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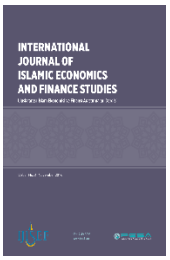

An Overview Of Economic Policy of "Injury (Damage) May Not Be Met By Injury in Islam". (La Darar Wa-La Dırar Fi'l-Islam)

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ABSTRACT

Quavaid-i qulliya consist of the first 99 articles of the Islamic law Majalla-i Ahkam-i Adliyya, which was codified in the Ottoman period. The hadith of 'There is no injury (damage), and injury may not be met by injury in Islam' is located among them as a general principle (Majalla, article 19). Imam Malik narrated this hadith in his book Muvatta, and Ibn Mace, and Darakutni wrote it in Sunans. Although weak as record, it is on the absolute floor in content. For this, it has been called the good (hasen) hadith. Again, this principle of Islamic law methodology for the prevention of *mafsadat* and ensuring the *maslahat (*best interests) principle is the basis of the principle of *ıstıslah.* Therefore, this principle is one of the basic principles of religion.

This principle has changed over time depending on the evaluation of the sects (*mazahib).* For example, the right of property was kept in the foreground by Abu Hanifa, but later Hanafis approached the opinion of the Maliki. Majalla has adopted this opinion. Maghreb and the Ottoman applications have been in this line.

Commentaries of Mecelle by Ali Haydar Efendi, Atif Bey and Ali Ulvi are recent works written in Ottoman Turkish. Although the examples in this description refer to the legal system, economic life, it is important in terms of economic thought and market regulation or even public administration disciplines.

This principle has been applied in many fields such as contiguity relations, urban schemes, and market regulations. Today, asymmetric information, externalities and market failures may be considered in this context.

1. Introduction

The word *principle* (قاعدة), plural of which is *principles* (قواعد), means *basis,* in Islamic jurisprudence, and expresses *the general rules according to which whole or majority to know the provisions of partial matters*. The majority principles (القواعد الكلية) means generality. Those were not from Imam Azam Abu Hanifa and were removed from the words of the other Imams. However, the judges can not act and can not give judgment with them unless there is an overt substance (Ali Haydar, 1914, p.11).

Named "quavaid quoulliya" e.i general principles of Islamic law, some of them have taken place in the first 99 articles of Al-Majalla Al-Ahkam Al-Adlıyyah in the Ottoman period[1]. In this study neither giving loss nor responding to damage or loss with loss' principle, whose source is the '*la darar ve la dirar fi'l-Islam"* hadith and related principels are handled accordingly. There were many juridical examples to commentary them. While a significant portion of the samples with the commentary about economic life, it is important in terms of economic thought and market regulation or even public management disciplines. Ali Haydar Efendi[2] and Atif Bey[3]'s books of commentary on this subject are written in Ottoman Turkish. There is also another study[4]. A significant portion of the samples in these commentaries as it is about economic life, they are important in terms of economic thought and market regulation or even public management disciplines. Here, besides the economic-law relations, this relationship is remarkable change over time. It should be noted that Islamic economics studies are closely related to the Islamic law (fiqh). So, below there is a brief opinion on it [5].

[1] "The Maliki jurists of the Maghrib, or Islamic West, applied the hadith, "no harm shall be inflicted [on anyone] or reciprocated [against anyone](da darar wa-la dirar fi-l-Islam). This axiom called for the exercise of the mufti's independent reasoning (ijtihad) in matters that were not explicitly clear from the text (nass) of the Qur'an or sunnah. Maliki jurists used this axiom, which was open to various interpretations, as a basis for rendering legal opinions (fatawa) in domestic conflicts arising from infractions relating to the socio-spatial world". In the Maghrib, muftis played a pivotal role in resolving issues of space and proximity between neighbors, and, in so doing, gave considerable consideration to the rights of people, their customs and habits ('urf). The question of individual rights versus public rights was, and continues to be, a very sensitive matter; for this reason the discretion of the jurists in assessing the nature of a conflict involving the use of space was essential. .. Judging from the cases cited above relating to habitat, the neighborhood, the home and the street, inferences of spatial form were implicitly derived from the axiom 'la darar wa-la dirar'". (Kahera, A. I. & Benmira, O. 1998: p.162)

[2] Ali Haydar. (1330 Rumi./ 1914 A. D.) Dürerü'l-Hukkam Şerhu Mecelleti'l-Ahkam, Şerhu'l-Kavaidi'l-Külliye. İstanbul. (Ottoman Turkish)

[3] Atıf Bey (1318 Rumi) Mecelle-i Ahkam-ı Adliyye. Dersaadet (İstanbul). (Ottoman Turkish)

[4] Ali Ulvi (1317 Rumi) Telhisu Kavaid-i Külliye ve Istılahatı Fıkhiyye. İstanbul. (Ottoman Turkish)

[5] Some scholars argue "that fiqh methods are mainly designed to find out whether a certain act is permissible

In this study, because of the close attention to them, the hadith of "Injury may not be met by injury (in Islam)" or 'there is no damage and there is no harm for the harm' principle and other principles based on it will be discussed. Malik narrated this hadith in his book Muvatta, and Ibn Mace, and Darakutni wrote it in Sunans. Although weak as record, it is on the absolute flor in content. For this, it has been called the good (hasen) hadith.

These principles in the Majalla were written in a disorganized manner like the other articles. Here, following the book of İbn Abidin and Mustafa A. Zarqa, who wrote the postcript for the book of İbn Nuceym, related articles have been studied together. Working within the framework of economic

or prohibited for an individual. Islamic economics, on the other hand, is a social science and, accordingly, its proper unit of analysis is society, not the individual. Methodologies of fiqh and Islamic economics also differ as the former focuses on prescriptions. It prescribes what an individual should do or avoid. In contrast, Islamic economics is more concerned with describing economic realities. While fiqh prescriptions are permanent in nature and for all individuals, economic descriptions may change from time to time and from society to society… The methods of reasoning in fiqh and Islamic economics are not necessarily the same. While fiqh is well served by its methodology and methods set out in *usul al-fiqh*, Islamic economics should rely on a methodology and methods that suit its social and descriptive nature….Islamic economics should rely on a methodology and methods of reasoning that would best suit its social and descriptive nature… While studying the descriptive economic realities of the society a Muslim economist should be guided by the objectives of the *Shari'ah* and propose policies that would achieve them. The objectives of the *Shari'ah* in particular when they are group-oriented and not individually focused provide valuable intellectual foundation for the subsequent development of Islamic economic ideas. One of the principal objectives of the *Shari'ah* is the prevention of *fasad*. (p.116) In order to prevent a public harm or evil (*mafsadah ammah*) the Muslim economists should emphasize *Shari'ah*-oriented economic policies (*siyasah shar'iyyah iqtisadiyah*). A *Shari'ah* oriented policy is a policy that is designed to achieve the objectives of the *Shari'ah*. Since prevention of harm or disorder (*fasad*) is one of the principal objectives of the *Shari'ah*, a *Shar'iah* oriented policy should be designed in a way that would achieve this objective. However, a public harm (mafsadah) due to the dynamic interaction of socio-economic forces presents itself in a variety of forms. It may also vary in degrees from time to time and differ from one society to another. It is therefore not possible to identify on a permanent basis and enumerate the various forms of *mafsadah* and the corresponding *maslahah* (p.118). It was due to this evolving nature of *mafsadah* and *maslahah* that Muslim jurists did not enumerate them on a permanent basis. Instead they laid down certain general maxims on how to deal with a *mafsadah*. For instance, the *Majalla* states: 'Repelling an evil is preferable to securing a benefit'. The jurists have also held that a private harm could be inflicted in order to prevent a public harm. Article of the *Majalla* says: "A private injury is tolerated in order to ward off a public injury". These legal maxims show the priority that Muslim jurists have accorded to the removal of public harm (*mafsadah, darar*) even if it is at the expense of an individual or individuals". The method for the prevention of public harm and the ways for the realization of public interest would change from time to time and place to place".
See for Ottoman period arrangenment in construction of buildings, urban planning, Old Construction Regulations, Street Regulations etc. (Ergin, Osman N. Mecelle-i Umur-ı Belediyye. V: I-IX)

relationship with the law, it is designed to address the concept of public administration, and economics and, finance and business.

2. The Concept of "Damage"

"Damage" (ضرر,) is doing improper business (mefsedet) to another. Idrar or dırar (إضرار ضرار) is the harm in response to damage.

It is forbidden to harm in both verses and hadith. Some of them are; "…No mother should be harmed through her child, and no child through his mother or father …" This verse (al-Baqara-233) is about damage in succession. The Prophet said that the blackmarketeer (muhteqir) is that who only stumbles. Like this are the urban merchants who sell the goods of villagers, and the prohibition of the use of the right to possess property with intent to harm others. When Samura b. Cündeb, one companion of the Prophet entered someone's yard without the permission of the owner (from Ensar), the Prophet said to him; "Surely you're hurting". This includes the elimination of the damage. Once Khalif Omar said to a companion, "Why are you going against to which is useful, which is helpful to you and your brother (neighbor). ". Before and after water your field. Is it your harm?". Later, as the counterpart insisted, Khalif Omar vowed, and declared; "I swear! Even though I spent it in your nose". While to marry Christian and Jewish women was still legitimate, He banned this lawful process for fear of general damage to Muslim community. This and other examples are the reflection of these rules. As Shawkani said, this tradition is one of the basic principles of religion (Ed-Dourayni, 2008, p. 119, 124).

Damage (injuriy) is not a desirable matter in the religion. In fact, Allah wishes to ease people (Baqara, 185; Nisa, 38; Maeda,6; Hajj,87). The Prophet also says in the hadith: "Religion means ease", and "I was sent with permissive policies, proper to human nature".

This principle is the basis of Islamic law, many verses in the Quran and hadiths show this. Indeed damaging events are prohibited and require compensation for actual and punitive consequences. Again, this principle of Islamic law methodology for the prevention of *mafsadat* and ensuring the *maslahat (*best interests) principle is the basis of the principle of *ıstıslah.*

By showing this hadith as an evidence, at-Toufi (d. 716 h./1316 A.D.) gave it special attention to the goodness (*maslahah*). In his *Maslahah Resalah*, he explanied it as "there is no harm to anyone else other than a special case if religion deems necessary". Here the word "religion" implies that damage is not to absolutely disappear with provision of the divine destiny. So apart from those exceptions based on religion, all damages have been removed. The damage is the source of harm (mafsadat) itself. According to this hadith, it is necessary to expose the goodness and to overcome the harm. Because at-Toufi

gives the goodness a special place: so it brings benefits, like the profit in transactions, or reachs the goal of worship, whether it is the tradition or the worship. How worship is done is understood by ayat (Quranic) and hadith or ıjma. In the traditions and customs, the goodness is mainly observered. Discussion is whether maslahat principle would be presented to nass (religious texts) through decleration or not.

God created His servants and, He has not neglected them after giving any blessing, so it is impossible to think that He considers them irresponsible. Indeed, many ayat indicate that: (Baqara, 29; Casiye, 13; Nebe, 6-16; Abese 25-32.) at-Toufi accepts ijma in the worship and measurements, weights etc. In the treatments, he essentially indicates the goodness of human being (*maslahah).* His evidence is the hadith as mentioned. So that, not to refuse the verses and hadiths, he evaluated their properties, such as definiteness and wholeness. He urged that a matter which is consisted of more than benefits, be received as whole, or be sorted amongst themselves. If there were multiple harms, they would be ranked in significance for the prevention of damage; where equality between goodness and harm, choice is would be made or lots would be drawn. He likens them to clarifying the idea of mathematics. However, he stressed that he himself was not one of such philosophers. He achieved this principle from the hadith "la darar ". (Maslahah Resalah of at-Toufi, cited from Khallaf, n.d., p. 108-144).

Ibn Taymiyyah (d. 661 H./1328 A.D.) also used the same meanings good-benefit, goodness and profit; evil, harm and losses. He gave many examples on it related to administrative, political and economic issues (El-Husayn, 2002, p. 225).

3. Guiding Principle: Injury (damage) may not be met by injury [6] ((Majalla, Article 19)

(لاضرر ولاضرار في الإسلام)

Occurrence of damage can be "probable" or "real". Possible damage is avoided with proactive measures before they occur. Although all Islamic jurists consider this hadith, the scopes of the Malikis and Hanbalis have held wider. According to the Hanafis, action is taken in reference to istihsan exorbitant damages, not by analogy. If the damage has become "real", it can not be sustained, it has to be corrected and compensated. Not taking this hadith as the exact argument, As-Shafii considers "extreme damage" (darar-i-ashad) in impeding possession of property by its owner. They believe there is no restriction in this hadith. Because the concept of harm is epitome (mucmal). However, if someone else intents to use the right of the owner in harm, this

[6]http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20%28Civil%20Law%29.pdf

diagnosis means responsibility for the nature. From this hadith, Abu Hanifa's opinion is that it does not provide the owner's limitation on the right to operate the property's legal care. Because it is the absolute property right. People have the right to do what they want on their property. But in extreme and excess cases, responsibility occurs. Nevertheless, by understanding religious emotions (caused by a sense of morality) it is necessary not to harm others. With the reduction of influence of religious motives on people, latter Hanifis see that the use of the property of the owner must be prevented in "exorbitant damage" cases. Imam Malik and Ahmad b. Hanbal regard this hadith as the main rule for limiting the rights. Thus, it is necessary for connected person to abolish the damage; otherwise the government should not prevent it. "Limitations of the change of time vary depending on the embezzlement of mischief and human behavior" (Ed-Dourayni, 2008, p. 128-132, 136). Ibn Hazm considers this hadith as mursal hadith and his opinion is very close of Abu Hanifa and Shafii. Acting on these principles generally, Jaafaris scholarsihps consider limiting the right of the owner, but as if they do not harm others (Ed-Dourayni, 2008, p. 137,139).

According to Abu Hanifa and as-Shafii, it is *makruh* (hateful) to do shopping during call for Juma prayer and to practice Juma prayer at a userped area, as well as it is for urban traders' to sell countrymen's goods. Ahl-i Dhahir and some Hanbalis consider it false (Ed-Dourayni, 2008, p. 145).

Ibn Taymiyyah is based on "no damage principle" on issues such as urban traders' selling goods brought by the villagers. He connected putting a fixed price on commodity and labor with this rule (El-Husayn, 2002, p. 185-189). Against the concept of fair pricing, Ibn Taymiyya called duly made and damaging price as persecution price. In our opinion, He favoured the price be revealed for fairness in price under the conditions of supply and demand. But his direction was not to keep ahead of market intervention.

Initially, as there is no harm, there is no harming response to damage, either. This principle was pronounced in the hadith. Accordingly, it is damaging to prevent someone from exercising his rightful deeds or using his property or wealth without any legal justification. Islam doesn't accept such applications. Secondly, it is also not permitted to give damaging response to someone who causes damage. However, if someone was suffered by the damage, he/she wants compensation for it by applying to the State. Because nobody even being the underdog has the right to persecute someone else; however, he/she can move so as to compensate his/her losses.

In the 921rst article of the *Majalla,* no one can persecute others even when oppressed by them. So, anyone who faces evil has no right to harm another with cruelty and evil in order to compensate for his loss. Likewise,

whenever a person receives false money he/she can not give it to someone else, either. (Ergünay, 1965: p.39).

This principle is to defend the property status. In addition, it expresses that unlawful reflection and transfer can not be made in financial transactions. However, environmental protection is related to many issues, such as the destruction of order in the market. According to this principle, market monopolisation can not be allowed.

The principle of "No … damage" puts a ban on absolute private or common injuries. This prevents damage to occur before. Proactive measures in occupational health and safety are examples of this. If damage occured, the results should be compensated and reoccurrence of the damage should be prevented. Moreover, this principle signifies that if it is necessary to make a choice between two losses or damages, the lighter one is to be chosen.

The second part of the principle " and no damage is permitted in response to another's damage". Thus, revenge which has no other function than increasing the impact of the loss and damage is prevented. Therefore, it is forbidden to give direct or indirect harm to human's personality, property, chastity and other right (Ed-Dourayni, 2008, p. 122).

For example, to destroy someone's property is harming him. On the contrary, the responding reaction of the injured person is a useless irrational behavior which means to expand the damage. However, the rational behaviour is to make the unjust and illegitimate actor compensate for the damage caused. So the right of the one who lost first is to be protected. Otherwise, to respond damage by damaging is a non-rational behavior, even folly.

Here matters those are provisions of the religion, such as " retaliation" are kept separate. Because responding the homicide is retaliation. Religion here keeps retaliation ahead on the basis of public order and security.

Islamic jurists have established many provisions on this axiom. Here are some of them:

- In case of expiry of the period prior to the harvest of the product, the person renting a farmland continues to hire the land by paying *similar-charges (ajr-i misl)* until the harvest is complete. Because the tenant would be at loss if lease agreement terminates before the harvest.
- If someone buying a property and then renting it to somebody else, finds a defect that comes from the period before his purchase of the property and wants to return it back to the former owner he/she can terminate the leasing agreement with the tenant.

- Measures are taken to prevent corruption and evil from spreading in society.
- Islamic jurists have given importance to protecting the *ancient rights (kadim huquq)*. Even if the documents of these rights are not presenet in the hands of the owners, their rights are protected provided that they have been acquired legally and without public harm.

At the present time, some adjustments are made based on this principle. Some of them are; the basis for compensation, the compensation of actual damage and not making compensation a tool for enrichment, the basis of the reinsurance coverage etc. (AAOIFI, 383) Being ill-gotten (haram)for substances that harm human body, and a healthy balance between the interests of the individual and the society are based on this principle (el-Karadavi, 2002, p. 168; Chapra, 1985, p. 49).

Other principles are subject to this axiom:

4. Injury is removed as far as possible (Majalla, article 31)

(الضرر مدفوع بقدر الإمكان)

Here, in the Arabic expression the word (**قدر**) '*kadr'* or *'kadar'* means the capacity and power. Accordingly, the damage is corrected as far as possible. In the Majalla commentary of Ali Haydar, examples were given from urban settlement, for example the landlord will be forced for establishing a fence between the houses. Also, if the extorted goods was perished, fungible goods (*misli*) was compensated as fungible, or valued (*kıyemi*) was compensated for its value.

In accordance with public interest (المصالح المرسلة, *al-masalihu'l-mursala*) or legal policy (السياسة الشرعية, *as-siyasatu'shar'iya*), proaktice measures must be taken before damage occurs. There is a proverb, "To prevent the disease is beter than to cure". Here, it can be remembered especially in terms of proactive approach to occupational health and safety measures.

The expansion of this principle implies; for public interest taking measures to protect the public safety and welfare, in term of private law, protecting pre-emption rights of the neighborhood, putting (an incompetent person) under the care of a guardian to eliminate the losses of the rights of the riotous and negative savings of himself and his family, in case of bankruptcy, division of common divisible goods by the judge on request of a partner, restoration of collective ownersihps etc. In a large part of the common ownership of buildings, the structure systems are also common. In particular where earthquake risk is high, complying with these principles as a maqasıd is directly related to main life and property safety.

Also, some options (*hıyarat,* خِيَارَاتٌ) are included into this principle; the provision option (khıyaru shart), the eyeshot option (khıyaru ru'yet), the indication option (khıyaru ta'yin) etc. These have a significant place in the elimination of asymmetric information in the exchanges.

5. Injury is removed (Majalla Article 20) (الضرر يزال)

Giving damage is tyranny, so it is obligatory to avoid persecution, and consistently acting and setting it is forbidden by Islam. The principle of '*Injury is removed"* is a secondary one. After all, it is necessary to remove it after occurrence of damage. The damage can be;

- removed without any injury or,
- compensated by less injury or,
- compensated by an equal injury or,
- compensated by more injury.

Above, the first two items are legitimates, and the others are't. Both in the public area like, especillay in urban settlement and in private area there are many issues related to this axiom. Even Ali Haydar has linked the legitimation of pre-emption to 'the neighbors house prices will change the situation for better or worse'.

According to the Majalla, article 1200, excessive (exorbitant) damage is in any case removed. Harm does not require premeditation and intent. As unfair as it is forbidden to take someone's goods deliberately, it is also forbidden to take one's property without his consent (Ergüney).

This principle concerns negative externalities. For example, a person with bees, causing damage to nearby vineyard is prevented from beekeeping (Ali Haydar, 1916: p.75). Here, Atıf Bey uses the definition of the exorbitant damage.

Today, including some developed countries some private losses are nationalized in times of crisis, that the private sector losses are financed by the public taxes. It can also be evaluated in the framework of this principle.

6. An injury cannot be removed by the commission of a similar injury (Majalla, Article 25)

(الضرر لا يزال بمثله)

One damage or loss can not be eliminated in a similar danger/loss. Accordingly, a private damage (darar-ı khas) can not be eliminated by other private damages to be selected. Ali Haydar gives such an example: Any handicraftsman or trader can not restrict someone to enter the market in fear that he is reducing their profits or limiting their transactions. This principle is

remarked in the articles 965, and 1288 of the Majalla. Another example is; someone who runs into dificulty is allowed, when someone has more water than he himsef needs, somebody else who needs it can get the extra amount of water. However, if the owner needs all the water that he has, others in need cannot take it.

In the description of this article, Ali Ulvi, is al-Majalla's commentator defines art as this; "Art consists of information of industry that is legally set". He divided it into five branches; the first items are substantive mines, surface mines and mine furnace operations; the second are intellectual property rights such as copyright, patent rights and, related rights of art including discovery; the third is the relationship between industrial connoisseur, names, company names, product names and factories; the forth is the relationship that arise between employers and employees, such as operating costs and mastery contracts; the fifth is the relationship between consumers and industrialists. Commerce is any form of transaction of goods transported from one place to another and or exchanged for benefit. For this, trade is characterized by profits. In trade, reputation, speed and safety are essential requirements. As dignity is the position of the trade spirit, rapidity in the realization of commercial transactions is importan. The safety is complementary factors of these two issues. Trade is to change the morality of the society from harshness to serenity, and to support the formation of relationship within society, and to increase the wealth of the nations" (Ali Ulvi, 1901; p.50).

7. Severe injury is removed by lesser injury (Majalla, Article 27)

(الضرر الأشد يزال بالأخف)

This principle specifies the limits of the axiom, "damage is removed". Although damage is removed, it is not removed with the same or a greater loss. But rather it can be removed with a smaller loss than itself.

Some examples are;

- Rich relatives must meet their poor family members' necessities. Indeed, such a situation is a slight loss for the rich relatives.
- In case someone purchases a piece of land, and raises a building or plants any crop on it, and later somebody else emerges and prooves to be holder of a right over the piece of land, if the value of the building is higher than the land value, it is the customer's right to forcibly get the possession of the land with its appropriate value. This example is particularly important in real estate valuation in the metropolitan area.

In respect of the Holy Koran (Kahf, 65-82), Mustapha az-Zarka gives examples of stories between Moses and al-Khidr. Khidr's slightly. Damaging the orphans' ship is a simpler damage than the King's extorting it.

According to the hadith, that Samura b. Jundab passed on he had a palm tree at the foot of a wall of other companions of Ansari. This companion had been living with his family. While Samura's entering and exiting the palm trees, neighbors were annoyed. They wanted him to move it. But, he refused it. It was explained to the Prophet (pbuh) that condition. The Prophet wanted him to sell it, but he refused. He wanted him to remove that tree, but he refused. Then the Prophet ordered as saying: "Then Grant it to him! It would be the gain (in the Hereafter) for you", but he refused. In contrast, the Prophet Muhammad said "You will be damaged", and turning to the companion "Go and remove his palm tree" (Abu Davoud, 3636). Here, it is pointed out that the protection of the interests' of parties in the physical area, and the preference for the lightest in case of damage are positive spiritual factors (the gain in the Hereafter). Based on the ownership right, Samura was to reject the offers. Indeed, trade is based on mutual consent, and "It is not lawful for Muslims without the property willingly".

8. The lesser of the two evils is preferred (Majalla, Article 29)

من إبتلى ببليتين يأخذ بايتهما شاء وإن اختلفا يختار اهونهما لأن مباشرة الحرام لا يجوز الا للضرورة (في حق الزيادة)

The word '*evil'* is the opposite of the word '*goodness' (khayr)*, and the evil is not legitimate in religion. If a person is compelled to commit one of the two things that are evil, he should prefer the one that would cause less damage. It is conceivable that this principle is closely related to environment and development issues.

An example: If anyone's ox dangled its head into someone elses's earthenware vat, and separating them from one another required damaging one of them, the owner of the one having the higer value would pay pay the owner of the one with less value and own both. Thus the lesser is preferable.

According the article 154 of al-Majalla, the value of something is the real worth, not more or less. Thus, the value is the measure of goods. So the goods will be evaluated by the value. But, *the price* in the contract is with the consent of the parties. It may be less or more than the value. Therefore, price and value are diffirent from each other (Ali Ulvi, 1901, p.51).

Abu Hurayra has narrated the following hadith; Prophet (pbuh) said that "if one of you wants (your religious brother) permission to put wall of trees (end) (with walls), you (the request) will not refuse it" (Abu Daoud, 3634). When Abu Huraira told of this hadith, and hearers were not satisfied with what they heard, they bowed their heads to the right front. Whereupon (Abu Huraira) said that; "Why does it (from this hadith) turns away I see a state? (Know it well that) I have this (the responsibility of that) I'm putting you on your shoulder".

It is necessary to address the elemantary needs of neighbors as legislation (wajib). But excessive damage is unthinkable. According Hanafis', and one opinion of Shafii, and Maliki's, the elimination of such damages is mandub, i.e. it is evaluated as a social responsibility (Ed-Dourayni, 2008, p. 152).

Here, in the same sense Ibn Taymiyyah has specified such a rule: in case of preference, the highest opinion is selected, and in case of difficulties the least of evils is selected (يقدم عند التزاحم خير الخيرين ويدفع شرالشرين) (al-Husayn, 201). Another principle here is that if the gooddness and the evil are faced, the most preferred of two is selected (إذا تعارض المصلحة والمفسدة ُقدِّم أرجحهما) (El-Husayn, 2002, p. 225). According to Ibn Taymiyyah, the licit fear of God (vara') is to make obligatories (faraiz) and to refrain from unlawful. So in terms of goods, it is obligated to give the rights of owners, as well as to observer bans (El-Husayn, 2002, p. 256).

9. In the presence of two evils, the greater is avoided by the commission of the lesser (Majalla, Article 28)

(إذا تعارض مفسدتان روعي أعظمهما ضررًا بارتكاب أخفهما)

When faced with two equal damages, either could be choosen on one's will. This principle is to be evaluated within the concept of externalities.

10. A private injury is tolerated in order to ward off a public injury. The prohibition from practice of an incompetent physician is derived from this principle (Majalla, Article 26)

(يتحمل الضررالخاص لأجل دفع ضررالعام)

Many provisions have been removed from this principle: "This principle is the origin of putting a ban on working ignorant surgeon, dotty mouphti, and bankrupt merchant. Also, imposter coachman is prohibited from doing business because of the overall damage to the customers, his/her private loss does not matter. So, personal damages are preferable instead of general damages. This depends on the decision of the Sultan (irada-i saniyya, i.e regulations). Like this, if the food supplier is selling with excessive deception, and making twice harms, the judge can officially put moderate fixed price (*narh, tas'ir*) after the consultation with the experts and specialists. This rationale is to protect the public (general) interest. So, to sell for more than the moderate price is prohibited". As such, if some certain foodstuff were needed by the people in a town, selling it outwardly (to another town) would be prohibited. Here, Atif Bey has taken into account the purchasing power of the poor. Another example is; if someone wanted to operate a cook shop at the clothes market, it would be prohibited beacuse of exorbitant damages.

During the Ottoman period, the fixed-price (narh) in the market was interfered with. The reason behind this is the principle mentioned above, namely, the public interest. *Narhs* could only be decided by a commission headed by a judge. In this regard, see many studies on the economics of Ottoman history[7].

This policy is available in many subjects, such as consumer rights, environmental rights, regulation of markets. Az-Zarka, the Islamic jurist in

[7] In the Ottoman, *narh* (fixed price) *system* or *guild system* on price, quality control and standardization regulations were focused on officially. This is seen as crucial for odds or the prevention of monopolization, the elimination of intermediaries, to reach agentless of goods from producers to consumers and the welfare of the people. In fact, this has formed the basis of the classical Ottoman period price policy. This point is also reflected in the documents. Supply and demand were based on still in the Ottoman administration officially, but it was intended to prevent the monopolistic tendencies.

Narh was determined by a commission, whose head was a judge. This commission was composed of such as sheikh, Kethüda, Yiğitbaşı, managers and experts on trades, and representatives of the people. At the price fixing, elements such as the production process of the goods, and labor costs factors were determined. If the determined price left enough profit, there would be no need to narh. Depending on the nature of work, average profit ranged from 10-20%. This rate was slightly greater in goods from distant places. After determining the goods were passed to the judges' records (*kadı sicilleri*). When conditions changed so did the price change, for example the narh (fixed prices rates were changed) before the month of Ramadan, in war or natural disaster cases again.

In addition, (judges) and muhtasibs (municipality police today) were responsible for the protection of the quality and were also monitoring the markets. Narhs would be applied at the prices of goods and services except foodstuffs only when the prices were widely violated. So the market price was revealed first, then the judge and experts were meeting, and the comission were determining the price close to the pre-formed price. Due to economic and social changes, it would have to change the prices several times in a year. The vialotions of narhs were seen as damages to public interests and the elimination of these losses was focused on.

It has been put in prices of all kinds of goods in the Ottoman Empire. In the classical period, the state administration saw the narh as one of the important state affairs. The narhs sometimes were controlled by the Sultan wether implementation was succeful or not (Kütükoğlu, 1983, p. 5).

The narhs have been the subject of complaints by the public in time to change the internal and external conditions. According to a report supplied to Sultan III. Selim (d. 1808 A.D.), the main causes of the increased prices were the rights of the monopolization of guild as a result of their extreme abuses. Thus, the narh system was abolished with the impact of liberalization in the Ottoman Empire after the Tanzimat Regulations. Here, the factors that were affecting the abolition are the effect of foreign trade with Europe, the imbalance in the foundations-artisans relationship, the effect of Janissaries entering the trades and staying away from muhtasib control systems and new factory production etc. (Çelik, et.al., 2013, p.177-181; Ergin, 1995, p. 2/402).

the last period, has adopted the fixed price as permissible (Ez-Zarka, 2012, p. 2/996).

Contrary to this article, it can be considered to abolish private damage instead of general (public) damage. For example, if someone's field is at a higher location than those of others', his irrigation right is given priority agaisnt those with lower positions. Their consent is not sought. So personal damages are removed before general damages.

Some principles have been emerged relating to the public interest in the historical process (Uyanık, 2013, p. 37,182). Those are;

- General (public) interest can not be defined without considering the personal benefit of individuals and its content can not be determined without it,
- The existence of public interest, being differented from the concepts that have universal moral status such as *common good* and *public welfare,* is instrumental and is an organisational issue.
- Each administration must safeguard the unity of interests between the rulers and the ruled,
- The notion of "benefit" " should be taken into account as best as possible to rather than the basic idea.

11. Repelling an evil is preferable to securing a benefit (Majalla, Article 30)

(درأ المفاسد اولى من جلب المصالح فاذا تعارضت مفسدة ومصلحة قدم دفع المفسدة غالبا)

If the interest in a job might involve evil, abandonment of the evil is more preferable to interest. However, if the interest is more, then this side is preferred. But, sometimes goodness is preferred. As al-Baydavi said (Tafsir, 1/68) "Leaving a large charity for some small evil is a bigger evil" This principle can be applied to both positive and negative externalities.

Although some goods and services give some benefits like pork etc., this does not preclude it from being forbidden.

Each person is responsible of his/her capacity. So the Prophet said that "Avoid that which I forbid you to do and do that which I command you to do to the best of your capacity".

Everyone has the right to dispose of their property as they wish, there is no right to act as he wishes in the issues concerning the rights of someone else. Because its the stakeholder's the right to make his own operations on his property, however he must refrain from actions and operations that harm others. The 1192 article of a-Majalla is about this policy: One upstairs and

other one in the ground floor in a building, property owners can not do anything harmful to each other without the consent of the other.

12. When prohibition and necessity conflict, preference is given to the prohibition. Consequently, a person may not sell another a thing which he has given to his creditor as security for debt (Majalla, Article 46)

(إذا تعارض المانع والمقتضى فانه يقدم المانع)

An example: When a litigious goods is sold together with a certain goods in the same contract because of ignorance, the obstacle gets ahead, and that contract is not applicable. As such, it is not permissible to sell a worthless thing together with a valuable item.

In the goods subject to ownership of partners, one partner has no right to harm another. People living in the same building would not have the right to hurt each other.

With this principle, two opposite concepts loss-benefit, and goodness-evil can be understood by comparing them to each other by using statistical methods.

13. Things which have been in existence from time immemorial shall be left as they were (Majalla, Article 6)

(القديم يترك على قدمه)

Due to the religious principles, any thing is left to the same condition unless there is an evidence. For example, if the water of the roof is flowing in the streets and does not harm the environment, it can be left as it is. In contrast, public-damaging situations are being removed even though *auld (kadim)*. In fact, something's being ancient forms presumption on its being justified and legitimate, *seniority (kıdam*) can not be relied on where the presumption could not possibly be considered, and can damage others.

14. Injury cannot exist from time immemorial (Majalla Article 7)

(الضرر لا يكون قديمًا)

Indeed, if somebody had a sewer flowing into the river where public received water from, regardless of its ancientness this process would be prevented. Public roads can not be bought, and sold, and be divided even though the issues are the exclusive rights of the individuals involved. In public water, there is no private right to damage public interests. When the damage is apparent, it should be removed whether it is new or old. However, if a non-transferable loss does not belong to the public it should be left to the ancient seniority (Ali Haydar, 1914: p.47).

These principles can be associated with the business cycles and externalities, as well as in conventional economics.

15. Conclusion

The principle of "There is no injury (damage), and injury may not be met by injury in İslam" (Majalla, article 19) is one of the principles of Islamic law, and there are many verses in the Quran and hadith showing it. In fact, damaging actions are to be banned, and compensation of them requires actual and punitive results. Again, this principle of Islamic law methodology for the prevention of *mefsedet* and ensuring the *maslahat (*best interests) principle is the basis of the principle of *ıstıslah.* Therefore, this principle is one of the basic principles of religion.

This principle has changed over time depending on the evaluation of the sects (*mazahib).* For example, the right of property was kept in the foreground by Abu Hanifa, but later Hanafis approached the opinion of the Maliki. Majalla has adopted this opinion. Maghreb and the Ottoman applications have been in this line. The interpretation of the principle is located more legal regulations, and ethical issues are handled implicitly. To be remembered, Abu Hanifa kept ahead the principle of the right of ownership, and argued that preventing damage concerns to the ethical behaviours. But, subsequent applications and opinions made it a principle.

Although the market mechanism is mainly subject to supply and demand rule, due to the market failure narh (fixed price) was based on the application of this principle. It has also been included in mechanisms such as monopolization, market control, public or general interest. Today, asymmetric information, externalities and market failures may be considered.

Other articles belonging to this principle are as follows;

- Injury is removed as far as possible (Majalla, article 31): The expansion of this principle implies; for public interest taking measures to protect the public safety and welfare, in term of private law, protecting pre-emption rights of the neighborhood, putting (an incompetent person) under the care of a guardian to eliminate the losses of the rights of the riotous and negative savings of himself and his family, in case of bankruptcy, division of common divisible goods by the judge on request of a partner, restoration of collective ownersihps etc.
- Injury is removed (Majalla, 20): This principle especially concerns negative externalities. For example, a person with bees, causing damage to nearby vineyard is prevented from beekeeping

- An injury cannot be removed by the commission of a similar injury (Majalla, 25): Here, someone can not be deprived of his rights in fear that it will damage others.
- Severe injury is removed by lesser injury (Majalla, 27): This principle specifies the limits of the axiom, "damage is removed". Although damage is removed, it is not removed with the same or a great loss. But rather it can be removed with a smaller loss than itself.
- The lesser of the two evils is preferred (Majalla, 29): The word '*evil*' is the opposite of the word '*goodness' (khayr)*, and the evil is not legitimate in religion. If a person is compelled to commit one of the two things that are evil, he should prefer the one that would cause less damage. It is conceivable that this principle is closely related to environment and development issues.
- In the presence of two evils, the greater is avoided by the commission of the lesser (Majalla, 28): When faced with two equal damages, either could be choosen on one's will. This principle is to be evaluated within the concept of externalities.
- A private injury is tolerated in order to ward off a public injury. The prohibition of an incompetent physician from practice is derived from this principle (Majalla, 26): Many provisions has been removed from this principle: This principle is the origin of putting a ban on working ignorant surgeon, dotty mouphti, and bankrupt merchant. Also, imposter coachman is prohibited from doing business because of the overall damage to the customers, his/her private loss does not matter. So personal damages are preferable, instead of general damages. This depends on the decision of the Sultan (irada-i saniyya, i.e regulations). Like this, if the food supplier is selling with excessive deception, and making twice harms, the judge can officially put moderate fixed price (*narh, tas'ir*) after the consultation with the experts and specialists. This rationale is to protect the public (general) interest. So, to sell more than moderate price is prohibited
- When prohibition and necessity conflict, preference is given to the prohibition. Consequently, a person may not sell to another a thing which he has given to his creditor as security for debt (Majalla, 46): With this principle, two opposite concepts loss-benefit, and goodness-evil can be understood by comparing them to each other by using statistical methods.
- Repelling an evil is preferable to securing a benefit (Majalla, 30): If the interest in a job might involve evil, abandonment of the evil is more preferable to interest. However, if the interest is more, then this

side is preferred. But, sometimes goodness is preferred. As al-Baydavi said "Leaving a large charity for some small evil is a bigger evil" This principle can be applied to both positive and negative externalities.

- Things which have been in existence from time immemorial shall be left as they were (Majalla, 6): Due to the religious principles, any thing is left to the same condition unless there is an evidence. For example, if the water of the roof is flowing in the streets and does not harm the environment, it can be left as it is. In contrast, public-damaging situations are being removed even though *auld (kadim)*. In fact, something's being ancient forms presumption on its being justified and legitimate, *seniority (kıdam*) can not be relied on where the presumption could not possibly be considered, and can damage others.
- Injury cannot exist from time immemorial (Majalla, 7): These principles can be associated with the business cycles and externalities, as well as in conventional economics.

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