

## The Role of Islamic Ijtihad in the Regulation and Correction of Capital Markets

I hesitate to speak on the role of ijthihad 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 ijthihad, which is connected with fiqh. Most of its sources are in Arabic. The second area is economics, which is connected with the analysis of capital markets. Most of its sources are in various European languages. Linking ethics and economics is necessary, because every economic choice has a spiritual dimension. But this is 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 ijthihad and economics requires a 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 a common ground between them.

Ijthihad, which is of central importance in *uṣūl al-fiqh*, is the method of implementing the spirit of the sacred texts in any environment. Since the third Islamic century, it has been the main theme of dialog between the different legal schools. To this day, scholars continue to debate the issue.

Economics is an important science that influences several other sciences. Since the capital market is a significant topic in economics, we must understand the strengths and weaknesses of the neo-classical analysis of capital markets in order to develop an Islamic capital market. In addition, we must understand the history of economic thought, how capital markets became an

important part of it, and why many neo-classical economists believe that their analysis is objective and spiritually neutral.

Since the nineteenth century, some of our *‘ulamā’* have tried to build a common ground between economics and *ijtihād* on matters of economic development by adopting many of the economists’ views. Some *‘ulamā’* have called for imitating the West and its modernity to achieve prosperity and thus have adopted elements of western methodology. They believe that the Ummah resists change by clinging to such concepts of *ḥalāl* and *ḥarām* in economic activity, which hinder the community’s development and prevent it from overcoming its economic problems. They have tried to justify this economic imitation on the community’s *maṣlahah* (benefit), the relativity of *fiqh*, the absence of alternatives, or a combination of these.

However, this approach justifies *taqlīd* (blind imitation) of the West by erroneously combining *ijtihād* with western economics. A truly Islamic economics and *ijtihād*, on the other hand, must apply traditional principles to the contemporary world by combining the transmitted (*naqlī*) and intellectual (*‘aqlī*) sciences. A precise understanding of Islamic principles must inform both disciplines to establish the true complementarity between them and then successfully apply the Islamic paradigm to economic problems. A bad economic analysis can misinform the best *ijtihād*, just as an erroneous *ijtihād* can vitiate the best economic analysis. Those who call for *taqlīd* 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 a potential for opposition, which is a serious challenge to all Muslim thinkers, regardless of whether they are economists, political scientists, sociologists, or *fuqahā’*.

This challenge raises serious questions. Can Islam deal 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 *naqlī* and *‘aqlī* sciences. Thus, the solution must come from the epistemological and methodological viewpoint that carefully defines and applies Islamic principles, not from *taqlīd* of the West. To build a solution based on traditional Islamic principles, we need to understand the *maqāṣid al-Sharī‘ah* (the Shari‘ah’s higher values and causes). 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 essential to building a common ground between *ijtihād* and economics, on which the Islamic solution is based. Our paradigm is based on three essential Islamic principles: *tawhīd* (God is the Absolute and the necessary starting point of any Islamic analysis), *tazkiyah* (purifying humanity and society from evil), and *‘umrān* (building a civilization in order to accomplish the good).

These principles form a complete and consistent set that can be applied to *ijtihād* and economics, for knowing that God is the Absolute requires eliminating the evil and accomplishing the good. Moreover, all three principles are necessary in a truly Islamic society. For example, it would be hypocritical to know the truth but not use it to purify oneself and society from evil and to neglect real needs in building a civilization designed to accomplish the good). Similarly, purification from evil is not possible without knowledge of the truth, and the existence of an Islamic civilization is crucial to enabling humanity to know and conform to that truth. Finally, building a civilization to accomplish the good is not possible unless it is based upon truth and reflects pure intentions rather than greed.

These essential Islamic principles or higher values are the pillars of our Islamic paradigm. They guarantee that our paradigm is characterized by *wasatīyyah* (avoids excess as evil and finds the good situated between two excesses), *tawāzun* (balanced), *‘adl* (just), *istiqāmah* (direct, not winding), *rabbāniyyah* (from God), *‘alamiyyah* (global), *al-‘umūm* (universal), and *al-shumūl* (includes every part of life).

When these three principles are the common ground of *ijtihād* and economics, we can integrate both to develop an Islamic capital market. However, the references on *ijtihād* and economics are very different. *Ijihād* is a central issue in *uṣūl al-fiqh* among all legal schools, and is the seventh chapter of any traditional *uṣūlī* book. All of these sources are in Arabic, which poses a major obstacle for many researchers. *Ijihād* 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 in order to separate ethics and economics, thereby excluding essential spiritual principles from their analysis. Neo-classical economists make the questionable claim that their analysis is objective and spiritually neutral. We will establish that ethics and economics cannot be separated, because values and preferences cannot be con-

flated. 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 viewpoints.

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

### IJTIHAD

When we think about *ijtihād* in *uṣūl al-fiqh*, we cannot unequivocally say that its current format provides us with an effective methodology for deriving optimal solutions to all contemporary issues. We cannot make such a claim, whether or not there is anyone who can be a *mujtahid muṭlaq* (an expert qualified to make *ijtihād* in all areas of *fiqh* without conditions) and whether or not we can identify such a person. Therefore, we need to 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. *Ijtiḥād* need not be a closed tool to be used only within a specialized methodology.

To reconstruct *ijtiḥād*, we need to take note of the following. First, in its *fiqhī* dimension, *ijtiḥād* is limited to the genius of a scholar who can formulate the appropriate question, given the event(s), and go to the text of the Qur'an and Sunnah for a ruling. If he/she cannot find a direct answer, then he/she must look for an answer in the rulings derived from *ijma'* (consensus), *qiyās* (analogy), or articulate his/her own considered legal principle.<sup>1</sup>

But in our time, the unprecedented and ongoing explosion of knowledge and communication has made this impossible. With the advent of the social sciences in world affairs and their continued spread into different spheres, there is even more information to incorporate into *ijtiḥād*. 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 necessary to apply Islamic principles within *ijtiḥād*. In turn, this application requires information from other sciences, meaning that *ijtiḥād* can no longer be limited to the *fiqhī* sphere or to one person. Thus, we have to establish a strong connection

between the social sciences (as a tool for understanding the event[s] in order 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 of individual ijtiḥad, we must adopt the principle of collective or institutional ijtiḥad based on diverse disciplines and specialists outside the framework of current fatwa committees or fiqh councils, despite their continuing importance. Ijtiḥad should be undertaken within the framework of establishing qualified research institutions featuring dedicated scholars from all *fiqhī* and *uṣūlī* schools, law, Hadith, and *tafsīr*, as well as social scientists, linguists, and community leaders. Guidelines may be established to determine the team's constitution depending on the issue. This does not negate the individual's role in ijtiḥad; rather, it emphasizes it and gives it direction.

Whenever such an institution for collective ijtiḥad develops, the nature of ijtiḥad itself will change. First, it will no longer be a process based on an individual *mujtahid's* theoretical dialog between the text and dictionaries in order to deduce a ruling established on an inference based on the semantics to which the scholars of *uṣūl* and logicians are accustomed.

Second, this institution will need to utilize all of the available social science methodological means, and possibly some of the available natural science methodologies, to understand, analyze, and better define the event. 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 will have to be modified to make better use of new developments that have taken place in the study, analysis, and deconstruction of the text in order to gain a deeper insight into its purpose.

Third, the Shari'ah's characteristics and the nature of its universal textual proofs (*al-adillah al-kulliyah*) will have to be brought to the forefront. Thus, it will become imperative to understand the particular textual evidence within the framework of the universal textual proofs. It is no longer sufficient to collect only those 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, goals, and purposes, as well as the nature of its originating source (the Qur'an) and its particular, clarifying, and binding source (the Sunnah).

Fourth, understanding the precise relationship between the Qur'an and the Sunnah will become apparent. 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 does not allow one source to

be separated from the other. In addition, it calls for understanding the nature of *bayyinah* (evidence), its characteristics, and how it details the general, interprets the vague, specifies the generic, and generalizes the particular. All of this is done to reveal the methodology used to apply the text to reality in the Prophet's time, and to show 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 until the end of time.

Fifth, after these centers and research academies are established, its members will have to reexamine "controversial legal indicators" (*al-adillah al-mukhtalaf fiḥā*) and leave behind those that are no longer relevant. Other indicators may be renewed, developed, and further regulated by the originating and clarifying sources.

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

Seventh, after such institutional *ijtihād* has become widespread, people will realize that no matter how many safeguards and means have been put into place, *ijtihād* cannot be presented as producing binding rules for future generations or that these rules respond to their needs. This *ijtihād* should not lead to new schools of thought and sects that may erode the Ummah's unity, impede its future development, and hinder future generations from practicing *ijtihād*. The most we can expect from any generation's *fiqh* is to offer solutions to crises and challenges that face a specific society in a certain time, place, and circumstance. The outcome of such *ijtihād* cannot be absolute and should only be binding on that generation and whoever chooses to adopt it. If 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 the people of other regions or other times. Only the Qur'an and the Sunnah have binding authority. Thus, we recover *ijtihād*'s effectiveness, vitality, and continuity and make it an integral part – not an exception – of the Ummah's psychological and mental state.

Eighth, *ijtihād* conducted by academic and research centers will reveal Islam's universal characteristics, which are not merely virtues but rather items to be applied as methodological guidelines when formulating collective *ijtihād*. Islam's universality, which is at the forefront of these characteristics, is indicated by the fact that the Shari'ah is a law of ease and mercy, based on the Qur'an's authority, connected with prophethood's finality, and

provides a necessary methodology. This universality indicates that Islam's message is for all of humanity, regardless of time or place, until the Day of Judgment. Its rapid spread took place according to a perfect methodology that began by preparing the final Prophet, tasking him to warn 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.

Islam's mission is global, although it addresses humanity through a specific social entity in its own language (Arabic) and deals with the community's needs and problems. These are not necessarily problems common to all of humanity in all times and places; rather, other societies can use them as a model for meeting their own different needs and problems by drawing on the Qur'an's methodology, values, and purposes. The Qur'an is so resourceful that it provides answers to specific questions regardless of time or place. At one level, it gives an answer for the Prophet's time, while at another level it applies the link to the Prophet's community to project the answer into the future. The text's multiple meanings and applications are fascinating, and this is how the Qur'an communicates absolute values in a relative environment, links 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, for if it had ignored the problems of the Prophet's community, it could not have projected these absolute values forward. In other words, there would have been no example of how to apply the message.

In a short period of time, Islam incorporated many other civilizations due to its universal vision, thereby proving its beneficial power in every time and place. This final message, characterized by the Absolute Book and the Last Prophet, contains categories that integrate the continuous and the temporary, the general and the specific, and the global and the local to satisfy its goals and objectives.

Unfortunately, our current religious teachings and studies do not prepare us to understand these essential principles. As a result, some people approach the Qur'an as if it were meant only for themselves, like a closed letter that our ancestors carried without opening. This leads some people to misinterpret the Qur'an based on their current viewpoint, such as equating jinn with bacteria, or money with capitalism or socialism. Some people take the opposite position, holding that the Qur'anic message was meant for our ancestors and simply provides us with general directions but no specific instructions. Both positions represent extremes that do not reflect a true understanding of the Qur'an, for they place limits on the methodology used to understand it. A deep understanding requires a knowledge of the

dichotomies in Islamic discourse, namely, the absolute and the relative, the general and the specific, the continuous and the temporary, and the local and the global in the Qur'anic teachings. In the absence of this discourse, we cannot understand the sacred text.

Our ancestors understood these categories and incorporated them into *uṣūl al-fiqh* as “chapters of terminology” and “chapters of what is common in the Qur'an and Sunnah.” These chapters include discussions of the general and the specific, the absolute and the limited, Qur'anic verses (*āyāt*) with locked and flexible meanings, abrogation and the abrogated, and other topics. In addition, they established some constraints and criteria to distinguish between the discourse's different levels, the legislative and the non-legislative, as well as the obligatory (*fard* or *wājib*), and the forbidden (*ḥarām*) or the reprehensible (*makrūh*). Our ancestors understood these distinctions so clearly that they formulated five categories for action: forbidden, reprehensible, indifferent, recommended, and obligatory. They even distinguished between two types of reprehensible categories: *makrūh tanzīh*, which implies unsuitability, and *makrūh taḥrīm*, which leads to the border of *ḥarām*. They also classified necessities into three categories: essential needs, means to these needs, and embellishments or accessories to support these means.

In order to serve and carry Islam's message, as well as prove its applicability and usefulness for every time and place, we need to build upon this great legacy. We must use our knowledge to go back and rethink what should be included in the different categories discussed above. This is an essential, dangerous, and difficult journey, particularly for a mentality that has been used to *taqlīd*, instead of *ijtihād*, for several centuries. To help us with this undertaking, we should also establish centers for collective *ijtihād*.

Let's consider one example of how a specific incident develops into a general legal principle so that we can understand how principles guide *ijtihād*. Take the case of adoption. The Qur'an deals with this through the example of Zayd (the Prophet's adopted son), declaring that the Prophet had no sons. Even though this message applied to a specific Arab community, the principle 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) still applies today. There are many other examples of establishing a principle through specific events in *fiqh*, such as emancipating slaves and dividing war booty.

Since our ancestors understood that the Qur'an communicates principles through specific incidents, they did not need the Qur'an to tell them:

“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, thereby placing the heavy responsibility of textual interpretation on the people of dhikr (remembrance) and the scholars:

[Here is] a Book that We have sent down to you, 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. If our generation could function at the same level of ability without stopping ijihad, we could understand correctly the Qur’anic categories mentioned in our *uṣūl al-fiqh*. If we pursue deep thought and illuminate our minds, we can build on our ancestors’ great achievements.

Their *mujtahidūn* deduced many principles for making legal judgments and deriving appropriate solutions, such as alleviating legal hardship, blocking licit means to illicit ends, choosing the most prudent course, limiting the matter to make options more plentiful, and realizing that difficulties attract facility, that the illicit can be rendered licit by necessity or overwhelming circumstances, that the public’s needs may be considered the same as the individual’s needs, and that there may be acceptance in continuation for matters unacceptable in initiation. These rules represent deep jurisprudential and 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 Shari’ah’s total objectives, they could properly understand those rules related to specific situations. They did not necessarily articulate the framework they used to derive these partial rules or how to apply the holistic viewpoint involving different levels of Qur’anic discourse and instruction.

In this regard, how the Qur’an dealt with alcohol and slavery, both of which were widespread at the time of its revelation, is important. The Qur’an gradually prohibited alcohol, and the Muslims were expected to end slavery shortly afterward. However, the failure to eliminate slavery during the Prophet’s time does not mean that it was left to continue. The ruling to eliminate slavery was in the Qur’an, but its full application took some time. Since

all of the Qur'anic rulings related to emancipation, not slavery, we know that slavery must ultimately end. Indeed, slaves were to be considered as the master's brothers and sisters, to eat what they eat, wear what they wear, and work as they work (not to be given overbearing tasks). All of this let people know that slavery was only a temporary situation. Moreover, people were forbidden to call others "slaves" and had 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 of 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 a slave be freed to atone for an accidental killing. 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; a person who accepts Islam is like a person who was dead and to whom God gave life.

Moreover, the analogy between charity and freeing a slave is erroneous, because the essence of money is an object for use, whereas the essence of a person is to be free. Our ancestors supported emancipation, saying that slavery was like death and *kufr*. They came so close to, but did not embrace, the prohibition of slavery. But if it is our job to resist *kufr* and end 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. Even if other civilizations continued with slavery, we could have at least eliminated it in ours. The whole question goes back to our inability to deal with what is continuous and limited, and with what is global and specific in the Qur'an. This is why we left it to the West to abolish slavery. We now turn to economics.

#### ECONOMICS AND THE CAPITAL MARKET

The Islamic tradition of economics contains 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. Since values cannot be reduced to preferences or tastes, differences in the content of desires, due to values, imply different methodologies of choice. Thus, Muslim scholars recognize

that ethics and economics are inseparable, for, since God is the Absolute, every choice has a spiritual dimension.

Secular neo-classical economic thought, on the other hand, denies that a “distinction between tastes, preferences, values and ethics can coherently be made.”<sup>2</sup> The theory conflates values and tastes, argues that different values do not change the methodology of choice any more than tastes do, and thereby separates ethics and economics.<sup>3</sup> This is why Milton Friedman could declare at his Nobel prize 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 neo-classical theory does not logically distinguish between tastes and values, how can it contribute to Islamic economic policy, which does? We will pursue this question by suggesting that secular neo-classical theory cannot accommodate Islamic values and that an Islamic theory of choice, which recognizes the distinction between tastes and values, can better inform collective *ijtihad* on capital markets. In addition, we will draw out the policy implications of the essential Islamic principles of *tawhīd*, *tazkiyah*, and *‘umrān* for the capital market and respond to potential objections from neo-classical economists.

Let’s begin with the neo-classical 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 provide a good starting point for the neo-classical approach. While their approach attempts to answer essential economic questions, it lacks spiritual neutrality, for it is based on the doctrine that the only thing anyone can desire or pursue 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 admits that people sometimes desire the happiness of others, but insists that this desire is only a means to their own happiness. Purely altruistic and benevolent actions and desires, therefore, do not exist. In other words, according to neo-classical theory the noble actions of the Prophet or the *muqarrabūn* (those who are close to Allah) are disguised forms of self-serving behavior rather than models of conforming to the truth. It is one thing to suggest that people often “put their own interests first,” which Islamic economics takes into consideration, but quite another thing to assert that they are capable of nothing else and thereby deny a person’s ability to be motivated by the truth or God, rather than utility. As the Qur’an states, God is the Truth (*al-Haqq*) because He is the Real.

While the Chicago School's neo-classical approach denies a person's spiritual nature (read their literature on the economics of crime, marriage, fertility, and so on), Islamic economics recognizes that the believers' ultimate motivating cause 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 a person meets his/her spiritual needs fully by conforming to the truth with his/her whole 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, therefore, is an effect that accompanies spiritual virtue. This explains why a pious person with few means is far happier than an impious person of great wealth. As the Prophet said: "The Muslim is happy [*bi khayr*] in every situation."

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-ammārah* (the soul that 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 applies to both spiritual complements (e.g., physical needs) and opposites (e.g., anti-spiritual desires). For example, the Chicago School's neo-classical approach suggests that a spiritually inclined person should allocate his/her time between complementary needs (e.g., 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 that the individual could increase utility by reallocating his/her time. This principle also applies to allocating time to different questions on an exam.

But this approach to a hierarchy of spiritual and other needs is only appropriate for the *nafs*, because these needs are qualitatively different (points on an exam are not). Lumping "spiritual utility," "eating utility," and "working utility" into one utility is not possible, because doing so requires that spiritual and other needs to serve as substitutes for each other. Such a relationship would create tension between them. This view is further mistaken because a different type of "spiritual utility" accompanies both eating and working. As the Prophet said, a person working to feed his/her family is performing an act of worship, just as if he/she were praying. A person's life can be integrated

around a sacred center only if qualitatively different types of utility exist simultaneously. Such integration explains how the sacred is always present and not in conflict with a person's other needs. Islam holds every aspect of life to be sacred, because nothing is outside of the Absolute. Moreover, no aspect of life is profane, because everything is attached to God. Given this, believers have no need to allocate 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 neo-classical 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, such trade-offs could exist only if 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 neo-classical approach sets the stage for the sacrifice of spiritual needs.

The same principle applies when this approach is applied to the opposition between spiritual needs and anti-spiritual desires. For example, the Chicago School's literature on the economics of crime suggests that its spiritual costs 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. Believers recognize that spiritual benefits cannot be traded off against criminal gain, for this would require the existence of an end beyond God, Who aggregates both. Such a proposition contradicts the truth that God is the Absolute. And so they do not engage in this particular type of calculation.

Unlike the *nafs*, the *rūḥ* (spirit) recognizes that good and evil are qualitatively different, given that they are related to different intentions, because there are qualitatively different criteria upon which to make a choice. The *rūḥ* judges the alternatives not with respect to utility, but with respect to the truth, by examining the reasons behind the various good and evil desires. Indeed, the *rūḥ* would not adjust its estimate of a "mono-utility" if the material benefits of crime increased. Moreover, not only is the neo-classical approach irrelevant for the *rūḥ*, it is also unstable for the *nafs*, since ignorance of the truth is not necessarily permanent. God saves whom He wills, and the *rūḥ* can overcome the *nafs al-ammārah* with the truth, transforming it into the *nafs al-muṭma'innah* (soul at peace). Thus, this neo-classical approach to both spiritual complements and opposites corresponds to a theory of choice for the *nafs*, not the *rūḥ*.

Economists attempt to make all choices commensurable, reducing them to a single intention, by employing the concept of “indifference.” For example, if a person rates options A and B as being equally good, the person is “indifferent” to them. This indifference is only possible, however, when there is one intention – multiple intentions would lead a person to prefer option A to B, or vice-versa, depending on which intention has the 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 neo-classical economic analysis, because advanced mathematics can be applied to them (i.e., maximize utility according to the shapes of indifference curves). Given this, 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. Only by reducing values to tastes can the Chicago School claim 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*. In fact, it even denies that there is an inner battle between the *rūh* and the *nafs*, for it maintains that everything is reducible to a single intention under indifference curves. In other words, the Chicago School denies the Prophet’s teaching that we must continuously engage in the inner jihad, because no such battle exists for them.

Some economists recognize that this is obviously false and that there are major problems with the Chicago School’s neo-classical approach. 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 in order to maximize one’s score. Since a variety of further intentions are consistent with this goal, such situations accommodate multiple intentions. While this approach to limiting the use of indifference curves is spiritually neutral, it suffers from a particular defect: 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 such goods as food and clothes does not eliminate the problem of spiritual neutrality. For instance, when one is overeating or buying way too many clothes simply to gratify his/her 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 thus indifference curves do not exist – one cannot wear food or eat clothes. They can only be viewed as substitutes toward a single intention, such as pleasure, if the *nafs*, instead of the *rūh*, 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 those needs that are not substitutes for desires, which are determined through indifference curves, neo-classical 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 neo-classical economic approach accepts. Indeed, economists who recognize that indifference curves do not exist for spiritual needs must justify why they should exist between other qualitatively different needs.

Hence, these very indifference curves, which are central to neo-classical 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 they can provide answers to essential questions by using a theory of choice that 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 between spiritual needs and anti-spiritual desires on the other. Islamic economics recognizes the existence of indifference curves within each qualitatively comparable “level” and applies an ethical analysis to determine the differences between levels. Since only the *nafs* conflates values and tastes, by ignoring the reasons for these “preferences,” neo-classical 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 or require justification, there is an ethical argument about values that 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 *rūh*, 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 neo-classical errors. Developing an Islamic capital market requires both a correct understanding of *ijtihād* and 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 Abū Ḥanīfah and his school of law with *taqlīd* of some economists like Milton Friedman and the Chicago School. It is useful to remember that not too long ago many people were arguing for *taqlīd* based on Karl Marx rather than Abū Ḥanīfah, 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 humanity 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 neo-classical economics in developing an Islamic capital market is illustrated by the secular analysis of *ribā*. (Regardless of how one defines *ribā* – “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 *ribā* by arguing that consumption today gives more utility than consumption tomorrow, so that a lender must restrain himself/herself in order to lend money. This theory was popularized by Irving Fisher, a major economist on capital markets, and is taught in economics courses on savings and investment. (While we recognize that this is not the only neo-classical justification for *ribā*, it is a popular one. Our purpose is simply to illustrate that it is not spiritually neutral.)

According to this argument, the lender's “effort” at self-restraint 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 person working to support his/her family. These two types of “effort” are not, how-

ever, comparable from the Islamic point of view. Abstaining from such an evil as over-consumption is not something that morally requires a payment, whereas accomplishing a good (e.g., working to support one's family) deserves compensation. As the Prophet said: "Pay the laborer his/her wages before the drying up of his/her sweat." He did not say to pay the person who has more money than he/she needs today extra money tomorrow so that he/she will not commit the sin of consuming too much today.

The real effort is to abstain from *ribā*, not simply restraining oneself from consuming too much today. Secular economists often respond that abstaining from *ribā* will ruin the economy. The Qur'an counters this by stating that Satan threatens the Muslim with poverty when he/she abstains from *ribā*, whereas God promises him/her blessings. God's promise is empirically verifiable by the simple fact that stock investments are far more profitable than bonds in the long-run. For example, statistics from Ibbotson 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 percent of stocks on the exchange would be worth \$4,495.99.<sup>10</sup> If someone objects that the stock market cannot accommodate small or short-term investments in order to offer superior returns to capital, the response is that in these cases, abstaining from *ribā* does not lead to the dire poverty envisioned by the economists.

On the contrary, guaranteed interest actually burdens future Muslim generations. As any natural resource economist will testify, maximizing the value of such non-renewable resources as oil requires selling practically everything within 50 to 100 years. Discounting the consumption of future generations places the value of 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 will have little economic value, because a positive interest rate makes \$20 for a barrel of oil today worth far 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 toward God in conformity with the truth, whereas *ribā* does not, for the Prophet said that a person working to feed his/her family is performing an act of worship just as if he/she were praying. Indeed, the Shari'ah makes the effort to earn one's daily bread a religious act that is just as obligatory as specifically reli-

gious duties, and gives religious meaning to all acts that are necessary for a Muslim's life, but not to those that are exploitative luxuries, such as *ribā*. This is why the Qur'an implies that working for a living and being charitable to one's family, the opposite of hoarding wealth with *ribā*, 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 troops to repel an enemy assault. Someone remarked that he wished the young man 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 following God. If he strives for the livelihood of his weak parents or weak children, he is following God. If he tries to show his health out of pride, he is following Satan.<sup>12</sup>

By defining *maṣlaḥah* as the effect of conforming to the truth, Islamic economics opposes the erroneous neo-classical definition of it as personal desire. Only a vision of economics that correctly recognizes the spiritual possibility of the truth as a motivating cause, and *maṣlaḥah* as an effect can inform the *ijtihād* necessary to develop Islamic capital markets.

This brief example suggests how *taqlīd* of such western economists as Milton Friedman can lead to ruin in formulating 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 neo-classical or Marxist, eventually leads to ruin. Moreover, this accidental *taqlīd* is the real danger in the current environment. While some modernists argue that Muslims do not need a fatwa to justify the *taqlīd* of western financial institutions, other Muslims often unknowingly confuse a fatwa that supports such *taqlīd* with real *ijtihād*. The two are obviously completely different, just as an occupied territory is different from an independent state.

However, *taqlīd* of past legal rulings on economic matters is also dangerous. While the Islamic view of humanity as God's servant (*ʿabd*) and vicegerent (*khalīfat Allāh fī al-ard*) has not changed, the circumstances according to which people fulfill these roles and make their choices have. In today's complex environment of industrial production and institutional trade, *taqlīd* is no longer possible. Early fatwas dealt with relatively simple economic situations in which exchange was more individual than institu-

tional, and production was more agricultural than industrial. Since questions about just and unjust transactions were simpler, the *faqīh* (expert in Islamic jurisprudence) did not need the expertise of others and could make legal deliberations alone.

This is extremely difficult, for the knowledge required to deal with today's complex environment is enormous and requires specialized investigation in several areas. Moreover, early fatwas dealt with transactions within *dār al-Islām* at a time 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 of these reasons, past fiqh on economic matters does not necessarily apply to the current environment. As a result, we must look to the Qur'an and the Sunnah for guidance.

The correct methodology is to apply Islamic principles to economic policy in order to integrate ethics and economics around the three essential principles of *tawhīd*, *tazkiyah*, and *ʿumrān*. Each principle has 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 people recognize that wealth is a means that serves their spiritual interests, and that it is 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 believers have God, rather than any other good, as their ultimate end, for God can never be a means to a further end. To suggest otherwise is to deny that He is the Sovereign Good "requiring no justification in terms of a higher good."<sup>14</sup>

The second principle, *tazkiyah*, requires that people's will and sentiment be pure and willing, and that they love all things for God's sake. Purity requires that the will of *homo Islamicus* should keep the Sovereign Good in view and consider all things in their connection with this Good. Their sentiments should be objective in loving all things in their divine context. It would be illogical and against the truth for *homo Islamicus* to will or love things outside of their Divine Cause, for that would constitute the sin of idolatry, defined as "to hate indirectly the Cause from which all perfection and all love derive."<sup>15</sup> The second principle, therefore, requires that people must not be passionately attached to wealth; must be grateful to God for their *rizq* (provisions) and view nature as an *āyah* (sign) of Allah; and must be generous when dealings with others. The fact that zakah is based on the

same root as *tazkiyah* shows just how intimately generosity is connected with purity.

The third principle, *‘umrān*, requires that people accomplish the good in building civilization. In other words, they should not waste their God-given talents and resources either through underutilizing them and neglecting to fulfill their real needs or through exploiting them in the service of greed rather than God. In accomplishing the good, the third principle requires humanity to be vigilant and not slothful, build wealth and civilization to fulfill real spiritual and other needs, and not to abuse them for the sake of passion.

These three principles show that Islam recognizes the importance of wealth in a hierarchy of humanity's spiritual and other needs (*maṣāliḥ*). The Islamic economic hierarchy recognizes that such external goods as wealth are means to attain goods related to the body, such as health and beauty, which, in turn, is the physical support for the spiritual work that manifests itself in intrinsic virtue, the "goods of the soul." The Islamic principles of *tawḥīd*, *tazkiyah*, and *‘umrān* regulate this hierarchy and integrate humanity's spiritual and other needs into a meaningful whole, thereby realizing and implementing the *shahādātayn* (the fundamental testimonies of faith). In this sense, Islamic economics recognizes the possibility that people can be motivated by the truth or God, rather than by utility or happiness, to eliminate the evil and accomplish the good.

Given all of the above points, we can say that Islam clearly recognizes the role of capital markets in raising funds for companies and projects designed to help the community fulfill its physical and other needs while also providing the necessary liquidity. But 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 that is consistent with these principles. This raises many questions, such as how the capital market can be used as a means to wealth or development that supports society's spiritual ends. 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 rather the result of fulfilling one's responsibilities. It is self-contradictory to argue that human dignity gives unlimited rights to the basest of people, for this would allow such people to destroy what makes up a person's real dignity: his/her attachment to God.

Several questions that suggest the kinds of responsibilities these principles imply for companies and investors are given below. They are intended to be suggestive (not exhaustive) and relate directly to the equity (not the debt) market. Although several questions apply to both, they are placed in the context of the stock (rather than bond) market, for the latter ultimately contradicts essential Islamic principles. More investigation is needed to determine distinctions between bond types and which types are Islamically acceptable (e.g., bonds for such public works projects as airports).

Turning first to companies, these principles raise questions about corporate responsibility to customers, employees, and shareholders. For example:

- Is it Islamically acceptable for companies to use money raised in the capital market to create entry barriers that inhibit competition so that they can charge their customers higher prices? Islamic principles say it is not. But this has occurred in several American industries.<sup>16</sup>
- Can companies treat some shareholders differently, even when they make similar investments? Justice requires that investors be treated equitably and that arbitrary treatment be considered unacceptable.
- What type of technology will the companies buy with their raised capital? Case studies by the Appropriate Technology Institute reveal that the West often sells technology to developing countries that cannot be transplanted and is often inappropriate. E. F. Schumacher, an economist famous for popularizing appropriate technology, has demonstrated that large-scale western technology is often not in the people's best interests.<sup>17</sup> Some economists may object that the market always produces the most efficient types of technology, but the Appropriate Technology Institute's research shows this is not always the case and that 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.
- What is a company's responsibility to the environment and future generations with respect to pollution and resources? For example, can companies use capital from the stock market to deplete non-renewable resources within 50 or 100 years in order to maximize financial gain? Once again, this violates Islamic principles. However, this is the regular practice of the oil industry, which represents some of the world's largest publicly traded companies. In short, capital must be used according to

Islamic principles if the idea of an Islamic capital market is to have any meaning.

Although these questions highlight some of the differences between Islamic and secular stock markets, there are several areas of common concern. Of particular concern is giving investors complete information on corporations so that unscrupulous brokers and companies cannot mislead them into purchasing practically worthless shares, as was common in the early days of the American stock market and, to some extent, today.

Only in the last decade did the U.S. Securities and Exchange Commission close such notorious brokerage firms as Blinder and Robinson, known to experienced investors and industry experts as “Blind’em and Rob’em.” This brokerage firm routinely created companies in which it was the only “market-maker,” or transactor of sales, and created an enormous spread between the “bid” price and the “ask” price, thereby 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, it made a huge profit. The firm would continue to manipulate the stock price higher before bringing it crashing down and wiping out the remaining investors. The process would then begin again with a new round of investors. Certain types of stocks 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. Thus, a large drop in a stock’s price should be investigated to ensure that there has been no manipulation.

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

Turning to investors, Islamic principles raise questions about the investments available to them. Of course, any investments in liquor and casino stocks, for example, are forbidden. But what about futures and options trading on companies selling *halāl* products? Futures contracts on stocks require 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 allow one investor to buy shares from or sell shares to another investor before a given time and at a pre-determined price in exchange for a fixed, irretrievable payment. Many scholars argue that such a transaction encourages speculation and allows exploitation, both of which are against Islamic principles.

Similarly, one must determine how much leverage is Islamically permissible when investing in stocks? Can investors put down 10 percent in the hope of greater profits and pay interest on the 90 percent balance? This was the New York Stock Exchange's policy before the stock market crash of 1929. Afterwards, the minimum investment was increased to 50 percent, because such a high leverage contributed to the prices' collapse and so created instability by encouraging speculation. Such destabilizing speculation is clearly against Islamic principles and is the major reason why some modernists argue that bonds are necessary, since stocks are unstable.

But many economists have pointed out that debt financing and speculation are major causes of stock market instability.<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, repeatedly warned investors to invest cautiously, clearly discouraging leveraged investments that increase market volatility. This is good advice, because price-earnings ratios and market volatility have now reached levels similar to those before the market crash of 1987. Some economists argue that the stock market's volatility is not rational, and that 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, both of 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.

In general, neo-classical 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 community's *maṣlahah*, fiqh's relativity, the absence of alternatives, or a combination of all three. However, those engaged in collective *ijtihād* must defend the Islamic economic approach which uses applied ethics from these erroneous charges. We will make a few suggestions in this regard.

Let's begin with the last argument: the lack of alternatives. Actually, this is a variation of the *maṣlaḥah* 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 our lack of creativity and desire to realize this goal prevent their implementation. Therefore, this section focuses on the neo-classical economists' first two arguments: the community's *maṣlaḥah* and fiqh's relativity.

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

The argument that humanity can determine what is in its best interests by thinking about *maṣlaḥah* without referring to revelation is absurd. The Qur'an commands us to think about our interests with an intelligence that is pure (*salīm*). But this is only possible if we follow the Shari'ah. When passionate desires control us and we break the Shari'ah, our intelligence alone is not sufficient to determine what is in our 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 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 thing 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 that contradict the absolute because of *maṣlaḥah* or time are fallacious. Unfortunately, secular economics combines both errors in a way that is even more extreme than that of Najm al-Dīn al-Ṭūfī, who argued that *maṣlaḥah* 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 *uṣūl al-fiqh* recognize the danger of al-Ṭūfī's argument and have developed an extensive literature on the appropriate use of *maṣlaḥah* in legal arguments. The scholars have strongly rejected radical interpretations of *maṣlaḥah*, as the following quote from Zāhid al-Kawtharī's criticism of al-Ṭūfī illustrates:

One of their spurious methods in attempting to change the *Sharʿ* in accordance with their desires is to state that "the basic principle of legislation in such matters as relating to transactions among men is the principle of *maṣlaḥah*; if the text opposes this *maṣlaḥah*, the text should be abandoned and *maṣlaḥah* 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-Ilāhī*) in order to permit in the name of *maṣlaḥah* what the *Sharʿ* has forbidden. Ask this libertine (*al-fājir*) what is this *maṣlaḥah* on which you want to construct your law? ... The first person to open this gate of evil ... was Najm al-Ṭūfī al-Ḥanbalī ... 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 al-Ṭūfī was clearly unsuccessful in his attempt to abuse the concept of *maṣlaḥah* and create heretical legislation, unfortunately, in the West, his British counterpart Jeremy Bentham, who was reacting to the injustices of the church, was far more successful. Bentham played a key role in developing the secular economics that now oppose the development of a truly Islamic capital market. Bentham defined *maṣlaḥah* in terms of individual desires, regardless of whether they are from the *nafs al-ammārah* or not. Modern economics uses the same approach by defining *maṣlaḥah* as any voluntary choice. According to this theory, more choice is always better because any voluntary exchange supposedly increases the society's *maṣlaḥah* (assuming that it does not create a negative "externality" or negatively affect others). According to

this theory, Islamic rules on ethics in the capital market are wrong, because they reduce the people's choices. Modern economics claims to be for the *maṣlaḥah* 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 *maṣlaḥah* is absurd and simply replaces serving God with serving one's passions in terms of utility. The theory makes the relative absolute by subordinating truth to desire, not distinguishing between "the mental states involved in believing something that really is true and a successful deception."<sup>21</sup> This neo-classical definition ignores whether an action or an intention conforms with the truth of the Absolute, thereby 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. Thus it is irrelevant to economics if the perceived *maṣlaḥah* is false in relation 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 *maṣlaḥah* is unacceptable from any spiritual point of view. If the *nafs al-ammārah* is making the choices instead of the *rūḥ*, then fewer choices are better for both the individual and society. As al-Ghazālī said, some people 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 *maṣlaḥah*. Unfortunately, many Muslim scholars believe that western economics can guide the Ummah to develop its capital markets. Therefore, it is vital to show how these economic arguments make *maṣlaḥah* absolute instead of God, and how they invert essential Islamic principles.

Indeed, the economic definition of *maṣlaḥah* 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 (*tawḥīd*) by making *maṣlaḥah* absolute, instead of God. It denies that God is the Sovereign Good "requiring no justification in terms of a higher good," and replaces God with *maṣlaḥah*.<sup>23</sup> According to economics, wealth can be an end in and of itself because *maṣlaḥah* is not subordinate to the truth.

In replacing truth with error, economics similarly inverts the second Islamic principle (*tazkiyah*). By making *maṣlaḥah* absolute, economics denies the need for purity in willing and loving all things for God's sake, and makes its inversion unavoidable. Rather than eliminating evil, acting according to the economic definition accomplishes it. Without truth to regulate *maṣlaḥah*

and our desires, we are bound to be passionately attached to wealth, ungrateful, and greedy (*tazkiyah* requires detachment, satisfaction, and generosity), as the Qur'an and Hadith testify.

Similarly, this definition perverts the third principle (*'umrān*), substituting accomplishing the good with an exaggerated concept of development that 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 this economic definition. 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.

In fact, this is the very starting point of western economics, beginning with Adam Smith, who examined the wealth of nations, in his book of the same title, from the point of view of material pursuits.<sup>24</sup> As a Deist, he believed that God was detached from the world. Similarly, John Locke believed that God was unknowable and that civilization had to be based on human reason rather than revelation. For him, the purpose of government was 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 are a parody of the Islamic concept of *'umrān*.

Such contemporary scholars as Muḥammad Sa'īd Ramaḍān al-Būṭī correctly argue 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 this dangerous character of secular economics, it is helpful to understand more about Jeremy Bentham, the "founding father" of modern utilitarianism.<sup>27</sup> Bentham hated God and religion, and attacked both vehemently. 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 that do not "harm others," such as sexual indulgence and homosexuality, actually decreased utility. For him, 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 so that it could govern society with secular laws based on the sci-

ence 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. When asked by “a great man” what he should do “to save the nation,” Bentham replied: “Take up my book, and 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 *uṣūl al-fiqh*, which had a parallel refutation of al-Ṭūfī. Scholars in *uṣūl al-fiqh* must also be aware of the dangerous assumptions underlying neo-classical economics. Both groups of scholars can generate truly Islamic alternatives and refute the modernists’ arguments that an Islamic economy does not serve society’s *maṣlaḥah*.

#### CONCLUSION

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

By recognizing that truth is the believers’ motivating cause in purifying themselves from evil and accomplishing the good, authentic *ijtihād* and Islamic economics can be combined in order to develop a truly Islamic capital market. The same analysis must also refute the erroneous legal and eco-

conomic arguments of those who favor *taqlid* of the West with a fatwa. If current ijthihad fails to apply such essential Islamic principles, the Ummah will face a more perilous situation in the future, for nothing useful can be accomplished without the truth.

The most important cause of our current economic problems is the lack of wisdom. Consequently, we do not know how to properly use our God-given resources. The secular economist's argument that scarcity is necessary because everyone must have insatiable desires is a myth propagated by the West. God's justice must be the source of our guidance, for wealth is God's wealth, and humanity is God's creation. We are His vicegerents and 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), 124.
3. Ibid.
4. Quoted from Tibor Machan, "Reason in Economics versus Ethics," *International Journal of Social Economics* (1996): 21.
5. C. Dyke, *Philosophy of Economics* (Englewood Cliffs, NJ: Prentice-Hall, 1981), 10-11.
6. Frithjof Schuon, *Spiritual Perspectives and Human Facts* (Middlesex: Perennial Books, 1987), 93.
7. For example, humility comes from one's total dependence on God. This awareness prevents people from overestimating themselves and underestimating others.
8. As Seyyed Hossein Nasr notes, Marxism is Christian charity without Christ. See his *The Need for a Sacred Science* (Albany: State University of New York Press, 1993), 152.
9. Frithjof Schuon, *Esoterism as Principle and Way* (Middlesex: Perennial Books, 1981), 94.
10. Ibbotson and Associates, *Stocks, Bonds, Bills, and Inflation: 1997 Yearbook* (Chicago: Ibbotson and Associates, 1997).
11. Muhammad Abdul-Rauf, *A Muslim's Reflections on Democratic Capitalism* (Washington, DC: American Enterprise Institute), 5.
12. Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn* (New Delhi: Kitab Bhavan, n.d.), 2:54.
13. As the paper's first section clarifies, 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), 58.
15. Frithjof Schuon, *Stations of Wisdom* (Bloomington: World Wisdom Books, 1995), 94.
16. The breakfast cereal industry, represented by such companies as Kellogg's and Post, is a recent example. Only after the American 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), 95-100.
19. Frithjof Schuon, *Logic and Transcendence* (Middlesex: Perennial Books, 1984), I.
20. Muhammad K. Masud, *Shatibi's Philosophy of Islamic Law* (India: Kitab Bhavan, 1997), 163.
21. James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford: Clarendon Press, 1986), 13.
22. Schuon, *Esoterism*, 102.
23. Schumacher, *Guide for the Perplexed*, 58.
24. Harry Landreth and David Collander, *History of Economic Thought* (Boston: Houghton Mifflin Co., 1994), 67.
25. Jeremy Rifkin with Ted Howard, *The Emerging Order: God in the Age of Scarcity* (New York: G. P. Putnam's Sons, 1979), 30.
26. Masud, *Shatibi's Philosophy*, 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): 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), 148.
29. *Ibid.*, 287.
30. *Ibid.*, 315.