

The Semantic Network of Government and State-making in the Late Na'ini's View¹

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Research Article



Abstract

Among the Muslim thinkers, Mirza Na'ini has a considerable role in explaining the Islamic government and state-making as well as the constitutionalist movement. The main question of this study is as follows: "How was the semantic network and Islamic state-making in the constitutional era?" To answer that question, we must say that Mirza Na'ini starts his discussion on the government from its necessity and maintains that people are the foundation of any government. He has attempted to use the foundations of the Shiite jurisprudence and explain the concepts such as politics, constitutional law, law, assembly, freedom and equality to prepare the ground for the public order in the constitutionalism era. Na'ini, like other Shiite thinkers, maintains that the desirable government is that of the impeccable Imams, but he believes in constitutional government and establishment of a state on its basis due to necessity in the Occultation Period. The semantic and conceptual network of Na'ini's state is based on the Shiite thought, and wherever the society (constitutional revolution) departed from this network, leaning towards the semantic network outside its homeland (i.e. the western constitutionalism), the movement failed.

Keywords

constitutional government, Islamic state, Na'ini, constitutional movement, public order, state-making.

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Statement of problem

The necessity of formation of the state for the human's political and social life is accepted by all divine religions, especially Islam. And Islam stresses on the point that religion is not separated from politics, and it has practical and theoretical principles for human life and formation of the state. After the Prophet's departure, the Islamic world has seen various forms of state, one of which was the constitutional government as an objective example. The constitutional government, which is known with Na'ini's name (see: Thobut, 1389 SH; Heydari Behnu'ya, 1386 SH) has been investigated and analyzed in various works. Besides, the state and government in the constitutional period and the thoughts of the jurists in that era have been studied in a variety of works. The distinctive feature of the present article is stating the views of the late Na'ini on the state and government and explaining its semantic network in view of the rival views as well as stating the key concepts such as politics, law, constitutional law, assembly, freedom and equality that prepared the ground for public order in the constitutional era. This article has a dual look at explaining the semantic network of the state and government from Na'ini's viewpoint. On the one hand, considering the political and social evolutions of the constitutional period, it considers the objective grounds for his discussions. On the other hand, considering the intellectual tradition governing that era and Na'ini's status in that tradition, it has attempted to investigate the semantic network of the state and government and the extent to which it was influential.

To explain the semantic network of the state and government in the late Na'ini's thought, we must present a perspective of his political thought. In explaining the constitutionalism and in order to establish the constitutional state, he composed the book entitled *Tanbīh al-Umma wa Tanzīh al-Milla* wherein he paved the way for constitutionalism by explaining new concepts. The concepts and

components explained in that work are found extensively and sparsely in other sources. But the innovation of the present article is that it organizes those concepts and explains the semantic network of the constitutional state as well as stating the causes for failure of the constitutionalism in regard with that semantic network. The convergence and common opinions of the thinkers in the constitutional era as well as the opposition of some others to the late Na'ini caused us to refer to some of those opinions.

The conceptual framework

In this article, the term 'state' means the governing board including the collection of existing organizations and institutions present in the political power dominant in the society. The term 'government' means the collection of the institutions enforcing the laws, with a more objective sense compared to the 'state'.

The constitutionalist movement of Iran was a series of efforts and events in theory and practice leading to restriction of the king's power in the royal system of Iran and highlighted concepts such as the law, the constitutional law, assembly, freedom, and equality.

The constitutional state is a state wherein the king's power has been limited based on the constitutional law confirmed by the nation, and the king govern according to the enacted laws. In that type of government, the king cannot act according to his own wishes. The [National] Assembly is the most important pillar of the constitutional government. The scholars and most of the people supported constitutional regime in Iran to protect Islam through it. Some may think that the religious perception of constitutionalism was restricted to the three religious authorities in Najaf (Muhammad Kazem Khorasani, Mirza Hussein Khalili Tehrani, and Abdullah Mazandarani) as well as Mirza Na'ini and Mahallati. But, upon a little reflection and scrutiny on some issues in those times, we find that the

public perception was nothing except that in the global conditions of that era, the only way for preserving religious beliefs was accepting some of the intellectual achievements pertaining to people's rights. The general theory in constitutionalism was protecting the egg of Islam, and when the conditions of time and place were considered, there was no way except an integration of some of the cultural items of the west with the Iranian traditional culture. And for them, if the international conditions were not considered, the storm of the new evolutions would destroy the whole religious beliefs of the people along with the political order (Abadiyan, 1374 SH, p. 83).

The concepts such as politics, state, government, constitutionalism, law, constitutional law, assembly, freedom and equality constituted a semantic network used by the late Na'ini in explaining constitutionalism in Iran and establishing the Islamic state in his works. Here, we have tried to analyze the link between those concepts and how they were employed in the late Na'ini's thought.

The status and necessity of politics in the late Na'ini's thought

The late Na'ini considers politics as something that organizes the human life. He maintains that politics is among those affairs that the impeccable Imams and their general deputies used to protect the nation and the Islamic values to lead the nation to felicity in this and the other world (Na'ini, 1361 SH, pp. 28-29). Accordingly, in Na'ini's view, politics is defined, with all its features, in the light of imamate.

The late Na'ini starts his discussion on government from necessity, and considers people as the foundation of any government. He says, "preserving honor, independence and originality of any nation... depends on the nation's reliance on themselves" (Na'ini, 1361 SH, p. 28). He considers government as essential, because it is necessary for organizing the human life. "Know that there is a consensus among the whole Muslim nations and all wise persons in the world that the

strength of the order of the universe and the subsistence of humankind is contingent upon a sultanate and politics, whether it relies on a single person or a community of persons, whether it is legitimate or usurped, and whether it is hereditary or through election” (ibid). Na’ini believes that the Holy Legislator is never pleased with disorder in the system and destruction of the Islamic land caused by the strangers. He argues that the Legislator wants the pious people to organize their life and protect their lands against the strangers. And this necessitates the existence of a government. In other words, the government is the introduction to an obligation, and the introduction of obligation is itself an obligation. He emphasizes that even if the general lieutenancy in all offices is not proved for the jurist (ibid, p. 73), there will be no problem for the principle of necessity of the government.

Various types of presidency and government

In a general division, we can divide the government – from the viewpoint of the jurists in Qajar period – into two types: the government of the Prophet and the impeccable Imam, and the government of the non-impeccable persons in the Occultation period.

1. The government of the Prophet and the impeccable Imam

The late Na’ini maintains that the best type of government is that of the impeccable persons (i.e. the Prophet and the Imams), and believes in the essential desirability of the Impeccable’s government. He says:

“The best tool one can imagine for protecting that idea from any change and safekeeping it as well as preventing even the least level of lustful actions and despotism is the very impeccability of the authority, on which the principles of Imamiya resides. This is because it is necessarily known that with that high position of impeccability and the divinely-given knowledge as well as being free from animal lusts and gathering of all other

necessary attributes in that sublime position – the complete command of all of which is out of the capacity of reasons and perceptions – the stage of getting to reality and not indulging in non-beneficial actions even through error, and the degree of limitation and always considering God – the Exalted – as well as the responsibility and the ruler's sacrifice for the nation and the like leads to the point where 'no one perceives it and to whose depth the human's intellect does not achieve'" (Na'ini, 1361 SH, pp. 35-36).

Thus, the impeccability prevents any kind of misusing the power, and this type of government goes to the ideal person. The axial element in such a government is justice and as Imam Ali expresses it, "The beauty of politics is observance of justice in the government" (Amudi, 1377 SH, p. 165).

2. The government of non-impeccable in the Occultation period

From the Shiite view, in a general approach, in the Occultation period, any type of government is considered usurped and oppressive. Various divisions of government in the Occultation period have been presented and considering the demands of time, the jurists have stated their views about the governments in their own ages. In a general classification, the government in Qajar period can be divided into three types as follows: the sultanate of a Muslim sultan, the desired Shiite government in the occultation period (*Wilayat Faqih* or 'the jurist's authority'), and the constitutional government.

2-1. The sultanate of the Muslim sultan (Islamic sultanate)

The late Na'ini has divided government, with a certain delicacy, from various perspectives, and refers to the sultanate government relied on a certain individual as well. He says, "This type of sultanate, due to being arbitrary and based on the ownership of all individuals

over their personal properties according to the sultan's will, is called *tamlikiya* (= possessive) and *istibdādiya* (despotic). It is also called *isti'bādiya*, *ist'sāfiya*, *tasaluḥiya* and *taḥkimiya*" (Na'ini, 1361 SH, p. 32). Since the Muslim sultan takes over such a sultanate in the Islamic lands, it is called the sultanate of the Muslim sultan. Na'ini rightly enumerates the features and degrees of the despotic government and adds, "and anyone whom he sees qualified for that purpose and annihilated in the position of acquisition, he will make him favored. And anyone whom he sees negating his will, he will expel him from the country he has considered as his own property, or execute and cut him to pieces to be eaten by dogs" (ibid, p. 31). He asserts that the despotic person considers himself as sharing God's attributes and actions and even claims to be God (ibid, p. 32). "The authoritative degrees of this kind of sultanate is different due to difference in sensual habits, difference in the sultans and their associates' reasons and perceptions, and difference in degrees of the knowledge and ignorance of the subjects regarding the sultans' duties and their own rights, and their degrees of being monotheist or polytheist in doing what they wish and governing as they want, non-responsibility for what they do, and ownership of the subjects and the like [in claiming] the divine Attributes and Names to the last degree, i.e. the claim to divinity" (ibid, p. 33). Na'ini depicts the religious despotism, imposed on the society with the help from the political despotism, as follows:

"and negating God's special attributes in the tyrants is considered contrary to Islam and the Quran! Worshipping the oppressors is supported, and it is considered as protecting religion. The delusive divine freedom puts on, in addition to being oppressed, the dress of religious permissibility and is displayed as the individuals' equality with the usurpers of their freedom and rights in the form of removing the privileges between the groups with different laws. The sophistries and

trickeries of Mo'awiya and 'Amr 'Aṣ in accusing Imam Ali – PBUH – of murdering 'Ammar was renewed by martyrdom on his heels and barbaric bloodsheds were renewed, and other oppressive atrocities originating from complicity in enslaving people is pretended to be justice, rights, freedom and removing oppression from the oppressed nation, etc. (ibid, pp. 167-168).

In this way, the sultanate government, in Na'ini's view, is the very government relied on an individual, whose office is seized through usurpation and force, and is governed through an image of *tamlikiya* (possessive) government.

2-2. The government favored by Shiism in the Occultation period (the Jurist's Authority or *Wilāyat Faqīh*).

As said before, the late Na'ini divided government into two types: *wilāyatiya* (authoritative) and *tamlikiya* (possessive). The former is, in his view, the government in its true sense (Heydari Behnu'iya, 1386 SH, pp. 88-100). He maintains that the Impeccable Imam's government is the best form of government and believes that with no access to that purified individual, i.e. the authoritative government (Na'ini, 1361 SH, p. 36), the favorite secondary government starts. He is never pleased with closure of government in the Occultation period and believes that there are some affairs, which the Holy Legislator is never pleased with neglecting, and the Imam's presence or absence has nothing to do with. These affairs are the very *ḥisbiya* affairs¹ that must never be given up. He asserts that since these affairs have not been specified as neither individual obligation nor collective obligation, they must be done by the jurist (faqīh), a just person or even an evildoer. However, as long as there is a just jurist, it does not come to a non-jurist, because the certain level of responsibility for *ḥisbiya* affairs is on the

1. Benevolent actions which require a qualified jurist or his representative to be done.

just jurist's shoulders, whether for the fact that the evidence for the jurist's authority proves the general authority for the jurist or not. Anyway, the jurist has authority in *hisbiya* affairs and no jurist lets the *hisbiya* affairs be given up, because the Holy Legislator is not pleased with giving them up. Na'ini argues that since the Legislator is never pleased with any disorder in the system of people's subsistence and hereafter, and since the Legislator is never pleased with destruction of the Islamic land and annihilation of Islam, which is called protection of the egg of Islam and is among the *hisbiya* affairs, we cannot give it up on the excuse that we are in the time of Occultation of the Impeccable Imam, for the importance of these affairs is more than the other religious affairs (see: *ibid*, pp. 35-36).

2-3. The constitutional government

The constitutionalism in Iran was the product of preparing the political, economic, cultural, religious and social grounds. The ample problems with which the Iranian people face made the need for evolution inevitable. Thus, the constitutional revolution was not unknown for Iranian people and had ties with the realities of the lives of ordinary people and scholars. The Iranians had found that they had to force the rulers to accept their rights. The experience of Tobacco Movement had prepared for them such an opportunity. On the contrary, Muzaffaruddin Shah knew nothing of constitutionalism and considered no right for the people. He issued the order of constitutionalism not for people's rights, but for doing a favor to them (Morvarid, 1372 SH, pp. 44, 73-74).

In explaining the concept of constitutionalism, the late Na'ini made use of religious concepts and doctrines such as trust (*amānat*) and authority (*wilāyat*). He says:

“In any religious law, and even for any wise person, the fabricated sultanate, whether taken over rightly or through usurpation, will

include trusteeship and authority over order and preservation and establishment of other duties regarding guardianship, not through ownership of arbitrary ruling in God's servants and among them and truly including guardianship of some endowments in organizing and preserving the common endowment and settling among those who own the rights and leading any person to his rights, not through arbitrary possession. And the personal seizure of the responsible person is for the fact that in Imams' language and that of the Islamic scholars, the sultan has been called *walī* (authority), *wālī* (guardian) and *rā'ī* (master), and the nation has been called *ra'iyyat* (subject). Thus, the foundation and truth of sultanate is authority over protecting the system as a shepherd for the cattle" (Na'ini, 1361 SH, p. 68).

Na'ini maintains that constitutional sultanate is of the type of *wilāyatiya* (authoritative) sultanate, which is valid in case there is no government of the Impeccable and no just jurist is able to administer the society. The perception of the scholars who are proponents of constitutionalism is limitation of power as the essence of government, and they always sought to limit sultan's power in the society. What is certain is the fact that Na'ini was influenced by Akhund Khorasani's jurisprudential political thoughts, and was one of the members of the scientific circle and council of Akhund Khorasani's *istiftā'* (i.e. legal reasoning), and some special innovations are seen in Na'ini's thought (Mir-Ahmadi, 1390 SH, pp. 161-168). He was in disagreement with other disciples of Akhund Khorasani regarding many of the constitutional issues.

One of the basic discussions among scholars regarding the constitutionalism is the discussion on law. This concept as one of the new concepts in political jurisprudence of that era attracted the attention of the scholars, both pros and cons of constitutionalism. The opinions of the proponents were mainly in line with answering the

questions and doubts proposed by the opponents of constitutionalism. The concept of law was used along with the concept of *Sharia*, and the author of the treatise entitled *Tadhkirat al-Ghāfil wa Irshād al-Jāhil* considered accepting law as an innovation due to leading to a commitment to something outside the framework of *Sharia* (Zargari-nejad, 1387 SH, vol. 2, p. 285). He considered human legislation contrary to the ideas of ultimacy, comprehensiveness and perfection of religion. He asserted that Islam is not realized without confessing to the prophethood [of Muhammad], and confessing to prophethood is not imaginable without rational reason, and the rational reason for prophethood is not apart from our need for such a law and our inability to specify it (ibid, p. 284). Thus, he considers human legislation opposed to the ultimacy, comprehensiveness and perfection of religion and concludes that “enacting law, in general or in particular, is inconsistent with Islam, and this is a prophetic task” (ibid, 285). The author of that treatise maintains that the best law is the divine law and believes that it does not need to be proved for Muslims (ibid, p. 285). Sheikh Fazlullah Nuri does not allow enacting law in the sphere of religious discussions and regards it as an innovation. He says, “In principle, this arrangement and the constitutional law and its reliance on majority’s vote, even if it is in permissible affairs, is legally illicit and an innovation in religion, for it is forced as a law. ‘And any innovation is aberration’. Even a permissible affair, when is forced to be done as an obligation and not doing it is punished, is illicit” (Zargari-nejad, 1387 SH, vol. 1, p. 264).

On the contrary, the proponents of constitutionalism recognized the humanly enacted laws as one of the pillars of constitutionalism. Akhund Khorasani infers the necessity of law from the necessity of limiting power in the Occultation period. He says, “Now that the owner of the *Sharia* (i.e. Imam Mahdi) is absent and the religious laws

are not enforced, and the tyrant rulers are inevitably dominant, it is better to have a law for preventing their despotism and oppression” (Kasravi Tabrizi, 1357 SH, p. 286). He defines enacting laws as something among the ‘public interests’ and ‘the religious obligations of all Muslims’ (Kadivar, 1385 SH, p. 165). In answering the objection of innovative nature of law, he considers it among the newly originated issues (*mustahditha*) and customary affairs (*urfiya*). “Today, the wise men of the world believe that the demands of this century are different from those of previous century. Any state and nation who do not take measures for customary affairs and foreign subjects, such as paving the roads and equipping the armies – in the land and the sea – with new tools, and founding factories that produce wealth for the nation in new way, not promoting industries and sciences, will not be able to stand independent and with grandeur. Remaining in the old path will have no result except decline and extinction” (ibid, p. 213). Thus, Akhund Khorasani considers human legislation as a customary affair, which is, as far as the subject is considered, out of the realm of religious laws and out of the circle of innovation. He emphasizes that these laws “based on Jafari school, will be quite stable and strong” (ibid).

By separating the realms of religious affairs and customary affairs, the late Na'ini recognizes the human legislation in the realm of customary affairs and, through that, inserts the human reason in enacting laws on the basis of council and consultation. He divides the duties and authorities of the state, in regard with order and preservation of the country and policy-making, into two types. “... Or they are texts that their practical task is specified and their decree is fixed in the pure Sharia, or they are non-textual items whose practical duty is not specified, due to not being inserted under the certain rule and the certain amount. And they are contingent upon the opinion and the preference of the typical legal guardian (*walī*)” (Na'ini, 1361 SH, p. 130).

He considers the first group of duties inalterable and the second group among the duties that change as demanded by difference in the interests and time. Since most of the typical policies are of the second type and are under the title of authority of the legal guardian (*walī amr*) and his special and general deputies, they run the principle of consultation of Sharia here (see: *ibid*, pp. 130-134). Thus, Naʿini, like Akhund Khorasani, by proving that the law is consistent with the two attributes of being human and being statute, maintains that legislation in customary affairs based on typical interest is illicit, and by considering the necessity of its not being inconsistent with the fixed religious laws is permitted. Muhammad Ismaʿil Gharavi Mahallati proposes the same view: “Unite with one another and elect those wise politicians among you who are impartial, put all affairs of the country under the law that is useful, not harmful; and force the state offices as well as the men serving there to act accordingly. Appoint a trustworthy supervisor on the state members, who do not betray so that your country becomes ordered and immune from the evils of enemies and your religion is protected” (Zargari-nejad, 1387 SH, vol. 2, p. 284).

The assembly as the subsidiary part of the law was a new achievement of constitutionalism in the path of public order. The opponents and proponents of constitutionalism have also expressed their views in that regard. The author of *Tadhkirat al-Ghāfil wa Irshād al-Jāhil* considers interference in the affairs of the country as a duty of the Impeccable Imam and believes that the ordinary people have no right to interfere in such affairs. While denying the principle of following the majority’s opinion, even as a secondary principle, he considers it an innovation (Zargari-nejad, 1387 SH, vol. 1, p. 284). The scholars who were opposing constitutionalism considered using the reasons of council for legitimizing the assembly as incomplete, and acting according to the majority’s opinion not in accordance with the nature,

the judgment of conscience, the necessity of reason and the Quran's explicit text (Zargari-nejad, 1387 SH, vol. 1, pp. 399, 411).

The late Akhund Khorasani reaches from the necessity of law to necessity of assembly. He maintains that just as the law is necessary and obligatory, creating the assembly of representatives for enacting laws is also necessary and obligatory. "The assembly whose establishment is for removal of oppression, helping the oppressed, enjoining good and forbidding evil, strengthening the nation and the state, the welfare of the people, and protecting the egg of Islam is definitely, rationally, religiously and conventionally referable and even obligatory. And the proponents to it are opposing the religious bright law and the owner of the Sharia" (Malek-zada, 1387 SH, pp. 512-513). For Akhund, the assembly is the agent of real relationship and union between the nation and the state (Zargari-nejad, 1387 SH, vol. 2, pp. 174-179). It has the duty to organize Muslims' affairs, transcend the true Islamic words, strengthening the state and the religion, cutting the strangers' infiltration, implementing the religious laws, enjoining good and forbidding evil, not transgressing the divine limits, and removal of oppression and despotic transgressions (Najafi Quchani, 1393 SH, p. 25).

The late Na'ini as the main theoretician of constitutional sultanate prepared the ground for entrance of assembly and constitutional law to the scene with a rational argument. In his argument, the best type of government is that of Imam Mahdi, and until that type of government is established, he offers the government of just persons. He says:

"Since these two types of government are not possible due to being out of the hands of individuals and not being public, we must observe two principles in formation of any type of government: first, we must enact laws that specify the rights and obligations of the ruler and people. Second, there must be a board consisting of the wise and knowledgeable men who are

aware of the common international laws and the politics and related duties of the age to supervise those laws” (Na’ini, 1361 SH, pp. 37-38).

Na’ini maintains that assembly must be composed of the persons elected by people for supervision and lookout, and considers it as the most important factor for preventing despotism in the political system. In addition to supervision, he considers the legislation role for assembly. By separating the customary and religious affairs in the perception of council, he recognizes the legislation of the assembly in customary affairs.

Na’ini attempts to prove the legitimacy of people’s presence in politics and electing their representatives. He asserts that people have the right to elect persons as their representatives and emphasizes that for a representative, just the public legitimacy is not sufficient, and the divine legitimacy is also needed. Thus, along with people’s elected representatives, a group is also chosen by the religious law; and these two groups are legitimated together as the National Assembly. He asserts:

“According to our principles in Imamiya school, who consider such typical affairs and the political affairs of the nation as pertaining to the general deputies of Imam Mahdi in the Occultation period, inclusion of the selected board of a group of just jurists or those with permission from a jurist, and their correction, confirmation and agreement in decrees issued are enough for its legitimacy” (ibid, p. 38).

Among the jurists supporting constitutionalism, Sayyid Lari goes beyond this and considers the assembly as a religious institute. This is while most opponents introduce it as a customary institute. By regarding assembly as a religious institute, Sayyid Lari maintains that its presidency belongs to a qualified just jurist. “But the conditions for

perfection of the assembly is that at least the prime person of the assembly be a qualified just jurist. After him, his deputy and successor must be of just believers, the more the better” (Zargari-nejad, 1387 SH, vol. 2, p. 87). This is while other jurists consider the assembly as a customary institute and consider the religious affairs out of the scope of assembly, regarding the presence of a supervising board of scholars for overseeing the enactment of that customary institute as an essential condition.

‘Freedom’ is also one of the key concepts disputable among the opponents and proponents of constitutionalism. We must acknowledge that this concept was used in the Shiite jurisprudence in a limited level before constitutionalism. But the constitutional milieu prepared a proper ground for the jurists to deal with its various dimensions. The opponents of constitutionalism, including Sheikh Fazlullah Nuri, were under the influence of the political-social grounds of constitutionalism, and stressed on the conceptual contrast between freedom and servitude to God. They considered the freedom (*ḥurriyat*) in the constitutionalists’ thought as meaning freedom from servitude to God and, consequently, inconsistent with Islam. The author of the treatise entitled *Tadhkirat al-Ghāfil wa Irshād al-Jāhil* asserts: “O dear brother! If they meant implementing the divine laws and the benefit of constitutionalism was preserving the Islamic laws, why did they want to found it on equality and freedom? Both of these concepts destroy the old pillar of divine law, because the strength of Islam is with servitude to God, not with freedom, and the foundation of its laws is on the differences and reconciliation of them, not on equality” (ibid, vol. 1, p. 286). The opponents of constitutionalism, under the influence of the dominant milieu, would consider the freedom generated as the freedom from limits and regulation of religion and accepting that principle as meaning conformity to the etiquettes and manners of the Europeans and Christians.

Contrary to that attitude, the late Akhund Khorasani saw freedom as one of the newly originated (*mustahditha*) issues in the political jurisprudence. He considered it, like the opponents of constitutionalism, as equivalent to *hurriyat*, regarding a semantic expansion for it as freedom from state and lack of any obstacle in the way to revival of legitimate rights of the people (ibid, vol. 2, pp. 294-295). He asserted that freedom is a divinely granted blessing and is freedom from slavery and subordination to arbitrary commands of agents and guardians of the court, not exit from the servitude to God the Exalted and the legitimate prophethood (Najafi Quchani, 1393 SH, p. 52).

Na'ini considered freedom as equivalent to *hurriyat* and wrote, "Thus, of course, the truth of changing the oppressive usurper sultanate is freedom from that slavery and subordination... The goal of any nation, whether they are committed to religion and religious laws or they have no belief in the Creator of the universe, is freedom from that slavery, not exiting the servitude to God – the Exalted – and removal of commitment to Sharia laws and the scripture. And the party to that struggle and dispute is the government usurping their rights, not their Lord and Creator" (Na'ini, 1361 SH, pp. 94-95). He considers the freedom as a principle founded on no slavery and subordination of the nation to the arbitrary will and no participation [in government] because of their equality with sultan (ibid, p. 41).

In the following statements, Muhammad Isma'il Gharavi Mahallati defines freedom in its legal sense, and reminds us of the new meaning of law in the thought of some western thinkers of that time including John Locke (Locke, 1993).

"*Hurriyat* means the general freedom of people from any arbitrary command and coercion so that no person in the position of a king can domineer any weak person, even the weakest, or impose on him a non-logical order because of his power, except through the laws

running in the country. And all people – including the king and the paupers – are equal before the law. And the freedom in this sense is a rational idea and a necessary notion in Islam, and the purpose is removal of oppression and transgression imposed by the strong persons on the weak ones... In short, all people in free lands are free from any transgression, unless what is demanded by their laws” (Zargari-nejad, 1387 SH, vol. 2, pp. 285-286).

Altogether, the group of scholars supporting constitutionalism had accepted ‘freedom’ as a principle, and would prepare the ground for its consistency with religious doctrines by considering it as an obligation.

‘Equality’ is one of the other basic concepts in constitutionalism, but the scholars opposing constitutionalism distorted it from its real sense in the name of religion and under the influence of the existing milieu of constitutionalism in terms of commonality of words or through sophistry. In their view, equality means being equal in laws and rights and no difference among individuals in precepts and rules. The author of the treatise *Tadhkirat al-Ghāfil wa Irshād al-Jāhil* refers to the existing inequalities in the Islamic laws among the subjects pertaining to the religiously competent persons (*mukallaḥīn*). Those laws make difference in regard with rites, transactions and policies for the mature and immature persons, discerning and non-discerning persons, intelligible and non-intelligible persons, healthy and sick ones and other aspects (ibid, vol. 1, pp. 283-303). He cannot recognize equality in rights, and denies equality in the sense the constitutionalists propose. This is while the scholars supporting constitutionalism would consider equality the same as equality in Islam and would consider a legal and political aspect for it. They maintain that the legal equality is the citizens’ equality before the authentic law of the society and believe that all individual members of the society, with any position

and any title, are equal before the law, and no privilege causes the superiority of the individuals.

Amid the events of the constitutionalism and the struggles of opponents and proponents of it, Akhund Khorasani, regarding the concept of equality, writes, addressed to the preachers and guilds and other peoples:

“You must exposit the meaning of equality between the strong and the weak, and the rich and the poor, in regard with rights and laws. You must also specify the truth of constitutionalism, which is no transgression of all classes from their specified religious and political duties, so that all people know with certitude that for acquiring what a blessing and what a felicitous fate in this world and the hereafter they are tolerating so many difficulties” (Kermani, 1357 SH, p. 191).

In another statement, the late Akhund Khorasani, explains the truth of Iranian constitutionalism and its freedom as follows:

“It means no transgression on the part of the state and the nation from the laws pertaining to the specific and general rules inferred from the religion. These rules are based on implementing the divine laws and preserving the religious and national prestige as well as the Islamic wrongdoings, promoting justice, eliminating the foundations of oppression, preventing committing arbitrary deeds and protecting the egg of Islam” (ibid, p. 198).

He stresses on conformation of laws with religious precepts as a necessity.

The late Na’ini also emphasizes that equality preserves the just side of the government. He believes the government that shifts its path from being ‘possessive’ to being ‘authoritative’ will keep on its way if the principle of equality is established there. He asserts that it seems

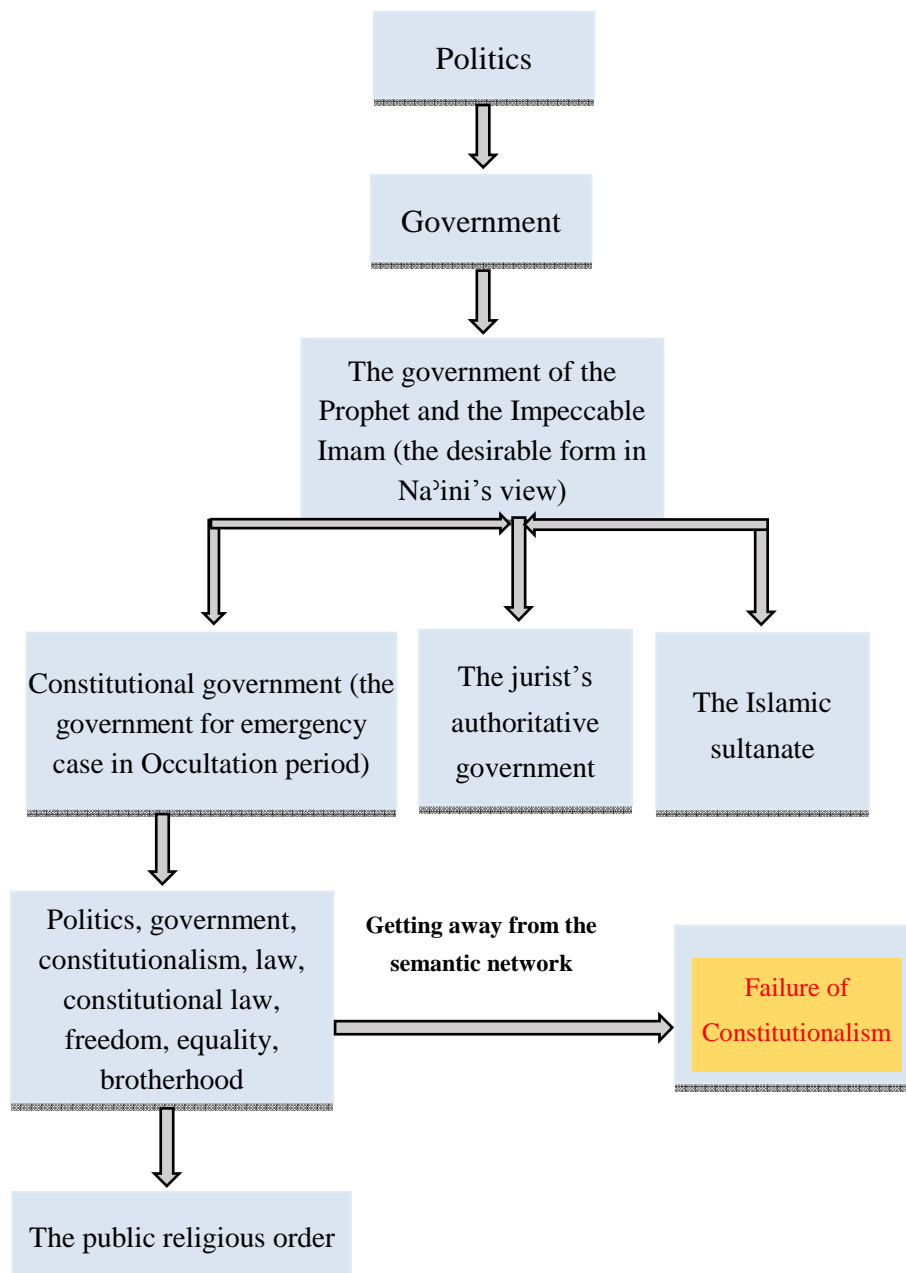
just as the foundation of the authoritative nature of sultanate and its exit from the despotic possessive mode was based on the first blessed principle, i.e. the nation's freedom from the slavery to tyrants, and was for this reason gotten in so many sophistries, its just nature and responsibility for preserving the nation and its revolution from alteration was also founded on the second blessed principle. i.e. the equality of all nation's members in all typical affairs (Na'ini, 1361 SH, p. 97).

Thus, the sultanate of the constitutional type, in view of the authors' writings and the political-social grounds as well as the intellectuals' mental backgrounds, put itself under the test of experience amid an era of struggle between two groups of scholars opposing and supporting constitutionalism in the Iranian society.

The Shiite scholars looked at constitutionalism as an alternative of desirable government in the Occultation period for restricting the limitless power of the sultans. They go to support constitutionalism, for removal of oppression from the society, in line with generating system of Islamic government. Then, new concepts such as law, assembly, freedom and equality emerge in the Shiite political jurisprudence, and various aspects of those concepts are investigated from different viewpoints.

With getting away from the abovementioned concepts, the ground was prepared for the defeat of constitutionalism. Meanwhile, in addition to the role of domestic forces in the defeat of constitutionalism, the role of foreign forces must not be ignored. The evolutions of that era show that Russia had a key role in suppressing constitutionalism and finally cannonading the assembly and seizing the management of affairs. Russia had told Muhammad Ali Shah that with a little military work and arresting the heads of constitutionalism, the story of constitutionalism and changes will end (Sari' al-Qalam, 1390 SH, p. 158; Ajudani, 1383 SH, pp. 502-503).

**The diagram of the semantic network of the government and
the nation in Na'ini's thought**



Conclusion

The Shiite jurists, including the late Na'ini under Qajar, like his predecessors, explains the necessity of government and presidency by making use of the reason and religious texts through imamate. In this way, they stress on the existence of social law and social power of the Muslims. With the entrance of constitutionalism and the related evolutions, the arguments for necessity of the state were founded on the reason and from the perspective of disorder in the system and destruction of the country by the foreigners; and the government is considered as an obligatory introduction. Thus, it becomes necessary and obligatory. The jurists under the Qajar dynasty called the government of the Prophet and the impeccable imams as the highest manifestation of justice, naming it 'the sultan of truth' and 'the state of truth'. In the Occultation period, we can name three types of government: Islamic sultanate, the jurist's authority, and the constitutional government. The Islamic sultanate and the constitutional government were accepted inevitably, and as to the jurist's authority in the Occultation period, authority in benevolence actions is agreed upon by all jurists, but there are a variety of views on whether that authority is applied to general affairs as well or not. With the beginning of constitutionalist movement in Iran, there emerged various views, in the path of creating public order, regarding constitutional government and its implications including the law, the constitutional law, assembly, freedom and equality; and the opponents and proponents' views lined up against one another. The constitutionalism, which was to find its place in religious texts by nurturing jurisprudential arguments, could not last, with its western taint, in the Islamic society and, finally, led to instability and disappointment in the political society of Iran. Getting away from the semantic network defined by constitutionalists such as Na'ini and going towards western constitutionalism led to the failure of

constitutionalism in Iran. The result of the struggles of constitutionalism was reinforcing theoretical discussions and stating different aspects of governmental jurisprudence in the language of the Shiite jurists.

For the late Na'ini, all concepts related to constitutionalism could be explained and interpreted through the doctrines and concepts hidden in the intellectual tradition of Islam. In other words, Na'ini reread and interpreted those concepts in his own reasoning system and stated his own perception of them. The whole series of those concepts alongside one another created a certain semantic network on which the constitutionalism was founded. The intellectuals of the constitutional period, influenced by the western secular thought, did not tolerate such interpretations of those concepts and their oppositions, along with the oppositions from the traditional group opposing constitutionalism inside the seminary centers, prepared the ground for the ailure of constitutionalism.

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