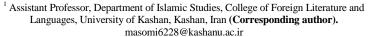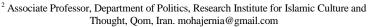# A Genealogy of Shaykh Fazlullah Nouri's Political Thought of in the Constitutional Movement: From Justice-Seeking to the Sharia-Centered Theory

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Abstract

The political thought of Shaykh Fazlullah Nouri regarding the Constitutional Revolution of Iran can be analyzed as a resilient ijtihad aimed at the Islamization of the new governmental structure. This study, by tracing his political and intellectual roots in the fundamental principles and rules of Shia jurisprudence, demonstrates that Shaykh Fazlullah Nouri's transformative stance stemmed from the requirements of jurisprudential inference and the safeguarding of Sharia. The theoretical framework of this research rests on three key pillars: first, an emphasis on the exclusive sovereignty of Sharia and the prohibition of human legislation; second, insistence on the oversight of the jurists over the legislative process as a constructive solution to ensure the Sharia compliance of enacted laws; and third, reliance on the principle of *nafy al-sabīl* (denial of non-Muslim dominion) as a central tenet of resistance against colonial domination. Despite his profound understanding of the oppression of despotism and his initial support for justice-seeking, upon witnessing the infiltration of Western secular concepts into the constitutional drafting and legislative process, Nouri redirected his position toward advocating for the Sharia-centered Constitutionalism. He viewed legislation without Sharia oversight as a clear violation of the prohibition against unlawful legislation, a duty stemming from the jurist's responsibility to protect the faith. This jurisprudential insistence ultimately led to the establishment of the second article of the supplementary constitutional law. In conclusion, Shaykh Nouri's position against the Constitutional Revolution was an active, courageous, and ijtihad-based effort to preserve the sovereignty of Sharia and the religious authenticity of the political

system in the face of the fundamental challenges of modernity and colonialism, providing the foundation for contemporary Shia political thought in relation to the establishment of new political systems.

Keywords

1. Introduction

The Iranian Constitutional Movement stands as an unparalleled turning point in the history of the country's political and social developments, a movement that began with the aim of seeking justice and placing limits on the despotism prevailing at the Qajar court. The political thought of Shaykh Fazlullah Nouri has remained central to intellectual attention and controversy owing to the dramatic transformation it underwent—from initial support to resolute opposition to the ultimate course taken by the Constitutional Revolution. The primary question is this: should Shaykh Shaykh Fazlullah Nouri's stance be regarded merely as political opposition, or ought it to be understood as a jurisprudential and ijtihad-based endeavor to Islamize the new governmental structure? Clarifying this stance requires a profound intellectual genealogy that traces the roots of his thought within the edifice of Shiite jurisprudence (*fiqh*). The significance of such a study lies in its challenge to the simplistic dualistic paradigm (*mashrūʿa* versus *mustabidda*, i.e., "Sharia-based constitutionalism" versus "despotic") commonly applied to the Shaykh's activism. Instead, it interprets his position not as opposition to the principle of constitutionalism itself (that is, the restriction of the monarch's power), but rather as a protest against the lack of legitimacy in the foundational bases of its legislation (Kamali, 2009, p. 120). This study seeks to demonstrate that Shaykh Nouri's thought emerged from the heritage of Uṣūl-based jurisprudence and an unwavering conviction in the sovereignty of divine sharia. On the basis of his own principles of ijtihad, he regarded human legislation that was independent of sharia—particularly when inspired by Western concepts such as absolute freedom and secular equality—as constituting forbidden, non-Sharia-based law-making (Ghasemi, 2001a, p. 45; Katouzian, 1999a, p. 100). It was for this reason that the theory of "mashrūṭa mashrūʿa" (constitutional government bound by sharia or Sharia-based constitutionalism) was put forward as Shaykh Fazlullah's positive, constructive proposal. This theory, while restricting the monarch's powers through the National Consultative Assembly (Majlis), insisted on the higher supervisory authority of fully qualified jurists (*fuqahā*) over parliamentary legislation in order to guarantee the complete conformity of all laws with sacred Sharia rulings. This jurisprudential insistence ultimately led to the inclusion of Article 2 in the Supplement to the Constitution, although in practice the article was never properly implemented (Mojtahedi, 2004b, p. 245). The main research question in this article is the following: how does Shaykh Fazlullah Nouri's stance against a non-Sharia-based constitutionalism come to be articulated as an endeavor to safeguard

religious authenticity? The hypothesis proposed in this article holds that Shaykh Fazlullah Nouri's position was that of a Muslim jurist (*faqīh*) deeply committed to the sharia, who feared that the Constitutional Movement would deviate into an instrument of secularism and colonial domination.

2. Research Background

While drawing upon the existing literature on the subject, a research gap has been identified in a careful elucidation of Shaykh Fazlullah's principles and ijtihad-based arguments:

◆ Mahdi Ansari. (1992). "Constitutionalism from the Perspective of Shaykh Fazlullah Nouri." *Keyhan-e Andisheh*, no. 43.

◆ Ali Abolhasani. (2001). "Shaykh Fazlullah Nouri: Revolutionary in the Age of Despotism, Reformer in the Constitutional Era." *Qabasat*, no. 22.

◆ Ali-Naghi Zabihzadeh. 2001. "The Role of Ayatollah Shaykh Fazlullah Nouri in the Constitutional Movement." *Maʿrifat*, no. 40.

◆ Seyyed Mohammad Mahdi Ghamami and Vahid Heydari. 2019. "A Jurisprudential-Legal Re-reading of Shaykh Fazlullah Nouri's Views on Constitutional Government and Sharia-based Legislation." *Quarterly Journal of Religion and Law* 7, no. 26: 145–163.

Unlike many previous works that address the broader dimensions of Shaykh Fazlullah Nouri's "political thought," the present paper focuses exclusively on the genealogy of the principles, rules, and deductive juridical arguments (such as the rule of *nafy al-sabīl*, the sovereignty of the Sharia, and the prohibition of human legislation). The study seeks to demonstrate that Shaykh Fazlullah Nouri's positions were rooted in the imperatives of juristic inference (*istinbāṭ*), rather than being merely a political or theological stance. This approach elevates the analysis from the macro level of the theory of Sharia-based Constitutionalism to the level of juridical rules and the fine details of deductive jurisprudence. Another distinguishing feature of the present paper is its effort to provide a comprehensive and comparative analysis of the Shaykh's positions toward the entire body of the Constitutional Revolution's Basic Law. The research aims to clarify precisely on which juridical foundations Shaykh Fazlullah Nouri agreed or disagreed with provisions concerning the rights of the nation, the separation of powers, the limits of customary laws, and other articles of the constitution. The ultimate goal is to move beyond piecemeal examination toward a holistic model of juridical analysis that presents the Shaykh's arguments within a coherent, systematic, and all-encompassing framework.

3. Definitions

To elucidate the intellectual genealogy of Shaykh Fazlullah Nouri in his encounter with Constitutionalism, it is essential that the article's central concepts be defined with a rigorously juristic and ijtihad-based approach and in a precise and elegant manner, so that the full scope and depth of his deductive reasoning may be clearly revealed.

1) Sharia-Based Constitutionalism

This is the original political-jurisprudential theory pioneered by Shaykh Fazlullah Nouri, the ultimate aim of which was the Islamization of the new governmental structure. This theory rests on two fundamental pillars: (a) restricting the absolute power of the monarch through the establishment of a parliament (Constitutionalism), and (b) the necessity of ensuring that all laws passed by the parliament conform to the rulings of the Sharia and the exercise of higher supervision over them by fully qualified jurists (Sharia-based) (Ghazizadeh, 2007, p. 220). In fact, this project was an attempt to reconcile the quest for justice with the sovereignty of the Sharia.

2) Intellectual Genealogy

The analytical approach adopted in this research, rather than focusing on temporary political stances, seeks the principled, regulative, and ijtihad-based roots and origins of his thought within the system of Shiite jurisprudence. This genealogy demonstrates that Shaykh Fazlullah Nouri's position (such as his proposal for "Sharia-based Constitutionalism") was not a political decision, but rather an obligation derived from jurisprudential inference and regulative principles—chief among them the prohibition of human legislation that contravenes the Sharia and the rule of "no domination" of non-Muslims over Muslims (Rabbani Golpayegani, 2011, p. 17).

3) Shiite Jurisprudence

Jurisprudence (*fiqh*) is the science of deriving subsidiary rulings of the Sharia from its detailed sources (the Quran, the Sunna, reason, and consensus), and it was this discipline that shaped the intellectual framework of Shaykh Fazlullah Nouri. He was an Uṣūlī jurist and placed strong emphasis on the practical principles (*uṣūl ʿamaliyya*) and regulative rules of jurisprudence. Within the context of Shiite jurisprudence, he insisted on the primacy of religious text (the divine Sharia) over human opinion (human legislation) in the formulation of laws for an Islamic society (Dehghani Firouzabadi, 2002, p. 35).

4) Oversight by Jurists (Article 2 in the Supplement to the Constitution)

Oversight by jurists is a jurisprudential-legal concept on which Shaykh

Fazlullah Nouri insisted as the guarantee for the survival of Constitutionalism within the framework of the Sharia. He held that a permanent committee of top-ranking mujtahids must oversee the enactments of the National Consultative Assembly (*Majlis-i Shūrā-yi Millī*) and possess the authority to veto any law that contravenes the Sharia. This jurisprudential insistence ultimately found expression in Article 2 of the Supplement to the Constitution and constituted the distinguishing feature of Iran's legal structure in contrast to Western models (Ghazizadeh, 2007, p. 235; Katouzian, 1999b, p. 100).

4. Conceptual Framework: The Theory of Sharia-Based Sovereignty According to Jurisprudential Rules

Shaykh Fazlullah Nouri's thought in confronting the Iranian Constitutional Movement was, in fact, a coherent and systematic ijtihad-based intellectual edifice that, drawing upon the foundational principles and regulative rules of Shiite jurisprudence, sought to offer a comprehensive, proactive, and resilient response to the critical triad of his era: domestic despotism, Western cultural aggression, and the crisis of governmental legitimacy. This theoretical framework elevates his position beyond mere traditionalist opposition and analyzes it as a fully articulated theory of Sharia-based sovereignty (*ḥākimiyyat-i mashrūʿa*) grounded in jurisprudential rules, which rests on the following three pillars of reasoning: (i) the exclusive sovereignty of the Sharia and the principle prohibiting human legislation that contravenes divine law; (ii) oversight by jurists as the positive mechanism for exercising the juristic guardianship or authority (*wilāya*) in the legislative domain; and (iii) the rule of "no domination" as the central axis of resistance against intellectual and political colonialism.

A. First Pillar: The Exclusive Sovereignty of the Sharia and the Principle Prohibiting Human Legislation

At the very core of Shaykh Fazlullah Nouri's intellectual system lies the cardinal principle of the absolute and exclusive sovereignty of the divine Sharia. This principle is not a mere political stance but a theological-jurisprudential doctrine according to which the right of legislation and law-making belongs solely to God Almighty; no human will—including the will of the majority in parliament—may infringe upon or restrict it. In this regard, he adhered firmly to the Uṣūlī school, emphasizing the primacy of revealed text (*naṣṣ*) over human opinion (*raʾy*) and the imperative that all affairs of society conform strictly to divine rulings (Mirzakhani, 2018, p. 83). In his view, the newly established legislative institution of the parliament may only undertake

the task of discovering the rulings of the Sharia and enacting customary and administrative regulations, provided that such regulations do not explicitly contravene the principles or subsidiary rulings of the Sharia. The moment the parliament proceeds to enact laws derived from non-religious sources (such as Western models) and falling outside the bounds of the Sharia, that act constitutes the prohibited practice of non-Sharia legislation (Ghasemi, 2001b, p. 45). In Shaykh Fazlullah Nouri's view, this is not merely an error but a doctrinal deviation that undermines the very legitimacy of the political order. It is precisely from this standpoint that his opposition to certain imported Western concepts arises. He regarded the concept of absolute freedom of the pen and expression as incompatible with the revealed texts of the Sharia, as well as with the obligation to preserve public modesty and prevent the dissemination of falsehood and heresy. Likewise, he viewed the secular notion of equality before the law—promoted by Western-oriented intellectuals—as being in stark conflict with the detailed rulings of the Sharia, which prescribe differing rights and obligations for different categories of people. Thus, Shaykh Fazlullah Nouri's opposition to an non-Sharia-based Constitutionalism was, at its core, a defense of the divine legal order against the encroachment of a secular human-made legal order. This stance demonstrates that one of his primary concerns was the preservation of the Islamic character of governance; a constitutionalism devoid of Sharia constraints, one that would impair the sovereignty of the Sharia, was simply unacceptable to him.

B. Second Pillar: Oversight by Jurists as the Positive Mechanism for Exercising Juristic Authority in Legislation

One of Shaykh Fazlullah Nouri's primary concerns during the Constitutional era was to articulate the theory of "Sharia-based constitutionalism" and to insist on the higher supervision of fully qualified jurists over the legislative process of the parliament. He maintained that, in the era of occultation, the preservation of social order, the protection of divine rulings, and the prevention of chaos and anarchy are duties incumbent upon the fully qualified jurist and mujtahid (Motahari, 2005, p. 97). Since legislation without oversight constituted a direct threat to the rulings of the Sharia, and the enforcement of laws contrary to it would inevitably lead to religious chaos, supervision over the legislative process was regarded as a clear and central instance of exercising juristic authority and duty. In this system, the role of the jurist is not merely advisory but rather one of ijtihad and sovereign authority. The jurist must possess the capacity, on the basis of his own independent juridical reasoning, to invalidate any enactment he deems contrary to Shiite

jurisprudence. Shaykh Fazlullah Nouri's resolute and jurisprudentially grounded insistence on this principle ultimately resulted in the incorporation of Article 2 into the Supplement to the Constitution of 1906. This article—one of his most significant intellectual achievements—elevated the institution of juristic oversight from a mere political mechanism into the very cornerstone of the legal legitimacy of the constitutional order. In this way, he succeeded in transforming his thought into an active structural proposal for integrating the modern institution of parliament within the framework of Sharia sovereignty. This supervisory mechanism ensured that, although the political structure had been liberated from the king's absolutism, it would not deviate from the absolute sovereignty of the divine Sharia (Group of Authors, 2007, p. 185). The aim was not to abolish constitutionalism, but rather to confer Sharia-based legitimacy upon it and to orient it in accordance with religious principles.

C. Third Pillar: The Rule of "No Domination" as the Axis of Resistance to Intellectual and Political Colonialism

Another central concern of Shaykh Fazlullah Nouri was his stance of resistance against foreign influence, a position firmly anchored in the robust jurisprudential principle known as the rule of "no domination" (*nafy al-sabīl*). This pillar elevates his thought beyond a mere domestic or religious controversy and transforms it into a national-jurisprudential project for independence. The rule of "no domination," derived from the noble Quranic verse "And never will God grant to the unbelievers a way [of domination] over the believers" (Quran 4:141), establishes that God has categorically blocked and prohibited any path (*sabīl*) by which unbelievers might gain dominion, superiority, or influence over believers. Shaykh Fazlullah Nouri ingeniously extended the application of this rule—traditionally confined to personal status and contractual matters—into the broader domains of sovereignty, politics, and legislation (Kashani, 2010, p. 72). In his view, the unconditional adoption of secular Western concepts into domestic legislation, in the absence of Sharia oversight, served as an instrument that indirectly paved the way for foreign intellectual, cultural, and political domination. He maintained that the unfiltered imitation of European civil and political laws amounted, in reality, to accepting intellectual domination and opening a path for foreigners to control the nation's destiny. Consequently, Shaykh Fazlullah Nouri's opposition to a non-Sharia-based constitutionalism was, at its deepest level, an ijtihad-based jihad aimed at preventing Western intellectual and political hegemony over the country's future. In his view, any law or treaty that weakened the nation's political or religious independence constituted a

flagrant violation of the rule of "no domination" and was therefore devoid of legitimacy (Akhoondi, 2016, p. 160). This approach elevated his stance from traditionalist resistance into a forward-looking, jurisprudentially grounded theory of resistance against imposed globalization and colonialist aggression, establishing him as an enduring symbol of the defense of both religious and national independence.

5. Jurisprudential and Ijtihad-Based Roots

The intellectual and ijtihad-based roots of Shaykh Fazlullah Nouri's stance toward the Constitutional Revolution are deeply embedded in the theoretical system of principles-based (*uṣūlī*) Shiite jurisprudence; any explanation of his position is impossible without understanding this jurisprudential origin. As a prominent and highly respected jurist of his era—who had studied under great masters such as Mirzā Shīrāzī (the leader of the Tobacco Protest)—Shaykh Fazlullah Nouri represented a school of thought that insisted on the absolute primacy of the divine Sharia over any form of human will or legislation. The present section elaborates the reasoning and jurisprudential foundations of these roots.

5.1. The Jurisprudential Grounds of Sharia Sovereignty

Shaykh Fazlullah Nouri's thought rested on a fundamental theological and jurisprudential principle that regards the right of legislation and law-making as belonging exclusively to God. In his view, in the Islamic legal order, all rulings of the Sharia, whether pertaining to acts of worship, transactions, or political matters, have been enacted by the Sacred Lawgiver (*Shāriʿ*); human reason and the general will are permitted to operate only in the sphere of discovery and application, never in the creation or establishment of law (Ṣadr, 2013, vol. 1, p. 48). This position, rooted in the late uṣūlī tradition of Shiite jurisprudence, relies on ijtihad and inferential reasoning while assigning the jurist a central role as trustee of the Sharia and supervisor of the implementation of divine rulings. In Shaykh Fazlullah Nouri's view, the National Consultative Assembly, which had been modelled on Western parliaments, would—absent a robust supervisory mechanism—rapidly slide from its intended function of establishing justice into the abyss of secular legislation. He explicitly maintained that if the parliament were to enact laws not grounded in the Sharia, such an act would not merely be illegitimate but would constitute the "prohibited practice of non-Sharia legislation," ultimately amounting to innovation (*bidʿa*) and even apostasy, inasmuch as it accords

recognition to a will that stands parallel to the will of the Lawgiver (Nāʾīnī, 2006, p. 120). His concern was that legislation without jurisprudential oversight would gradually shift society from the sovereignty of revealed text to the sovereignty of human opinion, thereby shaking the religious foundations of the nation.

5.2. Jurisprudential Manifestation in the Theory of Sharia-Based Constitutionalism

The theory of Sharia-based constitutionalism, which Shaykh Fazlullah Nouri formulated, was in fact a positive and ijtihad-based endeavor to resolve this jurisprudential-political dilemma. Initially, he endorsed the primary objective of the Constitutional Movement—namely, the limitation of the monarch's absolute power and the establishment of a house of justice—because he regarded it as fully consonant with the jurisprudential principles of removing oppression (*rafʿ al-ẓulm*) and repelling evil (*dafʿ al-munkar*). The decisive point of divergence between him and the secular intellectual current, however, emerged over the very foundations of legislation. Shaykh Fazlullah Nouri maintained that, in order to preserve the religious legitimacy of the new order, constitutionalism had to be constrained by the Sharia. By this he meant that the parliament must submit to the higher supervision of fully qualified jurists so that the Sharia-compliance of every enactment could be determined by jurists (Ṭabaṭabāʾī, 2009a, p. 240). In his view, such supervision was neither a privilege nor a mere right; it was a jurisprudential obligation and the guarantee of the Islamic character of the new political system. By virtue of his authority or guardianship and the right of *ḥisba* during the era of occultation, the jurist is duty-bound to safeguard the principles of religion and the rulings of the Sharia; legislation that contravenes the Sharia constituted the most blatant threat to that duty. Although some critics have portrayed his stance as opposition to constitutionalism as such, an intellectual genealogy clearly reveals that Shaykh Fazlullah Nouri was not against restricting the shah's power; rather, he opposed the absence of religious legitimacy in the foundations of legislation. What he sought was a new system that would secure political justice while simultaneously preserving its religious legitimacy (Kamali, 2011, p. 152).

5.3. Juristic Concerns in the Confrontation with Western Concepts

The jurisprudential roots of Shaykh Fazlullah Nouri's position is clearly visible in his confrontation with two key Western concepts.

A. Absolute Freedom and the Jurisprudence of Enjoining Good and Forbidding Evil

Shaykh Fazlullah Nouri was deeply alarmed by the infiltration of the notion of absolute freedom, particularly in the press and public expression. From his jurisprudential standpoint, freedom must never become a tool for violating the rulings of the Sharia, promoting moral corruption, or disseminating deviant beliefs. This position is firmly grounded in the regulative principle of enjoining good and forbidding evil—a duty that underscores the preservation of the community's religious and moral integrity. Granting unqualified, unrestricted freedom would, in practice, paralyze the obligation of the jurist and all Muslims to fulfill this duty, thereby fostering moral and doctrinal corruption throughout society (Motahari, 2005, p. 56). He regarded such absolute freedom as inherently corrupting and irreconcilably opposed to the preservation of the essential objectives of the Sharia (*maqāṣid al-sharīʿa*).

B. Secular Equality and Sharia-Based Differences

Shaykh Fazlullah Nouri's opposition to secular equality also had a purely jurisprudential foundation. Shiite jurisprudence explicitly establishes differentiated rights and obligations among various groups (e.g., between men and women, or between Muslims and non-Muslims) in areas such as inheritance, retaliation (*qiṣāṣ*), blood-money (*diya*), and testimony. He regarded Western-style equality before the law, which disregarded these Sharia-mandated distinctions, as being in direct conflict with definitive revealed texts and as tantamount to the abrogation of divine rulings (Rabbani Golpayegani, 2016, p. 22). For him, the acceptance of such a principle meant that the legislative institution was effectively legitimizing the nullification of God's laws—an act that, from a jurisprudential standpoint, was deemed blasphemous and illicit. In conclusion, the jurisprudential and ijtihad-based roots of Shaykh Fazlullah Nouri's thought clearly demonstrate that his opposition to a non-Sharia-based (un-Islamic) constitutionalism was not a reactionary political stance, but rather a systematic jurisprudential endeavor to defend the religious authenticity of governance and the sovereignty of the Sharia. Relying on his own jurisprudential principles, he correctly identified that the true danger lay not in the despotism of the shah, but in secularism and the exclusion of religion from legislation—a process that would also open the door to foreign domination. Thus, the theory of juristic supervision was indeed a sophisticated and far-sighted initiative by Shaykh Fazlullah Nouri to keep the legal and political framework of society within the boundaries of ijtihad and the Sharia (Katouzian, 2015, p. 180). This approach establishes him

as a jurist who, amid the crisis of modernity, employed the principles and regulative rules of Shiite jurisprudence as powerful instruments for safeguarding both the religious identity and the national independence of the country.

6. Perception of Despotism and Justice-Seeking

The second pillar in the intellectual genealogy of Shaykh Fazlullah Nouri consists of his profound and conscientious understanding of Qajar despotism and his religious and social concern for the pursuit of justice. His initial stance in support of the Constitutional Movement was not a passive political decision; rather, it sprang from a clear jurisprudential and ethical imperative to combat oppression and to establish equity (*qisṭ*) in an Islamic society. The present section elucidates the jurisprudential and social dimensions of his position regarding despotism and the quest for justice.

6.1. Jurisprudential Roots of Anti-Despotism

Shaykh Fazlullah Nouri's opposition to despotism was rooted in the definitive principles of Shiite jurisprudence, which declare oppression categorically forbidden and the establishment of justice obligatory. In the Shiite jurisprudential tradition, despotism, in the sense of arbitrary rule unbound by law, is a manifest instance of "evil" (*munkar*) and "oppression," the repelling of which is deemed obligatory by the regulative rule of enjoining good and forbidding evil (Najafī, 2021, p. 45). As a leading mujtahid, he regarded this duty as his foremost obligation toward the government. In his view, the Qajar despotism—with its squandering of public wealth, capitulatory treaties with colonial powers, and disregard for the rulings of the Sharia—was a twofold threat to both religion and nation. His understanding of despotism went far beyond mere moral protest: he viewed it not only as a source of political corruption but as the breeding ground for religious and ethical corruption in society, because an autocratic regime cripples the mechanisms required for implementing the Sharia and establishing Islamic justice. Consequently, his initial support for the Justice Movement (the demand for a "House of Justice") was in reality the discharge of a religious duty aimed at restraining tyranny and restoring governance to the boundaries of justice and the Sharia.

The establishment of a House of Justice and the limitation of royal power was the indispensable first step toward implementing Islamic rulings that despotism had long held in abeyance (Āqā Buzurg Tihrānī, 2019, vol. 2, p. 120).

6.2. Initial Support for the Constitutional Movement and the Limitation of Monarchial Power

In pursuit of the cause of justice, Shaykh Fazlullah Nouri, like many of his contemporary Shiite scholars, accepted that, in order to eliminate oppression and establish lasting justice, the absolute power of the monarch had to be restricted. At this stage, he explicitly endorsed the establishment of the National Consultative Assembly (Majlis) as a practical and effective instrument for curbing despotism. This insight reflected both his sense of social responsibility and his concern for the plight of the people. He clearly recognized that, in the absence of the Infallible Imam, supervisory institutions capable of restraining power were indispensable if governance was not to degenerate into personal whim. At this juncture, Shaykh Fazlullah Nouri's position fully aligned with an approach that sought to bind the oppressive monarchy (*salṭanat-i jāʾira*) through a secular institution enjoying popular legitimacy. Such binding, however, did not imply acceptance of secular legislation; rather, it meant compelling the shah to abide by law—a law that, in his conception, had to be rooted in the Sharia. In fact, he regarded the parliament as the authorized representative of the subjects (*wakil al-raʿāyā*), whose duty was to prevent the monarch from encroaching upon either the rights of the people or the rulings of the Sharia (Mojtahedi, 2004b, p. 167). Thus, his approval of the Majlis was not an endorsement of Westernization, but rather a principled embrace of a modern instrument for realizing Islamic justice.

6.3. Justice-Seeking as a Prerequisite of Initial Legitimacy

The significance of Shaykh Fazlullah Nouri's understanding of despotism and his pursuit of justice lies in the fact that this concern constituted the primary driving force behind his initial stance. He never abandoned the principle of justice-seeking; rather, as events unfolded, he came to realize that the Constitutional Movement was morphing into an even greater threat. From his perspective, the quest for justice was not an ultimate end in itself, but the indispensable condition for the legitimacy of any government during the era of occultation. A regime that practices oppression and fails to uphold justice is illegitimate, even if it outwardly wears the garb of religiosity. It was for this reason that he first aligned himself with a movement whose explicit aim was the elimination of tyranny (Shirvani, 2022, p. 80). He believed that an Islamic society must be governed by a just order so that its people could fulfill their religious duties with ease. Qajar oppression had destroyed the secure

environment necessary for adherence to the Sharia, thereby doubling the religious responsibility of the scholars (ʿulamāʾ) toward the nation. His support for the movement reflected both his good faith and his broad-minded readiness to accept novel political solutions, so long as those solutions remained oriented toward equity and the repelling of evil. Shaykh Fazlullah Nouri's approach can thus be described as an attempt to engineer a political-social transformation that would remain within the orbit of the primary rulings of the Sharia (such as the prohibition of oppression). In other words, while prepared to employ the modern mechanism of constitutional limitation of power, he sought above all to ensure that this mechanism would not be turned into an instrument for negating the sovereignty of the Sharia (Hashemi, 2020, p. 240). Therefore, Shaykh Fazlullah Nouri's final position must be understood as an effort to preserve the principle of justice within the framework of the Sharia and to prevent the deviation of the justice-seeking movement toward irreligion and intellectual colonialism. He sought Sharia-based justice, not a justice obtained at the cost of removing divine rulings from the social sphere. This stance reflects the depth of his ijtihad and insight in analyzing the political and jurisprudential conditions of his era.

7. Encounter with Western-Leaning Intellectuals and the Concept of Law

The decisive turning point in Shaykh Fazlullah Nouri's intellectual evolution and his ultimate stance toward the Constitutional Movement occurred in his confrontation with the Western-oriented intellectual current and the concept of modern law. This confrontation was not a political conflict, but an epistemological and ijtihad-based clash over the foundations of legislation and legal legitimacy. He came to realize that, although the original aim had been to restrict Qajar despotism, the movement's trajectory had shifted toward the adoption of secular Western concepts in the form of both constitutional and ordinary laws—an outcome that, from his perspective, posed a deeper threat than the previous despotism itself.

7.1. Jurisprudential Opposition to the Secular Concept of Legislation

Shaykh Fazlullah Nouri's main concern rested on the principles of Shiite jurisprudence, which recognize God alone as the absolute Lawgiver. While Western-oriented intellectuals sought to entrench the notion of human law as a self-sufficient source of legitimacy, he regarded this approach as a fundamental deviation. He maintained that laws governing an Islamic society

must conform to the sacred rulings of Islam, and any legislation contrary to them is illegitimate and void (Baḥr al-ʿUlūm, 2011, p. 120). From his standpoint, establishing the parliament did not mean creating a secular legislative body, but rather an institution to oversee justice and enact administrative regulations within the framework of the Sharia. When he observed that the Majlis was modelling itself on the legal systems of France and Belgium, he concluded that the process amounted to prohibited human legislation in conflict with the Sharia. He explicitly stated that legislation by humans independent of the Sharia constitutes a form of practical apostasy, inasmuch as it recognizes a will parallel to the will of the Lawgiver, which is incompatible with the principle of divine unity in sovereignty (Maleki, 2022, p. 65). Accordingly, his insistence on the inclusion of jurists' supervision in Article 2 of the Supplement to the Constitution was a calculated effort to subject the legislative institution to jurisprudential oversight and to preserve it within the bounds of Sharia sovereignty.

7.2. The Jurisprudential Challenge of Secular Equality

One of the concepts that deeply troubled Shaykh Fazlullah Nouri was the notion of "equality" (*musāwāt*) as advanced by the intellectuals in its absolute and secular form—namely, equality before the law without qualification. He did not oppose the principle of justice or the fundamental equality of human beings; rather, he opposed absolute, secular equality that denied the distinctions established by the Sharia. He held that Islam assigns different rights and obligations to different groups within society, distinctions that are obligatory to observe and grounded in divine wisdom (Fayḍ Kāshānī, 2018, vol. 4, p. 78). For example, Shiite jurisprudence recognizes differences between men and women, or between Muslims and non-Muslims, in matters of inheritance, blood-money, testimony, and the right to judge. Acceptance of the Western concept of complete equality before the law would, in practice, amount to the abrogation of these Sharia rulings and a deviation from established jurisprudential texts. Shaykh Fazlullah Nouri observed that promoting such unqualified equality not only negated Sharia rulings but would also create disorder in personal-status law and Islamic rights. His stance on this issue was therefore an ijtihad-based defense of the divine legal order against a human-made legal model.

7.3. A Jurisprudential Account of the Freedom of the Pen and Expression

The problem of freedom of the pen and expression, along with the drafting

of press laws, constituted another focal point of Shaykh Fazlullah Nouri's confrontation with the Western-oriented current. In his view, freedom cannot serve as a pretext for promoting error, immorality, and irreligion in an Islamic society. He feared that unqualified freedoms would lead to the publication of material contrary to the Sharia, insults to sacred matters, and the propagation of Western and colonialist ideas (Najafī, 2021, p. 180). This concern stemmed from the jurisprudential rule of preserving the social order (*ḥifẓ al-niẓām*) and the obligation to enjoin good and forbid evil. Shaykh Fazlullah Nouri held that the religious duty of the governing authority is to protect the faith of the people and to prevent the spread of prohibited acts. Absolute freedom of the press would obstruct this duty and drag society into moral and doctrinal dissolution. Accordingly, he insisted that any freedom in the realm of expression and publication must be constrained by non-opposition to Sharia standards so that it does not become corrupting. His position here was an effort to subject freedom to the limits set by the Sharia, not opposition to the principle of freedom of thought and criticism within the framework of religious teachings. He sought to prevent freedom from being transformed into an instrument of Western intellectual domination. The intellectual turning point in Shaykh Fazlullah Nouri's encounter with the concept of modern law reflects his jurisprudential insight and precision in analyzing social developments. He recognized that the danger of traditional Qajar despotism was being replaced by the deeper and more concealed danger of secularism in legislation. Despotism merely enslaved the bodies of the people, whereas secular law-making targeted the very foundation of religion and the culture of society. Consequently, his position shifted from support for the pursuit of justice against oppression (the second pillar) to defense of the sovereignty of the Sharia against secularism (the third pillar). Drawing on his jurisprudential foundations, he not only opposed Western concepts but, by insisting on constitutionalism conditioned upon the Sharia, proposed an indigenous legal model based on ijtihad-based supervision. This transformed his stance into an active intellectual resistance aimed at preserving religious identity and national independence.

8. Theory of Juristic Oversight (Sharia-Based Constitutionalism)

Shaykh Fazlullah Nouri's stance toward the Constitutional Movement reached its culmination in his formulation of the theory of "Sharia-based constitutionalism," which must be regarded as his most important and creative jurisprudential contribution in confronting the challenges of the modern era.

This theory, which in fact constituted his response to the Constitutional Movement's deviation toward secularism and Westernization, offered a positive and well-reasoned solution for reconciling political justice-seeking with the sovereignty of the divine Sharia. The theory of Sharia-based constitutionalism rested on two inseparable pillars. The first pillar was the limitation of the monarch's powers through a parliament—a principle he had endorsed as a means of eliminating oppression and establishing a House of Justice. The second pillar, and the distinctive feature of his thought, was his insistence on the necessity that all laws passed by the parliament conform to the rulings of the Sharia and be placed under the supervision of qualified jurists. From Shaykh Fazlullah Nouri's perspective, constitutionalism devoid of religious legitimacy not only fails to secure justice but also undermines the foundations of religion and national identity. Instead of rejecting constitutionalism outright, he sought its Islamization and the provision of jurisprudential guarantees for it (Hajipour, 2018, p. 105). His theory was not a negative or reactionary position, but the culmination of his intellectual and ijtihad-based effort to engage actively and constructively with the crisis of legitimacy in the new era. It functioned as a jurisprudential synthesis that aimed to combine the necessity of restricting Qajar despotism with absolute adherence to the sovereignty of the divine Sharia, and it was specifically designed to prevent the Constitutional Movement from veering toward secularism and Westernization. This model itself rested on two principal pillars that, in his thought, were inseparable and together constituted the distinguishing feature of his position in contrast to both the absolutist and the Westernizing currents.

8.1. First Pillar: Endorsing the Limitation of Monarchy in Terms of Justice-Oriented Jurisprudence

The first pillar of this theory, which initially met with the agreement of Shaykh Fazlullah Nouri and many justice-seeking scholars, was the limitation of the monarch's powers through the parliament. This acceptance stemmed from the religious obligation to remove oppression and establish equity. Like other jurists, he regarded the absolute and arbitrary Qajar monarchy as a clear instance of "evil" and "oppressive monarchy," the repelling of which is obligatory. At this stage, the parliament was endorsed by him as an effective customary instrument for binding tyrannical rule and establishing a house of justice. This position shows that Shaykh Fazlullah Nouri's objection was not to the principle of limiting power itself, but to the intellectual foundation

on which that limitation was to be based (Nāʾīnī, 2006, p. 120). This pillar explains his concern for political justice.

8.2. Second Pillar: Higher Oversight of Jurists as Guarantee for the Legislative Sovereignty of Sharia

The second and most decisive pillar of the theory of Sharia-based constitutionalism was Shaykh Fazlullah Nouri's resolute and jurisprudentially grounded insistence that all laws enacted by the parliament must conform to the rulings of the Sharia and be subject to the supervision of fully qualified jurists. This principle constituted his intellectual and ijtihad-based red line, and it formed the primary point of distinction between his thought and that of the Western-oriented intellectuals.

◆ **Jurisprudential Grounds of the Obligation of Oversight**

The principle of juristic oversight or supervision in Shaykh Fazlullah Nouri's thought was a religious and jurisprudential obligation derived from the doctrine of the guardianship or authority of the jurist (*wilāyat al-faqīh*) during the era of occultation of the Infallible Imam. He held that, in the absence of the Infallible Imam, the preservation of order, the protection of divine rulings, and the prevention of the spread of evil fall upon fully qualified jurists. Since legislation by the parliament that contravenes the Sharia constituted the most evident threat to the Sharia and a manifest instance of evil, supervision over this process was, for him, a duty of juristic authority from which one cannot abstain (Bojnurdi, 2023, p. 45).

This supervision was not a mere political consultation but a higher and permanent oversight. Shaykh Fazlullah Nouri insisted on the formation of a committee composed of top-ranking jurists tasked with continuously monitoring the enactments of the parliament and vested with the right to reject or veto any law that conflicted with the rulings of the Sharia (Rabbani Golpayegani, 2016, p. 120). This insistence removed legislation from the realm of purely human and secular activity and placed it under the authority of jurisprudential expertise and ijtihad. The objective was to prevent the delegation of legislative authority to a majority that might, lacking proper understanding of the principles of jurisprudence, commit religious error. Shaykh Fazlullah Nouri's insistence on juristic supervision was rooted in a profound jurisprudential obligation rather than a merely political preference. This obligation rested on two foundations:

1) The principle of the exclusive sovereignty of the Sharia: In his view, the right of legislation belongs solely to God. The parliament, as a human

institution, possesses no authority to enact laws contrary to the Sharia. Accordingly, in order to prevent the prohibited practice of non-Sharia legislation (Ghasemi, 2001b, p. 45), the existence of a jurisprudential authority charged with safeguarding the divine text is indispensable. This authority must ensure that the will of the majority does not become an instrument for the abrogation of divine rulings.

2) The authority or guardianship duty of jurists: During the era of occultation, the preservation of social order, the protection of the people's religion, and the prevention of the spread of evil fall upon fully qualified jurists (Bojnurdi, 2023, p. 45). Shaykh Fazlullah Nouri argued that the enactment of secular and Western laws constitutes the most flagrant form of evil and a direct threat to the very foundation of religion. Consequently, supervision over the legislative process was not an optional consultation, but a duty of juristic guardianship and an indispensable requirement for upholding the Sharia order. In this capacity, the jurist acts as the deputy of the Sacred Lawgiver in safeguarding divine rulings.

◆ **Practical Mechanism for Oversight**

To give effect to this jurisprudential obligation, Shaykh Fazlullah Nouri insisted on the formation of a committee composed of top-ranking and just mujtahids. This committee was to possess an absolute veto over all enactments of the parliament, such that if even a single provision of a law failed to obtain the approval of this juristic body, the entire law would be rendered null and unenforceable. His insistence on the unqualified authority of the supervising jurist demonstrates the seriousness with which he viewed the danger of secular legislation and his determination that supervision should not be reduced to a mere political formality.

8.3. The Theory's Achievement: Establishing Article 2 of the Supplement to the Constitution

Shaykh Fazlullah Nouri's resolute, well-reasoned, and courageous insistence on this jurisprudential foundation ultimately resulted in the inclusion of Article 2 in the Supplement to the 1906 Constitution in Iran. This historic article, secured through the determined pressure exerted by him and the scholars who supported him, explicitly stated:

> At no time shall any of the supplementary provisions or the laws enacted by the National Consultative Assembly be, in any respect whatsoever, contrary to the sacred principles of Islam or to the posited laws of the country. It is the duty of the distinguished scholars and

eminent jurists to determine whether such laws as may be proposed
are, or are not, in conformity with the principles of Islam.

This achievement effectively enshrined the sovereignty of the Sharia in the
country's highest legal document and marked the distinctive feature of Iran's
constitutional revolution in comparison with other constitutional movements
in the Islamic world. In Shaykh Fazlullah Nouri's view, this article served
as the constitutional guarantee of Sharia sovereignty and rendered the
constitutional order both legitimate and Islamic. For him and the supporters of
Sharia-based constitutionalism, the article guaranteed the system's enduring
compliance with the Sharia and the red line against the infiltration of
Westernization. Despite the subsequent opposition it faced (such as the failure
to fully constitute the committee of jurists), its very inclusion represented,
in his eyes, the establishment of Sharia sovereignty within the nation's
fundamental law. In reality, Shaykh Fazlullah Nouri succeeded, through
reliance on jurisprudential reasoning, in shifting the primary locus of
legitimacy from secular will to religious supervision (Yazdi, 2010, p. 210).
This effort demonstrated his extraordinary insight in legal and jurisprudential
engineering to confront modern challenges.

8.4. Final Appraisal of the Theory of Sharia-Based Constitutionalism

The theory of Sharia-based constitutionalism, as theorized by Shaykh
Fazlullah Nouri, constituted a novel jurisprudential contribution. In this theory,
he not only opposed despotism but, with remarkable insight, accepted modern
instruments (such as parliament and constitutional law) on the condition
that they be restrained by a mechanism of juristic supervision. This theory
removed Shaykh Fazlullah Nouri from the category of a merely traditional
jurist and established him as a thinker who, at a critical historical juncture,
succeeded—by relying on the principles of Shiite jurisprudence—in offering a
structural and positive response to the challenges of modernity and secularism.
Through this proposal, he demonstrated that the problem lay not in the new
structures themselves, but in their secular content. Ultimately, his stance must
be understood as an effort to preserve religious authenticity and to prevent
the justice-seeking movement from being diverted into an instrument for the
negation of religion; to that end, he presented juristic supervision as the sole
Sharia-based means of salvaging constitutionalism. The theory of Sharia-
based constitutionalism clearly delineates the boundaries between Shaykh
Fazlullah Nouri's thought and the two other currents:

1) **Distinction from despotism:** By accepting the limitation of the

monarch's powers through parliament, he distanced himself from traditional despotism and showed that he sought a justice that was constrained.

2) Distinction from the intellectuals: By insisting on juristic supervision, he drew a sharp line against the secularism of the intellectuals who regarded law as deriving solely from unqualified human reason. In his view, the intellectuals—by advancing concepts such as absolute freedom and secular equality—were promoting non-Sharia legislation, an act that he regarded as incompatible with jurisprudential principles (Zahedi, 2020, p. 77).

Thus, the theory of Sharia-based constitutionalism represented a comprehensive endeavor by Shaykh Fazlullah Nouri to establish Shiite jurisprudence as the theory of sovereignty within the nascent structure of modern government and to prevent that structure from being turned into a vehicle for the negation of religion and the acceptance of Western intellectual domination. This stance symbolizes his resolute commitment to the principles of the Sharia at decisive historical moments (Mohaghegh Damad, 2017, p. 88; Rouhani, 2017, p. 110; Akhoondi, 2016, p. 160; Ṣadr, 2010, p. 75).

9. Conclusion

The intellectual genealogy of Shaykh Fazlullah Nouri in his encounter with the Constitutional Movement reveals that his position constituted a coherent and resilient jurisprudential ijtihad aimed at resolving the crisis of legitimacy and legislation in the modern era. His initial concern, like that of the other senior scholars, was the removal of the oppression and tyranny of the Qajar despotism—an obligation that arose from the jurisprudential imperatives of repelling evil and establishing equity. In this regard, he endorsed the principle of limiting the shah's power through a parliament. The decisive turning point, however, came when he realized that the Western-oriented intellectual current intended to introduce secular Western concepts into society through legislation without any Sharia constraint. For him, this development represented a threat greater than despotism itself, because human legislation independent of the Sharia amounted to the prohibited practice of non-Sharia law-making and, ultimately, to practical apostasy. To counter this deviation, Shaykh Fazlullah Nouri formulated the theory of Sharia-based constitutionalism. This theory offered a positive and well-reasoned solution resting on two fundamental pillars: the retention of the parliamentary institution for the purpose of restraining despotism, and the absolute requirement of supreme supervision by fully qualified jurists over all enactments of the parliament in order to guarantee their complete conformity with the rulings of the Sharia. This

insistence stemmed from the jurist's duty of guardianship to protect the religion of the people and to prevent the spread of evil. The practical outcome of this determined stance was the entrenchment of Article 2 of the Supplementary Fundamental Law, which secured the sovereignty of the Sharia within the country's highest legal document. Completing this intellectual constellation was his penetrating insight into the danger of colonialism and Westernization. Shaykh Fazlullah Nouri regarded Westernization in legislation not only as a deviation from the Sharia but as an instrument that facilitated foreign intellectual and political domination. This position derived directly from the jurisprudential rule of "no domination": any structure or law that opens a path for non-Muslims to gain control over the nation's destiny is to be rejected. In the final analysis, Shaykh Fazlullah Nouri's ultimate stance was a full-scale defense of the country's religious authenticity and national independence against despotism, secularism, and colonialism. By advancing the theory of Sharia-based constitutionalism, he presented an indigenous jurisprudential and legal model for the Islamization of the modern governmental structure. His position must therefore be regarded as an exemplary instance of resilient ijtihad and resolute commitment to the principles of religion at critical historical junctures.

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