

**Islamic Law, Collective Obligations
and Pursuing a Just Global Order**

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Abstract

This paper explores the intersections of Islamic law, collective obligations, and the pursuit of global justice in the context of capitalism-induced instability. I argue that the contemporary global order is marked by a state of “abnormality” due to capitalism’s dynamic nature of “creative destruction,” rendering traditional Islamic jurisprudence (*fiqh*) inadequate for addressing modern challenges. Instead, the concept of collective obligations (*furūd kifāya*) in Islamic law offers a promising framework for managing these crises. This paper examines the potential for Islamic legal principles to confront global issues such as inequality and poverty, emphasizing the necessity of reflexive, adaptive jurisprudence grounded in democratic governance and public good. By reimagining Islamic law to focus on collective welfare and institutional reform, Muslim-majority states could play a pivotal role in fostering a more just global order. The paper concludes by stressing the urgent need for political will and collaborative action, informed by Islamic values, to address the systemic inequalities perpetuated by the capitalist global order.

Keywords: Islamic law, justice, capitalism, inequality, poverty

Introduction

This paper was originally prepared as part of the international conference on *Fiqh and Justice in an 'Abnormal' Context: Connecting Islamic Tradition to Contemporary Challenges*, held at the Indonesian International Islamic University (UIII) in November 2023. The theme of the conference was what Islamic law could contribute to solving the myriad challenges of justice facing the global community in the context of what the organizers of the conference called an “abnormal” context. The detailed description of the conference’s themes gave pride of place to *fiqh* as the center of the Islamic tradition, and asked participants to consider the extent to which *fiqh* offered resources to remedy structures of global injustice. Less attention was given to theorizing what renders our present context “abnormal,” even though the framing of the call to papers foregrounded this concept.

My paper will begin by addressing whether our circumstances are indeed “abnormal,” and if so, why they are “abnormal.” I will argue that our world is “abnormal” because of the instability in social and material relations of production that capitalism has wrought in the last 150 years. Moreover, this “abnormal” state represents the “normal” condition from the perspective of the contemporary global order of capitalism.

The second part of my paper turns to whether the Islamic legal tradition has resources to address this situation. I will argue “yes, in theory,” but precisely because we find ourselves in a permanent state of the “abnormal,” the historically dominant articulations of Islamic law, particularly those set out in works of *fiqh*, are unhelpful. Therefore, it will not be easy to draw on those resources. I will argue that the law of collective obligations – *furūd kifāya* – represents the most important conceptual resource at our disposal for addressing contemporary problems, but we must be prepared to grapple with what it means for Islamic law to be engaged in the permanent management of abnormality. The permanence of our abnormal condition means that we not only have to make far greater use of collective obligations in our legal reasoning than we did during times of “normalcy,” but also that *how* we think about collective obligations must incorporate our “abnormal” conditions reflexively into its normal modes of reasoning. (See for example Shāṭibī’s discussion on *maqāsid* in his *Al-Muwāfaqāt*)

The third part of my paper will turn to a particular problem of global justice: global poverty and inequality in wealth and income. I will argue that global

inequality is a fundamental question of global justice and attempt to show how the Islamic legal tradition can offer strategies for solving this problem.

Islamic Law and the Crisis of Modernity

a. The Norm and the Exception in Islamic Law

The conceptual architecture of Islamic law theorizes *both* a “normal” state of the world in which ordinary rules apply, and an “abnormal” state of the world in which other rules apply. This is evident in the juristic division of rules into ‘*azīma* and *rukḥṣa*. The former is the rule that applies in ordinary circumstances, while the latter is the rule that applies in extraordinary circumstances.

This division is most explicitly developed in ritual law (‘*ibādāt*). The legality of dispensations in ritual law is ubiquitous in the sources of Islamic law. Thus, the Qur’an itself permits a dispensation to the obligation to fast if one is sick or on a journey. Likewise, numerous reports of the *sunna* establish that when someone is traveling, they are entitled to shorten their prescribed prayers, a teaching that is also affirmed by a universal Muslim consensus. The Qur’an also provided express dispensations to the rules of Pilgrimage, providing that persons suffering from lice infestation or those precluded from completing their Pilgrimage on the account of the actions of an enemy were permitted to exit the consecrated state without completing their pilgrimage. Likewise, the Qur’an expressly excused those unfit for military service from the obligation to participate in *jihād* with the Prophet (S).

Jurists may differ on the extent of these dispensations, and whether they may be applied analogically, but there was no dispute as to their existence.

While a similar division exists in transactional law (*mu‘āmalāt*), calls to activate the greater use of extraordinary rules in this latter domain of Islamic law have met with substantial skepticism, if not outright rejection. This reluctance might stem from the paucity of express texts recognizing dispensations in the context of transactional law. Even here, however, the texts of the *sharī‘a* include express rules that represent extraordinary legislation. The Prophet (S), for example, prohibited the sale of something not in the possession of the seller, but he permitted forward sales (*bay‘ al-salam*). Likewise, the Prophet (S) prohibited hire contracts with an indeterminate wage, but he permitted the *muḍārabā* contract, even though

the investment agent's wage is contractually indeterminate. The Prophet (S) prohibited the sale of dried dates for fresh dates, but he permitted the *'arāyā* sale, which allowed the owner of date palms to sell his unharvested fresh dates while they are still on the tree, for dried dates, delivered immediately. In short, despite the general prohibitions of *ribā* and *gharar*, the Prophet (S) permitted some transactions that were well-known to his community as dispensations, i.e., exceptions, to the generally applicable rule. Despite the general acknowledgement of dispensations from general rules in transactional law, however, jurists have been reluctant to extend textual dispensations from their original contexts to *new* transactions, citing the interpretive principle that exceptions cannot form the basis for further analogies (*lā yuqās 'alā al-rukhaṣ*).

Islamic jurisprudence also recognized concepts such as necessity (*al-ḍarūra*) and convenience (*raf' al-ḥaraj*) that jurists applied in various cases to generate exceptions to otherwise generally applicable prohibitions. Numerous rules in Mālikī law reflect this sensibility. For example, Mālik permitted the mint to be paid its fee out of the raw gold that it struck into dinars, despite the violation of the rules of *ribā* entailed in such an arrangement. Mālikī jurists recognized as binding a hire contract to provide animal transportation to the Hejaz during pilgrimage season while permitting the customer to defer payment until such time as the pilgrimage caravan set out to the Hejaz. Such a contract violated the ordinary rule that before a hire contract becomes binding, either the customer must pay, or the worker must begin performance of the labor. Mālik (d. 795) permitted the sale of objects containing gold or silver, e.g., a sword with gold in its handle or a *mushaf* written in gold script, for gold or silver coins, provided that the percentage of gold or silver in the sword or *mushaf* represented less than one-third of the item's value.

Later Mālikī jurists, too, sometimes offered exceptions to general prohibitions based on necessity or convenience in situations where they had been persuaded that a general economic need existed for that exception. One such example was a partnership to produce cheese from the milk of sheep that were individually-owned but were pastured together under the supervision of one shepherd. Such a partnership entailed violations of ordinary applicable prohibitions against *gharar* and *ribā* because the shepherd did not separate, nor could he separate, the milk each sheep produced. Mālikī jurists in Andalusia also permitted partnerships in the

production of silk even though that arrangement violated the rule that hire contracts whose wage derived from the output of labor were invalid. In short, just as Islamic law recognized exceptional rules in the context of ritual law, jurists also recognized exceptional rules in transactional law, albeit they were fewer in number, and more likely to be controversial given the reality that jurists often introduced them in response to novel situations and there was a reluctance to extend previously recognized exceptions to new situations.

b. Capitalism and Crisis

Crucial to the jurists' *'azīma/rukḥṣa* dichotomy, however, was the expectation that the ordinary rule applied, not only in principle, but also in fact. This is evidenced most clearly in the application of these dispensations to Bedouin groups: Bedouins, precisely because they were constantly on the move, could not shorten their prayers or exempt themselves from fasting during Ramadan.

For the pre-modern jurists, dispensations were not only conceptually derivative of the ordinarily applicable rule, but they were also sociologically derivative as well: the assumption was that the need to rely on dispensations, whether in connection with ritual observance or transactions, was relatively extraordinary and rare. Indeed, the stability of the norm, and the social reality supporting it, was generally an unstated assumption of the jurists. Shāṭibī (d. 1388), however, argued explicitly that the coherence of the *sharī'a* "is based on the constancy of the customs of legal subjects (*kāna al-taklīf mabniyyan 'alā istiqrār 'awā'id al-mukallafīna*)."

The dispensation destabilizes the rule because it gives effect to facts that are not ordinarily supposed to be relevant to the operation to the rule. Muslim jurists tolerated dispensations on the assumption that their use was infrequent enough that they did not undermine either the normative character of the generally applicable rule, or its practical ability to regulate conduct. Capitalist modernity, particularly in the context of transactional law, however, undermines this assumption. Capitalism does so for various structural reasons that fundamentally challenge the logical structure of historical Muslim *fiqh*.

First, in conditions of capitalist production, production is geared primarily for the market, and only secondarily for the household. Farmers, for example, do

not grow crops with the intention to feed themselves and their family; rather, they intend to sell their crops to the market for money and use that to purchase their household's needs. Credit transactions, therefore, instead of being exceptional, become indispensable. Farmers as a result become vulnerable to the forces of market fluctuation: ironically, a successful crop might result in financial ruin, for example, if it results in depressed prices because of the market being oversupplied with food. More generally, modern capitalist production entails the substitution of machines for human labor, producing productivity gains of several orders of magnitude. One consequence of this increased efficiency is that technologies of industrial production cannot be universally adopted. If everyone adopted the same machinery to produce the same goods, the market would be oversupplied, no one would make a profit, and all producers would have to shut down. Capitalist production requires economies of scale so that costs of production decline as output rises. This is the opposite of what happens in agricultural economies: in traditional farming communities, expansion of agriculture results in declining productivity as less productive land is brought into production. Because of this feature of capitalist production, producers are constantly under pressure to innovate to produce more and different goods more quickly and more cheaply, just to stay in business. The pressure to innovate constantly means that nothing is stable in the capitalist market economy: both products and the technology that produces them quickly becomes obsolete under the pressures of competition.

It is practically impossible to opt out of capitalist competition. Populations appreciate the ability to purchase more goods and services at a lower price. But because one must trade for these goods, one is forced to sell one's own output on the international market to obtain funds to pay for imported industrial goods. That means that one must gear one's production to satisfy the demands of external markets, not one's own domestic market. Unless a country chooses to isolate itself from the world economy, like North Korea, it will be practically impossible for it to avoid integration into the global capitalist economy. In order to become competitive in the global market, the population will have to acquire new skills, which implies a more or less radical transformation of the educational system, both in terms of breadth, i.e., offering, if not mandating, universal education, and substance, i.e., teaching the population new kinds of knowledge that prepares them, or at least hopefully prepares them, to be efficient producers in a modern economy.

Second, capitalist modernity radically transforms the family, even if no one intends to do so. Improving access to public health, pre-natal care, improved sanitation, and universal vaccinations against infectious diseases radically reduce both maternal mortality rates *and* infant and childhood mortality. Women will have substantially more children than their mothers *and* a much larger percentage of those children will survive into adulthood. This population boom in turn feeds into the radical economic transformation of society: rural economies lack opportunities for the booming population and so a wave of rural migration to the city is set off. Cities rapidly increase in size and governments must adopt plans to absorb these internal migrants, build infrastructure for them, and provide them with housing, and other basic services.

The role of the state itself is also necessarily transformed. The state must act proactively to manage radical social changes and transform the environment in which the people live in order to allow them to accommodate to the radically changed circumstances modernity brings about.

Birthrates, however, quickly come down, and women seek new opportunities outside the home where they can earn a return based on the skills they have acquired in the new educational system. Households, moreover, quickly come to depend on the additional income provided by the woman who works outside of the house, radically transforming the economic relations within the household compared to pre-modern forms.

Instead of the father being the primary agent responsible for the family's well-being, the father becomes the instrument through which state policies, such as universal education, vaccinations, and other measures adopted by the state to manage the social transformations brought on by modernity, are enforced. Likewise, the relationship between the husband and the wife necessarily becomes more egalitarian as more husbands become increasingly dependent on their wives' labor to meet the expenses of their households. Economic changes reinforce these trends as far as new methods of production – as far as they entail the substitution of machines for muscle – make it more feasible for women to be as productive as men.

These are just some of the radical transformations in society that take place if the transition to capitalist modernity goes *well*. If it goes poorly, however, society will experience a population boom without the necessary increase in economic growth, resulting in mass unemployment, social unrest, a weak

state with insufficient resources to make necessary investments in social infrastructure, and increased immiseration as the society fails to make a transition into producing more valuable goods for the world market and gets stuck exporting primary goods on relatively worse terms every year. Past success is no guarantee for continued success: countries can make major policy errors from which it might take them years to recover, if they ever recover at all.

Under capitalist economic competition, one must constantly reinvent oneself or else risking falling off the train of progress. In a real sense, capitalist production puts everyone in a state of continual emergency. It is for good reason, therefore, that Marx, described the era ushered in by capitalism as one in which “All that is solid melts into air.”

It is fair to say that pre-modern Muslim jurists, even if they thought in terms of “normal” law and “exceptional” law, never imagined a situation in which the “exception” is continually in force. Accordingly, the historical *fiqh*, with its focus on the rights of private persons, does not seem adequate to meet these kinds of challenges. For Islamic law to meet the challenges of capitalist modernity, the *fiqh* of collective obligations – *furūd kifāya* – will have to become the center of legal deliberation, not the individual rights that the *fiqh* historically has placed at the center of its concerns.

c. Islamic law and the Management of the Crisis of Modernity

Rashīd Riḍā (d. 1935), writing in the first quarter of the 20th century, recognized the mismatch between traditional Islamic law making and the lawmaking needs of the Muslim community in modernity. Riḍā’s concern was that the structure of the historical *fiqh* – based on the bilateral relationship between the petitioner and the legal expert (*al-mustaftī* and the *al-muftī*) – was institutionally inappropriate for passing binding *general* law that could organize the common interests of the Muslim community. Riḍā realized that the proper form of legality in modernity was the statute adopted by deliberative bodies rather than the legal opinion derived from interpretation of legal sources. Yet, even Riḍā failed to grasp the radically different nature of modern legislation compared to historical law. Riḍā still imagined that a parliament, made up of representatives learned in the Islamic sciences, would deliberate on legislation by generally using the methods of historical, text-based *ijtihād*.

This misconceives the aim of modern legislation. While the pivot of the *ijtihād* of a *muftī* is the *dalīl shar‘ī*, modern legislatures focus on prospective questions of the public interest. They are managing the perpetual crisis that capitalist competition and capitalist transformation produce. The pivot of their judgment is therefore the empirical evidence of the social sciences. There is always, therefore, a tension between the modern legislature’s attempts to manage the “crisis” and historical rights.

Universal education of minors is only one of many such examples: requiring children to attend school for a minimum number of years is an obvious intrusion into the historical “right” of the father to direct the upbringing of his children, but this right gives way to the public interest in producing an educated citizenry capable of functioning in the capitalist economy. At the time that programs such as universal education are first introduced, they inevitably produce great resistance because their benefit is not obvious while families feel their immediate costs.

The nature of modern legislation thus introduces another kind of conflict that was rarely encountered in the historical *fiqh*: the conflict between the right of the individual and the collective obligation to pursue the common good. Perhaps the clearest case from the *fiqh* that confronted this problem was the power of the ruler to exercise eminent domain, i.e., compel the owner of a property to sell it to the government in order to permit the government to pursue a common aim, such as expanding the Friday Mosque or widening a street. Yet, this conflict between the private rights of individuals and the public rights of the community is exceptional in the historical *fiqh*, and therefore, as far as I know, receives no systematic treatment in *fiqh*.

What we need then is an Islamic theory of legislation that systematically attempts, first, to distinguish between the positive right of the community to pursue its collective good, and the negative rights of the individuals making up that community, and then second, to determine the conditions which permit the community to interfere in the historical rights of individuals. At a second stage, a modern theory of Islamic legislation would build on the distinction between a *fatwā* – the communication of a universal legal rule based on a universal revealed indicant (*dalīl*) of the law (*al-sharī‘a*) – and an exercise of administrative (legislative) power (*taṣarruf bi’l-imāma*) that is based on an empirical determination of where the public interest lies, e.g., increasing the number of citizens with advanced knowledge of mathematics

and engineering, and the means to achieve that end, e.g., a combination of building schools and attracting foreigners with those skills in hand. In legislation, the place of the *fatwā* is secondary to policy making based on empirical facts: the *fatwā* does not guide action but only functions to determine whether the content of the proposed policy is not illegal from the perspective of the *sharīʿa*. Finally, we must have standards for the extent to which the pursuit of public rights can justifiably interfere in private rights. As stated earlier, it can be taken for granted that general legislation of any type will inevitably interfere in the rights of some members of the community. Presumably, the juristic principle that “necessity is limited by the extent of the necessity (*al-ḍarūra tuqaddar bi-qadarihā*)” would be operative in this case, but the issue would be what institution enforces these limits: the executive or the courts, and if the latter, how much deference would courts give the judgment of the executive or legislature?

The question of the relationship of legislation to the *sharīʿa*, therefore, is not whether it is compatible with historical *fiqh* standards, but rather whether it meets the standards of the legitimate exercise of public power. I have argued elsewhere that the historical *fiqh* provided certain guidelines, procedural and substantive, to guide us in determining when legislation is, and when it is not, legitimate. From the substantive perspective, it must not command sin. A command requiring guardians of minors to send their children to public school and prohibiting them from using their children’s labor *is* an interference in the historical prerogatives of guardians, but it is not a command to commit sin. It amounts to substituting the government’s judgment determination of the child’s best interest for the father’s judgment, but it is not a substantively illegitimate governmental policy.

The historical *fiqh* also requires prospective legislation to satisfy other concerns, such as that it must be rationally calculated to achieve the public good and that it be properly “public” rather than “private.” Consider a law establishing a minimum age for marriage: is it sufficiently public if it establishes a *general* requirement for *all* marriages, or is it illegitimate because marriage is “private” and the public lacks power over our “private” affairs?

If we accept that such a rule is in fact “public,” then the public/private distinction is not in the usual case something that can be determined by looking to the substance of the law but is a question whose answer turns on

the form the rule takes: if it is appropriately universal, then we can take its aim to be public. In the absence of a substantive distinction between the public and the private, it becomes crucial that legislation is adopted through a representative body that effectively and genuinely *represents* the public. Legitimate Islamic legislation must be the result of public deliberation that meaningfully represents the considered views of the public regarding the nature of the public good and the reasonable means required to attain it. This requirement is of course consistent with the Qur’anic command that the believers’ affairs be conducted pursuant to common deliberation, and the normative theory of the caliphate in which the caliph and other public officials are understood to be representatives of the community.

d. The Production of Citizens and the Pursuit of the Common Good

The concept of the public good is critical for the legitimacy of any kind of public law-making activities of a Muslim government, but how are we to determine what the public interest is, and what are the most effective means to pursue it? Can we be confident that representative institutions, which I argued are a prerequisite for legitimate Islamic legislation, will lead to outcomes that rationally pursue the common good? The Qur’an suggests that there are no guarantees: in many cases, the “deliberative” bodies the Qur’an mentions – *al-mala’* – function as echo chambers for *bad* views. One such example is in the story of Moses, where he is warned that “the council is meeting to deliberate to plot your death so flee (*inna al-mala’ ya’ tamirūna bika li-yaqtulūka fa’khruj!*)”, al-Qaṣaṣ, 28:20. It is the rare case, such as that of Bilqis, where the deliberative council acts in a responsible fashion.

The failure of deliberative bodies to act responsibly ought not surprise us: as far as they are made up of individuals, they can only be as “good” as their members. If they are corrupt, then we can expect the outcomes of their deliberation to be corrupt. Islam has a direct role to play in solving this problem: promoting the virtues needed to exercise self-government responsibly in the pursuit of the common good. How can we ensure that the agents who are engaged in deliberative possess enough virtue and competence to make them more likely to consider sincerely the public good rather than pursue their own private interests?

Islamic law’s answer is the virtue of *‘adāla*, uprightness. Only if citizens can be reasonably relied upon to transcend their narrow self-interest to consider

the public good can democracy be reasonably viewed to be an efficient means of governance. If, on the other hand, citizens only use the power given to them to pursue their narrow self-interest, then democracy will devolve into a corrupt mechanism that in the best case furthers the interests of special interests within society, or in the worst case leads to anarchy and social collapse if citizens prove themselves unable to agree on common aims.

It is in the cultivation of “civic virtue” that Islam has the most direct role play in solving the problems attendant to democracy and thus to solving the abnormal situation of modernity. Nahḍa-era writers such as Khayr al-Dīn al-Tūnisī (d. 1890) recognized the importance of an upright and courageous citizenry in upholding the rule of law when he noted that good law – whether rational or revealed – is not self-executing: it requires actual human beings who are committed to upholding it and defending it against those who would violate it, and that Islamic principles, such as commanding the good and forbidding the evil, inculcate in the broad public the willingness to stand up to defend the integrity of the law. The 19th century Egyptian scholar, intellectual and writer Rāfi ‘ Rifā ‘ a al-Ṭaḥṭāwī (d. 1873) also recognized the significant role that Islam plays in cultivating what he called “the civic virtues (*al-faḍā ‘ il al-madaniyya*),” specifically, the virtue of ‘*adāla*. He understood the latter as the capacity for a person to both do his duty toward others, i.e., respect the rights of others, both by discharging what he owes them *and* assisting them in obtaining what is due to them as a matter of right, *and* demanding what he is owed from them as a matter of right.

In this context, I wish to highlight one virtue that the Qur’an emphasizes, and one might say is foundational to all other civic virtues: epistemic responsibility. Democracy paradoxically sets up the people both as judge and lawmaker, powers that we recognize in ordinary circumstances as violative of the most basic standards of procedural fairness. Yet, short of some kind of miraculous government of angels or divinely appointed representatives, the human condition makes this uniting of roles in the foundation of government inevitable.

For people to make just laws for themselves, they must learn the capacity to separate their judgment from their particular interests, to take on the broader view of the community and transcend their own, limited view of what is good from their own perspective. But human beings are clever creatures, and once they learn the *language* of the public interest, they are fully capable

of manipulating their language. Indeed, that is precisely the Qur'an's accusation against the hypocrites who falsely claim the role of peacemakers while they actually pursue mischief: *wa idhā qīla lahum lā tufsidū fī'l-arḍi qālū innamā naḥnu muṣliḥūn a lā innahum hum al-fāsidūn wa lākin lā yash 'urūn* ("When it is said to them, 'Do not cause corruption in the land,' they say, 'We are only putting things right,'" QS. 2: 11). Ultimately, the only possibility for just governance is when citizens, because they are just, pursue justice in their own political commitments and develop sufficient critical skills that they can distinguish between genuine commitments to the public interest and counterfeit ones. This is why epistemic responsibility, meaning, that we hold ourselves accountable for what we say and what we believe, is crucial for the success of democracy. It is not surprising that epistemic responsibility is foundational to our creed as Muslims.

The Qur'an, in verses 31-39 of Sūrat al-Isrā' enumerates many of the fundamental ethical requirements for a just society by setting out a list of concrete prohibitions: infanticide; fornication; murder; the misappropriation of the property of orphans; fraud in commercial dealings; and arrogance. This enumeration of virtues concludes in verse 39, which states, *dhālika mim mā awḥā ilayka rabbuka min al-ḥikma*. Verse 36, by contrast, does not highlight a particular prohibition, but instead broadly emphasizes epistemic responsibility as foundational to the "wisdom" that the Qur'an is teaching us. It states:

Wa lā taqfu mā laysa laka bihi 'ilm inna al-sam 'a wa'l-baṣara wa'l-fu 'āda kullu ulā 'ika kāna 'anhu mas 'ūlan ("Do not follow blindly what you do not know to be true: ears, eyes, and heart, you will be questioned about all these," al-Isrā', 17:36).

Without epistemic responsibility, it is simply impossible to conceive of democracy as a functioning system of just government. Accordingly, it is not too much of an exaggeration to describe it as the foundational civic virtue. A person who internalizes the Qur'an's conception of epistemic responsibility will be less likely to manipulate evidence for his own self-serving ends rather than to engage in good-faith deliberation about the public good. Islam, by instructing the public broadly and inculcating them with civic virtues broadly, and the civic virtue of epistemic responsibility particularly, can play a crucial role in establishing a secure basis for *just* self-governance.

While Islam cannot provide ready-made, off-the-shelf concrete solutions for the problems wrought by capitalism, it can play a crucial role in preparing us to govern ourselves responsibly in the face of the endemic crises of modernity.

Islam, Inequality, and the Possibility of a More Just Global Order

Capitalist modernity radically transformed the conditions of human life by allowing humans, for the first time, to transcend the limitations of Malthusian subsistence economies. The English economist, Thomas Malthus, had written in his famous 1798 work, *An Essay on the Principle of Population*, that human civilization was subject to certain constraints because population increased geometrically while resources increased linearly. Because populations increased more rapidly than the ability of human civilization to provide the population with the necessities of life, famine, disease and strife would inevitably set in to restore the equilibrium between population and resources by bringing about widespread death in the population.

Capitalism, by uniting science with production, instituted systems of continuous innovation in production techniques that resulted in an unprecedented boom in productivity. For the first time in human history, we could increase production faster than population grew. Capitalist modernity has meant sharply improved standards of livings for the vast majority of humanity. At the same time, however, the gains arising out of capitalism have not been evenly distributed. As a result, there has never been greater inequality in the standards of living among human beings than have emerged in the last 150 years.

According to 2024 IMF projections, Singapore, depending on how you measure it, has a per capita income of \$133,700 or \$82,808. (World Bank, 2024a) Palau, ranked 95th in the world, which makes it the median country out of the 190 countries ranked by the IMF, is projected to have a per capital income of \$17,381. Singapore, in other words, is more than six times wealthier than the median country. (Indonesia, by the way, is ranked 96th, one less than the median, and has a per capita income of \$16,861, or \$4,788 in 2022 US dollars.) The poorest country in the IMF ranking, meanwhile, is South Sudan, with a per capita income of \$455, making Singapore almost 294 times richer than South Sudan. Even if we ignored South Sudan and then compared Singapore to the Central African Republic, whose per capita

income is \$1,123, Singapore is still a whopping 119 times richer. In 2019, meanwhile, the global per capita income on a purchase power parity basis was \$18,381 and \$12,688 on the basis of 2022 US dollars.

Another way to understand disparities in national income is to consider how much of a country's consumption is devoted to food: in Indonesia, for example, 33.7% of consumers' expenses are spent on food. In Egypt, it is 37.1%. In Nigeria, over 50% of consumer expenditures are on food. In the United States, by contrast, it is 6.7%. This does not mean that Nigerians, Egyptians or Indonesians spend more money in absolute terms on food or eat more than Americans; rather, it means that they spend more of their limited income on keeping themselves alive. In fact, they spend less than Americans do, but it still takes a lot more of their relatively meagre resources to keep them alive than it does for Americans. Prior to capitalist modernity, when all human societies were subject to similar Malthusian restraints, differences in living standards were relatively modest. Technological innovations were intermittent and diffused too quickly to give lasting advantages to their inventors.

The structure of capitalist economics, by contrast, operates differently. The division of labor produced by modern capitalism has resulted in a world in which a few regions are technologically advanced, specializing in the production and design of goods and services that require inputs with high levels of intellectual specialization. Other regions of the world, particularly in the global south, are relegated to producing primary goods that are used by advanced economies – food and natural resources – either to sustain themselves physically or as necessary inputs in the manufacture of specialized goods. Producers of primary goods are locked in fierce competition, which constantly puts downward pressure on prices for their products. The products of the technically advanced goods of the global north, by contrast, precisely because they require high degrees of specialization and knowledge, result in markets that are either monopolies or oligopolies. Multinational firms such as Apple or Siemens or Honda, particularly as a result of globalization, are therefore able to extract enormous amounts of profits from their respective markets, while coffee farmers, wherever they are located, are forced to sell at a competitive price set by global forces of supply and demand.

The price of iPhones, by contrast, does not decline as Apple produces more phones. Because Apple is a monopolist with respect to the sale of iPhones, it produces that number of phones that will allow it to maximize its profit. Its only restraint in setting prices for its products is the risk that if the iPhone becomes too expensive, potential customers will choose another brand. Even though Apple sold only 20% of all the smartphones purchased on the global market, sales of iPhones in 2023 (Richter, 2023) represented 50% of the global cellphone market revenues, and a shocking 80% of global profits from the sale of smart phones.

Some might be skeptical that the skewed distribution of gains in capitalism is a problem of justice. They might argue as follows: global incomes have increased because of capitalism, and as a result, most regions of the world, in absolute terms at least, are better off. Given this reality, is it really a matter of justice that some countries are vastly wealthier than others? I believe the answer is yes.

First, while much of the world is better off than they were compared to their living standards 150 years ago, that is not true for the most impoverished countries of the planet. It is hard to imagine defending the justice of a global system that tolerates the level of inequality that exists between the United States and South Sudan. While absolute equality is plainly not a requirement of justice, a gap of 186 times in average living standards is simply incompatible with any conception of human equality. Second, the prosperity of technologically advanced countries is dependent on sustaining the global division of labor which results in poorer countries specializing in the production of low-skill, labor-intensive primary goods – agricultural production and natural resource extraction. As far as global production requires a global division of labor, fairness requires allocating a larger portion of global income to producers of primary goods, even if, or especially if, market forces tend to reduce their incomes. Third, and most importantly, these vast disparities in wealth promote a global order in which advanced states can exercise despotic, even genocidal power, over others, as we see taking place before our eyes in Gaza. One cannot accept the premise of the equal dignity of human beings and be indifferent to these massive differences in global well-being.

In principle, of course, the post-World War II global economic order is committed to improving the lot of the global south. Institutions such as the

International Monetary Fund, the World Bank and the World Trade Organization were motivated in part to promote a liberalized regime in the flow of goods and capital to promote prosperity across the globe. But much like the operation of capitalism in the domestic economy, without substantial intervention in the outcomes of a market economy, the natural equilibrium will be to enhance inequality, not reduce it.

One tool that is the subject of international consensus is the necessity for foreign aid to poorer countries. The Development Assistance Committee of the Organization for Economic Co-Operation and Development (“OECD”) had set a target of 0,7% of donor states’ national income for official development assistance as early as 1970. (OECD, 2024a) This was the level determined by a Nobel-prize winning economist as necessary to produce adequate rates of economic growth in poorer countries. While this level of aid hardly seems substantial, regrettably, the member states of the OECD have not even been able to live up to even this modest target. The United States, in absolute terms, is the largest provider of official development assistance, having given \$66 billion in 2023. (OECD, 2024b) Yet, this is a partly 0.24% of its gross national income. To meet the target of 0.7%, the United States would need to increase its giving by an additional \$206 billion to reach the target of \$275 billion. Indeed, the member states of the Development Assistance Committee as a group only met half of the requisite target, i.e., 0.37% of their gross national incomes, and only five member states met or exceeded the 0.7% commitment: Norway, Sweden, Denmark, Germany and Luxembourg.

Non-DAC countries. China, for example, gives only 0.36% of its GNI in foreign development assistance. India is much better at 0.65%, which is close to the 0.7% ideal. Turkey and Qatar, by contrast, are the most generous countries with respect to foreign development assistance. (Wikipedia, 2024) Turkey gives 1.15% of its GNI to foreign direct assistance and Qatar gives slightly more at 1.17%. From an Islamic perspective, however, 0.7% is clearly too low. What if we were to apply the 2.5% rate of zakat to the global economy? Applied to the US economy, that would generate over \$600 billion in transfers. Applied to the European Union, that would generate over \$400 billion in transfers. (World Bank, 2024b) Applied to Japan, that would generate over \$100 billion. According to the United Nations, approximately 670 million persons were living in “extreme poverty.” (United Nation, 2023) Extreme poverty is defined as earning less than \$2/day. Establishing a global system of income redistribution consistent with the traditional requirements

of zakat would all but eliminate extreme poverty. This shows clearly that we can solve our problem but that we lack the will to do so.

Income redistribution is hardly, however, an adequate long-term response to the problem of global inequality. That can only be tackled by promoting human development: economic progress is simply a reflection of the accumulation and diffusion of knowledge among the population. Governments of the states of the global south need to place knowledge acquisition across all levels of society at the top of their political agendas. Without increasing the skills of their populations, it will be impossible for poor countries to escape from the disadvantageous position the current global division of labor places them. To tackle global inequality, we must recognize it for the moral scandal that it is, and that solving it is the duty both of well-off countries and poor countries. The Qur'an (13:11) nods to the importance of individual and collective responsibility when it says *lan yughayyira allāhu mā bi-qawmin ḥattā yughayyirū mā bi-anfusihim* (“God does not change the condition of a people [for the worse] unless they change what is in themselves”).

The failure of the global economic system, moreover, is most obvious when we look not only at relative differences across the planet, but also when we look at the persistence of poverty. Just as advanced capitalist societies discovered, following the Great Depression of 1929-39, that redistribution of income, far from undermining capitalism, was rather the sine qua non for its sustainability, I believe the world will come to realize that the global economy cannot sustain itself unless it provides sufficiently robust benefits to the majority of mankind. According to the World Bank, although “only” 8% of the global population lives in “extreme poverty” (defined as earning less than \$2/day), almost fifty per cent of the global population still lives in absolute poverty. (Marta et.al, 2022) This means that despite the remarkable advances in global living standards and the achievements of science and technology over the last 150 years, the global median income level of \$7.60 per day is barely above the upper-bound of poverty that according to the World Bank is \$6.85 per day.

As Muslims we ought to care about the persistence of poverty primarily because its continued existence is spiritually offensive in the face of the massive wealth capitalism produces. It is for good reason that it was reported that the Prophet (S) said: *kāda al-faqrū an yakūna kufran* (“Poverty falls not

far short of being infidelity”). Other, better-attested hadiths corroborate the sense of this report, such as reports in which the Prophet (S) sought God’s protection from poverty and unbelief, as in this hadith: *allāhumma innī a ‘ūdhu bika min al-kufri wa’l-faqrī, fa-qāla rajul‘ wa ya ‘tadilān,’ qāla na ‘am.* Most of the pre-modern scholars who commented on this saying or hadith explained it by saying that extreme poverty may drive a person to commit sins, to debase themselves in the pursuit of property, or both. Perhaps the scholars should have also mentioned its effects on the extremely wealthy, and the risk that wealth among a sea of poverty leads to miserliness, hard-heartedness, arrogance and cruelty. These sins of the wealthy are exemplified in Qārūn, who said, when his people reminded him to be grateful for God’s bounty and therefore to act charitably, “*innamā ūtītuhu ‘alā ‘ilm ‘indī* (‘I was only given it because of knowledge I have’),” 28:78, *al-Qaṣaṣ*.

Even from a secular perspective, poverty represents a massive waste of human potential: human beings who spend most of their time figuring out how to eat their next meal are obviously not busy advancing the frontier of knowledge or solving other problems that confront humankind. While most of the blame for the vast discrepancies in global standards of living can be properly directed at the indifference of advanced countries, developing countries are not free from blame. Take, for example, Egypt. According to the World Bank, the per capita income of Egyptians was \$4,295 in 2022. Yet, almost 70% of the Egyptian population lives on less than \$6.85 per day, the upper-bound of poverty as the World Bank defines it. (World Bank, 2023) An income of \$6.85/day translates into an annual income of \$2,500, which is only 58% of Egypt’s per capita income. This means that an overwhelming majority of Egypt’s population earns less than the average income and that a small minority has been able to appropriate a considerable proportion of Egypt’s national income. Such a radically skewed distribution of income makes a mockery of Islamic ideals of solidarity and fraternity.

Responsibility for this atrocious distribution of national income, moreover, cannot be laid at the doorstep of imperialist powers: other states, with national income figures similar to Egypt’s, have substantially lower rates of poverty. Morocco’s poverty rate is substantially lower at 30% of the population, even though Egypt’s per capita gross national income is larger than Morocco’s. The disparity in poverty rates is also reflected in other statistics, such as the ratio of taxes collected to gross national income, which in the case of Egypt in 2021 (OECD, 2024c) was 13.6% but 27.1% in Morocco

for the same year. (OECD, 2024d) Obviously, unless a state has fiscal resources at its disposal, it will be unable to manage the acute challenges of modernity, including alleviating income inequality within its borders, to say nothing of fulfilling its role in helping society advance. Meaningful differences in outcomes demonstrates the importance of politics and ties questions of global justice back to questions of justice within different local jurisdictions, and the health of their local institutions and their local political culture. Tackling global challenges of justice, of which inequality is only one, requires changes in the policies of both the most powerful and successful states, and those struggling to find their way in the global order.

Conclusion

I have argued in this paper that we do indeed live in abnormal times, and that this exceptional state is effectively permanent. It is the nature of capitalism to produce what the Austrian economist Joseph Schumpeter called “creative destruction.” Capitalist innovation means that the world is constantly changing around us. Accordingly, the old institutions of *fiqh* are incapable of regulating the rapid and constant change capitalism produces in human societies. Nevertheless, Islamic law, broadly defined, has the depth of resources to provide a response to the challenges of capitalism, but to do so it will have to focus less on individual rights and more on collective obligations, establishing democratic means of government to minimize abuse of individual rights, and producing Muslims committed to pursuing the public good. Muslim states can then focus on adopting appropriate statutes to respond to the ever-changing face of the crises brought about by capitalism. I concluded with a description of the specific problem of global inequality. The gap between the richest and the poorest is a moral scandal, making a mockery of the post-World War II order’s commitment to universal human dignity. Global poverty, however, is not a problem that cannot be solved politically. But to solve the problems of global poverty and inequality, we need to produce the political will to do so. Here, too, I believe Islamic law, properly interpreted, can organize a coalition of states that will take seriously the obligation to eliminate poverty. While it is unlikely that we can end the state of exception capitalism has brought about, the tradition of Islamic law can help us manage it better.

Note: this paper is based on a lecture delivered on June 13th, 2024, West Java, during Prof. Fadel's appointment as a senior fellow at the Center for Islam and Global Challenges of the Faculty of Islamic Studies, UIN, Depok.

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