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The Economic Relevance of the Shaira Maxims (al Qawaid al Faqhiyah)

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The Sharia Maxims, we are told, “are the systematic exposition of the spirit of the legal text (nass)” (p. 1). Dr. Hasanuzzaman, with the endorsement of the Center for Research in Islamic Economics of King Abdulaziz University and in consultation with some noted jurists, has put together systematically some important maxims as the first-ever compilation in English. They are all to be congratulated, and especially Dr. Hasanuzzaman. So much destruction has occurred to Islamic thought and practice in the last century or two due to subjugation by the imperialist powers that a book like this is absolutely necessary for Muslims to return effectively to their civilisation and move steadily forward, as even civilisation must, instead of meandering in wilderness. Thus they do not only need to do much more of this type of joint effort to be able to hasten their pace, but also be able to reach at some threshold to practical completeness; for example, an extended body of commercial laws, which the accountants and economists also understand, use and contribute to with the jurist. Indeed, in the “Foreword” it is said that this book is “only a beginning ... and invite further deliberation and discussion” (p. vii) on this subject. It is hoped that many would take this opportunity with vigor and dedication for reaching some practical finality.

The author has classified his compilation and discussion under 10 headings (p. ix): Claim and Practice, Doubt and Certainty, Eliminating Detriment, The Rules of Relaxation, Give and Take, The Rules about Benefit vs. Liability, Public Welfare vis-à-vis the Discretion of Government, The Role of Custom and Usage, Penalty for Evasion, and Limitations. Not only each classification contains a useful subject of its own but also it is placed well in a sequence. In the same manner, each classification is discussed further in depth by sub-classifications. Moreover, the maxims are explained by application to a number of current economic and commercial situations as an

extension to those on rituals that were the main consideration before. The framework is therefore sound.

A number of discussions and applications, however, are weak and controversial, since the author has not fully appreciated the extent of alien influence on the Islamic culture. How can this be overcome?

Firstly, to be able to understand the significance of legal maxims for their correct applications, it will be a general help if the juridical background, at least their historical rationale, be known. The author has not attempted to do this. He has given maxims as data assuming that economists would not have much difficulty in understanding them. Nor has he given dissenting views, even as appendices.

Secondly, the definition and scope of economics that the author has quoted (p. 1) are focused very widely, although not as much as Lionel Robbin's original path-breaking mean-end relationship. For application we need, in my experience, to narrow it down further, as a first step, to the economic system itself, so that the direction of the solution is known in advance.

Although the Quranic economic system and values need more clarification technically in current economic terms, for an understanding at large, and hence, the purpose of books like this, the substantially relevant features, I believe, have now re-emerged sufficiently. The author's definition of economics can therefore be meaningfully focused on three related aspects of the Quranic economic system: (1) Freedom and liberty of individuals and institutions (competitive system and welfare economics); (2) Growth of economic opportunities of individuals and institutions (economic growth and development); and (3) Justice, for making (1) and (2) meaningful, stable, and sustainable at the maximum. In Quran, the role of justice is unique. It is not only the first virtue, but also has a special function to give support to (1) and (2) without setting limitations to them.

Thirdly, application of the Quranic guidance will be more effective if it is juxtaposed with that of the secular liberal. We know theoretically and empirically that the competitive system on its own is neither optimal or stable in growth and welfare, nor it is based squarely on justice. At the moment the secular liberal competitive system is in some type of practicality between Keynes and Friedmann-Hayek: i.e., the liberals do not fully know how to make their system optimal, stable and just. Whereas the Quran conceives its competitive system as such there is a substantive difference between the operation of the Quranic system and the secular liberal. Since the present economies of the Muslim states contain generally the secular liberal system, it requires an appreciation of the difference between the two when the Quranic guidance is applied to it.

To be able to clarify the above discussion, let us consider the following given maxim (p.2):

"Profit is to be distributed according to the agreement but loss is to be borne in proportion to capital contribution".

A basic principle of justice is that in a competitive system of individual freedom, an investor is fully entitled to or fully responsible for whatever net value, positively or negatively, is generated by his/her capital- no more and no less. For investors there is injustice in equivalence between profit and loss. However, as the maxim stands, there seems an apparent legal non-equivalence: on profit there is no directive on freedom but on loss there is. Does this violate justice?

Consider how the problem of justice in profit-loss sharing might arise. Suppose there is a well-known, rich and successful investor. His investment in any firm will give to it credibility and confidence and therefore a higher expected profit. Firms therefore want to attract his investment to them. His \$ value investment represents more than the \$ value. Thus there are tangible and intangible capital contributions. Accordingly, his real value to the firm is higher than just the return on the tangible \$ investment. Similarly, an individual may have some special talent in management or technical know-how. He may be attracted into the firm by an incentive of profit sharing, but not required to make any capital contribution. There may be, or course, other such situations. Therefore, the sharing of profit may not be strictly according to the tangible \$ capital. But, any such sharing scheme would be expected to increase the return on the \$ capital, not decrease it.

In the competitive system, it is assumed that individuals by and large will protect their own self-interest if they are directly involved in the decision-making. In this perspective the above maxim on profit sharing has no distortion and is allowed to operate on its own at maximum with stability. A violation of justice may still be present as other distortions (fraud, etc.) which would require correction. It should also be noted that in the Quranic system, unlike in the liberal, the framework of economic justice is established to give scope and direction to activity. Thus the instruments that are used for providing profit sharing must not also violate justice. A share with fixed premium, for example, will violate value for value principle and therefore will not be acceptable in the Quranic framework, whereas it is in the liberal. The share premium will have to be so arranged that the amount varies with profit variation. That is, although the Quranic guidance and the liberals' are the same on profit-sharing, the framework of economic justice is complete only in the Quran.

In seeking for an equivalence of the profit situation with the loss in order to satisfy justice, there will be a need to take account of a special condition which can bring about a distortion. When a firm is making a profit, it can be assumed that it would meet its obligations to creditors. The same cannot be said for the loss situation. Moreover, the protection of self-interest is much weaker for creditors because they are

not directly involved in the decision-making process of the firm, as the partners or shareholders are. Consider the above scenario further. Suppose a firm wants to attract a valuable investor to increase also confidence in its creditors. This investor will not only seek a higher return on his capital but also a lower risk when loss is faced. If allowed, he would have his liability reduced. This fact might not be known to creditors, who, knowing of such an investment, would be easier on credit to this firm. Or there may be an employee sharing in profit but has no capital to meet liabilities, which the creditors may not be aware of. If he is forced to, in view of his profit sharing, he will be bankrupt without any economic benefit to creditors. It is clear that as viewed above, the freedom that can be allowed in profit sharing agreements cannot be translated automatically to the loss sharing without increasing risk to creditors. If in a system the risk of giving credit is unnecessarily high, the creditors will protect their self-interest by using methods that will reduce both freedom in operation and growth.

There are a number of solutions to the above problem, but some are quite weak. One is to reach some type of a compromise amongst freedom, growth and stability, thereby being satisfied with each at a lower level. In this respect, the different type of liability may be defined (individual, partnership, company, separate or joint. etc.). This, I understand, is generally the liberal approach. It does not give an optimal or a just solution.

The Quranic solution is different. It has to focus on a just situation and use that to give support to freedom, growth and stability at the optimum level. There is no compromise here.

What the jurists, as I see it, have done by the above maxim is this: they have said that there is a potential confusion in the profit and loss sharing situation and it needs clarification or else it can deteriorate into wrong practices with lower and unstable economic results. The instrument of profit-sharing justly constructed can be applied in complete freedom to whatever such markets there exist (intangible capital, employee bonus, etc.). But these are appendage markets, separate with their own supply and demand, and related to the tangible capital profit market only. Their generation of value is based on increasing the return on the tangible capital. Therefore the instrument of loss-sharing cannot be in justice applied to the appendage profit markets, because their reference (supply and demand) is nor to those markets. The jurists, in my understanding, have stated all this succinctly in the maxim.

Observe the depth and correctness of their solution. There is a complete equivalence between profit and loss sharing once the market is clarified. The risk to creditors is not generated by these instruments. There is no limitation placed on condition for freedom, growth and stability.

The appendage markets also exist in the loss sharing as insurance, definition of types of liabilities etc.. with their own supply and demand, in order to reduce the risk

further. As long as there is no distortion in these markets for generating a just value, or value for value, there is complete freedom for their operation in the Quranic system. The profit and the loss sharing appendage markets are separate. The appendage loss sharers per se do not participate in profit, as the appendage profit shares do not in loss.

Since the liberals have established instruments for profit and loss sharing, it is also important that apart from establishing their own, their suitability for the Quranic system be clarified as well as for their existence in the Muslim states. This should be an important next step in the practical resolution directed by the above maxim. So, it should be followed through similarly in other areas like accounting and finance, and with other maxims.