Constitutionalism in Light of Mīrzā Nāʾīnī's Theological Principles: Challenges and Innovations*

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Research Article

Abstract

The present article aims to demonstrate how Mīrzāyī Nāʾīnī, within the tradition of the Shiite political theology and by employing the concepts and teachings of this intellectual tradition, has addressed theoretical questions and concerns about politics during his time. Thus, through textual analysis and within the framework of semantic theories, the article seeks to answer how he arrived at a stance supportive of constitutionalism from the core principles and tenets of Shiite theology. This study reveals that the outcome of his work, in comparison with other jurists of his time, lies in the particular formulation of concepts and doctrines from this old tradition in response to newly emerging issues regarding modern politics. This formulation has two key features: first, the inescapability of theological discourse on the guardianship of the jurist, which arises from his adherence to the Shiite theological tradition; second, the theological reflection on the foundations and various aspects of constitutionalism, which stems from his attention to the nature of the politics of his time. This analysis highlights Nāʾīnī's prominent role in the evolutionary process of Shiite political theology.

Keywords

Shiite political theology, Mīrzā Nāʾīnī, constitutionalism, guardianship of the Islamic jurist.

Introduction

Mīrzā Nāʾīnī (1239–1315 AH / 1860–1936 CE) was a progressive jurist and a prominent thinker in Shiite political theology, holding a distinguished position in the political thought of the contemporary Islamic era. His thought brought about a significant transformation in the history of Shiiism and post-Islamic Iran. Nāʾīnī's jurisprudential thought serves as a transformative model in contemporary Shiite jurisprudence, with particular importance due to his role in defining the components of constitutional governance. Every jurisprudential thought is built upon a set of theoretical foundations that shape a jurist's mindset before engaging with jurisprudential issues. Some of these foundations may be discussed in fields such as theology, ethics, and mysticism, forming the basis of a jurist's reasoning. Therefore, understanding a jurist's thought requires an exploration of these foundations. The reason these foundations are seldom mentioned when presenting the juristic thoughts is that they are generally undisputed among jurists who share the same jurisprudential approach. However, given Nāʾīnī's influential role in advancing jurisprudence and addressing the contemporary needs of society, it will be crucial to revisit these foundations, as this re-evaluation draws attention to propositions with a direct and clear impact on Nāʾīnī's jurisprudential system. It may be that the difference between Nāʾīnī and his contemporary Shiite jurists partly lies in these very foundations. While many studies have examined Nāʾīnī's views on constitutionalism, fewer have explored the origins and consequences of his theological framework compared to other issues in his thought; thus, such a study can be deemed beneficial. In this article, we aim to show how Nāʾīnī's views on subjects such as the guardianship of the jurist, constitutionalism, councils, parliament, law, and freedom are linked to and infused with his unique theological principles, foundations, rules, and presuppositions. We briefly review Shiite

jurisprudential thought on governance and then present an overarching aspect of Nāʾīnī's jurisprudential system within the framework of his theological foundations and its influence on his jurisprudential theory.

1. Shiite Jurisprudential Thought and the Political

By studying the texts influential in the development of Shiite theological discourse, we find that the concepts shaping historical phases of theology, despite having characteristics unique to a particular period, have also played a role in the formation of subsequent phases. These concepts include the method of inference employed by thinkers and their position and role in deriving meaning from religious sources. A glance at some classical theological texts reveals how the introduction of concepts like reason and, later, ijtihad into Shiite political theology has sparked discussions regarding the scope and semantic network of political matters. There is an interval of nearly a thousand years between the initial efforts of al-Shaykh al-Mufīd and al-Sayyid al-Murtaḍā on rational principles for deriving legal rulings during the Infallible Imam's occultation and Imam Khomeini's innovations on the subject of "legal directives." Throughout this period, discourse on the political has undergone significant fluctuations. Central to these transformations is the concept of ijtihad, which has established an argumentative structure within Shiite theology. The expansion of this concept, in light of the needs of the Twelver Shiite society and in recognition of Shiite theology and the political, has extended the authority of the jurist as the deputy of the Imam (*nāʾib al-Imām*). Initially framed within the dichotomy of "scholar / layperson" early after the Twelfth Imam's occultation, it later evolved into the "mujtahid / follower" dichotomy, forming the foundation for a political power organization. Thus, the Shiite mujtahid differs from the Sunni mujtahid. The primary distinction lies

in the fact that in Shiite jurisprudence during the Imam's occultation, the fully qualified mujtahid is regarded as the successor and deputy of the absent Imam. In addition to issuing legal rulings, this role grants the mujtahid authority in certain political and social positions. This unique aspect of ijtihad in Shiite theology has allowed jurists to play an influential role in socio-political developments in the contemporary era.

Thus, Islamic theological thought has developed within the two frameworks of Shiite and Sunni doctrines. While the principle of prophethood is common to both, the point of divergence lies in the concepts of Imamate in Shiite doctrine and Caliphate in Sunni thought. This is why Shiite political theories are predominantly centered around Imamate and *wilāya* (guardianship). According to Hassan, Shiite political theories regard Imamate as a fundamental principle, not a subsidiary aspect of the faith (Hassan, 2004, p. 475). On this principle, Imamate is considered an extension of prophethood. The Shiite Imam is viewed as a perfect human endowed with specific attributes such as infallibility and knowledge. The appointment of the Shiite Imam to this position is believed to be divinely ordained, guiding humanity toward the path of salvation. Shiite theologians invoke the principle of grace (*al-luṭf*) to explain this designation (see ʿAllāma al-Ḥillī, 1998, pp. 493–494; Hassan, 2004, pp. 433–478). The acceptance of infallibility (*ʿiṣma*) and knowledge as Shiite theological teachings has elevated the words (*qawl*), actions (*fiʿl*), and tacit approvals (*taqrīr*) of the Shiite Imam to the status of reliable sources for producing religious knowledge, akin to the Prophet's tradition. Moreover, the resulting knowledge is deemed obligatory to follow. This theological teaching is reflected in and shapes theories of legitimacy.

Shiite political views during the presence of an infallible Imam (peace be upon him) face no particular challenges, as there is no doubt

about the right of the infallible Imam to govern. The challenge arises, however, with the Major Occultation of the Imam.[1] This challenge stems from the absence of the infallible Imam and his special deputy in society. In Islamic terminology, a ruler is one who, appointed by God—the ultimate criterion of truth and falsehood—is granted the authority to discern and articulate the distinction between right and wrong. Thus, ruling fundamentally belongs to God and is delegated by Him to certain individuals.[2] This understanding of ruling is directly associated with sovereign authority vested in a single individual. Consequently, the ruler is not seen as a representative of the people but rather as one chosen as God's representative. For this reason, in Islamic discourse, the concept of government is not pertinent to

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1. The era of Occultation (*al-Ghayba*) has been a challenging and difficult period for the Shiites. Imami scholars made great efforts to address the challenges and issues arising from the Occultation and to offer solutions. Since the beginning of the Twelfth Imam's Occultation, generations of Imami scholars have emerged, each taking steps to preserve and continue the legacy of the Imamate. Noteworthy scholars have left enduring Shiite works, which serve as the primary sources for Shiite jurisprudence and are essential references for jurists:

   - Abū Jaʿfar Muḥammad ibn Yaʿqūb al-Kulaynī: *al-Kāfī*
   - Muḥammad ibn ʿAlī ibn Bābawayh al-Qummī, known as al-Shaykh al-Ṣadūq: *Man lā yaḥḍuruhu al-faqīh*
   - Muḥammad ibn al-Ḥasan al-Ṭūsī, known as Shaykh al-Ṭāʾifa: *Tahdhīb al-aḥkām* and *al-Istibṣār*
   - Muḥammad Muḥsin al-Fayḍ al-Kāshānī: *al-Wāfī*
   - Muḥammad ibn al-Ḥasan al-Ḥurr al-ʿĀmilī: *Wasāʾil al-Shīʿa*
   - Muḥammad Bāqir ibn Muḥammad Taqī al-Majlisī: *Biḥār al-Anwār*
   - Ḥusayn ibn Muḥammad Taqī al-Nūrī: *Mustadrak al-Wasāʾil*

   The first four books are known as the "Four Books" (*al-Kutub al-Arbaʿa*) and hold great significance (Modarresi Tabatabaei, 1362 Sh, pp. 25–26).

2. According to certain verses of the Quran, judgment ultimately belongs to God and is granted by Him to individuals. Examples of such verses include:

   - Ṣād (38:26): "O David! We have made you a vicegerent on earth, so judge between the people in truth..."
   - Maryam (19:12): "O John! Hold fast to the Book with strength." And We gave him judgment while yet a child.
   - Anʿām (6:89): "They are those to whom We gave the Book, and judgment, and prophethood. But if these disbelieve in it, We have entrusted it to a people who are not disbelievers in it."

democracy; instead, it largely denotes the authority that an individual exercises over all members of society by God's will to guide them according to divine law. Therefore, the persistent question regarding governance in Islamic thought has been: Who can act as God's deputy in an Islamic society? Unlike in Christian discourse, Islamic terminology does not separate what is religious, belonging to God, from what is worldly, belonging to people. This intertwinement of religious and worldly matters has shaped Muslim life, belief systems, and language, with less emphasis on separating religion and politics. For instance, the term "Imam" pertains to both the political and religious needs of society. These needs include preserving religious principles, defending the realm of Islam, leading in jihad, managing the community's finances, and regulating relations between the Islamic society and other communities—issues that must be decided according to sharia and in harmony with God's will.

In such circumstances, the question arises: To whom does the right of governance belong during the Major Occultation? The majority of Shiites hold that this right belongs to the just, fully qualified jurist. However, the question remains: What are the limits of such a jurist's authority? Shiite political theological debates have centered around these two fundamental questions, evolving and developing over different periods.

1.1. The Establishment Period

The turning point in the development of Shiite political theology is marked by al-Shaykh Mufīd's views. His perspective on the social, political, judicial, and military responsibilities of the jurist during the Imam's occultation is clearly articulated in his works. He adopts a method in his writings that was unprecedented among hadith scholars of the time. In *al-Muqniʿa*, instead of quoting the exact wording of the

Imams' hadiths in response to jurisprudential queries, he interprets these hadiths. This approach laid the foundation for a type of argumentative and fatwa-based jurisprudence in addressing jurisprudential matters. Up until then, jurisprudence was conducted through direct reference to hadiths and their formulations, but al-Shaykh al-Mufīd, through a treatise on the principles of jurisprudence, managed to establish a rational method of inference grounded in hadiths. This approach to jurisprudence required a structured inferential method. Accordingly, with the composition of *al-Tadhkira bi-usūl al-fiqh*, he produced the first independent text on Shiite jurisprudential principles. The emphasis on rational argument in this work indicates that reason was regarded as a source of inferring legal rulings from the Quran and Sunnah (Shaykh al-Mufīd, 1991, p. 28).

In his view, rather than directly quoting hadiths to explain rulings, rational inference and reasoning based on hadiths and the Quran can serve as substitutes. Therefore, for deducing legal rulings where explicit ruling does not exist, reason becomes a means to discern such rulings. In his works, rational argumentation opens a path to political authority. In particular, specific designation only justifies the designation of the special deputies of the Imam (peace be upon him); however, the foundation for a jurist's right to assume certain roles of the absent Imam is the jurist's knowledge, which is validated through rational reasoning (Shaykh al-Mufīd, 1989, pp. 675–676). Thus, a jurist's interaction with political authority occurs within a legal framework. According to jurisprudential evidence, a jurist is responsible for certain offices of the Imam, such as collecting zakat (Shaykh al-Mufīd, 1989, p. 352), leading congregational prayers (Shaykh al-Mufīd, 1989, p. 811), and holding judicial authority (Shaykh al-Mufīd, 1989, p. 811). Although these roles are intrinsically linked to political power and are primarily the right or duty of a just ruler, because an unjust government has no right

to occupy the Imam's positions, the jurist gains the qualification to assume these roles to ensure the affairs of the Muslim community are not neglected.

In continuity with al-Shaykh al-Mufīd's thought, his distinguished student, al-Shaykh al-Ṭūsī (d. 460 AH), expanded upon his approach and founded a new school of jurisprudence. al-Shaykh al-Ṭūsī's major contribution was the transformation he brought to Shiite jurisprudence in the absence of access to the infallible Imam (peace be upon him). Through his work *Al-ʿUdda fī uṣūl al-fiqh*, al-Shaykh al-Ṭūsī articulated his principles and methodology of jurisprudential reasoning. This approach represents the jurist's effort to deduce legal rulings not directly addressed in the Quran and Sunnah by deriving certain rational principles from reliable jurisprudential sources. In his book on jurisprudential principles, he discusses ijtihad and the necessity for the layperson to consult a jurist, outlining the requirements for jurisprudential reasoning (Ṭūsī, 1996, vol. 2, pp. 714–719). By distinguishing between imitation in principles of religion and in jurisprudential ancillaries, he argues that while there is evidence against imitation in theological principles, it is permissible for a layperson to follow a jurist in jurisprudential matters when they cannot deduce a ruling on their own (Ṭūsī, 1996, vol. 2, pp. 729–735). However, al-Shaykh al-Ṭūsī's most significant contribution was to propose an intellectual and jurisprudential solution for issues arising in the period of the Imam's occultation, rather than a political one. In this model, the jurist, through rational and scholarly effort, assumes the role of an epistemic and religious authority in addressing the emerging issues in the Imami community, without claiming political power (Amiri, 2013., pp. 509–510).

1.2. The Formative Period

The establishment of the Safavid government marked the beginning

of a new phase in the evolution of Shiite political theology.[1] The characteristics of this period created favorable conditions for an expanded political presence of religious scholars. Shiite jurists of this era—continuing the emphasis on *wilāyat al-faqīh* (guardianship of the jurist)—now also debated topics such as the scope of the jurist's authority, the permissibility of collaborating with the ruler, and whether a jurist could accept a position from the ruler. These issues became points of contention among the scholars (Borji, 2006., p. 145).

The most significant development of this period was the increasing involvement of jurists in worldly affairs. Some jurists of this era clarified that the Infallible Imam did not appoint the jurist solely for judicial and fatwa purposes but also as a ruler (Hosseinizadeh, 2001, p. 88). Thus, the qualified just jurist is considered a deputy of the Imams (Jahanbozorgi, 1999, p. 109). As a result of the jurists' efforts, the legitimacy of Safavid rulers became linked to the approval of the jurist. With the empowerment of jurists, they were also able to engage in worldly matters. The peak of this transformation can be observed in the views of Mullā Aḥmad Narāqī.

Perhaps the most significant social-political transformation was the emergence of a new influential center within Iranian society. With the development of new beliefs, commitments, rules, and obligations for social life under a cohesive religious system, a group of Shia jurists gradually came together to systematically present Islamic law to society and act as representatives of the Divine Lawgiver. This group expanded in conjunction with the spheres of politics and society. Until

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1. The Safavid era marks a significant turning point in the development of Islamic political thought. Shah Ismail's adoption of Shiism as the official religion of Iran—intended to distinguish his rule from that of the Ottomans and Uzbeks—occurred precisely as European societies were taking their initial steps toward modern discourse with the Reformation movement. Through their governance, the Safavids secured Iran's unity, and by establishing Shiism as the official religion, they enabled the consolidation of Iran's identity as it appears today.

the Safavid era, Shia jurists operated in dispersed communities under Sunni political rule, participating to some extent in the internal governance of these communities. While the Buyid and Sarbadar dynasties were Shia, they only held power in limited regions. With the establishment of the Safavid dynasty, Shia Islam was declared the official religion. Following this declaration, Shia jurists—who had previously lived in scattered communities in regions like Hillah in southern Iraq, Jabal Amel, the Beqaa Valley (southern Lebanon and western Syria), and Bahrain—were invited to Iran. Thus, the organizational structure of the clergy dates back to this period, during which the clergy emerged as a social group with defined, institutionalized functions and broad, stable connections with society.

1.3. The Consolidation Period

Another significant historical phase in Shia political thought coincided with the Qajar era. During this period, jurists, for the first time, not only acknowledged the guardianship of the jurist (*wilāyat al-faqīh*) in worldly matters and societal administration but also provided a reasoned explanation for it. Al-Shaykh al-Anṣārī considered issuing fatwas and judicial verdicts to be among the prerogatives of the jurist's authority and governance (Amid Zanjani, 1998, p. 66). Mullā Aḥmad Narāqī asserted that jurists have authority over adjudication and public disputes, and people must refer to them in their conflicts and accept the judgments they issue (Narāqī, 1988, p. 45). He was the first jurist to independently discuss this issue with multiple rational and scriptural arguments. His assertion that managing the worldly affairs of the people is among the responsibilities of the jurists was the first explicit statement on the political duties of jurists in the history of the Major Occultation (Kadivar, 2001, pp. 17-18). While emphasizing the necessity of the jurist's guardianship, Narāqī argued that it is imperative upon the Merciful and Wise God to appoint a guardian for any matter that

pertains to both the religious and worldly aspects of people's lives and whose presence in society is indispensable (Narāqī, 1988, pp. 15-16). In this regard, he used the Four Sources (*al-adillat al-arbaʿa*) to establish the jurist's guardianship over all matters of governance and societal leadership, asserting that the jurist is responsible for all affairs that are rationally essential for preserving the religion, public welfare, and social order (Amid Zanjani, 1998, pp. 56-57).

Based on this premise, the relationship between religion and politics and the balance of political power in Qajar-era Iran were grounded in Islamic law. Political leadership was considered the right of the Absent Imam; therefore, recognizing political authority was always provisional and conditional. Jurists held that the right to legitimize the state was theirs, delegated to them on behalf of the Imam.

1.4. The Evolutionary Period

The most challenging period in the transformation and evolution of Shiite political thought was marked by the introduction of modern political philosophy. The significance of studying this era is heightened by its coincidence with debates that have shaped contemporary Iranian history over the past 200 years. The unprecedented issue of recognizing the rights of the people led Shia jurists to split into two groups: pro-constitutionalists (advocates of *Mashrūṭa*) and advocates of sharia (*Mashrūʿa*), who opposed constitutionalism. These two factions developed distinct political theories, differing in their interpretation of the requirements for an Islamic ruler and the basis of legitimacy for religious governance.

Pro-constitutionalists, alongside acknowledging divine legitimacy, believed that government must also secure legitimacy from the people. In contrast, advocates of sharia, relying on scriptural evidence (*naṣṣ*), deemed divine legitimacy alone sufficient for governance, assigning

no role to popular legitimacy. To advance their perspective, pro-constitutionalist jurists proposed a new interpretation of the jurist's role and the conditions for acquiring authority or guardianship. Their primary aim was to safeguard the Islamic domain and prevent tyranny by establishing a just government led by Muslims. Mīrzā Nāʾīnī emphasizes, "It is among the certainties of our Imāmī creed that in this age of Occultation—may peace be upon the one in occultation—the jurists are indeed the deputies in regard to essential public duties, termed *ḥisbiyya* obligations [those related to social transactions], which the Sacred Lawgiver does not permit to be neglected, even without evidence for general deputation in all offices. As it is an absolute certainty that the Sacred Lawgiver does not consent to disorder in society, the disintegration of Islam, and, in particular, the duties relating to the preservation and order of Islamic realms, the jurists' deputation in performing these duties is an established certainty of the creed" (Nāʾīnī, 2014, p. 75). In the view of pro-constitutionalists, such a system could only be realized by recognizing the people's role as a pillar of legitimacy in establishing a political order.

The heightened supervisory role of jurists, alongside the acceptance of elections and the principle of representation, marked another significant shift that gained the attention of open-minded jurists of this period, ushering in a new phase of evolution in Shia political thought.

2. Theological Foundations of Constitutionalism in Nāʾīnī's View

Nāʾīnī's definition of constitutionalism as a political matter of his time is rooted in the framework of Shiite political theology. Thus, he considers the essence of constitutional monarchy to be a form of "guardianship" and "trusteeship" (Nāʾīnī, 1393, pp. 45, 68). This theological perspective also influenced Nāʾīnī's juridical views, which can be traced in his approach to jurisprudential subject analysis.

Subject analysis has a direct impact on a jurist's methods of

deduction and ijtihad. This importance becomes particularly tangible when a jurist encounters a novel issue. In some cases, unless theological foundations are broadened and developed to understand the subject, it may be fundamentally impossible for the jurist to issue a jurisprudential ruling. Mirzā Nāʾīnī approached constitutionalism as a new political structure. In the vision Nāʾīnī offered of this modern framework, the devout found more favorable grounds for religious practice, which could serve as a support for achieving religious objectives. This represents an example of Nāʾīnī's theological subject analysis, which influenced his method of ijtihad and distinguished his arguments and rulings from those of the pro-sharia jurists.

The formation of diverse intellectual and political currents among the intellectuals and scholars of the constitutional era in defending constitutionalism clearly reflects their comprehension of the concept, as well as the adaptation of the term "constitutionalism" within an Iranian-Islamic context. Thus, the political challenges of the constitutional period also encompassed theological debates aimed at defining the semantic boundaries of political terms such as nation, state, freedom, liberty, equality, law, constitutionalism, and legitimacy. These theological debates transformed varied layers of meaning into arenas for political struggle. For instance, the concept of nation-state, an important intellectual notion in the West, was interpreted through the Islamic linguistic structure when it entered Iran during the constitutional period. In the theoretical foundations of Shiite political thought, the term "nation" signified the religious law (*sharīʿa*) and its followers, in contrast to "state," which denoted monarchy. In this context, religious scholars were regarded as the leaders of the nation (as followers of the sharia), while the king was viewed as the head of the state. The social and political structure of Iranian society during the Safavid era was shaped accordingly, with clerics leading the nation (in terms of religious law) and the king and

courtiers leading the state. Therefore, the distinction between the concept of nation (sharia) and state (monarchy) that existed during the period of Occultation naturally persisted after the Constitutional Revolution, maintaining its structure.

Mīrzā Nāʾīnī held that the concepts of modern political philosophy—such as consultation, law, parliament, freedom, and equality—transcend human reason, a point acknowledged even by Western thinkers. He goes so far in attributing European borrowings from Islamic thought that he states, "They [Europeans] derived the principles of Islamic civilization and politics from the Quran, Sunnah, and edicts issued by the Lord of Guardianship—peace and blessings upon him—and other sources, and they acknowledged this justly in their historical records, admitting the limitations of human reason in reaching these principles, and attributing all extraordinary advancements achieved within less than the first half-century to following these [Islamic] principles" (Nāʾīnī, 2014, pp. 35-36).

Mīrzā Nāʾīnī, in his critique of the actions of the Shiite jurists, accused them of negligence in deriving and formulating the principles of political rulings from textual sources. He attributed this shortcoming to the belief in the non-establishment of government during the period of occultation—a belief that reduced jurisprudence to individual devotional rulings and prevented jurists from engaging in governmental jurisprudence. Nāʾīnī explicitly states:

> Despite the fact that—by God's praise and divine assistance—from a single blessed phrase like "Do not overturn certainty with doubt," we have derived such subtle principles, we have remained oblivious to the requirements of the foundations and principles of our creed, which are the source of our distinctiveness from other groups. Thus, we have deemed enslavement and subjugation under the tyrants of the ummah as incurable until the time of deliverance [Imam al-Mahdī's

reappearance]—may God hasten its days—and have not entered this domain at all. Meanwhile, others, in seeking to act upon these foundations and liberate themselves from this wretched bondage, have seized the lead. They took the natural origin of such advancement and influence from Islamic politics and, through their skilled reasoning and sound derivations, established rightful outcomes based on these foundations, attaining outstanding results. Meanwhile, we Muslims have regressed. (Nāʾīnī, 1393, pp. 91–92)

In tracing the historical roots of the Islamic nation's subjugation relative to the West's advancements, he points to the Umayyad discord, writing:

All political scholars and those knowledgeable about global affairs, both Muslim and non-Muslim, agree that just as the natural cause of Islam's remarkable advancement and influence in its early era—spreading with incredible speed within less than half a century—was due to the just and consultative nature of Islamic governance, where all Muslims, including the caliphs and their close circles, were equal in rights and rulings, so too has the natural cause of the Muslims' decline and the dominance of Christian nations over them—which has led to the loss of most of their lands, with the remaining few territories on the verge of being taken—been the Muslims' enslavement under the despotic and inherited rule originating from Muʿāwiya and their resulting success. (Nāʾīnī, 1393, pp. 79–80)

Overall, Nāʾīnī opposes the analysis that constitutionalism is a foreign import and, by examining historical evidence and Islamic intellectual sources, seeks to demonstrate that constitutionalism is a system rooted in Islamic principles. In other words, "Constitutionalism is a new name for an old concept" (Nāʾīnī, 1393, p. 78).

3. A Formulation of Religious Evidence for Constitutionalism in Nāʾīnī's Theological Views

The principle of non-guardianship (ʿadam al-wilāya) serves as Nāʾīnī's crucial basis for formulating the legitimacy of a constitutional system: that no one has an inherent right of authority or guardianship over another, and the intrinsic guardianship of the universe belongs solely to God. Even God's messengers come to convey to humanity that they must align their will solely with the will, law, and commands of the Almighty, without violating divine law in any area of life—including politics (Heidari Behnooyeh, 2007, pp. 74–85). Consequently, political power must also derive legitimacy from divine authority.

Although his ideal political model is governance by an infallible leader, in the period of Occultation, he inevitably favors a government based on law and popular elections over other models, as he sees it as free from the tyranny of rulers.

3.1. Reconstructing Political Theology to Tackle the Emerging Issues of the Occultation Period

The significance of Nāʾīnī's theological innovation lies in his reconstruction of Shiite perspectives during the era of Occultation. According to traditional Shiite belief, governance is solely the right of the infallible Imam or his appointed deputy, and any other government is considered usurped and unworthy of support. Nāʾīnī reconstructs this theological view in a way that leads to the establishment of a constitutional government. Based on his theological principles, he argues, first, that the power of tyrannical rulers must be decisively curtailed, and second, that the institution of monarchy itself should be redefined. Nāʾīnī rejects equating monarchy with autocracy and self-centeredness, insisting instead on the accountability of rulers. He states: "Necessarily, the institution of monarchy, whether legitimate or usurped, in any religion or even to any rational person, is intended to

be a trust on behalf of the people, a position of guardianship to maintain order and uphold duties related to protection, rather than a position of domination, ownership, and arbitrary rule over lands and people" (Nāʾīnī, 2014, pp. 69-70). Nāʾīnī further emphasizes: "The subjugation of the people under arbitrary commands, besides being the most heinous form of oppression, rebellion, and arrogance on earth, is a usurpation of divine majesty and contradicts the highest aims of the prophets" (Nāʾīnī, 2014, p. 70). He concludes, therefore, that freedom from tyrannical rulers is essential to faith. This line of reasoning demonstrates that Nāʾīnī initially brought the dispute between despotism and constitutionalism into the realm of theology, framing these two political systems in terms of faith and disbelief. Consequently, if it can be proved that the establishment of a constitutional system can prevent the spread of disbelief, a jurist would be compelled to issue a ruling in favor of establishing such a system.

Nāʾīnī's argument for the religious legitimacy and validity of constitutionalism is based on the premise that entrusting legislative authority to non-infallible humans creates conditions for disbelief. However, if legislative bodies in Islamic countries can derive the content of laws from the teachings of the Sacred Lawgiver, this approach will transform a political system that initially appears as a Western import into something suitable for Muslim lands. He emphasizes that, under a constitutional system, a committee of top jurists should oversee legislative resolutions to prevent the infiltration of disbelief. He further explains that the "impurity" of constitutionalism is incidental and removable, while the impurity of despotism is inherent. With these points, Nāʾīnī asks: In a time when the Muslim community is deprived of the direct guidance of the infallible Imam and the authority of jurists as his deputies has been usurped, is it permissible to refer back to a despotic government that embodies both

compounded injustice and usurpation? Or, is it our religious duty to depose the usurper from power? (Nāʾīnī, 1393, p. 68). In response to this question, he argues for the necessity of limiting tyrannical rule and transitioning it to a constitutional system. He states:

> No room for doubt remains regarding the obligation to transition despotic and usurping monarchy from the first type to the second type, as long as removal of the former is not feasible. For, as you have learned, the first type of rule usurps the divine mantle of sovereignty—exalted be His name—and constitutes an injustice against the sanctity of divine oneness, an encroachment on the authority of the Imamate—blessings upon it—and a usurpation of the people and lands, violating the rights of the servants of God. In contrast, the second type's usurpation and injustice are directed only against the sacred authority of the Imamate and are free from the other two forms of injustice and usurpation. (Nāʾīnī, 1393, pp. 76-77)

3.2. Relationship between Constitutionalism and Governance Models

Mīrzā Nāʾīnī categorizes the forms of government in his time under five general headings, dividing them into two main categories: legitimate governments and illegitimate governments. Under legitimate governments, which are free from injustice and usurpation, he envisions three possible types: the governance of the infallible Imams (peace be upon them), the authority of just and fully-empowered jurists (whom he refers to as the agential guardianship of the general deputies), and just constitutional government with the permission of just jurists. In the second category, namely illegitimate governments, he names two types: a just constitutional government without the permission of just jurists and an oppressive government, such as authoritarian or absolute rule. The first is illegitimate due to its

usurpation of the Imam's rightful authority; the second is entirely impermissible, as it constitutes an injustice against the divine domain, the position of the infallible Imam, and the people (Nāʾīnī, 1393, pp. 75-81; Kadivar, 1380, pp. 94-100).

Nāʾīnī adopts the strategy that, during the Occultation era, it is necessary to restrict the extent of usurpation to the extent of the capacities of the time and the community. He views the establishment of a constitutional system as a means to limit usurpation, since, unlike absolute despotic rule—which usurps both the Imam's and the people's rights—constitutionalism at least does not encroach upon the people's rights. He supports this argument with three premises: In the first premise, he states that if a person is involved in numerous wrongful acts, it is incumbent upon Muslims to prevent all such wrongs; however, if it is not possible to prevent them all, they should at least try to deter him in areas where they can. In the second premise, he argues that jurists, as the protectors of Islam during the Occultation, act as deputies of the infallible Imam; thus, the right to govern in this period belongs to them as a means to achieve this goal. In the third premise, he uses the metaphor of an endowment, explaining that if an endowed property is usurped and it is impossible to completely stop the usurpation, then, if feasible, it becomes religiously obligatory to limit the usurper's authority over the property (Nāʾīnī, 1393, pp. 102-106, 110-115).

This theological formulation reflects the circumstances of Nāʾīnī's time. Essentially, he argues that if he cannot completely abolish an illegitimate despotic government, he can at least break the absolute nature of its despotism by limiting and conditioning it. Therefore, in situations where the constitutional model can be used to restrain the absolute power of a tyrannical king, this becomes a religious obligation for the Muslim community.

3.3. A Theological Formulation of Freedom

The concept of freedom is another element of modern political philosophy that attracted the attention of Mīrzā Nāʾīnī. This concept had previously been addressed within Islamic theological thought, especially among Shiites, in terms of will and choice (or free will). For instance, this discussion can be traced under the notion of "slave and free person" in the works of Muslim theologians. A person considered free must necessarily possess certain rights. Human freedom can only be conceived if we remove the master-slave relationship from human interactions. Naturally, human freedom in social relations does not imply negating one's servitude to God. This new framework provided fertile ground for discussions on constitutionalism.

At first glance, freedom was seen as a foreign import brought by intellectuals from the West, leading anti-constitutionalists to reject this principle. However, Nāʾīnī's formulation of freedom provided a barrier against opposition to constitutional liberty by showing that, although freedom appears to be a modern concept, it has a longstanding equivalent in Shiite thought: "ḥurriyya" (liberty). Nāʾīnī did not simply settle for a basic alignment of this principle with Islamic teachings (Nāʾīnī, 2014, p. 51); he expanded its meaning. Through this conceptual expansion, freedom not only harmonizes with the sharia, but it also connects with the purpose of divine revelation and the mission of the prophets. He writes: "Thus, rescuing the usurped liberty of nations and freeing them from this abhorrent servitude to enjoy their God-given freedom has been among the paramount goals of the prophets, peace be upon them" (Nāʾīnī, 2014, p. 59). In this religion, God created humanity as free, and liberation from servitude to tyrants is a prerequisite for true worship of God.

3.4. A Theological Formulation of Parliament

Nāʾīnī holds that the era of Occultation is a unique historical condition that necessitates the Islamic community's turn toward collective wisdom, which can be realized in an institution called the "parliament" under a consultative system. He views parliament as a way to fill the void left by the absence of the infallibility (ʿiṣma) of the Imam in government, arguing that since, during the Occultation, governance cannot simply be ignored—and no ruler possesses the infallibility that would safeguard against errors in judgment—there must be a measure taken to prevent despotism. This measure should be a humanly feasible substitute (Nāʾīnī, 2014, p. 87), which he describes as "the closest possible replacement for the infallible guiding force of ʿiṣma" (Nāʾīnī, 2014, p. 89). In fact, Nāʾīnī aims to establish theological grounds for a constitutional government by envisioning a parliament that can perform some of the functions of the infallible Imam to the extent human intellect allows—though, of course, not in the same way done by the exalted Imams. While such a government may not be completely free from error, it also does not carry the harms of a despotic rule. To ensure the political legitimacy of this new institution, Nāʾīnī ties it to public oversight, asserting that just as the parliament restrains the tyranny of rulers, the oversight of the people should restrain any potential despotism within the parliament itself. He states:

> Accountability and full responsibility can only be realized, preserving limitations and preventing the transformation of governance into ownership, if all officials comprising the executive branch remain under the supervision and accountability of the representative body, and this body itself remains under the scrutiny and accountability of the entire nation. (Nāʾīnī, 2014, p. 48)

In Nāʾīnī's theological perspective, another basis for the validity of public oversight is its connection to the Islamic principles of *forbidding*

wrong (*al-nahy ʿan al-munkar*) and the Qur'anic exhortation of *consultation* (Nāʾīnī, 2014, pp. 75-77, 83-87). Yet Nāʾīnī does not stop here; he further emphasizes the role of the community's jurists, identifying the permission and endorsement of the jurist as the source of legitimacy for this civic institution and for public oversight (Nāʾīnī, 2014, p. 123). He writes:

> The legitimacy of oversight by the elected representative body, according to the principles of the *Ahl al-Sunna wa-l-Jamāʿa*, who consider the authority of the *ahl al-ḥall waʾl-ʿaqd* [those who hold authority] sufficient, is established by the election of the people alone and requires no further condition. However, according to our principles as Imāmīs—who hold that such matters of public welfare and governance are duties of the general deputies of the Imam in the era of occultation—the legitimacy of the elected body is ensured if it includes a number of just jurists or those authorized by a jurist and if their opinions are validated and ratified by the approval of these jurists. (Nāʾīnī, 2014, pp. 48-49)

In Nāʾīnī's theological perspective, another justification for the authority of public oversight lies in grounding this civic role in the principle of "enjoining good and forbidding wrong" and the Qur'anic recommendation of consultation (Nāʾīnī, 2014, pp. 75–77, 83–87). He does not stop there but further emphasizes the role of jurists within the community, presenting the permission and authorization of a jurist as the legitimizing element for this civic institution and public oversight (Nāʾīnī, 2014, p. 123). He writes:

> The legitimacy of the oversight by an elected assembly, according to Sunni principles that attribute authority in such matters to the community's decision-makers (*ahl al-ḥall wa-l-ʿaqd*), is established directly through the people's choice and does not depend on any further condition. However, according

to our Imami principles, which consider these communal and political responsibilities as duties of the general deputies during the era of Occultation (may peace be upon the one in occultation), the assembly's legitimacy is sufficiently established by including a number of just jurists or individuals authorized by a jurist, whose review and validation of decisions will ensure its legitimacy. (Nāʾīnī, 2014, pp. 48–49)

One of Nāʾīnī's theological innovations concerning the establishment of the Islamic Consultative Assembly is his appeal to the concept of *wikāla* (representation). He argues that, once the necessity of forming a "parliament" and appointing a "supervisory body" is accepted based on various religious grounds, the election of representatives by the people must also be accepted (Nāʾīnī, 2014, pp. 113–114). As the term suggests, this theological perspective stems from a conceptual extension of the doctrine of religious representation, and thus is grounded in religious texts. Nāʾīnī writes: "In regard to taxes intended for the public welfare, as well as other shared communal matters over which no one but a divinely appointed guardian has authority, their administration may be aligned with the concept of religious representation (*wikāla sharʿiyya*)" (Nāʾīnī, 1393, p. 114).

3.5. A Theological Formulation of Legislation

Alongside the concept of parliament, the notion of law inevitably arises. Here, law refers to frameworks established to limit power. In Nāʾīnī's theological framework, the elements of being "human-made" and "positively enacted" are emphasized as two core components in legislation (Mirahmadi, 2010, p. 84). Thus, implementing law within society involves defining the limits of duties and rights across various levels. Given that this understanding of law was considered an innovation, it became a point of theological debate in that era.

The Constitutional Movement was the first reflection of intellectuals'

efforts to adapt elements and values of European modernity to Iran's social conditions. Although Western concepts became part of Iranian political language through this movement, it can be said that such usage was an attempt to localize modern values. For instance, the concept of law was a core idea of constitutionalism introduced from the West; however, it soon came to be interpreted in a way that differed from its Western meaning.[1]

In this interpretation, the relationship between law and Sharia is emphasized. Nāʾīnī clarified that the scope of legislation in the parliament is limited to areas where there is "no explicit religious text" or to "customary matters" for which the Sharia has not established a clear ruling. Thus, legislation in areas governed by established Sharia laws—such as *ḥudūd* (penal) and *diyāt* (compensatory) rulings, which are unchangeable across times and places—is prohibited (Nāʾīnī, 2014, p. 134). In other words, the function of law in Nāʾīnī's theological view is to "regulate the conduct of officials, limit their authority, and specify their duties, along with identifying the general responsibilities necessary to be upheld." He asserts that these responsibilities are "subject to the interests and demands of the times and places and can vary accordingly" (Nāʾīnī, 2014, p. 134). He further argues that if the jurists—who are authorized to establish such rulings in the period of Occultation—are unable to fulfill this role, they must necessarily delegate it to another individual or institution. In the present age, the Consultative Assembly can assume the responsibility of legislating in customary matters with the

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1. Regarding the interpretation of the concept of law in the Constitutional Movement, some scholars and religious adherents, while recognizing the necessity of law, believed that such laws not only needed to align with Islam but should be entirely derived from it. From their perspective, Islam holds universal and timeless authority in legislation. Therefore, the task was to derive laws appropriate for contemporary society from the teachings of the Quran. (For further information, see Zargarinejad, 1995).

permission of the jurists. However, such authorization requires that the leading jurists of each era, as representatives of the prominent religious authorities, approve and validate the rulings issued (Nāʾīnī, 2014, p. 136).

In response to the proponents of *mashrūʿa* (pro-sharia anti-constitutionalists) who believed that accepting constitutionalism entailed innovation and alteration in divine rulings (such as changing obligations to prohibitions, or vice versa), Nāʾīnī highlights the distinctive nature of rulings in customary matters. He states, "In essence, laws pertaining to this category, due to the varying interests and requirements of different times, are necessarily subject to change and susceptible to annulment and modification" (Nāʾīnī, 2014, p. 137). Therefore, the legitimacy of constitutionalism stems from "shifting from one obligatory form to another, with their common element being the preservation of social order and the governance of community affairs as a general obligation. The selection of specific forms depends on the particular interests and exigencies of the times and is entrusted to the judgment of those with oversight authority; when one form is deemed more appropriate, a shift to it becomes necessary" (Nāʾīnī, 2014, pp. 137-138).

This pioneering theologian and innovative jurist substantiates the validity of his view by drawing a distinction between religious and customary matters and providing two legal arguments: "the obligation of the prelude to obligations (*muqaddimat al-wājib*)" and "the non-suspensibility of *ḥisba* duties." Nāʾīnī asserts that the obligation to maintain social order and protect Islam is self-evident, and the natural corollary of this is the existence of law. Thus, establishing laws in customary matters serves as an obligatory prelude to safeguard social order. Furthermore, legislation pertains to the domain of *ḥisba*, which is always valid and necessary (Nāʾīnī, 2014, pp. 107-108). Nāʾīnī's language and reasoning indicate that he divides laws into two broad

categories: fixed laws and variable laws. He seeks to develop a rational and legitimate framework to establish essential regulations for humanity's customary, specific, and changing needs, presenting them to society as part of a modern theological system.

Conclusion

The transformation of Iranian society from a traditional to a modern state began with extensive contact with the Western world. However, evidence suggests that this shift followed a path distinct from that of Western societies. Given that Iran's social structure and language differed from those of Western societies prior to the modern era, and considering that the historical and social transitions toward modernity in Iran varied from those of the West, it can be concluded that Iranian society is moving toward establishing a modern state with shared yet inherently non-replicable aspects of Western modernity. In this light, the Constitutional Revolution marked the beginning of fundamental shifts in the intellectual foundations of Shia society, including its theological framework, as Iranians encountered modernity. Among the most significant political consequences of this encounter were the acceptance of civil rights and the principle of citizenship, which destabilized the foundations of governmental legitimacy and made its reconstruction a vital concern for intellectuals and community leaders. Nāʾīnī was among those invested in this cause, striving to address this disarray by modernizing the Shiite doctrinal system and presenting a restructured theological perspective.

According to Nāʾīnī, the preservation of the Islamic order is a responsibility that never lifts from the shoulders of jurists during the era of Occultation. Therefore, it is incumbent upon them to establish a government that aligns with the principles and capacities of the time and is grounded in the foundational principles of Shiism, forming an effective social system. This necessarily involves the dismantling of

despotic and absolutist regimes. In describing the characteristics of a constitutional government as envisioned by Nāʾīnī, not only is the guardianship of the jurist in *ḥisbah* (public welfare) matters recognized, but also, in his presence, other Muslims' actions in public affairs must obtain the permission of a qualified jurist. However, in cases where no such jurist is present, it becomes obligatory for other believers to work toward establishing a just government and limiting the power of the despotic ruler. This perspective forms the core framework for Nāʾīnī's acceptance of constitutionalism.

Nāʾīnī seeks to demonstrate that the foundations of constitutionalism—such as freedom, parliament, and legislation—are rooted in Islamic teachings. Accordingly, he frames the relationship between sharia and law as a theological debate and challenge. By invoking principles like reducing oppression and limiting polytheism, he declares the establishment of a constitutional system a religious duty. Nāʾīnī proposes several jurisprudential measures to adapt constitutionalism and its institutions, originally established in the West, within an Islamic framework. These measures include appointing a council of religious scholars to ensure alignment with Islamic standards and prevent conflict with divine law, and public oversight of the parliament to avoid the rise of collective authoritarianism.

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