Research Article

The People and the Government in the Contemporary Shiite Political Jurisprudence (Constitutional Period)[1]

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Abstract

The Shiite political jurisprudence in the Constitutional Period was much bold. Ākhūnd Khurāsānī and his pupils were among the most prominent jurists – in the Constitutional period – who had many innovations in the constitutionalist thought. One of the great achievements of these jurists in the political arena is the relationship between people and the government. These jurists had, in their temporal conditions as the representatives of the great Shiite tradition, an important role in modernism of the Iranians. They did not stop in the past doctrines; rather, they used the political and social ordinances of the Shiite jurisprudence; and using the capacities of legal reasoning according to the conditions of time, place and demands of the time, they opened a new chapter in the Iranian and Islamic thoughts. Before the Constitutional period, people

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had mainly no right in the government, but there appeared a change in the discussions. The great Shiite scholars could highlight the people's status in the government by scrutiny and using the Islamic doctrines. Ākhūnd Khurāsānī and his co-thinkers, Mīrzā Nāʾīnī and Sheikh Ismāʿīl Maḥallātī, used new criteria in classification of governments, and opened way for people's participation.

Key words

Ākhūn Khurāsānī, Nāʾīnī, Maḥallātī, classification of governments, Constitutionalism.

Introduction

Constitutional movement was the prelude to Iranians' Islamic awakening, legal modernism and formation of the modern government. This revolution occurred under the influence of numerous factors such as economic factors, political despotism, thinkers' opinions, and numerous other factors (Ādamiyyat, 1355 SH; Ḥāʾirī, 1392 SH; Jūdānī, 1382 SH). Among the theoretical speculations of the thinkers of that period, the jurists – because of more familiarity with the traditional concepts of Iran and Islam than the other thinkers – could in many cases create a rupture in some of the concepts compared to previous ones. Generally in the writings under Qajars and before, people had no role in establishing the government, and they were just expected to obey the orders. The ruler was also given pieces of advice – in the form of letters of advice – to behave people with respect (See Yāwarī, 1397 SH; Murādī Ṭādī, 1397 SH). However, in the Qajar period – especially the end of it – there was a change and people were no longer obedient citizens and many of the writers in that period would refer to people's status and role in various spheres.

One of the aspects of referring to people and their rights was their role in the government and establishing it, which appeared in the writings of that period. Among the constitutionalist jurists, Ākhūnd Khurāsānī – in his letters, telegraphs and correspondences with people – would inform people of their rights. He considered Constitutional state as a government whose power was 'limited', and regarded limitation of power possible through elements such as law and people's interference (Mīr-Aḥmadī, 1390 SH, p.116). Nāʾīnī and Maḥallātī, like their master, stated valuable points about the

people's role in the government and the relationship between them. This group of scholars had clearly found that in view of society's demands and the evolutions emerged in human's social life, the religion and denominations must consider the newly-emerged issues – emerged because of the evolution in human's life – in their scientific methods and their inferences and legal reasoning, if they are to preserve their previous superior position among people. The importance of the works done by this group of scholars is that they – in addition to informing people – did their best to offer reasonable and understandable answers to the opponents' doubts inside the Shiite intellectual system, without opposing the Shiite principles and tenets; and this is an adorable effort. Although these scholars' logic and mentality would not allow propounding many of issues, they could contemplate on those concepts amid the intellectual and historical traditions and, as the starting point, create an important evolution, opening the door of modernism to future people (Murādkhānī, 1396 SH, p. 14). In other words, many of the innovations of the later generations are rooted in these precise contemplations.

Since, in the modern age, one of the important foundations of the government is people's consent, these jurists' opinions regarding people's role in the government can create much capacities in Iranians' modern thinking; and in this study, we have attempted to adduce the works of these prominent jurists to show how they opened the way for people's role in establishing the government – an idea whose expansion could have led to theory of people's ruling.

1. Government and its various types

Classification of governments is an old tradition among great thinkers of the world. Initially, they have classified governments into various types, and then defended their favorite government. Aristotle, Plato, Montesquieu and many others have done so. In the Islamic thinking, little has been said of types of government. Shiites, for instance, the existing governments would be regarded oppressive and usurper; or they have spoken of oppressive and

just sultans. People had no role in establishing those governments, because the foundation of establishing the government was regarded to be somewhere else. Under the Qajars, for the first time, discussions about the types of government were proposed in new writings in the political treatises of the Qajar period, and those classifications were an introduction to justifying the Constitutional state. Mīrzā Malkam Khan, as one of the first of these individuals, writes in *Dafter Tanẓīmāt* or *Kitābchi Gheibī*: "Government means the system that becomes the source of order and prohibition" (Malkam Khān, 1388 SH, pp. 31-32), then he introduces the topic of 'law' for distinguishing various types of government. He regards enacting and enforcing the laws as the basis of types of government, and maintains if the authority to enact laws and enforce them is separate, and enacting laws is up to the nation and enforcing them is up to the government, then the government is called 'moderate sultanate', like Britain and France; but if both of them are up to the government, it is called 'absolute sultanate' which is of two types: the 'ordered absolute sultanate' like Russia and Ottoman, and the 'non-ordered absolute sultanate' like Iran. In *Minhāj al-ʿUlā,* Abū Ṭālib Bihbahānī has the same idea. According to him, the order, progress and advancement of the government and nation depend on the separation between these two authorities (enacting and enforcing the laws). That is, the best government for him is the 'moderate' one. However, he believes that to create a moderate sultanate in Iran is not possible now, and it is better for Iran to go towards the 'ordered absolute sultanate', because in that type of government, although the king has the two authorities, he delegates them to two parliaments (which do not interfere in each other's tasks); but in the 'non-ordered absolute sultanate', these two authorities are mixed, and the government in such countries is despotic or oppressive, which – he maintains – is not stable (Bihbahānī, 1395 SH, pp. 170-172). Mīrzā Abdul-Raḥīm Khān Talibov also divides sultanate into absolute and constitutional, and writes the absolute sultanate is of two types. In the first type, the king enacts the law and nobody is allowed to interfere, like old Russia and Ottoman. In the second type, the king writes

no laws for administering the country; rather, he behaves like old times. This is the case in Iran, Afghanistan and Saudi Arabia. He considers both types as oppressive and opposed to the other type which is constitutional government (Talibov, 1356, p. 195).

In spite of the intellectuals' nicety regarding types of government, they have ignored people's role in these governments; and since their goal has been legalism and creation of limited and constitutional sultanate, they have regarded the 'law' as the basis in their classifications, which they have used for classifying the government. This, however, leads to people's role in the next steps, because people will play role in enacting laws. However, the intellectual's statement remains in that level.

2. Ākhūnd Khurāsānī and people's prominent role in the government

Ākhūnd Khurāsānī was one of the three great religious authorities (*marjaʿ taqlīd*s) supporting constitutionalism. He was the most prominent *mujtahid* (literally 'diligent'; religious expert) in the Constitutional period, who had many innovations in political jurisprudence. The position of Najaf scholars regarding constitutionalism, whose general director was Ākhūnd Mullā Muhammad Kāẓim Khurāsānī according to Yaḥyā Dowlatābādī (Kifāʾī, vol. 3, p. 158), was based on a special jurisprudential interpretation. These views can be found in Ākhūnd's enactment, telegraphs, correspondence, and announcements. Ākhūnd's jurisprudential arguments can be understood in the form of logical syllogisms whose minor proposition is "Constitutionalism causes removal of oppression and protecting Islam…" and its major proposition is "anything that leads to removal of oppression and protecting Islam is obligatory". From these two premises, we conclude that "Constitutionalism is obligatory" (Mīraḥmadī, 1392 SH, p. 195). Ākhūnd Khurāsānī believes that "Constitutionalism is a state wherein power is limited, and power limitation is undoubtedly possible by the interference of law and people's interference and presence" (Mīraḥmadī, 1390 SH, p. 11). One of the great achievements of his new thoughts in the political sphere is the people's rights

and their relationship with the government. He has offered novel opinions regarding the people's ruling, and gets help from the jurisprudence and principles of jurisprudence to state these new concepts, and also inserts jurisprudential-legal contracts into the government and political issues.

Ākhūnd Khurāsānī divides government into legitimate and illegitimate types, and believes that only an Infallible person's government can be legitimate and that governments whose ruling is at the hands of a non-infallible person are illegitimate. He also divides illegitimate sultanate into two types: (1) the just sultanate like constitutional state wherein overseers of the affairs are the wise and pious people; and (2) the oppressive and despotic sultanate wherein the absolute ruler is one despotic person (Thubūt, 1395, p. 21; Khurāsānī, 1387 SH, p. 214). Ākhūnd believes that in the legitimate government, the ruler is appointed by Almighty God; and by legitimate government, he means that type of government that is realized just for the Infallibles (Khurāsānī, 1387 SH, p. 207). Therefore, he regards the governments in the Occultation period as illegitimate ones. It is noteworthy that here the 'legitimacy' means religious permit, not its common sense in the politics based on the public or majority's acceptance. After specifying these two types of government, Ākhūnd proclaims that "according to the reason's explicit judgment and religious texts", the illegitimate just sultanate is prior to the despotic illegitimate sultanate, and states it by adducing the jurisprudential rule of "necessity of rejecting the more corrupt with the corrupt" (*dafʿ al-afsad bil-fāsid*) (Khurāsānī, 1387 SH, p. 214).

The important point in these statements about the types of government is paying heed to people, and its criterion is people's role, which is unique among the writers of that era. In the just government, people play their roles in affairs; and in the oppressive government, people play no role and there is just one who is responsible for all affairs. Besides, Ākhūnd considers people as the "God's deposits" and maintains that they have been deposited to Islam's sultan (Khurāsānī, 1387 SH, p. 158). These novel statements are of great importance from the viewpoint of the history of thought in Iran. In the Shiite

jurisprudence, the depositor (*mūdiʿ*) can give something to someone (*mustawdiʿ*), and if the trustee encroaches on or betrays in the property trusted, he is responsible and legally liable and is deposed, and even receives a discretionary punishment. Ākhūnd does not stop here and goes further. In a very important letter to the scholars in the "guarded lands", he explains his view about the people's role and writes: "in the guarded lands, people are owners of country's affairs principally and deservingly, and the reality of choosing a council is relegating this ownership to representatives and giving absolute governance to them for a specified timespan for all affairs" (Khurāsānī, 1387 SH, p. 288). In the previous expression, Ākhūnd considers people as God's deposits, but here he says: "people are the owners of the country's affairs, and they are the ones who have deposited their property to the ruler. Thus, the ruler has two custodial relationships: first, before God whose property is people, and second before people whose properties are the country's affairs." That he uses the concept of ownership to explain this relationship is clearly a separation from the previous scholars' thought. More clearly, according to him, people are owners of the country's affairs principally and deservingly, and relegate it to anyone they want. The concept of ownership in the Shiite thought is very broad, and the owner has freedom to manage or even destroy the property. In principle, since the Shiite jurisprudence was not rich in public law, the constitutionalist jurists used the concepts of private law for conceiving the concepts of public law (See Murādkhānī, 1397 SH). That Ākhūnd regards the country's affairs in the realm of people's ownership – deposited accordingly and on the basis of their latitude – is one of the brilliant points in his thought. According to this very thought, he has the following well-known statement: "It is a necessary point in the denomination that Muslim government in the Occultation period is up to Muslim people" (Khurāsānī, 1387 SH, p. 204). That is, people dominate their own affairs and decide for their own fate. Putting people's governance beside the other necessary items of denomination (like prayer, fasting, hajj, zakat, etc.) shows the high importance of people's role in the government for Ākhūnd

Khurāsānī. He regards any government not receiving its permission of qualification from people in the modern age as illegitimate. Similarly, he maintains that by restricting the sultanate's power and reviving people's rights and freedoms, one can preclude many corruptions, oppressions and the foreigners' dominance over the Islamic countries. Accordingly, he stepped in the path of struggling and constitutionalism, and maintained that the best way to refresh the power and governing sultanate is the law and the parliament (Shīrkhānī and Ibrāhīmī, 1390 SH, p. 302). He believed that in the government, the ground must be prepared for progress and economic advancement of the country, preserving the political-economic independence of the country, negating the dominant relationship and promoting the social justice for all people.

Ākhūnd's respect for and attention to some of the institutions and concepts of constitutionalism, such as parliament, also originates from his attention to the concept of people and the abovementioned statements. He regards the National Legislative Parliament and its formation as 'the obligation of all people' and their rational and religious duty. In his view, the reason for the importance of the parliament in our age is due to people's attention and acceptance. And in a letter to people of Tabriz, he states people's role well as follows: "when all people have consensus on the formation of National Legislative Parliament, it is obligatory for all Muslims to agree and they are not permitted to disagree" (Thubūt, 1395 SH, p. 23). As we mentioned before, he highlights people's role in the Occultation period and returns to this point in discussing about the National Parliament; and in a letter regarding people's obligation and its relationship with the National Parliament in the period of 'minor dictatorship' writes: "the conventional issues and *hisbiya* affairs[1] in the Occultation period is deposited to the Muslim wise men and trusted believers, and its instance is the very establishment of the great council which was forcibly closed by the

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1. Benevolent actions which require a qualified jurist or his representative./ translator

oppression of the rebels and agitators. Today, it is definite obligation for all Muslims to attempt to establish and revive the council, and ignoring or disobeying this order is as escaping jihad and among the major sins" (Khurāsānī, 1387 SH, p. 215). He considered the National Parliament as "the link between the government and the nation", and maintained that "It is obligatory for all Muslims to agree with and support the parliament whose aim is removing the oppression, promoting religious laws and protecting Islam" (Khurāsānī, 1387 SH, p. 167). For him, the parliament whose "establishment is for removing oppression and helping the oppressed and the anxious people as well as enjoining good and forbidding evil, reinforcing the nation and the government, relieving people and protecting Islam is definitely, rationally, legally and conventionally obligatory. The opponents are opposing the radiant religion and confronting the *Sharīʿa* of Islam." Similarly in the discussion on parliament, Ākhūnd considers people's carefulness in choosing their representatives – as righteous person in their belief and persuasion – even more important than their carefulness in the justice of the imam of congregational prayer, and refers to the fact that the result of any good and evil for the jurisdictions and opinions issues from the National Parliament, is rooted in the good or bad election, and the people are responsible for it (Khurāsānī, 1387 SH, p. 289).

Ākhūnd Khurāsānī regards people's opinions valuable to the extent that he extends their votes to choosing the jurists of the amendment to the second article of the law. He specifies three necessary conditions (ability to legal reasoning, justice, and awareness of the demands of the time) for the five-member board supervising the laws enacted in the Legislative Parliament, which they must enjoy along with the "public acceptance". Enjoying public acceptance shows his attention to people and their opinion to the effect that merely the ability to legal reasoning and justice are not enough for the jurists supervising the parliament; rather their acceptance for the people – who are the real owners of the government – is among the other conditions of those individuals. Even in introducing the jurists – as supervisors – to the parliament, Ākhūnd Khurāsānī did not appoint or nominate individuals

through his personal discretion and did not impose them on others, with no freedom or right for people. Not only did he consult with the scholars in the guarded lands for suggesting those supervisor jurists, he even relegated choosing them to the representatives of the Legislative Parliament (Thubūt, 1395 SH, p. 29).

3. People's participation in government in Mīrzā Nāʾīnī's thought

In the initial pages of *Tanbīh al-Ummāa wa Tanzīh al-Milla,* Muhammad Hussein Gharawī Nāʾīnī explains the obligation of establishing the government. Nāʾīnī considers preserving order, security and justice as obligatory both from the rational perspective and from religious viewpoint, and maintains that the best means for achieving this goal is establishing a government (ʿAmīd Zanjānī, 1379 SH, p. 279). Therefore, establishing the government is obligatory due to its being prerequisite for an obligatory thing. He believes that the government must be based on traditions and history of any people, and lack of such a government leads to the decline of those people. He says ironically that "necessarily, it is clear that protecting the honor, independence and identity of a nation – whether on the religious privileges or the patriotic ones – depends on rising of the government of their own; otherwise, their point of privilege and the great reputation of their religion, denomination, honor, and independence of their homeland would vanish, although they may have achieved high levels of wealth, prosperity and progress" (Nāʾīnī, 1390 SH, p. 416).

Mīrzā Nāʾīnī divides governments into two types (the second of which he also divides into two types) and asserts that one cannot imagine a three form. Those two types are *tamlīkiyya* (i.e. possessive) sultanate and *wilāyatiyya* (i.e. authoritative) sultanate. As to the former type, he says: "in this type of government, the ruler – like any of the owners regarding their properties – treats the country and the people as his own property and allows himself to do whatever he wishes to the lives, properties and reputation of the people, and regards the people as his own servants, or even animals, created for fulfilling his desires" (Nāʾīnī, 1390 SH, p. 417). Nāʾīnī considers the reason for

tamlīkiyya and despotic nature of this type the fact that in this type of sultanate, the ruler behaves people as his own properties. He uses the concept of ownership just like his master, but his point of departure is different from that of Ākhūnd Khurāsānī. Ākhūnd considers the government as a property in the possession of people, but Nā'īnī is a step behind his master in this regard, not believing in people's ownership relationship to the government. He emphasizes another issue and asserts that in *tamlīkiyya* government, the ruler sees people like properties at his disposal; and just as an owner has the right to do anything he wants with his properties, the ruler has the same belief. Accordingly, he calls the people in such governments 'captive', 'abject', and 'slave' and, even lower, he considers them as vegetables created just for fulfilling others' needs, with no independent right (Nā'īnī, 1390 SH, p. 418).

Nā'īnī calls the second type of government 'wilāyatiyya'. *Wilāyat* has a deeply-rooted and rich meaning in the Shiite jurisprudence and was used – in that time – more in discussions pertaining to transactions. According to that discussion, if someone, due to some reasons, is in the state of being 'legally incompetent' or *maḥjūriyat* (such as a child whose father has died), his paternal grandfather takes over the responsibility for managing his financial properties. This grandfather is called 'forcible guardian' or *Walī Qahrī*. In other words, someone takes over the guardianship (*wilāya*) of another one. Nā'īnī considers two types for *wilāyatiiyya* government. In his thought, the *wilāyatiyya* government whose basis is truth is the government of the Infallible Imam. He maintains that in a type of *wilāyatiyya* government over which the Infallible governs, the ruler's infallibility – as an internal factor – hinders the error and disobedience on the part of the governing system. In fact, this type of government is close to Ākhūnd's 'legitimate government'. In this type of government, people have no right to choose the Infallible as the ruler, because this is not accepted in the Shiite denomination; besides, they have no right to supervise him as a means for protecting him and his government against errors and disobedience. This, however, does not mean negating the free-choice and any political role of the people in the Infallible's

wilāyatiyya government; rather, people will have, in a certain mechanism, the legal right to participate in the political power. This is because in early Islam and under the Prophet's and Imam Ali's government, not only did people have the right to enjoin good and forbid evil and supervise the statesmen, they would be encouraged by those great leaders to use this right. In his ideal government, people are not possessed by statesmen; rather, they own rights (Waraʿī, 1382 SH, p. 46). These statements are theoretical with no practical effect, because Nāʾīnī believes that in the major Occultation period of Imam Mahdi, establishment of the ideal type of government is impossible. Thus, in the existing conditions, people must seek to establish a government which – at least – is not based on despotism (Nūrī, 1382 SH, p. 33).

Since we have no access to such a government in the Occultation period, he goes to the second type of the *wilāyatiyya* government and says: "the reality of this type of sultanate is the authority over the enforcement of duties regarding preserving the order and the country; not ownership, but a typical trusteeship in using forces of the country not in line with one's passions, because the level of sultan's dominance is restricted to his authority over the aforementioned affairs and his seizure – whether right or wrong – is contingent upon not trespassing that limit. All members of the nation partake in sultan's financial and other rights to typical forces, their share is equal, and they are all responsible for caretaking not as owners, and they are like other members responsible for their safekeeping duty and will be reprimanded for any little transgression" (Nāʾīnī, 1390 SH, p. 419).

Some important points are hidden in these statements. First is inserting the concept of *wilāya* (i.e. authority) in the government, not used by other constitutionalist jurists. He considers *wilāya* limited and regards its jurisdiction restricted to protecting the country and its order, not dominating people's lives, properties and reputation. Second is emphasizing that one cannot use the concept of ownership in explaining the government, because both people and the ruler are trustees and not owners. Here, Nāʾīnī keeps away from his master Ākhūnd Khurāsānī and, unlike him, does not considers people – like sultan – owners of the government, but trustees of it. As mentioned before,

trusteeship is among the jurisprudential legal contracts with some effects, and Ākhūnd and Nā'īnī had reasons for using it. The third is referring to another jurisprudential contract, i.e. partnership and people's partaking in the government, which is an important point. According to that statement, people are partners of the ruler, and both have common responsibilities in this regard. According to Nā'īnī, the ruler does not have the unlimited right to government and must be subordinate to people's freedom and rights, and does not have right to regard the government among his personal properties. He maintains that in this type of government, people's external supervision over the non-infallible ruler can – to some extent – play the role of the Infallible Imam's internal supervision.

Nā'īnī, according to the Shiite thought, maintains that in the Occultation period, there is some sort of usurpation and oppression hidden in all governments. But when establishing such a type of government – i.e. the government of the Infallible – is not possible, the best type of government is constitutional government. Thus, he prefers constitutional sultanate to absolute sultanate, because there is just one 'usurpation' (usurping the Infallible Imam's political authority) in it; but in the despotic government, there are three 'usurpations' (i.e. usurping the divine government, usurping the Infallible Imam's government, and usurping people's government) (Nā'īnī, 1390 SH, p. 437). Therefore, according to the rule of "rejecting the more corrupt with the corrupt", he proclaims that *wilāyatiyya* sultanate is legitimate out of necessity. That is, despite the fact that the government itself is usurped, it is superior to despotic government, and is accordingly legitimate. In other words, since the government is usurped, the rulers must not be allowed to do despotic and oppressive actions; and this type of government with people's participation is preferred to other forms of government wherein enforcing the ruler's power is contingent upon not violating the limits; and it is preferred to despotic government, although it is usurped, because there is no double oppression in it, and the representatives chosen by people act against the interests of the despots, hindering their arbitrariness (Turābī, 1391 SH, p. 98).

In Nā'īnī's view, defending Islam against its enemies is an obligatory

action like saying prayer, but performing that obligation necessitates some preliminary arrangements which are considered the "prerequisite of obligation". The most important means for realizing that obligation – i.e. defending Islam – is the existence of a just government supported by people so that it can defend the Islamic Land with people's assistance. Such a government is not realized unless it is founded upon limiting the ruler's power; and the ruler's power is just restricted through law. Thus, it is necessary that the constitutional law is legislated in order to supervise the government's actions, and the 'parliament' is necessary for making that legal supervision and direction possible. Accordingly, in Nā'īnī's view, the constitutional law and the parliament are the prerequisites of obligation (Nā'īnī, 1390 SH, p. 453). Thus, in a precise system, Nā'īnī links the parliament and the constitutional law to the government wherein he had specified people's role. Nā'īnī dealt with the formation of the parliament and legislating new laws for Iranian community when there was no precedent for his ideas, and the religious scholars believed that the main legislator is God and that the law is the very jurisprudential rules and religious ordinances written in the Book and the traditions, and there is no need to compose new laws apart from the religious laws (Ḥaqqdār, 1384 SH, p. 184).

Nā'īnī considers the despotic regime as baseless because it pays no attention to people's opinions and their participation in the country's affairs; and his emphasis on the constitutional government is due to people's participation in the country's affairs and adduces the Quranic verses "…and consult them in affairs" (the Quran, Āl ʿImrān, 135) and "…and whose affairs are a matter of counsel" (the Quran, Shūrā, 36) to state that the government wherein people do not partake causes destruction of freedom and increase in difficulties and people's hatred towards the government, which lead to the gradual collapse of the government. Indeed, Nā'īnī maintains that if people are aware of and partake in the country's affairs, an undesired government would not gain power.

Nā'īnī adduces Imam Ali's statement in sermon 216 of *Nahj al-Balāgha* regarding the mutual rights of the people and the ruler to infer some

important points:

"The greatest of these rights that Allah, the Glorified, has made obligatory is the right of the ruler over the ruled and the right of the ruled over the ruler. This is a [mutual] obligation which Allah, the Glorified, has set. He has made it the basis of their [mutual] affection, and an honor for their religion."

Among the points he infers are the following ones: "the nation must not have any fear of the government", "people must enjoy the right to consult and partake in administration of the country", and "the Prophet's way of life – as a model for Muslims' personal and social lives – was founded, despite enjoying the knowledge gained from the divine revelation and his infallibility, on consulting with people." Nā'īnī considered the presence of despotism and existence of despotic rulers – who dominate the country's affairs in various forms – equal to the nation's non-freedom, and maintained that despotism means people are not present in the scene and have no access to freedom as their divinely-granted blessing (Taskīn-dūst, n.d., p. 62).

4. People and types of government in Sheikh Ismāʿīl Maḥallātī's view

In his important book entitled *al-Liʾālī al-Marbūṭa fil-Wujūb al-Mashrūṭa*, Muhammad Ismāʿīl Maḥallātī, one of the jurists in Najaf in Constitutional period among the great companions of Ākhūnd Khurāsānī, has considered people's role in government and its various types. He speaks of people and their role in government more explicitly and bases his classification of government on the extent people partake in the government. He divided government into three types:

The first type is the despotic absolute government wherein people have no share in the typical rules and public interest, and are completely closed-handed and negated-rights. They serve as the slaves of the king and – in other words – are the instances of the rule "the slave and his possessions belong to his master" with no right to object, because "he is not responsible for what he does, and they are responsible". In absolute sultanate regime, the inhabitants of the country (i.e. people) have no right to participate in affairs. Another point in this classification is Maḥallātī's reference to the relationship

between the slave and the master in such a government. As seen before, Ākhūnd and Nāʾīnī used the concept of ownership, but Maḥallātī inserts the concept of master/ slaves to say the situation is more acute and the government's relationship with people in such governments goes beyond ownership to slavery. Although a slave is also possessed by his master, Maḥallātī's emphasis on slavery instead of ownership deserves attention.

The second type of government in Maḥallātī's view is the absolute sultanate (or the Infallible Imam's sultanate) wherein people have no participation, but the typical rights are established and recognized for them. In his view, the foundation of the caliphate of the Prophet's successors and Imams' sultanate is this type of government (Maḥllātī, 1390 Sh, p. 203). As seen here, Maḥallātī has refereed to people in such a government – which is not available now – and emphasizes that although people have no role in such a government, their rights are determined and will not be violated. His reference to typical rights can be close to the concept of Nāʾīnī's 'common typical rights' (Murādkhānī and Ṣādiqiyān, 1397 SH).

The third type of government is the constitutional government wherein "the public benefits and general political interests as well as what causes reform and growth and leads to the country's civilization and prosperity belong to all inhabitants of that land. Thus, some trusted representatives must be chosen by all of them to specify the public interests and losses so that they determine the typical goodness and degradations and offer them to the king. He then would command or prohibit according to what is passed and incite all governmental offices accordingly" (Maḥallātī, 1390 SH, p. 212). In introducing this type of government, Maḥallātī refers to people's role to mention a novel point. In that type of government, all country's affairs belong not to the individuals but to all inhabitants of the country as a whole, which is one of the delicate references to the concept of 'nation' in our traditional thought (as opposed to 'people') which is a result of the concept of people in the modern age. To emphasis this fact, he refers to the point that the parliament representatives are also trusted persons chosen by all people for managing the country's affairs. In Maḥallātī's view, since the second type

of government is impossible in the current age, we must choose one of the two other types and of course, "no rational being doubts that constitutional sultanate is preferred to despotic absolute sultanate" (Maḥallātī, 1390 SH, p. 215).

Maḥallātī, just like Nāʾīnī, maintains that people must choose righteous individuals aware of the current issues for representing them. Indeed, if people err in choosing the qualified persons, they have harmed themselves. He maintained that even if they choose non-qualified representatives, they are legitimate persons for administration, because they are chosen by people. Nevertheless, if there is a more qualified person, that person has just the right to criticize or – in religious expression – enjoin good and forbid evil by using the existing means and tools in order to reform affairs and direct authorities. Maḥallātī adduces Imam Ali's government as an example. Although Imam had the [right to] authority and imamate, he respected people's choice and yielded to the caliphs to whom people had paid allegiance before him. However, he never gave up enjoining good and forbidding evil; and when people paid allegiance to Imam, he established his own government in line with his mission and with reliance on people's allegiance (Rūḥānī, 1385 SH, p. 55).

In answering the sophistry of some people who objected that "when there are religious scholars present, the governance of representatives of people (most of whom are unaware of the religious issues) is inconsistent with the religious and rational principles", and also in response to the opinion that the legislative parliament would discourage people from obeying the scholars, Maḥallātī writes: "obeying the religious scholars is – as mandated by the true religion of Islam – obligatory in two occasions: one is in the general religious laws wherein ordinary people must refer to the scholars and imitate a qualified scholar; and the other is in minor external issues when they are liable to the judgment of a Muslim judge, which is apparent in jurisdiction. Otherwise, it is not obligatory to obey the scholars." (Zargarī-Nijād, 1377 SH, pp. 541-571) Besides, Maḥallātī believes that wardenship of the people, under the pretext that they are unable to discern their benefits and losses, is interfering in people's lives and rights, and is not rationally or religiously justified

(Maḥallātī, 1390 SH, p. 243).

Maḥallātī maintains that the Constitutional revolution is an attempt to free people from the shackles of despotism, and considers the establishment of an institution like parliament as a means to regain their rights so that they can acquire glory and wealth like other civilized states. Thus, for him, it is necessary that people's representatives be the most qualified and most aware of the current issues so that they can defend the people's rights and regard their opinions as important. The individuals who are aware of the demands of the time and aware of the policies must consider people's opinions – which are of great importance – to use them in their counseling sessions and enact laws which are useful for people. For this jurist, although people enjoy rights in the non-religious public affairs and the jurist cannot regard his own opinion superior to the opinions of the wise persons, he – a an expert in religious affairs – has the duty to supervise and control the public affairs in addition to inferring the religious laws (Maḥallātī, 1390 SH, p. 235).

Conclusion

Constitutionalism, despotism, legitimate constitutionalism, parliament, voting, equality, right, law, and people's governance have been concepts with important role and position in the history of political and social evolution in Iran for more than one century. Many of the research headings and entries have been appropriated to these concepts, and some studies have been composed in rejecting, confirming, or justifying them. The central point and the connecting link of the abovementioned concepts can be found in 'constitutionalism' whose entrance into the evolutions in Iran brought many other concepts and faced with different positions.

Many Iranian thinkers in the Constitutional period have offered theoretical discussions which are, in some cases, the expansion of traditional thought, and a rupture from the past ideas. In the present article, we have tried to investigate one of those concepts in the mind of a group of activists of Constitutionalism in Iran, i.e. the constitutionalist jurists. At certain temporal conditions, they – as the traditional representatives – have played

important role in modernism. These scholars did not stop at the past traditional doctrines; rather, they opened a new chapter in the Shiite political thought by using political and social laws according to the conditions of time, place, and demands of the time. One of the great achievements of the new political thoughts of these jurists in the political arena is the government-people relationship. In discussing types of government, the Shiite Constitutional jurists have mentioned some novel points and made important innovations. Not only did they quit the old frameworks, but also they resorted to speaking of various types of government to refer to people's role in the modern governments. No doubt, one could not speak of people's governance and their role in the government, but three Constitutional aforementioned jurists could manage to use much nicety to speak about types of government as a path for inserting people's role into the government – which was an important and prominent task as the starting point. Besides, they used the facilities of the Shiite jurisprudence for this important task and could bring concepts such as ownership and trusteeship from the private jurisprudence into the new realm of politics and society, and establish a new way of thinking. No doubt, investigating their role and the effect of their jurisprudential and political opinions in the victory of Constitutionalism can bring about ample capacities in the spheres of theorization and practice

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