



SPECIAL WORKSHOP
HARVARD LAW SCHOOL - APRIL 21, 2006

SELECT ETHICAL AND METHODOLOGICAL ISSUES IN SHARĪ'A-COMPLIANT FINANCE: A SHORT REPORT

Purpose of the Workshop

Islamic Finance (IF), by any standard, is a burgeoning industry. As with any industry, such fast progress demands a critical look. Particular to IF is the complex and integral relationship that Islamic law has with the field. The nature of *shari'a* advisement has recently been brought into question, and there have particularly been questions about the role of Islamic economists vis-à-vis *shari'a* scholars. With the encouragement of *shari'a* scholars and prominent Islamic economists, the Islamic Finance Project decided to hold this workshop in order to spark a discussion that we deem crucial to the future of the field.

Overview

This workshop was designed to host an ongoing and scholarly conversation between prominent economists and *shari'a* experts on pressing ethical and methodological issues in the field of *shari'a*-compliant finance. Specifically, the workshop was meant to address *shari'a* and economic issues associated with establishing *shari'a*-compliant finance products, services, and practices. These issues include: (1) the use of legal stratagems by *shari'a* experts, (2) the consideration of the aims of the *shari'a* (*maqāsid al-sharī`a*) by *shari'a* experts and economists, (3) ethical concerns about perceived conflicts of interest among *shari'a* experts, and (4) the philosophical and methodological ramifications of the multidisciplinary nature of the field.

The goals of the workshop were to explore the methods by which economists and *shari'a* experts can increase cooperation with each other in order to better understand the foregoing issues relating to IF, and to better understand some key ethical and methodological principles and processes that govern certain products or practices in IF.

Participants discussed methods to enhance communication with each other in the future through, for example, the formation of committees to take up some of the issues that emerged from the workshop. This workshop was expected to be the beginning of a dialogue, and more such events should be expected to follow this one.

Guiding Questions

The following three sets of questions informed and guided the discussion:

1. What is the role of the consideration of “*maqāsid al-sharī`a*” in Islamic Finance?
 - a. Should *maqāsid al-sharī`a* be considered when deciding whether to adopt a financial instrument? Is it consistent with *shari'a* to discuss a financial instrument without estimating the economic and social consequences of using that instrument?
 - b. What role has the “spirit of the *sharī`a*” (in contrast to the strict “letter of the law”) played in modern Islamic finance?
 - c. Is consumer protection the responsibility of *sharī`a* boards?
2. What is the optimal structure and mechanism of *sharī`a* supervision?
 - a. How have the following modern trends affected *sharī`a* supervision?
 - i. Push for standardization among various countries and locales
 - ii. Competition among institutions
 - b. Who is qualified to be a *sharī`a* supervisory board member and how are they accredited, identified, and

selected?

- c. Can a process be set up by which the larger community of *shari'a* experts can engage in peer review of the work of the *shari'a* experts who are most active in the field? Should it be done?
3. How best can economists contribute to the supervision of the *shari'a* compliant finance sector?
 - a. What makes an “Islamic” economist (in contrast to any other economist)?
 - b. What should be the role of economic reasoning when formulating responses to requests for *fatwa*?
 - c. What is the preferred means for raising objections if non-*shari'a* experts are uncomfortable about the decisions of some *fiqh* experts? In what forums should such reservations be shared and what is the most responsible and ethical way in which to share them?
 - d. What are the most important areas of collaboration between economists and *shari'a* experts?

Highlights of Discussion

Continuity and change in the history of Islamic Finance

Historical considerations frequently played a role in the discussion. Many participants referred to the role of the *fuqaha* in economic and financial matters in the pre-colonial Muslim world and considered certain structures and procedures of those times normative. Others disagreed, arguing that, considering the modern-day context and the situation of Muslims in it, it is unrealistic and not ideal to strive toward a model they consider dated. The rise of the field of IF and its development from the mid-twentieth century to the present was discussed as well.

The implementation of the *maqāsid al-sharī`a*

Participants agreed that the *maqāsid al-sharī`a* must play a significant role in *shari'a* advisement. However, some participants argued that many current IF institutions and products do not take *maqāsid* into consideration. All agreed that much more empirical economic research needs to be done when formulating the nature of *maqāsid* implementation. Some mentioned that there is a hierarchy of priorities when considering *maqāsid* and that it is unrealistic to put the burden on the relatively small IF institutions to implement all the *maqāsid* in the current context. The issue of whether debt-based financing is *shari'a*-compliant was also debated.

The application of *sharī`a* and economic expertise

Many agreed that *shari'a* and economic experts must work together in order for IF institutions to be effective. Some proposed that there should be specific programs that educate students on both the *fiqh* and economic perspectives, thus creating a new generation of IF experts. One participant felt it important to note that historically the *fuqaha* have had a strong relationship with relevant expert communities and proposed that such a relationship, especially with modern economists, is ideal for today's IF concerns.

The regulation and standardization of the structure of *sharī`a* advisement

Though all agreed on the significance of the *maqāsid al-sharī`a*, many maintained that the main concern is how to enforce the implementation of those *maqāsid* and how to regulate the Islamic aspect of IF. Some believed that only governmental power could enforce standards. Others advocated self-regulation within the IF industry. Some noted that centralized regulation hinders innovation in creating Islamic products. Others insisted that lack of standardization on some level will in the end hurt consumers and render *maqāsid*-implementation impractical.

Consensus

Despite all the opposing viewpoints, at the conclusion of the workshop, all participants agreed that there was a need for enhancing the process of *shari'a* advisement and offered several solutions and proposals:

1. Begin a journal on the *fiqh* of Islamic Finance
2. Have greater transparency about the *fatwa* function, processes, and compensation
3. Have future workshops focusing on specific products/instruments and ending with a unified decision
4. Increase empirical data for all independent sources
5. Reduce conflicts of interest in *shari'a* advisement.

In Attendance

Moderators:

Frank E. Vogel, Director, Islamic Legal Studies Program, Harvard Law School
M. Nejatullah Siddiqi, Independent Researcher and Consultant, Milpitas, CA

Participants:

Taha Abdul-Basser, Ph.D. Candidate, Near Eastern Languages & Civilization, Harvard University

Rashid Alam, Fulbright Scholar, Boston University, Boston, MA
S. Nazim Ali, Director, Islamic Finance Project, ILSP, Harvard Law School
Aziz Bakar, MBA Class of 2006, Harvard Business School, Boston, MA
AbdulKadir Barkatulla, Shari`a Supervisor, London, United Kingdom
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Mahmoud A. El-Gamal, Professor, Rice University, Houston, Texas
Husam El-Khatib, Senior Manager, Royal Bank of Scotland, London, United Kingdom
Rafe Haneef, Head of Islamic Finance, ABN AMRO Bank, Dubai, U.A.E.
M. Kabir Hassan, Professor, University of New Orleans, New Orleans, LA
Samuel L. Hayes III, Professor Emeritus, Harvard Business School, Boston, MA
Baber Johansen, Professor, Harvard Divinity School, Cambridge, MA
Monzer Kahf, Private Consultant/Trainer and Court Expert, Westminster, CA
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Nizam Yaquby, Shari`a Supervisor, Manama, Bahrain