HOW USURY CAME TO RULE THE WORLD

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THE ASCENDANCY OF USURY OVER
JUDAEO-CHRISTIAN AND MUSLIM COMMERCE

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بِسم اللہ الرحمٰن الرحیم

وصلی اللہ علی سیدنا محمد

وآلہ وصحبہ وسلم

USURY – A SYNOPSIS

The practice of lending money for profit, any profit, minimal as it may be, was considered to be a deadly sin in Abrahamic religions. In Judaism, the practice was seen *inter alia* as equivalent to robbery, shedding of blood and even rejecting God. A hostile attitude towards the practice was also adopted in Christianity for at least three quarters of its history. There was a time when Christians who asked more than they had given were under pain of refusal of confession, of absolution and of Christian burial; not to mention the invalidation of wills and excommunication. Likewise, the practice attracts severe punishments in the Quran – the Muslim holy book. Those believers involved are threatened with "*war from Allah and his Messenger*" in this life, and hellfire in the afterlife. The question is, however, how these strict anti-usury attitudes developed into the more relaxed financing practices of today. This thesis proposes that there have been three principal methods by which the adherents of the Abrahamic religions, throughout their respective histories, have sidestepped scriptural prohibitions against usury. The first is by reinterpreting the concept of usury itself. The second method is by exemption, i.e. by excluding the counter-party from the scope of scriptural prohibition. The third method is by the concealment of usury in classical commercial contracts. Curiously enough, none of these methods were exclusive to any one religion, although, for theological reasons, some of them became more popular among the followers of one religion than others.

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Notes

Footnotes, which are numbered i, ii, iii etc. and restart on every page, contain explanatory material. Endnotes, which are numbered 1, 2, 3 etc. are placed at the end of the book, and contain references to books and articles consulted and cited.

Contents

"The subject of usury has been discussed … through thousands of years and by countless learned men. After the Hebrew prophets and law givers, Caesar and Cato and later Justinian in Rome, and the Greek philosophers, debated on it; prelates, kings and great judges of great courts have studied and expounded it; parliaments, congresses, legislatures have turned it inside up and outside down; discourses on it in such bodies, in the pulpit, from the bench, have been innumerable in number, infinite in extent."

Metcalf LS and others, *The Forum* (Forum Publishing Company 1918)

Introduction

In recent decades Islamic jurists have taken the Islamic banking and finance (IBF) industry to task on the grounds that the contractual forms offered by Islamic banks present a *de jure* distinction that lacks a de facto difference from their conventional counterparts.[i] This is well-attested in many of the Islamic banking financial instruments which are in essence simple classical contracts that have been restructured into complex contractual devices in order to achieve similar ends to explicitly interest-based transactions.[1]

Islamic banks, with the help of their *Shari'a* boards, have devised a number of financially engineered and carefully structured arrangements through which the risk of failure is borne entirely by the customer, whilst the Islamic bank, as is the case with conventional ones, receives a fixed rate of return at the end of the contractual period.[2] Furthermore, this rate of return is very often based on a benchmark interest rate such as LIBOR.[3] Nonetheless, the practice has not been without its critics, who often assert that IBF is merely a semiotic cloaking device intended to disguise the charging of interest (i.e. the substitution of 'profit rate' or 'mark-

i One of the main reasons for this is probably the very nature of a wide range of financial transactions, e.g. consumer, government and personal finance, which the Islamic profit/loss sharing paradigm is not designed for and thus, not readily amenable to. For further information, see M.K. Lewis, 'In what ways does Islamic banking differ from conventional finance' 4 Journal of Islamic Economics, Banking and Finance (JIEBF)

up rate' for 'interest rate').[4] The proponents of Islamic banking, on the other hand, reject this view, alleging that these restructured transactions are fully "*Shari'a* compliant" since the contractual form, rather than the commercial substance, is what counts in Islamic law vis-a-vis commercial transactions.[5]

Interestingly, however, the argument with regard to what constitutes interest is not confined to the Muslim world. Both Talmudic and Canon law in their respective histories imposed severe restrictions on charging interest, which both Jewish and Christian lenders long sought to circumvent.[6]

Historically, the practice of charging interest was vigorously condemned throughout the Middle Ages, even though this prohibition was effectively circumvented.[7] The ban prompted a myriad of contractual innovations, which were devised to serve as a means of concealing the usurious practices of the merchants involved.[8] Interest bearing loans were recast into various versions of what were regarded as classical contractual forms, in which the operational risk was allocated to the borrower. In the course of time, the merchants developed more complicated and sophisticated contractual devices, which continued to violate the spirit, but not the letter, of the law against usury. As De Roover noted: "If it has not been for the usury doctrine, why would merchants have adopted a cumbersome procedure when simpler methods were available."[9] Among these transactions were the *contractum trinius* (triple contract), the *retrovenditio* (resale contract), the *census* (annuity); whilst specifically amongst Jewish traders there were the *heter iska*, (equity partnership), *mohatra* (revocable sales) and others instruments.

Curiously enough, some of these mediaeval interest-masking transactions are identical, or very similar, to certain financial instruments that are to be found in the Islamic banker's toolbox today, but of course, bearing Arabic and Islamic names. It would appear that the jurists of Islamic banks are following the lead

of the mediaeval formalistic approach to the laws pertaining to usury.

The central thrust of this thesis is an examination of the development and applications of usury law within the Abrahamic religions, i.e. Judaism, Christianity and Islam.[i] It hopes to throw useful light on the relationship between laws on lending and credit on the one hand, and actual commercial practices as developed over time, on the other.

To begin with, it is generally agreed that the foundation of law, irrespective of its subject, leans either on the good it produces or the evil it prevents. The purport of all legislation is to benefit society at large and to restrain whatever is prejudicial to it. However, it is a fact of life that mankind will never cease to differ in their judgments as to what constitutes good and evil. More often than not, the essence of the dispute is ideological rather than cognitive. This is readily noticeable in the diversity of jurisprudential approaches to the issue of usury. To the question as to the causes that give rise to interest, a consensual knowledge-based answer can be provided. But whether interest, *per se,* is good, just, and useful or not, remains largely a matter of divided opinion.[ii]

i In its most general sense, 'Abrahamic religion' is a monotheistic religion that includes Abraham ﷺ (Hebrew: Avraham אַבְרָהָם ; Arabic: Ibrahim إبراهيم) as a part of its history. It is held by Muslims that Islam is an Abrahamic faith and shares a common ground with Christianity and Judaism: "*Say: Verily, my Lord hath guided me to a Way that is straight,– a religion of right, – the Path (trod) by Abraham the true in faith, and he (certainly) joined not gods with God*" (Qur'an 6:161). "*The same religion has He established for you as that which he enjoined on Noah – The which We have sent by inspiration to thee – And that which We enjoined on Abraham, Moses and Jesus: Namely, that ye should remain steadfast in Religion, and make no divisions therein: To those who worship other things than God, hard is the (way) to which thou callest them. God chooses to Himself those whom He pleases, and guides to Himself those who turn (to Him).*" (Qur'an 42:13).

ii In his *Capital and Interest,* Bohm-Bawerk offered a good example in this context: "Suppose, for instance, that by the soundest of reasoning it was shown to be probable that the abolition of interest would be immediately

The answer to such a question is highly likely to be coloured by one's outlook upon the world, or upon the relationship of man to the world and to community in all its aspects, i.e. one's ideology. Law, on the other hand, can be seen as a practical reflection of such ideology.[10] In reality, however, the relationship between law and ideology is somewhat intricate and contentious. This is attributable to the diversity of definitions of 'ideology' and the various forms in which law might be intertwined with them.[11]

The term 'ideology' is used in a number of senses in the arena of social science.[12] As a concept, the term was originally coined by the French philosopher, Destutt de Tracy (1754-1836). He used the term to label a new scientific discipline that systematically studies the formation of ideas on the basis of feelings – the science of ideas.[13] This conception has since changed and ideology has come to refer not to a science of ideas, but to the ideas themselves, or rather, ideas that are political in character. Thus, an ideology exists to serve and reflect some form of political standpoint. It is a rigid organised system of ideas and values that aims to motivate people to act in certain ways, and therefore, it may involve a process of philosophical justification to provide a rationale for adopted social and political actions.[14] In this context, ideology could be defined as "A consistent integrated pattern of thoughts and beliefs explaining man's attitude towards life and his existence in society, and advocating a conduct and action pattern responsive to and commensurate with such thoughts and beliefs."[15]

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followed by a decline in the material welfare of the race, that argument will have no weight with the man who measures by a standard of his own, and counts material welfare a thing of no great importance—perhaps for the reason that earthly life is but a short moment in comparison with eternity, and because the material wealth that interest ministers to will rather hinder than help man in attaining his eternal destiny." See. E. von Böhm-Bawerk, *Capital and Interest: A critical history of economical theory* (Macmillan and Co. 1890), p. 21

Law, on the other hand, could be seen as the product of a dominant ideology. Law is ideological in that it conveys and reflects a certain set of attitudes, values and theories about aspects of society.[16] From another angle, law is a legal expression of the citizens' political principles and beliefs, whether tending toward liberalism, socialism, feminism or other political outlooks. While an ideology defines values and ends, law embodies the means and procedures by which these values and attitudes are put into effect.[17] However, it is not necessarily the case that law will reflect one particular ideology since any number of ideologies may be contesting within society for legal primacy. Therefore, law could be seen as a mirror reflecting the prevailing ideologies of its place and time.[18]

This intimate relationship between law and ideology has made it essential to study the ideological dimension of law, or what is referred to as: 'legal ideology', 'legal theory' or 'jurisprudence'. In order to understand the law, it is of paramount importance to consider not only the historical or geographical context but also the ideological context in which a given law has been proposed, developed and applied:

> "You will not mistake my meaning or suppose that I depreciate one of the great humane studies if I say that we cannot learn law by learning law. If it is to be anything more than just a technique it is to be so much more than itself: a part of history, a part of economics and sociology, a part of ethics and a philosophy of life."[19]

On this basis, the main purpose of the second chapter is to shed some light on the nature of the ideology behind laws pertaining to usury in pre-Abrahamic civilisations. The subject of the third chapter will be the development of such laws in Abrahamic religions. But, in order to keep this thesis within manageable limits, I have restricted myself to the usury teachings within the Sunni

branch of Islam, and within the Catholic and Protestant branches of Christianity. It is generally recognised that these branches represent the overwhelming majorities within their respective spheres. The fourth chapter examines, compares and contrasts the methods that have been used by the adherents of Abrahamic religions for the sake of evading the scriptural prohibitions on usury. The fifth and final chapter will be the conclusion.