

EDITORIAL: ISLAM AND THE FREE-MARKET ECONOMY

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Introduction

One of the great mysteries of the history of the Muslim world is why what was once the centre of trade and commerce across the then-known world has been for so long largely 'undeveloped', stagnant and (the foreign-developed oil industry aside) enterprising only at the smallest petty-bourgeois scale. This editorial provides a context for exploring that question, and the six articles in this issue explore specific aspects of why the classical Islamic civilisation was so prosperous, why the modern Muslim world is stagnating, and what can and is being done to remedy the problem from Islamic, economic and pragmatic perspectives. Along the way we provide an introduction to the relationship between Islam and free markets and some guidance to the Muslim world as to how to recapture their lost entrepreneurial glory.¹

Contracts are central

The religion of Islam was revealed to mankind through a merchant, Muhammad ibn Abdullah. Its holy scripture, the Qur'an, was initially revealed to the Arab people using not only the literal language with which they were familiar, Arabic, but the metaphorical language that this trading people knew best, the language of contracts (Ahmad, 2005). The Qur'an is not a complete legal system, and in fact it articulates few laws. It is thus interesting that so many of the legal dicta it does contain deal with contracts and the necessity of fulfilling them.

Islamic law in general is a framework in which individuals and elementary and intermediate institutions of society make contracts to govern their relations and actions (Rosen, 1989), including their business enterprises. Thus the fulfilling of contracts appears immediately after prayer and charity in the list of what defines righteousness (Qur'an, 2:177). In the first paper in this edition of *Economic Affairs*, Saad Azmat defends the hypothesis that it is the formal

and informal institutions that arose in this framework of Islamic law that were so favourable to enterprise and free markets that account for the documented success of Muslim Spain.

Property is sacred

Well-defined property rights, including procedures for recognition, alienation and inheritance, are basic elements for the establishment of a market economy. Private property is not simply recognised in Islam, it is sacred. The Qur'an mentions property 86 times, as for example: 'And do not eat up your property among yourselves for vanities nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property' (2:188). The Prophet in his farewell pilgrimage stated, 'O Men, your lives and your property shall be inviolate until you meet your Lord. The safety of your lives and of your property shall be as inviolate as this holy day and holy month' (Haykal, 1976, p. 486).

The Qur'an encourages trade,² prohibits fraud,³ and prohibits envy with the revelation that economic wealth is a positive-sum game: 'And in no wise covet those things in which God hath bestowed his gifts more freely on some of you than on others: to men is allotted what they earn and to women what they earn, but ask God of His bounty . . .' (4:32).

While the Muslim world now has some catching up to do with the West in terms of women's rights, in the case of women's property rights it was the West that lagged behind the Muslim world. The Qur'an guaranteed women rights of property and contract, and even a share in an inheritance, 14 centuries before some states in the USA granted married women the right to property at all. In this issue, Azhar Aslam and Shaista Kazmi explore the property rights granted to women by the Qur'an and the gradual erosion of those rights in Muslim history. They conclude with a study of the situation in six modern Muslim countries and argue

that restoration of women's Qur'anic rights to property would benefit their economic development.

Interpretation of the law should not defeat the purposes of the law

When we look at the intellectual and economic stagnation of the Muslim world over the last several centuries, we notice the role of the decline of original critical thinking (Ahmad, 2006). Not only did Muslims lose the ability to distinguish between the divine law and the human articulation of that law, they lost the understanding that the interpretation of law must never defeat the purpose of the law. A movement has arisen to restore critical thinking to Islamic jurisprudence and part of this movement is the effort to restore pride of place to the *maqâsid ash-shari'ah*, the purposes of the law, to jurisprudence (al-Alwani, 2006).

The general purpose of the law is justice. Of the specific purposes of the law, traditionally five are placed at the top level: religion, life, lineage, intellect and property. These may be viewed as five fundamental human rights, two of which are found in Locke's list of 'life, liberty, and property'. The Western notion of 'liberty' shares much with the Muslim understanding of justice and includes freedom of religion and intellect (thought and expression). Modern advocates of *maqâsid* have argued for adding 'liberty' as a specific purpose at the top level as well.⁴

Once we place achieving the purposes of the law at the centre of our jurisprudence, we can, as explained in the article by Mustafa Acar, understand the economic reforms in Turkey, and, as examined in the article by Omar Nayeem, Mohamed Shiliwala and Wasim Shiliwala, evaluate the implementation of 'Islamic banking' in the USA.

Reclaiming the Islamic heritage

With the flexibility of the classical era of Islamic thought restored to the interpretation of the law, Muslims will be once again in a position to reclaim the fruits of their heritage as well, which is to say progress and development. The article by Mark Frazier and Shannon Ewing explains the example of the opportunities that online markets and entrepreneurship provide to the modern Muslim world, while Michael Strong and Robert Himber bring us full circle with a demonstration of how an innovative use of Islam's flexibility towards legal

systems and contracts allowed accommodation of British common law under the umbrella of Islamic law (even while retaining Islamic criminal law), explaining the success of the Dubai Free Trade Zone. Just as Muslim Spain was able to develop the institutions that allowed Muslims, Jews and Christians to prosper side by side under Muslim rule, the success in Dubai sets a precedent by which the Muslim world can retain its own criminal and family laws while incorporating commercial codes that will allow economic integration with the West. Such a harmonious economic development will require both Western civilisation and the Muslim world to recognise the importance of liberty, contracts and private property as universal values.

1. Owing to space constraints, this editorial omits any discussion of areas where there are strong differences between the Islamic and Western economic systems. A brief discussion of such issues as fixed interest on loans, the corporation as a fictitious person, limited liability, intellectual property rights and the permissibility of hoarding (especially as regards perishable goods) will be found in Ahmad (2006). Only the first of these issues is addressed in these papers (see the paper by Naveem, Shiliwala and Shiliwala). Libertarians have taken both sides on these issues.
2. 'O you who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will . . .' (4:29).
3. 'Woe to those that deal in fraud, those who when they have to receive by measure from men exact full measure, but when they have to give by measure or weight to men give less than due' (83:1-3).
4. Auda (2008, p. 217) writes that 'freedom (*hurriyyah* or *itq*) mentioned in the traditional schools is different from "freedom" (or "liberty") in the contemporary sense. However, the basic meaning of freedom is part and parcel of a number of Islamic concepts that were expressed in different terms.'

References

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