Shariah, Economics and the Progress of Islamic Finance: The Role of Shariah Experts

Concept paper presented to stimulate discussion at the Pre-Forum Workshop on Select Ethical and Methodological Issues in Shari`a -Compliant Finance SEVENTH HARVARD FORUM ON ISLAMIC FINANCE Cambridge, Massachusetts, USA Friday 21 April 2006

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Discussing the role of Shariah experts in the development of Islamic economics and Islamic finance calls for a look at the nature of economics and the focus of Shariah. The chief concerns of economics over the ages have been efficiency and equity. Shariah in its broader sense that gives primacy to objectives over rules and regulations shares these concerns. However the same may not apply to shariah meaning fiqh, i.e., laws codified at a particular time and place. The historical context in which we approach our subject today sends mixed signals. The schools of traditional Shariah learning had long tilted towards teaching codified fiqh with few insights into the objectives, the maqasid al-shariah. But the new assignments given to Shariah scholars trained in these schools increasingly called for paying attention to objectives while interpreting the rules. How far have they been able to meet this challenge, is one of the questions whose answer I will try to explore. I begin by first narrating what happened in the name of Islamic economics during the last century then trying to understand where we find ourselves today and how we arrived where we are in the business of Islamic finance.

The Islamic Economics Project

Islamic economics was conceived in the early part of the twentieth century as an antidote to socialism and capitalism—an Islamic response to what were perceived as God-less western ideologies. The emphasis was on justice. Freedom from colonial rule and all that it meant in terms of exploitation and oppression was to be accompanied by a return to Islam that stood for elimination of poverty and reduction in inequalities in the distribution of income and wealth. Islam would help securing these goals without socialistic regimentation depriving people of their freedoms and robbing them of their properties. Islamic economy would not allow labor to be exploited by capitalists and the environment to be despoiled by greedy profit seekers. The appeal in all this was to the objectives of Islam, the maqasid al-Shariah. There were few references to fiqh, to Shariah in the sense of laws and regulations as codified in early Islamic history. Those who championed the alternative vision were mostly modern educated people, university teachers, journalists, political activists, poets. Even among the Ulema expounding Islamic economic system very few could be characterized as experts in fiqh/Islamic law. Even though it was asserted that Islamic economic system would be free from interest and gambling-like speculation, the mechanics of interest-free banking did not occupy the center of the stage. That came much later, in the nineteen-
seventies, to be precise. That development brought in the Shariah experts whose role I propose to study and highlight, but before that there is something more to note in order to reinforce what I said above.

In the early nineteen-seventies I made a survey of writings on Islamic economics in English, Arabic and Urdu languages. Out of the seven hundred items included in the bibliography only 8 date before 1920. Out of these, only 2 deal with the subject of interest, the remaining dealing with distribution of wealth (2), history (2), trade (1) and waqf (1). Of the 14 entries in the following decade only one deals with interest, the remaining are spread over other subjects. The first writings on interest-free banking appear in the nineteen-forties. Out of a total of 28 writings on Islamic economics during this period, three are on interest-free banking. Among the remaining zakat and the Islamic economic system in general has the largest number of writings. Though the writers in this period include Ulema trained in traditional schools, the writings on interest-free institutions are not by them.

We have 156 entries for the nineteen-fifties which include several writings on interest and interest-free institutions but the writings on socialism, capitalism and on some other aspects of Islamic economy far outnumber these. I have also listed all writings on interest-free banking in English, Arabic and Urdu till 1967 in the appendix of my book Banking Without Interest. Out of the 18 items listed 9 belong to nineteen-sixties, 2 to the fifties, 3 to the forties and 4 are not dated. Few, if any, among the authors of these books are Ulema. As the above-mentioned survey would show, most of the writings on interest-free Islamic banking came in the sixties and seventies of the last century. But the flood of technical material on the subject started after the period I surveyed and that is where Shariah experts came into picture in a big way.

Shariah Experts

I have made this statistical digression to establish three points.

First, the project of Islamic economics launched in the twentieth century was much wider in scope than introduction of Islamic finance, as it was mainly focused on providing a just and humane alternative to the raging ideologies of those times, capitalism and socialism.

Second, the role of Shariah experts in launching that project was at best marginal. I hasten to add that I say this not to belittle the role of Shariah scholars but to put it in proper perspective. As we proceed to describe, they do have a very significant role in the contemporary practice of Islamic banking, much more than what we noted above in the context of early days of the Islamic economic project. But their role is rather technical whereas the main project from which Islamic finance branched out was civilizational, oriented as it was towards maqasid al-shariah, which have little to do with technicalities. As I will show in what follows, Shariah experts have been doing...
what their training equips them to do, and they have been doing it well. Unfortunately their training is no longer well designed to serve the maqasid al-shariah in circumstances very different from the environment reflected in the books they study. This places the entire burden of identifying the maqasid involved in any matter and finding ways and means of securing them on the individual Shariah expert. Furthermore, the Shariah advisory function also involves monitoring the consequences of adopting a certain course and, in the light of lessons learnt, changing course if necessary. Let me make it clear that the Shariah experts do care for maqasid al-Shariah. As I have argued elsewhere, there are numerous recent examples of fatawa given on the basis of maqasid. The problem in my opinion is not of willingness to take maqasid into account. The challenge comes from the nature of the task in the new environment. These are tasks calling for not only economic analysis but drawing upon latest developments in other social sciences like sociology, psychology, political science and management. Lacking proper institutional arrangements for training to do the task, with its necessary backup in terms of fundamental research, instances of malfunction have been increasing in recent years causing anxieties in the market and raising the possibility of a backlash in terms of consumer rejection.

Third, it is only natural that the progress of Islamic financial industry be evaluated in the context of the larger project of Islamic economics of which it is an offshoot. That many find Islamic finance failing to serve the larger goals of Islamic economics should not be shocking in view of the short period of time since actual practice started in mid nineteen seventies and complexity of the task itself.

The first few fatawa shar‘iyah dealing with Islamic banking and finance and providing us with a window upon role of Shariah experts in the development of Islamic finance date late nineteen seventies and early eighties. They originated from the Dubai Islamic Bank, Kuwait Finance House and Faisal Islamic Bank in Sudan. Most of the early fatawa deal with well-known contracts like mudarabah and musharakah along with tijarah (trade). Murabaha was not in picture in this early phase, nor were salam/istina’. I am not sure about leasing (ijarah), but it could have been on the agenda of Kuwait Finance House. Issues relating to trade dominated the scene, giving rise to questions and answers relating to guarantees and bills of trade. There was no conscious effort to find Islamic substitutes for conventional financial products (which is different from what was obviously in focus: finding Islamic ways to do what needed to be done). In the nineteen eighties the two big conglomerates, Dar al-Mal al-Islami and al-Barakah, established in the beginning of the decade, became the most important sources of fatawa, even though smaller entities like the Jordan Islamic Bank had their independent Shariah Boards some of whose fatawa are available in print.

The emergence of Islamic financial institutions (Islamic banks, Islamic insurance companies, Islamic investment companies, etc.) was preceded by lot of homework that involved Shariah experts. Some of these works are available in the form of committee
The involvement of *Shariah* experts in the project was also crucial in giving legitimacy to the newly established Islamic financial institutions. For the Muslim masses under colonial rule, western financial institutions were an extension of colonialism, an instrument of exploitation like other colonial institutions. Introducing banks and insurance companies in Muslim societies was, therefore, always suspect as the history of nineteenth century shows. Government officials and businessmen with a vested interest would have never succeeded in selling these institutions to the people.

It is time to mention state-sponsored bodies occupied with the task of Islamization’ of banking operations in Pakistan, Iran and Sudan. *Shariah* experts served on these bodies, either as members as in case of the Council of Islamic Ideology in Pakistan or as advisors to the central bank of the country, a pattern followed later on in Malaysia and Indonesia, both of which have in-house committees of *Shariah* experts. Pronouncements of the Council of Islamic Ideology and other official bodies mentioned above are, mostly, available in print.

About this time, in the middle of nineteen eighties, big multinational financial corporations started operating in the Islamic financial market. Whereas the two biggest Islamic conglomerates, Dar al-Mal al-Islami and al-Barakah were managing funds around 5 billion dollars each at the peak of their success, Citibank, HSBC and ABN AMRO, managing hundreds of billions each started aggressively, first to prevent their rich Arab clients from deserting them in favor of Islamic banks and then to mop up the surplus liquidity in the oil-rich Muslim countries. The small but rich Muslim countries of the Persian Gulf also entered the fray at the official level. Even after the introduction of *murabaha, ijarah, salam and istisna’* during the eighties, the Islamic financial market needed more sophisticated financial products to handle the estimated three hundred billion dollar funds under management at the dawn of the twenty-first century. The impulse to try duplicating conventional financial products seemed natural.

Some important departures from early practice in the matter of *Shariah* advisement need be noted at this stage as they may turn out to have implications for our subject of study: role of *Shariah* experts. Most of the *Shariah* experts serving the Islamic financial industry in its infancy were not well versed in the English language. This changed. Western multinationals marketing Islamic financial products needed *Shariah* experts who could read, write and speak English. That was a scarce commodity in late eighties and continues to be so. Secondly, we find increased secrecy and reduced transparency in this later phase. Being private institutions the new entrants were under no obligations to make public all that their *Shariah* experts told them. Thirdly, those issuing *fatwa shar’iyah* in the early seventies came from an environment in which *fatwa* was seen as a public good. This was not obvious in an environment in which conventional legal experts charged hefty fees per hour of consultation. Following the same practice in getting Islamic-juristic advice looked fine. And lastly, wide publicity...
of fatawa in the early phase served the additional purpose of assuring the niche markets for Islamic financial products that they were being served the halal they cherished. But with the passage of time the importance of this function declined sufficiently to be overshadowed by the advantages of reaping the advantages of innovative moves.

**Shariah Advisement Under Stress**

In anticipation of further empirical research I can only surmise that the trend of focusing on duplicating conventional financial products through a kind of Islamic financial engineering started in nineteen nineties and came to dominate the scene in the new century. The most important areas seem to be sukuk duplicating bonds and tawarruq duplicating bank-loans. Leaving detailed empirical research for more competent scholars, I shall proceed to describe the mal-function in Shariah advisement that occurred in the case of tawarruq [9], as an example.

I base my opinion that declaring tawarruq to be Shariah compliant is a case of mal-function in Shariah-advisement on two grounds. Firstly, it was necessary to evaluate the masalih (benefits) and mafasid (harms) involved, as adoption of this practice on a large scale (by financial institutions) was an entirely new thing without precedents in the entire history of Islam. In the words of some scholars, tawarruq masrafi is qualitatively different from tawarruq practiced at individual levels, person to person. Secondly, evaluating masalih and mafasid in case of wide spread practice of twarruq was beyond the capacity of Shariah experts, generally speaking, as it requires expertise not provided in Shariah schools. I think it is necessary to look at the ultimate macroeconomic consequences of approving this product. It is not possible to detect the full extent of the mafsadah (ill-effects) involved without doing so. The maslaha ( benefits ) cited by those approving the product mainly relates to the individuals. Also it is smaller compared to the public harm that would occur. In accordance with the well-established qaidah (dictum), the smaller private gain has to be given up in order [10] to avoid the lager public harm . Unfortunately the macroeconomic part of the above argument never came into focus in the deliberations on the subject. The point I wish to make is: It could not be considered because the kind of training it calls for is not given in Shariah schools. The ability to conduct economic analysis in order to delineate the consequences of allowing tawarruq is not available with Shariah experts, generally speaking. Let me briefly elaborate.

One of the banes of modern financial system is the proliferation of debt. Debt instruments dominate the scene. From money creation and supply of credit to investment and capital formation, in the domestic market and at the international level, everywhere it is accelerated proliferation of debt. Islamic economists since the earliest [11] dates but increasingly during the last three decades have pointed out that almost all major ills of the cotemporary economic and financial system are rooted in this phenomenon. Domination of debts leads to instability. It creates opportunities for
gambling-like speculation. It increases disparities in the distribution of income and wealth based as it is on interest. Islamic economists advocated an asset-based system of creating money and extending credit in which money loans will occupy a marginal role. The problem with tawarruq is it introduces money now, given in exchange of a larger amount of money in the future, thus opening the door for debt proliferation. As I noted earlier, arguments given in favor of tawarruq demonstrate complete unawareness of the macro economic consequences of debt proliferation.

It is not possible for me in this brief talk to go into further details in discussing the wider causes of mal-function in Shariah advisement. I only note that it occurred. I think it can occur again. I suggest the issue be discussed with the seriousness it deserves and at the level of scholarship it requires. It will be most unfortunate for the discussion to degenerate into a blame game. The matter is far too complex to be dealt with in terms of pronouncements of right and wrong, sincere or motivated, etc. To appreciate part of the complexity, let us remember that economists were always called upon to assist the Shariah experts by the sponsors of Shariah boards/ advisories. They participated in several conferences and seminars organized to sort out such matters as inflation, and indexation. They are invited to participate in non-voting capacities in such bodies as the OIC sponsored Fiqh Academy, Jeddah and the Fiqh Council of Muslim World League at Mecca and the Islamic Fiqh Academy, India. It remains to be researched how far this association served its purpose. If it still left something to be desired, why? In these days of specialized expertise it may be too much to expect anyone to be an expert in the whole of Shariah or in all branches of fiqh. So how realistic it is to expect one to be an expert in Shariah and economics simultaneously? All that can be said with certainty is that the current practice of Shariah advisement/auditing, buttressed by occasional hearings given to economists, is vulnerable to mal-function. As to how to fix it, we are yet to grapple with that problem. I do not claim to offer you any quick fix. I will consider my job done if I succeed in convincing you that a problem exists and deserves your attention.

Banking, insurance and investment were not the only financial institutions taking off from the Islamic economic project launched many decades ago. In several countries with a Muslim majority the project covered other areas of the economy such as trade, commerce and international economic relations. The establishment of the Islamic Development Bank and its numerous subsidiaries is an eloquent testimony to that. Even in the countries in which Muslims lived as minorities, there have been considerable efforts to reorganize Awqaf and harness them once again in service of the goals they served in Islamic history, e.g., educational improvement and health care, etc. Also there have sprung up official as well as private institutions for collection and disbursement of Zakat. Shariah scholars had a strong role in the conception as well as direction of these institutions. Last but not the least, teaching of Islamic economics and finance, and research in related subjects, spread throughout the landscape if Muslim education with the Ulema often taking a lead. It would be rewarding to cover these areas too as they are witness to the valuable contributions Ulema have made to Islamic economics and finance. But I stop here to enable you to focus exclusively on the most important part of a vast problem.
Summing up, I would like to reaffirm the important role Shariah experts played in the progress of Islamic economics and finance. However there has been some malfunctioning that needs looking into and correction. Further more, the issues we face are far too complex to be handled properly without some conceptual as well as structural changes in Shariah advisement. The future of Islamic economics and finance may well depend on rising to this challenge.


[2] See items # 393, # 419 and # 526 in the bibliography of the survey mentioned above.


[4] These number 246 followed by 176 in the first five years of the seventies. It should also be noted that 72 out of the 700 items in the bibliography are not dated.


[6] Fatwa of the Shariah Boards of Kuwait Finance House and Faisal Islamic Bank Sudan are available on their respective websites (www.kfh.com) and (www.fibsvudan.com) The website of Dubai Islamic Bank (www.alislami.co.ae) does not give details nor are its fatwa available in print, to the best of my knowledge. However several collections of fatwa from different sources are now available in print, on CD ROM and online. Among them: Economic Fatwas marketed by Harf and available online at (www.harf.com). Also see(www.al-islam.com)


[8] Names and brief CVs are available on some of the websites mentioned above.

[9] One who needs cash first buys something on credit, becoming indebted for a certain sum of money to be paid at a future date, then sells that thing for cash. The cash to be paid in future is larger than the cash one gets in the present. This method, used earlier for tiding over individual difficulties has been recently institutionalized by some Islamic financial institutions. Some material is available on the Internet. Google the word tawarruq. I have briefly dealt with the issue in: A Survey of the State of the Art in Islamic Banking and Finance in Theory and Practice, to be published by the Islamic Research and Training Institute, Islamic Development Bank, Jeddah. One recent writing on the subject is: Ahmad Mohammad Khalil al-Islamboli, al-murabahah wa-l ínah wa-l tawarruq bayn usul al- al-bunk wa khusumih, Journal of King Abdulaziz University: Islamic Economics, Jeddah, vol. 18/2005, Arabic Section, pp. 59-68, available at the website (http://islamiccenter.kaau.edu.sa/english/index.htm).


[11] I have reported some of these works in the fourth chapter of my book: Riba, Bank Interest and the Rationale of its Prohibition, 2004, Jeddah, Islamic Development Bank, Islamic Research and Training Institute, available at the website (www.irti.org)

[12] Reporting this does not imply that the practice is efficient or correct. The economists are there to elaborate upon the maslha aspect of the issues under discussion which are decisive in matters that are not covered by texts of Quran and Sunnah or analogical reasoning based on textual laws.