

A COMPARATIVE
STUDY OF
ISLAMIC OWNERSHIP

CONCEPTUAL FRAMEWORKS
OF OWNERSHIP
IN ISLAMIC AND WESTERN
VALUE SYSTEMS

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Preface

The application of simple analogy is apt to mislead researchers who attempt to explain the phenomena of a culture which is different from their own culture. Of course, analogy is the first step for understanding the unknown. Man has so-called natural disposition or habit to start his cognitional process about the unknown by comparison with the already known, when he perceives some similarity between the two. But, such analogical understanding of the unknown includes in itself a danger, the observer can be misguided and prevented from seeing the realities of the cognitional object, because analogy without strict inspection is often a projection of preconcieved ideas in the cognitional subject to the object. In this volume, Mr. Takuma Abe attempts to clarify the concept

of "ownership" in the Islamic world. In his attempt, he compares the concept of "ownership" in the Islamic world and in the western world. His comparative method is a tool for finding out the differences between the two, not for a simple analogical explanation which western orientalist often have recourse to for their explanations of phenomena in the Islamic world. Owing to his strict, scientific method of comparison, he has succeeded in depicting the characteristics indigenous to ownership in the Islamic world, and these aspects are very different from those in the western world.

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Introduction

"The outstanding feature of a man's life in the modern world is his conviction that his life-world as a whole is neither fully understood by himself nor fully understandable to any of his fellow-men. There is a stock of knowledge theoretically available to everyone, built up by practical experience, science, and technology as warranted insights. But this stock of knowledge is not integrated. It consists of a mere juxtaposition of more or less coherent systems of knowledge which themselves are neither coherent nor even compatible with one another. On the contrary, the abysses between the various attitudes involved in the approach to the specialized systems are themselves a condition of the success of the specialized inquiry." (Alfred Schutz)

What is the most important qualification required of a field researcher? In my view, it should be his earnest endeavour to convey information correctly concerning what is going on in the field. In this case, as Clifford Geertz explains it, the emphasis should be

put on understanding people, or knowing how they define themselves.² Is this possible? Strictly speaking, unfortunately, the answer would be in the negative. This is because, more or less everyone has his own values which have been fostered through his family education, school, and social life. For someone to try to separate himself from his own values is impossible. That is to say, everyone has biases. The point is, even though one should abolish biased judgement in order to view social phenomena in the field clearly, it seems impossible. Therefore, every field researcher must try, at least, to reduce the degree of his biases, and if possible, to abolish them in order to keep his viewpoint objective. Otherwise, his work can not reveal the real features of the social phenomena. One must bear in mind the difficulty of evaluating something which takes place in a different cultural context than one's own.

Have Orientalist' works been revealing the real features of the Middle East? In general, the answer would be in the negative. Edward W. Said states that Orientalism is, in short, the Western style for dominating, restructuring and having authority over the Orient.³ One might be safe in thinking that works based on such aims can not be reliable nor reflect real Oriental values. According to Said, without examining

Orientalism as a discourse one cannot possibly understand the enormously systematic discipline by which European culture was able to manage and even produce the Orient politically, sociologically, militarily, ideologically, scientifically, and imaginatively during the post-Enlightenment period.⁴

Isma'il Ragi Al-Faruqi criticizes Orientalism from another point :

The West has separated the humanities from the social sciences because of the consideration of methodology. This separation succeeded in banishing from the social sciences all valuations except those based on instrumental ends. "Scientific" objectivity could not tolerate them; and they were dumped in the humanities where concern and application of them became utterly personal and individualistic.⁵

Al-Faruqi's statement seems to me a criticism toward reductionism which explains variety by simplification. Moreover, M. Baqir as-Sadr insists that study on Islam can not be divided into some small segments of social sciences such as politics, history, economics and so on, but should be dealt with as a whole body.⁶ Here one can clearly see the necessity of a holistic approach. From Geertz's, Sayeed's, Al-Faruqi's and Baqir as-Sadr's statements, one might understand that a field researcher must observe social phenomena from

the natives point of view and that without this attitude, his effort would only be in vain.

In this thesis, I will focus on one aspect of the Islamic social system, ownership, by covering various fields of social phenomena. I have decided to scrutinize ownership in Islam by comparing it to that of the West because during my stay in Iran for two years, I realized that the human behavior related to obtaining, maintaining and disposing of a certain object shows clear differences with that of Westerners'. In addition, to the best of my knowledge, it is very hard to find a book which answers the questions: what the Islamic ownership system is, how it works, under what conditions it operates, and so on.

In the first chapter, I will describe the concept of ownership in the both cultural systems of Islam and the West.

In the second chapter, I will compare various characteristics of ownership in Islam and the West.

In the third chapter, I will describe human nature and interaction between individuals, and then society, and how the concept of sovereignty is related to them.

In the fourth chapter, I will scrutinize conditions under which Islamic ownership operates and make some final conclusions.

Notes.

1. Alfred Schutz, "The Well-Informed Citizen" in Collected Papers II Studies in Social Theory, ed., by Arvid Brodersen, (The Hague: Martinus Nijhoff, 1976) p.120.
2. Clifford Geertz, Local Knowledge: Further Essays in Interpretive Anthropology, (New York: Basic Books, 1983) p.59
3. Edward W. Said, Orientalism, (New York: Vintage Books Edition, 1979) p.3.
4. Ibid., p.3.
5. Isma'il R. Al-Faruqi, "Islamizing the Social Sciences" in Social and Natural Sciences, ed., by I. R. Al-Faruqi, & A. O. Naseef, (Jeddah: King Abdulaziz University, 1981) p.15.
6. Muhammad Baqir as-Sadr, Iqtisadna, Dar-t-Ta'aruf li-l-Matbu'at, (Islam Keizairon) Trans. by Toshio Kuroda, (Niigata: The Institute of Middle Eastern Studies. International University of Japan, 1981) p.16.

I

Definition of Ownership

A. Changeable Meaning

As I will show, the concept of ownership is very broad and it is not an easy task to specify its meaning. However, I believe a reader will obtain a general idea of it as my argument continues. My usage of 'ownership' in this thesis has a broad meaning. By 'ownership', I mean property, possession, ownership and so on which are in general a chain of events related to possession or ownership of something. One authority on the subject, C. B. Macpherson states that "the meaning of property is not constant. The actual institution, and the way people see it, and hence the meaning they give to the word, all change over time."¹ Sayyid Muhammad Husayni Beheshty, an expert on Islamic philosophy, explains that the meaning of ownership is relative and changeable, different in various social systems and not a physically concrete matter but a

socially concrete matter.² From these two statements made by prominent scholars of Western and Islamic social science, it can be said that the notion of ownership has not always been fixed but has changed in various times and societies. According to Macpherson, it is not easy to define a changing and purposeful concept like property.³ He explains the reasons for the difficulties:

1) in the current common usage of the word, property is at variance with the meaning which property has in all legal systems and in all serious treatments of the subject by philosophers, jurists, and political and social theorists,

2) property in the works of modern writers is usually treated as identical with private property, an exclusive individual right, one's right to exclude others from some use or benefit of something, and this usage can be seen as the product of a particular set of historical circumstances.⁴

Before discussing the current definition, I would like to trace the meaning of ownership back to the Greeks briefly in order to show some examples of such semantic changes of ownership.

According to Richard Schlatter, Plato believed that in the perfect state all property was privately

owned by the citizens of the lowest class -- farmers, artisans, and merchants -- who produce all the wealth and who are excluded from all participation in politics. On the other hand, Aristotle concluded that property should be in a certain sense common, but as a general rule it is private.⁵ Schlatter states that equality is for both Plato and Aristotle a fundamental principle of justice governing the distribution of property and if we think only of the ruling class in their ideal state we may say that Plato and Aristotle were absolute equalitarians on the matter of property distribution.⁶

The Stoic School combined the Greek theories of property and natural law and incorporated them into the Roman Law and whatever the lawyers of the Roman Empire meant to say, the important fact for the later history of the theory of property is that they linked property to the law of nature.⁷ Cicero asserted that all men are by the law of nature equal and when we look at the application of Cicero's law of nature we see a revolution in thought separating him from Plato and Aristotle.⁸ In Rome, the actual inequality of men was more striking than it had been in Athens; slavery and an unequal division of property were as essential to society in the time of Cicero and Seneca as to that in

the time of Plato and Aristotle and the question was how this actual and necessary inequality could be defended against the law of nature?⁹ Cicero made a distinction between things owned by the law of the state and things owned by the law of nature, and he was anticipating Locke's definition of the limit imposed on acquisition by the law of nature.¹⁰

The early Fathers of the Christian Church did not find in the New Testament a ready-made theory of property. But throughout the New Testament there is a distrust of riches and an emphasis on the advantages of poverty and it is clear that St. Augustine regarded property as the conventional creation of the state and the fruits of sin, and he advised Christians not to own property individually although he also denounced as heresy the opinion that Christians are forbidden to own property in this world of sin.¹¹ At that time a general philosophical theory in which property was accepted but contrary to natural law, having been woven into the Augustinian concept of history and society, became the foundation of various ideas about ownership in the medieval age.¹²

St. Thomas Aquinas came to think that property and the political authority which protected it were not necessary evils but merely natural and good.¹³ He

synthesized the idea of Aristotle and traditional Christian thought; private ownership was natural because it was more highly developed. It was the more perfect form of ownership because, though common ownership or no ownership at all was the most perfect, it was the most natural of all forms of property.¹⁴ Fortescue gives us a clue to understanding the concept of private property in the Middle Ages. He defended the middle class, the class whose rise to power is the essential ingredient in the transition from feudal to capitalist society. He defended property in the very fashion in which ideologues were going to serve the purpose of bourgeois apologists for the next three or four centuries.¹⁵ Fortescue accepted without question the venerable Christian doctrine that property is the result of sin but his acceptance of the doctrine was entirely formal and he proceeded at once to prove that property was rooted in natural law and finally he connected the idea of contract with the idea of dominion; even the most absolute prince would have only a limited dominion even though no positive human laws defined the limitations.¹⁶

By surveying the history of the concept of property till the Middle Ages carefully, one may come to realize that the definition of ownership in the West

altered from time to time and I will later summarize the history after the Middle Ages up to the twentieth century.

In Islam, though I have presented Beheshty's statement in order to show that the Islamic concept of ownership has also undergone change, in comparison with that of the West, the change has been minimal. As one will see later, Islam is rigid in its basic concept of ownership: Allah is the only true owner of things and an individual can merely possess a thing as his property under the permission of Allah. Since this basic notion about ownership can not be changed in the Islamic perspective, in spite of some altered interpretations of ownership in various contexts, the change is very much limited. This makes it unnecessary to trace the history of Islamic ownership back to the past. I would like to move to the next section, therefore, to describe the current definitions of ownership in both of the West and of Islam.

B. Today's Definition of Ownership

1. Islamic Definition

Beheshty states that God is recognized as the owner of the world because it is He who gives existence to the world.¹⁷ In Persian, malekiyat means

ownership. S.M.H. Allamah Tabatabai explains that malekiyat is, from the social point of view, giving ownership of a thing to a person which is then recognized by others.¹⁸ Beheshty says that malekiyat is a social, idealistic or contractual relationship between an individual or a group and a thing, which makes the owner's possession clear and which prevents others from trying to take it.¹⁹ Beheshty provides the definitions of melk (property) and mal (estate): melk is a thing which a man is in possession of and the meaning is "the objects of possession" and mal is a thing which directly or indirectly has a consumption value for man. The consumption value is anything or any kind of work which reduces man's suffering; in other words, it may satisfy or secure one of the desires or demands of mankind in a direct or indirect way.²⁰ Baqir as-Sadr states that in Islamic interpretations, all property belongs to Allah and Allah sometimes lets individuals utilize the property. This trust from Allah is called ownership from the legal point of view, and ownership is the action which individuals take to contribute to society and to themselves as well.²¹

Here, it is clear that not only an individual but society in which such an individual lives is considered from the beginning in Islam. M.A. Mannan explains that

the uniqueness of the Islamic concept of economic welfare lies in the fact that it can not ignore a broad consideration of the general welfare which involves the question of morality, education, religion and many other things.²² This shows a clear cut difference of attitude toward ownership between Islam and the West. Mannan states:

The ethics of Islamic Economics sought to reduce man's present excessive material needs in order to release human energy for spiritual pursuits. Inner development, rather than outward expansion, was held out to be man's highest ideal in life. The modern Western spirit, while not deprecating the need for inner perfection, however, seems to have shifted the emphasis to the amelioration of the material conditions of life. Progress now means higher and higher standards of living which imply a progressive enlargement of wants, increasing discontent and dissatisfaction with things as they are and a passionate yearning after higher and higher levels of consumption. From the modern point of view, then the progress of a community is judged by the character of its material wants.²³

According to International Encyclopedia of Comparative Law, a modern Islamic definition of mal which covers the view of most of the schools of Islamic Law is "[a]ll that has a commercial value," or "[t]hose coporeal, usufructuary and other rights of any kind the exchange of which is customary are to be regarded as property (mal) of commercial value." So it includes

both movables and immovables, both specific objects and their use (or income which they produce) both what a man owns and has in his possession, and what is owed to him.²⁴ I would like to cite some articles of the Constitution of the Islamic Republic of Iran, which are relevant to my argument here, in order that one can see how people in Islamic society fit the basic ideas about ownership into their constitution:

Article 22: Respect, life, property, rights, housing and occupation of people are inviolable unless the law prohibits otherwise.

Article 40: No one is entitled to exercise his rights in such a way as to inflict injury on others or infringe upon public interests.

Article 47: Private property, acquired through legitimate means, is respected. The relevant criteria shall be determined by law.²⁵

2. Western Definition

a) A history of the definition after the Middle Ages

One can understand from the early discussion in this thesis that the definition of ownership has undergone change in the West, and here I would like to present the current definition. Since I have covered a history of the concept of ownership till the Middle Ages briefly in the preceding section, it might be a

good idea to touch upon the changes in the meaning from the Middle Ages till today.

In current everyday language, property generally means a thing. In the seventeenth century, however, property was a right: i) the rights to use the land, but not to own the land itself, ii) the right to a revenue by corporate, charters, monopolies granted by the state, etc.²⁶ While capitalistic market economy emerged in the seventeenth century the meaning of property evolved into rights to things exchangeable in the market. In short, unsaleable rights in things before the seventeenth century then became saleable and in the twentieth century the meaning changed again, so that it means rights to something, or rights to an income.²⁷ According to Macpherson, every society makes a distinction between property and mere physical possession and this, in effect, results in the definition of property as a right. And what distinguishes property from mere momentary possession is that property is a claim - that will be forced by society or the state, by custom, convention or law.²⁸ Macpherson shows the consequences of the change in the twentieth century: i) with the rise of the corporation, the dominant form of property becomes the expectation of revenue, ii) license, permission and so on, which are

generally associated with a relation to government, is required to obtain such revenue; therefore, property interpreted in the twentieth century is regarded as rights to income.²⁹

John Greiville Agard Pocock states that property appears in the Western tradition of political discussion in a number of places, which might be summarized as follows:

First and foremost, there is the tradition begun by Aristotle and continued by Aquinas, in which property appears as a moral and political phenomenon, a prerequisite to the leading of a "good life," which is essentially civic. Property was both an extension and a prerequisite of personality. The citizen possessed property in order to be autonomous and autonomy was necessary for him to develop virtue or goodness as an actor within the political, social and natural realm of order.³⁰

In every time in Western tradition, there is a conception of virtue -- Aritotelian, Thomist, neo-Machiavellian or Marxian -- to which the spread of exchange relations is seen as presenting a threat. In this perspective, those thinkers of the seventeenth through nineteenth centuries who argued on individualist, capitalist or liberal premises that the market economy might benefit and transform human existence were be the great heretics and dissenters.³¹

Jeremy Bentham states "property is nothing but a basis of expectation: expectation of deriving certain advantages from a thing which we are said to possess, in consequence of the relation in which we stand towards it."³² Morris Cohen says that "whatever technical definition we may prefer, we must recognize that a property right is a relation not between an owner and a thing but between the owner and other individuals on reference to things", and "the essence of private property is always the right to exclude others" and the law of property is believed to help one directly to exclude others from using the things that the law assigns to him.³³

According to B. Roshier and H. Teff, the original formation of property laws was related to controlling 'matter' or 'things' only, but as property came to include capital under the emergence of capitalism, it also came to include the control of wage labours, that is, the control of human beings.³⁴ So far, I have hurriedly summarized the change in meaning of ownership, and I would like to present the current definition in the next section.

b) Definition of Ownership in Civil Law

Civil Law systems in most of Continental Europe

during the Middle Ages and in modern times until the nineteenth century derived in great part from Roman Law and that influence is particularly strong in the law of property.³⁵

The word "property" has various meanings in Civil Law and in the broadest sense it is understood to mean any asset, i.e., any right that can form a part of person's patrimony, and as a rule, this right appears when a certain exchange value is attributed to it in commerce.³⁶ In contemporary society, both capitalist and socialist societies, ownership and contract may be regarded as the foundations of economic intercourse. Socialist and communist criticism of ownership is directed not against the institution itself but against a specific form of ownership, i.e., that of private persons in the means of production.³⁷ In non-communist countries, individual ownership has a much wider and more fundamental significance, because it provides security for the maintenance of the family as the most important group in social life, and on the other hand, because it provides security for the unfolding of human individuality.³⁸

The broad conception of property makes a distinction between corporeal and incorporeal things. A corporeal thing is a portion of material nature which

can be subjected to the power of a human being, is of value to him and can, in accordance with ordinary opinion, be considered an individualistic unit. All patrimonial rights are incorporeal things, and this distinction is very important in Civil Law in order to establish a legal system and status with which the third parties make themselves acquainted easily.³⁹

For a long time ownership was regarded only as the relation of a person with an object of ownership, though it is contended that it is not the individual but the community that must be pointed to as the final purpose of law. Most modern authors of this subject in Civil Law countries have now come to realize that both aspects of ownership of the individual and the community, are of importance.⁴⁰

One can see here the necessity of socialization of the law of property and as an example of such socialization of law, the first constitution, Weimarer Verfassung (Weimarer Constitution), which has a special clause to restrict the private ownership was enacted in 1919.⁴¹

c) Definition of Ownership in Common Law

Principles of Common Law were established in the nineteenth century and according to those principles,

an owner of property for example, was allowed to utilize his property as he wished, even in the case that his utilization of the property was aimed at fulfilling only his egoistic desire. Although it interfered with others, it was considered lawful. Here the absoluteness of ownership and the holiness of the freedom of contract were the basis of Common Law, and Benthamism strongly supported this concept of the Common Law.⁴²

However, at the end of the nineteenth century, Benthamism began to fade and collectivism emerged instead. It disagreed with laissez faire as the legislative doctrine and allows government to intervene in the realm of the individual freedom based on the idea that the action of a government might enhance social benefits as a whole.⁴³

In Common Law, one can see two divisions in the concept of property: i) choses in possession i.e., tangible movables which can be possessed ii) choses in action i.e., intangibles which can only be claimed or enforced by action because they are "rights of property."⁴⁴ As a marked characteristic of Common Law, a much more extensive use of abstraction than Civil Law is recognized, and this fact shows that Civil Law has a flexibility to handle ownership.⁴⁵

Notes. 1

1. Crawford Brough Macpherson, Property, (Toronto: University of Toronto Press, 1978), p.1.
2. Sayyid Muhammad Husayni Beheshty, Iqtisad-e Islam, (Islamic Economy) (Tehran: Islamic Cultural Publication Center, 1984) p.13.
3. Macpherson, op.cit., p.2.
4. Ibid., p.2.
5. Richard Schlatter, Private Property, (New York: Russell & Russell, 1973), pp.12, 16.
6. Ibid., pp.18, 19.
7. Ibid., pp.21, 32.
8. Ibid., pp.22, 23.
9. Ibid., pp.23, 24.
10. Ibid., p.24.
11. Ibid., p.38.
12. Ibid., pp.38, 39.
13. Ibid., p.48.
14. Ibid., p.54.
15. Ibid., p.72.
16. Ibid., p.74.
17. Beheshty, op.cit., p.17.
18. Sayyid Muhammad Husayn Allamah Tabatabai, Filosof-e Iqtisad-e Islam, (Philosophy of Islamic Economy)(Tehran) p.151.
19. Beheshty, op.cit., p.13.
20. Ibid., p.15.

21. Muhammad Baqir as-Sadr, Iqtisadna, Dar-t-Ta'aruf li-l-Matbu'at, (Islam Keizairon) Trans. by Toshio Kuroda, (Niigata: The Institute of Middle Eastern Studies. International University of Japan, 1981) pp.29, 30.
22. M. A. Mannan, Islamic Economic Theory & Practice, (Delhi: Jayyed Press, 1980) p.85.
23. Ibid., p.79.
24. J. Norman D. Anderson, "Islamic Law" in International Encyclopedia of Comparative Law Vol.VI, ed. by Frederick H. Lawson, (Tubingen: Mohr, 1976)
25. The Constitution of The Islamic Republic of Iran (Tehran: The Hamdami Publishers Book Designers and Builders) pp.28, 33, 36.
26. Macpherson, op.cit., p.6.
27. Ibid., p.6.
28. Ibid., p.3
29. Ibid., p.8.
30. John Greiville Agard Pocock, Virture, Commerce, and History, (Cambridge: Cambridge University Press, 1985) p.103.
31. Ibid., p.104.
32. Jeremy Bentham, "Security and Equality of Property" in Property, ed., by Crawford Brough Macpherson, op.cit., p.51.
33. Morris Cohen, "Property and Sovereignty" in Property, ed., by Crawford Brough Macpherson, op.cit., p.159.
34. Bob Roshier, and Harvey Teff, Law and Society in England, (London: Tavistock Publications, 1980) p.27.
35. Jacob H. Beekhuis, "Civil Law" in International Encyclopedia of Comparative Law Vol. VI, op.cit., p.3.

36. Ibid., p.5.
36. Ibid., p.5.
37. Ibid., p.5.
38. Ibid., p.5.
39. Ibid., p.6.
40. Ibid., p.8.
41. Teruyuki Tayama, Shoyuukenshiso no Rekishi, (Tokyo: Yuuhikaku, 1979) p.147.
42. Masami Ito, Igilisuho Kenkyu, (Tokyo: Tokyo Daigaku Shuppan Kai, 1978) pp.79, 80.
43. Ibid., p.80.
44. F. H. Lawson, "Common Law" in International Encyclopedia of Comparative Law, Vol. VI op.cit., p.25.
45. Ibid., pp.31, 32.

II

Ownership in Western and Islamic Value Systems

In this chapter I will describe some basic differences between Islamic and Western ideas about ownership which characterize economic activities in both cultural systems. Before going into detail, I would like to emphasize the most important factor in approaching Islamic economy. According to M. Baqir as-Sadr, if one does not tackle the problem from the viewpoint of the Islamic world view but only analyzes its economic aspect, the study on Islamic economy will be nonsense.¹ Sayed Kotb states that Islam enters the field of economic theory under the influence of its universal philosophy and is guided by its general ideology.² From these statements it is clear that if one tries to comprehend Islamic economy, he should study it by a holistic approach in order to cover many fields such as politics, philosophy and so on. Here,

reductionism should be avoided because by adopting reductionism one tend to analyze social phenomena from a small part of the whole and then makes the erroneous conclusion that he recognizes its whole feature.

A. Ummaism vs Individualism

1. Ummaism in Islam

As I have mentioned in the first chapter, in Islam God is the absolute owner of everything in this cosmos and man is merely given an opportunity to possess things as his property with God's permission. In Islamic perspective, Umma (society) is placed at a higher position than that of the individual as far as ownership is concerned. Ali Shari'ati explains Umma:

The word umma derives from the root amm, which has the sense of path and intention. The umma is, therefore, a society in which a number of individuals, possessing a common faith and goal, come together in harmony with the intention of advancing and moving toward their common goal.³

It seems that Umma is given a more important role in dealing with things in society than the individual. According to Kotb, property is in the widest sense a right which can belong only to society and in return society receives it as a trust from God.⁴ Here the individual is in a way a steward of his property on

behalf of society, and this obligates him to accept the restrictions which society lays upon his liberty, and the bounds which limit his fundamental right to such property.⁵ Ayatullah Sayyid Mahmud Taleghani explains several important principles in Islamic economy and I would like to mention at least four of them here in order to explain why Umma is given priority over the individual.

a) Individuals are owners of the fruits of their labour in the widest possible sense, and are free agents in transactions, within the framework of the relevant ordinances and it is a human leader of a society who functions in some cases as owner and in others as supervisor. From this standpoint, Islamic economy is based neither on the ultimate freedom of private ownership that leads to unbridled capitalism nor on public ownership that results in the total denial of individual ownership and freedom. There is private ownership based on the innate and natural freedom of individuals, and collective ownership based on public resources and interests.

b) The limits of ownership and economic relationships in Islam are delineated and ordered by three principles; i) individuals, ii) ordinances and iii) government. Mature individuals governed by faith

and moral responsibilities are free to dispose of their property as they are free in other ways. However, where the rights of individuals and those of society are in conflict, society is empowered to limit individual ownership to a greater degree than the law may authorize.

c) An owner is free to dispose and distribute his possessions which he obtains as the result of his labour. The limits and legal restraints on the right to disposition and ownership ensure that there is not an unfair distribution of possessions and profits.

d) The right to the ownership and distribution of products made from natural resources is based on the right to the disposition and distribution of natural resources, so as to ensure that the earth and all its natural resources belong to everyone. These rights are upheld only insofar as they do not injure the general welfare, because resources and materials in their natural state belong to the public and the private right to dispose them is limited by the public right to them.⁶

It is now clear that individuals can enjoy their right to ownership on the condition that they do not hamper public welfare, and society is given the first priority to handle property.

What are the fundamental ideas then to support the notion that Umma is more important than individuals? M. U. Chapra states there are four items that represent the goals and values of Islamic economic order:

- a) Economic well-being within the framework of the moral norms of Islam
- b) Universal brotherhood and justice
- c) Equitable distribution of income
- d) Freedom of the individual within the context of social welfare.⁷

S. N. H. Naquvi also makes four basic hypotheses on the Islamic economic system:

- (i) economic activity is indissolubly linked, through Unity, with man's ethical environment;
- (ii) by virtue of the basic quality of Equilibrium, in the sense explained above, there must obtain a "just" balance among the basic production, consumption and distribution relations;
- (iii) Free Will, translated onto the economic space, requires that individual economic freedom and state control be suitably combined to reflect the distinctive Islamic concept of human freedom; and
- (iv) the axiom of Responsibility dictates a conscious policy of redistribution and resource transfers among various classes and groups of the society. It also implies a financial relationship between the lender and the borrower which takes explicit cognizance of the essential risky nature of economic actions.⁸

From the arguments of these two scholars, it seems

fairly clear that even though an individual has freedom to work and to own something, society sometimes limits his exercising such freedom when it is necessary. On this point, Sayyid Muhammad Husayni Beheshty's explains that ownership derived from a man's creative and productive labour is not absolute but limited.⁹ In addition, ways of spending his property might be controlled as well. According to Kotb, the individual is not left to himself to do with his property as he wishes: he has his degree of freedom, but it is limited because there can seldom be a purely personal disposal of property which does not in some way affect other people, even though such effects may not be material or in any way apparent.¹⁰ The Islamic perspective has interest in the welfare of the individual while at the same time ensuring of the welfare of society. It wishes to do injury neither to the individual nor to society, and it does not oppose human nature. Nor, on the other hand, does it seek to impede the fundamental customs and the high and far-reaching objectives of life.¹¹

2. Western Individualism

I would like to turn to Western individualism which is generally believed to reflect the incentives of man's behavior in modern Western society. According

to Ko Harada, modern civil society was established by the bourgeois, i.e. the third class, and its political ideology was the theory of Social Contract.¹² In addition, J. Viner states that by the end of the eighteenth century, at least, enlightenment brought mostly common social ethics to the founders of Harvard, Yale or American Philosophy Association and to fathers of American settlers and it seems true that the eighteenth century thought was by and large individualistic.¹³ Then how did they develop this theory of individualism? R. Schlatter explains that the theory of the natural right of property achieved its classical statement as a defence of the early capitalist societies of the seventeenth, eighteenth, and nineteenth centuries.¹⁴ It is a well-known fact that the theory of natural right was presented by Hobbes and was developed by Locke. Natural right is the right which a man is gifted by natural law and even a state can not intervene in it because it was established before the state appeared.¹⁵ Harada expounds on natural right in more detail and summarizes it as the following:

a) natural right is immanent in an individual and it means freedom by which he utilizes his ability according to his own will,

b) natural right is an individualistic ability to do whatever he prefers most for his self-preservation and growth, and

c) therefore natural right is a natural ability.¹⁶

Now I would like to indicate briefly what Hobbes and Locke thought about natural right and natural law. Hobbes's famous argument on the state of nature concerns the state of human beings which lacks civil society and in which every individual who has natural ability opposes others. From these premises, he made his famous proposition that men live in a state of perpetual war.¹⁷ In Hobbes's argument, one can see three reasons for such conflict in society:

- a) fighting to satisfy his desires,
- b) fear that others will outstrip him by force,
- c) wishes to have superiority to others

Hobbes thought that in the state of nature, people only have the ability to maintain themselves and that the criteria of rational and social deeds based on instincts of self preservation are necessary in order to end the state of conflict derived from their exercising their natural right.¹⁸ Harada shows three

basic demands of natural law which Hobbes pointed out:

- a) human beings should pursue peace and secure it,
- b) human beings should surrender their natural right to

one another,

c) all contracts once signed should be observed; otherwise, human beings would return to the state of nature again.¹⁹

It seems clear at first glance of Hobbes's argument that some person or some institution should be given a sovereign power to make people maintain such contracts in a society so that every individual can enjoy his natural right without being infringed by others. Locke also agreed with Hobbes regarding the existence of natural right, though the contents of his theory was different from Hobbes's. In Locke's argument on the state of nature, every individual is governed by his reason. There is nothing superior to the individual in society, and there is nothing which has authority over them. This indicates that every individual is equal and independent, so he has the right to act as he wishes in society unless he interferes other's equal rights. From this notion, the right to live, the right to freedom and the right to property were deduced.²⁰ Here one can see two points: a) a state of perfect freedom and b) a state of equality. However, the meaning of Locke's freedom is the freedom within the bounds of the law of Nature and is dissimilar to Hobbes's freedom of state of licence according to which

one can do whatever he likes.²¹

There are two other distinguishing differences about the state of nature between Hobbes and Locke. Locke abandoned Hobbes's unsocial thoughts about men and insisted on the basic nature of human beings in a society. To Locke, human beings seemed to have the idea that to live alone itself is a sin and they are put in a position of having social life as a necessity and convenience and no individual can secure his safety and satisfy his desires by himself.²² According to Locke, the state of nature has the natural law to govern it and this law restrained human beings morally and even in the state of nature men should recognize others' rights. Therefore, the state of nature, in his argument, is not the same as Hobbes's idea that men live in a state of perpetual war, or chaos in which people pursue only their own profits.²³ As long as men are equal, nobody should interfere with the lives, health, freedom and property of others.²⁴ Here one can clearly see the dissimilarity of the basic understanding on the state of nature between Hobbes and Locke. Locke carefully observed private property which was derived from the natural law and natural right and developed his idea: the main purpose which connected men to a nation was the preservation of their property

and they could own the fruits of their labour. This is because their own labour belonged to them; in other words, labour gave individuals the first right to property.²⁵ C. B. Macpherson comments about Locke's achievement:

Locke was the first to make a case for property of unlimited amount as a natural right of the individual, prior to governments and overriding them. Many others had made a general case for limited government: Locke's great innovation was to justify it as necessary to protect unlimited property. Since men formed themselves into civil societies in order to protect their individual properties, no civil society could conceivably wish to take away any part of any man's property except in so far as necessary to protect property as an institution (that is, by such taxation as was necessary to maintain law and government); and governments, whose rightful powers were only those delegated to them by the whole civil society, could therefore never have the right to interfere with anyone's property beyond what was required to protect property.

What made his case for unlimited property so persuasive was that it seemed to be based simply on an equal right to one's own labour and to the means of labour, a right which is ethically pretty acceptable. And in spite of its strained logic his case soon became a standard one.²⁶

B. Origin of Ownership

1. Islamic Origin of Ownership

In Islam, God is the absolute owner of everything

and man is given an opportunity to own a thing. But what is the origin of ownership? Beheshty states that creatorship, or in other words, creative and productive labour to manufacture a certain object, gives us the right to possess the object by itself.²⁷ According to Baqir as-Sadr, labour in Islamic perspective gives a labourer the right to own the fruits of his labour.²⁸ From what Beheshty and Baqir as-Sadr state, it may be said that labour or work, whatever the terminology is, the deed, action, or work done to produce a certain substance is the origin of ownership in Islam. Beheshty explains more about ownership by identifying three basic origins:

- a) productive labour
- b) possessive labour
- c) service labour

Beheshty also identifies more specific types which are related to the general origins:

- a) exchange or commerce
- b) gift
- c) natural transfer (inheritance etc.)²⁹

J. Klaus says that even though there are discrepancies in the interpretation for ownership among various schools of thought in Islam, their basic understanding of the origin of ownership is labour,

inheritance and gift. Also there is no limitation in the amount that one person obtains or gives. Private property is regarded as a natural part of life and considered as appropriate to a moral order and it is believed a sin to intrude on it.³⁰ Kotb points out seven methods of individual acquisition:

- a) hunting
 - b) irrigation
 - c) production of minerals hidden in the earth
 - d) raiding
 - e) working for a wage for others
 - f) assigning ownership of a piece of land that does not have an owner
 - g) money given to someone to help them survive (e.g. a tax to benefit the poor).³¹
- Even though such an example as raiding is listed above, which requires a second consideration from an ethical point of view, basically it seems apparent that labour in a broad sense is the origin of ownership in Islam. Here the importance is not put on how to possess a thing individually but on how to utilize the property and to gain profit from it.³² In Islam, as I have shown in the earlier section of this thesis, an individual can not always dispose his property as he wishes. Also, there are eight rules of the Shari'ah (Islamic law)

governing private property:

- a) Property must be continuously utilized.
- b) Zakat (wealth tax) must be paid.
- c) Property must be used to benefit people and Umma.
- d) Property must be used without causing any harm to others.
- e) Property must be lawfully possessed.
- f) Property must not be used in a prodigal or parsimonious way.
- g) An owner should not sacrifice his own basic needs when using property.
- h) The Islamic law of inheritance should be correctly applied.³³

Without obeying these rules, an individual can not maintain his property.

To summarize, labor is the origin of ownership for individuals, and Article 46 of the Constitution of the Islamic Republic of Iran clearly states thus: "Every person is the owner of the product of his or her legal labor and industry and no one is entitled to deprive others of opportunities for work and industry for the purpose of owning the fruits of his own labor."³⁴

2. Western Perspective

Similar to the change in the definition of

ownership in the West as I pointed out in the first chapter, the theory of origin of ownership has been changing. To support his argument on the origin of ownership, Macpherson uses the following passage from Green:

The writers of the seventeenth and eighteenth centuries, who discussed the basis of the rights of property, took it for granted and in so doing begged the question. Grotius makes the right of property rest on contract, but clearly until there is a recognized "meum" and "tuum" there can be no contract. Contract presupposes property. The property in a particular thing may be derived from a contract through which it has been obtained in exchange for another thing or for some services rendered, but that implies that it was previously the property of another and that the person obtaining it has a property in something else, if only in the labour of his hands which he could exchange for it. Hobbes is so far more logical that he does not derive property from contract, but treats property and 'the validity of covenants' as co-ordinately dependent on the existence of a sovereign power of compulsion.³⁵

Hobbes's position was that "the validity of contracts 'begins not but with its institution,' yet its own right is derived from an irrevocable contract of all with all in which each develops his 'persona,' the body of his rights, upon it."³⁶ Locke treated property as derived from labour. "By the same law of nature and reason by which man has 'a property in his own person,'

'the labour of his body and the work of his hand are properly his' too."³⁷ According to Locke, nobody possesses a thing in primeval time. But in the process of a person's coming to do labour, the fruits of which belong only to him, private property emerges. Thus, labour makes the first right to property.³⁸ Locke put the following limitations on a right to property:

a) there should be plenty of common property left,
b) within the limitation that a person can utilize effectively for his own profit, a right to property should be approved, and if he hoards it beyond his ability for effective utilization and in consequence spoils it, it is the equivalent of theft.³⁹ There does not seem to be any differences between Locke and Islam about the origin of ownership here, because according to both, labour is the origin of ownership. However, a most striking difference can be deduced: possible inequality in terms of economic activities. From Locke's argument it can be said that everyone can possess property as much as he wishes unless he spoils it and by accumulating his wealth in the form of money, it is possible that he stockpiles his wealth to an unlimited extent and this may lead to economic inequality among people.⁴⁰ Here again, as I tried to explain in the preceding section, individualism is a key to under-

standing economic activities in Western societies. Regarding ownership, comparing the two value systems of Western society and of Islam, one may come to understand that the most striking difference between them is the position of society, or Umma, and individuals. In Islam, even though everyone can possess a certain object as his property through his labour if there is no conflict between him and Umma, Umma can restrict such a right to property if it is necessary to maintain equality among people. On the other hand, in the Western idea of ownership, an individual can possess as much as he wants if it is obtained by his labour, and society does not allow others to take anything away from that individual even in the case that the other individuals are suffering. Consequently, it seems that the individual will accumulate his property in the form of money and hoard it. In my view, this Western attitude toward ownership based on an extreme individualism makes it possible for strong and rich people to become stronger and richer and the gap between rich and poor, and strong and weak to widen.

C. Forms of Ownership

So far, I have discussed the ideological differences of ownership between the two cultural

systems. Next I will scrutinize the real features of the forms of ownership in Islam and in Western society.

1. Combined Ownership in Islam

The most impressive fact of ownership in Islam is that Islam allows various forms of ownership. As Baqir as-Sadr explains, Islam authorizes several types of ownership and it adopts the principle of combined ownership. Combined ownership has many forms which makes it different from capitalism or socialism that have one type of ownership in principle. Islam has private, public and state ownership and it establishes special boundaries for each one of them.⁴¹ According to Baqir as-Sadr's definition:

a) State Ownership

Prophet or Imam (leader in a Muslim society), who has the right to property within the realm of Islamic country, possesses certain things such as mining resources. This ownership gives authority to rulers who are responsible for public welfare in order that they may watch and maintain property.

b) Public Ownership

Society or the members of that society together possess a certain kind of property. Public ownership also includes property for which the country is

responsible. This meaning of public ownership covers two areas. One of them is the area of state ownership which is opposite to private property and the other area is of public ownership.

c) Social Ownership

This is one of the forms of public ownership. This kind of ownership means Islamic society's ownership of all property over a very wide range of history. One of the examples is gained cultivated land by jihad (holy war).

d) Human Ownership

This is also another type of public ownership. This ownership means property which an individual or a private institution is not permitted to possess and from which all people can benefit. The benefits that can be gained from seas or rivers is an example.

e) Private Ownership

In this kind of ownership, in principle, an individual can have a right to own a certain property exclusively within a limit and it is prohibited that others gain profits from it.⁴²

From this explanation, it is apparent that social ownership has priority over state ownership and private ownership, and this may be additional evidence that supports the idea that in Islam, the Umma is considered as of a higher order than either individuals or nation

states.

According to Beheshty, in the Islamic perspective, individual ownership and collective ownership exist, and in the latter, there are general ownership and group ownership.⁴³ Here again, one can see a combined form of ownership in Islam and this is quite different from Western ideas. A. A. Awan states that there is no concept of dual ownership in capitalism or socialism. Everyone in Islamic society is a trustee and beneficiary of ownership and yet no one owns property as his own in the traditional sense. The fact that capitalism or socialism has a single form of ownership is precisely what makes these systems so remarkably unsuited to the analysis of distributional questions.⁴⁴ Awan explains:

It seems fairly clear that dual ownership lays its foundation on the idea of community in which everyone is a partner in the economic process of production and distribution. Unlike the utilitarian and the Marxian approaches, in which either maximizing the sum of individual utilities is taken as the measure of social welfare or a planning authority determines the level of social welfare, the Islamic economic approach seems to demand not only relative gains and losses of everyone, but also insists on full participation by everyone in determining the level of social welfare.⁴⁵

To illustrate such combined ownership, I would like to

cite some articles of the Constitution of the Islamic Republic of Iran again:

Article 44: The economy of the Islamic Republic of Iran is based upon three sectors: public, cooperative and private.

The public sector consists of all large and private industries, foreign trade, large mines, banking, insurance, energy programs, large dams and irrigation networks, radio and television, post, telegraph, aviation, shipping and railways, whose ownership is the responsibility of the government.

The cooperative sector includes production and distributive cooperative companies and enterprises which are established in cities and villages according to Islamic criteria.

The private sector consists of those parts of agriculture, industry, animal husbandry, trade and services which complements cooperative and government economic activities.

Ownership in all three sectors of the economy, in so far as it conforms to other sections of this part, does not contravene Islamic laws, and helps to advance economic growth and development and would not be injurious to society, will enjoy the protection of the law in the Islamic Republic of Iran. Details and order of the usage of each is to be determined by law.

Article 45: Natural resources and national wealth such as lands or deserted lands, mines, seas, lakes, reed beds, natural woods, virgin land and pastures are part of the public domain. Heirless property and property of unknown ownership and public property restored from usurpers are in the possession of the Islamic government which will determine the best way to utilize them in the interests of the nation. Details and manner of usage will be determined by law.⁴⁶

2. Private Ownership in the West

It is well known that the economic development of the West after the industrial revolution has been supported by the private ownership system along with individualism and the freedom of contract. In the Western perspective, private ownership is a system in which a private individual can possess every sort of property especially lands, factories and other natural resources which are fundamentally production facilities, and the system is protected by law and within it an owner can principally maintain and dispose property as he wishes.⁴⁷ While capitalism made rapid progress, a lot of property was acquired by a small number of people and some came to predict that keeping this private ownership system would endanger the lives of many other proletariat and would ruin the ideal of utilizing property for the benefits of a whole society. Then, in the twentieth century, one can see a tendency to limit private ownership with regard to factors of production such as natural resources and monopolistic factories.⁴⁸

One may be right in thinking that the socialization of property law was required to solve the problem mentioned above. In the late nineteenth century, there emerged some changes in Common Law, that

is, the change in attitude from 'laissez faire' to 'collectivism' and as a result four measures were subsequently taken:

- a) protection of public authority
labourers, tenant farmers and women were considered as legally incompetent persons and their legal deeds were restricted,
- b) limitation on the freedom of contract
- c) enhancement of united actions (labour unions, etc.)
- d) the equalization of social benefits (compulsory education, social insurance, etc.)⁴⁹

In general, Common Law is an ultra-individualistic law and it regards individual will as holy. The central part of Common Law was individualistic responsibility, but the development of social law in the twentieth century modified the ultra-individualism. Consequently, it made executive authority larger, which took charge of socialization, and restricted the free will of individuals for the welfare of a whole society and this series of events shook the basis of English Law.⁵⁰

After a careful consideration of such socialization of law, a compromise has been made in various fields of law. Macpherson points out three types of property: common, private and state property. Common property is created by the guarantee to each individual

that he will not be excluded from the use or benefit of something, and private property is created by the guarantee that an individual can exclude others from the use or benefit of something, and these two kinds of property are individual rights because they are guaranteed to individuals. State property is another type of property because this is not an individual right at all: the state has not only created but has kept for itself or has taken over from private individuals or corporations. For example, railways, airlines which are owned by the state in many countries, and in those countries, the state is acting as an artificial person to handle it.⁵¹ Macpherson's analysis of state property is interesting. He says:

State property, then, is not common property as we have defined it: state property is not an individual right not to be excluded. It is a corporate right to exclude. As a corporate right to exclude others it fits the definition of (corporate) private property.⁵²

Though one may be confused with his paradoxical statement, the paradox disappears when one notices that the state, in any modern society, is not the whole body of citizens but a smaller body of persons who have been authorized to govern the citizens and it is a group that has the right to control the use of state

property and, therefore, state property is an exclusive right of an artificial person. Now it is clear that all these three types of property, common, private and state property are the rights of persons, either natural individuals or artificial persons.⁵³

One may be safe in thinking that in the Western perspective, although one sees some types of ownership on its surface, only personal rights are respected at its bottom, based upon individualism, and this shows a great difference with the Ummaism in Islam.

Notes. 2

1. Muhammad Baqir as-Sadr, 'Iqtisadna, Dar-t-Ta'aruf li-l-Matbu'at, (Islam Keizairon) Trans. by Toshio Kuroda, (Niigata: The Institute of Middle Eastern Studies, Internatioanl University of Japan, 1985) p.16.
2. Sayed Kotb, Al-'Adalah al-Ijitima'yah fi al-Islam, (Social Justice in Islam) Trans. by John B. Hardie, (New York: Octagon Books, 1980) p.100.
3. Ali Shari'ati, On the Sociology of Islam, Trans. by Hamid Algar, (Berkeley: Mizan Press, 1979) p.119.
4. Kotb, op.cit., p.105.
5. Ibid., p.106.
6. Ayatullah Sayyid Mahmud Taleghani, Society and Economics in Islam, Trans. by R. Campbell, (Berkeley: Mizan Press, 1982) pp.25-30.
7. Muhammad Umar Chapra, Objectives of the Islamic Economic Order, (London: The Islamic Foundation, 1979) p.6.
8. Syed Nawab Haider Naqvi, Ethics and Economics: An Islamic Synthesis, (London: The Islamic Foundation, 1981) p.62.
9. Sayyid Muhammad Husayni Beheshty, Iqtisad-e Islam, (Islamic Economy) (Tehran: Islamic Cultural Publication Center) p.22.
10. Kotb, op.cit., pp.124, 125.
11. Ibid., p.100.
12. Ko Harada, Seiyo Seiji Shisoshi, (Tokyo: Yuuhikaku, 1980) p.222.
13. J. Viner, The Role of Providence in the Social Order, (Kirisutokyo to Keizaishiso) Trans. by Takashi Negishi, and Aiko Negishi, (Tokyo: Yuuhikaku, 1980) pp.74-76.

14. Richard Schlatter, Private Property, (New York: Russell & Russell, 1973) p.278.
15. "Shizenken" in Shin Horitsugaku Jiten ed., by Sakae Wagatsuma (Tokyo: Yuuhikaku, 1981) p.510.
16. Harada, op.cit., p.241.
17. Ibid., p.240.
18. Ibid., pp.240, 241.
19. Ibid., pp.242, 243.
20. Ibid., pp.274-276.
21. Hajime Watanabe, Seiyo Seji Shisoshi, (Kyoto: Horitsu Bunkasha, 1979) p.187.
22. Harada, op.cit., p275.
23. Ibid., p.275.
24. Ibid., p.275.
25. Ibid., p.276.
26. Crawford Brough Macpherson, Property, (Toronto: University of Toronto Press, 1978) p.15.
27. Beheshty, op.cit., p.19.
28. Baqir as-Sadr, op.cit., p.19.
29. Beheshty, op.cit., pp.35, 36.
30. J. Klaus, Kaikyo no Keizai Rinri, (Tokyo: Meiji-shobo, 1943) p.66.
31. Kotb, op.cit., p.110.
32. Ibid., p.107.
33. M. A. Mannan, Islamic Economic Theory & Practice, (Delhi: Jayyed Press, 1980) p.98.
34. The Constitution of the Islamic Republic of Iran (Tehran: The Hamdami Publishers Book Designers and Builders, 1980) p.36.

35. Macpherson, op.cit., pp.105, 106.
36. Ibid., pp.106, 107.
37. Ibid., p.107.
38. Harada, op.cit., p.276.
39. Watanabe, op.cit., p.192.
40. Ibid., p.193.
41. Baqir as-Sadr, op.cit., p.4.
42. Ibid., pp.85, 86.
43. Beheshty, op.cit., p.42.
44. Akhtar A.Awan, Equality, Efficiency & Property Ownership in the Islmaic Ecocnomic System, (Lanham:University Press of America,1983) p.23.
45. Ibid., p.23.
46. The Constitution of the Islamic Republic of Iran pp.35, 36.
47. "Shiyuu Zaisan Seido" in Shin Horitsugaku Jiten, op.cit., p.568.
48. Ibid., p.568.
49. Ito, op.cit., p.80.
50. Ibid., p.78.
51. Macpherson, op.cit., pp.4-6.
52. Ibid., p.5.
53. Ibid., pp.5, 6.

III

Human Nature and Sovereignty in Islamic and the Western Perspectives

I have discussed the basic differences of ownership in Islam and the West. Through my argument, one can see the most significant aspect of ownership in each value system: there is no discrepancy concerning the origin of ownership between the two value systems because an individual's labour is regarded as the origin of ownership in both cases. However, the most striking difference concerns whether society puts some limit on the individual's property or not. As I have shown in the second chapter, in the West, the individual can pursue his desire to obtain things as much as he wishes even in the case that his action may interfere with others' benefits, because in the Western perspective, individualism has been considered the most essential value. On the contrary, in Islam, if it is necessary to protect social benefits, Umma places some

limit on the individual's desire to possess things, because to establish Umma is their final goal. One may object to my argument by saying that even in the West, social welfare or social benefit has been respected. This might be a fair criticism and as the evidence, one can see other forms of ownership other than private ownership, which have developed as a result of the socialization of law since the nineteenth century on. However, as I have expounded on it by showing C. B. Macpherson's analysis, at the bottom of the Western values, personal ownership has the highest priority. Therefore, it can be said that the most striking difference of ownership between the two cultural systems is individualism in the West and Ummaism in Islam.

As a result of this difference, other questions arise: what is the outlook on the individual in each value system, how do people manage society, or who has sovereign power to lead a society toward achieving its goals? To answer these questions, in the next chapter, I will briefly survey human nature and sovereignty in Islam and the West to answer these questions.

A. Islamic Human Nature

I should, first of all, point out that according

to Islamic ideas, a human being has a very high place in the world, though God has created everything in nature perfect. Ayatullah Morteza Mutahhari states that the Qur'an reveals a picture of the human being as a chosen creature of God, as His own Caliph (deputy) on the earth and as being half-heavenly and half-earthly, in whom has been implanted a God-knowing nature, freedom, trustworthiness, a sense of responsibility towards himself or herself as well as the world and the favor of hegemony over Nature, heaven and earth.¹ According to S.Radhakrishnan and P. T.Raju, in Islam it is possible for man to change his outer world if a human being has a rigid inner life and it is said that at the climax, he can embody perfection physically, intellectually, and spiritually.² Here, man is believed to be given much ability to develop himself by learning. However, God is superior to everything in the world and human beings are not an exception to this basic idea. Toshihiko Izutsu states that absolute submission to God is one of the essentials to be a real believer of Islam.³ Qur'anic verse says:

For a Believer, man or woman, when a matter has been decided by God and His Apostle, to have any option about their decision: If anyone disobeys God and His Apostle, he is indeed on a clearly wrong path. (chapter 33, 36)⁴

It is widely believed that equality, justice, and freedom are key-concepts in understanding human nature of Muslims and I would like to analyze them one by one in the following section.

1. Equality

In Islam, there is no discrimination against color, sex or race; in other words, in front of God, every individual is treated equally. Abdulrahman Abdulkadir Kurdi explains that according to the Islamic Holy Constitution, the believers of Islam should identify themselves only as Muslim, and this is the only citizenship to which they must be affiliated.⁵

For example, women in Islam have enjoyed the same status as men. One of verses of Qur'an says:

Their Lord would answer their supplication:
I will not suffer the labour of any
labourer from among you male or female, to
perish. You are spiritually akin one to
another. (chapter 3, 195)⁶

When a woman becomes an adult, she has the right to dispose of her possessions according to her own will, and no man can force them to get married. It is in the modern law era that this kind of principle was established in the West for the first time.⁷

The fundamental idea of equality in Islam is that

since the true owner of things in the world is Allah and people can utilize things within limitations, they can not obtain anything which enables them to be superior to others. A. K. Brohi states that an individual has five human rights:

- a) the right to life and property,
- b) the right to freedom of opinion and expression,
- c) the right of every Muslim to do good deeds for other Muslims and forbid them from wrong doing,
- d) the right to freedom of religion and conscience,
- e) the right to equality -- complete equality of opportunity.⁸

Although people are equal before God, this equality means a relative equality. Kurdi explains that the Islamic Holy Constitution does not consider this type of equality to entitle man to be absolutely equal. As mankind will never be entirely and unrestrictedly equal, the Islamic Holy Constitution declares that natural human inequalities must be recognized.⁹ Kurdi explains the reason as follows:

The generally accepted belief, that every individual or group sharing a similar variety of knowledge should enjoy a certain status in society with regard to class, income and performance, is probably not the standard that must be recognized by the Islamic Holy Constitution because of the inequality of their ability and performance.¹⁰

Kurdi concludes that social services such as education, health services and equality of opportunity to learn social rank, must be recognized by the authority of the Islamic State along with the acknowledgement of the inequality of men as a result of natural endowments. Therefore, the Islamic Holy Constitution is moderate in regard to equality not accepting any extreme.¹¹

If one imagines that since Islam does not accept complete equality among men, the gap between rich and poor, or strong and weak is very wide, I must say that this idea is absolutely wrong. This is because in Islam, to practice justice is considered one of the expressions of faith toward God, and justice restricts many aspects of human life. To maintain justice in society, people are not allowed to be too greedy. This maintenance of justice works very well as a way to avoid unnecessary competition among people to obtain things. So, in the next section, I would like to clarify Islamic justice.

2. Justice

Kurdi explains that justice can not be conceptualized materially by a precise definition and the question of just and unjust are morally conceptualized because justice is basically derived from a factor or

consciousness, which is usually exhibited through the emotional and spiritual impetus of the individual's ideological belief.¹² In addition, Majid Khadduri states that justice is essentially a relative concept and scales of justice vary considerably from land to land.¹³ Since the Divine Legislator did not rule directly over the believers, the representative of God on earth, to whom God's authority was delegated, had to put the Law into practice and to rule with justice. Thus government was established based on Divine Law and justice.¹⁴

It should be noted that justice has a very important meaning in Islam. The idea of justice was of particular interest to the Prophet Muhammad, who seems to have been endowed with a deep sense of justice, and he dealt with the problems of his day with uprightness, balance, and fairness. The Qur'an admonished people that in the fulfillment of their religious obligations they must above all be just. In the Qur'an, there are over two hundred admonitions against injustice and no less than almost a hundred expressions embodying the notion of justice, in a variety of either direct or indirect expressions.¹⁵ One of the Qur'anic references to justice is as follows:

Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts, lest ye swerve, and if ye distort (justice) or decline to do justice, verily God is well-acquainted with all that ye do. (chapter 4, 135)¹⁶

It can be said that justice is an integral part of man's faith toward God at an individual level. At the same time, social justice is one of Islamic aims. Kotb states that the nature of Islamic belief about human life makes social justice essentially an all-embracing justice which does not take account merely of material and economic factors because Islam holds that mankind is essentially one body, a body in which there are no isolated and outcast societies.¹⁷

According to Kurdi, justice means to equalize the distribution of wealth in the Islamic Nation. The Islamic Holy Constitution has prescribed certain legal and optional measures to achieve a balance of wealth. To realize the objective of the welfare of the Islamic Nation by the equitable distribution of wealth, and the main purpose of these regulations is to stop the concentration of wealth in a few hands. However, these legal provisions do not prohibit private ownership or restrict the free market, and these are carefully

designed to facilitate the economy of Islam and to provide the original right for every individual to build up his own wealth without exploitation.¹⁸ In summary, Islam has provided the Islamic Nation with detailed laws and regulations which are founded on the ideas of justice and equality for all people without discrimination. This shows that Islam is not merely a religion practiced only in places of worship, but also a system which governs all of life.¹⁹

3. Freedom

It seems very clear now that every individual in Islamic society can enjoy freedom within the realm which social justice permits. In other words, man can enjoy the benefits of limited freedom.

Mutahhari states:

It is quite obvious that although the human being is free to shape his or her spiritual mechanism to convert his or her natural environment to a more desirable form and to create the ideal future, he or she is somewhat restricted in actions. In other words, human beings enjoy a relative freedom which is confined to a specific domain within which they can either choose a prosperous or a disastrous future.²⁰

According to Kurdi, the concept of freedom in Islam basically stands for the ultimate responsibility of

man.²¹ The Islamic Holy Constitution has declared that each individual is fully responsible for deciding his own destiny and such a choice or decision is the most significant aspect of freedom in an individual life.²²

Freedom appears to play an important role in Islam. Baqir as-Sadr explains:

Freedom, according to Islam, maintains the revolutionary aspect of freedom, to liberate man from the idol's control, all idols from whose yoke humanity has been suffering across history. But it erects this great task of liberation upon the basis of a submission purely for Allah, and for Allah alone. Therefore, man's submission to God in Islam (instead of possessing his own self, according to capitalism) is the tool whereby man breaks all other norms of submission or slavery, for this sort of power with which he co-exists, stands in the same grounds before one Lord. Therefore, no power on earth has the right to fare with his destiny as it pleases or controls his existence and life...²³

Another aspect of freedom in Islam is the freedom of non-muslims. As I have shown in the preceding section of this chapter, man has the right to freedom of opinion and expression and to freedom of religion and conscience. In Islamic perspectives, even a non-muslim is guaranteed the right to have his own belief in religion, thought and so on. This might indicate that Islam is generous and tolerant to even non-muslims from the viewpoint of freedom.

Kurdi concludes Islamic freedom:

Finally, the concept of freedom in Islam is to be considered as the first stage of action towards rationally regulated behavior and conduct, based on the real need of mankind materially and spiritually. The Islamic Holy Constitution regards the concept of responsibility and commitment in an individual's life as the keystone in determining the concept of freedom. This responsibility guides an individual away from the chaotic stage and towards a rational stage. However, the concept of freedom is always limited whenever the responsibility is increased and vice versa.²⁴

B. Islamic Sovereignty

One must remember that everything, after all, belongs to God in Islam and even sovereignty is not an exception.

Yoshiaki Sanada explains that in Islam, sovereignty comes under the jurisdiction of God, in other words, Shari'ah and not under the jurisdiction of the state.²⁵ In Islamic perspective, human beings should surrender any right to rule others, whatever the content of sovereignty is, and nobody is permitted to order or make demands on others at all by his own right. Therefore, nobody should accept the obligation to follow such demands or orders.²⁶

Brohi describes this principle of sovereignty in more detail:

Strictly speaking, there is no ruler within the conceptual framework of a Muslim state-this is so because here the ruler has no will of his own since he has surrendered his will at the altar of the Will of the Lord and what is more he submits to that Will and undertakes to carry out its mandates, not for the sake of his personal aggrandizement but for the sake of showing obedience to the demand of the Divine Law. A ruler who does conform to this concept is really more or less a managing director of the public affairs of the state. His power is not his own if only because the Qur'an has categorically asserted that all power belongs to God and such power as belongs to man is virtually his only because it is delegated to him on the strict condition that it would be exercised beneficially for those for whose sake it has been so delegated to him.²⁷

Sanada advocates naming this Islamic system "nomocracy" distinguishing it from the Western "theocracy".²⁸ Here it is absolutely necessary to deny the principle of state sovereignty in order to prevent dictatorship by political power because taking sovereignty away from state can be the best assurance of limiting state sovereignty.²⁹

In order to apply this concept to the daily life of people, some measures should be considered. According to Haroon Khan Sherwani, it is obvious that God does not exercise His authority directly in political matters but delegates it to human beings.³⁰ Sherwani explains the process of delegation:

The whole conception of the supremacy of God and the vicegerence of man rests on the principle that God exercise his power and authority through human agency and that there should be uniformity in the behavior of the vicegerents as have faith and are prone to do good deeds, for without this even an attempt at obedience to the universal Law of Nature would not be possible.³¹

Later, Sherwani writes:

This makes it quite clear that the Islamic ruler in the mundane sense is different from the "sovereign" as evolved later by European politicians and political scientists, for according to the Islamic doctrine no person can be an autocrat. The very basis of political power in this sense is delegation, walayah, and this obviously entails responsibility. Moreover, the idea of absolute property either in political or personal sense is foreign to the Islamic spirit: for every thing is owned by God and therefore by the community in the practical sense, and is held in trust by the person using it.³²

Taleghani states that, since society is a moving and evolving entity, the end and the goal toward which the social organism moves should be clarified and a society without a set goal and purpose does not have the ability to survive. In order to establish such a goal, legislating and formulating laws are essential, and Taleghani shows conditons required of lawmakers:

1. aware of the ultimate goals of the individual, as well as the dynamism of the society so that movement

and process is not hindered in any phase of development and rules to satisfy all needs,

2. well versed in the complexity of the human psyche, desires, and values to be able to promulgate comprehensive principles and laws,

3. free from environmental, class influences and emotional desires, so that laws are promulgated for everyone's welfare by encompassing and uniting all people,

4. have the people's and social classes' belief in law and the position of law makers, so that the principles of law can be willingly enforced.³³

As one of the examples of conditions required of lawmakers or governors, I would like to support my argument by citing a relevant passage from the letter of Hazrat Ali addressed to Malik-e-Ashter who was appointed as Governor of Egypt.

You must always appreciate and adopt a policy which is neither too severe and harsh nor too lenient, a policy which is based upon equality and justice and which will be largely appreciated and liked.

Do not reserve for yourself anything which is common property to all and in which others have equal rights. Do not close your eyes from mal-practices of the officers, miscarriage of justice and misuse of rights, because you will be held responsible for the wrong done to the helpless and oppressed people.

You must always try to remember the good and useful things done in the past, activities of a just and benign government, good deeds done by it, good laws promulgated; orders and traditions of the Holy prophet, orders of God given out in His Holy Book; and things that you have seen me doing or heard me saying.³⁴

In the basic concept of sovereignty which I have described so far, one might have the idea that in Islam, only God. In other words, Shari'ah, has absolute sovereignty and, as the agent, human beings are given the power to manage society for the sake of the people in it. Here, again, it should be noted that at the bottom of this theory, God is considered to be the true owner of everything. As I tried to delineate in the early part of this chapter, the difference of ownership seems very closely related to the difference of the concept of human nature, society and sovereignty. Now, I would like to turn to those concepts in the West in order to support my hypothesis.

C. Western Human Model

1. Hobbes's Model

Hajime Watanabe states that Hobbes's observation on human nature was that man is an animal that is motivated by "fear and self-interest", and that Hobbes came to view man as living in perpetual war in his

natural state.³⁵ According to Takuya Hatori, in Hobbes's argument, man's primary motivation is his never ending will to power which includes essential human passions such as covetousness, ambition, emulation, envy, etc.³⁶ Hiroshi Shibuya explains that man, according to Hobbes's interpretation, is a self-centered being and lives to preserve his own life; that is, his individual life has primary value and no other value is more important than it. Therefore, he has the right to do anything in order to protect his life.³⁷

Since individuals struggle against each other in the state of nature, in order to keep order in society, some action should be taken, and Hobbes suggested the necessity of instituting a social covenant (see the second section of chapter 2).

One might be right in thinking that Hobbes viewed man as being too greedy and selfish, and Watanabe criticizes this point by saying that Hobbes's human model was much too one sided and that he ignored another aspect of man, that is, human beings behave with motivation other than egoistic motivation.³⁸

2. Locke's Human Model

Watanabe states that Locke evaluated man's sociality and autonomous ability highly. Therefore,

Locke viewed man not as mere animal but as moral and social being, showing a clear contrast to Hobbes's model. Locke felt that it is none other than reason that makes man a man of character.³⁹

Then, according to Locke's argument, what is the primary motivation for man's behaviour? Hatori explains that Locke regarded two kinds of uneasiness as stimulus to man's industriousness and deeds, which are composed of two kinds: natural uneasiness and fantastical uneasiness. Due to these kinds of uneasiness, people tend to try to obtain more than they really need.⁴⁰

Although people try to possess more than they need, according to Hiroshi Tanaka, in Locke's model, people do not compete with each other in the state of nature. This is because people are governed by their reason and this reasoning ability makes people respect other's lives, property and freedom.⁴¹

Harvey C. Mansfield Jr. states that in Locke's argument, God seems to have performed the duty of preserving His creatures by implanting in man a strong desire for self-preservation, as in all other animals, and to have distinguished man by the gift of reason instead of instinct.⁴² Mansfield concludes that:

God made men for the sake of their self-

preservation and that they follow the will of their Maker when they regard themselves as their own property.

Man, then, not being the property of God, has received no property from God. Man's only gifts are the desire for self-preservation and the reason to effect it which are in his own nature and could not have been withheld by any Maker of such as himself.⁴³

Ko Harada states that Locke, as an ideologue of the middle class, felt private property developed from the natural law and natural rights in order that man can possess the fruit of his labour.⁴⁴

One can see that in Locke's model, although a human being is seen as pursuing private benefit, at the same time he is regarded as having reason. Here it seems very clear that in comparison to Hobbes's model, Locke's man is more civilized.

3. Smith's Model

Smith is well known for his creation of the concept of "economic man". In his argument, man tries to obtain the greatest benefit he can. Smith stated:

But it is only for the sake of profit that any man employs a capital in the support of industry: and he will always, therefore, endeavour to employ it in the support of that industry of which the produce is likely to be the greatest value, or to exchange for the greatest quantity either money or of other goods.

As every individual, therefore, endeavours as much as he can both to employ his capital in the support of domestic industry and so to direct that industry that its produce may be of the greatest value; every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither, intends to promote the public interest, nor knows how much he is promoting it.⁴⁵

From this passage, it is clear that in his model, Smith thought that it is part of man's nature to earn much money, to get the most benefit from his labour and as a consequence this action may increase the state's income.

D. Western Sovereignty

I have summarized Hobbes's, Locke's and Smith's human models, and I would like to describe features of the society or state in which people of such human nature live.

1. Hobbes's Sovereignty

The purpose of sovereignty in Hobbes's argument is, according to Harada, to suppress man's unlimited self-interest by threatening him with punishment, to prevent the reappearance of war in the state of nature and to maintain society. This, in consequence, allows people to enjoy their long lives.⁴⁶ Harada states that

Hobbes felt individuals consciously deny "war" and constitute society or commonwealth by making a social covenant founded on their correct reasoning, and so they reach a more enlightened state. On making such a social covenant, they surrender their natural rights to a sovereign ruler unconditionally and the sovereign ruler is a selected third person who enforces the covenant.⁴⁷

The sovereign ruler has the absolute power to rule. Watanabe explains the rights Hobbes felt the sovereign ruler has:

- a) Individuals can not make a new covenant without the ruler's permission because they gave all their rights to him unconditionally.
- b) There can be no breach of the covenant from the ruler's side because those who are governed decided to give their rights to him. In other words, the ruler did not ask to make a contract with them.
- c) Even those who are opposed to the decision of the majority should consent tacitly to all the ruler's actions because the majority selected the ruler by consent among them.
- d) Whatever the ruler decides, it does not mean doing wrong to people.
- e) People can not impose the death penalty or other

penalties on the ruler. Moreover, the ruler can do whatever necessary to keep peace and protect people.

f) He has the right to control freedom of speech and to censor books, etc.⁴⁸

It is clear that sovereignty in Hobbes's argument is unlimited and absolute. In other words, the sovereign ruler is a "mortal God".⁴⁹

2. Locke's Sovereignty

As I indicated earlier, self-preservation was Locke's main concern and he argued that the right to property is essential for it. Hatori states that, in Locke's state of nature, it is hard to protect such right to property because the following three conditions are missing:

- a) positive law
- b) a fair judge
- c) execution of judgment

Therefore, people are afraid of having their property intruded on, so they make a contract to establish a political society and under political sovereignty, their property is protected.⁵⁰

According to Harada, Locke placed stress on establishing a lawful government based on the consent of all people, because nobody can be subject to the

political sovereignty of the third person. Therefore, the ruler should be chosen by the people and the form of his power should also be decided by the people. Locke clearly differentiated political society and government. His idea was that government exists for the sake of political society, so if the government threatens social profit, it can be overthrown. Here one can see the people's right to resistance.⁵¹

Watanabe explains that Locke regarded legislative power as most important. Locke felt the form of government should be decided on by the people.⁵² According to Watanabe, Locke believed four limits of legislative power:

- a) The legislative body should obey laws which are published clearly and laws should be applied to everybody equally.
- b) The ultimate goal of laws is to benefit the people.
- c) The legislative body can not impose any tax on people's property without the consent of people.
- d) The legislative body can not move its legislative power from a person or place which the people have decided.⁵³

Here, one can see a clear difference in theory between Hobbes and Locke. Whereas Hobbes considered monarchy is the most suitable form of government, Locke

thought democracy is the best form of government. Harada states that since Locke differentiated the state and government, he maintained that the people can destroy government without destroying the state, and this is called the "Right to Rebellion".⁵⁴

3. Smith's Sovereignty

From the quotations from The Wealth of Nations in the preceding section, it is very clear that Smith believed in "an invisible hand." Hatori states that in Smith's view, the commonwealth is established to preserve private property. Therefore, the only job that the commonwealth should do is to maintain private ownership, no more and no less. In other words, the economy of the commonwealth should be managed by the freedom of people's commercial activities, and the commonwealth should not intervene those activities.⁵⁵

One question emerges: is it possible that such individuals' commercial activities without any guidance or the control of the commonwealth generally will foster social welfare? Smith answered this question by explaining his idea that the economic man acquire wealth for the commonwealth by following invisible hands.⁵⁶

Then what is the role of government according to

Smith? Smith states:

According to the system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: first, the duty of protecting the society from the violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and thirdly, the duty of erecting and maintaining certain public works and certain public institutions, which it can never be for the interest of any individual, or small number of individuals, to erect and maintain; because the profit could never repay the expense to any individual or small number of individuals, though it may frequently do much more than repay it to a great society.⁵⁷

In short, Campbell and Skinner state that Smith's recommendations with regard to the functions of government are designed to ensure the freedom of the individuals to pursue his own ends which is also socially beneficial.⁵⁸

So far, I have described three theorists' human and social models in order that one may realize that at the beginning of Western modern times, individualism was emphasized and this idea strongly supported private ownership. Since I have shown some of the differences of human model and sovereignty between the West and

Islam, I would like to move to the next chapter to summarize briefly the basic conditions on which the Islamic ideal society would be established.

Notes. 3

1. Ayatullah Morteza Mutahhari, The Human Being in the Qoran, Trans. by Hossein Vahid Dastjerdi, (Tehran: Islamic Propagation Organization, 1984) p.19.
2. S. Radhakrishnan, and P.T. Raju, The Concept of Man (Sekai no Ningenron) Trans. by Masanaga Katsube, and Kyoichiro Hirose, (Tokyo: Gakuyou Shobou, 1978) pp.226, 227.
3. Toshihiko Izutsu, Imi no Kozo, Trans. by Shinya Makino, (Tokyo: Shinsensha, 1972) p.275.
4. The Glorious Kur'an, Trans. by Abdallah Yousuf Ali, (Libyan Arab Republic: The Call of Islam Society, 1973) p.1117.
5. Abdulrahman Abdulkadir Kurdi, The Islamic State, (London: Mansell Publishing Limited, 1984) p.56.
6. Muhammad Zafrulla Khan, The Quran, (Sussex: Curzon Press, 1985) p.72.
7. Radhakrishnan and Raju, op.cit., p.207.
8. Allahbukhsh K. Brohi, "Human Rights and Duties in Islam" in Islam and Contemporary Society, ed., by Salem Azzam, (London: Longman Group Ltd., 1982) p.246.
9. Kurdi, op.cit., p.43.
10. Ibid., p.44.
11. Ibid., p.46.
12. Ibid., pp.47, 50.
13. Majid Khadduri, The Islamic Conception of Justice, (Baltimore: The Johns Hopkins University Press, 1984) p.1.
14. Ibid., p.2.
15. Ibid., pp.9-10.

16. The Glorious Kur'an, op.cit., p.223.
17. Kotb, op.cit., p.29.
18. Kurdi, op.cit., p.115.
19. Ibid., pp.124, 125.
20. Mutahhari, op.cit., p.44
21. Kurdi, op.cit., p. 50.
22. Ibid., p.51.
23. Muhammad Baqir as-Sadr, Contemporary Man and the Social Problem, Trans. by Yasin T. Al-Jibouri, (Tehran: World Organization for Islamic Services, 1980) p.141.
24. Kurdi, op.cit., p.53.
25. Yoshiaki Sanada, Islamho no Seishin, (Tokyo: Chuo-daigaku Shuppanbu, 1985) p.160.
26. Ibid., pp.160, 161.
27. Brohi, op.cit., p.237.
28. Sanada, op.cit., p.166.
29. Ibid., p.166.
30. Harron Khan Sherwani, Studies in Muslim Political Thought and Administration, (Philadelphia: Porcupine Press, 1977) p.268.
31. Ibid., p.268.
32. Ibid., pp.269, 270.
33. Taleghani, op.cit., p.78.
34. Hazrat Ali, Nahjul Balagha, Trans. by Syed Mohammed Askari Jafery, (Tehran: Masjid Jame) pp.249, 259.
35. Hajime Watanabe, Seiyo Seiji Shisoshi, (Kyoto: Horitsu Bunkasha, 1979) p.177.
36. Takuya Hatori, Shimin Kakumei Shiso no Tenkai,

(Tokyo: Ochanomizu Shobo, 1976) p.249.

37. Hiroshi Shibuya, "Hoobes no Keiyakuron to Zettai Shuken" Seiji Shisoshi no Kiso Chishiki (Tokyo: Yuuhikaku, 1981) p.156.
38. Watanabe, op.cit., p.184.
39. Ibid., pp.186,187.
40. Hatori, op.cit., p.50.
41. Hiroshi Tanaka, "Shizen, Rodo, Shoyuukun" Seiji Shisoshi no Kiso Chishiki, op.cit., p.159.
42. Harvey C. Mansfield Jr., "On the Political Character of Property in Locke" in Powers, Possessions and Freedom, ed. by Alikis Kontos, (Toronto: University of Toronto Press, 1979) p.30.
43. Ibid., pp.30,31.
44. Ko Harada, Seiyo Seiji Shisoshi, (Tokyo: Yuuhikaku, 1980) p.276.
45. Adam Smith, The Wealth of Nations (New York: The Modern Library, 1965) p.423.
46. Shibuya, op.cit., p.157.
47. Harada, op.cit., p.243.
48. Ibid., pp.243, 244.
48. Watanabe, op.cit., p.182.
49. K. Vorlander, Von Machiavelli bis Lenin, (Machiavelli kara Lenin made) Trans. by Mitsuo Miyata, (Tokyo: Sobunsha, 1981) p.87.
50. Hatori, op.cit., p.24.
51. Harada, op.cit., pp.280, 281.
52. Watanabe, op.cit., pp.188, 189.
53. Ibid., p.189.
54. Harada, op.cit., p.284.

55. Hatori, op.cit., p.17.
56. Ibid, p.19.
57. Smith, op.cit., p.651.
58. R.H. Campbell, and A.S. Skinner, "General Introduction" in An Inquiry into the Nature and Causes of the Wealth of Nations, vol 2 / Adam Smith, ed., by R.H. Campbell, and A.S. Skinner, (Oxford: Clarendon Press, 1976) p.35.

IV

Prerequisite of Islamic Ownership System

From the first chapter through the third chapter, I have compared various aspects of ownership in Islam and the West. If I tried to express the most significant character of each ownership system in one word, Islamic ownership, Ummaism and Western ownership, individualism, might be the best words to choose. Here a question arises: in what conditions can Ummaism be achieved? Therefore, in this chapter, going on to conclude this thesis in the final part, it might be a good idea to describe the basic conditions on which such Umma can be established, in order that one might have a basic understanding about the ways Muslims are willing to support Ummaism.

A. Islamic Goal

1. Umma

It has been widely believed that people lived in Medina under the reign of Prophet Muhammad in the first Islamic State. It is not strange, therefore, that Muslims try to look back at their history to that time in order to set up a more desirable contemporary society. Haroon Khan Sharwani states why such a society is necessary: man is so created that he can not fulfil his wants by himself and needs other's help for that purpose. Therefore, it is necessary for people to gather together in groups so that mutual help and intercourse should be facilitated.¹

According to Yoshiaki Sanada, the Islamic Holy Constitution, the Qur'an requires Muslims to establish an Islamic community, Umma, where people spend lives of poetical justice.² The following Qur'anic verse supports this idea:

Let there arise out of you a band of people
inviting to all that is good, enjoying what
is right, and forbidding what is wrong:
They are the ones to attain felicity.
(chapter 3, 104)³

Brohi states that the Umma, after all, had to carry on the work entrusted to it by the Qur'an. It is described there as the best of Umma that was sent to mankind to encourage upon them to do what was right and to dissuade them from doing that which was forbidden.⁴

One can see another proof in the Universal Islamic Declaration of 1980, which describes the importance of establishing Umma.

WHEREAS Islam enjoys the Muslim Ummah to establish a just and humane world order, providing every opportunity to the all-round development of man and society in an environment free from all forms of exploitation and inequality;

and

WHEREAS the Muslim Ummah is duty-bound to fulfil its covenant with Allah by establishing the Islamic order and translating into practice the ideals and principles of Islam in its own life, thus presenting the message and model of Islam to others.⁵

In addition, according to Brohi, whatever the classical and neo-classical writers said, they at least attempted to preserve the unity of Umma.⁶ From these examples, one can understand that establishing the Umma has been philosophically the final goal of Muslims. Then, what does the Umma stand for in particular, and how is the Umma created?

From Ali Shari'ati's definition of the Umma (see page 25), one might think that the Umma has an obscure meaning. Farooq Hassan explains that the peculiarity of the Muslim Umma is, within the circle of those united by the common act of will that identifies them

as Muslims, the separateness of the national, linguistic, cultural existence, the pride of domination, and the humiliation of servitude.⁷ If one judges the Umma from a Western perspective, one might realize the basic idea of the Umma is completely different from the fundamental ideas that form the basis of the Western nation state or country.

Kalim Siddiqui maintains that the two types of states, the Islamic state and Western nation state, are not the same thing and they do not have anything in common. While Islam brings the state into existence as an instrument of Divine purpose, the nation state comes into existence for precisely the opposite reason - to dismiss God and to replace Him with the "national-interest" as determined by human reason.⁸ Therefore, one should distinguish the Western nation state and the Umma. Otherwise, he can not appreciate the heart of the Umma.

Historically speaking, the Umma has a longer record than the Western nation state. In other words, the idea of nation state is alien to Islam. At the beginning of the Umma, there was no boundary. It is because the area till the end of the place where Muslims lived was regarded as the Umma. However, while the idea of the Western nation state emerged, even

among Arabs two new ideas appeared: wataniyyah and qawmiyyah.

H. B. Sharabi states that wataniyyah (patriotism) derived from watan(home country or region) and should not be confused with qawmiyyah (nationalism), derived from qawm (people or national community). Patriotism applies within a state's boundaries, whereas nationalism applies to a community that often transcends the confines of a state. Wattaniyah usually stands for local nationalism (e.g., Egyptian or Algerian nationalism) as opposed to regional (e.g., Maghrib or pan-Arab) nationalism.⁹

It is now clear that the idea of qawmiyyah is a regionally wider concept than wataniyyah. As I have shown in the second chapter, the position of state ownership is lower than that of public ownership (see page 40-42), and this fact supports the idea that the Umma does not simply mean nation state but is a much wider concept. Muslims have been trying to establish such Umma and one can see the example of such movements in the Universal Islamic Declaration of 1980:

VII Unity of the Ummah

The people of the Muslim world should prevail upon their governments to adopt this framework as a principle of state policy, to be followed by statutory treaty arrangements leading to greater unity of the ummah as envisaged by Islam.¹⁰

However, as one can imagine, it is not easy to establish such Umma from the beginning and some concrete measures should be taken in order to achieve it. The Universal Islamic Declaration says:

We therefore, declare that the objectives of the Islamic Order can be achieved only IF:

(a) The Muslim Ummah dedicates itself to practicing the principle of Islam at the individual and collective levels, and abolishes all forms of domination, exploitation, all distinctions and all un-Islamic systems, laws and customs that have permeated Muslim society.

(b) A truly Islamic leadership emerges in the Muslim Ummah in all fields; capable of leading the people through the strength of its moral calibre and not through force, coercion or manipulation; which trusts its people and is trusted by them; which regards itself as accountable to the Ummah and above all to Allah.

It is under such an inspiring leadership and with a clear commitment to Islamic principles that Muslims all over the world be integrated into one organic community, and would be able to transform the mandate of Allah into reality.

2. Shari'ah

Shari'ah is Islamic law composed of four sources: Qur'an, Sunnah (the traditional practices and sayings of Prophet Muhammad), 'Ijma' (the interpretation of the Qur'an and of the traditions of the Prophet made by the unanimous consensus of opinion of qualified scholars)

and Qiyas (their deductions by analogy).

Former Oil Minister of Saudi Arabia and lawyer, A. Z. Yamani states that Sahri'ah, Islamic law, is inside and outside of Islam. Shari'ah is supreme religious law and the definite differences between Shari'ah and Western law are that the latter is essentially secular law and the former is religious law which is based upon the will of God. Shari'ah can be adopted by all Muslims.¹²

Hamid Dabashi explains that Islamic religious law, Shari'ah, regulates the structure of Islamic society and represents the most fundamental and esoteric aspect of institutional Islam. Without establishing the foundations of Islamic society through Shari'ah, there would be no communal context within which higher spiritual states might be achieved.¹³

Professor Muhammad Qutb states "God's Shari'ah alone is without defect and any such shortcomings because it is laid down by Him, the All-Knowing, the All-Wise." The Shari'ah was meant to comprehend the entity of man's life in all its political, economic, social, intellectual and spiritual aspects and was also meant to help promote the sound and normal growth of human life until history ends.¹⁴

Taleghani emphasizes the perfection of Islamic law

by specifying some distinctive points of method of Islamic legislation:

(a) Islam, through belief in tawhid (oneness), works to cure the retrogression of intellect, the disillusioned mind, and the internal psychological complexes. Human principles and laws, on the contrary, do not have an access to the domain of the inner self and do not pay attention to it.

(b) Islam frees man from slavery to man and his man-made laws and makes him submit to God. Man-made laws, on the other hand, growing out of customs and habits which are always in line with the interest and domains of a particular group, subjugate man.

(c) The laws derived from habits and class interest deprive people of their intellect and understanding so that they become totally submissive.

(d) Islam elevates the value of man and strengthens personal authority and independence in resisting lustful drives and the love of wealth, so that man may be his own sovereign and the owner of this wealth, and not vice versa.

(e) The most important effect of Islamic teaching and training is that it instills faith in individuals and guarantees their responsibility to the laws of the community and to their implementation.¹⁵

From Taleghani's explanation, one might see the strong point of the Islamic legislative system. To summarize this section, I would like to introduce F. Hassan's remark:

The Shariah has always placed equal emphasis on the rights of the individual and the rights of the Umma. The individual is the central element in the social edifice, and a general responsibility towards him is one of the basic concepts of the Muslim system. To keep a balance, an individual also has obligation towards the community. This system is intended to achieve social justice.¹⁶

Now I would like to move to the next question: how do they fit these ideas of Shari'ah into their social lives in order to attain the Umma?

3. Concrete Measures

As I have stated in the first section of this chapter, Muslims' goal is to establish the Umma which is supported by Shari'ah. In other words, by following Shari'ah, Muslims can set up the Umma. Here one should remember that everything belongs to God and even sovereignty of Islamic State is not an exception. Shari'ah exists to convey God's message how to manage society.

F. Hassan states that the fact that sovereignty

belongs to God does not mean that all the laws are to be made by God himself or that the Qura'n provides all possible positive laws and that the people have nothing to do with sovereign functions. On the contrary, all the laws are made by the people's representatives in light of the Qura'nic fundamentals.¹⁷ Brohi states that everyone who becomes a recipient or a donee of delegated power has to stand in awful reverence before his people towards whom and for whose sake he will be called upon to use their power.¹⁸

It seems very reasonable, then, that someone should interpret the teachings of Shari'ah in order to solve problems in their daily life and maintain the Umma. Then, in what kind of framework can such interpretation be done?

K. Siddiqui says that the Sunnah of the Prophet, one of four sources of Shari'ah, demanded the establishment of a political system without which Islam itself could not be understood or practiced. Islam began by defying the existing authority, by organizing civil and military and administrative systems, and, in the lifetime of the Prophet, defeating the opposition and establishing the unchallenged supremacy of the new way of Islam. Siddiqui describes Muhammad Iqbal's idea:

The essence of Tawhid as a working idea is equality, solidarity and freedom. The state, from the Islamic standpoint, is an endeavour to transform these ideal principles into space-time forces, and aspiration to realize them in a definite human organization.¹⁹

As I have stated in the first section of this chapter, the Islamic state and nation state are completely different in their ideological foundations. According to K. Siddiqui, the Muslim teachers of political science must reveal to their students and a wider public the true nature of the nation state and all its structures and functions. In addition, they have to develop a body to prove that the nation state cannot possibly solve any of the problems that now confront the Umma.²⁰

A. A. Kurdisays "The primary purposes of the Islamic State are the ensurance of freedom from outside invasion, the security of domestic tranquillity and the provision of jusitce, equality and personal security for its people."²¹ F.Hassan explains that the state is, based upon democratic principles, administerd under a social security system providing full and equal economic rights for all members of the society, without discrimination and without any bias.²²

A. A. Kurdi concludes that it is not the intention

of the Islamic State, as a powerful political body to play any political or social roles in directing the attention of its subjects, or manipulating them, toward specific policies in order to facilitate the politician's power over the people. "The Islamic State's main objective is to apply and enforce Islamic Law which is fully accepted by its citizens, who give their ultimate consent to their leader to exercise the terms and the provisions of the Islamic Holy Constitution over them. "23

From these statements, one might realize that Islam has a different concept of state compared to the Western perspective and Muslims try to set up the Umma based on Islamic law, Shari'ah. Now I would like to describe the framework of Islamic state in more detail.

According to the Universal Islamic Declaration, one can see five major policies of the Islamic state, and I would like to summarize some of the contents of these policies which seem relevant to my argument here:

(a) State Policy

- i) The Shari'ah is the supreme law of the Muslim community and must be enforced in its entirety in all aspects of life.
- ii) Political power must be exercised within the framework of Shari'ah. No one is authorized to

arrogate to himself the right to rule by personal discretion.

iii) It is the obligation and right of every person to participate in the political process.

iv) All political power, whether legislative, executive or judicial, is exercised within the limits set out by Allah and His Prophet for the promotion and enforcement of the values prescribed by Islam.

v) Obedience to the legitimately constituted authority is obligatory on people so long as it is in conformity with the Shari'ah.

vi) All citizens are equal before the law.

vii) The rights of people to life, liberty, honour and property as guaranteed by Allah and His Prophet can in no circumstances be abrogated or suspended.

(b) Economic Policy

The Islamic economic system is based on social justice, equity, moderation and a balanced relationship. It is a universal system embodying eternal values which safeguard man's rights while constantly reminding him of his obligations to himself and to society. It forbids all forms of exploitation and honours labour, encourages man to earn his living by honest means, and

to spend his earnings in a rational way.

i) All natural resources are a trust from Allah and man is individually and collectively custodian of these resources.

ii) Wealth should be justly distributed.

iii) All resources available to man in general and to the Ummah in particular, and must always be put to optimum use.

iv) Development is an essential requirement, and participation in economic activity is obligatory on every Muslim.

v) The procurement of wealth and the production of goods must be lawful in terms of the Shari'ah. Usury, gambling, hoarding, etc. are forbidden sources of income.

vi) Society must ensure the supply of basic necessities of food, clothing, shelter, education and health care, to all of those who are incapable of looking after their own needs being irrespective of their ages, sex, colour or religion.

vii) The economic power of the Umma shall be structured in such a way that there is cooperation and sharing within the Umma and maximum self-reliance therein.

(c) Educational Policy

i) The purpose of education shall be to produce people who are imbued with Islamic learning and character and are capable of meeting all the economic, social, political, technological, physical, intellectual and aesthetic needs of society.

ii) Secular and religious education prevailing today in the Muslim World should be fused together so as to provide an Islamic vision for those engaged in education and to enable them to reconstruct human thought, in all its forms, on the foundations of Islam.

(d) Social Policy

The social institution of mosque, family, local community, social consultative bodies, socio-economic co-operative, etc., are an integral part of the Islamic system, and should be established and strengthened on the Islamic principles of brotherhood and mutual help.

(e) Defence Policy

Defence of Islam and Muslim lands is the sacred duty of all Muslims.²⁴

One might obtain the general idea of the framework of policies in the Islamic state, or the Umma, which covers various fields, such as politics, economics, educational, and etc. Here, as mentioned once in the

early part of this thesis, one should tackle the problem from the viewpoint of the Islamic world view which covers all aspects of human life. Otherwise, study on Islam can not be successfully done. Now I would like to point out some other aspects of the socio-economic system of the Islamic state in more detail.

B. Socio-Economic System in the Islamic State

Naqvi states that the primary preoccupation of the policy-makers in an Islamic society should be to provide for an explicit mechanism to re-establish equilibrium in the specific Islamic sense, and maintain it over the course of time. In particular, it is essential to reduce interclass divisions by moving all social classes towards a golden mean in terms of an acceptable living standard: the poor will have to be moved up, and the rich pushed down to a common social denominator. In the Islamic economic system, four objectives are given priority: social justice, universal education, optimal rate of economic growth and the maximization of employment.²⁵

It seems very clear that distribution of wealth, in particular, is very important to attain social justice and its solution is likely to lessen the gap between rich and poor. However, Islam does not put

emphasis on money as means of such redistribution of wealth. This is because, according to Naquvi, the pursuit of economic welfare does not degenerate into the worship of money in Islam. On the other hand, Islam adds a spiritual dimension to such redistribution, in so far as redistribution of income and wealth enhances material welfare.²⁶ The Qur'anic verse says:

And what will explain to thee the path that is steep?
 (It is) freeing the bondman; or the giving of food in a day of privation to the orphan with claims of relationship, or to the indigent (Down) in the dust. (chapter 90, 12-16)²⁷

Kurdi states that the Islamic economic system is designed to support the broad requirements of Muslims' lives, and to further justice and equality in Islamic society and between it and the world.²⁸ In addition, F.Hassan shows that suppression of usury, monopolies, hoarding, smuggling and other unfair trade practices is made the underlying policy, with social control of the means of production so that individual interests do not interfere with the social welfare.²⁹

It is interesting that a monopoly is also regarded as harmful to society even by the Western scholar. Robert Nozic explains that a monopoly may be violated

in two ways:

1. a person may use force though unauthorized by the state to do so or
2. though not themselves using force a group or person may set themselves up as an alternative authority (and perhaps even claim to be the sole legitimate one) to decide when and by whom the use of force is proper and legitimate.³⁰

To conclude this chapter, I would like to point out some important factors on Islam, in specific, about the Umma and Shari'ah.

A. Z. Yamani states that one of the most significant contributions of Islam is the ideology of social welfare. The principle of social welfare in the West was developed from social justice in the twentieth century though, in Islam, this ideology has been realized in various contexts of daily life since the sixth century on.³¹

One might be safe in thinking that at the bottom of social justice, the rigid inner belief of tawhid (oneness) has been ideologically recognized by all Muslims. Taleghani explains "The call to the oneness of God (tawhid) - the inspiration to the spirit of faith in absolute truth - is to free humanity from the chains of enslavement to untruth, to unravel the psychological complexes of subjugation and suffering

among people."³²

Kurdi states that Islam is not, by any means, merely a religion or a personal code to be practised individually and in the mosque. Islam is rather a complete, systematic theology concerned with all aspects of Muslims' lives -- political, social and religious -- and one of the most significant aspect of the Islamic system is its dynamic ability to change according to prevailing circumstances of the time and place.³³

Notes. 4

1. Harron Khan Sherwani, Studies in Muslim Political Thought and Administration, (Philadelphia: Porcupine Press, 1977) p.46.
2. Yoshiaki Sanada, Islamho no Seishin, (Tokyo: Chuodaigaku Shuppanbu, 1985) p.125.
3. The Glorious Kur'an, Trans. by Abdallah Yousuf, Ali, (Libyan Arab Republic: The Call of Islam Society, 1973) pp.149, 150.
4. Allahbukhsh K. Brohi, "Islam: its Political and Leagal Principles" in Islam and Contemporary Society, ed., by Salem Azzam, (London: Longman Group, 1982) p.84.
5. "Universal Islamic Declaration" in Islam and Contemporary Society, op.cit., p.255.
6. Brohi, op.cit., p. 95.
7. Farooq Hassan, The Concept of State and Law in Islam, (Lanham: University Press of America, 1981) p.89.
8. Kalim Siddiqui, "Beyond the Muslim Nation-States" in Social and Natural Sciences: The Islamic Perspective, ed., by I.R. Al-Faruqi, and A.O. Nassef, (Jeddah: King Abdulaziz University, 1981) p.92.
9. Hishan B. Sharabi, Nationalism and Revolution in the Arab World, (New York: Van Nostrand Reinhold Company, 1966) p.95.
10. "Universal Islamic Declaration" in Islam and Contemporary Society, op.cit., p.265.
11. Ibid., p.266.
12. Ahamd Zaki Yamani, Islamic Law and Contemporary Issues, (Islamho to Gendai no Shomondai) Trans. by Yoshiaki Sanada, (Tokyo: Chuodaigaku Shuppanbu, 1980) pp.124, 127.
13. Hamid Dabashi, "The Sufi Doctrine of 'The Perfect Man' and a View of the Hierarchical Structure of

- Islamic Culture" in The Islamic Quaterly, Volume XXX (Number 2) (London: The Islmaic Cultural Center, 1986) p.119.
14. Muhammad Qutb, "Islam as a Supreme Doctrine" in Islam and Contemporary Society, op.cit., p.8.
 15. Ayatullah Sayyid Mahmud Taleghani, Islam and Ownership, Trans. by Ahmad Jabbari, and Farhand Rajae, (Lexingtonm: Mazuda Publishers, 1983) pp.82, 83.
 16. Hassan, op.cit., p.106.
 17. Ibid., p.35.
 18. Allahbukhsh K. Brohi, "Human Rights and Duties in Islam" in Islam and Contemporary Society, op.cit., p.106.
 19. Siddiqui, op.cit., pp.90-92.
 20. Ibid., pp.96-97.
 21. Abdulrahman Abdulkadir Kurdi, The Islamic State, (London: Mansell Publishing Limited, 1984) p.64.
 22. Hassan, op.cit., p.105.
 23. Kurdi, op.cit., p.65.
 24. "Universal Islamic Declaration" in Islam and Contemporary Society, op.cit., pp.260-263.
 25. Syed Nawab Haider Naqvi, Ethics and Economics An Islamic Synthesis, (London: The Islamic Foundation, 1981) p.85.
 26. Ibid., p.81.
 27. The Glorious Kur'an, op.cit., pp.1738-1739.
 28. Kurdi, op.cit., p.113.
 29. Hassan, op.cit., pp.105, 106.
 30. Robert Nozic, Anarchy, State, and Utopia, (New York: Basic Books, Inc., Publishers, 1974) p.23.
 31. Yamani, op.cit., p.96.

32. Taleghani, op.cit., p.81.

33. Kurdi, op.cit., p.129.

Conclusion

To conclude, I would like to summarize briefly several significant points of my argument. First of all, as one might understand, in the Islamic perspective, Almighty God, Allah, has the highest status in every aspect of Muslims' lives. Secondly, the important role of the Umma (society) should be respected. Thirdly, Muslims' final goal is to establish the Umma by following Shari'ah (Islamic law) in their daily life in order to realize social justice based on tawhid (oneness), which Islam greatly emphasizes. Without recognizing these foundations, one can not analyze Islamic values. Syed Nawab Haider Naquvi says:

Though not altogether excluding competition, Islam does not recognize it to be the best way to attain human happiness or even as a guiding principle of economic behavior. This is because, in a regime of socio-economic inequalities that spoil the

environment under capitalism, free competition aggravates social justice instead of reducing them.

By adopting these points mentioned above into the Islamic ownership system, it seems fairly clear that every individual enjoys his freedom and right to ownership within the limits set up by the Umma.

In comparison to Western values, by careful attention to my arguments above, one might understand basic differences of freedom and right to ownership. In the West, people can obtain everything gained through their labour after severe competition and can maintain and dispose of it as they wish even in the case that by doing so, the property of others in society is damaged. As I have shown, this individualism was born and fostered in the process of industrialization based on the theories of the market, invisible hand, economic man, and so on. However, as one can clearly notice, these theories could not solve problems, particularly in the field of economy, or even aggravate problems. For example, the gap between the rich and poor has been widening. Morris Cohen states three problems:

1. The supply of many things is not increased by making them private property.

2. There are inherent sources of waste in a regime of private enterprise and free competition.

3. A regime of private ownership in industry is too apt to sacrifice social interests to immediate profits.²

The fact that from the 19th century, socialization of law has been considered and adapted in various fields of social life might show the necessity of social welfare even in the Western value system. By developing such socialization of law, some other forms of property i.e., common and state property, have been set up though, as C. B. Machpherson points out, ironically, these still emphasize the individual's right. Therefore, one might be safe in believing that at the bottom of Western values, only the individual's right or personal right is given importance even today.

In my view, Western individualism has developed too far and accumulation of one's profits in the shape of money has contributed to this. One should notice that human happiness or social welfare can not be evaluated only on a monetary basis but one's mental satisfaction should also be counted. From this point of view, study on Islam is an effective way of learning about another paradigm other than that of the West. To complete this thesis, I would like to cite Sayyid

Mahmud Taleghani's opinion:

The roots of the problem begins from the moment that man turns his will and attention to fulfilling his instincts and desires, and does not stop at the level of basic necessities and satisfactions.³

Notes.

1. Syed Nawab Haider Naqvi, Ethics and Economics, (London: The Islamic Foundation, 1981) p.77.
2. Morris Cohen, "Property and Sovereignty" in Property, ed., by Crawford Brough Macpherson, (Toronto: University of Toronto Press, 1978) p.166.
3. Ayatullah Sayyid Mahmud Taleghani, Islam and Ownership, Trans. by Ahmad Jabbari, & Farhand Rajaei, (Lexington: Mazda Publishers, 1983) p.7.

Bibliography

- Al-Faruqi, Isma'il R. "Islamizing the Social Sciences." In Social and Natural Sciences. Ed. By I. R. Al-Faruqi and A. O. Naseef. Jeddah: King Abdulaziz University, 1981.
- Ali, Hazrat. Nahjul Balagha. Trans. By Syed Mohammed Askari Jaferi. Tehran: Masjid Jame.
- Anderson, J. Norman D. "Islamic Law." International Encyclopedia of Comparative Law Vol.VI. Tubingem: Mohr, 1976.
- Awan, Akhtar A. Equality, Efficiency & Property Ownership in the Islamic Economic System. Lanham: University Press of America, 1983.
- Bateson, Gregory. Steps to an Ecology of Mind. Trans. By Yasuyuki Saeki, Yoshiaki Sato and Kazuhisa Takahashi. (Seishin no Seitaiigaku. Tokyo: Shisakusha, 1985) Harper & Row, Publishers Inc, 1972.
- Beekhuis, Jacob H. "Civil Law." International Encyclopedia of Comparative Law Vol.VI. Tubingen: Mohr, 1976.
- Beheshty, Sayyid Muhammad Husayni. Iqtisad-e Islam. Tehran: Islamic Cultural Publication Center.
- Bentham, Jeremy. "Security and Equality of Property." In Property. Ed. By Crawford Brough Macpherson. Toronto: University of Toronto Press, 1978.

Braudel, Fernand. Les Structures du Quotidien: Le Possible et L'impossible tome 1. Trans. By Mitsuhiro Murakami. (Nichijosei no Kozo 1. Tokyo: Misuzu Shobo, 1985.) Paris: Librairie Armand Colin, 1979.

Brohi, Allahbukhsh K. "Human Rights and Duties in Islam." In Islam and Contemporary Society. Ed. By Salem Azzam. London: Longman Group, 1982.

----- . "Islam: its Political and Legal Principles." In Islam and Contemporary Society. Ed. By Salem Azzam. London: Longman Group, 1982.

Campbell, R. H. and Skinner, A. S. "General Introduction." In An Inquiry into the Nature and Causes of the Wealth of Nations Vol 2 / Adam Smith. Oxford: Clarendon Press, 1976.

Chapra, Muhammad Umar. Objectives of the Islamic Economic Order. London: The Islamic Foundation, 1979.

Cohen, Morris. "Property and Sovereignty." In Property. Ed. By Crawford Brough Macpherson. Toronto: University of Toronto Press, 1978.

The Constituiton of The Islamic Republic of Iran. Tehran: The Hamdami Publishers Book Designers and Builders, 1980.

Dabashi, Hamid. "The Sufi Doctorine of 'The Perfect Man' and a View of the Hierarchical Structure of Islamic Culture." In The Islamic Quaterly. Vol. XXX. London: The Islamic Cultural Center, 1986.

Geertz, Clifford. Local Knowledge: Further Essays in Interpretive Anthropology. New York: Basic Books, 1983.

Gheorghiu, Virgil. La vie de Mahomet. Trans. By Katsuo Tamura. (Allah wa Idainari. Tokyo: The Simul Press, Inc., 1980.) Librairie Plon, 1962.

The Glorious Kur'an. Trans. By Abdallah Yousuf Ali. Libyan Arab Republic: The Call of Islam Society, 1973.

Harada, Ko. Seiyo Seiji Shisoshi. Tokyo: Yuuhikaku,

1980.

Hassan, Farooq. The Concept of State and Law in Islam.
Lanham: University Press of America, 1981.

Hatori, Takuya. Shimim Kakumei Shiso no Tenkai. Tokyo:
Ochanomizu Shobo, 1976.

Imamura, Hitoshi. Boryoku no Ontology. Tokyo:
Keisoshobo, 1986.

----- Haijo no Kozo. Tokyo: Seidosha, 1985.

Ito, Masami. Igirisuho Kenkyu. Tokyo: Tokyo Daigaku
Shuppankai, 1978.

Izutsu, Toshihiko. Imi no Kozo. Trans. By Shinya
Makino. Tokyo: Shinsensha, 1972.

Keesing, Roger M. Cultural Anthropology: A Contemporary
Perspective. New York: Holt, Rinehart and
Winston, 1976.

Khadduri, Majid. The Islamic Conception of Justice.
Baltimore: The Johns Hopkins University Press,
1984.

Khan, Muhammad Zafrulla. The Quran. Sussex: Curzon
Press, 1985.

Klaus, J. Kaikyo no Keizai Rinri. Tokyo: Meijishobo,
1943.

Kotb, Sayed. Al-'Adalah al-Ijtitima 'yah fi al-Islam.
Trans. By John B. Hardie. (Social Justice in
Islam. New York: Octagon Books, 1980.) Cairo:
Maktabat Misr, 1945.

Kurdi, Abdulrahman Abdulkadir. The Islamic State.
London: Mansell Publishing Limited, 1984.

Kuroda, Toshio. Islam Jiten. Tokyo: Tokyodo Shuppan,
1985.

----- Islam no Kokoro. Tokyo: Chuokoron, 1980.

Lawson, F.H. "Common Law." International Encyclopedia
of Comparative Law. Tubingen: Mohr, 1976.

Macpherson, Crawford Brough. The Political Theory of

Possessive Individualism: Hobbes to Locke. Trans. By Watari Fujino, Shigeru Shojaku and Choichiro Senuma. (Shoyuuteki Kojinshugi no Seiji Riron. Tokyo: Godou Shuppan, 1980.) Oxford: Oxford University Press, 1962.

----- Property. Toronto: University of Toronto Press, 1978.

Mannan, M. A. Islamic Economic Theory and Practice. Delhi: Jayyed Press, 1980.

Mansfield Jr., Harvey C. "On the Political Character of Property in Locke." In Powers, Possessions and Freedom. Ed. By Alikis Kontos. Toronto: University of Toronto Press, 1979.

Moore Jr., Barrington. Privacy. New York: M. E. Sharpe, Inc., 1984.

Mutahhari, Ayatullah Morteza. The Human Being in the Quran. Trans. By Hossein Vahid Dastjerdi. Tehran: Islamic Propagation Organization, 1984.

Naqvi, Syed Nawab Haider. Ethicks and Economics: An Islamic Synthesis. London: The Islmaic Foundation, 1981.

Nozic, Robert. Anarchy, State, and Utopia. New York: Basic Books, Inc., Publishers, 1974.

Otsuka, Hisao. Kabushiki-Gaisha Haseishi-ron. Tokyo: Iwanami shoten, 1969.

----- Shakai Kagaku ni okeru Ningen. Tokyo: Iwanami shoten, 1980.

Pocock, John Greiville Agard. Virtue, Commerce, and History. Cambridge: Cambridge University Press, 1985.

Qutb, Muhammad. "Islam as a Supreme Doctrine." In Islam and Contemporary Society. Ed. By Salem Azzam. London: Longman Group, 1982.

Radhkrishnan, S. and Raju, P. T. The Concept of Man. Trans. By Masanaga Katsube and Kyoichiro Hirose. (Sekai no Ningenron. Tokyo: Gakuyou Shobou, 1978.)

Roshier, Bob. and Teff, Harvey. Law and Society in

- England. London: Tavistock Publications, 1980.
- as-Sadr, Muhammad Baqir. Contemporary Man and the Social Problem. Trans. By Yasin T. Al-Jibouri. Tehran: World Organization for Islamic Services, 1980.
- . Iqtisadna, Dar-t-Ta'aruf li-l-Matbu'at. Trans. By Toshio Kuroda. (Islam Keizairon. Niigata: The Institute of Middle Eastern Studies. International University of Japan, 1981.)
- Said, Edward W. Orientalism. New York: Vintage Books Edition, 1979.
- Sanada, Yoshiaki. Islamho no Seishin. Tokyo: Chuodaigaku Shuppanbu, 1985.
- Sato, Keishiro. Islam Shogyo-shi no Kenkyu. Kyoto: Dohosha Shuppan, 1981.
- Schlatter Richard. Private Property. New York: Russell & Russell, 1973.
- Schutz, Alfred. "The Well-Informed Citizen." In Collected Papers II Studies in Social Theory. Ed. By Arvid Boldersen. The Hague: Martinus Nijhoff, 1976.
- Sharabi, Hishan B. Nationalism and Revolution in the Arab World. New York: Van Nostrand Reinhold Company, 1966.
- Shari'ati, Ali. On the Sociology of Islam. Trans. By Hamid Algar. Berkeley: Mizan Press, 1979.
- Sherwani, Harron. Studies in Muslim Political Thought and Administration. Philadelphia: Porcupine Press, 1977.
- Shibuya, Hiroshi. "Hobbes no Keiyakuron to Zettai Shuken." Seiji Shisoshi no Kiso Chishiki. Tokyo: Yuuhikaku, 1981.
- "Shizenken." Shin Horitsugaku Jiten. Tokyo: Yuuhikaku, 1981.
- Sidiqui, Kalim. "Beyond the Muslim Nation-States." In Social and Natural Sciences: The Islamic Perspective. Ed. By I.R.Al-Faruqi and A. O. Naseef.

Jeddah: King Abdulaziz University, 1981.

Smith, Adam. The Wealth of Nations. New York: The Modern Library, 1965.

Tabatabai, Sayyid Muhammad Husayn Allamah. Filosof-e Iqtisad-e Islam. Tehran.

Taleghani, Ayatullah Sayyid Mahmud. Islam-o Malekiyat. Trans. By Ahmad Jabbari and Farhang Rajee. (Islam and Ownership. Lexington: Mazuda Publishers, 1983.) Tehran, 1965.

----- Society and Economics in Islam. Trans. By R. Campbell. Berkeley: Mizan Press, 1982.

Tanaka, Hiroshi. "Shizen, Rodo, Shoyuiken." Seiji Shisoshi no Kiso Chishiki. Tokyo: Yuuhikaku, 1981.

Tayama, Teruyuki. Shoyuukenshiso no Rekishi. Tokyo: Yuuhikaku, 1979.

"Universal Islamic Declaration." In Islam and Contemporary Society. Ed. By Salem Azzam. London: Longman Group, 1982.

Viner, J. The Role of Providence in the Social Order. Trans. By Takashi Negishi and Aiko Negishi. (Kirisutokyo to Keizaishisou. Tokyo: Yuuhikaku, 1980.) U.S.A.: The American Philosophical Society, 1972.

Vorlander, K. Von Machiavelli bis Lenin. Trans. By Mitsuo Miyata. (Machiavelli kara Lenin made. Tokyo: Shobunsha, 1981.)

Watanabe, Hajime. Seiyo Seiji Shisoshi. Kyoto: Horitsu Bunkasha, 1979.

Yamani, Ahmad Zaki. Islamic Law and Contemporary Issues. Trans. By Yoshiaki Sanada. (Islamho to Gendai no Shomondai. Tokyo: Chuodaigaku Shuppanbu, 1980.) Jiddah: The Saudi Publishing House, 1967.

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