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THE SUPREME COURT OF IRAN

DR. E. BURKE INLOW*

The current debate in Canada over the structure, jurisdiction, and general role of the Supreme Court invites comparison.

Little is known of the Supreme Court of Iran. The opportunities to study it are limited and little or nothing has appeared in translation which relates to its nature and function. Nevertheless, it is a court which has existed for some forty years. Its reputation is high in Iran and the Middle East. It is, even within its own country, a court deserving much greater scholarly consideration than it has received.

The Iranian Constitution, dated August 5, 1906 makes no mention of, or provision for, a Supreme Court. Unlike the B.N.A. Act, which does at least provide for the "Constitution, Maintenance, and Organization of a General Court of Appeals for Canada" (101), the *Constitutional Law of Iran* — as it is called — is concerned almost exclusively with the organization, authority, rights and duties of the National Consultative Assembly and of the Senate. It should be remembered, of course, that this law was passed in a time of great political ferment and the primary concern of the reformers was to ensure some kind of parliamentary check upon the absolutism of the Shah. Nevertheless, the importance of the rule of law was understood in Iran. In December of 1904, some two thousand leading merchants and mullas had publicly demanded a "House of Justice" as a substitute for the throne of the King, which, in a judicial sense, had traditionally been the last refuge of the people in distress. This request was transmitted to the Shah. It was only a first step, but as this was an important group and not one easily ignored, it did speak to a principle of sorts.

The principle saw the light of day three years later. In the *Supplementary Constitutional Law* of October 8, 1907, attention was finally given by the law-makers to judicial matters. (There were in existence at this time, of course, ecclesiastical courts which dispensed the law of Islam). Three articles of the Supplementary Law specifically mention a Supreme Court.

Article 69 states:

The National Consultative Assembly or the Senate shall denounce to the Supreme Court, offenses committed by ministers. The Supreme Court shall conduct a trial in the presence of all its members except when the charge and the suit do not refer to questions relating to Government departments entrusted to them personally, but concern the Minister as a private person.

A supplementary note is added to Article 69:

So long as the Supreme Court has not been organized, it shall be replaced by a body elected from the members of the two Chambers in equal numbers.

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Article 75 states:

There shall be only one Supreme Court for temporal cases in the Capital (*sic*): it shall not deal with any cases of first instance, except suits versus Ministers.

Article 88 states:

Arbitration in cases of disputes as to the limits of the administration and functions of the State shall be referred to the Supreme Court in accordance with the provisions of law.

The Supreme Court was finally organized in 1931. The circumstances of its organization have not been made public. If there was debate, the debates are not available. What is known is the Parliamentary Committee of Judicial Laws moved a large body of legislation through the Consultative Assembly *en bloc* as an interpretation of the *Supplementary Constitutional Law*. There actually seems to have been little or no opposition.

Once the Supreme Court was established, its jurisdictional lines appear to have run more clearly than did those of the Supreme Court of Canada. There were no plaguing problems of federalism present in Iran, of course, of the dimensions to be found in Canada. Nor was there the distant shadow of a Privy Council to be considered. On the other hand, in both countries, there were major problems to be faced. Neither Court held or expected to exercise any power of judicial review as that concept is understood in the United States. Neither was there a John Marshall present in either country. But in Iran, there was no appeal outside the country. The great problems of State were being fought out in the political arena — by the Shah, or in the Majlis, or in public contention among religious and secular groups. The Iranian Court was never in the eye of the storm. But its role was well-defined — even if in non-political terms. Consequently, it did have the opportunity to develop and to function as a Supreme Court in fact with all the power and prestige that term implies. Its future was never in doubt from the beginning. This alone gave it the opportunity to define its place in the life of the nation.

The Supreme Court of Iran presently functions under the authority set forth in the "Law relating to the organization of the Judicial Body" of the Code as enacted in the year, 1956. This law has not been translated into English. The Code itself, of course, (parts of which have been translated into French) runs to several volumes, but for the convenient use of lawyers, professors, and other interested persons, the most important sections have been compiled into a single volume presently edited by one man — a private lawyer — much in the same manner as the early United States Supreme Court Reports were compiled and edited by a single person — Wheaton, Cranch, etc. This single volume, which likewise has not been translated, is considered authoritative and is the basis for much of the materials contained below.

Approximately 25 Articles of the Code relate to the Supreme Court. Some 7 Articles are concerned with the censure of errant judges, including those on the Supreme Court.

The Supreme Court of Iran, as presently constituted, gives much the appearance of the committee system of the Canadian Supreme Court writ large. It consists of eight branches, each with four judges assigned but with

only three sitting in any given case. The odd number presumably is a precaution against deadlock. Each of the judges, in turn, prepares the decision of the Court as the cases come before it.

The branches — this is the terminology, not committees of the Court — are divided according to the work load and to the skills of the judges as adapted to the needs of the Court. In other words, some branches sit primarily to interpret the criminal code, some, the civil code. There is a court of felony (a branch), etc. — all depending on the docket and business pending. A judge, however, once appointed to the Supreme Court is expected to serve where he is assigned and would not think of himself as having been appointed primarily for his competence in the fields of torts, contracts, etc. It should be noted that a personnel breakdown of the Court would show no sectional or regional representation or primary area of judicial responsibility in the sense that the early circuit concept prevailed in the assignment of judges on the early United States Supreme Court or as the present division as between Quebec and English Canada exists in the membership selection of the Supreme Court of Canada. This is true despite the fact that there are, in Iran, strong historical regional interests to say nothing of the presence of the Tribes, not now as powerful as they once were, but still a political force to be reckoned with.

The judges of the eight branches as well as the presiding judge of each branch are appointed by the Minister of Justice. His office will be discussed below but it should be noted here that he is a political appointee of the Shah and an important member of the Shah's cabinet. The Chief Justice, known in Iran as the President of the Supreme Court, is nominated by the Minister of Justice to the Shah and is appointed by the latter on executive order. This appointment requires no approval of the parliamentary body.

In case of heavy dockets, or for other reasons deemed sufficient by the Minister of Justice, he is empowered to increase the number of branches up to four additional. The Court can also have alternate judges — also appointed by the Minister — up to half the total number of judges.

The President of the Supreme Court, who functions rather as the senior judge than as the Chief Justice (*i.e.* the administrative aspects of the Court's work are largely the responsibility of the Attorney-General — see below) must be at the time of his appointment or have previously been president of one of the branches of the Supreme Court, or an ex-Minister of Justice who has had a judicial career on the Supreme Court. He, along with other members of the Court are not permitted to hold any other public office nor to act publicly in a non-judicial role. In other words, judges would not sit on the equivalent of the Canadian Royal Commissions or act as is sometimes done in the United States, on a commission such as the Warren Commission. They are not active politically nor after they are elevated to the Bench, do they seem to have any particular connection with the law faculties of Iran. Once a year, on the anniversary of the separation of the Bar from the Ministry of Justice, the President of the Supreme Court addresses the Bar. Other than that, members of the Supreme Court do not give public speeches, get their pictures in the paper (sometimes the wives do, but only in her own right for something she has done), or, apparently even get honorary University degrees. They are not

required to divest themselves of any private holdings upon elevation to the Bench, but unlike their counterparts in North America, they need not even submit this to public review. On the other hand, one does not hear of conflict of interest as being a matter of any particular concern. There is no legal provision made for its eventuality. In conversation, I have been informed that as a matter of course, no judge would sit in a case involving any possible conflict of interest. There seems to be no question about it and one does not hear of the involvement of judges in heavy financial transactions as has been known to take place among high placed judges in North America.

Supreme Court judges are appointed for life. The retirement age is 70 (Lower court judges retire at 75.).

The Iranian judiciary considers itself — and is considered by the University faculties — as a professional Bench in the English sense of the word. All judges who sit on the Supreme Court have had previous judicial experience. However, judges are appointed for life to a particular court and not to the judiciary generally as sometimes happens on the Continent. They may resign to move up but once appointed cannot be removed unless a judgment is passed against them by a disciplinary or Criminal Court. Judges must be Muslim, either Sh'ia or Sunni. These two branches of Islam do entertain differences in the matter of general legal theory but as the Supreme Court is a secular court, these differences do not become of concern. Certainly there is no thought of balancing the Court in this way. Nevertheless it is interesting that in a country with a very sizeable Christian minority (mostly Armenian), and old and traditional Jewish and Zoroastrian minorities, these groups would not — as they did in the United States where for years the Supreme Court considered itself to be a Christian court — make an effort to alter this requirement. There are at present some female probationary judges who hopefully will someday sit on the Bench. However, as of this writing, all judges in Iran are men.

There is a salary schedule which operates more in the manner of the Civil Services than by straight salary grant. Annual increments, a promotional system, even demerits are a part of the apparatus. Every judge's case is reviewed annually by the disciplinary court and it is this court which determines the salary adjustments. The lowest grade on the Supreme Court is grade 8. The highest is 11. The salary of the former is 3,500-4,000 toumens per month or \$460-\$540 U.S. This is roughly equivalent to a professor's salary. The highest grade pays some 5,000 toumens per month or \$670 U.S. The President of the Supreme Court has an unnamed allowance in addition to his salary.

As indicated above, both civil and criminal cases come on appeal to the Supreme Court. Civil cases involving over 10,000 rials (\$133 U.S.) can be appealed to the Court. Criminal cases in which the sentence is for more than two months may appeal. The reason for this provision is that cases with sentences under two months may have the sentence commuted to a fine.

As in Canada, no official statistics on the work of the Supreme Court of Iran have ever been systematically compiled so that it is almost impossible

to give accurate information on the breakdown of cases, categories of rulings, decisions, appeals, etc.

The Disciplinary Code — as mentioned above this consists of seven articles in the Code proper — is an important part of the judiciary apparatus and applies to Supreme Court judges as well as lower court judges and lawyers. By comparison with the American agony over a Code of Ethics applicable to the Supreme Court, the Iranian code seems simple, direct, to the point — and completely unacceptable to the western tradition. The code provides for two disciplinary courts, one for judges and one for lawyers. They are separate. There are 8 degrees of punishment under the code for judges. They are:

1. Reprimand without file.
2. Reprimand for file.
3. Reduction of salary up to one-third of the judge's salary from one month to six months.
4. Suspension from the bench from three months to one year.
5. Demotion to a lower rating while remaining on the court.
6. Dismissal from the court.
7. Dismissal which prohibits any service in the Ministry of Justice.
8. Dismissal and prohibition from any public service.

Disbarment does not automatically take place at the same time but if a judge were to present his credentials to the Bar after dismissal with the request that he be admitted to practice law, I am told that he would be refused.

Offenses which invite disciplinary action are — at the reprimand level — excessive absenteeism or unwillingness to carry one's judicial load. The middle level suspensions and demotions are of drinking alcoholic beverages (prohibited to Muslims) or smoking opium in public or other unseemly behavior. At the dismissal level, one is talking about serious public scandal, although this would seem to be a somewhat relative matter by comparison with what has been known to happen on occasion to high court judges in North America. In particular, I was told of a case several years ago involving a judge who was having an affair with a woman but even though this was her wish, he would not marry her. The case finally went to the prosecutor (in the Attorney-General's office) who collected evidence and presented it to the Disciplinary Court asking that the judge's immunity be removed in order that he might be brought to trial. The court agreed and provision was subsequently made for a civil trial to be held in the city of the lady's residence. Before the matter came to trial, however, the lady changed her mind (there seems to be no doubt as to the reason for her action) and declared her satisfaction and requested that the case be dropped. Nevertheless, when the judge requested reinstatement to the court, he was tried by the disciplinary court that had deprived him of his immunity, found guilty, and dismissed.

On a more serious level, under the Musaddiq regime, certain judges were known to be in support of the Prime Minister's position. They were removed from the Bench on the Shah's return to Iran. Whether this was by executive order — for which there is no legal provision — or by action of a disciplinary court acting under executive order is not clear and a subject not easily discussed. The case was unusual, however, and has never been repeated. For

those remembering those bitter days it is not surprising that even the judiciary could hardly escape the scalding of major political stress.

The disciplinary court which investigates cases involving Supreme Court judges consists of a president and a qualified number of associate members. They are appointed by the Minister of Justice from the ranks of the Supreme Court and from lesser court judges with the following qualifications:

1. They must hold a degree from an accredited school of law.
2. Their grade shall be not less than 5.
3. They shall have at least twenty years judicial service.
4. They shall not have been convicted at any time of any offense involving a penalty of over the third degree of the disciplinary code.
5. Those who have attained grade 6 are exempted from the first condition.

The question was to whether or not a Supreme Court "makes" law is one frequently asked. Presumably, the Supreme Court of Iran does not. There is no common law tradition of judge made law as Iran operates under a Code. There is no accepted principle of judicial review or of any review of executive power. The procedures of the Court are set by law. Both the processing of the petition and the procedure of the Court itself are provided in the Code. Nevertheless there are two occasions where it can be said that the Supreme Court of Iran engages in rule making — which is a form of making law. Interestingly enough it is in regard to the substantive aspects of the law and not the procedural that they are to be found. They are (and what follows is an accurate rendition of the precise wording of the Code):

1. If any branch of the Supreme Court takes a view contrary to the opinion taken by another branch of the Supreme Court on a comparable case, then upon the request of the Minister of Justice or the President of the Supreme Court or the Attorney-General, the General Assembly of the Supreme Court shall convene (this refers to all branches sitting jointly). The Assembly, to rule, must be composed of at least three-fourths of all the associate judges and three-fourths of presiding judges of each branch sitting jointly. The subject at stake shall be investigated and an opinion shall be adopted. The opinion is the opinion of the majority. It shall be adhered to by the branches of the Supreme Court and by all lower courts dealing with similar cases. It shall not be reversed except by the General Assembly itself sitting subsequent to the ruling or by law.
2. If the lower courts irrespective of being (*i.e.* whether they are dealing with criminal or civil cases) take different positions on a particular law, the Attorney General is bound to report the case to the General Assembly of the Supreme Court and the Assembly shall be convened. The opinion of the General Assembly shall not affect the judgments which have already reached the final stage (*i.e.* a petitioner is given 10 days to appeal from the time a decision is reached by the lower court. If it is within this period it has reached the final stage), but shall be adhered to by the lower courts in all other cases of similar instance.

It should be noted that (1) applies to the Supreme Court only except insofar as the lower courts are bound by the ruling. Unlike the tradition commonly obtaining in the West, lower courts in Iran are not bound by the decisions of the Supreme Court except when the Supreme Court sits in General Assembly. It should further be noted that (2) applies only to the lower courts and not to the Supreme Court.

The point should be emphasized here that although these actions of the General Assembly represent additions to the substantive law of Iran, there is the limitation that the Assembly must be convened by a different authority

than itself and its decision can be changed by law (*i.e.* act of the legislative body). Finally, it should be emphasized that in general the two exceptions cited above as additions to rule-making in Iran are the only cases actually binding on the lower courts.

Two further aspects of the Supreme Court need be considered. The first is its association with the Minister of Justice and with the Attorney-General. The second involves the matter of its own membership.

The office of Minister of Justice predated both the creation of the Supreme Court and the adoption of the Code. The use of Cabinet government is a concept foreign to Islamic ideology. Nevertheless, under the Safavid dynasty, a Council of Ministers came into effect. The Ministers did not make policy. Membership was unstable and there was an overlapping of function. But it was more than merely advisory. According to the *Tadhkirat al Mulk*, an authoritative manual on Safavid administration written during the reign of that dynasty, this body was officially called the "Council of Amirs". They were also known as "Pillars of State". One of them, the Divan-Begi, directed the interrogation of those guilty of capital crimes (murder, rape, blinding, and breaking of teeth), controlled the tribunals of legal authority, and tried cases of oppression and transgression and civil actions in cases involving more than five toumens (67¢).

Under the Qajar dynasty, this formalized Council was maintained and the functions of government—largely under pressure from the West—increased in rationalization. At the middle of the nineteenth century, a reasonably well established eleven man cabinet included a Minister of Justice.

The Constitution of 1906 did not—as most constitutions do not—provide for a cabinet or define cabinet status, largely because of the struggle for power then ensuing between the supporters of the Shah who favoured strong executive control and the Majlis (Assembly) which sought to check the strength of this control. Nevertheless a cabinet did exist during the period and continued on down to the final overthrow of the Qajar Shahs and the establishment of the present Pahlavi dynasty under Shah Reza.

A Ministry of Justice is therefore today in Iran, a ministry with considerable historical prestige. In fact, when the present Ministry of Justice was established under the present Code, a Minister of Justice was appointed to set up the Ministry—not a committee of the Majlis. The Code provided that all judges should be Iranian nationals and qualified lawyers. At the time, there were not sufficient law school graduates to qualify with the result that the Minister of Justice—who held the appointive power for Supreme Court judges—was obliged to appoint some judges with a background of ecclesiastical studies and some from the Civil Service who had shown ability in legal matters. Most of these first appointees have retired, but a few still sit on the Bench. Today, of course all appointed judges hold law degrees, most from the University of Tehran, a few from universities in France and Switzerland, a few from the United States and fewer still from Great Britain, although one degree holder from the University of London did rise from the Supreme Court to the post of Undersecretary of Justice. It should be noted that Supreme Court judges are normally selected for appointment by the Minister of Justice from

within. Although there are a very few exceptions, the normal procedure of appointment is from the court of first instance, to the Court of Appeals, to the Supreme Court.

The Minister of Justice emerges, then, as a very powerful personage. As pointed out above, he is a political appointee of the Shah and sits in the Cabinet, but he is also a man of considerable standing in his own right. One recent Minister of Justice, who held a law degree from a Swiss university had been a law school professor. Another, a graduate of the University of Paris, was likewise a professor. One was a graduate of the University of Tehran with a judicial career. The present Minister once sat on the Supreme Court and from there went through the offices of the Ministry. He also is a University of Tehran graduate.

Below the Minister of Justice, in the hierarchy of the Judiciary, sits the Attorney-General and the President of the Supreme Court. They are considered co-equal. They have offices next to one another and seldom grant interviews except when together. The President of the Supreme Court is considered to hold the judicial portfolio and the Attorney-General, the administrative. For that reason, the line of communication is from the Attorney-General up to the Minister and not from the President up. The latter, in fact, because his position is considered to be exclusively judicial, has very little personal contact with the Minister of Justice.

Originally the Attorney-General was intended to be the chief legal authority. Article 83 of the *Supplementary Law* states: The King appoints the Attorney-General with the approval of the religious judge. This statement is a clear indication that he and not the Minister of Justice was originally regarded to be the higher authority — for no such approval by the powerful religious element was required for the appointment of the Minister. What happened has not been told, but one can speculate that during the period of Reza Shah's reign when contention with the majtahids became exacerbated, rather than change the constitutional requirement, the easier course, and the simpler, was to shift the power. Whether this was the reason for the change or not, the shift did take place with the result that today the Attorney-General can even be removed by the Minister of Justice (usually he is asked to resign). The present Attorney-General, for example, at one time held the office and resigned it and then was reappointed by the present Minister.

The functions of the Attorney-General can be comprehended under two headings:

1. He supervises, directs, and gives advice to the public prosecutors of the Courts of Appeal and to the public prosecutors of the courts of the first instance. His function here is administrative. There are three echelons of prosecutors — the court of first instance, for example, has several of them working under the direction of the public prosecutor of appeals.
2. He has several associates who work under his direction and control with the branches of the Supreme Court. As a general rule, when the General Assembly of the Supreme Court is convened, the Attorney General himself appears before the General Assembly to carry the prosecution.

A final question that might well be asked regarding the position of the judiciary in general and the Supreme Court in particular relates to the peculiar

wording of Article 27 of the *Supplementary Constitutional Law* of 1907. It states that "the powers of the State are divided into three parts" and then goes on in sub-sections to list them as: (1) the legislative power, (2) the judicial power, and (3) the executive power. This is commonly interpreted in the West as representing the classic statement of the separation of powers or the so-called "check and balance" system derived from Montesquieu and much favoured in the United States as a system of power. Such a concept, as applied to Iran, would be quite erroneous. As stated above, the Supreme Court never interprets the Constitution or the Supplementary Laws. It never addresses itself to an executive order or rules contrary to one. It is bound by the laws of the legislative power. In matters of State, it holds no jurisdiction in crimes committed against the State — and these crimes can be broadly defined. For example, it was a military tribunal which tried General Bakhtiar *in absentia* and condemned him to death. He was formerly Head of Security and is now in Iraq. At the present writing, when the Iranian government is making a major effort to stamp out opium and narcotics smuggling, several smugglers have been sentenced to death by military tribunals and executed. To the western mind, there is considerable disparity between the two cases as it involves matters of State. On the other hand, the Shah requested that Dr. Mussadiq be tried by the Supreme Court instead of by military tribunal, which normally tries offenses against the State.

It is not within the province of this paper to write on the military tribunals, the provision for which and the powers at its command being unclear, but rather at this final juncture to define the meaning of the constitutional statement that "the three above-mentioned powers shall always remain separate and distinct from one another." (Art. 28). It seems clear that it is not intended to be a political statement so much as an administrative arrangement. The Supreme Court has its work defined and this is its task. It does this well, by general agreement. If it does not move to the periphery of political decisions, as so often happens in Anglo-American courts, it is not thereby disqualified as being a separate and distinct branch of government. The Supreme Court of the United States leans hard on the traditions of political primacy. Yet there are those in the United States who would not have it so and the bitterness displayed against the Warren court is an example of this. In Canada, where the role of the Supreme Court is yet unclear as it affects political power, the example of the Supreme Court of Iran represents a clear position of what is another alternative to political action.

