Household Trade and Stock-Breeding: Spheres of Consumption and of Value Production in Muslim Fiscal Law

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HOUSEHOLD TRADE AND STOCK-BREEDING: SPHERES OF CONSUMPTION AND OF VALUE PRODUCTION IN MUSLIM FISCAL LAW

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I.

A legal system that accepts the idea that people follow different norms and value systems in different spheres of action allows for a high degree of structured complexity within its system. Structured complexity allows a legal system to adapt more quickly to changes within each subsystem, because the change in one subsystem does not automatically lead to changes in the others. But, this structural complexity also forces a legal system to delineate the demarcations between its legal subsystems, to coordinate its activities, and to harmonize them within one legal framework.¹

It is my proposition that Muslim law between the tenth and twelfth centuries was characterized by the jurists' efforts to delineate the fields of action of government and redistribution, the social exchange within the household, the commercial exchange, and cattle-breeding as legal (and social) subsystems with their own values and legal norms. Mainly, these jurists do so in the field of contract law, but also, as I hope to demonstrate, through the concepts and legal ordinances of fiscal law. This Article concentrates on the delimitation of the household sphere against the fields of the commercial exchange and cattle-breeding in the fiscal law. Whereas contract law opposes the concepts of social hierarchies with those of commercial equality, the motives of profit and calculation with those of social integration and generosity, the concept of commodities with those of social goods, the fiscal law in the legal ordinances concerning the alms tax centers strongly on subjective purposes and declarations, focusing on an individual's decision to use things and slaves for different purposes to delineate the different spheres of social action. In other words, the legal ordinances of the alms tax make it dependent not so much on the kind of goods and commodities that the individual owns, but on one's in-

tention to produce an increment value through either trade or cattle-breeding, or one's intention to consume these goods in the sphere of the household economy.

Before I begin my analysis, it is important to start out with a word of warning. This Article contradicts most authorities in the field, particularly the thesis of Joseph Schacht, one of the three leading scholars of this century in the field of the history of Muslim law. According to Schacht, Muslim law is characterized by the fact that "the concept of any systematic distinction is lacking." This proposition is shared by many excellent scholars. Jeanette A. Wakin, Schacht's most eminent student in this country, to whom we owe the fine edition and analysis of one of the earliest legal compendia on the form of documents in Islamic law, emphasizes:

[A]part from particulars concerning the subject matter, there is not a great deal of difference among marriage contracts, agreements creating partnerships, claims for debts, or deeds of sale. Even instruments recording bilateral obligations seem very much like those concerning unilateral declarations. This point of view, which stresses the lacking systematic differentiation in Islamic law, tends to be confirmed by post-modern studies of Islamic law, which tend to define Muslim law not as law, but rather as a system of religious ethics and precepts with binding character. This evaluation fits well with Max Weber's understanding of Muslim civilization as one that developed a separation of household and enterprise in urban space only, but not in law, social concept, or accounting. Additionally, this evaluation is easily harmonized with Polanyi's concept of embedded economy, which centers on the mechanisms of reciprocity, redistribution, and householding as the three processes that regulate the substantive economic process in pre-capitalist societies and marginalize the social role of the market—thereby preventing the economic process from becoming an autonomous social subsystem with its own value system and economic rationality.

6. Karl Polanyi, Great Transformation, 47, 53 ff., 56 ff.; Harry W. Pearson, introduction to Karl Polanyi, The Livelihood of Man, XXXIIIff.; George Dalton, introduction to Primitive,
Therefore, this Article rebuts the beliefs of a majority of well-established authorities and excellent scholars. First, I disagree with Joseph Schacht on the importance of systematic distinctions in Muslim law and with Max Weber on the question of the differentiation of household and commercial enterprise in Muslim law and society. Second, I disagree with Karl Polanyi on the question of the relative autonomy of social subsystems in pre-capitalist societies. Instead, it appears evident to me that the differentiation between the household and the commercial enterprise lies at the heart of the Muslim jurists’ contract law, their definition of the alms tax, and of their efforts to establish different spheres of consumption, production and exchange as legal subsystems following their own norms and value systems. Moreover, the social plausibility of their models is demonstrated through the practices of Near Eastern urban life between the eighth and twelfth centuries in which the central market area (Arabic: sūq; Persian: bazár) is, increasingly, differentiated from the residential quarter and its blind alleys. Access to the central sūq area is general and unrestricted, whereas access to the blind alleys is subject to social control and permission of the house-owners and inhabitants. This Article’s argument is based on the legal aspects of this question and on texts of the Hanafite school of Muslim sunni law, the oldest, geographically most widespread, and numerically strongest of the sunni schools of Muslim law. The texts I use stem from the tenth to the twelfth centuries, the classical period of Muslim law, and, mainly, from authors who taught in Transoxania, Iraq, Syria and Egypt. I ask the reader to keep in mind that this literature transmits a law, developed by jurists, through commenting on books written by other jurists.

II.

The Muslim fiscal law subjects Muslims to various kinds of taxes, including the land tax (kharāj), the tax on the harvest (‘uṣr), and the tax on treasure finds and mining (rikāz). I shall not discuss these taxes in this Article, however, because these agricultural taxes are construed as levies on property independent of the wealth and investment intentions of the land-owners or tenants. On the other hand, the alms tax,

8. See my Islamic Law on Land Tax and Rent: The Peasants’ Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods (London: Croom Helm, 1988); and my “Amwāl Ṣāḥira and Amwāl Bāṭina. Town and Countryside as re-
zakāt, is a religious tax on well-to-do Muslims that performs a form of religious service by property-transfer from the rich to the poor. The wealth and the investment intentions of the taxpayer, therefore, play an important role for the tax obligations arising under this tax and the options that the well-to-do have. This Article concentrates on the zakāt, the alms tax, but the reader should keep in mind that the legal ordinances concerning the alms tax create options for the taxpayer that are absent in other forms of fiscal law and other taxes. The goods taxed under the zakāt are defined as property which produces an increment value (māl nāmin)⁹ and which exceeds the basic needs of the taxpayer (fāḍilān ʻani‘l ḥājatī ʻl-ʻāšliyya).¹⁰ This definition applies also to commercial commodities which are—in the words of Kāsānī, a Syri-an jurist of the twelfth century—“goods with an increment value which exceed the basic needs.”¹¹ Through this definition, the jurists established a sphere of basic needs (ḥawā‘īj ʻāšliyya) and a sphere of goods with an increment value (māl nāmin).

III.

The sphere of basic needs is clearly identified with the household and the family, and is important in both contract and fiscal law. In contract law, it serves to delineate the sphere of the social exchange, such as marriage, against that of the profit-oriented commercial exchange. In fiscal law, it is defined as a sphere of reproduction of the taxpayer’s family and dependents (tamwīn, wilāya, nuṣra). The jurists state that all things in a household that are not reserved for commercial purposes, such as houses used for residential purposes, slaves used for services in the house, cloth for everyday wear or for work, mounts and animals used in the household, food and cloth for the household members, dishes and vessels, pearls and jewels, books, beds, furniture, and arms,¹² cannot be taxed “because,” as Qūdūrī, a tenth century


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author from Baghdad says, "they serve the basic needs and do not, in principle, have an increment value." In other words, the household is considered to constitute a sphere of consumption and, consequently, it does not form part of the sphere in which increment value is constituted. The "basic needs" are not quantifiable and there is no ceiling for the goods which are needed for their satisfaction. In fact, everything that serves the reproduction of the household and is consumed in its sphere falls under the heading of basic needs. Therefore, the jurists assert that a man with many basic needs and many debts cannot be taxed even if he owns property consisting of more than 10,000 dirhams if all his money serves to pay household needs and debts so that no taxable property remains that would exceed the basic needs.

The eleventh-century author Al-Sarakhsi justifies this tax-exemption by the costs of the household: the house has to be repaired and the slaves and animals have to be fed and sustained, the weapons cannot be sold, but must be preserved in good shape, and the books have to be used in scholarship. Overall, as long as the costs constitute a cause of continual expenses, the houseowner—much as he may be rich in terms of household goods and social support—is, in fact, poor as far as the production of an increment value is concerned. Therefore, he is not only tax-exempt, but also entitled to accept alms from the political authorities or other Muslims.

The household, thus, constitutes a sphere of consumption in which things are produced to be consumed. As a result, as long as the goods circulate only within this sphere, they cannot produce an increment value. Moreover, even things bought on the market cannot produce an increment value if they are earmarked for household consumption. For this reason, such goods cannot be taxed under the alms tax. Consequently, establishing the category under which a particular good falls, is crucial for the jurists. Whether a thing is a commercial commodity or a household good is determined by the purpose for which it is bought, not by the form of exchange which transfers


property. Gold and silver constitute the only exception to this rule. According to the jurists, they belong by necessity to the sphere of the commercial exchange being created to serve as measures of value and means of exchange. Apart from gold and silver, all goods and commodities bought for the household represent the sphere of the “basic needs” of the social use of things. Therefore, all things that are bought for this purpose are tax-exempt.

As alluded to earlier, there is no quantifiable limit to the “basic needs.” How, then, does one tell the difference between the spheres in which increment value is added from the sphere of basic needs? It is clear that the jurists do not consider urban industrial or artisanal production as a source of value added. Rather, the urban artisanal production is assimilated to the household sphere. Consequently, tools and working dress are not to be taxed because they do not enter the commercial exchange. As a result, raw materials bought for production purposes are taxable only if their traces remain clearly visible in the final product, such as the dye of the dyer in contrast to the soap of the bleacher; the former would be taxable if the final product is sold for commercial purposes, because the material would be entering the commercial circulation and becoming a taxable commodity.

According to the jurists, only goods (including slaves and animals) that are ear-marked for the commercial exchange or animals that are reserved for cattle-breeding on open pastures with the purpose of milk production and stock-farming are taxable under zakat because only they produce an increment value. By the simple fact of


18. Under the legal ordinances of the alms tax, the Hanafite jurists do not mention artisanal production as a source of values added, comparable to stock-breeding or commercial exchange. They state explicitly that there is no alms tax on the tools of artisans, Sarakhsi, Mabsūt, vol. II, 198; ʿĀlim Ibn al-ʿĀ lã, Al-Fatāwā al-Tātarkhāniyya, Karathchi: idārat al-Qurʾān waʾl-ʿulūm al-islāmiyya, Vol. II, 241), nor on the raw material used in production by the artisans, see al-Fatāwā al-Tātarkhāniyya, Vol. II, 241, except for those materials which are clearly visible on the finished product such as sesame on the bread or the colors which the dyer added to textiles, Al-Fatāwā al-Tātarkhāniyya, Vol. II, 240-41; Sarakhsi, Mabsūt, Vol. II, 198, because these are independent commodities whose value is added to that of the finished product. Also, commercial commodities which their owner intends to use in the sphere of artisanal production (Arabic: miḥna) cease, by this very intent, to belong to the sphere of the commercial exchange and are no more taxable under the alms tax. Sarakhsi, Mabsūt, Vol. II, 198. The artisanal production is, then, clearly not considered as a sphere of value increase under the alms tax and it is construed in analogy to the household as a sphere of productive consumption.


being invested in trade and stock-breeding, these earmarked goods prove to exceed the "basic needs." Animals are, according to the jurists, characterized by the fact that their increment is produced by themselves and not by the use made of them. The meaning of this criterion is obvious for stock-breeding on open pasture: the animals assure their procreation and produce milk all by themselves, and they also will grow fat through their own pasturing. Therefore, their owners acquire an increment value through preserving the property of the specific animals they own and keep on the open pasture. By contrast, if animals are held for the purpose of carrying things or serving as mounts, they are not taxed because their owners are not deriving the increment value from the animals themselves, but from their use by human beings. Such animals integrated into the household sphere of "basic needs" are, therefore, not taxable under zakāt.

Contrary to the sphere of stock-breeding, the taxability of the commercial exchange is not dependent on the form and the material of the individual commodity, but on the commodity value (māliyya) which it represents. This commodity value is preserved and increased through the exchange of one commodity for another, because the value of a commodity is preserved and increased in the equivalent for which it is exchanged. "This exchange," teaches Sarakhsi, an elev-

24. Ibid., 166.
26. The commercial exchange, according to the Hanafite jurists, preserves and increases the commodity value of the commodities exchanged. Sarakhsi, op. cit., vol. II, 166, 197; al-Fatāwā al-Tātarkhāniyya, op. cit., 248, 249, 251. For that reason, the commercial exchange of one commodity against another does not entail an interruption of the fiscal year concerning the commodity in question, whereas the exchange of cattle against other cattle or of cattle against commercial commodities brings about the interruption of the fiscal year concerning the cattle which is so exchanged. The value increase to be expected from cattle concerns the growth of the individual animal and is interrupted when the animal is exchanged. The value increase to be expected from commercial commodities is their "exchange value" (Arabic: māliyya), which is preserved even if the object which represents it is exchanged against another object of the same value. In commercial property (Arabic: māl al-tijāra), explains Sarakhsi, "it is the attribute of the exchange value [ṣifatu 'l-māliyya] not the thing in itself which is considered, so that the assessable minimum amount is calculated from its value (Arabic: qima), then, the exchange against another commodity realizes the purpose (for which one keeps) commercial property, that is the quest for profit [Arabic: istirbāḥ]." Sarakhsi, op. cit., vol. II, 166; see also Al-Fatāwā al-Tātarkhāniyya, op. cit., 251).

As the commercial exchange preserves the commodity value which is the object of taxation under the alms tax, the owner of the commodity is entitled to sell, rent, etc., the taxable assets, because he will, in exchange, receive their value. If, in the course of the exchange, these assets are lost or destroyed, the owner is not liable for their value or the taxes, Sarakhsi, op. cit,
enth-century jurist from Transoxania, “realizes the purpose of the commercial commodity (māl at-tijāra) which is the making of profit (wa huwa’l-istirbāḥ).” It does not matter whether the profit is made by selling living sheep or their tanned skins, as it is not the commodity’s form, but its commodity value, which is taxed. Thus, the exchange of one commodity against another constitutes the form in which the increment value in the commercial exchange is realized. By contrast, a cattle-breeder derives the increment value of his herds from the results of his living herds’ procreation and pasturing. As a result of this reasoning, the exchange of commodities through trade and the exchange of animals for animals provide different fiscal results. The commercial exchange preserves the commodity value and does not diminish the taxability of the newly acquired commodities, whereas the exchange of animals for animals or merchandise leads to an interruption of the fiscal year concerning the exchanged animals and to the beginning of a new fiscal year for the newly acquired animals or goods. Therefore, the manner in which the increment value is acquired and preserved differs in commerce and stock-breeding, separating them into two autonomous spheres of value production.

IV.

The three spheres of household economy, commercial exchange, and stock-breeding, constitute separate spheres of acquisition of goods and commodities. Acquisition in the household is characterized by either subsistence production or the unilateral transfer between generations and persons. A unilateral transfer can be conducted through inheritance and bequest, among living persons by gifts, alms, voluntary aids, or services, and, finally, through the mechanism of the social exchange, i.e., through payments for social relations such as marriage, divorce, emancipation of slaves, blood money, or amicable settlements for the waiver of claims to talion. The jurists call this last type of exchange the exchange of commodity against non-commodity

III, 26, 30; see also Vol. II, 196-97; Al-Fatāwā al-Tātarkhāniyya, op. cit., 247-49, because he did not try to consume (Arabic: istahlak) the commodity value. If, on the other hand, he exchanges commodities against household goods or other social goods, this is considered to be a consumptive exchange and the owner becomes liable for the value lost in this exchange. Al-Fatāwā al-Tātarkhāniyya, op. cit., 248-49; Sarakhsī, op. cit., vol. II, 196-97.

30. Ibid., 170.
In this form of exchange, money serves as means of payment but only in a very rudimentary form as a measure of value because the fact that a non-commodity is exchanged against a commodity makes a precise calculation of the values exchanged impossible. This problem of the non-calculability of the social exchange is treated in great detail in contract law, but it also concerns the discussion of the taxability of such payments under the alms tax.

In stock-breeding, the normal form of acquisition of the increment value is the growth of the herd by its own procreation (tawâlud wa tanâsul) and the growth of the individual animals through the process of pasturing. Increment value in the commercial exchange, on the other hand, is acquired through the individual exchange in the form of the “merchandise contract,” that is, a bilateral reciprocal contract in which commodities (mâl mutaqawwim) are exchanged. But, not every exchange of commodities qualifies as commercial exchange. The commercial exchange is, as the tenth-century Iraqi jurist al-Jaâṣâṣ explains, “a name applied to bilateral reciprocal contracts the purpose of which is the quest for profits (wa’l-tijâratu ismun waqâ’â ‘ala ‘uqûdî’l-mu’âwaḍ ati’l-maqsûdû bihâ ṭalab al-arbâḥ).” The Hanafite jurists of the tenth to the twelfth centuries underline the idea that the commercial exchange preserves the commodity value and adds to it. Each new equivalent has the same legal status and, in principle, the same or a higher value as the commodity for which it has been exchanged. Consequently, the jurists do not consider the commercial exchange as a form of consumption (istiḥlāk). Instead, the aim of making profit is the rationale for the commercial exchange. Therefore, the commercial exchange does not destroy and consume the value of the exchanged commodities; it increases the commodity value represented by the things exchanged. On the other hand, to buy things in the market for the household does not qualify as a commer-

cial exchange, but as a form of consumption. According to the jurists, in a commenda (mudāraba) all contracts signed by the working partner are commercial contracts with the commodities he acquires being taxable under the alms tax because they are acquired through a number of commodity exchanges with the aim of making profit. The sleeping partner, however, may buy without being taxed, "because he is entitled to buy things for non-commercial purposes," for the household or stock-breeding. Under the alms tax, therefore, the form of the commodity exchange, such as selling and buying, renting and leasing, is not sufficient to determine the commodity's status as taxable merchandise belonging to the commercial circulation. Instead, it is the trader's intention of investing a commodity into the commercial circulation with the aim of making profit, his "intention of trade" (niyāt at-tijāra), that is the decisive condition for determining the taxability of his commercial commodities under the alms tax.

In an early stage of the development of Hanafite doctrine, during the eighth century, the differentiation between household, stock-breeding, and commercial exchange, is reflected in the doctrine on the taxability of debts which the jurists ascribe to Abū Ḥanīfa, the eponym of the Hanafite school of law. According to Abū Ḥanīfa, every outstanding debt is, in principle, taxable. Abū Ḥanīfa divides debts which third persons incurred vis-à-vis the taxpayer into three categories: strong, medium, and weak. Strong debts are taxable and the tax payment is due whenever the creditor cashes forty dirhams. Medium debts are also taxable and their tax payment falls due each time the creditor cashes 200 dirhams. Finally, weak debts are taxable only after they are handed over to the creditor, making him bound to pay the taxes only one year after he received the money, the commodities, or the cattle, that were his due.

The strong debts, according to Abū Ḥanīfa, result from the commercial exchange or from credit; they are debts for commodities sold to the debtors or given as credit to them. The medium debts result from the buying of things for the household, such as the prices for a slave who is supposed to work in the household, for clothes to be worn during work, or for furniture of the residential house—in other words, debts for the satisfaction of "basic needs." Weak debts, finally, are debts for a) the social exchange, the exchange in which payments

are effected for the establishment or the dissolution of social relations such as marriage or slavery through consensual divorce, or the emancipation of a slave; b) the intergenerational transfer such as inheritance and testamentary bequest, or c) the unilateral transfer between living persons, such as gifts, and alms; since the debts that result from these forms of transfer are not based on any payment on the side of the creditor, they are, consequently, considered weak.\textsuperscript{40}

Abū Ḥanīfa's doctrine on the taxability of debts clearly reflects the differentiation between the household as the sphere of the "basic needs" and the social exchange on the one side, and the sphere of the commercial exchange as the value producing sphere on the other side. It conceives of debts as representations of spheres of social actions. This doctrine was abandoned in the second half of the eighth century by eminent Hanafite jurists such as Abū Yūsuf and Muḥammad ash-Shaybānī, who conceived of debts not as representations of social spheres of action but as representations of commodity value. These two jurists defend the notion that all debts are equal before the law because all debts are equally symbolic representations of commodity value, and can, for that reason, all be the object of a judicial trial against the debtor even after his death. The debts all count as goods and commodities for the creditor only after the debtors hand them over to him. In spite of this change of doctrine, Abū Ḥanīfa's teaching on strong, middle, and weak debts is an important indicator that the Hanafite jurists, from the eighth century onward, reason in terms of three different spheres of action with different legal and fiscal status. Yet, in spite of Shaybānī's and Abū Yūsuf's opposition, Abū Ḥanīfa's doctrine is upheld by important Hanafite jurists of the classical period.

V.

The jurists describe the household, the stock-breeding, and the commercial exchange as three spheres of action characterized by different forms of acquisition of property, different relations to the constitution of an increment value, and the assignment of different legal and fiscal status to the money, commodities, and goods that the proprietors place in them. But exactly how can goods or commodities be transferred from one of these spheres to another and what is the fiscal result of such a transfer?

\textsuperscript{40} Kāsānī, \textit{op. cit.}, vol. II, 12; Qādīkhān, \textit{op. cit.}, vol. I, 252; Fatāwā ‘Ālamgīriyya, \textit{op. cit.}, vol. I, 175; Sarakhsī, \textit{op. cit.}, vol. II, 195.
The transfer of slaves, things, and animals from one sphere to another is discussed by the jurists in terms of "form" (ṣūra) and "meaning" (ma'na), in other words, in terms of form and function. Objects which are transferred from the commercial exchange to the household sphere do not change in form but in function. The same holds true for the transfer among other spheres. This change of function connected with the transfer from one sphere to another is effected with unequal difficulty in different directions.

It is easy to transfer goods from the sphere of the commercial exchange into the sphere of the household. This happens either through consumption in daily use, where no further proof for the validity of the transfer is needed, or, it is effected through a declaration of the intention to transfer commercial commodities into household goods, though such a declaration may require a corresponding practice in order to become legally relevant. If such a transfer is completed before the alms tax is due, the fiscal year for the commercial property is interrupted, the alms tax for the commercial commodities does not fall due and the household good remains tax free. If the transfer is effected after the alms tax fell due, the transfer is considered as an act of illegal consumption and the taxpayer will become liable for the value of the commodity transferred.

If the owner of animals transfers them from the commercial sphere to the sphere of stock-breeding and adds them to animals of the same species, the newly transferred animals are joined to the already existing herd and become taxable cattle under the alms tax in the current year of taxation. The same holds true if animals are transferred via the social exchange, e.g., for dowry payment, for compensation in a consensual divorce, via kinship structures as in inheritance, or through unilateral acts such as a gift: the animals thus acquired become taxable cattle in the current tax year.

If the owner of cattle transfers his herds from the sphere of stock-breeding into that of the commercial exchange, the cattle undergoes, as the jurists say, a "functional" change. While remaining formally

(ṣūratān) cattle, the cattle are transferred into another sphere of increment value appropriation. No longer is the increment value expected to be the result of the herd’s natural development, but of the price for which it can be sold, in other words, of the increase in its commodity value that arises from the commercial exchange. This constitutes, as the jurists say, a change in the “function” (ma‘nā) of the herd, and they argue, that the sheer form (ṣūra) of the cattle is not sufficient to impose the cattle tax on a herd whose function (ma‘nā) it is to produce commercial profit. For that reason, the taxable amount of the cattle which has become a commercial property is calculated differently from the taxable amount of cattle held for stock-breeding: whereas for stock-breeding the taxable minimum is a herd of a specified number of animals of certain age-classes, for the tax on commercial commodities the number of animals is irrelevant—what counts is their commercial value as measured in money. The cattle-breeder who transforms his herd in goods for sale is not bound to pay the cattle alms tax in the current year and must pay the commercial alms tax only one year after he has transferred his animal from the sphere of the natural value production to the commercial one. Also, the exchange of one herd against another interrupts the fiscal year and exempts the cattle owner from the payment of the alms tax in the current fiscal year.

Hers that are held for stock-breeding on open pastures, however, cannot be transferred into the household sphere. Individual animals may be used as mounts and load-carrying animals, in which case they, as well as animals held in stables, form part of the household reproduction and are, therefore, tax free. But, herds transferred by the social exchange as payments for marriage, for consensual divorce,

49. Ibid.
50. Ibid., 166-67.
51. Ibid.
52. Qudūrī, op. cit., vol. I, 147; Kāšānī, op. cit., vol. II, 30, 34 (military purposes and "need"); Qādīkhān, op. cit., vol. I, 245-46; Sarakhsi, op. cit., vol. II, 165, 172; Fatāwā ʿĀlamgiriyya, op. cit., vol. I, 175. The non-taxable character of stallions which is defended by certain Hanafite jurists is clearly due to the fact that they form part of the circulation of prestige goods. See Sarakhsi, op. cit., vol. II, 188-89, who explains their special status through "the prestige of the horses in that period" (li‘izzatī‘l-khayl fi dhālikā‘l-waqt) and who states that the authorities are not entitled to collect taxes on them by force "because the horse is the object of everybody’s desire and it is a weapon" (li‘anna‘l-khayl ma‘ṣma‘ kulli ṣāmī) and that "its meat is not eaten according to Abū Ḥanīfa" (li‘anna ‘ainahu ghayru ma‘kuli‘l-lāḥm ūndahu) and that it does not, therefore, qualify as cattle that can be distributed to the poor; see also Qudūrī, op. cit., vol. I, 145; Fatāwā ʿĀlamgiriyya, op. cit., vol. I, 178.
etc., remain taxable cattle and will be taxed as such one year after their appropriation.\(^{53}\)

The household also can transform its goods into commercial property. Whether acquired through inheritance, testamentary bequest, gifts, or the social exchange (marriage payment, consensual divorce, settlements out of court), goods acquired through social relations may feed into the commercial exchange. The debate on the relationship between the commercial and the social exchange is mainly led in contract law and is there developed in great technical detail with regard to the murābaḥa-sale. But, it figures also in fiscal law. The eighth-century Hanafite doctrine shows a debate between Abū Yūsuf and Shaybānī which centers on the definition of trade and commercial exchange. Abū Yūsuf defines trade as the acquisition of property, while Shaybānī insists that trade only exists where the acquisition of property is realized through an exchange of commodities. Therefore, Abū Yūsuf teaches that goods acquired through inheritance and social exchange become commercial commodities through the simple intention to transform them into objects of the commercial exchange, whereas Shaybānī upholds the doctrine that such goods enter the commercial circulation only if their owner's intention to transform them into objects of commerce is accompanied by the practice of exchanging them against other commodities.\(^{54}\) Not only is this difference important on the theoretical level, but also it means that, according to Shaybānī, the goods become taxable only once they acquire the status of commodities through their being sold, bought and rented for other commodities or money with the aim of obtaining commercial profit. The classical Hanafite doctrine follows Shaybānī's teaching in defining the object of the commercial exchange (Arabic: al-ma'qūd ālaih) as a compensable commodity (Arabic: māl mutaqawwim) and in establishing the integration of these commodities into the practice of the commercial exchange as a condition for their taxability.\(^{55}\)

On the practical level, this doctrine concerning the transfer of goods and commodities from one sphere to the other shows that the

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\(^{54}\) Qāḍīkhān, op. cit., vol. I, 250; Fatawā ʿAlamgirīyya, op. cit., vol. I, 174; Sarakhšī, op. cit., vol. II, 169, 198 (the term icāra is, in this context, obviously the editor's mistake and should be replaced by ijāra).

cattle-breeder will always be taxed whether he receives cattle via commerce or the social exchange. He cannot transfer his cattle into the household sphere and he can escape taxation for the current year only if he exchanges his herds against other herds, or if he transforms them into commercial investment. The merchant, however, can transfer his merchandise into household goods and thus escape taxation, if he does so before the tax falls due. He can also transform the animals which he bought into cattle for stock-breeding and thus avoid the alms tax on his commodities for the current fiscal year.

Household goods can be transformed via the social exchange or the intergenerational transfer into commercial merchandise only if the recipient or the owner has the intention to invest them into trade and if he realizes this intention in practice. Cattle, on the other hand, that is transferred into stock-breeding via the social exchange or the intergenerational transfer is automatically transformed into taxable herds. The household goods in their entirety are, of course, non-taxable means of satisfying basic needs.

On the conceptual level, then, the jurists distinguish between three options open to the well-to-do Muslim for the placement of his property: a) satisfaction of his basic needs in the household sphere; b) acquisition of an increment value through the natural growth of cattle in stock-breeding; or c) investment into commercial enterprise. Goods and merchandise may then be optionally transferred from one sphere to the other. Such transfer interrupts the value production, and with it the taxability of the property of each particular sphere. Thus, it opens the possibility of tax evasion.

More importantly, the Hanafite doctrine on the alms tax organizes the references to these three spheres of social practices in a way that clearly characterizes them as autonomous systems of action having their own rules and norms. It is not the objective quality of the objects placed in these fields, but their owners’ subjective intent of placement and purpose which determines their character as household goods, merchandise, or taxable herds. The Hanafite juridical construction does not distinguish between society and economy, but characterizes household, commercial exchange and stock-breeding as optional choices for placement and social action. Agricultural taxes, however, do not share the same optional character. The urban production is not conceived of as a sphere of value production. Moreover, the Hanafite jurists do not develop the idea of an economic system because the economy as a system of its own is not the object of the jurists’ conceptual work (and insofar Polanyi has a point). Under
the fiscal law, the enterprise is not seen as an institution which exists independently of the individual or of the individuals who organize a commercial or productive activity (and insofar Max Weber is right). Instead, the household as a sphere of consumption is clearly separated from the spheres of stock-breeding and trade, in other words, the spheres in which the increment value is produced. These three different spheres of action constitute alternative options for the individual's economic activities. Whatever the option the individual owner chooses, it entails his obligation to follow the specific norms and the legal ordinances characteristic of each of these spheres of action. The differentiation between these three spheres of action clearly shows that it is false to speak, with regard to Islamic Law, of a non-existing legal differentiation between household and enterprise—even if the legal definition of enterprise is not situated in a concept of economy as a social subsystem and is not based on the concept of moral person. The solution of the Muslim law allows us to see that the negative checklist which is implied in taking Occidental institutions as the point of departure for inter-cultural comparison is not necessarily a positive guide to the understanding of other cultures and of societies' organization of the relation between social reproduction and the constitution of increment value.

The Hanafite jurists do not conceive of the relationship between household and commercial exchange as one of competition for rare resources, i.e., money and goods. There is no discernible effort to tax the household sphere nor to put a ceiling on the goods and the money which may be used tax-free to satisfy the "basic needs." In other words, no fiscal pressure is exerted on the household in order to incite its members to invest goods and money in the commercial exchange and thus to provide the necessary capital for the trade. Rather, the opposite is the case: the fiscal law discourages such transfers. The differentiation between the spheres of household economy and commercial exchange is not conceptualized in terms of competing systems with needs and constraints of their own, but rather in terms of options for the individual merchants and household chiefs. Only if the profits to be expected from trade surpass the taxes on the investment, will the household chief engage in trade.

So far, the Hanafite concept reminds us of early Renaissance conceptions of fiscal policy in Florence described by D. Herlihy:56 forced

loans to the state were imposed on the Florentine merchants and were calculated on the basis of merchants' business capital, whereas household goods were exempted from this kind of taxation. The result was an increasing transfer of capital into the household sphere because in order to withdraw capital from taxation, the wealthy families bought works of art which constituted tax-free household goods, thereby transferring their wealth into the household sphere, waiting for a better opportunity to re-transmit it into capital. In terms of state income, this policy was hardly of maximum efficiency. In terms of transfer options of the individual merchant and household chief, however, it proved to be efficient.

The same idea appears to hold true of the Hanafite concept of the religious alms tax. It does not impose taxes on household wealth. Instead, the obligation to pay taxes ceases with the transfer of the taxable property from the sphere of the commercial exchange to the household sphere; the household may, in fact, serve as a tax-free storehouse for stocks of goods earmarked either for consumption or for transfer into commerce—the household chief has the option. Additionally, the urban taxpayer is not, contrary to the cattle-breeder and the peasant, exposed to the tax-collector, or subject to a fiscal control of his property. Instead, he is entitled to pay his alms tax to people of his own choice as long as they correspond to the categories of "alms-deserving" people defined by the law. Thus, it becomes obvious that this tax is conceived as a means to reconcile religious ethics: the giving of alms, with a maximum choice of options for merchants and household chiefs, not as a means of providing a maximum state income. This aim is clearly emphasized by the jurists' stress on the taxpayer's intent as a decisive criterion for his obligation to pay taxes. The fact that other forms of taxes, such as the land tax, are less open for choice of options demonstrates that such taxes are more centered on assuring a maximum of state income.

The practical justification of the Hanafite legal ordinances concerning the alms tax lies in the delimitation of different social spheres of action from each other and the tax advantages that arise from it. It is this delimitation and differentiation which renders the choice of options available for the merchants and the urban household chiefs and which gives, at the same time, a rational and theoretical justification for it.

57. Ibid., 4-5.