Recalibrating *Takāful*'s Compass to Mālikī Sources: Revisiting Classical Proofs for Modern Claims

Habiba Afridi
Independent Scholar

Abstract

This article revisits the tabarruʿ *(donative) versus* muʿāwaḍa *(onerous/reciprocal exchange) distinction in the Mālikī school—a widely invoked justificatory frame for* takāful *(Islamic insurance)—and examines how far that distinction transposes to* takāful*'s constitutive contract. It traces the reception history and excavates its classical origins, bringing to light three overlooked insights: al-Qarāfī's three-feature* gharar *(uncertainty) test for exchange contracts, Mālik's tripartite taxonomy of legal dispositions, and his rationale for tolerating* gharar *in gratuitous contracts. The argument starts with an orientation that surfaces the paradigm-level assumptions and disciplinary priorities often latent in* takāful*'s doctrinal-technical debates and clarifies the article's scope and methodological limits. It then proceeds to a logical deconstruction of the received dichotomy, then to a reconstruction of its reception pathway, and finally to a close reading of its classical Mālikī sources. Engaging al-Qarāfī's Distinction 24 (the standard reference point for the issue) together with the canonical Mālikī text* al-Mudawwana*, the article proposes a constructive recalibration: shifting discourse away from a rigid, label-driven* tabarruʿ – muʿāwaḍa *binary toward Mālik's tripartite scheme, guided by al-Qarāfī's three features and more faithful to the Islamic moral-juristic economy.*

Keywords: consideration/exchange (*muʿāwaḍa*), gratuitous exchange (*tabarruʿ*), Islamic finance, Islamic insurance (*takāful*), Mālikī law, objectives of Islamic law (*maqāṣid*), uncertainty (*gharar*)

Introduction

Islamic insurance (*takāful*) is said to be valid notwithstanding the uncertainty (*gharar*) in indemnity because the parties' core undertaking is gratuitous (*tabarruʿ*), and the prohibition of *gharar* attaches to onerous exchange (*muʿāwaḍa*), not to donation. Contemporary standard-setting instruments such as the Accounting and Auditing Organization for Islamic Financial Institutions' (AAOIFI) "Shari'ah Standards"[1] and state-endorsed resolutions,[2] and juristic treatments[3] frequently present this special tolerance for *gharar* in gratuitous dispositions as a Mālikī doctrine that other schools (*madhāhib*, sg. *madhhab*) have adopted by necessity, thereby supplying a principal basis for *takāful*'s legitimacy.

This article tests the received claim by recovering its classical Mālikī foundations and mapping those foundations onto contemporary *takāful*. It proceeds in three stages: Section 1 zooms out to locate the article's narrow doctrinal entry point within the wider anthropological aims and stakes that animate the inquiry in order to render the ensuing constraint a deliberate methodological choice rather than an omission. Section 2 starts the inquiry by tracing a plausible reception pathway by which Shihāb al-Dīn al-Qarāfī's (d. 684/1285) nuanced juristic formulation became an oversimplified industry axiom. Section 3 zooms in on the principal Mālikī point of reference—al-Qarāfī's Distinction 24—as the classical anchor for the *tabarruʿ–muʿāwaḍa* framing. The section analyzes this doctrinal

1 Accounting & Auditing Org. for Islamic Fin. Insts, Shari'ah Standard No. 26: Islamic Insurance App. B: The Shari'ah Basis for the Standard (Eng. ed) 690–91, https://aaoifi.com/ss-26-islamic-insurance/?lang=en (last visited Oct. 13, 2025) ("Permissibility of cooperative/mutual/social insurance stems from the fact that it is based on cooperation and donation, rather than on *muʿāwaḍa* (exchange contract). It is well known among the *fuqahāʾ* (Mālikī school) that *gharar* has no impact on donation contracts.").

2 Shariah Advisory Council of Bank Negara Malay., Shariah Resolutions in Islamic Finance, 65 (2d ed. 2010), https://www.bnm.gov.my/documents/20124/9198675/shariah_resolutions_2nd_edition_EN.pdf.

3 Ḥamad Ḥammād ʿAbd al-ʿAzīz al-Ḥammād, *ʿUqūd al-taʾmīn ḥaqīqatuhā wa-ḥukmuhā*, 65–66 Majallat al-Jāmiʿa al-Islāmiyya biʾl-Madīna al-Munawwara 76 (1985); Aly Khorshid, Islamic Insurance 61 (1st ed. 2004).

architecture and applies its functional markers to contemporary *takāful* in a narrowly doctrinal sense of transposability.

Section 1: Aims, Scope, and Context of Inquiry

This section maps the interlocking registers in which debates about insurance—and by extension *takāful*—take place in order to clarify the anthropological stakes, doctrinal entry point, and methodological limits of my argument from the outset.

First is the moral register, in which the animating concern is compliance with religious values, and doctrinal reasoning functions as an instrument for achieving it. Proponents frame *takāful* as a constrained pursuit of *sharīʿa* compliance under non-ideal conditions[4]—sometimes via "lesser harm" reasoning[5]—whereas critics treat it as an illicit compromise with Islamic jurisprudence.[6] Some argue that, far from the proclaimed spirit of cooperation, certain *takāful* implementations can be more disadvantageous to participants than conventional insurance.[7]

4 In early deliberations of the Islamic *Fiqh* Academy of the Organization of the Islamic Conference (OIC)—published in its *Majallat majmaʿ al-fiqh al-Islāmī* (1986)—scholars treated Islamic insurance as a constrained, pragmatic, and temporary accommodation, to be augmented and revised. 2 Majmaʿ al-fiqh al-Islāmī, Majallat majmaʿ al-fiqh al-Islāmī 606–07 (1986) ("We live in a situation where Islam is completely absent from the Arab nation as a whole—save for what remains of the shadows of creed and worship. As for Islamic Jurisprudence (*fiqh*), it has no presence in society, neither among individuals nor the collective, except in very rare instances …. We must temporarily establish a practical insurance system that current states and governments allow to function …. Indeed, we are now facing a temporary Islamic insurance, so let us wait.")

5 *See, e.g.*, *Ruling on Cooperative Insurance*, Dāʾirat al-iftāʾ al-ʿāmm (May 10, 2024), https://www.aliftaa.jo/en-fatwas/696/Ruling-on-Cooperative-Insurance (demonstrating that Jordan's Dār al-Iftāʾ endorses cooperative insurance as the "lesser of two evils" relative to commercial insurance; it does not spell out the cooperative model's contractual mechanics, but it expressly anchors the permissibility in the OIC International Islamic *Fiqh* Academy's *fatwā*).

6 For a critique of *takāful* in general and its *waqf*-based model in particular, see Muḥammad Rāshid Daskawī, Murawwaja takāful ka-fiqhī jāʾiza (2013).

7 Al-Sāʿātī, for example, argues that "Islamic insurance companies bear lower risks and achieve greater gains," since deficits are covered via a recoverable loan to the policyholders' account, and *muḍāraba* lets the operator share in gains (*al-ghunm*) but not losses (*al-ghurm*).ʿAbd al-Raḥīm ʿAbd al-Ḥamīd al-Sāʿātī, *Idārat al-gharar fī al-taʾmīn al-taʿāwunī*, 23 J. King Abdulaziz Univ. Islam. Econ. 85, 109 (2010).

Second is the doctrinal register, which asks whether *takāful*, as a purportedly Islamic contract form, satisfies the criteria of Islamic jurisprudence. For pragmatic reasons, this article foregrounds that register, while nevertheless considering it as analytically incomplete in isolation.

Third is the economic register, which evaluates *takāful* in terms of, *inter alia*, efficiency and risk-sharing performance, welfare and distributional incidence, and incentive and information effects, often articulated through policy idioms oriented around *maqāṣid* (objectives of Islamic law) rather than fine-grained doctrinal analysis.[8]

Fourth is the political-economic register. Here insurance functions as a development infrastructure, shaping which projects become financeable and on what terms, and where surpluses settle. Because modern insurance can generate outward premium/reserve flows and place large-risk coverage decisions—often mediated through reinsurance—outside the domestic economy, it can operate as a developmental chokepoint. Timur Kuran's account of the Ottoman Empire illustrates this dynamic, linking the insurance sector to foreign consortia control of large infrastructure, exclusionary distributional effects marginalizing local majority Muslims, and outward wealth transfer via foreign-headquartered insurers.[9] A later illustration is Saudi Arabia's post-oil devel-

8 Economic-register debates on *takāful* are not uniformly approving. El-Gamal, for example, criticizes contemporary *takāful* as part of a broader pattern of "rent-seeking" *sharīʿa* arbitrage with attendant transaction costs and efficiency costs, calling for restructuring around substantive mutuality and agency. He frequently frames his critique in *maqāṣid al-sharīʿa* terms. While he does discuss the juristic logic of *gharar*, his engagement with classical *fiqh* literature is comparatively thin. For example, he cites Bank Al-Jazira's "pure agent" (*wakīl*) model as the "most widely accepted" way of neutralizing *gharar*—via mutuality rather than commutative exchange, without elaborating on and tracing the claim's jurisprudential pedigree in that discussion. See Mahmoud A. el-Gamal, Islamic Finance: Law, Economics and Practice 170 (2006). By contrast, Ahmad & Hasan offer a more approving, *maqāṣid*-inflected economic account of *takāful*, presenting regression evidence from Malaysia that *takāful* industry growth supports economic development. Abu Umar Faruq Ahmad & Rashedul Hasan, *A Critical Review of Takaful Companies' Contributions to Economic Developments in Fulfilment of Maqasid al-Sharīʿah: Evidence from Malaysia*, *in* 1 Enhancing Financial Inclusion through Islamic Finance 91 (Abdelrahman Elzahi Saaid Ali, Khalifa Mohamed Ali & Muhammad Khaleequzzaman eds., 2020).

9 Timur Kuran, The Long Divergence: How Islamic Law Held Back the Middle East 30, 194–99 (2010).

opment, where dependence on foreign insurers raised concerns about sustained capital flight and helped motivate domestication efforts, including the institutionalization of *takāful*.[10]

An associated fifth register is the institutional-ecosystem register in which proponents defend *takāful* as more than as a risk-management contract framed primarily in terms of individual and commercial necessity. Rather, it is a risk-management infrastructure for Islamic finance itself, with individual and corporate participation serving as a conduit for institutional viability and scale and regulatory legibility.[11] Since the contemporary liberal-capitalist order is organized around continuous, investment-driven expansion rather than slow, organic continuity, it multiplies exposure and makes insurance a constitutive feature of market coordination. Islamic finance, operating as it does within this global order, typically either relies structurally on conventional insurance and reinsurance or develops an internal analogue. Proponents defend *takāful*, and especially re-*takāful*, as that analogue: a condition of scalability, supervisability, and institutional coherence rather than merely a retail option.[12]

---

10 Ammar Al-Jaser, Is Islamic Insurance Ready to Take the Lead? A Case Study of Saudi Arabian Insurance 41 (2014) (S.J.D. dissertation, Georgetown University Law Center).

11 The Islamic Financial Services Board (IFSB)—an international standard setter for Islamic finance—frames *takāful* as "critical to the development of the ecosystem required for the overall development of the industry" and notes that a World Bank–IMF Joint Note "called for integration of Islamic finance with the global financial system." It further adds that applying IFSB *takāful* standards, can provide the "harmonised regulatory framework … needed for the future growth of the *takāful* sector, particularly for organisations … engaged in cross-border business." Islamic Fin. Services Board & World Bank, Realising the Value Proposition of the Takāful Industry for a Stable and Inclusive Financial System, at ix–x, 160 (2017), https://www.ifsb.org/wp-content/uploads/2023/10/IFSB-World-Bank-Joint-Publication-on-Realising-The-Value-Proposition-of-the-Tak257ful-Industry-for-a-Stable-and-Inclusive-Financial-System_En-1.pdf. Gönülal's World Bank-published book likewise notes that *takāful* was conceived "out of the need for Islamic banks" to obtain *sharīʿa*-consistent coverage, underscoring its institutional (not merely retail) function. Takaful and Mutual Insurance: Alternative Approaches to Managing Risks 71 (Serap O. Gönülal ed., 2013).

12 IFSB frames re-*takāful* as a scalability and system-coherence constraint, noting that conventional cession is often defended via *ḍarūra* (necessity) because without it, *takāful* and re-*takāful* undertakings would be "unable to maintain or to expand the level of their business," citing "a lack of capacity of appropriate quality in the *Retakāful* sector." Islamic Fin. Serv. Bd., Guiding Principles for Retakāful

Sixth is the register of power and governmentality. From a Foucauldian perspective,[13] insurance functions as a technology of governance by conditioning access to central domains of private, social, and economic life, including mobility, housing, employment, trade, and industrial production. Individuals and firms may formally own cars, homes, or enterprises, yet remain unable to operate them without insurance authorization. This is the liberal paradox: insurance governs by conditioning access even as it liberates us from liability. Historically, this governing role has extended beyond market coordination into the exercise of state power in both war and peace,[14] and it takes renewed salience in contemporary data-intensive, platform-mediated political economies, sometimes described as a technofeudal order.[15]

(Islamic Reinsurance) 34 (2016), https://ceif.iba.edu.pk/pdf/IFSB-GuidingPrinciplesforRetak%C4%81ful(IslamicReinsurance)2016.pdf.

13 *See* Francois Ewald, *Insurance and Risk*, *in* The Foucault Effect: Studies in Governmentality 200 (Graham Burchell, Colin Gordon & Peter Miller eds., 1991). Ewald, though more analytical than critical, calls insurance a "technology of risk" and a rationality "capable of transforming the life of individuals and that of a population." More critical governmentality-oriented sociology treats insurance as a modality of governance beyond the state that structures institutions and everyday conduct. *See, e.g.*, Richard V. Ericson, Aaron Doyle & Dean Barry, Insurance as Governance (2003).

14 Luis Lobo-Guerrero, inspired by Foucault, primarily focuses on the British "Commercial Kingdom" as his central case study for "insurantial sovereignty," yet he also reaches beyond Britain to discuss other western governments and supranational security actors—e.g., EU anti-piracy operations and Lloyd's cooperation with NATO—to show how insurance quietly shapes security environments in both peace and war. In peacetime, he argues, the "most prominent" manifestation of this "insurantial sovereignty" lay in neutralizing class struggle among "populations experiencing dramatic economic and social change as a result of industrialising processes." Through accident and social insurance as "bourgeois solutions to proletarian problems," governments sustained "social and political peace in an age of revolution." During war time, insurance helped the British government endure and sustain conflict: in World War I it established a War Risks Insurance Scheme to "ensure security of food supply in time of war"; because private insurers would have laid up ships under prohibitive rates, the state acted as reinsurer of last resort to "keep the merchant fleet sailing under the threat of enemy action." Luis Lobo-Guerrero, Insuring War: Sovereignty, Security and Risk, at xvi, 1, 4, 57 (2012).

15 "Technofeudal" is used here as a heuristic descriptor, associated especially with Yanis Varoufakis, for platform-mediated forms of economic coordination and dependence; the essay does not rely on the term's broader historical or normative claims. *See* Yanis Varoufakis, Technofeudalism: What Killed Capitalism (2023).

The same actuarial-informational infrastructures that make persons and assets insurable, such as granular data on sites, inventories, productive capacity, and exposure, have at times been repurposed to render industrial capacity and human life legible and targetable.[16] In this register, insurance governs less through overt coercion than through the technical organization of access, visibility, and vulnerability.

Each of these registers captures something real. Yet taken in isolation, they frame *takāful* respectively as a problem of *sharīʿa* compliance, functional efficiency, developmental necessity, institutional self-preservation, or governmental power—partial descriptions of a deeper dynamic. *Takāful* does not merely distribute risk; it reconfigures how human beings encounter consequence, obligation, and contingency in ordinary life, a transformation that standard moral-philosophical framings often register only incompletely because this transformation is mediated through institutions, techniques, and habituated practices rather than discrete individual choices. That is why I treat the question as irreducibly anthropological. The core concern of the broader research program—of which this article forms one part—is that *takāful* can (de)form moral agency itself, with effects that cut across the other registers and recast the very dynamics they seek to explain. Because this approach does not just address risk-management but also illuminates how risk may be created through incentive distortions such as moral hazard and then amplified through positive feedback loops. Ulrich Beck

16 Drawing on Feldman and Fritz, Lobo-Guerrero cites multiple wartime examples of insurance operating as an intelligence tool. In the Nazi period, the Third Reich used Allianz's life-insurance/actuarial records to locate and expropriate the assets of "the enemies of the people and the State," including Jews and communists. On the Allied side, the American Office of Strategic Services (OSS) (X-2) created an Insurance Intelligence Section (1943) that acquired blueprints of strategic industrial facilities by tracking facilities for which reinsurance was being sought in the market. Declassified OSS material also recounts that a British insurer's San Francisco office resold Panama Canal coverage to two Japanese firms (1941), and that, in connection with this insurance, detailed descriptions of the canal's locks and machinery—critical U.S. infrastructure—were transmitted to Tokyo. He treats these episodes as instances of an "intimate relationship" between statehood and actuarial resources, and situates them within his larger thesis of "insurantial sovereignty." Lobo-Guerrero, *supra* note 14, at 2–3.

makes a closely related point: modern society generates the risks it later seeks to contain and insure against.[17]

In Islamic legal-theoretical terms (*uṣūl al-fiqh*), insurance risks reshaping *fiqh*'s construction of the morally accountable agent (*mukallaf*) whose juridical liability capacity (*dhimma*) is the locus of obligation, liability, and discharge. By permitting the insured to externalize risk, insurance can reconfigure the very texture of *taklīf* by altering the conditions under which the *mukallaf*'s *dhimma* is borne, shared, or effectively transferred. In classical juristic grammar, liability or *dhimma* is not treated as a detachable commodity.[18] Thus *kafāla* (suretyship) is permissible on a gratuitous basis precisely because it is not a sale of *dhimma*: the guarantor's *dhimma* is joined to that of the principal (*ḍamm al-dhimma ilā al-dhimma*), so the creditor may claim from either.

17 Ulrich Beck, Risk Society: Towards a New Modernity 12 (reprt. ed. 2009) ("The argument is that, while in classical industrial society the 'logic' of wealth production dominates the 'logic' of risk production, in the risk society this relationship is reversed.")

18 Across classical discussions of transactions, jurists repeatedly treat *dhimma* (financial liability) as a relational obligation, not a detachable, fungible commodity. One illustrative locus is their prohibition of *qisma* (partition) of jointly owned debt claims (*dayn*) owed by multiple debtors: the creditors generally cannot simply agree, "You take Zayd's debt and I take ʿAmr's," as though each claim were an equivalent unit. They observe that liabilities do not equate nor balance (*lā tatakāfaʾ wa-lā tataʿādal*) because obligors differ in solvency and creditworthiness. Partition in unequal components is only completed by *taʿdīl* (equalization): one side must be compensated so the shares match. Once compensation becomes necessary, the operation is no longer mere partition; it functions as an exchange in substance, and in the debt setting that exchange readily takes the form of debt-for-debt (*bayʿ al-dayn biʾl-dayn*) or liability-for-liability (*dhimma bi-dhimma*), which is prohibited. Relatedly, jurists define true partition as *ifrāz* (severance/demarcation) that presupposes *tamyīz* (individuation), and they deny that such severance is even conceptually realizable within a single debtor's liability prior to collection. Thus, if one debtor owes a joint debt to two creditors, neither creditor can stipulate that "the first half collected will be mine and the remainder yours," because no prior "severance" inside the *dhimma* is imaginable and the claim is therefore not yet allocatable; only once collection occurs does a possessed sum exist that is then allocatable. In other words, doctrine resists *dhimma*-based allocation-by-severance that operationally mimics trading claims, while conceding *dhimma*-mediated discharge-by-clearing of *ḥawāla*, as a settlement device. *See, e.g.*, 20 Shams al-Dīn al-Sarakhsī, al-Mabsūṭ 131 (Maṭbaʿat al-Saʿāda, Cairo, n.d.); 21 *id.* at 39; 25 *id.* at 170; 4 Mālik b. Anas, al-Mudawwana al-kubrā 277 (Dār al-Kutub al-ʿIlmiyya 1994); 7 Muḥammad ʿUlaysh, Manḥ al-jalīl sharḥ Mukhtaṣar Khalīl 266 (Dār al-Fikr 1984); 16 Abū al-Ḥasan ʿAlī al-Māwardī, al-Ḥāwī al-kabīr 1269 (Dār al-Kutub al-ʿIlmiyya 1999); 6 *id.* at 484; 5 Abū Muḥammad ʿAbd Allāh Ibn Qudāma, al-Mughnī 60 (Maktabat al-Qāhira 1969).

For this reason, the jurists of the four Sunnī schools generally treated *kafāla* as *tabarruʿ* and did not allow guarantors to charge a fee for the mere assumption or co-joining of *dhimma*.[19] Similarly, *ḥawāla* (transfer of debt) too was construed as a voluntary relocation of obligation rather than a commutative exchange of liability; hence compensation for the transfer as such was not approved within the classical framework.[20]

By effectively rendering *dhimma* a commodifiable object, this reconfiguration of *taklīf* distorts moral agency and, in turn, threatens the very goods that *maqāṣid* reasoning seeks to safeguard, namely, religion, life, intellect, lineage, and wealth. Accordingly, narrower doctrinal questions—such as how to characterize insurance (*takyīf*) and thus trigger or tolerate *gharar*; whether risk alone can constitute a valid object of contract (*maḥall al-ʿaqd*) and thus be commodifiable; and whether the rationale behind the prohibition of wager-like instruments, such as unjust appropriation of others' wealth, applies to *takāful*—are best read not as isolated compliance checkpoints but as local

19 Jurists from across the four Sunnī schools generally treat unbundled guarantee—i.e., *kafāla* issued on its own and not tied to a larger exchange or wrongful act—as a gratuitous *ʿaqd tabarruʿ*. Even when some analyses shift rubrics across stages—e.g., *tabarruʿ* at initiation but exchange-like at discharge for doctrinal coherence—the prevailing characterization remains gratuity or benevolent accommodation (*irfāq*), not a commodified liability instrument. This holds across jurisdictions and terminologies (e.g., *kafāla*/*ḍamān*/*ḥamāla*/*zaʿāma* etc). *See, e.g.*, 19 al-Sarakhsī, *supra* note 18, at 170; 30 *id.* at 148; 3 Mālik, *supra* note 18, at 77–78; 1 Ismāʿīl b. Yaḥyā al-Muzanī, al-Mukhtaṣar min ʿilm al-Shāfiʿī wa-min maʿnā qawlih 564 (Dār Madārij lil-Nashr 2019); 14 Ibn Qudāma, *supra* note 18, at 567.

20 The four schools of Islamic jurisprudence concur that a valid *ḥawāla* (debt transfer) fundamentally requires absolute parity (*tasāwī*) between the debt transferred and the debt owed. This equality must encompass quantity (*qadr*), quality (*ṣifa*), and genus (*jins*). Because *ḥawāla* is legally categorized as a contract of concession or charitable assistance (*irfāq/maʿrūf*) rather than a commercial exchange, any discrepancy in value—such as swapping low-quality coins (*nabahraja*) for high-quality ones (*jiyād*)—invalidates the contract. Jurists warn that such imbalances transform the arrangement into either *ribā* (usury) or an impermissible sale of debt for debt (*bayʿ al-dayn bi'l-dayn*). While fees for distinct administrative services, such as agency or transport, may be permissible, they cannot function as a profit on the transfer itself. *See, e.g.*, Muḥammad b. al-Ḥasan al-Shaybānī, al-Jāmiʿ al-kabīr 329 (Dār al-Maʿārif 1981); 3 Abū Bakr al-Jaṣṣāṣ, Sharḥ Mukhtaṣar al-Ṭaḥāwī 221 (Dār al-Bashāʾir al-Islāmiyya wa-Dār al-Sirāj 2010); 9 Shihāb al-Dīn al-Qarāfī, al-Dhakhīra 244 (Dār al-Gharb al-Islāmī 1994); 7 Muḥammad b. Yūsuf al-Mawwāq, al-Tāj wa'l-iklīl li-Mukhtaṣar Khalīl 26 (Dār al-Kutub al-ʿIlmiyya 1994); 7 Ibn Qudāma, *supra* note 18, at 59.

doctrinal sites where the *taklīf-dhimma* architecture, understood to extend beyond individual burden bearing to charitable mutual support, is practically specified, tested, and contested.

This broader, *taklīf*-inflected anthropological stake also means that the object of analysis is not insurance in isolation, but rather consequence-displacing mechanisms more generally. Insurance primarily offers economic consequence shielding; juridical artifacts such as legal personhood and limited liability can furnish legal consequence shielding; and certain responsibility-attenuating doctrines, especially expansive appeals to necessity (*ḍarūra*), can provide conscience shielding by softening self-implication and guilt. The common thread is the weakening of the feedback between agency, consequence, and moral self-attribution that ordinarily produces prudence and restraint. Thus, just as the multiple registers elaborated above clarify that doctrine alone cannot explain the problem of insurance, anthropological stakes clarify that insurance alone is not the sole site of the problem.

While such a scope may appear expansive, the relevant threads connect naturally within the classical *fiqh* tradition. In that tradition, *sharīʿa* compliance is not a procedural test satisfied in the letter through loophole engineering, but a substantive safeguard that must be preserved in spirit, thus forming moral agency and social order, and thereby enabling the community to negotiate the terms of political-economic engagement rather than simply to absorb them. For Muslims, it can also function as a decisive point of practical reference amid what Alasdair MacIntyre described as the "interminable disagreement" characteristic of liberal discursive orders.[21] This article therefore adopts a doctrinal entry point, not because the problem is reducible to doctrine, but because doctrinal fidelity preserves *sharīʿa*'s normative integrity, and thereby helps secure the conditions under which ethical agency can be formed and sustained across the other registers the debate invokes.

Yet doctrinal fidelity requires distinguishing between pressures that legitimately inform juristic reasoning and those that impermissibly deform it. Epistemic considerations internal

21 Wael Hallaq, Restating Orientalism: A Critique of Modern Knowledge 191 (2018).

to *fiqh* grammar—such as assessing the degree of necessity (*ḍarūra*) and authorizing calibrated dispensations (*rukhṣa*)—are legitimate modes of reasoning recognized by the tradition itself. By contrast, pressures that pre-commit juristic reasoning to extrinsic ends are external distortions that strip *fiqh* of normative independence and degrade it into justificatory compliance. In many Islamic finance products, including *takāful*, juristic reasoning is better understood as institutionally conditioned rather than methodologically neutral: standard-setting committees often deliberate with a target functionality already in view and then pursue retrospective evidentiary search and justificatory rationalization, rather than a *de novo* assessment of the problem across the registers mapped above. These epistemic pressures operate within a broader political-moral economy of Islamic finance, in which products emerge under regionally variable demands for legitimacy and are further conditioned by state interests and global capital structures. The controversy around AAOIFI's draft "Standard 62" on *ṣukūk* (Islamic financial certificates) makes this dynamic visible: a reform, framed as closer adherence to risk-sharing, prompted warnings that it could "add complexity and raise costs" and might "put off investors," while senior market voices suggested it "may never come into force," emphasizing that "hurting issuance wasn't their intention."[22]

Under such political-economic pressures, political actors often epistemically construct rather than ontologically identify concepts such as "need," "progress," and "development." Governments do not simply discover necessity as an organic social demand; they actively manufacture and cultivate it through law, regulation, and infrastructural design.[23] Pakistan's relatively

22 Jennifer Hughes & Ian Smith, *Contentious Sukuk Rule May Never Come into Force, Says IsDB Chair*, Fin. Times, Oct. 23, 2025, https://www.ft.com/content/8978d2b7-1a87-47bd-b2a7-e0834d086efe.

23 Pakistan's recent trajectory further illustrates this top-down push: constitutional signaling toward the elimination of *ribā*, a widening regulatory embrace of *takāful* by the SECP (including re-*takāful* capacity, centralized data platforms, and a phased transition strategy), and provincial rollout of state-funded life *takāful*. See: Pak. Const. art. 38, cl. f; *SECP Facilitates Signing of Agreement Between Insurance/Takaful Companies and CDC to Join Centralized Information Sharing Solution for Health Insurance*, Sec. & Exch. Comm'n of Pak. (n.d.), https://www.secp.gov.pk/media-center/press-releases/secp-facilitates-signing-of-agreement-between-in-

late formal entry into *takāful* (often dated to its 2005 *Takāful* Rules), in comparison to Malaysia's earlier statutory adoption (notably, its 1984 *Takāful* Act), can be read as suggestive of differing state-jurist configurations. In more state-coordinated settings, uptake and standardization can proceed faster, whereas in more contestatory scholarly ecologies, doctrinal disputes may remain open longer and slow consolidation. This is not a definite claim, but a plausible explanation of how *takāful*'s development is shaped not only by juristic arguments but also by the political and institutional conditions that determine which juristic arguments are foregrounded and which are not.

This article foregrounds what has been backgrounded in global *takāful* debates. It thus pursues three parallel aims. Normatively, it seeks to realign contemporary *takāful* discourse with its purported Islamic economics roots, emphasizing substance over labels. As a disciplinary stewardship project, it recovers nuances embedded in the classical *tabarruʿ–muʿāwaḍa* discussions that recent treatments often flatten. Doctrinally, it assesses how far that distinction can be legitimately invoked and mapped onto contemporary Islamic insurance.

Having clarified the article's aims and scope, I now specify its limits. Despite its broader concern, the present analysis is confined to one micro-level evidentiary strand within contemporary *takāful* justification: the *tabarruʿ–muʿāwaḍa* dichotomy as attributed to al-Qarāfī, which I find insufficiently probative. Other Mālikī and non-Mālikī approaches to justify *takāful* in general, or particular forms of it—whether as a comprehensive permissibility claim across contexts or as a concessionary, transitional accommodation varying by time and place—implicate different jurisprudential mechanics, warrant independent treatment, and may yield different conclusions.

Finally, my argument acknowledges that *sharīʿa* rulings presuppose and operate within a sustaining social-moral ecology. The four canonical schools' shared stance on keeping *kafāla* strictly gratuitous,[24] a stance that effectively bars the commodi-

surancetakaful-companies-and-cdc-to-join-centralized-information-sharing-solution-for-health-insurance/ (last visited Aug. 19, 2025).

24 See *supra* note 19.

fication of standalone risk, made practical and normative sense in the premodern social order. In this context, a fabric of tight-knit kinship, communal obligation, and trade-based associative forms—guild-like pacts and mutual undertakings—and institutions such as the *ʿāqila* framed loss-sharing as a form of socially obligated assistance rather than a priced, premium-for-indemnity exchange.[25] Juristic error therefore arises both from transplanting premodern risk rulings into today's ruptured social-moral-political fabric without reckoning with that missing ecology, and from accepting the rupture as fixed and refashioning *sharīʿa* to conform to it. This dilemma exceeds both approaches and marks a fertile research agenda not merely on managing risk but on recovering the moral rationalities, social forms, and institutional and developmental capacities that once rendered recourse to artificial risk-transfer institutions unnecessary or illegitimate in the first place.

Having situated the problem and its broader horizon at an anthropological level, I now deliberately narrow my inquiry to one doctrinal locus, tracing the career of al-Qarāfī's *tabarruʿ–muʿāwaḍa* dichotomy as a justificatory device in contemporary Islamic insurance.

Section 2: Deconstructing the Argument, Mapping Its Reception

The toleration of *gharar* in gratuitous contracts is not a uniquely Mālikī position, though it has become closely associated with the school, arguably due to al-Qarāfī's influential framing. More accurately, the juristic schools span a range of views regarding the effect of *gharar*, and neat boundaries are difficult to draw: some schools tolerate it in certain gratuitous dispositions but not others. Broadly, the seventh/thirteenth-century Ḥanbalī jurist Ibn Taymiyya (d. 728/1328) reflects a comparatively more lenient line, often converging with Mālikī thought, whereas Shāfiʿī doctrine tends to be more restrictive, with Ḥanafī closer

25 *ʿĀqila* refers to the offender's agnatic kin-group collectively liable for paying blood money (*diya*), especially in cases of accidental homicide.

to the middle.[26] Accordingly, when Ḥanbalī-oriented bodies like the Council of Senior Ulema of Saudi Arabia articulate such tolerance without reference to Mālikī school,[27] the omission can be consistent with their internal doctrinal framework. By contrast, when Shāfiʿī-oriented treatments reach a similar position, explicit attribution and a method-consistent rationale for the departure help to preserve doctrinal coherence within the Shāfiʿī framework. For example, Bank Negara Malaysia, which operates in a Shāfiʿī-default jurisdiction that allows cross-school borrowing for the purposes of public interest,[28] presents *tabarruʿ* as "the pillar in *takāful* system [sic] that makes the *Gharar* (uncertainty) element allowable," with no reference to the underlying juristic transplantation,[29] although its "Shariah Resolutions" do make that attribution.[30] This intra-corpus variance likely reflects considerations of genre and condensation, but it can mislead by implying that the tolerance is axiomatic.

Logically deconstructed, the Mālikī *tabarruʿ–muʿāwaḍa* distinction and the associated tolerance of *gharar* in *tabarruʿ* is built on three premises: within the Mālikī tradition, (i) contracts divide cleanly into *muʿāwaḍa* or *tabarruʿ*; (ii) *gharar* does not vitiate *tabarruʿ*; and (iii) *takāful* is (contemporarily) classified as

---

26 Taqī al-Dīn Aḥmad Ibn Taymiyya treats *ribā* and *gharar* as twin sources of contractual corruption and argues that the harm of *gharar* is lighter than that of *ribā*. He compares the juristic schools' treatment of *gharar*, censures jurists who conflate the two harms, and commends the Mālikī school for its relative balance. For his analysis of *gharar*, see Aḥmad b. ʿAbd al-Ḥalīm Ibn Taymiyya, al-Qawāʿid al-nūrāniyya al-fiqhiyya 168–256 (Aḥmad b. Muḥammad al-Khalīl ed., Dār Ibn al-Jawzī 2001).

27 Qarār Raqm 51 wa-Tārīkh 4/4/1397 bi-shaʾn al-Taʾmīn al-Taʿāwunī [Res. no. 51 of Mar. 25, 1977 on Cooperative Insurance], *in* Qarārāt Hayʾat Kibār al-ʿUlamāʾ 119 (Council of Senior Scholars n.d.) (Saudi Arabia).

28 Al-Hafiz b. Ishak, *IRSYAD USUL FIQH SIRI KE-77: Bilakah Keadaan Yang Dibenarkan Untuk Mengambil Pandangan Mazhab Lain?* [*When Is It Permitted to Adopt the View of Another Madhhab?*], Federal Territories Mufti Office (May 2, 2025) (Malay.), https://www.muftiwp.gov.my/ms/artikel/irsyad-usul-fiqh/6227-irsyad-usul-fiqh-siri-ke-77-bilakah-keadaan-yang-dibenarkan-untuk-mengambil-pandangan-mazhab-lain (explaining that per the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), §§ 34, 38, the default is the Shāfiʿī "*qaul muktamad*," with qualified recourse to Ḥanafī, Mālikī, or Ḥanbalī views as needed).

29 *General Takaful*, Bank Negara Malaysia 2, https://www.bnm.gov.my/documents/20124/792374/booklet.en.pdf (last visited Mar. 1, 2026)

30 Shariah Advisory Council of Bank Negara Malay., *supra* note 2.

a *tabarruʿ* contract. From these, the conclusion follows: *takāful* is valid despite *gharar*. Premises (i) and (ii) rest on a meta-assumption of taxonomic lineage and authenticity: Foundational Mālikī authorities articulated the *tabarruʿ*–*muʿāwaḍa* dichotomy and jurists have, since then, treated it as an authoritative, mutually exclusive, and functionally exhaustive scheme for allocating *gharar* rules. Premise (iii) rests on a meta-assumption of contemporary transposability in which this classical divide can be carried over, unmodified, to Islamic insurance or *takāful*, with no hybrid genus or intervening doctrine limiting its use. These meta-assumptions become evident when scholars and *sharīʿa* standards routinely classify conventional insurance as *muʿāwaḍa* (thus prohibiting it) and *takāful* as *tabarruʿ* (thus permitting it).

Having uncovered these underlying assumptions, I now turn to testing them. The central question is twofold: what classical Mālikī criteria distinguish *tabarruʿ* from *muʿāwaḍa* and thus activate or relax *gharar* rules? And to what extent do those criteria map onto the reciprocal (premium-for-indemnity) structure of contemporary *takāful*? To answer this, I first trace the reception pathway of the claim and then analyze the origin.

A plausible reception pathway runs through the Sudanese Mālikī jurist al-Ṣiddīq Muḥammad al-Amīn al-Ḍarīr (d. 2015), whose doctoral dissertation "*Gharar* and Its Effects on Contracts in Islamic Law" (*al-Gharar wa-atharuhū fī al-ʿuqūd fī al-fiqh al-Islāmī*) was approved in 1967.[31] Circulating in Sudanese legal-academic circles in the late 1960s and 1970s, it furnished an early doctrinal template directly germane to the contemporary problem of insurance and its inherent *gharar*. When Sudan launched the Islamic Insurance Company in 1979—the first *takāful* operator worldwide—policy and industry discussions drew on this analysis already in circulation.[32] The work

31 Al-Ṣiddīq al-Amīn al-Ḍarīr, al-Gharar wa-atharuh fī al-ʿuqūd fī al-fiqh al-Islāmī 14 (Dār al-Sūdāniyya lil-Kutub 1995).

32 While Ḍarīr's influence on the first Islamic insurance company is often acknowledged by academics, perhaps the cleanest evidence we have is that an Islamic insurance company in Sudan itself hosts and cites Ḍarīr in a company publication on its website: al-Ṣiddīq al-Amīn al-Ḍarīr, *al-Iʿtibārāt al-sharʿiyya li-mumārasat al-taʾmīn* (Islamic Ins. Co. Ltd. n.d.). https://www.islamicinsur.com/insurance_form/

filled a considerable gap by systematizing the *gharar* corpus and linking it to modern financial transactions. His contribution was later recognized with the King Faisal International Prize in Islamic Studies (1990)[33] for work on financial transactions. The subsequent book publication (1995) further consolidated and disseminated the framework.

In his dissertation, Ḍarīr's contribution was evident—among other respects—in three areas: (a) formulating "*gharar* theory" as a four-point test for when *gharar* becomes legally operative in contracts, which he explicitly presents as an inferential synthesis (*istintāj*) from juristic views without binding himself to any single school;[34] (b) highlighting the Mālikī *tabarruʿ–muʿāwaḍa* distinction;[35] and (c) cataloging a nine-item typology identifying where *gharar* may attach across the counter-values of a sale contract.[36] These framework-setting contributions are reflected in the *al-Mawsūʿa al-fiqhiyya al-Kuwaytiyya*—a flagship, state-sponsored reference compiled under Kuwait's Ministry of *Awqāf* and Islamic Affairs. The encyclopedia is a forty-five-volume project; the volume containing the *gharar* entry appeared in 1994. As a government-organized collective enterprise, entries cite classical sources rather than naming individual contributors; thus, it states the *tabarruʿ–muʿāwaḍa* dichotomy and cites al-Qarāfī, not Ḍarīr.[37] Yet the *gharar* entry's close alignment with Ḍarīr's (arguably novel) contribution makes it plausible that the compilers drew substantially on his work.

---

dareer.pdf (last visited Mar. 1, 2026). And while a website alone does not prove corporate identity, the Federation of Afro-Asian Insurers & Reinsurers (FAIR)'s member directory entry for "Islamic Insurance Company Ltd." (Sudan) lists that same domain as the firm's official website and classifies its business as "Takaful," making it very likely that this is the Sudan-based pioneer being referenced in the historical claim. Fed. of Afro-Asian Insurers & Reinsurers, Islamic Insurance Company Ltd., https://fair1964.org/company-details/islamic-insurance-company-ltd (last visited Mar. 1, 2026).

33 King Faisal Prize, King Faisal Prize, Islamic Studies (1990): al-Ṣiddīq Muḥammad al-Amīn al-Ḍarīr, https://kingfaisalprize.org/ar/professor-al-seddiq-m-al-darir/ (last visited Oct. 14, 2025).

34 Ḍarīr, *supra* note 31, at 583–84.

35 *Id.* at 525.

36 *Id.* at 175.

37 Ministry of Awqāf & Islamic Affairs (Kuwait), al-Mawsūʿa al-fiqhiyya al-kuwaytiyya 154 (Dār al-Safwa Press 1994).

The encyclopedia may have functioned as a high-visibility amplifier of his framework within Arabic reference culture. Through Mahmoud A. El-Gamal's *Islamic Finance: Law, Economics, and Practice* (2006), that framework entered Anglophone discourse. El-Gamal engages Ḍarīr's *gharar* theory and develops further analysis on that foundation.[38] El-Gamal's book is commonly assigned on Islamic finance course syllabi and is heavily cited in the research literature.[39] Pending fuller bibliographic verification, this pattern supports a cautious hypothesis that Ḍarīr's framework—amplified by the encyclopedia and transmitted via scholars like El-Gamal—has served as a principal conduit for the now-familiar *tabarruʿ–muʿāwaḍa* dichotomy underpinning much *takāful* discourse.

The point is not to claim that Ḍarīr was the first modern figure to surface the Mālikī *tabarruʿ–muʿāwaḍa* dichotomy; he attributes it to the seventh/thirteenth century al-Qarāfī,[40] and many jurists would likely have drawn on it over the centuries, since the basic contrast is intelligible and broadly consistent with juristic thought. Rather, the point is that contemporary use of the *tabarruʿ–muʿāwaḍa* dichotomy would benefit from the nuances of its classical origins, including those embedded in al-Qarāfī's formulation, so that contemporary discourse is better aligned with the Islamic moral-juristic economy. To recover those often-neglected nuances, it is useful first to observe how Ḍarīr introduces the dichotomy and then how al-Qarāfī himself explains it.

Ḍarīr's distillation of this dichotomy from al-Qarāfī, in his seminal study of *gharar*, is concise enough to cite verbatim. He opens a chapter titled "The Effect of *Gharar* in Gratuitous Contracts," and, under the subheading "The Mālikī School," writes: "The Mālikī school is distinguished from the other schools by adopting a general rule concerning *gharar* in gratuitous contracts, namely: all gratuitous contracts are unaffected

38 El-Gamal, *supra* note 8, at 58.

39 *E.g.*, *Cambridge Muslim College BA (Hons) in Islamic Studies: Module Specifications Year 2*, at 26 (Key reading list) https://www.cambridgemuslimcollege.ac.uk/wp-content/uploads/2021/06/Modules-Specifications-Year-2_Last-version.pdf (last visited Feb. 27, 2026).

40 Ḍarīr, *supra* note 31, at 525–26.

by *gharar* in their validity. Al-Qarāfī articulated this rule explicitly, stating […]." Ḍarīr then reproduces al-Qarāfī in a shortened, slightly adjusted excerpt. Immediately thereafter, without further analysis, he adds a subheading—"Ibn Taymiyya agrees with the Mālikīs"—and closes with a brief restatement of the *tabarruʿ–muʿāwaḍa* framing.[41] The brevity suggests that Ḍarīr regarded al-Qarāfī's formulation as sufficiently self-explanatory. It is therefore appropriate to turn to al-Qarāfī's text itself.

Section 3: al-Qarāfī's Distinction: The Classical Anchor of a Modern Dichotomy

The Mālikī jurist al-Qarāfī sets out 274 legal distinctions in his celebrated work *al-Furūq*. He treats *tabarruʿ–muʿāwaḍa* under Distinction 24 in a passage of about 377 words. The analysis is neither cursory nor exhaustive, a mid-range treatment that nonetheless frames later debate. It is worth citing the pertinent portions in his own terms. He writes:

> The twenty-fourth distinction between (i) the rule for dispositions where unknowns (*jahālāt*) and excessive uncertainty (*gharar*) are operative, and (ii) the rule for those where they are not. Sound *ḥadīth*s report the Prophet's prohibition of the sale of *gharar* (*bayʿ al-gharar*) and of the unknown (*bayʿ al-majhūl*). Scholars then differed: some generalized [the ban] across all dispositions, such as Shāfiʿī […] while others—namely Mālik—drew a distinction between:
> (a) the rule concerning what *gharar* and *jahāla* must be avoided in, namely:
> 1. dispositions involving bargaining (*bāb al-mumākasāt*);
> 2. dispositions designed to grow wealth (*al-taṣarrufāt al-mūjiba li-tanmiyat al-amwāl*); and
> 3. those intended for wealth acquisition (*mā yuqṣad bihī taḥṣīluhā*); and

41 Ḍarīr, *supra* note 31, at 525–26.

(b) the rule concerning what *gharar* and *jahāla* need not be avoided in—namely what is not intended for that purpose.

Mālik divides dispositions into three classes: two polars and a middle.

> Class 1—pure exchange (*muʿāwaḍa ṣirfa*), so that [*gharar* and *jahāla* are] avoided here, except what customary necessity tolerates. […]
>
> Class 2—pure gratuity (*iḥsān ṣirf*): [dispositions] not intended to grow wealth, such as almsgiving (*ṣadaqa*), gift (*hiba*), and release/waiver (*ibrāʾ*). These dispositions do not aim at wealth-growth; if they fail to reach the beneficiary, the benefactor suffers no loss, *because he paid nothing* [emphasis added] (*fa-ʾinnahu lam yabdhul shayʾan*)—unlike Class 1, where, if it fails through *gharar* and unknowns (*bi'l-gharar wa'l-jahālāt*) (i.e., where if the exchange fails to yield the object of exchange—because the object is indeterminate, unavailable, or cannot be delivered as contemplated), the money paid as its counter-value is lost (*ḍāʿa al-māl al-mabdhūl fī muqābalatihi*); hence the *sharīʿa* barred unknowns there. Pure *iḥsān* entails no such loss; therefore, legal wisdom and the law's encouragement of *iḥsān* broaden it, permitting both known and unknown …. Thus, if one donates a runaway slave, it is valid: he may be found and yield benefit; if not found, *the donor loses nothing, having paid nothing* …. [emphasis added].
>
> Class 3—marriage (*nikāḥ*) as the middle: In one respect, money is not the objective in [the marriage contract]; its aims are affection, harmony, and repose, which suggests allowing *gharar* and *jahāla* [in *mahr*—obligatory marital dower payment]. In another respect, the Lawgiver conditioned it on wealth, [quoting the Qurʾānic verse] "that you seek [marriage] with your wealth," which suggests barring *gharar* and *jahāla*. Balancing these, Mālik allows slight *gharar* but not major: e.g., an unspecified

> slave (*ʿabd min ghayr taʿyīn*) or a standard room of a house (*shūrat bayt*) are allowed by reference to customary median standards; but not a runaway slave (*ʿabd ābiq*) or a stray camel (*baʿīr shārid*), which lack a governable standard ….[42]

My analysis of the foregoing excerpt from al-Qarāfī invites a reconsideration of the two meta-assumptions identified earlier in this section, (1) the taxonomic lineage and authenticity of the *tabarruʿ–muʿāwaḍa* dichotomy and (2) its transposability to *takāful*, by bringing to light three clarifying nuances, in order: first, al-Qarāfī privileges functional three-point criteria over nomenclature, and those criteria are amply substantiated by the canonical Mālikī source *al-Mudawwana*; second, while al-Qarāfī's own framing is dichotomous, he attributes to Mālik a more nuanced tripartite scheme; third, the tolerance of *gharar* in pure gratuitous contracts rests on no-paid-value at risk, unlike premium-based *takāful*.

Features, Not Labels: al-Qarāfī's Three Tabarruʿ *Disqualifiers*

By privileging functional criteria over nomenclature, al-Qarāfī mitigates terminological slippage. Although his formulation comes close to the familiar binary of *muʿāwaḍa* and *tabarruʿ*, his operative rule is feature based: three diagnostic markers—bargaining, wealth-growth, and wealth acquisition—delineate the divide. Accordingly, he treats a disposition exhibiting any of these exchange-characteristics as onerous, whether labelled *tabarruʿ* or *muʿāwaḍa*.

Al-Qarāfī did not introduce this triad *ex nihilo*; instead, he synthesized it from established Mālikī sources. While al-Qarāfī did not supply citations, reflecting the scholarly practice of his time, a careful reading of his juristic extrapolation permits a plausible reconstruction of its sources and logic. As to the first criterion—*mumākasāt* (dispositions involving bargaining)—a

42 1 Shihāb al-Dīn al-Qarāfī, al-Furūq: anwār al-burūq fī anwāʾ al-furūq 276–77 (1st ed. Dār al-Kutub al-ʿIlmiyya 1418/1998).

portion of its doctrinal footing may obtain from the following passage of *al-Mudawwana*: "It has reached me that the Messenger of Allah (ﷺ) prohibited all forms of selling the unseen (*bayʿ al-ghayb*) in all that people trade among themselves (*yudīruh al-nās baynahum*)."[43] The verb in the report is *adāra* (to circulate, manage, turn), which the Qurʾān uses in a commercial setting: *illā an takūna tijāratan ḥāḍiratan tudīrūnahā baynakum*.[44] While the word does not, by itself, denote bargaining, its usage signals reciprocal circulation of value, i.e., a commutative exchange.

The second criterion—wealth-generation or profit-seeking—appears inferable from the following excerpt in which Mālik prohibits contributing unrefined gold or silver as capital in a partnership. He requires capital to consist of standardized minted dinars or dirhams, as unstandardized raw metal introduces *gharar* and invites valuation disputes.

> I [i.e., Saḥnūn, transmitter of the *al-Mudawwana*] said: What is your view regarding uncoined silver and gold (*naqr*)—is *qirāḍ* [investment partnership] valid with them [as capital contribution of a partner]? He [ʿAbd al-Raḥmān b. al-Qāsim, a student of Mālik] said: I asked Mālik about this, because some of our companions had informed us that Mālik had shown leniency in the matter. Al-Layth [b. Saʿd], however, used to say: *qirāḍ* with them is not permissible. He would strongly disapprove of it and say: *qirāḍ* is valid only with minted dinars and dirhams. So, I asked Mālik about it, and Mālik said to me: *qirāḍ* is not valid with raw gold and silver.[45]

The above passage is worth citing verbatim because it records a contemporaneous perception—prevalent then, as now—of Mālik's relative leniency regarding *gharar*. Yet the exchange also evidences the balance of his position: despite that reputation, he did not permit *gharar* in dispositions meant for wealth-generation such as investments, where knowing the precise amount

43 3 Mālik, *supra* note 18, at 254.
44 Qurʾān 2:282.
45 3 Mālik, *supra* note 18, at 630.

of a partner's capital contribution is imperative for investment contract validity.

The third criterion, wealth acquisition, is likewise supported by the following passage, which invalidates employment with outcome-contingent wages on account of *gharar*. Employment checks this third feature because it is neither trade nor wealth-growth but acquisition of wealth through labor.

> I said: What if I rent a mount from a man on the condition that he deliver me to such-and-such a place by such-and-such a day; otherwise, he gets no wage? He said: Mālik judged this invalid, because it stipulates a condition under which one does not know what wage will be due; this is *gharar*—one does not know whether the wage will be taken in full or vanish entirely, so he may end up with nothing.[46]

Another contract that exhibits wealth acquisition is the "compensatory gift" (*hibat al-thawāb*), which, though free of trade, bargaining, and money-growth, still yields wealth acquisition and therefore triggers *gharar*.

> I inquired: May a runaway slave be sold by his owner while still in a state of flight? He responded: Mālik ruled that such a sale is impermissible. I further inquired: If a person gifts a runaway slave, is the gift legally valid? He responded: If the gift is not in exchange for consideration, then it is valid according to Mālik. However, if it is given with the expectation of reciprocal compensation, then it is invalid according to Mālik, on the basis that a compensatory gift [*hiba li-thawāb*] constitutes a form of sale (*bayʿ*), and the sale of a runaway slave is invalid, so is the compensatory gift.[47]

The preceding passage is instructive: it contrasts a true gift with a compensatory gift and shows that *gharar* operates in the latter

46 3 *id*. at 481.
47 4 *id*. at 462.

but not the former, because the compensatory gift entails wealth acquisition, the third feature in al-Qarāfī's three-feature test. A parallel comparison, consistent with the same framework, appears below where Mālik allows and even binds lot-drawing in *qisma* (apportionment) but prohibits it in sale. The rationale is that *qisma* merely allocates pre-owned undivided shares among partners, whereas sale initiates ownership for a non-partner. Put differently, *qisma* lacks bargaining, money-growth, and wealth-acquisition, thus tolerating *gharar*.

> I said: Suppose two men inherited houses or merchandise—or bought them—and the divider apportioned them between them and then drew lots; when one man's lot came out he said, 'I don't accept this ….' Do you regard this as risk-taking (*mukhāṭara*) [i.e., *gharar*], or is the share that came out for him binding or not? He said: That is binding for him according to Mālik. I said: Why did Mālik bind him to this while you do not allow this in sales and deem it risk-taking? … Why did he permit it in *qisma*? He said: Because division by lot, according to Mālik, is not a sale; and division differs from sales in some situations according to Mālik. In division, these people were partners; in a sale, the buyer is not a partner with the seller.[48]

But Mālik's leniency in allowing *gharar* in *tabarruʿ* (e.g., a true gift) or in dispositions that fail al-Qarāfī's three-feature test (e.g., *qisma*) must be balanced by his strictness toward aleatory arrangements. A revealing case is his voiding of a last-survivor clause in a tontine-like joint trust, along with similar wager-style agreements, expressly on grounds of *gharar*. Notably, the text shows that appeals to the *ḥadīth*-derived maxim that "Muslims are bound by their stipulations" were already made in Mālik's time[49]—just as today's *takāful* discourse does—yet Mālik's categorical ruling makes clear that the maxim does not extend to wager-like instruments.

48 4 *id*. at 288.

49 Abū Dāwūd, Sunan Abī Dāwūd, *ḥadīth* 3594, https://sunnah.com/abudawud:3594 (last visited Mar. 1, 2026).

> Mālik was asked about a house jointly owned by two men which they made as a *ḥabs* (endowment) for themselves, on condition that whichever of them dies first, his share shall be held for the benefit of the survivor. Mālik said: 'This is invalid,' because it is *gharar*—they have exposed themselves to a wager: if this one dies, that one takes his share; if that one dies, this one takes his share …. This is not among the conditions of Muslims, and sales do not validly conclude on such a term.[50]

The foregoing excerpts illustrate a consistent pattern: while Mālik is comparatively lenient about *gharar* in gratuitous dispositions or non-commutative allocations (e.g., a true gift, *qisma*), he is stringent with wager-like or aleatory structures. The categories—not a single catch-all rule—govern the outcomes. I conclude my reading of *al-Mudawwana* with another clear passage that, though framed as a prepayment sale (*salam*), maps directly onto insurance: it treats charging a fee for a stand-alone financial guarantee without any delivered good or service as impermissible and explains the prohibition in wager terms.

> I said: Is it permissible for me to engage in *salam* (prepayment contract) for a specific, existing commodity … and to defer taking possession until a later time? He said: No …. I said: Why? … He said: Because, according to [Mālik], this involves *gharar* …. I said: What if the buyer does not advance the payment? He said: Then the *salam* contract is invalid anyway, and it becomes a speculative wager …. Ashhab said: It is not permissible because … a portion of the purchase price is effectively compensation for the seller's guarantee, and that is impermissible because: Guarantees should not have a price … as such a transaction is *gharar* and gambling (*qimār*). If the guarantor knew that the commodity would perish … he would never agree to guarantee it for even double the payment he received. And if the beneficiary of the guarantee knew the commodity would remain safe,

50 2 Mālik, *supra* note18, at 467–68.

> he would never agree to pay the guarantor even a single dirham for it. If the commodity remains safe, the guarantor takes the beneficiary's money unlawfully, giving nothing in return. But if it perishes, the guarantor must compensate for it from his own property, despite never owning the goods, having no proprietary claim to them, and having received no benefit from them at all, not as a porter nor a worker.[51]

The foregoing analysis urges a refinement of the first meta-assumption about taxonomic lineage, shifting the focus from contract labels of *muʿāwaḍa* and *tabarruʿ*, as commonly assumed, to functional features, as authentically transmitted. Assessing the second meta-assumption of transposability, a mapping of *takāful*'s features to al-Qarāfī's three *tabarruʿ* disqualifiers indicates that a typical *takāful* engages all three, albeit to varying degrees. While bargaining is limited in retail *takāful* policies that are largely contracts of adhesion with standardized take-it-or-leave-it terms, institutional and large-account placements involve negotiated pricing, individually negotiated riders or endorsements (adjusting perils, limits, deductibles, or adding additional insureds/loss payees etc.) and inter-operator competition. Wealth growth appears in accumulation and investment of pooled funds and profit shares. Wealth acquisition appears in a priced, legally enforceable claim to indemnity within defined perils and operator fees. On al-Qarāfī's calibration, these features place *takāful* at least in the hybrid middle (*wāsiṭa*); in many commercial *takāful* implementations, alignment with the exchange pole is plausible. In either case, the doctrinal consequence is not a categorical suspension of *gharar* rules in *takāful* but their graded operation: tolerance of minor or *ʿurf*-typical uncertainties, and constraint upon major uncertainties—a line that Ḍarīr himself acknowledges is difficult to draw,[52] in which case prudence requires caution.

51 3 *id*. at 77–78.

52 Ḍarīr, *supra* note 31, at 672.

Mālik's Trichotomy vs the Popular Dichotomy

Having analyzed al-Qarāfī's feature-based classification of legal dispositions, I now turn to Mālik's (d. 179/795) classification of the same in his tripartite bipolar-plus-hybrid scheme. It's important to note that while al-Qarāfī distinguishes two rules—thereby effectively positing a dichotomy of contracts without explicitly naming it *tabarruʿ–muʿāwaḍa*, a label later made explicit by Ḍarīr—he himself attributes to Mālik a more nuanced tripartite scheme rather than a mere dichotomy. The passage is largely self-explanatory, but certain clarifications help bring out its nuances.

Mālik's necessity-justified custom carve-out resists extension to insurance. The first hurdle is methodological: exceptions pass only through *taʿāruḍ wa-tarjīḥ* (reconciling conflicting proofs and determining the preponderant view), a well-developed juristic rubric that binds the jurist to evaluate competing costs and benefits before exercising judgement. The second obstacle concerns the kind of uncertainty: in *al-Mudawwana* cases where limited vagueness was tolerable within the confines of *muʿāwaḍa* (e.g., porterage with an unspecified load or route), *ʿurf* supplies the missing particulars of load, route, place of tender, or time, thereby curing indeterminacy. By contrast, wager-like arrangements remained impermissible despite customary practice (e.g., tontine-style last-survivor clauses) because usage cannot supply who dies first. Likewise in insurance, the indemnity's very existence, quantum, and timing are indeterminate at formation, and neither custom nor actuarial regularities convert them into determinate terms for the insured; the carve-out is therefore difficult to extend to insurance.

Second, on Mālik's tripartite scheme, *takāful* most naturally sits in *muʿāwaḍa*; even if one credits its cooperative spirit and relocates it to the mediating hybrid, this licenses minor *gharar*, not major. Mālik's exemplars are instructive: a stray camel marks major *gharar*, whereas an unspecified camel among many illustrates minor *gharar*.[53] This aligns with the broader juristic hierarchy in which uncertainty of existence/

53 AL-QARĀFĪ, *supra* note 42.

non-existence—with comparable probabilities—constitutes the higher degree of *gharar*, while uncertainties of quantity or delivery time are classed as lesser *gharar* or *jahāla*. Insurance is problematic because it implicates both levels: the insured typically does not know when indemnity will be due, in what amount, or whether it will occur at all.

Third, the above excerpts from *al-Mudawwana*—illustrated by the case of the "compensatory gift" treated the same as "sale" and not as "pure gratuity" or even "the middle hybrid"—underscore that contracts are judged by their substantive reality rather than by their labels.[54] Tolerating *gharar* in gifts or charity presupposes a truly gratuitous transfer with no reciprocal expectation. Yet in practice, expectations are often mixed or indeterminate: how can we confidently say that contributors or policyholders in an Islamic cooperative or *takāful* are moved primarily by cooperative intent rather than exchange? We therefore need a more knowable line between *tabarruʿ* and *muʿāwaḍa* than asserted motive, a line which Mālik provides.

Mālik's Rationale for Gharar *Tolerance in* Tabarruʿ

While Mālik admits parties' intent into his synthesis—a criterion that, like labels, is prone to elastic self-description—his operative rationale for tolerating *gharar* in pure gratuity is more determinate: the absence of a paid countervalue at risk of loss or non-reciprocation. In pure gratuity transfers (*hiba*/*ṣadaqa*/*ibrāʾ*), the benefactor does not expend consideration that could be 'lost' if the hoped-for benefit fails to materialize. Notably, the 'lost paid countervalue' logic—captured by the contrast between *fa-ʾinnahu lam yabdhul shayʾ* in pure gratuitous dispositions and *ḍāʿa al-mālu al-mabdhūlu fī muqābalatihi* in pure exchange—targets consideration paid by reason of the very contract under review, as evident from *fī muqābalatihi* ("in exchange for it"), not to sunk costs incurred earlier. If one donates a stray camel, the price he once paid to acquire it is historically sunk; no new countervalue is paid to effect the gift, so no consideration is wasted if the camel is never found, hence *gharar* is not harmful

54 4 Mālik, *supra* note18, at 462.

because it is not wasting a paid countervalue. By contrast, in *takāful*—even if indemnification is styled as a gift—participants presently pay priced contributions to bring the arrangement into legal effect; those payments are considerations exposed to non-reciprocation when the uncertain state materializes (e.g., no accident occurs that would justify an insurance claim). Hence, the justificatory premise for broad *gharar* tolerance in pure gratuity—the absence of consideration lost by this transaction—does not hold in *takāful*.

A further indication of limited transposability of *takāful* to the pure *tabarruʿ* pole appears in Ḍarīr's own conclusion. He acknowledges the doctrinal complexity of insurance, deeming conventional, fixed-premium insurance an onerous contract and therefore impermissible, while treating cooperative insurance as permissible—but not as a polar instance of pure *tabarruʿ*, or (using Mālik's terms) *iḥsān*; rather, as a *sui generis* donative arrangement. In doing so, he effectively treats cooperative insurance as an exceptional *tabarruʿ*-type contract rather than locating it squarely within Mālik's bipolar-plus-hybrid taxonomy as a hybrid. He says:

> Cooperative insurance, even though it features *gharar*, as in fixed-premium arrangements, is not vitiated by that *gharar* because it falls within the class of gratuitous (*tabarruʿ*) dispositions, as the donative character is more salient in it than exchange: participants are not seeking profit; their object is mutual assistance in bearing misfortunes. In my view, this is a *sui generis tabarruʿ* contract—without an exact analogue among the familiar gratuitous contracts in Islamic jurisprudence—just as fixed-premium insurance is a novel commutative contract with its own constitutive elements.[55]

In sum, the rationale that permits *gharar* in *tabarruʿ* is largely absent in *takāful*. It is perhaps for this reason that jurists like Ḍarīr who laid the doctrinal groundwork for *takāful* often

55 *Id.* at 643.

hedged claims of pure gratuity even while invoking the Mālikī *tabarruʿ–muʿāwaḍa* dichotomy to justify it.

Before concluding, it helps to contrast the doubtful gratuity of many *takāful* designs with a case of pure gratuity where *gharar* is tolerated. Consider employer-matching programs: an employer commits to donate whatever amount employees end up giving within a period. The employer does not know *ex-ante*, the amount, whether employees will give, or when, yet the commitment is permissible as a gratuitous disposition. In Mālik's scheme, this sits in pure *tabarruʿ*: the employee's donation does not flow to the employer, nor the employer's to the employee; the employer's transfer is a reward directed to a third party, so there is no hidden exchange 'circulated' between the two parties. On al-Qarāfī's screen, the first feature (bargaining/exchange) is absent, and there is no wealth-growth or wealth-acquisition for either side; the matching is therefore permissible. The upshot is that juristic restraint toward insurance-like contractual arrangements does not reflect hostility to innovation in contracts or organizational design, but to innovations that run against Islamic moral-juristic principles—chief among them the non-commodifiability of unbundled risk. Innovation that encourages true gratuity remains squarely within that economy.

A gratuitous, gift-based model is not utopian. Civil society philanthropy can substitute for or outperform formal risk-pooling, notably for disaster relief and catastrophic, low-frequency illnesses that often drive demand for insurance.[56] In Pakistan for instance, given low insurance uptake, non-market solutions have emerged: the Indus Hospital & Health Network, the Sindh Institute of Urology and Transplantation, and the Shaukat Khanum Memorial Cancer Hospital and Research Centre deliver high-cost oncology, hepatology, and nephrology treatment, free of cost for low- and middle-income families, financed chiefly by donations rather than premiums.[57] These organic solutions

56 Humanitarian Outcomes, *Floods in Pakistan: Rethinking the Humanitarian Role* (2022).

57 *FAQs*, Indus Dev. Found., https://indushospital.ca/faqs/ (last visited Feb. 27, 2026); *Donate*, Indus Hosp. & Health Network, https://donate.indushospital.org.pk/ (last visited Feb. 27, 2026); Mirza Naqi Zafar & Syed Adibul Hasan Rizvi, *Providing "Free" Access to Dialysis and Transplant to the Disfranchised: A*

risk displacement once *takāful* becomes prevalent, and it would not be a linear substitution of donations for premiums at an institutional level but a self-reinforcing reconfiguration of the moral economy at an anthropological level. Not just patterns of giving and receiving, but our thoughts and habits would fundamentally shift: from risk-conscious vigilance to risk-blind negligence, from strategic planning to impulsive risk-taking, from productive investment to the unproductive purchase of illusory protection; from spiritually driven charity to commercially motivated gambling; from socially embedded solidarity to socially estranged pooling; from obligation-centered giving to entitlement-centered taking; from integrity-driven savings to compliance-monitored expenditures; and from a value-generating, serve-others charity sector to a value-extracting, self-serving, administrative industry.

One can already observe this last distortion, in which insurance supplants the charity sector, in the United States, particularly after the implementation of the Affordable Care Act (ACA), where insurance markets supplanted philanthropic models of care.[58] Some may underestimate the impact of this displacement, arguing that the key outcome has not changed: patients previously treated through publicly funded charity are now covered under federally supported insurance programs like those expanded by the ACA. However, this is precisely where the anthropological perspective becomes crucial: the issue lies not in the outcome itself, but in the transformative processes that underlie it. The shift from charity to insurance is not merely a passive logistical change reallocating resources from charity to insurance but a self-reinforcing structural transformation reconfiguring the individual behavior and social contracts that drive

Sustainable Model for Low and Low Middle Income Countries (LMICs), 36 Transplant Int'l 11290 (2023); *Fund Collection: SIUT Launches Online Donation Facility*, Express Trib. (July 10, 2013), https://tribune.com.pk/story/574802/fund-collection-siut-launches-online-donation-facility; *Financial Assistance Programme*, Shaukat Khanum Mem'l Cancer Hosp. & Research Ctr., https://shaukatkhanum.org.pk/patients-families/financial-assistance-programme/ (last visited Feb. 27, 2026); *Zakat*, *id.*, https://shaukatkhanum.org.pk/donors/zakat/ (last visited Feb. 27, 2026).

58 Harriet Blair Rowan, *Charity Care Spending By Hospitals Plunges*, KFF Health News (Aug. 13, 2019), https://kffhealthnews.org/news/charity-care-spending-by-hospitals-plunges/.

the demand for either charity or insurance in the first place. And the cost of this displacement is not merely borne by the direct stakeholders—insurers and insureds, donors and donees—but by society as an interconnected, complex system. These costs include both real and opportunity costs: the real costs of moral hazard, adverse selection, and administrative overhead, and the opportunity cost of eroding the moral-social ecology that sustains community-based support.

If the risk of this displacement is real and empirically observable, it calls into question the common proposal that fully gratuitous charity and semi-gratuitous *takāful* can simply be treated as complementary partners; they are competitors contending for limited resources and societal priorities, each driven by divergent incentives. When choosing between the two, charity emerges as the more efficient and effective solution, despite its inherent limitations. If an Islamic financial product is designed around the concept of unconditional charity or pure *tabarruʿ* and does not exhibit any of the three disqualifying features outlined by al-Qarāfī, either in letter or spirit, the issue of *gharar* would not apply, and the product would be unanimously permissible without doubt.

Conclusion

This article has traced the origins of a prevalent justification for *takāful*—that the Mālikī school treats *gharar* as vitiating onerous contracts but tolerable in gratuitous contracts—and recovered its classical moral-juristic nuances to enable the realignment of this purportedly Islamic instrument with its authentic bearings.

Before delving into *gharar*-based doctrinal inquiry, I sought to situate the inquiry within the broader landscape of the insurance problem and its potential solution. Section 1 outlined how insurance is typically debated, how it needs to be examined for better understanding and resolution, and how this inquiry aims to conduct that examination within the constraints of space. After mapping the six salient registers through which insurance is debated, I reasoned why the anthropological lens—focusing on the formation of moral agency and its cascading effects—has

been chosen by our research program, because it encompasses the other registers and addresses not only risk-management but also risk-creation and risk-amplification through human actions. I then identified the *taklīf-dhimma* framework as the *fiqh* analogue of this anthropological lens and explained how it matches the comprehensiveness of the anthropological framework by integrating both micro-level *fiqh* technicalities and macro-level *maqāṣid* reasoning. This, in turn, helped clarify that these micro-level *fiqh* nuances are neither pedantic quibbles nor mere technicalities but small yet critical doctrinal fuses embedded throughout the law that prevent local deviations from cascading into systemic breakdown. They must be understood in their essence and preserved in spirit, as they uphold the broader *taklīf-dhimma* framework, which is essential to social, moral, and political order. I illustrated, through comparative examples, how these nuances are flattened under illegitimate pressures and how *takāful* tends to flourish where such pressures prevail. I concluded by arguing that the solution lies in recovering the social-moral ecology that renders insurance unnecessary. This shift in solution-making—from institution-substitution to society-recovery—tracks the anthropological lens, which foregrounds not only individual moral agency but also the social structures, values, and norms that form, channel, and sustain it within a community.

The discussion in Sections 2 and 3 then shifted to the micro level: my examination of the classical origin of this claim, Distinction 24 of the seventh/thirteenth century Mālikī jurist al-Qarāfī, has shown that the two meta-assumptions behind the received claim require recalibration. I recalibrated the first meta-assumption of taxonomic lineage and authenticity by showing how the prevailing, label-driven *tabarruʿ–muʿāwaḍa* dichotomy diverges from al-Qarāfī's feature-based test, which classifies a contract as *gharar*-operative whenever it exhibits any of three features: bargaining, wealth-growth, or wealth-acquisition. I discovered two further points, counter to the prevalent view and attributable to Mālik himself: first, that his scheme of legal dispositions for allocating *gharar* operability is tripartite rather than strictly binary; second, that, unlike the indeterminate

appeal to cooperative motive in contemporary discourse, his more objective rationale for permitting *gharar* in gratuitous contracts hinges on the absence of a paid countervalue exposed to loss through *gharar*. I recalibrated the second meta-assumption of transposability by demonstrating that Islamic insurance sits, at best, in the hybrid middle that tolerates minor custom-bounded *gharar* but not major, aleatory uncertainty. To preempt the objection that *sharīʿa* compliance stifles innovation, I showed that innovative solutions can emerge within pure gratuitous structures. By briefly analyzing employer matching programs as an example, I argued that the core issue in *takāful* is not innovation as such, but the commodification of risk. I concluded Section 3 by addressing the common conception that insurance and charity can simply co-exist, arguing instead that they often function as competitors for limited resources and societal attention. In low-insurance-uptake contexts such as Pakistan, this raises the risk that existing charity-based arrangements—often more socially embedded and administratively light—may be crowded out by insurance expansion, with potentially significant anthropological distortions.

Having outlined what the inquiry accomplished, I now turn to its limits. I have sought to keep two horizons in view at once: the anthropological problem space that animates the project and the juristic "fine-grained" work through which that problem is pursued. That ambition necessarily carries trade-offs. Accordingly, I have intentionally confined the argument to the genealogy and deployment of the *tabarruʿ–muʿāwaḍa* dichotomy as attributed to al-Qarāfī. Because the claim under examination is, in the first instance, a textual one, the analysis has proceeded primarily through textual evidence and close reading. The cost of this choice is that the anthropological realities presupposed by those texts remain unelaborated, owing both to space constraints and to the partial irrecoverability of past social realities. Yet even in the absence of that reconstruction, one finding is analytically insightful: despite being separated by roughly five centuries, the eighth-century *Mudawwana* and the thirteenth-century *Furūq* converge on structurally similar conclusions. That cross-temporal convergence suggests that what

is at stake is not merely a local custom or a period-bound policy adjustment, but a more fundamental principle in the juristic grammar of *dhimma* than it may initially appear.

A further limitation is the absence of an explicit reflexive account, along with a sustained, logical deconstruction of the assumptions and premises underpinning *this* inquiry. In particular, I advance the central premise of non-commodifiability of unbundled risk here largely as a warranted inference rather than arguing for it directly on its own terms. These tasks are deferred, not dismissed.

Finally, whether Islamic finance is best understood primarily through a moral economy or a political economy remains contested.[59] Yet whichever emphasis one adopts, analysis and reform require holding both poles in view: the ethical formation of individual actors and the political-institutional architecture of the system. To describe contemporary *takāful* as purely gratuitous would be misleading; to insist that it should become so would be institutionally naïve. *Takāful*'s structural constraints are real, as are the socio-economic ruptures that condition its practice. In such a structural dilemma, clarity itself is a gain, clarity not only about how we might get "there," but also about how we ended up "here." Reform, in this setting, is a fraught and constraint-laden terrain, where the journey matters more than the destination. What matters, then, is to remain *on the path*, to see the problem clearly and to pursue solutions earnestly.

59 For example, compare Asutay's genealogy, which situates Islamic finance as the institutional expression of modern Islamic Moral Economy currents emerging in the late 1960s–early 1970s, with El-Gamal's account, which treats the industry's rise as substantially state-sponsored and politically motivated (petrodollar-backed "capitalist Islamism") rather than primarily a moral-economic project. Mehmet Asutay, *Conceptualising and Locating the Social Failure of Islamic Finance: Aspirations of Islamic Moral Economy vs the Realities of Islamic Finance*, 11 Asian & Afr. Area Stud. 93 (2012); Mahmoud A. El-Gamal, *Working Paper: "Islamic Finance" After State-Sponsored Capitalist-Islamism* (Rice Univ. Baker Inst. for Pub. Pol'y, Dec. 2017), https://www.bakerinstitute.org/sites/default/files/2018-02/import/elgamal-islamicfinance-dec2017.pdf.