

# MUSADDIQ 'S MEMOIRS

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## MY DOCTORAL THESIS AND TRAINING IN NEUCHATEL COURTS

My examinations finished and I received my Licence. Then I went to Lausanne for a holiday to mix with some of my fellow compatriots and relax, but I could not stay with them for more than one night. I returned to Neuchatel in order to prepare for the writing of my doctoral thesis. However, because I was so tired my efforts were not successful and it soon became apparent that if I did not take a break I would not be able to do anything of substance.

The proposed topic of my thesis as approved by the Faculty of Law related to Wills and Testaments in Islamic Law. I could research and compose such a thesis better in Tehran. That is to say, I could go to Iran, write my thesis first in Persian, show it to some specialists for their considered opinion, then translate it into French and submit it to the Faculty. Accordingly, I decided to go to Iran. I left my eldest daughter Zia-Ashraf and my eldest son Ahmad with the Swiss family with whom they had been living for two years. I took my wife and younger son Gholam-Husain<sup>1</sup> with me to Iran. During the journey and for the first few days of my arrival in Tehran, I could not work on my thesis. After I had rested for a little while I began to work hard and succeeded in producing it.

The nurse who had come with me from Paris to Iran three years previously had rented a single room near our house in Tehran. She used to take her dinner with us in the evenings. Suddenly, three nights went by and there was no news from her. Later, we found out that for those three nights she had not been in her own room either. The police were alerted and their investigation revealed what had happened. She had gone to teach in the Protiva

garden which was on the south-easterly side of the present junction of Shimiran Street<sup>2</sup> and Shah Reza Avenue.<sup>3</sup> On her way back home during the night the road was flooded because of heavy rain, and she had fallen into a well. Her body was recovered and buried in a graveyard near the Dulab district in south-east Tehran. This was a very sad incident and we were deeply moved.

In spite of the sadness that I felt because of the death of this good-natured woman, I nevertheless continued to work on my thesis. I do not quite remember, but there were certain legal issues which I could not cover with the assistance of my teacher, the late Shaikh Mohammad Ali Kashani. Thus I consulted the late Shams al-Ulama Qarib who introduced me to Ali Asghar Majedi for this task. I not only benefited from his knowledge in the course of researching for my thesis, but I also used his professional services for some legal work that my mother had in the courts of law. He was an honest and knowledgeable man. After the completion of the main topics, I wrote an introduction for my thesis as well. This introductory section covered the sources of Islamic law and was done under the supervision of my teacher Shaikh Mohammad Ali Kashani. Soon my thesis was complete and had only to be translated from Persian into French. I could do the translation better in Switzerland.

My stay in Tehran did not last more than three months. I left my wife and family in Tehran and went back to Switzerland on my own. Again I stayed in Neuchatel. While I was busy translating my thesis, I also started a traineeship in the law offices of a local lawyer known as Jean Roulee. The beginning of my training consisted of such simple tasks as the preparation and filing of the cases. Later on, my supervising lawyer allowed me to defend some of the small cases which had very little prospect of success. The reason for the allocation of this category of litigation to me was clear.

No client fighting an important case wished to be defended by a trainee lawyer whose depth and breadth of knowledge was doubtful.

The subject of one of the cases referred to me during my professional training, is of some importance in social terms and I shall recount the circumstances. There was a lady greengrocer, a French national residing in the city of Neuchatel, who had imported some canned meat from Italy. She was refusing to pay the contract price alleging that the canned meat supplied to her had been unfit for consumption and resale. She was trying to procure some witnesses who were prepared to lie for her so that she could use their false evidence. For this purpose she offered some money to a maid who frequented her grocery to purchase foodstuffs for a nearby household. Once approached, the maid immediately reported the matter to the police. The French greengrocer found it difficult to stand trial and escaped from Switzerland. This was the level of social responsibility which that Swiss maid had. Not only did she refuse the bribe offered to her but she also spent considerable time and incurred some legal expenses as well. She did so to uphold the law and give a lesson to others never to attempt to procure false testimony.

Throughout this period of my stay in Switzerland, I worked as a trainee lawyer daily until noon. In the afternoon I spent my time in translating my thesis from Persian into French with the help of one of my fellow classmates. My thesis was duly submitted and approved by the faculty committee. A few days before my return to Iran, I arranged for my thesis to be printed and published later in Paris.<sup>4</sup>

The normal length of time required to be trained as a lawyer in Switzerland was six months. I worked for nine months in that law firm. I participated in the pleadings of one of the cases which was conducted before the highest court sitting in Neuchatel. I obtained my certificate of advocacy from the court but my entitlement to practise law in Switzerland was conditional on my obtaining Swiss nationality.

In Switzerland, the obtaining of Swiss nationality did not require a denunciation of one's original nationality. In other words, any qualified person

could obtain Swiss nationality without losing his original nationality. The necessary requirements to obtain Swiss nationality were that the applicant should have resided in Switzerland for three years and that he should not have been convicted of any crime during his period of stay there. I obtained a certificate from the Neuchatel police department confirming that I did not have any criminal record there. Attaching that certificate to an appropriate form, I applied for Swiss nationality. I submitted my application to the federal government of Switzerland and this was accepted.

The summer vacation had already started. A number of the children of my relatives and friends, who were being educated in Switzerland, were anxious to go home with me. In those circumstances I could not attend to the rest of the formalities necessary for obtaining Swiss nationality and postponed these until a future date. We all left Switzerland for Iran together. We reached Tehran only one day before the declaration of the First World War. As a result of the continuation of the war and because I became involved in Iranian politics and other issues my stay in Iran lasted for quite a while. There were occasions when I had no news from my elder daughter and son whom I had left behind in Switzerland for several months.

However, I did not worry too much about them because they were living with a good Swiss family. That family was under the headship of M. Perrnaud, working as an insurance agent in the city of Neuchatel. He was a conscientious and honest man and was known as such in that city. His wife, who is still alive, was also a lady of integrity. I would send my childrens' living expenses in whatever way possible to Switzerland and I did not see them for five years.



## PUBLIC EMPLOYMENT AFTER EDUCATION

I had decided that after my graduation I would continue to spend part of my life on study and research. There were certain legal fields which I had covered at an elementary level only. I wanted to complete them by private study in Iran. After my arrival in Tehran, the late Dr Valiullah Khan Nasr, the director of the School of Political Science, came to visit me. After we met, he invited me to teach in that School. This invitation defined my research area and was a matter of great satisfaction to me. There had been a time when I had longed to join that School as a student but my circumstances had not permitted me to do so. Now the director of the same School was coming to my home inviting me to take a position as a lecturer.

In order to undertake this task I took stock of the various books which I had sent to Iran during my period of education abroad. I prepared a small library essential for the preparation of my lectures. The academic session at the school would start sometime in October, so I had only 50 days to prepare myself for the lectures. Because of this time scale, I left my family with my mother in Shimiran which at the time was just a suburb to the north of Tehran and stayed in town on my own. Although it was hot in town its advantage was that I could work day and night undisturbed. I spent all my time that summer working round the clock, apart from a few hours which I had allocated for resting. This I did to prepare my lectures for the coming academic year.

The first day when I went to the School, the director saw my briefcase.

He asked: what have you got inside your briefcase that makes it so bulky? I said that it contained the lecture notes that I had prepared for the subjects which I was to cover throughout the academic year. He expressed surprise on hearing that I had managed to do so much work during that short period. Not only had I consulted the European law textbooks which I had in my private library but I had also managed to write some commentaries on the newly drafted Provisional Code of Civil Procedures. My notes

covered, all in all, more than 1,000 sheets of paper. I incorporated part of these notes into one of my books which was later published under the title of Procedures in Civil Courts.

My teaching load at the School of Political Science was limited to two hours per week. I was thinking, therefore, of choosing another subject for my own private study, when the news came that Turkey had repealed the system of consular jurisdiction known as capitulation. This foreign term was unknown to our people and therefore they were interested to find out what the capitulation meant and why Turkey had repealed it.

In Turkey, the legal regime of consular jurisdiction or the capitulation was based on a number of international treaties, signed between the Ottoman Empire and the European powers. Although Iran had not concluded such a treaty with any country, nevertheless in practice the capitulation was practiced and enforced in Iran.<sup>5</sup> I began to spend some time on the international treaties which had been concluded between Turkey and the European powers. In the hope that Iran too would proceed to repeal this system of consular jurisdiction I wrote a treatise under the title of Kapitulation (Capitulation) which was later published.<sup>6</sup>

Soon after the publication of this treatise, Ardashir-Ji, who was the Indian Zoroastrians' representative in Iran, came to visit me, along with a number of merchants. He said that there was no book on company law in Iran. It would be a good idea, he suggested, if I also wrote a treatise on this. So, I spent some time on that topic and wrote a book, drawing on various statutes which were then in force in European countries. I published that study under the title of Joint Stock Companies in Europe.

To conclude, I spent all my time on study and research and I very much enjoyed it. One day the late Haj Mirza Yahya Dawlat-Abadi came to visit me. He had previously seen me in Switzerland where we had discussed many issues of mutual interest. It was in connection with those past conversations that Dawlat-Abadi proceeded to speak with me. It was concluded that if a number of us who had been educated abroad were to form a society, we as a group could render a valuable service to the nation. We



eventually took up that idea and formed a society of European-educated friends with a view to publishing a journal called The Scientific Journal. In its first issue we were to publish any article we wished, according to our own taste and reflecting our own field of knowledge and expertise. The membership of the society was composed of the following: Mirza Yahya Dawlat-Abadi; Firuz Nusrat al-Dawleh; Ghaffari Zuka al-Dawleh; Mohammad Ali Nizam-Mafi; Salar Mu'azzam (now Senator Nizam al-Saltaneh); Musa Shaibani; Zuka al-Saltaneh and myself.

It was my intention to write an article in the first issue of our society's journal about the Swiss registration system of immovable properties which I had studied as part of my course work in Neuchatel University. This was one of the best registration systems in the world, bettered only by that of Germany. However, because the establishment of a similar registration system in Iran was not practical in those days, I did not write that article. Instead, I chose another legal topic, namely the statute of limitation. In those days anyone, relying on either false or authentic documentation, could make a claim to the title of a property which had been in the possession of another person for a century. Similarly one could easily instigate litigation against other people for what had happened in the dim and distant past. The existing courts of law accepted all such claims, regardless of the considerable lapse of time between when the cause of action had arisen and when it was being sued for. So I decided to write an article on 'time limitation', a concept which was accepted in all countries apart from Iran. To introduce this legal reform in Iranian jurisdiction we did not need any institutional preparations. All that was needed was simply a piece of legislation approved by the Majlis.

After the publication of my article on this topic, a number of ulama got to know me and we started to visit each other. Each and every one of them criticised my article in one way or another as I had made a case for the adoption of this notion of statute of limitation in Iran. In certain cases their comments and observations were more than a simple objection or scholarly criticism. Some of the ulama considered any suggestion of time limitation to be entirely con-

trary to Islamic law. This experience made me despair. It did not take long before the foundation of our society of European-educated friends was shaken. The group soon disintegrated and our journal too stopped publication. There had been a common criterion for the establishment of our society, that being the fact that all members had been educated abroad. However, this common background was not sufficient in itself to sustain us as a group and ensure our society's continuation. In short, there was no common interest with which to keep the society going. I was perturbed that, after all the education I had received, I was not able to express my opinions about a single legal principle, and I was being subjected to misplaced and unjustified criticism. I wondered how on earth I could use my knowledge to serve my country.

Then came another disappointing episode. The credentials of one of the Majlis candidates, ostensibly having a majority in the ballot box, was the subject of investigation. His case had been referred to a Majlis committee entrusted to inquire into the allegation that the Majlis candidate in question had bribed people to vote for him. A well-placed person had been invited by the Majlis committee to give testimony on that matter. He had told the committee that the candidate who was being investigated had given him a list of twelve parliamentary candidates for Tehran. That list, unbeknown to me, included Dr Mussadiq's name as well. So automatically I became the subject of investigation. This was utter rubbish. I had not been in Iran for several years and I had not seen the person who had given that list to the man in question. It was obvious that some vindictive and malicious person had wanted to damage my reputation by putting my name along with a person who was accused of rigging the elections.

This episode made me so unhappy and sad that I contracted fever. My mother came to visit me and asked me why I was feeling so miserable. After she heard what I had to say, she said she wished that I had studied medicine instead of law in Europe:

Don't you know that anyone who has read law and enters politics must be ready for all types of slander and insult and prepared to suffer any unpleasant experience. As I know that you men well, I tell you

that the weight of individuals in society corresponds to the difficulties that they are prepared to undertake for the sake of people.

These statements, particularly coming from my mother, who both loved dearly and wanted the good of society, were very effective. I accepted them as my life plan. After that the more insults that were hurled at me, the more prepared I was to serve my country.



Ali Naghi Amin speaking to a high - powered political audience  
From right: Amir Alavi (grandson of Sabzavari and Behbehani), Ziaulhaq Ghafoori (a noble clergy), General Gholam Reza Azhari (the chief of staff and later the Prime Minister of Iran)

## MY MEMBERSHIP OF THE ETIDAL<sup>7</sup> (MODERATION) PARTY

The Third Majlis voted in favour of the premiership of the late Hasan Pirmiya, Mushir al-Dawleh, who was a Majlis deputy for Tehran. A number of the newly-elected Majlis deputies for Tehran had been holding government office prior to the general elections and did not wish to resign their offices.<sup>8</sup> But there were other deputies such as Pirmiya himself who resigned their membership of the Majlis in order to join the cabinet. For the constituencies of these Tehran deputies, there had to be by-elections. The central electoral committee of the Tehran province appointed me to the membership of one of Tehran's district electoral committees which was based in the Saraj al-Mulk Mosque, situated in Barg (now Amir Kabir) Avenue in central Tehran.

On that committee, I sat along with the late Allameh Dekhuda<sup>9</sup> whom I had known by name from the beginning of the Constitutional Revolution. However, it was only after our com-

mon membership of this committee that a genuine friendship and fellowship was formed between us. One day

when we were about to leave the mosque together, Dekhuda asked me to go with him to a meeting of the Moderation Party. We went to the house of Haj Mirza Ali Mohammad Dawlat-Abadi which was located on the opposite side of the mosque. There, Dekhuda asked me to accept membership of the Moderation Party. I remained silent, so they brought a copy of the Qur'an and I took an oath to serve that party.

I was frightened about taking the oath because of something that had happened in our family. My father had had a dispute over a property in Qazvin with his cousin Mirza Yusif Khan Mustawfi al-Mamalik, Nasir al-Din Shah's grand vazir. My father had asked his opponent to take an oath before the late Haj Shaikh Hadi Najm-Abadi.<sup>10</sup> The grand vazir took the oath, won the case, and died soon after. His sudden death created such fear in society that very few people dared to take an oath.

I knew precious little about the Moderation Party. This party had been established during the second legislative session when I had been abroad. I only knew that two parties had been established in our country. One was this party and the other was



Ali Naghi Amin speaking to an invited audience in 1955

the Democratic Party.<sup>11</sup> After I returned to Tehran I also learned that the Moderation Party had two wings: one was led by the late Sayyed Hasan Mudarris<sup>12</sup> and Haj Aqa Shirazi, the other wing was led by Haj Mirza Ali Mohammad Dawlat-Abadi, and Mirza Mohammad Sadiq Tabataba'i, the present senator. I knew very little of the personalities forming these two wings and what their real objectives were.<sup>13</sup>

I had kept silent in the Moderation Party meeting because I trusted Dekhuda and did not wish to refuse his invitation. In Islamic law, taking an oath is permissible as a means to settle a legal dispute. When a claimant cannot bring sufficient evidence to prove his case, the Islamic judge, in order to settle the dispute, will request the defendant to take an oath confirming that he has no case to answer. This oath-taking tradition is totally different from the modern oath of allegiance which we have imitated from western countries.<sup>14</sup> Nowadays, people take oaths in order to give a guarantee of their future conduct but usually do not fulfil what they have undertaken. This practice has resulted in treating oath-taking lightly.

As such, an institution which was a very pow-

erful weapon for the settlement of disputes lost its effectiveness. The best example of this situation was the disregard of the oath taken by the representatives of the Fifth Majlis. Under oath they had pledged that, in accordance with principle 11 of the constitution, they 'would never act against the monarchy and the rights of the people'. It is recorded that they did not fulfil this obligation taken under oath: they deposed the shah unconstitutionaly.<sup>15</sup> The shah may be removed only by a constituent assembly specifically convened for constitutional changes. He was removed by the Majlis which is an ordinary legislative organ, not a constitutional assembly. In this way the representatives of the Fifth Majlis acted against the provisions of the constitution. They did not care about their oath of allegiance, or the constitutional niceties. They wanted to preserve their own seats and were prepared to achieve this by breaching their duty and acting against the constitution. That is why, without exception, they all entered the next parliamentary session in the Sixth Majlis.<sup>16</sup> For this reason nobody nowadays minds taking an oath or fears God's punishment if he breaches his oath. Those who believe in keeping their word would not fail in



their duty whether they had taken an oath or not.

However, as soon as I left Dawlat-Abadi's house I considered myself to be a loyal member of the Moderation Party. On the basis of this obligation of party loyalty, I tried to unite the party which was then divided into two main factions. I arranged for a number of meetings in my own house between the leaders of the different wings of the party so that they could work together by consensus. However, my efforts at bridging the gap were not successful. Later, some of the effective and important members of the Moderation Party, including Dekhuda, resigned their membership. One day the board of directors of the Parvarish Charitable Company, composed of a number of cultural leaders and enthusiasts, was convened in the Dar al-Funun building.<sup>17</sup> The late Hasan Pirniya, Mushir al-Dawleh, was the chairman of that charity organisation and Dekhuda and I were both members. When we met, Dekhuda complained privately during the conversation that he and his friends did not expect me to continue my membership of the Moderation Party after they had resigned. This was illogical: their resignation was no good reason for me to resign as well. I told him that, as a founding member, he knew very well about the party. If that party was no good, he should not have invited me to join it in the first place. In response he said that he had done so to show me what he and his friends had endured in that frying pan. I told him: 'I joined the party in ignorance, now let me resign after I know something about it'.

Soon after this conversation, a number of political leaders and Majlis deputies went into exile. This included a number of the leading figures of both wings of the Moderation Party. They did not return to Iran until the First World War ended. As a result of their departure the Moderation Party disintegrated.

## FOOT NOTES

1. Tr. Dr Gholam-Husain Musaddiq is a famous gynaecologist / obstetrician. For many years he was in charge of Najmiyyah Hospital (founded by Najm al-Saltaneh, Dr Mohammad Musaddiq's mother).
2. Tr. Renamed after the 1979 Revolution as Dr Shari'ati Street.
3. Tr. Renamed after the 1979 Revolution as Inqilab (Revolution) Avenue.

4. Tr. The bibliographical details of this work, incorporating Dr Musaddiq's thesis, are thus: *Le Testament en Droit Musulman (Secte Chyite)*, Precede d'une Introduction sur les Sources du Droit Musulman, Paris, 1914, 230 pp.
5. Tr. This statement is not quite accurate. The Peace Treaty of Turkomanchai (signed on 10 February, 1828), forced Iran to accept the extra-territorial jurisdiction of Russian consulates over all Russian subjects residing in Iran. Following that, all other European powers based their relations with Iran on the basis of the treaty provisions embodied in the Turkomanchai treaty. For full details see S.H. Amin, *Middle East Legal Systems*, Glasgow, 1985, pp. 56-58.
6. Tr. Kapitulation was privately published in 1332 AH lunar. It was commercially reprinted and published in 1358 AH solar/1979 AD in Afshar (ed.), *Musaddiq va Masa'il-i Huquq va Siyasat*, Tehran: Zamineh, 1979.
7. Tr. The correct meaning of l'tidal is moderation, although its root (ad) means justice. Some have called this party the Justice Party, but this is not correct since the l'tidal party was rival to the Democratic party which was considered to be radical.
8. Under Iranian law, members of parliament may not hold government office. Thus any elected representative who joins the executive must resign from the Majlis.
9. Tr. Ali Akbar Dekhuda (1879-1957), a leading man of learning and a democratic political personality. He was active in the Constitutional Revolution and wrote a satirical column in the popular *Sur Israfil* newspaper. His main scholarly work is his *lughat-nameh* which is a comprehensive encyclopaedia of Persian and Islamic culture.
10. Tr. A liberal non-conformist mujtahid in Tehran who mixed freely with Muslims and non-Muslims in his humble residence. He was much loved and respected by the intellectuals and reformists of his time.
11. Tr. The Democratic Party was a radical party, and was bitterly opposed to the ('tidal (Moderation) Party.
12. Tr. Sayyed Hasan Mudarris, a famous mujtahid and Maps deputy from Isfahan. He was the most prominent opponent of Reza Khan's rise to power. Mudarris was sent into internal exile and put to death there on the orders of the Reza Shah.
13. Real objective because what they had put in their manifesto was not practical.
14. Tr. The author's view that the oath of allegiance was a simple imitation of western culture is not quite right. Taking an oath of allegiance, of loyalty and of safe conduct is a centuries-old tradition in Islamic history. In early Islam bai'a for a new caliph was the exact equivalent of taking an oath of allegiance in the West.
15. Tr. Sultan Ahmad Shah, the last of the Qajar dynasty, who was deposed by the Majlis to make way for Reza Khan to succeed him.
16. Tr. As the elections had been rigged.
17. Tr. Dar al-Funun (The Polytechnic), was the first secular college of further education established in Iran. It was founded by Amir Kabir, the reformist grand vazir to Nasir al-Din Shah. After the establishment of the University of Tehran and its subsequent expansion, Dar al-Funun was relegated to a state secondary school while a new Polytechnic was established in Tehran in the State higher education sector.