

Iqtisaduna, Our Economics, Volume 2, Part 1

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An Attempt at Discovering the Economic Doctrine in Islam

In Part One of Volume Two of “Iqtisaduna, Our Economics”, the author gives an overview of the Islamic Economics doctrine comparing it with the other economic doctrines and analyzing the sources of our system by citing these laws and their relevance and significance.

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Publisher's Foreword

1. The great Islamic scholar, revivalist jurist and thinker of genius, al-‘Allamah as-Sayyid Muhammad Baqir as-Sadr (1353/ 1935 – 1400/1980) may Allah encompass him with His Mercy for the works which he bequeathed to the Muslims, both the ordinary and the learned ones among them. His life was filled

with struggles and sacrifices for Islam and was prematurely ended by the hands of the criminals. He is too famous and well known that we are unable present his biography in this brief preface for the English translation of his celebrated book, *Iqtisaduna* (Our Economics), in which he present a masterly insight and elucidation of the Islamic system of economics.

2. In the preface to the English translation of his other book *The Revealer, The Messenger, The Message* we have introduced the works of as-Sayyid as-Sadr to our respected readers. And now that we are publishing the English translation of *Iqtisaduna*, we think that is necessary to turn the attention of our readers to the preface of *Iqtisaduna* itself, in which Sayyid as-Sadr has mentioned six points, which he deemed essential for the readers to carefully observe.

We do not wish to say anything more than what the author had himself mentioned, except that these six points – which he introduced while writing the book and emphasized to his readers to keep in their mind while reading the book and studying its discussions – were in our mind also when we decided to publish its English translation. And we emphasize, along with the author, careful observation of these points.

3. The English translation of *Iqtisaduna* was prepared by the Peermahomed Ebrahim Trust of Pakistan with our encouragement. Upon completion, the translation was submitted to us but at that time we did not have the means to be sure of its correctness. So it remained with us until we found the person who could check and rectify the shortcomings in the translation. Then again just along the way we encountered some defects, and fortunately found a person who was familiar with both Arabic and English, and had qualification in economics. He compared the translation with the Arabic version and corrected, according to his own views, as much as he could.

At this point we reached the utmost stage of our ability and resources for correction of the translation, and so we deemed it right to publish it, with the help of Allah such that it cannot be said that our efforts were reckless and that it would have been better to delay the publication. After all these efforts we shall gladly accept any criticism or observation, and welcome any suggestion to improve our work. We hope to correct the shortcomings and mistakes, which we may encounter in the future.

We ask Allah, the Glorified, to bless the English translation of this book and to expand its benefit as He did for the original Arabic version. And may He accept our work sincerely for His Holy Self. He is the best Master and the best Helper.

World Organization For Islamic Services

(Board of Writing, Translation and Publication)

27/11/1401

26/9/1981

Tehran – Iran.

Introduction To The Second Volume

This book is the third in a series which we began with the book *Falsafatuna* (Our Philosophy) and constitutes the second part of the book *Iqtisaduna* (Our Economics). In this part we will attempt to discover the Islamic economic doctrines in light of the provisions in the laws of Islam and their implications in relation to the economic life.

For this reason, this work comprises two steps. One precedes the other. The first step involves gathering a number of Islamic laws and their implications, which could throw some light on the process of discovering the doctrine. The second is involves offering a unified theoretical interpretation of these laws and their significance, in order to deduce their doctrinal contents in relation to Islamic economics.

The present book (volume) covers largely the second step. The first step is also indirectly covered in the selection of the relevant legal provisions and practices that may facilitate the second step. But this was done without specifying – as a condition – that the laws chosen are those that I personally adopted from juristic point of view. So the precepts that this book presents are not entirely according to the juristic approach I personally adopt. Instead, there are precepts that I do not embrace, despite their significance in some important discussions and the great attention given to them in the addendum to this book.

It is therefore necessary that I highlight this point and mention the sources from which I have drawn the precepts concerning lands, mines, water and similar natural resources. Otherwise, when I mention or emphasize any of the laws given in those books, it may be wrongly construed that I share the same juristically views. I defer the details in respect of this point and the reasons that made me take this position in the book concerning the first step, to the first chapter of this book.

In this connection, I wish to mention that the basis of all the laws and legal enactments presented in this book are from these three sources:

- i) The juristic opinions of our pious scholars. In this book, the majority of the laws – from which we seek some light in the process of discovering the doctrine – are drawn from this source. For almost all these laws, one or more jurists have selected and given formal legal opinion concerning them.
- ii) The juristic opinions, which the author embraces and believes as valid.
- iii) Juristic viewpoints, which are technically admissible in the field of research. However we may not juristically accept the conclusions derived, for the same reasons that sometimes prevent the researcher from adopting the conclusion arising from his research work or from the possibility of a conflict with the obvious.

There are certain technical terms used in this book and the definitions were already given in Volume 1,

Part 1. These definitions are to be applied throughout this book. The discussions in respect of private ownership, state ownership, public property and the permissibility of public use may be understood in the context of the intended meanings of the respective terms.

The book as you will see – in line with the plan and approach – is confined to the description of the laws that are connected with quest for the Islamic economic doctrine and constitutes part of the main structure of Islamic economics. It is for this reason that a number of property laws – their transcription and development – have not been expounded in this book, as that is not required in the search of the economic doctrine. It is our responsibility to expound them, God willing, at another occasion in the future.

Likewise, a number of the legal opinions and points of view that we present in the discussions throughout this book are not expounded in the book itself in a scientific manner. That is our preference to facilitate understanding of the discussions and to maintain their uniformity in style. However, as there is need to analyse these views in a scientific manner, we have chosen to do so in the addendum to this book.

Therein we have employed the style and method of interpretation, specific to juristic research. Only specialists in the science of jurisprudence would be able to fully comprehend the discussions and the implications.

In the end, I hope the modest attempt made in this book will set in motion many other research works on a wider scale and lead to the achievement of greater success in discovering the economic doctrine of Islam by seeking inspiration from the sacred laws of Islam and their great value in all fields of life.

**Muhammad Baqir as-Sadr
an-Najaf al-Ashraf
Iraq**

Chapter 1: Operational Discovery Of Economic Doctrine

Economic Doctrine And Islam

Before we set out to study a particular economic doctrine, it is best to agree at the very beginning as to what we mean by the term ‘doctrine’. This will help to illuminate, at the outset of our efforts, the guideposts to the goal and the nature of the contents, which any discussion of the economic doctrine should make explicit and clear.

What does the term ‘doctrine’ mean? What is the difference between economic doctrine and science of economics? Which are the fields (in economics) that are treated ‘doctrinally’?

Based on the answers to these questions, we shall determine the guideposts to the economic doctrine in a broad way, by which we will set the nature of the inquiry in respect of the Islamic economic doctrine. In this connection, we may recall what we said about the meaning of the terms ‘doctrine’ and ‘science’ in a previous discussion.¹ We stated that “economic doctrine is the way that the society prefers to follow in its economic life and in solving of its practical issues” while “science of economics is the science which describes the economic life, economic events and economic phenomena, the relationships among those events and phenomena, and the general factors and rules determining them”.

These definitions indicate an essential difference between the two. But this step is inadequate when we attempt to discover a particular doctrine or to form a conclusive idea about it. However we have made use of this basic distinction to make it easy for the reader to become acquainted with the nature of Islamic economics, which we are now studying. It will also enable him to perceive in light of this distinction that Islamic economics is a doctrine and not a science. It is the way that Islam prefers to its adherents to follow in their economic life. Islamic economics is not an exercise whereby Islam expounds and interprets the events in economic life and describes laws that govern them.

To realize this goal and to emphasize the doctrinal nature of the Islamic economics, it is sufficient for us to say respect of doctrine that it is a system, and that in respect of science that it is an interpretation. From this we know clearly that Islamic economics is an economic doctrine and not a science of economics. But now it is necessary for us to know that the economic doctrine is much more than this so that we mark out – in light of our understanding of the term – the spheres in which it functions, and then to search for the ways Islam is connected with each.

In which fields does the economic doctrine operate? How far does its range extend to? What is the overriding characteristic that we find in each doctrinal economic idea – that makes the characteristic a hallmark of those doctrinal thoughts in Islam – which we may try to combine and draw up in one single bunch? All these questions demand that we give a definite meaning to the doctrine, as distinct from science, which is capable of providing the answers to all these questions. And in this connection, it will not be sufficient to say that the doctrine is simply a “way”.

There are those who consider the scope of doctrine as being restricted only to wealth distribution, and that it has nothing to do with production since the processes of production are ruled by the laws under the science of economics. Consider the production of wheat or textile – the production processes and the level of human acquaintance with the forces of production and their characteristics. The process of the production and all the related factors do not become any different with the difference in the nature of the economic doctrines.

Hence economic science is the science of the laws of production, and economic doctrine is the art of the

distribution of wealth. As such any research work related to production and its improvement – or innovations with respect to the factors of production – is a subject matter of the science of economics. It is of universal nature, in which nations do not differ just because of differences in social principles and concepts or because a nation embraces one particular principle instead of another.

Any research that describes wealth, its ownership or its disposal, is on the subject matter of doctrinal research, as these constitute part of the economic system. These are unrelated to the science of economics. They are connected to the worldviews that the respective doctrines adopted such as capitalism, communism or Islamic.

However, a big mistake is usually involved in making this distinction between the science and the doctrine. It is based on the premise that the sphere, which each of them deals with, is different from that of the other. This leads to the thinking that the doctrinal characteristic and scientific characteristic are two outcomes from studying two different spheres, such that if the research is on production then it is a scientific research and if it is about distribution then it is a doctrinal research.

The fact is that the science and the doctrine differ from each other as to the method and the goal of the research, not as to their subject matter and the sphere of concern. The doctrinal research remains doctrinal and preserves its doctrinal stamp as long as it keeps to its particular method and goals, even when it deals with the subject of production itself. Likewise the scientific research does not lose its scientific nature, even if it deliberates on distribution and examines it with the method and the goals appropriate to the science of economics.

It is on account of this that we find that the idea of centralized planning for production – whereby the state exercises the authority of administering and supervising production – is one of the most important doctrinal theories. It is regarded as an essential element in the socialist doctrine or system, or other doctrines and systems that lean toward socialism. This is so despite the fact that we know that planning of production and its control by a higher body like the state does not mean that body owns the forces of production. Nor is it connected with the issue of distribution of the factors of production among individuals.

The idea of centralization of production is therefore a doctrinal thought, connected with the economic doctrine. It is not a subject matter under the science of economics, although it deals with production, not distribution. On the contrary, we may find many thoughts that deal with (wealth) distribution aspects being included in under the science of economics, even though they are connected with distribution, not production. For instance, Ricardo declared that the share of the labourer from the wealth produced – which is represented in wages – does not increase in amount under any circumstance from what is merely sufficient for the sustenance of living.

When he said that, he did not mean to affirm anything doctrinal. Nor was he laying down a rule for the state to prescribe a system for the payment of wages, like the system of private ownership and

economic freedom. He was only trying to explain the reality in which the labourers live and the inevitable result of this reality, given the state's rejection of policy on wage limits in adherence of its belief in the economic freedom in its capacity as a capitalist state.

The doctrinal aspects of economics and those of its science both encroach into each other's sphere and examine the issues of production and distribution together. However, this should not lead us to avoid differentiating the two in economic research. Such approach is favoured by those who were convinced that there is no economic system in Islam, when it was not possible for them to differentiate positively between the science and doctrine parts of economics.

They thought that a statement about the existence of the economic system in Islam would be tantamount to claiming that Islam was ahead of western thinkers in the scientific creation of the political economy. They also thought that a statement as to the existence of the Islamic economics would mean that we shall find within Islam an economic thought and scientific discussion in respect of the laws of economic life such as production and distribution, like those we find in the discussions by Adam Smith, Ricardo and many such leading political economists. Since we do not find in Islam such discussions, then according to them, the so-called Islamic economics is nothing but a myth and merely a figment of imagination.

However these people would give up their conviction as to the non-existence of the Islamic economics, if they would clearly grasp the difference between economic doctrine and economic science – or political economy, as it is named – and would know that Islamic economics is a doctrine and not a science.

An economic doctrine consists of all fundamental rules of economic life connected with the relevant ideology of social justice. The science of economics, in turn, comprises all theories, which describes the reality of economic life apart from a preconceived ideology or an ideal on justice. Thus, it is the ideology of justice, which is the dividing line between ideology and science, and the hallmark demarcation by which doctrinal ideas are distinguished from scientific theories. It is such because the ideology of justice itself is not a scientific or tangible entity that is capable of being measured and observed, or subjected to scientific experiments.

Justice is only a moral judgment and appraisal. So when you want to know the scope of justice in respect of the system of private ownership or to pass judgment with respect to the institution of interest-based banking, as to whether it is just or otherwise, you do not have recourse to those scientific methods and measurements which you would employ in the measurement of atmospheric heat or the boiling temperature of a certain liquid. Heat and evaporation are physical phenomena capable of being subjected to scientific assessment. But in appraising justice you need to resort to ethical values and higher ideals, which are beyond the boundaries of physical measurement.

Justice itself is not a scientific idea. Therefore, when it combines with a thought, it imprints it with a doctrinal stamp and makes it distinct from scientific thinking. Hence those principles related to private

ownership, economic freedom, prohibition of interest or nationalisation of the forces of production, all these are included in the doctrine because they are connected with the idea of justice.

As for the law of the diminishing marginal returns, the law of demand and supply, or the iron law of wages, all these are the laws of economic science. They have nothing to do with the appraisal of those economic practices. The law of the diminishing returns cannot judge whether the diminishing return is fair or oppressive. It only reveals it as permanent objective reality. Likewise, the law of supply and demand cannot justify the rise in price – due to a shortage of supply or an increase of demand – according to any particular idea of justice.

It only shows the objective reciprocal relationship between the price (of goods) and the quantities of supply and demand, in the sense of these being a certain inevitable manifestation of capitalist market. It is similar in respect of the iron law of wages. It explains, in the context of objective reality – as to what make workers end up always receiving wages barely adequate for their basic sustenance – irrespective of whether their miserable share in the distribution is fair or otherwise.

The fact is that none of the scientific laws rests on the ideology of justice. They only rely on deductions from the reality and observation of its numerous manifestations in various forms. In contrast, doctrinal laws are always embodied in a particular idea of justice.

Yet this clear-cut division between a doctrinal inquiry and a scientific inquiry does not prevent or preclude a doctrine from occasionally assuming a scientific frame of inquiry. Just as in the case of the laws of demand and supply or the iron law of wages, these laws are applicable to the reality that they describe in a capitalist society and do scientifically conform to doctrinal capitalism. These are scientific laws within a particular doctrinal framework. They are not universal scientific laws and are not valid in other frameworks, as we have elaborately explained in earlier part of this book.²

By merely drawing this clear line of demarcation between economic doctrine and science of economics, we come to know that by saying that economic doctrine exists in Islam does not mean that Islam investigates the law of supply and demand, or measures the effects of the increase or decrease in supplies or demands in the free market. Instead, Islam inquiries about the granting of freedom to the market and calls for its protection and preservation, or that Islam calls for supervision of the market and restrictions on its freedom in conformity with the concept of justice it adopts.

Similarly Islam does not investigate (the question of) the relationship between variation in (commercial) profits and interest, or the relationship between the flow of interest-based lending and commercial activities. Nor does Islam investigate the factors that lead to variation in profits. But it appraises profit and interest, and expresses judgment in respect of usurious or commercial investment as to whether they each conform to its idea of justice. Similarly, Islam does not investigate the phenomenon of diminishing returns in production or their causes, but it inquires whether it is legitimate and fair to place production under the supervision of a higher central body.

From the above, we learn that it is the role of economic doctrine to solve the problems of economic life, according to its idea of justice. In Islam, the two expressions *halal* (permitted) and *haram* (prohibited) are embodied in the values and the ideals that Islam believes in. When we put these together, then it is only natural that it may lead us to the conviction that Islamic economic doctrine does exist.

The consideration of *halal* and *haram* in Islam extends to all human activities and the scope covers all behaviours – the conduct of the rulers and their subjects, of buyers and sellers, employers and employees, the workers and the jobless. Every bit of these behaviours is either *halal* or *haram* and consequently, either just or unjust. When Islam prohibits explicitly a specific action then that act is *haram*. Otherwise it is *halal*.

Now if each activity in the economic life is subject to the consideration of *halal* or *haram* – interpreted in term of the values and ideals – the correct method of inquiry in the quest for the Islamic economic doctrine, is to be guided by values, ideals and conceptions reflected in the rules determining *halal* and *haram* matters.

The Relationship Between Economic Doctrine And The Civil Law

Just as we have learned that economic doctrine is different from economic science, we should also know the difference between economic doctrine and civil law. Economic doctrine is a collection of the fundamental theories that deals with the problems of economic life, and civil law is the legislative provisions that regulate in details the relationship among individuals and their personal rights including those related to pecuniary matters.

On this basis, the economic doctrine of a society cannot be the same thing as the civil law of the state as it is obvious that the capitalist economic doctrine of many countries in the world is not the civil laws in the respective states. For this reason, two states – for instance Germany and Italy – may differ from each other as to their respective civil laws, while both embrace the same economic doctrine. Those civil laws do not form a part of the capitalist system. The civil laws of the capitalist states that regulate trading, leasing or loan contracts, for instance, do not constitute part of capitalism in the sense of its being an economic doctrine (system).

These civil laws were applied because of the features of the capitalist economic doctrine that would result in conflicts between the basic principles of capitalism and the finer legal consequences in their application. The laws deal with practical difficulties arising from the fundamental principles of capitalism in respect of freedom of ownership, freedom of use as well as freedom of investment. These are the laws, which the capitalist system with its principles of freedom relies upon.

It would therefore be a mistake for the researcher on Islamic economics to offer a collection of Islamic rules and laws which are on the plane of the civil law according to the understanding of the time, and present them – in conformity with their legal texts – as the Islamic economic doctrine. Some Muslim

writers do so when they attempt a study the economic doctrine (system) in Islam.

They speak of a collection of laws in Islam with regulations on property rights (*huququl-maaliyyah*) and business transactions (*mu'amalat*) like the Islamic laws in respect of trading, leasing, partnership, product specifications, gambling, fraud and so on. It is indeed similar to someone who wants to study and determine the economic doctrine of the English nation, yet instead of identifying capitalism as its fundamental principles – in respect of property ownership, its use and investment and the concepts and values these fundamental principles represent – looks only at the country's civil laws and regulations connected with private ownership.

But while we emphasize the need for the separation between the theoretical nature of the economic doctrine (system) and the civil law, we do not sever the relationship between the two. On the contrary we simultaneously emphasize the strong link that firmly binds the economic doctrine and the civil law of a society, in the sense of them being parts of an integrated structure.

As a matter of fact, the economic doctrine with its theories and fundamental principles form the foundation for the upper structure, which is the civil law. However, the economic doctrine being the theoretical foundation for the law does not disqualify it from being in the upper structure resting on another foundation, such that the entire theoretical edifice of the society is built on a common theoretical base. It draws together several principles with some of them resting on the other, that the preceding principle is considered the base and foundation on which the whole structure is built. The economic doctrine and the civil law are two such theoretical structures.

The civil law is the upper section of the two components, and takes shape in conformity with the economic doctrine and is determined in light of the theories and ideology, which that doctrine represents. To clarify this point further, let us take an example from the free enterprise doctrine in capitalism – and its connections with the civil laws in theory and practice – to demonstrate the link between them and the extent to which the law is affected by the doctrine.

It will be from the sphere of personal rights in civil law that we will be able to understand the influence of the economic doctrine on the civil law. We will learn that the theory of tort liability, which is the cornerstone of civil law, having received its theoretical input from the nature of the capitalist economy during the period capitalist ideas on economic freedom were raging and the principle of free enterprise held sway over the mainstream thinking.

The emergence of the will theory (in contract law) later, over the theory tort liability resulted from that. The theory of tort liability bears the doctrinal stamp of capitalism since it places emphasis – following capitalism's belief in freedom and its individualist inclination – on the premise that it is the private will of the individual that is the sole source of all the personal obligations and rights. It does not accept the existence of the right of an individual over another, or the society's right over an individual that is not backed by evidence demonstrating that such obligations and rights are established with his free and full

willingness.

It is clear that the refusal to acknowledge the liability of a person towards another, which does not originate from the full and free will of the first person, only means a faithful translation of the ideals and essence of the capitalist doctrine (the economic freedom) from the economic doctrinal space to the legal arena. Because of this, we find that when the theory of tort liability is founded in another economic system, it differs from this. In such a case, the significance of will becomes far lesser.

Among the evidence that the capitalistic economic doctrine theories have been translated into elaborate legislative enactment on the legal plane, we can see how the civil law founded on the capitalist doctrine allows contracts for short-selling, futures trading, price differentials on credit sales and purchases, or employment of workers in oil extraction industry that enables the capitalist to own the oil produced. The law, in allowing all these, acquires legitimacy from the theories based on the capitalist economic doctrine. We find the same thing in the field of substantive law, including those in relation to property ownership. The law regulates the rights in accordance with the general standpoint, which the economic doctrine holds, in respect of the distribution of wealth.

Doctrinal capitalism, upholding freedom of ownership and viewing ownership as a sacred right, obliges the upper unit of its capitalist structure – the civil law – to permit individual ownership of property rights in mines in keeping with the principle of the freedom to own. It gives priority to the individual in benefitting from the property he owns over any other consideration and to grant him the freedom in using his property in a manner that he is pleased or fancies, irrespective of whatsoever, as long as the freedom emanates from his natural rights as an individual, not a social function that an individual exercises within the society.

After the peak of the era of the economic freedom, perception of private ownership underwent a change. New civil laws emerged disallowing ownership of some types of assets and natural resources, and restricting an asset owner in the deployment and enjoyment of his assets. All these bring to light and illustrate the interdependence between civil law and the respective economic doctrine to such a degree that it is possible to know and understand the economic doctrine and its original features by looking at the civil law in practise.

So a person can have recourse to the civil law of a country, if it is not feasible for him to directly get acquainted with its economic doctrine, in the sense that it is part of main structure with the economic system as the base. The civil law – as the upper section – reflects the essence of the economic doctrine and its general characteristics. In that case it would be possible for him, by studying the civil law of that country, to easily know whether it is a capitalist or socialist country. He may even gauge the degree to which the country practises its capitalism or its socialism.

Summary

So far we have discussed the general difference between economic doctrine and science of economics, and the difference between economic doctrine and civil law. From this discussion we could derive that it is incorrect to talk about Islamic economic doctrine as a science of economics, or as a collection of rules under the civil law that regulate commercial and transactions in the economic life.

Besides, we have also learnt the nature of the relationship between the doctrine and the law. In the coming chapters we shall, God willing, see the significance of this relationship. We have now realized the existence of an economic doctrine in Islam – which is not a science of economics – and made distinction between doctrine and law by understanding the nature of the relationship between them.

We should therefore now discuss our future work on Islamic economics in this book and scrutinize its essentials and their main points. We should also describe our method based on our earlier study and understanding of economic doctrine, economic science and civil law, and the nature of the relationship that binds the civil law to the doctrine.

The Process Of Discovery Versus The Process Of Formulation And Development

The research work we will carry out in our study of the Islamic economic doctrine will differ from that carried out by the leading exponents of the other economic doctrines. The researcher on the Islamic economic doctrine feels that his standpoint is fundamentally different from that who researches other economic systems like capitalism and communism.

The Islamic economic researcher or thinker finds himself before a completely established economic system and he is called upon to perceive its tangible aspects, determine its general framework, disclose the basic rules of thought that govern it, overcome (as far as possible) the consequences of long historical intervals, present its original features and reject the understandably strong inclination to recognize the dishonest attempts (by the ruling elites) make their practices look as if they were in conformity with Islam. Further, the researcher has to liberate his self from the framework of non-Islamic cultures that prevail in understanding of matters in accordance with their nature and thinking patterns. To endeavour to get over all these difficulties and to overcome them and reach at an Islamic economic doctrine is the job of the researcher of Islamic economics.

On this basis, it can be said that the process that we will pursue is a process of discovery. This is in contrast to the case with the thinkers who advocate the economic doctrines of capitalism and communism, for they pursue the process of formulation and development. Each of them – the process of discovery, and the process of formulation and development – has its characteristics and distinctions which are reflected in the research efforts that researchers carry out on Islamic economics and those on

the capitalist or the communist economics.

The most important of these characteristics and distinctions are the determination of the manner of the conducting the procedure and its generalization. The process involving the formulation of the economic doctrine is intended to construct the complete theoretical structure of society. The deliberation thus proceeds in a normal sequence. It progresses in a natural order and performs the work of directly formulating the general theories of the economic doctrine. Then it uses them as the premise for the secondary inquiries and for the formation of the grand structure of laws, which rests on the economic doctrine and is considered as its upper section. This is like the civil law, which as we learnt earlier, rests on the economic doctrine as its foundation.

However, in the other process of the discovering the economic doctrine, the sequence of the work is the reverse. In pursuing this goal, we do not have in our possession an explicit picture of the doctrine or any of its features. Nor do we have a particular sketch of the doctrine before its being formed. We do not know whether the doctrine embraces the principles of common ownership or private ownership, just as we have no idea as to what theoretical basis it adopts for ownership – whether it is need, or work, or freedom.

Under this situation, so long as we do not have in our possession a definite text sourced from the originator of the doctrine (system) – in order to discover it – we have to remove the obscurity that encompasses the doctrine. The only alternative is to search for another method or unveil some of its hidden and unseen parts.

We can propose this method in light of the interdependence between an economic doctrine and the civil law, a relationship that we have explained earlier. As long as the civil law constitutes the upper section of the structure – resting on economic system and is shaped by the economic doctrine – it is possible to discover the economic doctrine by way looking at the civil law. We already know that the civil law rests on that unknown – the economic doctrine we are searching for.

Hence it is necessary for the process of discovery to search for the scattered radiations of the economic doctrine in the outer sphere – that is from the other parts in the main structure – and from its other signs, the traditions, that are reflected in other fields. We could arrive, by ascertaining these radiations and traces, at the stage whereby we could form a definite estimation of the type of thoughts and theories about the economic doctrine that lie hidden beneath the surface.

The process of discovery therefore needs to follow a path opposite to the course that the process of formulation and development follows. The process of discovery proceeds from the upper section of the structure towards its base. It sets about doing so by collecting all the traces and stringing them together and ascertaining the outline of the economic doctrine, instead of setting out from the doctrine formulation and progressing to the branches.

This will be our firm standpoint in respect of the process, which we will pursue for the discovery of the

Islamic system of economy, or more correctly, much of it. While it is possible to present some aspects of the Islamic economics directly from the texts, there are some fundamental theories and ideas that are not easy to reach in the form of direct texts. Reaching them can be done only indirectly, that is by relying on the interdependence between the civil law in the general Islamic edifice. We will draw guidance from the laws by which Islam regulates the matters relating to contracts and rights.

So we proceed from the upper section and descend gradually to the base because we are carrying on the process of doctrine discovery. As for those who are carrying on the process of doctrine formulation and development, they ascend from the base to the upper story since in their situation the upper story comes only after the base.

In this way, our standpoint from the very beginning differs from that of the forerunners of the capitalist economic doctrine. Our standpoint also differs from that of those who are engaged in studies to discover and determine some economic doctrines whereby it is possible to reach their goals with a direct method. These economic doctrines are generally of the forms that conform with that heralded by the leading forerunners. For instance, our acquaintance with the economic doctrine of Adam Smith does not depend on our study of his thoughts in the sphere of civil law or the method it chooses to follow in regulating legal rights and obligations. Rather, we can combine its study with his doctrinal thought in the economic sphere.

The situation is the opposite when we seek to know the contents of the economic doctrine embraced by Islam. As long as we are not able to find their definite shapes in the Islamic sources (as we find it in the case of Adam Smith) we will be compelled to pursue its traces and to discover the economic doctrine in an indirect manner, as described earlier.

This makes the process of discovery that the Islamic researcher pursues to sometimes appear inconsistent. It appears that he makes no distinction between the economic doctrine and the civil law, when he tries to present the Islamic ordinances in the civil law and when he intends to study the economic doctrine in Islam. However he will indeed be right in doing so as long as he tries to present those laws as the upper section of the overall structure and capable of facilitating the discovery of the economic doctrine and not as the Islamic economic doctrine itself.

The Financial System As The Civil Law

In this connection it is necessary that we also link the financial system with the civil law as part of the grand structure of the economic doctrine, which reflects its features and takes shape according to its requirements. Just as it is possible for the process of discovery to benefit from the “radiations and traces” of the doctrine reflected in the civil law, it is likewise possible to benefit from similar doctrinal signs in respect of the financial system.

When we want to site an example of such influence of the economic doctrine on the financial system –

being part of its grand structure – we can consider a relationship similar to that between the civil law and the economic system. One of the manifestations of the relationship between the capitalist system of economy and the general system of civil law is the effect of the thoughts on domains.

By “domains” we mean those assets, which are the properties of the state such as lands, forests, mines which the state owns and yield revenue for the government. The domain is considered in the financial system as one of the main source of revenue for the state. Under the influence of the principle of economic freedom, the concept of domains became less significant and the scope of the state-owned enterprises shrank and almost disappeared from the financial system of the state when the capitalist doctrine became dominant.

One of the requirements for the safeguarding the economic freedom was non-interference by the state in production activities. The only exception was those industries, in which individuals were incapable of operating, by virtue of their natural characteristics. For these, the capitalist state could rely on its general financial capacity using taxes and other sources of revenue.

Then, the domains regained prominence as an important source of state revenue and its scope expanded. This was particularly so after the emergence of the trends towards communism and the decline of the principle of economic freedom in the mainstream economic thinking. One of the evidence of the relationship between the economic doctrine and the general financial system is that the revenues of the state differ in their functions, in line with the respective economic doctrine.

During the period when the idea of the economic doctrine that upheld economic freedom was dominant, the main function of the revenue was to cover expenses of the state as an apparatus for the maintenance of security and the defence of the country. When the communist ideology began to prevail, the role of state revenue was broadened. It then included addressing the inequitable distribution of wealth, removal of disparity between social classes and the establishment of social justice.

The state was not content with the collection of revenue or taxes only to the extent it would cover its expenses as a machinery for the maintenance of security and the defence of the country. It broadened the scope further to include the new responsibilities it had prescribed for itself. These evidences prove that the revenue of the society is generally applied in line with the fundamental principle of the economic doctrine the society embraces, in the same way as the civil law is viewed as signposts in discovering the economic doctrine.

Summary And Deductions

On the basis of what has been discussed earlier, it becomes necessary that we include a number of Islamic rules and legal enactments, which may be construed as part of the grand structure constituting the economic system, within the orbit of the process of discovery of the economic doctrine, even if they are not wholly part of the doctrine itself.

For this reason, the discussion in this book will cover many of the ordinances in respect of *mu'amalat* (pecuniary and personal relations) rights, which regulate the pecuniary relations between individuals. It will also cover some of the ordinances under the sacred law for the regulation of the financial relations between the state and the people, and the determination of the state's sources of revenue and its policy in respect of the spending of these revenues.

As discussed earlier, this book does not intend only to present the Islamic economic doctrine. It also attempts to pursue the process of discovering the doctrine and to ascertain the modus operandi for this process, which is the course subject matter, and its results. For this purpose we shall select the relevant Islamic ordinances in respect of the *mu'amalat* rights and (state) taxes and organize them accordingly. These rules may be considered as part of the grand structure of the system and they throw some light on the process of discovery. As for the ordinances that have no share in facilitating the discovery process, they will be excluded from the sphere of this inquiry.

We shall mention, as examples, the subjects of usury, fraud, *kafarah* (monetary penalty for expiation of certain offence) and the tax for religious war. Islam has prohibited interest in pecuniary transaction, just as it has prohibited frauds. The prohibition of interest and interest-based lending or borrowing has a role in the process of discovery, as it is a component of the grand structure of the theory of the wealth and income distribution, and as such reveals the fundamental rules for wealth distribution in Islam. This will be dealt with in our deliberation on wealth and income distribution, after the topic on production.

As for the prohibition of frauds, it is applicable not only to economic transactions in Islamic society. All societies, despite differences in their economic systems agree on this. It is similar in the case of *kafarah* and the tax for holy war (*jihad*). The redistributive tax, which Islam imposes for the maintenance of the social equilibrium like *zakat*, for example, has a part in the process of discovery. But it is not so in respect of the tax of holy war (*jihad*), which Islam enjoins for financing of the army of the *mujahidin* (the Islamic army) for it is a part of the mission of the Islamic state and not an element of the economic doctrine (system) of Islam.

The Synthesis Of The Laws (Ordinances)

When we consider the collection of the Islamic rules which regulate *mu'amalat* and the rights and obligations (of the individual members of the community), let us shift our attention to what lies deep beneath these fundamental rules that give shape to the economic doctrine in Islam. In this connection, it is necessary that in presenting and examining the rules, we do not treat them as if each rule is independent or isolated from the others.

The method whereby each rule is isolated and treated independently is more appropriate for discussions of the rules in the legal sphere, since such discussions do not involve surveying and tracing the rules to the relevant doctrines. Such discussions only need to present the Islamic rules that regulates, for instance, the contracts relating to trading, leasing, loans or partnership. After that, there is no need for a

synthesis between these rules that would lead to a general rule.

But since our study and presentation of these rules constitute part of the process of discovery, mere presentation of their details will be of no benefit to us even though many proponents of Islamic economic system are content to limit their research to this stage. We are of the view that there is no choice for us but to integrate these details. That means we should study each and every one of the rules as component parts of a single object and as a consolidated side of a main structure.

That will enable discovery of the general rule, which emanates from within a composite whole, with appropriate elucidation or rationalization. The discovery will not be possible by isolating the individual rules and treating each as independent of the others. The prohibition of interest in a loan contract, or the permissibility of an earning resulting from some factors of production under a leasing arrangement, or disallowing a lease holder from owning certain natural assets – lands, mines, etc. – that he has acquired by the lease contract; all these rules must be studied – after verifying their legal positions – and be synthesized together, to enable us to deduce the fundamental laws of Islam in respect of the distribution of income and wealth.

This would distinguish the Islamic standpoint in respect of the distribution of wealth generated by those economic activities from that under the communist doctrine, which establishes that distribution of wealth is only on the basis of work, or from that under the capitalist doctrine, which holds that distribution of wealth is on the basis of the various forces of production that jointly contribute in generating the wealth.

The Significance Of Key Conceptions In The Quest For The Islamic Economic Doctrine

We can place the conception that forms an important part of Islamic tradition in the same class with the prescripts of law, which contribute towards the discovery of the Islamic economic doctrine. By conception we mean every view or concept that explains a cosmic or social or legislative fact. The doctrinal belief of Islam about the relationship of the Universe with Allah, the Supreme and its connection with Him expresses a definite Islamic conception in respect of the universe.

“Unto Allah belongs whatsoever is in the heavens and the earth. Allah encompasses everything”. (4: 126).

The Islamic doctrinal view that the human society had progressed from the instinct-based primitive stage to the stage of reason and reflection expresses the Islamic concept of human society, as expressed in the Qur'an.

“Mankind was one community and Allah sent unto them prophets and bearers of good”. (2:213).

“Mankind was but one community then they differed”. (10: 19).

The Islamic doctrinal belief holds that ownership of goods and properties is not the personal right of man. Instead it is delegated to him by virtue of his appointment as vicegerent of God. This reflects the specific Islamic concept about a particular legislation related to the establishment of the institution of private ownership. According to the Islamic idea, assets belong to Allah in their entirety. God from time to time appoints individuals as His vicegerents for the management of the assets.

By this, the philosophy states that man's right to a property is a right, which he holds by virtue of a legislative act that appoints him to the position of vicegerency of God. In this respect he only holds it as a trust from God.

The conceptions have different perspectives, the Islamic interpretation of the universe and its phenomena, the society and its relationships (between its parts), or any of the established precepts of law. It is on this account that they are not included in the principles in a direct manner. Notwithstanding this, some aspects of these conceptions that are connected with the economic life and its phenomena or with the established legal precepts of Islam will be of use to us in our search for the economic doctrine of Islam.

In order to clarify the part, which this aspect of the conception plays in determining the landmarks of the Islamic economic doctrine, we should anticipate the results that the following discussions will reveal later and borrow from the two conceptions that enter into the process of the discovery of the Islamic economic doctrine, which is the subject matter of the study of this book.

The first of these two conceptions is the Islamic philosophy about assets whereby Allah appointed a group of people as His vicegerent (trustee) over the natural assets and wealth and established rules on personal ownership, within which an individual can exercise the mandates of vicegerency pertaining to the development of the assets (*mal*) entrusted to him, their protection and their employment in the interest of man and for his welfare. Therefore, ownership is an operation an individual carries out on behalf of the society and on his own account within the society.

The other conception, drawn in advance by us from the future discussion is the view of Islam concerning exchange or trading as one of the phenomena of economic life. The Islamic view is that trading, by its original nature, constitutes a branch of production and whenever a merchant sells the products of another person he thereby actually participates in the process of production.

Production, in reality, is always a process that produces utility and service, not physical product. Material or substance cannot be created anew. The preparation and processing of the product – in a new form until the point of delivery to consumers – are all considered part of production. Rather, the product has no utility value (for the intended use) from the perspective of the consumers without all the processes it undergoes. Any trade transaction involving the product, which is distant from its true and rightful preparation process, is considered a disruptive operation, intended only for the respective beneficiary and results only in the extending of the distance between the product and its consumers. It is an

irregular tendency that deviates from the original function of exchange and trading.

Let us defer the Islamic understanding of these two conceptions and its elaborate elucidation to an appropriate place in this book and present it as favorably as necessary to explain the part they play in our search for the Islamic economic doctrine, even though it will be a little repetitive. This will help us to fully comprehend and determine – in light of the outline of these two Islamic conceptions – the role that such notions play in the search process. These are some conceptions that play their parts – by shedding light on some of the precepts of Islamic civil rules and regulations – in helping us to understand the rules from legal texts, in which they are expressed, as well as in overcoming the obstacles in doing so.

The first of these two conceptions is the philosophy about the institution of private ownership, as we have mentioned a while ago. It prepares the mind such that it is ready to accept the texts of Islamic law, which restricts the right of the owner of an asset in conformity with the demands of the general well-being and interest of the society. Ownership of an asset, according to this notion, is a social function that the legislator entrusts to an individual so that he may share the responsibility of *khilafah* (vicegerency) on earth, with which Allah has honoured man. Ownership is not a personal, unconditional and unrestricted right.

Therefore, the rights in owning an asset are subordinated to the requirements and obligations under this institution of *khilafah*. It is easy in light of this to accept the texts that restrict the power and authority of an owner over an asset he holds, and even those that sanction its seizure from its owner (nationalization) in certain situations. Texts of Islamic law about land state that it should be taken from the him who owns and holds it, and be handed over to someone else if the former fails to cultivate the land productively or if he fails to deal with the land in such a way that conforms to the requirements under his vicegerency.

As these texts violate the sanctity of the institution of private ownership, Muslim scholars of Islamic law, are of two minds about accepting these texts. However, it is obvious that had these scholars viewed those texts with a perspective that is in line with the Islamic conception about the institution of private ownership, it would not have been difficult to accept them and respond to the underlying idea and spirit. By this we know that the Islamic thoughts in the economic sphere assume the form of an ideal and their adoption is necessary to give a complete and definite shape to the legislative texts from Islamic traditions, and to facilitate in understanding them. We find that some of those legislative texts are in precise conformity with this line of thought.

They embraced these conceptions or framework, in spelling the rules under the Islamic law. It is mentioned in the tradition, in the case of land and its ownership by man; “*the land belongs to Allah, the Supreme. He has handed over to His servants (men) to hold it in trust. So he who leaves it lying idle and uncultivated for three consecutive years without any reason, it should be taken from him and be given to someone else*”.

In the description of the rule for confiscation of a land from its owner, and the basis for the seizure we see that the tradition had invoked a particular conception regarding ownership of land and the role of the individual in relation to that ownership.

Some Islamic conceptions establish the basis for developing rules in Islam to fill the lacuna in law – gaps in the legal provisions – by authorising the ruler to address the legal needs. An example is the Islamic conception concerning trading as mentioned before. The conception is a good basis for the state to exercise authority in regulating commerce so as to prevent – within the limits of its capabilities – any attempt at separating the exchange of goods from their production by making the respective trade activities as processes that extend the passage between the commodity and its final consumer. This view is in contrast to that the exchange or trading process as an independent step to facilitate procurement of the commodity by its consumers.

So, the Islamic conception either sheds light on the general legislative texts or provides the state with the authority to regulate in the economic sphere, by which any possible legislative gaps are addressed.

Legislative Gaps In The Economic Sphere

When we mention legislative gap in the economic sphere, we must assign it great significance during our search for the economic doctrine, as the gap represents a limb of the Islamic economic doctrine. In fact, the Islamic economic doctrine comprises two limbs. One limb is definite and final – in a complete form – with no possibility for change or modification. The other limb constitutes the legislative gap. Islam grants mandate to the ruler (*Wali' Al-Amr*) or the ruling authorities to address the situations in accordance with the demands of the general goals of Islamic economics and the expediency required in the respective era.

Now when we speak of the legislative gap, we mean the gap as related to the Islamic legislation and its legislative texts, not as it is related to the practical situation of the Islamic community during the Prophet's time. The honorable Prophet filled that gap to attain the goals of Islamic law in the economic sphere in light of the conditions and the circumstances the Islamic society was in at the time. However, when the Prophet set out to fill this gap, he did not do that his capacity as a prophet as one who promulgated the divine law. That is unchangeable and constant for all places and age.

His actions in this respect were not in the manner of implementing permanent and unchangeable laws. He did it in his capacity as a ruling authority (*Wali' Al-Amr*), with the Islamic duty of filling the gaps in the prevailing set of laws, in accordance with the expediency of the circumstances of that time. From this we wish to deduce these conclusions.

First, the foundation of the Islamic economic doctrine cannot be accomplished without considering the legislative gaps – and the mandate for the state to address these gaps – in the search process. An assessment of the scope of this legislative gap (in the early days of Islam) as well as the exercise of the

mandate granted to address the relevant situations – as an instrument of Shari'ah in achieving the goals of Islamic economics – is a critical part of our search process. Neglecting this tantamount to diminishing the scope and capability of Islamic economics that is by considering only the formal aspects and ignoring its essence.

Second, the type of rules that the prophet implemented to fill the gaps was not injunctions of permanent nature. The Prophet did not issue them in his capacity as the promulgator of the permanent and fixed laws, but in his position being a ruler and guardian of the Muslims. Therefore, they cannot be considered as a permanent part of the economic doctrine of Islam. Yet they throw light, to a great extent, on the (required) actions in filling the gaps that must be carried out every time according to the expediency of the circumstances. It also makes it easier to understand the primary goals that the Prophet adopted in his economic policy. This would facilitate similar measures by the states in later periods.

Third, the Islamic economic doctrine on this basis is completely associated with the political system that was in practice. When there is no ruler or ruling system that enjoyed the same qualifications and legitimacy that the Prophet did – in his capacity as a ruler (and not in his capacity as a Prophet) – there would be little chance of the legislative gaps being addressed in line with genuine Islamic goals. As such it would not be possible for us to identify the true Islamic economic doctrine (on this basis alone) that we may reap its results and realize its goals.

As this book is about the economic doctrine, its scope does not include issues concerning the system of government in Islam and the legitimate person or the appropriate governing authority to succeed the Prophet, and holding the office of his authority (*wilayah*) or to his qualifications as a ruler (not as a Prophet). We will also not discuss the conditions that must be fulfilled in the case of such an individual or authority.

All these are extraneous to the discussions of this topic. So for the purpose of the discussion of this book we will ensure that we make reference to a legitimate ruler, allowed by Islam as having forthwith the qualifications of the Prophet in his capacity as a temporal ruler. We will avoid from making deductions from practices by the state – when it was led by other personalities after the Prophet's era – in response to the legislative gaps. Only then we could see the genuine Islamic doctrine and appreciate its goals and results.

But why is it that a legislative gap in the Islamic economic system, left to the discretion of the state authority on behalf of Islam from the very beginning. And what is that thought which justifies the existence of this void in the economic system, granting mandate over the matter to the ruler? And subsequently, what are the limits of the legislative gaps, in light of the indications of Islamic jurisprudence? We will provide the answer to all these, God willing, in our coming discussions.

The Process Of Ijtihad And Its Subjectivity

We have so far learned that the tools we have in our search for the Islamic economic doctrine are the Islamic legal rules and certain Islamic conceptions. Now it is the time for us to describe the method by which we can acquire those legal rules (*ahkam*) and the conception and the risks in employing that method. As it is by way of the Islamic rules and conceptions that we can discuss the Islamic economic doctrine, it is natural that we find out how we can identify these rules and conceptions themselves.

The answer to this question would be this: We will find these rules and conception directly in the Islamic texts, which comprise a particular Islamic legislation or a particular Islamic point of view. All that we will have to do, therefore, is to obtain texts from the Qur'anic verses and the *sunnah*³ of the Prophet, so as to compile a number of such Islamic *ahkam* (rules or law) and conceptions, by which we can eventually reach the general economic doctrinal theories.

Nevertheless it is not as simple as merely collecting the texts. More work needs to be done, for usually the texts do not display their legal or conceptional contents in an explicit and definite manner such that there is no ambiguity. On the contrary, in many cases the content is hidden or they reveal diverse and poorly arranged points. Under these circumstances, understanding of the text and the discovery of the definitive contents of the text are carried out by *ijtihad*⁴, and not an act based on plain common sense. We will not attempt to point out to the nature of this process, its juristic principle norms (rules) and modes. These all are outside the scope of the present subject. We only want to state – in light of *ijtihad* – facts about the Islamic economic doctrine and to caution against the dangers that we may fall into while carrying out of the process of discovery.

The fact is that the form of the economic doctrine, which we would arrive at, will depend upon the Islamic (economic) rules and Islamic (economic) conceptions. But inasmuch as these rules and conceptions depend upon the results of a particular *ijtihad* in understanding the text – from which these rules and conception are sourced – and the method of arranging these text and putting them together, they will be a reflection of a particular *ijtihad*. Thus it cannot be decided with finality that the form that we arrive at is the actual form of Islamic economic doctrine since it is possible to have errors in *ijtihad*.

Therefore, it is possible that different *mujtahids* – those who exercise *ijtihad* – may present different forms of Islamic economic doctrine in accordance with their respective *ijtihads*. All these forms will be considered as forms of Islamic economic doctrine because they represent the exercise of the *ijtihad*, which is allowed and acknowledged by Islam. They also represent patterns and norms (rules), which have developed. In this way, as long as the forms arrived at are outcomes of a legally valid *ijtihad*, they will be deemed as Islamic forms, irrespective of the extent of their conformity with the true economic doctrine of Islam.

This is the fact of the matter. As far risks arising from the basis of the *ijtihad* in deriving the *ahkam* (rules of law, regulations or ordinances) and the conceptions from the (legislative) texts of the Qur'an and

sunnah in relation to the search of the economic doctrine, it is best to eliminate any subjective and personal elements creeping into the process of *ijtihad* because the more objective the approach is, the more accurate and successful will the results be. But if some personal or subjective elements were incorporated into the exercise of the *ijtihad* – in the understanding of the text – the inquiry will lack integrity and the discovery will not be genuine and reliable.

The risks will be escalated in situations whereby very long gap and a significant disparity in circumstances separate the *mujtahid* and the texts he uses in his *ijtihad*. It is particularly risky when the texts are in connection with the treatment of issues that actually exist in the life the *mujtahid*. He now confronts the matter as an actual reality in relation to the treatment of similar matters, while the situations greatly differ from those in the texts. Texts connected with the social sides are part of this category.

In relation to the search for the Islamic economic doctrine, the danger of subjectivity in the exercise of *ijtihad* would be greater compared to that in the exercise of *ijtihad* related to other rules on personal actions – such as the directives as to the purification of *najasaat* (impurities) or the prohibition of weeping during the *salat* (Islamic prayer) or the obligation of the disobedient as to *tawbah* (repentance, turning to God).

Because of the significant risk of subjectivity in the exercise of *ijtihad*, in respect of the process of the discovery of the Islamic economic doctrine, it is incumbent upon us to clarify this point and specify the sources of the risks. In this connection, we can mention the following four factors as the main source of that risk:

- a) Attempting to justify the prevailing reality.
- b) Incorporation of the text into a specific framework.
- c) Separation of the legal (*Shari'ah*) evidence from its conditions and circumstances.
- d) Adoption of a pre-conceived view towards the texts.

Attempts To Justify The Prevailing Reality

This is the action involving an effort by the *mujtahid* to develop an interpretation and to construe a text to justify a *fasid* (defective) reality that prevails in the social environment that he is living in. It doesn't matter whether he is driven to do this intentionally or otherwise. He considers it as an inescapable necessity of the existing reality confronting him, as do some other Muslim thinkers. Like the others, he had succumbed to the prevailing social reality in which he was living and tried to adapt the *nass* (text) to the reality that he was in, instead of figuring out how to change the reality on the basis of the *nass* (text).

For instance, he reinterprets the grounds for the unlawfulness of usury and profit and so derived therefrom a conclusion that fits in with the *fasid* reality. It may go like this: Islam allows interest (on loans) provided it is not doubled and compounded. Islam prohibits it only when it reaches an unreasonable amount as is stated in the holy verse:

“Oh you who believe, devour not usury doubled and multiplied. Observe your duty to (fear) Allah that you may be successful” (3: 130).

And the ‘reasonable limits’ are the limits, which the *mujtahid* finds in the living reality of his life and his society. In fact, it is the prevailing reality of his life, which prevents him from comprehending the object of the verse, which is not intended to allow usury at ‘mild’ rates (instead of doubled and compounded). The verse instead seeks to draw the attention of the usurer to the horrible consequences of usury, when it reduces the debtor to the abject conditions of being burdened with a heavy debt incurring usurious charges, resulting in continuous increase of the usurious principal, accompanied by the mounting usury of the debt leading him to a financial disaster.

Had this *mujtahid* sincerely intended to live up to the spirit and teaching of the Holy Qur'an – away and free from the promptings of the actual life of his society and its delusions – he would have read and understood from the dictum of Allah the Supreme, in this verse:

“If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly.” (2:279).

That it was not a declaration of war against a certain type of usury common in the age of ignorance, which multiplied the debt. But it is a question of an economic doctrine (system) holding a particular view as to the capital and that, which determines the justification of its increase. It is also about an economic doctrine that restricts the increase of the capital, however slight it is, apart from justifiable sources, just as it stipulates and requires the lender to be content with his principal. In that case he shall not wrong anyone, nor he shall be wronged.

Incorporation Of The Text Into A Specific Framework

This is when the text is studied in a non-Islamic framework, and this framework may have or may not have emerged from a prevailing social reality. Here, the *mujtahid* tries to understand the text within that particular framework, and when he finds that it does not fit the picture, he skips it and moves to other texts that fit the given framework or at least do not contradict it. We have already seen how texts that curtail the power of an asset owner – which at times permit its seizure – were set aside and other texts were preferred simply because those texts do not agree with the intellectual framework which upholds the sanctity of the private ownership to such a degree as to place it above all other considerations.

A jurist commented on the text which states that the land whose owner does not cultivate it be taken away from him by the *Wali' Al-Amr* or the administrator, and be given to another person to be cultivated on behalf of the community. He wrote that it had better not be implemented since it is contrary to the principles and grounds of reasoning. By grounds of reasoning he meant the thoughts that affirm the sanctity of the private ownership, when it is this sanctity and its priority that should have been derived from the law (*Shari'ah*) instead.

That is the meaning of making a deduction in a framework borrowed (from outside Islam), when it was already established beforehand and was in a form that makes it possible for the legislative text to be understood in its own particular way. If that were not so, then what is that rational argument for holding the sanctity of private ownership so supreme as to prevent the acceptance of the aforementioned legislative text? Is private ownership anything more than a relationship subsisting between the individual and the property? And is the social relationship merely taken for granted and is it as if it was legally ordained by the society or any other law given to achieve a particular goal? As such it enters neither in the province of deductive reasoning nor that of inductive inquiry.

In a field like this, as to the unlawfulness of the seizure of a property, we find many *mujtahids* inferring from a mode of interpretive reasoning that usurpation is intellectually an abhorrent or odious act. But this mode of reasoning is inept for usurpation is not a rightful a seizure of a property. It is an unauthorized act. It is the law that determines whether a seizure is rightful or otherwise. So we should derive a rule without imposing a preconceived notion on the text. If it is decided that the seizure is wrongful (unauthorized), then it is usurpation. And if the right of seizure were established, the seizure would not be usurpation and consequently is not an abhorrent act.

Another *faqih* (jurist) using an interpretative mode of reasoning in respect of the legislation of private ownership of land had written:

“Requirement calls for it and accentuates the need for it. As man is unlike beasts and is by nature a civil being, he must have an abode to take shelter in, and a place exclusively belonging to him to live in. So unless it (private ownership) were made legal, it would result in great hardships, rather an unbearable burden.”

Of course, all of us admit that there exists the institution of private ownership in Islam, especially in respect of land. But the thing which we do not admit, however, is that the Islamic legal ruling draws upon the idea of private property from its historical roots, as it happens to be the case with this jurist whose intellectual horizon and conceptions of the past, present and future do not extend beyond the orbits of history in which the institution of private ownership existed.

Behind each appropriation in the history of man, he finds an image of the private ownership, which justifies and explains it, so much so that he has become unable to distinguish between the reality and its mere shadow. He has been conditioned to believe that as long as man requires appropriation of a residence that he may take shelter in, it is required that the man should own a private property so that it may belong to him exclusively and in which he may take shelter.

Had the *mujtahid* been able to distinguish between a man’s having a residence belonging to him and his possessing that residence as a private property of his own, he would not have been deceived by the historical implications of these two situations. It would have then been possible for him to perceive clearly that what would have resulted in a severe difficulty to the man is preventing him from having a

house that belongs exclusively to him. Merely depriving him of private ownership of that house does not cause him that hardship. For students in settlement near a university or for individuals in a communist society, each one of them has a residence to himself in which he dwells without private ownership. Thus we find that our *faqih* (jurist) has unintentionally acquired – from the grandeur and history of the private ownership institution – those perceptions that shaped his thinking and idea of humanity's need for private ownership, eventually becoming a framework for his juristic thinking.

Among the intellectual frameworks that play a significant role in the process of understanding of the texts, is the framework of language. While the basic word in the text is actually attached to history, its meaning – read in present day – has evolved throughout the passage of time and adopts a new dimension. In such a case it would be normal for the *mujtahid* to mistakenly understand the word in its present day meaning, and not based on its significance in a distant history. It is possible that the word may have acquired this meaning quite recently as a result of a new doctrine or an evolving civilization. For this reason, it is necessary to be extremely cautious in determining the meaning of the word. Otherwise it gets incorporated in the present day linguistic framework, which had not existed at the time the use of the word started.

The factor of the social conditioning on the word 'proprietorship' may have partly prevented *mujtahids* from the correct understanding of the text. Even when the word may have retained its original meaning in spite of the long passage of time, in the course of specific social dressings it becomes associated with a particular idea or practice conditioned to that idea or practice. So much so that at times the psychological sense of the word – because of such conditioning – result in a particular social perception exceeding the boundaries of the word's original linguistic sense.

At the least, the linguistic dimension of the word may have become amalgamated with the psychologically conditioned dimension – which in fact is a result of the social environment in which the *mujtahid* lives – more than what is projected by the word itself. Take, for example, the word 'socialism'. The word has become – during the present day socialist doctrines of socialism – the living experience of contemporary man conditioned to a mass of thoughts, values and practices. And this mass to a certain extent constitutes an important part of its present day social sense, even though on the purely linguistic level it bears nothing in the sense of this mass. It is similar in the case of the word 'subject'. The history of feudalism has driven into it significant influence and has conditioned it with the sense of feudal behaviour of the landlord towards the serfs who cultivated his land for him.

So when we come across the word 'socialism' or texts which contain the word 'socialism' or the word 'subject' like a text which states that the people have joint shares in 'water', 'fire', and 'grass', or when we come across a text which states that 'the lord (*wali*) has a right over the 'subject', we face the danger of responding to the social conditionings of these words and attach to it the social meanings which existed in a time so distant from the climate that prevailed at the time of the text, instead of giving it the actual linguistic meaning that it carried.

Separation Of The Legal (Shari'ah) Evidence (Ground) From Its Condition And Circumstances

Separating a legal ground from the circumstances and the environment it was applied in tantamount to extending the legal ground without an objective justification. This act is often perpetrated on a particular type of legal grounds and these grounds are those to which the jurist applies the name '*at-taqrir*'. In view of the fact that such grounds significantly impact the process of *ijtihad* performed in respect of the precepts and conceptions which are connected with the Islamic economic doctrine, it is necessary that we highlight the danger that results from separating a legal ground from its conditions and circumstances.

Let us first explain the meaning of the term *at-taqrir*. *At-taqrir* is one of the expressions of the holy practice (*as-sunnat ush-Shari'ah*). It means the silence of the Prophet or Imam in regard of a particular action which takes place in his presence or which comes to his knowledge. His silence reveals his *at-taqrir* or tacit consent (approval) and implies its validity in Islam.

At-Taqrir is of two types. In some situations, it will constitute a *taqrir* for a particular action, which an individual carries out. An example is when a person drank alcohol in the presence of the Prophet and the Prophet kept silent. The silence on the part of the Prophet would indicate the permission of drinking alcohol in Islam. In other situations, it will constitute a *taqrir* for a common action, frequently carried out by the people in their usual life. For instance, when we learn that it was a usual practice of the people – during the era of the formation of the Islamic legislations – to extract mineral deposits from the earth and to possess and own the output on the basis of their efforts in having extracted these mineral deposits.

That the *Shari'ah* is silent and does not object to this usual practice, is considered a *taqrir* or approval in respect of that practice and will constitute a ground for Islam's sanction for individuals to extract mineral deposits from the earth and own them. It is to this that the name *al-'urfu-'am* or *suratul-'uqlaiyyah* (common usage or practice of the common people) is applied in Islamic legal discussions.

Recourse to *at-taqrir* actually reveals the *Shari'ah*'s agreement with a practice that was common during the period of *Shari'ah* legislative formation by the absence of prohibition against the practice. The rationale is that if the *Shari'ah* did not agree with such practice, it would have been forbidden. So the absence of the *Shari'ah* prohibition against it is evidence of its permissibility.

This mode of reasoning depends upon a number of factors. First, the prevalence of that practice during the period of Islamic legislative formation should be established with historical certainty. If it is found that the practice were indeed common in a later period, then the silence of the *Shari'ah* in respect of that practice would not constitute its approval. The practise must therefore have been common during the same period of the *Shari'ah* legislative formation.

Second, the absence of any prohibition by the *Shari'ah* of that practice should be established with

certainty. Unless the researcher has completely established the absence of any prohibition issued in respect of the practice, he has no right to declare Islam's sanction of that practice, since it is still probable the *Shari'ah* might have prohibited it.

Third, all the circumstances and conditions must be objectively verified by a personal observation since it is possible that some of these circumstances and conditions may have influenced the sanction of that practice or its disapproval. When we have systematically and precisely specified all the circumstances and conditions surrounding that practice during the period of Islamic legislative formation, it will be possible for us to discover from the *Shari'ah*'s silence, its approval of that practice given precisely similar conditions and circumstances.

Now in light of this explanation, we will be able to understand how a personal subjective element creeps into this space, exemplifying the separation of the practice from its actual circumstances and conditions. This separation takes two forms. Sometimes the *mujtahid* finds that he is living in a society in which a particular economic order prevails. He clearly perceives the practice so entrenched with a deep-rooted origin. He becomes oblivious to the factors that brought the practice come into existence, and the temporal circumstances and conditions that contributed to its emergence.

He is therefore led to think that this practice was so well established in the past and must have come down historically from the Islamic legislative formation era. In fact, it actually emerged later from some particular conditions and circumstances, or at least it probably came into existence that way. As an example, we may consider production works in the mining industry under a capitalistic system. The reality today is that of a well-established practice of production whereby a capitalist hire labourers to extract mineral materials – like salt and oil – and pay them wages. The ownership of the material extracted is his, by virtue of the production enterprise he operates.

The employment contract between the capitalist and the labourers in present day practice appears so natural – in terms of the contents and implications – that it is possible for a large number of people to think that this type of contracts is similar with those in the old days. They may even assume that it is as old as the beginning the mining industry. On the basis of that assumption, they therefore hold that this type of employment arrangement must have already existed during the Islamic legislative formation era. It is thus quite natural to end up having such idea and using it as an argument for the validity of this type of employment contract – that results in ownership the extracted material by the capitalist – on the ground of *at-taqrir*. It may be said that the *Shari'ah*'s silence and non-prohibition of this type of employment arrangement constitutes a ground for Islam's approval of such arrangement.

We do not want to say anything in respect of this arrangement and its requisites from the juristic point of view, nor about the dicta of the jurists, who entertain doubt as to its legal soundness according to Islamic principles. We will examine the ruling of the law (*al-hukm-ush-shari'i*) in respect of this type of arrangement and its requisites with elaborate details at a later stage. We will then present all the arguments that are possible to cite as authoritative grounds for and against it.

Here we only want to examine the deductions with respect to such arrangement on the ground of *at-taqrir* in order to demonstrate the habit of separating *Shari'ah*-sanctioned practice from the (original) conditions and circumstances. Now those who infer – on the ground of *at-taqrir* – that it is legally valid and sound to employ workers and claim ownership of the mining output, did not actually live in the Islamic legislative formation era so as to be certain of the prevalence of this practice in that age.

They witnessed its prevalence only in their actual life and in the climate they lived in. It's being firmly rooted in the economic system and social order in which they lived, led them to believe that it was a general phenomenon extending down historically from the Islamic legislative formation age. This is what we mean by the separation of a practice from the conditions and circumstances it was prevalent, without an objective justification.

If it were not so, do we truly have a ground to say that this type of employment arrangement in mining did exist and was widely prevalent in the era of the formation of Islamic legislative? And to those who are so convinced of its existence in that age, do they know that such arrangement is actually a regular manifestation of capitalist production practice? Are they aware that historically it was not practised on a large scale? Or that it was not geographically widespread, especially in industrial field, except at a later date?

However this statement does not mean denial of the existence of the capitalist-style production of the minerals – the practice of their extraction by hired labour, with the output owned by the employer – in the era of Islamic legislative formation. Nor is it an endorsement of the practice. It merely expresses a doubt in respect of this being the case. That is to say, that how a particular phenomenon becomes so entrenched and appears so natural as to lead to the conviction that it was deep-rooted in the past. It is chronic simply because it is ingrained in the living reality without its complete historical facts.

This is the first form of the abstractive process, the separation of the real life practice from its actual conditions and circumstances and projecting its historical extension to the era of Islamic law formation.

The other form of the abstractive process takes place whenever we study a wrongful act that was occasionally sanctioned during era of the Islamic legislative formation and we attempt to deduce its permissibility, on the ground of *Shari'ah*'s silence. Under this circumstance, the *mujtahid* is likely to fall into the error of abstraction whenever he takes the sanction for the act out from its circumstances. He thereby isolates the factors that may have a part in its permissibility and proceeds to generalize it with the dictum that this practice is sound and valid in Islam under all circumstances.

By right, for an inference based on *at-taqrir* to be objective, it is necessary that we include into our consideration all circumstances which are likely to affect Islam's standpoint in respect of that act, since whenever some of those circumstances and conditions change, the inference based on *at-taqrir* becomes invalid. For example, you are told that drinking liquor is lawful in Islam on the ground that a particular person drank it when he fell ill, during the time of the Prophet and the Prophet did not forbid

his from doing so. In reply to this you can say that this ground of *at-taqrir* for an isolated case is not a sufficient basis to argue that Islam approves drinking of liquor for everybody even when he is in sound health, as it is possibly permissible in case of some illnesses.

Liquor may be allowable in exceptional situation, and therefore it is a mistake to isolate an incident – even one that happened during the Islamic legislative formation era – from its actual environment, with specific conditions and circumstances. It is wrong to generalize the legal ruling in respect of every similar act without proper justification, because the legal ruling differs when circumstances differ. We should rather consider very thoroughly all individual circumstances and social aspects surrounding the practices in the legislative formation era.

Approaching The Texts With Preconceived View

By this, we mean the researcher's own disposition towards the issue. The inclination would significantly affect his understanding of the texts. In order to clarify this, we may suppose two persons studying the texts. One of them is inclined towards discovering the social side and whatever is connected with that aspect in terms of the Islamic precepts and concepts. The other is drawn by his own inclination towards discovering the precepts, which are connected with specific practice of the individuals.

These two persons, although they directly deal with the same texts, will derive different results. Each will arrive at results which would be more in keeping with his own disposition and his particular point of view, and is likely to remain blind towards other aspects even those right before his eyes, but towards which he has no inclinations. The effect of such preconceived ideas – which in reality is a subjectivity of the *mujtahid*, instead of adhering to objectivity in his study of the texts – is not confined merely to concealing of some of the outstanding legislative landmarks from his view.

At times, it leads him astray in the understanding of the legal texts and to errors in the deduction of legal rules from them. This happens to be the case when *mujtahid* wants to impose his preconceived ideas. In such a case he will not reach a correct understanding of the text. Instances like this are numerous in Islamic jurisprudence. The case of the prohibition of surplus water and pasture by the Prophet is one of the most obvious examples of how far *ijtihad* may be affected by the disposition of the *mujtahid*.

It is stated in the tradition that the Prophet made a ruling for the inhabitants of Medina concerning (the use of well water for) date palms whereby no one was allowed to deprive others of surplus water. He also made a ruling for the desert dwellers, forbidding them from withholding surplus water or selling surplus pasture. This interdiction by the Prophet forbidding the withholding of surplus water and pasture may be construed as general rule of the *Shari'ah* applicable at all times and in all places, just like the prohibition of gambling and liquor.

But it may also be construed as a specific legal measure that the Prophet took in his capacity as a *Wali' Al-Amr* (ruler), who was responsible for the welfare of his Muslim subjects within the limits of his

authority and qualification as a ruler. As such it will not be an absolutely binding general law of the Islamic *Shari'ah*, instead merely an ordinance connected with the prevailing circumstances and experience as assessed by a ruler. The discussion in regard to this text of the tradition of the Prophet imposes upon the researcher the duty of considering both possibilities and determining which one of them is relevant, in light of the text or similar texts.

As for those with a preconceived idea in approaching a text, they take it upon themselves from the very beginning to find in every text the general rule of the Islamic law and to always look vis-à-vis the texts at the Prophet in his capacity as the promulgator of the general laws of Islam, overlooking his role in his capacity of a ruler. As such they will explain the aforementioned text on the basis of it's being a general rule of the *Shari'ah*, binding in all times and all places⁵.

This specific point of view does not spring from the text itself, but results from the mental habit as to his perception and his mental image of the Prophet. The *mujtahid* is led to this attitude, having always been accustomed to view the Prophet in his capacity as the promulgator of his prophetic mission. He is blinded to the Prophet's other identity, as a ruler of the community. He is consequently also blinded to this identity, as represented in different texts.

Occasional Need For Subjectivity

However we must point out the area, within which the subjective side is allowed when attempt is made at formulating the definitive general idea in respect of Islamic economics. It is the part in choosing the form intended to be adopted for the Islamic economics among those forms that represent legitimate juristic *ijtihads*. We have been already told that the discovery of the Islamic economic doctrine is accomplished through the process of *ijtihad* by construing the meaning of the texts, reconciling them and consolidating their implications.

We have learnt that *ijtihads* differ and vary from one *mujtahid* to another because of the differences among them in understanding the meanings of the texts and in the method of handling the contradictions that may appear between some of the texts. They also differ in respect of the general rules and patterns of the juristic thinking. We also learned that *ijtihad* enjoys a legal status and an Islamic stamp of approval as long as it pursues its function, depicts its form and retains its parameters within the framework of the Holy Book and the *sunnah* of the Holy Prophet and in accordance with the required terms and conditions.

This variations resulted in the growth and development of a diverse set of ideas and understanding in respect of the Islamic economics, all of them *shari'i* and Islamic. It is a case whereby we can choose in every part the most effective ingredients and those of the strongest form, for dealing with the socio-economic problems and for the realization of the highest of goals of Islam. This is a space for personal choice, in which the researcher is free to exercise his opinion. But he is free only in his capacity as a discoverer and it does not grant him freedom beyond the orbit of differences in *ijtihads*.

The author of this book made use of this space for the subjective personal choice in his research efforts herein, before this and also after in the foreword, as alluded to by him of the author's *ijtihad* deductions in matter of juristic law⁶. But not all the precepts the author has presented and adopted in this book – and those precepts he sourced guidance from – are the outcome of his own *ijtihad*. On the contrary, in some matters he has presented the precepts that do not agree with his own *ijtihad*, as long as they express deductions of other *ijtihads* in the matter of juristic law viewpoints bearing the Islamic character and the *shari'i* stamp.

In this connection I would like to state emphatically that the use of the space for subjective choice and the bestowal of the right of choice to practise within the general framework of *ijtihad* in respect of the Islamic common law constitutes a necessary condition – on the technical side – for the search for the Islamic economic doctrine. It is not merely a permission to relax the serious requirements and responsibilities related to task of *ijtihad* in respect of the precepts of Islamic law. This is so considering that under certain circumstances, the search for the comprehensive Islamic economic doctrine that is aligned with the essence of Islamic legislative provisions and their juristic ramifications is impossible except with some elements of subjectivity involved.

I say this based on my personal experience during the preparation of this book. Perhaps it is necessary to make it quite clear here in order to show one of the difficulties I had to undergo in my search of Islamic economic doctrine and the way I overcome it by using of the abovementioned space for personal choice, which grants the option. It is agreed among the present day Muslims that only a minority of the precepts of Islamic law has been well preserved, whereby their clarity, necessity and finality are agreed upon, notwithstanding the many centuries that separate us from the Islamic legislative formation age. Surely from among the body of the precepts we find in the juristic book, those that constitute this group that enjoys the status of absolute finality does not exceed five per cent.

Why is that so clear? The precepts of Islam are derived from the Holy Book and the *sunnah* of the Holy Prophet i.e. from the legal texts. The soundness of each one of these texts – with the exception of the Qur'anic texts and a small body of the texts of the *sunan*⁷ established as *tawatur*⁸ – depends upon the reliability of the transmission of one of its transmitters or the *muhaddithun*⁹.

We may carefully scrutinize the accounts about the transmitter and the level of his trustworthiness and faithfulness to his transmission. But we get acquainted with the integrity and the faithfulness of the transmitters by looking at history, not in a direct manner. There is therefore likelihood that the truthful transmitter, being fallible, might have misconstrued the text and transmitted it to us obliquely, especially in circumstances whereby the text reaches our hands only after passing through a number of transmitters. Each transmitter, in turn handed it down to the next till it reached us at the end of the long passage. We therefore cannot be absolutely certain of the soundness of the text.

But even when we have ascertained the soundness of the text and its authenticity as having come from the Prophet or an Imam, we still cannot comprehend that text except in the way we are living today. We

are thus unable to fully assimilate the atmosphere and conditions as implied in the text and penetrate its milieu, which can throw light on it. By comparing the text with other legislative texts in order to reconcile them, we are also likely to make mistake in our mode of reconciliation and end up giving preference to one text over another, when the other one is indeed sounder.

There could even be an exception that exists in yet another text that has not reached us. Or perhaps we have ourselves overlooked the text of exception it in the course of our *ijtihad*. We thus adopted the former text, ignoring the text containing the exception, which could explains it and specify the conditions.

From these it follows that *ijtihad* is a complicated process. There are doubts and reservations confronted on all sides. Whatever conclusion a *mujtahid* has arrived at, his opinion plays a key part as a deciding factor. As such, its soundness cannot be invariably confirmed inasmuch as it is probable that the *mujtahid* may have made a mistake in reaching its conclusion on account of the flaws of the text. Even though it may have appeared sound to him, on account of his misunderstanding of the meaning of the text, or on account of the error in the way of he reconciled the text with the rest, or on account of his omission of some other relevant texts because of his oversight, or simply because of their non-availability after a long passage of time.

This does not in any way mean that the process of *ijtihad* is invalid or disallowed. Indeed in spite of the fact that it is associated with doubts and misgivings, Islam has allowed its practice and has fixed for the *mujtahid* the scope in which he can rely upon his presumptive opinion, within the rules formally expounded by the science of *Usul al-Fiqh* (principles jurisprudence). And there is no blame on him as long as he relies upon his opinion within the permitted limits, whether he end up being correct or otherwise.

In light of this it is obvious that for each *mujtahid* there would be a collection of errors in terms of views that inevitably contradict the true Islamic legislation. It is also clear that the correct Islamic rules – within the space of issues handled by the *mujtahids* – exist in a rather irregular pattern, due to differences of opinions among the *mujtahids*. A *mujtahid* may be incorrect in the first matter and correct in the second, while another *mujtahid* gets it right in the first and erroneous in the second.

In view of this, the researcher actually gets involved in the search efforts only when he proceeds in his search from the precepts established by a specific presumptive *ijtihad*, in order to go beyond these to what is more profound and more comprehensive Islamic economic theories and doctrine. But it is incumbent upon us to pose a question. Would the *ijtihad* of every *mujtahid* – the precepts he has gathered in a collection – necessarily reflect a perfect consolidated economic doctrine and premises, consonant with the structure of those precepts and their nature?

Our reply to this question would be in the negative, for the *ijtihad* by which the deduction of those precepts is made is exposed to the risk of errors. As long as that is the case, it is likely for the *ijtihad* of a *mujtahid* to add an external element to the Islamic practice. It is likely that a *mujtahid* may have been

mistaken in his deduction or may have failed to find an Islamic legislative element because he was unable to correctly understand it.

It is also possible that the texts he was pursuing or the body of the precepts to which his *ijtihad* has led, may have become inconsistent for some reasons. It would become difficult in such a case to attain a perfect conceptual balance and unify them or reach a comprehensive doctrinal explanation that consolidates them all together into one integrated set.

It is on account of this, that we should make a distinction between the Islamic legislative realities – which the Prophet had enunciated – and its version as depicted by a particular *mujtahid* through his pursuit of the texts. However we believe that the reality of Islamic legislation in the sphere of economics is neither produced spontaneously nor is it born of views independent from one another. On the contrary, the Islamic reality in these spheres is built on a unified base with common and well-balanced conceptions. It emerges from the theories and general Islamic principles in the affairs of economic life.

It is our belief in this that makes us consider the precepts as the upper part of the structure that we should traverse to, the part that is more profound and comprehensive. Next we shall move down to the base of the structure, which expresses their generalities in elaborate detail and the ramifications in a consistent and coherent form. Were it not for our belief that the precepts of the *Shari'ah* are built upon unified fundamental principles, there would have been no justifiable reason for the pursuit of the economic doctrine.

All this is true with respect to the Islamic legislative reality. But as for the *ijtihads* of the *mujtahids*, it is not necessary that the precepts that those *ijtihads* had formulated reflect a complete economic doctrine or its comprehensive theoretical basis, when it is possible that the *mujtahids* commit errors. This would have resulted in either inserting an external element into the real Islamic legislation or omitting a true element from its true essence.

A single mistake in respect of the body of the precepts is sure to lead to the departure from the truth, adversely affecting the efforts and rendering it impossible to reach the true Islamic doctrines using those precepts. It is because of this that the researcher in pursuit of the economic doctrine faces a trying ordeal. It is the conflict between his capacity as a discoverer of the economic doctrine and his capacity as a *mujtahid* deducing the *ahkam* (the prescribed laws). This would be the case when we take it for granted that the body of *ijtihad* – to which he is led by his personal *ijtihad* – is unable to help him discover the economic doctrine.

Under these circumstances the researcher, in his capacity as a *mujtahid* – concerned with deducing those *ahkam* – is driven by the nature of his *ijtihad* to the choice of the *ahkam* that his *ijtihad* has led to. From there he has to set out on the path of discovering the economic doctrine. But in his capacity as a discoverer of the economic doctrine, it is incumbent upon him to choose a well-integrated body of *ahkam* – congruent in its directions and its theoretical significance – and with that, to be able to discover

the doctrine. But when he does not find a set of *ahkams* as described – from those his personal *ijtihad* has led to – he finds himself obliged to choose another point of departure appropriate for the search exercise.

Let us give a clearer and more concrete form of the difficulty in the following example. A *mujtahid* observed that the texts link ownership of natural resources with work and labour, and reject their appropriation in any way other than work or labour. He found a single exception to these texts. It is in a text sanctioning – in some particular contexts – appropriation by a means other than work or labour.

To this *mujtahid*, deductions from the texts and their contributions will reveal a quandary because of the lack of direction. The root cause of this lack of direction is the existence of the text of exception. If not for that single text, he would have been able to discover on the basis of the body of the other texts that in Islam ownership is established on the basis of work. Faced with such dilemma and being in such a predicament, what shall the *mujtahid* do? How is he going to overcome this contradiction between his two roles – his capacity as a *mujtahid* concerned with the precepts of the Islamic law, and his capacity as a discoverer?

The *mujtahid* who faces this difficulty has to put up with two usual explanations for the irregularity and the lack of consistency among the *ahkam*, which his *ijtihad* leads him to. One explanation is that the text with the exception (that we used in the above illustration) is unsound, notwithstanding the fact that it meets the prescribed conditions, and is thus enjoined by Islam and is supposed to be complied with. The unsoundness of some of the texts introduces an external element in the body of the *ahkam* combined together by his *ijtihad*. It subsequently leads to disharmony between those *ahkam* at the theoretical level and in the process of the discovery of the economic doctrine.

The other explanation is that the apparent disharmony between the constituents of the collection is superficial. It only resulted from the researcher's perceived inability to find the hidden unity between those constituents and their common theoretical explanation. Here the position of the *mujtahid* in his role as one who infers the precept of the laws of Islam is distinct from his standpoint in his other capacity as one pursuing the search for the Islamic economic doctrine.

In his capacity as one deducing the *ahkam*, he cannot ignore the resulting *ahkam* which his *ijtihad* directs him to – even though these *ahkam* appear to be logically undesirable at the theoretical level – so long as it is likely that this apparent undesirability arises from his inability to reach the evasive origin of the their doctrinal basis. But his adherence to these *ahkam* does not imply their finality. On the contrary, they are deduction of his presumptive opinion (*zann*) as long as they are established on his presumptive *ijtihad*, which justifies their adoption despite the possibility of error.

But when the jurist wishes to move from the domain of the jurist's precepts to the domain of jurist's theories and to pursue the exercise of discovering the Islamic economic doctrine, the nature of the exercise prescribes for him the type of precepts he should start from. It is imperative that the point of

departure for him is a collection of well-integrated and mutually consistent precepts.

If he is able to find such a collection from the precepts his *ijtihad* had drawn together, and to set out from such starting point – without undergoing the difficulty of inconsistency and disharmony among the constituents of this collection – it will afford him a valuable opportunity to align his capacity as one drawing the *ahkam* of *Shari'ah* with his other role as a seeker of the doctrine. However, if he is not so fortunate to have such opportunity and if his *ijtihad* does not facilitate in getting him to a proper point of departure, that should in no way affect his resolution to carry out the search effort nor his conviction that a generally coherent theoretical description of Islamic reality is possible. The only course for him to follow in that case is to find help from the precepts that the *ijtihad* of other *mujtahids* have arrived at.

Since in every *ijtihad* there is a collection of precepts, which differs significantly from that in other *ijtihads*, it would not be logical to expect the discovery of the economic doctrine through each and every one of these collections. We only believe in the Islamic economic doctrine established on the basis of the existing *ahkam* of the *Shari'ah*, contained in these collections. So in case of a disharmony between the constituents of a collection – adopted in the *ijtihad* of the researcher – it is obligatory upon him to remove the elements that lead to contradictions and replace them with such deductions and precepts from other *ijtihads*, which are more consistent and will facilitate the search exercise.

He also needs to develop a coherent collection comprising the results of various *ijtihads* as the starting point for him to set out from, and eventually discover the doctrine that fairly represents the selected collection of *ahkam* of *Shari'ah*. The least that can be said in respect of this collection is that it will be in its entirety the truest and the most accurate picture of the Islamic legislative reality and its verity is not more improbable than the verity of other pictures that the surface of the juristic *ijtihad* ground is replete with.

Over and above this, it bears the legal *Shari'ah* legitimacy since it expresses the authorized Islamic *ijtihads* all of which revolve within the orbit of the Qur'an and the *sunnah* of the Prophet. On account of this, it is possible for the Islamic community to choose it for application and practice, from among many of the *ijtihad* forms of the *Shari'ah*, one of which must be chosen.

This is all that can be achieved in the search for the Islamic economic doctrine, when the personal *ijtihad* of the seeker is unable to formulate an appropriate point of departure for that exercise. However, this is also all that we at most need in this connection. What more do we need after we have discovered an economic doctrine, which enjoys the best of the *ijtihad*'s pictures – the truest and the most precise – in which all the Islamic requirements are satisfied, and being attributable to a sufficient number of *mujtahids* who performed it with Islamic sanction for application in actual life.

Misapplication Of Rules Deduced From Past Practices To The

Present Realities

The economic doctrine of Islam entered the life of the Muslims in the era of the prophet and existed in real practice in the economic sphere of the Muslims society at the time. Because of this, it becomes possible for us – in our search for the Islamic economic doctrine – to examine and look for it at the level of its actual application, just as it is possible for us to study it and look for it at the theoretical level. Just as the texts on the theory define them in the sphere of *Shari'ah (principles)*, the actual practice defines the features and characteristics of the Islamic economics.

However, the legislative texts on the (Islamic economic) theory are a better reflection of the doctrine than the actual practise because the application of the texts in a particular condition is not likely to reflect its rich content or its full social significance. The extent the practice inspires and contributes to the theory differs from the contribution of the texts themselves. This difference arises because it is normal for the researcher to overlook the fact that the practice is linked with specific and actual conditions at the relevant time.

An example of this oversight would be sufficient. To the *mujtahid* who intends to find out the nature of Islamic economics from its application during the early period of Islam, the practice then would reflect that Islamic economics was apparently capitalistic in nature – with elements of economic freedom and broad scope of private ownership and individual-centered activities. This is what some Muslims held explicitly, as the individual members of the society who lived in that period apparently had a free hand, faced no restrictions and were not under any compulsion in their economic activities. They apparently enjoyed the rights of private ownership over any of the natural resources that they could possibly had access to and the right to the income from their investment of these assets or the proceeds from their disposal. After all, capitalism is nothing more than this unrestrained freedom, which the members of the members of early Islamic society were apparently pursuing in their economic lives.

Some of those *mujtahids* added that to graft Islamic economics onto non-capitalist systems and to say that Islam is socialist in its economics – or carries socialistic and communist seeds within it – is not an unfair thing to do on the part of the *mujtahid* in his capacity as a *mujtahid*. In doing so he is joining the march of new thought, which has begun to frown upon capitalism and to reject it. He is actually preaching to refashion Islam to a form palatable within the parameters of that new thought.

I do not deny that the individuals of the society in the era of the Prophet pursued economic activities freely and had economic freedom to a considerable extent. And I do not disagree that this does reflect an apparently capitalistic face of Islamic economics. But this side, which we perceive when we look at some aspects of the economic practice, is not visible at all when we look at them during the study of the doctrine at the theoretical level.

It is true that to us the individuals who lived at the time of the Prophet seem to have enjoyed a great deal of freedom, which at times the *mujtahid* may be not able to distinguish from the capitalist-style freedom.

But this acquired perception dissipates and fritters away when we turn from the practice to the theory as per the legislative texts.

This discrepancy between the practice and theory – notwithstanding the fact that each of them expresses one of the alternative forms of the other – lies concealed in the conditions the man of that era lived in, his (production) capabilities and the extent of his command over nature. The theoretical significance of its non-capitalistic dimension – in the sphere of actual practice – is hidden to the extent of man's limited control over nature in that age.

As human capabilities grow and man gains more control over nature with various means, opening more fronts and broadening his range of operation, appropriation and exploitation of the natural resources, the non-capitalist essence of Islamic economic practice becomes more manifest. The contrast between the Islamic economic theory and that of the capitalist economics becomes more visible. Its non-capitalist essence comes to light in the solutions formulated by Islam to meet the new problems emerging with man's growing dominance over nature.

As an example, in the time Islamic economics was applied, man mined salt or other substances, and extracted as much of the mineral material as he wished without any possibility of his appropriation of that material deposit or mine as his private property. Viewed with the theory that was prevalent then, there was nothing that was objectionable.

So what can this phenomenon, when it is separated from the study of the juristic and legislative text in a general way, reveal in the sphere of its application? It can reveal only the rule of the economic freedom in the society to a degree that resembled capitalist-style freedom with regard to ownership of the asset and whatever earnings it yielded.

But when we look at the theory through the text, we will find that it reveals an opposite sentiment to that reflected by the practice. The theory forbids private possession of salt or naphtha (petroleum) mines, and does not permit extraction of these materials more than the personal need of each individual. This explicitly contradicts capitalism, which embraces the principle of private ownership and opens wide rooms for the acquisition of natural resources and their profit-motivated, capitalist-style exploitation.

So can anyone apply an economic system that does not grant the freedom to own salt or petroleum mines, or disallow excessive extraction to the inconvenience of the others? Can anyone call such system capitalist economics? Or can he perceive it as a capitalist doctrine in the same the way as those who approach the subject by observing only the actual practice?

In that case we should understand that while man in that era – when the Islamic economic system was practised – had the freedom to work the mines, own the output and even derived profits from the salt and petroleum mines, yet because of his limited means and control over nature he was mostly unable to exploit the resources beyond the limits permissible by the theory. He had no ability to extract from the mine excessive quantities – on the same scale as today because he was not equipped against nature

the way men of our time are.

Therefore, in reality he did not breach the limit that was set on the permissible quantity to extract. The simple reason for this is that whenever he wished extract more, he was not able to do so with his primitive instruments at his disposal. He was not in the position to extract a large quantity that would bring him great advantage without sharing the benefits of the mine with others.

However, the theory clearly shows the consequences of such practice and this contrast with the capitalist thinking is only reflected when man gains control over nature. His capacity to exploit nature grew and it became possible for a small number of men to work and exploit the whole salt mine, or find wells in the oil field and deliver the output extracted to buyers all over the globe for a large profit.

Likewise, we also see a similar scene in relation to the theory's disapproval of private ownership over natural assets and resources, like woods in the forest, other than what a person can hold or produce with his own labour directly. The men in that era when Islamic economics was practised could not have had an explicitly clear sense of this theory as the work in that age was generally carried out by use of direct labour and whatever tools that was within their reach.

But it has now becomes possible to extract and obtain huge quantities from the mines with the use of machineries and sizable amounts of funds sufficient to defray the wages of the employed labourers. A person with such capabilities can employ labourers to extract and acquire possession of the natural resources on a massive scale.

This is what actually takes place in the real economy today when hired labour and capitalist-style production have become the common mode for the extraction and the acquisition of those natural resources. It is only in such situation that the contradictions between Islamic and capitalist economic theories manifest itself in a glaring manner. It would then be obvious to each researcher that Islamic economic theory is not of capitalist nature. Otherwise, it would not have any disagreement with the capitalist mode of acquiring natural resources.

Thus in the era of capitalist economy we could find a person with a big fleet of machineries and sizable funds hiring workers for large scale logging works. Aided by his access to logistical assets, he could transport massive quantities of output to the eagerly waiting markets for use in construction etc. If this man were to live the Islamic way of life, he would become aware of how much contradiction there is between the principle of economic freedom under Islam and that under capitalism. He will see that the Islamic economic theory would not sanction a capitalist-style logging operation, extracting massive quantities of wood and selling them at high prices.

So the whole face of the Islamic economic theory did not manifest during the era it was being practised, and man of that era did not have to test the limits of the theory in the problems he dealt with and in the economic activities he carried out. Its complete face is visible only through the texts in their definitive general forms.

However, those who hold the belief that Islam is capitalistic and grants economic freedom, do have some excuses for holding this belief. They drew inspiration for this perception from their study of man in the era when Islamic economics was applied, in particular the degree of economic freedom he apparently had. But this perception is untrue and misleading, for an inference from practice cannot be a substitute for input from the legislative and juristic texts, which reveals Islam's non-capitalist essence.

In fact, the firm belief in the non-capitalist essence of the Islamic economic theory – in light of what we have stated – does not result from a new development. Nor does it come about from grafting or from a new personal contribution to the theory as alleged by those who believe that Islamic economics is capitalistic. They charged that the tendency to interpret Islamic economics as non-capitalistic is a deceitful attempt to introduce a foreign element in Islam by way of insincere compliment intended to advance the cause of the new thought and discredit capitalism for its doctrine of private ownership and economic freedom.

We have historical proof to repudiate this charge and to confirm the sincerity of the efforts in interpreting Islamic economics as non-capitalistic. The evidence is in the juristic and legislative texts, which are found in the historical sources that go back to hundreds of years before the modern world and the recent emergence of socialism with all their doctrines, notions and ideologies. But when we bring the non-capitalist face of Islamic economics into clear sight – as presented in this book – and affirm a clear line of demarcation between the Islamic and the capitalist doctrines, we do not intend to brand Islamic economics as socialistic and include it in the rank of socialist doctrines as opposed to capitalism.

The clash and the polarization existing between capitalism and socialism lead to the postulation of a third pole in this contention and allow Islamic economics in particular to occupy this central position of the third pole. By virtue of its features and dominion, Islamic economics fits the position in this contention between the two highly polarized economic doctrines. The contention permits the admission of a third pole in the field because socialism is not merely the negation of capitalism, such that in order to be socialism, it will suffice to deny capitalism. It is also a real and independent doctrine.

Socialism has its own ideas, conceptions and theories and it is not that these ideas, conceptions and theories are only right when capitalism is false. It is not that Islam has to be capitalistic if it is not socialist. The independence of Islamic economics is real at its roots. When we search for the Islamic economics doctrine, we cannot simply confine our process within the orbit of the specific contention between the capitalism and socialism. We must not locate the position of Islamic economics on either of these two poles such that we can describe it as socialistic if it is not capitalistic, or describe it as capitalistic if it is not socialistic.

The originality of Islamic economics will become strikingly clear in the following discussion. Islam opposes socialism's hostility towards private ownership. Islam conditionally accepts the legitimacy of earnings through means other than labour from certain privately owned industries, while socialism considers any earning derived from privately owned production without direct labour input as unlawful

This in fact is the contradiction between the Islamic theory and socialist theory of economics and it is only from this starting point that all the contradictions between them manifest. This will become clearer and clearer as we will set to work on the details.

1. See Volume 1, Part 1 of Iqtisaduna. Foreword by the author.
2. Volume 1: The Scientific Laws of the Capitalist Economics are of Doctrinal Framework.
3. Sayings or traditions about the sayings and practices of the Prophets and Imams.
4. A complex process of arriving at independent legal opinions by applying human reasoning to ascertain the rules of Shari'ah Law.
5. They deduce on the basis of this that the prohibition is not an interdictory prohibition (nahy tahrir) but a reprehensive prohibition (nahy karahah) for they consider it improbable that the owner of the well is prevented from earning profit from his well-water for every time and in every place.
6. See the foreword by the author Vol. 1, Part 1.
7. The plural of sunnah.
8. Traditions narrated with numerous independent chains.
9. The scholars of traditions.

Chapter 2: The Theory Of Pre-Production Distribution

The Legal Precepts (Ahkam)

Distribution Of (Public) Wealth In Two Stages

Distribution Of (Public) Wealth In Two Stages¹

Wealth distribution is accomplished in two stages, pre-production and post-production. The first is distribution of the material factors of production, which are the material inputs in production. The other is distribution of the output from production.

Factors of production include land, raw materials, and tools and machineries required for the production of various goods. All these are required both in agriculture or manufacturing. As for production output, it is the outcome resulting from putting together the capital goods with raw materials and human labour. There is thus primary wealth, which constitutes inputs into the production activities. There is also secondary wealth, the output man successfully generates by employing all the factors of production.

Distribution therefore involves both, primary wealth and secondary wealth. Evidently the distribution of primary wealth – or factors of production – precedes the production process itself, since individuals carry out production activity in accordance with the way the society distributes the factors of production. As for

the distribution of the secondary wealth – the production output – it is related to and is dependent on the production process, for the latter influences the results of production.

However, when the capitalist economists study the problems of distribution with the capitalist framework they do not look at the entire wealth of the society and its natural resources that constitute the factors of production. They only examine the issue of the distribution of the production output. They consider the distribution at the level of the national income, instead of the entire national wealth. By national income, they mean the economic output comprising goods and services generated by the economy – or more explicitly the value of the gross production for a certain period, for instance, a year.

Therefore, a discussion of distribution in political economy is the discussion of the distribution of this economic value generated in production among the elements that contribute to the production activity – capital, land, entrepreneurship and labor – and the measure of their respective shares in the form of interest, rent, profit and wages. Because of this, it is natural that discussions of production precede those of distribution, so long as it means the distribution of the value of the production output among the various factors of production. On this basis, we find that the capitalist political economy considers production as the first subject matter of discussion. So it studies the issues in production first and then tackles the issues of distribution.

Islam, however, treats the issues of distribution on a broader and more comprehensive scale. It does not confine itself to dealing only with the distribution of the production output while steering clear of the deeper issues. By deeper issues, I mean the pre-production distribution or distribution of the factors of production. Doctrinal capitalism, or the applied capitalist economic system, has ignored the issue of the distribution of the factors of production completely and leaves that to the control and authority of the strongest, under the slogan of economic freedom (the *laissez-faire* doctrine). This only serves the interest of the strongest and opens the way for the monopoly-style exploitation of natural resources and their deployment.

On the contrary, Islam intervenes in a constructive manner, at a pre-production stage, in the distribution of natural resources. Islam divides natural resources them into several categories – each category marked for a particular mode of distribution – such as private ownership, or public ownership, or state ownership, or a public property accessible by all (*ibah atul-‘ammah*). It formulated for each a set of rules, along which the revenues generated from the assets are to be distributed.

Thus in Islamic economic system, distribution constitutes the starting point or the first step, instead of production as that in the traditional political economy. The rationale is that the distribution of the natural resources takes place before the production activity itself. Any subject that is connected with the production activity is relegated to the second stage. We shall now begin with ascertaining the position or the standpoint Islam takes with regard to the distribution of the natural resources and the wealth generated therefrom.

The Factors Of Production From Natural Resources

Before we begin with the details on how the factors of production are to be distributed, it is necessary that we specify the sources. In political economy, the primary factors of production are land, capital labour and entrepreneurship². Land is defined to include natural resources used in the production of goods and services. But when we discuss the distribution of the factors of production and their respective forms of ownership in Islam, we must exclude two elements from our discourse. These are capital and labour.

While capital is also a key input in the production of finished goods – accomplished with human labour – and also contributes to the generation of additional wealth, it is a produced wealth and does not come directly from nature. The equipment and machinery that produces textile goods are not natural resources. It was originally a natural material, shaped and processed with human labour in a previous production process.

We are presently discussing only details that regulate the distribution of natural assets prior to production, which is the distribution of the wealth gifted by God to human society before it sets out with economic activities and production works. As long as a capital comes from a previous act of production, it is part of ‘post-production’ distribution, and will be included in the discussion of the production output together with consumption goods and industrial products. As for labour, it is an abstract and an intangible element without a physical form so as to be included in the orbit of public or private proprietorship.

On this basis, only natural resources – from among the other production inputs – that could be the subject matter of our study (on distribution), for it represents a tangible material element prior to production.

Difference Of Doctrinal Standpoints Concerning Distribution Of Natural Assets

Islam differs from both capitalism and Marxism in the details of dealing with the subject of distribution of natural resources. Capitalism connects the ownership of natural resources and their mode of distribution with the individuals of the society and their respective skills, capabilities, drive that they command – within the orbit of the ample economic freedom allowed to all of them – in the competition to acquire the largest possible shares from those resources. Thus it permits each individual to acquire and take exclusive possession of, what in essence is, luck or good fortune enables him to successfully obtain out of the riches of nature and himself.

Marxism in turn views it in accordance with its universal approach in interpreting history, that the ownership of the factors of production is directly connected with the prevailing mode of production. It is what each mode of production determines – at the respective stage of history – as the mode of distribution for the relevant factors of production and the respective class of individuals who should own

them. This mode of production remains in continuation until history enters another stage, and production begins to assume a new form.

As the mode of production evolves, its progress is held back by the prevailing system of distribution since the growth and development of the former. When the prevailing system of distribution breaks apart after a bitter conflict with the new mode of production, a new form of distribution of the factors of production emerges. The new distribution system for the factors of production is one that recognizes the social conditions necessary for the new mode of production, thus facilitating its growth and development. The new distribution system is such that it supports the new mode of production as it is always established on the needs and evolution of the mode of production.

So during the history's stage of agricultural production, the mode of production necessarily imposed the establishment of a feudal-style distribution system (in relation to the factors of production). Later, during the stage of technology-led industrial production, the capitalist-style private ownership (over the factors of production) became dominant. At a particular stage during the evolution of technology-led industrial production, the replacement of the capitalist class by the proletariat class, and the resulting change in the distribution system was inevitable.

But the Islamic principles in relation to the distribution of factors of production differ from both capitalism and Marxism. Islam does not approve the capitalist concept of unrestrained economic freedom (*laissez-faire*) as we have seen earlier in the discussion of capitalism³. Likewise, it does not agree with Marxism that suggests system of ownership of the factors production that self-adjusts to the prevailing mode of production because of the inevitable connection between the two (as claimed held by Marxism), its landmark concept⁴. We observed this in earlier discussion.

Islam places restrictions on private ownership as regards the factors of production and separates the distribution of those resources from the mode of production. From the Islamic perspective, the issues pertaining to the distribution of natural resources are not about compatibility with the mode of production. Islam disagrees with the Marxism's idea that the distribution mechanism self-adjusts – due to the dynamics of the society – each time the need of production changes and requires a compatible system of distribution that facilitates its progress and growth.

Islam views it as a human issue. Man has needs and desires, which should be fulfilled in a form that preserves and develops his humanity. Man remains a man with his needs and his desires whether he tills the land with his hands or employ electrical or steam-powered tools for that purpose. Therefore, the distribution of natural resources must be organized in manner that will guarantee the fulfillment of these needs and desires within the human framework, which accommodates and contributes to the growth of his being and his humanity.

Everyone, especially in his capacity as a private person has needs and desires that must be satisfied. Islam has facilitated individuals to satisfy these needs by way of private ownership subject to the

restrictions and conditions it had established. When relations between men are established and the society comes into existence, there would also be general needs of the society. Islam has guaranteed the fulfillment of the society's needs by way of common ownership in respect of specific factors of production.

Many individuals are not able to fulfill their needs by way of private ownership and as a result they will experience unhappiness. The overall social equilibrium will thereby be disturbed. Here, Islam sets up a third form of ownership – state ownership – so that the head of the state (*Wali' Al-Amr*) may maintain peace and order.

In line with these, natural resources are classified into different categories and their respective distribution is effected based on the applicable form of ownership from the three we discussed above – private ownership, public or common ownership and state-ownership.

Natural Assets As Factors Of Production

We can divide the natural resources in Islamic economics into several categories:

- i) Land. It is the most important among the natural resources, without which it is impossible for man to carry on any type of production.
- ii) Minerals such as coal, Sulphur, petrol, gold, iron etc.
- iii) Natural waterways. They are one of the essential elements for man's life, which also play an important part in the agricultural production and transportation.
- iv) Others: These comprise the contents of the seas extracted by diving or some other ways (such as pearls and corals), natural vegetation and wildlife, gases in the atmosphere and even natural assets like waterfalls with their latent capacity and value in terms of their potential for electricity generation.

Land

Shari'ah has categorized lands that were annexed to the *Dar ul-Islam* (nation of Islam) into three forms of ownership – public ownership, state ownership and private ownership.

The *Shari'ah* ties the form of the ownership to the circumstances in which these lands come into the possession of the Islamic nation and the conditions that prevailed thereafter. The form of ownership of land in Iraq differs from that in Indonesia because these countries differ as to the manner in which they were annexed to and became the territories of *Dar ul-Islam*.

Likewise, in Iraq itself one land differs from another with regard of the form of ownership, on account of the different situation that prevailed over each land when Iraq became Islamic. In order to penetrate the circumstances, we will divide lands in the Islamic nation into different categories and then talk about

each class and its nature of ownership.

Lands That Became Islamic Territory By Conquest

Lands that became part of Muslim territory by conquest are those lands that fell to the *Dar ul-Islam* as a result of *jihad* carried out in the cause of Islamic mission such as lands of Iraq, Egypt, Iran, Syria and many other parts of the Islamic world.

The circumstances of these lands were not identical at the time of their respective Islamic conquest. There were some that were already cultivated through earnest human endeavours for productive agriculture or for some other uses. There were also lands which – from the beginning of the Muslim conquest – were naturally agriculture-ready without any need for direct intervention by man like woodlands or thickets, with fertile soil and abundant trees. There were also infertile and neglected lands at the time of conquest, classified as barren lands.

These were the three categories of lands with different circumstances at the time of their respective ingress into Islamic history. Islam has ordained public ownership in respect of some and state ownership in respect of others, as we shall see.

Lands Already Cultivated At The Time Of The Conquest

If the land at the time of its entry into the Islamic nation was already cultivated, possessed and worked on by man, then it would become a common property of the whole Muslim community and shall remain that way in the future. There must not be any discrimination between any members of the community and no one must be allowed under Islamic law to acquire the right to take the land into his possession as private property.

The great research scholar Najafi has quoted in his book *Al-Jawahir* from a number of juristic resource books such as *Ghunya*, *Al-Khilaf* and *At-Tadzhkirah* that there is a consensus of opinion among the *Imamiyyah* jurists regarding this ruling. They are of one accord about the application of the principle of public ownership to a land that was already a cultivated land at the time of its conquest by Islam.

Likewise, Al-Mawardi quotes from Imam Malik the saying that the conquered land shall be a trust property for the Muslim community from the day it is conquered. There is no (additional) need for the *Wali' Al-Amr* (the head of the Muslim state) to establish or decree the property as a trust. This is another meaning of the term ‘common ownership by the nation’.

The Evidence And Demonstration Of Public Ownership

The texts of Islamic law – the *Shari'ah* – and their application are quite explicit about the establishment of the principle of public ownership in respect of this category of land as is evident from the following reported traditions:

1- In a tradition from Al-Halabi it is stated that he asked Imam Ja‘afar ibn Muhammad as-Sadiq (a.s.) about the *as-Sawad* (black) land (i.e. Iraq) “what is its status?” The Imam replied “It belongs to the entire generation of Muslims of today and to the Muslims who will enter the fold of Islam after to this day and those not yet born”.

2- In a tradition from Abu Rabi‘ Ash-Shami, (it is stated) that Imam Ja‘far (a.s.) said “Do not purchase the land of *as-Sawad* (Iraq) for it is *fay’*⁵ for Muslims.”

The term *ardus-sawad* in use at that time was used to describe a part of lands of Iraq, which Muslims had conquered in the Holy War (*jihad*). But the (early) Muslims applied this term to Iraqi land only because when came from their place in the land mass of Arabia – carrying the standards of their divine mission to the world – the verdure of the fields and woods of Iraq appeared to them verging on darkness. They thus termed it *as-sawad* for they are used to combine both the term *al-khadrah* (green) verdure and *as-sawad*.

3- In the reported tradition by Hammad: That Imam Musa ibn Ja‘far (a.s.) said the land, which is taken by force is a trust property left in the hand of one who cultivates and revives it and *kharaj* (land tax) is levied on those who hold these lands according to their capacity.

By this, it was meant that the head of the state should leave the lands – that were conquered by force – in the hand of those individuals of the Muslim society, who cultivated it and planted crops on it. The state should demand from them tax in respect of the land because it was a public property of the Islamic nation as a whole. When the farmers plant crops on it and benefit from the harvest, they must pay to the nation the price for using it in the form of land tax. It is this price or rent that the term *kharaj* is applied in the abovementioned tradition.

4- It is stated in a tradition: That Abu Bardah asked Imam Ja‘far (a.s.) about purchasing of a taxed land. The Imam (a.s.) replied “but who will sell the land while it is the land of Muslims (property of the entire Islamic community)”.

Ardul-kharaj (taxed land) is a juristic term in respect of the category of lands we are discussing. It is a land already with crops cultivated on it when it was acquired. *Kharaj* is levied as stated in the earlier tradition and because of that the term a “taxed land” was used.

5- In a tradition reported by Ahmad ibn Muhammad ibn Abi Nasr, from Imam ‘Ali ibn Musa Ar-Rida (a.s.), he explained the types of land and the relevant Islamic ordinances, saying that “Whatever is taken by sword, that belongs to the Imam to grant it to anyone he deems fit.”

6- In the book *Tarikhul-futuhil-Islamiyyah* it is stated that the second caliph was asked to distribute the conquered lands among the soldiers of the Islamic army, on the basis of private ownership. He consulted the companions of the Prophet. ‘Ali (a.s.) advised against it on the basis of that principle. Ma‘adh ibn Jabal said: “If you distribute, it will place great revenue in the hands of the nation. Then they

will die and will thus be eliminated, and the revenue will become the property of a single man or a single woman. Then will come a people who will take their place joining the fold of Islam, but they will find nothing. So decide this matter taking into consideration the fact of making ample provision for the last as for the first.”

So he decided it to be public property. “See what the soldiers have brought to you from among animals and non-arable lands and distribute the same among the Muslims who were present, and leave out the lands to the respective persons having possession over them, so that these be the gift for all Muslims. If we distribute these among those present then there will be nothing left for those who come after them, i.e. the succeeding generations”.

So Umar wrote to Sa‘d ibn Abi Waqqas: “I have received your letter in which you wrote that people are asking you to distribute the spoils of war and what Allah has granted them by way of *fay*. I order you to see what the army urge upon from the spoils they have brought in, to distribute among the Muslims who have been present in the war only moveable properties (lit. *kara‘* = horses, weapons, etc. and mal moveable property) and leave aside the rivers and lands for the ‘*ummah* – those who work on them – so that these be as gifts to the Muslims. If we distribute these among those who are living at present, nothing will be left for those who will come after them.”

Some jurists, in explaining the measures of the second caliph, hold the opinion that the *sawad* (fertile) land belonged to its owners as stated in the book *Kitab Al-Amwal* by Abu ‘Ubaydah, that when he returned the land to them it became theirs by giving them permanent ownership right in the land and the right of *kharaj* accruing from it was assigned to the Muslims. So the public ownership (of the land) was connected with the *kharaj* accruing from the land and not with the permanent proprietary right in the land.

Some contemporary Muslims who accept this explanation say that this is nationalization of the *kharaj* and not the land. But the facts clearly shows that the measures were taken by ‘Umar on the basis of the belief in the principle of public ownership. His application of the right of permanent ownership of the land and his leaving the land in the hands of those who held it in their possession, were not an acknowledgement and recognition, on his part, of their right to it as their exclusive private property. He gave the land to them by a contract of lease (*muzara‘ah*) or hire (*ijarah*) so they could utilize or work the land for productive purposes and enjoy its benefits in consideration of the *kharaj* to be paid by them.

The proof of this is in an anecdote a mentioned in the book *Kitab Al-Amwal* by Abu ‘Ubaydah that ‘Utbah ibn Farqad purchased a land on the bank of the river Euphrates. He proposed to start the preparation of land for cultivation. He mentioned this fact to ‘Umar. He was asked by ‘Umar as to the person he had purchased it from. His reply was that he had purchased it from its owner. So when the *Muhajirs* and *Ansars* assembled before ‘Umar, ‘Umar asked ‘Utbah if he had purchased anything from these people. ‘Utbah replied in the negative and ‘Umar then ordered him to return it to the person from whom he had purchased it from and to take back his money from that person.

7- There is a tradition from Abu 'Awn Ath-Thaqafi mentioned in *Kitab Al-Amwa* that he said that a villager embraced Islam during the rule of 'Ali (a.s.). The Imam thereupon stood up and said: "As for you there is no *jizyah* on you and as for your land it now belongs to us".

8- It is stated in *Al-Bukhari* on the authority of 'Abdullah that the Prophet gave the Jews the land of Khaybar to cultivate. They had half of what they produced on it. This tradition – in spite of the presence of other traditions in conflict with it – enunciates that the Prophet had applied that principle of public ownership to the land of Khaybar as a land conquered in *jihad*. Had the Prophet distributed the land specifically among the soldiers who took part or were present in the battle – under the principle of private ownership, instead of public ownership – he would not have entered into a lease contract with the Jews for its cultivation in his capacity as the head of state. This indicates that the matter was entrusted to the state and not to the individuals who had acquired it as war booty.

Some Muslim thinkers state that the treatment of the conquered land of Khaybar in this manner furnishes a decisive proof of the fact that the state has the right to take into its possession the goods and properties of the individuals — a matter that establishes the validity of nationalization in Islam, for the general rule is that *fay'* should be distributed among the soldiers participating in the battle. Therefore to reserve it for the state instead of distributing it among those entitled confers the state the right to lay its hand on the rights and claims of its people, when such step is needed in the best interest and general well-being of the people. It is argued that it is thus valid for the state to have the right of nationalizing private properties.

But the fact is that the appropriation of the conquered lands to state – instead of the army – was indeed not an application of the principle of nationalization. It was an application of the principle of public ownership. Private ownership was not made a law in respect of the conquered land. The lawgiver had formulated the principle for the distribution of *fay'* as private property only in respect of moveable assets. Therefore, public ownership of conquered lands bore the original stamp mark of Islamic legislation. It was not with the secondary stamp mark of nationalization or (another) legislation after the properties had become private properties.

Anyway most of the texts we have cited go to establish that a conquered land is the property under the ownership by whole Muslim nation. The Imam as the head of state was responsible to manage and look after it and to demand a specific tax from those who enjoyed its use. The tax was to be paid to him as lease payments in consideration for the benefits derived by them from its utilization. The ummah was the owner of the tax proceeds and because it possessed the proprietary rights, it was entitled to benefit from the tax levied on the land.

Arguments Against Private Ownership (Of Conquered Lands)

There are some among Islamic research scholars who are inclined to the view that subjects the conquered land to distribution among the army who were participated in the battle as their private

property, in the same way as all other spoils of war were distributed. They rely juristically on two arguments. First is the Qur'anic verse on *ghanimah* (booty). Second is the reported practice of the Prophet in the distribution of the booty of Khaybar.

As for the verse of *ghanimah*, it is what Allah the Supreme says in the *Surah al-Anfal*:

“Know that the fifth of what you have conquered in the battle belongs to Allah, His Prophet, the kinsmen, the orphans, the needy and the traveller if you believe in Allah.” (8:41)

In the opinion of these people, the verse by its obvious meaning demands that one fifth of the spoils of war was to be set aside while the rest was to be distributed among the soldiers present in the battle. It applies to the whole booty, both land and movables assets. But the fact is that at the most the holy verse only indicates the obligation of the taking one fifth out of the *ghanimah* (booty) as a duty the state exacts for the well-being of kinsmen, the needy, orphans and travellers.

Let us assume that this one fifth is taken out of land too. However, this does not make clear – under any circumstances – the fate of the remaining four fifths or the mode of ownership that is to be applied to it. The *khums* (the one fifth) as a duty exacted for the good of specific group can be applied on lands just as it is possible to take it out of the movable assets among the war booty, which belong to the soldiers under private ownership. It is also possible to assume that it is taken out from lands that the people collectively own under public ownership. In general, no nexus is found to exist between *khums* and the distribution of war booty.

It may be further argued that while the assets gained from war are subject to the application of the “one fifth” or *khums*, it is not necessary to distribute them among the war participants on the basis of private ownership. The verse in respect of *khums* does not point to the distribution of the spoils of war among the participants.

The proponents of this view also point to the practice of the Prophet – as reported in the traditions – concerning the distribution of the spoils of Khaybar as private property among the soldiers, who took part in the battle. They are convinced that the Prophet distributed the land of Khaybar among the soldiers as their private properties. However, we completely doubt the soundness of this conclusion even if we were to assume the validity of the historical narrations concerning the distribution of land of Khaybar by the Prophet. The history, which relates this, also carries clear evidence concerning this unprecedented practice of the Prophet, which helps us understand the rules he applied in the distribution of the ‘spoils’ of Khaybar.

There is evidence of the Prophet reserving a great portion of (the land of) Khaybar for the benefit of the state and the good of the Islamic community. There is a tradition mentioned in *Sunan of Abu Dawud*, transmitted on the authority of Sahl ibn Abi Hathamah that the Prophet divided Khaybar (land) in two halves. One half was to meet his difficulties and needs and another half for distribution among the Muslims. He divided the latter half into 18 parts.

There is a tradition on the authority of Bashir ibn Yasar, a slave of an *ansar*, one of the companions of the Prophet. The tradition states that when the Prophet conquered the territory of Khaybar, he divided it into seventy and thirty portions (meaning that the whole was divided into hundred portions). Half of this was for the Muslims and the Prophet, and the remaining half he set aside for the deputations that visited him and for the affairs and need of the unfortunate ones.

There is another tradition from ibn Yasar that when Allah granted His Prophet victory over Khaybar he divided it into a set of seventy and a set of thirty portions, the total being one hundred. He set aside half of it for those in hardship and those who visited him from *al-Watihah* (a fort of Khaybar) and the *al-Katibah* and related expenses. As for the other half, he set aside for distribution among the Muslims to meet *ash-Shiqq* and as *an-Natah* as gifts or benefits for them, and related expenses. The portion representing the Prophet's share goes with them.

There is another piece of clear evidence that although the Prophet distributed part of the lands to individuals, he had kept the administration of the land under his control and authority, as he entered in direct agreement with the Jews for the cultivation of the land with the stipulation of the option for their eviction whenever he wished to do so. In a tradition in the *Sunan* of Abu Dawud it is reported that the Prophet intended to expel the Jews from Khaybar. Thereupon they told him, "Muhammad, let us work the land, we having a share as seems fit to you and your people having a share".

There is a tradition in the same book that was reported by 'Abdullah ibn 'Umar, that 'Umar said: "O you people, the Messenger of Allah (S) had allowed the Jews of Khaybar to remain and cultivate the lands on the condition that if we wished we would expel them from it so he who has any property belonging to him let him reach up to it (take it) for I am going to expel the Jews of Khaybar". He then expelled them.

It is also reported by 'Abdullah ibn 'Umar as saying "When Khaybar was conquered, the Jews asked the Messenger of Allah to acknowledge their work on the lands on fifty-fifty basis (applied to the sharing) for the produce. The Prophet replied '*We let you do so on that condition for as long as we wish*'. So they cultivated the land on that condition. The half of date yield of Khaybar lands used to be divided into two fixed portions and the Messenger of Allah used to receive the *khums* (from that)."

Abu 'Ubayah cites in the *Kitab Al-Amwal* that the Messenger of Allah handed over Khaybar – its date fields and its lands – to its owners on the fifty-fifty basis.

When we bring together these two narrations on the practice of the Prophet – that he kept a large portion of the revenue from the land of Khaybar for the good of the Muslim community and for the affairs of the state, and that he managed the other portion in his capacity as a ruler – we will be able to formulate a description of the practice of the Prophet that is consistent with previously given legislative texts (traditions) enunciating the principle of public ownership in respect of conquered lands. It is possible that the Prophet have applied the public ownership mode to the land of Khaybar. That involved the state assuming the right of proprietorship of the land and employing it for the interests and needs of

the nation.

The general needs of the nation of that time were of two types. First, support for the expenditure of the government in discharging its obligations towards the Islamic society. Second, creating social balance and raising the standard of living. At that time, the Muslims lived in hardship, as described by Lady 'Aishah: "We had not our fill of dates till Allah granted us victory over Khaybar". This is a measure of hardship, which stood as a barrier against the progress of a budding nation and its remedy would be deemed a general need of the nation.

The prophet's practice fulfilled both types of general needs of the nation. The Prophet assured the satisfaction of the first need with half of the revenue from Khaybar by allocating it for the less fortunate, foreign visitors and similar purposes, as stated in the tradition given earlier. He also assured fulfillment of the second need by allocating the other half of the revenue of Khaybar to the benefit of a large groups of the Muslims in order to provide help towards the general well-being of the Islamic society and facilitate improvement in the overall standard of living.

However, the appropriation of half of the land revenue among a large number of Muslims did not mean conferring upon them permanent proprietary right in respect of the land. The appropriation was only in relation to its revenue, access and usage, while keeping its mode of ownership as common property. It is this that explains to us that the Prophet had a free hand in the management of the revenue from the Khaybar land, as to the respective individual shares therein. It was because the permanent ownership of the land remains with the state. As long as it remains the property of the nation, the management of its affairs must be entrusted to the head of the state as its guardian.

The conclusion we draw from all this is this: that a conquered land belongs to the Muslim community under common ownership, if at the time of its conquest it is already a cultivated land. It is to be held in trust for the nation and is not subject to the rules of inheritance. Whatever portion of such property a Muslim holds in his possession as an individual of the nation is not transferable to his heirs. Rather, every Muslim has a right in it by the simple fact of his being a Muslim.

It is similar with a taxed land. It is neither inheritable nor saleable, for the sale of a trust property is not valid. Ash- Shaykh at-Tusi has stated in *al-Mabsut*, "*The disposal of taxed land by sale and purchase is not legal, nor by gift, nor by exchange, nor by possession nor by lease (tenancy)*". Malik says: "*The land is not divisible while it is a trust property, for the utilization of tax accruing therefrom for the benefit of Muslims in relation to such purposes of public utility as the supply of military provision for the soldiers, construction of bridges, and mosques and in ways of such other good things of public utility*".

When it is committed to the farmers for use, the farmers thereby do not earn right on the land (in the form of a permanent personal right to hold ownership of the land). He acquires the right of its tenure as a lease to cultivate it and he pays the rent or the *kharaj* by way of consideration for it in accordance with the terms and conditions agreed upon in the lease (tenancy) contract. When the term of the lease

agreed upon expires, his relationship with the land is cut off and it is not legal for him thereafter to further cultivate it or to enjoy its use in any way, except upon the renewal of the contract and by entering into a fresh agreement with the *Wali' Al-Amr* a second time.

This has been explained explicitly by the jurist Isfahani in his commentary in *al-Makasib*, denying an individual acquiring any personal (private) right in taxed lands beyond the limits authorized by the *waliyyu 1-amr* in the lease contract, which gives him the right to enjoy the use of the land and its cultivation in consideration for the rental for a fixed term.

If the taxed land is left neglected such that it has become wasteland and its cultivation has ceased, it does not lose its status of common ownership by the nation. Therefore, an individual will not earn a right over the land simply by carrying out reclamation efforts, except with a license from the *Wali' Al-Amr*. Nor will reclamation by an individual result in his gaining a title to possession of the land as his private property.

A person's entitlement to a special title of private possession of the land by reason reclamation exists only in respect of the state lands (we will discuss this later), not in respect of taxed lands. The ownership of taxed lands is a common ownership of the Muslim nation as stated explicitly by the research scholar, the author of *al-Balghah* in his book. Therefore, taxed lands that have suffered damage because of neglect shall continue to remain common property of Muslims and do not become a private property of the individual by reason of his reclamation and cultivation efforts.

We can thus retrospectively deduce rules of the *Shari'ah* laws that apply to every land – which was annexed to the *Dar ul-Islam* by *jihad* – that was already cultivated at the time of its conquest, as follows:

First, it shall be the common property of the nation and it shall not be lawful to appropriate it to any individual or for anyone to acquire possession.

Second, every Muslim shall have a right to the land in his capacity as a member of the Muslim community, and that the property shall not be subject to inheritance.

Third, it shall not be permissible for any individual to execute a deed of sale, gift or any transaction of such nature in respect of these lands.

Fourth, the *Wali' Al-Amr* shall be considered as the one responsible to look after the usage of these lands and the levying, collection and distribution of the related taxes.

Fifth, the tax that the farmer pays to the *Wali' Al-Amr* comes under the mode of the public ownership, similar to that of the land itself. The tax belongs to the nation.

Sixth, the rights under the lease contract shall end with the expiry of the lease and it shall not be valid thereafter if the lease gets renewed on a basis of exclusivity.

Seventh, if the taxed land later becomes a wasteland because of neglect that shall not affect its character as a public property. No individual shall be allowed to acquire ownership right therein by virtue of reclamation and restoration works he carries out.

Eighth, the cultivation of the land by the efforts of its previous owners at the time of the Islamic conquest shall be considered the key criterion for it to be placed under common ownership and for the application of the above-mentioned rules. If the land did not become agriculture-ready because of human efforts, it does not come under these rules.

Because of this, in actual practice today we need a vast amount of historical information regarding Islamic lands. For the respective areas under cultivation we need the historical background in order to identify – in light of this information – the tracts that were already under cultivation as opposed to other tracts, which were desert lands at the time of conquest. However, in view of the scarcity of conclusive information in this connection, a large number of the jurists have been content with mere presumptions. All lands that are presumed to have been cultivated lands at the time of its Islamic conquest are considered common property of Muslims.

Let us mention by way of example the attempts made by some jurists to determine those lands of Iraq – which were conquered in the second decade of the *Hijra* – that were taxed lands and were under common ownership of Muslims. This is mentioned in the book *Kitabul-Muntaha* by al-‘Allamah al-Hilli

“The *sawad* land is the land conquered from the Persians. It was conquered by ‘Umar ibn al-Khattab and that is the *sawad* land of Iraq. Its boundary ‘breadth-wise’ begins from the detached hilly tracts near Hulwan in the direction of Qadisiyyah adjoining with ‘Udhayb bordering on the Arabian land. ‘Length-wise’ it begins from the centre of Mawsil towards the coast as far as ‘Abbadan from both of eastern banks of Dijlah (Tigris). As for both Western banks, which are adjacent to Basrah that is under common ownership of Muslims, is only the ‘Amr ibn al-‘As River (*Shat ‘Amr ibn al-‘As*). This land – with its boundaries mentioned – was conquered by force by ‘Umar ibn al-Khattab. He had delegated it after its conquest to three persons, ‘Ammar ibn Yasir as a prayer leader, Ibn Mas‘ud as its *Qadi* (judge) and the administrator of the *baytul-mal* (public treasury) and ‘Uthman ibn Hanif as its land surveyor. He had fixed a goat for them for each day – half of it with fallen dates for ‘Ammar ibn Yasir and the half for the other two and declared “I know not, but I think the hamlet from which the goat is taken will soon be destroyed”.

‘Uthman surveyed the land but there was a difference in estimation of its total area. According to the surveyor’s estimation its area was thirty two million *jarib* while according to Abu ‘Ubaydah’s estimation thirty six million *jarib*.

In Abu Ya‘la’s book, *al-Ahkamus-sultaniyyah*, it is mentioned that the limits of the *sawad* land was ‘length-wise’ from a town off Mawsil up to ‘Abbadan and ‘breadth-wise’ from ‘Udhayb of Qadisiyyah up to Hulwan. In length is 160 *farsakh* and in breadth, 80 *farsakh* excluding the villages named by Ahmad

and mentioned by Abu 'Ubayd as al- Hirah, al-Yanqiya and the lands of Banu Saluba and other village which were treaty lands (i.e. *Daru's-Sulha*).

Abu Bakr has related with his chain of transmitters from 'Umar that "Allah the Mighty and Glorious granted us victory over the territory from 'Udhayb up to Hulwan."

As for Iraq, it contains by its breadth the whole of the land conventionally termed 'sawad' but is shorter in length, as compared its breadth. It begins on the Eastern banks of Dijlah (Tigris) al-'Alath and on the Western banks of Dijlah from Harbi. Thereafter it extends to the extreme end of the provinces of Basrah to the islet of 'Abbadan. Its length is 125 *farsakh* and is less in its breadth by 35 *farsakh* as compared with that of the *sawad* land (i.e. 160 – 125 = 35). However, its breadth is 80 *farsakh* like that of the *sawad* land.

Qudamah ibn Ja'far states: "this makes practically ten thousand *farsakh*. The length of a *farsakh* is twelve thousand cubit (*zura'* = forearm) by free (*Mursalah*) measurement and nine thousand cubits by survey measurement. This will make when the same is multiplied by the same and it is a fractonizing of *farsakh* by *farsakh* – twenty two thousand five hundred *jaribs*. When this is multiplied by the number of *farsakh* that is 10,000 ($80 \times 125 = 10,000$) the total will make two hundred and twenty five millions *jaribs*. Deduct from it by (approximation) the area of lands occupied by hills, mounds, dung hills (ant-hills), bushes thickets, beaten tracts, high ways river courses areas of towns and villages handmill pools, lakes, bridges, serap, heaps of wishy out scourings, heaps, threshing floors, reed dumps, and the furance pits of the lease, etc. (we take this to be seventy five million *jaribs*) the remaining area will come to be one hundred and fifty million *jaribs*. Take the half of it as uncultivated land and half as cultivated tuning with date palm and grapes garden trees.

If the remaining position from the *sawad* land (and it is 35 *farsakh*) is added to what Qudamah has mentioned in respect of the area of Iraq, the area of the land of Iraq will be increased by one fourth. This will make the total of the area of the *sawad* land fit for the plantation and agriculture. Part of this area however remains idle on account of numerous events.

Lands That Were Uncultivable At The Time Of Conquest

If a particular land was not conditioned by human efforts and was by nature already fertile when it was added to Islamic territory, then it was the property of the Imam. It is a land to which we apply the term 'state ownership'. It does not come within the orbit of private ownership. It similar to a taxed land in that it is not subject to the principle of private ownership, yet it differs as to the mode of ownership.

Cultivated lands at the time of conquest are considered common property of the nation. As for a land that was barren or uncultivable, when it was added to the *Dar ul-Islam*, it is considered state property.

Evidence For State Ownership Over Barren Land (At The Time Of Entry Into Dar-Al Islam)

The argument that establishes that a land, which was a barren and uncultivable at the time of its conquest, forms part of the spoils of war has been stated in the tradition. *Anfal* (spoils of war) means a collection of all those items and properties in respect of which the *Shari'ah* has ruled as belonging to the state by the dictum of Allah in the holy Book.

“They ask thee (O Muhammad) of the spoils of war, say: “The spoils of war belong to Allah and the Messenger, so keep your duty to Allah and adjust the matter of your difference and obey Allah and His Messenger if you are (true) believers”. (8: 1).

In reference to the occasion of the revelation of this verse ash-Shaykh at-Tusi has related (a tradition) in his book *at-Tahzib* that some people asked the Messenger of Allah to give them something out of the spoils. It was at that time that this verse was revealed affirming the principle of the state ownership for the spoils of war (*anfal*) and rejecting their distribution among the individuals on the basis of private ownership.

The Prophet's control over the spoils (of war) was by virtue of his being the head of the state that the spoils belong to and makes the ownership of the spoils an uninterrupted ownership which extends to the office of the Imam ever after him, as stated in a tradition from 'Ali (a.s.). He said: "to the one who is charged with the affairs of the Muslims belong the spoils, which belonged to the Messenger of Allah. Allah the Mighty and Glorious, has said: *They ask thee of the spoils say: ‘The spoils belong to Allah and the Messenger’ and what belongs to Allah and His Messenger belongs to the Imam* ”.

So if the spoils were for the Prophet as ordained in the above quoted verse of the holy Qur'an, and since barren land constituted part of the spoils, it is natural for it to be included in the orbit of state ownership. It is on this basis that Imam as-Sadiq (a.s.) was reported to have said in connection with the determination the ownership by the state (Imam): All barren lands, each and every one of them belongs to Him. This he has stated on the basis of the dictum of Allah the High: "*They ask thee of the spoils (that you give something out of them) say ‘spoils belong to Allah and the Messenger’*".

There are some other evidences that indicate that barren lands fall under the state ownership. There is a tradition in which the Prophet has said: "*No person has any title to the barren land except with whom the Imam is pleased*". Abu Hanifah has inferred from this that no person is entitled to reclaim or appropriate any barren land without the permission of the Imam and this is in complete agreement with the fact that barren land belongs to the Imam, or in other words ownership by the state⁶.

There is also a tradition on this point, which is given in the *Kitab Al-Amwal* by Abu 'Ubaydah, reported by Ibn Tawus from his father that the Messenger of Allah (S) said: "*Land belongs to Allah and His Messenger thereafter it belongs to you*". This *nass* (text of the tradition) gives the ruling in respect of '*adi* land that its ownership belongs to the Messenger of Allah and the other sentence '*thereafter it belongs to you*' affirms the right following its reclamation. We will discuss that later.

It is stated in the *Kitab Al-Amwal* that “Every such land is an ‘adi land that had men dwelling on it in the distant past, and was later abandoned. Such a land is ruled to belong to the Imam similar to the case of a barren land, which no man has revived by reclamation, or land that does not belong to a Muslim, or to a person (from a group) with whom there is a treaty made”.

Also in a tradition given in *Kitab Al-Amwal* it is stated on the authority of Ibn ‘Abbas that “When the Messenger of Allah arrived at Medina, all the land to which no water reached was made over to him to do with it as he wished”. This text of the tradition not only affirms the principle of the state ownership of every barren land that was far from water supply. It also affirms the application of this principle during the period of the prophet’s rule. So different two legal forms of ownership were applied to cultivable lands and barren lands acquired by conquest. Cultivable lands came under public (common) ownership while barren land under state ownership.

The Resulting Difference Between These Two Forms Of Ownership

Although these two forms of ownership – common ownership and the state ownership – are similar as to their social significance, they express two different legal forms. In one, the owner is the nation, while in the other the owner is the office of the one who conducts the government of the nation on behalf of Allah.

The difference is reflected in the way the revenues derived under each form of ownership is used and the part they play in the contribution towards development of the Islamic community. In respect of the benefits derived from the land and wealth under common ownership of the nation, the *Wali’ Al-Amr* is required to employ them as contribution towards fulfilling the collective needs of the nation and for the general well-being of the nation as a whole. These include construction of hospitals, improving and expanding medical treatment facilities, provision of education and other similar general social establishments that are of service to the whole nation.

It is not lawful to make use of gains from assets under common ownership for the benefit of a particular segment of the society, unless its benefit is connected with the benefit of the society as a whole, such that the whole society directly benefits. For example, it is not permissible to apply the revenue for the benefit of the poor, unless it happens to be in the interest and the need of the nation such as when this helps improve the social balance.

As for properties that belong to the state, the revenues can be employed for general benefits of the whole of the nation or alternatively for the benefit of a particular purpose like the creation of funds for those in need.

The Right Of Reclamation Of Barren Lands

Just as cultivable lands and barren lands differ in respect of the mode of ownership, they also differ with respect to the rights to ownership by an individual following reclamation efforts. The *Shari’ah* does not

confer upon an individual any special right of ownership in respect of a land that was already in a cultivable state at the time of conquest, even if the individual has restored it for cultivation (meaning that it was originally not in a cultivable state, as we have already learnt).

But the *Shari'ah* has permitted a person to invest his efforts to reclaim and cultivate the land if it was a barren land at the time of conquest. The *Shari'ah* has conferred specific right to the individuals in respect of such land on the basis of their having expended efforts in way of its restoration and cultivation. From among the traditions, which establish this fact, there is a tradition from the *Ahlul Bayt* that: "*He who reclaims a land, that land belongs to him. He has a greater right and claim to it*".

A tradition cited in Sahih al-Bukhari reported by 'Aishah mentions that the Prophet said: "*He who cultivated a land, which belongs to no one has a greater right and claim to it*".

On this basis, we learn that the land under common ownership according to the *Shari'ah* is incompatible with an individual's special right in it. So an individual does not acquire a special right in respect of a land under common ownership, irrespective of the efforts he may have invested in order to revive and restore it for cultivation, after it had become unproductive by neglect. But in the case of a land under the state ownership, it is compatible with the individuals having that special right.

The efforts to rehabilitate infertile and barren lands for cultivation are the main source of the special right in respect of state-owned lands. Therefore it is the performance of these work or their preparatory operations that confer upon the individual a special right in these lands. The *Shari'ah* in general does not acknowledge a private right apart from this⁷.

The important juristic question in respect of this matter is connected with the nature of the right an individual acquires by his reclamation works. So when a person works on a wasteland and restores it for cultivation, the question is what type of right does he thereby acquire, in respect of the land?

Many jurists are of the view that the right, which the individual earns by his reclamation works on the land, is the transfer of the possession of the land to his private ownership. Thus the land is taken out from the domain of ownership by the state and is placed in the orbit of private ownership. The individual becomes the owner of land which he has reclaimed as a result of the labour he has expended to revive it.

However there is another juristic view that is more in harmony with the legislative texts. The view is that that the rehabilitation of the land does not change the mode of ownership, and that the land continues to remain the property of the Imam or the Imamate (the office of the Imam). Nor does it permit an individual to acquire possession of its proprietary right even if he had restored it for cultivation.

An individual, by carrying out rehabilitation, does acquire a right in respect of the land. But it is not at the level of ownership. Restoration of the land for cultivation vests in him the right of use of the land and to benefit from it. The right also prevents others – who did not participate with him in the work and labour

for its rehabilitation – from interfering with him in the affairs of the land and protects him from any acts of seizure of the land from him so long as he fulfills his obligations in respect of the land.

However this degree of right does not excuse him from payment of his dues to the office of Imamate as the legal holder of the proprietary right of the land. The Imam has a right to impose upon him an amount of rent or as mentioned in the tradition, an amount in proportion to the profit he reaps from the use of the land he had reclaimed.

The great jurist Ash-Shaykh Muhammad ibn al-Hasan at-Tusi, has adopted this view in his discussions of *jihad* in his book *al-Mabsut*. He mentions therein: Indeed the individual does not acquire proprietary right of the land by virtue of his reclamation efforts. He only owns the benefits derived from his efforts, on the condition that he pays to the Imam the dues imposed upon him for the use of the land. Here is the text of the relevant sentence in his own words:

As for dead lands; they do not come under the heading of the war booty (ghanimah). They exclusively belong to the Imam. Any Muslim who reclaims such a land shall have the right on it, and to the Imam will belong its tax.

We find precisely this view in the book *Bulghatul faqih* by the profound jurist research scholar, as-Sayyid Muhammad Bahrul-‘Ulum. He too leaned towards denying of the right of possession by reclamation in the form of ownership right. The Imam will have the right to the tax on the land as agreed upon during the tenancy agreement and a similar fee in the absence of an agreement.

This does not contradict the traditions that ascribe the ownership of the land to the person who reclaimed it. In the traditions it is said: “*He who reclaims the land, the land belongs to him*”. This is just like the conventional words of the landlords telling the farmers by way of incentive when they urge them to reclaim and make their landed estate prosperous that he who cultivates it, drills the rivers on it or dredges its irrigational canals, the land will become his.

This means that such a person will have a greater right to it than any other person and that he is accorded priority over others as to the use the land. It does not imply repudiation of the ownership of the land by the landlord or his depriving himself of the ownership. The portion that goes to the landlords demonstrates their position as the undeniable beneficial owner of the land even if the property is annexed to the farmers on the grant of license or general permission.

The view which ash-Shaykh at-Tusi and jurist Bahrul-‘Ulum have avowed, is supported by a number of established traditions – through a proper chain of narrations – from the Imams of the Ahlul Bayt, ‘Ali and his descendants (a.s.). In some of the narrations it is recorded:

“*Anyone from the believers who reclaims a land, the land becomes his and he shall pay the rent*”. And in some it is stated: ‘*anyone from among the Muslims reclaims the land, let him till and let him pay the tax of it to the Imam. To him belongs what he consumes therefrom*”⁸.

In light of these traditions, the land does not become the private property of the man who reclaims it. If it had become his private property it would not have been proper to require him to pay the land rent to the state. Since he has to pay the land rent, it means that the proprietorship of the land remains that with the Imam. The individual enjoys the right of holding the land in his possession, which empowers him to avail of its benefits and to prevent others from seizing it from him. For that privilege, the Imam will impose the rent on him.

This juristic opinion gives a true sense of the term “ownership by the Imam” that allows the Imam the right of imposing rent on the state-owned properties. This view is held not only by the jurists from school of *Ahlul Bayt* such as ash-Shaykh at-Tusi, rather its seeds and its many forms are also present in various other Islamic juristic schools.

Al-Mawardi mentions from Abu Hanifah and Abu Yusuf: “If an individual reclaims a barren land and irrigates it with ‘taxed water’, that land will become a taxed land and the state will have the right to impose tax upon it”. By the term ‘taxed water’ both of them meant the rivers conquered by force such as Tigris (Dijlah) and Euphrates (Furat) and the Nile. It is stated in the *Kitab Al-Amwal* of Abu ‘Ubayd, Abu Hanifah used to say, “*Kharaj* (taxed) land is every land which is irrigated.”

As for Muhammad ibn al-Hasan ash-Shaybani, he too on his part has acknowledged the principle of tax on the barren lands that are reclaimed. But he has chosen details other than those chosen by Abu Hanifah and Abu Yusuf mentioned herein before. He says: “If the reclaimed land happens to be situated on the banks of the rivers dug by the non-Arabs then it is a taxed land. But if it is on the banks of the rivers which Allah the Supreme and Mighty has caused to flow, then it is a tithe land”.

We find in one form or another, a tendency in various juristic writings towards imposing tax on reclaimed lands, but it is not found in Islamic law anything which could be considered a basis to deny the right to impose tax on a reclaimed land, save the exceptions the Imam availed of from the “traditions of dispensation” (*Akhbaarut-tahlil*).

But when we cite an excerpt from the jurist ash-Shaykh at-Tusi concerning the principle of the Imam’s ownership with this meaning – which allows the Imam to impose *tasq* on whatever land that is reclaimed – we are examining the position only at the theoretical level, since it is on the theoretical aspects that we find the basis to infer this principle from the legislative texts. This principle was not adhered to by the Muslims in practice. Rather it was commended in the sphere of practice and was dispensed with by way of exception, in case of some person and during certain period as is indicated by the traditions of dispensation. The suspension of this principle in practice or during the time of the holy Prophet cannot be considered a proof that it is theoretically flawed.

It is the right of the Prophet to exempt or excuse any person from the payment of the *tasq*. His exercise of this right does not mean that an Imam who comes after him is not permitted to act on this principle or to apply the principle when the circumstances that had prevented its application no longer exist.

Similarly, the texts which urge dispensation with the implementation of this principle, in respect of certain persons – by way of exception – do not disallow considering it a rule that can be adopted beyond the exceptional cases described in the traditions of dispensation (*Akhbaarut-tahlil*).

Since in this study we endeavour to learn the theoretical aspects of Islamic economics, it is our duty to include this principle in our study, as there is an Islamic basis for this at the theoretical level. As such, it is part of the complete form that represents the Islamic theory in the field, which we are studying irrespective of whether it was implemented in practice or was placed on the shelves because of circumstances or for reasons of expediency.

In light of what we have already stated, the difference between the farmer who works on the plots of land under common ownership and the farmer who tills a land under state ownership, is the extent of their relationship with the land. But both do not possess proprietary right over the respective lands. The farmer who cultivates the common property is only a tenant as affirmed by the jurist research scholar al-Isfahani in his commentary of *al-Makasib*. The Imam holds the right to take away this land from him and give it to someone else when the period of his lease or contract of tenancy expires. The farmer working on the state-owned land enjoys the right vested in him to derive benefits from it and to prevent others from taking it away from him so long as he fulfills his obligation towards maintaining it in good condition for cultivation.

Every individual is allowed to freely to carry out reclamation works on a land under common ownership without first obtaining a licence from the head of the state (*Wali' Al-Amr*). The abovementioned texts have given unconditional permission for reclamation to all. So this permission is effectual so long as the state does not see, as under certain circumstances, the expediency for its prohibition.

There are however some jurists who hold the opinion that reclamation is not valid and that it confers no right unless it is carried out with the permission and license obtained from the *Wali' Al-Amr* (head of the state). They argue that the permission issued by the Prophet as in his dictum – *he who reclaims a land has a greater claim and title to have it* – is not sufficient because this general permission was issued by him as a head of the Islamic state and not in his capacity as a Prophet. Thus its effectuality does not extend to all times but ends with the ending of his rule.

Anyway, undoubtedly the head of the state (*Wali' Al-Amr*) possesses the right to prevent the reclamation of some state-owned lands or restrict the amount of land that is allowed for reclamation, if that is required in the public interest.

We may now summarize following points from the prescriptions in respect of the reclamation of wastelands:

First, it is deemed a state property.

Second, reclamation by an individual is in principle valid unless such work is prohibited by the authority

(*Wali' Al-Amr*).

Third, when an individual reclaims the land that belongs to the state, he acquires a right to use and benefit from the land and the right of protection from interference by others that would deprive his access and use of the land. However these do not make the land his private property.

Fourth, the Imam shall levy a tax on him because the land is the Imam's property by permanent proprietary right (*ruqbatul-ard*). He shall impose this tax as a trust for the benefit of the public good and for maintaining the social balance. The Imam also shall have the right to exempt anyone from the payment of the tax under specific circumstances. We shall find the consideration for the exceptions in this respect from the practice of the Prophet.

Lands That Were Naturally Cultivable At The Time Of Conquest

Many jurists hold the opinion that naturally cultivable lands – lands that by nature were already in the state cultivable state at the time of the conquest, like forests, etc. – are under the same form of ownership as the wastelands as mentioned earlier. They hold that these lands are the property of the Imam. In forming this opinion, they rely on the traditions transmitted from the Imams in which it is stated that '*every land which has no owner belongs to the Imam*'.

This tradition gives to the Imam ownership of every land that is not under the ownership of anyone such as the forests. A land has no owner except by reason of its cultivation and the forests are cultivated by nature without human intervention. In that respect, the *Shari'ah* holds that it has no owner. Consequently it is subject to the principle of the state ownership.

Our observation on this opinion is that the application of the principle of the state ownership (or by the Imam) to forests and lands with naturally grown vegetation (because of the nature of their soil) will be valid only if they were annexed to the *Dar ul-Islam* without war, because they are not owned by anyone. But as for similar lands that were conquered by force and seized from the hands of the non-Muslims, these are the common property of the Muslims. They come under the legislative texts, which give the Muslims the ownership of the land conquered by force.

Thus if the forests come under the orbit of the common ownership in accordance with these texts, they will become a land which has an owner, which is the whole nation. There will therefore be no rationale to include it in the category of a land without owner and thus deem it – according to the text – as belonging to the Imam.

Generalizing further, the same rules we apply to lands that were rendered cultivable by human toil and labour. We should also apply them to lands with naturally grown vegetation and forests – conquered by force – at the time of conquest⁹.

Lands That Became Muslim Land By Peaceful Call To Islam

(Ad-Da'Wah)

Lands that became Muslim land by peaceful call to Islam (through missionary activities) are all those lands whose people responded to the call to Islam without armed conflicts, like the city of Medina, Indonesia and a number of other places all over the Islamic world. Similar to lands that became Muslim lands by conquest, these lands are divided into lands that were made cultivable by the inhabitants and whose owners accepted Islam willingly or lands with naturally grown vegetation like the forests, and those which were barren lands at the time they were annexed to the Islamic nation.

As the barren lands of the countries whose inhabitant became Muslim were like those acquired by conquest, the principle of state ownership is applied to them. All rules applicable to conquered lands also apply to these lands because the barren lands are generally considered *anfal* (spoils of war) and *anfal* are the property of the state.

Likewise, lands that are naturally cultivable and became annexed to the nation of Islam by peaceful acceptance of Islam are also state property, under the juristic principle holding that 'every land which has no owner is part of *anfal*'. There is a difference between these two types of land, the wasteland and the cultivable land even though both are state properties. An individual can acquire a specific right in respect of the barren land by way of reclamation. The same rules are applied to it as those to conquered land. The legislative details are already given in connection with the conquered wastelands.

As for lands that are naturally fertile and cultivable when it joined the *Dar Al-Islam*, an individual has no means to acquire a right and title to it on the ground of its reclamation, since they were by nature already cultivable. The only thing open to him is to benefit from the use of such lands. When a person makes use of such land and benefits from it, then he should not be deprived of the use and benefits by according preference to another person as long as he was the first to cultivate the land. Another individual will be allowed to benefit from the use of the land, if his activities do not interfere with productive activities of the first person.

As for a country whose inhabitants have voluntarily embraced Islam, its cultivable lands shall belong to their respective owners. Islam confers upon a person who embraces Islam voluntarily all rights that he enjoyed before he embraced Islam, in respect of lands and other properties. They shall enjoy the right to retain and own their lands as their private properties and no tax will be levied on them. They shall have the properties exclusively in the same way they did before Islam¹⁰.

The Land Of Suh (Treaty Land)

These are lands dominated by Muslims and the inhabitants neither embraced Islam nor staged armed resistance to the call of Islam. They remained with their religion and chose to live peacefully under the

protection and rule of the Islamic state. Such lands are termed as land of peace by agreement or ‘treaty land’ in juristic usage. The terms as agreed in the treaty shall apply to these lands.

If the text of the treaty term stipulates that the lands belong to its inhabitants, then the land will be treated accordingly as their property. The Muslim community shall have no claim or entitlement to the lands. If it stipulated in treaty terms that the lands would belong to the Muslim community, it will become binding and the land will be subject to the principle of the common ownership and the *kharaj* (tax) shall be applicable.

It shall not be legitimate to deviate from the terms agreed upon under the treaty. There is a tradition in the *Kitab Al-Amwal* that the Prophet said: “*When you are in a war with a certain group, and they are prepared to make peace with you with their wealth (amwal) in order to save their lives and the lives of their children, then do not take more than what has been due, since the excess (amount) is unlawful for you*”.

It is mentioned in Sunan of Abu Dawud that the Prophet said: “*Behold, whoever wrongs a person (from the community that you have treaty with them) or mutilate or burden him with a task beyond his capability or take something from him without his consent, then, on the Day of Judgment I shall argue in favour of him*”.

The wastelands in a country that came under the rule of the Islamic state via a treaty shall fall under state ownership similar to the wastelands acquired by conquest and the wastelands in countries whose people voluntarily accept Islam. Similarly, the forest and such other lands of the country that came under Islamic rule via treaty shall also be state-owned, unless there are specific terms regarding them in the treaty. In such situation, as instructed by the Prophet, the treaty terms will apply to them.

Other Lands That Belong To The State

We will find other types of land subject to the application of the principle of state ownership, such as lands that the inhabitants had surrendered to the Muslims without any military encounter. These lands come under the category of *anfal*, and belong to the office of the Prophet and Imams, similar to another version as has been enjoined in the holy Qur'an by Allah, the High and Mighty:

“Whatever Allah gave as accessions to His Messenger from them, you urged not any horse or riding camel for the sake thereof but Allah gives His Messenger Lordship over whom He wills, Allah is able to do all things”. (59:6).

Lands whose inhabitants have perished and had become extinct also belong to the state according to the tradition reported by Hammad ibn ‘Isa from Imam Musa ibn Ja‘far (a.s.): “*Anfal belong to the Imam, and anfal is every land whose people have perished (become extinct)...*”

It is similar with newly found land in the *Dar Al-Islam*. For example, an island is formed in the sea or a

stream. It also will be included in the ownership of the state by the application of the juristic rule that “every land which is owner-less belongs to the Imam”.

Limitations Of Private Authority Over Lands

From the details given previously we can deduce that the entitlement of an individual to a piece of land and his personal right is established on the ground of one of these three factors:

- 1) Reclamation of a piece of state land.
- 2) Entry of the land's inhabitants into the Islamic nation by voluntary acceptance of Islam.
- 3) The land becoming part of the *Dar Al-Islam* by a peace treaty stipulating the ownership of the land to the parties of the treaty.

However, the first ground differs from the other two as to the form of relationship that ensues from it or the nature of title the individual acquires over the land. As for the first ground – individual reclamation of a piece of a state land – the land shall not be classified as private property. It does not lead to stripping the state off the ownership or preventing the Imam from imposing a land tax or rental on the individual who cultivates the land for his use of the land.

For having worked a piece of land and making it cultivable, a person will only be entitled to use the land and benefit from the crops he grows. He also enjoys the protection from any interference with his works and from competing attempts for the title by others, as stated earlier.

As for the other two bases, they confer upon a Muslim individual ownership of the land or benefits derived from ownership of the land and shall come to be classified under the category of private ownership. Private possession of a land by an individual – whether it is on the basis of right (to use) or on the basis of ownership – cannot be an absolute and permanent private possession. Instead, it is the right or authorized possession conditional upon the person properly discharging his responsibility towards the land.

Thus if he neglects his responsibility in this respect – in a manner as described in the traditions that we will quote shortly – his title to the land shall become void. He would then have no exclusive right to continue the possession of the land and prevent others from working the land and enjoying its benefits. By this, the concept that ownership is a social function receives its most cogent explanation on the rights of the individuals in respect of lands. The evidence for this from the perspective of the Shari'ah is present in a number of legislative texts.

It is stated in the tradition reported by Ahmad ibn Muhammad ibn Abi Nasr on the authority of Imam 'Ali ibn Musa ar-Ridha' (a.s.) that the Imam said: “*He who embraced Islam out of his own free will, land will be allowed to remain in his possession and tithe will be obtained from him in respect of whatsoever of it is cultivated, if it is irrigated by rain or rivers, and if watered by manual labour half of the tithe and that*

the Imam will take from him whatsoever of it he has not cultivated and will give it to him who will cultivate it. The land will remain a property of the Muslims and the lessor will have to pay out of their shares the tithe or half of the tithe.”

In an authentic tradition reported by Mu‘awiyah ibn Wahb, it is stated that Imam Ja‘far (a.s.) said: “*A man who finds a barren and uncultivable land and dredges canal and cultivate it, he will have to pay sadaqah (zakat) in respect of the land. However if it belonged to a man before him who had abandoned it and left it and wasted it and came afterward demanding it, (he has no right on it) for the land belongs to Allah and to him who cultivates it.*”

There is an authentic tradition reported by al-Kabuli on the authority of the Amirul-Mu’mineen ‘Ali (a.s.) that “*any Muslim who reclaims a barren land should be allowed to cultivate it and pay land tax on it to the Imam of my Ahlul Bayt. What the land yields shall belong to him, but if he leaves it and wastes it and any other Muslim takes it, cultivate and reclaims it, that person shall have greater claim to the land than the one who neglected it. This other man has to pay land tax in respect of it to the Imam.*”¹¹

In light of these texts we learn that the right that gives a person an entitlement to the possession of the land so as to prevent competing use by others is forfeited upon the land becoming wasteland out of his neglect. Thereafter he is not permitted to prevent others from gaining control over it and using the land as long as he neglects it.

There is no difference in that respect between the individual’s having acquired the title over the land by virtue of his having invested labour to revive it and by other means or reason. He will not be allowed to have an exclusive control and possession of the land after it has become a wasteland because of neglect, irrespective of the means by which he initially acquired possession.

Now if the land a person had in his possession – which he neglected until it becomes unproductive and uncultivable – happens to be a state land (under the Imam’s office), that land after its becoming a wasteland has become a land free to all (*mubah*) to work on. The same rules applicable to all the barren lands, which belong to the state, are applied to such land also. There is room for fresh reclamation efforts, subject to the same rules applicable to its first reclamation.

Ash-Shahid ath-Thani in his *al-Masalik* elucidates this meaning. He writes: “*This land, that is the land the individual had reclaimed and which afterward had become a wasteland, was originally a free land open to all to make use of it (mubah) when it is neglected, it comes back to its original status quo and becomes mubah (free to all) for reclamation, and it cultivation was the cause for acquisition of the title to its possession. When the cause ceases to operate the effect ceases*”.

He means to convey thereby that the right and entitlement to the land, which the individual acquires is the outcome of his reclamation efforts, hence its effect (his right). When the land ceases to show signs of life, his right to the possession ends.¹²

Al-Muhaqqiq ath-Thani has mentioned in his *Jami'ul-Maqasid* that the loss of exclusive title to the land by its owner (who first reclaimed it) after its becoming a wasteland and the legality of another person taking over and acquiring exclusive title to it is a well-known and accepted view among the *ashab* (Prophet's companions). This view prevailed in the pronouncement of the juridical opinion in that respect.

But if the neglected land happens to be under the category of private ownership (such as a land whose owner had voluntarily embraced Islam) its ownership is not invalidated on account of his neglect. The land in that case, in the opinion of Ibnu 'l-Barraj, Ibn Hamzah and others, is returned to become the property of the Muslims and is included in the category of properties under common ownership.

From this we learn that the exclusive appropriation of the land whether by way of right (to use) or as property (owned) is restricted and conditioned to the individual's social duty in respect of the land. So if the individual neglects his duty towards the land and cease to productively use it such that it becomes unproductive and uncultivable, his connection with the land is severed and his entitlement to the land ends. The land returns to be the state property. If it was initially wasteland – in respect of the lands in a country the inhabitants of which had voluntarily embraced Islam – it becomes the common property of Muslims.

The General Islamic Outlook In Relation To Land

In light of the diverse rules that Islam has stipulated concerning land and our familiarity with their details, we can deduce the general Islamic viewpoint in respect of land and the direction adopted under Islamic governance as pursued by the Prophet or his lawful successors in practice. When we later attempt to present the legal rules of Islam, which are connected with other natural assets and factors of production in their entirety, we can therefore refer to this general Islamic outlook concerning land. Based on that, we may adopt a more universal and broader outlook in formulating the doctrinal foundation for the Islamic principles on distribution of the factors of production.

To facilitate the understanding of the Islamic standpoint concerning land in the economic dimension – as well as isolating it from all considerations that are of political nature – it would be better that we first determine the general Islamic outlook with an illustration. This will help us view its economic content free from its political bearings.

Then let us suppose that a group of Muslims decides to settle in a region, which is still a virgin land. They establish in that region an Islamic community and set up relationships therein based on Islamic teachings. Let us imagine that its lawful ruler, the Prophet or his successor undertakes the administration of these relations in that society with all its ideological, cultural and legal virtues and values entirely according to Islamic teachings. Now, in what way shall the standpoint of the ruler and the society vis-a-vis the land and its mode of ownership be organised?

The reply to this will be readily available in light of the details already given. The land – which in our illustration we have decreed to become the homeland of the Islamic community, and where a heavenly civilization will grow – we have assumed to be a virgin land, untouched before by human. There had not been any human intervention yet or in other word they are the pioneer group on that land.

It is natural that different parts of the land are made up of two different types. The fertile part in a condition conducive to life and agriculture – with water, sunshine and good soil. The other type comprises the uncultivable part – in a condition not conducive to agriculture. They need human intervention to improve the conditions. These lands are termed wasteland in the juridical sense.

The naturally fertile land thereof shall be, as we have been told before, the property of the state or in other words the property of the Prophet or his lawful successors in their capacity of the head of state according to the legislative and juridical texts. It is mentioned in *At-Tadhkirah* by al-‘Allamah al-Hilli that there is a consensus among the scholars in that respect. Likewise, the wasteland is also property of the state as we have already learnt. Even ash-Shaykh al-Imam al-Mujaddad al-Ansari has mentioned in his *al-Makasib* that the texts in respect of this are numerous. It is even said they are numerous to the extent of being *tawatur*.

Well, then Islam applies to the whole land – as a land in its natural state – the principle of the ownership by the Imam and subsequently specifies common ownership. In light of this we are able to understand the traditions transmitted on the authority of the *Ahlul Bayt* (Imams) with chains of authentic narrations, asserting that the entire land is the property of the Imam. When they affirmed the ownership by the Imam, they looked at the natural state of the land as mentioned earlier.¹³

Let us look at the types of claim on land that Islam has permitted for the individuals of the community in our illustration. In this situation, we should eliminate claims based on mere possession or control, because we do not find a single authentic text that affirms such a basis in *Shari’ah*. The only thing we learned is that the claim, which they justify by the *Shari’ah* is the claim arising from reclamation of the land, that is an individual’s labour on a barren land to infuse life into it.

The person who invests his labour in the rehabilitation of a land is considered be entitled to a right in it. Nevertheless, it is not a ground for permanent ownership of the land as a private property. It only results in the right and entitlement by the individual, on the basis of priority in enjoying its use and benefits, over other individuals on the ground of the labours and efforts he has spent on its reclamation. The right of proprietorship remains with the Imam, who also holds the right to impose tax on the person reclaiming the land, according to the juridical text written by the great jurist authority, ash-Shaykh Muhammad al-Hasan at-Tusi in the chapter “*Jihad*” of his book *al-Mabsut*: “As for dead lands they do not constitute part of the *ghanimah* (booty). They belong to the Imam. The one who reclaims them, will have the priority of right to his making use of them and the tax thereon will belong to the Imam”. We have quoted this text earlier.

The right and entitlement of the individual to the land – that his reclamation efforts confer upon him – continues so long as he spends labour to maintain the land. When his labour ceases and the land needs fresh efforts to restore it to conditions suitable for cultivation, the individual loses his right to it. He needs to continuously spend the necessary labour and efforts to maintain the land in cultivable condition. When he neglects the land such that it becomes infertile and uncultivable, his right ceases.

Now we are able to fully grasp and determine the general Islamic outlook on land. Land is by its nature the property of the Imam and no individual possesses the right to its permanent ownership or any right to an individual appropriation, except on the basis of the labour a person spends on its labour and cultivation. This right that the individual earns as a result of spending his labour on rendering it cultivable and growing crops on it, does not impair the right of the Imam to impose tax on the reclaimed land so the whole community may share in the benefits derived from it. Further, this does not come in conflict with the Imam's right to waive this tax occasionally or under certain exceptional circumstances as stated in traditions of *tahlili*.

This is the Islamic outlook with regard to land as it appears to us, before bringing in the political factor into this sphere. Indeed this outlook is capable of accommodating the views of the proponents of private ownership of land, as well as their opponents. Land ownership is one of the social issues that had played an important role in human thought because of its significance, as a phenomenon that has existed in the life of man for thousands of years.

A more recent presumption is that the genesis of this phenomenon is the result of the history of man itself. It became widespread after his discovery of agriculture and his becoming dependent upon land for his life. When the farmer needed to settle in a particular land for a period of time – because the harvest from land required time – it was only natural for him to bind himself within a certain boundary or to a specific area to perform his labour and set up thereon his place of retreat and abode close to his farm in order to be able to keep watch over it and to protect it.

Eventually the farmer found himself tied strongly to a particular area of the land. He was bound to it by a number of factors – each eventually springing from the labour that he had expanded on the land and the hard work he put in – by which he had developed close attachment to its soil and all elements on it. It was as a result of this that the idea of appropriation (of land) was born. On one hand it reflected this bond, whereby the farmer found the labour he had spent had blended with the land. On the other hand, the idea of appropriation resulted in the division of the land on the basis of sufficiency such that every individual keeps to himself the land that he toils upon and sufficiency was established by the degree of his ability to cultivate. In this connection, it is presumed that the historical origin of this private right to a land is labour, which over time has led to ownership.

Opponents Of Private Ownership Over Land

The opponents of private ownership over land often stir up doubts directed at the assertion of its

historical occurrence and its long historical roots. At other times they go beyond these. They treat the very idea of the ownership and personal title to the land as a bolt out of the blue in relation to the principle of social justice.

As for the imputation of the occurrence of ownership and its historical authority, it is mostly ascribed to the factors of force and domination. They hold that historically, these two were the major factors that led to the entirely unjust distribution of land and the conferment of title of rights to a particular group of individuals.

Now, if it is force, domination and factors related to violence that constitute the ‘legitimacy’ and the historical authority for ownership of land and rights of title to its ownership – as human history has witnessed – then it is natural that these rights are put to an end and that the ownership of land as documented in history be regarded a type of robbery.

We do not deny the elements of force and usurpation nor the role they played in history. But these factors do not explain the emergence of land ownership and the related entitlements as documented in history. For you to grab a land by force and violence, it is necessary that there be one from whom you seize the land from, drive him out and make the land yours. This presupposes that the land subjected to such seizure by force and violence had come into the possession of a person or persons before that and it became his or theirs.

When we intend to explain this antecedent right for the operation of forcible seizure, it would be necessary for us to leave aside the description of force and violence so we could seek the basis for the mode of relationship established between the land and its owner. The person – who we suppose grabs the land by force – in general, could not have been a landless, outcast person without shelter. It is more probable that he is a person capable of working on an area of land and rendering it fruitful. His abilities and means gradually would have grown and he would have planned to grab new lands by violence. Then, there was productive work and right to the title established on the basis of labour and cultivation, prior to force and violence.

The closest for our acceptance is when we visualize a primitive tribe settling in a land area and began an agriculture-based life. Each individual would occupy a particular land area according to his means and ability, and work the land to render it productive and enjoy its harvest. The division (of the land by the respective areas) would start as a separation of labour as a factor, since it is not possible for all the farmers to be (common) stakeholders of every inch of the land.

From this division, ‘private’ rights and entitlements would have emerged as the individuals have staked claims to the land that benefited from their respective labour and hard work. It would have been after this that elements of force and violence would have appeared, when the mightier and more powerful ones would have taken to raiding the lands of others and grabbing the farms from the weaker ones.

By this we do not intend to justify private ownership and entitlements with respect to land in the manner

they historically developed. Our aim is to highlight and support the statement that reclamation of land is presumably the sole primary ground that is recognized by the ancient communities as the source of an individual's entitlement to the land that he worked and conditioned for agriculture, and cultivated crops on. All other grounds are secondary factors brought about by the social conditions and complexities at odd with the indigenous form and instinctive thoughts of the primitive communities.

The primary ground gradually lost its historical significance in the course of the development of these secondary factors and passion prevailed over nature such that the history of the private ownership of the land was filled with various types of injustice and domination by certain groups. Land became scarce for the masses as much as it became abundant for the privileged ones. Islam restored the original consideration for establishing the ownership of land as it made reclamation the sole source to gain entitlement, and put an end to its acquisition on any other grounds. In this way, Islam revived the practice in nature-based living, which the modern man of the industrial society had almost abolished.

This is in relation to the assertion about land ownership based on its historical background. But there is another assertion that is more compelling and significant. It is the very idea that ownership and title to its private ownership right – both in particular and in general – has been affirmed by some of the modern doctrinal trends, like collective or communal farming (whereby farmlands are aggregated based on collectivism). And what we hear generally in this connection is this: "Truly land is a natural wealth. Man has not manufactured it but is one of the gifts of God so it is not right that one man enjoys its use and benefit over others".

However, whatever may be said in this connection, the Islamic form we have presented at the beginning of this topic will prevail over opposing assertions for we had always held the position that land – viewed by its nature as it existed when this gift was delivered to man by Allah Almighty – was not a property of any individual, nor had anyone any title to its ownership. It was instead the property of the Imam in his capacity as holder of the office of Imamate and not in his personal capacity.

Therefore, according to the Islamic economic theory land does not cease to be the property of the Imam. And land does not become the property of any individual through forcible seizure, and for that matter not even through reclamation. Reclamation is considered only as a basis for the individual's right to use the land. It is only in the sense that when a man hastened to proceed in a legitimate way to restore a land to make it cultivable by expending his labour and efforts, it would be unjust to treat him – as regards his entitlement and right to the land – on the same level as claims by others who made no contribution. His claim should thus be accorded priority over that by any other.

Islam confers upon the person who works the land a right to use it as his own, rather than to anyone other than him. This side of the theory allows the Imam to levy a tax on it for the collective benefit of humanity as a share of gains earned from the land. While in Islam the right to possess and hold land is established on the basis of the labour that an individual expends on the land, this right is in essence lost whenever the land becomes uncultivable and requires more effort to maintain it in cultivable condition. If

the individual refrains from restoring it to cultivable condition and neglects it till it becomes a wasteland, his relationship with the land under these circumstances is cut off on the account that the legal justification by which he drew his right and title to it having ceased to exist.

The Political Factor In Land Ownership

Now that we have discussed the Islamic economic theory regarding land, it is incumbent upon us to bring to light the political component that is latent in the general Islamic outlook. Islam has recognized the political dimension of the act of reclaiming land, which by its nature is an economic act. The political element that is embodied in the land and gives the person who reclaims it a right is the manner in which the land came into the possession of the Islamic nation.

In fact the land's entry into the Islamic nation and its contribution to the life of the Muslim community and its material prosperity is at times caused by an economic factor. It is the efforts expended by the individual on the reclamation of the land – which comes into the possession of Islam – in order to infuse life into it that enable it to contribute in economic production. Likewise, at some other times, it is occasioned by a political factor. It is that action which results in the addition of a fertile and productive land to the Islamic nation. Each of these two actions has been accorded due consideration in Islam.

The actions that result in the inclusion of a fertile and productive land into the possession of the Islamic nation are of two types. At times the land is conquered by *jihad* waged by the Muslim army and at other times, by the voluntary surrender of its people. If it took place as the result of conquest, then the political action here will be considered the act of the whole nation and not that of a particular individual. The whole nation for that reason becomes the owner of the land and on that account the principle of the public ownership will be applicable.

But if the inclusion of a cultivable land took effect by way of voluntary surrender and acceptance of Islam by its owners, then the political action here was the action of individuals and not that of the nation. Because of this Islam recognizes the right of the individuals in respect of cultivated lands, which they surrender. They are thus allowed the right to retain possession of the lands.

We see that while political action plays a part in the Islamic general outlook in relation to land, it does not change the character of the land as a public asset. If the action is in the nature of a collective action that involves the whole nation in its various aspects – such as a war – the land gained from that action becomes a common asset of the nation.

Common ownership of the nation is in essence similar in its social significance with state ownership. However state ownership is broader in its scope. As for assets under common ownership, its benefits in any way are exclusive for the nation. It is not legitimate for the benefits to be channeled for any purpose other than for the common good of the nation. In case of land under state ownership, the Imam can administer it such that the benefits serve a broader range of recipients.

Hence the collective political action in connection with a cultivable land acquired through military conquest by Muslims results in the land being placed within the orbit of Muslim community, instead of a wider orbit of humanity. It does not change its character as a public asset, under common ownership. However, when the political action is that of individual nature, such as a surrender by their owners to the Islamic nation the land loses this public asset character and is subjected to the principle of private ownership

In light of this we learn that the basic sphere for private ownership of land in Islamic legislation is the group of lands which were private properties under the social order their owners had lived in – before their voluntary surrender and peaceful acceptance of the call of the Islamic army – because the *Shari'ah* respects their ownership and acknowledges their rights to their properties. Beyond this sphere, land is regarded a property of the Imam and the *Shari'ah* does not acknowledge appropriation to individuals that results in private possession and control of lands. However, according to the opinion of ash-Shaykh at-Tusi an individual can acquire a private right to a land by rendering it fit for cultivation, as mentioned earlier. This right, even though it does not differ from our present day understanding of ownership, is theoretically different.

As long as the individual does not hold ownership of the land and as long it is within the orbit of the Imam's ownership, it shall be the prerogative of Imam to impose land tax on the land as stated by ash-Shaykh at-Tusi. Further, even though in practice the tax is not levied on the basis of the tradition of *tahlil* (exemption) – which provides a relief from it as an exception – the taxability is acknowledged theoretically.

The *Shari'ah* therefore does not acknowledge private ownership of land, except within the bounds of its respect for the actual ownership of lands before their entry into the Islam nation via voluntary surrender or by way of treaty. We can easily find political justification for this acknowledgement if we were to relate it to the considerations of the religious call and its expediencies – instead of linking it with its economic significance – to ascertain the Islamic standpoint on the matter.

It is necessary that in case of those who voluntarily surrendered their lands to the Islamic nation or who peacefully submitted themselves to the authority of the Islamic nation by way of treaty, the land that they cultivated should be left in their hands. They should not be compelled to tender their lands to the state they had joined or the authority they came under. Such actions would have caused a major obstacle and encouraged resistance to the Islamic propagation at the various stages of its progress and expansion.

However, by granting these people the right of private ownership of their lands, Islam has not accorded an absolute right. It was conditional on the owners always keeping their lands in cultivable state and continuing to work the lands such that they contribute to the betterment of Islamic nation. If the lands are in a neglected state such that they become uncultivable, then in the opinion of some jurists like Ibnul-Barraj and Ibn Hamzah, the lands will become the property of the nation.

Underground Minerals And Other Natural Resources

Underground raw materials and mineral deposits existing therein come next in importance after land, as to their role in production and economic life of man. In fact, all material goods and the luxuries man enjoys are eventually traceable to land and underground materials. It is because of this that most industry sectors such as construction relies on the mining industry, by which man obtains those the materials and minerals.

The jurists usually classify minerals into two categories: *az-zahir* (the evident) and *al-batin* (the hidden). *Az-zahir* minerals are those mineral substances that naturally exist in a state that do not require additional labour and processing, like salt and oil. If and when we identify an oil well, we will find the minerals in such state whereby no further labour is required to transform it to crude oil, apart from the work to reach the well, drill it and draw the oil out.

So the term *az-zahir* as a juristic term is not used in its literal sense – that it is exposed or in the sense that it does not require digging and labour to reach or have access. The term is applied, as a descriptive term to denote every mineral, which when discovered, already exists in a state that requires no further transformation. It does not matter whether man is required to undergo a great deal of difficulties to reach the deposits buried deep underground or acquire it from the surface of the earth without any effort.

As for *al-batin* minerals, as a juristic term it refers to minerals that require labour and further work to process and/or transform them, like gold, iron and other metals. Metal deposits in the mines are not in a ‘ready-to-use’ state with the respective properties. They normally lay hidden deep underground, and the mining involves difficult and challenging tasks. More significant is that the natural deposits are in the form of metal ores and the extraction processes to produce the respective metals involve a great deal of works before they become ready for the market.

Hence to determine whether the minerals are *az-zahir* or *al-batin* in the juristic nomenclature, it depends on the nature of the materials and their respective state of ‘readiness’, not on its location or accessibility. In order to elucidate these juristic technical terms that we mentioned, let us refer to this quote from al-‘Allamah al-Hilli, in his *at-Tadhkirah*: “*By ‘az-zahir minerals’, it is meant those mineral deposits that exist in forms which require no additional works and processes to obtain their essence, other than the efforts to reach the deposits in some instances. These include salt, oil, coal, asphalt, China clay, ruby, antimony, aggregate stones, and other similar minerals like. By ‘al-batin minerals’, we refer to those mineral deposits, which require further work and processes to be able to obtain and extract their essence. These include silver, gold, iron, copper and lead*”

Az-Zahir Minerals

The *az-zahir* minerals – like salts and oil – according to the prevailing juristic opinion, are substances that should be shared by all people. Islam does not recognize the appropriation of these deposits to

anyone for private possession or private ownership they come under the orbit of common ownership and as such are subject to this principle. Islam only allows individuals to acquire such quantities that would meet their needs for that mineral, without appropriating it or taking into their possession the respective natural deposits.

On this basis, it is for the State – or the Imam as the head of the people who collectively own these natural resources – to organize the facilities and extraction works to enable the people to benefit therefrom. The *Shari'ah* has absolutely prohibited arrangements whereby individuals could acquire monopoly over the extraction and use of the minerals. Even if these undertakings involve labour and excavation works to reach the deposits or to enable their extraction from locations at deeper layers underneath, no private right and title shall be granted for these mineral products. These efforts do not result in the exclusion of the minerals from the orbit of the common ownership. The *shariah* only allows any individual to acquire a quantity that meets his personal need.

After having elucidated the legislative principle concerning the *az-zahir* minerals in *At-Tadhkirah*, Al-'Allamah al-Hilli – after quoting many examples – stated: '*No one acquires the deposits of these minerals by reclamation and rehabilitation efforts if it means thereby "nayl" by general consent*'. By 'nayl' he means the geological stratum wherein the mineral deposits lie. Thus it is not allowed for an individual, for instance, to take possession of those minerals even if he digs the well or the mine till he reaches the geological stratum underneath the earth, where the deposits lie.

Also in *al-Qawa'id* when talking about the topic of the *az-zahir* minerals it is stated as follows:

"The minerals fall into two categories: the az-zahir and the al-batin. The minerals which come under the category of the az-zahir are those minerals that no processing is needed to reach (the required properties) like salt and oil, sulphur, coal-tar, asphalt, antimony, bituminous substances, and ruby ... the closer they are to the joint partnership of Muslims therein, such being the case they cannot be acquired by reclamation nor will it become private property by constructing an interdictory boundary line to it nor will it be valid to rent it for a fee. It cannot be treated as private property to be rented. The one who gains the first access to its location shall not be disturbed till he has satisfied his need for it. If two persons reach it at the same time, lots shall be cast. When both cannot jointly participate in mining it, there are two possibilities to decide who shall be the first, that is by casting lots or the person whose need is greater shall be allowed first to satisfy his need".

The text of many reference books on jurisprudence like *al-Mabsut*, *al-Muhadhdhab*, *as-Sara'ir*, *at-Tahrir*, *ad-Durus*, *al-Lum'ah*, *ar-Rawdah* support the principle of the common ownership and the invalidity of private ownership in respect of the *az-zahir* minerals.

It is given in the *Jami'u-sh-shara'i* and *al-Idah* that "If any individual tries to take (from these mines) more than his requirement, he must be prohibited from doing so".

Contents of *al-Mabsut*, *as-Sara'ir*, *ash-Shara'i*, *al-Irshad* and *al-Lum'ah* confirm this interdiction, since

it is said in them: “He who is earlier, let him take what his need requires”.

Al-‘Allamah al-Hilli says in his *at-Tadhkirah*: “This is the opinion of the majority of our jurists, they however have not made it clear whether it is yearly or daily need”. By this he means that the jurists have prohibited an individual from taking more than his need but have not limited the period of the need, whether the need is for a day or year. In this, the *Shari’ah* does not describe the measures concerning the need, instead places its emphasis on the illegality of any individual exploiting these natural resources.

Considering the juristic text presented by us, *az-zahir* minerals are thus subject to the principle of common ownership. However, common ownership here differs from the common ownership of the lands conquered in cultivable condition that we discussed earlier. In the case of the conquered lands, common ownership is applicable as a result of the collective political action that the nation had carried out, which is the conquest by the nation. So the conquered property will remain as jointly owned common property of the Islamic nation.

But in the case of the minerals, all citizens have equal share according to many juristic sources. In mentioning about common ownership, it is intended for all, not just Muslims. This is stated in *al-Mabsut*, *al-Muhadhdhab*, *al-Wasilah* and *as-Sara’ir*. In the opinion of the authors of these sources, there is no evidence for the mining production to be exclusive property of the Muslim community. Instead, it should be for all living under the shelter the Islamic nation.

Al-Batin Minerals

In juristic sense this refers to those mineral deposits that do not exist in their finished form and a state of ready-for-use. Further works and processing are needed to extract, refine and transform them into the respective finished forms, such as gold. Gold does not exist in a finished form and ready-to-use state, but further work and refinement are needed to extract the gold metal and remove the impurities.

The *al-Batin* minerals, in turn are also of two types. There are those that are found close to the surface of the earth and are easily accessible. The other type exists far below the surface and is highly inaccessible.

Al-Batin Minerals That Are Easily Accessible

As for minerals found close to the surface of the earth, the directive in *Shari’ah* is similar to *az-zahir* minerals, which we have already discussed. Al-‘Allamah al-Hilli says in *at-Tadhkirah* regarding *al-batin* minerals that they may be either easily accessible or otherwise. Some mineral deposits may exist close to the surface of the earth or even above the ground, and could be easily collected. Some are hidden and lie deep beneath the surface. If the deposits are easily accessible then they cannot be acquired by way of reclamation, just like *az-zahir* minerals.

So, Islam does not allow appropriation of mineral deposits that are easily accessible as a private property while they lie in the mines, pits or beds. It allows each individual only such quantity as he can extract or take into his possession, provided the quantity does not exceed a reasonable limit. The limit should also be such that the quantity taken would not cause social injury to the individual or result in inconvenience to others, as specified by the jurist al-Isfahani in *al-Wasilah*.

We say this because we do not possess a sound text in the *Shari'ah* indicating the quantity that is considered as “taking control or possession”. Such actions, under all circumstances are grounds for confiscation irrespective of the amount and the consequence of the confiscation on others. All that we know in this respect is only one thing: that during the era the legislative rules were developed, the practice was that the people fulfilled their needs for the mineral materials found on the surface of the earth or those that were in easily accessible locations, by taking into their possessions these materials only in such quantities that would meet their respective needs.

The quantities they could extract and take possession were naturally small because of the limited means of extraction and production they could command at the time. Hence the people's inclination towards that practice prevailing at that time cannot be used to argue that the *Shari'ah* sanction individual appropriation of whatever quantity he could take possession of, even if the quantities acquired were different from one person to another – either in term of the amount extracted and secured, or in terms of the impact on others – when this practice was prevalent during that era.

Even to this day we find that the jurists do not permit private possession of the *az-zahir* minerals and those *al-batin* minerals that are easily accessible. But they do allow an individual to take a reasonable quantity of the minerals that would meet his personal need. This will allow more opportunity for their use and enjoyment on a broader scale, compared to granting monopolistic operation by private enterprises.

Al-Batin Minerals That Are Not Easily Accessible

Mineral deposits that lie deep below the ground require two types of efforts. The first involves searching (prospecting) and physically extracting them by drilling, excavation, digging etc. The second are efforts to separate or refine the materials and further transform them by chemical or physical processes into the desired forms. These include minerals as gold and iron. These types of minerals constitute the category of *al-batin* minerals that are not easily accessible.

A number of theories have been considered in Islamic jurisprudence (*fiqh*), in respect of these minerals. There are those who hold the opinion that these mineral deposits are property of the state or Imam by virtue of his office, not in his personal capacity. Among them are al-Kulayni, al- Qummi, al-Mufid, ad-Daylami, al-Qadī etc. Their view is that minerals are like *anfal* and they are property of the state. There are also those who hold the view that these minerals are of the nature that fall under the category of joint property shared by all the people, or that under public ownership category. Among them are reportedly al-Imam ash-Shafi'i and many of the Hanbali 'ulama.

With regard to our search for the Islamic economic doctrine, it is practically of high importance for us to study the legislative form of ownership of these minerals and to find out as to whether it is public ownership, or state ownership, or any other forms. As long as it is agreed that these minerals – by their nature – bear the general social character and belong to no particular individual, a study of the type of ownership will remain just a formal inquiry and has no direct impact on our goal. However, the significant point that deserves the focus of the inquiry is to ascertain as to whether or not Islam would allow placing gold and silver mines outside the domain of common assets and grant ownership to individuals who carry out excavations and prospecting for these minerals.

We have seen in the case of both *az-zahir* and *al-batin* minerals that are easily accessible, that the *Shari'ah* – according to the opinion of the jurists in common (*jumhur*) – does not allow their appropriation as private property. It permits every individual to take such a quantity of minerals that meets his needs and that would not disadvantage others. Therefore, it is necessary that we learn the standpoint of the *Shari'ah* concerning *al-batin* minerals – that are not easily accessible – and clarify the similarities and differences, in comparison with other minerals.

The question therefore is whether or not an individual can acquire a gold or iron mine as a private property, by discovering them through excavation or other means. The usual response by the jurists to this question is in the affirmative. They hold that ownership of the mines can be acquired through works that involve prospecting and developing access to the deposits. Their argument is that discovering a mineral through excavation is a type of reclamation. In their view, it is similar to the ownership of the harvest from naturally grown vegetation acquired by reclamation. Thus discovering mineral via excavation and prospecting is also a means of acquiring possession and control. Possession and control are considered grounds for the ownership of natural resources, in accordance with their respective forms.

When we examine this opinion from the angle of economic doctrine, we must not do so independent of the conditions that were imposed and the restrictions applied in the case whereby an individual who discovered a mine is allowed to acquire its ownership. The fact is, according to this opinion, his ownership does not extend to all the mineral deposits existing deeper below the ground. His ownership is applicable only to that part of the mineral deposits revealed by his excavation efforts. Likewise, the ownership does not extend to areas outside the border of the pit, which the discoverer has constructed. This part is what – in juristic parlance – is termed the precinct of the mine for others.

It is clear that the ownership is very restricted, resulting in the opportunity for any other person to carry out excavations at another spot in the mine area. In case where the first discoverer extracts or draws the mineral deposit, another person can come and also operate in the area of the mine and extract the mineral because the first discoverer does not own the whole mine.

This limitation on the ownership of *al-batin* minerals is made clear by those who hold this view in a number of juristic texts. Al-'Allamah al-Hilli says in *al-Qawa'id*:

“If a person digs and reaches the mine he does not get the right to prevent another person from digging it from another side. If he — the other — reaches its vein, it is not for him — I mean the first digger — to prevent him for he possesses the place which he has dug up and its precinct (harim)”.

He says in *at-Tadhkirah*, while explaining the range of ownership:

“If the excavation area is widened, and what is extracted is not found except in its middle part or in a part of the edges, his ownership (of the mine) will be confined to the spot where the material is found, but just as he becomes its owner, what he owns is only that spot by and nearby it — what may appropriately be described as its precinct, including the spot on which his assisting hands and his animal stand”.

“Concerning the validity of the excavation that is done from another spot by another person, it is not prohibited even if he reaches the vein irrespective of whether we say or do not say that the mine is his — for if he at all owns the mine he (only) owns the spot he had dug up, but not the veins which are beneath the earth.”

These texts restrict the ownership within the confines of the excavated pit and the area surrounding it to such an extent as would facilitate the operation of extraction, but do not admit extension of the area to more than that either horizontally or vertically.

We must consider the restrictions — stipulated by the same jurists who uphold the view allowing private ownership of the mine — invalidating the ownership of the mines upon their disuse. Individuals are therefore prevented from repeating excavation works — and reach the deposits — on multiple spots and thus end up owning several locations. The mines are effectively seized when they are abandoned and neglected.

When we incorporate these restrictions into the view that allows appropriation of mines under private ownership, there is a strong ground for denying private ownership over mineral deposits and mines. Based on the deductions drawn from theoretical discussions of Islamic economics — by the directives and rulings on the restrictions — individuals are actually not to be granted appropriation of mineral deposits, except only the spot of the pit excavated by him and the immediate area. The ownership by an individual is conditional — from the very commencement of his excavation work — on his continuous operation and on him not blocking access by others, failing which his entitlement is invalidated.

Ownership of this nature clearly differs from the type ownership of natural utilities and resources found in capitalist doctrine of economics. This type of restricted ownership does not go beyond facilitating the distribution of resources among the people based on labour spent and on individual needs. It cannot lead to the creation of individual-owned monopolies like those commercial arrangements that dominate the capitalist societies. It would also not become a means for acquiring dominance and control over natural utilities or monopoly over natural resources and mineral deposits.

Along with this prevalent view in the juristic circle — holding the legality of ownership (of the mines) —

there is also an opposite view that rejects appropriation mines to private owners, even within the limits set by the jurist who uphold the first view. This juristic inclination – rejecting entirely the private ownership over mines – draws support from the self-contradictory arguments and viewpoints of the proponents of private ownership (of mines). Their arguments could not convince jurists to acknowledge that the individual who starts work at the mine owns the mine on the basis of reclamation (by developing access to it) or on the basis of his holding possession and his having control over it, because under the *Shari'ah* reclamation establishes a special right only in the case of land based on the text that says: “*Whosoever reclaims a waste land does acquire the property*”.

The argument goes that mines are not in the same category as lands. It is observed that when the jurists discussed the precepts relating to lands in cultivable state acquired by conquest – and said that they are common property of the Muslims – they did not include the mines found on these lands in this category of ownership. They thus acknowledged the fact that a mine is not a land as comprehended by the text. Similarly no evidence is found in the *Shari'ah* suggesting that control and holding in possession constitutes grounds for ownership of natural resources.

On the basis of this juristic viewpoint, an individual cannot claim control over anything in the mine so long as it is inside the mine. He can only take possession of the materials that he extracts from the mine as his own private asset. This would not mean that his relationship with the mine does not legally differ from that of any other person.

At the same time, despite the fact that he does not own the mine, legally he is deemed more entitled to enjoy the benefit of the mine than any other person and to carry on the excavation work in the mine because of the fact that he was the one who created the opportunity to operate the mine by having expended his effort and labour to develop access to the mineral materials below the ground. Hence he is entitled to prevent others from making use of the mine to the extent that he has priority in terms of access to and extraction from it. Others are permitted to operate only in such ways that do not interfere with his right to reach and extract the mineral deposit.

In light of the position of the juridical texts and theories about (ownership of) mines, we can educe that mines are – in the predominant juridical opinion – jointly shared common properties and are subject to the principle of common ownership. That means it is not allowed to appropriate a whole mine, with the veins and deposits below the ground, to any individual.

The ownership right of the person – who discovers and works the mine – in respect of mineral deposit is only to the extent of the immediate vertical and horizontal extensions of the pit. However, it constitutes a legal difference between the prevalent juridical opinion and the opposite juridical trend. In the prevalent juridical opinion, the individual is given the right to acquire the mine within those boundary limits in case of *al-batin* mineral deposits in a mine that is not easily accessible. As for the opposite juridical inclination, the individual is granted the right to own only such quantity of the material he extracts from the mine and he is granted priority claim in accessing the mine and extracting deposits therefrom.

Does Ownership Of Land Mean Ownership Of The Mine On It?

Until now, the subject of our discussions is a mine, which exists on a free land, which do not belong any particular individual. The conclusion we arrived at from our discussions is as what we have educed above. Now it is appropriate that we observe as to whether this conclusion is applicable for mines that exist on privately owned lands or those mines that are considered as private property in the sense that the respective lands belong to some individuals.

The fact is that we find no restriction to the application of the conclusion, arrived at in our discussions concerning the mines. There exist a necessary consensus (*ijma' ta'abbudi*) to the effect that the presence (existence) of a mine on a privately owned land is not a sufficient ground for its appropriation as his private property from the juridical point, for we have learnt in the previous discussion that the entitlement of an individual to the appropriation of the land arises on two grounds. First, by reclamation and second, by a country entering into *Dar ul-Islam* and its people voluntarily surrendering their lands.

Reclamation entitles the worker to stake a claim on the land he had worked on and make it cultivable, while the incoming citizen's voluntary surrender of his land renders the land his property. But neither of these grounds extends to the mines existing below the ground. Both only apply to the relevant land areas in accordance with the *shari'i* argument concerning either of them. The *shari'i* basis in respect of reclamation is the legal text to the effect that "*whosoever reclaims a land he has the best right and title to it. He shall have to pay tax in respect of it*". It is clear that this text bestows upon the one who reclaims the land an entitlement only to the land he had reclaimed, not to the riches that lie underneath.

As for the *shari'i* basis in relation to the property of the individual of the country that have voluntarily surrendered their lands, it is that Islam protects blood and property. So he who embraces Islam, has his blood protected and the property that he possessed before he embraced Islam is left to him. This principle is applied to the land itself and not to the mines that exist thereon.

The reason is that the person who embraced Islam did not possess those mines before he embraced Islam so that they could be protected for him. In other words, the principle of protecting blood and property in Islam does not legalize newly gained ownership. It gives protection to the person – for the reason of his joining the fold of Islam – in respect of those properties which he possessed before he embraced Islam. And mines do not come under the category of these properties for him to keep in his possession by his embracing Islam. Islam honours and recognizes his land, which formerly belonged to him. So it remains his property after Islam and is not taken away from him.

There does not exist in *Shari'ah* any *nass* (text) to the effect that the ownership of the land extends to all the riches existing underneath the ground. Thus we learn that unless there exists a consensus to the contrary, it is juridically possible to say that mines existing on lands that are privately owned or in possession of some individuals are not their private properties. However, when the mines are operated for production, the land owners' rights will have to be taken into consideration since reclamation of the

mine and extraction of the material present therein should be subject to consent of the land owner.

Iqta' (Feudal Institution) In Islam

This word *iqta'* (fief) can be found among the technical terms of the Islamic law connected with lands and mines. We see this word – in the discussions by many of the jurists – in the statements that refer to the assignment of certain lands or mines is the prerogative of the Imam. The difference between them is as to the limits within which it is permissible for the Imam to do so.

The word *iqta'* (fief) carries with it a distorted perception of well-established conceptions and institutionalized practices, coloured by the history of the middle ages, in particular the history of Europe. As a result of that, the word evokes in the mind all those conceptions and practices that define the relationship between the owner of the land (the feudal lord) and the tiller of the land (his vassal), which regulate their respective rights in an age when feudalism was dominant in Europe and other parts of the world.

This connotative, evocative and reflexive conditioning is the linguistic outcome of the cultures and social doctrines that did not exist in Islam, and not those Islam was acquainted with. Whether or not Muslims in some parts of the Islamic homeland – having lost their roots and cut off from their fundamental ideological anchors and carried away by non-Islamic currents – had become acquainted with them, it would not be reasonable for us to load the word *iqta'* as it is used in Islamic *syari'ah* with these cultural and historical liabilities.

We do not intend to discuss the historical legacy the word is burdened with as a result of certain periods in the Islamic history, for it is not our goal to establish comparison between the two perceptions of the word. On the contrary, we do not find any justification at all to compare and contrast the meaning of the word *iqta'* as used in Islam and its meaning as comprehended in relation to the feudal order so as to cut off theoretically the relationship between them, just as to make them distinct from each other historically. Our only aim is to expound the word from juridical point of view in order to define the complete shape and form of the precept of Islamic *Shari'ah* in relation to distribution (of wealth), which is consolidated and crystallized through the process of discovery pursued in this book.

Iqta' is defined by ash-Shaykh at-Tusi in *al-Mabsut*. It is in fact an Imam's granting a person the right to work on a source of natural wealth, with his work deemed to constitute a ground for appropriation to him or his acquiring a particular right to the natural resource therein. In order to fully comprehend this definition, we should bear in mind that it is not permissible for the individual to work on any of the natural resources unless and until he is permitted by the Imam or the state to do so, either in a general or a specific manner. We will mention this in a later chapter in relation to the principle of state intervention, which enables supervision over production and distribution of work and opportunities in an appropriate and legitimate manner.

Hence it is natural for the Imam to undertake himself the efforts to ensure productive work in relation to

those resources. The Imam could alternatively establish collectively owned enterprises to provide opportunities for the people to carry out production activities in accordance with the respective conditions and production potentials, in pursuit of social justice from the Islamic point of view.

In respect of certain raw materials, such as gold, it may be preferable for the state to undertake the extraction works and to make readily available significant quantities from the materials extracted, for the benefit of the people. In the event the Imam finds this to be not practically possible because of the insufficient production capacity under a state-initiated enterprise, he may opt for another mode of production. He may grant permission to individuals or groups to take possession of the mines and to extract as much quantity of gold as possible. It is thus the prerogative of the Imam to decide on the mode of the production enterprise and the relevant policies pertaining to the production of resources in light of the actual circumstances and in pursuit of justice for all.

In light of this we can understand the role of the term *iqta'* and its juridical context. It is a mode of undertaking the extraction of raw materials that the Imam adopts, which he views as the best option under a particular set of circumstances. So the Imam's giving *iqta'* of gold mine to a person means permission to him to revive that mine and to extract the mineral deposits from it.

Therefore it is not permissible for the Imam to grant a person the *iqta'* of what is beyond his means and ability to manage and is thus unable to perform, as stated by al-'Allamah al-Hilli in *at-Tahrir*. A similar view was also given by Shafi'. Since *iqta'* in Islam means permission to an individual to work the mine and extract deposits of natural resources assigned to him under the arrangement, if he is has no capability to perform the role the *iqta'* will not be lawful. So this definition of *iqta'* reflects explicitly its nature as a mode of the distribution of works and benefits in relation to natural resources.

Islam does not consider *iqta'* as a ground for appropriation of the natural resources granted to an individual assignee by the Imam. That is a misinterpretation of its true character as a mode of organizing production and extraction work and also a means of distribution. *Iqta'* only gives the individual assignee the right to work the mine and extract the natural resources. This right also comes with the obligation on him to work on those natural resources. No other person will be allowed to prevent him or to interfere with his work as clearly stated by al-'Allamah al-Hilli in *al-Qawa'id*: "*Iqta'* imports *ikhtis* as (an exclusive right)". In the same way ash-Shaykh al-Tusi writes in *al-Mabsut*: "if the sultan gives to a man of his subject, a piece of barren land by way of *iqta'* (fief) he becomes more entitled to it than any other person by reason of the sultan's giving him the *iqta'*, without any objection."

So *iqta'* is not a process of appropriation, but a right and a title that the Imam confers upon the individual over natural resources, which makes him more entitled than any other person to avail for productive purpose a piece of the land or a mine assigned to him which is determined according to his ability and means. Evidently giving this right is necessary as long as *iqta'* is – as we have learnt – a mode of organizing operating capabilities and labour forces with the intention to obtain better yields from the natural resources.

Without such right being granted, *iqta'* would not be able to function accordingly. To be able to effectively work on the mine and the resources assigned to him by *iqta'*, the individual needs to have the right to invest and enjoy priority over others under that arrangement. So this right provides him with legal security and facilitates the success of efforts in organizing the production of natural resources in a way that is efficient and profitable.

From the moment the Imam assigns to a person the *iqta'* of a piece of land (part of a mine) until he commences operation – i.e. the interval between the period during which prepares and gets the mine in a condition ready for extraction work – the only right the person has is to carry out his work in the designated area of the land or the specified portion of the mine and put it into productive use, and the right of preventing others from interfering with his work. Any interference by a third party would upset the mechanism, which the Imam chooses in relation to production of the natural resources and the organization of work on the basis of efficiency.

This period between the granting of the *iqta'* and the commencement of the extraction works must not be extended because *iqta'* does not mean the individual has proprietary right over the land or the mine. It is only a mechanism to facilitate the organization of operation work for the exploitation of the natural resources efficiently. Therefore, the assignee of the *iqta'* has no right to delay the commencement of work without justification because his delay in commencing the work becomes an obstacle to the success of the *iqta'* in its character as a means to organize the work. That would be similar to interference in his work by another person – after he has already been appointed to carry the works on behalf of the state – being an obstacle to the functioning of *iqta* in its Islamic role.

Therefore, we find ash-Shaykh at-Tusi stating in *al-Mabsut*:

“If he (the assignee) delays the reclamation, the Sultan will tell him: you may either reclaim it or leave it for another person so that he may reclaim it. If he gives excuse for delay, and prays the Sultan to give him time, the Sultan may do so. But if he has no excuse for the delay and the Sultan gives him the two options, and he does not do so the Sultan will take it away from his possession”.

It is given in the *Miftahul-karamah*:

If he (the assignee) pleads desperately and appeals for time till better days, his request will not be taken into consideration for that would lead to indefinite delay and would entail protraction, leading to abandonment.

This is the whole structure of *iqta'* and its implications during the period from the granting of the right to the commencement of the work. It is this intervening period wherein *iqta'* is effective according to the *Shari'ah* and this effect does not extend beyond the right to work – as we have learnt – that makes *iqta'* a mechanism which the state avails under certain circumstances for the extraction of natural resources and for organizing the forces of production based on efficiency.

After the person had carried out the production work on the land or the mine, the effective period of *iqta'* ends in the view of *Shari'ah*. But he gains entitlement and right to the land or the mine based on the work he had performed (during *iqta*) in accordance with the nature of the work, as we have come across earlier.

This is the truth about *iqta'*, it as an Islamic mechanism for organizing production work as we have demonstrated with evidence from selected texts and precept as to its definition and structure in *Shari'ah*. *Iqta'* was established to facilitate management of natural resources – their custody, production and distribution.

It is not legally valid or permissible to assign a special right of ownership by virtue of the work, as stated by ash-Shaykh at-Tusi in *al-Mabsut*. This is based on numerous chains of reports of the relevant tradition. The prohibition of granting *iqta'* for this type of public utilities and limiting it specifically to the wastelands indicate quite explicitly the fact that the function of the *iqta'* – from the *Shari'ah* point of view – is only granting of the right of work on a particular site of natural resource for a specific purpose, as a mechanism to organize labour for its extraction, as we have established earlier.

As for the right and claim of the person on the natural resource, it is established on the basis of work and labour, and not on the basis of *iqta'*. However, if the natural resources or public utilities are not in need of being reclaimed and worked on, and there is no necessity to give a specific right or title to any person working on it, then *iqta'* is not permissible inasmuch as *iqta'* of such a utility loses its Islamic significance. Establishing *iqta'* in this situation may result in monopolistic exploitation of natural resources, driven by personal gains. This contradicts the Islamic concept of *iqta'* and its original function. Because of this, such arrangement is forbidden by the *Shari'ah*, which has restricted legitimate *iqta'* arrangements only to mines that are in need of development work.

Iqta' In Relation To Taxed Lands

The term *iqta'* is also applied in the juridical parlance for something else, which is payment for service. This *iqta'* is on taxed lands which are considered national assets. The governor can grant an individual something (derived) from taxed lands and authorize him to collect the tax on those lands. This authority is exercised by the governor although it remains more of a historical significance, without the real right and process of appropriation that lead to the actual proprietary right to the land. In its juridical sense and within permitted limits, it does not mean anything of that nature. It only represents a mode of payment of remuneration or compensation for work, which the state undertakes to pay the individuals for the public services rendered by them.

In order to understand this, we must call to mind the fact that the tax – the land tax that the state demands from the farmers working on the lands – is considered a property of the *ummah* (Muslim community) arising from the *ummah*'s ownership of the relevant lands. It is, therefore, the duty of the state to spend taxes derived from the land for the collective interest of the *ummah*, as stipulated by the

jurists in their texts.

Some gave examples of a range of collective interests including construction of mosques and bridges, etc. or providing administrators and judges, as the administrators and judges serve the *ummah*. Therefore hiring and maintaining them is the obligation of the *ummah*. As mosques and bridges are a part of the public utilities which are linked to the life of the people as a whole, building them with people's fund – including the money from the land tax – is valid.

The pay for administrators, judges and any other individual for rendering public services may be made by the state either directly from the public treasury (*baytul-maal*) or by giving the recipients the permission to collect the revenues from some of the state properties and retain their respective amounts. The state usually adopts the second method in situations where it does not enjoy strong central administrative machinery.

In the Islamic society, payment of salaries and expenses of individuals who render public services to the *ummah* are made in cash, or as it suits the administrative circumstances of the respective departments. These payments are made by way of the state granting the public officials the right of control to over tax collection for a set of specified landed properties from among those belonging to the *ummah*. So it is in this sense that the term *iqta'* is applied. In reality it is not an *iqta'*, but the delegation of the authority to public officials to collect land taxes in order to facilitate the payment of their salaries and expenses.

The assignee of the *iqta'* owns the tax receipt from the land – as payment of wage for the service he has rendered to the *ummah* – but he neither own the land nor a its proprietary title. He also does not have a right over the harvest. The property remains as collective asset of the Muslim community and as a taxed land as stated by the jurist research scholar, as-Sayyid Muhammad Bahrul-'Ulum in his *Bulghatah* when he defines this kind of *iqta'* as *iqta'* of taxed-land. He wrote:

“Indeed *iqta'* does not re-designate the land from being a taxed-land into another category, for it only means assignment of the tax to appointed officials, not a re-designation from its status as a taxed-land.”

Hima (Preserved Or Protected Land) In Islam

The concept of *hima* came from Arabs of the ancient times. It's an expression for wastelands in distant areas, which the powerful ones among them used to monopolize for themselves. Others were not allowed to enjoy the benefits derived from these lands. They considered whatever riches and benefits derived from these lands as their sole and exclusive property on account of their having forcibly acquired these lands and their might and power in preventing others from using the lands.

It is mentioned by the research scholar an-Najafi in his book *al-Jawahir* that:

“It was the custom of these people in the days of ignorance (pre-Islamic era) that when one of them set his foot on a fertile land he would cause his dog to bark from a surrounding hills or a plain land and then

would declare as his own property all the land as far as the barking sound reached and staked a claim over the area. It was because of this that it was termed *hima*".

Islam naturally forbids Hima because its right is based on domination, not on work and labour. Because of this, Muslims are not allowed to engage in this practice. There is a tradition, which affirms the abolition of this method of acquiring and monopolizing natural resources. It says: There is no *hima* except for Allah and His Messenger.

In some of the traditions it is mentioned that a person asked al-Imam as-Sadiq (a.s.) about a Muslim who had a landed estate where there was a hill that was a sellable thing among others he bought. Then a Muslim brother who had sheep and was in need of the hill came to him. Would it be lawful for him to sell the hill just as he sold other things therefrom, or is it forbidden for him to do so? What will be his position in this matter and what shall he take? The Imam replied: "It is not lawful for him to sell his hill to his brother".

The mere presence of natural resources that come under the control and power of an individual is not considered by Islam as a ground for giving him right and title over those resources. The only *hima* that Islam has permitted is the *hima* of the Messenger of Allah, peace be upon him and his progeny. The Messenger of Allah had preserved some places from wastelands for general good of the people like *Baqi'*, since it was reserved for the camels of *sadaqah* (charity), cattle of *jizyah* (tax on non-Muslims under Muslim rule) and for horses of the army.

Sources Of Natural Water

There are two types of water sources. The first type comprises bare sources above ground sources that Allah has created for man like seas, rivers. The second type comprises underground water sources, which man can access and benefit by spending labour to dig wells in reaching them.

The first type of water sources is considered common property shared jointly by the people. Those natural resources are considered as shared assets, which Islam does not allow appropriation to any individual as private property. Instead, Islam allows all individuals to enjoy the use and benefits of these assets, in line with the principles joint ownership. No one owns seas or rivers as his own private property, and all are allowed to enjoy their benefits. On this basis we learn that bare and exposed natural sources of water are subject to the principle of the public ownership. [14](#)

If a person collects water from these sources in a container – whatever type and size it may be – he becomes the owner of that amount of water he had collected. If he ladles up a quantity of water with a jug, or draws the water up by an instrument or digs a pit in a manner that is legally allowed and connects with the river, the quantity of water ladled up, drawn up into the pit becomes his asset because he has taken it into his custody.

He cannot acquire ownership of any quantity of water he has not taken into his possession and spent

labour on. This has been confirmed by ash-Shaykh at-Tusi in *al-Mabsut*. He wrote that water that is *mubah* (free to all) includes water of the sea or big rivers like Tigris and Euphrates and similar streams which spring up in wastelands of the lower and upper plains. Water from these sources is free and open to everyone to use as he wishes. There is no difference of opinion in this respect in line with the tradition related on the authority of Ibn 'Abbas from the Messenger of Allah already cited herein before, mentioning that the people have joint shares and are partners in three things; water, fire and grass. If the water level rises and the water enters into some private properties and accumulates therein, the owners cannot acquire it as theirs.

It is labour spent which is the basis for appropriation of whatever amount of water from these sources that a person gains control over, or brings under his possession. But if water from a river finds its way to that person's land – not by his labour or efforts on his part – then in that case he will have no justification to claim it as his own. Unless he spent labour for that purpose, the water will remain *mubah* (free) to all.

As for water from a source that lies below the ground, no one can claim it as his own unless he spent his labours to gain access to it, by digging to discover its source and makes it available for use. It is only when a man gains access to its source by his labour and excavation efforts that the water will become his. The spring discovered will be under his valid possession and he will be entitled to benefit from it and prevent others from interfering with his operation, since it was he who created the opportunity for the access to that spring.

So it is a part of his right to benefit from that opportunity while others who did not participate in the efforts to develop that opportunity should not come in his way of enjoying its benefits. He becomes more entitled than others to that spring and to own the water he extracted because it is a type of possession. But he does not become the owner of the spring, which existed below the ground before he uncovered it with his labour¹⁵ . Therefore, he owes a duty to allow others to use water from that source after he has fulfilled his requirement.

He is not allowed to demand payment from others in return for use of the water for their own consumption and for their livestock inasmuch as the substance (water) remains a common property jointly shared by all. The individual who discovers and develops access for the water only has the right of priority on account of the labour he invested in uncovering the source and developing the access. Once he has fulfilled his need and requirements, others have a right to share its benefits.

It has been narrated on the authority of Abu Basir from al-Imam as- Sadiq (a.s.) that the Messenger of Allah (s.a.w) has forbidden *an-nitaf* and *al-arba'a*'. He (the Imam) said: "So do not sell them, but lend them to your neighbour or brother (in faith). *Al-Arba'a*' means one makes a dam to irrigate his land until his need is satisfied. *An-Nitaf* means one has a fixed limit of time for irrigating his land to his satisfaction".

In another tradition from al-Imam as-Sadiq (a.s.), it was reported that he said: "*an-Nitaf* means the fixed

limit of time for irrigation. When your need for it has been fulfilled, you are not allowed to sell it to your neighbour but leave it for him. *Al- Arba'a* means dams made between lands of a (certain) group, when one of them has fulfilled his needs with the water of his dam", (the Imam continued): "he should leave it for his neighbour (to benefit), and he is not allowed to sell it to him"[16](#).

Ash-Shaykh at-Tusi also declares in *al-Mabsut* the same ruling as we have mentioned and makes it explicit that the relationship between the individual and the spring of water is that of a right (to use) and not of a property (owned). This is despite of the fact that in his (the Shaykh's) opinion he (the discoverer) owns the well that is the pit he dug whereby he gained access to the spring of the water. He wrote:

"At every place (context) we have said he owns the well (we meant by that statement) that he is more entitled to its water to the extent of his personal consumption, watering of his livestock and the irrigation of his farm. After this, if there remains any surplus it is up to him to give for free to anyone else in need of it for consumption and for the watering livestock. However, water that he has secured in his big earthen jar or water pot or in a tankard or in a pool or a well, that is the pit and not the substance (water) or in his manufactory or such other things, he is not obliged to give anything out of this stock to anyone even if it is in surplus of his need without any difference — because it is not its substance'.

So then, the individual cannot prevent other individuals from availing of the substance in it as a natural source – within limits that do not come in conflict with his right and title to it – for according to this opinion he does not own the substance itself. Instead, he only has a greater right to its benefits as a result of his having brought about the opportunity, which facilitated the availability of the use of the substance. So others should be allowed to avail of the benefit of the substance in a way and to the extent it does not come in conflict with his enjoyment of its use.

Other Natural Assets

Other natural resources come under the category of *al-mubahatul-‘ammah* (resources available to all). This group includes all those natural resources which everyone can use freely and enjoy the benefits as they do from their own private properties. This general permission is permission not only for their benefits but also their mode of ownership.

Islam has granted private possession and use with regard to these resources available to all (*al-mubahatul-‘ammah*) on the basis of work and labour spent in acquiring them in accordance with their types, for instance, the work or labour to gain possession of wild birds by hunting and capturing them. Works to fell trees and gathering the woods entitle the person to own his harvest. Works by divers entitle them to the pearls and corals from the seas. Similarly those who install hydroelectric equipment are entitled to the electrical power generated from the latent energy of the waterfalls. In this way, an individual gain possession of the *al-mubahatul-‘ammah*.

The ownership of these natural resources cannot be acquired except by work. Thus it will not suffice that a person brings any of these under his control without actually investing in constructive and productive

work to secure them. This text is given in *at-Tadhkirah* of al-‘Allamah al-Hilli. If the *mubah* (freely allowed to all) water increases and part of it enters into another land it does not becomes the property of that man. The Shaykh says:

“He cannot become its owner just as rain or snow falls on another person’s property and spills into his property, or a bird hatches eggs on nest and rear the young in his garden, or a deer sinks in the mire in his land, or a fish falls in his boat — he does not become its owner, except with efforts to secure it”.

In *al-Qawa‘id* of the ‘Allamah says in respect of the rules of hunting:

“A prey does not become his property by falling in the mire of his land or birds nestling in his house or a fish leaping up onto his boat”.

1. In this section we will use several technical terms. It is therefore necessary to define them at the very beginning.

 - a. The principle of multiple forms of ownership: This is an Islamic principle of ownership. The principle embraces ownership in three modes – private ownership, state ownership and public ownership.
 - b. State ownership: this is the right of possession of certain assets under office of the Islamic state, which the Prophet or the Imam exercises in performing their divinely ordained functions. These include for example, possession of mines according to some juristic texts.
 - c. Public ownership: It is the right of ownership of certain assets by the people or nation as a whole.
 - d. Ownership of the ummah (nation): It is a form of public ownership and it represents the right of ownership belonging to the entire Islamic nation in respect of a property or its historical extension, such as the ownership by Islamic nation in respect of a property acquired by conquest in religious war (jihad).
 - e. People’s ownership: It is also a type of public ownership. We will apply this term to every property that an individual is not permitted to exclusively possess or own as his private property, while all people are permitted its use for their own purpose and derive benefit from it. For any property of this nature, we will apply to it the term (a property under) the common ownership of the people. The term “common ownership of the people” is applied in the parlance of this book to represent a negative attribute – that is, not giving the permission to an individual or a particular party to take exclusive possession of the property – and a positive attribute – that is, the permission of its benefits to all of the people. Examples of these are the seas and natural rivers.
 - f. Common ownership: We will apply the term “common ownership” to what comprise both spheres: that of state ownership and that of the two preceding public ownerships, in contrast to private ownership.
 - g. Private ownership: we apply this term for the appropriation of a particular asset to an individual (or a limited group) that gives him the principal right to deny others from enjoying its use in any form, unless there exists a need or an exceptional circumstance. An example of this is another man fetching a load of wood from the forest or a small quantity of water that he draws with his hand from the river.
 - h. Private right: we will apply the term in this discussion to represent the degree of the individual’s appropriation of the property. It differs from the degree in which the ownership expresses the appropriation in its analytical and legislative sense. Ownership is a direct appropriation of the property. The right is an appropriation, a result of another appropriation and subject to it for its continuance. On the legal side, ownership of a property gives the owner the right to deny others from enjoying use of the property. Private right does not lead to this result. Others can enjoy the use of the property in the manner and form as regulated by the Shari‘ah.
 - i. Public property free to all (Ibahatul-‘ammah): It is a legal precept, in accordance with which an individual is allowed to enjoy the use of the property and to take it into his possession as if it were his exclusive private property. Examples of this are the wild birds and fishes.
2. Some economists consider labour and entrepreneurship as one single category. [Note of Al-Islam.org].
3. Iqtisaduna Vol . 1, Part. 2.

4. [ibid.](#)
5. Here the meaning of the word “fay” is that Allah has granted the land (as-Sawad) to all Muslims. Therefore, all have right on this land and no one, as an individual, can enjoy exclusive possession. (ed).
6. See Appendix II.
7. Refer Appendix III.
8. Vide Appendix IV.
9. Refer Appendix VI.
10. Refer to Appendix VII.
11. The tradition reported by al-Kabuli and the authentic tradition reported by Mu’awiyah ibn Wahb cannot be considered contradictory with the tradition reported by al-Halabi on the authority of the Imam as-Sadiq (a.s.), in which al-Halabi says that he had asked him (the Imam) in respect of a man who comes to a barren land, he reconditions it, causes its canal to flow, reclaims it and grows crop on it, what dues he has to pay? The Imam replied “Sadaqah”. I then asked “and if he happens to know its owner?” He replied “Let him pay to him his due”.

In the Imam’s reply in the tradition reported by al-Halabi, the only thing taken for granted is merely the fact that the land has ceased to be cultivable. This indicates something more general than its status as a barren land on account of the neglect by its owner. The authentic tradition reported by Mu’awiyah ibn Wahb takes for its subject matter something more specific. In that tradition, its former owner neglected the land and caused it to become a wasteland. This altogether is a more specific matter and as such requires the relationship between the owner and the land be terminated because the land had become a wasteland. He lost the right to deny others from working and reclaiming the land.

12. When this juridical text is compared with the legislative texts which appear in the reports of Mu’awiyah ibn Wahb and the reports of al-Kabuli, it will be observed that the text of ash-Shahid is conspicuously clear in that when the land (gets neglected and) becomes wasteland, the relationship between the owner and the land is terminated for good.

As for the texts previously given, they (do) permit any another individual to reclaim the land after it becomes a wasteland and (because of) neglect by its (earlier) owner and confer him (entitlement to) the land. But they do not indicate a final termination of the relationship between the owner and the land on account of its becoming a wasteland (because of neglect), for it is possible within the limits of the legislative implications in these texts for us to presume that its owners shall retain a right and entitlement to it and that his relationship with the land remains – even after its neglect and resulting wastage – such that he shall have priority in reclaiming it anew, whenever there are competing efforts in reclaiming it. This priority shall prevail so long as no one has overtaken him in the reclamation works. However the initial owner’s relationship with the land is conclusively terminated if the other person has actually reclaimed it during the period of his neglect.

Now on the basis of the juridical text of ash-Shahid, the individual’s right and entitlement to the land is completely terminated on the lands becoming a wasteland. But on the basis of the other texts, we can presume that the individual’s right and entitlement to the land remains to a certain extent. He only lose the rights to exclusively hold the land, that is the right of preventing others from making use of it and enjoying the benefits derived from it (during the period of neglect).

The difference of these two presumptions will have its practical implications in the case when the individual who neglects the land (and it becomes a wasteland) dies before anyone else has reclaimed it. Going by the opinion of ash-Shahid will lead to the dictum of the non-transferability of the land to his (legal) heirs since the relationship of its owner with the land cease to exist. So there is no basis for its inclusion in the assets of the deceased man for inheritance purposes. But on the basis of the second opinion, the land will be inherited in the sense that his heirs will enjoy the same degree of right in respect of the land, which remained (as assets of) the deceased (even) after it has become a wasteland. Henceforth, our discussion will be based on the opinion and views of ash-Shahid ath-Thani.

13. By this we learn that an explanation as to the Imam’s ownership in its entirety is possible from these texts, on the basis of its being a rule of the canon law. This ‘ownership’ is in ‘deterrent’ sense, so long as it is set upon the natural state of the land – wherever it is – and not in conflict with anyone else’s ownership of a piece of land in legal manner, considering the

natural state of the land and the value of his efforts, such reclamation. So there is no need to interpret ownership (as expressed in these texts) and consider it literally, outside its legal sense, as that will be conflict with the context of these texts. Look at the tradition reported by al-Kabuli and see how it declares that the whole land is the property of the Imam, ending with the dictum 'to Imam belongs the right to impose tax on the one who reclaims the land and cultivates it'. The Imam's imposing the tax or remuneration by allotting the rights to use, proves explicitly that ownership is taken in its legal sense which these traditions regulate, not in their spiritual sense.

- [14.](#) There is a popular juristic opinion that such water source found on a land belonging to an individual is his private property, and is exempted from the application of this principle (refer to Appendix VIII).
- [15.](#) Refer to Appendix IX.
- [16.](#) See Appendix X.

Chapter 3: The Theory On Distribution Of Factors Of Production

The Theory

We have now concluded with precise details the general upper structure of Islamic legislative enactment comprising a collection of the main precepts, guiding the distribution of the factors of production and the regulations relating to the rights of individuals, the society and the state in respect of resources that are available naturally.

Having conceived this from the Islamic core, we would have completed half the job in searching for the theory. There remains the investigation from the religious angle, whereby we should uncover the fundamental principles and the general theories that form the base, on which the upper structure stands. This will be the second half of the process of discovering the theory. We proceed from the upper structure to the base, and from the legislative details to the broad theoretical principles.

In our presentation and interpretation of these legislative enactments and precepts, we have always followed a method that consistently and clearly reflect the strong theoretical bonds between these precepts. The same method will be useful in this second stage of the process of discovering the theory and in applying those important precepts to the general religious outlook, which we are doing now.

We shall dissect the general Islamic theory of distribution of the factors of production and study it in stages. At every stage we shall take up one single aspect and ascertain the supporting legislative and juridical texts and precepts, which we learned from the previous stage. After we have fully mastered the different aspects of the theory in light of the main precepts – each supporting one of these aspects – we would finally stitch together separate parts of the theory into one composite whole and give it its general form.

The Negative Limb Of The Theory

Let us begin with the negative limb of the theory. This side of the theory holds the principle that there are no proprietorships and primary private rights in relation to natural resources, without spending labour on them.

The Upper Structure

1. Islam had abolished (declared invalid) *hima*. *Hima* belongs only to Allah and His Prophet and is not lawful for anyone else. By this, Islam denied any exclusive right of an individual to a land by his having domination and authority over it or by his defence of the land with force.
2. If the *Wali' Al-Amr* gives an individual a land as a 'fief', the individual thereby gains the right to work on it. But the arrangement does not grant him the right of the ownership over the land, or any other right there on unless he works or expends his efforts on it.
3. Springs and mineral deposits deep underground are not private properties. There is no special right for any individual, as al-'Allamah al-Hilli has made clear in *at-Tadhkirah* saying: "He (the first person who develops access to the mine) does not possess the vein which is in the earth. He (another person) who reaches it from another side then he will take from that side."
4. The open seas and rivers do not belong to any particular individual, nor is there any special right for any person over them. Ash-Shaykh at-Tusi says in *al-Mabsut*: "Water of the seas, rivers, or streams springing up in the plain or hilly wasteland, all these are *mubah* (free to all). Anyone can make use of what he wants and any way he wishes", according to the report of a tradition on the authority of Ibn 'Abbas from the Prophet, "*People have joint shares in three things: Fire, water and herbage (pasture)*".
5. If water (level) rises and the water enter the properties of the people and settles therein without these people having gained possession by spending labour, the water will not become their theirs.
6. If an animal comes to the control of an individual without him having spent any effort in hunting or capturing the prey, it does not become his property. Al-'Allamah al-Hilli in *al-Qawa'id* says, "A prey does not become one's property by its entering one's land, nor a fish by leaping up onto one's boat".
7. The same is the case with other natural resources. That they fall under the control or come into the hand of a person without any exertion on his part does not justify his possession. It is because of this that it is given in *at-Tadhkirah*: "A man does not become the owner of the snow coming into his possession merely by its falling on his land".

Deductions

From these precepts and other similar ones in the collection of the Islamic legislative enactments that we have come across, we are able to know that there does not exist – for any individual – a private right

over the natural wealth to distinguish him from others on the legislative level, except in consideration of his specific labour. In his real life (under the Islamic system), his labor separates him from others.

The individual does not earn entitlement to (ownership of) a land if he has done reclamation work on it. As for a mine, he is entitled to carry out extraction (of the minerals or the deposits of material) after he has developed access to it. Similarly, in case of a spring or source of water, he only gains the right to acquire the water only after being the first to uncover it. In case of wild animals he only gains possession after securing them by hunting. For easily accessible natural resources, he secures possession only after spending efforts on them.

We see through these examples that in the theory, labour is considered as the sole basis of acquiring primary possession rights over natural resources. But its application differs theoretically to different types of the natural resources. What is considered practically as labour in respect of some natural resources – and is a sufficient ground to establish the possession rights – may be considered inapplicable for another type.

By taking possession of some rocks found in the desert, you can own them. The labour spent in taking possession of these rocks, in theory, is accepted as the basis for establishing ownership rights. But similar labour is not admissible as the basis to establish the rights to gain entitlement and control in the case of wasteland, mines and natural springs.

So it will not suffice for you, in the case of a wasteland or a mine or an underground water source, to acquire control of those resources by bringing them into your possession. The only way of acquiring proprietary rights with regard to these resources is to spend labour and efforts on the land, the mine and the spring. The labour spent should eventually have the effect of reviving the land or develop access to the mine or the water source.

We will define in the affirmative limb of the theory the relevant meaning of 'labour', and the criterion it follows in describing different types of exertions, which men carry out in connection with natural resources, as labour. Once we fully grasp this criterion, we will be able to appreciate why taking rocks into one's possession constitutes a ground for its appropriation, while taking possession of the land does not result in similar entitlement.

The Affirmative Limb Of The Theory

The affirmative limb of the theory runs parallel to its negative limb and both are complementary. The affirmative limb holds the principle that labour is a legitimate basis for acquiring rights and gaining entitlements in respect of natural assets. Hence, the rejection of any primary right in connection with natural resources – apart from labour – is a negative limb of the theory, while the recognition of labor as the basis for entitlements and rights is its pair, the affirmative limb.

Its Upper Structure

1. The land is his who reclaims and revives it, as stated in the tradition.
2. He who excavates a mine till it is made accessible has a greater right and claim to it and to the ownership of the material extracted from the pit.
3. He who digs up a natural spring of water is more entitled to have it.
4. If a person takes possession of a wild (*an-nafir*) animal by hunting, or wood by gathering it, or a piece of rock from its natural place by carrying it, or a quantity of water by scooping it up in container from a river, it becomes his property by possession of custody as is written in the texts by all the scholars.

Deduction

All these precepts evidently have one common factor – that labour is the only source of rights and is the only basis for entitlement in case of resources available in nature to men. Even though we find that this is the common legal factor in each of those precepts, we shall – by a detailed study of the precepts and the related legislative texts – discover one constant factor and two variable factors that differ from each other by the type and class of the natural assets.

The constant factor is the link between a person's entitlement and rights – in respect of the natural resources – with his labour. Unless the person invests labour, he does not gain any entitlement; and if labour is amalgamated with the natural resources in any operation, an entitlement can be earned, for the relationship between labour and the entitlement rights in a general form is the common content and their constant factor.

The two variable factors we referred to are the type of labour and the type of entitlement and rights that labour brings about. We shall see that the precepts, which legally establish the entitlement and proprietary rights on the basis of labour, differ according to the type of labour that is invested and constitutes the basis for the entitlement. They also differ in terms of the nature of entitlement and right that arise in respect of the land.

Similarly we shall see that while reclamation work is recognized as labour in respect of lands and mines, it leads to only a limited right in ownership (*raqbah*) of the lands and the mines. The individual (who invests labour) thereby earns priority over others, but he does not become owner of the land or the mine itself. We have also learned that the labour put in for taking possession of rocks from the desert and ladling up of water from a river will be considered a sufficient ground from the *Shari'ah* point of view, for private ownership of the rocks and water, not merely for gaining priority right.

So there is a difference between the precepts – which connect the proprietary rights of an individual on account of his labour and exertions – as to the determination of the type of labour that give rise to these rights and as to the determination of the nature of those rights that are based on labour. Because of this it will give rise to a number of questions that require satisfactory answers.

For instance, why is it that the labour spent on securing possession of rocks from the desert and of drawing water from the river is sufficient for the person to acquire ownership right, while the same labour in respect of land and mine does not constitute a ground for similar right? Also, how is it that the right, which the individual earns in respect of water from the river by way of drawing it up, gets elevated to the level of ownership when it does not make the person who reclaims a land or opens a mine an owner? Instead, it only gives him the right of priority over the property that he revives or develops access to.

Further, if labour is the basis for the special and private rights, then why is it that when a man finds a land that is naturally fertile and benefits from the opportunity that nature has conferred upon it – by him cultivating it and expending labour on it – he does not gain the same rights as that for reclamation work, despite his efforts and labour on the land? And how is it that rehabilitation of an uncultivable land becomes a ground for the right of its ownership, while the use and cultivation of fertile land does not.

Indeed the answer to all these questions – about the different precepts of Islam in respect of labour and the resulting rights – relies on the determination of the third limb of the theory, which expounds the general basis for valuing labour in the theory. In order to determine this aspect of the theory we should gather those different precepts in respect of labour and its rights, which led to these questions, and incorporate these. From there we may formulate the upper structure, by which we will determine of the outstanding main features of the theory with clarity and precision because the body of these different precepts actually reflects precisely the main features of the theory.

Valuation Of Labour In The Theory

1. If a person carries out reclamation work on a piece of wasteland and renders it fit for cultivation or utilization, he shall be entitled to a right over the land that he had reclaimed. But he shall have to pay tax on it to the Imam unless he is exempted from that. This is stated by ash- Shaykh at-Tusi in the book of “*Jihad*” of his work *al-Mabsut*, in conformity in with sound texts of traditions stating that he who reclaims an uncultivable land has prior right to the land that he had rehabilitated and rendered fit for cultivation. However he shall have to pay tax on it, and in line with the right which he earns to it by virtue of his reclamation efforts, no one else shall be allowed to seize it from him as long as he holds his right, although he does not own the land itself.

2. If the person carries out the work of tilling a naturally fertile land and grows crops on it, he shall have the right to retain his possession of the land and it is not permissible for others to interfere in his utilization of the land and enjoyment of its benefits so long as he continues exercising this right. But this right does not entitle him a monopoly over the land. It does not stop another person from utilizing the land when he (the first person) does not use it productively. On account of this, the right that results from working a land that is naturally fit for cultivation differs from the right which accrues from the reclamation of a piece of uncultivable land.

The right which accrues from the reclamation work confers upon the person the right and authority to

forbid another person from taking control of the land without his due consent and permission as long as signs of life exist on the land, irrespective of whether or not the first person productively utilized the land. But the right, which an individual earns as a result of working a land that is naturally cultivable, does not go beyond gaining a priority to the land so long as he utilizes it productively. If he stops doing so, any other person shall have a right to benefit from the land and to play a role similar to that of the first person.

3. If a person carries out excavation and uncovers mineral deposits on a land and develops access to the mine, another person shall have the right to benefit from the same mine as long as he does not interfere with the works of the first person. For instance, the second person may excavate the mine from another side or location to reach the intended mineral deposit, as specified by the learned ‘alim (al-‘Allamah al-Hilli) in his book, *al-Qawa‘id*.

Despite the first person’s successful efforts in excavating and reaching the mine, he shall not have the right to prevent another from developing access and reaching the deposit from another side. Similarly, the second person – having reached the mineral deposit from another side – does not have the right to prevent any others from working on the mine and benefitting from it.

4. Ash-Shahid ath-Thani in his work *al-Masalik*, has stated in respect of a land, which the person has reclaimed but later became uncultivable. According to him, such a land was initially a *mubah* but when it was neglected and later degenerated into a wasteland, it would revert to its previous status, and would be a *mubah* property. It is similar to water drawn from the river Tigris and then poured back into it.

Reclamation is the cause of its ownership. With the cause of ownership having ceased to exist, its effect – the ownership – also ceases to exist. This means that if the person reclaims the land resulting in his right and title to the land, that right continues only as long as the (effect of) reclamation remains physically intact. When the (result of) reclamation ceases to exist, the right becomes void.

5. In light of this, if the person carries out excavation on a piece of land to uncover a mine or a spring, and if he afterwards leaves it neglected such that the excavated pit is filled up (or the seams of the dug earth are joined up by natural causes) and another person comes along, begins excavation work and reopens the mine, he shall earn the right to the mine and the first person will lose his earlier right of preventing others to benefit from it.

6. Holding possession of a property or having control over it does not constitute a basis for granting ownership or rights to the natural assets in respect of lands, mines and springs. Such right of ownership amounts to *hima* and is valid only for Allah and His Messenger.

7. Ownership of wild and refractory animals is by overpowering them and breaking down their resistance, or by hunting them even if the hunter has not secured them in hand or in his trap. Possession is actually not necessary for ownership of a prey. The learned ‘alim al-‘Allamah al-Hilli affirms in the *al-Qawa‘id* that the grounds for ownership of the prey are four factors; rendering nugatory

its resistance, evidence of its ownership, weakening it, or its falling into any device of hunting. Hence anyone who hits a hunted animal but misses it, and another person makes claim but shows no evidence of ownership, the first person becomes its owner even if he has not secured possession or custody as long as there is no one to contest his claim of ownership.

8. A person who digs a well until he reaches its water is more entitled to its water, to the extent required for consumption by his animals and irrigation of his farm. As for water in excess of these, it is obligatory upon him to provide it for free to another person who is in need, as specified by ash-Shaykh at-Tusi in *al-Mabsut*. We have already quoted the relevant text before.

9. If a man holds a property in his possession and he afterwards neglects and abandons it, his right and title to it becomes extinct and it becomes a *mubah* property, freely available for all, just as it was before he gained its possession. And it will be lawful for any other person to take it into his possession in a similar way the first person's failure to utilize a cultivable land and benefit from it (refer point no 2 above). Abandoning and neglecting the property severed his connection with it, as has been mentioned in a sound tradition narrated by 'Abdullah ibn Sinan on the authority of Ahlul Bayt, stating as follows:

He who lights upon a property, or a camel in a deserted tract of land exhausted or gone astray, abandoned by its owner, having ignored it, another person takes it up, maintains it, spends (labor) on it to restore it to a cultivable condition from its former lifeless state, that will become his property indisputably and the former has no right in it. This is like a mubah (free to all).

Though the tradition revolved around the abandoned camel, the (word) camel is joined with the (word) property we learn it is a general rule applicable to each and every such case.

10. A person does not gain the proprietary right to the land he puts his cattle to graze. He will obtain the right to it only by reclamation of the land. Hence it is not allowable for a person to sell pasturage unless before doing so he has acquired a right to it either by reclamation works or having inherited it from a person who had reclaimed it or in some other similar ways.

It is reported on the authority of Zayd ibn Idris that he questioned Imam Musa ibn Ja'far (a.s.) about a person enclosing a piece of land as his private reserve for pasturage, telling the Imam that they possessed landed farm property in the country, whereby the boundary lines of each property were clearly delineated. They possessed cattle. In the country there were pasturelands, one of them had camels and sheep and he was in need of pasturage for them. He asked whether it would be valid for that man to hold the pasturages as his private reserve (*hima*), to meet his need. The reply of the Imam to the query was that if the land was his own land then he could enclose it as his private reserve and benefit from it. Then he asked the Imam about a person selling his pasturage. The Imam replied that if the land belonged to him there was no objection to his doing so. This reply indicates that the action of adopting a pastureland does create for the herdsman the privilege to transfer this right to another person by sale.

Conclusion

In light of the upper structure and the particular traditions from the doctrinal basics, we will be able to perceive the landmarks of the theory and subsequently will be able to answer the question we have previously presented.

Work Of Economic Value Is The Basis For The Rights In The Theory

The Theory differentiates between two types of activities. One is utilization and development. The other type is domination and exploitation. Works in the nature of utilization and cultivation are by their nature works of economic character, while the works related to domination and control are on the basis of force and do not directly justify utilization and development.

In the theory, the source of exclusive entitlements and rights is work that is connected with those in the first category. It includes the gathering of the woods from the forest, or collection of rocks from the desert, or rehabilitation of an infertile land. As for the works under the second category, they have no significance in the theory for they manifestation of force and have no economic value in relation to the utilization and development of the natural resources. Force cannot become a source of the special rights nor their sufficient justification.

It is on this basis that the general theory has eliminated the work related to possession and control of the land and does not establish any special right on that basis. Such work, in fact, is an act of force and not one of utilization and development.

The Dual Nature Of Possession

When we assert this, we surely encounter the difference between taking possession of the land, and taking into possession a piece of rock from the desert, or a quantity of firewood from the forest, or some water from the river. Taking possession is a manifestation of force, not a work of economic nature like work related to land utilization and cultivation. How is it possible that Islam allows discrimination of works related to taking into possession of the land and works related to taking into possession some woods, conferring upon the latter special rights whilst disallowing those rights in the case of the former?

The reply to this question is that in the Islamic theory the differentiation between works related to land utilization and cultivation, and those related to domination and exploitation is not based on the type of the work. Rather, the works related to land utilization in one instance and the works related to land domination and exploitation in another, may be of the same type. It depends on the nature of the field, in which the work is performed, and the type of natural assets the person is handling.

For instance, even though taking possession is in a way a form of work, by the general theory it differs according to the type of assets over which the individual acquires control. Taking into possession firewood from the forest or taking some rocks into possession from desert land, is a work in the nature of

utilization. But taking possession of land or acquiring control of a mine or a spring is not a form of work, but is a manifestation of force and domination.

In order to demonstrate this we may imagine a man living all alone in an immensely vast area of land rich with springs, mines and natural resources, far from any competing claimants and study his behaviour and the type of possession he is likely to pursue. Such a man will not come to think of taking possession and control of a large area of land and whatever mines or springs existing therein to protect them from the encroachment by others. He will find no competing claimants and will derive no benefit from such move, as long as the land is at his service and disposal for all the time with no competitors. He is likely to only benefit from the land by utilizing such part of the land at a level that corresponds to his power and ability to cultivate and work on.

While it is unlikely that he will think of securing possession of a large area of land, he will always strive to secure possession of water by transferring it to his container – which he will carry to his shanty – and of the firewood to light fire upon. Thus taking possession of the land and other similar resources of nature will have no meaning when competition is non-existent. Rather, rehabilitation will be the only work the individual will carry out under such circumstances in respect of the resources of nature in order to derive benefit therefrom. Taking possession of the land will only have a value when there is competition for the land.

In such environment, the person will set out to secure possession and control of a large area of land and place it under his protection to prevent encroachment by others. This means that taking possession of land and other natural resources is not a work of economic nature in utilizing and benefitting from the land. Instead, it is an act related to dominating natural resources as a measure against competing claims.

Contrary to that, taking possession of firewood, rocks and some quantity of water is a work of economic value in the nature of utilization of resources, instead of seeking domination by force. It is because of this that we saw that the ‘lone man’ pursues this kind of possession, free of any motive or incentive to use force or violence.

On this basis, we can consider acquiring possession of natural assets such as lands, mines and springs as works in the nature of domination and exploitation, which have no value in the theory. But in the case of movable objects from among the natural assets – such as firewood, or rocks or a limited quantity of water – we may consider acquiring possession as work related to the utilization of these resources, which is the only source of the entitlement and rights in respect of natural assets.

From this we may derive a conclusion that the economic character of the work is a necessary condition that gives rise to the entitlement and rights. Thus any work will not become a basis for the entitlement and ownership of a property unless it is related to utilizing and benefitting from those natural resources.

The Theory Differentiates Between Works Of Economic Character

Let us take the work related to utilizing and benefitting from those resources – which bear economic characteristics – in order to examine the standpoint of the theory in respect of its appraisal of different type of works, and the kind of rights established by works of economic nature. In this area, we only need to pursue the second and the tenth points of the preceding section on the valuation of labour in the theory, in order to know that the *Shari'ah* does not always confer upon the individual the right and ownership of natural resources comprising land, mineral deposits and springs based merely on individual's work related to utilizing and benefiting from the resources.

For instance, from the second point, we see that by carrying out (the work of) tillage of a cultivable land, the individual does not gain that same right earned as that by carrying out the work of reclamation of a wasteland. We also observe from the tenth point that the utilization of the land by taking it for pasturage does not confer upon the herdsman an entitlement to that land, although his making use of it as a pasture is an act of utilizing and benefitting from the land. Here, there is a difference to be elucidated between land reclamation and the works related to it, and the usage of an already fertile land for cultivation and pasturage, although all these works appear to be of economic nature and similar to utilization. With this finding, we will be able to make more refined differentiation between them, in determining the general theory and all its aspects.

How Entitlements Are Established On The Basis Of Work

The difference is actually closely connected with the basis on which the theory confers entitlements on the basis of work – in relation to the natural assets – to a person. In order to fully understand the theoretical difference between works that are of economic nature, it is necessary for us to acquaint ourselves with the theoretical stipulation for the entitlements, which are connected with the work. Also, we need to see how, and to what extent the work plays its positive role in the theory. Further, we need to know the principle, by which work becomes the basis that gives rise to special right for the individual concerned. If we become acquainted with this principle, we will be able to differentiate works related to utilization.

We may summarize this principle in light of the completed upper structure of the theory in the following manner: The worker appropriates the product of his work, which he has produced by spending his efforts and energy on the natural asset. This principle is applicable to all types of work related to utilization and exploitation of natural resources, without any differentiation between an operation carried out for the reclamation of an infertile land, or the excavation of a mine, or the extraction of water, or the cultivation of a land that is naturally fit for cultivation, or using that land as pasture for livestock. Each of these activities is work, and the worker is entitled to reap the fruits and to appropriate the products of his work with those respective natural resources.

But the right and entitlement of the worker to own the product of his work – and the labour he had spent

on the natural resources – does not mean that all these works are alike in terms of their outcomes such that the resulting rights are identical. On the contrary, the products from these works differ from one another and on this basis the resulting rights are also different. The rehabilitation of an infertile land, for instance, is an activity the person carries out on a piece of barren land which is unfit for utilization and agricultural production. He has to remove the layer of rocks from the surface and fulfills all the conditions necessary to make it suitable for utilization and agricultural production. In this way, by virtue of his reclamation efforts, he has developed a new condition for the land that did not exist before.

But this is not the cause for the existence of the land itself. The reclamation work does not create the land. But the usefulness and benefit (of the newly conditioned land) was brought about by the labour and work of the person who reclaimed the land, since it was his reclamation efforts that renders the previously barren land fit for utilization and agriculture. Since this usefulness was not present before its reclamation – and actually resulted from the reclamation activity – the worker becomes the owner of this utility – according to the general theory – it being the product of his labour and work.

His ‘ownership’ of the utility leads to his right to prevent others from taking it away from him or of depriving him of this entitlement by seizing the land from him, or by interfering with his privilege to benefit from the land that he had earned by his strenuous labour and lawful work. Because of this, the person – having reclaimed the land – becomes more deserving than others so that he is enabled to benefit from the utility he has produced.

This right of priority is all that he has over the land. Thus we learn that the right of the person to the land he has reclaimed is established as a protection from others damaging the product of his work and obstructing him from enjoying the utility he has developed by lawful labour and work.

The uncovering (and utilization) of mineral deposits and the excavation of underground springs are identical to reclamation of an uncultivable land in this respect. The person who carries out the development activities creates the utility of part of the nature with his efforts and thus is entitled to appropriate it as a fruit of his labour and toil, and it is not allowable for others to deprive him of the utility. A similar right is applicable for individuals who develop access to mineral deposits and springs. There are however differences, which we shall examine in a while.

Let us now consider works related to cultivation on a naturally fertile land or making use of the already fertile land for pasturing of animals. Even though these are works in the nature of utilization and agricultural production in relation to natural assets, they cannot justify the granting the farmer or the herdsman a right and entitlement to the land because his efforts neither create the land itself, nor do they bring about a usefulness or benefit like that resulting from work of reclamation of an infertile land. The farmer or herdsman grows the crops or animals by way of his work on the land. This justifies only his appropriation of the farm products or the livestock, not an entitlement to the land itself.

The activities related to reclamation create a new utility to be derived from the land or the mine or the

spring, which did not exist before its reclamation. So the person appropriates the utility and through his appropriation of this utility he acquires his right to the natural assets he has rehabilitated or developed through his work. So, for the land that is naturally cultivable or the fertile land on which the herdsman carries out pasturing activities, their utility for cultivation or pasturage has existed thereon before. These did not result from any specific work. The only thing that resulted from the agriculture work, for instance, was the farm yield and he has special right over the yield for it is the product of his work.

In light of this we can deduce a new condition in respect of work that confers special right over natural resources. We have already learned that the first condition – that needs to be fulfilled – to earn a special right to natural assets is that the work has to be of economic nature. We will now deduce the second condition. It is that this work produces a new circumstances or a definite new utility that the worker appropriates and through it he acquires his right to the natural asset.

From our findings on this connection between the right of the person to the natural resource and the utility that his work has brought about, it logically follows that the right of the person ends when that utility – which his work has produced – ceases to exist because as we have learned his right to the natural asset stands on the basis of his appropriation of that utility. This is all that we find from the fourth and fifth points of the above section on the upper structure.

Let us now consider the works of reclamation which confer upon the working person special rights to the respective natural resources – such as reclamation of the uncultivable land, uncovering of mineral deposits and developing access to an underground spring – and examine them in detail. We see that these works differ in terms of the resulting rights and entitlements, after we have examined the difference between them and work related to agricultural use of the land. This also became clear after we learned before this the difference between works of economic and productive nature and those related to domination and exploitation.

When we re-examine the upper structure (of the theory) whereby the right to land are established on the basis of reclamation works, we find that it differs from the rights accruing from other works similar to reclamation such as that of uncovering and developing access to a spring. We knew that is not permissible for any person to carry out cultivation on a land reclaimed by an individual without prior permission by the first person, as long he continues using the land. On the contrary, we find that the person who uncovers a spring earns the right to its water only up to the quantity that commensurate with his need, and it is allowable for others to derive benefit from the spring from the surplus quantity that is in excess of his need.

It is therefore necessary to seek an explanation from the theory as to the basis for the difference between the right resulting from reclamation work for a land and that from development work for a spring. We also need to find the reason as to why it is permissible for any other individual to avail himself of water from the spring, when it is in excess of the need of its owner, while it is not permissible for anyone to use a land – reclaimed by an individual – for cultivation without his permission, even when he

does not actually employ it for cultivation.

Indeed the answer is readily available from the information we have discovered from the theory. The person who reclaims the land becomes first of all the owner of the product of his work, which is the right to benefit from utilization of the natural resource. His ownership of the utility imposes upon others the duty to refrain from depriving him of its benefit by seizing it from him. So it is by this reclamation that he obtains the special right to the natural resource. This outcome in its entirety applies in the case of all natural assets – including lands, mines and springs – for the rights that result from reclamation of these natural resources are similar.

The permission for others to consume the surplus water that is in excess of the need of the first person that uncovered a spring, does not arise from a difference in the nature of the right. Instead, it arises from the nature of the resource. The first person that uncovers a spring is not deprived of his ownership of the utility – which he receives as a result of his excavation work and uncovering of the spring – merely by the presence of another person sharing the benefit from the surplus water, because having a few more persons consuming it does not usually drain underground water. As such, the first person still preserves his right to enjoy the benefits of the utility he has created. Sharing with others does not make him lose his benefits.

In contrast to this, the situation for the individual who reclaims an uncultivable land – and acquires the right to the use and cultivate it – is different. By its nature, a piece of land cannot be cultivated by two people simultaneously, without having the benefits for each person impaired. If a second person were to cultivate the land reclaimed by the first person, that would amount to robbing the first person off the utility he had earned by his reclamation efforts. When assigned to a specific crop or agricultural use, the same piece cannot be utilized for another at the same time. In this way we learn that utilizing and benefitting from a reclaimed land is allowed only for the person who reclaimed it. Allowing another person the same right would amount to impairing the right of the first person to benefit from the utility he created by his work and labour.

In the case of the spring, allowing another person to consume from the water source – from the surplus quantity – does not amount to impairing the right of the first person in benefitting from the utility he has created. By its nature, the spring can satisfy the needs of many people at the same time. Hence it is the difference between characteristics of the natural resources and the respective modes of their utilization that is the basis for whether or not the right to benefit from each shall be exclusive.

In the case of a mine, Islam has allowed every individual to avail himself of the benefit to be derived from it in a way that it does not interfere with the operation of first person that that uncovered it and developed the access to its mineral deposits. By carrying out excavation work on another front of the mine – or to operate from the same pit that the first person has dug up, in case the mine is large and so rich with mineral deposits – another person can operate without depriving the first person of his rights to benefit from the opportunity he had developed. Hence the general criterion for allowing another person in

sharing the opportunity for natural resource – developed by the first person – is whether or not that permission will impair the right of the first person to benefit from the source he had developed.

The Basis For Rights In Relation To Movable Properties

So far we have confined our discussions to works in relation to (immovable) natural assets like lands, mines and springs of water. In order to cover the full content of the theory, we must now examine in detail the application of the theory to those natural assets that are movable, and explain the difference between them. We shall also discuss the theoretical reasons for these differences.

The only thing we have come by – as to the standpoint of the theory – is that taking possession of these movable assets from nature is considered a work of utilization that bear economic characteristics. This is unlike taking possession of immovable natural assets like lands, springs and mines, which are in the nature of domination and exploitation as the act does not bear economic features.

We have used the hypothetical example of an individual to demonstrate the difference between taking possession of the natural resources and acquiring possession of movable assets from nature. Taking some water into one's custody, or some woods from the forest, or any other movable resources from nature is considered primarily as work related to utilization and deriving benefits from those resources. Hence from the perspective of the theory that recognize only work of economic characteristics, taking possession of movable natural assets is permitted.

However, acquiring possession is not the only work that the theory recognizes and considers to be of value in the context of movable assets. There is another type of work that resembles reclamation work in relation to natural resources. It is the work of creating utility of benefit from movable assets (in nature) by overcoming their natural resistance that constitutes obstacles in benefitting from such assets. An example of this is hunting of wild animals. The effort of a hunter who overcomes the ability of the animal to resist capture is a work whereby he creates the utility of the animal. Just as the person who rehabilitates a piece of uncultivable land brings about the usefulness of the land and enables benefit to be derived from the land through his reclamation works, overcoming the hindrances and subjugating its soil to cultivation.

Hence taking possession of an asset from nature and doing works that brings about usefulness of another natural assets are two types of work that bear economic characteristics in the context of movable resources. However, the creation of a new utility to make available the benefit from the movable assets, stands apart from merely taking possession. Creating new utility is a constructive role while taking possession – from the economic point of view – is not because it merely involves acquiring control over the moveable asset. It does not add value by bringing about a new utility, or by making available a fresh benefit. When you take possession of a piece of stone on a public road or extract water from a well, you do not develop new usefulness and convenience.

The rock or the water was already lying there available to anyone who was in need. By merely taking

control over it and your keeping it in your custody for your need, you have not added any value. Transferring the rock to your house and the water to your container do not create a new element of usefulness, in terms of the benefit available in a general form. This (physical) transfer only facilitate your utilization of the rock or water, but it does not overcome any general obstacle or confers on the assets a quality which results in greater capacity to be benefited from in a general form, as in the case of reclamation of a land. In the case of the latter, the deficiencies of the land were overcome and the works confer upon it a new capacity to contribute to human life.

On this basis we can compare between hunting and similar activities that brings about a new utility in movable assets, with works like reclamation of lands. Hunting and land reclamation are similar in one thing, which is the creation of a new utility that was not available before. In the same way, we may also compare taking possession of the movable assets in nature with cultivation of an already fertile land. Cultivation of an already fertile land does not create a new utility of the land but is only a work related to the utilization and deriving benefit from the land. This is similar to extracting water from a natural spring¹.

This differentiation between taking possession of a movable natural asset and works that bring about utility or convenience – like hunting – does not mean separation of one work from the other. More often, acquiring possession of a movable asset is associated with works related to the creation of a new utility, such that all these works become a single operation. So in practice, one is unlikely to be found separate from the other.

In the case of certain movable natural assets – such as fishes in a sea or a deep overflowing river – there are significant obstacles in acquiring them. If the fisherman successfully secured them in his net, he may be said to have acquired possession and thus have created utility as he had overcome the barrier to utilizing them. Likewise, his retention of the overflowing water of the river means his taking possession of the water, because he develops utility and convenience by holding and preventing it from flowing back to the river.

It may also happen that the person performs a work that brings about a new utility in relation to the movable asset and overcome the natural barriers, without being able to actually secure possession of the assets. For example a person throws a stone at a bird in the air thus disrupting its flight and bringing it down. The bird falls at a remote spot that the person is unable to reach. Obviously a new utility was accomplished by this operation because some barriers have been overcome but the bird has not come into his possession. The ownership complete only if the person pursues it and actually secures possession.

An individual may take possession of the movable asset without actually performing the work related to creating a new utility, like when the movable asset is by nature readily usable – without any barriers – like taking into possession water from a spring or some rocks from the earth. Hence acquiring possession of a movable asset and creating new utility for such asset are two different types of work. They may be combined into one single operation and they could also be separate activities.

Let us now explain the second type of the work, which creates a new utility in the case of hunting as a good example of the work that brings about new utility in relation to movable assets. In order to examine both these types of work, we will deal with each separately and consider the theoretical ground to discover the prescriptions specific to each, and the nature of the rights that result from each.

The Significance Of Productive Work In The Theory

When we examine the act of hunting separately from the act of acquiring possession, we saw that it is a work, which brings about a particular utility. It is logical that it may confer upon the person that performs it the right and title to ownership of the utility which has resulted from his efforts, in the same manner that a person who rehabilitates a piece of land earns the ownership of the utility that results from his work based on the principles of the theory we discussed earlier. It confers upon every worker – for his work in respect of natural resources – the right of ownership to the product that results from his work.

As for the person hunting the bird, he gains entitlement to the bird that he has brought to the ground, even when he does not secure actual possession of the bird. This is as indicated by the application of the texts of Shari'ah². Hence it is not allowable for another person who reached the spot before him to take advantage of his efforts and take possession of the prey. That would result in the depriving the first person of the utility and convenience he had developed from his hunting work.

The right of the first person to the bird he has captured does not depend upon his securing possession or actually starting to benefit from that utility. By merely accruing the utility he has created, he earns the right irrespective of whether or not he intends to actually benefit from that opportunity and whether or not he immediately secures possession of the bird. The bird hunter is like the worker who does reclamation work on a piece of land. Just as it is not allowable for any other individual to utilize and cultivate the land, it is not allowed for any other person take possession of the bird unless he forgoes his right. But if the grounded bird, which has been disabled by the hunter's attack, regains its strength and recovers from the blow and flees before he could secure possession, his claim comes to an end since this right depends on the right and claim to the utility which he brings about by his act of hunting. This utility is ceases to exist when the bird flies away³ ().

In this respect it also resembles the worker who is entitled to a piece of land a similar basis. He loses his right once that land reverts to an uncultivable state, out of his neglect. The theoretical ground in either case is the same. In both cases, the right of the individual to the assets is linked to his appropriation of the utility that results from his work. Therefore when that utility ceases to exist and the effect of his work vanishes, his right to the assets comes to an end.

Thus, when hunting is viewed in respect of its prescriptive rules – independent of possession – it resembles the works related to reclamation of natural resources. This resemblance, as we have seen, is because it is the same theoretical basis that grants the right to both the bird hunter and the land worker.

The Significance Of Possession In Respect Of Movable Assets

The prescriptive rules for acquiring possession differ from those for pure hunting. Because of this, we find that when the bird hunter has become the owner of the bird he hunted and captured, it is his right to recover the bird when it flies away from him. If another person then shoots the bird, he (the second person) has no right to retain it. In fact, he must return it to the first person, for the right based on the authority of possession is an immediate right in the sense that the possession was the immediate reason of ownership of the bird. Possession is not connected with the ownership of a specific utility such that ownership ends with the end that utility.

This is the difference between acquiring possession and other operations that we have come across. Thus, hunting is the basis for the bird hunter's ownership to the utility he brought about. His right to the bird stands on that basis, just as reclamation work is the ground for the worker's appropriation of the utility which accrued from the reclamation works he did on a piece of uncultivable land, as a result of which he earns his right to the land he had rehabilitated. As for possession of movable assets, mere possession in itself is the original and immediate basis for their ownership.

This difference between acquiring possession and other works leads to an inevitable conflict at the theoretical level. The issue is this: the right of the individual to the natural asset he reclaims or to the animal that he hunts is established on the basis of his work – which is the right to enjoy an advantage from the utility he brings about. On what basis then is the right granted to the individual who finds pieces of rocks by the roadside and takes them into his possession? Also, on what basis is the right granted to the person who takes into his possession some water from a natural lake? In both cases, the act of acquiring possession did not bring about any new general utility in relation to the asset, as hunting and reclamation works would.

This issue can be resolved this way. The individual does not earn entitlement to ownership right to the utility that resulted from his work. Instead, he earns entitlement to utilize the asset and derive benefits from it. Just as it is a worker's right to enjoy the fruits of his work, it is likewise his right to enjoy the advantage, which Allah the Exalted with His grace provides him. For instance, in case of underground water, if an individual finds and uncovers the water source by excavation, he had brought about a convenience in utilization of the water. So he deserves to gain entitlement to its ownership.

But if water accumulates on the surface of the earth in a natural way and the benefits can be derived from the water source without the effort of the man, it will be necessary to allow everyone to enjoy its benefit, which is readily available in nature. When a person takes with his container some quantity of water from such source, it can be said – in a theoretical sense – that he had carried out a work relating to utilization and deriving benefit from it, as described by us in the early part of the discourse. As long as it is the right of every individual to enjoy the resources that nature presents before man, it is only natural that the person be allowed to take in his possession a quantity of water found on the surface of the earth from that natural source. Taking some water into his possession constitutes an act of utilization, not a

work related to domination and exploitation.

If the individual retains possession of that quantity of water, it is not allowable for another individual to contest his ownership of the water and seize it from him. The theory holds that taking into one's possession of a quantity of water or such other movable assets (from nature) is a work of utilization and deriving benefit, so long as it is a continuous possession. He is entitled to continue deriving benefit from the asset and there is no justification for another person to contest his right. Thus a person continues to enjoy his right to the moveable asset in his possession, so long as the possession is continuously de jure [4](#).

Thus it is clear that the right of a person to the quantity of water that he draws into his possession from a lake or the pebbles he takes from the public highway does not rest on his appropriation of the general utility which accrues from his work, but instead on the basis of that an individual's pursuit of benefitting from that assets in nature, by way of acquiring possession.

In light of the above, we are able to add a new principle in the theory to the preceding principle, which holds that every individual becomes the owner of the product of his work. This new principle is that the pursuit of an individual deriving benefits from a natural asset, gives him a right to it so long as he continues to do so and because in the case of movable natural assets taking possession is a work of utilization.

Generalizing The Theory On The Principle Of Possession As The Basis For Ownership

This principle is not only applicable to movable natural assets but also to other resources from nature. If a person carries out a work related to land utilization while cultivating a naturally cultivable land, his agricultural work constitutes a work of utilization. He gains a right to the land on that basis, and that right restricts others from interfering with him and seizing the land from him, so long as he continues with his works to benefit from it.

But this does not mean that his mere possession of the land is sufficient to earn that right, in the same way taking possession of a quantity of water does. It is different because taking possession of a piece of land is not a work of utilization and deriving benefit. He benefits from the land – which was already cultivable by nature – by way using it for cultivation activities. So if the worker carries out agriculture work on such land and derives benefit from it, another person is not allowed to seize the land from him so long as the worker continues his work of cultivation. The other person has no more right to the than the first person who actually makes profitable use of the land.

But if the first individual discontinues his productive agricultural works and stops deriving benefit from the land, his right to continue with the possession comes to an end. In that situation, it becomes valid for another individual to utilize the land and benefit from it with fresh cultivation activities.

We may notice the difference between the two principles at the point where the first person ceases to

utilize and derive benefits from the land. The right of the person – which stands on the basis of his continued profiting from natural assets – vanishes simply by him ceasing to derive benefit from the land, while the right which stands on the basis of bringing about a new utility and convenience – with the necessary efforts – lasts as long as the utility remains intact and the worker maintains the results of his efforts on the land.

Summary Of The Theoretical Deductions

From our examination of the general theory of the distribution of the factors of production, we can now infer two basic principles of the theory.

The first is that the worker who carries some work on natural resources becomes the owner of the product of his work. It is the general utility of the benefit derived from that natural asset and the result of the worker's appropriation of ownership of this utility that constitutes his right to the property itself. This follows from his assumption of ownership of the utility brought about by his work. His right to the property is linked with his ownership of this utility. Thus, if the opportunity and convenience he has brought about ceases to exist, his right to the property ends.

The second principle is that the pursuit of deriving benefit from any of the natural assets confers upon the relevant person a right of priority, whereby other persons are not permitted to seize the asset from him so long as he continues to use it and benefit from it and carries out works related to its utilization. No other person shall have priority over him in connection with that asset. The asset may not be forcibly taken away from him and granted to other persons.

The prescriptive rules which regulate the operations of reclamation and hunting are established on the first principle, while the prescriptive rules for acquiring possession of movable assets – which are readily available in nature – in order to derive the benefit from them, rest on the second principle. Thus, the creation of a new utility with respect to natural resources and continuous activities to derive benefits from them are the two primary sources of special rights to natural assets.

It is the economic characteristic of the works, which is the common criterion of these two sources of right to natural assets. The creation of a new utility and deriving benefits on the basis of utility that is naturally available, are considered to be works of economic character and not works related to domination and exploitation.

Observations

A Comparative Study Of The Islamic Theory

We have seen that Islam permits the acquisition of special rights to the natural resources by an individual, within the limits laid down by the general theory on the distribution of the factors of production. The theoretical determination of these rights differs from those in the capitalist and Marxist theories.

In the capitalist doctrine, appropriation of all the assets in nature is permitted to everyone on the basis of the principle of economic freedom. The individual may regard all assets, which he holds under his control as his property unless that comes into conflict with the freedom of ownership bestowed upon other persons. The permitted scope of each individual's private ownership is unlimited except to the extent of safeguarding the freedom of ownership of other individuals. Thus the individual earns legitimacy for his ownership on the basis that he is a human being and that he does not interfere with the freedom of others.

But the Islamic general theory of distribution of factors of production – which we have studied – does not recognize the freedom of private ownership in the way held by capitalism. Instead it considers a person's right to ownership of the natural resources as connected with his ownership of the product of his labour or his continuous utilization of the natural asset in deriving benefit from it. Therefore his right to the asset expires when both of these two factors cease to exist.

Capitalism regards special private rights to natural resources as an expression of individual freedom, which one enjoys under the aegis of the capitalist system, while in Islam it is an expression of individual efforts or labor in his pursuit to derive benefits from nature.

Marxism, however, believes in the revocation of every type of private ownership over natural resources and all other factors of production. It calls for the release of all those factors of production from the bondage of private ownership, because there is no longer any justification for that ever since history entered the modern industrial age, which was a particular stage that foreshadowed mechanized and mass production in the present capitalist age. But the Marxist's belief in the need for this annulment of private ownership over natural resources does not mean, from doctrinal point of view, that the private proprietorship in Marxism is totally unjustifiable. It only interprets its doctrinal belief that private ownership has exhausted all its relevance and goals in the evolution of history and as such there remains no longer any room for it in the modern history, after it had lost its justification and had become a cross-current.

In order to make a comparison between the Marxist and Islamic theories on private ownership, it is necessary for us to know the justifications for private ownership in the Marxist theory, and how these have become inapplicable in the modern age⁵. Marxism holds the opinion that raw natural assets, by their nature, have no exchange value. They have only usage values. The exchange value for a raw natural asset emerges only as a result of investing human labour. It is the human labour that creates exchange value in these assets. The raw materials that are in their natural form and are not upgraded by human labour have no value from the viewpoint of trade.

This is how Marxism links human labour with the exchange value and determines that it is the worker who confers an exchange value on the assets that he pursues with his labour, proportionate to the amount of the labour he spends on it. In a similar way, the theory links exchange value with ownership. It confers upon the individual who created the exchange value – with his labour – ownership of that asset

and entitlement to enjoy the value that he brings about. Hence according to Marxism, the person's ownership of that asset is justified by the addition of exchange value as a result of the labour he has spent on it.

Thus based on this theory, a person earns the right to ownership of natural resources – and the natural factors of production – if he is able to invest some efforts and thereby confers an exchange value on those assets. In light of the Marxist theory, this ownership results from labour and not that of the natural resources independently.

But this subject – which the worker now becomes the owner of – is not the convenience or utility that results from labour, which we saw in the Islamic general theory on distribution of the factors of production. Instead, in the view of Marxism, the exchange value is generated from labour and therefore it is the worker who confers upon the natural asset a specific value and he thus becomes the owner of the complete value of the asset.

Erecting the justification for private ownership on this basis, Marxism states that this ownership continues to be legitimate until the world entered the age of industrial production, whereby those who own resources and factors of production employ those who do not. The latter are paid wages while the profits are handed over to the former.

The value of these profits will soon become proportionate to the exchange values of the natural resources or factors of production. The owner will have full right to these resources and factors of production because his right over them is connected with the value of the product of his work on the natural assets, as long as he extracts the value – embedded in the asset – in the form of profits which it has generated. Thus, according to Marxism, private ownership loses its legitimacy and becomes invalid with the advent of the age of capitalism or hired labour.

This idea which links worker's ownership with exchange value, makes room for another worker if he works on the asset, to become the owner of a new value that results from his work. Let's consider the case of a man who goes to the forest and extracts some woods. He does further works on them to make some wooden boards. Then another man comes. He makes bed from the boards.

Each one of them becomes the owner of the exchange value that results from their respective works. Therefore, Marxism considers that it is the hired worker in the capitalist system who is the owner of the entire exchange value that the raw material gains through his work, and that the owner of the materials – taking part of this value in the name of profit – has robbed the worker.

Value is linked with work and ownership but only within the limits of the value that results from the owner's work. The Marxist justifications for private ownership can be summed up in these two propositions.

First, exchange value is linked with work and results from it.

Second, the ownership by the worker is linked with the exchange value that his work brings about.

Islam's stand differs from Marxism in both these propositions. As for the first proposition, which connects exchange value with work – and makes it the sole basic criterion – we have examined this in detail in our discussions earlier this book. In that discussion, we have proved that exchange value does not emerge primarily from work. We have also repudiated the basis of all the upper structure that Marxism has built on this proposition⁶.

As for the second proposition which links individual ownership with exchange value, it comes in conflict with the trend of the Islamic general theory on distribution of the factors of production. In Islam, a person's rights to natural resources stand on the basis of his ownership of the product of his work. For instance, a worker who works a week to rehabilitate a piece of land, becomes its owner through his one-week labour, not through the exchange value which his work of the week had produced, as is held by Marxism.

What the worker becomes the owner of – for the work done by him on a piece of land, which he reclaims – is the utility of improved condition that he has brought about on that land. It is through his acquiring ownership of this utility that his special right to the land itself is born. As long as this utility exists, his right to the land will be deemed to remain and it will not be legitimate for another person to take possession of the land and spends fresh labour thereon even if the fresh work adds to exchange value, since the advantage of the utility is the property of the first individual and no other person is allowed to interfere in his work.

This is the key difference – on the theoretical level – between the Marxist and the Islamic principles. The special right, according to the Marxist view, leads to the ownership of the exchange value that the land has gained because of his work and nothing more. According to the Islamic view, the worker's ownership results from of the actual utility of the land that his work has brought about.

In other words, the Islamic theory holds the principle that the special rights to the natural resources stand on the basis of work and that the worker earns ownership of the actual product of his work reflects while the Marxist view holds the principle that the exchange value of the natural resources arise from the work and that the worker's ownership is limited to the exchange value that he has created.

The main difference between these two principles is the source of all the differences that we find between Islam and Marxism on income and wealth distribution.

Land Tax (Tasq) And Its Theoretical Explanation

We find from the upper structure a specific subject that shows that it differentiates land from other natural resources. We need to examine this and seek appropriate explanations in light of the Islamic general theory on distribution or its nexus with other economic theories.

This subject is on *tasq* (a fixed land tax or return) that the Shari'ah has allowed the Imam to levy on an individual when he reclaims a land and derives benefit from it. It was recorded in a sound tradition and in some juridical texts of ash-Shaykh at-Tusi that if a person reclaims a barren land, there is a *tasq* on it (its rent), which he has to pay to the Imam. The issue is the justification for *tasq* and why is it that land, among the many types of natural resources, is singled out for this tax? Why is it that individuals who work on reclamation of other natural resources are not required to pay a similar tax from their revenue?

Tasq can actually be explained doctrinally from the theoretical aspect on two bases. The first is on the basis of the general Islamic economic theory on distribution itself. *Tasq* is actually a rent that the Imam imposes on the (use of) land because it is part of *anfal*. In addition to that, the Imam employs it (the proceeds) in the interest and good of the society. We may equate the obligation of the owner of the land to pay the *tasq* (on the land they have reclaimed) to the obligation of the owners of mines and springs (on the resources they have reclaimed) to allow access to others to extract the materials – minerals from the mine or water from the spring – in excess of their needs as long as it does not interfere with his right to the mine (or the spring).

If we put these together, we will have before us a new principle that confers upon the society a common right to benefit from assets in nature, as it is generally made available to serve human need, as stated in the Qur'an:

"He created for you all that is on the earth." (2:29).

This common right of the society does not lapse with the natural resources coming under the right or entitlement (of some persons). Instead, the *Shari'ah* determines the method for the public to derive benefit from these resources, in a manner that does not interfere with those rights. In the case of a mine or a spring, others are permitted to derive benefits in a direct manner, since another individual is free to extract mineral deposits or water if he operates from another side.

Likewise, in the case of a spring, another individual has a right to consume water from the quantity in excess of the need of the first person that uncovers it. But it is a little different for land. Since by its nature it is not possible for two persons to benefit simultaneously, *tasq* is instituted whereby the Imam has to spend the proceeds for the good of the society. Indirectly, the public benefits from the land despite it having come under the rights and entitlement of the person who reclaimed it, while others are prohibited from benefiting directly from that land.

Second, we may explain *tasq* outside the general theory on distribution. It can be viewed as a tax levied by the state in pursuit social justice. When we later study *anfal* and its social function in Islamic economics, we will see that the main object of *anfal* in the *Shari'ah* is to assure social security and to maintain a general economic equitability in the society. So long as *tasq* is regarded legislatively as a part of *anfal*, it is reasonable to regard it as a tax arising from the general theory on social justice and those aspects connected with social security and economic equitability.

Land was singled out for the application of this significant tax because of its role and importance in the economic life. The *Shari'ah* imposed this tax to safeguard the Islamic society from the dangers of private ownership of lands – the miseries and the ordeals experienced by the non–Muslim societies – and to shield the Islamic nation from extreme disparity, misfortune, conflicts and the far reaching consequences, brought about by monopoly over lands. These are obvious from historical observations. On this basis, *tasq* resembles '*khums*' (one fifth tax) which is levied on minerals and deposits extracted from mines.

In conclusion, having advanced these two theoretical explanations of *tasq*, it is possible for us to replace each one with the other by bringing in a more broad-based and inclusive theory so that we can explain *tasq* as a tax, which the Imam is permitted to impose to enhance social security, maintain social and economic equitability and protect the needy members of the society.

The objectives and the desirability of the tax are self-explanatory. It is the duty of the members of the society with a superior economic position – including those who acquire possession and cultivate reclaimed lands and those who benefits from other natural assets – to discharge their obligations to the public and contribute towards public interest and aid the poor.

Interpretation Of Ownership In Islam – An Ethical Perspective

We have so far examined ownership and special rights in light of the general theory on the distribution of the factors of production, largely the natural resources. The discussion was purely from the perspective of economic doctrine. In the course of the discussion we were able to advance a theoretical interpretation of ownership and special rights reflecting the viewpoint of the Islamic economic doctrine.

We now intend to interpret ownership from the perspectives of Islamic ethics. By this, we mean a broad-based description of the ideal conception, which Islam has specified for ownership – its role, objectives and the efforts so that the distribution of ownership in the society is such that it becomes a force that influences the behaviour and conduct of individuals, in relation to their private rights over wealth, in a favorable way.

But before we begin, it is essential that we clearly explain the distinction between the interpretation of ownership from perspective of Islamic ethics and the doctrinal interpretation – which we have done earlier – from the economic point of view. In order to facilitate this distinction, we may borrow the meaning of *khilafah* so that we may compare it with the general theory of distribution, which we have used to explain the ownership rights from the point of view of the economic doctrine.

Khilafah adds to private ownership the mark of deputyship. It makes the owner a trustee of the wealth and a deputy (on behalf) of Allah the High Who is the Lord and Master of the world and all that exist therein. When this Islamic concept of the essence of ownership prevails in the mind of the Muslim owners, it becomes a force that could guide their behaviour – obliging the owners, binding him to the

instructions, and prescribing limits on behalf of Allah the Mighty and Glorious, just as a deputy is always bound always to carry out the wishes of the person who appoints him to that position.

When we look into this meaning, we find that it does not explain the justifications of the private ownership from the perspective of the economic doctrine. That is because private ownership – whether it is on the basis of *khilafah* or any other principles – stirs up questions about its doctrinal justifications, raising issues like why is it that a certain individual is made a vicegerent or a deputy, and not another?

Therefore, deputyship alone cannot adequately explain (and justify) private ownership. We find the answer to this question in the doctrinal explanation for private ownership based on the Islamic economic theory. The position is clearly described, that the entitlement to rights are on the basis of work and it is the nexus of the worker with the product of his work. Thus we know that the prevalence of vicegerency or deputyship over private ownership is not sufficient for the formulation of theory of distribution (of wealth and opportunities), because it does not give an economic explanation of this phenomenon. It does establish a particular stance on ownership, that it is purely a vicegerency or a deputyship, instead of absolute ownership.

If this develops and becomes mainstream in the society, it will become a social force that will shape the behaviour of individuals. The society would embrace this perception of ownership and from this will evolve a sense whereby wealth inspires the minds of the wealthy. In that way the conception of *khilafah* becomes a dynamic (and favorable) force in the economic and social lives.

Then the interpretation based on Islamic ethics justifies the conceptions of ownership, which every Muslim usually comes across in Islam. They mentally and spiritually shape him, and his sentiments and conduct are decided in conformity with them. The basis of these is the concept of *khilafah* to which we alluded earlier. The assets belong to Allah. He is the real Owner and men are His vicegerents and His trustees on earth and all assets that exist on it. Allah the High says:

“He it is who made you vicegerents in earth, therefore whoever disbelieves, his unbelief is against himself; and their unbelief does not increase the disbelievers with their Lord in anything except hatred...” (35:39).

It is Allah the High who has conferred upon man this vicegerency and if He wished He could take it away from him.

“If He pleases He may take you off and make whom He pleases successors after you ...” (6: 134).

The nature of the vicegerency imposed on man in respect of wealth he has been made deputy of is such that he must comply with those instructions from the one who has granted him that deputyship. Allah says in the Qur'an:

“Believe in Allah and His Messenger, and expend of that unto which He has made you trustees.

And those of you who believe and expend shall have a mighty reward". (57:7).

Likewise, as a result of this (vicegerency) man will be accountable to the one who appointed him as trustee. He is answerable to the Master over the ways he uses his wealth and his deeds. Allah the High, says:

"Then We appointed you vicegerents on earth after them, that We might behold how you would behave" (10: 14).

The vicegerency belongs to the society as a whole, for this vicegerency actually manifests itself in Allah's creation of wealth on earth and placing them at the disposal and service of man. By man here, it means the public, which includes all of the individuals:

"He it is who has created for you all things that are on earth". (11: 19).

The forms of ownership are only modes that facilitate the society in carrying out of its responsibilities in respect of rendering the world prosperous and flourishing. Allah the High says:

"It is He Who hath made you vicegerents on earth. He has raised some of you in ranks above the others, that He may try you in that He has given you." (6: 165).

The conferring of ownership and ownership rights to some instead of others, and raising some in ranks above others as to *khilafah* is a type of test as to what is bestowed to the community and its ability to carry the responsibility and their motivation to strive and discharge their key duties of vicegerency. Thus in light of this, privately-owned assets become a vehicle for the society in discharging its affairs in relation to vicegerency and assume the mark of a social function as a manifestation of a general trusteeship, not that of absolute right and control as a principal.

There is a tradition reported on the authority of Imam as-Sadiq (a.s.) "*Indeed Allah has bestowed upon you this abundance of wealth not to accumulate them but to direct it to the ends that He has directed you to*".

Since the *khilafah* (vicegerency) in truth belongs to the society and private ownership is a mechanism for the society in achieving the mission and goals of this *khilafah*, the society's link is not cut off. The society's responsibility in respect of the asset does not cease on its becoming the property of an individual. On the contrary, it will be obligatory on the society to protect the property against an owner who is intellectually-challenged, for it is not possible for such individual to be able to play his part as the *khalifah* (vicegerent). It was in relation to this that Allah the High says:

"And give not your property which Allah hath made means of support for you to those weak of understanding, but feed and clothe them therewith and speak to them words of kindness" (4:5).

He directed the address to the society, for the *khilafah* belongs to the society. The verse forbade

handing over assets to those who lack the ability to understand and ordered the society to protect their properties and to spend out of those properties for their good. Despite the fact that it speaks about the properties that belong to those “*weak of understanding*”, it ropes in the society itself, it says: “*And give not your property...*” Herein is the indication that the *khilafah* principally belongs to the society and that the properties are owned by *khilafah* even if these are private properties that belong to individuals.

The later part of the verse that followed this part indicates the object of the *khilafah* and its mission, describing the property: “*your properties which Allah has made means of support for you*”. So Allah has made the property for the community – meaning that Allah has appointed the society as its guardian – not for the purpose of squandering it or keeping it idle, but to discharge your duty in this respect and to benefit from it and preserve it. So if this purpose is not realized through an individual, then the society may be made responsible for discharging the duty⁷.

On this basis the individual is made conscious of his responsibility in respect of use and deployment of assets before Allah the High, Who is the real Owner of all of them. Likewise, he has been made responsible for his duties to the society too, because in reality, the *khilafah* belongs to the community and property ownership is only one of the manifestations and modes of that *khilafah*.

Because of this, it is the right of the society to disentitle him if he is incapable of making proper use of the assets because of his lack of maturity or intellectual capacity. The society can also prevent a mature and mentally capable person from using his property in a way that results in great harm, for instance if he uses his property for immoral or destructive purposes. The Prophet once struck on the hands of Samrah ibn Jundub and ordered his date palm be cut off and thrown away since he made it a means of evil, and told him: “*You are a destructive person.*”

When Islam gave private ownership the conception of *khilafah*, it divested wealth of all its psychological distinction and merit, which had become associated with it with over the passage of time. Islam also disallowed Muslims from viewing wealth ownership as a measure of respect and honour in the Muslim society and from attaching any value to wealth ownership in social interaction. In a tradition, reported on the authority of Imam ‘Ali ibn Musa ar-Ridā (a.s.) it is taught that “*One who meets a poor Muslim and greets him with salam different from the salam to a rich man, Allah will cast on him wrathful look on the Day of Judgment*”.

The Qur'an has cast dreadful recrimination upon the individuals who set their level of respect and care for others with the measure of wealth and riches. It says:

“He frowned and turned away, because there came to him a blind man (interrupting). But what could tell thee but that perchance he might grow (in spiritual understanding)? Or that he might receive admonition, and the teaching might profit him? As to one who regards himself as self-sufficient, to him dost thou attend, though it is no blame to thee if he grows not (in spiritual under-standing). But as to him who came to thee striving earnestly, and with fear (in his heart),

of him thou was unmindful" (80: 1-10).

By this, Islam assigns private ownership to its place and reinstated it to its true position in the context of *khilafah*. It is incorporated in the general Islamic framework in a way that it is not allowed to be reflected in spheres other than its own specific field. Nor is respect and adoration accorded in relation to ownership of material wealth, since it is a *khilafah* and not a personal right.

The Qur'an has described the sense of private ownership in a sublime form. Upon reflection, the meaning reveals clearly to us that Islam views that any sense of distinction and any attempt at extending private ownership beyond its original sphere only come from a misunderstanding of its meaning, by wrongly viewing it as a personal right and not a *khilafah* which has its own responsibilities and benefits.

The most sublime form is the story narrated in the Qur'an about two persons, one of whom Allah had enriched with two natural orchards and (in essence) appointed him a trustee (*astakhlafa*) in respect of the wealth (Qur'an: Sura Al Kahf verses 34 to 42).

"(Abundant) was the produce this man had: he said to his companion, in the course of a mutual argument: 'more wealth have I than you, and more honour and power in (my following by) men". (18:34).

Believing that his high and elevated (social) position justified him adopting the high tone in which he addressed his companion:

"He went into his garden in a state (of mind) unjust to his soul: He said, 'I deem not that this will ever perish," (18:35).

By this denial of the responsibility and the nature of the ownership, he was preparing the factors of the devastation and destruction (of the wealth).

"Nor do I deem that the Hour (of Judgment) will (ever) come. Even if I am brought back to my Lord, I shall surely find (there) something better in exchange". (18:36).

His companion viewed that it is a *khilafah*, which Allah has given him for him to discharge his duties. One should not have any feeling of pride, glory and arrogance.

"His companion said to him, in the course of the argument with him: 'Dost thou deny Him Who created thee out of dust, then out of a sperm-drop, then fashioned thee into a man? But (I think) for my part that He is Allah, My Lord, and none shall I associate with my Lord. Why didst thou not, as thou wentest into thy garden, say: 'Allah's will (be done)! There is no power but with Allah! ' If thou dost see me less than thee in wealth and sons". (18:37-39).

"It may be that my Lord will give me something better than thy garden, and that He will send on thy garden thunderbolts (by way of reckoning) from heaven, making it (but) slippery sand!- Or

the water of the garden will run off underground so that thou wilt never be able to find it.' So his fruits (and enjoyment) were encompassed (with ruin), and he remained twisting and turning his hands over what he had spent on his property, which had (now) tumbled to pieces to its very foundations, and he could only say, 'Woe is me! Would I had never ascribed partners to my Lord and Cherisher!'" (18:34-42).

By compressing the significance of private ownership back to its original scope on the basis of the conception of *khilafah*, it is turned into a means not an end. Muslim who adopt this Islamic view in his spiritual and intellectual framework looks upon wealth as a means for the realization of an aim of the general *khilafah* and for the fulfillment of the various human needs – which are legitimate as opposed to greed, gluttony and the tendency to be dominant over others.

With respect of this view of wealth as an instrument or a means, there is a tradition from the Messenger of Allah (S) that "*out of thy property nothing is yours save that which you consumest by eating or that which you wearest out by clothing yourself with it or that which you preserves by dispensing in the way of Allah*".

In another tradition he is recorded to have said "*The servant of Allah says my property; my property, whereas out of his property that property is his which he has eaten up and consumed, has clothed himself up with or has given it and has saved as for the rest he will pass away and leave it behind for the people*".

Islam opposes the view that ownership itself is an end, by compressing its significance and meaning, and divesting it of all its distinctions other than its original sphere. Islam has also set up in line with that a positive action in order to oppose that view and has opened up before an individual a broader horizon compared to the limited scope based only on the customary material perspective. It is the longer distance compared to the short trip of private ownership that ends with death.

It gives Muslims the good news of gains of another kind. Gains that are perpetual, which constitute stronger incentives, inspiring those who believe in them to a greater cause. With this perception of wealth and ownership, acquisition of material gains is at times perceived as a loss. Likewise, sacrificing and relinquishing ownership – when it leads to a reward of a better nature – is perceived as a gain for the life hereafter.

It is clear that this faith in the reward – for spending wealth in cause of Allah – and the nature of the promised gains play a very favorable role in extinguishing the selfish motives in owning wealth, and in promoting the view of wealth ownership as a means instead of an end. Allah the High says:

"... and whatever ye spend from anything He replaces it, for He is the best sustainer". (34:39).

"... whatever of good ye give, benefits your own souls; and ye shall only do so seeking the nearness of Allah. Whatever good ye give, shall be rendered back to you, and ye shall not be

dealt with unjustly". (2:272).

"... and whatever good ye send forth for yourselves ye shall find it in Allah's presence". (73:20).

"On that day every soul will be confronted with all the good he has done..." (3:30).

"And whatever good they do, they shall not be denied it, and Allah knows those who guard (against evil)". (3: 115).

The Qur'an has described gains and losses based on a perspective that is far broader than that the narrow capitalist view that is based purely on worldly measures, whereby wealth accumulation is desirable and foregoing wealth is associated with loss and poverty. The Qur'an has assigned this narrow capitalist view to the Satan, and says:

"The Satan threatens you with poverty and bids you to sordidness while Allah promises you with His forgiveness and bounties, and Allah is All- embracing, All-knowing." (2:268).

Time Limitation Over Ownership And Entitlements

The general theory that specifies the special rights also imposes, in a general way, a time limitation applicable to these rights. Each ownership and entitlement or right in Islam is limited to the lifespan of the owner of the property and he is not allowed to have an indefinite extension. Therefore, in Islam the individual does not have the right to decide the fate of his property after his death.

The fate of the wealth is determined by the law under the rules and regulations in respect of inheritance that governs the distribution of the personal assets left by the deceased among the relatives. In this respect Islam differs from the capitalist societies. The capitalist societies believe that the authority in respect of one's personal wealth extends far beyond his own life. They invest him with the right of deciding the future course of his wealth after his death and of bestowing his wealth to anyone he wishes and in any manner he chooses.

This 'time limitation' in the Islamic system in respect of ownership rights is actually the outcome of the general theory on distribution of the factors of production, which is the basis of these rights. We have already learned that under the theory, ownership rights and entitlements are based upon two premises.

The first premise is the creation of utility or convenience in connection with a natural asset – that enables its productive use – by doing relevant reclamation (or developmental) works. Reconditioning or rehabilitation (of such natural assets) entitles a person to ownership of the utility, which he brought about as a result of his work. This gives him the right that disallows others from taking away that utility he had developed.

The other premise is the continuous productive utilization of a particular property. It gives the user a right of priority to the use of the property over others so long as he is using it productively. These two

premises do not remain intact after his death. For instance, the utility that an individual creates by his reclamation works on a naturally uncultivable land is now impaired since his productive use has come to an end. Thus with his death, any productive use of the property by another person will no longer rob the deceased of his land. He is naturally deprived of the utility, in the same way productive utilization ends in the event of his death. The special rights lose their justifications stipulated by the general theory.

Hence time limitation for rights over privately owned assets, according to the *Shari'ah* law of inheritance, constitutes an element in the structure of the economic doctrine and is connected with the general theory on distribution. This time limitation is a provision under the negative limb of those laws of inheritance, which declare that the relationship of an individual with the personal wealth he owns, is discontinued upon his death. The positive limb of the laws of inheritance – which defines the new owners and regulates the distribution of the wealth among them – is not an outcome of the general theory of distribution of factors of production, but is connected with other theories of Islamic economics, as we shall see in the forthcoming discussions.

Islam clearly places a time restriction on privately owned assets, confining the ownership to the lifetime of its owner. Islam further forbids arbitrary wills in respect of such assets – as to its treatment after the owner' death – except for only one third of the total wealth. The owner is permitted to decide on the treatment of only this one third of the wealth he owns. This does not contradict the fact that we learnt about the time limitation and its nexus with the general theory.

The legislative texts that point to this permission for the owner explicitly indicate that this permission is in the nature of an exception, established on the basis of a specific good. In a tradition by 'Ali ibn Yaqtin, it was recorded that he asked Imam Musa (a.s.): "what portion of the property belongs to its owner at the time of his death?" "One third" replied the Imam, "and one third is too large a portion".

There is a tradition on the authority of the Imam as-Sadiq (a.s.): "Will is for one fourth, and one fifth, which is preferably better than the one third". It has also occurred in the tradition that Allah the High says to the son of Adam (man): *I have granted you in respect of three things. I have kept concealed (your misdeeds), which the members of your family would have known, would it not have been buried you. I granted you ample (livelihood) then asked for a loan out of it, then why didst thou not advance it for a good thing; and I assigned to you one third portion at your disposal at your death then why didst not send it as a good in advance.*"

Thus the one-third portion in light of these traditions is a right granted to encourage the owner to use it for others. He should be grateful and consider it a gracious gift that Allah has bestowed upon his servants at the time of his death. It is not in the sense of it being an extension of his rights beyond his lifetime. All these factors point to the fact that the permission for the deceased to bequeath one third of his property is an exception to the rule and it is an admission of the fact that we have already presented about the time limit and its nexus with the general theory.

The objective that the *Shari'ah* seeks by allowing this exception is to promote and enhance social justice, as such exception enables an individual – while he is bidding farewell to his worldly wealth and entering a new realm – to avail himself of the advantage of his wealth in a way that would benefit him in the new realm.

It is most probable that during the moments of his inevitable departure from this world, a Muslim's flame of material and carnal desires have drastically diminished – a matter that prompts his thoughts about the alternative use of his wealth for his future in the afterlife, which he is preparing to migrate to. It is this kind of spending to which the term '*khayr*' (a good) is applied in the above-mentioned tradition. In the tradition, God admonishes the person who does not take the opportunity to benefit from this right, by making a will (for other purposes), not realizing the reasons he is granted this right.

At the very time Islam urges to bequeath one third of his wealth, it has persuaded him to avail himself of this last opportunity for his own future well-being in his afterlife, by allowing this one third for the cause of public good and benefit, thus contributing to social justice and solidarity.

The time limitation of ownership over the wealth is therefore the fundamental law, and the permission in respect of the one third is only an exception prescribed for goals connected with other aspects of Islamic economics.

1. It may be observed here that I did not compare mubah water with a land that is naturally cultivable. But I have instead compared securing possession of water with the cultivation of a land naturally fit for cultivation because taking possession of the land is not a work of utilization and deriving benefit, as stated before. Taking possession of water is a work of utilization that bears economic characteristics similar to cultivation of the land that by its nature is already fit for cultivation.

2. Refer to Appendix XII.

3. Refer to Appendix XIII.

4. By "de jure", we mean he keeps holding the position by legal right, without circumstances by which the nexus to the property is cut off like amnesia, loss and usurpation etc. The *Shari'ah* assigns in relation to a continuous possession the right of use, but orders return of the lost or usurped goods or property to the its rightful owner.

5. Here, by the Marxist theory, we mean the economic theory in relation to the Marxist doctrine and not the Marxist theory on interpretation and analysis of history (historical materialism). Private ownership is sometimes studied as a historical phenomenon. In this context, it is justified on the basis of the Marxist theory of history under the given condition of class conflict, mode of production and forces of production. At other times, private ownership is studied purely from the economic perspective in order to find its legislative justification, instead of the historical justification of its existence. On these occasions, it is necessary to search for its justifications (under Marxism) in the Marxist theory on value, labour and surplus value.

6. Refer to Volume 1.

7. In understanding of this verse, we have followed one of the various possible interpretations of the Qur'an.

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