

Iqtisaduna, Our Economics, Volume 2, Part 2

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Sayyid Muhammad Baqir al-Sadr

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Author(s):

[Sayyid Muhammad Baqir al-Sadr](#) [1]

Publisher(s):

[World Organization for Islamic Services \(WOFIS\)](#) [2]

Iqtisaduna, Our Economics Volume Two, Part Two

The Quest For The Economic Doctrine In Islam

In Part Two of Volume Two of “Iqtisaduna, Our Economics”, Allamah As-Sayyid Muhammad Baqir as-Sadr continues comparing the Islamic Economics doctrine with the other economic doctrines and analyses in depth 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.

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Chapter 1: Theory On Post-Production Distribution

The Theoretical Basis For Distribution Of Production Output, Among Different Means Of Production

The Theoretical Basis For Distribution Of Production Output, Among Different Means Of Production¹

The Upper Structure

Al-'Allamah al-Hilli, the Muslim research scholar (*muhaqqiq*) mentions in his book *ash-Shara'i*, in the chapter on "*Wikalah*" (Agency) that *wikalah* for the labour work of harvesting wood or works of similar type is invalid. For instance, if a person appoints another person as his *wakil* (agent) to harvest wood from the forest on his behalf, the *wikalah* will be null and void. The hirer will not become the owner of the woods harvested by his agent.

The reason is that the labour involved in extracting wood from the forest or from other similar works in nature does not result in any entitlement or ownership right for a person unless the person himself performs the work or spends his efforts directly in the work. The purport of the *Shari'ah* and its giver – the Prophet – according to the *Muhaqqiq* (al-Hilli)'s interpretation, is the *iqa'* (performance) of those works or acts directly by the person himself.

1. Here is the actual text (quoted from the above-mentioned book of) al-'Allamah al-Hilli:

"Among the acts for which *niyabah* (agency) is not legally valid, are those acts in which the governing rule thereof pertains the purport of the *shari'* (lawgiver) to the *iqa'* (performance) of these acts by the person himself. For example *taharah* (ritual purification) and *salat* (obligatory prayers) as long as one is alive; *sawm* (fasting); *i'tikaf* (physical retreat for spiritual contemplation); obligatory *hajj* for one who can afford; *iman* (faith); *nadhr* (vow); *al-qasm baynaz-zawajat* (justice between one's wives); *zihar* (a man's comparing the back of his wife with his mother or any female in the groups, with whom marriage is prohibited); *li'an* (accusing one's wife with adultery); *qada'il-'iddah* (completion of the waiting period for a divorced woman or after the death of her husband before contracting a second marriage); *janabah* (major ritual impurity); *itqat* (finding a property of unknown ownership from a public place); harvesting of wood and grass."

2. This is on *wikalah* in the book *at-Tadhkirah* by al-'Allamah al-Hilli:

“As for the validity of *wikalah* in *mubah* (permitted) acts like hunting, cutting of wood or grass, reclamation of infertile lands, taking possession of a quantity of water or a similar (substance), more clarification is needed.”

3. It is mentioned in *Kitabul-qawa'id*:

“Indeed in appointing a *wakil* for acquisition of *mubah* assets like treasure trove or found property (of unknown ownership), hunting or fishing, or extraction of wood or harvesting grass (from the wild), review is required.”

4. A number of jurist sources, like *at-Tahrir*, *al-Irshad*, *al-Idah* etc. share this opinion.

5. Several other jurist sources went beyond expressing doubts about the validity of *wikalah* in such matters or leaving it for review. They explicitly stated its invalidity, in agreement with the *shara'i* like *al-Jami' fil-fiqh* and *as-Sara'ir* in respect of hunting as ash-Shaykh at-Tusi in his book *al-Mabsut* (in some editions). The invalidity of appointing a *wakil* in the case of reclamation of wasteland and also the invalidity of *wikalah* in case of harvesting wood and grass were also mentioned.

6. Al-'Allamah al-Hilli links together, *wikalah* (agency) and *ijarah* (work/service hire) and then states that when *wikalah* is invalid in regard to those works, then so is *ijarah*. So just as the principal does not acquire the ownership of the harvested wood or the hunted prey or a piece of reclaimed infertile land by the labour of his agent, the hirer (of the worker) also does not acquire the output of labour of the workman he hires².

Here is the text of what he wrote in *at-Tadhkirah*:

“If we allow that *wikalah* to be valid in such acts then we will allow that hiring too is valid in those. So if a man hires labour to extract wood, or to carry water or to reclaim a piece of wasteland, these would be valid and he would become the owner of the product of the work of the worker that he hires. But if we deny the validity of such *wikalah*, we thereby deny the validity of hiring other persons (so the employer could own the output).

The research scholar al-Isfahani confirms in the book *al-Ijarah* that “hiring of labour (in relation to natural resources) is ineffective in gaining the ownership and entitlement by the hirer of the labour – that is, the person who pays the wage – of the output of the labourer through his physical work. Thus if the worker takes possession of the product of his work, then it will be his and the hirer will get nothing.”

7. al-'Allamah al-Hilli mentions in *al-Qawa'id*: “If a man captures a wild animal or extracts wood or gather grass with the intention that whatever he secures by his work will be for himself and for someone else, that intention of his, will be ineffective. Whatever he acquires will be wholly and solely his³.

8. (It is given) in the book *Miftahul-karamah* that ash-Shaykh at-Tusi, al-'Allamah al-Hilli and Muhaqqiq al-Hilli, all the three have decided that if a person secures possession of some natural assets with the

intention that what he secures will be for him and for someone else, such intention will be ineffective in law as the whole of it will be his.

9. It occurs in *al-Qawa'id* of al-'Allamah al-Hilli: "If a man lends a net for catching game with the intention of getting a share in the game, the captured game shall belong to the hunter and a remuneration will be due to him in respect of the use of his net. A number of other jurist sources like *al-Mabsut*; *al-Muhadhdhab*, *al-Jami'* and *ash-Shara'i'* confirm this.

10. In the discussions of hunting in the book *al-Jawahir* of al-Muhaqqiq an-Najafi, it is stated:

"If a man usurps a tool for hunting and bags a game with it, I find no jurist opinion to the contrary that the captured game will be the property of the hunter and not that of the owner of the tool, even if he had secured the game with the tool which it was illegally obtained, for instance the ownership of the *mubah* thing was acquired by direct labour and the usurper has realized it in that way. Certainly, the rent of the tool shall be due from him as in the case of the rest of the usurped accessories, nay, rather this (rent is due) even when he does not capture any game with it so as to make good for the opportunity forgone."

11. Here is an extract from the book *al-Mabsut*, the eminent ash-Shaykh at-Tusi wrote in respect of partnership:

"If a person authorises another person to catch game on his behalf and that person goes out to catch the game with the intention that the captured game shall be for the one who ordered it and not for him, whose property will the captured game be? There is one opinion that it is similar to a water carrier's carrying water with the understanding that what he earns will be shared between them and the price of water will be his, i.e. the one who does the work of carrying water and his partner shall be entitled to nothing out of it. So in this case also the captured prey will be the property of the man who did the work of the capturing it by himself and not the property of the person who ordered him. According to another view it will be the property of the man who ordered him, for that was the intention of the hunter in the capturing the prey and that intention will be taken into consideration. But the first view is sounder."

12. Al-Muhaqqiq al-Hilli mentions in *ash-Shara'i'*:

"If a man gives, for example, another man his animal and water-skin to a water-carrier with the understanding of sharing in the earnings therefrom, no partnership will take place, so in such a case whatever is earned will belong to the water carrier and compensation for the use of the animal and the water-skin will be due from him."

From The Theory

The whole of this upper-structure reveals the basic fact in relation to the general theory on the post-production distribution, and consequently the material difference between the Islamic general theory of post-production distribution and that under the capitalist doctrinal (applied) economics. However, instead of beginning with deduction of the theory from the upper-structure we have preferred to begin with the

formulation of a general idea and a common conception of the nature of the theory of post–production distribution by presenting an illustration from the capitalist doctrinal system of economics to ascertain the scope, which the doctrinal theory in regard of post–production distribution must cover.

After presenting (the example of) the theory in the capitalist frame, we will present the Islamic theory of post–production distribution and give it a definite form. That will help reveal and highlight the difference between the two theories. Then we will come back to the upper–structure given above, in order to strengthen and support our assumptions relating to the Islamic theory as well as explain our method of adducing them from that upper–structure in which its basic guidelines and main features are reflected.

Thus, the journey of our inquiry will be completed in three stages.

Illustration From Capitalist Economics

In the mainstream capitalist economic system, the process of production is usually reduced to the main factors engaged in the process and the general idea about the distribution of the production output is based on the outcome of the interplay of those factors. Each of these constituent factors earns its share in accordance with its role in the process. It is on this basis that capitalist system of economy decides the distribution of the goods produced or its market value, and the sharing among the factors of production in the forms listed below:–

1. Interest
2. Wages
3. Rent,
4. Profit.

Wages are the share of human labour or the worker, being the prime factor in the process of production in the capitalistic theory. Interest is the share of the borrowed capital used and profit is the share of the internal capital used in actual production, while rent expresses the share for land.

There have been several modifications in this capitalist method of production on the formal side. Some include wages and profit in one group, in the belief that profit is a form of wages for a specific category of labour. That is the work of the business owner or the entrepreneur in organizing the various factors of production – capital, land and labour – and skilfully managing them is the process of production.

Some broaden the definition of rent beyond its original meaning – as return on land – to cover various types of rents from other assets. Likewise, there is also a view preferred by some to give capital a more comprehensive meaning covering all the elements of nature including land. Despite these formal variations and adjustments, the essential view regarding the capitalist distribution has remained intact and is firmly fixed without any change.

The view is that all these factors of production are to be considered on an equal footing and that each of

them is to be assigned its respective share from the goods produced as a participant in the operation and within the framework of its collaboration with all the other factors in the full production process of the goods.

The worker receives his wage according to the very method and on the basis of the same doctrinal theory according to which interest is paid for capital. Each of them, in the established capitalist term is an agent of production and participating force in the organic mechanism of the operation. So it is only natural that the output be distributed among the respective factors in a proportion determined by the law of demand and supply and other such forces governing the distribution.

The Islamic Theory Compared To The Capitalist Theory

Islam rejects altogether this materialist view and is fundamentally different from the capitalist doctrine as it does not place the various factors of production on an equal footing. Furthermore Islam does not consider the law of demand and supply a satisfactory mechanism in deciding the eventual sharing of the value of the production output as the capitalist economic system does. On the contrary, the general Islamic economic theory on distribution regards the production output in relation to natural resources as the property of the production worker alone.

As for the material means of production and the various tools, which a worker employs in the operation of that production, they have no share from the output itself. They are only means that provide man with the convenience to gain access to the natural resources and the harness nature for the purpose of production. If these means happen to belong to an individual other than the production worker, then it is an obligation on the production worker to pay to their owner (a rent) in consideration of the services that he benefits from.

The payment that the production worker makes to the owner of the land or the owner of the implements or the tools that contribute to the production process does not represent the share of the land or the tools or the instruments in the end product in their capacity as factors of production. It is only a way of compensating the owners of those means of production for the services they have rendered the production worker by allowing him to allow those assets in his production work.

So in case the whereby the means of production are owned by the production worker himself, then the term 'compensation' will be meaningless as in such situation, the benefit will be a gift of nature, not a service provided by another person. Therefore, in the Islamic theory of post-production distribution the production worker is the real owner of the material produced from the natural raw material and the material factors of production have no share in the value of the output. It only considers the production worker a debtor to the owners of the means he has employed in the production. He is this obliged to pay compensation to them in consideration of the services he benefits from those means of production.

The share of the participating material means that the production operation bear the mark of compensation in consideration of service rendered. It represents a debt arising from the obligation on the

worker to pay for their use. It does not mean treating the material means and human labour equally, or a partnership between both on an equal basis. In the course of our continuous search for the general theory of post-production distribution, we shall come to know the theoretical justification for the compensation that the owners of the material elements and tools earn from the means (of production) that they own, in view of increase in production made possible by those means.

So the difference between the Islamic theory of post-production distribution and the capitalist theory in this respect is very significant. This difference between the two theories – Islamic versus capitalist – arises from the view on the status of man and his role in the production operation. The role of man in the capitalist view is that of a means which serve production, not the end that production serves. In this respect, he shares in the production output – with all the other production forces such as natural resources and capital – on an equal footing.

The capitalist view is that man – together with the other productive forces – joins as a participant and a servant of the production. Therefore, a single theoretical basis is applicable in relation to the distribution of the production output among all of them including man. The other productive forces are viewed as his ‘partners’ in production.

However, from the Islamic view the status of man is that of an end, not a means. Therefore, he is not on equal footing other material means in the distribution of the produced goods. On the contrary, Islam considers the material components and tools of production as servants of man in accomplishing the operation since the production is for the sake of man and as such theoretically, the share of the production worker differs from the share of the material elements.

Hence if the material means belong to a person other than the production worker and their owner provides them for use in the production, it is a part of his right that the production worker pays him compensation in consideration for the usage. The compensation here constitutes payment for the benefits as an obligation of the production worker. It does not theoretically represent a sharing under partnership (between the production worker and provider of the material).

With the status assigned to the material elements in the production process, the Islamic theory prescribes that the production worker pays compensation (for the materials) as his servants and not as his partners. Similarly, the status of man in the production operation as its goal accords the production worker sole ownership over the right to the natural resource, which Allah the High has prepared for the service of man.

A very important factor that reflects this significant difference between the two theories – the Islamic and the capitalist – is the standpoint of the two systems of economics, in relation to the extraction or production of natural raw material. The capitalist doctrine permits use of capital to carry out extraction of natural resources. With the use of sufficient capital funds, the capitalist producers can hire labourers to harvest timber from the forest or extract of petroleum from oil wells. Under the capitalist system of

distribution, the wages represent the full share of the workers, while the capital provider becomes the owner of all the timber harvested or the minerals extracted by the workers. Similarly the revenue from the sale of the products, as determined by the owner, belongs to him.

According to the Islamic theory on distribution, there is no room for such mode of production⁴ because the provider of capital or tools is not entitled to the output by the workers he employs for labour for harvesting of wood or extraction of minerals. The Islamic theory has made direct labour a necessary condition to acquire ownership of natural assets and confers the entitlement solely to the worker. It disallows ownership of natural resources by way of hired labour.

The domination of capital over these natural assets under the capitalist system is simply because of the ability of the capital providers to pay for wages and tools for the production work. It results in the appropriation of the natural raw material (to the business owner) through hired labour. The domination of capital and its significance over natural resources eventually dissipated (at one stage in history) giving way to dominance of labour.

However the disappearance of that capitalist mode of production is not an accidental event or a passing manifestation. It was not a partial difference between the Islamic theory of distribution and that of capitalist economic system. In fact it was an explicit expression of the direct conflict between the two theoretical bases, as we have learnt.

Deduction Of The Theory From The Upper Structure

So far we have presented the Islamic post-production distribution theory hypothetically to the extent it was necessary for the comparison and contrast against the capitalist theory with respect to natural assets, which also constitute the factors of production (for downstream processing). However to prove the soundness of our conception of the theory, it is necessary for us to revert to the upper structure given in the early part of our discussions. That will enable us to deduce the feature that we regard as reflective of the Islamic theory and one that reveals its religious significance in practise. It also demonstrates the extent of its conformity with the conception we have presented. The precepts that we have presented in the upper structure lay down these points:

First: it is not valid for the principal to reap the fruits of the labour of his *wakil* (agent) on works relating to the natural assets. Hence if an individual appoints another person as his *wakil* for harvesting wood from the forest, for example, it will not be valid for him to appropriate the quantity of the wood his *wakil* extracts. As he has not performed the work himself he shall not be entitled to the output from the work, because only the worker alone earns the entitlement. This fact is quite clear from the first eight extracts in upper structure quoted earlier.

Second, the hire-contract is similar to agency contract. In either case, just as the principal does not become the owner of the materials that his agent extracts from nature, the employer of waged labour also does not earn entitlement to the natural resources or assets that his hired labourer acquires, just

because he pays the wages for the work. Those assets from nature get to be owned only by direct labour and work. This fact is clear from the sixth extract quoted above.

Third, if a production worker who performs a work to extract natural materials employs tools or materials of production owned by another, there will be no share (in the output) for the provider of the tools. The production worker will be obliged to pay the owner of the tools an amount in consideration for their usage in the production. As for the product, it will be wholly the property of the worker alone. This is clear from the quoted extracts, the ninth, tenth and twelfth.

These three points are sufficient for the discovery of the post-production distribution theory, which is based on the super structure of all of these precepts. In the same manner, it is sufficient as evidence that we have discovered the theory and provided it proper context and features. Thus we see that the production worker becomes the owner of the assets he obtains from nature, not as a shareholder and a servant in the process, but on the basis that he is the goal that the production (process) serves. So he appropriates all the output, while the other forces and means (of production) that serve and participate in the production do not share the output with him.

However (the owner of) the material elements and tools have a claim on the production worker – who pursues the work of production with their contribution – because they are deemed to be his servants and not because they are deemed to be on equal footing with him⁵.

Thus by making use of the upper structure given above, we obtain the Islamic basis for the post-production distribution and prove the correctness of the conception we have presented according to the Islamic theory, upon comparison against the capitalist theory.

Now let us continue with our quest for the doctrine and take up the study and presentation of another aspect of the theory by way of comparison and contrast against the Marxist theory of post-production distribution. We would be able to determine of the salient and outstanding difference between them.

Striking Difference Between Islamic And Marxist Theory

The Upper Structure

1. Al-Muhaqqiq al-Hilli writes in his *ash-Shara’* in the book *al-Ijarah*:

“A man gives another person an article to do some work on for him. Let’s assume that he engages a washer or a bleacher that job, at a fair wage. If it is not usual of the washer or bleacher to charge a wage but it is a type of jobs, for which there is usually remuneration, then he can demand the remuneration. He is the better judge of his intention. However, if it is one of the jobs, for which usually there is no remuneration, then his claim may be ignored”.

The commentator added the following: If it is known from his intention that he performed the job gratuitously, then it will not be valid for him to put in his demand for remuneration.

2. Al-Muhaqqiq an-Najafi cites in his *al-Jawahir* in the book “Usurpation”: If someone takes by force some seeds and sows them, or an egg and hatches it without the consent of the owner, the opinion of many of the jurists is that the real owner is the one from whom the material has been usurped. Rather there is, on the authority of an-Nasiriyyah, nothing against this verdict but in *as-Sara’ir*, thus there is a consensus on this. It is like the principle and norms of the juristic practice.

He (an-Najafi) also quotes another jurist who claims: The green crop and the young bird belong to the usurper because the usurped seed and egg are considered to have been non-existent (at the beginning). So the green crop and the young bird are new things that the usurper, as the result of his labour, owns them.

3. In the same book it is mentioned:

If someone usurps a land and cultivates it or plants trees on it, then the crops and plants will belong to the planter, and I do not find any disagreement (on this point) among the (Muslim) jurists. On the contrary I find consensus in the book of *at-Tanqih*. But the farmer has to pay rent of the land to the owner of the land (from whom he usurped).

This rule has been confirmed by some traditions. Here is one report of the tradition on the authority of ‘Uqbah ibn Khalid who says: “I asked Imam as-Sadiq (a.s.) about a person, who had made use of a piece of land to raise crop on it, without obtaining the consent its owner. When the crop has matured, the owner of the land came along and told the man who raised the crop ‘You have raised crop on my land without my consent, so the crop you have raised on my land is mine, and I will pay you a remuneration for the labour you have expended on it.’ “ ‘Uqbah says: “Then I asked the Imam: ‘Will the crop be his or not?’ The Imam replied: ‘The crop belongs to the man who grew it, and the owner of the land will have rent for the use of the land.’ “

4. It was mentioned in *al-Jawahir* in the book “*al-Mazari*”:

In every case, whenever the agricultural contract becomes invalid it is upon the owner of the land to pay the wage of the labour. If the seed belongs to the worker, then the crop also belongs to him, and he has to pay the rent of the land to its owner. But if the seeds are from the owner of the land, then the owner of the land will have the crops too, and he will be responsible for remuneration payable to the worker and for the tools too. However, the seeds are contributed by both of them, the yield shall be proportionately divided between both of them.

From these details it may be deduced that the owner of the seeds will have the yield accruing from the seeds, be he the farmer who sows them or the owner of the land on which they are sown because it is the seeds that constitute the basic substance of the crops grown. In case the seeds belong to the farmer, the landowner is not entitled to the yield. He would only earn the rent (on the land) that is due from the farmer for use of the land.

5. It is stated in *al-Jawahir* in the book of “*al-Musaqat*”:

In any case, whenever *musaqat* (share-cropping contract over the lease of a plantation, limited to one crop period) becomes invalid, the labour should be paid (according to the mutual agreement), and the fruits belong to the real owner because the growth (of the fruit) goes according to actual ownership.

Here is an elucidation of the above text:

(This is) when a person owns trees that need watering and (crop) maintenance to bear forth its yield. The owner of the trees engages a caretaker and hands over the crops to him, binding him with a contract whereby the caretaker agrees to undertake to maintain and water the trees and (thereby) becomes a partner in the yield of the crops according to the contract. For this kind of agreement entered into between an owner of the trees and its caretaker, the term *al-musaqat*, is applied. The jurists have specified the obligations binding both contracting parties to the contents of the contract if the term of the contract is to be completely fulfilled. But if there is a breach of any term and conditions of the contract, then according to Shari’ah it has no effect. In this case the juristic text we have cited above specifies that the yield, the whole of it – in case of any breach of the contract – will become the property of the owner of the trees. The caretaker will have suitable remuneration for his services and his labour in looking after the trees. The juristic term *ujratul-mithl* (adequate payment) is applied to such remuneration.

6. ‘*Aqdul-mudarabah*’ (contract of silent partnership) is a particular type of partnership in which the worker agrees with the owner of the capital to carry out trades with the owner’s capital, on the basis of profit sharing. In case the terms of the agreement are not fulfilled in any way, the whole profit will belong to the owner of the capital, and the worker will be entitled to remuneration in as specified by the jurists in *al-Jawahir*.

From The Theory

We have until now revealed as much as required of the general theory of post-production distribution in the Islamic system of economy, for a scientific comparison with similar theory in the capitalist economic model. Now we propose to continue our search of the guiding principles and distinct features of the Islamic economic model by comparing against the respective theory according to the Marxist economic system, and identify the most salient differences between them.

As we did in the earlier part, we shall begin by providing an idea and highlighting the most salient difference between the two theories as we perceive. Later, when we can clearly envisage the conceptual aspects of differences and their doctrinal source, we may discuss the upper structure. We would return to the examination of the grand structure in order to elicit from it the evidence in support of the correctness of our hypothesis and establish the conception juristically.

Theoretical Proof Of Ownership

We can sum up the difference between the Islamic and the Marxist theories on post-production distribution in two fundamental points.

The first is as follows:

The Islamic general economic theory on post-production distribution confers upon a worker private ownership or a right or title to such ownership to every asset that he produces by his spending labour on it. But this is applicable only when the basic material, on which he carries out the work of production, is not a natural asset owned by another person (as his private property or such right or title to that property). Examples of this include the wood that the worker extracts from the forest or wild birds or fish he captures. They also include mineral materials that a miner extracts from the mines or a piece of wasteland a farmer reclaims and rehabilitates or a water spring a person excavates and uncovers. All of these belong to the respective persons who spend their labour, because these assets did not belong to anyone in particular in their natural state. A productive work carried out on them gives to the worker an entitlement to privately own the respective assets. But as we have already learnt, the means of production have no share in the ownership of the production from these assets.

However, if the base material, on which the man carries out his work of production, is the private property of another person or an asset that another person holds right or entitlement to – resulting from one of those grounds in the Islamic general theory on the factors of production distribution – then this would mean that the right over the material had been acquired earlier. There is therefore no room for conferring entitlement (again) on the basis of a new production process, either to a person who does work on it, or to an owner of the means of production the worker employs in the new work of production.

Thus the worker who spins yarn or weaves a fabric out of some wool owned by a shepherd would not be entitled to the possession of the fabric made. He also does not become a partner to the shepherd on the basis of the labour he has expended in making the fabric. The whole quantity of fabric he has produced will be deemed as property of the shepherd as long as he is the owner of the base material – the wool – since his ownership of the material neither lapses nor is invalidated by the act of another person expending labour to make fabric from it. This is to which we apply the term ‘the phenomenon of the constancy’ in respect of ownership of a property.

The Marxist general economic theory of post-production distribution is in fact the opposite of this. It holds that the worker, who receives materials from the capitalist and upon which he expends his effort, becomes its owner proportionate to the new exchange value he contributes with his labour. According to the view held by the Marxist theory, the worker would thus be the legal owner of the goods produced minus the value of the material he (the worker) receives (from the capital provider) prior to his productive operation.

This difference between the Marxist theory and the Islamic theory arise from the Marxist's contention about the link between the end product with exchange value on one side, and that between the exchange value and labour on the other. The Marxist theory contends that exchange value is born of labour⁶ and explains the worker's ownership of the material – on which he has carried out his labour – on the basis of the exchange value that his work generates in the material. As a result of this (value) it becomes the right of every maker of a particular object – as he contributes a new exchange value to the material produced – to own this value that he has injected into the material with his labour.

Contrary to this, the Islamic theory separates the ownership of a property and its exchange value from each other. Further, the Islamic theory does not give the maker an ownership right to the material on the basis of the new exchange value that he has contributed to the material. Instead, it makes work the direct basis for entitlement as we have come across in our inquiry and discussion of the theory of distribution in relation to production of natural resources. So when an individual acquires ownership of a material on the basis of labour and the basis continues to exist, it will not be permissible for another person to acquire a new ownership of the material even if he were to contribute a new value to it by virtue of his labour.

Thus we can recapitulate the Islamic theory as follows. As for the material for the production that a man performs his labour on – when it is not already owned by another person – the end product of his production will be wholly and solely his own property. All other elements participating in the production will be regarded as servants of the worker and their providers shall be remunerated for their use and not as partners in the production at par with the production worker. But if the base material is a property already owned by another person, then it will continue to remain – according to the principle of the constancy of ownership – the private property of owner, irrespective of the changes it may undergo as we saw in example of the wool.

It may appear to some that this ownership – the wool owner's appropriation of the woollen fabric made from his wool, i.e. whereby the owner of a material keeps his ownership – would imply that the providers of capital and the material elements (in the production operation) would appropriate the output. It may be perceived that the (base) material (in our example, the wool) would be a type of (economic) capital in the production of the woollen yarn and the woollen fabric, since raw material of every commodity constitutes a type of a capital.

But the interpretation of this principle of the constancy of the ownership of an asset in a capitalist way is a misconception. The conferring of the ownership of the woollen fabric (which the worker has woven from his wool) upon the owner of the wool is not based on recognition of the wool as capital. It also does not mean that the provider of capital has a right to take possession of the commodity produced because of its role in providing a participating factor as the base material in the production of the woollen fabric.

Although the wool constitutes a capital in the production of the woollen yarn or the woollen fabric – in its character as a raw material for this production – the tools that are employed in the spinning and weaving

process also bear capital-like characteristics and participate in the operation as another type of 'capital'. Yet no ownership entitlement is conferred to their providers in relation to the end product. Neither is a share granted – to the providers of these elements – in the ownership of the fabric along with the owner of the wool.

The Islamic economic theory of post-production distribution – in preserving intact the shepherd's right to his ownership of the wool after the worker made a woollen cloth from it – does not intend to single out capital as the basis for conferring ownership to the output produced. This is demonstrated by the fact that the theory does not confer upon (the other providers of) capital – the tools and implements – that ownership right. Holding that the shepherd is the owner of the end product only demonstrates the theory's regard for the constancy of right to the ownership of the material (wool) that was firmly established before its processing into yarn or the fabric. The theory holds the opinion that merely changing the form of a property does not impair the rights of its original owner even if the change leads to the creation of a new exchange value. It is this that we refer to as the principle of constancy of ownership.

In the Islamic theory, the (providers of) capital and the material elements participating in the production operation are not given a right to the wealth produced in their character as capital and material forces participating in the production operation. This because in this capacity they are regarded only in their character as nothing more than servants to man, the production worker. Man is the main and pivotal point, the hub of the axis in the production operation, and it is in such a character that they are entitled to remuneration from him for their use. The shepherd who is the owner of the wool in our example wins the right to the ownership of the woollen fabric only because the woollen fabric was the very wool that the worker was possessing and not because of the fact that it constitutes a capital in the production operation.

Separation Of Ownership (Proprietary Rights) From The Exchange Value Under The Theory

The second point of the essential difference between the Islamic and Marxist theories on post-production distribution, it is that the Marxist theory gives to every individual a proprietary right to the production output proportionate to the exchange value that he injects into the goods produced. The theory holds the belief – on the basis of the link between the proprietary right with the exchange value – that the owner of the material elements and tools participating in the production enjoys a share in the wealth produced because these forces and means contribute to the formation of the value of the commodity produced in proportion to the amount consumed during the act of the production. The owner of the materials consumed in production becomes the owner of the production output in proportion to the amount the materials he contributed in the creation of the value of that commodity.

As we have learnt, the Islamic theory strictly separates ownership from exchange value. Even if we were

to accept that the materials utilized in the production of a commodity are included in the formation of the value of the end product – in proportion to the amount of their consumption – it does not necessarily mean that the benefit of the proprietary right in respect of the end product be conferred to their owner. The materials used in production of a commodity are always regarded in the Islamic theory only as servants of the man (the worker) and their right is subject to this principle.

This is the result of the separation of the ownership of the commodity produced from its exchange value. The (providers of) material elements that contribute their share in production of a commodity shall be entitled to their remuneration on the same principle.

Inference Of The Theory From The Upper Structure

We have discussed the most striking difference between the two theories – Islamic versus Marxist – in relation to post-production distribution, in the way we conceive and visualize the subject. It is now possible for us to identify the roots of this difference, and their supporting evidence from the upper structure we have presented. This is in line with our top down approach in the quest for the theory, by first looking for clues in the explicit legislative instructions.

In the extracts (from the upper structure) quoted above, the material used in the act of production of the new commodity remains the property of a particular person. Because of this, all the quoted extracts affirm the right over the material to continue being with its original owner, despite its transformation into a new commodity, as a result of the production process.

The commodity, which its owner hands over to a hired worker – to perform work on and transform – remains his (the owner's) property, as stated in the first extract. The hired worker will not become the (new) owner on the ground of his work, even if he transforms it into a new commodity and creates a new value for it, because of the fact that it is already owned.

The worker (farmer) who usurps the land of another person and sows his seeds on the land, will own the yield accruing therefrom as stated in the third quoted extract and the owner of the land will have no share in the yield. That is because the farmer is the owner of the seed and the seed is a constituent factor of the basic material that transforms into the crop (and provides the yield) in the course of the cultivation operation.

As for the land, being a material element participating in the production, it is regarded in the Islamic economic theory of post-production distribution as a servant of the farmer, and he has to pay remuneration for its use to its owner. Islam, then, differentiates between the seed and the land and gives the ownership of the crop to the owner of the seed and not to the owner of the land, notwithstanding the fact that both of them – the seed and the land – constitute capital in the economic sense and are both participating forces in the production.

This clearly reveals the fact, which we have already stated, that the owner of the raw material employed

and transformed in the production, only owns the material after its transformation because it is the material that he owns and not because it plays the role of capital in the production operation. If that were so, then Islam would not have made a distinction between the seed and the land and would not have denied the owner of the land ownership of the crop, when it conferred it upon the owner of the seed despite the fact that both the land and the seed contribute to the operation in capital-like roles in the economic sense.

The fourth and fifth quoted extracts are both consistent with the principle established by the third quoted extract. That is, the ownership of the crop or the produce is conferred upon the owner of the seeds, instead of the person that own the land or any other factors participating in the production operation and playing capital-like roles in the production.

The last extract quoted confers to the owner of the capital a right to the whole profit when the (implied) *mudarabah* (partnership) contract is rendered null and void. It disallows the share for the worker, because even though the profit is largely the result of the effort and labour of the working 'partner' in selling and bringing the commodity before its end buyer enabling its disposal at a higher price. However this effort is similar to the effort of the spinner or the weaver of the wool that was owned by the shepherd. It has no effective force according to the theory as long as the material under the working partnership contract (the wool) is a property already owned.

Now there remains the second quoted extract in the upper structure for us to point out in particular. It discusses the case of a person who takes – without permission – an egg from another person and from it hatches (and grow) a chicken, or a quantity of seeds from which he cultivates some crops. The extract states that according to one prevalent juristic opinion, the produce – chicken or crop (grain) – belongs to the owner of the egg or the seeds. It also mentions that according to another juristic opinion, the produce belongs to the worker who actually carries out the work for its production even when he had illegally acquired the egg or the seeds.

We see from the extract which presents these two opinions that both arise juristically from the difference between the jurists as to the determination of the relation that subsists between the egg and the chick that comes out of its entrails, and likewise between the seed and the crop that is grow from it. Some jurists view that both the egg and the chick (or the seed and the crop) is the same, and differ only in the degree, similar to the difference between a wooden block and a bedstead made out of it. They thus adopt the first opinion and consider the person from whom the egg or the seed is usurped as the owner of the produce – the chicken or the crop.

Another group of jurists view that the base material – the egg or the seed – gets consumed and is thus destroyed in the production operation. They hold that the new item that is produced – by common perception – is a new thing that arises from the destruction of the primary material because of the work and labour of the worker during production process (hatching or tilling). In their opinion, the produce (chicken or the crop) belongs to the worker (who had illegally acquired the egg or the seed) because the

produce is a new item, which the owner of the egg or the seed did not possess before this. Hence it is within the right of the one who produced it by his effort, to appropriate the produce in spite of his illegal act.

It is not important here to solve this conflict between the two opposing juristic opinions and to examine their viewpoints. Our goal actually is to benefit from the theoretical implication revealed by this juristic disagreement in relation to our doctrinal standpoint, with greater clarity and precision as other quoted extracts of the upper structure do. We already see clearly that the owner of the wool would own the woollen fabric made out of it, or that the owner of any primary material would own the end product. And we see that this it is not because the wool or any primary material – used in the production – constitutes a type of capital in the production. It is only because of the principle of constancy of ownership, which holds that he who owns a material continues to retain its ownership as long as the material remains in existence and as long as it is in conformity with Islamic rules.

When the jurists differ as to whether the produce is from the egg (or the seed), they link their juristic standpoint in relation to the issue with their viewpoint regarding the nature of the relationship with the primary material and the produce. This means that the jurists who decide that product belongs to the owner of the primary material – which was usurped from him – does not hold that opinion on the basis that he is a provider of capital.

If this preference is indeed because of the fact that he is the one who provides the capital or anything used in the production operation, there would not be any conflict of opinion among jurists. This is so because whether they view the end product as continuation of the primary material or as emergence of a new item, the result would be the same. The primary material – used in the production operation – in either case would have been regarded as capital, anyway. And its owner would thus be conferred the ownership of the end product because of his capital. It would have made no difference whether the primary material gets destroyed or depreciated or transformed in the process of production. Thus, from that perspective, it would have become necessary for the jurists to grant the ownership of the produce to the owner of the material, the egg or the seed irrespective of the relationship between him and the material.

Yet, the jurist decided to confer the owner of the material (for instance the seed) the proprietary right to the crop only when it is established according to the common view that the end product is the same thing (as that at the start) and the difference is only because it is in a particular state of its transformation. This demonstrates that conferring ownership of the end product to the owner of the primary material (and not to the one who carries out work on the material) rests on the basis to of principle of the constancy of ownership. The Islamic justification differs from the capitalist point of view, which holds that capital (provider) owns the end product and that the labourer is (only) an employee of the capital (provider) and only deserves to be paid wages for the work done.

Thus we understand clearly the extent of the theoretical difference between the Islamic bases of

conferring ownership of the wealth produced to the owner of the primary material used in the production, against the justification for the same result on the basis of the capitalist point of view.

The General Law On Earnings From The Material Means Of Production

The Upper Structure

i. It is valid for a production worker to rent tools or materials he needs for his work and pay the owners of the tools or materials compensation as agreed. This compensation will be regarded as rent to the owner of the tools in consideration of their contribution to the production operation and a debt is payable by the production worker. The respective amounts are payable by the production person irrespective of the actual earnings he gains from the production operation. On this, the jurists are unanimous.

ii. Just as it is valid to rent (tools and materials) for ploughing or weaving, it is also valid for a production person to rent a land from the person who holds private proprietary right to it. For example, if you are a farmer you can make use of another person's land by entering into an agreement with him and pay to him a rent for the use of his land in the production operation. On this, there is agreement among the majority of the Muslim jurists. However, there are some *ashab* (companions of the Holy Prophet) and a few Muslim thinkers who deny the legality of the rent of piece of land relying on specific traditions of the Holy Prophet. We will, Allah willing, study and examine these traditions in our future discussions and explain that they do not go against the prevalent juristic opinion.

Similarly, it is lawful for a man to hire a worker for stitching of clothes, spinning of wool, selling books or transacting businesses. When the hired person has completed the assigned task, it is obligatory upon the employer to pay him the wages as agreed between them.

iii. Islam has laid down a model of a stipulated partnership between a land owner and a farmer, under which the farmer agrees to cultivate the land on the condition that the land owner shares with him in what accrues from his labour, whereby the portion for each from the total output is determined on fixed percentage.

Let us concentrate on the *'aqdul-Muzara'ah* (share cropping contract) from ash-Shaykh at-Tusi's book *al-Khilafah*, in which he explains the implication of *al-Muzara'ah* and its legal limitations. He writes therein:

“It is permissible for him (that is, the owner of the land) to give his land to another person to grow something on it, on condition that the land and the seeds will be from him, and it is upon the *mutaqabbil*⁷ (the person who accept and assumes the obligation) to undertake the cultivation on the land and the related crop maintenance.”

In light of this we learn that the farming contract constitutes two elements. First is the work of cultivation by the worker and second the land and seeds from the owner of the land. The basis of the terms agreed

as written by ash-Shaykh at-Tusi is:

“It is not permissible for the land owner to conclude *‘aqdul-Muzara’ah* by merely contributing his land and holding the farmer responsible for cultivation and provision of seeds at the same time, since the contribution of the seeds by the land owner is a basic condition for the fulfilment of the farming contract as stated in the previous texts.”

When what is stated in this text about seeds is finalized, we can then understand the reason for the prohibition of the *mukhabbirah* (by the prophet). *Mukhabbirah* is a type of *Muzara’ah* agreement, in which the owner is required to give the land but not the seeds. In this way, from the terms given in the text of which ash-Shaykh at-Tusi has written, we learn that the basic condition of the farming contract include the obligation of the land owner to provide seeds to the farmer while the farmer is required to undertake the cultivation work. Without these, the contract would not be proper.

iv. The responsibility of the landowner under the contract is not confined to merely providing the land and seeds, but also extends to the expenditure on the soil if the soil requires manures. Al-’Allamah al-Hilli has stated in *al-Qawa’id*:

“If the ground needs manures the owner of the land should buy it and the farmer shall spread it on the ground.”

This has been confirmed by a number of juristic sources like *at-Tadhkirah*, *at-Tahrir* and *Jami’ul-maqasid*.

v. *Al-Musaqat* is another type of contract, which resembles the farming contract. It is a form of agreement between two persons, one of whom is the owner of the trees and tender plants while the other is a person with the skill of watering them in order to bring forth their yield. In this contract the worker undertakes the responsibility to water the trees and seedlings until maturity. In return for that, he shares with the owner the yield on the basis of a rate agreed upon in the contract. Islam allows this contract as has stated in many of the juristic texts.

vi. *Al-Mudarabah* is a legal contract in Islam. Under this contract, the worker enters into an agreement with the provider of capital to carry out trades with his capital and earns a share in the profit at specified rate. If the person is able to make a profit from the trading with the given capital, it will be divided between him and the owner according to what has been agreed in contract. If the trade results in a loss, then it will be borne by the owner alone. The worker will only suffer from loss of his labour and efforts. It is not permitted for the owner of the capital to make the worker bear the (capital) loss, because if the worker gives a guarantee against loss under any condition, then the owner of the capital will be not be entitled to profit. This is in line with that stated in the tradition reported on the authority of ‘Ali (a.s.): “Whoever guarantees a merchant (to pay back the capital he has taken from him), for him (the merchant) is to receive his capital and he will have no share in the profit (of that capital).”

In another tradition it was stated: “Whoever guarantees (the benefit of) *al-mudarabah* (silent partnership) (in favour of the owner of the capital) – i.e. to hold the agent of *mudarib* (speculator or trader) responsible for the (benefit of the) capital – for him (the owner of the capital) is to receive his capital and he will have no share in the profit (of that capital).” So the fulfilment of the condition of leaving the risk on the part of the owner of the capital and the agent’s not giving him the guarantee for the security of his capital are the basic requirements for the legal validity of the *mudarabah* contract. Without this, it will not be partnership but a loan contract, and the profit will all be for the agent/trader.

If the agent enters into an agreement with the owner of the capital to trade with it, it is not permissible for him to get another agent who is satisfied with a smaller share of profit and hand over the capital to him to trade with it, and earns the difference between the two rates without actually doing any work in earning it. For example, he enters an agreement with the principal on the condition of having half the profit and then enters into another agreement with another agent who is content with only a quarter of the profit. The first agent thus earns a quarter of the profit in this way without having to do any work. This is not valid in Islamic law.

Al-Muhaqqiq al-Hilli writes under the section of “*al-Mudarabah*” of his book of *ash-Shara’i* that this action is illegal, saying:

“Whenever an agent gives a capital to another agent as *al-mudarabah* with the permission of the owner of the capital on the basis of profit sharing between the owner of the capital and the second agent, there is no objection in this matter. But if it is not so, that is, the first agent shares the profit with the second (agent), this is not permitted, since the first agent has done nothing.” It is mentioned in a tradition that someone asked the Imam (a.s.): “Is it lawful for someone who has taken a capital (from someone else) on the basis of *al-mudarabah*, to make a third person share with him in that capital with less profit (for the third)?” The reply was “No.”

vii. Lending of money on interest is haram (prohibited) in Islam, that is, lending money to another person for a fixed period and the borrower returning – at the time agreed upon – the principal with interest is haram in Islam. Only lending of money without interest is permissible, so the lender can ask only for the return of the money he lends without any addition to the principal, even if it is only a small amount. This precept is considered Islamic – in the degree of its clarity and non-ambiguity – to rank with the main requirements of Islamic legislation.

The following sacred verses of the Holy Qur’an pointing to this are sufficient: –

“Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: “Trade is like usury,” but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever).” (2:275).

“O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.” (2:278).

“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).

viii. The last sentence of the verses of the Holy Qur'an quoted above, which restricts the right of the creditor to the principal sum lent by him and which permits the return of his money if he repents is a clear proof of the order of the prohibition to lend money on interest and the unlawfulness of (charging) any kind of interest however slight it may be, for that constitutes an injustice on the part of the creditor towards the debtor, as implied in verse of the Qur'an.

ix. It is mentioned in the tradition of the Prophet: *“Usury is the worst of gains. Allah fills the belly of the one who devours it with the fire of hell to the proportion of its amount. And if he earns money therefrom neither will Allah accept his work nor will he cease to be under the curse of Allah and the angels as long as a qirat⁸ of it remains in his possession”*.

x. *Al-Ju'alah* (pay, wages, allowance, reward) is legal in Islamic *Shari'ah*; that is, one promises to do an allowable intended work. For example, when one says he who finds out a book he has lost, he will have a *dinar* or he who tailors his garment will have one *dirham*. The *dinar* or *dirham* is the return the owner of the book or the cloth takes upon himself to pay to one who does the specific actual work in connection with his property.

It is not necessary that the wage be a specified sum such as a *dinar* or a *dirham*. It is permissible for a man to make it unspecified in its nature. For instance, he may say that whosoever cultivates this land of mine, he may have half of the produce; or the one who brings back to me my lost pen, he will be my partner for the half of it, as has stated by al-'Allamah al-Hilli in *at-Tadhkirah*, by his son in *al-Idah*, by ash-Shahid in *al-Masalik* and by the Muhaqqiq an-Najafi in *al-Jawahir*.

The difference between the *ju'alah* and hiring on wage basis juristically is this. If, you, for example, engage a person on hire for tailoring your garment, you become, according to the hire-contract, the owner of the service of the employee that is the fruit of his tailoring work just as the employee becomes the owner of the wage specified in the contract. But if you stipulate with the man who tailors your garment to give him one *dinar* for tailoring it you do not become the owner of (the service) of tailoring work just as the tailor does not become the owner of anything for which you are responsible unless he carries out the work. If he does the tailoring work then he will have due to him one *dinar* from you, which you have stipulated to give him for the tailoring work.

xi. *Al-Mudarabah*, on which a tradition has been already mentioned in the sixth extract, is limited as defined in law, to the extent of commercial operations of buying and selling. A person who possesses a commodity (goods) or cash is permitted to enter into agreement with a particular agent to trade with his goods or money, or to buy goods with his money and sell it; and the partnership with an agent in profit is

on a ratio as mentioned in the sixth extract.

Al-Mudarabah, however, is not valid outside the commercial orbit, which is defined legislatively as buying and selling operations. For example, if a person owns an article or tool of production, intends to enter into a *mudarabah* contract with a worker (*'amil*) on the basis that he gives his tools of production to the worker to use for production, he is not entitled to impose a condition such that he will get a share in the profit resulting from the production operation.

Al-Muhaqqiq al-Hilli, writes in the book of *al-Mudarabah of ash-Shara'i* on this matter, saying:

If the owner of hunting paraphernalia, for example, gives it to a hunter on the condition that one-third of the game captured with it and the hunter agrees, this will not be a valid *mudarabah* deal. The captured game shall be the property of the hunter and the owner of the hunting paraphernalia will have no share in it. He is entitled only to rent due from the hunter for the use of the paraphernalia.

From this we learn that mere participation in the productive operation with tools and materials does not entitle the owner of the tools or materials to a share in the profit. The owner of the tools or materials is only allowed to share in the profit with a trader, who carries on commercial activity when, he (the owner) offers to him goods or cash and appoint him to carry out trades under a profit sharing arrangement.

Just as *mudarabah* and participation in the profit by way of providing tools for production is invalid, so is *muzara'ah* contract, a contract that we have come across in the third extract. It is not valid for a person who owns some tools of production to share with a farmer, in his agricultural produce, merely by giving the farmer these tools. Such partnership (with entitlement to a share in the eventual profit) is however possible for one who provides land and seeds, as we have learnt from the text from ash-Shaykh at-Tusi, mentioned earlier.

xii. It is not valid for a man to lease a land or production tools at a specified rental and then lease it out to another person at a higher rental unless he does some work on the land or tools that justifies earning a higher rental. If you lease a land for ten *dinar*, then it is not legally permissible for you to lease it out to another person and demand from him a bigger rental, unless you have expended labour on improvement and preparation of its soil that justify the difference that you earn.

A group of great jurists, including as-Sayyid al-Murtada, al-Halabi, as-Saduq, Ibnu'l-Baraj, ash-Shaykh al-Mufid, ash-Shaykh at-Tusi have specifically given this verdict in agreement with many traditions in this connection. Some are given below.

a. Sulayman ibn Khalid reports a tradition from the Imam as-Sadiq (a.s.) that he said, "I dislike. I dislike that I take a quern (stone hand-mill for grinding grain) on a fixed rent and then lease it to another person on a higher rent than the rent at which I took it on lease, except when I make some change in it."

b. On the authority of al-Halabi (it is stated that) he says, "I asked al-Imam as-Sadiq (a.s.): 'Can I enter

into a tenancy (lease) contract for a land holding myself responsible for one-third or one-fourth, then I enter into a tenancy (lease) contract in respect of the land with someone else holding him responsible for one-half?' The Imam replied: 'There is no objection'. I then asked, 'Can I lease it for one thousand and lease it to someone for two thousand?' The Imam replied, 'No, it is not permissible'. I asked him, 'Why?' He replied 'Because (in) this later (case the amount) is guaranteed, (in) the former (case fixed amount) is not guaranteed'⁹.

c. In a tradition reported by Ishaq ibn 'Ammar on the authority of as-Sadiq (a.s.) it is stated that the Imam said: "If you take lease of land holding yourself responsible for gold or silver then do not lease it to someone else to make him responsible for more gold or silver fixed in the contract. But if you have taken the land on lease making yourself responsible for a return of one-half or one-third then you can execute the same transaction with someone else holding him responsible for a higher share than you have made yourself responsible for in your contract because gold and silver are guaranteed amounts".

d. Isma'il ibn al-Fadl al-Hashimi reports: "I asked Ja'far ibn Muhammad as-Sadiq (a.s.) about a man who takes on lease from the sultan a taxed land for a fixed number of *dirham* or for a fixed quantity of grains. He then lets it on rent and stipulates with the one who tills it that he will share in the half or less than half of the yield, then there is some surplus from the (yield of the) land, will it be fit for him to take it?" The Imam replied, "Yes if he digs a canal or does something which helps those who cultivate it, then the surplus will be his".¹⁰ He says, "I then asked about a person who undertake a lease a taxed-land for a fixed number of *dirham* or for a quantity of grain then lets it piece by piece or by *jarib* ¹¹. Then there is surplus over the sum for which he had leased from the Sultan, while he spends nothing on it, or he enters into farming contract – giving those who cultivate it seeds and expenses of cultivation – and there is surplus over the sum for which he has taken on lease, will the surplus be his or not? The Imam replied: 'It will be his if he takes the lease, spends something on it and develops it then there is no objection to what you have mentioned.'

e. A tradition reported by Abu Basir from as-Sadiq (a.s.): that he said: "If you lease a land holding yourself responsible for (a fixed amount of) gold or silver, then do not lease it to someone else making him responsible for a greater amount, for both gold and silver are *madmun* i.e. guaranteed".

f. There is a tradition reported by al-Halabi on the authority of Imam as-Sadiq (a.s.) about a person who rents a house and then he rents it out to another for a higher rent than he had rented it. The Imam said, "It is not proper for him to do so unless he makes some changes in the house".

g. It is in the tradition reported by Ishaq ibn 'Ammar that al-Imam al-Baqir (a.s.) used to say: "There is no objection to a person taking on hire a house, a land or a boat then give it on hire at a rent higher than the rent at which he hires it, provided that he made some improvement therein."

h. Sama'ah narrates a tradition saying; "I asked the Imam about a man who purchases a pasture in which he used to graze his flock, at fifty *dirham* or for a sum less or more than that. Then he wishes to

join with him those who used to graze their flocks along with him making them responsible for the price before he joins them with him. The Imam said: “He may join with him whomsoever he wishes for a part which he gives something and if he joins them with him making them responsible for forty-nine *dirham* and his sheep be for one *dirham*, then there is no objection. But if he grazed his flock for a month, two months or for more months even then there is no objection if he joins them provided he makes it clear to them. However, it is not lawful for him to sell it for fifty *dirham* and graze his flock with them or for more than fifty *dirham* and not pasture with them unless he has already done some helpful works on the grazing ground, the digging of a well or excavating a canal, with the consent of the owners of the pasture. Then there this is no issue for him to sell it at sum greater than at which he obtains it for. Since he does some work, it is quite proper for him to do so.”¹²

Just as it is not permissible to a person, who leases a land or means or tools of production to sub-lease them at a higher rental, it is also not permissible for him to enter into agreement with a person to perform a work at a specific rate and then to engage another man to do the work for a rate less than that which obtains under his first agreement, and keeps for himself the difference between the two rates.

In the tradition reported by Muhammad ibn Muslim, it is stated that he asked al-Imam as-Sadiq (a.s.): “If a man undertakes to do a work on a contract, then he himself does not do that work but gives it to some other person, can he pocket the profit therefrom?” He replied: “No, unless he has done some work.” In another tradition, it is stated that Abu Hamzah asked al-Imam al-Baqir (a.s.): “If a man undertakes to do a work (on contract) but does nothing and gives it to someone else to do it, can he pocket the profit (arising) therefrom?” The Imam replied: “No.” In a third tradition, it is stated that the Imam was asked about a tailor who takes a tailoring work on contract. He cuts the cloth and gives it to someone else for sewing. Can he take the surplus? The Imam replied: “There is no objection, for he has done some work.”

It is stated in a tradition reported by Mujma’ that he asked Abu ‘Abdillah [Imam as-Sadiq (a.s.)]: “Can I take a piece of cloth on contract to stitch it then give it to boys to stitch it at two-third of the amount? The Imam asked: ‘Did you not do therein any work?’ I replied: ‘I cut it and purchased thread for it’. The Imam replied: ‘There is no objection.’ ” In another tradition, it is stated that a goldsmith asked Abu ‘Abdillah as-Sadiq (a.s.): “Can I take a work on contract, then give it on contract to boys working under me for two-third of the amount?” The Imam replied: “It would not be proper unless you do the work with them.”

The Theory

We examined in the preceding theoretical space when work is carried out on a material, which was not already owned by someone else. We were able to discover quite clearly that the Islamic theory of post-production distribution – in such a case – confers the ownership of the whole output upon the man who carries out the work. And it does not assign any share (of ownership) in it to the (providers of) material elements, on the basis that they are production factors that serve the production person and are not his equals. They earn their respective compensation from the production person but do not share with him in

ownership of the output.

We also examined the case of work carried out on a (primary) material owned by another person, such as that of a spinner, who works on some quantity of wool that belongs to a shepherd. We learnt the view of the theory in such a case that the material continues to remain the property of its owner. Neither the worker nor any of the providers of tools and other material elements that take part in the production operation will have any share in the output produced. They are only entitled to compensations from the owner of the primary material, according to the services they render in transforming and improving of the material.

We now intend to study – through the new upper structure – the compensations, which the factors or the means of production earn under these circumstances and find out the limits, types and subsequently the theoretical basis. With the restrictions on the mode of compensation which are allowed to the factors of production – such as labour, land, tools of production and capital – we will learn the extent to which Islam allows the acquisition of earnings resulting from ownership of each of them and the theoretical justification for the earning from their ownership.

The Regulation Of The Upper Structure

Let us summarize from the process of the regulation of the new upper structure, the general results which lead to it, and then to unite those results into a well-organized theoretical composition.

According to the upper structure of the Islamic legislation, two modes are allowed in determining the compensation for a work, and the worker has the right to choose the mode he prefers.

The first is, '*ujrah*' (a return on hire, wage) and second is share in the profit or the produce. A worker is entitled to demand a specified amount of money as a recompense for the work he does. As for the second mode, he is also entitled to ask for a share in the profit or the production output, and enter into an agreement with the owner of the property (*maal*) for a share in the profit or the output – as specified – that constitutes his recompense for the work he does.

The first mode is distinguished by an element of security. When the worker is content that he may be recompensed with a specified amount of money – and this is to which we apply the term *ujrah* (recompense), the owner of the property will have to pay him this amount of money without looking at the results of the work or at the value accruing in the end product – whether it is a gain or loss. But if the worker chooses to join in a partnership with the owner of the property and earn a share in the end product – with the hope to obtain a greater return – then by doing so, links his fate with the work he pursues and thereby waives security.

It is quite possible that he may obtain nothing if no profit accrues. But for the security he foregoes, he gains an unlimited upside in the return that may surpass limited return (under the first mode) because the amount of profit or produce is a variable. So fixing the pay for work as a share of the profit or the end

product, implies the possibility of gains and loss. Each mode has its distinctive characteristic.

Islam regulates the first mode – *ujrah* – by the legislative enactments regarding *ijarah*. We have seen this in the first quoted extract. The second mode – the sharing in the profit or end product – is governed by the legislative enactments regarding *al-Muzara'ah*, *al-musaqat*, *al-mudarabah* and *al-ju'alah* as we came across earlier in the 3rd, 5th, 6th, 10th quoted extracts.

In the farming contract, the worker–farmer can enter into an agreement with the owner of the land and seeds to cultivate the land on the basis of jointly sharing the produce. And in the *musaqat* (watering of the trees) contract the one who undertakes the work enters into agreement with the owner of the trees wherein he may undertake the responsibility to water and maintain the crops in return for the owner giving him a share of the yield on a certain ratio. In the *mudarabah* contract the working partner is permitted to conduct trading with the goods of the owner on profit sharing basis. In the *ju'alah* it is allowable for a merchant of wood for example, to declare his willingness to give any person who makes bedsteads from those pieces of wood, half the value of the end product. So under this arrangement, the worker's wellbeing is linked to the results of the operation he carries out.

Under both modes of compensation for a worker, it is not valid for the owner of goods or capital to impose any loss upon the worker. Rather, the entire loss will be borne by the owner of the material or the capital. If a worker has linked himself with the owner on the basis of *mudarabah* contract, then his expending labour in vain is a sufficient loss for him.

However, for the materials and tools or production – like the spindle/spinning wheel or the plough for example – if they are used for spinning wool or ploughing a field, then the remuneration for these is legally restricted to one mode, which is rental or wage. So if you wish to use a plough or a net owned by other persons, then you may hire them on hire their owners as stated in the second quoted extract from the above given upper structure.

Their owners cannot demand a compensation for their use by way of a share in the profit. The option to benefit by sharing in the profits from the operation, which is permitted in exchange for labour, is not legally allowed for the owner of tools of production. Hence their owners have no right to enter into *mudarabah* partnership with a worker. For example, a person who owns a net cannot give it to a hunter and expect to share the profit with him from the game captured.

We can see this in the quoted extract no. 10 of the upper structure. In the same way, a person who owns agricultural tools and equipment, is not allowed to give them on hire to a farmer for use in farming operation and expect to share in the produce with him, as stated in the quoted extract no. 3 of the upper structure. We have already learned from the text of ash-Shaykh at-Tusi that a farming contract can be made between two individuals on the basis of one person contributing land and seeds and the other person contributing labour. Thus, for the execution of the contract, it is not sufficient that the first party provides only tools of production.

The same case also applies to *ju'alah* whereby the agreement allows a maker of the wooden bedstead to join the owner of the wood material in sharing of the profit as given in the quoted extract no. 8 (of the upper structure). The owner of the wood may offer half of the profit to anyone who makes bedstead from his wood. But it does not permit him to enter into *ju'alah* agreement whereby he gives one half of the profit to a person who provides him with the tool he needs for the production of the bedstead, because *ju'alah* in Islam represents a return which a person determines beforehand for a work he likes to be done for him, not a compensation or for any type of service rendered.

Anyway, the provider of tools of production has no share in the profit and may only demand compensation or rent. The scope of earnings resulting from ownership of the tools of production is thus narrower than that from provision of labour. For ownership of tools or material, only one mode is allowed, while for labour is allowed both modes are permitted.

The case of trading capital (in a commercial operation) is opposite to that of the tools (in production). It is not permitted to the owner of the capital to lend his money on interest to his agent or trader to conduct trades with it. The worker (trader) enjoys security of his wage and is insulated from the financial outcome of the operation and the risks associated with it. Furthermore, lending of money with *riba* (usury) and is *haram* (strictly forbidden) by the Islamic law, as stated in the 7th quoted extract.

However the owner of the capital or the commodity is allowed to provide his funds (or his stock-in-trade) to an agent to trade with, based on profit sharing on an agreed ratio. But the sharing basis has to be such that that the eventual profit be distributed according to the ratio, while in the event of losses, it would be on the owner's account alone. The share of loss of the trader or worker is to be limited to only his loss of wages from his efforts. Only this basis of sharing is allowed for in commercial operations between a capital owner and his agent/trader.

From this we learn that the lawful modes of earnings for providers of tools of production and those providing trading capital are the opposite of each other. Each has its respective mode, while in both modes are allowable as remuneration to the agent or the worker (*'amil*).

In case of an uncultivable land – that requires fresh work and labour to be productive – the owner is only allowed to charge a rent. It is not permissible for him to seek a share in the produce or profits accruing from cultivation. Certainly, a landowner shares in the profit on an agreed ratio in the sharecropping contract (*'aqdul Muzara'ah*). But we have learnt from the jurist text of ash-Shaykh at-Tusi as per the extract no. 3, that farming contract is allowed only if the landowner provides both the land and the seeds. So the owner of the land is also the owner of the seed according to the opinion of ash-Shaykh at-Tusi, as appears from the text given. Thus, his share in the product is not on the basis providing the land, instead it is on the basis of his ownership of the materials, which are the seeds.

Earnings Stands On The Basis Of Expended Labour

Having organized the upper structure and summing up its general phenomena, it is easy for us to reach

the doctrinal (normative) side of the theory which binds and unites together the phenomena, and to know the norm, which explains the modes of earnings and remunerations that result from ownership of the forces of production and justifies the permissibility or prohibition either mode, or both in the respective cases.

The norm – which combines all the legal precepts of the upper structure on its discovery or its proceedings – is that the acquisition of a gain or an earning (*al-kasb*) stands on the basis of labour expended in the course of an undertaking. The expended labour is the single fundamental justification by the one who expends it, for the entitlement to recompense from the owner of the enterprise, who engages the worker. Without a person's share in the expending of labour, there is no justification for his entitlement to earnings.

The norm has its affirmative (positive) and negative sense and purport. On the positive side it lays down that acquisition of gains on the basis of labour is valid. On the negative side, it declares the invalidity of gains that do not stand on the basis of expending of labour in an undertaking.

The Affirmative Limb Of The Norm

The affirmative (positive) side is reflected in the prescriptions regarding hire or renting, as stated in the first and second quoted extracts. These prescriptions permit an employee (a labourer) whose service has been engaged for a particular intended work to receive a wage by way of compensation for the labour expended by him on that project.

The prescriptions also permit one who owns tools of production to give them to another person to use in the project in consideration for a specified remuneration (in the form of rent) that he receives from the person who undertakes the project. This is in view of the fact that the tools embody the 'labour' embedded in them and that this labour disintegrates in the course of its employment in the production operation. For example, the spinning wheel represents an embodiment of a specific (amount of) labour, (being) made from an ordinary piece of wood as a tool for spinning. This labour embedded in it is 'expended' progressively during the spinning operation. So the owner of the spinning tool has a right to earn for 'his labour' as a result of the depreciation of the labour stored in the tool. Thus, the hire that the owner of the tool of production earns is a type of wage or hire that an employee or a hired labourer receives.

The earnings from both of these rests upon the investment of labour in the course of project, with the labour being in two different natures. The labour that the worker expends in is direct and in real time. He accomplishes the work and expends the labour at one and the same time. As for the 'labour' that undergoes wear and tear – and is expended in the course of the employment of the tool of production – is a 'packaged' labour, from the owner of the tool. The work was already accomplished and is in a form ready for use and is subject to wear and tear in the production operations.

We thereby learn that the expended labour that the theory regards as the sole basis for earning

compensation is not merely direct labour, but also includes embedded labour 'stored' in goods. Hence so long as there is an expenditure of labour and depreciation or wear and tear of embedded labour, it is the right of the owner of the expended labour to earn compensation agreed upon with the enterprise owner irrespective of whether the labour gets 'consumed' by the project directly or indirectly.

On the basis of this demarcation of the expended labour, which includes both modes of compensation, we can also include buildings as among tools of production. Islam allows a building owner to provide his property on rental and earn remuneration in consideration for its use. A building is also a 'product' of previous works – with embedded labour – and gets consumed through wear and tear during its use, even though it has a longer life span. Hence the owner of the house has a right to obtain compensation vis-à-vis the 'work' stored in the house, utilized and sacrificed in a production operation.

It is similar with a piece of agriculture land that the owner provides to a farmer in consideration for a rent. The owner of the land receives his right to the land on account of his reclamation works in relation to the land, and works related to the conditioning of its soil and rendering it fit for cultivation. His right to it ceases when the land is exhausted and when traces or results of his labour vanish, as stated in the foregoing jurist's texts. Thus, as long as his labour remains embodied and his endeavours stored in the land, the owner of the land is entitled to demand rent from the farmer's use of the land and benefits from it, since the farmer's exploitation of the land causes the depreciation (loss) of a part of the labour, which he (the owner of the land) has expended in the course of its reclamation and refitting for cultivation.

The rent or wage, within the permitted limits of the theory, always stands on the basis of the consumption of a person's labour by another in the course of the operation and it is paid to the owner of the consumed labour. There is no distinction between wages for labour or rent for (the use of) tools of production or landed property or agriculture land as regards this basis, even though the nature of the bond that connects the owner of the wage with labour may differ. Waged labour is a direct work by the employee while the labour stored in the tools of production, for example, is indirect labour derived from past work and stored in the tool now consumed in the operation run by a new person.

Hence the wage an employee receives is a wage for the newly expended labour that he himself undertakes while the rent which the owner of the tool receives is in fact a rent against labour expended in the past, stored in the tool and is now consumed in the operation by the owner of the enterprise.

This is the affirmative sense of the norm, which explains the earnings derived from ownership of the forces of production. We have learnt that this sense is reflected in all manners remunerations are earned from having ownership over the forces of production.

The Negative Limb Of The Norm

The negative limb disallows earnings that are not justified by labour expended in the course of an operation. This is conspicuously clear from the texts and prescriptions given in the preceding juristic text in the extract xii (h). It was mentioned that that if a person buys a pasture for fifty *dirham* then it is not

lawful for him to sub-lease (or give on hire to another person) for a more than fifty, unless he does some work on the pasture to improve it with the consent of the owners of the pasture. In such a case there is no objection to sub-lease it for a sum higher than the price he had leased it for. His work makes it legitimate for him to earn a higher rental.

This text explicitly establishes this negative limb because it prevents the herdsman from acquiring a gain resulting from the sub-lease of the pasture for a rental higher than that he paid to the first owner, without doing any work on it. The text affirms in the book *an-Nihayah* that if he does some constructive works on the pastureland, then his efforts justifies the surplus he earns. The profits that he acquires are for the labour that he advances as seen in this extract: *“indeed he did some work therein so it is proper for him.”*

By accounting for the gains and linking it with labour in this manner, the text intends to affirm the negative limb of the norm. With labour it becomes proper for the herdsman to acquire the new gain, while without labour it is not. It is obvious that this reasoning gives the text the meaning of the principle. Thus, it does not remain a mere rule in the case of the herdsman and the pasture, instead its significance and application extends to other business areas so as to make it a basis for earning of gains in general¹³.

Therefore, acquisition of gain – according to this text – is not valid without direct labour that is embedded in the tools of production or landed properties. This fact itself follows from the text in extract xii (b), which prohibits a person who leases a piece of land at one thousand *dirhams* from sub-leasing the land at two thousand *dirhams*, without expending any labour thereon. This is in line with the principle that explains it and the general basis on which the prohibition is established, that is because it is guaranteed as stated in the text¹⁴.

By this approach of understanding the context and seeking the meaning behind the juristic decision, and we elevate the instruction for a specific transaction to that of a general rule, that it is not permissible for any person to secure for himself a gain without putting in labour since work – in the theory – is the main justification for remuneration and gains.¹⁵

Just as the texts state the negative limb of the rule, they also connect it with a number of prescriptions from the foregoing upper structure. Among those prescriptions are those which prohibit a lessee of a land or a building or a hirer of tools of production from sub-leasing or renting them out with at higher rates, unless he does some work on them. For example, people takes on the lease of a building for ten *dinars* and sub-lease it at twenty *dinars*, thereby earning a net gain of ten *dinars* without any expended labour. This is prohibited on the basis of the principle we have discovered.

Among the prescriptions that are connected with the principle is the prohibition of an employee from employing another worker to do the same work he is hired for at compensation less than what he earns, as stated already in the quoted extract no xii (h). For example, it is not valid for a person who is

employed to stitch a dress for ten *dirhams* to hire another person to do that work for eight *dirhams* for this leads to a surplus of two *dirhams* for himself without doing the work.

The law of Islam makes that illegal in accordance with the negative limb of the principle, which rejects the types of earnings that are not based on the performance of work. The tailor hired by the owner of the piece of cloth to make a dress is allowed to employ another person to do the work for eight *dirhams* and keep the two *dirhams* for himself only if he does part of the work – in making of the dress and completes a phase of the tailoring work – which he is hired for, in order to legitimately earn the two *dirhams* from the tailoring work he expended on the making of the dress.

The third prescription we find in the upper structure connected with the negative limb of the principle is that we came across in the quoted extract no. VI. That is the prohibition of the owner of the capital or stock-in-trade (*maal*) in a *mudarabah* partnership contract, from holding the agent or trader responsible for the security of his *maal* (capital or stock-in-trade). The significance is that if a merchant gives trading capital – such as cash or commodity – to his agent or trader, to trade with on the basis of profit sharing, then he is not legally entitled to charge the latter with the deficit in case the trade results in a loss.

This means that the owner of the capital has before him two options in dealing with the trader or agent. First, he may sell the merchandise to the agent for a specified amount of money, which the agent will pay him from the proceeds after the final disposal of the goods. In such a case, the agent becomes a guarantor for the specified amount of compensation agreed upon and holds himself responsible for its payment, along with the fulfilment of all the legal conditions, irrespective of whether the trades will eventually result in profit or loss. Under such arrangement, the owners of the merchandise will neither share the profit with the agent nor will he be entitled to anything except the agreed specified sum of compensation, since the merchandise becomes the property of the agent and all profits accrue to him alone.

It is on account of this that it is mentioned in the tradition given previously in the quoted extract: “*He who holds an agent that is the merchant who trades will be entitled only to his capital (the merchandise or the capital, he gives)*”.

The other option is for him to remain the owner of his merchandise and employ the agent to trade with it on profit sharing basis. Under this arrangement, the owner of the merchandise will be entitled to profit, for the merchandise is his. But it will not be valid for him to require the agent to compensate for any loss. It is this prescription or legal rule linked with the principle that we have discovered through the upper structure. And that is because the loss in business is not because the agent had consumed the embedded labour in the merchandise in the course of the commercial operation. This is unlike the case a building or of tools of production – used in production operation – whereby the consumption of the embedded labour (in the building or tools) during operation by the enterprise owner entitles their owners for remunerations. This compensation obtained by the owner of the building or the tools of production is based on expended labour.

The case of a trading operation is different. A trader or agent receives from the owner of the capital or property a sum of say, one hundred *dinars* to trade with on the basis of partnership the profit. The trader buys one hundred pens with the money. Let's assume that the price of pens fall in the open market for whatever reason. If he is compelled to sell the pen for ninety *dinars*, he shall not be held responsible for this loss. He shall not be obliged to pay proportionate compensation for the fall in the value of the merchandise because the loss does not result from consumption of the labour stored therein. Instead, it was the result of the fall in the exchange value of the pen or a decline of their market prices.

So here the issue is not that of a person's stored labour that gets consumed and expended in the course of the utilization of the goods such that the trader needs to compensate the capital provider. On the contrary, the labour stored in the merchandise remains intact as it was, unfettered and unconsumed. Only its price had suffered a decline. So it is not for the owner of the merchandise to seek compensation from the trader for that. Otherwise, he would earn gains without putting expended labour and without the trader having consumed anything of the owner's (stored) labour in the operation. This is rejected by the negative limb of the principle.

The Binding Of The Prohibition Of Usury With The Negative Limb Of The Principle

Just as the interdiction of imposing guarantee is bound with the negative limb of the principle that we were deliberating on, we can also regard the prohibition of the usury as one of the pillars of the upper structure, which rests on this negative limb of the principle. The interdiction of usury is rather one of the most significant parts of that structure.

We have come across the order prohibiting usury in the quoted extract vii of the foregoing upper structure, which explains Islam's prohibition (*tahrim*) of all types of lending with inflated repayment. In the established capitalist practice, interest is considered as a wage (remuneration) for the capital or funds that the owners advance to commercial projects, etc. in return for recompense at a specified rate for a given period on the funds advanced.

It is not very different from the recompense that the owners of the landed properties or tools of production earn from renting of those properties or tools of production, just as you can lease a house to dwell in for a period of time and then hand it over to its owner along with the specified rent. Likewise, it is permitted by common understanding (*'urf*) that accepts interest for one to borrow an amount of money for consumption or commercial purpose and then returns the amount along with the specified recompense (the interest) to the lender.

By its prohibition of interest-bearing loans and by its permission of gain or profit accruing from leasing of landed properties and tools of production, Islam reveals the theoretical difference between cash capital and the landed properties and tools of production. This difference should be explained in light of the theory and on the basis of the principle that we are now pursuing, in order to know the reason or the ground that calls upon the economic doctrine to abolish the recompense for capital – or in other words

the abolishment of the fixed gain accruing from the ownership of funds – while allowing the recompense for tools of production and even a fixed gain accruing from ownership of these tools.

Why does it permit the owner of the tools to earn income from those assets by way of renting them out at a fixed gain without expending direct labour, and not owner of the capital to earn income from his funds by lending it a guaranteed rate without having to expend labour? This is indeed a question we have to answer convincingly and decisively.

Actually, the answer to this relies on no more than a recourse to the principle either its positive or negative limbs. The secured earning or profit – the rent or wage accruing from ownership of the tools of production – is implied by its affirmative or positive limb of the principle. The embedded labour in the tools of production constitutes a right for compensation for the wear and tear they suffer from in the course the production operation. The wage or rental paid to their owner is, in fact, a wage in respect of past labour and consequently represents a gain or earning on the basis of expended labour. Hence it is permissible according to the positive limb of the principle.

As for the secured gain accruing from the capital fund – the interest – there is no theoretical justification for this. The merchant who borrows a sum of one thousand *dinars* for a commercial project at a specified rate of interest will repay the lender – within a specified period – the sum of one thousand *dinars* without any form of loss incurred from wear and tear by its use. Under such arrangement, the interest would become an illicit gain since it is not based on any form of expended labour, and thus comes under the negative limb of the principle.

Thus we learn that in the Islamic Law the difference between the interest on capital fund and the rental on hired tools of production arises from the dissimilarity in the nature of the utilization of the capital fund advanced and that of the hired tools of production. The utilization of a capital fund does not cause any depreciation of the capital fund in terms of its character, or result in a decay of any part of the labour stored therein. This is so as the borrower is obliged under the loan contract for the repayment of the full amount within the specified period. And the money that he repays in discharge of the debt has the same value and utility (as that he borrowed earlier).

As for tools of production which a person hires, its utilization in the course of production operation, would lead to some degree depreciation and decay of the labour embedded in them. Because of this, it is only appropriate that their owners earn some gains, on hiring out of the tools, on the basis of the expended labour. But it is not legitimate for the owner of capital fund to earn any gain in this way because he recovers his rented capital fund as it was, intact and without suffering any wear and tear from its use.

In revealing of the link between the upper structure and the theory, we may add another rule to the collection of the prescriptions, which we have presented, which was already mentioned in the sixth quoted extract. It is a prescription that decrees the prohibition of an agent in a *mudarabah* contract from entering into another (*mudharabah*) agreement with a second agent to carry out the work at a lower

profit sharing ratio than that he agreed with the principal. Obviously, prohibiting this practice is wholly in agreement with the negative limb of the principle, which we are seeking to reveal.

This rule disqualifies a gain that is not based on expended labour, because when the first agent would be earning the difference between the two different rates of profit sharing without having to do any work. So it is only natural that such a gain be abolished in conformity with the general principle.

Why Are (Providers Of) The Means Of Production Not Granted A Share In The Profits?

From the foregoing upper structure, there is one remaining issue about the prescriptions as to the sharing of profit. Let us prepare ourselves for that question by organizing what we have discovered so far.

We have learnt from the Islamic theory of post-production distribution that earning a remuneration or compensation is valid only on the basis of consumed labour. Consumed labour is of two types; labour expended and consumed in real time (of production) like the labour of a production worker; and labour expended in the past, embedded in an item or object and consumed during its utilization in the course of operation, by the hirer of the object. This includes buildings and or tools of production. They suffer wear and tear in the course of their utilization.

We also have learnt that the ownership of capital fund does not constitute a (legitimate) source of earning because interest on loans is not based on consumption of labour in either form. It is thus prohibited. We have looked at all types of fixed earnings and compensations. Some of them are permitted like rental from a building while some forbidden like interest from loans. We have also been able to link each with either the positive or negative limb of the principle.

But so far we have not explained the other type of earnings apart from the fixed compensation mentioned in the foregoing upper structure. By this we mean the sharing in the profit and the eventual outcome of the operations in terms of profit or loss. The working partner in a partnership (*'aqdul-mudarabah*) cannot demand, under any circumstances, a fixed return from the partner who invests the money. He can demand only a share in the profit and his contractual wage or spending in accordance with the outcome of the operation.

It is similar with a working partner in the farming contract. In such contract, earnings are permitted on the basis of profits or produce as stated in the foregoing extracts iii, vi and x. Because of this, we stated at the beginning of our discussion that two types of gain for the labour are permitted. First, as wage or compensation and second, as a share in the profit. Likewise, the owner of stock in trade in a working partnership contract and the landowner in a farming contract or owner of the crops in the farm watering contract are allowed to earn compensation on the basis of profit. Each of them has a share in the profit according to terms agreed to in these contracts, as stated in the foregoing extracts we mentioned previously.

In contrast to this, the provider of tools of production is disallowed any share in the profit. The *Shari'ah*

does not permit him a gain on that basis. Rather it allows him an opportunity to earn only on the basis of fixed return. The owner of tools of production cannot provide them to the worker on the basis of a share in the profit or the produce, as stated in the extract no. xi of the foregoing upper structure whereby it is ruled that the person who owns hunting equipment is prohibited from giving it to the hunter on the basis of the owner earning a share of the game captured.

These are quite obvious from the upper structure, and it is up to us to posit the following questions for the purpose of discussion.

Why is it allowed to earn gains on the basis of sharing in the profit for labour, while the same is not allowed in relation to tools of production? And how could it be that while earning gains by this profit sharing is forbidden for the owners of tools of production, it is allowed for the owners of merchandise, lands and crops and farms?

The difference between labour and the tools of production – that allows profit sharing for labour but disallows it for tools of production – arises from the theory on distribution of factors of production, the pre-production distribution. We have learnt from that theory, that labour – the pursuit of works of utilization and deriving benefit from resources in nature – is the general reason and basis for entitlement and ownership in respect of those natural assets. We also learnt that from the standpoint of doctrinal economics there is no other reason or basis for entitlement and ownership. Likewise, we learnt that if an individual acquires a private right by carrying out labour on these assets in nature, his right continues to remain intact and as long as the nature of labour, on the basis of which he acquired the right lasts. Under this circumstance, it is not permissible for another person to acquire a private right in those assets by expending fresh labour on them as elaborated in detail by the theory on the distribution of the factors of production.

But this does not mean that the new person's labour differs in nature from that of the first. Rather, it is that each of them would itself separately constitute a ground for gaining ownership of the asset he has laboured for. The new labour is denuded of its effect only in consideration of the first labour having preceded it in time and because the operation of the first person results in conferring ownership of the asset to him.

Thus the first worker, on the basis of his having been earlier than the second worker, shields his (right) from the effect of the work of the second. Because of this, it becomes natural that when the first person forgoes his right, the second person's work may return to take its effect. And this is what takes place in respect of the contracts of *muzara'ah*, *musaqat*, *mudarabah* and *ju'alah*. For example, in the '*aqdul-Muzara'ah* (farming contract) the farmer exerts and carries out labour for the cultivation of the seeds with the eventual transformation into crops. However, this labour that he carries out does not give him the right to ownership of the crop, for the material that he works on (the seeds) are the property of the landowner. If the owner of the land allows the farmer – by the farming contract – to reap the fruit of his labour and forgo his right to say, half of the material, then there remains nothing to prevent the farmer to

eventually own half of the crops.

On this basis we learn that the share of the worker or agent in the produce (or the eventual product or profit) actually expresses the right of labour that he carries out in respect of a material (for example, the seed, the crops and/or merchandise) and the entitlement, which results from its performance, in accordance with the general theory of pre-production distribution. This entitlement is however at times suspended because of the right of another person that precedes it. If that person forgoes his right under a contract, like the contract of farming or other contracts between the worker and the owner of the property, there is nothing to prevent the worker to gain his right in respect of the assets and output of operation within limits 'waived' by its previous owner.

As for tools of production, they fundamentally differ from labour that an agent or a worker performs in accordance with these contracts. The farmer, who enters into a farming contract with the owner of the land and seeds, carries out labour and does painstaking work. It is his right that he may own it within the limits of the terms allowed in the contract. But as for the owner of the hunting equipment, who gives it to a hunter, he does not carry out the work. Nor does he make effort to acquire possession of the prey. It is only the hunter alone who carries out the labour and exerts efforts to capture the animal. So there is no justification for the owner of the hunting equipment to be entitled to the outcome of the hunter's efforts.

The performance of labour in the capture of the prey is the basis for its entitlement and the owner of the hunting tool has not performed that (any part of) labour. Therefore merely having the hunter consenting to a share by the tools owner in the gains from his hunting efforts is not sufficient as long as it is not in conformity in the general theory of distribution. Here, it is not the right of the hunter that prevents an entitlement by the owner of the hunting equipment. It is because there is no theoretical justification for such entitlement.

In this way we learn from this point about the difference between direct labour and stored labour. Direct labour is a labour, which is performed by the worker on the base material. The labour constitutes a justification for his right to the (share of) ownership in the end product of the operation, when the owner (of the material) forgoes his (part of his) right. As for the stored labour, like that in the tools of production, the owner does not expend direct labour in the operation. The owner of the hunting gear, for instance, does not perform direct labour in capturing the prey. So he has no right to the ownership of the output, irrespective as to whether or not the performer of the labour – for example, the hunter – forgoes his ownership. He is only entitled to the compensation for the hire, that is, in consideration of the consumption or depreciation of the stored labour during its use in the operation.

In light of it, we are able also to perceive the difference between the owner of the tools of production who is not permitted to have a share in the profit, and the owner of the land in the farming contract or that of the merchandise in the *mudarabah* contract and similar objects in cases of whereby sharing in profit is permitted. Those owners who are allowed to a share in the profit or produce, in fact, own the (primary) materials on which the worker performs the labour.

For example, the landlord owns the seed (according to a foregoing text by ash-Shaykh at-Tusi) that the farmer sows, while the owner of the merchandise owns the commodities with which the agent trades. Now we know from the theory of pre-production distribution that ownership of a material does not lapse with the transformation of that material by another person and with the material acquiring a new utility because of the operation. Thus, the right to the produce or profit accruing therefrom is that of the owner of the seed or the merchandise so long as he owns the primary materials.

The circumstances wherein the owner is allowed the appropriation of the profit or produce – such as *Muzara'ah*, *musaqat*, *mudarabah*, etc. – support and consolidate the correctness of the explanation we have offered for this ownership. The common factor in all these arrangements is that the primary material on which the agent or the worker carries out the work is already a property of its owner.

Observations

Risks As Viewed By Islamic Economics

The findings we have come across from the theory of the post-production distribution plainly shows that the theory does not acknowledge risk as one of the basis for earning gains and that there is no type of gains that is justified by virtue of risk-taking. In fact, risk is neither a commodity that an investor or entrepreneur offers to another person such that he may ask a payment for it, nor is it a work that he expends on a material such that he is entitled to appropriate or demand a wage or compensation from its owner.

Risk is only a particular state of mind that prevails upon a person, who is trying to embark on an undertaking that he is uncertain about. Because of this uncertainty, he may either withdraw from the venture or instead overcome his fear and proceed with determination. Thus, it will be solely for him to choose the course of action by his own will and assume the doubts associated to the intended venture, for which there is a probability of loss. So it is not his right to demand a material compensation in respect of this fear, as long as it is a personal emotion and not that of embedded labour or a produced commodity.

It is true that sometimes determination and the ability to deal with fear and doubts are of great psychological and moral significance. But a moral value is one thing and economic value is another. Many have fallen into error influenced by the capitalist thought, which has a tendency to explain the point and its defence on the basis of risk. They say that the profit allowed to the owner of the stock-in-trade (cash capital or commodity) in the *mudarabah* contract is theoretically based on risk assumed by the owner. It is argued that even though he does not do any work, he bears the risk and exposes himself to the possibility of loss by providing his funds or merchandise to the agent to trade with. It is a duty of the agent, therefore, to allocate a share of the profits as compensation against the risk undertaken, as agreed upon in the *mudarabah* contract between them.

But the fact has been made fully clear in the previous discussion that the profit that the owner of the fund or merchandise obtains as a result of the agent's trading operation is not based on the risks. It is justified on the basis of his ownership of the fund or merchandise. Even though the merchandise is most likely to increase in value because of a commercial labour that the agent carries out – like transferring it to the market place and making it readily available to the consumers – it remains the property of the owner, because his ownership doesn't get nullified by another person working with his merchandise or making changes to it. This is in line with the principle of constancy of ownership.

So the right of the owner of the fund or the commodity to the profit is the result of his ownership of the material that the agent handles profitably in the trades. It is similar to the right of the owner of a plank of wood, manufactured into a bedstead. Because of this, the profit is considered the right of the owner of the fund or the commodity, even if he does assume any efforts or hardship. For example, a man trades with the property of another person without his (the owner's) knowledge and makes profit from his trade. In such a case the owner of the property (the fund or commodity) can subsequently consent to that and appropriate the profit himself. He can also object to it and seeks to obtain his property or what is equivalent to it from the agent.

The entitlement of the owner to the profits in this example is not based on the element of risk, for in any case his property is secure. It is the agent (or the trader) who took the risk of having to compensate in the case of an eventual loss. This means that the right of the owner of a property (or fund) is not theoretically the result of the risks he assumes. It is also not a compensation for his resistance of fear of the dangers, as we read in the accounts by the authors of traditional capitalism. These writers attribute the mark of heroism to risk-taking and make it a legitimate basis for earning the gain on the ground of his courage.

There are a number of elements in the *Shari'ah*, which demonstrate its opposition to the admission of risk-taking as justification for the acquiring of gain. For example, there are many who are inclined to explain and justify usurious interest based on the element of risk involved in lending. Let us examine this deeper.

A person lending his money faces the risk of losing his money if the borrower is unable to repay or if the borrower encounters an unfortunate circumstances such that the loan is not settled. It is argued therefore that it is his right to obtain a recompense for assuming the risk with his money for the sake of the borrower and this recompense is in the form of interest.

Islam does not admit this kind of thinking and does not view the assumption risk as justification for the interest that the lender earns from the debtor. This has been decisively forbidden. The prohibition of gambling and the earning derived from the activity is another legal aspects of the *Shari'ah*, which demonstrates its adverse view on the element of risk-taking. This is because the earning resulting from gambling is not based on productive work. It instead rests on the risk alone. The gambler obtains his wage because he has taken the risk with his money and proceeds to pay over the wage to his opponent

in case he loses.

We may group together with the prohibition of the gambling with that of *shirkatul-abdan* (pool or partnership bodies). According to many text of jurists like al-Muhaqqiq al-Hilli in *ash-Shara'i*, and Ibn Hazm in *al-Muhalla*, these are forbidden. In this context the jurists refer to a partnership between two or more persons, whereby each of them pursues his particular work and craft and sharing jointly the earning accruing therefrom. For example, two physicians agreed between them that each one of them will perform the work of visiting patients and each would share half of the fees they jointly earn during the month.

The prohibition of this sort of partnership is in line with the adverse view of the *Shari'ah* towards the element of "risk" in relation the earning based on risk instead of work. The two physicians in the above example engage themselves in this kind of partnership, only because they do not know beforehand the amount of fees they will earn from their work. Each one of them thinks that the fees his partner earns may be more than what he does. So he engages in such a partnership, agreeing to forego part of the fees he earns in the event it is more than that of his partner's and enjoying part of that earned of his partner, in the event the partner earns more than what he does.

As a result of that, the physician with lesser earning will have a right to share part of the earning of the other physician and the fruits of his labour because he had taken the risk in relation to his own earning from the beginning, if the result were to be the opposite. This means that the sharing in the earning by the physician who earns the smaller fees arises from an element of risk and is not based on expended labour. So its prohibition confirms the *Shari'ah's* adverse view on earnings based on risk.

Capitalist Justification Of Interest And Criticisms Against It

We have just learnt that the risk element in lending, against which Islam adopts an adverse view, is one of the justification capitalism uses to support its explanation of interest and the right of the lender to impose it on the debtor. We have also learnt that the justification for charging interest on the ground of the risk element is wrong in Islamic view, because Islam does not consider element of risk a lawful ground for earning. Islam instead connects earnings only with direct or stored labour.

In its justification of interest on the basis of risk, the proponents of capitalism overlooks the role mortgages play in lending operation. By requiring mortgages as collaterals, the lenders obtain guarantees and eliminate the risk element. What then is capitalist view of (interest on) loans propped up with mortgage and sufficient guarantees?

In justifying interest, the capitalist thinkers went beyond just the element of risk. They also have advanced a number of explanations on the doctrinal aspects for its legitimacy. Some said that the interest that a debtor pays to the lender is a compensation for depriving the lender of profitable use [16](#) of the fund advanced and remuneration for having to wait for the whole duration of the agreed period. They

argue that it may be viewed as a charge that the lender demands in consideration of the borrower's utilization of the fund lent to him, similar to the rent that a landlord gets from a tenant for utilization of his residence.

In light of Islamic theory of distribution that we have discovered, we perceive the contradiction between this attempt and the Islamic thoughts in respect of distribution. Islam, as we have learnt, does not acknowledge earning or gain other than that on the basis of compensation of the expenditure of direct or stored labour, while the capitalist thinking is such that a borrower must repay the lender the loan amount along with the compensation (interest) even though there isn't any labour expended and any depreciation of the fund returned by the borrower. There is therefore no Islamic justification for admissibility of interest, since earning without labour is contrary to Islamic ideas of justice.

There are some who justify interest as an interpretation of the lender's right to some of the profits, which the borrower reaps by using the fund the lender had advanced to him. But this interpretation has no relevance in the case of loans, which the borrower spends to meet his personal needs, because he does not make any profit from it. It only justifies the validity of capital provider earning part of the profit when he advances the fund for profit-driven commercial activities.

In such a case Islam acknowledges the right of the capital provider to part of the profit. But this right means partnership of the fund owner with the worker on profit-sharing basis and an alignment of the right of the capital provider with the results of the operation. This in the meaning of *mudarabah* in Islam whereby the capital provider alone bears a loss, while a profit is shared with the worker on the percentage agreed upon in the partnership contract. This substantially differs from profit in the capitalist understanding, which guarantees a fixed return irrespective of the outcome of the trading operation.

Some proponents of capitalism bring forth a stronger justification for interest. They interpret interest as the differential between the actual value of the commodity and its future value. It is based on the belief that time plays a positive role in establishing value. The exchange value of one *dinar* of today is greater than the exchange value of one *dinar* of tomorrow. So if you lend a *dinar* to someone for one year, it is your right that at the end of the year to obtain more than a *dinar*, so that you may recover thereby a sum which is equal to the exchange value of the *dinar* you had lent to him.

If the loan period is over longer period, the lender is entitled to a higher amount of interest in accordance with the greater difference between the present value of the *dinar* and its future value, due to the longer duration. But the notion behind this capitalist justification rests on a wrong basis. It is incorrect for the distribution of post-production to go according to the theory of value. The theory of distribution of post-production is separate from the theory of value itself.

That is why we see that many factors of production which has a role in the formulation of exchange value of the product has no legitimate share in the production output in the Islamic distribution theory. The provider of the respective means of production only earns remuneration from the owner of product,

commensurate with his contribution in the production operation. In Islam, the distribution among individuals is not on the basis of exchange value such that each element of production is given a share in the product equal to its role in the accumulation of the exchange value. Instead, the distribution of the produced wealth is connected with its doctrinal concepts and the Islamic ideas about justice.

Thus, from the Islamic point of view it is not necessary to pay interest on the loan to the lender – even if it is true that present commodity's value is greater than its future value because doctrinally, this is not adequate to justify the interest that represents the 'decline of value', unless interest is reconcilable with the ideas about justice embraced by Islam. We learned earlier that on doctrinal side, Islam does not allow an earning that is not justified by an expended labour, either direct or stored labour. Interest is of this category because it is – according to the last explanation given by the proponents of capitalism, which we have examined – only the result of time factor, not that of work. So it is appropriate for the doctrine to prohibit the capital owner to utilize time to gain interest income, even though the doctrine acknowledges that the time factor has a role in the value (of the capital).

We therefore see the mistake of the linking of the equitability of distribution with the theory of value. This error indicates the failure to differentiate between a doctrinal enquiry and a scientific investigation.

Limitations On The Authority Of An Owner Over The Use Of His Assets

Islam places several restrictions on the owner of an asset over the ways he may dispose with it. There are different sources these limitations arise from. Some has their origin in the theory on pre-production distribution. For instance, under the 'time limitation', the authority of the owner over his property is limited to his lifespan. He is prohibited from deciding the fate of the asset after his departure, as discussed earlier.

Some of the limitations are the outcome of the theory on post-production distribution, for instance, the limitation on the authority of the fund owner over his capital. He is prohibited from earning interest and disallowed from lending on interest. This limitation arises in relation to the theory of post-production distribution that connects earning to expended labour – either direct or stored labour – as we have learnt above.

There are further limitations in the Islamic economic system related to religious and moral conceptions about private ownership. These result from the person's membership of the society, for whose benefit and service, Allah has provided natural wealth. Thus, it is not valid for him to act in a destructive way in relation to his asset. Doing so would be harmful and is against the interest and wellbeing of the society, contrary to the purpose the assets are provided by God. It is natural on this basis, to limit an owner's authority over the use of his assets in a way that may cause injury to others and be detrimental to the interest of the society.

The right of ownership in capitalism is opposite to this. Capitalism does not view the individual's right of

ownership over natural assets as a phenomenon of benefit to society. Instead, in capitalist view the right of the individual is interpreted as the greatest scope of freedom in every field. Capitalism therefore does not place any limit on the owner's freedom, except that it must not interfere with another person's freedom.

Thus, in capitalist system an individual has the right to utilize his asset in any way he likes as long as he does not deprive others of their formal freedom.¹⁷ For example, if you own a large business then it is within your right – based on capitalist conception of private ownership – to follow any method that may enable you to wipe out smaller enterprises and drive them out of the market, even in a way that may lead to their destruction and injury to their owners, for this does not interfere with their formal freedom, which capitalism jealously guards and assure for everyone.¹⁸

It is mentioned in a collection of traditions and reports (*ahadith* and *riwayat*) on the Islamic legislative principle that actions of a property owner in such a way as to cause harm to others are restricted, as mentioned below: –

1. It is stated in a number of reports that Samurah ibn Jundab owned a cluster (of dates). His path of access lies across the interior of the premise of an *ansari* man. Samurah used to come and enter to his raceme without asking permission from the *ansari* man. The *ansari* man told him: “Samurah, you always come upon us suddenly while we are in a state that we would not like your coming upon us unannounced. So when you come, ask permission.” Samurah replied: “ I will not ask permission for the path to my cluster.” The *ansari* man then complained to the Messenger of Allah (S) against him (Samurah). Thereupon, the Messenger of Allah (S) sent for him and when Samurah came, told him: “So-and-so complains against you. His allegation is that you enter his premise without asking his permission, and you come upon him and his family unannounced. So henceforth whenever you wish to enter, ask his permission.” In reply, Samurah said: “ O Messenger of Allah! Do I have to ask permission for my way to my cluster?” The Messenger of Allah then said to him: “Well, then leave it, we will give you, instead, a raceme at such and such a place”. He said: “No.” The Messenger of Allah (S) then told him: “You are a harmful person. (It is not permitted) to harm a believer nor to cause inconvenience to him or injury (*la darar wala dirar*).” The Messenger of Allah, then, ordered to uproot the raceme and fling it at him.

2. On the authority of al-Imam as-Sadiq (a.s.) that the Messenger of Allah (S) passed for the Medinites a decree concerning troughs for date palms, that the use of extra water should not be prohibited. He (the Messenger) passed a decree to the nomads that the surplus water should not be prohibited (for others to use), and that surplus pasture is no prohibited. And he (the Messenger) said: (It is not permitted) to harm others or to cause inconvenience to them (*la darar wala dirar*).

3. Also on the authority of al-Imam as-Sadiq (a.s.), that he was asked about ordering a person to rebuild a wall which had fallen, (the wall) used to act as a curtain between him and his neighbour's premise. He (the Imam) replied: “The owner of the fallen wall cannot be compelled to rebuild it unless it

becomes incumbent upon him to do so, on account of the right of the owner of the other premise or on a conditional term agreed upon in the original contract of the property. But it may be told to the owner of the house, ‘You can buy for yourself your right if you wish’ “. He (the Imam) again was asked: “If the wall had not fallen by itself, but the owner razed it down or he razed it down – without any need (reason) – in order to harm his neighbour?” He (the Imam) replied: “(In that case) he should not be let free since the Messenger of Allah said: ‘Neither damage nor harm (*la darar wala dirar*)’ . So if he razed it down, he must be compelled to rebuild it”.

4. In *Musnad* of Ahmad ibn Hanbal there is a tradition narrated by ‘Ubadah that the Messenger of Allah (S) decreed: “Neither harm nor damage”, and he decreed: “For the wrongdoer that he has no right on the crops he raised on a forcibly seized land:” and he also decreed to the Medinites on date palms that the extra water from the well should not be prohibited; and decreed to the nomads that no surplus water should be prevented in order to prevent extra pasture.

1. While studying the theory on distribution of the factors of production earlier, we sought to determine the right that individuals acquire in respect of natural raw materials (in the pre-production stage) as a basis for their distribution. As these rights were the outcome of labour, the inquiry was directed to the determination of the role of labour in relation to these natural assets. Therefore, the natural resources acquired through labour – in this sense – are also incorporated in the production output. On account of this, the two inquiries, the pre-production inquiry and post-production inquiry – become partially interlaced. This interlacing makes it necessary to provide explicit description when discussing either stage of distribution.

2. Refer Appendix 14.

3. Refer Appendix 15.

4. For what we have learnt from the upper-structure, i.e. the invalidity of *wikalah* (appointment of agents) as stated by Muhaqqiq al-Hilli in *ash-Shara’i* for the work such as harvesting of wood and works in acquiring *mubah* things, or works related to land rehabilitation, by *ash-Shaykh at-Tusi* as transcribed from some copies of his book *al-Mabsut* and confirmed by similar assertion by *al-Isfahani* in the book *al-Ijarah* according to which an employer of a worker does not become owner of whatever quantity of natural material his labourer extracts on the basis of hire-contract.

5. It will be sufficient for us to arrive at these results theoretically from our summary of the latter two of the three points, the implication of which we have adduced from the upper structure. Even if we do not accept the first point, the structure of the theory we have built will still be sound. Let us suppose that the agent produces something from the natural raw material for his principal and his principal becomes the owner of what he produced (these two are preferred). (Refer Appendix No. 15).

Yet, this does not contradict the principle which holds that “the production worker alone is the rightful owner of the material he produces” because the worker himself waives his right and hands it over to another person when he intends to acquire something from him. This basis, which holds that the production worker alone is the rightful owner of what he produces, links the point with the dictum of the upper structure to the effect that the material means of production do not share the output with the worker. It also links with the other point which holds that the capitalist does not become the owner of the output the worker produces simply because of his purchase of labour from the worker, and for furnishing the material and tools for the production process.

Thus the key difference between the idea whereby the principal takes for himself the output of what his agent works on or acquires, and the idea holding that a worker appropriates the output of the work he is hired (by another) to do or what he acquires, became quite fine. The first thought is capitalistic in its nature for it directly accords ownership right of the output to the (owner) of capital and means of production, instead of (the provider of) human labour. It is the opposite to the second thought, which acknowledges the right of the worker to the material (he produces) and regards upon his engagement by another person (for example, for the harvesting of wood from the forest) as implied from the worker’s handing over his

ownership of the output to the hirer and waiving his right in favour the other's favour.

[6.](#) See Iqtisaduna, Vol. 1, Part. 1.

[7.](#) Mutaqabbil is the agent or person who uses of the land of another person.

[8.](#) A measure of weight, equivalent to 1/16 dirham or 0.195g.

[9.](#) The substance of the details in this text and the subsequent text is as given below:

That the difference in the two cases is that between a lease (tenancy) contract and a muzara'ah (farming contract). In the case of ijarah (lease) contract, when a person takes lease of a land, for example, at a hundred dinar, it is not permissible for him to give it on a sub-lease to another person for more than a hundred dinar if he himself does not do any work on the land. But in the case of muzara'ah (farming contract) when the man agrees with the owner of the land (and the seed) to cultivate his land and to share with him in the profit on the basis of, say, fifty per cent, it is allowable for the man – who undertakes the cultivation of the land – to later on give it to another man who manages the cultivation (on the land) on the basis of thirty per cent for the latter, while keeping to himself twenty per cent.

The text tries to explain this difference between the case of muzara'ah and the case of ijarah and mentions, in justifying its validity, that this is guaranteed (madmun) and that the other is not. The text (tradition) means to convey by this description (madmun and ghayr madmun, that is, guaranteed and unguaranteed). It says that the second lessee of the land rents from the first lessee for a fixed agreed sum in excess of the rental in the first lease contract. So a fixed rental is guaranteed in the contract itself. But the farmer who receives the lease under a farming contract ('aqdul-muzara'ah) to cultivate the land does not guarantee anything to the first lessee. So whatever the first lessee acquires as a result of the farming contract is not guaranteed under the farming contract itself. The tradition means to convey that the difference that accrues to the first lessee when he gives the sub-lease for a sum higher, is guaranteed in the lease contract. So it is invariably necessary that a work, prior to the contract, be carried out to justify this guaranteed gain because the Shari'ah does not acknowledge a guaranteed gain except in return for a work. As for the difference that accrues to the lessee if the second lessee tills the land for half, it is not guaranteed in the farming contract itself. Thus it is not necessary that the first lessee do some work prior to the farming contract to justify this gain.

[10.](#) The explanation of this tradition is: If a person undertakes the lease a land for one hundred dirham and then gives it to a farmer to cultivate it on the basis of partnership with the producer on a ratio of say, fifty per cent and that this fifty per cent is more than one hundred dirham, it is not (legally) permissible for the lessee to pocket the additional sum, unless he expends some labour on it, such as digging of a canal or similar works.

Many of the jurists remark that this tradition leads to abolishing the difference between ijarah and muzara'ah. It is not permissible for a lessee who leases at a lower rental to take advantage of the difference between the two rental rates without any work. Similarly, it is not valid for him according to this tradition to gain from the amount that results from disparity in the two farming contracts. Because of this, this tradition (leads to) clashes in their opinion with the two previous traditions since these two traditions lay emphasis on the difference between the lease and farming contract and on the fact that the difference is not valid without work, but the difference resulting from the percentage ratio difference in the two farming contracts is valid.

But the fact of the matter is that the traditions go well together and there is no actual contradiction between them. The explanation by juristic mode of discussion is that the two previous texts tackle a specific aspect, that is, the difference between the agreement of the lessee with the landowner and his subsequent agreement with the farmer who tills the land. The profit that the first lessee gains (between the rate he pays to the land owner and that he receives from the farmer who actually tills the land) is the result of this disparity. The profit the lessee (who is actually an intermediary) earns results from the disparity (in the sharing ratio) between the two farming contracts. It is legitimate even if the intermediary person does not do any work on the land before the farmer undertakes to till it for a lesser sharing ratio. But if the disparity between the ratios is the result of the disparity of two lease contracts, then it is illegal unless the lessee does specific work on the land before he lets it to a person who agrees to work for a less percentage ratio of return.

However the text of the last tradition in the report of al-Hashimi considers that it is necessary for the first lessee to do some works like excavating the canal or a similar work for the validity of the farming contract that he enters into with the farmer, and for the legitimacy in benefiting from the surplus resulting from the difference between what he gives to the landlord and his share of the profits from the actual work (by the farmer).

In order to know that import of this tradition does not contradict with the two preceding traditions, it is necessary for us to know these. First, the work – which the text in the tradition reported by al-Hashimi considers the condition for the validity of the farming contract that the lessee has with the farmer – is only the work carried out after the conclusion of the farming contract, not before. This is borne out by his (the Imam's) words ("Yes, if he digs a canal or does something whereby he helps then it is his"). The meaning of his digging the canal or his doing work and his helping them thereby is that these works were accomplished (executed) after the conclusion of the farming agreement he entered into with them. But if the lessee digs the canal before he gets other persons, whom he farms out the field to share in the produce, then this digging cannot be described as done for helping them or done on account of them. The words in the tradition are indicative of the fact that the work – which is made a condition – is the work that is done after the conclusion of the farming contract, while the work made a condition in the two preceding traditions (for the validity of the lease contract with a higher rent) is the work the lessee carries out before he leases out the land for a higher rental than that he pays the land owner.

Second, in this tradition the extra (a higher) rental is not provided for in the contract. It may only result from outcome of future events. (What really happens is that) the lessee leases the land for a specified rent. The contract states that each of the contracting parties will have half of the yield. That half, by nature, is an unspecified amount. It is just as possible that the (eventual) amount is less than the rent that the lessee has paid to the landowner. Likewise, it may also be equal to the rental amount or more. The extra amount which the tradition talks about is not specified – by the nature of the farming contract – for the farmer to pay the lessee (in the form of a higher rent than that the lessee pays to the land owner). It only binds the working farmer in the contract to pay a specified ratio of the produce irrespective of whether it is more or less than the amount of rent the lessee pays to the land owner.

When we look at these two matters we can say that the condition (for work to be done on the intermediary lessee) in this tradition of al-Hashimi (in relation to his farming contract) with the farmer who actually tills the land is not for the justification of the surplus the lessee gains from the excess of the rental he pays to the landlord over the share of profits receives from the farmer. Let us, for example, assume a ratio of fifty-fifty. The condition that the lessee must perform some work is only for the validity of the farming contract, for the fulfilment of its legal requirements, as to its being a specific contract irrespective of any addition or deletion.

That is because of the juristic assumption that in the farming contract, it is not sufficient that the landowner offers only his land. Rather, for the contract is to be valid it is necessary for him to make a commitment to also provide another means of production beside land. This is indicated in the juristic text, which we have transcribed from ash-Shaykh at-Tusi in the third quoted extract. In this text, contribution of seed is made obligatory on the landlord and the element of production that the text (in the tradition reported by al-Hashimi) deals with, it is not specified that the intermediary lessee binds himself to provide seeds to the farmer. Thus it is stipulated that he may be made responsible to share in the farming works of the farmer. From this it may be concluded that the owner of the land – the owner who holds the ownership of the land or owns the benefit accruing from it – who enters into a farming contract, is required to contribute to the cultivation works or provide seeds or spend on similar things. Providing only land would not be adequate.

The explanation of the text of al-Hashimi in this light does not clash with its general meaning and retains intact the difference between muzara'ah (farming contract) and ijarah (lease) as fixed by the two preceding traditions, because the work that justifies 'sub-leasing' the land at a rent higher than that he pays to the land owner is the work which he does before he concludes the sub-lease contract. Its importance lies in validating the sub-lease contract. As for the work that justifies him partnering with a farmer (under a farming contract) for a specific share (say, half) in the produce, it is a work, which the intermediary lessee invests before concluding the farming contract. Its importance lies in the validating the principle of the farming contract, not only for to justify or legitimize in the higher return.

[11.](#) A fixed land measurement that equals to five-eighth (5/8) of an acre.

[12.](#) Herein, the word “bay’ ” is not intended in the specific sense of buying or selling. This is clear from its use in context with his (unless he does some work with the willing consent of the owner of the pasture). This shows that the pasture had its owner. This does not go well with the statement that the herdsman had in fact purchased it. You should take the general meaning of the word, “bay’ ” applicable to entering into a lease arrangement.

[13.](#) It is like the saying: Do not follow the ‘fatwa’ (verdict) of Zayd unless he is a mujtahid. If he is a mujtahid then it is valid for you to follow his opinion because he is a mujtahid. So because he is a mujtahid, following him (his opinion) is valid for you. The implied sense of this saying by the common understanding (‘urf) is that the validity of following a religious opinion is always bound with ijthad. Therefore, just as it is not valid to follow the opinion of Zayd unless he happens to be a mujtahid, it is also not valid to follow any other person’s opinion in such situations. In other words, common understanding gushes the peculiarity of an event, by considering the context, and linking the earning with labour or following of the opinion with the ijthad as a general rule.

[14.](#) The text given on the authority of al-Halabi as follows: He says: “I asked the Imam as-Sadiq (peace be upon him) ‘Can I enter into a tenancy contract for an agricultural land and hold myself responsible for one-third or one-fourth of the yield, then I enter into a tenancy contract with someone else, holding him for one half yield?’ The Imam replied ‘There is no objection’ “. He says he then asked “Can I lease it for one thousand dirhams and then lease it out for two thousand dirhams?” The Imam replied “No”. ‘I asked him ‘Why?’ He replied ‘In the first case it is guaranteed while in the second it is not’. This is quoted in the foregoing upper structure.

[15.](#) Refer to Appendix 16.

[16.](#) This is known as opportunity cost, which is the compensation for loss of the opportunity for an alternative use of the capital during that loan period. [Note of Al-Islam.org].

[17.](#) For clarification of the meaning of formal freedom and real freedom, refer Vol 1.

[18.](#) The owner’s use of his property that causes harms to others are in two ways: –

First, the owner’s use of his assets that causes direct material loss or injury to other persons by damage to their properties, such as digging a pit on his land, which may lead to the collapse of a building on a neighbouring land. Second, causing injury to others in an indirect way that leads to the deterioration in the condition of others, without actually damaging their properties. This includes the ways employed by large capitalist enterprises in destroying small ones. Such methods do not actually bring about physical losses to the material assets of the owners of the small businesses. It only compels them to sell their products at lower prices, disabling them from continuing with their businesses and eventually having to withdraw from the industry.

The first way of using one’s property (that is harmful to others) is included in the general Islamic law la darar wa la dirar (neither harm nor be the cause of harm). The owner of property is forbidden from practising such actions in relation to his property. The second type of actions in relation to one’s property, as a general principle, is connected with the understanding of the term ‘darar’ (harm). If darar means direct loss in terms of damage to material or life – as many jurists think – then this type of harm does not come under this principle; for it is not causing harm in this sense. But if causing harm means causing deterioration of the person’s condition as is given in the lexicons, then the meaning is broader and more comprehensive than direct financial harm. In that case, it is possible to include this second type of harm based on this understanding. The declared limitation of the authority of the owner over his assets shall include forbidding him from practising both types of actions in relation to his wealth, because both result in deteriorating circumstances and worsening condition for others as explained by us in our discussion of the principles, and lead us to the generalizing the rule based on that.

Chapter 2: The Theory Of Production

Relationship Of The Doctrine With Production

There are two aspects of the activity of production. The first is the objective aspect. It consists of the means that are employed, the process implemented and the labour expended in carrying out of the operation of production. The second is the subjective aspect. It consists of the motive or goal the person intends to achieve by the operation, and the evaluation of the operation in accordance with the conceptions of justice embraced.

The objective side of production is a subject studied under the science of economics together with physical sciences in order to discover the general laws that govern the means and the reality of the process. That enables man to employ those laws – upon their discovery – and organize the means and the process of production in a better and more efficient manner.

For example, the science of economics discovers the law of diminishing returns in agriculture. The law states that for an increase in labour and capital of a specific proportion, the corresponding increase in the output is in less. This disparity between the increase in labour and capital and the corresponding increase in the output continues and the return continues diminishing till the increase of the return becomes evenly balanced with the increase in labour and capital (costs). When this state of affair is reached it would not be to the interest of the farmer to spend any more labour and capital on the land. This law throws light on the (dynamics of) the operation process and by its discovery a producer can avoid wasting labour and capital and would be able to specify the factors of production which would guarantee him the optimum production results.

It is similar with the discovery that division of labour leads to greater production output. This fact has been discovered by economic science and has been employed by producers to increase and improve production output. The role of the science of economics in relation to production is therefore to reveal those laws, which enable the producer to organize the objective aspect of the production operation in a way that leads to an optimum result as to the quantity and quality of production output.

In this field, economic doctrines – of whatever ideology it may be – has no role whatsoever because the revelation of the general laws related to the realities of natural or social phenomena are the function of the respective sciences. They do not encroach into the space of doctrinal matters. It is because of this that different societies with their respective economic doctrines are joined together on the scientific platform and agree on making use of the contributions of the science of economics and all the other sciences for guidance in the field of production.

However, the doctrine has a positive role to play on the subjective side of the production process.

Doctrinal contradictions – between societies embracing different economic doctrines – are reflected on this front, since every society has its own particular viewpoint as to the process of production. Each evaluates that process on the basis of its general conceptions and its own doctrinally driven methods as to the determination of the goals and application of their ideals.

What do we produce for and to how much do we produce? What goals should be set for the process of production? What types of the commodity do we produce? And should there be a central authority that regulated production and its planning? These are the questions, which the doctrine deals with.

Economic Growth

There is probably the only point, about which there is a complete agreement among these doctrines – of Islamic, capitalist and Marxist systems – on doctrinal ground. That is the point on economic growth (or growth in gross national production) and economic efficiency (the optimal utilization of resources) within their respective general framework.

All these economic doctrines are unanimous on the importance of these goals and their achievement by all mechanisms that are broadly in line with their respective frameworks. Likewise, because of the economic management style of a particular doctrine, it would reject everything that is not compatible with its doctrinal framework. Since the goals of economic growth and efficiency are an integral part of a whole, they have implications on the elements of the respective economic systems and are therefore aligned accordingly in a way agreeable to each doctrine.

For example, capitalism rejects any method of economic growth and wealth generation that clashes with its principle of economic freedom; and Islam rejects all of those means and conducts that are inconsistent with its theories on distribution and its ideals on justice. Marxism holds that the doctrine does not clash with economic growth and instead runs parallel with it. It however asserts that it is necessary to manage production and the modes of distribution, as will be discussed later.

Anyway, we will set out on the study of the Islamic theory of production based on the policies on growth held by Islam. Islam has enjoined upon the Islamic society to conform and has made economic growth and economic efficiency the doctrinal goals of the society. It lays down its economic policies accordingly. On one hand Islam set its general doctrinal frame and on the other hand considers the actual conditions and circumstances of the society. The state executes the policy within those limits.

We can see clearly the features of the principle of economic growth from its application during the era of the Islamic State and from the formal Islamic instructions preserved by history even to this day. The Commander of the believers, 'Ali (a.s.) had formulated a program – with these instructions – to his Governor for Egypt, Muhammad ibn Abi Bakr, and had ordered him to implement them. It is reported in *al-Amali* of ash-Shaykh at-Tusi that when the Imam Ali (a.s.) appointed Muhammad ibn Abi Bakr as the Governor of Egypt, he wrote to him and commanded him to read the letter to the people of Egypt and to

act upon whatever contained therein. The Imam wrote in this letter: –

“O servants of Allah! Verily, the pious acquired possession of the goodly transient things of the world and the goodly things of the future life. They shared with the worldly people, their worldly life, but the worldly people did not share with them their life hereafter. Allah has permitted them to have such of the worldly things as would be adequate for them and suffice them (as to their worldly needs). Allah the Mighty and the Glorious said:

“Say: Who has forbidden the beautiful (gifts) of Allah which He has produced for His servants and the pure and clean things (tayyibat) He has provided for sustenance?” Say: “They are in the life of this world for those who believe (and) purely for them on the Day of Judgment. Thus, do we explain the signs in detail for those who understand” (7:32).

They live in the world in the best way the world lives, eat the best things that the world eats. They share with the worldly people their world. They eat with them out of what they eat of the pure and the clean things and drink with them out of what they drink the pure and clean, and clothe themselves with the best of the dress with which they clothe themselves, and dwell in the best of the houses in which they dwell and ride the best of mounts they ride. While they enjoy the worldly pleasures with worldly people, tomorrow they will be the protégés of Allah; and desiring of Him His gifts, they will be given what they desire; and their prayer will not be rejected and nothing will be detracted from their share of pleasure. So Oh servants of Allah towards such things, he who has sense will be eager for and labour for it with piety of Allah. There is no power or might save in Allah”.

This admirable letter is not of the actual existence of the God-fearing people on earth or their actual historical existence, but had been intended to perfect the explanation of the worldview of God-fearing people about life and describe the pattern that a God-fearing society should establish on earth. It was because of this that he ordered to adopt and practice the contents of the letter and formulate his policy in light of the commandments and instructions given therein. The letter then is quite clear on material prosperity that results from economic growth and efficiency is a goal, which the god-fearing society will strive for and which the theory embraced by this society warrants in its conduct in this life.

The goal is however wrapped within the religious frame and is confined to limits as the Holy Qur’an declares:

“Oh You who believe! Make not unlawful the good things which Allah has made lawful for you, but commit no excess, for Allah loves not those given to excess”. (5:87).

So the prohibition related to excesses in exploitation of nature and its proliferation is the Qur’anic way of explaining this general Islamic cast.

Islam's Means For Economic Growth

Islam at the time it embraced this principle and made the growth of production and wealth an economic goal employed all its doctrinal potentials for its realization and the development of the means and support that are in harmony with these potentials. The means employed to realize this goal were of two types:

First, the doctrinal means. It is a part of the functional duty of the Islamic social doctrine to build and deliver these means. Second, the purely applicative and practical means. A state that embraces a particular social doctrine uses these means by prescribing a practical policy accompanying the general doctrinal direction.

Islam amplified the means that come under its orbit as a creed professing the social doctrine and a vehicle of civilization in general.

The Islamic Philosophical Approach in Nurturing Economic Growth

On the intellectual front, the doctrinal means adopted by Islam are to inspire man with the drive for work and productive activity. It assigns a high value to labour and links it with man's dignity, honour, his position before God and even his perception of himself. By that it made the motivation for enhancement of material wellbeing appropriate and legitimate in man's life. It also gave such moral standards and clearly defined criteria in respect of work and idleness not known before. In light of these standards and criteria, a man's work becomes an act of worship that deserves reward from God.

The man who labours to earn his livelihood becomes, before Allah, a person of higher merit than a worshipper who does not work for his livelihood. And idleness or avoidance of work becomes a defect in man's character and a ground of his inferiority. It is mentioned in a tradition that when al-Imam as-Sadiq (a.s.) inquired about a person, he was told that while he is reduced to poverty, he keeps himself at home engaged in devotional acts (of worship) and his brothers provide him with the means of his livelihood. To this the Imam said: "He who works for his livelihood is a greater devotee than him."

It is quoted that the Messenger of Allah (S) one day raised the hand of a hardworking tailor and imprinted a kiss upon it, saying: *"Seeking of the lawful is a duty of every believing man and woman. One who eats what he acquires by the painstaking toil of his hand, will pass over the sirat like the twinkle of a lightening flash, he who eats what he earns by the painstaking toil of his hand, Allah will look upon him mercifully, thereafter, He will never punish him. He who eats what he earns lawfully with the painstaking toil of his hand, all the doors of the paradise will be made open for him to enter it through any of them."*

In another tradition it is reported that once a man passed by al-Imam Muhammad ibn 'Ali al-Baqir (a.s.) while he (the Imam) was engaged assiduously working in his farm. Seeing the Imam full of sweat by the toilsome labour, the man exclaimed: "May Allah do good to you! Please tell me what, if death comes upon you while you are thus engaged?" He (the Imam) replied – and his reply expresses the meaning of

labour in Islam: “If death were to come to me while I am thus engaged, it would come to find me engaged in rendering my obedience to the commandments of Allah.”

The Messenger of Allah (S), as mentioned in his sacred biography, whenever he saw a person of impressive appearance he used to think highly of him and to inquire his profession or business. If he were told that the man has no profession or does not do any work, the Prophet’s estimation of him becomes less favorable, and he (the Prophet) used to say: “*If a believer has no profession, he lives with his religion*” (i.e. makes his religion as a mean of livelihood).

In several other traditions, work (for livelihood) is made a part of *iman* (faith). It is said therein: “*To make use of a property in a proper way is a part of faith*”. In another tradition of the Holy Prophet it is said, “*there is nothing whatever a believer sows or plants and which man or beast feed upon but will be written down in his account as sadaqah (a charitable act)*”.

It is reported from al-Imam Ja’far as-Sadiq (a.s.) that once said to Mu’adh – one of his companions, seeing him retired from his business: “O Mu’adh! Have you grown weak for business, or you have forsaken it?” Mu’adh replied: “I have neither grown weak nor forsaken it, but I have a plenty of wealth in my possession, and none has any due to me; and I do not see myself to consume it till my death”. The Imam, thereupon, told him as an advice: “Do not give it (trade) up, giving it up is to lose one’s wits”.

In another assembly meeting, the Imam in a reply to one who asked him to pray to Allah to give him means of livelihood said: “I will not pray for you. Seek it in a way as Allah, the Exalted, has asked you to seek it”.

It is narrated that when the verse:

“And for him who fears Allah, He prepares a way out and provides for him (his livelihood) from the source he could never imagine” (65:2-3),

was revealed, some of the companions (of the Holy Prophet) secluded themselves in their homes and engaged themselves in worship (of Allah); and they said: “Surely Allah is sufficient for us.” Then the Messenger of Allah (S) sent them (a message) saying: “*Surely whoever acts like that, Allah will never grant his prayer, it is upon you to seek it (livelihood)*”.

Just as Islam stands against a life of idleness and urges man to work, it also stands against leaving material wealth idle and frozen. Islam is against withdrawing them from the field of the productive and profitable utilization, and induces the owner to employ the maximum possible natural resources and wealth in productive use and in the service of man in the field of productive operation.

Islam considers the idea of keeping certain natural assets idle, and neglecting their development and utilization as a type denial and ingratitude in relation to the gift that Allah has bestowed upon His servants. Allah, the Exalted says:

“Say: “Who has forbidden the beautiful gifts of Allah which He has produced for His servants, and the things clean and pure (which He has provided) for sustenance?” Say: “They are, in the life of this world for those who believe, (and) purely for them on the Day of Judgment. Thus do We explain the signs in detail for those who understand”. (7:32).

God further says, in prohibiting superstitious beliefs and practices (prevalent among Arabs then) in respect of certain animals:

“It was not Allah Who instituted (superstitions like those of) a slit-ear she-camel, (bahirah), or a she-camel let loose for free pasture (saibah) or idol sacrifices for twin-births in animals (wasilah) or stallion-camels freed from work (hammi). It is blasphemers who invent a lie against Allah. But most of them lack wisdom”. (5:103).

He calls upon man to put to use resources on earth:

“And He it is Who made the earth manageable for you to traverse ye through its tracts and enjoy the sustenance which He provides; And to Him is the resurrection”. (67: 15).

Islam gives preference to productive investment spending over consumption spending, because of its desires for production growth and expansion of wealth. This can be seen from traditions quoted from the Prophet and of the Imams forbidding sale of landed property or house and squandering the proceeds on consumption spending.

The Islamic Legislative Approach in Promoting Economic Growth

The Islamic legislative enactments that are consistent with the principle of the growth are extensive and cover multiple areas. These rules are indicative of the priority of growth in Islamic economic doctrine and facilitate the implementation of the corresponding measures in practise. We present a few of these legislative enactments and prescripts: –

1. Islam’s prescript ordaining seizure of a land from the possession of its owner if he leaves it idle or neglects it till it becomes a waste and is rendered unsuitable for cultivation. On the basis of this prescript, *Wali Al-’Amr* (the Head of the State) is empowered to seize the land in such a condition from its owner and hand it over to another person. The second person has to put it to the best productive use in the way he chooses, since it is not permissible to deprive the society from productive use of the land. On the contrary, it is necessary that the land contribute fully and continuously to the prosperity and wellbeing of man. Therefore in a situation whereby private ownership stands in the way of this, the law ordains that this (private ownership) right be revoked and that the ownership over the land be adapted to a form, which enables its productive utilization. [1](#)

2. Islam prohibits the practise of *hima*. Under this practise a person takes possession of an area of open space of wasteland by force, not by doing works to render the land fit for cultivation and turn it to

productive use. The Islamic law links the right to the land with the work of reclamation and so on, not by forcible acquisition. Use of force has no relevance with reclamation and rehabilitation of the land for the good of man.

3. For the persons who were the first to productively use the natural assets, Islam does not give them the right to freeze those assets by delaying the development and extraction works. Islam also does not allow them to keep those reclaimed assets for themselves, whenever they discontinue the relevant works, since their control over these assets will eventually deprive the society of the benefits from their potential use. So Islam has tasked the *Wali Al-'Amr* (Head of the State) with the duty to repossess the natural assets from the individuals who have reclaimed them if they neglect the lands and fails to promptly resume appropriate works.

4. Islam empowers the *Wali Al-'Amr* to assign land only to a person who has the capacity to cultivate and work on it. Granting the land to anyone without the capacity to put it to productive use means wasting and squandering the natural assets and their productive potentials.

5. Islam has disallowed earnings without work. For example, it is not permitted to sub-lease a piece of land to another person at a rate higher than that under the original lease in order to earn from the difference. It is similar with hypothetical transactions we discussed previously. The elimination of the part of the intermediary between the land owner and the farmer – who directly cultivates – is obviously conducive for a high production level, since the intermediary plays no positive part in the production. He benefits at the expense of production without actually contributing to it.

6. Islam forbids interest and abolished usury on capital. With that it has steered towards transformation of funds in an Islamic society into productive capital allowing its share in gains earned by commercial or industrial enterprises. This transformation (of the capital funds) assures two advantages for production (and other economic activities):

First, it removes the deep conflict between the interest of business owners in the commerce and industry and that of the lenders and those who own capital. The capitalists, in a society that embraces the institution of interest, always wait for the golden opportunity when businesses are in dire need for capital. They would raise the interest rate and keep a tight hold on their purse, to exact the highest possible price.

But when the demand for capital fund declines because of lesser need for capital by commercial or industrial businesses and the rate of interest falls, we will see the lenders becoming more flexible and provide funding at a lower rate. It is clear that the abolishment of interest-based lending will put an end to this conflict, for its abolishment will eventually transform the lenders who previously lend on interest to be investors of capital fund (*mudarabin*) and partners in commercial or industrial enterprises on the basis of profit-sharing.

By this it thus defines the position and role of capital. The capital comes into the service of commercial

and industrial enterprises, responding to the needs of businesses.

Second, the capital funds invested in the businesses eventually serve large commercial and industrial enterprises and long term projects with firmer commitment, assurance and security, because after the abolishment of the interest-based lending the owner of capital fund will have only profit in mind and this desire will drive him towards participation in big businesses with lucrative prospects and returns. In a system that allows interest-based lending, he would prefer lending his funds on interest to investing in those enterprises because the gains from lending are secure under all circumstances.

Moreover, he will prefer to lend on short term basis and would avoid long term lending because doing so may deprive him of the opportunity of bigger gains should the rate of interest rise in the distant future. Because of this, the borrower will employ the funds in short time businesses to match the term of his loan from the lender. Over and above that, business owners in the system with interest-based lending will not risk borrowing money for investment in any commercial or industrial undertaking unless they are convinced that the return from those businesses would be higher than the interest charged by the lender.

This will restrict their acceptable range of business undertakings and will freeze funds in the custody of the lenders, blocking their flow into market circulation in the form of investment or consumption spending. This will eventually lead to a slump in demand, a weakness in the general market and the emergence of economic crises and uncertainties.

With the abolishment of the interest-based lending and the transformation of the fund owners from being lenders into investors – venturing and participating directly in various commercial enterprises and industrial ventures – the business owners will see that it is in their interest to be content with less share of profit since they will not be obliged to surrender part of it for interests. They will also find that it will benefit them to re-invest the surplus from their profits, after setting aside for the operation and project-funding requirement. This will facilitate optimal investment and consumption spending in the system. It will discourage idling of funds, frozen in the coffers of lenders – in spite of the need for funding by businesses – thus frustrating new business investments and new products dependent on the capital.

7. Islam has forbidden some trades that are deemed unproductive like gambling, sorcery or witchcraft, and jugglery. It prohibits earning of income from carrying out these trades.

“And do not swallow your property among yourselves by wrongful means.....” (2: 188).

Indulging in such trades is a wastage and diversion of man’s productive capabilities and as such, remunerations paid to the practitioners of these trades are waste of financial resources that could have been converted into an agent for economic expansion and growth. A look at historical facts will reveal and bring home the extent of squandering that resulted from such trades and the damaging consequences on the economy, in particular the impairment of economic progress because of the dissipation of capabilities, efforts and financial resources.

8. Islam has forbidden hoarding of money and its withdrawal from circulation. This is done by imposition of tax by the Islamic state on stored and unused gold or silver coins. This tax, called Zakat, would deplete the hoarded assets with the passage of time because it is applied every year, draining two and a half per cent of the stored assets. The tax is continuously applied until the asset is reduced to twenty *dinars*. Because of this, it is considered a gradual appropriation of the hoarded funds, to the State treasury. By having this tax on the assets that have been stored away, the resources are diverted back into circulation supporting economic activities in the society. The money that would have otherwise been frozen in the coffers of their owners could now flow to finance production activities in industrial, agricultural and other economic pursuits.

Islam's prohibition of unproductive wealth accumulation is not a mere accidental phenomenon of Islamic legislation. It is an expression of one of the most fundamental difference between its economic doctrine and that of capitalism. It reflects a method by which Islam has been able to insulate the society from the problems resulting from the anomaly in the role of money in the capitalist system, which often leads to economic cycles and severe crises in the capitalist society.

In order to show clearly the difference on this point – between the two doctrines – it is necessary for us to distinguish between the primary role of money and the incidental role it plays under the auspices of capitalism, and to then grasp the difference between these two and the effect on economic and production activities. Money by its nature is a medium of exchange that man employed in commerce to overcome difficulties in barter trades, which is simply direct exchanges of products.

With the economies practising division of labour, primary producers had faced difficulties with barter exchanges. Whenever a wheat producer is in need of wool, he would not be able to obtain wool in exchange for his wheat, unless and until the wool producer happened to be in need of wheat. If a shepherd intends to obtain his daily need of wheat, he will not be able to do so by way of a barter trade because the price of a sheep is larger than that of the amount of wheat he is seeking for his daily need, and it will not be possible for him to divide sheep into fractions.

In addition to these, in barter exchanges it is difficult to determine the value of the respective goods. In such trades, it would be necessary to know the value of a commodity in comparison to those of all other commodities, in order to ascertain its value relative to the others². The money 'mechanism' in trades overcomes all these difficulties. It serves both as a common unit of measurement for value and as a medium of exchange.

Money serves the common measurement unit of value for all goods by comparing the value of all goods relative to the value of a particular product, enabling the value to be monetarily determined. The trade transaction can then be performed using money as a substitute for the respective goods. After the practise of barter trades – where goods were directly exchanged like wheat for wool – the use of money came into practise.

The single trade operation – under barter – was then transformed into two parts, the buying and selling transactions. The owner of wheat sells wheat for a hundred *dirhams*. He then needs to execute another operation. With the money, he purchases wool to fulfil his need. Thus, instead of a single transaction system of direct exchange of goods, it became two operations of exchanging goods and this overcame the earlier difficulties in the barter system.

We learned that the original roles of money when it was introduced were as a common measurement unit and a common medium of exchange. But after that, the role of money expanded beyond the two functions to overcome difficulties in the barter system. Instead, money was also employed for another role that was unrelated the difficulties of the barter system. Money gets hoarded and unproductively accumulated (to gain certain advantages).

As we saw earlier, with the entry of money into commerce, the single barter transaction for exchange of goods became two independent transactions to complete the exchange. The wheat producer will now sell his wheat and use the money obtained to subsequently purchase wool. The wheat producer may now put off the purchase of wool at later date. The use of money in commerce actually enables him to sell his wheat even when he does not desire to exchange his product for something else. He can now keep the money for use in his time of need. Money now also functions as an instrument to hoard and accumulate wealth.

This incidental role of money as an instrument for hoarding and accumulating wealth played a crucial part under the auspices of capitalism. It encouraged wealth accumulation and made interest a strong attraction for that. This leads to the disruption in the balance between the aggregate demand and aggregate supply of the consumption goods as well as capital goods in the entire system. In the era of barter system, this balance was assured on the basis of direct exchange of each product with another. The reason is simply that the producers during the barter era produced only his own consumption or for exchange with another commodity that was also for his own consumption. Thus the commodity he produced was always assured of the eventual matching demand. Hence, total production in the entire system matches the aggregate consumption, resulting in the equilibrium between supply and demand.

But after the decoupling of the buying and selling transaction – following the entry of money into commerce – it is not necessary for a producer to have a demand for another commodity that matches the quantity of commodity he produces. It is now likely that he will produce a commodity with the purpose of selling it and earning money with the intention to accumulate and add to that he had saved. He may now sell his goods without any plan to buy another commodity.

In such situation there would possibly be supply (of goods and services) for which there is no matching demand. Because of this, the equilibrium between total demand and total supply would be disturbed. This disequilibrium would grow proportionate to the desire of producers and the traders for wealth accumulation. As a result, a significant proportion of the produced goods will not be absorbed by the market. The excess production will have adverse consequences on the market and so will the

accumulation (of financial resources by certain groups). The economic progress and the general economic wellbeing of the society will be subjected to significant volatility.

Capitalism, for a long period had overlooked the truth about these difficulties, which arose from the acts of accumulating money. The theory on disposal of money holds that whenever a person wishes to sell a particular product, he would demand money against it not for itself but to be able to obtain another commodity that will satisfy his need. This implies that the production of a commodity creates a demand for a similar commodity such that the demand and supply will always be equal.

The theory therefore takes it for granted that the seller of a commodity always sells a commodity with the goal of buying another commodity, despite the fact that such scenario is (only) true in the era of barter system where the selling and buying are transacted in a single trade. It is no longer true when monetary payment system is adopted for trades. In the new system, it is easy for a merchant to sell his commodity with the intention of accumulating more money for investment in interest-bearing loans.

In light of this understanding of the primary and the incidental roles of money, we may see the essential difference between Islam and capitalism. While capitalism acknowledges the use of money as an instrument for wealth accumulation, it encourages it and legalizes interest-based lending. On the contrary, Islam discourages (unproductive) wealth accumulation by imposing a tax on the accumulated and unutilized money, and promotes consumption and investment spending in productive areas, so much so that it is mentioned in a tradition on the authority of al-Imam Ja'far as-Sadiq (a.s.) that: "Allah has granted you surplus riches so that you spend it. He has not given you to amass it."

Islam by its campaign against amassing money puts an end to one of the most severe challenges to economic growth that the capitalist society is suffering from. In the Islamic economic system – regulated by the Islamic laws – it is not necessary to accumulate and build capital fund to enable the financing major public spending in an economic downturn, as is the case with the capitalist society. The capitalist society would strengthen itself by building up of huge amount of capital fund, as a result savings accumulated in the banking system. This is then employed to finance major public projects. In a capitalist society ruled by capitalist institutions, it is inevitable to secure the help of large owners of private assets to support and participate in large economic projects.

It would not be feasible to undertake large projects except by encouraging saving and by pooling together the saving funds in the banking system. In a capitalist society it is necessary to adopt these measures for economic growth and expansion. But in the Islamic society, the state can deploy assets under common and state ownership to finance large economic projects and leave to the private sector ample space to explore and work on their potentials.

9. Prohibition of vain amusements and distractions. There are traditions prohibiting the sort of entertainments that distract one's mind away from God and prevent one from remembrance of Him. The traditions disallow one from indulgence in several types of entertainment, amusement and diversion that

erode one's character of enthusiasm, earnestness and dedication, and the prime youthful energy and talent. That erosion of his character will eventually lead to withdrawal from efforts and labour on genuine and productive economic pursuits. Inappropriate circumstances may lead him to a life filled with pleasure seeking, neglect and spiritually hollow life.

10. The endeavour to prevent concentration of wealth, in line with the verse of the holy Qur'an:

"...in order that it may not [merely] circulate between the wealthy among you..." (59:7).

We will explain this when we study and examine of the theory of social equilibrium in the Islamic economic system. This policy is to prevent concentration of wealth. Even though it is directly connected with distribution, it is also connected indirectly with economic growth. Concentration of wealth will have adverse consequences on production. When wealth gets concentrated in the hand of only a few, prevalence of misery will become common and the need of the large majority of people will become acute.

As a result, the general population will be unable to consume the quantity of goods and services that they actually need because of their limited purchasing power. Thus, large quantities of production output will remain unsold and industrial and commercial production will be shrink leading to economic slump.

11. Prohibition of market manipulations or even considering marketing and distribution process as an integral part of production. This will be discussed at the last stage of the revelation of the theory of production. We will then see its effect on production and growth.

12. Islam allows the wealth of a person to be given to his near relatives after his death. The order to this effect is the positive limb of the rules of inheritance. It may be regarded as an incentive in encouraging man towards work and the pursuits of economic activities in certain sectors, whereby at the end of his journey of life – when the thought of his own future becomes faint – his concern is replaced with the thought of his children and kin. Now, he will find in the rules of inheritance concerning distribution of his wealth and property after his death among his near relatives. That will encourage him to work and drive him to strive for the growth of his wealth, out of his eagerness for their welfare, as the ones who will keep alive his name after him.

As for the negative limb of the rules of inheritance, it is the set of rules that disconnect his relationship with his assets after his death. By these rules, it is not permissible for him to decide on his own the fate of his assets. This injunction is the result of the general theory of pre-production distribution and is connected with that, as we have previously learnt.

13. Islam has formulated the legal principle in relation to social security, as we will explain in the coming discussion. Social security plays a significant role in a particular dimension. It establish a perception at the individual level that he is given an assurance by the government and that his social status, honour and dignity in life is granted to him even if he fails or suffers loss in his undertaking.

This would act as a significant psychological support and would boost his enthusiasm. It will drive him to pursue economic success in various fields. It develops in him innovativeness and would be a novel medium to enhance his passion. This is in contrast to the case of one who lacks that sense of security. Such person would frequently avoid innovative efforts out of fear of a probable loss, which is a risk not only to his economic position but also to his social standing. Unless he enjoys assurances that provide him with the means to lead a dignified life in the event his efforts fail and end in losses, he would not have that boldness and resoluteness that the safety net provided by social security nurtures in the minds of those enjoying its shelter.

14. Islam made it unlawful to grant social security to able bodied men – who are capable of engaging themselves in economic activities – and disallowed them from living on alms. By this, it has prevented them from evading productive work. This naturally compels them to employ their capabilities for productive and fruitful works.

15. Islam has prohibited extravagance and squandering of wealth. This prohibition places a limit to consumption based on need. It makes available a great deal of funds for investment spending, instead of excessive and wasteful consumption spending.

16. Islam has made obligatory upon Muslims to achieve sufficiency of knowledge in all trades and all aspects of life.

17. Islam does not stop there. It has also made it a duty on Muslims to gain the highest level of knowledge – in all fields of life – in order to facilitate the acquisition of all moral, material and spiritual means by the Islamic community so they could take up the global lead role in terms of economic capabilities and other aspects. Allah, the Supreme says:

“And prepare against them what force you can”. (8:60).

Here, the word “what force you can” that occurs in the divine text denotes an unbounded and unconditional meaning. It includes all forms of capabilities that add to or increase the might of the nation (*ummah*) to carry out its mission to all nations of the world. Also, in the vanguard among those powers, are the intellectual and material means for the economic growth and productive employment of natural resources.

18. Islam has empowered the State to take the lead in all the economic sectors under public sector undertaking. Obviously, by employing the enormous State resources in the projects it carries out, there would be favorable spinoffs in other sectors. It will enable (the private sector) to undertake similar economic projects, learn from the experience the state gained in these ventures and adopt the best mode and practise for improvements in production and expansion of wealth.

19. Islam has conferred power and authority upon the State in developing the public sector. The State would be able to absorb part of the existing workforce, minimize redundancy and ensure maximum

participation by the workforce in the overall economic activities.

20. Last, on the basis of definite principles – which we shall shortly examine in the inquiry of the Islamic theory of production – the State has been given the authority to supervise the control and planning of private sector production operations. This is to ensure that there is appropriate coordination and to prevent a situation of unbounded freedom and chaos, which may lead to disruptions in economic life.

Policies for Economic Growth

These are what Islam, as a doctrine, has contributed to the cause of economic growth and expansion of wealth. Having provided the doctrinal support, Islam leaves to the State to examine the actual conditions and circumstances of economic life, take stock of the natural assets available in the country, ascertain the size of workforce and the economic challenges they are experiencing. Having taken these into consideration, the state is to formulate an economic policy – within the limits of the doctrine – that will lead to growth of production, increase of wealth and better standard of living for the society.

On this basis, we will learn the relationship between the religion and the economic policy instituted by the State for a specified time frame – of say, five or seven years – to reach a set of goals at the end of that period. Such a policy is not a constituent part of religion and its decision and formulation are not a function of religion. The reason is this that the policy is subject to changes and adjustments in line with changes of circumstances, the capabilities of the society, as well as the nature of the problems and challenges the State has to deal with.

The economic challenges and the corresponding policies and measures differ from one case to another. The inhabitants of densely populated countries differ from those in sparsely populated states. Thus, each actual situation affects the policy decision that needs to be pursued under the given circumstance. Therefore, it is necessary for religion to leave the right decisions on the economic policies to the State as it sees appropriate for the respective circumstances. Religion will confine itself to the formulation of fundamental goals of the economic policy, its general limits and the overall religious framework. It would be obligatory upon the State to bind itself to it and formulate its policy within that framework.

Why Do We Produce?

We were examining from the theory of production the point on which there is a doctrinal unanimity among ideological trends of different economic systems. We have made it a pivotal point to start from in our detailed study of the doctrinal differences between these economic systems.

We have already learnt that economic growth and efficiency are the fundamental goals of the Islamic theory on production. These goals are common in the Islamic system and the other schools of economics. Even though there is unanimity between the different schools on this principle, they do differ on the details and in their ways of thinking about it due to their ideological viewpoints and cultural

framework as well as their overall worldview.

For example, there is a difference among them about the fundamental objective as to the increase of wealth, and its role in the life of man. They differ on issues like the objective production and the role of wealth. Each school has a particular view that conforms to its ideological basis and its worldview. In our study of the Islamic economic system – and other economic doctrines – in relation to their respective theories on economic or production growth, we will realize that to know a system's view on economic goals is not sufficient. Rather, we also need to have a comprehensive knowledge of its ideological basis, which explains the thought behind the doctrine about wealth and its role.

The ideology plays a key part in laying down the economic goals and the growth objectives will be adapted to fit the ideological framework. Indeed economic growth and wealth expansion objectives differ from one economic system to another in conformity with the respective ideological framework and the instruments employed by the respective systems. In ascertaining the ideological basis for the economic growth and wealth expansion, we cannot separate the economic doctrine from the larger body of thinking culture and worldview it belongs to.

It is on this basis that we choose the Islamic economic system and capitalism and study the ideas behind both as well the part each plays and the goals each sets out to achieve. We will study them not merely as two economic systems, but also as two different cultural patterns. That will help present the ideological basis for economic growth from the Islamic system and contrast it against that under the capitalist ideology.

Now in the material-driven culture that represents by capitalism on its historical and doctrinal economics aspects, economic growth and wealth expansion is frequently regarded as a key objective and a fundamental goal, because (material) wealth is everything according to the criteria, by which a person in this culture governs his life. He does not look for any other goals beyond that. He therefore strives to work for increase in wealth only for the sake of wealth itself and to achieve the maximum material comfort and wellbeing.

Capitalism accordingly considers the mechanism adopted and the course followed in attainment of economic growth and wealth expansion as a goal on its own that independent from distribution. It considers the objective as achieved and fully realized if the total wealth of the society increases irrespective of whether or not the wealth is equitably distributed in terms of the opportunity for each member of the nation to enjoy a fair share of the improved wellbeing.

For this reason, it encourages and promotes the use of industrial equipment during the machine age³ because employment of machinery facilitated increase of production and growth of the wealth of the society, even if it caused redundancy of thousands and led to the failure of small enterprises. So, wealth is the main objective in the material-led culture, and growth in the capitalist sense is measured by the increase in the total wealth of the society. The capitalist thinking binds the economic difficulty with

scarcity of resources and natural challenges. Accordingly, the remedy for the difficulties is bound with increase in production output and efficient use of resources.

But Islam's position is different. Wealth is not the main objective in Islam, notwithstanding the encouragement to seek wealth. Nor does Islam measure economic growth on the basis of total wealth of the society and regards it as independent from the distribution aspect. And Islam does not view that economic difficulty arises from scarcity of production such that its remedy is by increasing wealth. The standpoint of Islamic economic system is given below:

The Islamic Perception Of Wealth

We can ascertain Islam's view about wealth in light of the texts, which deal with this aspect and try to describe the Islamic perception of wealth. We can divide these texts into two groups. At first glance the examiner of these texts will see contradictions between them as to their ideological position towards wealth, its purpose and its role. But by integrating these texts, he would be able to reconcile the contradictions and reach a broad Islamic perception about wealth enhancement, and will be able to form an inclusive viewpoint on both sets of texts.

The following traditions may be classified in the first group: –

- a. The Messenger of Allah (S) said: *"Riches are the prime help to the fear of Allah (piety, taqwa)."*
- b. From al-Imam as-Sadiq (a.s.): "The world is the most excellent aid for the world of the hereafter."
- c. From al-Imam al-Baqir (a.s.): "The (present) world is the best help to the seeking of the world of the hereafter."
- d. From the Messenger of Allah (S): *"O Allah bless us and make us prosper in the matter of bread, part us not from each other. Had we not the bread, we would not have prayed; not have fasted; nor discharged our duties to our Lord."*
- e. From al-Imam as-Sadiq (a.s.): "No good is the man, who does not earn money in the lawful way whereby he saves his honour, discharges his debts and discharges his obligations to his near relatives."
- f. A man told al-Imam as-Sadiq (a.s.): "By Allah I do seek the world and wish it to be given to me." The Imam asked: "What do you wish to do with it?" He said: "I wish to meet my needs, my children and family members' needs; to spend it in the way of Allah; to go to pilgrimage and perform 'umrah with the help of it." The Imam replied: "This seeking is not for this world. It is seeking the world of the hereafter."
- g. It is stated in the tradition: "He is not one of us who renounces this world for the next world; nor he, too, who renounces the hereafter for this world."

The second group consists of the following traditions: –

- a. From the Messenger of Allah (S): *"He who loves this world does harm to his next world."*
- b. From al-Imam as-Sadiq (a.s.): "The love of this world is the head of every sin."
- c. Also from as-Sadiq (a.s.): "Far removed from Allah will be that servant of Allah who fancies nothing

but his belly and his private parts.”

d. From Amir al-mu'minin, 'Ali (a.s.): “The greatest help to morality is abstinence from the world.”

It is easy for anyone to note the contrast between the two sets of traditions. In the first group, the world, worldly wealth and riches are said to be the best help to the life hereafter, while in the second group it is said to be the main factor of every wrongful and sinful act. But this contradiction can be resolved by placing them together and ascertaining the respective contexts of the traditions. Material wealth and its enhancement are the best help for the life of the hereafter, and at the same time are also the main elements of all sinful acts. Because it has two extreme opposite aspects and it is the psychological frame (in how the wealth is perceived by the person) that brings to light whether it of one extreme or the other.

In the Islamic view, material wealth and its growth is an important objective. But it is a means, not an end itself. Wealth is not the main objective for which God had set before man on earth. It is instead a means for a Muslim to discharge his role of vicegerency and to employ it for the development of all the human potentials and to elevate man's humanity in all the fields, spiritual and material.

So, the increase in wealth for the realization of the main objective of man's vicegerency on earth is the best help for his the life of the hereafter. There is no good in a man who does not strive for it. He, who as a bearer of the life mission and yet abandons and neglects it, does not belong to the fold of Islam. As for striving for the growth of wealth merely for the sake of wealth itself – to regard that as the main pursuit in one's life and to be pre-occupied and obsessed is so doing – that is the main source of all the wrongful acts and sins. It is this that detaches man far from his Lord, the Nourisher. Man is required to abstain himself from such attitude.

Islam wants a Muslim to strive for the enhancement of material wealth in order to gain control over it and to derive benefits from it. Man is not supposed to allow himself be subordinated to his wealth, surrender to it is control and to ruin the lofty goals set for him. Islam does not allow wealth and its acquisition modes that stand as a barrier between a Muslim and his Lord, the Sustainer, and cause him to overlook his ardent spiritual desires. Such relationship with wealth drags his spiritual progress and stands in the way of him fulfilling the grand mission of establishing and maintaining justice on earth, and would cause him to grip him strongly to the worldly life.

On the contrary, Islam encourages wealth and its means of acquisition that affirms a Muslim's relationship with his Lord, the Generous Lord. It helps him perform his acts of worship with ease and comfort, and opens up before him a broad space to fully employ his talents and capabilities and helps him to realize the ideals of justice, brotherhood and dignity, which Muslims are required to strive for.

Aligning Economic Growth With (Equitable) Distribution

The capitalist ideology views economic growth and wealth creation as an aspect that is independent of wealth distribution. Islam rejects such view and aligns wealth creation with (equitable) distribution as joint

goals. The measure of the material wellbeing and quality of life of the individual members of the community is also a major goal in the Islamic system, for economic growth in the Islamic sense is a means, not a ultimate end as we have learnt earlier. Therefore, the wealth creation process must contribute effectively to an equitable sharing of material wellbeing among the individual members of the community and afford them an environment whereby they can employ their utmost talents and abilities for the realization of their mission. Without these, the economic growth and wealth creation do not perform a favourable role in the life of man.

We find that in the letter which al-Imam 'Ali (a.s.) wrote to the Governor of Egypt in which he describes the Islamic programme that the governor should follow. At the time he wanted to speak about growth in wealth as an objective of a pious society – in the words of the letter – he did not depict the accumulation of huge quantity of wealth, but painted a picture of ease and comfort of life prevailing over all the members of the society of the pious. He stated this to confirm and lay an emphasis on the fact that the growth of wealth is an objective only as far as it is reflected in the life of the people and in their means of living. But when wealth grows in a way that is disconnected from the life of people, and the masses devote themselves to wealth acquisition – instead of acquiring wealth in service of the people – then in such a situation, it becomes a type of idolatry as it has become an end in itself. The saying of the Messenger of Allah (S) confirms this and explains this kind of wealth and warns against its danger. He said: *“The yellow (golden) dinar and white (silvery) dirham will destroy you as they have destroyed others before you.”*

On this basis, when Islam makes economic growth the goal of the society, it requires coordination of the overall measures for wealth growth with those towards equitable sharing of material wellbeing and comfort for all members of the society. Islam also rejects any mode of economic growth that compromises the criteria on equitability and fairness in distribution of wealth.

In light of this, we can predict that if Islam – instead of capitalism – had held the rein of authority at the time of the rise of steam engine during the industrial age, it certainly would not have permitted the use of the new machines which doubled and boosted production output many folds to the extent that it exposed thousands of manual workers to peril and placed them in jeopardy. Islam would have allowed that only after a way is worked out to deal with the difficulties that mechanization would bring about. Allowing mechanization to boost production before having overcome these difficulties and the misery it would have caused is an illustration of how growth of wealth was embraced as an end itself.

Islam's Conception Of Economic Problem

Last, Islam holds that the economic difficulties arise from on the handling and conception of the affairs, not from scarcity of resources or natural challenges. It is true that natural resources for production are limited and man's need are numerous and diverse. It is also true that only a mythical community will enjoy abundance of resources and be free from any economic difficulties, such that there is no poverty therein and everyone will be able to satisfy all of his needs in that 'paradise'.

But this does not prove that economic hardship that troubles humanity arises from the impossibility of this paradise. Rather, the attempt at explaining it on that basis is nothing more than an excuse from confronting the real reasons for the hardship – which could actually be resolved – by portraying the ideal economic scenario as imaginary and thus implying that the remedies are impossible in any circumstances. It is intended to justify and legitimize whatever solutions offered as ideal and conclusive, even when they are merely partial treatment of the problem and is confined to the economic growth dimension. That will subsequently lead the formulation of the economic policies within in the given framework of ‘difficulty and limitations’, instead of discovering an arrangement that would remove the difficulty and overcome the limitations. Capitalism did exactly this when it portrayed the ideal scenario as a mythical community.

To the proponents of capitalism, as long as long as there is scarcity of resources and resistance and challenges in nature, it is to be accepted that human needs will conflict and a person’s interests will interfere with those of others. In such situation, it is inevitable that the formulation of an economic system prioritize the needs and sets limits on their fulfilment.

Islam rejects this in its entirety and looks at the issue of economic problem with an optimistic attitude. We find that solution in holy words of Allah, the Supreme: –

“Allah it is He Who created the heavens and the earth, and sent down out of heaven water wherewith He brought forth fruits to be your sustenance. And He subjected to you the ships to run upon the sea at His commandment; and He subjected to you the rivers” (14:32).

“And He subjected to you the sun and moon constant upon their courses, and He subjected to you the night and day” (14:33).

“And He gave you of all you asked Him. If you count Allah’s blessing, you will never number it, surely man is sinful, unthankful!” (14:34).

These holy verses after mentioning the sources of wealth, which Allah has bestowed upon man, assure that they are sufficient for the satisfaction of man’s wants and needs and the accomplishment of what he asked for (and He gave you of all you asked Him). So, the actual problem did not arise from the scarcity of resources or the resistance of nature. Man himself causes the difficulty, as the last portion of the verse declares man’s injustice and ungratefulness. (*Indeed man is the most unjust and the greatest of the ingrates*).

So there are two reasons for the hardship and misery faced by mankind from the beginning of man’s history. One is man’s own injustice in wealth distribution and the other is his ungratefulness in respect of the gifts of Allah, the Supreme, by exploiting the wealth bestowed upon him. It is possible to overcome economic difficulty by looking at it from this human perspective and by ending man’s injustice and ingratitude by establishing a mechanism in providing fair access to natural resources and treasures, and an equitable distribution of the eventual production output.[4](#)

The Relationship Between Production And Distribution

Is there any relationship between production and (wealth) distribution? Islam and Marxism fundamentally differ on this issue, at the doctrinal level. Marxism affirms the existence of this relationship. It holds that every form of production pre-supposes – in conformity with the law of evolution and change – a particular mode of distribution, compatible with that form of production. The mode of distribution accompanies the production growth and its evolutionary changes.

When production assumes a new form that is incompatible with the earlier system of distribution, it is inevitable that conflicts and bitter struggles ensue. The relationship between production and the original mode of distribution is broken, giving way to a distribution system. The incorporation of the new and compatible distribution mode with the prevailing form of production support its development and progress.

Thus, Marxism considers that the system of distribution always follows the mode of production and adapts itself to the need of production. This dependence of the distribution system on the mode of production is an inexorable law of history and is unchangeable. The basic proposition in life is that a person produces and production goes on and increases continuously.

As to who confers the ownership right of the means of production and decides on the distribution (of the output) – and whether these are on the basis of master-servant in feudal ownership relations, or that of bourgeois ownership or proletariat ownership – all these are fixed by expediency and the interest of production itself. In every stage of history, the distribution relation adjusts to a form that matches the mode of production.

We have learnt this Marxist theory in detail in the first volume of this book. We were able to draw from our study a conclusion that contradicts the theory, disproves it philosophically and scientifically, as well as demonstrates its inaccurate historical interpretation⁵. Likewise, we have learnt the standpoint of Islam about this theory and its rejection of the dependence of distribution on the form of production⁶ (as claimed by Marxism).

Islam's Guidance In Ensuring Equitable Distribution

Islam rejects the idea that distribution depends on the form of production and that distribution mode is conditioned by the forces of the natural law of history, as held by Marxism. But Islam does not sever all the relationship between distribution relations and the modes of production. Islam holds that this relationship between distribution and production is not a relationship of interdependence based on the law of nature, as presumed by the respective doctrine. Islam regulates production to conform to its principles of distribution, instead of adapting distribution to follow the needs of production, as stipulated by the Marxist theory.

The idea regarding this relationship stands on the basis of the following points: –

First, Islamic economic system regards the law it brings as permanent, invariable and valid for all time and the place. It is valid and applicable in this age of electricity and nuclear energy, as it was in age of steam engine and the age of windmill and manual labour. For example, the rule that stipulates ‘it is the right of a worker to keep the fruits of his labour’ is applicable in each of those.

Second, it regards the process of production, which a worker performs, as one of the phases of that general law in respect of distribution. For example, reclaiming a wasteland, uncovering a spring, harvesting wood from the forest and extraction of minerals, all these are processes of production. But at the same time, they constitute the function in the application of the general law of distribution on the wealth produced. Therefore, the sphere of production is also the arena for application of the rules on distribution.

Third, that when production levels improve and production capacities increase, man’s domination over nature is amplified. It would become possible for a person equipped with enough means of production to carry out his production activity with respect to natural assets on a scale and scope far larger and more extensive than that, which would have been possible for him in the past.

Considering these points, we learn that the evolution of production processes and the improvements in the means of production would make it possible for a person (with higher production capability) to maximize his production efforts – and benefit from the application of the general rules on distribution – while carrying out his production activities. This act may result in an eventual distribution that is grossly disproportionate to individual needs and would constitute a threat to general equilibrium and social justice, as required by Islam.

Let us take the example of the rehabilitation or reclamation of infertile lands. In the age of manual labour, a person was not capable of rehabilitating large areas of land. Since the theory does not recognize rehabilitation by way of hiring labour and a person only had the help of basic tools, he could only reclaim land on a limited scale. It was not within his reach to take advantage of the general rule on distribution while carrying out his production work. It was not thus beyond his ability to take into his possession huge tracts of land in conformity with the law that confers ownership right on the person undertaking the reclamation works (with his own labour).

But in this age of modern machineries and equipment, a person is capable of rehabilitating large areas, and thus can take advantage of general law of distribution. Under this situation, it is inevitable to have guidance in practise in order to reach the goals that correspond with the Islamic ideals of justice. In the Islamic system, the doctrinal relationship between production and distribution arises from this. In fact, it rests on the idea of ‘guided’ application, which defines production as a process of application of the law of distribution. This definition leads to a limitation that assures equitable distribution in line with the Islamic ideals and goals.

Islam limits the potential abuse (by taking advantage of the rules on distribution), by bestowing upon to the Head of the State (*Wali Al-'Amr*) the authority to intervene in relation to the application of the law on distribution and restricting its abuse. In the example that we have offered, the head of the state has the authority to prohibit an individual from undertaking reclamation of lands except within limits that conform with Islam's idea of social justice. Islam has laid down the principle of the right of intervention by the state. We will examine this in detail in future discussion of the subject.

Thus, we learn that in relation to economic development and growth, the head of the Islamic state is tasked with the responsibility and also authorized to manage and intervene in production activities and determine the limits in the application of the general law of distribution, in such a way that the spirit of the law itself is upheld. This means that the principle of state intervention, whereby the state is authorized to guide the application of the law, is the tool that Islam uses to ensure appropriate use of the general law of distribution and its conformity with its ideas of social justice for all time and place.

Relationship Between Production And Circulation

Production as we know is a process of changing or remaking nature and natural materials in the form that best meets the needs of man.⁷

Circulation in the physical sense means transport or moving an object from one place to another, while circulation in the legal sense means all commercial operations by way of barter trades, or buying and selling transactions throughout. It is the second one that we propose to discuss here.

Circulation in the physical sense is obviously an extension of the production process. For instance, the transport of a product from one place to another usually creates a new convenience and constitutes an addition to its value in meeting the needs of man, as that brings it nearer to the end user. In respect of mineral deposits, a miner's work essentially involves removing the natural deposits from an underground location and bringing them to the surface. Bringing any product nearer to its consumer adds to its usefulness and convenience to the user. All these are changes to a better form, in respect of the needs of man.

As regard to circulation in the legal sense, and the transfer of ownership from one person to another – as we have noticed in commercial transactions – it is based on the prescribed law on transactions that must be observed. Its relationships with production are established on doctrinal basis. We can therefore study the view of Islam on the relationship between production and circulation and the nature of their connection at the doctrinal level.

The Islamic conception about circulation and its relationship with production, doctrinally, does not only involve its doctrinal conception. It also plays an important part in the formulation of the general policy on product circulation and in filling the legal gaps that Islam has mandated the state to respond accordingly based on expediency.

Islam's Conception Of Wealth Circulation

From our study of the texts, prescriptive dicta and the general juristic trends, the Islamic conception of circulation that comes to light is this. In principle, circulation is an integral part of production and should not be separated from its general sphere. A number of texts and legal prescriptions suggest this Islamic conception. This conception has also been widely accepted historically in line with the local needs and requirements that gave rise to this view.

Most probably circulation did not exist in societies where the members produced just enough to satisfy their respective needs, because man who lived in this self-sufficient environment did not have any need for goods produced by another person. There was therefore no need to physically move a product or trade it with another person.

Circulation arose in the life of man as a result of division of labour. That prompted each person to pursue production of particular goods and to produce a quantity of those goods in excess of his own requirement. That also led him to obtain his entire requirement of any other goods from other producers by way of trade. He offered them the goods they needed from what he produced, in exchange for his needs from the goods they produced. The diversity and repetition of needs brought about by division of labour, in this form, subsequently led to various ways wealth is circulated in the society.

The wheat producer confines himself to the production of wheat, and defrays his requirement for wool by carrying a quantity of wheat – in excess of his own requirement – to the wool producer who has a need for it. He hands over to the wool producer the required quantity of wheat and receives from him, against that wheat, the quantity of wool he desires.

We see in this manner that the wheat producer is directly connected with the consumer of his product. Likewise, the shepherd who produces wool gets in contact with the wool consumer in the circulation process without a medium of exchange. In this model, a producer of a commodity directly exchanges his production output with another person who is a producer of the commodity that he wishes to consume.

The process of circulation evolved in a variety of ways. At one stage an intermediary exists between the consumer and the producer. The wool producer does not sell his wool directly to the wheat producer as in our previous example. Instead, he finds a third person that plays the role of being an intermediary between them. The third person buys the wool not for his consumption, but to hold it for subsequent sale to the end consumers. Therefore, instead of the wheat producer having to find the wool producer initially, he meets this intermediary who markets the wool and agrees to purchase the wool. This is the start of the commercial operations. Later, it was the intermediary who frequently transacted with the producers and consumers.

In light of this background, we learn that in both types of circulation – whereby ownership changed hands either by way of producer-to-consumer exchange, or by way of producer-to-merchant-to-

consumer trades – a work of production was done on the part of the person, who transfers the ownership of the commodity and receives the price for it. In the first type, the wool producer carries out the work of producing the wool himself and then transfers its ownership by selling it in consideration for a return. In the second type, the intermediary carries out the work of transferring the production to the market, keeping it and making it available for delivery to the consumer, whenever he desires it. This work is also a form of production as we have already learnt.

This means that the benefit or gain which a seller earns from the transfer of ownership (for a return or compensation) – and it is what we now call it profit – is the outcome of a productive work that he had performed, not an outcome of the ownership transfer itself.

But the mastery of commerce driven by selfish motives led to a change and deviation from its original form – of healthy, ethical and legally compliant trades – especially in present day capitalist era. That started the separation of both circulation and trading from production. Also, the transfer of ownership came to be an operation on its own, detached from any productive work on the part of the immediate preceding transferor. He now carries out the transfer for the sake of acquiring benefits and profits. While trade was (originally) the source of these benefits and profits as an extension of the production process, it later (at times) became merely a legal process for the transfer of ownership (with no really added economic value).

Therefore, we find in the capitalist trade that the number of legal (transfer) process multiplies in respect of a single property, resulting from the multiple intermediaries that exist between the producers and consumers, only to end up with numerous merchants having the opportunity to acquire gains from those operations.

Islam naturally rejects this capitalist-style deviation because it is contrary to true meaning and conception of trade. It is also against the Islamic view of trade as an extension of production as we have said above. Islam always treats and regulates issues pertaining to wealth circulation with this particular viewpoint. In matters related to trade contracts, the Islamic ideas adhere to a decisive course in the direction that rejects any detachment of circulation from production.

Doctrinal Evidence On The Islamic Conception On Circulation

The origin of Islamic conception on wealth circulation⁸ can be easily traced and it can be found in the doctrinal evidences in a collection of juristic prescriptions drawn together in the upper structure of the Islamic law. Among those texts that reflect this conception and states the Islamic view, is the letter of ‘Ali (a.s.) to his governor of Egypt Malik al-Ashtar. In that letter, ‘Ali (a.s.) lays for him a programme of work and specifies the Islamic concepts, and says: “Then admonish with kindness merchants, men of profession (artisans, industrialists) for the recommendation given and enjoin on them to do good – the resident among them, the one troubled about his wealth, the one who physically support – they are sources of benefits, the means for public convenience, the importers of distant things (products) from

isolated dump places on your land, your sea, your mountain and your plain whence one cannot combine together and venture upon.”

It is obvious from this text that the trader class is placed on the same rank with that of professional men, artisans and industrialists and generalizes them in terms of all sources of benefits. Just as the merchant creates benefits, so do the professionals, artisans or industrialists. In the text that is followed with the explanation of the benefit or profit, which the merchants create and the operations they carry out – bringing goods from distant and isolated places, where other men do not jointly venture upon.

In Islam, trade is therefore a form of production and fruitful labour and earnings therefrom is the result of not only for an operation in the legal space (that results in change of ownership). This Islamic conception is not merely what the essentials of circulation denotes. It also presents the basis, in light of which, the (Islamic) State fills the legal gaps left to it to be dealt with within the bounds of its capacity as hinted earlier by us.

The Juristic Leaning That Reflects This Conception

As for the prescriptions and legislative enactments, which reflect Islam’s conception of circulation (of goods), we can find it in a number of juristic texts and jurists’ opinions. Some are given below:

1. In the opinion of a number of jurists like al-’Umani as-Saduq, ash-Shahid ath-Thani and others: If a merchant buys say, wheat, but has not taken it in his possession, it will not be permissible for him to make a profit by selling it at a higher price. But it will be permissible for him after he has taken possession, even though in the Islamic jurisprudence a legal transfer is completed with the execution of the contract and does not depend on any value-adding work thereafter. The merchant has already become the owner of the wheat even though he had not yet taken possession. However it is not permissible for him sell it at a profit at that stage. The intention (of the ruling) is that profit should be linked with work, as also to prevent more trades being merely legal transactions as cover for profit. There are a number of traditions in which this opinion is indicated:

In a report by ‘Ali ibn Ja’far, it is stated that he asked al-Imam Musa ibn Ja’far (a.s.) in respect of a man who buys food. “Is selling it permissible before he take possession of it?” al-Imam replied: “If he makes profit then it is not valid before he takes possession. But if it was by way of *tawliyyah*, that is he sells it at the same price he purchased, without any profit, then there is no objection. “

2. In the opinion of al-Iskafi, al-’Umani, al-Qadi, Ibn Zuhrah, al- Halabi, Ibn Hamzah and many other jurists: “Even if a merchant purchases goods to take delivery at a different time and pays the price thereof forthwith, it is not valid for him to sell the goods – after the due date comes to pass – at a higher price before he takes possession of the quantity of the goods he has purchased. Now, if you purchase wheat from a farmer, and it was agreed with him that he will hand over to you the total quantity of the purchased wheat after a month, you paid forthwith the price, it is not valid for you after the passing of the

month to sell it for more before you take delivery of the purchased quantity and avail of the legal process of the transfer for the sake of acquiring new profit. You can, however, sell the goods at the very price as you purchased it.”

Those who hold of this opinion rely on a number of traditions. It is stated in a tradition that Amir al-mu'minin, 'Ali (a.s.) said: “He who purchases food or fodder to be given to him after a fixed time (deferred delivery), if its condition was not met with and cash was taken, then he cannot take anything but his principal, for, on this basis, he will do no wrong, and no wrong will be done to him.”

In another tradition reported on the authority of Ya'qub ibn Shu'ayb it is stated that: he asked al-Imam as-Sadiq (a.s.) about a person who sells in advance a quantity of wheat and dates for one hundred *dirham*, when the time is due, the man to whom he made the advanced sale comes to demand the goods he had purchased. The man tells him: “By God, I have not more than half of what I have sold to you. So if you wish you can take from me half of the quantity you purchased and half of the cash money you gave me.” He (al-Imam) replied: “There is no objection if he takes from him the money as he gave it, that is one hundred *dirham*.”⁹

3. In many of the traditions from the prophet there are prohibitions against going out to meet the caravans (of merchants) and city-dwellers selling for the desert-dwellers. It is given in the tradition that the Messenger of Allah (S) said: “No one of you shall meet commercially outside the city nor shall city-dweller sell for the desert-dwellers.”

Receiving or meeting the caravan of merchants means a merchant goes out of the city and receives the owners of commercial goods. He buys the goods before they enter the city and later returns to the city and sells the goods to the people. As for ‘the city dwellers selling for the desert-dweller’, it means that a city merchant takes charge of the village people who are advancing towards the city, carrying with them their fruits and milk products, etc. He buys from them and trades with them.

Clearly, prohibition against these two transactions bear the stamp mark of the Islamic leaning, which we are trying to establish. The prohibition is aimed at dispensing with the intermediary and the parasitic part he plays by standing in the way of the owner of the goods meeting face to face with the consumers of the goods, not because of anything except on the basis of hurling himself in between them. Islam does not welcome an intermediary in such a role, undertaking no productive element in the production operation and exchanging purely for profit.

Who Do We Produce For?

I wish to highlight the capitalist position with respect to this question. By comparison, we may ascertain the Islamic standpoint along with its unique features.

The Capitalist Position

In directing production, the capitalist system – guided by its economic doctrine – relies on the price mechanism. Price determines supply and demand in the free market. The free (laissez-faire) capitalist economic system is driven by privately owned businesses. These businesses are operated and run by individuals and are subject to their will and desires. Each person runs his business and plans his production in line with his interests and his desire to earn the maximum amount of profit.

It is the drive and desire for profit that conditions each person to his production and determines his level of activity. The movement of price in the market determines the profit. Thus, whenever there is an increase in the price of the commodity that his business produces, the business owner directs his attention to the production of that commodity in a larger quantity hoping to earn a larger amount of profit. It is obvious that in a healthy and sound market environment, the price increase of a commodity in the market reflects an increase in the demand for that commodity.

It is this price movement that capitalism holds to be the bond between production and demand, with the profit being an incentive for production. It is the price increase that attracts capitalist enterprises with profit, and it is the rise in the demand that leads to the price increase. Thus, production is eventually directed for the sake of consumers and adapted to their needs, which express themselves in the increase in demand and consequently, the price. In light of this, the reply by the capitalist system to the above question (who do we produce for?) is that production is undertaken for the consumers and is always connected with their needs.

Criticism Of The Capitalist Position

This is the conspicuous picture of the capitalist production or the nice image that the adherents of capitalism seek to showcase in order to demonstrate the evidence of the prevalent relationship between production and demand under the capitalist economic system. While this picture is partly true, it is unable to conceal the appalling contradiction between production and demand under the capitalist economic system. It does explain the various links between production and demand, but it does not describe the essence of demand. And it does not uncover the capitalist conception to examine this arbitrary acknowledgement of demand, dealing with it only by use of the price mechanism.

The fact is that demand as an interpretation along its monetary dimension – in the capitalist sense – overwhelms that of its human dimension. It captures only one element – that demand causes increase of price in the market. But that is a demand accompanied by purchasing power or the financial capacity to fulfil. As for demands that are not backed by the corresponding financial ability of alluring or tempting the capitalist markets – that is by raising the price of the respective commodity to for attract producers to increase output – they are neglected no matter how desperately the goods are needed. Even if a consumer completely and persistently expresses his demand for a commodity, he has no right to ask for increase in production without demonstrating the evidence of his financial capacity to pay. He does not

have any say in the capitalist economic life, even if it springs from the core of human reality and desperate needs.

No sooner did we learn this capitalist conception of demand, those golden ideals that the supporters of free enterprise wrap the capitalist production with – which they claim to conform to the wants and needs – dissipate all at once, because only the purchasing power of the fortunate few increases, while that of others declines. The level of wellbeing for the great majority of the individuals in the capitalist society has declined. From the capitalist point of view, the outcome of this considerable disparity in purchasing power would be that the demands backed by enormous purchasing power would command an exclusive influence over the direction of production. The will and desire of this elite group with the incentives of higher prices lure the owners of the respective businesses. At the same time, the need of the ordinary people is neglected for their lack of purchasing power.

A demand backed by enormous purchasing power will be able to get the capitalist market to produce both products of necessity and those of luxury for amusement and indulgence. Meanwhile, the demands by the poor will be unable to attract the production of even absolutely basic necessities of life. The system will result in the capitalist businesses enlisting all their resources and employing them towards production of luxury goods.

In response to this greed and over indulgence, a variety of devices and products have been invented because of the endless demand for enjoyment of goods and pleasure. The demand for items of necessity from a far broader base of the population among the ordinary people – for maintenance of life – continues to remain unattended to, except within the bounds of their financial capacity. In this way, the capitalist markets are filled with a variety of luxury goods and products for leisure, with occasional shortages of the basic necessities for a section of the population.

This is the position of capitalism in respect of production and the market mechanism that it relies on in determining what product and how much to produce.

The Islamic Position

As for the Islamic position, its essence can be described with the following points: –

1. To satisfy the basic needs of all members of the society, Islam makes it obligatory for the society to increase production to a level whereby the quantity of the commodity are capable of satisfying those wants and needs. It has to be in a sufficient quantity, which would allow each individual to have his need met. Until the production level is increased to that sufficient to meet the society's total needs, it will not be legitimate to direct the relevant forces of production to other areas of production. In Islam, the needs and desire – regardless of the corresponding financial capacity or purchasing power – play a positive role in determining the level of production.
2. Likewise, Islam also makes it obligatory that the society's production does not lead to extravagance.

Overindulgence and excesses are forbidden in Islam, whether it is private expenditure by a person or a public spending for the society. It is also forbidden (in Islam) for one to wash the ground of his house with expensive perfumes, since it is extravagance (*israf*). Similarly, it is forbidden for the society or – in other words, the producers of perfumes – to produce more than the need of the society and its consumption capacity, because excessive production is a form of waste of wealth that is not justifiable.

3. Islam allows intervention by the *Imam* in production, with justification on the following grounds:–

First, to enable the state to set the minimum level of production of necessary goods and also the maximum limit, beyond which it is not permitted to further produce. It is clear that the running of private businesses driven solely by the will and desire of their respective owners, without any restriction by a central authority will lead to some difficulties. In some periods there would be overproduction and wastages, while in other periods there would be underproduction and shortages. A certain level of state supervision would assure that the society's production runs its course within the desired limits.

Second, to authorize the state to respond according to exigencies of circumstances in areas, which the *Shari'ah* stays silent. This zone includes all types of permissible activities. The head of the state (*Wali Al-'Amr*) has the right to intervene in any of these activities in pursuit of the overall goal of the Islamic economic system. We shall give details about this area of activities and the limits of the state's authority and its role, in our future discussion. This authority conferred upon the head of state to supervise and intervene in production, by deciding on the relevant aspects in the areas the *Shari'ah* is silent, is part of the state's rights.

Third, the Islamic legislation concerning the distribution of natural assets provides room for the state to intervene and supervise the entire economic life. The Islamic legislation in this respect makes direct labour a basic criterion for the appropriation of natural assets and the acquisition of their ownership according to juristic statement mentioned in some of the upper structures of Islamic law discussed earlier. This makes it impossible for an individual to establish a large operation that monopolizes natural resources despite his capacity to invest. Thus, production in relation to minerals and natural resources are to be carried out under regulation by the state authority. Large state-owned enterprise can be established for efficient production of these natural resources and to place them at the service of the Islamic nation.

Through an effective and complete supervision over the mining industry and the production of primary raw materials, the state would have an indirect control over different fields of economic activities since in most instances businesses are dependent on natural resources and raw materials for their operation. It will thus be possible for the head of the state to access various economic fields indirectly by way of control over the earliest and most basic stage of production, that is, the natural resources and primary materials.

[1.](#) See Vol.2, Part.1, Second Chapter under The Theory of the Pre-production Distribution.

[2.](#) See Vol.1, Part 2.

[3.](#) The Machine Age refers to a period of time in the early 20th century from approximately 1880 to approximately 1945. During this time, new machinery was invented and production increased. [Note of AI-Islam.org].

[4.](#) See Iqtisaduna Vol 1, Part 2.

[5.](#) See Iqtisaduna, vol. 1, Part 1.

[6.](#) See Iqtisaduna, vol. 1, Part 1.

[7.](#) In traditional term, production is creation of a new utility (of an object). We have chosen this definition of production because those who know it in the other form ended up with meaningless generalization. They interpret 'utility' as a property of an object that enables it to fulfil the respective need or requirement. They say it is not an intrinsic or extrinsic aspect of an object, but is born merely by the desire for it, even if this arises from a false or erroneous estimation of the object. For instance, the desire for certain medicines may arise from a misplaced belief in its effectiveness in the protection against infections or diseases.

The definition of production and utility of an object in this form includes a person's work at convincing the public with regard to the usefulness or effectiveness of a particular product – because it creates a new utility and leads to that product enjoying the feature of satisfying the general desire – despite the reality that the person did not perform any work on the substance. This is the generalization that the traditional definition sustains. Therefore, we define production as the process of changing or remaking nature and natural assets in line with man's needs. By this, we mean that production is a work that creates benefits that perform a role and fulfil a need.

[8.](#) We had better associate this conception with Islamic juristic leaning as against the Islamic legal prescriptions.

[9.](#) These texts point only to the law directed at prohibiting certain practices; forbidding the buyer from selling in advance whatever he purchases, before taking possession – after the due date falls – at a higher price. But if the texts (were taken to) mean an explanation of what a buyer can demand in the event the contract is breached, as regard to his legal options resulting from the failure of the seller to deliver within the given time, then the meaning of the prohibition in that respect will be that if the goods which the buyer purchased in advance are not delivered to him within the given period, and the contract is cancelled, then he has the right to recover – at the same price that he had paid to the buyer beforehand. On this supposition, there remains from the texts rulings as regard to the prohibition against selling it at a higher price before taking delivery.

Chapter 3: Responsibilities Of The State In An Islamic Economy

Social Security

Islam has prescribed for the state the duty of providing social security in respect of the standard of living for all the members of the Islamic community. The state usually sets about discharging this important duty at two levels. At the first level, the state provides each person with an opportunity for a generous share from productive work in order that he may earn his livelihood with his own labour and effort. However, when anyone is unable to do work and earn his livelihood wholly with his own labour, or in an exceptional situation where the state is unable to afford him an opportunity for work, the state carries out this duty on the second level.

The second level is the application of the principle of social security whereby the state shall make available adequate funds to defray the expenses to meet the needs and wants of a person. It is the duty of the state to fix a particular limit with regard to his standard of living. This principle of social security is established on the two premises of the Islamic economic doctrine and draws its doctrinal (economic) legitimacy from both.

The first premise is social or common responsibility, and the other is the right of the society to the resources of the state under common ownership. Each of these has its limits and its exigencies in respect of the determination of the type of needs that must be met as well as the minimum standard of living that the state has to guarantee the society under the principle of the social security. The first premise requires a guarantee for only the basic necessities of life and critical needs of an individual, whilst the second premise makes it obligatory for the state to guarantee the fulfilment of broader needs and higher standard of life. It is incumbent upon the state to implement the social security on both premises within the limits of its authority and capabilities.

In order to determine the idea behind the principle of social security in Islam it is necessary for us to expound both of these premises, their exigencies and the relevant legal evidence.

The First Premise Of Social Security

As mentioned above, the first premise for the principle of social security is the principle of social or common responsibility. Islam has prescribed this for the Muslims as a *farḍul-kifāyah*, a communal obligation or a legal obligation that must be discharged by the Muslim community as a whole. It includes the support for and maintenance of certain groups of people by the rest of the community. It is a duty incumbent upon a Muslim within the bounds of his means and powers. He has to discharge it just as he has to discharge all of his other duties.

The function that the state pursues under this principle of common responsibility of the Muslims actually expresses the state's role in compelling its citizens to comply with what the *Shari'ah* has tasked them with. The state sees to it that the Muslims on their own abide by the laws of Islam in its capacity as a ruling authority being charged with the application of the laws of Islam. Having the power to enjoin rightful deeds and prohibit the sinful actions, the state is answerable in respect of its duties and is vested with the right to ensure, and if necessary by force, that each person under its rule carries out his religious obligations and complies with the orders of Allah, the Supreme.

Just as the state has the right to compel Muslims to go out for *jihad*, in the same way it has the right to compel them to discharge their obligations in respect of the maintenance and support of the disabled, in the event they refuse to do so. In accordance with this right, it is reasonable for it to afford social security to the disabled on behalf of the Muslims and to impose upon them within the bounds of its means and powers to render assistance with a sufficient amount of funds towards the implementation of this guarantee and thus facilitate their compliance with the divine order of Allah, the Supreme.

In order that we may know the limits of the social security that the state will pursue on the basis of the principle of the common responsibility and the types of needs it will satisfy, we should look for guidance in the legal texts in relation to this principle of the common responsibility. In light of these texts we should determine the level of maintenance and support the Muslims are responsible to provide. These limits should be subsequently adopted in the application of this principle of social security.

It is mentioned in a sound tradition on the authority of Sama'ah that he asked al-Imam Ja'far ibn Muhammad (a.s.): "There is a group of people. They have excess (of wealth) while their brethren are in severe needs, and the *zakat* will not suffice them. Can they eat to their fill while their brethren go hungry? It is hard time." "A Muslim is a brother of a Muslim", replied the Imam. "He shall not wrong him, neither shall he abandon him in bad condition, nor deprive him. It is a duty incumbent upon a Muslim to strive after, keep friendly relation, cooperate with each other and be sympathetic to those in need."

In another tradition (it is stated): al-Imam Ja'far as-Sadiq (a.s.) said: "Whosoever of the faithful denies another faithful a thing that he is in need of, while he can give it out of what he has, or somebody else has, will arise (from his grave) on the Day of Resurrection, with his face blackened, his eyes blinded, and his hands tied to his neck. Then it will be said: 'This man is a dishonest who had committed dishonesty against Allah and His Messenger.' Then he will be ordered to Hell." His being ordered to Hell, obviously proves that the satisfaction of the need or want of a brother believer is a duty obligatory upon a believer within the limits of his means and capacity, because a believer does not enter Hell for omitting what is not obligatory on him, which is not his duty to do.

Though the term '*hajah*' (need or want) in this tradition occurs in a general sense, in the preceding tradition it occurs in the sense of a severe need, because the charge and guarantee of a collective satisfaction of a need other than severe is not an obligatory duty on the Muslims. From this it follows that it is a guarantee within the limits of critical needs and wants when Muslims have sufficient provisions in their possession to spare. In such cases, they cannot – within the term of the first tradition quoted above – leave their brother in privation. On the contrary it will be obligatory (on him) to satisfy his brother's need and afford him the means to relieve himself of the hardship. Islam has linked this guarantee of social security with the general principle of universal brotherhood of Muslims in order to show that it is not a special type of tax, but a practical expression of the principle of universal brotherhood of Muslims. It proceeds from here by prescribing a moral framework that is consistent with its conceptions and values, for a man's right to the support and maintenance by others. In the Islamic sense, this support is out of a brotherly sentiment for him and from an emotional acceptance of their togetherness in a just human family.

The State carries out, within the bounds of its capacity and powers, the protection of this right. The needs that deserve to be fulfilled with this right are critical needs – meaning basic necessities – which if not fulfilled would make life difficult. Thus, we know that social security on the basis of common responsibility is confined within the limits of basic needs of individuals, which must be fulfilled, to ensure

that life is not too difficult for them.

The Second Premise Of Social Security

But the State does not derive its justification for the social security by applying the principle of common responsibility. On the contrary, it is possible to show another premise for the social security, as we have previously learnt. It is the right of the society to the natural resources. On this the basis, the state will be directly responsible for the livelihood of the needy and helpless. This is quite apart from the obligation on the members of the Muslim community to support and maintain those in difficulty.

We shall firstly discuss the state's direct responsibility on social security and its limits according to the legislative texts, and then we will discuss the right of the society to natural wealth, which is the theoretical basis of the thought of this security. As for this direct responsibility for social security, the terms of this responsibility differ from that, which the state exercises on the basis of the principle of the society's common responsibility.

It imposes on the state the responsibility for economic security not only within the boundaries of a person's basic needs, but also that of his means of life in keeping with the standard of living of the Islamic community. Here, security applies to the security of upkeep, and upkeep means affording an individual the means in keeping with the standard of living and aiding the person to maintaining it.

The term 'maintenance' is used here in its popular sense. It implies that whenever the Muslim community's general standard of living increases in terms of comfort and ease, it is incumbent on the state to satisfy an individual's basic needs such as food, shelter and clothes, such that the level of his wellbeing – both by quality and quantity – reflects the overall standard of living of the Muslim society. Likewise, it is incumbent on the state to fulfil all the needs of an individual beside his basic necessities. These needs constitute the Islamic meaning of upkeep in line with the elevation of the standard of living of the Islamic society.

The legislative texts, pointing to the State's direct responsibility for social security are quite clear in their emphasis on this responsibility and on the fact that this security is a security of upkeep, that is, a security of affording the means of upkeep in line with the standard of living of the Islamic community. There is a tradition reported on the authority of al-Imam Ja'far as- Sadiq (a.s.) that: "The Messenger of Allah (S) used to say in his sermon '*Whosoever leaves behind him his loss, his loss is my responsibility and whosoever leaves debt behind him his debt is my responsibility and whosoever leaves his money it is his food.*' "

In another tradition, it is stated that al-Imam Musa ibn Ja'far (a.s.) said, defining what is due to him and what is due from him: "He is the heir of one who leaves no heir behind him, and he maintains one who has no means to maintain himself." In a report of Musa ibn Bakr (it is stated) that al-Imam Musa (a.s.) told him that one who seeks sustenance by lawful means in order to benefit himself and his family and

children is a *mujahid* in the cause of Allah. Then, if he fails in that let him seek to borrow in the name of Allah and His Messenger (S) whatever he needs to feed his family and children. Then, if he dies without discharging his debt then it will be the responsibility of the Imam to discharge it. Then, if the Imam does not discharge it, upon him will be the burden of it. Allah, the Mighty, the Glorious says:

“Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; in the cause of Allah; and for the wayfarer: (thus is it) ordained by Allah, and Allah is full of knowledge and wisdom.” (9:60). [1](#)

It is stated in a letter of al-Imam ‘Ali (a.s.) to the Governor of Egypt:

“Thereafter for the sake of Allah take care of those from among the poor and the needy, the miserable and the crippled who have no means to support themselves. They are a class of contented and courageous people. Allot for them a share out of your *Bayt Al-Mal* and a share of Islam’s best crops from every city, for the most distant of them is like that which is for the nearest of them. You should surely call to your attention the right of every one of them and pride should not divert your attention away from them. Indeed, you will not make lame excuse of loss of a trifle for your numerous important orders. Do not leave off your care of them nor turn away your face in disdain from them.”

“Then from among them who cannot reach you, he from whom eyes are swiftly turned away, he whom people hold in contempt and whose matters you missed let you employ your trustworthy man of Godly fear and humility to devote themselves to such a one of them and let them bring before you their matters, then act in respect of them in a way that it will constitute your plea to Allah on the Day you will confront Him for these are from among those under your rule and more in need of justice than others. Look after the orphans, and the one enfeebled by age who has neither the ability nor can toil for their own problems.”

These texts enunciate quite clearly the principle of social security and expound the responsibility of the state in relation to the maintenance of each member of the community and providing him with the means to financially support his living expenses. It is this principle of social security that the state is considered directly responsible to apply and pursue in the Islamic society.

As for the theoretical premise for this principle on the security, Islam holds that the society has the right to all natural resources of the nation for all these natural resources have been created for the society as a whole, not for any specific group only excluding the rest of the community:

“It is He Who hath created for you all things that are on earth; Moreover His design comprehended the heavens, for He gave order and perfection to the seven firmaments; and of all things He hath perfect knowledge”. (2:29).

This right means that every individual of the society has a right to benefit from the natural wealth and to

a dignified life therefrom. Thus for each person who is capable of working in any of the sectors for public or private industries, it will be a duty of the state to afford him a work opportunity within the bounds of its capacity. As for those whom the State cannot afford the opportunity or who are unable to benefit from the opportunity, then it will be the responsibility of the state provide for them the benefit from the natural wealth in the form of financial support for expenses commensurate with that of a dignified life.

So the direct responsibility of the state in respect of social security rests on the premise of the society's common right to the natural wealth and that constitutes an evidence of the right of certain members of the society who are incapable of doing work.

As for the mode that the economic doctrine adopts to enable the state to afford economic security in line with this right and to afford economic protection for the entire community including the disabled, it is by establishing certain public sector enterprises. These enterprises are to be funded with public resources and state assets in order that they may constitute an institution on similar footing as *zakat* – securing the right of the weak and a building a barrier against monopoly of the entire wealth by the economically strong.

The state will thus bring some measure of balance by underwriting the expenditure for social security and affording each individual the right to a dignified life with financial support drawn from the utilization of the nation's natural assets. The basis, in light of this, is the right of the entire society to benefit from the natural wealth.

The idea about social security that rests on this premise is the basis for the state's direct responsibility in providing economic security – in terms of the means to maintain an adequate standard of dignified life – to all the individuals of the society including the helpless and the poor. The doctrinal mode for the implementation of this idea is public sector enterprises, created under the Islamic economic doctrine as the institution towards full realization of all the relevant goals.

The most striking legislative piece in relation to the declaration of this premise for all of the economic doctrinal content – both the idea and the mode – is the Qur'anic injunction in *surat al-Hashr*. The relevant verse of the *surah* specifies the function of “*fay'*” and its role in the Islamic society as an instrument of public sector. Here is the text:

“What Allah has bestowed on His Messenger (and taken away) from them – for this ye made no expedition with either cavalry or camelry: but Allah gives power to His messengers over any He pleases: and Allah has power over all things.” (59:6).

“What Allah has bestowed on His Messenger (and taken away) from the people of the townships, – belongs to Allah, – to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah; for Allah is strict in Punishment”. (59:7).

In this verse we find the declaration of the basis, on which the idea of social security is established. The basis is the right of the whole society to the wealth, as expressed by the Qur'anic phrase – ***In order that it may not (merely) make a circuit between the wealthy among you.*** The verse explains the legislation of the public sector of the *fay'*. It shapes a mode of the social security based on this right. It forbids monopolistic control of wealth by some people and it lays emphasis on the necessity of subjugating the public sector to the good and benefit of the orphans, the poor and the wayfarer in order that all the individuals of the society succeed in obtaining their right to enjoy the benefit of nature which Allah has created for the service of man.² So the basis, the idea and the mode, all of them are obvious in this Qur'anic injunction.

Some of the jurists like ash-Shaykh al-Hurr have given their legal opinion, that the social security granted by the state is not specific only for Muslims but also for a *dhimmi* (a non-Muslim subject) who lives under the protection and shelter of the Islamic state. The elderly, who is unable to earn his livelihood, will obtain the means of his maintenance from the *Bayt Al-Mal*. Ash-Shaykh al-Hurr has quoted a tradition on the authority of al-Imam 'Ali (a.s.) that he passed by an old man who was begging where upon *Amir al-mu'minin* (a.s.) asked: "What is this?" He was told that the beggar was a Christian. The Imam said: "You sought to make use of him until when he grew old and is unable to work, and you deny him his means of sustenance. Give him his maintenance money from the *Bayt Al-Mal*."

Social Balance

Islam formulates the principle of the state economic policy in relation to the social balance by proceeding from two fundamental realities. One is universal, and the other is doctrinal. As for the universal reality, it is that there is great diversity among individuals as to their mental, intellectual and physical faculties and aptitude. They differ as to their endurance and fortitude and their will power and ambitions. They differ as to the level of enthusiasm, receptiveness and creative abilities. They also differ as to physical strength, mental and emotional stamina and other qualitative aspects of human personality.

Islam views these disparities not as the outcome of random occurrences in the history of man, as presumed by some with the extremist view, who will always attempt to point to economic factor as the ultimate cause of every phenomenon in human history. It is a mistake to attempt to explain these variations and disparities on the basis of a particular social circumstance or a specific economic factor.

If it were possible to fully explain a condition of a society in light of economic factor and if it can be said that the feudal order or slavery was born out of an economic cause, as claimed by the proponents of materialist way of explaining history, then what economic circumstance would adequately explain the appearance of those specific variation and disparities between individuals? Why does a person become a slave, and another, lord or master? Or why is a person insightful and capable of inventing new things, while another person completely the opposite? Or why isn't each of them in the place of the other, within the framework of a general order.

The question can only be answered by assuming that individuals are diverse as to their specific talents and capabilities, even before the social variations among them (in the class-based society) come into play. This may help explain the difference between individuals in the class-based society and the designation of each individual to a particular role in this order.

A similar assumption is also required to explain the difference as regards their natural talents and capabilities. Thus, it will be wrong to say that this person happens to be insightful because he occupies the role of the lord in the class order while another person is dull-witted because he is in role of a slave in that order. This is unacceptable because for this person to be in the role of slave and the other in the role of the lord, there exists a differential between them to enable the lord to make the slave content with the distribution of the roles in that form. Thus, we are led to eventually conclude that the cause is the natural psychological factors, which are the source of the differences between individuals as regards their peculiarities and aptitudes.

Hence, difference among individuals is an absolute reality. It is not the product of a social conditioning. So, it is neither possible for a realistic theory to disregard it, nor for the social order to abolish it with legislation or with a process that alters the nature of social relationship. This is the first reality.

The second reality that is the basis of the Islamic rationale in dealing with matters related to social balance, it is the (economic) doctrinal law of (wealth) distribution whereby work is the basis of ownership and related rights. We have come across this law and we have studied every detail of its doctrinal contents in earlier discussions.

Now let us combine these two realities in order to know how Islam proceeded from both in dealing with issues related to social balance. Islam's understanding and acceptance of the disparity in wealth is the outcome of its understanding and acceptance of these two realities. Let us assume, for example, that a group of people settle down in an area and develop it economically. A society grows and its members establish relationships with each other on the basis that work will be the source of ownership. Let's assume further that on that basis, none of them will practise any type of exploitation against others. After a while, we would find variation and disparity in respect of their wealth according to their intellectual, spiritual and physical makeups.

Islam acknowledges these differences Islam because they are born from both realities. It sees no danger from such variation coming into conflict with the social balance. It is on this basis that Islam prescribes that in understanding social balance, these two realities are to be acknowledged. From that, Islam educes the statement to the effect that social balance would be a balance of the standard of living and not the equality of income among individual members of the society. And the meaning of (balance in) the 'standard of living' is that wealth should be present with and circulate among the people to a degree that afford each individual member of the society a common standard of living. That means that every individual member of the society affords to enjoy life on a single standard of living. The degree of the living standard has to be preserved such that the means to support livelihood only differ within a single

standard of living. There would be a difference of degree in the standard of living and but not a stark contrast like those existing in the capitalist society.

This does not mean that Islam enjoins to create this state (of disparity). Instead, Islam defines social balance in terms of the standard of living as a goal that the state should strive with its best, within the bounds of the means at its disposal and its capacity, to implement and achieve with different legal modes and methods. Islam accomplishes this goal by applying pressure – from above – on those with higher standard of living, prohibiting of extravagance. It also applies pressure – from below – towards upgrading of those with lower standard of living. With this, the differing standards of living are brought closer to each other till they come into a single band. There will be differences in standards but they will not be worlds apart like that in the capitalist system.

We have learnt that the Islamic principle of social balance is based on a close examination of the Islamic texts. This examination reveals the view held in these texts, which is that social balance is a goal, and further, that the essence of this goal is as what we have expounded. The texts also emphasise on the direction of the state, which is towards upgrading of the standard of living of those with limited means, to bring them to almost equal footing with those having better means.

It is stated in the tradition that al-Imam Musa ibn Ja'far (a.s.) specified the responsibility of the governor of the state as regards *zakat*.

“The Governor should exact the *zakat* and spend it for the purposes Allah has directed him according to eight categories of the poor and the indigent. He should distribute it to them in their annuities of such amount as would render them dispense with their needs without difficulty and without dread. After that if there remains any left over as surplus, it will revert to the governor. But if there is shortage, and the amount of *zakat* is insufficient to meet their needs then the governor would make up the shortage by providing out of funds in his custody an amount that would do to relieve them of their needs.”

This text specifies explicitly that the aim and objective, which Islam tries to achieve, is to make each individual member of the society prosperous. This is what we find from the words of ash-Shaybani according to what has been narrated on his authority by ash-Shamsud-Din as-Sarkhasi, in *al-Mabsut*. He says:

“A Governor should have fear of Allah in spending monies of Allah for their proper purpose. It is not for him to neglect a needy man without giving him his rightful share out of *sadaqah* with such amount as would suffice himself and his family. In case some Muslims are in need, and there is nothing left in the *Bayt Al-Mal* of *sadaqat*, then the Governor should give out of the *kharaj* (land-tax) in the *Bayt Al-Mal* what they are in need of. It will not constitute a debt on (the part of) *sadaqat* to *Bayt Al-Mal*, because as explained by us, *kharaj* and whatever revenue comes within its meaning is for use towards needs of the Muslims.”

So, the prevalence of prosperity is the goal that the texts highlight before the Imam or the head of the

state. In order to know the Islamic conception of prosperity, we should specify that also in light of these texts. When we refer to the texts we will find that they have set an upper limit of prosperity for giving *zakat*. It has permitted giving *zakat* to a poor till he becomes prosperous but has disallowed giving further *zakat* to him after that, as mentioned in a report of a tradition on the authority of al-Imam Ja'far as-Sadiq (a.s.): "You may give to him *zakat* till you make him prosperous." Thus, (the level of) prosperity, the abundance of which Islam aims to achieve for all the members of the society is the prosperity level which is made a line of demarcation between giving and not giving of *zakat*.

We should again refer to the texts and search for the nature of this line of demarcation between giving and not giving of the *zakat*, to know the meaning of "*al-ghaniyy*" in Islam. At this stage of deduction it is possible to discover the nature of that line of demarcation in light of the tradition of Abu Basir, in which it is narrated that: "he asked al-Imam Ja'far as-Sadiq (a.s.) about a man having in his possession eight hundred *dirham*, the man, a shoemaker, with a big family, as to whether it is valid for him to take any *zakat*." The Imam replied: "O Abu Muhammad! Does he make any saving out of the *dirham* with which he maintains his family?" "Yes", replied Abu Muhammad. "If he saves half of the amount with which he supports his family", said the Imam "then he should not take *zakat*. But if it is less than half, then in that case he may take *zakat*. And whatever amount of *zakat* he takes he may contribute towards the upkeep of his family so as they could join (on level) with people."

In light of this, we understand that what Islam considers as the 'level of prosperity' would be whereby a man enjoys as much of the means of spending upon himself and his family as would join him to the average person in the society. He will have the means to support his living and that of his family to be at par with the common standard of living whereby there is no difficulty and no fear.

In this manner, we will come out from a series of conceptions to an Islamic conception concerning social balance, and will see that when Islam formulated the principle of social balance and made the head of the state (*Wali Al-'Amr*) responsible to implement it with legal means, expounded its idea concerning this and declared that it will be realized by having increased prosperity for all members of the society.

The *Shari'ah* has employed this conception of prosperity to fix a line of demarcation between the permissibility and impermissibility of *zakat* (for a particular individual). In other texts this line of demarcation has been prescribed as that degree of a person's prosperous condition of living that will join him with the standard of living of the average person. With that, the tradition has given us the Islamic conception of prosperity – that informs concerning the principle of social balance – that it is directed towards the goal of the increased prosperity of all people. It also informs us that the principle regards the prevalence of prosperity as a basic condition for the realization of social balance.

In this manner, we can visualize a complete picture of the Islamic principle of social balance and we will know that the goal set for the head of the state is to bring the underprivileged individuals into a higher standard of living such that they will attain comfortable life similar to that of the average member of the society.

Just as Islam has formulated the principle of social balance it has undertaken to equip the state with the requisite powers in order that it may exercise them for the application of this principle. The essence of these powers is as follows: –

First, the imposition of recurring taxes and to expend the tax revenue for the purpose of social balance.

Second, establishing state-owned enterprises by employing state assets and applying profits from these investments for the purpose of social balance.

Third, the nature of Islamic legislative enactments that regulate diverse fields of economic life.

Imposition Of Permanent Taxes

These taxes are *zakat* and *khums*. These two taxes were not planned only for the sake of fulfilling the basic needs, but also for addressing poverty and for upgrading the standard of living of the poor and bringing it closer to that enjoyed by the rich, in order to realize the social balance as conceived by Islam.

The following texts are juridical evidence of the goals in relation to social balance and that the state's authority and capability to be employed to that end:

a) On the authority of Ishaq ibn 'Ammar. He says: "I asked al-Imam Ja'far as-Sadiq (a.s.) if I may give a man one hundred *dinar* out of the amount of *zakat* due from me. The Imam said: 'Yes.' I then asked: 'Two hundred.' He said: 'Yes.' I asked: 'Three hundred.' He said: 'Yes.' I asked: 'Four hundred.' He said: 'Yes.' I asked: 'Five hundred.' He said: 'Yes, till he becomes self-sufficient.'"

b) On the authority of 'Abdur-Rahman ibn Hajjaj. He said: "I asked al-Imam Musa ibn Ja'far (a.s.) about a man whose father, uncle and brother used to supply him with provisions to meet his needs, as to whether, in case they were not able to supply all the things, can he take *zakat* and enable himself to meet his needs?" The Imam replied: "There is no objection."

c) On the authority of Sama'ah. He says: "I asked al-Imam Ja'far ibn Muhammad (a.s.), 'is taking of *zakat* valid for a person having a house and a servant?' The Imam replied: 'Yes.'"

d) It is reported by Abu Basir, speaking about a person on whom *zakat* is obligatory while he is not well off in life. The Imam said: "He must be helped in feeding and clothing of his family and children; he may retain something from it and give it to others and he may share with his children whatever of the *zakat* he takes till they join the people (as to the standard of living)."

e) On the authority of Ishaq ibn 'Ammar, he said³, "I asked al-Imam Ja'far as-Sadiq (a.s.): 'May I give to a man eighty *dirham* from *zakat*? ' He said: 'Yes, and give him even more. 'I said: 'May I give him one hundred?' He said: 'Yes, and make him self-sufficient if you can do so.' "

f) On the authority of Mu'awiyah ibn Wahab, he said, "I asked al-Imam Ja'far as-Sadiq (a.s.): 'It is

narrated on the authority of the Prophet that giving of *sadaqah* to the well-to-do is not valid, nor is it valid giving to persons of good means.' The Imam said: 'Yes, it is not valid for well-to-do people.' "

g) On the authority of Abu Basir, he said, "I asked al-Imam Ja'far as-Sadiq (a.s.): 'An old man from among our companion, called 'Umar, a needy man, begged 'Isa ibn A'yan for something. 'Isa ibn A'yan told him, "I have *zakat* money with me, but I will not give you anything from it, for I saw you purchasing meat and dates." 'Umar told him: "I gained only one *dirham* out of two *daniqs* therefrom. I purchased meat and with two *daniqs*, I purchased dates and was left with two *daniqs* for my need. " 'The narration reports that when the Imam heard this story of 'Umar and 'Isa ibn A'yan, he put his hands on his forehead for a while, then lifted his head and said: "Allah the Supreme has looked into the monies of the rich. Thereafter, he has looked into the state of the poor and then fixed *zakat* such sum of the monies of the self-sufficient as they would be satisfied with and if that were not to suffice them, make it more for them. Nay! A self-sufficient men should give a poor men such sum of money as would enable him to eat, drink, clothe himself, marry, give *sadaqah* and perform the *hajj*".⁴

h) On the authority of Hammad ibn 'Isa: That al-Imam Musa ibn Ja'far (a.s.) said, while he was speaking about the share of the orphans, the needy (*miskin*) and the wayfarer in relation to the *khums* – the governor shall dispense it among them according to the Book (al-Qur'an) and the *sunnah* such amount of annuities as would enable them to dispense with their needs. After that if there is any surplus left, it will belong to the governor. However, in case he is unable to or the *khums* falls short for their sufficiency in terms of yearly needs, then he is liable to give them, out of the money in his custody, such amount as would render them self-sufficient.

These texts enjoin giving as much out of zakat and such other funds, as would enable an individual to be join the standard of the people or as far as would enable him to become self-sufficient or – according to different wordings which occur in the texts – giving to them such amount as would be sufficient for their primary and secondary requirement such as: food, drink, clothing, marriage, *sadaqah* and *hajj*. Each of these is directed to one subject, the efforts to bring about of the prevalence of self-sufficiency according to the Islamic conception at all levels of living standards.

In light of this, we can generally define self-sufficiency and poverty according to Islam. According to the Islamic conception, a *faqir* (poor) is one who has not met his requisite and various needs as far as the wealth of the country would allow him. In other words, he is one who lives at a standard of living that is well apart from that of the well-to-do members of Islamic society. As for the self-sufficient (the rich), it is he whose living standard is that of the well-to-do in the society, and is not difficult for him to meet the requisite and various needs in a way that commensurate with the wealth and the material progress of the country, irrespective of whether he owns great wealth or not.

From this, we learn that Islam did not specify an absolute meaning and fixed parameters for all cases and situations of poverty. For instance, it cannot be held that the inability to satisfy simple basic needs constitutes poverty because that would make poverty means a life condition below the living standard of

ordinary people. By not assigning a fixed meaning to poverty, the actual purport of poverty will be broadened and will be aligned in accordance to rise in the standard of living.

In such a case, lagging behind the pace of this increased standard of living would constitute poverty. For instance, it is possible that people are accustomed to have houses of their own as a result of the progress of civilization and the flourishing condition of a country. If a family does not have an independent house of its own in that country, it would constitute a form of poverty. But in a country that has not reached such standard of ease and comfort of life, if a family does not have a house of its own that would not amount to poverty.

This flexibility in the interpretation of poverty has a bearing on the idea of social balance. If Islam instead offers a fixed and rigid meaning of poverty – as the inability to fulfil simple basic needs –, and to specify *zakat* or other instruments to address poverty, the establishment of social balance through these alone would not be possible. And they would not be able to bridge the wide gap in the standards of living of the *zakat* recipients and that of the financially able people, whose economic positions keep on advancing following their advancement in social life and the overall economic progress of the country.

Thus, by providing a flexible interpretation of poverty and self-sufficiency and setting the parameters of *zakat* and other institutions on the basis of this flexible interpretation, Islam empowers *zakat* and other instruments to be more effective in assuring the accomplishment of an overall social balance. Providing a flexible meaning is not irrelevant to a purport, with which the prescribed law is connected, such as the flexible interpretation of poverty to which *zakat* is linked. And this does not mean that the prescribed law can be changed at will. It only means adaptability to the prevailing meaning of the goal and its relevant parameters.

Medical science is a clear example of this. Islamic law has ordained learning of medicine as '*kifayah*' duty of Muslims. This duty is a permanent ordinance connected with a specific import, namely medicine. But what is the import of medicine? What does learning of medicine mean? Learning of medicine means a study of special information that fulfils, in any circumstance, the condition as regards knowledge of illnesses and the treatment methods.

This specialized information will grow with the passage of time in accordance with the progress of knowledge and the perfection of experience. The information that constituted specialized information yesterday will not be deemed specialized information today. And in complying with the ordinance of Allah in regard to learning medicine, it will not be sufficient for a present day physician that he has mastered only the knowledge of the expert physician of the era of the prophet.

Hence, the flexibility on the significance and the scope of medicine is not a change of the ordinance of law. If the present day physician is different from a physician in the era of the prophet, then it is reasonable for the meaning of 'poor person' today also to be different from that in the era of the prophet.

Development Of Public Sector Enterprise

Islam is not content with the regular taxes that it has specified in seeking social balance. It has also made the state responsible for the deployment of public sector assets for this purpose. It is mentioned in a tradition on the authority of al-Imam Musa Kazim (a.s.) that the governor, in case of the insufficiency of *zakat* collection, is liable to provide them out of what he has with him as much as would help them to become self-sufficient.

The phrase 'out of' what he has with him (or what is under his custody) proves that he can employ resources of the *Bayt Al-Mal* (public treasury) beside *zakat* towards the cause of attaining social balance by providing economic support for the poor and raising their standard of living. The glorious Qur'an has expounded the part of *fay'* which is one of the sources of the revenue of the *Bayt Al-Mal*. It says:

"....What Allah has bestowed upon His Messenger by way of fay' from the towns' people belongs to Him, to His Messenger, to the kinsmen, to the orphans, to the needy and to the wayfarer, so that circulation of wealth may not become confined in the hands of the wealthy amongst them". (59:7).

We have already learnt that this sacred verse speaks about the object of the use of *fay'* and puts the orphans, the needy and the wayfarer on a rank with Allah, His Messenger and the kinsmen. This means that the *fay'* is provided for disbursement of part of it to the poor just as it is provided for a disbursement of a part of it upon the common good connected with Allah and His Messenger. The verse clearly indicates that the provision of *fay'* for disbursement of part of it to the poor is intended to allocate the money for common use and common possession by all individuals of the society and not being circulated only among the wealthy, especially to enhance social balance.

In fact, *Fay'* constitutes assets Muslims have acquired by way of booty from the unbelievers without a war. It constitutes a state property, that is, it belongs to the office of the Prophet or the Imam. Therefore, *fay'* is regarded as a class of *anfal* (spoils of war). They are assets that Allah has rendered the property of the Prophet and the Imam by virtue of their position, such as wastelands or mines, according to a tradition.

The term *fay'* is generally applied in legal technical terms to *anfal* on the evidence of what is stated in the tradition narrated by Muhammad ibn Muslim on the authority of al-Imam al-Baqir (a.s.). He says: "*Fay'* and *anfal* comprise a land that was acquired without bloodshed or whatever of the land that has been acquired from a people that has made peace or what has been given with their own hand as well as the neglected wastelands, and those below the ground (mines). All these constitute *fay'*. This text makes clear the application of the term *fay'* to whatever of other types of properties Muslims have come into possession by way of *anfal* (spoil of war) and in light of this, the legal technical term will not be restricted to booty obtained without fighting. It is to be an expression as regards all the sectors that come into possession of the office of the Prophet or the Imam as administrators.[5](#)

On this basis, we may conclude that the verse confirms the order of *anfal* in a general form under the name *fay'* and by this we learn that in the *Shari'ah*, *anfal* is used to safeguard social balance and to ensure circulation of the wealth among all, as it is used for the common good.

The Nature Of Islamic Legislation

The social balance in the Islamic society owes its origin to the collection of Islamic juristic regulations in different fields whereby state obligations are specified. We cannot list here all the juristic rules that have bearing on social balance and demonstrate the relationship between them. But we can adequately refer to Islam's campaign against hoarding of funds, prohibition of usury, introducing new laws of inheritance, giving the state an authority over unproductive lands and so forth.

By prohibiting hoarding (of funds) and usury, Islam constrains the role of the capitalist-style banks in widening the economic disparity and hurting the social balance. It deprives them of their ability to acquire the lion's share of the country's wealth, facilitated by hoarding of funds and interest-based lending.

So, the Islamic policies will most likely impair the ability of the well-funded individuals to expand his dominance in commercial and industrial operations. Their ability to expand his industrial and commercial operations in capitalist societies depends on the banks, which support them with interest-based lending. Thus, when hoarding and interest are prohibited by law, it will not be possible for banks to accumulate huge funds or support private enterprises with interest-based lending. Hence, private businesses will remain within reasonable bounds in keeping with the general balance and that will naturally leave the initiatives on large projects to the public sector.

The Islamic laws of inheritance, according to which the property left by the deceased will most likely be distributed among a number of heirs and relatives, is another instrument in assuring social balance. The distribution of such assets among the deceased's heirs and relatives accordingly as laid down in these laws will lead to continuous distribution of these assets and will act as a check against their accumulation. Thus, at the end of every generation the total number of new heirs will most likely be a multiple of that before.

The powers conferred upon the state to deal with certain affairs that the *Shari'ah* is silent, is also an instrument for the state to work at achieving the social balance, as we will find in our forthcoming discussion. Likewise, the prohibition of large-scale production or exploitation of natural resources by a single private sector party also facilitates the attainment of social balance, since it is this upstream production in relation to natural resources that is usually the starting position for many economic activities.

Now, direct labour or work had been stipulated as a condition for the gaining ownership of resources from nature, as held by some jurists, and engagement of others (on behalf of the contender) is invalid for that purpose. Thus, the distributions of the wealth will have already been structured in a pattern that will

not hurt the social balance since it would not be possible for a small number of persons to exploit – to their advantage – in this sphere, by employing large capital or other capabilities. This is a matter has become the root cause of growing gaps in the economic positions that could eventually upset the social balance.

The Principle Of Intervention By The State

The comprehensive and universal authority given to the state for intervention in economic life of the community is deemed as one of the fundamental and important principles of the Islamic economic system. For the permanent and fixed dicta of the statutory laws of Islam, the state intervention is restricted to mere adaptation of the static rules. But in relation to those areas on which the *shariah* is silent, the state intervention is far more significant. It extends to filling these fields with complete set of guidance or regulations. This could include devising dynamic elements as regards the Islamic legislation, according to circumstances.

In the sphere of actual practice, the state would intervene in the economic life to guarantee the adaptation of those dicta of the Islamic law that are connected with the economic life of the individuals. For instance, it puts a check on those transacting businesses with elements of interest (usury) or acquiring authority over land without legitimate reclamation efforts. Likewise, it carries out itself the dicta with which it is directly concerned. For instance, it implements the principle of social security and general social balance in accordance with the way Islam has permitted for the realization of those principles.

In the legislative sphere, the state will intervene to fill the legal gap – those areas the Islamic laws has stayed silent on – left for the authority to improvise according to the changing circumstances, in the form that would assure the attainment of the general goals of Islamic economic system and bring the Islamic picture of social justice to realization. In the early part of our discussion we have referred to this legal void and have learnt that its study and examination is necessary during the search for the doctrine since it enters into the picture – that we are seeking to discover – as a dynamic element. This gives the system the ability to perform its mission and the capacity for integration with the practical and theoretical aspects, in diverse situation and in different ages.

Why Was Legal Gap (Lacuna) Kept?

The idea of these areas of legal flexibility stands on the basis that Islam does not offer a rigid principle of legislation on economic life as a permanent and unchangeable treatment. Islam does not even treat it as a phased system that history transmits over time, from one form to another until its final arrangement. Instead, Islam offers it as a theoretical form suitable for all ages. It is, therefore, necessary to give this form comprehensiveness with a feature of adaptability in response to diversely changing circumstances over measure of time.

To take up this idea in detail, it is necessary for us to determine the changing aspect of man's economic

life and the measure of its implications on the form of legislative enactment that regulates his economic life. In a man's economic life, he has a relationship with nature – the natural resources – that is exemplified in the mode of their production, and his control over them. He also has relationships with fellow humans, as reflected in the rights and privileges that each of them has acquired.

The difference between these two types of relationships is that for the first type, man pursues it irrespective of whether or not he lives in a society. As for the other, he is entangled with nature in a clearly defined relationship limited by his experience and knowledge. He hunts animals, or cultivates lands, or extracts coals and spins wools in a way he is good at. The existence of these relationships between man and nature does not depend by their nature on man's presence in a society, but the society influences these relationships. It leads to the accumulation of numerous experiences and the pooling of knowledge and eventually to increased level of human acquaintance with nature and man's capabilities to meet his needs and desires.

Man's relationships with fellow humans stipulate their respective rights and obligations and depend on man's existence in a society. Unless a man lives alone in complete isolation from others, he needs to be concerned about his rights and his duties. All the rules of the relationships – the right to the land he rehabilitates to a productive condition, the prohibition of acquiring gains through usury, obligation to allow others to fulfil their requirement for water from a spring he had uncovered specifically from that in excess of his own needs – have no meaning except in the context of being part of the society.

Islam, as we conceive, distinguishes between these two categories of relationships. It holds that the relationship between man and nature or natural resources changes with the passage of time. It follows from the challenges which man confronts continuously in his interactions with nature and the broad variety of solutions that he had mastered over these difficulties. As often as his relationship with nature changes, his control over it improves and his capability as to his tools and techniques grows.

Man's relationships with his fellow humans are constant for they treat the problems that are essential and permanent, even though externally they may appear inconsistent. Every society that in the course of its relationship with nature gains control over natural assets will be confronted with issues related to equitable distribution and determination of the rights of the individuals and the society. This is applicable whether production is powered by steam engine, or electricity, or by hand-mill.

Because of this, Islam considers that laws, which regulate these relationships in conformity with social justice, are capable addressing and resolving permanent problems at the theoretical level. For instance, the legal principle stipulating that the ownership right to natural resources is established on the basis of labour, would generally treat similar problems whether they are in the age of the simple plough or in the era of sophisticated machines because the method of the distribution relation is a permanent problem in both ages.

Islam disagrees with Marxism on this. Marxism doctrinally holds that man's relation with fellow humans

changes in accordance with changes in his relationship with nature. Marxism also links the form of distribution with the mode of production. It denies the possibility of discussing problems of the society except in the framework of its relationship with nature. We noticed this when we presented and critically analysed the theory in the first volume of the present book.

On this basis therefore, it is only natural for Islam to offer its principles for the theory and law, which are capable of regulating the relationships between men in different ages. But this is not a reason to avoid giving proper attention to the relationship between man and nature. As man's command and control over nature grow – and with his resulting control over natural resources growing systematically – so does his threat to the society. There will be means at his service and disposal, for him to expand his interests and that could ruin the form adopted for the social justice.

Let's take, for instance, the juridical principle that stipulates that the man who expends earnest and hard labour on a piece of land and makes it fit for productive use is more entitled to it than any other person. In the Islamic view this is considered a just principle, because it would be an injustice to place the worker who expends his efforts on a piece of land on the same rank as another who has not done so. But with man's command and control over nature having increased consistently, a single person's capability and reach can be very extensive.

During the period when a piece of land was cultivated with the help of rudimentary tools, it was not feasible for a single man to undertake cultivation except on a small area. But after the growth of man's capability and the increasingly abundant means for him to have part of nature under control, it has become possible for a small number of individuals – having the privilege to the relevant opportunity – to even cultivate vast areas of land and to manage the crops effectively by employing large equipment and heavy machinery.

This shakes violently the foundation of social justice and disrupts the efforts towards the collective good of the society. So there must be a juridical form in respect of the areas that *Shari'ah* remain silent – with adequate mandate and legal capacity to address such issues according to circumstances – so that a general permission is given for the cultivation of the land for a limited period. Subsequent to that, individuals in the next period are to be allowed to cultivate only within limits that commensurate with the aims of Islamic economy and its ideas of social justice.

It is on this basis that Islam has left the legal gap in the juridical space, in which the economic life is regulated, in order for the state could adapt the rules accordingly and keep up to date with the changes in the dynamic relationship between man and nature.

The Juridical Gap (Lacuna) Is Not A Defect

The lacuna or the juridical gap – the area that *Shari'ah* is silent on – is not a sign of defect or deficiency of the legal system. It is not neglect by the *Shari'ah* or a failure to address certain real issues. On the

contrary, it expresses the comprehensiveness of the form and the legal mandate to keep up to date with diversity in situations and time.

The *Shari'ah* has not left these areas in a manner that is indicative of neglect. Instead it has specified prescriptions for the respective areas by assigning to each situation its primary juridical attribute, while conferring upon the head of the state the mandate to assign to it a secondary juridical attribute according to circumstances. For instance, cultivation of land by a person is a legally permissible operation and the head of state has the right to prohibit that activity according to exigencies of time and circumstances.

The Juridical Evidence

The following verse of the holy Qur'an is evidence for the mandate conferred to fill the juridical gaps.

"Oh you who believe! Obey Allah, obey the Messenger and those in authority from among you". (4:59).

The boundaries of the areas, to which the applicable mandate of the head of the state are expanded – in light of this verse – are to include all acts that by its nature is legally permissible. Thus for any activity about which there is no legal text indicating whether it is lawful, or obligatory, or forbidden, the head of state is permitted to give a secondary ruling by forbidding or enjoining it.

So, when the Imam forbids an act that was by its nature permissible, it becomes unlawful and when he enjoins it, it becomes obligatory. As for acts that are generally deemed unlawful by the *Shari'ah*, for instance, usury, the *Wali Al-'Amr* has no right to declare it lawful. Likewise, if the *Shari'ah* had stipulated an act as obligatory, for instance, the financial support for a wife that is obligatory on the husband, the *Wali Al-'Amr* has no authority to forbid it. Obedience to the *Wali Al-'Amr* is taken for granted be within limits, only when does not conflict with obedience to Allah and His general commandments. It is for the class of acts that in the nature are *mubah* (permissible or approved) in the economic life. These constitute the zone of lacuna we referred to.

Illustrative Examples

In the transmitted texts of traditions, there are numerous illustrative examples, of the exercise of his powers by the *Wali Al-'Amr* in respect of this zone of lacuna. These examples shed light on its nature, and the significance of its constructive role in regulating the economic life of the Islamic society. We present below some of the examples.

a) It is mentioned in the text that the Prophet prohibited the surplus of water and fodder (to the owner). It is also reported on the authority of al-Imam Ja'far as-Sadiq (a.s.) that he said: "The Messenger of Allah (S) gave an executive order among the people of Medina in respect of watering of palm groves, that the surplus water and fodder shall not be withheld." This order as *haram* (unlawful) was as required by the need in the circumstances. When we add to it the opinions of multitude of the jurists – to the effect that if

a person withhold part of his surplus water and fodder from another person – it is not something that is originally unlawful in the *Shari'ah*. It is unlike withdrawing financial support for a wife or drinking liquor. We can adduce that the interdiction issued by the Prophet in his capacity of *Wali Al-'Amr* .

It was the exercise of his capacity, in the zone of lacuna, according to the circumstances. The society of Medina (city) was in great need of increasing their animals and farms products, so the state ordered the individuals to give their surplus water and fodders to others to stimulate and accelerate the growth of agricultural wealth. Thus, we see that giving away surplus water and fodder is a *mubah* (permissible, approved) act and the State imposes an order making it an obligatory duty (*taklif*) as the practical circumstances were such that it was essential of general good of the society.

b) An interdiction of the Prophet against the selling of fruits before they were ripe is mentioned in the tradition. It was reported on the authority of al-Imam Ja'far as-Sadiq (a.s.) that a question was asked to the Imam about a man selling fruits of a certain land and all the fruits were getting damaged. The Imam replied: "A dispute like that between people was brought to the Messenger of Allah (S). They used to mention it. When he saw that they did not give up quarrelling, he interdicted sale of fruits till they were ripe. However, he did not make sale of unripe fruits unlawful. He only forbade it on account of their disputes."

In another tradition, the Messenger of Allah (S) is reported to have declared: "*The sale of unripe fruits is lawful, but when it leads to dispute and disagreement, no buying or selling of the fruits is allowed until they are ripe.*"

Now, the sale of the fruits before they are ready for consumption is a permissible act in its nature, and is commonly permitted. But the Prophet interdicted this sale in his capacity as *Wali Al-'Amr* to ward off the mischiefs and conflicts resulting from it.

c) At-Tirmidhi reports on the authority of Rafi' ibn Khudayj that he said: "The Messenger of Allah (S) interdicted us from indulging in an act which was profitable for us, that is, if we happened to have a piece of land to give in the consideration for a part of the land-tax (*kharaj*) or for dirham." He, also, told us: "*When anyone of you possesses a piece of land, let him bestow it upon his brother to cultivate it or let himself cultivate it.*"

Now, when we put together the case of this interdiction and the agreement of the jurists on the legality of giving land on rent (in the code of the Islamic law in general) and add to it the numerous traditions cited on the authority of the companions indicating the permissibility of renting out land, we would adduce a clearly defined explanation of the text occurring in the tradition reported on the authority of Rafi' ibn Khudayj.

It is that the Prophet issued the interdiction in his capacity as the *Wali Al-'Amr* and not as a common legal dictum. So, renting out of a piece of land is among the *mubah* acts in its nature. It is therefore an act that the Prophet can forbid as an imposed interdiction in his capacity as the *Wali Al-'Amr* in

conformity with the exigencies of the situation.

d) During the rule of al-Imam 'Ali (a.s.), he gave strong orders to Malik al-Ashtar urging upon him to fix the limits of prices in conformity with justifiable requirements. He has talked to his governor about merchants, has committed them to his care and then followed it with the observation: "And know with that – that there are many who are excessively narrow hearted and abominable miser, profiteers, arbitrary in their buying and selling transactions. That is a category of person harmful to the common people and blameworthy for a governor, so forbid them from hoarding. In fact, the Messenger of Allah (S) has prohibited from indulging in it. And let buying transaction be a magnanimous transaction by the scales of justice and let prices be not arbitrary to either buying party or selling party."

It is juristically clear that it is permissible for the buyer to sell his commodity at any price he likes. The *Shari'ah* does not prevent by a general interdiction on the owner selling his commodity at an unfair price. Now, the order of the *Imam* by placing a limit on the price of a commodity and preventing the merchant from selling it at a higher price was issued by him in his capacity as the head of state, by an exercise of his power and authority in relation to the filling the zone of lacuna, in consonance with the exigencies of the social justice which Islam has adopted.

[1.](#) The Imam's quotation of this Holy Verse would not mean encompassing the head of state's responsibility about maintenance and the disbursement (of it) with a specific source of Bayt Al-Mal's (Public Treasury) revenue, namely, zakat. This is because the verse is not specific for zakat. Instead, it lays down a general rule concerning sadaqah of all types. The verse therefore includes the money, which the state gives to the helpless and the needy for it is also a type of sadaqah.

Further, it is not necessary for the head of the state to distribute the zakat to the eight groups mentioned in the verse quoted. On the contrary, it is permissible for him to spend it on some of the groups mentioned in the text of the tradition reported by Musa ibn Bakr, which affirms that if the head of the state did not discharge the debt of the man, it will be a heavy burden upon him, and this is a specific responsibility in relation to social security.

[2.](#) There are some traditions, which differ from this in the explanation of the verse, like the tradition that speaks of the revelation of the two verses in respect of two different subject matters. It speaks of the first verse that it is about the fay' and of the second verse that it is about the ghanimah (booty) or about the khums of the ghanimah. But these traditions are weak in terms of authenticity as apparent from the chain of narrators. It is, therefore, necessary for us to explain the two verses in light of their appearance. Both obviously talk about one subject matter, that is about fay'. The first verse negates the right of the soldiers to the fay' for it was acquired without fighting and the second verse specifies the purposes of the use of fay', that is, the beneficiaries on whom the fay' is to be spent. Evidently, the poor, the wayfarers and the orphans being the object of spending the fay' does not negate its being a property of the Prophet or the Imam by virtue of his position, as sound traditions have pointed out to that.

The essence of those traditions viewed in parallel with the verse is that fay' is the property held by the office of the Prophet or the Imam, and the purposes for which it is incumbent upon him to spend the fay' is one of those within the orbit of the two headings mentioned in the verse, namely, the interest that have to do with Allah, the Prophet, his family, the poor, the wayfarer and the orphans. By the specification of the purposes of expenditure in accordance with the verse is the generality of his statement. (He may put to use where he wishes) as is in the tradition of az-Zurarah. The Imam may put it to use wherever he may wish, within the orbit of the limits the holy verse specifies.

[3.](#) It may be remarked here that the purchasing power of the dirhams in the days of these texts was greater than the purchasing power of the currency coins to which we apply the same name in present day.

- [4.](#) The preferred opinion concerning the understanding of these texts is that they are directed to the aim of allowing the dispensation of zakat such that they assign a man the category “poor” (and thus his entitlement to zakat) not on the same basis of grouping for ‘in giving it in the way of Allah’ and to that we can give the Islamic conception of a poor person.
- [5.](#) We must add to that that this verse, according to common understanding, is general and not specific.

Appendix 1: Examination Of The Exceptions To Ownership Of Conquered Lands By Muslims

The Rules On The Cultivated Land After The Enactment Of The Law Of Anfal

The Rules On The Cultivated Land After The Enactment Of The Law Of Anfal (Spoils Of War Gained Without Fighting)

Some jurists hold the view that there are two types of cultivated lands that are acquired by conquest.

One type comprises lands that had been cultivated by the non-Muslims before the law of *anfal* was enacted, which results in ownership by the office of the Imam. This type includes reclaimed wastelands that were cultivated since the pre-Islamic times.

The other type comprises lands – acquired by conquest – that is cultivated only after the law was enacted. For instance the Muslims conquered it in the fiftieth year of the *hijrah* (672 A.D.), and its cultivation began after the revelation of the Chapter 82 of the Qur’an, or after the death of the Prophet.

The first category of such lands at the time of conquest by the Muslims is public property, while the second category is not under Muslim’s common ownership. It is the property of the Imam alone. The jurist research scholar, the author of the book *al-Jawahir*, in the discussion of *khums* in his book, states:

“By the practice of the companions and the traditions on the designation of public ownership of lands conquered by force, it (*khums*) is meant for wastelands that the non-Muslims had reclaimed before Allah made *anfal* as gift to His Prophet. Even if the land had not been reclaimed^{[1](#)}, it also belongs to him, even if it was already in a cultivated condition at the time of the conquest.”

However, the jurist scholar opposes that view in the discussions of reclamation of wastelands in the same book.

The admission of these two points below is the basis for making a juristical distinction between the two types of cultivated lands acquired by conquest. The two points are as follows: –

a) After the legislation on *anfāl*, a non-Muslim will not become the owner of a wasteland by reclamation, because according to this legislation the land will be the property of the Imam; and the Imam would not agree to a non-Muslim's rehabilitation so that he may become the owner of the land he has rehabilitated.

b) Upon conquest, the Muslims will legally seize and take possession of only the properties of non-Muslims as spoils of war, not the properties of the Imam that are in the latter's possession and control.

From this, it may be deduced that a wasteland which non-Muslim rehabilitates after the enactment of the law of *anfāl*, will be the property of the Imam and the non-Muslim will not gain its ownership by rehabilitation, as the first point establishes. Therefore, when Muslims conquer the land, they would not become its owners, because it is not a property of a non-Muslim but that of the Imam. They become owners of only what they seize (as spoils of war) from the non-Muslims, as mentioned in the second point above.

This opinion which aims at making distinction between these two types needs some clarification, because when we examine the legislative texts which confer ownership of the properties to the Muslims – including lands which they have taken from the unbelievers by force – we find ourselves in between two hypotheses.

One hypothesis is that, according to these texts, properties gained by conquest and awarded to Muslims may be taken to include all properties that were owned (or were already in a phase towards full ownership) by non-Muslims in the past. The second hypothesis is that it includes every property seized by conquest from the possession and control of a non-Muslim regardless of the nature of the legal relationship between the property and its non-Muslim 'owner'.

Based on the first hypothesis, according to the texts, to treat a property as spoils of war it is necessary to prove in advance that the property was (formerly) owned by a non-Muslim and was later taken by Muslims in a conquest.

Contrary to the first point – which denies the right of a non-Muslim to a wasteland that he had rehabilitated after the enactment of the law of *anfāl* – we hold the opinion that a non-Muslim's rehabilitation of a wasteland entitles him to the right similar to that for a Muslim, even though the property belongs to the Imam. This is in accordance with the text that says: "*He who rehabilitates a land is more entitled, without any distinction between Muslim and non-Muslim.*" In this light, Muslims' conquest of a land will constitute a ground for the transfer of this right from the non-Muslims to the Islamic community, while proprietary right of the land will remain to be that of the Imam and there will be no conflict between the two.

However, if we choose the second hypothesis for the explanation of the texts about '*ghanimah*' properties, these texts include land which Muslims seize as booties from a non-Muslim even if the properties don't belong to the non-Muslims and also those they do not hold any form of right to, before

the conquest. Based on this interpretation, the basis of Muslims right of possession is broader. It is the seizure of the property from possession and control by a non-Muslim.

This will lead us to the conflict between the application of the texts regarding '*ghanimah*' and those regarding the Imam's ownership, because the land that a non-Muslim had rehabilitated after the enactment of the law of *anfal* and later conquered by the Muslims, under the texts regarding the '*ghanimah*' will be considered subsumed as a land seized from an unbeliever by conquest. The land thus becomes a common property of the Muslims. This contradicts the application of the texts on evidence of the Imam's ownership of a wasteland, because the reclaimed land will be considered subsumed as a wasteland at the time of the enactment of the law of *anfal*, and consequently becomes the property under his office.

In cases such as these, it is juristically necessary to determine with precision as to how far the meanings of the texts contradict each other, and which parts of their meanings can be embraced without any conflict. When we take into consideration the conflict here, we find that the '*lam* (ل)' in their statement is its point of emphasis, that is, the '*lam*' in the statement that every wasteland belongs to the Imam and in their statement that every land taken by sword belongs to the Muslims. Now, '*lam*' does not indicate ownership by its nature, but a special right. It includes possession and usage. This means that the conflict is between the two *lam*'s because they indicate two different nature of possession.

So the two applications are cancelled and the root meaning of the jurisdiction remains established since there is no objection to the supposition of the two jurisdictions of the land which non-Muslim has rehabilitated after the enactment of the law of *anfal* and later conquered by the Muslims. One is the Imam's jurisdiction at the level of ownership and the other is the Muslims' jurisdiction at the level of (public) right.² By this, we arrive at the same conclusion we reached, on the basis of the first hypothesis.

Is Khums Excluded From Conquered Land?

What remains for us to know is whether *khums* is applicable to conquered land or it is ruled to be entirely the public property of Muslims. Perhaps, the majority of the jurists hold the view that *khums* is applicable, in adherence to the evidence in the texts that stipulate that *khums* also applies to immovable properties. A group of jurists however hold a contrary view, saying that *khums* does not apply to *ghanimah* in view of the evidence in the texts on ownership of conquered land by Muslims and thus there is no allocation for *khums*.

We need to ascertain the intention of the proponents of this view. Is it that of giving preference for the texts in support of ownership by Muslims to those prescribing *khums* on the *ghanimah*, or is it merely acknowledgement of the conflict between the two sets of texts and their respective applications, and being content with dropping the set in support of *khums*?

If the first is intended, then for it to be preferred the evidence in the texts in support of public ownership

of the conquered land by Muslims need to be more specific than that in support of *khums* on *ghanimah*. This specificity is a matter for investigation because it is the pre-requisite for preference. If the main subject matter of a particular textual evidence is more specific than that of another, the position of the textual evidence with the more specific subject matter is deemed to be more firmly established. The subject matter of the textual evidence for public ownership of Muslims is the conquered land, while that for *ghanimah* it is *ghanimah* itself. It is obvious that the conquered land is more specific than *ghanimah*, since the conquered land is a class of *ghanimah*.

But if the pre-requisite is instead a thorough examination of the circumstances and intention of the rule, then the comparison between the two sets of textual evidence will be in total, because it will take the difference between the subject matter (the *ghanimah*) and the other subject matter (the land acquired as booty) at that time. The common subject matter will be the seized land. On one hand, the difference between them would be *khums* on movable properties, and on the other hand *khums* of the seized land. Obviously here there is no perfect measure to identify the one that is more specific. Rather, the situation will vary with changes in the occasions of legal practice (*urfan*) as detailed in the explanation of the *usul* (principle) of jurisprudence.

But if the second is intended, that is acknowledgement of the contradiction between the two sets of textual evidences and the need to cancel one of them and the admission of there being neither one that is more specific, then an argument can be put forward against the ruling. It can be contended that if the contradiction is conceded, then preferring the application of the textual evidence for *khums* of *ghanimah* can be endorsed for two reasons: –

One is that the evidence for *khums* includes a verse of the Holy Qur'an. In terms of the thoroughness in considering the textual evidence, ignoring the Qur'an is an obvious mistake. The Qur'anic text should absolutely prevail and thus the evidence for the alternative ruling should be discarded as it contradicts the Holy Book.

The other reason is that the textual evidence implying public ownership by Muslims is by general understanding of the wisdom and philosophy of the Prophet's saying, while that for *khums* on *ghanimah* in respect of the conquered land is wide-ranging, like the report of the tradition by Abu Basir ("*Everything fought for on the attestation that there is no god but Allah is subject to khums*"). It is similar in the case of Qur'anic verse.

The text of the tradition begins with the particle of "totality", the word '*kul*'. As for the Qur'anic verse, the phrase, "everything" in the holy words: "*and know that everything which you seize as booty*" takes the place of the particle of totality as regards the meaning. According to Islamic legal practice, preference is to be given to the overall message instead of the literal meaning, in situation of conflict, without exception.

Thus, we learn that the reply to the adherence to the application of the textual evidence for *ghanimah*

needs another examination.

The uncertainty over the imposition of *khums* on conquered land – as we have found in our discussion of the issue in this book – is because in the traditions on *ghanimah* there is nothing that justifies inferring from it the applicability of *khums* on conquered land except the abovementioned tradition reported by Abu Basir. Other traditions, in fact, are weak in terms of authenticity. For example the traditions on the confinement of *khums* in five things are inadmissible because of contradictions, like the tradition reported by Ibn Sinan: “No *khums* except in special *ghanimah* (spoils of war)” or hemmed in by special link other than land of the *ghanimah*, like the traditions on the extraction of *khums* of the *ghanimah*; and the distribution of the rest among the participants of war, because the distribution (of the spoils of war) among the participants of war indicates that their occurrence is in respect of the movable spoils of war.

Thus, we learn that the application of the tradition of Abu Basir along with the Qur’anic verses is limited to *ghanimah*. Both support and confirm the applicability of *khums*, but on further examination we could not deduce anything beyond that. As for the Qur’anic verse, its subject matter has been explained in the *sahih* (authentic) tradition reported by Ibn Mahziyar regarding gains a man acquires. In light of this explanation, the subject matter of the verse would be an expression of private gain, while the textual evidence for the public ownership (by Muslims) of the conquered land excludes private gains. So, the subject matter of *ghanimah* cannot apply to the meaning of the *sahih* tradition. Hence the verse does not apply to forcibly conquered land.

As for the tradition reported by Abu Basir, we will reply from two angles.

First, that the application of holy verse – in view of the explanation in authentic tradition reported by Ibn Mahziyar – will be as per the tradition reported by Abu Basir, insofar as when it applies to gains in respect of property. That is because the verse demands that *khums* be established with the caption of gains while the tradition reported by Abu Basir demands that it be confirmed by property that was acquired by fighting. Rather, it has to do with the caption of gains in that respect.

Therefore, either of them – in accordance with the need of its application – implies that the caption taken is the entire subject matter of the *khums* of the *ghanimah*. Restricting the application of the tradition reported by Abu Basir the caption ‘gains’ – and that is because the restraint, without exception, is there – and the necessity of non-interference of the caption of ‘gains’ directly in the matter *khums* of the *ghanimah* leads to the removal of the *khums* of the *ghanimah* from the application of the verse and turn it to other sources of *khums*. Alternatively it leads to the necessity that the verse – even if it implies to the *khums* of the *ghanimah* – being only a caption taken from it, that is, the profit, and it has nothing to do with this subject matter of *khums* at all. And both cases are invalid.

As for the removal of the *khums* of the *ghanimah* from the application of the verse, it is obvious that the *khums* of the *ghanimah* is an undisputable divine decree from the verse because it is the source of the *Sunnah* of the Prophet and his practices. So, there can be no reason for its removal. As for the caption

taken from the subject matter of the verse, that is, *ghanimah*, in the sense of private gain, that too is invalid, because when the matter runs between the discussion of cancellation of the caption taken as regards either of the two textual evidences directly on the basis of objectivity, the restriction of the deduced caption taken in respect of the other evidence it will be allocated to the second and in place of the imperative. So, there is no way to avoid from restricting the subject matter of the tradition reported by Abu Basir to just the caption on gains.

However, if it is said that this also makes cancellation of the caption taken from the tradition reported by Abu Basir imperative (i.e. the phrase “what is fought upon [spoils of war]”) because gain in itself is a pre-requisite for *khums* even with respect to that other than those “fought upon”.³ Our view is that it does not make it imperative. On the contrary, caption on the subject matter being acquired by fighting constitute the inner core of the *khums* of the *ghanimah* to the extent of the caption of the thought of capital as regards the subject matter of the *khums* of the mines and its effect is the proof of imposition on property in its entirety without exception of the provision contrary to the caption of the profit alone, that is, the basis of the pre-requisite essential of the *khums*, after the exception and not for the whole.

It clearly follows from this that the restriction as to the applicability of the tradition – which needs the caption derived from it to be the whole of the subject matter – makes cancellation of the caption derived from the verse in respect of the *khums* of *ghanimah* directly necessary, or the restriction of the applicability of the tradition to the verse after the revelation and the necessity that the subject matter of *khums* involves fighting and the veracity of the caption ‘gains’. There is no danger therein (object of precaution) of the giving up of the caption directly.

So, if that is proved, the reasoning based on the tradition is inadmissible because the caption ‘private gains’ will not apply to the land after it has permanently become a public endowment for (the benefit of) the Muslims. This is our reply, from the first angle, to the reasoning based on the tradition reported by Abu Basir.

As for the second angle, we will argue that the application of the tradition reported by Abu Basir contradicts the traditions implying public ownership of Muslims for all conquered land. The lands so acquired are of two types. First, lands acquired and second, the green land (Iraqi land).

As for the first type, of its relationship with the tradition by Abu Basir being on the assumption of totality is subject to it and it cannot conflict with it because the application of it is by the preludes of prophecy, while the totality of the tradition by Abu Basir is declaratory.

As for the second kind, as the caption of it is arable land (Iraqi land) it is a mark of a land which is limited abroad. So its implication will be by verbal appearance, not by the prophecy, and at such a time it will be good for conflict with the tradition by Abu Basir. This means that the tradition by Abu Basir will only happen to be a side of conflict in the first grade with the second kind particularly and after the elimination of both sides, the shift will amount to the first in its turn without (any) conflict, because the first kind in

view of itself subject to it, due to the basis of totality in the tradition of Abu Basir. It is impossible that it will come to be a side of the conflict with it in the first grade so that it will fall (be eliminated) with its falling (elimination).

[1.](#) By the time of the enactment of the law on *anfal*.

[2.](#) In other words, the conflict is actually not between allowing the general application of the caption ‘ghanimah’ (because some texts point to public ownership by Muslims) and the caption ‘wasteland’ (because some texts permit ownership by the Imam). The conflict is in fact between the application of the ‘lam’ in all these texts because it is these two applications which lead to the joining of two properties in a single owned property, and the rule on conflict demands gradual cancellation to that extent there is a conflict, and not beyond that. So, the application of the ‘lam’ giving the meaning of ownership is to be cancelled from either group of texts and the root meaning of the ‘lam’ indicating special right will remain.

In that case, we will establish the right of the Muslim public to the land, with which the element of conflict arises from the ‘lam’ in the texts of ‘ghanimah’, because to this extent there is no contradiction. And we will establish that the Imam’s right to the land as the right of ownership, clearly showing that the entire land belongs to the Imam, because after the cancellation of the two specifics, the reference shall be made in general.

Indeed, it may be perceived opposite to what we have stated, that the evidence for ownership of the Imam is determined when there arises a conflict between the two groups of texts, because the overall meaning of some of the texts is given with the article of generality (such as in its statement “Every dead land belongs to the Imam”) against the text on the *kharaj*–land (taxed land).

The reply to this is that the application of the traditions on *kharaj*–land in the texts regarding ‘ghanimah’ does not contradict the generality in the phrase “every dead land”. But it is in conflict with its temporal application after the conquest, in the sense that the conquered land (that was already cultivated at the time of conquest) was an inner part of the evidence for the Imam’s ownership, without contradiction.

Therefore, the aspect with contradiction is the temporal application, because the textual evidence for the Imam’s ownership (not the individual generality) that is declarative, even to the extent of its temporal application. We have earlier described the source of the contradiction. Therefore, if we assume the absence of the application of ‘lam’ (which indicates ownership), there will remain no contradiction, neither of individual generality nor in respect of the temporal application.

[3.](#) This refers to gains beside war booties acquired from the enemy without bloodshed.

Appendix 2: Discussion Of The Inclusion Of Conquered Wasteland In The Law Of The Taxed Land

It is stated in *ar-Riyad* that the texts indicating that wastelands form part of *anfal* and is a property of the Imam contradict the basis of the directive in the previously mentioned texts indicating that land acquired by conquest belongs to the Muslims. The conflict is as regard to wasteland conquered by force. The texts on Imam’s ownership of taxed land imply its inclusion while those on Muslim’s public ownership of

land taken by force also imply its inclusion according to the statement, '*what is seized with sword belongs to the Muslims*'. So, what is the juridical justification for the taking the texts on Imam's ownership and the applying them to conquered land when they are wasteland, while disregarding the texts of Muslims' public ownership?

In rebutting the above, it may be contended that the subject matter of the texts on public ownership by Muslims is the properties, which Muslims seize as spoils of war from the non-Muslims. The spoils of war seized from the properties the non-Muslims own, whereas wastelands are not properties owned by anyone among them. They only own lands that they cultivate, so the wasteland is then not the subject matter of those texts.

This reply is valid only on the basis of the first of the two hypotheses, which we have previously mentioned in the Appendix 1, in respect of the subject matter of the texts on *ghanimah*. But if we take the second hypothesis and say that *ghanimah* includes everything seized by sword, then the application of the texts on *ghanimah* does not depend on the seized property being assets owned by a non-Muslim. For its application, it will be sufficient that the property is under the control of non-Muslims

Therefore, every property seized in a war – from the possession and control of a non-Muslims – would constitute *ghanimah*, whether or not the property is owned by any of them. Now, it is obvious that a wasteland in the non-Muslim country will be regarded as being under the control and possession of the non-Muslims of that country. So, with its occupation by Muslims, it will confirm that it was taken by sword even if it was not the property of a definite enemy. So, a total conflict is demonstrated

For all that, the texts on the Imam's ownership are submitted for the following technical reasons:

First, the texts on the Imam's ownership can be classified under two sets. Those that occur with the wording, '*lands that are wastelands belong to the Imam*' and those that occur with the wording '*lands which are owner-less belong to the Imam*'.

Clearly, the second set of texts on Imam's ownership cannot conflict with the text on taxed lands – that implies public ownership by Muslims – on the same level as that of the first set such that both are eliminated, because of an inconsistency between two evidence of the same rank. And, it is because the texts on taxed lands prove the Muslims' public ownership of the conquered land, governing. So, such term the second set since they separate the land from its being a land having no owner and makes Muslims its owner.

Therefore, it is impossible for the second set in such a case to happen to be the side of the conflict with the traditions of the ownership of Muslims because the governed will not contradict the evidence of the governing. The outcome of it will be that the conflict in the first grade centres upon between the texts of the ownership of the Muslims and the first set of the texts of the ownership of the Imam; and after the falling in succession we will get to the second set of the texts of the owner-ship of the Imam without the conflict (contradiction) only if by the addition of a declaratory *istishab* (the seeking of link – i.e., to

something which is known and certain) which trains its subject matter – which is the non– existence of (absence) of the owner of the land.

Second, in the texts on the ownership of the Imam, there are terms that indicate exhaustive and total ownership, like the saying, ‘each land which is a wasteland belongs to the Imam’. Whereas, the texts on taxed land indicate the ownership totally and total is preferred to the absolute when the capital between the two is in respect of the direction of the totality.

Third, if we acknowledge the elimination of both sides of the conflicting textual evidences, it is then necessary to seek recourse to the total ownership of the Imam. As stated above, the whole land is the property of the Imam because this totality is apt for the authority after the gradual elimination of the conflicting texts.

Fourthly: If the two sets are eliminated and if we disregard the above–mentioned competent authority the *istishab*, a competent authority is made possible because the wasteland was the property of the Imam before the Islamic conquest of the country in accordance with the texts of the Imam’s ownership of wasteland, and implies Muslims public ownership is only by conquest (in case of the assumption of the guarded elimination of the application of the texts by conflict, the ownership will be sought to be linked with the Imam).

But this reason is fulfilled only in respect of the land which was conquered after the enactment of the rule on the land as the Imam’s property, such that his ownership precedes the conquest and *istishab* becomes applicable just as some of the previous reasons will also be fulfilled in respect of some suppositions, condition in respect of them may change with the change of historical timing (time reckoning) of the enactment of the law of the Imam’s ownership of the *anfal* and the enactment of the law of Muslim’s ownership of conquered land. The verification of the conquest is irrelevant leaving no room for its detailed statement.

Appendix 3: The Legal Effect Of At–Tahjir

Many jurists think that *at-tahjir* (putting a protective walls or fences around a piece land) gives the person who sets up the structures ownership right to the land and prevents others access to it. In that, they rely on the traditions that are unsound in terms of their chain of authority (*sanad*) and could not be relied upon as a basis for the rule. Therefore, there is no valid and acceptable evidence as to the subject matter. It can be said that fencing cannot be considered a ground for ownership right as a separate independent operation. It can be regarded thus only as a beginning of the reclamation works or the beginning of the work related to cultivation and rehabilitation.

Appendix 4: Discussion As To Whether Rehabilitation Of Wasteland Results In Ownership Right

There are texts that contradict those, which indicates explicitly that rehabilitated lands remain the property of the Imam and he has right to the *kharaj* (land tax) thereon. These two sets of texts, which imply the proprietorship by the person who rehabilitates a land that he has rehabilitated, and that is not responsible for any tax in relation to the property. One gives that meaning only superficially, while the other indicates that more explicitly.

As for the first set of the texts, they are just like what is mentioned in the tradition by Muhammad ibn Muslim on the authority of the *Ahlul-bayt* (a.s.): “*Whoever rehabilitates a portion of the land will have more right to it and that it will be his*”. For the ‘*lam*’ (genitive) in the phrase ‘*lahum*’ implies competent authority while the literal meaning of its application to competent authority – a manner of ownership.

As for the second set of the texts, the example is a tradition reported by ‘Abdullah ibn Sinan on the authority of Abu ‘Abdillah (a.s.). He said: “While I was present a question was asked of the Imam, about a person who had rehabilitated a wasteland, had dug out stream, built houses and thereon planted palm groves and trees.” The Imam replied: “The land was his and the rent accruing from the houses. But he will have to pay the ‘*ushra* (tithe – i.e., *zakat*).”

His contenting himself with the mention of *zakat* in place of the determination of what was due upon him is like making explicit statements as to the negation of the *kharaj* (land tax) and the cessation of the relationship of the Imam with the *riqbah* (physical ownership) of the land. Therefore, a remedy for the ending of the conflict between these two sets and the set referred to in the text, is inevitable.

Perhaps it may be argued that this set is irrelevant after the establishment of a definite and decisive *sirah* practice as regards the person who reclaims (a land) while not required to pay the *kharaj* since the time of the Imam to this day. Likewise, there is no reason in carrying it to the time of the *zuhur* of the *Hujjah*. Thus, it is necessary to dissociate from this.

Our reply to this is that, if it is meant the practice of the jurist to follow strictly the text of *Ahlul-bayt* (a.s.), it may perhaps be due to their not giving for remuneration of traditions declaring something lawful or permissible, not because of the discontinuation of the Imam’s relation with the land directly after its rehabilitation. If it is meant for the practice of Muslims of other sects – then it is on account of their subscribing to another jurist principle. Or, it may perhaps be said that the companions have avoided from this set – indicating ownership of the Imam, so it is void as a basis of argumentation.

Our reply to this is follows.

First, avoidance of a tradition does not make it void as a basis for argumentation as we have described in the *usul* (Principle of Jurisprudence). Second, avoiding of all jurists is not proved and mutual admission of all jurists as to the de facto invalidity of *tasq* (a fixed sum of land tax) on account of the traditions declaring the lawfulness of permissibility of its meaning by all.

Third, if the avoidance of the meaning (of the tradition) were admitted, it would perhaps be because of the application of the rules in areas of conflicting textual evidence and the preference for the opposite. It was not because of defects in the particular texts.

According to this, the resolution of the conflict is necessary to conceive for these reasons:

First: to take the set (of textual evidence) ordering *kharaj* on the basis of *istihbab* (presumption of accompanying circumstances) as an integral part of its obvious invalidity.

It may be argued that this would be confusing the obligatory (*taklifiyyah*) law with the declaratory (*wad'iyyah*) law, because this integration will be valid in respect of *taklifiyyah* (obligatory) laws whereby its order holds when the permission is arrived at on the basis of preference. But it is not valid in respect of the declaratory laws, as the basis for that integration is absent here.

Therefore, the reason for the taking evidence of the *taklifi* (order to mean the obligatory) preference, after the occurrence of the permission, will be constructed on the basis of the research scholar. An-Na'ini, as regards the evidence of the obligatory nature of the order; and because the obligatory nature and the basis are not the two meanings of the word, rather the obligatory nature is drawn from reason's diction by the necessity of the furnishing of the wanted (demanded) of the Mawla (the Lord) whenever mentioned thereof.

Therefore, when the permission comes, the question of the obligatory nature factually disappears and is established by its integration with the comprehensive demand – the meaning of the word *istihbab*. Or it may be on the basis of being obligatory nature established by the application of the meaning of the order so that the bearing demand from – *istihbab* – to be restricted to the application which is the origin of the obligatory nature and to be restricted to the requirement of the rule. Or it may be on the basis of obligatory nature being a declaratory meaning towards a direction, since the bearing of *istihbab* depends upon a claim of the existence of the literary sense of the secondary meaning of the version of *istihbab* – choice or preference – reaching it into its turn after the lifting of hand from its first literary sense of necessity in order to be *istihbab* established by literary sense and not by interpretation.

All this is not accomplished in the matter of the literary meaning of the statement of declaratory law just as in the place, since his statement ('let him pay the fixed amount of land-tax or the fixed land-tax') is practice (*urfan*) an explanation of the indication for (the ownership of) ownership and not a naked defining (controlling) demand pure and simple. So it does not lead to the meaning of *istihbab*.

The second reason: The set of traditions indicating explicitly the continuation of the ownership of the Imam gets eliminated (in his disappearance) when it conflicts with the explicit tradition in its disappearance and ends up, in its turn, to the set of other literal traditions in its disappearance and gives to the rehabilitator the proprietor's right to the land in general. The reason for it is that this set of literal tradition cannot reasonably be a part of the conflict with the set of traditions, which are explicit about the continuation of the Imam's ownership of a wasteland because the applicatory literal sense cannot be contrary to the explicit. Rather, the explicit tradition will be tied to it literally.

Accordingly, the conflict in the preceding category will be between the two sets of explicit traditions and will reach in their turn the applicatory literal sense without contradiction.

This explanation is based on the fundamental rule about the domain of contradiction. The rule is that when two sets of traditions come in conflict, whereby, for instance, one in its entirety is explicit about negation, while in the other there is explicit and literal affirmation. Therefore, elimination of all of them in the same rank because of that which is literal as to affirmation cannot contradict that which is explicit as to negation, when the explicit to a certain extent fits with the context of legal practice. The explicit as to affirmation contradicts the explicit as to negation only and after their mutual elimination; and comes back to the literal sense of the negation not contrary as regards its rank.

This general rule, although it is not absolutely accepted in practise by all jurists yet, is in fact, an extension of the rule that is accepted by them in theory and practice. The rule is a restart to the above general after the mutual elimination of the two specifics because the very idea which demonstrates that the general (universal) cannot happen to be a part (side) of the contradiction at the level of the two specifics points to that in place of similar kind.

This reason, however, is based on the determination of the elimination of the two explicit, one by one, and the non-preference of either. The explanation of the 'preferred' will be given later on.

The third reason: It is based on the reversal of relationship on the pretext that the texts are opposed to each other in the direction of incongruity. The tradition of *tahlil* (making or declaring lawful or permissible) is limited to the text implying that the person who rehabilitates the wasteland does not own it and the evidence of *kharaj* (land tax) due from him, and removes the individuals whom the traditions of *tahlil* includes. Therefore, because of this the text becomes absolutely (in general) more moral specific than the text that negates *kharaj* (land tax) absolutely (in general) and the contradiction disappears.

It may be argued against this – as an adjunct to the forms of the major reversal of relationship – that the reversal of relationship between the two universals (generals) that are incompatible with each other, is accomplished only when the specific, happens to be with one of them, contradicts the other in order to take the meaning of the corresponding universal, the source of the specific – and in the place of the traditions of *tahlil*. And if they were contrary or earmarked, they would not indicate the certainty of *kharaj* except that they are not in agreement with the negation of *kharaj* and implying the rehabilitator's

proprietaryship of the (rehabilitated) land because the literal sense of the negative universal is the explanation of the entire Divine Ordinance, and not declaring the proprietary permissible as is the intent of the traditions of tahlil.

The mention of some of the traditions of the negative set as regards the source of the Jews and Christians, a matter which is indicative of the fact that in connection with the statement of the private proprietary permission, so it cannot be taken to mean the source (origin) of the tradition of tahlil to be the reversal of relationship.

The fourth reason: That the two sets of texts contradict each other, and the text which is indicative of proprietary ownership of the land by the person who rehabilitates it is chosen either on account of its being a *mashhur* (well known) tradition or on account of its conformity to universals of the definite practice of the Prophet, whereas in that the sentence: “*He who rehabilitates a land, that land belongs to him*”, is *mutawatir* from the Prophet and Imams. It indicates by the application of ‘*lam*’ to the ownership and so it carries more weight for the text that is indicative of the ownership of the rehabilitated land by the person who spent efforts on it.

The reply to this is what we have mentioned in the *usul* (Principle of Jurisprudence). It is that a tradition being *mashhur* (well known) – but not to a degree that leads to its certainty – does not lend more weight, in the same way that correspondence with *as-sunnatul-qat’iyyah* (a decisive practice of the Prophet or Imams) does not enhance the position a fact about *sunnah* when it has not reached the level of *tawatur*.

The fifth reason: That the text in support of disallowing ownership of a land to the person who reclaims it – and upholding the Imam’s proprietary ownership – carries greater weight in a place of the other and that is because the other text which contradicts it is opposed to the universal (principle) of the Qur’an and is presumably of questionable authenticity.

As for the universal (principle) of the Book, it is the declaration of Allah, the High,

“Do not appropriate each other’s property by invalid means except in the way of commerce with one another by mutual consent” (4:29).

This verse gives the verdict that every means of appropriation or taking possession of another’s property except by way of commerce with mutual consent is invalid. Obviously, taking into possession of the property of the Imam by way of rehabilitation is not trading with mutual consent, so it is invalid by the application of the verse.

What, in view of this verse, could therefore prove the ownership gained by the person reclaiming the land? Therefore, it will have precedence, likewise the reality of the direction in respect of it, is decisive not what indicates to the rehabilitator’s ownership, so consider well.

Appendix 5: Permissibility Of Sale Of A Reclaimed Land According To Ash-Shaykh At-Tusi

It is said that this opinion, which denies granting of ownership to the person who reclaims a wasteland is incompatible with the permissibility of sale of the land, because according to this opinion the person does not acquire ownership of the reclaimed land. Therefore it should not be permissible for him to sell it. (The issue is) while he only acquires a right (of use) to it, the permissibility of selling the land he rehabilitates is well established in the *Shari'ah*.

Our reply is this. The sale transaction effectively confers upon the buyer the same relationship that binds the seller with the property – in return for the seller's acquisition of the same relationship that binds the buyer with the money he paid to the seller – regardless of whether the relationship is at the level of ownership or at the level of right (of use). Therefore, it is permissible for the person who rehabilitates a land to sell it because he enjoys a personal relationship with the land. It is the relationship to which we technically call the right to use. Therefore, it is possible for him to sell the land in the sense of conferring upon the buyer this relationship in return for his acquisition of the relationship of the buyer with the money he receives as the price.

This permissibility may also be explained in another way. It is that the person who reclaimed the land sells his right, and not the land itself. But this explanation does not stand because selling of an item means the seller's conferring to the buyer the relationship that binds him with the object. Consequently, the assumption of a relationship between the seller and the object sold is inevitable, as the underlying object exchanged between the buyer and the seller. But the right is only a legal prescription and the seller's relationship in the form of the legal prescription is unlike his relationship with all of his possessions.

For example, he does not own the legal prescription; or in other words a legal prescription is not saleable because of the non-existence of its supplementary and transferable connection with the seller. The right is only a legal prescription so its sale is not conceivable. Furthermore, it is the product, which the buyer acquires possession of, not the buyer becoming the owner of the right (of use). If the land were an item owned by the seller – like all his other belongings – then the sale would result in the buyer's acquiring the right of the seller and not to his earning of this right. There is a difference between the buyer acquiring the right of the seller and his right established to it on his own.

Appendix 6: Acquisition Of Possession Through Dominance And Control

On this basis, control or dominance does not result any private right of ownership of a territory (lit. land) for an individual. This is applicable to all types of land including forests, etc. conquered by force. It is similar to the rule that reclamation before conquest does not result in a private right of ownership for any person in relation to cultivated taxed land.

It is sometimes said that naturally cultivable land can be owned on the basis of acquiring control or possession, since in relation to such land control over it is similar to rehabilitation works on wasteland. This view attempts to establish ownership on the basis of possession or control relying on the traditions indicating that “he who possesses (an object) owns (it)”. However it may be argued that this view is incorrect.

First, some of these traditions are weak in terms of their authenticity and carry no weight as evidence. Among them there is one that is cited in the context of clarifying the indication of actual possession. It made possession literally an indication, instead of the basis for ownership. Among them there is also a tradition that was cited in respect of specific situation or context, like the saying “*to the hand belongs what it takes and to the eye belongs what it sees*”, a tradition cited in respect of hunting.

Second, if the traditions on possession and control were admitted to be pertinent to the primarily main *mubah* objects that would not legally be owned by an agency or an individual, then they will not imply the position in view of the fact that forest land is supposed to be the property of the *ummah* (community) or of the Imam.

Appendix 7: No Discrimination Between The Types Of Land Owned By Those Who Have Embraced Islam Voluntarily

It is possible for one to conceive the possibility of discrimination between two types of land owned by those who became Muslims voluntarily. One of it is land that has been in cultivable state since a period before the legislative enactment of the Imam’s ownership of wasteland. Another category is lands that were wastelands at the time of the legislative enactment of the Imam’s ownership of wastelands, and

were later rehabilitated by non-Muslims into a cultivable state and after that they embraced Islam voluntarily.

Therefore, each land of the first category will be considered the property of their owners and will not be classified as the property of the Imam, since it was not a wasteland at the time of the legislative enactment of the Imam's ownership. Upon becoming Muslims, the owners continue keeping them because their Islam protects their life and property.

As for lands of the second category, they are the property of the Imam in view of the fact that they were wastelands at the time of the legislative enactment of the Imam's ownership of wastelands. Therefore, they are classified as within the scope of the Imam's ownership. Their rehabilitation by non-Muslims thereafter should not deprive the Imam of the property. The rehabilitation only leads to the establishment of their right to use. Therefore, if they embraced Islam, while holding the land, this right of theirs will be protected, as far as Islam spares and protects their property. But this does not mean that the proprietary ownership of the land is theirs. It neither adds to the property nor makes anyone its owner other than the real owner.

As a result of that, the land whose owner embraces Islam will remain his property, if its cultivation started before the legislative enactment of the Imam's ownership of wasteland. But he would not be made the owner if its cultivation started after that, although he can keep the right to use the land. This elaboration looks like that adopted by the author of *al-Jawahir* on conquered lands (refer Appendix 1) where it is mentioned that "if its cultivation started before the legislative enactment of the Imam's ownership of (rehabilitated) wasteland then it belongs to the Muslims, otherwise it is the property of the Imam and not that of the Muslim public".

The justifications for the statement about those lands whose owners became Muslims voluntarily in the period of the formation Islamic legislation includes the principle of the Imam's ownership, but it is not an evidence that land becoming the property of a certain unbeliever who cultivated it and became Muslim voluntarily, while holding its ownership. It is not by reason of his reclamation works or by reason of him accepting Islam.

His rehabilitation efforts do not confer upon him the proprietary ownership of the land because rehabilitation only implies competence or legal capacity. As for his acceptance of Islam, we do not find anything, which proves that it is a basis for a person keeping possession of a land he holds, when he embraces Islam. All the proofs that are advanced in respect of this are disputable.

a. The right to keep holding a land on the basis of his acceptance of Islam is inferred from the application of the texts, which say that when the landowners embrace Islam voluntarily, their lands will be left in their possession and will be theirs. The tradition was applied to both the lands with cultivation that started before the enactment of the law of the Imam's ownership of wasteland and those after that.

Our reply is that these texts have occurred in two traditions related by Ibn Abi Nasr and the chains of

narration in both are weak and cannot be convincing evidence.

b. It may be inferred from general texts that point to the fact that Islam protects life and property and the literal meaning of these texts is the conferring of the land to its owner when he embraces Islam voluntarily.

Our reply is that the meaning of these texts is that the property that should not be taken from owners who have accepted Islam voluntarily are those that would have been publicly lawful were it not for his conversion to Islam. This side of the texts corresponds to the other side which expounds the rules of law as regards a belligerent unbeliever, and both sides as a whole make it clear that if an unbeliever wages war against the call to (the mission of) Islam, his land, his possession and his life are made public property (seizing them is permitted), and if he embraces Islam voluntarily all these are spared.

Then what they are entitled to is the very thing, the appropriation of which would have been *mubah* for (commonly permissible to) the Muslims, if they did not turn Muslim and disputed the call to Islam. Therefore, in order to know what is spared for him and what he would acquire – if he turns Muslim – it is necessary for us to know what is it – among his possessions – that would be *mubah* and would be made over to the Muslims, if he did not accept Islam and instead opposed the Islamic mission.

In this connection it is necessary for us to recall what we have discussed earlier in Appendix 1. We mentioned that in the case of a land that was conquered by force and whose owner did not embrace Islam, if the land were under already cultivation before the legislative enactment of the Imam's ownership of wasteland, then it would be the property of the Muslims. If its cultivation started after that, then it will be the property of the Imam, because (actually) it was not a property of the non-Muslim owner before the war but was instead a property of the Imam. The non-Muslim owns the right of use over the land before war, because of his rehabilitation efforts and this right will be transferred to the Muslim public.

Therefore, on this basis we learn that the owners who embrace Islam voluntary would not be the owner of lands unless the cultivation started before the legislative enactment of the Imam's ownership of wastelands, because the Muslims would not acquire their ownership on the basis of war. In short, we knew that the object – which is spared by the voluntary conversion to Islam – is the very object which is captured as booty in war against the opposition to the call to Islam in view of the protection of life and property accorded – in the texts – to those who embraced Islam, corresponds to their lawfulness for the Muslims.

We added that the acquisition of proprietary right over conquered lands (that were originally rehabilitated wasteland) is not lawful for the Muslims if the cultivation started after the legislative ownership of the Imam was in place. It is lawful for them in the case the unbeliever acquired to it by reason of his rehabilitation of it (and was later acquired by conquest and became public property of the Muslims).

From these we conclude that a person who embraces Islam while having possession of a rehabilitated

wasteland – that started after the legislative enactment of the Imam's ownership of wasteland – will secure his right to the land. The right would otherwise be transferred to the Muslim public, if he opposed the call to Islam. He does not own the land. He only owns the land if its rehabilitation started before the formative period of Islamic Law.

The Islamic principle therefore does not add any new thing to the property nor confers new proprietary right that was not there. It only preserves those rights and ownerships that he previously enjoyed. As to the wasteland that a non-Muslim rehabilitated after the legislative enactment of the Imam's ownership of wasteland, he does not own it. He only acquires a right to use it, while it remains the property of the Imam. Then, by his voluntarily embracing Islam, he preserves his right and it continues to be his property as it was before. It is status quo.

c. It was the customary practice (*siratus-salawat*) of the Prophet to leave the lands in the hands of its owners (if they embrace Islam voluntarily) without a scrutiny as to the date of the rehabilitation of the land and without demanding from them a fixed land tax. It may be inferred from this that Islam always conferred ownership of a rehabilitated land upon the one who joined the fold of Islam voluntarily.

Our reply is that, it is beyond any doubt an established illustrious practice of the Prophet. But it does not demonstrate ownership of the land by he who embraces Islam voluntarily. Nor does it demonstrate that such land is outside of the boundary of the Imam's ownership. There is a practical difference between the land's ownership by voluntary acceptance of Islam by its owner and its being the Imam's property along with the personal right of use by its 'owner' becoming Muslim voluntarily.

This only becomes apparent in respect of the imposition of *kharaj* (land tax), for if the land were the property of its 'owners' who have embraced Islam, there would be no justification for the imposition of the land tax on them. But if the 'owner' only had a right of use to it, while it continued to be the property of the Imam, the land tax will be due from him to the Imam. This practical difference does not arise in the customary practice of the prophet, for the Prophet used to waive land tax. Therefore, the fact that he did not collect land tax cannot be considered a proof of the exclusive (private) proprietorship of the land.

Thus, it becomes clear that this elaboration in respect of such lands – between those rehabilitated before and those after the legislative enactment of the Imam's ownership of wasteland – although not invalid from the juridical point – encounters difficulty in gaining consensus from the scholars thus making its adoption difficult. It is inevitable that by recourse to consensus, ownership of such land is absolutely with the original owners who embrace Islam voluntarily.

Appendix 8: The Rules On A Spring Which Emerge In A Privately Owned Land

The well-known juridical opinion holds that natural springs that gush up in the private property of a person will be deemed as his because it emerges in his land. It was because of this that ash-Shaykh at-Tusi considers this type of newly discovered natural sources of water as a subject matter of controversy. He says the variation in opinions is in respect of its being the owned. For such springs, there are two views. One is that they are property of the landowners. The other is that they do not belong to the respective landowners.

The fact is that I do not find an argument for ownership by the landowners from texts of the holy Qur'an or those of *sunnah* (the practice of the Prophet). The possibly strongest argument for ownership by the landowners is those legal texts that indicate a person's ownership of the growth of his possession.

Our reply to the argument is that a new spring is in fact not a growth of his property in the sense of it being a fruit of his possession to justify ownership by him. It is a wealth inside of a wealth, in a sense similar to the content and a container, unlike a tree and its fruit. The ownership of the container does not justify the ownership of its content. In light of this we learn that the well-known juridical opinion holding the view that the ownership should be adopted if it is supported by intellectual argument such as the pious (imitative) consensus or the customary practice of the scholars that fulfils the conditions which we have expounded beforehand explicitly in the present book. Unless something of this nature supports it, there exists nothing in the arguments that which would justify its adoption.

Appendix 9: Possession By A Person Of A Spring He Uncovers

What has been already said in the book in regard to a person not owning a spring he uncovers, was established on the basis of reason, which is opposed to the well-known view which holds that he becomes its owner. This well-known view should be adopted if there is a consensus on it. In the absence of a consensus, there is room for arguments against the view and its basis. There are several arguments that can be considered, including these:

a) A spring is an outgrowth of his property. Therefore, if a man digs a land and discovers spring therein, the ownership will be legally his because it is an outgrowth of his property and as long as the land is his,

whatever emerges from it will also be his.

Our reply is that a spring cannot be regarded as part of the growth of the land, but is a wealth present therein. The relationship between them is that of a container and its content. Thus it cannot be equated to the relationship between a principal object and its natural product, to which the Shari'ah stipulates the right of the possession as an extension of the ownership of the principal. Examples of this are the relationship between a hen and her egg and that between a tree and its fruit.

b) The meaning of the texts implying the permissibility of the sale of (the right to) the use of spring (*shurb*) like the report of the tradition by Sa'id al-A'raj (the lame) wherein the Imam is stated to have permitted the sale of a canal. Had it not been a (private) property its sale would not have been permissible.

Our reply to this is that the permission for selling is more general than the ownership. An entitlement to an object is sufficient for the validity of a sale. Thus the sale might have been in view of the right that belonged to the person in the case of the canal, whereby this right may be transferred to the buyer so that he becomes more entitled to it than anyone else just as the seller was.

The assignment of the sale to the land itself does not negate this on the ground that the sale equally, if it was in respect of the right to the original or to its ownership, concerns only the entitled or the owned (thing) not with the right or ownership itself, as is clear. So reports of traditions of the permissibility of selling the canal upon its completion do not imply anything more than the entitlement.

c) The rules on rehabilitation of a wasteland are applicable to discovery of springs.

It may be argued that the text "*he who rehabilitates a wasteland, the land is his*", only shows rehabilitation work as being the preparatory cause (*sabab*) for giving its inhabitant private right to the land, not to what it contains – like the water present therein – to which the term 'land' (soil) cannot be applied. Furthermore it does not signify more than giving the person who rehabilitates the land a right to the land, according to the opinion of ash-Shaykh at-Tusi as we have already learnt.

d) By uncovering a spring and taking possession, the person owns it since ownership of every natural asset is gained by acquiring possession.

Our reply to this is that there is no authentic text implying that possession is the basis for ownership.

e) It is the established prevalent local practice (*as –siratul-'uqalaiyyah*).

Our argument against this is that there is a possibility of proving the invalidity of this practice, and that the right is no more than just an entitlement to use or priority over others (in term of the right to use). In this respect there is very little doubt. Furthermore, the prevailing local customary practice does not constitute a *hujjah* (an argument or evidence) in itself. It becomes a *hujjah* only when it is discovered that the customary practise is approved by a legitimate legislator.

There is usually only one way of discovering the sanction of the legislator. It is the absence of any restriction such that it can be said that had he not sanctioned it, he would have restricted it. Therefore, before inferring from the prevailing local customary practice, it is necessary to determine that there have been no restrictions enforced against it.

But this should not be asserted when there exists a report of a tradition that implies some sense of restriction, even when the *sanad* (chain of authority) of the tradition is incomplete. Inasmuch as it was probable that there was some restriction from the legislator, it is sufficient for the determination about the rejection of the customary practice. Although a weak tradition cannot constitute a legitimate argument, but it would be deemed sufficient on the whole in all cases to invalidate the legal view drawing support from the prevailing local customary practice and to prevent its application. This is a general point that should be considered in the overall inference from the prevailing local customary practice.

Because of this, we may state that the few traditions that imply prohibition of access to the water by other users, or denial of the right to surplus water to others, or non-permissibility of sale of a canal after the person who no longer needs it, lead at least to the probability of the existence of restrictions that were incompatible with complete ownership (of the water sources).

Appendix 10: The Obligation Of Allowing Free Access To A Canal When The Person No Longer Needs It

There are a group of traditions that contradict the set, which implies permissibility of sale of a canal. For instance, there is a tradition reported by al-Kahili, in which he says: “ A man asked Abu ‘Abdillah in my presence (while I was with him) about a canal, held by a group of individuals, with a known share for each as to the use of its water. Now, a man from among them was in no need of its water. The question asked was as to whether the man could sell it in return for a quantity of wheat or barley. The Imam replied ‘He may sell it for anything he wishes.’

After highlighting the contradiction, this tradition may be reconciled (to the other set) by attributing the prohibitive traditions to dislike (*kirahah*), instead of prohibition. There is apparently then no longer an issue with the ‘contradiction’. But if we look deeper into the tradition, we will find this ‘reconciliation’ incomplete. If we presume a conflict between this tradition and the other set – on a particular subject matter – how can we simply reconcile a prohibition, even, if it is in the sense of just dislike (*kirahah*), with such a statement.

It is quite clear as regard it's being free from all doubts. Looking into the reconciliation of the two sets of the texts, we will find that the set that prohibits – like the reliable tradition of Abu Basir mentioned – implies two things. One is the obligation to allow free access to the water so that others may utilize it after the 'owner' of the canal fulfils his need (for irrigation). Second, it is not permissible to sell it.

The second set, of which al-Kahili's report is one, does not directly contradict because it does not point to the permissibility of renting the canal to another person. It only points to the permissibility of selling it and that does not necessarily mean that renting it is permissible. Do not view this in a framework that it is legally binding. The pretext is that if it was obligatory to allow access to others, then there would remain no basis for selling it or that it has any significance as an object to purchase. A person who desires to buy it could instead gain free access and usage so long as it is obligatory on the 'owner' to allow others free access and usage.

Therefore, the very supposition of sale and the verdict as to its permissibility is legally binding as to the permissibility of lending it free of charge so as to confirm the nature of prevailing customary practice for buying and selling, in as much as it dashes off this delusion in that the obligation of the lending does not make purchasing and selling senseless. It is quite possible that a person may not be content with enjoying free access and usage. He may rather desire to have the canal belong to him along with the right of priority over it, in the same way it belonged to the seller who no longer needs it. This right is only transferred by a buy and sell transaction.

Accordingly, the set of texts implying permissibility of a sale are not essentially inconsistent with the obligation to allow free access and usage to others. Certainly there was a conflict between the two sets of texts. The solution to this contradiction is that the set ordering to allow free usage carries two meanings in its prohibition. The first meaning is that it is a real prohibition of selling the canal with an absolute statement, and the second it is prohibition on selling the water. It is in the sense of not forcing a person who desires the water to pay for it, and instead allows him access and use for free. If the prohibition is taken by its first meaning, there is obviously a contradiction. But if the second meaning is adopted, then there is no contradiction.

Then it is desirable to be held that if the set of texts implying permissibility of sale are stronger than the appearance of the other set in the first sense if it has its appearance in respect of that and we do not hold hesitatingly between its two senses; or its appearance in the second, the appearance of permissibility will be given precedence and then will result from the combination of the two sets the permissibility of the obligatoriness of the lending of the surplus of the requirement from the canal to the other free of charge and the permissibility of its sale conclusive of the transfer of the right of exclusive (private) possession and priority to the buyer.

Appendix 11: Annexation Of A Mine To The Land

By this we mean that in this respect the mine is like the land itself, because the proof of the established right or control over a mine is by perception (non-verbal – *labbi*) and cannot be held by its application.

It is possible that *istishab* (assumption of accompanying circumstance) may prevent its enforcement for more than one reason. If the reports of tradition regarding (the imposition of) *khums* on mines are accepted, the instruction to the landowner to pay *khums* on what he extracts from the mine implies that he is the owner of the other part (the remaining balance, or the four-fifths) of the mine. Accordingly the proof of the individual's control over the mine would be verbal not by perception (non-verbal).

We hold that these reports of the tradition are not at a level of adequate clarity as to the rule about mines, and the right of the landowners over the mines. It is therefore not necessary to adhere to them for the establishment of that right because of doubts over their authenticity. We view these reports as merely a statement of the certainty of *khums* on the extracts from the mine, which gives ownership to an individual by virtue of his extraction. So, it is not possible to prove – by these reports – the ownership of the remaining material in the mine as to whether they belong to the land owner, or otherwise.

But the subject of our discussion is the material obtained from the mine and not what still remain inside.

Appendix 12: Ownership Of A Bird Is Acquired By Hunting Even If Its Possession Is Not Accomplished

The statement by al-Imam ar-Rida (a.s.) in the collection of sound traditions (*sahih*) saying “*He who hunts two-winged bird, for which the claimant is not known, will be its owner*” indicates what has been previously stated in this book, because it is an established fact that the bird will be ruled as owned by the hunter on the mere confirmation of his hunting efforts. This is irrespective of whether or not he captured the prey.

Thus, it includes the case where the bird escapes the possession of the hunter as, in the hypothetical situation described earlier in this book. The meaning is that the hunting work itself is the basis for ownership. This is derived from the principle in the theory, giving the hunter the right of the opportunity (utility) over that his work had brought about.

Appendix 13: The Difference Between Ownership By Hunting And Ownership By Acquisition (Hiyazah)

The juristic proof for that is the application of the statement of al-Imam as-Sadiq (a.s.) given in the collection of sound traditions stating that if 'a bird' possesses its two wings, it belongs to him who takes it. Indeed, this application implicitly includes a bird that previously belonged to another person who had captured it, but escaped and flew away.

It is held that this tradition is connected to the tradition reported by Muhammad ibn Fadl and others wherein it is stated: "I asked him about catching a pigeon, worth one *dirham* or half of a *dirham*. He replied: 'If you know its owner, return it to him.' "

We hold that this text and others that are similar – even if connected to a preceding absolute text – mention about whether the bird came under the control of its previous owner. This is learnt from the context of his statement, 'return it to him'. It is evident from the order to return it, which presumes the knowledge that someone previously owned the bird. As for the view that entitlement is by mere hunting efforts – without actual capturing – we have discussed this in the text in the tradition reported by Muhammad ibn Fadl will not be applicable on account of the capture of 'return' (*radd*) to it not being true.

After considering the absolute (general) along with the tradition narrated by Ibn-Fadl, the detailed statement between a case when a person had gained control over a two-winged bird and had it under his possession and control, and the other case whereby he might have gained ownership merely by capturing it. In the first case, it would not be lawful for a person who captures it upon its escape, while in the second case it would be lawful.

Appendix 14: Discussion About A Person's Right Of Possession To Assets Acquired By A Donor Or An Authorized Representative Or An

Employee

The discussion may be divided into three parts: –

First, it is about an asset (in nature) that a person acquires for another by way of service offered voluntarily, not by agency or in consideration of compensation. The issue is whether or not the other person (the recipient) would legitimately keep possession of the asset as his own.

The reply to this question should be made after understanding the connection of that acquisition with the second person, who for some reasons does not acquire the natural asset on his own. It could be because the first person who volunteers to appropriate the property may intend to do so on behalf of the second person for the latter's subsequent possession and use. Therefore the first person's possession will itself constitute a connection between the properties with the second person, placing him in the capacity of the beneficiary of the acquisition.

But the reply will be in the negative if there are no basis that could juristically justify delegation of the work – involved in acquiring the natural asset – to a person other than those who do so under waged labour contract or agency agreement. In these cases the possession itself only justifies the ownership by the worker and not by any other person.

So, there is no legitimacy for his ownership by the worker or the agent simply assigning to him the basis of ownership, which is work done by another person. It is both invalid whether the basis is the execution of the process of acquisition and actual possession, or utilization of the assets he acquired. There is no justification for a person to earn any right to a natural asset acquired by another with the latter's own labour and effort.

As for the first, which constitutes the expression of possession or ownership on the physical aspects, the intended beneficiary has made no efforts to earn the ownership. It is similar with the second basis, in that he himself did not invest any efforts in utilizing the asset.

The second part is when a person empowers another person (an agent) to acquire possession of a natural asset for him. This is similar to that we discussed earlier. The only difference is the formal empowerment. As in the previous arrangement, he does not gain any right to ownership by hiring another person to undertake the task of acquiring the asset. Thus, it is ineffective for the principal to empower another, as a means to acquire ownership of natural assets.

It can be argued that the act of the agent, by virtue of the agency, is derived from the principal's authority and thus the acquisition by him will be an acquisition by the principal just as a sale by him is deemed to be sale by his principal. The reason for ownership by the principal will thereby become complete.

The reply to this argument is that the act of the agent is attributable to the principal only in legal and conventional matters like buying, selling, gifting, hiring and similar transactions. But it is not applicable in a physical and bodily action, which is certainly attributed to the person who performs it. Thus, a principal can confirm the claim that he has sold his book, if his authorized agent has sold it. But he cannot legally claim that he visited such and such person, even if he had authorized another person to pay visit on his behalf. The visit is attributed to the actual visitor, as it is a bodily act, contrary to act of selling. A sale transaction is a legal matter capable of being delegated to another authorized person.

Acquiring possession of a natural asset is a bodily and physical act similar to visiting, which is not attributable to anyone other than the visitor himself, unlike commercial transactions. On this basis, we hold that the legitimacy of significant legal matters, like sale and similar transactions is established with evidence in conformity with the respective rules. For example, the validity of the owner's sale is because of the authority he had granted to his agent. It results in the attribution of the selling act by the agent to the principal. This confirms the criterion for the application of the primary proof indicating the validity of the sale without a need for specific legal proof about the authenticity of the agency.

But this is not applicable in non-legal matters. Delegation of authority does not have the same results. Therefore, the validity of delegation to an agent and the attribution of the act of the agent to the principal – as regard legal tradition – needs a specific proof. The primary proof indicating the assignment of authority will not be sufficient.

Since there is no application from the traditions, the principal calls for the disassignment of the tradition of the principal's act to the act of the proxy (agent) in creational matters unless a specific proof is got up on the devotional reduction from the law giver. But in the field of acquisition and possession, no such proof is established, so the power of attorney is made null and void in such matters.

The third part is related to the hiring of a person by another to acquire a *mubah* object, as to whether he would become the owner of that obtained by the hired person. There are two side issues related to this. One issue is about when the hirer has a share in the acquisition act such that he can claim his share in the hiree's work. The other issue is concerning the nature of the acquisition.

As for the first issue, sometimes it may be taken for granted that the hiree is entitled to a share in the acquired asset as if he acts for himself. In some cases, it may be taken for granted that he does that for the hirer in accordance with the terms on which he was hired.

On the first assumption there is no doubt as regards the hirer's not taking possession of what the hireling acquired because the acquisition done was the hirer's property, and he could not rely on the hire contract to expect an entitlement to the asset. As for the second supposition from the first side issue, and it is that which the hireling acquires for the hirer in accordance with hire contract, here there is nothing to distinguish it by juridical discussion from the second side issue, it is, about when it concerns the nature of the hire acquisition since there is found nothing in it to imply its being a justification of the

hirer's taking possession of the wealth a hireling acquires, save hire contract. Therefore, if it were admitted about this supposition that the hirer takes possession of what his hireling acquires, then it is admitted only on the basis of the execution of the contract and this basis itself is also established in the second side issue.

Thus, it requires concentration of the supposition, the discussion from the second of the first side issue, and from the second side issue of this point, which is:

Can the hire contract be the cause or reason for the hirer's right of ownership to the natural asset his agent acquires?

It is juristically obvious that the primary meaning of the hire contract and its real role confers upon the hirer the benefits of the hired property like residing in a hired house and the hirer's benefit of the hired labour; and the benefit of the hiree is his labour. The status is established similar to that of the benefits of living in the hired house.

This would mean, regarding the subject under discussion, that the hirer is entitled to the output from the work of the hiree, that is, the acquisition of the benefits established thereby. As for the acquired object that is the wealth (material) acquired – if that is what is to be taken possession of to be owned by the hirer, then this is not directly the meaning of the hire contract. On the contrary, it is invariably the result of his taking possession of the acquisition, just as when we supposed that the right to the possession of the acquisition is inseparable juristically from the right to possession of the object (acquired).

Thus, it becomes incumbent on us to discuss this aspect juristically so as to see as to whether the right to possession of the acquisition is a cause or is inseparable from the right of possession over the goods acquired.

At the juristic level there are several matters for which it is possible to rely on for the justification of this reasoning about the hirer's taking possession of the hiree's acquisition. Here are a few:

First, what is well known from the book *al-Jawahir* and from other books that the acquired asset is the result of acquisition by the hiree, whose work the hirer is entitled to. This is in accordance with the principle that he who owns the principal object also owns its offshoot or product.

This proof is in between these two explanations:

One is that the asset obtained is the product of something that belongs to the hirer, like the fruit of a tree. Just as the owner of the tree becomes owner of its fruit on account of his ownership of the tree, he will become the owner of the woods harvested from the forest by the worker he hires on account of his ownership of the work executed by his worker.

The other is that work (to acquire natural assets) is like tailoring work. Therefore, just as the product of the tailoring work is owned by the hirer of the tailor, so is the outcome of the work involved in acquiring a

natural asset.

The first explanation is incorrect. It is obvious that the attribution of the acquired property to the worker is different from that of fruit to the tree. The fruit is the natural product of the tree. As for the wood harvested, it is not the product of the acquisition work. The outcome of the work is controlled felling of trees, not the wood itself. The argument only indicates the fact that one who owns an object also owns its product like the fruits of the trees and the eggs of hens that he owns. As for the product in the metaphorical sense like that applied to the wood harvested, it is not a basis for ownership by the hirer just because he 'owns' the work involved in acquiring it.

As for the second explanation, it could be argued that the output of tailoring work is not owned by the tailor's paymaster. Thus if a person engages a tailor to make him a shirt from a piece of woollen cloth, he does not own the tailor's work that transform the cloth into a shirt. He instead becomes the owner of shirt because of his ownership of the cloth that was established before the contract, as ownership of the material is, in law, an outright ownership of all the shapes and forms that occur thereto because shapes and forms have no independent ownership.

Therefore, if we suppose that the piece cloth does not belong to the hirer but to someone else for whom he is permitted to have the right of its disposal, the hirer was not in a position to own the garment shape on account of the hire-contract. This means that the product of the work of the tailor – the transformation of shape of the cloth – may be owned by the hirer only if the work was performed on a material that belonged to him prior to the hire contract. However, if the woollen cloth was not owned by him before the hire contract, and instead was a public property free to all (one of the *mubahat*), the deduction by analogy with the product of tailoring is invalid because of the difference.

The second argument that can be put forward is that the product of the work – that is the transformed shape resulting from tailoring work – is not the wool itself but ownership legally derived from the acquisition. The ownership of natural assets gained in the case of acquisition work is equivalent to the transformed shape that result from the tailoring work. Thus, if the analogy of acquisition with the tailoring became obscured, and if we disregarded the first objection, that would result in the hirer taking possession of the ownership of the wool, not the wool itself and this has no meaning.

Second: if the acquisition of the hireling was owned by property of the hirer, then it is in fact his acquisition. The hirer owns the wool acquired in the capacity of its acquirer by the very acquisition of his hireling.

Therefore, our objection to this standpoint is:

First: the hirer's ownership of the hiree's work fulfils the attribution of the acquisition to the hirer with the attribution of ownership, not in terms of the attribution of the act (work) to the actor (worker). So that the hirer becomes the acquirer by the acquisition of the hired; nor is it the preparatory cause of an individual's right to the possession of a property (goods) but it is a cause of his being its acquirer of it

and not his being the owner of his acquisition.

Second: if we acknowledge the attribution of the act itself – the acquisition – to the hirer on account of his ownership, even then it would not be helpful, because the proof of right of possession by acquisition is not a verbal proof so as to hold to it by its application. Rather it is non-verbal (mental) proof limited to the extent of certainty.

As for the claim of consensus that the hirer owns what his worker acquires, it is not an unsound claim; and if we acknowledge this, the abovementioned consensus will not be sufficient to establish the ownership in the matter under discussion, for it is probable that the reliance of the many of the acquiesces in the above mentioned consensus is on their basis of conviction that the rules of the hire-contract demand that from their belief about the correlation between the ownership of the acquisition and the object of the acquisition. As we do not admit this basis, with regard to us, it will not be submissively imitative consensus (we do not join with those who are unanimous about it).

Third: that the local customary practice in the past is established based on the hirer's right to possession of whatever asset the hired worker obtains.

It is not possible for one to say that according to us, during the era the *Shari'ah* was being developed, the custom was not adequately known and practised to such a degree that its diffusion (into the social culture) could enable us to determine whether it had been sanctioned or restricted.

However, if we admit this customary practice and its sound reasoning, it only proves in respect of the inclusion of familiar customary practice because the proof is verbal. Thus, the reasoning with it is acceptable only when the hired worker intends that acquired asset for the hirer's possession. It would not be applicable if there were no such intention. For this form will not be a sure thing decisively from the customary practice.

Fourth: the claim of the proof of generalities and the applications of the soundness of the hiring to the wanted and that because it proves the soundness of the hire conformably with the matter under discussion and proves necessarily the hire's right to the possession of what the hiring acquires or else the hiring will be a bootless absurdity yielding no profit to the hirer, and so it would be, on account of it, null and void. Hence, the validity of hiring is inseparable from the hirer's right of ownership of the property acquired.

This may be disputed as follows:

First, the hirer's right to profit from the work of the hiree is not limited to the possession of the acquired asset. Rather, it may not be connected with the objective of the customary practice, the very acquisition itself and the harvested wood. So, the hire (contract) is not absurd in any case.

Second, if we admit the hire (contract) as absurd, and an absurd hire (contract) is specifically or

definitively inadmissible as evidence for the soundness of the hire, it is thus not correct to hold fast of those evidence for establishing its validity, apart from establishing of the right of the hirer over the acquired assets because it is holding fast to the general or absolute with the substitutive judicial error.

Add to this, the possibility of raising doubt as to the finding of the application of the proofs of hire, because in the reported sound traditions (*akhbar*) there is nothing, which is in harmony with the reality of the statement with an absolute saying to hold fast their application. The verse of the holy Qur'an: **"fulfil your contracts" (5:1)** implies obligation not soundness, neither in conformity nor by necessity, and the saying of the holy Qur'an: **"except that it be a commercial transaction carried out by mutual agreement" (4:29)**, is pertinent to trade, an evidence of buying and selling, and includes general contracts that result in entitlement to ownership.

Fifth: It is a saying of al-Imam as-Sadiq (a.s.), in which he says: "One who hires himself out prohibits to himself his means of livelihood (rizq)." This indicates that the hirer becomes the owner of what his hiree acquires; otherwise this saying will not be correct in general and would not apply to one who hires himself out. Hence, the application of the text and its inclusion of every hiree imply that it is the hirer – not the hiree – who becomes the owner of the acquired goods.

Besides that, it can also be argued that the text is of questionable authenticity as the tradition's chain of narration is unsound. As far as I know the whole chain is weak. So it cannot be relied upon. In light of these arguments, we know that the ownership of the hirer over the assets his hiree acquires is not a valid.

Appendix 15: Arguments That The Hired Worker, Not The Hirer, Owns The Acquired Assets

It would be more accurate to say that if a person acquires a natural asset for another person, its ownership will be transferred to the person for whom it is acquired, merely because it was intended for him, instead of relying on the basis of the hiring or the agency contract between him and the worker. It may be said that the evidence for the right of possession is a general practice (*sirah*), and is established on the acquirer's right of possession, irrespective of whether the person himself or someone else did the work.

The acquirer's right of possession not as being the acquirer so as to hinder what has been previously said (from the first side of previous appendix) that the acquirer is not the acquirer as a representative or the hirer, so as to oppose what has already been said from the two other sides of the preceding appendix, as to the fact that the contract of representation or hiring does not call for this. [1](#)

Therefore, if this is completed, the meaning will be that a person other than the pursuer of the acquisition will become the owner of the acquired wealth in one (and only one) way, and it is the pursuer who intends its acquisition for him. But in no other way than this, a person other than the pursuer will become the owner of the acquired wealth and the acquirer of it, being his representative or his employee will not justify his right to the possession of it, because we have learnt that the validity of the representation in creative (*takwin*) matters requires a specific proof and that is absent here. The hire contract grants the hirer ownership over the work of the hired person, not the object of the acquisition, that is, the acquired asset.

1. It may be observed on the basis of what was said in the preceding appendix that the hirer's right of ownership to what his worker acquires is sufficient juridically as evidence for ownership by the hirer.

It is argued that is because the worker is only a hired person, and the natural asset he obtained will thus not belong to him, even though he is the one who pursues the acquisition work. It was further argued that the proof (argument) that acquisition is the cause of ownership is only a customary local practice, because the traditions on this subject are weak in terms of authenticity – and we do not know that the local customary practice during the era of legislative formation used to confer upon the hired worker ownership of the acquired natural wealth. Therefore, when the worker's right to possession of acquired natural wealth is not established, it will make it definite that the hirer will be the owner.

But this observation does not justify the hirer's ownership of the acquired natural asset. We acknowledge the absence of the proof for ownership of the hired worker. But failure to prove ownership by the worker does not at all mean that the ownership of his hirer is proven. We may possibly also add that this observation will not be dismissed in case of land rehabilitation, about which there exists a text to the effect that the land will belong to the person who revives it. There is ample proof in this case that the person who revives the land is entitled to a right of ownership. And here the person who revives the land is the hired worker. Thus according to the application of the text, he will be the rightful owner.

Appendix 16: An Observation Of A Specific Text

It is held that the justification occurring in the text that referring to some guaranteed elements of compensation or earnings. It means that a gain without a previous work or labour is impermissible if it is guaranteed. But if it is not guaranteed then it is permissible, like the difference between compensation that an intermediary pays to the owner, or the percentage he pays the farmer if it happens to exceed that compensation.

This statement is partially valid with regard to the explanation of the justification and for an understanding of the sphere of inquiry in other fields.

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