



## Constitutionalism and the Concept of Law in Mirza Naini's Political Thought

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### Abstract:

The concept of "law" should be considered as the epicenter of constitutionalism in Iran. Therefore, basic conflicts emerged between Sharia and the modern law, and divided clergymen into two spectrums, Constitutionalists and Traditionalist (Sharia), which the prominent representative of constitutionalist spectrum was Mirza Mohammad Hossein Naini. Based on his ideas and Ijtihad's (exegesis of divine law), for resolving the conflicts about setting Constitutional Government, we found that, Naini considered Constitutional Government as the best political system in the age of Imam's absence (occultation), based on nation's will through the parliament, and by dividing the Sharia law in two groups of "Mansoos" (based on Quran and Hadith) and "Gheyre Mansoos" (not based on Quran and Hadith), put the concept of law in the realm of Gheyre Mansoos laws which could be passed and enforced by nation's representatives in parliament. In this article with the analytical method and by citation of historical written texts, this issue is clarified.

**Keywords:** Sharia, Constitutionalism, Law, Ijtihad, Mirza Naini

### 1. Introduction

Before the arrival of modern and secular thoughts to Iran, most of religions scholars (Ulama) engaged in fulfilling religions duties and enjoining the good and forbidding the evil. After entering the new age, Iran encountered complicated issues which could be remembered as confrontation of religious and

secular-modern thoughts before this, in the realm of intellectual systems of Osoulism, Ekhbarism, Shiaezem and Babism, such confrontation has been occurred, from that time most confrontation of religions scholars became external, including irreligion's matters and modernist doctrines like constitutionalism. With the issue of constitutionalism order

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by Mozaffar ad-din shah Qajar as the Persian constitution and then setting laws by modernist constitutionalists, basic conflicts between Sharia and constitutionalism emerged, which finally led to war and bloodshed. Also there were major conflicts between religious scholars about setting the laws and cooperating with constitutionalist which formed two spectrums; constitutionalist and religious constitutionalist.

It could be said that, the prominent point and canonical thought of Iranian constitutionalism was the concept of "law". Based on what said above and with considering the meaning of law from the clergymen and modern constitutionalist perspective of views, religious spectrum with their perception of sharia law, comforted the irreligion's perspective of view. In this confrontation constitutionalist emphasizing religious thought, on one hand tried to resolve the conflicts through Ijtihad and new interpretation of Sharia, on the other hand answer the doubtful question of legitimate constitutional. Mirza Naini (1860 – 1936) was the prominent representative of this group. So we tried with a descriptive-analytical approach to answer the following question: what is the constitutional government and concept of law based on political thoughts of Mirza Naeini?

Research hypothesis is that, Naini considered the constitutional system as the best system in the age of Imam's absence, which was based on nation's will through the parliament and he categorized the concept of law in Gheyre-Mansoos (not based on Quran) Sharia rules which could be passed by members of the parliament.

### 1. Conceptual framework

In this section, we will try propose the definitions of constitutional government, law and

government, from the view point of religious scholars.

#### 1-1 The concept of law

For the concept of law, two definitions could be considered which somehow are rooted in two sources that are as old as human existence: "One is the unchangeable nature of things, and the other is the criteria for organizing human life". These two definitions and interpretations of law in human thought have prominent places. "

The Vedaic word "rta" and Avestan word "asa" goes back to Aryan civilization. The developed form of "rta" could be found in words like movement, harmonic movement, order, cosmic order and moral order. In China, Lao-Tse talked about cosmic order. Its synonym in Indian Buddhism, is the word "dharma". In old Greek language, the word "moira" was synonym to cosmic order (Manouchehri, 2004, p. 74).

It is obvious that the concept of law has a long history in human civilizations and every society had an equivalent for that. But the main discussion about law is its basis and criteria for setting. "Some contemporary traditional thinkers like Leo Strauss believe that the reasoning could not provide the prerequisite and necessary condition for moral and political life and only belief in a supernatural divine existence that rewards and tortures could provide such a condition. So reasoning has destroyed the faith and has paved the way for an equal life. But in religious thinking, the base of law is religious faith and with this regard, putting away the traditional natural rights of thinking led to nihilism. So, according to religious interpretations, the only laws are divine laws (Torkaman, 1983, pp. 57-59).

## 1-2 Constitutionalism

Constitutionalism is a way of governing based on constitution and voting in a parliamentary system and the basic principle of its theoretical frame work is limitation of political power.

The word "constitution" and its Persian equivalent "Qanoon Asasi" is a new concept in Persian, but in European languages constitution has a long history. In European languages this word was taken from medical field and its development in ancient Rome and Greek has a long history. In ancient Rome the word *constitutio republica* has been used as principles of governing the country, although these principles were not written but was a collection of principles which were created and performed traditionally. From the mid 16<sup>th</sup> century, in English and French texts the word constitution has been used in relation to the word *les fundamentalist* which was, the basic principles of monarchy like the regency of the oldest male offspring of the king. In 17<sup>th</sup> century, the word and its basic legal principles and from that time it was in use in constitutionalist theories as a new legal concept (Tabatabaei, 2003, p. 157).

So most of the consisting elements of constitutionalism as a governing system goes back to middle ages or even prior centuries to emergence of absolute monarchies and roughly could be divided in six historical periods:

- 1 –Greek philosophical thoughts and ancient Rome's laws.
- 2 –Thoughts of feudalism era which were guarantees of complicated networks of duties and mutual obligations and was neither absolute nor constitutional but seemed decentralized.
- 3-Consultation movement of 15<sup>th</sup> century Catholic church which was the

outcome of church's schism and presence of three claimants of Pope position, led to creating of a council for choosing the pope, and gradually these flow of events, caused the creation of new attitudes against ruler's cruelties, and the necessity of public insurgences and even them topple down and then the idea of people's government developed, and became joint link between middle ages and new ages.

- 4 –Proposing the constitutional government by French authors and thinkers and emergence of two thinking spectrums, one proponents of the theory of developing rights and private freedoms of individuals, the other ones emphasizing the providence of a political system.
- 5 –Religions and political dispute and tensions in religions reformation era, like the views and ideas of Luther, Calvin, Hognut's thoughts, anti-monarchists and also determinist thoughts of counter-reformation.
- 6 –Complicated disputes of civil war period in England about limited and integrated monarchy (Winsent, 2002, pp. 131-135).

As it's obvious from the history, basically, the idea of constitutionalism was formed in Europe and generally rooted in limiting the absolute power through law and creating order and stability, although evolution of political ideas in Iran and Islam was occurred in a different way.

## 1-3 law and legislation in Islam:

According to Islamic view, those who have the following characteristics can legislate: "first of all someone who legislate should has

knowledge about real righteousness and corruptions of humanity and show us the right path of those righteousness, there for his laws will be the guarantee of human happiness and will provide the real and true righteousness to humanity.

In the next step, the law can pave the path to real benefits. So, someone should be the legislator who knows the main and right paths. Then who is more aware than the Almighty God about the truth of the world and the roots of righteousness and the ability to guide humanity to such righteousness. So God's law should be considered the most complete law. But there is also another condition for law, that's legislator's avoidance of self-interest and exclusive benefits, so he will not destroy the other people's benefits in expense of his benefits. Without any doubts, mankind is not free from his personal and carnal desires and always peruses his benefits and favors, therefore only the divine existence could legislate for benefits of others and finally for human beings, without any intrinsic or carnal desire.

The legislator should be also knowledgeable. When desires of a person are different from desires of a lot of people, the legislator with his knowledge can realize which law is closer to righteousness and justice and could serve the final desires of humankind. That's the condition for legislation (Yousefi, 2008). According to this view, mankind is not able to know about the basic truth and wisdom of creation and human existence, so the legislator should be one who all of his laws should be wise; therefore, this person cannot be anyone except God. (Only God is the superior and the wise) (Quran, Tobeh, Verse. 60).

So, according to divine view, laws and all aspects of legal and political guardianship belongs to God and original guardianship is

related to God, legal guardianship of others is auxiliary and has to be backed by divine guardianship. "According to monotheistic Islamic view, governing and guardianship are divine legal positions. Since the expedient of social duties and inaction of laws requires physical and natural connections with people, but god doesn't work in this way, therefore, some of the human beings should establish government. Anyway, legitimacy of guardianship and government should be allowed by God's permission or originated from divine guardianship." (Saeed Mehr, p. 55 cited in Yousefi. p.19).

Based on the above explanation, from a divine perspective, law's source, basically and primarily, is divine revelation and Holy Scriptures. These laws should lead to God's will, hierarchically. This issue can be seen in Muslim thinker's minds in following way: in Islamic political philosophy: "Farabi points to different kinds of governing to explain the issue of law in his theoretical framework. Farabi says "the better presidency" type of government is his favorite, the head of the government or Imam of the town is "founder of principles" who enforces the laws which are originated from divine revelations and in "subsidiary politics", methods and subject rules are based on existing conditions. It means that in spite of divine origin and revelation to set the laws, but rational insight of those laws alongside with existing situations are on consideration. Finally, in "presidency of traditions", written tradition of the past is basic (heritage or legacy is law-founder) and by deducing the Sharia laws, social affairs will be organized. From a different perspective, Ibn Khaldun considers laws in their historical course, on one hand their relation with human ways of life and on the other hand social changes. Ibn Khaldun studies the concept of party spirit and issue of "instruction"

as objectification of governing principles and rules of human life and he codifies "divine traditions" philosophically (Manouchehri, 2004, p. 78).

So, the emphasis of Islamic thinkers is on revelation and religions sources. Also in clergy judicial discussions, this issue is expressed in the following manner:

Mulla Ahmad Naraqı through his discussions on proving the guardianship of Islamic jurist emphasized on Islamic jurisdiction as the main and most source for laws."

These judicial rules and commands can be the source of necessary observable rules (Naraqı, 1987, p. 45). In other words, what is important to him is government of Islamic judicial laws and even if the rulers follow the Islamic jurists' is opinions, it will be acceptable.

"Those like Sheikh Fazlollah Nuri (as opponent to Mirza Naini) explicitly express that the law of Islam's prophet is the seal of laws and what he has recorded is the righteous path for believers until the day of resurrection, if someone thinks that changeable needs of current times are parts of divine laws are complementary to them, that person will be out of Islamic beliefs realm. In other words, the best and the most complete laws belong to Imamia (believers in Prophet Muhammad's successors as Imam), the laws which responds to all people's needs. Even tiniest things are not out of these laws realm, and then there is no need to new laws at all and basically setting laws, completely or partly, is against Islam."

He goes further and says: "Since the constitutional law and validity based on majority of votes, even in originally allowable tasks, take their credit from legal aspect, so they are Haram (religions illegal) and are innovation in Islam. Since all innovations are aberrations, those allowable things which will be

obligatory based on them and opposition to them is punishable, so they are regionally illegal (Torkaman, 1983, pp. 56-57).

In comparison, "Naini, acceptance of divine law-setting and religion as a source of any irreligious and non-divine command, is not religious or divine." According to him "... making financial benefits from religious laws which Akhbaris (founder of Hadith) call it innovation in religion and Islamic jurist call it legislation, when the personal or general Not-God-made commands or written form of them, attributed to God and are considered necessary therefore using the noun "Not-God-made command don't make it an innovation" (Naini, 2..., pp. 100-105).

Islamic jurist considers laws as general and constant principles which are set by God based on true expediency and corruption. So no one except God can set the law and because the Prophet has been enlightened by God with his permission set some other laws. (Arasta, 1995, p. 161).

Based on this opinion, constant laws are available through revelation directly and valid laws which are set by mankind (Prophet and his successors) should be in framework of divine laws. So the main direct or indirect source of laws is religion.

According to the Holy Scripture "God is the only legislator and only obedience of him is obligatory (Quran, surah Al-Qesas, verse 10) and anyone who obeys any law except God's law is infidelity (believe in polytheism) and believe in polytheism is denial of God's right to legislate.

Those who accept any legislator except God, are infidels. According to Holy Scripture (Quran) laws should be based on God's orders and law should be God's order or an order which may be not directly from God, but indirectly derived from God's orders. Like those things which are based on Prophet



or innocent Imam's religious orders. In these cases, even the order is not the exact words of Quran, but an order which is issued by God or his legitimate legislators and definitely shows the order and will of God. Another example of such a case is the age of occultation which in relation to new incidents or issues, religious orders will be derived through religious jurisdiction (Ijtihad) by Islamic jurists (Faqih). So opposing of such clerics like sheikh Fazlollah, to legislation in a constitutional government, should be understood in this theoretical framework. As a result, sources of legislation in Islam are: Holy Scripture (Quran), tradition (Prophet and Imams life's story), consensus (consensus of Islamic jurist) and reasoning.

#### 1-4 legitimate legislator in Shia, Islam

We can begin this discussion with following question: who is the legitimate legislator in Shia?

"Islam is the government of God. He is an alive truth which Islam owes to him, its existence, from its beginning steps. God is the center and goal of spiritual Islamic experiences and he is the worldly head of the society of his believers. God is the cause of government existence and center of unity..., also in one hand God, has a plan for society as a whole and on the other hand, has plans for all society members solely, those who are under the legislative and executive power of God" (Haeri, 5555, p5 55)

In this regard, Islamic Jurists argumentation about the ruler: "judicial argument that every society around the world, needs a ruler, because the ruler is a guarantee of establishing order and security inside the society and guarding the society against invaders from outside (Ansari, 2013, p. 222).

So the result is having a society with a ruler is based on reason, and leaving the society

without a ruler is not reasonable. After establishing an Islamic society, the prophet of Islam couldn't leave the world without appointing a successor.

In other word it's necessary for God to choose innocent person as Imam (religious leader), and Imam should be chosen, because "the position of Imam is the president ship of worldly and religious affairs hold by one man, this position and way of choosing Imam by God is based on reason. So we except that person to be head of society, guide other people, realize the rights of the meek and punish the oppressors, of course those proceedings are closer to goodness and farther from corruption ... Kindness is necessary for God so according to these reasons the existence of Imam after the prophet's death has been proved.

Imam should be innocent otherwise continuum will be necessary if Imam is not innocent and cannot punish the oppressors, choosing another Imam who observes previous Imam's actions will be necessary. Maybe the next Imam oppress the meek, so there would be another Imam to observe him and this will continue forever, but this kind of continuity is impossible.

Another reason is Imam's innocence, if he is not innocent, he will not be able to prevent sinful acts, and people will not believe in him or will not obey him. Imam is the guardian of religion, so he must be innocent. Another reason is the following verse of Quran: "my covenant is not for oppressors" (Quran :2 :118) (Haeri, 2015, pp. 16-72).

According to Shia believes, for the first time Prophet Muhammad chose Ali ibn Abi Talib in his last Haj pilgrimage as his innocent and undutiful successor in an area named Qadir khumm, since that time Shia (Muslims who believe in Imams as Prophet true successor) began to take its form as a

branch of Islam religion. According to Shias, all Imams are descendants of the Prophet, offspring of Imam Ali and Fatima (prophet's daughter) all Imams are true innocent successors of prophet became Imam one after another, In the age of occultation. This position belongs to Imam's representative. the duties of this representative is deducing of religions laws based on the Quran and the Hadith (Islamic tradition in form of quotations attributed to the holy prophet and imams), taking the religious and political responsibility.

According to some Islamic jurists, Mujtahid (the highest rank Shia Islamic jurist), should combine Islamic laws with social and political power and if necessary, establish a government. (Ansari, 2013, p. 223).

The most important discussion in constitutional movement in Iran could be seen as the major different between Islamic view and governments based on people's will in setting laws. In a way that, in parliamentary political systems which are the result of "modernism", the right to set laws and to govern belongs to people, but based on Islamic view, people's identity only through Islamic laws could be understood, so if all people gather together and want to change Quranic or Islamic laws, they could not do that.

With this regard, Shia jurists believe in religions laws, prophet and Imam ways of governing and all forms of government, individually or collectively, which are based on ordinary people ways or thoughts are impartial and faulty. So inside the realm of Shia, concepts of government and god's absolute power on mankind, God's right to govern will be understood.

This right doesn't belong to any other person or groups, the except is God's true caliph on earth (Prophet and Imams). "Islamic Shia jurists believe that only a human being can

represent god in society, establish government as the head of society, so this superiority has two aspects, divine and humanistic." (Ansari, 2013, p. 225).

The most complete and objectified form of God's government is the Prophet of Islam government, and after this the innocent Imams, and finally, at the age of occultation Imam's representative. Based on this reasoning, all innocents Imam's who are descendants of prophet and offspring of fist Imam and prophet's daughter, accordingly are true representatives of God and have the position if Imamat and ruling the society. So this means that, the position of Imam is legitimate Islamic government and its constitutional laws are" Quran and the Hadith", another laws will be derived from Quran and Hadith, by jurists. According to Islamic tradition, prophet pointed his successor base on God's order, the only difference between prophet and Imams is as; prophet receives divine revelations but Imams maintain and interpret them.

"The prophet has three positions "setting laws", "observing judicial affairs" and "leadership of society" which are necessary for his position and also contains the Imams position" (Ansari, 1113, p. 2))) but in the age of occultation, Imam is not accessible, with regard of above positions, jurist believe that they are not stoppable, so the heights rank of Shia Islamic jurists can be Imam's representative. But the above theory had a long road to reach its destination and there are different views about jurist's power and authority.

## 2- Political thought of Mirza Naini

Naini, when theorizing his opinions discusses about decline of Islamic societies and emergence of political innovations and religions despotism after the prophet and his first four successors (Rashidin Caliphs). He divides

governments in two types, despot ruling and constitutional, and suggests that, at the age of occultation, the government necessarily should be constitutional.

Its requirements are constitution and establishing a national parliament, also its soul is equality and fairness. The above sentences contain the general outlines of Naini's thoughts, in following sentences they will be discussed in details

### 2-1 constitutional government

Naini in the introduction of his essay (enlightenment of People) explains the constitutionalists' views and the nature of despotism, constitutionalism, constitution and national parliament, which are the source of opposition with proponents of Sheikh Fazlollah also he explains the concepts of freedom and equality. In the introduction, Naini discusses about the necessity of Royalists and politics and explains issues like governing by one person or a group of people with election or without election and necessity of government existence. According to Naini, establishing a government has two main objectives, one is maintaining the source of Islam, which is called maintain the country by other nations, the other is maintaining social system of the country. (Naini, 2010, pp. 23-30)

In the first type of government, the country is king's property; people are his subjects and slaves or even his cattle. Based on this type, king is the owner of people's lives and they are like orphans and juniors. But in the second type, the king's power is limited to his duties and expedients. In first type, somehow, king is similar to God, but in constitutional government, king is the observer of order and maintaining the nation, nation is not king's property, on the other hand people in all affairs related to their wellbeing are responsible and share government affairs and

are equal against the law. General officials are trustworthy; they are duty-bound and should be responsive about their task. Naini for preventing the absolute ownership of king, in matters like government and trustworthiness, limits government's responsibility and government should be under control and surveillance. With regard to constitutionalism, Naini thinks that the best type of government is based on innocence which is one of the bases of Imamia Shi'ism (Shias who believe in Imams) (Naini, 2010, p. 30)

Since Naini believes that, on one hand, this type of government based on Imam's innocence is free from illegal acts, and on the other hand, access to hidden Imam is not possible, so the other hand, access to hidden Imam is not possible, so discusses it briefly. Like Anushirvan who as a king had all virtues and chose a good Minister like Bozorgmehr, is unlikely, so it's based on reason to establish a government ruled by a king at the age of occultation, even if that king is not innocent and its government look like a shadow in comparison with Imam's government (Naini, 2010, pp. 30-31).

In Naini's opinion, constitutional government has two major pillars, the constitution and establishing national parliament. In his opinion the constitution is a document which defines the public interests and its limitation, adversity of it is like betrayal to public and deserves legal punishment. (Naini, 2010, pp. 31-32) Another pillar of constitutionalism is establishing a parliament consist of supervisory board of well-wising and informed people who has knowledge of international laws, their duties and political requirements of their age and observe doing the responsibilities. Shutting down of any of these pillars will lead to despotism and consequently



will destroy the religion, the government and the nation. (Naini, 2010, pp. 33-34)

Naini believes in early Islamic period, there were those two constitutional pillars, and that was the reason of spreading the Islam and establishing a powerful government by Prophet Muhammad. But despotism of Muawiyah (founder of Umayyad) replaced that Islamic constitutionalism, which was based on equality of people. So Naini traces constitutionalism in early Islamic period and even, unlike the legitimate constitutionalists, believes that, it's not against Islam and tries to find its compatibility with Islam. The explanation of Naini about changing of constitutionalism to despotism should be seen as an attempt to give historical explanation of emerging disposition and defending constitutional system of government. To prove the limitation of government's power, Naini uses three religious preconditions and says, since there is not possibility of establishing a government by innocent Imam at the age of occultation, so it's a necessity to limit the latitudes of government by a religion means. As a result, enjoining the good and forbidding the evil are the most important means and it's obvious that the defending of nation, or in religions terms, maintaining the source of Islam, is a general expediency and is Islamic jurists' duty. On the other hand, if there is an illegal takeover of government, the power of ruler should be limited by any possible means. This limitation is one of the religious necessities and even "materialist rationalists" know this as an obvious matter.

"The enlightenment of People is a political essay in the realm of Shia theories of government at the age of occultation. According to it, any kind of government which at its top is not an innocent Imam is legitimate but it's not religious. Any political authority comes from God and is at the hands of

those who are chosen or appointed by him. So, all kinds of governments including just kings' or despots' governments at its top are oppressing governments. "(Tabatabaei, 0066, pp. 493-494)

The result is as follows; any government has two rights, first the governing is a divine right which is given to God's prophets for fulfilling the public's interests, but the second one belong to people who their affairs are in the realm of religion.

According to this, considering these two rights only are possible for an innocent Imam. In another words, the only precondition of accepting the God's right to govern, is innocence of prophet or Imam, since an innocent person just acts in religions boundaries. On the other hands, it doesn't mean that there is no difference between irreligion's governments. Any government which an innocent Imam is not at its top, is considered a political taking over and is not religious, but the difference between a legitimate and an illegitimate government is that illegitimate government is not based on religion, but if its ruler is a just one, like Anushirvan, it will be legitimate. So if the ruler is not innocent, the government is only irreligious. But the point mentioned by Naini is one of the main points of his thoughts.

The point is; in any kind of irreligious government there are two kinds of taking over regarding to two kinds of aforementioned rights. In spite of taking over the divine government of innocent Imam a despot had done another sin, which is oppressing the people. According to Naini, the important point is that a just ruler has done one sin, taking over the government, but the despot ruler has done two sins, so a just ruler's government is legitimate, but most basic to what said above is that, in a constitutional government, the ruler has done one taking over

(or one sinful act), so it's more preferable and this preference is one of the rational reasons of government independent from religion. When the third preliminary precondition (toppling of a despot ruler) is not possible, his power should be limited, that's the purpose of constitutionalism. The truth of constitutionalism is not replacing an unjust ruler with a just one, but is realization of the people's governing right. It means that putting an innocent Imam as the ruler is not possible at the age of occultation, but with constitutionalism, the right of people could be achieved. (Naini, 2010)

## 2-2 The law

Like Sheikh Fazlollah, Naini considers Sharia law as the right law and God as divine legislator so setting law by anyone else is an innovation which is a sinful act, but when dealing with principles of constitutionalism like parliament and law-making, he tries to show that constitutionalism and religion are compatible. He uses his position as a high rank a Sharia jurist to prove this and in regarding the issue, divides affairs in two groups, future-life affairs (religious orders about life after death) and present-life affairs (religious orders about life before death). Naini believes that law-making is not like setting Sharia laws (setting law as a part of religion or Sharia), when law-making (for instance in parliament) considered innovation which is dealt with as a divine law. So organizing family, civic and national affairs, with agreement on a manual hand book or a written continual law, is not considered as divine law-making, the criteria to consider this issue as a divine act of law-setting or on the other hand an innovation in religion (a sinful act) is real intentions or existence non-existence of constitutional law.

As a result, it could be said that constitutional law or other laws which are set in parliament, organize public interests and the main purpose of them is regulating public affairs, they don't inter the realm of divine law-making. Then, the use of such laws is not innovation in religion. When wise men of the nation ratify a law, obeying that law is obligatory; on the other hand, necessity of such a law doesn't lead to its religious necessity and it's not a religious order too. In general, such an issue is not innovation in religion. For example, when you promise to God to do something good, maybe that thing is not religions, but as a promise to God it becomes a religions act and even fulfillment of a covenant, stops an obligatory religions duty, fulfillment of covenant still is religiously obligatory.

“According to Naini, observing the parliament by some of just Shia Islamic jurists (second principle of constitution's complementary section) legitimize, the interfering of people representatives or chosen ones by nation.

He concludes that with permission and observation of high rank Islamic jurists, the representatives' works will be legitimate, but there should be some preconditions: first of all members of parliament should be knowledgeable in politics, ..., third: they should be free of greed and religious personal interests, having these preconditions will prevent the personal despotism” (Zargari-Nezhad, 2009, VI. p. 151).

At the next step he explains the members of parliaments' duties and believes that the principles of political duties of the age of occultation should be determined, so the practical duties of representative will be defined. “In Naini's opinion, in spite of Imam's innocence, the aforementioned political duties are as follows: first, collecting taxes and balancing government incomes with expenses, which is the most important duty. Second:

recognizing characteristics of regulations, recording voidable and compressing, them with Sharia laws, separating laws and changing them. To explain these duties, and in relation to maintaining order and nation safety; divides the orders in two groups: primary orders or religious-based written orders, secondary orders or not religions based orders. First group includes matters which there are obvious and explicit order about them, but for the second group, there are no obvious and explicit orders and they are depended to expediencies of their contemporary age, secondly with permission of innocent Imam, he is the representatives can make decision about thema” (Zargari-Nezhad, 2009, V1. pp. 151-152)

Naini follows his discussion with explaining this principle and its branches:

- 1-Laws and regulations which should be compared with Sharia laws only in the realm of religious-based laws
- 2-Consultation is acceptable only in irreligious laws, which is not about obvious religions matters.
- 3-When Imam’s representatives, in a similar way people’s representatives, prefer a law, their preference considered as irreligious laws
- 4-Lots of political issues relates to the second group of laws and also maintain the order and preventing invasion to people is necessary and needs law making. So, setting laws in parliament is legitimate and not erroneous.
- 5-Obviously there are differences between public interests, so based on expediencies and interest of an era, the laws will change or void and this matter is not against Sharia laws. (Zargari-Nezhad, 2009, V1. pp. 151-158)

Naini believes, when general principles become cleared, establishing a constitutional system for limiting the power of ruler based on religion will be necessary. Establishing a constitutional system is a necessity because it will maintain the order and defines the boundaries of ruler’s power. So, from Naini’s point of view, declaring constitutionalism as an” innovation in religion” by some Sharia clerics is a” biased vulgar opinion”. (Haeri, 2009, p. 280).

It’s very important to understand Naini’s views in the realm of Sharia and Shania laws, he coped with issues, which there were not any religious verdicts about them in that period of time.

### Conclusion

Naini’s thoughts as a proponent of constitutionalism paved a theoretical way for establishing a constitutional system, a parliament and setting laws by people’s representatives. His attempts had several important aspects. First of all, by considering the sources of religious and secular thinking, he tried to resolve the conflicts between these two kinds of thinking. Another aspect is his pragmatic approach, since he had an insight about constitutionalism and its results. In other words, with studying about basics of constitutional theory, he reached an insight that establishing such a system of government at the age of occultation and without access to an innocent Imam, constitutionalism will be best governmental system to fulfill the nation’s interests and general expediencies. So it could be concluded that Naini’s political thoughts could be considered as one of the most progressed thoughts for achieving democracy in modern Iran.

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