

# Islamic Economics and the Relevance of *Al-Qawā'id Al-Fiqhiyyah*

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## Abstract

Islamic economics, as part of the Islamic body of knowledge, has emerged as a new social science discipline that has gained currency and recognition in various institutions of higher learning in the contemporary Muslim world. Different sources of Islamic knowledge have significantly contributed to shape its evolution and development. The Islamic legal maxims, however, do not seem to have received much attention in terms of their contextualization in the present economic thinking. Using the content analysis approach, this article examines the relevance of *qawā'id al-fiqhiyyah*, placing emphasis on the five normative maxims and some of their variants, to the understanding of Islamic economics. The aim is to assess their relevance to Islamic economic life and their contextualization within time and space. It was found that *qawā'id al-fiqhiyyah* significantly contributes to the understanding of Islamic economics as a discipline in the Islamic tertiary educational pursuits. They help to understand certain economic theories from the Islamic ethical perspective. Therefore, it is concluded that if Muslim social scientists, especially, Muslim economists, embrace and pursue this branch of *fiqh* with an utmost concern and commitment, it would facilitate a better appreciation of economic theories from the Islamic perspective.

## Keywords

Islam, economics, *al-qawā'id al-fiqhiyyah*, *sharī'ah*, ethics

## Introduction

Islamic economics has emerged as an alternative to the conventional economics because it seeks to observe and explain, from the perspective of Islam, the universal reality as far as humankind's socio-economic behavior is concerned. This is made possible through the understanding of the *Sharī'ah*, especially, the Islamic principles of *mu'āmalāt* (i.e., the injunctions governing the horizontal relationship between human beings and their fellows as well as other creatures), which are all guided by *uṣūl al-fiqh* (i.e., principles of Islamic jurisprudence), *qawā'id al-fiqhiyyah* (Islamic legal maxims), and *maqāsid al-sharī'ah* (principles of *sharī'ah*; Elgariani, 2012; Kamali, 1998, 2007). According to Hasanuz-Zaman, the major concern of Islamic economics lies in

the knowledge and application of [the] injunctions and rules of the *Sharī'ah* that prevent injustice in the acquisition and disposal of material resources in order to provide satisfaction to human beings and enable them to perform their obligations to Allah and society. (As cited by Kahf, 2003, p. 19)

As a matter of fact, Islam teaches that humankind should utilize resources in a sustainable manner and, in accordance with the principle of justice, to facilitate the continuity of quality human life. However, the attainment of these lofty goals cannot be achieved if the regulation of human life,

especially the economic system, is left to operate without an ethical or moral framework or is determined by morally unguarded and independent human thought.

Hence, Islamic economics has become, first, a viable alternative approach for the proper understanding of economics based on the values of Islam and, second, a corresponding mechanism for appreciating the fundamental assumptions of conventional economics from the Islamic point of view. The Islamic legal maxims, therefore, have fundamental implications for the contextualization of economics and economic principles and behavior within the Islamic paradigm. In spite of this, these legal facilities have not received the needed attention in terms of their contextualization in contemporary Islamic economic thought. It appears that not much effort has been made to assess the relevance of these maxims, known technically as *qawā'id al-fiqhiyyah*, which is an important aspect of *fiqh*, in the study of Islamic

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economics. Today, a disciplinary research that focuses on the relevance of the legal maxims to the study of economics will be difficult to come by, if it exists at all. Thus, the importance of this article lies in its being, probably, the first of its kind in the field of economics and is meant to spark-off scholarly interest in this area. Our argument is that the above branch of *fiqh* is very necessary for the study of economics in the Islamic ring. *Qawā'id al-fiqhiyyah* is a group of maxims that have legal significance and, indeed, could be applied to the understanding of various circumstances of the economic activities that come under common rulings (Kamali, 2007; Laldin, 2007; Al-Zuhaili, 1995). Furthermore, they could become the criteria for judging the ethical or moral legitimacy of human conduct, particularly economic behavior. It is, therefore, important to find out how these aspects of *fiqh* contribute to and promote the study and understanding of Islamic economics bearing in mind the socio-economic challenges facing the contemporary *'Ummah*. One of the challenges of the scholars of our time is the search for an alternative to the conventional economics the failure of which has become too obvious to deny (Aydin, 2013; Chapra, 1992). Therefore, the rigorous study of economics from the Islamic perspective has become necessary. In contributing to this rigorous study, this article puts the five major legal maxims (i.e., *qawā'id al-fiqhiyyah al-kubrā*) into economic perspective by examining how they could facilitate the understanding of Islamic economics, or generally, human economic behavior from the *Sharī'ah* perspective. The objective is to assess their relevance to the understanding of economic theories, processes, and the study of Islamic economics in contemporary times.

## Definition of *Fiqh* and “Islamic” Economics

*Fiqh* is derived from the root *faqiha*, which literally, means “to understand” or “comprehend” (Wehr, 1980, p. 723). Thus, *fiqh* implies understanding. Its extension, *faqāhah*, delineates the striving to acquire legal knowledge. Hence, the *faqīh* is the expert of the science of the *Sharī'ah*. However, according to Imām Abū Ḥanīfah, its technical meaning implies “one’s knowledge (*ma'rifah*) of his rights and obligations.” However, Imām Al-Shāfi'ī defined it as a “. . . discipline that studies [the] practical rules of *Sharī'ah*, which are derived from its detail[ed] sources” (Al-Zuhaili, 1995, p. 10). This implies that, *fiqh* (jurisprudence) is the exercise of human thought, through critical study and reasoning, with the appropriate belief (*'aqidah*), to understand and apply the *Sharī'ah*. It has three major branches. These are *'uṣūl al-fiqh* (i.e., principles of Islamic jurisprudence), *qawā'id al-fiqhiyyah* (legal maxims) and *maqāsid al-sharī'ah* (principles of *Sharī'ah*). However, this discussion focuses primarily on the normative legal maxims known above as *qawā'id al-fiqhiyyah al-kubrā* and their relevance to the study of economics in the Islamic ring.

On the other hand, the word, *eco-nomics* derives from the Greek root words, *oikos*, which refers to a “household,” or simply, a “house” (Johnson, 2002, p. 87; Olla, 2012, p. xiii; Schaps, 2012) and *nemein*, which means “to manage” (Shah, 2010, p. 293). *Nomos*, an etymological variant of the word, *nemein*, from which “nomy” or “nomics” is obtained, was the Greek word for “law” (Arendt, 1958, pp. 62-63; Elden, 2010, p. 20, 2011, p. 92). Thus, economics connotes the management of a household through the lawful exploitation of limited financial resources. This makes every sane individual “a manager” or “an economist” to some extent. For this reason, one scholar is said to have once remarked that whoever attends school without studying economics is not properly educated (Asante, 1980). Adam Smith (1723-1790) defines it as “an inquiry into the nature and causes of the wealth of the nations.” On the other hand, Robbins (1935) defines it as “. . . the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses” (p. 16).

In Islam, the problem of “relative scarcity” is significant to the Qur'an (11:61; 15:19-21; 42:27; Al-Razi, n.d.; Habib, 2002) because it calls on humankind to use available resources in a sustainable manner. Thus, Islamic economics is defined as

. . . the science that studies the best possible use of . . . resources . . . for the production of maximum . . . output of *Halal* good[s] and services . . . within the framework of *Shari'ah* and its intents. (Habib, 2002, p. 28)

The emergence of Islamic economics resulted from a long search for an alternative economic system that aims at a world order with ontological and epistemological sources of law (i.e., Qur'an and *Sunnah*) that would serve as the framework of the value system of this world order (Khan, 1984). This implies that the Islamic economic system has a moral thought and a set of cost-effective principles that govern the production, distribution or exchange, and consumption, and are shaped by the principles of the *Sharī'ah*. The objective of the Islamic economic system, therefore, is to ensure socio-economic justice by reducing the gap between the haves and the have-nots in the society (Al-Qaradawi, 2000). The unique characteristic of Islamic economics is, therefore, perceived in its operational mechanisms that are expected to be deeply rooted in Islamic principles (Chapra, 2000).

Islamic economics is, therefore, important for Muslim individuals, their society, and its educational institutions. This realization came about primarily because of the consciousness about the ethical challenges unleashed in the Muslim world by the importation of alien economic paradigms. Hence, the idea of the “Islamization of knowledge” has become a popular rubric of intellectual discourse that has gathered momentum in many Islamic universities and institutions across the Muslim world. Economics, as an Islamized academic discipline, has many areas that are interlocked with

the other branches of the Islamic sciences (Kahf, 2003) that have bearings on commercial transactions. *Fiqh* is an aspect of the Islamic sciences that are closely tied-in with Islamic economics. However, the major disciplines that are significant to the formulation of the rules of interpersonal dealings (*mu'āmalāt*) are *'uṣūl al-fiqh*, *maqāsid al-sharī'ah*, and *qawā'id al-fiqhiyyah*. The rules of interpersonal dealings also incorporate Islamic economics because they discuss the legal framework for conducting economic transactions in Islam. Hence, understanding the contours of these interpersonal dealings is important for the formulation of economic behavioral theories from Islamic perspectives. Islamic economics, therefore, studies the human behavior in economic transactions while *fiqh* studies the doctrinal and legal provisions for the ethical conduct of these transactions. For this reason, *fiqh* cannot be detached from Islamic economics. *Qawā'id al-fiqhiyyah* is, thus, significant in Islamic economics.

### An Overview of Qawā'id Al-fiqhiyyah

As it has been indicated, *qawā'id al-fiqhiyyah* is an important component of *fiqh* as a disciplinary study of the *Sharī'ah* that deals with the legal maxims. These maxims are a succinct summary of rules that are related to each other and justified from the Qur'an and the *Sunnah*. The prominent scholar, Mustafā al-Zarqā, defines legal maxims as the “general fiqh principles which are presented in a simple format consisting of the general rules of Shari'ah in a particular field related to it” (Laldin, 2007, p. 93). These maxims are used for deriving new legal opinions. They are sometimes general in terms of principles; nonetheless, they play significant roles in the science of jurisprudence (*fiqh*; Laldin, 2007). Legal maxims facilitate the understanding of social and economic problems and help to appreciate the relevance of the basic principles (ethical codes) underlying social and economic behavior because they are formulated with justifications from the Qur'an, the *Sunnah*, and, for that matter, the Islamic or inherited legitimate legal folklore. For example, following 'Abdullāh ibn Mas'ūd's view that “what the Muslims deem to be good is good in the eyes of God,” the jurists have promoted the maxim thus: “custom is the basis of judgement” (Kamali, 2007, p. 3). Explaining this further, Hashim Kamali indicates that when a social or economic transaction is not regulated by a contract (i.e., a written agreement), its customary rule applies (Kamali, 2007).

Maxims are often constructed on primary and eternal principles, which are also deeply rooted in the principles of social justice (*'adl*) and natural law because they are basic principles upon which the interests of the society could be established. The period of the development of this strand of legal thought or how it developed among the Islamic legal sources is not clearly known because some of them had existed as customary rules in the pre-Islamic era. However, these legal maxims were based on the natural or universal

principles of justice that do not differ markedly from one society to the other and, therefore, the Muslim jurists sanctioned them for full implementation in the Muslim life (Securities Commission Malaysia, 2009). For instance, generosity, compassion, altruism, forgiveness, cooperation, equity, and a host of others, are essentially, universal values which, although might not be the same, in terms of expression, in all societies but are similar, in terms of principle or essence, every society would uphold and promote. Thus, they serve as the basis upon which certain principles of the *Sharī'ah* could be formulated. They are, therefore, different, in essence, from *'uṣūl al-fiqh*, which deals with the methodology of Islamic jurisprudence (*fiqh*). Legal maxims are rather grounded on the essential principles of this jurisprudence (Kamali, 2007).

Legal maxims have remained very important for Muslim jurists across cultures till today. This is because the Islamic religious rules cast across time and space (Yusuf & Abdulsalam, 2011). As we indicated earlier, the issue of how this category of law developed is unclear in the Islamic sources. However, their importance seems to have emerged during the era of the Rightly Guided Caliphs. For example, Caliph 'Umar is reported to have instructed Abū Mūsā al-Ash'arī to make a compilation of these maxims and their variants for the purpose of juristic guide. Another prominent compiler in this regard was Tāj al-Dīn al-Subkī. Yet, another compilation based on the work of Al-Subkī was carried-out by Imām Jalāl al-Dīn al-Suyūṭī, whose work conformed to the *Madhhab* of Imām al-Shāfi'ī. Another scholar, Zayn al-'Ābidīn b. Ibrāhīm (also known as Ibn Nujaym), did a similar work on legal maxims but it was based on the Ḥanafī *Madhhab* (Securities Commission Malaysia, 2009). Some of the basic principles of the *Sharī'ah* (i.e., that relate to the maxims), which have profound impact on societal cohesion and harmony include the following:

- That the larger interest of society takes precedence over the individual's interest.
- That although relieving hardships and promoting benefits are among the prime objectives of the *Sharī'ah*, the former takes precedence over the latter.
- That a huge loss cannot be inflicted to relieve a minor loss or a bigger benefit cannot be compromised in favor of a smaller one. Conversely, a smaller harm could be inflicted to prevent a bigger harm or a smaller benefit can be sacrificed for a larger benefit (Chapra, 1983).

There is no gainsaying the fact that the above legal maxims have many implications for economic life. Therefore, generally, legal maxims are relevant to the study of Islamic economics, banking, and finance. This is because a number of economic problems and theories could be examined in a manner that is consistent with Islamic lore and these rulings could go a long way to facilitate a deeper insight into the

multiple challenges confronting the *'Ummah* in its economic adventures and explorations. Scholars have generally classified legal maxims into two categories.

1. Those maxims that are accepted by some scholars from certain *Madhhabs* and rejected by others. This kind of maxims is also referred to as *qawā'id al-madhhabiyyah* (*madhhab*-based maxims).
2. The maxims that are accepted and applied by the jurists of different *Madhāhib* (the Schools of Law). Examples of this category are the five major maxims known as *qawā'id al-fiqhiyyah al-kubrā* (Laldin, 2007) or “normative legal maxims” (Kamali, 2007, p. 2).

### **Qawā'id al-Fiqhiyyah: Its Nature and Economic Dimensions**

The classical scholars (Al-Suyufī, 1983; Al-Zūhaylī, 2006) argued that five major legal maxims (*qawā'id al-khams al-kubrā*) form the essence of the *Sharī'ah* as a comprehensive guide for humankind and that the many others only serve as variants, which fundamentally explain the five main established ones also known as the (major) normative maxims (*qawā'id al-fiqhiyyah al-kubrā* (Laldin, 2007) or *qawā'id al-fiqhiyyah al-aṣliyyah* (Kamali, 2007)). This implies that, fundamentally, there are five main legal maxims and that there are many others that relate to one of these normative assertions in terms of principle but only differ slightly in terms of expression. The above bears the logic of our choice of the five as the main focus of attention. These five major maxims are the maxims that cover various issues under jurisprudence. They are

1. *Al-'umūr bi maqāsidihā* (matters are determined according to intention);
2. *Al-yaqīn lā yazulū bil-shakk* (certainty cannot be removed by doubt);
3. *Al-mashaqqah tajlib al-taysir* (hardship begets facility);
4. *Lā ḍarar wa lā ḍirār* (harm shall not be inflicted nor reciprocated);
5. *Al-'ādah muḥakkamah* (custom is a basis for judgment (Al-Subkī, 1991; Al-Suyufī, 1983; Kamali, 2007; Laldin, 2007)).

To appreciate the significance of the above axioms in the study of Islamic economics or understanding of economic processes or thought within the Islamic framework, we will examine the above components and some of their variants with the aid of specific illustrations within the economic arena.

1. *Al-'umūr bi maqāsidihā* (matters are determined according to the intention behind them): This maxim

emanates from the popular ḥadīth of the Prophet in which he is reported to have said, “deeds are judged by intentions and every person is judged according to his intention” (*Ṣaḥīḥ al-Bukhārī*, ḥadīth No. 54; An-Nawawī, *Arba'īn al-ḥadīth*, ḥadīth No. 1). This maxim implies that any action or utterance of a person should be interpreted in accordance with his intention because human acts proceed from a certain goal. This implies that, contrary to the conventional economic philosophy that “the end justifies the means” (Yusuf, 2010, p. 226), in Islamic economics, both the end and the means to achieving it are mutually inclusive and responsible; and the means could also justify the end. In other words, in Islam, the means is as important as the end itself (Al-Qaradawī, n.d.; Yusuf, 2010), and the way to achieving the objective, the end, also determines or justifies the eventual ethical value of the result from the Islamic ethical perspective. Thus, if one intends to do or aims toward what is good but per the misfortune of accident, the final result (i.e., the end or the product) tends to be bad, one would be judged but according to that which one intended to do. The applicability of this to economic transactions relates to banking and customer relations, for instance, in which *ta'wīḍ* or compensational charges are levied against defaulters who are unable to honor their financial obligations intentionally or otherwise. Some customers might be genuinely insolvent economically to justify why, morally, they cannot be liable to a penalty for delaying the discharge of their financial commitments to their banks. Thus, the inability to devise the right mechanisms for distinguishing intentional defaulters from their financially insolvent counterparts could be morally devastating to the individual and constitute an indictment on the ethical standards of the society.

2. *Al-yaqīn lā yazulu bil-shakk* (what is certain cannot be removed by doubt): This maxim means that an issue that has already been settled by a foregone conclusion based on inevitable conviction and declared by competent legal thoughts as safe cannot be re-challenged on the basis of doubt. This maxim could also be justified from the ḥadīth in which the Prophet said thus: “If any of you feels something in his stomach and wonders whether something has come out from it or not he shall not leave the mosque until he hears the sound or the smell.” In another ḥadīth, it is said thus: “If you have doubt regarding your prayer; whether you have performed three or four *raka'āt*, you must leave the doubt, and stick to what is certain.” Another variant of this ḥadīth puts the rule more succinctly: “leave that about which you are in doubt for that about which you are not in doubt” (Al-Tirmīdhī, *Sunnan*, ḥadīth No. 2518; An-Nawawī, *Arba'īn al-ḥadīth*, ḥadīth No. 11). Even though, the first two *aḥādīth* essentially border on the issues of ablution and prayer, their applicability could be extended to economic transactions as well. For example, usury (*ribā*) has been explicitly proscribed in Islamic economic transactions in all its forms (Qur'an 30:39; 3:130; 2:275-281). Therefore, Muslim scholars have been unanimous about the illegality of

*ribā*. However, some scholars have introduced some argument that is capable of creating doubts in the minds of some Muslims. These scholars seem to be disgruntled with the existing definition of *ribā* and have, therefore, delved deeply with economic theories prospecting for an answer to the question of what constitutes *ribā* to merit the prohibition of the Qur'an. These scholars have tried to distinguish "usury," normally used to explain *ribā*, from the interest charged by the conventional banks (see, for example, M. A. Khan, 2013, p. 181; M. M. Khan & Bhatti, 2006, p. 147; Kuran, 2011, p. 146). These debates constitute the excessive questioning of the established order that both the Qur'an and the prophetic traditions proscribe (*Ṣaḥīḥ al-Bukhārī*, ḥadīth No. 6878, Al-Tirmidhī, *Sunnan*, ḥadīth No. 2679 An-Nawawī, *Arba'īn al-ḥadīth*, ḥadīth No. 9). Thus, whoever decides based on what is certain, for example, that usury and all its associates are prohibited, maintains the sanctity of his religion.

3. *Al-mashaqqah tajlib al-taysir* (hardship begets facility): The basis of this maxim can also be rooted in both the Qur'an and the *Sunnah*. For example, "He (Allah) has not laid down upon you in religion any hardship" (Qur'an 22:78); "Allah intends every facility for you, and He does not want to put you in any hardship" (Qur'an 2:286). Moreover, in a ḥadīth, the Prophet is reported to have said that Allah has made the religion easy with full kindness; and "He did not make it narrow" (cited in Securities Commission Malaysia, 2009). This maxim implies that a difficulty is not the ideal in Muslim socio-economic life. Therefore, at difficult times, the Muslims are entreated to relax the rules if their application could bring hardships to the people. It is based on this phenomenon that the scholars promulgated another short but morally loaded maxim that "necessities legalize illegalities [*al-ḍarūrāt tubīḥ al-maḥzūrāt*]." The implication is that if the observance of particular provisions of law endangers one's existence, to the extent of such danger to life, existence, or sustenance, the implementation of the law to the core has to be suspended temporarily. This is known technically as *maṣlaḥah* (greater good and interest or benefit of the society) bearing in mind that Islam does not inflict harm on the individual. Thus, history tells us that the economic law of amputation for theft stipulated by a clear command (*naṣṣ*) in the Qur'an (5:38) was suspended by Caliph 'Umar b. al-Khaṭṭāb during a period of drought or famine (Abū Yūsuf, 1970; Kayadibi, 2010; Raccagni, 1983; Saeed, 2014). Another example is also associated with 'Umar during the conquest of Southern Iraq and Syria in which he refused to distribute the booty, as the Prophet had personally done several times (M. Y. M. Siddiqi, 1989), on the ground that it would inflict suffering on the descendants of the conquered people from whom that property could be taken:

By God, no territory should be conquered after me to form a great gain, but be a burden on the Muslims. If we were to divide the land and the property of Iraq and Syria . . . what is going to

be left for posterity and the widows in these lands of Syria and Iraq? (Saeed, 2014, p. 31)

There is yet another variant of the "law" of necessity that reads, "necessity must be answered proportionately [*al-ḍarūrah tuqadr bi qadrihā*]." Thus, if the customer of a bank, for example, becomes insolvent and it becomes necessary that the one's assets ought to be disposed-off to defray his financial commitments, the movable assets have to be considered first and if the amount caters for the debt then the fixed assets become unlawful to touch.

4. *Lā ḍarar wa lā ḍirār* (harm shall not be inflicted nor reciprocated): This maxim gives the understanding that all harmful and injurious acts must not only be avoided in all cases but they must also be prevented. This maxim originates from a ḥadīth of almost the same wording: "*Lā ḍarar wa lā ḍirār fī al-Islām*" (meaning: "harm may neither be inflicted nor reciprocated in Islam"; Ibn Mājah, *Sunnan*, ḥadīth Nos. 2340 and 3107; Kamali, 2007, p. 3; Maghaire, 2008, p. 242; Zakariyah, 2015, p. 49). Islam, as a religion, does not sanction the effort to inflict injury on people without valid reasons. Therefore, doing harm to somebody in a bid to do good to another, axiomatically expressed in conventional economics as "robbing Peter to pay Paul" (e.g., Tach & Greene, 2014, pp. 1-21), is not allowed in Islam. However, when harm is either mistakenly or intentionally committed, revenge without any proper legal procedure is also discouraged. Thus, if, for example, someone refuses to pay the obligatory alms (*zakāh*; understood as having committed harm), taking it without his or her knowledge (itself understood as the commission of another harm) is also disapproved. This prevention of harm is very important in buying and selling. For example, in business transaction, every defect on a product should be made known to the buyer at the time of the purchase. Otherwise, the buyer has every moral right to revoke the contract binding any purchase whether written or unwritten. Thus, the understanding here is that Islam places a lot of emphasis and precautions to ward off evil and secure benefit. Other variants of the above maxim include the fact that "Harm must be prevented wherever possible" and "Greater harm must be prevented even at the expense of the lesser harm" (Kamali, 2007, p. 3). In the formulation of economic policies, therefore, the application of this maxim and all its variants by a government could serve the public interest.

5. *Al-'adah muḥakkamah* (custom is a basis for judgment): The word "custom" refers to the confirmed practices of any group within usually a longer period of time. These could take the form of observable actions or sayings (usage). These confirmed practices which, after a certain length of time, become the foundation for defining the principles for governing the people's cultural life, were sanctioned in Islamic law through another *Sharī'ah* principle known as '*urf*' (Qur'an 7:199). However, such custom and usage should not supersede or contradict an established Islamic normative principle

(*maqāsid al-sharī'ah*). If it is found to be consistent with the above Islamic principles, it is considered to be morally binding and could be applied to either specify a general matter or restrict an unrestricted matter. Custom is also useful in attempting to understand certain circumstances in socio-economic transactions and interactions. For example, it is reported in a ḥadīth that Hind, the daughter of 'Utbah complained about her husband, Abū Sufyān, to the Prophet with regard to her husband's stinginess in providing for her basic needs and those of his (Sufyān's) own children and further requested for a portion of the husband's property for this purpose. It is reported that the Prophet responded to her request in the following words: "take from his property what is customary which may suffice you and your children." (see *Ṣaḥīḥ Muslim*, "*Kitāb al-'Aqdiyyah*" Book 18, ḥadīth No. 4251). The above ḥadīth demonstrates the importance of custom in the socio-economic life of the people even at the time of the Prophet. Thus, there is no reservation among scholars that the customs that are valid from the Islamic legal perspectives invariably bind human socio-economic interactions in matters that are either not legislated upon by the *Sharī'ah* or are not covered by legitimate formal contracts (Kamali, 2007). For instance, in many of today's supermarkets, it has become a custom for the owners to affix the prices of their commodities to their packages (Yusuf, 2010). Thus, prior to the purchase, although Islam encourages business transaction based on mutual bargaining and agreement (Qur'an 4:29; Akhtar, 1992; A. A. Khan & Thaut, 2009), a prospective buyer might realize that the door to this mutual negotiation has been unilaterally closed by the seller. Nonetheless, a buyer still has to observe the rule, that is, either to buy it or not to, without violating the operational mechanism that has become an established business tradition or custom in today's supermarkets. The understanding here is that price-tagging has become a mechanism to cater for the needs of another section of the public, particularly impulse-buyers or window-shoppers who might need price-tags to make their purchasing choices without interfering in the activities of the shop operators. Window-shopping refers to the process in which a possible buyer walks into a shopping-mall often merely "to examine a product" but eventually stands equal chances of either buying it or not (Shy, 2013). Window-shoppers might not place a value on after-sales services and might end up wasting the time of shop attendants. Thus, as the ethical value of this act falls within mere permissibility (*'ibāḥah*), which, in actual sense, does not have any ethical value or moral consequence, that rule is binding. Therefore, if a matter is not covered by a clear text, the customary principle applies.

### **Qawā'id al-Fiqhiyyah: Its Relevance to Economics and Its Theories**

After giving the above illustrations of the maxims in the economic arena, let us now relate them to specific economic theories to see how they could be used in Islamic economic

analysis. From the illustrations, it is apparent that the maxims could help to either vividly repudiate or affirm many scientific and mostly speculative theories in economics from the Islamic perspective. Although some of the normative maxims are constructed from devotional premises, they have relevance to civil contracts, litigation, and economic or financial transactions (cf. maxims 4 & 5). These maxims could, therefore, help Islamic economists to understand and explain, for example, the law of contract (MacMillan & Stone, 2012) in economics from the Islamic economic perspective. The principle of promise, which is the moral foundation of the law of contract (Fried, 1981) in economics, serves as the principle by which business people oblige themselves to hitherto non-existent rules of transaction. The theory of promise and fulfillment, in the context of Islamic economics, is a typical illustration of voluntary cooperation between two or more autonomous actors who announce or codify their intentions toward one another in the form of promises known, in technical terms, as "contract" (*'aqd* in Arabic). In the Qur'an, Allah says,

Oh you who believe! When you deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing . . . Let him who incurs the liability dictate, . . . and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as you choose, for witnesses, so that if one of them errs, the other can remind her . . . Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is more just in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves but if it be a transaction which you carry out on the spot among yourselves, there is no blame on you if you reduce it not to writing. But take witness whenever you make a commercial contract . . . if you are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). (Qur'an 2:282)

From the above verse, one observes that Islam considers a "promise" or contractual agreement as a declaration of mutual intention purported to enable the confidence of the beneficiaries about a transaction. Thus, it could be written or oral. However, whether it is written or oral, fulfillment is an ethical necessity (*fard*). Personal security, warranty, or the guarantee of the safety of property, and the obligation of contract form the ethical foundation of a civilized society (Hume, 1896). Respect for the law of contract is the first evidence of law and social justice in the ideal economic system and society in which mayhem and ferocity are kept at bay (cf. Yusuf, 2014). In Islam, therefore, this economic law of property transfer is expected to set the boundary to human rightful possessions and the normative maxims not only remind humankind against the violation of these boundaries but they also serve as the ethical yardstick for ratifying and sanctioning human economic and financial transactions within legal limits. Hence, they form an integral part of the Islamic economics investigative framework because they help the

Muslim economist to conceptualize, for example, the “law of torts” (civil wrongdoing; Fried, 1981) within an Islamic context while explaining and adapting the law of contract to perfect Islamic standards. Islam sees both written and unwritten self-imposed and mutually endorsed contractual agreements as a legally binding endeavor; and the maxims help to make sense of this will-theory of contract. The normative maxims also explain, from the Islamic economic perspective, the concept of property ownership in Islam, which is to promote the security of personal property and frustrate the unethical exploitation by the influential few (see Maxim 5). Thus, while urging and empowering humankind to crave for lawful possessions, the normative maxims also provide the moral yardstick for judging this human craving in line with the Islamic economic principles. In exemplifying and explaining the theory of civil contract from the Islamic economic perspective, the maxims help to understand that whatever a trader says at the time of selling a product puts a certain moral responsibility on him or her from the economic point of view. Thus, by misleading or lying to a buyer about a product, a seller abuses the buyer’s trust and violates the principle of the contract (see Maxim 5). Maxim 5 not only exemplifies the Islamic equivalent of the law of contract in economics but it even goes beyond its conventional connotation to say that where no formal contract was signed, the customary rule is as binding as a formal contract (Kamali, 2007). This implies that the Islamic economic perspective of the law of contract extends the concept beyond its conservative confines to cover the rational traditions followed by the people over a period of time provided they do not contradict an established Islamic norm (*maqāsid al-sharī‘ah*).

The maxims (e.g., Maxim 1) also help an Islamic economist to appreciate the theory of cause and effect as well as the concept of intention and consequences from the economic perspective. The maxim that “the end justifies the means” is well known in secular ethics (Balleck, 1992, pp. 679-696; Gilbert, 1998, pp. 143-151; Yusuf, 2010, p. 226). This economic maxim postulates that an act that obtains a desirable effect or outcome exonerates or decriminalizes any wrongdoing committed to attain it (the effect). This maxim, also known as *consequentialism* (Mizzoni, 2010), is part of the normative ethical theories that uphold that the consequence of an act serves as the ultimate basis for judging the ethical value (i.e., the rightness or wrongness) of that act. Hence, from the consequentialist perspective, a morally right conduct is the one that produces a good outcome and vice versa. The implication of this maxim is that if the perceived (intended) consequence (effect) of a transaction is judged to be ethically correct, any procedure (means) for achieving (causing) it (the effect) is also ethical. However, the situation is different in Islamic economics in which the means (for causing the effect) is as responsible as or even more responsible than the end (the effect) itself. In short, a good intention does not make a *harām* act *halāl* (Yusuf, 2010). The economic implication of the latter is that intending a good

outcome (consequence or effect) does not, on its own, permit a businessman to involve himself in an unethical transaction unless the transaction is permissible in itself (*halāl li-dhātih*). This makes the Islamic perspective of the above maxim deontological because it places more emphasis on the cause than the effect. Deontological ethics agrees with natural law ethics, which in this case, Islam upholds, because, in judging the ethical value of an act, it “focuses more on the intention [the cause] rather than the consequence [the effect]” (Mizzoni, 2010, p. 104). Therefore, just like the deontologist point of view (Mizzoni, 2010), in the Islamic view of economic transaction, the end (the effect) does not justify the means (the cause).

Aydinonat (2008) gives an expansive treatment of the concept of intention in economics. He, however, argues that, in economics, an individual’s intention implies both purpose and plan (Aydinonat, 2008). Nonetheless, the two do not always move concurrently (Keller, 1994). A person might have a purpose but without a plan. A purpose backed by an effective plan is easily achievable with good consequences while a purpose without an effective plan is often characterized by “unintended consequences,” an outcome that is often not intended by the actor (Aydinonat, 2008). In Islamic economics, an individual does not necessarily intend an act because his action is fundamentally liable to a consequence (an effect).

For some time, the theory of cause and effect has driven scientific research and analysis in various fields (Bergman & Collins, 2004) including economics and economists have occasionally been apprehensive and concerned about causality, to some degree, at least since the time of David Hume of the 18th century (Hoover, 2001, 2012; Hume, 1754). The theory of causality, however, predates Hume because apart from Aristotle, almost all the great economists have normally also been great philosophers of causality; and Adam Smith’s (1776/1937) introductory work proves the centrality of causality to economics (Hoover, 2008). Hume seems to have set the “benchmark” for the subsequent evaluation and application of causality in its conventional form (Hoover, 2012). In one of his famous collections, Hume (1754), argues thus:

But still it is of consequence to know the principle whence any phenomenon arises, and to distinguish between a cause and a concomitant effect. Besides that the speculation is curious, it may frequently be of use in the conduct of public affairs. At least, it must be owned, that nothing can be of more use than to improve, by practice, the method of reasoning on these subjects. (p. 304)

The relevance of other dimensions of causal awareness in economics is also grasped in the Islamic normative maxims. For example, in further appreciating Maxim 4 on the need to avert harm and the theory of contract, it could be captured that personal confidence, well-being, self-assurance, and the security of personal property (aversion of harm) during business transactions, coupled with the human susceptibility to

corruption, deceit, and doubt, are the main reasons for the mutual agreement and commitment known as contract (see Qur'an 2:282), which we examined earlier. The manifestation of causality here is that one obliges oneself by pledging to abide by the principles of a contract (cause) and, as an economic consequence (an effect), becomes responsible for both the desirable and undesirable outcomes (effect). The principle here also is that human beings make their own choices in life (which is also another cause with an unforeseen consequence). They enjoy the beneficial outcomes (effects) of the good choices and, as well, suffer the consequences of the bad ones. Thus, here, we define a "cause" as an event that is followed by another whereby if the first had not occurred, then the second would never have existed (Hume, 1777); therefore, as the first occurs, the second must be expected also.

On the other hand, the concept of uncertainty (*shakk*) and its concomitance of hardship or risk rationalized by Maxims 2 & 3 also feature prominently in economics even in its conventional form (Alchian, 1950; Ferrari-Filho & Conceição, 2005; Gilboa, Postlewaite, & Schmeidler, 2008; Levin, 2006). The adaptation of economic enquiry to absorb uncertain foresight is a generally accepted theory of economics; and it explains decisions that often depend on uncertain human behavior. The concept of uncertainty first appeared in conventional economics as the principle of "utility" or the "expected utility principle" of Bernoulli in 1738 (translated in Bernoulli, 1954) and was applied by a few economists in the subsequent two centuries. However, it metamorphosed into a theory underpinned by the notion of how reasonable individuals make their choices under uncertainty in Neumann and Morgenstern (1947). It is an undeniable fact that every choice or resolution in economics is made in expectation of uncertainty and risk or hardship. However, Islam, recognizing the human vulnerability to this uncertainty, demands that uncertainty is handled effectively through the avoidance of what is uncertain (*shakk*) and the execution of every act based on conviction and certitude: "leave that about which you are uncertain [for that which is certain]" (Al-Tirmīdhī, *Sunnan*, ḥadīth No. 2518; An-Nawawī, *Arbaʿīn al-ḥadīth*, ḥadīth No. 11). In Islam, it is for the purpose of subduing future uncertainties and the risks associated with them that the facility for mutual guarantee known as *takāful* (insurance) among the ancient Arabs was revived by the Muslims. Thus, for example, how a worker prepares for superannuation in times of uncertainty about imminent earnings, yields from assorted economic ventures as well as the fixation of prices of goods and services in times of uncertainty in demand, and what policy a government must pursue when there is uncertainty about future productivity, unemployment, and inflation, all fall within the purview of the concept of uncertainty. Unfortunately, it appears that the principle of insurance (*takāful*) as it is today always treats uncertainty as an unconditional risk with a constant likelihood. Thus, the problem of deciding in uncertainty is always rendered as the issue of deciding under risk (Gilboa et al., 2008).

In Islam, uncertainty can be grouped into two: Type 1: uncertainty that concerns constants and variables that affect one's relationship with God ("*ibādāt*: for example, performance of *wudū*" [ablution], offering of the five daily prayers, and payment of *zakāt*, *ṣadaqah*, etc.), and Type 2: uncertainty determined by interpersonal (*muʿāmalāt*) factors, namely, the behavior of a person as an economic agent. The latter has two elements: (a) uncertainty about constants that make a person's economic exploitations unpredictable, for example, weather, business conditions, and state policies, and (b) uncertainty about the behavior of other economic actors, business partners, and so forth (Radner, 1975). The economic implications of the uncertainty (*shakk*) maxim, therefore, apply to Type 2. Thus, in Islamic economics, the analysis of choice under uncertainty relates to the investigation of the natural obstructions to the optimum allocation of economic resources in times one is unsure of what happens.

### Integration of *Qawā'id al-Fiqhiyyah* Into Islamic Economics

The integration of various fields into the Islamic body of knowledge, which some prefer to call "Islamization of knowledge" is still ongoing. Therefore, the search for a good framework for the study of economics within the Muslim range is still under prospect. The normative maxims are a comprehensive set of normative theories that encapsulate what is generally considered as the standard patterns of human behavior that can serve as a framework for adapting and contextualizing economic theories within the Islamic ring. No one disaffirms the fact that the major challenge facing Islamic economics is that many Muslim economists and thinkers still use the conventional theories and approach to teach economics and its constituents, banking and finance (Haneef, 2016; Hassan, 2005; Kayed, 2008; M. A. Khan, 2013). A research conducted by Kayed (2008) about courses on economics in some 13 leading universities in Muslim countries (including Palestine, Qatar, Oman, Bahrain, United Arab Emirates [UAE], Saudi Arabia, Kuwait, Morocco, Pakistan, Bangladesh, and Jordan) indicated only approximately 2% Islamic content (see also M. A. Khan, 2013). Furthermore, according to Haneef (2009), despite producing over 2,000 economics graduates within a span of 25 years, the Faculty of Economics and Management Sciences of the International Islamic University in Malaysia (IIUM) still records very low profile of research in uniquely Islamic economics. The above challenge is understandable because the field is still developing both in shape and form. However, the predominantly conventional or perceived Western conformist nature of the "Islamic" economics taught in Islamic universities becomes more apparent due to the absence of *fiqh* and the Islamic ethical values in the economists' scholarly theorizing. Therefore, as the Islamic ethical values are considered as universal (M. A. Khan, 2013; Yusuf & Abdulsalam, 2011), they need to be integrated into the rational and



investigative framework of economics so as to augment and deepen our understanding of human economic experience within the Islamic ethical ring.

If Muslim economists recognize that transacting business in the Islamic way encompasses also living according to specific rules (M. A. Khan, 2013; Shams, 2004), then, logically, they must embrace and integrate these rules (*fiqh*) to make sense. From the analysis of the relevance of the maxims, it could be realized that the integration of *fiqh* or its maxims (the *qawā'id*) is not, in any way, problematic. This is because, in actual fact, the conventional economics has some theories that also apply to Islamic economics but only with a different emphasis on practical approach or application. For example, in Islamic economics, specific provisions are made in the interest of the poor or vulnerable sections of the society so that some transactions are disapproved for moral reasons while others are approved for the same moral reasons. Thus, *fiqh* and its tools, the maxims, have to be fused with Islamic economics to promote an economic order inspired by Islamic principles.

To succeed in this process of integration, we should stop stressing the shortcomings of conventional economics and minutely attributing our failures to it and rather integrate the *qawā'id* and *fiqh* in general, and, together with the already integrated conventional theories, rewrite the Islamic commercial or economic philosophies in contemporary and progressive jargons and professional economics language. This is not a framework for separating the two strands of knowledge but a way of teaching Islamic economics as an attachment to the conventional economics as some Muslim economists have advocated (Hassan, 2005; M. A. Khan, 2013; M. N. Siddiqi, 1996) so the former could benefit from the useful theories of the latter. This integration will eventually set the stage to teach economics from an Islamic perspective and distinguish the Islamic economic paradigm from conventional economics that is less concerned about what Muslims consider to be the moral implications of some practices of the free-market economy. From this hybridization of economics will emerge "a system of moral policy" (El-Din, 2008, p. 74) that is in tune with the Islamic economic philosophy. We can, therefore, integrate the *qawā'id* by

1. uniting them with the present Islamic economics training framework;
2. fusing them with the conventional economics theories and concepts wherever conceivable; and, with the aid of the *qawā'id*,
3. giving the latter an Islamic definition that is consistent with the principles (*maqāsid*) of the *Sharī'ah*.

The last two are necessary because, given the contemporary realities in which Islamic economics is interwoven with Western theories and paradigm in many Islamic institutions (Haneef, 2016; Hassan, 2005; Kayed, 2008; M. A. Khan, 2013), we cannot simply detach it from its conventional counterpart without destroying the gains made so far.

## Conclusion

The article examined the significance of the five Islamic normative legal maxims in the study of Islamic economics. The main objective was to appreciate the relevance of these principles in the contemporary conceptualization or Islamization of economic knowledge, also known as Islamic economics, in the Muslim world. It also attempts to weigh the value of Islamic jurisprudence in the contemporary economic thought in general. The legal maxims have been found to be very relevant to the structuring and analysis of contemporary economic thought and behavior and are, indeed, regarded by scholars and jurists as very important, not only in terms of legislation but, as well, in terms of their broader application to economic theories. Applying these interesting legal axioms to economic thinking and a set of economic theories, behavior, and assumptions exposes an economist or a moral thinker to the humanistic and pervasive dimensions of the Islamic socio-economic philosophy which aspires toward the common good. The important contribution of this article, therefore, lies in the evaluation of the maxims (the *qawā'id*) against the theories of economics and the attempt to stress the synthesis between the two by finding Islamic definitions to those theories using the maxims. Furthermore, it explores how these maxims can be integrated into the economic analysis of human behavior within the Islamic ring. Apart from the above, as we indicated in the introduction, a disciplinary research that looks at the relevance of these *qawā'id* to the study of economics as its central focus will be difficult to come by, if it exists at all. Thus, another importance of this article lies in its being, probably, the first of its kind in the field of economics. The implication is that *fiqh* and its tools like the *qawā'id* are necessary for rewriting economics in the Islamic language. The maxims increase our consciousness about and facilitate a firm grasp of the truism that the happiness of the human person is at the core of, and, indeed fundamental to Islam's approach to economic lawmaking and moral thinking. They accelerate the conscious and premeditated, yet, non-mechanical realization of the dynamic, universalistic, and timeless characteristic of the Islamic legal constructs and paradigm. Therefore, Muslim economists, bankers, and financial practitioners have to integrate them into the economics framework by using them to evaluate the theories of economics and adapting them into the professional Islamic academic language. The *qawā'id* enhance a broader understanding of Islamic law in various spheres of human life, particularly the economy, that is, business and financial transactions, which constitute the fundamental aspects of the individual's day-to-day interactions. There is no doubt, therefore, that *qawā'id al-fiqhiyyah* plays an immeasurable role in Islamic economics as a new branch of knowledge in the Islamic social sciences. Therefore, if Muslim social scientists, especially Muslim economists, embrace and pursue this branch of *fiqh* with commitment, it would facilitate the understanding of the contemporary economics theories within the Islamic range.

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