</sup> Majles approached, in the fall of 1949, relations with the concessionaire British oil company had become the dominant issue. A small group of opposition deputies sought the leadership of Musaddiq as the only figure with the stature for the fight<sup>32</sup>. Musaddiq agreed and led a sit in at the Royal Palace to demand that the pending elections be free. The twenty Deputies and journalists around Musaddiq who formed the steering committee for this activity became the leadership of the National Front<sup>33</sup>.

As a loose association of liberal nationalists, the Front succeeded in electing 6 deputies from Tehran to the 16<sup>th</sup> Majles, including Musaddiq as the first deputy. This popular "Minority (*aqaliyat*)" faction in the parliament managed the fight against several unacceptable versions of the agreement with the British oil company. Led by Musaddiq's parliamentary maneuvers, it prevailed in passing the law for the nationalization of Iran's oil industry. When Musaddiq was offered the position of Prime Minister on April 28, 1951 with the expectation that as usual he would decline it, he accepted it, in order to implement the oil nationalization law. The pressure of public opinion assured him the grudging cooperation of the Shah and the Majles<sup>34</sup>. In the first year, Prime Minister Musaddiq concentrated on foreign policy with surprising success. In his second year, Musaddiq undertook to implement what he considered to be the domestic promises of the Constitution.

As his National Front competed for the same constituency of the politically aware urban segment of the population with the Communist Tudeh Party, Musaddiq drastically curtailed the Shah's authority, and obtained extraordinary powers from the Majles to enact immediately enforceable reform measures. When the Majles threatened to turn against him, Musaddiq moved to dissolve the Majles by a referendum, thus paving the way for the election of hopefully a friendlier new Majles.

Musaddiq's foreign adversaries never relented in their efforts to overthrow him through his domestic opponents<sup>35</sup>. Tipped off by a phone call a few hours before, Musaddiq thwarted an

attempted military coup by the Shah in the early hours of August 16, 1953<sup>36</sup>, only to be faced by a better organized effort three days later.

### **Prime Minister *de jure* but not *de facto***

At approximately four in the afternoon of August 16, 1953, a white sheet was pulled off the bed from which the often ailing Prime Minister Musaddiq governed Iran. At his order the sheet was sent to be flown over the building which served both as his residence and the Prime Minister's office. The Building was thus declared "defenseless."<sup>37</sup> Musaddiq had decided to stop resisting the forces bent on toppling him. Presently, a Colonel representing the Royalist troops surrounding Musaddiq's house was ushered into his room. He demanded that Musaddiq resign as Prime Minister or face "dire consequences." Musaddiq replied: "God forbid that I should resign. Based on the authority given to me by the Majles, I am the Prime Minister and I do not resign."<sup>38</sup> He would, however, instruct his guards not to fire at the assaulting soldiers.

As his house then came under heavy bombardment, Musaddiq's initial plan was to stay in his bedroom and "be killed to end my responsibility to the nation." He was persuaded by the few close associates who had stayed with him that for their sake -as they would not leave without him- they should all escape to a neighboring house<sup>39</sup>. That night Musaddiq told these men: "legally, I am the head of the government but, practically, my rule is not effective."<sup>40</sup> He followed by declaring that he would turn himself in immediately<sup>41</sup>. Early next day, arrangements were made for the security forces of the new government to take him into custody. At six in the evening he was taken to General Fazlollah Zahedi<sup>42</sup>, his replacement as Prime Minister. "He asked no question," Musaddiq would later recall<sup>43</sup>. Zahedi ordered that Musaddiq be held in the Tehran Officers Club<sup>44</sup> which also served as Zahedi's headquarters. Musaddiq was there 16 days<sup>45</sup>, and while there he heard over Tehran Radio that he would soon be put on trial by the new government<sup>46</sup>.

### **A Special Forum**

Soon thereafter, Musaddiq was officially notified that he would be tried under the 1939 Military Code of Justice and Punishment (*qanun dadresi va kayfar artesh*)<sup>47</sup> by a special military court<sup>48</sup>. The prosecutor of the Armed Forces, helped by two other officers, began his deposition (*bazporsi*) of Musaddiq on September 17, 1953<sup>49</sup>. He was accused of "cooperating in the plot (*su'-i qasd*) to change the foundation of monarchy (*asas-i saltanat*) and the order of succession to the throne (*tartib-i verasat-i va takht-o taj*) and inciting people to arm against the power of the crown (*qudrat-i saltanat*)."<sup>50</sup>

Musaddiq was deposed without counsel<sup>51</sup>. In answer to the question about his "job," Musaddiq said "Prime Minister." He gave his age as "about 72 or 73."<sup>52</sup> He "strongly denied (*qaveyyan takzib*)" all allegations<sup>53</sup> in general and brushed aside the prosecutors' insistence for more detailed answers by saying "don't bother me any more. If an open court is convened I will tell the public."<sup>54</sup>

At the end of the first session which lasted four hours, the prosecutor issued a Detention Order (*qarar-i bazdasht*) for Musaddiq. Musaddiq immediately objected<sup>55</sup>. A military court of five Officers, without a hearing, affirmed the Detention Order on September 23, 1953<sup>56</sup>. The chief judge (president of the court) was a general who had been boasting about his part in

bombarding Musaddiq's house by a tank on August 19, 1953<sup>57</sup>. There was no jury in these proceedings.

In the second session of the deposition, the prosecutor called as a witness Musaddiq's Minister of Justice who himself now faced charges by the military justice system. Following this witness's less than friendly testimony<sup>58</sup>, Musaddiq spoke at some length, outlining what would become the core of his defense<sup>59</sup>.

The Complaint (*eddea nameh*) by the prosecutor of the Armed Forces against Musaddiq was published in Tehran newspapers on October 7, 1953<sup>60</sup>. In support of the charges it listed numerous acts that took place in the four days from August 16 to 19, 1953, when Musaddiq became an "outlaw (*yaghi*)" by disobeying the Shah's Order (*farman*) which dismissed him as Prime Minister. They included the arrest of the Commander of the Royal Guard who delivered the *farman*, disarming of the Royal Guard, arresting the Acting Minister of the Royal Court and the scribe of the *farman*, ordering the arrest of the man appointed as Musaddiq's successor, not disclosing the *farman* to all the Ministers of his Cabinet, issuing an order dissolving the Majles, arresting an opposition deputy of that Majles, ordering the preparation for a referendum to establish a Regency Council, organizing a mass public gathering where anti-Shah slogans were featured, allowing publication of newspaper articles insulting to the Shah, removing the statues of the Shah and his father from public squares, instructing Iran's Ambassador in Iraq not to contact the Shah who had gone there, and firing on the people who set siege on Musaddiq's house on August 19, 1953. A death sentence was requested<sup>61</sup>.

Musaddiq's trial began on November 8, 1953, in the ornate Hall of Mirrors of a Palace that once served as the venue for the official summer audience of the Qajar Shahs. This was now a military base where Musaddiq was held for almost the duration of his trial.<sup>62</sup> As a Tehran newspaper noted the drama, unprecedented in the annals of judicial tribunals<sup>63</sup>, first the prosecutor and the judges came into the room and sat in their chairs; then, five minutes later, Musaddiq entered slowly<sup>64</sup>. The chief judge would later acknowledge Musaddiq's unusual status of "*sheykhukhiyat* (elder statesmanship).<sup>65</sup>" More important, this was the first time that any Prime Minister was being tried in any court in the history of the Iranian constitutional monarchy<sup>66</sup>.

The new chief judge had been a general who had been retired by Prime Minister Musaddiq. Two of the other four judges, all military officers, had been recalled from their posts by Musaddiq because of complaints against their alleged misdeeds by the local population<sup>67</sup>. Musaddiq chose not to formally object to this conflict of interests<sup>68</sup>. He objected unsuccessfully to the qualification of the prosecutor on the grounds that he had in the past declined an appointment to a military court, giving as his excuse lack of "any judicial education and experience."<sup>69</sup> Indeed, this Officer did not even have a college degree<sup>70</sup>.

There was no jury in this court. Musaddiq was allowed only military lawyers<sup>71</sup>. When his first choice demurred so as not to displease the Shah<sup>72</sup>, Musaddiq accepted a lawyer appointed by the court. Colonel Jalil Buzurgmehr maintained that he was sympathetic to Musaddiq. Musaddiq did not fully trust him<sup>73</sup> but he served as the conduit for legal support provided by Abdollah Mo'azemi, a prominent professor of Law. Musaddiq's favorite in Mo'azemi's team of judges and lawyers<sup>74</sup> was one of Iran's best trial lawyers, Hasan Sadr<sup>75</sup>. While these men furnished

assistance on technical legal research, the main briefs which were about constitutional issues were prepared by Musaddiq himself<sup>76</sup>.

Civilian spectators were allowed. Reporters from the local and foreign press attended. The coverage by the controlled domestic press was sporadic<sup>77</sup>. The new government was probably more sensitive to coverage by the freer foreign press. It was generally believed that the government's purpose for convening this tribunal was to discredit Musaddiq by trying and convicting him in a court of law<sup>78</sup>.

For both sides the real audience was beyond the walls of the courtroom<sup>79</sup>. Musaddiq relished the opportunity to tell his story in the court<sup>80</sup>. As he might have assumed, this would help establish him as the undisputed leader of the opposition to the regime that the Shah would create in the course of the next quarter century. Even the Tudeh Party would now refer to Musaddiq deferentially and with respect.

The first part of the court proceedings was about the jurisdiction of the court, and the second part about the "substantive charges (*mahiyat*).” In practice this boundary was not observed. Many of the same arguments were repeated in both phases.

## **The Process**

The protagonists were the prosecutor and Musaddiq. This defendant kept counsel's presentation to a minimum<sup>81</sup>. There was another defendant in the court. The Army's chief of Staff under Musaddiq was tried with him, although with charges that were different. He had several military lawyers. On occasions, they invoked and expanded Musaddiq's arguments<sup>82</sup>.

The prosecutor was aggressive,<sup>83</sup> short on legal reasoning and long on political and personal attacks against Musaddiq. He was helped by Musaddiq's adversaries from among former senators, deputies, and judges<sup>84</sup>. He was given free reign by the court<sup>85</sup> to accuse Musaddiq of numerous types of crimes<sup>86</sup>, ranging from embezzlement to apostasy and heresy<sup>87</sup> to being an agent of foreign Powers<sup>88</sup>. The bulk of these allegations were about events prior to August 16 and hence outside the period specified in the charges. The prosecutor's commentaries took much of the court's time: at one stretch almost all of the 36 hours of 9 sessions<sup>89</sup>. The evidence he produced was all related to the post August 16 events, consisting of Government orders, newspaper articles, and a sound track of the August 16<sup>th</sup> mass public meeting<sup>90</sup>.

The prosecutor called as witness of the events of those four August days, fourteen of Musaddiq's close associates. Questions were directed to them both by the chief judge and the prosecutor. The prosecutor repeatedly reminded those witnesses that they were also being held as defendants<sup>91</sup>. The intimidation was too blatant even for the witness whose testimony had displeased Musaddiq during his deposition. Both this former minister of Justice<sup>92</sup> and another witness, the veteran professor of law Ali Shayegan<sup>93</sup>, reminded the prosecutor that they were in this court as witnesses and not as accused<sup>94</sup>. When the prosecutor maintained that as accused their testimony should be interpreted differently and that their rights were not the same as ordinary witnesses<sup>95</sup>, they reprimanded him for his lack of legal knowledge<sup>96</sup>.

Musaddiq did not cross-examine any of these witnesses. He did not have to. Their treatment of him in the court ranged from deep respect to near reverence shown by bowing to him<sup>97</sup>. They did not contradict anything of substance that Musaddiq said<sup>98</sup>. Musaddiq had already neutralized such possibility in advance by saying that he would accept whatever they might say about him or indeed about any event<sup>99</sup>.

Musaddiq did not introduce any witness. His defense consisted of oral arguments. Much of these had been prepared meticulously in detail and in writing.<sup>101</sup> Several times Musaddiq's arguments were left incomplete as he was stopped by the court. They had to be repeated later. Musaddiq's experience as a parliamentarian in the challenging debates of the 5<sup>th</sup> and 6<sup>th</sup> Majleses and, indeed, his "abundant (*sarshar*) memory" helped him<sup>102</sup>. Musaddiq was determined to tell his story whole. This meant covering subjects which were not directly related to the charges against him<sup>103</sup>. He reasoned that they were necessary to provide a full explanation for what happened<sup>104</sup>. Regardless, he wanted the world to know his position on many issues he considered relevant or important<sup>105</sup>.

Of the five judges, only the chief judge spoke at the trial. He saw his job to be limiting Musaddiq to defending the charges before the court and expediting the process<sup>106</sup>. He was repeatedly urged to do so by the prosecutor<sup>107</sup>. His self interest<sup>108</sup> also required preventing Musaddiq from criticizing the Shah who was the real antagonist in this theater<sup>109</sup>. Occasionally, however, the chief judge would show curiosity about what some of the witnesses<sup>110</sup> and even Musaddiq had to say<sup>111</sup>. At one point Musaddiq was moved to praise the judge for his questions which helped to elucidate some fine points of constitutional law. This is "useful," Musaddiq said<sup>112</sup>.

In insisting that he be allowed to say what he needed, Musaddiq would remind the judge that Article 49 of the Army Code under which he was being tried specifically provided that a defendant had the right to say what he thought was necessary for his defense at any time during the proceedings<sup>113</sup>. Musaddiq would be told that he should then limit himself to the events of the four days of August 1953<sup>114</sup> and should avoid repeating what he had already said<sup>115</sup>. When he was stopped, Musaddiq would threaten a hunger strike<sup>116</sup>. He would also threaten to refuse to come back to the court<sup>117</sup>. The prosecutor in turn would threaten to bring him to the court by force, in handcuffs and shackles. Once, at his insistence, even the chief judge made that threat<sup>118</sup>. When Musaddiq's comments about the Shah or his father became too blatant, the prosecutor and the judge would threaten to take the proceedings closed doors<sup>119</sup>. Consideration of international public opinion was believed to have restrained the court<sup>120</sup>. Despite this continuous tug of war between the parties, none of these threats were carried out. Musaddiq was able to say nearly all that he wanted. In exasperation, the prosecutor declared to the court: "I must admit that I have never been caught in such a bind (*tangna*)"<sup>121</sup>.

The court assumed subject matter jurisdiction (*salahiyat-i zatti*) by rejecting Musaddiq's opposition which maintained that his alleged crimes were political by definition; the court's position was that the complaint determined the type (*onvan-i davay-i matruheh*) of the crime<sup>122</sup> and its charges were not political but common crimes<sup>123</sup>. The court assumed personal jurisdiction over Musaddiq by denying that he was being tried for his acts as a prime minister<sup>124</sup>; its position



was that Musaddiq had become a common civilian criminal *-yaqhi* (outlaw), in the prosecutor's language- after refusing the Shah's dismissal Order<sup>125</sup>.

The court convicted Musaddiq of all the charges. As the facts were generally not disputed, the main issues were whether Musaddiq could be held responsible for the acts of others on the theory that he "initiated"<sup>126</sup> and directed them with no exculpating good intent<sup>127</sup>, and whether those acts cumulatively amounted to an attempt against the Crown and toward changing the regime and inciting armed popular insurrection to that end. Musaddiq denied attributive culpability of *respondeat superior* for the acts<sup>128</sup> and denied the application of the law to those acts<sup>129</sup>. The court ruled against him on both<sup>130</sup>.

Before the court recessed to decide its judgment, the chief judge had read into the record a letter from the new minister of the Royal Court -Musaddiq's pre-Reza Shah ally Hussain Ala- to the effect that the Shah would forego any personal claim against Musaddiq in recognition of his services for nationalizing the oil industry during the first year of his government<sup>131</sup>. Musaddiq got up and said that he declined such favors from the Shah<sup>132</sup> as he had done no wrong to the Shah or the country. He asked the judges to render justice in view of God and their conscience<sup>133</sup>.

In sentencing Musaddiq the court said it took into account Musaddiq's services which had been "acknowledged" by the Shah as well as the fact that Musaddiq was older than sixty years which required leniency<sup>134</sup>. On December 21, 1953 the court sentenced Musaddiq to three years solitary confinement<sup>135</sup>. The prosecutor expressed his displeasure with the judgment: "This could not be a (right) verdict!"<sup>136</sup>.

Musaddiq immediately filed an appeal (*farjam*) to Iran's highest court, the civilian *divan-i ali-yi keshvar* (National High Court)<sup>137</sup>. The military court of appeals responded by saying that was not possible<sup>138</sup>. Instead, that court itself seized Musaddiq's case<sup>139</sup>. The parties' arguments about the Constitution before the appellate court were not that different. The sentence was affirmed on May 12, 1954<sup>140</sup> with this difference: the reduction of the sentence was now based solely on old age. The court said that the Shah's declared forbearance should not be deemed as his having been a party to the case<sup>141</sup>.

Musaddiq again demanded that the civilian High Court hear his case. That court delayed and finally, on March 13, 1956, denied his request, stating that his "objections were not effective (*mua'ssir*)"<sup>142</sup>. It upheld the decision of the military court of Appeals. The former prime minister served the remainder of his prison term in a room in a military base which had coincidentally been the office of his counsel sometime before<sup>143</sup>. He was then kept under virtual house arrest until his death in 1967 at his farm, Ahmad Abad, where he had also been in exile under Reza Shah.

Musaddiq maintained that because of the threat of closed door session he could not say all that he wanted to say in the military courts. He prepared a detailed brief to be presented to the High Court. A review of that brief<sup>144</sup> does not reveal anything materially new with regard to his arguments on the major constitutional law issues. The analysis that follows is based on the detailed records of the trial court.

## CONSTITUTIONAL ISSUES

Musaddiq treated his trial as an opportunity to expound his interpretation of the Constitution. This was reflected in his pithy sarcastic critique of the trial court's Judgment: "Tonight you taught the Iranian nation the meaning of Constitutionalism (*mashrutiyyat*)"<sup>145</sup>. He repeated almost the same summation about the proceedings in the military appellate court. He felt fulfilled in having successfully used these forums to draw the public's attention to the fundamental questions of a constitutional regime which was meant to wean Iran away from the will of a single individual king toward the rule of the majority of the people<sup>146</sup>.

Musaddiq claimed a unique authority to undertake this task because of his "fifty years of observation and experience (*mutalieh va tajrube*)"<sup>147</sup>. Further, he considered himself exceptional as he had proven that he would speak his mind even to the mighty, and would not now hold back as he feared no consequence, not even a death penalty<sup>148</sup>. Finally, as he would repeatedly remind the court, he was a constitutional lawyer<sup>149</sup>.

The Constitutional issues that Musaddiq discussed in the Trial court could be categorized in terms of relevance to the case itself. Some were fundamental to the allegations against him and hence determinative for the judgment. Others were not so but still raised by the allegations. The third category was issues relevant to clarifying the facts of the allegations even though they were not explicitly raised by the allegations.

These issues could also be categorized with regards to the court's adjudication or rebuttable by the prosecutor or the chief judge in the proceedings. Thus, some issues were decided in the judgment, some were only debated in the prosecutor's arguments or the judge's comments in the discussions, and still others were not addressed by either.

A total of eight major Constitutional issues can be recognized. Together they constituted a rather comprehensive picture of Musaddiq's conception of Constitutionalism for Iran at this time. They are discussed below.

### **I. Does the Shah have the right to dismiss the prime minister?**

Musaddiq's answer to this question was an unequivocal no. The issue was pivotal not only to the outcome of the trial but also to Musaddiq's views about the 1906 Constitution. His detailed discussion requires a thorough description. It was here that Musaddiq also explicated some fundamentals of a constitutional law for Iran, dealing with such matters as who should interpret the constitution, how to interpret it, and what precedents could be used.

The arguments in the court regarding this issue centered on Article (Principle or *asl*) 46 of the 1907 Amendment to the Constitution. The Article provided that "The dismissal and appointment of the ministers are by the Royal Order of the Shah (*azl-o nasb-i vuzara be mujeb-i farman-i humayun padshah ast*)"<sup>150</sup>.

#### **The need to interpret the Constitution**

The threshold question was whether this language was so unambiguous as to require no interpretation. The prosecutor said it was<sup>151</sup> and the court agreed with him. Their position was that these words were "explicitly certain (*nass-i sarih*)"<sup>152</sup> as to the right of the Shah to dismiss and

appoint ministers, including the prime minister<sup>153</sup>. The prosecutor claimed that there had never been any disagreement about this<sup>154</sup>. The court seemed to concur<sup>155</sup>.

Musaddiq disagreed and discussed his position at length. He pointed out that ever since Mohammad Ali Shah there had been disagreement about the meaning of this provision<sup>156</sup>, specifically concerning the Shah's "right" to dismiss and appoint ministers. He cited the address to the Cabinet and the letter to the Majles by the Regent of the succeeding monarch, in which the Regent (Nayeb os-Saltaneh Naser al-Molk) clearly stated that although "it might appear (*suratan*)" that the Shah had the power, in fact all decisions were with the Majles and the ministers<sup>157</sup>. Indeed, Musaddiq reminded the court, there had been a disagreement between the current Shah and Musaddiq on this issue which was submitted for resolution to a commission of eight deputies of the 17<sup>th</sup> Majles<sup>158</sup>. Musaddiq summed up: the interpretation of constitutional provisions is necessary because by nature all constitutions are brief. They are not "rigid," their built-in "*supples*" allows for circumstances all of which could not be foreseen<sup>159</sup>.

### **The tools for interpreting the Constitution**

Musaddiq maintained that the ultimate authority for interpreting the Constitution was the Majles<sup>160</sup>. In all of his arguments, Musaddiq did not refer to a single court decision. No court had ever dealt with this or other constitutional issues. As Musaddiq would indicate in other contexts - under Issue V below- any court decision about the Constitution could be overruled by the Majles.

If the Majles had not spoken explicitly, judicial tribunals had other tools for the proper understanding of Article 46, Musaddiq said. The tools he would use covered the gamut of the permissible under most legal systems including the Iranian common law based on the Shiite jurisprudence (*fiqh*), which in its principle of due diligence (*ijtihad*) allowed reason (*aqI*), logic (*manteq*), and analogy (*qias*). The categories of proof he proffered were not uncommon.

### **Admission**

Musaddiq directed the court to the aforesaid admission of the Regent Naser al-Molk<sup>161</sup> about the true meaning of Article 46. Similar to that was the fact that the aforesaid 17<sup>th</sup> Majles commission of eight deputies had submitted its report to the whole Majles, supporting Musaddiq's position that the Shah did not have the right to dismiss prime ministers<sup>162</sup>. This was after consulting with the Shah and, apparently, obtaining his concurrence<sup>163</sup>. Even though the Majles did not get around to approving it<sup>164</sup>, the report could serve as a valuable guide for the courts.

### **Precedent**

Secondly, Musaddiq continued, there was evidentiary conduct by the Fifth Majles, when it ignored Ahmad Shah's cable to dismiss the incumbent prime minister Sardar Sepah and successfully insisted on reinstating him.<sup>165</sup> This Majles practice could be considered as precedent.<sup>166</sup> The absence of contrary practice was also proof of this precedent. Musaddiq stated that there was ample evidence that when the Majles was in session, no prime minister had been removed without a Parliamentary interpolation and vote of no confidence.<sup>167</sup> This precedence was also supported by the Shahs' conduct, Musaddiq asserted. He told the court that it was because the dismissal of the prime minister was deemed the exclusive right of the Majles that the

Shah did not interfere or act in the dismissing of prime ministers. Hence a Royal dismissal Order was unprecedented.<sup>168</sup>

Musaddiq acknowledged that Ahmad Shah once dismissed Samsam os-Saltaneh as prime minister by a telegraph. The latter, however, continued to insist that he remained the prime minister and Musaddiq agreed with him. This was one bad precedent, Musaddiq insisted<sup>169</sup>; it was superseded by the Majles's defeating Ahmad Shah's later attempt to dismiss prime minister Sardar Sepah.

### Reading in Context

Another approach that the court could use in interpreting Article 46, Musaddiq continued, is by reading its words in context, in conjunction with other "completing (*mukkammel*)" Articles of the Constitution.<sup>170</sup> He elaborated by offering the following four examples.

**Ministers.** First, Musaddiq said, several Articles of the Amendment to the Constitution spoke about the appointment and dismissal of the ministers. He cited article 65 which said that the Majleses (*majlesain*, comprising the Majles, or the National Consultative Assembly, and the Senate)<sup>171</sup> could demand answers to their questions from the ministers and bring them to trial, and Article 67 which said that if the majority of the Majles or the Senate expressed their dissatisfaction about the cabinet or a minister, that body or person would be dismissed. Mentioning provisions of Articles 60 and 61 which also supported such authority of the parliament, Musaddiq concluded that these Articles "simply, clearly, and obviously prove" that dismissing ministers was by the Majleses. It was not by the Shah because, otherwise, there had to be counterparts of these Articles in the section of the Constitution that dealt with the scope (*hudud*) of the role of the Crown.<sup>172</sup>

As Musaddiq pointed out, the framers of the Constitution did not say that the dismissal and appointment of the ministers were among the Shah's "rights and powers," or at his "will." Instead, they used the word "*farman* (Order)". Musaddiq explained the contingent nature of that word. Article 45 stated that all laws and Shah's Orders became enforceable when signed by the appropriate "responsible (*mas'ul*)" minister. The Shah's Orders were ineffectual without the signature and approval of the ministers, Musaddiq asserted. Under Article 46, to be effective, the Shah could issue his Order appointing ministers only at the prime minister's recommendation. The prime minister chose the ministers and introduced them to the Shah. The Crown did not interfere in that choice.<sup>173</sup>

**Prime Minister.** Second, Musaddiq argued, if the Shah's Orders were ineffectual without the signature and approval of the ministers, it was obvious that the Shah could not appoint and dismiss the prime minister by Orders bearing only his signature. Article 46 did not mention the appointment and dismissal of the prime minister, Mossadeq pointed out, in recognition of the principle that the prime minister came into the office by the vote of preference (*ra'y-i tamayul*) of the Majles and went out only by its vote of no confidence (*ra'y-i adam-i etemad*). Any Royal Order dismissing or appointing the prime minister without such prior consent and permission of the Majles was without effect.<sup>174</sup>

**Accountability.** Third, Musaddiq said, the Constitution could not give the same right, to appoint and dismiss the prime minister, to both the Majles and the Shah. That would cause a conflict.<sup>175</sup> (Buzurgmehr, 1999a: 469) Musaddiq cited Articles that showed the ministers were

accountable to the Majles: Article 60 which said that the ministers were accountable to the Majleses and must appear before them when so demanded, and Article 61 which said that the ministers were jointly and severally accountable to the Majleses. Musaddiq pointed out that no comparable provisions existed in the Constitution for accountability of the ministers to the Shah.<sup>176</sup> The ministers were not accountable to the Shah, Musaddiq concluded. If the ministers were not accountable to the Shah, the Shah could not question (*mu'akhezeh*) them. Without being able to question them, how could the Shah investigate to determine if the ministers should be dismissed, Musaddiq asked rhetorically.<sup>177?</sup>

**Immunity.** Fourth, Musaddiq reasoned, accountability was a pre-condition for having power. The ministers were accountable; while the Constitution specified that the Shah was “not subject to accountability (*as mas'uliyat mubarrast*).”<sup>178</sup> The accountable minister’s countersignature was required to make a Royal Order effective. The Shah’s interference in the affairs of the State would violate the principle of Royal non-accountability.<sup>179</sup> The crown’s immunity (*masuniyat*) from accountability was essential to the survival of a hereditary monarch such as Iran’s, Musaddiq argued.<sup>180</sup> It allowed any heir to ascend the throne without being subjected to investigation which would be necessary if he were to be held accountable.<sup>181</sup>

### **Spirit of the Constitution**

The spirit (*mafhum*) of the Constitution was another tool that the court should use in interpreting the language of Article 46, Musaddiq posited. The Shah’s power to dismiss the prime minister would be against the very goal of Iran’s Constitutionalism (*mashrutiyat*). With such power for the Shah, Iran would be returning to the “absolutist monarchs (*salatin-i istebdad*).”<sup>182</sup> The essence of the difference between constitutionalism and absolutism was that in the latter the Shah “could dismiss and appoint the prime minister.”<sup>183</sup>

**Recording.** The Constitution by providing that the Shah issue the Order for the ministers’ dismissal addressed a matter of formal recording, Musaddiq maintained. Just as a marriage contract was recorded in an official registry, the Royal Order recorded acts by others who were the real parties: the Majles and the ministers.<sup>184</sup>

**Ceremonial.** The Constitution envisaged only a ceremonial (*tashrifati*) role for the Shah, Musaddiq concluded.<sup>185</sup> His signing of the Orders was in the exercise of such role. The Shah’s title of the Commander-in-chief of the Armed Forces was another example of his ceremonial role; the actual commander was the minister of National Defense whose countersignature was required for the Shah’s Orders regarding military matters. Otherwise, how could one accept that a Shah who might ascend the throne at the age of 18 be the Commander-in-chief?<sup>186</sup> Another ceremonial duty of the Shah was being the symbolic representative of the country in the world. *That* was the true meaning of his being above all ministers, Musaddiq said.<sup>187</sup>

### **Legislative History**

Next, Musaddiq referred the court to the legislative history of the 1906 Constitution for understanding it. He reminded the court that the Iranian Constitution was not the original “creation of Iranian thoughts (*za'ideh-yi fekr-i irani*).” It was borrowed mostly from the Belgian Constitution, “and maybe some others.” Therefore, Musaddiq went on, if there was no applicable precedent because “our Constitution is not that old,” the court should look at the comparable provisions in the Belgian Constitution and see how they had been applied so that “we may use

from them that which is in the country's interest."<sup>188</sup> Musaddiq recalled that the Iranian Constitution's Article 46 was enacted in the Belgian Constitution as Article 65, the Iranian Article 45 was modeled after the Belgian Article 64, and the Iranian Article 44 after the Belgian Article 63.<sup>189</sup> He argued that the Belgians interpreted their Article 65 the same as he had been saying the identical Article 46 should be read. As proof, he asked that he be allowed to solicit an advisory opinion from "the most prominent Belgian legal authority."<sup>190</sup>

### **Custom and practice of others**

Finally, Musaddiq proposed that the court should take into account the custom and practice of other constitutional monarchies, such as Sweden and Britain.<sup>191</sup> He explained that even though Britain did not have a written constitution, established customs were accepted there as constitutional. Two relevant such principles, Musaddiq pointed out, were the sovereign immunity of the Crown and the principle that Royal Orders required countersignature by the appropriate ministers.<sup>192</sup>

## **II. Who rules in the absence of the Majles?**

In the absence of the Majles, Musaddiq maintained, the prime minister ruled.<sup>193</sup> This resulted from the fact that the Shah could not dismiss the prime minister even when the Majles was not in a position to act. Musaddiq pointed out that in this respect, there was no provision in the Constitution to distinguish between this time and when there was a Majles. He argued that there was no reason for making such a distinction.<sup>194</sup>

In fact, Musaddiq pointed out, the 1906 Constitution did not envisage the absence of the Majles.<sup>195</sup> The governing principle of that document, as stated in Article 7 of the Amendment, Musaddiq continued, was that "there would be no interruption in the fundamentals of Constitutionalism (*asas-i mashrutiyat tatil bar dar nist*)."<sup>196</sup> This meant that the Constitution did not allow a parliamentary interregnum. A new Majles, Musaddiq said, would be elected before the expiration of the last one.<sup>197</sup> While no precedent was cited by Musaddiq in support of this argument, as prime minister he had acted in accordance with this position: he had asked the Shah to issue the Order for holding the elections for the 18<sup>th</sup> Majles before August 16, 1953 and, hence, before declaring the dissolution of the 17<sup>th</sup> Majles.<sup>198</sup>

The premature dissolution of the 17<sup>th</sup> Majles was occasioned by its inability to function, both of these also being situations not provided for by the Constitution. The 17<sup>th</sup> Majles had been deprived of a quorum for some time by the refusal of Musaddiq's supporters to attend as they feared that the pending interpellation by an opposition deputy could lead to a vote of no-confidence in his government. In this unusual and short period, according to Musaddiq, the prime minister could rule, unless he chose to resign. There was ample precedent for prime ministers' voluntary resignation in Iran.<sup>199</sup> Musaddiq maintained that he too would have resigned if the Shah had asked him.<sup>200</sup>

## **III. Does the prime minister need the approval of the other ministers to act in the name of the executive branch of the government (*dawlat*)?**

Musaddiq's response to this issue could be seen as splitting it into two separate issues. He maintained that he did not need the approval of the other ministers for his government to continue despite the Shah's dismissal Order of August 16, 1953.<sup>201</sup> With respect to the acts of the government thereafter, Musaddiq's response was more equivocal.

Musaddiq defended his right not to disclose the receipt of the dismissal Order to his ministers.<sup>202</sup> He maintained that the decision not to accept the Order was his only, as prime minister. He pointed out that he was not accountable to the ministers but only to the Majles. Indeed, he appointed the ministers; while the prime minister's own appointment was by the Majles.<sup>203</sup> Similarly, Musaddiq continued, the dismissal of one minister by the Majles did not bring down the prime minister. For that the Majles had to vote no confidence in the whole government, which is in effect the prime minister.<sup>204</sup> Clearly, for Musaddiq, the prime minister was not merely prime among equals.

As for the Article 61 Constitutional concept of ministers' "joint liability (*mas'uliyat-i moshtarak*),"<sup>205</sup> Musaddiq distinguished between government decisions and those relating to "*poloitiq general* (general or party politics)." In matters falling within the latter category, Musaddiq maintained, he did not have to consult his ministers. The decision to continue as prime minister was one such matter.<sup>206</sup> The ministers did not share in any resulting liability.<sup>207</sup>

It was different when Musaddiq -after deciding that his government would continue- on August 16, 1953, declared in the name of the "*dawlat* (government)" that the 17<sup>th</sup> Majles was dissolved.<sup>208</sup> He had not even consulted with many of his ministers for this declaration.<sup>209</sup> Admittedly, they had approved the popular referendum, the results of which, Musaddiq argued, justified the dissolution of the Majles. By the same token, however, it could be argued that Musaddiq should have then sought the Cabinet's approval for effectuating the results. This was especially so as it was debatable that the government could take such action without the formality of an Order from the Shah to whom the 1949 Constitutional Assembly had granted the right to dissolve the Majles. Musaddiq did not address this argument. Instead he maintained that the ministers, in effect, approved his dissolution of the Majles in the name of the *dawlat* because they did not object to it afterwards.<sup>210</sup> "If they had any objections, they should have told [me]."<sup>211</sup>

This "approval by waiver" argument was implicitly endorsed by the testimony of one minister (who, coincidentally, also confirmed that he had full trust in the prime minister's judgment, thus alternatively implying approval by ratification.)<sup>212</sup> It would have been a more persuasive argument, however, if all Musaddiq's ministers were of the type who would freely express their opposition to the prime minister's major policy decisions. The testimony at the trial court showed them to be otherwise. They saw their roles essentially as technocrats concerned only with matters of their own Ministries, choosing not to question the prime minister's policy decisions.<sup>213</sup> This was not necessarily typical of Iranian cabinets. In fact, ministers in Musaddiq's earlier cabinets were clearly more independent.<sup>214</sup>

Unlike the Majles dissolution decision, Musaddiq said he was going to bring before the Cabinet the matter of establishing a Regency Council in the absence of the Shah who had left the country on August 16, 1953. Musaddiq had already commissioned his political advisors - some twenty deputies of the 17<sup>th</sup> Majles group (*fraction*) who had remained loyal to him<sup>215</sup> - to study and propose the appropriate approach to this yet another issue unforeseen by the Constitution.<sup>216</sup>

Musaddiq said that the final decision was left to the Cabinet's review, and that he would have acted only after the Cabinet approved the proposed course of action.<sup>217</sup>

At least in this case the ministers would have been deprived of the claim of lack of prior knowledge, as defense against joint liability for the decision.<sup>218</sup> That defense is, in fact, the one Musaddiq used against his being liable for his Foreign minister's anti-Shah cables to Iran's Embassies after August 16.<sup>219</sup> For some other acts of this same minister offensive to the Shah,<sup>220</sup> Musaddiq offered another defense: those were the minister's acts in his personal capacity.<sup>221</sup> Accordingly, Musaddiq pointed out that the Constitutional principle of joint liability of ministers' could be invoked only when a minister acted on behalf of the Government.

#### **IV. Could the Majles be dissolved by popular referendum?**

Musaddiq maintained that he could dissolve the 17<sup>th</sup> Majles by a popular referendum. He argued that disabling the Majles was necessary as the majority of deputies had come to favor the policy of Iran's foreign adversaries that Musaddiq's government should be made to fall. Therefore the 17<sup>th</sup> Majles no longer served the interests of the Nation.<sup>222</sup> To Musaddiq, this justified the parliamentary maneuver of those deputies who supported him, to deprive the Majles of the required quorum by refusing to attend its sessions. This maneuver, however, could be effective only temporarily. Musaddiq believed people would soon come to demand that their deputies return to the Majles. Populist deputies could not resist such pressure. The pending interpolation against Musaddiq's government would then be voted on and could win, as some pro-government deputies could defect.<sup>223</sup> To avoid this, deputies who strongly supported Musaddiq declared their resignations from the Majles.

The resignation of a deputy, however, could not be final until fifteen days after it was read in a meeting of the Majles properly convened with a quorum.<sup>224</sup> Therefore, at any time enough resigned deputies could change their mind and rescind their resignations and, eventually, cause the fall of the government under the mentioned scenario.<sup>225</sup> Musaddiq said that the dissolution of the Majles was the way to safeguard against this threat.<sup>226</sup>

The 1949 Constitutional Assembly had given the Shah the right to dissolve the Majles.<sup>227</sup> Musaddiq would not use this approach probably because that would have validated a right the granting of which Musaddiq had strongly opposed.<sup>228</sup> He had argued against that amendment to the Constitution on the grounds that the elections to the Constitutional Assembly were not free and were held when political groups were suppressed or intimidated in reaction to the failed recent assassination attempt on the Shah's life.<sup>229</sup>

Furthermore, Musaddiq could not expect the Shah to willingly use his right to dissolve the Majles. It was not difficult to see that the Shah's interest was in supporting the Majles opposition to the prime minister who had curtailed so much of his cherished powers. As Musaddiq saw it, there was no other way but to ask for help directly from the people.<sup>230</sup> He would do this by putting the question of the dissolution to a referendum.

That approach was justifiable, Musaddiq argued. The Constitution provided only for elections of representatives by the people. Musaddiq deemed that to mean that the Constitution did not oppose referendum; it was merely silent about it. On the other hand, referendum had been used in other countries. As Musaddiq put it, referendum in this case was preferable since the



people being the “principal,” they were more entitled than their “agents” or deputies to decide about an impasse that the Constitution had not foreseen.<sup>231</sup>

The referendum that was held had flaws for generating a full popular mandate. For Musaddiq its imperfections did not invalidate the mandate. An imperfect referendum was sufficient, especially as Musaddiq held that the defects were excusable. In the referendum, different polling stations were set up for those favoring and those opposing the dissolution. Musaddiq defended this practice as necessary to prevent clashes that would cause serious threat to political stability.<sup>232</sup> More objectionable was the fact that the referendum was held only in big cities. To Musaddiq this geographic limitation of the franchise was justified because the rural voters were prone to manipulation by the Shah, the army, the big land owners, and the tribal chiefs who, he believed, all supported Iran’s foreign adversaries against his government.<sup>233</sup>

On the other hand, Musaddiq pointed out, the voting for the referendum was far fairer than those for previous elections in Iran. There was no ballot box stuffing, voters were not intimidated or manipulated, and those who voted were the best educated and politically aware.<sup>234</sup> Most important, Musaddiq maintained, more than two million votes were cast in favor of dissolving the Majles, far more than the highest total of votes (1,400,000) in any previous elections even though they were countrywide.<sup>235</sup>

#### **V. Could the Majles delegate power to enact changes in the military justice system, enforceable subject only to the Majles’s rejection of them?**

Musaddiq defended the delegation of conditional legislative powers to him by the 17<sup>th</sup> Majles as permissible under the Constitution. He stressed that those powers were delegated by both the Majles and the Senate, which was then in session, and approved by the Shah.<sup>236</sup> At the time none of these parties objected that the delegation was against the constitutional principal of separation of powers. Indeed, they could not as they were intimidated by the recent popular uprising of July 1952, known as *see-yi tir*, which had forced them to reinstate Musaddiq as prime minister against their wishes.

There had been precedent for the delegation of legislative powers by the Majles to individuals and bodies, such as its own Judicial commission.<sup>237</sup> On three occasions, Musaddiq had opposed the grant of such powers: in the 6<sup>th</sup> Majles to the minister of Justice, in the 14<sup>th</sup> Majles to the American Financial Advisor, and in the 16<sup>th</sup> Majles to the minister of Finance.<sup>238</sup> Musaddiq had argued that such delegation was against the Constitution.<sup>239</sup> Yet, at earlier times, as Musaddiq reminded the court, he had also accepted such delegation of legislative powers from the 4<sup>th</sup> Majles to himself as minister of Finance<sup>240</sup>, in order to prepare laws for reforming that Ministry.<sup>241</sup> Thus, Musaddiq was arguing that his past position had not been unequivocally against such delegation.

What justified the delegation was necessity, in Musaddiq’s opinion. As prime minister, Mossadeq had insisted that he needed the delegated authority to govern effectively in the emergency conditions existing during the struggle to nationalize the oil industry. Furthermore, Musaddiq pointed out, there were effective limitations and controls built into the delegation of legislating powers to him as prime minister.<sup>242</sup> The measures that he would enact, although enforceable immediately, had to be submitted to the Majles within a short time and the Majles could repeal them. Only if the Majles did not do so, would they have become permanent laws.<sup>243</sup>

Musaddiq maintained that the legislative powers delegated by the Majles could extend to the authorization to change the “justice system (*dadgustary*)” as, indeed, the law granting him those powers specified.<sup>244</sup> Accordingly, Musaddiq had even dissolved the country’s highest court (*divan-i ali-yi keshvar*). Thus Musaddiq rejected the position taken by the prosecutor and his trial court that such actions were unconstitutional because they were against several Articles of the Constitution on the separation of powers and, also, because of the principle of “the rights and authorities” of judges.<sup>245</sup>

Musaddiq insisted that only the Majles could decide whether measures enacted under his delegated powers exceeded their scope. Accordingly, Musaddiq argued that his position that those powers included his authority to change the military justice system -because it was a part of the overall “justice system”- could not be challenged by the new cabinet or by courts.<sup>246</sup> It was under this authority, Musaddiq maintained, that he abolished the very special military court that was trying him<sup>247</sup> and repealed the part (“First Book”) of the Code for the administration of military justice under which he was being tried.<sup>24</sup>

#### **VI. Could a Regency Council be installed by referendum if the Shah refuses to perform his required Constitutional function?**

Musaddiq asserted that when the Shah was out of the country a Regency Council was needed and if the Shah refused to establish it, and the Majles was not in session, then it should be established through authorization by a popular referendum.

The Constitution provided certain duties for the Shah. Among them was the solemnizing “signing (*tushih*)”<sup>249</sup> required to formalize the enactment of bills, the appointment Orders, and the Orders to hold elections. There was no provision in the Constitution, however, for the performance of this function when the Shah was not available. Ahmad Shah, the last Qajar king, established a Regency Council to act on his behalf when he traveled to Europe. The incumbent Mohammad Reza Shah had followed this practice and had established a similar Council when he traveled to Britain.<sup>250</sup> Musaddiq recognized that such a constitutional right for the king was thus created, although it did not exist in the Constitution itself.<sup>251</sup>

In acknowledging that right, Musaddiq said that he intended to ask the Shah who had left the country on August 16 to form a Regency Council if he was not planning to return soon. If the Shah declined<sup>252</sup>, Musaddiq maintained, then the Majles could establish the required Regency Council.<sup>253</sup> The Majles, however, had been dissolved, and the Regency Council was needed before a new Majles could be convened.<sup>254</sup> Indeed, the election of the new Majles itself required a Royal Order.

Musaddiq did not think that *dawlat* (the Cabinet) could establish the Regency Council.<sup>255</sup> Such authority did not come even within the scope of the special powers delegated to him as prime minister.<sup>256</sup> That left only one approach for the establishment of the needed Regency Council: asking the people.<sup>257</sup> Musaddiq, once again, argued that, indeed, when “the voters wanted to express their opinion, that opinion would be one thousand degrees superior to the opinion of their representatives.”<sup>258</sup>

Some political groups, especially Musaddiq's rivals on the left, proposed the election of a Constitutional Assembly for the purpose of establishing a Regency Council.<sup>259</sup> The urgency of the need called for a speedier process than the time consuming elections of an assembly of representatives. The direct method of referendum that had just been experienced in the matter of the dissolution of the Majles was far more expeditious. Furthermore, a Constitutional Assembly was where the Constitution could be amended. Musaddiq was against amending the Constitution, at least at this time<sup>260</sup>, and would have presumably preferred avoiding any conduct that appeared to the contrary. He commissioned a group of deputies of the defunct Majles who were his supporters to study the whole subject of the Regency Council. They came to report their conclusion to him on August 19<sup>261</sup>, but the more momentous events of that day did not allow any further discussion of the issue. They later indicated that their recommendation favored putting the issue of the Regency Council to a referendum.

In the court, Musaddiq endorsed this position.<sup>262</sup> His Ministry of Interior had already advised provincial administrators to be ready for holding a referendum.<sup>263</sup> The arrangements as to how the members of the Council were to be chosen were left to be decided by the Cabinet.<sup>264</sup> Musaddiq argued that no harm would be done by so establishing the Regency Council; it would be a temporary expedient which the Shah could dissolve upon his return.<sup>265</sup> Musaddiq maintained that this was "not against the Constitution."<sup>266</sup>

His deputy prime Minister went further, explaining to the court as an expert in "political sociology," that on the grounds of the past practice of the Shahs, "customs and precedent (*rasm, adat, ... sabegheh*)" constituted "the basis for forming the Regency Council" in Iran as a part of the "constitutional law (*huquq-i asasi*)."<sup>267</sup> Musaddiq did not use this language. Instead, he based his justification on the necessity for establishing the Council.<sup>268</sup> Indeed, the term *huquq-i asasi* is absent in the lexicon that Musaddiq employed in what was a most elaborate exposition of Iran's constitutional law, before the court that tried him. Musaddiq acknowledged his scholarly minister's theoretical discourse: "that is because he has been a Prof. (*usta*)."<sup>269</sup> Musaddiq's own method, however, was detailing in factual parlance the vast legal implications of the real experiences of his governance for Iran's Constitution.

## VII. Were Musaddiq's alleged crimes in August 16-19, 1953 political crimes?

Article 79 of the Amendment to the Constitution provided for jury trial in the case of political crimes.<sup>270</sup> Jury trial could not be held in Iran's military courts.<sup>271</sup> Iran's laws, however, did not define political crime.<sup>272</sup>

Musaddiq maintained that the crimes he was charged with having committed during August 16 to 19, 1953, were the type of political crimes meant by the Constitution. They were alleged to be acts aimed at changing the regime, the line of succession to the throne, and inciting armed insurrection against the Crown.<sup>273</sup> The prosecutor denied that these were political crimes<sup>274</sup> and the court agreed. Musaddiq responded by applying the reasonable common meaning for the term, asking, in effect, that if these were not political crimes, what then could be said to be political crimes?<sup>275</sup>

Further, Musaddiq asserted that he happened to be an authority on the legal meaning of the term political crime, reminding the court that he wrote his university thesis<sup>276</sup> in Switzerland on that very subject.<sup>277</sup> He said political crimes had not been defined in any laws of any

country.<sup>278</sup> He invoked, however, the authority of the 1935 conference of world's jurists in Copenhagen, Denmark that, as Musaddiq said, defined political crimes as "crimes against the country's regime and political institutions." That was exactly the sum of the allegations against him, Musaddiq pointed out.<sup>279</sup>

### VIII. Should the Constitution be changed?

Musaddiq did not believe that the 1906 Constitution needed to be changed. Evolution might be unavoidable, but for now the country did not need any alteration of the regime.<sup>280</sup>

Musaddiq denied that he considered establishing a Republic.<sup>281</sup> This was supported by the court testimony of associates who spent most of those four fateful days of August with him.<sup>282</sup> As one of them stated, in a country where people could not yet properly elect even a Majles, they could not be expected to properly elect a Republican President.<sup>283</sup> Musaddiq declared that not only the establishment of a Republic was not practical<sup>284</sup>, it was also not desirable. For him it was important to abide by his past "swearing on the Quran" to the Shah that he would not participate in any effort to establish a Republic.<sup>285</sup> As he pointed out, Musaddiq had not taken such an oath to the Shah's father<sup>286</sup>; and thus unhindered, he did not refrain from denouncing the father for his greed as well as allegedly serving the interest of Britain.<sup>287</sup>

Further, Musaddiq claimed that he would not have stayed in office if he knew for certain that he had lost the Shah's support.<sup>288</sup> This was more than just a personal preference. His close associates deemed the Shah as a necessary symbol for the unity of the country.<sup>289</sup> This was likely Musaddiq's view as well. If a King was needed, Musaddiq made it clear that he believed the incumbent was the best person available.<sup>290</sup>

Musaddiq, of course, would not revert to the absolutism of pre-Constitution times. For him this meant that concentration of power in the hands of the Shah should be avoided. This was not only for domestic reasons, he said, but also for resisting foreign pressures. Foreign interests desired concentration of powers in the hands of the Shah, Musaddiq asserted, so that they could more easily bring pressure on Iran through him.<sup>291</sup> Instead, in Musaddiq's view, the prime minister should be entrusted with sufficient power to be effective. He should be accountable to a Majles that was truly representative of the people. The Majles should be the ultimate depository of power.

There were two problems with the current Majles, as Musaddiq saw it. One resulted from interference by foreign Powers with undue economic interests in Iran. Many of the deputies followed the foreign powers' commands and wishes either because they owed their seats to them or because they were intimidated by them.<sup>292</sup> The other problem was that the voters often could not distinguish patriotic Majles candidates from those who were foreign agents. This was in part because foreign powers had long pursued a policy of keeping the Iranian people "ignorant, desperate and poor (*nafahm, bichareh, faqir*)"<sup>293</sup> so that their agents could rule over them by force (*chumaq*).<sup>294</sup>

Musaddiq's brief for the court on these subjects was his longest and the most important, his counsel would report later.<sup>295</sup> Musaddiq was optimistic that foreign interference could be eliminated<sup>296</sup> and, given time, Iranian voters would choose the right candidates. Musaddiq

believed that people's active participation in politics was needed. This was possible not just by the conventional devices of voting in elections and engaging in vigorous exchange of views in a free press -which Musaddiq's government ensured. Equally important was attending mass public gatherings where speeches would not be subject to "censorship" by the government, Musaddiq stressed.<sup>297</sup> Only thus, Musaddiq said, could the government know what people wanted.<sup>298</sup> As well, Musaddiq maintained, people's involvement in such manners was required to strengthen the government against its foreign adversaries.<sup>299</sup>

For Musaddiq the primary culpable foreign power was Britain. In the trial court, Musaddiq barely mentioned Russia and made virtually no reference to the United States. Even in the brief which he later prepared for the High Court, Musaddiq only mildly criticized the United States, mostly its incumbent Ambassador to Iran; Britain remained the main target of his complaint<sup>300</sup>

Musaddiq recognized the need for certain restrictions on people's rights. As he limited voting in the referendum to the urban population, he justified the disfranchisement of the rural citizens on the grounds that their votes were prone to manipulation. Musaddiq also denied the followers of the Tudeh Party freedom to hold public assemblies of their own, or speak at others' mass public meetings.<sup>301</sup> He justified these restriction by arguing that the Tudeh followers were wittingly or unwittingly serving the interests of foreign powers: Russia, or even Britain as some were disguised British agents or *tudeh-nafti* (the [British] Oil [Company] Tudeh).<sup>302</sup> Yet Musaddiq would not endorse methods of suppression, urged by the Shah, which he considered as ineffective. He proposed to deal with the causes of the Tudeh's strength, which he argued were the legitimate grievances of the people.<sup>303</sup>

## CONCLUSIONS

A written constitution is the schematic plan for the political organization of the community. In the second half of 1953, Mohammad Musaddiq endorsed the continued relevance of the 1906 Constitution for Iran. His reading of it should not have surprised the framers. The Constitution was the work of privileged and educated Iranians like himself, actively facing up to the challenge of a stronger, modernized West. The basic elements of the suitable prescription were obvious. The Crown had to become merely symbolic, and the parliament had to become supreme. In Iran's constitutional monarchy popular sovereignty would be implemented by the representative form of government.

Musaddiq acknowledged these Constitutional precepts as ultimate truth. His contribution was to account for the transitional period. In the penumbra of the Constitutional goal of *azadi* (Liberty), Musaddiq saw democracy and individual freedoms. All were eclipsed, however, by the absence of the twin Constitutional goal of *isteqlal* (Independence). The all important Majles could not act properly when it was deformed by pernicious foreign interferences rooted in unjust demands.

The indivisible struggle for Liberty and Independence required sacrifice and unity. For a limited period, power had to be delegated to a tested and accountable executive. Time was needed also to remove the vestiges of servitude from the populace. Until then franchise would be limited to the informed. Beyond verification, Musaddiq's gospel asked for faith and trust from the believer.<sup>304</sup> A charismatic popular leader could generate both. For a fleeting moment in Iran's history, Musaddiq seemed able to offer such a possibility.

## NOTES

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**Error! Main Document Only.** 1. (Records of Trial Proceedings: 95). The source used here for the transcript of the trial proceedings is Jalil Buzurgmehr's two volume (combined) book, Buzurgmehr, J. (1999) *Musaddiq dar mahkameh-yi nezami* (Musaddiq in Military Court). Tehran: Doostan. Buzurgmehr mentions that he copied the records of the Deposition. (Buzurgmehr, 1999b: 30) The rest is, at least, partially based on texts published by newspapers (Records of Trial Proceedings: 693). Buzurgmehr wrote a preface and an introduction for the first volume and an introduction for the second volume which are bound as one book. These three are numbered each separately in letter numbers, while the rest of the two volumes, the court proceedings (pages 3-802) are numbered sequentially together. Here, for easier reference, they are cited as four different sources.

2. .(Buzurgmehr, 1999b: 8)

3. .(Buzurgmehr, 1999b: 8; Afshar, 1986: 58-61)

4. .(Afshar, 1986: 58)

5. .(Buzurgmehr, 1999b: 8)

7. .(Afshar, 1986: 81, 118)

8. .(Afshar, 1986: 82)

9. . His other related works were a book entitled *sherkatha-yi sahami dar urupa* (Joint Stock Companies in Europe), an article with the title *qa'edeh-yi murur-i zaman dar iran* (The Rule of Time Limitations in Iran), and a book called *usul-i qavaed va qavaneen-i maliyeh dar mamalek-i kharejeh va iran qabl az mashruteh va doreh-yi mashruteh* (Principles and Laws of Finance in Foreign Countries and Iran before Constitutionalism and during Constitutionalism). (Afshar, 1986: 82-84)

10. .(Buzurgmehr, 1999b: 9)

11. .(Records of Trial Proceedings: 710)

12. .(Buzurgmehr, 1999b: 9)

13. .(Records of Trial Proceedings: 119)

14. .(Records of Trial Proceedings: 119)

15. .(Buzurgmehr, 1999b: 9)

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- 16 . .(Buzurgmehr, 1999b: 10)
- 17 . .(Buzurgmehr, 1999b: 10 )
- 18 . .(Buzurgmehr, 1999b: 9-10)
- 19 . .(Records of Trial Proceedings: 509-510, 519)
- 20 . .(Buzurgmehr, 1999b: 11; Ghani, 2000: 370)
- 21 . .(Records of Trial Proceedings: 129; Afshar, 1986:179)
- 22 . .(Buzurgmehr, 1999b: 11-12)
- 23 . .Musaddiq has admitted only once (Afshar, 1986:386) to have even discussed politics in this period: commiserating, in private, about the Shah's oil concessions to the British with Hasan Pirnia (Moshir al-Dowleh) .(Katouzian, 1999: 32), the former Prime Minister who had first offered him the portfolio of Justice in 1920, and upon returning to office appointed Musaddiq Governor of Azerbaijan -having failed to win Majles's approval to make him the Minister of Finance- and finally appointing him the Minister of Foreign Affairs. (Buzurgmehr, 1999b: 9-10). One may thus conjecture that until then Hasan Pirnia was perhaps the closest to Musaddiq's model of a Constitutionalist Prime Minister (Katouzian, 1999: 14). He was one of the drafters of the 1906 Constitution (Ghani, 2000:78).
- 24 . .(Ghani, 2000 :84)
- 25 . .(Katouzian, 1999: :5)
- 26 . .(Buzurgmehr, 1999b: 12)
- 27 . .(Buzurgmehr, 1999b: 13-14)
- 28 . .(Buzurgmehr, 1999b: 14)
- 29 . .( Records of Trial Proceedings: 129)
- 30 . .(Records of Trial Proceedings: 348)
- 31 . . (Buzurgmehr, 1999b: 14 )
- 32 . .(Baq'a'i, 1985: 248)
- 33 . .(Buzurgmehr, 1999b: 14; 1999a: 476)
- 34 . .(Records of Trial Proceedings: 101)
- 35 . . (Records of Trial Proceedings: 25-26)
- 36 . .(Records of Trial Proceedings: 26)
- 37 . .(Records of Trial Proceedings: 30-31, 622, 657)

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- 38 . .(Records of Trial Proceedings: 481, 622)
- 39 . . (Records of Trial Proceedings: 30-31, 126 590, 622 )
- 40 . .(Records of Trial Proceedings: 656)
- 41 . .(Records of Trial Proceedings: 565)
- 42 . .(Records of Trial Proceedings: 623)
- 43 . .(Records of Trial Proceedings: 485)
- 44 . .(Katouzian, 1999: a 485)
- 45 . .(Records of Trial Proceedings: 642)
- 46 . .(Records of Trial Proceedings: 299)
- 48 ... (Buzurgmehr, 1999d: 5) In its judgment the court called itself *dadgah-i nezami-yi add-yi vaqay-yi 25-28 murdad-i 1332* (The Ordinary Military Court of the Events of 25-28 Mudrad, 1332 /August 16-19, 1953). (Records of Trial Proceedings: 788)
- 49 . .(Buzurgmehr, 1999c: 28)
- 50 . .(Records of Trial Proceedings: 3)
- 51 . .(Buzurgmehr, 1999c: 31)
- 52 . .(Records of Trial Proceedings: 3)
- 53 . .(Records of Trial Proceedings: 3)
- 54 . .(Records of Trial Proceedings: 5)
- 55 . .(Records of Trial Proceedings: 3)
- 56 . .(Records of Trial Proceedings: 7)
- 57 . .(Records of Trial Proceedings: 96)
- 58 . .(Records of Trial Proceedings: 7-13)
- 59 . .(Records of Trial Proceedings: 21-32)
- 60 . .(Buzurgmehr, 1999c: 28, 47-58 )
- 61 . .(Records of Trial Proceedings: 47-58, 313-98)
- 62 . .(Buzurgmehr, 1999c: 33 )
- 63 . .(Records of Trial Proceedings: 96),



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- 64 ..(Records of Trial Proceedings: 79)
- 65 .. (Records of Trial Proceedings: 84)
- 66 ..(Records of Trial Proceedings: 166, 235)
- 67 ..(Records of Trial Proceedings: 110)
- 68 ..(Records of Trial Proceedings: 110)
- 69 ..(Records of Trial Proceedings: 88)
- 70 ..(Records of Trial Proceedings: 81)
- 71 ..(Buzurgmehr, 1999c: 28 )
- 72 ..(Buzurgmehr, 1999c: 29 )
- 73 ..(Buzurgmehr, 1999d: 22)
- 74 ..(Buzurgmehr, 1999c: 37-38
- 75 ..(Buzurgmehr, 1999d: 15 )
- 76 ..(Buzurgmehr, 1999c: 48)
- 77 ..(Buzurgmehr, 1999b: 7 )
- 78 ..(Buzurgmehr, 1999d: 5; 1999a: 700)
- 79 ..(Records of Trial Proceedings: 153, 700, 750)
- 80 ..(Buzurgmehr, 1999c: 31; 1999d: 5; 1999a: 455)
- 81 ..(Buzurgmehr, 1999d: 11 ; Records of Trial Proceedings: 153 422, 698)
- 82 ..(Buzurgmehr, 1999d: 7)
- 84 ..(Buzurgmehr, 1999d: 8)
- 85 ..(Records of Trial Proceedings: 451)
- 86 ..(Records of Trial Proceedings: 608 711-12, 720-23, 708-724)
- 87 ..(Records of Trial Proceedings: 369, 652, 382-85)
- 88 ..(Records of Trial Proceedings: 682-83, 710)
- 89 ..(Buzurgmehr, 1999d: 8)
- 90 ..(Records of Trial Proceedings: 63-76, 291-92, 295-96)

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- 91 . .(Buzurgmehr, 1999d: 11-12)
- 92 . .(Buzurgmehr, 1999d: 13)
- 93 . .(Records of Trial Proceedings: 690)
- 94 . .(Buzurgmehr, 1999d: 13, Records of Trial Proceedings: 690)
- 95 . .(Records of Trial Proceedings: 608)
- 96 . .(Records of Trial Proceedings: 520-27)
- 97 . . (Buzurgmehr, 1999d: 14-15 ) The sole exception was a minister without Portfolio, Davud Rajabi, whose mildly adverse testimony was rewarded by the prosecutor dropping the charges against him. (Records of Trial Proceedings:611)
- 98 . .(Records of Trial Proceedings: 608)
- 99 . .(Records of Trial Proceedings: 605, 608, 694)
- 101 . .(Buzurgmehr, 1999c: 38-44, 47-48 ) (Note 100 is intentionally left blank)
- 102 . .(Records of Trial Proceedings: 750)
- 103 . .(Buzurgmehr, 1999d: 7)
- 104 . .(Records of Trial Proceedings: 725, 737-38)
- 105 . .(Records of Trial Proceedings: 153)
- 106 . .(Buzurgmehr, 1999d: 7, 10; 1999a: 750)
- 107 . .(Buzurgmehr, 1999d: 9 ; 1999a: 224, 517-18, 750)
- 108 . .(Records of Trial Proceedings: 750)
- 110 . .(Records of Trial Proceedings: 675-76)
- 111 . .(Records of Trial Proceedings: 513-14)
- 112 . .(Records of Trial Proceedings: 513-15)
- 113 . .(Records of Trial Proceedings: 774)
- 114 . .(Buzurgmehr, 1999d: 10, 600 725)
- 115 . .(Records of Trial Proceedings: 698)
- 116 . .(Records of Trial Proceedings: 421)
- 117 . .(Buzurgmehr, 1999d: 10)

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- 118 ..(Records of Trial Proceedings: 750)
- 119 ..(Records of Trial Proceedings: 420-21; 1999d: 10)
- 120 ..(Buzurgmehr, 1999d: 10)
- 121 ..(Records of Trial Proceedings: 706)
- 122 ..(Records of Trial Proceedings: 252)
- 123 ..(Records of Trial Proceedings: 205-206)
- 124 .. (Records of Trial Proceedings: 207, 251)
- 125 ..(Records of Trial Proceedings: 252)
- 127 ..(Records of Trial Proceedings: 726-29, 793, 796)
- 128 ..(Records of Trial Proceedings: 479, 792)
- 129 ..(Records of Trial Proceedings: 792-93)
- 130 ..(Records of Trial Proceedings: 797-99)
- 131 ..(Records of Trial Proceedings: 787 )
- 132 ... A few days before Musaddiq had decided against another purported offer of pardon by the Shah (Buzurgmehr, 1999d: 17-19).
- 133 ..(Records of Trial Proceedings: 788)
- 134 ..(Records of Trial Proceedings: 800)
- 135 ..(Records of Trial Proceedings: 800)
- 136 ..(Records of Trial Proceedings: 801)
- 138 ..(Katouzian, 1999: p 201)
- 139 ..(Katouzian, 1999: p 202)
- 140 ..(Afshar, 1986:317-18)
- 141 ..(Katouzian, 1999: p 203)
- 142 ..(Afshar, 1986:317-18, 329)
- 143 ..(Buzurgmehr, 1999c: 53)
- 144 ..(Afshar, 1986: 219-330)

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145 ..(Buzurgmehr, 1999d: 22, 1999a:801))

146 ..(Katouzian, 1999: 203 )

147 ..(Records of Trial Proceedings: 166)

148 ..(Records of Trial Proceedings: 446, 448, 700)

149 ..(Records of Trial Proceedings: 82, 198 , 801)

150 ..(Records of Trial Proceedings: 794)

152 ... In contemporary Iranian law, based on a dictum of *feqh* (the Shiite jurisprudence), *nass* precluded research (*ijtihad*) for defining a legal term: *ejtihad dar muqabel-i nass ja 'yez nist*) Langarudi, 1967: 714-15 If the meaning was not in doubt, there was no need to apply the otherwise acceptable tools of interpretation, analogy, contextual reading, and reasoning. Ironically, the framers of the 1906 Constitution feared that the Shahs would argue that its provisions were ambiguous when they provided that only the Majles could interpret and explicate the Constitution (Bushehri, 1976:176-178).

153 ..(Records of Trial Proceedings: 251, 794-95)

154 ..(Records of Trial Proceedings: 739)

155 ..(Records of Trial Proceedings: 795)

156 ..(Records of Trial Proceedings: 508)

157 ..(Records of Trial Proceedings: 771-72)

158 ..(Records of Trial Proceedings: 508, 518)

159 ..( Records of Trial Proceedings: 771)

160 ..( Records of Trial Proceedings: 771)

161 ..( Records of Trial Proceedings: 771-72)

162 .. ( Records of Trial Proceedings: 508)

163 ..( Records of Trial Proceedings: 94)

164 .. (Records of Trial Proceedings: 94, 508, 518)

165 .. (Records of Trial Proceedings: 509-10, 519)

166 ... The court's response was "why should we care what Ahmad Shah did?" (Records of Trial Proceedings: 510).

167 .. (Records of Trial Proceedings: 778)

168 .. Records of Trial Proceedings: 697-98)

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- 169 ..(Records of Trial Proceedings: 773; Afshar, 1986:289)
- 170 .. (Records of Trial Proceedings: 701)
171. While the Constitution in certain passages referred to the Senate and the Majles, sometimes as *majlesain*, Musaddiq -who was opposed to the institution of the Senate because ½ of its members would be appointed by the Shah (Baqā'i, 1985: 252-3; Afshar, 1986:273)- in referring to the parliament, in effect, meant only the Majles or the lower house (*majles shuray-i melli*).
- 172 ..(Records of Trial Proceedings: 507-508)
173. **Error! Main Document Only.**(Bozorgmehr, 1999a: 697)
- 174 ..(Records of Trial Proceedings: 697-98)
- 175 .. (Records of Trial Proceedings: 469)
- 176 ..(Records of Trial Proceedings: 507-508)
- 178 .. (Records of Trial Proceedings: 91)
- 179 .. Records of Trial Proceedings: 513-14
- 180 .. (Records of Trial Proceedings: 118)
- 181 .. (Records of Trial Proceedings: 773)
- 182 ..(Records of Trial Proceedings: 91)
- 183 .. (Records of Trial Proceedings: 509)
- 184 .. (Records of Trial Proceedings: 509)
- 185 .. (Records of Trial Proceedings: 469, 508)
- 187 . (Records of Trial Proceedings: 513-14) The prosecutor proclaimed that it was an inexcusable crime to say that the minister of Defense was the Commander-in-chief of the Armed Forces. (Records of Trial Proceedings: 602) The court's judgment said that a ceremonial role for the Shah was against logic (Records of Trial Proceedings: 794)
- 188 .. (Records of Trial Proceedings: 738)
- 189 .. ( Records of Trial Proceedings: 469, 507)
- 190 ..(Records of Trial Proceedings: 509)
- 191 .. (Records of Trial Proceedings: 468, 697-98, 739)
- 192 ... ( Records of Trial Proceedings: 513) The chief judge said each country had laws special to it. The court could not review or interpret the laws of other countries. (Records of Trial Proceedings: 739) The prosecutor said that what they did in other countries was not relevant for Iran. (Records of Trial Proceedings: 602) Those countries

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had laws which could not apply to Iran such as allowing women to inherit the throne (Records of Trial Proceedings: 739) and not considering Islam as the official religion.

193 .. (Records of Trial Proceedings: 513, 516)

194 .. (Records of Trial Proceedings: 144)

195 .. (Records of Trial Proceedings: 697)

196 .. (Records of Trial Proceedings: 516)

197 . (Records of Trial Proceedings: 516)

198 ... (Records of Trial Proceedings: 55. The Shah did not respond and left the country. (Records of Trial Proceedings: 55)

199 .. (Records of Trial Proceedings: 27)

200 ... Records of Trial Proceedings: 27-28. Musaddiq explained that he did not obey the dismissal Order on August 16, 1953 because he did not believe that it was issued with the Shah's knowledge. (Records of Trial Proceedings: 479, 681.

202 ..(Records of Trial Proceedings: 417)

203 ..(Records of Trial Proceedings: 697)

204 .. (Records of Trial Proceedings: 488)

205 ..(Records of Trial Proceedings: 4)

207 ..(Records of Trial Proceedings: 694)

209 .. (Records of Trial Proceedings: 402-403 )

210 ..(Records of Trial Proceedings: 694)

211 .. (Records of Trial Proceedings: 693-94)

212 ..(Records of Trial Proceedings: 716)

213 ..(Records of Trial Proceedings: 13-14, 402-403, 534, 607)

214 ..(Records of Trial Proceedings: 611; Afshar, 1986:247)

215 .. (Records of Trial Proceedings: 591)

216 ..(Records of Trial Proceedings: 10, 596, 678)

217 ..(Records of Trial Proceedings: 29, 457, 679, 729)

218 .. (Records of Trial Proceedings: 8-9, 694)

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219 . . ( Records of Trial Proceedings: 276, 293, 608)

220 . .(Records of Trial Proceedings: 292, 295)

221 . .(Records of Trial Proceedings: 478-79, 608)

222 . .(Records of Trial Proceedings: 23)

223 . . (Records of Trial Proceedings: 123-125)

224 . .(Records of Trial Proceedings: 516, 662)

225 . .(Records of Trial Proceedings: 123-126, 778)

226 . .(Records of Trial Proceedings: 126 )

227 . . (Records of Trial Proceedings: 776)

228 . . . Even after the referendum, Musaddiq did not ask for the Royal Order to dissolve the 17<sup>th</sup> Majles. Instead, he asked for the Royal Order to hold the 18<sup>th</sup> Majles -which he expected the Shah to issue on August 15 (Records of Trial Proceedings: 532) - that would have implicitly affirmed the result of the referendum dissolving the Majles. (Records of Trial Proceedings: 290)

229 . .Buzurgmehr, 1999b: 14; 1999a: 24-25, 662 )

230 . .(Records of Trial Proceedings: 126)

231 . .(Records of Trial Proceedings: 126-27, 663)

232 . .(Records of Trial Proceedings: 663-664)

233 . .(Afshar, 1986: 210; Baqa'i, 1985: 251-52)

234 . .(Records of Trial Proceedings: 100, 663-64 )

235 . .(Records of Trial Proceedings: 24)

236 . . (Records of Trial Proceedings: 210; Afshar. 1986: 250)

237 . .Records of Trial Proceedings: 207- 208 )

238 . .(Buzurgmehr, 1999b: 12; 1999a: 365 )

239 . . . (Records of Trial Proceedings: 365; Baqa'i, 1985: 466).

240 . .(Records of Trial Proceedings: 247)

241 . .(Buzurgmehr, 1999b: 9, 247)

242 . . Colonel Abbasquli Shahquli, counsel for the other defendant Taqi Riyahi, who had helped the prime minister revise the Military Justice laws under those powers (Buzurgmehr, 1999d: 22), argued in the court that the powers

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were not “legislating authority” but merely for “executing and testing” bills that Musaddiq would proposed to the Majles. (Records of Trial Proceedings: 246-47) Musaddiq did not specifically endorse this interpretation.

243 ..(Records of Trial Proceedings: 83, 210)

244 ..(Records of Trial Proceedings: 83)

245 ..(Records of Trial Proceedings: 252, 367)

246 ... (Records of Trial Proceedings: 83, 210) This position distinguished Iranian constitutional law from, for example, the constitutional law of the United States. Unlike the U.S., the courts in Iran could not declare a law passed by the legislature unconstitutional -i.e., unenforceable for being against the Constitution- unless the Constitution specifically provided to the contrary. The argument for the Iranian position was based on the constitutional principle of separation of powers: courts could not supervise the legislature (Emami Vol 1, 1974: 15).

247 ..(Records of Trial Proceedings: 83)

250 ..(Records of Trial Proceedings: 666 )

251 ..(Records of Trial Proceedings: 729)

252 .. (Records of Trial Proceedings: 667, 679, 729)

253 ..(Records of Trial Proceedings: 729)

254 ..(Records of Trial Proceedings: 729)

255 ..(Records of Trial Proceedings: 729)

256 ..(Records of Trial Proceedings: 588 )

257 ..(Records of Trial Proceedings: 729 )

258 .. (Records of Trial Proceedings: 729)

259 .. (Records of Trial Proceedings: 287)

260 ..(Records of Trial Proceedings: 763, 640)

261 ..(Records of Trial Proceedings: 678 )

262 ..(Records of Trial Proceedings: 29)

263 ..(Records of Trial Proceedings: 639)

264 ... (Records of Trial Proceedings: 29) As though completing the circle, one of Musaddiq’s earliest partners in the constitutionalists movement, Ali Akbar Dehkhoda who recruited Musaddiq into the now extinct Edalat Party in 1914 (Buzurgmehr, 1999b:8), was believed to be a candidate for the Council. Dehkhoda who had long been retired from politics, met with Musaddiq after August 15 (Records of Trial Proceedings: 628) and consulted with the commission of deputies Musaddiq appointed to study the issue. (Records of Trial Proceedings: 591)



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- 265 ..(Records of Trial Proceedings: 679 ,729 )
- 266 ..(Records of Trial Proceedings: 679)
- 267 .. (Records of Trial Proceedings: 637)
- 268 ..(Records of Trial Proceedings: 729 )
- 269 ..Buzurgmehr, 1999d: 13-14)
- 270 ..(Records of Trial Proceedings: 199)
- 271 ..(Records of Trial Proceedings: 183, 199)
- 272 ..(Records of Trial Proceedings: 198)
- 273 .. (Records of Trial Proceedings: 3 )
- 274 .. (Records of Trial Proceedings: 225 )
- 275 ..(Records of Trial Proceedings: 198, 230)
- 276 .. *Etude de droit civil au sujet de la responsabilite de l'Etat pour les actes illicites de ces fonctionnaires, et de droit penal sur le principe de la non extradition pour delits politique.* (Records of Trial Proceedings: 215)
- 277 .. (Records of Trial Proceedings: 198 )
- 278 ..(Records of Trial Proceedings: 198)
- 279 ..(Records of Trial Proceedings: 199)
- 280 ..(Records of Trial Proceedings: 637-38)
- 281 .. (Records of Trial Proceedings: 299, 637 )
- 282 ..(Records of Trial Proceedings: 593)
- 283 ..Records of Trial Proceedings: 593)
- 284 .. (Records of Trial Proceedings: 727-28)
- 285 ..(Records of Trial Proceedings: 28, 727)
- 286 .. (Records of Trial Proceedings: 370)
- 287 .. (Records of Trial Proceedings: 38-39)
- 288 ..(Records of Trial Proceedings: 3-4, 27-28)
- 289 ..(Records of Trial Proceedings: 593 673)

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- 290 .(Records of Trial Proceedings: 118, 728)
- 291 .(Records of Trial Proceedings: 118, 194-95)
- 292 .(Records of Trial Proceedings: 23-24, 123)
293. (Records of Trial Proceedings: 194; Afshar, 1986:233, 258)
- 294 .(Buzurgmehr, 1999b: 11)
- 295 .( Buzurgmehr, 1999c: 47)
- 296 .(Records of Trial Proceedings: 28)
- 297 .(Records of Trial Proceedings: 730; Afshar, 1986:369)
- 298 .(Records of Trial Proceedings: 40)
- 299 .(Records of Trial Proceedings: 40)
- 300 . (Afshar, 1986:250-298). Only later, Musaddiq would write at length about the American involvement in the August 1953 coup (Afshar, 1986: 193, 337-38), leading one to conclude that until then he might not have known the full story.
- 301 .(Records of Trial Proceedings: 41 574 )
- 302 .(Records of Trial Proceedings: 573-74)
- 303 .(Records of Trial Proceedings: 576-77)
- 304 . . A future foe, Baqa'i would recall how the 15<sup>th</sup> Majles deputies who began opposition to the British oil company concluded that Musaddiq was the only person with the stature to lead their popular movement; and how Ali Zohari, whose interpolation later as a 17<sup>th</sup> Majles deputy would threaten the fall of Musaddiq's government, would declare that Musaddiq was like "the Iranian flag; no matter how many times they hit our head with this flag we still would respect him." (Baqa'i, 1985: 366) Khalil Maleki is reported to have warned Musaddiq that his decision to hold the referendum was the path to hell (*jahannam*) but, nonetheless, to declare that his devotion to him was such that he would follow him to hell. (Katouzian, 1981: 103-104 ) Musaddiq's aides called him by many titles, including *pishvay-i mellat* (the Leader of the Nation), but the one they used commonly was the simple and most descriptive *aqā* (Master). Ali Shayegan would later recall, for a small group of us, how on the night of August 19, 1953 -sitting in the room to which he had fled with *aqā*- he expressed disappointment at the turn of events: "*bad shud* (misfortune has befallen)!" Musaddiq's response was defiant: "No, the alternative was worse." Shayegan indicated submission -once again- to Musaddiq's position. As though summing up, he told us: "*rafteem, rafteem ta sare-mun be sang khurd* (we proceeded/followed him, we proceeded/followed him, until our heads hit the rock)."

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