

# THE ROLE OF ISLAMIC *IJTIHAD* IN THE REGULATION AND CORRECTION OF CAPITAL MARKETS

*Ṭāhā Jabir al-'Alwānī*

I am hesitant to speak on the role of *ijtihād* in an Islamic capital market, because this topic requires understanding two important but difficult areas whose primary sources are in different languages. The first area is *ijtihād* which is connected with *fiqh* issues; the majority of its sources are in Arabic. The second area is economics which is connected with the analysis of capital markets; the majority of its sources are in European languages. Linking ethics and economics is necessary but difficult. Necessary, because every economic choice has a spiritual dimension. Difficult, because secular economics severs the link, by reducing values to tastes and arguing that different ethical values do not change the method of choice. Therefore, properly linking *ijtihād* and economics is a difficult task, requiring determined effort to refute the secular separation of ethics and economics. I spent over 100 hours thinking, reading, and analyzing the essential points of both until I could establish common ground between them.

*Ijtihād* is of central importance in *usul al-fiqh*, and concerns the method of implementing the spirit of the sacred texts in any environment. Since the third century A.H., *ijtihād* has been the main theme of dialog between the different schools of *fiqh*. To this day scholars debate the issue.

Economics is an important science in our time, influencing several other sciences. Since the capital market is a significant topic in economics, it is important to understand the strengths and weaknesses of the neo-classical analysis of capital markets in developing an Islamic capital market. We must also understand the history of economic thought, how capital markets became an important part of it, and why many neoclas-

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*Ṭāhā Jābir al-'Alwānī* is both president and professor at the School of Islamic and Social Sciences (SISS), Leesburg, Virginia. This article was translated from Arabic into English by Waleed El-Ansary who is a research analyst in Islamic economics at SISS.

sical economists believe that their analysis is objective and spiritually neutral.

Since the last century, some of our *ulamā* have tried to build common ground between economics and *ijtihād* on matters of economic development, adopting many of the views of economists. Some '*ulamā* have called for imitation of the West and its modernity to achieve prosperity, and have adopted elements of Western methodology. They have thought that the ummah resists change by clinging to concepts of *halal* and *haram* in economic activity, thereby hindering the community from development and preventing it from overcoming economic problems. Such '*ulamā* have attempted to justify imitation of the West on economic matters on the basis of the *maṣlahāh* (benefit) of the community, the relativity of *fiqh*, the absence of alternatives, or a combination of all three.

Yet, this approach justifies *taqlid* (blind imitation) of the West by erroneously combining *ijtihād* from the Islamic world with economics from the Western world. A truly Islamic economics and *ijtihād*, on the other hand, must apply traditional principles to the contemporary world, combining the transmitted (*naqli*) sciences and intellectual ('*aqli*) sciences. Precise understanding of Islamic principles must inform both disciplines to establish the true complementarity between them and successfully apply the Islamic paradigm to economic problems. Bad economic analysis can misinform the best *ijtihād*, just as an erroneous *ijtihād* can vitiate the best economic analysis. Those who call for *taqlid* of the West often combine both errors.

Thus, failure to apply traditional Islamic principles to either *ijtihād* or economics creates a duality between the old and the new, between *naql* and *aql*. And this duality creates potential for opposition which is a serious challenge to all Muslim thinkers, regardless of whether they be economists, political scientists, sociologists, or *fuqaha*.

This challenge raises big questions. Is Islam capable of dealing with this duality or not? Can the Shari'ah give us solutions for any problems—past, present, or future? The ummah needs to see that the Shari'ah provides solutions by applying traditional Islamic principles to both *aqli* and *naqli* sciences. The solution must, therefore, come from the epistemological and methodological point of view which carefully defines and applies Islamic principles, not *taqlid* of the West. To build a solution based on traditional Islamic principles, we need to understand the *maqāsid*, or higher values and causes of the Shari'ah. Without looking at all of these points, it is very difficult to answer questions of economic policy and the challenge of secular economic thought, especially on capital markets.

The Islamic paradigm is, therefore, essential to build the common ground between *ijtihād* and economics on which the Islamic solution is

based. We suggest that there are three essential Islamic principles which our paradigm is based on. The first is *tawhid*, the Truth that God is the Absolute and the necessary starting point of any Islamic analysis. The second principle is *tazkiya*, or purification of man and society from evil. The third principle is *'umrān*, or the building of civilization for the accomplishment of good.

The principles form a complete and consistent set which can be applied to *ijtihād* and economics, for knowing the Truth that God Is the Absolute requires the elimination of evil and the accomplishment of the good. Moreover, all three principles are necessary in a truly Islamic society. For example, it would be hypocritical to know the Truth without applying it to purify oneself and society from evil and neglecting real needs in building civilization for the accomplishment of the good. Similarly, purification from evil is not possible without knowledge of the Truth and the existence of an Islamic civilization is crucial to assist man in knowing and conforming to the Truth. Finally, building civilization to accomplish the good is not possible unless it is based upon Truth and is the reflection of pure intentions rather than greed.

These essential Islamic principles or higher values are the pillars of our Islamic paradigm. They guarantee that the character of our paradigm is *wassatiya* (avoids excess as evil and finds the good situated between two excesses), *tawazzan* (balanced), *'adl* (just), *istiqāma* (direct, not winding), *rabbaniyya* (from God), *'alamiyya* (global), *al-amum* (universal), and *ashsumul* (includes every part of life, leaving nothing unanswered).

When these three principles are the common ground of *ijtihād* and economics, we can integrate both in developing an Islamic capital market. The references on *ijtihād* and economics, however, are very different. *Ijtihād* is a central issue in *usul al-fiqh* among all the schools of law, and is the seventh chapter of any traditional *usuli* book. All of these sources are in Arabic posing a big obstacle for many researchers. *Ijtihād* will be the first topic of our discussion.

Economics and the capital market will be the second topic of our discussion. Unfortunately, there are few books in Islamic languages on this subject, but many in European languages. In most of these books, neo-classical economists conflate values and preferences to separate ethics and economics, excluding essential spiritual principles from their analysis. Neoclassical economists claim that this is objective and spiritually neutral, but this assertion is questionable. We will attempt to establish that ethics and economics cannot be separated because values and preferences cannot be conflated, and this is the basis for an Islamic theory of choice. Of course, a full treatment of this topic requires many researchers to deal with both Western and traditional Islamic sources from different points of view.

This introduction indicates how difficult it is to properly link *ijtihād* and economics, and to deal with the capital market from an Islamic perspective, even though I think we should try to deal with this challenge. Before I leave this introduction to the main themes on *ijtihād* and economics, I would like to emphasize that this paper will deal with the topics objectively without an attempt to give legal rulings or recommend specific policies. We will try to discover the link between the two fields, dealing with the principles that would help others apply them to specific cases.

### *Ijtihād*

When we think about *ijtihād* in our science of *usul al-fiqh*, we cannot unequivocally say that in its current format it provides us with an effective methodology for optimal solutions to all of our contemporary issues. We cannot make such a claim whether or not there is anyone in this time who can be a *mujtahid mutlaq* (an expert qualified to make *ijtihād* in all areas of *fiqh* without conditions), and whether or not we can identify such a person. Therefore, it is imperative that we reconstruct the concept of *ijtihād* itself so that it can become a methodological tool capable of responding to the challenges and questions of our time and future generations. *Ijtihād* need not be a closed tool to be used only within a specialized methodology.

To be able to reconstruct *ijtihād*, we need to take note of the following. First, in its *fiqh* dimension, *ijtihād* is limited to the genius of an *‘alim* who is able to formulate the appropriate question given the event(s) and to go to the text of the Qur’an and Sunnah for a ruling. If he cannot find a direct answer, then he looks for an answer where *ijmā* (consensus) was achieved. If that is not possible, then he proceeds to *qiyās* or articulates a legal principle to be his line of approach.<sup>1</sup>

But in our time, this is no longer possible with the explosion of knowledge and communication, which increases not only every day, but every hour and minute. There is additional information to incorporate into *ijtihād* with the advent of the social sciences, their appearance in world affairs, and spread into different spheres. Similarly, the collapse of the idea of the “limitedness of the text and the unlimitedness of the events” in the face of the holistic thought and purposes of the Qur’an and Sunnah (which exemplifies Qur’anic principles) makes it clearly necessary to apply Islamic principles within *ijtihād*. In turn, this application requires information from other sciences, no longer allowing the limitation of *ijtihād* to the *fiqhi* sphere and no longer limiting it to one person. And thus we have to establish a strong connection between the social sciences (as a tool in understanding the event[s]) to formulate the relevant ethical

question) and *fiqh* (as the science according to which these formulated incidents have moral value and meaning).

Second, due to the difficulty for individual *ijtihād*, it becomes imperative that we adopt the principle of collective or institutional *ijtihād* established on multiple and diverse disciplines and specialists, outside of the framework of what is now known as *fatwa* committees or *fiqh* councils, despite their importance. *Ijtihād* should be undertaken within the framework of coming up with competent research institutions that include dedicated scholars (from all schools of *fiqh*) of *usul*, law, Hadith and *tafsīr*, as well as social scientists, linguists, and community leaders. Guidelines may be established to determine the constitution of the *ijtihād* team depending on the issue. This does not negate the individual's role in *ijtihād*, rather it emphasizes it and gives it direction.

Whenever such an institution for collective *ijtihād* develops, the nature of *ijtihād* itself will change, taking a different shape with the following characteristics. First, *ijtihād* will no longer be a process based on a theoretical dialog—undertaken by the individual *mujtahid*—between the text and dictionaries for the sake of deducing a ruling established on an inference based on the semantic that the *usul* scholars and logicians are accustomed to.

Second, the *ijtihād* institution will feel a great need for the utilization of all methodological means available in the social sciences, and possibly some of the methodologies used in the natural sciences. These means and methodologies to aid in the study and analysis of the incidents under consideration will be used to understand, analyze, and better define the incident. Such an approach includes, in addition to the linguistic method, the statistical, quantitative, and qualitative methods as well as other tools. Even the linguistic method itself will have to be modified to better utilize the developments that have taken place in the study, analysis, and deconstruction of text for the purpose of gaining deeper insight as to its purpose.

Third, a need shall then arise to bring to the forefront the characteristics of the Shari'ah and the nature of its universal textual proofs (*al-adillah al-kulliyah*). It becomes imperative, then, to understand the the particular textual evidence within the framework of the universal textual proofs. It is not sufficient to only collect particular proofs relevant to the issue; rather, such proofs or evidence need to be understood within the context the Shari'ah's universal textual proofs, its goals and purposes, and the nature of its originating source, the Qur'an, and its particular, clarifying, and binding source, the Sunnah.

Fourth, the need shall become apparent to understand the precise relationship between the Qur'an and the Sunnah. This relationship shall consider the Qur'an as the only originating source of law and the Sunnah as the only clarifying and binding source. Such a relationship between the

originating and clarifying sources does not allow their separation. The relationship calls for understanding the nature of *bayyan*, its characteristics, and how it details the general, interprets the vague, specifies the generic, and generalizes the particular. All this is done for the sake of revealing the methodology used in applying the text to reality in the Prophet's time, and how such a methodology could be generalized for all ages so that humanity may be guided by the values and regulations of the Qur'an and the Sunnah till the end of time.

Fifth, when these *ijtihād* centers and research academies get established, the need shall become apparent to reexamine what has come to be known as controversial legal indicators (*al-adillah al-mukhtalāf fiha*) and leave behind that which is no longer relevant. Other indicators may be renewed and developed and further regulated by the originating and clarifying sources.

Sixth, the higher values of the Shari'ah, *tawhid* (the unity of God, Truth that God is the Absolute), *tazkiyah* (purification from evil), and *'umrān* (building of civilization to accomplish the good), shall be the guiding lights, regulating standards, and just scales against which the outcome of the institutional *ijtihād* shall be evaluated.

Seventh, it shall become apparent after such institutional *ijtihād* has become widespread that no matter how many safeguards and means human effort has been afforded, *ijtihād* cannot be presented as producing everlasting rules binding for future generations, or that these rules are even responsive to their needs. This *ijtihād* should not lead to the establishment of schools of thought and sects that may erode the unity of the ummah, impede its future development, and become a barrier for future generations to practice *ijtihād*. The most we can expect from the *fiqh* of any generation is to offer solutions to crises and challenges that face a specific society in a certain time, place, and circumstances. The outcome of such *ijtihād* cannot be absolute and should not be binding for those other than the generation of that *ijtihād* and whoever chooses to adopt that *ijtihād*. In the case that a consensus exists among the people of a region or a certain time about a previous *ijtihād* ruling, it shall become binding upon them but not necessarily upon people of other regions or other times. Only the Qur'an and Sunnah have binding authority. Thus, we recover the effectiveness, vitality, and continuity of *ijtihād*, making it an integral part of the psychological and mental state of the ummah, and not an exception.

Eighth, the practice of *ijtihād* from academic and research centers will reveal the universal characteristics of Islam. These characteristics are not merely virtues of Islam, but should be applied as methodological guidelines in the formulation of collective *ijtihād*.

At the forefront of these characteristics is the universality of Islam. The universality is indicated by the fact that the Shari'ah is a law of ease and

mercy (removes discomfort) is based on the authority of the sacred book, is connected with the finality of prophethood, and provides a necessary methodology. This universality indicates that the message of Islam is for all humanity in every place and time until the Judgement Day. The rapid spread of this message to all corners of the globe took place according to a perfect methodology that began by preparing the final Prophet, charging him with warning his relatives (the people of Makkah and the surrounding area), and then building an ummah that provided a model for the rest of humanity to emulate.

The mission of Islam is global although it addresses humanity through a specific social entity in its own language (Arabic), dealing with the community's needs and problems. These are not necessarily the problems of all of humanity in all times and places, but can be used as a model for other societies which face different needs and problems by drawing from the methodology, values, and purposes of the Qur'an. The Qur'an is so resourceful that if you read it at any time or age, it will provide answers to specific questions. At one level, the Qur'an gives an answer for the Prophet's time. At another level, it applies the link to the Prophet's community to project the answer into the future. The multiple meanings and applications of the text are fascinating, and this is how the Qur'an addresses the problem of communicating absolute values in a relative environment, linking the transient to the eternal and the specific to the general. This correlation between the relative and the absolute has been achieved in the Qur'anic text. This was necessary because if the Qur'an had ignored the problems of the Prophet's community, it would have been impossible to project these absolute values forward. There would have been no example of how to apply the message.

In a short period of time, Islam was able to incorporate all other civilizations because of its universal vision, which proves its beneficial power in every time and place. This final message is characterized by the Absolute Book and Last Prophet. The message, therefore, contains categories to integrate the continuous and the temporary, the general and specific, and the global and local to satisfy its goals and objectives.

Unfortunately, our current religious teachings and studies do not prepare us to understand these essential principles. Because of these religious teachings, some people approach the Qur'an as if it were meant only for themselves, like a closed letter which our ancestors carried without opening. This leads some people to misinterpret the Qur'an from their current point of view, equating *jinn* with bacteria, or equating money with capitalism or socialism. Some people take the opposite position, thinking that the Qur'anic message is meant for our ancestors, simply providing the current generation with general directions without specific instructions. Both positions represent extremes that do not reflect a true understanding of the Qur'an, placing limits on the methodology used

to understand the sacred text. A deep understanding requires a knowledge of the dichotomies in Islamic discourse, namely, the absolute and relative, the general and specific, the continuous and temporary, and the local and global in the Qur'anic teachings. We cannot understand the sacred text otherwise.

Our ancestors did understand these categories in Qur'anic discourse, and incorporated them into *usul al-fiqh* in what they called "chapters of terminology" and "chapters of what is common in Qur'an and Sunnah." These chapters include discussion of the general and specific, absolute and limited, *ayats* with locked and flexible meanings, abrogation and the abrogated, etc. And they established some constraints and criteria to distinguish between different levels of Qur'anic discourse, and to differentiate between the legislative and nonlegislative as well as the obligatory (*farḍ* or *wajib*) and the forbidden or reprehensible (*ḥarām* or *makruh*). Indeed, our ancestors understood the Qur'anic distinctions between these things so clearly that they were able to differentiate five categories for action: forbidden, reprehensible, indifferent, recommended, and obligatory. They even distinguished between two types of reprehensible categories: *makruh tanzih* which implies unsuitability for a person, and *makruh taḥrīm* which leads to the border of *ḥarām*. They also classified necessities into three categories, namely, essential needs, means to these needs, and embellishments or accessories to support these means.

To serve and carry the message of Islam, proving its applicability and usefulness for every time and place, we need to build upon what they have done. This requires using our knowledge to go back and rethink what should be the contents of the different categories discussed above. This is an essential, dangerous, and difficult journey, particularly for a mentality which has been in the habit of *taqlīd* rather than *ijtihād* for several centuries. And we should establish centers for collective *ijtihād* to be the instruments to implement this task.

Let us consider a simple example of how a specific incident is developed into a general legal principle to understand how principles guide *ijtihād*. Let us take the case of adoption. The Qur'an deals with this through the example of Zayd (adopted son of the Prophet), declaring that the Prophet had no male children. Even though this message applied to a specific Arab community at that time, the principle applies today that adoption does not entail changing the child's name and literally creating new parents (although the Qur'an emphasizes the great rewards and spiritual virtues of caring for orphans). There are many other examples of establishing a principle through specific events in *fiqh*, such as emancipation of slaves, war booty, etc.

Since our ancestors understood how the Qur'an communicates principles through specific incidents, they were not waiting for the Qur'an to tell them that, "This is relative, this is absolute. This is general, this is

specific. If the circumstances change, do this or that.” But Allah revealed the Qur’an as He wills, and He revealed it to the ummah in this way, placing a heavy task of interpreting this sacred text on the people of *dhikr* and the scholars.

(Here is) a Book which We have sent down unto thee, full of blessings, that they may meditate on its Signs, and that men of understanding may receive admonition. (38:29)

Nor should the Believers all go forth together; if a contingent from every expedition remained behind, they could devote themselves to studies in religion, and admonish the people when they return to them—that thus they (may learn) to guard themselves (against evil). (9:122)

Our ancestors produced many great achievements with this understanding, and if our generation continued on the same level without stopping *ijtihād*, we could properly understand the Qur’anic categories mentioned in our *usul al-fiqh*. If we pursue deep thought and illuminate our minds, we can build on the great achievements of our ancestors.

Their *mujtahids* set for themselves tens of principles for legal judgment, deriving solutions appropriate for their problems. Examples of these legal principles are: alleviate legal hardship, block licit means to illicit ends, choose the most prudent course, limit the matter to make options more plentiful, difficulties attract facility, the illicit can be rendered licit by necessity or overwhelming circumstances, the needs of the public may be considered the same as those of the individual, and there may be acceptance in continuation for matters unacceptable in initiation. These rules represent deep jurisprudential, legal thought and past generations may have considered them more than enough to deal with their problems. Through these partial rules that are based on the total objectives of the Shari’ah, they were able to properly understand rules related to specific situations. They did not necessarily articulate the framework they used to derive these partial rules from the purposes of the Shari’ah, or how to apply the holistic point of view involving different levels of Qur’anic discourse and instruction.

In this regard, the example of how the Qur’an dealt with the problem of drinking is important, and can be applied to slavery which was as popular as drinking at that time. If the Qur’an achieved prohibition of drinking at that time, the Muslims were expected to achieve the end of slavery shortly afterwards. The fact that it was not able to completely eliminate slavery during the Prophet’s time does not mean that it was left to continue. The ruling to ultimately eliminate slavery was in the Qur’an, but the full application of the rule took some time. Since all the Qur’anic rulings related to emancipation, not slavery, we know that slavery must

ultimately end. Indeed, slaves were to be considered as brothers, to eat what we eat, wear what we wear, and work as we work (not to be given overbearing tasks). All this let people know that slavery was a temporary situation. Moreover, people were forbidden from calling others as “slaves,” and were required to address them more affectionately. People have talked a lot about how Islam released slaves, but nobody talks about why slavery lasted until the recent universal emancipation. Why did we not reach global prohibition? We should have reached this conclusion ourselves since we did not have any rules for enslaving people.

The truth is that slavery was a sensitive issue. The *fuqahā* went around it—we did not find somebody to “break the egg.” The Abbassids and Ottomans were more powerful than other civilizations at their time, but they did not abolish slavery because they did not understand the nature of the sacred text. For example, the texts require that the expiation for an accidental killing is freeing a slave. According to Nasafi’s *tafsīr*, freeing a slave is like giving life to what is dead. Indeed, slavery is associated with *kufr* in the days of ignorance, and *kufr* is related to spiritual death; the person who accepts Islam is like the person who was dead whom God gave life. Moreover, the analogy between charity and freeing a slave is erroneous because the essence of money is as an object for use whereas the essence of a person is to be free. Our ancestors supported emancipation, saying slavery was like death and *kufr*. They came so close to prohibition, but did not embrace it. But if it is our job to resist *kufr* and finish every trace of it in our society, why did we not eliminate slavery in our society and the rest of the world? We had the power, and even if other civilizations continued with slavery, we could have at least eliminated it in our own. The whole question goes back to our inability to deal with what is continuous and limited, what is global and specific in the Qur’an. This is why we did not abolish slavery and left it to the West. Given this understanding of *ijtihād*, we now turn to economics.

## Economics and the Capital Market

When we turn to the Islamic economic tradition, we find a rich history of economics as applied ethics. Muslim intellectuals were well aware of the distinction between “tastes” and values, and that values determine the methodology one uses to make a choice whereas tastes do not. Because values cannot be reduced to preferences or tastes, differences in the content of desires due to values imply different methodologies of choice. Muslim scholars, therefore, recognize that ethics and economics are inseparable, for every choice has a spiritual dimension since God Is the Absolute.

Secular neoclassical economic thought, on the other hand, denies that a “distinction between tastes, preferences, values and ethics can coher-

ently be made."<sup>2</sup> The theory conflates values and tastes, and argues that different values do not change the methodology of choice any more than tastes do, thereby separating ethics and economics.<sup>3</sup> Witness to this the fact that Milton Friedman declared in his Nobel acceptance address, "The great Saints of history have served their 'private interest' just as the most money grubbing miser has served his interest."<sup>4</sup>

But if neoclassical theory does not logically distinguish between tastes and values, one has good reason to question how it can contribute to Islamic economic policy which does. We will pursue this question, suggesting that secular neoclassical theory cannot accommodate Islamic values, and that an Islamic theory of choice which recognizes the distinction between tastes and values can better inform collective *ijtihād* on capital markets. We will draw out the policy implications of the essential Islamic principles of *tawhid*, *tazkiyah*, and *'umrān* for the capital market, and respond to potential objections from neoclassical economists.

Let us begin with the neoclassical theory of choice as espoused by Milton Friedman, Gary Becker, and the "Chicago School of Economics" because they have won the most Nobel Prizes in economics for the past decade, and they provide a good starting point for the neoclassical approach. While their approach attempts to answer essential economic questions, it lacks spiritual neutrality. It is based on the doctrine that the only thing anyone is capable of desiring or pursuing as an end in itself is one's own self-interest or utility, in which pleasure, satisfaction, and happiness are used as synonyms.<sup>5</sup> The theory does not deny that people sometimes do desire the happiness of others, but insists that people are capable of desiring the happiness of others only as a means to their own happiness. Purely altruistic and benevolent actions and desires, therefore, do not exist. The noble actions of the Prophet or the *muqarrabūn* are, according to neoclassical theory, disguised forms of self-serving behavior rather than models of conformity to the Truth. It is one thing to suggest that men often "put their own interests first," which Islamic economics takes into consideration, and another thing to assert that they are capable of nothing else, denying man's ability to be motivated by the Truth or God rather than utility. As the Qur'an states several times, God Is the Truth (*al-Haqq*) for He Is the Real.

While the Chicago School's neoclassical approach denies the spiritual nature of man (read their literature on the economics of crime, marriage, fertility, etc.), Islamic economics recognizes that the ultimate motivating cause for the Faithful is not utility or happiness, but the Truth. For although happiness accompanies conformity to the Truth, it is an effect rather than a motivating cause. "Our willing is not inspired by our desires alone, fundamentally it is inspired by the truth, and this is independent of our immediate interests."<sup>6</sup> If man meets his spiritual needs fully by con-

forming to the Truth with the whole of his being, the result is spiritual virtue, or "beauty of soul."<sup>7</sup> With spiritual virtue comes true happiness, for beauty and the love of beauty give the soul happiness. Indeed, "sensible beauties are situated outside the soul, and their meeting with it is more or less accidental; if the soul wishes to be happy in an unconditional and permanent fashion, it must carry the beautiful within itself."<sup>8</sup> Happiness is therefore an effect which constantly accompanies spiritual virtue, and this explains why a pious man with few means is far happier than an impious man of great wealth. As the Prophet said, "The Muslim in every situation is happy [*bi khayr*]."

The Chicago School erroneously inverts cause and effect by subordinating truth to utility and declaring utility to be the sole motivating cause. It is a theory of choice appropriate for the *nafs al-amarah* (the soul which commands to evil), for only the *nafs* would reduce values to tastes, subordinate the truth to utility, and ignore the reasons behind preferences. This reduction by the *nafs* applies to both spiritual complements such as physical needs and opposites such as anti-spiritual desires. For example, the Chicago School's neoclassical approach suggests that a spiritually inclined person should allocate his time between complementary needs such as praying, eating, and working such that the utility of the last moment spent in each of these activities is equal. This would maximize utility since any discrepancy would mean the individual could increase utility by reallocating his time. The same principle applies to allocating time to different questions on an exam.

Yet, this approach to a hierarchy of spiritual and other needs is only appropriate for the *nafs* because these needs are qualitatively different, whereas points on an exam are not. Lumping "spiritual utility," "eating utility," and "working utility" into one utility incorrectly requires substitutability between spiritual and other needs, creating tension between them. This is erroneous because a different type of "spiritual utility" accompanies both eating and working. As the Prophet said, a man working to feed his family is performing an act of worship as if he were praying. Man's life can be integrated around a sacred center only if qualitatively different types of utility exist simultaneously, explaining how the sacred is always present without conflicting with man's other needs. Indeed, every aspect of life is sacred in Islam because nothing is outside of the Absolute, and no aspect of life is profane because everything is attached to God. For the Faithful, there is no question of allocating resources between the sacred and profane or between spiritual and other needs because everything has a spiritual context. They find the ultimate purpose of any action in God because no end is beyond Him and no end has sufficient reason if it stops short of Him.

Thus, the neoclassical approach to spiritual and other needs collapses into one type of utility, creating trade-offs that do not exist in reality, but

only as an illusion of the *nafs*. Indeed, the trade-offs could only exist when one does not recognize the spiritual nature of all activities on the one hand, and one vitiates spiritual activity with an inferior intention on the other. Through such false trade-offs, the Chicago School's neoclassical approach sets the stage for the sacrifice of spiritual needs.

The same principle applies to the neoclassical approach to the opposition between spiritual needs and anti-spiritual desires. For example, the Chicago School's literature on the economics of crime suggests that the spiritual costs of crime can be traded off against its material benefits in a single measure of utility. Obviously, this is a theory of choice for the *nafs*, for such costs and benefits are incommensurable. The faithful, on the other hand, recognize that spiritual benefits cannot be traded-off against criminal gain, for this would require that there be a further end beyond God which aggregates both, and this contradicts the Truth that God Is the Absolute. The faithful, therefore, do not engage in the type of calculation that the Chicago School suggests. Unlike the *nafs*, the *ruh* or spirit recognizes that good and evil are qualitatively different, relating to different intentions because there are qualitatively different criteria upon which to make a choice. The *ruh* judges the alternatives not with respect to utility, but with respect to the Truth by examining the reasons behind good and evil desires. Indeed, the *ruh* would not adjust its estimate of a "mono-utility" if the material benefits of crime increased. Moreover, not only is the neoclassical approach irrelevant for the *ruh*, it is unstable for the *nafs* since ignorance of the Truth is not necessarily permanent. God saves whom He wills, and the *ruh* can overcome the *nafs al-amarah* with the Truth, transforming it into the *nafs mutma'innah*, or "soul at peace." Thus, this neoclassical approach to both spiritual complements and opposites corresponds to a theory of choice for the *nafs*, not the *ruh*.

Economists attempt to make all choices commensurable, reducing them to a single intention, by employing the concept of "indifference." If, for example, a person rates options A and B as being equally good, the person is "indifferent" between them. This indifference is only possible, however, when there is one intention—multiple intentions will lead a person to prefer option A to B, or vice-versa, depending on which intention has higher priority. In other words, indifference is impossible and preference is necessary when there are two or more intentions. When many options are compared, a set of points that a person ranks equally form what economists call an "indifference curve." These curves are central to neoclassical economic analysis because advanced mathematics can be applied to them, i.e., maximize utility according to the shapes of indifference curves. According to neoclassical theory, the saint and the money-grubbing miser simply have differently shaped indifference curves. While this may be true for tastes that reflect a single intention, it cannot be true for values that reflect multiple intentions. It is only by

reducing values to tastes that the Chicago School claims to have a theory of choice that is independent of ethics. But this theory of choice itself incorporates bad ethics into economics and is only appropriate for the *nafs*. Indeed, the theory even denies that there is an inner battle between the *ruh* and the *nafs*, for the theory maintains everything is reducible to a single intention under indifference curves. The Chicago School, therefore, denies the teaching of the Prophet that we must continuously engage in the inner *jihād*, because for them no such battle exists.

Some economists recognize that this is obviously false, and that there are major problems with the neoclassical approach of the Chicago School. They attempt to limit the application of indifference curves to situations in which the alternatives are qualitatively similar and morally neutral, such as optimally allocating one's time to questions on an exam to maximize one's score. Because a variety of further intentions are consistent with maximizing one's score on an exam, such situations accommodate multiple intentions. While this approach to limiting the use of indifference curves is spiritually neutral, it suffers from the fact that these situations are too few to cover essential economic choices since spiritual considerations appear everywhere. For example, how much wealth one strives for and the nature of economic institutions are spiritual choices in traditional Islamic civilization, for nothing is profane. Without explaining the "budget constraint" and the institutional environment, economic theory is fatally incomplete, abstracting from the essence of the problem it seeks to solve.

Moreover, applying indifference curves only to goods such as food and clothes does not eliminate the problem of spiritual neutrality. Indeed, when one is over-consuming food and clothes for pleasure, indifference curves can exist between such tastes. But when one is directing needs for food and clothes to support spiritual work, they are not substitutes and indifference curves do not exist -- one cannot wear food or eat clothes. They can only be viewed as substitutes towards a single intention such as pleasure if the *nafs*, not the *ruh*, is in control. In this sense, the incommensurability of real needs is based on values, whereas the commensurability of arbitrary desires is based on tastes. By reducing needs which are not substitutes to desires which are through indifference curves, neoclassical theory once again reduces values to tastes, and violates spiritual neutrality. The range of spiritually neutral economic choices to which indifference curves apply is far narrower than any neoclassical economic approach accepts. Indeed, economists who recognize that indifference curves do not exist for spiritual needs must, therefore, justify why they should exist between other qualitatively different needs.

Hence, the indifference curves which are central to neoclassical theory force economists to choose between spiritual neutrality and logical completeness. Economists can either apply their theory of choice in a

spiritually neutral way, leaving essential economic questions unanswered and the theory incomplete; or economists can provide answers to essential questions by using a theory of choice which is not spiritually neutral. Islamic economics does not have this problem because it denies the existence of indifference curves between a hierarchy of qualitatively different spiritual and other needs on the one hand, and spiritual needs and anti-spiritual desires on the other. Islamic economics recognizes the existence of indifference curves within each qualitatively comparable "level," and applies ethical analysis for differences between levels. Since only the *nafs* conflates values and tastes, ignoring the reasons for these "preferences," neoclassical economics is only a theory of choice for the *nafs*. While indifference curves reflecting a single intention can exist for different tastes, they do not exist for different values. Whereas "there is no arguing about tastes" since they do not depend on the truth and do not require justification, there is ethical argument about values which depend on truth and require justification. Islamic economics recognizes these crucial distinctions, and thereby combines ethics and economics in a theory of choice for the *ruh* which is spiritually neutral—it recognizes God rather than utility as the Absolute—and logically complete.

Any effort at collective *ijtihād* on the capital market should, therefore, beware of neoclassical errors. Developing an Islamic capital market requires not only a correct understanding of *ijtihād*, but also a correct vision of economics with which to inform *ijtihād*. One cannot base economic analysis on secular economic fallacies any more than one can base *ijtihād* on anti-Islamic principles. Indeed, modernists usually substitute *taqlīd* of the great imams like Abu Hanifa and his school of law with *taqlīd* of some economists like Milton Friedman and the "Chicago School of Economics." It is useful to remember that not long ago many people were arguing for *taqlīd* based on Karl Marx rather than Abu Hanifa, despite the fact that many religious leaders recognized and predicted that communism must fail because it inverts spiritual principles.<sup>9</sup> The point is not that the Islamic world should blindly follow the imams of the past, but that one should not simply replace them with secular economists today. Indeed, blindly following Milton Friedman instead of Karl Marx may simply replace one error with another. Adopting the neo-classical fallacy which inverts spiritual principles necessarily leads to self-destruction, for the Qur'an and hadith continuously warn man of spiritual indifference, regardless of whether it is applied to communism or any other economic system. In short, it is more dangerous to base *taqlīd* on secular economic thought than on past Islamic thought, and understanding the latter can play a key role in refuting the former to correctly inform *ijtihād*.

In brief, the danger of blindly following neoclassical economics in developing an Islamic capital market is illustrated by the secular analy-

sis of *riba*. (Regardless of how one defines *riba*—“preferences” may generate either extremely high or low interest rates—the point is not to examine Islamic arguments on interest, but to examine whether the neo-classical justification of it is spiritually neutral.) Secular economists usually attempt to justify the morality of *riba* by arguing that consumption today gives more utility than consumption tomorrow, so that a lender must restrain himself in order to lend money. This theory was popularized by Irving Fisher, a major economist on capital markets, and the theory is taught in economics courses on savings and investment. (While we recognize that this is not the only neoclassical justification for *ribā*, it is a popular one. Our purpose is simply to illustrate that this is not spiritually neutral.) According to this argument, the lender’s “effort” to restrain himself from consumption deserves a reward just as the effort of labor in production deserves a reward. This secular economic argument equates not consuming too much, which a Muslim is supposed to do even without compensation, with the *jihād* of a man laboring to support his family. These two types of “effort” are not, however, comparable from the Islamic point of view. Abstaining from an evil such as overconsumption is not something that morally requires a payment, whereas accomplishing a good such as working to support one’s family clearly deserves compensation. As the Prophet instructed, “Pay the laborer his wages before the drying up of his sweat.” He did not say pay the person who has more money than he needs today extra money tomorrow so that he will not commit the sin of consuming too much today.

The real effort is to abstain from *riba*, not simply restraining oneself from consuming too much today. Secular economists often respond that abstaining from *riba* will ruin the economy. The Qur’an counters this threat by stating that the devil threatens the Muslim with poverty when he abstains from *riba* whereas God promises him blessings. God’s promise is empirically verifiable by the simple fact that stock investments are much more profitable than bonds in the long-run. For example, statistics from Ibbottson Associates show that \$1 invested in long-term government bonds in 1926 would be worth \$33.73 today whereas \$1 invested in stocks on the New York Stock Exchange would be worth \$1,370.95 and \$1 invested in the smallest 10% of stocks on the exchange would be worth \$4,495.99.<sup>10</sup> If someone objects that small or short-term investments cannot be accommodated by the stock market to offer superior returns to capital, the response is that in these cases abstaining from *riba* does not lead to the dire poverty economists threaten Muslims with.

On the contrary, guaranteed interest actually guarantees poverty for future Muslim generations. As any natural resource economist will testify, maximizing the value of nonrenewable resources such as oil requires selling practically everything within 50 to 100 years. Discounting the consumption of future generations values their consumption of these

nonrenewable resources at practically zero. The “optimal” sales plan is to exhaust nearly all of the resource within a few generations, after which the resource has little economic value because a positive interest rate makes \$20 for a barrel of oil today worth much more than \$20 for the same barrel 50 years from now. Therefore, future generations are not properly represented in the economic equation, a case of “missing markets” in the language of economists.

Moreover, labor has a spiritual purpose ultimately directed towards God in conformity with Truth whereas *riba* does not, for the Prophet said that a man working to feed his family is performing an act of worship as if he were praying. Indeed, the Shari'ah makes the effort to earn one's “daily bread” a religious act as obligatory as specifically religious duties, and gives religious meaning to all acts which are necessary for a Muslim's life, but not those which are exploitative luxuries such as *riba*. This is why the Qur'an implies that to work for a living and to be charitable to one's family, the opposite of hoarding wealth with *riba*, is tantamount to defending the faith.<sup>11</sup> The Prophet stressed this fact when a young man with a strong physique was running to his shop through the area where the Prophet was marshalling his men to repel an enemy assault. Someone remarked that he wished the youth would use his body and health to run in the way of God by enlisting to defend the faith. The Prophet responded, “If this young man runs with the intention of not depending on others and refraining from begging, he is in the way of God. If he strives for the livelihood of his weak parents or weak children, he is in the way of God. If he tries to show his health out of pride, he is in the way of the devil.”<sup>12</sup> By defining *maṣlaḥa* as the effect of conformity to Truth, Islamic economics opposes the erroneous neoclassical definition as personal desire. Only a vision of economics that correctly recognizes the spiritual possibility of Truth as motivating cause and *maṣlaḥa* as effect can inform the *ijtihād* to develop Islamic capital markets.

This brief example suggests how *taqlīd* of Western economists like Milton Friedman can lead to ruin in the formation of Islamic capital markets.<sup>13</sup> Indeed, *taqlīd* based on an older but truly Islamic *ijtihād* is preferable to the modern *taqlīd* of Western economics based on a secular *ijtihād*. Even if this *taqlīd* is accidental, Muslims must never forget that blindly following secular economic thought, whether it be neoclassical or Marxist, eventually leads to ruin. And this accidental *taqlīd* is the real danger in the current environment. While some modernists argue that a *fatwa* is not necessary to justify the *taqlīd* of Western financial institutions, other Muslims often unknowingly confuse a *fatwa* which supports *taqlīd* of the West with a real *ijtihād*. The two are obviously completely different, just as an occupied territory is different from an independent state.

However, *taqlid* of past legal rulings on economic matters is also dangerous. While the Islamic view of man as God's servant (*'abd*) and vicegerent (*khalifat Allah fi al-arḍ*) has not changed, the circumstances according to which man fulfills these roles and makes his choices have. In today's complex environment of industrial production and institutional trade, *taqlid* is no longer possible. Early *fatāwa* dealt with relatively simple economic situations in which exchange was more individual than institutional, and production was more agricultural than industrial. Because questions about just and unjust transactions were simpler, the *faqih* did not need the expertise of others and could make legal deliberations alone. This is extremely difficult today since the knowledge required to deal with the complex environment is enormous, requiring specialized investigation in several areas. Moreover, early *fatāwa* dealt with transactions within *dar al-Islam* when Islamic civilization was politically and economically dominant, and did not address the international trade of today when many Muslim countries are dominated economically if not politically. For all these reasons, past *fiqh* on economic matters does not necessarily apply to the current environment, and it is necessary to look to the Qur'an and Sunnah for guidance.

The correct methodology is to apply Islamic principles to economic policy, integrating ethics and economics around the three essential principles of *tawhid*, *tazkiyah*, and *'umrān*. All three principles have important implications for the Islamic view of wealth, and by extension, the role of capital markets in an Islamic society. Applied to wealth, the Truth that God is the Absolute requires that man recognize that wealth is a means which serves his spiritual interests, not an end in and of itself. If the Absolute is that which requires no further justification, then the first principle excludes the possibility of money or anything else being viewed as a self-sufficient end. Moreover, the first principle obviously requires that the Faithful have in view God rather than any other good as their ultimate end, for God can never be a means to a further end, and to suggest otherwise is to deny that God is the Sovereign Good "requiring no justification in terms of a higher good."<sup>14</sup>

The second principle, *tazkiyah*, requires that man's will and sentiment be pure, willing and loving all things for God. Purity requires that the will of *homo Islamicus* should keep in view the Sovereign Good, and view all things in their connection with this Good. His sentiment should be objective in loving all things in their Divine context. It would be illogical and against Truth for *homo Islamicus* to will or love things outside their Divine Cause, for that would constitute the sin of idolatry and is "to hate indirectly the Cause from which all perfection and all love derive."<sup>15</sup> The second principle, therefore, requires that man must not be passionately attached to wealth, that he must be grateful to God for his *rizq* (provisions) viewing nature as an *ayat* of Allah, and that he must be

generous in his dealings with others. Indeed, *zakat* is based on the same root as *tazkiyah*, showing how generosity is intimately connected with purity.

The third principle requires that man accomplish the good in building civilization. This requires that man should not waste his God-given talents and resources, neither underutilizing them and neglecting to fulfill his real needs nor exploiting them in the service of greed rather than God. In accomplishing the good, the third principle requires man to be vigilant and not slothful, building wealth and civilization to fulfill real spiritual and other needs and not abuse them for the sake of passion.

These three principles, therefore, show that Islam recognizes the importance of wealth in a hierarchy of spiritual and other needs, or *masālih* of man. The Islamic economic hierarchy recognizes that external goods such as wealth are means to goods of the body such as health and beauty, which are in turn the physical support for the spiritual work which manifests itself in intrinsic virtue, the "goods of the soul." The Islamic principles of *tawhid*, *tazkiyah*, and *'umrān* regulate this hierarchy and integrate man's spiritual and other needs into a meaningful whole, realizing and implementing the *shahadahtayn* (the fundamental witness-es of faith). In this sense, Islamic economics recognizes the possibility that man can be motivated by the Truth or God rather than utility or happiness in eliminating evil and accomplishing the good.

Islam, therefore, clearly recognizes the role of capital markets in raising funds for companies and projects that help the community fulfill its physical and other needs while providing necessary liquidity. But the operation of the capital market cannot betray the purpose of its existence which is determined by these three essential Islamic principles. Islamic values must be in the marketplace as well as the mosque, for God Is the Witness to all contracts. Therefore, companies and investors must use resources ethically in a way which is consistent with these principles, raising many questions on how the capital market can be used as a means to wealth or development that supports the spiritual ends of society. Such questions cannot be answered by simply assuming that the capital market or wealth is an end in and of itself. Indeed, the principles imply that freedom is not an unconditional right, but is the result of fulfilling one's responsibilities. It is self-contradictory to argue that human dignity gives unlimited rights to the basest of men, allowing them to destroy what makes up man's real dignity, his attachment to God.

Several questions follow that suggest the kinds of responsibilities these principles imply for companies and investors. The questions are intended to be suggestive, not exhaustive, and relate directly to the equity rather than debt market. Although several of the questions apply to both, they are placed in the context of the stock rather than bond market because of the concern that the latter ultimately contradicts essential Islamic princi-

ples. More investigation is needed to determine distinctions between types of bonds, and what types are Islamically acceptable, e.g. bonds for public works projects such as airports.

Turning first to companies, these principles obviously raise questions about corporate responsibilities to customers, employees, and shareholders. Is it Islamically acceptable, for example, for companies to use money raised in the capital market to create entry barriers which inhibit competition, allowing companies to charge their customers higher prices? The Islamic principles clearly show that this would be unacceptable, yet this has occurred in several industries in the United States.<sup>16</sup> Can companies treat some shareholders differently than others, even when they make similar investments? Justice requires that investors be treated equitably, and that arbitrarily treating some shareholders better than others is unacceptable. And what type of technology will the companies buy with the capital they raise in the stock market? Case studies by the Appropriate Technology Institute clearly show that the technology sold to developing countries by the West cannot be transplanted and is often inappropriate for its needs. E. F. Schumacher, the economist famous for popularizing appropriate technology, has demonstrated that large-scale Western technology is often not in the best interests of the people.<sup>17</sup> Some economists may object that the market always produces the most efficient types of technology, but research by the Appropriate Technology Institute shows this is not always the case and inappropriate technology can conflict with spiritual principles. After billions of dollars have been loaned to developing countries to buy inappropriate technology with such dismal results, it is time to consider more appropriate technologies. And what responsibilities do companies have to the environment and to future generations, both with respect to pollution and to resources? Is it acceptable, for example, for companies to use capital from the stock market to deplete nonrenewable resources within 50 or 100 years because this maximizes financial gain? Once again, this is contrary to Islamic principles, but is the regular practice of the oil industry which represents some of the largest publicly traded companies in the world. In short, capital must be used, not abused, according to Islamic principles if the idea of an Islamic capital market is to have any meaning.

Although the previous questions highlight differences between Islamic and secular stock markets, there are several areas of common concern, particularly in providing investors with complete information on corporations; otherwise, unscrupulous brokers and companies can deceive investors into purchasing practically worthless shares, as was common in the early days of the U.S. stock market and is still occurring to some extent today. Only in the last decade has the U.S. Securities and Exchange Commission closed notorious brokerage firms like Blinder and Robinson, known to experienced investors and industry experts as

“Blind'em and Rob'em.” This brokerage firm would routinely create a company in which it was the only “market-maker,” or transactor of sales, and create an enormous spread between the “bid” price and the “ask” price, making an enormous profit on the difference. To trick potential investors into buying shares, the brokerage firm would tell them that the company manufactured something morally commendable like bibles. It would then manipulate the stock price by sending it higher and higher, moving investors into and out of the stock (known as “churning the accounts”). On each transaction, the brokerage firm made a huge profit. The firm would continue to manipulate the stock price higher before bringing it crashing down and wiping out the investors who were left owning shares. Then the process would begin again with a new round of investors. Certain types of stocks today are still notorious for scandals, such as “penny stocks” in gold or oil companies which attract investors with false promises of vast discoveries of gold or oil deposits. There should, therefore, be investigaion of a large drop in a stock's price to ensure there is no manipulation.

Similarly, unscrupulous brokers must be prevented from selling their own shares to their customers at unnecessarily high prices by buying shares for themselves before their customers. However, the elimination of these swindles is not sufficient to make the market “Islamic,” because the Islamic market concerns itself with other ethical questions as well. Moreover, the function of all participants such as market-makers and dealers must be examined and justified in the light of Islamic principles.

Turning to investors, Islamic principles clearly raise questions about the investments available to them. Investments in liquor and casino stocks, for example, are obviously illegal. But what about futures and options trading on companies selling halal products? Futures contracts on stocks requires more study, and should be stopped until they are properly analyzed. (Of course, futures contracts on commodities require the seller to actually have the commodity specified in the contract.) Similarly, options are questionable because they give the right of one investor to buy shares from or sell shares to another investor before a given time at a pre-determined price in exchange for a fixed, irretrievable payment. Many scholars argue that this type of transaction encourages speculation and allows exploitation, both of which are against Islamic principles. Similarly, one must answer the question of how much leverage is Islamically permissible when investing in stocks? Can investors put 10% down in the hope of greater profits, and pay interest on the 90% balance? This was the policy of the New York Stock Exchange before the stock market crash of 1929. Afterwards, the minimum investment was increased to 50% because such high leverage contributed to the collapse of prices, creating instability by encouraging speculation. Such destabilizing speculation is clearly against Islamic principles, and is the

major reason some modernists argue that bonds are necessary since stocks are unstable. Yet, many economists have pointed out that the presence of debt financing and speculation is a major cause of stock market instability in the first place.<sup>18</sup> This is especially important in the current market environment when price-earnings ratios are at extremely high levels. In the past year, Alan Greenspan, Chairman of the U.S. Federal Reserve, has repeatedly warned investors to invest cautiously, clearly discouraging leveraged investments which increase market volatility. This is good advice because price-earnings ratios and market volatility in the U.S. have now reached levels similar to those before the market crash of 1987. Some economists argue that the volatility of the stock market is not rational, and information systems on company performance and stock prices must be better utilized. Therefore, trading rules that limit leverage are critical to stabilizing the stock market and maximizing investor safety. Short-selling also increases instability, and is clearly against Islamic principles. Under trading rules that allow leverage and short-selling which decrease stability, fewer investors will prosper from the growth of publicly traded companies and fewer funds will be available for the capital market in the long term.

Neoclassical economists often argue that regulations that reduce choices for investors and companies are harmful. They argue that one must contradict the essential Islamic principles of the Qur'an or Sunnah because of the *maṣlaḥa* of the community, the relativity of *fiqh*, the absence of alternatives, or a combination of all three. However, those who are engaged in collective *ijtihād* must defend the Islamic economic approach using applied ethics from these erroneous charges, and we will make a few suggestions in this regard.

Let us begin with the last argument, lack of alternatives. Actually, this is a variation of the *maṣlaḥa* argument since it derives its force from the harm that would befall the community if it abstained from the economic activity in question. As the earlier discussion on the principles of an Islamic capital market showed, alternatives do exist, but only the lack of creativity and desire to make an effort prevent their implementation. Therefore, this section focuses on the first two arguments used by neo-classical economists to create obstacles to the development of Islamic alternatives, the *maṣlaḥa* of the community and the relativity of *fiqh*.

As pointed out earlier, what is relative must conform to the absolute, not vice-versa. Scholars in *usul al-fiqh* have maintained that arguments based on what is relative (such as *maṣlaḥa* and time) are not valid against arguments based on what is absolute, namely, the Qur'an and Sunnah, as well as the principles they necessarily imply. Erroneous arguments that contradict the absolute based on the relative make the relative absolute, contradicting the first principle of *tawhid*. Without absolute and eternal standards based on *tawhid*, there is no basis upon which to evaluate

either *maṣḥala* or changes in time. Consequently, there is no basis on which to purify individuals and society from evil or to accomplish the good, thereby contradicting the second and third principles of *tazkiyah* and *'umrān*, respectively.

The argument that man can determine what is in his best interests by thinking about *maṣḥala* without referring to Revelation is absurd. The Qur'an commands man to think about his interests with an intelligence which is pure (*salim*) but that is only possible if one follows the Shari'ah. When passionate desires control man and he breaks the Shari'ah, his intelligent alone is not sufficient for him to determine what is in his best interests.

Similarly, the fact that some parts of *fiqh* are relative cannot be used to argue that all parts are relative. This erroneous argument implies that everything is relative, which itself is self-contradictory. One scholar answers this absurd proposition in the following manner:

Relativism sets out to reduce every element of absoluteness to a relativity, while making a quite illogical exception in favor of this reduction itself. In effect, relativism consists in declaring it to be true that there is no such thing as truth, or in declaring it to be absolutely true that nothing but the relatively true exists; one might just as well say that language does not exist, or write that there is no such things as writing. In short, every idea is reduced to a relativity of some sort, whether psychological, historical, or social; but the assertion nullifies itself by the fact that it too presents itself as a psychological, historical, or social relativity. The assertion nullifies itself if it is true, and by nullifying itself logically proves thereby that it is false; its initial absurdity lies in the implicit claim to be unique in escaping, as if by enchantment, from a relativity that is declared alone to be possible.<sup>19</sup>

Thus, arguments which contradict the absolute because of *maṣḥala* or time are fallacious. Unfortunately, secular economics combines both errors in a way which is even more extreme than that of Najm al-Din al-Tufi who argued that *maṣḥala* has priority even over the Qur'an and Sunnah. Secular economists and some Muslims have used this type of argument against developing a truly Islamic capital market. Of course, specialists in *usul al-fiqh* recognize the danger of Tufi's argument, and have developed an extensive literature on the appropriate use of *maṣḥala* in legal arguments. The scholars have strongly rejected radical interpretations of *maṣḥala*, as the following quote from Zahid al-Kawthari's criticism of Tufi illustrates:

One of their spurious methods in attempting to change the *Shar'* in accordance with their desires is to state that "the basic princi-

ple of legislation in such matters as relating to transactions among men is the principle of *maṣlaḥa*; if the text opposes this *maṣlaḥa*, the text should be abandoned and *maṣlaḥa* should be followed." What an evil to utter such statements, and to make it a basis for the construction of the new *Sharʿ*!

This is nothing but an attempt to violate the divine law (*al-Sharʿ al-Ilahi*) in order to permit in the name of *maṣlaḥa* what the *Sharʿ* has forbidden. Ask this libertine (*al-fajir*) what is this *maṣlaḥa* on which you want to construct your law? . . . The first person to open this gate of evil . . . was Najm al-Tufi al-Hanbali . . . No Muslim has ever uttered such a statement . . . This is naked heresy. Whoever listens to such talk, he partakes of nothing of knowledge or religion.<sup>20</sup>

Although in the Islamic world Tufi was clearly unsuccessful in his attempt to abuse the concept of *maṣlaḥa* and create heretical legislation, unfortunately, in the West, his British counterpart Jeremy Bentham was much more successful. Bentham played a key role in the development of the secular economics that now opposes the development of a truly Islamic capital market. Bentham defined *maṣlaḥa* in terms of individual desires, regardless of whether they are from the *nafs al-amarah* or not. Modern economics uses the same approach by defining *maṣlaḥa* as any voluntary choice. According to this theory, more choices are always better because any voluntary exchange supposedly increases the *maṣlaḥa* of society (assuming it does not create a negative "externality," or negatively affect others). Islamic rules on ethics in the capital market, according to this theory, are wrong because they reduce the choices of the people. Modern economics claims to be for the *maṣlaḥa* of society by maximizing these choices in accordance with the Pareto principle that "nobody can be made better off without anybody being made worse off."

From the Islamic point of view, this definition of *maṣlaḥa* is absurd and simply replaces serving God with serving one's passions in terms of utility. Indeed, the theory makes the relative absolute by subordinating Truth to desires, not distinguishing between "the mental states involved in believing something that really is true and a successful deception."<sup>21</sup> The neoclassical definition of *maṣlaḥa* ignores whether an action or intention is in conformity with the Truth of the Absolute, allowing an egoistic illusion to be preferable to the bitter truth, and a complete delusion that one has realized the meaning of existence to be the same as actually doing so. It is, therefore, irrelevant to economics if the perceived *maṣlaḥa* is false as to its object or level. In the latter case, "the object can be good, but happiness can be wrong if it cuts it[self] off from its Divine context . . ."<sup>22</sup>

Such false happiness or *maṣlaḥa* is unacceptable from any spiritual point of view. If the *nafs al-amarah* is making choices instead of the *ruh*, then fewer choices are better for both the individual and society. As al-Ghazzali said, some men have to be driven to heaven with a whip. Conforming capital markets to Islamic principles by eliminating evil choices and creating good choices is the true definition of *maṣlaḥa*. Unfortunately, many Muslim scholars believe that Western economics can guide the Ummah to develop its capital markets, so it is very important to show how these economic arguments make *maṣlaḥa* absolute instead of God and invert essential Islamic principles.

Indeed, the economic definition of *maṣlaḥa* destroys the Islamic integration of the Ummah's spiritual and other needs by inverting the three key principles. The definition clearly inverts the first Islamic principle of *tawhid* by making *maṣlaḥa* absolute instead of God. It is to deny that God is the Sovereign Good "requiring no justification in terms of a higher good," and to replace God with *maṣlaḥa*.<sup>23</sup> According to economics, wealth can be an end in and of itself because *maṣlaḥa* is not subordinate to the Truth.

In replacing Truth with error, economics similarly inverts the second Islamic principle of *tazkiyah*. By making *maṣlaḥa* absolute, economics denies the need for purity in willing and loving all things for God, and makes its inversion unavoidable. Rather than eliminating evil, acting according to the economic definition accomplishes it. Without Truth to regulate *maṣlaḥa* and man's desires, he is bound to be passionately attached to wealth, ungrateful, and greedy (opposite *tazkiyah's* requirement of detachment, satisfaction, and generosity) as the Qur'an and Hadith testify.

Similarly, the economic definition of *maṣlaḥa* perverts the third principle of *'umrān*, substituting the accomplishment of good with an exaggerated concept of development which resembles an irrational swelling more than an intelligible civilization. Unlimited greed leads to the exploitation of nature and inevitably to an environmental crisis. Moreover, society decays from the pursuit of immoral pleasures associated with the economic definition of *maṣlaḥa*. This is obviously inconsistent with the third principle of building civilization to accomplish the good because it implies a wealth motivated by greed rather than spiritual principles. Indeed, this is the very starting point of Western economics, beginning with Adam Smith who examined the wealth of nations from the point of view material pursuits without spiritual ends.<sup>24</sup> He did not believe in revelation, and did not believe that God had an impact on things in the world. On the contrary, he was a Deist who believed that God's hands were "cut-off" from the world. Similarly, John Locke believed that God was unknowable, and men had to base civilization on human reason rather than revelation. For Locke, the purpose of govern-

ment is to facilitate the unlimited accumulation of money and exploitation of nature for material prosperity. "The negation of nature," he argued, "is the way toward happiness."<sup>25</sup> Such doctrines which underlie secular economics are a parody of the Islamic concept of *'umrān*.

Contemporary scholars such as Muhammad Sa'id Ramadan al-Buti have correctly argued that utilitarian philosophy, of which economics is the central application, represents nothing short of an attempt to destroy Islam.<sup>26</sup> To better understand the dangerous character of secular economics, it is helpful to understand more about Jeremy Bentham, the "founding father" of modern utilitarianism.<sup>27</sup> Indeed, Bentham hated God and religion and vehemently attacked both. John Colls, a former disciple of Bentham who later turned against him, described Bentham's volumes on religion as "volumes of blasphemy and slander . . . against the Author of Christianity and His people."<sup>28</sup> Bentham attacked the Church's teachings, arguing that bans against practices which did not "harm others," such as sexual indulgence, homosexuality, and others, actually decreased utility. For Bentham, questions about the truth of religion were irrelevant and relegated to second-order considerations if divorced from justifications in terms of utility.

His book *An Introduction to the Principles of Morals and Legislation* established the utilitarian principles on which the state should replace religious laws, thereby governing society with secular laws based on the science of legislative utilitarianism. After trying to influence others with the book before its publication, Bentham dreamed that he was "a founder of a sect, of course a personage of great sanctity and importance."<sup>29</sup> Bentham dreamed of himself as the savior of England and possibly the world, and when he was asked by "a great man" what he should do "to save the nation", Bentham replied, "take up my book, & follow me." Bentham implied that his book should replace Scripture as the best plan to save the world, for it is a book with "the true flavour of the fruit of the tree of knowledge." The angel who delivered it to him said that Bentham "had no occasion to eat it . . . as St. John did his: all I had to do was cram it as well as I could down the throats of other people."<sup>30</sup>

Given this account of Bentham's source of inspiration, one should have no questions about applying secular economics to the development of Islamic capital markets. Unfortunately, many Muslim scholars call for help from secular economists, not understanding the dangerous assumptions behind their economic policy recommendations. Secular economics has no category for motivation by the Truth because utility is absolute. Muslim economists can refute this approach by drawing on the valuable literature in *usul al-fiqh* which had a parallel refutation of Tufi. Scholars in *usul al-fiqh* must also be aware of the dangerous assumptions in neoclassical economics. The efforts of both groups of scholars can generate truly Islamic alternatives for the Ummah and refute the argu-

ments of modernists that an Islamic economy does not serve the *maṣlaḥa* of the society.

## Conclusion

Hence, *taqlīd* of secular economics and institutions is even more dangerous than *taqlīd* of scholars in Islamic law. Contemporary Muslim scholars must, therefore, have an accurate understanding of both *ijtihād* and Islamic economics on which to base policy on capital markets. Bad economic analysis can misinform the best *ijtihād*, just as an erroneous *ijtihād* can vitiate the best economic analysis. A correct understanding of both disciplines must be achieved through applying to both the three essential Islamic principles: *tawhīd*, the Truth that God is the Absolute; *tazkiyah*, the purification of man and society from evil; and *'umrān*, the building of civilization for the accomplishment of good.

By recognizing that Truth is the motivating cause of the Faithful in purification from evil and the accomplishment of the good, authentic *ijtihād* and Islamic economics can be combined to develop a truly Islamic capital market. The same analysis must also refute the erroneous legal and economic arguments of those who favor *taqlīd* of the West with a *fatwa*. If the current *ijtihād* fails to apply such essential Islamic principles today, the Ummah will certainly face a more perilous situation in the future, for nothing useful can be accomplished without the Truth.

Indeed, the most important cause of our current economic problems is lack of wisdom. Consequently, we do not know how to properly use the resources which God has blessed us with. The secular economist's argument that scarcity is necessary because everyone must have insatiable desires is a myth which the West has propagated. God's justice must be the source of our guidance, for wealth is God's wealth, humanity is God's creation, we are His vicegerents, and we must fulfill our duty to Him. God says the Truth, and may He guide us.

## Notes

1. For example, that avoiding evil is prior to doing good.
2. Geoffrey Brennan, "The Economist's Approach to Ethics: A Late Twentieth Century View," in Peter Groenewegen, *Economics and Ethics?* (New York: Routledge, 1996), p. 124.
3. *Ibid.*
4. Quoted from Tibor Machan, "Reason in Economics versus Ethics," *International Journal of Social Economics* (1996), p. 21.
5. C. Dyke, *Philosophy of Economics* (Englewood Cliffs, NJ: Prentice-Hall, 1981), pp. 10–11.
6. Frithjof Schuon, *Spiritual Perspectives and Human Facts* (Middlesex: Perennial Books, 1987), p. 93.
7. Humility, for example, has its source in one's total dependence on God, awareness of which prevents man from overestimating himself and underestimating others.
8. As Seyyed Hossein Nasr notes, Marxism is Christian charity without Christ. *The Need for a Sacred Science* (Albany: State University of New York Press, 1993), p. 152.

9. Frithjof Schuon, *Esoterism as Principle and Way* (Middlesex: Perennial Books, 1981), p. 94.
10. Ibbotson and Associates, *Stocks, Bonds, Bills, and Inflation: 1997 Yearbook* (Chicago: Ibbotson and Associates, 1997).
11. Muhammad Abdul-Rauf, *fa Muslim's Reflections on Democratic Capitalism* (Washington, DC: American Enterprise Institute), p. 5.
12. Al Ghazzali, *Ihya Ulum id-Din* (New Delhi: Kitab Bhavan), Vol. 2, p. 54.
13. As the first section of the paper will clarify, it is important to point out that an interest-free capital market does not by itself guarantee that the capital market is Islamic, for it is possible to have an un-Islamic capital market that is interest-free.
14. E.F. Schumacher, *Guide for the Perplexed* (New York: Battam, 1997), p. 58.
15. Frithjof Schuon, *Stations of Wisdom* (Bloomington: World Wisdom Books, 1995), p. 94.
16. The breakfast cereal industry represented by companies like Kellogg's and Post is a recent example. Only after the U.S. government applied heavy legal pressure did the industry's companies respond by reducing their prices. See F.M. Scherer's *Industrial Organization* for these and other examples.
17. E.F. Schumacher, *Small Is Beautiful: Economics As If People Mattered* (New York: Penguin, 1973).
18. M. Umer Chapra, *Towards a Just Monetary System* (Leicester: The Islamic Foundation, 1985), pp. 95-100.
19. Frithjof Schuon, *Logic and Transcendence* (Middlesex: Perennial Books, 1984), p. 1.
20. Masud, *Shatibi's Philosophy*, p. 163.
21. James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford: Clarendon Press, 1986), p. 13.
22. Frithjof Schuon, *Esoterism as Principle and Way* (Middlesex: Perennial Books, 1981), p. 102.
23. E.F. Schumacher, *Guide for the Perplexed*, p. 58.
24. Harry Landreth and David Collander, *History of Economic Thought* (Boston: Houghton Mifflin Co., 1994), p. 67.
25. Jeremy Rifkin with Ted Howard, *The Emerging Order: God in the Age of Scarcity* (New York: G.P. Putnam's Sons, 1979), p. 30.
26. Masud, *Shatibi's Philosophy*, p. 132.
27. The following account of Bentham draws from an article by Waleed El-Ansary on "The Spiritual Significance of Jihad in Economics," *American Journal of Islamic Social Sciences*, June 1997, p. 251.
28. Quoted from James Crimmins, *Secular Utilitarianism: Social Science and the Critique of Religion in the Thought of Jeremy Bentham* (Oxford: Clarendon Press, 1990), p. 148.
29. *Ibid*, p. 287.
30. *Ibid*, p. 315.