

Money from Syar'iah Perspective

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Abstract

In history, paper money systems have always wound up with collapse and economic chaos. Today, the usage of fiat currency, a form of paper money and the correlate bank money has brought about wide spread hardships and sufferings upon many sectors of society and communities. An in-depth syari'ah analysis leads to the conclusion that fiat currency and bank money are not acceptable. They are, in reality, introduced through manipulative collaborations between governments and bank cartels, as they defy the long established sanction against riba' (usury), operate at the advantage of a selected group in society to the detriment of the masses and the weak. To achieve broader justice, all communities have to strive to ensure that the monetary system maintain a balance between the interests of the people of all classes. This would be possible by returning to commodity-based currency and ethical banking system, which is part of the sanctions established by syari'ah.

Keywords: Syari'ah, Fiat Currency, Bank Money and Riba'.

1. Introduction

In economic relations, the function of money is significant because it facilitates and expedites trade and other economic activities. However, the transformation of money into an unsustainable system of debt has created situations where the current monetary system has faced never ending crises¹ and stood on the brink of collapse.² Collusion between politicians and bankers has embedded fractional reserve banking practice within a government monopolised fiat monetary system that gave rise to both an undue credit expansion and a speculative economy.³ The combination of such banking and governmental practices led to an imbalance allocation of

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¹ According to IMF, "the euro area and the United States could fall back into recession," See, IMF, *Global Financial Stability Report: Grappling with Crisis Legacies*, World Economic and Financial Survey (Executive Summary), p. xvi, available at <http://www.imf.org/external/pubs/ft/gfsr/2011/02/pdf/sum.pdf> (Last visited July 30, 2012).

² George Soros said in an interview on Bloomberg Television, "You had a financial crisis where the market did actually collapse, but it was kept alive by the authorities." See, Jesse Westbrook (Oct 7, 2011), *Soros Says Europe, U.S. Turmoil Reminds Him of Soviet Collapse*, available at <http://www.bloomberg.com/news/2011-10-06/soros-says-europe-u-s-turmoil-reminds-him-of-soviet-collapse.html> (Last visited Oct. 23, 2011).

³ Five main reasons for the current crisis as given by Walker, i.e., "accumulation (and economic bubbles), product complexity, valuation limits, risk separation and liquidity provision," are all pointed to over expansion of credit and excessive speculation as argued above. See, George Walker, *Credit Crisis, Bretton Woods II and a New Global Response: pt. II*, 2 J. of INT'L BANKING & FIN. L. 77 (2009).

capital resources and unjust allocation of cost and benefit and the transfer of wealth,⁴ causing unsustainable credit bubbles and broader macroeconomic disturbances that brought about by rapid fluctuation in exchange rates, unethical speculation, international trade hardships, problem of balance of payment and economic depression.⁵

Although it is widely accalimed that Islamic banking system had managed to tackle the effect of global financial crisis, that was mainly due to their inability to venture into high risk speculative assets that brought down many conventional banks.⁶ Since Islamic financial system is still “mimicking the conventional finance”⁷ and operate within the template of the current global system, logically speaking it is not totally immune from the general effect of the crisis and bigger disaster that is likely to happen. This paper goes beyond financial activities of banks and studies the use of fiat currency and bank money, the foundation for debt under modern capitalist economic system. These areas of studies are surprisingly neglected by most Muslim scholars, despite that money and currencies are the foundation for financial services. This paper employs the *Syari'ah* principles to analyse modern monetary elements and to look for justifiable and fair solutions based upon its system, which, as some modern legal scholars have argued, offers “the most liberal and humane legal principles available anywhere in the world.”⁸ This paper aims to offer a humble insight of its own and to see how it can contribute to the search for a more just global monetary and financial system.

Section 2 of this paper briefly considers ‘money’ from a historical perspective. Section 3 analyses the current usage of fiat currency and bank money from the conventional and *syari'ah* perspectives. Section 4 explores the possibility of a *syari'ah* compliant solution to the current monetary predicament. This part addresses the issues of necessity and emergency (*maslahah*) in relation to the global banking business whose foundation lies within the templates of modern liberal and capitalist monetary and banking systems. Finally, Section 5 concludes that societies from all walks of life are responsible to strive so that justice and equity are brought back to the monetary and banking system. They have to gradually work towards the removal of the current unjust and oppressive elements in the monetary system. As a whole, this paper places emphasis

⁴ A role in regulating needs to strike a proper balance between a need for consumer protection and a need to have a basic policy judgments reflecting a fair allocation of costs and benefits and the transfer of wealth from some persons to others. See, Committee on Consumer Financial Services, Federal Trade Commission Rulemaking, 37 Bus. Law. 925 (1982). Also, It was argued that the primary objective of Congress’s antitrust law is distributive justice, was concerned principally with preventing “unfair” transfers of wealth from consumers to firms with market power. See, ROBERT H. LANDE, *Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged*, 34 HASTINGS L.J. 65 at 67 (1982).

⁵ Murray N. Rothbard, *A History of Money and Banking in the United States: The Colonial Era to World War II* § 2, 4 & 5 (2002); and, Pascal Lamy, in his speech in opening the WTO Seminar on Exchange Rates and Trade on 27 March 2012, said: “We need an international monetary system which facilitates international trade,” available at http://www.wto.org/english/news_e/sppl_e/sppl222_e.htm (Last visited April 15, 2012).

⁶ Isam Salah, *Islamic Finance in the Current Financial Crisis*, 2 BERKELEY J. MID. EAST & ISLAMIC L. 145 & 151 (2009).

⁷ Kelly Holden, *Islamic Finance: "Legal Hypocrisy" Moot Point, Problematic Future Bigger Concern*, 25 B.U. INT'L L.J. 367 (2007).

⁸ Noah Feldman, *Why Shariah?* New York Times (3/16/2008).

on the use of economic natural law⁹ and *syari'ah* (which is in consonant with nature)¹⁰ to resolve or tackle current monetary problems.

2. Background of Money

Since time immemorial, the most valuable and accepted types of monies were gold and silver¹¹ and, to a limited degree, copper.¹² During late antiquity, the pre-Islamic Arabs, who maintained trading relations with both the Greek city-states (and later the Romans) in the West and the Persian in the East, adopted both the Roman gold and the Persian silver standards into their monetary practice.¹³ Since an international standard was impossible at that time, the role of the Money Changer (Exchange Banker) was important to determine the weight, purity and measure of the metal coins for exchange purposes.¹⁴

At the time of Prophet Muhammad (*pbuh*) (610-633 CE), Muslims mainly used the Byzantine gold *dinar* and the Persian silver *sigloi*,¹⁵ which the Muslims called *dirham*.¹⁶ However, the Muslims' use of coinage was unorganized and irregular until a caliphatewide (national) monetary system was established during the reign of Abdul Malik bin Marwan (695 AD/76 AH). Generally, since the exchange rate between gold and silver was stable, there was no problem for Muslims to abide by the bimetallic standard for almost 400 years. Fiscal institutions, usually headed by a chief judge (*qadi*), were established to regulate the minting and metal composition and maintain the smooth running of the Islamic monetary standard.¹⁷ *Dinars* and

⁹ The "natural" or spontaneous predispositions which are there at work and can be explained by economic "laws," as opposed to the "artificial" or deliberate regulation or imposition of economic life by the state or by some other influence. See, O. H. Taylor, *Economics and the Idea of Natural Laws*, 44(1) QUARTERLY J. OF EC. 35 (1929). Here what is meant by "natural law" is that it refers to "a system of social claims, duties, and rights existing by itself (by its own nature) without deriving from arbitrary, especially human, creation." See, Herbert Spiegelberg, *Justice Presupposes Natural Law*, 49 (3) ETHICS 343 (1939).

¹⁰ Islam is also called *dīn al-fitrah* (the religion of human nature) as is revealed in the Qur'an: "Set your face to the *dīn* in sincerity which is Allah's *fitrah* (the nature made by Allah) upon which He created mankind. There is no changing the creation of Allah. That is the right *dīn* but most people know not (Surah 30:30);" and, Man in their intra behaviour is to be in harmony with the order of the universe (*qanun al-fitrah*). Nevertheless, at the level of inter behaviour between man and nature (including situation), man has been created with the ability to behave or misbehave, while the latter is created subject to exploitation by the former. See, Sayed Sikandar Shah Haneef, *Principles of Environmental Law in Islam*, 17 (3) ARAB L. QUARTERLY 242 (2002).

¹¹ Anghel N. Rugina, *A Monetary and Economic Dialogue with Lord Keynes*, 28(1/2) INT'L J. OF SOC. EC. 208 (2001).

¹² Token money made from copper and other cheap materials such as lead, tin and leather were found prevailing in the middle ages and because the small value ascribed to such coins they were used as small change for commercial activities, a means of paying workers, tax or merchandise receipt to a means of facilitating the distribution of charity. See, William J. Courtenay, *Token Coinage and the Administration of Poor Relief During the Late Middle Ages*, 2(3) J. OF INTERDISCIPLINARY HIST. 275 & 277 (1972).

¹³ David J. Wasserstein, *Coins as Agents of Cultural Definition in Islam*, 14(2) Poetics Today 305 (1993); and, Robert S. Lopez, *Mohammed and Charlemagne: A Revision*, 18(1) SPECULUM 21-22 (1943).

¹⁴ S. M. Hassanuz Zaman, *Economic Function of an Islamic State: The Early Experience*, 341 & 343 (1991).

¹⁵ Michael Vickers, *Fifth Century Cronology and Coins Decree*, 116 J. OF HELLENIC STUD. 172 (1996).

¹⁶ S.M. Hassanuz Zaman, *supra* note 14, at 341; and, S. A. Q. Husaini, *Arab Administration*, 86 (1949).

¹⁷ For example, this can be seen in Egypt during the reign of the Fatimid's Caliphate, the Ayyubis (1174- 1250), and the Mamluks (1250-1517). See, A.S. Ehrenkreutz, *Contribution to the Knowledge of the Fiscal of Egypt in the Middle Ages*, 16(3) BULLETIN OF THE SC. OF ORIENTAL AND AFR. STUD. 502 & 514 (1954); and, A.S.

dirhams were used by Muslims to facilitate international trade with distant territories, such as Russia Eastern Europe, the Christian Spain, Venice, Catalonia in Western Europe and Far-Eastern communities.¹⁸

In modern times, the British were the first to adopt the gold monetary standard after practising the official policy of bimetallism, which was made applicable to the region of the British West Indies following the Proclamation of Queen Anne in 1704. However, the United Kingdom officially came under the gold standard in 1816.¹⁹ By virtue of Coinage Act of 1792 the United States adopted a bimetallic dollar standard²⁰ and when the Coinage Act of 1873 struck out silver from the list of money to be coined, gold became the only standard of the dollar.²¹ By 1914 most developed European states adopted the Gold Standard as a contingent rule for the exchange of their currencies.²² These countries later adopted the gold bullion standard, a system by which gold coins do not circulate but the government undertakes to redeem circulating currencies on demand with gold bullion at a fixed price.²³ This system, which allowed other nations to hold U.S. dollar as reserve currency, prevailed under the Bretton Wood System until 1974. Under this system, Article 2(2) of the International Monetary Fund Agreement of 1943 (enforced 1944) had introduced 'par value' regulation and as result of this, international law had made gold as the basis for money of all countries.²⁴

(a) Modern Adoption of Fiat Currency and Bank Money

China invented paper money and utilised such currency during the late Tang Dynasty (618–907) and into the Song Dynasty (960–1279). However, paper money was initially used in China as a means for merchants to exchange heavy coinage for receipts of deposits, issued as promissory notes from the shops of wholesalers, which were valid for temporary use within a small regional territory.²⁵ This is similar to the use of cheques (*sakk*), promissory notes (*suftaja*)

Ehrenkreutz, *Extracts From the Technical Manual on the Ayyubid Mint in Cairo*, 15(3) BULLETIN OF THE SC. OF ORIENTAL AND AFR. STUD. 425-6 (1953).

¹⁸ In Russia the hoard of *Dinars, Dirhams and Fulus* were found in excavations as early as the year of 1845. The oldest coins found were struck at Bukhara in 148 AH (765/766) during the reign of Abbasid Caliph al-Mansur and the most recent were also from Bukhara minted in 651 AH (1253/1254). See, Thomas S. Noonan, *Medieval Islamic Cooper Coins From European Russia and Surrounding Regions: The Use of Fals in Early Islamic Trade With Eastern Europe*, 94(4) J. OF THE AM. ORIENTAL SOC. 448-451 (1974); and, Robert S. Lopez, *The Dollar of the Middle Ages*, 11(3/1) THE J. OF EC. HIST. 219 (1951).

¹⁹ This is through the adoption of Coinage Act of 1816. See, Angela Redish, *The Evolution of Gold Standard in England*, 50 THE J. OF EC. HIST. 802 (1990).

²⁰ Murray N. Rothbard, *Supra* note 5, at 65-6.

²¹ Arthur Nussbaum, *The Law of the Dollar*, 37(7) COL. L. REV. 1067 (1937).

²² Michael D. Bordo & Hugh Rockoff, *The Gold Standard as a Good Housekeeping Seal of Approval*, 56(2) THE J. OF EC. HIST. 389 (1996).

²³ Eichengreen. B.J., *Globalizing Capital: A History of the International Monetary System* 53 (2008).

²⁴ Monetary unit of the member states was to be expressed in term of gold as a common denominator, or in terms of the U.S. dollar of the weight and fineness corresponding to \$ 35 an ounce. See, Arthur Nussbaum, *The Legal Status of Gold*, 3(3) THE AM. J. OF COMP. L. 360 (1954).

²⁵ Catherine Eagleton & Jonathan Williams, *Money: A History* 149 (2007).

and transactional accounts by medieval Muslim merchants (8th-12th Centuries).²⁶ However, both were redeemable with real money. During the Song Dynasty, paper money was also used as a temporary means for the government to deal with monetary difficulties. On the other hand, in Europe, paper money was first introduced in Sweden in 1661. Sweden was rich in copper. Due to the low value of copper, bank paper notes ('plate') was substituted for the exceptionally large and heavy copper coins, but was discontinued after two years due to the problem of over-issue.²⁷

From historical analysis, the advantages of paper currency in medieval economies were numerous: it reduced transport of gold and silver, and thus lowered the risks; copper coins, which were heavy and cumbersome, needed not be transported from places; it made loaning gold or silver at interest easier, since the specie (gold or silver) never left the possession of the lender until someone else redeemed the note; and it allowed for a division of currency into credit and specie backed forms.

However, the above advantages also carried disadvantages. First, from the above banking practices, savers, looking to secure the safety of their valuables, deposited gold coins and silver coins with goldsmiths, receiving a note for their deposit in return. Once these notes became a trusted medium of exchange, an early form of paper money was born in the form of the goldsmiths' notes,²⁸ often issued exceeding the amount of specie deposited. This was the origin of commercial bank money, which was created under fractional-reserve banking systems. Second, since a note has no intrinsic value, there was nothing to stop the issuing authorities, which later became government monopolies, from printing more paper money than they had specie to back it with. The above historical inventions were precursors to modern bank and fiat monies respectively.

(i) *Triumph of Bank Money*

Banking businesses during the early Genoa and Venice periods issued paper notes that exceeded the gold deposited with them. This later became standard practice in banking business in early modern western economic history. When the French entered Amsterdam in 1794, it was discovered that the Bank of Amsterdam had acted on this principle. Millions of coin money, which merchants had deposited in the bank vaults for safekeeping and for transferring from one account to another, of which they paid a premium, had been secretly lent by the Bank to the India Company and to the Provinces of Holland and West Friesland.²⁹

Also, in early modern banking, private banks printed and circulated their own banknotes to finance industrial and business ventures.³⁰ As a result, the original framework of metallic

²⁶ Nicholas Dylan Ray, *The Medieval Islamic System of Credit and Banking: Legal and Historical Considerations*, 12(1) ARAB L. QUARTERLY 71-3 (1997).

²⁷ Two dollar of silver money in copper, had a weight of no less than 3.62 kg. So, it was natural that it led to untold inconveniences. See, Eli F. Heckscher, *The Place of Sweden in Modern Economic History*, 4(1) THE EC. HIST. REV. 11 (1932).

²⁸ Goldsmith or private bank notes were considered as cash in the 18th and 19th centuries. See, J. K. Horsefield, *British Banking Practices (1750-1850): Some Legal Sidelights*, 19(75) ECONOMICA 309 (1952).

²⁹ William M. Gouge, *A Short History of Paper Money and Banking in the United States* 69 (1833 Reprinted 1968).

³⁰ A "bank note" is a piece of paper saying that the bank (issuer of the note) owes the bearer a stated amount of "money." During the time of the gold standard, the bill was known as "silver certificate" or Gold certificate" and

money was expanded and consequently brought lax monetary discipline to the concerned countries. Due to the easy supply of credit money, a new phenomenon of inflation-deflation and instability started to haunt the economies.³¹ Later, when the private banks in England were prohibited from issuing private banknotes by Bank Charter Act 1844 (Art. X and XI), banks shifted to the creation of bank deposits and began loaning out the same easy, weak, and unstable money.³² Today, the practice continues through numerous means, such as the various modes of financing, types of loans, credit cards, and electronic money.³³ Money now flicks in and out of existence in the role of credit and debit in accounting balances. Money is borrowed into existence through the commercial banks and loans repayment eliminated money.³⁴

In the twenty-first century, the power of banks was enhanced when Gram-Leach Bliley Act was introduced in the U.S. in 1999, following the revocation of the Glass-Steagall Act of 1932. As a result, the existing separation between Wall Street investment banks and deposit banks ended. Using their customer's deposit, banks are now able to aggressively pursue lucrative speculative securities, hedging and derivatives ventures. They were and are able to wager up to 30 times the amount of their customer's deposit, which not only flooded the economy with credit money, but also brought about systemic risk when high leverage and loss had turned into the global financial crisis in 2007.³⁵ This crisis was exacerbated by the existence of shadow banks and other unregulated financial institutions that had played a critical role in the credit market. In the U.S. alone, the banking practices resulted in the creation of liquidity (capital) comprised of \$617 trillion in the form of currency and credit derivatives and \$9.5 trillion in M2 money, while the federal reserve monetary base was a mere \$2.5 trillion.³⁶

(ii) *The Enthronement of Fiat Currency*

By 1900, most industrialising nations were on some form of gold standard, with paper notes and silver coins constituting the circulating medium. However, when governments were faced with the need to fund high levels of expenditure, while having limited sources of tax

were convertible at will into gold or silver. A bank note of those days simply said that you, the bearer, could go to the issuing bank and demand your dollar's worth in gold, if you so chose. In that system, the bank accordingly "owed" the gold to the bearer, and the redeemable "note" became something generally recognised the world over as a store of value, as well as a medium of exchange, in the place of gold. However, by observing that not all note holders redeem the note at the same time, the bank took the risk of issuing more notes the total value of which now exceeded the amount of gold it holds. See, Glyn Davies, *A History of Money: From Ancient Times to the Present Day* 239 (2002).

³¹ Robert Mundell, *Currency Areas, Exchange Rate Systems and International Monetary Reform*, 3(2) J. OF APP. EC. 221 (2000).

³² Angel N. Rugina, *A Plan for a Free, A plan for a free, just and stable European Monetary and Economic Union* (1976), 28(1/2) INT'L J. OF SOC. EC. 119 (2001).

³³ Ali Khan, *The Evolution of Money: A Story of Constitutional Nullification*, 67 U. CIN. L. REV. 442-3 (1999).

³⁴ See, *Modern Money Mechanics: A Workbook on Bank Reserves and Monetary Expansion*, Public Information Center, Federal Reserve Bank of Chicago, available at <http://www.rayservers.com/images/ModernMoneyMechanics.pdf> (Last visited July 30, 2012).

³⁵ See, *Financial Crisis Enquiry Commission*. 2011. Available at <http://cybercemetery.unt.edu/archive/fcic/20110310173738/http://www.fcic.gov/report/> (Last visited Aug. 1, 2012)

³⁶ See, dmo.gov.uk, *Bank of England History*, available at <http://www.dmo.gov.uk/bginfo/bofe.htm> (Last visited August 29, 2011).

revenue, the convertibility of currency into gold were suspended on a number of occasions.³⁷ This did not happen all around the world at the same time, but occurred sporadically, generally during times of war or financial crisis. Such practices began in the early part of the 20th century and continued globally until the late 20th century, when the regime of floating fiat currencies came into practice. One of the last countries to break away from the gold standard was the U.S. in 1971.

The gold bullion standard allowed central banks to issue currencies in excess of their gold reserve. By World War I, most nations, through their central banks, had legalized the government monopoly over bank notes and the legal tender status for that reason. In theory, governments still promised to redeem notes in specie on demand. However, the costs of the war and the massive expansion afterward forced governments to suspend redemption in specie. Since there was no direct penalty for doing so, governments were not immediately responsible for the economic consequences of printing more money (contemporarily referred to as “quantitative easing”), which normally led to hyperinflation.

In the resulting monetary practice, attempts were made to reassert currency stability by anchoring it to wholesale gold bullion, rather than making it payable in specie. This money had become pure fiat currency, in the sense that the currency was limited to central bank notes and token coins that were current only by government fiat. It permitted a form of convertibility, via gold bullion exchange, or via exchange into U.S. dollars which were convertible into gold bullion, under the 1945 Bretton Woods system arrangement. The physical transportation of bullion occurred only when countries need to settle their current account deficits or surpluses.

Today, through the expansion of the bullion system to become a pure fiat system, most national economies have been gradually flooded with cheap credit money from two sources, central banks and private banks. Government currency notes, including those of Islamic countries, are acceptable only because of the constitutional guarantee that the issuing authority will accept them as legal tender.³⁸ After the U.S. severance with gold in 1971, contemporary paper currencies do not carry any intrinsic value, but, by and large, they are monies that have nominal value supplanting commodity money that is universally regarded as having intrinsic value independent of any state decree.³⁹ Fiat national currencies are, thus, only money substitutes for gold and silver, the commodity money, which are natural monies. They take effect only by the government law or regulation declaring that they are the legal tender.⁴⁰ As such, this money cannot be rejected by a creditor as payment for a debt.

3. *Syari’ah* and Today’s Money

To many critics, one of the biggest world economic and development problems is the failure of the current neo-liberal capitalist world system to provide equitable remedies to many

³⁷ Michael D. Bordo & Hugh Rockoff, *Supra* note 22.

³⁸ Stuart C.A. Verrijn, *Metallic and Non-Metallic Standards of Money*, 33(130) THE EC. J. 152 (1923). Its acceptance by the public depends on law, institution and the mind-set. See, George Selgin, *On Ensuring the Acceptability of a New Fiat Money*, 26(4) J. OF MONEY, CREDIT AND BANKING 808 (1994).

³⁹ Ali Khan, *Supra* note 33, at 441.

⁴⁰ Milton Friedman, *Quantity Theory of Money*, in Eatwell, Milgate & Newman, 10 (1980).

questions of world issues of common interests.⁴¹ The excessive degree of financial greed, egotism, national chauvinism, rivalries and cultural homogenisation promoted by neo-liberal capitalism have led to the current crisis, that has plunged the globalising world into economic uncertainty and imbalance.⁴² What makes the situation worse is the ongoing self-interest and unipolar policy regarding oil security and dollar hegemony adopted by the World Super Power, the U.S.⁴³ Without real and serious efforts to restrict and reduce self-centred policy and striving for global justice through broad international institutional arrangements, cooperation and comprehensive regulations, world peace and general prosperity would be difficult to maintain.⁴⁴ It is feared that this uncertainty may lead not only to a deep global recession and financial volatility, but also to an acute increase in mutual hatred, clash regional or global conflicts and wars that will lead to destruction, loss of lives and miseries for the vast majority of the global population.

(a) Monetary Justice and *Syari'ah*

Currently, the money supply in all economies in the world consists of irredeemable paper currencies, or fiat money, and bank money (credit). As will be explained below, the nature of these national fiat money (currencies) and bank money are inherently *ribawi*⁴⁵ and *gharar*.⁴⁶ It follows that provisions and policies of the International Monetary Fund (IMF) and Central Banks, concerning the convertibility of national currencies, creates opportunities for speculation in the Foreign Exchange Market⁴⁷ that can be equated to gambling (*maysir*).⁴⁸ Furthermore, the roles played by fiat and credit money in speculative banking activities in securities, hedging and

⁴¹ See, Walden Bello, *Global capitalism versus global community*, 44(4) RACE AND CLASS 63-71 (2003); and, Paul Kennedy, *Forecast: Global Gales Ahead (Dangers of Globalization)*, 9(405) NEW STATESMAN & SOC. 28-9 (1996).

⁴² Jeffry A. Frieden, *International Investment and Colonial Control: A New Interpretation*, 48(4) INT'L ORG. 561 (1994); Benjamin Barber, *Jihad vs. McWorld* 19-20 (1996); and, Phillip Anthony O'Hara, *The role of institutions and the current crises of capitalism: a reply to Howard Sherman and John Henry*, 60(4) REV. OF SOC. EC. 616 (2002).

⁴³ James K. Galbraith, *The unbearable costs of empire: Bush's war could help the economy in the short run. The big harm comes later*, 13(21) THE AM. PROSPECT 26-7 (2002).

⁴⁴ It is appropriately said that "(i)f you want real peace, then work for justice"- quoted in Nicolaus Tideman, *Peace, Justice and Economic Reform*, 60(5) THE AM. J. OF EC. AND SOCIOLOGY, 165 (2001), at p. 165.

⁴⁵ Having the element of interest (*usury*).

⁴⁶ *Gharar* is a broad concept and may carry different shades of meaning relative to different types of transactions. In a contract of sale, *gharar* often refers to uncertainty and ignorance of one or both of the parties over the substance or attributes of the object of sale, or of doubt over its existence at the time of contract. However, *gharar* in transactions has often been used in the sense of risk, uncertainty and hazard. See, Muhammad Hashim Kamali, *Uncertainty And Risk-Taking (Gharar) In Islamic Law*, 7 (2) INT'L ISLAMIC U. MALAYSIA L. J. (1998). Available at <http://www.the.fiqh.org/article.php?id=7> (Last visited August 24, 2011)

⁴⁷ Samuel Knafo, *The Gold Standard and the Origins of the Modern International Monetary System*, 13(1) REV. OF INT'L POL. EC. 78-102 (2006).

⁴⁸ The Malaysian National Fatwa Council rules that currency trading that involve speculation as *haram* (prohibited). See, *National Fatwa Council rules forex trading haram*, New Straits Time 2/15/2012, available at <http://www.nst.com.my/latest/national-fatwa-council-rules-forex-trading-haram-1.47013> (Last visited June 28, 2012).

derivatives have promoted other practices of *riba*, and *maysir*,⁴⁹ and economic suppression in the form of obscure and dishonest transfer of wealth from holder to the issuer (inflation) that made these currencies non-compatible with *syari'ah*. Even a group of modern economists has unwaveringly maintained that gold, by nature, is a stable currency⁵⁰ and behaviourally a *numeraire* (unit of account), whereas fiat currency and monetised bank credits are unstable and anti-numeraire.⁵¹ This has been proven by the fact that the stability of the gold standard prevailed for a significant period of time, more than 400 years during the Islamic period, most of the early modern European era and from 1821 to 1971.

(i) *Syari'ah and Fiat Currency*

The significant point about coins and notes (fiat money) created by governments is that the money is created at no cost, apart from that of materials. Of course, governments have no particular need of these coins and notes, as banks are the institutions requiring a supply of cash. The government, through the operation of the Central Bank (Federal Reserve in the U.S.), buys bonds and issues money, therefore increases both assets and liabilities accordingly.⁵² In an expansionary open market operation, the Central Bank buys, for example, RM 1 billion worth of bonds, thus increasing the money supply by RM 1 billion. In contrast, in a contractionary open market operation, the central bank sells RM 1 billion worth of bonds, conversely decreasing the money supply by RM 1 billion. The sum of money that is in circulation in the economic system is, therefore, nothing more than the government liabilities.

The question to be resolved concerns the position of fiat currency under *syari'ah*. Since it is a government's liability and not backed by something valuable, can it be considered as a debt? There are two possible answers here. First, we can say that these notes are not debts because they do not fulfil the legal requirements of a debt. Under *syari'ah*, a debt (*dayn*) is contracted with some definite term fixed for repayments. Modern fiat currency is only an innovative money system held together by many tricks and luck over the past 30 years.⁵³ Initially, world currencies were redeemable currencies. However, after 1971, all currencies were transformed to irredeemable currencies through the hijacking of the people's confidence in redeemable currencies. Once the public becomes accustomed to the convertible money as a unit of weight of gold, the government can sever and hijack the accustomed name from its root in the market-trusted commodity, and seize the monopoly of supplying it by offering instead a fiat currency – the results of which are being witnessed today.⁵⁴

⁴⁹ See, al-Qur'an, 2:219; 5:90 & 5:91.

⁵⁰ See, Anghel N. Rugina, *Dialogue With Lord Keynes*, *Supra* note 11, at 201; and, Frank D. Graham & Charles R. Whittlesey, *Fluctuating Exchange Rate, International Trade and Price Level*, 24(3) THE AM. EC. REV. 407-8 (1934).

⁵¹ Anghel N. Rugina, *Dialogue With Lord Keynes*, *Supra* note 11, at 208.

⁵² Thus the establishment of Central Banks in most countries, including Islamic countries, is to have several functions: as an issuer of banknotes, banker to the government and also to the banking sector. See, Kevser Hepgüler Ýnceler, *Financial Structure of Egypt*, 15(3-4) J. OF EC. COOP. AMG. ISLAMIC. CNTRS. 56 (1994).

⁵³ Ron Paul, *Paper Money and Tyranny*, Chris Belchamber Investment Management LLC Notable Article. Available at <http://www.chrisbelchamber.com/na10.asp> (Last visited April 12, 2011).

⁵⁴ Walter Block, *The Gold Standard: A Critique of Friedman, Mundell, Hayek and Greenspan from the Free Enterprise Perspective*, 25(5) MANAGERIAL FIN. 23-4 (1999). Previously, due to exigencies of wars governments

The first act of introducing fiat currency was, in fact, a fraud, because it was not something sincere, but a manoeuvre that took advantage of the existing relationship between redeemable currencies and the commodities that backed them. It is comparable to the goldsmith receipts in the early years of banking. It is a scam made legal through a government's or a sovereign's decree that allows no other choice for the market but to accept it. As the currency is merely a creation of government's fiat and does not have any backing by actual asset, this is not acceptable under *Shari'ah* as it involves *gharar* (uncertainty) explained earlier.⁵⁵ This creates economic imbalance in the society benefitting only a small fraction of the society to the disadvantage of the majority. In Islam, such governmental conduct is comparable to the act of debasing or counterfeiting money.

Even, if , for argument sake, we accept fiat currency as debt, the difficulties from *dayn bi-l-dayn* (credit made out of credit) will arise. The promise to redeem the debt with the same type of debt, or other unidentified debt, is something illusive and serves as a legal fiction. In Islam, all transactions must be certain and clear, fulfilling all the legal requirements. Commercial transactions involving clauses or *syurut* that contravene the ethical and ritual prohibitions of the *syari'ah* can result in the nullification of the transactions.⁵⁶ In Islam, debt can be transferred or deferred,⁵⁷ but not repaid by another debt existing only in vague economic and legal imaginations. Furthermore, the value of the legal tender relative to price fluctuates (inflates or deflates) subject to the supply of money. Thus, the future purchasing power may differ from the current purchasing power. These stipulations involve uncertainty or risk (*gharar*)⁵⁸ and unjust transfer of wealth thus invalidating the transaction.

In addition to the inherent injustice of the paper money, the problem of its management has brought significant difficulties and hardships to the majority of countries, especially those that have less organised money markets.⁵⁹ A big task of any government is to decide how to regulate the quantity of currency in so that the quantity does not exceed the supply of goods and services. Currently, there is no law requiring the quantity of paper currency to be regulated – only policy alternatives that are put before the government. Unrestrained issuance of irredeemable currency can flood the economy with money supply that will initiate inflation if the availability of money exceeds the availability of goods and services.⁶⁰ Adding up to the massive existing private banking money, which, in fact, supplies 80 percent or more of the total money supply in the market would be frightening. Practically, most of today's economies are exposed to rapidly

temporarily suspended the convertibility of currencies and subsequently restore it when the situations returned to normal. However, the suspension of 1971 was made with no pretense of any intention to restore it. See, Kevin Dowd, *The emergence of Fiat Money: A Reconsideration*, 20(3) CATO J. 474 (2001).

⁵⁵ See *supra* note 46. Also see Saba Habachy, *The System of Nullities in Muslim Law*, 13(1) AM. J. OF COMP. L. 66 (1964); and, Kamali, *Supra* note 46, at 7.

⁵⁶ See, Oussama Arabi, *Contract Stipulation (Shurut) in Islamic Law: The Ottoman Majalle and Ibn Taymiyya*, 30(1) INT'L J. OF MID. EAST STUD. 36 (1998); and, Saba Habachy, *ibid.*, at 66-7.

⁵⁷ Nicholas Dylan Ray, *Supra* note 26, at 61. *Hawala* is the transfer of debt from one debtor's charge to another's. Scholars differ as regards to whether permission is needed from the original contracting parties.

⁵⁸ Scholars based their theory of *Gharar* on the prohibition of gambling (*maysir*). See, Saba Habachy, *Supra* 55, at 66.

⁵⁹ B. B. Bhattacharya, *Demand and Supply of Money in a Developing Economy: A Structural Analysis for India*, 56(4) REV. OF EC. & STAT. 502 (1974).

⁶⁰ In another word, excessive demand is perceived as the most important cause of inflation, currency overvaluation and payments difficulties. See, Luis Banck, *International Monetary Fund: Distributional Impacts of IMF-Supported Economic Reforms: A Case Study of Mexico*, 3 GEO. PUBLIC POL'Y REV. 117 (1998).

growing inflation that is now approaching a critical point of severe magnitude.⁶¹ Like the problem of previous token money, fiat money brings inflation that “results to a rise in retail prices which will press heavily on the poor, who cannot get a corresponding rise in their wages.”⁶²

Fiat currency is, and has been, the money in use in all the Muslim countries for a long time. The world all over is using irredeemable paper currencies or fiat and bank credit money after governments went against the nature of the market by abolishing the gold standard before World War I and later the redeemable currencies in 1971.⁶³ Because fiat currency involves fraud,⁶⁴ exploitation and injustice, which at the same time creates uncertainty and Involves riba and gharar, It has been ruled to be impermissible (*haram*).⁶⁵

Furthermore, the U.S.-led fiat currency system has become a weapon of economic imperialism.⁶⁶ By going off the gold standard, the U.S. obliged the world’s central banks to finance its balance-of-payments deficit by using their surplus dollars to buy U.S. treasury bonds and maintain large amounts of dollar reserves, whose total amount rapidly goes beyond “America’s ability or intention to pay.”⁶⁷

Theoretically speaking, the U.S. can continue to enlarge its budget deficit without limit, precisely because the larger the payment deficit, the more dollars end up in the hands of foreign central banks, only to be recycled into the purchase of U.S. treasury securities. This means that the U.S. government’s deficit spending is being financed by foreign governments, a new form of imperialism that exploits not just workers in poor countries, but workers everywhere. The U.S. sovereign debt has increased tremendously from \$408 billion in 1971 to \$6.8 trillion in 2003,⁶⁸

⁶¹ Angel N. Rugina, *Preliminaries and Transitory Measures Toward a Complete Stabilization of the US Dollar*, 24(5) INT’L J. OF SOC. EC. 438 (1997). Since 1971 the dollar has lost almost 80% of its purchasing power. See, Ron Paul, *Supra* note 53.

⁶² F.W. Hirst, *Token Money in Turkey*, 7(25) THE EC. J. 110 (1897).

⁶³ Exchanging of commodities money and redeeming currencies with precious metals are natural market tendencies. However, displacing these methods with fiat money that was made a legal tender only through government decree goes against the natural market tendency. See, Kevin Dowd, *The emergence of Fiat Money: A Reconsideration*, 20(3) CATO J. 474. (2001).

⁶⁴ Lawrence Marks, *What the President Should Know About Our Monetary System*, Available at http://www.gold-eagle.com/editorials_99/parks100399.html (Last visited Dec. 10, 2011).

⁶⁵ Muhammad Noor Bin Muhammad Deros, Amiruddin Bin Muhammad Zain and Muhammad Faisal Bin Muhammad Ayub, THE DAZZLING PROOF FOR THE RETURN OF OUR PURE MONEY THE JUDGMENT ON FIAT CURRENCY, THE DAZZLING PROOF FOR THE RETURN OF OUR PURE MONEY THE JUDGMENT ON FIAT CURRENCY, at 12-31 available at <http://asadullahali.files.wordpress.com/2013/04/judgment-on-fiat-currency.pdf> (visited May 18, 2014).

⁶⁶ Standard Shaefer, *Financing the war, financing the world*, 11(6) SUSTAINABLE EC. (2003). Available at <http://www.sustecweb.co.uk/past/sustec11-6/duck.htm> (last visited Dec. 10, 2011).

⁶⁷ Bruce Dyer, *The Almighty Dollar?*, 11 (6) SUSTAINABLE EC. (2003). Available at [http://www.sustecweb.co.uk/past/sustec11-6/The Almighty Dollar.htm](http://www.sustecweb.co.uk/past/sustec11-6/The%20Almighty%20Dollar.htm) (Last visited Dec. 10, 2011). According to him, the US dollar accounts for almost 70% of global currency reserves. Japan holds more than 90% of its reserves, and China the bulk of her reserves is in US dollars. China and Hong Kong have been buying more US Treasury securities than any other creditor nation, with combined annual purchases of \$290bn.

⁶⁸ Henry C.K Lui, *US Dollar Hegemony Has Got To Go*, 11 (3) SUSTAINABLE ECONOMICS, (2003), available at <http://www.sustecweb.co.uk/past/sustec11-3/page7.htm> (Last visited Dec. 10, 2011).

and to \$15.8 trillion in June 2012,⁶⁹ against the current gross domestic product (GDP) of \$15 trillion.⁷⁰ State indiscipline as regards the national debt, as in the cases of Ireland and Greece, is another phenomenon of fiat currency system. The ensuing loss of confidence in the system, which is growing day by day, will cause turbulence to the world economy.

Adverse effects of this type of globalisation on the developing economies are obvious. It robs them of the meager produce of their exports and keeps their domestic economies starving or capital, as all surplus dollars that were forced to be accumulated as foreign reserve must be reinvested in US treasuries to prevent the collapse of their own domestic currencies. However, from the *maslahah al-siasah*⁷¹ viewpoint the use of fiat money has to be temporarily permitted, with some protective measures put in place until *Shari'ah*-based or *Shari'ah*-compliant alternative system is established. Of course, this change may take time. According to a US Congressman the likelihood for a quick solution to the deeply ingrained and worldwide imbalances built up over thirty years of severance of money from gold is remote.⁷²

(ii) *Syari'ah and Bank Money*

The biggest problem associated with bank money is the regulation of the fractional reserve requirement and the credit that the bank creates. Normally, a small fraction of bank deposit is required to be kept as reserve, while the rest are loaned out by the bank with interest. However, the amount loaned by the bank is not deducted from the depositor's account.⁷³ Furthermore, in theory, if the reserve requirement is 10 per cent of the deposit, the bank can loan out 900 per cent more than the amount of deposits through multiple deposits and loans from this accounting deposit.⁷⁴ This is because the loaned money will come back into the banking system as fresh deposits and large portions of the payments can be loaned out again. At this stage, a credit is created out of credit and this goes on in a cycle, making the practice difficult to reconcile with *syari'ah*, not yet taking into account the interest that the loans bear.⁷⁵ This system also involves a process of money making or bank loaning out of nothing with interest earned and then eliminated through loan repayment out of money acquired from exchange of good and services that is earned in a hard way.

⁶⁹ Total Public debt outstanding Subject to Statutory Debt Limit, TreasuryDirect, available at http://www.treasurydirect.gov/govt/reports/pd/pd_debtposactrpt_0612.pdf (Last visited July 25, 2012).

⁷⁰ World Bank, *Data by Country – United States GDP 2011*, available at <http://data.worldbank.org/country/united-states> (Last visited Jul. 17, 2012).

⁷¹ Maslahah literally means “utility” or “welfare.” The jurists use it to denote public interest or general human good. So maslahah-ul siasah means, political utility. See, S. Mahmassani, *The Philosophy of Jurisprudence in Islam* 87-9 (2000).

⁷² Ron Pauls (U.S Congressman), Speeches and Statements, The Beginning of the End of Fiat Money, at: <http://paul.house.gov/index.php?option=com_content&task=view&id=425&Itemid=60>

⁷³ Lawrence M. Parks, *The Oncoming Monetary Collapse: The Fight for Honest Money*, 65 (1) VITAL SPEECHES OF THE DAY 13 (1998).

⁷⁴ For an explanation see, Federal Reserve Bank of Chicago, *Modern Money Mechanics*, *Supra* note 34, at 11; and, Ahmed Kameel Mydin Meera, *The Islamic Gold Dinar* 16 (2002). From an initial deposit of for example \$ 10,000, the total amount of deposit will be finally \$ 100,000.

⁷⁵ Interest bearing loans are forbidden because they are *riba al-nasi'a*. The Hadith clearly says that an exchange with delay within a type commodity but of different quantity constitutes *riba al-nasi'a*, and is haram. See, Bukhari, Book 34, No. 386.

The money creating functions of private banks and other financial institutions are subject to government regulation. However, this wide constitutional power has resulted in the delegation of wide power of money making to the banking system – a power that the legislature itself does not have.⁷⁶ In most states, a bank's ability to produce credit money is not regulated, but rests on its economic prudence, policy choices and reserve requirements,⁷⁷ and this is worsened by the banking industry's deregulation.⁷⁸ How can we explain these ongoing phenomena? The reasons are mainly because of the long relationship that has existed between the financiers and the politicians, and some vested interest groups, that made this practice tolerated and its reality kept away from the public scrutiny. Such a wide and arbitrary power is against the principles of trust or accountability and *a'dl* (justice) under *syari'ah*.⁷⁹

As mentioned above, fiat currencies in private hands are government liabilities. The Central Bank's fiat currency, which is already difficult to square with *syari'ah*, is now used to create more money. The deposit that the bank receives becomes a credit in the bank's account. Based on the fractional reserve system, large amounts of that deposit (credit) are loaned out, thus, again a credit is created out of credit. *Syari'ah* places certain restrictions on the creation and transfer of credits. When debts are offered out of a relationship between two parties, they become substitutes for money because they exist only in numbers (simple book keeping entry). The transfer of a debt to a third party is regulated by *syari'ah* and it can be lawful or forbidden depending on the circumstances. In general, debts in Islam are limited to being debts and nothing else, even though it can be transferred to a third person.⁸⁰ In other words, debts are intended to be fulfilled as stated in the contract, and if they are transferred, this is done by the cancellation of the old contract and the rewriting of a new one.

The abundance of money that results through the above practices of the banking system, due to the few restrictions imposed on the banks regarding the creation of money, has resulted in the extraordinary rise of a speculative economy.⁸¹ Using on-line communication technologies, cyberspace traders constructed numbers that represent money and complex rules by which those numbers can be converted into a seemingly infinite variety of financial instruments, each with its own distinctive risks and reproductive qualities. Through their interactions, the players manipulated more than 90 per cent of the 2 trillion U.S. dollars that exists in cyberspace and engage in competitive transactions daily, seeking to acquire for their own accounts the money

⁷⁶ Lawrence M. Parks, *Supra* note 73.

⁷⁷ Sheila C. Dow, *Why the Banking System Should be Regulated*, 106(436) THE EC. J. 699-700 (1996); and, Larry Schweikart, *U.S. Commercial Banking: A Historiographical Survey*, THE BUS. HIST. REV. 606 (1991)

⁷⁸ There is no restriction on quantities, types or mix of debt and equity claims a bank may issue. *See*, George A. Selgin & Lawrence H. White, *How Would the Invisible Hand Handle Money?*, 32(4) J. OF EC. LIT. 1718 (1994).

⁷⁹ Declaring that the power to govern is an *amanah* (trust), the Qur'an enjoins the rulers to govern with justice (38:26, 4:58), to avoid oppression (8:25, 39, 10:85), to promote public interest, to take care of the needy and not to benefit the rich at the expense of the community (59:7). For further discussion see, Abdul Rashid Moten, *Political Science: An Islamic Perspective* 109 (1996).

⁸⁰ Bukhari. Book 37 No 486; and, Nicholas Dylan Ray, *Supra* note 26, at 61.

⁸¹ Speculation has been widespread especially in the foreign exchange market. The essence of speculative behaviour is the balancing of uncertainty and expected gain produced by the use of unstable fiat and credit money. For further discussion *see*, Martin S. Feldstein, *Uncertainty and Forward Exchange Speculation*, 50(2) THE REV. OF EC. & STAT. 182 (1968).

that other players own. It is in the form of pure finance “investment” funds completely detached from the creation of real value. This speculative economy operates beyond the boundaries of physical money and physical merchandise, but it affects, nevertheless, the value of currencies and merchandise. Additionally, rapid increase in government’s fiat money supply will increase the inflationary pressures. The result is that paper money would often lead to an inflationary bubble and macroeconomic instability in general. This normally hits the poor countries harder due to lack of management capacity and policy choices.⁸²

The issue of credit money has posed a big challenge to Muslim scholars since the late twentieth century. The debate concerning the legality of money with little or no intrinsic value, such as paper and accounting money, were not previously considered because there was no need to do so. The early written literature, dated between the ninth and seventeenth centuries, discussed gold and silver as the medium for exchange with a conventional value. This covers the development of the latter part of this period when counting superseded weighing as a legally valid method, and money became a *numeraire*.⁸³ But, from the nineteenth century, Islamic civilisations experienced decline and little legal discourse was produced to support the adoption of the gold based money vis-à-vis irredeemable paper currencies.

From the perspective of *syari’ah*, the practical solution to these maladies is to construct a stable standard of value and, in due course, a stable economic condition will be achieved. Imitating the root cause analysis approach, we have to start from the root causes and move up with the analysis to the end results. The real problem is, therefore, how to attain a dependable standard of value, which is indispensable for the general equilibrium of a market economy.⁸⁴ The use of a stable commodity currency is the best solution, and is supported and promoted by Islam because it is in line with the rules of *syari’ah*. History has proved that commodity and redeemable monetary systems were the most stable and efficient mechanisms through which an adverse trade balance and excessive credit could be corrected.⁸⁵ Furthermore, undesirable activities, such as speculation, could be minimised.

At this point, it may be summarised that the prevailing monetary system is incompatible with *shari’ah* that has the following characteristic features:

- (i). A system that is just and fair

A sound monetary system is the one that promotes equity, fairness and justice (*adl*)⁸⁶ for all sectors of the society. Compassion and benevolence (*ihsan*) for the weaker members of the society is a commendable practice in economic relations.⁸⁷

- (ii). A system that is void of fraud, oppression and harm

⁸² Francis Agbewali, *Critical Analysis of the Impact of Government Expenditure and Money Supply on Inflation Rate on the Economy of Ghana*, MBA Thesis at the Maastricht School of Management 5 (2011).

⁸³ Nikolaus A. Siegfried, *Concept of Paper Money in Islamic Legal Thought*, Arab Law Quarterly, (2001), at 320-1.

⁸⁴ Angel N. Rugina, *Preliminaries*, *Supra* note 61.

⁸⁵ See, dmo.gov.uk, *Bank of England History*, available at <http://www.dmo.gov.uk/bginfo/bofe.htm> (Last visited August 29, 2011).

⁸⁶ al-Qur’an. 2:277; 3:194 & 4.

⁸⁷ al-Qur’an. 16:90

Islam disapproves economic activities and practices which involve explicit or implicit physical or moral harm, impurity,⁸⁸ and exploitation and injustice to the contracting parties or to the public at large.⁸⁹ It also disapproves activities which restrict the freedom of trade, or the adoption of a policy that will give harmful effect to others.⁹⁰ Honesty and truthfulness are extremely important qualities. Allah the Almighty promises His blessing for those engaged in honest trade. Islam forbids cheating,⁹¹ fraud,⁹² deceitful practices,⁹³ and dishonest and immoral exploitation.⁹⁴ Another important *syari'ah* precept is that no one is entitled to obtain another's property without lawful cause, and, therefore, unjust enrichment is prohibited.⁹⁵

(iii). A system that outlaws *riba'* (usury) and *gharar* (uncertainty)

As said earlier, *syari'ah* has outlawed the practice of *riba'*. It allows investments in which risks and returns are shared.⁹⁶ Based on authentic *hadith*, *syari'ah* prohibits the transacting of gold for gold and silver for silver, or money which is deferred and of different value. According to Islamic jurists, this type of contractual transaction falls under the category of *riba' al-fadl*.⁹⁷ A transaction that involves *gharar* is also prohibited.⁹⁸

(iv). A system that protects property right

⁸⁸ For examples, the act of drinking wine and gambling. See, Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam*, 24-6 (1998).

⁸⁹ Such as coercion, or imposing contractual condition on an unwilling party (*Ikrah*). See, M. Tahir Mansuri, *Islamic Law of Contracts and Business Transactions*, (New Delhi: Adam Publishers & Distributors, 2006), at 151; and, Shibli Nu'mani, *Sirat-un-Nabi*, Vol. 5, 207 (1979).

⁹⁰ It is one of the objectives of *syari'ah* (*Maqasid syari'ah*) to promote economic activities and to remove any impediments that may hinder trade within its legal boundary. See, for a discussion of the doctrine of *maqasid syari'ah*, Anowar Zahid, "Corporate Social Responsibility from a *Shari'ah* Perspective", 8(3) *International Journal of Civil Society Law* 79 (2010).

⁹¹ al-Qur'an. 83:1

⁹² *Id.* 83:2; 83:3

⁹³ *Id.* 4:107

⁹⁴ Such as hoarding, i.e., withholding supplies of goods or services with a view to raising prices. This may be understood from the Qur'anic allowance of trade and commerce: "Allah made business lawful and prohibited usury (*riba'*)" (2:275). In the same way, Prophet Muhammad has encouraged trading and forbidden hoarding: "The importer (of an essential commodity) into the town will be fed (by Allaah) and the hoarders will have (Allaah's) curse upon him." *Ibn Majah* 2144. In light of the Qur'anic verse and the saying of the Prophet, it is understood that anything that hinders honest and legitimate business activities is unacceptable under *syari'ah*.

⁹⁵ al-Qur'an. 2:188

⁹⁶ al-Qur'an. 2: 219

⁹⁷ "Riba al-fadl is described as an unlawful excess in the exchange of two counter-values where the excess is measurable through weight or measure. The concept is based on some ahadith according to which if gold, silver, wheat, barley, dates, and salt are exchanged against themselves, they should be spot and be equal and specified. If these conditions are not found, this transaction will become *riba al-fadl*. Khalid Zaheer, "Why Is Riba Al-Fadl Unacceptable?" at <http://www.khalidzaheer.com/essays/kzaheer/economic%20issues/ribaalfadl.html> (accessed on 4 June 2014 citing Usmani, Muhammad Imran Ashraf (2002), Meezan Bank's Guide to Islamic Banking, Daul Ishaat, Karachi, Pakistan, p.253)

⁹⁸ Saba Habacy, *The System of Nullities in Muslim Law*, 13 (1) THE AM. J. OF COMP. L. 68 (1964).

Prophet Muhammad (*pbuh*) emphasised the importance of property rights in his farewell pilgrimage, declaring to the assembled masses “Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly.” The Qur’an mandates the respect for property rights be extended to all human beings regardless of their religious faith.⁹⁹

3. Returning to Commodity-Based Money

“[T]he call for *syari’ah* is not a call for sexism, obscurantism or savage punishment but for an Islamic version of what the West considers its most prized principle of political justice: the rule of law.”¹⁰⁰ The present international monetary system, with its good and evil, leave us with no choice but to make it work because it is the only system currently in use to facilitate trade and development. However, due to the destructive, infective and under-regulated nature of the modern non-convertible fiat currency system, the search for a better alternative has become more crucial, especially for the many victims of the system.¹⁰¹

An alternative effort that is gaining momentum is the initiative to return to commodity based currencies. A practical solution to the present economic maladies is to construct a stable standard of value and in due course a stable economic condition will be achieved. Imitating the classical approach, we have to start from the root causes and move up with the analysis to the end results. The real problem, therefore, is how to attain a dependable standard of value, which is indispensable for the general equilibrium of the market economy.¹⁰² The use of a stable commodity currency is the best solution, and is supported and promoted by economic *Siyar* because it is in line with the rules of the *Shari’ah*. History has proved that commodity and redeemable monetary systems were the most stable¹⁰³ and efficient mechanism through which adverse trade balance and excessive credit could be corrected.¹⁰⁴ Furthermore, undesirable activities such as speculation could be minimised.

⁹⁹ al-Qur’an. 3:75

¹⁰⁰ Noah Feldman, *Supra* note 8.

¹⁰¹ In the last two decades, thousands of local communities in Europe, Asia, and Latin America have resorted to barter exchange and alternative currencies such as locally circulating units of exchange, or ‘local’, ‘complementary’, ‘community’, ‘social’ and metallic interest free non-state currencies to build socio-economic solidarity and mutual assistance toward achieving development goals. An excellent example is the Red Global de Trueque or Barter Network established in Argentina in 1995. It involves hundreds of thousands of people in at least nine South American countries and has facilitated billions of US dollars worth of commerce without any institutional support and no national currency, using only locally printed interest-free coupons as a means of exchange. Today, there are about 20 countries in the third world where complementary currency programs are active. See, Jeff Powell, *Petty Capitalism, Perfecting Capitalism or Post Capitalism? Lessons From the Argentinean Barter Experiments*, 9 (4) REV. OF INT’L POL. EC. 619-649 (2002); Katherine Watt, *Barter Town*, 11 (2) INSIDE TUCSON BUSINESS, (04/02/2001); Benjawan Somsin, *Self-reliance the force behind new community currency*, The Nation, (Thailand), May 11, 2000; and, Strohalm Foundation, *Program Description: Valuable Local Currency System*, available at <http://www.strohalm.org/materials/Valuable Local Currency Introduction.pdf> (Last visited on 7th June 2011).

¹⁰² Anghel N. Rugina, *Dialogue*, *Supra* note 11, at 199.

¹⁰³ See, dmo.gov.uk, *Supra* note 85.

¹⁰⁴ The gold standard is a fixed rates system of currency exchange where countries defined their currencies in terms of weights of gold and exchange rates represented the ratios of the weights. When gold went abroad (a balance of payments deficit) the money supply shrunk, domestic expenditure (total spending) was cut and the deficit was corrected; when it returned, the money supply increased, expenditure rose and the surplus were eliminated. The system got into trouble only rarely when, as during war, countries turned to deficit finance. Success of the gold

Commodity monies, such as gold and silver, have intrinsic value, and, to humans, reflect their function, demonstrating both gratifying physical characteristics and scarcity. Studies revealed that on most economic criteria the classical gold and second-stage Bretton Woods (1959-70) regimes performed well compared to other regimes.¹⁰⁵ If gold is not being used as a medium of exchange, it could be used for various other purposes. As opposed to partial gold or commodity-backed currency, Islam favours full gold backed money as achieved in previous international gold standards. The most important reason as to why the gold standard should make a comeback is its capability to restore wealth that is justifiably due to every individual and nation. The basic reasons why gold was the choice of the people in all periods of time arise from the various functions that the metal performed.¹⁰⁶ The most important one is, it is the best store of value or wealth.

However, the present realities of international economic and development relations are not that simple. Like other cross-cultural interactions, such relations affect, and are affected by, other political-economic elements of international relations. For the U.S., the largest economy in the world, the chances of returning to commodity based money is quite remote because she has gone too far in abusing her status as issuer of international currency. There seems to be no clear short-term solution to the ballooning sovereign debt that will soon surpass the gross domestic product of the U.S. Interested nations, such as China, have been arguing for the current monetary system to promote measures that would allow the Special Drawing Rights (SDRs) of the IMF to "fully satisfy the member countries" demand for a reserve currency. China even suggested the creation of a substitution account to allow exchange of U.S. dollars into SDRs. When substitution was proposed before, in 1978, the U.S. appeared reluctant to allow such a mechanism to become operational. It is thus very difficult to bring a change to the status quo.¹⁰⁷

Currently, to emerge from the financial fiasco, countries need to reduce their current account deficit by increasing exports. This will take place only when the currency value is comparatively low and, thus, many industrialized countries have scrambled to depreciate their currencies. The currency war that ensued, by which China blaming America for causing problems for emerging markets with excessive quantitative easing, while America repeated its calls for further appreciation of the Yuan, resulted with both China and the U.S. "winning the race" to devalue their currencies. It had instead pushed up the value of the Euro, Yen and the currencies of many emerging economies.¹⁰⁸

standard however, depended on fiscal prudence. See, Robert Mundell, *Currency Areas*, *op. cit.*, p. 227-8; and, Kosmas Tsokhas, *The Australian Role in the Britain's Return to the Gold Standard*, quoting Tomlinson's *Problems of British Economic Policy*, 47 (1) THE EC. HIST. REV. 131 (1994). See, in this context, Rohimi Shapiee and Anowar Zahid, "Addressing Economic Meltdown: An Evaluation of Fiat and Credit Money from Islamic Perspective", 11(2) *US-China Law Review* 182-202 (2014).

¹⁰⁵ Derek H. Aldcroft, *The Gold Standard and Related Regimes: Collected Essay by Miceal D. Bordo*, 53(1) THE EC. HIST. REV. 212 (2000).

¹⁰⁶ Anghel N. Rugina, *Dialogue With Lord Keynes*, *Supra* 11, at 203.

¹⁰⁷ Barry Eichengreen, *What Can Replace the Dollar?* Project Syndicate, available at <http://www.project-syndicate.org/commentary/what-can-replace-the-dollar> (Last visited July 30, 2012).

¹⁰⁸ John Foley, *Who's winning the currency wars?*, Banking Views, Reuters, available at <http://blogs.reuters.com/bankingviews/2010/10/11/whos-winning-the-currency-wars/> (Last visited July 30, 2012).

The above scenario shows that as small economies, without concerted effort, Muslim nations will remain at the whims and fancies of larger nations. In the Muslim world, many countries have initiated and mooted the idea of reintroducing the gold *dinar* as an international and domestic currency to facilitate trade, because it is more stable and less prone to speculative activities. Though this new alternative system of gold standard will be able to weather the evils of fiat currency – it is more easily proposed than accomplished. Even a U.S. Congressman thinks that the likelihood for a quick solution to the deeply ingrained and worldwide imbalances built up after thirty years of the severance of money from gold is remote.¹⁰⁹

5. Conclusion

From the above *syari'ah* analysis and discussion, it is established that fiat currency and bank money are unacceptable under *syariah*. They are in reality, introduced through deceitful collaborations between governments and bank cartels and their use defy the long established sanction against *riba*'. In addition, they operate at the advantage of a selected group in society to the detriment of the masses, resulting in the unfair oppression of the weak, whether it is an individual, a society or a state. These all are made possible when the capitalist system in which they are made to operate in “insist it remains a wicked system, one that rewards immoral behavior, greed, ruthlessness, and indifference to the fate of others and produces immoral outcomes, namely widening inequality.”¹¹⁰

As a result the world economy has never seems to come out from the depressing financial crisis. After Ireland and Iceland, Greece succumbed to become another victim of self-inflicted mismanagement of state's finance after failing to resist the lure of cheap fiat and bank money. Spain and Italy are said to follow suit. In August 2011, gold reached a value above \$1900 an ounce and now lingering at around \$1600.¹¹¹ This is an evidence of the continuing safe haven buying by investors, as capital seeks to escape to precious metals and lower risk currencies from all of the rampant money printing that are taking place in industrialised economies. The gold price up-trend, that has been taking place for some years now is a manifestation of the inflation mega-trend, encompassing the loss of value of all fiat currencies, which will continue at an accelerating pace for the next decade.

To achieve broader justice, all communities have to strive to ensure that the monetary system once again complies with the balance in nature, which is also part of the sanctions established by *syari'ah*. Returning to commodity based currency and ethical banking is the most preferred choice of direction. Without real and serious efforts to restrict and reduce self-centred policy and striving for global justice through broad international institutional arrangements, cooperation and comprehensive regulations, world development, general prosperity and peace would be difficult to maintain.

Thus, the international community has the responsibility to free the international monetary system and law from its contradicting formalism and its heavy shield of Western Capitalism centrality, and to steer it towards a nobler, more humane and more essential goal – the

¹⁰⁹ Anghel N. Rugina, *A Monetary*, *Supra* note 11.

¹¹⁰ Martin Wolf, *The Morality of the Market*, 138 FOREIGN POL. 46 (2003).

¹¹¹ *Gold Price*, available at http://goldprice.org/gold-price-history.html#2_year_gold_price (Last visited July 30, 2012)

promise of equal development opportunities.¹¹² *Syari'ah*, in its universal approach to justice, could become the impetus to encourage change and make the international community more aware and critical about the available solutions to current and menacing global economic and monetary problems.

¹¹² Rohimi Shapiee, *A Framework of Economic Siyar or Islamic International Economic Law: An Introduction*, 3(3) MAN. J. OF INT'L EC. L. 45 (2006).