Traditional Governance and the Theology of Law

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Abstract

If governance is to be designated into two respective categories, namely the traditional and modern periods, the foundations of political thought in Shiite Iran have assuredly been established on the traditional governance approach. Monarchy and Sharia constitute the two fundamental elements in the traditional governance archetype. The connotation of law in this concept is defined as the same as Sharia, and the monarchy is in fact the implementation of the law. This concept, which culminated in the Safavid period (1501-1736 AD) and later prevailed as a valid belief in this land, is the basis of Iranian political thought in the contemporary period. The jurists likewise attained a remarkable position in the traditional governance parallel with the perceived significance of Sharia as the law, and in some cases, shifted the political power balance in their favor. Nevertheless, the entirety of traditional governance fell into a state of turmoil and decline and underwent many transformations in the face of the emerging and potent rival of modernity. This article strives to study this occurrence of great magnitude in the most remarkable works of this period's intellectuals, including Mulla Sadra and Mulla Mohsen Fayz Kashani, and assess the relevance and consequences of this occurrence on the current presumed new situation.

Keywords

Introduction

Monarchy and Sharia constitute the two main elements of traditional governance. In the traditional thought, the law solely meant Sharia, and the monarchy was merely an institution intended for the implementation of the law. Unquestionably, the political thought system pertaining to the Safavid era is the most prolific source for describing the traditional theology of law. In line with this, one must mention Sadr al-Muta'allehin (979-1050 H) among the leading philosophers of this era, and accordingly, his remarkable and influential works. In his work titled "al-Shawahid al-Rububiyyah fil Manahij al-Sulukiyyah (Mulla Sadra, 2003)" Mulla Sadra renders an extensive explanation for the trinity of Man, God, and prophecy, and through this, deals with the concept of law and the association between law and Sharia. In the tenth chapter of the second part, he writes, referring to the traditional anthropology of Muslims:

"Indeed, man is not enough in nature and self-sustenance in his existence and survival; because mankind is not confined to one man, and given how his solitary and individual existence is not conceivable, he is unable to maintain his life in the world except through civilization, society, and cooperation. As a result, different groups and bodies are established; families, villages, and cities alike, and these establishments inevitably require a 'law' to oversee the dealings, marriages, and punishments, which exercises authority over all mankind, and judges justice by the same means. Otherwise, there will be conflicts and conquests, and men will become corrupted, mankind doomed, and the systems of life disturbed for once and for all. Mankind possesses two hidden traits: voracious desires and longing to satisfy what one needs and deems for himself on the one hand, and resentment and rage at anything and anyone that stands against men and hinders him from fulfilling these needs, on the other. And that 'law' is indeed the 'Sharia,' and the Sharia will undoubtedly render a salvation path for men to settle their lives in the world and establish a tradition that assures mankind's journey leading to the God (Mulla Sadra, 2003)."

The premise of these phrases is based on the inadequacy of mankind to

maintain collective life despite the necessity and need for collective life. Mulla Sadra adopts the same anthropological basis that is the grounds for the theology of law in traditional governance in his other works. For instance, in "al-Mabda wal-Ma'ad (Mulla Sadra, 1975)," the same phrases of the Alshawahud are quoted verbatim, yet in "Mafatih al-Ghayb (Mulla Sadra, 1984)," provides more explanation, which we discuss briefly because of its importance. Mulla Sadra addresses the following in the second chapter of the Mafatih, which concerns the interpretation of "the merciful intentions and divine purposes of the Book of Revelation [the Qur'an]":

The world is merely a home among the homes for travelers of God, and the body a beast to be mounted; the one who disregards the home and the mount, could never fulfill his journey. This approach can be summed up in the provision of food for the body; because food for the body is like hay for beasts, so that a person could sustain himself and then, by the means of marriage, ensure the survival of mankind. However, this act also depends on providing food; because the survival of mankind depends on the survival of the person, and the survival of the person depends on the provision of food. Thus, everything depends on the provision of food, and food provision demands some means that can only be rendered by civilization and society. This relation explains why it is maintained that mankind has a civic nature, and inevitably, divided into diverse groups, and bodies, and villages, and cities. Therefore, mankind will overwhelm and kill each other like dogs wrestling each other to death if 'this act' is left without a precise legal definition that would serve as the reference for arranging the exclusive and inclusive affairs of the people. Men will become corrupted, mankind doomed, and the systems of life disturbed for once and for all. Mankind possesses two hidden traits: voracious desires and longing to satisfy what one needs and deems for himself on the one hand, and resentment and rage at anything and anyone that stands against men and hinders him from fulfilling these needs, on the other. And that 'law' is indeed the 'Sharia,' and thus, the Qur'an bears a description for the laws of the Shari'a that include criteria for allocation in Quranic verses concerning marriages, debts and claims, inheritance, zakat,

plundering, slavery, and liberating slaves, rules of captivity, war, fornication, frontiers, compensations, retribution, weregild, and atonement. That being said, the inclusion of the Qur'an on this kind of verses is designated as the halal and haram knowledge and the ahkam (limits of the rules), and the jurists serve as the agents of such knowledge, the jurisprudence knowledge that is concerned with the needs and prosperity of mankind due to its initial interest in the prosperity of the world, and then through the same means, in the prosperity of mankind's akhirah. For this reason, the holders of this knowledge and agency possess the most renown, respect, and dominance over other types of knowledge and their agents, including preachers, storytellers, and theologians (Mulla Sadra, 1984).

Law and Sharia

Evidently seen, Mulla Sadra pronounces "that law is Sharia (Mulla Sadra, 1975)." The law is Sharia, and vice versa, Sharia is the law. The traditional theology of Muslims' is based on the following in the form of a logical argument:

1. Mankind needs the law to oversee the benefits and corruption of life.
2. Sharia is the expression of benefits and corruption.
3. Thus, the law is the same as Sharia.

There is an obvious association between Sharia and prophecy, and parallel with this reason, traditional theology argues for the necessity of prophecy based on the necessity of Sharia (or divine law). Mulla Mohsen Fayz Kashani (1007-1090 AH) in his book "Anwar al-Hikma (Fayz Kashani, 2004)" and under the title of "الاضـطرار الـی الشـرع و الشـارع," reiterates the previously discussed argument from his master and father-in-law, Mulla Sadra, that the world is solely a home among the homes for travelers of God, and the body serves a man as his mount. This journey to God is not conceivable except by the means of the world and the body, and a plan that secures the survival of mankind and the well-being of the body at the same time, along with and the survival of civilization and world order, demands a law that is the Sharia. Mankind necessarily serves a legislator and Sharia that command such a law and compromise to govern the livelihood in the world and aid the journey to

God (Fayz Kashani, 2004).

But why can't man himself implement such a law, and he obliges a legislator and Sharia that exceeds his will? A legislator sent to man, not by man, but by God? The traditional Muslim theology maintains two distinct but consistent arguments in answer to such questions. First, the law is not merely bound to the public aspects, but also affects the most private aspects of human life. Neither aspect of human life is devoid of the law. Second, in the Muslim tradition, man is not bound to "individual subjectness" and is unable to oversee his conflicting desires and fails to recognize and serve his benefits or evade corruption even in his most personal affairs. According to traditional theology, this "self-insufficient nature of man" of the approach has an adverse and corrupt impact on the legislature, the recognition of interests, and the administration of society. Fayz Kashani has elaborated this view in his two books "Anwar al-Hikma (Fayz Kashani, 2004)" and "Elm al-Yaqin (Fayz Kashani, 1997)" and also in his collection of treatises. The summary of his discourse is as follows:

Since man is devoid of the fulfillment that he was conceived for at the beginning of his commitment and growth..., at the same time, he possesses an innate ability to gain it, of course, God has granted the means and conditions for it. Yet, due to the nature that human beings are blessed with, their temperament, strengths, and various tendencies, arrangements are imminent to govern and train it in the light of its perfectionist interests, oversee man's affairs, and lead him on the path of virtue and prosperity. Otherwise, man will forever remain no more than an animal, and the retaining wall between him and the creator and bestower of his blessings will be permanent. The Wise and Deft Creator has placed agents, who serve to provide a bond between the Creator and His servants among mankind, showing and guiding them towards what's in their best interest and benefits, or what assures their survival or destruction...These agents are, in fact, the prophets and chosen ones among God's people... Such a legislator must necessarily be of mankind because the angels' direct communication in human enlightenment appears improbable...Yet, man obliges to learn these traditions and laws, but if every

human being is still dependent on a human teacher, of course, it will render a false sequence, and for this reason, a chosen person is necessary to cease this chain with divine guidance and infallibility, and He completes the sequence, and He is the Chosen One and the Prophet of God. The Prophet is obliged to establish laws and traditions for mankind by the grace of God, His command, and revelation through the angel of revelation. The first duty of the Prophet is to bring mankind to acknowledge the one and only Almighty God aware of the hidden and the obvious of mankind, and he is the only one to rightfully command and be obeyed. Further, the Prophet must lead mankind to recognize the resurrection and the ultimate destination of mankind, teach them the ways and gifts for prosperity and resurrection. Teaching mankind the ways of prayer and devotion are part of this commitment's means; man must be taught what to pursue or disregard to gain prosperity. One of the most striking duties of the Prophet is to legislate the laws concerning civil life, including the laws on property and other assets that serve a wide range of contracts, transactions, inheritance, marriage, divorce, theft, defense, weregild, retribution, dispute resolution, and more. It is also necessary for the Prophet to designate an Imam and a governor who is the guardian of this tradition and Sharia and contends it against disparities, disagreements, and deviations (Fayz Kashani, 2004).

These references, which, despite their length, denote a summary of the Muslim tradition in the theology of law, further indicate two significant points:

A) The fact that the legislator is exclusively God and the Prophet and the law is the Sharia.

B) The fact that the law of Sharia embraces all respective aspects of life, including private and public, prayers, commerce, religion, and politics.

The countenance of this analysis implies that traditional theology has not left any aspect of human life devoid of sharia law and, accordingly, barred all the paths for human law, but this is not the case at all. Traditional theology is an open and inclusive system by nature, and this inclusiveness has aided Muslim intellectuals to commence the way leading to a modern

state from the heart of the rights and compromises on the eve of modernity. The elaborations of Fayz Kashani, along with Mulla Sadra, present the same analysis for the agreement between law and sharia and regard them as two relevant interpretations of the same concept, as you have evidently seen prior. Although these two intellectuals lived in the Safavid era world and maintained and further supported the discourse for this type of political order, the essential point is the prevailing of this idea throughout the tradition prior and post the Safavid era, without undergoing any changes.

For instance, Sa'ad al-Din Taftazani (722-792 AH), a logician and Ash'arite theologian of 8th century H, remarks the same idea in "the necessity for a prophet and the law" that has been echoed by the intellectuals of the Safavid era. Taftazani writes quoting Muslim scholars, "the scholars have said: Man in his life needs communication with his fellows and partnerships that will not cease except in deals and contracts that require a law common to all, set by a distinguished human being chosen by God's grace...And such a person, who is the legislator of the laws overseeing the affairs between people, and politics [= punishment] for violators, that ensures mankind's interests in survival all the same, is indeed the Prophet (al-Taftazani, 1988)." Although Taftazani criticizes the philosophers' statement on the "need for a prophet and the law" and deems it "inconsistent with what is necessarily known from religion," he agrees and appears in absolute consistency with the original philosophers' claim made by Ibn Sina and others, a tradition that has remained more or less in the minds of the world and the populace, from the past to the present.

Ibn Sina (370-428 AH) has dedicated the tenth article of the theology of "The Book of Healing (al-Shifa) (Ibn Sina, 1984)" to Sharia and law in five chapters. In a fragment of this article, he maintains:

It is obvious that the difference between man and other animals is that he cannot plan his life well individually and personally, and provide for his basic needs without the aid of others. Every human being requires fellows, and fellows possess the same reciprocal need. One grows wheat, another bakes bread, and a third sews clothes, and so forth. For this reason, mankind

must compromise and build cities and establish communities. Anyone or any group that has not given in to the community compromises and does not abide by the conditions will inevitably have a society with features resembling a community but will ultimately lose many prerequisites to human fulfillment. In any case, interaction with fellow beings is a condition of human existence and survival, and partnership is not necessarily confined to a deal and compromise; dealing is inevitably unexempt from tradition [law] and justice, and tradition and justice require the legislator and the subject alike. Such a reference source must necessarily be able to address the people and oblige them to tradition and law, be human and never leave people on their own devices, while their opinions on the law are different, and everyone deems justice to be whatever that's in their favor and whatever that is to their disadvantage as injustice. All in all, the need for such a person, on whom the existence and survival of mankind depend, is much more felt than the need to grow hair on the eyebrows and eyelids and to flatten the soles of the feet and other acts that may not be so necessary (Ibn Sina, 1984).

According to Sheikh al-Rayees, the existence of a person with the characteristics of a prophet is less likely to occur again at any time. For this reason, the Prophet (PBUH) is obliged to take great measures to ensure the survival of the tradition and the permanence of the law and Sharia, on which the affairs of human interests depend. Paramount among these measures is to provide the dominance of God's memory and the resurrection in the minds of the people and to not forsake these two after the Prophet's inevitable death. The legislation of prayers is the result of such wisdom, which incites the proximity of God, along with the dominance, and permanence of His memory in the hearts.

The above paragraph is what Ibn Sina refers to as the advantages of prayer in the world. This point is significant according to the theology of law because prayer and worshipping are established as the necessary preludes to ensuring world order rather than the laws of world order, or deals and compromises being a prelude to human worship, and Bu'ali emphasizes the role of worship in governing worldly life. This statement never suggests denying the afterlife value of worship, but rather it signifies that prosperity

in the akhirah is indeed the coercive result of purity of soul and pertinence to morality and moral action, and such an outcome is conceivable, of course, under the light of practicing the tradition, law, and sharia. Worship lays the grounds for adherence to Sharia/law and assures Sharia and law within the human conscience and inner beliefs. In Ibn Sina's view, the practice of good deeds renounces the evils; "إن الحسـنات يـذهبن السـيئات," thus, if good deeds prevail and are repeated, an inner urge will be formed within man that heeds the right and abandons falsehood, facilitating the likelihood of prosperity upon death and departure of the soul from the body. Anyone who engages in such good deeds deserves the prosperity in akhira, even if the person does not believe that these deeds are in fact duties expected of Abdallah, let alone a devoted believer who has faith in the divine origin of these laws and the virtues that are results of committing to them. This part of Bu Ali's analysis concerning the philosophy of worship is relevant likewise. He appears to be focusing on two strategic points at the same time:

A) The prosperity in akhirah is the result of good deeds committed in this world. The inner urge will be formed within whoever maintains such deeds with any belief, and the urge will heed the right, and abandon falsehood, facilitating the likelihood of prosperity for the person upon death and departure of the soul from the body.

B) Believers must maintain more commitment and obligation in the practice of good deeds and abandonment of falsehoods because they have faith in the divine origin of laws that demand and foster good deeds in this world. Consequently, believers will be rendered more prepared and meritorious of gaining prosperity in the akhirah.

The result of this Sinaitic analysis of the relation between the world and the akhirah, along with the role of worship, is evident. The prosperity in the akhirah is conditioned on morals and good deeds in this world, and in this respect, it is not reserved merely for the believer or the non-believer. Yet, believers are more devoted to doing good deeds and forsaking falsehoods because they deem divine origins in moral precepts. The particular function of worship and prayer is to render remembering God and the akhirah, along with its impression on the continuance of virtues and avoidance of falsehoods.

Ibn Sina has dedicated the fourth chapter of the tenth article to " و عقد المدينة عقد البيت." "Contract" in religious literature context signifies a bilateral or multilateral agreement to establish an institution such as the city and the family. Sheikh al-Ra'is, thus, inspects the contractual nature of the city and the family, and in this respect, appears in consistence with some aspects of the modern thought. Yet, this contract is not based on the fundamental equality of God's populace, but rather on the inequality of mankind. For this reason, the traditional philosophy of the Muslims failed to engage in democratic life and resorted to build a city based on unequal order. Our philosophical tradition legitimized inequality and authoritarianism issuing from such an order, and accordingly, maintained and perpetuated it. Even if our traditional theology had a critique, it would target the tyrant and not tyranny. This incident is rooted in the belief concerning the fundamental inequality of mankind by definition.

Ibn Sina writes: Therefore, it is obliged that the first purpose of the [legislator] in establishing the traditions and city order is to arrange the city on the basis of three components including planners, craftsmen, and guards. Further, the legislator must arrange leaders in each of these three components, subordinated to him hierarchically to the extent that when the order reaches the lowest person [Afna al-Nas], he would be a total obedient with no power to exercise over anyone. Thus, no human being in a city should be idle and deprived of a defined position and duty that is corresponding to the person's circumstances. Every individual must serve an interest in the city (Ibn Sina, 1984).

The result of our review on these works designate that the Muslim tradition's law and Sharia have a theological origin, but the traditional philosophy has similarly rationalized and pondered the same interpretations and inferences. The theology of law in traditional governance complies two fundamental features:

A) First, the theology of law in traditional governance is established on the basis of mankind's inequality. Both systems of knowledge, whether religious or philosophical, intellectual or narrative, presume two types of inequality that are

1. gender inequality, between men and women, which has swayed the "family contract" towards male authority, and 2. civil inequality between citizens, which has led the "Medina (city) contract" towards elitism and further hierarchized the political system.

B) Second, traditional governance does not render the legislative process to mankind but the legislative process itself, based on the credence resulting from the "unequal nature of human beings," which by the same virtue, can relate to the world of intellects and angels. Only the chosen Prophet can act as a legitimate legislator for the city, the family, and everyone. Traditional governance has not granted the falsification of the law to man, but only the inference and implementation of it, and this inferential effort is designated as the "power of ijtihad" in the Islamic literature context. Now, we return to the Safavid era order and inspect the relation between man, law, and the monarchy in traditional governance.

Sharia and Monarchy

"Aayineh Shahi (Royal Mirror) (Fayz Kashani, 1944)," by Mulla Mohsen Fayz Kashani (1007-1090 AH), presents brief and coherent descriptions concerning the relations, intellect, law, and monarchy in the Safavid era. This treatise, which is a Persian summary of the original Arabic treatise "Zia al-Qalb" by Fayz, has been composed and dedicated to Shah Abbas II of Persia (1011-1045 AH). Fayz Kashani employs an intriguing metaphor by comparing the human soul to a city under the dominance of various rulers. Wisdom, nature, law, custom, and habits are the five rulers governing this city. As long as a person is in mortal life, he is compelled to serve the five rulers set by the Lord of the universe to nurture and entrust his might. The Lord has designated him to serve whomever of these rulers he wills yet he cannot surpass the boundaries of this verdict as an entirety (Fayz Kashani, 1944). He writes in the description of these rulers and the five forces in the administration of man and society, and their potential conflicts:

There are two [rulers] within him. First one is 'intellect', the second 'nature.' There are two [rulers] from outside. First one is 'Sharia', the second 'custom'. The fifth ruler originates from the outside, yet settles in [inside] him, and it is the 'habit' that is gained through repetition and instinct.

Sometimes one of these rules declares a verdict, contrary to the judgment of the others, and at times like this, the benefit of obedience or disobedience is not apparent and the obedient is left in a state of confusion. Sometimes, a verdict is declared and the owner of the verdict is unknown. Sometimes the obedience of some [of these five rulers] renders damage, but the obedient cannot forsake the rule nor the verdict. At last, he seeks refuge in God, who is the ruler of the rulers, to repel his evil. According to these precepts, every soul is bound to know each of these five rulers and his own soul [and his community] which is obedient to him, the ranks of the rulers in honor and virtue, and the wisdom in their reign over man. Each soul must know to heed their benefits despite objections, and separate and distinguish the verdicts of some from the rest (Fayz Kashani, 1944).

Fayz' speech includes several significant remarks:

First, man, as long as he is alive, is obliged to "obedience," and there appears no escape from it.

Second, the sources of the "rule" are five, namely intellect, nature, religion, custom, and habit. There is no valid verdict unless one of these five rulers is referred to and cited as the source.

Third, each of the five rulers pertains to a different origin. Reason and nature are internal, while Sharia and custom are external, and exercise sovereignty all the same. Finally, and habit, however, has a distinct characteristic. The habit has an external origin and gradually becomes internal through repetition.

Fourth, the nature and content of these five rulers are not always consistent, and sometimes or often, they are observed in a state of conflict and contradiction. Under such circumstances, judging and determining a verdict over other inconsistent verdicts is undeniably proves to be a formidable task.

Fifth, the following question poses great importance. Do these five rulers maintain the same validity, or are they unequal? Fayz provides two correlated answers. First, in Fayz' view, no five fingers are equal. Second, he, and the entire traditional governance system in Iran, favors the verdicts of Sharia over the four other rulers, including the verdicts of practical reason, based on the value system.

Hence, Mulla Mohsen Fayz Kashani considers man obedient to the five

mighty forces of reason, nature, Sharia, custom, and habit. Yet, reason and sharia are deemed more relevant and worthwhile among these five powers. Fayz Kashani presents intellect as the noblest and most significant force in human beings. Yet, by intellect, he implies the perfect intellect of an infallible person. According to him, "When the intellect is perfect, it takes precedence over other rulers. As long as there is intellect, no other ruler could exercise power. However, this intellect is solely reserved for the prophets and saints, and whoever is deprived of this intellect must prioritize the Sharia force over the rest since Sharia is the perfect intellect's surrogate for one who does not possess the perfect intellect."

This statement of Fayz has major importance in traditional governance, introduces Sharia as the fundamental law of political order, and eliminates any conflict between the citizens' intellect and Sharia in favor of the latter. Yet, Sharia is not the only law in traditional governance even though Sharia supersedes the perfect intellect, and is regarded as the fundamental law in the management of life. Traditional governance, of which Safavid dynasty is the most recent and comprehensive example, was governed by two laws, namely the Sharia law and customs law. Fayz writes in "Zia al-Qalb (Fayz Kashani, 1997)," referring to the nature and relation of these two laws:

Sharia is the divine law that God Almighty has bestowed upon His servants through the prophets and their infallible successors so that they may know, act, and attain eternal salvation. And, 'the custom is the law of the republic' that the republics have legislated it among themselves and further established obligations to implement these laws while deeming it unacceptable to oppose it. All in all, that part of the custom which the intellectuals know well and have accepted, or accepted merely to rid those who accept the custom, is justifiable and valid. Otherwise, committing to it is foolish..., and custom is designated as 'politics' when it involves monarchy and domination, and politics is inevitable for the life of communities, both in villages and cities, even if it includes supremacy and likewise. And the difference between politics and sharia is that... politics for sharia is like a body for the soul, and a servant for the master (Fayz Kashani, 1997).

Fayz' elaborations are unmistakable, he discusses two respective laws of Sharia and custom, but in the analysis of the customs law, which is validated by the republic, highlights two basic points. First, custom does not serve the law, but merely validates the intellectuals for the sake of good or repelling the enemy. Secondly, it places politics and monarchy under the custom or the most significant part of the custom, and with these considerations, recognizes Sharia and monarchy as the multilateral foundations of governance in the Safavid era. Naturally, the monarch and the monarchy are viewed as a symbol of custom. Jurisprudence and the jurist are likewise relevant to the Sharia, and thus, the relation between the jurist and the monarch befalls at the center of the traditional governance circle. Fayz Kashani deals with these associations in "al-Muhaja al-Bayda (Fayz Kashani, 1996)" in regards to the words of Abu Hamid al-Ghazali (450-505 AH) in "Ihya al-oloum-addin, (al-Ghazali, 1973)" and writes:

If it is questioned why you have recognized jurisprudence as one of the sciences of that world, and you the jurists as the intellectuals of this world, the answer should be that God Almighty conceived Adam (AS) from dust and his offspring from semen, and put them from their fathers' loins to the mothers' wombs, and from there to the world, and from the world to the grave, and later the realm of resurrection, then to heaven or hell, that is the beginning of man, and the end of his work, and what is at stake throughout is his homes. God has fashioned the world as a burden to lead in the journey to the akhirah, so that they may take whatever they can carry from the world for their journey. If they gain it with justice, the quarrels will cease, and the jurists will remain idle, but the people seize it unjustly through lust. As a result, disputes and hostilities arise, and a monarch is needed to oversee the worldly affairs of the people. Yet, the monarch needs a law by which to govern society. Hence, the jurist is aware of the law of politics and understands the way to intercede between people when they are contending with each other because of their lusts. Consequently, the jurist is the mentor and guide of the monarch in managing the affairs between people and forming discipline among them to the extent that perseverance and precision may

resolve their worldly affairs.

I swear upon my life that jurisprudence is one of the religious and akhirah disciplines too, but through the mediation of the world and not by nature, because the world is a field for cultivating the akhirah, and religion is not complete without the world. Monarchy and religion are twins. Religion is the principle while the monarch is the guardian, and anything devoid of principle and roots is doomed, and everything that lacks a guardian is a waste. Monarchy and guardianship do not end with the monarch only, and heeding the social order and the settling the hostilities cannot be conducted but with jurisprudence. The politics of tact and overseeing the affairs of the people with monarchy are not primary concerns of religion, but aids to what religion cannot be practiced and completed in their absence. The knowledge of politics is similar to this, as it is seen in the instance of pilgrimage. A pilgrimage (hajj) could be only conducted when he pilgrim has a guardian to escort and protect him from the dangers of the road. Accordingly, pilgrimage is one thing, and walking the path is another. Also, guarding the road on which the pilgrimage takes place is unlike the two prior aspects, while knowing the methods of guarding and executing these directions is different from all of these. The outcome of jurisprudence discipline is the cognition of protection and politics (Fayz Kashani, 1996).

In any case, the theology of traditional governance has established the geometry of government on law and monarchy. According to this intellectual-political tradition, "human nature is born of rage, jealousy, and hatred, and this is what provokes war, hatred, and resentment among people. God bestowed dominance to the monarchs, and he helped them with his strength, zeal, and means, and inspired fear in their subjects so that they would serve their orders, whether they wanted to or not. The Lord has guided the monarchs by reforming the affairs of His servants to the extent that they have arranged the parts of the cities like members of one person so they would aid and benefit from each other. Further, organized the officers, judges, gatekeepers, and market merchants, compelled the subjects to obey the law of justice and obliged them to serve and cooperate so that the blacksmith would benefit from the butcher, the baker, and other citizens, while the rest would benefit from the services of the blacksmith. Bloodletter benefits the farmer, and vice

versa, just as the members of the body maintain each other, while simultaneously gaining benefits. This situation is due to the order, sense of community, discipline, and the inclusion of the people under the leadership of the monarch. God named the prophets to benefit the monarchs who serve as the benefactors of the subjects, teach them the laws of the divine law and political tacts in maintaining justice among the people in their setting and order, along with introducing the rules of succession, monarchy, and Jurisprudence that guides them in redeeming the worldly affairs.

The monarchs better the masters of industry, the scientists improve the monarchs, the prophets guide the scientists that are their heirs, and the angels serve the prophets. This chain goes forth in the same manner until the Lordship, which is indeed the origin of every order, virtue, grace, arrangement, and composition. All these are blessings of the Lord of the Lords and the Cause of the Causes (ربّ الأرباب و مسبّب الأسباب) (Fayz Kashani, 1996).

Ijtihad and Monarchy

The above considerations indicate the relationship between monarchy and Sharia and therefore automatically declare the position of the monarch and the jurist in conventional governance. Kaempfer, who was in Iran during the reign of Sultan Suleiman, the eighth Safavid shah, wrote the below paragraph about the position of the mujtahid in Safavid governance:

In terms of prestige and respect, all religious authorities are placed after the person who is a scholar and is called a mujtahid. This title points out the highest rank of clergy and unquestionable supremacy over the believers. People assume that the mujtahid's mind is so firmly wholesome that it can put an end to all conscious anxieties and grieves. Thus he is considered the absolute reference in debatable issues [disagreements in the society] and is also trusted with the correct interpretation of the Qur'an, the prophetic narrations, and Hadiths of the Twelve Imams. To justify this matter, which was a far-fetched occurrence for the Shah to come in terms with, they argue as follows: whenever Muslims are required to be guided based on Allah's

divine providence, He must declare His will to one of the mortal individuals. But who is worthy of that? The divine providence is expressed only to the Prophet Muhammad and the Twelve Imams, meaning that it is only declared to the prophet's descendants. Nowadays, during the absence of Imam al-Mahdi, since none of them is available, His providence is only passed on to the mujtahids as the righteous substitutes. But the Shah, to whom God has granted the authority to run and rule over His country, has to figure out His will and providence from the mujtahid (Kaempfer, 1981).

Kaempfer adds to his report on the relationship between the monarch (sultan) and the mujtahid: Regarding the respect that the Safavid Shah holds for the mujtahid, you could say that it's mostly quite fake and the Shah fears his people on that matter. People obey the mujtahid to the extent that the Shah prefers not to endanger his position by violating a key principal of the religion or make an attempt in ruling that the mujtahid considers against the religious teachings (Kaempfer, 1981).

Although the above articles are long, they clarify the role of the jurist and the mujtahid in conventional governance. However, what is the knowledge of religious jurisprudence, which according to Abu Hamid al-Ghazali and Mohsen Fayz Kashani is a worldly knowledge, and plays such an important role in conventional governance? How is it structured and organized? What methodology is it based upon? How did it manage the monarchy's laws? We will overview these points briefly below. This approach matters because the practice of religious jurisprudence highlights ijtihad and the government in Iran's governance history.

Ijtihad, jurisprudence's particular methodology, is considered as the most important knowledge of practice in the Islamic community. Many definitions of ijtihad in Shiite thinking have been presented so far, but its meaning has not changed since the time of Mohaqiq al-Hilli (602-670 H) and his book "Ma'arij al-Osul (Mohaqiq Hilli, 1983)" Mohaqiq al-Hilli defined ijtihad as: giving away efforts to extract principals from the evidences of Sharia (Mohaqiq Hilli, 1983). Muhammad Rida al-Muzaffar (1322-1383 H) also preserved the same definition and wrote: Ijtihad refers to looking through the sources of Sharia

to gain awareness of subsidiary rules and the holy Quran, Sunnah (authentic hadith), ijma (juridical consensus), and qiyas (analogical reasoning) (Muzaffar, 1996).

Thus, ijtihad is a specific methodological discourse which produces the rules and laws of living and Shiite political life, and provides criteria for the Sultan's actions by systematically linking the above four elements (Feirahi, 2017).

However not everyone agrees on this methodology and confirms its validity. Especially since the Safavid era, there have been two important trends: Akhbari and Usuli-opponents and proponents of ijtihad. The conflict over whether ijtihad is valid or invalid has a long track record among Shiite scholars, and the author addresses some of these conflicts in "Power, Knowledge, and Legitimacy in Islam (Feirahi, 2017)." These conflicts indicate two important points. First, the word ijtihad has undergone a perceptual shift in Imamiyya jurists' terminology little by little, has gradually disregarded the negative connotation it used to come along with, and has become an acceptable and necessary Shiite discourse in the late age. Secondly, Shiite mujtahids have always put their foot down in maintaining their distance from qiyas (analogical reasoning) as it is the foundation upon which ijtihad in the Sunnis is based upon, and therefor insist on the conceptual distinction of ijtihad in the two Shiite and Sunni religions. Seyyed Muhammad Baqir al-Sadr points out that this perceptual shift is was offered by Mohaqiq al-Hilli and his book "al-Ma'arij (Mohaqiq Hilli, 1983)". The author of al-Ma'arij has described the structure of Shiite ijtihad in an important article entitled "The Truth of Ijtihad" as follows:

And it is to make great efforts and endeavor to extract the rules of Sharia as a part of the jurists' practice. In this regard, extracting verdicts from the evidences of Sharia is called ijtihad because ijtihad is based on special "theoretical validities" that are often not derived from the verses of the Qur'an, whether this reasoning is analogical or non-analogical. Putting it like that, we could conclude that analogy is only one type of ijtihad's several types. So is it necessary that the Imams pursue ijtihad? The answer is, this is

indeed the case. However, there is some sort of ambiguity in the above statement, as if it considers qiyas (analogical reasoning) [Sunni] as ijtihad. Hence, whenever qiyas (analogical reasoning) is excluded from the set of ijtihad operations, we will also consider ourselves the ones who pursue ijtihad in obtaining the verdicts in theoretical manners (Mohaqiq Hilli, 1983).

Mulla Abdullah Fadhil Toni (1071 AH) was one of the mujtahids of the Safavid era who referred to the current controversy over ijtihad in a treatise on Friday prayer (prayer in congregation) and wrote:

Sometimes you encounter some people nowadays denying ijtihad and condemning the mujtahids, not having a single idea of what ijtihad means; because as you are aware, the truth behind ijtihad is gaining conjecture on behalf of an individual who is qualified and meets the criteria of ijtihad according to a Sharia law extracted from evidences whose urgency to practice has been proven with reasons. Therefore, if the opposer of ijtihad claims that the practice of religious arguments is not permissible; his invalidity is one of the most obvious axioms. Such a person does not deserve the title of a human being, إِنْ هُمْ إِلاَّ كَالْأَنْعَامِ بَلْ هُمْ أَضَـلُّ سَـبِيلاً (Holy Quran, al-Furqan, 44)Even animals are aware of the requirement of obeying the orders and prohibitions of Sharia. If one claims that it is not allowed to practice certain meanings such as concepts, although the claim is rightful, it does not necessarily deny of ijtihad. If the one claiming to not agree with certain practices for rational reasons, inferring both types of Istihbab [rationalistic and Sharia], although it is a false claim, it does not necessarily question ijtihad either. It denies a certain type of ijtihad at maximum. Likewise, the Shiites avoid practicing qiyas (analogical reasoning) and some other Sunni ijtihad arguments but this does not imply that they deny all the principles and acts of ijtihad. Sometimes it is said that the authenticity of ijtihad obliges the mujtahid to take action based on his own suspicion and the common people are obliged to follow in his footsteps. So it is essential that ijtihad itself be a well-known, established and disciplined matter. But that is not true because there is no specific boundary that distinguishes a mujtahid from a non-mujtahid. One of the qualifications of ijtihad is possessing a high skill in

deduction, and this varies greatly from one person to another. The status of ijtihad is nothing but comprehending the meanings behind narrations and hadiths while being able to make distinctions and conclusions between them, according to common sense and direct understanding. Whether it is supporting the strong and incapacitating the weak, perceiving Taqiyya, Istihbab, principle of Takhir (making a decision), etc. It should be noted this is disciplined and methodical… That's the reason why one can distinguish the ignorant and the scholar although no one is capable of solving all the problems and finding the answers in all cases. In conclusion, the human intellect has enough capacity to recognize a person who has more or less reached such a degree with slight difference. Ijtihad is nothing but resolving the controversies between the hadiths and sorting out their inaccuracies so that common sense often does not consider such an action invalid and incorrect (Fadhil Toni, 2002).

This does not oppose to the possibility of error occurrence in some conditions. Anyways, the origin of the mistakes the opponents of ijtihad make is lied within the forbiddance of qiyas (analogical reasoning) and ijtihad. They have assumed that ijtihad has the same meaning as in the above narrations as it does in the jurists' terminology. They have not taken this fact into account that what is implied about ijtihad in Akhbari is taking action based on verdict and Istihsan as presented by the Hanafi School. Besides, the reason behind the delusion of the opponents of ijtihad could be that they come across many issues in jurisprudence books that lack explicit references in religious sources and conclude that these issues are short of evidence and the blame the great intellectuals for conducting such unsubstantiated issues in jurisprudence books.

The above statements, though long, represent the foundation of the dispute over ijtihad and consequently ijtihad and monarchy in traditional governance. In terms of banning ijtihad some are for and some are against it. Mohsen Fayz Kashani in "al-Usul al-asliyya (Fayz Kashani, 2008 a)" stands opposing to ijtihad and believes that no necessity justifies the act of ijtihad. As opposing to the principle of ijtihad and consequently imitating a mujtahid, he writes:

Be aware: there is no need to accept ijtihad in the laws of God and imitate either a living or dead mujtahid; because, the verdicts of the holy Quran and the Sunnah [of the Prophet] and the hadiths of our leaders (AS) have been recorded and the general criteria have been narrated from the Imams (AS). Also, perusing ijtihad for the mujtahid, getting acquainted with the mujtahid for the imitators and comprehending the fatwas of the mujtahids is not easier than understanding verdicts of the holy Quran and the Sunnah [of the Prophet] and the hadiths of Ahl al-Bayt (AS). In fact the vice versa is true; because, the book, the Sunnah and the valid hadiths are preserved throughout time. Most of the hadiths are the answers to the arisen questions and question is closely related to understanding the meanings. So it has become easy to understand the meaning behind these words. If they claim: "We have nfot received the verdict of all issues from verdicts of the holy Quran, the Sunnah and the hadiths Ahl al-Bayt (AS), and not everyone is able to deduce the verdicts of new issues from the mentioned evidences. Therefor the mujtahids, who have superior comprehension and make endeavors, interpret, categorize these materials and lend access to others." Let us argue: "If we are deprived from any sort of knowledge from the holy Quran, the Sunnah and the hadiths Ahl al-Bayt (AS), it is necessary to refer that knowledge to Allah, the Prophet and the Imams (AS). Then we have to pause and take precautions if possible and make a choice if cautions are out of the question. The matter shall not be up too mujtahids to decide (Fayz Kashani, 2008 a).

The above phrase is the argument of Fayz Kashani opposing to the so-called ijtihad of the modern era fundamentalists. In "al-Usul al-asliyya (Fayz Kashani, 2008 a)" and also in his treatise "Safina-to-nejat (Fayz Kashani, 2008 b)", he restricts the Sharia evidence of the Imams to the two bases which are the holy Qur'an and Sunnah and verdicts that ijtihad and turning to the consensus of the scholars or mujtahids is invalid (Fayz Kashani, 2008 b). However, Fayz finds it essential that non-experts refer and imitate an expert while identifying the evidence, and adds: The existence of the promise of someone from whom imitation is allowed is a necessity of religion and a condition of filling faithfulness, and it is not acceptable to waste time (Fayz Kashani, 2008 a).

Despite the above statement Fayz clarifies that "the theory of imitation of the supreme mujtahid is one of the inventions of the Mutakherins (late

intellectuals)" and has no logical or religious basis and in fact does not exist. Because not all events have a definite explicit address, and many of them are known by no one but the Ahl al-Bayt. In such conditions, it is demanded to hesitate on any event whose verdict is not known, and there is no mujtahid who does not have to hesitate and have second thoughts in many inevitable matters (Fayz Kashani, 2008 a).

Fayz's outlook, probably through which Shiite life is fully mirrored, at least in the second period of the Safavid era, proposes two important objectives. First, it puts an end to a character called the utter and perhaps the most knowledgeable mujtahid. The result of this mentality is the mujtahids growing in number and various groups of their imitators. Secondly, by restricting the Sharia evidences to the holy Qur'an and Sunnah, Fayz pushes the Muslim practice into the realm of caution, and thereby criticizes any approach to the modern age. Naturally, such an outlook has affected the nature of governance in the Safavid era and has trapped the relationship between ijtihad and politics in the cocoon of conservatism.

The dead end in conventional governance, which was probably an obligation for such a discourse of ijtihad and politics, not only did challenge conventional governance but gradually challenged the entire conventional world. The step-by-step emergence of the idea of modernism, the symptoms of which had begun in the West, intensified this tension. Among the results of these developments that took place within the conventional ijtihad is the dispute between Sheikh Yusuf al-Bahrani (1107-1186 H), the author of "al-Hadaiq al-Nazira fi Ahkam al-'Itrat al-Tahira" (Bahrani, 1984)," and Muhammad Baqir Vahid Behbahani (1118 H-1205 H), which led to the relative superiority Usuli over Akhbari.

Behbahani's school of thought proposed the idea of "the unworthiness of the punishment in case the accused individual was unaware" and inevitably widened the range of freedoms and permissions a Muslim has in life by banning the precautionary principle and promising the reasonable presumption of innocence in the face of doubt. But will such a paradigm shift be able to preserve life and consequently the conventional governance? To find the

answer, we need to mention the internal formation and progresses in the field of this type of ijtihad. The idea went long back in history, but historical necessities crossing paths with the character of Muhammad Baqir "Vahid" Behbahani further highlighted it.

Transformations in the realm of ijtihad

As we have discussed, ijtihad and sharia maintain a concept in Islamic literature, and accordingly, their perception is acknowledging. Prior, Shahid Thani (911-966 H) had distinguished and comprised two respective interpretations of ijtihad and mujtahid:

Yes, it is sometimes asserted that at any time, the presence of a mujtahid who can dispel the surmises of the dissidents and the objections of the opposition is necessary, and this is another discussion, and here we are addressing the ijtihad which is responsible for overseeing the public duty of the obligees. And there is a discrepancy about the objective necessity or adequacy of such ijtihad (al-Shahid al-Thani, 2000).

This type of ijtihad has two fundamental features, briefly listed below:

A) The organizational duty of ijtihad is to "deduce sub-religious rules and ahkam from circumstantial evidence."

B) Such ijtihad is based on "error." The mujtahid must be excused from committing unintentional errors considering that no mujtahid is immune to errors in a given issue or issues nor infallible in the face of committing unintentional errors and shortcomings (Mazandarani, 1968).

The author of "al-Milal wa al-Nahl (Shahrestani, 1985)," maintains that ijtihad is one of the sufficiency obligations and further continues this statement by "The existence of a mujtahid" is inevitable since the religious rules of ijtihad are pertinent to ijtihad, and the rules are implausible without a mujtahid (Shahrestani, 1985).

In any case, the assemblage of Muslim literature signifies the value of not depriving the society of a mujtahid at any given duty era. Further, the mujtahid is deemed as the authority overseeing the people, and the infallible is the authority overseeing the mujtahid (al-Tawq al-Qatifi, 2001).

This statement of Shahrestani that "the religious rules of ijtihad are pertinent to ijtihad" has a particular analytical subtlety. It appears that he divides the Sharia governance into two respective parts, namely as ijtihad and non-ijtihad/commanded rules. Commanded rules/verdicts with an explicit countenance are exempt from the scope of inference. The only area that could be pondered in the Sharia commands is not the inference of explicit verdicts, but the thematic research to obtain examples and investigate the conditions of implementation according to the time and place circumstances, along with the other obligations of life. For instance, the verdict that forbids the usury has an explicit countenance, thus, rendering it exempt from the scope of ijtihad. Yet, the question is whether the banking system today is an example of usury or merged with usury or not, and what would be the potential fate of the economy and conventional life in Muslim society in case of eliminating today's banking profits without an alternative comprises the realm of usury jurisprudence.

With such an argument, we could resolve that only those Sharia commands lacking an explicit countenance or any countenance at all are concerned with Sharia ijtihad and further placed under this category. Some contemporary writers denominate this type of rulings as jurisprudential. Sheikh Yusuf Qaradawi (born. 1926), one of the contemporary Sunni intellectuals, distinguishes between jurisprudence and Sharia, and thus, contains the rulings of jurisprudence more to the realm of implicit or similar countenances, the realm in which one must live lawfully, yet there are no explicit commands to establish the life upon. This is indeed the realm of jurisprudence which, according to Qaradawi, is the realm of the reason for the fundamental religion of the Muslims. He states:

Sharia is the explicit rules of God and the Prophet of God, all that is evidently stated in God's Holy Book and the Sunnah of the Prophet (PBUH). This is indeed Sharia. Sharia implies revelation, it implies the rules of revelation. Jurisprudence is the act of inference. The act of the Islamic intellects in inferring the rules. This act is human action, and jurisprudence is

the action of man...A human jurist is an intellectual who employs his intellect to deduce rulings in accordance with the principles and rules of Sharia. He does not think in vain, and of course, he is not a non-religious man who acts only according to his fervor, but he is a 'Muslim man' who thinks and acts in the Muslim context, according to the religious principles of Islam (al-Qaradawi, 2003).

Qaradawi further elaborates on what he signifies by "human jurisprudence action." According to him, jurisprudence acts are the practice of Muslims in understanding religious contexts and countenance. Many or most of these contexts require "understanding," and understandings are "different" as human life suggests as a result of different natures and situations of human beings, the concepts and schools of jurisprudence are inevitably different in a manner similar to the other human disciplines (al-Qaradawi, 2003).

The pioneers of the Shiite mujtahids, such as Mohaqiq Hilli, did not extend the term ijtihad to include absolute and general inference acts, but limited ijtihad to only those types of inferential acts that were not documented in the countenance of the commands. Yet, the realm of ijtihad developed gradually. Intellectuals of jurisprudence principles understood that the process of inferring a verdict from the countenance of a command text is paramount, and one must necessarily attempt to understand its appearance and limits. The realm of ijtihad did not cease even at this level, and it further expanded within inferring the commands by practical principles to determine the practical state of the Muslims. These advancements in the realm of ijtihad led the Shiite fundamentalists towards a novel division concerning the arguments of Sharia commands. Consequently, the late Shiite fundamentalists, after Vahid Behbahani (1118H-1205H), divided the command arguments into two respective classes, namely "ijtihad" and "jurisprudence. (Shaykh Ansari, n.d.)"

A) The reason for ijtihad is the source of the original command, and these ijtihad arguments are Quran, Sunnah, intellect, and consensus.
B) The reason for the jurisprudence is the reference of the explicit command, and these principles or jurisprudential arguments are acceptance, innocence, caution, and choice.

A theologian is designated a mujtahid according to this analysis of ijtihad's nature because he infers the Sharia commands/verdicts, whether explicit or implicit. Moreover, the theologian is designated a jurist as well because he is an intellectual of such commands/verdicts, whether explicit or implicit (Ashtiani, 2009). This development in the realm of ijtihad was of great significance in traditional governance and highlighted the jurist's role in the lives of the devotees more than ever. This change signified a power balance shift in favor of the jurists, with more power redeemed from the sultan (monarch) and the monarchy in the traditional governance system. It appeared that a new paradox was emerging. On the one hand, the power balance between the monarch and the jurist was evolving, and the jurists were gradually gaining a greater role in society and politics. Yet, on the other hand, the entirety of the traditional governance, along with the ijtihad discourse it endorsed, was in a state of turmoil and decline in the face of the emerging and powerful rival, modernity.

Conclusion

A review of the most notable classics of this era revealed how traditional governance in Iran relied on the two concepts of monarchy and sharia - as law. Sharia is indeed the only source that can aid us to contrive the benefits and corruption of life since it comprises benefits and corruption, similarly. This law of theological origins, Sharia, embraced all aspects of life, including private and public life, worship and commerce affairs, religion and politics, and claimed to legislate all aspects of life. Although the countenance of this statement denoted that traditional theology did not leave any aspect of human life devoid of sharia law and accordingly, barred all the paths for human law, this is not the case at all. Traditional theology is an open and inclusive system by nature, and this inclusiveness has aided Muslim intellectuals on the edge of modernity to commence the path leading to novel law and civil rights from the heart of it, thus distancing themselves from the traditional governance.

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