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Reasonableness, Rationality and Government: The Liberal Political Thought of Mehdi Ha’eri Yazdi

Rawls formulates liberalism according to two conceptions of reasonable and rational, which, tied to two particular notions of society and person, define the basis of liberalism in Rawlsian thought. This article argues that Mehdi Haeri Yazdi’s important work, Hekmat va Hokumat, should be considered as a work of liberal theory, and shows how it endorses liberal conceptions of the reasonable and the rational. The main elements of Ha’eri’s liberalism are his thesis that philosophy has priority over jurisprudence, his doctrine of contract based upon concepts of agency contract (aqd-e vekalat) and joint private ownership (malekiyat-e shakhsi-ye musha), and his defense of individualism against the alleged collectivism of Rousseau.

Mehdi Ha’eri Yazdi (1923–99) was one of the most important scholars of what is called “Islamic philosophy” in contemporary Iran. Hekmat va Hokumat, published in 1995 in London, is Ha’eri Yazdi’s main work of political theory. This article includes a detailed reading of Hekmat va Hokumat, arguing that Ha’eri should be considered as a liberal political theorist. We will see how he uses some traditional concepts from Islamic philosophy and jurisprudence, particularly notions of “joint private ownership” and agency contracts.

1Mehdi Ha’eri Yazdi was the son of the renowned Grand Ayatollah Abdulkarim Ha’eri Yazdi, one of the main Shiite authorities (maraj) of his time, and the one who made Qom the main site of Shi’a studies in Iran. At the age of twenty-eight he received his ordination as exegesis (ejtehad), the highest degree in traditional Islamic sciences, particularly Islamic law, from Grand Ayatollah Borujerdi, the main Shi’a authority after the death of his father. In 1952, Tehran University accepted Ha’eri’s ejtehad degree as equivalent to a doctorate degree in theology and he became a faculty member of Tehran University’s theology department. Later, he enrolled in the PhD program at the University of Toronto, where he received another doctorate in 1979. In 1979, he returned to Iran to resume his post as professor of Islamic philosophy and jurisprudence, particularly notions of “joint private ownership” and agency contracts.

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ownership” and “agency contract,” in order to develop a reasonable contract theory. As a framework for defining reasonableness and the normative demands of liberalism, I will use John Rawls’s political liberalism.

The first section contains my own interpretation of Rawls’s ideas of reasonableness and rationality. Based on this initial step, and analyzing different aspects of Hekmat va Hokumat, I will then argue that Ha’eri Yazdi should be regarded as a liberal thinker. To do this, I will first consider what may be called Ha’eri’s argument about the priority of Islamic philosophy to Islamic jurisprudence. I will then discuss Ha’eri’s thesis of government as the agency of joint private owners, explaining how this doctrine is constructed on traditional notions of agency compact (aqd-e vekalat) and joint private ownership (malekiyat-e shakhsi-ye musba) in Shi’a jurisprudence. This part is followed by my interpretation of Ha’eri’s defense of individualism against collectivism, explaining how this doctrine is constructed on traditional notions of agency compact and joint private ownership which is in line with the coercive nature of state power. From this analysis, I will conclude that Ha’eri Yazdi’s Hekmat va Hokumat should be regarded as a reasonable and liberal doctrine in the way that reasonableness and liberalism are interpreted by John Rawls.

Reasonableness and Rationality in Rawls’s Political Liberalism

Political liberalism is the account of liberalism Rawls developed in the later period of his life. According to Rawls’s theory, liberalism is linked to two fundamental ideas: the reasonable, and the rational. The origin of the distinction between the two terms goes back to Kantian ethics, where Kant differentiates between categorical and hypothetical imperatives, although its present format is Rawls’s invention. Rawls defines reasonableness as being “ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.” In other words, reasonableness includes the part of our moral sensibility

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\[\text{2John Rawls, Political Liberalism (New York, 1996), 48–49.}\]

\[\text{3Rawls, Political Liberalism, 49. Here I need to address one possible objection. In Political Liberalism, Rawls also articulates a second criterion for reasonableness that I have neglected in my interpretation. This element is what Rawls calls “the burdens of judgment.” What is my argument for this omission? In my interpretation of political liberalism, it seems acceptable to keep the first condition of reasonableness, i.e. willingness to get involved in social cooperation provided that others do the same, and exclude the second one, i.e. the burdens of judgment. It seems to me that including the appropriate conceptions of person and society is both a necessary and sufficient criterion for the reasonableness of a doctrine. Put another way, the burdens of judgment apparently can be discarded without resulting in a significant problem for maintaining the main ideas of political liberalism, such as public reason, the original position, the reflective equilibrium, overlapping consensus, etc. As Wenar argues, there seems to be no strong argument proving that abandonment of the burdens of judgment is fatal for the entire Rawlsian project of political liberalism. Furthermore, the burdens of judgment seem to be incompatible with the firm religious beliefs of the faithful, and one might even argue that excluding them from the criterion of reasonableness is a recommendable step for applying political liberalism to more religious societies, including Muslim majority ones. Wenar suggests that the burdens of judgment are not acceptable for many religious}\]
that connects with the idea of fair social cooperation and reciprocity.\textsuperscript{4} For Rawls, a political doctrine is reasonable and rational, and thus liberal, if it includes two fundamental elements: first, an idea of society as “a fair system of cooperation over time, from one generation to the next”; and second, an idea of citizens (those engaged in cooperation) as “free and equal persons.”\textsuperscript{5} These conceptions of the society and the person are normative, belonging to the domain of moral (political).

Furthermore, reasonableness and rationality are very closely tied to the two moral powers which Rawls attributes to citizens in a democratic society: the reasonable is connected to citizens’ sense of justice, i.e. their capacity to understand, apply and act according to justice; the rational is connected to citizens’ moral power to determine and revise their conception of the good. Thus, reasonableness is linked to the idea of social cooperation whereas rationality is connected to the idea of freedom. Rationality is guided by the principle of choosing the most effective means to an end. It expresses “a scheme of final ends and attachments together with a comprehensive doctrine in the light of which those elements are interpreted.”\textsuperscript{6} Rationality also applies to how one’s ends are given priority and how they cohere with each other, which is different from the demands of reasonableness. Finally, the idea of rationality embodies an important part of Rawls’s idea of autonomy as well.\textsuperscript{7}

The core of the idea of rationality, one might argue, is freedom. As mentioned above, according to Rawls’s concept of rationality, each person has a capacity to form, revise and pursue a conception of rational advantage or good. However, each person’s conception of the good is not fixed, but develops as the person matures, and may even change radically over their lifetime.\textsuperscript{8} This is the first meaning of freedom according to Rawls’s idea of rationality, and it implies that, when a person converts from one religion to another, she should not lose her constitutional rights.\textsuperscript{9} Rawls’s rationality also implies that people are free in a second sense, of

\begin{thebibliography}{9}
\bibitem{March2009} Andrew March, \textit{Islam and Liberal Citizenship: The Search for an Overlapping Consensus} (Oxford, 2009), 272–3
\end{thebibliography}
being self-authenticating sources of valid claims. Here, people are free because they are “entitled to make claims on their institutions so as to advance their conception of the good,” so slaves are not free, for example, because they are not counted as sources of valid claims. As Rawls puts it, slaves are “socially dead: they are not recognized as persons at all.” Therefore, any political theory which justifies slavery, in lacking such a perception of freedom, contradicts Rawls’s ideas of rationality and reasonableness. There is also a third aspect in which people are viewed as free according to Rawls’s definition of rationality. Here, freedom means a person’s capability of taking responsibility for her ends. This means that persons are capable of restricting their claims to the kinds of things the principles of justice allow. I need to add that these three senses of freedom, and the idea of rationality which encompasses them, are modeled in Rawls’s original position.

The ideas of the reasonable and rational are connected to particular liberal conceptions of society and person. As a result, for Rawls, only those political doctrines which include such liberal conceptions of society and person are to be considered as reasonable and rational: “The reasonable is an element of the idea of society as a system of fair cooperation.” Reasonableness is thus incompatible with non-liberal notions of society, such as viewing society “as a fixed natural order, or as institutional hierarchy justified by religious or aristocratic values.” A non-literal conception of society lacks the idea of reciprocity. Reciprocity means that “all who are engaged in cooperation and who do their part, as the rules and procedure require, are to benefit in an appropriate way as assessed by a suitable benchmark of comparison.”

The notions of reasonable and rational draw upon a particular conception of the person which follows from the idea of society as a fair system of cooperation; that is, a person who takes part or plays a role in social life. The person is someone “who can be a citizen, that is, a normal and fully cooperating member of society over complete life.” In contrast, a society in which individuals’ basic rights depend on their religious affiliation and social class has a non-liberal conception of the person. Such a society lacks the idea of persons as free and equal, reasonable and rational. Finally, according to Rawls’s idea of personhood, someone who has not developed the twin moral powers of reasonableness and rationality to a minimum requisite degree cannot be a normal and fully cooperating member of a democratic society.

From this outline of Rawls’s ideas one can conclude that a political doctrine is unreasonable and irrational when it lacks a minimum amount of social cooperation, and/or when it does not allow people to rationally revise their conception of the good

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10Ibid., 33.
11Ibid., 33; cf. 72.
12Ibid., 72f.
13Ibid., 49–50.
14Ibid., 15.
15Ibid., 16.
16Ibid., 18.
17Ibid., 30.
18Ibid., 74.
during their lifetime. In the next section, I will argue that, as interpreted through Rawlsian political philosophy, the doctrine of the guardianship of the jurist is an unreasonable comprehensive doctrine because it is irreconcilable with the liberal conception of society and person presented above. Following this, I will demonstrate how Muslim philosophical and legal tradition, as presented in Mehdi Haeri Yazdi’s *Hekmat va Hokumat*, includes the fundamental ideas of society as a fair system of cooperation, and persons as free and equal citizens, as the primary and the necessary requirements of a liberal political theory.

The Priority of Islamic Philosophy to Islamic Jurisprudence

The title of Haeri Yazdi’s main book on political theory, *Hekmat va Hokumat*, was chosen with a lot of care and attention. As I understand it, this title represents what may be called Ha’eri’s prioritizing of Islamic philosophy over Islamic jurisprudence, and embodies one of his main arguments for the necessity of a reasonable Muslim political theory. In Ha’eri’s terminology, “hekmat” refers to Muslim practical philosophy while “hokumat” draws on notions of government, state, politics and sovereignty.

In Islamic tradition, particularly the Iranian one, there are two words which usually refer to Islamic philosophy: one is *hekmat* and the other is *falsafeh*. Some commentators believe that *hekmat* has a much wider meaning than *falsafeh*, arguing that a good deal of rational Islamic theology (*kalam*) should be classified as *hekmat*, such as in the case of theoretical mysticism (*tasavvof-e nazari*). Ha’eri, however, seems to use *falsafeh* and *hekmat* interchangeably as more or less equivalent to each other. Following Aristotle, as well as Ibn Sina and other classical Muslim philosophers, Ha’eri divides *hekmat* into theoretical (*hekmat-e nazari*) and practical branches (*hekmat-e amali*).19 This division corresponds to his division of being into “unwilled existence” (*vujud-e namaqdur*) and “willed existence” (*vujud-e maqdur*). Whereas the existence of unwilled beings is independent of the human will, willed beings are brought into the realm of existence only through the consequences of human action and behavior. While theoretical Islamic philosophy is mainly concerned with unwilled beings, Ha’eri argues, practical Muslim philosophy studies willed beings.20 This means that *Hokumat* is a willed being to be studied by *hekmat*, i.e. Muslim practical philosophy, as interpreted reasonably.

*Hekmat* and *hokumat* are tied to each other. In Persian, *hokumat* means government, sovereignty, state or politics, depending on the context. However, a Muslim political theory, Ha’eri argues, cannot be developed without relying on philosophy because political thought cannot be rooted only in jurisprudence (*feqh*). As a result, he rejects the idea of the guardianship of the jurist (*velayat-e faqih*) in that the government “is not a superior divine metaphysical reality” in the manner that guardianship of

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the jurist theory proposes. Rather, government, or *hokumat*, is simply a human phenomenon and jurists are wrong in thinking that the administration of state lies within the orbit of shari’ā:

Literally speaking, *hokm* and *hokumat* are derived from Arabic *hakama*, *yahkumu*, *hukman*. Both mean to order, to judge, to arbitrate, to settle in judgment. In the science of politics, *hokumat* means the art of administration and thinking about how to rationally manage domestic and international affairs of the country. However, in Islamic philosophy and logic, *hokm* means to admit a predicative relation in a proposition, i.e. judgmental knowledge (*elm-e tasdiqi*) versus conceptual knowledge (*elm-e tasawwori*). ... *hokm* and *hokumat* have to be viewed as the judgmental knowledge of forming, directing and administrating states, rather than [Islamic] guardianship.

In order to develop a reasonable (in the Rawlsian sense) model of government (*hokumat*), one primarily has to rely on Islamic practical philosophy (*hekmat*), rather than the holy texts per se, or jurisprudence. *Hokumat*, as derived from *hekmat*, is incompatible with the very idea of the guardianship of the jurist, which justifies itself solely by appealing to Islamic shari’ā. In cases of conflict in political affairs between philosophy (especially Islamic practical philosophy, as reasonably interpreted) on the one hand, and Shi’ā jurisprudence on the other, one should side with practical philosophy. In other words, if we are going to develop a reasonable theory of government, we have to give a secondary role to jurisprudence as compared to other intellectual Islamic sciences, especially philosophy. It is useful to note here that, in addition to being a philosopher, Ha’eri was also a jurist. As mentioned earlier, he had permission for *ejtehad*, or exegesis in Shi’ā jurisprudence, from Grand Ayatollah Borujerdi. Yet he believed that a reasonable account of Islamic philosophy should be given greater consideration than the science of jurisprudence in solving both theoretical and practical issues concerning state affairs and politics. For Ha’eri, the implication is that any theory of government that solely relies on jurisprudence at the cost of neglecting the requirements of philosophy has to be regarded as unreasonable, and even irrational. The doctrine of the guardianship of the Shi’ā jurist (*velayat-e faqih*), which regards Muslims as invalids or minors, in need of the care of a guardian (*vali*), is a clear example of such unreasonableness and irrationality, and has to be rejected. Viewing persons that way is incompatible with the reasonable consideration of them as citizens, i.e. as free, equal and cooperating members of society, and also neglects the fact that they should be able to revise their conception of the good during the lifetime. In short, these factors make the guardianship of the jurist theory an illiberal doctrine in the Rawlsian sense.

In the last two chapters of *Hekmat va Hokumat*, Ha’eri discusses the theory of *velayat-e faqih* in more detail. In contemporary Shi’ā thought, this doctrine was

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21Ibid., 64–5.
22Ibid., 54–5.
most eloquently expressed first in 1970 by Ayatollah Khomeini in his *velayat-e faqih* lessons in Najaf (Iraq), later published as *Governance of the Jurist: Islamic Government*. Khomeini held that the authority of *vali-ye faqih* (the supreme leader) was invested in him by the twelfth Shi’a Imam, Mahdi, and argued that the basis of the supreme jurist’s authority rested on the Shi’a Muslim’s obligation to obey God, his Prophet and the Twelve Infallible Imams. For Khomeini, who had been one of Mehdi Ha’eri Yazdi’s former tutors in Qom as well, political obligation was subsumed under the religious obligation to obey the Imam.

Khomeini believed that the Islamic state is part of the very idea of Muslimhood, arguing that history showed that Muhammad had established the first Islamic government, and that the necessity for such an Islamic state was not confined to the Prophet’s time, but rather has continued since his death. According to Khomeini’s interpretation of the Qur’an, the ordinances of Islam and shari’a are therefore not limited to a particular time or place; they are permanent and must be enacted until the end of time: “They were not revealed merely for the time of the Prophet, only to be abandoned thereafter,”23 so the *hudud* (Islamic penal code) still needs to be enacted, the taxes prescribed by Islam still need to be collected, and the defense of the lands and people of Islam must not be suspended. Since all of these tasks need a state to implement them, Khomeini concluded that the claim that the laws of Islam may remain in suspension or restricted to a particular time or place is contrary to the essentials of Islam. “Law is God’s decree and command.” So the divine command of Islam has absolute authority over all individuals for all eternity.24 The ground for Khomeini’s theory had been prepared by the nineteenth century jurist Molla Ahmad Naraqi (died in 1829) in his *Avāyid al-Ayyām*.

Ha’eri disagreed with both Khomeini and Naraqi, arguing that, in traditional Shi’a jurisprudence, guardianship is only relevant in the cases of underage children (*saghir*) and persons of unsound mind (*majnun*) who need their property, etc., protected by others because of their own incompetence and invalidity. Ha’eri concluded that Khomeini’s and Naraqi’s application of this model to the state–individual relationship was misleading both philosophically and theologically. Philosophically, it is wrong because it deprives individuals of their rights, denies their human autonomy and may lead to despotism. Ha’eri therefore rejects the argument of theorists of the guardianship of the jurist, such as Naraqi and Ayatollah Khomeini, that *hokumat* can be equated with *velayat*:

*Velayat*, in the meaning of guardianship, conceptually and essentially is different from *hokumat*. Guardianship is the right of the guardian to possess the private property and rights of a ward, who for reasons such as immaturity, being of unsound mind, lunacy, and so on, is incompetent to take possession of his property and rights. In contrast, *hokumat* and statesmanship equate to the reasonable man-

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24Ibid., 29.
agement of the affairs of a particular political and geographical territory [Greek polis]. Statesmanship of government is a position that should be transferred to a competent, rational and reasonable person or institution by the citizens who are the real owners of the city or country. Put another way, bokumat is a hypothetical or real agency contract between citizens and their agents as some persons or institutions. Velayat, which is equivalent to the possession of all the rights of an incompetent or ward by a guardian, seems to be inappropriate for social and public affairs. Guardianship is essentially a private relationship which cannot be extended to public life and relations.25

In short, government (bokumat) is distinct from guardianship (velayat), and thus one of the main sources of unjust and criminal attitudes within dictatorial states derives from neglecting this distinction.26

Ha’eri’s philosophical argument is also complemented by a theological argument that aims to question validity of the guardianship of the jurist theory in Islamic terms. The words of the Prophet and Shi’a Imams, called the hadith, carry authority in Shi’a jurisprudence. Ha’eri believes that the supporters of guardianship misinterpret some of the words of Shi’a authorities in order to justify their position. In their interpretation of the term faqih in hadiths such as “fuqaha [the plural of faqih] are havens of Islam, “fuqaha are trustees of prophets,” and so on, the theorists of the guardianship of the jurist doctrine equate the term faqib with a person who is knowledgeable in jurisprudence, thereby interpreting such words by Shi’a authorities as indicating the origins of a theory of the Islamic state.27 Appealing to Molla Sadra, Ha’eri instead interprets the word faqib as a person who is well-versed in the mystical and spiritual sciences of Islam in order to argue that it is incorrect to interpret faqib as a person who is the most knowledgeable in Islamic jurisprudence.28 According to Molla Sadra, equating the term faqib with a person who is simply well-versed in jurisprudence is a distortion of the truth of Islam because salvation, Molla Sadra argues, is not limited to the practice of the legal orders of jurists. That is, whereas Islamic salvation results from involving oneself in the mystical sciences, the science of faqib is limited only to this world (dunya) and its worldly legal practices. It is a fallacy to assume that jurists are the havens of Islam or trustees of the prophets, as Naraqi and Khomeini are inclined to do. Thus, referring to Molla Sadra’s commentary on Koleyni’s Űsul al-Kāfi book, “the Chapter of Reason and Ignorance,” Ha’eri argues that jurisprudence is a this-worldly science, rather than a science of salvation, so being expert in Islamic jurisprudence does not necessarily result in spiritual salvation.

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25Ha’eri, Hekmat va Hokumat, 177; cf. 61, 57, 178.
26 Ibid., 57.
28 Ibid., 187.
He concludes that jurists cannot be regarded as the most knowledgeable rulers from an Islamic point of view.29

Furthermore, according to Islamic teaching, the divine right to rule is limited solely to infallibles. Only the infallibles, i.e. the Prophet, his daughter Fatima and the Twelve Shi’a Imams, have *velayat* over other believers. No fallible person, including a Muslim jurist, can claim a right to political leadership and divine *velayat*. Thus, from a religious perspective, since the guardianship of the jurist attributes the divine right of ruling to fallible people (i.e. Muslim jurists, whose knowledgeableeness of jurisprudence is irrelevant), it should be rejected as a false doctrine.

In addition, even the political leadership rights of the Infallible Imams or the Prophet himself can only be implemented if there is a consensus of believers. In other words, the Imams’ potential right to political leadership, contrary to what the guardianship of the jurist theory seems to claim, can only be realized if political leadership is transferred to an imam or prophet by the people.30 Although the infallible Prophet or Imams are considered to be supremely talented in statesmanship, Ha’eri argues that such skill cannot be used unless people select them to lead. This explains how Muhammad and Imam Ali became political leaders of the Muslim community at particular moments of their lives. It also explains why Ali, who was potentially the most talented ruler of the Muslim community after the Prophet, abstained from making any claim to political leadership for twenty years, during the period when Abu Bakr, Umar and Usman were the Caliphate, until the people came to his door and selected him as their leader following the death of Usman.31 Although, like the Prophet Muhammad, Ali was infallible, he only became a political leader when the Muslim community themselves became mature enough to understand his particular talents and select him as their ruler.

This account leads Ha’eri to suggest that it is very unlikely that the jurists have a divine right of leadership when even the Infallibles, who according to Shi’a theology have a special ontological status in the universe, did not have the right to rule community without the consensus of the governed. Finally, according to some Muslim philosophers, only Imams have access to a mystically illuminated knowledge about reality and existence, while the rest of the people, including the jurists, lack such an advantage. Thus, the theory of the guardianship of the jurist is deeply flawed according to Islamic doctrine.

All in all, to use John Rawls’s terminology, the guardianship of the jurist doctrine is unreasonable, both philosophically and theologically. For Rawls, unreasonable

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29Ibid., 188–91.
30Ibid., 142–3; cf. 168–76.
31In Ha’eri’s interpretation, this verse of the Qur’an refers to this fact when Allah says to the Prophet: “Certainly was Allah pleased with the believers when they pledged allegiance to you, [O Muhammad], under the tree, and He knew what was in their hearts, so He sent down tranquility upon them and rewarded them with an imminent conquest” (Qur’an, Sūra48: 18, translated by Sahih international translation, http://quran.com). According to this verse, Ha’eri *(Hekmat va Hokumat)* argues, revelation appoints an infallible prophet or Imam as the political leader only if the people’s consensus already exists. Ibid., 168.
doctrines are unwilling to engage in social cooperation, unless based on their own self-interest. They are unlikely to propose any standards of justice for specifying the terms of cooperation, and do not acknowledge the fact of reasonable pluralism. However, as we will see, Ha’eri Yazdi’s account of contract, called government as the agency of joint private owners, agrees with Rawls’s normative demands about liberalism.

Government as the Agency of Joint Private Owners

Like classical European theories of social contract, *Hekmat va Hokumat* endorses an idea of the state of nature. Ha’eri argues that, before entering society, in the state of nature, each human being naturally occupies a place of residence, and, over time, the person develops a sense of belonging to this place. This sense of belonging is the result of her human corporality and forms the basis for the idea of natural ownership called “exclusive private ownership” (*malekiyat-e shakhsi-ye enbesari*) when it is limited to a small and almost private space. However, in most cases, the initial private exclusive inhabitant forms part of a larger and penetrable common residence where people live together with their families and fellows. This means that, in addition to the exclusive private ownership of a particular space, each person is also the joint owner of a larger residential environment. The people who live in this shared place, or natural habitation, enjoy a joint ownership called “joint private ownership” (*malekiyat-e shakhsi-ye musha*). In Ha’eri’s view, both exclusive and joint private ownerships are essentials of our human life and are simply driven from the corporal nature of our human bodies. Both private ownerships are natural, in the sense that they are based upon our natural sense of belonging to our inhabitance. Thus, exclusive and joint private ownerships should not be confused with non-natural private ownership, which is constructed only after entering into a society based on human convention.

The concepts of exclusive and joint private ownership in *Hekmat va Hokumat* are partly inspired by a principle in Islamic jurisprudence traditionally used to justify private property, according to which “the forefront occupants of a space are its owners.” A saying with the same content is also attributed to the Prophet. These concepts are also well-known in the Islamic jurisprudence literature, where a standard

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32Rawls, *Political Liberalism*, 50. For Rawls, a country will have a stable liberal democracy only if the number of people who adhere to unreasonable doctrines (e.g. guardianship of the jurist) is “outweighed by the appropriate conduct of a sufficient number of others.” See John Rawls, *The Law of Peoples: With The Idea of Public Reason Revisited* (Cambridge, MA, 1999), 15.

33We should not interpret *Hekmat va Hokumat*’s state of nature as an actual state, nor should we interpret its agency contract as an agreement that actually took place. In other words, Ha’eri is not concerned with giving an historical account of how government came about. Rather, his doctrine is best viewed not as explaining the origin of government, but rather as an attempt to provide “philosophical knowledge” about the concept of the state so that we can better understand our political rights and obligations when such a government exists. Here I am following Rawls’s interpretation of Hobbesian contractarianism. See John Rawls, *Lectures on History of Political Philosophy*, ed. Samuel Freeman (Cambridge, MA, 2007), 30–32.


example of joint private ownership is an immovable property assigned to a number of heirs following the death of the original owner (usually a family member). In these cases, each heir becomes the joint private owner of the property. Such ownerships are private in the sense they exist independently and the owners do not violate the individuality and autonomy of each other. It should be noted that, although the concepts of exclusive and joint private ownership are intrinsically inspired by some Islamic sources, they may be considered as inherently secular, because they exist independently from and prior to the law of shari’a.38

In the state of nature, we may face a situation where different residents have conflicting claims about their joint share of ownership. Such competition between different occupants in the state of nature over property claims makes the need for a protection system protecting us from each other’s egoistic excesses inevitable.39 One Islamic jurisprudence principle asserts that “people are sovereigns of their properties” (al-nasū ṭusalātīna ala anvalihim). Inspired by this, Ha’erī argues for constructing an agency mechanism, later called the government, in order to settle disputes and provide security. In order to achieve this, joint private owners select a group of agents, or an institution, as their representative in the neighborhood. To use Rawls’s terminology, the task of these agents, or their related institution, is the fair distribution of social cooperation benefits.40

If we enlarge our scale, the joint private ownership of the neighborhood later turns into the joint private ownership of the city, the country or nation.41

In order to organize their affairs, the joint private owners develop an agency contract (aqd-e vekalat) between themselves and one or a group of elected agents. Government is thus the transference of some of the powers and responsibilities of joint owners to their agents through a private agency contract, which is why Ha’erī’s thesis of government as the agency of joint private owners rejects all forms of government which are not grounded on the democratic consensus of the people, particularly the idea of the guardianship of the jurist. Instead of grounding political obligation on divine command, Hekmat va Hokumat bases it on the agreement of the joint private owners of the country, i.e. the citizens, with the duties and powers of the agents (politicians) being limited only to what is transmitted to them by the owners. This also entails that, based on the rules of Shi’a jurisprudence, as far as private contracts are concerned, joint private owners can one-sidedly abrogate the agreement at any time if they find their agents violating the terms of the compact and depose them for breach of trust. The fact that the ownership is joint and private means that the selected agent(s) should take into account the interests and benefits of all owners independently and equally, and avoid preferring one owner over the others.42

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37 Ibid., 104.
38 Ibid., 97.
39 Ibid., 85.
40 See Rawls, Political Liberalism, 16f.
41 Ha’erī, Hekmat va Hokumat, 113.
42 Ibid., 120–21.
short, in Ha’eri’s theory, citizens are joint private owners of their neighborhood, city or nation, who voluntarily transfer some of their powers and responsibilities to the state through a private compact.

In my understanding, Ha’eri’s conception of the government as agency of joint private owners recognizes mutual respect and leads to a liberal idea of toleration; all the citizens have occupied the same neighborhood (or city or country on a larger scale) equally, with the same rights and responsibilities, and because of this equal, though independent, status—in the both state of nature and afterwards in society—inintolerance is unjustifiable. Because of the fact that natural and private joint ownership is valid regardless of a person’s gender, religion, social status (which does not exist in the state of nature), race, etc., Hekmat va Hokumat is compatible with what Will Kymlicka calls an equal concern for individuals as the basis of all contemporary varieties of Anglo-American political theory, including liberalism.43 In the logic of Hekmat va Hokumat, since the state is supposed to be the agent of all individuals in an equal manner, regardless of whether they are Shi’a or Sunni, Muslim or Christian, faithful or apostate, majority or minority, the state’s unequal service to individuals from different religious backgrounds, as is the case with Naraqi and Khomeini’s guardianship of the jurist theory, becomes unjustifiable. Since each citizen is assumed to equally enjoy the natural right of joint ownership, she has to have equal status before the national law. Similarly, because all the people are assumed to have made an identical private agency contract with the state, they should benefit from the advantages of such contract equally.

Ha’eri’s thesis of government as the agency of the joint owners justifies only a liberal democratic constitution, and regards the idea of an Islamic constitution, such as the present constitution of the Islamic Republic of Iran, as unreasonable. For Ha’eri, the constitution should be regarded as the official exemplification of the agency contract between the joint owners and the sovereign, determining the boundaries, conditions, limits and quality of the power voluntarily transferred to the state by the people, and thus cannot be theocratic.44

I mentioned earlier that, according to John Rawls’s political liberalism, a political theory needs to contain two ideas in order to be considered reasonable and rational: first, it needs to elaborate an idea of citizens as free and equal persons; second, it needs to contain an idea of society as a fair system of cooperation between free and equal individuals. As we saw in this section, these two fundamental ideas are visible in Ha’eri’s arguments for government as the agency of joint owners. The conceptions of agency and joint ownership that he links together imply the idea of a willingness to propose and abide by principles of fair cooperation, as Rawls’s criterion of reasonableness demands. As far as Rawls’s idea of freedom and rationality is concerned, Hekmat va Hokumat’s defense of individualism against Rousseau’s alleged collectivism provides a further argument for liberalism in Mehdi Ha’eri Yazdi’s political thought.

Individualism versus Collectivism: Criticizing Rousseau

Surprisingly, a critique of Rousseau is one of the important themes of *Hekmat va Hokumat*, and other political writings by Mehdi Ha’eri. In this section I will not discuss the plausibility of his interpretation of Rousseau. Rather, my concern is with the implications of this evaluation for Ha’eri’s liberalism, especially Rawls’s idea of rationality, and the concepts of freedom which are connected to it.

Ha’eri mostly links his criticism of Rousseau to a linguistic analysis based on the distinction between *koll* and *kolli* in traditional Muslim philosophy. In an autobiographical interview in the last years of his life, the interviewer, noticing Rousseau’s *Social Contract* on Ha’eri’s office table, curiously asked what the difference was between his view of the contract and Jean Jacques Rousseau’s. Ha’eri answered:

My [contractarianism] is very different from that of Rousseau. In my view, a plural name has [at least] two forms. On the one hand, we have the summing plural (*vahed-e majmu’i*) which represents whole versus part relationships. ... On the other hand, we have the encompassing plural (*jami’*) which reflects universal versus individual relationships, rather than whole versus part. ... If we are going to endorse autonomy and an independent character for individuals in a community, we have to explain the relationship between the community and the individual with a universal versus individual rather than a whole versus part model, which is endorsed by Rousseau in his account of the relationship between community and individuals.

Along these lines, Ha’eri places Rousseau and Hegel in the same category, considering both as collectivists and defenders of particular types of false holism. Thus, Ha’eri’s refutation of Rousseau is a liberalism contra collectivism type of refutation. Or, put another way, Ha’eri’s primary concern in dealing with Rousseau is to demonstrate the faults of collectivism and defend a liberal idea of the individual.

The first chapters of the principles of jurisprudence (*usul-e feqh*) books which are taught in Shi’a seminaries mostly contain various linguistic debates. Perhaps owing to this, the main analytic device Ha’eri uses in order to attack Rousseau’s alleged collectivism, and to defend a rights-based liberalism, is the Muslim philosophers’ linguistic distinction between whole (*koll*) and universal (*kolli*). Koll (whole) refers to the integration or collection of all components (*joz*), whereas universal includes all the members of an assumed class or group (*fard*). The members of a universal are called individuals (*afrad*), while the components of whole are called parts (*ajza*). Unlike the individual, which has all the characteristics of the universal, a part has only some of the characteristics of the whole.

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45Ibid., 85–95; cf. 466–73.
46Ibid., 381.
According to this distinction, in an individualist theory of democracy we have to consider the political society, or the social contract, as a universal rather than a whole. Rousseau’s collectivism, however, places the relation between political society and persons under the umbrella of a whole-part category, thereby providing a theoretical ground for depriving individuals of some of their rights. This confusion between the whole and the universal is the fundamental fault of Rousseau’s social contract. Being holistic rather than universalist in Ha’eri’s interpretation, Rousseau’s concepts of the general will and the public person are rendered incompatible with the autonomous status of individuals in a liberal-democratic theory. That is, Rousseau’s conception of a political society deprives the person of her true personality and her “independent and free existence.” Ha’eri, by contrast, claims that his view of government as the agent of joint owners is based on the notion of a person who is free and autonomous, having all the rights belonging to the universal concept of human being. It regards a person’s autonomy or her rights as being independent of any public notion of good, or religion, thus guaranteeing their freedom. In this regard, government as the agency of joint owners stands in direct opposition to the theory of the guardianship of the jurist, or the idea of an Islamic state, which conceives of citizens as incompetent minors, or people of unsound mind. This again provides further proof that Ha’eri’s theory of government as the agency of joint owners is compatible with the conceptions of the society and person modeled in Rawls’s political liberalism, and that *Hekmat va Hokumat* offers a reasonable and rational political doctrine from a Rawlsian perspective.

Ha’eri thinks that his theory of the relationship between person and society, based on the distinction between whole and universal, and his correspondent idea of autonomy, can also be justified from Qur’anic verses. In the Qur’an, shari’a commandments are directed to individuals rather than the collectivist whole:

The terms such as *qowm* (ethnic group), *umma* (nation of Islam) only refer to individual persons not their sum. That is because the plural sum *(vahed-e jam’i, [another name for whole]*) is a subjective, non-existing and illusive entity to which no responsibility can be attributed. Only real individuals are able to bear the burden of responsibility, and the logical foundation of this understanding of the individual and his autonomy is ... the universal versus the individual relationship.

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48 A careful reading of Rousseau’s *Social Contract* may prove that Ha’eri’s reading of Rousseau is problematic and unfaithful to the text. Nevertheless, I will not go into this debate here. See Jean-Jacques Rousseau, *Social Contract and Other Later Political Writings*, ed. Victor Gourevitch (Cambridge, 1997).

49 Ha’eri, *Hekmat va Hokumat*, 122–6; cf. 111.

50 Ibid., 126.

51 Ibid., 177–8; cf. 57, 61.

52 Ibid., 159.
Thus, the Qur’an does not attribute religious and moral responsibilities to the whole but rather to individuals, and recognizes human autonomy and freedom. This freedom is not absolute because people have to restrict their liberty within the boundaries of reason. Otherwise, liberty will turn into barbarism and chaos. In short, liberty is inconceivable without responsibility.\textsuperscript{53}

Ha’eri complements this with a final argument in favor of the incompatibility between the non-oppressive nature of shari’a and the oppressive nature of state power, claiming that there is a logical contradiction between the voluntary nature of shari’a and the very idea of a religious state. He argues that the enforcement of shari’a through coercion is self-contradictory and vicious, showing that \textit{Hekmat va Hokumat}’s understanding of shari’a law is consistent with the normative demands of Rawls’s ideas of rationality and reasonableness.

Proponents of the idea of an Islamic state usually justify their position by appealing to the Islamic principle of \textit{amr bil ma’ruf} and \textit{nahy anil munkar} (to bid what is lawful and forbid what is unlawful). In his lectures on the guardianship of the jurist which were referred to earlier in this article, Khomeini argued that the commitment to this principle entails the creation of an Islamic state. However, this interpretation of shari’a and its relationship with the state obviously violates what Rawls calls “the liberal principle of legitimacy,” according to which “our exercise of political power is proper and fully justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational.”\textsuperscript{54} Therefore, as a reasonable and rational account of Muslim political theory, \textit{Hekmat va Hokumat} rejects such an interpretation of \textit{amr bil ma’ruf} and \textit{nahy anil munkar} principle as violating the liberal principle of legitimacy.\textsuperscript{55}

While considering philosophical secularism as quite incompatible with Islam, Ha’eri apparently regards political secularism as a requirement of shari’a, and therefore tries to reconcile the conception of shari’a law with the liberal-democratic principle of freedom.\textsuperscript{56} He believes that shari’a cannot remain God’s law if it is imposed by the state because the enforcement of shari’a by force is incompatible with the nature of salvation, which can only be achieved through voluntary and rational actions. Further, if shari’a is made mandatory through state power, the difference between it and secular laws disappears. In other words, state imposition will transform shari’a into secular rule, thereby depriving it of its sacred character. When the law of shari’a is enforced coercively, it is no longer the rule of God that is vindicated, but rather the state’s law.\textsuperscript{57} If God’s law is imposed by the state upon Muslims, the concept of religious reward and punishment in the hereafter (\textit{akherat}) loses its

\textsuperscript{53}Ibid., 112.
\textsuperscript{54}Rawls, \textit{Political Liberalism}, 217.
\textsuperscript{56}Ha’eri’s argument here is partly based on Muslim theologians’ distinction between God’s cosmic will (\textit{erade-ye takvini}) and his revealed will (\textit{erade-ye tashri’i}). See ibid., 127–9.
\textsuperscript{57}Ibid., 324–5.
logic, and those subject to the law can no longer be held responsible for violating the law of God. The state imposition of shari’a law is clearly incompatible with Rawls’s definition of the liberal idea of the person, and the fact that in liberalism a person’s religious identities should not be confused with their constitutional identities. As Rawls reminds us, “on the Road to Damascus Saul of Tarsus becomes Paul the Apostle. Yet such a conversion implies no change in our public or institutional identity.”

Conclusion: Ha’eri Yazdi as a Liberal Political Theorist

For Rawls, a political theory is liberal only if it endorses liberal ideas of society and person, and when it is compatible with their normative demands. Therefore, a political doctrine which shares these understandings of society and person should also be counted as reasonable and rational. The model of political though Ha’eri Yazdi proposes to us in Hekmat va Hokumat satisfies these conditions and is both reasonable and rational from the perspective of political liberalism. Ha’eri’s main arguments in this book, including the priority of philosophy over jurisprudence, government as the agency of joint owners, and his defense of individualism versus collectivism, relate to various aspects of Rawlsian ideas of reasonableness and rationality. As a work which rejects the guardianship of the jurist and the enforcement of shari’a through the coercive power of the state on the one hand, and theorizes a doctrine of contract based upon the traditional notions of agency contract and joint private ownership (which already exist in the tradition of Islamic jurisprudence) on the other, Hekmat va Hokumat represents a Muslim work of liberal theory, and Mehdi Haeri Yazdi should be considered as a liberal thinker, at least as far as liberalism is interpreted by John Rawls.

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58 Ha’eri does not make clear what he means by the voluntary status of Islamic law. For example, one might ask whether Ha’eri’s theory would permit orthodox Muslims, in a Muslim majority society, to adhere voluntarily to discriminatory parts of shari’a, such as hudud penalties, as an expression of their religious freedom or not. In my understanding, Ha’eri’s interpretation of hudud, as one of the most controversial parts of shari’a regarding human rights, might be similar to Mohammad Fadel’s interpretation when he argues that Rawls’s political liberalism could be compatible with hudud penalties if those punishments were regarded only as voluntary. Put another way, Fadel believes that only if regarded as choice-based will the justification for the hudud penalties be religious, rather than secular. Fadel admits that in practice very few Muslims will volunteer to be penalized by the hudud. See Mohammad Fadel, “Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights Law,” Chicago Journal of International Law 8, no. 1 (2007): 16–20.

59 Rawls, Political Liberalism, 31.