

Property Rights in Islam

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ABSTRACT

Ownership rights in Islam originate from the concept of *khilafah* (stewardship), which is a constituent of the Islamic faith. The *shari'ah* clearly and explicitly defines property rights and the institutions that safeguard them. Meanwhile, there exist certain ethical and legal obligations that govern the acquisition of private ownership. The use of whatever is owned is restricted by the prohibition of *ribā* and the legal obligation of paying *zakat*. These moral limits are meant to achieve two vital objectives: restoring *al-'adl* and promoting *al-ihsān*. *Al-'adl* and *al-ihsān* are both necessary and sufficient conditions for restoring equitable income distribution. The paper further argues that the Islamic law of contracts and obligations acknowledges economic freedom. Nonetheless, the government is expected to play an active role by providing the institutional infrastructure that facilitates the efficient allocation of resources.

I. INTRODUCTION

For centuries Islam has influenced (in varying degrees and intensity) the structures and the political developments of societies in the Middle East, India, and Southeast Asia. Even today, Islamic tradition leaves its imprint on the thinking and the lifestyle of a large number of people. In the past few years, an interesting and widespread development appeared in the field of Islamic law and finance. The outgrowth of modern banking on the basis of the *shari'ah* renewed an old debate on economics and culture, especially religious culture (Berger, 1994). Although the idea of enforcing religious discipline in business is not new, few would argue that culture actually determines economic behavior in today's industrial societies.¹ What makes this development interesting is the fact that Islam does not separate between markets and sanctuaries, nor does it separate between morals and economic rationality. Indeed, economic and financial practices in Islam are not bound primarily by the marketplace. *Fiqh* (jurisprudence) and the *shari'ah* in general form the background against which all attempts in finance and business find guidance and legitimacy. Hence, the reliance of Islamic finance on law is inevitable since Islamic law gives any financial practice its legitimacy and significance (Saleh, 1986).

Serious attempts have been made in explaining the principles, concepts, and viability of the Islamic concept of economics. Considerable effort has been devoted specifically to Islamic banking and finance. These efforts have clearly demonstrated that the financial system of Islam is no longer a theoretical myth but an existing reality.

However, an important issue that has received little attention in the current literature, despite its relevance, is the issue of property rights in Islam. What makes this issue particularly relevant and appealing is that economists have recognized that market transactions are exceptionally productive in reconciling private desires with public purposes.ⁱⁱ One central component of the legal foundation of the market relates to property rights over objects and circumstances. Effective and properly defined property rights are deemed essential in providing the preconditions for economic growth.

Thus, Islam, like Christianity and Judaism, acknowledges private ownership of assets insofar as this is in conformity with the Islamic law. In fact, the Qur'ān (the foremost source of Islamic Law) contains various rules and provisions which curtail to a certain extent the rights of ownership (Rodinson, 1986). For example, the Qur'ānic prohibition of usury (*ribā*) and the *shari'ah's* prohibition of speculation (*gharar*) constitute two landmarks of the Islamic legal system. Both create a constraining factor on the technique of contracting (Saleh, 1988).ⁱⁱⁱ Yet, certain institutions, like *al-hisba*, are deemed necessary to define and safeguard ownership rights (Bashir, 1998).

The objective of this paper is to give an overview of the ownership rights in Islam, the acceptable means for acquiring wealth, and the Islamic restrictions on private and public property. Section II below discusses the concept of ownership in Islam and sketches, in concrete terms, the Islamic requisites on property acquisition. Section III discusses the sources of ownership from an Islamic perspective. The obligations and restrictions placed by the *shari'ah* on ownership rights are summarized in section IV. The institutions required to enforce and protect property rights are discussed in section V. An appreciation of these rules and institutions is essential in

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understanding the Islamic perspective on economics. Section VI focuses on the impact of institutions on economic development, and Section VII concludes the study.

II. PROPERTY RIGHTS IN ISLAM

Ownership rights in Islam originate from the concept of *khilafah* (stewardship) which is a constituent of the Islamic faith. Generally speaking, ownership is regarded as depending less upon the independent activity of men than upon God's will (Rodinson, 1978). That is, God's ultimate ownership of property supersedes that of the individual. The Qur'an and the Sunna (teachings of the Prophet), clearly and explicitly stated that God is the sole owner of wealth and that people, as vicegerents of God, are merely trustees or custodians.^{iv} In practice, however, nothing prevents the owner of private property from legitimately causing his property to fructify in the capitalist manner. The individual claims to *al-māl* (which denotes all the resources made subservient to man) are recognized and safeguarded by law.^v Yet, the use of whatever is owned is restricted by the prohibition of *ribā* (usury) and the legal obligation to give *zakat* (alms).^{vi} The Qur'an (57:7) explicitly states: "Believe in God and His messenger, and spend of that whereof He made you trustee." By implication, the ownership of *al-māl* is understood to be a trust and its disposal is considered to be a test of faith since the owner has to use it in accordance with God's revealed wisdom. The Qur'an (6:165) states: "It is He who hath made you (His) vicegerents (or stewards), inheritors of the earth. He hath raised you in ranks, some above others; that He may try you in the gifts he hath given you." Hence, a person entrusted with wealth can achieve the highest degree of virtue (*falāḥ*) by spending out of his wealth within the boundaries prescribed by the *sharī'ah*, Qur'an (2:261).

Meanwhile, the objectives of the *sharī'ah* are said to pertain to this world and to the life *hereafter*. It is, therefore, no surprise that the concept of stewardship brings the idea of accountability. Accountability indicates that we can neither evade responsibility for our actions, nor the motives behind them. Therefore, the repercussion of every human action is two fold: its effect in this life ("this worldliness") and its effect in the life hereafter ("other worldliness"). That is, the belief in the hereafter, which extends the life horizon beyond physical death, elicits an intertemporal behavior (Bashir, 1998). As Kuran (1989) writes, "In the terminology of modern economics, he is to bring into his calculus the negative and the positive externalities of his actions." Most important, the pattern of eternal reward and punishment exemplified in the Qur'an motivates compliance with the dictates and prohibitions of the *sharī'ah*. For example, when someone decides to pursue a business venture, he must take into consideration not only his expected profits (the worldly benefits) but also the eternal rewards he might get from benefiting the community. Perhaps, the most indispensable goal of the *sharī'ah* is realizing the economic well being of the society through full and efficient utilization of resources. Al-Ghazzali, a great Islamic jurist, wrote, "The very objective of the *sharī'ah* is to promote the welfare of the people which lies on safeguarding their faith, their life, their intellect, their posterity and their property. Whatever ensures the safeguard of these five serves the public interest and is desirable."^{vii}

In so doing, the *sharī'ah* explicitly specifies a set of rules and principles that regulate the legitimate sources of acquiring *al-māl* (property), its growth, and its disposal. These moral limits, which will be discussed in detail below, are meant to achieve two vital objectives: restoring *al-ʿadl* (socioeconomic justice) and promoting *al-iḥsān* (mutual benevolence) (Qur'an 16:90). *Al-ʿadl* and *al-iḥsān* are meant to articulate the notion that people should have equal opportunities, not necessarily equal riches.^{viii} More specifically, by emphasizing *al-ʿadl*, the *sharī'ah* intends to eliminate all forms of economic inequality, injustice, exploitation, oppression, and wrongdoing, whereby a person either deprives others of their rights or does not fulfil his obligations toward them. The principle of *al-ʿadl* forbids gross inequalities in the distribution of goods and indicates that the ownership of wealth has social as well as economic dimensions.^{ix} *Al-iḥsān*, on the other hand, is a reassurance that *al-māl* is to be used to maximize the welfare of the community (*Ummah*). Restoring both *al-ʿadl* and *al-iḥsān* are necessary and sufficient conditions for equitable distribution of income.

Other precepts specified by the *sharī'ah*, to restore *al-ʿadl* and *al-iḥsān*, include the proscription of both avarice and wasteful spending (*Israf*) (Qur'an 17:27). *Israf* or extravagant spending is prohibited because it entails consumption beyond the average standard for society and, therefore, violates the principle of equality (Kuran, 1989). Hence, people are encouraged to be modest and utilize the available resources to attain both the mundane and the spiritual objectives of the *sharī'ah*. Another important injunction required for the restoration of *al-ʿadl* and *al-iḥsān*, is the proscription of hoarding (*kanz*). Hoarding is prohibited due to its negative externality on wealth and income distribution. In today's economic thinking, hoarding can be harmful because it limits the productive capacity of resources and leads to the concentration of wealth in the hands of few. Chapra (1985) writes, "Islam provides an economic system that makes it absolutely imperative to use God-given resources for fulfilling the essential needs of all human beings and providing them with decent living conditions."

III. SOURCES OF OWNERSHIP IN ISLAM

A. Private Ownership

To reach a conclusion on the position of Islam on private property, it is necessary to make a thorough examination of the manner in which Islamic law (the *shari'ah*) specifies the privileges, the usage, and the disposal of owning property. As a prelude, it is important to note that the Islamic concept of ownership rights is commensurate with work effort. Work, in all its forms, is considered to be a perfectly legitimate vehicle for acquiring property in so far as it is in conformity with certain moral requisites. There are numerous injunctions in the Islamic law urging the followers of Islam to engage in productive activities and pursue legitimate monetary gains to improve their economic well being. For example, the *shari'ah* dictates that it is a divine duty for all persons to work and use their abilities to gain a just reward from their work effort.^x Consequently, the individual can acquire property, including the means of production, through a host of legitimate means. Though traditional Islamic sources of private ownership were profoundly influenced by the circumstances of the earlier days of Islam, the following sources are still relevant and safeguarded by law in many Islamic countries.

1. Physical and Mental Work

Since Islam seeks to promote the economic well being of each person within the framework of its moral norms, it urges man to engage in productive activity and to utilize all the resources he is entitled to, circumscribed by the limits set by the *shari'ah*. Accordingly, ownership is considered a fair return when the job is done with care and devotion. The Qur'an (9:105) states: "And say: work; soon will God observe your work and His Apostle, and the Believers." This high admiration for work is a clear enticement to innovation and novelty. Hence, wage-labor is seen as something perfectly normal, and individuals are encouraged to invest in their human capital development. Indeed, intellectual property rights are acknowledged and safeguarded by the *shari'ah*.

2. Landed Property

According to the Islamic theory of landed property, development and fructification of what one possesses binds ownership. Property can be acquired through developing and utilizing arable fertile (farming) land with no previous claim of ownership.^{xi} However, the right someone has acquired to a piece of land is not lost merely through non-use; it vanishes only if someone else brings that land under cultivation.^{xii} The purpose of such law is to benefit the general public by bringing life to the virgin land and to ensure the continuity of utilization.^{xiii} No privately owned natural resource is to be left unused. Meanwhile, the concept of sharecropping is acknowledged by most Islamic schools of thought as a justifiable mode of acquiring property rights.

3. Mining and Minerals

Extraction of minerals (*al-rekaaz*) is another accepted means by which one may legitimately claim ownership rights.^{xiv} Here the extractor is assured of four fifth of the yield, provided that these minerals are extracted through individual efforts. The public treasury (*bayt al-māl*) claims the other fifth.

4. Inheritance and Bequest

Islamic jurists agree that property rights can be transferred through inheritance and bequest. The *shari'ah* has a detailed set of rules and regulations concerning the intergenerational transfer of asset ownership from parents to children. In principle, the ownership rights of the entire inherited wealth can go to one heir. However, only one third of the property can be willed away as a bequest.^{xv} A closely related source of ownership acknowledged by the *shari'ah* is the right of *Ash-Shufe'ah* (preemption). The right of *Ash-Shufe'ah* gives the neighbor and/or the partner the right to acquire the property of his neighbor or partner when the latter intends to sell it. The Prophet was quoted as giving a verdict regarding *Shufe'ah* in every undivided joint object (property). But if the limits are defined and the shares are identified, there is no preemption. *Waqf* is also a legitimate means of acquiring the benefits of ownership.^{xvi}

5. Trade and Commerce

Trade and commerce are praised sources of acquiring ownership rights. In fact, the Sunna has stated that trade is a superior way of earning one's livelihood: "If you profit by doing what is permitted, thy deed is *jihad* [that is, it is identified with holy war or any vigorous effort undertaken for God's cause] and, if thou usest it for thy family and kindred, this will be a *sadaqa* [that is, a pious work of charity]; and truly, a *dirham* [drachma, silver coin] lawfully gained from trade is worth more than ten *dirhams* gained in any way." It is important to note that the *shari'ah* forbids the fixed or predetermined return on financial transactions (interest), but not the uncertain rate of

return represented by profits. The Qur'ān (2:275) states that trade is permitted and usury is forbidden. Therefore, economic activity, the search for profit, and consequently, production for the market, are looked upon favorably.

To avoid unlawful gains and usurious transactions, the *sharī'a* has specified detailed contractual laws that govern trade and commerce. All types of contracts, such as *ijāra* (hire), *ijāra wa iktina* (hire-purchase), *murābaḥa* (markup), *mushāraka* (partnership), and *mudāraba* (profit sharing), are permitted so long as the ethics of contracting are observed. Faithfulness to contractual obligations is certainly stressed in the *sharī'a*.^{xvii} It is worthy to mention here that, no specific wording is recommended as *the* way to make contracts. Any consensual transaction between two trading partners is considered a binding contractual agreement. However, the contracting parties should have perfect knowledge of the countervalues intended to be exchanged as a result of their transaction (Saleh, 1988). This freedom of contracting provides the parties involved with the flexibility to make a virtually open-ended menu of financial transactions and instruments (Khan and Mirakhor, 1987).

B. Public Ownership

The state, in the Islamic system, is a form of collectivity that derives its authority from the concept of *Khilāfa* (vicegerency). Bound by the moral teachings of Islam, the state has a number of duties to perform. These include activities such as defending the territorial integrity of the state, maintaining law and order, propagation of good and suppression of evil, assurance of at least a basic minimum standard of living for all its citizens, and prevention of gross inequalities in income and wealth distribution. To fulfill its obligations, the State must generate sufficient funds. Ironically, Islam envisages a variety of property rights that accrue to the state.

1. Public Farming

It is quite true that, in the early stages of the Islamic State, revenues came mainly from agricultural production. Expropriations “for the public good” were numerous at the time and immense areas of cultivable land were placed at the disposal of the State. It was indispensable that this land be exploited so as to meet the costs of the machinery of State and to generate revenues for the treasury (*bayt al-māl*). Part of the revenue was used to provide help for the needy and the poor.

2. Public Utility

Although the *sharī'a* advocates sharing rather than excluding, it restricts and regulates public ownership.^{xviii} For example, property may be expropriated for public utility such as pasturage, mining, and water sources. Moreover, designated public farming land cannot be used for private purposes unless a special arrangement is made (e.g., share cropping). This emphasizes the fact that production for the public interest gives the State the power to limit the property rights of individuals. However, individuals affected by regulations that allow taking land use options from owners must be compensated.

3. Other Public Resources

A variety of other sources of public revenue are also available to the Islamic State. These include the *zakat* (a wealth and property tax to be recovered from Muslims), *kharāj* (land tax on agricultural land surrendered to Muslims without any resistance), *jizya* (poll tax on non-Muslims residing in Muslim territories), *ushoor* (custom duties) and *rekaaz* (mines and treasure-trove). *Ghaninmah* (spoils of war), and *fai'* (booty surrendered by the enemy without actual fighting), are other occasional sources. Each one of the above-mentioned sources is subject to a separate fund account. For instance, *Diwan Al-Zakat*, with its dual role of collecting and distributing the *zakat*, and *Diwan al-Kharāj*, for collecting taxes, were public institutions utilized in the past that were designated for administering public revenues. Religious institutions, public endowments (*awqāf*), and the natural resources buried underneath the earth may also generate revenue to finance public projects that benefit the general public. All revenues accruing from these sources are considered public and the State should disburse them according to a certain set of rules.

Meanwhile, the State is expected to seek other ways to generate enough revenue to pay for its civic and defense expenses. In fact, the *sharī'a* provides broad guidelines according to which the State may perform its functions. The permissibility of dynamic interpretations (*ijtihad*) provides wider latitude to find solutions to newly emerging problems. Utilizing the principles of *qiyas* (analogical deduction) and *al-masalih-al-mursalah* (judgment based on public welfare), jurists have concluded that the state should be active in promoting overall economic activity by fully utilizing the economy's productive resources.

IV. THE NORMS GOVERNING PROPERTY RIGHTS

Ownership and acquisition in Islam are bound by a set of normative obligations laid down by the *sharīʿa*. These obligations comprise the moral and the religious doctrines that guide and govern ownership in Islam. Since the Islamic economic regulations are closely related to moral standards, these norms should be looked at as regulations rather than restrictions. From an economic perspective, one would expect these principles to enhance economic performance by restoring both equity and efficiency. Nonetheless, since these principles should be obeyed under all temporal and spatial conditions, the following restrictions should be taken as axiomatic.

A. Prohibition of *Ribā* (Usury)

The central restriction of the Islamic economic system is the prohibition of *ribā* (interest) in financial transactions. According to the Islamic value system, *ribā* represents a source of unjustified advantage, and those who deal with *ribā* wage war against God and His Apostle (Qurʾān 2:279). Obviously, the prohibition of interest applies to all types of loans, whether or not notes or debentures secure them. The *sharīʿa* has acknowledged instead the usage of the unspecified rate of return (profit) as a mechanism for allocating resources. The Qurʾān (2:275) states: “But God hath permitted trade and forbidden usury.” A system based on profit-and-risk sharing is believed to be more equitable than a system based on interest and usury.

B. Prevention of *Gharar* (Chance)

Starting from the notion of protecting the weak against exploitation, the *sharīʿa* has prohibited any transaction entailing uncertainty, speculation, or risk (*gharar*). The *sharīʿa* prohibits any gain that may result from chance or from undetermined causes. A certain game of chance that received an enormous degree of prohibition is *maysir* (gambling). Above all, any selling in which there is an element of uncertainty is prohibited (Rodinson, 1978). If the subject matter of the contract is not in existence or even present at the time of contracting, the transaction is regarded void.

C. Repudiation of Monopoly

There is a general principle in Islam that wealth should not be monopolized in the hands of a few individuals, since this will create social imbalance. The *sharīʿa* prohibits monopoly and exclusive possession of *al-māl* because monopoly, along with interest, are believed to be the primary vehicles for financial exploitation and wealth concentration. By denouncing monopoly, the *sharīʿa* mandates that *al-māl* should be distributed in a way that does not confine it to a few wealthy people in society.^{xx} Therefore, the private owner should adhere to the requirements of the *sharīʿa* when acquiring, disposing, spending, transferring, or exchanging property.^{xx} The Qurʾān (57:7) states: “And spend (in charity) out of the (substance) whereof He has made you heirs.”

D. Prohibition of Unjustified Means

Any property acquired through unjustifiable means, like *gharar* (speculation), *maysir* (gambling), bribing, stealing, cheating, or illegal trading is proscribed and forbidden.^{xxi} Certain commercial practices are, however, prohibited (deemed *ḥarām*) by the *sharīʿa* as well. These include the production and marketing of intoxicants, as well as the hoarding and cornering of stocks with the intention of creating artificial scarcity and profiteering. Interest-based transactions, bribery, theft, robbery, breach of trust, and the use of fraudulent weights and measures do not satisfy the definition of *al-māl* and, therefore, are not worthy of ownership. Any contract involving these products is not binding and, hence, should not be honored or enforced.

E. Legal Obligation of *Zakat* (Alms)

Zakat occupies a unique position in the Islamic economic system. The *sharīʿa* assigns to the state a clear-cut duty to organize a system of *zakat* collection and disbursement. The Qurʾān (9:103) states: “Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow...” According to Islamic teaching, payment of *zakat* purifies one’s soul, as well as leads to increase in material welfare in this world and growth of religious merit in the next. Those who fail to discharge this obligation are warned severe chastisement in the hereafter. Therefore, the property owner is deemed responsible for the payment of *zakat* when *al-māl* reaches the necessary limit of *al-nisab* (the minimum quantity of an asset which makes it liable to *zakat*) and has been in his ownership and possession for one full year.^{xxii}

F. Voluntary Spending for Welfare of the Poor (*Sadaqa*)

It is the general philosophy of Islam that human beings should be properly motivated to act rightly on their own, so that the coercive powers of the state are used to the minimum extent necessary (Ahmad, 1989). In the matter of income distribution particularly, Islam emphasizes the virtue of *infaq*, that is, voluntary spending for the welfare of the poor. The Qur'ān (3:92) proclaims that in no case will man attain piety unless he spends freely from his wealth in the way of God for the needy and the poor. The repeated exhortations on this matter in the Qur'ān and the Sunna (the traditions of the Prophet) are meant to promote a culture and a way of living where people care for each other and where the disparities in income and wealth are minimized.

G. Efficient Use of Property

By condemning hoarding and extravagant spending, the *shari'ca* encourages and promotes efficient use of property. The owner is required to use his wealth in ways that benefit him while not hurting the general interest of society. Any inefficient use of property is in violation of the objectives (*maqāsid*) of the *shari'ca*.^{xxiii} If the property owner proves his inability to use *al-māl* properly, he forfeits his ownership rights. Under such conditions, the community (State) is fully justified in withdrawing the rights of usage of that property^{xxiv} in order to protect it from the misuses of its owner.^{xxv} Imam Al-Shafe'i (a renowned jurist) is of the opinion that when individuals go beyond the point of moderation in expenditure, even if they are spending on good and lawful things, their property should be placed under the custody of the State.^{xxvi} This is because Islam attaches great importance to protecting people from harm. The Prophet is reported to have said "to cause harm to others is not allowed in Islam."

H. Fulfilling Necessary Interests

According to the Islamic jurists, five necessary (*daruri*) interests need to be fulfilled. These comprise the *deen* (religion), the *nafs* (life or self), *nasl* (family or progeny), *māl* (property), and *'aql* (intellect or reason). One major liability of the property owner is to fulfill his *daruri* (necessity) obligations, since these obligations constitute basic religious duties on par with the annual payment of *zakat*.^{xxvii} The Qur'ān (2:177) states: "It is not righteousness that ye turn your faces to the east and the west; but righteousness is to believe in God and the Last Day and the Angels and the Scripture and the Prophets; and spend of your substance, out of love of Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves, to be steadfast in prayer, and practice regular charity; to fulfill the contracts."

I. Investment of *al-Māl*

It has been argued that the Islamic prohibition of hoarding wealth entails continuous investment of *al-māl* in legitimate (*halal*) enterprises. The *shari'ca* encourages Muslims to invest their funds sensibly and neither gamble them away, nor otherwise waste them (Qur'ān 6:141). Given the absence of interest, it can be seen that uninvested money will be entirely eaten up by the *zakat* over time. Hence the *zakat* is expected to have a stimulating effect on investment. Both the wealth (property) owner and the State are obliged to devise permissible investment strategies to reproduce *al-māl*.

V. PROPERTY RIGHTS INSTITUTIONS

The enforcement of property rights can only begin with the establishment of legal as well as economic institutions. This is important because legal and economic institutions are inextricably linked and complementary to each other. Certainly, the promulgation of written laws delineating individual rights and responsibilities will compel participants to abide by these laws. Conversely, the lack of a well-defined legal system specifying the domain and limitations of property rights would undermine any efforts to encourage individuals to enter into long-term contracts. Not only does the *shari'ca* acknowledge ownership rights, but it also requires establishing institutions that will regulate, codify, and enforce property rights. Indeed, the Islamic system already has built-in institutional infrastructure to enforce and protect individual rights.

A. Legal Institutions

In the Islamic legal system, there exist comprehensive clauses specifying the rights and responsibilities of property owners. Several times, the Qur'ān makes explicit reference to institutional authority to uphold justice, collect the *zakat*, and oversee contractual agreements. In fact, the *shari'ca* places a great emphasis on contracts, and the Qur'ān (4:1) instructs the believers to faithfully fulfill all contractual obligations. With regard to documenting and recording debts to protect individual rights, the Qur'ān states: "O you who believe, when you contract a debt for a determined period, record it in writing and let a scribe justly record it in writing." Implementing and enforcing the

Islamic law of contract is, therefore, expected to accomplish two things. First, it will foster compliance with long run contractual agreements. Second, the existence of monitoring institutions and/or written provisions will minimize the moral hazard problem associated with long-term agreements. Hence, applying the *sharīʿa* is both a necessary and sufficient condition for initiating property rights institutions.^{xxviii}

Historically, the Islamic legal institutions used to protect property rights include the *fiqh* (jurisprudence) institutions, the judiciary system, the *shura* (consultation) institutions, and the *hisba*.^{xxix} To ensure their integrity, these institutions were given total independence from the government (State). Under an independent judiciary system, the court system will be effective in enforcing contractual agreements, settling disputes, and specifying punishments. The strict punishments prescribed by the *sharīʿa* for violating property rights (e.g., stealing, burglarizing, and using force to confiscate) would safeguard properties of all individuals. In fact, the independence of the *fiqh* institutions were the catalyst in allowing the Islamic jurists to freely interpret relevant and applicable *sharīʿa* rules and perform *ijtihad*.^{xxx} The *shura* institutions, on the other hand, are needed to enact regulations and secure compliance and accountability. Meanwhile, the State is expected to give due regard to *shura* and *ijma* (consensus of jurists) in formulating its policies in various spheres (Ahmad, 1989). Furthermore, the institution of *al-hisba* is meant to monitor the behavior of market participants and set the standards for fostering ethical and moral behavior.

B. Market Institutions

In endorsing economic freedom and allowing maximum scope to market forces, the *sharīʿa* acknowledges the market mechanism as a vehicle for the determination of commodity prices. Full and unlimited access to the market, by all buyers and sellers, is advocated as a prerequisite for the free working of a liberal economy. Moreover, full disclosure of the quality of goods being offered for sale and noninterference with suppliers before entrance into the market is required. Above all, specific norms of behavior have to be observed by all market participants if the interests of all parties are to be safeguarded (Ahmad, 1989). For example, the parties entering any sale-purchase transaction have free consent (*khiyar*) in reaching an agreement. However, once the transaction is completed, fulfillment of all terms of the contract is required. In addition, the *sharīʿa* prescribes certain norms to enhance the market behavior. Adulteration, hoarding, and cornering of stocks with a view to creating artificial scarcity and profiteering, collusion among buyers or sellers to hurt the interest of one party, and bidding up prices without the intention to purchase are all severely condemned (Ahmad, 1989). Strict adherence to correct weights and measures is also emphasized.

Historically, independent regulatory agencies were established to monitor trading practices and other fraudulent market behaviors. These medieval Islamic institutions included *al-hisba*, *diwan al-azimmah*, and the Real Estate Registry. Currently, *sharīʿa* committees affiliated with Islamic banks are established for the same purpose. Meanwhile, the State is enjoined to institute whatever arrangements are needed to regulate the market. Certainly, this can be interpreted as part of its duty of propagating good and suppressing evil (*amr bil maruf wa-n-nahi anil munkar*). The Qurʾān (22:41) states: “They are those who, if we establish them in the land, establish regular prayer and give regular charity, enjoin right and forbid wrong...” Moreover, Islam also allows a considerable flexibility in using human reasoning to find solutions to new problems. The only constraint is that the objectives (*maqāṣid*) of the *sharīʿa* should be met.

C. Financial Institutions

Credit and commerce were in widespread use in the Islamic world at least three or four centuries before comparable levels of economic activity were recorded in medieval Europe. Although no Islamic institutions evolved into the kind of credit and banking institutions which were seminal in the economic growth of Europe, a variety of credit institutions which could both facilitate trade and provide a framework for credit were founded in the earliest Islamic periods. In fact buying and selling on credit was an accepted and apparently widespread commercial practice, whether the merchant was trading with his own capital or with that entrusted to him by an associate (Udovitch, 1975). Moreover, Islamic jurisprudence has not identified the firm as a legal entity whose obligations are separate from its owners, (Gamble and Karin, 1990). Yet, many early Islamic legal writers assumed that credit dealings were indispensable to successful and profitable trading.

Indeed, contemporary banks, firms, and other financial institutions are encouraged to use credit insofar as they satisfy the injunctions (*maqāṣid*) of mobilizing assets via various modes of profit-sharing arrangements. Surely, the freedom of contracts allowed under the Islamic law provides a flexibility that makes possible a virtually open-ended menu of various forms of financial transactions and instruments^{xxxi} (Khan and Mirakhor, 1989). Under the provisions of these profit-sharing arrangements, a good number of different types of trading companies (*sharikāt*) were known to Islamic jurisprudence (Gambling and Karim, 1985). According to Islamic jurisprudence,

sharikāt can be of two kinds: *sharikāt al-milk* (non-contractual) and *sharikāt al-uqud* (contractual). The latter are also divided into four categories: *sharikāt al-mufawadah*, *al-ʿīnan*, *al-abdan*, and *al-wujuh* (Chapra, 1985). These are companies based on delegation, guarantee, labor, and reputation. The equity-based system also entails the creation of new institutions, new markets, and new instruments to eliminate the possibility of dealing with *ribā*. For instance, joint stock companies and large-scale financial markets are needed to foster financial development so long as they conform to the *sharīʿa*.

D. Monetary Institutions

Certainly, contemporary monetary and fiscal policy institutions were not identified in classical Islamic jurisprudence. However, their conformity to the *sharīʿa* can be judged through *qiyas* and *al-masaleh al-murssala*. For example, the avoidance of inflationary and deflationary pressures requires the coordination of monetary and fiscal policy to restore macroeconomic stability. Monetary stability is very important because inflation and unemployment are believed to have serious consequences on property rights. Like other taxes, inflation is unpopular, erodes the value of the property, and redistributes incomes unequally. Indeed, reducing the level of inflation is consistent with the *maqāṣid* of the *sharīʿa*, and so the government has an incentive to prevent it. Hence, macroeconomic stability should be the top priority of the Islamic State.^{xxxii} Consequently, an autonomous monetary authority (central bank) is needed to develop appropriate financial instruments that are permissible under Islamic law. Beside its role of regulating the banking system freely and diligently, the central bank should issue and control high-powered money. This requires the central bank to be an independent institution. An independent central bank would constrain the government from using inflationary debt financing to balance its budget. Recent evidence has shown that greater independence of the central bank is associated with lower inflation rates (Cukierman, 1994).

E. Political Institutions

Legal and market institutions should also be accompanied by political institutions. The institutions of *as-shura* (mutual consultation) should be established. *As-shura* is needed to reach consensus in matters where there is no clear injunction from the Qurʾān or Sunna. *As-shura* institutions could be formed to deal with legislative as well as executive matters. Al-Awa (1980) writes, “It is more compatible with the Islamic method of legislation to leave matters to be brought before *As-Shura* unspecified and undefined, establishing only the principles and general rules, and leaving details to be worked out by Muslims in adapting the law of Islam to particular time and place.” The institutions of *as-shura* will implement the constitutional changes, safeguard the transition of power, and warrant political stability. *As-shura* institutions are also needed to regulate and protect ownership rights, to check government performance, and enforce the rule of law.

VI. INSTITUTIONS AND ECONOMIC DEVELOPMENT

The Islamic perspective of development seeks to improve the social, cultural, economic, and ethical condition of man (as vicegerent on earth) under the guiding principles of the *sharīʿa*. As Ahmad (1981) writes, “[D]evelopment would mean moral, spiritual and material development of the individual and society leading to maximum socioeconomic welfare and the ultimate good of mankind.” Hence, the legal, economic, and political institutions comprise the infrastructure needed to maintain sustained and balanced development. The impact of these institutions on growth and development can be analyzed in terms of their effects on income and wealth distribution, resource allocation, saving and investment, and monetary stability.

The institution of *zakat* for example, is expected to play an important role in income distribution and resource allocation. First, the *zakat* serves as a safety net designed to provide for the relief of poverty and other forms of social security. Its redistribution effect is expected to increase the aggregate demand in the economy. Second, as a tax, the *zakat* is expected to have a strong stimulating effect on investment and productivity. By discouraging property owners from holding idle assets, the *zakat* will create incentives for wealth owners to ensure the maximum turnover of their net capital (Gamble and Karim, 1990). Together with the proscription of extravagant spending, the *zakat* is expected to reduce the transaction demand for money. Moreover, the stimulating effect of the *zakat*, together with the ban on interest, is expected to reduce the precautionary demand for money. Finally, the redistribution effects of *zakat* are expected to have a positive impact on the level of aggregate savings.

Equivalently, the market institutions, especially Islamic banks, can make useful contributions to growth and development. Given the high degree of thrift practiced by farmers and peasants, expanding the interest-free banks in the rural areas will help transform the rural economies. The Islamic banks could use their profit-and-loss sharing schemes to finance productive sectors like agriculture and small-scale industries (microcredit schemes). Islamic banks would make a significant contribution to growth and development if they were able to attract foreign capital

through cooperation and partnership (i.e., foreign direct investment). They could also be the vehicles for transferring technology.

Growth and development will also be impacted by monetary institutions that assure price stability. It is well documented in the literature that managing the rate of growth of the money supply is a prerequisite for stable prices. Research has also shown the depleting effects of inflation on economic growth. Hence, price stability is expected to have a significant positive effect on economic growth. An independent central bank would be in place to manage the money supply, issue and maintain the value of the currency, and sustain the public's confidence in the payment system. Moreover, as a regulatory agency, the central bank can serve as a catalyst in guaranteeing transparency, accountability, disclosure, and openness.

Meanwhile, the Islamic State has an indispensable role to play in the economy. First, it should design policies that protect economic freedom and provide perfect information to the market. Second, it should strive for sustained and balanced growth, higher standards of living, and equitable distribution of income. Third, the government should invest in human capital to increase productivity, assist entrepreneurs in acquiring managerial skills, and acquire new knowledge. Finally, fiscal and monetary policy should be coordinated to attain economic stability and curb inflation.

VII. CONCLUSION

The paper analyzes the bearing of Islamic teachings on defining and enforcing property rights. It is strongly argued that the *shari'c* acknowledges and specifically defines ownership rights. Moreover, Islamic law is explicit about the institutional framework needed to protect the rights and privileges of property owners. The paper further argues that Islam permits economic freedom and free markets provided that these institutions do not violate certain guidelines regulating the means by which ownership is attained. Meanwhile, the government of the Islamic State is expected to promote market-oriented policies to facilitate efficient allocation of resources.^{xxxiii} However, the government is expected to keep its intervention in the market to a minimum, confined to the enforcement of property rights. Hence, all economic and social institutions which improve income distribution, restore social justice, and conform to the requirements of the *shari'c* should be established. The institution of *al-hisba* plays an important role in monitoring and enforcing ethical and legal restrictions. Furthermore, it is argued that establishing these institutions will promote economic development. There is much to learn, and much room for improvement.

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ⁱ The Christian Church in Europe made consistent and well-documented attempts to enforce canon law in business affairs, for centuries (Gambling and Karim, 1990).

ⁱⁱ For example, when property rights to land are properly enforced, land users must pay for what they use and therefore will economize on their use. Equally, land owners searching for high bids have a strong incentive to find those with highly valued uses now (for revenue) and in the future (to protect current asset value) (see Stroup, 1997).

ⁱⁱⁱ *Ribā* can be defined as an unlawful gain derived from quantitative inequality of the countervalues in any transaction purporting to the effect of exchange of two or more species. *Gharar* in sale transactions, on the other hand, causes the buyer to suffer damage (*ghubn*) and is the result of a want of knowledge (*jahl*) that affects either the price or the subject matter (see Saleh, 1986).

^{iv} See Qur'ān (20:6).

^v The concept of *al-māl* in Islam denotes all the resources that God made subservient to man on land, in the sea, and beneath the surface of the earth. *Al-māl* is also defined as anything (property) that can be owned and has value, including the rights and benefits of ownership. It can be classified as *ḥalāl* (lawful) if owned through legitimate means, or *ḥarām* (unlawful) if acquired through unjustifiable means.

^{vi} Neoclassical economists tend to regard institutions as constraints on market activity, and from this perspective it follows that property rights embody protection against the arbitrary and capricious alteration in such institutions. However, a correct understanding of institutions sees them as both liberating and constraining economic agents (see Bromely, 1997).

^{vii} Al-Ghazali. *Al-Mustasfā* 1. pp. 130-40.

^{viii} Justice and equity are such indispensable ingredients of the Islamic faith that an ideal Muslim society, where these norms have not been actualized, is inconceivable.

^{ix} See Kuran (1989) for a similar argument.

^x The Qur'ān (62:10) states: "And when the prayer is ended, then disperse in the land and seek of God's bounty, and remember God much, that ye may be successful."

^{xi} The Prophet Muhammad disapproved of leaving productive assets (land) idle and urged those who owned land to cultivate it or leave it to those who could do so.

^{xii} The Prophet (peace be upon him) explained the principle of ownership of such land, "Land belongs to God and the human beings, too. Whoever rehabilitates barren land becomes its owner." He also said, "There is no right of ownership to be claimed on the land if the owner does not reasonably exploit it after three years of possession."

^{xiii} During the decadence of the Roman Empire, the owners of agricultural domains were threatened with forfeiture of their property if they neglected to cultivate it (see Rodinson, 1978, pp. 172).

^{xiv} *Al-reikaaz* are treasures buried during the pre-Islamic period. The extractor should declare it first before claiming its ownership. A similar practice was common during the Roman Empire: one was allowed to exploit a mine he had discovered, whether the owner of the land consented or not, and only one-tenth of the product was due to be paid to this owner (Rodinson, 1978).

^{xv} The Prophet (peace be upon him) told his companion Sa'ad, when the latter asked about the Will, "The third, and the third is too much."

^{xvi} *Waqf* is a public endowment where the benefactor has the right to reap the benefit from the asset but not the right to sell or exchange it.

^{xvii} The Qur'ān (2: 275) says, "But God hath permitted trade and forbidden usury," while Qur'ān (5:1) says, "O ye who believe! Fulfill (all) obligations."

^{xviii} The right of ownership is limited by certain considerations, such as the right of everyone to life. One dying of hunger is justified in taking, at the expense of the legitimate owner, the minimum of food needed to remain alive. Meanwhile, some primary products, such as water and grass, are not subject to appropriation. See Rodinson (1978, Ch. 2).

^{xix} Although people differ in their wealth, Islam always recommends an equitable income distribution. Qur'ān (59:7) states, "... in order that it may not (merely) make a circuit between the wealthy among you."

^{xx} There is a consensus among Muslim jurists that ownership cannot be established without the authorization of the *sharī'a* because all rights, including the right to own, originate in the *sharī'a*.

^{xxi} Islam does not allow the arbitrary expropriation of private property. The Qur'ān (2:188) says, "And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property."

^{xxii} The *zakat* is an important component of social insurance or a provident fund for the community. It is the right of the less fortunate members of the community on the property of the rich. If the rich fail to pay *zakat*, the government is responsible for enforcing it. When the proceeds from *zakat* are insufficient, the government has the right to levy more taxes on the wealthy for budgetary purposes.

^{xxiii} The Prophet was quoted as saying, “No harm and no harming.” The jurists said there should be laws and regulations to curb mischief before it occurs.

^{xxiv} The Qur’ān (4:5) says, “To those weak of understanding, make over your property which God has made a means of support for you.”

^{xxv} It was narrated that the Prophet (peace be upon him) told one of his companions that he might fully water his fields and must leave the water to flow to his neighbor to benefit from it. The Prophet was also quoted as saying, “People are partners in three things: water, pasture, and salt,” indicating that water is common property.

^{xxvi} The owner can regain the title to his/her property when showing willingness to refrain from *Israf*, or extravagant spending. During the decadence of the Roman Empire, the owners of agricultural domains were threatened with forfeiture of their property if they neglected to cultivate it (Rodinson, 1978).

^{xxvii} There are other unspecified rights on *al-māl*, over and above zakat, especially during the time of emergencies and disasters. The Prophet (peace be upon him) was quoted as saying, “There are obligations on *al-māl* other than zakat.”

^{xxviii} Islamic law places a great deal of emphasis on contracts and the necessity for participants to remain faithful to the terms specified in them, so much so that faithfulness to the terms of contracts is considered a distinguishing characteristic of a Muslim. The Prophet was quoted as saying, “Muslims are bound by their stipulations.” When the Prophet was asked about the believer, he replied, “A believer is one with whom the people can trust their persons and possessions.”

^{xxix} The institution of *al-hisba* is based on the Islamic duty of enjoining the right and preventing the wrong. The *muhtasib*, who oversees the *hisba*, is a market monitor or regulator delegated by the authorities to oversee trading practices (e.g., weights and measures).

^{xxx} *Ijtihad* is the jurist’s use of reasoning to find solutions to new problems while keeping in full view the intent and spirit of the *sharī‘a*. Methods of *ijtihad* include *qiyas* (analogical deduction), *istihsan* (preference of one *qiyas* over another or even abandonment of *qiyas* for some strong reason), and *al-masalih-mursalah* (judgment on the basis of public welfare).

^{xxxi} The Islamic financing mechanisms include *muḍāraba*, *mushāraka*, *murābaḥa*, *ijāra*, *ijāra wa iktina*, *Bay‘ Mo’ajal*, *Salam*, and *Quard Hassan*.

^{xxxii} Recently, some economists have suggested that zakat could be used as a stabilizing device to reduce inflationary pressures (Ahmad, 1983).

^{xxxiii} The Prophet (peace be upon him) allowed sharecropping while implicitly acknowledging the efficiency of private enterprise. Public property should be privatized or managed privately through profit-sharing arrangements.