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Islamic finance and the plural dimensions of capitalism. Open issues in property rights theory

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My speech aims at inserting the study of Islamic finance in the broader context of **(1) property rights** and **(2) economic development** issues.

(3) Within this framework, I will claim that **Islamic finance** embeds a **capital theory that is alternative to the conventional one**, whose inner nature can be properly understood only by **re-framing capitalism** through a **plural approach to property rights**.



(1) The idea of property rights



Property rights are relations between people respecting things: being the legitimate cloth of wealth, they organize in any society the acquisition, use and transfer of rights with regard to things that are regarded as valuable.

As a means to *formalize* property entitlements, property rights necessarily involves three variables:

1. the **subject** that beholds the right;
2. the **object** of property (valuable);
3. the **bundles of rights** held by the subject upon the object.

>>> **How property rights are formalized in Western capitalism? [...]**



Can we correctly assume that Western property rights are neutral and universal?

Certainly, intended as the *unique* economic paradigm assuring growth, Western capitalism acts today as a ‘totalitarian’ model, excluding competing capital theories, and despite its failures in eradicating poverty worldwide.

But...

>>> economic studies on alternative property governance (e.g. Ostrom)

>>> socio-legal studies:

“**property models** that *purport* to be *universal* are in fact largely based on **Western legal categories**, the most important of these being the notion of **private individual ownership**, often regarded as the apex of legal and economic evolution as well as a precondition for efficient market economies. This has led to a misunderstanding of property both in the Third World societies and in Western industrialized states, encouraging property policies that have unintended and deleterious consequences” (Von Benda-Beckmann)

NORMATIVE <<<< (?) >>>> DESCRIPTIVE



(2) Economic development and De Soto's *Mystery of Capital*



One of the most striking example of the 'totalitarianism' of Western property rights is Hernando de Soto's "***The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else***" (2000). According to De Soto the main reason behind underdevelopment can be found in the persistence of local and not-formalized economic structures, which prevent people to enter the 'official' market and transform their labor and belongings into 'capital'.

Criticism:

1. excess of neo-liberal confidence;
2. excess of cultural 'unilateralism': the *implicit assumption of formalizing property rights according to Western standards in order to promote economic development* simply re-affirms the *exclusivity of the 'Western way' to capitalism*.



“... underneath the proposition that [Western] ‘formal’ systems of exchange and transaction are a more efficient engine of development than [non-Western] ‘informal’ relations, is an *ideological message*... [that] we pursued to explain, impose, and sustain a *system of law, administration and property relation* which was not simply *alien*, but which grew to *oppress, destabilize and stultify the evolution of indigenous social system*’

(Prof. Okoth-Ogendo, University of Nairobi – Report to the Commission for the Legal Empowerment of the Poor, Kenya)

methodological hint:
CAPITAL THEORY and CULTURAL PLURALISM



(3) Islamic finance and its capital theory



In order to disclose which capital theory underpins Islamic finance, it is useful to refer to three fundamental conceptualizations of **social justice**:

1. *legal justice*, which refers to the rights/duties of each individual towards the community;
2. *commutative justice* (just allocation of rights in private transactions);
3. *distributive justice* (just distribution of goods between all the members of the community).

NB. While being this distinction helpful for our reasoning, these three conceptualizations of justice are **mutually interdependent**, as expressions of the **culture/tradition of the given community**.



	Western tradition	Islamic tradition
(1) legal justice	Western tradition conceives the individual as the source and beholder of any right, as well as the centre of attribution of any resource	Islamic tradition assumes the centrality of God as the only Creator, whose will (hukm) is performed by the human agent, and correspondingly realized in the subsequent 'right' (haqq : 'real', 'true', 'just')
(2) commutative justice	The equilibrium of the transaction is deemed to be the result of an agreement that looks at resources as 'portions' of divided justice, which separately belong to single individuals	The equilibrium of the transaction is conceived as the maintenance of a balanced unity (tawid) that looks at resources as 'shares' of a unique justice established by God
(3) distributive justice	Distribution of resources refers both to real and financial assets ; historically speaking, financial assets have become predominant, leading to the primacy of debt-based economy	Distribution of resources refers to (1) 'real' (haqq) assets, according to (2) a sharing principle, whose final outcome is the theoretical foundation of an economy which is asset-backed and equity-based

From ISLAMIC TRADITION to the ECONOMIC RATIONALITY of ISLAMIC FINANCE



The **Islamic tradition** gives rise to a *complementary path to growth* through **its own capital theory in Islamic finance**, whose fundamental rationales are

- 1. the primacy of real economy over finance** (expression of a *legal justice* centered on the *hukm* 'made real' through the *haqq*);
- 2. the pursue of a balanced unity in commercial transactions** (*commutative justice* through the prohibitions of *riba*, *gharar* and *maysir*);
- 3. a risk-sharing capital model**, matching **asset-backed and equity-based economy** (*distributive justice* based on participation and cooperation in real economy).



Conclusions

Challenging the neutrality and universality of Western capitalism, my speech has suggested the application of a **plural theory of property rights to capitalism** as a possible path to fill the gap between descriptive and normative economic analysis of law in a global context.

Accordingly, **Islamic finance** has been interpreted as supporting an **autonomous capital theory**, based on (1) the **primacy of real economy over finance**; (2) a **balanced unity in the exchange**; (3) **risk sharing in asset-backed and equity-based economy**.

>>> PLURAL CAPITALISM?

From a political economy perspective, a 'plural capitalism' is far from being efficiently achieved in development economics...

At any rate, it should be underlined that recognizing the existence of **alternative property models** does not represent an obstacle to market economy, but, on the contrary, multiplies **complementary means for sustainable growth**...