

**THE ANALYSIS OF MAJOR WESTERN THEORIES OF  
DISTRIBUTIVE JUSTICE IN THE LIGHT OF ISLAMIC  
LAW: A Comparative Study**



T-4373

Submitted by  
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**DATA ENTERED**

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
MASTER OF SHARI'AH AND LAW  
(Faculty of Shari'ah and Law)  
in The International Islamic University  
1428 A.H. / 2008 C.E.

Supervisor: Professor Imran Ahsan Khan Nyazee

Faculty of Shari'ah and Law  
International Islamic University Islamabad



b/86/00

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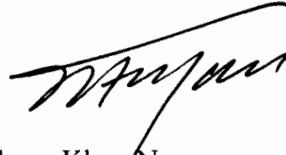
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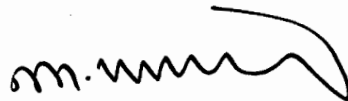
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It is certified that we have read the dissertation submitted by Susic Sejo entitled *The Analysis of Major Western Theories of Distributive Justice in The Light of Islamic Law (A Comparative Study)* as a partial fulfillment for the award of degree of LL.M. (Shari'ah & Law). We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of the degree.



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## Dedicated to My Late Parents

“ Our Lord! And make them enter the Gardens of Eden, which Thou hast promised them, with such of their fathers and mates and descendants as do right. Lo! Thou, only Thou, art the Mighty, the Wise.”

(Qur'an 40:8)

## ABSTRACT

What is justice, and what in particular is distributive justice, are questions that have occupied many legal philosophers for a long time? It has been an old practice that, a group of people join together to produce different kinds of goods for a society, like food, clothing and shelter. Immediately, some fundamental questions arise: Who in the society will get these goods and in what proportion? How are they going to be distributed? Should every one receive an equal amount? Should the strongest prevail? Should people receive the goods according to their needs, abilities, or is some other mode of distribution to be applied?

Since the time of Aristotle, who first invented the term “distributive justice”, the western world developed a deep concern for the idea of justice. The very need of creating a constitutional society versus dictatorial one-man ruled society was inspired by human philosophical and legal vision. During the last century some of the leading legal philosophers have been preoccupied with study and research related to the problems of distributive justice. These scholars have made significant contributions and provided guidance for dealing with this very old problem. Notable among these scholars are: John Rawls, Edgar J. Bodenheimer, Recher Nocholas, John Roemer, Robert Nozick and

others. Their contributions have made very persuasive effects on the actual practice of the various legal and social systems.

Islamic social values have always upheld the spirit of justice and equality. The Holy Qur'an not only gives us an indication of what justice is, but also emphasizes over and over again our responsibility as human beings to strive relentlessly for justice. While in the early Islamic literature justice has been given great importance and some seminal ideas are found in the works of early scholars, very little work has been done in this area by the modern scholars. The only well known work is that of Syed Qutb "Social Justice in Islam". Other studies are very sketchy. Some economists approached this subject in the context of the Islamic economy, but the subject needs to be analyzed and studies in the light of Islamic law and views of its jurists.

The present study attempts to assess the contributions made in the field and to analyze these ideas in the light of Islamic law. The study is divided into two parts. The first part is related to Western theories and approaches regarding distributive justice, while the second part deals with Distributive justice in Islam.

## **ACKNOWLEDGMENTS**

All praise be to Almighty Allah, the Most Merciful and Compassionate, source of all powers, who enabled me in addition to revelation of His unlimited blessings, to accomplish this task.

I acknowledge my deep sense of gratitude to my supervisor Prof. Dr. Imran Ahsan Khan Nyazee for generously providing all possible support, advice and guidance. Professor Nyazee's inspiring discussion greatly influenced the shape and contents of this work.

I also want to acknowledge my gratitude to the Dean and members of the Faculty of Shari'ah and Law, from International Islamic University Islamabad, for providing me all necessary facilities, which made my studies here an enlightening experience.

Last but not the least, I would like to thank all those whose names I have not been able to mention here, who directly or indirectly assisted me in the completion of this research.

## INTRODUCTION

Praise be to God, Whom we beseech for aid, guidance and forgiveness, and to Whom we turn in repentance. We seek refuge with God from the wickedness within us and from our evil deeds. Whom God guides none may lead astray; whom He leaves in error has no guide. We testify that there is no deity save God, Alone without partner. We testify that Muhammad is His Slave and His Messenger, sent before the Hour as herald and harbinger, summoning to God by His leave, as a lantern shedding light. By him God guided out of error. By him He showed the way from blindness. By him He led out of temptation. By him He opened eyes that were blind, ears that were deaf and hearts that were crusted over. For he delivered the Message, discharged the Trust, counselled the Community, strove truly in God's Cause and worshiped God till certainty came to him from his Lord. God bless him and his family and keep them safe! May He grant him for our sake the most excellent reward He has ever granted a Prophet for the sake of his community!

Although, there is a general presumption that the Western theories of distributive justice are opposed to divine law, it does not seem to be true, when they are compared with Islamic law. To get into deeper analyzes of Western theories, and have their proper understanding, it will be necessary first of all to see on which principles they are based. What are the origins of these principles and from where they came out? Who was the first who defined natural law, and how the theory of natural law, state of nature and natural rights influenced modern legislation? What was reaction on the school of natural law by the founder of British utilitarianism Jeremy Bentham, and how his teaching made an



impact on the future developments regarding the theories of distributive justice? Only after getting this kind of necessary knowledge, we will be able to precede, analyze, and understand modern western theories and approaches related to the distributive justice specially presented by John Rawls and Robert Nozick.

Accordingly, the foremost objective of the study will be to present and analyze major modern western theories related to distributive justice comparing some of their principles with the Islamic law. After completion of this task, Islamic concept of distributive justice has to be presented. What are the meaning, scope and sources of distributive justice in Islam? What are the principles of distributive justice in Islam, and how these principles are organized?

The study has been divided into two parts: (a) Western Theories and Approaches Regarding Distributive Justice and (b) Distributive Justice in Islam. The first part consists of seven chapters while the second part has only two.

Chapter I present and analyze some of the earliest definitions of justice given by the leading Greek and Roman philosophers. It commences with an overview of ancient mythology regarding justice, and than studies the teaching of Socrates, his trial and death which were quite significant for the development of the idea of justice. The chapter proceeds with the presentations and analysis of Plato's and Aristotle's concepts of justice, and concludes with Marcus Tullius Cicero views related to justice.

Chapter II discusses the relationship between the schools of natural law and justice. From Marcus Tullius Cicero we got first definition of natural law which was the basic on which Thomas Aquinas built his theory. The classical era of natural law was

presented first of all by the teaching of Thomas Hobbes. John Lock was the first philosopher who introduced a theory of natural rights which would have immense influence on modern western legislation, while Jean Jacques Rousseau differed from almost all western philosophers how to discover the natural law. This chapter concludes with the discussion on natural law from Islamic perspective.

Chapter III in its beginning presents the origin of Utilitarianism, and then proceeds with the teaching of its two main theorists, the founder of British utilitarianism Jeremy Bentham, and his student, John Stuart Mill. This chapter concludes by the concept of happiness from Islamic point of view.

Chapter IV discusses the relationship between distributive justice and goods. The main objective of Distributive Justice is a distribution of goods. It presents two main theories related to the goods: the Theory of Good according to John Rawls and a Theory of Goods according to Micheal Walzer. This chapter concludes by the discussion on goods from the perspective of Islamic law.

Chapter V discusses the concept of equality which has been considered as one of the most constitutive features of distributive justice. It examines different forms of equality showing how each of this form is linked with distributive justice. The chapter comprehensively discusses and concludes the idea of equality from the standpoint of Islamic law and its different aspects.

Chapter VI considers the idea of freedom and its relationship with justice. The relationship between justice and freedom, are two gripping concepts that have vexed the minds of jurists down the ages. At the outset the views of Thomas Hobbes and John Lock regarding the freedom are critically evaluated. This chapter in details presents and

analyzes Robert Nozick's theory of the state and justice, and concludes with the view of freedom from Islamic perspective.

Chapter VII is the last chapter of the first part, and discusses the theories which combine freedom with equality. As a first theory, the teaching of William Sorley is to be examined.

Chapter VIII analyzes and discusses the meaning, scope, and source of distributive justice in Islam. As an integral part of the chapter, view of justice as the attribute of Almighty Allah is also included.

Chapter IX is the last chapter of the thesis and deals with the principles of distributive justice in Islam. These principles are of three kinds. In the first kind are the principles of justice related to the relationship between Almighty Allah and His servant. The second pertain to the principles related to the relationship between the servant of Almighty Allah and his surroundings. Third and last kinds are the principles which are related to the relationship between the Khalifa and the citizens of Islamic state.

Then, the Conclusions of the thesis are recorded, which is followed by three appendices. Appendix I contain Farewell Address of the Holy prophet Muhammad (peace be upon him). Appendix II contains the instruction of Imam Ali ibn Talib (may Almighty Allah be pleased with him) to Malik b. al-Harith al-Ashtar relating his appointment as governor of Egypt. Appendix III contains the letter which contains the instruction given by Imām Abū Yūsuf to the Khaliph Hārūn ar-Rashīd regarding the just ruler.

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**PART ONE:**

**WESTERN THEORIES  
AND APPROACHES REGARDING  
DISTRIBUTIVE JUSTICE**



## CHAPTER ONE:

### THE ORIGIN OF JUSTICE

#### 1.1 The Early Beginning

Due to unavailability of studying material it will be very difficult to say precisely when and where the idea of justice originated amongst people. But we may say certainly that the idea of justice was present from the beginning of man's creation and his existence on earth. People living together were organizing their life according to certain rules and principles which would differ from time to time as well as from one place to another. The origins of these rules and principles were also different.<sup>1</sup> Initially they were of divine in nature but with the passage of the time its course was changed. As a proof of this we may recall the Holy Qur'an where Almighty Allah says that: "To every people (was sent) a Messenger, when their Messenger comes (before them) the matter will be judged between them with justice, and they will not be wronged ". (10:47) According to this

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<sup>1</sup> "Amidst that first crisis in 458 B.C., Aeschylus produced the *Oresteia*, the greatest tragic drama in human history. It is a window into the evolution of Athenian justice, the principles underlying its law, and the threats to justice inherent in human passions. The play is a transcendental plea. for democratic justice. The third part of the trilogy Its final act portrays a courtroom trial in which the mental state of the defendant is central with all the elements of what today we call legal insanity. The *Oresteia*, immortalized and carried the message of justice through millennia. This powerful drama kept alive the idea of humanistic justice, through the eclipse of the Roman Empire and submersion in the Dark Ages, through the Renaissance when the classics resurfaced, to the British Isles, and to our courtrooms. The *Oresteia* became the vital voice of Solon's justice that enabled it to survive. The Athenian legal system served as a frame of reference for the first codification of Roman law. Greek drama, and the sociological, scientific and, psychological principles underlying ancient law played a role in the evolution of a great and complex Roman jurisprudence. Then as Rome declined and fell, civilization sank into the darkness of "the worst of times" and justice seemed to be extinguished by societies ruled by greed, cruel power, and raw vengeance. The Furies retook Justice. Primitive magical thinking and belief in the supernatural buried the scientific attitude. Then demonology and witchcraft metamorphosed into a malignant scapegoating preoccupation that became twin to the Plague and rendering human understanding comatose. But Justice and Science lay dormant, hibernating in those literary treasuries of classical Greece and Rome, stored away in Islamic libraries and Ecclesiastical archives. It has been a slow and fitful reawakening. (Walter Bordnenn,"Isaac Roy: A History of Justice: Origin of Law and Psychiatry, AAPL Newsletter, American Academy and Psychiatry and Law, April 1999, Vol. 24, no. 2, pp12-14).

verse from the Holy Qur'an, to every nation Almighty Allah sent a Messenger and through them He established religion and justice.

## 1.2 The Ancient Mythology

Divine revelation and teaching of the Prophets (peace be upon them) was not all the time to be followed by the people. History teaches us that some people instead of being obedient to Almighty Allah and His Prophets (peace be upon them) chose to invent and make their own goddesses and worship them. The same was the case with the Goddess of Justice.

The origin of the Goddess of Justice goes back to antiquity. She was referred to as Ma'at by the ancient Egyptians and was often depicted carrying a sword with an ostrich feather in her hair (but no scale) to symbolize truth and justice. The term *magistrate* is derived from Ma'at because she assisted Osiris in the judgment of the dead by weighing their hearts.<sup>2</sup>

Generally speaking in modern western philosophy thinking justice is dual in nature: (1) an idea or tradition of justice conceived to exist apart from man and stemming from a higher source, although man seeks to know its nature and draw inspiration from it in his actions; (2) a conception completely dependent upon man in its inception and practice; and (3) an intermediate ground partaking of each of the preceding two conceptions in various intermingled forms. While each of these conceptions may be discerned in the writings of ancient and modern authors, it is in the middle ground where the tradition of justice appears currently in the form of man's faith, ethical beliefs, social institutions, and in those of his actions which reflect this dual nature of justice. Regarding the ancient Greeks it was Themis.

Her ability to foresee the future enabled her to become one of the oracles at Delphi, which in turn led to her establishment as the goddess of divine justice.

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<sup>2</sup> "Legal Symbols of the Anglo-American Legal Tradition," 11 The Guide to American Law: Everyone's Legal Encyclopedia, Appendix D, 685, 687 (1985).

Classical representations of Themis did not show her blindfolded (because of her talent for prophecy, she had no need to be blinded) nor was she holding a sword (because she represented common consent, not coercion).<sup>3</sup>

The ancient Romans also had their goddess of justice. "The Roman goddess of justice was called *Justitia* and was often portrayed as evenly balancing both scales and a sword and wearing a blindfold. She was sometimes portrayed holding the fasces (a bundle of rods around an ax symbolizing judicial authority) in one hand and a flame in the other (symbolizing truth)."<sup>4</sup>

### 1.3 Socrates (470-399 B.C)

It will be unjust and unfair to proceed towards the teaching of Plato without mentioning his teacher Socrates, his trial and death which were quite significant for the development of the idea of justice.<sup>5</sup> Socrates died from drinking hemlock after being tried and sentenced to death. There were two major significant opinions regarding his accusations. The first say, "Socrates is an evil-doer and a curious person, searching into things under the earth and above heaven; and making the worst appear the better cause,

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<sup>3</sup> Cathleen Burnett, "*Justice: Myth and Symbol*," 11 Legal Studies Forum 79, 80 (1987).

<sup>4</sup> Supra, note 1 at 688.

<sup>5</sup> The most significant of the pre-Socratic philosophers for our theme are Heraclitus and the Sophists (although Plato sarcastically refers to the Sophist as "a sort of merchant or dealer in" wares, in *Protagoras* 333c). Heraclitus said that nothing is stable, that permanence is an illusion conceived by man, and that strife "is the justice of the world..." (Zeller, p. 46). In the next century the Sophists compared different customs and civilizations, questioned whether the gods and institutions were really sacred and inviolable, felt these were the creatures of man and his conventions and therefore capable of change, and oriented Greek thought and ideas to a form of humanism (*vide* Rousseau, in the eighteenth century, who attacked institutions as corrupters of natural man). One of the most renowned of the Sophists was Protagoras who, in the fifth century B.C., brought the idea of justice into a humanistic framework in his famous statement "that man is the measure of all things..." (*Theaetetus* 152a). A further contention that change was an illusion and not a fact (illustrated by the paradoxes of Parmenides and Zeno of Elea) resulted in the ultimate *reductio ad absurdum* (by Zeno's pupil Gorgias) that if Being is infinite and eternal it cannot be located in a particular space or time and therefore cannot exist, i.e., Being and Nothing would then be the same; this argument, of course, struck at the idea that justice could vary in different places and times. The Heraclitean-Sophist concept of justice has had and still has a considerable influence; its implications for the contrasting Eleatic and Platonic idea of the immutability of justice are significant. (*Dictionary of the History*, University of Virginia Library, The Electronic Text Center, pp654-656, vol. II).

and teaching all this to others."<sup>6</sup> According to the second, "Socrates is an evil-doer and corrupter of the youth, who does not receive the gods whom the state receives, but introduces other new divinities."<sup>7</sup> Accordingly the charge against Socrates had three major specifications:

- a) - The gods of the state were not recognized by him,
- b) - He was introducing new divinities, and
- c) - Socrates was a corrupter of the youth.

In the dialogue *CRITO*, Socrates justified his decision to accept his death penalty. His decision by many was praised as principled, just, and rational. As the text reveals his friend Crito proposed to Socrates to escape from prison. That idea was rejected by Socrates by following two major justifications. Firstly, according to his first principle of justice, "that neither injury nor retaliation nor warding off evil by evil is ever right."<sup>8</sup>

Here Socrates not only rejected any kind of retaliation but even the right to self-defense which was very evident in his case. Despite his full awareness of the unjust trial, accusations and punishment awarded to him, he stuck till the end to his first principle. Secondly, according to Socrates lawbreaking is unjust, while observance of laws is just, because laws are just, even if legitimacy of laws in general can be questioned. Throughout his dialogue with Crito his stand is visible. "Do the laws speak truly, or do they not? Crito- I think they do"<sup>9</sup> Socrates in his imaginary dialogue with the state, tries to convince his friend Crito that his decision to remain in prison and face a death penalty

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<sup>6</sup> *The Dialogues of Plato*, translated into English with analyses and introductions by B. Jowett, (London: Oxford University Press, Humphrey Milford, Third Edition 1892), Vol. II, p. 99.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, 151.

<sup>9</sup> *Ibid.*, 153.

is unalterable. Let us see now how the state was going to convince him not to change his decision. The laws will say,

Consider Socrates, if we are speaking truly that in your present attempt you are going to do us an injury. For having brought you into the world, and nurtured and educated you, and given you and every other citizen a share in every good which we had to give, we further proclaim to any Athenian by the liberty which we allow him, that if he does not like us when he has become of age and has seen the ways of the city, and made our acquaintance, he may go where he pleases and take his goods with him. ... But he who has experience of the manner in which we order justice and administer the state, and still remains, has entered into an implied contract that he will do as we command him. And he who disobeys us is, as we maintain, thrice wrong; first, because in disobeying us he is disobeying his parents; secondly, because we are the authors of his education; thirdly, because he has made an agreement with us that he will duly obey our commands; and he neither obeys them nor convinces us that our commands are unjust; and we do not rudely impose them, but give him the alternative of obeying or convinces us that; - that what we offer, and he does neither.<sup>10</sup>

Socrates did not leave any definition of justice to us except a principle not to retaliate or render evil for evil, and consider current law to be just. No doubt that according to many, Socrates decision was brave and principled. But was it? How much it was wise and just? Some reasonable questions can be raised. Firstly, why was Socrates obedience to the state more important than his belief in God (or gods), and consequently, why his belief in God was not above everything whether it was state or his reasoning. Secondly, his principle not to retaliate even in the case of self-defense does not look so convincing. What will be the case if everybody behaves like Socrates? Thirdly, Socrates does not like to injure anybody. Accepting the unjust decision of a death penalty did he not at the same time injure himself, members of his family, and his dear friends? Fourth,

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<sup>10</sup> Ibid.,

why are the laws of the state presumed to be just when they are man made and not when they are of divine origin? The fifth is concerned with the way how Socrates was executed. He by himself has taken a poison and committed a suicide. Does a wise man who believes in God can allow such thing, even if it is a way of execution prescribed by the law at that time? In regard to this question my answer must be negative.

#### **1.4 Plato's Concept of Justice**

"Plato identified justice as fundamental to all virtues, seeing it as consisting in the right order of the soul-in an order keeping our passions under the control of our reason- and arguing that only such an order will guarantee that people carry out such actions, normally understood to be required by justice, as keeping promises and paying debts."<sup>11</sup> The first important fact related to Plato's view of justice was that he was a student of Socrates, and being witness to his trial, it influenced his reasoning and views about justice. Plato devoted a lot of his time discussing the idea of justice, first with his friends and than later on giving his definition and views on it. In the book *Republic* different definitions of justice were presented by his friends and discussed. None of these definitions was convincing and acceptable and, therefore each one was criticized by him.

The first definition of justice has been given by Cephalus, and according to him justice simply means," To speak the truth and to pay your debts-no more than this."<sup>12</sup> This definition did not suit Plato and his criticism pointed mainly towards the word debt in the above mentioned definition. Firstly, as Plato will say, "For he certainly does not mean, as we were just now saying, that I ought to return a deposit of arms or of anything else to one who asks for it when he is not in his right senses, and yet a deposit cannot be

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<sup>11</sup> Samuel Fleischacker, *A Short History of Distributive Justice*, (London: Harvard University Press, Cambridge, Massachusetts, 2004), 10.

<sup>12</sup> *The Dialogues of Plato*, translated into English with analyses and introductions by B. Jowett, (London: Oxford University Press, Third Edition, 1892), Vol. III, p. 6.

denied to be a debt. <sup>13</sup> And secondly he considered returning a debt to the enemy as an evil act and not as justice.

The second definition of justice given by Polemarchus was in fact a refinement of the first definition given by Cephalous. It states that, " Justice is the giving to each man what is proper to him; "<sup>14</sup>This definition was also not considered satisfactory.

The third definition was the result of discussion between Plato and his friends. Simonides presented his definition saying that, " justice is the art which gives good to friends and evil to enemies."<sup>15</sup> Plato criticized this definition as well, saying that the meaning of friend and enemy are relative terms." Many a man who is ignorant of human nature has friends who are bad friends, and in that case he ought to do harm to them; and he has good enemies whom he ought to benefit; but, if so, we shall be saying the very opposite of that which we affirmed to be the meaning of Simonides."<sup>16</sup> Due to this remark Plato redefined this definition of justice by saying, " And instead of saying simply as we did at first, that it is just to do good to our friends and harm to our enemies, we should, further say: It is just to do good to our friends when they are good, and harm to our enemies when they are evils. "<sup>17</sup>

The fourth and last definition presented to Plato by his friends was that of Thrasymachus, who said that, " justice is nothing else than the interest of the stronger."<sup>18</sup> The interest of the stronger according to him refers not only to individuals but to the state as well. Referring to the state he says, " that in all states there is the same principle of

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 7.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.,10.

<sup>17</sup> Ibid., 11.

<sup>18</sup> Ibid., 15.

justice, which is the interest of the government; and as the government must be supposed to have power, the only reasonable conclusion is, that everywhere there is one principle of justice, which is the interest of the stronger."<sup>19</sup> Thrasymachus's approach towards a justice was quite amazing especially because of his remark, "that just is always a loser in comparison with the unjust."<sup>20</sup> Plato was astonished by this remark asking Thrasymachus for further explanation. The following text was the answer given by Thrasymachus to the objection raised by Plato.

First of all, in private contracts wherever the unjust is the partner of the just you will find that, when the partnership is dissolved, the unjust man has always more and the just less. Secondly, in their dealings with the State: when there is an income-tax, the just man will pay more and the unjust less on the same amount of income; and when there is anything to be received the one gains nothing and the other much. Observe also what happens when they take an office; there is the just man neglecting his affairs and perhaps suffering other losses, and getting nothing out of the public, because he is just; moreover he is hated by his friends and acquaintance for refusing to serve them in unlawful ways. But all this is reversed in the case of the unjust man.<sup>21</sup>

All these arguments were swiftly refuted by Plato. The life of the unjust can never be more advantageous than that of the just. According to him a duty of the ruler is to look after the interests of the people and not his own interests. "They rule and provide for the interests of their subjects who are the weaker and not the stronger to their good they attended and not to good of the superior."<sup>22</sup>

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid., 21.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid., 24-25.



After discussion, questioning and criticism of all the above mentioned definitions it was now Plato's turn to present his theory regarding justice. He divided it into two interlinked parts:

a) Justice in the state and

b) Justice in the individual, making an analogy between the human organism on the one hand and social organism on the other.

Regarding to the first (justice in the state) there are three classes in Plato's ideal state. The first class is the class of the philosopher or the ruling class which is the representative of reason. The second class is the class of the auxiliaries, the class of the warriors and defenders of the country, and this class is the representative of spirit. The third and the lowest class consist of farmers and artisans, and this class is the representative of the appetite instinct of the community. In Plato's ideal state one man was supposed to do only one job, the job for which he was naturally most suited. "The original principle which we were always laying down at the foundation of the State, that one man should practice one thing only; the thing to his nature was best adopted."<sup>23</sup> Only through this condition justice in the state can be achieved. "The justice of the State consisted in each of the three classes doing the work of its own class."<sup>24</sup>

Regarding the second (justice in the individual), Plato defined justice in the individual analogously to justice in the state. The starting point is the human soul, which has three parts according to Plato's teachings. These three elements are reason, spirit, and appetite. An individual is just when each part of his soul performs its functions without interfering with those of other elements. "But in reality justice was such as we were describing, being concerned however, not with the outward man, but with the inward, which is the true self and concernment of man: for the just man does not permit the

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<sup>23</sup> Ibid., 123.

<sup>24</sup> Ibid., 134.

several elements within him to interfere with one another, or any of them to do the work of others."<sup>25</sup> Consequently, the justice in the individual will vanish whenever any part of the soul does not perform its duty properly, or interferes in the functions of others.

Plato's concept of justice firmly negates the idea of equality. Unjustly he predestined to a person his place in society denying any possibility that someone from the lower class can be transferred to the upper one. If wisdom and knowledge are merely gifts from God, then why except philosophers is everyone deprived from them? The only reason seems to be nothing than his egotistical desire to become the head of the state, considering himself to be the wisest.

### **1.5 Aristotle's Concept of Justice**

Aristotle as a great thinker and philosopher has influenced by his teaching's Western and other philosophies for the past 2500 years. Our concern will be his views regarding justice which was examined by him in his *Nicomachean Ethics*. Aristotle's approach towards justice was quite different to Plato's approach. As previously mentioned there are three classes in Plato's ideal state while Aristotle does not recognize any of them, introducing some kind of equality in his theory, especially legal equality amongst the free citizens. Equality and fairness will be two leading terms in his attempt to define and explain the true meaning of justice. Aristotle was the first philosopher who employed a term distributive justice dividing justice into different kinds. Aristotle's fifth book of *Nicomachean Ethics* is fully devoted to the idea of justice.

Aristotle considered justice as a whole virtue and not as a part of it, while an injustice is not a part of vice, but the whole of it. Explaining why justice is a whole virtue he says that, "It is complete virtue, first of all, because it is the exhibition of complete virtue: it is also complete because he that has it is able to exhibit virtue in dealing with

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<sup>25</sup> Ibid., 136-37.

his neighbors, and not merely in his private affairs; for there are many who can be virtuous enough at home, but fail in dealing with their neighbors."<sup>26</sup>

In the beginning of book five, Aristotle defined and made a distinction between a just and unjust man, and what is just and what is not. "Firstly, he who breaks the laws is considered unjust, and, secondly, he who takes more than his share, or the unfair man."<sup>27</sup> Contrary to an unjust man, a just man will consequently have two opposite attributes, that of being law-abiding and fair. Regarding what is just and what is not he says that, "a just thing then will be (1) that which is in accordance with the law, (2) that which is fair; and the unjust thing will be (1) that which is contrary to law, (2) that which is unfair."<sup>28</sup> As a text reveals there are two meanings of just:

(a)-First can mean that which is lawful where Aristotle is assigning the first definition of Just to the exercise of justice in relation to the whole. This kind of justice he calls universal justice, which can be identified with complete virtue.

(b)- The second meaning of justice is based on what is equal and fair. Aristotle calls this kind of justice, particular justice, a justice which relates to the individual.

In the next step, Aristotle divided particular justice into two kinds: Distributive and Corrective. The first, "Kind is that which has to do with the distribution of honor, wealth, and the other things that are divided among the members of the body politic (for in these circumstances it is possible for one man's share to be unfair as compared with another's)"<sup>29</sup> and the second, "Kind is that which has to give redress in private

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<sup>26</sup> *The Nicomachean Ethics of Aristotle*, translated by F.H. Peters, M.A., Fifth edition, (London: Kegan Paul, Trench, Truber & Co. Ltd. 1893), 139.

<sup>27</sup> *Ibid.*, 138.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, 144.

transactions."<sup>30</sup> Private transactions are of the two types: voluntary and involuntary. Voluntary transaction is contract where both sides voluntarily enters in such a contract, and are of different kinds," Such as selling, buying, lending at interest, pledging, lending without interest, depositing, hiring."<sup>31</sup> Involuntary transactions are such where the consent of one side in the transaction does not exist, and are of two kinds," one involving secrecy, such as theft, adultery, poisoning, procuring, corruption of slaves, assassination, false witness; the other involving open violence, such as assault, seizure of a person, murder, rape, maiming, slander, contumely."<sup>32</sup>

Aristotle was not ready to treat each member of the society equally. On that base he made another division of justice: political and domestic. The main characteristic of the political justice was that such kind of justice existed only amongst free citizens of the state, excluding women, children, slaves and foreigners. For example, in an ancient state, a foreigner was deprived from the right of appeal to the law in his own person, and this can be done only over the free citizen of such state. According to Aristotle a political justice cannot exist in a household, because reciprocity is only possible between two equal persons. Children and slaves were regarded as man property, and therefore without any rights, while the wife enjoyed some rights but these rights were a far away from any kind of equality between them.

Political justice according to Aristotle is two parts: natural and conventional.

That is natural which has the same validity everywhere, and does not depend on our accepting or rejecting it; that is conventional which at the outset may be determined in this way or in that indifferently, but which when once determined is no longer indifferent; e.g. that a man's ransom be a mine, or that a sacrifice

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

consists of a goat and not of two sheep; and, again, those ordinances which are made for special occasions, such as the sacrifice to Brasidas (at Amphipolis), and all ordinances that are of the nature of a decree.<sup>33</sup>

Did Aristotle succeed in making a clear difference between these two kinds of justice? Not mentioning the sources and origins of the natural justice, it looks considerably difficult to make a clear distinction between these two kinds of justice. No doubt that natural justice is based on certain universal standards recognized by everyone, but the author of these standards remained unidentified by Aristotle.

As a conclusion on his views regarding justice, Aristotle defines the equitable man, describing him as, "one who does not insist on his rights to the damage of others, but is ready to take less than his due, even when he has the law to back him, is called an equitable man; and this type of character is called equitableness, being a sort of justice, and not a different kind of character."<sup>34</sup>

## 1.6 Marcus Tullius Cicero

Marcus Tullius Cicero (106 B.C.–43 B.C.) was an orator, statesmen, political theorist, and philosopher of Ancient Rome. Cicero's approach towards justice was quite different, and at the same time more realistic than those approaches presented by Greek philosophers. In his two major works: *De Officiis* and *Treatise on the laws*, Cicero presented his views regarding justice. His concept of justice is of divine origin because, "the entire universe is overruled by the power of God, that by His nature, reason, energy, mind, divinity, or some other word of clearer signification, all things are governed and

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<sup>33</sup> Ibid., 163.

<sup>34</sup> Ibid., 176.

directed."<sup>35</sup> Universality of the laws and justice derived from God by human reason, were Cicero's starting point from which his entire theories were built. That is why Cicero saw only one source from where justice could be derived and that is God. "The origin of justice is to be sought in the divine law of eternal and immutable morality."<sup>36</sup> Justice and law are closely interrelated; where law must be derived from the principles of justice. The law is right reason according to Cicero, and must be in accordance with Divine law and justice. Any negligence of this fact in the process of making of a new law will be an act of injustice and wickedness.

According to Cicero there are two principles of justice. "The first demand of justice is, that no one do harm to another, unless provoked by injury; the second, that one use common possessions as common, private, as belonging to their owners."<sup>37</sup> Here, in the first principle of justice, Cicero differed from the Greek philosophers (Socrates and Plato) allowing an injured person to retaliate and defend himself. This retaliation should not exceed the injury.

Two kinds of injustices exist in Cicero's theory. "One, that of those who inflict injury; the other, that of those who do not, if they can, repel injury from on whom it is inflicted."<sup>38</sup> Here is the second point where Cicero openly disagrees with Plato and those who are of the same opinion. According to him it is a duty of a just man to defend those who are in need of protection.

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<sup>35</sup> *The Political Works of Marcus Tullius Cicero*, comprising his treatise on The Commonwealth and his Treatise of The Laws, translated from the original with dissertations and notes by Francis Barham, (London: Edmund Spettigue, 1842), Vol.2, 39.

<sup>36</sup> Ibid. 37.

<sup>37</sup> *Cicero De Officiis*, translated with an introduction and notes by Andrew P. Peabody (Boston: Little, Brown, and Company, 1887), 13.

<sup>38</sup> Ibid. 14-15.

It will thus be seen that Plato is not entirely in the right when he says of philosophers, that because they are engaged in the investigation of truth, and because they despise and count as naught. What most persons eagerly seek and are always ready to fight with each other for, they are therefore just men. They indeed attain one part of justice, in injuring no one: they fail as to the other part, for, kept inactive by their zeal for learning, they forsake those whom they ought to defend. Plato thinks, too, that they will take no part in public affairs, unless by compulsion.<sup>39</sup>

According to Cicero the most heinous injustice which can be done is that committed by the hypocrite. A hypocrite while engaged in doing injustice, will at the same time try to present himself among the people as a very honest and good man. That is why the basic requirement for the just man is his sincerity, where, a justice should be done only for the sake of justice and not for any other purpose.

We have already seen that according to the three above mentioned Greek philosophers there is a presumption, which says that, a law is just and unquestionable, even if it is made by a tyrant. On the contrary Cicero was of the opinion that,

Are then the laws of tyrants just, simply because they are laws? If the thirty tyrants of Athens imposed certain laws on the Athenians, and if these Athenians were delighted with these tyrannical laws, are we therefore bound to consider these laws as just? For my own part, I do not think such laws deserve any greater estimation than that past during our own interregnum, which ordained, that the dictator should be empowered to put to death with impunity, whatever citizens he pleased, without hearing them in their own defense.<sup>40</sup>

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<sup>39</sup> Ibid. 17-18

<sup>40</sup> *The Political Works of Marcus Tullius Cicero*, comprising his treatise on The Commonwealth and his Treatise of The Laws, translated from the original with dissertations and notes by Francis Barham, (London: Edmund Spettigue, 1842), vol. 2, 55.

Towards a slave, contrary to Aristotle, Cicero had a very liberal approach assigning to him different rights. Slave: "ought to be treated as hired servants, to have their daily tasks assigned to them, and to receive a just compensation for their labor."<sup>41</sup> Another point in which Cicero differed from Aristotle was in his distinction between justice and beneficence:

Cicero does not explicitly address Aristotle's discussion of justice, but he does introduce a distinction that was seen by later figures as paralleling the one between commutative and distributive justice. In his *De Officiis*, Cicero contrasts justice with beneficence, saying that justice can and should be legally required of us while beneficence should not be, that violations of justice inflict positive harm while failings of beneficence merely deprive people of a benefit and that duties of justice are owed to anyone, anywhere, while duties of beneficence are owed more to friends, relatives, and fellow citizens than to strangers.<sup>42</sup>

Hugo Grotius, a jurist from Holland is considered to be the father of international law. It is surprising, that more than 1500 years before him, Cicero laid down certain principles of the International law, which were related to what a just war is, when and how it is to be waged, as well as the treatment of the prisoners of war. "No war can be undertaken by a just and wise state, unless for faith or self-defence."<sup>43</sup> If war is undertaken for any another reason, it is considered to be unjust. Moreover, if a state must undertake war then such a war must first be declared and fought only till the extent where

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<sup>41</sup> Cicero *De Officiis*, translated with an introduction and notes by Andrew P. Peabody (Boston: Little, Brown, and Company, 1887), 29.

<sup>42</sup> Samuel Fleischacker, *A Short History of Distributive Justice*, (London, Harvard University Press, Cambridge, Massachusetts, 2004), p. 20.

<sup>43</sup> *The Political Works of Marcus Tullius Cicero*, comprising his treatise on The Commonwealth and his Treatise of The Laws, translated from the original with dissertations and notes by Francis Barham, (London: Edmund Spettigue, 1842), Vol I, 278.



just and equal restitution is met. "All wars, undertaken without a proper motive, are unjust. And no war can be reputed just, unless it be duly announced and proclaimed, and if it be not preceded by a rational demand for restitution."<sup>44</sup>

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<sup>44</sup> Ibid., 279.

## CHAPTER TWO

### NATURAL LAW AND JUSTICE

#### 2.1 Greeks and Romans

John W. Whitehead, an American jurisprudential author was right when he called the concept of natural law, "one of the most confused ideas in the history of Western thought."<sup>45</sup> The relationship between justice and natural law has a long history and has been understood in different ways. Analyzing the idea of natural law and its development, two basic approaches are very evident and must be distinguished. The first is that natural law is a God-given law discovered by human reasoning, and this approach is mostly related to the early development of natural law. The second does not associate to natural law any kind of Divine origin. Natural rights are a product of natural law theory and these rights are a matter of dispute amongst philosophers and jurists. My task here will be first of all to make a short review related to the development of natural law and then to analyze its impact on the legal system and legislation.

The ancient Greek philosophers were the first to elaborate on a natural law doctrine. Heraclitus spoke in the 6<sup>th</sup> century B.C. of a common wisdom that pervades the whole universe.

Wisdom is the foremost virtue, and wisdom consists in speaking the truth, and in lending an ear to nature and acting according to her. Wisdom is common to all...They who would speak with intelligence must hold fast to the (wisdom that is) common to all, as the city holds fast to its law, and even more strongly. For all human laws are fed by one Divine law.<sup>46</sup>

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<sup>45</sup> John W. Whitehead , *The Second American Revolution* (Westchester, IL: Crossway Books, 1982), 181.

<sup>46</sup> *Heraclitus of Ephesus*; 536-470 B.C. taken from following web. page:  
[http://www.philosophynotes.com/ethics/natural\\_law.htm](http://www.philosophynotes.com/ethics/natural_law.htm)

Sophocles will say something very similar in his *Antigone* one century later by referring to the unwritten and unfailing statutes of heaven.

Yes; for it was not Zeus that had published me that edict; not such are the laws set among men by the Justice who dwells with the gods below; nor deemed I that thy decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of today or yesterday, but from all time, and no man knows when they were first put forth.<sup>47</sup>

Aristotle did not mention explicitly a natural law but he gave a hint when he made a division of political justice into two forms, saying that: "That is natural which has the same validity everywhere, and does not depend on our accepting or rejecting it."<sup>48</sup>

According to Stoicism, the whole cosmos is rationally ordered by an active principle variously name God, mind, or fate. Every individual nature is part of the cosmos. To live virtuously means to live in accord with one's nature, and right reason. A passion and an emotion are considered irrational movements of the soul; the wise individual seeks to eradicate passion and consciously embraces rational life. The principle of equality was an important element in the Stoic concept of natural law. Stoic's doctrine about natural law was popularized among the Romans by the 1<sup>st</sup>-century B.C. Roman stoic philosopher Marcus Tullius Cicero. He gave a famous and one of the most important early definitions of natural law in his *De Re Publica*.

There is a true law, conformable to nature, universal, unchangeable, eternal, whose commands urge us to duty, and whose prohibitions restrain us from evil. Whether it enjoins or forbids, the good respect its injunctions, and the wicked treat them with indifference. This law cannot be contradicted by any other law,

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<sup>47</sup> *The Tragedies of Sophocles*, translated into English prose by Sir. Richard C. Jebb (Cambridge, University Press, 1904), *Antigone*, 141-142.

<sup>48</sup> *The Nichomachean Ethics of Aristotle*, translated by F.H. Peters, M.A., Fifth edition, (London, Kegan Paul, Trench, Truber & Co. Ltd. 1893),.163.

and is not liable either to derogation or abrogation. Neither the senate nor the people can give us any dispensation for not obeying this universal law of justice. It needs no other expositor and interpreter than our own conscience. It is not one thing at Rome and another at Athens; one thing to-day and another to-morrow; but in all times and nations this universal law must for ever reign, eternal and imperishable. It is the sovereign master and emperor of all beings. God himself is its author, - its promulgator, - its enforcer. He who obeys it not, flies from himself, and does violence to the very nature of man. For his crime he must endure the severest penalties hereafter, even if he avoids the usual misfortunes of the present life.<sup>49</sup>

Ulpian, a Roman jurist of the third century A.D. defined natural law in a different way. As a source of the natural law he rejected its Divine origin.

The law of nature is that which nature has taught all animals. This law is not peculiar to the human race, but belongs to all creatures living on the land or in the sea and also to birds. Hence arises the union of male and female which we call marriage, hence the procreation of children, hence their rearing, for we see that all animals, even wild beasts, appear to take part in this knowledge of the laws.<sup>50</sup>

Here the natural law seems to come much closer to the idea of animal instinct.

## **2.2 Thomas Aquinas (1224-1274)**

Aquinas formulated the natural law from man's enjoyment "of a certain share in the divine reason," but this share could thus be limited to such law itself and therefore not partake of justice. There is, also, an uncompromising position taken by Aquinas with respect to "divine" reason which is made the touchstone for his conclusions. His

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<sup>49</sup> *The political works of Marcus Tullius Cicero*; comprising his Treaties On The Republic and his Treaties On The Laws. Translated from the original with Dissertation and Notes in two volumes, by Francis Barham, Vol.I. The Treaties On The Republic. (London: Edmund Spettigue, 1841), 270.

<sup>50</sup> Quoted in Edgar Bodenheimer, *Jurisprudence*, (Harvard University Press, Third edition, 1978), 16.

formulation of the idea of justice follows both a Platonic and Aristotelian tradition; like Aristotle, Aquinas proposes the secularization of the idea, and the logical extension of his thoughts eventually reaches an extremely religious form.

Indeed, Aquinas takes over Aristotle's conception of distributive justice more or less intact. He contrasts commutative and distributive justice, says that the first rights wrong while the second distributes goods, describes the first as following strict equality while the second proportions goods to merit, and gives the different ways that political offices are parceled out in aristocracies, oligarchies, and democracies as his example of the sort of issue to which distributive justice applies. Again, distribution follows merit; again, the main kind of distribution in question has to do with political, not material, goods; and again, there is no suggestion that caring for the poor is a matter for distributive justice at all.<sup>51</sup>

The Christian ethic of that time had stressed love, e.g., of God and neighbor to achieve justice, so that baptism redeemed one from sin, the most fundamental injustice, and "it becomes us to fulfill all justice" (Matthew 3:15); but there was a corresponding love of God for man, e.g., as through the giving of Christ (suggesting, perhaps remotely, the aspect of justice as reciprocity in the Protagorean and Hebraic approach).

The great Christian Platonist, St. Augustine, used this position to argue that nobody can be truly just without being a faithful Christian. 'Justice is that virtue which gives to each his due,' he says, but 'what kind of justice is it, then, that takes a man away from the true God and subjects him to impure demons? Is this giving to each what is due?' Only a soul that submits to God will be able to exercise proper rule over its body; only such a soul, therefore, will be capable of justice. There is, and can be, no justice in people who are not subject to God, Augustine maintains. There are and can be, therefore, just republics only where faithful Christians rule. This may mean that there never have been and never will

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<sup>51</sup> Samuel Fleischacker, *A Short History of Distributive Justice*, (London, Harvard University Press, , 2004), 21-22.

be any truly just republics. Augustine is skeptical about the likelihood that truly faithful Christians will ever have much political power. His point is that faithful Christians should put their trust in God rather than in political rulers, that the City of God is radically different from, and more worthy of obedience than, the city of man."<sup>52</sup>

Thomas Aquinas presented his view regarding natural law in his major works *Summa Theologica*, Book One, Its second part, answering the questions related to the various kinds of laws starting from question number 91 till question number 94. He recognized four types of laws: Eternal, Natural, Man-made, and Divine.

a). Eternal law refers to the fact:" that the whole community of the universe is governed by Divine Reason. Therefore the very idea of the government of things in God, the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. 8. 23, hence it is that this kind of law must be called eternal. "<sup>53</sup>

b). Natural law according to Aquinas is part of Eternal law which can be discovered by a man through his reason. Man, however, unlike the rest of creation is free and rational, capable of acting contrary to eternal law. That is why, this eternal law has to be promulgated to him through reason. "Therefore it has a share of the Eternal Reason, by which it has a natural inclination to its due act and end; and this participation of the eternal law in the rational creature is called the natural law."<sup>54</sup>

c). Man-made law is the law made by man but not independently. This law has to be derived:" from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination

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<sup>52</sup> Samuel Fleischacker, *A Short History of Distributive Justice*, (London, Harvard University Press, , 2004), 10-11.

<sup>53</sup> St. Thomas Aquinas, *Summa Theologica, Vol. 1*, First Complete American Edition, Literaly translated by Fathers of the English Dominican Province (Benziger Brothers, Inc. 1947) ,208.

<sup>54</sup> *Ibid.* 209.

of certain matters. These particular determinations, devised by human reason, are called human laws."<sup>55</sup> Aquinas concludes: "Therefore all laws, in so far as they partake of right reason, are derived from the eternal law."<sup>56</sup> Any law which is not drawn from an eternal law is to be considered as unlawful and unjust.

d). Divine law is the law which has been revealed through the scripture. Aquinas divided a Divine law into an Old and New referring to the Old and New Testament. "The Divine law is into old and new. Hence the Apostle (Gal.3.24,25) compares the state of man under the Law to that of a child *under a pedagogue*; but the state under the New Law, to that of a full grown man, who is *no longer under a pedagogue*."<sup>57</sup>

It is interesting to note here that Aquinas placed a Divine law behind a natural and man-made law. Did he consider that a Divine law is of less importance giving may be in this way preference to the two mentioned above?

Although the state could and did exist separately and did properly dispense its own brand of justice while linked with the church as its secular arm, e.g., do unto others, Aquinas did not disagree in this division of justice but advanced the view (in greatly disputed passages) that the state, for one, could independently dispense justice even though ultimately there was the Divine idea; commutative justice therefore could, in practical effect, stand alone. He disagreed with the idea that justice was simply what was "due to each man" (e.g., as in the Pythagorean, Hebraic, and Augustinian views), for God could not properly be held to be a debtor; this severance between God and man could now also be found, and here again he did not allow Augustine's attribution of justice solely to God or its identification with His essence.

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<sup>55</sup> Ibid. 210.

<sup>56</sup> Ibid. 217.

<sup>57</sup> Ibid. 211.

Another interesting point related to the Natural law examined by Aquinas is that can this law be changed? Regarding this Aquinas says that natural law consists of two principles. According to the first principle natural law can not be changed, but according to the second," it may be changed in some particular cases of rare occurrence, through some special causes hindering the observance of such precepts."<sup>58</sup> Aquinas gave three examples in which according to him natural law was changed.

The slaying of the innocent, adultery, and theft are against the natural law. But we find these things changed by God, as when God commanded Abraham to slay his innocent son (Gen. 22.2) and when He ordered the Jews to borrow and purloin the vessels of the Egyptians (Exod. 12.35) and when He commanded Osee to take himself a wife of fornication (Osee I.2). Therefore the natural law can be changed.<sup>59</sup>

### 2.3 The Classical Era of Natural Law

To appreciate the developments of natural law in the classical era, it is essential to examine briefly the changes in Europe from the 16<sup>th</sup> century onwards.

- a). Religious field: In the religious field Protestantism started gaining ground. As a result, individuals were granted more autonomy to form opinions about God's intentions and about the guiding principles of life. The intervention of priests in such matters started losing its importance.
- b). Economic field: In the economic field various movements were started whose chief target was the feudal system.
- c). Political field: In the political field, there was a strengthening of secular, individualistic and liberalistic forces.

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<sup>58</sup> Ibid. 225.

<sup>59</sup> Ibid.



d). Legal field: There were major changes in the legal field, the following being the most important:

1) - There was a complete divorce of law from theology. The influence of the clergy over matters of law and state was relegated to the background. In fact, Thomas Aquinas had prepared the way for this by making a distinction between Divine law and natural law.

2) - Medieval scholars had restricted natural law to a few first principles, but the scholars of this period tried to elaborate the complete system of natural law.

3) - In the earlier period, the emphasis was on the social nature of human beings, but in this period the emphasis shifted to doctrines that were based on the *natural rights* of man and his individual happiness.

4) - The earlier theories had emphasized goal-directed ideas and the achievement of perfection by human beings. This was the inner law of nature. In the new theories by Hobbes, Locke, Spinoza, Montesquieu and others, the emphasis was on human behavior, and the characteristic traits of man becoming more scientific now.

### **2.3.1. Thomas Hobbes (1588-1679)**

Life experiences in many cases are a major factor which frame a certain theory related to the state and society. This was exactly the case with Thomas Hobbes. "Living during the civil war in England, Hobbes was convinced of the overwhelming importance of state authority, which he thought ought to be vested in an absolute ruler. In the struggle between Long Parliament and Charles I, Hobbes defended the cause of the King.

In theory Hobbes, like most writers of his time, acknowledges the authority of Natural law."<sup>60</sup>

### **2.3.1.1 The State of Nature**

In the early seventeenth century, Thomas Hobbes argued that the nature of man was not such that one could deduce natural law from it. According to him the state of man without any state or civil society is called the state of nature. In this state of nature, all men are equal and have equal rights to whatever they consider necessary for their survival. There is no concept of justice or injustice in the state of nature. Every thing is allowed to everybody, and in such society, in fact, there is a perpetual war of every one against every one. "And because the condition of Man is a condition of War of every one against every one, in which case every one is governed by his own Reason; and there is nothing he can make use of, that may not be a help unto him, in preserving his life against his enemies."<sup>61</sup> In Hobbes theory of state of nature there is no place for any concept of private property. "Every man has a Right to every thing, even to one another's body."<sup>62</sup> A man in the state of nature is described by Hobbes as intrinsically selfish, malicious, brutal, and aggressive.

### **2.3.1.2 The Law of Nature**

Hobbes argued that several logical conclusions or consequences can be deduced from man's concern for his survival, among these being what Hobbes called natural laws. Even in the state of nature, man knows these natural laws, which are logically consistent

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<sup>60</sup> W. Friedmann, *Legal Theory*, 5<sup>th</sup> ed. (London: Stevens & Sons Limited, 1967), 120.

<sup>61</sup> *Hobbes's Leviathan*, reprinted from the Edition of 1651, with an essay by the late W. G. Pogson Smith (Oxford: Clarendon Press, Reprinted 1965), 99.

<sup>62</sup> *Ibid.*

with man's principal concern for his own safety. "A Law of Nature, (Lex Naturalis) is a Precept, or general Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved."<sup>63</sup> Hobbes in his theory mentioned what law of nature generally consists of, and according to him it implicates: "Equity, Justice, Gratitude; and other moral Virtues"<sup>64</sup> Besides these general laws of nature, Hobbes will choose three laws of nature which have great importance and priority. As peace is the most urgent priority in Hobbes theory of law of nature, "Every man, ought to endeavor Peace, as far as he has hope of obtaining it; and when he cannot obtain it, then he may seek, and use, all help, and advantages of War."<sup>65</sup> The second law of nature says, "That a man be willing, when others are so too, as fare-forth, as for Peace, and defense of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other man, as he would allow other man against himself."<sup>66</sup> And the last law of nature says, "That men performer their Covenants made: without which, Covenants are in vain, and are but Empty words; and the Right of all men to all things remaining, we are still in the condition of War."<sup>67</sup>

### **2.3.1.3 The Social Contract**

For his own safety and security a man should learn how to avoid the state of nature, making his life more safe and secure. The contract by which man avoids the state of nature and enters civil society is an agreement between individuals, where every man

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid., 205.

<sup>65</sup> Ibid., 100.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid., 110.

should say to another," I authorize and give up my right of governing my self, on this condition, that thou give up thy right to him, and authorize all his action in like manner."<sup>68</sup> This contract is between all citizens and not between an individual and sovereign, where each individual hands over his right to govern himself to the sovereign. The sovereign has absolute power to govern and is in no way subject to the citizens. He can be a single man or the assembly of man but Hobbes preferred the rule of a single man. According to him, " This is the Generation of that great Leviathan, or rather to speak more reverently of that Mortal God, to which we owe under the Immortal God, our peace and defence."<sup>69</sup> The question may arise, from where did Hobbes derive this absolute power given to the sovereign? He went back to the Bible by giving the example of Prophet Samuel and his kingdom given by God and then making (wrong) analogy to the kings of his time. Consequently in Hobbes theory there is no right of resistance given to a citizen against the sovereign. The sovereign can be questioned and possibly overturned only in the case when it is not able to provide a peace and security in the commonwealth.

#### 2.3.1.4 Civil Law versus Natural Law

Finally, some words should be written regarding the relationship between civil and natural law in Hobbes theory. He defined civil law by the following words:" I define Civil law in this manner. Civil law is to every subject, those Rules, which the Commonwealth hath Commanded him by Word, Writing, or other sufficient Sign of the Will; to make use of, for the Distinction of Right and Wrong, that is to say, of what is contrary, and what is not contrary to the Rule."<sup>70</sup> According to Hobbes the law of nature is a part of the civil law where," the Law of Nature and the Civil Law, contain each other, and are

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<sup>68</sup> Ibid., 132.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid., 203.

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of equal extent."<sup>71</sup> Hobbes saw the law of nature as in fact," the essence of all other laws"<sup>72</sup> and therefore every man should be obliged to obey them. Obedience to the Civil Law means at the same time obedience to the Law of Nature. Hobbes is of the opinion that all laws are just, and it appears that justice and morality begin with the sovereign, that there are no principles of justice and morality that precede and limit the acts of the sovereign.

### 2. 3.2 John Lock

John Lock's approach towards the nature of man, the state of nature and its laws was quite different in comparison to Hobbes approach. The state of nature has been described by him as a state of perfect freedom and equality, governed by the law of nature. In his second treatise of Civil Government, he said that,

The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order; and about His business; they are His property, Whose workmanship they are made to last during His, not another's pressure.<sup>73</sup>

In Locke's theory a man is considered to be the servant of God Almighty, to Whom everything belongs, while in Hobbes theory there is no recognition of any right in the state of nature. Three natural rights, protection of life, liberty and property were

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<sup>71</sup> Ibid. 205

<sup>72</sup> Ibid. 209

<sup>73</sup> *The Works of John Locke*, (London: C. and J. Rivington & others, 1824) Vol. IV, p.341.

recognized by John Locke. According to Hobbes, man in the state of nature is intrinsically selfish, malicious, brutal and aggressive, living in a permanent state of civil war. John Locke looked at this situation completely differently. "And here we have the plain difference between the state of nature and the state of war, which however some men have confounded, are as far distant, as a state of peace, good-will, mutual assistance and preservation, and a state of enmity, malice, violence and mutual destruction, are one from another."<sup>74</sup> Since these individuals will want to acquire goods and will come into inevitable conflict, Locke invokes a natural law to govern them before they enter into society. Locke presumes people will understand that, in order to best protect themselves and their property, they must come together into some sort of body politic and agree to adhere to certain standards of behavior. But any kind of society which is going to be made by mutual agreement between individuals must be based on the law of nature. "The first to do whatsoever he thinks fit for the preservation of himself, and others within the permission of the law of nature."<sup>75</sup>

Entering into civil society the people submit natural freedoms to the common laws of the society which are based on natural law where in return they receive the protection of the government. By coming together, the people create an executive power to enforce the laws and punish the offenders. When, either through an abuse of power or an impermissible change, these governing bodies cease to represent the people and instead represent either themselves or some foreign power the people may, and indeed should, rebel against their government and replace it with one that will remember its trust. But to carry on a revolution for a minor reason is not allowed. "Such revolution happens not upon every little mismanagement in public affairs. Great mistakes in the ruling part,

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<sup>74</sup> Ibid., 348.

<sup>75</sup> Ibid., 413.

many wrong and inconvenient laws, and all the slip of human frailty, will be borne by the people without mutiny or murmur."<sup>76</sup>

Lock's doctrine that nature had endowed human beings with certain inalienable rights that could not be violated by any governing authority was incorporated in the American Declaration of Independence, which at its beginning states that,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty. And the pursuit of happiness-that to secure these rights, government are instituted among men, deriving their powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in a such form, as to them shall seem most likely to effect their safety and happiness."

### **2.3.3 Jean Jacques Rousseau (1712-1778)**

Rousseau's position regarding the state of nature was completely different. In his book *The Origin of Inequality* he rejected even its existences, limiting its possible existences to very extraordinary circumstances.

It has not even entered into the heads of most of our writers to doubt whether the state of nature ever existed; but it is clear from The Holy Scriptures that the first man, having received his understanding and commandments immediately from God, was not himself in such a state; and that, if we give such credit to the writings of Moses, as every Christian philosopher ought to give; we must deny that, even before the deluge, men were ever in the pure state of nature, indeed,

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<sup>76</sup> Ibid., 472.

they fell back into it from some very extraordinary circumstances; a paradox which it would be very embarrassing to defend and quite impossible to prove.<sup>77</sup>

What Rousseau stated here regarding of non-existence of state of nature was a matter of fact, and what is more amazing is that even legal theorists after him were not ready to recognize it. He is certainly right from the Islamic point of view as well, because to every nation Almighty Allah sent messengers and through them He established religion and justice.

Another point, where Rousseau differed from almost all western philosophers was how to discover the natural law. According to the majority of philosophers and legal thinkers human reason is the only way to discover a natural law. But Rousseau was not of that opinion. He was convinced that the heart is more important in human reasoning in discovering a content of natural law. In an unpublished manuscript on *The State of War*, Rousseau elaborates this point. "If natural law were inscribed only on human reason, it would hardly be capable of directing most of our actions. But it is also indelibly engraved in the human heart. It is from the heart that natural law speaks to man more powerfully than all the precepts of philosophers."<sup>78</sup>

Rousseau was convinced that all justice comes from God. But the problem is how to receive such knowledge from God. That is why he says that, "All justice comes from God, who is its sole source, but if we knew how to receive so high an inspiration, we should need neither government nor laws. Doubtless, there is a universal justice, emanating from reason alone; but this justice to be admitted among us, must be mutual."<sup>79</sup>

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<sup>77</sup> Jean Jacques Rousseau, *The Social Contract & Discourses*, (London & Toronto published by J.M.Dent & Sons, First issue of this edition 1913, Reprinted 1923), 175.

<sup>78</sup> Grace G. Roosevelt, *Reading Rousseau in the Nuclear Age*, (Philadelphia: Temple University Press. 1990), 189.

<sup>79</sup> Jean Jacques Rousseau, *The Social Contract & Discourses*, (London & Toronto published by J.M.Dent & Sons, First issue of this edition 1913, Reprinted 1923), 32.



### 2.3.3.1 Social Contract

Rousseau attempted to reconcile the natural rights of the individual with the need for social unity and cooperation through the idea of the social contract. He presented a new concept of social contract based on an awareness of common interests that creates a bond between people. Rousseau in his Social Contract used the term *general will* to describe those common interests, which in fact, were nothing more than the preservation of equality among men.

The constant will of all the members of the State is the general will; by virtue of it they are citizens and free. When in the popular assembly a law is proposed, what the people are asked is not exactly whether it approves or rejects the proposal, but whether it is in conformity with the general will, which is their will. Each man is giving his vote, states his opinion on that point, and the general will is found by counting votes."<sup>80</sup>

In Rousseau's theory of social contract the sovereign is the general will than can only be exercised through the assembly of a whole people. That is why he said that, "Every law the people have not ratified in person is null and void- is, in fact, not a law."<sup>81</sup> The necessary conditions of its exercise, then, in Rousseau's time, were only fulfilled in the Swiss cantons. Rousseau in his theory proposed his model of real and absolute democracy, criticizing at the same time other democracies declaring them as undemocratic where its citizens enjoy very limited freedom. In regard to that he says that, "The people of England regard itself as free; but it is grossly mistaken; it is free only during the election of members of parliament. As soon as they are elected, slavery

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<sup>80</sup> Jean Jacques Rousseau, *The Social Contract & Discourses*, (London & Toronto published by J.M.Dent & Sons, Reprinted 1923), 93- 94.

<sup>81</sup> *Ibid.*, 83.

overtakes it, and it is nothing. The use it makes of the short moments of liberty it enjoys shows indeed that it deserves to lose them."<sup>82</sup> The idea that no laws are binding unless agreed upon by the people deeply affected French thinking, and it became one of the chief forces that brought on the French Revolution about 30 years later. The teaching of Jean Jacques Rousseau especially as interpreted during the French revolution, made natural law a basis for democratic and egalitarian principles.

#### **2.4 Natural law from Islamic perspective**

Natural law has been defined by St. Thomas Aquinas as a part of Eternal law discovered not from the Holy Scriptures, but purely by human reason. Can discovering a Divine law by this method presented by Aquinas be applied in Islamic Law? Or we may ask, can the *hukm* (a rule) of the Almighty Allah be known through human reasoning without any consultation of the main sources of Islamic law? Regarding this question let us see first of all a short overview of how a Muslim jurist approached this question done by Prof. Nyazee in his Theories of Islamic Law:

There was complete agreement among Muslim jurists about the meaning of the words of the God, 'The *hukm* belongs to Allah alone.' The Mu'tazilah agreed with the majority that the source of all laws is Allah, but they disagreed with them about the identification and discovery of these laws prior to revelation. They maintained that reason can discover the laws of Allah, that is, the shar'i ahkam, in the absence of revelation. The Mu'tazilah were not alone in holding these views and there were other sects who held the same or similar views, especially the Maturidis, some of whom were Hanafis, though their views were slightly different. The Ash'arites held the view that the laws of Allah can be discovered

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<sup>82</sup> Ibid.

through revelation alone and there is no way in which reason can discover these laws.<sup>83</sup>

If we say that the *hukm* from Almighty Allah can be discovered by independent human reasoning, then such a statement will cause many unanswered questions. First of all, human reasoning will undoubtedly differ and in the end we will have not only different but also complete by opposite views. In that situation, which view will be preferable, or we will have to wait until a complete consensus should be reached? In the case of different reasoning, who is supposed to give the final word, and to decide which reasoning is in exact conformity with the will of God?

The highest degree of knowledge and human reasoning is expected to be from the Prophets of God (peace be upon them). Can we find any exceptional case? Our answer could be positive, especially in the case when the reasoning of the Prophet Musa (peace be upon him) could not accept what *Khizr* (may Almighty Allah be pleased with him) had done. This following event is well known and described in the Holy Qur'ān:

Musa said unto him: May I follow thee, to the end that thou may teach me right conduct thou hast been taught?

He said: Lo! thou canst not bear with me.

How canst thou bear with that whereof thou canst not compass any knowledge?

He said: Allah willing, thou shalt find me patient and I shall not in aught gainsay thee.

He said: Well, if thou go with me, ask me not concerning aught till I myself make mention of it unto thee.

So they twain set out till, when they were in the ship, he made a hole therein.

(Moses) said: Hast thou made a hole therein to drown the folk thereof? Thou verily hast done a dreadful thing.

He said: Did I not tell thee that thou couldst not bear with me?

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<sup>83</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad* (Islamabad: Islamic Research Institute, 1997), 46.

(Moses) said: Be not wroth with me that I forgot, and be not hard upon me for my fault.

So they twain journeyed on till, when they met a lad, he slew him. (Moses) said: What! Hast thou slain an innocent soul who hath slain no man? Verily thou hast done a horrid thing.

He said: Did I not tell thee that thou couldst not bear with me?

(Moses) said: If I ask thee after this concerning aught, keep not company with me. Thou hast received an excuse from me.

So they twain journeyed on till, when they came unto the folk of a certain township, they asked its folk for food, but they refused to make them guests. And they found therein a wall upon the point of falling into ruin, and he repaired it.

(Moses) said: If thou hadst wished, thou couldst have taken payment for it.

He said: This is the parting between thee and me! I will announce unto thee the interpretation of that thou couldst not bear with patience.

As for the ship, it belonged to poor people working on the river, and I wished to mar it, for there was a king behind them who is taking every ship by force.

And as for the lad, his parents were believers and we feared lest he should oppress them by rebellion and disbelief.

And we intended that their Lord should change him for them for one better in purity and nearer to mercy.

And as for the wall, it belonged to two orphan boys in the city, and there was beneath it a treasure belonging to them, and their father had been righteous, and thy Lord intended that they should come to their full strength and should bring forth their treasure as a mercy from their Lord; and I did it not upon my own command. Such is the interpretation of that wherewith thou couldst not bear.<sup>84</sup>

The above mentioned verses from the Holy Qur'ān very clearly show that there is a special knowledge from Almighty Allah, even not known to Prophet Musa (peace be upon him). Almighty Allah distributes this kind of knowledge to whom He likes, and nobody has a right to say that this kind of knowledge is not available.

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<sup>84</sup> The Holy Qur'ān 18: 66-82.

According to Imām Abū Hāmid Muhammad Al-Ghazālī (may Allah be pleased with him) there are two kinds of knowledge received from Almighty Allah without mediation. The first one is the revelation, related to the prophets (peace be upon them), and this kind of knowledge is the strongest. The second one is the inspiration. With regard to this kind of knowledge Imām Abū Hāmid Muhammad Al-Ghazālī says,

The second type is Inspiration (الهام) and Inspiration is the awakening, by Universal Soul, of the individual human soul, in proportion to its purity and its receptivity, and the degree of its preparedness. Now Inspiration follows upon Revelation, for Revelation is the clear manifestation of the Divine Command, and Inspiration is the hinting thereat. The knowledge which is derived from revelation is called prophetic knowledge, and that which is derived from inspiration is called knowledge from on high (علماً لدنيا). It is that which is attained without mediation between the soul and its Creator; it is, indeed, like the radiance from the Lamp of the Invisible, shed upon a heart which is pure, at leisure, subtle. That is because all knowledge is attained and known in the substance of the Primal Universal Soul, (which is present in incorporeal, primal, pure substance), through its relationship to the First Intelligence (Universal Mind), which is like the relationship of Eva to Adam (upon him be peace).<sup>85</sup>

Another proof that independent human reasoning does not have place in discovering *hukm* from Almighty Allah is also very clearly manifested from the two following traditions and the incident is linked with the judgment of Hazrat Umar ibn Al-Khattab (may Allah be pleased with him). The first is related to the incident when Ali ibn Abu Talib (may Allah be pleased with him) was sent to Yemen to be a judge, despite his objection that he was too young, and without adequate knowledge for that post. In reply to his objection, the Holy Prophet (peace be upon him) revealed that Almighty Allah will provide guidance for him.

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<sup>85</sup> Abū Hāmid Muhammad Al-Ghazālī, *Al-Risālat Al-Laduniyya*, translated by Margaret Smith, Journal of The Royal Asiatic Society (April, 1938), Part II, p. 365.

It has been narrated from Ali ibn Abu Talib that he said:

The Apostle of Allah (peace be upon him) sent me to Yemen as judge, and I asked: Apostle of Allah, are you sending me when I am young and have no knowledge of the duties of a judge? He replied: Allah will guide your heart and keep your tongue true. When two litigants sit in front of you, do not decide till you hear what the other has to say as you heard what the first had to say; for it is best that you should have a clear idea of the best decision. He said: I had been a judge (for long); or he said (the narrator is doubtful): I have no doubts about a decision afterwards."<sup>86</sup>

In another tradition, there is a very clear indication from the Prophet Muhammad (peace be upon him), that a decision of the judge, who does not desire the office, is under direct guidance of an angel.

It has been narrated from Anas ibn Malik that he said:

The Prophet (peace be upon him) said: "If anyone desires the office of Judge and seeks help for it, he will be left to his own devices; if anyone does not desire it, nor does he seek help for it, Allah will send down an angel who will direct him aright."<sup>87</sup>

Malik related from Yahya ibn Sāid from Sāid ibn al-Musayyab that Umar ibn al-Khattab had a dispute brought to him between a Muslim and a Jew. 'Umar saw that the right belonged to the Jew and decided in his favor. The Jew said to him, "By Allah! You have judged correctly." So 'Umar ibn al-Khattab struck him with a whip and said, "How can you be sure." The Jew said to him, "We find that there is no judge who judges correctly but that there is an angel on his right side and an angel on his left side who

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<sup>86</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 24, transl. Ahmad Hasan , Hadith Number 3575 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/024.sat.html> (Last time visited on 10.12.2007).

<sup>87</sup> Ibid.,

guide him and give him success in the truth as long as he is with the truth. When he leaves the truth, they rise and leave him."<sup>88</sup>

Finally, let us see a definition of reason ('aql) given by Al-Bazdawī, which is at the same time a reply to the Mu'tazilah who glorified reason beyond any reasonable need, falsely giving it extraordinary importance.

Reason is a light in the body of man like the sun in the domain of earth. By it is illuminated the way which begins from where the effect of sense perception is eliminated. But the reason is in itself powerless. When the way becomes clear to us, the heart perceives it by its understanding, like the sun of the manifest domain when it rises and its ray comes out and the way becomes clear, the eye perceives it by the flame of the sun. The reason is not sufficient in any circumstance at any moment."<sup>89</sup>

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<sup>88</sup> Imam Malik, *Malik's Muwatta*, Book 36, trans. 'A'isha 'Abdarahman at-Tarjumana and Ya'qub Johnson, Hadith Number 2. <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muwatta/036.mmt.html> (Last time visited on 10.12.2007).

<sup>89</sup> Ahmad Hasan, *Principles of Islamic Jurisprudence* (Islamabad, Islamic Research Institute, International Islamic University, 1993), 293.

## CHAPTER THREE

### Utilitarianism and Distributive Justice

#### 3.1 The Origin of Utilitarianism

To seek pleasure and avoid pain is something that is part of man's nature. The origin of Utilitarianism goes back to ancient Greek philosophers.

The Greek philosopher, Aristippus of Cyrene (circa 435-356 BCE), maintained that pleasure is the only good and identified happiness with pleasure and in particular sense pleasure (as opposed to intellectual pleasure). Epicurus (341-270 BCE), like the Cyrenaic, identified the goal of life with pleasure. Whereas the Cyrenaics emphasized the pleasure of the present, Epicurus preferred pleasure that endured. Since sense pleasure is not enduring, he taught that the goal of man is rational pleasure, which consists mainly in tranquility of soul, peace of mind and harmonious living in society.<sup>90</sup>

In his Nicomachean ethics, Aristotle also examined pleasure and its importance. Let us see how he defined pleasure. "For pleasure is an affection of the soul, and each man takes pleasure in that which he is said to love, he who loves horses in horses, he who loves sight-seeing in sight-seeing, and in the same way he who loves justice in acts of justice, and generally the lover of excellence or virtue in virtuous acts or the manifestation of excellence."<sup>91</sup> According to Aristotle a final and most preferred goal of everyone is his happiness. "Thus it seems that happiness is something final and self-sufficing, and is the end of all that man does."<sup>92</sup> According to him there are several kinds

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<sup>90</sup> Andrew C. Varga, *On being human: Principles of Ethics*, (New York: Paulist Press, 1978), 51.

<sup>91</sup> *The Nicomachean Ethics of Aristotle*, translated by F.H. Peters, M.A., Fifth edition, (London, Kegan Paul, Trench, Truber & Co. Ltd. 1893), 20.

<sup>92</sup> *Ibid.*, p. 15.



of pleasure, but natural pleasure is only one, and can be achieved only through a noble work.

England of the eighteenth centuries produced several philosophers who proposed Utilitarianism, the view which has been described as the ethical theory that seeks to provide the greatest happiness for the greatest number of people. The most prominent of these thinkers were Jeremy Bentham and John Stuart Mill. Utilitarianism greatly influenced liberal legislation in England and America and is probably the basic moral philosophy of most humanists today.

### 3.2 Jeremy Bentham (1748-1832)

Bentham is usually considered as the founder of British utilitarianism. As a hedonist he believed that to attain pleasure and to avoid pain was the most important interest concerning every individual. At the beginning of his major work *An Introduction to the Principles of Morals and Legislation*, Bentham writes,

Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it.<sup>93</sup>

In this statement, Bentham announces the essentials of his ethics and psychology. According to him human beings are only motivated by consideration of their own pleasure and pain. His concept of utility stands on these two principles, and that is why he defined utility in the following way:

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<sup>93</sup> Jeremy Bentham, *An Introduction to the principles of Morals and Legislation*, edited by J. H. Burns and H. L. A. Hart (London: University of London, Athlone Press, 1970, reprinted 1982), 11.

By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered; if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual.<sup>94</sup>

The principles of utility are completely subordinate to the advocacy of happiness while every action either by the individual or the government should be directed towards this end:

By the principle of utility is meant that principle which approves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government.<sup>95</sup>

Any moral principle which will not lead to produce pleasure or avert pain is not considered to be worthy at all. On the basis of such reasoning, any principle of asceticism was swiftly rejected. Bentham also completely rejected the idea of natural law and natural rights. In his essay *Anarchical Fallacies*, Bentham attacked the view that the object of all government was the preservation of the natural rights of man. According to him it, "is simple nonsense, natural and imprescriptibly rights, rhetorical nonsense, nonsense upon stilts."<sup>96</sup>

Presumably, for me one of the most crucial questions related to the theory of pain and pleasure which Bentham raised was related to the Will of God. To attain God's pleasure should be the most substantial goal for everyone. Why Bentham, who was not

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<sup>94</sup> Ibid., 12.

<sup>95</sup> Ibid., 12-13.

<sup>96</sup> Jeremy Bentham, *Anarchical Fallacies- The works of Jeremy Bentham*, Vol. 2, (Edinburgh: Simpkin, Marshall & C.O. 1843), 495.

denying that fact, was giving preference to man's pleasure? To this question, Bentham has given an extremely astonishing answer, which contrary to any valid teaching or interpretation of The Bible.

The principle of theology refers every thing to God's pleasure. But what is God's pleasure? God does not, he confessedly does not now, either speak or write to us. How then are we to know what is His pleasure? By observing what is our own pleasure, and pronouncing it to be his. Accordingly, what is called the pleasure of God, is and must necessarily be (revelation apart) neither more nor less than the good pleasure of the person, whoever he is, who is pronouncing what he believes, or pretends, to be God's pleasure.<sup>97</sup>

Does this kind of answer given by Bentham justify the roots of utilitarianism on which he created his entire theory of pain and pleasure? Certainly not!

As proof that Bentham did not care much or may be, not at all for any, religious or moral principle which will contradict or restrain pleasure, we may mention amongst others, his views regarding usury and homosexuality. He was not only a supporter of usury, but also an opponent to any legislation done by the state which restrained or fixed an interest rate. His entire book *Defense of Usury* was purely devoted to this purpose. My task here is not to present or analyze this book, but it will be interesting to cite two definitions of usury given by Bentham.

I know of but two definitions that can possibly be given of usury: one is, the taking of a greater interest than the law allows of: this may be styled the political or legal definition. The other is the taking of a greater interest than it is usual for man to give and take: this may be styled the moral one: and this, where the law has not interfered, is plainly enough the only one.<sup>98</sup>

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<sup>97</sup> Jeremy Bentham, *An Introduction to the principles of Morals and Legislation*, edited by J.H. Burns and H.L.A. Hart (London: University of London, Athlone Press, 1970, reprinted 1982), 31-32 f.n.g

<sup>98</sup> Jeremy Bentham, *Defence of Usury* (London: Printed for Payne and Foss; Pall-Mall, 1818), 7-8.

While mentioning different interest rates in different countries, during a long historical period, nowhere in the book is mentioned Biblical prohibition of usury, or prohibition imposed by another religion. Taking usury by Thomas Aquinas has been declared as a violation of Natural law even, while over a period of hundreds of years period the Church has officially prohibited taking usury. Any fixation of the interest rate according to Bentham will be a violation of two vital principles: pleasure and liberty. Up to which level Bentham has gone in his promotion and advocacy of the pleasure principle may be illustrated in his defense of homosexuality. He saw only pleasure in it without inflicting any pain on anyone. Aware that religion strongly opposes and prohibits such odious and repulsive acts (surely better to call it crime), and of course not mentioning it at all, he tried to find some justification in this practice of the people who belonged to the ancient civilizations, specially ancient Greeks and Romans. "It appears then that this propensity was universally predominant among the ancient Greeks and Romans, among the military as much as any."<sup>99</sup> In Bentham's writings even Greek gods were not exempt from such practices. "With regard to the people in general it may be presumed that if the gods amused themselves in this way—if Apollo loved Hyacinthus, if Hercules could be in a frenzy for the loss of Hylas, and the father of gods and man could solace himself with Ganymede, it was neither an odious nor an infrequent thing for mortal men to do so."<sup>100</sup>

Regarding the sources from where pleasure and pain flow, Bentham mentioned four: the physical, the political, the moral, and the religious. In his work many different kinds of pain and pleasure are mentioned, where sensual pleasures were to be mentioned first, while religious pleasure was mentioned nearly at the end of the list. Anyhow,

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<sup>99</sup> The full text of the book is available on the following web page:  
[www.columbia.edu/cu/lweb/eresources/exhibitions/sw25/bentham/index.html](http://www.columbia.edu/cu/lweb/eresources/exhibitions/sw25/bentham/index.html),  
 (Last time visited on 15.11.2007).

<sup>100</sup> Ibid.

Bentham did not make any qualitative difference between them, and in his theory all kinds of pleasure are considered to be equal. For this view he was criticized by many.

On the basis of utility and necessity of its legal protection Bentham derived the conception of justice and injustice saying that,

Justice is the security which the law provides us with, or professes to provide us with, for every thing we value, or ought to value: for property, for liberty, for honor, and for life. It is that possession which is worth all others, put together: for it includes all others. A denial of justice is the very quintessence of injury, the sum and substance of all sorts of injuries. It is not robbery only, enslavement only, and insult only, homicide only: it is robbery, enslavement, insult, homicide, all in one.<sup>101</sup>

### 3.3 John Stuart Mill (1806-1973)

The most effective exponent of utilitarianism after Jeremy Bentham was undoubtedly John Stuart Mill. Bentham has been criticized not only for his hedonistic approach to utilitarianism but for his godless approach as well. Therefore, Mill faced at least two major challenges: first to defend the principles of utility against its critics, making them more practical in society, and second to prove that utilitarianism is not a heretical doctrine and that its principles are deeply rooted in religion.

Mill like Bentham identified utility with pleasure and tried to clarify what he meant by this. "The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure."<sup>102</sup> In the writings of Jeremy Bentham

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<sup>101</sup> *The Works of Jeremy Bentham*, Vol. II, *A Protest Against Law-Taxes*, (Edinburgh: William Tait, 107, Princes Street; Simpkin, Marshall, & Co., London, 1843), 574.

<sup>102</sup> John Stuart Mill, *Collected Works*, Volume X, *Utilitarianism* (University of Toronto Press, Routledge & Kegan Paul, 1969), 210.

nowhere has any qualitative difference between different kinds of pleasures been made. It was simply unacceptable to the many who at this point harshly criticized him. Fully aware of this fact and, declining to openly criticize Bentham, Mill draws distinction between higher and lower pleasures declaring that, " It must be admitted, however, that utilitarian writers in general have placed the superiority of mental over bodily pleasures chiefly in the greater permanency, safety, uncostliness, &c., of the former."<sup>103</sup>

Bentham's views regarding God and religion, especially inability to identify what is God's pleasure, and as a result of that his identification of man's with God's pleasure generated a lot of criticism. Utilitarianism according to many critics at that time became a godless idea, deserving strong condemnation and rejection. Aware of all these facts Mill tried to present Utilitarianism as a doctrine whose principles are deeply rooted in religion.

We not uncommonly hear the doctrine of utility inveighed against as a godless doctrine. If it is necessary to say anything at all against someone as assumption, we may say that the question depends upon what idea we have formed of the moral character of the Deity. If it be a true belief that God desires, above all things, the happiness of His creatures, and that this was His purpose in their creation, utility is not only a godless doctrine, but a more profoundly religious than any other. If it be meant that utilitarianism does not recognize the revealed will of God as the supreme law of morals; I answer, that a utilitarian who believes in the perfect goodness and wisdom of God, necessarily believes that whatever God has thought fit to reveal on the subject of morals, must fulfill the requirements of utility in a supreme degree.<sup>104</sup>

The ideal perfection and a foundation of utilitarian morality, Mill found in the principle of religious brotherhood, practiced during the time of Prophet Isa (May Allah be pleased

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<sup>103</sup> Ibid., 210.

<sup>104</sup> Ibid., 222.

with him). "In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as 'one' would be done by, and to love one's neighbor as oneself, constitute the ideal perfection of utilitarian morality."<sup>105</sup> On this point, some very reasonable questions need to be raised. Does taking an interest go directly against this fundamental principle of brotherhood just mentioned above by Mill? Is there any criticism done on Bentham by Mill regarding this issue, regardless of the fact that taking an interest has also been prohibited by the Bible, and for hundreds of years officially prohibited by the Church. Moreover, homosexuality has been strongly condemned and prohibited by the Bible, and severe punishment was imposed by the Church on those who practiced it. How then is it possible that one of the main exponents of Utilitarianism, Jeremy Bentham, was not questioned by his follower Mill on this issue? Does it mean that the writings of Jeremy Bentham were more important to Mill, even in the case when they directly opposed Mill's derived fundamental principles of utility? Another point on which Bentham has been criticized was on the question of self-sacrifice. According to the critics such a concept simply cannot exist due to the fact that hedonism simply does not recognize any kind of sacrifice. Mill tried to dismiss such critique by saying that: "The utilitarian morality does recognize in human beings the power of sacrificing their own greatest good for the good of others. It only refuses to admit that *the sacrifice is itself good. A sacrifice which does not increase, or tend to increase, the sum total of happiness, it considers as wasted.*"<sup>106</sup>

Finally, our short presentation of Mill's teachings will be finalized by his view regarding justice. Bentham while dealing with justice was very brief and under the full shadow of utilitarianism, Mill dealt with it much more comprehensively. The last chapter of his Utilitarianism was fully devoted to explaining the connection between justice and

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<sup>105</sup> Ibid., 218.

<sup>106</sup> Ibid.

utility. In the beginning Mill made a brief survey of a variety of approaches towards justice, showing the main differences between them. Sometimes two approaches confront each other and as an example Mill mentioned the case of the obedience to unjust law. While a first approach commands obedience even to the unjust laws, the second approach strongly opposes it. Differences also appeared in the spheres of distributive justice, and as an example Mill mentioned a distribution of income.

Some Communists consider it unjust that the produce of the labor of the community should be shared on any other principle than that of exact equality; others think it is just that those should receive most whose *needs* are greatest; while others hold that those who work harder, or produce more, or whose services are more valuable to the community, may justly claim a larger quota in the division of the produce. And the same natural justice may be plausibly appealed to in behalf of every one of these opinions.<sup>107</sup>

Even a literal and initial meaning of the justice differed from one language to another and, from one nation to another and due to that reason the idea of justice according to Mill passed through a several phases until it reached the present diverse form. Despite all these diversities, Mill found one common feature which each of them poses. That common feature is the idea of personal right, and this personal right is the basis for his concept of justice.

Mill's concept of justice comprises two components, which are closely related to the idea of right. The first component comprises not only personal right but moral right as well. He made a distinction between moral right and generosity or beneficence, making a distinction between justice and general morality. "Justice implies something which is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right. No one has a moral right to our generosity or

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<sup>107</sup> Ibid., 244.



beneficence, because we are not morally bound to practice those virtues towards any given individual."<sup>108</sup> The second component is related to the violation of rights and contains a retribution for those who unjustly deprive others from their rights and infringe a rule. Elaborating on this he has presented different theories of punishment. After analyzing this problem, Mill again returns to the problem of different approaches regarding distribution. To which side a preference should be granted, what an individual or a state should receive? Which mode of taxation should be chosen by the state: progressive or it should be in numerical proportion? Such and similar questions do not possess a similar answer but a variety of answers. "From these confusions there is no other mode of extrication than the utilitarian."<sup>109</sup> Concluding his discussion about justice, and defending utilitarian approach Mill said,

That justice is a name for certain moral requirements, which regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others; though particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice. Thus, to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner. In such cases, as we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some other moral principles, but that what is just in ordinary cases is, by reason of that principle, not just in the particular case.<sup>110</sup>

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<sup>108</sup> Ibid, 247.

<sup>109</sup> Ibid. 255.

<sup>110</sup> Ibid. 259.

### 3.4 Happiness from the Islamic Point of View

We have already seen that Bentham did not differentiate between man's and God's pleasure. According to him, God did not reveal to man His pleasure, and said that even God does not know what His pleasure is. Consequently whatever man considers as his pleasure, it is at the same time considered as God's pleasure, according to Bentham. From the Islamic point of view such approach is completely unacceptable, and furthermore considered as pure apostasy. Regarding the Islamic approach, it is Almighty Allah alone Who is the Distributor of happiness for all of us. For those who take their pleasures as something divine, the Holy Qur'ān says that they will be deprived from any guidance from Almighty Allah.

“Hast thou seen him who maketh his desire his god, and Allah sendeth him astray purposely, and sealeth up his hearing and his heart, and setteth on his sight a covering? Then who will lead him after Allah (hath condemned him)? Will ye not then heed?”<sup>111</sup>

Furthermore, whenever a desire is followed it will ultimately lead to complete corruption, not only of the individual but of the whole society as well.

“And if the Truth had followed their desires, verily the heavens and the earth and whosoever is therein had been corrupted. Nay, We have brought them their Reminder they now turn away.”<sup>112</sup>

But those who strive to please Almighty Allāh, He will guide them to the right path, taking them out from the darkness of their ill desires, and granting them light of His guidance.

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<sup>111</sup> The Holy Qur'ān 45:23

<sup>112</sup> The Holy Qur'ān 23:71

“Whereby Allah guideth him who seeketh His good pleasure unto paths of peace. He bringeth them out of darkness unto light by His decree, and guideth them unto a straight path.”<sup>113</sup>

As we have already seen the concept of happiness in Islam is directly subordinated to the will of God and fully depends on obtaining God's pleasure. Only when Almighty Allāh is pleased with somebody, can such a person consider himself as someone who possesses real happiness, which has been given by God. How then, can God's pleasure be obtained? God's pleasure can be obtained not only throughout obedience to Almighty Allāh, but also to His beloved Messenger (peace be upon him). That is why Almighty Allah says in the Holy Qur'ān that He will not be pleased with us until we are obedient to the Holy Prophet Muhammad (peace be upon him), simply because there is no obedience to Almighty Allah without obedience to His Prophet (peace be upon him) :

“Say, (O Muhammad, to mankind): If ye love Allah, follow me; Allah will love you and forgive your sins. Allah is Forgiving, Merciful.”<sup>114</sup>

Through our obedience to Almighty Allah and His beloved Prophet Muhammad (peace be upon him), our happiness will be in direct proportion to how much we got close to Almighty Allah. Whenever this closeness is increased our happiness is also increased. The manifestation of this closeness to Almighty Allah and what it exactly means will be more clearly evident from the following *Hadith Al-Qūdsi* (sacred tradition), which has been narrated by Abu Hurairah (may Almighty Allah be pleased with him), that Allah's Apostle (peace be upon him) said:

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<sup>113</sup> The Holy Qur'ān 5:16

<sup>114</sup> The Holy Qur'ān 3:31

Allah said, 'I will declare war against him who shows hostility to a *waliyy* of Mine. And the most beloved things with which My slave comes nearer to Me, is that which I have made obligatory upon him; and My slave continues coming closer to Me through supererogatory deeds (*nawafil*) until I love him, so I become his sense of hearing with which he hears, and his sense of sight with which he sees, and his hand with which he grasps, and his foot with which he walks; and if he asks Me, I will give him, and if he asks My protection (Refuge), I will protect him; (i.e. give him My Refuge).<sup>115</sup>

This stage of the spiritual journey has been called *fena* (or self-annihilation) by the Sūfīs. At this stage of the spiritual journey, the saint is losing his own will, and transforming it to the will of God. In regard to this stage, Sheikh Abdul Qadir Gilani (may Almighty Allah be pleased with him) said:

So *fena* or self-annihilation is the aim and object and the *fena*; end and base of the journey of the saints. All the previous saints in their different stages of development have been asking for persisting effort for changing their own will to the will of God. All of them unto the end of their life annihilated their own will and transformed it into the will of God. This is why they are called *Abdal* (a word derived from *Badala* meaning change). Thus in the view of these personages it is a sin to associate their own will with the will of God.<sup>116</sup>

As stated above so many blessings have been granted by Almighty Allah to those whom He likes. Nothing can be comparable to happiness which has been granted by Almighty Allah. The kind of happiness that was enjoyed by our beloved Prophet Muhammad

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<sup>115</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 8, Book 76, transl. M. Muhsin Khan, Hadith Number 509 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/076.sbt.html> (Last time visited on 15.11.2007).

<sup>116</sup> Hazrat Shaikh Muhyuddin Abdul Qadir Gilani, *Futuh Al-Ghaib* [The revelation of the unseen], transl. Maulvi Aftab-Ud-Din Ahmad, (New Delhi, Kitab Bhavan, 1979), 29.

(peace be upon him) during his night journey and ascension (*Miraj*) is beyond our imagination, specially when Almighty Allah said that:

“When he was on the upper most horizon

Then he drew nigh and came down

Till he was (distant) two bows length or even nearer”<sup>117</sup>

For those who succeed, Almighty Allah has promised a big reward, not only in the Hereafter but also in this world.

Allah hath promised such of you as believe and do good works that He will surely make them to succeed (the present rulers) in the earth even as He caused those who were before them to succeed others; and that He will surely establish for them their religion which He hath approved for them, and will give them in exchange safety after their fear. They serve Me. They ascribe no thing as partner unto Me. Those who disbelieve henceforth, they are the miscreants.<sup>118</sup>

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<sup>117</sup> The Holy Qur'ān 53:7-9

<sup>118</sup> The Holy Qur'ān 24:55

## CHAPTER FOUR

### DISTRIBUTIVE JUSTICE AND GOODS

The main object of Distributive Justice is a distribution of goods. By distribution, is meant to give, allocate, exchange, gift, inherit etc. In the beginning of his *Spheres of Justice*, Micheal Walzer says that:

Distributive justice is a large idea. It draws the entire world of goods within the reach of philosophical reflection. Nothing can be omitted; no feature of our common life can escape scrutiny. Human society is a distributive community. That's not all it is, but it is importantly that: we come together to share, divide, and exchange. We also come together to make the things that are shared, divided, and exchanged; but that very making – work itself – is distributed among us in a division of labor. My place in economy, my standing in the political order, my reputation among my fellows, my material holdings: all these come to me from other men and women. It can be said that I have what I have rightly or wrongly, justly or unjustly; but given the range of distributions and the number of participants, such judgments are never easy.<sup>119</sup>

Before analyzing how these goods should be distributed, we should try to see what is meant by goods and which kinds of goods are going to be distributed. Let us start with Aristotle who says that, "...the good be conceived as the mere possession of something, or as its use-as a mere habit or trained faculty, or as the exercise of that faculty."<sup>120</sup> According to him, there are basically three kinds of goods, while to the goods of the soul he has given preference. "Now, good things have been divided into three classes, external goods on the one hand, and on the other goods of the soul and goods of the body; and the goods of the soul are commonly said to be goods in the fullest sense, and more good than

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<sup>119</sup> Micheal Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, Inc, 1983), 3.

<sup>120</sup> *The Nocomachean Ethics of Aristotle*, translated by F.H. Peters, M.A., Fifth edition, (London, Kegan Paul, Trench, Truber & Co. Ltd. 1893), 19-20.

any other."<sup>121</sup> The pleasure of the soul, which came out as a result of a work done by noble people is most precious good for Aristotle. "And while with most men there is a perpetual conflict between the several things in which they find pleasure, since these are not naturally pleasant, those who love what is noble take pleasure in that which is naturally pleasant."<sup>122</sup>

#### **4.1 The Theory of Good According to John Rawls**

John Rawls presented his theory of good in his famous book, *A Theory of Justice*. The starting point in his approach was to determine a person's good. With regard to that, he says that it is a rational plan of everyone to determine our goods.

The main idea is that a person's good is determined by what is for him the most rational long-term plan of life given reasonably favorable circumstances. A man is happy when he is more or less successfully in the way of carrying out this plan. To put it briefly, the good is the satisfaction of rational desire. We are to suppose, then, that each individual has a rational plan of life drawn up subject to the conditions that confront him."<sup>123</sup>

Rawls theory of good has two parts: the thin and full theory of good.

##### **4.1.2 The Thin Theory of Good**

The first theory of good has been called by the author as the thin theory of good. The reason why such a name has been given, Rawls says that, "I have called the thin theory of the good to explain the rational preference for primary goods and to explicate the notion of rationality underlying the choice of principles in the original position. This theory is necessary to support the requisite premises from which the principles of justice

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<sup>121</sup>Ibid., 18.

<sup>122</sup> Ibid., 20.

<sup>123</sup> John Rawls, *A Theory Of Justice*, (Oxford: Clarendon Press, 1972), p. 92-93.

are derived."<sup>124</sup> In Rawls theory, the original position corresponds to the state of nature, which has already been explained. These primary goods are of two kinds: first, social primary goods which are under direct control of the society, and second, natural goods, which are a kind of primary goods, but not under the direct control of society. "For simplicity, assume that the chief primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth. These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods, although their possession is influenced by the basic structure, they are not so directly under its control."<sup>125</sup> The most important primary goods for Rawls is that of self-respect."First of all, as we noted earlier, it includes a person's sense of his value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions."<sup>126</sup>

#### **4.1.3 The Full Theory of Good**

While the thin theory of good is concerned with different kinds of primary goods, the full theory of good deals with different sorts of moral worth. What needs to be mentioned here is, the primary developing step which transforms the thin into the full theory of good going via the original position. The main task of the full theory of good is to define and distinguish on the one hand who is the good man and his good action, and on the other who is the unjust, the bad, and the evil man.

Firstly, Rawls defined a good person, and his good action. "A good person, then, or a person of moral worth, is someone who has to a higher degree than the average the broadly based features of moral character that it is rational for the persons in the original

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<sup>124</sup> Ibid., 397.

<sup>125</sup> Ibid., 62.

<sup>126</sup> Ibid., 440.



position to want in one another."<sup>127</sup> Regarding the good action, Rawls says, "taking a further step, we can define a good action (in the sense of a benevolent action) as a good act performed for the sake of the other person's good."<sup>128</sup>

Secondly, he defined and made a distinction between the unjust, the bad, and the evil man in the following way:

To illustrate, consider the fact that some men strive for excessive power, that is, authority over others which goes beyond what is allowed by the principles of justice and which can be exercised arbitrarily. In each of these cases there is a willingness to do what is wrong and unjust in order to achieve one's ends. But the unjust man seeks dominion for the sake of aims such as wealth and security which when appropriately limited are legitimate. The bad man desires arbitrary power because he enjoys the sense of mastery which its exercise gives to him and he seeks social acclaim. He too has an inordinate desire for things which when duly circumscribed are good, namely, the esteem of others and the sense of self-command. It is his way of satisfying these ambitions that makes him dangerous. By contrast, the evil man aspires to unjust rule precisely because it violates what independent persons would consent to in an original position of equality, and therefore its possession and display manifest his superiority and affront the self-respect of others. It is this display and affront which is sought after. What moves the evil man is the love of injustice: he delights in the impotence and humiliation of those subject to him and he relishes being recognized by them as the willful author of their degradation.<sup>129</sup>

#### **4.2 A Theory of Goods according to Micheal Walzer**

A Theory of Goods plays a crucial role in Micheal Walzer's concept of justice. According to him, the concept of justice directly depends upon the form of social life.

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<sup>127</sup> Ibid., 437.

<sup>128</sup> Ibid., 438.

<sup>129</sup> Ibid., 439.

Therefore, whenever the form of social life is changed, or may be would be better to say that whenever it becomes more advanced, it will ultimately demand a change in the previous concept of justice. Walzer saw the reason for such an approach, in the fact that, the distribution of different social goods cannot be carried out by one uniform formula of distribution; rather each good should have its own formula. That is why he says,

That the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from different understandings of the social goods themselves-the inevitable product of historical and cultural particularism."<sup>130</sup>

Walzer's theory of goods consists of six propositions.

The first proposition says that, "All the goods with which distributive justice is concerned are social goods. They are not and they cannot be idiosyncratically valued."<sup>131</sup> Walzer in his theory excluded the concept of God's goods, saying that, "Goods in the world have shared meanings because conception and creation are social processes."<sup>132</sup>

The second proposition says that, "Man and women take on concrete identities because of the way they conceive and create, and than possess and employ social goods."<sup>133</sup>

The third proposition reveals the difficulties regarding determination of even a single set of primary goods. The concept of primary goods differs from place to place.

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<sup>130</sup> Micheal Walzer, *Spheres of Justice, A Defense of Pluralism and Equality*, (New York, Basic Books, Inc, Publishers, 1983), 6.

<sup>131</sup> *Ibid.*, 7.

<sup>132</sup> *Ibid.*,

<sup>133</sup> *Ibid.*, 8.

"Even the range of necessities, if we take into account moral as well as physical necessities, is very wide, and the rank orderings are very different. A single necessary good, and one that is always necessary – food, for example – carries different meanings in different places."<sup>134</sup>

The fourth proposition emphasize on the importance of the meaning of goods. "If we understand what it is, what it means to those for whom it is a good, we understand how, by whom, and for what reason it ought to be distributed. All distributions are just or unjust relative to the social meanings of the goods at stake."<sup>135</sup> Some things can be purchased, but it is not the case with everything. As an example, Walzer mentioned the meaning of the office from the Christian perspective, where those who are going to hold the post must be chosen according to their knowledge and piety, and not according to their wealth. "Similarly, the words *prostitution* and *bribery*, like *simony*, describe the sale and purchase of goods that, given certain understandings of their meaning, ought never to be sold or purchased."<sup>136</sup>

The fifth proposition declares that, "Social meanings are historical in character; and so distributions, change over time."<sup>137</sup>

The sixth proposition reaches its final conclusion related to the distribution of different goods. It declares that every good has its distributive sphere, and therefore needs a different model of distribution. "Every social good or set of goods constitutes, as it were, a distributive sphere within only certain criteria and arrangements are appropriate. Money is inappropriate in the sphere of ecclesiastical office; it is an intrusion from another sphere. And piety should make for no advantage in the

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<sup>134</sup> Ibid.,

<sup>135</sup> Ibid., 9.

<sup>136</sup> Ibid.,

<sup>137</sup> Ibid.,

marketplace, as the marketplace has commonly been understood."<sup>138</sup> As a conclusion, Walzer finally says that, "There is no single standard. But there are standards (roughly knowable even when they are also controversial) for every social good and every distributive sphere in every particular society; and these standards are often violated, the goods usurped, the spheres invaded, by powerful men and women."<sup>139</sup>

#### **4.3 The Concept of Goods from the Perspective of Islamic Law**

The fundamental principle, related to the concept of goods, from the Islamic perspective holds that Almighty Allah alone is the Creator and the Owner of everything, which is opposite to Micheal Walzer's concept of social goods.

Whatever is in the heavens and whatever is in the earth is Allah's; and whether you manifest what is in your minds or hide it, Allah will call you to account according to it; then He will forgive whom He pleases and chastise whom He pleases, and Allah has power over all things.<sup>140</sup>

“Do you not know that Allah's is the kingdom of the heavens and the earth, and that besides Allah you have no guardian or helper?”<sup>141</sup>

“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.”<sup>142</sup>

To determine what is to be considered as a good, belonging only to its Creator, Almighty Allah. Whatever has been prohibited by Almighty Allah automatically loses

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<sup>138</sup> Ibid., 10.

<sup>139</sup> Ibid.,

<sup>140</sup> The Holy Qur'ān 2:284

<sup>141</sup> The Holy Qur'ān 2:107

<sup>142</sup> The Holy Qur'ān 2:29

its attribute of being good from the Islamic perspective. Such goods have been deprived from any kind of value, moreover any transaction of such goods has been declared as prohibited.

The concept of absolute ownership presented in a modern Western legal thought, is completely alien to Islam. As mentioned above, from the Islamic point of view, the absolute ownership belongs to Almighty Allah alone. The kind of ownership, regarding the goods which are in our possession granted by Almighty Allah has to be view differently than in the Western jurisprudence. In fact, all these goods which we own during our life are only given as a trust from Almighty Allah, and therefore we will be accountable for how these goods have been utilized by us. The way to use these goods has also been prescribed for us.

Goods from the Islamic point of view are divisible into two major categories. The first category is related to the material goods, and they are basically divided into private and common goods. The goods which belong to the state can be considered when the state is legal personality, which is a disputed issue between modern legislation and the classical Islamic jurisprudence. From the Islamic point of view a state does not possess a legal personality, and one of the major reasons for that lies in the fact that a fictitious person is not able to perform religious duties. It should also be noted here that the Islamic jurists were fully aware of the concept of a fictitious personality, but fully aware that admitting a new type of personality would also mean a necessary alternation of the number of traditional Islamic concepts.<sup>143</sup>

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<sup>143</sup> "It is important to note that justifying the legal validity of a fictitious legal personality under Islamic law may not be very difficult if the general principles of this law are applied. It is what comes after such justification that is important. Take the case of the state. When we admit the state as a person within Islamic law a number of traditional concepts prevalent within Islamic constitutional law appear to need alteration. For instance, the state owns all the land within its territory. The stipulations regarding revival of barren land (*ihyā' al-mawāāt*) become meaningless, because the primary condition is that only that land can be revived that is not owned by anyone. Here all the land is owned by the state as a person, and this excludes the possibility of any revival. Yes, the state may grant land to landless peasants, but that is not the issue here; here we are talking about the clash of concepts. Further, Islamic law contemplates a personal relationship between the head of the state or the chief executive and between the members of the

The second category which has preference over the first category is related to spiritual goods. By spiritual goods we mean a belief, a happiness, different kinds of rights, etc. Priority amongst the goods from the Islamic perspective are determined by the *Maqāsīd al-Sharī'ah*. Therefore, as the protection of *Dīn* has priority over other *maqāsīd*, it means that *Dīn* has been considered as the most important and valuable good. The protection of this good (*Dīn*) is not only the primary interest of the individual, but also the most important public interest, which an Islamic state has to protect at any cost. On the contrary as has been rightly stated by Prof. Nyazee that,

Religion in the West, on the other hand, has been reduced to a level with a lowest priority. In fact, it is not even a public interest; it is a personal affair. Some Western scholars have hinted that the Muslim community should follow suit and reduce religion to a private affair. The privatization of Islam will alter the structure of the *maqāsīd* as seen by the *fuqaha*.<sup>144</sup>

Two more questions which are closely related to the concept of good from the Islamic perspective should be posed here. The first, who is a righteous person, and how he has been defined, and the second, what we mean by righteous action in Islam? From the Islamic point of view, a righteous person has been defined by Almighty Allah in the Holy Qur'ān, and with regard to that Almighty Allah declares:

It is not righteousness that ye turn your faces to the East and the West; but righteous is he who believeth in Allah and the Last Day and the angels and the Scripture and the prophets; and giveth wealth, for love of Him, to kinsfolk and to orphans and the needy and the wayfarer and to those who ask, and to set slaves

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community, that is, the relationship is governed by the contract of *wakālah* (agency) where the head of state is an agent of the citizens. When the state intervenes, these relationships are altered. In the case of corporations, when the juristic person steps in, the traditional concepts of *sharikah* lose their significance." (Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, International Institute of Islamic Thought and Islamic Research Institute, Islamabad, 2000), p.117.

<sup>144</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, (Islamabad, Islamic Research Institute Press, 2<sup>nd</sup> reprint 2005), 267.

free; and observeth proper worship and payeth the poor-due. And those who keep their treaty when they make one, and the patient in tribulation and adversity and time of stress. Such are they who are sincere. Such are the Allah-fearing.<sup>145</sup>

Regarding righteous action we can say that two conditions have to be met. The first declares that an action must be in full accordance with the commands of Islamic law, and the second requires from us that whatever we do, it has to be done only for the sake of Almighty Allah.

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<sup>145</sup> The Holy Qur'ān 2:177

## CHAPTER FIVE

### **Equality & Distributive Justice**

From antiquity up till today, equality has been considered as one of the most constitutive features of distributive justice. According to Edgar Bodenheimer,

Equality is a polymorphous concept which carries a number of different meanings. Its referent may be the right of political participation, the system of income distribution, the social and legal position of disfavored groups. It includes in its scope the equality of treatment, the equality of opportunity, the equality of basic human needs. It may also be concerned with the protection of equivalence between obligation and counter obligation in consensual agreements, with the adequacy of compensation or restitution in making amends for a wrong, and with the maintenance of a certain degree of proportionality between offense and penalty in the administration of criminal justice.<sup>146</sup>

Therefore many thinkers and legal philosophers, considered equality as a pillar and backbone of the distributive justice where the entire structure will simply collapse in the absence of this most essential component. But the meaning of equality differs from time to time as well from place to place. My task here will be to try briefly to deal, and to some extent examine the exact connection between an equality and distributive justice, i.e., what kind of role does equality play in the theory of distributive justice, than to look at it from the perspective of Islamic law. Before mentioning different kinds of equality with its developments and impact on distributive justice, it will be appropriate to begin with the literal meaning of equality.

The terms *equality* (Gr. Isodes, Lat. Acquitas, Fr. égalite, Ger. gleichheit), equal, and equally signify a qualitative relationship. Equality (or equal) signifies correspondence between a group of different objects, persons, processes or circumstances that have the same qualities in at least one respect, but not all

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<sup>146</sup> Edgar Bodenheimer, *Jurisprudence*, (Harvard University Press, Third edition, 1978), 229.



respects, i.e. regarding one specific features, with differences in other features. Equality needs to be distinguished from identity – this concept signifying that one and the same object corresponds to itself in all its features: an object that can be referred to through various individual terms, proper names, or descriptions. For the second reason it needs to be distinguished from *similarity* – the concept of merely approximate correspondence.<sup>147</sup>

From the above mentioned definition of equality we can say that for two things to be equal means for them to be identical in some respect. Therefore if two men are both precisely two meters tall, we say that they are equal in height. If two men both earn precisely twenty thousands rupees per month, they are equal in income. And if for example two people have the same chance of winning a price they have in that respect equality of opportunity. There are other kinds of equality as well which can be mentioned but there is no need to go into these details here. After this short introduction there is a need to provide and examine some kinds of equality which are notably related to the distributive justice.

### 5.1 Formal Equality

This kind of equality was first introduced by Aristotle in his *Nichomachean Ethics*. That is why it has also been called Aristotelian or Proportionate equality. One can initially estimate that the Aristotelian principle of equality is a purely formal principle, abstract, which must apply in practice to naturally unequal or different individuals. The definition of justice given by Aristotle says that equals are to be treated equally and no equals unequally. If two things are equal in some respect and if we treat one of them in one way based on this respect, it will be wrong to treat the other differently based on that same respect. When applied to distributive justice, the formula of formal equality enjoins giving to equal shares and unequals unequal shares. In other words it means to treat like

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<sup>147</sup> Westen Peter, *Speaking Equality*, (Princeton: Princeton University Press, 1990), 39.

cases alike and different cases differently. This kind of equality has been described as too abstract, inapplicable, and of not much use in practical life.

It is clear formal Equality by itself established very little. Indeed, if we accept the infinitive variety of human personality, that no two people, not even identical twins, are qualitatively identical, than there will always be difference between any two people, which might be held to justify a difference of treatment. Many of these differences we may wish to rule out as not being relevant but since the principle of Formal Equality does not provide, of itself, any criteria of relevance, it does not by itself establish much. It gives a line of argument, but not any definite, conclusion.<sup>148</sup>

## 5.2 Moral Equality

A class system which was based on the presumed natural inequality of man existed for a very long period of time. Plato in his vision of an ideal state divided a society into three classes.

The men of gold are to become the rulers in Plato's ideal commonwealth, they must be philosophers (for until philosophy and governmental power coalesce, there will be no end to evil in the state in Plato's opinion) and they will be endowed with absolute power to be exercised rationally and unselfishly for the good of the state. The men of silver are to be the military guardians of the state and are to assist the rulers in the discharge of their governmental duties. The men of iron and copper will form the producing classes.<sup>149</sup>

Different kinds of class systems based on presumption of existence of natural human hierarchy remained in the West until the eighteenth century. This kind of presumption collapsed with the advent of the idea of natural rights and its assumptions of

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<sup>148</sup> H. Bedan, *Justice and Equality*, (Prentice – Hall, 1971), 139.

<sup>149</sup> Edgar Bodenheimer, *Jurisprudence*, (Harvard University Press, Third edition, 1978), 8.

an equality of natural order amongst all human beings. The concept of universal and moral equality was initiated a long time ago by the Stoic philosophers. According to Bodenheimer: "They developed a cosmopolitan philosophy, founded on the principle of the equality of all man and universality of natural law. Their ultimate ideal was a world – state in which all men would live together harmoniously under the guidance of divine reason."<sup>150</sup>

In the modern period starting in the seventeenth century, the dominant idea was of a natural equality in the tradition of the natural law and social contract theory. In Hobbes's concept of the state of nature, all man are equal and equally have the right to whatever they consider necessary for their survival. John Locke argued that all human beings have the same natural right to both ownership and freedom. He described the state of nature as, "...state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do."<sup>151</sup> From the state of nature, moral equality has been transformed into a civil society and,

For Rousseau the key problem for social philosophy, to which the sovereignty of the general will could provide a solution, was to reconcile the natural equality and autonomy of man with the social condition and political authority. Without this reconciliation men can not realize their potentiality as morally self-governing persons. Kant offered a philosophically sophisticated version of a very similar moral position: all human beings must be treated as ends, not merely as means; all men are equally 'legislating members of the kingdom of ends' because

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<sup>150</sup> Ibid., 13.

<sup>151</sup> *The Works of John Locke*, Volume The Fourth (The Twelfth edition, London, 1824), 342 .

all are equally capable of realizing the good will, the only thing in the world good in itself.<sup>152</sup>

The idea of equal respect for all persons and of the equal worth or equal dignity of all human beings is accepted as a minimal standard by all leading schools of modern western legal and political culture. Any legal or political theory abandoning this notion of equality will not be found plausible today and in accordance with it will be swiftly rejected.

### **5.3 Equality Before the Law**

The concept of moral equality did not remain as a pure religious postulate or in the minds of few philosophers alone. If the people are all equal before God, why not be equal before law too. The concept was developed, transformed and implemented into a legal system within a short period of time. Equality before the law is the principle, which says that every one should receive equal treatment by the legal system, which enjoys a long tradition. We learned from ancient Greek history how Athenians in the case of setting disputes between themselves, were equal before the law. In Adam Smith's understanding of equality, there should be no classes, castes, or elites above the law. The law should be applied equally towards everyone, where nobody enjoys any kind of privileges. In his first Inaugural address, Thomas Jefferson asserted, "equal and exact justice to all men, of whatsoever state or persuasion, religious or political."<sup>153</sup>

The equality before the law got its first legal implementation in the first section of the 14<sup>th</sup> amendment to the Constitution of the United States which says that,

All persons born or naturalized in the United States, and subject to the jurisdiction therefore are citizens of the United States and of the state wherein

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<sup>152</sup> *The Encyclopedia of Philosophy*, Volume three, (New York, Macmillan Publishing Co., Inc & The Free Press, reprint edition 1972), 39.

<sup>153</sup> <http://www.princeton.edu/~tjpapers/inaugural/infinal.html> (Last time visited on 15.11.2007)

they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.<sup>154</sup>

Finally equality before the law got its universal and international recognition in Article 7 of the United Nations Declaration of Universal Human Rights which declares that: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."<sup>155</sup>

#### **5.4 Economic Equality**

The idea of equality before the law has been rejected by Karl Marx in his *The Critique of the Gotha Program* (1874). According to Karl Marx this kind of equality is meaningless until the means of production remains in the hands of the bourgeois.

The bourgeois have very good grounds for falsely ascribing supernatural creative power to labor, since precisely from the fact that labor depends on nature it follows that the man who possesses no other property than his labor power must, in all conditions of society and cultures, be the slave of other men who have made themselves the owners of the material conditions of labor. He can only work with their permission, hence live only with their permission.<sup>156</sup>

Instead equality before the law (which was meaningless for Marx), he saw a solution in building a communist society where the major point was the Economic equality with the means of production in the hands of the proletariat. His vision contained two phases of the Communist society. In the first phase,

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<sup>154</sup> <http://www.usconstitution.net/const.txt> (Last time visited on 15.11.2007)

<sup>155</sup> <http://www.ohchr.org/english/about/publications/docs/abc-annexes.pdf>  
(Last time visited on 15.11.2007)

<sup>156</sup> <http://www.marxists.org/archive/marx/works/1875/gotha/index.htm> (Last time visited on 15.11.2007)

...right by its very nature, can consist only in the application of an equal standard; but unequally individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard insofar as they are brought under an equal point of view, are taken from one definite side only for instance, in the present case, are regarded only as workers, and nothing more is seen in them, everything else being ignored. Further, one worker is married, another is not; one has more children than another, and so on and so forth. Thus, with an equal performance of labor, and hence an equal in the social consumption fund, one will in fact receive more than another, and so on. To avoid, all these defects, right instead of being equal, would have to be unequal.<sup>157</sup>

The principle to each according to his works signified Marx's view of the first phase of the Communist society. According to him this kind of economic equality contains some defects which are inevitable in the first phase. Because of that it was necessary for the communist society to transform itself into the second phase where the principle to each according to his works was transformed into the principle to each according to his ability, to each according to his needs.

In a higher phase of communist society, after the enslaving subordination of the individual to the division of labor, and therewith also the antithesis between mental and physical labor has vanished; after labor has become not only means of life but life's prime want; after the productive forces have also increased with the all-around development of the individual, and all the springs of co-operative wealth flow more abundantly-only then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: From each according to his ability, to each according to his needs."<sup>158</sup>

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<sup>157</sup> Ibid.,

<sup>158</sup> Ibid.,

### 5.5 Equality of Opportunity

Another kind of equality closely related to distributive justice, which undoubtedly needs to be mentioned here is an equality of opportunity. The term was used during the French Revolution, when liberty became associated with equality of opportunity as well. Inequality of opportunity was the greatest obstacle to individual development and liberty than any form of external restraint. Therefore, the French Revolution took the American Revolution a step further by trying to equalize, as much as possible, conditions in such areas as education, health, housing, and establishing freedom from want and fear, so that every individual might have equal opportunity for self-realization. Immanuel Kant in his *Principles of Politics* also examined the term. According to him:

Every Member of the State should have it made possible for him to attain to any position or rank that may belong to any subject to which his talent, his industry or his fortune may be capable of raising him; and his fellow-subjects are not entitled to stand in the way by any hereditary prerogative, forming the exclusive privilege of a certain class, in order to keep him and his posterity for ever below them.<sup>159</sup>

Equality of opportunity in John Rawls's theory of justice took a very prominent place. While, Rawls's theory of justice with its principles will be presented later, it is necessary to note here that, basically his theory of justice for institutions consists of two principles. The second part of the second principle contains the liberal principle of fair equality of opportunity, which is described as follows:

This means that in addition to maintaining the usual kinds of social overhead capital, the government tries to insure equal chance of education and culture for persons similarly endowed and motivated either by subsidizing private schools

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<sup>159</sup> *Kant's Principle of Politics including his Essay on Perpetual Peace*, edited and translated by W. Hastie, B.D. (Edinburgh: T. & T., 1891), 39.

or by establishing a public school system. It also enforces and underwrites equality of opportunity in economic activities and in the free choice of occupation. This is achieved by policing the conduct of firms and private associations and by preventing the establishment of monopolistic restrictions and barriers to the more desirable positions. Finally, the government guarantees a social minimum either by family allowances and special payments for sickness and employment, or more systematically by such devices as a graded income supplement (a so-called negative income tax).<sup>160</sup>

### **5.6 Equality from the Islamic Perspective**

As we have already seen, the question of equality from the perspective of distributive justice has been approached in different ways. What is an Islamic approach towards equality? What is common and what are the differences in these different Western concepts? Is the Islamic concept of equality easily understandable, especially for those who are not so familiar with the Islamic law?

Regarding the last question, it is a fact that the concept of equality in Islam, sometimes seems to be difficult to understand, especially when it is approached by the modern Western understanding of equality. That is the main reason for the misunderstanding of the Islamic concept of equality. My intention will not be to explore this issue in detail. For our purpose here, let us mention an example which is related to the equality between a man and women. The evidence of women and a woman's share in inheritance are two well known issues.

The first issue is related to the evidence of women in the case when there is an offense punishable under the *hudūd* law. Here according to the Islamic law, the evidence of women is excluded. Furthermore, the problem seems to be much more evident in the case of the offense of rape, where the evidence of a victim is not acceptable as a proof for imposing the *hadd* penalty. In both cases, it has been assumed that a woman has been

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<sup>160</sup> John Rawls, *A Theory Of Justice* (Oxford: Clarendon Press, 1972), 275.



deprived from an equal right. Regarding these two cases mentioned above, Prof. Nyazee says:

The usual answer given in is that the evidence of women is excluded in such cases on the basis of the Sunnah, which is also a source of law. These are cases involving the right of Allāh. The approach to this issue is that somehow women have been deprived of a right. Evidence in these cases and in others too, is a duty and not a right. Women have been spared the burden of this duty. The purpose is to waive the penalty of *hadd*, which is usually an extreme punishment, and to show mercy to the accused in an indirect way. This, perhaps, is the intention of the Lawgiver. Related to this is a misconception that the offense of rape cannot be proved and punished with the evidence of one woman. It is true that *hadd* cannot be awarded upon the testimony of one woman, but that does not mean that no other punishment can be awarded to the rapist on the basis of such testimony. The ruler or the state has wide powers under the doctrine of *siyāsah* to award an equally stiff penalty. The Federal Shariat Court in Pakistan has ruled that this will be possible.<sup>161</sup>

The second issue is related to a woman's share in inheritance. The main objection raised here is that according to the Islamic law a woman is to be given half the share of a man, and again it is a strong violation of the principle of equality between a man and a woman. Looking from the Islamic point of view, equality could be understood differently.

The justification provided by scholars is that the Islamic legal system places a much greater financial burden on the male in terms of maintenance of his family and near ones. Such a burden has not been placed on a woman. Further, a woman is paid dower upon her marriage by the husband. This increases the financial liability for males.<sup>162</sup>

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<sup>161</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence* (Islamabad, Islamic Research Institute Press, 2000), 120-121.

<sup>162</sup> *Ibid.*, 121.

Accordingly, we may see that a distinguishing principle related to the Islamic concept of equality declares that it is an unchangeable Divine concept. The right to grant equality and to define what its exact meaning is belongs only to Almighty Allah. The kinds of equality which are already found within the framework of Islamic law, nobody has right to change or redefine. My task here will not be to bring up and analyze every kind of equality within the Islamic law, but only try to identify some fundamental principles of equality which are closely related to the Islamic concept of distributive justice. I do not claim any finality in this regard, and this is just a simple attempt to approach this issue.

#### **5.6.1 Equality of All Human Beings before Almighty Allah**

While the Western concept of equality recognizes equality before the law, Islamic law precedes one step further, recognizing equality before its Lawgiver. From the Western perspective, a man-made law most of the time, (if not always) is a result of ongoing political struggle between different political parties or groups, etc., which is not case in the Islamic law. Therefore, to obtain impartiality from the lawgiver in that case is not something which is usually expected. What is meant by the equality of all human beings before Allah is that Almighty Allah looks at all human beings as equal, not differentiating between them, except in piety and good action.

O people! Verily We have created you from a male and a female, and have made you different branches and different tribes, so that you may recognize one another. Surely the most honored of you in the presence of Allah is he who is the most pious of you. Surely Allah is the All-knowing, the All-Aware.<sup>163</sup>

The equality of all human beings before God has also been declared by the Prophet (peace be upon him) in his farewell address. The Holy Prophet Muhammad (peace be

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<sup>163</sup> The Holy Qur'ān 49:13

upon him) very clearly declared this kind of equality, saying, "All mankind is from Adam and Eve, and an Arab has no superiority over a non-Arab nor a non-Arab has superiority over an Arab, also a white has no superiority over black nor a black has any superiority over white except by piety and good action.."164 It should also be noted here that every child is born a Muslim, which means that the equality of all human beings is manifested in this way as well. It has been recorded that Allah's Apostle said,

Every child is born with a true faith of Islam (i.e. to worship none but Allah Alone) but his parents convert him to Judaism, Christianity or Magainism, as an animal delivers a perfect baby animal. Do you find it mutilated?" Then Abu Hurairah recited the holy verses: "The pure Allah's Islamic nature (true faith of Islam) (i.e. worshipping none but Allah) with which He has created human beings. No change let there be in the religion of Allah (i.e. joining none in worship with Allah). That is the straight religion (Islam) but most of men know, not." (30.30)<sup>165</sup>

### 5.6.2 Equality before the Divine Law

Another very important principle related to the Islamic concept of distributive justice is that of equality before Islamic law. Full implementation of this principle by the state, seems to be crucial for administration of justice in an Islamic state.

As it will be mentioned in the following tradition, non-implementation of this principle has many implications and was a major cause for the destruction of many societies before. There are numerous examples given by the Holy Prophet (peace be upon him)

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<sup>164</sup>For the full text of the Tradition see Appendix I

<sup>165</sup>Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 2, *Book 23*, transl. M. Muhsin Khan, Hadith Number 441. <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/023.sbt.html> (Last time visited on 15.11.2007)

and his glorious companions (may Almighty Allah be pleased with them) in the implementation of this principle. For our purpose here let us just mention one tradition where the Messenger of Allah (peace be upon him) was highlighting the importance of the implementation of this principle in Islam.

'A'isha, the wife of Allah's Apostle (may peace be upon him), reported that the Quraish were concerned about the woman who had committed theft during the lifetime of Allah's Apostle (may peace be upon him), in the expedition of Victory (of Mecca). They said: "Who would speak to Allah's Messenger (may peace be upon him) about her?" They (again) said: "Who can dare do this but Usama b Zaid, the loved one of Allah's Messenger (may peace be upon him)?" She was brought to Allah's Messenger (may peace be upon him) and Usama b. Zaid spoke about her to him (interceded on her behalf). The color of the face of Allah's Messenger (may peace be upon him) changed, and he said: "Do you intercede in one of the prescribed punishments of Allah?" He (Usama) said: "Messenger of Allah, seek forgiveness for me." So in the afternoon, Allah's Messenger (may peace be upon him) stood up and gave an address. He (first) glorified Allah as He deserves, and then said: "Now to our topic. This (injustice) destroyed those before you that when any one of (high) rank committed theft among them, they spared him, and when any weak one among them committed theft, they inflicted the prescribed punishment upon him. By Him in Whose Hand is my life, even if Fatima daughter of Muhammad were to commit theft, I would have cut off her hand. He (the Holy Prophet) then commanded about that woman who had committed theft, and her hand was cut off." 'A'isha (further) said: Hers was a good repentance, and she later on married and used to come to me after that, and I conveyed her needs (and problems) to Allah's Messenger (may peace be upon him).<sup>166</sup>

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<sup>166</sup> Imam Muslim, *Sahīh Muslim*, Book 17, transl. Abdul Hamid Siddiqui, Hadith No. 4188  
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/017.smt.html>  
 (Last time visited on 15.11.2007)

### 5.6.3 Equality According to the Needs

The third kind of the equality which is crucial for an understanding of the distributive justice in Islam is that of a equality according to the needs. This kind of equality is in fact a principle which is found in The Holy Qur'ān, and with regard to that Almighty Allah says:

"And they question you as to what they should spend. Say you: "Spend what is beyond your needs." Thus does Allah expound to you His Commandments so that you may reflect."<sup>167</sup>

According to this verse from the Holy Qur'ān, there is no justification for possessing any additional property to be let or leased out for any pecuniary gain; each to possess only that much which is necessary for his needs and for the needs of his family, and whatever is beyond that is considered as illegitimate.

This principle has also been declared and fully implemented by the Holy Prophet (peace be upon him), as we can see from the two following traditions:

'Utman ibn 'Affan reported that the Apostle of Allah (may peace be upon him) said:

"The son of Adam has no right except to the following: a house in which he lives, a garment with which he conceals his private parts, dry bread and water."<sup>168</sup>

Anas said, "The Messenger of Allah, may Allah bless him and grant him peace, did not store up anything for the next day."<sup>169</sup>

The companions of the Holy Prophet (peace be upon him) also strictly followed the same principle. Although, there are numerous examples which can be mentioned here, it

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<sup>167</sup> The Holy Qur'ān 2:219

<sup>168</sup> Sunnan Al-Tirmidhi, Book 34, transl. Muhammad Akram Khan, Hadith Number 30, Muhammad Akram Khan, *Economic teaching of Prophet Muhammad (peace be upon him)*, (Islamabad: International Institute of Islamic Economocs, 1989), 78.

<sup>169</sup> Qadi 'Iyad ibn Musa al-Yahsubi, *Muhammad Messenger of Allah* (Ash-Shifa of Qadi 'Iyad), transl. Aisha Abdarrahan Bewley, (Granada: Madinah Press, 1991), 59.

will be sufficient for our purpose here to mention just one saying of Hadrat 'Ali (may Allah be pleased with him).

Hadrat Sha'bī (Rad) says that Hadrat 'Ali (Rad) said, "O the son of Adam! Don't hurry (or worry) about the day that is coming in preference to the present day. If you are not going to die on the coming day than your provision for that day will surely come to you. Remember that whatsoever you earn over and above your needs will be nothing but a treasure for others."<sup>170</sup>

Finally, regarding the house in which a man lives, any kind of extravagance was disliked and disapproved by the Messenger of God (peace be upon him).<sup>171</sup>

Narrated Anas ibn Malik:

The Apostle of Allah (peace be upon him) came out, and on seeing a high-domed building, he said: "What is it?"

His companions replied to him: "It belongs to so and so, one of the Ansar."

He said nothing but kept the matter in mind. When its owner came and gave him a greeting among the people, he turned away from him. When he had done this several times, the man realised that he was the cause of the anger and the rebuff.

So he complained about it to his companions, saying: "I swear by Allah that I cannot understand the Apostle of Allah (peace be upon him)."

They said: "He went out and saw your domed building. So the man returned to it and demolished it, leveling it to the ground. One day the Apostle of Allah (peace be upon him) came out and did not see it."

He asked: "What has happened to the domed building?"

They replied: "Its owner complained to us about your rebuff, and when we informed him about it, he demolished it."

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<sup>170</sup> Maulānā Muhammad Yūsuf Kāndhlawī, *Hayātus-Sahābah*, transl. Dr. Majid Ali Khan, (Karachi: Darul-Ishaat, 1993) Vol.II, p. 731.

<sup>171</sup> Unfortunately, today we are witnesses of endless competition between rich Muslims, in regards to who will have more money in the bank account, and at the same time who will have more beautiful house.

He said: “Every building is a misfortune for its owner, except what cannot, except what can not, meaning except that which is essential.”<sup>172</sup>

#### 5.6.4 Equality Related to the Distribution From the *Baitul-māl* (Public Exchequer)

How are the goods, which belong to the *Baitul-māl* (public exchequer) going to be distributed? With regard to this issue two solutions seem to be available.

Firstly, according to the first Caliph, Hadrat Abu Bak'r (may Allah be pleased with him), this kind of a distribution should be done equally, which means that everybody will receive an equal share.

Aslam (Rad) states, 'When Hadrat Abu Bak'r was appointed Caliph, he maintained equality among people in regard to various distributions. When he was advised to give preference to 'Mohajirin' and 'Ansars', Hadrat Abu Bak'r (Rad) replied, 'I meet people on business terms (i.e. weighing commodities properly) and hence it is better to keep equality in this matter than to observe preference'. The freed-slave of 'Umar bin Âbdullah (Rad) states, 'When Hadrat Abu Bak'r (Rad) brought about his first distributions, Hadrat 'Umar bin Khattab (Rad) said, 'Give preference to first lot of Immigrants and those who have performed some distinct service to Islam. Hadrat Abu Bak'r (Rad) said, 'Should I purchase their priority in actions?' And maintained equality among people.<sup>173</sup>

Secondly, according to the second Caliph, Hadrat 'Umar ibn Khattab (may Allah be pleased with him), the distribution from the *Baitul-māl* should not be done equally, but according to the status or the merit . Interestingly, later on Hadrat 'Umar ibn Khattab (may Allah be pleased with him) changed this view, returning to the viewpoint of Hadrat Abu Bak'r (may Allah be pleased with him), nearly during the last year of his worldly

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<sup>172</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 41, transl. Prof. Ahmad Hasan , Hadith Number 5218 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/041.sat.html> (Last time visited on 15.11.2007)

<sup>173</sup> Al-Baihaqi (Vol. II, p.306), quoted in, Maulānā Muhammad Yūsuf Kāndhlawi, *Hayātus-Sahābah*, transl. Dr. Majid Ali Khan, (Karachi: Darul-Ishaat), Vol II, p. 239-240.

life. With regard to that, Hadrat 'Umar ibn Khattab (may Allah be pleased with him) during his one Friday sermon said:

"Undoubtedly, Hadrat Abu Bak'r (Rad) had a viewpoint to maintain equality in the distribution of wealth. On the other hand, I had a view to make distributions according to status. If I remained alive in the year following, I shall return to the viewpoint of Hadrat Abu Bak'r (Rad) as his view is superior to that of mine."<sup>174</sup>

In a conclusion, we may say that from an Islamic point of view, equality must be understood only in the context of Divine command, related to the different aspects of equality and justice, and not as something which is abstract, where a door is wide open for a new invention of equality. The concept of equality in Islam is based on certain Islamic principles which must be taken into consideration when the question of equality arises.

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<sup>174</sup> Narrated by Al-Haithmi (Vol.VI, p.6). quoted in, Maulānā Muhammad Yūsuf Kāndhlawi, *Hayātus-Sakābah*, transl. Dr. Majid Ali Khan, (Karachi: Darul-Ishaat,) Vol II, p. 247.



## CHAPTER SIX

### FREEDOM AND DISTRIBUTIVE JUSTICE

Freedom has been associated historically with a very wide range of philosophical doctrines and political policies. The relationship between justice and freedom (liberty), with its impacts, is one of the most discussed ideas in the legal history concerning the theories of justice. According to the Western approach there are two major concepts of freedom: while first pertains to outward, the second is related to inner approach.

Freedom as an idea, with all its complexities, has played different roles in different times, as well differed from one type of society to another. Throughout history, especially in the early period, until the appearance of John Locke and his teachings, the idea of freedom was given very little or no importance.

#### 6.1 Early stage

The division of mankind as masters and slaves marked a very long time in the history of human society. Even to philosophers like Aristotle, slavery has been considered as right and just. According to him, "It is clear, that some men are by nature free and others slaves, and for these latter slavery is both expedient and right."<sup>175</sup> Early advocates of natural law like Ulpian have rejected this opinion that it is nature which predestines someone to be free or enslaved. Contrary to that they considered every one as equal according to the natural law. Regarding this issue Ulpian said: "So far as the civil law is concerned, slaves are not considered persons, but this is not the case according to the natural law because natural law regards all men as equal."<sup>176</sup>

It is well-known that the institution of slavery was not abolished until recent times and for a long period in the history it was practiced worldwide.

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<sup>175</sup> *The Politics of Aristotle*, translated into English with introduction, marginal analysis, essays, notes and indexes by B. Jowett, (London: Oxford University Press, 1885), 9.

<sup>176</sup> Quoted in Edgar Bodenheimer, *Jurisprudence*, (Harvard University Press, Third edition, 1978), 17.

## 6.2 Hobbes and Lock

Usually it is an unwritten rule in modern history that after the appearance of dictatorship, repression and the exaggerated exploitation of one class by another, a need for liberation and freedom emerges. On the contrary, whenever anarchy appears there is an urgent call from the people for more security and freedom is restricted. Originally, an individual freedom was considered as something given by God, or corresponded to an original principle of the law of human nature from which concrete action could be derived by pure logical reasoning. For our purpose here, the state of nature will be a starting point from where we will try to present, in short, major features regarding the development of an idea of freedom, with its impacts on the state and justice, starting with the theories of Thomas Hobbes and John Locke.

Thomas Hobbes is one of the first philosophers who introduced the idea of the state of nature. According to Hobbes, it is the state of the war of all against all, where the men are only controlled by the instinct of self-preservation. Thus, the state of nature is the state of perfect freedom without security where every man has the right to do anything without any restriction. Due to that reason in Hobbes's theory of the state of nature no action can be unjust simply because there is no covenant between the people and consequently no law to be followed. The most important reason which justified the creation of the state was, according to Hobbes, the need for a peace and safety which at the same time coincided with his two basic and essential laws of nature: to seek peace and follow it, and self-defense by all its means.

John Locke (1632-1704) was the first theorist of the libertarian philosophy according to which the state exists to preserve the natural rights of its citizens. Locke's view of the state of nature is as a state of perfect freedom where all men are created equal, each one having the right to protect his life, freedom, and property. He developed his philosophy of political liberty in his famous book, *Two Treaties of Government*, which was published in 1690. In the beginning of the fourth chapter Locke made a

minorities. In France this idea scientifically influenced Voltaire who insisted that the state should be supreme over the church and demanded universal religious tolerance.

### **6.3 Political and Economic Liberalism**

As we proceed, two interlinked kinds of liberalism should be mentioned here as well. First, political liberalism as an ideology which makes personal freedom a fundamental value of the society, informing man of his right to autonomy, and full exploration of his abilities. Second, an economic liberalism as a doctrine which considers that the exercise of economic freedoms (right of ownership, right to work freely, right for free trade, right to freely undertake and sign contracts, etc.) is naturally associated to political freedom. For the liberals, the continuation of an egoistic interest within a framework of a freely organized market leads and makes a society more prosperous and developed. According to them, the main function of the state is to provide and guaranty freedom, while maintaining law and order.

The first comprehensive attempt from libertarian point of view regarding distribution of wealth has been done by Adam Smith. In his *Wealth of Nations*, Adam Smith evokes *an invisible hand of market*. Within this framework, an intervention of the state must be reduced to the maximum. For Smith, the state must be defined like a minimal state, whose function will be to take care of and respect the conditions of pure and perfect competition. A state should allow full exercise of personal freedom and only when it is necessary should mitigate the rare failures of the market.

### **6.4 Robert Nozick (1938-2002)**

One of the most influential libertarian philosophers of the 20<sup>th</sup> century was a professor of Harvard University, Robert Nozick. The philosopher of Harvard University developed a theory of individual rights, which is coherent with anarcho-capitalism, in spite of the fact that some of its developments have been used for justification of the

distinction between the natural liberty of man, and the liberty of man in society. Describing the natural liberty of man, he says: "The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature for his rule."<sup>177</sup>

This kind of liberty corresponds to the liberty of man in the state of nature. The second kind of liberty which is related to the man in society does not differ much." The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under the domination of any will, or restraint of any law, but what that legislation shall enact according to the trust put in it."<sup>178</sup> Locke was of the opinion that the man who left the state of nature is not to submit himself to a despot but to preserve his freedom, equality, and obviously his private property. Consequently, political power will be limited, monarchy cannot be absolute as it was previously designed by the theory of Catholic Church regarding divine rights, and therefore Locke proposed a division of power into legislative, executive and federative.

The purpose of the legislative power is to fix the rights of each one according to his natural rights. The executive power is in charge of the application of the law by the administration and justice. The federative power is the power to deal with the foreign states, because there is no contract between the states regarding their relationships.

Locke's doctrine that nature had endowed human beings with certain inalienable rights that could not be violated by any governing authority was incorporated in the American Declaration of Independence. In his writings Locke also approved the right of rebellion against oppression and was one of the promoters for toleration of religious

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<sup>177</sup> John Locke, *The Works of John Locke, Two Treatises of Government* (London: C. Baldwin, the twelfth edition, 1824), Vol. IV, p. 351.

<sup>178</sup> *Ibid.*

minimal state. An idea of the absolute individual rights proposed by John Locke was the basis on which Nozick built his theory. Following Locke, Nozick made individual rights to life, liberty, and property fundamental and inviolable. That is why his *Anarchy, State, and Utopia* start with the following words: "The individual has rights, and there are things that nobody nor no group can make them undergo (without violating their rights)."<sup>179</sup> The Welfare State had already made its appearance, giving a new direction to the debate on distributive justice, and also suggesting the idea of a central authority controlling the allowance of all resources. In response to that, the legitimacy of the minimal state, and the illegitimacy of the policies of redistribution have been one of the major concerns for Nozick in his book. Nozick divided his book *Anarchy, State and Utopia* into three parts. I will try to deal very briefly with some of its parts which are closely related to the distributive justice from the libertarian point of view.

#### **6.4.1 The State of Nature**

The justification of the minimal state and the rejection of anarchy (the state of nature) was the main task for Nozick in the first part of his book. As a starting point Prof. Nozick took John Locke's definition and description of the state of nature, raising a question about why we need a transformation of the state of nature (anarchy) into the state. Here Nozick explains that in a state of nature a person may enforce his own rights, defend himself, exact retribution and punish. To use justly and implement all these rights can be, according to Nozick, problematic from two basic points of view. From the first point of view, it is very probable that retribution for example will not be equal, and can easily excite the crime. From the second point of view for example to exercise fully this right might not be possible due to personal witness, or the inability to reach justice or due to some other reasons. In the case of appearance of such or similar situations the need of the people to form some kind of protective association would be unavoidable. In the

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<sup>179</sup> Robert Nozick, *Anarchy, State, and Utopia*, (Oxford, Basic Blackwell, 1974), ix.

newly formed protective association each member will maintain with his colleagues mutual aid. The problems will arise according to Nozick when, "...several different protective associations or companies will offer their services in the same geographical area. What will occur when there is a conflict between clients of different agencies?"<sup>180</sup> This question was a crucial point for Nozick. From the existence and competition of several different protective associations in the same geographical area one may emerge as dominant. But a dominant protective association is not any form of the state? The dominant protective association does not offer all the guarantees for safety as a state because of the simple reason that it does not have the monopoly of the use of force.

The necessity for creation of the state, Nozick derived from two main reasons. Firstly, a state holds a monopoly of the use of force in a certain territory. Secondly, a state provides protection to all the inhabitants of that same territory.

A system of private protection, even when one protective agency is dominant in a geographical territory appears to fall short of a state. It apparently does not provide protection for everyone in its territory, as does a state, and it apparently does not possess or claim the sort of monopoly over the use of force necessary to a state. In our earlier terminology, it is apparently does not constitute a minimal state, and it apparently does not even constitute an ultraminimal state.<sup>181</sup>

Can a minimal state arise out of a state of nature itself transgressing the rights of persons?

#### **6.4.2 The State**

For Nozick the state must exist and anarchy should be rejected. But a question is which kind of state is acceptable for the author. As a libertarian, for Nozick the minimal state is the most extensive state that can be justified. "Any state more extensive violates

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<sup>180</sup> Ibid., 15.

<sup>181</sup> Ibid., 51.

people's rights."<sup>182</sup> Nozick revived the concept of the Minimal State already initiated by John Locke and Herbert Spencer. According to the libertarianism everyone possess absolute rights to life and liberty, in the sense that no-one may justifiably interfere into another's life and liberty, except in the case of self-defence or legitimate punishment. Furthermore, by going through certain procedures we can acquire rights to property as well. Having these three absolute rights does not mean that they will always be respected. It is the task of the Minimal state (the night- watchman state of classical libertarianism) to protect us from each other, as well as from external threats and enemies. The state therefore can be justified according to Nozick only when it protects people against aggression, fraud, crime, and when enforcement of contracts is required. "The night-watchman state of classical liberal theory, limited to the functions of protecting all its citizens against violence, theft, and fraud, and to the enforcement of contracts, and so on; appears to be redistributive."<sup>183</sup>

In the Minimal state there is no central bank, no department of public works, no ministry for education, no instrument for welfare policy, and so on. All these and similar functions, which are assumed to be a proper task of the government will be undertaken by different private institutions, charities, religious bodies, all operating in a free market. Nozick advocates a system in which the role of the government is very limited. That is why he rejected any kind of state redistribution. According to him, taxation is equivalent to forced labor. "Taxation of earnings from labor is on a par with forced labor."<sup>184</sup> Concluding his discussion regarding the minimal state Nozick says:

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<sup>182</sup> Ibid., p. 149.

<sup>183</sup> Ibid., p. 26.

<sup>184</sup> Ibid., p.169.

The minimal state treats us as inviolate individuals, who may not be used in certain ways by others as means or tools or instruments or resources; it treats us as persons having individual rights with the dignity this constitutes. Treating us with respect by respecting our rights, it allows us, individually or with whom we choose, to choose our life, and to realize our ends and our cooperation of other individuals possessing the same dignity.<sup>185</sup>

### 6.4.3 Justice

What are the main reasons for Nozick's new theory of justice? We may distinguish two main reasons for its appearance. First reason was the existence of a welfare state which gave new directions to the debate on distributive justice, also suggesting the idea of a central authority controlling the allowance of all resources. Another reason is undoubtedly John Rawls's wonderful book *Theory of Justice*. Nozick himself praised this book saying, "Theory of Justice is a powerful, deep, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill, if then."<sup>186</sup>

Before any attempt to shortly present main ideas regarding Nozick's theory of justice, it will be necessary first to say in a few words something about Nozick's (libertarian) concept of ownership. Nozick holds that a person is the owner of himself and therefore his talent and natural abilities belonging only to him. If the person owns his talents then he owns the products of his self-owned talents. That is why a self-owned person has absolute rights over his property. Therefore in Nozick's case the right to property is one of three absolute rights. This right has not been given or created by the state legislator. Every one has inherited this right from the state of nature, and the state has no right to abolish or restrict this right in any case. On the basis of such reasoning, Nozick also invokes the right of non-aggression which prohibits sacrificing one person to

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<sup>185</sup> Ibid., 333-334.

<sup>186</sup> Ibid., 183.



benefit another." There is no justified sacrifice of some of us for others. This root idea, namely, that there are different individuals with separate lives and so no one may be sacrificed for others, underlies the existence of moral side constraints, but it also, I believe leads to a libertarian side constraint that prohibits aggression against another."<sup>187</sup>

The concept of justice presented by Robert Nozick was called by the author the Entitlement theory (a theory of the justice of possession). It contains three principles:

**The first principle:**

A principle of justice in initial acquisition explains how an individual can be the first appropriator of a good from nature." The first is the original acquisition of holdings, the appropriation of unheld things. This includes the issues of how unheld things may come to be held, the process, or processes, by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on."<sup>188</sup>

**The second principle:**

The second principle is called by Nozick a principle of transfer of holdings. He says:" Under this topic come general description of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society."<sup>189</sup>

**The third principle:**

The last principle is the principle of justice in rectification. In the case when one of the two above mentioned principles is violated, the correction of injustice should be applied. It should be noted here also that in his book Nozick did not give more details

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<sup>187</sup> Ibid., 33.

<sup>188</sup> Ibid., 150.

<sup>189</sup> Ibid.,

regarding the content of this principle. Avoiding to specify this principle, Nozick only describes its purpose saying:

This principle uses historical information about previous situations and injustices done in them... and information about the actual course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of holding in the society. The principle of rectification presumably will make use of its best estimate of subjunctive information about what would have occurred... if the injustice had not taken place. If the actual description of holdings turns out not to be one of the descriptions yielded by the principle, then one of the descriptions yielded must be realized.<sup>190</sup>

## **6.5 Freedom from Islamic Perspective**

The Western concept of freedom shows continuous tendency to change. Just a short time ago, something that was strongly prohibited and unthinkable to be allowed, has become a well recognized right today. Several reasons could be mentioned, but as a main reason we may see the secularization of Western societies, the separation between the state and religion, where religion has become a private affair. Morality has lost its original meaning, and is day by day showing its tendency towards a transformation, directed by those who consider themselves free from any legislator above themselves. Surely, from the Islamic perspective such an approach is completely unacceptable. The scope and limits of freedom in Islam have been determined by Almighty Allah alone. No one has the right to alter, the rights already granted by Almighty Allah, while things which are prohibited by Him, nobody has right to permit, except by His permission. My purpose here will be not to go into details regarding different kinds of freedom which have been granted by Almighty Allah, as already thousands of pages have been written

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<sup>190</sup> Ibid., 152-153.

about it. Therefore, there is no need to repeat same things. What I see as a need here is to try to bring up distinguished features related to the concept of freedom in Islam, the purpose of these freedoms and prohibitions granted by Almighty Allah, and finally the ultimate goal to be achieved by them.

Let us start our short presentation with some fundamental questions, related to freedom from the Islamic perspective. Can a person be free from God, Who is his Creator and Who has already predestined everything for him? Consequently, who is then supposed to determine our freedom, man by himself or the Creator of man and the Creator of his freedom?

Firstly, the freedom from God, from the Islamic perspective is simply impossible and at the same time a most undesirable thing for the believer. Almighty Allah did not only create us, but also predestined everything for us.

"He to Whom belongs the dominion of the heavens and the earth: no son has He begotten, nor has He a partner in His dominion: it is He Who created all things, and ordered them in due proportions."<sup>191</sup>

Our souls, Allah, the Most High have created a long time before the creation of our bodies. For our purpose here, there is no need to go into any further discussion regarding the issue of freewill and predestination (*Qadā' and Qadar*). Therefore, a believer in this world is basically separated from Almighty Allah, with a strong innate desire for a reunion with Him. It is one of the many reasons why our Prophet Muhammad (peace be upon him), called this world as a prison for the believer, and the paradise for the unbeliever.

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<sup>191</sup> The Holy Qur'ān, 25:2

Abu Huraira reported Allah's Messenger (may peace be upon him) as saying:

"The world is a prison-house for a believer and Paradise for a non-believer."<sup>192</sup>

Secondly, from the Islamic point of view, freedom is a gift from Almighty Allah. The kinds, a nature and a scope, of freedoms granted by Almighty Allah are in the best interest of a man, to whom this worldly life is only a means to achieve the full success in the hereafter. Therefore, freedom is only a tool for the final success in the Hereafter. Inventing some new kinds of freedoms which will be contrary to the Will of God, will only go against the interests of man, which has already been defined by Almighty Allah.

Thirdly, as a matter of fact, unlimited freedom has never been allowed and existed in any civilized society; and therefore the scope of freedom in Islam has also been limited by the rules of Islamic law. Most of the rights (lets not say all) recognized by modern Western jurisprudence, we find in Islamic law as well. The differences which exist between them are concerned with certain limitations related to a particular right. While in Islamic law these limitations are directed by Divine command with an unchangeable nature, in Western law they have been directed by human beings and vary from time to time. For our purpose here, let us give at least two examples.

#### **6.5.1 The Liberty of Conscientiousness**

Despite the fact that every child is born as a Muslim, and that belief is the most precious gift from Almighty Allah, the Liberty of conscientiousness has been granted to man.

"There is no compulsion in religion. The right direction is henceforth distinct from error. And he who rejecteth false deities and believeth in Allah hath grasped a firm handhold which will never break. Allah is Hearer, Knower."<sup>193</sup>

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<sup>192</sup> Imam Muslim, *Sahih Muslim*, Book 042, transl. Abdul Hamid Siddiqui, Hadith Number 7058 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/042.smt.html> (Last time visited on 15.11.2007).

<sup>193</sup> The Holy Qur'an, 2:256

"Say: (It is) the truth from the Lord of you (all). Then whosoever will, let him believe, and whosoever will, let him disbelieve."<sup>194</sup>

The liberty of conscientiousness in Islam has certain limitations, which is not the case in the modern Western legislation. It is true that Islam does not recognize any kind of compulsion in religion, but once when Islam has been willfully accepted, then changing of religion will have very serious consequences. Almighty Allah does not distribute only provision for us but an attributes as well.

The religion from the Islamic point of view is not something which depends on our will that we can earn or get, but it is a most precious gift from Almighty Allah, which must be preserved at any cost. It should be repeated again and again, that this kind of limitation, which has been ordered by the Divine authority, is in the best interest not only of the individual but of Islamic society as well and it is everlasting.

### **6.5.2 The Freedom of Expression in Islam**

From the Western point of view, freedom of expression practically means to say whatever you want, not bound by any kind of limitation. For our purpose here let us distinguish three basic principles related to the freedom of expression in Islam.

The first principle related to the freedom of expression in Islam demands from us two things: the first, telling the truth and the second, the prohibition of telling a lie. One of the blessed names of Almighty Allah is also the Truth (*Al-Haqq*). According to Imām Al-Ghazālī (may Allah be pleased with him), "Man's share in this name lies in seeing himself as false, and not seeing anything other than God-great and glorious-as true. For if a man is true, he is not true in himself but true in God-great and glorious, for he exists by virtue of Him and not in himself; indeed he would be nothing had the Truth not created

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<sup>194</sup> The Holy Qur'ān, 18:29

him."<sup>195</sup> No doubt that telling the truth has very significant importance. One of the main characteristics which distinguish a true believer (*mumin*) from the hypocrite is that a true believer will never lie as it has been stated by the Messenger of Allah (peace be upon him) in one tradition. Furthermore, telling the truth to the tyrannical ruler has been declared by the Prophet (peace be upon him), as the best form of *jihad*.

It has been narrated by Abu Sa'id al-Khudri that:

The Prophet (peace be upon him) said:" The best fighting (jihad) in the path of Allah is (to speak) a word of justice to an oppressive ruler."<sup>196</sup>

The second principle related to the freedom of expression in Islam states that whenever there is nothing good to be said, silence is strongly recommended. Silence is also recommended for a Muslim with regard to matters which do not directly concern him. Regarding this principle there are numerous *ahādith*, but for our purpose, only one will be mentioned here.

"He who believes in Allah and the Last Day does not harm his neighbor, and he who believes in Allah and the Last Day shows hospitality to his guest and he who believes in Allah and the Last Day speaks good or remains silent."<sup>197</sup>

The third principle is a general one and it is related to the restrictions imposed by Islamic law regarding the Freedom of expression. Whatever has been considered as an offense, based on the *hukm* from Almighty Allah, will remain unalterable forever. The

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<sup>195</sup> Al-Ghazālī, *The Ninety-Nine Beautiful Names of God*, translated with Notes by David B. Burrell and Nazih Daher, (Cambridge, The Islamic Texts Society, Reprinted 1997), 125.

<sup>196</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 37, transl. Prof. Ahmad Hasan, Hadith Number 4330 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/037.sat.html> (Last time visited on 15.11.2007).

<sup>197</sup> Imam Muslim, *Sahih Muslim*, Book 1, transl. Abdul Hamid Siddiqui, Hadith No. 76 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/001.smt.html#001.0076> (Last time visited on 15.11.2007).

common attribute of all these restrictions are that they are in the best interest of the individual and the society as a whole:

"Under the Sharī'ah, violation of the freedom of speech occurs either in the form of particular offenses, such as slanderous accusation (*qadhf*), blasphemy, sedition (*fitnah*), insult and cursing (*sabb, l'an*), attribution of lies, and disbelief to others (i.e. *iftirā'* and *takfīr*). It may also take the form of a contempt to, or a denial of, the accepted norms and principles of Islam, which may fall under the general headings of *kufr*, and heresy (*bid'ah*). Some of these are criminal offences and carry specific penalties, whereas others are not so well defined and often tend to invoke a moral condemnation only."<sup>198</sup>

As a conclusion we may quote an article 22 of Cairo Declaration on Human Rights in Islam which regulate the freedom of expression in Islam in general terms. It declares:

- "(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to principles of the Shari'ah.
- (b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.
- (c) Information is a vital necessity to Society. It may not be exploited or misused in such a way as may violate sanctity and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm Society or weaken its faith.
- (d) It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination."<sup>199</sup>

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<sup>198</sup> Mohammad Hashim Kamali, *Freedom of Expression in Islam*, (Kuala Lumpur, Berita Publishing SDN. BHD., 1994), p.161.

<sup>199</sup> <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm> (Last time visited on 31.11.2007).

Therefore, from the Islamic point of view, the full submission to Almighty Allah and His messenger (peace be upon him) is the greatest form of freedom which is required to be achieved. The achievement of this form of freedom is possible only through continuous struggle against our inner desires. With regard to this Almighty Allah says in the Holy Qur'ān,

"Hast thou seen him who maketh his desire his god, and Allah sendeth him astray purposely, and sealeth up his hearing and his heart, and setteth on his sight a covering? Then who will lead him after Allah (hath condemned him)? Will ye not then heed?"<sup>200</sup>

In his *al-Muwāfaqāt*, Imam Al-Shātībī considers the liberation of an individual from his desires, as the main objective of Islamic law. "The objective behind the Shari'ah is to liberate the individual from his desires in order to be a true slave of Allah and that is the legitimate *maslaha*."<sup>201</sup> Becoming a true slave of Almighty Allāh means to be free from everything except Allah, the Most High, and to enjoy full protection from Him. Imposing any kind of restriction on those who possess such high quality of freedom is completely meaningless and contra productive.

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<sup>200</sup> The Holy Qur'ān, 45:23.

<sup>201</sup> Quoted in Imran Ahsan Nyazee, *Theories of Islamic Law* (Islamabad: International Institute of Islamic Thought, 1994), 235.



## CHAPTER SEVEN

### **THEORIES COMBINING FREEDOM WITH EQUALITY**

To choose only one kind of approach, either equality or freedom, in attempt to define and solve the problems in a society related to Distributive justice, proved itself to be extremely difficult if not impossible. Therefore, the need for a new approach and formula emerged. The main characteristic of this new approach was to combine equality and freedom, and to come up with a new theory of distributive justice. Regarding this kind of approach two names are most prominent: William Sorley and John Rawls.

#### **7.1 William Sorley**

An initial idea, which combined freedom and equality, in its attempt to solve problems regarding issues of distributive justice, was first introduced by Scottish philosopher William Sorley. A discussion regarding justice, Sorley starts with a formal definition of justice, which defines it as giving each citizen his due. But to define what a citizen's due is remained undefined and undetermined, and here Sorley saw place for his new approach. His new approach was based on the concept of right, because to define and determine a citizen's due is only possible through mechanism of a right. Basically there are two kinds of rights in Sorley's theory. The first kind of rights which are defined by the legislator, and enforced by the state are called positive or legal rights. But besides these legal rights, there is a need for another kind of rights which are independent of the state legislator, and everlasting. These rights are completely independent of the will of a state legislator, having their very old historical undisputed background. And that is why Sorley says that: "A theory of what is called Natural Rights has thus been worked out in this connection. And it is characteristic of this theory that the rights claimed are held to

be independent of positive or historical enactment. <sup>202</sup> There is no agreement amongst philosophers about which rights are to be called Natural. Instead of making a long list of all these rights, Sorley classified them as follows:

First, a natural right which has been mentioned by him is the right of life, "...which is sometimes made to involve a right to work – and to have work provided for one – in order that life may be maintained; sometimes also, to include a right to happiness, in order that life may be worth maintaining." <sup>203</sup>

Second, another natural right is the right of property, which usually includes: "...the right to use one's property, to prevent others from using it, and to destroy it; and the right to alienate it whether by exchange, by gift, or by bequest." <sup>204</sup>

Third, another natural right is the right of freedom,

"...which has many meanings and applications: such as, in the first place, freedom of thought: to hold one's own opinion and to convince others of it by speech or print; in the second place, freedom of action, as in choosing one's business, in entering into contracts, and in employing one's leisure; in the third place, freedom of combination along with others for the achievement of any lawful purpose; in the fourth place, perhaps, freedom to resist oppression, that is, the right to rebel if the ruling power of society interferes with one's rights; and, in the fifth place, under the name of the franchise, a share in the government, or in electing representatives in the government, is regarded as the mark of a citizen of a free country." <sup>205</sup>

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<sup>202</sup> W.R.Sorley, *The Moral Life and Moral Worth*, (London, Cambridge University Press, 1911), 98.

<sup>203</sup> *Ibid.*, 99.

<sup>204</sup> *Ibid.*,

<sup>205</sup> *Ibid.*, 99-100.

The fourth natural right is: "...the right to have the contracts made with one fulfilled, and generally to Good Faith."<sup>206</sup>

The fifth and the last natural right is that of equality, which includes: "...in the first place, impartial treatment by the law, and, in the second place, impartial treatment in the distribution of the benefits of life."<sup>207</sup>

The full implementation of all these natural rights, in one society, at the same time, seems to be, if not impossible, then surely an extremely difficult task. The reason is that, if one natural right is fully implemented, then it will automatically lead to the restriction of another right.

"If we are to recognize an inherent or natural right to life, it can only be by making large restrictions upon the right to property; and if we are to establish a right to happiness, the problem is graver still, and indeed impossible of solution. Again, the right to have a contract fulfilled is itself a limitation of the abstract right to freedom, for it limits the freedom of one of the parties to the contract."<sup>208</sup>

The fallacy of the previous approaches regarding justice, according to Sorley, was that only one natural right has to be taken as a leading idea, while all other natural rights have to be subordinated to this one. In these approaches two leading natural rights were distinguishable, namely, Liberty and Equality." These are rival ideas. Yet the two always went together in older doctrines of natural rights. That all men were free and equal was a characteristic of the supposed state of nature, antecedent to every political constitution, which was a leading idea with medieval and many modern political philosophers."<sup>209</sup> While these two natural rights were regarded by many as rival, Sorley saw them as

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<sup>206</sup> Ibid., 100.

<sup>207</sup> Ibid.,

<sup>208</sup> Ibid.,

<sup>209</sup> Ibid., 101.

companions. A further step taken by William Sorley was a short analysis of both leading ideas with their main proponents. According to him no one completely succeeded in their attempts to define the satisfactory meaning of justice.

"Justice therefore, it would seem, cannot consist either in abstract freedom or in abstract equality. And the ideas are antagonistic. Equality is gained only by constant interferences with liberty. And liberty, conceived in this abstract fashion, has been shown to be hostile to the realization of equality: of real equality, of equality of opportunity, and even of equality before the law, wherever (as in this country) legal proceedings are expensive."<sup>210</sup>

Making a harmony between liberty and equality was a priority for Sorley in his attempt to frame a new approach regarding justice. As a conclusion, let us see according to Edgar Bodenheimer, which are William Sorley's basic maxims of social policy.

"The development and direction of human mental and physical powers by a system of universal education; providing such access to the materials and instruments of production as would give suitable employment to people; and creating physical and social surroundings which will aid, not hamper, individual development."<sup>211</sup>

## 7.2 John Rawls and his Theory of Justice

In the last century, the most significant and discussed work in the legal philosophy related to the distributive justice, was undoubtedly done by John Rawls in his book *A Theory of Justice*. The concept of justice, which has been presented by Rawls was called by the author as *Justice as Fairness*. "The main idea of justice as fairness, that the principles of justice are those that would be agreed to by rational persons in an original position of equality, prepares the way for extending the definition of good to the larger

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<sup>210</sup> Ibid., 110.

<sup>211</sup> Edgar Bodenheimer, *Jurisprudence*, (Harvard University Press, Third edition, 1978), 199.

questions of moral goodness."<sup>212</sup> The starting point from where the idea of justice as fairness emanates is a fair cooperation between equal and free members of the society. It has been made for a modern constitutional democracy, carefully isolated and balanced from different philosophical or religious doctrines. In one of his articles, written some fifteen years later, Rawls said:" One thing I failed to say in *A Theory of Justice*, or failed to stress sufficiently, is that justice as fairness is intended as a political conception of justice."<sup>213</sup> Regarding the aim of his theory Rawls was of the opinion that," The aim of justice as fairness as a political conception is practical, and not metaphysical or epistemological. That is, it presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons."<sup>214</sup>

The central feature of justice as fairness as a political conception is the priority of the right over the good. After a short introduction regarding the basic idea of what is meant by justice as fairness, let us proceed with our short presentation of the theory.

### 7.2.1 The Veil of Ignorance

The starting point in John Rawls' theory of justice is the original position. His concept of original position corresponds to the state of nature in the traditional social contract theory. His description of the original position does not differ much from the classical view. The main characteristic of the original position is that,"... the parties are situated behind a veil of ignorance."<sup>215</sup>: Describing the veil of ignorance and to which extent it is expounded Rawls says:

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<sup>212</sup>John Rawls, *A Theory Of Justice*,(Oxford: Clarendon Press, 1972), 438.

<sup>213</sup> John Rawls, Justice as Fairness: political not Metaphysical, *Philosophy and Public Affairs*, Vol. 14, No.3. (Summer, 1985), pp.223-251

<sup>214</sup> Ibid.,

<sup>215</sup> John Rawls, *A Theory Of Justice*,(Oxford: Clarendon Press, 1972), p.136.

First of all, no one knows his place in society, his class position to social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve. The persons in the original position have no information as to which generation they belong. These broader restrictions on knowledge are appropriate in part because questions of social justice arise between generations as well as within them, for example, the question of the appropriate rate of capital saving and of the conservation of natural resources and the environment of nature.<sup>216</sup>

In such a state of complete ignorance does anything remain to be known to the people who are living in such kind of a society? Rawls' answer on this question is positive saying: "... the only particular facts which the parties know is that their society is subject to the circumstances of justice and whatever this implies."<sup>217</sup>

### **7.2.2 Principles of Justice**

John Rawls considered a man in the original position as rational, having some kind of rational plan of life, but not giving us many details. Combining man's rationality and the knowledge of the circumstances related to justice, gives a man the ability that in cooperation with other members of that society frame principles of justice in the original position. Rawls made a distinction between the principles which apply to the institutions, and those which apply to the individuals in particular circumstances. A common

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<sup>216</sup> Ibid., 137.

<sup>217</sup> Ibid.,

characteristic for all these principles is that they are initially chosen in the original position. Lifting a veil of ignorance does not happen overnight, indeed that is a process which has its stages. Rawls did not claim that his principles of justice are the only just principles, saying that alternative just principles are also possible.

### 7.2.2.1 The Principles of Justice for Institutions

There are two principles of justice for institutions in Rawls' theory.

*First principle* says: " Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."<sup>218</sup>

*Second principle* says: " Social and economic inequalities are to be arranged so that they are both:

(a) to the greatest benefit of the least advantaged, consistent with the just saving principle, and

(b) attached to offices and positions open to all under conditions of fair equality of opportunity."<sup>219</sup>

*First principle*: The most significant principle related to the principles of justice for institution is that of freedom. For Rawls, it is crucial that the first principle has a priority compared to the second. A man desires to be free and exercising his freedom is deeply rooted in his nature. The question with which we are concerned here is what are the most significant freedoms chosen in the original position? In the original position personal freedom, freedom of conscience and thought are supposed to be agreed upon amongst the parties, and became fundamental freedoms. These freedoms will be the basis on which many other freedoms will be built, after a disappearance of the veil of ignorance, when the society from original position is transferred into the constitutional state. "While both sorts of freedom are deeply rooted in human aspirations, freedom of thought and liberty

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<sup>218</sup> Ibid., 302.

<sup>219</sup> Ibid

of conscience, freedom of the person and the civil liberties, ought not to be sacrificed to political liberty, for freedom to participate equally in political affairs."<sup>220</sup> One of the most significant kinds of freedom chosen in the original position is that of conscience and I will be mostly concerned with this kind of freedom. In the original position, according to Rawls, people are not aware, neither of their religion nor of any moral conventions, and therefore they do not have any concept related to religious or moral obligations. They are completely free to choose any religious, philosophical view or moral standards or even to create their own. Adopting a certain religion, even by the majority, does not give a right to suppress or limit another's right to freely choose and exercise whatever he wants to believe. If something like this happens then it will be directly against the freedom of conscience and the principle of equal liberty. The reason for such an approach is that religion, its principles and rules are a dogma for Rawls. Everybody is free to have his own understanding of religion and its rules. "Each person must insist upon an equal right to decide what his religious obligations are. He cannot give up this right to another person or institutional authority."<sup>221</sup> As a consequence of such reasoning a person is free to change his faith and his convictions. Any suppression or limitation of freedom based on religious principle was firmly rejected by Rawls.

By social contract people agree to enter a civil society where all these fundamental freedoms have to be guaranteed by the constitution. This principle will also be a source for another kind of freedom which a legislator is going to invent. The justice of the constitution, Rawls called a political justice. The principle of equal freedom will now be partially transformed into the principle of (equal) participation. "It requires that all citizens are to have an equal right to take part in, and to determine the outcome of, the

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<sup>220</sup> Ibid., 201.

<sup>221</sup> Ibid., 217.



constitutional process that establishes the laws with which they are to comply."<sup>222</sup> Political justice will create some political liberties as well, where certain limitations are supposed to be made by the legislator, for example in the case of the separation of powers, certain conditions which can be elected etc. My task here is not to go into these details. What I would like to be concerned about here are the limitations imposed on some intolerant sects. On this issue Rawls posed three questions. "First, there is the question whether an intolerant sect has any title to complain if it is not tolerated; second, under what conditions tolerant sects have a right not to tolerate those which are intolerant; and last, when they have the right not to tolerate them, for what ends it should be exercised."<sup>223</sup>

According to Rawls a liberty of conscience requires religious toleration in an organized society (state). The author rejects Thomas Aquinas' justification of the death penalty which Christianity prescribed for heretics. Reasoning upon which Aquinas based his opinion according to Rawls can not be commonly recognized. As mentioned above, for Rawls a religion is considered as a dogma where everyone should have their own understanding and judgment of religion, its duties and obligations. What to do with a religious man ( called intolerant by the author), who simply says that he is only following the commands prescribed by religion, not asking anything for himself that others may be deprived, fully convinced that he is following correct and right principles of his religion? Concluding his discussion related to the several questions just mentioned above, Rawls says:" The conclusion, then, is that while an intolerant sect does not itself have title to complain of intolerance, its freedom should be restricted only when the tolerant sincerely

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<sup>222</sup> Ibid., 221.

<sup>223</sup> Ibid., 217.

and with reason believe that their own security and that of the institutions of liberty are in danger. The tolerant should curb the intolerant only in this case."<sup>224</sup>

*Second principle:* The second principle of justice for institutions has its two parts. First part, called by John Rawls as a different principle, deals with the distribution of income and wealth. This distribution does not necessarily need to be equal. Unequal distribution will be preferable in the case when it will produce better life for the underprivileged. More than the formal equality, this principle stipulates that the most favored must be able to improve their situation only if one such improvement also benefits the most unprivileged. The corollary of this interpretation is the principle of difference: unless there is an uneven distribution which benefits all, an equal distribution must be preferred. One can, for example, tolerate that a contractor grows richer than the other individuals, if his activity also benefits the non-qualified workmen and the company in general. It should be noted here that a different principle can cause a decline in the living standard of the privileged individuals when the social structure becomes unjust.

The second part of the second principle contains the liberal principle of fair equality of opportunity.

"This means that in addition to maintaining the usual kinds of social overhead capital, the government tries to insure equal chance of education and culture for persons similarly endowed and motivated either by subsidizing private schools or by establishing a public school system. It also enforces and underwrites equality of opportunity in economic activities and in the free choice of occupation. This is achieved by policing the conduct of firms and private associations and by preventing the establishment of monopolistic restrictions and barriers to the more desirable positions. Finally, the government guarantees a social minimum either by family allowances and special payments for sickness

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<sup>224</sup> Ibid., 220.

and employment, or more systematically by such devices as a graded income supplement (a so-called negative income tax).<sup>225</sup>

In short, this principle states that all social positions as jobs must be open to all, and furthermore, that measures must be taken so individuals actually have equal opportunities for reaching those positions. As already mentioned, the second principle of justice has its two parts. Between these two parts, John Rawls made a priority rule as well, calling it as Second Priority Rule which states: "The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:

- (a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- (b) an excessive rate of saving must on balance mitigate the burden of those bearing this hardship."<sup>226</sup>

#### **7.2.2.2 The Principles of Natural Duty and Obligation That Apply to Individuals**

In Rawls' theory, the justice for individuals consists also of two principles: natural duties and obligations. As in the case of principles of justice for institutions, these principles are also chosen in the original position. As an explanation of why these principles are chosen in the original position Rawls says: "They are an essential part of a conception of right: they define our institutional ties and how we become bound to one another. The conception of justice as fairness is incomplete until these principles have been accounted for."<sup>227</sup> As an individual everyone has certain duties and obligations towards societies and its members. It is an interest of every one to cooperate and make

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<sup>225</sup> Ibid., 275

<sup>226</sup> Ibid., 302-303

<sup>227</sup> Ibid., 333

his life more prosperous and advanced. To analyze the nature and kinds of these duties and obligations will be our next task.

*Obligation:* Any understanding of Rawls' concept of obligation will be incomplete without first of all considering his principle of fairness. This principle states that a person is under obligation to obey the operating rules of an institution if the following two conditions are met. "*First*, the institution is just (fair), that is, it satisfies the two principles of justice, and *second*, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers one's interests."<sup>228</sup>

In Rawls' theory, contrary to the natural duties, "the content of obligations is always defined by an institution or practice the rules of which specify what it is that one is required to do."<sup>229</sup> It means that every obligation is defined and there should be no any ambiguity related to its content. Another distinguished feature, related to the obligations is that they are owed to a definitive personality, which is not the case when the natural duties are examined. In a democratic society those who are assuming any public post, having at the same time, an obligation towards their fellow citizens, which comes from the fact that they obtained a trust from the public for that particular public post. "Similarly, we assume obligations when we marry as well as when we accept positions of judicial, administrative, or other authority. We acquire obligations by promising and by tacit understanding, and even we join a game, namely, the obligation to play by the rules and to be a good sport."<sup>230</sup>

*Natural duties:* As already mentioned before natural duties originated from the original position without any dependency from the principle of fairness as was the case with the obligations. While the obligations are usually owed to definitive individuals, it is

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<sup>228</sup> Ibid., 111-112

<sup>229</sup> Ibid., 113

<sup>230</sup> Ibid

not a case with the natural duties which are necessarily related to all as equal moral persons. "A further feature of natural duties is that they hold between persons irrespective of their institutional relationships; they obtain between all as equal moral persons."<sup>231</sup>

There are several kinds of natural duties mentioned by John Rawls in his book. The first natural duty which is at the same time most important is the duty of justice. Let us see how the author defined this duty and its content. "From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves."<sup>232</sup>

Another natural duty which not only deserves to be mentioned but to be elaborated as well is the duty of mutual respect. After the duty of justice, this kind of duty seems to be the most significant in Rawls' theory. What are the ways in which the duty of mutual respect should be shown? Regarding this question Rawls has given the following answer: "Mutual respect is shown in several ways: in our willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected."<sup>233</sup>

Next kind of natural duty mentioned by the author was the duty of mutual aid. The reason why Rawls chosen this kind of duty in his theory has been explained by Immanuel Kant, who made a very significant influence on John Rawls. Rawls says: "Kant suggests, and others have followed him here, that the ground for proposing this duty is that

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<sup>231</sup> Ibid., 115

<sup>232</sup> Ibid

<sup>233</sup> Ibid., 337

situations may arise in which we will need the help of others, and not to acknowledge this principle is to deprive ourselves of their assistance."<sup>234</sup> Finally, two more natural duties deserve to be mentioned here, and they are:" the duty not to harm or injure another; and the duty not to inflict unnecessary suffering."<sup>235</sup>

Rawls made a distinction between positive and negative duty. While positive duty requires something good to be done, like in the case of the duty of mutual aid, negative duty requires something not to be done. Due to this reason such an act has been considered a bad action. A duty not to harm or injure others may be cited as an example for negative duty. In the case when it is required to decide which kind of duty to give a greater weight, priority according to Rawls has to be given to the negative duty.

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<sup>234</sup> Ibid., 338

<sup>235</sup> Ibid., 114

**PART TWO:**

**DISTRIBUTIVE JUSTICE IN ISLAM**

## Chapter Eight:

### The Meaning, Scope, and Sources of Distributive Justice in Islam

#### 8.1 The Meaning of Justice in Islam

The most common word used in an Arabic language for a justice is *Al-Adl*<sup>236</sup>, which literally has a several meanings, like justice, fairness, equality, impartiality, etc. In the Holy Qur'ān there are several words which in one way or the other talking about justice. Each of these words again may have also several meanings. "*Adl* and *Qist* can be

<sup>236</sup> *عدل* " *Equality, justice, or rectitude*; cont. of جور; (S,O, Msb, K, TA;) i.e. i.q. قصد, in affairs; (Msb;) and قسط; (S,M,Mgh, &c, in art. قسط; ) and تنسوية; (O, K;) and استقامة; (I Aar, K;) and a *thing that is established in the minds as being right*; (K, TA;) as also معلة (S, Msb, K) and عدالة and عدولة: (K : ) or, as some say, it is the *mean between excess and falling short*: and Er-Rāghib says, it is of two sorts: one is *absolute, such that reason requires the inference of its goodness*; and this will not at any time be abrogated, nor described as a mode of transgression; as the doing good to him who does good to thee, and the abstaining from harming him who abstains from harming thee: and the other is *such as is known to be by the law*; and this may be abrogated sometimes; as retaliation, and fines for wounds and maimings, and the taking the property of the apostate; and this is what is meant by the saying in the Kur [xvi. 92], ان الله يامر بالعدل والاحسان, i.e. [ *Verily God comandeth* ] *equality in recompensing, if good, with good, and if evil, with evil, and the requiting of good with more good, and of evil with less evil*: [ see also 4 in art. حست ] and he says of عدالة and معلة, that each is a term requiring the inference of equality, and is used with a regard to correlation. (T.A.) One says, بسط الوالى عدله and عدلته (S,O) [ *The governor, or ruler, largely extended his equity, or justice* ] And عدل من اهل المعلة (S,) or المعلة (O,) i.e. [ *Such a one is of the people of equity, &c.* ]. (S,O.) و أشهدوا نوى عدل منكم (S,O.) in the Kur [lxv. 2], is used by Sa'eed Ibn-El-Museiyib to mean نوى عقل [ i.e. *And make ye to be witnesses two persons of intelligence from among you*: but this rendering I think questionable ]. (TA.) – Also *Repayment, requital, compensation, or recompense*. (K.) – And *Ransom*, (S, O, Msb, K, TA,) when regard is had therein to the meaning of equality, or equivalence. (TA.) This is [ said to be ] the meaning in the phrase of the Kur [ v. 96 ], و عدل ذلك صياما, [ *Or the ransom thereof by fasting*: but this is generally expl. as meaning *or the like thereof of fasting*; ( see عدل ; ) i.e., in lieu of feeding a number of poor men, one shall fast the like number of days ]. (S, O.) And so [ according to some ] in the saying, occurring in a trade, لا يقبل منه صرف ولا عدل [ *of which see various explanations ( including three renderings here following) in art. صرف* ]. – And *Measure*; syn. كيل (K.) So in the phrase اعطاه بالعدل [ *He gave him by measure* ]. (T.K.) – And *An obligatory act or divine ordinance*. ( En-Nadr, O.K.) – And *A supererogatory act*. (O.K.) = *Also One who acts equitably, justly, or rightly*; and so عادل: (K, TA or the latter signifies thus: (S,O and the former [ particularly ] signifies a man *approved and satisfactory in testimony*; originally an inf. N.; (S, O, TA;) whose testimony is approved and available; (Msb;) a man whose testimony is allowable, or legally admissible, as also عادل; a man whose saying, and whose judgment, or judicial decision, are approved; and, according to Ibrāheem, one from whom a thing occasioning doubt, or suspicion, or evil opinion, has not appeared: being originally an inf. N., it means نوى عدل: or, according to IJ, it is an intensive epithet, as though meaning *possessing every kind of عدل* ". (EDWARD WILLIAM LANE, ARABIC-ENGLISH LEXICON, LIBRAIRIE DU LIBAN, Riad el-Solh Square, Beirut – Lebanon, 1968, Part 5, page 1974).



used to speak of justice as equitable action but justice can also be defined as correct or truthful action, in which case *sidq* or *haqq* may be used. Metaphors such as the balance (*mīzān*), inheritance shares (*nasīb*) and even brotherhood can describe the underlying principles of justice."<sup>237</sup> In our attempt to present and analyze Islamic concept of distributive justice we will frequently come back to these terms and deal with them in much more details.

Islamic concept of distributive justice is purely of Divine origin, and therefore completely depends on the *hukm* from Almighty Allah. In Islam non-obedience to the Divine command is the main source of injustice. Therefore, to get a clearer picture what exactly means by justice, it will be also necessary to see the meaning of injustice from the perspective of Holy Qur'ān "The usual word for injustice in the *Qur'ān* is *zulm*, which has the sense of stepping beyond the boundaries of right action, specifically, a *zālimi* one who does wrong to others or to himself. But human injustice can also be expressed in the larger sense of sinning, opposing God, or ascribing partners to God, for which there are many terms, such as *fahshā'* and *baghy*."<sup>238</sup> Therefore, proper understanding of wrong action from Islamic perspective is very much required.

According to Imam Ibn Taymiya (may Allah be pleased with him):

Wrong is of two kinds: neglect of right, and transgressing the limit. The former is failure to perform what is due to another, such as failure to settle debts, or to discharge other trusts and financial obligation. The second is aggressive conduct, like murder and seizing property. Both constitute wrong. This is why the Prophet, on him be peace, said in generally accepted Tradition: 'Delay in payment by the wealthy is a wrong, and if one of you prosecutes a man who is

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<sup>237</sup> Jane Dammen McAuliffe, ed., *Encyclopedia of the Qur'ān*, (Brill, Leiden-Boston 2003) Volume3, J-O, page 69.

<sup>238</sup> *Ibid.*,

solvent he may do so.' Thus he makes it wrong to procrastinate, that is, to delay payment when able to pay.<sup>239</sup>

The definition of justice is therefore based on the fulfillment of all these prescribed Divine duties. Accordingly, Imam Ibn Taymiya (may Allah be pleased with him) concluded that:

This is generally self-evident, unanimously accepted by all the Muslims: that justice may consist in fulfilling an obligation, or in avoiding something unlawful, or in combination of the two; and that injustice also may consist in neglecting an obligation, or in doing something unlawful, or in a combination of the two. This being well known, it is also common knowledge that justice and injustice may affect a person himself, and may affect the rights of others; as mentioned previously, where I explained that all good deeds are included in justice, and all bad deeds are included in injustice.<sup>240</sup>

Imam Al-Ghazzali (may Allah be pleased with him) did not differ from Imam Ibn Taymiya in his approach towards the justice. According to him justice means to give everybody his due while the administration of justice is a part of worship.

One fourth of worship consists in the administration of justice, i.e. *giving every man his due*. Many people entrapped into ambition and worldly gain are divided and have degenerated to such an extent that many of their acts and deeds are not only repulsive and repugnant to Islam, but are indeed flagrant violation of its basic tenets. Something must be done before the wrath of God seizes them. Though the knowledge of the laws relating to the administration of justice among men is indispensable, yet it is quite insignificant when compared with the

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<sup>239</sup> Imām Ibn Taymīa, *Public Duties in Islam*, transl. Muhtar Holland: (Leicester: The Islamic Foundation, 1982), 128-129.

<sup>240</sup> *Ibid.*, 129.

knowledge of Divinity, which lights our way to heaven and revives our spirit by its rich fragrance.<sup>241</sup>

On the same way, the justice was defined even by Hadrat 'Alī ibn Talib (may Allah be pleased with him). Reza Shah-Kazemi in his book *Justice and Remembrance*, introducing the Spirituality of Imam 'Alī says:

This duty to give what is due to each and every being relates to the most explicit definition of justice given by Imam: 'Justice puts everything in its right place.' One is 'just' insofar as one gives everything its proper due, renders the *haqq* due to each person, indeed to each and every thing in existence; and the ability to be 'just' in this demanding and universal manner is enhanced in the measure that one is attuned to *al-Haqq*, the Real.<sup>242</sup>

As a conclusion here, we may say that the scope of a distribution justice in Islam is very wide and covers almost every aspect of the human life. The discussion has nearly shown that its principles are a universal and unchangeable, ordered by Almighty Allah to be followed and implemented. The scope of Distributive justice in Islam has been determined by Divine rights and obligations prescribed by Almighty Allah. It has been reported that the Apostle of Allah (peace be upon him) said:

Allah, Most Exalted, has appointed for everyone who has a right what is due to him, and no will be made to an heir, and women should not spend anything from her house except with the permission of her husband. He was asked: Even food grain, Apostle of Allah? He replied: that is the best of our property. He than said:

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<sup>241</sup> Letters of Al-Ghazali, translated by Abdul Qayyum, (New Delhi: Kitab Bhavan, 1992), 98.

<sup>242</sup> Reza Shah-Kazmi, *Justice and Remembrance*, *Introducing the Spirituality of Imam 'Alī* (London: The Institute of Ismaili Studies, 2006), 77.

A loan must be paid back, a she-camel lent for a time for milking must be returned, a debt must be discharged, one who stands surety is held responsible.<sup>243</sup>

## 8.2 The primary Sources of Distributive Justice in Islam

The primary sources in Islamic law are the Holy Qur'ān and the Sunna of the Prophet Muhammad (peace be upon him). The basic principle related to the Islamic law says that the *hukm* belongs to Almighty Allah alone, as it is stated in The Holy Qur'ān:

"Say: I am (relying) on clear proof from my Lord while ye deny Him. I have not that for which ye are impatient. The hukm belongs to Allah alone. He telleth the truth and He is the Best of Deciders."<sup>244</sup>

The same principle is the pillar on which complete system of Distributive justice in Islam relies. To decide what is just and what is not, or to make a distinction between what is good and what is not, belongs only to *Al-Hakam* (the Arbitrator), Who is Omniscient, the Creator of everything, but himself not created. Almighty Allah says in the Holy Qur'ān, that sometimes something may look good for us, but in reality it is not, or vice versa.

"Warfare is ordained for you, though it is hateful unto you; but it may happen that ye hate a thing which is good for you, and it may happen that ye love a thing which is bad for you. Allah knoweth, ye know not."<sup>245</sup>

Along with the Holy Qur'ān, the Sunna of the Holy Prophet Muhammad (peace be upon him) is also considered as a primary source from where we have to derive Islamic principles related to the Distributive justice. As the Prophetic sayings are of Divine

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<sup>243</sup> Imam Abu Dawus, *Sunan Abu Dawud*, Book 17, transl. Ahmad Hasan, Hadith Number 3558  
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/023.sat.html> (Last time visited on 31.11.2007).

<sup>244</sup> The Holy Qur'ān, 6:57

<sup>245</sup> The Holy Qur'ān, 2:216

origin, there is no need of further distinction between these two primary sources. The only difference between them is that the Holy Qur'ān is considered as written revelation, while the Sunna of the Holy Prophet Muhammad (peace be upon him) belonging to another kind so called the unwritten revelation. Accordingly, it is related, that the Holy Prophet (peace be upon him) said:

The Qur'ān is hard and difficult for anyone who hates it. It is judgment. Whoever cling to what I say and understands it and retains it, than it will be like the Qur'ān for him. Whoever considers the Qur'ān and what I say unimportant and neglects it loses this world and the Next. My community is commanded to take my words and obey my command and follow my Sunna. Whoever is pleased with my words is pleased with the Qur'ān. Allah says, 'Take what the Messenger brings you.'<sup>246</sup>

The Prophet Muhammad (peace be upon him) is the best interpreter of the Holy Qur'ān, who fully on the best possible way not only interpreted but also implemented its rules. The Guidance from Almighty Allah was all the time with him, which made him infallible and most just of all the Prophets (peace be upon them) throughout his entire mission.

It has been narrated by 'Abdullah: "On the day (of the battle) of Hunain, Allah's Apostle favored some people in the distribution of the booty (to the exclusion of others); he gave Al-Aqra' bin Haris one-hundred camels and he gave 'Uyaina the same amount, and also gave to some of the eminent Arabs, giving them preference in this regard. Then a person came and said; 'By Allah, in this distribution justice has not been observed, nor has Allah's PLEASURE been aimed at.' I said to him, 'By Allah, I will inform the Prophet (of what you said). I went and informed him, and he said: 'If Allah, and His Apostle did not act justly,

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<sup>246</sup> Qadi 'Iyad ibn Musa al-Yahsubi, *Ash-Shifa of Qadi 'Iyad*, transl. Aisha Abdarrahman Bewley, (Granada, Madinah press, First edition 1991), 218.

who else would act justly. May Allah be merciful to Moses, for he was harmed with more than this, yet he kept patient.<sup>247</sup>

Therefore the full obedience to the Holy Prophet (peace be upon him) has been ordered by Almighty Allah as only possible way for our salvation, which is related not only for the hereafter but for this worldly life as well.

### 8.3 Justice as an Attribute of Almighty Allah

One of the blessed names of Almighty Allah is The Just (Al-Adl), whose word is perfect in veracity and justice. With regard to that Almighty Allah says:

"Perfected is the Word of thy Lord in truth and justice. There is naught that can change His words. He is the Hearer, the Knower."<sup>248</sup>

Imam Al-Ghazālī (may Almighty Allah be pleased with him) says that Divine justice implies that in the universe all things are in exact proportion and in the correct place and situation, as they should be, nothing is amiss.

So whoever wants to understand this attribute must comprehend the action of God most high from the kingdoms of the heavens to the ends of the earth, to the point where one does not notice *any fault in the creation of the infinitely good One*, and turns again and sees no rifts in it, yet turns one more time only *to have his sight become weak and dulled*; for the beauty of divine presence has overwhelmed him and bewildered him its harmony and its regularity: for such a man, something of the meaning of His justice-the most high and holy One-clings to his understanding.<sup>249</sup>

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<sup>247</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 4, Book 53, transl. M. Muhsin Khan, Hadith No.378. <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/053.sbt.html> (Last time visited on 15.12.2007).

<sup>248</sup> The Holy Qur'ān, 6:115

<sup>249</sup> Al-Ghazālī, *The Ninety-Nine Beautiful Names of God*, translated with Notes by David B. Burrell and Nazih Daher, (Cambridge: The Islamic Texts Society, Reprinted 1997), 92-93.

Beside the fact that Almighty Allah wanted to be worshiped alone and to be known as well, one of the main objective of the creation of the universe was primarily to uphold justice and truth. From the following verses of the Holy Qur'ān it will be very easy to recognize this well-known fact.

"We created not the heavens and the earth and all that is between them save with truth, and lo!."<sup>250</sup>

"And We created not the heavens and the earth, and all that is between them, in play.

We created them not save with truth; but most of them know not"<sup>251</sup>

"He is who appointed the sun a splendor and the moon a light, and measured for her stages, that ye might know the number of the years, and the reckoning. Allah created not (all) that save in truth. He detaileth the revelation for people who have knowledge."<sup>252</sup>

Almighty Allah told us that He created sons of Adam as different nations and tribes only so that they are easily identified and recognized, but the best of them in the sight of Allah are those who are most God-fearing. There is no superiority over a race or an origin. It is their deeds and intentions alone which makes them superior in the sight of Allah, Most Glorious.

"O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! The noblest of you, in the sight of Allah, is (he who is) the most God-fearing of you. Lo! Allah is Knower, Aware."<sup>253</sup>

To every nation Almighty Allah sent His messengers, and through them He established truth and justice. There was no a nation to whom a messenger was not sent. Everyone will be responsible only for his own deeds, and no one will take a

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<sup>250</sup> The Holy Qur'ān, 15:85

<sup>251</sup> The Holy Qur'ān, 44:38,39

<sup>252</sup> The Holy Qur'ān, 10:5

<sup>253</sup> The Holy Qur'ān, 49:13

responsibilities for others. Allah, the Most Just also will never punish any people, until He send a messenger to them, who called them to the right path and obedience to Him. In regard to that Almighty Allah says:

"And to every nation there is a messenger. And when their messenger cometh, the matter will be judged between them with justice, and they will not be wronged."<sup>254</sup>

"Whosoever goeth right, it is only for (the good of) his own soul that he goeth right, and whosoever erreth, erreth only to its hurt. No laden soul can bear another's load. We never punish until We have sent a messenger."<sup>255</sup>

"Say: Shall I seek another than Allah for Lord, when He is Lord of all things? Each soul earneth only on its own account, nor doth any laden bear another's load. Then unto your Lord is your return and He will tell you that wherein ye differed."<sup>256</sup>

Surely, someone may ask, why even the Prophets (peace be upon them), and God-fearing people are imposed on so many difficulties and a hardships, and how then is Almighty Allah just towards them? The reason is that, Almighty Allah tests the believers in different ways, to show those who are steadfast His way.<sup>257</sup> It is not a punishment at all for them from Almighty Allah, but the way to the Paradise which Allah, the Most High promised for His faithful servants. With regard to that Almighty Allah says in the Holy Qur'ān:

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<sup>254</sup> The Holy Qur'ān, 10:47

<sup>255</sup> The Holy Qur'ān, 17:15

<sup>256</sup> The Holy Qur'ān, 6:164

<sup>257</sup> In regard to that, Hazrat Abdul Qadir Jilani, in his book *Revelation of the Unseen*, says: "It is a practice of God to try His believing servant in proportion to his faith. Thus if a person's faith is great and immense, his trial is also great. Thus the trial of a *Resul* is greater than that of a *Nabi*, because his faith is greater than that of the latter. And the trial of the *Nabi* is greater than that of a *Badal (Abdal)*. And the trial of a *Badal* is greater than that of a *Wali*. Everyone is tried according to his faith and certainty. And the authority for this lies in a saying of the Holy Prophet (peace be upon him) : '*Verily we the community of Prophets are most tried of all people.*'" p. 71-72.



"And surely We shall try you with something of fear and hunger, and loss of wealth and lives and crops; but give glad tidings to the steadfast.

Who say, when a misfortune striketh them: Lo! we are Allah's and lo! unto Him we are returning.

Such are they on whom are blessings from their Lord, and mercy. Such are the rightly guided."<sup>258</sup>

"Or think ye that ye will enter paradise while yet there hath not come unto you the like of (that which came to) those who passed away before you? Affliction and adversity befell them, they were shaken as with earthquake, till the messenger (of Allah) and those who believed along with him said: When cometh Allah's help? Now surely Allah's help is nigh."<sup>259</sup>

Complete justice has been promised by Almighty Allah to all of his creatures, with absolute denial of any kind of injustice from His side. He does not treat His creatures without justice, nor does He rule them unfairly or cruelly. It is the people themselves who wrong themselves, and Allah, the Most High, do not wrong to anybody. Furthermore, He is against those who does wrong and therefore do not like them. In regard to all these facts mentioned above, Almighty Allah says:

"Lo! Allah wrongeth not even of the weight of an ant, and if there is a good deed, He will double it and give (the doer) from His presence an immense reward."<sup>260</sup>

"Lo! Allah wronheth not mankind in aught, but mankind wrong themselves."<sup>261</sup>

"And as for those who believe and do good works, He will pay them their wages in full. Allah loveth not wrongdoers."<sup>262</sup>

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<sup>258</sup> The Holy Qur'ān, 2:155-157

<sup>259</sup> The Holy Qur'ān, 2: 214

<sup>260</sup> The Holy Qur'ān, 4:40

<sup>261</sup> The Holy Qur'ān, 10:44

Finally, on the Day of Judgment, when the perfect scales of justice will be set up, any good or bad deed done by a person will be recorded and presented with reward and punishment to the justice of Almighty Allah.

"And We set a just balance for the day of resurrection so that no soul is wronged in aught. Though it be of the weight of a grain of mustard seed, We bring it. And We suffice for reckoners."<sup>263</sup>

Another attribute of Almighty Allah which is most closely related to Islamic concept of Distributive justice is The Provider (*Al-Razzāq*). Giving his explanation, Imam Al-Ghazali says:

Al- Razzāq – the Provider – is the One who created the means of sustenance as well as those who are sustained, and who conveys the means to the creatures as well as creating for them the ways of enjoying them. Sustenance is of two kinds: outward, consisting of nourishment and food, which is for the sake of what is outward, namely the body. Inward consisting of things known and things revealed, and that is directed to our hearts and inmost parts. This latter is the higher of the two modes of sustenance, for its fruit is eternal life; while the fruit of external sustenance is bodily strength for a short period of time. God – Great and Glorious – Himself attends to crating the two modes of sustenance and is graciously disposed to convey both kinds, but *He extends sustenance to whomever he wills and decrees (XLII: 12).*<sup>264</sup>

Can a man be honored with a share of this attribute? Answer which has been given by Imam Al-Ghazālī (may Almighty Allah be pleased with him) is positive. Therefore, he says:

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<sup>262</sup> The Holy Qur'ān, 3:57

<sup>263</sup> The Holy Qur'ān, 21:47

<sup>264</sup> Al-Ghazālī, *The Ninety-Nine Beautiful Names of God*, translated with Notes by David B. Burrell and Nazih Daher, (Cambridge, The Islamic Texts Society, Reprinted 1997), 78.

For when God loves someone, then He makes creatures need that person more; and to the extent that he becomes an intermediary between God and man in enabling sustenance to reach them, will he acquire a share in this attribute. The Messenger of God – may God's blessing and peace be upon him – said: 'the faithful steward who happily gives what he is ordered to is himself one of the almsgivers.' Now the hands of men are the storehouses of God, Most High, so the one whose hand is made a storehouse for bodily sustenance, and his speech a storehouse of sustenance for hearts, has been honored with a share of this attribute.<sup>265</sup>

In a conclusion, we may say that the perfection of God's justice, which is infinitive and manifested in everything, whatever He has been created is only known to Him. Consequently, a man's share in this kind of knowledge very limited and fully depends of Almighty Allah's Will. Therefore, I most humbly ask Almighty Allah to give me and increased my knowledge regarding His justice, not claiming at the same time possession of any knowledge with regarded to that.

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<sup>265</sup> Ibid., p. 79

## CHAPTER NINE

### THE PRINCIPLES OF DISTRIBUTIVE JUSTICE IN ISLAM

We have already seen in the first part of the thesis some Western approaches regarding principles of distributive justice. Some of these principles had a Divine origin. From Islamic point of view each principle must be derived from the *hukm* of Almighty Allah. These principles are based on different prescribed duties imposed by Almighty Allah on us. How these duties to be performed, as a best and an ideal example we have in our beloved Prophet Muhammad (peace be upon him), who has been sent as a mercy for all the worlds.

In Islamic society everybody gets some kind of responsibility for which he will be questioned.

It has been narrated on the authority of 'Ibn 'Umar that the Holy Prophet (peace be upon him) said: 'Beware, every one of you is a shepherd and every one is answerable with regard to his flock. The Caliph is a shepherd over the people and shall be questioned about his subjects (as to how he conducted their affairs). A man is a guardian over the members of his family and shall be questioned about them (as to how he looked after their physical and moral well-being). A woman is a guardian over the household of her husband and his children and shall be questioned about them (as to how she managed the household and brought up the children). A slave is a guardian over the property of his master and shall be questioned about it (as to how he safeguarded his trust). Beware; every one of you shall be questioned with regard to his trust.'<sup>266</sup>

Regarding the principles of distributive justice in Islam, which are found in the Qur'ān and the *Sunna*, generally, three sets of principles are distinguishable. First, a principle of justice which are related to the relationship between Almighty Allah and His

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<sup>266</sup> Imam Muslim, *Sahīh Muslim*, Book 20, transl. Abdul Hamid Siddiqui, Hadith No. 4496 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/020.smt.html> (Last time visited on 15.12.2007).

servant, a second, a principles of justice related to the relationship between a servant of Almighty Allah and his surroundings, and a third, a principles of justice related to the relationship between the *Khalifa* (the head of an Islamic state) and the members of Islamic society.

### **9.1 Principles of Justice Related to the Relationship between Almighty Allah and His Servant**

The first set of principles is related to the duties of the man towards Almighty Allah.

The duties of the *sharī'a* which are Rights of God are of three types: matters of worship, like Prayer, the alms-tax and fasting; punishments, whether fixed or discretionary; and expiation. Each of these groups is again subdivided into physical, financial and composite. Physical acts of worship are, for instance, Prayer and fasting. The alms-tax is an example of the financial kind. The composite is represented by the Pilgrimage. Examples of the three types of expiation are: feeding the poor (financial); fasting (physical); donation of a sacrificial animal (composite). The physical type of punishment includes killing and amputation; an instance of the financial is provided by the destruction of wine-containers; and two examples of the composite sort are the flogging of the thief who steal from an unguarded place plus the imposition of a double fine upon him, and the killing of infidels plus the seizure of their property.<sup>267</sup>

The questions which one may ask are: why are these duties imposed on us, and what is their relationship with justice? Is Almighty Allah in need of anything from us? Are all these duties for the benefit of the man? Our answer regarding the first and last question is that the performance of all these kinds of duties are in direct interest and benefit of the individual, for which he will not only be rewarded in this world but in the hereafter as well. No doubt that Almighty Allah is not in need of anything from us, but

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<sup>267</sup> Imām Ibn Taymīa, *Public Duties in Islam*, transl. Muhtar Holland, (Leicester: The Islamic Foundation, 1982), 64.

we are in dire need of everything from Him. Therefore, to achieve different needs we have to fulfill our duties towards Almighty Allah. There are several purposes to be achieved by the performance of duties towards Almighty Allah, and one of them is surely the justice towards oneself. According to Imām Ghazali (may Almighty Allah be pleased with him),

To be just to one's own soul means to be purified of all the inner impurities including low desires: anger, lust, hatred, greed, pride and revenge etc. Take pity on your soul and be kind to it and bring into use all the instruments for service of your Lord and surrender whatever is to Him. You should show an almost insane hostility to yourself, and ride on your animal self and after disciplining it, traverse on its back the paths of safety. The moment you do this, you will feel the first divine illumination and you will acquire the immediate knowledge of God, which is the highest thing which a man can attain. The Prophet (peace be upon him) said: *"Had not the devils misled men, the letter would have held sway over the kingdom of heaven."*<sup>268</sup>

Not denying the importance of duty towards Almighty Allah, three most important principles related to the Islamic concept of justice can be derived. The first principle is related to piety, the second principle demands that a judgment be done only according the *hukm* from Almighty Allah, and the third principle demands full sincerity in our deeds towards Almighty Allah.

### 9.1.1 Piety

The ability to distinguish between a right and a wrong has been given by Almighty Allah to those who most fear Him. Therefore, the piety is considered as the most essential way to achieve this kind of Divine guidance. It has been considered as the first

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<sup>268</sup> *Letters of Al-Ghazali*, translated by Abdul Qayyum (New Delhi: Kitab Bhavan, 1992), 65.

and foremost duty towards Almighty Allah in the process of acquiring knowledge necessarily for the administration of justice. With regard to that has been stated in the Holy Qur'ān:

"O you who believe! If you keep fearing Allah, He will grant you the power of distinction (between right and wrong) and remove from you your sins and forgive you. And verily Allah is the Lord of Mighty Grace."<sup>269</sup>

Even in the case of non-availability of certain religious knowledge concerning particular judgments, it is a piety which can help a *mumin* to receive a Divine guidance from Almighty Allah. As a proof of this, we can take the following tradition, in which Hazrat 'Ali ibn Abi Talib (may Allah be pleased with him) was sent by the Prophet (peace be upon him) to be a judge in Yemen, when he made a complaint of his young age, and not enough knowledge required for the post of judge. It has been narrated by Hazrat 'Ali ibn Abi Talib (may Allah be pleased with him) that he said:

The Apostle of Allah (peace be upon him) sent me to the Yemen as judge, and I asked: 'Apostle of Allah, are you sending me when I am young and have no knowledge of the duties of a judge?' he replied: "Allah will guide your heart and keep your tongue true. When two litigants sit in front of you, do not decide till you hear what the other has to say as you heard what the first had to say; for it is best that you should have a clear idea of the best decision." He said: 'I had been a judge (for long); or he said (the narrator is doubtful): I have no doubts about a decision afterwards.'<sup>270</sup>

### 9.1.2 To judge only according to the *hukm* from Almighty Allah

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<sup>269</sup> The Holy Qur'ān, 8:29

<sup>270</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 24, transl. Prof. Ahmad Hasan, Hadith Number 3575 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/024.sat.html> (Last time visited on 15.12.2007).

The second duty related towards the Almighty Allah is to give a judgment only according to His command. This kind of knowledge has to be acquired, either from the Holy Qur'ān or the Sunnah of the Holy Prophet (peace be upon him). For those who do not judge according to what has been revealed by Almighty Allah there is a stern warning from Almighty Allah, and for our purpose following three verses<sup>271</sup> from the Holy Qur'ān can be mentioned:

"And whosoever does not judge by what Allāh has revealed, such are the disbelievers."<sup>272</sup>

"And whose does not judge by that (Book) which Allah has sent down, it is those who are the unjust."<sup>273</sup>

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<sup>271</sup>"Imām Ahmad recorded that Ibn 'Abbās said, 'Allāh sent down the *Āyāt*, '***And whosoever does not judge by what Allāh has revealed, such are the disbelievers***', '***Such are the unjust***', and '***Such are the rebellious***'. about two groups among the Jews. During the time of *Jāhiliyyah*, one of them had defeated the other. As a result, they made a treaty that they would pay blood money totaling fifty *Wasaq* [of gold] (each *Wasaq* approx. 3 kg) for every dead person from the defeated group killed by the victors, and a hundred *Waqas* for every dead person the defeated group killed from the victors. This treaty remained in effect until the Prophet (peace be upon him) came to Al-Madīnah and both of these groups became subservient under the Prophet (peace be upon him). Yet, when the mighty group once suffered a casualty at the hands of the weaker group, the mighty group sent a delegation demanding the hundred *Wasaq*. The weaker group said, 'How can two groups who have the same religion, one ancestral lineage and a common land, have a *Diyah* that for some of them half of that of the others? We only agreed to this because you oppressed us and because we feared you. Now that Muhammad has come, we will not give you what you asked.' So war was almost rekindled between them, but they agreed to seek Muhammad's judgment in their dispute. The mighty group among them said [among themselves], 'By Allah! Muhammad will never give you double the *Diyah* that you pay to them compared to what they pay to you. They have said the truth anyway, for they only gave us this amount because we oppressed and overpowered them. Therefore, send someone to Muhammad who will sense what his judgment will be. If he agrees to give you what you demand, accept his judgment, and if he does not give you what you seek, do not refer to him for judgment.' So they sent some hypocrites to the Messenger of Allah (peace be upon him) to try and find out the Messenger's judgment. When they came to the Messenger (peace be upon him), Allāh informed him of their matter and of their plot. Allāh sent down, (***O Messenger! Let not those who hurry to fail into disbelief grieve you,***) until, (***Such are the the rebellious.***) By Allāh! It is because of their problem that Allāh sent down these verses and it is they whom Allāh meant." (Quoted by Ibn Kathir, *Tafsir Ibn Kathir*, abridged by a group scholars under the supervision of Shaykh Safi-ur-rahman Al-Mubarakpuri, Riyadh, Darussalam, First Edition: January 2000, Vol.3, p. 185-186).

<sup>272</sup> The Holy Qur'ān, 5:44



"And those who do not judge by what Allah has sent down-then it is they who are the rebellious."<sup>274</sup>

'Ali bin Abi Talhah also stated that Ibn 'Abbās commented on Allāh's statement,

"And whosoever does not judge by what Allāh has revealed, such are the disbelievers"

"Whoever rejects what Allāh has revealed, will have committed *Kufr*, and whoever accepts what Allāh has revealed, but did not rule by it, is a *Zālim* (unjust) and a *Fāsiq* (rebellious) and a sinner."<sup>275</sup>

### 9.1.3 Sincerity

The third and last essential duty towards Almighty Allah is that of sincerity (*ikhlas*). It demands from us that whatever we do, must be for the sake of Almighty Allah alone and in accordance with a rule of Islamic law. This requires from us a continual process of purification of our hearts. Only pure and clean heart will be obedient to the will of Almighty Allah. The reward from Almighty Allah for our deeds directly depends on our intention. Therefore the Apostle of Allah (peace be upon him) said, "The reward of deeds depends upon the intention and every person will get the reward according to what he has intended. So whoever emigrated for Allah and His Apostle, then his emigration was for Allah and His Apostle. And whoever emigrated for worldly benefits or for women to marry, his emigration was for what he emigrated for."<sup>276</sup>

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<sup>273</sup> The Holy Qur'ān, 5:45

<sup>274</sup> The Holy Qur'ān, 5:47

<sup>275</sup> At-Tabari 4:597

<sup>276</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.1, Book 2, transl. M. Muhsin Khan, Hadith Number 51. <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/002.sbt.html> (Last time visited on 15.12.2007).

Furthermore, according to Imām Ibn Taymīa (may Allah be pleased with him) a sincere action will be correct only if it is according to the *Sunna* of the Holy Prophet (peace be upon him).

For action that is simply sincere is not acceptable until it also becomes correct. ‘Sincere’ means that is for God, while ‘correct’ means that it is in accordance with the *Sunna*. Right action must be intended for the sake of God, Exalted is He, for He accepts no action that is not intended for His sake alone. According to an authenticated tradition the Prophet, on him be peace, said:” God says: ‘I am the Associate most free to dispense with association. If anyone performs an action in which he makes any but Me participate, I have nothing to do with it. It belongs to the one who associates.’<sup>277</sup>

## **9.2 The Principles of Justice which are Related to the Relationship between the Servant of Almighty Allah and his Surroundings**

The second sets of principles are related to the duties of the man towards his surroundings. The word surroundings have been carefully chosen, because it covers several different relationships. First of all it is related to the family relationships amongst its members, which consists of different mutual duties. Additionally, it also includes duties towards a slave and servant who are an integral part of the household. Secondly, it covers duties towards a neighbor. Thirdly, it is related to the duties towards the poor and needy. Fourthly, it includes mutual duties amongst the Muslims, as well a duties towards a non-Muslim in Islamic state. Islamic concept of distributive justice does not conclude here. It not only includes relationship between human beings, but also between other living creatures. Finally, to take care of the environment is also a duty prescribed by the Islamic concept of distributive justice. The Farewell Address of the Holy Prophet (peace

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<sup>277</sup> Imām Ibn Taymīa, *Public Duties in Islam*, transl. Muhtar Holland, (Leicester: The Islamic Foundation, 1982), 85-86.

be upon him) has been considered as the Islamic Charter of Humanity, where Apostle of Allah (peace be upon him) has given a summary of his teaching. Rules which are related to the justice, are an very important part of the Address. Therefore, first of all it is necessary to see a complete text of the Address before proceeding into analyses of principles of justice which are related to the relationship between the servant of Almighty Allah and his surroundings.<sup>278</sup>

### 9.2.1 Justice related to the family relationships

The family is considered as a nucleus of Islamic society. Preserving this nucleus has an enormous positive effect on the development and prosperity of the whole society. On the contrary, whenever the family foundation of Muslim society is threatened, the whole Islamic society comes under threat. The preservation of a family life in Islam is not only a duty of the individual, but also fundamental duty of the Islamic state. *Hifz al-nasl* (progeny) has been considered as one of the five *maqāsid*. Therefore, upholding the justice between family members is the primary duty of its members. The question of our concern here will be to define the content of justice between family members. The justice between family members in Islamic society consists of different kinds of duties attached to its members by the Sovereign, Almighty Allah. These duties which are of different types, can be further divided according to the following relationships which exist within the family structure in Islam: a) Duties of husband and wife, b) Mutual duties between parents and their children) Duty towards servants and slaves) Duty towards other family members and relatives.

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<sup>278</sup> For the full text of tradition see Appendix I

### 9.2.1.1 Duties of husband and wife

Before the advent of Islam, in Arabian Peninsula, the woman was considered merely a household property, deprived of all kinds of right in her relationship with husband. It is the teaching of the Holy Prophet Muhammad (peace be upon him), which has brought change regarding her family status, and raising her status to the equal level of her husband's. Therefore, in Islamic society, a husband and a wife are considered as equal and most important parts of the family structure, where the leadership in the family life has been granted to the man by Almighty Allah. By equality here, we certainly mean the Divine and not man-made concept of equality. Allah, the most Exalted says:

"And woman shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise."<sup>279</sup>

The article six of the Cairo Declaration on Human Rights in Islam in that regard states that, "Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage."<sup>280</sup> The mutual relationship between a husband and a wife has been regulated in such a way, that both of them get to enjoy certain rights and obligations. To be a just husband or a wife, from Islamic point of view, means successful performance of all prescribed Divine duties, and seeking God's pleasure in them. To provide maintenance for the wife, in terms of food, shelter, and medical care is considered the most important duty of the husband, as it has been declared by the Holy Prophet (peace be upon him) in the following tradition:

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<sup>279</sup> The Holy Qur'ān, 2:228

<sup>280</sup> Cairo Declaration on Human Rights in Islam, <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm> (Last time visited on 31.11.2007).

Mu'awiyah asked: "Apostle of Allah, what is the right of the wife of one of us over him? He replied: That you should give her food when you eat, clothe her when you clothe yourself, do not strike her on the face, do not revile her or separate yourself from her except in the house."<sup>281</sup>

In case a husband does not provide the family the basic needs, his wife has a right to take it from husband's property without his consent, or ask the state authority to help her in this regard.

Narrated by 'Aisha: Hind bint 'Utba came and said, "O Allah's Apostle! Abu Sufyan is a miser and he does not give me what is sufficient for me and my children?" The Prophet (peace be upon him) said," Take what is sufficient for you and your children, and the amount should be just and reasonable."<sup>282</sup>

Lot of criticism has been made by the Western scholars on the account of polygamy which is allowed in Islam. According to them, polygamy is against the basic principle of equality which exists between man and woman. It is true that polygamy has been allowed in Islam, but it is also a fact that polygamy was also allowed in other monotheistic religions as well. My purpose here is not to go into further discussion regarding God's wisdom behind the allowance of polygamy. The main point here which needs to be stressed is that Divine concept of equality is based on absolute knowledge and wisdom from Almighty Allah, while a human concept of equality is very relative, always changeable, depending on different historical circumstances and variety of people's aspirations in particular time. Whenever right has been granted by Almighty Allah,

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<sup>281</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 11, transl. Prof. Ahmad Hasan, Hadith Number 2137  
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/011.sat.html>  
 (Last time visited on 31.11.2007)

<sup>282</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 7. Book 64, transl. M. Muhsin Khan, Hadith Number 277  
<http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/064.sbt.html>  
 (Last time visited on 31.11.2007).

consequently a particular duty has been also attached to that right. The right to have more than one wife has been granted by Almighty Allah only to those who are able to deal justly and equally with them. With regard to that Almighty Allah says,

And if you fear that you will not be able to do justice in the matter of the orphan-girls (then do not marry them) then marry those (other women besides them) who appeal to you, two or three or four; but if you fear that you will not be able to deal equally with them, then marry one only or what (slave-girl) your right hand owns. That is more fitting so that you do not incline unjustly.<sup>283</sup>

For those who fail to deal with them equally, let us see in which condition they will find themselves on the Resurrection Day, as it has been described by the Holy Prophet (peace be upon him) in the following tradition:

Abu Hurairah reported from the Holy Prophet who said, "When there are two wives of a man who does not deal with them equitably, he will come on the Resurrection Day with half of his body fallen off."<sup>284</sup>

Regarding the Distributive justice in marriage (*qasm*), in case when a man has two wives, Burhān al-Dīn Al-Farghānī al-Marghīnānī (may Allah be pleased with him) said:

If a man has two wives, who are free women, he is under an obligation to deal justly with them in the distribution of favors, whether both were virgins or were

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<sup>283</sup> The Holy Qur'ān, 4:3

Regarding to this verse from the Holy Qur'ān, Hazrat 'Aisha (may Allah be pleased with her) said following: "... (This Verse has been revealed in connection with) an orphan girl under the guardianship of her guardian who is attracted by her wealth and beauty and intends to marry her with a Mahr if less than what other women of her standard deserve. So they (such guardians) have been forbidden to marry them unless they do justice to them and give them their full Mahr, and they are ordered to marry other instead of them." (Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 7, Book 62, transl. M. Muhsin Khan Hadith Number 2 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/062.sbt.html> Last time visited on 31.11.2007).

<sup>284</sup> *Mishkat-ul-Masabih*, Eng. Tr. Al-Haj Maulana Fazlul Karim, (Lahore, Law Publishing Company), Vol. I, 169.

deflowered, or whether one was a virgin and the other deflowered (before they married him). This is due to the saying of the Prophet (God bless him and grant him peace), 'If a person has two wives and he is inclined towards one of them, he will appear on the Day of Judgment with one of his sides paralyzed.' It is related from 'Ā'isha (God be pleased with her) that 'the Prophet (God bless him and grant him peace) used to maintain justice in distribution among his wives, and he used to say: 'O Lord, this is my distribution according to my ability, so do not hold me accountable for what I do not possess,' that is, an excess in love... The extent of the visit is a choice left to the husband, because what is due is equality and not the method with which the equality is implemented. Further, the equality due pertains to stay and not in intercourse as that depends upon physical activity.<sup>285</sup>

As Islamic law has granted certain rights to the wife, consequently, there are some duties which are imposed on her as well. Obedience to the husband has been considered as a most significant duty. A good and obedient wife has been considered the best possession immediately after God-consciousness. She is a source of the true happiness for her husband. During husband absence her duty is to take care of household.

Abū 'Umma (Allah be pleased with him) is reported to have said on the authority of the Holy Prophet (peace and blessings of Allah be upon him) that he used to say, 'A believer does not get more benefit of the good he possesses, after God-consciousness, than a righteous wife. If he commands her, she obeys him, if he casts a glance at her, she pleases her and if he takes an oath against her, she fulfills it and if he is absent from her, she is sincere to him regarding her person and his property.'<sup>286</sup>

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<sup>285</sup> Burhān al-Dīn Al-Farghānī al-Marghīnānī, *The Guidance, (Al-Hidāyah)*, Translated from the Arabic with Introduction, Commentary and Notes by Imran Ahsan Khan Nyazee, (Bristol: Amal Press, 2006) Vol.I, 545.

<sup>286</sup> *Sunan Ibn-i-Mājah*, transl. Muhammad Tufail Ansari, (New Delhi: Kitab Bhavan, 200), Vol. III, Hadith Number 1857, p.119.

The importance of the duties which are imposed on the wife are very clearly shown from the following tradition.

'Abdullāh b. Abī 'Aufā (Allah be pleased with him) is reported to have said that Mu'ādh (Allah be pleased with him) came from Syria, he prostrated before the Holy Prophet (peace and blessings of Allah be upon him). He (the Holy Prophet) said, "O Mu'adh, what is it?" He replied, "I went to Syria and found them (the Syrians) prostrating before their archbishops and their emperors. I liked it in my heart that we should do so for you." Upon this, Allah's Messenger (peace and blessings of Allah be upon him) remarked, "Don't do so. If I were to command anyone to prostrate before anyone beside Allah, I would have commanded the wife to prostrate before her spouse. By Him in Whose Hand lies my life, a woman can not carry out the right of her Lord, till she carry out the right of her husband. And if he asks her to surrender herself (to him for sexual intercourse) she should not refuse him even if she is on a camel's saddle."<sup>287</sup>

### 9.2.1.2 Mutual duties between parents and their children

It is an essential duty of the parents to provide their children with basic human necessities, such as food, cloth, shelter, education and medical care. Beside this essential duty, another but not less of importance duty is to provide their children with love, warmth, affection and spiritual nourishment. To maintain equal treatment in case of more than one child is the basic duty of the parents which has been ordered by the Holy Prophet (peace be upon him). It has been narrated by An-Nu'man ibn Bashir that the Prophet (peace be upon him) said:

“Act equally between your children, act equally between your sons.”<sup>288</sup>

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<sup>287</sup> *Sunan Ibn-i-Mājah*, transl. Muhammad Tufail Ansari, (New Delhi: Kitab Bhavan, 200), Vol. III, Hadith Number 1853, p.116-117, According to al-Zawā'id, Ibn Hibbān transmitted it in his *Sahih*. Sandi said, "It is as if he means that it is *hadith* having good *isnād*."

<sup>288</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 23, transl. Prof. Ahmad Hasan, Hadith Number 3537 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/023.sat.html> (Last time visited on 31.11.2007).



In another tradition the Prophet (peace be upon him) said:

"If anyone has a female child, and does not bury her alive, or slight her, or prefer his children (i.e. the male ones) to her, Allah will bring him into Paradise." Utman did not mention 'male child'.<sup>289</sup>

Importance and reward of taking care of the three daughters at the same time will be very much clear when we see what the Prophet (peace be upon him) said in that regard.

"If anyone cares for three daughters, disciplines them, marries them, and does good to them, he will go to Paradise."<sup>290</sup>

Narrated by Abdullah ibn Amr ibn al-'As: A man came to the Prophet (peace be upon him) and said: "Apostle of Allah, I have property and children, and my father finishes my property." He (peace be upon him) replied: "You and your property belong to your father; your children come from the pleasantest of what you earn; so enjoy from the earning of your children."<sup>291</sup>

Several different kinds of duties are prescribed for the children in their relation to the parents. Immediately, after ordering us to worship Him alone, Almighty Allah commanded us to show kindness, be obedient and do well to our parents.

"And your Lord has commanded that you should worship none but Him alone, and do good to parents. If either or both of them reach old age in your lifetime say not even

<sup>289</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 41, transl. Prof. Ahmad Hasan, Hadith Number 5127 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/041.sat.html> (Last time visited on 12.12.2007).

<sup>290</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 41, transl. Prof. Ahmad Hasan, Hadith Number 5128 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/041.sat.html> (Last time visited on 12.12.2007).

<sup>291</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 41, transl. Prof. Ahmad Hasan, Hadith Number 3523 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/023.sat.html> (Last time visited on 12.12.2007).

"Fie" to them, and chide them not, and when you speak to them speak to them in terms of great respect and kindness."<sup>292</sup>

And We have enjoined on man doing good to his parents; his mother bore him despite weakness upon weakness, and his weaning takes full two years (so We have commanded): "Give thanks to Me and to your parents. Only to Me is your eventual return." And if they press you to associate with Me that whereof you have no knowledge, then obey them not in this, however, carry on with them in the world handsomely and follow the path of him who turns to Me in devotion. Than to Me is your eventual return, and I shall inform you of that which you used to do.<sup>293</sup>

There are several traditions in which the Messenger of Allah (peace be upon him) emphasized the importance to serve parents and all the time to be dutiful towards them. In one such tradition it has been stated that the most beloved action to Almighty Allah after offering a prayer in its very first stated time is that of being dutiful to them. It has been narrated by Walid bin 'Aizar (may Allah be pleased with him) that he said:

I heard Abi Amr 'Ash-Shaibani saying, "The owner of this house." He pointed to 'Abdullah's house, "said, 'I asked the Prophet which deed is loved most by Allah?' He replied, 'To offer prayers at their early (very first) stated times.'" 'Abdullah asked, "What is the next (in goodness)?" The Prophet said, "To be good and dutiful to one's parents." 'Abdullah asked, "What is the next (in goodness)?" The Prophet said, "To participate in Jihad for Allah's Cause." 'Abdullah added, "The Prophet narrated to me these three things, and if I had asked more, he would have told me more."<sup>294</sup>

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<sup>292</sup> *The Holy Qur'ān*, 17 : 23

<sup>293</sup> *The Holy Qur'ān*, 31 : 14,15

<sup>294</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 8, Book 73, transl. M. Muhsin Khan, Hadith Number 1 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

Taking care of the parents has been declared by the Holy Prophet (peace be upon him) as a one kind of *Jihad*. In one well-known tradition a man was prevented to participate in *Jihad* due to the reason that he was ordered first to serve his parents. It has been narrated by ‘Abdullah bin ‘Amr (may Allah be pleased with him) that he said: A man said to the Prophet, "Shall I participate in Jihad?" The Prophet said, "Are your parents living?" The man said, "Yes." The Prophet said, "Do Jihad for their benefit."<sup>295</sup>

To be disobedient to the parents has been considered as a one of the most serious sin. In the following tradition we will see that the biggest sin after joining partners in worship with Almighty Allah is that of being undutiful to the parents. It has been narrated by Hazrat Abu Bakr (may Allah be please with him) that he said,

Allah's Apostle said thrice, "Shall I not inform you of the biggest of the great sins?" We said, "Yes, O Allah's Apostle." He said, "To join partners in worship with Allah: to be undutiful to one's parents." The Prophet sat up after he had been reclining and added, "And I warn you against giving forged statement and a false witness." The Prophet kept on saying that warning till we thought that he would not stop.<sup>296</sup>

In the case that the parents are in need of any kind of financial support, it is the duty of the children, to fulfill the parents needs according to their capacity.

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<sup>295</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 8, Book 73, transl. M. Muhsin Khan, Hadith Number 3 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

<sup>296</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol. 8, Book 73, transl. M. Muhsin Khan, Hadith Number 7 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

Amr-b-Shuaib from his father from his grandfather reported that a man came to the Prophet and said: "Verily I have got wealth and my father is in want of my wealth." He (peace be upon him) said: "Both you and your wealth belong to your father. Verily your children are the best of your earnings. So eat of the earning of your children."<sup>297</sup>

### **9.2.1.3 Duty towards other family members and relatives**

We have mentioned some basic Islamic duties which are related to the mutual relationship between most close family members. The concept of duties related to the family structure in Islam is extended to other family members as well. The main duty regarding other family members is to do good to them which can be manifested on different ways. After satisfying his personal needs and the needs of his close family members, man has a duty to help and support those relatives who are in need.

"Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion; He instructs you, that ye may receive admonition."<sup>298</sup>

"They ask thee, (O Muhammad) what they should spend, Say: That which you spend for good (must go) to parents and near kindred and orphans and the needy and the wayfarer."<sup>299</sup>

Among the brothers, Islamic law has granted the older one more rights over the younger one, which are comparable with the rights of the father upon his son. With regard to that Sayid-b-al-A's reported that the Holy Prophet (peace be upon him) said:

"The right of the elder of the brothers upon the younger of them is the rights of the father upon his son."<sup>300</sup>

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<sup>297</sup> *Mishkat-ul-Masabih*, transl. Al-Haj Maulana Fazlul Karim, (Lahore: Law Publishing Company,) Vol. I, 163.

<sup>298</sup> *The Holy Qur'ān*, 16 : 90

<sup>299</sup> *The Holy Qur'ān*, 2 : 215

A poor family member has priority to receive a *sadaqa*. For those who give a *sadaqa* to the poor family members there is a double reward.

Salmān b. 'Āmir ad-Dabbi (Allah be pleased with him) reported that Allah's Messenger (peace and blessings of Allah be upon him) said, "(Payment of) *sadaqa* to the poor person (has the reward of) *sadaqa* and (its payment) to the near one (promises the reward of) two *sadaqa*: (Reward of) *sadaqa* and (the reward) for (joining) the ties of kinship."<sup>301</sup>

Regarding incurring of expenditure on kinsmen,

Imām Abū Hanifa holds it obligatory to incur expenditure on kinsmen which include sons, grandsons, parents and their parents without any distinction whether they are Muslims or not. In all other cases incurring of expenditure is obligatory provided the relative is a Muslim because it is not obligatory for a Muslim to incur expenditure on any other kin if the latter is a non-Muslim.<sup>302</sup>

Another duty which is equally important is related to the strong prohibition of severing the family ties. Our tie with Almighty Allah directly depends on our relationship towards our relatives. With regard to that Allah's Messenger (peace be upon him) says:

"The tie of kinship is suspended to the Throne and says: He who unites me Allah would unite him and he who severed me Allah would sever him."<sup>303</sup>

<sup>300</sup> *Mishkat-ul-Masabih*, transl. Al-Haj Maulana Fazlul Karim, (Lahore: Law Publishing Company,) Vol. I, 191.

<sup>301</sup> *Sunan Ibn-i-Mājah*, transl. Muhammad Tufail Ansari, (New Delhi: Kitab Bhavan, 2000), Vol. III, Hadith Number 1844, p.109.

<sup>302</sup> Allama Yūsuf Al-Qardāwi, *Economic Security in Islam*, transl. Muhammad Iqbāl Siddiqi, (Lahore: Kazi Publication, 1981) p.58-59.

<sup>303</sup> Imam Muslim, *Sahih Muslim*, Book 032, transl. Abdul Hamid Siddiqui, Hadith Number 6198 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/032.smt.html> (Last time visited on 12.12.2007).

Furthermore, Jubair b. Mutlim reported that his father narrated to him that Allah's Messenger (may peace be upon him) said:

"The severer of the tie of kinship would not get into Paradise."<sup>304</sup>

### 9.2.2 Duty towards a slave and a servant

A slave is considered by the Holy Prophet (peace be upon him) a brother who by a decree of Almighty Allah is put under the command of a free man. Therefore, there are several duties towards a slave. First of all kindness and forgiveness should be preferred all the time. There should be no difference between a slave and his master, regarding food and clothes. A slave should neither asked to perform any work which is beyond his abilities.

Narrated by Abdullah ibn Umar: "A man came to the Prophet (peace be upon him) and asked: Apostle of Allah! How often shall I forgive a servant? He gave no reply, so the man repeated what he had said, but he still kept silence. When he asked a third time, he replied: Forgive him seventy times daily."<sup>305</sup>

It has been narrated by Al-Ma'rur: At Ar-Rabadha I met Abu Dhar who was wearing a cloack, and his slave, too, was wearing a similar one. I asked about the reason for it. He replied, "I abused a person by calling his mother with bad names." The Prophet (peace be upon him) said to me, 'O Abu Dhar ! Did you abuse him by calling his mother with bad names You still have some characteristics of ignorance. Your slaves are your brothers and Allah has put them under your command. So whoever has a brother under his command should feed him of what he eats and dress him of what he wears. Do not ask them

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<sup>304</sup> Imam Muslim, *Sahih Muslim*, Book 032, transl. Abdul Hamid Siddiqui, Hadith Number 6200 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/032.smt.html> (Last time visited on 12.12.2007).

<sup>305</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 41, transl. Ahmad Hasan, Hadith Number 5145 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/041.sat.html> (Last time visited on 12.12.2007).

(slaves) to do things beyond their capacity (power) and if you do so, then help them.<sup>306</sup>

### 9.2.3 Duty towards a neighbor

Duty towards a neighbor, from Islamic perspective of distributive justice, comes immediately after the completion of duties related to family members. The first and most essential duty towards a neighbor is related to the conduct towards him. Making any trouble or disturbance to the neighbor is strongly prohibited. To feel insecure from the neighbor has been considered as a very serious offense. With regard to that the Holy Prophet (peace be upon him) said,

"By Allah, he does not believe! By Allah, he does not believe! By Allah, he does not believe!" It was said, 'Who is that, O Allah's Apostle?' He said, "That person whose neighbor does not feel safe from his evil."<sup>307</sup>

To be kind and polite towards a neighbor, even if he in a non-Muslim is very much insisted by Holy Prophet (peace be upon him). Therefore, is one tradition of Allah's Apostle (peace be upon him) and one saying of his companion (God bless him) should be mentioned here. The Holy Prophet (peace be upon him) said;

"Gabriel continued to recommend me about treating the neighbors kindly and politely so much so that I thought he would order me to make them as my heirs."<sup>308</sup>

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<sup>306</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.1, Book2, transl. M. Muhsin Khan, Hadith Number 29 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/002.sbt.html> (Last time visited on 12.12.2007).

<sup>307</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.8, Book 73, transl. M. Muhsin Khan, Hadith Number 45 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

<sup>308</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.8, Book 73, transl. M. Muhsin Khan, Hadith Number 45 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

It has been reported that Mujahid (God bless him) said,

I was in the company of Hadrat 'Abdullāh bin 'Umar (Allāh be pleased with him) and his slave was busy in removing the skin of a quail. Hadrat ibn 'Umar (Allāh be pleased with him) said, 'When you finish the work of removing the skins of quails, first of all take some of the flesh to our Jew neighbor.' The slave said to him, 'Why do you tell me this repeatedly?' And he replied, 'The Holy Prophet (peace and blessings of Allāh be upon him) has been saying to us time and again, and we feared lest our neighbors be not made heir to our inheritance.'<sup>309</sup>

From Islamic point of view three kinds of neighbor are distinguishable. The first kind of neighbor is the one, who is a Muslim and a relative at the same time. He gets triple rights. The second is a Muslim neighbor who get a double right, while the third is non-Muslim who gets a single right.

Hasan-b-Sufyan reported that the Messenger of Allah (peace be upon him) said: "The neighbors are three (classes); a neighbor who has got a single right; a neighbor who has got double rights; and a neighbor who has got triple rights. The neighbor who has got triple rights is a Muslim neighbor having relationship; for him there is the right of neighborhood, the right of Islam and the right of relationship. As for one who has got two rights, he is a Muslim neighbor; for him there is the right of neighborhood and the right of Islam; and as for one who has got a single right, he is a polytheist neighbor."<sup>310</sup>

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<sup>309</sup> 'Allama Yūduf Al-Qardāwi, *Economic Security in Islam*, transl. Muhammad Iqbāl Siddiqi, (Lahore: Kazi Publications, 1981), 146-147.

<sup>310</sup> *Mishkat-ul-Masabih*, transl. Al-Haj Maulana Fazlul Karim, (Lahore: Law Publishing Company ), Vol. 1, p.200.



My main concern is to find out what are exact duties which we have towards our neighbors? Our beloved Prophet (peace be upon him) in the following tradition informed us with an exact contents of the duties towards a neighbor.

Amr-b-Shuaib reported from his father from his grandfather that the Messenger of Allah (peace be upon him) said:" Do you know the duties of a neighbor? – Help him if he seeks help, give him succor if he seeks your succor; give him loan if he asks you loan; give him relief if he is needy; nurse him if he falls ill; follow his bier if he dies; cheer him if he meets any good; sympathize with him if any calamity befalls him; without his permission raise not your building higher so as to obstruct his air; harass him not; give him when you purchase fruit; if you do not do it, take it secretly; and let not your children take it out to excite thereby the anger of his children."<sup>311</sup>

How much important is our good relationship with the neighbor from Islamic point of view? How much it is serious when our neighbor, for example is not saved from our tongue? The following tradition from the Holy Prophet (peace be upon him) will be the best way to illustrate the importance of this issue. Abu Hurairah (May Allah be pleased with him) reported that a man asked:

O Messenger of Allah! Such and such woman is reputed for frequent prayers, fasting and alms-giving except that she offends her neighbors with her tongue. He said: She will be in Fire. He inquired: O Messenger of Allah! Such and such a women is reputed less for her fasting, alms-giving and prayers, but she gives alms of the remainders of cheese and she does not offend her neighbors by remainders of cheese and she does not offend her neighbors by her tongue. He said: She will be in Paradise.<sup>312</sup>

#### 9.2.4 Duty towards needy and poor

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<sup>311</sup> Ibid.,

<sup>312</sup> *Mishkat-ul-Masabih*, transl. Maulana Fazlul Karim, (Lahore: Law Publishing Company) Vol. I.p.199.

Helping and taking care of the poor and the needy, is a duty which has been attached not only to the individuals, but to the Islamic state as well. Our concern here, is to examine the duty of the rich having towards the poor, and state's responsibility will be examined later. Before saying any thing about the nature of this duty, first of all we should try to see who is to be declared as a poor according to the Islamic law. There are several sayings of the Holy Prophet (peace be upon him) regarding to this question. In one tradition the Messenger of God (peace be upon him) said that,

"When one of you comes to us seeking alms and we have nothing to give him he feels offended. Any seeker of alms who possesses one *awqiya* (forty dirhams) is unnecessarily bothering the people."<sup>313</sup>

In another tradition we find how a rich man has been defined , who is at the same time deprived from the right of asking for an alms. The Messenger of Allah (peace be upon him) said:

"He who seeks alms from the people, while being rich, is only adding to (the population of) hell." I asked, 'O Messenger of God, what does while being rich mean?' He replied, "That you know that your family has enough to feed them the afternoon and the evening meal."<sup>314</sup>

Analyzing these different traditions and the views of the jurists, Abū 'Ubayd al-Qāsim ibn Sallām, the author of *Kitāb al-Amwāl* said: "I believe the traditions make a distinction between being rich and poor through different standards. In some of them it is the ability to pay off debts or the means of subsistence, while in others it is the owning of fifty *dirhams*. In a third tradition it is an *awqiya*, while in the fourth it is the afternoon or

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<sup>313</sup> Abū 'Ubayd al-Qāsim ibn Sallām, *The Book of Revenue (Kitāb al-Amwāl)*, Translated by Professor Imran Ahsan Khan Nyazee, (Garnet Publishing Limited, 8 Southern Court South Street Reading RG1 4QA, UK, 2002), p. 504.

<sup>314</sup> *Ibid.*,

evening meal. The jurists have based their opinions on each of these standards and have adopted them."<sup>315</sup>

Almighty Allah has given right to the poor and the needy in the wealth of the rich, declaring that they have no absolute right in disposition of their property. Therefore, the payment of *Zakāt* has been made obligatory for them. The author of *Al-Hidāyah*, Burhān al-Dīn Al-Farghānī al-Marghīnānī (may Almighty Allah be pleased with him) says,

*Zakāt* is obligatory for each free, sane and major Muslim when he owns the *nisāb* (minimum scale) through complete ownership and a year has passed over such ownership. The obligation is based upon the words of the Exalted, ***Pay the zakāt*** and the words of the Prophet (God bless him and grant him peace), ***Pay zakāt on your wealth***. Further, there is the consensus (*ijmā'*) of the Ummah (on such obligation). The meaning of *wajib* (obligation) here is the definitive obligation (*fard*), as there is no doubt about it.<sup>316</sup>

We have already mentioned that the *Zakāt* is the right of the poor in the wealth of the rich. Payment of *Zakāt* also has been considered as a pure right of God. Is the amount paid for the *Zakāt* sufficient for all the time? What in the case when it is not? The question which needs to be examined here is: Does the poor have besides Poor-due (*Zakāt*) more rights in the wealth of the rich? Our answer to this is affirmative. First of all, as we have already mentioned, the basic Islamic principle related to the Distributive justice is first to satisfy our needs and then whatever is surplus to give it in charity. Those who reject to feed the poor, are condemned by Almighty Allah .

”Seest thou one who denies the Judgment (To come)?

Then such is the one who repulses the orphan,

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<sup>315</sup> Ibid.,505.

<sup>316</sup> Burhān al-Dīn Al-Farghānī al-Marghīnānī, *The Guidance, (Al-Hidāyah)*, Translated from the Arabic with Introduction, Commentary and Notes by Imran Ahsan Khan Nyazee, (Bristol: Amal Press, 2006) Vol.I, p. 247.

And encourages not the feeding of the indigent.”<sup>317</sup>

How much is significant to feed the poor and provide drink for them, is clearly shown in the following tradition.

Abu Hurairah reported that the Prophet (peace be upon him) said: "Verily the Almighty Allah will ask on the day of Resurrection: O son of Adam! I was sick and you did not visit Me. He will replay: O my Lord! How could I have visited Thee when Thou art the Lord of all the worlds. He will say: Did you not know that such and such one of My servants was sick, but you did not visit him? Did you not know that if you had visited him, you would surely have found Me with him? O son of Adam! I asked you food, but you did not give me food. He will replay: O my Lord! How could I have fed Thee, when Thou art the Lord of all the worlds? He will say: Did you not know that such and such one of My servants asked you food, while you did not feed him? Did you not know that if you had fed him, you would surely have found that with Me? O son of Adam! I asked you drink, and you did not give Me drink. He will replay: O my Lord! How could I have given Thee drink when Thou art the Lord of all the worlds? He will say: Such and such one of My servants asked drink of you and you did not give him drink. Did you not know that if you had given him drink, you would surely have found that with Me."<sup>318</sup>

On many different occasions the Holy Prophet (peace be upon him) has urged us to feed the poor. The proof that there is another right beside the poor-due which belongs to the poor in the wealth of the rich, we may find also in the saying of Ibn 'Umar ( may Almighty Allah be pleased with him), who said:

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<sup>317</sup> The Holy Qur'ān, 107:1-3

<sup>318</sup> Imam Muslim, *Sahih Muslim*, Book 032, transl. Abdul Hamid Siddiqui, Hadith Number 6232 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/032.smt.html> (Last time visited on 12.12.2007).

In your wealth are dues other than *zakat*."<sup>319</sup> Many similar sayings can be quote from the Companions of the Holy Prophet (peace be upon him). For our purpose here it is enough to mention one more, and that is a saying of Hadrat 'Ali (may Allah be pleased with him), who said: "The right of the poor which has been prescribed by God in the wealth and property of the rich people is sufficient to meet the needs of the needy. If the poor people are still hungry and unclothed, it means that the rich have failed to give them their due right. Allāh is empowered to question them on the Day of Resurrection and punish them."<sup>320</sup>

### 9.2.5 Muslims and their mutual duties

Although there are several different duties which the Muslims need to perform among themselves, our short overview we will start with the duty which requires an establishment of the brotherhood between members of Islamic society. There is a valid reason why taken this duty as the first to be mentioned. One of the main reasons why Muslims today are so badly divided is in fact the result of non-performance of this essential and extremely important duty. Our task here will be to point out major duties which are attached to the establishment of a brotherly relationship amongst Muslims.

The first duty demands from us is to wish for our brother what we wish for ourself. The Muslim who does not wish for his brother as for himself is declared as somebody who was deprived of a real faith. Therefore, the Prophet (peace be upon him) said that,

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<sup>319</sup> Abū 'Ubayd al-Qāsim ibn Sallām, *The Book of Revenue (Kitāb al-Amwāl)*, Translated by Professor Imran Ahsan Khan Nyazee, (Garnet Publishing Limited, 8 Southern Court South Street Reading RG1 4QA, UK, 2002), 341.

<sup>320</sup> Allama Yūsuf Al-Qardāwi, *Economic Security in Islam*, transl. Muhammad Iqbāl Siddiqi, (Lahore, Kazi Publication, 121-Zulqarnain Chambers, Ganpat Road, 1981), 161.

"None of you will have faith till he wishes for him (Muslim) brother what he likes for himself."<sup>321</sup>

It should be also noted here that shortly after his arrival to Medina, the Holy Prophet (peace be upon him) started to establish brotherly relationships between the *Ansars* (Helpers) of Madina and *Muhajirs* (Immigrants) from Mecca. The establishment of such brotherly relationships was of the great significance for new establishing Islamic society. We may even go to an extent to say that one of the pillars of the new established Islamic state was that of brotherhood.. It has been narrated by Annas (may Allah be pleased with him) that:

When 'Abdur-Rahman bin 'Auf came to us, Allah's Apostle made a bond of fraternity between him and Sad bin Ar-Rabi' who was a rich man, Sad said, "The Ansar know that I am the richest of all of them, so I will divide my property into two parts between me and you, and I have two wives; see which of the two you like so that I may divorce her and you can marry her after she becomes lawful to you by her passing the prescribed period (i.e. 'Idda) of divorce. 'Abdur Rahman said, "May Allah bless you your family (I.e. wives) for you." (But 'Abdur Rahman went to the market) and did not return on that day except with some gain of dried yogurt and butter. He went on trading just a few days till he came to Allah's Apostle bearing the traces of yellow scent over his clothes. Allah's Apostle asked him, "What is this scent?" He replied, "I have parried women from the Ansar." Allah's Apostle asked, "How much mahr have you given?" He said, "A date-stone weight of gold or a golden date-stone." The Prophet (peace be upon him) said, "Arrange a marriage banquet even with a sheep."<sup>322</sup>

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<sup>321</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.1, Book2, transl. M. Muhsin Khan, Hadith Number 12 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/002.sbt.html> (Last time visited on 12.12.2007).

<sup>322</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.5, Book 58, transl. M. Muhsin Khan, Hadith Number 125 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/058.sbt.html> (Last time visited on 12.12.2007).

Whenever this brotherhood is attained, it has to be protected as well. To guard and sustain it, the Apostle of Allah (peace be upon him) prescribed several duties to be performed as well. Amongst these duties there are several important restrictions to be imposed. Existence of any kind of animosity, suspicion, spying, or jealousy amongst the Muslim brothers will weaken and ruin brotherhood, and is therefore strongly condonable. With regard to that the Holy Prophet (peace be upon him) said, "Beware of suspicion, for suspicion is the worst of false tales; and do not look for the other's faults and do not spy, and do not be jealous of one another, and do not desert (cut your relation with) one another, and do not hate one another; and O Allah's worshiper! Be brothers (as Allah has ordered you!)"<sup>323</sup>

In the Holy Qur'ān it has been declared by Almighty Allah that the believers are brothers among themselves, and in the case of any dispute between them, there is a duty for the peace restoration.

"The believers are naught else than brothers. Therefore make peace between your brethren and observe your duty to Allah that haply ye may obtain Mercy."<sup>324</sup>

The brotherhood established by Almighty Allah amongst the believers is purely based on the faith in Him. Therefore, such established brotherhood is the strongest one. The believers are considered as a one body by the Holy Prophet (peace be upon him) in their mutual love, care and kindness. Therefore Allah's Apostle (peace be upon him) said: "You see the believers as regards their being merciful among themselves and showing love among themselves and being kind, resembling one body, so that, if any part of the

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<sup>323</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.8, Book73, transl. M. Muhsin Khan, Hadith Number 90 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

<sup>324</sup> The Holy Qur'ān, 49:10

body is not well than the whole body shares the sleeplessness (insomnia) and fever with it."<sup>325</sup>

By establishing brotherly relationship amongst the Muslims, they will in fact achieve only half of their duty to be done. The second part is related to the establishment of the unity of the Muslim Ummah, which has to be the ultimate goal for every Muslim ruler today. Despite the fact that the present situation in the world shows a desperate need for unity, very little has been done so far. Maybe one of the most difficult questions today, which Muslims are facing is how the unity of the Muslim Ummah could be achieved? What are necessary requirements for that? In my humble opinion the unity of the Muslim Ummah will be possible to achieved, only if it is based on the supreme love of the Almighty Allah and His Prophet Muhammad (peace be upon him), along with full implementation of Islamic law.

As a result of a brotherly relationship which exists amongst the Muslims, the fundamental principle of the distribution of goods has been derived. According to this principle whatever proceeds over one's needs should be given in charity. The principle is based on the major sources in the Islamic law, the Holy Qur'an and the Sunna of the Holy Prophet (peace be upon him). Regarding the first source, Almighty Allah says:

"And they ask you what they ought to spend. Say: "That which is (spare) beyond your needs."<sup>326</sup>

Regarding the meaning of this verse from the Holy Qur'an, Hazrat Ibn 'Abbās (may Allah be pleased with him) said that, "This *Āyah* means, whatever you can spare above the needs of your family. This is also the opinion of Ibn 'Umar, Mujāhid, 'Atā', 'Ikrimah,

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<sup>325</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.8, Book73, transl. M. Muhsin Khan, Hadith Number 40 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

<sup>326</sup> The Holy Qur'ān, 2:215



Sa'īd bin Jubayr, Muhammad bin Ka'b, Al-Hasan, Qatādah, Al-Qāsim, Sālim, 'Atā' Al-Khurāsāni and Ar-Rabī bin Anas."<sup>327</sup>

There are several traditions where the Holy Prophet (peace be upon him) was instructing his companions (may Allah be pleased with them) to follow and implement this principle. For our purpose two examples will be enough to be mentioned here. In the first tradition Abu Sa'id al-Khudri reported that,

While we were with the Apostle of Allah (peace be upon him) on a journey, a person came upon his mount and began to stare on the right and on the left. (It was at this moment) that Allah's Messenger (peace be upon him) said: 'He who had an extra mount should give that to one who has no mount, and he who has surplus of provisions should give them to him who has no provision, and he made mention of so many kinds of wealth until we were of the opinion that none of us has any right over the surplus.'<sup>328</sup>

In the second tradition we may see how the Holy Prophet (peace be upon him) advised Hazrat Bilāl (may Allah be pleased with him) not to keep any food overnight and immediately to spend it in charity, not fearing for the provision which is surely coming from Almighty Allah.

Abū Huraira said that when the Prophet once visited Bilāl and saw he had a heap of dates, he asked him what it was. On his replying, "It is something I have stored up for to-morrow," he said, "Are you not afraid that to-morrow you may see on account of it

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<sup>327</sup> Ibn Kathir, *Tafsir Ibn Kathir*, abridged by a group scholars under the supervision of Shaykh Safi-ur-rahman Al-Mubarakpuri, (Riyadh, Darussalam, First Edition: 2000), Vol.I, 607.

<sup>328</sup> Imam Muslim, *Sahih Muslim*, Book 018, transl. Abdul Hamid Siddiqui, Hadith Number 4290 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/018.smt.html> (Last time visited on 12.12.2007).

steam in the fire of jahannam on the day of resurrection? Spend it, Bilāl, and do not fear poverty from the Lord of the Throne."<sup>329</sup>

Regarding other kinds of duties attached to the Muslims, several of them have been mentioned here. As a main source for these duties, we will refer to the Farewell Address of the Holy Prophet (peace be upon him), which is an integral text we have already mentioned. The rights of life, property, and dignity have been guaranteed by the Holy Prophet (peace be upon him). To hurt a Muslim in any way, without valid reason has been strongly prohibited. All financial obligations including *Riba*, which are a main source of injustice, are declared as void. It should also be mentioned here that it is not only Islam which prohibits a *Riba*. The same prohibition we may find in Christianity and Judaism as well. Furthermore, any kind of exploitation amongst the Muslims is directly against the basic principles of Distributive justice in Islam.

Our short overview regarding the basic duties of every Muslim, we complete here by the saying of the Holy Prophet (peace be upon him) which is related to the imposition of the *sadaqa* which in fact has several meanings, and reflect also different kinds of duties to be performed.

The Holy Prophet (peace be upon him) said,

On every Muslim there is enjoined (a compulsory) Sadaqa (alms)." They (the people) said, "If one has nothing?" He said, "He should work with his hands so that he may benefit himself and give in charity." They said, "If he cannot work or does not work?" He said, "Then he should help the oppressed unhappy person (by word or action or both)." They said, "If he does not do it?" He said, "Then he should enjoin what is good (or he said what is reasonable)." They said, "If he

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<sup>329</sup> Miskat Al-Masabih, transl. Dr. James Robson (Lahore: Sh. Muhammad Ashraf, 1981), Vol I, 400.

does not do that." He said," Then he should refrain from doing evil, for that will be considered for Him as a Sadaqa (charity)."<sup>330</sup>

### 9.2.6 Duty Towards non-Muslims

To be just and deal kindly with non-Muslims has been prescribed by Almighty Allah in the Holy Qur'an. With the regard to that Almighty Allah says:

Allah forbids you not, with regard to those who fight you not (your) faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just. Allah only forbids you, with regard to those who fight you for (your) faith and drive you out of your homes, and support (others) in driving you out, from turning to them ( for friendship and protection). It is such as turn to them (in these circumstances), that do wrong.<sup>331</sup>

Ordinary non-Muslim citizens of Islamic state are called *ahl al-dhimmah*, and their status with the Islamic state has been regulated by the contract. The first such kind of contract we find between the Holy Prophet (peace be upon him) and the Jews, which was in fact a peace treaty incorporated in the Constitution of Madīna. In the clause (24) it has been stated that:"The Jews shall contribute to the cost of war so long as they are fighting alongside the believers."<sup>332</sup> Following clause regulates more closely their status declaring them as one community which religious freedom is granted. "The Jews of Banū 'Awf are one community with the believers (the Jews have their religion and the Muslims have

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<sup>330</sup> Imam Bukhāri, *Sahīh al-Bukhāri*, Vol.8, Book73, transl. M. Muhsin Khan, Hadith Number 51 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/073.sbt.html> (Last time visited on 12.12.2007).

<sup>331</sup> The Holy Qur'ān, 60:8-9

<sup>332</sup> Akram Diyā' al 'Umarī, *Madīna Society at the Time of the Prophet*, transl. Hudā Khattāb, (Virginia: The International Institute of Islamic Thought, Second Edition, 1955), 109.

their), their freedmen and their persons except those who behave unjustly and sinfully, for they hurt but themselves and their families."<sup>333</sup>

In the following two traditions, we may find that other rights have also been granted by the Holy Prophet (peace be upon him). Full protection of life, property, freedom and privacy are also granted. With regard to that the Messenger of Allah (peace be upon him) is reported to have said:

"Beware, if anyone wrongs a mu'ahid, or diminished his right, or forces him to work beyond his capacity, or takes from him anything without his consent, I shall plead for him on the Day of Judgment."<sup>334</sup>

"Allāh has not permitted you to enter the houses of the people of the Book without permission, or beat their women, or eat their fruits when they give you that which is imposed on them."<sup>335</sup>

After the Prophet's death the people of Najrān approached the Caliph 'Abu Bakr (may Almighty Allah be pleased with him) for a renewing a contract between an Islamic state and them. All rights which have been already granted by the Holy Prophet (peace be upon him) were confirmed by the First Caliph. The text of the Pact follows,

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<sup>333</sup> Akram Diyā' al 'Umarī, *Madīna Society at the Time of the Prophet*, transl. Hudā Khattāb, (Virginia: The International Institute of Islamic Thought, Second Edition, 1955), p.109.

<sup>334</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 19, transl. Prof. Ahmad Hasan, Hadith Number 3047 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/019.sat.html> (Last time visited on 12.12.2007).

<sup>335</sup> Imam Abu Dawud, *Sunan Abu Dawud*, Book 14, transl. Prof. Ahmad Hasan, Hadith Number 2652 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/014.sat.html> (Last time visited on 12.12.2007).

In the name of God, the Compassionate, the Merciful. This is the pact which the servant of God, Abū Bakr, successor to the Prophet Muhammad, issued to the people of Najrān. They shall have the protection of God and the guarantee of Muhammad, Apostle of God, for their persons and their lands, creed, property, dependents, buildings, those absent and those present, and their bishops and monks, churches, and all that they possess, whether it be much or little. No conscription or tithe shall be imposed on them, nor shall any bishop or monk be displaced from his office, in fulfillment of the pact which Muhammad issued to them and in accordance with the promises given in this document. May the protection of God and the guarantee of Muhammad forever be upon this document so long as [the people of Najrān] remain faithful and act in accordance with their rightful obligation.<sup>336</sup>

### 9.2.7 Duty towards animals

To be just only towards human beings is not enough from Islamic perspective of Distributive justice. Whenever there is a responsibility, a certain duty is attached to it. Therefore, according to the teaching of Islam, man's responsibility has been extended towards an animal as well. Appropriate reward and punishment will be granted by Almighty Allah with regard to the treatment of animals. In well known tradition we learnt how the woman was punished for inhuman treatment of the cat. Nafi (may Allah be please with him) reported from 'Abdullah that Allah's Messenger (peace be upon him) said:

"A woman was punished because she had kept a cat tied until it died, and (as a punishment of this offence) she was thrown into the Hell. She had not provided it with food, or drink, and had not freed her so that she could eat the insects of the earth."<sup>337</sup>

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<sup>336</sup> *The Islamic Law of Nation*, Translated with an introduction, notes, and appendices by Majid Khadduri, (Baltimore: The Johns Hopkins Press, 1966), p.280.

<sup>337</sup> Imam Muslim, *Sahih Muslim*, Book 026, transl. Abdul Hamid Siddiqui, Hadith Number 5570 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/026.smt.html> (Last time visited on 12.12.2007).

In another tradition we learnt how forgiveness and reward from Almighty Allah has been granted to the man who shared water with thirsty dog, and how for a service to every living animal there is a reward from Almighty Allah. Abu Huraira (may Allah be pleased with him) reported Allah's Messenger (peace be upon him) as saying:

A person suffered from intense thirst while on a journey, when he found a well. He climbed down into it and drank (water) and then came out and saw a dog lolling its tongue on accounts of thirst and eating the moistened earth. The person said: This dog has suffered from thirst as I had suffered from it. He climbed down into the well, filled his shoe with water, then caught it in his mouth until he climbed up and made the dog drink it. So Allah appreciated this act of his and pardoned him. Then (the Companions around him) said: Allah's Messenger, is there for us a reward even for (serving) such animals? He said: Yes, there is a reward for service to every living animal.<sup>338</sup>

No human being possessed a sense for justice, as our Beloved Prophet (peace be upon him), who was sent by Almighty Allah as a Mercy to all worlds. Not only human beings but animals as well were asking the justice from the Apostle of God (peace be upon him). In the following tradition we see how a gazelle made a request to the Holy Prophet (peace be upon him), and a justice was not denied by the Holy Prophet (peace be upon him) in that case.

Umm Salama said that the Prophet (peace be upon him) was in the desert when a gazelle called out to him, "Messenger of Allah!" He replied, "What do you need?" it said, "This Bedouin has captured me and I have two fawns in the mountains, so release me so that I can go and suckle them. Then I will return." He asked the man, "Will you do that?" He replied, "Yes." Then he left it go and it went and returned and he tied: "Messenger of Allah, is there anything you

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<sup>338</sup> Imam Muslim, *Sahih Muslim*, Book 026, transl. Abdul Hamid Siddiqui, Hadith Number 5577 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/026.smt.html> (Last time visited on 12.12.2007).

want?" He said, "Let this gazelle go." He let it go and it went running off into the desert, saying, "I testify that there is no god but Allah and that you are the Messenger of Allah."<sup>339</sup>

### **9.3 Principles of Justice Related to the Relationship between the *Khalifa* (the Head of an Islamic state) and the Citizens of Islamic State**

The last set of the principles is related to the relationship between the *Khalifa* (and his representatives) and the citizens of the Islamic state. Duties of the *Khalifa* towards the citizens of the Islamic state are twofold. The first kind of duty is related to governors, while the second kind of duty is related to people.

The responsibilities of the *Khalifa* are twofold. The first kind of a responsibility is related to his accountability to Almighty Allah, while the second is related to his accountability to the people. The first kind consists of the most important duty, and that is full implementation of the Islamic law, through obedience to Almighty Allah and His beloved prophet (peace be upon him). The right to be a *Khalifa* does not belong to every mature man as it is usually prescribed in the western legislation today. Contrary to the western law, in Islamic law, it has been considered as a trust (*Ammanah*) from Almighty Allah, which bears a greatest responsibility which can not be accomplish by everyone, but only by those who are the best and they are surely in small number. The duty of *Khalifa* is the most difficult one, and therefore specially rewarded by Almighty Allah.

It has been narrated on the authority of 'Abdullah b. 'Umar that the Messenger of Allah (may peace be upon him) said: "Behold! The Dispensers of justice will be seated on the pulpits of light beside God, on the right side of the Merciful, Exalted and Glorious. Either side of the being is the right side both being equally

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<sup>339</sup> Qadi 'Iyad ibn Musa al-Yahsubi, *Ash-Shifa of Qadi 'Iyad*, transl. Aisha Abdarrahman Bewley (Granada: Madinah press, 1991), 174.

meritorious. (The Dispensers of justice are) those who do justice in their rules, in matters relating to their families and in all that they undertake to do."<sup>340</sup>

### 9.3.1 Duty towards a Governors Appointed by the *Khalifa*

The first and most significant duty of the *Khalifa* is to choose a person who is fully capable to perform all prescribed duties assigned to particular post. *Khalifa* has to show this ability, rejecting not only those who are not fit for the post, but also those who are greedy for that, even if they have a very close blood relationship with him. The principles of impartiality and equal opportunity have to be followed strictly, as it is shown by the Prophet (peace be upon him) in the following tradition:

It has been narrated on the authority of Abu Dharr who said: "I said to the Holy Prophet (may peace be upon him): Messenger of Allah, will you not appoint me to a public office?" He stroked my shoulder with his hand and said: " Abu Dharr, thou art weak and authority is a trust and on the day of judgment it is a cause humiliation and repentance except for one who fulfils its obligations and (properly) discharges the duties attendant thereon."<sup>341</sup>

Our Prophet Muhammad (peace be upon him) also rejected to grant a post for anybody whoever asked or showed greediness in that regard.

Abu Mussa reported: We went to the Prophet, I and two men of my cousins. One of them said: "O Messenger of Allah, make me governor of some land over which Allah gave

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<sup>340</sup>Imam Muslim, *Sahih Muslim*, Book 20, transl. Abdul Hamid Siddiqui, Hadith No. 4493 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/020.smt.html> (Last time visited on 15.12.2007)

<sup>341</sup>Imam Muslim, *Sahih Muslim*, Book 20, transl. Abdul Hamid Siddiqui, Hadith No. 4491 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/020.smt.html> (Last time visited on 15.12.2007)



you power."The other said like that. He said: "By Allah, we appoint none in this post who seeks it, nor anyone who is greedy for it."<sup>342</sup>

Completely opposite to this principle, today we are witnessing unprecedented greediness for the power by the majority of the Muslims politicians. Is it in according with above mentioned saying of the Holy Prophet (peace be upon him)? Our answer has to be negative in this regard.

Another main duty assigned to the *Khalifa* is to advice and regularly inquire about those who has been appointed by him. The letter of 'Umar (God be pleased with him) also called the directive on *siyāsah* (administration of justice), written to Abū Mūsa al-Ash'arī, is the basis for recommended judicial conduct and procedure. Due to its extreme importance, the full content of letter I decided to present here. The letter of Imam 'Alī (God be pleased with him) to Mālik al-Astar, and the letter of Abū Yūsuf to the *Khaliph* Hārūn ar-Rashīd will be presented in appendix. Hazrat 'Umar (God be pleased with him) stated following in his letter:

Adjudication is a governing (definitive) obligation and a *sunna* (practice) that is followed persistently. Understand fully the matter that is brought before you for speaking about a right that cannot be enforced is futile.

Treat people equally through the expressions on your countenance, the way you make them sit in your court and through your justice, so that the elite may not expect favors from you nor the weak despair of your justice. In one narration it is said: so the weak may not be terrorized by your overbearing demeanour. Testimony is the burden of the plaintiff and the oath is to be administrated to one who denies the claim. Settlement (through mediation) is permitted among Muslims, except a settlement that legalizes what is prohibited or prohibits what is lawful.

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<sup>342</sup> Imam Muslim, *Sahīh Muslim*, Book 20, transl. Abdul Hamid Siddiqui, Hadith No. 4489 <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/muslim/020.smt.html> (Last time visited on 15.12.2007).

Let not a judgement you rendered yesterday, and that you have (later) reflected upon receiving guidance towards the correct view, prevent you from restoring a right. Rights are ancient and cannot be annulled. Restoring a right is by far better than persisting in a manifest error. Ponder over the matter, ponder over what is causing you concern in your heart and is something that has not reached you from the Noble Qur'ān and the *Sunnah*. Thereafter, identify the precedents and resembling cases and undertake analogy when such cases are found. Then rely on what appears to be more pleasing and appropriate to Allāh, the Exalted, and what is most suitable as the truth.

Grant the plaintiff time that is sufficient for him to prove his claim. If he comes up with testimony (evidence), he takes what is due to him; otherwise a judgement against him becomes obligatory. In one narration it is said: If he is unable to come up with evidence, the issuance of a judgement against him will be permitted. This is the most suitable course for eliminating objections and for making ambiguous things manifest.

The presumption is that Muslims possess moral probity, one against the other, except those who have been awarded the *hadd* for *qadhf* (false accusation of unlawful sexual intercourse), one who is of doubtful clientage or lineage, or one who is known to have committed perjury. Without doubt Allāh has appointed you guardians over the secret-in one narration secrets-and has warded off allegations against you through testimony.

Beware! Do not become angry, perturbed, or overwhelmed (while deciding), and do not torment the public, who are litigating, by denying them the source of their rights through which Allāh, the Exalted, gives rise to rewards and arranges provisions. Verily, he who purifies his intention about a right in his relationship with Allāh, the Exalted, even when such intention goes against his own person, Allāh will be sufficient for him in his relationship with the people. If a person adopts misrepresentation (deception) before the people when Allāh knows that the truth is contrary to it, then Allāh, the Mighty and Majestic, will give him disgrace. He, the Praiseworthy and Exalted, does not accept any worship other than what is pure. What than do you think about (the purity of) the rewards that

Allāh, the Praiseworthy and Exalted, gives from the ready substance and overflowing treasures of His mercy.<sup>343</sup>

### 9.3.2 Duties towards the people

Imām Ibn Taymīa (may Almighty Allah be pleased with him) said:

Muslims in positions of authority, whether as scholars or as commanders, as well as their subordinates, all have obligation towards people. Each rank has particular duties which it is required to perform, although these may not be demanded of another grade, being less essential to it and therefore not obligatory. Likewise, certain things may be unlawful to a man by virtue of his rank, while to those of different rank they are either not unlawful at all, or to a lesser extent.<sup>344</sup>

There are several kinds of duties which have been prescribed for the *Khalifa* or his representatives towards the people. The question which necessarily will come to be examined in the beginning is that of priority. Which kind of duty has a priority over other? What are the main and most important purposes of the *Sharī'ah*, which the head of Islamic state has to preserve? With regard to this question, chronological order of the *Maqāsid al-Sharī'ah* (Purposes of the Sharī'ah) has to be followed. In Islamic law, there are five primary purposes of the Sharī'ah. "Each purpose, however, has a positive or aggressive aspect and a negative or defensive aspect. From the positive aspect, the interest is secured by establishing what is required by the *Sharī'ah* through each of its *maqāsid*."<sup>345</sup>

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<sup>343</sup> 'Alā' al-Dīn Abū Bakr ibn Mas'ūd al-Kāsānī, *Badā'i' al-San ā'i' fī Tartīb al-Shar ā'i'* (The Unprecedented Analytical Arrangement of Islamic Laws), Book LIII, *Adab al-Qādī*, Duties of the Qādī and Judicial Procedure, Translation and Commentary by Imran Ahsan Khan Nyazee, (Lahore, Advanced Legal Studies Institute, 2007), 57-59.

<sup>344</sup> Imām Ibn Taymīa, *Public Duties in Islam*, Translated from the Arabic by Muhtar Holland, (Leicester: The Islamic Foundation, 223 London Road, 1982), 129.

<sup>345</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, (Islamabad: Islamic Research Institute, 2<sup>nd</sup> reprint 2005), 242.

The first and most important purpose of the *Sharī'ah* is the preservation and protection of *Dīn*. Whenever it is needed, it is a duty of *Imām* as a head of Islamic state, to wage a *jihād* for the protection of *Dīn*. "Thus, *jihād* is prescribed for defending *Dīn*, while prayer, fasting, pilgrimage, and *Zakāt* help establish it. It is the duty of the *Imām* to ensure proper conditions for both, while it is binding upon each subject to fulfill these duties, individually and collectively."<sup>346</sup> It is the duty of Islamic state to provide and ensure religious education for the masses especially through its educational institutions.

The second purpose of the *Sharī'ah* is the preservation and protection of Life. "Life is preserved through the provision of sustenance and the maintenance of good health, while it is protected or defended through the provision of penalties for those who destroy life without legal justification."<sup>347</sup> It is a primary duty of Islamic state to protect life and provide security to its citizens. Basic needs regarding the health care should be provided free of cost. To eradicate poverty, if present, is another primary duty to be performed. These are some most important duties which the head of Islamic state has to perform in regard to the protection of life which is the second purpose of the *Sharī'ah*.

The third purpose of the *Sharī'ah* is the preservation and protection of Family (*Al-Nasl*). "*Nasl* is promoted through the maintenance of healthy family life and the institution of marriage, while penalties are provided for those who would corrupt it and destroy its values."<sup>348</sup> It is a duty of the state to encourage marriage amongst the youth, which can be done by different ways. One of them can be to grant the financial support or other privileges for those who are in need, whenever the state is in position to do it.

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<sup>346</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, (Islamabad: Islamic Research Institute, 2<sup>nd</sup> reprint 2005), 242.

<sup>347</sup> *Ibid.*,

<sup>348</sup> *Ibid.*,

The fourth purpose of the *Shari'ah* is the preservation and protection of Intellect (*Al-'Aql*). "The preservation of '*aql*' is achieved through the provision of education and healthy conditions for its growth, while penalties are provided for the consumptions of substances that destroy the intellect."<sup>349</sup> To provide an education to the youth is basic duty of the Islamic state. The recent fact that 6 464 000 children in Pakistan have never been to school is very much alarming. The right to get the education is not only to be considered as a private interest, but as the one of the top public interest as well. Therefore, taking into consideration the needs of the modern time, providing compulsory and free of cost education for the youth, at least for the primary and secondary level should be considered as a top priority of the Islamic state.

The fifth and last purpose of the *Shari'ah* is the preservation and protection of Wealth. "Preservation of wealth is achieved by encouraging its growth, while theft or misappropriation of wealth is punished through penalties."<sup>350</sup>

As we have already seen, most essential duty of the *Khalifa* in general, is to implement the *Shari'a* and not to be its innovator. By doing so, there is a duty on the public to obey and cooperate with him. Let us see what Hadrat Abū Bakr and Hadrat Ali ibn Talib (may Allah be pleased with them) said with regard to that.

'Ali ibn Hāshim ibn al-Barīd related to us from Hishām ibn 'Urwa from his father who said: "Abū Bakr (may God be pleased with him) addressed the people. He (first) praised and glorified God and then said: 'I have assumed authority over your affairs, but I am not the best of you. The Qur'ān was revealed and the Prophet (peace be upon him) established (his) Sunna. He taught us and we acted accordingly, and we came to know. O People- that the greatest wisdom comes through guidance'- or he said 'fear of God', and Abū 'Ubayd doubting this said: I

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<sup>349</sup> Ibid.,

<sup>350</sup> Ibid.,

believe it is taqwā (fear of God) - 'and the greatest humiliation comes through iniquity. The weak among you is the strongest for me, till such time that I have had his rights restored, and the strong among you is the weakest till I have secured from him rights (that were usurped). O Man, I am a follower (of the shari'a) but not its inventor. If I do well (in the performance of my duties), cooperate with me, but if I deviate (from the right path), correct me. With this I end my talk and beseech God that He may forgive you and me.'<sup>351</sup>

'Abd Allāh ibn Idrīs, Abū Ismā'il Ibrāhīm ibn Sulaymān al-Mu'addab, and al-Ashj'i- whose name is 'Ubayd Allāh ibn 'Ubayd al-Rahmān- all of them related to me from Ismā'il ibn Abi Khālid from Mus'ab ibn Sa'd, who said: "Ali ibn Abī Tālib, on him be peace, affirming the truth, said: 'It is obligatory on the ruler (*Imām*) to adjudicate according to the commandments of God and to discharge the trust (reposed in him). When he does so, it is obligatory on the people to pay head to him, to obey him and to respond to his call.'<sup>352</sup>

Now let us see some basic duties related to the *Khalifa* (Islamic state) towards the public. First of all, nobody should be deprived from his right, even if his right is directly related to the claim towards the *Khalifa* or the Islamic state. The following tradition will on the best way to illustrate this principle.

Abū Sa'id al-Khudri (Allah be pleased with him) is reported to have said that a Bedouin came to the Holy Prophet (peace and blessings of Allah be upon him) demanding from him the payment of a loan that he owed and he (the creditor) treated him (the Holy Prophet) harshly till he said to him (the Holy Prophet), "(Blame me not if) I reduce you to a strait by torturing you except that you repay it." Upon this his Companions rebuked him and said, "Woe to you! Do you know whom are you talking with?" He replied, "I am demanding my right." Then, the

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<sup>351</sup>Abū 'Ubayd al-Qāsim ibn Sallām, *The Book of Revenue (Kitāb al-Amwāl)*, Translated by Professor Imran Ahsan Khan Nyazee, (Garnet Publishing Limited, 8 Southern Court South Street Reading RG1 4QA, UK, 2002), p. 4-5.

<sup>352</sup> *Ibid.*, 5.

Holy Prophet (peace and blessings of Allah be Upon him) asserted, "Why don't you stand at the side of the one who has the right?" Then he sent (someone) to Khaula, the daughter of Qais, asking her, "If you have some dates, lend them to us till our dates reach us (as a booty) and we return (them) to you." She said, "Yes. May my father be ransom for you, Allah's Messenger." Then she gave him (the dates) on loan. He (the Holy Prophet) repaid the loan to the bedouin and fed him. He then said, "You paid my right in full. May Allah give you to the full." Upon this, he (the Holy Prophet) said, "Those are the best of people. A people will never be revered among whom the weak cannot get his right without confronting with trouble and disturbance."<sup>353</sup>

The compensation is to be paid to an individual by the state authority, in case of any unlawful damage done, even unintentionally, either to his personality or to his property. As a wonderful example for this rule we may quote an incident during a caliphate of Hadrat Umar ibn Khatab (may Allah be pleased with him).

Hadrat Ayas bin Salmah (may Allah be pleased with him) said, "Once Hadrat Umar (may Allah be pleased with him) passed through a market with a lash in his hand. He pushed me slightly with his lash which touched the border of my clothe, and asked me to clean the way of the rubbish. He again met me next year and said to me, 'Are you planning to perform Hajj?' I replied in the affirmative. After that he caught my hand, took me to his house and gave me 600 dirhams, saying, 'This is due to my pushing you with lash. I submitted, I do not remember that'. He said, 'But I have not forgotten it.'<sup>354</sup>

Does the Islamic state have a right to usurp someone property with appropriate compensation when there is a demand of public interest? In regard to this question,

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<sup>353</sup> *Sunan Ibn-i-Mājah*, transl. Muhammad Tufail Ansari, (New Delhi: Kitab Bhavan, 2000), Vol. III, Hadith Number 2426, p.434-435.

<sup>354</sup> Maulānā Muhammad Yūsuf Kāndhlawi, *Hayātus-Sahābah*, Translated from the Arabic by Dr. Majid Ali Khan, (Karachi, Darul-Ishaat, Urdu Bazar Karachi-1, 1993) Vol.II, p. 121

despite the general rule that a public interest should always prevail over a private, our answer can not be affirmative. Without consent of the owner nobody has a right to take his property, and this view has been based on the following tradition.

Hadrat Zaid bin Aslam (may Allah be pleased with him) narrates,

The house of Hadrat Abbas bin Abdul Motal'lib was situated beside the Masjid-e-Medina (Mosque in Medina). Hadrat Umar (may Allah be pleased with him) asked him to sell his house to him for he wanted to bring about some extension in the boundary of the Masjid. Hadrat Ab'bas (may Allah be pleased with him) refused to do so. Hazrat Umar (may Allah be pleased with him) than asked him to give the house as a gift to him. Hadrat Abbas (may Allah be pleased with him) refused to accept this too. Hadrat Umar (may Allah be pleased with him) then asked him to bring about extension into the boundaries of the Masjid through that house. Hadrat Abbas (may Allah be pleased with him) refused to accept it as well. Then Hadrat Umar (may Allah be pleased with him) suggested that someone put as an arbitrator between them. Hadrat Abbas (may Allah be pleased with him) named Hadrat Ubai bin K'ab (may Allah be pleased with him), and Hadrat Umar (may Allah be pleased with him) accepted him. Both of them brought their dispute to Hadrat Ubai bin K'ab (may Allah be pleased with him). He said to Hadrat Umar (may Allah be pleased with him) 'You can not turn him out from the house without his (Abbas's) consent'. Hadrat Umar (may Allah be pleased with him) said, 'Have you taken this decision from the Book of Allah? Or you have found it somewhere in the Sun'nah of the Holy Prophet (peace be upon him)? Hadrat Ubai bin K'ab said, 'I have given this judgment rather from the Sun'nah of the Holy Prophet (peace be upon him). Hadrat Umar (may Allah be pleased with him) said, 'What is that Sun'ah'? He said, 'I have heard the Holy Prophet (peace be upon him) saying. 'While Hadrat Sulaiman bin Daūd (peace be upon him) was constructing 'Baitul maqdis' he would see the wall demolished every time he got it raised. Then Allah, the Exalted revealed to Hadrat Sulaiman (peace be upon him) that a building must not be constructed on any body else's land without his consent'. At this, Hadrat Umar (may Allah be pleased with him)



gave up this dispute. Hadrat Abbas (may Allah be pleased with him) then extended the boundary of the Masjid by giving his house of his own.<sup>355</sup>

Another duty of the *Khalifa* is his concern for the welfare of the people.

Hadrat 'Umar was the first ruler in the world history who introduced the system of social security in his regime. He established in the caliphate the department of social security on systematic and regular basis. A careful census was taken, each name having been registered, to facilitate the task and to ensure that every one was provided with the basic necessities of life. Even orthodox European orientalisists admit that to Hadrat 'Umar has the credit of being the first ruler to maintain registers showing the numbers and needs of the people to enable the state to discharge efficiently its duty to the public.<sup>356</sup>

The priority regarding a social security should be given to those who are old and living alone, not able to take care of themselves. As for example let us see how Hazrat Abū Bak'r and Hazrat Umar ibn Khattab (may Allah be pleased with them) performed this duty by themselves during their caliphates.

Hadrat Abu Salef Ghaffari (may Allah be pleased with him) narrates,

Hadrat Umar (may Allah be pleased with him) would look after at night an old blind woman who lived in the outskirts of Medina. He would carry water for her and made other provisions for her. But whenever he would go to the old woman he felt that someone else had already attended to the woman. He came to the old woman several times but could not surpass that man is looking after the old woman. Hadrat Umar lay in wait for the person and saw Hadrat Abu Bak'r (may

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<sup>355</sup> Maulānā Muhammad Yūsuf Kāndhlawi, *Hayātus-Sahābah*, transl. Dr. Majid Ali Khan, (Karachi: Darul-Ishaat, 1993) Vol.II, 108-109.

<sup>356</sup> Prof. Dr. Noor Mohammad Ghifari, *Social Security in Islam*, (Lahore: Atiq Publishing House, 1989), 128.

Allah be pleased with him) doing all that and he was a Caliph at the time. Having seen this, Hadrat Umar said: "By my age (life) none but you could do that."<sup>357</sup>

In another narration Auzai says,

Once Hadrat Umar (may Allah be pleased with him) came out in a dark night. Hadrat Talha (may Allah be pleased with him) noticed him and he followed him up to the destination. He saw Hadrat Umar (may Allah be pleased with him) entering one house and then the other. Next morning, Hadrat Talha (may Allah be pleased with him) went to that house and saw that an old, blind and crippled woman lived in the house. He asked the old woman, 'Why did that man come to you at all?' The old woman replied, 'This man looks after me for a long time, provides me all necessities of life and removes my cares and anxieties.' Having heard this, Hadrat Talha (may Allah be pleased with him) accursed himself and said, 'O Talha! You had followed Hadrat Umar in order to catch him red-handed.'<sup>358</sup>

For those who are in need, there should be no difference in a distribution of necessary goods. With regard to that the old-age pension has been granted by Hadrat Umar ibn Khatab irrespectively of being a Muslim or a Dhi'mmi.

Hadrat Abdullah bin Abi hadrad Aslami (may Allah be pleased with him) narrates,

When we reached Jabia in the company of Hadrat Umar (may Allah be pleased with him) he saw a Dhim'mi of old age begging food from door to door. On inquiry, the people around informed him that he is a Dhim'mi and has now grown old and weak. Hadrat Umar (may Allah be pleased with him) exempted

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<sup>357</sup> Maulānā Muhammad Yūsuf Kāndhlawi, *Hayātus-Sahābah*, transl. Dr. Majid Ali Khan, (Karachi: Darul-Ishaat, 1993) Vol.II., 96-97.

<sup>358</sup> Ibid., p. 97.

him from 'Jiz'yah' (Tax for safety of the non-Muslim) and said, 'You people have reduced him to such a plight that he is now begging food. Thereafter he fixed ten 'dirham' from Baitul-māl (Islamic exchequer). The old man had his children too'. In another narrative it is like this:

'Once Hadrat Umar (may Allah be pleased with him) came across an old Dhim'mi, who used to beg at the gates of Masjids (mosques). Hadrat Umar said, 'I have not done any justice in your case. We would take 'Jizyah' from you in spite of your old age and thus we have lost you in your old age.' And after that, he fixed *a considerable amount for him as old age pension.*<sup>359</sup>

Another example we have taken from the practice of Hadrat Ali ibn Talib (may Allah be pleased with him) when he did not make any difference between a free woman who was an Arab and her non-Arab freed-maid when they came to him, begging for some food.

Abdullah Hashmi narrates from his father that he said,

Two beggar women came to Hadrat Ali (may Allah be pleased with him). One of the two was an Arab and another was her freed-maid. Hadrat Ali (may Allah be pleased with him) issued order to give one sackful of cereal and forty dirham to each. The freed-maid left with what was given her. But the Arabian woman said, 'O Amirul-Mominin! You are giving me equal to my slave-maid whom I have now set free, although I am an Arab. Hadrat Ali (may Allah be pleased with him) said to the woman, 'I have pondered over the Book of Allah but nowhere I found any preference given to the offspring of Ismail (peace be upon him) to Is'haque (peace be upon him).'<sup>360</sup>

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<sup>359</sup> Ibid., 120

<sup>360</sup> Ibid., 123

For the poor Hadrat Umar ibn Khatab (may Allah be pleased with him) has even fixed a old age pension irrespectively whether they are Muslims or Dhim'mis.

Hadrat Abdullah bin Abi Hadrat Aslami (may Allah be pleased with him) narrates,

When we reached Jabia in the company of Hadrat Umar (may Allah be pleased with him) he saw a Dhim'mi of old age begging food from door to door. On inquiry, the people around informed him that he is a Dhim'mi and has now grown old and weak. Hadrat Umar (may Allah be pleased with him) exempted him from 'Jizyah' (Tax for safety of the non-Muslims) and said, 'You people have reduced him to such a plight that he is now begging food. Thereafter he fixed ten 'dirham' from Baitul-māl (Islamic exchequer). The old man has his children too. In another narrative it is like this: 'Once Hadrat Umar (may Allah be pleased with him) came across an old Dhim'mi, who used to beg at the gates of Masjids (mosque). Hadrat Umar said, ' I have not done any justice in your case. We would take 'Jizyah' from you in spite of your old age and thus we have lost in your old age.' And after that, he fixed a considerable amount for him as old age pension.'<sup>361</sup>

Finally, last essential duty which we are going to be mentioned here is that of a *Shura* (consultation), which the *Khalifa* as a head of Islamic state is obliged to do.

There must be consultation between ruler and ruled. 'Take counsel with them in the matter.' (3:153) 'And their affair is a matter for consultation among them.' (42:38) Consultation is one of the fundamentals of Islamic rule, although no specific method of administering it has even been laid down; its application has been left to the exigencies of individual situations. The Messenger (peace be upon him) used to take the advice of the Muslim community in matters concerning which no revelation was received; thus he would ask their opinion in worldly affairs in which they had some skill, such as positions on a field of battle. Thus he listened to their opinion at the battle of *Badr*, and encamped at the well

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<sup>361</sup> Maulānā Muhammad Yūsuf Kāndhlawi, *Hayātus-Sahābah*, transl. Dr. Majid Ali Khan, (Karachi, Darul-Ishaat, 1993) Vol.II, p. 120.

of *Badr*, though originally he had been some distance away from it; similarly, he listened to them in the matter of digging the trench, and so, also, against the advice of 'Umar, in the matter of prisoners, through in this case there eventually came a revelation which supported 'Umar's point of view. Whenever revelation was received, of course, in the very nature of the case there was no room for consultation, in accordance with the very foundations of the faith; the matter then pertained exclusively to the Messenger, the trusty One. In the same way the Caliphs continued to consult the Muslims. Abu Bakr did so in the case of those who withheld the *Zakāt*; he held strongly that war should be declared on them, and though 'Umar at first opposed him, he finally came to agree with Abu Bakr most fully, Allah having opened his mind to understand that Abu Bakr was set on such a course. Again, Abu Bakr took counsel with the Meccans concerning the war in Syria, against the opposition of 'Umar. And 'Umar himself took advice in the matter of going into a plague-stricken country; he came to his own conclusion, and subsequently found a precedent in the custom of the prophet which confirmed him, and thus he kept to his course. Such was the method of consultation; it did not follow any well-marked or definite system, because the needs of that age never demanded more than this type of informal counsel. But the wide variety of questions which now arises leaves ample room for a wide range of systems and methods; hence no system is specified by Islam, which is content rather to lay down only the general principle.<sup>362</sup>

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<sup>362</sup> Sayyid Qutb, *Social justice in Islam*, transl. John B. Hardie, (New York: Islamic Publication International, 2000), 122-123.

## CONCLUSION

Regarding the earliest definitions and approaches related to justice this research has found that to define justice and formulate its principles was the task with which human mind was preoccupied since beginning. For those who received divine revelation, either through the Holy Scripture, or teaching of the Prophets (peace be upon them), the sole source of justice and its principles was the command from God Almighty. Those who rejected the belief in one God chose to invent and make their own goddesses, not only worshipping them, but also considering them as source of justice, as it was described in the ancient mythology. Socrates, who opposed such belief, was for that reason trailed and sentenced to death. However, fully aware of unjust law punishment which was awarded to him, he again considered current law to be just, swiftly rejecting his friend Crito idea to escape from the prison. His trial and death were quite significant for the development of the idea of justice. Plato who was a student of Socrates and witness of his trial realized that current stand towards justice had to be changed. He devoted a lot of his time discussing the idea of justice, first listening different approaches by friends, and then later on, giving his definition and views regarding to justice. His friends defined the justice differently as follows:

- ➔ To speak the truth and to pay your debts-no more than this.
- ➔ Justice is the giving to each man what is proper to him.
- ➔ Justice is the art which gives good to friend and evil to enemies.
- ➔ Justice is nothing else than the interest of the stronger.

Plato divided his theory of justice into two interlinked parts: a) Justice in the state and b) Justice in the individual. Regarding to the first (justice in the state) there are three classes in Plato's ideal state: a) the class of the philosopher or the ruling class which is the representative of reason, b) the class of the auxiliaries, the class of the warriors and

defenders of the country, and this class is the representative of spirit, c) the class of farmers and artisans, and this class is the representative of the appetite instinct of the community. According to Plato the justice of the State consisted in each of the three classes doing the work of its own class. Regarding the second (justice in the individual), there are three elements of human soul: a) reason, b) spirit, and c) appetite. An individual is just when each part of his soul performs its functions without interfering with those of other elements. Aristotle's approach towards justice was quite different. He does not recognize any class of people as purposed by Plato, introducing some kind of equality, especially legal equality amongst the free citizens. Equality and fairness will be two leading terms in his attempt to define and explain the true meaning of justice. Political justice cannot exist in a household, because reciprocity is only possible between two equal persons. Children and slaves were regarded as man property, and therefore without any rights, while the wife enjoyed some rights but these rights were a far away from any kind of equality between them. Aristotle was the first philosopher who employed a term distributive justice, which according to him deals with the distribution of honor, wealth, and the other things that are divided among the members of the body politic. Cicero's approach towards justice was quite different, and at the same time more realistic than those approaches presented by Greek philosophers. His concept of justice is of divine origin and therefore the origin of justice is to be sought in the divine law of eternal and immutable morality. According to Cicero there are two principles of justice.

➔The first demand of justice is, that no one do harm to another, unless provoked by injury;

➔The second, that one use common possessions as common, private, as belonging to their owners.

Here, in the first principle of justice, Cicero differed from the Greek philosophers (Socrates and Plato) allowing an injured person to retaliate and defend himself. This retaliation should not exceed the injury. Towards a slave, contrary to Aristotle, Cicero

had a very liberal approach assigning to him different rights. Slave ought to be treated as hired servants, to have their daily tasks assigned to them, and to receive a just compensation for their labor.

With regard to the school of natural law this research has moreover established that Roman stoic philosopher Marcus Tullius Cicero was the first philosopher who defined natural law. His views regarding natural law greatly influenced Thomas Aquinas according to whom natural law is part of Eternal law which can be discovered by a man through his reason. Man, however, unlike the rest of creation is free and rational, capable of acting contrary to eternal law. That is why, this eternal law has to be promulgated to him through reason. The main contribution to the school of natural law given by John Locke is his view regarding natural rights. Three natural rights, protection of life, liberty and property were recognized by John Locke. Lock's doctrine that nature had endowed human beings with certain inalienable rights that could not be violated by any governing authority was incorporated in the American Declaration of Independence. This research has also found that these natural rights have been taken from the Bible by John Locke. Jean Jacques Rousseau differed from almost all western philosophers was how to discover a natural law. According to the majority of philosophers and legal thinkers human reason is the only way to discover a natural law. But Rousseau was not of that opinion. He was convinced that the heart is more important in human reasoning in discovering a content of natural law. Another point on which Rousseau differed from almost all western philosophers was his view regarding the state of nature. He rejected even its existence, limiting its possible existence to very extraordinary circumstances. According to him it is clear from The Holy Scriptures that the first man, having received his understanding and commandments immediately from God, was not himself in such a state, and after that so many Prophets have been sent. He is certainly right from the Islamic point of view as well, because to every nation Almighty Allah sent messengers and through them He established religion and justice. Rousseau was convinced that all



justice comes from God. But the problem is how to receive such knowledge from God. From the perspective of Islamic law, *hukm* from Almighty Allah can not be discovering by independent human reasoning.

Regarding to the Utilitarianism, this research has found that Jeremy Bentham did not differentiate between man's and God's pleasure. According to him, God did not reveal to man His pleasure, and said that even God does not know what His pleasure is. Consequently according to him whatever man considers as his pleasure, it is at the same time considered as God's pleasure. Can this view given by Bentham justify the roots of utilitarianism on which he created his entire theory of pain and pleasure? We may conclude that the roots on which Bentham established his theory are completely unfounded and against basic teaching of Christianity. Bentham's view generated a lot of criticism and that is why Mill tried to present Utilitarianism as a doctrine whose principles are deeply rooted in religion. In this regard his success was very limited. Here, we may conclude that contrary to the teaching of Jeremy Bentham, the concept of happiness in Islam is directly subordinated to the will of God and fully depends on obtaining God's pleasure. God's pleasure can be obtained only throughout sincere obedience to Almighty Allah, and His beloved Messenger (peace be upon him). Through our obedience to Almighty Allah and His beloved Prophet Muhammad (peace be upon him), our happiness will be in direct proportion to how much we got close to Almighty Allah.

The most important finding of this research regarding libertarian approach towards distributive justice, we found in the teaching of Robert Nozick and his concept of Minimal State. According to Nizick, in the Minimal state there is no central bank, no department of public works, no ministry for education, no instrument for welfare policy, and so on. All these and similar functions, which are assumed to be a proper task of the government will be undertaken by different private institutions, charities, religious bodies, all operating in a free market. Nozick advocates a system in which the role of the

government is very limited. That is why he rejected any kind of state redistribution. The concept of justice presented by Robert Nozick was called by the author the Entitlement theory (a theory of the justice of possession), and it contains three principles:

- ➔ The first principle is a principle of justice in initial acquisition which explains how an individual can be the first appropriator of a good from nature.
- ➔ The second principle is a principle of transfer of holdings. It contains general description of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society.
- ➔ The third principle is a principle of justice in rectification. In the case when one of the two above mentioned principles is violated, the correction of injustice should be applied.

From Islamic point of view, the liberation of an individual from his desires has been considered as the main objective of Islamic law. Different kinds of freedoms recognized by Western law were the part of Islamic law much earlier. The main difference between two systems is that the freedom and its limitation in Islamic law has been prescribed by Almighty Allah and no body has right to change it, while in Western law we have a different situation. Becoming a true slave of Almighty Allāh means to be free from everything except Allah, the Most High, and to enjoy full protection from Him.

This research has also found that the most important work regarding distributive justice in the last century was undoubtedly done by John Rawls in his book *A Theory of Justice*. The main characteristic of his approach was to combine equality and freedom, and to come up with a new theory of distributive justice. Analyzing his book we found that his principles of justice are twofold:

- ➔ The principles of justice for institutions
- ➔ The principles of natural duty and obligation that apply to individuals

There are two principles of justice for institutions in Rawls' theory:

- ▶ First principle says that each person is to have an equal right to the most extensive

system of equal basic liberties compatible with a similar system of liberty for all.

► Second principle says that social and economic inequalities are to be arranged so that they are both:

- a) To the greatest benefit of the least advantaged, consistent with the just saving principle, and
- b) Attached to offices and positions open to all under conditions of fair equality of opportunity.

The most significant principle related to the principles of justice for institution is that of freedom. For Rawls, it is crucial that the first principle has a priority compared to the second.

Regarding to the principles of natural duty and obligation that apply to individuals, several kinds of natural duties were mentioned by Rawls. The first and most important is the duty of justice, and according to Rawls this duty requires us to support and to comply with just institutions that exist and apply to us. The second important natural duty is the duty of mutual respect, and it contains in our willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected. And the third important duty mentioned by Rawls was the duty of mutual aid. The duty not to harm or injure another; and the duty not to inflict unnecessary suffering are the last two duties mentioned by the author. In Rawl's theory, the content of obligations is always defined by an institution or practice the rules of which specify what it is that one is required to do. It means that every obligation is defined and there should be no any ambiguity related to its content. However, one thing that cannot escape our attention is that no where Rawls has given his definition of justice. He by himself recognized this fact. Although there are several similarities which we can find between Rawl's theory and Islamic concept of distributive justice, the main difference remains in his concept of the veil of ignorance, from where all principles of

justice he derived. This research has already proved that the state of nature is completely unfounded from the Islamic point of view.

This research claims to have successfully tried to establish the following conclusions which are related to the Islamic concept of distributive justice.

► Islamic concept of distributive justice is purely of Divine origin, and therefore completely depends on the *hukm* from Almighty Allah. Consequently, the most commonly accepted definition of justice given by Islamic jurists (*fuqaha*) is that of ***giving every man his due***. The scope of Distributive justice in Islam has been determined by Divine rights and obligations prescribed by Almighty Allah, and therefore they are very wide and covering almost every aspect of the human life. The discussion has shown that its principles are universal and unchangeable, ordered by Almighty Allah to be followed and implemented.

➔ The principles of distributive justice in Islam are of the three kinds:

- ❖ First kind of the principles are related to the relationship between Almighty Allah and His servant,
- ❖ Second kind of the principles are related to the relationship between a servant of Almighty Allah and his surroundings, and
- ❖ Third kind of the principles are related to the relationship between the *Khalifa* (the head of an Islamic state) and the members of Islamic society.

► Regarding to the principles of justice related to the relationship between Almighty Allah and His servant, our research has identified three basic principles. These principles are in the fact the most important duties of the man towards Almighty Allah, and if these duties are not properly performed by the man, then no one has right to claim for himself any attribute of justice. The first principle is related to piety, the second principle demands that a judgment be done only according to the *hukm* from Almighty Allah, and the

last third principle demands full sincerity in our deeds towards Almighty Allah. It will be also necessary to mention that that Divine justice implies that in the universe all things are in exact proportion and in the correct place and situation, as they should be, nothing is amiss. Almighty Allah is the One who created the means of sustenance as well as those who are sustained, and who conveys the means to the creatures as well as creating for them the ways of enjoying them. Sustenance is of two kinds: outward, consisting of nourishment and food, which is for the sake of what is outward, namely the body. Inward consisting of things known and things revealed, and that is directed to our hearts and inmost parts.

► Regarding to the principles of justice related to the relationship between the servant of Almighty Allah and his surroundings, several principles are distinguishable. First is the principle of Islamic brotherhood which contains different duties between the Muslims. The second is the principle of mutual respect and aid which applies to every citizen of Islamic state. The third principle is related to the fundamental principle of the distribution of goods, and according to this principle whatever proceeds over one's needs should be given in charity. The last most significant principle is the principle of mercifulness, which requires from every Muslim not to harm others and to be merciful towards everything, as it was shown by the Holy Prophet Muhammad (peace be upon him).

Our research has also identified several different relationships where these principles are applied.

- ❖ First of all these principles are related to the family relationships amongst its members, which consists of different mutual duties. Additionally, it also includes duties towards a slave and servant who are an integral part of the household.
- ❖ Secondly, it covers duties towards a neighbor.
- ❖ Thirdly, it is related to the duties towards the poor and needy.

- ❖ Fourthly, it includes mutual duties amongst the Muslims, as well a duties towards a non-Muslim in Islamic state. Islamic concept of distributive justice does not conclude here.
- ❖ Fifthly, it does not include only relationship between human beings, but it also include relationship between other man and other living creatures.
- ❖ Finally, to take care of the environment is also a duty prescribed by the Islamic concept of distributive justice.

► Regarding to the principles of justice related to the relationship between the *Khalifa* (the head of an Islamic state) and the citizens of Islamic state, these principles are divided and therefore directly related to two different kinds of duties prescribed to be perform by the *Khalifa*. The first kind of duties are related towards governors appointed by the *Khalifa*, while the second kind of duties is related towards the people. There are two most significant duties of the *Khalifa* towards his governors. First is to choose a person who is fully capable to perform all prescribed duties assigned to particular post. Full implementation of the principle of equal opportunity is the crucial part of this duty. Another main duty assigned to the *Khalifa* is to advice and regularly inquire about those who has been appointed by him.

There are several kinds of duties which have been prescribed for the *Khalifa* or his representatives towards the people. Regarding to the question of priority, which kind of duty should be perform first, chronological order of the *Maqāsid al-Sharī'ah* has to be followed. Therefore, the preservation and protection of *Dīn* will have supreme priority, and will be followed by the protection of life, family, intellect, and wealth. The most essential principle related to the personality of *Khalifa* is that the head of Islamic state has to be the representative of the Holy Prophet (peace be upon him) at that time.

## **Appendix I:**

### **The Farewell Address of the Holy Prophet (peace be upon him)**

After praising and thanking Almighty Allah, the Holy Prophet (peace be upon him) said:

“O people lend me an attentive ear, for I know not whether after this year I shall ever be amongst you again. Therefore listen to what I am saying very carefully and take these words to those who could not be present here today.

O people just as you regard this month, this day and this city a sacred, so regard the life and property of every Muslim as a sacred trust. Return the goods entrusted to you to their rightful owners. Hurt no one so that no one may hurt you. Remember that you will indeed meet your Lord, and that He will indeed reckon your deeds. Almighty God has forbidden you to take interest (Arabic:riba), therefore all financial obligations involving interest shall henceforth be waived. Your capital is yours to keep. You will neither inflict nor suffer any inequality. Almighty God has judged that shall be no interest and that all the interest due to Abbas ibn 'Abd al-Mutalib be waived. Every right arising out of homicide in pre-Islamic days is henceforth waived and the first such right that I waive is that arising from the murder of Rabiah ibn al-Harith.

O man, the unbelievers indulge in tampering with the calendar in order to make permissible that which God has made permissible. With Almighty God, the months are twelve in number. Four of them are holy, three of these are successive and one occurs singly between the months of Jumada and Shaban. Beware of satan, for the safety of your

religion. He has lost all hope of that he will be able to lead you astray in big things, so beware of following him in small things.

O people it is true that you have certain rights with regard to your women, but they also have right over you. Remember that you have taken as your wives only under God's trust and with His permission. If they abide by your rights, then to them belongs the right to be fed and clothed in kindness. Treat your women well and be kind to them for they are your partners and committed helpers. And it is your right that they do not make friends with anyone of whom you do not approve, as well as never to be unchaste.

O people, listen to me in earnest, worship Almighty God, say your five daily prayers, fast during month of Ramadan, and give your wealth in charity and perform Hajj if you can afford to.

All of mankind comes from Adam and Eva, an Arab has no superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab; also a white has no superiority over a black nor does a black have any superiority over a white- - - except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood. Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly. Do not therefore do injustice to yourselves. Remember one day you will meet Almighty God and answer for your deeds. So beware and do not stray from the path of righteousness after I am gone.

O people, no prophet or messenger will come after me no new faith will be born. Reason well, therefore, O people, and understand the words which I convey to you. I leave behind me two things: the Qur'an and my Sunnah, and if you follow these you will never go astray.



All those who listen to me shall pass on my words to others and those to others again, and may the last ones understand my words better than those who listen to me directly. Be my witness, O God, that I have conveyed Your message to Your people.<sup>363</sup>

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<sup>363</sup> Imam Ahmed bin Hanbal, *al-Musnad*, Hadith no. 19774

## Appendix II:

(Written when the Imam appointed him as governor of Egypt and its regions, at a time when the rule of its governor, Muhammad b. Abī Bakr, was unstable; it is the longest of the letters written by the Imam, and the most all-embracing as regards beauty of form and excellence of meaning.)

### In the Name of God, the Compassionate, the Merciful

“This is what the servant of God, 'Alī, Commander of the Faithful, enjoins upon Mālik b. al-Hārith al-Ashtar, in his mandate (*'ahd*) to him, appointing him as governor of Egypt: to collect its revenues; to fight its enemies; to establish the welfare of its inhabitants; and to bring prosperity to its lands. He enjoins him to have fear of God; to prefer obedience to God [above all things]; and to abide by what He has commanded in His Book- acts both obligatory and recommended- for no one prospers except through abiding by them, and no one is wretched except through repudiating and neglecting them. [He further enjoins him] to assist God with his heart, his hand and his tongue: for truly He - majestic is His Name- has undertaken to grant victory to him who assists Him, and to elevate him who exalts Him. He enjoins him to break the passionate desires of his soul, and to restrain it when it is beset with whim and caprice, for truly the soul incites to evil, unless God has mercy.

And be aware, Mālik, that I am directing you to a land which has been ruled by states - just and unjust - before you; and that the people will evaluate your conduct, just

as you have evaluated the conduct of governors before you. They will speak about you just as you spoke about them; and the righteous are proven such only through what God has caused to flow from the tongues of His servants. So let your most beloved treasure be the treasure of virtuous acts. Dominate your inclinations, and exercise self-restraint in the face of that which is unlawful for you- for indeed self-restraint engenders within the soul a proper balance as regards what it likes and what it dislikes.

Infuse your heart with mercy for the subjects, love for them and kindness towards them. Be not like a ravenous beast of prey above them, seeking to devour them. For they are of two types: either your brother in religion or your like in creation. Mistakes slip from them, defects emerge from them, deliberately or accidentally. So bestow upon them your forgiveness and your pardon, for you are above them, and the one who has authority over you is above you, and God is above him who appointed you. He expects you to satisfy their needs; and through them He tests you.

Do not set your soul up for war with God. For before His retribution you have no resistance, and in the face of His forgiveness and mercy, no independence. So feel no regret when you pardon, and do not rejoice when you punish. Do not let an impulse propel you rashly towards any course of action, if you can see an alternative to it. Do not say, 'I have been given authority, I order and am obeyed', for this leads to corruption in the heart and the erosion of religion; and it brings closer the adversities of fate. If the authority of your position engenders vanity and arrogance, then look at the grandeur of God's dominion above you, and at His power to do for you that which you have no power to do for yourself. This will calm your ambition, restrain you from your own vehemence, and restore to you what had strayed from your intellect. Beware of comparing [yourself]

with God in greatness and likening [yourself] to Him in might, for God abases every tyrant and disgraces every braggart. Be just with God and be just with people [giving them what is their due] from yourself, from your close relatives, and from those of your subjects towards whom you are most affectionate. If you fail to do this, you will be an oppressor. And he who oppresses the servants of God will find that God, as well as His servants, will oppose him. God refutes the argument of whomever He opposes. He [the oppressor] remains at war with God until he desists and repents. Nothing so surely induces the removal of God's grace and hastens His retribution as persistence in oppression. For God hears the cry of the oppressed and keeps a vigilant watch over the oppressors.

Let the most beloved of affairs to you be those most centred upon the right, the most comprehensive in justice, and the most inclusive of popular contentment, for the discontent of the common folk (*al-'amma*) undermines the contentment of the elite (*al-khāssa*); while the discontent of the elite is compensated by the contentment of the common folk. In times of prosperity no subjects are more of a burden to the ruler as regards seeking his favour than the elite, and none who are less helpful to him in times of trial; none more repelled than they by justice, more importunate in making demands, less grateful when granted favour, slower to pardon when deprived, less patient in the face of the vicissitudes of time. By contrast, the pillar of the religion, the cohesion of the Muslims, and the implement [for fighting] the enemies are constituted by the common folk, so be well disposed to them and incline towards them.

Let those of your subjects who most keenly seek out the faults of others be the ones furthest away from you and the most despicable in your eyes. For people do have

faults which it behoves the governor-above all others- to conceal. So do not disclose those faults which remain hidden from you. Your duty is but to purify that which has become apparent and obvious to you; God will judge concerning those things which remain hidden from you. So try and veil deficiencies as much as you can, so that God may veil from your subjects that in yourself which you wish to be veiled. Untie the knot of all resentment amongst the people, and cut from yourself the rope of all rancors. Ignore everything which is obscure to you. Never be quick to believe a slanderer, for a slanderer is a deceiver, even if he appears in the guise of a good adviser.

Do not allow into your sphere of consultation any misers, for they would deflect you from generosity and threaten you with poverty; nor any cowards, who would weaken you in your affairs; nor those who are avaricious, for they would adorn avidity for you with injustice. Truly, miserliness, cowardice and avarice are so many diverse inclinations comprised within a bad opinion of God. The worst of your ministers is he who ministered to evil [rulers] before you, participating in their sins. So do not allow them to enter your inner circle, for they are assistants to sinners, brothers of tyrants. The best alternatives to them will be found among those who are as intelligent and capable as they are, but who are not saddled with their burden of sin, and have not assisted any tyrant in his tyranny nor any sinner in his sin. Such people will be less of a burden for you as regards provision, most helpful to you as regards succour, most deeply inclined towards you in affection, and least attached to people other than you. So choose such people as intimate companions, to be with you in private and in public. Within this group, give preference to the one who most sincerely speaks the truth, however bitter it

may be to you, and who supports you least in doing that which God dislikes for His friends, however painfully this may strike at your desires.

Attach yourself to those who are known for their piety and sincerity, and train them in such a manner that they do not flatter you or lavish praise upon you for doing something which you have not in fact done. For excessive praise breeds pride and carry one headlong towards vainglory. Do not place the virtuous and the wicked in the same rank before you, for this would result in the virtuous belittling the virtues and the wicked entrenching their vices. Impose upon them [the appropriate reward or punishment for] what they have imposed on themselves. Be aware that nothing so effectively engenders the governor's confidence in his subjects than his virtuous behaviour towards them, his relieving of their hardship, and his refraining from compelling them to do what is beyond their power.

Let there thus arise a situation in which you can enjoy confidence in your subjects, for such an attitude will spare you much trouble. He who is most worthy of your confidence is he by whom your trial was deemed good, while he who is most deserving of your distrust is he by whom your trial was deemed bad.

Do not rupture any beneficial tradition established by the leaders of this community, as a result of which unity has been harmoniously established, and from which the subjects have prospered. Do not set up some new practice which is detrimental to the already established traditions; if you do so, the reward for their observance will redound to him who established them, while the onus of their destruction will be upon you. Study much with the scholars (*al-'ulamā'*) and hold much discourse with the sages (*al-hukamā'*), in order to consolidate that which brings well-being to your lands, and to

further entrench that which has already been established by your predecessors. Be aware that the subjects consist of various classes, none of which can be sound without the others being so, and none can function independently of the others. Among these classes are the soldiers of God (*junūd Allāh*); the scribes (*kuttāb*, sing. *kātib*) administering to the common people and the elite; the judges (*qudāt al-'adl*); officials responsible for upholding fairness, and establishing the right of redress (*rifq*); those who pay the *jizya* (poll-tax) and the *kharāj* (land-tax) from among the 'protected people' (*ahl al-dhimma*) and the Muslims; the merchants and artisans; and the lowest class, comprising the needy and destitute. God has prescribed to each [class] its share and has ordained-as a binding covenant (*'ahdan*) with us from Him- for each its limits and its duties, according to His Book or the *Sunna* of the Prophet- God bless him and his family.

So as regards the soldiers, they are- by the grace of God- the fortresses of the subjects, the adornment of the governors, the power of religion, and the pathways to security (*subul al-amn*). The subjects cannot maintain themselves except by means of the soldiers, and the soldiers for their part cannot be maintained except by means of the [revenues of the] *kharāj* which God extracts for them; with this, they have the wherewithal to wage war on their enemies, establish their welfare, and fulfill their needs.

These two classes [the soldiers and the peasants] cannot be maintained except through the third: the judges, administrators and scribes, inasmuch as they uphold all contracts, harmonize and organize all interests and benefits, being charged with the maintenance of the specific and general affairs [of state and society]. All of these classes need for their proper functioning the merchants and artisans, who gather the requisite goods, and establish the appropriate markets. They fulfill [the needs of the other classes]

by procuring through their specific functions those resources which cannot be obtained by the work of others. Finally, there is the lowest class, consisting of the needy and the destitute-those deserving assistance and favour. For each [class] there is plenitude with God; and each has, in relation to the governor, a right proportioned to the needs of its welfare. The governor cannot fully accomplish the tasks imposed upon him by God without resolute determination and resorting to God's help (*al-ihitimām wa'l-isti'āna*), galvanizing himself for the prerogatives of rectitude, and manifesting patience in the face of ease and difficulty.

Appoint as the commander of your soldiers the person whom you feel deeply is the most sincere in relation to God, the Prophet and your Imam, the purest of heart, the one most excellent in forbearance (*hilm*); who is slow to anger, happy to pardon, kind to the weak, severe with the strong; one who is neither moved by violence, nor held back by weakness. Cleave to those of noble descent, belonging to pious families of established name and repute, and to men known for their bravery, courage, generosity (*al-sakhā'*) and tolerance (*al-samāha*)- for they constitute a group formed by nobility, and a party made of honour. Then supervise their affairs as parents would supervise their child. Let no act by which you strengthen them appear too great in your eyes. Do not belittle any kindness- however slight-which you have promised them, for such kindness is as a summoner (*dā'iya*) unto them, calling them to dispense good advice to you, and to enjoy trust in you. Do not abandon a close inspection of their affairs in favour of [ostensibly more] weighty matters, for there is a situation in which they benefit from even a small act of kindness, and one in which they cannot dispense with the weighty matters.



Let the most preferred of your commanders be one who is benevolent to the people, and most generous to them with his bounty, such that they have ample means, they and those among their relatives who succeed them. Let their concern be integrated within one resolve: to fight the enemy. Truly, your kindness towards them will cause their hearts to incline towards you.

The greatest source of joy for the governors is the establishment of justice in the land, and the emanation of love from his subjects. Such love will not be manifest unless their hearts be secure. And their advice will not be sound except through the governors' supervision of those in of those in charge of the subjects' affairs, and their ensuring that they find the burden of rule light and easy to bear, and that they no longer anxiously hope that the rule of the governor will be terminated. So raise their hopes, keep up your continuous praise of them, and your enumeration of the brave deeds of those who have been brave- for truly, abundant praise of their noble acts rouse the brave, and spur on the lazy, if God wills. Acknowledge the courageous deeds of every man, and do not ascribe the deeds of one to someone else, or fall short in granting due acknowledgement. Do not let the nobility of a man cause you to reckon a small accomplishment great; and do not allow the lowliness of a man cause you to reckon a great one small.

Refer to God and His Messenger any matter which weighs heavily on you, or which is unclear to you, for God the Exalted has declared to a folk whom He loved to guide: 'O ye who believe, obey God and obey the Messenger and those in authority among you. And if ye dispute with one another over anything, then refer it to God and the Messenger' (Qur'ān, 4: 59). To 'refer to God' means following that which is clear and

unequivocal in His Book; and 'refer to the Messenger' means following that part of his Sunna which unites, rather than that which divides.

Choose as judges those whom you consider the most excellent of your subjects- those who are not confused by complex matters, nor angered by disputants; who do not persist in error, and are not reticent about turning to the truth when they perceive it; whose souls are not susceptible to avarice; who, dissatisfied with a superficial understanding, will probe deeply; who are most circumspect in the face of ambiguities; most consequent in argumentation; least perturbed by the appeals of litigants; most patient in efforts to disclose the true state of affairs; most resolute when the right judgment is clear; who are not beguiled by praise nor misled by blandishment. Such people are indeed rare!

Then examine carefully and frequently the execution of the judge's verdicts, and be generous in paying him, so that any deficiency [in terms of livelihood] will be removed, thus diminishing his need for help from people. And bestow upon him a rank of proximity to yourself, one which nobody else from among your close companions might hope to attain. He should be made safe in your presence, protected against the attacks of other influential men. Scrutinize them with a piercing scrutiny, for this religion had been held captive in the hands of evil people, abused by them and their caprice, exploited by them for the sake of this world.

Then consider your administrators. Employ them after due examination, and do not appoint them out any partiality or favoritism, for such indulgence will engender various forms of injustice and treachery. Look for men of proven experience and modesty from among the righteous households, families enjoying precedence in Islam,

for they are the most noble in character, most rooted in dignity, least susceptible to greedy desires, and most acutely conscious of the consequences of all things. Provide them with a generous stipend, for this will be a source of strength for them, enabling them to establish their welfare, obviating any need to appropriate for themselves what that have power over, and providing an argument against them should they disobey your orders or betray your trust. Examine carefully their actions, by appointing supervisors known for their sincerity and reliability to watch over them. Your secret observation of their affairs will motivate them to fulfill their trust, and to be considerate towards the subjects. Pay attention also to your assistants: should any one of them stretch his hand towards some treacherous deed- and your observers are unanimous in their report, which you deem sufficient evidence of the act- then impose corporal punishment upon him. Let him be chastised on account of the affliction effected by his act. Let him be disgraced, brand him a traitor, and gird him with the ignominy of accusation.

Carefully examine the question of the *kharāj* land-tax, so that those subject to it are maintained in a proper state of well-being, for it is from their welfare, and the proper collection of the tax itself, that the benefit of others is derived. There can be no welfare of others except through them [the peasants], for all without exception are dependent on the [revenues of the] *kharāj* and those subject to it. Let your concern with the cultivation of the land outweigh your concern with the collection of the tax, for no tax will be collected if there be no cultivation. And whoever exacts the tax, without cultivating the land, ruins the land and destroys the people. His rule will not endure for long.

So if they complain of a heavy burden- or of some deficiency, or the cutting of irrigation supplies, or lack of rain, or a change in the condition of the soil as a result of flooding or drought- then lighten their burden, inasmuch as your hope is that their situation be set right. Do not let any favour you bestow upon them- by way of lightening their burden- weigh heavily upon you; for this will be an investment, which will yield a return for you in terms of the prosperity of your land and the adornment of your rule, through your reaping the finest praise from them, and taking pride in dispensing justice among them. You can then depend upon an increase in their potential as a result of what you have invested in them when you gave them respite; and you can trust them inasmuch as you have accustomed them to receiving your justice and kindness.

It is possible that a situation might arise in which you depend upon them: they would then bear this responsibility gladly, for a prosperous land can bear a burden which you place upon it. The devastation of the land only comes about through the destitution of its inhabitants; and the destitution of its inhabitants only comes about when the desire to amass wealth rules the souls of the governors, when they have doubts about what endures, and when they profit little from exemplary teachings.

Now consider with care the situation of your scribes, appointing the best of them in charge of your affairs. Assign those letters containing the most sensitive strategies and secrets to the scribe in whom you find the most comprehensive moral qualities; one who will not be emboldened by his elevated status to contradict you in the presence of others at a public assembly; one who is not negligent in delivering to you the correspondence of your officials, and properly dispatching your replies, regarding what he takes and gives on your behalf. He must not weaken any agreement contracted for

you, nor be incapable of repudiating that which has been contracted to your detriment. He must not be ignorant of the value of his own capabilities; for one who is unaware of the value of his own capabilities will be even more ignorant of the value of others. Do not allow yourself to make your selection only on the basis of your own discrimination, confidence and trust, for men know how to present themselves to the discrimination of rulers through pretence and good service, behind which there is no sincerity or fidelity. Rather, investigate them carefully, doing so in relation to that with which they were entrusted by good people before you; and trust him whose virtue left the deepest impression upon the common people, and whose reputation for integrity is most widespread. This will be proof of your sincerity towards God and towards the one who appointed you.

Appoint for each of your affairs a head-officer among your officials, one who will not be daunted by the magnitude of affairs nor dispersed by their multiplicity. Any fault of your scribes which you have ignored will be ascribed to yourself.

Then attend to the merchants and artisans. Treat them well, urging the same on others. [Among them are] those of fixed abode, those who travel with their goods, and those who earn their livelihood with their hands. They are sources of benefit and the means by which conveniences are obtained. By them are procured goods from distant and remote places, brought by land and sea, from plains and mountains, and from places where men do not settle nor even dare to venture. They are in a state of reconciliation (*silm*), and from them no calamity need be feared; and they are in a state of peace (*sulh*), from them no disturbance need be feared. Examine their affairs attentively, both those which are close to you and those in all corners of your land. Be aware that, despite what

has been said, there is in many of them a despicable stinginess, a repugnant greed, a propensity to hoard goods, and to arbitrarily fix prices. All of this brings about loss for the populace, and is a source of shame for the governors. So prohibit hoarding, for the Messenger of God-God bless him and his family- prohibited it. Let trading be carried out with propriety and fairness, according to prices which do not harm either of the two parties, the buyers or the sellers. So if any one of them succumbs to the temptation to hoard, after you have prohibited it, inflict upon him an exemplary- but not excessive- punishment.

Then- O God, O God!? [ pay particular attention to] the lowest class, those who have no wherewithal, the destitute, the needy, the afflicted, the disabled. Within this class are those who beg, and those whose wretchedness calls out to be alleviated but do not beg. Be mindful of God in regard to their rights, for He has entrusted these rights to your care. Assign to them a portion from your public treasury (bayt al-māl), and a portion of the produce of what is taken as booty by the Muslims in every region, for those who are furthest have the same rights as those nearest. Upholding the right of each of them is incumbent upon you. Do not let any haughtiness on your part cause you to neglect them, for you will not be pardoned even the slightest shortcoming [in fulfilling your obligations towards them] as a result of attending to some important matter. So do not turn your concern away from them, nor assume a contemptuous attitude towards them. Keep a watchful eye over the affairs of those who have no access to you, and who are disdained by men of high standing. Appoint from among those you trust a God-fearing and humble person to be responsible for bringing their affairs to your attention. Treat these people in a manner such that God may excuse you on the day you meet Him, for they are more in

need of justice from you than any others among your subjects. In regard to each of them, offer your excuse to God in respect of fulfilling his right. Assume responsibility for the orphans and the elderly, those who have no resources yet cannot being themselves to beg. This is onerous for the governors, and [the fulfillment of] all rights is onerous, but God makes it light for those who aspire to the Hereafter, who restrain their souls in patience, and trust in the truth of that which is promised them by God.

Apportion a part of your time to those who have special needs, making yourself free to attend to them personally, sitting with them in a public assembly with all due humility before God, your Creator. Keep your soldiers, guards and officers away from them, so that they can speak to you in an uninhibited manner for I heard the Messenger of God say- God bless him and his family- on more than one occasion: 'A nation in which the rights of the weak are not wrested in an uninhibited manner from the strong will never be blessed.'

Bear patiently any coarseness or inarticulate expression that they might manifest; do not show any irritation or disdain towards them- God will thereby extend the most extensive dimensions of His compassion to you and make incumbent the reward for your obedience to Him. Give whatever you give with beneficence, and withhold [if this be unavoidable] with grace and apology.

There are certain affairs which you must take care of personally- among which are replying to your officers if your scribes are incapable of so doing; issuing [responses to] the requests of people when they are brought to you in person because your aides find their hearts constricted on their account.

Perform each day the task proper to it, for to each day belongs a particular task. Set apart the most excellent of your available time, and the greatest portions thereof, for your soul, for what is between you and God, even though all times [and actions performed therein] are for God, if the intention underlying them is good, and if your subjects derive security as a consequence. Let your observance of those duties (*farā'id*, sing. *farīda*) relating exclusively to God be the special means by which you purify your religion for God. Give unto God of your vital energy in your nights and your days, and perform fully that by which you draw near to God, doing so perfectly, without becoming dull or deficient, taking your body to its limits.

When you lead the people in prayer, do so without repelling [them] or squandering [it], for there are people with infirmities or special needs. Indeed, I asked the Messenger of God- God bless him and his family- when he sent me [as his representative] to Yemen, 'How should I lead them in prayer?' He replied, 'Lead them according to the prayer performed by the weakest among them; and be merciful to the believers.'

In addition to all of this, do not prolong any period of absence from your subjects, for the isolation of the governors from their subjects is a kind of constriction and causes deficiency in awareness of their affairs. Such isolation cuts rulers off from acquiring knowledge about things hidden from them, so that which is great will appear small, and that which is small, great; the beautiful will appear ugly, and the ugly, beautiful; the true will be mixed with the false. The governor is but a human being: he cannot know what people hide from him. There are no visible signs on the truth, by virtue of which apparent expressions of veracity can be distinguished from falsehood.



You can only be one of two types: either a man who gives himself generously for the sake of the truth- in which case why seclude yourself [thereby preventing yourself] from bestowing a necessary right or performing an honorable deed? Or else you are a man afflicted with refusal [to give of oneself] in which case, how quickly people will refrain from making requests of you, despairing of your generosity! This, despite the fact that [fulfilling] most of the needs which people present to you is not burdensome, whether they be complaints against injustice or demands for fairness in transactions.

The governor has favorites and intimate friends, among whom some are prone to presumptuousness, arrogance and unfairness in transactions. Sever the root of these people by eliminating the causes of these vices, by not allotting any landed estates to anyone among your entourage or friends. Do not let them entertain any hope that you may grant them some estate; [were they to receive such an estate] it would be detrimental to those living adjacent to it, as regards [their access to] water resources, or any common undertaking, the burden of which would doubtless fall on them, while the profit therefrom would redound to those acquiring the estate, and not upon you. Upon you will fall only the resulting blame (*'ayb*), both in this world and the next.

Impose what is right upon whomsoever it is incumbent, whether he is close to you or distant. Be steadfast and vigilant in this matter, regardless of how it may affect your close ones and favourites. Always desire the consequences of [this principle], however heavily it may weigh upon you, for its outcome will be laudable.

If any of your subjects suspect you of an injustice, present your case such that you may be exonerated, thus deflecting their suspicions away from you through your clear explanations. Such conduct is a means of self-discipline; it is a form of kindness

towards your subjects, and a way of presenting your plea which will help you to fulfill your need to keep them upright in accordance with the truth.

Never reject any call to peace made to you by your enemy, if there be divine acceptance of his call, for truly in peace lies repose for your soldiers, relaxation of your concerns, and security for your lands. But maintain all due vigilance regarding your enemies once you have contracted peace with them, for it is possible that the enemy is only making peace with you in order to lull you into a false sense of security. So proceed with all due precaution, and be wary of having too trusting an opinion in such circumstances. But if you and your enemy enter into a solemn agreement, or if he obtain from you the right of protection (*dhimma*), then faithfully abide by what you have promised, and honorably uphold your obligation of protection. Make your very life a shield for what you have promised, for there is no divine obligation which so strongly unites people- despite having diverse inclinations and multifarious opinions- as that of honouring the principle of fulfilling one's pledge. The polytheists had observed this amongst themselves- even apart from their dealings with the Muslims- such was their dread of the consequences of treachery. So do not violate your pledge of protection, do not break your promises, and do not be treacherous towards your enemy- for only an ignorant wretch (*jāhil shaqiyy*) dares to oppose God. God has indeed made His pledge and His protection a means of security, spreading it over His servants by His mercy,

a sanctuary in the impregnability of which they find peace, and towards the protective power of which they make haste. So let there be no corruption, no treachery, and no deception. Do not enter into any agreement which contains defects, nor fall back on ambiguous connotations once the agreement has been confirmed and solemnized.

Do not let any difficult matter lead you to break unfairly an agreement which God has made binding upon you. For indeed, your patience in the face of a difficulty- hoping for its resolution and its positive outcome- is far better than acting treacherously and then fearing its consequence: being overwhelmed by an exacting demand (*tilba*) from God, from which you will not be able to seek exemption in this life or the next.

Beware of unlawfully shedding blood: nothing is more conducive to retribution, more momentous in consequence, more deserving of the cessation of blessings and the severance of one's term [of life] than the unjust shedding of blood. On the Day of Resurrection, God- glorified be He- commences judgment of His servants by [calling them to account over] the blood they have shed. So do not try and strengthen your authority by unlawful bloodshed, for such action in fact weakens and debilitates it, indeed, brings it to an end and removes it.

You have no excuse before God or before me if you intentionally murder anyone, for this calls forth capital punishment. If you fall prey to some error, and your tongue or your hand goes too far in inflicting punishment- for even a punch, and other such assaults, can be a cause of death- do not allow pride in your power to make you seek a way of avoiding payment of what is rightfully due as recompense to the relatives of the person killed.

Beware of being self-satisfied, of being over-confident in what you find impressive about yourself, and of loving to be flattered, for these are among Satan's most reliable opportunities to efface the virtue (*ihsān*) of the virtuous (*al-muhsinīn*). Beware of making your subjects beholden to you for your virtue towards them; of exaggerating your deeds; and of making promises to them which you break. For making people beholden

ruins virtue; exaggeration removes the light of the truth; and breaking promises imposes upon you the hatred of God and men. God the Exalted has said: 'It is indeed hateful to God that ye say that which ye do not' (61:3). Beware of rushing your affairs before their proper time, of squandering the possibility of dealing with them, of obstinacy when they prove intractable, of feebleness in dealing with them when they become manifestly clear. Put every affair in its proper place, and deal with it in its proper time. Beware of appropriating that in which all men have an equal share, and of negligence in regard to what is urgent and has become self-evident, for this will be to the detriment of yourself, and to the benefit of others. Soon, the veil covering all affairs will be lifted for you, and justice will be sought from you by those who have been wronged.

Dominate the zeal of your pride, the vehemence of your castigation, the power of your hand, and the sharpness of your tongue. Guard against these vices by restraining all impulsiveness, and putting off all resort to force until your anger subsides, and you regain self-control. But you cannot attain such self-domination without increasing your pre-occupation with remembrance of your return to your Lord.

It is incumbent upon you to remember what transpired in earlier times as regards just rule and virtuous customs, the practices of the Prophet- God bless him and his family- and the obligations enshrined in the Book of God. So faithfully follow that which you have witnessed us performing in these respects, and strive with all your soul to act in accordance with the injunctions contained in this mandate of mine. I am confident that this [mandate] will furnish an argument for myself against you, so you have no excuse if your soul hastens instead to gratify its caprice.

I beseech God by the abundance of His compassion, and the magnitude of His power, to fulfill every desire, to cause me and you to do that which will please Him, to present a clear justification to Him and His creatures, to earn the fairest praise amongst the servants [of God], and leave behind us the most beautiful vestiges in the land. [I beseech him to grant us] perfect blessings and ever-increasing honour, and that He seal [the lives of] myself and yourself with felicity (al-sa'āda) and the testimony (al-shahāda).<sup>364</sup> Truly unto him we are returning? (2 : 156).

And peace be with the Messenger of God-God bless him and his good and pure progeny.<sup>364</sup>

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<sup>364</sup> Reza Shah-Kazmi, *Justice and Remembrance, Introducing the Spirituality of Imam 'Alī* (London, The Institute of Ismaili Studies, I.B. Tauris Publisher, 2006), 219-234

### **Apendix III:**

## **Abū Yūsuf's Letter to the *Khaliph* Hārūn ar-Rashīd**

“Commander of the Believers, Allah has invested you with a great matter, whose reward is the greatest reward, and whose punishment is the greatest punishment: He has entrusted you with the affair of the Community of Believers. Day and night you build for many people, of whom Allah made you the shepherd, whom He has confided to your care and tried you with, and of those whose affairs He has made you the administrator. A structure not founded on piety shall not abide, for Allah will attack its foundations and cause it to fall on him who built it and trusted in it against Him. Therefore do not waste what Allah has entrusted you with: the matter of this Community and these subjects, for power to act is by Allah's leave.

Do not put off the work of today until tomorrow, for if you do, you waste. Death is without hope, so go to death with deeds, for there are no deeds after death. Shepherds of men must settle with their Master, as a shepherd must settle with his; therefore establish the right in what Allah has set you over and entrusted you with for an hour. The happiest shepherd on the Day of Resurrection will be he whose flocks were happy with him. Do not deviate, and thus cause your subjects to deviate, and beware of giving orders in passion or punishing with anger! When confronted by the matter of this world and the matter of the next, choose the next world, for it will abide and this world will pass away. Act cautiously, in fear of Allah, and where Allah's command is concerned, let people be equal in your sight, whether they are near or far from you. When you are on Allah's side, fear no one's blame. Be wary - and wariness is a matter of the heart, not of the

tongue. Fear Allah, for piety is only fear of Allah, and Allah keeps him who fears Him.

Act for a term delayed, and road traveled and a way taken, and an act preserved, and a goal attained, for that is the true stopping place; the grand station, where hearts shall fly and arguments be cut off, by the might of a king whose power is overwhelming, for this is (so certain that it is) as if it had already been. There will be requited with sorrow and regret those who knew but did not act, on the Day when feet shall drag and colours change, the day of long standing and severe accounting. Allah, *blessed is He and Exalted*, has said in His Book:

**"A day with Allah is as a thousand years of what you reckon." [Al-Qur'ān 22:47]**

And:

**"On the day when they see that which they are threatened, it will appear to them that they had not stayed for more than an hour of a day." [Al-Qur'ān 46:35]**

A lack for mistakes that are not found small, alas for useless regrets! Only the difference of a night and a day will wear out every new thing, and make imminent every remote matter, and being the fulfilment of every thing promised, and Allah will pay every should what it has earned - and surely Allah is swift at the accounting and He judges His servants by their acts, not by their rank. The Prophet, *peace be upon him*, has said:

**"No one shall retire on the Day of Judgment until he has been asked about four matters: on his knowledge and what he did with it, on hi life and how he passed it, on his money and how he spent it, and on his body, and how he used it."**

Therefore, Prince of the Believers, prepare the response for these questions, and what you have done establish securely, for tomorrow you must recite the answers.

I advise you, O Commander of the Believers, to keep what Allah has entrusted to you, and to guard the flock He has given you, and to regard it all as His for His sake, for if you do not, the easy path of guidance will become hard, and your eye will be blind to it; its landmarks will be effaced, and its width will be narrow for you, so that you reject what you see and see what you should reject. Contend with your self (*nafs*) so as to obtain victory for it, and not against it. Beware of causing loss to the flock which its Master will require to make good, causing you loss. A house can only be buttressed before it falls. Do not neglect to take charge of that which Allah has entrusted you, and you will not be neglected. Your time in the world will not be wasted, and Allah in His grace and mercy and goodness made those in charge of affairs His vicegerents on His earth, and given light to His subjects; the light which he causes to shine on those in charge of affairs is in applying the legal punishment and rendering justice to His people. The violence of the shepherd causes loss to the flock, and the aid he seeks from those who are untrustworthy of confidence causes general ruin. Nothing is dearer to Allah than doing good, and nothing more hateful to Him than corruption, while to act sinfully is to reject His Grace.

I have written for you what you have ordered, and explained it and make exposition of it, so ponder it and apply yourself to it and reread it until it is yours, for I have exerted myself for you, and neglected no advice for you and the Muslims, seeking Allah's favour and reward and fearing His chastisements.



May Allah assist you to that which will be pleasing to Him, and best for you!"<sup>365</sup>

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<sup>365</sup> <http://www.sunnahonline.com/library/history/0031.htm> (Last time visited on 15.12.2007)

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