Unstable Balance between Theocracy and Democracy:
A Preliminary Study of Religious Democracy in Iran

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Abstract:

President Hassan Rowḥānī, immediately after his re-election in the Iranian presidential election on May 2017, provoked religious-political controversy over the relationship between democracy and theocracy with Muslim elders.

The issue of consistency between Islam and democracy has become one of the fundamental problems not only for Iranian Shīʻa but also for the modern Islamic world including Sunnis since 19th century, particularly after 20th century. Therefore, the current domestic controversy in Iran must be also significant for the whole Islamic world as a case study even if there is uniqueness of Shīʻa doctrine on the background of the issue.

As regards this issue, I would like to review the BBC Persian news article and comment for Iranian at first, then combining with the textbook for Iranian high school students for reference to see official positions and the constitutionalist argument of Moḥammad Ḥosein Nāʼīnī who had been a Shīʻa religious leader in the Iranian Constitutional Revolution of 1905-11. This review will shed a thoughtful light on problems of modern Islam.

The Constitutionalism that Nāʼīnī advocated was based on cooperation between the religious community and the people in order to restrict power of the despotic and arbitrary tyrannical monarch. While this structure had basically remained until the Iranian Islamic Revolution of 1979 that Āyatollāh Khomeinī led, the despotic monarch as common enemy, eventually playing a role of promoting cooperation between the religious community and the people, had been lost with the abolition of monarchy by the revolution. It can be seen that this structural issue has continually aroused friction and controversy between constitutionalists and anti-constitutionalists. In addition, we cannot deny the aspect that the United States (and Israel[1]) has taken over the role of tyrannical monarch more than before.

Keywords:

1. Controversy over Religious Democracy
1-1. Background

First of all, prior to reviewing the perspective discrepancy and controversy between President Rowḥānī and religious conservatives' heavyweights, occurring just after the Iranian presidential election, we will briefly explain the facts in this context.

In the Iranian presidential election on May 20, 2017, incumbent President Rowḥānī won the election massively against the cleric presidential candidate Ebrahīm Ra'īsī who was seen as a rival. He was said to be a man who Supreme Leader Khāmene'ī had expected as his future successor, and some of religious heavyweights and elders had recommended him as the next president to look ahead to the future.

On the other hand, a series of tense incidents took place in neighboring countries. On the same day [May 19] of the Iranian presidential election, US President Donald Trump started on his first excursion and visited Riyadh, the capital of Saudi Arabia, and met together with more than fifty Arab and Muslim leaders to set up a campaign to contain Iran. On June 5, Saudi Arabia, Bahrain, the United Arab Emirates and Egypt have broken diplomatic relations with and imposed sanctions on Qatar that was suspected of interfering with the campaign. On June 7, IS, or Islamic State, launched a terrorist attack on the Majles (Parliament) building and the Āyatollāh Khomeinī mausoleum in Iran. Only two weeks later, on June 21, the King of Saudi Arabia sacked the crown prince to make his own son Defense Minister Moḥammad bin Salman the heir to the throne. Meanwhile, on June 23, many people had gathered in public squares of Tehran to celebrate Jerusalem Day,[2] chanting an anti-Rowḥānī slogan "Death to Hypocrite" and criticized President Rowḥānī by comparing him to former President BanīṢadr.

Here, I will explain the historical background of the word "hypocrite (*monāfaq*)." At the beginning of the Iranian Islamic Revolution of 1979, the Islamic Republican Party or IRP (Khāmene'ī and the late Rafsanjānī were top officials of the party), promoting the establishment of "Governance of the Islamic Jurist (*faqīh*)" that Āyatollāh Khomeinī advocated, had been steadily expanding its power. However, other various political and religious groups had also joined the Iranian Revolution but were forced to drop off or to be inferior to the growing IRP. They gathered under President BanīṢadr after he had been elected to the first President of Iran as a stronghold to resist and prevent the IRP's domination. Those groups included pro-western citizens of Tehran, and the People's Mujahedin of Iran also known as the MEK (*Mojāhedīn-e Khalq*) that had a mixed idea of left-wing ideology and Islam. *Monāfaq* is a word Āyatollāh Khomeinī pointed to the

MEK. Afterward, the MEK leader Masʿūd Rajavī exiled to France with then-President BanīṢadr, and most members of the MEK were forced to exile to Iraq that was at war with their own country at the time. In conjunction with their exile, a series of bombing terrorism aimed at the IRP headquarters and other places have occurred, advocating resistance to the domination of the IRP. Therefore, Iranian demonstrators who attended rally at Jerusalem Day 2017 had compared Rowḥānī to BanīṢadr in an attempt to help evoke such situations of the Islamic Revolution.

Under these circumstances, the controversy over and opinions about religious democracy have appeared in the center of Iran. At first, I will introduce a news report from BBC Persian news website.[3]

1-2. News Report: Theocracy or Democracy?

"On May 20 [2017], incumbent President Rowḥānī overwhelmingly defeated a rival and conservative hardliner candidate Ebrahīm Raʾīsī in the Iranian presidential election and returned to the presidency.[4]

Rowḥānī published the words that Supreme Leader and Grand Āyatollāh Khāmeneʼī uttered in 1987 [when he was president of Iran] on Instagram, saying "significance of election of rulers by the people," which was seemed to be Rowḥānī's answer to criticism from conservative clerics against him.

For instance, a conservative cleric Aḥmad Jannatī chairman of the Assembly of Experts for Leadership, said, "Considering people's opinion and views as sources to justify the Islamic governance contradicts the fundamentals of Islam and should be rejected. This was a reaction to what Rowḥānī said by quoting *Nahj al-Balāgha (The Peak of Eloquence)*, a collection of sermons, letters and quotes of Imām ʼAlī.[5] At that time Rowḥānī said:

"The concept of people's opinion [the will of the people] is not a gift from the post-Renaissance West. We also have had a religion [of the Twelver Shīʿa Islam] respecting 'a Leader of the Faithful [i.e. Imām ʼAlī],' which is based on the governance relying on people's opinion. Imām ʼAlī who had been introduced by the Prophet as his successor and the leader (of Umma, i.e. Community of the Faithful) to them considered himself that he had sovereignty [indeed he had been appointed by the Prophet as his successor as mentioned above] but listened to and relied on people's opinion through election. That is, Imām ʼAlī had trusted people's opinion and made the legitimacy of governors and governance subject to people's pledge of

allegiance under the Islamic regime." This Rowḥānī's view was similar to what Supreme Leader Khāmene'ī had once said, but rejected by the Assembly of Experts for Leadership.

Grand Āyatollāh Nāṣer Makārem Shīrāzī also said, "It is not people that elect a ruler in Islam. God decides who rules." And Shīrāzī said to President Rowḥānī, "As for *velāyat* [guardianship or leadership], the Qur'an mentions it many times but your argument is only based on a text of *Nahj al-Balāgha*. Obviously, in the Twelver Shī'a Islam, it is not people but God that chooses Imām."

The Assembly of Experts for Leadership released its statement with signature of chairman Jannatī after Makārem Shīrāzī had expressed the above opinion. The statement said, "People's leadership or political and social leadership does not refer to an agreement or consensus of people's opinion and hope. What matters is *velāyat* or [to lead the people in] the spirit of Islam." It added, "Before quoting from *Nahj al-Balāgha*, you should pay attention to the fact that Qur'an sanctifies the status of *velāyat* like that of the Prophet." It also said, "The pledge of allegiance does not mean listening and knowing people's opinion but, more importantly, [people's] obedience and [people's] pledge of allegiance to holy leaders of Islam. So, we must not compare it to contemporary public opinion and election."

About a week ago, Supreme Leader Khāmene'ī severely criticized Rowḥānī government and said, "we must not repeat the experience of 1980 [when our country had been governed by President BanīṢadr immediately after the Iranian Revolution] that caused a bipolar society and a hostile relationship bisecting people. This seemed to be his severest criticism against President Rowḥānī.

However, after winning the presidential election, Rowḥānī said the result of this election showed that the majority of the people had agreed with him, not rivals.

1-3. Comment on Controversy between Theocracy and Democracy in Iran

The following is a comment on BBC news website about this controversy. [6]

"President Rowḥānī's remarks uttered a few days ago especially on democratic foundation under the [current Iranian] Islamic regime provoked criticism and refutation from some prominent Iranian clerics. About the governance of Imām 'Alī, Rowḥānī said, "Imām 'Alī considers people's opinion [the will of the people] and election as the

foundation of leadership and governance." Further, he said, quoting Imām 'Alī, that those who were elected by the people have sovereignty over the society. In response to this Rowḥānī's view, Grand Āyatollāh Makārem Shīrāzī said, "Rowḥānī is only focusing on a small part of *Nahj al-Balāgha* but ignoring other texts. The highest priority text we should refer to is Qur'an."[7] And Shīrāzī quoted some verses of Qur'an and said, on the basis of those verses, that those who rule the society have to be designated by God. Other religious heavyweights including Meṣbāḥ Yazdī and Nūrī Hamadānī severely criticized Rowḥānī's view and said, like Makārem Shīrāzī, that sovereignty was divine and irrelevant to the people.

It can be said that such differences of views go back to the era of Iranian Constitutional Revolution of 1905-11. The two worlds (i.e. the Shī'a world and the Sunnī world) had accepted one political system until they encountered the expansion of the Western democratic system. The caliphate system had expanded and been accepted widely in the Islamic world. On the other hand, the Shī'a world had a tendency toward the sultanate system since the Safavid dynasty. Under this system, ulamas were also regarded as collaborators to power as part of sovereignty. But after the theme of delegating sovereignty to the people through election and of limiting caliphate's and sultanate's power had been presented, the contradictory ideas between Popular Sovereignty and God's Sovereignty appeared as political controversy.

The axes of this controversy were the two clusters of Qur'an verses (and two supplementary *hadīth* groups belonging to each cluster, and various political acts of political and religious leaders in the early Islam period.) Unconditional supporters of democracy cited the Qur'an verses on consultation (*shūrā*)[8] and insisted that the Prophet had governed through consultation with the people. Opponents, however, cited the Qur'an verses on God's Sovereignty[9] and stated that God would monopolize sovereignty.

Depending on how to solve the contradiction between these two different clusters of sources of the Islamic law (verses of Qur'an), three general perspectives have been presented. First, the democratic perspective fully accepted the framework of (modern Western) democratic system and regarded it as a legal and legitimate system from the standpoint of Islam. Those who supported this view are participants of the Freedom Movement of Iran led by Mehdī Bāzargān who was the prime minister of the interim government after the Iranian Revolution. In his book *The Afterlife and God: The Aim of the Sacred Mission of the Prophets*, Bāzargān said that the Qur'an verses on sovereignty were (telling) the spread of the God's authority to create the world, and that

unconditional and absolute authority of God on the day of final judgment is related to the field of the Hereafter and such context is irrelevant to the Islamic political system [that is directly related to secular politics, i.e., what people do rather than God does.] Bāzargān fundamentally opposed the use of the term "Islamic governance" but rather cited the term "governance of Muslims." This difference indicates that, because basically there is no specific governance system in Islam, and therefore the issue of sovereignty depends on people's consensus, if Muslims occupy the majority in a society, the system arising from there will naturally be in harmony with Islamic values.

This argument had also spread among thinkers in the Sunnī world. 'Alī 'Abd al-Raziq (1887-1966) insisted in his controversial book *Al-Islam wa Uṣūl al-Ḥukm* (Islam and the Principles of Governing) that there was no specific political system in Islam, and he regarded the democratic system as [one of] the system harmonizing with the values of Islam. Because his book provoked anger of cleric elites of the Azhar Academy, he was expelled from there. However, his followers have been still increasing among religious thinkers in both Sunnī and Shī'a worlds.

The second perspective definitely refused democracy and saw that the foundation of governance could not come except from God. Proponents of this argument opposed the term "Islamic Republic" during the early period of the Iranian Revolution, but instead they recommended the term "Islamic governance." They did not deny election and the people's opinion [or the will of the people] but took a position that it should not be the basis of political system. They thought that election would be merely a means of stimulating and strengthening a sacred legitimacy of Islamic rulers. Thus, the term "extension of hand (*basṭ-e yad*)" is used to mean that Islamic rulers expanded their power by way of accepting the people.

In other words, the second perspective did not think that the people's opinion [or the will of the people] would be the source of legality and legitimacy of Islamic rulers, but that Islamic rulers should be elected by religious experts based on criteria established by God. (In that case, the role of) The people's will is merely a factor that gives rulers political power. This view is a basis of the system of [electing] Supreme Leader in the Islamic Republic of Iran. Supreme Leader, or the first ruler of the Islamic Republic of Iran, is a kind of leader having full authority. The people cannot elect him directly, but prominent clerics only elect him among clerics within the framework of the Assembly of Experts for Leadership. Of course, those clerics are elected by the people through election.

The controversial point here is that in this system, contrary to the [Western]

democratic system, the people are severely restricted in their voting rights and could not elect non-clerics as members of the Assembly of Experts for Leadership, and therefore the people cannot directly elect Supreme Leader.

The third perspective is synthesis of the above two, and many thinkers have presented it in a similar way. One of the most outstanding thinkers in this perspective is Muḥammad Baqir al-Sadr (1935-1980), a martyred cleric in Iraq. First of all, he assumed that the matter of ruling (or governance) belonged to God and it was sacred. He said, however, that God imposed a condition on rulers who God elected and if they could not fulfill the condition, they would lose control, and he added it depended on people's acceptance. As a result of this condition, Al-Sadr thought, legitimacy of Islamic rulers would be based on people's election. What this synthesis does mean is that if a ruler elected by God cannot fulfill the condition of people's acceptance, or if the ruler attempts to impose its rule on the people and government, he would lose legitimacy given by God.

Accordingly, rulers who have legitimacy by God must take on the position through democratic means, and the people should accept their obligation that they have to be based on a religious viewpoint of electing a ruler from the perspective of God. If the people do not fulfill their obligation, whatever crimes they may commit, the ruler has no right to exercise enforcement or punishment against the people.

But several rehashed controversies over this theme [i.e. balance between theocracy and democracy] show that there is still room for discussion about the current Islamic regime in Iran. The political structure of Islamic Republic has been built on balance between religious legitimacy of *velāyat-e faqīh* (guardianship and leadership of the Islamic jurist) and people's acceptance through the framework that many people participate in election.

Maintaining this balance has always been difficult and made the groundwork for situations where both of those who supported the ruler designated by God and those who upheld democracy could be dissatisfied. Such conflict and controversy will continue, like a flow of political change in Islamic Republic, until either of them dominates and the other is suppressed."

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It can be said that behind this friction between Muslim elders and President Rowḥānī, there are structural features of the current Iranian regime i.e. the Islamic

Republic of Iran. For instance, among those features is included a "problem" that Article 5 and Article 6 of the current Iranian Constitution prescribe Popular Sovereignty and God's Sovereignty, respectively, before and after, as the footnote notes.[10]

However, we can find there that the current Iranian regime has an attitude which does not negatively regard this as a "problem" but view it positively as a noteworthy "feature" as below.

For instance, the official textbook for Iranian high schools, *Modern History of Iran* (for the third grade of high school students of all courses) explains as follows.[11]

"As prominent polemists of Islamic Awakening in modern history, the following three names can be cited: (i) Nā'īnī [of Iran]; (ii) Hassan al-Banna [who was an Egyptian school teacher, known for the founder of the Muslim Brotherhood]; and (iii) Khomeinī. Among them, Nā'īnī [as a revolutionary constitutionalist ulama during the Iranian Constitutional Revolution of 1905-11] revealed for the first time his idea of Islamic Constitutional Governance System (*Ḥokūmat-e Mashrūṭe-ye Mashrūʿe*) in his book and presented a kind of Religious Democracy (*Mardomsālārī-ye Dīnī*) against the Western secular democracy. [On the other hand, Faḍlu'llāh Nūrī, a leader of conservative ulamas, breaking away from and hostile to the Islamic Constitutional Movement] had [drafted and] added an article prescribing that [at least] five first-grade Mujtahids shall monitor anti-Islamic legislation in Parliament, as Supplementary Article 2 of the Constitution[12], and signed it with his own blood [proclaimed on October 8, 1907]."

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F. Nūrī (Faḍlu'llāh Nūrī) saw the Constitution that constitutionalists had been proposing would weaken the Sharīʿa or Islamic law and pave a pathway for the invasion of Western colonialists into Iran.[13] Democrats in the Constitutional Movement insisted on their position, leading to secularism, that all the people, irrespective of their religion, shall be equal before the law. On the other hand, F. Nūrī and other ulamas argued that the social privilege of Muslims should be maintained and that any legislation in Parliament should not be allowed until the Ulama Committee approved it to be compatible with the Sharīʿa or Islamic law.[14]

Despite differences in position and mutual suspicion, the majority of public opinion at the time insisted that the establishment of an advisory parliament to restrict the arbitrary authority of monarch would protect Islam and lead to prevention of tyranny and domination of Western powers.[15] Under the rise of a popular movement, Moẓaffar

ad-Dīn Shāh Qajar called Parliament on August 1906 and then the Constitution was finally passed on December 27, 1906 with the signature of the King who died soon after then (on January 8, 1907). However, because it had been passed in such a hurry, the momentum towards reviewing the Constitution had risen under the new King Moḥammad Alī Shāh Qajar. It was at this time when F. Nūrī drafted the supplementary article of the Constitution that would grant [at least] five Mujtahids the authority to monitor anti-Islamic legislation in Parliament. Moreover, the reactionary new King executed a coup d'etat with a view to abolishing the Constitution in June 1908. At this conjuncture, constitutionalists resisted the King's coup d'etat based in provincial cities and then advanced to Tehran from 1908 to the summer of 1909. The King escaped to Russia and was dethroned (in July 1909) and F. Nūrī, siding with the reactionary King, was hanged by constitutionalists on July 31, 1909.[16]

Since then, F. Nūrī had been generally hated by the people due to his anti-Constitutional attitude. But after the Iranian Islamic Revolution of 1979, he has begun to be reevaluated as a hero who defended Sharī'a.[17]

Accordingly, also in this textbook, while constitutionalist Nā'īnī is acclaimed as the first advocator of the Islamic Constitutional system, reactionary F. Nūrī[18] who opposed constitutionalism is highly evaluated as a person who "added an article, granting five Mujtahids the authority to monitor and prevent anti-Islamic legislation, as the supplement of the Constitution." I would like to point out here that the textbook takes a position to suggest that the foundation of "Religious Democracy (*Mardomsālārī-ye Dīnī*)," different from the Western secular democracy, was laid down by both constitutionalists and conservative ulamas against them.

Additionally, Nā'īnī is one of three persons Khomeinī named as precursors ahead of himself in his theory of *velāyat-e faqīh* (Governance of the Islamic Jurist) published in 1970. Therefore, Nā'īnī is an important person to the current Iranian regime that is based on the Khomeinī's theory of *velāyat-e faqīh*.[19]

Nā'īnī (Moḥammad Ḥosein Nā'īnī, 1860-1936) wrote a book titled *Tanbīh al-Umma wa Tanzīh al-Mella,* or *Admonition and Refinement of the People.*

I have two versions of the book now. One version, published in 1999, has commentary and summary by Sayyid Maḥmūd Ṭāleqānī (1910-1979).[20] According to information cited in other publication[21], the first edition seems to have been published after 1955. But the book in my hand is 9th edition and the compliments seemingly sent by former President Khātamī (1997-2005) for publishing are printed on the back cover. The other version of the book has commentary and analysis by Sayyid Javād Vara'ī and the

first edition seems to have been published after 2003.[22]

     This Nā'īnī's book *Admonition and Refinement of the People* consists of introductory chapter, five main chapters, and conclusion. This treatise focuses on briefly looking at the main points of the book, and for that purpose, I used the overview by an Iranian, i.e. Ṭāleqānī's summaries and commentaries, which originally have been placed separately in each chapter of the original text as footnotes. In my treatise, however, I will only introduce summaries of three chapters, i.e. introductory chapter, and the 1st and 2nd chapters, which Ṭāleqānī attached to footnotes of the original text.

2. Nā'īnī's book *Admonition and Refinement of the People*
2-1. Summary of Introductory Chapter

1) It is apparent that the social order belongs to governance and that governance assumes guardianship of the right to rise up for public beliefs and ideas, otherwise governance will disintegrate and become corrupt. And it [governance] must preserve the seeds [nature] of Islamic society,[23] and keep social rights and norms, like walls to protect individual interests and rights, which ulamas consider to be the most important duty [of governance].

2) Governance has two basic duties. One is to keep domestic order. This is to make every social class and individual follow each norm and to give rights to inherent right-holders. The second is to prevent foreign interference and its greed [y exploitation]. Since ancient times, monarchs have set norms, utilized defense forces and politics, and applied legal and scientific knowledge of ulamas and intellectuals for those purposes. As for unspecified parts, the Holy Law of Islam has made up for them by prescribing detailed provisions and clarifying duties.

3) Monarchy can be also categorized into the following two types.[24]
Tamallokīyah : The first type is normless, <u>unlimited and self-indulgent monarchy which governs on the basis of selfish [and arbitrary] judgement and material desire</u>. That is to say, the monarch is a tyrant against himself, and his greed trumps down his own best solution, good sense and noble affection. In addition, the nation and state are also made a prey to his greed.

Velāyatīyah : The second type of monarchy is in contrast to the first one, and only

keeps rights and norms. The monarch has no privilege other than *velāyat* [guardianship or leadership] over various things and the enforcement of laws, and exists for the people. This type of governance is noble since it [the monarch] is willing to self-sacrifice for legal practice and public interests.

4) Both types of monarchy are different in features and influences. The first type of monarchy works for its own greed but the second one is based on *velāyat* over various things and a kind of trust system, which restrains appropriation, irrespective of whether the monarchy emerged by legitimate right or robbery. Although the trustee might commit a breach of trust, all the people can ask him to account for it. Therefore, we call it "<u>a responsible limited [power] monarchy</u>."

In general, [God-given] human nature is often rebellious and tyrannical. Nevertheless, can we find an above-mentioned noble monarch among such humans? It is best to find a governor or a monarch [e.g. the Hidden Imām] who is innocent and ruled by godlike will, otherwise in some cases we can find just persons. But both cases are not [realistic nor] common. [Therefore,] what might be possible is to obey the following two basic norms.[25]

a) To define tasks and boundaries (or norms) between governors and other classes: The breach of trust will bring down the person in charge. This is very similar to the category of "Trust (*Amānat*)" in Islamic law, and even a slight breach of trust by a guardian will inevitably lead to the dismissal of the person. Such tasks and boundaries are regarded as conforming to the Islamic law only if they are not contrary to Sharī'a.

b) To elect a monitoring committee to control; [the people] elect sage and sane persons [as committee members] to monitor politics and international affairs; and monitor the activities to prevent their breach of boundaries. The monitoring committee leads the forum for consultations in central and local level; the government is responsible to the committee; and the committee is responsible to the people. As regards the Islamic legitimacy of the committee, Sunni Muslims regard "*ahl-e ḥal o 'aqd* [those who will appoint or dismiss rulers or caliphates as a representative of Muslim society (like a tribal chief)[26]]" as "the authority holder or person in charge,[27]" which is election in

itself.

But the Twelver Shī'a Islam considers that a deputy of Imām [i.e. the Islamic jurist] will take charge of those tasks. Therefore, a Mujtahid [i.e. a qualified jurist of Islamic law as a general agent of Imām] or someone who is permitted by the Mujtahid must be included in members who are elected by election. On this basic structure, two sacred fundamental principles, i.e. "freedom" (to be liberated from others' will) and "equality" (all people can get involved with various rights) are confirmed. The monitoring authority and responsibilities originate from these two principles. The implementation of the monitoring and responsibilities had brought a remarkable progress in the early Islam period, but the Muslims had lost those two principles in the Umayyad period.[28]

5) In the theology and the Words of Imāms, leaving yourself to personal intention was considered subordination (slavery), and the fights that a series of Prophets had waged were struggles to unleash human beings from subordination (slavery) to someone other than God. This subordination (slavery) has two aspects. One is the subordination (slavery) to monarchs, and the other is to heads of various religions.

6) In the early Islam period, the monitoring had been fully implemented, so there was no slavery. The fundamental principle of equality between the people and the governor had been also carefully and accurately implemented. Holy acts and words of Prophet Muḥammad and Imām 'Alī had been inscribed during this period.

7) Although the rise up of true religious scholars and the enthusiastic Faithful had intention to regenerate the holy Islamic laws and norms based on Qur'an and Sunnah, scholarly puppets controlled by religious tyrants had ostensibly said, "Women must become corrupted and shameless imprudent," while concealing their true intention of maintaining a political tyranny. (If the true intention of puppets is as such, the implementation of the Constitutionalism could have prevented apostasy and corruption. But tyrants had hidden themselves behind the trench of laws and regulations [of the monarchical decrees] and rather spread such apostasy and corruption more widely.) In this way, they had arbitrarily interpreted

"freedom." Regarding "equality," they had also made an arbitrary interpretation that all individuals should be equal whether they were adults or children and whether they were unbelievers or Muslims. But these interpretations had nothing to do with the core of freedom and the basis of the Constitutionalism.[29]

2-2. Summary of Chapter 1 & 2

1) Looking at the establishment of governance and monarchy in the history of humanity, regardless of whether they were established by the Prophets, heads of various religions, or wise men (or whether they have emerged in the human growth process,) monarchs and rulers had placed the foundation of their governance on watchmen [or monitors] and limited *velāyat*. They had had the right to deal with various things arbitrarily within the range of authority over donated properties which custodians had as trust or trustees had as *waqf*. Monarchs and rulers were equivalent to the monitoring watchmen and custodians, and they had to return all authority to their owner. Therefore, according to Words of wise men in Islam, a sultanate is a *valī* [the person who gained the authority to deal with human matters in the Umma (Community of the Faithful) on the basis of truth, good and welfare from God. Originally God alone has such authority. But as the next step, a Prophet and an Imām chosen by God will become a *valī* and lead the Faithful. At present because the twelfth Imām has been hiding, as the second best way, a qualified jurist will become a *valī*] and is called a shepherd [or the deputy caliphate] and, we the Twelvers believe, [the sultanate] has to be appointed by true owner [i.e. God][30] or the true *valī*. From the viewpoint of various religions, the basis of governance has been historically the establishment of the order and *velāyat*. If a ruler or *valī* has changed the situation and a wolf has come, instead of a shepherd or watchdog, the people, irrespective of their religion and norms, would not remain indifferent or silent. This is because in such case, people's honor, the tribe, wealth and life will be critically threatened by tyrants. For this reason, Qur'an, hadith and history books teach us that [even] repressive governance had been based on self-restriction and consultation system. Even the pharaohs and the Queen of Sheba were no exception.[31]

2) Chapter 2 sets forth that monarch's authority should be restricted and its obligation should be determined as much as possible, even if the monarchy was originally established by non-legitimate robbery. In order to determine the

obligation, I will describe the three principles of the Islamic law.

i) The principal religious ordinance to forbid evil is mostly obligatory in every case. Even if it is impossible to do so in some cases, it is not necessarily permitted to fail to fulfill its obligation in other cases. And when a series of related crimes are committed, we should forbid each crime individually, rather than banning all the crimes together.

ii) We, the follower of the Twelver Shī'a Islam, believe that a Mujtahid with all qualifications [i.e. a jurist qualified to interpret the Islamic law] is a deputy of Imām. Clearly in this case the deputy deals with the matters of *ḥisba* [the matters of *ḥisba* are legal guardianship (*velāyat*) of children, mad persons [or widows] or the like, the expropriation of properties without owner and unclaimed *waqf* assets and the use of them for its own purpose, and so forth.][32] Also because the maintenance of public rights and the order is completely the matter of *ḥisba*, in this case, an ulama obviously becomes a deputy of Imām and is naturally obliged to perform the duty.

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【Author's Comment】[Here I would like to point out that the subject of *velāyat* is limited to *ḥisba*, i.e. *velāyat* (guardianship or directorship) over the matters of legal guardianship *(velāyat)* of children, mad persons [or widows] or the like, the expropriation of properties without owner and unclaimed *waqf* assets and the use of them for its own purpose, and so forth. In 1970, Khomeinī delivered a series of lectures on *velāyat-e faqīh* at a theological college in Najaf, which was embodied in the Iranian Islamic Revolution of 1979. Because the need to expand the subject of *velāyat* had been recognized during the process of practicing the theory of *velāyat-e faqīh*, the wording -- the subject matter that an Islamic jurist as Supreme Leader should perform *velāyat* is *moṭlaq* (or absolute/unlimited and unrestraint) -- was added to Article 57 of the revised Constitution of 1989.

Consequently, the above opinion that Ṭāleqānī described in the form of summary of the Nāʾīnī's argument stating that the subject of *velāyat* was limited to *ḥisba* has become an "outdated" interpretation different from that of the current Iranian regime after the

Islamic Revolution. It can be said that difference between the two interpretations is so large, moreover critically large, that they might cause misunderstandings and problems in some cases.]

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iii)   What is obvious about the matter of *waqf* owned by the populace and the upper class is that even if *waqf* is unlawfully usurped by a traitor and the owner cannot recover it, it will not result in the extinguishment of the owner's obligation to restrict the usurpation, and that even if the owner lack the authority to restrict the usurpation of all benefits of *waqf*, its remaining duties will not go away.

Once the above three principles of Islamic law have been confirmed and clarified, the next point to note is that the unrestricted [self-indulgent] monarch will also become a usurper of God's Rights because the unconditional and absolute command [*ḥokm*] and the will belong to God. It is not only usurpation of the Imām's status but also that of rights, lives and property of Muslims. But restricting such usurpation by law as much as possible would be to limit usurpation of Rights of God and Creatures even if the problem of usurping the Imām's status [as the leader of Umma] is still to be solved.

* * *

【Author's Comment】 [However, the unsolved problem Nā'īnī (and Ṭāleqānī) left here has been solved by Khomeinī's theory of *velāyat-e faqīh* saying that based on the doctrine of the Twelver Shī'a Islam regarding the Islamic jurist as the general deputy (*Nā'ib al'Āmm*) of the Hidden Imām, the Islamic jurist assumes leadership and governance as the deputy of Imām instead of monarch after the abolishment of monarchy. Because even if the Constitutional system succeeded in limiting tyrannical authority of the despotic and arbitrary monarch, the usurpation of the status of the Hidden Imām as the original leader still remained, and the problem yet to be solved. In terms of putting an end to this usurpation problem, both the abolition of monarchy and the governance and leadership by the deputy of Imām (the Islamic jurist) are important. This is the doctrinal significance of the Iranian Islamic Revolution of 1979, and also leads to the evaluation of Nā'īnī as a precursor of Khomeinī's theory of *velāyat-e faqīh*.]

*   *   *

Therefore, limiting and changing the unrestricted authority of monarchs through those who are elected by law [and lawmakers] will strengthen deterrence of tyranny and usurpation more than before. [Asking] Whether such limitation is compatible with the Islamic law does not mean to suspect that the aim of limitation might be replacing power, rather than challenging tyranny and usurpation [in front of us]. Restricting usurpers of *waqf* will become compatible with the Islamic law by taking the form that the usurpation is made under the presence of approval and monitoring authority, not in the absence of it. When there is no such regulatory authority, however, [the following two problems will occur:] 1) such wrongful seizure means usurpation of the authoritative status [of Imām]; and 2) it is also incompatible with the Islamic law. Likewise, unlimited and unconditional seizure is like dirt defiling the place, which cannot be cleansed unless the essence is cleansed. But limited seizure and power are like defiling the place [not the essence], and so it can be cleansed. There is no doubt that it is allowed to prevent brutal enforcement or oppression against Muslims' property, lives and rights under the religious order that forbid evil. (But tyranny is a stinky sewage sink that will bring about all kinds of evil and apostasy, and it is useless to prohibit evil unless they are dried up.) Consequently, it is the most important obligation to restrict tyranny by these obvious Islamic principles and laws.

In addition, it is apparent to those who have knowledge of origin and reasons of progress and development, and decline and destruction of nations or ethnic groups that progress and eternity are based on "limited governance" and "constitutional governance" as the history of Islam proves it. On the contrary, it is clear from the recent situations of Muslims, if despotic, arbitrary and unrestricted rulers increase, the downfall will soon come. Accordingly, it is the most important religious obligation to replace tyranny in order to protect Muslims, together with [dealing with] relations with neighboring worlds.

*   *   *

Ṭāleqānī's summary of the Nā'īnī's argument (though this treatise refers only to introductory chapter and 1ˢᵗ and 2ⁿᵈ chapters) is as above. Additionally, if referring to Boozari's analysis, it can be understood that the role of the ideal ruler who Nā'īnī advocated is, equivalent to the role of the trustee of *waqf* [religious donation], the

management and equal distribution of property, and that such a *velāyat* (guardianship and leadership) is an ideal that the ruler should pursue as the authority granted to the Prophets and Imams.[33]

3. Opinion of Anti-Constitutionalists (1)

In the above 1-2 and 1-3 titled as "Theocracy or Democracy?" and "Controversy between Theocracy and Democracy in Iran" for each sub-chapter, I introduced the recent political and religious controversy in the center of Iran. Finally, in relation to it, I would like to attempt to make mutual reference and relativization between the past and the present through additional consideration of the opinion of anti-constitutionalists who refuted the constitutionalist argument of Nā'īnī at that time.

* * *

1) Rights and Status of Individuals

Constitutionalists saw that "freedom", "equality" and "political participation" were the ultimate goals that a series of Prophets had pursued since ancient times. In contrast, anti-constitutionalists emphasized the need to draw attention to "fear of God", "grace of God" and "the Hereafter" instead of this world. In other words, constitutionalists advocated the political rights and social equality of individuals, liberation from slavery, political participation, and through these means, the pursuit of social justice and well-being.

Anti-constitutionalists considered rulers' coercion as necessary, saying that a fair and balanced society can be established only through personal faith and its practice, that the idea of individual freedom and equality is contrary to Islam, and that there are different levels that individual human soul can reach, and in this respect, people will not be equal and cannot acquire moral virtue without training.[34]

This idea recalls the words of Makārem Shīrāzī, a heavyweight of the religious community, strengthening the spirituality [or soul], which I introduced in 1-2 of my treatise. He said, "People's political and social leadership does not refer to an agreement or consensus of people's opinion and hope. What matters is *velāyat* or [to lead the people in] the spirit of Islam."

And as I saw in 1-3 of my treatise, the above idea also supports the following evaluation in the comment on BBC news website, saying "Other religious heavyweights including Meṣbāḥ Yazdī and Nūrī Hamadānī criticized Rowḥānī's view severely……such differences of views go back to the era of Iranian Constitutional Revolution of 1905-11."

2) Regarding Sharī'a and the legislation, or the relationship between revelation and reason, anti-constitutionalists took a position to overemphasize and rely upon the documentary knowledge (*naql*) derived from the revelation i.e. Qur'an and hadith, but disregard human reason (*'aql*). This position was closer to the Akhbārī Shī'a school although they belonged to the Uṣūlī Shī'a school. This is why anti-constitutionalists thought that sacred texts like Qur'an and hadith had answers to every timeless human problem, and thus argued that Muslim society, unlike non-Muslim society, did not need to solve problem by way of legislation. Anti-constitutionalists saw that human beings themselves had no legislative power, and that such legislative attempt itself would intervene in the legislation that the legislator God had already done, thereby making their status equal to that of God, which was a heretic act. From this point of view, anti-constitutionalists doubted legitimacy of the Constitutionalism, and also criticized a majority rule.[35]

On the other hand, constitutionalists believed, from the standpoint of the Uṣūlī Shī'a school, the correlation and harmony between the core of "revelation" as sacred law and the human "reason." Such belief had played an active role in making new regulations that are consistent with Sharī'a. That is to say, the Uṣūlī Shī'a school not only regarded Sharī'a as non-variable targets and just guidelines (difficult to realize), but also opened up for human beings a dynamic field to create new regulations through their active commitment to such targets and guidelines. Based on this thought of the Uṣūlī Shī'a school, constitutionalists welcomed the idea of *Majles* (Parliament) as an institution that reasonable human beings are involved in legislation. It can be said that the stream of reformists[36] from former President Khātamī[37] to incumbent President Rowḥānī have seen this as [the result of] the Iranian Constitutional Revolution to which Nā'īnī contributed[38] and stood in a position to evaluate constitutionalists positively. (As for the controversy between reformist, former President Khātamī and his conservative rival, leading cleric Meṣbāḥ Yazdī, see footnotes 36 and 37.)

4. Conclusion

By the Constitutional Revolution in the early 20th century, the idea that Nā'īnī had advocated led to the establishment of Iran's first Constitution and the opening of Parliament. And the Supplementary Article 2 of the Constitution (adopted on October 8, 1907) granted (at least) five ulamas as legislators the authority of monitoring and preventing any legislation contrary to principles of Islam and the law of the Prophets in Parliament. (This article, however, has never been implemented.)[39]

Although the Constitution was established at the Constitutional Revolution as mentioned above, under the two reigns of the Pahlavi dynasty that continued after then, Reza Shah, the first monarch of the Pahlavi dynasty, had reigned as an autocratic monarch wearing army shoes, and Moḥammad Reza Shah, the second monarch of the Pahlavi dynasty, had also become an autocratic monarch after a coup d'état against Moṣaddeq in 1953, with the support of the United States (and the collaboration with Israel). In this way, the Constitution had been modified and emasculated, which had triggered a great popular uprising, and leading to the establishment of the Revolutionary regime which has looked up to Khomeinī as a leader.

Meanwhile, Nā'īnī's idea of Constitutionalism, which had become to exist in name only but kept smoldering and therefore the original flame of the great cause of Constitutionalism did not disappear, has been passed to the current Iranian regime after the Islamic Revolution. And the function of monitoring the anti-Islamic legislation in Parliament has become in operation owing to F. Nūrī's effort.

The problem is, however, that there is a structural difference between the situation in the Constitutional Revolution and that after the Islamic Revolution. As mentioned above, Nā'īnī's premise was "the existence of a despotic and arbitrary tyrant" but the monarchy has been abolished and disappeared after the Islamic Revolution led by Khomeinī. After the monarchy's fall, a new system has emerged that would allow the Islamic jurist to rule the people as the deputy of Imām. However, its scope of supervision has been extended from the traditional *ḥisba* to the "absolute and unrestricted"[40] authority specified in the 1989 revised Constitution, while conditioning that as long as it remains within the framework of the people's public interest and religion.

At first sight, this absolute and unrestricted supervision is reminiscent of the coming-back of the tyrannical monarch, but regarding this concern, the textbook for university curriculum explains as follows.[41]

The textbook says, "The term of *moṭlaq* (absolute/unrestricted/unlimited) specified in this 'unrestricted *velāyat*' was additionally attached to 'Velayat' in the Article 57, to

avoid restrictive interpretation of Article 110 (Leadership Duties and Powers) of the Constitution.''[42] And even if the authority of *velāyat* is unlimited, it "remains within the framework of people's public interest and religion, and therefore it cannot go against the framework of the people's public interest. In this respect, *velāyat-e faqīh* is greatly separated from tyranny because it does not take account of the people's public interest, nor respect God's Orders."[43] Therefore, the textbook says, the Islamic jurist who has come to rule the people instead of monarch cannot become like a despotic and arbitrary monarch.

At the beginning, the people and the religious community, while both resisting tyrannical monarchs, have not denied the monarchy itself but basically cooperated in common purpose of restricting the authority of tyrants. But after the monarchy had been driven into abolition by Khomeinī's theory of *velāyat-e faqīh* and the Iranian Revolution of 1979, they lost the common rival. What derives from this structural change may be a constitutional system based on conventional function with its main purpose of restricting the tyranny of a new ruler, or a religious leader. In this case, a new challenge that the people and the religious community need to address after the abolishment of monarchy may be to revise and readjust their roles, functions and mutual relationship.

If the people and the religious community are seeking abroad a substitute for the tyrant who had been their common enemy and heading towards maintaining their traditional partnership, we can also think that it might relax and make room for their mutual relationship. In the theory of *velāyat-e faqīh*, Khomeinī had cited the words of Imām 'Alī, saying "Be an enemy of oppressor and helper of the oppressed" and advocated the expansion and continuation of the Revolution, saying "All the ulamas and Muslims have obligation to overthrow the governance*s* and establish the Islamic governance."[44] And the same meaning is also emphasized in the Preamble and other parts of the current Iranian Constitution,[45] which indicates a problem not caused by friction accompanying a structural change but by doctrinal idea. However, we will need to note other doctrinal aspect in the doctrine of the Uṣūlī Shī'a school as well, which urges the Faithful to pay attention to [the change of] space-time conditions as the basis of the interpretation of religious law (*ijtihād*), and therefore basically prohibits the Faithful from following (*taqlīd*) the dead Mujtahids.

The comment on BBC news website said, "Several rehashed controversies over this theme [i.e. balance between theocracy and democracy] show that there is still room for discussion about the current Islamic regime in Iran." Can it also be understood as meaning that the emergence of a new argument replacing Nā'īnī's is being awaited? Or

rather, should we find value and significance worth evaluating in maintaining a current fine and exquisite balance?[46]

As we have already seen, the Iranian textbook evaluates the achievement of constitutionalist Nā'īnī who had advocated the Islamic Constitutional system, while also referring to the supplementary article of the Constitution that orders five Mujtahids to monitor anti-Islamic legislation in Parliament, which was drafted by F. Nūrī who had distrusted, departed from, and finally opposed constitutionalists. Based on these facts, the textbook suggests that in conjunction with both efforts, a religious democracy, different from Western secular democracy, was spun out. This attitude of the Iranian textbook is interesting because even if it is only a description in the school textbook, it is also representing the current Iranian government. As the name implies, "religious democracy" encompasses legitimacy derived from both God and the people, and therefore it involves friction. As regards this, the textbook cites Nā'īnī as a representative thinker, while also mentioning F. Nūrī daringly. Consequently, it can be said that the current Iranian government is seeking adjustment that both the religious authority who has legitimacy derived from God and the people who represent the will of the people can publicly acknowledge their actual interdependency each other.[47]

Notes

[1] On the tension between Revolutionary Iran and both U.S. and Israel, see the following: TOMITA, Kenji, The Arab Spring or Awakening Islam?: From the Perspective of Iran, *Kirisutokyo Kenkyu (Studies in Christianity)*, Kirisutokyo Kenkyukai, Vol. 78 No. 2 (December 2016)（拙論「アラブの春か、イスラームの目覚めか―イランの視点」『基督教研究』基督教研究会、第 78 巻第 2 号、2016 年 12 月）

[2] Since Khomeinī set a day to remember anti-America and anti-Zionism, Iranians had held the annual demonstration on the last Friday of the fasting month. In 2017, it was June 23.

[3] http://www.bbc.com/persian/iran-features-40358390 (view date: June 21, 2017)

[4] Rowḥānī won the presidential election with 57% of the vote. On the other hand, conservative hardliner Ebrahim Raisi secured 38% of the vote. The voter turnout rate was over 70%. See SUZUKI, Hitoshi, On 12th presidential election in Iran, *Middle East Review of IDE-JETRO*, the interim report (view date: June 24, 2017)（鈴木均「イランの第 12 回大統領選挙をめぐって」『中東レビュー』暫定原稿、2017 年 6 月 24 日閲覧）

[5] Nahj al-Balāgha.

[6] http://www.bbc.com/persian/blog-viewpoints-40397132 (view date: June 25, 2017)

[7] The opinion of Grand Āyatollāh Naser Makārem Shīrāzī
http://www.bbc.com/persian/40318345 (view date: June 18, 2017)

[8] See, for instance, Qur'an 42:38 and 3:159

[9] See 33:2, 33:3, 64:1 and 67, etc.

10 *Article 5*: During the occultation of the *Wali al-'Asr* (may God hasten his reappearance), the leadership of the Ummah [Muslim community] devolve upon the just and pious person, who is fully aware of the circumstances of his age, courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Article 107.
   Article 6: In the Islamic Republic of Iran, the affairs of the country must be administered on the basis of public opinion expressed by the means of elections, including the election of the President, the representatives of the Islamic Consultative Assembly, and the members of councils, or by means of referenda in matters specified in other articles of this Constitution.
   (The Constitution of the Islamic Republic of Iran, adopted October 24, 1979, amended July 28, 1989)
   (Source: International Constitutional Law Project http://www.servat.unibe.ch/icl/ir__indx. html)

11 Official Textbook for Iranian High Schools, *Bīdārī-ye Eslāmī,Zamīne-ye Tarīkh-e Moʿāsar-e Irān, Sāl-e Sevvom-e Āmūzesh-e Motavasete-ye Kollīe-ye Reshte-hā*, 1392, p. 39.

12 'Consutitutional Revolution', *Encyclopaedia Iranica*, ed., Yarshater E., Vol. VI, Costa Mersa, California: Mazda Publishers, p. 180.

13 ①Momen, M., *An Introduction to Shiʿi Islam*, New Haven and London: Yale Univ. Press, 1985, p. 249. ②Browne, Edward G., *The Persian Revolution of 1905-1909*, New Edition, ed., Abbas Amanat, Washington, DC: Mage Publishers, 1995, p. 147.

14 YOSHIMURA, Shintaro, *A History of Modern Iran: Struggle against Dependence in a Hundred Years*, Yushisya, 2011, p. 51（吉村慎太郎『イラン現代史—従属と抵抗の 100 年—』有志舎、2011 年、51 頁）; SANO, Tosei, *History of Modern Iranian Intellectuals - Taqizade, his Life and Nationalism*, Minerva Shobo, 2010.（佐野東生『近代イラン知識人の系譜、タキーザーデ、その生涯とナショナリズム』ミネルヴァ書房、2010 年）

15 'Consutitutional Revolution', *Encyclopaedia Iranica*, p. 171.

16 Browne, Edward G., *op. cit.*, p. 149, p. 180.

17 Momen, M., *op. cit.*, p. 250, & 'Consutitutional Revolution', *Encyclopaedia Iranica*, p. 171.

18 Regarding F. Nūrī's attitude towards the Constitutionalism, see Kasravī, Ahmad, *Tārīkh-e Mashrūṭe-ye Īrān*, *Jolde dovvom,* p. 829, Mo'assese-ye Entesharāt-e Amīr Kabīr, 2536 (Imperial Calendar). In this book, Kasravī regarded Nūrī as a great enemy to the Constitutionalism.

19 Two other persons that Khomeinī named as precursors are Mullā Aḥmad Naraqī (died 1829) and Kāshif al-Ghiṭā (died 1812). See Emām Khomeinī, *Velāyat-e Faqīh, Jahād-e Akbar*, Tehran, Enteshārāt-e, Seyyed Jamāl, date of issue unknown.（R・M・ホメイニー著、富田健次訳『イスラーム統治論・大ジハード論』平凡社、2003 年、152 頁）

20 Sayyed Maḥmūd Ṭāleqānī (1910-1979) was born in a political ulama's family in northern Ṭāleqān of Iran. He began preaching in Tehran after learning at Qom Seminary. He took part in the oil nationalization movement of Prime Minister Mosaddeq and cooperated with A. Kāshānī, the religious leader at the time. Ṭāleqānī has been involved in social activities such as running a Qurʾan interpretation cram school with Bāzargān for 40 years. Leaders and executives of People's Mojahedīn of Iran (PMOI) were learning in this cram school. Ṭāleqānī advocated social justice, equal distribution of wealth and relief of the oppressed, and were trying to find out how far those could be achieved through reinterpretation of the Islamic law in consultation with religious community. He projected his ideal image of government on Imām's reign that he

had been thinking about. "The Islamic government which is entrusted to Imām exists to establish equality and has authority to monitor the acquisition and disposition of property in the public interest and restrict freedom of individual economic activities and collection of natural resources as public assets. If someone has shares that go beyond fairness, that authority should be restricted. In this respect, the authority of the Islam government is broad and exceeds the statutory law." See S. Bakhash, *The Reign of The Ayatollahs: Iran and the Islamic Revolution,* Revised Edition, New York: Basic Books, Inc., Publishers, 1984, pp. 167-170.

[21] Boozari, A., *Shi'i Jurisprudence and Constitution: Revolution in Iran,* New York: Palgrave Macmillan, 2011, p. 237. In the bibliography of this book, the 1955 version compiled by Ṭāleqānī is included.

[22] Moḥammad Ḥosein Nā'īnī, *Tanbīh al-Ummah wa Tanzīh al-Millah,* ed., Mahmūd Ṭaleqānī, Tehran: Sharkat-e Sahami-ye Enteshār, 1378/1999.

[23] Boozari, A., *Shi'i Jurisprudence*, pp. 105&206. Footnote No. 24.

[24] Moḥammad Ḥosein Nā'īnī, *op. cit.*, p. 62.

[25] *Ibid.*, p. 63.

[26] *A Glossary of the Islamic Technical Terms (Persian –English)*, Second edition, 2008, p. 83.

[27] *Ibid.*, p. 80.

[28] Moḥammad Ḥosein Nā'īnī, *op. cit.*, p. 64.

[29] *Ibid.*, p. 65.

TOMITA, Kenji, *Shiite Islamic Studies Textbook in Iran*, Akashi-shoten, 2008, p. 185（富田健次『イランのシーア派イスラーム学教科書』明石書店、2008 年、185 頁）

[31] Moḥammad Ḥosein Nāīnī, *op. cit.*, p. 78.

[32] *Ibid.*, p. 79.

[33] Boozari, A., *op. cit.*, p. 105.

[34] *Ibid.*, p. 101.

[35] *Ibid.*, pp. 101-102.

[36] On Reformists and Conservatives: Various political forces had joined the Iranian Islamic Revolution of 1979 and shared only one goal to overthrow a monarch, but they had had different political philosophy. So many of them had been gradually ousted and excluded in a series of election process toward regime-building after the Revolution. Finally (in the end of 1981) the governance of the Islamic jurist which Khomeinī advocated had been consolidated under the one-party system of Islamic Republican Party. However, when an issue of formulating a new "socio-financial construction" plan has emerged as the next stage of regime-building, a new conflict over its policy occurred inside the party. It was one between conservatives and reformists. Over the socio-financial construction policy, conservatives advocated liberal economy while reformists supported planned economy. In the religious doctrine, conservatives, mainly higher-ranking elderly Islamic clerics and called the traditional law school (*Feqh-e Sonnatī*), insisted on emphasizing the Qur'an and hadith. It reminds us of the Akhbārī Shī'a school before the 18th century, but, unlike the Akhbārīs, they acknowledged reason as one of the sources of law and insisted that they would stand for the Uṣūlī school. They emphasized, however, even if the utilization of reason was permitted, it must not be limitless beyond Qur'an and Sunnah. That is to say, they said that in judging the law, reason was only used for a matter not clearly stated in the Qur'an and Sunnah, and unlimited abuse of reason would damage the Qur'an and Sunnah themselves. On the other hand, most ulamas who supported reformists were younger and lower-ranking jurists, and they were often called the

Dynamic Jurisprudence (*Feqh-e Pūyā*). They advocated the active use of reason to align the Islamic law with social needs and the changing times. The late Khomeinī basically adopted a neutral position for both parties. While the current Supreme Leader Khāmene'ī took a pro-conservative approach, the late Rafsanjānī took a pro-reformist attitude. Former Prime Minister Mūsavī and former president Khātamī are in the reformist stream, but they are held under house arrest and imposed restrictions on public activities as of 2017. See TOMITA, Kenji, *Āyatollāhs' Iran: Contradiction and Development of the Islamic Governance System*, Daisan-Shokan, 1993, pp. 39-42 (Author added.)（富田健次『アーヤトッラーたちのイラン：イスラーム統治体制の矛盾と展開』第三書館、1993 年、39-42 頁に加筆）

[37] Controversy between Reformist Khātamī and Conservative Meṣbāḥ-Yazdī: Former President Khātamī expressed that even if the Iranian Islamic Regime (*velāyat-e faqīh*, i.e. the government of the Islamic jurist) emphasized the divine/theocratic nature, it could not acquire legitimacy until being incorporated in the Constitution, that is to say, it became effective by the people's will through a national referendum. And he said, "This regime came to exist based on people's opinion. The Constitution will be approved by people's opinion and also organizations of the state will be established by people's opinion. The Islamic Republic of Iran means that our people determined to rule the state based on values and criteria of Islam."

In opposition to Khātamī, a conservative heavyweight Meṣbāḥ-Yazdī said, "Regardless of whether the people accepted or not, Muḥammad was chosen as a Prophet by [the will of] God Himself, not by God who took account of the people's demands……. It was also God who chose the Twelve Imams. In this case, the role of the people was only to accept the governance……. It is the same today in the era of the Hidden Imām. The governance of the Islamic jurist was decided by God and preached by the Hidden Imām. Whatever role the people take on has nothing to do with legitimacy of governance. However, <u>the realization of governance depends on the people's acceptance.</u> ……. Even in the phase of electing a particular jurist [as a leader] from general jurists, the people have no role to play in respect of legitimacy of governance by the said jurist. The people are "discovering and knowing" a qualified jurist, but the act of discovering and knowing does not give legitimacy of his governance. This is the same as the sighting of new moon. What we entered the month of Ramadan is justified, not by whether new moon is visible or not, but by whether new moon is objectively present or not." …… As for the relationship of the Constitution and the authority of the jurist, Meṣbāḥ-Yazdī also said, "[The authority of the jurist as the leader] does not stand above God's decrees and laws [i.e. the Islamic law], but above the Constitution. Accordingly, the Constitution has become effective not because many of the people voted in favor of it, but because it was acknowledged by the jurist as leader." See Emām Khomeinī, *Velāyat-e Faqīh, Jahād-e Akbar*, Tehran, Enteshārāt-e, Seyyed Jamāl, date of issue unknown, Comment 1, p. 298, pp. 302-303（R・M・ホメイニー著、富田健次訳『イスラーム統治論・大ジハード論』平凡社、2003 年、解説 1、「ホメイニー師の思想と現代」298 頁、302—3 頁）

[38] Ibid., p. 102.

[39] KAGAYA, Hiroshi, *Modern History of Iran* (Sekaishi Kenkyu Sosho 18), Kondo Shuppansya, 1975, pp. 196-7（加賀谷寛『イラン現代史（世界史研究双書 18）』近藤出版社、1975 年、196-7 頁）；Edward G. Browne, *The Persian Revolution of 1905-1909,* New Edition*,* ed., Abbas, Amanat, Washington, DC; Mage Publishers, 1995, pp. 372-3.

[40] Article 57 [Separation of Powers] in the Constitution of the Islamic Republic of Iran (amended in 1989): The powers of government in the Islamic Republic are vested in the legislature, the

judiciary, and the executive powers, functioning under the supervision of the absolute/unrestricted [*moṭlaq*] religious Leader and the Leadership of the Ummah, in accordance with the forthcoming articles of this Constitution. These powers are independent of each other.

(Source: International Constitutional Law Project http://www.servat.unibe.ch/icl/ir__indx.html) The words "/unrestricted [*moṭlaq*]" in the above were inserted by translator according to the original Japanese treatise.

41　Moḥsen Javādī & ʿAlīreḍā Amīnī, *Maʿāref-e Eslāmī (2),* Nahād-e Namāyandegī-ye Maqām-e Moʿazzam-e Rahbarī, Dar Dāneshgāh hā, pp. 164-167.

42　Article 110 [Leadership Duties and Powers] in the Constitution of the Islamic Republic of Iran (amended in 1989):

(1) Following are the duties and powers of the Leadership:

1. Delineation of the general policies of the Islamic Republic of Iran after consultation with the Nation's Exigency Council.

2. Supervision over the proper execution of the general policies of the system.

3. Issuing decrees for national referenda.

4. Assuming supreme command of the Armed Forces.

5. Declaration of war and peace and the mobilization of the Armed Forces.

6. Appointment, dismissal, and resignation of:

a. the religious men on the Guardian Council,

b. the supreme judicial authority of the country,

c. the head of the radio and television network of the Islamic Republic of Iran,

d. the chief of the joint staff,

e. the chief commander of the Islamic Revolution Guards Corps, and

f. the supreme commanders of the Armed Forces.

7. Resolving differences between the three wings of the Armed Forces and regulation of their relations.

8. Resolving the problems which cannot be solved by conventional methods, through the Nation's Exigency Council.

9. Signing the decree formalizing the election of the President of the Republic by the people. The suitability of candidates for the Presidency of the Republic, with respect to the qualifications specified in the Constitution, must be confirmed before elections take place by the Guardian Council, and, in the case of the first term of a President, by the Leadership.

10. Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty of the violation of his constitutional duties, or after a vote of the Islamic Consultative Assembly testifying to his incompetence on the basis of Article 89.

11. Pardoning or reducing the sentences of convicts, within the framework of Islamic criteria, on a recommendation from the Head of judicial power.

(2) The Leader may delegate part of his duties and powers to another person.

(Source: International Constitutional Law Project http://www.servat.unibe.ch/icl/ir__indx.html)

43　Ibid., pp. 158-9.

44　Khomeinī（富田訳、41 頁）

45　For instance, "The Form of Governance in Islam" in the Preamble of the current Iranian Constitution says, "With respect to the Islamic content of the Iranian Revolution, which was a

movement for the victory of all the oppressed people over their oppressors, the Constitution prepares the ground for continuing this revolution at home and abroad. Specifically, it strives to expand international relations with other Islamic movements and people in order to pave the way for the formation of a single, universal community,…… to also assure that the continuous struggle for the emancipation of the deprived and oppressed nations of the world is strengthened." Also, Article 154 of the Constitution says, "The Islamic Republic of Iran considers human happiness throughout human society as its ideal. It considers independence, freedom, and the governance of justice and truth as the right of all the people of the world. Consequently, while it completely abstains from any kind of intervention in the internal affairs of other nations, it supports the struggles of the oppressed for their rights against the oppressors anywhere in the world." (This translation of the Constitution of the Islamic Republic of Iran (1989 Edition) is published in Iranian Studies, 47:1, 159-200 (2014). http://www.wipo.int/edocs/lexdocs/laws/en/ir/ir001en.pdf) See also YAMAO, Dai, "<Translations> The Concept of the Shiʿite Islamic State in Modern Iraq: Muḥammad Bāqir al-Ṣadr's "Origin of Power" *Kyoto Bulletin of Islamic Area Studies*, Vol. 1 (April 2007), Center for Islamic Area Studies at Kyoto University. (山尾大「現代シーア派のイスラーム国家論：ムハンマド・バーキル・サドル『イスラーム国家における力の源泉』」、『イスラーム世界研究』京都大学イスラーム地域研究センター、2007 年 1 号) Although his study is about a view of Iraqi (non-Iranian) Shī'a, it is suggestive for understanding this issue.

[46] KUBO, Kenichi, "Ambiguous Governance of the Jurist: Leaving Room for Realization of Democratization." (December 2, 2009, Yomiuri Shimbun) (久保健一「曖昧な法学者統治；民主化実現の余地残す」讀賣新聞 2009 年 2 月 12 日号所載) His analysis is suggestive, and reminds us of the fuzzy theory of the Iranian scholar lotfī ʿAlī ʿAskarzādeh who died in September 2017.

[47] For instance, some conservative ulama also acknowledged "the realization of governance depends on the people's acceptance" although "whatever role the people take on has nothing to do with legitimacy of governance." See also the underlined part of Meṣbāḥ-Yazdī's opinion cited in footnote 37.