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Constitutionalism Synthesis to the Sharia in the Political Thought of Allameh Naini

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Abstract

The Constitutional Revolution that restricted political power for the first time in Iran can be considered as one of the turning points in the history of political developments in Iran and the growth of political thought based on Shiite religious teaching. In fact, although constitutionalism began in the West, it soon influenced Islamic states, including Iran, and challenged the authoritarian monarchies. Meanwhile, the support of religious and leading scholars of The Najaf Seminary, especially Akhund Khorasani and Allameh Naeini from this socio-political movement in Iran played an important role in the relative victory of the Constitutional Revolution, otherwise the signing of the constitutional decree and the establishment of parliament and emergence of a new form of political system in Iran didn't seem possible. Accordingly, despite the dichotomy of muslim scholars in favoring and opposing the constitutional movement, the great influence of the top scholars of Najaf, especially Allameh Naeini in supporting and theorizing about the superiority of the constitutional government over the authoritarian monarchy, paved the way for the victory of this movement. This article, by direct reference to the important work of Allama Naini called "Tanbih al-Umma Wa Tanzih al-Milla" has been attempted to analyze the rational and narrative teachings that has caused him to the preference of the constitutional government instead of the absolute monarchy in the era of Absence.

Keywords:

constitutionalism, sharia, Allameh Naeini, political thought.

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Introduction

The attempt to change and transform autocratic and absolute and irresponsible governments into bound, conditional and accountable governments in the history of human social political developments, especially in the West, has a long and ups and downs lineage. Absolute governments, which were usually realized in the past centuries in the royal form and in Ibn Khaldun's interpretation of ethnic and tribal hostility, were realized based on the originality of maintaining political power and dealing fully with opponents and critics of political power and not paying attention to the will and vote. In the political developments of the West and following social political revolutions, especially The Glorious Revolution of England and the Great Revolution of France, a new literature about the way of governance and statecraft emerged. Although the social revolutions in the West started with destruction and fear and insecurity in the beginning, but in the long run, it was able to change absolute political power to conditional and accountable power; and transform the nation watching the political decision-making processes into an influential nation through the formation of parliament and elections. Public opinion, especially with the expansion of public media and the press to monitor the performance of political systems, gradually gained a privileged position to the extent that they can be interpreted as one of the stable pillars of democracy in the contemporary era.

In addition to the political developments, the teachings and thoughts of prominent political thinkers in theorizing in accordance with the developments around the new form of political systems and the drafting of the constitution as a covenant between the government and the people, as well as the strengthening of the parliament as a manifestation of the national will and monitoring the exercise of political power by the governing body played a prominent role in the emergence of constitutional and democratic governments. For example, John Locke, who is referred to as the father of the parliamentary system and the father of the architecture of new democratic systems, compiled the foundation of the constitutional, legal and electoral system in his precious work called "two treatises of government". He enumerated its differences with absolute, irresponsible and non-elected systems. The essence of the conditional political system based on public votes is limiting the power of the government by the boundaries of the laws, especially the constitution, the formation of the government by public votes and the formation of the parliament or Dar al-Shura. Based on Locke's ideas, in such a system, the growth and excellence of all human beings and the inherent non-differentiation of humans with each other, regardless of race, color, language, and other distinguishing factors, should be taken into

consideration, and equal opportunities for growth and promotion should be given to different members of society (Locke, 2003 :101). In the new constitutional political system, the ruler and governor are the trustees and guardians of public interests for a certain period of time, and the members of parliament, who are elected by the people, will have the task of drafting the necessary laws in a certain period and supervising the performance of the executive branch. Equality before the law was considered one of the main features of the new constitutional systems, and no one was immune from prosecution due to having power or wealth. As the theorists of this new discourse in the field of statecraft have mentioned, such a government that is bound and conditioned by the legal boundaries approved by the nation is realized when the citizens of a society play essential role in the political process of the society and decisions (Axford and others, 2002: 120).

In the new political process that gradually began to spill over from the west to the east, the absolute and unconditional ruling powers tried to confront this thinking, and considering the differences in the ideologies governing the societies of the West, they tried to declare the concepts related to constitutional systems, especially two important concepts, freedom and equality, against religious teachings in Islamic countries. In Iran, the overwhelming majority of the Shia religion, especially the local religious scholars, sought to receive the views, analyzes and fatwas of their religious authorities, who were in charge of the religious leadership of the Shia world at that time in Najaf, about this new political system and how it is compatible or not compatible with Islamic teachings so that they could have the necessary Sharia evidence to support or not support the constitutional movement. In such a critical and difficult situation, the great Allameh Naini, who was the teacher of many prominent jurists and authorities in the later periods, wrote an important and influential book called "Tanbih al-Umma Wa Tanzih al-Milla" in defense of constitutionalism in the era of the absence of the infallible Imam. Allameh Naini's book was decorated with the ornaments of two prominent leaders of Najaf, namely Akhund Khurasani and Saleh Mazandarani, and the strong interpretations of those two prominent jurists added to the validity and strength of this work. Allameh Naini has written in the introduction of his book that, since the compilation of the book is to inform the Islamic Ummah about the necessities of the Sharia and to reform the nation's thoughts from the indoctrination of the opponents and heretics, he has chosen the name of this book as "Tanbih al-Umma Wa Tanzih al-Milla" (Naini, 1909, p. 4).

1. Conceptual Framework: The rational necessity of government and its types

Allameh Naini, in the introduction of *Tanbih al-Umma*, first talks about the rational necessity of the formation of government among different nations in different historical periods and has cited that regardless of the form of government and whether the ruler is just or unjust, the legitimacy, illegitimacy or acceptability of the government, it is necessary to form a political system and the government in order to prevent people from encroaching on each other's rights and to establish security, peace and development of the country. Then Allameh Naini mentions that based on this rational necessity, Islamic Sharia has made the preservation of the Islamic system as one of the most important tasks and the duties of the Imamate of Ummah.

Allameh Naini then refers to the origin of the state, which is one of the theoretical topics about politics and statecraft, and he says about this, "... establishment of the government and taxation and other duties of the government, whether it was from the prophets, peace be upon them, or from other sages, are all for the establishment of these duties and the supervision of these affairs, and they have prescribed the same in the Holy Sharia by completing the deficiencies and stating its conditions and limitations" (Allameh Naini, 1909: 6). Then, Allameh Naini divides governments and political systems into two major categories according to the style of state management and the quality of the government's dominance and how the people in power occupy the affairs of the subjects of the political power and political systems :

- **Tamiliki monarchy:** Allameh Naini considers the *Tamiliki* monarchy to be the absolute autocratic government without obedience to the law, as if the ruler considers the country as his personal property and authorizes any kind of seizure at his will and without accountability and retribution. According to Allameh's interpretation, he considers the nation as slaves who are forced to obey, and he considers taxes and tribute as rent of his property and uses them for his own purposes. According to Naini's interpretation, because it is based solely on the will of the sultan, this kind of rule is also called tyranny (Naini, 1909: 7). Of course, Allameh Naini considers this form of government to be multi-level and has different levels of intensity and weakness according to the prevailing conditions in different societies.

- **Provincial monarchy:** The second form of governance is independent of ownership and authority. It is the constitutional government that the authority of the ruler and the sultan is suspended and subject to the

laws and regulations. Allameh Naini considered such a government to be a trust from the people to the ruling body or a person in charge in order to protect their interests, and according to his interpretation, in such a government, the rulers in charge of affairs are all trustees and servants of the people, not their owners and servants, this type of monarchy and government Naini calls it a limited, just, constitutional and responsible government (Naini, 1909: 9).

The noteworthy point in this matter from Allameh Naini's speech is that he does not attach much importance to the form of government in this division, but the performance and style of governance and the decision-making process and adherence to the law or its absence, whether it is absolute or conditional, is the main difference between two mentioned political systems. It should be noted that apart from the divisions of the modern age around the government in the history of political thought, some prominent classical thinkers have considered the division of governments mainly based on their performance (Aristotle, 1998: 77-8).

2. The necessity of the constitutional system in the age Occultation (Absence era of Imam Mahdi)

Allamah Naini considers the comprehensive and complete form of the desired political system in the teachings of the Shia religion in the presence of the infallible Imam (peace be upon him) after the Prophet, peace and blessings be upon him. Imamate and the infallible imam have the two characteristics of infallibility and divine knowledge, which keep him from mistakes, and unsavory tendencies and reprehensible traits, but apart from the infallible rule, any other person who is in charge of this responsibility, no matter how reformer, fair or benevolent he may be, he has flaws that expose him or the governing body to errors and slips or transgressions. Allameh Naini writes that the non-innocent government needs two main elements as pillars in its structure to prevent deviation and good planning. First, the regulation of the constitution, which is a covenant between the government and the people, and in which it must "officially guarantee the limits of the authority and possession of the sultan, the freedoms of the nation, and all the rights of the people and classes of the country in accordance with the requirements of religion, and the second pillar and component Forming the Parliament (Majlis Shura) and appointing representatives from the nation who are experts in domestic and foreign affairs to be a serious obstacle to the return of tyranny and the transformation of constitutional government into Tamiliki. According to Allameh Naini's interpretation, these two measures "guarded the limits of political power (constitutionality) and prevented the

transformation of guardianship (representation) into *Tamiliki*" (Naini, 1909: 12) .

Allameh Naini explains his doctrine about the constitutional government with two stipulations in terms of religion and law. First of all, he states that the constitution should specify all the rights of the people based on the sharia, and secondly, that this constitution should be an official and signed document and not just the oral promise of the sultan, and the Parliament (*Majlis Shura*) and elected representatives should also supervise on its proper implementation and drafting the necessary laws related to the binding constitutional government. Allameh Naini emphasizes that the nation's awareness of the constitutional system and its concepts and components, in other words, improving public political understanding in protecting this system liberating them from the yoke of tyranny and preventing looting of property by the authoritarian system is necessary.

3. Historical Background: Transformation of the Islamic council government to an autocratic monarchy

After explaining and confirming the principle of existence of government, Allama Naini considers consultation in political and social affairs and, in his interpretation, all the issues and interests of the general public as important and sensible features of Islam and even divine religions. Consultation in affairs are considered necessary according to the Holy Qur'an and the life of the Holy Prophet (PBUH) also testifies to this. Even in sensitive cases such as the battle of Uhud, Allamah Naini reprimanded that despite the fact that the Prophet's opinion on the method of war was contrary to that of the Companions, they preferred the opinion of the Companions or the majority of them over their own. Allameh Naini considers the emergence and establishment of an autocratic and despotic monarchy, which is contrary to the spirit of Islamic teachings, from the time of Mu'awiya I and then the Umayyad Caliphates, who instead of guiding the people to the worship of God, made themselves slaves and absolute subordinates, and suppressed any protest with all the severity and thousands death squads to consolidate their autocratic power and rule and contaminated the humiliating fountain of religious politics with oppression, aggression, and autocracy. Allameh Naini considers the council principle of political power and social affairs to be one of the distinguished and historic features of Islam, which Christian nations have institutionalized in the form of parliament centuries after that and according to the same progressive religious teachings. According to Allameh Naini, the blessed verse "and consult them in the matter" is addressed to the Prophet in general and includes all political affairs. He then refers to the *Sirah* of the Prophet, peace and blessings be upon him, and Imam Ali (peace

be upon him) in this regard, and mentions some of the enlightened thoughts and opinions of Imam Ali on the mutual rights of governor and subject in Battle of Siffin. (Naini, 1909: 35-37).

Allameh Naini by mentioning various evidences of Prophet and Imam Ali's Sirah, speaks about the councillorship and accountability and equality of all members of the society, including nobles and scholars, in front of the law in the pure Islamic thought about politics and government. Distortion from this path and the transformation of the council and accountable government into the unaccountable and oppressive autocratic government had predicted by the Prophet (PBUH) and his successor, after the formation of the Umayyad and Abbasid dynasty. The behavior and performance of those oppressive governments caused the passivity of Muslims and the domination of autocrats in the field of politics and government.

4. Allameh Naini and Constitutionalism Synthesis to the Sharia

Before dealing with this topic, it should be mentioned that from Allameh Naini's religious point of view, the constitutional government isn't an ideal and perfect government, but the expediency and necessity of its formation only in the age of occultation with intellectual and religious documents is acceptable. Therefore, he has examined the discourse of constitutionalism in the modern era according to the reason and Sharia. Allameh Naini explains the constitutional government bound by the laws, especially in avoiding tyranny and autocracy in governance, based on religious teachings, and explains the arguments in favor of constitutionalism over the tyranny and absolute rule of the Sultan. Allameh's most important arguments in support of constitutional government are:

4-1. The way of governance in the early days of Islam was far from autocracy and tyranny, and even during the time of the Prophet, peace and blessings be upon him, various political matters were planned with consultation. This method was the conventional Islamic tradition in state management until Mu'awiya I came to power, and according to Allameh, the transfer and transformation of the Islamic governance based on the mentioned method into an absolute autocratic monarchy was done by Mu'awiya I and his successors. This situation was predicted by the Holy Prophet (PBUH) based on frequent prophetic hadiths before it happened (Naini, 1909: 29).

4-2. The ideal government from the Shiite point of view is the government of the infallible Imam (a.s.) who is completely far away from errors and omissions, arbitrariness and cruelty with the two characteristics of knowledge and infallibility of the Imam, and the supreme happiness of

mankind and the good life in the shadow of such a government is the ultimate goal. But what should be done in occultation era? Regarding the issue of the necessity of the government, Allamah Naini mentions that the Sunnis, who did not consider infallibility or divine appointment to be necessary, were satisfied with The Advocates Of Selection Through Unanimity, and after the formation of the government and the caliphate, the non-violation of the Quran and the Sirah was included in the Allegiance. But from the perspective of Shia, due to the necessity of forming a government and the lack of an infallible Imam, other ways to protect the government from falling into the lap of tyranny and autocracy should be supported. (Naini, 1909: 28)

4-3 .Another reason of Allameh Naini is the issue of the necessity of The Affirmation of The Good And The Prohibition Of Evil, which is one of the important religious duties, and this is also true for the governor and the sultan, and forbidding the sultan from the evil is a serious duty, which is also in the constitutional government and the formation of the parliament and the supervision of the representatives will be better realized, especially in financial affairs. Therefore, in fact, in the constitutional government, attention to The Affirmation of the Good and the Prohibition of Evil in the public sphere, which according to Allameh Naini is related to the interests of the people, will be better realized .

4-4 .Another jurisprudential reason of Allameh Naini for the primacy of the constitutional government is the category of "representation of jurists in the age of occultation in matters of Hasbiyyah affaires". Hasbiyyah matters are matters that the Holy Shari'ah is not satisfied with leaving due to disruptions in the affairs of Muslims. Allameh Naini explains this in his treatise *Tanbih al-Umma Wa Tanzih al-Milla*. (Naini, 1909: 29)

4-5 .Another reason of Allameh Naini in prioritizing the constitutional government is a general jurisprudential ruling related to the public domain or grabbed. Allameh Naini explains it by the matters related to general and special waqf or similar matters related to guardianship. It is a certain jurisprudential ruling according to all Islamic scholars that if a person grabbed the waqf aggressively and and it is not possible to avoid aggressive usurpation, but with special arrangements such as placing a board for supervision and the like, the necessity of doing such a thing is self-evident and completely justified. In this issue acting contrary to establishing a consulter or supervisory board is not acceptable according to Sharia and rationally. With this introduction, Allameh says that unconstitutional and authoritarian government has three types of usurpation. 1- The usurpation of God's position, because all people should be servants and obedient to God's

commands, which a despotic ruler demands such obedience from people for the benefit of his personal interests. 2- The usurpation of the position of governorship and oppression of the sacred Imamate, peace and blessings be upon them. 3- The usurpation of the rights of people and oppression against them. Then Allama mentions that the constitutional government is only the usurpation of the holy position of Imamate and there are no other two usurpations in it, and in other words, it is free from the other two usurpations and oppression, and from this point of view it is also preferable (Naini, 1909: 29). Allameh Naini then says that the usurpation of the position of imamate can be acceptable and legitimate by issuing permission and enforcement by someone who has religious guardianship, and the oppression of the position of imamate can be removed with the aforementioned permission. (Naini, 1909: 30)

4-6 .In describing the structure of the constitutional system, Allama Naini refers to the National Assembly and considers the formation of such an elected assembly of the nation's representatives, which is the place for the deliberation of the elites of the nation, in line with the realization of the political system of Islamic councils. He believes that it was existed at the dawn of Islam and changed by tyrannical and despotic rulers after the era of the Rashidun Caliphs. The parliamentary system is the revival of the same religious tradition in political affairs in a new form and in the modern era, and from this similarity, Allameh Naini considers the constitutional system to be in line with the neglected religious doctrine found in Islamic political discourse and thought (Naini, 1909: 33). Allameh Naini says that the National Assembly is, in the interpretation of the Holy Qur'an, "This our stock-in-trade has been returned to us ", and how far we are from the Quran, the Sirah, that we consider the formation of such an assembly to be contrary to Islam (Naini, 1909: 35).

Allama Naini in his treatise *Tanbih al-Umma Wa Tanzih al-Milla* also provides an answer to the doubts of the opponents of the constitution, especially regarding the two concepts of freedom and equality, and considers the statements of the opponents of the constitution to be fallacies and a branch of religious tyranny, especially from a religious point of view. Naini considers freedom in the constitutional system as getting out and being freed from the oppression and slavery of the oppressive Sultan, therefore, he interprets freedom as the liberality. The concept of freedom is not only reprehensible in this sense, it is also based on the concept of human growth and excellence. Allameh says that it is obvious that the conflicts and arguments of a nation that wants to be freed from the captivity of authoritarian rule are centered on this matter (Naini, 1909: 41) .

Naini challenges the fallacy of the principle of "equality" by the opponents of the constitution and explains that the meaning of this concept is the equality of all members of the Ummah by law, which Islamic teachings have paid full attention to, and the Sirah indicates it well. (Naini, 1909: 45). Allameh Naini considers liberation and freedom from the tyranny of the sultans to be necessary for the progress and promotion of the nation and the country, and in condemning tyranny, like Abd al-Rahman al-Kawakibi in *Tabai al-Istibdad wa-Masari al-Isti'bad* (The Nature of Despotism), he expresses thought-provoking words in the nature of tyranny and says: "... Until tyranny is established in the country, it is impossible to take away this power and turn it into knowledge" (Naini, 1909: 87) .

Allameh Naini, in the conclusion of his treatise *Tanbih al-Umma Wa Tanzih al-Milla* mentioned two important points, and consider paying attention to them as the source of liberation from the autocratic sultans. The first is about the harms and corruptions of the nation's ignorance and lack of awareness of its rights and privileges, which, according to Allameh Naini, is the root of all evil and leads to the bottom of the earth. Allameh Naini has emphasizes that "ignorance leads human to Shirk." It is because of ignorance that the poor man completely forgets his God-given freedom and his equality in all matters with the tyrants and accept their domination" (Zargari Nezhad, 2010: 471-2).

Another issue that Allama Naini at the end of his treatise and in other parts of his book warned about is the use of religious teachings as a tool to consolidate tyranny and autocracy. Naini finds it very difficult to cure and remove religious tyranny as a precondition of the constitutional system and says in this regard: "The issue that is the biggest after the ignorance of the nation, and the most difficult to cure due to the influence of religion in the hearts of the people, is the tyranny of religion, which is presented as religion and urges the ignorant nation to obey it due to their ignorance and lack of knowledge about religion. » (Zargari Nezhad, 2010, vol. 2: 472).

In fact, Allamah Naini considered adherence to religion for consolidate the foundations of authoritarian power on the one hand due to the ignorance and lack of awareness of the people, and on the other hand, its emergence in the history of Islam since the consolidation of the foundations of the power of the Umayyad Caliphates and at the head of it, Mu'awiya I, after the martyrdom of Imam Ali (A.S.). He believes that in fact, the conversion of the religiously responsive and consultative government into an autocratic monarchy caused religious tyranny. In Naini's interpretation, the expansion of the sanctity of the monarchy and the birth of a new political birth in the public sphere is one of the consequences of this great historical

oppression of Islam, which was founded by the Umayyad rule and continued in the following centuries. Allameh Naini then reminds the important passages of the covenant of Imam Ali (peace be upon him) to Malik al-Ashtar, his governor in Egypt, which includes the nature of accountability, anti-despotism and full and comprehensive observance of the rights of the people. The principle of limiting and reducing oppression, which can be grasped by the necessity of reason and hadith, is one of the principles cited by Allameh Naini and other constitutionalist scholars, including Akhund Khorasani (Nazem al-Islam Kermani, 1997, vol. 4: 290). It should be noted that other letters were published in defense of constitutionalism based on rational and narrative teachings by constitutionalist scholars' parallel to the constitutional revolution, such as:

- Leali al-Marbutah in the Necessity of the Constitution, Sheikh Isma'il Mahallati Gharavi
- Necessity of immediate treatment of fatal diseases, Akhund Khorasani
- Explaining the meaning of constitutional monarchy and its benefits, Emad Ulama Khalkhali
- Treatise on law in the unity of the state and the nation, Seyyed Abdul Hossein Lari
- Questions about the constitutionalism, Sheikh Mehdi Tabrizi
- The meaning of the constitutional monarchy, Sheikh Isma'il Mahallati Gharavi
- Essay on justice, Abdul Rasul Kashani

Each of the above-mentioned book have Expressed their approach regarding the concept and position of constitutional government and how to adapt it to religious and intellectual standards. In these books, Ulama clarified that constitutional monarchy, relative justice, equality of all before the law are considered to be closer to Sharia than autocratic government (Aqa Najafi Quchani, 1999: 51).

Conclusion

Allamah Naini wrote the book "Tanbih al-Umma Wa Tanzih al-Milla" in defense of constitutionalism in the age of occultation based on Shia jurisprudence and intellectual evidence. Naini's defense of the constitutional government was approved not as a perfect and ideal government, but as a system superior to the absolute monarchy and not bound by the law. The Shia ideal government can be realized after the age of occultation and with the presence and appearance of the Imam Mahdi (AS), but Allama Naini, citing rational and narrative evidence and tracing the origins of tyranny in the Islamic world since the rule of the Umayyad Caliphates and the

unfortunate consequences of autocratic governments in different eras in the Islamic world ultimately considers constitutional government to be preferable to autocratic and unaccountable governments that take arbitrary decisions for the people and their votes and passion with their representatives and sometimes harmful to national interests. Allameh Naini considers this government to be usurping and considers it against Islamic teachings and the way of religious elders. During the constitutional movement, one of the important actions of scholars of prominent Shia religious authorities was to theoretically explain the foundations and components of constitutional government and concepts related to this new political phenomenon in the public arena. Limited and conditional political power, rule of law, social and political freedoms in expressing views and criticizing political power, formation of the National Council for consultation in the public domain and in Naini's interpretation of common interests, drafting of the constitution and supreme equality and knowledge before the law were the main components that approved by religious authorities who defend constitutionalism, including Allameh Naini. On the other hand, Allameh Naini and Akhund Khorasani considered the continuation of the autocratic and inefficient government during the Qajar period to be harmful to the preservation of the Islamic society, and in order to change the country's political situation, they explained the reasons for defending the constitutional government as well as practical support for the constitutional movement. Allameh Naini's treatise at that important historical moment is considered a major turning point in the history of the evolution and development of political thought in the Shia world and in the modern era. Although it has been said that the extremes in the constitutional movement and the execution of Sheikh Fazl-allah Nouri caused Allameh Naini's great disappointment in the later stages of the constitutional revolution.

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