



Contending with Capitalism: Fatwas and Neoliberal Ideology

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Abstract

Neoliberal economic theorists posit that the economic sphere is to be differentiated from the social world and governed by its own rationality that is distinct from religious, ethical, social, or political considerations. My article explores how the issuance of fatwas in the contemporary Muslim world discursively compete with neoliberal capitalist ideology by embedding religious ethics in economic discourse. First, I contextualize this analysis with a historical discussion on how the Muslim world was incorporated into the capitalist world-system, a process that peripheralized their established economic and cultural practices. Then, I examine the contemporary fatwas on commercial transactions that are issued by an international Muslim organization. My overall argument is that the Islamic moral economy proposes financial arrangements that represent alternatives to capitalist financial practices, which are the standard modes of operation in global financial institutions. Such practices pose a challenge to Muslim economic ethics and law, a challenge that Muslims are trying to negotiate using traditional legal practices such as the fatwa.

Keywords: Capitalism, Colonialism, Embeddedness, Ethics, Finance, Law, Political economy, World-Systems Theory

This article explores how the discourse of fatwas in the contemporary Muslim world are competing with neoliberal capitalist ideology by embedding religious ethics in economic discourse.¹ Karl

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Polanyi described how neoliberal ideas in modern history disembedded economics from social relations. I argue that contemporary fatwas on Islamic finance are countering this trend by re-embedding the economic sphere within a normative framework; hence, defying the neoliberal logic that the market should function according to its own economic rationality. A fatwa is a legal opinion that is pronounced by a Muslim jurist that establishes the legitimacy or lack thereof of an action, position, or practice. As such, I view fatwas as ethical embedding mechanisms in Muslim Society. In using the notion of embeddedness, I draw upon Karl Polanyi's usage and popularization of the term in his work *The Great Transformation* (Polanyi 2010: 48). Mathew Watson describes Polanyi's concept of embeddedness as follows: "Embeddedness, for Polanyi, is the social control of economic relations through institutional means, where a link can be drawn between embeddedness and the social obligation to act in a morally dutiful manner" (quoted in Dale 2011: 331). Fatwas do much more than merely embed economy within a moral framework, but the focus of this study is on those fatwas that connect economic relations with moral obligations.

Ultimately, I explore how fatwas in the contemporary Muslim world are discursively competing, albeit inadvertently, with neoliberal capitalist ideology by situating economics within the domain of religious ethics. This exploration does not focus on the actual challenge of the Islamic economy to the conventional economic order, but rather on its ideational foundations (religious ethics) that outline a different vision of economic practice through the means of a pragmatically-oriented counter discourse (fatwas). The case study undertaken here demonstrates how fatwas situate economic rationality in the moral sphere, opposing the notion that instrumental market logic should solely determine economic operations. It should be made clear here that this opposition that fatwas pose to neoliberal ideology is not a conscious effort made by jurists who issue these statements. Rather it is born of the very function of fatwas themselves to embed the social world in a normative framework, a practice that contradicts neoliberal economic ideology. Thus, fatwas pose a discursive counter current to the disembedding policies of neoliberal capitalism. Moreover, unlike forms of theoretical discourse that ideologically advocate alternative economic orders, fatwas represent a kind of pragmatic discourse consisting of performative statements centered on particular social actions rather than explicitly advocating ideological positions. In that sense the challenge they pose to neoliberal economic discourse is both unintended and peculiar.

However, before such an analysis I first present the essential ethical precepts that undergird the fatwas related to economics and finance so as to situate the later argument of how Muslim

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commercial transactions were disembedded from these normative considerations. I then give a historical summary of the integration of the Middle East into the global economic order as a backdrop to understanding the rise of contemporary Islamic finance as well as the current economic realities facing the region. Employing Immanuel Wallerstein's world-systems analysis, I show the historical process by which Muslim economies were disembedded from social relations and integrated into the capitalist configuration of the world-system.

The reader should understand that the success of this transformation of the Muslim political economy was not solely due to economic and political factors, but was accompanied by the cultural component of secularization. Secularization of Muslim society was critical to understanding the nature of how economic relations were disembedded from social relations. Hence, the historical section on the economic integration of the Middle East in the Modern World-System will be followed by a cultural analysis of the secularization Muslim society. In this section, I extend Wallerstein's notion of the periphery into the cultural domain to argue that secularization of Muslim societies was carried out through a colonial and postcolonial process of the 'peripheralization' of Islamic law within Muslim societies. This peripheralization was integral to the disembedding of Muslim economies and their integration into the global economic order. Here, peripheralization is seen as a process by which the disembedding of the Muslim economy was achieved; hence, I merge a Polanyian analysis with Wallerstein's concepts to formulate a new theory of Muslim secularization.

Yet it is my contention that these historical and ideological trends are being counteracted by contemporary fatwas that envision a moral basis to the economy rather than a purely utilitarian one. To demonstrate this phenomenon, in the final section I examine a contemporary fatwa issued by the International Islamic Fiqh Academy (IIFA), a fatwa-issuing organization consisting of Muslim jurists from across the Muslim world. More particularly, I analyze its resolution on Islamic stocks as an illustration of how Muslim institutions are simultaneously attempting to adapt to and ideologically challenge the global capitalist order.

The Normative Foundations of Islamic Economics

The most fundamental feature of Islamic economics that distinguishes it from most conventional economic doctrines is that it gives primacy to ethics over efficiency in its operations. Wardi asserts that Homo-Islamicus' motivations for social actions is based on altruism because the individual in this conception ideally behaves virtuously in accordance with religious norms, while motivations of *homo-economicus*, as conceived by classical capitalist economic doctrines, are based on self-interest (Wardi 2010: 41). Being ethically based, Islamic economic doctrine was not formulated from a presupposed theory of human economic behavior, instead it arose in modern times out of the analysis of the set of laws that were established by medieval Muslim jurists for

the regulation of commercial and financial transactions. Hence, the Islamic economics does not proceed from the pretensions of being a science that theorizes the nature of human economic behavior, but what it does do is try to situate the rationality of that behavior in its ethical system.

At the heart of Islam's moral economic framework lie two primary prohibitions that regulated commercial and financial transactions: *riba* (usury) and *gharar* (speculation). *Riba*, as it relates to today's modes of finance, means the taking of interest on a bond or loan (ISRA 2016: 52); while *gharar* "refers to 'excessive' uncertainty in relation to price, quantity, or quality of goods in an exchange contract" (ISRA 2016: 62). Let us take a closer look at the notion of *riba* in Islamic economic doctrine and return later examine to the concept of *gharar*. Islam, like other pre-modern conceptions, views money's primary function as a medium of exchange and not a commodity for rent or sale, which explains its ban on interest (ISRA 2016: 53). Conceived primarily as a medium of exchange, Muslim economic theorists argue from an ethical point of view that money should not be seen as a leasable asset because is not a durable property that "generates usufruct...without being used up or consumed in the utilization process." (ISRA 2016: 54).

Moreover, from the economic perspective, some Muslim economic theorists view interest, or *riba*, as stifling genuine commerce because in usurious money-lending no real goods or services are exchanged. Instead, interest-based financing they allege harms commerce by "withdrawing money from the flow of trade in goods and services" because moneylenders find it easier and less risky to lend money for profit (interest) than to engage in real productive activities like commerce. In turn, this then gives financiers unjustifiable power over the wealth that was originally created through real commercial transactions (ISRA 2016: 53-54). Thus, by eliminating interest-based financing, money is diverted to genuine commercial transactions stimulating trade (ISRA 2016: 57)

The prohibition on *riba* insured that finance was not decoupled from commerce, and for most of Muslim history finance was a subset of commerce and not an autonomous activity (Wardi 2010: 25). To finance commercial ventures, Muslims developed various models of profit-loss sharing (PLS) modes of finance, which connected capital to labor to produce real goods and services and reduce the profit maximization aims of financiers seeking to reduce their costs through strict debt financing (ISRA 2016: 50, 56). These innovative PLS models of finance, which fatwas play an integral role of morally legitimating, are being re-created in the current context.

I next turn to the other bedrock concept of Islamic economics: *gharar* (speculation). Unlike *riba*, which has a limited scope of cases, *gharar* arises in myriads of commercial and financial situations, making it difficult to narrow this infraction down to a few identifiable forms. In classical Islamic legal manuals, it was exemplified by the 'sale of the fish in the sea' and similar types of purely speculative ventures. Nevertheless, *gharar* may be illustrated by several types of infractions: the non-existence or lack of possession of the subject matter under contract; the lack

of information about the subject that is being contracted; or over-complexity in a contract that makes one transaction dependent upon another and thus creates uncertainty over whether the terms of the transaction would be fulfilled (ISAR 2016, 185-186). Islamic business ethics eschews these practices as unethical because they often lead to situations of disagreement between the contracting parties or worse yet exploitation by one or more of the parties over another in the transaction.

What concepts like *riba* and *gharar* tell us about the Islamic understanding of the economy is that it ought to be embedded within an ethical framework that governs the behaviors of the agents within that domain. This system takes into account ‘non-economic’ motivations to market behavior (Wardi 2010: 10), because of its recognition that there is no such thing as a purely economic perspective since economy is situated within the domains of moral and social relations. Fatwas have been one main social mechanism by which commercial and financial transactions have been situated within the framework of a moral economy. This article explores how this is carried out in the contemporary context. But before providing this explication, I summarize the history of how the Islamic moral economy was disembedded from its ethical framework so that we can appreciate the role of contemporary fatwas in contesting neoliberal ideology.

Incorporation of the Muslim World into the Modern (Capitalist) World-System

The transformation of the Muslim World from an agrarian-based social formation to a capitalist one was a lengthy and varied process that was shaped by the various historical experiences of its many regions. Yet the common thread to these experiences was their encounter with increasing European hegemony on the world stage, starting in the mid-eighteenth century. This put most Muslim lands under the direct colonial domination of European states by the beginning of the twentieth century, or made Muslim states subservient to the new European global economic and political order that was forged. The key features of this order were wealth-generating capitalistic modes of production, bureaucratic political administration, the European model of nation-states, and technological advancements that gave European states greater power to impose this new political and economic order on the rest of the world. This world order has been aptly described by Immanuel Wallerstein as the modern world-system, characterized by capitalistic modes of production and a global division of labor regime that fixed economic relationships between various regions of the world.²

Colonization and semi-colonization of the Muslim world was the vehicle by which the Muslim world was incorporated into this modern capitalist system. Throughout the nineteenth century, European powers incorporated the economies of their colonial possessions into the world

² For a basic exposition of Modern World System theory, see Wallerstein 2011 V.1: 349; Wallerstein 2004: 28; and Duchrow 1992: 12, 15, and 20.

market, which involved converting their economies from self-reliant subsistence economies with vibrant manufacturing sectors into dependent commodity economies supplying the colonial metropole with cash crops and raw materials for their manufacturing sector. These finished industrial products were subsequently exported to and sold in colonized states. Roger Owen states: “In the course of the 19th century the Middle East was integrated, as a producer of primary products and [a] market for manufactured goods and colonial produce, in the international network of trade” (as quoted in Bromely 2005: 8). The increasing economic integration with Europe put local manufacturers out of business and encouraged the growth of cash crops (Bromely 2005: 8).

With some variance in its implementation depending on the circumstances of a particular region or the political and economic strength of the colonial state, the application of this colonial economic policy and practice spanned colonized Muslim societies from Algeria to Indonesia, including those Muslim states like the Ottoman Empire and subsequently Turkey, which managed to escape direct colonial occupation. It was through these means that Muslim societies were made dependent and peripheralized in this capitalist world-system.³

This European-modeled international order wreaked havoc on Muslim societies beginning in the 19th century and radically reconfigured their social, economic, legal and political structures and conditions. Yet, despite these sweeping changes, the ‘development gap’ which had existed between European (core) and non-European (peripheral) regions was only further perpetuated by the increasing diffusion and entrenchment of this system around the globe. Furthermore, these rapid, externally-imposed alterations in the socio-historical conditions produced a profound psychological alienation amongst Muslim peoples (and colonized peoples the world over) not only with the world order but with their own tradition as well. Social dislocation and the subsequent psychological alienation spawned various new socio-political reactions in the Muslim world that emerged towards the end of the 19th and beginning of the 20th century, which changed both the worldview and practices of Muslim peoples.

Schulze argues that the economies of colonized states continued to be very much dependent on the Western determined world market in the 20th century. Jolts in the international market hindered the ability of colonized nation-states to achieve consistent development. For example, world-wide the economic crises of 1920s and 1930s severely affected the economies of Muslim nation-states because there was a steady decline in the prices of primary commodities for which Muslim countries were heavily dependent on agrarian exports.⁴

³ See Rosa Luxemburg's (2003) *The Accumulation of Capital* especially the chapters 27-30 where she documents European colonial exploitation across the Muslim world in the 19th century from Algeria to Muslim-governed India.

⁴ See Schulze, 2002: 92 for statistics on the exports of some Muslim nations during this period.

Yet, by the middle of the 20th century when direct colonization was coming to an end in most Muslim countries, “the competition of uncontrolled Western products and the presence of the Western capital market still posed much of the same problems as they had throughout the nineteenth century,” especially for countries that did not place internal controls on their economies (Hodgson 1974 V.3: 368). The continued effect of the capitalist world market on these societies made them feel that allowing this market free play would continue to perpetuate their dependence and facilitate the disparities between the privileged and the impoverished. These conditions fostered the growing socialist tendencies of Muslim post-colonial governments, which called for greater control and planning of the national economies and fostering of massive industrialization to break this dependence on the Western driven capitalist world system (Hodgson 1974 V.3: 369-370). These changes did not come without a social price: industrialization further broke down the old social structures of pre-colonial societies and fragmented the social unity that once existed. In light of this breakdown in social cohesion, nationalism became the new cement that held modernizing societies together (Gellner 1981: 92-94).

Modernization efforts by the governing nationalist elites never achieved their objectives of economic development and political independence of Muslim nations because the structural factors of economic and social development of urban regions required from the economy more than it could provide (Schulze 2002: 194). Schulze (2002) argues:

The readjustments on the international finance market triggered the rapid rise in oil production suddenly made any economic developments conducted by the state appear as an anachronism. The expensive and often ambitious development projects which continued to follow classical theories of modernization could no longer be financed. In 1970, Egypt already had debts exceeding 1.6 billion US dollars, and Iran owed 2.2 billion dollars. (Schulze 2002: 187)

Modernization projects failed to change the peripheral status of most Muslim nations in the global economy as suppliers of raw materials and cash crops. But modernization policies that were pursued during the colonial and postcolonial period led to one critical consequence: the complete disembedding of the economy and politics of Muslim societies from Islamic normative considerations. This is because these spheres became dominated by the logic of economic rationality or calculations of political interests, especially in the sphere of commercial transactions where the rules of Islamic law had previously prevailed.⁵ By the 1970s, the failure of modernization policies to deliver on their promises led to the disillusionment of the Muslim public and a turn towards embracing Islamic solutions to modern challenges (Schulze 2002: 195-196).

⁵ See Chapter 7 "Contracts and Other Obligations" in Hallaq's (2009) *Sharia: Theory, Practice, Transformations* for more on how extensively Islamic law regulated commercial transactions.

Before addressing the issue of Islamic revivalism and its impact on the Muslim economy, I describe in the next section the corollary cultural ‘peripheralization’ during the colonial and postcolonial period that was an interrelated process to the economic peripheralization taking place. The cultural process of secularization of Muslims society through the marginalization of Islamic law and ethics, which up until the period of European colonialism played an integral role in regulating Muslim commercial activities, also facilitated the incorporation of the Muslim world into the modern world-system.

Secularization of Muslim Society and the Peripheralization of Islamic Law

The peripheralizing of Islamic law during the colonial period, particularly from commercial transactions, meant that the Muslim economy was being increasingly disembedded from Islamic ethical norms in which Muslim commercial transactions were anchored for centuries prior to colonial intervention. My analysis adapts Wallerstein’s idea of economic peripheralization of societies in the modern world-system, extending it to the cultural domain. My aim is to highlight how the normative concepts and ideas of economically peripheral societies in the modern world-system are marginalized to make way prioritize capitalistic instrumental reason and other European values and sensibilities. In other words, ‘peripheralization,’ or the decentering of native cultural norms and practices in societies on the economic periphery of the modern world-system, becomes a vehicle through which secularization was fostered in those societies.

One historical implication of this process of colonial cultural peripheralization in the Muslim context was that it led to the disembedding of certain types of social action from their moral anchor. It is this dual phenomena of peripheralization and its effect of ethical disembedding that define a particular anatomy of secularization of the Muslim world. To explore the historical manifestation of this secularization process, I examine the peripheralization of Islamic law starting in the colonial period and continuing into the postcolonial era.

Beginning in the nineteenth century, Islamic law in many Muslim regions was— under colonial rule or foreign pressure—restricted to adjudicate matters of family law and pious endowments, and it was stripped of jurisdiction over criminal and commercial law (Asad 2003: 211; Awass 2017: 41). An example of this is the Ottoman Empire’s adoption of European penal and commercial codes in the mid-nineteenth century (Awass 2017: 41; Hallaq 2009: 407). In 1853, the Egyptian regime also adopted the French-modeled Ottoman Commercial Code of 1850, which was implemented through merchant councils. These councils, ruled by European and Egyptian judges, effectively moved commercial transactions outside the purview of Islamic law (Awass 2014: 420-421; Hallaq 2009: 422).

In the case of French colonized Algeria, the French gradually reduced the role of Islamic law in Algerian society during the nineteenth century by limiting the types of cases that could be settled

through Islamic law and then reducing the number of Islamic courts. The Islamic judges lost the right to deal with cases concerning landed property in 1886, and criminal cases could only be dealt with by French jury courts where the French settlers were the jurors (Awass 2017: 38; Vikor 2005: 245). There were originally 300 Islamic courts in Algeria, but with the introduction of new policies that would further subdue Algerians to French domination, the number of these courts decreased from 180 to 60 in the period between 1870 and 1890. In the areas where Berber non-Arab tribes (Kabyle) resided, these courts were abolished altogether in 1874, under the guise that the Berbers were not sufficiently Muslim and ought to be governed by their own customary laws (Awass 2017: 38; Vikor 2005: 245).

The formation of Muslim nation-states in the first quarter of twentieth century and their eventual decolonization by the mid-century continued the colonial policy of secularization that further peripheralized Islamic law within Muslim societies. This was because the elites within these states attempted to emulate the secular model of governance of their European colonizers. In this period, the removal of legislative authority from the hands of Islamic jurists had been almost complete. Whereas these jurists controlled the legislative and judicial functions in the precolonial state, these functions were transferred to the “modern” nation-state in the form of a secular legislature and judiciary (Awass 2017: 42; Layish 2004: 95).

This sort of peripheralization of Islamic law and its corresponding institutions over the past two centuries has had profound effects on Muslim outlook and practice. This increasing marginalization of Islamic norms in the Muslim public sphere created an amoral social space for the operation of other forms of rationality in the place of the value-based rationality of religious ethics. Morally disembedded Muslim societies enabled European educated and acculturated Muslim elites to infuse the economic, political, and social spheres within the secular logic of nationalism and statism.

What I am proposing is that secularism in the Muslim context is defined as the disembedding of the various spheres of life from their ethical grounding. Once this disembedding reached a critical threshold, it allowed for those spheres to run according to the logic of the state or the international market. This was partly how secularism was introduced to the Muslim world in the colonial period; that is by rendering Islamic law ever more limited in its reach to the various spheres of the social world even as that same law was centralized by the ‘modernizing’ Muslim states for the secular ends of statism. Secularism in the Muslim world was not a result of some historical ‘rationalization’ process, which many 20th century secularization theorists posited as the natural course of human history.⁶ Instead, the historic roots of secularization in the Muslim world

⁶ See Weber’s “The Social Psychology of World Religions”, Peter Berger’s *The Sacred Canopy*, and others for articulations for the what is known as the Secularization Thesis.

were colonial impositions that displaced the moral influence of religious institutions on the state and mitigated their role on the social order.

To illustrate how this colonial inspired secularization worked in the economic sphere, the colonial political pressure on semi-colonized Muslim states like the Ottoman Empire and pre-colonial Egypt succeeded in divorcing the rules governing the commercial sector from the purview of Islamic law. This forced these states to adopt European commercial codes through its policy of capitulations furthering the integration of Muslim economies into the capitalist world-system. Given that these new commercial codes were not situated in Islamic ethical and legal norms and were instead based on western capitalist non-religious norms meant that the Muslim economic sphere was being secularized. As a result of the promulgation of these codes, interest-based banks and lending practices were established in these regions.⁷ Thus, the Islamic rules regarding the prohibition of usury were annulled, demonstrating how economic transactions were being increasingly disembedded from the Islamic moral framework.

Colonial inspired secularization of Muslim societies was carried forth by the newly formed Muslim nation-states that were products of colonialism. As I discuss above, Muslim nation states further peripheralized Islamic law and extended the secularization process of Muslim societies in the name of development and modernization. For instance, with the 1925 formation of the modern nation state of Iran following the dissolution of the pre-modern Qajar Dynasty, the new Iranian monarch, Reza Shah, undertook legal and judiciary reforms where he eventually promulgated western-style legal codes that replaced religious and customary law (Arjoumand 1988: 66; Keddie 1981: 95). Religious law forbade trade by Muslims in some goods like alcohol as well as the dealing with interest. The new commercial codes that were promulgated during early period of Reza Shah's reign legalized such transactions, much to the religious establishment's objection (Arjoumand 1988: 82; Keddie 1981: 95).

Serge Latouche, a critic of development, sees these 'modernization' efforts by countries of the Global South like Iran not simply in economic terms but also in cultural terms. Development for Latouche is a cultural practice of westernization that displaces native ideas and institutions for European ones, which asserts not only western economic and technological hegemony but also its cultural dominance. Development was the aspiration of acquiring the western model of consumption through the agency of technological advancement; hence, an ascension of materialist values. By incorporating the diverse parts of life into the logic of the market, the West not only modified the means of production, but also destroyed the meaning of the social systems of Third

⁷ For example, Issawi (1982) documents the establishment of such banks starting in the 1850s in Algeria, Egypt, Lebanon, Tunisia, Turkey and elsewhere (pg. 81). Moreover, the Egyptian Saving Fund (Sanduq al-Tawfeer) established by the Postal Administration in the early 20th century issued interest-bearing saving certificates (Warde 2010, 54)

World peoples by subverting their understandings of well-being with an idea of happiness that was solely realized through the possession of wealth (Latouche 1996: 20).

In this respect, the modern world-system as articulated by the European colonial venture not only peripheralized the economies and politics of non-European societies, but it also peripheralized their culture and social systems. The displacement of native ideas and institutions through a process of European acculturation shows that the concept of peripheralization not only meant the incorporation of non-European societies in the international economic order but also their integration within a European cultural orbit. One of the hallmarks of that cultural orbit is its advocacy of secularism as a mode for organizing societies and cultivating personal sensibilities. For the Muslim world, this meant the peripheralization of the core religious values that structured society through the agency of law. This secularization process disembedded the Muslim social world from its moral anchoring. Modern fatwas are playing a role in resituating Muslim society and re-embedding Muslim social action in that moral framework.

Before I turn my attention to this role of these fatwas in the economic sphere, in the next section I review the economic and political context that facilitated the resurgence of fatwas in the field of commerce and finance. The historical changes in the political economy of the Middle East over the last fifty years played a crucial role in the proliferation of fatwas on the Islamic economy, and they provide an important backdrop for my analysis of fatwas that follows.

The Political Economy of Postcolonial Islamic Finance

At the same time that newly decolonized Muslim states were struggling to liberate themselves from economic and political dependence on core (Western) states in the international system, in the 1970s oil-rich Arab Gulf states rose to economic and political prominence due to the changing circumstances of the political economy of oil. The increasing demand for oil worldwide and the ability of these oil-producing countries to renegotiate better terms for the pricing and management of oil production with foreign oil companies brought greater profits and political leverage in the Muslim world and globally to countries like Saudi Arabia (Warde 2010: 95). The oil-rich Arab Gulf states became rentier states where their development was strictly based on oil revenues (Bromely 2005: 13). The unique position of oil in the world market and the ability of these states to exercise greater control over its production and pricing through cartels like OPEC (Stevens 2005: 6) allowed Arab Gulf states advance from peripheral to semi-peripheral status in the world-system. This gave them greater influence over other Muslim states who remained on the periphery of the international political and economic order.

The growing influence of Arab Gulf states—especially Saudi Arabia—on other Muslim states and especially in the Middle East, was felt on several fronts. First, they were able to assert their hegemony over competing secular-nationalist states by granting these states aid packages

after their postcolonial economic reform programs failed. This was the case when Saudi Arabia pledged to support Egypt and Syria with a \$329 million (U.S.) annual subsidy after the 1967 Six Day War (Schulze 2002: 188). Saudi Arabia also played a decisive role in the formation of international Islamic organizations like the Saudi-sponsored Muslim World League and the Organization of Islamic Conference (OIC) (Warde 2010: 94). The Muslim World League was to re-shape and unite a global Muslim public by creating an international platform for Islamic reformers in exile to regain influence over their national cultures along Saudi-inspired Islam; while the OIC established a community of Muslim states countering the secular wave of Third World republicanism without calling into question the sovereignty of nation-states (Schulze 2002: 189-191; Warde 2002: 94). Islamic institutions like these further fueled the resurgence of Islamic movements along with raising Saudi Arabia's prestige and political influence all across the Muslim world.

Although these oil-rich Arab Gulf states were gaining greater influence over the rest of the peripheral Muslim states as upgraded semi-peripheral states in the global system, they nevertheless continued to be exploited by core (Western) states. Western states found ways to 'recycle' the Arab Gulf states' petrodollars by funneling that wealth into Western institutions and products. For instance, during the 1970s, the United States adopted a policy of selling arms to Saudi Arabia and other Gulf states (Warde 2002: 97) that they neither needed nor had the technical ability to operate.⁸ Speaking about the Middle East in general, Bromely (2005) argues that with rise of oil revenues in the 70s and 80s, the shared military expenditure of the GDP of Middle East countries was twice that of the most militarized regions like the Warsaw Pact countries and three times the world average. Moreover, this militarization of the Middle East was encouraged by the United States. These expenditures on militarization stifled economic and social development in Middle East states and strengthened the authoritarian model of politics in the name of national security (Bromely 2005: 16-17).

But an even more crucial factor was how Middle East oil money was invested into Western financial institutions and governments and was used to perpetuate the continued dominance of core (Western) states and the further peripheralization of the Global South in the modern world-system. These oil-rich countries in the Middle East deposited their profits gained from the rise in oil prices in 1973 in U.S. banks like Citicorp (Barnet and Cavanagh 1994: 368) and bought U.S. government

⁸ While in Jeddah in January 2015, I met an American military consultant working in Saudi Arabia who was training the Saudi military how to use weapons that they had acquired from western states like the United States and France. According to his assessment, that many of the weapons that the Saudis had been acquiring ranging in the billions of dollars were, in fact, useless and that the Saudis did not even know what they were buying. As an example of this incompetence, he said that some acquired missiles were delivered to the Saudis without their guidance system; thereby, rendering them worthless.

treasury bonds (Warde 2002: 97). These banks, in turn, recycled the surplus petrodollars into loans to Third World governments who could not keep up with the rise in the price of oil and other imports during the 1970s. Third World governments were tempted to take these loans because they would not have to undertake the unpopular measure of raising taxes to acquire necessary funds (Barnet and Cavanagh 1994: 369). By the end of the 1980s, Third World governments became insolvent and could not service these mounting debts. They thus began selling off their public companies at bargain prices to service these international debts (Barnet and Cavanagh 1994: 372).

Alongside these developments, the character of Western economic dominance underwent a reordering in the 1970s. The post-WWII Bretton Woods agreement had tempered the pre-war unfettered financial practices by Western financial institutions that had led to the Great Depression of 1930s. These events gave political impetus to Western states to legislate more socially responsible policies in favor of the welfare state, in the process curbing the excesses of neoliberal capitalism (Helleiner 1994: 164-165). Yet this arrangement proved to be only temporary, as the post-WWII expansion of global production was followed by a considerable decline in the growth of production and in the rate of profit in the production sector in the 1970s and 1980s. One of the consequences of that decline was the shifting of investment from the production sector to the financial sector in search of greater profits (Wallerstein 1996: 211-212).

With this shift, finance became ever more decoupled from production and less attracted to the long-range thinking of industrial development. Instead, it became increasingly subservient to the decision making of financial manipulators whose main aim was an immediate financial gain (Cox 1994: 48). This redefined the relationship between finance and economics: whereas previously the financial sector was propelled by real economic factors, now the economy was driven by finance. This new arrangement posed new risks for the economy and challenges for governments on how to manage the increasingly speculation-obsessed character of finance (Warde 2010: 103-104).

An example of this new mode of finance was the growing tendency to securitize loans and other financial assets and splice the interest from bonds, separating them from their principal and combining them with other financial instruments to package them as a single product. Such innovative ‘financial engineering’ made the business environment far more competitive for traditional forms of banking finance, forcing them to merge with one another and engage in financial transactions that were outside their traditional domains (Warde 2010: 103). It is these types of financial interactions that have further disembedded economics and finance from social relations and normative considerations that the contemporary discourse of Islamic economics and finance seeks to address.

Despite the continuing hegemony of the Western constructed global economic and political order and the pervasiveness of their financial instruments, discourses and institutions of Islamic economy and finance were given fresh impetus by the growth of Islamic consciousness within the

Muslim public, as symbolized by the resurgence of Islamic revivalism beginning in the 1970s.⁹ The availability of the oil wealth of Arab Gulf states lent support to such discourses and institutions (Warde 2010: 93). The idea behind such discourses and their corollary institutions was to re-embed Muslim economies within the normative framework of Islam following the colonial experience and the incorporation of the Muslim world into the capitalist world-system. Yet this aim would not be easy to achieve given the structural restraints and complexity of the modern global economy.

A part of the normative re-embedding effort of the Muslim economy is the legal legitimation of contemporary Islamic economic and financial practices through the discourses of fatwas. Fatwas are legal opinions by Muslim jurists that respond to questions that arise in the social world with regards to religious practice. By examining these types of fatwas, one can acquire fundamental knowledge on the ethico-legal principles underlying the workings of an Islamic economy as well as how economy and finance are envisioned differently in Islam from the prevailing secular neoliberal economic model. In the next section, I provide an analysis of a fatwa to show how Muslims are responding discursively to the challenges of the world-economy.

Re-Embedding of Economy in Ethics: a Fatwa on Commercial Transactions

I argue that the following analysis of a fatwa issued in the postcolonial period demonstrates a means through which Muslim institutions are trying to contend with the hegemony of capitalist values and at the same time to reassert the primacy of Islamic norms in Muslim economic life. For this task, I examine a fatwa issued by one postcolonial Muslim legal institution: The International Islamic Fiqh Academy (IIFA) of the Organization for Islamic Cooperation (OIC). The following is a brief introduction to these institutions.

The Organization for Islamic Cooperation (OIC), previously known as the Organization of the Islamic Conference, is an intergovernmental organization that arose out of the need to increase cooperation between Muslim states in an era of the postcolonial nation-state system. Fostering “Islamic solidarity” between Muslim nation-states was the key objective in the organization’s formation (Ihsanoglu 2010: 2). The OIC membership of Muslim nation-states has grown since its inception in 1969, and it now has 57 member states (Ihsanoglu 2010: 219-220). The organization has also established many auxiliary organizations that promote its goal of solidarity among the world’s Muslims.

One such organization is the International Islamic Fiqh Academy (IIFA) that was formed in the OIC Third Islamic Summit Conference in Mecca in 1981 (Al-Ahsan 1988: 36). The OIC’s stated purpose for this body was to gather

⁹ For more on the resurgence of Islamic ideology in the 1970s, see Lapidus, 2002: 823; Schulze 2002: 195-196; and Warde 2010:105.

...Religious scholars and intellectuals in various cultural, scientific, social and economic disciplines from various parts of the Muslim world, to study problems of contemporary life and to engage in original effective *ijtihad* (legal reasoning) with the view to providing solutions, derived from Islamic tradition and taking into account developments in Islamic thought, for these problems. (As quoted in Ihsanoglu 2010: 33)

The membership of the IIFA consists of “expert jurists and scholars of Islamic jurisprudence and various other sciences” (Ihsanoglu 2010: 42). The purpose of the Academy is to foster Islamic unity by promoting adherence to an Islamic jurisprudence that engages contemporary issues so as to provide Islamic solutions that are both effective and authentic (Ihsanoglu 2010: 42, 91-92; also see al-Ahsan 1988: 36).

I now turn my analysis to an actual fatwa that the IIFA issued on matters of commercial and financial transactions after having provided this context about the institution that issues fatwas. The fatwa (or *qarār*- resolution- as the IIFA calls them)¹⁰ that makes up our case study is on Islamic stocks (*sukūk*).¹¹ In Resolution 178 (19/4) titled *Sukūk: Its Contemporary Applications and its Circulation*, the IIFA defines a Shariah-compliant stock (*sukūk*) as:

.... a document or monetary certificate that is issued, which represents a common share in the ownership of property (real property, benefit from property, rights or a mix of real property + benefit from property + money + debts) that is in existence or founded from the return of subscription and is issued according to a Shari’ah-compliant manner (IIFA 2009: Resolution 178. (19/4))

The legitimation of this form of stock as connoted by the term “Shari’ah-compliant” and its subsequent definition as to what constitutes legitimate forms of *sukūk* contain within them an embedded normative consideration as to how Islam regulates commercial transactions. This norm is found in the phrase “property ... in existence” (IIFA 2009: Resolution 178 (19/4)) which contains the idea that ethical commercial transactions are realized when real properties are exchanged. This is because a part of Islamic business norms is that only currently existing properties can be exchanged in commercial transactions so as to minimize the risk of speculative dealings that could be based on non-existing properties or commodities. Speculative transactions are frowned upon from the perspective of the ethics of Islam because they contain uncertainty (*gharar*), which leads to dispute and/or exploitation.

¹⁰ See Qamar, 2007: 15 fn. 1 who claims that these fatwas were called resolutions (*qarārāt*) according to the terminology of the contemporary convention when agreements are reached at conferences.

¹¹ *Sukūk* (sing. *sakk*) has sometimes been translated as Islamic bonds instead of stocks.

Trades that are fraught with ambiguities and uncertainties are seen as loopholes for exploitative practices that speculators take advantage of to cheat the other party in the transaction, or the ambiguities in a transaction can lead to misunderstandings in its terms and cause disputes between the involved parties. The Islamic business ethical framework seeks to avoid such scenarios, and hence discourages the avenues that would lead to them. This is why in the case of this fatwa on *sukūk* there is a stipulation that they must be based on real properties so as to avoid the speculation that exists on transacting with properties or commodities that are not yet in existence or may not even exist (e.g. derivatives) — a practice prevalent in the contemporary business environment.

A contemporary example where the issue of transacting with effectually non-existent properties that lead to speculation and exploitative practices in the conventional market was the extreme rise in oil prices between August 2007 and July 2008 where a barrel of oil rose from \$71 a barrel to \$147 (U.S.). This rise was not caused by real economic rules of supply and demand, but rather by speculative practices in the oil markets (Askari and Krichene 2010). Instead of trading in actual barrels of oil (effectually existent property), speculators were trading in futures contracts of oil for short-term gains. The sales of futures contracts of oil, dubbed by some economists as “paper barrels,” falsely inflated the demand for oil—when actual global consumption of oil remained steady, causing this artificial increase in prices that benefited the speculators whose actions were fueling this frenzy (Askari and Krichene 2010).

The ethico-legal prohibition against *gharar* (excessive uncertainty, speculation, or risk) tries to protect economies from the volatile effects of such speculative financial transactions. In this succession of selling the contracts of oil without having actual possession, these speculators were not exchanging real assets, but instead were exchanging “virtual” properties (“paper barrels”) that were manipulated to produce short-term gains for the speculators at the expense of consumers. It is precisely because of this type of abuse that *sukūk* were defined in this fatwa with the requirement of being backed by ‘real property,’ or real assets like money and/or benefits from a property. This stipulation in the fatwa underlines that fact that *sukūk* must be asset-backed in the sense that the underlying assets from which the *sukūk* were formed represent the sole source of profit and loss for the holders of those *sukūk* and “in the event that the issuer [of the *sukūk*] were to default or become insolvent, the note [*sukūk*] holders would be able to recover their exposure by taking control of and ultimately realizing the value of their asset(s)” (Islamic Shariah Research Academy (ISRA) 2016: 422). But more pertinent than these dimensions of asset-backed *sukūk* is the idea that the construction of these *sukūk* is not based on ‘hypothetical’ or ‘virtual’ properties (e.g. ‘paper barrels’) that easily foster speculative practices found in conventional (capitalist) finance, but are grounded in real assets that promote sound economic transactions.

The resolution (fatwa) continues to address what properties cannot be securitized or made into *sukūk* where it says:

...it is not allowed to take (this statement) allowing for the circulation (of *sukūk*) as a pretext (*dhariy'ah*) or a stratagem (*hilah*) to securitize debt and circulate it, as is the case where the activities of the portfolio (of securitized properties) is converted debt trading, whereby (that debt) had its basis in real commodities and those commodities are used as a stratagem for circulating (those securitized debts)” (IIFA 2009: Resolution 178. (19/4)

In the definition of Sharia-compliant *sukūk* mentioned above and elsewhere in this resolution, the IIFA allowed for the possibility that the portfolio of assets making up the *sukūk* to consist of a combination of real properties and some money and debt, as long as the money and debt was a minority portion of the *sukūk* portfolio.¹² Yet, the part of the resolution that is quoted immediately above makes it clear that although debt may make up a minority portion of *sukūk*, it does not give giving license to the wholesale securitizing debt and trade them as *sukūk*.

The reason for this is that Islamic law puts restrictions on the trading of money and debt as a result of its ban on usury (*riba*). Money and money-based debts are to be traded at a price that is equal to their actual value, with no profits to be accrued from the transaction. This is because money is viewed in Islam as a medium of exchange and not a commodity to be bought, rented, or sold.¹³ Hence, securitizing money would lead to the trade of money-based *sukūk* at unequal value. Likewise, under the usury rules of Islam debt—even if it was non-monetary as in the case of loaning actual properties—is not supposed to accrue any benefit to the creditor, as loans are seen as an act of pure charity.¹⁴ By securitizing debts and selling them as stocks or *sukūk*, agents would essentially accrue profit and thus violate Islamic normative rules about usury.

In addition to the violations of the rules of usury, debt trading also leads to speculative practices that violate the prohibition of *gharar* (speculation and/or uncertainty) as was the case with the collapse of the American housing bubble in 2007 that led to the 2008 global economic crisis. The sale of what was mortgage-backed securities played a leading role in precipitating the crisis (Warde 2010: 88). Mortgage-backed securities (MBS) are securitized mortgage debts (i.e. mortgage debts made into stocks) that are sold to investors where the interest of the mortgage payments serves as the profit margin for these stocks. These securities proved to be especially attractive to global capital during the first decade of this century because the conventional financial

¹² In their words, “as long as most of the assets (making up the *sukūk*) in this situation are real properties and benefits.” See Resolution 178 (19/4) at <http://www.iifa-aifi.org/2300.html> accessed 3/14/2019.

¹³ See ISRA’s (2016) *Islamic Financial Systems: Principles and Operations* pgs. 53-54 for more on this point.

¹⁴ See ISRA’s (2016) *Islamic Financial Systems: Principles and Operations* pg. 54 for more on this point.

products, such as U.S. treasury bonds, were paying a much lower interest rate (1%) than the high rates of return on MBS instruments (6%-7%).

Demand for these lucrative mortgage-backed securities (MBS) outstripped the supply of American mortgages needed to securitize MBS. As a result, banks and mortgage brokers began to engage in predatory lending—enticing unworthy creditors to take on mortgages that they could not afford in order to meet the global demand for MBS. Ultimately, large swathes of mortgage holders defaulted on these loans, turning these MBS into toxic assets that ruined the financial market and eventually the global economy, whose drivers were more and more dependent on finance.¹⁵

The point of this exposition is to illustrate that the limitations that this fatwa places on the types of properties that may be securitized into *sukūk* are specifically designed to prevent risky speculative financial practices. It is interesting to note that Islamic financial institutions averted the initial blow of the global meltdown because— due to the restrictions of Islamic law on speculative and/or exploitative financial products as reflected in the language of this IIFA resolution on *sukūk*—Islamic capital was not invested in such toxic financial assets. Nevertheless, the meltdown in the financial sector eventually filtered into the real economy, which eventually led to a slump in Islamic financial investments (Warde 2010: 88-89).

The reader may ask: what is the impact of fatwas such as the one issued by the IIFA in terms of affecting public discourse and policy? There are few sociological studies that measure the impact of fatwas on public opinion and practice, but impact of fatwas such as the ones on Islamic finance can be measured by the policies they affect with Islamic finance's global regulatory agencies. One such agency is the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), which is an autonomous non-profit organization established in 1990 that sets global accounting and ethical standards for the Islamic finance industry. Bahrain, Dubai, Jordan, Lebanon, Qatar, Sudan, and Syria have adopted the implementation of AAOIFI's standards for the regulation of their Islamic finance industry (ISRA 2016: 128).¹⁶ Moreover, its 200 institutional members from 40 different countries view it as an authoritative body “whose pronouncements on the acceptability or otherwise of contractual structures in relation to Islamic financial instruments are to be viewed in the same vein as regulatory edicts” (Irfan 2014: 290).

¹⁵ See *This American Life* “The Global Pool of Money” aired May 8, 2008 for a detailed analysis of this issue: <https://www.thisamericanlife.org/radio-archives/episode/355/the-giant-pool-of-money> (accessed November 8, 2017).

¹⁶ On August 31, 2015 in Muscat, Oman, I obtained through personal communication with Mustafa bin Nasser Al-Naabi, who is Nizwa Bank's Senior Shariah Auditor, that Oman's lone government sanctioned Islamic bank at the time (Nizwa Bank) also abides by the AAOIFI's *Shari'a Standards*. This adds Oman to the list of countries that abide by AAOIFI in regulating their Islamic financial institutions.

Dr. Ayashi (Layache) Faddad, a member of AAOIFI Shari'a Standards Review Committee—which is responsible for supervising and approving its *Shari'a Standards* (or business ethical standards)—indicated that AAOIFI's *Shari'a Standards* typically conform to the legal conclusions reached by the IIFA's fatwas on Islamic finance and seldom depart from their fatwas.¹⁷ Given that the *Shari'a Standards* are the normative criteria by which most of the Islamic financial industry in the Middle East abides, this shows that the fatwas of the IIFA in the realm of Islamic finance does affect discourse and policy in this arena.

But how have these discourses like the fatwa on *sukūk* and the policies and standards that have been shaped by them affected the actual Islamic financial markets? Both the IIFA fatwas and the AAOIFI standards on *sukūk*, along with other fatwas related to Islamic finance, have facilitated the growth of Islamic capital markets by providing the ethical and legal legitimation for the transactions for capital market products like *sukūk*. Since AAOIFI issued its Shariah Standard on *sukūk* in 2003 (AAOIFI 2007: 318) one of the fastest growing areas in Islamic finance has been in *sukūk* products (McMillen 2011). In 2017, global *sukūk* issuances reached \$92 billion (U.S.)—and at their height in 2012 issuances reached \$131 billion (U.S.)—as compared to less than \$10 billion (U.S.) in 2004 when *sukūk* products were first coming on the market (IFSB 2018: 25). Despite the growth of the *sukūk* market, the global compliance of *sukūk* issuances to the normative standards of IIFA and AAOIFI varied in the early period (McMillen 2011). In the last decade there has been greater convergence in the industry towards the norms represented in the AAOIFI Shariah Standards, especially for Islamic financial products issued in Middle East countries (ISRA 2016: 823-824).

Conclusion

The growth of the Islamic finance industry in the past two decades as represented by the development of the *sukūk* market is an indication of the growing trend towards seeking alternative modes of economic practice and alternative financial products to those of the mainstream financial sector. This orientation poses a growing challenge to the neoliberal paradigm of how economics and finance should operate. The discursive impetus for this alternative yet emerging economic paradigm is the normative considerations embodied in the fatwas like the IIFA's. In particular, there are two ethical pillars of this paradigm that arise from the analysis of the IIFA fatwas in the field of commercial transactions: usury (*riba*) and speculation born of ambiguity or uncertainty (*gharar*).

It is apparent from the above analysis that these two principles played a very big role in determining the legitimacy of commercial transactions. Business practices that promote interest and speculation are seen as legitimate business practices within the framework of the

¹⁷ Author interview with Dr. Ayashi (Layache) Faddad in Jeddah, Saudi Arabia on January 15, 2015.

neoliberal capitalist economy, even though they are seen as immoral from an Islamic perspective. Irrespective of whether the parties to the transaction agree to engage in such business practices, this does not change the moral valuation of such practices from the viewpoint of Islamic normativity. Therefore, practices such as interest and speculation are ideologically challenged in the contemporary economic environment by fatwas such as the one analyzed here, which seek to embed ethical positions into the economic discourse in a way that is peculiar to conventional discussions about business.

The neoliberal capitalist ideology that undergirds the current global economic order operates on the precept of a supposed economic rationality that differentiates it from the realm of morality and ethics. The dominance of this economic order and its underlying ideology was not merely a result of political and economic machinations, but as I tried to show that its prominence was facilitated by a concomitant cultural transformation. In the Muslim world, this transformation meant secularization of the society through a progressive campaign of ‘peripheralization’ of Islamic law leading to a disembedding of ethics from the Muslim public sphere. This peripheralization was accompanied by a social reorientation towards a new cultural ‘core’ consisting of European values, laws, practices, and rationalities that were conducive to legitimating the instrumental logic of capitalism. Hence, the modern world-system was not only political and economic arrangement, but a cultural one as well.

Yet, the very idea of the ethical embedding function of fatwa challenges this secular orientation, and neoliberal ideology in particular, by re-situating economic rationality in a moral sphere. Hence, the moral operations of fatwas inadvertently oppose a fundamental neoliberal capitalist proposition that economic practices should not be hampered by ethical or social considerations; a position that is necessary to the functioning of the current configuration of global capitalism. But why do I say this opposition is inadvertent? This is because jurists who are issuing fatwas on economic and financial issues are not conscientiously doing so to subvert neoliberal ideology, but are doing so to maintain primacy of Islamic ethical principles in modern life. Nevertheless, this contestation becomes an unintended consequence of their juristic practice.

Yet the viability of the challenge of Islamic normativity to conventional financial and economic ideology is tempered by the actual performance of Islamically-compliant financial products, which still shows their dependence on the conventional global market. A strong indicator of the dependence of the financial Islamic sector on the vicissitudes of the global economy was the above-mentioned decline of the Islamic markets during the 2008-2009 global financial meltdown, despite the relative lack of crisis-inducing toxic assets in Islamic markets. For example, during the 2008-2009 global economic crisis, issuances of *sukūk* had dramatically declined after their continued rise in the previous period, only to sharply rise again in the period between 2010-2012 (IFSB 2018: 25). This correlation indicates that the Islamic economy and finance still relies

on the performance of the mainstream capitalist economy. This suggests that this developing Islamic economy—and perhaps the Muslim world in general—still occupies a peripheral position in the global economic order.

Nevertheless, fatwas on economy and finance are at least beginning to change the discourse about economics in a very practical way, and once the discourse begins to change, alternative economic practices will follow. This is because, unlike theoretical treatises on economics, fatwas by their very nature are pragmatic discourses in that they explicitly call the audience into action for the position they advocate. The immediacy of their discursive power is a starting point for changes in economic thinking and practices, and it is here where they pose a peculiar ideological challenge to the neoliberal ideology that undergirds the modern world-system.

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