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Economic Ideas of Ibn ‘Ābidīn: A Legal Analysis

ABDUL AZIM ISLAHI

Abstract

Ibn ‘Abidin was among the most distinguished scholars of Ḥanafī School of jurisprudence in the early nineteenth century, replica of early great scholars of Islamic jurisprudence. He assigned great importance to current ‘urf or local custom in solving new problems or even in adopting new solutions based on old customs. He added istiṣnā‘ (commission to manufacture) and bay‘ al-wafā’ (loan sale) among the contracts which had been permitted due to ‘urf so as to remove hardship. He criticized the government’s imposition and collection of oppressive taxes and recommended a sound policy of taxation based on the principles of economy, convenience and certainty. Fluctuation in the value of money was a serious problem of his time, one that had disturbed the of buyers-sellers relation and naturally affected the volume of trade. While he discussed the impact of devaluation of money on trade, he did not try to find out economic factors and consequences responsible these fluctuations nor did he take them into account while exploring their rules. His opinions on bay‘ al-wafā’, Sūkarah (insurance/security), istiṣnā‘ and bay‘ al-salam (prepaid forward sale) are frequently referred in modern Islamic economic discussions.

Keywords: Ibn Abidin, Sukarah, Bay al-wafa, Istisna, Bay al-Salam, Insurance, urf, Ijtihad, al-Shawkani.

Introduction

Muḥammad Amīn b. ‘Umar Ibn ‘Abidin (1198–1252 AH/1783–1836 AD) generally known as Ibn ‘Abidin al-Shāmī was among the most distinguished scholars of Ḥanafī School of jurisprudence in the early nineteenth century. He was very brilliant and creative in his own right and proved replica of early great scholars of Islamic jurisprudence. He received questions through the mail from all over the world on various matters to which he replied, sometimes in a very detailed manner. In those queries there were a fair number of issues that related to the economic problems of the time on which he expressed his views. But until now the study of his economic thoughts has been a less explored area. The present paper is a modest attempt to discuss his economic ideas on some major issues. To provide background knowledge, it commences with a brief introduction to his life work and his stand on certain selected juristic problems to see his deep insights in *Sharī‘ah* matters.

Life and work

Ibn ‘Abidin al-Shāmī was born in Damascus, during the Ottoman era. His father was a businessman, and Ibn ‘Abidin frequently visited his father’s shop where he learnt the skills of trade.¹ Later on, he chose to pursue his education in the Qur’ānic exegesis, juristic principles, inheritance, mysticism, mathematics, and the rational sciences from the greatest scholars of his age. For example, under Shaykh Shākir al-‘Aqqād (d. 1222/1807), he read the major works of Ḥanafī *fiqh* like *Multaqā al-Abḥur* by al-Ḥaṣkafī (d. 1088/1667), *Kanz al-Daqā’iq* by al-Nasafī and its commentaries *al-Baḥr al-Rā’iq* by Ibn Nujaym, *Dirāyah fī Takhrīj Aḥādīth al-Hidāyah* by Ibn Ḥajar al-‘Asqalānī and *Hidāyah* by al-Marghīnānī. His teacher Shaykh Shākir presented him to his own teachers and recommended that they permit him on their authority to report and teach traditions and *fiqh* (jurisprudence).

The *Hāshiyah* or the marginalia² on al-Ḥaṣkafī’s work *al-Durr al-Mukhtār*³ is a *magnum opus* in which he compiled the preferred rulings of Ḥanafī *fiqh*, thereby making it an authority in

the Ḥanafī School.⁴ *Al-Durr al-Mukhtār* is a succinct work; thus, many details have been omitted to keep it concise. Sometimes, descriptions are puzzling for anyone but with a trained eye and an experienced master. Ibn ‘Abidin saw the need for its commentary, and the inclusion of many matters omitted therein. Incidentally, earlier authors who had attempted such a comprehensive work had passed away before they could complete their efforts. In many cases, they were unable to go beyond the section on *ijārah* (hiring, renting). Ibn ‘Abidin, thus, started his marginalia from the chapter on *ijārah* and went on till the end. Thereafter he started the marginalia again from the beginning of the book and concluded it at the section of *ijārah*. After completion of the task he began arranging and ordering the manuscript, but due to his untimely death, he could not complete his own fair copy. His son, ‘Alā’ al-Dīn, later completed the fair copy and appended his own notes spanning two separate volumes. Ibn ‘Abidin died at the young age of fifty-four on Wednesday, the 21st of Rabī‘ al-Thānī, 1252 AH (1836). He was buried in Damascus in accordance with his will – near the grave of Shaykh ‘Alā’ al-Dīn al-Ḥaṣkafī the author of *al-Durr al-Mukhtār* and next to the *ḥadīth* expert Ṣāliḥ al-Junaynī (d. 1171/1757).

In all his works, including his commentary, he pays the utmost respect to earlier scholars and refers to them with due deference. In his commentary, when he says: ‘ponder’ (*ta’ammal*), or ‘needs ascertaining’ (*fa’l-yuḥarrar*), or ‘pending further examination’ (*fīh naẓar*) he means that though he quotes them, he may not accept their opinion. He, thus, hints at his respectful disagreement instead of making an explicit statement.

He left behind numerous books and monographs that are a testament to his brilliance. The most famous and the largest of them all being his marginalia on *al-Durr al-Mukhtār* named: *Radd al-Muḥtār ‘alā ‘l-Durr al-Mukhtār* (Answer to the Perplexed: An Exegesis of ‘The Choicest Gems’).⁵ This is, as we have already stated, very comprehensive and represents the most authoritative book on Ḥanafī *fiqh*.

Minḥat al-Khāliq ‘alā ‘l-Baḥr al-Rā‘iq (Grace of the Creator: An Exegesis of the Lucid Ocean) is his other important work, wherein he completed the commentary of Ibn Nuḥaym’s (d. 970/1563) book left unfinished at *al-Ijārah al-Fāsīdah* (void hiring). *Al-‘Uqūd al-Durriyyah fī Tanqīḥ al-Fatāwā al-Ḥāmidīyyah* (The String of Pearls: A Revision of Ḥāmid’s *Fatāwā*) is a revision of the *Fatāwā* of Shaykh Ḥāmid b. ‘Alī al-‘Imādī (d. 1171/1758), published in two volumes.

The Place of ‘Urf and Ijtihād in Deciding New Issues: Ibn ‘Abidin assigned great importance to current ‘*urf*’ or local custom in solving new problems or even in adopting new solutions based on old customs. In a variety of economic issues, he applied custom to decide a rule. He held that since Islamic Law one of the objectives of was to make the life of a believer free from suffering, this would not be achieved if ‘*urf*’ was not considered in arriving at legal rulings. In his opinion many things change with time and that the laws need to be flexible in order to account for changes in ‘*urf*’.⁶ For example, he noted that certain activities, that used to be considered pure devotional by nature, had assumed the status of economic activity due to the changes in time and ‘*urf*’, such as teaching the Qur’ān, leading prayers and so on.⁷ These, at his time, were considered economic activities in the sense that such people used to receive payment for these tasks. On the contrary, some earlier permitted economic activities were barred by the jurists in the wake of the spread of dishonesty. For example, the jurists held that a caretaker of an orphan’s property was not allowed to invest it in *muḍārabah*, or let it estates for more than one year in case of the property is a building and more than three years in case it was land.⁸ The reason for declaring such transactions unlawful was the widespread dishonest practices and need to protect the assets of orphans.

Here, one was to ask whether the *muḍārib* (the working partner) of a *muḍārabah* contract could be asked to guarantee the return of the capital if not the fixed profit, due to increasing

moral hazards and the weak position of *rabb al-māl* or depositor in the present system. This question has been raised in the past at different occasions.⁹

Ibn ‘Abidin included *istiṣnā’* and *bay‘ al-wafā’*, discussed below, among the contracts which had been allowed due to *‘urf* so as to remove hardship in getting finance.¹⁰ He also presented many examples of sale and purchase contracts, such as *waqf* and *ijārah*, where *‘urf* was to be decisive in solving disputes.¹¹

Another issue which related to the use of the current *‘urf* in *fatāwā*, was the defining of the application of the term *ijtihād*.¹² *Ijtihād* that had a wide area of application during the early formative period of Islamic Law was declared to reach at the end long before Ibn ‘Abidin’s time.¹³ Ibn ‘Abidin, however, applauded the statement of Ibn Mālik (d. 672/1273), the famous grammarian, who stated that knowledge is a bounty from Almighty Allāh and His special gift, so it is not unlikely that He would favour some of the later generation with it and which was beyond the access of their seniors. Ibn ‘Abidin acknowledged that he had been rewarded with such capabilities.¹⁴ True, but the dominance of imitation (*taqlīd*) prevented him from using this capacity beyond a certain limit. He seems to have believed that *Ijtihād* was still acceptable for use in certain circumstances. However, his *Ijtihād* was confined within the school of *fiqh* to which he belonged, namely Ḥanafī. Essentially, he would try to solve the problem in the light of the various opinions found among the scholars of that school. To him, *Ijtihād* outside the specific school of jurisprudence was acceptable but only if there were no other option. He also considered it acceptable to use his own reason if times and *‘urf* had changed and required a change in the law. Such required changes usually meant to him that the times were becoming more and more corrupt and that the laws needed to be made stricter.¹⁵ It is interesting to note that on another occasion Ibn ‘Abidin denied the existence of a *mujtahid* (independent fresh decision maker): ‘Our age is not an age of *ijtihād*’.¹⁶ He did not allow a judge to pronounce a judgment based on his *ijtihād*, the reason being that in his opinion there was no one in his age who was capable of practising *ijtihād*.¹⁷ This is in contradiction to what he said above in support of Ibn Mālik.

The Economic Thought of Ibn ‘Abidin

His Criticism of Oppressive Taxes: Ibn ‘Abidin was a state-appointed muftī but this fact did not prevent him to disapprove any state policy which violated the principles of just taxation and was not in the public interest. At the end of one of his *fatāwā* about taxes, he added a note criticising the state’s collection of taxes:

But most of the extraordinary taxes imposed on the villages these days are not for preservation of either property or people, but are mere oppression and aggression and most of the expenses of the governor, his subordinates, the buildings of his residence, the residences of his soldiers and what he pays to the messengers of the sultan... levied in our country twice yearly and there are many sums on top of it that are taken as presents to his assistants and attendants...’¹⁸

From his statement above it appears that to Ibn ‘Abidin the purpose of taxation is to serve the people, not exploit them. In other words, he recommended a sound policy of taxation based on the principles of justice, need and economy.

On Money: Ibn ‘Abidin authored a tract entitled *Tanbīh al-Ruqūd ‘alā Masā’il al-Nuqūd* (Caution to Sleepers regarding Monetary Problems) in which he discussed issues like revaluation and devaluation of money its less acceptance in the market or its disappearance from circulation altogether.¹⁹ In this, he recognised the falling value of money but saw that this did not nullify sale contracts. To illustrate it, he discussed a situation where some clothes were sold and before the payment, a change occurred in the currency. He holds that the change may be of two types: either it has been stopped from circulation or its value has decreased. Of

course, in the first case, the sale contract would be abrogated, but in the second case, the sale would be valid and the seller would have to accept the newly existing currency charge.²⁰ In this connection, he examined the various opinions of Ḥanafī jurists and their arguments. He drew heavily upon al-Tumurtāshī's²¹ treatise on the same topic as he acknowledged it explicitly.²²

Ibn 'Abidin reiterated what earlier jurists had discussed about devaluation or the appreciation of coinage. The discussion was specific to *fulūs* (copper coins) or *dirhams* (silver coins) in which the major portion is an alloy or a mix of inferior metals. The coins made of pure precious metals or those with a very little mix of inferior metals, were beyond the discussion for there was seldom fluctuation in their value. In the era of Ibn 'Abidin the situation, however, had changed and appreciation and depreciation began to run in the coins made of pure metals. 'But in our time', he noticed, 'there is frequent rise and fall in their values as well.' According to him, no commentator had as yet paid attention to this possibility.²³ After examining the situation he concluded that if the value of a *dirham* of pure silver or with a little mix, went up or down, the sale contract would not be affected at all and the same amount of currency would be paid which was originally mentioned in the contract because such coins are money both by nature and by convention. In other words, there would be no consideration of a little-added alloy.²⁴ However, if in the sale contract a kind of money is mentioned which is used only as a unit of account like *qurūsh* (singular *qirsh* = pence), and the value of money changes, then the best solution is that one should pay the average value. This is so because if we insist on the value of the money at the time of the contract or at the time of payment, then either of two parties may be harmed. Hence, the solution of the average is just for both.²⁵ It is clear that this is not applicable to gold and silver, which were considered as legal *thaman*.

From Ibn 'Abidin's account, it appears that fluctuation in the value of money was a serious problem of his time, one which disturbed the relations of buyers and sellers and naturally affected the volume of trade. On another occasion, Ibn 'Abidin noted that the units of "money in our time are very different from each other. Even the coins issued by the same Sultan are not identical. Those issued during the early period of his rule are weightier than those issued at the later stage."²⁶

Ibn 'Abidin tried to present the solution in a legalist way by ignoring the economic factors and consequences responsible for these fluctuations. Had he paid attention to these, he would have contributed to the monetary thoughts and analyses like al-Maqrīzī²⁷ and al-Asadī²⁸ who lived during the fifteenth century.

Insurance: During the twentieth century, insurance came to be known as *ta'mīn* in the Arab world. During the nineteenth century, however, Ibn 'Abidin called insurance *sūkarah* (security or *securité*), influenced by the Italian term *siguare* and the Turkish *sigorta*. In the opinion of Rispler-Chaim,

it is hard to believe that Muslims did not practise insurance before the nineteenth century. Muslims were involved in marine activities in the Mediterranean and the Indian Ocean from the seventh century on. Contacts between Islam and Christianity existed in Spain, Sicily, Italy, Cyprus and Malta. Thus Muslims must have been exposed at least to the European marine insurance (if not to other types of insurance) which was part of the usual conduct of trade in the Middle Ages.²⁹

Yet many writers presently eagerly show that several forms of insurance can be traced back to the beginning of Islam.³⁰

However, modern insurance was mentioned for the first time in Islamic sources under the name *sūkarah* (security) by the Ḥanafī jurist Ibn 'Abidin in his work *Radd al-Muḥtār*.³¹ In the year 1240 AH (1824/1825 AD), his opinion was sought about a kind of insurance which was

common those days among traders. They used to hire transportation from the people of a war land (*ahl al-ḥarb*) to carry their goods and commercial stuff. They paid the transporter the stipulated rent as well as some additional amount for the insurance of the merchandise to guarantee protection from what people living under war conditions might take away. The transporter had to guarantee the full return of what people at war may take away from the trader's merchandise. Now the question is if he sailed away with these and some pirates from among a people at war seized the articles, should he, the transporter, in this case, be held responsible because of the guarantee which he took and for which he received payment for its protection?

Ibn 'Abidin's response was that the *Hanaḥī* jurists do not hold him responsible and the guarantee is not applicable as his position is that of a joint hireling or employee (*ajīr mushtarak*) he held, "there are well-known differences regarding the guarantee of such a person. Our school opines that he cannot be held responsible of what is lost from his hands even if the guarantee has been stipulated."³² After giving this general *fiqhī* opinion, Ibn 'Abidin further analysed the issue: "If something is lost from his possession without his fault and it was also not possible for him to protect it from accidents such as fire, sinking, robbers and attackers, then it is agreed upon opinion that he should not be held responsible. However, since he has collected rent for protection and stipulated guarantee, his position is like a person to whom something has been deposited for protection on rent, so that if it is lost, he would be the guarantor."³³ In other words, because of accepting a price for ensuring the protection, he should be held responsible. He also pointed out the difference between joint hireling (*ajīr mushtarak*) and the present contract. In the former case, the main objective of hiring is work; protection is something supplementary. As for one to whom something is deposited and he accepts a wage for it then, in this case, the protection is the main purpose and obligatory, so he should be held responsible. This he also supported by reporting such an opinion from an earlier scholar, Fakhr al-Dīn al-Zayla'ī (d. 743/1343), who discussed it in the section on "guarantee of the hireling."

Ibn 'Abidin further states that it remains to be assessed whether the guarantee would be absolute or against only those risks from which safeguarding is possible. He states that it appears that guarantee is applicable in the latter case only. This is so because the jurists agree that a joint hireling cannot be held responsible where safeguarding is not possible. Hence, the guarantor who received payment for the protection of merchandise falls under this latter category.³⁴ After taking into account the opinions of earlier scholars on the nature of risk and the provision of possible guarantee, Ibn 'Abidin held that if the risk taker explicitly mentions the risks for which he is shouldering the liability, or such risks are common in the given exchange contracts, then he will be held responsible, otherwise he will not.³⁵

From Ibn 'Abidin's foregoing discussion it appears that the practice of insurance for maritime trade from pirates was very common during that period, although this was done between Muslim traders and European transporters.³⁶ The nature of the problem clearly required fresh thinking. Yet Ibn 'Abidin tried to solve the problem within the framework of opinions expressed by the earlier jurists. As he was opposed to *ijtihād*, he did not think over the problem of insurance independently.

It may be noted that Rifā'ah Rāfi' al-Ṭaḥṭāwī (1215–1290/1801–1873)³⁷ who lived in France for five years during 1826–31, gave an account of insurance, which he called "partners in guarantee" (*al-shurakā' fi'l-ḍamān*). This association provided guarantees to those who contribute to it in the case of calamity or accident.³⁸ He did not illustrate how *al-shurakā' fi'l-ḍamān* functioned and what was his stand regarding insurance. However, the term indicates that it might have been a mutuality-based insurance, which is at present considered the only permitted form of insurance in Islam.³⁹

Bay' Salam: *Bay' salam* is a sale in which advance payment is made for the commodity to be delivered in future. In principle, this kind of sale is not permitted because it is selling something which does not exist at the time of contract. But, as an exception to the principle, this has been allowed for the convenience of people especially agriculturists who generally need financing to manage seeds, fertilisers, sowing and harvesting costs. At present *bay' salam* is used for the preparation of various investment products. However, this kind of sale may turn into a source of exploitation if *Shari'ah* objectives and spirit are not observed. Ibn 'Abidin warned its cautious use because during the nineteenth century its incautious practice left many villages in ruins. Generally, advance price was lower than what would be prevailing after the crops were ready, as a result, farmers lost the bulk of their product and their survival was in danger. In order to overcome this danger Ibn 'Abidin hinted towards interference by the sultan and proposed that he may himself fix the floor price.⁴⁰ Perhaps similar situation promoted exploitation in the *salam* based contract in pre-Islamic Arabia as it is reported that the financier used to accept what he could realise and in the rest, he gave time and increased the amount.⁴¹ It is understood that the farmer is unable to supply contracted produce used to offer an increase in the amount in lieu of time given for repayment on the next harvest.

Bay' Istishnā': *Bay' istishnā'* is a sale transaction where a commodity is transacted before its production. It is also defined as an order to a producer to manufacture a specific commodity for the purchaser. Under an *istishnā'* agreement, a seller undertakes to develop or manufacture a commodity with clear specifications for an agreed price and to deliver the same after an agreed period of time. Usmani also considers *istishnā'* a kind of sale where a commodity is transacted before it comes into existence. It means to order a manufacturer to manufacture a specific commodity for the purchaser. If the manufacturer undertakes to manufacture the goods for him with material from the manufacturer, the transaction of *istishnā'* comes into existence. But it is necessary for the validity of *istishnā'* that the price is fixed with the consent of the parties and that necessary specification of the commodity (intended to be manufactured) is fully settled between them.⁴²

According to Ibn 'Abidin, the legal basis of *istishnā'* permissibility stands on '*urf*' that makes it an exception to the principle of prohibition of selling things that are not existing at the time of contract. In other words, it is considered a special case exempted from that analogy due to consideration of '*urf*'.⁴³ It should be noted that *istishnā'* is an important financial product commonly used in present day Islamic finance, being suited for commercial or residential buildings, industries, roads, aircraft vessels, and so on.

Bay' al-Wafā': To Ibn 'Abidin removal of hardship people and prevention from practices of *ribā* had priority in economic issues. It was this consideration that he validated *bay' al-wafā'*,⁴⁴ relying upon the authority of *al-Bazzāziyyah*.⁴⁵ Under this contract, the owner sells his estate, with a condition that he will have it back once he returns its price to the buyer.⁴⁶ In other words, it is a sale contract with an attached condition of abrogation, that is if the seller returns the cash, the buyer shall return the asset. *Bay' al-wafā'* developed after fourth-century hijrah in central Asia when people of Bukhara felt difficulty in getting finance. As a result this mode became so common that it was transformed into a custom.⁴⁷ However, the majority of scholars in the past and at present consider it an invalid contract. The Islamic Fiqh Academy of the Organization of Islamic Conference (O.I.C.), now Organization of Islamic Cooperation in its seventh session held at Jeddah (1412 AH/1992 AD) also confirmed its prohibition.⁴⁸

It will be interesting to compare Ibn 'Abidin with al-Shawkānī⁴⁹ on this issue. The two scholars were contemporaries, but they presented extreme views on practising *ijtihād*. While al-Shawkānī advocates for *ijtihād* and calls to shun imitation (*taqlīd*), Ibn 'Abidin thinks that there is no way but imitation and following the earlier jurists as the capability of *ijtihād*, in his opinion, does not exist in his period. Nevertheless, their stand on two seemingly identical transactions is same.

Al-Shawkānī uses a slightly different term—*bay' al-rajā'*⁵⁰ (sale on buyback expectation). It was very common in practice during his time in Yemen at the early nineteenth century. It refers to selling an agricultural land at the market rate or less with the condition that the seller has right to cancel the sale within a fixed period. At the expiry of that period, the transaction shall be final. Al-Shawkānī considers it as one of the valid sale transactions based on the doctrine of *khiyār al-sharṭ* (option by stipulation).⁵¹ It is valid unless the two parties are not using it as a subterfuge to circumvent the prohibition of *ribā* (interest). Due to this apprehension, some of the Zaydī jurists held it as illegal sale because this transaction looks like borrowing money and pledging land as collateral and providing the lender (buyer) an opportunity to use the land and get the fruits (which is *ribā*).⁵² Al-Shawkānī has been criticised on his validation of *bay' al-rajā'* on the ground that *bay' al-rajā'* is similar to *bay' al-wafā'*⁵³ which is declared prohibited by the main-stream scholars.

As we know from a statement by al-Shawkānī himself, Yemen, at that time, was passing through a period of chaos in matters of religious life, economy and political affairs⁵⁴. . . . *Ribā*, which is clearly prohibited, was practised openly. The governor himself was surrounded by usurers from whom he borrowed money on interest, in turn shifting its burden to the general public.⁵⁵

Thus we find that in spite of belonging to two different schools, both Ibn 'Abidin and al-Shawkānī gave importance to the *'urf* (the existing custom) for their permission of *bay' al-wafā'* and *bay' al-rajā'* respectively and used it to present the solution for the economic problem faced by the community. Both tried to remove hardship and save people from open breach of the prohibition of *ribā*. However, they did not think or advise to establish institutions that could solve the problem of financing without inviting any objection from *Sharī'ah* point of view.

Concluding Remarks

In the preceding pages we have seen that Ibn 'Abidin, discussed some economic issues in a traditional way without paying attention to the economic causes and effects with respect to forming his opinions about them. One may argue that it was not expected from a pure jurist to do so. But the history of Islamic economic thought reveals that in its formation period jurist played an active role in the evolution of economic ideas in Islam.⁵⁶ Ibn 'Abidin was the model of a traditional scholars who were not exposed to European influences. As against the later generation of nineteenth-century scholars, neither he visited foreign countries, nor did he read the translation of foreign works. So he was not exposed to the tremendous developments in politics, economics, science and education that had already taken place in the Western world. He touched some of the economic issues, but his treatment remained in the jurisprudential framework. He discussed desirability or rejection of certain economic institutions on the basis of traditional *fiqh* rules, which generally did not go in economic analysis. However, in due course, when the situation had changed, scholars who came after him, started thinking in a fresh and different way on such issues. This trend became popular with time. However, before concluding I would like to make it clear that this comparison is not meant to belittle the importance of Ibn 'Abidin's contributions. In fact, his opinions on *bay' al-wafā'*, *sūkarah*, *istiṣnā'*, *bay' al-salam*, etc. cannot be ignored. They provided the starting point for modern Islamic economic thinking and are still frequently referred to.

Endnotes

1- A brief biography of Ibn 'Abidin has been added to the first volume at the beginning of *Radd al-Muḥtār* by its publisher which is the main source of information for this section.

2- It may be noted that in the period of intellectual decadence which was prevailing during sixteenth to early nineteenth centuries writing commentary on earlier works and commentary over commentary was the dominant trend among the *'ulamā'* and *fuqahā'*. This was considered a great achievement. Commenting on the period after fifteenth century Muhammad Nejatullah Siddiqi rightly observes: "The decline in independent thinking has already yielded to stagnation. ... The jurists in this period were, generally speaking, content with writing footnotes to the works of their predecessors and issuing *fatāwa* in the light of the standard rules of their respective schools," see Muhammad Nejatullah Siddiqi, "Islamic Economic Thought: Foundation, Evolution and Needed Direction," in *Readings in Islamic Economic Thought*, ed., Abul Hasan Sadeq and Aidit Ghazali (Selangor: Longman Malaysia, 1992), 23.

3- It may be interesting to note that al-Ḥaṣkafī's work itself is a commentary on *Tanwīr al-Abṣār* of al-Tumurtāshī.

4- However, Ibn 'Abidin has shown at many places that al-Ḥaṣkafī's deviated from, or could not precisely record, the formal position of the School. He has given such comments in his manual about how to give *fatwā*: *Sharḥ 'Uqūd Rasm al-Muftī*. That was one of the reasons why he felt the need to write this *Hāshiyah*.

5- This has been published many times: the Būlāq edition of 1272 AH in five volumes and later in 1276 AH and 1299 AH; the Maymaniyyah edition in 1307 AH. The same year Istanbul edition appeared. Once again in 1323 AH, there was a Maymaniyyah edition. Later on the Muṣṭafā al-Bābī al-Ḥalabī and Istanbul editions were published in eight volumes along with the *Takmilah*, which have been photo-offset a number of times hence.

6- Haim Gerber, *Islamic Law and Culture, 1600-1840* (Leiden: Brill, 1999), 88–121.

7- Muḥammad Amīn Ibn 'Abidin, *Majmū'ah Rasā'il Ibn 'Abidin* (n.p., n.d.), 2:126.

8- Ibid.

9- Muhammad Fahim Khan, "Guaranteeing Investment Deposits in Islamic Banking System," *Journal of King Abdulaziz University: Islamic Economics*, 16, no. 1 (2003): 48–50; Al Tījānī 'Abd al-Qādir Aḥmad, "Tabarru' al-Muḍārib bi Ḍamān Ra's al-Māl fi'l-Wadā'i' al-Maṣrafiyyah" in *Ḥiwār al-Arbi'ā'* ed. Khālīd al-Ḥarbī and 'Obaydullāh 'Abd al-Ghanī (Jeddah: Markaz al-Nashr al-'Ilmī, Jāmi'at al-Malik 'Abd al-'Azīz, 1997–2006), 104–08; 'Abdul 'Azīm Iṣlāhī, "Tasā'ulāt Ḥawl Taṣfiyat 'Aqd al-Muḍārabah fi'l-Bunūk al-Islāmiyyah" in *Ḥiwār al-Arbi'ā'* ed. Khālīd al-Ḥarbī and 'Obaydullāh 'Abd al-Ghanī (Jeddah: Markaz al-Nashr al-'Ilmī, Jāmi'at al-Malik 'Abd al-'Azīz, 1997–2006), 104–08.

10- Ibn 'Abidin, *Majmū'ah Rasā'il Ibn 'Abidin*, 2:127.

11- Ibid., 136–40, 146.

12- The term *Ijtihād* has been defined by different authors in different ways but the sense is almost the same. Āmidī (d. 631/1234) says: *Ijtihād* means putting in of effort and endeavour in order to reach presumption (*ẓann*) regarding one of the prescriptions (*aḥkām*) of the *Sharī'ah* in such a manner that one feels that he can do nothing more. Sayf al-Dīn al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām* (Beirut: Dār al-Kitāb al-'Arabī, 1404 AH), 4:169.

13- 'Allāmah Ibn Nujaym (d. 970/1563) stated that the door to analogical reasoning was closed during his age. The role of *'ulamā'* was only to report the opinions of past scholars of their school of thought, see Zayn al-'Abidīn b. Ibrāhīm Ibn Nujaym, *Rasā'il Ibn Nujaym* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1980), 87. 'Allāmah Ibn Ḥajar al-Haytamī (d. 973/1566) says: "It is not permissible for anyone to pronounce a judgement against his school of jurisprudence. If they do, it is void because the capacity for *Ijtihād* was missing from the people of this age" see Ibn Ḥajar al-Haytamī, *al-Fatāwā al-Kubrā al-Fiqhiyyah* (Beirut: Dār Ṣādir, n.d.), 2:213.

14- Ibn 'Abidin, *Majmū'ah Rasā'il Ibn 'Abidin*, 2:80.

15- Gerber, *Islamic Law and Culture*, 126.

16- Ibn 'Abidin, *Majmū'ah Rasā'il Ibn 'Abidin*, 2:159.

- 17- Ibid., 160
- 18- Gerber, *Islamic Law and Culture*, 66.
- 19- Ibn ‘Abidin, *Majmū‘ah Rasā’il Ibn ‘Abidin*, 2:58.
- 20- Ibid.
- 21- Muḥammadb. ‘Abdullāh al-Tumurtāshī (939–1004/1532–1598), the Ḥanafī scholar of the late sixteenth century was born in Ghazzah (Palestine) and lived there, though he travelled to different cities in neighbouring countries such as Aleppo, Hamah, Damascus and Cairo in his academic pursuits. His work *Risālah fi’l-Nuqūd* or more correctly *Badhl al- Majhūd fi Tahrīr As’ilat Taghayyur al-Nuqūd* (Efforts to solve the questions of changing currencies) deals exclusively with problems relating to variations in the value of money. Ibn ‘Abidin mentions its title as *Badhl al- Majhūd fi Mas’alat al-Nuqūd* in his own treatise entitled *Tanbīh al-Ruqūd ‘alā Aḥkām al-Nuqūd* in which he incorporated the major portion of al-Tumurtāshī’s work. For al-Tumurtāshī’s thought on money, refer to Abdul Azim Islahi, *Muslim Economic Thinking and Institutions in the 10th AH/16th AD Century* (Jeddah: Scientific Publishing Centre, King Abdulaziz University, 2009), 109–11.
- 22- Ibn ‘Abidin, *Majmū‘ah Rasā’il Ibn ‘Abidin*, 2:59.
- 23- Ibid., 62.
- 24- Ibid., 63.
- 25- Ibn ‘Abidin, *Majmū‘ah Rasā’il Ibn ‘Abidin*, 2:67. It may be noted that on different occasions the *Sharī‘ah* praises or upholds the *average*. For example, the Qur’ān (5:89) ordains that for one who breaks his swearing, his penalty (*kaffārah*) is to feed ten poor the average (*awsat*) diet that he serves his own family.
- 26- Ibid., 119.
- 27- Aḥmad b. Alī al-Maqrīzī (766–845/1364–1442) was born and lived in Egypt, and enjoyed a multifaceted career. His work *Ighāthah al-Ummah bi Kashf al-Ghumma* is translated and edited by Adel Allouche under the title *Mamluk Economics: A Study and Translation of al-Maqrīzī’s Ighāthah* published by University of Utah Press in 1994, contains a detailed monetary history. Al-Maqrīzī’s *Ighāthah al-Ummah* served for him as a basis for another work entitled *Shudhūr al-‘Uqūd fi Dhikr al-Nuqūd* or *al-Nuqūd al-Islāmiyyah* in which he retained some sections of *al-Ighāthah* while making certain additions and improvements. In this way, al-Maqrīzī became the first to write an exclusive tract on money in Islam.
- 28- Muḥammadb. Khalīl al-Asadī (lived in the ninth/fifteenth century). Nothing is known about his life except that he was born and died in Syria. He completed his work *al-Taysīr wa’l-I’tibār wa’l-Tahrīr wa’l-Ikhtibār fi mā yajib min Ḥusn al-Tadbīr wa’l-Taṣarruf wa’l-Ikhtiyār* in 855/1451. The book has been edited by ‘Abd al-Qādir Ṭulaymāt (1967). In *al-Taysīr*, monetary issues are discussed in detail and it is clear that al-Asadī considered monetary corruption one of the major causes of financial crisis during his time.
- 29- Vardit Rispler-Chaim, “Insurance and Semi-Insurance Transactions in Islamic History Until the 19th Century,” *Journal of the Economic and Social History of the Orient* 34, no. 3 (1991): 143.
- 30- Ibid., 143–55.
- 31- Ibn ‘Abidin, *Radd al-Muḥtār Sharḥ al-Durr al-Mukhtār* (Beirut: Dār al-Fikr, 1979), 4: 170-71.
- 32- Ibid.
- 33- Ibn ‘Abidin, *Majmū‘ah*, 2:178.
- 34- Ibid.
- 35- Ibid.
- 36- As in other civilizations, in Islamic history the first type of insurance to be used was marine insurance. Other types of insurance followed suit. At the end of the nineteenth century, the first insurance companies in the Islamic world were founded in 1890 in Egypt,

and in 1893 in Turkey, see Rispler-Chaim, “Insurance and Semi-Insurance Transactions in Islamic History Until the 19th Century,” 158.

37- For his economic ideas refer to Abdul Azim Islami [Islahi], “Economic Ideas of Rifā‘ah al-Ṭahtāwī,” *Hamdard Islamicus* 37, no. 2 (2014): 7–35.

38- Rifā ‘ah Rāfi‘ al-Ṭahtāwī, *Takhlīṣ al-Ibrīz fī Talkhīṣ Bārīz* [Customs and Manners of the Modern French], (Cairo: Maṭba‘ah Būlāq, 1834 (also in 1905)), 149.

39- Muhammad Hamidullah, “Haidarabad’s Contribution to Islamic Economic Thought and Practice,” *Die Welt Des Islams* 4, no. 2/3 (1955): 76; Muhammad Hamidullah, “Islamic Insurance,” *The Islamic Review* 39, no. 3–4 (April 1951): 45–46.

40- Ibn ‘Abidin, *Radd al-Muhtār* 5:168.

41- In one of his articles Muhammad Anas Zarqa writes that in Sudan *salām* is known as *shayl* which has become a bad example of exploiting poor farmers, see Muhammad Anas Zarka, “Duality of Sources in Islamic Economics, and its Methodological Consequences” (paper presented at the 7th International Conference in Islamic Economics, Jeddah, April 1-3, 2008), 33.

42- Taqi Usmani, *An Introduction to Islamic Finance* (Karachi: Idārat al-Ma‘ārif, 1998), 135–36.

43- Ibn ‘Abidin, *Majmū‘ah Rasā’il Ibn ‘Abidin*, 2:116.

44- Different names of *bay‘ al-wafā’*: Various jurists who dealt with this type of contract have used different names such as *bay‘ al-uhdah* (custody sale) because both parties pledge to return the substitute or the alternative after a specific period or because the buyer guarantees the item; *bay‘ al-idah* or *bay‘ al-wa’d* (promise sale) because the sale happens as a result of a binding promise instead of a condition; *bay‘ al-amānah* (trust sale) because the item sold is entrusted with the buyer; *bay‘ al-nās* (people’s sale) because people used it frequently and became used to it; *al-bay‘ al-jā’iz* (allowed sale) because some *fuqahā’* have legitimized it to the point that there is no other contract being legitimized as such and *al-bay‘ al-mu‘ād* (the returned sale) because there is a sale and a repurchase. It seems that this kind of sale is as old as the fifth century after *hijrah*.

45- Ibn ‘Abidin, *Majmū‘ah Rasā’il Ibn ‘Abidin*, 2:120.

46- See Articles 118 and 119 of *Majallat al-Aḥkām al-‘Adliyyah*, in ‘Alī Haydar, *Durar al-Ḥukkām Sharḥ Majallat al-Aḥkām* (Beirut: Dār ‘Ālam al-Kutub, 2003), 1:111–12.

47- Ibid., article 32, 1:42.

48- Following is the resolution of Islamic *Fiqh* Academy of OIC:

The Council of the Islamic *Fiqh* Academy, meeting in its seventh session held in Jeddah, Kingdom of Saudi Arabia, from 7–12 Dhul Qi‘dah 1412H corresponding to 9–14 May 1992.

Having considered the research papers received by the Academy on the subject, of “Bay al-wafā’” (Debt guarantee Sale)

Having listened to the discussions held about “*bay al-wafa*” and its real nature i.e. “the sale of money on condition that when the seller returns the price, the purchaser returns to him the amount purchased

RESOLVES

First: That this sale is in fact “a loan which has generated a profit”. It is therefore a fraudulent practice of *Riba* and is considered unsound by the majority of *ulema*.

Second : The Academy considering this contact prohibited in *Shari‘a*. (*Majallat al-Majma‘ al-Fiqhī al-Islāmī*, 1412/1992, No. 7, part 3, p. 557) 49 Muḥammad ‘Alī al-Shawkānī (1173–1250/1759–1834), was born in the mountains of Hijrah al-Shawkān, a town outside Ṣan‘ā’, hence the attribute “al-Shawkānī.” Yemen had been an independent Zaydī Imamate for centuries. He received his education and training in the Zaydī school of jurisprudence, in the

capital city of Ṣan‘ā’ from his father ‘Alī al-Shawkānī and other prominent scholars. However, he broke ranks with the Zaydī tradition and preferred to follow the evidences where they took him and became a vociferous opponent of the blind and uncritical following (*taqlīd*) of any single legal tradition. He called for a return to the textual sources of the Qur’ān and sunnah.

50- *Bay‘ al-rajā’* is known with different names. It is called *bay‘ al-rajā’* because *rajā’* means expectation as in this sale the seller hopes to recover his land. It is also called delayed or time bound sale because the word *rajā’* also means delay and defer and in this sale the finalization of the contract is deferred to the stipulated date. Some other names are *bay‘ al-khiyār* (optional sale, as the seller has the option to abrogate it if he is able to return the price), *bay‘ al-rahn* (sale of collateral), *bay‘ al-ajal* (time based sale), and *bay‘ iltizām* (sale on obligation). In some Muslim countries, it is known as *bay‘ al-wafā’*, (sale of fulfilling promise, as the buyer fulfils his promise to return the sold object). However, in the Yemeni courts, its official name was *bay‘ al-rajā’*, see Luṭf Muḥammad al-Sarḥī, “*Bay‘ al-rajā’*”, *Ḥiwār al-Arbi‘ā’* ed. Khālīd al-Ḥarbī and ‘Obaydullāh ‘Abd al-Ghanī (Jeddah: Markaz al-Nashr al-‘Ilmī, Jāmi‘at al-Malik ‘Abd al-‘Azīz, n.d.), 44.

51- *Khiyār al-shart* (option by stipulation) is a valid provision to provide a right to confirm or to cancel the contract within a stipulated time period.

52- It may be noted that in a contract of loan and collateral (*rahn*), the lender is not permitted to benefit from the pledged object.

53- Al-Sarḥī, “*Bay‘ al-rajā’*”, 47. According to al-Sarḥī although *bay‘ al-wafā’* and *bay‘ al-rajā’* appear to be similar there are many differences between the two transactions. Both have time period, but in case of *bay‘ al-rajā’*, if within the stipulated period the seller does not return the price to get back the land, for example, the sale is final, while in the case of *bay‘ al-wafā’*, both buyer and seller have options to cancel the sale by re-exchanging the price and the commodity, and after the expiry of the time the transaction is automatically void. Again, in case of *bay‘ al-wafā’*, the buyer takes the fruits of land, while in the case of *bay‘ al-rajā’*, the fruits will be for one who would be finally the owner of the land.

54- Al-Shawkānī, “al-Dawā’ al-‘Ājil li-Daf’ al-‘Aduww al-Ṣā’il,” in *Majmū‘at al-Rasā’il* (al-Madīnah al-Munawwarah: al-Jāmi‘ah al-Islāmiyyah, 1410A H), 51–52.

55- *Ibid.*, 56, 65.

56- Siddiqī, “Islamic Economic Thought,” 14–32; Siddiqī, “Abū Yūsuf kā Ma‘āshī Fikr,” *Fikr-o-Nazar* (Aligarh) 5 no. 1 (1964): 66–95.