

Session 2

Parliamentarism and Constitutional Systems in Islamic and Chinese Regional Spheres

Two Dimensions of the Iran's Constitutionalism: Familiar Notions, Lack of Theory

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The processes of compilation of the constitutions and the shaping of the parliaments in the modern epoch have based on the accumulation of theoretical aspects and historical events. Constitutions and parliaments were legal achievements of the western civilization and the result of the existing new institutional/juridical attitude in the modern political thought. Drafting of the constitution of the *Constitutional Revolution (Qanun-e Asasi-ye Mashrutiyyat)* and formation the *parliament (Majles-e Shura-ye Melli)* in the political history of the contemporary Iran (1906), were considered as an Iranian experience of the constitutiolization of the political power. The main object of the present speech is discussion about the significant supposition: Iranian society had not the legal theory of genesis of the constitution and the political thought of the limiting of political power; but, Iranians, in the societal life (political, economic, legal) have confronted with the aggregation of the many occurrences that caused to revolting and questing for the new order based on the demand of a constitution and the request of a parliament. So, the situation of the *Familiar Notions, Lack of Theory* became dominant on the process of the formulating the constitution and parliament in the contemporary history of Iran.



Figure Dilemma of Iran's Constitutionalism

Phenomena do not appear, precipitously; but they happen and grow in a time-based and location-bond historical process surrounded by a chain of causations. Constitutional revolution is historical procedure whose advent dates back to a long time before its seeming appearance in contemporary history of Iran. The primary requests of constitutional activists from dismissal of Asghar Garichi to constitution signing and granting the constitutional laws do not date back to one or two years before advent of Constitutionalist Movement; but they have historical roots. The historical root may be divided into two parts: Internal and External. Not knowing anything about the theories of humanism, constitutional actions, limitation of political power and revolts and uprisings against autocratic system, Iranians requested for something from political system of their time through political writing and intellectual treatises, all of which were present in the theories of political philosophy of modern Europe. Since Iranians recognized that there are some other communities other than them who are more advanced and stronger, they started to think about becoming a community like them and embarking on the road to prosperity.

Codification of new constitution implies a novel era in governance method of a country. The nature of constitution is in such a way that it can be separated from previous experiences. Constitution setting is viewed as a foundation process after rejecting the previous political system. The new foundation is an intellectual process;

it means that wisdom become the criterion of determining the characteristics of new political system. On the other hand, constitution setting is a phenomenon whose aim is evolution and it is in line with international history of a political tradition. It can also be viewed as a phenomenon belonging to evolution and prevalence of an international political culture. In this international evolution, the values originated from historical experiences of a certain country travel from one country to another one and they are generalized through this journey; it means that a legal system is emerged from them which are entered into the political culture of the next countries. These countries try to build a new political system based on that:

- A) From medieval Europe, three principles of law governance, power limitation and parliament and representative councils of different classes of peasantry were assigned as legitimacy of political system;
- B) From revolution of France, principles of natural law and natural rights of people were assigned as legitimacy of political system in the place of religious;
- C) Since the second half of the 19th century and all periods of the 20th one, wide expansion of government power and taking the responsibility of some public services such as construction, primary education, secondary education, university education, health care and social insurance were given consideration which meant more reliance on social duties and social services;
- D) After soviet revolution of 1917, there appeared a kind of constitution which was based on revolutionary ideology and the constitution was considered as a tool to operationalize the fundamental social changes on the basis of aspirations of the dominant ideology;
- E) Resorting to the religion in order to justify and legitimate the new political system was the output of Islamic revolution of Iran which added a principle to the other doctrines of constitution;
- F) Federalism was a unique experience of American Revolution and wars of Independence which was added to the constitution.

In the drafting process of the constitution of the constitutional revolution, the elements A and B were present directly, but the authors of constitution did know nothing about the theoretical and philosophical claims of these elements. Emergence of constitution is consequence legal limitation of political power in written framework but they are neither beyond history nor non-historical. From this point of view, constitution creation has emerged in a historical process or at a historical moment/instant; a process emerged following gradual evolution of the societies and mind preparation of the rulers and citizens. This historical moment in revolutionary history of the law and constitution is timely and exactly refers to 1215 AD of England constitutionality history; astute rulers acquiesce in some kind of constitution by granting some rights to citizens through issuing charters and commands in order to preserve and maintain their position and status since the ground was ready for rebellion and revolution and spoiling the basis in some temporal segments and in fact using auto limitation methods prevented risk by giving some privileges to people. King of Britain established the first constitution by issuing Magna Charta under the social and political pressure in 1215. So, constitution creation and structuring the theory of government power limitation are historical matters.

Constitution is known as a structure, within which there is abundance of basic concepts, ideologies, approaches, values, systems and levels. Generally, constitution is a collection of regulation which attempts to enact tasks, power and performance of different institutions of the government and regulate the relation between them and determine the relation between the government and individuals. So, constitution enacts absolute regulations for controlling the political system. The task of constitution is creating stability and developing the ability of prediction and discipline in activities of a political system and government. Constitution, in law definition,

is a text or custom containing a set of superior principals which determines legal system of political power in the government and ensures right and freedom of people. Combining politics and law gives us the ability to present another definition for constitution: constitution takes the form of a document which is approved by people. This constitution determines government authority, specifies political manner and sets the relation between the citizens and the government. That document is translated into an effective monitoring tool for political actions and traditions by defining ordinances and regulation and creates stability criterion for situations where otherwise uncontrollable disputes may form among society forces. From this point of view, enacting constitution is a historical matter and emerges from within the historical events.

When special task of constitution is considered some issues are looked at which are historical; however, at first it seems that it enjoys theoretical basis and principals. Constitution aims at creating a complex frame of monitoring and stability between different wings of the government; as government is like a game, before these players can achieve capacity for competing they should agree with a set of regulations and decide how the game is played. Constitutions are political game plans; it means who can vote, who can gain the position, what divisions it should have, what the right and tasks of citizens are. Government would fall into dictatorship, physical threatening and chaos without constitution. Historical reviews of constitution need to investigate birth history of constitutionalism: all new rules, even rules seem to be revolution-oriented, are born out of evolutions which are created in previous legal method and they cannot be understood correctly if their historical source is not determined and generally it can be said that law history investigation is necessary for those who want to know the exact position of contemporary legal principals through civilization evolution and refer to sources during codification. Constitution legislation is more a historical issue than a legal issue. Revolution constitution has no separate nature; incidentally, its combination with historical events is in such a way that it puts history atop and law at second place.

There are two ideas in constitution theoretical basis: firstly, limiting and making power conditional and constraining that; and secondly, emphasizing on the ability of legislation of human which these two terms are constitution. Tradition of writing and legislating constitution means establishing and founding an organization which can characterize or ensure justice and freedom in the society and constrain injustice, autarchy and dictatorship and this has not emerged in contemporary history of Iran as it is in West. Iranian elites and liberals of constitutional era were not absolutely and completely familiar with metaphysical and basic intellectual principal of constitution and parliament formation but paid attention to them partly and at least understood them considering existing situation of reign and monarchy in Iran and asked for change in political system management. Subsequently, birth and creation of constitution and parliament in Iran lack theoretical background but express historical experiences.

Sources

- Alder, John. 2002. *General Principles of Constitutional and Administrative Law*. New York: Palgrave MacMillan, fourth edition.
- Andrews, William G. 1968. *Constitutions and Constitutionalism*. Princeton: D. Van Nostrand, third edition.
- Barnett, Hilaire. 2011. *Constitutional and Administrative Law*. London: Routledge, eighth edition.
- Blackwell, Amy Hackney. 2008. *The Essential Law Dictionary*. Illinois: Sphinx Publishing.
- Burton, William C. 1998. *Burton's Legal Thesaurus*. New York: MacMillan Library Reference.
- Gifis, Steven H. 1991. *Law Dictionary*. New York: Barron's Educational Series, third edition.
- Gooch, Graham, and Michael Williams. 2003. *Oxford Dictionary of Law Enforcement*. Oxford: Oxford University Press.

- Gove, Philip. 1984. *Webster's New Dictionary of Synonyms*. Massachusetts: Merriam-Webster Inc.
- Haddock, Bruce. 2005. *History of Political Thought 1789 to the Present*. Cambridge: Polity.
- Haqdar, Ali Asghar. 2004. *Majles-e Avval va Nehad'ha-ye Mashrutiyyat* [First Parliament and Institutions of Constitutionalism]. Tehran: Mehrnamag.
- Kasravi, Ahmad. 1990. *Tarikh-e Mashrute-ye Iran* [History of Constitutionalism in Islam]. Tehran: Amir Kabir.
- Malek'zadeh, Mehdi. 1984. *Tarikh-e Enqelab-e Mashrutiyyat-e Iran* [History of the Constitutional Revolution of Iran]. Tehran: Elmi.
- McLeod, Ian. 2010. *Key Concepts in Law*. New York: Palgrave Macmillan.
- Mingus, Matthew S. 2007. Constitutionalization. In *Encyclopedia of Governance*, vol. 1, ed. Mark Bevir. London: Sage Publication.
- Nazem al-Eslam-e Kermani. 1978. *Tarikh-e Bidari-ye Iraniyan* [History of the Awakening of the Iranians]. Tehran: Agah Publication.

After the “Second Empire”: New Horizons of Ottoman Constitutional History

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The history of the modern era of the Ottoman Empire (c.1300–1922) is composed of two constitutional periods: the First Constitutional Period (*Birinci Meşrutiyet*, 1876–1878) beginning with the promulgation of the Ottoman Constitution of 1876 (*Kanun-ı Esasî*, i.e. the Fundamental Law), usually called the “Midhat Constitution” after the name of one of its main drafters, Ahmed Şefik Midhat Paşa (1822–1884); the Second Constitutional Period (*İkinci Meşrutiyet*, 1908–1918) introduced through the 1908 Revolution of the Young Turks.

The constitutional history of the Ottoman Empire seems to have been extensively covered in many textbooks and monographs, written not only in Turkish or English but also in Japanese. In fact, several detailed monographs regarding the Ottoman constitutional government have recently been published in Japanese (e.g. Kasuya 2007; Fujinami 2011; Sasaki 2014). These have generally suggested that the First Constitutional Period came into being owing to the constitutional movement led by Muslim intellectuals mainly consisting of young officials and journalists, and that the Second Constitutional Period appeared in the turmoil of the 1908 Revolution led by various political groups dissatisfied with the autocracy of the 34th sultan, Abdülhamid II (r. 1876–1909). It might be thus no exaggeration to say that the modern history of the empire is nothing but the progress of constitutionalism and parliamentarism.

However, it should be noticed here that most of those works discuss Ottoman constitutionalism within the framework of the *modern* history of the empire. They develop their argument about Ottoman constitutionalism on the assumption that either constitutionalism or parliamentarism came from *outside* the empire as an option presented by modernity. They indicate generally that the Ottoman Empire, once it was exposed to Western Impact, was forced to initiate the Reorganization (*Tanzimat*) to keep the state alive somehow, as well as to adopt



Figure Heavy Rains at Constantinople, People Going to Hear the Reading of the Constitution. *The Illustrated London News*, 13 January 1877.