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«Not so do those who show patience and constancy,
and work righteousness; for them is forgiveness (of sins)
and a great reward.»

Surat Hud 11:11 Holy Quran



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Editorial

Dear Readers

The Islamic banking law serves the interests of the growing number of Muslims who are not comfortable with conventional financial systems which charge interest on capital.

Muslims consider interest as *riba*, (prohibited by shari'ah law) and that's an important reason why Muslims are turning to Islamic banking services and even looking at Islamic investment in the form of *sukuk*, Islamic bonds.

The passage of the law, however, does not automatically address all the problems currently faced by shari'ah banking and finance. The double taxation issue is one of them. Because shari'ah banking does not charge interest, shari'ah banking transactions often involve selling and buying of assets, which belong to the bank until the end of the transaction, when the client buys the asset back. This selling and buying cycle is subject to taxation, which may mean double taxation, compared to a conventional loan to buy an asset where it is only purchased by the client once.

Another big problem for shari'ah banking is the limited choice of instruments currently. Many fixed rate instruments currently available from shari'ah banks are not really very different from interest based transactions in conventional banks.

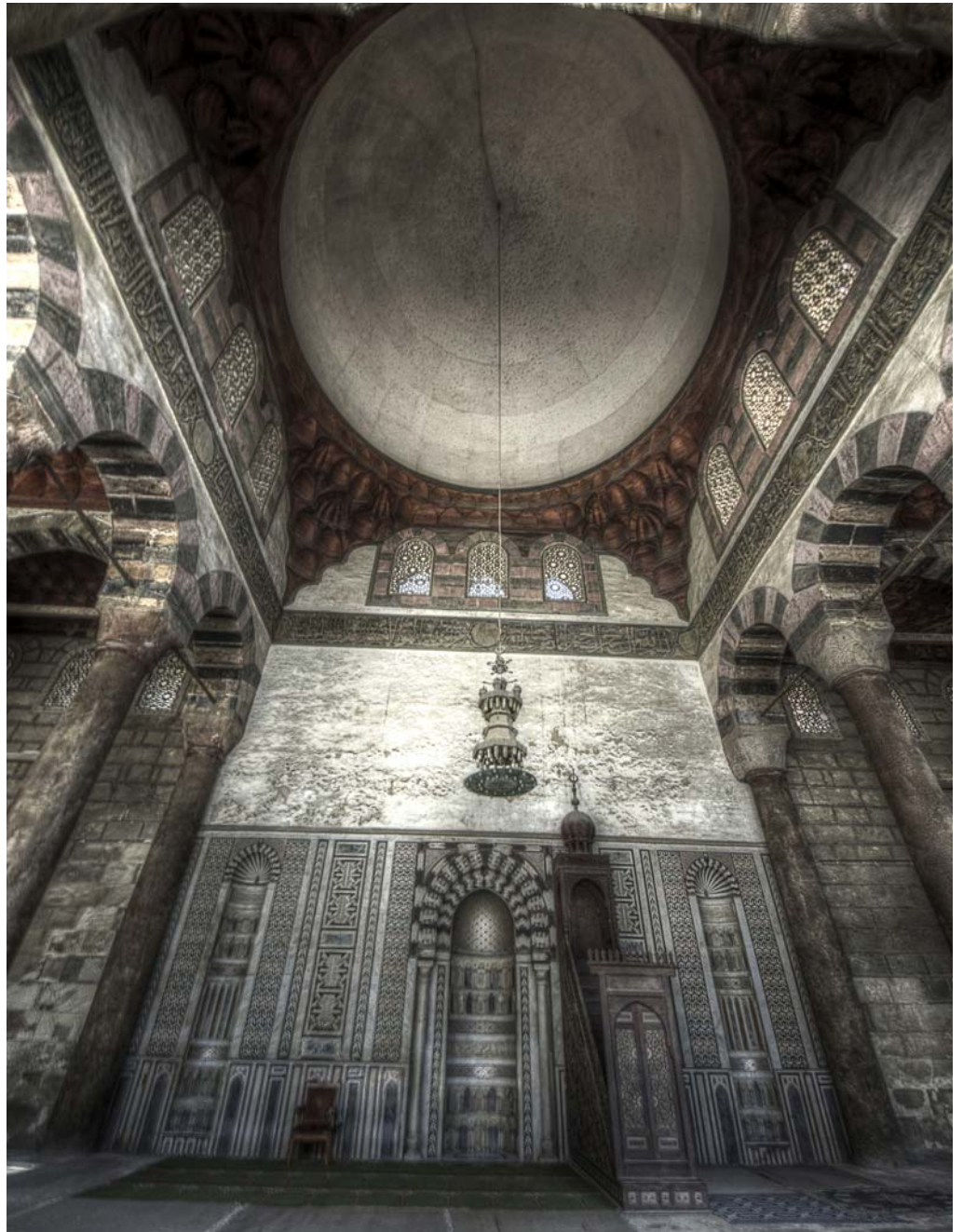
If you want to borrow money from a shari'ah bank to buy a car, for example, you have to buy the car from the bank and not from the car dealer. The bank would charge you a price based on the original price of the car plus management fees and the profit for the bank and its depositors.

Therefore, technically, there is not necessarily a big difference in pricing between shari'ah banks and conventional banks. That's why even Muslims themselves have expressed some skepticism and even cynicism regarding the present practices of Islamic banking.

There is a challenge for shari'ah finance scholars to devise truly shari'ah banking instruments or investment instruments that would attract more people to put their money in shari'ah banks and be recognized as shari'ah-compliant internationally. These could include fixed cost instruments where there are fees or charges but not interest, and variable cost instruments where the client may share profits or losses with the bank.

If more instruments are available and attractive and better advertised, then shari'ah banking should serve not only Muslims but also people of other faiths, who are perfectly free to use it. This way, Islamic finance will be able to become a vehicle to develop and empower the economy for Muslims and non-Muslims alike.

Contents



AlimJournal 4 | 2012

- 1 Editorial
- 2 Contents
 - Shari'ah Scholars
- 4 Salman al-Oadah
 - Ummah" (Community) in the Qur'an
- 8 Mohamed Ali Elgari
 - Current Trends in Islamic Finance and the development of Islamic hedge funds
- 12 Muhammad Saarim Ghazi
 - Stagnation & Need for Redirection - A Journey from debt-based financing towards equity-based financing
- 16 Yusuf Talal DeLorenzo
 - The Total Returns Swap and the "Shariah Conversion Technology" Stratagem
 - Academic Article
- 24 Mohammad Omar Farooq
 - Sahih* as "Rigorously authenticated" and *Hasan* as "Authenticated": Unwarranted translations and creating misperceptions



Contents

Islamic Finance Studies

- 32 Umer Majid
The Shari'ah-The Central Tenet to an Effective Islamic Finance Implementation Strategy
- 34 Shafiq ur Rahman
Islamic Banking; Contractum Trinius Or Shariah Compliant?
- 38 Muhammad Zubair Mughal
Importance of Islamic Finance Education

Islamic Belief & Practices

- 42 Yamin Zakaria
Is there a Divine 'Method' to Re-Establish the Caliphate (Khilafah)?
- 46 High Status of Ulema in Islam

Islamic Culture

- 50 Geography, Travels and Exploration by Muslims



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Ummah" (Community) in the Qur'an

By Sheikh Salman al-Oadah

The Arabic word "ummah" is often translated as "community" or "nation" In fact, this word appears in the Qur'an with numerous meanings which can be summarised into five general categories as follows:

1. A leader or role-model: We find this meaning in the verse: "Abraham was indeed a role-model (*ummah*), devoutly obedient to Allah, and true in faith." [Sūrah al-Nahl: 120]

This conforms with how most commentators on the Qur'an understand the verse. Another interpretation of the verse is that Abraham was indeed a community unto himself. This interpretation was suggested by the Prophet's Companion Ibn `Abbās, and by the Successor Sa'id Ibn Jubayr, as well as others.

Farwah b. Nawfal relates the following conversation he had with another eminent Companion, Ibn Mas'ūd:

Ibn Mas'ūd once said about his fellow Companion: "Mu'ādh was indeed a role-model (*ummah*), devoutly obedient to Allah, and true in faith."

When I heard this, I said to myself: "Ibn Mas'ūd has made a mistake. Allah sad that Abraham 'was indeed a role-model, devoutly obedient..."

Ibn Mas'ūd turned to me and said: "Do you know what an *ummah* is. Do you know what it means to be devoutly obedient?

I said: "Allah knows best."

He said: "An *ummah* is someone who teaches people what is good. A devoutly obedient person is one who obeys Allah and His Messenger. This is Mu'ādh b. Jabal. He used to teach people what is good, and he used to obey Allah and His Messenger."

2. A specific historical period: We find this usage in the Qur'an in the verse: "But the man who had been released, one of the two who had been in prison, and who now recalled after so long a space of time (*ummah*)..." [Sūrah Yūsuf: 45]

We find this usage again in: “And if We were to withhold the punishment from them until a stated period of time (*ummah*), they would certainly say: ‘What prevents it?’ Now surely on the day when it will come to them, it shall not be averted from them and that which they scoffed at shall beset them.” [Sūrah Hūd: 8]

We can discern a strong connection between the idea of an *ummah* as a nation and that of a specific historical timeframe, since a nation persists for a period of time and then comes to an end.

As Allah says: “To every nation (*ummah*) is a term appointed: when their term is reached, not an hour can they cause delay...” [Sūrah al-A`rāf: 34]

3. A way of thinking or a school of thought, whether correct or misguided. Allah says: “Nay! they say: We found our fathers on a path (*ummah*), and surely we are guided by their footsteps.” [Sūrah al-Zukhruf: 22-23]

Though they were clearly misguided, they were steadfast in their adherence to the ways of their forefathers. Therefore, this usage of the word *ummah* is appropriate here.

4. A faction or grouping of people, whether large or small. Allah says: “And when he arrived at the watering place in Madyan, he found there a group (*ummah*) of men watering their flocks...” [Sūrah al-Qasas: 23]

We also find: “Every time a new group (*ummah*) enters the Fire, it curses its sibling group that went before, until they all follow each other therein.” [Sūrah al-A`rāf: 38]

5. People united by a common faith. This is the usage that is most commonly found in the Qur’an, like where it says: “Humanity was a single community (*ummah*), and Allah sent Messengers with glad tidings and warnings...” [Sūrah al-Baqarah: 213]

Ibn `Abbās and others among the Companions and Successors relate to us that all humanity had at one time been united upon right guidance. For ten generations after the time of Adam, humanity remained united in religious belief and were steadfast in monotheism. Then, devilish elements lured them from their faith, so Allah sent prophets to humanity to warn them and give them glad tidings.

We need to give this some thought. We know that even among Adam’s own children, there were those who were disobedient and sinful. We see this in the story of Cain and Abel. Indeed, humanity has been tried and tested ever since

Adam and Eve were sent out from Paradise. Therefore, it might be possible that the verse stating humanity was united in faith refers to the state of the overwhelming majority of people during those first ten generations, and not to every single person. And Allah knows best.

The Best Community

Allah says: “You have been the best of communities brought forth for humankind: commanding good, forbidding evil, and believing in Allah.” [Sūrah Āl `Imrān: 110]

What this verse is saying is that this is the community wherein the best of humanity is to be found. They are those who are not concerned with themselves alone. They do not simply fulfil their own needs. They exist for all humanity, to teach them, guide them, and show them the way to Paradise.

Ibn `Abbās said: “They are the people who emigrated with Allah’s Messenger from Mecca to Madinah.”

`Umar pointed out: “Had Allah wished, he could have said; ‘You are the best of communities...’ Instead, he said: ‘You *have been* the best of communities...’ This shows that the verse is speaking particularly about the Prophet’s Companions and those who follow their example.”

`Umar also said: “This verse refers to the first of us and not to the last of us.”

He bases this interpretation on the verse’s use of the past tense verb. The Muslims, at the beginning, were as the verse describes them to be. They commanded what was right and forbade what was wrong on the strength of their faith. As for those Muslims who neglect these duties or who come together as a community on a basis other than faith, they are not proper witnesses for humanity and the verse does not apply to them. It is wrong to think that this honour of being the best of communities comes from merely identifying with Islam. It is not an ascribed status that the community inherits from its historical background.

Qatādah relates that `Umar saw some people behaving badly during the Hajj pilgrimage. He recited the verse: ““You have been the best of communities brought forth for humankind...”, then he said: “If you wish to be part of this community, then fulfil the condition Allah has placed on it.”

He meant that they must command what is good and forbid evil, united in their faith.

We should realize that even during the Prophet's lifetime, his Companions read the verse with the past tense: "You *have been* the best of communities..." They understood from it that the past tense referred to Allah's prior knowledge of their state as a community.

It is more likely that `Umar's understanding is based less on the past tense verb in this verse, but rather on another group of verses altogether: "And those foremost in faith will be foremost in the Hereafter... a large number of people from

the earliest times and a few from those of later times." [Sūrah al-Wāqī'ah: 10-14]

In any case, the condition that `Umar points out is a true qualifier for anyone wishing to be counted among the best of communities: "...commanding good, forbidding evil, and believing in Allah."







Mohammed Ali Elgari

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Current Trends in Islamic Finance and the development of Islamic hedge funds

By Sheikh Dr. Mohammed Ali Elgari

In 1975 the first Islamic bank was born. Certainly this was not the beginning of Islamic finance as Islamic finance started with the very birth of the religion of Islam over 14 hundred years ago.

However, that was the beginning of the institutional set up of new financial organizations that are, while following Shari'ah injunctions they can fit into an already existing world class financial system. It is the process of re-engineering already tested structures of finance to be in line with Shari'ah requirements.

1975 witnessed a modest beginning where the basic lenderborrower based financial intermediary was redesigned to work on concepts like sale, lease and partnership rather than money for money in a contract of loan. The drive to "Islamize the system" did not stop there. Enlightened leaders knew that Muslim societies will be able to keep pace with the rest of the world without a financial system capable of meeting all their needs. To do that it is not required that we jump over Shari'ah rules. Shari'ah is never a hurdle and we are not incarcerated inside Shari'ah. On the contrary, we are emancipated by Shari'ah. However, we have to pay the effort and work very hard to understand these rules, comprehend Shari'ah aims and objectives and interpret the scripture in a manner that while not violating the established rules of interpretation, takes into consideration facts of our contemporary life. This approach always pays off. The more we apply it the more we discover the versatility and resourcefulness of Islamic Shari'ah.

In the last few years Shari'ah boards with the help of financial experts were able to really take the system to new level of modernity by designing substitutes that deliver the same economic outcome of some of the most sophisticated conventional products on a Shari'ah acceptable legal framework. This includes things like options, futures, profit (not interest) rate swaps; capital protected (not guaranteed) investments...etc. The area of Sukuk is by itself a witness to the almost unlimited potential for innovation within the Shari'ah permissibility.

Rating Intelligence is really blessed to have a Shari'ah board that, with the exception of the chairman, consists of exceptional scholars who are open minded and have remarkable abilities to research, revert to Shari'ah sources and discover

amazing

exemplars of the methodology of classical scholars in interpreting rules of Shari'ah in a way that proves that Islamic law is peerless in its adaptability to changing circumstances.

Marvelous innovations in the last few decades are not confined to genetic engineering, technological design and computer software.

Some of the most important revolutions that reshaped our lives are taking place in the sphere of finance. Individuals and firms have always resorted to their ingenuity to reduce cost, circumvent inefficient government regulations and manage risks. This results in more growth and prosperity and welfare improvement for everybody. It is a forgone conclusion that Muslims should not ignore new advances in medicine and technology. By the same token, they must not be left out in the pursuit to renovate the system of economy. It is wrong to think that Shari'ah is a constraint that prohibits us from enjoying the fruits of scientific advances. In fact it is part of our Islamic belief that our Shari'ah is capable of accommodating all our legitimate needs. If we fail to catch up with others, it is due to lack of effort on our part to understand the principles, rules and objectives of Shari'ah. This can be said about Hedging technique. If these techniques satisfy a legitimate need, then rest assured that there must be a Shari'ah permissible way for hedging. Nevertheless, until very recently the area of derivatives is looked at as "taboo" from Shari'ah point of view. This is quite natural. When futures contracts first launched in Chicago in 1860 they were considered a form of wagering and they were prohibited.

However, the 19th century didn't close before laws prohibiting futures and option were repealed. When futures first launched in Chicago in 1860 they were considered a form of wagering and they were prohibited. The same thing happened in several states in the US. However, the 19th century didn't close before laws prohibiting futures and option were all repealed. This doesn't mean all derivatives are good and useful. Until this very day a lot of knowledgeable and wise people believe that derivatives are nothing but a game of cards played in gigantic casinos as Noble laureate economist Moris Allns once described derivative market.

Like everything in life, derivatives are a blend of good and bad, useful and harmful. Hence we have to be prudent enough to segregate the good from the bad and harmful. It is in the area of risk management that holds most of potential utility and benefit.

Every business faces variety of risks. However, risk is like

matter, it cannot be destroyed only moved from one place to another. It is not possible to eliminate risk but it can be managed. To do that we must recognize the existence and nature of risk we are facing and consciously take the amount of risk we want to take. In every market when a market player desires to take less risk, there should be another willing to assume more risk. Those who work to avoid certain type of risks are called hedgers. Those who assume more risk, for profit, are customarily called speculators. However, these are not two distinguishable groups of people. The only difference between hedgers and speculators is the fact that the latter have no commercial interest in the underlying asset. Such will not be a material difference that can be the basis of policy or special procedures toward each group. Hedging is a umbrella of structures and arrangements the purpose of which is to manage risk by allowing players to take only the amount of risk they feel they can manage. The best way to understand hedging is to think of it as insurance.

When you hedge you are insuring yourself against a negative event.

In investment, hedging generally means using instruments in the market to offset risk of adverse price movement.

Clearly, the availability of a mechanism to transfer risks is quite valuable to individuals and companies. On a macro level a mechanism to transfer risk is a form of risk sharing.

Risk by itself is neither necessary nor preferable for any transaction to be Shari'ah acceptable. In fact it is more in line with Shari'ah to avoid risk, provided this is done through Shari'ah acceptable means. At the time of the Prophet (PBUH) a Bedouin getting off his camel asked the Prophet (PBUH) as a true believer should I just rely on Allah and leave my camel here unleashed.

The Prophet (PBUH) said no you rely on Allah but also you leash your camel. Hence, managing risk is not contrary to true belief.

It is an established economic fact that risk sharing and intertemporal smoothing are essential elements of welfare in any society. It is also an established Shari'ah fact that the main objective of Islamic Shari'ah is the good and welfare of the Society. Therefore, it is unthinkable that Shari'ah will lack the ways and means to provide necessary facility for Muslims' legitimate needs to manage risks in the realm of finance and investment.

We know already that all the modes of partnership in Shari'ah are geared toward risk participation. Not only that risk sharing is the most important element in the idea of

Mudarabah and *Musharakah*, but also that when the form of contract of such partnership is altered to shield one partner from risk, the contract becomes null and void for it no longer serves the basic purpose which is risk/reward sharing. In fact the main reason for prohibition of interest is the fact that loan contract shifts commercial risk of the profit generating venture to the borrower.

Hence, the other party deserves to get no share of such profit which is essentially a reward for risk taking.

However, it is one thing to say that risk sharing is a legitimate objective, but another to say that risk *per se* can be the subject of an exchange contract. Speculators have no commercial interest in the commodities being exchanged in futures markets. Rather, they make money out of “purchase” and “sale” of risk. Unlike the need for hedging against risks,

speculation is a deplorable activity. The point is how can we distinguish hedgers who have a legitimate need, and speculators? Unfortunately, there is no practical way for such end.

Intertemporal smoothing is a legitimate objective. It is a built-in component in every contract that bridges present to future.

Shari’ah doesn’t lack such a facility. As a matter of fact *Salam* itself is an intertemporal smoothing device.

The simplest way to hedge is to invest in two securities with negative correlation.





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Stagnation & Need for Redirection - A Journey from debt-based financing towards equity-based financing

By Muhammad Saarim Ghazi

Abstract thoughts of past on Islamic financial system have now turned into a viable, robust and more resilient alternative to conventional financial system with more than 1500 institutions, 1.16 trillion dollar assets and unmatched double figure growth rates that have outpaced the conventional sector across the globe over the last two decades in particular. The number of Islamic financial institutions is ever increasing. New financial institutions with huge amount of capital are being established. This transformation from a niche to stream has exerted huge unanticipated pressure on promoters of Islamic finance to fuel it through innovation, financial designing & architecting, research & development, education, regulatory framework and capacity building. Although there is no short-cut to experience, however they believe to accomplish the journey of centuries in decades by their restless efforts and sincere devotion.

To start with, let us focus on evolutionary perspective behind the existing efforts of Islamic finance i.e. realization of more just & equitable Islamic economic system – a system that believes in socio-economic justice, equitable distribution & redistribution of wealth and effective check & balance for use of economic resources to allow fair-play to generates reciprocation & social-uplift besides justice which generates parity, and as a result economic growth & sustainable development becomes the hallmark of a satisfied human sector (Ghazi and Afzal 2010).

But requisition of high growth and realization of persistently increasing market shares cost a lot to the spirit of Islamic banking & finance by relying almost completely on debt based or quasi debt based instruments rather than adopting risk-return sharing mechanism. One of the prominent Islamic Shari'ah scholars Mufti Muhammad Taqi Usmani rightly observed, "...the fact, however, remains that the Islamic banks should have progressed towards musharakah in gradual phases and should have increased the size of musharakah financing. Unfortunately, the Islamic banks have overlooked this basic requirement of Islamic banking and there

are no visible efforts to progress towards this transaction even in a gradual manner even on a selective basis (Usmani, The Performance of Islamic Banks - A realistic evaluation 2011)". "Shari'ah emphasizes that the economy should be based on equity as opposed to debts, this leads to a more equitable distribution of wealth in the economy. If the transaction is based on equity, it is much more closer to the objectives of Shari'ah than the instrument based on debt (Usmani, Revisiting Shari'a Matters: Deloitte Webcast 2010)". It was agreed, after analytical debate among Shari'ah scholars in different regions around the globe, that behavioristic and fundamental change needed to shoulder the operability & realization of the new Islamic economic system was rarely possible on dint of inexplicable reasons. (Elaborating such reasons here will take us away from the focus of this article). So, a patching up approach was agreed upon to be adopted as a tool to attain Islamic economic system's benefits in a gradual process. But the brightening spark of increasing market shares, capitalizations and other material benefits restricted the focus of promoters of Islamic finance to current market penetration disregarding ultimate destination i.e. Islamic economic system. Meanwhile many controversial debates took existence but were unable to break the inertia of stagnation (Stagnation: not with reference to growth, but in terms of moving towards ideal Islamic economic system). They focused to penetrate into the market by maintaining over use of Islamic permissibility thereby limiting development of new products based on risk sharing mechanics.

The situation gives rise to many questions: Is equity-based product or financing more beneficial or desirable so far as Shari'ah is concerned? Are we bound to provide alternative to every conventional product only? Is excessive use of trade based modes (risk transferring based products) prohibited? Can we exit the trap of conceptions and behavior of conventional framework at consumer level or we need to only westernize Islamic concepts all the time? Can we have different & distinguished products, of our own, based on Shari'ah desirability and not merely based on Shari'ah permissibility? Were we unable to change the perception and impart better understanding of the essence of Islamic finance in last two decades or so?

Addressing these questions and evaluating the indicators resulting from the assessment will help us analyze whether Islamic finance is facing the dilemma of stagnation and whether there exists a dire need to redirect the efforts of Islamic finance to obtain a sustainable Islamic economic system? This study will explore the status of stagnation faced

by Islamic finance and solutions thereto. Let us invite rationality to discuss concerns mentioned above with reference to stagnation and status quo in Islamic finance.

Debt based financing is a handicap for the businesses and hinders their aggregate growth i.e. it may either exploit the debt-holder or the financier in the contract. This is because the just & equitable aspect of distribution is absent in this way of financing. Inflows (profits) of business are obviously random and are affected by many uncontrollable factors while outflows (interest payments) are fixed in case of a business financed by debt. If the inflows are zero or less than the outflows it will be detrimental for the businesses. This will certainly lead to bankruptcies, which in turn affect the growth and give birth to production cut-downs, hence lead to greater unemployment. On the other side, if businesses make huge revenues, then the financier is being exploited, as the financing earns less than its actual share. However, in equity based financing there is always just distribution of revenues and both parties get their equitable share in both above mentioned scenarios.

Debt based financing always caters the needs of those segments of the society who are able to give safe & fixed repayments. Financing only well-secured businesses and giving less weightages to profit-potential projects leads to income and wealth inequalities and misallocation of resources. This security oriented approach is fatal for the growth of small business enterprises which may have enormous potential to grow, hence have greater potential to contribute more to the gross national product but fail to provide an assurance of repayment to financial institutions. The over reliance on pledges, securities and collateral leaves very small room for small scale entrepreneurs to benefit from these financings, which is a great obstruction to the growth of economy.

The glimpse of some other effects of neglecting equity based financing and using interest substituting instruments is as follows:

It allows financing for superior projects, as more importance is given to intrinsic strength of the projects rather than its extrinsic features (collateral & pledges etc). Conversely less emphasis on collateral or like arrangements will enable talented but poor entrepreneur to take a positive initiative. Bankers are usually used to handle many projects, hence have better information and valuable experience & expertise. In equity based financing, their share of risk will motivate them to pool their knowledge & expertise which will guarantee greater success.

Being in debt leads to compromise over sovereignty and

integrity (Blaisdell 1929: Ottoman empire).

Equity based financing encourages resistance to avoid crisis and provides more just distribution of FOP - Ferraro and Rosser 1995 (Zaman 2001).

Equity based financing can yield huge profits rather than investing in fixed return modes. IFIs can make liaison with established businesses of trade, construction, textile, pharmaceutical etc and can earn profits more than they are getting through debt or quasi debt instruments. This in turn gives the banking institutions an opportunity to share more profits with depositors.

There is a general perception that these arrangements will expose the IFIs to more risks. Moreover, the depositors may not be willing to associate with the banks that prefer equity based financing. This perception seems to be misconceived. The only measure required from IFIs is to be more vigilant, well-informed & skillful in project valuation, management and monitoring. At the first stage institutions may select some specific fields such as construction, mining, agriculture or manufacturing and then gradually increase the investment base in other industries as well. Efficient risk assessment techniques can be developed along with due diligent procedures that are needed to execute the project. Once this culture has been developed IFIs will surely become investment hubs and take enormous advantage over their conventional counterparts.

Risk of loss in equity based financing is a fear more than the reality. This fear may be theoretically true but if the equity based diversified financing portfolio is prudently managed than practically there will be no possibility of overall loss on this diversified portfolio.

Over reliance on fixed-return and interest substituting modes like *Murabaha*, *Ijarah* etc. is creating huge debt in the economy. The way IFIs are proceeding will perhaps never end-up with a system having equity, welfare, stability & growth both at micro & macro levels. It is possible that any Shari'ah permissible contract caters for the individual needs at micro level, but it may not be altogether equally useful at macro level such as contract of loan & debt or contracts ending with a relationship of debt are permissible in many situations but excessive indebtedness is never desirable. There are many authentic Ahadith in Islamic literature that discourage in indulging excessive indebtedness. One for example, Syedah Aisha (blessing of Allah upon her) said: Allah's Messenger used to invoke Allah in the prayer saying, "O Allah, I seek refuge with you from all sins, and from being in debt." Someone said, O Allah's Messenger! (I see you) very often you seek refuge with Allah from being in debt. He

replied, "If a person is in debt, he tells lies when he speaks, and breaks his promises when he promises."

The debate on adopting more desirable instruments is sometimes conceived as challenging the permissibility of fixed return debt based instruments. The adoption of these instruments is not only permissible (as Qur'an describes "Allah has permitted trade and prohibited *riba*") but is the only solution in certain situations i.e. interest based transactions. The debate on permissibility is quite different from desirability e.g. divorce is permissible in Islamic teachings and not only permissible rather the only solution in certain situations but it is never desirable and cannot become a norm. The point is once Islamic finance has attained a reasonable pace it is necessary to strive out new paths and start a journey from asset based financing towards equity based financing to a reasonable extent rather than mimicking the conventional products of interest based system for the sake of widening product base. Now the question before us is should we confine ourselves to articulate or fabricate the existing conventional products and offer a Shari'ah-compliant alternative to every conventional financial product or we should move towards values and goals dreamed by the pioneers of the Islamic finance that can serve the humanity in more just and equitable way?

Answering to this question invokes another question that whether conventional conceptions are as old as human civilization or there exists strong evidence that non-interest based system well catered the need of humanity in the past. Such brainstorming will lead us to believe that we can surely exit from the trap of conventional conceptions and can also persuade others to this effect. Determination to change will enable IFIs to impart strong public awareness in this regard and will instinct IFIs to develop new products that are based on fundamentals of Islamic economics contrary to conventional one. So, we don't need to westernize Islamic concepts all the time in order to ensure the marketability of such products in as much as we sincerely strive hard to change the perception of consumer/ provider of funds.

So, we are not bound to provide alternate to conventional products only but should tailor innovative products based on risk-return sharing that does not only satisfy legal form but also safeguards the spirit of Islamic commandments. This way we can take a step-ahead from conventional peers by designing more just, equitable and robust products based on equity based modes and other concepts like *Waqf* etc. Debt based instruments are undoubtedly permissible but never desirable, according to Mufti Muhammad Taqi Usmani, "...It should never escape attention that these devices (fixed-

return) have been adopted only for a transitory period. They are neither the ideal Islamic modes of finance nor the ultimate goal to be achieved by the Islamic Bank. The banks are under an obligation to advance towards the ideal Islamic modes of finance through *Musharakah and Mudarabah* and to minimize the transitory devices through a gradual process”.

The statistics, however, shows that as we have progressed, the use of equity based instruments becomes less desirable for the banking industry, hence there is no real effort made for transition from asset based financing to equity based financing. Multiple reasons for stagnation include the following:

Product developers of Islamic finance are putting in considerable effort to offer a package of products that matches the conventional operationality (spirits & conventions) in a legal form. Hardly, a focused effort, even at experimental level, has been undertaken to present altogether different products, based on Shari’ah desirability.

As a whole it seems that disguised materialism is planting deep roots in Islamic finance framework whereby business objects are preferred over the journey towards more human-friendly economic system by resting on and using excessively narrow or conditional permissibility of Islamic finance.

At present, IFIs are pre-dominantly influenced by the conventional practices/procedures which surely need to be modified/re-enforced by Islamic spirit. Inculcation of this spirit in its true sense is a colossal job. Like any other change, it is bound to be resisted because a big majority of IFIs trained personnel is tuned to old banking conceptions & behaviors which do not coincide with Shari’ah desirability.

It is perceived that managing IFIs in true Islamic spirit will render substantial increase in the risk appetite of said institutions. This behavior is evident by reluctance generally demonstrated in designing and launching of equity based products under the influence of conventional risk theories. They prefer to put Shari’ah desirability on stake rather to inflict any threat on marketability, whereas exceptions to this are surely but rarely present.

Now responsibility rests on the shoulders of people who are bestowed by Al-mighty with an opportunity to guide and serve humanity. Promoters of Islamic finance have achieved a milestone by providing Shari’ah compliant finance facilities but humanity demands more by requiring them to replace each & every mechanism of human exploitation and destitute, with due respect to their present efforts. We are at the edge of the need for redirection that will accomplish a

transition from Shari’ah permissibility to Shari’ah desirability; a journey which is to be accomplished yet. To conclude, let us, therefore, make a humble effort that will place the growth of Islamic finance on more sustainable track:

A concrete awareness campaign about the fundamental philosophy of Islamic finance needs a big push which appears to be somewhat neglected. The growth we have seen in the Islamic finance is equally related to current financial crunch, and not merely due to knowledge of the potential benefits of Islamic modes of financing. If awareness efforts are properly managed they will naturally increase the loyalty of the people, even when they face losses in some cases. According to Samuel Hayes (Professor Emeritus, Harvard Business School), what motivates Muslims is not the effort to westernise Islamic concepts but rather to maintain a relationship with God and invest in a way that they find to be morally in line with God’s plan (Ali 2008).

Equity-based products need to be introduced in a gradual manner rather than mere imitating the conventional ones. The higher objectives should be given reasonable space in the product innovation & development because if these are lost and system is wholly built on Shari’ah permissibility rather than Shari’ah desirability, it will take us away from the ultimate destination i.e. more just and equitable economic system. Shari’ah objectives & principles should never be compromised as a norm owing to business rationality.

Promoters of Islamic finance should give preference to Shari’ah graduates where possible; at least one such graduate ought to be appointed at branch level. It will give multiple benefits: culture of IFIs will be improved, they can build better perception & rectify misconceptions among the customers, enhance Shari’ah compliance etc.

Advancing towards more desirable arrangements in the contemporary products e.g. reducing & replacing the role of agency through new innovative structures, implementing independent external Shari’ah audit and presenting new model for Shari’ah supervision to protect the boards from pressure exerted by bank managements. These amendments can be helpful to enhance authenticity in the existing system. Lastly the role of learned Shari’ah scholars is critical and multi-dimensional at this point of time. Besides, their sincere and restless efforts to provide Shari’ah compliant facilities framework, a new set of rules for sustainable growth is needed to be discussed regarding Shari’ah desirability i.e. transition from debt-based system to equity-based system.





Yusuf Talal DeLorenzo

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The Total Returns Swap and the "Shariah Conversion Technology" Stratagem

By Yusuf Talal DeLorenzo

This study will look at Islamic values in financial decision-making by considering whether or not Shariah Supervisory Boards will approve any financial product that is delivered by ostensibly halal means, even if what is delivered by those means, the end product, is derived from non-compliant investments. This may be characterized as a quasi-philosophical question about means and ends. Yet, it is one that carries a myriad of practical implications and far-reaching ramifications for the growing Islamic financial industry.

This is a case study, and not a theoretical study. The focus of the study is a particular means or process for the development of products sometimes called "Shariah Conversion Technology". The reason for writing this paper is to draw the attention of scholars and industry experts to the importance of making a distinction between bringing returns from Shariah-compliant investments and bringing returns from non-Shariah compliant investments. If care is not taken, this "technology" represents a great danger to modern Islamic Finance. My own reaction to this threat, initially, was to suggest recourse to *sadd al-dhara`i*, the instrument in Islamic jurisprudence that blocks ostensibly legitimate means to illegitimate ends. On closer study, however, I have concluded that there is no need to resort to this instrument as the matter is simply one of distinguishing between what is truly lawful, halal, and what is truly unlawful, haram. In what follows, I will explain exactly what led me to this conclusion, and why I think it necessary to share my thoughts on the matter.

To date, I have shared this paper with only a handful of scholars and colleagues. In the coming months, however, Islamic banks and investment houses will look closely at products based on the "Shariah Conversion Technology" stratagem, and

Shariah boards will be asked to deliberate and opine on the compliance of such products with the rules of the Shariah. My intention in circulating this paper is to contribute to a wider and more comprehensive understanding of this particular stratagem. At a time when Shariah scholars are increasingly being asked to opine on new and exotic products, I believe that due consideration must be given to not only the literal structure of products and processes, but also to their consequences for the future of Islamic Finance. In other words, while up until now the Shariah supervisory boards of modern Islamic financial institutions have focused almost exclusively on the rules for transacting in compliance with the Shariah, it is now time for them to focus as well on the higher purposes of Islamic law or the *maqasid al-Shari'ah*.

Introduction

Recently, a financial stratagem known as "Shariah Conversion Technology" was developed, the purpose of which is to affect a total returns swap or to "Wrap a non-Shariah compliant underlying into a Shariah compliant structure. In other words, the objective of the mechanism is to use non-compliant assets and their performance to bring returns into a so-called Shariah-compliant investment or investment portfolio. This point is key to the entire transaction, and for that reason it needs repeating. What the product proposes to accomplish is to bring to the Islamic investor returns from investments that are not compliant with Shariah principles and precepts. The questions that such a product immediately bring to mind are: How can Shariah boards approve such returns? Does the circumstance of direct or indirect delivery to the Islamic investor change the ruling? When the Shariah of Islam is understood to differ from other legal systems because it may be characterized as both positive law and morality, is it possible to ignore the moral aspect of a financial transaction like this?

The means of delivery, a *wa'd* or promise, is widely seen to comply with Shariah norms. Since it is compliant, at least to the letter of the law, some Shariah scholars have approved products that use a *wa'd* to deliver returns from non-compliant investments. By doing so, however, they have failed to consider the purpose of the transaction, they have failed to consider the movement of the cash and, most importantly, they have failed to consider the ramifications for the industry as a whole. At a very fundamental level, the reason for these failings is that they have not discerned the difference between the use of LIBOR as a benchmark for pricing and the use of non-Shariah compliant assets as a

determinant for returns. In June of this year, 2007, a pioneering Islamic bank in the Gulf launched a principal protected note that was the first product using this "Shariah Conversion Technology" to be offered to the investing public. This was followed by another such product, also offered by a Gulf-based Islamic bank. Prior to this, the stratagem was used in structured products offered by multinational banks to institutional investors and the treasuries of Islamic banks and finance houses. All of these products have been approved and certified by Shariah supervisory boards. Not all of these products, however, bring to the Islamic investor returns from investments that are compliant with Shariah.

A Few Explanations

Before examining the "Shariah Conversion Technology" stratagem from an Islamic legal perspective, however, it may be helpful to make a few preliminary remarks.

1. There should be no reason to object to the use of a *wa'd* on its own. The use of promises is a matter that the Shariah boards of modern Islamic financial institutions have studied in detail. Therefore, it will not be necessary to discuss the definition of a promise, its purpose, or its legal characterization (in terms of *wajib*, *makruh*, etc.).
2. The financial instrument that the *wa'd* structure seeks to facilitate is called a swap. Swaps are arrangements between counterparties to exchange cash flows over time, and they are very flexible. In conventional finance, the most popular forms of swaps are interest-rate swaps and currency swaps because these allow for the effective management of both balance sheets and risk profiles. In an interest rate swap, for example, no principal is exchanged between the counterparties; only interest is exchanged. The utility of a swap comes from the ease with which it is initiated and completed, as opposed to the numerous steps required to accomplish the same thing by other means.
3. LIBOR (the London Interbank Offered Rate) is the rate at which international banks charge one another for dollar denominated-loans in the London market and is therefore used widely as a reference for any floating-rate loan. Depending on the credit rating of the borrower, that rate may vary from LIBOR to LIBOR plus one or more points over LIBOR.

Before discussing the purpose of the "Shariah Conversion Technology" stratagem, the movement of the cash and, most importantly, the ramifications for the industry as a whole, it will be well to look at (1) how the "Shariah Conversion

Technology" stratagem is actually employed, and then (2) at the difference between the use of LIBOR as a benchmark for pricing and the use of non-Shariah-compliant assets as a determinant for returns.

"Shariah Conversion Technology" Stratagem

The stratagem developed for the exchange of non-Shariah-compliant returns for Shariah-compliant returns generally begins with the purchase by the Islamic investor of Shariah-compliant assets by means of a Shariah-compliant contract such as a salam sale or a murabahah. In most cases, the subject of these transactions will be commodities or base metals. Through such contracts, the bank can offer apparent Shariah compliance and nominal fixed returns of, say, 4-5%. Then, to give the investor the ability to enhance the returns from the investment, the bank arranges to swap the returns from the Shariah-compliant transaction with returns from another investment. The way it does this is by means of a promise, a *wa'd*. Effectively, what the promise says is that at maturity, or at the end of a certain period of time (generally three to five years) the counterparties promise to swap their returns. The bank can then take the further step of protecting the principal invested by the Islamic investor by one means or another.

The benefits to the Islamic investor are obvious; the principal is protected, the returns will almost certainly be at least 4-5% (from the Shariah-compliant investment), and there is a strong likelihood that the assets in the other basket will outperform the Shariah compliant investment. The benefits to the bank may not be quite so obvious, but in fact they are far greater than the benefits to the Islamic investors as we shall see later in this paper when we "follow the money".

Most importantly, however, the Islamic investor is told that the investment is completely Shariah-compliant. This is because the money invested has been used for nothing other than the purchase of Shariah-compliant commodities by means of a Shariah-compliant contract like a salam sale. The return on the investment, if it comes from the salam sale, is clearly compliant with Shariah principles and precepts. And if the return comes from the other investment, by means of the stratagem employing a promise to exchange returns, those returns, so says the bank, may be considered legitimate, halal, even if the investment is non-Shariah-compliant. According to the Shariah boards that have approved such exchanges, the non-Shariah-compliant assets have been used to establish a price; and the promised exchange is for the value of the returns established by the performance of the non-Shariah-compliant assets. This, they

reason, is no different than using LIBOR, an interest rate, to establish the price for a murabahah or an ijarah. If the use of LIBOR has been nearly universally approved by Shariah boards, then the swap achieved by a promise, the "Shariah Conversion Technology" stratagem should also be approved.

LIBOR and How Returns are Determined

Let us now consider the difference between the use of LIBOR as a benchmark for returns and the use of non-Shariah-compliant assets as a determinant for returns. Shariah boards have approved any number of less than ideal devices if they have been convinced that these will assist in promoting the industry in general. A good example is the use of LIBOR as a benchmark for pricing a murabahah or an ijarah when floating rates are to be preferred over fixed rates. In the absence of a viable and widely-published alternative, LIBOR has been used repeatedly; and will likely continue to be used until the industry can develop and then agree upon a benchmark, or a set of benchmarks, based on criteria of its own, i.e., Shariah-compliant criteria. In the final analysis, a benchmark is no more than a standard, and therefore non-objectionable from a Shariah perspective. If it is used to determine the rate of repayment on a loan, then it is the interest-bearing loan that will be haram. LIBOR, as a mere benchmark, has no direct effect on the actual transaction or, more specifically, with the creation of revenues.

In modern Islamic financial transactions, LIBOR has been used to facilitate the closing of literally hundreds, if not thousands, of Shariah compliant financings. It should be noted, however, that these do not involve interest. As explained above, LIBOR is merely a convenient and highly transparent measure of the financial markets. Most importantly, the use of LIBOR as a benchmark for pricing in no way means that interest has entered the transaction itself. This is because LIBOR is a notional rate. The bank loans that determine this rate will under no circumstances become a part of the Shariah-compliant ijarah or murabahah transaction that is benchmarked to LIBOR. Finally, the money paid into an ijarah investment using LIBOR will never pass through to the banks whose rates contribute to the setting of LIBOR, and will certainly never finance, directly or indirectly, assets whose performance or credit rating will set that rate.

When a Muslim investor invests in a product that uses a promise to swap returns from a non-Shariah-compliant investment, however, the matter is quite different. For, while LIBOR is a benchmark used to set a price by marking value, the *wa'd* is used to actually deliver that price, even if it does

so synthetically. By means of the "Shariah Conversion Technology" stratagem, the unwitting Muslim investor actually participates in the non-Shariah-compliant investment, however indirectly. This is because, when the investor agrees to exchange murabahah returns for returns from another investment, the investor indicates *qubul* or approval of the other investment. If that investment includes non-compliant assets and instruments, like conventional bonds or treasury bills, then the investor is approving the same and the transaction must be considered unlawful. Finally, and perhaps most significantly, the money paid into an investment employing the "Shariah Conversion Technology" stratagem will most certainly be used to finance the other investment(s), however indirectly. Therefore, even if the Muslim investor is not directly financing non-Shariah-compliant transactions, if the investment with the swap had not been made, those non-Shariah-compliant transactions would not have taken place. This will be clarified later when we consider how the cash in such a transaction actually moves.

The attempt to draw a legal analogy, *qiyas*, between the use of LIBOR for pricing and the use of the performance of non-Shariah-compliant assets for pricing is both inaccurate and misleading. The only similarity is that both are used for pricing. Where LIBOR is used to indicate the return, however, the other is used to deliver the return or, as we shall see, the other is the return. Therefore, it is simply incorrect to justify the swap of returns from non-Shariah-compliant assets by comparing the same to LIBOR and then saying that since the one is approved by Shariah supervisory boards, the other should also be approved.

The Purpose of the Transaction

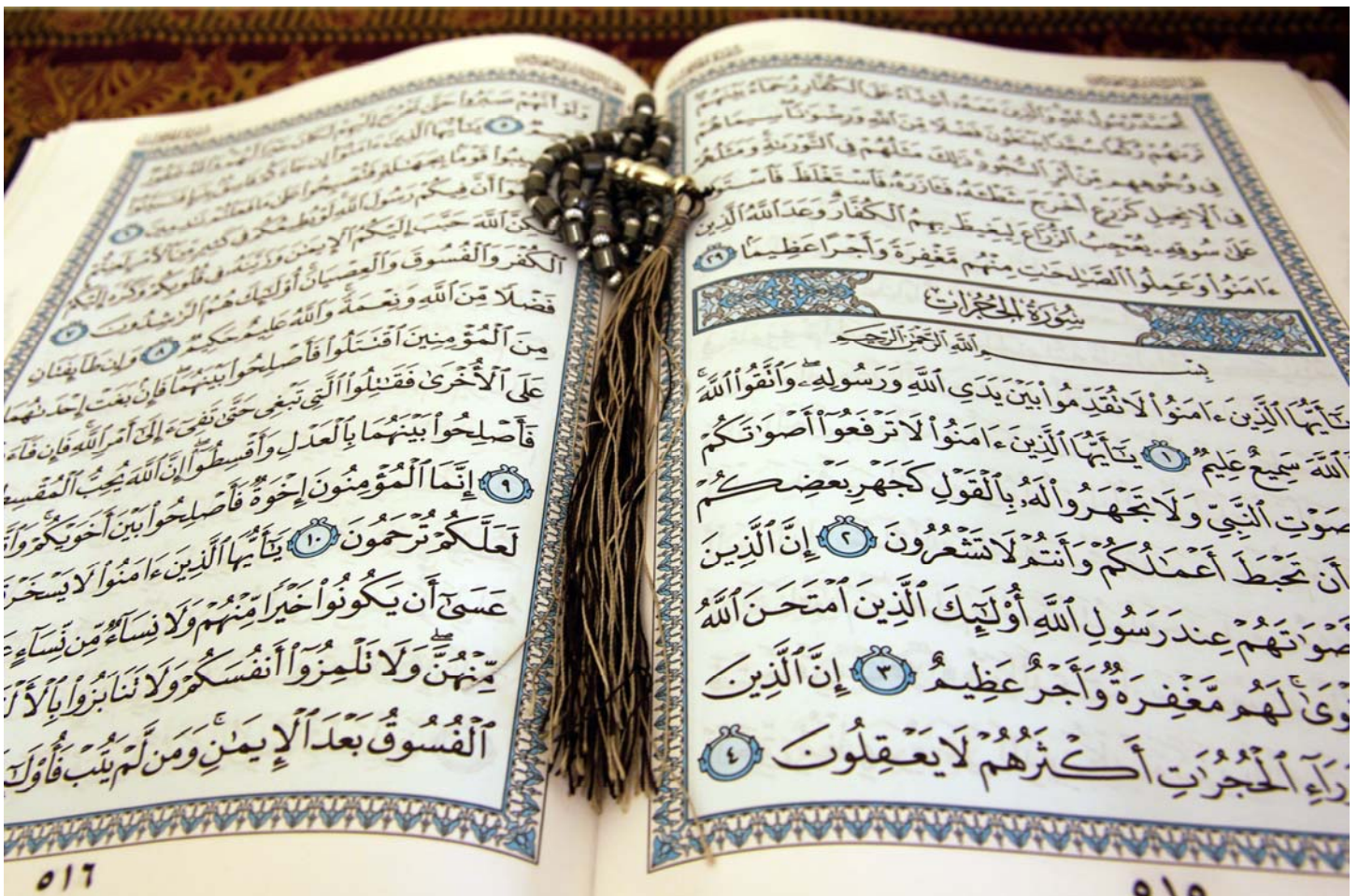
The purpose of the transaction was clarified by a spokesperson for the bank offering the product to the public who explained that it was designed to allow Muslim investors access to funds that operate in a non-Shariah compliant manner by "reflecting their performance." The euphemistic description of what the product aims to achieve, like the simplistic explanation of how the money in the investment remains exclusively in compliance with Shariah rules, is in my opinion a manipulation and, ultimately, a misrepresentation of the truth. The term sheet for one such product states unequivocally that its purpose is to "wrap a non-Shariah compliant underlying (asset) into a Shariah compliant structure." Nothing could be clearer. When this is the purpose, how can a Shariah board possibly approve? Does it

matter if the structure and the transactional basis of these schemes are compliant with established Shariah rules if the end product is the result of prohibited investments? Does it really matter if that result is direct or indirect if the returns are from investments that do not discriminate between right and wrong, halal and haram, good and harmful? What the public is invited to invest in is a basket that will "reflect" returns from anything from wineries, to pork futures, to casinos, to who knows what else? At the present time, the matter is in the hands of the investors, many of whom are institutional investors with their own Shariah Supervisory Boards; and it is still unclear as to how those boards will decide to view the matter. In my opinion, there can be only one response; and that is to reject the "Shariah Conversion Technology" stratagem and the investment products based on this stratagem.

The Movement of the Cash

Before the reader begins to suppose that this discussion is more about *taqwa* and less about fatwa, or morality rather than law, let us now consider the movement of the cash. The Islamic bank that offers this product insists that the Muslim investor's money is invested in a Shariah-compliant product and that the returns are completely halal.

Their claim is that the investor's money is used to purchase a principal protected note, structured by a multinational bank, which invests in simple salam or murabahah contracts. The contract for the note includes an agreement, no more than a promise actually (sometimes termed "a purchase undertaking"), that if the returns from the salam are less than the returns from a particular index, or grouping of funds, then the structuring bank will pay the investor an amount equal to the returns from the index, or group of funds. To be more precise, if the non-Shariah compliant index or funds outperform the salam investment, the investor will earn returns that are better than the salam returns. Since the bank will pay investors with its own money, the investors will not receive returns directly from the conventional index or group of funds (funds which may be using strategies that are non-Shariah-compliant, investing in stocks that have never been screened, and selling securities that they borrowed but never owned, to say nothing of investing in interest-bearing bonds, futures, or any of a host of derivative instruments). In fact, the Islamic bank is happy to point out that it is not investing in any of these prohibited things! And, technically, the bank may be right. However, as we shall see, the matter is not this simple.



When the Islamic Bank takes in the investor's money, what actually happens? Let's imagine that the investor, say an Islamic pension fund, places 100 million dollars in this product. The first thing that happens is that the Islamic Bank passes the money to the structuring bank. That bank will do two things. Firstly, it will invest 100 million, after deducting some fees for management, into salam or murabahah contracts. Then, using the salam as collateral, it will make a loan to an asset managing bank, one with a prime brokerage of its own that works with hundreds of different fund managers. The asset managing bank will then allocate that money to a selected group of fund managers. In the absence of any mandate to transact in compliance with Shariah, the asset managing bank will choose managers and strategies solely on the basis of performance; and from a risk perspective, this means that the bank will seek to diversify its allocations. Of course, what this means is that some of the money allocated will certainly go to bonds, treasuries, debt instruments, and derivatives like futures, options, and swaps. Also, the loan made by the structuring bank to the asset managing bank will be made for interest at the same rate as the salam. In this manner, the asset managing bank suffers no gap between the salam swap rate and its borrowing

costs. In the middle of the transaction, the structuring bank is fully secured for its loan because the rates for the salam and the loan are matched. This means that the structuring bank, likewise, takes no risk. The structuring bank will also earn fees for the notes it has structured for the Islamic bank.

The investor's money, that of the client of the Islamic bank, is placed in a Salam investment. By means of a note provided by the structuring bank, the investor's principal is protected as well. The client pays fees for both of these. Some fees go directly to the Islamic bank, others go to the structuring bank, to the asset managing bank, and to the managers of the various funds. In this transaction, the greater part of the returns are shared by the funds, the asset managing bank, and the structuring bank. The Islamic bank's earnings are significantly less than all these. The reason for detailing the money trail here is to point out how the investor's money, even though it remains in salam contracts, is actually put to work in ways that are clearly not in compliance with Shariah rules.

It may be argued that this will happen anyway; that it happens whenever an Islamic bank or institution has dealings with a conventional bank. This may be so. Ultimately, what

the conventional bank does with its money, when it becomes the bank's money, is its own business. But the transaction we are considering here has direct, predictable and immediate consequences. In other words, the Islamic client's investment in this product triggers a series of transactions, none of which is Shariah-compliant. Moreover, these produce fees and earnings for other than the Shariah investor. Can the Shariah board of the Islamic bank ignore all of this, and approve the entire transaction because the first link in the series is basically a salam or a murabahah? Or is the Shariah board compelled to consider the transaction in its entirety?

Consider the parties to this series. There is an investor, an Islamic bank, a structuring bank, an asset managing bank, and a number of fund managers. Then consider how the money passes from one to the other, all the way to the fund managers. And then consider then how it passes all the way back. With each pass, more fees are added to the transaction. Consider also how the Islamic investor's money is the beginning point for the entire transaction. Without this initial investment, none of the rest will take place, no one will earn fees. It is this initial investment which ensures the participation of the structuring bank, the asset managing bank, and the fund managers because it is the initial transaction, the simple salam, which effectively creates and guarantees the capital. The irony is that no one, other than perhaps the unwitting Islamic investor, considers this transaction to be only a principal-protected note with a murabahah and a promise. On the contrary, this is a highly complex and profitable transaction involving several different parties at many different levels. In short, it is a golden opportunity for the banks because the money is virtually guaranteed and their risk is next to nothing. In short, the Muslim investor is assured that the investment product is Shariah compliant because the "Shariah Conversion Technology" stratagem, which involves a promise, apparently ensures that the Muslim investor's money never goes directly into anything prohibited. So, the Muslim investors' money may not be invested directly into the part of this transactional series that is actually performing and earning returns. Instead, a mechanism is required to bring the returns from that product to the Muslim investor indirectly. It is also clear, however, that an asset managing bank would not be allocating money to managers unless that money came from somewhere. Between the Muslim investor and the fund manager there may be an indirect link, but the cause and effect relationship is nonetheless present. In a very real sense, the promise to exchange the returns from the non-compliant funds establishes a direct link between those funds and the

investor. It also identifies the series as a single transaction. As such, then, it cannot be ignored by the Shariah board. The Shariah board must consider every step in the transactional series; and when this is done, the Shariah board must reject the product.

Ramifications for the Industry

When a Shariah Board gives consideration to only one part of the transactional series, it is only natural that it should fail to consider the consequences of the product for the industry as a whole. It is an unfortunate shortcoming on the part of the Shariah board in this transaction that it has failed to consider the context of the offering. It is an even greater shortcoming when it fails to consider the consequences the product will have for the entire industry. When it is clear that a product cannot be offered in its own form or, in other words, when it cannot be offered directly, but must be offered by means of a stratagem that is basically a derivative like a swap, red warning flags should go up. In such situations, the Shariah Board must pay careful attention to the circumstances of the offering. If the circumstances can be found to justify such a product, then it may be possible to grant approval. If not, however, approval must be withheld. In the case of promised returns from a referenced basket of assets, the assets must be Shariah compliant in order for the returns to be Shariah compliant. It really cannot be otherwise.

If consideration is not given to the underlying assets, or to the assets referenced by the swap mechanism, it could spell the end of the need for authentic Islamic products, services, and methodologies. Why should a bank bother to spend the extra time and money required to make a securitization into a Sukuk? For less money and in less time, it can simply offer conventional bonds and then use the "mechanism" to match performance, appear to sanitize the money, and satisfy the investor that the investment is halal and lawful. If such a mechanism is available at lower costs, then why license an Islamic index for Shariah compliant stocks? Why use mutual funds that follow guidelines laid down by Shariah Supervisory Boards? Why bother with all the complex structuring and documentation that go into Shariah compliant real estate deals? Or infrastructure projects? Or private equity? Or home finance? Why expend the resources required to develop new and innovative Islamic financial products and tools? The "Shariah Conversion Technology" stratagem makes all of that unnecessary. At a very fundamental level, however, this mechanism seeks to make the haram halal. This is the nature of the threat to our industry. The fatwa giving blanket approval for this misguided stratagem may well be

referred to as the Domsday fatwa for Islamic Finance.

If the product described in this paper is successful, managers of all manner of funds, not just hedge funds, will never be motivated to do what is necessary to manage and invest in ways that comply with Shariah. But then why should they, if all they need to do is agree to swap returns? Asset managers can continue as before, buying and selling interest-bearing bonds, debt-based derivatives, pork futures, bank, casino and brewery stocks. They can trade these however they wish, even by borrowing stocks and then selling them into the market without ever owning them, or by leveraging them and incurring interest on the leverage! In other words, Islamic investors will not know what managers are doing because an Islamic bank and its Shariah board have assured them that by means of a special "technology" their money will remain separated and pure.

***Sadd al-Dhara`i*: Blocking Ostensibly Legitimate Means to Illegitimate Ends**

When I first became acquainted with the details of the "Shariah Conversion Technology" stratagem (last year, when I was invited to approve it by a huge multinational bank), I had thought that the best way to combat it was to have resort to *sadd al-dhara`i*, the legal device from our classical jurisprudence that blocks ostensibly legitimate means when these are employed for illegitimate ends. In other words, in the same way that the digging of a well in the middle of a road may be declared unlawful for the reason that it may lead to great inconveniences and economic losses by those who travel the road, I thought that this mechanism might be declared unlawful by Shariah boards for the reason that its use may lead to prohibited investments. So, while a promise to exchange returns may be lawful, if the returns promised have been earned by illegitimate means (by funds that invest in Treasury futures, for example), then that promise may be declared unlawful as it has become a means, an ostensibly legitimate means, for illegitimate ends.

I am now convinced, however, that this transaction is prohibited outright; and that the application of *sadd al-dhara`i* in this instance is unwarranted. This is because of a subtle point of law regarding the application of when it is possible to resort to *sadd al-dhara`i*. The classical jurists have stated that whatever leads to involvement in the unlawful will either lead to the unlawful as a certainty or lead to the unlawful as a possibility. This product includes investments, even though they are entered into indirectly, that are clearly unlawful. Moreover, there is no doubt whatsoever that the transactional series leads inevitably, and repeatedly, to what

is unlawful. That being the case, that what leads to involvement in the unlawful does so as a certainty and not as a mere possibility, then *sadd al-dhara`i* is inapplicable. There is no need to resort to *sadd al-dhara`i* because the transaction is clearly unlawful.

I quote, in what follows, from *al-Bahr al-Muhit, Kitab al - Adillah al-Mukhtalif fiha* by Badr al-Din al-Zarkashi, on the subject of *Sadd al-Dhara`i*: Blocking Ostensibly Legitimate Means to Illegitimate Ends.

Know that whatever leads to involvement in the unlawful will either lead to the unlawful as a certainty or lead to the unlawful as a possibility. The first of these two (that it will certainly lead to commission of the unlawful) is not to be discussed under this heading. Instead the proper place for its discussion is under the heading of "That Which there is No Way to Escape the Unlawful Except by Avoiding It" The commission of such an act (whatever will certainly lead to involvement in the unlawful) is unlawful for the reason that whatever is required to ensure the performance of a required act is itself required. (And here the required act is that one avoid what is unlawful; and what is required to ensure that it is avoided is avoidance of the act that will certainly lead to it.)

To clarify this point, the stratagem we are discussing leads, without a doubt, to the unlawful. Obviously, if fund managers are given no guidelines to follow for Shariah compliance, they will surely make investments that are not Shariah compliant, they will surely manage their cash in ways that are not Shariah compliant, and they will surely transact in ways that are not Shariah compliant. The statements given to the press by the Islamic bank offering this product admit as much. This being the case, that the product leads surely to the unlawful, there is no need to resort to *sadd al-dhara`i* to prevent the proliferation of the product because the product is already unlawful, owing to its leading directly and without doubt to what is unlawful.

If there were some doubt about this, such that the product's leading to the unlawful was only a possibility, whether likely or unlikely, a strong possibility or a slight possibility, then recourse might be had by the jurists to the device known as *sadd al-dhara`i*. When the assets referenced by the "Shariah Conversion Technology" stratagem are known to be unlawful, however, the transaction is unlawful and there is no need for recourse to any legal device for its prohibition. This being the case, there is also no need to discuss the opinions of the various classical scholars in regard to *sadd al-*

dhara`i and its use.

It is an established principle of Islamic Law that whatever is required to ensure the performance of a required act is itself required (*بجولو و هفبلا لا بجولو ا جتلا له*). When the avoidance of the unlawful is a requirement, if there is an act that will surely lead to the unlawful, then the avoidance of that act too is a requirement. It is for this reason that it is essential, *wajib*, to avoid or to reject, the stratagem and the product. This is because the stratagem is what allows the asset manager to deploy money gathered through this transaction, however indirectly, in funds that operate in ways that are non-compliant with Shariah, and that invest in businesses that are non-compliant with Shariah, ignoring all guidelines for Islamic investing that have been developed at great expense by businesses that respect the Muslim investor's need to transact and to invest only in ways that accord with the principles and precepts of the Shariah.

Conclusion

As jurists, Shariah scholars are trained to look at texts and at classical models, especially in regard to transactions. If a question of law is not answered directly in the texts, jurists are trained to seek indirect answers, often by drawing parallels from the body of accumulated jurisprudence, or through recourse to legal maxims and principles. Then, while Islamic law may be characterized as both a moral and a legal system, the jurisprudence that has developed around modern trade and commerce relies almost exclusively on derived legal considerations; even if these may be characterized as legal means to moral ends. Thus, it is difficult to suppose that jurists will make decisions on the basis of purely moral or *maqasid*-related considerations.

From a practical perspective, the best way to deal with this question may be to refer it to the Shariah Council of the Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI), the standard setting body for the entire industry. Since the stratagem that drives the product is based on a promise, or *wa`d*, which has applications in many modern financial instruments including the modern *murabahah*, AAOIFI might be requested to promulgate a standard dealing with every aspect of the *wa`d* and its uses. The cynical stratagem described above presents Muslim jurists with a real challenge. If investor confidence is to be maintained, the industry must demonstrate its ability to regulate itself and insist upon the Islamic authenticity of all that it does, or allows to be done in its name. In the past few years, modern Islamic finance has proved itself to be viable,

innovative, and profitable. The question it faces now is whether it can prove that it is moral and responsible.

د اسلام او قيفوتلار يلو هو عملعأى لاعتلله او

Glossary of Arabic Terms

fatwa: an opinion on matters of Islamic law, often employed by modern Islamic banks as formal certification for a financial product or service.

halal: lawful

haram: unlawful

ijarah: lease

murabahah: mark up sale on deferred payments

qiyas: legal reasoning

sadd al-dhara`i: blocking ostensibly legitimate means to illegitimate ends

salam sale: A forward sale of fungibles in which advance payment in full is made in return for a deferred delivery of specified goods.

Shariah: Islamic law

sukuk: Shariah-compliant securities

taqwa: one's being heedful of the Almighty

wa`d: promise

wajib: necessary, a legal characterization that performance of an act is necessary.





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***Sahih* as “Rigorously authenticated” and *Hasan* as “Authenticated”: Unwarranted translations and creating misperceptions**

Abstract

Hadiths or Prophetic narrations are among the two primary sources of Islam in general and Islamic law and jurisprudence in particular. Hadiths are classified by the traditionists based on authentications into various categories: *Sahih*, *Hasan*, *Daif*, *Maudu*, etc. In English these terminologies have been translated in various ways. In recent times some new translations have been introduced: *Sahih* (rigorously authenticated) and *Hasan* (authenticated). This brief note presents an analysis of such newly translated terms, which, as demonstrated in this paper, is unwarranted and potentially misleading. Since such classifications are also related to validation of Islamic rulings (*ahkam*), in this paper an analysis of how these new translations affect the previous categorizations and their use in validation of Islamic rulings are presented.

Sunnah is the second primary source of guidance for Muslims and hadith - ‘what was transmitted on the authority of the Prophet, his deeds, sayings, tacit approval, or description of his *sifat* (features) meaning his physical appearance’ [1] – is the source to authenticate hadith. An important area of hadith studies is grading of hadith, such as *sahih*, *hasan*, *daif*, *maudu*, etc. yielding certain classification of categorization of hadith, which serves as the basis for establishing evidence (*dalil*) and deducing and validating Islamic rulings (*ahkam*). While for common Muslims, knowing that some claims or rulings are based on hadith is enough or satisfactory, in scholarly Islamic discourses such grading plays pivotal role, especially indicating the level of authenticity assigned to each hadith. There are some differences of opinion regarding the relevance of detailed terminology used in hadith studies and their scope of application, but broad agreement exists about the usage of these terminologies in Arabic. When it

comes to translating these terms into other languages, such as English, it poses some challenge and thus some variations do exist. However, even in translations in English, as we present here, some broad range of agreement exists. In recent decades, however, there are new translations of some of the primary terms of hadith that are becoming a source of confusion, which may constitute misrepresentation as well. In this paper we analyse the translation of these specific terms and study the implications for legal as well as popular Islamic discourse.

The background

In the age of the technology in general and internet in particular, Islamic discourse is not the turf of the privileged any more. The discourses have become more applied in the contemporary context. While popular Islamic discourses cover as wide a range of issues as wide life is, in certain fields, such as Islamic banking and finance, the discourse now engages a wide range of participants – scholars, experts, researchers, professional, students, consumers, etc. It was an expression that I came across in online discussions about Islamic banking and finance that sparked my further interest in this subject: the expression is “rigorously authenticated”, as translation of *sahih*. During my participation in IBFnet [2], the premier internet forum about Islamic finance and banking with 5,000+ participants, one of the threads I participated in was related to Riba and hadith. Based on my reading of the book *Interest in Islamic Economics: Understanding Riba* by Abdulkader Thomas [Routledge, 2006], I publicly posed a question to the author on IBFnet. [3]

Message #5464 [4]

In the Chapter The juridical meaning of Riba, Sh. Zuhayli cites a hadith as following:

"Hakim relates on the authority of Ibn Mas'ud that the Prophet said, '*Riba* is of seventy three kinds, the lightest in seriousness of which is as bad as one's marrying his own mother; for the Muslim who practices *riba* goes mad.'" [Thomas, p. 27] Endnote #6 adds: "Related by Ibn Majah in a shortened version, and by Hakim in its complete form, deeming it rigorously authenticated." [5]

I further added the comment:

I wrote to Br. Thomas that Ibn Majah adds the following comments about that hadith. "According to al-Zawa'id, its *isnad* contains in it Najsh b. Abdur Rahman Al Ma'shar. The scholars are unanimous on declaring him *daif* [i.e., weak]." [Sunan Ibn Majah,

Vol. 3, #2274, p. 351.] Actually, many other notable scholars have rejected that hadith, saying that it doesn't even go all the way to the Prophet.

Well, the author never responded to that query. Then, another participant, Atif Khan [6], used the same expression in the context of another thread [Message #5698] [7]: "The Prophet (Allah bless him and give him peace) commanded us to 'adhere to the jama'a' (Tirmidhi, rigorously authenticated), ..." [8] I was still not familiar with the expression, so I posed the question again to Atif Khan. The reply to the question came with some implied pity for me that how was it that I didn't already know this. Khan wrote: "I'm surprised 'rigorously authenticated' eluded you: 'sahih'; just 'authenticated,' 'hasan.' These terms are not a matter of dispute; they are a matter of convention, adopted by generations of Arabist translators." [9]

That is when it became clear to this author that "rigorously authenticated" is a new translation for *sahih* and "authenticated" is for *hasan*. Obviously, I was under the mistaken impression that it is a new categorization in hadith classification. Well, there is a reason why this author wasn't aware of or familiar with this new translation, which, according to Atif Khan, has been in vogue through the contribution of "Arabist translators". Unfortunately, Khan did not specify or give an example of any Arabist translator who may have contributed to such new translations.

Generally accepted translation of *sahih* and *hasan*

The fact of the matter is that hardly there are any reputable scholars of hadith, fiqh or other pertinent Islamic fields, who have either used such translations in the past or adopted it in recent times. First, let us survey the relevant literature, so that it is established that these are not merely my impressions; rather, these observations are duly corroborated.

Prof. Ahmad Hasan (translator of *Sunan Abu Dawud*)

In addition to translating *Sunan Abu Dawud*, his books on *Ijma* (consensus), *Qiyas* (analogical reasoning) and *Usul al-Fiqh* (Islamic jurisprudence) are highly regarded as reference work in the respective subjects. [10]

"Sahih (sound). A faultless hadith in which there is no weakness either in the chain (isnad) or in the text (matn).

Hasan (approved). A hadith like a *sahih* but for the fact that some of its narrators are found to

have defective memory in comparison to the narrators of a *sahih* hadith. It is inferior to *sahih*." [11]

Abdul Hamid Siddiqi (translator of *Sahih Muslim*)

He has also translated into English one of the well known books of Imam al-Ghazali, *Mishkat al-Masabih*.

"Sahih (sound)." This name is given to the utterly faultless hadith in which there is no weakness either in the chain (isnad) or in the text (matn) and in which there is no tendency to contradict any established belief of Islam.

Hasan (Approved) is a *sahih* tradition except for the fact that some of its narrators are found to have a defective memory in comparison to the narrators of *Sahih* hadith." [12]

Muhammad Tufail Ansari (translator of *Sunan Ibn-i-Majah*)

"Sahih (Sound)." [13]

Sheikh Abdur-Rahman ibn Yusuf (a scholar with Sunnipath)

"The Science of Hadith: An Introduction
Sahih (correct/proper form):
Hassan (good/well) [14]

Prof. Fazlur Rahman

He should not need much introduction. He was a professor at the University of Chicago and one of the foremost Islamic intellectuals and academic Muslim scholars of twentieth century.

"On the basis of these investigations, the Hadiths were classified into various categories such as '**genuine**', 'good', 'weak', ..." [15]

Dr. Muhammad Mustafa Azami

His works on hadith studies and research are considered as reference by the contemporary generation of Muslim scholars and researchers.

"Sahih (authentic)
Hasan (agreeable)" [16]

Dr. Muhammad Zubayr Siddiqi

He was the late Professor of Islamic Culture at Calcutta University. His book on hadith literature is one of the most well known scholarly reference works. The new edition of his book was edited and revised by a western Muslim scholar, Abdul Hakim Murad.

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"**Sahih (sound)**, Hasan (fair)" [17]

Dr. Suhaib Hassan

He is the author of a well known work on hadith studies.

"According to the reliability and memory of the reporters; the final judgment on a hadith depends crucially on this factor: verdicts such as **sahih (sound)**, hasan (good), da'if (weak) and maudu' (fabricated, forged) rest mainly upon the nature of the reporters in the isnad." [18]

Hasan al-Banna

He should not need much introduction. He was the founder of Muslim Brotherhood in Egypt (*Ikhwan al-Muslimun*) and had deep impact on global Islamic movements, leading to, among a number of interrelated areas, movement toward Islamic economics and finance.

Al-Tirmidhi said it is a good (hasan) and **sound (sahih)** Hadeeth). [19]

Shaikh Yusuf al-Qaradawi

He does not need much introduction either. He is one of the most well known jurists and scholars of our time. Apart from his influential and highly popular books, he is the founder and dean of the Shariah College at University of Qatar and chairman of the European Council for Fatwa and Research. He is also on Shariah boards of a number of Islamic financial institutions.

"if we investigate the **sahih (sound)** Hadiths that are narrated from the Messenger of Allah (peace and blessings be upon him)" [20]

Mufti Muhammad Taqi Usmani

He also should not need much introduction, especially for those from the field of Islamic finance and banking. He is one of the leading Shariah experts, much sought after by the global industry of Islamic finance.

"The Holy Prophet has, in another **authentic** hadith reported by Imam Bukhari ... " [21]

Prof. Mohammad Hashim Kamali

He is a professor of law at the International Islamic University Malaysia. He has taught Islamic law and jurisprudence there since 1985. His works on Islamic

jurisprudence and a myriad of vital issues today have become highly regarded references.

"A hadith is classified as **sahih, or authentic**, when its narrators belong to the first three categories. It is defined as a hadith with a continuous isnad all the way back to the Prophet, consisting of upright persons who also possess retentive memories and whose narration is free of both obvious and subtle defects.

The hasan hadith differs from the sahih in that it may include among its narrators a person or persons who belong to the fourth, fifth or sixth grades on the foregoing scale. It is a hadith that falls between sahih and daif. ... Hadith scholars during the first and second centuries Hijrah did not speak of hasan as a separate category and the term seems to have been used from the time of Imam Ahmad ibn Hanbal and al-Bukhari." [22]

Here I have referred to only Muslim sources. As far as non-Muslim scholars, the translation is broadly similar to what is presented above. They also commonly translate *sahih* as authentic or sound. [23] Thus, none of the sources cited above, including some of the most notable scholars in the field of hadith literature, whose works have been translated into English (or they themselves have authored works in English) use the new translation "rigorously authenticated" for *sahih* and "authenticated" for *hasan*.

Sources of these new translations

It was still puzzling as to who introduced it when and why. The earliest work available online that uses the new terminology (and that I could locate) is by Nuh Ha Mim Keller. In two essays in 1995 he used the terms Sahih "rigorously authenticated" and hasan "well authenticated". [24] Identifying and studying the origin (especially, if it has been used as convention for "generations", as claimed by some) and finding the rationale for it thus became an intellectual curiosity.

Tracing it to Keller who has employed these translations led to some further observations. However, the background of Nuh Keller merits some observation in this context. According to Wikipedia, "Keller (born 1954) is an American Muslim translator of Islamic books and a specialist in Islamic law, as well as being authorised by Abd al-Rahman al-

Shaghouri as a sheikh in sufism in the Shadhili Order. He is one of the foremost Muslim theologians and experts on Sufism in the West.” As mentioned earlier, the first work in which I came across these translations is by Thomas, who is also a western convert to Islam.

There are others among Muslims and non-Muslims, new converts and otherwise, who have picked up the usage, much later than Keller, examples of which include: Shaikh Muhammad Hisham Kabbani (1998), Nabil Haroun, the author of Teach Yourself Islam (2005), Philip Kennedy (2005), and Abdulkader Thomas (2006), and so on – none of whom are from the field of hadith. In some cases such terms have been used to present interpretations that essentially turn the egalitarian Islam upside down. One of the shaikhs with Sunnipath, who is also a student Keller, opines on “Arabs preferred over other nations” and asserts:

“It is obligatory on a Muslim to believe that Arabs are preferred over other nations because there is a proof for it. However, this is not one of the pillars of our religion such that if someone rejected this, they would be considered outside of Islam. But if one does reject this, one has sinned for not believing in it because it is an affirmed matter according to a clear rigorously authenticated hadith.” [25]

In one of the most widely reported historical declarations from the life of the Prophet Muhammad (s) is the Last Sermon, in which he was categorical in terms of the universalistic message and position of Islam:

All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor a black has any superiority over white except by piety and good action. [26]

The message of the Last Sermon is affirmed in the Qur’an:

“O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other (not that you may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) most righteous of you.” [49/Al-Hujuraat/13]

In the face of these categorical guidance from the Qur’an and the Prophet (s), views that find superiority of the Arabs over the non-Arabs are evidently contrary to the pristine message of egalitarianism in Islam. However, that it is being presented with the claimed backing of a “rigorously authenticated

hadith” makes it only that much more unacceptable.

Some pertinent issues

There are a few pertinent issues to deal with in this context: (a) Why abandon the translation that has been and is still used by the scholars, especially of the field of hadith literature? (b) Is it a more appropriate translation? And (c) Is there any problem with such new translation?

First, in the works of reputable and well known scholars, jurists, academicians, as corroborated above, the variation of translation of *sahih* ranges as following: authentic, sound, genuine (authentic or sound as the most common). The variation of translation of *hasan* ranges as following: good, fair, agreeable, approved (good is the most common).

Since no one has explained anywhere as to the origin or rationale of this new translation, we can’t really go much further. As is already documented above, Muslim scholars and academics commonly use the translation ‘authentic’ or ‘sound’ for *sahih* and good for *hasan*. It is noteworthy that neither of these common translations or their other variations is as assuming and awe-inspiring as “rigorously authenticated” and “authenticated”. Indeed, scholars, as documented above, usually juxtapose the original and the translated word or rather use the original Arabic term by itself. If only translation is to be used, why not use the original Arabic term?

Second, the new translation adds confusion, because what is generally used as translation for *sahih* (authentic) is used for *hasan* there. Therefore, unless the original in Arabic and the translation are used in juxtaposition, or the readers are familiar with this added confusion, readers might be confused when the word authenticated is used, because they might be considering it as *sahih*, when it is being used as *hasan*.

Third, another confusion arises in the context of another category called “Hasan Sahih.” One of the additions to hadith classification (*mustalah al-hadith*) made by Imam Tirmidhi, the compiler of one of the *Sihah Sittah*, is Sahih-Hasan/Hasan-Sahih category. [27] Indeed, extensive refinement with the hadith studies pertaining to *hasan* category is one of the hallmarks of Tirmidhi.

“The above ... examples should suffice to demonstrate the nature of the remarks appended by Tirmidhi to the traditions of his *Jami*. These hadiths he categorized as either *Sahih* (Sound), *Hasan* (Fair), *Sahih Hasan* (Sound-Fair), *Hasan Sahih* (Fair-Sound) ...

But perhaps the most important feature of the *Jami*, so far as assessments of reliability are concerned, is the category of *hasan*.” [28]

“Hasan Sahih is a hadith which according to Imam Tirmidhi stands at a higher level than a mere hasan hadith, but at a bit lower level than sahih.” [29]

If *hasan* is translated as authenticated and *sahih* as “rigorously authenticated”, then hasan-sahih would be authenticated-rigorously authenticated, which won’t make any sense. That’s probably one of the reasons why the Muslim scholars of the pertinent fields haven’t used or adopted such new translations.

Lastly, those who have introduced such newly translated terms are in a better position to explain their rationale for it. Those rationales can be evaluated, once those are known or disclosed. Until then, one can only surmise that some people might have thought that in an age where hadith as one of foundational source of Islamic knowledge and guidance is under attack, we need to use terminology that is more awe-inspiring. Using such terms would give Muslims a better sense of confidence in regard to hadith. Thus, *hasan* as “authenticated” commands much more respect than “good” or “fair”. Similarly, *sahih* as “rigorously authenticated” is more assuming than “authentic” or “sound.” Furthermore, the new translations allow even *hasan* category to sound like *sahih* in translated terms. This might be important because a vast portion of Islamic laws, codes and dogmas are based on *hasan* or even lower grade hadith. Describing *hasan* as “authenticated” is elevating this grade of hadith in the minds of Muslims to a significantly higher level.

Among the few people who have given me feedback on this matter so far is Dr. Muhammad al-Faruque, Associate Professor of Library Administration and Middle Eastern Studies Librarian at the University of Illinois at Urbana-Champaign. From the background of Arabic and Islamic Studies, he also held a similar position at Stanford University. He is also an active academic researcher. He wrote in response to my query:

I do not recall seeing this new translation for 'sahih' and 'hasan'. These are terminologies of 'usul ul-hadith' to denote certain quality and category of hadith. Thus, literal (or non-literal) translation most of the time do NOT give the same connotation as the original term does.

The new translation seems to me an **over-zealous** attempt to redress the mental set up of (mostly Western) readers of hadith. I can almost make a prophecy that it would not be popular in the scholarly circle. As for non-scholarly circle, it depends on how well it is propagated.

I would prefer to stick to the original term and, if necessary, to give a good explanatory note to it. [30]

Dr. Abdulaziz Sachedina is Professor of Religious Studies at the University of Virginia. His MA/PhD is from the University of Toronto, and has BA degree from Aligarh Muslim University in India. [31] His feedback about the new translation is as following:

SAHIH is ‘sound’ and hence, reliable. **Anything stronger than that is contrived.** Similarly HASAN ‘good’ and hence, admissible, provided its congruency remains untainted. The trend among those who want to convey ‘traditions’ as THE source for all Muslim legal-ethical decisions is to convey what you have seen more recently, which has, as yet, not accepted by any critical scholarship on traditions. [32]

Dr. Mohammad Fadel is an assistant professor, Faculty of Law, University of Toronto. He has a PhD in Near Eastern Languages and Civilizations at the University of Chicago (1995). He shared his comments on IBFnet forum. Note that he acknowledged that he has recently seen the new translation of these terms and were “puzzled as to what that meant.”

The ‘ulama have a saying: la mushahha fi al-istilah, meaning, one should not quarrel regarding conventional terms. The real issue is how conventional terms such as ‘sahih,’ ‘hasan’ and ‘da’if’ are defined. There, the muhaddiths have well-known differences of opinion. I have seen some contemporary translators use the term “rigorously authenticated” but was always puzzled as to what that meant. The muhaddithun, to indicate the conventional nature of the authentication process, will say things like ‘sahih ‘ala shart muslim’ or ‘sahih ‘ala shart al-bukhari’ or ‘sahih ‘ala shartihima’, meaning, respectively ‘valid according to the conditions of Muslim,’ ‘valid according the conditions of Bukhari’ and “valid according to both of their conditions. [33]

During the past century, hadith as a foundational source has come under serious attack by non-Muslims. Even some

among Muslims have turned toward rejection of hadith as an Islamic source of knowledge altogether. This is very unfortunate and unwarranted. However, if Muslims want to restore the confidence about hadith, especially among the Muslims, a vital task, it is important to recognize that in contradistinction to the extremism of the rejecters, one should not make any untenable claims in defense about hadith. It is worthwhile to remember that except *mutawatir bil lafz* category of hadith, even *sahih* hadith yields only probabilistic knowledge about what the Prophet has said or done. That's why due circumspection is needed in using relatively more presumptuous translations of hadith classification terms. This is especially important in the context of misapplications of hadith in formulating Islamic laws and codes. [34]

Hadith literature is precious to Muslims. However, maintaining and upholding confidence in it cannot be by assigning a lower grade hadith (*hasan*) a higher-level descriptor "authenticated." I am not for merely following the commonly used classification because it has been used so far. If we can come up with better descriptors, by all means, we should consider new ideas. However, we must explain what is the problem with the current usage as well as the relative merit of new translations. As far as "authenticated" (*hasan*) and "rigorously authenticated" (*sahih*) descriptors are concerned, as explained here, those not only do not have any relative merit, but also add confusion about the currently used translated terms and create misperception about hadiths that are lower grade than *sahih*.

Apart from explaining these problems with such new translations, one important goal of this essay is to expose those inaccurate assertions that these translations have been in use for "generations." On the contrary, as corroborated in this essay, our respected scholars and academics have not used such terms. Rather, quite consistently, they have used terms that are less assuming. It is preferable that we use *sahih* and *hasan* in original Arabic. If we do use English equivalents, what our scholars have used so far is better – not because they have used it to date, but because of their relative merit over new translations that add to confusion and create misperception.

What another Muslim convert-scholar wrote in response to my query is enlightening. Anne Sofie Roald is a professor of religious studies in Norway. She became a Muslim in 1982. [35] In a book *Women in Islam: the Western experience*

published in 2001, she used the new translation "rigorously authenticated" for *sahih*. When this author inquired of her as to how she came across this translation, she wrote:

"I have to admit that I made this study more than 13 years ago (I handed in the manuscript for print in 1999) and I have done very much other research after this.

I can not remember whether this term was found in other sources, but as you mentioned it probably is not. With the danger of reconstruction a matter according to my contemporary situation, I would assume that the reason for choosing such a term is that for me hadith *sahih* is supposed to be a hadith which is accepted as sound due to very thorough investigation about *isnad* and content. Of course with my knowledge today (and the last decades development in Islamic studies), I know that this might not always be the case and I would probably not have used this term." [36]

Thus, not only there is no compelling or acceptable justification for using this term "rigorously authenticated" for *sahih* hadith, but also this translation leads to confusion and even misrepresentation, which we can do without.

[For the annotated version of this paper, please download from <http://ssrn.com/abstract=1982675>]





Umer Majid

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The Shari'ah-The Central Tenet to an Effective Islamic Finance Implementation Strategy

By Dr. Umer Majid

Key to understanding the Muslim customer's mind set is understanding what the customer needs. For the Muslim customer taking out products that are Halal is down to one simple fact which is the greater purpose of all Muslim activity worshipping the creator, taking a halal product out is simply fulfilling this obligation in financial terms, just like eating meat which is Halal does, essentially what the customer seeks is to fulfil their obligations to the creator by following the Shariah.

Great Philosopher Gazzali, defines Shariah to be promoting and safeguarding the wealth and safety of the people, the term Shariah compliant does not give justice to the central guiding principles in Islam which involves largely minority opinions, to give legitimacy in the eyes of customers we need consensus of rule, aligned to customer needs and values which was the original promise of Islamic finance a more appropriate term giving rise to genuine legitimacy to Islamic finance is "Shariah based finance" this means that any products derived are value lead and do not compromise the Islamic value system which in this case is the implementation of the Shariah. This is the core to the central guiding principles underpinning Islamic finance. An Islamic financial organisation must seek to implement a clearly defined vision before it can think about delivering a genuine value proposition which must be aligned to the needs of the customer.

Wealth creation under the Shariah seeks to address the imbalances in a society creating opportunities to benefit the greater good and share genuine risk which was prevalent in the early stages of Islam under the Medina model, which by sharing risk effectively avoided debt creation. Notably debt is a key cause of the current global recession Stephen Green former head at HSBC points out that debt "has grown exponentially in developed countries. In the UK, for example, the ratio of debt to income reached 173 per cent in 2008, up from 129 per cent five years ago, and higher than any other G7 economy. The key advantage of following the Medina model is by sharing risk, you to mitigate and effectively manage it, reflecting upon activities such as risk shifting of large secular based banking organisations in net effect showed that they were themselves being managed by the risks.

The core principles of Islamic finance underpinned by the Shariah must be adhered

to by any forward thinking Islamic finance organisation as they are the means of creating a corollary with the customer as you create a natural alignment with the customer. Any organisation that compromises the Islamic value system, namely the Shariah runs the risk of alienating its customers. Islamic finance organisations would be well advised to derive strong theoretical models and then go on to develop ways to implement them by delivering products that would stack up to the shariah ,any organisation that seeks longevity ultimately must never seek to compromise on the core principles it seeks to deliver upon, this is the key problem with Islamic finance it appears no different from its secular alternative, organisations must therefore clearly distinguish themselves under the fence of the Shariah.Lets us look at the would be Islamic Diminishing Musaharakah home finance product a product that could be very simply designed to avoid negative equity but the Islamic finance organisations have replicated the conventional mortgage structured products. Largely due to conventional bankers running these organisations, any Islamic based organisations need to understand the need to follow the Shariah based mindset to sustain customer lock on.

Islamic finance must clearly identify and focus on a vision defined by the Shariah. The vision should be the only uncompromising basis about which the company should repose their focus on, harmonise their resources and serve to unleash their capabilities. Notably, it precedes the mission statement which should reflect how the organisation intends to implement its vision. This aids the workforce in practically visualising the bigger picture thereby helping to fortify and consistently simulate and motivate their moral and resolve. Managers need to therefore continuously align and set tasks towards the bigger picture in realising this vision. Organisations need to discharge of any duties that are not connected to accomplishing this vision, for example the re-engineering of conventional products to would be Islamic based products and benchmarking against libor seamlessly are tasks that are consuming precious resources and are debilitatingly draining emotional energy and may well prove to be disastrous in the long term as such activities undermine the “sprit of the shariah.”

Building any Islamic finance brand means developing sound market intelligence including in-depth customer segmentation and developing inventories that capture need profiles of customers implementing a robust customer relationship management system (CRM) striving to deepen their relationship with the customer. Clearly any Islamic finance value proposition must in totality be a “faith based”

one as the customer seeks the fulfilment of a faith based promise, which is only deliverable by aligning the company strategy to the Shariah. In order to further enhance their CRM management systems organisations need to engage in community partnerships, which will enable them to refine their value chain and become closer to the customer; they must forge links outside their existing business models.

In the long term Islamic finance will only corrode itself if it continues to identify itself on the basis of imitation products, these imitation products have had the net effect of damaging trust with the customer who is beginning to define these organisations as undermining the spirit of the shariah. Building trust is a vital component to creating long-term loyalty.

To crystallise trust with the customer an organisation must be strategically poised to deliver a genuine Islamic value proposition meeting the customers faith driven needs turning your initial contact to a competitive advantage.Lessons should be drawn from the current financial crisis the prophet Muhammad (SAW) who was the impeccable embodiment of the noble Muslim value system (the Shariah) gifted by Allah (SWT) to the human family through the perfect religion of Islam stated all humans are one body warned humanity to keep away from the evils of interest bearing, debt based transactions, explicitly saying.; “No matter how much Riba (Interest) there may be in the end it will lead to total poverty”.(IbnyMaja)





Shafiq ur Rahman

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Islamic Banking; Contractum Trinius Or Shariah Compliant?

By Shafiq ur Rahman

Background

The Biblical Scripture, both New Testament which relates to Christians (Luke 6:35) and Old Testament which relates to Jews (Ezekiel 18:8, Psalm 15:5, Exodus 22:25 etc) prohibit usury. Most Christian nations of ancient times, had incorporated this scripture into their laws, and as such it was illegal for any person to charge interest on a loan of money. In the Middle Ages (around end of Sixteenth Century), European Bankers and Merchants, with a view to circumvent this prohibition and provide the clients with so called Usury-Free transactions devised a set of contracts. Without going into details of the contracts, there was precisely, a set of three separate contracts were presented to the person seeking a loan i.e. an investment, a sale of profit and an insurance contract. Each of these contracts were severally permissible under the Church law, but jointly simulated an interest-bearing loan. The idea quickly spread to merchants and bankers across Christendom and people started following the system. Those who opposed this arrangement defied the system by declaring it as '**contractum trinius**'. That is how the Christians legitimized usury in their financial dealings. It was until the dogma was restructured by the School of Salamanca, and the ban on interest-bearing loans was lifted gradually, starting with England in the regime of Henry VIII.

There is a marginal minority view that the present practice of Islamic Banking depends on devices, particularly *Murabahah*, that are similar to the 'contractum trinius' as a means of working around a ban of *Riba* (usury) in religious scripture. Nonetheless, there is vast majority of people who still raise doubts on the system of Islamic Banking on the plea that there is no practical difference between the two systems. Hence it is strongly felt to justify business processes of the Islamic Banking System by first endeavoring to defy the wrong perceptions and then by evaluating the performance of the Islamic Banks covering pros and cons in *to-to*, over three decades since their inception.

Inception and essence of Islamic Banks:

Fed-up of distributive imbalances of conventional banking system under the umbrella of Capitalism and inspired by the verses of Holy Qur'an that dealing in interest is in fact

waging war on Almighty Allah (Baqarah 2:279), those who take *Riba* do not sustain themselves except like the one who has been maddened by *Satan* by touch (Baqarah 2:275) and that by taking *Riba*, the wealth shrinks and by paying *Zakat* the wealth is augmented (Rum 30:39), Islamic Banking was pioneered in mid seventies which is undeniable reality now as over 300 banks/institutions are operating worldwide in about 50 countries.

These institutions are offering wide range of products to their clients. These products are designed with a view that needs of the masses are fulfilled. In doing so the Islamic banks are to follow the course of action similar to that of conventional banks. But it must be noted that *Mahiyat* (essence) of the products of Islamic Banking is altogether different from that of the Conventional banks.

Illustration :

To comprehend this point we need to take some real time examples. A glass full of transparent liquid can be anything which comes to mind of viewer. To narrow down some may say it is water, based on the way it was presented or the place it lied or shape of glass it embedded. Others may have some different factors in mind while declaring it wine. While finding correctness one has to inquire its essence. Unless it is done so the reality would not be revealed. Similarly a pack of meat can be of a *Halal* mammal or of a *Haram* (prohibited one). Also if it was a *Halal* mammal, it cannot be guaranteed that it had been slain in the way prescribed by Islam unless one finds out the answer about its essence and then of source of the meat through which it was slaughtered. It is obvious that mere apparent resemblance of two different things does not necessitate their being same altogether. The products of Islamic Banks, *albeit*, resemble those of Conventional Banks, their essence is at total variance and is essentially based on compliance of the dictates of *Shariah*.

It may be little creepy to illustrate another paradigm, though there is no shyness in seeking the knowledge, that all schools of thought unanimously agree that integral components of *Nikah* are; the *Motaaqidain* (parties), the *Mahr* (amount of consideration) and the *Aqd* (agreement) and if any one of these is missing the *Nikah* would either be *Batil* (void) or *Fasid* (voidable). If one looks scrupulously, all the three components are also in existence in the act of *Zina* (adultery), as it cannot be constituted without the parties, the money and the mutual agreement of the parties. So what is the difference? If, *prima facie*, there is no point to vary then what should be the reason for the former being declared *Sunnah* (the commended act), and in some cases *Wajib* (mandatory) and the latter as the *Kabira* (amongst the largest sins). Without going into

the details, the simple answer would be that there is difference of essence, as the purpose of *Nikah* as mentioned in the Holy Quran is that the parties should be chaste and honest in wedlock, not debauched or lustful, nor taking paramours or of loose conduct (N isa, 4 :24, 25). Also, by doing *Nikah* one pledges to take full time responsibility of the *Nafqah* (expenses) and *Suknah* (accommodation) of the spouse till the rest of the life. Moreover, by *Nikah* the human lineage is preserved. None of these can be located in *Zina* (adultery).

One of the reasons that seem to justify the resemblance of the Islamic banking products with the conventional banks is perhaps the particular need of the people due to which these products are devised. But it must be kept in view that there are two sets/types of laws in Islam; *Ikhtiari* (ordinary) and *Iztirari* relaxed due genuine excuses. So far the Islamic banks have not been able to adhere to the ordinary laws of *Shariah*. They still follow the relaxed type of laws which by their origin are limited to some conditions or circumstances, so as when the particular condition or circumstance ceases, the *Hukm* (verdict) is changed. Like for instance *Ibaha*t (permissibility) of taking a pig is limited to certain conditions. The Islamic banks have ignored this factor and have adopted *Murabahah* and *Ijarah* as pivotal source of their working and financing which by their origin are not ideally a source of financing.

Attainments of Islamic Banks:

Having said this let us now endeavor to find what actually has caused this hubbub and what has gone wrong with the Islamic Banks to have caused this whinging, even by those who are considered to be sincere towards. But before doing that it should also be diminutively taken into account that the Islamic Banks have great attainments. They set practical example of interest-free banking by courageously translating the long-existent theory into practice. The *Shariah* Advisory Board that is part of their integral system, made them consult *`Ulama* (scholars of Islam) whenever need arose which on the other hand assisted the *`Ulama* to understand modern business market and provide solutions under *Shariah Law* on the basis of *Istinbat* (derivation) and *Ijtihad* (scholarly efforts) which for about last three centuries had been held in abeyance. Islamic banks have also greatly contributed towards restoring the wheel of evolution of Islamic Legal system particularly in the field of business, finance and economy.

Causes of Misconceptions:

As mentioned earlier, the philosophy of *Riba*-Free banking is aimed at establishing distributory justice, free



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from exploitations that are prevalent in the society. Islam provides their solution through modes called *Musharakah* and *Mudarabah*. The Islamic Banks were supposed to switch over to these two modes with the passage of time which unfortunately has been neglected world over by the Islamic Banks. Take only case of Pakistan where according to report of last quarter of 2006 issued by State Bank of Pakistan, *Musharakah* is only 1% and *Mudarabah* is 0%, while *Ijarah* is 30% and *Murabahah* is 40%.

It may be appreciated that in *Shariah* Law, *Musharakah* and *Mudarabah* are not modes of financing. The permission granted by *Ulema* for resorting to *Ijarah* and *Murabahah* were as interim measures and not as permanent rules so as that the entire sector start revolving around them. The dubious transactions akin to conventional banks have created doubts in the minds of people who are otherwise sincere towards Islamisation of banking sector. By adopting these two devices by all the banks that too under the frame work of LIBOR, it has become difficult to justify to masses, particularly non-Muslims who feel that it is nothing but twisting the documents.

Another reason is that Many Islamic Banks are not following in true letter and spirit the set pattern/procedure for financing which render the *Murabahah* transactions as *Fasida* (voidable).

Taking into *Qabza* (possession; whether physical or constructive) even for a while of the item being provided on *Murabahah* or *Ijarah*, by the bank must take place to constitute *Gharar* (Risk) on part of Bank. This practically is not accomplished by Islamic Banks while financing of items

Murabahah can only be of an item actually required by the client. Some banks enter *Murabahah* for provision of funds of the clients for over-head expenditures, payments of salaries of staff etc which is not allowed under Islamic Law,

Some time the client enter *Murabahah* for financing of their already purchased items. This amounts to Buy-Back which is against Islamic law,

In case the client is authorized as *Wakil* (agent) for purchase of item, this capacity should be separate from his subsequent capacity as a buyer having legally different liabilities. The banks normally do not care for their segregation, Penalty for default or late payment is not allowed in *Shariah* Law. Some banks have been found increasing amount of *Murabahah* on this pretext, which is against the *Shariah*.

4. Essence of *Ijarah* is that risk of damage/destruction should remain with bank being owner, as bank has provided only usufructs

of the item to the client against rent. Some banks have been found charging rent from client even if the item is damaged/lost due to *force majeure*, rendering the transaction of *Ijarah* as *Fasida* (voidable).

Recommendations:

Let us now precisely see what may be the points of concentration to bring about desired changes. These points are not exhaustive on the issue and a lot more is to be done.

There is vital difference between Islamic and Conventional Banking. So it is not necessary that both should give matching results while doing business. Linking of the profit earned by Islamic Banks with the rates of conventional banks is not a legitimate practice which casts serious doubts. The Islamic Banks should carry out reforms in the area in order to win hearts and mind of masses.

While Islamic Banks are indisputably not Welfare Organizations and they are in the market for business, they cannot be absolved from moral objectives towards the society, by caring for needs of people particularly, those small traders who really need assistance. Thus new products of House-Financing, Motor-Financing and Rehabilitation-Financing, copiously need to be launched keeping in view of society problems in which area the Islamic Banks are found to be lacking.

Without a strong system of Liquidity Management for inter- bank transactions, Islamic Banking cannot advance. Lack of such system has forced these Banks to approach the conventional banks for their short-term needs of liquidity involving *Riba*. A *Murabahah* cum *Ijarah* Liquidity Fund can be established, *inter se*, by the Islamic banks/institutions of the world.

The Islamic banks need to develop their own culture, based on Islamic values. The outlook of banks and their staff should reflect Islamic identity. This requires a major change. Some Middle Eastern Islamic institutions/ banks have shown advancement towards this aspect, but there should be a distinct and diverse feature of all the Islamic banks of the world.

Conclusion

To conclude it may be reemphasized there is no doubt that Islamic Banking System is *Shariah* compliant, however the preceding discussion is not aimed at opening the avenue for vilification. It would be appreciated if the stakeholders of Islamic Banking Sector may look into these points for remedial measures keeping in view the larger interest of the sector.





Muhammad Zubair Mughal

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Importance of Islamic Finance Education

By Muhammad Zubair Mughal

Islamic Banking and Finance

Islam is not only a religion in the ordinary sense of the word, but a complete system of life. While other religious codes provide guidance only for the relation between man and his Creator, Islam guides man in his relationship with God and gives him the norms which govern his temporal existence, since Islam is concerned with the spiritual, political, social economic, moral and all other material aspects of the human being.

Islamic banking is banking or banking activity that is consistent with the principles of Islamic law (Shariah) and its practical application through the development of Islamic economics. Shariah prohibits the fixed or floating payment or acceptance of specific interest or fees (known as Riba or usury) for loans of money. Investing in businesses that provide goods or services considered contrary to Islamic principles is also Haraam (forbidden). While these principles were used as the basis for a flourishing economy in earlier times, in the late 20th century that a number of formal Islamic banks were formed to apply these principles to private or semi-private commercial institutions within the Muslim and Non-Muslim Communities.

Current Status and Future Potential of Islamic Finance

The growth of the Islamic finance industry was remarkable in the last decade and in certain parts of the world its growth is extraordinary. According to Ernst & Young's inaugural World Islamic Banking Competitiveness Report 2011, Islamic banking assets with commercial banks globally will reach US\$1.1 trillion in 2012, a significant jump of 33% from their 2010 level of US\$826 billion. The Islamic banking assets in the Middle East and North Africa (MENA) region increased to US\$416 billion in 2010, representing a five year Compound Annual Growth Rate (CAGR) of 20% compared to less than 9% for conventional banks and these Islamic banking assets are expected to reach to US\$2.8 trillion by the year 2015. As new geographies open up to Islamic banking, the MENA Islamic banking industry is expected to more than double to US\$990 billion by 2015.

Based on estimates of the International Monetary Fund (IMF) (2010), there are

more than 390 Islamic banks and institutions spread across 75 countries. Based on the Islamic Development Bank records, the average annual growth rate of Islamic financial institutions assets during the period 1995-2010 was estimated to be within the range 10-15%. The main reason for the growth stem from a number of sources:

- Muslims worldwide are starting to use Shari'ah compliant products that were not previously available to them;
- Due to the increase in oil wealth of the Muslim nations in the Middle East and their decision to use Shari'ah compliant products, western governments and conventional financial institutions are considering using Islamic Finance
- Due to their escalating competitiveness and focus on ethics, Islamic products are attracting not only Muslims but non- Muslims as well.
- Islamic Finance has no way to leave in any time soon as Islam is the fastest growing religion in the world and is the second largest religious group in the UK, USA and France.

The GCC countries account for nearly 56 percent of the total Islamic banking assets. Based on Mckinsey projections, by 2015, more than half of financial services provided are expected to become Shari'ah complaint in the GCC countries.

Need of Islamic Banking and Finance Education & Trainings

Islamic banking faces an increasing problem of Human Resources with the start of the perspective to open Islamic banks, according to a careful estimate 50000 Islamic financial professional are needed in Islamic Financial industry. The need of human resources is growing indeed but the Human Resources are not growing in line with the opening of Islamic banks. It is a fact that a person cannot become an Islamic banker just by studying a few books or One week training, it needs many things in collective. To become an Islamic banker, one needs to spend life in this field and gain experience. We do not have enough trained professionals in the field of Islamic banking and finance but we also need to replace the conventional staff from Islamic Banks, so that Islamic Bank can be performed accordance to Islamic principles. We need suitable people and it will take time to the problem to be solved, the human capital can be trained in this field in accordance with the demand. Education will indeed raise standards in Islamic finance.

Current Status of Islamic Banking Education at University, College and Religious Schools

Currently, in accordance with a careful approximation, around 40 Universities all over the world are providing Post Graduate, PhD and Bachelor level programs on Islamic Banking and Finance, these universities are producing approximately 5000 professional every year while the demand of the Islamic Financial professional are 10 times high, it is an immediate need to fulfill the demand and supply gap from the Islamic Financial Industry. Some renowned international institutions who are providing Islamic financial education are , International Institute of Islamic Banking and Finance (IIIBF), La Trobe University, IIUM Institute of Islamic Banking and Finance (IIIBF), Durham University, Effat University, The Markfield Institute of Higher Education, Qatar Faculty of Islamic Studies, London School of Business and Finance, Salford University, University College of Bahrain, The University of Bedfordshire, Aston Business School, Islamic Research and Training Institute(IRTi), Bangor Business School at Bangor University, University of Reading, University Of Wales, The University of East London, Paris-Dauphine University, The International Centre for Education in Islamic Finance (INCEIF) Malaysia, Monash University Australia, University College of Bahrain, University Islam Sultan Sharif Ali (Unissa) – Brunie, College of Business UUM - Malaysia, University of Sharjah, MDIS Uzbekistan, University of Wales UK, Selangor International Islamic University College (KUIS) Malaysia.

With reference to Pakistan, almost 10 institutions are offering masters level program in Islamic Banking and Finance. Dadabhoy Institute of Higher Education, University of Management and Technology, KASBIT, Sheikh Zayed Islamic Center, International Islamic University Islamabad, Riphah International University and PAF Karachi Institute of Economics & Technology are some well-known name of institutions in Pakistan.

AlHuda Center of Islamic Banking and Economics (AlHuda CIBE) is also working on the same grounds. It is a well established name, working in the field of Islamic banking and Finance from the last seven years. AlHuda is dedicated to serve the community as a unique institution providing advisory, trainings, education, Awareness, product development and Publications in the field of Islamic Banking & Finance not only in Pakistan but all over the world. It has so far organized more than 500+ trainings, 52 successful campus programs and other educational & training program

in different parts of the world.

Approaches to produce Quality Human Resource in Islamic Banking and Finance

Several approaches can be used in order to produce the quality Human Resource for Islamic Banking and Finance industry. The approaches and techniques can be:

- University Degree Programs
- Specialized Trainings and Workshops
- Distance Learning Programs
- Publications, Webinars & other Media

As stated earlier, different Universities and Colleges are providing the education facility in the field of Islamic Banking and Finance. There is a need of more institutes providing degrees in this field with an aim of enabling the candidate to deeply understand the Islamic Banking operating system and the concepts of Islamic Finance.

In addition to this, training is an effective tool for Human Resource Development (HRD) as well as for achieving the goals of an organization. Islamic banking is a Shari'ah-based interest-free banking system. It has to operate in a way that benefits society as a whole. Its features and functional procedures are quite distinctive than that of the traditional banking system. To satisfy the objectives of the Islamic

banking and to face the challenge of the next century, the job of Islamic banking is becoming more complicated and more technical day by day. The personnel of Islamic banks require special Attitude, Skill and Knowledge, which can be developed through proper training. It is obvious that a large number of appropriately trained employees would result in increased output and reduced costs, further resulting in maximum utilization of human resources, which will ultimately benefit the entire nation.

Many institutions are providing Distance Learning Program on Islamic Banking and Finance. Through this mode, masses can be educated in a flexible and convenient manner. As Muslim are not only limited in Asia or Africa but they also reside in all over the world, so we can educate the Muslims and Finance professional globally through Distance learning programs. In addition to this, publications can also be used as a medium to educate masses about the latest news and updates on Islamic Banking and Finance.

We are sure that Islamic Banking system can be strengthened in better way by promoting Islamic Banking Education and Trainings.



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Is there a Divine ‘Method’ to Re-Establish the Caliphate (Khilafah)?

By Yamin Zakaria

Rational necessity coupled with the undisputable evidences in the Islamic texts makes the existence of the Caliphate obligatory for all Muslims. Therefore, in the absence of the Caliphate, its restoration is also an obligation.

Only the Islamic Liberation Party (Hizb-ut-Tahrir) has made the claim that it has extracted the divine method from the Islamic texts through the process of *Ijthad* (scholarly exertion). The method, meaning that one must undertake the steps as part of an obligation to re-establish the Caliphate. This article disputes this, the points listed below elaborates upon this.

1) The method has been built entirely upon the evidences related to how the first Islamic State was **established** by the Prophet (SAW) and His companions. Naturally, the pool of evidence extends from how the Prophet (SAW) and His companions took the various steps from the beginning of the divine revelation in Mecca to the migration (*Hijra*) to Medina. First point to note is there is no evidence in the Hadiths or the Quran that explicitly or implicitly states how the Islamic State should be **re-established**.

The method is primarily built on extracting the evidences that led to the changing of the non-Islamic system to the Islamic System that manifested in the Islamic State in Medina. Those acts are applied to our current situation to re-establish the Islamic state by changing the non-Islamic system prevailing over Muslims. The common factor being that we are trying to change the political system governing a society. **However, reason dictates that one must also look at the differences as well as the similarities in making an analogy between two different scenarios. There is a fundamental difference between the Prophet (SAW) establishing the first Islamic State in the primitive Arabian society, and of our situation of re-establishing the Islamic State amongst Muslims.**

Since the two scenarios are so different, one would argue the differences outweigh the similarities thus the evidences extracted from the *Seerah* (Life of the Prophet) is not even applicable, let alone binding. Hence, one can argue that the establishment of the first Islamic State cannot be a reference point as we are re-establishing the state amongst Muslims.

Yamin Zakaria

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There is a further significant problem in that the non-Islamic system of Mecca was changed and not Medina, thus the focus should be on those acts related to Medina and this is elaborated in the next point.

- 2) It is also fact that the Prophet (SAW) brought the entire religion of Islam, which included the establishment of the Islamic State in Medina. **Deciphering which acts contributed towards the establishment of the Islamic State in Medina is very much subjective; and difficult given that the state was established in Medina which was transformed largely by Musab Bin Umayr (RA) who had minimal contact with the Prophet (SAW) and functioned almost autonomously.**

Thus, with respect to the method, one can legitimately question the value in citing all the actions of the Prophet (SAW) in Mecca, which was geared towards changing the Meccan society, and it is fact that Mecca did not change; in fact it rejected the Prophet (SAW) until the end when it was opened up by force.

The evidences should be taken primarily from the actions of those who made Medina the first Islamic state. Reason dictates that if one is seeking evidences in relation to changing the society then clearly most of the episodes in Mecca should be ignored as it did not change through the actions of the Prophet (SAW) prior to migration to Medina. Rather Mecca remained hostile.

On a side point, those who are incessantly arguing for re-establishing the Islamic State in the Arab lands should note the Arabs in Mecca were amongst the best in Arabic, understood the miraculous nature of Quran very well and related to the Prophet (SAW), yet they rejected the message of Islam. So much for the Arabic language being the factor as the example from Mecca shows otherwise!

- 3) The claim that a given set of actions stated in the method should be applicable for all time to change different societies is false; – ironically the example of the Seerah proves this as Mecca did not change but Medina did. Therefore, the actions of the Prophet (SAW) showed that they were an attempt to change the society, which may work in some cases and not others, hence cannot be binding for all cases.

Furthermore, there is no corroborative evidence to make those steps obligatory especially given that we are referring to a situation (Seerah) that is fundamentally different to our situation of re-establishing the Islamic State. At most, one can make the case that one is permitted to emulate the steps taken by the Prophet (SAW) in establishing the first Islamic State, but they are

not obligatory.

The only action that we can argue as applicable is the interaction with the society that we are attempting to change, and this was carried out by the Prophet (SAW) and His companions. In any case this is self-evident and dictated by rational necessity; and this is so general, thus to claim it is part of the method is meaningless. If we observe history, we see many examples where such changes took place through interaction. In terms of the details as to how one should interact with the society depends on the situation, as stated earlier, the actions failed in Mecca but not Medina. Thus, one is not obliged to follow those actions of the prophet (SAW) and His companions in trying to change the society.

As for the claim that seeking of Nusrah (help from those with ability to change the system) is also, part of the method is elaborated in the next point.

- 4) Once again the seeking of Nusrah is also dictated by ration as part of the actions that can be undertaken to change the society, however to claim that this is binding for all times as it is considered part of the method is false. First there is no corroborative evidence for this, and secondly this contradicts the reality as in some cases seeking Nusrah may not be possible. For example, a dictatorial hostile regime would ensure that the persons holding the reigns of power are loyal thus getting Nusrah from them is impossible or unlikely. This is the case in many parts of the Islamic world further corroborated by the failure of HT to attain Nusrah over the last 50 years. **Furthermore, even if someone in a position of Nusrah became convinced of the method that the person(s) would feel obligated to resign from the position as the clear-cut verse that states one cannot be part of a hostile regime ruling by non-Islamic laws. This would nullify the ability to attain Nusrah. Hence, the claim that Nusrah is part of the method is false and it is only permitted to seek it in cases where it is suitable.**

The party has also misconstrued the relationship between Nusrah and the use of force, which is discussed in the next point.

- 5) The constant claim made by the party (Hizb-ut-Tahrir) that it is a non-violent party that is seeking a peaceful change like that which occurred in Medina is false. If we look into the details, the tribes were ready for battle and willing to take on anyone who challenged the authority of the Prophet (SAW) as He entered Medina, and the second pledge given to the Prophet (SAW) by the 12 from

Medina included the pledge to fight. **Thus, violence was intrinsically linked to the Nusrah of Medina even though it did not occur, but that is incidental.** Any change of system in the current times would involve fighting, unless the authority gave up the reigns of power willingly, but that is something one cannot determine or enforce.

In terms of precise evidence for changing the non-Islamic System to an Islamic one, the closest evidence is the Hadiths, which makes explicit references to changing a ruler by the sword if he deviates from the Caliphate. This is used by the Jihad orientated groups. The obvious implication is to use force to restore the caliphate and all the current secular states are in a deviated state. But again, this rule has to be applied with caution as it could lead to substantial loss of life, and this is not decisive either to argue that this is the only method to re-establish the Caliphate.

- 6) Some dubious arguments have been brought forward by some of the members of the Liberation Party claiming that there is a principle that every obligation (fardh or wajib) must have detailed explanation of how that should be achieved. **The implication is that re-establishing the state is an obligation thus there must also be a detailed explanation how that can be achieved. The principle is not from the books of Islamic Jurisprudence, in any case it is irrational as the principle makes little sense in many cases the how (or the method) of an obligation is part and parcel of the definition.** For example, the subject of prayer (*Salah*), the how or the method of the prayer does not exist as the definition of prayer contains how. This is composed of the various acts like the reciting Fathia (a chapter from the Quran), Ruku (bowing) Sujood (prostration) etc. Likewise for fasting, the notion is self-contained, fast by definition means abstaining from food, water and sex for certain duration. In some cases the method to perform a specific obligation is separate from the obligation itself but there is no rule to say this has to be defined. Note these examples to clarify the point even further –

It is obliged to fight the enemy in the battlefield but the method to fight the enemy is not defined. It is left to the people to use the appropriate means available to them.

It is obligatory to cut the hand of the thief but the method is not defined. One can use a sword, and axe or some other sharp object.

Likewise, it is obliged to re-establish the state but the method has not been defined but left to the people.

This final example actually proves the point even further. It is obligatory to call the people to pray. The method was not defined initially and the companions with the Prophet (SAW) did not say we have to wait for the revelation to clarify the matter as there is a principle that every obligation must have a method – instead they began to consider the various methods to call people to prayer, until the revelation came to specify the *Adhan*. Hence there is no such principle that states that the explanation of the obligation showing how it should be carried out must exist, in some cases the how of an obligation does not, in other cases it does and defined by the text or left for us to decide.

This then brings up the question, what is the correct method to re-establish the Caliphate. The short answer is there is none. There is no explicit text that states you must undertake these sets of actions to re-establish the state.

Therefore, we can use any permissible act to achieve the re-establishment of the state based on the principle of Ibaha, which states that all acts in origin are permissible until the text has forbidden it. So one can use charitable work or missionary type of work, but not acts like adultery to re-establish of the caliphate. This also confirms to the reality as the nature of society has changed significantly since the time of Mecca and different circumstances will require different sets of actions. As stated earlier that Mecca did not respond but Medina did even though bulk of the evidence and effort was focused in Mecca.

One can argue the core elements of society have remained the same like the presence of individuals, political authority and a system governing the various relationships; however, this would be an oversimplification of the problem and naive.

In a tribal society, the power resides with the few tribal leaders, whereas a nation state is far more complex with various facets. Therefore, to bring about a change to a nation state will require a different approach. As stated earlier it may be impossible to gain those (Nusrah) who have the position to alter the society.

In the context of the current times, it is almost a pre-requisite for mass support, thus one may have to resort to agitating the masses to create a mass revolution or uprising, which may eventually turn out to be bloody as we cannot always control how these things will turn out. **But where is the evidence from the Seerah that we can agitate the masses to revolt and over turn the society, if Nusrat is the only way to bring about change? Medina did not involve**

mass agitation; rather it was the product of the people in key position being convinced of the call of Islam and finding it as a convenient solution to their endless feuds. The public opinion played little role in a tribal society.





High Status of Ulema in Islam

1. Holy Prophet (PBUH&HP) said: Allah The Sublime has termed casting a look at the houses of Ulema as "Ibadah". (Uddatud Da'ee)
2. Whenever you go to an Aalim (learned man) and there are people along side him. Say salam to all but specially to the aalim with respect. (Kafi)
3. Hazrat Imam Jafer sadiq (AS) said that an aalim (learned man) is supreme than one thousand worshippers and devotees. And an aalim from whose knowledge people get advantage is supreme than the worship of 70, 000 worshippers. (kalma e Tayyabah)
4. Hazrat Imam Jafer Sadiq (AS) said Allah would weigh the ink of the pen of ulema (learned man) with the blood of martyrs on the Day of Judgment. The ink of the pen of ulema will overcome the blood of martyrs. (kalma e Tayyabah)
5. Holy Prophet (PBUH&HP) said that sitting of an aalim on his bed with his pillow and deliberation in ilm (knowledge) is better than 70-year worship of a worshipper. (kalma e Tayyabah)
6. Hazrat Imam Muhammad Baqir (AS) said that the example of an aalim is that of a candle, which light is beneficial for people and when a man sees this candle prays for it. Aalim removes darkness as candle does. So a man who gets salvation from darkness due to this light he is free of hell and Allah grants to that aalim in turn for that freed body reward which is supreme than 1,000 rakat prayer performed in Ka'aba. (Beharul Anwaar)
7. Holy Prophet (PBUH&HP) said that supremacy of an aalim (learned man) over an aabid (worshipper) is like that of sun over stars. And supremacy of a worshipper over others is like that of moon over stars. (kalma e Tayyabah)
8. Aaimmah (AS) said that ziarat of ulema is favourite in the sight of Allah than 70 circumambulation of Holy Ka'aba and is better than 70 accepted hajj and umrah. Allah elevates 70 grades for him and showers his mercy upon him and angles give evidence that paradise is obligatory upon him. (Iddatud Da'ee)
9. Hazrat Imam Moosa Kazim (AS) said if it is not possible to visit our graves then visit virtuous momneen (ulma e Haqqa) - (it means he will have the same reward as if he visits Masumeen (AS)'s Holy graves).
10. Hazrat Ameerul Momeneen (Ali yibne Abi Talib (AS)) said to make a look at an aalim is dearer to Allah than one year of etakaf e Baitullah (retirement to Ka'aba for continued prayer). (Iddatud Da'ee)
11. It is reported from Hazrat Ameerul Momeneen (Ali yibne Abi Talib (AS)) that

- Holy Prophet (PBUH&HP) said an Aalim (learned man) has such supremacy over an Abid (worshipper) as the moon of 14th night has over all stars. (Irshad, Sheikh Mofid)
12. Aimmah (AS) said a momin who sits close to an aalim for a moment, Allah says 'By my honour, dignity and glory I will surely seat him (momin) with aalim (learned man) in paradise'. (Amaali)
 13. Hazrat Ameeral Momeneen (AS) said sitting with ulma (learned men) for a moment is dearer to Allah than the worship of 1,000 years. (Iddatud Da'ee)
 14. The author of Kalma e Tayyabah says example of an aalim is that of a scent seller. At the time of meeting scent seller, a man's mind is scented with the fragrance of scent even if he does not buy it. Likewise meeting with an aalim gives benefit. Therefore a hadith says that to cast a look at an aalim's face is ibadat. (Kalma e Tayyabah)
 15. Holy Prophet (PBUH&HP) said to have a look at the face of an aalim (learned man) is dearer to Allah than 60 years of worship. (Jame ul Akhbar)
 16. Holy Prophet (PBUH&HP) said that if an aalim (learned man) and a student enter a village or city of Muslims and drink milk from there, Allah due to his blessing raises the torment from Ahle Qaboor (people in graves) of that village or city for 40 days. (Kalma e Tayyabah)
 17. Hazrat Imam Jafar Sadiq (AS) said one rakat of an aalim faqih is supreme than 70,000 rakaat of a worshipper. (Kalma e Tayyabah)
 18. Aimmah (AS) said the sleep of an aalim (learned man) is worship. (Jamalus Salehin)
 19. Aimmah (AS) said angels love ulama, and pray for them, and all creatures (as well) even the fish in rivers and animals in deserts ask forgiveness for aalim (learned man). (Jamalus Salehin)
 20. Hazrat Imam Jafar Sadiq (AS) said the status of an aalim is as higher than a worshipper as traveling of 500 years. (Kalma e Tayyabah)
 21. Fazil Syeed Mohammad Baqir Bin Sharif Hussaini Isfahani who was from among ulama of the period of Nadir Shah, reports in Book Noor Al-Oyoon that an aalim went to Sultan Ameer Ismail Samani, Sultan of Khurasan, for some important matter. The sultan paid much respect to the aalim and he went with him for seven steps at the time of aalim's departure. In the night, the sultan saw Holy Prophet (PBUH&HP) in his dream saying that you have respected one aalim from my ummah so I prayed from Allah Almighty to keep you honoured in the world. And you went with him for seven steps so this sultanate would remain in your progeny for seven generations. (Kalma e Tayyabah)
 22. Imam (AS) says aalim (learned man) among ignorant is as alive among dead. (Kalma e Tayyabah)
 23. Hazrat Imam Zainul Abidin (AS) said that presence of a discerning man in religion is tougher on Satan as compared to one thousand worshippers. (Kalma e Tayyabah)
 24. Holy prophet (PBUH&HP) said the supremacy of an aalim is 70 steps high than a worshipper and among every step is the expanse of one year. Because Satan causes innovation in people while aalim removes it and the worshipper remains busy in his worship. (Maniyatul Morid Shahid Sani)
 25. Holy prophet (PBUH&HP) said the supremacy of an aalim (learned man) over an abid (worshipper) is like mine over lowest man from among you. Allah, angels, residents of heavens and earth even ants in their holes and fish in rivers invoke blessings upon the man who teaches people aml e khair (good deed). (Kalma e Tayyabah)
 26. Aimmah (AS) said Allah The Sublime revealed upon prophet Daniyal (AS) that the ignorant from among the persons who invited My (Allah) wrath is that who considers the right of learned men less and does not follow them. And that person is nearer to me from among dearest persons who is pious and seeker of thawab, and the follower of ulama. (Maniyatul Morid)
 27. Aimmah (AS) said that to offer prayer after an aalim in some place other than mosque is equal to 1,000 rakat while to offer prayer after him in Jamia Mosque is equal to one lakh rakat. (Maniyatul Morid)
 28. Aimmah (AS) said that aalim is he whose act certifies his words, and who does not act so he is not an aalim. This hadith tells that an aalim cannot be with abundance of knowledge unless he acts upon it. Aalim is he who avoid sins and leads his life in piety, abstinence and obedience of Allah, and prefers hereafter upon this world, always says truth and avoids false. Lace himself with good qualities and off himself from evils. As much as knowledge he possesses more humbleness should be in him. Therefore, one day Hazrat Christ (AS) said to his Hawariyyin that he want from them something. They said O Ruhullah we accept what you want. So Hazrat Christ washed their feet and another hadith says that Hazrat Christ also kissed. Hawariyyin said that the act done by you was the act, which we must do. Hazrat

Christ (AS) said only ulma e din deserve the service and entertainment, and what I did was an act to tell you that to what extent hospitality be shown. (Jamalus Salehin)

29. Aimmah (AS) said that when an aalim (learned man) dies, at that time angels, all those places where he worshipped and the doors of heavens where his deeds were sent, all cry for him and there a crack created in religion that no one has its remedy.
30. Aimmah (AS) said that 70 sins of ignorant are forgiven then Aalim (learned man)'s one sin is pardoned. (Jamalus Salehin)
31. Holy prophet (pbuh&hp) said that a man who sits with an aalim for a while a call is made to him from Allah that you sit to my beloved. By My honour I will enter you in paradise with him. (Amaali)
32. Holy prophet (pbuh&hp) said that sitting in the company

of an Aalim is supreme than going with one thousand funerals, visiting one thousands patients, offering one thousand namaz e shab, keeping fasts for one thousand days, giving one thousand dirham in alms, performing one thousand hajj and one thousand jihad. (Rozatul waizeen)

33. Hazrat Ali (AS) said he who sits in the company of ulama (learned men), he will be honoured. (Darus Salam)
34. The worth of the scholars during the occultation has been emphasized in a beautiful tradition that has reached us from the 10th Imam, Muhammad b. 'Ali al-Hadi:



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Geography, Travels and Exploration by Muslims

Arabia being a barren peninsula, its inhabitants had always to depend on foreign supplies for the necessities of life, hence they had to undertake trips to distant countries like Egypt, Abbysinia, Syria, Persia and Iraq. It was an Arab caravan which brought Hazrat Yusuf (Prophet Joseph) to Egypt. Moreover, the fertile areas in Arabia including Yemen, Yamama, Oman, Bahrein and Hadari-Maut were situated on the coast, and the Arabs being sea-faring people took sea routes in order to reach these places and fulfilling their commercial ventures.

The birth of Islam opened a new vista for their enterprises and the vast conquests of the Arabs during the early decade of Islamic history served as a fresh stimulus to their adventurous spirits. The stories of the famous Arabian Nights including the one about Sindbad the Sailor, give a glimpse of the adventures of those fearless Arabs. It provides a slightly coloured account of the great voyages undertaken by Arab mariners as early as the 1st century A.H., and who, undaunted by the perils enroute, roamed about in stormy seas reaching such distant lands as Ceylon, Zanzibar, Maldives, Malaya, Java and Sumatra.

The Haj or the holy pilgrimage to Mecca was another factor which added to their geographical and commercial knowledge by providing social contacts among the Muslims of various countries visiting Mecca every year. This pilgrimage provided not only the means for promoting religious unity but also contributed to strengthening the commercial ties among Muslim countries and led to the exchange of views and news among people of far-flung countries. In fact the Haj, which created an opportunity for a great international assembly each year has paved the way for Muslim commercial and geographical enterprises.

The invention of mariner's compass opened vast oceans for their enterprising voyages. Most European writers have credited the Chinese with inventing the mariner's compass, but according to the famous orientalist George Sarton, the Arabs were the first to make practical use of it, a fact which has been admitted by the Chinese themselves. Another celebrated orientalist, Philip K. Hitti, has endorsed the view expressed by George Sarton.

"According to a statement of Sir R. F. Burton, it even seems that Ibn Majid was venerated in the past century on the African coast as the inventor of the compass". Any way, the practical use of the compass has immensely contributed to the undertaking of distant voyages by Arab sailors, who had hitherto been confined to coastal trips. They now came out into the open ocean and roamed about in the Atlantic as well as in the Pacific, circled the African continent and touched even the

shores of the New World. The frail boats were replaced by larger sailing ships and Arabs with the help of compass and other marine instruments braved the stormy seas.

The golden period of Muslim geography, travels and explorations runs from the 9th to the 14th century A.D., in which a vast amount of travel and geographical literature was produced in the world of Islam, which ultimately paved the way for later explorations and discoveries by the Christian West.

Writing in the *Legacy of Islam* J. H. Kramers says, "Europe ought to look upon them (Muslims) as its cultural ancestors in the domain of geographical knowledge of discovery and of world trade. The influence which Islam has exercised on our modern civilization in the spheres of action can be seen in the many terms of Arabic origin which are to be found in the vocabulary of trade and navigation. The measure of influence can only be proved by studying the historical development of the domain over which our actual geographical knowledge extends".

Theorists

The works of Greek writers specially the *Almagest*, written by Ptolemy provided the starting ground for Arab geographers. Al-Khwarizmi, the eminent Arab scientist, who flourished during the reign of the celebrated Mamun-ar-Rashid incorporated some of the ideas of *Almagest* in his geographical treatise *Kitab Surat al-Arṣ*. The book which has been preserved in Strassburg was edited along with a Latin translation by Nallino.

The simple geographical descriptions of numerous countries including their physical features, climatic conditions and the life of the people formed the subject matter of treatises compiled by early Muslim geographers. Ibn Khurdabaiḥ wrote *Kitab al-Masaalik wa-Mamaalik*; Al-Yaqubi compiled *Kitab al-Buldan*; Ibn al-Faqih also wrote *Kitab al-Buldan* and Ibn Rusta named his work *Kifayāt al-Aṣḥāb al-Naqṣa*. These books contained simple facts about the countries in order to satisfy the practical necessities of travellers visiting such countries.

The foremost writer of such geographical treatises during this period was Abu Zaid Al-Balkhi who was an eminent scholar at the court of the ruler of Khorasan. He has the distinction of being the author of as many as 43 books including his *Suwar al-Aqalim* a geographical work of considerable value which is not available at present. The book guided later writers on the subject.

Abu Yahya Zakariya Ibn Muhammad al-Qazwini (1203-83 A.D.) who wrote a book entitled *Ajaib al-Makhlūqāt wa-Gharāib al-Mawjūdāt* which is a very systematic

cosmographical work, and which, according to M. Streck, 'must be deemed as a work of fundamental importance and is quite the most valuable book that the Arab middle ages have given us in the field'.

Al-Qazwini has dealt with the description of the earth together with its seven climatic regions in his other geographical treatise *Aṭ-Ṭawā'ir wa-dkhār al-ʿUlūd*. The book also contains the climatic regions, physical features, life and history of the people of the countries dealt with. The voluminous geographical work written by the Spanish author Al-Bakri (C. 1067), contained most elaborate information on ports and coasts.

Another geographer of repute is Hamdullah Mastaufi, the author of *Nuḥḍat al-Qulūb* which deals with natural history, anthropology and geography. It has helped Mr. G. L. Stange in writing his book entitled *Lands of Eastern Caliphate*.

Explorers, Travellers and Writers

Abul Qasim Ibn Hauqal is the first traveller worth mentioning who, starting from Baghdad in 943, A.D. made an extensive tour of the Islamic countries and on his return incorporated his experiences in his geographical treatise, *Kitab al-Masaalik wa-Mamaalik*.

Another more famous traveller of the period is Shamsuddin Abu Abdullah al-Moqaddasi. Excepting Spain and Sind, Moqaddasi too toured the length and breadth of the Islamic world. He has put down his travel experiences in his celebrated geographical work *Aḥṣan al-Taqasim fi Ma'rifat al-Aqā'im* a rare book of its type. A. Sprenger has acclaimed him as the greatest geographer of all ages. The Asiatic Society of Bengal published the English translation of his famous work in 4 volumes between 1897 and 1910 A.D.

Abul Hasan Ali Ibn al-Husain al-Masudi is one of the great versatile figures of the Islamic world.

He is a well-known writer and explorer of the East. He was still quite young when he travelled through Persia and stayed in Istakhar for about a year in 915 A.D. Starting from Baghdad, he went to India, visiting Multan and Mansura, returned to Persia and after touring Kerman again went to India.

Travelling through Cambay, Deccan and Ceylon he along with some merchants sailed to Indo-China and China. On his return trip he visited Madagascar, Zanzibar, Oman and he reached Basrah where he settled afterwards and wrote his great work, *Muruj al-Dhahab* (Golden meadows) in which he relates his rich experiences in a cheerful manner which amuses the reader. Masudi also visited the southern shore of the Caspian sea and travelled through Central Asia and Turkistan. Retiring to Fustat (old Cairo) he wrote his

voluminous work *Mirat-uz-zaman* (Mirror of the Times) comprising 30 volumes in which he elaborately described the geography, history and life of the people of the countries he had visited. He toured Gujrat in 303 A.H. According to him, Chemur, a port of Gujrat was inhabited by more than 10 thousand Arabs and their descendants.

Among the great mariners of the 10th and 11th centuries A.D., Sulaiman al-Mahiri and Shahabuddin Ibn Majid occupy outstanding positions. They not only roamed about in the Indian, Pacific and atlantic oceans, but also toiled around the African continent and probably even touched the shores of the New World. Sulaiman reached as far as the Behring Strait and has penned his valuable experiences in a number of books, of which *Al-Umdat aE-Mahriya Ji Zabt-i-Ulum-il-Bahriya* is well-known.

The other mariner Ibn Majid was considered among the four sea lions of his time. Allama Syed Sulaiman Nadvi in his book entitled *The Navigation of Arabs* has enumerated fifteen books written by Ibn Majid on Navigation. According to a western critic, Ibn Majid is one of the earliest writers of nautical guides and his elaborate geographical account of the Red Sea could not be surpassed even up to the present day. Ibn Faldan was a traveller of the 10th century A.D., who led an embassy sent by the Abbasid Caliph Al-Muqtadir Billah in 921 A.D. to the Bulgarian Monarch, and incorporated his experiences in *Risalah* which is one of the earliest regional accounts about Russia. During the eleventh century A.D., Abu Rehan Beruni, the celebrated thinker of Islam visited India, stayed there for a number of years, learnt the Sanskrit language and described the geography and the life of India in his memorable work *Kitab-al-Hiplet*.

Regional geographics were also written during this period. Famous among them were the description of the Arabian peninsula by Al-Hamdani and of India by Al-Beruni. The works of travellers like Ibn Jubayr, Al-Mazini and Ibn Batuta are store-houses of geographical knowledge. Al-Mazini (1080 --1170 A.D.) who visited Russia wrote *Tuhfat-al-balad*.

The most brilliant writer of the period is Al-Idrisi (2101--54 A.D.) who was employed at the court of the Christian king of Sicily. His book *Nuzhat-ul-Mushtag* contained 70 maps. In the second abridged edition of Idrisi's book one comes across eight instead of seven climates which were to be found south of the equator. The world map drawn by Idrisi is of the traditional round type and the first translation of his book was published in Rome in 1619 A.D.

Yaqut-al-Hamavi (1179--1229 A.D.) compiled a big geographical dictionary named *Mujam-al-Buldan* which contains all geographical names in alphabetical order. It was

published in 6 volumes in Leipzig (Germany) between 1666--73 A. D. Writing in the 'Introduction to the History of Science; George Sarton remarks, "The *Mujam al Buldan* is one of the most important works of Arabic literature. It is a store house of information not simply on geography, but also on history, ethnography and natural history. It is preceded by an introduction dealing with mathematical, physical and political geography, the size of the earth, seven climates, etc."

The Spanish traveller, Ibn Jubayr visited Mecca and Iraq in 1192 A. D. He wrote his well-known book of Travels entitled *Rihlat-ul-Kinani* which is a unique book of its type in Arabic literature.

Abu Abdulla Muhammad (1304--78 A.D.), better known as Ibn Batuta was the greatest Muslim traveller. Born in Tanglers, he started his travels at the age of 20, and returned home at the age of 51. During these 31 years he covered about 75,000 miles which is equal to three trips round the globe. No explorer or traveller during mediaeval times had traversed so many miles during a lifetime. Starting from Tanglers he toured Egypt, Abyssinia, Northern and Eastern Africa including Mombassa. He crossed the great Sahara (Desert) and reached Timbuktoo. He describes an oasis in the Sahara (Desert) where people constructed houses of rock-salt roofed with camel skins.

In Europe he visited Spain, the Eastern Roman Empire and Southern Russia and sailed in the Mediterranean and the Black Seas. There hardly was a Muslim country in Asia, which Ibn Batuta had not seen. He made many tours of the Arab countries and performed Haj (Holy pilgrimage to Mecca) four times. In addition he travelled in Persia, Turkistan, Afghanistan, India, Maldives, Ceylon, East India, Indo-China and China. According to him Aden was a great commercial centre in those days and had a good system of water-supply. He travelled as far North as Bolghar (54 degrees N) in Siberia, in order to see the shortness of summer nights and desired to travel into the land of darkness (extreme North of Russia), but abandoned his visit due to certain reasons. He stayed for eight years in India, as the State Qazi of Muhammad Tughlaq in Delhi, but had to flee to Deccan in order to save himself from the indignation of the Emperor. He took part in the conquest of Goa and visited Maldives where he was made Qazi and married four wives.

He relates interesting stories about India. Hindus in those days drowned themselves in the sacred waters of the Ganges in order to gain Baikunth (Paradise). On his first sight of Sati he was so overwhelmed with emotion that he almost fell off his horse. He met a very old man in the Hindukush



mountains, who was said to be 358 years old and got a new set of teeth after every 180 years.

Explorations and Discoveries

Muslims may claim due share in the exploration of vast oceans and the discoveries of far off lands. But the difficulty is that the achievements of Muslims in this sphere of human activity are not generally known to the world. The largest collection of literary and artistic treasures accumulated during the five centuries of the Islamic rule, perished at the time of the fall of Baghdad. The invaluable manuscripts were consumed to ashes by Hulagu Khan and his Mongol hordes. The cream of Muslim civilization met a similar fate in Spain, at the hands of Christian conquerors. Modern research has now begun to lift the veil from the face of mediaeval ages and the achievements of the Muslims now are revealed in all their glory.

"At a time when Europe firmly believed in the flatness of the Earth," says Ameer Ali, "and was ready to burn any foolhardy person who thought otherwise, the Arabs taught geography by globes". Their progress in mathematical geography was no less remarkable. The works of Ibn Hauqal, Makrizi Istakhri, Masudi, Beruni, Idrisi, Qazwini, Wardi and Abul Fida contain store of geographical knowledge specially on this branch of science, called by them "Rasnul Ard".

Rotation of the Earth

The rotation and sphericity of the earth were discussed and proved by the Muslim geographers of mediaeval times. The Kitab Kalimat-ul-Ain deals with the rotation of the earth which causes day and night. Muslim astronomers also proved that the earth is a sphere and has a shape like a peach. Globes were commonly used in Arabic schools of mediaeval times which testifies to the contention of the sphericity of earth advanced by Muslims. Geography of the world was also taught with the help of globes in Moorish Spain.

Knowledge of Seas

Arab Mariners and explorers had a very wide knowledge of seas and oceans. The greatest discovery of the Arabs was that the oceans are connected with one another and form a compact oceanic world. The first sea route described by Sulaiman al-h-Mahiri started from the Indian Ocean and passing through the Pacific Ocean, Behring Sea, Arctic Ocean and Atlantic Oceans entered the Mediterranean Sea through the Straits of Gibraltar.

The other route was easier. Starting from the Indian Ocean and passing through the Abyssinian Sea, Mozambique channel and encircling the Cape of Good Hope it entered the Atlantic Ocean. Passing through the Straits of Gibraltar it

entered the Mediterranean Sea. This was the route used by Vasco De Gama in 1498 A. D. This shows that the Arabs were the masters of the seas and possessed maps of seas and oceans which they freely used in their voyages.

Ibn Khaldun has stated the length of the Red Sea, to be 1,400 miles, while according to current maps it is given as, 1,310 miles. This shows that the speculations of Arab geographers came very close to modern research.

Behring Strait

The Behring Sea and Strait was known to the Arabs. The route described by Sulaiman al-Mahiri went from the Pacific Ocean to the Arctic Ocean passing through the Behring Strait. The celebrated explorer Al-Masudi has also mentioned the Behring Sea in his works. Among the Arabs it was known as 'Warang' sea.

According to the Encyclopaedia of America the geography of equatorial Africa and the issuing place of the river Nile was known to the Arabs for a very long time.

Arab Pilot of Vasco De Gama

In 1498 A. D. Vasco De Gama discovered a new route to India by passing through the Cape of Good Hope. Prince Henry of Portugal had established his nautical academy at Cape St. Vincent under the guidance of Arab and Jewish teachers which prepared the ground for the explorations of Vasco De Gama. It is now a well-known fact that an Arab had piloted his ship to India. Writing in Legacy of Islam, J. H. Kramers says, "when Vasco De Gama, after his circum-navigation of Africa in 11198, had reached Malindi on the East Coast of Africa, it was an Arab pilot that showed him the way to India.

According to Portuguese sources, this pilot was in possession of a very good sea-map and of other maritime instruments. Arabic sources of that time also knew the story; they state that the Pilot, whom they knew under the name of Ahmad Ibn Majid, could only be induced to show the way to the Portuguese after having been made drunk".

Reporting from Bares, a Portuguese who was a member of the party of Vasco De Gama, writes in the Encyclopaedia of Islam: "When Vasco De Gama reached Malindi a Moor (Arab Muslim) called on him. Being much pleased in our company and with the idea of winning the favour of the king of Malindi who was in search of a pilot for the Portuguese ship, he (Arab Muslim) agreed to pilot our ship to India".

According to the learned author of the Encyclopaedia Britannica, a local hand had piloted the ship of Vasco De Gama to India. He is either shy of associating the name of a Muslim with the much advertised exploration of Vasco De Gama or is ignorant of such a vital fact which may hardly be

expected from an author who has undertaken such a gigantic work.

The discovery of-America

Modern research has proved beyond doubt that the Arabs discovered America. Muslim Geographers and astronomers believed in the sphericity of the earth. The trigonometrical tables of Khwarizmi were translated by Adelard of Bath, Gerard of Cremona and Roger Bacon. The famous book Image Mundi published in 1410 A. D. incorporated the Ain (or Arim) theory from the translations of Khwarizmi. It was from this book that Columbus learnt that the earth was pear shaped and that there must be some elevated part on the other side of the earth which he decided to discover. "Thus Islamic geographical theory", observes J. H. Kramers, "may claim a share in the discovery of the new world".

Modern research on the subject has gone a step further and has established that the Arabs discovered America five centuries before Columbus. The following important news was published in leading Indian newspapers including the Delhi Express, dated 11th August 1952.

"A leading South African anthropologist says the Arabs, not Christopher Columbus, discovered America. The Arabs scored a beat of nearly 500 years on Columbus, according to Dr. Jeffreys, Senior lecturer of Social Anthropology at Witwatersand University. Dr. Jeffreys based his claim on a discovery 18 months ago of Negro Hamitic skulls in the Rio. Grande River."

The professor said, 'Puzzling things previously inexplicable suddenly made sense and fitted a jigsaw puzzle'.

"Dr. Jeffreys thinks that by 1000 A. D. Arabs already commanded the Mediterranean, were established on the west coast of Africa and had settled in America. Columbus, too, found small colonies of Negroes in the Darian Isthmus who, according to Dr. Jeffreys, were descendants of Arab slaves."

"He said the discovery of Hamitic skulls in caves in Bashama Islands and African root crops in the Carribean lend credence to this theory."

The celebrated anthropologist of South Africa, Prof M. D. W. Jeffreys' article has been published in various journals of the world in which he has given weighty proofs that Arabs had discovered America and had settled in Carribean islands long before the arrival of Columbus. He says, "There is an old Portuguese tradition that when the Portuguese were exploring the coasts of Guinea (West Africa) under King John II, who died in 1495, these explorers brought maize, an American plant from Guinea to Portugal.... As maize must have reached Guinea from America to introduce it to

Portugal before Columbus sailed from Spain, it is clear someone must have brought it from the Americas, and I claim it were the Arabs who did so".

In the same way banana was carried by Arabs to Carribean islands and American mainland. Peter Nartyr, a friend of Columbus, published his first Decade before 1504 A.D. In it he describes the banana as it appeared in the West Indies when the Spaniards arrived. He writes: "it (banana) was brought from a part of Ethiopia called Guinea, where it grows wild, as in its native country."It were the Arabs who introduced the banana to Guinea (West Africa) and therefrom carried it to Carribean islands and American mainland.

Reynold writes: "The Arabs were instrumental in distributing the banana across equatorial Africa, so that it was well-established on the Guinea coast when the Portuguese first explored there in the years 1469-1474 A.D."1

Moreover the Atlantic islands were known long before the discovery of Columbus. The Arabic names of these islands in the geography published by a Franciscan Friar in 1350 A.D. prove that most of these were inhabited by Arabs and their descendants, e.g., Lost Islands were named Kalidat, Teneriffe was named Elburd. The word Brazil too has Arabic origin. Armando Cortesao, formerly counsellor for the History of Science at UNESCO has published a book called The Nautical Chart of 1424, in which he has named several islands which have Arabic origin e.g., Antilia, Saya and Ymana.

The celebrated Geographer Idrisi had published his well-known geography Nuzhat-al-Mushtaq about 1151 A.D. Idrisi in his geography gives a hint that the Arabs knew the Americas. The western orientalist Glas, writing in 1764 A.D. of Idrisi, whom he -calls the Nubian geographer admits: "Anyone who reads with attention the first part of the Nubian Geographer's Third Climate will be strongly inclined to believe that the Arabs had even some knowledge of America or West India Islands".



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