

Methods and Methodologies in *Fiqh* and Islamic Economics

Dr. Muhammad Yusuf Saleem

Department of Economics

Kulliyyah of Economics and Management Sciences

International Islamic University Malaysia

ysaleem12@hotmail.com; myusuf@iiu.edu.my

Abstract. This paper intends to examine the methods of reasoning that are employed in *Fiqh* and critically discuss their adoption in Islamic economics. The paper argues that the methods used in *Fiqh* are mainly designed to find out whether or not a certain act is permissible or prohibited. Islamic economics, on the other hand, is a social science. Like any other social science its proper unit of analysis is the society itself. Methodologies of *Fiqh* and Islamic economics also differ as the former focuses on prescriptions. It prescribes what an individual should do or avoid. In contrast, Islamic economics is more concerned with describing economic phenomena. While *Fiqh*, especially worship (*Ibadat*) type, prescriptions are permanent in nature and for all individuals, economic descriptions may change from time to time and from society to another. This paper argues that the methods of reasoning for discovering the truth in *fiqh* and Islamic economics are not necessarily identical. While *fiqh* has a well developed methodology in the form of *usul al-fiqh*, Islamic economics in its search for finding the truth should rely on a methodology that suits its social and descriptive nature.

Introduction

This paper begins with a discussion on methods and methodologies. It explains how the adoption of different standards for the acceptability of certain evidence can lead to differences in approaches and methodologies. It also discusses that various disciplines have different units of analysis or objects of inquiries. This calls for different methods of reasoning. The paper examines the legal methods of reasoning in Islamic jurisprudence (*usul al-fiqh*) and discusses their application to group-related issues and economics. It next argues that Islamic economics should rely on a methodology and methods of reasoning that would best suit its social and descriptive nature.

A Methodological Discourse

A method is defined as a systematic arrangement and order of thoughts. It refers to a certain structure of reasoning such as induction or deduction or research techniques or tools used to gather data such as observation, case studies, or surveys. A method is a mode, a procedure or a way of investigation according to a defined and regular plan. It teaches us how to arrange thoughts, propositions, and arguments for the investigation or exposition of a truth. A methodology, on the other hand, is the philosophy of a research. It determines the approach taken by a researcher towards understanding certain phenomena. It also sets standards for the acceptability of evidence and determines the role of reason in the investigation. Methodology as a science deals with the methods and

their application in a particular field. It is concerned with the suitability of the methods and techniques of reasoning employed in a certain investigation.⁽¹⁾

Reason alone is not an independent source of knowledge. One of its great weaknesses is its subjectivity. A methodology by providing standards for the acceptability of evidence and a set of methods releases reason from subjectivity and personal inclinations. This results to some extent in objectivity and predictability. Scholars and researchers in a certain field who use the same methodology would come to similar conclusion on a certain issue.

The adoption of different standards for the acceptability of evidence can result in differences on methodologies and may influence the choice of methods. The main difference between Islamic and secular methodologies lies in their recognition of certain evidences. While the former accords supremacy to revelation and accepts it as a source of knowledge; the latter recognises empiricism as supreme. While Islamic methodology recognises a limited role for empiricism, secular methodology totally denies the role of revelation in discovering and explaining the truth.

A researcher's choice of methods and methodology may also be influenced by the basic unit of analysis in a certain research. Disciplines differ from each other in their basic units of analysis. A unit of analysis means whether a certain research problem calls for the study of the physical nature, legal rules, behaviours, an individual or a group. The type of units of analysis can subsequently influence the choice of methods, and the formulation of research problem. For instance, the physical nature consists of objects that have no volition of their own and cannot make choices. They are governed by certain preordained laws. The role of human reason is to discover these laws through observation, experimentation, induction, deduction and other scientific methods which are mostly aimed to produce descriptive analyses.

In contrast, humans are different from the objects in the physical nature. They have been given a limited free will and can make their own preferred choices. Humans are also subject to rules and regulations. These rules and regulations about human conduct fall within the realm of laws. These laws are either man-made or of divine origin. While man-made law is derived from customs and conventions or made by a legislature, Islamic law (*fiqh*) has its own unique sources based on revelation. The role of human reason is to extend the normative statements given in the *Quran* and the *Sunnah* to new cases through the process of *ijtihad*. The legal methodology adopted for this purpose is different from the scientific methodology. In legal methodology the role of reason is to extend the law prescribed for humans to new cases, while in scientific methodology the role of reason is to discover the laws ordained for the nature through observation and experience. The methods of reasoning adopted for the study of human nature and behaviour could be different from the methods of reasoning in physical sciences. Human nature is also different from other physical phenomena. Physical phenomena are consistently subject to the rules of physical sciences. In contrast human nature can be

(1) See *The Compact Oxford English Dictionary*, 2nd ed. (Oxford: Clarendon Press, 1991). See also *Webster's New Twentieth Century Dictionary Unabridged*, 2nd ed. (New York: Prentice Hall Press, 1983); *Oxford English Dictionary of Historical Principles*, 5th ed. (Oxford: Oxford University Press, 2002).

changed by education, family upbringing, economic, and social factors or controlled by self restraint.⁽²⁾

A human group or collectivity is a totally different unit of analysis. Human groups or collectivities are not subject to the laws that govern nature. The law of the nature once discovered is consistently applicable to a certain physical phenomena. A group comprises many individual members with diversified and various choices and preferences. This results in the existence of numerous variables which militates against consistency. Similarly, a group should not be treated like an individual. An individual is held responsible for his actions and omissions. He is therefore the only proper subject for the enforcement of the law. For instance, an individual could be prosecuted for offences, or sued for civil liabilities. In contrast responsibility cannot be assigned to a group collectively neither in this world nor in the Hereafter. Human groups and societies cannot be prosecuted as a group in a court of law, imprisoned, punished, or declared bankrupt collectively. The commands and prohibitions addressed to an individual are meant to be permanent. In contrast, group-related decisions are not about command and prohibitions. They are temporary decisions which may differ from a society to another, from a situation to another, and from time to time. A human group or collectivity is the proper subject of research for the social sciences.

***Fiqh* as a Legal System**

Literally, *fiqh* means to understand and to have the knowledge of something. Technically *fiqh* is the knowledge of the derived practical legal rules as acquired from their particular sources.⁽³⁾ During the time of the Prophet (pbuh), the term *fiqh* was not applied in the legal sense alone but carried a wider meaning covering the whole of religion. For instance the *Quran* states: “That they may gain understanding (*liyatafaqqaho*) of the religion” (9: 122). The Prophet is also reported to have blessed Ibn Abas saying: “O God give him understanding (*Faqqihho*) in religion”. Both, the *Quranic* verse and the *Hadith* mean a deeper understanding of the religion and not only knowledge of the legal rules. However, later the science of *fiqh* got a more specialised meaning, which became synonymous with law and legal matters. Thus, *fiqh* as understood today includes various branches of legal rules on transactions, family matters, offences, and matters related to worship (*‘ibadat*).

Both the *Quran* and the *Sunnah* provide normative statements on what an individual Muslim ought to do or avoid. These detailed rules and regulations about an individual’s conduct and his rights, and obligations form the subject matter of *fiqh*. The basic units of analysis in the discipline of *fiqh* are the normative statements of the *Quran* and the *Hadith* on human conduct and his rights and obligations. Subsequently, the early jurists focused on those rulings of the *Quran* and *Sunnah* that concerned with the actions, rights, and obligations of an individual Muslim. The verses of the *Quran* that contained these rulings were termed as *ayaat al-ahkam*. A *Shari’ah* ruling (*hukm Shar’i*) was

(2) The fact that so many *Quranic* verses and *ahadith* refer to the subject of *akhlaq* shows that human nature can be changed and controlled. The Prophet (pbuh) is reported to have stated that he has been sent to complete the most beautiful *akhlaq*.

(3) See Subhi Mahmasani, *The Philosophy of Jurisprudence in Islam*, translated by Farhat J. Zaidah (Kuala Lumpur: The Open Press, 2000) p. 8.

defined as a communication from the Lawgiver concerning the conduct of the *mukallaf* which consists of a demand, an option or an enactment.⁽⁴⁾ A *mukallaf* refers to an individual who is in full possession of his faculties. Based on this the acts of a Muslim individual would fall within the five categories of obligatory (*wajib*), recommended (*mandub*), permissible (*mubah*), abominable (*makruh*) and prohibited (*haram*).⁽⁵⁾ The Sunnah of the Prophet is defined to include his sayings, acts, and tacit enactments where the emphasis was more on legal *sunnah* (*sunnah tashri'iyyah*). .

Islamic Jurisprudence (*Usul al-Fiqh*)

With the spread and expansion of Islam to new territories came unprecedented issues that demanded answers. In order to avoid legal chaos, these answers had to be provided with reference to the *Quran*, *Sunnah*, the practice of the companions and reason (*ra'i*). In the words of Iqbal “systematic legal thought became an absolute necessity.”⁽⁶⁾ Differences however emerged. These differences were initially geographical where the people of traditions (*ahl al-hadith*) were based in Medina while the people of reason (*ahl al-ra'i*) were centred in Kufah. Later, however they found as their chief representatives Imam Malik in Medina and Imam Abu Hanifah in Kufah. It is possible to attribute the early disagreements between the people of traditions (*ahl al-hadith*) and the people of reason (*ahl al-ra'i*) and the subsequent emergence of various *fiqh* schools to their differences of methodologies. This could be seen in the different standards that they adopted for the acceptability of *hadith* and in particular solitary (*ahad*) *hadith*. They also differed on the extent to which reason could be allowed to play a role in determining matters of Shari'ah as far as legal (*fiqh*) issues were concerned. These subsequently influenced their choice of methods. While all schools agreed on analogy (*qiyas*), they differed over other methods. Imam Shafi'i who initially tried to bridge the gap between the two methodologies could not condone the Hanafis excessive use of reason and in particular their juristic preference (*istihsan*) as it permitted unlimited use of reasoning. His methodology is therefore closely identified with those of the people of traditions (*ahl al-hadith*).⁽⁷⁾ However, the methodologies adopted by all the *fiqh* schools have a common ground. They have all made reason subservient to revelation. The difference however, was in the degree.

The methodology that was subsequently developed through the efforts of Muslim jurists is called *usul al-fiqh* which best suits the nature and requirements of *fiqh* as a legal system. It represents a joint venture between revelation and reason where the latter is always subservient to the former. The role of human reason is to extend the normative statements of the *Quran* and the *Sunnah* to new legal issues or to provide answers to new

(4) Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 2nd revised ed.(Kuala Lumpur: Ilmiah Publishers, 1989) p.321.

(5) The Hanafis have classified human conduct into seven categories of obligatory (*fardh*), lesser obligatory (*wajib*), recommended (*mandub*), permissible (*mubah*), disapproved (*makruh tanzih*), reprehensible (*makruh tahrimi*), and prohibited (*haram*).

(6) Allama Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (New Delhi: Adam Publishers and Distributors, 2004), p. 118.

(7) For a discussion see *Al-Shafi'i's Risala: Treatise on the Foundations of Islamic jurisprudence*, translated into English by Majid Khadduri, (Cambridge: The Islamic Text Society, 1987), pp. 28-40. See also Taha Jabir al-Alwani, *Usul al-Fiqh al-Islami*, (Herndon: The International Institute of Islamic Thought, 1990), pp. 33-7.

legal problems through the process of *ijtihad*. *Usul al-fiqh* is concerned with the sources of the *Shari'ah*, the rules of interpretation and the methods of reasoning. These methods of reasoning include analogy (*qiyas*), consensus of opinions (*ijma'*), juristic preference (*istihsan*), undefined interest (*maslaha al-mursalah*), blocking the means (*sadd al-dharai'*), presumption of continuity (*istishab*) and customs (*'urf*). The exercise of *ijtihad* through these various methods of reasoning produced immense wealth of legal rules. However, the bulk of these rulings were concerned with the conduct of the individual *mukallaf*.

Consequently, the methods of reasoning used in *usul al-fiqh* are also more individually oriented. *Ijma'*, for instance, is defined as consensus of Muslim jurists upon a matter of Islamic law (*hukm shar'i*).⁽⁸⁾ All non-legal matters such as matters related to war, or matters concerning the management of peoples' affairs (*tadbir umur ra'yah*) are excluded from the scope of *ijma'*.⁽⁹⁾ Analogical deduction (*qiyas*) is defined as the extension of a *Shari'ah* value from an original case (*asl*) to a new case because the latter has the same effective cause (*'illah*) as the former. The *hukm* that is extended to the new case must be with regard to practical matters. It must be a legal rule that pertain to the law. A certain rule that does not fall within the ambit of *fiqh* cannot be extended to new issues through *qiyas*. *Istihsan* as a method of reasoning relies on *qiyas* which was initially introduced by the *Hanafi* School and later adopted by the other Schools of *fiqh*. *Istihsan* was applied to cases where a decision based on *qiyas* would produce hardship to the people. As a result a Muslim jurist will set aside *qiyas* and give preference to another evidence that may remove hardships.⁽¹⁰⁾ *Maslahah* literally means benefit. Technically, *maslahah mursalah* refers to a consideration which is proper and harmonious with the objectives of the *Shari'ah*; it secures a benefit or prevents a harm; and the *Shari'ah* provides no indication as to its validity or otherwise.⁽¹¹⁾ *Sadd al-dharai'* is defined as blocking the means to an expected evil which is likely to materialise if the means towards it is not obstructed.⁽¹²⁾ Based on this method the means itself even if permissible would be declared prohibited if it leads to an evil or prohibition.

***Usul al-Fiqh* and Group-related Issues**

Usul al-fiqh as a methodology is aimed to arrive at normative statements that conform to the principles of *Quran* and *Sunnah*. These normative rulings are made by jurists through the process of *ijtihad* and bind each and every member of the society. A widely used method of reasoning is analogy (*qiyas*) which is almost universally accepted by all *fiqh* schools. *Qiyas* or deductive reasoning is reasoning from the principle. It extends a certain rule of the *Quran* and the *Sunnah* to a new case where the latter has the same effective cause (*'illah*). While referring to *qiyas*, iqbal observes: "The School of Abu Hanifa tended to ignore the creative freedom and arbitrariness of

(8) Wahbah Zuhaili, *Usul al-Fiqh al-Islami*, vol. 1 (Damascus: Dar al-fikr 1998), p. 491.

(9) Ibid, p.536.

(10) See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, pp. 245-266. See also Imran Ahsan Khan Nyazee, *Islamic jurisprudence* (Islamabad: international Institute of Islamic Thought, 2000) pp. 230-2.

(11) See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, p. 267.

(12) Kamali, *Principles of Islamic Jurisprudence*, p. 310.

life, and hoped to build a logically perfect legal system on the lines of pure reason.⁽¹³⁾ These creative freedom and arbitrariness of life is even more evident in social sciences in general and economics in particular than in the legal system of Islam. The existence of numerous variables and factors influencing social and economic phenomena and the changing nature of social and economic realities militate against formulating permanent laws similar to those of *fiqh*.

A case at point is the practice of the Prophet (pbuh) to confiscate the lands of those tribes who fought the Muslims and did not surrender peacefully. The use of analogy (*qiyas*) would lead to the confiscation of any land where the inhabitants put up a fight and do not surrender peacefully. This reason (*'illah*) to confiscate the land was present when Iraq was conquered. However, against the opinions of the companions who insisted to follow the practice of the Prophet (pbuh), 'Umar (ra) refused to distribute the massive territories of Iraq among the Arab soldiers. Fazlur Rahman argues that Caliph 'Umar's refusal to distribute massive territories one after another among the soldiers "was motivated by fundamental considerations of socio-economic justice".⁽¹⁴⁾ He also argues that the Prophet (pbuh) "was acting within a restricted milieu of tribes" and his practice cannot be carried on "where vast territories and whole peoples are involved; otherwise you violate the very principles of justice for which the prophet had been fighting all his life".⁽¹⁵⁾ The reason why Caliph 'Umar departed from an established practice was his deep insight to distinguish between a rule of the Prophet (pbuh) that concern groups and a rule that is addressed to an individual. A ruling concerning a group may change from a situation to a situation. A mere mechanical comparison of one situation with another and the application of a *Sunnah* intended for the former to the latter would lead to rigidity and sometimes unfair decisions. Converting a ruling of the Prophet which was initially meant for a group and intended as a policy statement into a legal rule intended for all the times to come and apply that to all subsequent similar cases may go against the higher objectives of the *Shari'ah*.

Another example could be the distribution of *zakat* fund to the eight recipient groups (*asnaf*). Majority of the Muslim jurists are of the opinion that authorities are not bound to distribute the *zakat* fund equally among the eight recipient groups. Some of the groups may receive a higher percentage than others. They also argue that this is a policy issue left to the authorities to decide whether *zakat* fund should go to some recipient groups such as the poor and the needy to the exclusion of others. Thus, the distribution aspect of *zakat* is not governed by *fiqh* rules and is entirely left to the Muslim authorities to decide as this concerns issues related to groups. Similarly, the issue of how *zakat* affects the distribution of wealth across classes and groups could not be addressed by the methods of reasoning in *usul al-fiqh*. In contrast, the basic principles concerning the amount of *nisab*, the duration of *hawl*, the rate of *zakat* are laid down by *fiqh* as *zakat* is an obligation on an individual. *Fiqh* methods of reasoning such as *qiyas* are used to extend the rule of *zakat* to rented houses and salaries. These are issues that cannot be left to authorities for their decision.

(13) Iqbal, *The Reconstruction of Religious Thought in Islam*, p. 140.

(14) Fazlur Rahman, "Social Change and Early Sunnah", P.K. Roy, ed. *Hadith and Sunnah: Ideals and Realities*, (Kuala Lumpur: Islamic Book Trust, 1996), 220-232, p. 224.

(15) *Ibid*, italics in the origin.

Besides analogy (*qiyas*) another method of *usul al-fiqh* that may not suitably be applied to group issues is consensus of juristic opinion (*ijma*). *Ijma* according to the majority opinion represents a juristic consensus on a legal (*fiqhi*) issue. An *ijma* is also binding on subsequent generations. Consultation (*shura*) could be the right method for matters that affect groups and collectivities. It represents the deliberation and decisions of experts in a certain field other than the law (*fiqh*). These decisions may not be followed in subsequent similar situations. In *shura* the overriding principle is the consideration of public interest.

In contrast *maslahah* also called *istislah* is more suitable as a method to introduce policies for the general public rather than a law for the individual. Even the examples of *maslahah* given in *fiqh* books are not purely legal but are related to governmental decisions, policies and administrative issues. These include issuing currencies, establishing prisons, waging war on those tribes who refused to pay *zakat*, and imposing *zakat* on the wealthy when public treasury runs out of fund. These are measures aimed to secure a certain public benefit (*maslahah*). Similarly, *sadd al-dharai* has a great potential to be used to block the means to a certain public harm (*mafsadah*) or to open the means to a certain public beneficence (*maslahah*). For instance, when Hudhayfa one of Caliph Umar's officials in Madain married a Jewish woman the Caliph ordered him to divorce his wife. In reply to Hudhayfa who wrote to the Caliph arguing for the validity of the marriage the Caliph wrote that this example might be followed by others who might be lured by the beauty of the women of *ahl al-dhimmah*.⁽¹⁶⁾ It however, has to be noted that the jurists from both the Hanafi and Shafi'i Schools had observations regarding the suitability of *maslahah al-mursalah* and *sadd al-dharai* as independent proofs in *usul al-fiqh*. The opponents of *maslahah* argued that the use of *maslahah* would result in the application of *haram* and *halal* in some places or to some persons and not to others. Al-Shafi'i approves of *maslahah* only within the general scope of *qiyas* while Abu Hanifa recognises it as a variety of *istihsan*.⁽¹⁷⁾ The *Hanafi* and *Shafi'i* jurists also did not recognise *sadd al-dharai* as a principle of jurisprudence in its own right. They argue that the necessary ruling regarding the means can be derived by recourse to other principles such as *qiyas* and *istihsan*.⁽¹⁸⁾

The methods of reasoning in *usul al-fiqh* could be defined as reasoning from the principles prescribed in the text i.e. the *Quran* and the *Sunnah*. These methods enable a jurist to arrive at a normative statement and extend it to new cases. The methods of reasoning in economics could be described as reasoning from experience and observation. These methods of reasoning produce descriptive hypotheses or assumptions that suggest a certain relationship between economic variables or discover a certain economic reality.⁽¹⁹⁾ For instance, the methods of reasoning in *fiqh* are not meant to discover or explain the effects of prices on behaviours, the law of supply and demand or to tell us how markets behave in a certain given situation. These methods of reasoning can explain that what should be supplied and what should be demanded or what an individual should do or refrain. In contrast methods of reasoning in economics

(16) Kamali, *Principles of Islamic Jurisprudence*, p. 313.

(17) *Ibid.*, p. 278.

(18) *Ibid.*, p. 314.

(19) See Muhammad Anas Zarqa, "Islamization of Economics: The Concept and Methodology", *Journal of King Abdul Aziz University; Islamic Economics*, Vol. 16, No. 1, pp. 3-42, at pp. 22-23.

are not designed to decide on the permissibility or prohibition of acts or things. For instance, it is not possible to decide whether or not *tawarruq* or *bay' al-einah* are permissible through observation, market research, case studies, questionnaires, interviews, or surveys. These are purely legal issues and should be decided with reference to legal methods of reasoning of analogy (*qiyas*) or blocking the means (*sad al-dharai*).

Economics as a Descriptive and Social Science

Economic theories and principles are descriptive hypothesis and assumptions that explain economic realities. A descriptive statement or a statement of a fact is a statement of what is. It is a statement that describes a specific reality or a certain relationship between variables. They are arrived at based on the observation of economic phenomena and realities in a certain society and the assumptions about human economic behaviours. They involve numerous variables which defy permanence and always demand a new investigation and approach. For instance, data-based research of economic crises and conditions is descriptive. This can only reveal the situational character of the discipline. There exist so many variables that make it difficult if not impossible for economic researches to be of any predictive value. In contrast the rules of *fiqh* are normative statements. A normative statement is a statement of value that expresses an attitude towards what should be. It expresses a preference. It is not concerned with describing scientific or economic realities.⁽²⁰⁾

Economics is a social science. It is concerned with policy issues that affect groups or collectivities. Policy decisions related to collectivities involve numerous variables that defy permanence and always demand revision. They are not legal rulings. A legal rule by its very nature is addressed to an individual. It establishes on a permanent basis whether a certain act is recommended (*wajib*) or forbidden (*haram*). While economic policies are not about obligation or prohibition. They are mainly based on factual realities and are intended to achieve certain results. Economic policies may therefore differ from time to time and from a society to a society. However, an Islamic economic policy should always endeavour to achieve the objectives of the Shari'ah.

Economics is not the study of one individual's behaviour but how an aggregate of them would behave in a certain given economic context. Since it is difficult to predict how groups of people would behave, due to the existence of numerous variables and preferences, the study therefore is focused on human nature. Certain assumptions about rational human who is motivated by self-interest are used to formulate certain economic theories and hypotheses. These theories and hypotheses are used to predict how groups of humans would make their decisions with regard to scarce resources.

Among the most important economic assumptions that have widespread implications for the premises and theories of this discipline are those that relate to human's natural dispositions and motives as they are and not as they ought to be. Economic assumptions and theories cannot be built on human behaviour as they ought to be. Such an attempt assumes the observance and internalisation of *fiqh* rules and ethics by each and every

(20) *Ibid*, p.6.

individual of a certain group. The problem with this assumption is that individuals differ with each other as far as the observance and implementation of *fiqh* and ethics are concerned. *Fiqh* rules and ethics are extraneous forces that impose certain restraints on human behaviour. The influence of these extraneous forces differs from an individual to an individual. It is therefore always safe to base assumptions on the human nature and find out how, not an individual, but a group of them would behave in a certain given economic context. For instance, Caliph Umer (ra) refused to distribute Iraqi land among the soldiers on the ground that if Arab soldiers became land settlers they would cease to be fighters. He argued based on human nature that if a person settles and busies himself with the land he is more likely to abandon jihad as a result the cause of religion may suffer. We should not forget that among the soldiers were the companions and the successors. This policy was made with reference to human nature as it is and not as it ought to be. It is therefore argued that the issue that how groups of humans ought to behave should be addressed by economic policies. Islamic economic policies should be designed in a way that would ensure people's compliance with the Shari'ah principles. Thus, the difference between secular and Islamic economics is in the design and implementation of economic policies.

Sources and Methods of Reasoning in Islamic Economics

1. The Holy Quran

The first source for the knowledge of Islamic economics is the *Quran* as is also the case with *fiqh*. However, unlike *fiqh* which focuses on *Quranic* verses that confer rights or impose obligations on individuals (*ayat al-ahkam*), Islamic economics should focus on those verses that contain descriptive statements on human nature. Similarly descriptive statements of the *Quran* on economic phenomena and verses concerning groups or collectivities fall within the ambit of Islamic economics.

The Quran has many descriptive statements on human nature. These include, for instance, verse 33: 72 which states that man "has always been prone to be most wicked, most foolish", verses 42:27 which links human transgression to affluence and richness, verses 4: 32, 20: 131 that explains the covetous nature of man which desires what others have and thereby his vulnerability to be influenced by external social and economic factors.⁽²¹⁾ Humans by nature love wealth. Verses 3: 14-15 describes man's love of wealth and verse 100: 8 states that "verily, to the love of wealth is he most ardently devoted". Islam therefore, does not condemn seeking wealth but instead introduced certain guidelines within which wealth can be earned and spent. We may also refer to verse 2: 30 where the angels while referring to man's *khilafah* on earth said that men would "spread corruption thereon (*mai ufsidu feeha*) and shed blood".⁽²²⁾ The fact that

(21) *Ibid*, pp. 14-15.

(22) Muslim commentators have advanced different arguments as to the source of angels' knowledge about men's these two destructive qualities. There are arguments that angels' knowledge was based on inference which they came to by comparing Adam (as) with the jinn who had inhabited the earth prior to man, caused corruption and shed blood thereon. There are also arguments that the angels were informed by Allah (swt) and that the *Quraan*, while discussing the events of the creation, because of brevity, did not mention this part of the conversation between Allah (swt) and the angels. See Imam Fakhr al-Din al-Razi, *al-Tafsir al-Kabir*, 3rd edition, (Beruit: Dar al-Marifah, n.d), vol. 1, pp.169-170; Abdullah Muhammad ibn Ahmad, al-Ansari al-Qurtabi, *al-Jami-ul-Ahkam-ul-Quran*, (Qairo: Dar-al-Shu'b, n.d.) p. 235; Abi Ja'far Muhammad ibn Jarir al-Tabari, *Jamiu'al - Bayan an*

God did not reject their claim but merely said that, “verily, I know that which you do not know” shows that man by nature is prone to cause disorder (*fasad*).⁽²³⁾ These descriptive statements of the Quran on human nature fall outside the scope of fiqh.

The *Quran* also has descriptive statements on certain economic phenomena. For instance, verse 43: 32 states: “But is it they who distribute thy Sustainer’s grace? [Nay, as] it is We who distribute their means of livelihood among them in the life of this world, and raise some of them by degrees above others, to the end that they might avail themselves of one another’s help”. This verse describes the differences in wealth, talents, physical and mental capacities and other potentials among people. It also explains the reason for the existence of these differences as they enable humans to make use of each other and in the process meet each other’s economic needs.

The *Quran* also has descriptive statements on groups or collectivities. These statements are wider in scope and application than the normative statements of the Quran or *Sunnah*. While the latter are only applicable to Muslim individuals the former are equally applicable to both Muslim and non-Muslim collectivities. For instance, verses 2; 251 and 22: 40 states: “were it not that God repels (*daf’a*) some people by means of others, corruption (*fasad*) would surely overwhelm the earth”. The word *daf’a* used in both verses literally means repelling⁽²⁴⁾ and convey the meaning of checking and defending.⁽²⁵⁾ This, it is argued, is a descriptive statement concerning human groups and not its individual members. The *Quran* in these verses describes that in order to restrain groups of people from doing injustice to each other the law of mutual check and balance applies. Some Muslim commentators are of the view that these verses refer to two groups of people one standing for justice, peace, and order (*islah*) and the other representing the forces that are for oppression, war, and disorder (*fasad*). They subsequently argue that if the forces that are for justice and order (*islah*) do not check those that stand for injustice, then disorder (*fasad*) will prevail on earth. From this they conclude that if Muslims do not check and repel the non-Muslims the outcome will be disorder (*fasad*) on earth.⁽²⁶⁾ This interpretation, however, means that when Muslims are powerless the forces that stand for disorder (*fasad*) could not be countered. This necessarily means that this rule (*sunnah*) of Allah (swt) with regard to human societies would not be operational. Furthermore, this interpretation has unnecessarily restricted the wider implications of these verses. The Quran in these verses refers to one of the laws (*sunnah*) of Allah (swt) whereby He empowers groups of people to counter each other’s aggression and keep each other, through mutual checking and repelling, in a

Ta’wel Ai al-Quran, vol. 1, (Beruit: Dar al – Ma’rifah, n.d.) pp.157-160; Abi al-Fazl Shahabuddm al-Syed Mahmood al-Aloosi al-Baghdadi, *Rooh al-Ma’ani*, vol. 1, (Beruit: Dar-al-Fiqir, n.d.) p. 222; Muhammad ibn Ali ibn Muharnmad al-Shawkani, *Fathol-Qadeer*, (Beirut Dar-al-Fiqir, 1973) 3rd ed. vol. 1, p. 63.

(23) See Fazlur Rahman, *Major Themes of the Quraan* (Kuala Lumpur: Islamic Book Trust, 1999) p. 17-18.

(24) See Edward William Lane, *Arabic-English Lexicon*, (Lahore, Islamic Book Centre, 1982) Book 1, p.890.

(25) See Muhammad Asad, *The Message of the Quran*, and Abdullah Yusuf Ali, *The Meaning of the Holy Quran*, respectively.

(26) See for example, Razi, Qurtabi, Shawkani, Tabari, see also Abi al- Qasim Mahmood ibn Umar al-Zamakhshari, *al-Kaskaf* (Beirut Dar al - marifah, n.d.) p. 382 and Jalal al-Din al-Suiti, *Tafsir al- dor a-Manthur fi Tafsir al-Mathur* (Beirut: Dar al Fiqir, 1993) pp. 764-9. See also Muhammad al-Tahir ibn Ashore, *Tafsir al Tahrir wa al-Tanweer* (Libya: al-Dar al-Tunisyyah lil Nashr, n.d.) pp. 500-3; Muhammad Husain Fadhlullah, *Min Wahy al-Quran* (Beirut Dar al-zahra, 1983) pp. 220-21.

state of balance. This will act as a natural deterrence which restrains collectivities from aggression. It may cover a situation where the forces that are for justice and order (*islah*) check other forces that stand for injustice and disorder (*fasad*). However, it may also equally cover situations when two equally oppressive or evil powers or two groups which are equally just may find themselves, because of their conflict of interests in the complex world of politics and economics, in a position to restrain and check each other. It is this mutual checking by different political and economic forces that curbs disorder (*fasad*) and keeps various groups and powers in a state of equilibrium (*islah*). In contrast, it is the absence of mutual repelling and checking by different human groups that can lead to disorder (*fasad*). This concept of mutual check and balance could also be extended to markets. For a market to be in a state of equilibrium there should be competitions among the various market forces. Competitions prevent monopoly of any one force and ultimately bring about equilibrium (*islah*) to the market. A competitive market represents a state of equilibrium and determines a fair price which should not be disturbed by unnecessary interferences.

2. *Sunnah* of the Prophet (pbuh)

The second source for the knowledge of Islamic economics is the hadith of the Prophet (pbuh). The division of *Sunnah* into legal (*sunnah tashri'iyyah*) and non-legal *sunnah* (*sunnah ghayr tashri'iyyah*) has provided a useful guidance in order to distinguish between a *hadith* which provides a basis for a *fiqh* rulings and a *hadith* which does not.⁽²⁷⁾ Among the non-legal *Sunnah* are also the rulings which originate from the Prophet (pbuh) in his capacity as imam or head of the state such allocation and expenditure of public funds, decisions pertaining to military strategy and war, appointment of state officials, distribution of booty, signing of treaties, and etc which legal rules cannot be derived. This type of *Sunnah* does not entitle individuals to any right, nor oblige them unless a decree to that effect is given by a lawful authority.⁽²⁸⁾

A situational treatment of the Prophet (pbuh) of certain group issues should not be taken as a definite, rigid, and defined rule meant for all times and all situations to come. Instead we should focus on what the Prophet intended to achieve.⁽²⁹⁾ The *hadith* related to groups that concerned socio-political and economic issues should be understood to have meant to prevent a certain public harm and to acquire a certain public interest. The spirit of these types of *hadith* which is the prevention of public harm (*mafsadah*) and the acquisition of public interest should be pursued. However, the means used to prevent a public harm or to achieve a public interest may differ. These are related to policy matters which could best be dealt with by the concerned leadership through the process of consultation (*shura*). It is therefore argued that a distinction should be made between a decision made on a question of law and a decision made on a question of policy. Group related decisions were meant to acquire a certain public interest (*maslahah*) and prevent certain harm (*mafsadah*) the consequences of which were not necessarily limited to an individual but affected a certain group or the society as a whole. These

(27) Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, p. 51.

(28) *Ibid*, p. 56 where the implication of the hadith "whoever reclaims barren land becomes its owner" is discussed.

(29) For a discussion see Fazlur Rahman, "The Living Sunnah and Al-sunnah Wal jama'ah" P.K. Roy, ed. *Hadith and Sunnah: Ideals and Realities*, (Kuala Lumpur: Islamic Book Trust, 1996) 129-189, p. 147-8.

decisions concerned policy issues and were not intended to become permanent legal rules.

This argument is further supported by the practice of the Prophet (pbuh). There were complaints that the prices of certain items were high and people requested the Prophet (pbuh) to fix the prices. He replied: “Allah is the one who fixes price, who withholds, who gives lavishly, and who provides, and I hope that when I meet Him, none of you would have a claim against me for any injustice with regard to blood or property”.⁽³⁰⁾ A proper way is to identify a public harm that the *hadith* intended to prevent and not the application of *qiyas*. The hadith indicates that prices are determined by forces which are beyond human control. That the forces of supply and demand and competitions among maximising agents propel market towards equilibrium and determine a fair price for commodities, goods, and labour. It also indicates that price determination by the state (*tas'eer*) or any other state interference that disturbs the normal market conditions and equilibrium is harmful. However, this equilibrium could be disturbed, for instance, by hoarding, meeting the rider on his way to the market (*talaqqi al-rukban*),⁽³¹⁾ monopolies, underselling, and collusion among otherwise competitive firms. These practices allow market players to manipulate prices and introduce a degree of artificiality into the market. They act as hindrances to the natural functioning of the market, distort the existing equilibrium and fail markets. Interference therefore is necessitated in order to stop interferences and restore the balance in the market. In this way it is argued the true meaning and spirit of the hadith is upheld. Muslim jurists have also accepted the possibility of interference in the market in these situations under the doctrine of necessity and public interest. Indeed the institution of *hisbah*⁽³²⁾ was established to prevent these hindrances to the natural functioning of the market. The *muhtasib* was responsible to supervise markets and common morals. Among his duties were to check irregularities and to ensure that market players were in the right track and did not indulge in malpractices.

1. Readings of Economic Phenomena

The *Quran* and *Sunnah*, as was discussed, constitute two principal sources for Islamic economics. This could also be classified as reading from the text. The other source for Islamic economics is the reading of economic phenomena. It would enable a researcher to study a certain economic phenomena and discover the relationships between variables. This will help to discover the reality as it is. The tools for reading economic phenomena include observation, experience, inductive reasoning, surveys, questionnaires, interviews, market research, statistical methods, quantitative research

(30) Reported by Ahmad, Abu Daoud, al-Tirmidhi, Ibn Majah, al-Dari, and Abu- Ya'la. See also Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam*, translated by Kamal El-Helbawy (Kuala Lumpur: Islamic Book Trust, 1995) p. 255.

(31) It refers to a practice where a caravan would be stopped on their way to the city market and telling them that prices there are low, with the design to purchase their goods themselves at the lowest possible price. See Yassine Essid, *A Critique of the Origins of Islamic Economic Thought*, (Leiden: E. J. Brill, 1995) p. 156.

(32) The history of the institution of *hisbah* goes back to the time of the Prophet pbuh. It remained in existence throughout the greater part of the Muslim world until the beginning of the twentieth century. The officer in charge of the *hisbah* was called *muhtasib*. For a discussion see Abdul Azim Islahi, *Economic Concepts of Ibn Taimiyah*, (Leicester: The Islamic Foundation, 1988) pp. 186-191.

and other methods and techniques of economic analyses developed by conventional economics. This is a different type of *ijtihad* where human mind guided by revelation is applied to the study of economic phenomena.

2. The Objectives of the *Shari'ah*

While studying the descriptive economic realities of the society a Muslim economist should be guided by the objectives of the *Shari'ah* and propose policies that would achieve them. The objectives of the *Shari'ah* in particular when they are group-oriented and not individually focused provide valuable intellectual foundation for the subsequent development of Islamic economic thoughts. One of the principal objectives of the *Shari'ah* is the prevention of *fasad*. The word *fasad* which has been mentioned almost fifty times in the Quran has a wide range of meanings. It signifies “a state of disorder, or disturbance, or of destruction, annihilation, waste, or ruin”.⁽³³⁾ It also connotes mischief, corruption, exploitation, wrong, and all forms of injustice, mismanagement, anarchy, and chaos.⁽³⁴⁾ *Fasad* is the opposite of *islah*. *Islah* is derived from the root word *salaha* which literally means good, incorrupt, sound, right or a proper state, or in a state of order.⁽³⁵⁾ *Islah* refers to a state of equilibrium where things are in a proper order and balance. Muslim jurists have also used the word evil (*sharr*) and harm (*dharar*) as synonymous with *mafsadah*. Ibn Ashur argues that numerous textual proofs confirm the fact that removal of corruption (*dar' al-mafasid*) and the acquisition of good (*jalb al-masalih*) is “the overall objective of the *Shari'ah*”⁽³⁶⁾ and the “fundamental universal rule of the *Shariah*”.⁽³⁷⁾ Muslim jurists are of the opinion that any measure that prevents a *mafsada* is in line with the objectives of the *Shari'ah* even if the latter does not provide any indication as to its validity or otherwise provided however, that it should not turn a prohibited act into a permissible one and vice versa.⁽³⁸⁾

In order to prevent a public harm or evil (*mafsadah 'aammah*) the Muslim economists should emphasise on *Shari'ah* oriented economic policies (*siyasa shara'iyyah al-iqtisadiyah*). A *Shari'ah* oriented policy is a policy that is designed to achieve the objectives of the *Shari'ah*. Since prevention of harm or disorder (*fasad*) is one of the principal objectives of the *Shari'ah*, a *Shari'ah* oriented policy should be designed in a way that would achieve this objective. However, a public harm (*mafsadah*) due to the dynamic interaction of socio-economic forces presents itself in a variety of forms. It may also vary in degrees from time to time and differ from a society to a society. It is therefore, not possible to identify on a permanent basis and enumerate the various forms of *mafsadah* and its corresponding *maslahah*. Neither are they enumerated by the *Quran* or the *Sunnah*. While deductive reasoning (*qiyas*) can be used to declare on the permissibility or prohibition of a certain act or thing on a permanent

(33) Edward William Lane, *Arabic-English Lexicon*, Book 1, p. 2396.

(34) See al-Syed Mumammad Murtaza al-Zubaidi, *Taj-al-A'rose*, (Jamalia, Misir: Matbaat al-Khairiyah, 1306H), vol. 2, p. 452; Mustansir Mir, *Dictionary of Quranic Terms and Concepts*, (New York: Garland Publishing Inc., 1987), p.42.

(35) Edward William Lane, *Arabic-English Lexicon*, Book 2, p. 216.

(36) Muhammad al-Tahir ibn Ashur *Ibn Ashur Treatise on Maqasid al-Shari'ah*, translated by Mohamed El-Tahir El-Mesawi, (London: The International Institute of Islamic Thought, 2006) p.88.

(37) *Ibid*, p. 90.

(38) See Abu Hamid Muhammad al-Ghazali, *Mustasfa min 'Ilm al-Usul*, (Cairo: al-Maktabah al-Tijariah, 1356/1937) vol. I, 139-40.

basis, it is not feasible to use *qiyas* to decide whether or not a certain situation amounts to *mafsadah* by comparing it with a previous form of *mafsadah*. Instead inductive reasoning is used to identify the causes or effects, as the case may be, of a certain economic *mafsadah*. Similarly, the prevention of a certain public harm (*mafsadah*) or acquiring a certain public interest needs various approaches and policies. These policies once taken are meant to deal with a particular issue that affects the public at a certain time-space and may change with the passage of time. They are not rules of law that cannot be amended and are meant for generations to come. In other words policies are not intended to declare a certain act permanently permissible (*halal*) or prohibited (*haram*).

It was due to this evolving nature of *mafsadah* and *maslahah* that Muslim jurists did not enumerate them on a permanent basis. Instead they laid down certain rules on how to deal with a *mafsadah*. For instance, the *Mejelle* states: “Repelling an evil is preferable to securing a benefit”.⁽³⁹⁾ The jurists have also held that a private harm could be inflicted in order to prevent a public harm. Article 26 of *The Mejelle* says: “A private injury is tolerated in order to ward off a public injury”. These legal maxims show the priority that Muslim jurists have accorded to the removal of public harm (*mafsadah/dharar*) even if it is at the expense of an individual or individuals. For instance, non-performance of basic duties by a state may lead to underdevelopment, unemployment and economic crises. These are various forms of *mafsadah* that should be avoided by imposing more taxes, in addition to zakat, on individual citizens.⁽⁴⁰⁾ In circumstances where two evils (*mafsadah*) present themselves at the same time the lesser of the two evils is chosen. In such cases the greater evil is avoided by the commission of the lesser. *The Mejelle*, states: “In the presence of two evils the one whose injury is greater is avoided by the commission of the lesser”.⁽⁴¹⁾ It also states: “Severe injury is removed by lesser injury”.⁽⁴²⁾ These show that various measures could be validated provided they lead to the prevention of public harm or disorder (*mafsadah*). The method for the prevention of public harm and the ways for the acquisition of public interest would change from time to time and place to place.

Conclusion

Methodologically speaking, a Muslim jurist’s approach towards legal issues and a Muslim economist’s approach towards economic phenomena have one thing in common. Both these approaches and the methodologies of investigation have accorded revelation a superior position where reason and empiricism are always made subservient to it. However, the methods of reasoning and research in the two disciplines differ as they focus on two different units of analysis. In *fiqh* the subject-matter is the acts, rights, and duties of an individual Muslim. It prescribes whether a certain act is obligatory (*wajib*) or prohibited (*haram*) or falls between these two on a permanent basis. Subsequently, its focus is on the normative statements of the *Quran* and the *Hadith*. The methods of reasoning in *fiqh* are designed to extend these normative statements to new

(39) *The Mejelle*, translated by C.R. Tyser, D.G. Demetriades, and Ismail Haqqi Effendi (Kuala Lumpur: The other Press, n. d.) Article 30.

(40) See, Yusuf al-Qaradawi, *Fiqh al-Zakat* (Beirut: Al-Resalah publishers, 2000) 4th ed., vol. 2, p. 986.

(41) See *The Mejelle*, Article 28 and 29.

(42) *Ibid*, Article 27.

cases. In contrast, economics is a social and descriptive science. Its basic units of analysis are human nature, scarce resources, economic phenomena, and a large aggregate of persons. Thus, *fiqh* and Islamic economics in their search for discovering the truth have to rely on two different set of methods, as the objects of inquiry in the two disciplines are different.

It was due to the needs of everyday practical life that *fiqh*, and not economics and social sciences in general, got the greatest attention from the Muslim jurists in the early formative history of religious thought. This focus on the actions, rights, and duties of an individual Muslim has subsequently influenced the later efforts of the Muslim jurists for the developing of a methodology for *fiqh*. *Usul al-fiqh* has the most comprehensive methods for legal reasoning. However, some of these methods in particular analogy (*qiyas*), juristic preference (*istihsan*), and consensus of juristic opinions (*ijma'*) may not suit the social and descriptive character of Islamic economics. On the other hand, public interest (*maslahah al-mursalah*) and blocking the means (*sadd al-dharai'*) can usefully be employed to guide Islamic economic policies.

Islamic economics should pay greater attention to those verses of the *Quran* that describe human nature and economic phenomena. Similarly, descriptive statements of the *Quran* on human groups and collectivities provide valuable intellectual foundation for the development of Islamic economic thoughts. Non-legal *Sunnah* (*Sunnah ghair tashri'iyyah*) and *hadith* on markets' are another source for Islamic economics. The focus should be on how to deal with a certain public harm (*mafsadah*) that the *hadith* intended to prevent. In the light of these two sources' Islamic economics can adopt methods of reasoning and analysis developed by conventional economics. This will help a Muslim economist to know the reality, explain a certain economic phenomena and discover a certain relationship between economic variables. The knowledge of the objectives of the *Shari'ah* is another source for Islamic economics. The objectives of the *Shari'ah* when they are related to groups and in particular the prevention of public harm (*mafsadah*) and the acquisition of public interest (*maslahah*) are guiding principles for designing *Shari'ah*-oriented economic policies.

References

- Abdul Azim Islahi, (1988) *Economic Concepts of Ibn Taimiyah*, Leicester: The Islamic Foundation.
- Abdullah Muhammad ibn Ahmad, al-Ansari al-Qurtabi, *al-Jami-ul-Ahkam-ul-Quran*, (Qairo: Dar-al-Shu'b.
- Abi al- Qasim Mahmood ibn Umar al-Zamakhshari, *al-Kaskaf*, Beirut Dar al-marifah.
- Abi al-Fazl Shahabuddm al-Syed Mahmood al-Aloosi al-Baghdadi, *Rooh al-Ma'ani*, Beriut: Dar-al-Fiqirn.
- Abi Ja'far Muhammad ibn Jarir al-Tabari, *Jamiu'al - Bayan an Ta'wel Ai al-Quran*, Beriut: Dar al - Ma'rifah.
- Abu Hamid Muhammad al-Ghazali, *Mustasfa min 'Ilm al-Usul*, Cairo: al-Maktabah al-Tijariah.
- Allama Muhammad Iqbal, (2004), *The Reconstruction of Religious Thought in Islam*, New Delhi: Adam Publishers and Distributors.
- Al-Shafi'i's Risala: Treatise on the Foundations of Islamic Jurisprudence*, (1987), translated into English by Majid Khadduri, Cambridge: The Islamic Text Society.
- Edward William Lane, (1982), *Arabic-English Lexicon*, Lahore, Islamic Book Centre.

- Fazlur Rahman, (1996), "Social Change and Early Sunnah", P.K. Roy, (ed.), *Hadith and Sunnah: Ideals and Realities*, Kuala Lumpur: Islamic Book Trust.
- Fazlur Rahman, (1996), "The Living Sunnah and Al-Sunnah Wal jama'ah" P.K. Roy, ed. *Hadith and Sunnah: Ideals and Realities*, (Kuala Lumpur: Islamic Book Trust.
- Fazlur Rahman, (1999) *Major Themes of the Quran*, Kuala Lumpur: Islamic Book Trust.
- Imam Fakhr al-Din al-Razi, *al-Tafsir al-Kabir*, Beirut: Dar al-Marifah, .
- Imran Ahsan Khan Nyazee, (2000) *Islamic Jurisprudence*, Islamabad: International Institute of Islamic Thought.
- Jalal al-Din al-Suiti, *Tafsir al-dor a-Manthur fi Tafsir al-Mathur*, Beirut: Dar al Fiqir.
- Mohammad Hashim Kamali, (1989), *Principles of Islamic Jurisprudence*, 2nd revised ed., Kuala Lumpur: Ilmiah Publishers.
- Muhammad al-Tahir ibn Ashore, *Tafsir al Tahrir wa al-Tanweer* (n. d.), Libya: al-Dar al-Tunisyiah lil Nashr.
- Muhammad al-Tahir ibn Ashur, (2006) *Ibn Ashur Treatise on Maqasid al-Shari'ah*, translated by Mohamed El-Tahir El-Mesawi, London: The International Institute of Islamic Thought.
- Muhammad Anas Zarqa, (2003) "Islamization of Economics: The Concept and Methodology", *Journal of King Abdul Aziz University; Islamic Economics*, Vol. 16, No. 1, pp. 3-42
- Muhammad Asad, (1980), *The Message of the Quran*, Gibraltar: Dar al-Andalus.
- Muhammad Husain Fadhlullah, (1983) *Min Wahy al-Quran*, Beirut Dar al-Zahra.
- Muhammad ibn Ali ibn Muharnmad al-Shawkani, *Fathol-Qadeer*, Beirut Dar-al-Fiqir.
- Mustansir Mir, (1987), *Dictionary of Quranic Terms and Concepts*, New York: Garland Publishing Inc., *Oxford English Dictionary of Historical Principles*, (2002), 5th ed. Oxford: Oxford University Press.
- Problems of Research in Islamic Economics. (1986), Research Papers and Proceedings, A Symposium Jointly Held with the Islamic Research and Training Institute Islamic Development Bank-Jeddah/ Saudi Arabia.
- Subhi Mahmasani, (2000), *The Philosophy of Jurisprudence in Islam*, Translated by Farhat J. Zaideh, Kuala Lumpur: The Open Press.
- Syed Mumammad Murtaza al-Zubaidi, (1306H), *Taj-al-A'rose*, Jamalia, Misir: Matbaat al-Khairiyah.
- Taha Jabir al-Alwani, (1990), *Usul al-Fiqh al-Islami*, Herndon: The International Institute of Islamic Thought.
- The Compact Oxford English Dictionary*, (1991), 2nd ed. Oxford: Clarendon Press.
- The Mejelle*, Translated by C.R. Tyser, D.G. Demetriades, and Ismail Haqqi Effendi, Kuala Lumpur: The Other Press.
- Wahbah Zuhaili, (1998), *Usul al-Fiqh al-Islami*, vol. 1 Damascus: Dar al-fikr.
- Webster's New Twentieth Century Dictionary Unabridged*, (1983), 2nd ed. New York: Prentice Hall Press.
- Yassine Essid, (1995), *A Critique of the Origins of Islamic Economic Thought*, Leiden: E. J. Brill.
- Yusuf al-Qaradawi, (2000), *Fiqh al-Zakat*, Beirut: Al-Resalah publishers.
- Yusuf al-Qaradawi, (1995), *The Lawful and the Prohibited in Islam*, Translated by Kamal El-Helbawy, Kuala Lumpur: Islamic Book Trust.

طرائق ومناهج البحث في الفقه والاقتصاد الإسلامي

د. محمد يوسف سليم

قسم الاقتصاد، كلية الاقتصاد وعلوم الإدارة
الجامعة الإسلامية العالمية - ماليزيا

المستخلص: تهدف هذه الورقة إلى فحص طرق التعليل المستخدمة في الفقه مع مناقشة نقدية لاعتمادها في الاقتصاد الإسلامي. إن الورقة تحتاج أن الطرق المستخدمة في الفقه مصممة على طريقة الوصول إلى حل أو حرمة عمل فرد ما، أما الاقتصاد الإسلامي فهو علم اجتماعي؛ وكأي علم اجتماعي آخر فإن وحدة تحليله الأساسية هي المجتمع بنفسه. وهذا يمثل أحد عوامل الفرق بين طرائق الاستنباط في العلمين. الفرق الآخر يتمثل في أن مناهج الفقه والاقتصاد الإسلامي يختلفان في تركيز الفقه على جانب إصدار الأحكام على الأفعال المرتبطة بالأفراد؛ ما يجب على الفرد فعله وما يحظر الإقدام عليه. في حين أن مجال الاقتصاد الإسلامي منصب على وصف الظواهر الاقتصادية. وبناء عليه فإن أحكام الفقه تتسم بطبيعتها بالثبات والديمومة لكل الأفراد، في حين أن الأوصاف الاقتصادية يمكن أن تتغير من زمن إلى آخر، ومن مجتمع إلى آخر.

إن الورقة تحتاج أن طرق التعليل المستخدمة في الفقه للوصول إلى الأحكام ليست بالضرورة مطابقة لتلك المستخدمة في الاقتصاد الإسلامي. فالفقه يملك منهجية متطورة ومكتملة متمثلة في أصول الفقه، في حين أن الاقتصاد الإسلامي في إطار سعيه للوصول إلى المنهجية الصحيحة يجب عليه أن يعتمد على منهجية تأخذ بعين الاعتبار طبيعته الوصفية والاجتماعية.