Divine law of *ribā* and *bay'*:
New critical theory

Azeemuddin Subhani

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DEDICATION

This study is dedicated to my dear late son Yusuf (Munawwar) Subhani who, with his short but painfully eventful life, innocently and unknowingly to him, showed the light for this search. His temporal life of slightly less than two decades was first a normal gradual *forward growth*, and then, what turned out to be nearly half-way through, an abnormal and rare gradual *reverse growth*. Shortly before departing for his eternal abode on February 14, 1992, when in an otherwise completely vegetative state, to my utter bewilderment, he called out to me, in a voice unforgettably loud and clear, only one word and only once, *"Baba!"* – not just a farewell call, but also, as it turned out, a call-attention notice, a call for me to search, to discover, to ponder, in all the manifestations, the mysteries of *forward* (and *reverse*) "growth," a word that in the divinely chosen language of revelation translates as *"ribā."*

CONTENTS

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ABSTRACT

Author	: Azeemuddin Subhani
Title	: Divine Law of *Ribā* and *Bay'*: New Critical Theory
Department	: Institute of Islamic Studies, McGill University
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The notion of usury/interest, subsumed under the Arabic term *ribā* and Hebraic *neshekh/marbīt,* has been the center of human attention throughout recorded history, but only as an exclusive economic paradigm subject to toleration, limitation or prohibition. Yet, in a clearly disproportionate treatment, all pristine major world religions consider this "economic act" as the greatest of sins, which, in Islam, additionally attracts the most graphic other-worldly punishments at the extremes of the spectrum. Economic usurpation of greater severity, e.g., theft by *stealth* and robbery by *force* do not attract as severe a Scriptural punishment as does "interest-taking" by *consent,* clearly implying, both scripturally and linguistically, that this seemingly exclusive "economic act" is in fact a sin of greater theological proportions. Yet, casuistry and a non-philosophical approach have so far prevented the extant Judaic, Christian and Islamic scholarship from assessing the depth and breadth of the theology at stake here. Utilizing a semiotic methodology and a philosophical/theological approach, and drawing out the glaring deficiencies of the current scholarship, this work posits that the Arabic *ribā* / Hebraic *marbīt* (growth), by virtue of its intrinsic characteristic of *intra-activity* as against its binary opposite of *inter-activity* inherent in *bay'* (exchange), causes self-emanation, self-subsistence and *ex-nihilo* creation, which, being exclusive Divine attributes, not only render *marbīt/ribā* an act of idolatry/polytheism (Arabic: *shirk),* but also thereby extend it to all spheres of human action. This diagnosis not only harmonizes the severe ordained punishment with the gravity of the sin, it also bestows perfect hermeneutical calibration to the whole *ribā* paradigm for all monotheist religions, identifying the universal divine law: *intra-activity (ribā)* – lack of dependence – for the Master *(Rabb)* and *inter-activity (bay')* – dependence – for the servant *('abd).* This yields the new critical theory of normative human behavior prescribed by "Islam" – the *dīn al-fiṭra,* which calls for total human conformity to the design and purpose of human creation in pairs *(tathniya:* duality), reserving *ribā (tawḥīd:* singularity) for the One whose divine attribute it is.

RÉSUMÉ

Auteur : Azeemuddin Subhani
Titre : La loi divine de *ribā* et de ***bay'*** : nouvelle théorie critique
Faculté : L'Institut d'Etudes Islamiques, Université McGill
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La question de l'usure / l'intérêt, indiqué par le terme « *ribā* » en arabe et « *neshekh / marbīt* » en hébreu, relève depuis l'aube de l'histoire des préoccupations les plus impérieuses de l'homme, mais ce exclusivement en tant que paradigme économique faisant l'objet tantôt de tolérance, tantôt de limitation, tantôt de prohibition. Cependant, et d'une manière qui dépasse toute proportionnalité, l'ensemble des grandes religions mondiales originales considèrent cet « acte économique » comme l'un des péchés les plus abominables qui soient, péché qui, dans le cas de l'Islam, entraîne les plus sévères des châtiments dans la vie de l'au-delà. En effet, même les usurpations économiques d'une sévérité apparemment plus marquée, telles que le vol ***à la dérobée*** ou le brigandage ***de force***, ne font pas l'objet d'une censure scripturale aussi rigoureuse que celle entraînée par un «prêt à intérêt» conclu ***de gré***, ce qui laisse entendre sans défaut – aussi bien sur le plan scriptural que linguistique – que cet acte que l'on croirait de caractère exclusivement « économique » constitue, en effet, un péché à prolongements théologiques bien plus graves. Toutefois, la façon casuiste et non-philosophique dont ce problème est normalement traité a empêché jusqu'ici – au sein des milieux savants juifs, chrétiens et islamiques – une appréciation adéquate de la véritable envergure des questions théologiques en jeu. S'appuyant sur une méthode sémiotique et une approche philosophique/théologique, tout en soulignant les insuffisances frappantes des recherches actuelles, ce travail avance l'hypothèse selon laquelle la notion de « *ribā* » en arabe / « *marbīt* » en hébreu (c.à-d. : 'croissance') – de par sa caractéristique intrinsèque d' « ***intra-activité*** », par opposition à l'« ***inter-activité*** » qui constitue son opposé binaire et qui fait partie intégrante du ***bay'*** ('échange') – donnerait lieu à une auto-émanation, une subsistance en soi et une création ***ex nihilo***, autant de qualités qui, étant des attributs exclusivement divins, non seulement font de la *marbīt* / *ribā* un acte d'idolâtrie / de polythéisme (arabe: ***shirk***), mais qui font également que cette qualité de ***shirk*** s'étende à l'intégralité des domaines de l'action humaine. Cette perspective a pour effet non seulement de concilier la sévérité du châtiment prescrit avec la gravité du péché, mais aussi d'effectuer un calibrage herméneutique au point du paradigme-*ribā* pour l'ensemble des religions monothéistes, et ce en identifiant la loi divine universelle d' : ***intra-activité*** *(ribā)* – manque de dépendance – propre au Seigneur ***(Rabb)*** et ***d'inter-activité (bay')*** – dépendance – propre au serviteur ***('abd)***. Ainsi cette optique donne-t-elle lieu à une nouvelle théorie critique de comportement normatif chez l'homme tel qu'il est prescrit par l'« Islam » – le *dīn al-fiṭra*, lequel exige une conformité totale de l'être humain face à la conception et le but de la création des hommes en couple *(tathniya* : 'dualité'), tout en réservant la *ribā (tawḥīd* : 'unicité') à l'Unique qui seul en saurait être qualifié.

TRANSLITERATION NOTE

The following system of transliteration in use at the Institute of Islamic Studies, McGill University, has been employed in this work:

Consonants:

ء (initial): unexpressed ; ء (medial/final) : '

ب	b	ط	ṭ
ت	t	ظ	ẓ
ث	th	ع	‘
ج	j	غ	gh
ح	ḥ	ف	f
خ	kh	ق	q
د	d	ك	k
ذ	dh	ل	l
ر	r	م	m
ز	z	ن	n
س	s	ه	h
ش	sh	و	w
ص	ṣ	ي	y
ض	ḍ	ى	á

Vowels:

	ـَ	ـُ	ـِ
Short	a ;	u ;	i
Long	ا ā ;	و ū ;	ي ī

Tā' marbūṭa: ة a ; in *iḍāfa*: at

Diphthongs: اي = ay ; او = aw

CHAPTER I

INTRODUCTION

وَأَحَلَّ اللهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

***"...Allāh permitteth* bay' *and forbiddeth* ribā ..." – Qur'ān 2:275**

"He granteth wisdom to whom He pleaseth. And he to whom wisdom is granted receiveth indeed a benefit overflowing; but none will grasp the Message but men of understanding" – Qur'ān 2:269

"God will not ask us, on the Day of Judgment, what people may have said or understood, but He will ask us if we ourselves have understood His Book, and if we have followed its direction" – M. 'Abduh

I.1. Objective

This hermeneutical and juridical research project is a theological-philosophical investigation of a single Abrahamic scriptural injunction quoted above, which, exoterically mundane in manifestation but esoterically very pregnant in meaning, originated in the Hebrew Torah as prohibition of *marbīt* (lit. growth; tech. creditor's gain) – and also as *neshekh* (lit. bite; tech. debtor's loss) – and which, with cognate Semitic linguistic roots for *marbīt* and *ribā*, culminated in the Qur'ān as outlawing (declaring *ḥarām)* the human practice of *ribā* (lit. unilateral growth; tech. usury/interest) and permitting (making *ḥalāl)* the human practice of *bay'* (lit. bilateral exchange; tech. sale).[1] Theologically, the research objective is to discover in this scriptural injunction a universal and eternal divine law. Philosophically, the objective is to extract a pioneering critical theory of normative human behavior subsumed in this divine law. Hermeneutically, the objective is to determine the inter-locking meaning, scope and rationale of the two terms, *ribā* and *bay'*. Juridically, the objective is to identify the definitive *ḥikma* (rationale) and *'illa (ratio legis)* of the injunction.

Based primarily on Islam, this new theory of normative human behavior may be termed "Natural Conformism" to denote "conformity" with the divine law, which, *inter alia*, compared to the popular translation "submission," might be a more precise rendering of the term "Islam" – the *dīn al-fiṭra* (the religion of nature).[2] Given its diverse roots and virtually unlimited scope, and constituting a comprehensive practical

[1] Q. 2:275.
[2] Q. 30: 30.

worldview of normative human behavior, this new theory could eventually qualify for the much sought after title of "Grand Unifying Theory" (GUT)[3] that has eluded the academic study of religion:

> It has become clear over the past two centuries that the *academic study of religion has no GUT*, that is, *no Grand Unifying Theory* that brings into sharp focus all things religious. *And it never will.* Every theory frames and focuses our attention on some things while leaving other things outside the frame or out of focus. Thus, *religious studies is always in search of new theories that might open up new ways of seeing and interpreting religion.*
>
> In recent decades, religion scholars have moved beyond their traditional disciplinary boundaries in search of new theoretical perspectives by which to interpret religion. Theories of culture, history, language, and gender that were unfamiliar to most religionists in the past are today reframing and refocusing how we see religion. As a result, the canon of theories and methods important to the academic study of religion has been dramatically transformed and expanded. *This situation makes religious studies an exciting and vibrant academic field. Yet it also presents religion students and teachers with significant challenges. These new theories* ask innovative questions and *reveal novel possibilities* for studying and interpreting religion, *but they are often difficult to understand.* [italics and emphasis mine][4]

This work will take up this challenge by positing a comprehensive yet *easy to understand* new theory of "action" (normative behavior), i.e., the nature and role of divine vs. human action and human conformity to it, to comprehend religion devoid of ritual and jargon in terms of the divine law of *ribā* and *bay'*.

I.2. Research Issue

Intellectually so far, the divine law of *ribā* and *bay'*, revealed in all three Abrahamic faiths in varying detail and differing degrees of developmental potential, has been grossly under-utilized as it was always relegated to its limited technical meaning only. The formal foray into its intrinsic broader meaning commenced with a hermeneutical examination,[5] which concluded that the current hermeneutical models of *ribā* were lacking in depth, restrictive in scope and skewed in construction as they did not calibrate its linguistic, prohibitory and punitive aspects. Therefore, the research objective, as outlined above, is to explore conceptually the Scriptural prohibition of *ribā* and the juxtapositional permission of *bay'* in the Abrahamic monotheistic divine law – as manifested finally in Islamic law – in such depth and breadth, and using an appropriate methodology, that through a calibrated hermeneutical model a new critical theory of normative human behavior can be posited.

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[3] A term used by William E. Deal and Timothy K. Beal in *Theory For Religious Studies* (New York; London: Routledge, 2004), xi.
[4] Ibid.
[5] Azeemuddin Subhani, "The Islamic Doctrine of *Ribā* Prohibition: A Modular Hermeneutical Examination" (master's thesis, McGill University, 2002).

Though lexically pregnant, contextually and technically the Arabic term *ribā* (root: *r.b.w.*) subsumes only the age-old concept of usury/interest, encountered as a moral and legal issue since antiquity, in terms of toleration, limitation or prohibition. Focus of writ, inquiry and action by the ancient law-code givers, rulers, philosophers, prophets, theologians, jurists and economists, and pointedly prohibited by the Holy Scriptures and the Prophets of the three great monotheist religions of the world – Judaism, Christianity, and Islam – it has not yet been explored to its full potential.

Conventional religious and secular scholarship on this topic – very copious and voluminous, but more from repetition than from originality and variety – has not produced a conclusive theoretical consensus that is necessary, at least synchronically, for juridical purposes.[6] Any further academic pursuit along conventional lines would, therefore, be futile.

Conventionally, the ancient legal systems and philosophical scholarship, employing "usury" as a simple and exclusive economic concept, limit or prohibit it on the grounds of justice and morality (exploitation), and natural law (infertility of money). Unlike the masterfully presented justice and morality arguments, the *natural law* argument of infertility (of money) alone is capable of further development.

Pristine Judaic, Christian and Islamic religious thought treats the prohibition of *ribā,* or of its counterparts – *neshekh-marbīt/tokos* – as a scripturally strict and unequivocal injunction and its violation as a grave sin. The subject should, therefore, have been a closed chapter. Yet, after several centuries of ritual religious compliance, under later mounting financial pressure, secular intellectual challenge and political compulsions usury/interest is currently a "dead" issue in the Judeo-Christian milieu, though for reasons entirely materialistic and capitalistic. In the Islamic milieu, on the other hand, after centuries of classical compliance, medieval evasion, colonial-era neglect, post-colonial revival and current petro-dollar revolution, pristine religious thought on *ribā* is being actively re-explored and re-implemented via the increasingly sophisticated, wide and fast spreading Islamic banking movement. In a nutshell, the

[6] The necessity of synchronic consensus for juridical clarity does not belittle the desirability of diachronic evolution of positive doctrine to cater to newly emerging situations.

difference between these traditions is that while the medieval "Church-dollars"[7] in the Occident eventually killed the usury prohibition almost universally, the contemporary "Petro-dollars" in the Orient are actively reviving the prohibition again almost universally. Due to this common Abrahamic heritage, this re-exploration – though only Islamically initiated – is nevertheless equally applicable to the older religious tradition. In the quest for a new common theory, this work, therefore, explores both the Judeo-Christian and Islamic traditions in tandem to capture the sum total of the extant thought on the subject. This revivalist re-exploration of *ribā*, however, is severely hampered by absence of consensus on a plausible rationale *(ḥikma)* of its prohibition which is not clearly delineated in the Abrahamic textual sources. For current religious scholarship, this rationale is either ritual obedience[8] (scripturally), or a consideration of a spiritual/moral/social/economic nature (literally and contextually). The extant conventional exegetical treatment of these identified rationales for prohibition is very exhaustive, but inexplicably, not conclusive. Not the *exhaustiveness* but the *conclusiveness* of the rationale is, for this study, the point of departure from conventional scholarship.

Unlike the current Judeo-Christian milieu, in the Islamic milieu the *ribā* discourse still operates on both the conceptual and practical levels. On the practical plane, the Qur'ānic concepts of *ribā* and *bay'*, though encapsulating a complete code of action for humankind – enunciated in this work – have historically been viewed exclusively in their limited technical context of "usury/interest" and "sale" respectively in the Islamic milieu as well. Thus, these two concepts, together with the prohibition of *gharar* (uncertainty/speculation) and *maysir* (gambling), are at the core of Islamic financial jurisprudence. While the concepts of *gharar* and *maysir* enjoy scholarly and juridical consensus, the concepts of *ribā* and *bay'* are engulfed in linguistic and juridical controversy, resulting in a multiplicity of diametrically opposed *fatāwā* (scholarly juridical opinions) on the subject from leading Islamic scholars and juridical academies. This makes the definition of, and the terminological contrast between, *ribā* and *bay'* a matter of not only theoretical but also practical concern. For this contrast potentially

[7] A term coined by this author to designate the accumulating but un-invested financial wealth of the medieval Church.
[8] Imran Ahsan Khan Nyazee, *The Concept of Ribā and Islamic Banking* (Islamabad: Niazi Publishing House, 1995), 104.

guides not only the everyday financial decision-making of one-fifth of humanity today, but also regulates the highly creative financial engineering constantly evolving ever-new Islamic business applications in the burgeoning, yet nascent, Islamic banking industry. The Qur'ān[9] and the *Ḥadīth*[10] – the unanimously agreed juridical textual sources for *ribā* and *bay'* injunctions – while unequivocal, explicit and focused on injunction, are less so, (particularly the Qur'ān) on explication *(bayān)* of their meaning and rationale. Like the importance of ritual obedience in matters of devotional jurisprudence *(fiqh al-'ibādāt),* this needed but absent explication *(bayān)* is of crucial significance in matters of transactional jurisprudence *(fiqh al-mu'āmalāt),* involving highly creative jurisprudential activity, operating as it does at the very delicate religious-secular, *ḥarām-ḥalāl,* border, as in the case of financial engineering.

On the conceptual plane, the *ribā and bay'* injunctions are among the central tenets of Islam. *Ribā*-proscription and *bay'*-permission are divinely textually ordained in the Qur'ān and divinely inspired in the Sunna. Juridically, the presence of *ribā* voids any contract, and, in the absence of a theory of contract, the *bay'* contract functions as the prototype of all contracts in Islamic law. Violation of these divine injunctions is regarded as the gravest of sins *(akbar al-kabā'ir)* [11] and is threatened with consequences at the severest end of the spectrum. For believers, therefore, the comprehension and temporal enforcement of this prohibition/permission should have been no different from its acceptance as a pillar of faith. However, this is not the case. What sets this tenet apart from the others, in the matter of enforcement, is the fact that while the injunctions are unequivocal on prohibition/permission, they are – inexplicably – not readily self-explanatory. It is a case of paucity of explicit direct guidance – both Divine and Prophetic – on a crucial tenet. Discovery of the true meaning of the prohibited *ribā* and permitted *bay'*, to capture the true Islamic regulatory model, has, therefore, been the quest of Muslim scholarship since the time of the inception and classical development of Islamic law. Yet, in spite of precision on the juridical level, though verging on casuistry and apparent superficiality, the search has failed both in method and content. The true meaning continues to be as elusive and the *ijtihādic* task as pressing as ever. Unlike the

[9] Q. 2:275-281; 3: 130; 4: 161; 30; 39.
[10] *Ribawī* - commodities *ḥadīth*; incest-*ribā* correspondence *ḥadīth*; *ribā* only in *nasī'a ḥadīth*; dates sale-purchase *ḥadīth*.
[11] Ibn Ḥajr al-Makkī (d. 974 A.H.), *al-Zawājir li 'l-Makkī*.

other two foundational prohibitions of Islamic financial jurisprudence, i.e., *gharar* and *maysir*, this primary prohibitory foundation, i.e., *ribā*, though unequivocal in injunction, is so enigmatic in interpretation that it appears to be "the supreme of all *Quaestiones Vexatae* of Islamic law."[12] In spite of all the classical, medieval and contemporary, traditional and liberal scholarship – both Muslim and Orientalist – devoted to it, *ribā* prohibition has so far defied a universal consensus not only on its definition and scope, but also on its rationale, its underlying cause and the commensurability of the rationale with the ordained punishment. The only consensus is that *ribā*, whatever it means, covers or signifies, is unequivocally prohibited and severely punishable, though again its enforcement is subordinated to the doctrines of exception, need/necessity, and modernity.

Not surprisingly, given the current fluidity and inconclusive state of exegesis and juristic extrapolation, the fundamental research questions about *ribā* still remain: *What* is it? *Why* is it prohibited? And *how* is it so severely punishable? In other words, "[W]hat purpose does the *Sharī'a* seek to achieve through the prohibition of *ribā?*"[13] The thrust of this questioning is both theological and juridical.

These interpretative obstacles surrounding the concepts of *ribā* and *bay'* are fully borne out by the conclusions reached by classical, medieval and contemporary leading scholars of Islamic law. Historically, Caliph 'Umar b. Khaṭṭāb (d. 22/644), recognizing the ambiguity of the main Qur'ānic injunctions on *ribā* and the lack of their full Prophetic explication, advised the community to shun both *ribā* and *rība* (doubt), the latter term appearing in some versions of the tradition as *ribḥ* (profit).[14] Reportedly, there were three issues, including *ribā*, on which he desired clearer Prophetic injunctions.[15]

The underlying richer explanatory potential of this limited Sunnaic material on *ribā* was initially downplayed – though later restored – by Companion Ibn 'Abbās (d. 68/686), who is still relied upon by some scholars for his distinction between the so-

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[12] S.E. Rayner, *The Theory of Contracts in Islamic Law* (London: Graham and Trotman, 1991), 266.

[13] Nyazee, *Ribā and Islamic Banking*, 104: "The main reason for understanding the *ḥikma* of the prohibition of *ribā* is that its implementation will become easier once we identify the main goal that has to be achieved. The determination of the purpose of prohibition is important not only for the initial implementation of the provisions of *ribā*, but also for later administration and adjudication of cases by officials and judges."

[14] According to the uncontested evidence of Ibn 'Abbās, reported in Ibn Māja; al-Bukhārī; also, *Fatḥ al-Bārī*, VIII, 164 f.

[15] Ibn Kathīr, *Tafsīr*, abr. Sheikh Muḥammad Nasīb ar-Rafā'ī (London: al-Firdous Ltd., 1999), 74-75.

called Qur'ānic *ribā* as reflected in references to *ribā al- nasī'a* (*ribā* from delay) of the Jāhilīya, and the Sunnaic *ribā* as reflected in references to *ribā al-faḍl* (*ribā* from excess) in the Prophetic *ḥadīth* on *ribawī*-commodities. Ibn 'Abbās assigned a secondary importance and hence a weaker binding force to the latter, based on another crucial Prophetic *ḥadīth,* transmitted by himself, to the effect that *"ribā* is in *nasī'a* (delay) only."

The 10th century Ḥanafī jurist, al-Jaṣṣāṣ (d.372/982), noting the divergence between the linguistic and technical meanings of the term *"ribā,"* left it as an unelaborated *(mujmal)* term in need of explication *(bayān).*[16]

Famous exegete Ibn Kathīr (d.774/1373) admits that "the problem of understanding *ribā* and what may lead to it has been one of the most difficult problems for jurists *(ahl al-'ilm).*"[17]

Contemporaneously, a 20th century exegete Muhammad Asad, relying on Ibn Kathīr, regrets the absence among Islamic scholars of an absolute agreement on a definition of *ribā,* comprehensive juridically and responsive positively to all variable economic exigencies.[18]

As noted above, [19] Susan Rayner calls *ribā* "the supreme of all *Quaestiones Vexatae* of Islamic law." Likewise, lawyer Nabil Saleh explains the lack of unanimity on the issue of *ribā:*

> ... each school [of Islamic law] and practically every scholar has an individual view ... This has made the *ribā* issue one of the most debated in Islamic *fiqh.*[20]

Professor Imran Ahsan Khan Nyazee, a leading writer on Islamic financial jurisprudence, comments on the complexity of the issue of *ribā:*

> The topic of *ribā* has been selected to elucidate the operation of these methods of interpretation [of the *fuqahā* '],both because of its *complexity* and *importance* in modern times. Indeed, the issue of *ribā* has assumed the proportions of a *challenge for the scholars of Islamic law.* [italics mine][21]

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[16] Abū Bakr Aḥmad ibn 'Alī al-Jaṣṣās al-Rāzī, *Aḥkām al-Qur'ān* , 3 vols. (Beirut: Dār al-Kitāb al-'Arabī, n.d.; Constantinople: Maṭaba'a al-Awqāf al-Islāmiyya, 1355, I, 464-5, chap. on *ribā.*

[17] 'Imād al-Dīn Abū al-Fidā' Ismā'īl Ibn Kathīr al-Qurayshī al-Dimashqī, *Tafsīr al-Qur'ān al-'Aẓīm,* 7 vols. (Beirut: Dār al-Fikr, 1389/1970), I, 581.

[18] Muhammad Asad, *The Message of The Qur'ān, Translated and Explained* (Gibraltar: Dār al-Andalus, 1980), n. 35, 622.

[19] See n. 12, p. 17, above.

[20] Nabil Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law* (London: Graham & Trotman, 1992), 15. But, Hallaq, in personal comments on this thesis, correctly points out that this diversity of opinion is not unique to *ribā* and is characteristic of most positive law.

[21] Nyazee, *Ribā and Islamic Banking,* 2.

Similarly, Professor Wael B. Hallaq, a leading legal historian, protests the ambiguity of the issue of *ribā:*

> Some properties *[*of *ratio legis],* however, do not disclose the reason. We do not know, for instance, why edibility should be the *ratio legis* for the prohibition of usury; all we know is that all objects possessing the property of edibility cannot be the subject of a transaction involving usury.[22]

The above conclusion is corroborated by the Sharī'a faculties of Islamic universities who hold and teach that the *'ilal (rationes legis:* occasioning factors) and *ḥikma* (rationale) of the injunction prohibiting *ribā* postulated in Islamic *fiqh* to-date are all *inconclusive.*[23]

Finally, in the first-ever library-cum-field researched work on Islamic finance, Professor Frank E. Vogel, a leading expert on Islamic law, highlights the complexity and challenge of the issue of *ribā:*

> The question arises, why, if such *[ribawī]* transactions meet with the approval of both parties *(tarāḍin),* are they divinely disapproved? The Qur'ān asks this very question, but in a more penetrating way – *why is sale not like ribā?,* and gives the emphatic, if obscure, answer that God has allowed the one and prohibited the other. Given the question and the response, *it becomes morally urgent to be able to distinguish ribā from ordinary trade.* What sorts of "increase" or inequality in exchange transform lawful commercial gain into condemned usury, despite both parties' ready consent? In what circumstances does the desire for gain become perverted and corrupt? *Unfortunately, the answers to these vital questions have never been easy...* [italics mine][24]

As is corroborated by the few notable opinions quoted above, in short, conventional Muslim scholarship has failed even to raise, let alone answer, the question of how and why possible economic exploitation (in interest-bearing loans)[25] and homogeneity, currency-value, edibility, storability, measurability and weighability (in *ḥalāl* commodities exchange)[26] can be the *ratio legis ('illa),* and injustice can be the rationale *(ḥikma)* of an offence – the gravest of sins in all monotheistic religions – that is threatened with the severest of the Qur'ānic punishments of evil touch of Satan,

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[22] Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), 85-86.

[23] Personal observation by Dr. Fahad al-Hamoudi, faculty member of Imam Saud Islamic University, Riyadh, Saudi Arabia, October, 2006.

[24] Frank E. Vogel, and Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return* (The Hague; London; Boston: Kluwer Law International, 1998), 63. This is an extensive library and first ever field-researched work, including in-depth interviews with leading Muslim scholars of financial jurisprudence from around the world, backed by a team of Harvard researchers of Islamic law and the extensive resources and financial data base of the Harvard Islamic Finance Project. Frank E. Vogel is holder of the Custodian of Two Holy Mosques (Late King Fahad) Chair of Islamic Law at Harvard, and Samuel L. Hayes III is a Professor Emeritus of Finance at the Harvard Business School.

[25] Based on popular exegesis of Q. 2: 279.

[26] Juridically derived characteristics of the commodities named in the *ribawī* six-commodities Prophetic *ḥadīth.*

deprivation of God's blessing (which equates to destruction and extermination), war from God and His Messenger, loss of belief, and eternal Hellfire, and which Sunnaically is equated with *shirk* (idolatry, polytheism), incest with one's own mother, and the destruction of man's honor?

In the absence of any further Scriptural revelations, Prophetic guidance and any conventional *ijtihādic* success so far, the explication *(bayān)* of the *ribā* and *bay'* ordinance is now clearly a prime candidate for a new *ijtihād* through inspiration, intuition, and reason. What is needed is a focus not so much on the *exoteric* as on the *esoteric* aspects of the *ribā* and *bay'* concept. What has to be explored is not the perceived *forms* and *effects* in terms of exploitation/injustice, as in the current juridical/economic scholarship, but the *essence* of *ribā* and *bay',* in a philosophical-theological framework, in terms of the divinely emphasized distinction between what may be called the *ḥarām ribawī* and the *ḥalāl bay'awī* modes of behavior. This work, therefore, based on Qur'ānic and Sunnaic evidence, inspiration, intuition, and reason, will seek the *bayān* left to posterity by al-Jaṣṣāṣ, expounding philosophical-theological answers to questions on *'illa* and *ḥikma* of *ribā* and *bay'* injunctions, raised by Hallaq, Vogel, Rayner, and Nyazee and others contemporaneously, and by many scholars historically, but not answered conclusively so far.

Essentially, the underlying problem is that the word "*ribā*" appears to be an "unclear" word. In *uṣūl al-fiqh* (jurisprudential) methodology, "unclear" words are those "that do not themselves convey a clear meaning without the aid of additional evidence that may be furnished by the Lawgiver Himself or by the *mujtahid.* The three types of unclear words are: *khafiy* (obscure), *mushkil* (difficult), and *mujmal* (ambiguous, vague). If the inherent ambiguity is clarified by means of research and *ijtihād,* the words are classified as *khafiy* (obscure) and *mushkil* (difficult). But when the ambiguity could only be removed by an explanation that is furnished by the Lawgiver, the word is classified as *mujmal* (ambiguous, vague)."[27] The *mujmal* is inherently unclear and gives no indication as to its precise meaning. Only the Lawgiver can explain what it means. The causes of ambiguity are: (1) either the word is *mushtarak* (a homonym) (2) or the word is unfamiliar, or (3) the word is transferred from its literal meaning and used as a

[27] Muhammad Alsharcef, *The Code of Scholars: Usool Al-Fiqh* (Ottawa: Al-Maghrib Institute, 2001), 55.

[technical] term.[28] Evidently, based on this third cause of ambiguity, which he expressly mentions in the case of *ribā,* al-Jaṣṣāṣ classified *ribā* as an unelaborated *(mujmal)* term in need of explication *(bayān),* as pointed out above.[29] His implication is clear that the *bayān* (explication) can only be provided by the Lawgiver Himself. But al-Jaṣṣāṣ goes on to declare that such additional explanatory Qur'ānic and Sunnaic evidence is available. The Prophet provided extensive elaboration of the meaning intended by Allāh in the *[ribā]* verse by way of explicit commands and decisions.[30] Utilizing this evidence only requires imaginative exploration, which will be a hallmark of this research in a marked departure from conventional scholarship on the issue, making it a pioneering study and the results a definite contribution to knowledge.

I.3. Methodology

Although the research content of this work is revisionist, the employed research methodology is traditional – linguistic, jurisprudential, philosophical and theological analysis. Essentially, it employs the traditional rules of *uṣūl al-fiqh* itself both for critical evaluation of, and suggested revisions to, the *fiqh* (positive law) repertoire. The point of departure from the traditional Islamic scholarship, in method and result, however, lies in the application of philosophical and theological analysis to the *fiqh* on *ribā* and *bay'* apparently for the first time ever. The study seeks the defining parameters of *ribā* and *bay'* primarily not in the traditionally employed fields of economics, ethics and law but in the never yet applied fields of philosophy and theology.

Central to the methodological approach of this work is the modern linguistic theory of semiology[31] of the Swiss linguist Ferdinand De Saussure (1857-1913). A catalyst for the development of structuralism, this theory holds that *linguistic meaning resides in the relationship between words,* a notion that has impacted on many fields of academic inquiry including religion, literature, philosophy, anthropology, and psychology.[32] This philosophy of language is called structural linguistics after its

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[28] Ibid., 58.
[29] See, n. 16, p. 18, above.
[30] al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, I, 464-5.
[31] Ferdinand De Saussure, in his posthumously published *Course in General Linguistics* (1916), tr. by Wade Baskin. (New York and London: McGraw-Hill, 1959), quoted in William E. Deal and Timothy K. Beal, *Theory For Religious Studies* (New York; London: Routledge, 2004), 19ff.
[32] This theory has acted as a critical point of departure in the work of influential twentieth-century critical theorists such as Foucault, Althusser, Barthes, Lévis-Strauss, Lacan, Kristeva, and Derrida.

strategy for examination of language and meaning, which focuses on investigating structures within a system. Structuralism significantly shaped 20th century thought through its notion of the "linguistic turn," which holds that meaning does not exist outside language.[33]

This new linguistic science, called "semiology" (from the Greek word for "sign" *semeîon*), or "semiotics," is the science of signs, that is, the study of the structure of language as a system of signification rather than the history of the development of language.[34] The theory holds that the study of language as a system requires a synchronic rather than a diachronic approach. Language can only be understood in terms of relationship. Instead of etymology as the conveyor of meaning of a word, meaning is produced by a *word's relationship to other words occurring at a particular time, within a particular system of relationships.* An illustrative example of the word "dog" is posited in this discourse. "The contemporary word 'dog' means something not because of its historical derivation from the Middle English *dogge*, which is in turn derived from the Old English *docga*, but rather because of the current relationship of 'dog' to other words like 'puppy' and 'cat'."[35] A central claim made by this synchronic linguistic analysis is that *words do not have inherent meaning.* Instead *meaning resides in relationships of difference and similarity* within a larger linguistic system – *words are not units of self-contained meaning.* The theory posits that language is not natural, i.e., language names things not because of some intrinsic relationship between a word and the thing named; instead language is conventional, i.e., language names both concrete things and abstract ideas based on an arbitrary decision to use a certain sound to represent a certain idea.[36] The linguistic sign is fundamentally relational and the relationship between the signifier and the signified is arbitrary: any signifier can potentially stand for any signified. In the 'dog' example, above, the word *dog* is an arbitrary designation, capable of change simply by cultural agreement. "There is no particular dog designated by the word, nor is

[33] Deal and Beal, *Theory for Religious Studies*, 19-20.
[34] As pointed out by Deal and Beal (*Theory for Religious Studies*, 20), "nineteenth-century philology employed a diachronic methodology that derived from a central assumption that language could only be comprehended through a study of its historical changes. Thus, if a word could be traced back to its origin, then the path to its present meaning could be followed."
[35] Deal and Beal, *Theory for Religious Studies*, 20-21.
[36] Ibid., 21.

there some inherent quality ("dogness") contained in or conveyed by the sound-image *dog*."[37]

In the system of signification, "since signs are arbitrary, the meaning of any particular sign is determined in terms of similarity and difference in relation to other signs. Thus *meaning is founded on binary oppositions*, such as dark/light, good/bad, inside/outside, margin/center, male/female, positive/negative, immanent/transcendent, life/death, scared/profane ...[and *ribā/bay'*]. Within these binary pairs, *the meaning of one is basically the opposite of the other.* Meaning, then, is predicated on difference ..."[38]

It is claimed that Saussure's theory of the structure of language has significant implications for the academic study of religion because religious narratives frequently derive meaning from binary oppositions. Here a Saussurian question arises as to whether the named elements (e.g., good and evil) exist prior to language or only within the binary relationships of terms in particular languages. This question arises due to perceptions of the world in terms of differing binary oppositions (e.g., good/evil vs. purity/impurity) among the various religious traditions.[39]

While the Saussurian assertion on binary opposition of meaning is universally valid, the assertion that words are arbitrary designations *capable of change simply by cultural agreement* is problematic for languages of divine revelation. In a language like Arabic, with its claimed divine origin and revelatory use and a well laid out typically triliteral word-root system ("The Semitic root is one of the great miracles of man's language."[40]), the initially assigned meaning of words *is not capable of change simply by cultural agreement.* Qur'ānic Arabic, like Biblical Hebrew, neither has constantly developing arbitrary meanings nor any can be adopted by cultural agreement. The snapshot of word meaning captured at the time of divine revelation acquires a synchronic and diachronic fixity, which also flows into the vernacular of these languages. Binary opposition which brings meaning into sharp relief, however, is a Qur'ānic linguistic feature extensively utilized centuries before the modern theory of semiology. The only element of this modern theory that will be put into exegetical

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[37] Ibid.
[38] Ibid., 21-22.
[39] Ibid., 22
[40] Johannes Lohmann, "M. Heidegger's ontological difference and language," in *On Heidegger and Language*, ed. Joseph J. Kocklemans (Evanston: Northwestern University Press, 1972), 318.

service in this work, therefore, is the binary opposition of meaning obtaining at the time of divine revelation.

This study rests squarely on the two "from" sources (Qur'ān and Sunna), and on only the first of the two "through" sources *(qiyās* and *ijmā')* of Islamic legal methodology.[41] Drawing on Qur'ānic and Prophetic Sunnaic source material, the study applies to it linguistic, philosophical and theological analysis to determine the defining characteristic and thus the rationale and the occasioning factor of *ribā* and *bay'* injunction. Employing the legal methodology of *qiyās* (analogical extension), these findings further determine the parameters of, and implications for, a gamut of *fiqh* topics.

Hermeneutical exploration of *theory* rather than historical investigation of *practice* being the research objective, the methodological focus in the new theory development is primarily conceptual. The argumentation continues to be based entirely on intuitive exposition and rational evidence/analysis without any resort to non-divinely-revealed/inspired historical and contextual evidence. The sole *historical* reliance is on the divinely revealed/ inspired Scriptures of the three monotheist faiths. Hence, in the Islamic context, the only historical evidence employed is the Qur'ānic and Sunnaic evidence. This is not to belittle the importance of historical/contextual evidence – including *asbāb al-nuzūl*, i.e., the occasions or circumstances of revelation – as an indispensable instrument of Qur'ānic narrative exegesis. But, by definition, *asbāb al-nuzūl* concept has a local historical context and connotation. How can the discovery of Divine Law, universal truths and principles *per se*, although sometimes aided by this historical context, be allowed to be constrained by it? Similarly, how can the application of the discovered Divine Law be allowed to be constrained by the "modern" – more neutrally called "contemporary" – context? Moreover, our sources for the pre-Islamic and early Islamic eras are at best sketchy and, then too, not entirely reliable. To confound the confusion further, the mode of employment of this sketchy historical evidence by contemporary scholars is such that it leads not to clarity, unanimity or certainty but to ambiguity, multiplicity and uncertainty in interpretation. It is quite fashionable for contemporary scholars to attribute – often with self-proclaimed certitude

[41] The terms "from" and "through" sources are borrowings from Hallaq, *History of Islamic Legal Theories*, 1.

and without historical verification – any number of practices, even self-contradictory, to past civilizations to suit their self-serving lines of argumentations and agendas. Typical of such declarations, relevant to this study, run along the lines: "production loans were very *common* in pre and post Islamic Arabia," and its contrary declaration "consumption loans were the *only* form of lending practiced in pre and post Islamic Arabia," etc. Any meaningful reliance on historical evidence, while not always helpful in conceptual matters, leads directly into the separate and independent issue of historiography, which would call for a study in its own right.

Starting with a philological and morphological examination of the core terms *ribā* and *bay'* and of the intimately related term *rabb*, the analysis pursues their meanings to logical conclusions. This is supplemented by a critical evaluation of both the extant *fiqh* repertoire and the posited new theory on the *'illa* and *ḥikma* of the *ribā/bay'* injunctions, employing *uṣūl al-fiqh* methodology. Finally, a philosophical-theological extrapolation culminates in a calibrated hermeneutical model.

Unless prevented by the diversity of the topics, all background material is presented using the chronological method which facilitates the detection of any diachronic developments of thought on the issues. Due to its suitability, the analytical method is employed for presenting the legal *ḥadīth* material, the chronology of which is, in any case, not determinable within the twenty-three year Prophetic revelatory time span. The analytical method has also been employed for presenting the scriptural and hermeneutical models to sum up the individual sources for identifying common underlying processes.

The sources selected for consideration do not exhaust the field, but still capture the diversity of thought on the issue. Authors and works dealing exclusively with the practical field of Western and Islamic banking have been omitted, except to the extent of practical topics germane to the issues of theory.

I.4. Dissertation Scope

Wide scope being one element of its originality, the study will, for the first time ever, extend the conventional exclusive financial context of the *ribā* discourse to the farthest limits sustainable by the lexical and scriptural meanings of the terms *ribā* and

bay', thereby immediately elevating the discourse to philosophical and theological levels, the focal point of which will be the concepts of the Creator, the creation, the created and the resurrected. The study's parameters will, therefore, be delimited by the notions of Divine singularity and human duality, divine self-subsistence and human interdependence, *ex-nihilo* creation in pairs, the significance of the Qur'ānic reference to odd and even numbers and the number 19, the notion of worldly test of the human duality model, and the promise of the first-ever introduction of the duality model ("pure companions") in the Hereafter. Textual support for this extended focus as well will come from the Qur'ān and the *Ḥadīth*. In addition to the Qur'ānic and Sunnaic injunctions specifically on *ribā* and *bay'*, constituting the juridical repertoire in chapter II, many Qur'ānic verses cited in chapter IV, with an extra-juridical import and philosophical-theological orientation, support this extended and broader scope of the dissertation.

The parameters of this inquiry will, therefore, cover important philosophical-theological ground in addition to the purely financial. The concepts of the unity *(aḥad)* and the necessarily flowing self-sufficiency of the Creator,[42] and the duality *(zawj)* and the necessarily flowing interdependence of the creation,[43] together with the concept of creation from nothing [*ex-nihilo*],[44] will be explored in the quest for the discovery of the divine law governing human creation (the *Sharī'a*). This vast spectrum will be mined and a conception of the divine law posited in the context of the human heavenly creation, temporal growth and eschatological return to eternity through the instrumentality of the concepts of *ribā* (growth) and *bay'* (exchange),[45] against the backdrop of the promised duality (companionship) in the Hereafter.[46] In short, the scope and conclusions of the study are encapsulated by the Arabic terms *waḥdat al-khāliq wa tathniyat al-makhlūq* or *waḥdat al-mūjid wa tathniyat al-mawjūd or waḥdat al-rabbānīya wa tathniyat al-insāniyya* (all meaning, Divine Singularity and Human Duality), which will be the defining parameter for the discovered and postulated divine law.

The focal Arabic terms *ribā* and *bay'* have been variously translated and treated by the different world languages and traditions. The common feature of these terms – the

[42] Q. 112: 1-4.
[43] Q. 36:36; 51:49.
[44] Q. 19:67.
[45] Q. 2:275.
[46] Q. 2:25.

counterparts of *ribā* and *bay'* – is their restriction of the technical meaning to the financial context of usury/interest and sale, in spite of an underlying broader linguistic meaning. Similarly, the linguistic meanings of the Arabic terms *ribā and bay'*, and their Qur'ānic and juridical usage, are broader, conveying the concepts of growth and exchange in all their manifestations. Yet, like its predecessors, Islamic scholarship, both classical and contemporary, also has restricted its exegesis and juridical extrapolation of the *ribā*-proscription and *bay'*- permission to the financial context only. This constricted usage has caused a lack of precision in understanding the terms and prevented a comprehensive, conclusive and defensible exegesis of the scriptural injunctions. To bring out and preserve their fuller meaning, this work will, therefore, use the un-translated Arabic terms *ribā* and *bay'* throughout and deal with them in their broader meaning of growth and exchange respectively, not restricting them to the financial manifestation reflected by the terms usury/interest and sale respectively.

With identification and formulation of a calibrated hermeneutical model and a new theory of *ribā* and *bay'* as the stated research objective, this work is a conceptual analysis of these Arabic terms as employed in the Qur'ān and *Ḥadīth.* After a thorough survey and critical analysis of the primary and secondary sources on the subject, the investigation will commence, through an analysis of the underlying inherent processes, with a determination of the meaning *(ma'nā)* and a conclusive distinguishing /determining characteristic *(tamyīz)*[47] of the phenomenon of *ribā* and that of the contrasting phenomenon of *bay'*, which sets these terms apart at the pain of Satanic insanity and eternal Hell Fire.[48] In a departure from conventional scholarship, this analysis will be based not on the often ill-perceived and undocumented Arab historical financial practices or on the technical meaning of these terms, but on the broader linguistic Qur'ānic and Sunnaic usage supplemented by sound input from the disciplines of theology, philosophy, logic, accounting and finance. The resulting definition of *ribā* and *bay'* will dispel the prevailing "terminological confusion syndrome"[49] with respect to such terms as *ribā al-jāhilīya, ribā al-nasī'a, ribā al-faḍl, ribā al-Qur'ān,* and *ribā al-*

[47] Conventional *ribā* discourse makes frequent references to the English term "distinguishing/determining characteristic" and its Urdu equivalents, but its Arabic compact equivalent "*tamyīz,*" coined and utilized in this work perhaps exclusively, is not encountered in the literature as a technical term, as the other associated terms *'illa* and *ḥikma* are.
[48] Q. 2:275.
[49] An expression coined by Hallaq in his "Introduction", *Islamic Law and Society,* 2 (1996), 136.

Sunna, and will determine the scope of application of these two terms beyond the conventionally restricted financial sphere, dispelling what might be called, to coin a new expression, the "application confusion syndrome."

This determination of the distinguishing/defining characteristics of *ribā* and *bay'* will identify the rationale *(ḥikma)* of the injunction *(ḥukm)* of *ribā*-proscription and *bay'*-permission for humankind, fully commensurate with the Qur'ānically-ordained non-*ḥadd* punishment of Satanic insanity and eternal Hellfire,[50] and war from Allāh and His Messenger,[51] and with the juridically-imposed *ta'zīr* punishment of imprisonment and eventual death.[52] This rationale *(ḥikma)* will be commensurate also with the Sunnaic equivalences between *ribā* and *shirk* (idolatry), *ribā* and incest (with one's own mother), and *ribā* and destruction of man's honor.

The determination of the distinguishing characteristic *(tamyīz)* and identification of the rationale *(ḥikma)* will act to derive the *ratio legis ('illa)*, i.e., the efficient cause, or "occasioning factor,"[53] of the injunction *(ḥukm).*

The application of the defined *ratio legis ('illa)* through the analogical method of *qiyās* will in turn delineate the scope of the concepts of *ribā* and *bay'*, extending them beyond the financial manifestation to all spheres of human activity.

This exposition will also evaluate the permissibility of *ribā* based on requirements of need/necessity *(ḥāja/ḍarūra),* location: enemy vs. Islamic territory *(dār al-ḥarb* vs. *dār al-Islām),* and modernity.

This congruence of meaning, distinguishing characteristic, rationale, efficient cause, application, and punishment will yield a calibrated hermeneutical model through a new theory of *ribā and bay'*, which in turn, *inter alia,* will clarify the Islamic dogma, pinpoint the Islamic *Sharī'a,* adjust the *uṣūl al-fiqh,* supplement the *fiqh* repertoire, fine-tune the Islamic commercial law and justify the *ḥudūd* punishments in Islamic criminal law.

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[50] Q. 2:275.
[51] Q. 2:279.
[52] Minority opinion of Ibn 'Abbās, Ḥasan al-Baṣrī and Ibn Sīrīn.
[53] A translation of *'illa* posited by Bernard Weiss in his, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press,1992).

I.5. Thesis

Briefly, the thesis is that the scripturally indicated meaning and scope of the term *ribā* is much broader than the popular technical connotation of usury/interest, the single defining characteristic that squarely distinguishes *ribā* from *bay'* is still undiscovered, the rationale of the strict proscription of *ribā* is far graver than the popularly posited concepts of injustice and exploitation, and the rationale of the permission of *bay'* is much more meaningful than the popularly posited mundane and ill-argued rationale of risk/profit sharing. A further key premise is that the Qur'ānic prescription of *bay'* and proscription of *ribā* represents a universal divine law of normative human behavior much broader than the contextual color accorded it in conventional exegesis and jurisprudence. Thus, this thesis argues that conventional scholarship – both Traditionalist and Liberal – has not grappled conclusively with the question of *ribā [*and *bay'*]* – "the supreme of all *Quaestiones Vexatae* of Islamic law."[54] This inconclusiveness stems from a forced restrictive financial interpretation of these two terms with complete disregard of the inherent comprehensively applicable processes underlying these concepts. The resulting theories of *ribā* have produced hermeneutical models which are at best skewed, hampering consensus on the injunction and on its implementation.

It will further be argued that the development of a new theory of *ribā* and *bay'*, reflecting their defining characteristics, not swayed by the contextual, illusive, self-contradictory and undocumented historical Arab Jāhilīya financial practices, is a desideratum. This study, through a calibrated hermeneutical model, posits such a new theory of *ribā* and *bay'*, as the divinely ordained diametrically opposed paths.

I.6. Thesis Questions

The overall thesis question is simply *what* is *ribā* and its coverage, *why* is it strictly prohibited, *how* is it so severely punishable, and *what* is *bay'* and *why* is it only permitted, not commanded? Within this parameter, answers will specifically be sought for what is the:

- *Ma'nā* (meaning) of *ribā and bay'* that removes the prevailing "terminological confusion syndrome"

[54] A term borrowed from Rayner, *Theory of Contracts in Islamic Law*, 266.

- *Tamyīz*[55] (distinguishing/determining characteristic) of *ribā and bay'* that sets the two terms apart at the pain of Satanic insanity and eternal Hell Fire
- *Ḥikma* (rationale) of *ribā* -prohibition, and *bay'*- permission, commensurate with the ordained non-*ḥadd* punishment of Satanic insanity, eternal Hell Fire, war from Allāh and His Messenger, and with the *ta'zīr* punishment of imprisonment and eventual death (minority opinion), and with the Sunnaic equivalence between *ribā* and *shirk* (idolatry) and with incest (with one's own mother) and loss of man's honor
- *'Illa (ratio legis)* – operative modes covering the types of growth (creation)
- Scope of *ribā*-prohibition and *bay'*- permission beyond the conventionally restricted financial sphere
- Comprehensive juridical definitions of the terms *ribā* and *bay'*
- Application criteria to differentiate *ribawī* and *bay'awī* transactions

I.7. Study Organization

After the introductory material in chapter I – setting forth the objective, nature, scope and methodology of the study – chapter II will investigate and evaluate the contributions towards new theory development from the relevant available sources, i.e., linguistics, scriptural text, prophetic guidance, exegetical expositions, and philosophical, legal and other scholarly formulations. Each source will be examined at least in terms of both the Judeo-Christian and Islamic perspectives. Examination of the Judeo-Christian tradition will highlight the birth, evolution and eventual death of the usury prohibition. Extending into the second phase of the monotheist discourse on usury, this chapter will critically survey the extant literature on the Islamic concepts of *ribā* and *bay'*, scanning the lexicon, Arabic grammar, Qur'ān, *ḥadīth*, *fiqh*, *tafsīr*, *sīra*, *tārīkh* and *falsafa*, highlighting the re-enforcement, expansion, evasion, hibernation, and eventual revival of the prohibition. The underlying theme is to show that the prohibition is not just an exclusive Islamic phenomena but a common Abrahamic heritage with centuries old deep origins and roots in the Judeo-Christian tradition.

Wide as the survey is, the focus for analytical purposes will, however, not be as much on what *has* been said as on what *has not* been said. Significantly, this approach

[55] See n. 47, p. 27, above, for this coined technical usage.

will facilitate the development and presentation of a new philosophical-theological theory of normative behavior/action in chapter IV, in preparation for which, chapter III will critique the derived juridical and the hermeneutical Traditionalist and Liberal models, and summarize the Qur'ānic and Sunnaic model of *ribā* and *bay'* as the foundation of the new model. Chapter IV will develop this new calibrated hermeneutical model in support of the new theory of normative behavior encapsulated in the concepts of *ribā* and *bay'*. Finally, chapter V will explore the extrapolations and implications of the new theory and chapter VI will present the conclusions.

CHAPTER II
THEORY DEVELOPMENTAL SOURCES

The new critical theory being posited here has roots in the disciplines of linguistics, scripture, prophetic guidance, philosophy and theology, in addition to logic, accounting and finance. But these rich, albeit somewhat sketchy, sources have not been explored to their full potential by exegetes, jurists and hermeneuts in their usury/*ribā* discourse. This chapter surveys these sources, both for what has been explored and, more importantly, for what has not been explored, in the search for a comprehensive theory.

II.1. Linguistic Foundations

For this research, linguistics is the first productive source and tool as it furnishes the very foundation for the edifice of the new theory, not only through the linguistic theory of semiotics elaborated in chapter I, but also through specific world linguistic traditions surveyed hereunder.

II.1.i. Usury/Interest in Lexicon

Ancient and modern languages provide a rich underlying mosaic of meaning for their different terms employed to denote usury/interest. However, the linguistic usage and any theory development remained universally confined to the terms' specifically technical financial connotation of usage charge and the underlying broader common concept of "growth" and even "reproduction" has invariably been neglected – inexcusably and at great intellectual cost. For instance, the Sumerians used the same word, *mas*, primarily for calves and secondarily for interest.[56] Likewise, the Egyptian linguistic usage apparently developed its word for interest, *ms*, from the verb "to give birth," *msj*.[57] Similarly, the Greek term for usury/interest is *tokos*, which means "offspring."[58] Yet, in spite of this common theme of "reproduction" underlying these terms for usury/interest, there is no evidence of an ancient comprehensive theory of growth beyond the orphan financial theory of usury.

On the other hand, the Sanskrit/Hindi equivalent term for interest is *biyāj*, meaning "increase," while the Hindu legal term for usury, also found in early Buddhist

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[56] G. R. Driver and J. C. Miles (ed.), *The Babylonian Laws* (Oxford: Clarendon Press, 1955), I, 174.
[57] Fritz Heichelheim, *An Ancient Economic History*, trans. Joyce Stevens (Leiden: Sijthoff, 1958), I, 105.
[58] Aristotle, *The Politics*, trans. T. A. Sinclair, revised and re-presented Trevor J. Saunders, (London: Penguin Books, 1992), 87.

literature, is similarly *vraddhi*.[59] A profound reflection on this concept of increase through interest-taking is provided by a famous Indian writer through his fictional character Margayya (lit. "the one who showed the way"), the money-lender:

> His function ... is to mediate between their [his clients] *primeval darkness* and the *mystical light* flowing from the modern conception of interest. Money is the greatest factor in life and the most ill-used ... People don't know how to *tend it*, how to *manure it*, how to *water it*, how to *make it grow*....[60][italics mine]

In an Aristotelian mode of thought, the narrative goes on to profoundly reflect:

> There was probably no other person in the whole country who had meditated so much on the question of interest. Margayya's mind was full of it. Night and day he sat and brooded over it. The more he thought of it the more it seemed to him the *greatest wonder of creation*. It combined in it the *mystery of birth and multiplication*. Otherwise how could you account for the fact that a hundred rupees [Indian currency] in a savings bank became one hundred and twenty in course of time? It was something like the *ripening of corn*. *Every rupee contained in it seed of another rupee* and *that seed in it another seed and so on and on to infinity*. It was something *like the firmament, endless stars and within each star an endless firmament and within each one further endless* ...It bordered on *mystic perception*. It gave him the feeling of being part of an *infinite existence*. But Margayya was racked with the feeling that these *sublime thoughts* were coming to him in a totally wrong setting.[61][Italics and underlining mine]

The themes of increase and reproduction, as in other milieus, are prominent here also. But, more importantly, these passages bring out most succinctly the themes of self-emanation, self-generation and infinity associated with the financial concept of interest and with the broader concept of *ribā*. However, these rich themes have simply been neglected so far and thus inexcusably squandered.

Similarly, Persian/Urdu usage has some interesting but as yet unexplored parallels. The translated term for "interest" in Persian originally, later borrowed in Urdu, is *sūd* which literally means "profit."[62] The Arabic term *ribā* also is translated as *sūd*, though these terms are not complete equivalents. Very significantly, however, Arabic also has the linguistic root *s.w.d.*, (pron. *sūd),* whence the Persian/Urdu term *sūd* may have been derived, but whose meaning is neither "interest" nor "profit" but rather the same as *rabb:* master, head, chief, sovereign, lord, overlord.[63] This important similarity of meaning between Arabic terms *sūd* and *rabb* has, however, not even been detected, let alone utilized, by the scholarship so far. Thus, *sūd* (Persian/Urdu) technically refers only to a

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[59] *Cambridge History of India*, I, 218.
[60] R.K. Narayan, *The Financial Expert* (New York: Time Incorporated, 1966; Copyright 1953 Michigan University Press), viii.
[61] Ibid., 130-131.
[62] Fazlur Rahman, 'Ribā and Interest', *Islamic Studies: Journal of the Central Institute of Islamic Research, Karachi*, 3 (March 1964), 1-43, 1.
[63] Hans Wehr, *Arabic-English Dictionary: The Hans Wehr Dictionary of Modern Written Arabic.* ed. J.M. Cowan. (Ithaca, NY: Spoken Language Services Inc.1994), 513.

stipulated financial increase that, in turn, is only a part of *ribā* (Arabic), which has a much wider (technical) connotation of sale/purchase as well where there is no element of credit.[64] *Sūd* also does have the connotation of being "beneficial," implying the concept of "growth," but the concept of "reproduction," as in other milieus, is conspicuous by its total absence. Still, even the available rich underlying meanings have not been developed further in the service of a comprehensive theory.

As against these rich but under-utilized reservoirs of meaning, the English linguistic usage of usury and interest in the Western context,[65] being very matter-of-fact and devoid of deeper linguistic connotations, is a source not of theory formulation but sometimes of confusion, having undergone a crucial historical transformation, clarity about which is essential for a productive analysis of the discourse. Originating in the Middle Ages, the current distinction between usury and interest hinges on the notion of exorbitance of the charge. Today exorbitant charge constitutes usury, which is prohibited, while non-exorbitant charge qualifies as interest, which is permitted. Prior to this historical transformation, however, the distinction between usury and interest hinged on the notion of intrinsic nature of the charge. Usage charge (usury) of any kind was prohibited, and only compensation for default on maturity (interest) was permitted.

Accordingly, the original English usage treated usury (from the Latin *usus* meaning "use") as a "payment for the *use* of a thing," making it synonymous with the current notion of "interest" of any kind. The Nynweger capitulary of 806 CE gives the first medieval definition of usury as: "where more is asked than is given."[66] By contrast, "interest" originally meant an additional payment in the form of a fine that the lender was allowed to collect from the debtor if the bargain was not kept by delaying payment, which could inflict serious loss. This fine, the *poena conventionalis,* was often as high as the amount of the original debt, and represented "that which is between" (Latin *interesse*) the present position of the creditor and what it would have been had the bargain been kept and the loan repaid on the fixed date. Hence the name "interest" from the Roman "*interesse*" – "that which is between." But the *poena*, incidentally a solution

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[64] Mufti Mohammad Shafi, *Mas'ala' Sūd* (Urdu), *The Issue of Interest.* trans., Anwar A. Meenai. (Karachi: Darul Ishat, 1997), 13.
[65] Arthur Birnie, *The History and Ethics of Interest* (Glasgow: William Hodge & Company, 1952), 3, 7.
[66] Paul Mills, "Interest in Interest: The Old Testament Ban on Interest and its Implications for Today", (Jubilee Centre Publications Ltd., 1993), 11, quoted in Buckley, Theological Examination, 84.

milder than imprisonment or even slavery for the defaulting debtor, was not in itself strictly a case of interest, since it was vindictive – it punished negligent or fraudulent default. However, it was a step nearer to a later acknowledgement of delay in repayment as an entitlement to interest charges. Nevertheless, the concept and the term "interest" are derived from Roman law, where *"interest is never thought of as payment on a loan;* it is the 'difference' to be made up to a party injured by the failure of another to execute his obligations. Interest is purely compensatory, and it is accidentally and extrinsically associated with a loan."[67]

This legal and licit concept of *"interesse"* was, however, historically utilized as an exception to or evasion (stratagem: in Arabic *ḥīla)* from the prohibition against usury. Reportedly, loans were initially contracted lawfully without any usury. But to evade the prohibition of usury, the initial term was kept to a very short duration with a mutual covert understanding that the loan would be "defaulted" upon this short maturity, and thereupon the additional payment, *interesse*, would be lawfully demanded and transacted, thus *in effect* converting the so-called *interesse* into a *payment on a loan.*

Incidentally, this practice has very significant parallels with the reported Israelite practice and pre-Islamic Jāhilīya lending practice that are not commented upon in the scholarship.

As to the source of the Israelite parallel, it has been suggested that the "Leviticus text [on interest] may refer to one of the circumventions of the law, which Israelite legislation considered usury in disguise, such as the common ruse of contracting for a very short-term loan without interest, but with a penalty for not repaying on time."[68]

As to the source of the pre-Islamic Jāhilīya parallel, it is reported extensively in Muslim sources that *ribā* (interest) was charged by the Arabs not on the initial but only on the extended term of the loan upon default.

Very significantly, these parallels indicate that not only the Israelites but also the Arabs of the Jāhilīya age, were aware of and complied with the prohibition of usury; they only charged compensation *(interesse)* for the loss emerging *(damnum emergens)* from the initial default. They did not charge for use of money for the agreed initial term

[67] Buckley, Theological Examination, 99-100.
[68] Rev. Robert P. Maloney, "The Background for the Early Christian Teaching on Usury." (Doctor of Sacred Theology diss., School of Sacred Theology, Catholic University of America, 1969), 69-70, relying on Baba Mezi'a, V, 1f.

of the loan. The reported "doubling and redoubling," mentioned in the Arabic sources as standard Jāhilīya practice, came only upon default at the end of the initial agreed maturity, and only for extension of the allowed period of repayment (*interesse:* interest). Was the Jāhilīya initial loan also a stratagem *(ḥīla)* or a truly charitable act? This question will be dilated in II.8.iv, below.

The Roman legal concept of *"interesse"* led, in the medieval period, to the development and scholastic approval of the concept of compensation for *damnum emergens,* the "loss emerging" from failure by the debtor to repay on the stipulated date and the consequent compulsion for the lender himself to borrow at a higher rate of interest. Another concept emerging therefrom, which won scholastic approval and which *finally* allowed compensation in the form of interest from the beginning of the original loan, was *lucrum cessans* – "by handing money over to another the lender deprived himself of the gain he might have made in various ways." In spite of this scholastic approval, St. Thomas Aquinas, himself a scholastic and a theologian, disapproved of *lucrum cessans* as a basis of claim on the grounds of a future gain being too hypothetical – "selling what did not exist and, in all probability, might never exist."[69] This stand by St. Thomas on the hypothetical nature of future gain (by the creditor) has a striking similarity to the declaration by al-Rāzī pronouncing future gain (in his case, by the debtor) as *ẓannī*[70] (resting on mere assumption, presumptive, supposed, hypothetical[71]).

The medieval and later English usage, accordingly, treats usury as synonymous with *excessive* interest only, and by extension, interest as *non-excessive* interest only. The Oxford English Dictionary defines interest as "the money paid for the use of money lent or for the forbearance of a debt according to a fixed ratio," and usury as "the practice of charging, taking, or contracting to receive, excessive or illegal rates of interest for money on loan." Thus usury in modern parlance refers to a rate of interest greater than that which the law or public opinion permits, as also corroborated by Bentham's definition of usury.[72]

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[69] Buckley, Theological Examination, 101.

[70] Fakhr al-Dīn Muḥammad ibn 'Umar al-Rāzī, *Mafātīḥ al-Ghayb* (Istanbul: al-Maṭba'a al-Amīra, 1891), II, 531.

[71] Hans Wehr, *Arabic-English Dictionary,* 682.

[72] "I know of but two definitions that can possibly be given of usury: one is, the taking of a greater interest than the law allows of ... the other is the taking of a greater interest than it is usual for men to give and take." But the distinction is "a question of semantics because, at whatever stage of the historic development of the teaching on usury, both concepts imply a payment above the principal,

The English linguistic usage – both original and subsequent – is thus purely pragmatic and completely devoid of any deeper meaning; by this token, while not productive, it is not guilty of the charge of intellectual squandering of its own.

More fertile ground for theoretical development is initiated in the monotheist milieu by the Hebrew language, which – as the first Semitic usage – has two Biblical terms for interest. But even this fertile meaning is sacrificed on the altar of technical meaning. The first, *neshekh,* literally meaning bite or sting, has been confined to its technical connotation of painfulness to the debtor.[73] The second, even more meaningful, *tarbīt* or *marbīt* (cognate of the Arabic term *ribā,* with a common root *r.b.w.),* literally meaning growth or increase, has been confined technically to denoting the gain on the creditor's side,[74] and which in later Hebrew becomes *ribbit.* Various further contextual meanings have been assigned to these two terms, including "advance interest versus accrued interest"[75] and "accumulating interest versus fixed amount of interest," and "interest from the standpoint of the debtor (bite or decrease = *neshekh*) versus interest from the standpoint of the creditor (increase = *tarbīt* or *marbīt).*" But again, the richer connotation of growth has been buried in the financial jargon.

Very crucially for the new theory, however, the Hebrew meaning of interest is not usury in the modern sense of the term, that is, excessive interest, but all, even minimal, interest. There is no difference in law between various rates of interest as all interest is prohibited,[76] and in discussing Jewish law the words "interest" and "usury" may be used indiscriminately.[77] As Hughes puts it: "The Hebrew term further includes gain, whether from the loan of money or goods or property of any kind. In the Mosaic Law, conditions of gain for the loan of money or goods were rigorously prohibited."[78]

In the Judaic context, then, the Hebrew terms for usury/interest, i.e., *neshekh* and *tarbīt* or *marbīt,* have the stated technical meaning of negative and positive increase,

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whether one recognizes it as a just compensation for time or lost revenue or unjust profit on a loan.", quoted in Buckley, Theological Examination, 7.

[73] Ex.22:24; Dt.23:20.

[74] Additionally in Lev.25:36-37.

[75] Rabbi Nathan (160-190 A.D.) in *Siphre on Deuteronomy,* XXIII, 21, 263: "The commandment has been formulated to show that there is a type of interest which precedes and a type which follows. How? A man is seeking to borrow from someone and he sends him a present saying, "... so that you may lend to me." That is interest which precedes. A man has borrowed from someone and sends him small coins and a present, saying, "... for your inactive money which I have." That is interest which follows."

[76] *Encyclopaedia Judaica* – CD ROM ed., (Judaica Multimedia (Israel) Ltd.). s.v. "Usury" by Haim Hermann Cohn.

[77] *The Jewish Encyclopedia,* xii (New York; London: Funk and Wagnells Co., 1905), 388.

[78] Thomas Patrick Hughes, *A Dictionary of Islam* (Lahore: Premier Book House, Reprint 1989), 544.

and as cognates of the Arabic term *ribā*, they also have the unstated meanings associated with *ribā*, as will be posited in this work. But this wider spectrum of meaning has been strangulated by both Jewish and Islamic scholarship to this day, as shown by their utter failure to develop a comprehensive theory.

Finally, the Syriac linguistic term for interest, *rebitha*,[79] bears a striking resemblance to the Hebraic term *tarbīt/marbīt*, and accordingly attracts the same criticism for its under-utilization.

II.1.ii. *Ribā* and *Bay'* in the Lexicon

Providing the as yet unexplored framework for comprehensive theory development, Islamic legal prescriptions, although still concentrating on interest/usury, are, very helpfully, in the broader context of *ribā*, which not only signifies "growth" but also has deeper theological meaning and connotations that will be expounded in this work. Very significantly, however, there are additional specific Arabic terms, denoting the "increment/return," that are the exact equivalent of the English terms "interest" and "usury." One of these is *"fā'ida,"* or *"naf',"* meaning "use, usefulness, avail, benefit, advantage, profit, utility, worth; interest; good, welfare; interest (on money)." Accordingly, *fā'ida basīṭa* means simple interest, and *fā'ida murakkaba* compound interest, while *mu'addal al- fā'ida* means the rate of interest.[80] Another term is *"ribḥ,"* which means: "gain, profit; benefit; interest (on money); proceeds, returns, revenues; and dividends."[81] Accordingly, *ribḥ basīṭ,* also, means simple interest, and *ribḥ murakkab,* also, compound interest.[82] These three words, *"fā'ida," "naf'," and "ribḥ,"* therefore, mean the "product" of a certain "process" that however remains un-named.

These lexical meanings have serious conceptual implications. The *ribā*-prohibitory Qur'ānic verses do not employ these Arabic equivalents of interest/usury. The Qur'ān has elsewhere used the derivatives of the word *"naf'"* at least 39 times,[83] and that of *"ribḥ"* once,[84] which establishes that these words are of the Qur'ānic Arabic, and not just of the Modern Standard Arabic. Now, had the intention of the Lawgiver been to prohibit

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[79] Used in a sermon by the Syrian Monophysite Bishop Jacob of Saroug (c. 451-521 AD), in Abbe Martin, trans. and ed., in *Zeitschrift der deutschen morgenlandische Gesellschaft*, 1875, pp. 107-147, quoted in Maxime Rodinson, *Islam and Capitalism*, 239.
[80] Rūḥī al-Ba'albakī, *Al-Mawrid: A Modern Arabic-English Dictionary* (Beirut: Dar al-'Ilm li'l-Malāyīn,2001), 809.
[81] Hans Wehr, *Arabic-English Dictionary*, 371.
[82] Ibid.
[83] For example, see Q. 87:9 *(nafa'at);* 22:33 *(manāfi'u).*
[84] Q. 2:16 *(famā rabihat tijāratuhum).*

interest/usury only and exclusively, any one of these words could have been employed for greater precision and clarity. But the Qur'ān instead employs a different word altogether, written as *ribawā* and pronounced as *ribā*, in all the *ribā*-prohibitory verses. This word *ribawā*, however, refers to the *process* of growth, and not to its *product*, i.e., the growth itself, because in Q. 2:275 it has been juxtaposed with the term *bay'* (exchange), which has the exclusive reference to a *process*, and not to any of its *products*. This usage has two implications. Firstly, as shown above, the words *"fā'ida,"* *"naf',"* and *"ribḥ"* have the meaning of "product" of an un-named "process." That as yet un-named process is, therefore, *ribawā*. This means that the Qur'ān is prohibiting a particular process of growth, *ribawā*, and not just the growth itself, i.e., *"ribḥ."* Secondly, this being the case, this neutral process of growth, *ribawā*, underlies not just financial growth but all forms of growth. Rendering the all-inclusive Arabic term *ribawā (ribā)* exclusively as interest/usury is, therefore, highly problematic.

Conventionally, the term *"ribā"* has the linguistic meaning of "excess," and the assigned technical meaning of "usury/interest." The term *"bay'"* has the linguistic meaning of "exchange," and the assigned technical meaning of "sale." The traditional juristic *ribā* discourse confines itself to these assigned technical meanings.

This juridical usage raises an important methodological question: What is a technical term? At what stage of its evolution and development does a general term acquire the status of a technical term?[85] The distinction is not always clear-cut, but a general definition is: "When a term is consistently used to represent a constant extensional class or a fixed process it can be taken as a technical term."[86]

Consistent historical usage being the distinguishing factor between general and technical meanings, it is obvious that the technical meaning is relevant for juridical purposes, and the general linguistic meaning relevant for fresh exegetical purposes, when the original intention of the Lawgiver is being attempted to be discovered.

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[85] C. H. M. Versteegh, *Arabic Grammar and Qur'ānic Exegesis in Early Islam* (Leiden; New York; Köln: E.J. Brill, 1993), 1.
[86] Jonathan Owens, *Early Arabic Grammatical Theory: Heterogeneity and Standardization* (Amsterdam; Philadelphia: J. Benjamins, 1990), 11 ff.

The morphological construction and lexical meaning of the Arabic terms *ribā* and *bay'* are crucial to the comprehension of the various connotations of the terms and their Qur'ānic/Sunnaic usage, which will aide theory development.

II.1.ii.a. Morphology of *Ribā* and *Bay'*

The morphology of these two terms requires detailed examination, firstly, to bring home their richer lexical connotations in addition to their commonly recognized technical meanings, and secondly – more importantly – because linguistic analysis is a principal methodology of this work, which will also similarly and comparatively examine the cognate term *rabb.*

II.1.ii.aa. Morphology of *Ribā*[87]

The linguistic root of the Arabic term *ribā* is *r.b.w.*,[88] which, grammatically, is a defective root,[89] the third sub-class of the weak verbs, due to the presence of the weak long vowel *w* as the third radical. Of the total fifteen verbal forms of Arabic language, this root appears only in the first five Forms,[90] which mean (Form I) to grow, (Form II) to make or let grow, (Form III) to practice usury, (Form IV) to make grow, and (Form V) to be raised. Very surprisingly but significantly for this thesis, the verbal Form III, which specifically means "to practice usury," is not employed in the Qur'ān at all, either as verb *(rābā),* active/passive participle *(murābin/murāban),* or verbal noun *(murābātun),* in any of the *ribā*-prohibitory verses. Only the derived noun of the root *r.b.w.*, *ribā* (indefinite) and *al-ribā* (definite), finds expression in the Qur'ān, suggesting very openly that the Qur'ānic reference is to the broader meaning of the term. But in the lexicon this derived noun has arbitrarily been assigned a lexical meaning synonymous with its technical meaning of interest, usurious interest, and usury, without any elaboration.[91] The Qur'ān employs the indefinite noun, *ribā,* only once in 30:39. According to conventional Muslim scholarship (though not unanimous and less weighty), even here the term *ribā* refers to gift and not to usury. The Qur'ān employs only the definite noun,

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[87] For complete morphology of *ribā,* see Appendix 1 (a).
[88] Hans Wehr, *Arabic-English Dictionary,* 374.
[89] Defective root is the third sub-class of the weak class of roots/verbs that include (1) assimilated root/verb, with the weak letter *y* or *w* as the first radical, (2) hollow root/verb, with the weak letter *y* or *w* as the middle radical, and (3) defective root/verb, with the weak letter *y* or *w* as the final radical.
[90] The grammatical analysis has greatly benefited from the help of Carl Sharif El-Tobgui.
[91] Hans Wehr, *Arabic-English Dictionary,* 375.

al-ribā, in all the other *ribā*-prohibitory verses,[92] where it is always written as *al-ribawā,* but pronounced as *al-ribā* as above. This is because the alphabet *waw* in *al-ribawā* serves only as a seat for the subsequent alphabet *alif maqsura* and has no morphological value. A parallel written construction is to be found in the case of two important Qur'ānic terms, *ṣalā[t],* written as *ṣalāt* or as *ṣalawāt* but pronounced alike as *ṣalā[t],* and *zakā[t],* written as *zakāt* or as *zakawāt* but pronounced alike as *zakā[t].*

The adjective of this noun, *ribawī,* meaning usurious,[93] has not been used in any of the Qur'ānic *ribā*-prohibitory verses, and as best as could be ascertained, anywhere else in the Qur'ān. It is more commonly associated with the six-commodities *ḥadīth.*

II.1.ii.ab. Morphology of *Bay'*[94]

The linguistic root of the Arabic term *bay'* is *b.y.'.*, which, grammatically, is a hollow root,[95] the second sub-class of the weak verbs, because of the presence of the weak long vowel *y* as the middle radical.

This root appears in only six of the total fifteen verbal forms of Arabic,[96] which mean (Form I) to sell, (Form III) to make a contract, to pay homage, to acknowledge as sovereign or leader, pledge allegiance, (Form IV) to offer for sale, (Form VI) to agree on the terms of a sale, conclude a bargain [deal], (Form VII) to be sold, be for sale, and (Form VIII) to buy, to purchase. But very crucially for this study, all these verbal forms are transitive, with both an active and passive participle – an agent acting on another agent. This theme will be developed in chapter IV, below.

II.1.ii.b. Lexical Definitions of *Ribā* and *Bay'*

Both *ribā* and *bay'* have received considerable lexical coverage. But except for Ibn Manẓūr and Edward Lane, as will be seen below, none of the lexicologists offer any help whatsoever in the development of a comprehensive theory of *ribā.*

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[92] Q. 2:275, 276, 278, 279, 3:130, and 4:161.
[93] Hans Wehr, *Arabic-English Dictionary,* 375.
[94] For complete morphology of *bay'*, see Appendix 1 (c).
[95] Hollow root is the second sub-class of the weak class of roots/verbs which consists of (1) assimilated root/verb, with the weak letter *y* or *w* as the first radical, (2) hollow root/verb, with the weak letter *y* or *w* as the middle radical, and (3) defective root/verb, with the weak letter *y* or *w* as the final radical.
[96] The grammatical analysis has greatly benefited from the help of Fahad al-Ḥamoudī.

II.1.ii.ba. Lexical Definition of *Ribā*

Ribā has been variously defined,[97] as detailed in Appendix 2, according to the perspective of the linguist, as "excess,"[98] "benefit" and *"liyāṭ"*(cement),[99] "manifestation of growth,"[100] "an excess in a homogenous exchange without a counter-value" and "*neshekh:* gain from loan of money, goods, or property of any kind,"[101] "danism" (from the Greek *daneisma* meaning a loan;[102] Arabic: "loans with *fāḥish* [excessive] *ribā"),*[103] "slightest addition" and "an *addition obtained in a particular manner* in buying, selling, lending or giving."[104]

This last characterization of *ribā* as an addition obtained in a *particular manner,* in fact, holds the key to the enigma of *ribā.* Lane posits but does not pursue this thought any further; it will be shown below (chapter IV) that crucial to correct and precise understanding of *ribā* is not the result of the transaction (e.g. interest/usury) but the *particular manner* of the transaction.

II.1.ii.bb. Lexical Definition of *Bay'*

In spite of the diverse morphological connotations of *bay'* as sale, contract, homage, pledge of allegiance and even purchase, the usual translation and lexical definition of *bay'* is sale. But in the Islamic legal discourse, the noun *bay'* is rendered very broadly as "exchange," including even marriage. In the absence of a theory of contracts in the Islamic legal tradition, the *bay'* contract is the prototype of all contracts, including the marriage contract. This broader meaning has been propounded thus:

> [In Islamic law] this term covers all commutative contracts, that is, contracts in which there is an exchange of two counter-values. In other words, ownership in one counter-value is passed to the other party in lieu of another counter-value. In this wider sense, the term *ijāra* (hire), for example, is included in the meaning of *bay',* because it is the exchange of benefits from the rented property for rent, or it is the exchange of wages for services rendered. Hire is often referred to by jurists as the sale of benefits arising periodically. Some[105] go to the extent of considering the marriage

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[97] Ibn Fāris did not even feel the need to define *ribā* since in his opinion "*ribā* in wealth *(māl)* is well-known": Ibn Fāris al-Qazwīnī, *Mujmal al-Lugha*, I, 417.
[98] Ibn Manẓūr, *Lisān al-'Arab,* XIV, 304-7; Murtaḍa al-Zubaydi, *Tāj al-'Arūs,* X, 142-144, quoting linguist Zajjāj; ; Abū Manṣūr al-Azharī, *Tahdhīb al-Lugha,* XV, 473 ; Rāghib al-Isfahāni, *al-Mufradāt fī Gharb al-Qur'ān,* 185-7.
[99] Ibn Manẓūr, *Lisān al-'Arab,* IX, 273.
[100] Jawharī (d. 393A.H.), *al-Ṣaḥāḥ al-Jawharī,* VI, 3349 ; Ibn Manẓūr Afrīqī (d.711A.H.), *Lisān al-'Arab li'l-Afrīqī,* III, 4.
[101] Hughes, *Dictionary of Islam,* 544.
[102] E. Cobhan Brewer, *Dictionary of Phrase & Fable* (1898), 329-330.
[103] Harith Sulayman Faruqi, *Faruqi's Law Dictionary - Arabic English* (Tripoli: Libyan Publishing House, 1962).
[104] Edward W. Lane, *Arabic-English Lexicon* (London: William and Norgate, 1863).
[105] Abū Bakr Muḥammad ibn Abī Sahl al-Sarakhsī, *Kitāb al-Mabsūt,* 30 vols. (Cairo: Maṭba'at al-Sa'ādah,1324-31/1906-13. Reprint Karachi, 1987), XIII, 109.

contract as some kind of sale insofar as it amounts to handing over ownership in benefits *(tamlīk al-manāfi')* in exchange for dower.[106]

The Shorter Encyclopaedia of Islam states, in part that "*bai'* [*sic*] originally means the clasping of hands as the indication of the conclusion of an agreement."[107] This clasping of hands is the visual representation of *bay'* in chapter IV below, and is of crucial importance for this thesis. According to Ibn Manẓūr, *bay'* is literally a transaction (both sale and purchase), but in legal terminology it means *mubādala* or *muqābala,* barter, or an exchange of commodities. It is a pre-agreed contract of exchange with the mutual consent of the parties involved. In both senses of the word an element of contract or agreement *(ṣafqa, mubāya'a, mu'āhada)* enters into the meaning, when the purchaser strikes his hand on that of the seller to signify offer and acceptance *(ījāb* and *qabūl).*[108]

al-Marghinānī (d. 593/1197) elaborates this notion of *bay'* thus:

> The contract of *bay'* takes effect *(yan'aqidu)* with the offer and acceptance (of a thing): this is signified by the two words of the past tense, as one of them (i.e. the seller) says: 'I sold; 'the other (i.e. the purchaser) says: 'I bought.' This is because *bay'* (sale and purchase) creates the possibility of possessing and disposing *(taṣarruf)* of the thing bought.[109]

This lexical exposition of *bay',* as will be seen below, is very productive for the development of the new theory of *ribā* and *bay'.*

II.2. Scriptural Structure

Revealed scripture on the topic of *ribā* and *bay',* stretching over several milieus and millennia, culminating and perfecting in the Qur'ān, furnishes the very basic framework for the new critical theory.

As against the diverse Eastern religions, the three Western monotheist faiths of Abrahamic origin – Judaism, Christianity and Islam – display an organic unity which is conspicuously reflected, among others, in the concept of usury – *neshekh/marbīt* in Hebrew, *tokos* in Greek and *ribā* in Arabic – which is treated as the greatest of sins in the pristine forms of all three religions. However, the specific prohibitory paradigms and

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[106] Nyazee, *Ribā and Islamic Banking,* 42.
[107] *The Shorter Encyclopaedia of Islam*, s.v. *bai',* 56.
[108] Ibn Manẓūr, *Lisān,* VIII, 23.
[109] al-Marghinānī, *al-Hidāya* (Karachi: Qur'ān Maḥal, n.d.), III, 18.

the permissible alternatives have been differently treated in each of these faiths, which, together with some of the diverse Eastern traditions, are examined below:

II.2.i. Hindu and Buddhist Teachings

Reflecting the antiquity and geographical spread of the notion, prohibition of usury is to be found in the pristine teachings of Hinduism and Buddhism:

> Among the oldest known references to usury are to be found in ancient Indian religious manuscripts and Jain provides an excellent summary of these ...[110] The earliest such record derives from the *Vedic* texts of Ancient India (2000-1400 BC) in which the 'usurer' (*kusidin*) is mentioned several times and interpreted as any lender at interest. More frequent and detailed references to interest payment are to be found in the later *Sutra* texts (700-100 BC), as well as the Buddhist *Jatakas* (600-400 BC). It is during this latter period that the first *sentiments of contempt for usury* are expressed. For example, Vasishtha, a well known Hindu law-maker of that time, made a special law which forbade the higher castes of *Brahmanas* (priests) and *Kshatriyas* (warriors) from being usurers or lenders at interest. Also, in the *Jatakas*, usury is referred to in a demeaning manner: 'hypocritical ascetics are accused of practicing it.' By the second century, however, usury had become a more relative term, as is implied in the *Laws of Manu* of that time: 'Stipulated interest beyond the legal rate being against (the law), cannot be recovered: they call that a usurious way (of lending).'[111] This dilution of the concept of usury seems to have continued through the remaining course of Indian history so that today, while it is still condemned in principle, usury refers only to interest charged above the prevailing socially accepted range and is no longer prohibited or controlled in any significant way.[112]

The ancient Hindu legal rule – Damdopat – strictly limited interest to the full amount of the loan ["doubling and re-doubling?"], while the ancient Indian law-giver Manu is reported to have fixed a ceiling on the interest rate.[113] It is reported that the ancient Chinese religion also forbade usury.[114]

However, the Hindu/Buddhist paradigm on usury clearly comes across as financial rather than comprehensive, as a limitation rather than a full prohibition, and as a moral rather than a philosophical-theological model, which may be characterized as lacking both the "vertical depth" and "horizontal spread," features that will be expounded in II.2.iii below as necessary for a full-fledged theory.

II.2.ii. Zoroastrian Teachings

Like the Semitic religions, Zoroastrianism also regarded usury as among the worst, if not the worst, of sins, as borne out by the passage:

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[110] L.C. Jain, *Indigenous Banking in India* (London: McMillan & Co., 1929).
[111] Ibid., 3-10.
[112] Wayne A.M. Visser and Alastair McIntosh "A Short Review of the Historical Critique of Usury" (www.alastairemcintosh.com/articles/1998_usury.htm), 2.
[113] *The Laws of Manu*, translated by G. Bühler in the *Sacred Books of the East* (1886).
[114] Altaf Gauhar, *Translations from the Quran* (Lahore: Sang-e-Meel Publications, 1989), 128-129.

> [3.] 41. 'The Religion of Mazda indeed, O Spitama Zarathushtra! takes away from him who makes confession of it the bonds of his sin; it takes away (the sin of) breach of trust *[Doubtful]. [From the commentary it appears that draosha must have meant a different sort of robbery: ('He knows that it is forbidden to steal, but he fancies that robbing the rich to give to the poor is a pious deed.')]*; it takes away (the sin of) murdering one of the faithful; it takes away (the sin of) deeds for which there is no atonement; it takes away the *worst sin of usury*; it takes away any sin that may be sinned. [underlining and italics mine].[115]

This teaching on usury does have the theological connotations of sin, but beyond that, again like Hinduism and Buddhism, it does not display any "vertical depth" or "horizontal spread," features that will be expounded in II.2.iii, below, as necessary for a full-fledged theory.

II.2.iii. Old Testament Prescriptions

Among the most relevant, the oldest revelatory primary source for this thesis is the Old Testament, which contains the first divinely ordained monotheistic prohibitory paradigm of *neshekh/marbīt* (*ribā* = usury). Based on these Scriptural injunctions,[116] "a continuous Judeo-Christian tradition from about 1000 B. C. to 1450 A. D. said that usury was sinful."[117] Unlike the New Testament, the Old Testament is directly prohibitory about usury. The Biblical (Torah) prohibition, through decisive Mosaic injunctions,[118] is put in perspective by the Qur'ān in 4:161, by referring to the prohibition of *ribā* for the Jews and to their violation of it at the pain of grievous punishment.[119] Additionally, there are Biblical wisdom literature texts which straightforwardly reaffirm the prohibition of interest.[120] The Torah texts are crucial, not just for the Israelite prohibition of interest taking, but for the Christian teaching on usury as well, as they were relied upon explicitly by the Church Fathers and the Councils.

These injunctions manifest the historical flexibility of ancient Near-Eastern law. The prohibitions are concrete, not universal. They allow differing cases to be posed and further questions to be asked. Some cases explicate the prohibition: neither money, nor

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[115] *The Zend Avesta*, Fargard 3.41; *Vendidad: Book of Law*, trans., James Darmesteter (from *Sacred Books of the East*, American Edition, 1898), www.essene.com/Mysticism/Zoroastrianism.html.

[116] Detailed in Appendix 11 (a).

[117] Maloney, Background, 1.

[118] Exodus 22:24, Deuteronomy 23:20-21, and Leviticus 25:35-38.

[119] As indicated in Biblical texts and later in the Qur'ān (4:161), in spite of the clear prohibition, usury was rampant in practice in Israel. This Scriptural description is also supported by archaeological evidence which gives instances of loans at interest among Jews (Maloney, Background, 76-78). The Elephantine papyri include two loan contracts (456 B.C.) at 60% interest compounded (anatocism) (A. Cowley, *Aramaic Papyri of the 5th Century B.C.* (Oxford: Clarendon Press, 1923), 29ff; papyrus # 10 and 11) and the Tebtunis papyri include one contract (174 B.C.) (B.P. Grenfell, A.S. Hunt and J.G. Smyly, ed., *The Tebtunis Papyri* (New York: Oxford Univ. Press, 1910-38), III, 1, 318-19;# 818), in all of which one Jew takes interest from another.

[120] Psalms 15:1-5, Ezekiel 18:5-13 and Ezekiel 22: 11-12.

food, nor anything else;[121] neither from your fellow Israelite,[122] nor from the *ger.*[123] Another case limits the prohibition: you may take interest from the *nokri.*[124] Still other questions remain unasked: what of the Israelite merchant who borrows to finance business ventures? What of the rich who borrow to invest?[125]

However, the Biblical universalistic toned reference to incest along with interest[126] is very significant and parallels the *ribā*-incest equivalence *ḥadīth* ascribed to Prophet Muḥammad – a relationship further analyzed below.

The Biblical juxtaposition of "increase" and "usury" is significant in that the word "increase" here directly connotes the later Qur'ānic term *"ribā."* Moreover, the Qur'ānic connotation of *ribā* as "self-creating" is also brought out by the Biblical book of Genesis which speaks of *"making in own kind," "its seed in it," "by their kind,"* and *"in His image,"*[127] terms which, however, have not been utilized in the exegetical repertoire on usury either in Judeo-Christian or Islamic scholarship, due perhaps to an absence of direct cross-reference between these texts and the usury texts. Whatever the reason, it is obvious that this scholarly oversight has been very damaging for comprehensive theory development.

Due to the concreteness and generally non-universal character of the relevant Biblical injunctions, an Old Testament legal theory of usury is not directly discernable. The only obvious feature is the rationale behind the prohibition: prevention of hostility and of exploitation and oppression of the poor, promotion of philanthropy and charity among brethren, and the concepts of brotherhood and chosen community. The interest-prohibiting verses of the Torah "stress the importance of the concept of "relational responsibilities," whether economic or social, that the small group engenders with regard to its sense of community."[128] This concept of "relational responsibilities" has a close link to the philosophical-theological concepts to be developed in this thesis.

Three features of the Old Testament usury discourse stand out from this review. Firstly, the discourse is limited only to the financial application of the term, in spite of

[121] Dt. 23:20-21.
[122] Ex. 22:24.
[123] Lev. 25:35.
[124] Dt. 23:20-21.
[125] Maloney, Background, 51-52.
[126] In Ez. 22: 11-12
[127] Genesis 1:11, 12, 21, 24,25 and 26.
[128] Buckley, Theological Examination, 7.

the wider lexical connotation of "growth" in the equivalent Hebraic term *marbīt* (a cognate of the Arabic *ribā).* Secondly, the explicit biblical references to usury, and the exegesis thereon, are in terms of its *extrinsic effects* and not its *intrinsic characteristic.* This approach to the usury discourse may be described as an absence of both "horizontal spread" and "vertical depth." The *intrinsic characteristic analysis* is precluded by the absence of the exegetical use of the Genesis verses on self-creation *("from its own kind"),* quoted above,[129] from the usury discourse. This desideratum prevents a full-fledged philosophical-theological treatment of the subject in the Judaic discourse, which is limited to only random and oblique pointers. For example, a theological explanation for usury prohibition – idolatry – is only hinted at in the following excerpt:

> The law-code was reformulated into a covenant-code... the teaching on usury moved from the concept expressed in Leviticus and Exodus of not exploiting the poor within their own community to the Deuteronomic teaching which allowed for 'exploitation' of the stranger, and upon which 'horns of dilemma' the Christian Church wrestled for many centuries. According to R. Brinker, for example, the guiding principle of Deuteronomy was ... the protection of the people from the threat of Canānite *idolatry.*[130]

Thirdly, the Old Testament only prohibits usury. Unlike the Qur'ān, it neither prescribes nor even suggests a *positive* alternative *(bay'* in the Qur'ān) to *neshekh.* This, as will be argued below (chapter V), is a feature of the completeness or otherwise of the relative Scriptures.

Astonishingly, in the Old Testament although usury is treated as a sin, it is not armed with any specific punishments. This absence prevents the realization of the full gravity of the offence and thereby hampers comprehensive theory development.

Further clues to a theological rationale for usury prohibition (its association with idolatry) are provided – albeit without full theory development – in the later rabbinical literature, as will be seen below.

II.2.iv. New Testament Recommendations

The Greek term used in the New Testament for usury/interest, as noted above,[131] is *tokos,* which means "offspring." Significantly, it is in consonance with the earlier Hebraic/Judaic term *marbīt* and the later Arabic/Islamic term *ribā.*

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[129] See n. 127, p. 46, above.
[130] R. Brinker, *The Influence of Sanctuaries in Early Israel* (1946), quoted in Buckley, Theological Examination, 14.
[131] See n. 58, p. 32, above.

Notwithstanding this similarity of meaning, not being a law code, the New Testament does not contain a detailed financial code of behavior.[132] "The teaching in the New Testament scriptures on usurious lending is couched in more idealistic and universalistic terms in the light of loving not only one's friends but equally one's neighbor and enemy."[133] Later Church teachings on usury, therefore, relied on the Old Testament prescriptions.

The New Testament mentions interest only in the two accounts of the parable of the talents.[134] The parable simply incorporates the common Graeco-Roman practice of receiving interest, without any statement either for or against its morality.[135] But the practice of receiving interest is, nevertheless, castigated in the parable as reaping where one has not sown and gathering where one did not scatter.

Despite the above cited[136] Judeo-Christian tradition from about 1000 B. C. to 1450 A. D. that regarded usury as sinful, today the morality of interest-taking is a dead issue for Christians,[137] largely because, in spite of this long historical tradition, a single scholastic theory concerning usury remained absent, and the revised theory approved all the basic credit mechanisms of the capitalist society.[138]

A review of the Biblical injunctions shows that while the Old Testament prohibits usury, the New Testament instead recommends its converse, i.e., charity, or more specifically, disinterested charity in lending, even when there is no hope of repayment.[139] Followers are urged by Jesus not to turn away from those who *wish* to borrow[140] – a teaching in line with the Old Testament.[141] In this recommendation, the New Testament teaching widens the scope of the Old Testament teaching in two ways. Firstly, the qualification for a loan is widened from *need* to borrow, in Dt. 15:8, to *want* to borrow,

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[132] Paul S. Mills, "Should Interest Exist?" (Ph.D. diss., Cambridge University, 1994), 14.
[133] Buckley, Theological Examination, 81.
[134] In Mt. 25:27 and Lk. 19:23.
[135] A Van den Born and L. Hartman, "Loans," *Encyclopedic Dictionary of the Bible*, ed. L. Hartman (N.Y.: McGraw-Hill, 1963), 1361-62.
[136] See n. 117, p. 45.
[137] Maloney, Background, 1.
[138] Ibid., 2: "The primary reason for considering usury as sinful was its condemnation by the teaching authority of the Church. Over the centuries theologians marshaled arguments to support that condemnation. But the lack of a unified theory led to clear inconsistencies in practice....Gradually... from 1450 to 1750 [A.D.] the interpretation of the prohibition changed radically. The revised theory approved all the basic credit mechanisms of the capitalist society"; see also, John T. Noonan, *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957).
[139] Lk. 6:34-35.
[140] Mt. 5:42.
[141] Dt. 15:3ff.

in Mt. 5:42. Secondly, the emphasis is universally broadened from lending only to *"brothers"* (Dt. 23:19) to lending to *anyone,* including one's enemies, and at the same time expecting nothing in return (Lk. 6:34-35).[142] This exhortation to disinterested charity in lending is, however, the focus of much exegetical dispute among the Fathers as to the exact interpretation of the text, which nevertheless is silent on the morality of usury.[143]

The positive nature of the teachings of Jesus on lending and usury, the absence of any judgment on the morality of usury, and the lack of punitive measures for indulgence in usury render it impossible to derive a unified theory of usury directly and exclusively from the New Testament. This usury paradigm may, therefore, be characterized as lacking both "vertical depth" and "horizontal spread."

II.2.v. Qur'ānic Injunctions

In a significant move, the Qur'ān confirms the Torah (Old Testament) prescriptions on usury that were binding on the Jews and, by extension, the Christians, and expands them as a fuller paradigm of total human behavior.[144] The Qur'ān thus, comparatively speaking, makes a very positive and focused contribution to the *ribā* discourse and to new critical theory development, both linguistically and scripturally. But the full potential of this rich source material has not so far been realized in the scholarship.

Linguistically, the Qur'ān employs not only various derivatives from the root *r.b.w.* in different rich shades of meaning, but also the genesis of what has come to be known as the modern theory of semiotics: the theory of binary opposition of meaning. Significantly, it employs binary opposition not only for *ribā/bay'*,[145] but, characteristically, also for a host of other topics, making the so-called modern theory of semiotics a full-fledged Qur'ānic classical linguistic theory.[146]

Scripturally, the *ribā* discourse in the Qur'ān is very focused and pungent. It drops the negative Torah reference to the Hebrew *neshekh* (bite), focuses exclusively on the

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[142] Paul Mills, Interest in Interest, quoted in Buckley, Theological Examination , 75.
[143] Lk. 6:34-35: "If you lend to those from whom you hope to receive, what credit is that to you? Even sinners lend to sinners, to receive as much again. But love your enemies, do good, and lend, expecting nothing in return [or alternate disputed version: 'never despairing']", quoted in Maloney, Background, 137-138.
[144] Q. 4:161.
[145] Q. 2:275.
[146] For example, *al-ẓāhir wa 'l-bāṭin* (Q.57:4), *al-awwal wa 'l-ākhir* (Q. 57:3), *ṭulū' wa ghurūb* (Q. 20:130), *ḥaqq wa bāṭil* (Q. 13:17), *nafa' wa ḍarar* (Q. 6:71), *al-rijāl wa 'l-nisā'* (Q. 4:176), *al-layl wa al-nahār* (Q. 2:164), *ḥalāl wa ḥarām* (Q. 3:50).

positive concept of growth in the Arabic *ribā* (Hebrew *marbīt)*, legitimizes *bay'* as the first-ever positive alternative to *ribā,* makes the failure to discern the binary opposition of *ribā* and *bay'* gravely punishable, and legislates the first-ever graphic punishments and past accountability for the sin of *ribā.*

II.2.v.a. Linguistic Contribution of the Qur'ān

R.B.W. – the root of the term *ribā* (or *ar-ribawā* and *riban,* as used in the Qur'ān), among others – appears twenty times in different verses of the Qur'ān in different grammatical forms (noun, verb, adverb). Of these occurrences, ten are nouns (eight in a financial and two in a physical context), eight are verbs, and two are adverbs. Eleven of these occurrences are in *ribā* prohibitory verses, and nine in six verses expounding other meanings of *ribā,* as detailed in II.2.v.aa, below.

B. Y. '. – the root of the term *bay'* – appears, as an indefinite noun *bay'* (bargain) in Q. 2:254, 9:111 and 14:31, and particularly in 24:37 where *bay'* (unspecified connotation) is specifically distinguished from *tijāra* (trade), and as the definite noun *al-bay'* (unspecified connotation) in juxtaposition with *ribā,* twice in Q. 2:275 and once in juxtaposition with "remembrance of Allāh" in Q. 62:9.

II.2.v.aa. *Ribā*-Expounding Qur'ānic Verses

Six sets of explanatory Qur'ānic verses hold the interpretational key to the enigma of *ribā.*[147] These verses employ the root *r.b.w.* in different rich shades of meaning, all denoting "excess," not in a pejorative sense of impropriety or impermissibility, but simply in the neutral or even positive sense of increase or growth, such as *rabwatin* (height: hillock),[148] *rābiyan* (rising: foam),[149] *arbā* (exceeding, being more numerous: nation),[150] *rabbayānī* and *nurabbika* (bringing up, raising: a child),[151] *rabat* (swelling: earth),[152] and *rābiyatan* (overpowering: grip).[153]

A contemporary writer on Islamic finance, Saeed, simply concludes "[T]hese usages appear to have one meaning in common, that of 'increase,' in a qualitative or

[147] Presented in full in Appendix 3.
[148] Q. 2:265; 23:50.
[149] Q. 13:17.
[150] Q. 16: 92.
[151] Q. 17:24; 26:18.
[152] Q. 22:5; 41:39.
[153] Q. 69:10.

quantitative sense."[154] What has not, however, been discovered, or even investigated by Saeed or by others – including Fazlur Rahman who commented on it[155] – is the very crucial distinguishing characteristic of this "increase," underlying these Qur'ānic usages, that holds the key to new theory development and that will be identified and developed further in the concluding phase of this thesis. At this introductory stage, it may suffice to critically note the contents of one of the verses, cited above, which refers to the rising foam (*zabadan rābiyan*) and which is pregnant with deeper meaning:

> He sends down water (rain) from the sky, and the valleys flow according to their measure, but the *flood bears away the foam that mounts up* (*rābiyan*) to the surface – *and (also) from that* (ore) *which they heat in the fire* in order to make ornaments or utensils, *rises a foam like unto it*, thus does Allāh (by parables) show forth truth and falsehood. Then, as for the *foam* it *passes away* as scum upon the banks, *while that which is for the good of mankind remains in the earth.* Thus *Allāh sets forth parables* [for the truth and falsehood, i.e. belief and disbelief]. – Q. 13:17

By talking about the passing away of the foam (*ribawī* phenomenon) and the remaining in the earth of what is good for mankind (botanical *bay'awī* phenomenon), and by "showing forth of truth and falsehood," this verse is alluding to the passing away of *ribā* (falsehood for mankind), and the continuation of *bay'* (truth for mankind). There could not be a better parable to show the Divine Law of prohibition of *ribā* and permission of *bay'* enunciated in Q. 2:275, discussed in II.2.v.ba., below.

II.2.v.ab. *Bay'*-Expounding Qur'ānic Verses

As shown above, the root, *b. y. '.*, appears in six Qur'ānic verses.[156] Surprisingly, notwithstanding the lexical meaning and popular exegetical translations, the derived noun *bay'* has not been used in its strict commercial sense of "sale" in any of these verses. The verse which sets the term *bay'* squarely apart from any commercial transaction states:

> Men whom neither *tijāra* nor *bay' [tijāratun wa-lā bay'un]* diverts from the remembrance of Allāh, nor from establishing *al-ṣalāt* nor from giving *al-zakāt* ....[157]

Popular translations of the Qur'ānic expression *"tijāratun wa-lā bay'un"* include: "neither trade nor sale,"[158] "neither traffic nor merchandise,"[159] "neither worldly

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[154] Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Ribā and its Contemporary Interpretation.* (Leiden: E.J. Brill), 1996., 20.
[155] Rahman, Riba, 1.
[156] Q. 2:254; 2:275; 9:111; 14:31; 24:37; 62:9.
[157] Q. 24:37
[158] Dr. Taqi-ud-Din Al-Hilālī and Dr. Muhammad Muhsin Khan, *Interpretation of The Meanings of The Noble Qur'ān in The English Language* (Riyadh: Darussalam Publishers and Distributors, 1996), 505.

commerce nor striving after gain: lit., bargaining, or selling or buying and selling,"[160] "business or commerce,"[161] "neither trade nor traffic,"[162] "trade and commerce or buying and selling,"[163] "trade or business,"[164] "neither merchandise nor sale,"[165] and "neither merchandizing nor selling."[166] Imprecise as some of these translations are, the point that all of them are missing is that if *tijāra* means – as it does – "trade," and if *bay'* means "sale"–as most translators posit– then logically sale is synonymous, albeit quantitatively and partially, with trade. Given this relationship, why would the Qur'ān put out two synonymous terms in juxtaposition with each other by the use of the negative term *wa-lā* (neither/nor) which is reserved for contrasting terms which are at least different in degree if not altogether antonyms? The unavoidable implication is that the Qur'ānic usage of the term *bay'* does not refer to commercial sale: it refers to the broader meaning of "bilateral action" or "intercourse." What the verse is saying is that neither commercial/economic intercourse *(tijāra:* trade) – essential for daily nutritional needs – nor other intercourse, e.g., sexual, cultural, social, and political etc. – essential for other human needs – prevents these men from remembrance of Allāh, *ṣalāt* and *zakāt.* This rendering is comprehensive and much more meaningful than the popular translations, above. Therefore, it can be concluded that at least the Qur'ānic meaning of *bay'* is bilateral action (intercourse).

Similarly, Q. 2:254 deploys the term *bay'* in juxtaposition with *khulla* (friendship) and *shafā'a* (intercession) on the Day of Judgment. Rendering *bay'* here as "sale" is completely out of context; rendering it as "intercourse" goes harmoniously with the other two terms.

Likewise, Q. 14:31 employs the term *bay'* in the same context as Q. 2:254, thereby rendering it as bilateral action.

Q. 62:9 invites believers to the Friday prayer and remembrance of Allāh upon hearing the call *(adhān)* by giving up *bay'*. It is obvious that the hindrance to a response

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[159] Yusuf Ali, *The Holy Qur'ān: Text, Translation and Commentary* (Brentwood, Maryland: Amana Corp, 1983), 909.
[160] Asad, *The Message of The Qur'ān*, 542.
[161] Muhammad Bāqir Behbūdī and Colin Turner, *The Quran: A New Interpretation* (Richmond, Surrey: Curzon Press, 1997), 212.
[162] Muhammad Zafrulla Khan, *The Qur'an: Arabic Text with a New Translation* (New York: Olive Branch Press, 1997), 343.
[163] Ahmed Ali, *al-Qur'ān: A Contemporary Translation* (Princeton, N. J.: Princeton University Press, 1993), 302.
[164] Rashad Khalifa, *Quran: The Final Scripture* (Tucson, AZ: Islamic Productions, 1981), 241.
[165] Marmaduke Pickthall, *Holy Quran* (Karachi; Lahore; Rawalpindi: Taj Company Ltd., n.d.), 350.
[166] George Sale, *The Korān* (London: Frederick Warne and Co. Ltd., n.d.), 349.

is not only commercial intercourse but all forms of intercourse. Therefore, the meaning of *bay'* is bilateral action here as well.

The oppositional juxtaposition of *bay' (ḥalāl)* with *ribā (ḥarām)*, and the grievous punishment for the Jāhilīya attempt at establishing their synonymity, in Q. 2:275, also accord well with the rendering of *bay'* as bilateral action when its opposite *ribā* signifies unilateral action.

Finally, Q. 9:111 uses the derivatives of the noun *bay'* in relation to believers not in the narrow sense of "sale" but more of "exchange." Translators have also rendered these derivatives as contract, bargain, trade and exchange – terms which are closer in meaning to bilateral action.

The Qur'ānic meaning of *bay'* may, therefore, be rendered with confidence as bilateral action – a concept very crucial to the new theory proposed here.

II.2.v.b. Scriptural Contribution of the Qur'ān

The scriptural contribution of the Qur'ān covering the legislative and punitive aspects of *ribā* and its binary opposition to *bay'* is contained in seven verses presented in Appendix 4 and explored below for their salient features.

II.2.v.ba. *Ribā*-Prohibitory and *Bay'*- Permitting Qur'ānic Verses

As indicated above,[167] of the twenty occurrences of the root *r.b.w.* in the Qur'ān, eleven occurrences are in the *ribā*- prohibitory verses. Verbal-form expression of the root is *yurbī* in Q. 2:276 (once) and *yarbū* in Q. 30:39 (twice). Noun-form expression of the root is *ar-ribawā (al-ribā)* thrice in Q. 2:275, and once each in 2:276, 2:278, 3:130, and 4:161. However, in Q. 30:39, the noun-form expression is a unique *riban,* which was commented upon by several early commentators and by some lexicographers. A contemporary writer sums up the issue of these Qur'ānic two different usages of the noun, *ar-ribawā* and *riban,* thus:

> Several early commentators on the Qur'ān contended that the meaning of *ribā* in this verse [*riban* in Q. 30: 39] was 'gift.' Based on this interpretation, some lexicographers like Azharī (d. 370/980) [168] and Ibn Manẓūr (d. 711/1311) [169] stated that there were two forms of *ribā*, one prohibited and the other lawful. According to Ibn Manẓūr, this verse[170] refers to 'lawful' *ribā*. He

[167] See II. 2. v. a., p. 50, above.
[168] al-Azhari, *Tahdhīb al-Lugha,* XV, 273.
[169] Ibn Manẓūr, *Lisān,* XIV, 304.
[170] Q. 30:39.

> explained it by saying that lawful *ribā* is "giving a person something in anticipation of getting something better at a later time."[171] The interpretation of *ribā* as 'gift' is rather problematic. All usages of the term *ribā* in the Qur'ān appear to have the same meaning, that is, a charge imposed on a needy debtor due to his inability to repay a debt on time. The term *ribā* in the sense of gift does not appear to have been used in pre-Islamic or post-Islamic times. Neither Azharī nor Ibn Manẓūr provide any examples of such a usage. It could, therefore, be argued that the concept of a lawful *ribā* and an unlawful *ribā* was most probably a later invention due to the difficulty the commentators had in interpreting the rather unusual wording of the verse (30:39) in which the term is used. ...[172]

In the above analysis, what the lexicographers Azharī and Ibn Manẓūr, as also the contemporary writer Abdullah Saeed, have missed is an important injunction of the Qur'ān. The term *riban* in Q. 30:39 may well have the meaning of "gift," although no historical evidence has been adduced for it. But the analogical extension of this possible meaning to conclude that there are two forms of *ribā,* one prohibited and the other lawful, and that lawful *ribā* is "giving a person something in anticipation of getting something better at a later time," is utterly untenable in the light of this clear Qur'ānic prohibition:

- And give not a thing in order to have more – Q. 74:6

This verse alone, which surprisingly has not been relied upon by participants in the *ribā* discourse, is sufficient to preclude even the possibility of there being any lawful *ribā* in the sense of "giving something in anticipation of getting more." Moreover, Q. 30:39 itself says that what you give from *riban* [even if it means "gift"] to increase the wealth of others has no increase with Allāh. So how can this *ribā* (so-called "gift") be sanctioned as lawful *ribā?*

The above quoted verse "And give not a thing in order to have more" (Q. 74:6) has a very important further legal significance. It is generally held that the Qur'ān provides a basis only for the prohibition of *ribā al-nasī'a* (*ribā* of delay) and that it is the *Ḥadīth* alone that provides a basis for the prohibition of *ribā al-faḍl (ribā* of excess), i.e., excess in a homogenous exchange. But the words of the above verse also clearly prohibit any excess in such an exchange. The Arabic word used in the verse for the prohibition is *tastakthiru,* which conveys the meaning of excess in homogeneity. Thus, contrary to

[171] Ibn Manẓūr, *Lisān,* XIV, 304.
[172] Saeed, *Islamic Banking,* 21.

general belief, the prohibition of *ribā al-faḍl* likewise has a clear Qur'ānic basis, which surprisingly has not been recognized in exegetical and juridical scholarship.

The conventionally recognized seven *ribā*-prohibitory verses spread over four chapters *(suwar; sing.: sūra)* of the Qur'ān[173] have been commented upon thoroughly by exegetes, jurists and other scholars. To avoid repetition, only issues germane to the new theory development are examined here.

In Q. 30:39, *ribā* is portrayed as simply disapproved, but not actually prohibited. Hinting at a prohibition rationale, *ribā* is contrasted with *zakāt* for denial of God's blessing. In fact, as discussed above,[174] there is even exegetical disagreement[175] on whether here *ribā* means "gift," as no punishment has been provided for it,[176] or whether it means usury/interest as elsewhere.[177] Obviously, this verse, not a prohibitory command *(amr),* and not in an imperative mode, is a positive statement, but much more than an expression of simple disapproval or denial of God's blessing. Deeper reflection shows it to be an expression of a fundamental divine law. The first verse on *ribā* not only chronologically but also thematically, it pioneeringly spells out *ribā* as a process of *apparent* but *not real* increase and lays down the fundamental principle that human *ribawī* action is against divine law. Human and Divine perceptions of increase are different.

Man has to navigate two relationships – one with the Creator and the other with His Creation – which are found in the juristic repertoire as *Fiqh al-'Ibādāt,* encompassing the Rights of Allāh *(Ḥuqūq Allāh)* and *Fiqh al- Mu'āmalāt* encompassing the Rights of His Servants *(Ḥuqūq al-'Ibād).* This verse seemingly regulates the first relationship – Rights of Allāh – by indicating that human *ribawī* action is against divine law: the prescribed human conduct is not *ribawī* action of acquisition (self-emanation) but *zakawī* action of disposition (self-annihilation). Thus the *ribā/zakāt* contrast governs the Man-God relationship. The attribute of *ribā* is for God, the attribute of *zakāt* for man. How *ribā* and *zakāt* lead to self-emanation and self-annihilation, respectively, will

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[173] See *Sūrat al-Baqara* (#2:275, 276, 278, 279), *Āl-'Imrān* (#3:130), *al-Nisā* (#4:161) *and al-Rūm* (#30:39).
[174] See pp. 54-55, above.
[175] This controversy, however, is germane not for the issue of the prohibition itself but only for its historicity determination i.e., whether the prohibition process is of Meccan or Medinan origin.
[176] View attributed to Ibn 'Abbās, Mujāhid, Zahhāk, Qatāda, Ukrimah, Muhammad b. Ka'b, al-Qurzī and Shu'bī.
[177] View attributed to Ḥasan al-Baṣrī, Suddī, Aalūsī and Nishāpurī.

be expounded below (chapter IV). The second relationship for man to navigate – the Man-Man relationship – is governed by the *ribā/bay'* contrast,[178] and by the *ribā/ṣadaqa* contrast,[179] where *ribā* (self-emanation= increase) is prohibited *(ḥarām), bay'* (exchange: maintenance of status-quo through equalization of exchanged values in fair exchange = equality) is permitted *(ḥalāl),* and *ṣadaqa* (self-annihilation = decrease) is encouraged *(mandūb).*

In Q.3:130, *ribā* is for the first time unequivocally prohibited, where the verb *tā'kulū* (devour) is qualified by the adverbial expression *aḍ'āfan muḍā'afatan,* popularly translated as "doubled and redoubled."[180] However, as a glitch meticulously observed by Hallaq,[181] the translation of *aḍ'āfan* as "doubled" is not accurate. Firstly, being a *ḥāl* (adverbial) expression, "doubling" is more precise. Secondly, and more importantly, the adverbial term *aḍ'āfan* is in the plural case (sing.: *ḍi'f;* pl.: *aḍ'āf).* Therefore, the precise meaning is a *recurring* doubling process, not in one but in several – not consecutive but parallel – instances. The reference is not to the frequency of doubling but to the multiplicity of doubling. The accurate translation would, therefore, be "multiple doubling." The frequency of "doubling" is covered by the second term *muḍā'afatan,* which has correctly been rendered as "redoubling." Could the use of *aḍ'āfan* in this verse, then, refer not to one but several instances (types) *of ribā,* and thus support the Prophetic *aḥādīth* ascribing several *abwāb* (chapters)[182] to it, some of which constitute the findings of this research?

The "doubling and redoubling" is considered in the sources to be a Meccan Quraysh *ribā* practice, which, it is argued, was being envied by the Muslims, after their defeat at the battle of *Uḥud,* as the financial cause of Quraysh military superiority. In order to ward off this temptation, this practice is being prohibited for Muslims' own welfare. Here *al-ribā* is held to mean a specific usury practice, and the prohibition rationale is stated to be true welfare and success. In fact, the Liberal hermeneuts mainly

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[178] In Q. 2:275.
[179] In Q. 2:276.
[180] The first term *aḍ'āfan* is rendered by Yusuf Ali, Muhsin Khan and Ahmed Ali as "doubled," and by Pickthall, Asad and Colin Turner as "doubling." The whole expression *aḍ'āfan muḍā'afatan* is rendered by Rashad Khalifa as "compounded manifold," by Zafrulla Khan as "multiplying," and by Hans Wehr as "many times, a hundred-fold."
[181] In a comment on this dissertation.
[182] These *aḥādīth* presented in Appendix 5 typically use a specific number, like 70, 72 or 73, to designate the types of *ribā.* It must be noted that this usage is merely metaphorical and the intention is to refer to multiplicity rather than to a specific number, which will be reflected in this work as well.

rely on the specificity of this verse to argue that the prohibited *ribā* subsumes only excessive or compound interest and not benign simple interest. The sources thus relate this verse to one characterization of "recurring doubling" (financial *ribā)* but ignore the "multiple doubling" inherent in the meaning of the expression (leading to other characterizations of *ribā).* The "doubling and redoubling" may exoterically refer to the Arab usury practice, but more significantly it refers esoterically to "continuity" and hence, by extension, to "eternity."

Commanding *believers* to abstain from *ribā,* this verse links *belief (īmān)* to the prohibition of *ribā.* Now, the most structural and fundamental element of Islamic belief being the existence and absolute unity of Allāh, this verse apparently suggests that human indulgence in *ribā* somehow strikes at this very belief, either by denying His existence, or by considering more than one entity as a god, or by considering that certain attributes of Allāh are shared by other entities. This fundamental point will be expounded below (chapter IV).

By linking *ribā's* prohibition with fear of Allāh *(taqwā),* success *(falāḥ)* and belief *(īmān),* this verse clearly raises the level of the *ribā* discourse above and beyond the economic level, as will be elaborated below (chapter IV).

In Q.4:161, grave punishment for *ribā,* referred to for the first time chronologically, though specifically for the Jews, applies to the Muslims as well, not directly but by implication. Taking *ribā* and devouring of wealth are cited in this verse as two distinct Jewish practices, both of which are equated with rejection of faith, and held grievously punishable, without any explicit causal link between the two practices. Hence rejection of faith appears to be the implied rationale for the prohibition.

The verse Q. 2:275 presents a comprehensive and final prohibition of *ribā* and permission of *bay'.* As already noted above,[183] its late revelation, not enabling the Prophet to expound it before his death, reportedly prompted Caliph 'Umar to advise the community, in the absence of Prophetic exposition, to shun both *ribā* (usury/interest) and *rība* (doubt). In another version of this *ḥadīth,* the latter term reads *ribḥ* (profit).

This verse links indulgence in *ribā* to the Satanic strike of insanity upon Resurrection: the word "stand" *(yuqīmūn)* has unanimously been rendered by exegetes

[183] See nn. 14 and 15, p. 17, above.

and translators as referring to standing up on the Day of Resurrection. The question, then, is what this insanity is? It cannot be the temporal insanity "stemming from the excess of greed of the usurer," as propounded by many exegetes, because, firstly, excess of greed in usurers is only an unsupported presumption without empirical evidence and it does not apply to all categories of *ribā*, and, secondly, it does not necessarily lead to insanity. Today's, like yesterday's, bankers are anything but insane. This association of insanity with excessive greed of the usurer is an unsuccessful exegetical attempt at establishing an economic rationale *(ḥikma)* for the prohibition of *ribā*. Excessive greed is, therefore, not one of the only two plausible explanations of this insanity. Temporally, it could refer to the intra-active cannibalistic process of insanity being evidenced contemporaneously in animals (cows) in the form of Bovine Spongiform Encephalopathy (BSE) disease, commonly called Mad Cow Disease, and in humans in the form of its variant, Creutzfeldt-Jacob Disease (CJD), as will be postulated below (chapter IV). In other-worldly terms, this insanity could refer to a re-play of the insanity which Satan, as per the Qur'ān, initially displayed in trying to frustrate God's plan for creation of humans in pairs from dust in a duality model *(bay'awī)* to operate along side the heavenly singularity model *(ribawī)*.[184] The Satanic insanity specifically consisted of the Satan persuading Eve and, through her, Adam to eat from the only prohibited tree in the Garden of Eden, the Tree of Eternity *(shajarat al-khuld)*,[185] which constituted the first case of indulgence in *ribā* – the foundational *ribā*. This theme is pursued in IV.5., below.

This Satanic insanity in man upon resurrection is further attributed by this verse to man's failure to distinguish between *ribā* (with *intransitive* verbal expression) and *bay'* (with *transitive* verbal expression) by regarding the two as similar. This demonstrates that the distinction between the two processes of *ribā* and *bay'* has a crucial significance and consequences overflowing in the Hereafter.

Through the juxtaposition of *ribā* and *bay'*, this verse completes the governance of the second loop of human relationships, i.e., the Man-Man relationship reflected in *Fiqh al-Mu'āmalāt* encompassing the Rights of Servants of God *(Ḥuqūq al-'Ibād)*. The first loop of human relationships, i.e., the Man-God relationship, reflected in *Fiqh al-'Ibādāt*

[184] Q. 20:116.
[185] Q. 20:120.

and encompassing the Rights of Allāh *(Ḥuqūq Allāh),* was covered by Q. 30:39, above. Here, in the Man-Man relationship, as already explained above,[186] *ribā* (self-emanation) is being prohibited *(ḥarām), bay'* (exchange: maintenance of status-quo through equalization of exchanged values in fair exchange) is being permitted *(ḥalāl),* and, in the next verse Q. 2:276, *ṣadaqa* (self-annihilation) is being encouraged *(mandūb).*

This verse raises the crucial question of what sets *ribā* apart from *bay'.* What makes *ribā* proscribed *(ḥarām)* and *bay'* permitted *(ḥalāl)*? And above all, what is it that attracts Satanic insanity for confusing the two terms with one another? Is it simply a lack of commercial knowledge, or something graver to be equated with Satanic insanity and punished with eternal Hell Fire? These questions will be tackled below (chapter IV).

The popular English rendering "shall be pardoned for the past"[187] or "not be punished for the past"[188] for the original Arabic expression *"falahu mā salafa"* in this verse raises a translation problem which leads to a contradiction in terms. Either of these two translations conflicts with the next part of the verse which has unanimously and appropriately been translated as "their case is for Allāh to judge" *(wa amruhu ilā Allāhi).* Now, if Allāh has already declared pardon or no punishment for the past, as rendered above, then what else remains on this score to be judged by Allāh? The literal, and in this case appropriate, meaning of the Arabic expression *"falahu mā salafa,"* also adopted by Asad,[189] is simply "for them is what is in the past," i.e., contextually, they can retain their *ribawī* gains of the past; they will not be asked to return those gains. But their case is not closed and will still be judged for the past by Allāh, and, by implication, they could still otherwise be punished. This stipulation of accountability and possible punishment for the past actions is a unique feature of the sin of *ribā.* No other human action, not even *kufr* (unbelief), attracts accountability and punishment for the past. One is responsible for his actions only after a Revelation, and his acceptance thereof, and not before it. The past is automatically condoned in the case of all other sins. But the attachment of responsibility for past, present, and future actions in the case of *ribā,* by itself, is sufficient to demonstrate the seriousness of this offence in the eyes of Allāh,

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[186] See pp. 55-56, above.
[187] See, e.g., Yusuf Ali, *Holy Qur'ān,* 112.
[188] See, e.g., al-Hilālī and Muhsin Khan, *The Noble Qur'ān,* 98.
[189] Asad, *The Message of The Qur'ān,* 62.

not matched in any other temporal offence. This aspect of *ribā* not only sets it apart from all other major sins, but also raises its level beyond a straight economic crime. However, a prominent contemporary exegete Mawdūdī surprisingly whittles down the importance of this past accountability back to an economic level by asserting that the punishment for past *ribawī* gains will depend upon how the sum is disposed off – either on oneself (punishable) or on collective welfare (pardonable).

Notably, unlike *zakāt* and *ṣadaqa* which are repeatedly commanded and exhorted throughout the Qur'ān, *bay'* is simply declared permitted *(ḥalāl)* and neither commanded *(farḍ)* nor even exhorted, leaving adherence to it up to the free will of man. As will be expounded below (chapter IV), human adoption of a *bay'awī* mode of conduct is the test which man has to take using his free will while on earth. Had this mode of conduct been commanded like *zakāt* and *ṣadaqa* or *ṣalāt* and *ṣaum* (fasting), it would not have remained a matter for the exercise of human free will and the temporal test would have lost its meaning and purpose.

As already pointed out, Q. 2:275 clearly and at length contrasts *ribā* with *bay'*, linking the failure to distinguish between the two terms with an act of Satanic insanity. The chronologically earlier verse, Q. 30:39, contrasts *ribā* with *zakāt*, while the later verse, Q. 2:276, contrasts *ribā* with *ṣadaqa*. In the face of these clearly spelled out juxtapositions, the assertion of Fazlur Rahman, an influential Modernist Pakistani scholar, denying the opposition of *ribā* and *bay'* is surprising:

> According to the Qur'ān, the opposite of *riba* [*sic*] is not *bay'* (trade) but *ṣadaqa* (charity). The prevailing confusion about the problem, we submit, was due to *riba* [*sic*] and *bay'* being considered opposed to each other. The result was that juristic hair-splitting was substituted for the moral importance attaching to the prohibition of *riba* [*sic*].[190]

Regrettably, having utterly failed to see the philosophical significance of the terms, in his enthusiasm to prove a moot point, Fazlur Rahman is completely ignoring the contents of Q. 2:275. He correctly declares the opposite of *ribā* to be *ṣadaqa*, but that is in Q. 2:276, and he ignores the fact that the opposite of *ribā* is *zakāt* in Q. 30:39. Furthermore, he correctly asserts that this juxtaposition of *ribā* with *ṣadaqa* (and *zakāt)* underlies the moral importance attaching to the prohibition of *ribā*. But he misses the important point that this moral importance governs the first loop of human relationship

[190] Rahman, Riba, 31.

with Allāh, i.e., *Fiqh al-'Ibādāt* encompassing the Rights of Allāh *(Ḥuqūq Allāh).* The second loop of human relationship reflected in *Fiqh al-Mu'āmalāt* encompassing the Rights of Servants of God *(Ḥuqūq al-'Ibād),* is governed by the *ribā and bay'* juxtaposition which lays down the ground rules for temporal dealings. *Ṣadaqa* and *zakāt* are moral obligations: these can be the underlying but not the governing codes of *Fiqh al-Mu'āmalāt.* Fazlur Rahman is again correct in asserting that juridical hair-splitting ensued and caused much confusion, but his reasons for this undesirable development are not valid. Juridical hair-splitting occurred not simply because of *ribā-bay'* juxtaposition, as he asserts, but because of a mere exoteric perception of the defining characteristics of *ribā* and *bay'* (economic connotation of the two terms), at the cost of the appropriate exegetically pregnant esoteric perception of the distinguishing characteristics (philosophical connotation of the two terms), as will be expounded below (chapter IV).

Q. 2:276 re-emphasizes the first loop of the human relationship with Allāh, i.e., *Fiqh al-'Ibādāt,* encompassing the Rights of Allāh *(Ḥuqūq Allāh)* by juxtaposing *ṣadaqa* with *ribā* which has already been juxtaposed with *zakāt* in Q. 30:39. *Ṣadaqa* and *zakāt* are apparently used here interchangeably, both denoting "giving" or "annihilation" *(fanā').*

The English renderings "ungrateful" and "wicked" for the original Arabic *"kulla kaffārin"* and *"athīmin,"* respectively, though commonly adopted and part of the lexical meaning, are not satisfactory. For it is difficult to see what connection *ribā* has with ungratefulness and wickedness. The other lexical layer of meaning of these two Arabic terms, i.e., "unbeliever, infidel, atheist," and "sinner," respectively, are more appropriate because they are congruent with the meanings of previous *ribā* verses, more to the context and exegetically more productive.

Q. 2:278 with a more emphatic reiteration of the link of *ribā* with unbelief further elevates the *ribā* discourse.

Q.2:279, exegetically very rich in content, is the key to deciphering the rationale *(ḥikma)* of *ribā* -prohibition. The English rendering "unjustly" relates to the expression *"taẓlimūna"* in the Arabic original. This concept of *ẓulm* has been interpreted in at least three different ways. Firstly, a moral interpretation leads most exegetes, even nowadays, to take this to mean "exploitation of the poor." El-Gamal, however, aptly points out that

"Islamic scholars have long debunked the explanation of the prohibition of *ribā* solely on the basis of its exploitative nature,"[191] relying on al-Nawawī (d. 676/1278) who had debunked "exploitation" of the poor as the prohibitory rationale on the grounds that it could equally well apply to what he regards as legitimate profit generation.[192] Secondly, an economic interpretation of the concept, equates *ẓulm* with *ghubn fāḥish* (excessive injustice/criminal fraud[193]) where justice means "equality or proportionality of the transaction" as expounded by the Mālikī jurist, Ibn Rushd (d. 595/1198).[194] Yet Ibn Rushd did not look into the occasioning factor for this condition of "equality in transaction," which is "similarity" and which has a philosophical-theological significance in the *ribā ḥikma* search, as will be explained below (chapter IV). Thirdly, a legal interpretation of the concept of *ẓulm* equates it with "transgression" – the stepping into the forbidden territory, i.e., the sanctuary *(ḥimā)* of someone else. This interpretation is supported by the wordings of the verse itself when it threatens war from Allāh and His Messenger for not giving up all outstanding *ribā.* After all, the triggering factor of war is transgression. Further direct support for this interpretation is from another verse where *"ẓālimūn"* can only be rendered as "transgressors":

> And We said: Oh Adam! Dwell you and your wife [pair] in the Paradise and eat both of you freely with pleasure and delight, of things therein as wherever you will, but come not near this tree [Tree of Eternity: *shajarat al-khuld* in Q. 20:120], or you both will be of the *ẓālimūn.*[195]

Obviously, by eating of the prohibited Tree, Adam and Eve could not have been indulging in "exploitation of the poor" and "excessive injustice *(ghubn fāḥish),*" nor could they have "oppressed" God; they could only have "transgressed" God, i.e., transgressed in the divine sphere of eternity.

Finally, the Qur'ān directly supports this meaning of *ẓulm* as transgression when it declares:

- And whoever *transgresses* the limits ordained by Allāh, then such are the *ẓālimūn.*[196]
- Verily joining others [in worship] with Allāh is a great *ẓulm* indeed.[197]

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[191] El-Gamal, *A Basic Guide to Contemporary Islamic Banking and Finance* (Houston: ISNA, 2000), 2, n.1.
[192] al-Nawawī, (continuation by al-Subkī), *al-Majmū' Sharḥ al-Muhadhdhab* (Cairo: Dār Iḥyā al-Turāth al-'Arabī, 1995), IX, 390-404 (*"far' fī madhāhib al-'ulamā' fī bayān 'illat al-ribā fī al-'ajnās al-arba'a"*).
[193] Hans Wehr, *Arabic-English Dictionary*, 779.
[194] Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Beirut: Dār al-Ma'rifat, 1997), III, 183-184.
[195] Q. 2: 35.
[196] Q. 2:229.
[197] Q. 31:13.

Moreover, the Qur'ān juxtaposes *kufr* (unbelief) with *ẓulm:*

- And it is the disbelievers who are the *ẓālimūn.*[198]

Further, the Qur'ān juxtaposes *īmān* (belief) with *ẓulm (shirk)* thus:

- It is those who believe and confuse not their belief with *ẓulm,* for them there is security and they are the guided.[199]

Leemhuise concludes that "*ẓulm,* at least in Q. 6:82, became equated with *shirk.*"[200] Similarly, quoting a *ḥadīth* from Abū Dharr Ghifārī, al-Nawawī explains that the highest level and the most extreme form of *ẓulm* is *al-shirk* or associating partners with Allāh.[201]

Therefore, when Q. 2:279 speaks of *lā taẓlimūna wa-lā tuẓlamūna,* the *ẓulm* is referring not to "oppression" (of God) but to "transgression." God is in effect telling man "do not transgress in My domain *[ribā]* and I (God) will not transgress in your (man's) domain by ensuring that you receive your capital *(fa lakum ru'ūs amwālikum).* This theme will be developed below (chapter IV).

In this verse the English rendering "capital sums" relates to the expression *"ru'ūs amwālikum"* of the Arabic original, in accordance with the lexical meaning. Through this expression, this verse stipulates that in a transaction of homogeneity the only human entitlement is the capital (base) and any increase is prohibited. This injunction provides the juristic justification for the *fatwā* that all interest in any form is prohibited. In addition to this financial application, this injunction can also be extrapolated to cover any situation of a base and any increment or continuation thereof, as done in chapter IV.

In summary, in this set of verses, in a tone of comprehensiveness and finality, *al-ribā* is contrasted with *al-ṣadaqāt* in terms of loss of Allāh's blessing, and more to the point, as an expression of a fundamental divine law. Additionally, in a foundation-building revelation, *al-ribā* is contrasted repeatedly with *al-bay'* in terms of strict denial of their mutual similarity, and prohibited, with specific punishment of Satanic insanity and eternal Hell-Fire for treating the two practices as similar. Furthermore, punishment of war from God is ordained for violation of the prohibition, implying the occurrence of

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[198] Q. 2:254.
[199] Q. 6:82.
[200] Fred Leemhuis, "Origins and Early Development of Tafsīr Tradition" in Andrew Rippin, *Approaches to the history of the interpretation of the Qur'ān* (Oxford: Clarendon Press; New York: Oxford University Press, 1988).
[201] Al-Nawawī, *ḥadīth* no. 24.

transgression. The restriction of human returns to the bases *(ru'ūs amwālikum)* rules out any increment or continuity of homogeneity. The meaning of the term *al-ribā* is not specified directly; only implied through contrast with *al-ṣadaqāt* and *al-bay'*. The rationale for the prohibition is not spelled out; it is only implied to be rejection of belief, and further implied through provision of severe punishment in the Hereafter. Working with these Qur'ānic givens, and aided otherwise, the new critical theory will be posited.

II.3. Prophetic Blueprint

This is a very fertile source for the *ribā* theory development and will be explored in the context of the three Abrahamic faiths.

II.3.i. Judeo-Christian Prophetic Guidance

Unlike the Islamic tradition, there is no separate *ḥadīth* genre in the Judeo-Christian tradition. The prophetic contribution is already incorporated in the Old and the New Testaments (II.2.iii. and II.2.iv, above) and will be utilized accordingly.

II.3.ii. Islamic Prophetic Guidance

The Prophetic Sunna *(ḥadīth)* encapsulating the sayings, actions and tacit approvals of the Prophet is very rich source material for the new theory development, but it requires deep reflection and has unfortunately only been cursorily handled by the exegetes and jurists.

The prohibition of *ribā* and permission of *bay'* is both Qur'ānic and Sunnaic. In addition to the Qur'ānic verses that are taken by many scholars, without full justification, to be the basis for the prohibition of *ribā al-nasī'a* alone, there are a number of Prophetic *aḥādīth* dealing with the extension, elaboration and prohibition of *ribā* which are taken by them, again without full justification, as the basis for the prohibition of *ribā al-faḍl* alone. The famous and often-quoted *aḥādīth* which served as the source-material for the application of analogy *(qiyās)* in the development of Islamic jurisprudence *(fiqh)* on *ribā* and *bay'* are given in Appendix 5. As for their authenticity, these traditions have been reported as *marfū'* (elevated in rank) from a large number of Companions.[202] These traditions are very productive for new theory development in

[202] Including the four *Khulafā' Rāshidūn*, Abū Bakr, 'Umar, 'Uthmān, and 'Alī, and others including 'Ubādah ibn al-Ṣāmit, Abū Sa'īd al-Khudrī, Abū Hurayrah, Sa'd ibn Abī Waqqās, 'Abd Allāh ibn 'Umar, Faḍālah ibn 'Ubayd, Abū Bakrah, Abū al-Dardā', Abū

several ways. They:

1. Herald the close of the Jāhilīya and the dawn of the Islamic non-*ribawī* era, through annulling all *ribā al-jāhilīya,* as late as the Prophet's Farewell Pilgrimage, thus speaking to the late formulation and implementation of the final injunctions on *ribā,* which lays heavy responsibility on later exegetes;
2. Lay down the universality of the application of *ribā* -prohibition by applying it to the Christians (of Najrān), in addition to the Jews already;
3. Point out the actual *ribawī* practices of Jews, Christians and Zoroastrians;
4. Underscore the gravity of the sin of *ribā* by designating it as the fourth of the seven great destructive sins *(al-kabā'ir);*
5. Elevate the *ribā* discourse to a higher theological and philosophical level, by spelling out the gravity of the sin of *ribā* through:
    - associating *ribā* with *shirk* (naming partners with Allāh) – a notion not even spotted, let alone explored by conventional scholarship:

      'Abd Allāh Ibn Masūd has reported that the Prophet said: "*Ribā* has over seventy kinds and *shirk* (associating partners with Allāh) is like (as bad as) that." – Reported by al-Bazzār, with the same transmitters as those of the *Ṣaḥīḥ,* in Ibn Māja with sound *isnād.*[203]

    - associating *ribā* with adultery and incest with one's own mother at its lowest manifestation, using an exoterically biological and seemingly moral – but an esoterically philosophical – metaphor:

      From Abū Hurayrah: The Prophet said: "*Ribā* has seventy segments, the least serious being equivalent to a man committing adultery with his own mother." [Incest][204]

    - associating *ribā* with attack on the honor of a Muslim;
6. Specify the denial of temporal and heavenly blessings for indulgence in *ribā;*
7. Graphically describe the punishment for the sin of *ribā;*
8. Spell out the temporal curse (Allāh's wrath) for *ribā*- indulgence;
9. Bring out the eschatological implications of *ribā;*
10. Clearly express condemnation of and curse on the practice of *ribā* (both taking and giving);

Usayd al-Sā'idī, Ruwayfah ibn Thābit, Buraydah and others, mentioned in Nyazee, *Ribā and Islamic Banking,* 128.

[203] *Muṣnaf 'Abd al-Razzāq,* VIII, 315; *Masnad al-Bazzār* with reference to *Kashf al-Asrār,* I, 64, chapter of *al-shirk, ḥadīth* no. 91; *Sunan Ibn Māja, Kitāb al-Tijārāt, Bāb al-taghlīẓ fī al-ribā, ḥadīth* no. 2275.

[204] Ibn Māja, *Kitāb al-Tijārāt, Bāb al-taghlīẓ fī al-ribā.*

11. Extend the culpability for the sin to all participants of the *ribā* contract– the taker, the giver, the recorder, the two witnesses;
12. Lay down *ribawī* injunctions on homogeneity, equality and instantaneity, in what are generally referred to as the different versions of *ribawī*-commodities *ḥadīth,* naming six commodities (gold, silver, wheat, barley, dates and salt). For homogeneity and equality, various versions of these *aḥādīth* use different expressions like *"mithlun bi mithlin"* (like for like), *"sawā'un bi sawā'in"* (equal for equal), *"'aynun bi 'aynin"* (same for same), and, in Abū Yūsuf's version, *"waznun bi waznin"* (weight for weight) and *"kaylun bi kaylin"* (measure for measure). These *aḥādīth* provide the tools and the instruments for the philosophical-theological exposition of *ribā* and *bay'*, containing the most profound wisdom and the most comprehensive esoteric exposition of *ribā.* But these *aḥādīth* only became the basis of the doctrine of *ribā* discussed in Islamic law (for mechanical analogous extrapolation),[205] and were not utilized by the scholarship to extract the deeper philosophical-theological layers of meaning and rationale.

> From 'Ubādah ibn aṣ-Ṣāmit, who said, "The Messenger of Allāh said, 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, *like for like, in equal weights, from hand to hand. If these species differ,* then, sell as you like, as long as it is from hand to hand.' " [206]

> "The Messenger of Allāh said, 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, from hand to hand. He who gives in excess or *acquires an excess has charged ribā;* the person giving and acquiring have the same liability [guilt] in this." [207]

13. Provide (in the *Barnī*-and Khaybar-dates *aḥādīth)* a clear distinction between *ribā* and *bay'* and an explication of the *ribawī*-commodities *ḥadīth.* These *aḥādīth* also directly refute the position of many scholars who maintain that the opposite of *ribā* is not *bay',* but *ṣadaqa.*[208] These *aḥādīth* explicitly demonstrate that in matters of *mu'āmalāt,* the prescribed alternative to, or the opposite of, *ribā* is *bay';* in matters of *'ibādāt,* the antithesis of *ribā* (growth or

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[205] Saeed, *Islamic Banking,* 31-34.
[206] *Ṣaḥīḥ Muslim, Kitāb al-Musāqāt, Bāb al-ṣarfī wa bay'i al-dhahabi bi al-waraqi naqdan* ;also in Tirmidhī; al-Ṣan'ānī, *Subul al-Salām Sharḥ Bulūgh al-Marām,* III, 72.
[207] *Ṣaḥīḥ Muslim, Kitāb al-Musāqāt, Bāb al-ṣarfī wa bay'i al-dhahabi bi al-waraqi naqdan.*
[208] See, e.g., Rahman, Riba, 31.

self-emanation) is indeed *ṣadaqa* (diminution or self-annihilation). Moreover, from an application standpoint, these *aḥādīth* appear to sanction what has in later juridical literature been dubbed, apparently incorrectly, as the *ḥīla* (stratagem) of "double sale." These *aḥādīth* provide a mechanism to achieve an ultimate *indirect* exchange (not a sale) of homogeneity (dates for dates) through two *direct* exchanges (actual sales/purchases) of heterogeneity (dates for money, and money for dates):

> Narrated Abu Sa'īd al-Khudrī: Once Bilāl brought *Barnī* (a superior kind of) dates to the Prophet and the Prophet asked him, "From where have you brought these?" Bilāl replied, "I had some inferior kind of dates and exchanged two *Ṣā's* of it for one *Ṣā'* of *Barnī-dates*, in order to give it to the Prophet to eat." Thereupon the Prophet said, "Beware! Beware! This is definitely *ribā* (usury)! This is definitely *ribā* (usury)! Don't do so, but if you want to buy (a superior kind of dates) sell the inferior kind of dates for money and then, buy the superior kind of dates with that money." [209]

> Abu Sa'īd al-Khudrī and Abū Hurayrah reported that the Messenger of Allāh appointed someone to collect revenue from Khaybar. He brought him dates of high quality *[janīb]*. The Messenger of Allāh said, "Are all the dates of Khaybar like this?" He replied, "By Allāh, no. O Messenger of Allāh, we get a *ṣā'* of these in exchange for two *ṣā's* (of our dates) and two *ṣā's* in exchange for three." The Messenger of Allāh said, "Do not do this, but sell the mixed dates for *dirhams*, and then buy the good quality dates *[janīb]* with the *dirhams*." [210]

14. Clearly convey the important concept that delay *(nasī'a)* results in *ribā*, and require instantaneity of the transaction. The concept of delay is further developed in two best known traditions of Usāma and al-Barrā' ibn 'Āzib which stipulate that all *ribā* is included in or restricted to *ribā al-nasī'a* and that true *ribā* is found when there is a delayed settlement. These traditions, however, do not explain just how delay causes true *ribā;* this question will be tackled below (chapter IV);
15. Fine tune the indirect incidence of *ribā*, such as the dust of *ribā*, gifts or favors;
16. Foretell the universal spread of *ribā*, which mankind is experiencing today, but witnessing conspicuously only in the financial domain;
17. Recognize (in Companion *aḥādīth* attributed to Caliph 'Umar) the ambiguity of the *ribā* provisions. In one version of the above *aḥādīth* , the word *ribḥ* (profit) replaces *rība* (doubt). While the word *rība*, more popularly rendered as *raib* (both meaning, doubt), extends the scope of application of *ribā*-proscription beyond the

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[209] *Ṣaḥīḥ Bukhārī*, III, *Ḥadīth* no. 506; Muslim, *Ṣaḥīḥ. Kitāb al-Musāqāt, Bāb al-ṭa'āmi mithlan bi mithlin*, III, 48.
[210] Bukhārī, *Kitāb al-Buyū', Bāb idhā arāda bay'a tamrin bi tamrin khayrun minhu.*

certain to the doubtful cases as well, the term *ribḥ* (profit), if an authentic part of this tradition, raises a serious question about the legitimacy of the notion of profit in Islamic law, which will be explored below (chapter V) from an accounting and philosophical perspective.

18. Define *ribā*, by implication, as an "excess" in an exchange of homogeneity, and as "delay" in exchanges of both homogeneity and heterogeneity;
19. Prescribe *bay'* as the permissible alternative to the prohibited *ribā* in matters of *mu'āmalāt* (transactions).

What the legal *ḥadīth* material does not do, however, is clearly spell out the *'illa* and the *ḥikma* of the *ribā-bay'* injunctions, much less expound these concepts. The *'illa* of *ribā's* proscription is only hinted at (e.g., homogeneity and delay). But the *'illa* of permission of *bay'* is not even hinted at. *Bay'* is simply designated the *default mode* of human behavior. To add further complexity, the *ḥikma* of the injunctions on *ribā and bay'* is, as it were, a divine secret to be reflected upon by mankind. The legal *ḥadīth* material, as the Qur'ān itself, is only suggestive but completely silent on it, leaving the arduous task for intuitive exposition.

This legal *ḥadīth* raw material and the Qur'ānic raw material are, nevertheless, the foundation on which and from which the structure of the Qur'ānic/Sunnaic calibrated hermeneutical model of *ribā* will be explored and constructed in this work through the search for the *'illa* and the *ḥikma* of the injunction in the form of a new theory.

II.3.ii.a. *Ribā-Bay'* in *Sīra / Tārīkh* Works

The stated scope of this work precludes a full length examination of the diachronic development of adherence to the *ribā-bay'* injunctions in Islamic history. However, a sample from the early historiographical works is presented in Appendix 6, which, *inter alia,* supports the Prophetic *ḥadīth* material on the subject and underscores the unique position of the concept of *ribā* in Islamic faith and practice.

Sīrat Rasūl Allāh by Ibn Isḥāq (d. 150/767) contains some purely exegetical sections (e.g. *Sīra* III, 112-28 on Q. 3:121-179). This exegesis confines itself to a kind of lexical paraphrase found in the early commentaries.[211]

[211] Versteegh, *Arabic Grammar and Qur'ānic Exegesis*, 71.

Additionally, the express prohibition of *ribā* is contained in several pacts/letters of the Prophet with/to various tribes, such as the pacts with tribe of Juhayna,[212] with the Christians of Najrān[213] and with the Thaqīf tribe (Ṭā'if),[214] and the letter to 'Amr Ibn M'abad al-Juhanī.[215]

The prohibition of *ribā* and its centrality to Islam comes out clearly from these Prophetic documents, but, as appropriate to the genre, no light is shed on the rationale of the prohibition.

II.4. Punitive Chisel

Although *neshekh/ribā* is classed as the greatest of the sins in all three pristine Abrahamic faiths, the Bible does not prescribe any punishments for it. It is only in Islam that *ribā* attracts a set of Qur'ānic punishments and Sunnaic sin-associations which are firstly unique and secondly apparently extreme. They are unique because they have not been prescribed for any other sin. They are apparently extreme because they are at the extreme end of the punitive spectrum, which by no stretch of the imagination is compatible with the sin of *ribā*-indulgence seen only as an economic/financial act. These unique and harsh punishments act, metaphorically, as a chisel to fashion and polish the theoretical construct. These punishments in fact are the key to unlocking the new theory of *ribā*. They are the greatest indicators of the full import of the new theory.

II.4.i. Qur'ānic Non-*Ḥadd* Admonition

The punishments for indulgence in *ribā*, as ordained in the Qur'ān and summarized by al-Sarakhsī, are not of the *ḥudūd* category and include:[216] Evil touch of the Devil which equates to epilepsy,[217] Deprivation of Allāh's blessing which equates to destruction and extermination,[218] War from Allāh and His Messenger,[219] Loss of belief *(kufr)*[220] and Eternal Hellfire.[221]

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[212] Ibn Sa'd, *Kitāb al-Ṭabaqāt al-Kabīr*, III, 24-25, 27, as translated in Sultan Ahmad Qureshi, *Letters of the Holy Prophet*, (Lahore: Muslim Educational Trust, n.d.), 43.
[213] Aḥmad ibn Yaḥya Balādhurī, *Futūḥ al-Buldān*, I, 64-65, as translated in Qureshi, *Letters of the Holy Prophet*, 50.
[214] Abū 'Ubayd, *Kitāb al-Amwāl*, 19, 92, as translated in Qureshi, *Letters of the Holy Prophet*, 53.
[215] Ibn Sa'd, *Kitāb al-Ṭabaqāt al-Kabīr*, III, 24-25, as translated in Qureshi, *Letters of the Holy Prophet*, 118.
[216] al-Sarakhsī, *al-Mabsūṭ*.
[217] Q. 2:275.
[218] Q. 2:276.
[219] Q. 2:279.
[220] Q. 2:276.
[221] Q. 2:275.

What al-Sarakhsi does not notice is that the Qur'ān – very uniquely for any sin – also institutes past accountability for the sin of *ribā*,[222] while, however, not *explicitly* associating it with the unforgivable sin of *shirk* (idolatry). A possible explanation why these punishments are not of the *ḥudūd* category will be posited in chapter V.

II.4.ii. *Ta'zīr* Punishments

According to a tiny minority juristic opinion, the *ta'zīr* punishments for *ribā* include: initial dissuasion, subsequent imprisonment and eventual death.[223] Again, even this minority-opined punishment of death is unique and severe in that no other "economic crime" attracts it. It clearly suggests a deeper but yet unexplored significance.

II.4.iii. Sunnaic Admonition

The Sunnaic admonition of *ribā*, contained in four different *aḥādīth* cited above, while very grave and graphic, is loaded with unexplored meanings and raises the *ribā* discourse beyond the apparent moral to its ultimate unscaled theological heights:

- Equivalence of *ribā* with idolatry *(shirk);*
- Equivalence of *ribā* with adultery *(zinā');*
- Equivalence of *ribā* with incest *(zinā' al-maḥārim*[224]*)* with one's own mother;
- Equivalence of *ribā* with loss of Muslim's honor.

These Sunnaic admonitions fully complement the grave Qur'ānic and *ta'zīr* punishments and, taken together, provide a perfect chisel to fashion the new theory on *ribā.*

II.4.iv. Uniqueness of Admonitions/Punishments

'Abd al-Raḥmān al-Jazīrī elaborates the punishments for the severely prohibited *(nahyan mughallaẓan) ribā* thus:

> *[Ribā]* is far removed from Islam and is in discord with its basic philosophy in form as well as meaning. ... This is the Book of God which has prohibited *ribā* vehemently and has reprimanded the taker so severely that it makes those who believe in their Lord and dread His punishment tremble with fear. Can any reprimand be harsher than God equating the takers of *ribā* with those

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[222] Ibid.
[223] Opinion of Ibn 'Abbās, Ḥasan al-Baṣri, Ibn Sīrīn and Rabī' ibn Anas related in al-Jaṣṣāṣ's commentary on Q. 2:278, I, 471 ff. Imprisonment of seller of liquor and indulger of *ribā* is also stipulated by the *Fatāwā 'Alamgīrī*, II, 169.
[224] al-Ba'albakī, *Al-Mawrid: Arabic-English Dictionary*, 609.

> who have risen in revolt against Him and are at war with Him and His Prophet? What will be the state of that feeble human being who fights with the Almighty and Overpowering God, Whom nothing on earth or in Heaven can frustrate. There is no doubt that by resorting to *ribā* such a person has adopted the course of self-destruction and deprivation. [225]

Crucial to the interpretation of *ribā* is the fact that the Qur'ānic and Sunnaic punishments/admonitions have not been pronounced for any other cardinal sin. If *ribā* is an economic crime (exploitative but nevertheless *mutually consented* transfer of wealth), as generally believed, then there are more serious economic crimes like theft (transfer of wealth by *stealth)* and robbery (transfer of wealth by *force /murder).* But theft (act of *stealth)* and robbery (act of *force)* do not attract as grave a punishment as *ribā* (act of *consent)* does. If *ribā* is a moral crime against humanity (injustice), as is also generally advocated, then there are more serious moral crimes like murder. But again murder does not attract the same range and severity of punishment as *ribā* does. Moreover, the sin of *ribā* is unique in attracting accountability for the past.[226] Above all, the Sunnaic equivalence of *ribā* with idolatry *(shirk)* clearly raises the stakes, and thus drastically changes the very perception of *ribā* from the economic and moral to the theological realm.

II.5. Exegetical Excavation

The genre of exegesis (Arabic: *tafsīr)* should have offered the greatest promise of deciphering the divine Scripture on the prohibition of usury for the development of a comprehensive theory. However, both the Judeo-Christian and Islamic monumental exegetical production has utterly failed to develop a plausible theory of *ribā.* Except for some instances in the Judaic rabbinical literature, the exegesis of usury/*ribā* verses is woefully perfunctory, lacking any philosophical-theological depth. As will be seen below, only the Judaic rabbinical exegesis reaches theological heights, though still short of a full-fledged theory, while the Christian exegetical effort simply hovers around moral and legal perspectives (barring one metaphorical theological reference), and the Islamic exegetical output is suffocated by an overt concern with the contextual (Jāhilīya) and narrow thematical (economic) perspectives.

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[225] 'Abd al-Raḥmān al-Jazīrī, *al-Fiqh 'alā al-Madhāhib al-Arba'a* (Cairo: al-Maktaba al-Tijāriyya al-Kubrā, n.d.), 6th ed. II, 245-8.
[226] Q. 2:275.

II.5.i. Early Rabbinical Teachings [227]

The initial Old Testament and other Biblical injunctions – concrete and lacking universality – were explored for meaning and guidance in the early rabbinical literature and in the process the usury discourse was raised to new theological heights, albeit still without a full-fledged theory. This early rabbinical literature,[228] however, fully supports the new theory of *ribā* being developed in this thesis.

The early Jewish thinking is reflected in the Palestinian Talmud (5th c.) and the Babylonian Talmud (7th c.) whose legislation, contemporary with early Christianity, surpassed the Old Testament[229] in forbidding not just usury but – very significantly – even what looked like usury,[230] and in increasing the severity of Biblical prohibitions.[231]

Echoing past conventional philosophical wisdom reflected in concepts such as "*money bred from money* as their *calves* are *from cattle,*" rabbinical thought regarded positive morality, justice, sterility of money and *self-creation* of interest as the prohibition rationales. But in a far-reaching move, fully supportive of the new theory, the usury ("increase") prohibition was extended to cover far more than the taking of interest and came to distinguish four main types of "increase" (= Hebrew *marbīt;* Arabic *ribā)* in the Talmud and the medieval Jewish codes:[232] (1) fixed increase: ordinary transaction where interest on money is paid directly on a loan (in violation of the express command of Scripture, known as "Increase under the Mosaic Law"); (2) "the mere dust of increase": some indirect form of interest in bargain or sale, even if more or less gratuitous; also anything given by a borrower in anticipation of a loan (known as "Rabbinical Increase"); (3) "the semblance of increase": interest paid out of gratitude for a past loan or out of the desire to induce a future one; and (4) increase payable by means other than money, including many disparate cases, such as, when a borrower

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[227] This section on early rabbinical teachings, detailed in Appendix 11 (b), draws heavily and liberally on the work of Maloney (Maloney, Background, 113-135) which incorporates original research.

[228] The early Jewish rabbinical sources for usury discourse include Philo (c. 30 B.C.- 45 A.D.) and Josephus, the Mishna and Tosephta, the Sipphra on Leviticus, the Siphre on Numbers and Deuteronomy, and the Mekiltha on Exodus.

[229] Maloney, Background, 113ff.

[230] *Baba Mezi'a*, V, 1ff.

[231] One rabbinical practice of rabbi Gamaliel II (90-130 A.D.) even involved "negative interest", i.e., taking losses on loans by accepting reimbursement at whichever price level was lower, that of the time of lending or of repayment, reported in S. W. Baron, *A Social and Religious History of the Jews,* 9 vols. (New York: Columbia University Press, 1960), II, 250; also *Baba Mezi'a*, V, 8. This is a historical evidence of negative indexing of loans for inflation, an issue much debated inconclusively in contemporary Islamic finance circles.

[232] Code of Maimonides (12th c.); *Turim* Code of Jacob ben Asher (1248-1340); Code of Joseph Caro, the *Shulchan Arukh* (16th c.).

honors his creditor by allowing him to perform some religious duty in connection with synagogue worship.[233]

The complicated commentaries of the rabbis on *Baba Meẓi'a,* through the use of casuistry, further refine the meaning of usury, beyond the text of the *Mishna.* Only a full reading of the Gemara can adequately show the intricacies of usury discussed within Judaism.[234] But regrettably this "micro" analysis did not lead to a "macro" theory.

The Tosephta to *Baba Meẓi'a* deals extensively with the broadened concept of usury, by forbidding not just interest-taking but also what looks like, though may not be, usury.[235] The former was known as *ribbit keẓuẓah* (interest proper), and the latter as *avak ribbit* (dust of interest).[236] *Baba Bathra* further illustrates the extension of the understanding, and subtle use, of the usury principle in a quotation,[237] in which considering the whole period of the contract as one long day for wage settlement has an oblique similarity with the concept of "unity of session" *(ittiḥād al-majlis)* in Islamic law. Continuing with the broadened concept of usury, *Baba Ḳamma* applies it to sales transactions, as stated by the Gemara, which later came to be known as *bay' al-salam* in Islamic law.[238]

The rabbinic thought adds not only breadth, as seen above, but also theological depth to the usury discourse. The *Mishna* [239] spells out the notion and scope of guilt in usurious transactions as *transgression* and invoking the fear of God.[240] The Gemara in the *Jerusalem Talmud* [241] points out the blindness of the usurer who hires a notary and witnesses to attest to his sin,[242] and the *Mekiltha on Exodus* condemns all participants in usury and denies the usurer any "share in divinity": "He who lends on interest ... has no share in Him who decreed against taking interest."[243]

These passages have a striking resemblance to the later Islamic Prophetic traditions that also similarly condemn all the participants – the taker, giver, guarantor,

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[233] Maloney, Background, n. 125, 117; J. Abelson, "Usury (Jewish)", *Encyclopedia of Religion and Ethics,* XII, 557.
[234] *The Talmud* (London: Soncino Press, 1935), Nezikin II: *Baba Meẓi'a,* V, 361ff.
[235] Tosephta to *Baba Meẓi'a,* IV, 3.
[236] *Encyclopaedia Judaica- CD-ROM Edition.* cf. Usury.
[237] *Baba Bathra*, 86b-87a.
[238] *Baba Ḳamma,* 103a: "Advance payment at present prices may be made for the future delivery of products, but no advance payment at present may be made if the value of the products will subsequently be paid in actual money in lieu of them."
[239] *Mishna* is one of the two constituent parts of the Talmud. The other is Gemara.
[240] *Baba Meẓi'a,* V, 11.
[241] Ibid., V, 11d.
[242] Maloney, Background, 121.
[243] R. Meir in *Mekiltha on Exodus,* XXII, 24.

witnesses, and scribe – in a usurious transaction. They also raise the usury discourse to a theological level, which, however, in a strange contradiction, is downgraded elsewhere by the absence of absoluteness of the prohibition[244] which accommodated rabbinical exceptions to the law of usury on the rationale of charity.[245]

Nevertheless, the rabbinical prohibition against usury, though not absolute, is certainly very grave. Raising the discourse to theological heights, usury is made equivalent to denying God. The Gemara of *Babylonian Talmud* quotes Rabbi Jose (130-160 A.D.):[246]

> Come and see the blindness of the man who lends at interest: ... if someone gets together witnesses, a notary and ink, and writes and signs (a contract), he *denies the God of Israel*.[247]

Similarly, the Gemara of the *Jerusalem Talmud* declares interest-taking as denial of Yahweh:[248]

> Come and see the blindness of those who lend at interest: if anyone calls another an idolater, an incestuous man or a murderer, the other seeks vengeance on his life; but doesn't one who hired a notary and witness and tells them to attest (a usurious contract) *deny the Place?* This brings out that *everyone who lends at interest denies the Principle* [of divine authority].[249]

Maloney explains that these two texts, read with the Gemara on *Sanhedrin* [250] and the Tosephta to *Aboda Zara,*[251] bring out the extreme gravity assigned by the rabbis to the sin of usury:

> A Jew was permitted to violate the ordinances of the Torah if he were threatened with death, but he was forbidden to do so in cases of idolatry, immorality and bloodshed. The text given above from the *Jerusalem Talmud* alludes to these three special cases and connects usury with idolatry, the most serious of sins. So grave was the prohibition of idolatry that it was regarded as "equal in weight to the whole Torah."[252] To drive home their general teaching on idolatry the rabbis formed practical regulations which aimed at lessening the likelihood that Jews would be contaminated with pagan practices. To the modern reader their measures might seem extreme, but they worked from the principle that prevention was better than cure. A book like *Aboda Zara* gives flesh to this principle through multiple minute regulations. The Gemara expresses its working philosophy with an aphorism:[253] "Keep off, we say to the Nazirite; go round the vineyard and come not near to it." Just as the Nazirite could avoid the fruit of the vine by avoiding the vineyard itself, so also could the Jew be preserved from idolatry by being preserved from any idolatrous object. The Tosephta to *Aboda Zara* applies this principle to usury by forbidding

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[244] Maloney, Background, 124.
[245] Tosephta to *Baba Mcẓi'a*, V, 15. (Maloney transl. from Bonsirven, 472).
[246] Maloney, Background, 125.
[247] *Baba Mcẓ i'a*,, 71a. (Maloney transl. from Bonsirven, 461).
[248] Maloney, Background, 125.
[249] Gemara of *Jerusalem Talmud, Baba Mcẓ i'a*, V, II d (Maloney transl. from Bonsirven, 462).
[250] *Sanhedrin*, 74a.
[251] Tosephta to *Aboda Zara*, I, 10.
[252] *Sanhedrin*, 74a; *Horayoth*, 8a.
[253] *Aboda Zara*, 58b.

> business dealings that involved any money that had formerly been gained from usury.[254] The connection of usury to idolatry makes rabbinical efforts to avoid even what looked like usury much more understandable.[255]

In addition to equating usury with idolatry, these rabbinical texts bring out two important concepts. They permit scriptural exemptions on the doctrine of dire necessity, but not in the case of idolatry which is identified with usury. They utilize the notion, also discussed in the later *ribā* discourse, of avoiding transgression against the protected boundaries *(ḥimā)* of God.

These texts clearly raise the usury discourse to theological heights by equating usury with denial of God and with idolatry. But they do not explain what the occasioning factor for the equivalence between usury and idolatry is? The denial of "Place" and "Principle" referred to in Gemara of the *Jerusalem Talmud* cited above[256] requires further elaboration in the Judaic context which is beyond the present scope of this work. The usury prohibition rationale, short of being explicitly posited and explained as idolatry, was instead posited as the prohibition of shedding of blood (savagery),[257] and the promotion of bond of brotherhood and charity towards the poor,[258] but not justice either in the Old Testament or in the rabbinic literature.

Interestingly, in spite of the gravity of the sin of usury (equivalence with idolatry), the Torah lacks any temporal or other-worldly punishments for the sin on an individual level. It is only on a community level that the rabbis connected, among other things, usury prohibition with Israel's covenant with Yahweh: the "exodus" as punishment for indulgence in, and the "return" on the condition of avoidance of, usury. The Gemara of *Sukkah* and the Siphra on *Leviticus* draw this conclusion:

> The homes of the Israelites have been delivered to the empire because of ... those who lend money on usury ...[259]

> I have brought you out of Egypt on the condition that you accept the commandments on usury. Whoever professes them professes the exodus from Egypt, and vice-versa.[260]

The explanation is that the prohibition of interest being of a charitable nature, it was only a moral transgression and its violation was not treated as a criminal offense to

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[254] Toscphta to *Aboda Zara,* I, 10-11.
[255] Maloney, Background, 125-126.
[256] See n. 247, p. 74, above.
[257] *Temurah,* 6b.
[258] Maloney, Background, 130.
[259] *Sukkah,* 29 a, b.
[260] Siphre on *Leviticus,* XXV, 38. (Maloney transl. from Bonsirven, 46).

which any penal sanctions attached. Only in the prophesies of Ezekiel did usury come to be identified with the gravest of crimes in the context of larceny, adultery, homicide and other such "abominations" that are worthy of death (Ez. 18:11-13). The threat of death for usury was later interpreted as the divine sanction against irrecoverable and illegitimate self-enrichment (BM 61b).[261] Furthermore, interest-taking moneylenders are likened to apostates who deny God (Tosef., BM 6:17) and to shedders of blood (BM 61b) and they have no share in the world to come (Mekh. Sb-Y 22:24).[262]

This rabbinical usury discourse, though it treats of the *extrinsic effects* of usury, also investigates its *intrinsic characteristic.* Further, by extending the concept from "usury" to also "what looks like usury," very subtly it generalizes the scope beyond the financial. Thus, the Jewish rabbinical usury paradigm may be characterized as the first one possessing both vertical depth and horizontal spread, and very productive for, but still short of, a full-fledged theory.

II.5.ii. Patristic Teachings – Church Fathers/Christian Theologians [263]

In developing their teachings on usury, the early Church Fathers faced two problems: the lack of specific guidance in the New Testament on the taking of interest and the tackling of what appeared to them a "Deuteronomic double-standard" that allowed Jews to take interest from the *other* but not from the *brother.* But what is lacking in the New Testament has, however, been more than made up for by the Church Fathers based on the teachings of the Old Testament and the notion of incompatibility of usury with Christian love. The essence of the early Church Fathers' teaching was severe disapproval of usury, influenced in certain cases by classical Greek thought as well.

In an attempt to show the harmony between the Judaic Law and the Gospel, the new law is not seen as abolishing the old, but as surpassing it: the prohibition of usury remains and is expanded – not even to seek the principal from the one who is in need.

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[261] *Encyclopaedia Judaica- CD-ROM Edition* .s.v. Usury.
[262] Ibid.
[263] This section on the teachings of Church Fathers, detailed in Appendix 12 (a), also draws heavily and liberally on the doctoral dissertation of Rev. Robert P. Maloney (Maloney, Background, 136-179) which incorporates original research on the work of Clement of Alexandria of the Greek Church (c. 150-215 A.D.), Tertullian (c. 155-220 A.D.), Apollonius (dates uncertain: an Asian bishop), St. Cyprian (c. 200-258 A.D.), Commodianus, Lactantius, St. Athanasius (c. 295-373 A.D.), Cyril of Jerusalem (c. 315-387 A.D.), Hilary of Poitiers (c. 315-c.367 A.D.), Basil the Great (330-379 A.D.), Gregory of Nazianzen (330-389 A.D.), Gregory of Nyssa (335-394 A.D.), St. Ambrose (339-397 A.D.), St. John Chrysostom (344?-407 A.D.), St. Jerome (344-420 A.D.), St. Augustine (350-430 A.D.), Leo the Great (390?-461 A.D.), and Jacob of Saroug (c. 451-521 A.D.).

The Old Testament (Ez. 18:8) is seen as prohibiting interest in order to prepare people for the habit of losing the principal itself (Lk. 6:34).[264] This bears a striking resemblance to the later Qur'ānic exhortation in Q.2:280 to grant facilitating extension and even charitable remission to the needy debtor.

Treating Mosaic Law as the source for all the moral teachings of the Greeks, the rationale of usury prohibition is regarded as eternal happiness, generosity, fellowship, piety, liberality, justice and humanity.[265]

Condemnation of usury as immoral finds support not only in the Scripture (Old Testament), but also in its incompatibility with Christian love as expressed in poetic thought, in the homilies of the Fathers, [266] castigating the usurer, attacking usury and cataloging the prescription to be followed by the man who sincerely seeks God and strives after truth. [267]

Conforming to the special precept of not lending at interest brings the reward of dwelling with the Lord in His eternal tabernacle, whereas its violation excludes man from eternal life.[268] In the first-ever reference of its kind in Judeo-Christian tradition, usury is treated as a diabolical action along with intemperance and avarice.[269] This is a close parallel to the later Qur'ānic categorization of usury *(ribā)* indulgence as "Satanic insanity" (Q. 2:275). Both the rich and the poor are dissuaded from borrowing, positing "freedom from care" as the rationale.[270] Echoing Aristotle, Basil states[271] that usury must be called *tokos* (offspring) because of all the evils it engenders. But other offspring grow only until they reach maturity, whereas usury never ceases to grow, bringing with it ever-increasing sorrow.[272] This declaration is very significant as it points, for the first time in the Judeo-Christian tradition, to the "eternity" of usury. It does not, however, elaborate how this eternity comes about and operates and what theological significance

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[264] Maloney, Background, 140-141.
[265] Ibid., 138-139.
[266] Ibid., 143.
[267] Lactantius, *Epitome*, 64 (Maloney transl.) (after 314 A. D.): "He will not steal nor will he even covet another's goods. He will not give money at usury (for this is to make a profit from the ill-fortune of others), nor will he turn down anyone whom necessity forces to borrow."
[268] Maloney, Background, 145.
[269] Ibid.
[270] Basil in *Homilia ii*, 3: "Are you rich? Do not borrow. Are you poor? Do not borrow. If you are prospering, you have no need of a loan; if you have nothing, you will not repay the loan. Do not give your life over to regret, lest at some time you may esteem as happy the days before the loan. Let us, the poor, surpass the rich in this one thing, namely, freedom from care."
[271] *Homilia ii*, 3.
[272] Maloney, Background, 148.

it has. This theme will be developed in the Islamic context below (chapter IV). Usury is denounced in words reminiscent of Aristotle and the New Testament (Mt. 25:27 and Lk. 19:23):

> Another man defiles the earth with usury and interest, *gathering where he did not sow and harvesting where he did not plant* – reaping his gain not from the earth, but from the need of the poor.[273]

Even more significantly, usury is deemed to result from an "evil union" unknown to nature which has the power to make sterile things bear fruit, even though nature itself has made only animate things fecund:

> But you, *copper and gold*, things that cannot usually bring forth fruit, do not seek to have *offspring*.[274]

This line of argumentation, based on the essentially Aristotelian concept of the sterility of money, was revived a millennium later to support the already long-standing prohibition on usury.[275] But what is unexplored so far is the concept of "evil union unknown to nature which has the power to make sterile things bear fruit." This only hints at the concepts that will be explored below (chapter IV).

Interest-loans not just to the poor but to the rich,[276] and not only exorbitant interest but even that allowed by civil law, are condemned.[277] The creditor is equated with a thief and robber: both take away what belongs to others, whether men call that robbery or interest-taking or anything else.[278] The sacred scripture forbids the taking of any surplus over and above capital, no matter what pretence at legality is made.[279] This is a perfect parallel to the later Qur'ānic stipulation of *"lakum ru'ūs amwālikum"* (you are entitled to your principal).[280] "Interest-taking was legal all through the patristic period, but Gregory, like other Fathers, maintained that Old Testament law had not been destroyed, but fulfilled. No matter what the laws of the empire might say, the law of God still forbade usury."[281]

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[273] Gregory Nazianzen in *Oratio xvi*, 18 (Maloney transl.).
[274] Gregory of Nyssa in *Contra Usurarios* (Maloney transl.), quoted in Maloney, Background, 150.
[275] Noonan, *Scholastic Analysis*, 56.
[276] Gregory of Nyssa in *Homilia iv in Ecclesiasten and Ep. Ad Letoium.*
[277] Ibid., in *Ep. Ad Letoium.*
[278] Ibid., in *Homilia iv in Ecclesiasten and Ep. Ad Letoium.*
[279] Ibid., in *Ep. Ad Letoium.*
[280] Q. 2: 279.
[281] Maloney, Background, 153.

Very significantly, usurers were denounced as "a breed of vipers that gnaw the womb that bears them."[282] This is a very pointed reference to the incestuous process of "attempted self-creation" (an agent, short of being able to act on itself, acting on the agent who created him in the first place). A close parallel is to be found in the later Islamic Prophetic *ḥadīth* which equates *ribā* (usury) with incest with one's own mother – a crucial theme for this thesis.

Usury practice is condemned as contrary to divine positive law and as against nature.[283] Like Aristotle, the theme of *tokos* (offspring) is utilized for usury-generation and its rapid generation is compared to the birth of hares.[284] But, it is not elaborated what is the "divine positive law" and "nature" that are violated by the practice of usury. This theme will be developed below (chapter IV).

A generosity which goes beyond the law is exhorted.[285] The legal centesima (percentage rate)[286] as well as the illegal anatocism (compound interest) are condemned:[287]

> The first of the month arrives, the *capital brings forth its hundredth*; each month comes, interest is born, *evil offspring of evil parents*. This is the generation of vipers. The hundredth has developed; it is demanded, it is not paid; it is applied to the principal...And therefore it begins to be no longer interest, but principal, that is to say, not a hundredth of interest, but interest on a hundredth.

The Deuteronomy permission to take interest from enemies *(nokri:* foreigner) is admitted as applicable even in the Christian era. Interest-taking is seen as clearly allowed in cases where warfare is justifiable. "Where there is right of war, there is also right of usury."[288] This Christian position is similar to the later Islamic *fiqh* ruling of Imām Abū Ḥanīfa[289] and, later, Shāh 'Abdul 'Azīz,[290] which permitted interest-taking in the *dār al-ḥarb* (enemy territory).

The scriptural prohibition is seen as flowing from the evils inherent in the practice, thus dealing with the immanent values that the usury prohibition seeks to

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[282] By Gregory and Basil.
[283] Ambrose, *De Officiis,* III, 3.
[284] Maloney, Background, 161.
[285] Ibid., *De Tobia,* 9, 10.
[286] Ibid., 34, 40, 42, 50.
[287] Ibid., 42, 45.
[288] Nelson, *Usury from Tribal Brotherhood to Universal Otherhood,* 4.
[289] al-Sarakhsī, *al-Mabsūṭ,* XIV, 56, *Bāb al-ṣarf fī dār al-ḥarb.*
[290] Mushir-ul-Haq, "Shāh 'Abd al-'Azīz al-Dihlawī and his Times", *Hamdard Islamicus,* VII, No.1, 78.

safeguard.[291] But this necessarily raises the perennial question: what if these values are not at stake in a transaction? This question demolishes the inherent evil theory of usury. This assertion runs contrary to the thesis of this work, which holds that the scriptural prohibition flows not from any evil inherent in usury but from the innate inapplicability of usury *(ribā)* to designed human conduct.

A progression is seen in the laws prohibiting usury: the Old Testament (Lev. 25:35 and Dt. 23:20-21) forbade interest only among the brethren; in the Prophets (Ez. 18:8) all interest-taking is prohibited; the New Testament takes another step by stipulating: "Lend to those from whom you can expect nothing in return" (Lk. 6:34). Thus, the Deuteronomic prohibition had been universalized by the Prophets and the New Testament, as Christians had been enjoined to treat everyone as "brother."[292]

The universal prohibition of usury is affirmed.[293] The usurer will be received into the everlasting fire prepared for the devil and his angels: he is excluded from the kingdom of heaven.[294] This is the first ever reference, in the Judeo-Christian tradition, to a punishment of eternal hellfire for the usurer, later articulated repeatedly in the Qur'ān, and the second reference to the equivalence of usury with a devilish act, again articulated pointedly in the Qur'ān. Usury is temporally placed in the category of crime, classifying it as theft under the seventh commandment.[295]

Leo the Great in his famous letter, *Nec hoc quoque,*[296] emphasizes that Christ came to fulfill the Law, not to destroy it; matters, among them usury prohibition, that are in harmony with both Testaments, therefore, remain unchanged. He underlines the gravity of the sin of usury by declaring that usury, no matter what its results might be, is sinful. He declares usury taking, by laymen, as seeking a shameful gain *(turpe lucrum).*[297]

On the rationale for usury prohibition, the Fathers' teaching was not a mere narrow reading of Scripture; rather, it was shaped by their collective Christian

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[291] St. John Chrysostom.
[292] St. Jerome, quoted in Buckley, Theological Examination, 83.
[293] Augustine, *Ennarationes in Ps. xxxvi,* sermo 3, 6.
[294] Ibid., *De Baptismo contra Donatistas,* 4, 9.
[295] St. Augustine, quoted in Buckley, Theological Examination, 83.
[296] *Nec hoc quoque,* trans. by C.L. Feltoe, in *The Nicene and Post-Nicene Fathers,* ed. by P. Schaff and H. Wace (New York: The Christian Literature Co., 1895), v, XII, 3-4. *Nec hoc quoque* is Leo the Great's famous letter, the single most important document of the early Church on usury, and is the clearest general prohibition enunciated by supreme other-worldly authority before 1179, when the Third Lateran Council (canon 25) declared that usury was condemned by both Testaments, and excommunicated and denied Christian burial to manifest usurers. The letter *Nec hoc quoque* forms the cornerstone of later usury legislation including other-worldly and secular state legislation for Charlemagne's empire.
[297] Noonan, *Scholastic Analysis,* 15.

conscience which abhorred the exploitation of the defenseless and less fortunate, thus treating the practice of usury not as an economic but as a *moral* question.[298] The Christian conscience was finely sensitive to the obligation of charity. Wealth was the gift of God and men were but stewards: *dispensatores* not *possessores*.[299]

But in an oblique reference to the connection between *paganism* and *usury* as a possible rationale for its prohibition, Jacob of Saroug (c. 451-521), the Syrian Monophysite Bishop, in an interesting sermon in Syriac, states:

> Satan was lamenting the collapse of his authority as a result of the recent disappearance of *paganism*. In order to recover his power, he is going to make use of *lending at interest (rebitha)*: priests and monks will indulge in this practice, and it will be their undoing. Once they have begun it, their orthodoxy, their cult of the true God, will matter little. 'I do not mind', exclaims the Devil, 'if the priest uses the interest he draws from his money to buy an axe with which to smash the temples of the gods! The love of gold is a greater idol than any idol of a god ... It is worth as much to me as all those idols put together. They have cast down the idols, but they will never cast down the coins that we shall put in their place ...'" [300]

This is the solitary instance – although purely metaphorical – of raising the usury discourse to theological heights in Christian thought. But again it falls short of a full-fledged theory.

As summed up by Maloney, two practical questions, critical for the development of thought on usury, arise in patristic times, but neither receives a satisfactory answer: first, why Deuteronomy allowed interest-taking from foreigners, and second, what is the morality of taking interest from a person who profits from the loan. Both these questions at root ask about the immanent values which the usury prohibition seeks to protect and inquire about situations where those values might not be at stake:

> But in answering these two questions, Ambrose and Jerome limited themselves to exegeting the transcendent precept as it appeared in Deuteronomy and Ezekiel respectively. In so doing they bypassed the question of immanent values and as a result failed to grapple with the problem: what if those values are not at stake in given instances? This problem, like all unanswered ones, will arise again in the course of later history to demand a satisfactory response.[301]

Such a response, as part of a new theory, will be attempted below (chapter IV), but the very absence of this response in patristic teachings even at a social and moral level,

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[298] Buckley, Theological Examination, 83.
[299] *Encyclopaedia of Religion and Ethics*, XII, 550.
[300] Trans. and ed., Abbe Martin, in *Zeitschrift der deutschen morgenlandische Gesellschaft*, 1875, pp. 107-147, quoted in Maxime Rodinson, *Islam and Capitalism*, 239.
[301] Maloney, Background, 179.

leaving the theological investigation aside, testifies to the impossibility of developing a coherent theory of usury based exclusively on those teachings.

II.5.iii. Medieval Church Teachings [302]

Several points of proximity exist between early Western medieval economy and the Islamic financial system: the explicit ethical nature of both systems; the closeness of detailed parallels; identical practices; some evidence of common origins; the outright prohibition of usury by both, with later permission of a return from a genuine risk-sharing partnership; the justification of prohibition in both on the distinction between the fungible and the non-fungible; and the rejection by both of "time" as a justification for interest payment.[303] However, in spite of this parallel and proximate early development, the two financial systems today are headed in opposite directions. While the medieval Islamic financial system, after the suppressing colonial interlude, is reviving again, the contemporary Western thought on the issue, as correctly pointed out by Buckley, has deviated completely from the principle by removing itself far from its own tradition, thus causing the gap between Western and Islamic banking systems today. Buckley concludes that "it is in the light of this apparent contradiction, or *volte-face*, in Western theological thought that the medieval teaching on the concept of usury raises important issues to be addressed in the West today..."[304]

The source of influence for the medieval thought, as Buckley points out, was the combined weight of several authorities – the Old Testament universally applicable text of Psalm 15, Fathers' writings against usury, and earlier conciliar condemnation of clerical usurers. The medieval thought, contrary to some assertions, was not founded upon the doctrine of Aristotle, as Aristotle was not "re-discovered" in the West until the twelfth century, and by that time the medieval position was well established. Moreover, Buckley concludes that most scholastic authorities were motivated by theological considerations and the scholastic theory of usury and economic conditions of the time had only an indirect causal connection. Finally, Buckley shows that the usury

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[302] These teachings, detailed in Appendix 12 (b), extracted from the work of Susan L. Buckley in her doctoral dissertation on the theological aspects of usury (Buckley, Theological Examination) cover the work of St. Anselm of Lucca, Hugh of St. Victor, Peter Comester, Peter Lombard, The Second Lateran Council, Gratian (1159), Pope Alexander III (1159-1181), and Pope Urban III (1185-1187)

[303] Buckley, Theological Examination, 85-86.

[304] Ibid.,86.

prohibition was not related to the Church's own interests; on the contrary, given the immense but idle financial resources of the Church, there was ample temptation for the Church, in their own interest, to allow usury. But instead the medieval Church convicted its own clerics for the sin of usury.[305] The source of all later developments on the concept of usury was the authority of the actual Church, rather than a biblical text by itself, or Aristotle's teaching, or economic conditions.[306] It is, therefore, conceivable that the more pressing financial interests of the *later* Church, rather than contributing to the usury ban, may have instead contributed to the later relaxations and ultimate complete reversal of the usury prohibition – the *volte-face* in Western theological thought.

Usury, which was synonymous with interest until the early 17th century, was classified as theft under the seventh commandment, making it ineligible to be given as charity.[307] Furthermore, usury was for the first time universally and explicitly decreed as prohibited for all, without, however, explicitly declaring justice to be the rationale.[308] A legal form of prohibition of usury, defined as "whatever is demanded beyond the principal," was given definitive shape in 1159.[309] The obligation of restitution was emphasized; otherwise usury was no more than theft.[310] In the first extension of the usury prohibition from loan transactions to sales transactions, credit sales at a higher price than cash sales were declared to be usury.[311] This conceptual extension, in Christian thought, seems to have occurred rather late, as it had already been made in Islamic thought as far back as 632 CE in the Prophetic six-commodities *ḥadīth*. Usury was not considered as admissible even for worthy causes, because usury is a crime detested by both Testaments. Therefore, usury is not merely a simple other-worldly rule, though it is not yet regarded as against natural law.[312] In 1179, usury was declared by the Church as condemned by both Testaments, while "manifest usurers' were excommunicated and denied Christian burial and the reception of offerings made by

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[305] Ibid., 86-88.
[306] Noonan, *Scholastic Analysis*, 14.
[307] By St. Anselm of Lucca (quoting St. Augustine), in an influential precedent, followed by Hugh of St. Victor, Peter Comester and Peter Lombard and Ivo of Chartres, quoted in Buckley, Theological Examination, 88.
[308] The Second Lateran Council, with absolute authority of an 'infallible' ecumenical council, quoted in Buckley, Theological Examination, 88.
[309] In a collection of canons of Gratian which formed part of the Church law till the new Code in 1917.
[310] Buckley, Theological Examination, 89; Noonan, *Scholastic Analysis*, 19.
[311] By Pope Alexander III (1159-1181 A.D.), quoted in Buckley, Theological Examination, 89.
[312] Ibid.

them prohibited.[313] For the first time in the entire tradition, a specific command of Christ is authoritatively interpreted by a Pope as prohibiting usury. "Luke 6:35 will stand, effectively unquestioned, as an absolute divine prohibition of gain from a loan until questioned by Dominic Soto in the sixteenth century... Whether it [the gain from a loan] has been stipulated or not, the lender is guilty of 'mortal usury' because this is prohibited by Luke 6:35."[314] This biblical text (Luke 6:35) and its papal use became the basis of the contention of scholastic writers that intention to gain constitutes usury[315] – a concept identical to the Islamic notion of *tafāḍul* (excess) constituting *ribā al-faḍl.*

The medieval Church teachings on usury, though motivated by theological considerations, did not even rise to the theological peaks attained earlier literally by rabbinical teachings and figuratively by patristic teachings (association of usury with idolatry and paganism). These prohibitory teachings, though adding breadth by expanding the scope, do not add any intensity of depth to the discourse.

II.5.iv. Medieval Scholastic Theory

The medieval scholastics – though the acknowledged intellectual and moral leaders of all of Europe for several hundred years,[316] and their usury analysis the outcome of theology, economics and law – still could not present a unified usury theory. Their discourse, confined to "justice" as the usury-prohibition rationale, could not even match the theological heights attained earlier by rabbinical and patristic thought. Operating on a non-theological level, for three centuries they "engaged in an idealistic effort to frame the intellectual and moral conditions under which credit might justly be extended."[317] They treated usury as a pressing problem and argued against it, distinguishing it from lawful profit. Their theoretical structure, however, lacked consistency but encouraged risk-sharing investment and charity to the poor. Their model lacked simplicity, neat and consistent logical pattern, a single lesson and a universal prescription.[318] The foundations and applications of their model are contradictorily treated either as multiple, i.e.,

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[313] Buckley, Theological Examination, 89, quoting Third Lateran Council under Pope Alexander III.
[314] Luke 6:35 interpreted by Pope Urban III (1185-1187), quoted in Buckley, Theological Examination, 90.
[315] Buckley, Theological Examination, 90.
[316] Individual scholastic writers include William of Auxere- the deacon of Beauvais (1160-1229 A.D.), Pope Innocent IV (r. 1250-1261 A.D.), Cardinal Hostiensis (appointed 1261 A.D.), St. Thomas Aquinas (1225-1274 A.D.), Professor Burudian of the University of Paris (d. 1358 A.D.), theologian Giles of Lessines, theologian Scotus, theologian Astesanus, and Scottish theologian John Major or Muir (16th c.), as detailed in Appendix 12 (c).
[317] Buckley, Theological Examination, 90.
[318] Ibid. 90-91.

theological, economic and legal,[319] or as single, i.e., neither economics nor law but theology – a natural-law analysis of usury,[320] but still devoid of theological depth.

It has been argued that theology dominated reason in the rational development of the scholastic theory of usury, for "does not the Church decide *a priori* what the scholastics must then prove *a posteriori?*" Buckley admits that, being theologians or canonists, the scholastics could not go against the positive determinations of the Church, which sometimes involved resorting to flimsy and even fatuous arguments to support "rationally" what they knew they were bound by authority to believe. Yet, the medieval period did produce "a sound analysis of usury and a valid, if narrow and technical, case against it ... and [also] the theory of legitimate interest and alternative methods of credit." She further maintains that "the rules of the Church were more often the result, rather than the cause, of the scholastics' reasoning, and the usury analysis developed not only from a study of the sources of revelation, as would a purely theological analysis, but also from a consideration of the demands of natural justice in concrete economic circumstances."[321]

On an individual level, five contributive arguments were advanced in the usury discussion: the conflict of usury with natural law; the intrinsic evil of usury; the distinction between the absolute and conditional voluntariness of the debtor; a general rule for detection of frauds against the usury laws; and a new argument on the sinfulness of selling time. These arguments became incorporated in the general medieval teaching on usury.[322]

In an individual revolutionary departure from the tradition of the past two centuries, the old "justice arguments" on usury were ignored completely, and entirely

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[319] Noonan, *Scholastic Analysis,* 407: "It is clear that almost all the historical errors about the scholastic analysis of usury theory arise from a single failure: a failure to consider the theory broadly enough, to take into account either the multiple character of its foundations, theological, economic and legal, or the multiple aspects it presented in practice..."

[320] Buckley, Theological Examination, 91: "The scholastics were primarily disciples of the Roman law; economics in their view was always secondary. *Neither economics nor law, however, is at the origin of the scholastic theory – originally and primarily it is a theological creation.* That usury is a sin was the dogma of the Catholic Church. It was because it was part of the content of Christian revelation that the prohibition of usury became the object of detailed, rational exploration; therefore, throughout the scholastic treatment of it other-worldly authority plays a dominant role. It is the effort of the scholastic writers to explain, to expand, and to apply the positive teaching of the Church which results in the natural-law analysis of usury. They do not rely on authority, or revelation, or Roman law alone, but they make a determined effort to rest their case against usury on the nature of man and the nature of things in themselves, whilst at the same time they try to determine what forms of credit are naturally lawful and just – a point which is often neglected."

[321] Ibid.

[322] Mills, Interest in Interest, 15, quoting William of Auxere (1160-1229), the deacon of Beauvais, probably the most influential scholastic writer on usury before St. Thomas Aquinas, and among the first pioneering theologians treating usury from the perspective of natural law.

new individual arguments were developed to show that usury is a social evil, resulting in famine, poverty and greed.[323]

Elsewhere, the familiar argument against usury was reaffirmed – albeit an incorrect one – that, in a loan transaction, the ownership of the loan passes to the debtor; hence there is no justification for usage charge on it. But for the first time a case of *lucrum cessans* was unmistakably and fully approved wherein, as stated above, by handing money over to another the lender deprived himself of the gain he might have made, and was, therefore, entitled to compensation from the beginning of the original loan, with the proviso that the merchant's principal motive must be a charitable one and the permission was not for habitual lending.[324] "For the first time the honest business man is given lawful reason for charging beyond the principal even though his debtor is in no way at fault. This authoritative canonist's recognition of pure *lucrum cessans*, however much restricted in its practical conditions, is of the greatest importance."[325]

This admission of *lucrum cessans* – compensation for forgone profits – is a legitimate, yet merely utilitarian, approach to the question of usury that completely ignores the intrinsic process of growth underlying usury and its theological implications, which will be explored in this thesis.

St. Thomas Aquinas (1225-1274), holding a special place in the development of the usury theory because of his pre-eminence as a theologian and the intrinsic weight of his arguments, expanded upon the thought of Aristotle on usury. But due to an inaccuracy in the translation of Aristotle's *Politics* – the Greek term for retail trade was rendered by the translator as *"campsoria"* which specifically means money-changing – Aristotle's case against usury, which rests on his case against *all* trade, is accepted by St. Thomas as simply a case against money trade, i.e., making money from money.[326]

The first and principal argument of St. Thomas against usury is the Roman law point that, in a *mutuum* (loan), ownership is absolutely transferred to the debtor – not merely a case of *possessio* but of *dominium*.[327] For him, "the process of exchange had the quality of a sale, and to sell an article and then charge for the use of it was unjust." He

[323] By Pope Innocent IV (r.1250-1261), an eminent canonist.
[324] By Cardinal Hostiensis (a canonist appointed 1261).
[325] Buckley, Theological Examination, 101.
[326] Ibid., 95-96.
[327] Hastings, *Encyclopaedia*, 551.

takes from Aristotle a "utility" argument from natural law against usury, and presents it as his second argument, treating money as a fixed value measure:

> All other things from themselves have some utility; not so, however, money. But it [money] is the measure of utility of other things, as is clear according to the Philosopher in the *Ethics* V:9. And therefore the use of money does not have the measure of its utility from this money itself, but from the things which are measured by money, according to the different persons who exchange money for goods. Whence to receive more money for less seems nothing other than to diversify the measure in giving and receiving, which manifestly contains iniquity.[328]

The major argument of St. Thomas against usury goes beyond the "money as measure" to "money as consumptible" argument:

> In those things whose use is their consumption, the use is not other than the thing itself; whence to whomever is conceded the use of such things, is conceded the ownership of those things, and conversely. When, therefore, someone lends money under this agreement that the money be integrally restored to him, and further for the use of the money wishes to have a definite price, it is manifest that he sells separately the use of the money and the very substance of money. The use of money, however, as it is said, is not other than its substance: whence either he sells that which is not, or he sells the same thing twice, to wit, the money itself, whose use is its consumption; and this is manifestly against the nature of natural justice.[329]

The final argument of St. Thomas against usury is based on "metaphysical rather than legal grounds. It is the real distinction between accidental and essential change which forms the foundation of his reasoning."[330] He argues that, through use, an item like a house might undergo accidental change, but money undergoes essential change. The use and substance of money are the same – an essential change. The use and substance of money cannot be sold separately. In itself, therefore, the loan of money did not justify a charge for its use.

Thus it has to be said that St. Thomas Aquinas, the great theologian, relies on an argument from metaphysics rather than theology for his case against usury: he does not posit any divine law argument for the prohibition.

Usury was also regarded as an evil "... because the usurer seeks avariciously what has no finite limits. This places its results outside of nature."[331] This is a very significant statement on the infinity of the process and its natural law implications, but it falls short of connecting infinity with divinity and divine law.

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[328] Noonan, *Scholastic Analysis*, 52.
[329] St. Thomas Aquinas, *Opera Omnia – Quaestiones disputate de Malo* vol. xiii (ed. P. Marc and S.E. Frette, Paris, 1871-1880), Q. 13, art. 4c, cited in Noonan, *Scholastic Analysis*, 54.
[330] Buckley, Theological Examination, 99.
[331] Burudian (d. 1358), a professor at the University of Paris.

Moral superiority was accorded to *lucrum cessans* by distinguishing usury, a profit for the loan itself, from compensation for the profits forgone by the lender, while the licitness of the complicated triple contract was upheld, which eventually became the paradigm for licit financial loans.[332]

Commenting on the transformation by the scholastics of the concept of interest from its original version of compensation *upon* and *for* default *(interesse)* to the new version of compensation *from* the start of a loan *for* forgone benefit *(lucrum cessans)*, Buckley concludes:

> The acceptance of 'interest' so far has only involved fault on the part of the debtor ... Did the original law concept of *interesse*, as the 'difference' due to failure to fulfill an obligation, prohibit the admission of such payment without any failure on the part of the debtor? The right to interest ... where the debtor was at fault ... was the original conception of interest. The scholastics would have to take a huge step to admit that interest might be due from the *start* of a loan. To do this seemed to many of them to abandon the foundation for the usury prohibition, the normal gratuitousness of a loan, and it was certainly to go well beyond the Roman notion of *interesse*. But the leap was finally taken.[333]

It might be added, to what Buckley has said above, that with this scholastic rationalization of interest came to an end any search for the rationale of its Scriptural prohibition, while the Church revised its teaching on usury because conscientious Christians were involved in financing. This seals the fate of the Scholastic theory as a contributor to a comprehensive theory of the divine prohibition of *ribā* for humankind.

II.5.v. Medieval Non-Scholastic "New Theory" [334]

The Scholastic usury theory, imperfect as it was, received a fatal blow from the Reformation and Protestantism, which brought about an overthrow of the yoke of authority and the casting off of the binding strictures on usury. "The Reformers were no longer bound by the canon law, although they were still bound by a vigorous tradition of Christian opposition to usury."[335] While Martin Luther did allow the charging of rent on land and interest to compensate for actual loss *(damnum emergens* and *lucrum cessans)*, provided the charge was moderate and was not against the poor,[336] on the other hand,

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[332] By John Major, or Mair, (16th c.), a Scottish theologian, regarded as the last distinguished scholastic and known for his casuistry, quoted in Buckley, Theological Examination, 119-122.
[333] Buckley, Theological Examination, 100.
[334] Main proponents are Martin Luther, John Calvin (1509-1564), Charles du Moulin (Molinaeus) (1500-1566), a distinguished French lawyer, Claude Saumaise (Salmasius) (1588-1653), a Calvinist classicist, and Scipio Maffei (18th c.), a Veronese count and a Catholic writer, as detailed in Appendix 12 (d)..
[335] Buckley, Theological Examination, 127.
[336] Ibid.

John Calvin (1509-1564), the most notable Protestant contributor to a new theory of usury, unintentionally opened the flood gates in favor of usury. "Calvin deals with usurie as the apothecaire doth with poison," wrote Roger Fenton. Calvin abandoned the detailed scholastic analysis and re-defined usury by proposing one general principle of the "Golden Rule": usury is sinful only if it hurts one's neighbor. As Buckley puts it:

> Biting usury ... will always be condemned by God's law; but a modest profit on a loan under any circumstances is by no means forbidden. The only arguments against taking profit on a loan are drawn from Scripture. Of these, Calvin maintains that Luke 6:35 had been twisted from its original sense. It merely commands generous lending to the poor. Jesus merely wished to correct the vicious custom of the world whereby men readily lent to the rich who could pay back, and not to the poor. Deut. 23:19 was political. The passages in the Old Testament are to be interpreted as requiring only the observance of *charity* and *equity* toward the poor, or, if they are to be interpreted more strictly, they still may be considered only as positive political law appropriate for the Jewish economy, but no longer binding today.[337]

Calvin has only contempt for Aristotle's argument of sterility of money: when money buys a field, from which is yielded a yearly revenue, money then bears money. Interest also proceeds from money as naturally as rent from a field or house.[338]

Even in this purely economic argument, devoid of any theological content, here Calvin is completely glossing over the fact that, in his money-field-money example, money is not bearing directly from sterile money; it is bearing from a fertile field. This is not a case of an agent (money) acting upon its *own* species (money), where growth is termed *neshekh* or *ribā* and not allowed by divine law. Instead, this is a case of an agent acting upon an agent of a *different* species: money upon field and field upon money, where growth is termed *bay'* and allowed by divine law. Again, in his equating of interest with rent, the glaring flaw is that when interest proceeds from money, it is a case of a divinely prohibited process: money acting upon money. But when rent proceeds from a field or a house, it is a case of a divinely permitted process: field or house acting upon money. Interest and rent, therefore, cannot be equated. The obvious difficulty for Calvin is that this stark theological contrast of an agent acting upon itself *(ribā)* vs. an agent acting upon a different agent *(bay')* is laid out only in the Qur'ān (2: 275), not in the Old or the New Testament. And further unfortunately for him, although

[337] Ibid., 127-128 citing Jean Calvin, *Consilia De Ususris* in *Opera*, X, cols. 248-249.
[338] Ibid., 128.

the Qur'ān was first rendered into Latin in 1143 A.D.,[339] but printed only in 1543 A.D.,[340] the first English translation, by Alexander Ross,[341] appeared only in 1649 A.D. – too late for Calvin who died in 1564.

Going even beyond this economic argument, flawed as it was, Charles du Moulin (Molinaeus) (1500-1566), a distinguished French lawyer, was the first Catholic writer to urge the licitness of moderate usury, meticulously demolishing the old arguments of the canonists, although without opposing the Church itself.[342] The hardiest ever defense of usury, however, came in 1630 from Claude Saumaise (Salmasius) (1588-1653), a Calvinist classicist, whose position is summarized by Buckley thus:

> His general position is that selling the use of money is a business like any other business. If it is licit to make money with things bought with money, why is it not licit to make money from money? The seller of bread is not asked whether he sells to a poor man or a rich man, why should the usurer? ... The question to be asked was: Is there any law against usury? Salmasius argues that in the Bible it is true that Jews were forbidden to take usury from any other Jew, poor or rich. But its prohibition was *political*, and given chiefly because Jews were united in a *blood brotherhood*. After the destruction of the Jewish state, argues Salmasius, it no longer held. As for the gospel, Jesus Christ means to teach nothing of civil polity or economic transactions. The only other-worldly law against usury that Salmasius knows of is the papal law, and why should anyone obey the Pope? In Salmasius, all religious scruple against usury is brushed aside, and the secular law alone sets a limit to profits."[343]

On the other hand, Scipio Maffei (18th c.), a Veronese count and a Catholic writer, was able to expound the Calvinist theory of the licitness of moderate usury without his orthodoxy being challenged. Again, as Buckley puts it:

> His main theses had all been stated before in Calvin, Molinaeus, and Salmasius: the Old Testament prohibited usury only from the poor; the New Testament simply required one to be charitable in a general way; the Fathers and Councils only condemned excessive usury; the only usury condemned by any law is usury that hurts one's neighbor; money is not sterile but the instrument of business, and therefore fruitful; loans at interest are necessary for commerce; and the State not only tolerates, but actively enforces, loans at usury; usury is already permitted by the personal *census* [an obligation to pay an annual return from a fruitful property – imperfectly translated into English as 'annuity'], the triple contract [three different permitted contracts with three different persons: a contract of partnership; a contract of insurance against loss of capital; and a contract of insurance against fluctuation of profit], and *lucrum cessans* [compensation for forgone profits], which are understood broadly to include the loss of all future investment opportunity. The natural law argument, Maffei asserts, is that ownership passes in a loan, but he denies that this happens. The lender is still the owner because he can still bequeath or donate the value of the loan. He alienates only the physical quantity, not the value of the money."[344]

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[339] By an Englishman, Robert of Retina and Hermann of Dalmatia on the initiative of Petrus Venerabilis, the Abbot of Clugny, as cited in George Sale, *The Korān*, v.
[340] By T. Bibliander in Basel, as cited in George Sale, *The Korān*, v.
[341] From an earlier French translation by André du Ryer, as cited in George Sale, *The Korān*, v.
[342] Buckley, Theological Examination,132.
[343] Ibid., 132-133.
[344] Noonan, *Scholastic Analysis*, 373, cited in Buckley, Theological Examination,133.

"Therefore, if the lender is still the owner, he can collect rent, as any owner does on property given to another for use."[345]

Here Maffei is correct in rejecting the natural law argument and in asserting that in a loan the ownership *does not* pass. But what both Maffei and Buckley are missing is the crucial point that, as explained above[346] in connection with Calvin, rent (interest money) on lent money is a divinely prohibited process (Qur'ānic *ribā;* Biblical *marbīt)* and therefore illicit, while rent (rent money) on any other lent property is a divinely permitted process (unfortunately for them, only Qur'ānic *bay')* and therefore licit.

Needless to say, the medieval non-Scholastic "New Theory" of *permission* of moderate usury is of no help for a theory of its prohibition. More significantly, their pro-usury arguments are not even designed, much less able, to counter any of the philosophical-theological anti-usury arguments being presented in this thesis.

II.5.vi. Muslim *Tafsīr* on *Ribā and Bay'*

The Qur'ānic injunctions on *ribā and bay'* received extensive coverage in the *tafsīr* (exegesis) literature. The *ḥikma* (rationale) of these injunctions could have been well handled by this genre of Islamic studies. However, the utility of this discourse for analytical purposes depends on the particular genre of *tafsīr* adopted and the extent to which the requirements of the genre have been meticulously met by the exegete. As will be seen below, based on these criteria, the Muslim *tafsīr* of *ribā* by classical, medieval and contemporary exegetes does not even come close to some theological heights achieved by the earlier exegetical traditions both literally and figuratively.

II.5.vi.a. Classical/Medieval *Tafsīr*

Historically, the classical/medieval *tafsīr* typically did not deal with one topic exclusively, but with almost every aspect of the text of the *Qur'ān* in varying degrees, with the main motive to investigate its *applicability to religious and social practices* under the aegis of *ta'wīl.* Here, typical criticism against somebody's view of the text would read: "you have applied this verse incorrectly to a given situation" ('Abd ar-Razzāq, *Muṣannaf* IX, 242) or "you have applied the Book of God otherwise than it was

[345] Buckley, Theological Examination,133.
[346] See p. 89, above.

intended" ('Abd ar-Razzāq, *Muṣannaf* VII, 209).[347] This demonstrates that the concern of the early exegetes was not so much with the *rationale* as with the *application* of the Qur'ānic injunctions.

However, a distinction between *tafsīr* as the result of the transmission of authoritative witnesses concerning the interpretation of the Qur'ān, and *ta'wīl* as the result of research and expertise is drawn by al-Māturīdī (d. 333/944). Combining the Qur'ānic meaning of *ta'wīl* in the phrase *"ta'wīl al-aḥādīth"* (Q. 12:21), this distinction prompted a semantic shift, whereby *ta'wīl* exclusively signified Qur'ānic allegorical interpretation. Never used by the early commentators in this sense, the meaning of "allegorical interpretation, hidden sense" is nevertheless foreshadowed in the introduction to Muqātil's *Tafsīr,* where he quotes Ibn 'Abbās as saying "the Qur'ān has four aspects: *tafsīr*, which the scholars know, *'arabiyya*, which the Arabs know, *ḥalāl wa-ḥarām*, the knowledge of which is indispensable to the people, and *ta'wīl,* which only God knows," implying that *tafsīr* is what is known at the human level and *ta'wīl* what is known at the divine level only. (Muqātil, *Tafsīr,* I. 27).[348] "According to a similar notion, *tafsīr* applies to passages with one interpretation and *ta'wīl* to those with multiple aspects."[349] On the other hand, Ibn 'Abbās is also quoted in the same introduction as saying "learn the *ta'wīl* before other people will come who will interpret it according to the wrong *ta'wīl" (Tafsīr,* I. 26, 10f.), and Muqātil himself says "whosoever recites the Qur'ān without knowing its *ta'wīl* is illiterate in it."[350]

This further demonstrates that the actual concern of the early exegetes was more with narrative exegesis on a historiographical level than with allegorical exegesis on a symbolical one. Moreover on the analytical level, "the linguistic aspect of exegesis was almost absent in the early commentaries."[351]

With this theoretical background, the following sections explore the various genres of *tafsīr* for their contribution to a comprehensive theory of *ribā* and *bay'.*

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[347] Versteegh, *Arabic Grammar and Qur'ānic Exegesis*, 64.
[348] Ibid.
[349] *Encyclopaedia of Religion*, ed. Mircea Eliade, XIV, 236.
[350] Versteegh, *Arabic Grammar and Qur'ānic Exegesis*, 64.
[351] Ibid., 95.

II.5.vi.aa. Prophetic *Tafsīr*

Unique to Islam, Prophet Muḥammad (d. 10/632) himself is the first and the greatest practical exegete of the Qur'ān, bequeathing what may be called *Tafsīr al-nabī.* The Prophet provides a potentially very rich interpretation of the Qur'ānic prohibition of *ribā* and permission of *bay'* through his various *aḥādīth: ribā-shirk*, *ribā*-incest, *ribawī*-commodities, *Barnī*-dates, Khaybar-dates and *ribā*-in-*nasī'a.* These Prophetic pronouncements are pointers to unparalleled philosophical peaks, by explicitly juxtaposing homogeneity and heterogeneity, and to unparalleled theological peaks, by explicitly juxtaposing idolatry with *ribā.* The later exegetical problem, however, is that these rich Prophetic indicators have either been ignored altogether or taken merely at their face value by the exegetes without extracting their deeper hidden meanings. These *aḥādīth*[352] will be extensively utilized in the construction of this thesis and the development of the new theory.

Apart from this unique Islamic genre, there are five sequential categories of *tafsīr:* narrative (aggadic), legal (halakhic), textual (masoretic), allegorical and rhetorical,[353] whose contribution to the *ribā* discourse is evaluated below:

II.5.vi.ab. Narrative *Tafsīr*

Exemplified by Muqātil ibn Sulaymān (d. 150/767),[354] it is the least productive genre, but unfortunately the one most commonly employed. It is concerned with the explanation of the Qur'ānic *narratio.* Its main feature is the creation of an edifying narrative. As the *Encyclopaedia of Religion* puts it:

> Its central concern is "adding detail to otherwise sketchy scripture and answering the rather mundane questions which the curious mind will raise when confronted by a contextless scriptural passage. In fact, the actual narrative seems to be of prime importance; the text of the scripture remains underneath the story itself, often subordinated in order to construct a smoothly flowing narrative. ... The identification of the participants and the precise question being asked [in response to which a verse is believed to have been revealed], provided in a marvelously naïve and therefore entertaining manner, are specified. The overall interpretation of the verse becomes clear through this supplying of contextual material.[355]

Even ignoring this rather harsh and somewhat polemical critique, this genre has limited analytical utility. By employing it, the *ribā and bay'* verses are simply explained

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[352] Cited in II.3.ii, above and presented in full in Appendix 5, below.
[353] John Wansbrough, *Quranic Studies: Sources and Methods of Scriptural Interpretation* (Oxford: Oxford University Press, 1977).
[354] Muqātil ibn Sulaymān, *Tafsīr al-Qur'ān.*
[355] *The Encyclopaedia of Religion,* ed. Mircea Eliade. (New York: Macmillan , 1987), XIV, 236-44.

either in terms of the *asbāb al-nuzūl* (occasions of revelation) – the historic event, tribes or individuals involved – or in terms of the perceived historical financial and commercial practices of the Arabs (e.g., doubling redoubling *ribā),* or simply in conjunction with the ordained punishments. None of this is conducive to analysis. The narrative genre is various and voluminous[356] but not productive for the real *'illa* and *ḥikma* of *ribā and bay'* injunctions. An illustration of this interpretational shortcoming is provided by the representative excerpts detailed in Appendix 7. Only some important issues raised by these exegetes are examined below:

Ṭabarī interprets "the touch of Satan" in Q. 2:275 as "madness."[357] This interpretation is accepted by all commentators and lexicographers,[358] but not developed for the practical implications that will be posited in this thesis.

al-Zamakhsharī (d. 528/1144), the Persian-Arab exegete, whose commentary otherwise contains a quintessence of Mu'tazalite doctrine, nevertheless does not offer any analytical insights on the question of *ribā* beyond semantics. He dwells on the alleged analogical equivalence of *ribā* and *bay'* and its nullification by an explicit statement (*naṣṣ*), but without defining their distinction.[359]

Ibn Kathīr (d. 774/1373), following the classical/medieval methodological tradition of *tafsīr* of the Qur'ān by the Qur'ān and by the *Ḥadīth (tafsīr bil-ma'thūr:* interpretation by tradition), does not delve into the inner meanings of the Qur'ānic verses or the *aḥādīth* themselves. Thus, his *Tafsīr* does not offer any insights into the divine injunctions and their rationale *(ḥikma)* over and above the literal word of the Qur'ān and the *Ḥadīth,* which itself needs deciphering in the first place. Rather, he even

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[356] The narrative exegetes include 'Abd Allāh Ibn 'Abbās (d. 68/686) with a personal title of Tarjumān al-Qur'ān, Zayd b. Aslam (d. 130/747), Ibrāhīm al-Nakha'ī (d. 95/713), Muslim b. Yasār (d. 101/719), Mujāhid b. Jabr (d. 104/722), Ḍaḥḥāk (d. 105/724), al-Ḥasan al-Baṣrī (d. 110/728), Qatāda b. Di'āma al-Saddūsī (d. 117/735), Ibn Shihāb al-Zuhrī (d. 124/742), Suddī (d. 127/745), Abū l-Ḥasan Muqātil ibn Sulaymān al-Balkhī (d. 150/767), Abū 'l-Ḥajjāj Mujāhid b. Jabr (d. 104/722), Abū 'Abdallāh Sufyān ibn Sa'īd al-Thawrī (d. 161/778), Abū Naḍr Muḥammad ibn as-Sā'ib al-Kalbī (d. 146/763), Zayd ibn 'Alī (d. 122/740), Abū Bakr 'Abd ar-Razzāq ibn Hammām al-Ṣan'ānī (d. 211/827), Ma'mar ibn Rāshid (d. 153/770 ?), Abū Ja'far Muḥammad ibn Jarīr aṭ-Ṭabarī (d. 310/923), al-Māturīdī (d. 333/944), Abū 'l-Qāsim Maḥmūd ibn 'Umar al-Zamakhsharī (d. 528/1144), and Ibn Kathīr (d. 774/1373).

The works of the following exegetes could not be consulted due to non-accessibility:

(1) Zayd ibn 'Alī (d. 122/740), has an exegetical work which is unpublished but preserved in two or three manuscripts under the title *Tafsīr Gharīb al-Qur'ān* (cf. Sezgin 1967:556). (2) Abū Bakr 'Abd ar-Razzāq ibn Hammām aṣ-Ṣanānī (d. 211/827), *at-Tafsīr.* Ms. Cairo, Dār al-Kutub, no. 242 *tafsīr.* (3) Ma'mar ibn Rāshid (d. 153/770?), unpublished, but preserved in at least two manuscripts in the recension of Abū Bakr 'Abd ar-Razzāq ibn Hammām aṣ-Ṣanānī (d. 211/827), who according to Sezgin (1967: 99, 290) may be regarded as co-author of the commentary.

[357] al-Ṭabarī, *Jāmi',* VI, 8-12.

[358] Mahmoud M. Ayoub, *The Qur'ān and its Interpreters,* 2 vols. (Albany: State University of New York Press, 1984), I, 273.

[359] Jār Allāh Abī al-Qāsim Maḥmūd ibn 'Umar al-Zamakhsharī, *al-Kashshāf 'an Ḥaqā'iq Ghawāmiḍ al-Tanzīl wa buyūn al-aqāwīl fī wujūh al-ta'wīl* (Riyadh: Maktabāt al-'Ubaykān, 1998), I, 319-323, as translated in Helmut Gätje, *The Qur'ān And Its Exegesis,* translated and edited by Alford T. Welch (Oxford: One World Publications, 1996; Reprint 2000), 193-194.

discourages any search for the *ḥikma* in the characteristic classical/medieval style: ("...[Allāh] is All-Knower, All-Wise, no one can reverse His Judgment, and *He cannot be questioned about His acts*, but they will be questioned about theirs. He knows the true nature of things and what is useful for His slaves, and He guides them to it; He also forbids them what is harmful to them ...") [italics and underlining mine].[360]

But in a display of intellectual honesty, Ibn Kathīr observes "that the problem of understanding usury and what may lead to it has been one of the most difficult problems for jurists."[361]

II.5.vi.ac. Legal *Tafsīr*

This genre, again with a focal point in Muqātil,[362] is concerned with the prescriptions and regulations of the Qur'ān as revelation, and the prime indicator of the genre is topical arrangement of material. This legalistic presentation is again not productive for analytical purposes.

Muqātil, following the requirements of the genre, has dealt with, among others, the legal topic of *ribā* as a separate category. But the text of the *tafsīr* follows the narrative genre in line with the classical/medieval tradition. The *ribā*-prohibitory verses are explained with the help of each other in the context of Jāhilīya financial practice.[363] This exegesis offers no clues to the *'illa* and *ḥikma* of the prohibition.

II.5.vi.ad. Textual *Tafsīr*

With the earliest work being that of the philologist al-Farrā' (d. 207/822),[364] this genre is concerned with the lexicon of scripture, especially with its *variae lectiones* (variant readings) and its grammar. In fact, grammatical explanations could prove to be a valuable key for analysis. But al-Farrā' has commented only on the *Sūrat al-Baqara* and *Sūrat al-Rūm* verses on *ribā*.[365] Departing from the genre, his comments on Q. 2:275 and 2:278 offer a contextual (tribal practice) and *sabab al-nuzūl* (occasion of revelation) explanation, without any variant reading and grammatical analysis. However, for Q.

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[360] Ibn Kathīr, *Tafsīr*, abridged by Sheikh Muḥammad Nasīb ar-Rafā'ī (London: al-Firdous Ltd., 1999), 74-75.
[361] 'Imād al-Dīn Abī al-Fida' Ismā'īl Ibn Kathīr al-Qurayshī al-Dimashqī, *Tafsīr al-Qur'ān al-'Aẓīm*, 7 vols. (Beirut: Dār al-Fikr, 1389/1970), I, 581.
[362] Muqātil ibn Sulaymān, *Kitāb Tafsīr al-Khams Mi'at āya min al-Qur'ān*, ed. Isaiah Goldfeld, Bar-Ilan University (Shifaram: al-Mashriq Press, 1980), based on British Library MS. Or. 63333.
[363] Ibid., 139-140.
[364] Abī Zakariyā' Yaḥyā bin Zayād al-Farrā', *Ma'ānī al-Qur'ān* (Beirūt: Dār al-Surūr, 1988).
[365] Ibid., *Ma'ānī al-Qur'ān*, ed. by Muḥammad 'Alī an-Najjār . 3 vols. (Cairo: ad-Dār al-Miṣriyya, 1955-72), 182.

30:39 he gives both variant readings of one word ***(liyarbuwa*** in ʻĀṣim, Aʻmash and Yaḥya b. Waththāb; vs. ***litarbuwa*** in Ahl al-Ḥijāz, both of which he regards as correct), and limited grammatical variation therefrom, which at any rate does not contribute to analytical enterprise.

II.5.vi.ae. Allegorical *Tafsīr*

This genre is concerned with the interpretation of the text on a symbolical level. This expediency of allegorical interpretation provided *ex post facto* support for dissident opinion in Islam. Exemplar of this genre is Ṣūfī *tafsīr,* supported through a terminological differentiation of the *ẓāhir* as *historia*, "literal," and the *bāṭin* as *allegoria*, "symbolic."[366] This genre could have been the most productive for an analytical and philosophical-theological interpretation. But even the most widely known Ṣūfī exegete, the Andalusian Muḥyī al-Dīn ibn ʻArabī (d. 638/1240) disappointingly does not offer any allegorical explanation of *ribā.*[367]

II.5.vi.af. Rhetorical *Tafsīr*

Concerned as it is with the style of the text and *iʻjāz al-Qurʾān*, this genre is not relevant for analytical purposes here.

II.5.vi.b. Contemporary *Tafsīr*

The question of *ribā* has received varied coverage in contemporary exegesis, but mostly in the historical,[368] moral,[369] social,[370] economic[371] and legal[372] contexts, to the utter exclusion of the philosophical-theological perspective. Hence, like its predecessor genres, contemporary *tafsīr* is also not productive for theoretical development. Even the most profound *ribā-shirk* equivalence *ḥadīth,* though reproduced only once,[373] goes without comment in contemporary sources. The profound *ribā*-incest equivalence *ḥadīth*

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[366] *Encyclopaedia of Religion,* ed. Mircea Eliade, XIV, 236-44.
[367] See Muḥyī al-Dīn ibn ʻArabī, *Tafsīr Ibn al-ʻArabī.*
[368] According to Qatada, Mujāhid (as reported in Ibn Jarir, III, 62), Abū Bakr al-Jaṣṣāṣ (his research in his *Aḥkam al-Qurʾān*, I), and Imām Rāzī (his research in his *Tafsīr Kabīr*, II, 351), all quoted by Mawdūdī in his *Sūd*, 150-151.
[369] Abul Kalam Azad, *The Tarjumān al-Qurʾān.* ed. and rendered into English by Dr. Syed Abdul Latif. 2 vols. (Bombay; Calcutta; New Delhi; Madras; Lucknow; London; New York: Asia Publishing House, 1965), II, 131 ff.
[370] Israr Ahmad, *Islām kā Maʻāshī Niẓām.* [in Urdu] (Lahore: Markazi Anjuman Khuddam al-Qurān, 1985), 22.
[371] Sayyid Abul Aʻlā Mawdūdī, *Tafhīm al-Qurʾān.* English version, *Towards Understanding the Qurʾān.* trans. and ed. Zafar Ishaq Ansari. (Leicester: The Islamic Foundation, 1988), I, n. 315, 213; and his, *Sūd* (Interest) [in Urdu]. (Lahore: Islamic Publications Private Ltd., 1989).
[372] Sir Sayyid Ahmad Khan, *Tafsīr Qurʾān* (Patna: Khuda Bakhsh Oriental Public Library, 1995), 237.
[373] Muftī Muḥammad Shafī and Mufti Muhammad Taqi Usmani. trans., Anwar Ahmed Meenai, *The Issue of Interest.* Karachi: Darul Ishat, 1997.

is explained away as a mere condemnation of a social evil.[374] Elsewhere, *ribā* is inconsequentially equated with lack of fellow-feeling, selfishness, greed, exploitation, tyranny, and concentration of wealth in a few hands, and the discourse "dwells on the evils of usury."[375] But, the Qur'ān no where calls *ribā* an evil; it declares it to be *ḥarām*[376] (forbidden, out of bounds, sacred, sacrosanct, inviolable, or taboo[377]). Rendering *ḥarām* as evil will have many untenable implications. In a novel unsubstantiated medical approach, apparently following al-Sarakhsī, "*yatakhabbaṭuhu ash-shayṭānu min al-massi,*" in Q. 2:275, is rendered as *epilepsy* "which the superstitious Arabs regarded as the touch of Satan."[378] This rendering of the phrase is taking liberties both with the text and the context: the text does not support the word "epilepsy," and the context does not quote any historiographical authority in support. Moreover, while the Qur'ānic text of 2:275 attributes this Satanic phenomenon pointedly to wrongly equating *ribā* with *bay'*, popular exegeses of the verse attribute this Satanic phenomenon directly to "oppressive exploitation of the weak," without any explicit textual basis for such rendering. It thus appears that even the conventional "exploitation rationale" for *ribā*-prohibition is textually unsupported.

In a surprisingly dramatic distortion of thought, the swelling/expanding of the earth, the rising of the foam, the exceeding of one nation over another, and the overpowering grip of God – all very *natural* divine phenomena dwelled upon in the Qur'ān – are described by one translator/commentator as *unnatural* and *artificial,* "beyond the natural or original size!" These natural processes are not only termed unnatural and artificial, but are also equated with the *unnatural* act of lending money at interest to increase one's capital through others' wealth (Q. 30:39).[379] Aristotle had very correctly only argued the [humanly created] "money breeding money" as unnatural, i.e., against "natural law." But this modern exegesis is very perilously branding even the aforementioned divine acts of *ribā* as an "unnatural or artificial increase."

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[374] Israr Ahmad, *Islām kā Ma'āshī Niẓām.* [in Urdu], 22.
[375] Azad, *Tarjumān al-Qur'ān.* II, 131 ff.
[376] Q. 2: 275.
[377] Wehr, *Dictionary,* 201.
[378] Ibid., II, 132.
[379] Ahmed Ali, *Al-Qur'ān,* 50.

Drawing on its another *contemporary* lexical meaning of "asthma," *ribā* is deemed, by the same commentator, to suffocate a person's freedom of action and independence and result in oppression. Nevertheless, contrarily, the necessity of interpreting *ribā* in its *pre-Quranic sense* is highlighted:

> The Arabic of the Qur'an is pre-Quranic in its etymological and historical perspectives," resulting in translation problems, even when rendering Quranic Arabic into modern Arabic [leading to what has been explained below as "terminological confusion syndrome"]. Today, in the clash of Islamic thought and Western practice, the word is deemed to have become polemical, mainly through translation corruption, just as the original and former Biblical usage of "usury," the exact equivalent of *riba* in English, as "interest of any kind on money lent," has been changed, *by accident or design*, to mean "iniquitous or illegal interest on a loan, (Chambers 1901 ed.).[380]
> The crime of usury, before Reformation, consisted in the taking of any interest for the use of money; and now in taking higher rate of interest than is authorized by law.[381]

An innovative but unsubstantiated attempt at an "exegetically-led" reading of the Qur'ān ascribes *sophistry* to usury, renders *"yaqūmūn"* as rising from their place in the *market,* treats Satanic insanity as being *rolled in the dust and the mud,* associates usury with *burden,* lack of *good fortune, ungratefulness, oppression,* and only apparent *good-naturedness,*[382] calls abstinence a *return to God's law* [383] and *attainment of salvation,*[384] and renders *"wa-mā ātaytum"* as "that which you *entrust to commercial organizations, companies and banks."* [385] It is difficult to see where the textual support lies for these innovative attributes of *ribā.* It appears to be more of a flight of imagination than an insight of exploration.

On the legal plane, noting an early juristic agreement on definition of *ribā* as interest of any kind or motivation, a unanimously agreed definition of *ribā* giving new dimensions and a fresh economic meaning is being sought by exegetes, in order to cover all conceivable legal situations and positively respond to all the exigencies of social and technological development and variable economic environment of every successive Muslim generation.[386] The "logical connection" of usury *[ribā]* with charity is however naively posited only in the moral context, without exploring the metaphysical

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[380] Ibid.
[381] Altaf Gauhar, *Translations from the Quran* (Lahore: Sang-e-Meel Publications, 1989), 128-129.
[382] Behbūdī and Turner, *The Quran*, 26.
[383] Ibid..
[384] Ibid., 36.
[385] Ibid., 244.
[386] Asad, *Message of The Qur'ān*, n. 35, 622-623.

implications.[387] Based on the premise that the ancient and modern "*'ulamā'*" treated usury mainly on the basis of economic conditions existing at the rise of Islam, a new definition of usury is sought which would include profiteering of all kinds, but exclude economic credit, the creature of modern banking and finance.[388] The similarity of a race of usurious idlers, cruel blood-suckers, and worthless fellows, who do not know their own good, with madmen is described as an "apt simile."[389] On the other hand, charity, i.e., "giving," is raised from an economic and moral to a theological perspective by defining it as "the giving of ourselves and of our substance in the cause of God and God's truth ..."[390] Only partially responding to this definition, and departing from the traditionalist stance, an expanded economic definition is posited of *ribā* as "any increase sought through *illegal means*, such as *usury, bribery, profiteering, fraudulent trading* etc. [including] *economic selfishness* and many kinds of sharp practices, individual, national, international...[notwithstanding] the spacious phraseology of high finance or City jargon."[391] In a virtual economic treatise in interpretation of the *ribā-bay'* injunctions, closing the doors on theoretical development, it is contended that since *"ar-ribawā"* was the name of a particular type of excess [financial] that was widely known in pre-Islamic Arabia, it has not been elaborated in the Qur'ān, which suffices to say that Allāh has declared it to be *ḥarām* and is to be given up.[392] Several forms of interest transactions at fixed rates (skipping variable rates), contentiously in vogue and designated as *ribā* by the Arabs at the time of the revelation of the Qur'ān, are posited as the intended coverage of the Qur'ānic injunction. These are reported to include credit sale with fixed maturity and with stipulation of *price increase* for further time extension,[393] loan with stipulation of specified excess repayment within given maturity,[394] and loan with fixed maturity at fixed interest rate with stipulation of higher interest rate for default and extension upon

[387] Ibid., n. 262, 61.
[388] Yusuf Ali, *Holy Qur'ān*, n. 324, 111.
[389] Ibid., n. 325, 111.
[390] Ibid., n. 450-451, 156.
[391] Ibid., n. 3552, 1062.
[392] Mawdūdī, *Sūd*, 150.
[393] According to Qatāda, quoted by Mawdūdī in his *Sūd*, 150.
[394] According to Mujāhid, reported in Ibn Jarīr, III, 62, and according to the research of Abū Bakr al-Jaṣṣās, in his *Aḥkām al-Qur'ān*, I, quoted by Mawdūdī in his *Sūd*, 151.

maturity.[395] The textual indicator to cover all these claimed historical practices under the prohibition is, however, not specified.

A specific but prominent case of lexical license in translating Q. 2:275 renders the Arabic *"yaqūmūn"* as "behave," despite the fact that its standard lexical meaning is "stand," and *"yatakhabbaṭuhu"* as "insane," equating it with *"majnūn"* (possessed by the *jinn),* whereas its standard lexical meaning is "struck, hit."[396] But the *ribā-bay'* distinction, and absence of its cognition by the *Kuffār* at the peril of Satanic insanity, is posited in this exegesis in the limited and incongruous context of "profit" accruing on investment in commercial enterprises on the one hand and "interest" as profit accruing on loaned money on the other,[397] thereby completely and irresponsibly ignoring the inherent distinguishing characteristics of *ribā* and *bay'.* While positing the standard lexical meaning of the root *r.b.w.* as "excess," "growth," "increase" and "rising," *ribā* is inexplicably defined very restrictively and even contradictorily as: "*ribā* is from this same root and its connotation is 'excess in wealth' and 'addition to principal'; the Holy Qur'ān uses the word *ribā* to denote interest."[398] On the juridical level, some exegetes, surprisingly but in line with Urdu language usage, repeatedly employ the term *'illa* to mean *ḥikma.* The neo-Revivalists discuss the issue of *ẓulm* (injustice) in *ribā,* but do not definitively agree on it as the *raison d'être (ḥikma)* of the prohibition, or on its absence as a license for interest transactions.[399] The Qur'ānic unparalleled drastic punishment for the sin of *ribā,* and the graphic Sunnaic comparison with incest with one's own mother is recognized,[400] yet no attempt is made to reconcile meaningfully the gravity of this sin and the threatened punishment with the stated moral/economic *ḥikma* of the prohibition.

In a very pregnant but unelaborated reference, the exegete Mawdūdī declares that, while initially only the Qur'ānic prohibition of usurious dealings in loans *(ribā al-nasī'a)* was within the prohibition boundaries *(ḥudūd)* or sanctuary *(ḥimā)* of Allāh, the Prophet later established preventive measures around this *ḥimā* of Allāh by the condemnation of all participants of the interest-bearing loan transaction and by the prohibition of *ribā*

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[395] According to the research of Imām Rāzī, in his *Tafsīr Kabīr,* II, 351, quoted by Mawdūdī in his *Sūd,* 151.
[396] Mawdūdī, *Tafhīm al-Qur'ān. Towards Understanding the Qur'ān.* trans. and ed. Ansari, I, n. 316, 213.
[397] Ibid., I, n. 317, 214.
[398] Ibid., *Sūd,* 147, 149.
[399] Ibid., "Prohibition of Interest in Islam" *al-Islam,* June 1986, 6-8.
[400] Ibid., 157.

al-faḍl.[401] This reference to the *ḥimā* of Allāh comes very close to theological interpretation but stops short of full exposition: What is it that puts *ribā* in the *ḥimā* of Allāh? What is that triggering factor, the distinguisher of *ribā* from *bay'*, the lack of knowledge of which attracts the punitive measure of Satanic strike and eternal Hell-Fire in Q. 2:275? This *ribā al-faḍl* – the protective wall around the *ḥimā* of Allāh – is defined by him as the prohibited "excess in an exchange of *similar genus* in an *instantaneous transaction.*" [402] However, this definition is only partial, and therefore misleading, because excess in an exchange of *similar genus* is prohibited in *delayed transactions* as well.[403] Moreover, the rationale behind the prohibition of *ribā al-faḍl* is ascribed to its being "the prompter to exaction of excess and the promoter of that *mentality* in humans which ultimately leads to usury generation."[404] However, it is not elaborated what that human mentality is. Put differently: What is that occasioning factor in *ribā* which renders it *ḥarām* and sets it apart from *bay'* which is *ḥalāl*?

A *fiqh* postulate exempts animals from the prohibition of excess in exchanges of similar genus *(ribā al-faḍl).* But, ignoring the philosophical connotations, the reason for this exemption is posited as purely economic: the wide disparity in value and price of animals of the same genus permits their unequal exchange.[405] The fundamental concept of homogeneity and heterogeneity is alluded to, but again its philosophical implications are not explained.

The permissibility of excess in exchanges of different genus with the requirement of instantaneity is again explained in purely economic terms: excess in instantaneous exchanges of different genus is bound to be the result of *current market prices;* but excess in such delayed transactions runs the risk of being tainted with *ribā* due to the inability of accurately forecasting *future market prices.*[406] This is sound economic reasoning for prohibiting delayed settlement of transactions, but it falls short of a metaphysical argument for the requirement of instantaneity. More importantly, this

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[401] Ibid., 164-166.
[402] Ibid.
[403] As per the *ribawī* commodities *ḥadīth,* which is the text source for *ribā al-faḍl*, and is relied upon by Mawlānā Mawdūdī also, equality and instantaneity are the conditions for the permissibility of exchange of *similar genus.* Therefore, an excess in an exchange of *similar genus* in a *delayed transaction* also gives rise to the prohibited *ribā al-faḍl.*
[404] Mawdūdī, *Sūd,* 164-166.
[405] Ibid., 181.
[406] Ibid., 177.

economic argument also does not explain why excess is prohibited in exchanges of homogeneity and permitted in exchanges of heterogeneity.

Some scholars, including Mawdūdī,[407] treat the Qur'ānic contrast between *ribā (ḥarām)* and *bay' (ḥalāl)*, as one between "*ribā*" from a loan transaction and "profit" from a sale transaction, and thereby conclude the Qur'ānic prohibition of all interest. While this conclusion is valid, the underlying premise is seriously questionable. One critic, Saeed, disputing the Qur'ānic contrast as being between *ribā* and profit, posits it to be between *ribā* and *ṣadaqa,* firstly because the Qur'ān does not go on to exhort *bay'* but merely states its lawfulness, and secondly because the next verse immediately contrasts *ribā* and *ṣadaqa*, as does another where the term *zakāt* appears to be synonymous with *ṣadaqa.*[408] Saeed relies on the exegete Rāzī (d.606/1209)[409] and on Fazlur Rahman (d.1988) for confirmation of this contrast. Fazlur Rahman states that "according to the Qur'ān, the opposite of *riba* [*sic*] is not *bay'* but *ṣadaqa.*"[410] The serious implications of this opinion are analyzed below in a detailed examination of his work. Reverting to Mawdūdī and Saeed, it is notable that apart from the exegetical question of what is the real Qur'ānic contrast, the very derivation of the concept of *profit* from the concept of *bay'*, directly by Mawdūdī and indirectly by Saeed, is at best problematic. As will be explained in detail in chapter V, *bay'* (sale or exchange) *per se* does not generate a profit/(loss), for the determination of which, the sale has to be measured against an earlier purchase, using a *single common* measuring medium. Put differently, homogeneity of the transacting medium is essential for profit/(loss) determination. This condition makes profit/(loss) absolutely dependent, if not on a direct *exchange* of homogeneity, at least on a *comparison* of homogeneity. In either case, profit/(loss)-generation is a process where one agent acts upon or is compared with itself (same genus). But a sale, by a rational definition, is an exchange of one commodity for money or for another commodity (different genus). Therefore, sale is a process where two different agents act on each other. Thus profit/(loss)-generation (homogenous agent process) and sale (heterogeneous agent process) are diametrically opposed to each other.

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[407] Ibid., 82-5.
[408] Saeed, *Islamic Banking*, 25.
[409] Rāzī, *Tafsīr*, VII, 90.
[410] Rahman, Riba, 31.

In rebuttal of Mawdūdī and Saeed, it may, therefore, be asked: How can two diametrically opposed processes be synonymous with, or lead to, each other?

The *mujmal* (unelaborated) character of the copious *ḥadīth* material is posited and regarded as the source of classificational uncertainty and juristic differences in the determination of *ribawī* commodities and their *ratio legis.*[411] Yet, excavation of the rich explanatory potential of at least the *ribawī*-commodities *ḥadīth* – the key to deciphering all the unknowns in the *ribā* issue – is not even attempted. It is only admitted that commercial, financial and economic laws in our ancient *fiqh* books now require much updating. The dispute is not over the need but over the method of this renewal and revision – whether it should be the Liberal or the Traditionalist approach. Islamic law is not a static law, but what is alterable are the derived laws and not the underlying universal legal principles that are based on divine knowledge of human nature and reality of things. Yet Mawdūdī argues that in Islamic law, based both on revealed texts and *fiqh*, there is ample provision for softening the strictness of injunctions according to circumstances and necessity, and hence – unlike Sanhūrī– offers somewhat watered-down concessions in the case of *ribā,* viz.:

- There can be compulsion in paying interest but not in taking interest.
- Every necessity does not qualify as compulsion for obtaining interest-bearing loans.
- Even in case of dire necessity, interest-bearing loan can be obtained only in required amount and only on condition of prompt repayment upon ability to repay.

But, for Muftī Muhammad Shafi'(d. 1976) – the former Grand Muftī of Pakistan– the difference between *ribā* and *bay'* is one of divine command, the former totally declared *ḥarām* and the latter *ḥalāl.* Hermeneutically very important, he requires correspondence between the crime and its punishment, but his position is still shy of full theological peak. For him, the correspondence is only (1) between the crime of "Satanic greedy behavior" of usurers on this earth and the punishment of the Satanic state into which they will be resurrected; and (2) between the crime of disbelief *(kufr)* of denying the divinely ordained *ribā-bay'* polarity and opposing the *ribā*-prohibition and the

[411] Mawdūdī, *Sūd,* 178-179.

punishment of eternal Hellfire and threatened war from Allāh. He thus does not raise the sin of *ribā* above the level of disbelief *(kufr).*[412]

Nevertheless, Sayyid Quṭb (d. 1966), the ideologue of the Muslim Brotherhood, lowers even further the level of the discourse to a moral stance, accusing modern banks of "eating the bones and flesh" of the poor borrowers and "drinking their sweat and blood" under the umbrella of the interest-based system.[413] He declares the intrinsic incompatibility of *ribā* and Islam, but only denounces *ribā* for clashing with mankind's ethics, belief and worldview, for being an economic evil and, in spite of appearances to the contrary, for interfering with the balanced growth of man. He rightly concludes that Allāh would not have prohibited any thing if it were essential for human growth, and that no *evil* thing can ever be essential for human life.[414] But branding *ribā* as an evil, whereas Allāh brands it as *ḥarām*, he is perilously oblivious of the consequences of equating evil and *ḥarām.* What is the character of the *masjid al-ḥarām?* Of the month of *Muḥarram al-Ḥarām?* Of the *muḥarram* widows of the Holy Prophet? Of the *muḥarram* closed family circuit?

To sum up, in a very highly critical, yet very apt, attack on medieval and contemporary exegetes over the centuries for missing the exact message and plain simplicity of the Qur'ān due to their intellectual environment, which bred "a gradual decadence in the quality of the Muslim mind," a contemporary exegete declares: "...When the commentators found that they could not rise to the heights of the Qur'ānic thought, they strove to bring it down to the level of their own mind."[415] In other words, after sporadic promising philosophical forays, contemporary exegesis reverts back to the conventional wisdom on the subject which does not contribute to a philosophical-theological theory of *ribā.*

II.6. Philosophical Speculation

While the term *ribā* has been examined from the exoteric morphological, lexical, and particularly contextual, historical, and juridical angles, no attention appears to have been focused by the scholars on its esoteric, intrinsic philosophical meaning, the search

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[412] Muftī Muḥammad Shafī, *Ma'ārif al-Qur'ān* (Karachi: Idāra al-Ma'ārif1969), I, 585-622.
[413] Sayyid Quṭb, *Tafsīr Āyāt al-Ribā* (Dār al-Buḥūth al-'Ilmiyya, n.d.), 12.
[414] Ibid., *Fī Ẓilāl al-Qur'ān* (Urdu) (Lahore: Islami Academy, n.d.), 70.
[415] Azad, *Tarjumān al-Qur'ān*, II. 2, ix-x.

for which is at the heart of the whole *ijtihādic* question. A very crucial question remains unanswered, even unraised. What is the esoteric distinguishing characteristic of the Arabic term that makes its lexical meaning of growth so crucial for the doctrine of its prohibition? The successful quest for this intrinsic meaning and distinguishing characteristic will constitute a scholarly landmark.

II.6.i. Secular Philosophy

The only significant, strictly philosophical input in the usury discourse is the Greek theory of "sterility of money" posited by Aristotle and its later demolition by Calvin.

II.6.i.a. Greek Thought [416]

The legitimacy of interest-taking on loans *(daneismos)* was recognized and the principle of unrestricted liberty on interest rates prevailed throughout Greek history.[417] Nevertheless, opposition to usury, among other sources, came from the condemnatory discourse of the greatest of the philosophers, Plato and Aristotle.[418]

The most influential ancient philosophical discourse comprises the clear-cut condemnation by Greek philosophers of usury/interest. Both Plato (c.429-347 B.C.) and Aristotle (384-322 B.C.)[419]condemned and outlawed the practice of usury/interest on loans. Their rationale for the condemnation was the unnaturalness of usury. Plato regarded money as barren,[420] and, therefore, he outlawed profit on loans:

> No one shall ... lend at interest, since it is permissible for the borrower to refuse entirely to pay back either interest or principal.[421]

For Plato the rationale for outlawing interest was promotion of mutual cooperation and curbing selfishness and strife among citizens, and establishment of an order where good was the supreme value. Thus, Plato's contribution to the usury issue is "surprisingly slight, his condemnation being based on the class conflict it might engender, rather than on any deeper philosophical foundation, concerned as he was with

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[416] This section also draws heavily and liberally on the original research work in Maloney, Background, 81-98.
[417] E. Caillemar and F. Baudry, "Foenus," *Dictionnaire des Antiquités Grecques et Romaines*, II, 1215 ; G. Glotz, *Ancient Greece at Work* (New York : A.A. Knopf, 1926), 242 ; A. Bernard, "Usure (1. La formation de la doctrine ecclésiastique sur l' usure)," *DTC*, XV, 2319-2320.
[418] Maloney, Background, 84-85.
[419] The First Master of later Islamic philosophers.
[420] Plato, *Leges*, XI, 921d.
[421] Ibid., V, 742 (Loeb transl.).

an account of the ideal social structure and the origins of the city, then identical with the state."[422]

Aristotle condemned usury/interest in a clear and reasoned manner in his philosophical discourse:

> Of the two sorts of money-making, one, as I have just said, is a part of household management, the other is retail trade: the former necessary and honorable, the latter a kind of exchange which is justly censored; for it is unnatural and a mode by which men gain from one another. The most hated sort, and with the greatest reason, is usury, which makes gain out of money itself, and not from the natural use of it. For money was intended to be used in exchange, but not to increase at interest. And this term usury (*tokos*) [offspring], which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. Wherefore of all modes of making money this is the most unnatural.[423]

In this passage, Aristotle touches on some very crucial concepts. Firstly, he regards profit from trading ("men gaining from one another") as unnatural, and usury as the most hated and most unnatural form of it because it "makes gain out of money itself," i.e., growth out of an agent acting upon itself, which, although not stated by him, results in self-emanation. The science of Economics and Accounting inform us that trading profit may be realized from bilateral exchanges (two different agents acting upon each other) but the measurement of profit is a unilateral process to the extent that growth (profit) can be measured only through comparison of similar agents. He could, and perhaps should, have censored profit on the grounds of unilateralism just as he did usury. Yet his declaration of trading profit as unnatural is based on moral grounds only ("men gaining from one another"), and not on the philosophical ground of unilateralism. This point of moral argumentation is further corroborated by the fact that, as against unbridled profit as an end, he appears to believe in money-making only for need fulfillment. For him, wealth was simply a *means* to an *end* of better living a moral life; it should not be acquired more or less than the end requires.

Secondly, his censure of usury is based on the philosophical grounds of unilateralism when he touches on the concept of gain from exchange of similarity ("birth of money from money" and "the offspring resembling the parent"). Here Aristotle is talking about the very core of unilateralism, where not only an agent is acting on itself, but is also producing similar growth. This concept is the central point of the *ribawī-*

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[422] Eric Roll, *A History of Economic Thought* (Faber and Faber Ltd, 1938), Fourth Edition, 1973, 27-31.
[423] Aristotle, *Politica*, I, 10, 1258 a- b (Jowett transl.).

commodities *ḥadīth* in the later Islamic legal repertoire and one of the main themes of this study.

In this Aristotelian discourse, the contextual meaning of the term usury is a gain from money itself, and in line with this meaning, the application is financial/economic, although the literal meaning of the term usury as offspring *(tokos)* is suggestive of a possible broader practical application of the term which is absent in Aristotle, but which will be explored below (chapter IV). Moreover, as pointed out above,[424] the Aristotelian rationale for the condemnation of usury is natural law: for him, unilateralism is simply unnatural. He does not posit any theological rationale against unilateralism, which will be done in this work.

Even so, being only a philosophical edict without a supporting Divine ordinance or State legislation, the Aristotelian usury discourse is only a moral exhortation without any religious punishments or civil penalties. In the face of a widely held recognition of interest-bearing loans as an integral part of Athenian economic life, the voices of the great philosophers went largely unheard.

The seeds of a hermeneutical imbalance are, however, clearly evident even in this moral/philosophical discourse. It starts with a meaning of usury as a broad concept of offspring *(tokos),* but narrows it down to the practice of making money from money alone – a financial application only – and again uses a broadly applicable argument of unilateralism, to label the interest generating process as unnatural.

There is a more serious interpretational problem connected with the Aristotelian usury paradigm. Aristotle bases his argument against usury, as shown above, exclusively on the notion of unilateralism being against natural law. He does not talk about the "infertility of money." On the contrary, he talks about the "fertility" of money ("birth of money from money" and "the offspring resembling the parent") which does take place, but is against natural law. Yet, his commentators were to hold that Aristotle censured usury on the grounds of sterility of money. Gregory of Nyssa (335-394A.D.) was to describe usury (the birth of money from money) as an "evil union unknown to nature"

[424] See pp. 106-107, above.

having the power to make sterile things bear fruit, even though nature itself has made only animate things fecund.[425]

This line of argumentation of the commentators relies only on a physical, tangible and limited notion of "sterility," operative in the usury process, but not utilized by Aristotle himself, to the utter exclusion of a more abstract, intangible and universal notion of "unilateralism," also operative in the usury process and utilized by Aristotle, as shown above. This "animation argument" of the commentators, denies the power to reproduce or even attempt to reproduce to inanimate objects and, without any further qualifications, allows it to animate objects, regardless of the mode of reproduction, even if incestuous. However, the "unilateralism argument," subscribed by Aristotle and to be further developed in this thesis, below, denies the power to reproduce and even attempt to reproduce to both inanimate and animate objects and even to concepts, if the mode of reproduction is unilateral, i.e., an agent is acting upon itself. This is the very essence of the Islamic foundational notion of *tawḥīd* – the absolute unity and singularity of God, the Self-Sufficient Who neither begets nor was begotten.[426] Only this theological point sets the Islamic paradigm of usury *(ribā)* apart from the Aristotelian usury model which is based on the rationale of natural law.

On a theological level, Aristotle, in his famous expression, speaks of the Unmoved Mover as "*Thought thinking itself.*"[427] "The plain meaning of this is that God is the object of his own thinking."[428] As Aristotle puts it in his *Metaphysics*, "it is by thinking of itself [*sic*] that God knows and controls all things." Aristotle rejects the notion that God might think of something other than itself [*sic*] precisely because this would diminish God's power.[429] This theological exposition is the most succinct expression of the thesis of this work as will be elaborated in chapter IV.

In another philosophical metaphor, the publicly condemned Greek lending practice of loan discounting is equated with "birth before conception":

> They say that hares at one and the same time give birth to one litter, suckle another, and conceive again; but the loans of these barbarous rascals give birth to interest before conception;

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[425] Maloney, Background, 150.
[426] Q. 112:1-3.
[427] Aristotle, *Metaphysics*, 1072b19.
[428] *The Encyclopedia of Philosophy*, editor in chief Paul Edwards (New York: Macmillan Publishing Co., Inc. & The Free Press, 1967), I, 161.
[429] Aristotle, *Metaphysics*, 1072b19.

> for while they are giving they immediately demand payment, while they lay money down they take it up, and they lend what they receive for money lent.[430]

The Greek usury paradigm, above, again limits the discourse to the financial context only; however, it – particularly the Aristotelian discourse – analyzes not the *extrinsic effect* but the *intrinsic characteristic* of usury. It may, therefore, be characterized as the first model with vertical depth but still without horizontal spread of analysis.

II.6.i.b. Roman Thought [431]

The Roman attitude towards usury was similar to that of the Greeks: loans at interest were regarded by both as a fact of life. But the effects differed: for the Greeks interest was a promoter of general prosperity, while for Rome it was a harbinger of misery and revolt.[432] Yet in the Roman literature, the legitimacy of interest-taking was rarely questioned; only the greedy usurer was criticized. However, Seneca, in *De Beneficiis* (VII, 10, 3), does disapprove of usury, labeling it an *unnatural form of human greed*, without, however, developing the argument.[433] Additionally, "he considered usury also to be morally wrong because it involved paying for time."[434]

Devoid of any philosophical content, however, Roman thought on usury is not conducive to theory development.

II.6.i.c. Later Western Thought

A review of Western thought indicates that, other than the Aristotelian theory of sterility of money, there was no subsequent strictly philosophical input in the usury discourse, which essentially remained an economic or at best a religious precept debated by the economists and the theologians.

Aristotle's theory of sterility of money did act as a source for the later Islamic and other Western religo-philosophical thought on usury. But, in the Christian milieu, even the force and potential of this Aristotelian theory was whittled down by Calvin, who refuted it with his theory of "transvaluation of values." He legitimized usury without

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[430] Plutarch (c. 46 A.D. – after 120 A.D.), *Moralia*, ed. G.N. Bernardakis (Leipzig: Teubner, 1888-96), 829 (Loeb transl.).
[431] This section also draws heavily and liberally on the original research work in Maloney, Background, 81-98.
[432] Maloney, Background, 98, quoting Tacitus's (c. 55 A.D. – after 115 A.D.) *Annales*, VI, 22.
[433] Ibid., 99.
[434] Buckley, Theological Examination, 81.

impairing the vitality either of the universalism or the fraternalism of the Christian ethic, by exhorting that the Mosaic and Gospel rules be interpreted in the light of the individual conscience, the equity of the Golden Rule, and the requirements of public utility.[435] For whatever its philosophical value, Bertrand Russell (d. 1970) was to state: "Throughout the Middle Ages the law of nature was held to condemn usury."[436]

II.6.ii. Islamic *Falsafa*

Likewise, even a review of Islamic thought fails to unveil any significant philosophical input in the *ribā* discourse, which continues to operate largely at the economic and religious level, in spite of the much deeper and wider connotation of the term *ribā* as compared to usury. Perhaps, the only exception would be the lego-philosophical contribution of Ibn Ḥazm (d. 456/1063-4):[437]

> Unlike *bay'*, *ribā* implies that money or a commodity is loaned or exchanged for *self-generating* or *self-expanding value*, which is not a form of *just sale* because the increment over the exchanged or loaned commodity or principal capital does not bring in return any equivalent counter-value to the borrower. For him, this growth or increase *(faḍl)* of money or commodity through loans (as well as in sales and exchanges in the broad sense) is illegal and inequitable. In a *bay'*, i.e., exchange of equal values, there is a purchase and sale, i.e., a permissible equal exchange, a *just* and *lawful economic activity*, a *fair transaction*, since something is exchanged for something, an equal value for an equal value, as money for goods, or simply, goods for goods. But in money-lending capital, which is given on loan for an increase *[ribā]*, there is no such legitimate or moral relationship mediating, except that capital is *loaned for an increase in it. It is the capacity of money to increase its own value*, without the lawful economic activity of just sale or exchange. This is the point which the Qur'ān so clearly makes when it refutes the theory of moneylenders who contend that *ribā* is similar to *bay'*, i.e., it is a form of sale of its own nature, *it has the power to create an increase in money; as an offspring is conceived, a child is born, a tree bears fruit, so money generates money*. If one tells the moneylender that this is *ribā*, an unjustified profit, the latter justifies it by his claim that the increase over capital in a certain course of time is because of the time factor; that is, the increase is the compensation for the time during which the moneylender parts with his capital.[438]

This discourse touches on the very crucial concepts of *"self-generation and self-expansion"* inherent in *ribā*, but only from a moral, ethical, legal and economic perspective. It does not explore the concepts for their all-important theological implications – the main argument of this work.

The only other recurring references in Islamic philosophy of relevance for this thesis are to the concepts of *ex-nihilo* creation, self-subsistence, self-emanation, and

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[435] Nelson, *Idea of Usury*, 73-82.
[436] Bertrand Russell, *History of Western Philosophy* (New York; Simon and Schuster, c. 1945), 601.
[437] Ibn Ḥazm, *al-Muḥallā*, VIII, 351. See also Abū 'Alī ibn al-Ḥasan al-Ṭabrasī (d. 547 AH), *Majma' al-Bayān fī Tafsīr al-Qur'ān* (Tehran: Kitab Firushi-e-Islamiyya, 1379 AH), II, 389.
[438] Ziaul Haque, *Riba: The Moral Economy of Usury, Interest and Profit*, 12.

eternity, either on their own or in relation to other subjects. But, these concepts have not been associated so far with the *ribā* discourse, and will be applied for the first time in this thesis.

II.7. Contemporary Exploration

The contemporary usury discourse may be neatly divided between Western and Islamic milieus.

II.7.i. Western Milieu

Contemporary Western thought,[439] by being either neutral or even outright opposed to any prohibition of interest, is not helpful in the development of a theory of its theological prohibition. Western economic thought of the 17th and 18th centuries did not contribute to the theological perspective on usury. It approached the question purely in terms of economic theory, quantum of desirable interest rate and its state regulation.[440] Even the religious thought turned the tide against usury prohibition. Repeal of even the legal limit on usury and the abandonment of the old Christian prohibition of usury and of the scholastic theory were recommended. Money-lending was regarded as a trade like any other and price control as inapplicable as much to money as to any other commodity. The law against usury was termed "foolish and ancient," and considered to be sourced in: a Christian opposition to temporal prosperity; an anti-Semitic distrust of Jewish methods; an ignorant reverence for Aristotle's maxim of barrenness of money; and a worldly love of present pleasure and hatred for the abstemious lender.[441] "These four motives combined to set in motion the whole formidable machinery against usury, vestiges of which still plague Britain today. Bentham dismisses all scruples against usury: usurers are men as honest as other tradesmen."[442] Even the Roman Catholic Holy Office, "in a series of decisions rendered between 1822 and 1836, ended all doubts and practical difficulties by publicly decreeing that interest allowed by law may be taken by

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[439] Detailed in Appendix 13 (a).
[440] Prominent contributions are from: William Petty, *Political Arithmetick* (1690); Sir William Petty's *Quantulumcumque Concerning Money* (1695); John Locke, *Some Considerations of the Consequences of the Lowering of Interest and Raising the Value of Money* (1691); Dudley North, *Discourses upon Trade* (1691); David Hume, *Of Interest* (1752) and Adam Smith, *The Wealth of Nations* (1776).
[441] Jeremy Bentham, *Defence of Usury* 1818, in *Economic Writings*, ed. W. Stark, (London: G. Allen and Unwin, 1952), 9-13; 53; 96-106.
[442] Buckley, Theological Examination, 136.

everyone."[443] However, the theoretical controversy surrounding these decisions is summed up by Noonan thus:

> The licitness of the rent of money as a fruitful good, at least in production loans, is asserted ... The biblical and conciliar prohibitions of usury are explained as prohibitions only of excessive usury and Calvin, Molinaeus, and Maffei become the new authorities. The scholastic defenders of the new theory assert that only in its terms can the general permission to take interest be understood and modern commerce be justified. On the other hand, the champions of the old theory reassert the familiar arguments against all usury, pointing out that the general permission to take interest can be understood as an extension of the title of *lucrum cessans*, and need involve no abandonment of the old principles.[444]

The point that is being missed here is that, regardless of how it is being justified, either through the new theory or through the title of *lucrum cessans,* interest nevertheless remains a process of money directly generating money – an intrinsic quality which attracts its divine prohibition for humankind.

In the nineteenth century, "competent scholastic theologians were rare, and great scholastic theologians were non-existent. Consequently, no commanding figure arose to defend the old theory, although ... it [old theory] was still generally accepted. But facile and persuasive writers were urging its abandonment and the acceptance, in greater or lesser degree, of the theory of Calvin and Maffei."[445] It was asserted that no dogma of the Church was at risk by allowing moderate profit on loans to businessmen and the rich. Through an extensive review of papal, conciliar, patristic, and scholastic teaching on usury, it was concluded that the only dogma on usury, which ever existed, was the evil nature of excessive or oppressive profit on a loan. The medieval scholastic position was called "transient and local opinion" incapable of being elevated above the rank of positive law, and was ascribed to the economic conditions of the time, to the tyranny of Aristotle, and to the ignorance of the Fathers.[446]

The theses of Molinaeus and Maffei were presented, most originally, in terms of money's "applicability," by which was meant both the power of being able to use money and its actual use. This applicability was separate from money itself and may always be charged for. A worker cannot be asked to work for nothing simply because he is idle. Similarly, nor can a lender with idle funds be asked to surrender their applicability free

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[443] Ibid.,137.
[444] Noonan, *Scholastic Analysis,* 377, cited in Buckley, Theological Examination, 137.
[445] Buckley, Theological Examination, 137.
[446] William César (Cardinal de la Luzerne), *Dissertations sur le prêt-de-commerce* (1822), quoted in Buckley, Theological Examination, 138.

of charge.[447] Again, this most original argument of selling the "applicability" of money and not money itself, nevertheless, ignores the fact that in the absence of an intervening commodity the sale process still remains an exchange of money for more money – an inherent "self-emanation" which attracts divine prohibition.

This new theory of legitimate interest was justified by linking the fruitfulness or sterility of money to the underlying economy: unlike the present economy where money is fruitful, in the static medieval economy, the feudal and guild systems, war, theft, and trade barriers made investment and capital accumulation difficult, rendering money immobile and sterile. It was held that law, particularly on usury, does not remain "abstractly motionless," but develops with economic change. As the economic structure of Europe changed and money became capable of fruitful employment, the Church altered the law to meet the new conditions, broadening the exceptions into general permission and allowing the taking of interest. The only dogmatic principle, which remains unaltered though applied differently in different conditions, is the sinfulness of exploiting one's neighbor. The early scholastic theory was criticized for its abstract legalistic approach which ignored the economic significance and the moral essence of the usury law. The proper theoretical approach, set out in this new theory, is to abandon the legal technicalities of contracts and titles and adopt one general moral principle that no contract should injure an impoverished neighbor.[448] The arguments in defense of the licitness of rent of money as a fruitful good are multi-pronged: there is no scriptural or natural reason to contradict this new approach; biblical disapproval is only of exploitation of the poor; there is absence of justification, in the old scholastic theory, of the advantageous present-day economic operations; the transference of ownership in a loan is a determination of positive, not natural, law; and money is no longer sterile.[449]

On the other hand, the old theory was defended on the grounds that the consumptibility of money, not its productivity, is the essence of the old theory. The modern practice of interest is not the rent of money but the universal claiming of *lucrum cessans,* which legalizes interest. In spite of change in practice with economic change,

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[447] Mark Mastrofini (a member of the papal court in Rome), *Discussion sur l'usure* (1828), quoted in Buckley, Theological Examination, 138.
[448] F. X. Funk (mid-19th c. German theologian), *Zins und Wucher* trans. and cited in Noonan, *Scholastic Analysis*, 386.
[449] Buckley, Theological Examination, 140.

the scholastic principles – a part of Catholic doctrine – remain unchangeable and equally good in their new application.[450]

In a syncretistic defense of usury doctrine, it was held that money in this age was virtually fecund (new theory) and could be rented at a profit because of the lender's universal suffering of *lucrum cessans* (old theory).[451] Another defense of interest-taking similarly appealed equally to *lucrum cessans* and the fecundity of money.[452]

The new *Codex juris canonici* of 1917, replacing all earlier collections of canon law and becoming the sole statute book of the universal Church, took the final formal step in the acceptance of general interest-taking by combining all responses, decrees and bulls of the old canon law into a single rule:[453]

> If a fungible thing is given someone, and later something of the same kind and amount is to be returned, no profit can be taken on the ground of this contract; but in lending a fungible thing it is not itself illicit to contract for payment of the profit allocated by law, unless it is clear that this is excessive, or even for a higher profit, if a just and adequate title be present.[454]

The diachronic development of the Christian attitude towards usury since its inception has been very aptly summarized by Visser and McIntosh:

> Despite its Judaic roots, the critique of usury was most fervently taken up as a cause by the institutions of the Christian Church where debate prevailed with great intensity for well over a thousand years. The Old Testament decrees were resurrected and a New Testament reference to usury added to fuel the case. Building on the authority of these texts, the Roman Catholic Church had by the fourth century AD prohibited the taking of interest by the clergy; a rule which they extended in the fifth century to the laity. In the eight century under Charlemagne, they pressed further and declared usury to be a general criminal offence. This anti-usury movement continued to gain momentum during the early Middle Ages and perhaps reached its zenith in 1311 when Pope Clement V made the ban on usury absolute and declared all secular legislation in its favour null and void.[455]
>
> Increasingly thereafter, and despite numerous subsequent prohibitions by Popes and civil legislators, loopholes in the law and contradictions in the Church's arguments were found and along with the growing tide of commercialization, the pro-usury counter-movement began to grow. The rise of Protestantism and its pro-capitalist influence is also associated with this change,[456] but it should be noted that both Luther and Calvin expressed some reservations about the practice of usury despite their belief that it could not be universally condemned. Calvin, for instance, enumerated seven crucial instances in which interest remained "sinful," but these have been generally ignored and his stance taken as a wholesale sanctioning of interest.[457]
>
> As a result of all these influences, sometimes around 1620, according to theologian Ruston, "usury passed from being an offence against public morality which a Christian government was

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[450] Cardinal Ernest Joseph Van Roey (early 20th c. Belgian theologian), *De justo auctario ex contractu crediti* (Louvain, 1903), 226, quoted in Noonan, *Scholastic Analysis*, 389, and in Buckley, Theological Examination, 141.
[451] Adam Tanquerey, an early 20th c. popular French theologian, quoted in Buckley, Theological Examination, 141.
[452] Jerome Noldin, early 20th c. German Jesuit, quoted in Buckley, Theological Examination, 141.
[453] Buckley, Theological Examination, 141.
[454] *Codex juris canonici* (Rome, 1920).
[455] Birnie, *Interest*.
[456] A.E. McGrath, *A Life of John Calvin* (London: Blackwell Press, 1990).
[457] Birnie, *Interest*.

expected to suppress to being a matter of private conscience [and] a new generation of Christian moralists redefined usury as excessive interest."[458]

This position has remained pervasive through to present-day thinking in the Church, as indicative views of the Church of Scotland suggest when it declares in its study report on the ethics of investment and banking: "We accept that the practice of charging interest for business and personal loans is not, in itself, incompatible with Christian ethics. What is more difficult to determine is whether the interest rate charged is fair or excessive."[459]

Similarly, it is illustrative that, in contrast to the clear moral injunction against usury still expressed by the Church in Pope Leo XIII's 1891 *Rerum Novarum* as "voracious usury ... an evil condemned frequently by the Church but nevertheless still practiced in deceptive ways by avaricious men," Pope John Paul II's 1989 *Sollicitude Rei Socialis* lacks any explicit mention of usury except the vaguest implication by way of acknowledging the Third World Debt crisis.[460]

The Christian perspective on the usury issue at the beginning of the 20th century has been summed up by Buckley as syncretistic: "the usury rule, sapped of its vitality in modern economic conditions, is not abandoned, but so limited in the likelihood of its applicability that profit on credit transactions is made the norm, and usury the exceptional case of unjust extraction."[461] The canonist doctrine, as Roll points out, was steadily weakened with commercial expansion and finally faced with complete collapse of its power to regulate economic life.[462] Buckley further elaborates this point:

> After the Reformation, the Church was no longer able to stand in the way of the growth of commercial capitalism, and whether Protestant and Puritan doctrines were themselves conducive to the development of the capitalist spirit is an area of discourse, already much debated ... What is important is that the harmony between Church dogma and feudal society, between theological and economic thought, responsible for the all-embracing quality of the Canon Law, came to an end with the decline of feudal society. This harmony had enabled the institutionalized Church, with its spiritual and secular power, to claim the right *to order the whole of human relations and conduct on this earth* as well as to provide the precepts which would lead to spiritual salvation.[463]

Nevertheless, as Roll maintains:

> Canonist thought was essentially an ideology, in economic matters it was an illusory representation of reality. It was successful so long as the conflicts of reality had not become very acute. With the sharpening of these conflicts, the antithetical elements in this ideology were seized upon by the contending parties, and the *original universal character* was lost ... A separation was effected by which *religious dogma ceased to represent an analysis of existing society as well as a code of conduct* ... Though attempts were again to be made to introduce ethical elements into the main stream of economic thought, it remains henceforth independent of religion. The foundation for a secular science of economy was laid.[464]

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[458] R. Ruston, "Does It Matter What We Do With Our Money?", *Priests and People*, May 1993, 171-77.
[459] Church of Scotland, *Report of Special Commission on the Ethics of Investment and Banking* (1988).
[460] Visser and McIntosh, Usury, 3-4.
[461] Roll, *Economic Thought*, 53, cited in Buckley, Theological Examination, 142.
[462] Buckley, Theological Examination, 142.
[463] Ibid.
[464] Roll, *Economic Thought*, 53, cited in Buckley, Theological Examination, 143.

Buckley shows that "with the acceptance of the modern day understanding of usury as an exorbitant rate of interest and interest itself accepted into the fabric of economic life, the usury debate has evolved into the issue of how to incorporate the principles of low-cost credit and debt finance, and the concept of justice, into the structure of poverty stricken communities and societies of the disadvantaged." This is the essence of the contemporary Christian discourse on usury. But, she admits, "this is not to deny, however, the possibilities for the existence of an interest-free banking system according to theological principles [Islamic Banking]." She analyses in detail "how the practical application of the 'usury' issue, as it is now perceived, has been employed by social Christianity within the previous one hundred years in Great Britain, particularly in terms of 'associationism' [co-operative enterprises] and co-operative banking methodology," and posits the question: "where do we go from here?"[465]

The logical step forward from the *social* Christian "associationism" and co-operative banking is the *theological* Islamic banking.

Buckley herself further posits the question:

> If the concept of 'usury' as exorbitant interest is so readily accepted in the West now, and the use of interest as a legal entity is built into the law, is there any banking or economic system which could implement the Judaic and early Christian notion of interest-free loans with a view to a fairer redistribution of wealth, or wealth creation, and help for the poor? Can, for example, the *ethical* teaching in respect of usury of another great monotheistic religion – Islam – provide a paradigm for the rest of the world to adopt as we approach the twenty-first century with its concept of Islamic Banking facilities?[466]

The answer, for El-Gamal, is that it not only *can,* but it already *has:*

> I don't believe in a separate Islamic economy. Western capitalism evolved out of Islamic principles. [Buckley believes out of Jewish principles]. UK common law evolved out of Sharī'a law from the Mediterranean European legal system. The framework is very much Islamic at heart although there is may be not the same discipline as with Islamic law.[467]

Furthermore, as pointed out by El-Gamal, "it is not surprising in the light of [the] clear prohibition of interest in Judaism and [early] Christianity to learn that the first interest-free bank in documented history was established prior to the life of Prophet

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[465] Buckley, Theological Examination, 145.
[466] Ibid., 154.
[467] Mahmoud A. El-Gamal, (http://www.ruf.rice.edu/~elgamal/files/islamic.html).

Muḥammad (pbuh). The first interest-free (Islamic?) bank *Agibi Bank* was established c.700 B.C. in Babylonia, and functioned exclusively on an equity basis."[468]

This, then, leads into an examination of the Islamic teachings on the Qur'ānic juxtaposed concepts of *ribā* (lit. excess) and *bay'* (lit. exchange), but, with the rejoinder to Buckley that, as will be argued below, the Islamic paradigm is not just *ethical,* but foremost, *metaphysical, philosophical and theological,* and with its affinity to divine and human nature, it is fully capable of becoming not just the universal *economic* paradigm but also the universal *total human conduct* paradigm.

II.7.ii. Islamic Milieu

In the Islamic milieu contemporary, scholarly contribution on the *ribā* discourse has come both from Muslim and Orientalist sources.

II.7.ii.a. Contemporary Muslim Contribution[469]

Contemporary Muslim *ribā* discourse, like its classical/medieval counterpart, does not contribute to a comprehensive theory development due mainly to its merely exoteric research approach. Fazlur Rahman characterizes the general quality of contemporary scholarship thus: "the intellectual output of the Muslim scholars from the fourteenth century onward could be characterized generally as ponderous and repetitive, unoriginal, pedantic, and superficial."[470] Ironically, however, his own contribution to the *ribā* discourse does not match his intellectual prowess as an outstanding contemporary Muslim philosopher. Hallaq correctly brands his *ribā* discourse as a "reformist agenda devoid of any philosophic content."[471]

In the modern discourse, only moral, economic, perceived historical and linguistic arguments are posited for the prohibition of *ribā,* to the utter neglect of the philosophical-theological dimensions. For instance, the prefixing of the article *"al"* to the term *ribā* in Q. 2:275-280 is taken by Rashīd Riḍā to indicate knowledge and familiarity, and thus to argue for *ribā al-jāhilīya* as the only prohibition.[472] Emphasizing

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[468] S. Baron, *A Social and Religious History of the Jews* (New York: Columbia University Press, 1952), cited in, Mahmoud A. El-Gamal, "Can Islamic Banking Survive? A Micro-evolutionary Perspective" (http://www.ruf.rice.edu/~elgamal/files/islamic.html), 5.
[469] Detailed presentation in Appendix 13 (b).
[470] Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: The University of Chicago Press, 1982), 45.
[471] McGill University seminar on Islamic law, 2001.
[472] Riḍā, M. Rashīd. *Tafsīr al-Manār* (Cairo: Dār al-Manār, n.d.), III, 94.

the moral aspects, the Islamic "legal form" of *ribā* is relegated by al-Najjār, al-Namir and Fazlur Rahman to a secondary position, arguing the *raison d'être* for the prohibition to be "injustice,"[473] as a translation – albeit inaccurate – of the Qur'ānic usage, *ẓulm*. But if this concept of *ẓulm* is viewed in its more appropriate meaning of "transgression," the whole scenario changes from a moral to a theological one and an entirely new rationale *(ḥikma)* of prohibition emerges, as will be demonstrated in chapter IV. It is contended by Fazlur Rahman that the absence of an early Meccan condemnation of *ribā* would have been contrary to the "wisdom of the Qur'ān," whose only expression is claimed in economic and moral contexts.[474] Accordingly, the prohibition is deemed restricted to "usury" and not inclusive of "interest," i.e., a charge equal to or more, but not less, than the principal.[475] The Egyptian civil code also adopts this position.[476] This discussion, based on the alien concepts of usury and interest in relation to *ribā,* is at best confusing because *ribā* stands for any increase and not just an increase above a threshold. Alternatively, an attempt is made to justify interest charge, though indefensibly, as indexation of a loan to compensate for the monetary loss through decline in the purchasing power of money in an inflationary economy.[477] This compensatory indexation issue, the subject of extensive debate, is relevant only for *ribā*-prohibition in its narrow economic context. When viewed in its broadest context of philosophical-theological rationale, the whole issue of indexation fizzles out.

Definitionally, *ribā* is recognized by Fazlur Rahman in its literal and lexical meaning of "excess"[478] in all its Qur'ānic manifestations,[479] but this rich mosaic of meaning is not developed any further, and its examination is restricted to the technical meaning of the term in its financial context only. Additionally contributing to definitional inaccuracy, in a pioneering reference, Q. 74:6 *"wa-lā tamnun tastakthir" (do not favour anybody in the hope that he will return you more to cause your wealth to increase)* is cited by Shafi and Usmani to posit that *"riban"* in Q. 30:39 means "gift"

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[473] Sa'īd al-Najjār, 'Abd al-Mun'im al-Namir and Fazlur Rahman, quoted in Saeed, *Islamic Banking*, 41.
[474] Rahman, Riba , 3.
[475] Ibid., 46; Quoted in Drāz, *Ribā*, 9.
[476] Egyptian Civil Law, Article, 9, quoted in Saeed, *Islamic Banking*, 46.
[477] Quoted in Saeed, *Islamic Banking*, 47.
[478] Rahman, Riba, 1.
[479] Q. 22:5; 2:276; 30:39; 23:50; 2:265; 13:17; 27:24; 26:18; 69:10; and 16:92.

and not *"ribā."*[480] The point being missed is that this verse (Q. 74:6) is juridically a clear Qur'ānic source of prohibition of *ribā al-faḍl*, whose prohibition is generally erroneously regarded as only Sunnaically-sourced. Also missed is the point that this verse is philosophically a prohibition of self-emanation. Contributing unwittingly to the on-going "terminological confusion syndrome," Fazlur Rahman classifies *ribā* into "two distinct categories" – with the claimed support of "all the *fuqahā'*" – namely (1) *ribā* prohibited by the Qur'ān, "*ribā* al-Qur'ān" and (2) extension of the Qur'ānic *ribā* to different forms of exchange/transactions, "*ribā al-ḥadīth*" or "*ribā al-faḍl* (excess)."[481]

More gravely, in utter neglect of the intrinsic meaning/connotations of the term, *ribā* is branded by Shafi and Usmani as an evil,[482] or by Fazlur Rahman as "an economic evil."[483] Qur'ānic and *ḥadīth* material, objectively viewed, shows that, while the human practice of *ribā* is not accorded divine favor and is proscribed, it is nowhere branded as an evil *per se*, let alone specifically as an economic evil. It is true that the Qur'ānic and Sunnaic legal injunctions on *ribā* are placed in an exoteric economic setting, but the esoteric implications of these injunctions go far beyond. The only possible connotation of evil in connection with *ribā* comes in the *ribā*-incest equivalence *ḥadīth*. But even this *ḥadīth* has more of a neutral philosophical connotation rather than a pejorative moral connotation of evil. In a more flagrant case of neglect, a Prophetic *ḥadīth*, reported by Ibn Māja, establishing a parallel between seventy-two types of *ribā* and *shirk* (idolatry) is pioneeringly included by Shafi and Usmani in an attached list of *aḥādīth* on *ribā*, but not commented upon at all either by these particular scholars[484] or by others so far.

Classifying the *ribā*-prohibitory verses as (1) *central:* Q. 3:130, (2) *prologue:* Q. 30:39, and (3) *epilogue:* Q. 2:275 ff.,[485] the *'illa* of *ribā*-prohibition is contended by Fazlur Rahman to be explicitly mentioned in this "central and fundamental" verse Q. 3:130 as its "becoming doubled and redoubled."[486] Supporting evidence is cited from two early commentators, Mujāhid and Zayd b. Aslam, who are reported by al-Ṭabarī to have equated doubling and redoubling *ribā* with *ribā al-jāhilīya*, which, it is claimed, the

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[480] Mufti Mohammad Shafi, and Mufti Mohammad Taqi Usmani, trans. Anwar Ahmed Meenai, *The Issue of Interest*. (Karachi: Darul Ishaat, 1997).
[481] Rahman, Riba, 2.
[482] Shafi and Usmani, *Issue of Interest*.
[483] Rahman, Riba, 3.
[484] Shafi and Usmani, *Issue of Interest*.
[485] Rahman, Riba, 5.
[486] Ibid., 6.

Qur'ān was targeting. But this contention denies any universality to the *ribā*-proscription by taking a very restrictive and purely contextual, and even rather shallow, approach to an issue that has very deep philosophical and theological connotations of a universal import. In a very innovative – albeit naïve – answer to the question of why the posited Qur'ānic restricted coverage of atrocious *ribā al-jāhilīya* was extended historically to all interest, it is contended by Fazlur Rahman that "all types of interest [usurious or mild] were a part of the *ribā* system which was by nature exorbitantly usurious and had to be banned *as a whole*, without any exceptions, thus banning milder interest as well." This prohibition of the *ribā*-system's constituent mild interest, it is argued, does not cover modern bank interest which is a separate kind of system: [487]

> Many well-meaning Muslims with virtuous consciences sincerely believe that the Qur'ān has banned all bank interest for all times, in woeful disregard of what *riba* [*sic*] was historically, why the Qur'ān denounced it as a gross and cruel form of exploitation and banned it, and what the function of bank interest [is] today.[488]

In this analysis of pre-Islamic *ribā*, by expanding a constituent part to the status of a full-fledged system, an exception is being advocated, which the Qur'ān itself did not make. The following Qur'ānic verses should be sufficient to deny this human exception:

> Say, have you seen what Allāh has sent down to you from provisions and you have made of it unlawful and lawful. Say, has Allāh permitted you or do you invent a lie against Allāh?– Q. 10:59
>
> And say not concerning that which your tongues put forth falsely: "This is lawful and this is forbidden," so as to invent lies against Allāh. Verily those who invent lies against Allāh will never prosper. – Q. 16:116

In a reformist, virtually evasive stance, Fazlur Rahman "prophesizes" that "in a truly Islamic order, if and when established, there will not be any need for bank-interest or the present banking system, and thus the issue of *ribā* will disappear, but any premature abolition of bank-interest would be suicidal for the economy."[489] On the other hand, dismissing the Liberal thought on permissibility of modern day commercial and business bank interest as apologetic, in a wishful and premature conclusion, a complete consensus of all five schools of *fiqh* and of Islamic economists is posited by Uzair on the complete prohibition of interest in all forms, of all kinds, and for all purposes.[490]

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[487] Ibid., 7.
[488] Fazlur Rahman, "Islam : Challenges and Opportunities", in Alford T. Welch and Pierre Cachia (eds.), *Islam: Past Influence and Present Challenge* (Edinburgh: Edinburgh University Press, 1979), 326.
[489] Ibid., 41.
[490] Muhammad Uzair, "Impact of Interest Free Banking." *Journal of Islamic Banking and Finance*, Autumn 1984, pp. 39-50, 40.

Theoretically, Chapra regards *ribā* as a prominent source of unjustified advantage, literally meaning increase, addition, expansion or growth, but narrowed down to the economic connotation only. He admits that not every increase or growth is prohibited in Islam, but the prohibiting criteria is not identified, merely contending that in *ribā al-nasī'a* the prohibition criteria is "the *predetermined positiveness* of the return," and in *ribā al-faḍl* the requirement of equality in exchanges of homogeneity is to ensure "justice and fair play in spot transactions."[491]

This assertion about the prohibition of the *predetermined positiveness* of the return is not tenable on grounds of the permissibility of rent, which also has the distinctive characteristic of *predetermined positiveness* of the return. And the assertion about the requirement of equality in exchanges of homogeneity is based on a very literal and seemingly apparent meaning of the six-commodities *ḥadīth,* without realizing that this *ḥadīth*, rather than *requiring* exchange of homogeneity with condition of equality and instantaneity, is in fact *positively discouraging* such an exchange of homogeneity by making it completely meaningless for the transacting parties by requiring equality and instantaneity in homogeneity. This requirement is not intended primarily to ensure justice and fair play in spot transactions, but to prevent man from the prohibited domain of exchanges of homogeneity *(ribā)* and confine him to his permitted domain of exchanges of heterogeneity and instantaneity *(bay':* "when the commodities differ, exchange them as you wish, provided the exchange is instantaneous").

On a positive note, the unsuitability and inadequacy of the traditional interpretation of *ribā* is highlighted and argument made by Saeed "for approaching the issues of banking and finance on the basis of *ijtihād* not *taqlīd.*" [492] Specifically, the contention of scholars like Mawdūdī that the Qur'ānic contrast in 2:275 is between *ribā* and profit arising out of a sale transaction is rejected altogether on two grounds. Firstly, "the Qur'ān does not go on to exhort trade *(bay'),* but merely states its lawfulness," and, secondly, the very next "verse, Q. 2:276, contrasts *ribā* and *ṣadaqa*, as the Qur'ān does previously in verse 30:39, where the term *zakāt* appears to be synonymous with

[491] Chapra, *Just Monetary System*, 55-59.
[492] Saeed, *Islamic Banking*, 3.

ṣadaqa."[493] Exegete Rāzī is cited in support of this contrast.[494] The important question why the Qur'ān does not command *bay'* but simply declares it lawful, and whether the contrast of *ribā* is with *bay'* or with *ṣadaqa,* will be treated below (chapter IV).

Citing the vast difference between the modern and the pre-Islamic debtor, in terms of borrowers' regular incomes and borrower protection laws, the rationale *(ḥikma)* of *ribā*-prohibition is posited by Saeed to be the protection of the economically and socially disadvantaged in the community.[495] Treating the Qur'ānic prohibition as moral and humanitarian, but not legalistic, it is argued that the Qur'ān basically prohibited exploitation of the needs of a person in financial difficulty, rather than an "increase" accruing to the creditor in a loan transaction as such.[496] This view is in complete disregard of the linguistic meaning of *ribā* as excess and the implied Qur'ānic reference to a particular distinguishing characteristic of that excess that will be posited in chapter IV. It is further argued that the juristic invention and widespread use by Muslims of *ḥiyal* (stratagems) was resorted to in order to enable borrowing and lending for non-humanitarian purposes in any form at any rate and in any circumstances.[497] There may be a point in the argument that these stratagems had rendered the traditional interpretation of *ribā* almost obsolete. But as far as the essence of the Qur'ānic injunction itself is concerned, the so-called stratagems *(ḥiyal)* may in fact have served to implement rather than thwart the Qur'ānic injunction, as will be shown in chapter V, below.

But, while on the one hand complaining about the historical use of *ḥiyal* to soften the prohibition, on the other, in a move that makes the *ribā*-prohibition completely subjective and flexible, based on the posited but rather inaccurate translation of "*ẓulm*" as "injustice," it is argued that the prohibition rationale/criterion is "injustice" and not "increase" *per se*, implying thereby that a "just" transaction of interest is permitted and an "unjust" transaction even without interest is prohibited. Saeed specifically states:

> The point to be made here is that it is the circumstances of a particular transaction, the parties to such a transaction, the relative power of the parties vis-à-vis each other as well as the economic and social environment within which the transaction takes place, which should determine whether a particular transaction should be prohibited as *riba* [*sic*].[498]

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[493] Ibid., 25.
[494] Rāzi, *Tafsīr*, VII, 90.
[495] Saeed, *Islamic Banking*, 29.
[496] Ibid., 142.
[497] Ibid., 142-143.
[498] Ibid., 146.

Firstly, the suggested approach to *ribā*-determination is unworkable because the attachment of so many provisos to the injunction, many of which are not quantifiable and highly subjective, would render any consensus on the presence of *ribā* in any given situation more difficult than at present – virtually impossible. Secondly, the rationale of injustice (exploitation) has long since been debunked by al-Nawawī on grounds of being equally extendable to profit which he regards as legitimate. Thirdly, the Qur'ānic prohibition of *ribā* is absolute and unconditional. The Qur'ānic prohibitory verses state: "Allāh has prohibited *ribā!"* These verses do not state "Allāh has prohibited *ribā, if*..." Such unconditional injunction cannot have a conditional rationale that may or may not exist in all situations. Fourthly, and most importantly, the advocated moral perspective is not the governing principle behind the *ribā*- prohibition. The governing theological perspective and the derived rationale *(ḥikma)* therefrom, render the above suggested rationale and all the provisos meaningless and irrelevant, taking the discourse out of the attempted *power relationship* into a *conformity relationship.*

At the juridical level, a lack both of perception and of precision prevails. The *ḥikma* is identified as *ẓulm* (linguistic, but not strictly Qur'ānic, meaning of "injustice") and the *'illa* as "financial excess," both of which are not balanced against the severity of the Qur'ānic punishment for violation. Simply the gravity of the sin and the severity of punishment are noted but without explaining the underlying reason for the gravity and severity. Nor is it shown how does the identified *'illa* of "excess" in a loan lead to the identified *ḥikma* – a flouting of the requirement of *uṣūl al-fiqh.* Instead a lengthy discourse is offered, mostly quoting Western economists, on the nature of money and the perceived evil effects of interest on the global economy. [499]

Furthermore, in influential literature on Islamic Economics, the portrayal by Khurshid Ahmad[500] of *nasī'a* as one "kind" and of *faḍl* as "other aspects of *ribā"* is very problematic and greatly hinders the true comprehension of the concepts. Verifiably, both the Qur'ān and the Sunna are prohibiting *ribā,* period – explicit mention of *ribā al-*

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[499] Justice Taqi Usmani, retired judge of the Shari'a Appellate Bench of the Supreme Court of Pakistan, Vice Chairman of the *Fiqh* Academy of OIC, Jeddah, and a Shari'a Advisor to many financial institutions internationally, in his 250-page judgment in Shari'a Appellate Bench of the Supreme Court of Pakistan, *Judgment on Ribā,* December 23, 1999 (Islamabad: Advanced Legal Studies Institute,www.nyazee.com,, 2000), 429, 433-452.

[500] Khurshid Ahmad, Pakistan Senator, Nā'ib Amīr of the Jamā'at Islāmī, Pakistan, founder of the Islamic Foundation, Leicester, England, and one of the nine 'Makers' in John L Esposito and John O. Voll, *Makers of Contemporary Islam* (New York: Oxford University Press, 2001), in his *Towards The Monetary and Fiscal System of Islam* (Islamabad: Institute of Policy Studies, 1981), 13.

nasī'a and *ribā al-faḍl* is absent from both sources. The Qur'ān does appear to point towards *nasī'a* in what apparently is only a contextual usage of the term *ribā* in 2:279, with reference to entitlement to capital sums, and in 3:130, with reference to its doubling and redoubling. These are, at best, only indirect references to *nasī'a* (delay). In fact, there is instead a more direct reference to *faḍl* (excess) in both these verses – excess over capital sums (Q. 2:279) and excess through doubling and redoubling (Q. 3:130). Given this, how can it be claimed that the Qur'ānic coverage is directly of *nasī'a?* Notwithstanding this, the Qur'ānic usage of the term *ribā* is very abstract and unelaborated in all the prohibitory verses. The Sunna, through the *ribawī*-commodities *ḥadīth*, is simply elaborating the Qur'ān by showing through concrete example that both *nasī'a* and *faḍl* are operative in *ribā;* the *Sunna* is not emphasizing "other aspects of *ribā* generally termed *ribā al-faḍl.*" It might be argued that the Qur'ānic reference is to the Jāhilīya lending practice, which like any other lending, involved *nasī'a* (delay). But, obviously that Jāhilīya lending practice also involved *faḍl* (excess). In fact, *nasī'a* (delay) and *faḍl* (excess) both operate in *ribā* in varying permutations: *nasī'a* only; *faḍl* only; or *nasī'a* and *faḍl* both. It is therefore not correct to label *nasī'a* as exclusively Qur'ānic and *faḍl* as exclusively Sunnaic. As aptly put by Nyazee:

> *Ribā al-faḍl* and *ribā al-nasī'ah* are prohibited by the Qur'ān, just as they are prohibited by the *Sunnah.* In fact, *ribā* of the Qur'ān and *ribā* of the *Sunnah* are exactly the same. The *Sunnah* is merely acting as a commentary.[501]

In a departure from conventional scholarship, Abdulkader Thomas associates *ribā* with *shirk* on grounds of granting money a self-propelled or intrinsic value gain based merely on passage of time without any God-given merits, without effort and without requiring God in order to achieve it.[502] He does not, however, develop this premise any further. But elsewhere, rather inconsistently he calls *ribā* a social disease – an illness infecting man's relations with man and with God.[503]

It can only be concluded from the above review that, mired in controversy, polemics and shallowness of discourse, contemporary Muslim scholarship on *ribā* is on the whole a hindrance rather than a help for theoretical purposes.

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[501] Nyazee, *Ribā and Islamic Banking,* 27.
[502] Abdulkader Thomas, "What is ribā?" in Abdulkader Thomas, ed., *Interest in Islamic Economics* (London; New York: Routledge, Taylor & Francis Group, 2006), 127.
[503] Ibid., American Journal Islamic Finance, www.ajif.org, section on CV of Abdulkader Thomas.

II.7.ii.b. Orientalist Contribution

The post–colonial Orientalist scholarship has dealt with the Islamic notion of *ribā* in references which are only scattered, rather rudimentary, and even contradictory and non-cohesive. In spite of sharp, penetrating insights elsewhere, the Orientalists have not probed the rationale of one of the defining prohibitions in Islam – prohibition of *ribā* – in any depth or breadth.

Christiaan Snouck Hurgronje (1857-1936) recognizes *ribā* as an abuse connected with trading practices.[504] Contradictorily, D. S. Margoliouth (1858-1940) regards its prohibition both in Islam and in medieval Church as injurious to the economy.[505] Even so, Hurgronje sees the *ribā*-prohibition exclusively in its economic connotation, with no reference to the moral, philosophical or theological perspectives. On the other hand, Henri Lammens (1862-1937) does refer to the "severity" of the prohibition,[506] but without either investigating its rationale in Islam or linking it to the earlier similar prohibitions in Judaism and early Christianity. Instead, he points to the escape routes from this "severity" invented by Muslim jurists in the form of *ḥiyal*.[507] Similarly, Richard Bell (b. 1876) does not delve into the rationale of *ribā*-prohibition beyond stating that Q. 2:276 is a "dissuasion from taking usury because of its *moral consequences* at the Judgment."[508]

Joseph Schacht (1902-1969) refers to the Qur'ānic recognition of *ribā* as a practice of unbelievers and to the demand for its abandonment as a test of belief. [509] But he points to what he calls "an ignorance of the correct interpretation" of the Qur'ānic prohibition in the traditions, borne out by what he labels as a tendentious tradition that the Prophet could not expound the *ribā* verses before his death. He regards the *ribawī*-commodities *ḥadīth* as expressing the view that later became authoritative. He notes that in the implementation of this *ḥadīth,* "particularly conscientious people went even further in their limitation of *ribā* than the generality ... Still stricter was the view that

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[504] Christiaan Snouck Hurgronje, *Islam. (Der Islam,* in *Lehrbuch der Religionsgeschichte,* 4th ed., ed. A. Bertholet and E. Lehmann, Tübingen: J. C. B. Mohr (Paul Siebeck), 1925, i, 648-756; transl. J. Schacht), in *Selected Works of C. Snouck Hurgronje,* ed. G.H. Bousquet and J. Schacht (Leiden: E. J. Brill, 1957), pp. 1-108, 21.
[505] D. S. Margoliouth, *Mohammed* (London; Glasgow: Blackie & Sons Limited, 1939), 83.
[506] H. Lammens, trans., Sir E. Denison Ross, *Islam: Beliefs and Institutions* (London: Methuen & Co. Ltd, 1929), 63.
[507] Ibid., 64.
[508] Richard Bell, *A Commentary on the Qur'ān,* ed. by C. Edmund Bosworth and M.E.J. Richardson, (Manchester: University of Manchester, 1991), I, 58.
[509] Joseph Schacht, *Shorter Encyclopaedia of Islam,* 471-472.

the exchange of even the same quantities of the same thing ... was *ribā.*" These views are in conformity with the interpretation in this work that this *ḥadīth* is in fact prohibiting the exchange of homogeneity.

Schacht notes that, in Islam, *ribā* is one of the gravest sins, the least of its many forms being as bad as incest. But in spite of this and the severe punishments prescribed, tradition foresees that *ribā* will prevail. Schacht makes no attempt to interpret the *ribā*-prohibition or to look into the rationale *(ḥikma)* of the injunction. He admits, "the inner significance of decrees of the divine law naturally cannot be understood by the mind of man." Schacht does not offer a coherent or unified theory of *ribā.* He simply makes a distinction between the original Qur'ānic injunction and the later development of doctrine. He states that the relevant passages of the Qur'ān were directed against "the current practice of Mecca," which he deems to be "*adding* the *accumulated interest* to the capital which was to be repaid at a fixed term, and in *doubling* the *debt* every time the debtor asked for and received an extension of the term."

Incidentally, Schacht's account of Meccan practice is at odds with that of Ṭabarī (no accumulated interest for the initial term)[510] and also even with the contradictory account of al-Jaṣṣāṣ (accumulated interest for the initial term, *but no doubling thereafter*).[511] But, he adds, the ancient schools of law, by a common development of doctrine but with differences over details, *extended* the law of "usury" to all exchanges, with not only immediate delivery of the two lots, but also absolute equality in quantity if of the same species, which he calls a "sweeping rule." The Meccans, however, kept more closely to the original circumstances of the Koranic prohibition and held that there could be no "usury" unless there was a time-lag in the transaction.[512] They had therefore no objection to the exchange of one dīnār for two, or of one dirham for two (why the exchange?), if both lots were delivered immediately, and only objected to it if the delivery of one of the lots was to be postponed.[513]

While justifiably emphasizing the role of "delay" *(nasī'a)* in *ribā*-generation, Schacht presents, but abstains from comment on, what is clearly a very naïve description

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[510] Ṭabarī, *Jāmi'*, IV, 59.
[511] al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, I, 465.
[512] Shāfi'ī, *Kitāb Ikhtilāf al-Ḥadīth,* 241 f.
[513] Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1950), 251.

of an alleged historical practice and its underlying human motivation. Who in his right senses would even consider, let alone conclude, an exchange of one dīnār (or dirham) for two of the same instantaneously? These descriptions are pure concoctions to support a shallow and misplaced interpretation of the *ribawī*-commodities *ḥadīth* and have made a complete mockery of the profound truths underlying the Qur'ānic and Sunnaic injunctions on *ribā*.

For N. J. Coulson,[514] the "so-called legal matter of the Qur'ān consists mainly of broad and general propositions," including the particular and "more peculiarly Islamic precept" of usury *(ribā)* which is simply declared to be forbidden *(ḥarām)* without giving any "indication of the legal incident of the practice." Jurisprudentially, later "usury was a purely civil matter, the transaction being a type of invalid or unenforceable contract." Referring to the absence in the Qur'ān of temporal punishment for usury, he makes the categorical assertion that "... the primary purpose of the Qur'ān is to regulate not the relationship of man with his fellows but his relationship with his Creator."[515] As will be clearer below (chapter IV), this statement is not only at odds with the basic Qur'ānic *ribā* injunction (Q. 2:275), which categorically declares *ribā* as *ḥarām*, i.e., the regulator of man-Creator relationship and *bay'* as *ḥalāl,* i.e., the regulator of man-fellow relationship, but Coulson, citing Schacht, seems to contradict himself by declaring: "the prohibition of usury was, of course, an anti-Jewish measure in part,"[516] i.e., a regulator of man-fellow relationship. Further, this declaration reduces *ribā* injunction to a purely temporal political level, depriving it of any philosophical-theological content. On a technical level, Coulson gives a definitional twist to *ribā* by associating it with gambling:

> ... Qur'ānic prohibition of gambling had become merged with the prohibition of *ribā* to give the latter a much wider import than simple usury or interest on capital loans. It was now interpreted to cover any form of profit or gain which was unearned, in the sense that it resulted from *chance*, and which could not be precisely calculated in advance by the contracting parties.[517]

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[514] N.J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964; Delhi: Universal Law Publishing Co. Pvt. Ltd. First Indian reprint, 1997).
[515] Ibid., 11-12.
[516] Ibid., n. 3, 17.
[517] Ibid., 38-39.

This association of *ribā* with *chance* is contrary to the conventional understanding where *ribā* is associated with *certainty* and its diametrically opposed *bay'* with *uncertainty* (chance, risk).

Finally, while admitting the extremely rigorous development of Qur'ānic principles in the doctrine of *ribā* by the nascent Muslim jurisprudence, Coulson questions the very authenticity of this jurisprudence by declaring:

> And ultimately these accretions of juristic interpretation had all come to be artificially expressed, particularly through the growth of Traditions, as manifestations of the divine command. As has so often been suggested in recent times, it must be the primary task of modern jurisprudence to ascertain the precise limits of the original core of divine revelation. [518]

Similarly, Coulson ascribes the development of the *ribā* doctrine to the rigid interpretation of the Qur'ānic norms by the doctrinaire group:

> [These interpretations] resulted in the rule that the barter of certain commodities – gold, silver and staple foodstuffs – against a commodity of the same species was only permissible when the offerings on both sides were exactly equal in weight or quantity and when delivery on both sides was immediate. Early Medinan doctrine had allowed the exchange of gold ore against a smaller weight of gold coinage, the difference covering the cost of minting. But to the doctrinaire group this constituted *ribā* and was therefore prohibited. This approach naturally resulted in the law of the doctrinaire group assuming a highly negative character, in essence if not in form, to the degree that it lost touch with practical needs and circumstances. It is difficult to see any point or purpose in a transaction where 'Umar takes 20 lb. of Zayd's wheat in exchange for 20 lb. of his own wheat in the same session.[519]

Coulson is right about the meaninglessness of this transaction of equality, homogeneity and instantaneity. But here, both the doctrinaire group and Coulson display a very superficial understanding of the authentic Prophetic *ribawī*-commodities *ḥadīth*. The simple question is how and why the Prophet could have ordered such a transaction? What they are missing, as explained below fully,[520] is that this *ḥadīth* is *not ordering* this equal and instantaneous exchange of homogeneity, but rather *prohibiting* this exchange, not by a direct negative command of "do not do this," but by the indirect positive command of making the exchange meaningless and purposeless. While Coulson does refer to the divergent *madhāhib 'ilal* (effective causes) behind the *ribā injunction*,[521] he makes no attempt to look into its *ḥikma* (rationale).

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[518] Ibid., 224.
[519] Ibid., 41-42.
[520] See p. 247, below.
[521] Ibid., 79.

Montgomery Watt, in a historical analysis of the doctrine, deals with *ribā* in a conventional but rather contradictory manner. In a long excerpt[522] he contradicts himself twice. First, using Schacht and Richard Bell as additional support, he categorically asserts that the *ribā*-prohibition was directed not against the rich merchants at Mecca, but "primarily against the Jews" at Medina where "the prohibition was first made." But towards the end of the passage he, contradictingly, talks of "*Qur'ānic* criticisms of the pagan Meccans' attitude to money." Second, he does refer to the Prophet's last sermon at Mecca (where all usury *[ribā]* was declared to be illegal), yet in the same passage he declares that the Prophet had no intention of hindering legitimate trade or of revolutionizing the financial practices of Mecca. Watt recognizes much historical obscurity and both practical and theoretical discussion on the meaning and application of *ribā*. He seems to provide a historical basis for the contemporary Liberals' argument that the Qur'ānic prohibition of *ribā* is directed against interest on consumption loans and not on production loans. Accordingly, for him, the prohibition rationale is mutual help among the brotherhood of believers.

Bernard Weiss equates *ribā* with "unlawful gain" in the sense of denial of the principle of just exchange, which he declares to be fundamental to Muslim juristic thinking about contracts, and notes a moralistic bent of the jurists in this discourse. He ascribes to *ribā* a meaning somewhat broader than the usual translation as usury by including in it increase in every exchange of homogeneity with delay. He reads behind the juristic scruples surrounding the development of the *'ilal* ("decisive characteristics"), a *ribā*-prohibition rationale of preservation of human well-being and property and prevention of exploitation. Yet he declares *ribā* to be clearly vital to, and widely practiced in, commercial life in medieval Islam through the juristically condoned "*ḥīla*" of double-sale *(bay'atān fī bay'a)*, "which accomplished the same result as *ribā* without actually constituting *ribā* from a strictly technical point of view." He cites Schacht[523] to the effect that the *ribā* transaction was thus replaced with two separate transactions, each in itself perfectly permissible, the combination of which produced the same result

[522] Montgomery Watt, *Muhammad at Medina* (Oxford: Clarendon Press, 1956), 296-298.
[523] Schacht, *Introduction*, 79.

as the forbidden transaction.[524] Coulson also makes the same point with an elaborate illustration.[525]

The crucial point being missed by Weiss, Schacht and Coulson is that the Prophetic authentic *Barnī*-dates *ḥadīth* fully corroborates this business arrangement. Instead of a direct exchange of homogeneity resulting in an excess, a sale and a purchase (both exchanges of heterogeneity) is being prescribed here to achieve the same end result, but with a different method. This being an authentic Prophetic *ḥadīth*, it cannot be a *ḥīla* (legal stratagem). It is clear, therefore, that the object of the prohibition is not the end *result* but the underlying *method* of the transaction(s). The subtle point, invariably ignored, is that *ribā* refers to homogenous excess generation, and not to the generated excess *per se*, although as a technical term it has acquired the latter meaning rather imprecisely. In Q. 2:275, having been juxtaposed against *bay'*, which is indisputably a *process*, *ribā* is also a *process*, not its *product*. Had *ribā* referred to the *product* (interest), its Qur'ānic juxtaposition would have been against *ribḥ* (profit), the product of the *process* of *bay'*.

For J. N. D. Anderson, *ribā*, which is commonly translated as "usury," *basically* means *any fixed rate of interest*.[526] Contradictorily, Coulson calls the *ribā* doctrine *basically a prohibition of usury*, extended rigorously and systematically by the jurists to cover interest.[527] Anderson then adds an ethical perspective by calling *ribā* or interest a "pejorative term." [528] He regards the complete prohibition of fixed rates of interest as a rigid interpretation of the classical doctrine, and an intolerable restriction on trade "for merchants throughout the whole Muslim world."[529] With this perception, he confines the scope, and thus the rationale, of *ribā* to "exploitation of a brother Muslim's time of need," exempting therefrom "modest rates of fixed interest," which, in line with the contemporary Saudi Arabian rationalization, he would prefer to label as "commission" or "payment for services rendered."[530] He does, however, raise an important yet-unraised question of methodology about the comparative "basic authority" and "equal universal

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[524] Bernard G. Weiss, *The Spirit of Islamic Law* (Athens, Georgia; London: The University of Georgia Press, 1998), 161 f.
[525] N.J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago; London: The University of Chicago Press, 1969), 87-88.
[526] J. N. D. Anderson, *Law Reform in the Muslim World* (London: The Athlone Press, 1976). n. 22, 194.
[527] Coulson, *Conflicts and Tensions*, 69-70.
[528] Anderson, *Law Reform*, 100.
[529] Ibid., 10.
[530] Ibid., 194.

and permanent applicability" of the *ribā*-prohibitory Qur'ānic verses. The only answer is that all Qur'ānic injunctions, even when contextual in nature for ease of comprehension, have a universal and permanent import. The divine revelation does not provide any scale to measure the comparative basic authority of the divine injunctions. He further sees the same reservations about authority, universality and permanent applicability in the Prophetic Sunna, which is further complicated by the question of authenticity and variance.[531] Again, the only response can be that the development of law from the primary sources of the Qur'ān and the Sunna cannot proceed without ground rules, which are the equal authority of the entire Qur'ān and the authority and authenticity of all traditions included in one of the six *ṣaḥīḥ* collections of *ḥadīth*.

The above survey of input of Orientalist and Muslim scholarship shows the sketchy and inconclusive nature of the contemporary discourse on the *ribā* paradigm, which again is not conducive to theory development.

II.8. Legal Extrapolation

Legal contribution to the usury discourse, although one of the oldest, is nevertheless the least productive for theory development. It is essentially a paradigm of limitation and promulgation, and even when of prohibition, not of exposition. It limits and even prohibits usury, but, conforming to the typical characteristics of the genre, does not formally indicate why – the question that is at the root of this thesis.

II.8.i. Ancient Law Codes

In the developed secular juristic cultures of the ancient world, excepting Israel, and also later, the practice of usury is permitted, but varying limits are placed on the maximum legally chargeable rate. The prohibition is limiting in nature; it applies only after a certain point. The meaning of the term is "charge for the use of money," and hence the application of the concept is accordingly only financial/economic. The underlying rationale of the limitation of the practice is the concern of the ruler/State for the welfare of the poor. The consequence of any violation, therefore, is civil law penalties.

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[531] Ibid., 178.

The ancient so-called Law Codes incorporating this model of limiting the maximum chargeable rate of usury, in varying forms and measures, are summarized in Appendix 10 (a).[532] The Laws of Eshnunna (c. 1925 B.C.), however, are the first *extant* legal source dealing directly with loans at interest. They begin a four thousand year history of legislation on interest-taking.[533] The most *complete* extant treatment of loans at interest is the Code of Hammurabi (1728-1686 B. C.). Significantly, in this Code, interest was thought of as "offspring." Hammurabi and later legislators, in a striking parallel to the later Islamic requirement in Q. 2:282 were very cautious about the formalities of loan contracts and the honest keeping of records. The Code stipulated that a man who lends without drawing up a written contract or without calling in witnesses has no legal right to the capital or the interest. The Code also deals with the abusive practice of anatocism, taking of interest on interest (compound interest).[534]

A review of ancient Near-Eastern practice reveals that in more than eighty percent of the temple loans in ancient Babylonia, the god of justice Šamaš takes on the role of creditor par excellence by contributing to the standardization of interest rates, making the "interest of Šamaš " a frequent phrase in loan texts.[535] "The temple loans allowing the poor to repay whenever they had the money, instead of insisting on a definite date" [536] echoes the later Islamic recommendation of *qarḍ ḥasan* (open-maturity loan).

The ancient Law Codes lack a deductive consistency. They contain few general rules, no abstract definitions, and no strictly logical plan. There are repetitions, lacunae, and even contradictions. Maloney sketches the ancient Near-Eastern legal practice, (which bears a striking parallel to the typical Islamic legal system), as follows:

> Ancient Near-Eastern law is therefore not so much a science as an art, enabling the jurist to resolve practical daily problems. He does not deduce his conclusions from abstract principles or appeal to precedents in judge-made law. Rather, the code sets before him concrete hypotheses taken from reality and indicative of a solution. The jurist discerns which circumstances are the same, which are different, which have a bearing on the solution of the case, which do not. Then he makes a decision. This legal method, in which a constant factor (e.g., a fugitive slave) is examined in successive cases with varying circumstances, is evident not just in the codes mentioned above, but also in *ana ittišu* [a series of a scribal school-book text preserved in the

[532] As quoted in George Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh: Biblical Colloquium, 1955), 9, these ancient Law Codes, limiting the usury rate, are the Ur-Nammu Code (c. 2050 B.C.), the Code of Eshnunna (c. 1925 B.C.), the Code of Lipit-Ishtar (c. 1860 B.C.), the Code of Hammurabi (c. 1700 B.C.), the Hittite Code (c. 1450 B.C.), the Assyrian Code (c. 1350 B.C.), and the Covenant Code (c. 1000 B.C.).
[533] Maloney, Background,14, 16.
[534] Ibid.,20, 23-24.
[535] Ibid., 35.
[536] Ibid., 36.

> library of Ashurbanipal] where lists of circumstances modifying cases are provided for students. For the jurist using the method, the legal prescriptions are exemplars. The general rules which inspired them remain implicit in the more or less large number of cases and decisions given in a code.[537]

In the face of this legal method and the interest-rate-limiting character of the ancient law codes, it is futile to look for a coherent ancient Near-Eastern legal theory of usury, beyond the stated usury prohibition rationale of "welfare of the poor" and the clue to an unstated philosophical rationale in the Code of Hammurabi ("offspring"), which will be further explored in chapter IV.

II.8.ii. Greek/Roman Legal Regulations

As detailed in Appendix 10 (b), with two Roman exceptions, in spite of the philosophical discourse, the Greek and Roman legal framework did not recognize usury prohibition as a precept of divine law and hence viewed it merely as a rate limiting mechanism.

Greek civil law did neither prohibit usury nor impose maximum rates.[538] On the other hand, the beginning of Roman legal involvement in the usury problem was a political and social issue.[539] The first legal intervention on usury occurred through the famous Twelve Tablets (Leges Duodecim Tabularum), c. 451- 449 B.C., which are the foundation for the whole fabric of Roman Law, and which represented a codification and promulgation at the behest of the plebeians of what had formerly been customary law administered and interpreted by the patricians. These interventions continued in a checkered fashion as rate limiting only until the Lex Genucia (342 B.C.), which prohibited usury altogether. However, the law fit in poorly with the conditions of the time, and was "honored more in the breach than in the keeping. The law-maker had tried, and failed, to eliminate what was already a necessary part of the Roman economy."[540]

Finally, in the Christian era, legal compliance with, but later abrogation of, other-worldly prohibition of usury as part of oriental imperial law came about. Basil the Macedonian (867-886) repudiated and banned interest-taking for any reason whatsoever

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[537] Ibid., 46.
[538] T.W. Taylor and J.W. Evans, "Islamic Banking and the Prohibition of Usury in Western Economic Thought," *Nat. West Quarterly,* Nov., 1987, 16, quoted in Buckley, Theological Examination, 82.
[539] Maloney, Background, 100.
[540] Ibid., 103; P. Louis, *Ancient Rome at Work,* trans. E. Wareing, (New York: Barnes and Noble, 1965), 87.

as unworthy of a Christian state because it was prohibited by *divine law*. But Basil's decree caused such havoc that his successor, Leo the Wise (886-911), abrogated it (with great delicacy) and set the maximum rate of interest at 4%:

> Certainly it would be excellent and salutary if the human race, *being conformed to the laws of the Holy Spirit,* had no need for human regulations. Nevertheless as it *is not granted to all to be raised up to the heights of the Holy Spirit and to hear the echo of the divine law,* but actually there are very few who arrive there through the practice of virtue, we ought to be quite happy if men at least live comfortably to human laws. *The judgment of the Holy Spirit condemns in an absolute fashion what is called interest on loans of money,* and knowing that, the Emperor of eternal memory, our father, decided to forbid, by a special measure, the receiving of interest. But that prohibition became, because of extreme poverty, a cause, not of betterment, as was the legislator's aim, but of perversion...
>
> Leo concluded: *Without wanting to condemn the law in itself (something which would not please God),* granted (as I have said) that *human nature cannot attain the sublimity of the law,* we abrogate this enactment which was *too perfect,* and we permit, on the contrary, a return to the practice of loans of money at interest, as the ancient legislators had authorized.[541]

It is informative to note from this passage – a theological construct – that the other-worldly prohibition of usury was at least recognized, both in promulgation and in abrogation, as an attempt to conform to divine law which was "too perfect" and whose echoes were not audible to all, who could not be raised up to the "heights of the Holy Spirit," as mentioned in the citation above.

As is obvious from the above presentation, Greek/Roman thought and legislation on usury was mainly what might be termed as a rate limiting paradigm without any attempt at a well-rounded theory of prohibition, beyond the theological recognition, by Basil the Macedonian and Leo the Wise, of the prohibition as the divine law. To this extent, then, the Roman usury paradigm may be characterized as possessing "vertical depth," but, being a financial paradigm only, still lacking "horizontal spread."

II.8.iii. Earlier Conciliar Legislation [542]

As the Church developed in power, – especially after the conversion of the Emperor Constantine in 311 CE – antagonism against usurious lending gradually hardened into prohibition within the canons of the early church councils.[543] At first it dealt only with clerics, who, as guardians of other-worldly property, may have had

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[541] Leo the Wise, *Novellae,* 83, translated by Maloney in his, Background, n. 110, 112-113.

[542] This section also draws heavily and liberally on the doctoral dissertation of Rev. Robert P. Maloney (Maloney, Background, 180-203) for its original research.

[543] Council of Elvira (306); Council of Arles (314); First General Council of Nicaea (325: in its seventeenth canon); Council of Carthage (348: the earliest African council from which a collection of canons survive, in its thirteenth canon); Council of Laodicea (4th c.: in its fourth cannon); Sixth Council of Carthage (401); Rabbula, the bishop of Edessa (412-435); Council of Tours (461); and Council of Aix-la-Chapelle (789) under Charlemagne (742-814), as detailed in Appendix 12 (e).

practical difficulties and temptations.[544] Therefore, as pointed out by Maloney, concurrent with the Fathers' battle against the recurrent problem of usury, the local and provincial church authorities as well as the general Council of Nicaea issued several authoritative pronouncements condemning usury. This other-worldly legislation prohibited what civil legislation allowed, both in east and west. But in spite of severe threatened penalties, both clerics and laymen sought profit from loans, ignoring the prohibitions in these earliest conciliar other-worldly pronouncements.

These religious "Church" initiatives ultimately found secular "State" backing. As pointed out by Buckley:

> The Christian teaching found expression, for the first time in history, in the *secular* legislation of the State. Citing Nicaea, '*Nec hoc quoque*', the Apostolic Canons, and the 'law of the folk', the capitularies of Charlemagne forbade usury to everyone. That the State should ban usury for laity, as well as clergy, is an important event. Here in the formative age of medieval civilization the rule with regard to usury is acknowledged by the secular power as obligatory on all Christians. From this time on both Church and State press the fight against usury.[545]

Tracing the further historical developments, Buckley continues:[546]

> Several times the Holy Roman Empire renews the basic prohibition... The Church also continues the battle by means of Episcopal capitularies, for example, the Paris Synod of 829 showed a wider use of biblical authorities, and the Synod of Pavia in 850 took the sharpest methods yet against lay usurers. In 889 an Episcopal capitulary contained the first legislation referring to usury taken by means of a contract.[547] Similar sanctions were invoked against usurers in England by the Council of Northumberland, Alfred the Great (849-899), and Edward the Confessor (1004-1066).[548]

Evaluating the historical developments of the period from 750 to 1050 CE, which is regarded by Noonan as primitive, Buckley[549] cites the positive developments of this era as: (1) enactment by the Holy Roman Empire of the usury prohibition as the law of the land; (2) local legislation against usury by bishops; (3) collection of biblical texts against usury; (4) rejection of the defense that the usurer is entitled to a reward for helping the borrower productively; and (5) papal condemnation of usury applicable to laymen. Of the negative developments, Buckley cites: (1) lack of papacy sponsorship of general legislation on usury; (2) bare definition of usury; (3) non-recognition of usury as a sin against justice; (4) maintaining of the generic category of usury as *turpe lucrum*

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[544] Buckley, Theological Examination, 83.
[545] Ibid., 84.
[546] Ibid., 84-85.
[547] Noonan, *Scholastic Analysis*, 16.
[548] Mills, Interest in Interest, 11.
[549] Buckley, Theological Examination, 85.

(shameful gain); and (5) denunciation of the sin of usury more as a form of avarice or uncharitableness. Around 1050 CE, she maintains, the Christian teaching on usury enters a second stage of development with the advent of the Scholastic analysis of usury in the medieval period.

The Christian teaching on usury, in its conciliar form, has been summarized by Maloney thus:[550]

(1) A continuous string of councils in both east and west condemned usury.

(2) The councils considered usury grave sin and often imposed severe penalties (excommunication and deposition) on violators of the prohibition.

(3) Even in the earliest conciliar legislation usury was condemned for both clerics and laymen.

(4) Councils used sacred scripture, especially Ps. 15:5, to support the condemnation, viewing usury as contrary to the law and the prophets.

(5) Conciliar legislation was not merely preventative, nor was it particularly successful – usury was common among both clerics and laymen.

As is clear from the above presentation, the conciliar legislation merely legislated against a sin; it neither went into the question of the *ratio legis* nor of the rationale of the prohibition. Therefore, Christian conciliar legislation alone cannot be of any help in the development of a comprehensive theory of usury.

In fact, the entire Judeo-Christian tradition on usury prohibition did not feel the need to go into the question of *ratio legis.* Unlike the Islamic prohibition apparently applicable to money and initially to six specifically named commodities, the Judeo-Christian prohibition applied *ab initio* to everything physical – money, produce, anything else. There was, therefore, no need felt for analogical extension of the prohibition on physical items and hence no apparent use for a *ratio legis.* Only the Islamic legal repertoire is brimming with copious discussions on *ratio legis ('illa).* However, for all the monotheistic religious traditions – Judaism, Christianity, Islam – the identification of the *ratio legis* of the usury *(marbīt, ribā)* prohibition is essential because the theological prohibition extends beyond physical objects to concepts, attitudes and practices as well, which have not been identified so far and which

[550] Maloney, Background, 201-203.

obviously cannot be identified without an operative *ratio legis.* This task will be attempted in this work in chapter IV.

II.8.iv. Arab Jāhilīya Regime

The pre-Islamic Arab Jāhilīya regime, governed by tribal customary law, had no intellectual contribution to the *ribā* discourse. Moreover, their only literary production, highly eloquent oral poetry, had no place for a mundane topic such as *ribā.* They were reportedly only practitioners of *ribā.* Yet, being the direct audience of the divine revelation through Prophet Muḥammad, their perceived financial practices – whatever their actual historical content – became a focal point of the *asbāb al-nuzūl* of the *ribā*-prohibitory verses of the Qur'ān, and came to acquire the technical designation of *ribā al-jāhilīya* in Islamic *fiqh* and *tafsīr* works. Muslim exegetical and juridical endeavor on *ribā*, therefore, came to rely heavily on these perceived pre-Islamic Arab Jāhilīya financial practices that warrant an examination.

Whether or not the immediate target of the Qur'ānic injunctions on *ribā* was the localized Jāhilīya context or a more generalized universal context depends on what was the social and commercial status of pre-Islamic Mecca and the role of *ribā* in it. Was the social and commercial atmosphere of Mecca conducive to widespread practice of usury? Was usury a standard personal and business financial practice, or was it an instrument of coercion and exploitation of the poor by the rich? The question of the social and commercial status of Mecca is the subject of intense debate between the traditionalist (mainly Muslim) and revisionary sources (mainly Orientalist, e.g., Patricia Crone), which place the city variously between one extreme of a mature financial and trading center with widespread practice of *ribā* both for consumption and production loans, and another extreme of a town of no significance at all, except the sanctuary. Neither case is supported by reliable historical evidence.

The Muslim sources focus on Ṭā'if, the home of the Thaqīf tribe, and on Mecca, the home of the Quraysh and its branch Banū Mughīra tribe, as two mature commercial and financial centers. Significant portion of the population of Ṭā'if is believed to have been Jews who, upon expulsion from Yemen and Yathrib, had reportedly settled there

for business purposes.[551] Belonging to the Thaqīf tribe, their main business was *ribawī* transactions.[552] For some of them, this was the exclusive business.[553] *Ribā* being thus ingrained in their economic life, the Holy Prophet had stipulated in the Ṭā'if Peace Treaty not only its complete abolition for future dealings,[554] but also the giving up of all present *ribā* claims.[555] The *ribawī* dealings of the Thaqīf, both in cash and in kind, were not confined to the inhabitants of Ṭā'if but also extended to the trading population of Mecca as well, with Banū Mughīra being their permanent clients.[556] It is even believed that the Quranic verse 2:278 ("Be afraid of Allāh and give up what remains of *ribā* ...") was revealed in response to the dispute between the Thaqīf and the Banū Mughīra over payment of a large amount of outstanding *ribā* after acceptance of Islam.[557] Debt recovery, both in cash and in kind, involved doubling of the principal and interest upon initial default.[558] However, it is not clear how the doubled and re-doubled debt was ultimately settled, when even the initial debt was incapable of settlement. The sources are not in agreement on the ultimate shape of the loan disposition and the consequences of final default. In view of this technical incompleteness of the reports, it appears that these "historical" descriptions have been tendentiously invented and tailored only to the extent necessary to provide a *sabab al-nuzūl* for the "doubling and re-doubling" *ribā* verse of the Qur'ān.[559]

Mecca, on the other hand, devoid of agriculture, forests, minerals and manufacturing, is said to have been forced into trading as a means of livelihood, [560] thus becoming a principal trading center.[561] The institutions of the sanctuary and pilgrimage, the *'Ukāẓ sūq*, *khafāra* and *iylāf* contributed to this role.[562] This trading city gradually acquired the status of a banking and financial clearing center with the growth of the necessary institutions and traditions.[563] This had made *ribawī* dealings commonplace in

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[551] Aḥmad ibn Yaḥyā Balādhurī, *Futūḥ al-Buldān*, (Cairo, 1932), 67.
[552] Ibid.
[553] Abū Ḥayyān Muḥammad ibn Yūsuf al- Andulisī, *al-Baḥar al-Muḥīṭ fī Tafsīr al-Qur'ān* (al-Riyāḍ: Maktabah wa-Maṭābi' al-Naḥr al-Ḥadithah, 198?), I, 335.
[554] Balādhurī, *Futūḥ al-Buldān*, 67.
[555] Jalāl al-Dīn Suyūṭī, *al-Durr al-Manthūr* (Bayrūt: Dār al-Ma'rifah, 197?), I, 336; Ṭabarī, *Tafsīr*, III, 66.
[556] Ṭabarī, *Tafsīr*, IV, 55.
[557] Ibid., III, 66.
[558] Ibid.
[559] Q. 3:130.
[560] Ṭabarī, *Tārīkh*, 1602.
[561] Philip Khuri Hitti, *History of the Arabs* (London: Macmillan, 1937), 104.
[562] Muhammad Hamidullah, *'Ahad Nabawī main Nizām Ḥukmrānī*, 236-239.
[563] *Shorter Encyclopaedia of Islam*, s.v. Mecca, 368ff.

Mecca. Schacht, quoting Lammens,[564] subscribes to the view that "transactions with a fixed time limit and payment of interest as well as speculations of all kinds formed an essential element in the highly developed trading system of Mecca."[565] For the Meccans, *ribawī* business was like a commercial business, and, like *bay'*, was a means of exchange.[566] The Quraysh had highly developed their *ribawī* business, which was not confined to their own tribe but extended to other tribes of the Ḥijāz. 'Abbās ibn al-Muṭṭalib and Khālid ibn Walīd had, before the prohibition, operated a *ribawī* lending business covering both Mecca and Ṭā'if, lending particularly to Banū 'Umrū ibn 'Umayr, a branch of the Banū 'Awf.[567] 'Uthmān ibn 'Affān, a wealthy trader, also operated a *ribawī* lending business.[568] Ṭabarī reports that the evil of *ribā* had become so common in pre-Islamic times that the Quraysh had to be warned by their elders against using any *ribā* earnings in rebuilding the *Ka'ba* shrine in c. 605 CE. [569] Abū Wahb ibn 'Amr ibn 'A'idh, an uncle of the Prophet's father, warned them: "O people of the Quraysh, do not put into its foundations anything which is not pure or permissible, do not fill into it anything earned either by a prostitute, or through a transaction involving *ribā*, or anything which has been taken wrongfully after defrauding any person of his right or due."[570] This report alludes that, even in the pre-Islamic age, *ribā* was treated as an abomination but still practiced widely.

The sources also describe in detail the forms and kinds of *ribā* prevalent in the Jāhilīya, which arose out of loans or credit sales. In loans, money was advanced for an agreed period in exchange for a stipulated increase,[571] sometimes in quality, sometimes in quantity,[572] the rate of which was mutually agreed by the parties, according to the amount and period of the loan,[573] and the payment of which was either in monthly installments,[574] or in lump sum upon maturity.[575] In case of default at maturity, under the lump sum payment method, the principal and interest was doubled and the repayment

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[564] P. H. Lammens, *La Mecque a la veille de l 'hégire,* 1924, 139 *sqq.*, 155 *sqq.*, 213 *sq.*
[565] *Shorter Encyclopaedia of Islam,* s.v. Ribā, 471ff.
[566] Ṭabarī, *Tafsīr,* III, 66.
[567] Ibid.
[568] Ṭabarī, *Tārīkh,* 1753.
[569] Ibid., III, 1136.
[570] Ibn Hishām, *Sīra,* I, 210-212.
[571] al-Jaṣṣāṣ al-Rāzī, *Aḥkām al-Qur'ān,* I, 551, 552, 554.
[572] *Sharḥ al-Mūwaṭṭa* by Shāh Walī Allāh Dihlawī, I, 356.
[573] al-Jaṣṣāṣ al-Rāzī, *Aḥkām al-Qur'ān,* I, 551.
[574] Rāzī, *Tafsīr al-Kabīr,* II, 371.
[575] Ṭabarī, *Tafsīr,* III, 62.

period extended;[576] under the installment payment method, the amount of the installment was increased and the repayment period extended.[577] In credit sales, the time of payment of the price together with the interest rate was stipulated. In case of default at maturity, the time was further extended against increase in the interest.[578]

The extensive citations, above, from respected Muslim sources, unhesitatingly attest to the presence and differing forms of *ribā* in the Jāhilīya age. But it is not certain as to whether these descriptions reflect history as it actually was, or are mere theoretical extrapolations in the service of agendas. These "historical" accounts raise two conceptual problems. Firstly, there is a problem of authenticity. The most quoted authority, Ṭabarī, was writing almost three centuries after the formal close of the Jāhilīya age. In the absence of any written historical records of the Jāhilīya, what were his sources for the detailed description of the financial practices of the period? In the case of Prophetic pronouncements, actions and events, there is at least the historiographical assurance afforded by the highly developed science of *ḥadīth* – the *matn* and *isnād* authentication. But, in the case of pre-Islamic history, there is no *matn* and *isnād* authentication. What, then, is the reliability of the reports concerning Jāhilīya practices, particularly the financial ones?

Secondly, there is a problem of consistency. As seen above, various Arab tribes (e.g. Thaqīf and Banū Mughīra) and individuals (e.g., 'Abbās ibn 'Abd al-Muṭṭalib and 'Uthmān ibn 'Affān) from Mecca and Ṭā'if are reported to have been big usurers, but, surprisingly, no accounts of exploitation of the debtor at the hands of these creditor tribes and individuals are mentioned even in the Muslim sources which otherwise posit that the Jāhilīya *ribā* practice was inherently exploitative and was the *sabab al-nuzūl* of the *ribā*-prohibition. These sources translate the term *ẓulm*, used in the *ribā*-prohibitory verse Q. 2: 279, as injustice and exploitation and treat it as the rationale for the prohibition, yet no historical accounts of widespread injustice or exploitation from the practice of *ribā* are to be found.

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[576] Ibid., IV, 55.
[577] Rāzī, *Tafsīr al-Kabīr*, II, 371.
[578] Ṭabarī, *Tafsīr*, III, 62.

The sources only mention that the defaulting debtors were sold into slavery. Bukhārī has cited traditions showing that, in early Islam, prisoners of war and defaulting debtors were tied and bound in mosques. Shurayh used to order that debtors be imprisoned and confined together with prisoners of war in mosques.[579] But the later jurists differed as to whether they were to be imprisoned. Ibn Ḥazm, the Mālikī jurist, opposed the Ḥanafite *fuqahā'*, who held that such debtors must be imprisoned. However, Abū Bakr al-Jaṣṣāṣ holds that a defaulting debtor must be imprisoned for two or three months. If he still does not pay but can afford to pay, he is thrown into prison indefinitely until he pays – but if he is in financial straits, he is released.[580]

Far removed from readily available Scriptural revelation and immediate Prophetic guidance, except the *dīn al-ḥanīf* which was not an elaborate religious code, and in complete unfamiliarity with, indeed absence of, any centralized regulation, the Jāhilīya society at the advent of Islam was governed by tribal customary law in all domains including the financial. Paucity of elaborate and authentic sources on these early historical periods, however, prevents an accurate and reliable reconstruction of the exact financial practices of the period, as shown above. In spite of this handicap, one conclusion is possible: there was no religious or secular regulation of financial dealings, including interest rates. Admittedly, as seen above, there are Muslim sources that claim to describe the financial practices of the times. But the question as to what were the credit and interest rate practices of the time has not been satisfactorily answered. These sources are generally inadequate and often even contradictory. A comparison of the formulations of the Jāhilīya financial practices by the early exegetes and jurists, below, illustrates this point.

Ṭabarī (d. 310/923), dilating on the meaning of the term *ribā* as used in verse Q. 3:130, explains the Jāhilīya lending practice:

> Do not consume *ribā* after having professed Islam as you have been consuming it before Islam. The way pre-Islamic Arabs used to consume *ribā* was that one of them would have a debt repayable on a specific date. When that date came the creditor would demand repayment from the debtor. The latter would say, 'Defer the repayment of my debt; I will add to your wealth.' This is the *ribā* which was doubled and redoubled.[581]

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[579] Bukhārī, *Ṣaḥīḥ*, kitāb al-ṣalāt, bāb al-asīr wa-al-gharīm yurbaṭ fī al-masjid. See also Mālik, *Muwaṭṭa'*, II, 678-680; Ṭabarī, *Jāmi' al-Bayān*, VI, 33-34.

[580] al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, I, 474ff.

[581] Abū Ja'far Muḥammad ibn Jarīr aṭ-Ṭabarī, *Jāmi' al-Bayān fī Ta'wīl Āyat al-Qur'ān*. 3rd ed. 30 vols. (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1963; Dār al-Ma'ārif, n.d.), IV, 59.

Elaborating the above report, but omitting the reference to doubling and redoubling of *ribā*, Ṭabarī further states:

> God has forbidden *ribā* which is the amount that was increased for the capital owner because of his extension of maturity for his debtor, and deferment of repayment of the debt.[582]

The practice of doubling and redoubling of *ribā* in the pre-Islamic period (Jāhilīya) as described by the son of Zayd b. Aslam (d. 136/754)[583] is quoted by Ṭabarī:

> *Ribā* in the pre-Islamic period consisted of the doubling and redoubling [of money or commodities], and in the age [of the cattle]. At maturity, the creditor would say to the debtor, 'Will you pay me, or increase [the debt]? If the debtor had anything, he would pay. Otherwise, the age of the cattle [to be repaid] would be increased... If the debt was money or a commodity, the debt would be doubled to be paid in one year, and even then, if the debtor could not pay, it would be doubled again: one hundred in one year would become two hundred. If that was not paid, the debt would increase to four hundred. Each year the debt would be doubled.[584]

There is an inconsistency in the lending practice relating to cattle and money/commodity as described in the above report. In case of default at maturity, while the age of cattle would be *increased* (by how much at first default and subsequent defaults?), the amount of money/commodity debt would be *doubled*, and later, *redoubled*. Why is the doubling rule not applicable in case of cattle?

The effect of this doubling and redoubling of *ribā* would be that "a small amount [of debt] could consume all the wealth of the debtor," as pointed out by Zamakhsharī (d. 538/1144),[585] by "repeated increases," as pointed out by Bayḍāwī.[586]

The above quoted reports do not indicate whether the debts referred to were the result of loans or credit sales. However, Ibn al-'Arabī (d. 543/1148), in his commentary on the Qur'ān, confines his description of the debt to credit sales alone, to the exclusion of loans altogether:

> *Ribā* was well known among the Arabs. A person would sell something on a deferred payment basis. Upon maturity the creditor would say [to the debtor]: 'Will you pay [as agreed] or will you add an amount to the [original] debt?'[587]

All the above quoted reports indicate that an increase was neither agreed nor added to the principal amount of the debt for the initial maturity at the time the debt was contracted; the increase in the debt occurred only upon default at maturity for the

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[582] Ṭabarī, *Jāmi'*, III, 69.
[583] Ibn Ḥajr, *Tahdīb*, III, 395.
[584] Ṭabarī, *Jāmi'*, IV, 59.
[585] Abū al-Qāsim Jār Allāh Maḥmūd b. 'Umar Zamakhsharī, *al-Kashshāf 'an Ḥaqā'iq al-Tanzīl* (Calcutta: Maṭba'at al-Laysi, 1856), 234.
[586] 'Abd Allāh Bayḍāwi, *Tafsīr al-Qur'ān* (Istanbul: Dar al-Ṭiba'a al-'Āmira, 1886), 56.
[587] Abū Bakr Muḥammad b. 'Abd Allāh Ibn al-'Arabī, *Aḥkām al-Qur'ān* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1376/1957), I, 241.

extended maturity. This means that the initial maturity was interest-free and that it was only the extended maturity which attracted an increase (interest).

As explained above,[588] this Jāhilīya financial practice has a striking resemblance to the early Christian practice whereby the prohibition of usury was effectively evaded through a stratagem *(ḥīla)* by keeping the initial maturity usury-free but deliberately short, and charging a compensation *(interesse:* interest) for the "loss emerging" *(damnum emergens)* from failure by the debtor to repay on the stipulated date, i.e., the differential position of the creditor arising out of the default at initial maturity, which was covertly pre-arranged. Thus the creditor effectively enjoyed the benefit of usury, except for the initial short period, while still complying with the letter of the law which prohibited usury. This parallel means that either the Jāhilīya age in Arabia was also aware of and complied with the prohibition of usury in letter, while flouting it in spirit, or that the original credit was truly gratuitous. But if this practice was not a stratagem *(ḥīla)*, and if the original debt was truly gratuitous, then it is difficult to comprehend the financial logic of this reported practice. Why would a debt be interest-free initially and then become interest-bearing subsequently? What was the motivation of the lender? Why was generosity followed by cruelty? Why would a debt be contracted interest-free initially and only upon default of even the soft terms attract interest (100%: doubling in one year) which would further aggravate the chances of debt recovery? The prospects of debt recovery in case of default are improved by softening the terms and conditions, not by hardening them. In case of debt arising out of credit sales, the reported Jāhilīya financial practice of no explicit increase for the initial term is understandable because the credit price would have been higher than the cash price, thus already building-in the increase for the initial delay. But in case of debt arising out of loans, as explained above, the reported practice is utterly incomprehensible.

The reported Jāhilīya debt practice (doubling each year after the initial year) could only lead not to full debt recovery for the creditor but to utter financial ruin for the debtor. There are historical reports about the Meccan practice of *i'tifād* (ritual suicide)[589]

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[588] See II.1.i., p. 35., above.
[589] Muḥammad ibn Aḥmad al- Qurṭubī, *al-Jāmi' li Aḥkām al-Qur'ān* (Cairo: Dār al-Kitāb al-'Arabī, 1967), II, 204ff.

and *qinā̄na* (serfdom, slavery).[590] But the practice of *i'tifā̄d* (ritual suicide), whereby a bankrupt merchant would separate himself and his family from the rest of the clan and starve to death rather than become a liability for relatives, is mentioned in the sources only in connection with bankruptcy due to the restricted nature of the Meccan merchants' commercial activity and not necessarily due to *ribā̄* (usury).[591] However, *qinā̄na* (serfdom, slavery) is mentioned in the sources in connection with *ribā̄* (usury),[592] but there are no reports of the widespread incidence of the practice.

The Qur'ān does refer to doubling and redoubling *ribā̄*[593] but the specific mode of doubling reported by the exegetes (no increase for initial maturity followed by 100% increases for extended maturities) finds no support in the Qur'ān. It is quite possible that the Qur'ān, in the absence of any indicators to the contrary, is simply describing the logical process of *ribā̄* generation where any rate of increase applied uniformly each period results in a doubling and redoubling of the principal over a number of years depending on the rate of increase. And this doubling occurs whether the debt attracts compound interest (quicker doubling) or even simple interest (slower doubling). The argument of the modernists that the doubling *ribā̄* prohibited by the Qur'ān[594] refers to compound interest only and not to the simple interest charged by the contemporary banks, is therefore not valid because doubling can occur in case of simple interest also. Further, compound interest is very much the standard financial practice of banks today.

However, here a historiographical problem is encountered. The reported financial practice (doubling each year after the initial year) as described by the early exegetes, such as Ṭabarī, is clearly contradicted by the Ḥanafī jurist al-Jaṣṣāṣ in the chapter on *ribā̄* in his *Aḥkām al-Qur'ān,* where he contends that the initially specified maturity attracted an agreed upon increase:

> The *ribā̄* which the Arabs knew and practiced meant lending money [dirhams and dīnārs] with a specified maturity at an agreed upon increase over and above the sum borrowed.[595]

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[590] E. R. Wolf, "Social Organization of Mecca and the Origins of Islam," *Southwestern Journal of Anthropology,* 7. Albuquerque, 1951: 329-356. ; Shihāb al-Dīn Aḥmad al-Qasṭalānī, *Irshād al-Sāri fī Ṣaḥīḥ al-Bukhārī* (Cairo, A.H. 1304 [1886/7]), IV, 315ff; Jawād 'Alī, *al-Mufaṣṣal fī Tārīkh al-'Arab qabla al-Islām,* 10 vols. Beirut, 1971, VII, 46ff. ; H. Lammens, *la Mecque a la veille de l'hègire* (Beyrouth, 1924), 237ff; Maxime Rodinson, *Muhammad* (New York, NY., 1974), 36.

[591] Mahmood Ibrahim, "Social and Economic Conditions in Pre-Islamic Mecca", *International Journal of Middle East Studies* (Cambridge University Press: The Middle East Studies Association of North America,), 14 (1982), 344.

[592] Ibid., 346.

[593] Q. 3:130.

[594] Q. 3:130.

[595] al-Jaṣṣāṣ, *Aḥkām al-Qur'ān* , I, 465.

In the face of the conceptual problems and reporting contradictions discussed above, the only conclusion that can be drawn is that it is very difficult to reconstruct accurately and authentically the actual financial practices of the Jāhilīya and it is even more difficult to relate any Qur'ānic injunction with such unauthenticated practices. This conclusion supports the view that the object of the Qur'ānic injunctions was not any concrete local context; it was, and is, an abstract universal context.

II.8.v. Islamic Legal Pronouncements

The views of individual Muslim *fuqahā'* and muftis, like the *madhāhib* expositions on *ribā* examined below, are marked by differences of opinion that severely hinder the development of an encompassing theory of *ribā* and *bay'* by utterly failing to handle productively the *'illa* and *ḥikma* of the injunctions. Furthermore, the chronological presentation of these views in Appendix 8, below, does not detect any orderly diachronic evolution in the generally understood concept of *ribā*. While Caliph 'Umar reportedly lamented the absence of sufficient Prophetic explication, Caliph 'Alī offered a purely economic explication of *ribā*-prohibition, based on his own opinion[596] and on a Prophetic *ḥadīth*.[597] Companion Ibn 'Abbās [598] initially considered *ribā al-jāhilīya* – the *ribā* conjectured to have been practiced in the pre-Islamic age – to be the only unlawful *ribā*, which involved increase in the debt for extension of the period of repayment. But the question of what exactly was *ribā al-jāhilīya* itself has remained unanswered to-date. In the absence of firm historical evidence, *ribā al-jāhilīya* has been variously defined by different modern scholars, each according to his own perspective and agenda. In these definitions, there is considerable variation in the details and unanswered questions, e.g.: Did the initial agreed period of debt attract *ribā*, and was it the principal or the *ribā* thereon that was increased (doubled and re-doubled) at the time of extension of the maturity? Without allowing these historical controversies to distract the discourse, the point is that, according to one version,[599] Ibn 'Abbās regarded the *historically practiced ribā* of the Jāhilīya age alone as the specifically prohibited *ribā* based on an authentic *ḥadīth* reported by Ibn 'Abbās himself which states in essence: "No *ribā* except in *nasī'a*

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[596] Muhammad Bāqir al-Majlisī, *Biḥār al-Anwār* (Tehran: al-Maṭba'at al-Islāmiyyah, 1387), CIII, 89.
[597] al-Shaykh uṣ-Ṣadūgh, *al-Khiṣāl* (Qum, Iran: Mu'assisāt un-Nashr ul-Islami, 1403), I, 286.
[598] Together with Companions Usāma Ibn Zayd, 'Abd Allāh Ibn Mas'ūd, 'Urwa Ibn Zubayr and Zayd Ibn Arqām.
[599] Salch, *Unlawful Gain*, Second Edition, 34.

[delay]" (meaning *ribā al-jāhilīya).* He considered the earlier six-commodities *ḥadīth* as superseded by the above quoted *ḥadīth* and therefore the *ribā al-nasī'a* and *ribā al-faḍl* both provided for in the six- commodities *ḥadīth* as lawful. He is reported to have later retracted this view.[600]

Any attempt to restrict the prohibition of *ribā* to a specific historical practice, such as by Ibn 'Abbās and by modern scholars who still rely on his initial view, localizes the import of the Qur'ānic and Sunnaic injunctions, tarnishes the divinely ordained universality of these injunctions, and puts a lid of history on the philosophy of the divine injunctions on *ribā,* as will be shown below (chapter IV).

Imam Abū Ḥanīfa (d. 150/767) and Muḥammad b. Ḥasan al-Shaybānī (d.189/804), on the authority of Makḥūl on the authority of the Prophet, held that *there is no ribā* between Muslims and inhabitants of *dār al-ḥarb* (enemy territory) in the *dār al-ḥarb.* Although this *ḥadīth* is *mursal* (incompletely transmitted), the only transmitter, i.e., Makḥūl al-Shāmī al Dimashqī (d. 116 AH) was an authoritative jurist, and a *ḥadīth* even with incomplete *isnād* (transmitters) from such a source is acceptable. This *ḥadīth* formed the basis of the permission given by Imam Abū Ḥanīfa and Muḥammad (al-Shaybānī) to Muslims to sell one dirham for two dirhams to an enemy in enemy territory.[601] Another supporting *ḥadīth* is quoted to the effect that there is no sin for a Muslim in obtaining the wealth of inhabitants of *dār al-ḥarb* by their permission in any manner in their territory.

This permission has profound conceptual and practical implications requiring fuller examination. But it is clear that this ruling does not legitimize *ribā* even in enemy territory *between* Muslims. This ruling has a striking resemblance with the Deuteronomic injunction (popularly dubbed as the Deuteronomic double-standard, albeit without full conceptual investigation) forbidding *neshekh* only between *brothers* but not between *brother* and *other.* These exemptions raise a fundamental but as yet unexplored question about the identity of the actors in the *ribā* process. What is the defining characteristic of the actor that renders his action *ribawī* or *non-ribawī? Dār al-ḥarb* (vs. *dār al-Islām)* is only an exoteric manifestation. What then is the underlying esoteric

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[600] Ibid.
[601] al-Sarakhsī, *al-Mabsūṭ,* XIV, 56, *Bāb al-ṣarf fī dār al-ḥarb.*

manifestation? This ruling adds a new question of *who* to the commonly asked questions of *what*, *why* and *how* of *ribā*.

Imām Mālik (d. 179/795), on the authority of Zayd b. Aslam,[602] Ṭabarī (d. 310 A.H.),[603] and Ṭaḥāwī (d. 321 A.H.),[604] all give a historical explication of *ribā* simply in terms of *ribā al-jāhilīya*, without any analytical contribution whatsoever.

Abū Bakr al-Jaṣṣāṣ (d. 370/980), the Ḥanafī jurist and commentator, provides the pioneering but damaging basis for the later compartmentalization of *ribā* into *ribā* of the Qur'ān (to mean *ribā al-nasī'a*) and *ribā* of the Sunna (to mean *ribā al-faḍl)*, which laid the foundation for the Liberal thought on *ribā*. Additionally, contrary to all other historical accounts, al-Jaṣṣāṣ contends that *ribā al-jāhilīya*, like modern-day bank interest, consisted of a financial charge for the initial maturity of the loan. He is silent about the financial charge for any extended maturities.[605] But in a conclusion of far reaching significance, he declares that the *Sharī'a* [technical] connotation of *ribā* is not supported by its literal meaning of "*ribā* is increase." [606]

al-Bayhaqī's (d. 459/1066) contribution also is purely historical rather than analytical, simply presenting about two hundred sound and weak traditions on *ribā*.[607]

al-Sarakhsī (d. 490 or 495/1096 or 1101), the Ḥanafite jurist, defining *ribā* both in its literal aspect (excess) and its technical aspect (excess without counter-value), very importantly treats *ribā* as a particular form of *bay'* (the prohibited form).[608] The term *bay'* (though used restrictively by al-Sarakhsī, as well as in general parlance) has a wide meaning in *fiqh* which covers all types of exchanges, including loans.[609] Making a very important point on the terminological confusion syndrome, as cited above, he states that "[The words] *'faḍl* is *ribā'* imply *faḍl* through *qadr* and they imply *faḍl* through a period of delay, and both are intended. This was elaborated in the tradition of 'Ubādah ibn al-Ṣāmit."[610]

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[602] Mālik, *Muwaṭṭa', Kitāb al-buyū', Bāb al-ribā.*
[603] *Tafsīr Ibn Jarīr* (Beirut: n.p., 1988), II, 103 and IV, 90.
[604] *Sharḥ Ma'āni al-Āthār li 'l-Ṭaḥāwī*, II, chapter on *ribā*, 223.
[605] Abū Bakr Aḥmad ibn 'Ali al-Jaṣṣas al- Rāzī, *Aḥkām al-Qur'ān* (Beirut: Dār al-Kitāb al-'Arabī, n.d.), I, 465.
[606] Ibid., I, 551-2.
[607] Ziaul Haque, *Riba: The Moral Economy of Usury, Interest and Profit* (Selangor, Malaysia: Ikraq, 1995), 8.
[608] al-Sarakhsī, *al-Mabsūt*, XII, 109.
[609] Nyazee, *Ribā and Islamic Banking*, 20.
[610] Ibid., 111.

Abū Ḥāmid al-Ghazālī (d. 505/1111), in a powerful exposition of the function of money and in condemnation of usury, propounds the *ḥikma* of *ribā*-prohibition thus:

> And whoever makes a transaction of *ribā* in dirhams and dīnārs he indulges in *denial of blessings* and *conduct of oppression* because these have been created for obtaining other things. There is *no purpose or benefit in their very selves.* Whoever makes them products of trade, makes them the object, against the purpose of their creation.[611]

Elaborating the distinction, Ghazālī further states:

> When someone is trading in dirhams and dinars themselves, he is making them as his goal, which is contrary to their functions. Money is not created to earn money, and doing so is a *transgression.* The two kinds of money are means to acquire other things; they are *not meant for themselves.* In relation to other goods, dirhams and dinars are like prepositions in a sentence – used to give proper meaning to words; or like a mirror reflecting colors but having no color of its own. If a person is permitted to sell (or exchange), money with money (for gain), then such transactions will become his goal, and thus money will be imprisoned and hoarded. Imprisonment of the ruler or postman is a transgression, for then they are prevented from performing their functions; same with money. Selling a dirham with equal amount of it with late payment is also not allowed. This can be done only by a generous person who is trying to be benevolent. In the case of a loan, an act of generosity such as this conveys to the person gratitude here and reward in the Hereafter. But, if someone exchanges dirhams for a bigger amount, there is no question of thanks or reward. Further, it is an injustice because it is destroying the qualities of generosity and putting it into compensatory exchange. [Italics mine][612]

Significantly, Ghazālī touches the important concept of self-generation of money ("the two kinds of money are means to acquire other things; they are not meant for *themselves")* and the other important concept of transgression ("money is not created to earn money, and doing so is a *transgression").* However, he does not develop these concepts further along philosophical-theological lines. For Ghazālī, as for many other Jewish, Christian and Islamic scholars, the arguments against *ribā* are sinfulness (absolute scriptural prohibition), and the possibility of economic exploitation and injustice in transactions. He also posits a purely economic explication of the *ḥikma* of *ribā* prohibition.[613] However, he does not attempt to reconcile this rationale with the dire Qur'ānic punishments for *ribā*-indulgence.

Other than lending and borrowing, Ghazālī discusses transactions where *ribā* may arise in disguised form, sometimes consistent and sometimes inconsistent with the

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[611] Abū Ḥāmid al-Ghazālī, *Iḥyā' al-'Ulūm al-Dīn* (Beirut: n.p., 1986), IV, Kitāb al-shukr al-rukn al-awwal, 96-97.
[612] Ibid.,192.
[613] Ibid., 4.

scriptural prohibition. Notably, similar arguments were developed later by Thomas Aquinas.[614]

The detailed position of Ghazālī, like that of other Arab and European Scholastics, on disguised *ribā* generation has been summed up by Ghazanfar as follows:

> [He] generally assumed that the value of a good was independent of the lapse of time. On this assumption, he argued, there are two ways in which interest *[ribā]* can arise in disguised form: it can happen when there is an exchange of gold for gold, wheat for wheat, etc., *but* with differences in quantity or in the time of delivery. If the time of delivery is not immediate and excess quantity of the commodity is called for, the excess is *riba al-nasiah* [*sic*] (interest due to late payment or delivery). If the quantity exchanged is not equal but the exchange takes place simultaneously, the excess given in exchange is called *riba al-fadl* [*sic*] (interest due to extra payment). Both are forbidden, according to Ghazālī. That is, for either kind of interest *not* to occur, exchange should be with equal quantity and ownership transfer should be simultaneous; otherwise, "disguised" interest could occur. However, if the exchange involves the same *types* of commodities, such as metals (gold or silver) or foodstuffs (wheat or barley), only *riba al-nasiah* [*sic*] is prohibited, whereas *riba al-fadl* [*sic*] is permissible. If exchange is between different types of commodities (metals and foodstuffs), then, both kinds are permissible.[615]

Surprisingly, a scholar of the intellectual stature of Ghazālī appears to resort here to a very literal interpretation of the *ribawī*-commodities *ḥadīth* in requiring that, in the case of the *same* commodity, "exchange should be with *equal quantity* and ownership transfer should be *simultaneous.*" Apparently he ignores the fact that this is a completely meaningless transaction: Why would any rational person exchange the *same* commodity, in the *same* quantity, and at the *same* time? What is the incentive for such a transaction? The *ribawī*-commodities *ḥadīth* is not, and can never have been, ordering such a meaningless transaction. As explained below fully,[616] it is, on the contrary, prohibiting such a transaction, not by a negative command but by a positive command of making the transaction meaningless. The *ḥadīth* is actually saying that *the only* way the same commodity can be exchanged is in the same quantity and at the same time, which makes the exchange meaningless and, therefore, to be avoided.

Even more surprisingly, Ghazālī does not appear to take account of the Prophetic categorical pronouncement that "verily, *ribā* is in *nasī'a,*" in declaring the permissibility of both *ribā al-nasī'a* and *ribā al-faḍl* in exchanges of heterogeneous commodities ("if exchange is between different types of commodities – metals and foodstuffs – then both

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[614] Karl Pribram, *A History of Economic Reasoning* (Baltimore: John Hopkins University Press, 1983), 15; Bernard W. Dempsey, *Interest and Usury.* (Washington DC: American Council on Public Affairs, 1943), 139.
[615] S. M. Ghazanfar, ed., *Medieval Islamic Economic Thought: Filling the "Great Gap" in European Economics.* (London; New York: Routledge Curzon, 2003), 36.
[616] See p. 247, below.

kinds *[*of *ribā]* are permissible"). In positing this permissibility of *ribā al- nasī'a,* Ghazālī also completely ignores the express wording of the *ribawī*-commodities *ḥadīth* that prohibits *nasī'a* and requires hand-to-hand exchange *(yadan bi-yadin)* in exchanges of both homogenous and heterogeneous commodities. Thereby, Ghazālī misses a profound philosophical-theological argument for the absolute and unconditional prohibition of delay in all human transaction settlements, which will be posited in this thesis.

Abū Bakr Muḥammad Ibn al-'Arabī (d. 543/1148), the Mālikī jurist and Qur'ān commentator, upholds the traditional view of Ṭabarī that in Jāhilīya the financial excess was levied not for the initial but for the extended maturity, and refutes the contention of al-Jaṣṣāṣ that *ribā* is a *mujmal* term requiring a *bayān,* because in its technical usage it came to acquire meanings that were not intended in the language:

> ... [T]hose who consider this verse to be unelaborated, i.e., ambiguous, vague (*mujmal),* do not understand this cross-section of *Sharī'a.* Allāh sent His Prophet towards a nation to which he himself belonged and whose language he himself spoke. Allāh's book was also revealed in their language so that it was easy for them to understand. The dictionary meaning of *ribā* is excess and the intention in the verse is all excess without any counter-value.[617]

This controversy as to whether *ribā* is *mujmal* or not is crucial in the light of *uṣūl al-fiqh* that, as noted above, regards a word or statement as comprising three levels of non-clarity– low: *khafīy* (obscure); medium: *mushkil* (difficult); and high: *mujmal* (ambiguous, vague). For *khafīy* and *mushkil,* the researcher or *mujtahid* may provide the clarification. But for *mujmal,* the ambiguity can only be removed by an explanation from the Lawgiver.[618] Now, in the light of the generally-held belief on the absence of fuller Qur'ānic and Sunnaic explanation of the term *ribā* and in the impossibility of any further Prophetic elaborations, if the term *ribā* is indeed *mujmal,* how will it be clarified? Admittedly, al-Jaṣṣāṣ, as pointed out above, classified *ribā* as an unelaborated *(mujmal)* term in need of explication *(bayān),* clearly implying that the explication can only be provided by the Lawgiver Himself, but he also declared that such additional explanatory Qur'ānic and Sunnaic evidence is available. The Prophet provided extensive elaboration of the meaning intended by Allāh in the *[ribā]* verse by way of explicit commands and decisions.[619]

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[617] Ibn al-'Arabī, *Aḥkām al-Qur'ān,* (Beirut: n.p., 1988), I, 241, 320-321.
[618] Alsharcef, *The Code of Scholars,* 55.
[619] al-Jaṣṣāṣ, *Aḥkām al-Qur'ān* , I, 464-5.

Abū Bakr al-Kāsānī (d. 587/1189), the Ḥanafī authority, defines *ribā* simply in its technical (legal) sense in the context of its two types only – *ribā al-faḍl* and *ribā al-nasā' (nasī'a).* Even in this technical sense, he does not offer an all-encompassing legal definition of *ribā.* Moreover, he does not give the literal meaning.[620]

al-Marghinānī (d. 593/1196), on his part, simply echoes Ibn 'Arabi's definition of *ribā.*[621]

Ibn Rushd (d. 595/1198) refers to both the *ribā* of sales and *ribā* of debt but elaborates only on the *ribā* of debt, introducing the controversial concept of discount for early repayment *(reverse ribā),* in addition to the premium for late repayment (the *[positive] ribā* of Jāhilīya).[622]

Fakhr al-Dīn al-Rāzī (d.606/1209) again damagingly reinforces the above basis for the compartmentalization of *ribā.* Again, contrary to the traditional historical accounts, al-Rāzī, like al-Jaṣṣāṣ, holds that in *ribā al-jāhilīya,* a financial charge was levied for the initial maturity. And in accordance with the traditional historical accounts, he also holds that a financial charge was levied for the extended maturity.[623] He rebuts the views of Ibn 'Abbās that the prohibited *ribā* is *ribā al-nasī'a* alone.[624]

In Ibn al-Athīr's (d. 1209 CE) *Sharī'a* definition of *ribā* [625] the reference to the absence of contract of sale in the process of *ribā* generation points to the Islamic legal stipulation that makes invalid *(fāsid)* any contract of sale containing an element of *ribā.* Furthermore, though not specifically stating it, this definition strongly points to the operative principle of unilateral activity in *ribā* and bilateral activity in *bay'*, concepts that will be expanded below (chapter IV).

al-Nawawī (d. 676/1278), in a partial contribution to the search for the *ḥikma* of *ribā*-prohibition, and without proposing an alternative, debunked "exploitation" as the prohibitory rationale on the grounds that it could apply equally well to legitimate profit generation.[626]

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[620] Abū Bakr al-Kāsānī, *Badā'i' al-Ṣanā'i'* (Beirut: Dār al-Kitāb al-'Arabī, 1982). V, 183.
[621] Burhān al-Dīn al-Marghinānī, *al-Hidāya* (Karachi : Qur'ān Maḥal, n.d.), Kitāb al-Buyū', chapter on *ribā,* III, 78.
[622] Ibn Rushd, *Bidāyat* (Cairo: Dār al-Salām, 1995). II, 96.
[623] Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr,* 32 vols. (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1980), VII, 91.
[624] Ibid., VII, 92.
[625] Majd al-Dīn al-Mubārak Ibn Muḥammad Ibn al-Athīr, *al-Nihāya fī Gharīb al-Ḥadīth wa al-Āthār* (Cairo: n.p., 1322H.), II, 66.
[626] Nawawī, *al-Majmū',* 390-404.

Ibn Taymiyya (d. 728/1327), in his conclusions similar to those of the Greek philosophers, of St. Thomas Aquinas and of other medieval scholars, and like al-Ghazālī before him, provides scriptural and detailed economic arguments for the prohibition of *ribā*.[627]

Ibn Qayyim al-Jawziyya (d. 751/1350), the Ḥanbalite theologian and student of Ibn Taymiyya, in an influential but damaging explication of the *ḥikma* of its prohibition, defines *ribā* in terms of the degree of its hiddenness:

> *Ribā* is of two kinds: *Jalī* [manifest] and *Khafīy* [hidden]. The *Jalī* has been prohibited because of the great harm it carries and the *Khafīy* has been prohibited because it is an instrument for the *Jalī*. Hence prohibition of the former is deliberate while that of the latter is precautionary [against exploitation and wrongful acquisition of other's property]. The *Jalī* is *ribā al-nasī'a* and this is what was engaged in during the Jāhilīya, like allowing the postponement of repayment of principal against an increase, and every time there was a postponement, there was an increase... However, *ribā al-faḍl* has been prohibited to close the access to *ribā al-nasī'a*.[628]

Ibn Qayyim is thus the author of the now famous and much relied upon Liberal distinction between "hidden *ribā*" *(ribā al-khafīy)*, which is *ribā* by way of increase *(ribā al-faḍl)*, and "manifest *ribā*" *(ribā al-jalī)*, which is *ribā* by way of deferment *(ribā al-nasī'a)*. For him, hidden *ribā* is not forbidden in itself but only when it is a way to gain manifest *ribā*, which is forbidden in itself. Accordingly, the degree of prohibition was not the same in both the categories, being much stronger in "manifest *ribā* "*or ribā al-nasī'a* than in "hidden *ribā* "or *ribā al-faḍl*. Consequently, "manifest *ribā*,"*or ribā al-nasī'a*, cannot become lawful except in the case of pressing necessity *(ḍarūra mulji'a)*, like that which allows the eating of carrion. But, "hidden *ribā* "or *ribā al-faḍl* can become lawful in case of need *(ḥāja)* only. "Hidden *ribā*" or *ribā al-faḍl* is prohibited when there is fear that it may lead to *ribā al-nasī'a* and it is allowed in case of need.[629]

This distinction between "manifest" and "hidden" *ribā* and the association of "manifest" with deferment *(nasī'a)* and "hidden" with increase *(faḍl)* betrays a lack of cognizance of the Accounting definition of the process of *ribā*. We are informed by the discipline of Accounting that, in a loan transaction, for example, (and exactly opposite to Ibn Qayyim's distinction), the benefit accruing to the lender *(faḍl)* is quantifiable and *manifest* (the interest received), while the benefit of delay accruing to the borrower

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[627] Ibn Taymiyya, *Majmū' Fatāwā Shaikh al-Islām Aḥmad Ibn Taymiyya*, 35 vols. + 2 vols. Index (Riyadh: Maṭābi al-Riyāḍ, 1983-9), XXIX, 469.
[628] Ibn Qayyim al-Jawziyya, Shams al-Dīn Muḥammad b. Abī Bakr, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, II, 154ff.
[629] 'Abd al-Razzāq Sanhurī, *Maṣādir al-Ḥaqq fī 'l-Fiqh al-Islāmī*. 6 vols. (Beirut: al-Majma' al- 'Arabī al-Islāmī, n.d.), III, 206.

(nasī'a) is non-quantifiable, hidden and, according to al-Rāzī, only an assumption, presumption, supposition, hypothesis *(ẓannī)*. Now, if Ibn Qayyim has in mind a philosophical-theological distinction that negates the conventional accounting distinction above, he may have a point to make, but he does not make it clear and his choice of terminology does not point to it either. Such a philosophical-theological distinction that attaches greater significance to delay *(nasī'a)* than to simple excess *(faḍl)* will be postulated below (chapter IV).

The question of dispensing with the prohibition of *ribā* – whether *nasī'a* or *faḍl* – in case of pressing necessity and need will be taken up below (chapter V). Suffice to comment here that indulgence in *ribā* is a sin akin to the only sin which God will never forgive. This rules out any exceptions or exemptions in the case of *ribā,* and its comparison with the specific exceptional permissibility of eating carrion is inappropriate. However, the rationale *(ḥikma)* of the prohibition of *ribā,* according to Ibn Qayyim, is linked only to its moral aspect: the poverty of the debtor in the practice of pre-Islamic *ribā*.[630]

Ibn Qayyim explained the rationale of the early practice of Arab and Latin Scholastics and their Greek predecessors of couching their discussions of interest in terms of precious metals and foodstuffs thus:

> The secret behind the prohibition of unequal exchange of the same kind of precious metals is that their purpose of "moneyness"(*thamaniya*) will be destroyed; and the reason behind the prohibition of unequal exchange of the same kind of foodstuff is that it will destroy their purpose of serving as diet.[631]

Ibn Kathīr (d. 774/1373), like Ibn al-Athīr, simply explains *ribā* as "excess on the principal without any contract of sale."[632] al-'Aynī (d. 855/1451) also offers a similar definition.[633]

Şeyhülislam Ebu's-su'ud Efendi, the Ottoman Mufti of Istanbul (1545-1574), with the sanction of Sultan Suleyman, issued perhaps the first-ever *fatwā* in Islamic history declaring the cash trusts *(awqāf:* pious foundations), which derived their income from lending at interest, as valid. This flouting of the legal prohibition on interest-taking, without the support of any Ḥanafī authority, was manipulated by Ebu's-su'ud with the

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[630] Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn,* II, 157ff.
[631] Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn,* II, 140, cited in Ghazanfar, ed., *Medieval Islamic Economic Thought,* 136.
[632] Ibn Kathīr, *al-Nihāya.* (an authentic book explaining *ḥadīth* terminology).
[633] Badr al-Dīn al-'Aynī, *Umdāt al-Qārī* (Constantinople: Maṭba'a al-Amira, 1310 AH), V, 436.

help of legal stratagems *(ḥiyal)* giving him the license to call the income payments not by the actual name of interest but by the commonly used euphemism of "legal transaction" *(mu'āmala shari'iyya).* In this *fatwā*, issued in spite of the juristically correct opposition of the fundamentalist scholar Mehmed of Birgi, Ebu's-su'ud was guided not by juristic texts but only by the doctrines of necessity and public interest.[634]

Shāh Walī Allāh of Delhi (d. 1176/1762), the traditionalist Indian scholar, seems unwittingly to have provided support to the Liberal viewpoint by further stressing the distinction between what he calls the "actual" Qur'ān-sourced *ribā* of debt practiced intensely in the Jāhilīya and the "figurative" *ḥadīth*-sourced *ribā al faḍl.*[635]

Shāh 'Abd al-'Azīz (d. 1824 A.D.), traditionalist scholar and son of Shāh Walī Allāh of Delhi, driven by political and economic expediency, through a *fatwā* permitted *ribā* for Muslims in dealings with non-Muslims in *dār al-ḥarb,* which, to him, British India was.[636] 'Abd al-Ḥayy Farangī Maḥlī Lakhnawī (1847-1886) also subscribed to this opinion.[637] Sir Sayyid Ahmed Khan (d. 1898) and Muḥammad 'Abduh (d. 1905), opined the permissibility of modern-day bank interest even between and among Muslims, even in *dār al-Islam,* based on political and modernity expediencies. Had these scholars known the governing *ḥikma* of *ribā*-prohibition, being posited in this thesis, they would have shuddered before even contemplating such opinions.

Muḥammad 'Abduh (d. 1905), the Grand Mufti of Egypt, and his disciple Rashīd Riḍā (d. 1935), were the first contemporary jurists and scholars of the 20th century to clearly defend modern-day bank interest and to exempt it from the *ribā*-prohibition on the grounds that it was not covered under the historical practice of *ribā al-jāhilīya* which they treated as the only prohibition, and even that excusable by the doctrine of dire necessity. They treated *ribā al-faḍl* and *ribā al-nasī'a* both as Sunna-based and therefore not prohibited – only *makrūh* (reprehensible). They relied on Ibn Qayyim's distinction between "manifest *ribā*" *(ribā jalī)* and "hidden *ribā*" *(ribā khafīy)* in formulating their

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[634] Colin Imber, *Ebu's-su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), 37, 145-146; J. R. Mandaville, "Usurious piety: the cash waqf controversy in the Ottoman Empire", *International Journal of Middle Eastern Studies,* 10 (1979), 289-308; Ebu's-su'ud, *Bida'at al-Qādī,* Süleymaniye Library, Istanbul, MS Lalelı 3,711, chap. 1; Rev. M. McColl, "Are Reforms Possible Under Mussulman Rule?" (mimeo,1881), quoted in El-Gamal, "Interest and the Paradox of Contemporary Islamic Law and Finance", 2.

[635] Shāh Walī Allāh, *Ḥujjat Allāh al-Bālighah,* 2 vols. (Cairo: Dār al-Turāth, 198?). II, 106-107.

[636] Mushir-ul-Haq, "Shāh 'Abd al-'Azīz al-Dihlawī and his Times", *Hamdard Islamicus,* VII, No.1, 78.

[637] Ibid., VII, No.1, n. 99, 95.

position on *ribā*.[638] However, Chibli Mallat, in his discussion of the Egyptian Savings Funds scheme of the early 20th century, points out that these scholars were not explicitly or openly suggesting that interest is acceptable without any qualification; they seem to have tolerated it if a scheme of *muḍāraba* could be devised to legitimize the interest on the employees' deposits.[639]

The criticism of Ibn Qayyim's position, above, applies equally well to the position of Muḥammad 'Abduh and Rashīd Riḍā insofar as they share the concept of "manifest *ribā* " *(ribā jalī)* and "hidden *ribā* " *(ribā khafiy).* Moreover, their conclusion that compound interest ("interest accruing on interest already accounted") is the manifest *ribā (ribā jalī),* which was originally practiced as *ribā al-jāhilīya* and which is the only form of *ribā* prohibited by the Qur'ān, is a position that completely ignores the intrinsic meaning and implications of the terms *ribā* and *bay'* as used in Q. 2:275.

Muḥammad Abū Zahrah (d. 1974), the famous Egyptian *faqīh*, echoing Shāh Walī Allāh, does further damage to theoretical development by spelling out the distinction between *ribā* of the Qur'ān and *ribā* of the Sunna.[640]

Abūl A'lā Mawdūdī (d. 1979), though a traditionalist and neo-revivalist, unwittingly but clearly spells out the foundation of what is the Liberal position and again inhibits theoretical development by pointing out the distinction between *ribā al-nasī'a (fā'ida)* as the *ribā* of (prohibited by) the Qur'ān, and *ribā al-faḍl* as the *ribā* of (prohibited by) the Sunna.[641]

For 'Abd al-Razzāq Sanhūrī, the contemporary Egyptian authority on Islamic law,[642] the prohibition of *ribā* is the rule, and – unlike the position of 'Abduh and Riḍā – is not under the presumption of aversion *(karāhiya).*[643] For him, only compound interest is first and foremost prohibited in verse Q. 3:130; and based on the testimony of the reports on pre-Islamic *ribā* and also by implication, simple interest would not be

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[638] Saleh, *Unlawful Gain,* Second Edition, 35-36.
[639] Chibli Mallat, "The Debate on Ribā and Interest in Twentieth Century Jurisprudence," *Islamic Law and Finance,* SOAS, London, 1988, 74.
[640] Abū Zahrah, Foreword to Zakī al-Dīn Badawī, *Naẓarīyat al-Ribā al-Muḥarram Fī al-Sharī'a al-Islāmiyya.* (Cairo: Dār wa -Maṭābi' al-Sha'b, 1940), trans. Nyazee, quoted in his, *Ribā and Islamic Banking,* 13.
[641] Ibid., 165.
[642] Saleh, *Unlawful Gain,* Second Edition, 36-37.
[643] Sanhūrī, *Maṣādir al-Ḥaqq,* III, 222-234.

prohibited.[644] Sanhūri distinguishes between *ribā al-jāhilīya, ribā al-faḍl* and *ribā al-nasī'a* as follows:

> *Ribā al-faḍl* is a way to achieve *ribā al-nasī'a* which is a way to achieve *ribā al-jāhilīya.* It is sufficient, as far as *ribā al-nasī'a* is concerned, to allow payment to be postponed once the debt has matured, charging further interest, so as to attain *ribā al-jāhilīya* . Consequently, *ribā al-faḍl* and *ribā al-nasī'a* are not under a direct prohibition (contrary to pre-Islamic *ribā,* which is), but under a prohibition of illicit means – a prohibition designed to close the loopholes which might lead to pre-Islamic *ribā.*[645] The result of such degrees of prohibition is that *ribā al-jāhilīya* is allowed only in case of pressing necessity *(ḍarūra muliḥḥa),* while *ribā al-faḍl* and *ribā al-nasī'a* are deemed lawful in case of need *(ḥāja).*[646]

The focus of Sanhūrī on *ribā al-jāhilīya* as the object of direct prohibition attracts the same criticism as that of Ibn 'Abbās above. Both localize the import of the Qur'ānic/Sunnaic injunction at the cost of its universality and deeper philosophical meaning. The dispensability of the prohibition of *ribā* in case of pressing necessity and need has already been commented upon above in the case of Ibn Qayyim.

Ibrahim Zaki al-Badawi, another Egyptian scholar of Islamic law, argues that the strict prohibition of *ribā* should apply only to the pre-Islamic form.[647]

The positions of Sanhūrī and Badawi, outlined above, have been refuted by critics, as pointed out by Saeed, on the grounds that "verse Q. 3:130 is the first stage of the prohibition of *ribā,* or that the term *'aḍ'āfan muḍā'afatan'* (doubling and redoubling) mentioned in the verse is only explaining what the Arabs practiced, not that the interest charged would be lawful if the amount were not doubled.[648] Moreover, in their view, the last *ribā*-related verses (2:275-8) have clearly stated that any increase over and above the principal should be *ribā,* and as such prohibited. This applies to any form of interest whether it is simple, compound, fixed or variable."[649]

Some modernists, such as Doualibi, differentiate between consumption and production loans and support the legality of interest on production loans and the illegality of interest on consumption loans, on the grounds that, out of concern for the poor, the Qur'ānic prohibition applies to consumption loans only.[650] This position is

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[644] Saeed, *Islamic Banking,* 43.
[645] Sanhūrī, *Maṣādir al-Ḥaqq,* III, 222-237.
[646] Ibid., III, 237.
[647] Quoted in Chibli Mallat, "The Debate on *Riba*", 80.
[648] Muḥammad 'Abd Allāh Drāz, *al-Ribā fī Naẓar al-Qānūn al-Islāmī* (Cairo: International Association of Islamic Banks, n.d.), 12-13.
[649] Saeed, *Islamic Banking,* 43.
[650] Muḥammad Abū Zahra, *Buḥūth fī al-Ribā* (Kuwait: Dār al-Buḥūth al-'Ilmiyya, 1970), 52-57.

contested by critics who maintain that rather than consumption loans, it was production loans that were prevalent in Arabia at the time of the prohibition of *ribā.*

Some other modernists[651] maintain that the prohibition of *ribā* covers only individuals, not the giving or taking of interest amongst corporate bodies, such as companies, banks, or governments (institutional credit), or the taking of interest from corporate bodies by individuals (individual deposits), because an individual cannot exploit a larger organization like a bank.[652] The Pakistan Council of Islamic Ideology likewise could not unanimously agree on the inclusion of institutional credit under the heading of *ribā.*[653]

This stance on exempting interest on "institutional credit" from the purview of the *ribā*-prohibition is not tenable on the grounds that classical and medieval Islamic law did not recognize the separate legal entity status of corporate bodies; all are individuals. For example, the Qur'ān and the derived Islamic law speak of the rights and obligations not of the "government" but of the "governor" (ruler: *ḥākim).* Moreover, this stance is based on the rationale of "exploitation," which, not being universally operative, cannot serve as the rationale of the universally applicable prohibition of *ribā.*

Notwithstanding the *fiqhī* differences of opinion surveyed above, 'Abd al-Raḥmān al-Jazīrī, in his *al-Fiqh 'alā al-Madhāhib al-Arba'a* – a modern compendium on the juristic opinions of the four predominant Sunnī schools of Islamic jurisprudence – elaborates on the severely prohibited *(nahyan mughallaẓan) ribā,* but still merely reflects the prevalent depth of the discourse.[654]

These individual legal definitions and explanations suggest a process of gradual watering down of the perception of the *ribā*-prohibition as one moves from the traditionalist to the modernist thought model. At one end of the prohibitory spectrum is the complete and absolute prohibition, as evidenced in the definitions by al-Sarakhsī, al-Kāsānī and Ibn Rushd. At the other end of the spectrum is a steadily widening scenario of partial and contingent prohibition, as evidenced in the definitions by the Liberal scholars Ibn 'Abbās, Ibn Qayyim and Muḥammad 'Abduh/Rashīd Riḍā. It culminates in

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[651] Quoted in Saeed, *Islamic Banking,* 45-46.
[652] Abdul Jabbar Khan, "Divine Banking System." *Journal of Islamic Banking and Finance.* Summer 1984, 24-44.
[653] Decision taken on January 13, 1964, in response to a question from the Pakistan Ministry of Finance, as quoted in Nawazish Ali Zaidi, "Islamic Banking in Pakistan" *Journal of Islamic Banking and Finance.* Summer 1988, 21-30.
[654] 'Abd al-Raḥmān al-Jazīrī, *al-Fiqh 'alā al-Madhāhib al-Arba'a* (Cairo: al-Maktaba al-Tijāriyya al-Kubrā, n.d.), 6th ed. II, 245-8.

the formulation of Sanhūrī, where not all forms of *ribā* are prohibited, and even when prohibited, become permissible on the sanction of the doctrine of necessity and even need.

In all these juridical definitions and explanations the focus of attention is the form of the financial/economic excess, how it arises, how its prohibition is sourced and, for the Liberal scholars, how it can be restricted or even evaded. The definitions do not go beyond the technical usage of the term *ribā* to connotations other than the financial/economic that are expressed in the Qur'ān itself. Moreover, these legal expositions, although touching upon the concept of excess in exchanges of homogeneity, do not explore this concept for discovery of the true occasioning factor *('illa)* and rationale *(ḥikma)* of the prohibition of *ribā* and permission of *bay'*, thus remaining completely oblivious of the perilous nature of the underlying concepts.

CHAPTER III

JURIDICAL, HERMENEUTICAL AND SCRIPTURAL MODELS

The extant sources on usury/*neshekh/tokos/ribā* surveyed in the preceding chapter furnish the basis for an exclusive Islamic juridical model and two Islamic hermeneutical models with historical roots in the Judeo-Christian tradition as well. These models are critiqued below for their structural characteristics and for the extent of their contribution to a defensible theory, and the scriptural model is recapitulated in preparation for the new theory subsumed in the divine law of *ribā* and *bay'*.

III.1. Current Islamic Juridical Model: *Uṣūl al-Fiqh*

The model of *ribā*-proscription and *bay'*- permission developed by Islamic legists, while totally neglecting the moral and the more important hermeneutically crucial philosophical and theological perspectives underlying these scriptural injunctions, employed an outward form-oriented legal approach that is fraught with the danger of fizzling out into what a contemporary scholar calls "a meaningless exercise and a quibble over semantics."[655] To be sure, specifically there is no juristic agreement either on the definition and categories or on the occasioning factor and rationale underlying the concepts of *ribā* and *bay'*. Mired in disagreement, not fully supported by the rules of *uṣūl al-fiqh* (legal methodology) itself, and hence not helpful for new theory development, this juridical construct is critiqued below.

Based on a legalistic approach, *ribawī* transactions were classified by the *fuqahā'* into three categories: (1) *ribā al-faḍl (ribā* of excess), produced by the unlawful excess of one of the counter-values in an exchange (2) *ribā al-nasī'a (ribā* of delay), produced by delaying completion of the exchange of the counter-values, with or without an excess, and (3) according to some scholars, including the Ḥanbalī Ibn Qayyim, a third category known as *ribā al-jāhilīya,* often manifested by the lender asking the borrower at maturity date to settle or increase, with the increase normally occurring by charging interest on the debt initially accrued.[656]

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[655] Saeed, *Islamic Banking,* 40.

[656] Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn,* ed. Muḥammad 'Abd al-Ḥāmid, 4 vols. (Beirut: al-Maṭba'a al-'Aṣriyya, 1987), II, 153ff. Nabil Salch notes that Ibn Qayyim did not infer from the division of *ribā* into three categories all the effects which were to be deduced later on by Muḥammad 'Abduh, Rashīd Riḍā and others (compound interest).

The proponents of the above third category of *ribā* regarded this *ribā al-jāhilīya* as the one directly referred to in the Qur'ān, and the other two categories, *ribā al-faḍl* and *ribā al-nasī'a,* as the ones referred to in the Prophet's tradition *(ḥadīth).*[657]

The schools of law are not in agreement even on the exact definition of the first two categories of *ribā* as shown by the differences in the generally accepted views of the major four Sunnī schools. For them, *ribā al-faḍl* occurs, when, in an on-the-spot (hand-to-hand) transaction, there is an excess in one of the counter-values which belong to the same genus *(jins)* and both counter-values are (i) weighable or measurable (Ḥanafis); (ii) either currency, or storable nourishment for mankind (Mālikīs); (iii) either currency, or foodstuffs (Shāfi'īs); and (iv) either currency, or are measurable or weighable (Ḥanbalīs).[658] On the other hand, *ribā al-nasī'a* occurs when delivery of one counter-value is deferred in a sale transaction involving counter-values which are susceptible to *ribā.* The counter-values should be: (i) of the same genus or both weighable or measurable (Ḥanafis); (ii) storable nourishment for mankind, or both currency (Mālikīs); (iii) both foodstuffs, or both currency (Shāfi'īs); and (iv) both measurable or weighable, or currency (Ḥanbalīs).[659]

Without attempting to resolve the irreconcilable causal differences of *madhāhib* opinion reflected above, an elaborate, albeit still unsatisfactory, juridical definition of *ribā* has been posited as follows:

> [*Ribā* is] an unlawful gain derived from the quantitative inequality of the counter-values in any transaction purporting to effect the exchange of two or more species *(anwā', sing. naw')*, which belong to the same genus *(jins)* and are governed by the same efficient cause *('illa, pl. 'ilal).* Deferred completion of exchange of such species, or even of species which belong to different genera but are governed by the same *'illa*, is also *ribā*, whether or not the deferment is accompanied by an increase in any one of the exchanged counter-values.[660]

In the *madhāhib* categorization of *ribā*, the definition of *ribā al-faḍl* is clear, though not unanimous. But the definition of *ribā al-nasī'a* is ambiguous in that it does not explain how, or what type of, *ribā* arises in this case of delay when occurrence of excess in any of the counter-values is not a requirement for this undefined *ribā* of delay to arise? This definition also does not specify the beneficiary of the *ribā* of delay.

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[657] 'Abd al-Razzāq Sanhurī, *Maṣādir al-Ḥaqq fī 'l-Fiqh al-Islāmī.* 6 vols. (Beirut: al-Majma' al-'Arabī al-Islāmī, n.d.), III, 217-18.
[658] Salch, *Unlawful Gain and Legitimate Profit,* Second Edition (London; Dordrecht; Boston: Graham & Trotman, 1992), 19-26; Jazīri, *Fiqh,* II, 250ff; both summarized by Saeed in his, *Islamic Banking,* 35.
[659] Salch, *Unlawful Gain,* Second Edition, 19-26, summarized in Saeed, *Islamic Banking,* 35.
[660] Salch, *Unlawful Gain,* Second Edition, 16.

Nyazee attempts to rectify these definitional deficiencies through an exposition of *ribā al-faḍl* and *ribā al-nasī'a* based on the foundational definition of *ribā* and further explanation of its two kinds given by al-Sarakhsi:

> *Ribā* in its literal meaning is excess ... and in the technical sense (in the *Sharī'a), ribā* is the stipulated excess without a counter value in *bay'* (sale/exchange).[661]

> [The words] *"faḍl* is *ribā"* imply *faḍl* through *qadr* and they imply *faḍl* through a period of delay, and both are intended. This was elaborated in the tradition of 'Ubādah ibn al-Ṣāmit.[662]

Based on the above, Nyazee defines *ribā* as the excess that is revealed as (1) excess through *qadr* (estimation), i.e., excess in quantity or amount, determined by weighing, measuring or counting, called *ribā al-faḍl* and (2) excess through *nasī'a* or *nasā'* (delay), i.e., excess from benefits of delay, determined by clocking the period of delay during which one party enjoys the benefits from the utilization of the exchange commodity, called *ribā al-nasī'a.* For Nyazee, the distinction between *ribā al-faḍl* and *ribā al-nasī'a* is determined by two factors: method of estimation and identification of the beneficiary. In both kinds of *ribā,* an excess is revealed, but determined differently; *ribā al-faḍl* is determined through weight, measure or count, while *ribā al-nasī'a* is determined by clocking the period of delay during which the borrowed amount or commodity is used by the borrower. Even more crucial factor of distinction for him, ignored by other modern scholars, is the identification of the beneficiaries. It is the lender/seller who receives the excess known as *ribā al-faḍl,* while the benefit of *ribā al-nasī'a* goes to the borrower/purchaser, who uses the amount or commodity during the period of repayment or delay.[663]

Within this technical paradigm of *ribā,* based on the juridical definition by al-Sarakhsī, in which he gives the literal meaning of *ribā* as "excess" and the technical meaning as "the stipulated excess without a counter value in *bay',"* Nyazee posits a very concise and lucid juridical definitional model[664] that, as will be shown, is somewhat useful in clarifying the "terminological confusion syndrome" referred to above.

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[661] al-Sarakhsī, *al-Mabsūt,* XII, 109.
[662] Ibid., 111.
[663] Nyazee, *Ribā and Islamic Banking,* 19ff.
[664] Ibid., 19-39.

Nyazee identifies the main elements of the above definition by al-Sarakhsī thus: (a) *Ribā* is "excess," (b) It is an excess that is stipulated in a *bay'* (exchange), and (c) It is an excess that is without a counter value.[665] Derived from this, his model defines *ribā* as excess revealed in two ways, i.e., through:

1. *Qadr* (estimation) arising from weight, measure, or count of the two quantities being exchanged in a *bay'*. If the exchange is *ribawī,* this excess is called *ribā al-faḍl,* where the beneficiary is the seller, or in the case of a loan, the creditor.
2. *Nasī'a or Nasā'* (delay) arising from the benefits of delay of payment or delay of delivery, measured by the period of delay. If the transaction is *ribawī,* this excess (benefit) is called *ribā al-nasī'a,* where the beneficiary is the party effecting the delay.[666]

Hence, based on the above distinction between the beneficiaries of the excess, and contrary to popular understanding, in any loan transaction the creditor becomes the recipient of *ribā al-faḍl* and the debtor the recipient of (the benefit of) *ribā al-nasī'a.* The interest payment received by the creditor is *ribā al-faḍl* and not *ribā al-nasī'a.*[667] It will be noted that *ribā al-nasī'a* is not objectively quantifiable as it is the unspecifiable benefit attributed to the debtor through the use of the loaned amount during the period of repayment. The recognition of this distinction is among the very crucial elements for a correct understanding of the concept of *ribā.* The lack of clarity and precision on this point among many contemporary scholars and even judges[668] has been the source of much confusion. In complete disregard for this inter-locking relationship between these two aspects of *ribā,* contemporary scholars maintain, apparently without sufficient justification, that *"ribā al-nasī'a* is the *ribā* of the Qur'ān and *ribā al-faḍl* is the *ribā* of the Sunna."[669] It can be seen that this Liberal assertion, read together with the conceptual distinction between *ribā al-faḍl* accruing to the creditor and *ribā al-nasī'a* accruing to the debtor, implies (perhaps unintentionally and inadvertently), that neither the Qur'ān nor the Sunna of itself offers a complete prescription for a loan transaction.

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[665] Ibid., 20.
[666] Ibid., 20-21.
[667] Ibid., 23.
[668] Noticeable in the different opinions expressed in the judgment of the Shari'a Appellate Bench of Pakistan Supreme Court of December 23, 1999. See web site of Advanced Legal Studies Institute, Islamabad (www.nyazee.com).
[669] Nyazee, *Ribā and Islamic Banking,* 23.

The Qur'ān is being seen as catering to the borrower alone and the Sunna to the lender alone. This is clearly an untenable implication. The compartmentalization of *ribā* by contemporary scholars into *ribā* of the Qur'ān and *ribā* of the Sunna is, therefore, conceptually not supportable. Nyazee maintains that this compartmentalization is rooted in the explanations of *ribā* provided by Ibn Rushd, al-Jaṣṣāṣ and particularly al-Rāzī, all quoted above.[670]

Nyazee concludes that both *faḍl* and *nasī'a* are to be found in the type of *ribā* mentioned in the Qur'ān, and both are included in the types (of *ribā)* mentioned in the Sunna. *Ribā al-faḍl* and *ribā al-nasī'a* are prohibited by the Qur'ān just as they are prohibited by the Sunna. In fact, *ribā* of the Qur'ān and *ribā* of the Sunna are exactly the same. The Sunna is merely acting as a commentary.[671]

The Sarakhsī model at the foundation of the *fiqh* discourse on *ribā*, as structured by Nyazee, suffers from the major flaw that, by its own definition, while the benefit of *ribā al-faḍl* accruing to the lender/seller is weighable, measurable and countable, the benefit of *ribā al-nasī'a* accruing to the borrower/purchaser is not only not weighable, measurable or countable, but it also lacks certitude of occurrence. The borrower/purchaser may or may not derive any benefit from the borrowed amount or commodity. As pointed out by al-Rāzī, this benefit is only *ẓannī* [672] (resting on mere assumption, presumptive, supposed, hypothetical). Thus, if the *ribā al-nasī'a* is a benefit of delay and this benefit is only *ẓannī (ẓannī ribā)*, how could the Prophet have said "Verily, *ribā* is in *nasī'a*"? [673] Whatever the Prophet intended by this saying – whether *nasī'a* is the default case or the exclusive case of *ribā* – the point is that *nasī'a* does cause *ribā,* so that the question is: What that *ribā* is and how is it triggered? It is definitely not the above expounded *ẓannī* benefit of delay referred to in the jurisprudential scholarship. This question requires further exploration and an answer will be proffered below (chapter IV), where it will be shown that delay causes a definite double occurrence of *faḍl* of a type more profound than the weighable and measurable *faḍl* associated with *ribā al-faḍl.*

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[670] See Ibid., 23-24.
[671] Ibid., 27.
[672] Fakhr al-Dīn al-Rāzī, *Mafātīḥ al-Ghayb*, II, 531.
[673] Bukhārī, *Ṣaḥīḥ*, II, 138.

In spite of these conceptual shortcomings, "the traditional interpretation of *ribā* in Islam is the *raison d'être* of Islamic banking."[674] This is based on the belief of Islamic banking theorists and Muslim legists that any reinterpretation of the traditional Islamic legal definition of *ribā* was out of the question, based on the idea of the immutability and permanence of *Sharī'a* rules advocated by two highly influential neo-Revivalist groups: *al-Ikhwān al-Muslimūn* (Muslim Brotherhood) of Egypt and *Jamā'at Islāmī* (Islamic Party) of Pakistan.[675] However, it is contended that the traditional/neo-revivalist interpretation of *ribā* faces insurmountable obstacles in today's financial and economic environment as it does not appear to be either totally implementable or morally justifiable.[676] "Any correction to the course of Islamic banking may not perhaps be possible without a fresh look at this concept based on the overall instructions of the Qur'ān and *Sunna*, and in the light of *contemporary economic and financial realities...*"[677] [italics mine].

This stand of Islamic banking theorists and Muslim legists, disallowing reinterpretation of the traditional Islamic legal definition of *ribā* based on the notion of immutability of Islamic law, has to be qualified in the light of the clear distinction between *dīn, sharī'a* and *fiqh*. As pointed out by Masud, *"Dīn* is the essence and is common in all revealed religions. *Sharī'a,* on the other hand, has differed from one religious community to the other. *Fiqh* is an interpretation of *Sharī'a* by jurists, muftīs and qāḍīs, and thus a product of human reason."[678] While the notion of (im)mutability is a major debate in Islamic law among influential thinkers, [679] in order to preserve the

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[674] Saeed, *Islamic Banking*, 3.
[675] Ibid., 1.
[676] Ibid., 2.
[677] Ibid., 3.
[678] Muhammad Khalid Masud, *Shāṭibī's Philosophy of Islamic Law* (Islamabad: Islamic Research Institute, 1995), 9.
[679] As summed up by Masud, ibid., 1-9, the immutability view is held by most traditionalist Muslim jurists and by a large number of Islamicists such as C. S. Hurgronje [Review article on L. W. C. van den Berg's translation of *Minhāj al-Ṭālibīn* (Batavia, 1862-1884) in *Revue de l'histoire des religions*, XXXVII (1898), 1-22, 174-203; available in G. H. Bousquet and J. Schacht (editors), *Selected Works of C. Snouck Hurgronje* (Leiden, 1957), 214-255]; G. Bergsträsser [*Grundzüge des Islamischen Rechts*, published by J. Schacht in Berlin, 1935. Cf. J. H. Kramers, "Droit de l'Islam et droit islamique" in *Analecta Orientalia: Posthumous Writings and Selected Minor Works of J. H. Kramers*, Vol. 2 (Leiden: Brill, 1956), 67]; J. Schacht ["Theology and Law in Islam", in G. E. Von Grunebaum (ed.), *Theology and Law in Islam* (Wiesbaden, 1971), 4 ff.]; N. J. Coulson [*History*, 1-2]; H. A. R. Gibb ["Constitutional Organization", in M. Khadduri and H. J. Liebesny (eds.), *Law in the Middle East*, Vol. I (Washington: Middle East Institute, 1955), 4. Also in Gibb and H. Bowen, *Islamic Society and the West*, Vol. I, part 2 (Toronto: Oxford University Press, 1957), 114]; H. J. Liebesny ["Religious law and Westernization in the Moslem Near East", in *The American Journal of Comparative Law*, Vol. II (no.4, 1953), 492]; M. Khadduri ["From Religion to National Law", in J. H. Thompson and R. D. Reischauer (editors), *Modernization of the Arab World* (Princeton: Nostrand, 1966), 38]; H. Lammens [*Islam, Belief and Institutions* (London, 1929), 82]; G. Makdisi ["Remarks on Traditionalism in Islamic Religious History", in Carl Leiden (ed.), *The Conflict of Traditionalism and Modernism in the Muslim Middle East* (Austin: University of Texas, 1966), 77]; and, J. N. D. Anderson [*Islamic Law in the Modern World* (New York: New York University Press, 1959), 17]. The mutability view is held by Muslim reformists such as Subḥī Mahmaṣānī [*Falsafat*

qualitative integrity of the law, it is the *Sharī'a,* the divine law, alone which is immutable, while *fiqh*, the human understanding of this divine law, is man-made and hence mutable. In fact, as pointed out by Masud,[680] very few even Muslim thinkers claim divine origin of *fiqh.* Therefore, any changes in the *fiqh* definitions and rules of *ribā*, indicated by on-going *ijtihād*, should not be objected to. However, in the process of mutation of man-made *fiqh*, the governing principle is not compatibility with other further man-made constructs, such as the financial and economic environment, but compatibility with the immutable *Sharī'a.* The real guiding factor for this reassessment is not contemporary economic and financial realities, but universal transcendental realities. It is true that any correction to the course of Islamic banking may not perhaps be possible without a fresh look at this concept based on the overall instructions of the Qur'ān and *Sunna*, but this fresh look at the concept of *ribā* has to be made in the light, not of contemporary economic and financial realities, but of philosophical and theological considerations. The so-called "contemporary economic and financial realities" themselves are also the object of this fresh look.

In the development of the juridical repertoire on the proscription of *ribā* and the permission of *bay'*, the primary ("from")[681] textual sources, i.e., the Qur'ān and the Prophetic *Ḥadīth* furnish the scriptural framework, and the secondary ("through")[682] sources, i.e., *ijmā'* (consensus) and *qiyās* (analogy) cater to the positive law framework. While the Qur'ān and the Prophetic *Ḥadīth* provide the bare injunctions, examined above,[683] *ijmā'* of the classical, medieval and contemporary jurists/juridical institutions is supposed to provide workable interpretations of the injunctions, which it has failed to do beyond contestably declaring that interest in all its forms constitutes the prohibited *ribā*, and *qiyās* is supposed to provide the extrapolation of the injunctions beyond the six

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al-Tashrī' fī al-Islām (Beirut, 1952), trans. by F. J. Ziadeh, *The Philosophy of Jurisprudence in Islam* (Leiden: Brill, 1961); *Muqaddima fī Iḥyā 'Ulūm al-Sharī'a* (Beirut: Dār al-'ilm l'il mala'in, 1962); "Transactions in the Sharī'a", in Khadduri and Liebesny (eds.), *Law in the Middle East*, Vol. I , 179-202], based on Abū Isḥāq Ibrāhīm b. Mūsā al-Shāṭibī (d. 790/1388) [*al-Muwāfaqāt fī Uṣūl al-Aḥkām*, ed. M. Muḥyī al-Dīn 'Abd al-Ḥamīd, 4 vols. (Cairo: Maṭba'at Muḥammad 'Alī Ṣubayḥ, 1970)] and by experts such as Y. Linant de Bellefonds ["Immutabilité du droit musulman et réformes législatives en Égypte", *Revue internationale de droit comparé*, 7 (1955): 5-35; *Traité de droit musulman comparé*, Vol. I (Paris: Mouton, 1964]; Leon Ostrorog [*The Angora Reform* (London: University of London, 1927), 19]; and S. G. V. Fitzgerald ["Nature and Sources of Sharī'a", in *Law in the Middle East*, op. cit., 87].

[680] Masud, *Shāṭibī's Philosophy of Islamic Law*, 9.

[681] A term used by Hallaq, in *History*, 1.

[682] Ibid.

[683] See II.2.v and II.3.ii., above.

commodities named in the *ribawī*- commodities *ḥadīth,* which it does, albeit in varying degrees in the different *madhāhib* (legal schools), as examined below.

III.1.i. Critique of the Current Juridical Construct from the Qur'ān

Essentially, the classical/medieval/contemporary juridical construct developed exclusively from the Qur'ān is limited to *agreement* on the absolute prohibition of *ribā* and permission of *bay'*. Although hinted at, there is no attempt at formal identification of the *tamyīz*[684] (distinction) of these terms and no juridical extrapolation of the *'illa (ratio legis;* occasioning factor) of these injunctions *directly* from the Qur'ān. Moreover, the juridical extraction of the *ḥikma* (rationale) of the prohibition from the Qur'ān, based on an inaccurate translation of the term "*ẓulm*" as "injustice," is, at the least, misleading. Consequently, this juridical construct is not helpful for comprehensive theory development, which requires definite input on all the elements – *tamyīz,*[685] *'illa* and *ḥikma.*

III.1.ii. Critique of the Current Juridical Construct from the *Ḥadīth*

The juridical construct from the *ḥadīth,* on the other hand, is virtually limited to *disagreement* on the injunction and on its *'illa* and *ḥikma.* On *ḥadīth* authority, a distinction is made between *ribā al-nasī'a (ribā* of delay) and *ribā al-faḍl (ribā* of excess), with the latter being assigned a secondary importance and even outright dispensability. Again, as many as nineteen *'ilal* (occasioning factors) have been extracted from the six-commodities *ḥadīth,* which is testimony to significant inconclusiveness and juridical disagreement among *madhāhib* and *fuqahā'*.[686] Finally, in spite of its great hermeneutical potential, the *ḥadīth* material, particularly the *ribawī*-commodities *ḥadīth,* which is at the cutting edge of philosophy-theology, has not been mined for the ultimate *ḥikma* of the prohibition. Thus, this exegetical/juridical construct is even less helpful, if not outright confusing, for theory development.

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[684] See n. 47, p. 27, above, for this coined technical usage.
[685] Ibid.
[686] Nyazee, *Ribā and Islamic Banking,* 68, based on Muḥammad ibn 'Alī Shawkānī (d. 1839), *Irshād al-Fulūl ilā Taḥqīq al-Ḥaqq min 'Ilm al-Uṣūl.*

III.1.iii. Critique of the Current Juridical Construct through *Ijmā'*

The "through" source of *ijmā'* has also been utilized, though infrequently, in the legal discourse on *ribā*.[687] But this consensus, or even the lack thereof, is limited to the prohibitional, absolutist, definitional, applicatory, specificational and punitive aspects of interest/usury. There is no ijmā'ic (consensual) attempt at, much less agreement on, discovering the *'illa* and *ḥikma* of *ribā*-prohibition, which is not conducive to the task of new theory development.

Even on the conceptual prohibitory issues of *ribā,* there is considerable controversy at the *Sharī'a* court and juridical academy levels. The most significant current court controversy is the divergent views of The Pakistan Federal *Sharī'a* Court[688] and the presently reconstituted *Sharī'a* Appellate Bench of the Pakistan Supreme Court[689] on whether all forms of interest are subsumed by the prohibited *ribā.*

The controversy at the juridical academy level concerns the permissibility of the pre-specification of profits as a percentage of capital, as opposed to the conventional practice of a percentage of actual realized profit in a *muḍāraba (commenda)* contract under the *Sharī'a.* This permissibility was rather controversially opined in a *fatwā* (legal opinion) by the al-Azhar Islamic Research Institute (IRI)[690] but was officially rebutted by the largest possible juristic body, the Council of the Islamic Jurisprudence Academy (IJA: *Majma'al-Fiqh al-Islāmī)* of the Organization of Islamic Conference (OIC), reiterating the rejection of the Islamic legitimacy of all forms of bank interest.[691]

The legitimacy of this *al-Azhar fatwā* rests on the fact that pre-specification of profits is not prohibited by any Canonical Text. And in any case, the core issue in the *ribā* discourse is not the pre-specification or otherwise of profits, rather it is the method

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[687] By individuals such as Ibn 'Abd al-Barr al-Mālikī (d. 463 H), Qurṭabi, Ibn Rushd and Ibn Ḥajr al-Makkī (d. 974 H), Dr. Muhammad Sayyid Atiyya Ṭanṭāwī, Mufti of Egypt and later Grand Imām (*Imām al-Akbar*) and Rector *(Shcikh)* of *al-Azhar,* and by institutions such as Islamic Council of Europe (in its Islamic Universal Declaration), Pakistan Council of Islamic Ideology, Islamic Jurisprudence Academy (IJA: *Majma'al- Fiqh al-Islāmī*) of the Organization of Islamic Conference (OIC), Meeting of Islamic Banks in Kuwait (1983), *Fiqh* Academy *(Majma' al-Fiqh al-Islāmī)* of the Muslim World League *(Rābiṭat al-'Ālam al-Islāmī), Fiqh* Academy of India, Pakistan Federal *Sharī'a* Court, *Sharī'a* Appellate Bench of the Pakistan Supreme Court, and al-Azhar Islamic Research Institute (IRI).

[688] Judgment on *Ribā* of the Pakistan Federal Shari'ah Court of November 14, 1991. Reproduced. (Lahore: Pakistan Law Digest (PLD) Publishers, 1992).

[689] Judgment on *Ribā* of the Shari'ah Appellate Bench of Pakistan Supreme Court of December 23, 1999 (Islamabad: Advanced Legal Studies Institute, www.nyazee.com, 2000), 532; and 2002 Judgment of the reconstituted Bench overturning its own 1999 Judgment.

[690] *Fatwā* issued in December 2002 by the Grand Imām *(Imām al-Akbar)* and Rector *(Shcikh)* of *al-Azhar,* Dr. Muhammad Sayyid Aṭiyya Ṭanṭāwi, reiterating his *fatwā* of 1989 when he was Mufti of Egypt. This most recent *fatwā* is also fully supported and approved by, and is known as the *fatwā* of, the al-Azhar Islamic Research Institute (IRI).

[691] Ibid., 3.

of generation and distribution of the profits. However, this *fatwā* only violates the classical rules of the silent partnership contracts known as *muḍāraba* or *qirāḍ* (analogous to the Medieval European *commenda* contract and the Jewish *heter isqa).* [692] But the Islamic legal status of the *muḍāraba* contract itself is an as yet unanswered question in contemporary scholarship. Is there any Canonical support for the *muḍāraba* contract? Moreover, as will be elaborated below (V.7.i. and V.7.ii.), the *muḍāraba* contract and the *mushāraka* (partnership) contract, even in their prevalent classical versions that are among the main instruments of contemporary Islamic finance, to the extent that they treat the financial institution and its customers and depositors as separate legal entities, require restructuring to comply with the *ribawī* prohibition of excess and delay in an exchange of homogeneity.

These differences of opinion on the part of prestigious international juristic entities, often based on differing perspectives, mirror the state of contemporary consensus *(ijmā')* on the crucial question of *ribā,* and point to the need to understand *ribā* in its true meaning and significance.

III.1.iv. Critique of the Current Juridical Construct through *Qiyās*

The *fuqahā'* have extensively utilized the "through" source of *qiyās* (analogical reasoning) in extrapolating the injunctions on *ribā.* In the case of loan transactions, the single criterion for detecting *ribā* is the presence or absence of an element of increase over and above the principal, which yields uniform juridical formulations. But in the case of sale and barter transactions, the *madhāhib* focus on different features of the commodities and employment of fundamentally different *'ilal* (occasioning factors) leads to different and even contradictory juridical formulations. Yet again, these formulations suffer from the further weakness of the employed occasioning factors that do not fully comply with the rules of *uṣūl al-fiqh* itself. These *madhāhib* premises and formulations are critiqued below.

III.1.iv.a. Critique of *Ribawī*-Commodities Definition in *Fiqh*

The literalist view of the definition of these prohibited commodities limits them to the six named by the Prophet in the *ribawī*-commodities *ḥadīth,* i.e., gold, silver, wheat,

[692] See El-Gamal, "Interest and the Paradox of Contemporary Islamic Law and Finance", 9-10.

barley, dates and salt. Accordingly, the literalist prohibition does not extend to any other commodities, which can all be exchanged with an excess even in an exchange of similar genus without any restrictions. The obvious juristic implication being that there is no room for the application of analogy *(qiyās)* in this matter.[693] The Ẓāhirīs, though subscribing to this view, nevertheless, permit the extension of the meanings of the six commodities to others through the implication of the meanings.[694]

On the other hand, the analogical view on *ribawī* commodities, however, differs amongst the various *madhāhib.* Firstly, there are *madhāhib* differences of opinion on the definition of species.[695] The characteristics that determine the species according to the Ḥanafī *fiqh* are three: common composition, common customary use, and level of required workmanship; according to Ḥanbalī *fiqh*, only two: common origin and common name, regardless of customary use; according to Mālikī *fiqh*, only one: common customary use or utility; according to Shāfi'ī *fiqh*, also one: common specific name; and, according to Ja'farī *fiqh*, again one: common name. As is evident, then, the *madhāhib* discourse is entangled in the mechanics of homogeneity; it investigates only what leads to homogeneity, and not what homogeneity leads to. Secondly, there are *madhāhib* differences of opinion on the analogical extension of the *ribawī* commodities. The Ḥanafī and also Ḥanbalī *fiqh* allows the extension of the prohibition to all commodities that are *weighable* and *measurable.*[696] The Shāfi'ī *fiqh* restricts the extension of the prohibition to gold, silver and edibles that are *weighable and measurable.*[697] The Mālikī *fiqh* limits the extension of the prohibition to edibles that are storable. These juristic differences, as Mawdūdī admits, lead to differing juristic injunctions, treating the same commodity differently as to the *ratio legis* of its prohibition, thus making the same commodity transaction *ḥarām* in one *madhhab* and *ḥalāl* in another. Yet, he asserts – rather indefensibly – that these juristic differences are

[693] This view is expressed by the Ẓāhirīs, as also by scholars Qatāda, Ṭāwūs, 'Uthmān al-Battī, and Ibn 'Uqayli Ḥanbalī, as reported in Mawdūdī, *Sūd*, 179-180.
[694] Nyazee, *Ribā and Islamic Banking*, 71.
[695] Qari Muhammad Amin Naqshbandi, *Islamic Economics* (Lahore: Iqra Books, n.d.), 383.
[696] This view is also held by 'Ammār, as reported in Mawdūdī, *Sūd*, 180.
[697] This view is also held by Sa'īd bin al-Musayyab, as reported in Mawdūdī, *Sūd*, 180.

not over matters covered explicitly by the divinely revealed and inspired texts, but over matters that are *mutashābihāt* (ambiguous) and at the border between *ḥalāl* and *ḥarām.*[698]

III.1.iv.aa. Critique of Ḥanafi *Fiqh* on *Ribā*

Synopsis of Ḥanafi Teaching on *Ribā*[699]

Exchanged Counter-Values	Ḥanafi *Fiqh* Rulings
Case I HOMOGENEITY of genus, and HOMOGENEITY of estimation method – weighability or measurability (wheat for wheat)	I (a) Gain prohibited in spontaneous transaction I (b) Deferred transaction, even without gain, prohibited
Case II HETEROGENEITY of genus, and HOMOGENEITY of estimation method – weighability or measurability (gold for silver)	II (a) Gain permitted in spontaneous transaction II (b) Deferred transaction, even without gain, prohibited
Case III HOMOGENEITY of genus, and ABSENCE of weighability or measurability (COUNTABILITY) (animal for animal)	III (a) Gain permitted in spontaneous transaction III (b) Deferred transaction, even without gain, prohibited
Case IV HETEROGENEITY of genus, and HETEROGENEITY of estimation method: weighability, measurability, countability	IV (a) Gain permitted in spontaneous transaction IV (b) Gain permitted in deferred transaction

Critique

The Ḥanafi *fiqh* rulings in Cases I to III are strictly in accordance with the requirements of the *ribawī*-commodities *ḥadīth* under which gain is prohibited in exchange of homogeneity and permitted in exchange of heterogeneity, but deferment prohibited in both cases. However, Case IV is rather problematic. The Ḥanafi ruling IV (a) conforms to the *ribawī*-commodities *ḥadīth,* but IV (b) does not. This ruling permits both a deferred transaction and a gain in it. But the governing *ḥadīth* does not permit any deferred transaction at all, let alone a gain in a deferred transaction. The Ḥanafi

[698] Ibid., 180-181.
[699] Extracted from Saleh, *Unlawful Gain,* Second Edition, 25-26 (not necessarily the unanimous view of all scholars of the school).

reasoning in this case is probably based on a generally held, but erroneous, un-spelled out assumption that *faḍl* (self-generating excess), in order to materialize, *always* requires homogeneity of estimation method. And since Case IV involves heterogeneity of estimation method, even deferment cannot cause any *faḍl* (self-generating excess) to arise; hence gain from deferment will not be self-generating and, therefore, permissible. As will be shown, deferment can not only cause *faḍl* (self-generating excess, even without homogeneity of estimation method), but *faḍl* of a more profound nature, and not once but twice in what is perceived to be a single deferred transaction. This could explain the Qur'ānic prohibition of *ribā* "doubled and re-doubled" *(ad'āfan muḍā'afatan)* and the *ḥadīth* statement that indeed real *ribā* is in *nasī'a* (deferment).

III.1.iv.ab. Critique of Mālikī *Fiqh* on *Ribā*

Synopsis of Mālikī Teaching on *Riba*[700]

Exchanged Counter-Values	Mālikī *Fiqh* Rulings
Case I HOMOGENEITY of genus – currency or storable nourishment (*dīnārs* for *dīnārs*; wheat for wheat)	I (a) Gain prohibited in spontaneous transaction I (b) Deferred transaction, even without gain, prohibited
Case II HETEROGENEITY of genus – currency or storable nourishment (*dīnārs* for *dirhams*; wheat for beans)	II (a) Gain permitted in spontaneous transaction II (b) Deferred transaction, even without gain, prohibited
Case III NON-STORABLE FOODSTUFF, homogenous or heterogeneous (bananas for lettuce)	III (a) Gain permitted in spontaneous transaction III (b) Deferred transaction, even without gain, prohibited
Case IV NON-FOODSTUFFS, HOMOGENEITY of genus, and HOMOGENEITY of estimation method – weighability or measurability, and HOMOGENEITY of Purpose (material for material)	IV (a) Gain permitted in spontaneous transaction IV (b) Deferred transaction, even without gain, prohibited

[700] Extracted from Saleh, *Unlawful Gain*, Second Edition, 30-31 (not necessarily the unanimous view of all scholars of the school).

Case V NON-FOODSTUFFS, and HETEROGENEITY of genus (material for currency)	V (a) Gain permitted in spontaneous transaction V (b) Gain permitted in def. transaction

Critique

The aforementioned Mālikī *fiqh* rulings suffer from the general limitation of being confined only to *all currencies* and *all storable* foodstuffs, excluding *all* other items from the purview of *ribā*-prohibition, although these rulings are an extension over the Ẓāhirī coverage of only two *named* currencies and four *named* foodstuffs. However, their additional requirement of *storability* (longevity vs. perishability) for foodstuffs to become *ribawī*, though mundane in appearance, has a deeper philosophical connotation. As will be demonstrated below (in chapter IV), for any self-emanation *(faḍl)* and self-subsistence to occur, the subject must, by definition, have longevity, which, in the case of currencies, is inherent and, in the case of foodstuffs, is best guaranteed by their quality of storability. Perishable food, by definition, cannot subsist, let alone self-subsist.

In Cases I and II, the Mālikī *fiqh* rulings conform to the requirements of the *ribawī* -commodities *ḥadīth*. In Case III, ruling III (a) is a direct offshoot of the Mālikī storability requirement for foodstuffs. This ruling appears to be a refinement of the general perception of *faḍl* as being applicable to all items, by maintaining, in effect, that perishable food is not capable of *faḍl*, at least not of any duration. Ruling III (b) is in line with the governing *ḥadīth*.

The Mālikī *fiqh* rulings for Cases IV and V, are again problematic. Rulings IV (a) and V (a) are the product of the Mālikī restriction of *ribawī* commodities to foodstuffs. In these rulings, the fact is ignored that it is homogeneity and, according to the Mālikīs themselves, longevity, which are the requirements for *ribā*, and that these requirements apply to all commodities, not just to the named category of foodstuffs. This ruling also flies in the face of their storability (longevity) argument by exempting from *ribā*-purview all non-foodstuffs, which generally have the inherent quality of longevity. Ruling IV (b) on the other hand complies with the requirements of the governing *ḥadīth*, whereas ruling V (b) is not defensible because the governing *ḥadīth* prohibits deferment

for all homogenous and heterogeneous commodities without limitation; it will be demonstrated below (chapter IV) that deferment produces doubled *faḍl* of a more profound nature.

III.1.iv.ac. Critique of Shāfiʿī *Fiqh* on *Ribā*

Synopsis of Shāfiʿī Teaching on *Ribā*[701]

Exchanged Counter-Values	Shāfiʿī *Fiqh* Rulings
Case I HOMOGENEITY of genus: all currencies or all foodstuffs (gold for gold; dates for dates)	I (a) Gain prohibited in spontaneous transaction I (b) Deferred transaction, even without gain, prohibited
Case II HETEROGENEITY of genus: all currencies or all foodstuffs (gold for silver; dates for wheat)	II (a) Gain permitted in spontaneous transaction II (b) Deferred transaction, even without gain, prohibited
Case III HETEROGENEITY of genus: foodstuff vs. non- foodstuff (wheat for iron)	III (a) Gain permitted in spontaneous transaction III (b) Deferred transaction, even without gain, prohibited
Case IV NON-CURRENCIES AND NON-FOODSTUFFS: homogenous or heterogeneous (wood for wood; wood for lead)	IV (a) Gain permitted in spontaneous transaction IV (b) Gain permitted in deferred transaction
Case V HETEROGENEITY of genus: currency vs. other (incl. foodstuffs) (iron for gold; rice for silver)	V (a) Gain permitted in spontaneous transaction V (b) Gain permitted in def. transaction

Critique

The Shāfiʿī *fiqh* rulings on *ribā*, I (a), II (a), III (a), I (b), II (b) and III (b) are in conformity with the *ribawī*-commodities *ḥadīth* in prohibiting excess in spontaneous exchanges of homogeneity and permitting it in spontaneous exchanges of heterogeneity,

[701] Extracted from Salch, *Unlawful Gain*, Second Edition, 26-27 (not necessarily the unanimous view of all scholars of the school).

as well as in prohibiting delayed settlements with or without excess. However, the Shāfi'ī restriction of *ribā*-prohibition to currencies and foodstuffs only is a restrictive economic approach to the issue. Rulings IV (a) and IV (b) take a restrictive view of the governing *ḥadīth* in exempting non-currencies and non-foodstuffs from the purview of *ribā*-prohibition, and allowing both excess and delay in all their permutations and combinations. This approach robs the governing *ḥadīth* of its immense analytical value.

III.1.iv.ad. Critique of Ḥanbalī *Fiqh* on *Ribā*

Synopsis of Ḥanbalī Teaching on *Ribā* [702]

Exchanged Counter-Values	Ḥanbalī *Fiqh* Rulings
Case I HOMOGENEITY of genus: all foodstuffs, and HOMOGENEITY of estimation method– weighability or measurability (rice for rice; grain for grain)	I (a) Gain prohibited in spontaneous transaction I (b) Deferred transaction, even without gain, prohibited
Case II HOMOGENEITY of genus: all foodstuffs, and ABSENCE of weighability or measurability (COUNTABILITY) (oranges for apples), or HOMOGENEITY of estimation method–weighability or measurability and NON-FOODSTUFFS(gold for silver)	II (a) Gain permitted in spontaneous transaction II (b) Deferred transaction, even without gain, prohibited
Case III HETEROGENEITY of genus, and HOMOGENEITY of *'illa*: all measurable or all weighable or all foodstuffs (wheat for barley)	III (a) Gain permitted in spontaneous transaction III (b) Deferred transaction, even without gain, prohibited
Case IV HETEROGENEITY of genus: currency vs. ribawī commodity i.e. weighable or measurable or foodstuff	IV (a) Gain permitted in spontaneous transaction IV (b) Gain permitted in deferred transaction

[702] Extracted from Saleh, *Unlawful Gain*, Second Edition, 29-30 (not necessarily the unanimous view of all scholars of the school).

Case V HETEROGENEITY of genus, and HETEROGENEITY of *'illa*: measurable vs. weighable (wheat for meat)	V **(a)** Gain permitted in spontaneous transaction V **(b)** Conflicting opinions on Gain in deferred transaction
Case VI ABSENCE of weighability or measurability, and FOODSTUFFS	VI **(a)** Gain permitted in spontaneous transaction VI **(b)** Gain permitted in deferred transaction

Critique

The Ḥanbalī *fiqh* rulings I (a) and I (b) comply with the *ribawī*-commodities *ḥadīth* in requiring equality in spontaneous exchanges of homogeneity and in prohibiting delayed settlements with or without excess. However, these rulings take a view of *ribā* even more restrictive than the Ẓāhirī view in focusing only on foodstuffs as *ribawī* commodities. Ruling II (a), though not in conformity with the text of the governing *ḥadīth* due to its permitting excess in an exchange of homogeneity, is in fact a case of applying legal refinement and precision to the *ḥadīth* text. The continuation of homogeneity in excess generation in materials requires either weighability or measurability. Excess through countability does not guarantee homogeneity. Therefore, prohibition of excess through exchanges of homogeneity applies only in the cases of weighability or measurability; it does not apply in that of countability. This explains their ruling that excess in spontaneous exchange of homogeneity is permitted in the case of countable items of exchange. However, the Ḥanbalī restriction of *ribā*-prohibition to foodstuffs only, and permission of excess in spontaneous exchange of homogeneity of estimation method in the case of non-foodstuffs is a very restrictive view of the governing *ḥadīth.* However, ruling II (b) is in conformity with the governing *ḥadīth* in outlawing deferred transactions, with or without gain. Rulings III (a) and III (b) are in compliance with the governing *ḥadīth* in permitting excess in spontaneous exchanges of heterogeneity of genus and in prohibiting deferred transactions, with or without gain, even in heterogeneous exchanges. Rulings IV (a) and V (a) comply with the governing *ḥadīth* in permitting excess in spontaneous exchanges of heterogeneity of genus. But

rulings IV (b) and V (b) are in conflict with the governing *ḥadīth* in permitting excess in deferred transactions of heterogeneity. Ruling VI (a) is in conformity with the legally refined and precise interpretation of the governing *ḥadīth* in permitting excess in spontaneous exchanges, but ruling VI (b), in permitting both excess and deferment, contravenes the governing *ḥadīth* which prohibits deferred transactions altogether.

III.1.iv.ae. Critique of Ibāḍī *Fiqh* on *Ribā*

Synopsis of Ibāḍī Teaching on *Ribā*[703]

Exchanged Counter-Values	Ibāḍī *Fiqh* Rulings
Case I HOMOGENEITY of genus, and HOMOGENEITY of *'illa*	I (a) Gain permitted in spontaneous transaction I (b) Gain prohibited in deferred transaction
Case II HETEROGENEITY of genus, and HETEROGENEITY or HOMOGENEITY of *'illa*	II (a) Gain permitted in spontaneous transaction II (b) Gain permitted in deferred transaction

Critique

The Ibāḍī *fiqh* ruling I (a), in permitting excess in spontaneous exchanges of homogeneity, contravenes the *ribawī*-commodities *ḥadīth* which expressly prohibits it. Ruling I (b), in permitting delayed settlements, also contravenes the governing *ḥadīth* which prohibits it altogether. Ruling II (a) is in conformity with the governing *ḥadīth* in permitting excess in spontaneous exchanges of heterogeneity. Ruling II (b) again contravenes the governing *ḥadīth*, which prohibits deferred transactions altogether, even without or with gain, in cases of both homogeneity and heterogeneity of genus. Heterogeneity of genus does not sanction deferred transaction.

III.1.iv.af. Critique of Ẓāhirī *Fiqh* on *Ribā*

The Ẓāhirīs do not accept analogy *(qiyās)* as a valid source of law. For them, *ribā* can occur only in the loan transaction referred to in the *ribā* prohibitory verses of the Qur'ān and only in the six commodities specifically mentioned in the *ribawī*-

[703] Salch, *Unlawful Gain*, Second Edition, 33-34 (not necessarily the unanimous view of all scholars of the school).

commodities *ḥadīth* of the Prophet. Therefore, derivation of *'ilal (rationes legis),* so central to the other *madhāhib*, has no place or relevance in Ẓāhirī *fiqh.*

III.1.iv.ag. Critique of Ja'farī *Fiqh* on *Ribā*

Synopsis of Ja'farī Teaching on *Ribā*[704]

Exchanged Counter-Values	Ja'farī *Fiqh* Rulings
Case I HOMOGENEITY of genus, and HOMOGENEITY of estimation method – weighability or measurability	I **(a)** Gain prohibited in spontaneous transaction I **(b)** Deferred transaction, even without gain, prohibited
Case II HETEROGENEITY of genus, and HOMOGENEITY of estimation method – weighability or measurability	II **(a)** Gain permitted in spontaneous transaction II **(b)** Conflicting opinions on Gain in deferred transaction
Case III HOMOGENEITY of genus, and ABSENCE of weighability or measurability (COUNTABILITY) (animal for animal)	III **(a)** Gain permitted in spontaneous transaction III **(b)** Conflicting opinions on Gain in deferred transaction
Case IV HETEROGENEITY of estimation method – weighability or measurability	IV **(a)** Gain permitted in spontaneous transaction IV **(b)** Gain permitted in deferred Transaction

Critique

The Ja'farī *fiqh* rulings on *ribā* I (a), I (b), II (a), III (a) and IV (a) comply with the *ribawī*-commodities *ḥadīth* in requiring equality in spontaneous exchanges of homogeneity and in prohibiting delayed settlements with or without excess. However, the conflicting opinions in rulings II (b) and III (b), and the ruling IV (b) have no basis in the governing *ḥadīth* which outlaws deferred transactions altogether.

The originality of Shī'a view resides in the fact that Shī'a *fiqh,* in a departure from other Islamic jurisprudential schools, permits *ribā* among certain categories of people: master and slave, father and son, and husband and wife.[705]

[704] Extracted from Saleh, *Unlawful Gain*, Second Edition, 33 (not necessarily the unanimous view of all scholars of the school).

For them, the union of the patrimonies *(dhimma māliyya)* of the master and the slave renders any transaction between them devoid of *ribā*.[706] Since the slave is the property of the master and all his possessions belong to the master, they regard the master and the slave as only one party in the transaction. Accordingly, any transaction between the two is a transaction by the master with himself, in which case, according to them, there is no place for *ribā*.

Transactions between father and son, for them, are also beyond the prohibition of *ribā* and fall under the category of *iḥsān* (doing good), which the Qur'ān urges sons to do to their fathers, and which is interpreted to mean passing benefits to them.[707] Any excess in a transaction between father and son is therefore not *ribā* but *iḥsān*. The *ribā*-exemption between father and son is not applicable between mother and son, based on a *ḥadīth* attributed to Imām 'Alī, and cannot be extended to mothers by analogy *(qiyās)*, which is not recognized by the Ja'farī *fiqh*.[708]

Transactions between husband and wife are also devoid of *ribā*, on the authority of the abovementioned *ḥadīth* attributed to Imām 'Alī, which states "there is no *ribā* between father and son, master and slave, nor between husband and wife but between you and those whom you do not own... ."[709] According to the majority Ja'farī view, the husband and wife exemption is applicable to permanent marriage only and not to the temporary marriage *(mutā')* recognized in Shi'ite Islam.[710]

The originality of Ja'farī *fiqh* in granting exemption from *ribā*-prohibition to the three relationships above lies in their pioneering attempt to point to the philosophical connotation of *ribā*. It is a unique – albeit only partially successful – effort to bring out the underlying process and the distinguishing characteristic of *ribā*. The basis for their exemption of the master-slave relationship is, rightly, philosophical. But the basis for exempting the father-son relationship is moral *(iḥsān)* and that for the husband-wife relationship traditional *(ḥadīth)*, without reference to the underlying rationale. A critique of these exemptions in the light of the new theory of *ribā* will be posited in chapter IV.

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[705] Abu al-Qāsim 'Alī ibn Ḥasan al-Mūsawī, *al-Intiṣār*. (Tehran, 1971), 212-213, quoted in Saleh, *Unlawful Gain*, Second Ed., 38.
[706] al-Mūsawī, *al-Intiṣār*, 212-213; Yūsuf al-Baḥrānī, *al-Ḥadā'iq al-Nāḍira*. 22 vols. (Beirut, 1985), XIX, 259.
[707] al-Baḥrānī, *al-Ḥadā'iq al-Nāḍira*, XIX, 260-261; al-Mūsawī, *al-Intiṣār*, 213-214; Muḥammad Ḥasan al-Najafī, *Jawāhir al-Kalām*. 43 vols. 7th cd. (Beirut, 1981), XXIII, 379.
[708] Ibid.
[709] Ibid.
[710] al-Baḥrānī, *al-Ḥadā'iq al-Nāḍira*, XIX, 261.

III.1.iv.b. Critique of *'Illa* of *Ribā*-Proscription in *Fiqh*

The Islamic jurisprudential discourse on the *'illa* of *ribā*-proscription is very complex and even divisive, although the basis of this juridical discourse is the common set of *ribawī*-commodities *aḥādīth* presented above.[711] As Saeed puts it:

> Juristic discussion tended, firstly, to probe into the *'illa* (efficient cause) of the prohibition of each commodity mentioned in the 'six-commodities *ḥadīth.*' Identification of the *'illa* was intended to extend the prohibition to other similar commodities by means of the jurisprudential tool of analogy *(qiyās),* which meant not to look into the social and moral reasons for the prohibition, but to establish the letter of the law. Since the *ḥadīth* did not provide any reason for the prohibition concerning these six commodities, jurists had to resort to *ijtihād* to identify the *'illa.* On the basis of certain terms used in some versions of the *ḥadīth,* they arrived at *'illas* [*sic*] which naturally differed amongst the schools of law.[712]

To the preceding statement it may be added that the *ribā-qiyās* was likewise not meant to look into the philosophical and theological rationale for the prohibition, which, as it turns out, might prove to be one of its greatest shortcomings. Additionally, the *ḥadīth* only did not *explicitly* provide a reason for the prohibition, although the *implicit* reasons are subsumed by its wordings.

Current juristic repertoire does mention "similarity" as an *'illa* of *ribā,* but not an exclusive one. Furthermore, it does not work out the implications of this *'illa* of similarity for the *tamyīz* (distinction) of *ribā* or the *ḥikma* (rationale) of its prohibition. In its *'illa* formulation, it conjoins similarity with the physical qualities of the Prophetically-named six commodities, namely currency value, food value, weighability, measurability, storability, etc. In this approach of combining the abstract with the material aspects, the doors to the search for implications of the concept of similarity are closed. Making the material aspects of the commodities the "operative conditions" for the working of the *'illa* of *ribā* immediately limits the scope of *ribā* discourse to physical human welfare, shutting out all metaphysical explanations.

On the contrary, these material operative conditions are only "incidental" characteristics of the named commodities, and not the *'illa* of *ribā.* In the *ribawī*-commodities *ḥadīth* the only and exclusive *'illa* is "similarity." The actual operative principle, i.e., the distinguishing criterion employed, is "similarity" vs. "dissimilarity" (*"gold for gold* ..." [similarity]... *"if the commodities differ...* "[dissimilarity]), and not

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[711] Cited in II.3.ii, above and presented in full in Appendix 5, below.
[712] Saeed, *Islamic Banking,* 34.

"goldness" vs. "non- goldness," or "weighability" vs. "non-weighability," etc. The *ḥadīth* lays down the requirements of exchange for cases where there is "similarity" and where there is "dissimilarity." The *ḥadīth* is not structured to lay down rules of exchange either for gold vs. non-gold or for weighable vs. non-weighable, etc. Rather, it specifically mentions only "dissimilarity," and not "non-goldness" or "non-weighability," etc. Any reading of the latter two concepts into this *ḥadīth* is only by implication at best and by speculation at worst.

Conditions Pertaining to Rule-Occasioning Factor *('illa)*

The topic of *'illa* and its derivation has been extensively and variously treated in major *uṣūl* works, such as those of Shāfi'ī, al-Ghazālī, ibn Rushd, Ibn Qudāma and al-Sarakhsī, to name but a few. In this study, however, in evaluating the current and the posited *'ilal* (occasioning factors) of the rule governing the prohibition of *ribā* and permission of *bay'*, sole reliance will be placed on the classic works of Abū al-Ḥasan 'Alī Sayf al-Dīn Āmidī (d.630/1232). His *al-Iḥkām,*[713] in the words of Hallaq, [714] represents the culmination of discourse on *uṣūl al-fiqh* in that he sums up virtually all arguments that preceded him in the field, making his work representative of a wide range of method and substance in *uṣūl.*[715]

The derivation conditions laid down in the *uṣūl,* though not all non-controversial, for the formulation of the occasioning factor *('illa)* giving rise to the rule governing a case, as captured by the classic works of Āmidī, and as presented by Bernard Weiss,[716] cover: (a) determinacy and role of rationales: conditions 3, 9, 14, and 15; (b) relationship of the occasioning factors and the occasioned rules: conditions 8, 11, and 16; (c)

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[713] Āmidī, Abū al-Ḥasan 'Alī Sayf al-Dīn. *al-Iḥkām fī Uṣūl al-Aḥkām,* 3 vols. (Cairo: Maṭba'at 'Alī Ṣubayḥ, 1968); *Muntahā al-Sūl fī 'Ilm al-Uṣūl* (Cairo: Maṭba'at Muḥammad 'Alī Ṣubayḥ, n.d.).

[714] Observation made by Hallaq in a review of this dissertation, November 2006.

[715] Major primary works on *uṣūl* and their authors that preceded Āmidī include, by *madhhab:*

(1) Ḥanafī Madhhab: Abū Bakr Muḥammad ibn Abī Sahl al-Sarakhsī (d. 483/1090), *al-Uṣūl,* ed. Abū al-Wafā al-Afghānī, 2 vols. (Cairo: Dār al-Ma'rifa, 1393/1973).

(2) Shāfi'ī Madhhab: Muḥammad b. Idrīs Shāfi'ī, *al-Risāla,* ed. Muḥammad Sayyid Kīlānī (Cairo: Muṣṭafā Bābī al-Ḥalabī, 1969); *al-Risāla,* ed. Aḥmad Muḥammad Shākir (Cairo: Muṣṭafā Bābī al-Ḥalabī, 1940). Trans. Majid Khadduri, *al-Risāla fī Uṣūl al-Fiqh: Treatise on the Foundations of Islamic Jurisprudence,* 2nd edn (Cambridge: Islamic Texts Society 1987); Abū Ḥāmid al-Ghazālī (d. 505/1111), *al-Mustaṣfā min 'Ilm al-Uṣūl,* 2 vols. (Cairo: al-Maṭba'a al-Amīriyya, 1324/1906); *al-Mankhūl min Ta'līqāt al-Uṣūl,* ed. Muḥammad Ḥasan Haytū (Damascus: Dār al-Fikr, 1980); *Shifā' al-Ghalīl fī Bayān al-Shabah wa al-Mukhīl wa-Masālik al-Ta'līl,* ed. Ḥamd al-Kabīsī (Baghdad: Maṭba'at al-Irshād, 1390/1971).

(3) Mālikī Madhhab: Abū al-Walīd Muḥammad ibn Aḥmad ibn Rushd (d. 595/1198), *al-Ḍarūra fī Uṣūl al-Fiqh aw Mukhtaṣar al-Mustaṣfā,* ed. Jamāl al-Dīn al-'Alawī (Beirut: Dār al-Gharb al-Islāmī, 1994).

(4) Ḥanbalī Madhhab: Muwaffaq al-Dīn Ibn Qudāma (d. 620/1223), *Rawḍat al-Nāẓir wa-Jannat al-Munāẓir,* ed. Sayf al-Dīn al-Kātib (Beirut: Dār al-Kitāb al-'Arabī, 1401/1981).

[716] Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1992), 561-570.

multiplicity of features of occasioning factors and of rules: conditions 6, 10, 12, and 13; and (d) affirmative and negative rules: conditions 4, and 17.

These derivation conditions are first summarized below and then the *'ilal* of the *ribā*-proscription as postulated by the various *madhāhib* are evaluated for compliance with these conditions.

(A) NON-CONTROVERSIAL CONDITIONS (all accepted by Āmidī)

Non-Controversial: Condition # 7

(a) The occasioning factor behind the original rule must be extendable to the novel case for the analogy to be valid.

(b) The occasioning factor behind a rule must be present in a case other than the case governed by that rule in order to be a true occasioning factor.

Non-Controversial: Condition # 18

(a) The occasioning factor behind the original rule must not have been extrapolated from the rule fallaciously.

(b) The original rule must not prove to be inoperative: any occasioning factor extrapolated from it cannot be productive of a valid analogy.

(c) The occasioning factor behind the original rule must not consist merely of some feature of the principal case that happens to be present whenever the rule is operative and absent whenever it is inoperative.

(d) The occasioning factor behind the original rule must not be capable of being countered by some other occasioning factor for which there is equal supporting evidence and which is not present in the novel case.

(e) The occasioning factor behind the original rule must not be in conflict with a clear Qur'ānic or Sunnaic text or with an Ijmā'ic consensus.

Non-Controversial: Condition # 19

(a) The occasioning factor must be determined solely by the Legislator and the indicator through which it becomes manifest must accordingly be a *Sharī'a* indicator: an indicator supplied by the Legislator.

(B) CONTROVERSIAL CONDITIONS

Controversial: Condition # 1

The occasioning factor must neither be identical with the case to which the rule applies nor be a part of that case. The controversy surrounds the second part of the condition, which Āmidī rejects on the ground that most of the analogies in fact involve occasioning factors that *are* part of the factual bundle to which the occasioned rule applies.

Controversial: Condition # 2

The occasioning factor must be "that which prompts or occasions" *(al-bā'ith).* To remove the tautology, the condition has been rephrased by Weiss as "the occasioning factor behind the original rule must truly occasion the rule," which according to Āmidī, means "it must entail a rationale *[ḥikma]* that the Legislator may be said to have in mind as His purpose in establishing the rule." Weiss explains that this condition does not equate *'illa* with *ḥikma;* it simply requires that the *'illa* entails, or is linked to, a *ḥikma.* The condition presupposes that the *'illa* is not just any feature *(waṣf)* of the principal case but is rather a feature that is tied to a *ḥikma,* thus making the existence of a *ḥikma* a *sine qua non* of analogy. This controversial condition is accepted by Āmidī.

Controversial: Condition # 3

The occasioning factor must not consist of an indeterminate *ḥikma.* Specific constant determinate features of cases that give determinacy to an indeterminate *ḥikma,* and not the indeterminate *ḥikma* itself, should constitute the rule-occasioning factor. This controversial condition is accepted by Āmidī with qualification.

Controversial: Condition # 4

Affirmative original rule must have a positive occasioning factor, i.e., something that exists, something present as opposed to something absent. This controversial condition is accepted by Āmidī.

Controversial: Condition # 5

The occasioning factor behind the original rule must not itself be a rule of law. This controversial condition is accepted by Āmidī.

Controversial: Condition # 6

The occasioning factor behind the original rule must consist of a single feature of the principal case; it may not be a complex of several features. This controversial condition is rejected by Āmidī.

Controversial: Condition # 8

The occasioning factor behind the original rule must be unrestricted in its operation as a rule-occasioning factor; it must occasion the rule in every case in which it is present. This controversial condition is accepted by Āmidī with qualification.

Controversial: Condition # 9

The *ḥikma* to which the occasioning factor behind the original rule is tied must be uniformly coincidental with the rule; whenever the *ḥikma* obtains, the rule must also obtain; otherwise, the occasioning factor ceases to be valid. This controversial condition is accepted by Āmidī with qualification.

Controversial: Condition # 10

Where the occasioning factor behind the original rule consists of a complex of several features of the principal case (for rejecters of Condition 6), the features must constitute a unit such that the validity of the analogy is not dependent upon any one of them considered apart from the others. This controversial condition is accepted by Āmidī.

Controversial: Condition # 11

The occasioning factor behind the original rule must be such that if it is negated the rule must also be negated. This controversial condition is accepted by Āmidī with qualification.

Controversial: Condition # 12

The occasioning factor behind the original rule must be the sole factor occasioning that rule: it must not be one of several occasioning factors operating simultaneously to give rise to the rule. This controversial condition is accepted by Āmidī.

Controversial: Condition # 13

The occasioning factor behind the original rule must not also be the occasioning factor behind some other rule. This controversial condition is rejected by Āmidī.

Controversial: Condition # 14

The occasioning factor behind the original rule must serve to give determinacy to some *ḥikma* (rationale). This controversial condition is accepted by Āmidī.

Controversial: Condition # 15

The occasioning factor behind the original rule, as the giver of determinacy to a rationale, must be indispensable to the working of the rationale such that the rationale will never obtain in a particular case apart from it. This controversial condition is rejected by Āmidī.

Controversial: Condition # 16

The occasioning factor behind the original rule must not obtain after the rule has already become operative: the rule must not have been previously operative apart from the occasioning factor. This controversial condition is accepted by Āmidī.

Controversial: Condition # 17

Where the original rule assumes a negative form and the occasioning factor is some impediment to the operation of the corresponding affirmative rule or the non-realization of some condition upon which the operation of the affirmative rule depends, the occasioning factor behind the affirmative rule must be actually present and operative. This controversial condition is accepted by Āmidī.

Controversial: Condition # 18

(f) The occasioning factor behind the original rule must not have the effect of restricting the reference of a general expression in the Qur'ān. This controversial condition is rejected by Āmidī.

(g) The occasioning factor behind the original rule must not be capable of being countered by a factor that occasions the contrary of the original rule. This controversial condition is rejected by Āmidī.

(h) The occasioning factor must not entail any addition to what is contained within the meaning of the Qur'ānic and Sunnaic texts. This controversial condition is rejected by Āmidī.

(i) The original rule from which the occasioning factor is extrapolated must itself be established with absolute certainty. This controversial condition is rejected by Āmidī.

(j) The occasioning factor must not be in conflict with the opinion of a Companion of the Prophet. This controversial condition is rejected by Āmidī.

(k) The presence of the occasioning factor in the novel case must be established with absolute certainty. This controversial condition is rejected by Āmidī.

Controversial: Condition # 19

(b) An indicator that is used to establish an occasioning factor must not itself serve to establish the rule governing the novel case. This controversial condition is rejected by Āmidī.

***Madhāhib Fiqh* Compliance with Derivation Conditions**

The compliance with these conditions by the various *madhāhib* in the development of their *'ilal* of *ribā*-prohibition is evaluated below:

III.1.iv.ba. Critique of *'Illa* in Ḥanafī *Fiqh*

According to the Ḥanafīs, the *'illa,* for both the currencies and edibles included in the six-commodities *ḥadīth* is *similarity of species* and *similarity of method of estimation (qadr):* weight in case of currencies and measure in case of edibles, in line with the commercial practice in the age of the Prophet.[717] In an exchange, when both factors –*similarity of species* and *similarity of method of estimation* – are present, both excess in weight/measure *(ribā al-faḍl)* and delay in delivery *(ribā al-nasī'a)* are prohibited. In case only one of the factors is present – *similarity of method of estimation* – then excess in weight/measure *(ribā al-faḍl)* is permitted but delay in delivery *(ribā al-nasī'a)* is prohibited. In case both the factors – *similarity of species* and *similarity of method of estimation* – are absent (e.g. exchange between currencies and edibles), then both excess in weight/measure *(ribā al-faḍl)* and delay in delivery *(ribā al-nasī'a)* are *permitted,* according to Ḥanafī *fiqh.*[718]

Ḥanafī *fiqh* considers only *weighability* and *measurability* as the components of the method of estimation *(qadr),* to the exclusion of *counting.* This is not an omission or oversight, but has a sound philosophical/theological reason connected with the *ḥikma* of the *ribā*-proscription, though not postulated by them. As for the *'illa* itself, while the

[717] al-Sarakhsī, *al-Mabsūṭ.* XII, 116-20.
[718] Nyazee, *Ribā and Islamic Banking,* 69.

Ḥanafī reasoning appears to be sound in the case of the *presence* of both or one of the factors of the *'illa* , their reasoning in the case of the *absence* of both factors of the *'illa* does not appear to be defensible. In this latter case (dissimilarity of species and dissimilarity of estimation method) they permit both excess in weight/measure *(ribā al-faḍl)* and delay in delivery *(ribā al-nasī'a).* But this twin permission runs contrary to the Prophetic *ribawī*-commodities *ḥadīth,* which clearly stipulates that in the event that the commodities *differ* (as to species and estimation method), they may be sold as one wishes *(faḍl* permitted), *provided* the exchange is *hand to hand (nasī'a* prohibited). This Ḥanafī position is based on their assumption that the prohibition of excess and prohibition of delay are *both* governed by the presence of similarity of species and similarity of method of estimation. As will be shown below, while the prohibition of excess is indeed, as in the Ḥanafī position, governed by similarity of species and similarity of estimation method (weight/measure), contrary to the Ḥanafī position the prohibition of delay is *not* conditional upon the presence of these two factors of the *'illa.* Prohibition of delay stems from a unique phenomenon, connected directly to the *ḥikma,* and applies even when both the factors of this *'illa* are absent. Put differently, the *'illa* of the prohibition of delay is different from the *'illa* of prohibition of excess. Moreover, these two factors of the *'illa,* as the Ḥanafis call them (similarity of species and similarity of estimation method), are not the *'illa* itself. These two factors are only the "necessary conditions," (as held by the Shāfi'īs, although for species only), for the emergence of the *'illa* of excess, which is a single phenomenon and has a direct link to the *ḥikma* of the prohibition, in accordance with the requirement of *uṣūl al-fiqh.*[719] This conclusion is a major component of the thesis of this work and is elaborated below (chapter IV).

Nyazee has concluded that the Ḥanafī position of not requiring immediate exchange in case of dissimilarity of species and dissimilarity of estimation method enables credit sales *(buyū' al-nasī'a),* and pre-paid sale *(bay' al-salam)* under certain conditions.[720] But as will also be argued below (chapter V), the permissibility of credit sales itself under Islamic law is at best questionable, while *bay' al-salam* is not the rule

[719] Weiss, *Search for God's Law,* 563, (Condition # 2).
[720] Nyazee, *Ribā and Islamic Banking,* 69-70.

but an exception. In *bay' al-salam* the prepaid price is a loan for a fixed period as permitted by Q. 2:282, and then the sale takes place in the regular manner when the goods are manufactured and ready.

Jurisprudentially, the Ḥanafī *'illa* for the rule of *ribā*-proscription does not meet the crucial conditions debated in jurisprudential circles as summarized above (III.1.iv.b). Firstly, as pointed out above, the two factors of *'illa* identified by the Ḥanafīs (similarity of genus and similarity of estimation method) are not the *'illa* itself, but only the "necessary conditions" for the emergence of the *'illa.* Even if these two factors are accepted as the *'illa*, the Ḥanafī stipulation of the two factors as the *'illa* attracts the controversy surrounding the permissibility of a multiplicity of features of the original case acting as the *'illa.* It flagrantly conflicts with Condition #6 that requires that the occasioning factor behind the original rule must consist of a single feature of the principal case: it may not consist of a complex of several features. Furthermore, as a crucial failure, the Ḥanafī *'illa* does not conform fully with Condition# 2 which requires that the occasioning factor behind the original rule must entail a rationale *(ḥikma)* that the Legislator may be said to have in mind as His purpose in establishing the rule and that the *'illa* should entail, or is linked to, a *ḥikma.* Ḥanafī *fiqh* does not show how their identified *'illa* of similarity of genus and similarity of estimation method entails, or is linked to, a *ḥikma,* or what that *ḥikma* is. By not meeting this crucial requirement, the Ḥanafī *fiqh* on *ribā* utterly fails the test of analogical validity and jurisprudential legitimacy.

III.1.iv.bb. Critique of *'Illa* in Shāfi'ī *Fiqh*

In Shāfi'ī *fiqh*, currency-value *(thamaniya)* and food-value *(ṭa'ām)* are the *'ilal* in the cases of currency and edibles respectively, extending the prohibition of *ribā* to all precious metals possessing a currency-value, and to all food items.[721] Contrary to the Ḥanafī view, similarity of species, for the Shāfi'īs, is not an element of the *'illa*, but only a necessary condition.[722]

The major flaw in the Shāfi'i position is that their *'ilal* of currency-value and food-value have no demonstrable connection with a plausible *ḥikma.* Their *'ilal* have

[721] al-Nawawī, *Minhāj al-Tālibīn*, trans. L. W. C. Van Berg. I, 355.
[722] al-Sarakhsī, *al-Mabsūṭ*, XII, 116-120.

implications for the temporal market economy (possible money market disequilibrium and human hardship), but no connection to a *ḥikma* compatible with the dire punishments ordained for *ribā*. The Shāfiʿī extension of *ribā*-prohibition to all currency and food items, including countable items, by including countability along with weighability and measurability as part of the method of estimation, severs the only (though unpronounced) methodological link that the Shāfiʿī *ʿilal* could have had with the *ḥikma*. This severance completely undermines the strength of the Shāfiʿī *ʿilal*, as will be shown below.

From the standpoint of *uṣūl al-fiqh* requirements, again as a crucial failure similar to the Ḥanafī failure, the Shāfiʿī *ʿilla* does not conform fully with Condition #2 which, as shown above,[723] requires that the occasioning factor behind the original rule must entail a rationale *[ḥikma]* that the Legislator may be said to have in mind as His purpose in establishing the rule and that the *ʿilla* should entail, or is linked to, a *ḥikma*. Shāfiʿī *fiqh* does not show how their identified *ʿilal* of currency-value and food-value entail, or are linked to, a *ḥikma*, or what that *ḥikma* is. By not meeting this crucial requirement, the Shāfiʿī *fiqh* on *ribā* utterly fails the test of analogical validity and jurisprudential legitimacy.

III.1.iv.bc. Critique of *ʿIlla* in Mālikī *Fiqh*

Mālikī *fiqh*, like the Shāfiʿī version, regards currency-value and food-value as the *ʿilal* for the currencies and edibles respectively. The critique of the Shāfiʿī position, in III.1.iv.bb, above, applies equally to the Mālikī position, as their *ʿilal* are the same. Therefore, the Mālikī *fiqh* on *ribā* likewise fails the test of analogical validity and jurisprudential legitimacy.

However, there is an additional Māliki requirement of *storability* for the attribute of food, thus excluding perishable food from the prohibition.[724] This Mālikī requirement of *storability* (implied longevity as opposed to perishability) is a very important – though entirely unrecognized and unformulated by them – condition for the emergence of the *ʿilla* of excess, as will be shown in chapter IV. It may suffice to note here that longevity, leading to eternity, is a defining and essential characteristic of self-

[723] See, p. 182, above.
[724] Ibn Juzay, *Qawānīn al-Aḥkām al-Sharīʿa*, 279-280.

emanation; today, for instance, man is seeking self-emanation (through cloning) to achieve eternity.

III.1.iv.bd. Critique of *'Illa* in Ḥanbalī *Fiqh*

Ḥanbalī *fiqh,* like the Ḥanafī, considers similarity of species and similarity of method of estimation to be the factors in the *'illa* for the prohibition of excess and prohibition of delay in currencies and edibles. But it adds *countability* to weighability and measurability as a method of estimation.[725]

The critique of the Ḥanafī position, delivered in III.1.iv.ba., above, applies equally to the Ḥanbalī position as their *'ilal* are the same. Therefore, Ḥanbalī *fiqh* on *ribā* also fails the test of analogical validity and jurisprudential legitimacy. Additionally, the Ḥanbalī inclusion of *countability* along with weighability and measurability as yet another method of estimation severs the link which their *'illa* of excess could have had with the *ḥikma.* This severance, as also in Shāfi'ī *fiqh,* completely demolishes the strength of the Ḥanbalī *'illa,* as will be shown below in chapter IV.

III.1.iv.be. Critique of *'Illa* in Ibāḍī *Fiqh*

Ibāḍī *fiqh* does not have a uniform position on the *'illa* of *ribā's* proscription, the application of which is rather limited under that *fiqh.*[726] As in the Ḥanafī *fiqh,* some Ibāḍī scholars regard *weighability* and *measurability* as the *'illa.*[727] al-Shammākhī adopts the Shāfi'ī position on *'illa,* though substituting for foodstuff the term "what is produced by the soil."[728]

This lack of cohesion in the Ibāḍī *fiqh* on *ribā* prevents any meaningful contrast with the calibrated hermeneutical model below (chapter IV) and with the *uṣūl al-fiqh* requirement, above, (III.1.iv.b). However, to the extent of its similarity with the Ḥanafī and Shāfi'ī *fiqh* positions, the fragmentary Ibāḍī *fiqh* on *ribā* also utterly fails the test of analogical validity and jurisprudential legitimacy.

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[725] Nyazee, *Ribā and Islamic Banking,* 71.
[726] Saleh, *Unlawful Gain,* Second Edition, 20-21.
[727] Al-Basyānī, *Mukhtaṣar al-Basyānī* (Oman, 1397 AH), 177.
[728] al-Shammākhī,, 'Āmir ibn 'Alī. *al-Iḍāh,* III, 28.

III.1.iv.bf. Critique of *'Illa* in Ẓāhirī *Fiqh*

For the Ẓāhirīs, analogy *(qiyās)* is not a valid source of law. Therefore, they confine *ribā* to the named six commodities.[729] Accordingly, in their *fiqh* there is no need to determine *'ilal* for the extension of the *ḥukm* of *ribā.* But, as already pointed out above,[730] the Ẓāhirīs permit the extension of the meanings of the six commodities to other commodities through the implication of the meanings.[731]

III.1.iv.bg. Critique of *'Illa* in Ja'farī *Fiqh*

Ja'farī *fiqh* recognizes *similarity of genus* and *similarity of means of valuation (taqdīr)* by weight or measure as the two necessary elements of the *'illa.*[732] For them, *similarity of genus* arises from *similarity of name* [733] or *similarity of attributes.*[734] Weighability or measurability, for them, is to be determined according to the practice in the time of the Prophet, or in its absence, according to local custom.[735]

This Ja'farī position on the *'illa* has the same elements as the Ḥanafī position and, therefore, the same comments apply here as in III.1.iv.ba, above. Therefore, the Ja'farī *fiqh* on *ribā* similarly fails the test of analogical validity and jurisprudential legitimacy.

III.1.iv.bh. Critique of *'Illa* in Individual *Fuqahā'* Works

A large number of differing *'ilal* of the injunction of *ribā* – as many as nineteen – have been discovered and posited by the classical jurists.[736] Most of these are covered by the *madhāhib* exposition on the *'illa* and their critique, above, comprising the work of representative *fuqahā'* of each *madhhab.*[737] The *'ilal* and their critique presented above, therefore, provide a complete coverage of the *fiqh* repertoire on the issue.

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[729] Abū Muḥammad 'Abd Allāh b. Sa'īd Ibn Ḥazm, *al-Muḥallā* (Beirut: n.p.,1978; Cairo: Idāra Ṭaba'āt al-Munīriyya,1350),VIII, 468.
[730] See III.1.iv.a., p. 169, above.
[731] Nyazee, *Ribā and Islamic Banking,* 71.
[732] Jamal al-Dīn al-Ḥasan ibn Yūsuf al-Muṭahhar, *Tabṣirāt al-Muta'allimīn fī Aḥkām al-Dīn,* 127.
[733] Rūḥ Allāh al-Khumaynī, *Taḥrīr al-Wasīla* (al-Najaf: Maṭba'āt al-Adāb, [between 1964 and 1978]), I, 537; see also Abū al-Qāsim Najm al-Dīn Ja'far ibn Ḥasan 'Alī, *al-Mukhtaṣar al-Nafī' fī Fiqh al-Imāmiyya,* 151.
[734] Ibid.
[735] M. J. Maghnīyah, *Fiqh al-Imām Ja'far al-Ṣādiq* (Bayrūt: Dār al-'Ilm lil-Malāyīn, 1965), VIII, 277.
[736] Nyazee, *Ribā and Islamic Banking,* 68, based on Muḥammad ibn 'Alī Shawkānī (d. 1839), *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min 'Ilm al-Uṣūl.*
[737] al-Sarakhsī on Ḥanafī *fiqh;* al-Nawawī on Shāfi'ī *fiqh;* Ibn Qudāma on Ḥanbalī *fiqh;* Ibn Juzay on Mālikī *fiqh;* al-Basyānī, al-Shammākhī and al-Sālimī on Ibāḍī *fiqh;* and al-Muṭahhar, al-Khumaynī and al-Murtaḍa on Ja'farī *fiqh.*

III.1.iv.c. Critique of *Ḥikma* of Proscription of *Ribā* in *Fiqh*

Any search for the rationale *(ḥikma)* of proscription of *ribā* and its rational explanation is a departure from the standard method of classical Islamic law. The casuistic analogical method of the classical and medieval *fuqahā'* did not encourage the formulation of juristic positions on the rationale *(ḥikma)* of Scriptural injunctions. Moreover, since the extension (through *'illa)*, and not interpretation (through *ḥikma)*, of the *ḥukm* of *ribā* was the matter of practical concern at that time, the *madhāhib* formulations were developed only for the *'illa*. Hence, unlike the abundant *madhāhib* literature on *'illa*, there is no formal *madhhab* formulation on the rationale *(ḥikma)* of proscription of *ribā*. "Although few classical scholars acknowledge a need to go beyond the usual *'illas* [*sic*] ... in order to 'understand' *ribā* laws or identify their deeper 'causes,' there have been a few attempts to do so, famous perhaps because of their rarity."[738] Only some individual scholars have opined on the subject, the more prominent being those examined below.

Ibn Kaysān (d. 911 or 912 C.E.) opined that "the reason *(al-maqṣūd)* for the prohibition of *ribā* is kindness towards people" (i.e., by not charging an increase). This opinion was reported and debunked by al-Nawawī[739] "since this logic would extend incorrectly to profit-making ... ."[740] Further critical evaluation of this rationale is posited below in dealing with Ibn Qayyim's rationale of "exploitation of the poor."

Ibn Rushd (d.595/1198), the philosopher and Mālikī jurist,[741] as pointed out by Vogel, preferred and extended the Ḥanafī *'illa* of equality of measure to posit "mathematical equivalency" as the *ḥikma* (rationale) of proscription of *ribā*. For Ibn Rushd, the rationale of *ribā*-prohibition is the "goal of exalting fairness of exchange, advanced by insisting on exact mathematical equality of exchange whenever that equality is possible and appropriate. Adequate equality is usually achieved by transacting through the medium of currency, the purpose of which, he notes, is to provide a neutral measure of respective values. If, however, the two countervalues being exchanged have similar uses *and* are either both measured by volume, both weighed, or

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[738] Vogel and Hayes, *Islamic Law and Finance*, 78.
[739] al-Nawawī, *al-Majmū'*, IX, 390-404 ("*far' fī madhāhib al-'ulamā' fī bayān 'illat al-ribā fī al-'ajnās al-arba'a*").
[740] El-Gamal, "An Economic Explication of the Prohibition of *Ribā* in Classical Islamic Jurisprudence" (http://www.ruf.rice.edu/~elgamal/files/islamic.html), n. 1, 2.
[741] Ibn Rushd, *Bidāyat*, II, 129 ff.

both currency, then exact mathematical equality ought to be required."[742] Extending Ibn Rushd's mathematical equality theory, Vogel posits "prevention of uncontrolled inequality" as the rationale for the prohibition of delayed exchanges of goods within these three groupings.[743] Further precision is added to this 'Ibn Rushd rationale' by El-Gamal who states, "Ibn Rushd dramatically enlarged the scope of *ribā*,[744] and held the *ḥikma* to be *ghubn fāḥish* (excessive injustice/criminal fraud[745]), where justice meant 'equality or proportionality of the transaction' with no connotation of injustice to, or exploitation of, the poor."[746] Ibn Rushd himself states:

> It is thus apparent from the law that what is intended by the prohibition of *ribā* is what it contains of excessive injustice *(ghubn fāḥish)*. In this regard, justice in transactions is achieved by approaching equality. Since the attainment of such equality in items of different kinds is difficult, their values are determined instead in monetary terms *(with the Dirham and the Dīnār)*.
> For things which are not measured by weight and volume, justice can be determined by means of proportionality. I mean, the ratio between the value of one item to its kind should be equal to the ratio of the value of the other item to its kind. For example, if a person sells a horse in exchange for clothes, justice is attained by making the ratio of the price of the horse to other horses the same as the ratio of the price of the clothes [for which it is traded, tr.] to other clothes. Thus, if the value of the horse is fifty, the value of the clothes should be fifty [If each piece of clothing's value is five], then the horse should be exchanged for 10 pieces of clothing.
> As for [fungible] goods measured by volume or weight, they are relatively homogenous, and thus have similar benefits [utilities]. Since it is not necessary for a person owning one type of those goods to exchange it for the exact same type, justice in this case is achieved by equating volume or weight, since the benefits [utilities] are very similar ...[747]

Here Ibn Rushd is clearly advancing a rudimentary economic argument, which El-Gamal has subsequently rendered in modern economic terminology of "Pareto efficiency," a concept of Welfare Economics. While this economic justice-based rationale of exact mathematical equality or proportionality is promising *per se*, it is not commensurate with the ordained Qur'ānic punishment for indulgence in *ribā*, and its Prophetic equivalence with *shirk* and incest. Moreover, beyond this rationale of justice, Ibn Rushd in philosophy – as also Vogel in law and El-Gamal in economics – does not explore any philosophical and theological explanation that will be posited in this thesis.

Vogel here raises what he calls an interesting side question: "why [is it that] *qarḍ* loans without interest are lawful, when sales with delay of a *ribawī* good for an equal but

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[742] Vogel and Hayes, *Islamic Law and Finance*, 78.
[743] Ibid., 79.
[744] Wahba al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuh* (Damascus: Dār al-Fikr, 1997), Fourth revised ed., V, 3724-3725.
[745] Hans Wehr, *Arabic-English Dictionary*, 779.
[746] El-Gamal, An Economic Explication of the Prohibition of *Ribā*, 5.
[747] Ibn Rushd, *Bidāyat* (Beirut: Dār al- Ma'rifat, 1997), verified by 'Abd al-Majīd Ṭu'mat Ḥalabī, III, 184, trans., El-Gamal, in his "An Economic Explication of the Prohibition of *Ribā*", 5.

delayed price in the same good (e.g., ten bushels of wheat now for ten bushels of wheat later) are *not* lawful?" He posits the technical *fiqh* answer that interest-free loans are licit because "loans are always presently due, liable to being called at any time, a provision favoring the lender and reducing his market risk. As important is the Prophet's description of *qarḍ* as a charitable act, implying that the lender's voluntary acceptance of the delay in the exchange is charity." He further posits that delayed sales are illicit presumably because delay introduces an unreasonable inequality into the exchange.[748] These rationales, based on morality (charity) and justice (equality of exchange), are rather weak and are not compatible with the punishments for the sin of *ribā*. A stronger and compatible philosophical-theological rationale arising out of transfer of ownership, not in loans but only in delayed sales, is posited in chapter IV, below.

Fakhr al-Dīn al-Rāzī (d. 606/1209), declares the rationale *(ḥikma)* of the prohibition of *ribā* to comprise the following:[749]

(1) "The first reason is that taking of *ribā* implies appropriating another person's property without giving him anything in exchange... Now, a man's property is for fulfilling his needs, and it has great sanctity. ... This means that taking it from him without giving him something in exchange is *ḥarām*." – [justice rationale].

This argument, viewed from a theological perspective, has all the ingredients of the *ex-nihilo* creation argument, but is not developed further by him along these lines.

(2) "The second reason is that dependence on *ribā* prevents people from working to earn money ... [with all its undesirable economic consequences]" – [economic rationale]. Elsewhere, Rāzī expands on this rationale as follows:

> God forbade *ribā* only because it prevents people from busying themselves for gain, because if the owner of the dirham can by means of a *ribā* contract gain an additional dirham whether in cash or credit, it becomes easier for him to win the means of subsistence. He will rarely bear the burden of profit, commerce, and arduous crafts.[750]

(3) "The third reason is that permitting the taking of *ribā* discourages people from doing good to one another ... and from lending with goodwill, expecting back no more than what they have loaned" – [moral rationale].

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[748] Vogel and Hayes, *Islamic Law and Finance*, 79-80.
[749] Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr*, VII, 94.
[750] Ibid., *Mafātiḥ al-Ghayb* (Istanbul: al-Maṭba'a al-'Amīra, 1891), II, 531.

(4) "The fourth reason is that the lender mostly would be rich, and the borrower poor. [Thus] allowing the contract of *ribā* would involve enabling the rich to exact an extra amount from the weak poor" – [social rationale].

These arguments from al-Rāzī are based on sound justice, economic, moral and social rationales. But none of them are compatible with the gravity of the Qur'ānic punishments for, and the Prophetic graphic descriptions of, the sin of *ribā.*

Ibn Qayyim (d. 751/1356), the Ḥanbalī jurist,[751] regards prevention of "commercial exploitation" of the weak poor by the strong rich as the rationale *(ḥikma)* of the prohibition of excess in debt transactions, explaining the Jāhilīya practice thus:

> In the pre-Islamic period, *ribā* was practiced by giving extra time to repay a debt and adding a charge against this extension until one hundred became thousands. In most of the cases, only a needy individual would keep doing so as he would have no choice but to defer the payment of the debt. The creditor agreed to defer his demand for repayment of the debt, and waited so that he might gain more profit on the principal. On the other hand, the debtor was forced to pay the increased amount to ward off the pressing demands of the creditor and the risk of the *hardships of prison.* Thus, as time passed and the loss of the debtor went on increasing, his troubles multiplied and his debt accumulated until all his possessions and belongings were lost to the creditor.[752]

The rationale *(ḥikma)* of the prohibition of delay in settlement of sale transactions is regarded by Ibn Qayyim to be simply prevention of potential injustice to the economically weaker party in a barter transaction:

> Had the sale of these commodities [wheat, barley, dates and salt] been allowed on deferred payment basis, no one would have sold them unless at a profit. If so, the seller would then have desired to sell them on an on-the-spot basis for the greed of profit. This would have raised the cost of food for the needy, hurting them severely. Most people do not have dirhams or dinars, particularly those living in isolated areas or deserts. Hence, they exchange food for food ... Had it been allowed, it could have led to the form of pre-Islamic *riba* [*sic*] which is represented in their saying: "Either you pay or add to the debt." One measure could become ultimately many measures.[753]

Ibn al-Qayyim's position on *ḥikma* of *ribā* is captured by Vogel thus:

> Ibn al-Qayyim argued that the Qur'ān shows the reason for its vehement prohibition of *ribā* by contrasting *ribā* and charity. The core case of *ribā* is 'pay or increase,' i.e., *ribā al-jāhilīya*, where one obligated to pay is given an extension against an increase in debt. This is exploitation of the needy, he says, since only a needy person would pay more for a mere extension of time. To such a person the rich have a duty to *give* charity, not to *take* something more from him. The prohibition of other forms of *ribā*, particularly *ribā al-faḍl* and *ribā al-nasī'a*, which includes even equal exchanges of *ribawī* goods with delay, is to prevent that evil from arising in any form. These prohibitions prevent gold, silver, and foodstuffs (the latter are essential for life, and are often used in lieu of money) from being traded like ordinary commodities. Such trading leads

[751] Ibn Qayyim, *I'lām al-Muwaqqi'īn*, II, 153-164.
[752] Ibid., II, 154.
[753] Ibid., II, 157-158.

inevitably to exploitation of the poor through hoarding and speculation as well as through loans with interest and increasing debts in return for a delay.[754]

Vogel further points out:

> For Ibn al-Qayyim, *ribā* rules are comprehensible not because each and every act they prohibit is intrinsically unjust, exploitative, or unfair, but because to prevent such acts from occurring God has taken the precautionary step of excluding certain goods from ordinary commerce. Because of the vehement divine disapproval of such situations, the law does not merely enjoin fairness and enforce it in particular cases; instead, it deploys rules designed to prevent the occurrence of unfair situations.[755]

This "prevention of exploitation of the poor" rationale of Ibn al-Qayyim, who died in 751/1356, is not tenable for four reasons. Firstly, the rationale of injustice (exploitation) had already been debunked by al-Nawawī, who died in 676/1278, some three quarters of a century before Ibn al-Qayyim, on the grounds of being equally extendable to profit which he regards as legitimate.[756] Secondly, the Qur'ānic prohibition of *ribā* is absolute and unconditional. The Qur'ānic prohibitory verse states: "Allāh has prohibited *ribā!"* This verse *does not* state: "Allāh has prohibited *ribā*, *if ...*" Such unconditional injunction cannot have a conditional rationale (exploitation of the poor) which may or may not exist in all situations. Thirdly, exploitation, even when operative, cannot attract for the sin of *ribā* the drastic Qur'ānic punishments and the graphic Prophetic equations with idolatry(*shirk*), adultery and incest. Fourthly, this "exploitation of the poor" rationale is based on a negligent interpretation of the last part of the Qur'ānic verse 2:279, "*lā taẓlimūna wa-lā tuẓlamūn.*" As pointed out by El-Gamal, this phrase is popularly taken to mean injustice in the sense of exploitation of the poor debtor by the rich creditor. The standard meaning of this phrase, according to Abū Ja'far, Ibn 'Abbās and others,[757] is [then you should collect your principal] "without inflicting or receiving injustice," which is interpreted as "without increase or diminution" where both an increase or a decrease of the amount returned relative to the amount lent would be considered injustice.[758] This is also, as explained above,[759] Ibn Rushd's concept of injustice based on the "equality or proportionality of the transaction." However, even this "equality" interpretation of the phrase is not entirely

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[754] Vogel and Hayes, *Islamic Law and Financc*, 82.
[755] Ibid.
[756] al-Nawawī, *al-Majmū'*, IX, 390-404. ("far' fī madhāhib al-'ulamā' fī bayān 'illat al-ribā fī al-'ajnās al-arba'a").
[757] al-Ṭabarī, *Jāmi'*, II, 109-110.
[758] El-Gamal, An Economic Explication of the Prohibition of *Ribā*, 3.
[759] See n. 739, p. 192, above.

satisfactory. As will be posited below (chapter IV), from the standpoint of hermeneutical balance in the *ribā*-injunctions, the most appropriate interpretation of this phrase, as already explained above,[760] is "transgression" – the stepping into the forbidden territory, i.e., the sanctuary *(ḥimā)* of someone else.

Vogel notes that a common addition to this rationale (what may be called the "distributive justice" rationale) is that *ribā*-prohibition, by forcing the investor to bear risks, prevents the rich from remaining forever rich and the poor forever poor. He refers to Qur'ān 59:7, which is often cited for this proposition, which requires distributing booty to, among others, the needy and the orphans "so that it may not [merely] make a circuit among the wealthy of you."[761]

Ibn al-Qayyim's exposition also brings out another rationale, that of "minimizing commerce in currency and foodstuffs," which is also posited by Ibn Rushd. Vogel explains that, for Ibn al-Qayyim and Ibn Rushd, "if money is to remain a neutral measure of value, it must not be dealt with as a commodity. Because foodstuffs are often used in lieu of money and because they are basic needs of mankind, they should be treated as much as possible as if they also were neutral and stable values, withdrawn from commerce."[762]

The rationales of "distributive justice" and "minimizing commerce in currency and foodstuffs," advanced by Ibn al-Qayyim and Ibn Rushd, are again untenable because these are not commensurate with the Qur'ānic drastic punishment and the Prophetic graphic equations for the sin of *ribā*.

In addition to these individual opinions about the *ḥikma*, as pointed out by Vogel,[763] many aspects of Islamic commercial law rely on the classic legal maxim of *al-kharāj bil-ḍamān*, which is contained in authentic Prophetic *aḥādīth*,[764] dealing with slaves, and which is popularly translated as "gain accompanies liability for loss." This suggests that gain is morally justified only when it involves risk to secure it and that, therefore, riskless gain is unjust. This maxim, however, does not legitimize *gharar* that involves "undue risk."

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[760] See II.2.v.ba., p. 63, above.
[761] Vogel and Hayes, *Islamic Law and Finance*, 83.
[762] Ibid.
[763] Ibid.
[764] Abu Dāwūd, Tirmidhī, Nasa'ī, and Ibn Māja *ḥadīth* no. 2242/1 and 2243/2, 57.

Islamic legal tradition has put this maxim in service as the rationale of the prohibition of *ribā* which entails a gain, but does not by contract entail a risk of loss. This maxim has also been utilized as the legitimizing basis of "profit/loss sharing" structure of Islamic finance industry, through the financial instruments of *musharaka* and *muḍāraba.*

There are two problems with this "profit/loss" maxim as utilized in the Islamic juridical repertoire. Firstly, rendering the term *al-kharāj* as "gain" is problematic since the lexical meaning of the term has a stronger connotation of "extraction; tax" than of "gain." Surprisingly, another authentic *ḥadīth* [765] which juxtaposes *ribḥ* (profit) with *ḍamān* has not been put in service for this purpose. Moreover, the term *al-ḍamān* has a stronger lexical connotation of "security; guarantee; liability" than of "loss." This absence of a satisfactory meaning of the term has been commented upon by El-Gamal:

> Despite thousands of references to the legal maxim *'al-kharāj bil-ḍamān'* (return must be justified by guarantee/risk) in the Islamic jurisprudence and finance literature, I have yet to read a single satisfactory explanation of what it means ... [either] it is merely tautological ... or inviting the legal stratagems ... In either case, it is difficult to understand the substance of this oft-quoted maxim. [766]

Secondly, the profit/loss maxim ("linking lawfulness of gain to risk") as the rationale of prohibition of *ribā* is, again, not commensurate with the Qur'ānic punishment for, and Prophetic condemnation of, the sin of *ribā.*

Another closely linked argument [rationale] against interest-taking in loans is advanced by Kāsānī[767] which, in the words of Vogel, states:

> Most loans not only shield the lender from risk, but they also involve consumables, i.e. goods which yield benefits only through being consumed. Unlike a donkey or a farm, wheat or money produces no fruit or yield *(kharaj)* [*sic*], and are in that sense sterile. A lender who gets compensation beyond exact restitution of his goods is exacting gain from someone *in return for nothing*, and is therefore *unjustly enriched.* Gain can fairly be derived from money only when one invests it in property that does yield tangible gain, such as the donkey or the land.[768]

As further noted by Vogel, Kāsānī recognizes that "for consumables the thing itself represents the usufruct; hence to exact interest is to take a compensation for

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[765] Ibn Māja, *ḥadīth* no. 2188/2, 31.
[766] El-Gamal, "Interest and the Paradox of Contemporary Islamic Law and Finance", 21, n. 48.
[767] al-Kāsānī, *Badā'i' al-Ṣanā'i'*, VII, 395-96.
[768] Vogel and Hayes, *Islamic Law and Finance*, 84.

nothing."[769] Similarly, Sarakhsī defines *ribā* in the technical sense as "the stipulated excess without a counter-value in *bay'* (sale)." [770]

The above argument by Kāsānī and the definition by Sarakhsī both come very close to the creation-based argument posited below (chapter IV) as a rationale of prohibition of *ribā*, but neither of these jurists (like Vogel), develops this argument beyond the exoteric temporal level (unjust enrichment) to an esoteric theological level.

III.1.iv.d. Summary Critique of all *Madhāhib Fiqh on Ribā*

As is evident from the individual critiques on *madhāhib* expositions on *'illa* and *fuqahā'* expositions on *ḥikma*, above,[771] all the extant Sunnī and Shī'ite *madhāhib fiqh* on *ribā* fail the test of analogical validity and jurisprudential legitimacy. They either flagrantly violate even the explicit requirements of the flag-bearer *ribawī*-commodities *ḥadīth* of the Holy Prophet, or flout the crucial conditions imposed by their own rules of derivation of *'illa* and *ḥikma* laid down in the *uṣūl al-fiqh.* In extrapolating their *fiqh,* they flout the *ribawī*-commodities *ḥadīth* by contravening its requirements on homogeneity and instantaneity in exchanges. They flout their own *uṣūl al-fiqh* rules of derivation by failing to posit a rationale *[ḥikma]* that the Legislator may be said to have in mind as His purpose in establishing the rule, and which, *inter alia,* is commensurate with the drastic punishments for violation. They further violate these rules by failing to posit an *'illa* which entails, or is linked to, a plausible *ḥikma, inter alia,* compatible with the associated punishment. This state of affairs on the all-important *fiqh* of *ribā*, arising from juridical deficiencies, is very critically alarming and requires a solid juridical redressing.

III.1.iv.e. Critique of *Bay'* in *Fiqh*

The concept of *bay'* in Islamic law is much wider than its popular translation as sale. Article 149 of the *Mejelle* defines it as: "*bai'* [*sic*], in the generic sense, is the transfer of a definite ascertained object, having a legal value, in exchange for an equivalent; or, in Shāfi'ī law, the transfer of a definite use of property in perpetuity in exchange for a price. This definition includes a large number of different contracts,

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[769] Ibid., 84, n. 24.
[770] al-Sarakhsī, *al-Mabsūṭ*, XII, 111.
[771] See III.1.iv.b. and III.1.iv.c, above.

among which sale in the specific sense is the *transfer of a definite ascertained object seen by* [or at least known to] *both parties for a definite equivalent in money."* Nyazee articulates the same idea in an expanded version thus:

> The term *bay'* is usually translated as sale, however, it has a much wider meaning in Islamic law. This term covers all commutative contracts, that is, contracts in which there is an exchange of two counter-values. In other words, ownership in one counter-value is passed to the other party in lieu of another counter-value. In this wider sense, the term *ijārah* (hire), for example, is included in the meaning of *bay'*, because it is the exchange of benefits arising from rented property for rent, or it is the exchange of wages for services rendered. Hire is often referred to by the jurists as the sale of benefits arising periodically. Some go to the extent of considering the marriage contract as some kind of sale insofar as it amounts to handing over ownership in benefits *(tamlīk al-manāfi')* in exchange for dower.[772]

Nyazee further states that al-Sarakhsī has explained the similarities and distinctions between *bay'* and *nikāḥ.*[773]

al-Sarakhsī explains that if an excess of one commodity is without an equivalent return *('iwād, badal)* in a sale transaction, it will be contrary to the requirements of a valid *bay'*. Therefore, such an inequitable exchange or sale is unlawful from the legal/moral point of view; and therefore, any stipulation of surplus or excess profit in transaction of exchange would be illicit because a valid or legal sale is necessarily a mutual transaction of exchange-value for an equal exchange value.[774]

Ibn al-'Arabī opines that trade *(tijāra)* is *bay',* involving the exchange of commodities (including money) for commodities. He classifies *bay'* (exchange) into three types: (1) material substance for another material substance, i.e., commodity or money for commodity or money, (2) purchase/sale by paying money in advance *(salam)* or on the basis of a manufactured item, and (3) *ijāra:* sale of a material substance (money) for usufruct *(manfa'a).*[775]

Taking *bay'* in its restricted sense of sale, according to al-Kāsānī, the Ḥanafī jurist, there are four basic types of sale: barter, cash sale, *salam* and *ṣarf.* He explains:

> Sale with respect to counter-values is divided into four types, the sale of an ascertained commodity *('ayn)* for an ascertained commodity *('ayn)*, which is the sale of goods for goods and is called barter; the sale of an ascertained commodity *('ayn)* with a *dayn*, and this is the sale of goods for absolute prices (currencies), which are *dirhams* and *dīnārs*, or their sale for copper coins or with a described measured commodity as a liability (debt) or a described weighed commodity or described identical counted items; the sale of a *dayn* with an ascertained commodity *('ayn),*

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[772] Nyazee, *Ribā and Islamic Banking,* 42.
[773] al-Sarakhsī, *al-Mabsūṭ,* XIII, 109.
[774] Ibid., XII, 109. See also, *The Encyclopedia of Islam* (Leiden: E. J. Brill, 1936), III, 1148.
[775] Ibn al-'Arabī, *Aḥkām al-Qur'ān,* I, 241-2.

which is *salam;* and the sale of a *dayn* with a *dayn,* which is the sale of an absolute price for an absolute price, and is called *ṣarf.*[776]

Each one of these four types of sale can be either immediate or delayed. Further, this description does not capture the full juristic spectrum of sale by excluding sale of benefits or of services, which are treated by the jurists separately under the headings of *ijāra* and *ji'āla,* etc.[777]

Ibn Ḥazm contrasts *bay'* and *ribā* from a legal and moral perspective thus:

> Bay' involves a mutual transfer of the proprietary right to hold the material substance or property. Thus *bay'* and *ribā* share a common attribute, and individual operation of each is the same: each comprises a *mu'awada* (mutual exchange) of goods for goods – but one exchange is just, permissible and good, and the other unlawful, perverse and noxious, and falls in the category of gravest sins.[778]

In a comparative study of the *madhāhib fiqh,* Fitzgerald states that all schools are agreed on the definition of *bay',* above.[779] Except for minor technical terminological differences, like the distinct treatment of the concept of *dayn* in Ḥanafi *fiqh,* there are no fundamental *fiqh* differences among the various *madhāhib.* Hence, there is no separate treatment of each *madhhab* on this concept in this thesis.

Significantly, the *fiqh* definition of *bay',* above, is centered on the concept of counter-values of different commodities, benefits and services. The central theme is, therefore, heterogeneity of exchange, which is a crucial concept in this study.

III.2. Current Hermeneutical Models

The work of the linguists, jurists, exegetes, historians, philosophers, contemporary scholars, and economists on usury/*ribā,* individually examined above,[780] varied as it is, has evolved diachronically and culminated in distinct but divergent hermeneutical models.[781] Although formulated here primarily in the Islamic context, essentially these models are also fully and equally reflective of the similar divergent thought streams in the Judeo-Christian tradition.

Islamic hermeneutical effort on the issue of prohibition of *ribā,* ostensibly derived from the Qur'ānic/Sunnaic Scriptural Model, may be classified for analytical purposes

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[776] al-Kāsānī, *Badā'i' al-Ṣanā'i',* V, 134.
[777] Nyazee, *Ribā and Islamic Banking,* 46.
[778] Ibn Ḥazm, *al-Muḥallā,* VIII, 183, 351.
[779] S. G. V-Fitzgerald, *Muhammadan Law: An Abridgement According to its Various Schools* (Oxford: Clarendon Press,1979), 182.
[780] See chapter II, above.
[781] This section draws heavily on, and extensively reproduces verbatim from, the earlier unpublished work of this author, Azeemuddin Subhani, "The Islamic Doctrine of *Ribā* Prohibition: A Modular Hermeneutical Examination" (master's thesis, McGill University, 2002).

broadly into the Traditionalist/Revivalist/Neo-Revivalist and the Liberal/Modernist paradigms. Both camps share the contemporary scholarship on *ribā* and agree that the rationale *(ḥikma)* of its prohibition is the moral concept of injustice (exploitation). What they differ on is, in effect, whether the *ḥikma* (rationale) of injustice can serve as the *'illa* (occasioning factor) of prohibition of *ribā.* The Traditionalists insist on using the traditional *'ilal* (occasioning factors) identified by medieval jurists; the Liberals advocate the use of their posited *ḥikma* of injustice as the *'illa,* thereby sanctioning the "just" modern- day bank interest.

As will be argued below, the scholarship of both camps suffers very acutely from grave weaknesses, namely, a restricted view of *ribā,* imperfect formulation of the *'illa,* and absence of identification of a plausible *ḥikma,* all crucial elements of theory, the absence of which completely demolishes these thought models.

III.2.i. Traditionalist Model

This Model is the by-product of the Traditionalist/Revivalist/Neo-Revivalist Movement that is represented by the classical and medieval Revivalists and the contemporary 20th century neo-Revivalist groups.

However, although the Revivalism of the 18th and 19th centuries is characterized by, among other things, a call to a "going back" to the original Islam, an attempt to shake off the idea of the fixity and finality of the traditional schools of law, and an attempt to perform *ijtihād* [research effort] to rethink for oneself the meaning of the original message,[782] the derived Traditionalist Model of *ribā*, as championed by the Neo-Revivalists, is still plagued by the notion of *taqlīd* (adherence to traditional *madhāhib)* and absence of *ijtihād.* This phenomenon is explained by their perception of *ijtihād,* which is based on their belief and an explicit recognition that the Qur'ān and *Sunna* contain a complete way of life whose sanctity and purity should not be tarnished by new interpretations influenced by time and circumstances.[783] For the neo-Revivalists, then, the function of *ijtihād* would be to find solutions to problems not explicitly covered by the Qur'ān and the *Sunna.* Accordingly, they emphasized areas such as Qur'ānic

[782] Rahman, "Islam: Challenges and Opportunities", in Welch and Cachia (eds.). *Islam*, 317.
[783] Chandra Muzaffar, "Islamic Resurgence: A Global View." in Taufik Abdullah and Sharon Siddique (eds.). *Islam and Society in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 1986), 5-39, quoted by Saeed in his, *Islamic Banking*, 8.

punishments *(ḥudūd),* Qur'ānic and *Sunnaic* family laws, and identified interest on loans as *ribā.* [784] As noted by Saeed, according to them, no Qur'ānic or *Sunnaic* rule is to be reinterpreted or modified; it is to be accepted and applied without modification irrespective of time, place and level of social or economic development, since, for them, the *Sharī'a* is good for all times and places. Saeed further notes that even though both Modernism and neo-Revivalism have been influential in shaping Islamic thought in modern history, it is the neo-Revivalist movement which has been the most influential in the development of Islamic banking theory, which was largely developed in order to implement the traditional interpretation of *ribā* (embraced by the neo-Revivalists) in the area of banking and finance.[785]

The proponents of the Traditionalist Model[786] of *ribā* include many classical, medieval and contemporary exegetes and scholars.[787] Their individual presentations differ in detail – too many to review here, and the important ones have been presented above.[788] The summarized collective Model essentially maintains that:

- *Ribā* is literally "excess" and technically a "financial excess;"
- *Ribā* covers all forms of financial excess – regardless of nature or source;
- *Ribā* is prohibited strictly and unequivocally by the Qur'ān supplemented by the Sunna, without any exceptions;
- *Ribā* has a ritual obedience and/or an economic, social, moral and spiritual rationale *(ḥikma)* for its prohibition;
- Violation of *ribā*-prohibition is subject to grave other-worldly punishment;
- Extension of *ribā*-prohibition beyond the named six commodities is a point of disagreement amongst the various schools of law, both as to the very permissibility and the *'ilal* (occasioning factors) for the extension.

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[784] Rahman, "Islam: Challenges and Opportunities", in Welch and Cachia (eds.). *Islam*, quoted in Saeed, *Islamic Banking*, 8.
[785] Saeed, *Islamic Banking*, 8.
[786] The presentation of the structural characteristics of this Model here, and not the analysis, draws heavily and liberally on Nyazee, *Ribā and Islamic Banking.*
[787] Prominent among these, in chronological order, are: Abū Ḥanīfa (d. 150/767), Anas b. Mālik (d. 179/796), Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805), Muḥammad ibn Idrīs al-Shāfi'ī (d. 204/820), Muḥammad ibn Ismā'il al-Ṣan'ānī (d. 211/826), Aḥmad b. Ḥanbal (d. 241/855), Abū Bakr Aḥmad ibn 'Alī al-Jaṣṣāṣ al-Rāzī (d. 370/981), Abū Muḥammad 'Abd Allāh ibn Sa'īd ibn Ḥazm (d. 456/1064), Abū Bakr Muḥammad ibn Abī Sahl al-Sarakhsī (d. 483/1090), Abū Ḥāmid al-Ghazālī (d. 505/1111), Abū Bakr ibn Mas'ūd al-Kāsānī (d. 587/1189), Abū al-Walīd Muḥammad ibn Aḥmad Ibn Rushd (d. 595/1198), Fakhr al-Dīn al-Rāzī (d. 606/1209), Shihāb al-Dīn Abū al-'Abbās Aḥmad ibn Idrīs Qarāfī (d. 684/1285), Ibn Taymiyya (d. 728/1327), Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī (d. 790/1388), Shams al-Dīn Muḥammad ibn 'Abū al-'Abbās al-Ramlī (d. 1004/1595), Muḥammad Amīn ibn 'Uthmān Ibn 'Ābidīn, (d. 1258/1868), Sayyid Quṭb (d. 1966), and Abūl A'lā Mawdūdī (d. 1979) who has written extensively on Islamic economics and on *ribā.*
[788] See II. 8. v., above.

A review of the available literature indicates complete agreement of the classical *fuqahā'* on the essential features of the scriptural prohibition as summarized above. Their consensus, cast in modern terms, is that the prohibition covers compound interest, simple interest and other types of *ribā*.[789] The only significant difference of opinion among the classical *fuqahā'* concerns the derivation of the detailed rules *('ilal)* of *ribā* for the extension of the prohibition.

The method of interpretation employed by the classical jurists *(fuqahā')*, forming the majority of the Traditionalist group, and their identification of the source of the prohibition is distinguished by their conformity with *uṣūl al-fiqh*.[790] Crucially, however, this conformity is only with the general source requirements, and, as shown in this work, not with the specific derivation requirements of the *uṣūl al-fiqh* for formulation of the *'illa* and *ḥikma* of injunctions. Accordingly, they treat the Qur'ān as supplemented and elaborated *(bayān)* by the *Sunna* as one source, and not the two, separately and independently of each other, as two sources. Thus they interpret the prohibition of *ribā* as a single, single-sourced prohibition. They maintain that the only source of prohibition is the Qur'ān and that the *aḥādīth* are only elaboratory in nature, re-enforcing the Qur'ānic unequivocal prohibition. The Qur'ānic prohibition is comprehensive and hence covers all "excess" *(ribā)* whether arising through *nasī'a* (delay), the so called Qur'ānic *ribā al-nasī'a,* or through *qadr* (estimation – weight, measure, count), the so-called Sunnaic *ribā al-faḍl.* This method of interpretation sets the Traditionalists apart from the Liberals in the matter of the coverage of the prohibition.[791]

The Model employs the literal meaning of the term *ribā* as "excess,"[792] but the various shades of meaning and applications of this term used in the Qur'ān, as illustrated above,[793] do not find any treatment in the Model. Its focus of attention immediately narrows down only to the contextual financial/economic connotation of the term, i.e., usury/interest and other commodity excess. *Ribā* is juridically defined as excess without counter value,[794] but the concept is not developed further.

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[789] Nyazee, *Ribā and Islamic Banking*, 17.
[790] Ibid.
[791] Ibid., 8.
[792] al-Sarakhsī, *al-Mabsūṭ*, XII, 109.
[793] See II. 2. v., p. 50, above.
[794] al-Sarakhsī, *al-Mabsūṭ*, XII, 109.

As to the coverage of the prohibition, the classical *fuqahā'*, as already explained above, basing their exegesis on the general *uṣūl al-fiqh* and deeming the Qur'ān as the single source and the Sunna as its elaboration, and treating the Qur'ānic usage of the term *ribā* as a generic usage and requiring the *bayān* (explanation) from the Sunna, regard the *ribā*-prohibition, in the economic sphere, as all encompassing and consequently covering all forms of financial increase, i.e., both *ribā al-nasī'a* and *ribā al-faḍl.*

The Model treats this financial/economic excess as strictly and unequivocally prohibited. It treats the prohibitory injunctions and their supporting verses as *muḥkamāt* (firm) and not as *mutashābihāt* (doubtful). Notwithstanding some dissenting opinion, it does not recognize benignancy of the charge, mutual agreement of the parties, or need/necessity as grounds for any exceptions from the ambit of the prohibition.

As to the rationale *(ḥikma)* for the prohibition of *ribā,* some traditionalist scholars regard the observance of the prohibition as a matter of ritual obedience.[795] For them, therefore, the discovery of the rationale of the prohibition is not required or even necessary. But the majority of the traditionalist jurists seek both the *ḥikma* and the *'illa* of the prohibition.[796] In line with the adoption of the contextual financial/economic meaning of the term, these scholars attribute economic, social, and the associated moral and spiritual factors as the governing principles of the *ḥikma.* The word "exploitation" could perhaps be used as a catchall term to capture this wide spectrum of rationale very nearly completely. In dealing with this rationale of exploitation, the Model, however, does not address the question of the benignancy of the charge, or the presence of mutual agreement of the parties.

The Traditionalist Model has accorded an extensive treatment – with internal significant disagreement – to the question of the *ratio legis ('illa)*[797] of the *ḥukm* of prohibition of *ribawī* commodities. The Prophetic *ribawī*-commodities *ḥadīth,* as already noted, has identified only six commodities (gold, silver, wheat, barley, dates and salt), without explicitly clarifying whether the *ribā* rule is restricted to these six named

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[795] Nyazee, *Ribā and Islamic Banking,* 104.
[796] Ibid.
[797] The following presentation of *'illa* is based on the work of Nyazee, *Ribā and Islamic Banking,* (67-71. These juristic differences of opinion are detailed in many works of Islamic *fiqh* including e.g., Ibn Qudāma, *al-Mughnī,* IV, 124-127.

commodities or is extendable to other commodities as well, and if so, what those other commodities are and how are they to be ascertained. What is the *ratio legis ('illa)* to be applied for the extension of the *ḥukm* of prohibition?

Also, as already seen, the Ẓāhirīs, and some others, restrict the prohibition only to the six named commodities on the basis of their rejection of *qiyās* as a valid source of law.[798] A majority of the *fuqahā'*, however, agreed on the permissibility of the extension of the prohibition and employed *qiyās* (analogy) as the method of extension. Some *fuqahā'* sought the extension through *qiyās al-ma'nā* (applied in the presence of *higher or lower* order literal meanings of the word under examination).[799] Others sought it exclusively through *qiyās al-'illa* (applied in the presence of *equivalent* meanings of the word under examination) requiring the discovery of the *'illa*.[800] The discovered *'illa*, however, is different according to the various schools of law *(madhāhib)*, as detailed below.

Finally, the Traditionalist Model recognizes the directly named Qur'ānic punishments for the violation of the *ribā*-prohibition. There are no primary-sourced prescribed temporal punishments. However, the Model incorporates what is reported to be a set of secondary-sourced temporal punishments. Based on the last words of verse Q. 2:279, juristic opinion reportedly provides for exercise of compulsion on the offender to abandon *ribā*, and in case of persistence, the majority of such opinion calls for his imprisonment till abandonment, while even his execution is called for in the opinion of Ibn 'Abbās, Ḥasan al-Baṣrī, and Ibn Sīrīn.[801]

The Traditionalist Model incorporating the neo-Revivalist view is the dominant one in the contemporary *ribā* debate.[802] "This view emphasizes the legal form of *ribā* as expressed in Islamic law, and insists that the words specified in the Qur'ān should be taken at their literal meaning, regardless of what was practiced in the pre-Islamic period. According to this view, since the Qur'ān has stated that only the principal should be taken, there is no alternative but to interpret *ribā* according to that wording. Therefore, the existence or otherwise of injustice in a loan transaction is irrelevant. Whatever the

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[798] Ibn Ḥazm, *al-Muḥallā*, VIII, 468.
[799] Nyazee, *Ribā and Islamic Banking*, 68.
[800] Ibid.
[801] Gauhar, *Translations From The Quran*, 136.
[802] Saeed, *Islamic Banking*, 49.

circumstances are, the lender has no right to receive any increase over and above the principal."[803] As Saeed puts it, "whatever the value of the neo-Revivalist interpretation of *ribā*, it is this interpretation which is the basis of current Islamic banking theory as well as practice."[804]

Contemporary juridical support for the complete banning of all forms of *ribā* is, however, not uniformly present in all Muslim legal jurisdictions. One jurisdiction bans it completely,[805] another prohibits it but does not make the prohibition mandatory,[806] some do not prohibit it at all,[807] others distinguish commercial loan-*ribā* which is permitted and civil loan-*ribā* which is banned,[808] while still others officially sanction "parallel banking systems" that incorporate both conventional interest-based and Islamic interest-free banking.[809] This highlights a tension between the contemporary Islamic financial theory and practice on the one hand and the relevant state legislation on the other. In the contemporary juridical scenario, in essence, in terms of the banning of all forms of *ribā* (financial excess), the Traditionalist Model finds recent full support, among others, in the rulings of the Jeddah-based Fiqh Academy of the Organization of Islamic Conference (OIC) and in the now-reversed judgments of the Pakistan Federal Sharī'a Court (FSC) and the Sharī'a Appellate Bench of the Pakistan Supreme Court (1999).

III.2.ii. Liberal Model

This Model is the by-product of the Liberal/Modernist Movement.[810] Contemporaneously, Liberal thought is represented by the Modernist movement, which is a product of the late nineteenth century. In the Islamic context:

> It called for fresh attempts to revive *ijtihād*, to derive relevant principles from the Qur'ān and authentic *Sunna* and to formulate necessary laws based on these principles. Modernists criticized what they called the 'atomistic' approach to deriving rules from the Qur'ān and also the early jurists' failure to understand its underlying unity. The Qur'ān, according to the Modernists, was a phenomenon that occurred in the light of history and against a socio-historical background. They saw it as a response to that situation consisting, for the most part, of moral, religious, and social pronouncements in answer to specific problems confronted in concrete historical situations. According to the Modernists, to insist on a literal implementation of the rules of the Qur'ān,

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[803] Abū Zahra, *Buḥūth fī al-Ribā*, quoted in Saeed, *Islamic Banking*, 49.
[804] Saeed, *Islamic Banking*, 50.
[805] Islamic Republic of Iran.
[806] Saudi Arabia.
[807] For example, Bahrain.
[808] For example, Kuwait.
[809] Malaysia and Pakistan.
[810] The presentation of the structural characteristics of this Model here, and not the analysis, draws heavily and liberally on Nyazee, *Ribā and Islamic Banking*.

shutting one's eyes to the social change that has occurred and is so palpably occurring, was tantamount to deliberately defeating its socio-moral purposes and objectives.[811]

The Modernists also called for: "(i) selective use of the *sunna;* (ii) the exercise of systematic original thinking with no claim to finality; (iii) a distinction to be made between the *Sharī'a* and *fiqh;* (iv) avoidance of sectarianism; and (v) a reversion to the characteristic methodology but not necessarily to the law and solutions of the classical schools, extinct and extant."[812]

In line with this thinking, Modernist contemporary Muslim scholars have a fundamental difference of opinion with the neo-Revivalists about the question of Islamic admissibility of modern bank interest that revolves around a contentious jurisprudential point: Should the rationale of injustice, as maintained by the Modernists, or the formal Islamic legal form of *ribā*-prohibition, as maintained by the neo-Revivalists (mirroring the Traditionalists), determine the scope of *ribā*-application? [813]

The Liberal Model, with support from at least two classical and many contemporary exegetes and scholars,[814] cannot correctly be labeled as a homogenous set of thought. It is an umbrella category incorporating a diversity of opinion of contemporary scholars divided roughly along the lines of the two main constituent sub-groups, the contemporary religious scholars and the contemporary secular scholars, and further compounded by individual differences of opinion within each of the two sub-groups. While the contemporary Liberal religious group has the advantage of familiarity, but the privilege of disagreement, with the methods of the Traditionalist group, the contemporary Liberal secular group has only the privilege of disagreement. In this Model, then, the only point of agreement is disagreement with the Traditionalist Model. The Liberal Model seeks curtailment, dispensation and circumvention of the prohibition. Another binding factor in the contemporary Liberal Model is the obsessive concern with the sanctity of modernity. The Liberal Model derives its guiding principles from the historical context but tempers them by the modern context. In fact, it treats the

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[811] Rahman, *Islam and Modernity*, 2-19, quoted by Saeed in his, *Islamic Banking*, 6-7.

[812] Said Ramdan, *Islamic Law* (Lahore: n.p., 1970), 71-73; Ṣubḥī Maḥmasānī, *Falsafat al-Tashrī' fī al-Islām.* trans. Farhat J. Ziadeh (Leiden: E. J. Brill, 1961), 51ff, 92-98; Sir Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sh. Muhammad Ashraf, 1960), 129, 151ff, 171-3; S. Waqar Ahmed Hussaini, *Islamic Environmental Systems Engineering* (London: The Macmillan Press Ltd., 1980), 23, quoted by Saeed in his, *Islamic Banking,* 7.

[813] Saeed, *Islamic Banking,* 41.

[814] Prominent classical scholars include Ibn 'Abbās (d. 68/686) and Ibn al-Qayyim (d. 751/1350). Contemporary Liberal scholars dealing with *ribā* include Muḥammad 'Abduh (d. 1905), Rashīd Riḍā (d. 1935), Abū Zahra (d. 1974), 'Abd ar-Razzāk as-Sanhurī (d. 1971), Ibrāhīm Zakī al-Badāwī , and Fazlur Rahman (d. 1988), to name but a few.

historical context as the cradle and the modern context as the grave for the derived principles.

The Liberal Model differs from the Traditionalist Model in many respects, including the modifiability, the source, the binding force, the coverage and the dispensability of the prohibition. Points on which this Model does not record any dissent, although not positively stated by its proponents, are regarded as being common between the two Models and are dealt with accordingly.

The method of interpretation employed by contemporary scholars and their treatment of the sources differs from that of the classical *fuqahā'*.[815] In disregard of, or even non-familiarity with, *uṣūl al-fiqh*, they treat the Qur'ān and the *Sunna* as two separate, independent sources, with the Qur'ān as the primary source and the *Sunna* as the secondary, non-complementary source.[816] This characterization carries with it an unsupportable assertion of a lesser binding force for the Sunna. Prohibition of *ribā* is interpreted as a dual, double-sourced prohibition, with only the so-called Qur'ānic *ribā al-nasī'a* claimed as the original prohibition sourced in the Qur'ān – the Qur'ānic or primary prohibition, implying a greater binding force. The so-called Sunnaic *ribā al-faḍl*, claimed to be not sourced in the Qur'ān, is a later extension by the Prophet of the original Qur'ānic prohibition of *ribā al-nasī'a* and is sourced in the *ribawī*-commodities *ḥadīth* – a Sunnaic or secondary prohibition, implying a lesser binding force.

Like the Traditionalist Model, the Liberal Model also employs the literal meaning of the term *ribā* as "excess" and, similarly, the various shades of meaning and applications of this term used in the Qur'ān do not find any treatment in this Model as well, where too the focus of attention immediately narrows down only to the contextual financial/economic connotation of the term – usury/interest and other commodity excess.

The Liberal scholars have a point of agreement with the classical *fuqahā'* that the prohibition, in its technical sense, applies to financial/economic increase and, therefore, both *ribā al-nasī'a* and *ribā al-faḍl* are prohibited. But they have a point of disagreement with the traditionalists on the source and the resulting binding force of the prohibition

[815] Nyazee, *Ribā and Islamic Banking*, 8.
[816] Ibid., 11-13.

that serves to narrow down the coverage of the prohibition. Thus even within this narrow financial/economic connotation, there is a further narrowing of scope. The Liberal Model treats the so-called Sunnaic *ribā al-faḍl* as altogether excludable from the coverage of the prohibition on the basis of the doctrine of Sunnaic lesser binding force. Even within what is termed by them as the *ribā* of the Qur'ān, the Liberal Model, as a group, relying on the contextuality of one of the Qur'ānic injunctions, and on the economic rationale for the prohibition, limits the prohibition to compound interest and interest on consumption loans, but that too dispensable on the basis of the doctrine of necessity. It exempts from the prohibition simple interest and interest on production loans as being non-exploitative. Another view regards the prohibition as being applicable to usury and not to interest, i.e., only to the modern context of excessive interest, and not to the modern-day bank interest.

For the limitation of the prohibition to compound interest, reliance is placed on the *"ribā* doubled and redoubled" verse of the Qur'ān, thus employing the specificity of the verse and ignoring the generality of the other *ribā* prohibitory verses which employ a generic usage of the term *ribā.*

The Liberal Model treats this narrowly defined financial excess as not strictly prohibited. One shade of opinion treats the prohibitory injunctions and their supporting verses as *mutashābihāt* and not as *muḥkamāt.* Even when they do not subscribe to this view, they treat the prohibition as dispensable. They consider the prohibition on simple interest and interest on production loans as dispensable based on rationale (non-exploitative nature). They consider the prohibition on *ribā al-faḍl,* if not altogether excludable, then at least dispensable on the basis of the doctrines of *ḥāja* (need) and *maṣlaḥa* (public interest). For them, *ribā al-faḍl,* provided in the Sunna, is simply *makrūh* and not *ḥarām.* Finally, they consider the prohibition on compound interest or usury and on interest on consumption loans as dispensable on the basis of the doctrine of *ḍarūra* (necessity). One extreme opinion even regards the *ribā al-jāhilīya* as allowed in case of pressing necessity and *ribā al-faḍl* and *ribā al-nasī'a* as allowed in case of need.[817]

[817] Sanhūrī, *Maṣādir al-Ḥaqq,* III, 237.

The Model recognizes benignancy of the charge, mutual agreement of the parties, and necessity as grounds for inapplicability of the prohibition. It regards the prohibition itself as subject to interpretation and modification.

Operating within the confines of the Traditionalist Model, the Liberal Model also contextually employs the economic, social, moral and spiritual rationale *(ḥikma)* as the explanation for the prohibition. But, as a major point of departure, adding precision and refinement to the concept, the Liberals make a very effective use of the catchall term "exploitation." In dealing with this rationale of exploitation, the Model pointedly raises the question of the benignancy of the charge, and of the presence of mutual agreement of the parties. It makes the obvious, simple, yet powerful point that if the charge is benign and/or mutually agreed, it is not exploitative and, if exploitation is the rationale for the prohibition, then whatever is non-exploitative is not covered by the prohibition. This line of argumentation accentuates the need for the discovery of the true rationale for the divine prohibition.

The Liberal Model has not identified the *ratio legis ('illa)* of the *ribawī* commodities on the pattern adopted by the Traditionalist Model. It appears that the Liberal Model makes no distinction between the concepts of *ḥikma* and *'illa.* It uses the two terms interchangeably, and as shown above, employs the concept of exploitation to refer to *ḥikma* and *'illa* both. However, in one shade of Liberal interpretation, "conformity with historical practice" – to coin a new expression– appears to have been used as the *'illa.* This view regards the historical practice of *ribā al-jāhilīya* as the only prohibited *ribā* and contends that only what conforms today to the historical practice of *ribā al-jāhilīya* is prohibited, and whatever does not conform to this practice is exempted.

The Liberal Model, like the Traditionalist Model, recognizes the directly named otherworldly punishments for the human violation of *ribā*-prohibition. There is no room for interpretation or disagreement on these punishments. These are clearly and directly ordained in the Qur'ān. They also recognize that there are no primary-sourced prescribed temporal punishments and the secondary-sourced punishments were advocated only by a minority of the Traditionalist group.

The strength of the Liberal Model has been undermined by several developments. Firstly, the Liberals' views and their advocated "exceptions" to the *ribā*-prohibition have been countered by neo-Revivalist critics with both economic and scriptural arguments, which has weakened their position. For example, Muhammad Nejatullah Siddiqi, one of the leading Islamic banking theorists, states:

> Efforts of some pseudo-jurists to distinguish between *riba* [*sic*] and bank interest and to legitimize the latter [have] met with almost universal rejection and contempt. Despite the fact that circumstances force many people to deal with interest-based financial institutions, the notion of its essential illegitimacy has always remained.[818]

Secondly, the Liberals have seen their position undermined by "their inability to present a consistent theory of *ribā* on the basis of the rationale of prohibition which is specified in the Qur'ān." Thirdly, the Liberal position has been practically challenged by the "rise of Islamic banking institutions, inspired by the neo-Revivalist thinking on the issue of *ribā,* which have adopted the view that any interest is *ribā,* and as such is prohibited."[819]

With the adoption of the philosophical-theological arguments for the prohibition of *ribā,* developed below (chapter IV), the relative strength of the two Models will further be accentuated in the direction outlined above.

Contemporary juridical support for Liberal thought on *ribā,* in terms of liberalizing the prohibition, is quite extensive in the Muslim world, coming chiefly from the prestigious juridical academy – the Egyptian al-Azhar University in Cairo – and the civil legislation of many Muslim countries themselves.

III.2.iii. Critique of Hermeneutical Models

In the light of the meaning, regulatory framework and the structural and hermeneutical aspects of prohibition of *ribā* examined above, a critical hermeneutical evaluation of the Muslim Traditionalist and the Liberal Models in terms of their employment of the meaning, application, rationale, underlying cause and consequence of *ribā,* can now be attempted in order to summarize the hermeneutical imbalance in these models.

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[818] Muhammad Nejatullah Siddiqi, *Issues in Islamic Banking: Selected Papers* (Leicester: Islamic Foundation, 1983b), 9-10.
[819] Saeed, *Islamic Banking,* 48-49.

A survey of the exegetical literature indicates that there is unanimity of opinion amongst the Traditionalist and Liberal exegetes and jurists on the literal and lexical meaning of *ribā* as "excess, growth, addition." Thus, while there is no apparent Arabic linguistic problem, either the Models do not recognize at all or, more simply, do not express the intrinsic distinguishing characteristic of the "excess, growth, addition" that is being referred to. The Models do not satisfactorily answer some fundamental questions raised by many scholars: Does *ribā* refer to every, or only to a specific, type of "excess, growth, addition?" What sets *ribā* apart from *bay'*? What makes *ribā* prohibited *(ḥarām)* and *bay'* permitted *(ḥalāl)?* And above all, what is it that attracts the Qur'ānic threat of Satanic insanity for confusing the two terms with one another? Surely, a simple inability to comprehend the commercial distinction between two seemingly commercial terms can easily be a case of ignorance of commercial knowledge, and cannot be so serious as to be equated with Satanic behavior and punishable with eternal Hell Fire. Conversely, in the modern vernacular, a degree in commerce, finance, or law, in itself, cannot be a passport to Heaven. And surely, indulgence in one seemingly commercial activity cannot be such a grave sin as to imperil such grave punishment as eternal Hell Fire. What, then, is the veiled layer of meaning beyond the apparent commercial meaning that attracts such punishment? As will be shown below, the absence of an adequate treatment of the above questions in the Models has a very profound bearing on the very meaning of the term with all the consequent misconceptions, which is what makes *ribā* appear to be "the supreme of all the *Quaestiones Vexatae*"[820] of Islamic law. This lack of precision of meaning represents the first hermeneutical flaw in the Models.

In spite of the above-referred agreement on the lexical meaning of *ribā* as "excess, growth, addition," the focus of attention of both Models immediately narrows down to the economic/financial application of the term in varying degrees. Accordingly, attempts are made to confine the term to economic/financial excess arising out of delay or estimation, and to equate it with the English language terms of usury or interest or both.

In these Models, this confinement of the application of *ribā* only to the economic/financial aspect of human activity is quite understandable in the light of at least two factors. Firstly, in the historical context of Revelation (the mercantile

[820] A term borrowed from Rayner, *Theory of Contracts in Islamic Law*, 266.

character of the immediate recipients – the Quraysh – and of their habitat – Mecca), the commercial/financial/economic aspect was the most readily discernable, identifiable and prevalent candidate for the first application of the term *ribā* as a process of growth. Secondly, on a more specific plane, the Qur'ān, following its contextual approach, uses the term *ribā* in its economic application when it refers to a reportedly prevalent Arab financial practice of *"ribā* doubling and redoubling" (3:130), or conceptually, when it contrasts *ribā* with *ṣadaqa* (2:276) and with *zakāt* (30:39). The Qur'ān also contrasts *ribā* with *bay'* (2:275). This *ribā/bay'* contrast appears, at first sight, to be clearly, and only, a further economic application, and serves as the hermeneutic foundation of the current *ribā* models. But this *ribā/bay'* contrast does not have the exclusive economic connotation that is claimed for it. This contrast has a very profound esoteric connotation that, as will be expounded below, is the hermeneutic foundation of the Qur'ānic/Sunnaic Model. However, even setting aside this question of interpretation of Q. 2:275, in any case, there is still ample Qur'ānic source material and Arab customary usage to link *ribā* with human economic activity. However, this does not mean that *ribā,* with its generic meaning of "excess, growth, addition," is confined to the economic sphere only. As a matter of fact the Qur'ānic usage of the term, as detailed above,[821] conveys at least six different shades of meaning that identify the presence of the process of *ribā* in many other spheres.

Furthermore, the Prophetic *aḥādīth* equating *ribā* with *shirk* and with incest, quoted above,[822] refer to the existence of over seventy categories of *ribā.* Clearly, not all the categories belong exclusively to the economic sphere.

Even within this narrow financial/economic application, the Liberal thought attempts to downgrade or reject some applications that the Traditionalist thought regards as covered by the prohibition. Firstly, the Liberal downgrading of the *ribā al-faḍl* as a secondary lesser binding prohibition is not defensible either procedurally or conceptually. Procedurally, it is in violation of *uṣūl al-fiqh* for not treating the Qur'ān and the Sunna as one binding source. Conceptually, downgrading the *ribā al-faḍl* runs counter to the very essence of the concept of *ribā.* Secondly, the Liberal attempt to

[821] See II. 2. v. aa., pp. 51-52, above.
[822] See II. 3. ii., p. 66, above.

altogether exclude simple interest from the prohibition net is challengeable. For the limitation of the prohibition to compound interest/usury only, reliance is placed by them on the *"ribā* doubled and redoubled" verse of the Qur'ān (3:130). Their argument is based on the specificity of the verse and ignores the generality of the other *ribā*-prohibitory verses that employ a generic usage of the term *ribā.* The counter-argument could be advanced that had it been the divine purpose to prohibit only a specific practice, then the specific Q. 3:130 suffices for the purpose. What then is the target of the other generic-meaning and comparative-meaning verses? What the Liberal interpretation ignores is the more plausible position that the Qur'ānic prohibition being generic is necessarily also comprehensive and that Q. 3:130 is only one example of a covered practice familiar to the immediate audience of the Revelation. In fact, the nature and severity of the prescribed punishment in *Sūrat al-Baqara* strongly suggests that the coverage and the depth of the prohibition go even further – much beyond the mere entire financial and economic spheres. The authentic *aḥādīth* equating *ribā* with *shirk* and with incest with one's own mother are very suggestive of the deeper and broader import of the term *ribā* and the rationale of its strict prohibition.

The lack of explicit recognition that *ribā*-application covers the financial spectrum in its entirety and even goes far beyond the economic sphere is the major factor that prevents in the current Models the synthesis of meaning, application, rationale, underlying cause and consequence. This limitation of application represents the second hermeneutical flaw in the Models.

The Qur'ān and the *Ḥadīth*, while very emphatic on *ribā*-prohibition, and very clear on the nature and severity of the other-worldly punishment for its violation, are explicitly and completely silent on the rationale *(ḥikma)* underlying the prohibition and the punishment. It has, therefore, been left to the jurists to ask what *ribā* is, why it is prohibited, and how it is punished?

In line with their restricted economic paradigm of *ribā,* the exegetes have picked up the readily discernible economic connotation clues from the Qur'ān when it contrasts *ribā* with *bay'* and *ribā* with *zakāt/ṣadaqa.* Accordingly, *ribā* is treated as the opposite of *bay'* from an economic and social viewpoint and as the opposite of *zakāt/ṣadaqa* from a related moral and spiritual viewpoint. Consequently, all the benefits and virtues of *bay'*

and *zakāt/ṣadaqa* are seen as absent from *ribā.* Based on this model, the exegetes have come up with a number of negative effects of the practice of *ribā* and they treat these as the rationale for the divine prohibition of *ribā.* According to them, these negative effects of *ribā* under the economic and social category include exploitation, inequity, injustice, wealth concentration in few hands, economic depression/crisis, and social resentment/anger leading to revolution, and under the moral and spiritual category, selfishness, miserliness, callousness, ungratefulness, greediness, avarice, meanness, hatred, resentment, spite and jealousy.

While the exegetes have demonstrated the negative effects of *ribā* practice from the economic and the related social, moral, and spiritual standpoints, very thoroughly, forcefully and convincingly, yet they have not done so conclusively. They have not even attempted to prove that these negative effects of *ribā* are the necessary and the only concomitants of *ribā,* i.e., *ribā* cannot result in any thing but these stated negative effects and that *ribā* can never have any positive effects. While it is very clear and has been amply explained by them what human effects *ribā* as an instrument can, and does, have in the hands of an oppressive person, the exegetes have not even asked, let alone answered, the question what human effects *ribā* as an instrument can, and does, have in the hands of a benign person? And, in the light of the answer to this question, what then is the real rationale for the strict prohibition of *ribā* and the severe other-worldly punishment for its violation? They have not answered the logical question why, if exploitation is the prohibition rationale, non-exploitative practices – involving benign charge and/or mutual consent – are also classed as prohibited. And, they have also not even asked the question of whether, how and why *ribā* is applicable to other than economic spheres of human creative activity.

These unanswered questions are further compounded by an inadequate interpretation of the connotation of "interplay of similarity/dissimilarity" in the *ribawī*-commodities *ḥadīth* and by virtually no explanation of the *ratio legis ('illa)* in the oft-quoted *ribā*-incest and the rarely quoted *ribā-shirk* equivalence *aḥādīth.* This lack of identification of the definitive and plausible rationale *(ḥikma)* for the prohibition constitutes the third hermeneutic flaw in the Models.

The derivation and identification of the *'ilal* (underlying causes) of prohibition of *ribā* has received substantial coverage particularly in the Traditional Model, as examined in detail above.[823] This derivation represents an impressive intellectual effort, but is narrowly conceived by definition and design. Both Models, with some exceptions, seek the *'illa* in the context of the named six commodities only in order to extend the prohibition to other commodities. This could be termed as a micro-level approach in the economic sphere as against a macro-level approach in the universal sphere. The juristic Traditionalist Model seeks the distinctive characteristics of the named six commodities but not the distinctive characteristic of *ribā* itself. It ignores the essence and explores the manifestations of the prohibition. It looks at the characteristics not of *ribā* but of what *ribā* is reflected through. It diagnoses not the disease but the patients. It concentrates on the exoteric micro-level indicators of similarity, weighability, countability, measurability, storability, valuability and edibility of the commodities, but not the esoteric distinguishability of *ribā* that runs through the commodities. Even in this exoteric micro-level *fiqhī* analysis, as detailed above,[824] none of the derived *'ilal* fully meet the very conditions laid down in the *uṣūl al-fiqh* itself for derivation of *'illa*. On the other hand, the scholarly Liberal Model, as pointed out above, does not have a systematic approach to the whole concept of *ḥikma* and *'illa* of *ribā*-prohibition.

The employment of a systematic but exoteric micro-level approach in the Traditionalist Model and a non-systematic approach in the Liberal Model, and non-compliance with *uṣūl al-fiqh* conditions for *'illa* derivation in both Models, constitutes the fourth hermeneutical flaw in the Models.

As indicated above,[825] the directly named punishments for the violation of the *ribā*-prohibition are all other-worldly in nature. There are no primary-sourced prescribed temporal punishments. There is a minority secondary-sourced punishment of death. This punitive aspect of *ribā*-prohibition presents an *ijtihādic* challenge which in the current Models has not received the attention that it calls for. The dilemma to be resolved is that *ribā* is seen as a temporal activity, and indulgence in it is regarded as a sin. The explicitly ordained punishment for this temporal violation is non-temporal (other-

[823] See III. 1. iv., above.
[824] See III.1.iv.b., above.
[825] See II. 4., above.

worldly) only, and, this other-worldly punishment is not commensurate with *ribā* seen only as a temporal violation. Is the punishment, then, too harsh, or is the violation more than temporal? The punishment, being divinely ordained, cannot be unjust. Our perception of *ribā* must then be at fault. The current Models do not address this dilemma. They do not respond to the following specific questions:

Firstly, *ribā* is seen as a temporal activity and part of the *fiqh al-mu'āmalāt* but the primary-sourced prescribed punishments are all other-worldly and not temporal in nature. And there is hardly any evidence of the application of the minority secondary-sourced temporal punishments. However, regardless of the validity of this minority juridical opinion, these temporal punishments do not and cannot replace or abrogate the other-worldly punishments that are expressly divinely ordained. The question then still remains: Why only other-worldly punishments for temporal violations?

Secondly, the prescribed other-worldly punishments represent the most extreme end of the punitive spectrum, which is certainly not commensurate with *ribā* seen only as a violation of human economic and social rights. Why is there such grave punishment for violation of one (economic/social) component of *ḥuqūq al-'ibād* when violation of any other of its components does not attract such punishment? These other-worldly punishments are by themselves evidence and proof that *ribā*-indulgence must involve a far graver sin. Even the reported juristic opinion-based punishment of execution for *ribā*-indulgence is similarly harsh and incompatible with the economic/social connotation as the only manifestation.

No intellectually defensible attempt appears to have been made to evaluate the so far humanly "discovered" rationales in juxtaposition with the divinely ordained punishment. One unsatisfactory attempt at reconciliation has involved the raising of the status of the violation by proclaiming that the nature of the Divine punishments shows the importance that God attaches to human economic rights. These unresolved points of reconciliation between the rationale and the punishment are a further, the fifth, hermeneutic flaw in the current Models.

Based on the above analysis, the underlying hermeneutic flaw of the Traditionalist and the Liberal Models of *ribā* can be summed up as one of *imbalance*. There is imbalance between the meaning and the application, imbalance between the application

and the rationale, imbalance between the rationale and the underlying cause, and finally imbalance between all these variables and the punishment. The hermeneutical problem is that these *ribā*-prohibition Models start with the generic meaning of the term, narrow it down to one sphere of activity by relying only on the historicity, contextuality and specificity of meaning, search for the prohibition rationale and the underlying cause in this narrowed context, attempt to promulgate the prohibition on the strength of this narrowed context rationale, and make no meaningful attempt to reconcile the rationale with the punishment. This skewness of the Models is clearly in need of alignment through calibration.

This internal calibration of the *ribā* model requires exegetical and juristic research to discover from the Qur'ān/Sunna itself a meaning for *ribā,* beyond the technical and the contextual, one that is intrinsic and distinctive in terms of its uniqueness *(tamyīz),*[826] and then to formulate a definition of *ribā* that in turn should represent a complete synthesis of the *meaning*, the *application*, the *rationale* and the *underlying cause* of the prohibition, and the *consequence* of violation of the prohibition. Without this delineation and synthesis, confusion about the concept will persist, hindering the juridical transformation from interpretation to implementation.

This calibrated hermeneutical model, based on Qur'ānic and Sunnaic evidence and rationally derived from a new theory of divine law of normative behavior *(ribā vs. bay')* is presented below (chapters IV and V). But, first it is necessary to recapitulate the Qur'ānic/Sunnaic Model, which serves as the foundation of the current Models ostensibly and of the new Model truly.

III.3. Scriptural Model

The salient structural features of the prohibitory model derived from an objective study of the *ribā*-prohibitory injunctions, contained in the Qur'ānic verses and Prophetic *aḥādīth* quoted above,[827] may be recapitulated as follows.

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[826] See n. 47, p. 27, above, for this coined technical usage.
[827] See II. 2. v. and II. 3. ii., above.

III.3.i. Qur'ānic/Sunnaic Prohibition

The Qur'ānic prohibition of *ribā* is gradual but ultimately unequivocal and strict. While *ribā* has been juxtaposed against *ṣadaqa* (charity) and *zakāt* (alms tax) as well, it is solely in the *ribā/bay'* juxtaposition that the notion of *ḥarām* (prohibited) and *ḥalāl* (permitted), respectively, has been enjoined. The violation of the prohibition has been associated with dire warnings, rejection of belief, and sin.

The Sunnaic prohibition of *ribā* is rather terse, expressed in a very matter of fact manner. The *aḥādīth* deal with the prohibition, not through the notion of *ḥarām* directly, but through positive and negative command, curse, and association with the notions of *shirk* (idolatry), adultery, and incest. This prohibitory method is very revealing, especially in the identification of the *'illa* (cause) and *ḥikma* (rationale) of the prohibition, although it has not been utilized to full advantage by the contemporary scholarship.

III.3.ii. Qur'ānic/Sunnaic Meaning

The Qur'ān and the Sunna do not explicitly furnish a theoretical/conceptual meaning of *ribā,* though the *ribawī*-commodities *ḥadīth* does contain indicators of conceptual meaning that has to be extrapolated. The only meanings that may be directly gleaned are in two contexts – generic and contextual.

III.3.ii.a. Qur'ānic/Sunnaic Generic Meaning

The Qur'ānic usage of the term *rabā/ribā* conveys the generic meaning of the process of addition, excess, growth, as revealed in the various verses cited above.[828] The cited *aḥādīth* also convey such meaning.

III.3.ii.b. Qur'ānic/Sunnaic Contextual Meaning

The Qur'ān uses the term *al-ribā* in the prohibitory verses, but without assigning any explicit definite meaning to it. One contextual usage in the Qur'ān, *al-ribā aḍ'āfan muḍā'fatan (ribā* doubling/redoubling)[829] and the juxtaposition of *ribā* with *rū'ūsu amwālikum* (your capital, principal),[830] apparently conveys the meaning of financial increase. The only other contextual use, referring to the Jewish practice of *ribā,* only

[828] See II.2. v. aa., pp. 51-52, above.
[829] Q. 3: 130.
[830] Q. 2: 279.

mentions *ribā* without specifying any particular meaning or form. While generally believed to refer to their financial practice, it could have a broader meaning.

III.3.iii. Qur'ānic/Sunnaic Definition

The Qur'ān does not provide any specific elaborate definition of *ribā.* It only contrasts *ribā* with *ṣadaqa* (2:276), with *zakāt* (30:39) and with *bay'* (2:275). There are Sunnaic indicators of the existence of *ribā* in exchanges involving similarity of genus. The *ribawī*-commodities *ḥadīth* provides a comprehensive definition of *ribā* in stating to the effect that any excess and/or delay in an exchange of homogeneity, and any delay in an exchange of heterogeneity constitutes *ribā.* A further explication of this *ribawī*-commodities *ḥadīth,* leading towards a clearer concrete definition of *ribā* and *bay'* is provided in the *Barnī*- and Khaybar-dates *aḥādīth* cited above.[831]

III.3.iv. Qur'ānic/Sunnaic Application

The Qur'ānic/Sunnaic application of the term *ribā* is both generic and contextual as detailed below:

III.3.iv.a. Qur'ānic/Sunnaic Generic Application

The verb *rabā* (derived noun: *ribā)* has been employed in the Qur'ān in several generic applications:

1. Economic (increase in wealth)[832]
2. Political/International (one nation exceeding another)[833]
3. Social/Biological (bringing up, raising a child)[834]
4. Theological (overpowering grip of God)[835]
5. Botanical (garden on a height)[836]
6. Geological (swelling earth, high ground)[837]
7. Hydrological (rising foam)[838]

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[831] See p. 67, above.
[832] Q. 2:276; 30:39.
[833] Q. 16:92.
[834] Q. 17:24; 26:18.
[835] Q. 69:10.
[836] Q. 2:265.
[837] Q. 22:5; 41:39; 23:50.
[838] Q. 13:17.

The Sunna also employs the term *ribā* in several generic applications, as detailed in the various *aḥādīth* cited above,[839] but which, beyond the economic/financial application, have not been explicitly recognized by the scholarship and not yet put into exegetical service:

1. Economic/Financial *(ḥadīth* on *ribā*- contract participants)
2. Philosophical *(ḥadīth* on exchanges of homogeneity and heterogeneity)
3. Biological *(ḥadīth* on adultery/incest-*ribā* correspondence)
4. Theological *(ḥadīth* on idolatry/*shirk-ribā* direct parallel, self-emanation from unilateral action and *ex nihilo* creation from delay).

In addition to embedding these four specific generic applications, several of these *aḥādīth* declare *ribā* to have – albeit metaphorically– seventy three *abwāb* (chapters, types, kinds).[840] A legitimate question faces the proponents of the exclusive economic/financial connotation of *ribā:* How can all this intended multiplicity be fully accounted for by usury and interest alone? What are the rest of them, beyond the four readily identified by the Prophetic *aḥādīth* above? An answer will be posited below (chapter IV).

III.3.iv.b. Qur'ānic/Sunnaic Contextual Application

The concept of *ribā* has been contextually employed in the Qur'ān, as detailed above,[841] as a financial growth process (usury/interest), referring to the actual practice of the Arabs. The Sunna also employs the concept of *ribā* contextually when it deals with the commercial/financial aspects (purchase/sale of *Barnī*-dates, Khaybar-dates, and abolition of the *ribā* of 'Abbās ibn 'Abd al-Muṭṭalib on the occasion of the Farewell Pilgrimage).[842]

III.3.v. Qur'ānic/Sunnaic Rationale *(ḥikma)*

The Qur'ān does not provide any explanation, or even explicit mention, of the rationale *(ḥikma)* underlying the prohibition of *ribā* and the dire punishment for its violation. It only contrasts *ribā* with *bay'* (Q. 2:275) declaring one as *ḥarām* and the

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[839] See II. 3. ii., p. 65, above.
[840] See, e.g., Ibn Māja, *Sunan, ḥadīth* no. 2275/3, 72.
[841] See III. 3. ii. b., above.
[842] See II. 3. ii., above.

other as *ḥalāl,* in association with Satanic Insanity and Hell Fire punishment for equating the two terms. The contrast of *ribā* with *ṣadaqa* (Q. 2:276), and with *zakāt* (Q. 30:39) is only an indirect indicator of the rationale for the prohibition. The Sunnaic equivalence of *ribā* with incest with one's own mother is a very stark contrast, but the underlying cause for the equivalence, the *ratio legis ('illa),* is not clarified.

III.3.vi. Qur'ānic/Sunnaic *Ratio Legis ('illa)*

The Qur'ān and the Sunna do not provide any definite pointers to the *'illa,* the underlying cause, of *ribā,* which could be applied to distinguish what is *ribawī* from what is non-*ribawī.* At least three Prophetic *aḥādīth,* cited above,[843] pinpoint transactions which give rise to *ribā,* but the underlying *'illa* still remains unspecified. From one of these, the famous *ribawī* (six)-commodities *ḥadīth* a large number of differing *'ilal* – as many as nineteen – [844] have been discovered by the classical jurists, some of which have also been discussed above.[845]

III.3.vii. Qur'ānic/Sunnaic Punishment

The Qur'ān ordains strict punishments for violation of the *ribā*-prohibition. The Sunna condemns all participants of the *ribā* process, without directly specifying any punishment, and graphically equates *ribā* with gravest of sins, only implying the associated punishments. These punishments/admonitions are detailed in II.4 above.

III.3.viii. Qur'ānic/Sunnaic Permission of *Bay'*

The Qur'ānic permission of *bay'* comes from Q. 2:275, which directly declares *bay'* to be *ḥalāl* (permitted) and emphasizes its distinction from *ribā* at the pain of Satanic insanity for those who fail to see it. Sunnaic permission of *bay'* is both direct and indirect. The *Barnī*-and Khaybar-dates *aḥādīth* directly lay down a procedure of *bay'* (sale of dates for money and purchase of desired dates for money) as the permitted mode of conduct. Another Prophetic *ḥadīth* declaring "*nikāḥ* is my *sunna*" provides indirect permission of *bay'*. *Nikāḥ* popularly means marriage but technically it means sexual intercourse which is an inter-active process, which, in turn, is the defining characteristic of *bay'*. The extended meaning of this *ḥadīth,* then, is that *bay'* is a Prophetic Sunna.

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[843] See II. 3. ii., p. 65 ff., above.
[844] Nyazee, *Ribā and Islamic Banking,* 68.
[845] See III.1.iv., above.

III.4. The Building *(Ijtihādic)* Task

The guidelines and warnings gleaned from the Qur'ān and supplemented by the Sunna have posed an *ijtihādic* challenge to discover the *true* meaning and *full* implications of the crucial terms, *ribā* and *bay'*, that have not been defined explicitly in the Qur'ān and Sunna themselves, and to which the extant scholarship has not done full justice.

This *ijtihādic* task as pinpointed by Vogel has already been quoted above,[846] but due to its direct relevance it is repeated here in a slightly expanded version:

> The question arises, why, if such transactions *[ribawī]* meet with the approval of both parties (*tarāḍin*), are they divinely disapproved? The Qur'ān asks this very question, but in a more penetrating way – why is sale *[bay']* not like *ribā?* – and gives the emphatic, if obscure, answer that God has allowed the one and prohibited the other. Given the question and the response, it becomes morally urgent to be able to distinguish *ribā* from ordinary trade. What sorts of "increase" or inequality in exchange transform lawful commercial gain into condemned usury, despite both parties' ready consent? In what circumstances does the desire for gain become perverted and corrupt? Unfortunately, the answers to these vital questions have never been easy. The Caliph 'Umer reportedly lamented that the Prophet never spelled out the full scope of *ribā:* ['Umer said,] The last verse revealed was the verse of *ribā,* and [then] the Messenger of God was taken [in death]. He had not explained it to us. So leave *ribā* and doubt *[ribah].*[847]

In response to this *ijtihādic* task and in the light of the foregoing critique of the contemporary juridical and hermeneutical models, a calibrated hermeneutical/juridical model of the divine law of *ribā*-prohibition and *bay'*- permission is presented in the next chapter.

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[846] See 1.2., p. 19, above.
[847] Vogel and Hayes, *Islamic Law and Finance*, 63.

CHAPTER IV

NEW THEORY DEVELOPMENT

IV.1. Theoretical Setting

As seen in the previous two chapters, the scholarly utilization of the contribution of linguistics, scripture, prophetic guidance, exegesis, philosophy and jurisprudence has not produced a comprehensive theory capturing all aspects of the *ribā* discourse. Filling this lacuna through introduction of a philosophical-theological perspective in the discourse to extract a comprehensive theory requires examination of certain crucial terms/concepts that have either a significant normative relevance or very meaningful morphological and functional affinity with the focal terms of this study – *ribā* and *bay'*. Accordingly, the notions of Divine law and *Sharī'a* require a brief review for their role as the setting for the new theory. The term *rabb* (lord) requires detailed examination for its cognate linguistic root and functional commonality with the focal term *ribā,* which sets the new theory into motion. The concepts of Divine *tawḥīd* (singularity) and human *tathniya* (duality) – in the context of this study – warrant full treatment, for these are the very essence of the new theory. But before this examination, two foundational concepts for the new theory require definition.

IV.1.i. Foundational Concepts

Centered on the posited notion of divine and human "action," the new theory employs the two essential modes of action, i.e., **intra-action** and **inter-action** as foundational concepts with the following adopted shades of meaning:

IV.1.i.a. Intra-action

> Intra-action is that mode of "action" wherein only one agent is operative and that agent is acting on a homogeneous agent, i.e., on itself, or on a cognate object or on a similar object in order to create/grow or merely to attempt to create/grow.

IV.1.i.b. Inter-action

> Inter-action is that mode of "action" wherein two agents are operative and each is acting on an opposite heterogeneous agent, i.e., on an object other than itself in order to create/grow or merely to attempt to create/grow.

IV.1.ii. Nature of Law – Divine or Human?

Without unmanageably broadening its scope to delve into the huge controversy over the question of whether the nature of law is divine or human, this study, by definition, is consciously based on the apparently non-provable religious premise that all law is divine and that the human role is merely to search for it and extrapolate it. This study, accordingly, is a search for the divine law of normative behavior as perfected and encapsulated in the Islamic notions of *ribā* and *bay'*, some aspects of which were revealed in earlier monotheistic faiths as well.

IV.1.iii. Divine Law for Normative Behavior – The *Sharī'a*

The Qur'ān declares that a *Sharī'a* (path, law of life) was ordained for each of the three communities.[848] In chapter V, this study will also, *inter alia*, review the current scholarship on what that *Sharī'a* is for each of the three monotheist faiths of the Abrahamic tradition. It will then argue for and posit a connection between the concepts of *ribā* / *bay'* and the Islamic *Sharī'a*, which the Qur'ān declares to be the completed and final revelation for all humanity for all time to come.

IV.1.iv. Meaning of *Rabb* (Lord)

The term *rabb* has a crucial significance for this study, and is, therefore, examined in detail. This Arabic expression *al-Rabb* – rendered as "The Lord," "The Sustainer" and "The Supporter," as frequent Qur'ānic titles for the Divine Being – is an *ism al-ṣifa* (attribute), whereas Allāh is an *ism al-dhāt* (essence). "*Rabb*, in its literal meaning, is 'to bring up,' that is, to bring or educate anything up to its perfect standard, by slow degrees, and inasmuch as the Almighty is He who can bring everything to perfection, the word *al-Rabb* is especially applied to God."[849] In Hebrew, *Rab* (רב) enters into the composition of many names of dignity and office in the Bible. In Muslim theology, the word is used in various combinations: *Rabb al-'Izzā* (Lord of Glory), *Rabb al-'Ālamīn* (Lord of the Universe), *Rabb al-Arbāb* (Lord of Lords), and *Rabb al-'Ibād* (Lord of His Servants). The word is also used for a master or owner, e.g.: *Rabb al-Dār* (the master of

[848] Q. 5:48.
[849] al-Bayḍāwī, *Commentary*, p. 6, line 10, Flügel's edition.

the house), *Rabb al-Arḍ* (a landowner), *Rabb al-Māl* (a possessor of property), and *Rabb al-Salaf* (a person who pays in advance for an article).[850]

The linguistic difficulty surrounding this word is its complexity of meaning:

> [It] embraces a wide complex of meanings not easily expressed by a single term in another language. It comprises the ideas of having a just claim to the possession of anything and, consequently, authority over it, as well as of rearing, sustaining and fostering anything from its inception to its final completion. Thus the head of a family is called *rabb al-dār* ('master of the house') because he has authority over it and is responsible for its maintenance; similarly, his wife is called *rabbat al-dār* ('mistress of the house'). Preceded by the definite article *al*, the designation *rabb* is applied, in the Qur'ān, exclusively to God as the sole fosterer and sustainer of all creation – objective as well as conceptual – and, therefore, the ultimate source of all authority.[851]

When applied to God, the word *rabb* also means "the Creator of all things and promoter of their progress from lower stages of existence towards higher evolutionary stages, while simultaneously providing sustenance to all living things."[852] The notion of self-subsistence embedded in the term *rabb* applied to God is brought out when *rabb* is defined as "the One Who nourishes with the love of *both* father and mother."[853]

Crucial for but absent from the *ribā* scholarship is the recognition of the significant point that the Arabic morphological roots of the words *rabb* (*r. b. b.*) and *ribā* (*r.b.w.*), as can be seen, are cognate, though not the same, as claimed by some. For one, Naqshbandi, commenting on this cognate relationship, merely calls it: "not a coincidence; [rather] heavenly designed."[854] He does not further explore its effects on the *ribā* discourse; he neither examines the implications of this relationship, nor elaborates his assertion of its being heavenly designed. For another, Richard Bell maintains that "the root [of the word *rabb*] *r. b. b.* appears in Arabic in the sense of "increase," from which, as Torrey argues, the sense of "Lord" for the noun may be derived."[855] This erroneously suggests a common root for the words *rabb* and *ribā*, whereas in fact the roots are only cognate. Very significantly for this thesis, lexically the word *rabb* means the Lord, *rubūbiyāt* means the divine attributes, and, therefore, *ribawa (ribā)* can be rendered as the *divine mode*. Morphological comparison of the terms, *rabb* and *ribā*, follows:

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[850] Hughes, *Dictionary of Islam* (1885), 531.
[851] Asad, *Message of The Qur'ān*, 1-2.
[852] Naqshbandi, *Islamic Economics*, 360.
[853] Hishām Amīr 'Alī, *The Message of the Qur'ān in Perspective* (Vermont; Tokyo: Charles E. Tuttle Company Inc., 1974), 31 (Mirza Abul Fazl's commentary on *Sūrat al-Fātiḥa*).
[854] Naqshbandi, *Islamic Economics*, 360.
[855] Bell, *Commentary on the Qur'ān*, I, 1.

COMPARISON OF WORDS: *RABB* and *RIBĀ*[856]

	RABB	*RIBĀ*
Root	*r. b. b.*	*r. b. w.*
Root Type	Sound; Doubled	Defective
Verbal Forms: (3PMS)*		
Form I	*rabba*	*rabā*
Type	Transitive	Intransitive
Verbal Noun	various, incl. *rubūbiyya*	*rabā', rubūw*
Participles:		
Active	*rābbun*	*rābin*
Passive	*marbūbun*	-
Meaning	To be master, be lord, have possession, control, command, or authority	To increase, to grow, to grow up, to exceed, to be more than
Form II	*rabbaba*	*rabbā*
Type	Transitive	Transitive
Verbal Noun	*tarbībun*	*tarbiyya*
Participles:		
Active	*murabbibun*	*murabbin*
Passive	*murabbabun*	*murabban*
Meaning	To raise, bring up (a child)	To make or let grow, to rear, to raise, to bring up, to educate, to teach, to instruct, to breed, to grow, to cultivate, to develop
Form III	*rābba*	*rābā*
Type	Transitive	Transitive
Verbal Noun	*murābbatun/ribābun*	*murābātun*
Participles:		
Active	*murābbun*	*murābin*
Passive	*murābbun*	*murāban*
Meaning	To deify, to idolize	To practice usury

* Third Person Masculine Singular

[856] Meanings from Hans Wehr, *Arabic-English Dictionary*, 370, 374.

This chart reveals the relationship of the terms *rabb* and *ribā* as very close, sometimes even synonymous, sometimes apparently antonymous, but always very meaningful. Significantly, while the root of the word *rabb* is sound and doubled, that of *ribā* is defective. In its basic verbal Form I, while *rabb* denotes mastery, *ribā* denotes the process of acquiring that mastery (growth, excess, superiority). In the derived verbal Form II, there is perfect synonymy: both terms denote raising and bringing up. Very significant is the juxtaposition of the derived verbal Form III where, while *rabb* denotes deifying and idolizing, *ribā* denotes practicing usury. This Form III morphological juxtaposition of idolizing *(shirk)* and practicing usury *(ribā)* could be the linguistic basis for the *ḥadīth,* cited above,[857] which declares that "*ribā* has seventy two levels and *shirk* (idolatry) is like that."

Importantly, this chart also helps explain the mistaken human affirmation and its divine negation, in Q. 2:275, that *ribā* and *bay'* are similar. The consensual exegetical view – albeit untenable – is that the human affirmation of the similarity of *ribā* and *bay'* was based on their alleged perception that both *ribā* and *bay'* yield an increase or excess and, therefore, are similar. While it is correct that *ribā* (usury) as a process by itself yields a *nominal* increase or excess for the taker, *bay'* (sale) as a process by itself does not and can not yield an increase or excess. Firstly, the sale transaction, to be honest and to reflect a "just price" must exhibit an absolute equality of value on both sides, i.e., no increase *per se.* Secondly, the sale has to be compared with an earlier purchase to start the process of profit-determination. Thirdly, even so, the comparison of the sale and purchase may result either in a profit or in a loss, i.e., an increase/excess or a decrease/deficit, depending upon the quantum of the two processes. Thus, unlike usury *(ribā),* the act of sale *(bay') per se* cannot be held to be a generator of excess. Moreover, even *ribā* cannot generate a *real* increase: it generates a *nominal* increase for the taker but an offsetting equal nominal decrease for the giver, resulting in zero net increase for the two taken together. It merely transfers wealth, does not produce additional wealth. This is common business knowledge and could not, therefore, have been the basis for the human declaration of the similarity of *ribā* and *bay'*.

[857] See II. 3. ii., p. 65, above.

The Qur'ānic stipulation, in 2:275, of the punishment of Satanic insanity for holding *ribā* and *bay'* to be similar clearly suggests a more profound and valid reason for the divine negation of this similarity. The morphological analysis of *ribā* and *bay'*, presented above,[858] furnishes such a reason. The human affirmation of similarity was more likely and plausibly based on the fact that the verbal Form III of *ribā* is seen to be transitive (requiring both subject, i.e., lender and object, i.e., borrower) and that so is the verbal Form III of *bay'* (to make a contract with someone). But human reasoning ignored the fact that *ribā* in its very basic verbal form is intransitive (requiring only the subject), and even in the verbal Form III of *ribā* ("to practice usury"), the *direct* subject and the *direct* object in the transaction are one and the same, i.e., money. And, therefore, the equation of *ribā,* which intrinsically is intransitive (subject acting on itself: self-subsistence, independence), with *bay'*, which indisputably is transitive (subject acting on the object: interdependence), produces a disparity of theological proportions that is being obliquely hinted at in Q. 2:275 at the pain of Satanic insanity.

IV.1.v. Concept of *Tawḥīd* (Singularity) and *Tathniya* (Duality)

The concept of the *tawḥīd* (singularity) of God and the *tathniya* (duality) of man is a recurrent theme in the Qur'ān reflected in , among others, the following verses:

First relevant verse:

- Say: "He is Allāh, (the) One. The Self-Sufficient Master, Whom all creatures need, He neither eats nor drinks. He begets not, nor was He begotten. And there is none co-equal or comparable unto Him.".[859]

This verse, *inter alia*, underscores the singularity, self-sufficiency, non-dependence, and absolute self-emanation of the Creator – the first concept that has a crucial defining role for this study.

Second relevant verse:

- And of everything We have created pairs: that ye may receive instruction.[860]

Third relevant verse:

- Glory to God, Who created in pairs all things that the earth produces, as well as their own (human) kind and (other) things of which they have no knowledge.[861]

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[858] See II. 1. ii. a., above.
[859] Q. 112:1-4.
[860] Q. 51:49.
[861] Q. 36:36.

The latter two verses declare the polarity (duality) of all creation including human – the second concept that has a crucial defining role for this study.

The defining role of the three above cited verses for this study is underscored by the following exegetical excerpts on the last two cited verses:

> **Commentary on verse 51:49:**
> ... (3) All things are in twos: sex in plants and animals, by which one individual is complementary to another; in the subtle forces of nature, Day and Night, positive and negative electricity, forces of attraction and repulsion; and numerous other opposites, each fulfilling its purpose, and contributing to the working of God's Universe; and in the moral and spiritual world, Love and Aversion, Mercy and Justice, Striving and Rest, and so on; - all fulfilling their functions according to the Artistry and wonderful Purpose of God. Everything has its counterpart or pair or complement. God alone is One, with none like Him, or needed to complement Him. These are noble things to contemplate. And they lead us to a true understanding of God's Purpose and Message. [862]

> **Commentary on verse 36:36:**
> The mystery of sex runs through all creation – in man, in animal life, in vegetable life, and possibly in other things of which we have no knowledge. Then there are pairs of opposite forces in nature, e.g. , positive and negative electricity, etc. The atom itself consists of a positively charged nucleus or proton, surrounded by negatively charged electrons. The constitution of matter itself is thus referred to pairs of opposite energies. [863]

> **Fourth relevant verse:**
> - And by the even and the odd.[864]

This verse also complements the theme of the other three above cited verses and hence has a crucial defining role for this study, which is brought out by two exegetical excerpts, a Prophetic *ḥadīth* and a philosophical exposition below.

The exegetical excerpts are:

- The contrast between even and odd forms the subject of learned argument among those who deal with the mystic properties of numbers. In any case, even and odd follow each other in regular succession: each is independent, and yet neither is self-sufficient. In ultimate analysis every even number is a pair of odd ones [???]. And all things go in pairs: see Q. XXXVI: 36, and n. 3981. In the animal world pairs are but two individuals, and yet each is a complement of the other. Both abstract and concrete things are often understood in contrast with their opposites... [865]

- ... 'Even' and 'Odd' is interpreted differently by different religious scholars. Some said: ... Others said: 'Even' is all the creatures and 'Odd' is Allāh.[866]

The Prophetic *ḥadīth* states: "God loves odd numbers."[867]

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[862] Yusuf Ali, *Holy Qur'ān*, nn. 5025, 1427.
[863] Ibid., n. 3981, 1178.
[864] Q. 89:3.
[865] Yusuf Ali, *Holy Qur'ān*, n. 6110, 1731.
[866] Muhsin Khan and Taqi-ud-Din Hilali, *The Noble Qur'an*, n. 2, 865.
[867] *Muslim*, Dhikr 6, quoted by al-Ghazālī in his, *al-Maqṣad al-Asnā fī Sharḥ Asmā' Allāh al-Ḥusnā*.

The philosophical exposition (contemporary Muslim) reads:

> The odd numbers are "retrospective" in the sense that they express an infolding toward Unity, or the Divine Origin, whereas the even numbers are "prospective" in the sense that they express on the contrary a movement in the direction of manifestations, the world, or the universe.[868]

Fifth relevant verse:

- And over it are nineteen (angels as guardians and keepers of Hell). And We have set none but angels as guardians of the Fire. And We have fixed their number only as a trial for the disbelievers, in order that the people of the Scripture may arrive at certainty and that the believers may increase in faith, and that no doubts may be left for the people of the Scriptures and the believers, and that those in whose hearts is a disease and the unbelievers may say, "What symbol doth God intend by this?" Thus doth God leave to stray whom He pleaseth, and guide whom He pleaseth: and none can know the armies of thy Lord, except He. And this is no other than a warning to mankind.[869]

The relevance of this verse for the study and its one plausible explanation is that it dilates on the concept of singularity (Creator) and plurality/multiplicity (Creation). From number 1 to 19 is the domain of *singularity*. Within this domain, each number from 1 to 9 is an absolute singularity representing a vertical ascension, while each number from 10 to 19 starts with the number 1, and represents not a vertical ascension anymore but a horizontal extension. After 19, start the domains of *duality* (20 to 29) and *multiplicity* (30 onwards), until the number 99, when the process starts all over again with further horizontal extensions. Not only this, but in fact, the entire Sūra 74, containing this verse, appears to be a step-by-step warning, explanation and description of punishment for the practice of *ribā,* which is specifically hinted at in verses 6 and 15. But this Sūra has not been put into exegetical service in the contemporary *ribā* discourse.

Sixth relevant verse:

- Verily, the number of months with Allāh is twelve months (in a year), so was it ordained by Allāh on the Day when He created the heavens and the earth; of them *four* are Sacred *[ḥurumun].* That is the *right religion [al-dīn al-qayyim],* so wrong not yourselves therein, and fight against the *mushrikūn* (polytheists, pagans, idolaters, disbelievers in the Oneness of Allāh) collectively. But know that Allāh is with those who are pious (*al-muttaqūn*).[870]

Seventh relevant verse:

- The *postponing* (of a Sacred Month) is indeed *an addition to disbelief:* thereby the disbelievers are led astray, for they make it lawful one year and forbid it another year in order to adjust the number of months forbidden by Allāh, and make such forbidden ones lawful. The evil of their deeds is made fair-seeming to them. And Allāh guides not the people who disbelieve.[871]

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[868] Seyyed Hossein Nasr, *Islamic Spirituality. Foundations* (London: Routledge & Kegan Paul, 1987), 50.
[869] Q. 74:30-31.
[870] Q. 9:36.
[871] Q. 9:37.

These two verses have a very profound allegorical meaning that furnishes crucial Scriptural support for this thesis. Qur'ānic exegetes have commented contextually on these verses but have not tackled the basic questions raised therein.

There are two main problems with the reviewed commentaries on these verses. Firstly, most translators/commentators have imprecisely translated the Arabic expression *al-dīn al-qayyim* as: correct code (Mawdūdī); true ordainment (Zafar Ansari); correct system (Zafrulla Khan); straight usage (Yusuf Ali); regulation of affairs (Bāqir Behbudi/ Collin Turner); right reckoning (Shakir Ali); and ever-true law [of God] (Asad). The only precise and lexically correct translations are: right religion (Pickthall; Muhsin Khan), and perfect religion (Rashad Khalifa).

Secondly, the commentators have not tackled any of the basic underlying questions. Why does the Qur'ān emphasize twelve as the ordained number of months in a year, and why are any of them, and exactly four of them, declared sacred *(ḥarām)?* Above all, how does this fixation (of twelve) and designation (of four) constitute the straight religion *(al-dīn al-qayyim)?* How the violation of these four sacred months is associated with the notion of idolatry *(shirk)* evident from the reference to the idolaters *(mushrikūn)* in the verse? And, how does the postponement of one of the sacred *(ḥarām)* months from one year to another result in an addition to disbelief *(kufr)?*

Most commentators' answers, though not directly addressing the above questions, are confined to the contextual scenario – the timing of the pilgrimage *(ḥajj),* the freedom for their summer and winter trading caravans, and the strategic military advantage over the enemy. The only divine context mentioned is Allāh's will to keep to the lunar calendar and thereby rotate the timing of the pilgrimage throughout the seasons, over the solar year, so as not to make it always too difficult (summer) or always too easy (winter/spring).

Elaborating on the term *al-dīn al-qayyim,* which he translates as "the ever-true law [of God]," one of these commentators, Asad, offers a "natural law" explanation by stating that "the months spoken of here are lunar months, progressively rotating through the seasons of the solar year. Since reckoning by the easily observable lunar months is more natural than by the arbitrarily fixed months of the solar year, it is described in this passage as the 'ever-true law' *(dīn)* [of God]." The key phrase in Q. 9:37 *"innamā al-*

nasi'u ziyādatun fi al-kufri" is rendered by him as: "intercalation (also postponement) is an instance of refusal to acknowledge the truth" [italics and underlining mine]. Nevertheless, the commentators are either silent or fail to explain how the contextual scenario or the natural law explanation above constitutes the straight religion.

The allegorical meaning that answers all of the above questions raised by these two verses is hidden therein but surfaces upon deeper reflection. Firstly, the designation of four months as sacred *(ḥarām)* means they are out of bounds for humans and are in the divine domain. That leaves eight months, out of twelve, in the human domain. Now, the ratio of these "divine" months to these "human" months is 4:8 or, arithmetically simplified, 1:2 (Divine vs. Human). This is the temporal and arithmetical expression of the most profound theological reality – the Singularity of the Divine and the Duality of the Human, which is the central theme of this thesis. This expression is the true profession of the Islamic faith and thus the "straight religion" *(al-dīn al-qayyim).* Secondly, the postponement of one divine month from one year to the next would leave only three divine months in the initial year and make five months divine in the next. This disturbs the neat, divinely ordained 1:2 ratio of Divine vs. Human in both years, and thus amounts to an "addition to disbelief *(kufr)"* by tampering with the theological reality. Furthermore, in order to make it clear that it is not any quadruplity (denoted by the number four) but the singularity (denoted by the number one as in the above ratio 1:2) of the divine that is actually meant, the *first* month of the lunar calendar – one of the four "divine" months – is elsewhere named *muḥarram al-ḥarām* (the sacred of the sacred).

It is very difficult, if not impossible, to posit any other plausible or tenable explanation of how keeping to the calendar constitutes the "straight religion," and of how tinkering with the calendar amounts to an act of *shirk* and *kufr.*

Morphologically, the word *tawḥīd* is derived from the root: *w. ḥ. d.* which in its basic verbal Form I means to be alone, unique, singular, unmatched, without equal, incomparable. In the derived causative verbal Form II, it means to make into one, unite,

unify, to connect, join, link, bring together, combine, and merge.[872] Both these connotations of meaning have been utilized in the scholarship, as shown below.

The notion of *tawḥīd* – in its basic meaning of the singularity of God – is a foundational notion in the dogma of the religion of Islam, a religion based as it is on what is in the nature of things particularly the Divine nature itself. Being the first Article of Faith in Islam, this notion of *tawḥīd* has also attracted copious Scriptural and human attention. The Qur'ān is replete with pointed assertions and reminders of this point. The scholarship is rich with discourses on this central idea. Hossein Nasr even goes to the extent of characterizing this discourse for non-Muslims as a pleonasm:

> It *[tawḥīd]* is, in fact, emphasized so much that for a non-Muslim it seems as a pleonasm, a kind of excessive reiteration of something which is obvious. But to the Muslim the idea of unity does not just mean the assertion that there is only one God sitting in heaven instead of two or three. No religion could convert a quarter of the population of the globe ... with just such a simple idea. Unity is, in addition to a metaphysical assertion about the nature of the Absolute, a method of integration, a means of becoming whole and realizing the profound oneness of all existence. . . Every manifestation of human existence should be organically related to the *Shahāda, Lā ilāha illā Allāh,* which is the most universal way of expressing Unity.[873]

While rightly emphasizing its centrality and significance, this characterization of *tawḥīd,* nevertheless, misses some important implications of the notion. Firstly, what the discourse ignores is that, while the *singularity* of God is apparently being over-emphasized, the *duality* of man is likewise being over-emphasized. The Qur'ān is equally replete with assertions and reminders about the creation of man, and of everything, in pairs.[874] What is the significance and implication of the juxtapositional notions of the *singularity* of God and the *duality* of man? Secondly, the discourse translates *tawḥīd* as "unity," not in its basic sense of "numerical singularity" but more in the derived sense of "union": a method of integration, a means of becoming whole and realizing the profound oneness of all existence – the notion of *waḥdat al-wujūd* of Ibn 'Arabī. This notion of the oneness of all existence does furnish a moral code for human action. But what furnishes the truly practical code – the *modus operandi* – for human action is the notion of the *singularity* of God with its necessarily flowing intra-activity (one agent acting on itself), and of the *duality* of man with its necessarily flowing inter-activity (one agent acting on its opposite). Hence, for humans, the divine law ordains prohibition of *ribā*

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[872] Hans Wehr, *Arabic-English Dictionary*, 1236.
[873] Nasr, *Ideals and Realities of Islam*, 29.
[874] Q. 6:144-5; 13:3; 20:53; 26:7; 31:10; 36:36; 39:6; 42:11; 43:12; 50:7; 51:49.

(intra-activity) and permission of *bay'* (inter-activity). This is the practical significance of what appears to be a pleonasm.

Tawḥīd has been declared the core of all Islamic religious knowledge, "as well as its history, metaphysics, esthetics, ethics, social order, economic order, and indeed the entire Islamic world order."[875] How does *tawḥīd* serve this function? As shown above, on the moral plane, *tawḥīd* operates as the notion of union with God, while on the practical plane, it operates as the notion of singularity of God and, its opposite, the duality of man.

Arithmetically, this notion of unity and duality can be expressed very simply. Unity cannot "multiply" *itself*, for 1 x 1 = 1, always. Duality can, and is required to, "multiply" *itself*, for 2 x $\underline{1}$ = 2, but 2 x $\underline{2}$ = 4. Put theologically, God does not, will not, cannot(?) "multiply" Himself. Man, on the other hand, does, will, can, must, "multiply."

IV.1.vi. Modes of Creation and Growth

Theoretically, the process of creation and the subsequent existence/growth of any object or concept can originate and continue only from three sources: (i) from ***nothing*** *(nihilo);* (ii) from ***itself*** (the object or concept itself); and (iii) from ***other*** (something other than the object or concept itself). If something is created from *nothing*, it is called, in theological and philosophical discourse, ***ex-nihilo creation***. To coin two new terms, when something is created from the thing *itself*, it may be called ***ex-sui creation*** (creation from self), which in this work will be referred to as ***intra-action;*** finally, when something is created from something *other*, it may be called ***ex-alio creation*** (creation from other), which in this work will be referred to as ***inter-action.***

Although all these three concepts play a crucial role in new theory development in this work, the two concepts that are in practical binary mode and act as the pillars of the new theory are **intra-action** or ***ex-sui creation*** (creation from self), and **inter-action** or ***ex-alio creation*** (creation from other).

IV.1.vi.a. ***Ex-nihilo creation (khalq min al-'adam)*** – creation from nothing – as debated by theologians and philosophers, is a process wherein only one agent is operative and

[875] Ismail al-Faruqi quoted in Tamara Sonn, "Tawḥīd" in *The Oxford Encyclopedia of the Modern Islamic World.* ed. J. Esposito, (Oxford University Press, 1995), 190-198.

where that agent acts on nothing in order to create or attempt to create. It is thus indisputably, if anything, an exclusive divine creative fiat – beyond human capability. God created the universe from *nothing*. For Him, it is only a matter of "*kun! fa yakūn*" (Be! and it is).[876] Other verses which attest to this divine capability are:

- He [Zakariyyā] said: "My Lord! How can I have a son when my wife is barren, and I have reached the extreme old age?"
  He [Allāh] said: "So (it will be). Your Lord says: It is easy for Me. Certainly I have created you before, when you had been *nothing!*"[877]
- And man says: What! Once I am dead, shall I be raised to life again?
  Does man not remember that We created him before out of *nothing?*[878]
- Has there not been over man a period of time when he was *not a thing* worth mentioning? Verily, We have created man from *nuṭfa* (mixed drops of male and female sexual discharge), in order to *test* (try) him, so We made him hearer and seer. Verily, We showed him *the way*, whether he be grateful or ungrateful.[879]

Very significantly, these verses declare man's initial creation out of nothing – *ex-nihilo creation* of man – and his subsequent creation from a mixture of duality (male sperm and female egg) for the purpose of *testing him* (for conformity with this duality model), and *showing him the way (sharī'a).* These verses thus encompass and support several crucial concepts in this study – creation from nothing, creation in duality mode, worldly test and the *sharī'a.*

On the other hand, man cannot create something from nothing. Man has to act on something to create something. *Ex-nihilo creation* is, therefore, not a human capability or category, and cannot therefore be rendered in terms of human actions. It can only be expressed in its generic form. As will be shown below, man can only attempt to simulate *ex-nihilo creation.* But even this attempt – a failure at best – will, nevertheless, constitute the serious-most transgression in the divine domain.

IV.1.vi.b. ***Ex-sui creation or Intra-action (khalq min al-nafs)*** – creation from the thing itself – means a process wherein only one agent is operative and where that agent acts upon itself in order to create or to attempt to create. This process, therefore, is one of intra-action. And intra-action leads to self-subsistence, self-emanation, perfection, purity, infinity and eternity. Intra-action is the purest form of growth – a replication, a

[876] Q. 2:117; 3:47; 36:82.
[877] Q. 19:8-9.
[878] Q. 19:66-67.
[879] Q. 76:1-3.

duplication of quality of exact self – exactly the same characteristics mirrored in the growth, without any impurity coming from the inter-action of two agents with necessarily different genetic characteristics. Again, the attributes of self-subsistence, self-emanation, perfection, purity, infinity and eternity are divine attributes. *Ex-sui creation* is also, therefore, an exclusively divine mode of growth based on intra-action. Also, intra-action results in inbreeding. In the human domain, incest with one's own mother (the subject of a Prophetic *ḥadīth* on *ribā)* is the utmost limit of inbreeding involving circular action. Incest with other members of the biological family unit involves lesser degrees of inbreeding. Also, man can attempt self-replication, self-emanation and eternity through the genetic engineering technique of human cloning, but the operative attribute still remains divine. Therefore, with the sole exception of the institution of *waqf* (endowment) which is "the only form of perpetuity known to Islam,"[880] any human act which is intra-active – or even an attempt at that – is a transgression in the divine domain. This is borne out by the following Qur'ānic verses:

- Nay, but man doth *transgress* all bounds.[881]
- In that he looketh upon himself as *self-sufficient.*[882]

These two verses are the most direct Qur'ānic assertion of human self-sufficiency representing a transgression in divine self-sufficiency.

The third supportive verse is:

- *Wa-lā tamnun tastakthir.*[883]

This verse has been variously translated as "and give not a thing in order to have more" (Muhsin Khan); "nor expect, in giving, any increase (for thyself)!" (Yusuf Ali); "and show not favour, seeking worldly gain!" (Pickthall); "and bestow not favours that you may receive again with increase" (Shakir Ali); "do not bestow favours in expectation of returns" (Ahmed Ali); and "and do not through giving seek thyself to gain, or, lit., do not bestow favours to obtain increase" (Asad).

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[880] George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), n. 232.
[881] Q. 96:6.
[882] Q. 96:7.
[883] Q. 74:6.

Notwithstanding the translation differences, the underlying theme of the verse is very significant in clearly prohibiting any excess in an exchange of homogeneity (intra-action).

On a theological level, as pointed out above, in his famous expression, Aristotle speaks of the Unmoved Mover as *'Thought thinking itself'*.[884] This is the most succinct expression of the concept of intra-action, and ensuing self-subsistence, which this thesis posits as one of the distinguishing characteristics of *ribā* and as an exclusive divine capability. "The plain meaning of this is that God is the object of his own thinking." [885] As Aristotle put it in his *Metaphysics*, "it is by thinking of itself [*sic*] that God knows and controls all things." Aristotle rejects the notion that God might think of something other than "itself" (which would amount to inter-action: one agent acting upon another) precisely because this would diminish God's power (which is intra-action: one agent acting upon itself).[886]

IV.1.vi.c. ***Ex-alio creation or Inter-action (khalq min al-ghayr)*** – creation from something else – is the process wherein two different agents are operative and acting upon each other, i.e., an agent is acting on its binary opposite in order to create or attempt to create. It is the only process of creation and growth that is inter-active. Inter-action does not lead to eternal growth, but to a negotiated, defined and constrained growth and ultimate decay. Inter-action leads to imperfection and impurity. Recent genetic research, for example, has demonstrated that the male cell introduces "imperfection" in the human embryo. Inter-action is the only mode and source of creation and growth that is in conformity with the structural design and purpose of the creation of man. It is the exclusive human domain. The Qur'ān repeatedly emphasizes the creation of man in pairs – duality and the resulting inter-activity. According to al-Kindī, the blissful state of everlasting life of the heavenly bodies, as compared to the terrestrial entities, is by virtue of the fact that they have no opposites [i.e., no inter-action].[887]

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[884] Aristotle, *Metaphysics*, 1072b19.
[885] *The Encyclopedia of Philosophy*, ed. in chief Paul Edwards (New York: Macmillan Publishing Co. & The Free Press, 1967), I, 161.
[886] Aristotle, *Metaphysics*, 1072b19.
[887] Abū Riḍā, *Rasā'il al-Kindī al-Falsafiyah* (Cairo: n.p., 1950, 1953), 253, quoted in Majid Fakhry, *History of Islamic Philosophy*, 2nd ed. (London: Longman; New York: Columbia University Press, 1983), 82.

IV.2. The New Critical Theory

A new theory of normative behavior, derived from the divine law of prohibition of *ribā* and permission of *bay'*, is developed below in terms of its three foundational constituents: (1) distinction (*tamyīz*),[888] (2) rationale *(ḥikma)* and (3) cause *('illa: ratio legis).*

IV.2.i. Posited Distinction *(Tamyīz)*[889] of *Ribā* and *Bay'*

Conventional scholarship, as seen above, has not searched for the intrinsic distinguishing characteristic of *ribā* and *bay' (al-'unṣur al-mumayyiz)* [890] beyond their apparent external manifestations. The common historical perception of *ribā* is that of an evil human action, due primarily to the empirically observed historical manifestations of the practice of usury/interest. But as will be demonstrated below, *ribā* is, in fact, a pious and pure divine action, absolutely devoid of any evil, but – for this very reason – *prohibited* to humans. The reason for this conventional misperception is concentration on its observable, exoteric economic manifestations to the complete exclusion of its non-observable, esoteric manifestations. The sum total of conventional scholarship is confined to associating *ribā* with its most apparent manifestation of interest/usury, and associating *bay'* with its indirect manifestation of profit/loss. The analogical extension of the six named commodities in the *ribawī*-commodities *ḥadīth* also has utilized only the apparent external characteristics of the commodities – currency-value, food-value, weighability, measurability, storability, etc. This narrow exoteric application has handicapped the conventional scholarship in harmonizing the prohibition rationale and punishment for *ribā.* The distinguishing characteristic of the Arabic linguistic terms *ribā* and *bay'* will, therefore, be sought not in the exoteric *products* but in the esoteric *processes* underlying these two concepts, not only in the Scripture and the lexicon, but also in the linguistic theory of semiology/semiotics which, as explained above,[891] holds, *inter alia,* that linguistic meaning resides in binary oppositions. In line with this science of signs for the study of the linguistic structure, the Arabic linguistic terms *ribā* and

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[888] See n. 47, p. 27, above, for this coined technical usage.
[889] Ibid.
[890] A new composite term in the *ribā* discourse as an expanded equivalent of *tamyīz.*
[891] See 1.3., above.

bay', in terms of their distinguishing characteristic and their binary opposition, may appropriately be depicted as shown below:

Semiological Binary Opposition of *Ribā, Bay'* and *Zakāt*

Ribā:  = *Intra-action:* one agent *self-emanating*

Bay':  = *Inter-action:* two agents *exchanging*

***Zakāt** (ṣadaqa):*  = *Intra-action:* one agent *self-annihilating* (reverse)

Incidentally, this depiction dispels the popular exegetical misconception that the Qur'ānic binary opposition is between *ribā* and *zakāt/ṣadaqa.* As is evident above, both *ribā* and *zakāt/ṣadaqa* are in the same category of intra-action, and hence cannot be in binary opposition to each other. Yet, while both are intra-active, *ribā* is proscribed, and blotted, because it is self-emanating, and *zakāt/ṣadaqa* is prescribed, and even promised manifold reward, because it is self-annihilating. This is the only logical explanation of the particular juxtaposition of *ribā* with *ṣadaqa* in Q. 2:276 and with *zakāt* in Q. 30:39. The binary opposition, then, is between *ribā /zakāt/ ṣadaqa* and *bay'*.

IV.2.i.a. Posited Distinction *(Tamyīz)*[892] of *Ribā*

The distinguishing and defining characteristic of any object or concept, by definition, must refer to that inherent quality of the object or concept that is universally present. If it is present in some situations and absent in others, it may be *a* characteristic but not *the* defining characteristic. The distinguishing/defining characteristic *(tamyīz)* of

[892] See n. 47, p. 27, above, for this coined technical usage.

ribā is, therefore, to be sought in the operative modes in which this characteristic functions to actualize the inherent processes of growth and creation. As will be explained below, the growth operative mode is *intra-action (ex- sui* creation) and the creation operative mode is *ex- nihilo action (ex- nihilo* creation).

Intra-action *(ex- sui* creation)

As a technical term, *ribā* has come to be identified exclusively with interest/usury. Notwithstanding their historically evolving meanings and their present conceptual difference, the current intrinsic meaning of interest and usury is money generation from money. The Qur'ān apparently points to this process when referring to the "doubling and re-doubling *ribā*."[893]

As a generic term, however, *ribā* has several applications. As noted above,[894] the Qur'ānic text as a linguistic contribution applies the term *ribā*, in its different grammatical derivations, to denote "excess"/ "increase" or "growth" in such seemingly diverse processes as *rabwatin* (height: hillock);[895] *rābiyan* (rising: foam);[896] *arbā* (exceeding, being more numerous: nation);[897] *rabbayānī* and *nurabbika* (bringing up, raising: child);[898] *rabat* (swelling: earth);[899] and *rābiyatan* (overpowering: grip).[900]

At the bottom of these seemingly diverse technical and Qur'ānic expressions, there is a very crucial, common distinguishing characteristic. Close scrutiny of the above usages – money generation from money, growth of the hill, rising of the foam, being more numerous of the nation, bringing up of the child, swelling of the earth, and being overpowering of the grip – clearly demonstrates that all these diverse processes of growth have one feature in common: *in each case only one agent is operative and it is acting on itself.* The *fā'il* (subject) and the *maf'ūl* (object) of the *fi'l* (verb/action) is one and the same entity, acting on itself in order to produce growth. In other words, they are all *intra-active* processes. Other than this intra-action, there is no feature common to

[893] Q. 3:130.
[894] See II. 2. v., above.
[895] Q. 2:265; 23:50.
[896] Q. 13:17.
[897] Q. 16:92.
[898] Q. 17:24; 26:18.
[899] Q. 22:5; 41:39.
[900] Q. 69:10.

these diverse applications of the term *ribā*. Thus intra-action (*ex-sui* creation), being the *modus operandi* of *ribā*, is the growth mode of its distinguishing characteristic *(tamyīz)*.

This philosophical notion of intra-action (*ex-sui* creation) as a mode of the distinguishing characteristic *(tamyīz)* of *ribā* has a more profound theological connotation. Intra-action is an exchange of homogeneity – one agent operating upon itself – and any growth therefrom leads to self-emanation. The exchange of a small apple for a larger homogenous apple can be regarded as a self-emanating growth of the small apple for the initial possessor of the small apple. Likewise, a sum of money left in a bank savings account or put out on loan at interest can keep on growing – intra-acting and self-emanating. Moreover, without being restrained by the opposite inter-action, this process of self-emanation can be continued *ad infinitum* leading in turn to eternity. But self-emanation and the ensuing self-subsistence, and eternity, are exclusively divine traits.[901] Except for the Divine Himself, this mode of intra-action, by virtue of the underlying process of self-emanation and eternity, is therefore an act of what may be termed "divine imitability" on the part of anyone or anything that indulges in it.

Thus, it can be posited that *intra-action (ex-sui* creation) is the "growth mode," both in its technical and generic sense, of the distinguishing and defining characteristic of *ribā* which is "divine imitability." In its turn, as expounded below,[902] this act of "divine imitability" both directly and perfectly entails a *ḥikma* (rationale) for *ribā*-prohibition which is fully commensurate with the ordained punishment.

Ex-nihilo creation

However, in the context of creation, *ribā* operates in another mode of the distinguishing and defining characteristic of "divine imitability": *ex-nihilo action* (or ex-*nihilo* creation: *ibdā'),* which is triggered by "delay" in settlement, with/without growth.

The *ex-nihilo* creation argument in this work draws heavily on the Islamic legal *(fiqh)* notion of "unity of the transacting session" *(ittiḥād al-majlis).* The notion stipulates that a transaction, to be complete and legally valid, must be completed in a single session of the two participants.

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[901] Q. 112:1-4.
[902] See IV. 2. ii. a., below.

Reliance on this notion for the development of the *ex-nihilo* creation argument was objected to as "reliance on a legal fiction, damaging the strength of the argument."[903] In response, it may be posited that the Islamic legal requirement of the unity of the session, wittingly or unwittingly on the part of the jurists *(fuqahā')*,[904] far from being a legal fiction, is in fact an expression of a fundamental law of nature. For example, sexual intercourse – a biological transaction – must be completed in one session for it to be effective. If its completion in one session is interrupted, the remainder cannot be completed in another session. The process cannot be picked up in the new session at the point where it was left off in the previous session. The interrupted activity of the old session is rendered ineffective. It must be resumed in the new session anew. This basic law applies not only to biological transactions but to all other transactions, for all are part of the process of exchange *(bay')*. Reliance on this notion is, therefore, reliance not on a legal fiction but on a fundamental law of nature, which will, rather than damage, support the *ex-nihilo* creation argument as shown below.

The assertion that *ribā* operates in an *ex-nihilo* action mode triggered by delay is substantiated, though not explicitly explained, by the Prophetic *aḥādīth* that "there is no *ribā* , except in *nasī'a* [delay]," [905] and "verily, *ribā* is in *nasī'a.*"[906] While the *aḥādīth* themselves are silent on the question of "how," the exegetical and juridical scholarship has not answered the question satisfactorily, either. Literally, these *aḥādīth* seem to be confining *ribā* to *nasī'a* only. However, these *aḥādīth* cannot be taken in their literal sense, for, as per the *ribawī*-commodities *ḥadīth* and the *Barnī-dates ḥadīth*, *ribā* does arise, even without the presence of delay, in exchanges of homogeneity. What these *aḥādīth* are doing, therefore, is only to *emphasize* the *gravity* of that *ribā* which is triggered by delay in settlement. The question, then, is: What is that *ribā?* The only explanation posited by scholars so far is that in a credit sale or a fixed-rate loan transaction, while the seller/creditor has a predetermined fixed profit/interest, the buyer/debtor has the potential of an undetermined and variable monetary benefit from

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[903] An objection raised at the oral defense of the Proposal for this dissertation at the Institute of Islamic Studies, McGill University, Montreal, February 1, 2005.

[904] As per the *fuqahā'*, the reason for the unity of the session is merely a contractual necessity of expressing *riḍā* (consent) and the so-called "the meeting of the two minds." They completely ignore the more fundamental rationale for the requirement.

[905] Bukhārī, *Ṣaḥīḥ, Kitāb al-Buyū', Bāb bay' al-dīnārī bi al-dīnār nasa'an;* also *Ṣaḥīḥ Muslim and Musnad Aḥmad.*

[906] Ibid., *Ṣaḥīḥ* , II, 138.

the use of the money for the duration of the delay. It is claimed that this undetermined and potentially large monetary benefit is being referred to as the real *ribā* in these *aḥādīth.* But, as pointed out by al-Rāzī, this potential benefit is only *ẓannī*[907] (resting on mere assumption, presumptive, supposed, hypothetical). A *ẓannī* benefit could not have been the basis of these emphatic Prophetic *aḥādīth.* The answer to the question of how delay triggers a severer kind of *ribā* must lie elsewhere.

The only tenable answer appears to be that delay in settlement produces a semblance of *ex-nihilo* creation, which in turn is an exclusive divine power. The delayed settlement transaction is, therefore, an attempted incursion into the exclusive divine domain and hence the severest form of prohibited *ribā.* It is an act of "divine imitability." But this answer begs the further question: How does delay lead to *ex- nihilo* creation? Again, the only tenable answer can be along the following lines. Delay in settlement of an exchange, breaking the unity of the exchange session *(ittiḥād al-majlis),* leads to two instances of *ex-nihilo* creation. When the settlement is postponed, the *majlis* (exchange session) is virtually broken into two *majālis* (sessions) – the initial *majlis* in which the commodity is given by seller to buyer, and the subsequent *majlis* in which settlement will be made by the buyer to the seller. Now, in the first *majlis,* the seller gave the commodity to the buyer, but the buyer gave *nothing* tangible in exchange (except his promise to pay). This receipt of the commodity in exchange for *nothing,* in that *majlis,* thus constitutes an instance of *ex-nihilo* creation of that *commodity* for the buyer. Similarly, in the second *majlis,* the buyer gave the payment to the seller, but the seller gave *nothing* in exchange, as he had already given the commodity in the first *majlis.* This receipt of money in exchange for *nothing* in the second *majlis* thus constitutes an instance of *ex-nihilo* creation of that *money* for the seller. The delayed transaction, by producing these two instances of *ex-nihilo* creation, invites the Prophetic *ḥadīth:* "there is no *ribā* [of such severity], except in *nasī'a.*"

This, however, leads to a further legitimate question: Why does the Qur'ān permit stipulated-period loans,[908] when such lending obviously involves delayed settlement which, as shown above, produces *ex-nihilo* creation? The explanation lies in the fact that

[907] Fakhr al-Dīn al-Rāzī, *Mafātīḥ al-Ghayb,* II, 531.
[908] Q. 2:282.

a loan only involves transfer of possession and not transfer of ownership which occurs only in a sale and which is essential for *ex-nihilo* creation to take place. Therefore, lending and its equal settlement – delayed by definition – does not involve *ex-nihilo* creation and hence is permitted.

Thus it can be posited that *ex-nihilo* action is the "creation mode," both in its technical and generic sense, of the distinguishing and defining characteristic of *ribā*, i.e., of "divine imitability."

To sum up, *intra-action (ex-sui* creation) and *ex-nihilo action* are, therefore, two operative modes or processes exclusively inherent in *ribā.* And, as established in this section above, *intra-action* and *ex- nihilo action* are two modes of "divine imitability" – transgression in the divine sphere. Therefore, "divine imitability," operating through *intra-action* and *ex-nihilo action*, is the distinguishing and defining characteristic *(tamyīz)* of *ribā.*

In addition to the above arguments, the presence of *intra-action* and *ex- nihilo action* in *ribā* is fully supported by the evidence of a Prophetic *ḥadīth,* which, though extensively utilized for exoteric analogical extension, has surprisingly not so far been put in exegetical service for such an esoteric conclusion. This *ḥadīth*, in its two but fully compatible versions, already cited above,[909] is the most complete elaboration of the Qur'ānic prohibition of *ribā* and permission of *bay'* (in Q. 2:275), notwithstanding the reported lament of the Caliph 'Umar that the Prophet did not live long enough to explain it fully. These versions are repeated here for their relevance to the discussion:

> From 'Ubādah ibn aṣ-Ṣāmit, who said, "The Messenger of Allāh said, 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, *like for like*, in *equal weights*, from *hand to hand. If these species differ*, then, sell as you like, as long as it is from hand to hand.'"[910]

> The Messenger of Allāh said, "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, *like for like*, from *hand to hand.* He who gives in excess or acquires an *excess* has charged *ribā;* the person giving and acquiring have the same liability [guilt] in this." [911]

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[909] See II. 3. ii., p. 67, above.
[910] Muslim, *Ṣaḥīḥ. Kitāb al-Musāqāt, Bāb al-ṣarfi wa bay'i al-dhahabi bi al-waraqi naqdan;* also in al-Ṣan'ānī, *Subul al-Salām Sharḥ Bulūgh al-Marām*, III, 72
[911] Muslim, *Ṣaḥīḥ. Kitāb al-Musāqāt, Bāb al-ṣarfi wa bay'i al-dhahabi bi al-waraqi naqdan.*

This *ḥadīth* has been the subject of constant disagreement and, more importantly, of misinterpretation. Its traditionalist interpretation still reads absolute equality and instantaneity as the requirement for an exchange of homogeneity:

> As early as the 2nd/8th century, based on a strictly literalist interpretation of the reports, the doctrinaire group, with their rigid interpretations, ruled that barter of certain commodities – gold, silver, and certain foodstuffs – against a commodity of the same species was only permissible when the offerings on both sides were exactly equal in weight or quantity and when delivery on both sides was immediate. Former Medinan doctrine had allowed the exchange of gold ore against a smaller weight of gold coinage, the difference covering the cost of minting; but to the doctrinaire group this constituted *ribā* and was thus prohibited.[912]

This led an Orientalist scholar of the stature of Coulson, among others, to conclude, albeit *partially correctly* and *partially incorrectly:*

> This approach naturally resulted in the law of the doctrinaire group assuming a highly negative character, in essence if not in form, to the degree that it lost touch with practical needs and circumstances. It is difficult to see any point or purpose in a transaction where 'Umar takes 20 lb. of Zayd's wheat in exchange for 20 lb. of his own wheat in the same session.[913]

Coulson is *partially correct* in criticizing the above transaction as meaningless and the doctrinaire position as negative. However, he is *partially incorrect*, and the doctrinaire group totally incorrect, in deducing that such a transaction was the intent of this Prophetic *ḥadīth.* How could the Prophet, with his divinely revealed wisdom, have *ordained* such a pointless exchange?

Similarly, a prominent contemporary Islamic economist, Chapra, citing another Muslim scholar, 'Abd al-Karīm al-Khaṭīb, falls prey to interpretational confusion regarding this *ḥadīth.* Like Coulson, they both agree that "on the surface it appears hard to understand why anyone would want to exchange a given quantity of gold or silver or any other commodity against its own counterpart, and that too 'spot'." But they contend that "what is essentially being required is *justice* and *fair play* in spot transactions; the price and the counter-value should be *just* in all transactions where cash payment (irrespective of what constitutes money) is made by one party and the commodity or service is delivered reciprocally by the other."[914] Chapra further contends that:

> Any thing that is received as extra by one of the two parties to the transaction is *ribā al-faḍl*, which could be defined in the words of Ibn al-'Arabī as "all excess over what is justified by the counter-value." Justice can be rendered only if the two scales of the balance carry the same value of goods. This point was explained in a most befitting manner by the Prophet, peace be on him,

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[912] Buckley, *Theological Examination,* 199-200.
[913] Coulson, *History,* 42.
[914] 'Abd al-Karīm al-Khaṭīb, *al-Siyāsah al-Māliyyah fī al-Islām* (Beirut: Dār al-Ma'rifah, 1975), 141-6.

> when he referred to six important commodities and emphasized that if one scale has one of these commodities, the other scale also must have the same commodity, "like for like and equal for equal." To ensure justice, the Prophet, peace be on him, even discouraged barter transactions and asked that a commodity for sale be exchanged against cash and the cash proceeds be used to buy the needed commodity *[Barnī*-dates *ḥadīth].* This is because it is not possible in a barter transaction, except for an expert, to visualize the fair equivalent of one commodity in terms of all other goods. Hence the equivalents may be established only approximately thus leading to some injustice to one or the other party. The use of money could therefore help reduce the possibility of an unfair exchange.[915]

This discourse about justice and its practical realization is valid. But the point that Chapra appears to be missing is that, while the phrase "like for like and equal for equal" signifies equality of value – which is certainly the requirement of justice as he rightly claims – this phrase also signifies an exchange of *homogeneity* in which any increase is not being allowed, and that the ensuing phrase in the *ḥadīth* "if these species differ, sell them as you wish" signifies an exchange of *heterogeneity* in which increase is being allowed and neither value nor physical equality is a condition. These concepts of homogenous and heterogeneous exchanges will be analyzed below.

The point was made by Coulson, and also indirectly by Chapra, above, that an exchange of homogeneity with the condition of equality and instantaneity is a pointless transaction, without any motivation for the seller or the buyer. And the question was raised by this writer, above, as to how the Holy Prophet could have ordered such a transaction? What they are missing – Coulson completely and Chapra partially – is that, as already explained, this *ḥadīth* is *not ordering* this equal and instantaneous exchange of homogeneity, rather it *is prohibiting* this exchange, although not by a direct negative command *(amr nahī)* of "do not do this," but by the rhetorical indirect positive command of making the exchange meaningless and purposeless. Instead of saying, for example, "do not smoke," it is saying "smoke but without lighting the cigarette." Although the *ḥadīth* starts by saying "gold for gold ...," it does not mean *"[Sell]* gold for gold, like for like, in equal weights, from hand to hand;" it actually means *"[The only way you can exchange] gold for gold* [is] like for like, in equal weights, from hand to hand *[which is meaningless and hence better avoided].* He who gives in excess or acquires an excess [or delays] has charged *ribā."*

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[915] Chapra, *Just Monetary System,* 59-60.

This *ḥadīth* thus clearly establishes that intra-action (exchange of homogeneity), when it is allowed to yield an excess, is *ribā*. Thus intra-action becomes one aspect of the distinguishing characteristic of *ribā*.

This *ribā*-expounding *ḥadīth* also requires instantaneity *("from hand to hand")* in both homogenous and heterogeneous exchanges, i.e., it is prohibiting delay of settlement in both types of exchanges. The other cited *ḥadīth* "verily, *ribā* is in *nasī'a*" directly holds "delay" to be the originator of *ribā*. While these *aḥādīth* do not go beyond "delay" as a generator of *ribā*, the only plausible connection of "delay" with *ribā*, as shown above, is that "delay" in settlement leads to a semblance of *ex-nihilo* creation. Therefore, the extended meaning of these *aḥādīth* is that *ex-nihilo* creation is the other aspect of the distinguishing characteristic of *ribā*.

This concept of *ex-nihilo* creation in relation to *ribā*-generation was utilized – albeit in a differing shade of meaning – by Kāsānī[916] who, in the words of Vogel, states that "... A lender who gets compensation beyond exact restitution of his goods is exacting gain from someone *in return for nothing*, and is therefore *unjustly enriched*..."[917] As is evident from this passage, Kāsānī is treating the notion of creation from nothing in a very temporal sense of unjust enrichment, without any metaphysical trace.

In summary, the aforementioned assertion that "divine imitability," operating through *intra-action* and *ex-nihilo action*, is the distinguishing and defining characteristic *(tamyīz)* of *ribā* is not only fully borne out through rational arguments but also fully supported by Prophetic *aḥādīth*.

IV.2.i.b. Posited Distinction *(Tamyīz)*[918] of *Bay'*

As already noted the term *bay'* denotes such processes as sale, bargain, business deal, commercial transaction, profession of loyalty, pledge of allegiance,[919] and even the act of marriage. Again, these seemingly diverse economic, political and biological processes have one feature in common: in each case two agents are operative and they are acting on each other. The *fā'il* (subject) and the *maf'ūl* (object) of the *fi'l* (action)

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[916] al-Kāsānī, *Badā'i' al-Ṣanā'i'*, VII, 395-96.
[917] Vogel and Hayes, *Islamic Law and Finance*, 84.
[918] See n. 47, p. 27, above, for this coined technical usage.
[919] Hans Wehr, *Arabic-English Dictionary*, 375.

are two different and opposite agents – buyer and seller, commodity and money, ruler and ruled, husband and wife – each acting on the other to produce growth. In other words, they are all *inter-active* processes. Other than this inter-action, there is no feature common to these diverse applications of the term *bay'*. Significantly, the Qur'ān also associates the apparently inter-active verb *rabiḥat* (root: *r.b.ḥ),* and not the intra-active verb *rabat* (root: *r.b.w.),* with the growth resulting from the inter-active noun *tijāra* (trade, sale/purchase).[920]

Thus, it can be concluded that the distinguishing and defining characteristic of *bay',* both in its technical (sale) and generic (exchange) sense, is *inter-action.*

IV.2.ii. The Search for Rationale *(Ḥikma)* of *Ribā and Bay'* Injunctions

While legal precision about the *ratio legis* (occasioning factor, *'illa)* of *ribā*-proscription has a decisive role in law formulation through analogy *(qiyās),* a legitimate question poses itself: Why look for the rationale *(ḥikma)* of the *ribā and bay'* injunctions? Our ancestors ignored this search, why search now? Why has the search acquired necessity and urgency? The answer to these questions requires an examination of the approach of Islamic classical jurisprudence to this issue, which Ibn Khaldūn (d. 1406) sums up thus:

> The Divine Legislator, not bound by limits of human reason, demands unquestioning acceptance. The goal of the (human) search is *what,* and not *why,* the Divine Legislator has commanded.[921]

Accordingly, almost all schools of Islamic law *(madhāhib)* followed a literalist and non-analytical methodology whereby, in the words of Saeed:

> The constituent elements of each command or prohibition in the Qur'ān were interpreted by examining the most immediate and literal meaning of the relevant text and emphasizing it at the expense of the underlying reason or rationale. ...Once a prohibition or command was recognized, its surface meaning was emphasized. The methodology followed in schools of law demanded that commands or prohibitions be followed irrespective of whether or not we know the rationale. ... In fact attempts to arrive at a rationale were not even seen to be a fruitful exercise, though some scholars attempted to do so. ... Since almost all exegetes belonged to schools of law, and rationales were generally ignored in these schools, the exegetes did not seem to find it an attractive option to interpret the meaning of *ribā* in the light of its rationale. ...Not much attention was attached to the rationale for the prohibition of *riba* [*sic*] either in the exegetical sources or in juristic discussions, in line with the prevailing juristic emphasis on legal forms, literal and immediate meaning of the relevant texts, and the more concrete aspects of each prohibition.[922]

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[920] Q. 2:16.
[921] Ibn Khaldūn, *Muqaddima,* ed. E.M. Quatremere (Paris, 1858), III, 27 ff.
[922] Saeed, *Islamic Banking,* 27.

This historical explanation is fully supported by a statement of Rāzī:

> The prohibition of *ribā* is proved by a text [of the Qur'ān]. It is not necessary for mankind to know the rationale of duties. Therefore, the prohibition of *ribā* must be regarded as definitely known even though we do not know the rationale for its prohibition.[923]

Here Rāzī is not only denying the importance of the search for the rationale, he is also denying even our need to know if any rationale exists. But, Saeed arrives at an important conclusion about the need to know the rationale:

> The point emphasized by Rāzī is that searching for the rationale of the prohibition is not important: mankind merely has to comply. Furthermore, according to this view, we do not even need to know if any rationale exists. It could be argued that if there is general agreement among Muslims on the meaning, nature and form of what is prohibited, there may not be much point in probing into the rationale. However, in the absence of agreement [such as exists today],it may be difficult to justify such an attitude towards the rationale and we should perhaps be allowing it to have a decisive role in determining what is prohibited. Which transactions are regarded as *ribā* and which are not has been a matter of some dispute since the time of the Companions of the Prophet. For this reason it is of the utmost importance to refer to the rationale in order to arrive at a balanced view as to what is or is not *riba* [*sic*]. [924]

This successful establishment of a case for the identification of rationale, however, raises an important question of legal methodology itself: Can the rationale *(ḥikma)* perform the function of efficient cause *('illa)* in analogy *(qiyās)?* Three contrasting juridical views, as summarized by Āmidī,[925] are: (i) *ḥikma* can perform the function of *'illa* whether it [*ḥikma*] is explicit or not or whether its existence can be ascertained independently or not;[926] (ii) *ḥikma* can not perform the function of *'illa* at all;[927] and (iii) if the *ḥikma* is explicit and if its existence can be ascertained independently, then it can perform the function of *'illa.*[928]

The view of al-Rāzī and Bayḍāwī that *ḥikma* can perform the function of *'illa* relies on the argument that *"ḥikma* is the intention of the Lawgiver in enacting the law. If it cannot be used to extend the rules, then the *'illa* which is after all based on the *ḥikma* cannot be used for extension of a rule. If the *'illa* can be used, then *ḥikma* should be given priority in extending the rules."[929] But in practice, the scholars regarded *ḥikma* as minor and unimportant apparently because " *'illa* could be used objectively and easily, whereas the jurist would have to consider many factors in arriving at a decision on the

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[923] Rāzī, *Tafsīr,* VII, 94.
[924] Saeed, *Islamic Banking,* 27.
[925] Abū al-Ḥasan 'Alī Sayf al-Dīn Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām,* 3 vols. (Cairo: Maṭba'at 'Alī Ṣubayḥ,1968), III, 290, quoted in Saeed, *Islamic Banking,* 36.
[926] This view is attributed to Fakhr al-Dīn al-Rāzī (d. 606/1209) and Bayḍāwī (d. 685/1286)
[927] This view is attributed to the majority of scholars of *uṣūl al-fiqh.*
[928] This is the view of Āmidī (d. 630/1232).
[929] Saeed, *Islamic Banking,* 36.

basis of *ḥikma.* A decision arrived at in that way would change according to the circumstances, whereas a decision arrived at on the basis of *'illa* could remain immutable."[930] Nevertheless, the *'illa* approach still proved inadequate both in juridical theory and practice, as also noted by Saeed:

> The inadequacy of the *'illa* approach is glaringly obvious in the discussion of *riba* [*sic*] in both the early and the modern period. In the case of *riba* [*sic*] as prohibited in the *sunna* for instance, each school of law arrived at an *'illa* which had nothing to do with the circumstances of the transaction, the parties thereto, or the importance of the commodity to the survival of society. There was no emphasis on the moral aspect. This approach, which could be described as superficial and devoid of moral and humanitarian considerations, led to some amazing conclusions by several jurists... [and] also led to some other unfortunate developments as in the case of *ribā*-related *ḥiyāl* [legal stratagem].[931]

In rebuttal, it may be posited that the *'illa* approach has proved inadequate, as argued by Saeed, not because of any conceptual problems with this approach but because of the development and use by the jurists of *'ilal* (plur. of *'illa)* that are at best superficial, half-baked and unrelated to any plausible *ḥikma.* When an *'illa* is properly, fully developed and is related to a plausible *ḥikma,* as required by the *uṣūl al-fiqh,* then the use of this *'illa* for rule extension will automatically take account of the *ḥikma.* But the real problem is that, in the case of *ribā* at least, it is impossible to construct an *'illa* grounded in moral considerations (injustice) to accord with and take account of the morality-based *ḥikma* (injustice). Such a juridical quest is a dead-end: a moral *'illa* is not inventable and a moral *ḥikma* not plausible. Injustice is not an intrinsic distinguishing characteristic *(tamyīz)* of *ribā;* it may only be an outcome of *ribā* though not omni-present; therefore, injustice can serve neither as an *'illa* nor as a *ḥikma.* However, an *'illa* that is based on philosophical-theological grounds (intra-activity and *ex-nihilo* creation, which are the intrinsic distinguishing characteristics of *ribā)* can be constructed, as already done above, to accord fully with a *ḥikma* based on theological grounds *(shirk),* as will be demonstrated below. In this case, the *'illa* approach is fully adequate and can operate in tandem with a plausible and related *ḥikma.*

Additionally, at a time – such as today – when the very wisdom of the Qur'ānic proscription of *ribā* is being questioned, when the proscription is being branded as out-dated, when it is being declared incompatible with the dictates of modernity, when, at

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[930] Ibid.
[931] Ibid., 37.

best, attempts are being made to confine the proscription to certain outmoded financial practices of the Age of Darkness (Jāhilīya), and when modern banking practices are being declared beyond the purview of the Scriptural proscription, the search for and identification of a plausible rationale *(ḥikma)* of *ribā*-proscription could not be more urgent and essential, not only for the health of the financial system but for the very integrity of the Islamic legal system.

Accordingly, a search for the distinguishing characteristic *(tamyīz; al-'unṣur al-mumayyiz)* of the crucial focal concepts of *ribā* and *bay'*, and for the ensuing rationale *(ḥikma)* of their proscription and permission, respectively, has been conducted as the primary focus of this research and a set of distinguishing characteristics and rationales – not explicitly posited so far in the Islamic intellectual repertoire – posited below. These conclusions, in turn, support a new critical, philosophical-theological theory of what may also be described as normative "admissible emanation/growth" in monotheist legal milieu.

Admittedly, the concept of this posited rationale is alluded to in the following Prophetic *ḥadīth*, though not specifically as a rationale, but only as a *parallel* of the process of *ribā:*

> 'Abd Allāh Ibn Masūd has reported that the Prophet said: *"Ribā* has over seventy kinds and *shirk* (associating partners with Allāh) is *like* that." – Reported by al-Bazzār, with the same transmitters as those of the Ṣaḥīḥ, in Ibn Māja with sound *isnād.*[932]

But very surprisingly even the existence of this parallel has not ever been mentioned, let alone further explored and developed, by exegetes and *fuqahā'*. Invaluable as it has proven as an evidence, support and the seal for this research, this Prophetic *ḥadīth* surfaced fairly late in the writing phase and thus did not steer the course of the research process, whose conclusions were arrived at entirely independently of it.

IV.2.ii.a. Posited Rationale *(Ḥikma)* of *Ribā*-Prohibition

It has been established above[933] that intra-action (leading to self-emanation and eternity) and *ex-nihilo* creation are two processes operating in *ribā.* These two processes

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[932] *Muṣnaf 'Abd al-Razzāq*, VIII, 315; *Masnad al-Bazzār* with reference to *Kashf al-Asrār*, I, 64, chapter of *al-shirk*, *ḥadīth* no. 91; *Sunan Ibn Māja*, chapter on trade, section on *ribā*, *ḥadīth* no. 2275.

[933] See IV.2. i. a., above.

were also seen to be two aspects of the distinguishing and defining characteristic *(tamyīz)* of *ribā,* which was seen to be "divine imitability," because both these actions – intra-action and *ex-nihilo* creation – are strictly and exclusively divine functions, beyond the very structural capability of man. *Ribā* is thus purely and simply in the domain of the divine. Thus human indulgence in *ribā,* through the attempt at intra-action and *ex-nihilo* creation, constitutes transgression in the divine domain. And any transgression in the divine domain is an act of *shirk* (idolatry) – an attempt to share certain attributes of the Divine. Therefore, the human practice of *ribā* is an act of *shirk.* Hence the rationale *(ḥikma)* of *ribā*-prohibition is that *ribā* being a divine act, human indulgence in *ribā* is an act of *shirk* (associating partners with God), which is strictly prohibited and which, *inter alia,* is one sin that God does not tolerate and never forgives.

This prohibition rationale is totally commensurate with the ordained Qur'ānic punishments for the human indulgence in *ribā.* For one, *ribā*-indulgence is threatened with "war from Allāh." After all, when does one rational being threaten war? Only when one's domain *(ḥimā)* is threatened or transgressed. For another, the sin of *ribā*-indulgence is threatened with "eternal Hell Fire." Again, which sin will attract eternal Hell Fire and never be forgiven by Allāh? Obviously, as the Qur'ān stipulates, the sin of *shirk.*[934] For yet another, *ribā*-indulgence is threatened with "Satanic insanity." Once again, what was the Satanic insanity? Obviously, again as per the Qur'ān, it was Satan's open defiance of the Divine Will and his attempt to set himself up as a competing force *(mushrik)* in diverting man from the ordained straight path of inter-action. Finally, *ribā*-indulgence is the sole sin which carries "accountability for the past," i.e., no automatic condonation.[935] Now, which sin but *shirk* carries no automatic pardon for its past commission? Even a *kāfir* (disbeliever) is automatically pardoned for the past. It is only the *mushrik* (who associates partners with God) who is not.

Shirk (idolatry – associating partners with Allāh) can take two different forms, namely, (1) considering more than one entity as god, or (2) considering certain attributes

[934] Q. 4:48.
[935] Q. 2:275.

of Allāh to be shared by other entities.[936] The case of human indulgence in *ribā* falls into this second category of *shirk*.

In terms of *uṣūl al-fiqh*, there is a perfect harmony between the posited *tamyīz* (distinction), *'illa* (occasioning factor) and *ḥikma* (rationale) of *ribā*. As seen above, intra-action leads to self-emanation, and, without being restrained by inter-action, this process of self-emanation can be continued *ad infinitum* leading in turn to eternity. Both self-emanation and eternity are solely divine attributes. This mode of intra-action, therefore, attaches to the occasioning factor of "divine imitability," which thus entails the *ḥikma* that *ribā* is prohibited *(ḥarām)* because it is tantamount to sharing in the exclusive divine attributes of self-emanation and eternity, which is an act of *shirk* (idolatry).

The eternity argument is fully supported by the following theological extract:

> Islamic theology long held to the principle that participation in the attributes of *eternity* involves participation in that of *divinity* or, in other words, eternity is God's most characteristic attribute.[937] This means that the world or any material thing – even inanimate – is rendered a second God by the mere attribution of eternity. We find this principle in the thought of as early a theologian as Jahm ... Eternity would then be predicated to something other than God, which would for him be blasphemy.[938]

The posited *ḥikma* of *shirk* (idolatry) for the prohibition of *ribā (marbīt* in the Torah) is fully supported by Judaic, Christian and Islamic teachings. Yet astonishingly, these teachings have seldom been commented upon, much less emphasized, in any of these traditions. Relevant extracts, already quoted above, are repeated here for their immediate relevance:

Supporting Judaic Rabbinic Thought on Usury Rationale:

The Gemara of *Babylonian Talmud* quotes Rabbi Jose (130-160 A.D.):[939]

> Come and see the blindness of the man who lends at interest: ... if someone gets together witnesses, a notary and ink, and writes and signs (a contract), he *denies the God of Israel*.[940]

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[936] Maulana Mufti Mohammad Shafi, *Mas'ala' Sūd* (Urdu), *The Issue of Interest*, trans., Anwar Ahmad Meenai (Karachi: Darul Ishat, 1997), 71-72.
[937] Ibn Ḥazm, *al-Fisal*, II, 127; Ibn Abī Ḥadīd, *Sharḥ Nahj*, XIII, 91; al-Shahrastānī, *Milāl*, I, 48; *Nihāyat al-Iqdām*, 192-194, 201; *Risāla fī al-Kalām* (MS 452), 2.
[938] Husām Muḥī Eldīn al-Alousī, "The Problem of Creation in Islamic Thought" (Doctor of Philosophy diss. Cambridge University, 1965), 191-192. (Published. Baghdad: Baghdad University; National Printing and Publishing Co., n.d.).
[939] Maloney, Background, 125.
[940] *Baba Meẓi'a*,, 71a. (Maloney transl. from Bonsirven, 461).

Similarly, the Gemara of the *Jerusalem Talmud* declares interest-taking as denial of Yahweh:[941]

> Come and see the blindness of those who lend at interest: if anyone calls another an idolater, an incestuous man or a murderer, the other seeks vengeance on his life; but doesn't one who hired a notary and witness and tells them to attest (a usurious contract) *deny the Place?* This brings out that *everyone who lends at interest denies the Principle*. [of divine authority][942]

Supporting Christian Patristic Teaching on Usury Rationale:

Jacob of Saroug (c. 451-521), the Syrian Monophysite Bishop, in a sermon in Syriac, associates paganism with lending at interest:

> Satan was lamenting the collapse of his authority as a result of the recent disappearance of *paganism*. In order to recover his power, he is going to make use of *lending at interest (rebitha)*: priests and monks will indulge in this practice, and it will be their undoing. Once they have begun it, their orthodoxy, their cult of the true God, will matter little. 'I do not mind,' exclaims the Devil, 'if the priest uses the interest he draws from his money to buy an axe with which to smash the temples of the gods! The love of gold is a greater idol than any idol of a god ... It is worth as much to me as all those idols put together. They have cast down the idols, but they will never cast down the coins that we shall put in their place ...' [943]

Supporting Islamic Ordinance on *Ribā* Rationale:

Explicit Prophetic Pronouncement:

As noted above, 'Abd Allāh Ibn Masūd has reported that the Prophet associated *ribā* with *shirk:*

> *Ribā* has over seventy kinds and *shirk* (associating partners with Allāh) is like (as bad as) that.
> – Reported by al-Bazzār, with the same transmitters as those of the *Ṣaḥīḥ,* in Ibn Māja with sound *isnād.*[944]

Implicit Qur'ānic Pronouncement:

While instructing to give up "what remains of *ribā*" *(mā baqiya min al-ribā)* – which could refer either to the remainder of financial *ribā* claims or to the remainder of other than financial forms of *ribā* – the Qur'ān warns against *transgression* in the divine domain, i.e., *shirk:*

> Give up what remains of *ribā* ... You shall have *your base (ru'ūs amwālikum).* Do not *transgress (lā taẓlimūna),* and you shall not be *transgressed (wa-lā tuẓlamūna)*[945] [trans. mine].

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[941] Maloney, Background, 125.
[942] Gemara of *Jerusalem Talmud, Baba Meẓi'a,* V, II d (Maloney transl. from Bonsirven, 462).
[943] Trans. and ed., Abbe Martin, in *Zeitschrift der deutschen morgenlandische Gesellschaft,* 1875, pp. 107-147, quoted in Maxime Rodinson, *Islam and Capitalism,* 239.
[944] *Muṣnaf 'Abd al-Razzāq,* VIII, 315; *Masnad al-Bazzār* with reference to *Kashf al-Asrār,* I, 64, chapter of *al-shirk, ḥadīth* no. 91; *Sunan Ibn Māja, Kitāb al-Tijārāt, Bāb al-taghlīẓ fī al-ribā, ḥadīth* no. 2275.
[945] Q. 2: 279.

IV. 2.ii.b. Posited Rationale *(Ḥikma)* of *Bay'*- Permission

It is a repeated Qur'ānic declaration and an undisputed empirical observation that all creation,[946] including man foremost *is in pairs.* Natural human reproduction (as against artificial cloning) involves the equal sharing of the genes of both the male and the female partner. Inter-action thus operates in the very genetic code of humankind. This "duality mode" is the hallmark of human creation. When the human positive and negative currents (male and female) inter-act, there is reproduction – creation. But if the angels, consigned to the "unity mode" and made of light, were to have positive and negative currents (male and female), and if they were to inter-act, the result would not have been reproduction but destruction, as when the positive and negative poles of electricity inter-act, there is a spark – fire.

Thus genetically structured to be inter-active, humans have been *permitted* to practice *bay'* (inter-active hetero exchange). Inter-active behavior on earth, albeit with the full exercise of human free will, being the very test and purpose of human creation, the exercise of *bay'* has only been *permitted* (declared *ḥalāl)* and not ordained (not made *farḍ). Ribā* is forbidden, but its alternative *bay'* is not ordained; rather, simply permitted, in order to allow human free will full scope to operate and the humans to thereby pass the test of inter-active behavior of their own accord. Had *bay'* been ordained, the integrity of the test would have been compromised. Compliance would have become a matter of duty, not of free will.

The rationale *(ḥikma)* of *bay'*-permission, in juxtaposition with *ribā*-prohibition, therefore, is to see how far man, left to his own free will and free actions, and with only divine suggestion but not divine instruction, makes the duality model a success on this transient earth by passing the test of inter-active behavior. This also answers one of the thesis questions as to why *bay'* is only *permitted,* not *ordained.*

IV.2.iii. Posited *Ratio Legis ('Illa)* of the *Ribā and Bay'* Injunctions

The central role of *'illa,* the *ratio legis* or *ratio decidendi,* or occasioning factor in the process of analogical reasoning has been emphasized thus:

> The most crucial step in the process of formulating the law on the basis of an analogy is the ascertainment of the occasioning factor behind the original rule... Perhaps the most important

[946] Excluding only some very elementary life forms like prokaryotic (single-celled) organisms that include bacteria.

> outcome of the controversies over the conditions of validity of an analogy is the general agreement among the jurisprudents to the effect that the occasioning factor behind a rule of law must be evident and determinate if it is going to serve as the basis for a rule-producing analogy. Because of this insistence upon evidentness and determinacy, most jurisprudents rejected the idea that a rationale *[ḥikma]* behind a rule of law may be regarded as the occasioning factor... For the majority ... the occasioning factor proper could only be some feature of the case to which a rule applied: only specific features of cases were characterized by the evidentness and determinacy that the analogizing process required and that rationales lacked. On the other hand, all agreed that rationales were always involved: the particular feature of a case deemed to be the occasioning factor behind a rule must serve the purpose of pinning down, delimiting, giving determinacy to, an otherwise vague and elusive rationale.[947]

This passage underscores that the occasioning factor must be evident and determinate, may not consist of the rationale, can only be a feature of the case, and must give determinacy to a rationale.

The requirement that the occasioning factor could only be a feature of the case raises the question of the selection of *the* feature from amongst a multiplicity of features attached to a case that alone can serve as the occasioning factor. The *mujtahid* may not select any feature entirely on his own judgment. According to Āmidī's account, Islamic jurisprudence has prescribed seven different methods for this selection process.[948] These methods are reviewed below and applied, where possible, to the selection of the governing feature of the *ribā*-prohibition rule that can serve as the occasioning factor.

***Ratio Legis* (*'illa*) Selection Methods:**

Method # 1: Referral to the *Ijmā'*

The legal source of *ijmā'* has limited applicability in the contemporary Islamic context and therefore, this method (referral to the *ijmā')* will not be productive in the *'illa* selection process presently.

Method # 2: Referral to the *Explicit* Sense of Qur'ānic or Sunnaic Text *(al-naṣṣ al-ṣarīḥ)*

For the *ribā*-prohibition rule, this method too has limited potential: while the Qur'ānic text does not provide any *explicit* pointer to any feature of the case that could serve as the occasioning factor, the Sunnaic text *(ribawī*-commodities *ḥadīth)* does provide an *explicit* pointer, though not to the feature generating the occasioning factor, but to the conditions necessary for the generation of the occasioning factor. This *ḥadīth* explicitly mentions homogeneity of genus and non-instantaneity of settlement –

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[947] Weiss, *Search for God's Law*, 593-594.
[948] Ibid., 594-595.

features which are only the necessary conditions for but not the occasioning factors themselves, which are implied and need to be searched further. The *ḥadīth* does not spell out either how the homogeneity of genus and non-instantaneity of settlement lead to those features of the case which can serve as the occasioning factors.

Method # 3: Referral to an *Implicit* Sense of a Qur'ānic or Sunnaic Text *(dalālat al-tanbīh wal-'Imā')*

This method has the greatest potential for the identification of the features of the case of *ribā* that can serve as the occasioning factors for the rule. As already explained above, the *intra-activity* of the process of growth is the common feature of the Qur'ānic usage of the term *ribā*, in its several different grammatical derivations, to denote excess, increase or growth, such as *rabwatin* (height: hillock),[949] *rābiyan* (rising: foam),[950] *arbā* (exceeding, being more numerous: nation),[951] *rabbayānī* and *nurabbika* (bringing up, raising: child),[952] *rabat* (swelling: earth),[953] and *rābiyatan* (overpowering: grip).[954] The same process of *intra-activity* is present in the case of interest/usury, which is the technical meaning of *ribā*, in that money begets money, i.e., money intra-acts with itself to produce more money. The Qur'ān points to this intra-activity in referring to the "doubling and re-doubling of *ribā*."[955] The Sunnaic text *(ribawī-commodities ḥadīth)* on the other hand is less implicit and more explicit on the feature of intra-activity when it dwells specifically on the homogeneity and heterogeneity of genus, prohibiting excess *(ribā)* in exchanges of homogeneity (intra-action) and permitting it in exchanges of heterogeneity (inter-action). Based on these implicit Qur'ānic and Sunnaic indicators, it can be concluded that the common governing feature of the case of *faḍl* (excess) in exchange of homogeneity, both in its linguistic and technical meanings, is its *intra-activity*. It has been demonstrated above that *intra-activity*, by causing self-emanation, entails and leads to a plausible rationale *(ḥikma)* commensurate with the ordained punishments for indulgence in *ribā*. Thus, the feature of *intra-activity* meets the main

[949] Q. 2:265; 23:50.
[950] Q. 13:17.
[951] Q. 16:92.
[952] Q. 17:24; 26:18.
[953] Q. 22:5; 41:39.
[954] Q. 69:10.
[955] Q. 3:130.

juristic conditions, outlined above, to serve as the occasioning factor for the rule of proscribing *faḍl* (excess) in exchanges of homogeneity.

The Sunnaic text *(ribawī-commodities ḥadīth)* also requires hand to hand (instantaneous) settlement in exchanges of both homogeneity and heterogeneity, branding the absence of instantaneity *ribā*. This requirement *implies* that delay *(nasī'a)* in settlement – both homogenous and heterogeneous – can lead to the feature of this case which serves as the occasioning factor for the rule. It has been demonstrated above that delay in the settlement of any exchange by breaking the unity of the exchange session *(majlis)* leads to two instances of *ex-nihilo* creation, which again leads to a plausible rationale *(ḥikma)* commensurate with the ordained punishments for *ribā*-indulgence.

In summary, it can be posited that based on the implicit sense of Qur'ānic and Sunnaic texts, *intra-activity* is the occasioning factor for the rule prohibiting excess *(faḍl)* in homogenous exchanges, and *ex-nihilo* creation is the occasioning factor for the rule prohibiting delay *(nasī'a)* in both homogenous and heterogeneous exchanges.

The issue of the *'illa* of *bay'* is not as complicated, and there are also implicit Qur'ānic and Sunnaic indicators. The Qur'ān repeatedly mentions the creation of everything in pairs and permits human exercise of *bay'*. The *ribawī*-commodities *ḥadīth* and the *Barnī*-dates *ḥadīth* both permit heterogeneous exchanges in *bay'*. These indicators bring out the existence of *inter-activity* – an agent acting upon a heterogeneous agent – as the occasioning factor in the process of *bay'*.

Method # 4: Elimination of Alternatives *(al-sabr wal-taqsīm)*

The application of this method requires the compilation of an exhaustive list of all the possible features of a case and the identification of those features which *cannot* be the occasioning factor in the hope of eliminating all but one, which then becomes the occasioning factor by default.[956] The application of this procedure to the governing *ribawī*-commodities *ḥadīth* (naming six commodities: gold, silver, wheat, barley, dates and salt), which prohibits excess *(faḍl)* in homogenous exchanges and delay *(nasī'a)* in both homogenous and heterogeneous exchanges, produces the following exhaustive list of fourteen features of the case of *ribā* / bay' for consideration as occasioning factor(s):

[956] For a discussion of this method, see Ghazālī, *Mustaṣfā*, II, 295-96; Ghazālī, *Mankhūl*, 350-52.

1. **Homogeneity of genus:** Homogeneity of genus is a neutral state of affairs that is not capable of becoming an occasioning factor. It is a necessary condition – as also maintained by Shāfiʿī – for the operation of intra-activity which, as shown below, is alone capable of becoming a mode of an occasioning factor.
2. **Heterogeneity of genus:** Heterogeneity of genus, by definition, is not even a necessary condition for the operation of intra-activity. Hence the question of it becoming an occasioning factor does not arise at all.
3. **Homogeneity of estimation methods *(qadr)* – weighability, measurability, countability:** Homogeneity of estimation method of weighability and that of measurability are necessary sub-conditions for the continuation of homogeneity of genus, which as shown above is a necessary condition for the operation of intra-activity which in turn is capable of becoming a mode of an occasioning factor. Thus, homogeneity of estimation method of weighability and that of measurability are not, by themselves, capable of being the occasioning factor. Countability, on the other hand, is not even a necessary sub-condition for the continuation of homogeneity of genus. Weighability and measurability guarantee homogeneity; they do not admit heterogeneity. Heterogeneous commodities cannot be weighed (by mass) or measured (by volume) together without being unfair. But countability can never guarantee homogeneity, for it can be applied equally to both homogeneity and heterogeneity. Thus, any link of countability with an occasioning factor is totally absent.
4. **Heterogeneity of estimation methods *(qadr)* – weighability, measurability, countability:** Heterogeneity of estimation methods of weighability and measurability rules out homogeneity altogether. Countability, by its nature, does not guarantee homogeneity. Therefore, heterogeneity of weighability, measurability, and countability cannot become the occasioning factor.
5. **Specified commodities (six):** If the specification of the six named commodities is considered to be a feature of the case, the question of analogical extension and an underlying occasioning factor does not arise in the first place.

6. **Exchangeability:** Exchangeability is not restricted to homogeneous commodities; it applies equally to heterogeneous commodities. Therefore, it cannot serve as the occasioning factor.
7. **Edibility:** Edibility is a characteristic common to four of the six named commodities, but it cannot serve as the occasioning factor because the *ḥikma* that it entails is satisfaction of basic human needs, the denial of which is not commensurate with the ordained punishment. Furthermore, edibility is not exclusive to homogeneous commodities.
8. **Currency value:** Currency value again is a characteristic common to two of the six named commodities, but it cannot serve as the occasioning factor because the *ḥikma* that it entails is potential disequilibrium in the currency market, which again is not commensurate with the ordained punishment. Like edibility, currency value is also not exclusive to homogeneous commodities.
9. **Nutritional value:** Nutritional value is a characteristic common to the edible four of the six named commodities, but again it cannot serve as the occasioning factor because the *ḥikma* that it entails is human nourishment, the denial of which yet again is not commensurate with the ordained punishment.
10. **Storability (longevity):** Storability of a commodity (longevity as opposed to perishability) is a *sub-condition* for the continuation of homogeneity of genus, which is a necessary condition for the operation of intra-activity which alone is capable of becoming a mode of an occasioning factor. Thus, storability is not, by itself, capable of being the occasioning factor.

This elimination of ten of the maximum possible fourteen identifiable features leaves, *by default,* the following features, four in number but combinable into two sets, to serve as the occasioning factors for *ribā* and *bay'* respectively:

11. ***Intra-activity:*** Intra-activity in the process of excess generation tantamounts to a semblance of self-emanation. Thus on merit as well, it is capable of serving as an aspect of the occasioning factor of the *ḥukm* of *ribā* because the *ḥikma* that it entails is *shirk* (idolatry), which alone is commensurate with the ordained punishment.

12. ***Inter-activity:*** Inter-activity in the process of excess generation precludes self-emanation and guarantees *ex-alio* creation. Thus on merit as well, it is capable of serving as the occasioning factor of the *ḥukm* of *bay'* because the *ḥikma* that it entails is conformity with "creation in pairs" – operation in a duality mode.
13. **Instantaneity:** Instantaneity of settlement assures creation from something (countering *ex-nihilo* creation). Thus on merit as well, it also is capable of serving as the occasioning factor of the *ḥukm* of *bay'* because the *ḥikma* that it entails is conformity with "creation in pairs" – operation in a duality mode.
14. **Delay:** Delay in settlement leads to *ex-nihilo* creation. Thus on merit as well, it is capable of serving as an aspect of the occasioning factor of the *ḥukm* of *ribā* because the *ḥikma* that it entails is *shirk* (idolatry), which alone is commensurate with the ordained punishment.

Features #11 and # 14, i.e., **intra-activity** and ***ex-nihilo* creation** qualify not simply as occasioning factors of the *ḥukm* of *ribā* by default, but also as true and fully operative occasioning factors on merit. Both these features are modes of a process of "divine imitability," which, as shown above,[957] is the distinguishing/defining characteristic *(tamyīz)* of *ribā*.

The utilization of features #11 and # 14 for determination of the occasioning factor *('illa)* of the *ḥukm* of *ribā*, leaves, by further default as well as on merit, the last two remaining features #12 and #13, i.e., **inter-activity** in excess generation (no self-emanation) and **instantaneity** of settlement (creation from something) as true and fully operative aspects of the occasioning factor of the *ḥukm* of *bay'*, which may be termed "instantaneous inter-action."

<u>Method # 5</u>: Establishing "Suitability" of a Feature vis-à-vis a Known Rationale

This method involves establishing the "suitability" *(munāsiba)* of a particular feature vis-à-vis a known rationale.[958] It has been established above[959] that the rationale of the *ribā*-prohibition is *shirk* (idolatry). It has also been established above[960] that the

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[957] See IV. 2. i. a., above.
[958] Ghazālī presents the most extensive defense of this method as rational and not subjective in his *Shifā' al-Ghlīl fī Bayān al-Shabah wal-Mukhīl wa-Masālik al-Ta'līl*, ed. Ḥamd al-Kabīsī (Baghdad: Maṭba'at al-Irshād, 1390/1971), 142-266.
[959] See IV. 2. ii. a., above.
[960] See IV. 2. i. a., above.

distinguishing characteristic of *ribā* is "divine imitability," which operates through the processes of inter-active growth and *ex-nihilo* creation. It has further been established above that intra-activity and *ex-nihilo* activity are processes inherent in *ribā.* Therefore, these two features, intra-activity and *ex-nihilo* activity, as occasioning factors of *ribā,* have direct "suitability" vis-à-vis a known [posited] rationale, i.e., *shirk* (idolatry).

The rationale for the permission of *bay'* for humans was posited above[961] as compliance with the very purpose of creation – operation in a duality mode. Operation in a duality mode was also shown to require inter-action – *ex-alio (other) creation.* Thus inter-action as an occasioning factor of *bay'* has a direct "suitability" vis-à-vis a known [posited] rationale of operation in a duality mode.

Method # 6: Establishing the "Similitude" of a Particular Feature

This method utilizes the principle of "resemblance" *(shabah).* But there is considerable juristic difference of opinion on the very definition of "resemblance" and what it entails,[962] and this method presupposes the existence of multiple categories of a case governed by the single rule. But, since the application in the case of *ribā* has so far been confined to financial *ribā* only, such multiple categories of cases do not yet exist. Hence this method does not have applicability in the current state of scholarship.

Method # 7: Noting Concurrence between a Feature and the Rule of the Case

This method involves noting concurrence between a particular feature of a case and the rule that governs that case.[963] "Here the *mujtahid* simply observes that whenever a certain rule becomes applicable a certain feature of the case is always present and concludes from this that the feature in question is the occasioning factor."[964]

For its operation, this method too requires the existence of multiple categories of cases governed by the single rule. But, as noted above for Method # 6, the absence of multiple categories of the case of *ribā* precludes the application of this method as well.

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[961] See IV. 2. ii. b., above.
[962] Weiss, *Search for God's Law,* 595, 628.
[963] For a discussion of this method, see Abū Isḥāq Ibrāhīm b. 'Alī al-Shīrāzī, *Sharḥ al-Luma'*, ed. 'Abd al-Majīd Turkī, 2 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988), II, 860-62; Abū al-Walīd b. Khalaf al-Bājī, *Iḥkām al-Fuṣūl fī Aḥkām al-Uṣūl,* ed. 'Abd al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1986), 649-51.
[964] Weiss, *Search for God's Law,* 595.

The "Qarāfī Means"

In addition to the aforementioned *'illa* selection methods in service in Islamic jurisprudence ("Āmidī Methods"), the Mālikī jurist Shihāb al-Dīn al-Qarāfī (d. 684/1285), who, in the words of Malcolm Kerr, was "an authority on methods of jurisprudence frequently cited by modern writers,"[965] lists eight means used to identify the *'illa* in a given legal ruling:[966]

(1) Explicit textual indication *(naṣṣ);*

(2) Implicit textual indication *('imā');*

(3) Suitability *(munāsaba):* conduciveness of a rule to the promotion of a benefit *(maṣlaḥa)* or the prevention of an evil, **subdivided** as follows:

(a) Compelling necessity *(ḍarūra):* Protection of the "five universals" *(al-kulliyyāt al-khams)* deemed to be recognized in the *Sharī'a:* life, religion, family, reason, and property (also a sixth: honor, according to some);

(b) Importance *(ḥāja):* need but not imperativeness;

(c) Mere supplementary embellishment *(tatimma):* general encouragement of good works and good character

(4) General resemblance *(shabah):* no inherent "suitability" or promotion of benefit

(5) Concomitance *(dawarān):* consistent presence or absence of an attribute

(6) Experimentation and enumeration *(sabr wal taqsīm):* process of elimination using a criterion of relevance

(7) Examination from all sides *(ṭard):* conjunction of the ruling with the attribute in all its forms but without any regard for "suitability"

(8) Refinement of the basis of the ruling *(tanqīḥ al-manāṭ):* isolating the *'illa* from the accompanying superfluous, but connected, elements of its context.

A comparison of these "Qarāfī Means" and the "Āmidī Methods" shows that they are essentially the same: specifically, Qarāfī # 1 conforms to Āmidī # 2, Qarāfī # 2 to Āmidī # 3, Qarāfī # 3 to Āmidī # 5, Qarāfī # 4 to Āmidī # 6, Qarāfī # 5 to Āmidī # 7, and Qarāfī # 6 to Āmidī # 4. Of the remaining two, Qarāfī # 7 is closely related to Qarāfī # 5

[965] Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad 'Abduh and Rashīd Riḍā* (Berkley: University of California Press, 1966), 66.

[966] *Tanqīḥ al-Fuṣūl fī 'Ilm al-Uṣūl*, published as chap. 2 in *Adh-Dhakhīra*, a collection of Qarāfī's writings (Cairo, 1961), I, 125-126.

and 6, and Qarāfī # 8 is a subsidiary method of clarification. The application analysis shown above for the "Āmidī Methods," therefore, applies equally to the "Qarāfī Means."

IV.2.iii.a. Posited *Ratio Legis ('illa)* of *Ribā* Injunction

The application of the Āmidī *'illa* selection methods # 3 (Implication: *tanbīh)*, # 4 (Elimination: *taqsīm)*, and # 5 (Suitability: *munāsiba)*, as shown above, leads to the identification of intra-activity and *ex-nihilo* activity as the occasioning factors or *ratio legis ('illa)* of the rule of *ribā*-prohibition.

IV.2.iii.b. Posited *Ratio Legis ('illa)* of *Bay'* Injunction

The application of the Āmidī *'illa* selection methods # 3 (Implication: *tanbīh)*, # 4 (Elimination: *taqsīm)*, and # 5 (Suitability: *munāsiba)*, as shown above, leads to the identification of inter-activity as the occasioning factor or *ratio legis ('illa)* of the rule of *bay'*-permission.

IV.2.iv. New Theory Recapitulation

Based on the distinction *(tamyīz)*,[967] rationale *(ḥikma)* and *ratio legis ('illa)* of *ribā*-prohibition and *bay'*-permission, posited in this chapter, above, the new theory may be recapitulated in terms of its underlying premises, supporting evidence and conclusions:

Premise: *Ribā is a creation process and a growth process*

Evidence

(a) Linguistic Evidence:

The complete lexical agreement on this literal meaning.

(b) Scriptural Evidence:

The unambiguous linguistic usage in the Torah and the Qur'ān, denoting this meaning.

Premise: *The creation process represents* ex-nihilo *creation (from nothing) and the growth process represents intra-action, i.e., self-emanation and self-sustenance*

[967] See n. 47, p. 27, above, for this coined technical usage.

Evidence

(a) Empirical/Rational Evidence:

- ***Ex-nihilo* creation:** Delay in settlement of exchange *(nasī'a)*, with or without excess *(faḍl)*, produces two instances of semblance of creation of something from nothing.
- **Intra-action/Self-emanation:** Claim to a financial excess *(ribā)* from a loan, for example, is intra-active, i.e., it does not require inter-action of another productive agent for its actualization; it is self-emanating.

(b) Scriptural Evidence:

- ***Ex-nihilo* creation:** Divine creation is *ex-nihilo* creation *(Kun fayakūn:* Be and it is!). And *ribā* is part of the Divine creative activity.
- **Intra-action/Self-emanation:** Qur'ānic linguistic usage of *ribā,* and derived verbs, which demonstrates intra-active growth – one agent acting on itself to grow, i.e., self-emanating.

(c) Sunnaic Evidence:

- ***Ex-nihilo* creation:** The *"ribā* in *nasī'a" ḥadīth,* although silent on the mechanics, originates the *ex-nihilo* creation argument for *ribā.*
- **Intra-action/Self-emanation:**
  - The *ribawī*-commodities *ḥadīth* identifies *ribā* as the excess from an exchange that demonstrates homogeneity, i.e., intra-activity.
  - The *ribā-shirk* equivalence *ḥadīth* juxtaposes *ribā* with *shirk,* i.e., claiming a share in Divine Attributes, and intra-action/self-emanation is an absolute Divine Attribute. This makes *ribā* intra-active/self-emanating.
  - The *ribā*-incest equivalence *ḥadīth* compares *ribā,* at the lowest of its seventy two levels, with incest with one's own mother, which is the closest possible biological manifestation of intra-activity/self-emanation, i.e., not being able to procreate by himself, he procreates from the agent that procreated him in the

first place (the newly emerging technology of human cloning is the perfect act of intra-action).

Premise: Ex-nihilo *creation and intra-action/self-emanation are in the Divine Domain*

Evidence:

(a) Empirical/Rational Evidence:

The empirical observation and the philosophical postulate that *ex-nihilo* creation, if at all a possibility, and intra-action/self-emanation are beyond human capability and, hence, strictly in the Divine Domain.

(b) Theological Evidence:

The monotheist belief system putting *ex-nihilo* creation and intra action/self-emanation strictly in the Divine Domain.

(c) Scriptural Evidence:

The Qur'ānic declaration of God's creation of the universe and man from nothing *(Kun fayakūn:* Be and it is!), and of His self-emanation and self-subsistence.

Premise: *Neither human design nor human purpose of creation permit either* ex-nihilo *creation or intra-action/self-emanation*

Evidence:

(a) Empirical Evidence:

The very creation of the human embryo requires the male sperm and female egg which precludes both *ex-nihilo* creation and intra-action.

(b) Scriptural Evidence:

The Qur'ānic repeated declaration that "all creation is in pairs."[968]

Premise: *Ribā is Divine Domain*

Evidence:

(a) Lexical Evidence:

Rabb (the Hebraic/Arabic term for God – the Sustainer) and *Marbīt/Ribā* (the Hebraic/Arabic terms for growth – Sustenance) have cognate

[968] Q. 6:144; 13:3; 20:53; 26:7; 31:10; 36:36; 39:6; 42:11; 43:12; 50:7.

linguistic roots. In Arabic these are *r.b.b.* and *r.b.w.*, respectively. *Ribā*, therefore, is an inherent activity of the *Rabb*.

(b) Rational Evidence:

As established above, the distinguishing characteristics of *ribā* are *ex-nihilo* creation and intra-action/self-emanation, both of which are in the Divine Domain. *Ribā*, therefore, is in the Divine Domain.

(c) Scriptural Evidence:

The nature and severity of the Qur'ānic punishments for human indulgence in *ribā*, which are consistent only with the sin of transgression in the Divine Domain.

Premise: Ribā *is applicable to all conceivable spheres of human activity and not restricted just to the historical notion of financial activity*

Evidence:

(a) Lexical Evidence:

The lexical meaning of the basic verb *rabā* "to grow," without any qualification and certainly without restriction to financial growth only.

(b) Scriptural Evidence:

The Qur'ānic several generic applications, beyond the **financial**, of the verb *rabā*, i.e. **economic** (increase in wealth),[969] **political/international** (one nation exceeding another),[970] **social/biological** (bringing up, raising a child),[971] **theological** (overpowering grip of God),[972] **botanical** (garden on a height),[973] **geological** (swelling earth, high ground),[974] and **hydrological** (rising foam).[975]

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[969] Q. 2:276; 30:39.
[970] Q. 16:92.
[971] Q. 17:24; 26:18.
[972] Q. 69:10.
[973] Q. 2:265.
[974] Q. 22:5; 41:39; 23:50.
[975] Q. 13:17.

(c) Sunnaic Evidence:

- The *ḥadīth* that declares *ribā* to have **seventy three *abwāb*** (chapters, types, kinds),[976] not all of which multiplicity conceivably and legitimately can be fully accounted for by usury/interest alone.
- The several specific generic applications of the term *ribā* in the *aḥādīth*,, beyond the **financial,** i.e. **economic** *(ḥadīth* on *ribā* contract participants), **philosophical** (six-commodities *ḥadīth* on exchanges of homogeneity and heterogeneity), **biological** *(ḥadīth* on adultery/incest-*ribā* correspondence), and **theological** *(ḥadīth* on idolatry/*shirk-ribā* direct parallel, on self-emanation from unilateral action and on *ex-nihilo* creation from delay).

(d) Rational Evidence:

The all-encompassing feature of "divine imitability" (manifesting through intra-action i.e. *ex-sui* creation and non-action i.e. *ex-nihilo* creation) as the posited *'illa* (occasioning factor) of *ribā* would virtually extend, by analogy *(qiyās),* the *ḥukm* of *ribā* potentially to any and all human actions.

Conclusion (based on the aforementioned *ribā*-premises):

Ribā *is a Divine Function. Human indulgence in* ribā *is, therefore, a transgression in the Divine Domain, an act of* shirk *(idolatry) – claiming a share in Divine Attributes and thus a negation of Divine Singularity* (tawḥīd), *potentially in all conceivable spheres of human activity.*

Premise: Bay' *is an exchange process – a process of negotiation, of give and take, of offer and acceptance*

Evidence:

[976] Ibn Māja, *Sunan, ḥadīth* no. 2275/3, 72.

Lexical Evidence:

All the lexical connotations of *bay'* – sale, purchase, oath of allegiance, making a contract, marriage, etc. – which display a process of negotiation, of exchange, of give and take, of offer and acceptance.

Premise: Bay' *as an exchange process is not a growth process* per se*; it requires another process to activate growth*

Evidence:

Accounting Evidence:

According to the "Matching Principle" of Accounting, profit/loss determination requires matching the sale proceeds with acquisition costs. For the determination of growth (profit/loss), therefore, *bay'* (sale) requires comparison with an earlier process of acquisition (purchase, gift, or inheritance).

Premise: *This exchange process is inter-active, i.e., an agent is always acting on another agent*

Evidence:

(a) Lexical Evidence:

All lexical connotations of *bay'* – sale, purchase, oath of allegiance, making a contract, marriage, etc. – denote an agent acting on another (inter-action).

(b) Scriptural Evidence:

The Qur'ānic juxtaposition of *ribā* and *bay'*,[977] and the exposition of *bay'* not as the narrower "commercial sale" but as the broader "bilateral action" or "intercourse."[978]

Premise: *This exchange process is in the Human Domain*

Evidence:

(a) Scriptural Evidence:

- The Qur'ānic recognition of *tijāra* and *bay'* as legitimate human activities.[979]

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[977] Q. 2:275.
[978] Q. 24:37.

- The Qur'ānic pointed declaration of *bay'* as *ḥalāl* (permissible) for man.[980]
- The Qur'ānic repeated affirmation of the creation of humans and other living creatures "in pairs,"[981] and invitation to reflect on it.[982]

Premise: *Both human design and human purpose of creation presuppose inter-action*

Evidence:

(a) Empirical Evidence:

The very creation of the human embryo requires the inter-action of male sperm and female egg.

(b) Scriptural Evidence:

The Qur'ānic repeated declaration that "all creation is in pairs."[983]

Conclusion (based on the aforementioned *bay'*-premises):

Bay' *is a Human Function. Human indulgence in* bay' *is, therefore, the permitted normative human mode of action, an expression of Human Duality* (tathniyat al-insāniyya), *and, by implication, a confirmation of Divine Singularity* (tawḥīd).

Master Conclusion (based on the aforementioned *ribā* and *bay'* conclusions):

Critical Theory:

Human indulgence only in acts of ***inter-action*** (bay': ex-alio creation), *human non-indulgence in any and every act of* ***intra-action*** (ribā: ex-sui creation), *and human non-indulgence in any attempts at* ***non-action*** (also ribā: ex-nihilo creation) *is the divine law of normative behavior for humanity. Human conformity with this divine law is the very purpose of human creation, his temporal test, and his heavenly mode of eternal existence.*

IV.3. New Theory Compliance Test: *Uṣūl al-Fiqh*

The posited *ratio legis ('illa)* and rationale *(ḥikma)* of the *ḥukm* (injunction) of *ribā* and *bay'* embedded in the new theory must comply with *uṣūl al-fiqh* requirements

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[979] Ibid.
[980] Q. 2:275.
[981] Q. 6:144; 13:3; 20:53; 26:7; 31:10; 36:36; 39:6; 42:11; 43:12; 50:7.
[982] Q. 51:49.
[983] Q. 6:144; 13:3; 20:53; 26:7; 31:10; 36:36; 39:6; 42:11; 43:12; 50:7.

in order to acquire legitimacy and admission into the *fiqh* repertoire. Such compliance tests are administered below:

IV.3.i. Compliance with the Derivation Rules of *Ratio Legis ('illa)*

The posited *'ilal* of *ribā*-prohibition and *bay'*-permission are tested below for compliance with the *same* rules of derivation, laid down in *uṣūl al-fiqh* as captured by Āmidī and summarized by Bernard Weis,[984] against which the existing *fiqh* on *ribā* and *bay'* was evaluated in the previous chapter.

Compliance with Non-Controversial Conditions

There is full compliance of the posited *'illa* with *all* the non-controversial conditions laid down in *uṣūl al-fiqh,* as shown below:

Condition # 7 (a): There is full compliance since the posited *'illa* in the original financial rule is *extendable* to the novel non-financial case(s).

Condition # 7 (b): There is full compliance since the posited *'illa* is *present* in a case(s) (non-financial) other than the case (financial) governed by that rule.

Condition # 18 (a): There is full compliance since the posited *'illa* has *not* been *extrapolated* from the rule *fallaciously.* The extrapolation is based on the recognized methods of "implication" *(tanbīh),* "elimination" *(taqsīm),* and "suitability" *(munāsiba).*

Condition # 18 (b): There is full compliance since the original rule has *not* proved to be *inoperative.*

Condition # 18 (c): There is full compliance since the posited *'illa* behind the original rule does *not* consist *merely* of *some feature* of the principal case that happens to be present whenever the rule is operative and absent whenever it is inoperative.

Condition # 18 (d): There is full compliance since the posited *'illa* behind the original rule is *not capable* of *being countered* by some other *'illa* for which there is equal supporting evidence and which is not present in the novel case.

Condition # 18 (e): There is full compliance since the posited *'illa* is *not* in *conflict* with a clear Qur'ānic or *Sunnaic* text or with an *ijmā'ic* consensus.

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[984] Weiss, *Search for God's Law,* 561-570.

Condition # 19 (a): There is full compliance since the posited *'illa* has been *determined* solely *by* the *Legislator,* and the *indicator* through which it has become manifest is accordingly *a Sharī'a indicator:* an indicator supplied by the *Legislator.*

Compliance with Controversial Conditions

There is full compliance even with almost all the controversial conditions debated in the *uṣūl al-fiqh,* as shown below:

Condition # 1: There is full compliance of the posited *'illa* with the first part of this condition since the posited *'illa* is *not identical with* the *case* to which the rule applies. There is no compliance of the posited *'illa* with the second part of this condition, which requires that the *'illa not be* a *part* of the *case.* This part of the condition is *controversial* and *rejected* by Āmidī on the ground that most of the analogies in fact involve occasioning factors that *are* part of the factual bundle to which the occasioned rule applies.

Condition # 2: There is full compliance since the posited *'illa* is in fact "that which prompts or occasions" *(al-bā'ith).* Or to remove the tautology, "the occasioning factor truly occasions the rule," which, according to Āmidī, means "it entails a rationale *[ḥikma]* that the Legislator may be said to have in mind as His purpose in establishing the rule." This condition does not equate *'illa* with *ḥikma;* it simply requires that *'illa* entails, or is linked to, a *ḥikma.* The condition presupposes that *'illa* is not just any feature *(waṣf)* of the principal case but is rather a feature that is tied to a *ḥikma,* thus making the existence of a *ḥikma* a *sine qua non* of analogy.

Condition # 3: There is full compliance since the posited *'illa* does *not* consist of an *indeterminate ḥikma. Specific constant determinate features* of cases that give determinacy to an indeterminate *ḥikma,* and not the indeterminate *ḥikma* itself, constitute the rule-occasioning factor, as required.

Condition # 4: There is full compliance since the *affirmative* (as well as the negative) original *rule* does have a *positive 'illa.*

Condition # 5: There is full compliance since the posited *'illa* behind the original rule is *not itself* a *rule of law.*

Condition # 6: There is full compliance since the posited *'illa* does consist of a *single feature* of the principal case: it is *not* a *complex* of several features.

Condition # 8: There is full compliance since the posited *'illa* is in fact *unrestricted* in its *operation* as a rule-occasioning factor.

Condition # 9: There is full compliance since the *ḥikma* to which the *'illa* is tied is uniformly *coincidental with* the *rule:* whenever the *ḥikma* obtains, the rule obtains.

Condition # 10: This condition, operative when the *'illa* consists of a complex of several features, is *not applicable* to the posited *'illa* which consists of a single feature.

Condition # 11: There is full compliance since the posited *'illa* is in fact such that if it is negated the rule is also negated.

Condition # 12: There is full compliance since the posited *'illa* is the *sole factor* occasioning the rule; it is not one of several occasioning factors operating simultaneously to give rise to the rule.

Condition # 13: There is full compliance since the posited *'illa* behind the original rule is *not* also the occasioning factor *behind* some *other rule.*

Condition # 14: There is full compliance since the posited *'illa* does serve to give *determinacy to* some *ḥikma* (rationale).

Condition # 15: This condition, which is rejected by Āmidī, requires that the occasioning factor behind the original rule, as the giver of determinacy to a rationale, must be indispensable to the working of the rationale such that the rationale will never obtain in a particular case apart from it. Full compliance with this condition is debatable, since in the case of *ribā* the rationale *(shirk)* could also be triggered by something other than the posited *'illa* of intra-action and *ex-nihilo* action.

Condition # 16: There is full compliance since the posited *'illa* does *not obtain after* the *rule* has already become operative and since the rule had not been previously operative apart from the occasioning factor.

Condition # 17: There is full compliance since the posited *'illa* behind the affirmative rule is *actually present* and *operative.*

Condition # 18 (f): There is full compliance since the posited *'illa*, as best as can be ascertained, does *not* have the effect of *restricting* the reference of a *general expression* in the *Qur'ān.*

Condition # 18 (g): There is full compliance since the posited *'illa* behind the original rule is *not* capable of being *countered* by a factor that occasions the contrary of the original rule.

Condition # 18 (h): There is full compliance since the posited *'illa* does *not* entail any *addition* to what is contained within the meaning of the *Qur'ānic* and *Sunnaic texts.*

Condition # 18 (i): There is full compliance since the *original rule* from which the posited *'illa* has been extrapolated has itself been established *with absolute certainty.*

Condition # 18 (j): There is full compliance since the posited *'illa,* as best as can be ascertained, is *not* in *conflict* with the *opinion* of a *Companion* of the Prophet.

Condition # 18 (k): There is full compliance since the presence of the posited *'illa* in the *novel case* has been established with *absolute certainty.*

Condition # 19 (b): There is no compliance with this controversial condition, which is also rejected by Āmidī, that an indicator used to establish an occasioning factor must not itself serve to establish the rule governing the novel case.

Besides compliance with practically all the conditions laid down/debated in the classical *fiqh*, above, the posited *'ilal* also conform to conditions laid down in modern *fiqh* influenced by the concept of social utility of the *Sharī'a.* According to Malcolm Kerr, the twentieth-century Egyptian commentator 'Abdalwahhāb Khallāf, "whose methodology is careful and, by contemporary standards, rather conservative, but who nonetheless reflects the modern urge to emphasize the social utility of the *Sharī'a*," explains that the *'illa* must be (1) "suitable" *(munāsib)*, i.e., plausibly conducive to the underlying *ḥikma*, (2) "objectively recognizable" *(ẓāhir)*, and (3) "clearly defined" *(munḍabiṭ).* As shown above, the posited *'ilal* meet all three conditions.

Additionally, the posited *'ilal* also meet another criterion laid down in Islamic jurisprudence. Hallaq states:

> Similarly, *ratio legis* attested by more than one text was deemed to outweigh another supported by a single text.[985]

The posited *'ilal* of *ribā*-prohibition and *bay'*-permission, i.e., intra-activity and inter-activity arising out of exchange of homogeneity and heterogeneity, respectively, are supported, as required by the above reference, by more than one text, i.e., by both the Qur'ān (2:275) and the *Ḥadīth* (the *ribawī*-commodities and *Barnī*/Khaybar-dates *aḥādīth).* On the contrary, the *'ilal* conventionally posited in Islamic jurisprudence – weighability, measurability, storability, currency value, and food value (edibility) – are only seemingly supported by only one text (the *ribawī*-commodities *ḥadīth),* and that too inconclusively because, as shown above, these commodity characteristics do not fully meet the conditions for sound *'illa* derivation laid down in the *uṣūl al-fiqh.*

To sum up, the posited *'illa* for the rule of *ribā* (intra-activity and *ex-nihilo* creation manifesting as "divine imitability") and the posited *'illa* for the rule of *bay'* (inter-activity) are not only derived using the three most relevant and important of the seven potential selection methods prescribed in the *uṣūl al-fiqh,* but they likewise comply with the rules of derivation also laid down in the *uṣūl al-fiqh.*

IV.3.ii. Compliance with "Criteria of Credibility" of the Rationale *(ḥikma)*

While there are several conditions for testing any posited *'illa,* as seen above,[986] only three criteria are discernable in the associated Rules of Derivation for testing any posited *ḥikma.* The Rules of Derivation are concerned primarily with *'illa,* but the inter-connectivity of *'illa* and *ḥikma* permits the extraction of *ḥikma* criteria therefrom. As will be seen in the test results below, there is complete conformity of the posited *ḥikma* of *ribā and bay'* injunction with the three derived criteria in *uṣūl al-fiqh.*

1. **Plausibility of the *Ḥikma:*** The posited *ḥikma* must be such "that the Legislator may be said to have [it] in mind as His purpose in establishing the rule" (as per Āmidī, from Controversial Condition # 2, above). The posited *ḥikma* of *shirk* for *riba*-prohibition is plausible as the divinely intended *ḥikma* because the severity of the ordained admonition for the sin of *ribā* is fully compatible only with the gravity of the sin of *shirk: absence of pardon* (absolute for *shirk,* contingent for *ribā)* is the

[985] Hallaq, "Can the Sharī'a Be Restored?", in Yvonne Y. Haddad and Barbara F. Stowasser, eds., *Islamic Law and the Challenge of Modernity* (Walnut Creek: Altamira Press, 2004), 16.
[986] See III. 1. iv. b., above.

common feature of these two sins alone. The posited *ḥikma* of *bay'*-permission – inter-action under free will (conformity with human design and purpose of creation)– is plausible as the divinely intended *ḥikma* because inter-action is fully compatible with the divine design and purpose of human creation in pairs.

2. **Determinacy of the *Ḥikma:*** The posited *ḥikma* must be determinate (from Controversial Condition # 14). The posited *ḥikma* of *shirk* for *ribā*-prohibition is determinate, as there are no multiple interpretations or degrees of *shirk.* In determinacy, this rationale is not like the oft-posited rationales of exploitation and injustice; it is difficult to determine exactly where exploitation and injustice start and end, but *shirk* is clear-cut.
3. **Uniform Coincidentality of the *Ḥikma* with the Rule:** The posited *ḥikma* must be uniformly coincidental with the rule (from Controversial Condition # 9). The posited *ḥikma* of *shirk* for *ribā*-prohibition is uniformly coincidental with the rule of prohibition of *ribā* for humans. The *ḥikma* of *shirk* is present in all the posited applications of the rule of *ribā*-prohibition.

To sum up, the posited *ḥikma* of *ribā*-prohibition, i.e., *shirk* (idolatry) and the posited *ḥikma* of *bay'*-permission, i.e., inter-action under free will (conformity with human design and purpose of creation), by displaying plausibility, determinacy and uniform coincidentality, fully meet the derived *uṣūl al-fiqh* criteria for establishing the *ḥikma.*

IV. 4. Posited Application Scope of *Ribā and Bay'*

The application scope of *ribā* is not limited to interest/usury as restrictively denoted by its technical meaning. As put by a contemporary jurist:

> The Qur'ān did not define the term, since to define is to limit and restrict, and the Qur'ān, being the last Testament was to enure for the benefit of the creation till the end of time and thus had to cater to the ever-evolving new forms and dimensions of *ribā.* Indeed as to the all enveloping paradigms of *ribā,* it was so prophesied more than fourteen centuries ago [by the Prophet]: [987] 'There will certainly come a time for mankind when everyone will take *ribā* and, if he does not do so, its dust will reach him.' [988]

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[987] Abū Dāwūd, *Kitāb al-Buyū', Bāb fī ijtinābi al-shubuhāt* ; also in Ibn Māja.

[988] Sharī'a Appellate Bench of the Supreme Court of Pakistan, *Judgment on Ribā,* December 23, 1999, Opinion of Justice Wajihuddin Ahmad, (Islamabad: Advanced Legal Studies Institute,www.nyazee.com,, 2000), 322-379.

Given this Prophetic prediction and given this thesis that intra-action and *ex-nihilo* creation that are neutral notions not exclusively characteristic of any single activity are at the core of *ribā,* practically all the actions – not only financial – and even the thoughts of man can be susceptible to *ribā.* In any and all spheres, man can act or think in a manner which smacks of intra-activity and consequent self-subsistence, self-emanation and ultimate eternity. Several authentic Prophetic *aḥādīth* cited above[989] declare *ribā* to have, albeit metaphorically, seventy-two *abwāb* (chapters, types, forms). This multiplicity of *ribawī abwāb* has never been spelled out so far by *uṣūl al-fiqh:* neither by the Qur'ān, nor by the *Ḥadīth*, nor by *qiyās*, nor by *ijmā'.* Islamic *fiqh* did not name these multiple applications perhaps because – *ribā* being confined in the *fiqh* only to its technical meaning of financial excess – no need was felt to discover the distinguishing characteristic of *ribā* that could be tested in other than financial activities. But now, with the posited discovery and identification of its true distinguishing characteristic of "divine imitability" through intra-activity and *ex-nihilo* creation, *ribā* can be freed from its financial prison and its presence detected in other spheres of human activity as well through analogical extrapolation *(qiyās).* The posited defining characteristics of intra-action/*ex-nihilo* creation and inter-action applicable to *ribā* and *bay'*, respectively, will determine the scope of application of these two concepts beyond the conventionally restricted financial/commercial sphere, thus dispelling what might be called the "application confusion syndrome."

Some of the most readily apparent applications so extrapolated are identified below. These cover either existing or newly emerging human practices. Islamic law already faces – or will soon face – the task of pronouncing on the licitness or otherwise of these and similar practices. To be plausible, enforceable, effective and readily acceptable, the solicited rulings will need to be based on grounds much firmer than ethics alone. Today, for example, both the secular and religious rejection of human cloning and stem cell research musters only ethical arguments that are insufficient to quell the opposition to its rejection. Stronger and fool-proof arguments are required. The explanations posited in this work, beyond the conventional ethical approach, constitute such conclusive arguments that will strengthen this juridical review. Financial *ribā* is the

[989] See II. 3. ii., p. 65 ff., above.

only application currently identified in the scholarship. The several other indicated, potential applications of *ribā* are the pioneering and exclusive outcome of this research. The research on, and search for more of, these applications must continue. Similarly, *bay'*, popularly restrictively translated as "sale," refers to a broader neutral process of exchange and thus encompasses many other applications, also indicated below.

IV.4.i. *Ribā* Categories

The presence of intra-action/*ex-nihilo* creation is readily detectable in many acts/concepts, which are thereby rendered not just morally and ethically but, what is more crucial, theologically culpable on grounds of being *ribawī,* and which may be classified as:

IV.4.i.a. Financial *Ribā:*

- **Interest and Usury Charge** (all forms): Intra-activity, the basic *ribawī* characteristic, is embedded in the generation of money *directly* from money, without the intervention of another agent, in all forms of interest and usury.

IV.4.i.b. Commercial *Ribā:*

- **Profit-Determination:** Intra-activity, the basic *ribawī* characteristic, is inherent in the underlying process of profit measurement (matching of sale and purchase using the same currency/barter unit), which requires *comparison* of homogeneity, though not direct *exchange* of homogeneity.
- **Delayed Settlement of Transfer of Ownership in any Transaction**: *Ex-nihilo* creation (two occurrences), the more crucial *ribawī* characteristic, is discernable in the structure of all such transactions of delayed settlement, e.g., credit sales (buyer: goods/services received now in exchange for *nothing* now, and later, seller: payment received then in exchange for *nothing* then).
- **Artificial Juridical Personality Creation:** Intra-activity, the basic *ribawī* characteristic, is present in the concept of artificial juridical personality through the replication of the attempted human capacity to live in *perpetuity.*

IV.4.i.c. Economic *Ribā*

- **Capitalism:** Intra-activity, the basic *ribawī* characteristic, is integral to capitalism to the extent that it is interest-based and classically non-profit-sharing with labor (self-preserving and non-participatory).

IV.4.i.d. Agricultural *Ribā:*

- **Agricultural Growing *(zara'a):*** Intra-activity, the basic *ribawī* characteristic, is evident in agricultural growth *(zara'a),* which, through the use of the verb *rabat* in 22:5 and by specification in 56:64, the Qur'ān reserves for Divine action; only the inter-active sowing *(ḥaratha)* is conceded to human action (Q. 56:63).[990]

IV.4.i.e. Labor *Ribā*

- **Delayed Wage Settlement:** *Ex-nihilo* creation (two occurrences), the more crucial *ribawī* characteristic, is discernable in the structure of this transaction of delayed settlement (master: work received now in exchange for *nothing* now, and later, laborer: wage received then in exchange for *nothing* then). But the Islamic (and Judaic) requirement that the laborer be paid his wages before the sweat on his forehead is dry is generally taken only in the sense of fairness and justice. Significantly, the *Muwaṭṭa'* of Mālik b. Anas (II, 609-686) lists the "payment of wages to laborers in an indefinite manner" among the various forms of *ribā,* without, however, this specific explication.

IV.4.i.f. Religious *Ribā*

- **P(M)atrilineal Religious Leadership** (directly vertically-descending): Intra-activity, the basic *ribawī* characteristic, is manifest in any system of patrilineal (father-to-son) hereditary religious leadership, e.g., in Caliphate and Imāmate, as an act of attempted self-replication and ensuing perpetuity through direct progeny.[991]

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[990] Q. 22:5 describes the act of agricultural production (growing from the earth) by the verb *rabat*, the feminine Form I, from the root *r.b.w.*. Accordingly, "to grow and cultivate" (plants/flowers) is one of the lexical meanings of the Form II verb *rabbā* from the same root. The Qur'ān associates many commercial terms, like buying, selling, trading, and profit-making, with human beings, but its references to agriculture are always in divine terms. Though the Arabic term for agriculture, *zirā'a,* is not mentioned in the Qur'ān even once, its associated verb *zara'a* (to grow) and noun *zar'* (green crop) appear in a total of five verses, with the growing/growth being attributed to divine act in each case (Q. 14:37; 18:32; 32:27; 39:21; 56:64). In fact, Q. 56:63 concedes only the act of sowing (*ḥaratha)* to man. Any human claim to the process of this activation (growing) is, therefore, a transgression in the divine domain, and may be labeled as agricultural *ribā.*

[991] A caliph, imām, or political, tribal, feudal or communal leader, short of living and achieving rule in perpetuity for himself, can approximate it by decreeing the position to his progeny in perpetuity.

IV.4.i.g. Political *Ribā*

- **P(M)atrilineal Rulership** (directly vertically-descending): Intra-activity, the basic *ribawī* characteristic, is manifest in any system of vertically-descending patrilineal (father-to-son) hereditary rulership, e.g., in monarchy and dictatorship, etc., as an act of attempted self-replication and perpetuity through direct progeny.

IV.4.i.h. Social *Ribā*

- **P(M)atrilineal Tribal, Feudal or Communal Leadership** (directly vertically-descending): Intra-activity, the basic *ribawī* characteristic, is manifest in any system of vertically-descending patrilineal (father-to-son) hereditary leadership, as an act of attempted self-replication and perpetuity through direct progeny.
- **Intra-Family Marriage:** Intra-activity, the basic *ribawī* characteristic, is visible in marriage within the family circle of blood relatives (though outside the expressly prohibited closed circle) through near proximity to intra-active reproduction. The resulting *inbreeding*, though not exactly intra-active, gives it a *ribawī* color. A Prophetic *ḥadīth* tells followers to go as far out of the family circle as possible for marriage.[992]
- **Master-Slave and Mother-Child Relationships:**[993] Intra-activity, the basic *ribawī* characteristic, is structurally inherent in the master-slave relationship by virtue of ownership, and naturally in the mother-child relationship by virtue of the breast-feeding of the child by the mother. The father-child and husband-wife relationships, by contrast, are naturally inter-active.

IV.4.i.i. Cultural *Ribā*

Intra-activity, the basic *ribawī* characteristic, as an attempt at perpetuity is manifest in the artistic activity of human/animal image reproduction in print and in sculpture. A Prophetic *ḥadīth* curses the artist, among others.

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[992] This inbreeding, conspicuous in the Jewish and Muslim communities with widespread intra-family marriages, is medically proven to be the cause of a fatal degenerative brain disorder – technically known as *ceroid lipofuscinosis* and popularly called Batten's Disease after the name of its discoverer – that leads to a complete vegetative state and eventual death of the patient. Yusuf, this author's late son to whom this research project is dedicated, was one such victim.

[993] Discussed in Ja'farī *fiqh* for exemption from prohibition of *ribā*. See III.1.iv.ag., pp. 177-178, above.

IV.4.i.j. Biological *Ribā*

- **Masturbation:** Intra-activity, the basic *ribawī* characteristic, is inherent both in the male and female practice of masturbation, which is an instance of *perfect* biological intra-action involving a biological agent actually acting upon itself, but only an attempted self-emanation because of impossibility of direct reproduction (pro-creation) – the most elementary form of biological *ribā.*
- **Homosexuality/Same-Sex Marriage:** Again, intra-activity, the basic *ribawī* characteristic, is inherent in the practice of homosexuality and same-sex marriage,[994] which are instances of *near-perfect* biological intra-action involving a biological agent acting, though not upon itself, but upon a member of its own sex. This is only an attempted self-emanation due to the present impossibility, but future possibility,[995] of direct pro-creation – the next higher form of biological *ribā.*
- **Incest** *(zinā' al-maḥārim*[996]*):* Yet again, intra-activity, the basic *ribawī* characteristic, is inherent in the practice of incest, which is another instance of *near-perfect* biological intra-action where a biological agent acts, again not upon itself, but upon a member of its immediate family unit – the first example of actual self-emanation with resulting direct pro-creation. Incest with one's own mother is the closest proximity to perfect biological intra-action where, being otherwise incapable of pro-creating from himself, man pro-creates from the person (mother) who pro-created him in the first place. Short of cloning, this is the closest achievable proximity to biological self-emanation, as also borne out by the *ḥadīth* that equates *ribā* with incest with one's own mother – the highest form of *natural* biological *ribā.*

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[994] As per a report in *The Gazette,* Montreal, Monday, June 7, 2005, A 3, Pope Benedict XVI condemns same-sex marriage as "anarchic pseudo-matrimony" as against matrimony which "is not just a casual sociological construction, but rather an institution that has its roots in the most profound essence of the human being."

[995] As per reports in *The Gazette,* Montreal, Monday, June 20, 2005, A 18, and Tuesday, July 11, 2006, A 14, this attempt at self-emanation may not, however, remain futile much longer as scientists have "created the precursors of human sperm and eggs from 'building block' stem cells, raising the prospect that infertile and homosexual couples could have babies that are genetically their own. A British team has, for the first time, used embryonic stem cells to grow primordial germ cells that later develop into either sperm or eggs. In addition to being potentially of use in assisted reproduction such as in vitro fertilization, synthetic sex cells could be used in therapeutic cloning and medical research. Some researchers believe that the breakthrough means an egg could, in theory, be generated from a man's own stem cells and even that a child could be created from sperm and an engineered egg from the same man." Likewise, the turning of stem cells into sperm capable of producing offspring raises the possibility of women making sperms and of lesbians having their very own children.

[996] al-Ba'albakī, *Al-Mawrid: Arabic-English Dictionary,* 609.

- **Adultery and Other Illegal Sexual Intercourse** ***(zinā'):*** Intra-activity, the basic *ribawī* characteristic, can potentially be detected also in all instances of illegal sexual intercourse. These acts can be legally deemed intra-active because, although there is an opposite *physical* agent, there is no *legal recognition* of that opposite agent, i.e., an absence of the marriage *(nikāḥ)* contract.
- **Animal and Human Cloning**: Yet again, intra-activity, the basic *ribawī* characteristic, is inherent in the practice of cloning, which is the most perfect and complete instance of *genetically engineered* productive intra-action, and where, through genetic engineering, a biological agent acts and relies completely on itself to reproduce its replica. Unlike normal *natural* biological inter-action of male and female, where the offspring inherits the DNA of both parents almost equally, animal and human cloning produces an offspring who inherits the DNA of only a single chosen parent exclusively – the highest form of *engineered* biological *ribā.*
- **Cancer:** Intra-activity, the basic *ribawī* characteristic, is also inherent in the nature-initiated and operated fatal biological activity of cancer where, unlike the normal process of limited "good" cell division to sustain bodily growth,[997] the uncontrolled runaway *self-replication* of "bad" cells has no limit on replication which goes on for ever even outside the human body in the laboratories as well. Nature itself does not tolerate this self-replication for long in the human body, which accordingly suffers premature death. This could also be one meaning of Q. 2:276 which declares that Allāh exterminates *(yamḥaqu Allāh) ribā.*

IV.4.i.k. Psychological *Ribā*

- **Oedipus Complex:** Intra-activity, the basic *ribawī* characteristic, is also discernable in this Freudian psychoanalytical concept, just as it is in the closely related physical biological process of incest. Named after the Greek legend of Oedipus, who unwittingly kills his father, marries his mother, and then blinds himself in remorse, the Oedipus Complex concerns the young child's attraction to the parent of the opposite sex and initial jealousy of, but ultimate identification with, the parent of the same sex, the failure to successfully negotiate with which is the

[997] According to generally-held medical opinion, it is limited to 24 times only.

primary cause of nervous disorders.[998] Through the fantasy of assuming the role of the same-sex parent and operating on the other-sex parent, the Oedipus Complex has all the ingredients of self-emanation, i.e., short of self-procreating, nurturing the fantasy of procreation from the one who procreated you in the first place. Could the Qur'ānic punishment of Satanic insanity for indulgence in *ribā* (Q. 2:275) be a reference also to this nervous disorder resulting from the self-emanating notion of Oedipus Complex?

IV.4.i.1. Nutritional *Ribā*

- **Wine Consumption:** Intra-activity, the basic *ribawī* characteristic, is also demonstrable in the process of wine production. For Islamic *fiqh* unanimously, the distinguishing characteristic of *khamr* (wine), and consequently the *ḥikma* (rationale) as well as the *'illa* (occasioning factor) of its prohibition, is merely its *effect* of intoxication, to the utter exclusion of its *cause* and *meaning* of fermentation.[999] However, Ibn Maskawaih, through his theory of development of the vine and date-palm from plant-life to the threshold of animal-life, partially posits the basis of an eventual philosophical-theological prohibition rationale. [1000] But even he does not develop further the point that wine is the outcome of *fermentation,* which is a classic example of nutritional intra-action of one substance resulting in the purest of substances. Wine production is the only example of a rotten *eatable* generating a pure *eatable* (drinkable), which further displays a quality of infinity by going on purifying, rather than rotting, with time (aging of wine). And pure wine is what is promised in Heaven.[1002] Is it that the process of purification (the ordained *zakāh),* if continued indefinitely, could lead to the pure Essence? The Qur'ān itself explicitly acknowledges undefined benefits of wine consumption for mankind (medical science has only postulated the therapeutic benefits of red wine for cardiovascular disease), but declares the *sin* –

[998] Deal and Beal, *Theory For Religious Studies,* 4.
[999] In the Jewish faith, there is prohibition, though not of wine, but of eating *fermented* bread during the Passover fasting.
[1000] Ibn Maskawaih, *Al-Fauz al-Asghar,* 78-83. According to him, in the case of the underlying plant products – grapes and dates – the last stage of development [of plant-life] is reached in vine and date-palm that stand at the threshold of animal life. In the date-palm a clear sex-distinction appears. Besides roots and fibers it develops something that functions like the animal brain, on the integrity of which depends the life of the date-palm. This is the highest stage in the development of plant-life and a prelude to animal life.
[1002] Q. 47:15; 76:2.

not the *harm* – of it to be greater than its benefits.[1003] The *'illa* of wine prohibition is, therefore, intra-action and wine consumption definable as nutritional *ribā.*

- **Pork Consumption:** Again, intra-activity, the basic *ribawī* characteristic, is also demonstrable in the process of pork consumption. The Qur'ān prohibits the consumption of meat of *khinzīr* (pig), but does not describe the *'illa* or the *ḥikma* of its prohibition beyond calling it *rijs,* which in addition to "dirty" may also be rendered as "shameful," "disgraceful" and "atrocious."[1004] Very significantly, recent medical research has shown pig biology to be strikingly similar to human biology. The human consumption of pork could, therefore, approximate human consumption of human meat – cannibalism. Supported not only by this intra-active act of cannibalism, but also by the oft-neglected adjectival connotations of *rijs* as "shameful," "disgraceful" and "atrocious," pork consumption is includable in the instances of the prohibited *ribā.*
- **Cannibalism:** Yet again, intra-activity, the basic *ribawī* characteristic, is demonstrable in cannibalism – an agent feeding on itself – which is reflected in the fatal brain-wasting Mad Cow Disease (Bovine Spongiform Encephalopathy, or BSE), caused by cows being fed on cow's carcasses, and in its fatal human variant (Creutzfeldt-Jakob Disease, or CJD), caused by eating beef from such an infected cow – both being terminal forms of insanity. The Qur'ānic association of "eating *ribā*" with Satanic insanity[1005] could temporally refer to this intra-activity and resulting insanity from BSE and CJD.

IV.4.i.m. Engineering *Ribā*

Intra-activity, the basic *ribawī* characteristic, is in-built in the recently invented "self-replicating" robot which is a robotic tower made of cubes that performs no useful function except to reproduce,[1006] and in the next expected step of creating "self-sustaining" *[ribawī?]* robots that could self-replicate or, at least, self-repair.

[1003] Q. 2:219.
[1004] Hans Wehr, *Arabic-English Dictionary,* 378.
[1005] Q. 2:275.
[1006] Created at Cornell University and announced in the prestigious science journal, *Nature*, as reported in *The Gazette,* Montreal, Thursday, May 12, 2005, A22.

IV.4.i.n. Virtual Reality *Ribā*

Intra-activity, the basic *ribawī* characteristic, is again visible in the current scientific efforts to reconstruct a simulation of a living organism inside a computer, and to recreate full-blown model of Escherichia coli (E. coli), the humble resident of the human gut – a virtual twin.[1007]

IV.4.i.o. Architectural *Ribā*

Intra-activity, the basic *ribawī* characteristic, is again visible in the building of multi-storeyed skyscraper structures which represents vertical intra-action – one storey acting on another – as opposed to horizontal inter-action – one building negotiating with adjacent buildings, without building on itself. A Prophetic *ḥadīth* warns of the building of high-rises as one of the signs of the impending Doomsday.

IV.4.i.p. Conceptual *Ribā*

- **Philosophical *Ribā:*** Intra-activity, the basic *ribawī* characteristic, is unmistakably evident in the concept of *khudī* (Persian/Urdu), of Pakistani philosopher-poet Iqbal, which may be rendered as "I-ness" or "self-ness," meaning an exclusive human focus on the self. Interestingly, in Persian/Urdu, *khud* means "self," *khudī* "self-ness," and, *Khudā*, whatever the significance, God (Allāh). Poetically, Iqbal exhorts man to raise the level of his *khudī* ("I-ness") to an extent where God will be "obliged" to ask man what he wants as his own destiny.[1008] This, in addition to the Western philosophical concept of egoism, is an illustration of conceptual intra-action.
- **Intellectual *Ribā:*** Again, intra-activity, the basic *ribawī* characteristic, is unmistakably evident in the legal and general concept of *ra'y* (personal opinion) as a source of law or of general action in which the opinion-holder or actor acts upon him/herself to produce an opinion or action. By contrast, *ijmā'* (consensus) and *shūra* (consultation) are inter-active and, therefore, non-*ribawī* processes.

[1007] *The New York Times,* "Building a Virtual Microbe, Gene by Gene by Gene", Science section, August 16, 2005.

[1008] Muhammad Iqbal, *Asrār-i Khudī* (Secrets of the Self) (Lahore: Sheikh Ghulam Ali, 1915; 2nd ed. 1918). Covering this work is his, *Rumūz-i Bikhudī* (Secrets of Selflessness) (Lahore: Sheikh Ghulam Ali, 1918) (both Persian). English translations covering these Persian works include: V. G. Kiernan, *Poems from Iqbal* (London: John Murray, 2nd ed., 1955); and Mustansir Mir, *Tulip in the Desert: A Selection of the Poetry of Muhammad Iqbal* (London: Hurst; Montreal: Queens-McGill University Press; and New Delhi: Orient Longman, 2000).

- Literary ***Ribā:*** Again, intra-activity, the basic *ribawī* characteristic, is detectable in "passion/ardour" (Persian/Urdu: *"jōsh")* – one of the three components of natural poetry in the Urdu language – which has been defined by the celebrated Urdu poet, Alṭāf Hussain Ḥālī (d. 1914), "as the expressing of a poetic conceit in such an effective way that it is almost as if the poet has not composed the conceit, rather the conceit has taken hold of the poet and arisen *by itself."* (Ḥālī, 1953: 158). In other words, the quality of passion/ardour *(jōsh)* refers to creating the illusion that the poem *arose spontaneously.*[1009] This literary production of an agent acting upon itself is clearly intra-active.
- Academic ***Ribā:*** Again, intra-activity, the basic *ribawī* characteristic, is detectable in scholarly dogmatism which is an act of sole intellectual self-reliance, self-sustenance, and self-emanation. The contrasting process of scholarly concession is inter-active and, therefore, non-*ribawī.*
- Post-Modernity ***Ribā:*** Again, intra-activity, the basic *ribawī* characteristic, is evident in the spirit of post-modern thought which is an attempt at "self-creation," and "self-consciousness of the de-actualized self."[1010]

IV.4.ii. *Bay'* Categories

The application scope of *bay',* as will be shown below, is not limited to "sale," which is denoted by its restrictive technical meaning. What has been quoted above for *ribā*[1011] applies equally well to *bay'* and may be re-phrased as: The Qur'ān did not define the term, "since to define is to limit and restrict," and the Qur'ān, being the last Testament "was to enure for the benefit of the creation till the end of time and thus had to cater to the *ever-evolving new forms and dimensions* of *[bay'].*"[1012]

Conventional Categories of *Bay'*

Conventionally, the defining characteristic of the process of *bay'* is the act of "offer" (*Ījāb*) and "acceptance" *(qabūl),* represented by a handshake. Accordingly, the

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[1009] Javed Majeed, "Nature, Hyperbole and the Colonial State," in *Islam and Modernity – Muslim Intellectuals Respond,* eds., J. Cooper, R.L. Nettler, Mohamed Mahmoud (London: I.B. Tauris, 2000), 15.
[1010] Patrick Glynn, *God: The Evidence: The Reconciliation of Faith and Reason in a Postsecular World* (Rocklin, CA: Forum, 1999), 146-147.
[1011] See IV. 4., n. 980, p. 277, above.
[1012] Sharī'a Appellate Bench of the Supreme Court of Pakistan, *Judgment on Ribā,* December 23, 1999, Opinion of Justice Wajihuddin Ahmad, (Islamabad: Advanced Legal Studies Institute,www.nyazee.com,, 2000), 322-379.

term *bay'* conventionally refers to those processes that involve offer and acceptance. As seen above, while technically *bay'* is taken to mean "sale," lexically, the extended meaning also covers contract, homage, pledge of allegiance and even purchase, and juridically, the noun *bay'* is rendered as exchange including even marriage.

Posited Categories of *Bay'*

With the positing of inter-action (an agent acting upon its binary opposite) as the distinguishing characteristic of *bay'*, the meaning of this term, which is declared by the Qur'ān to be *ḥalāl*,[1013] can further be extended analogically to include all those human processes, material or abstract, that are inter-active. Some of these processes are detailed in V.5.ii., below.

IV.5. Eschatological Dimensions

> But give glad tidings to those who believe and work righteousness that for them are Gardens, beneath which rivers flow. Every time they are fed with fruits therefrom, they say: "Why, this is what we were fed with before," for they are given things in similitude; and they have therein companions pure and holy; and they abide therein for ever. – Q. 2:25.

The eschatological scenario sketched in the above verse – the notions of reward, similitude, duality and eternity – constitutes the final link in the development of the new theory of divine law of normative behavior.

As per the Scripture, and partial empirical evidence as well, the "duality model" of creation is initially associated with this created universe of jinn and man and other subordinate creatures only; elsewhere, beyond this universe, we are told a "singularity model" prevails; there the only known existents are single: God is single and alone, and His heavenly creations, the angels, are not in pairs; they have no opposite companions. However, an introduction of the "duality model" is promised in the otherwise singularity scenario of the Hereafter in the form of "pure and holy companions" for man in Paradise. The "Here-to-before" is a model of pure singularity. The "Here" is temporally a model of pure duality. And the "Hereafter" is promised to be converted partially (for man only) into a model of duality. This duality model in the Hereafter is, however, associated with the Paradise only – no companions are promised in the Hell. And entry to the Paradise is made dependent upon compliance with God's commands in

[1013] Q. 2:275.

this universe, especially as they relate to man's creation. Thus, this divinely desired and divinely promised first-time introduction of the duality model in the Paradise becomes contingent upon the success of the duality model in this universe, which is thus at best an "experimental laboratory." The purpose of creation of man is to test the success of the duality model.

The animals and the plants in this created universe are also part of the duality model, by also being in pairs. Their actions also are inter-active but only intuitively. There is no exercise of independent reasoning and free will in them and they cannot but act inter-actively. But the role of man is to ensure the success of this duality model in spite of the exercise of his independent reasoning, judgment and free will, through understanding this purpose of duality clearly and acting accordingly for its success in an inter-active manner in all dealings *(bay')*, without any incursions in the domain of singularity, intra-active behavior and growth, and eternity *(ribā)*. Thus, the divine law of *ribā* and *bay'* is not just temporal; it has crucial implications flowing into the Hereafter. Exercising his divinely gifted free will, if *every* man fails the test of ensuring the success of the inter-active duality model on earth by indulging in the intra-active singularity model, man will face eternal Hellfire as threatened by God, and all will be denied Paradise. Since the introduction of duality model is promised for man in the Paradise only, with no one going there, the duality model will not materialize in the Paradise. This absence of duality model on earth and later in Paradise is contrary to the revealed Divine wish. God in His absolute wisdom and absolute power has desired man to successfully implement the duality model on earth as a condition for its introduction in Paradise. At the instigation of Satan, man has already once failed the test. Adam and Eve were created as pure companions, oblivious of their sexuality, and were told to live in, and eat freely from, all of the Garden of Eden except from the Tree of Eternity *(shajarat al-khuld)*.[1014] However, upon Satan's instigation, they ate from this tree and thereby their sexuality became manifest to them. The implication is that if allowed to stay in this state of sexual awareness, biological reproduction could have taken place in Paradise. But Paradise is a place of pure and holy companionship, not of biological reproduction. God wants all biological reproduction to take place on this "impure" earth,

[1014] Q. 20:120.

and then to resurrect all and admit the qualifying reproduced population into Paradise. God in His infinite wisdom and power has already allowed Satan to have one feather in his cap by luring man to the forbidden tree and He has accepted Satan's challenge to lead man astray on earth. If man fails the second test on this earth, this would add another feather in Satan's cap. Obviously, God does not want this to happen. He exhorts man to pass the test of success of duality model on earth. He seeks a goodly loan from man. Is this not the meaning of the Qur'ānic verse:

> Who is he that will lend to Allāh a *goodly loan* so that He may multiply it to him many times? And it is Allāh that decreases or increases and unto Him you shall return – Q. 57:11.

CHAPTER V

THEORETICAL EXTRAPOLATIONS AND IMPLICATIONS

The research findings in the previous chapter trigger several extrapolations, new definitions, modifications, elaborations and implications as follows.

V.1. Terminological Precision

The two primary juristic technical expressions currently in vogue to designate types of *ribā – ribā al-faḍl (ribā* of excess) and *ribā al-nasī'a (ribā* of delay) – are neither Qur'ānic nor strictly Sunnaic. While the Qur'ān does not use these expressions at all, the *ḥadīth* only uses the word *nasī'a,* though again not as a designation or type of, but as a factor leading to, *ribā.* The invention and employment of these composite terms in *fiqh* is the victim of what may be called "terminological confusion syndrome,"[1015] even the recognition of existence – let alone the removal – of which is conspicuous by its absence in the conventional scholarship so far. Even upon a cursory lexical examination *"ribā"* essentially means "excess," while *"faḍl"* also means "excess."[1016] Therefore, the composite term *ribā al-faḍl* ("excess of excess") is in the first place a tautology. Secondly, it thereby attempts to describe the "effect" of a process (i.e., the excess), and not its "cause." Nor is the construction of the second composite term, *ribā al-nasī'a,* consistent with that of the first term. Here, the term *ribā al-nasī'a* is describing not the "effect" (the excess) but the apparent "cause" of the process (delay). Moreover, this term is silent on the fact that, as shown above,[1017] *nasī'a* (delay) causes two instances of *faḍl* (excess), both *ex-nihilo,* to occur. Therefore, in what is termed *ribā al-nasī'a* the "effect" is *"faḍl"* (excess), exactly like the "effect" of *"faḍl"* (excess) in what is called *ribā al-faḍl.* This point is fully supported by al-Sarakhsī, who has explained the meaning of the two kinds of *ribā* by elaborating the meaning of *faḍl,* as already seen above:

> [The words] *"faḍl* is *ribā"* imply *faḍl* through *qadr* and they imply *faḍl* through a period of delay, and both are intended. This was elaborated in the tradition of 'Ubādah ibn al-Ṣāmit.[1018]

Therefore, by definition, *ribā* is only *faḍl.* The difference between what is currently termed as *ribā al-faḍl* and *ribā al-nasī'a* lies only in what causes each. *Ribā,* as

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[1015] An expression borrowed from Hallaq in his "Introduction", *Islamic Law and Society,* 2 (1996), 136.
[1016] Hans Wehr, *Arabic-English Dictionary,* 374, 840.
[1017] See IV. 2. i. a., pp. 244-245, above.
[1018] al-Sarakhsī, *al-Mabsūṭ,* XII , 111.

posited above, is caused either by intra-action *(fi'l al-nafs* or *mithliya)* or by *ex-nihilo* action *(fi'l al-'adam* or *'adamiyya)* triggered by delay *(nasi'a).*

Consequently, the "effect" being common, the terms adopted, in order to be truly distinguishing, must describe the different "causes" accurately. Accordingly, to coin two new composite terms, the correct and accurate designation for what is currently improperly termed *ribā al-faḍl* would be ***ribā al-mithliya*** *(ribā* from homogeneity) to describe the *faḍl* (excess) created in homogeneous exchange by intra-action, and that for what is currently inconsistently termed *ribā al-nasi'a* would be ***ribā al-'adamiyya*** *(ribā* from nothingness) to describe the *faḍl* (excess) created by *ex-nihilo* action triggered by delay *(nasi'a)* in both homogeneous and heterogeneous exchanges. This also implies that it is not accurate to term these as *ribā al-Qur'ān,* and *ribā al-Sunna.*

In the light of the research findings in chapter IV and the terminological clarification above, the following new definitions emerge.

V.1.i. Generic *Ribā* – New Definition

> *Ribā* is *any growth (faḍl),* actual or attempted in method, real or imitated in character, intended or unintended in object, explicit or implicit in appearance, certain or probable in result, financial or non-financial in application, small or large in quantum, occasioned by *intra-action (ex-sui* creation: *khalq min al-nafs)* and/or *ex-nihilo creation (khalq min al-'adam)* in *any field* of human activity, proscribed, in *all* monotheist religious pristine traditions, as an act of *idolatry* (Arabic: *shirk).*

V.1.ii. Financial *Ribā* (Interest/Usury) – New Definition

> Financial *Ribā* (interest/usury) is *any* increase, small or large in quantum, fixed or variable in rate, simple or compounded in incidence, pre-determined or unknown in certitude, consumptible or productive in purpose, occasioned by *intra-action* and/or *ex-nihilo-action* of money in a financial transaction, proscribed, in *all monotheist* religious pristine traditions, as an act of *idolatry* (Arabic: *shirk).*

V.1.iii. *Ribā al-Nasi'a or Ribā al-'Adamiyya* – New Definition

> *Ribā al-Nasi'a* is that type of *ribā (faḍl: excess),* defined above, which is the result of two acts of *ex-nihilo creation (khalq min al-'adam)* triggered by delay *(nasi'a)* in *any field* of human activity, proscribed, in *all* monotheist religious pristine traditions, as an act of *idolatry* (Arabic: *shirk).* It may, therefore, more appropriately be re-labeled as *ribā al-'adamiyya (ribā* from nothingness).

V.1.iv. *Ribā al-Faḍl or Ribā al-Mithlīya* – New Definition

Ribā al-Faḍl is that type of *ribā (faḍl: excess)*, defined above, which is the result of an act of intra-action/*ex-sui* creation *(khalq min al-nafs)* in *any field* of human activity, proscribed, in *all* monotheist religious pristine traditions, as an act of *idolatry* (Arabic: *shirk).* It may, therefore, more appropriately be re-labeled as *ribā al-mithlīya (ribā* from homogeneity).

V.1.v. *Bay'* – New Definition

Bay' is *any exchange* in *any field* of human activity occasioned by *inter-action/ ex-alio creation (khalq min al-ghayr)* and not by *intra-action* and/or *ex-nihilo action,* permitted as an act of compliance with the design and purpose of human creation.

V.2. *Sharī'a* – Identification

The *Sharī'a* is the Divine Law, the concrete embodiment of the Divine Will. The word *Sharī'a* itself is derived etymologically from the root, *sh. r. '.*, meaning "road" or more specifically "way to the well." Very significantly, the Divine Law, or *Sharī'a,* and the Spiritual Way, or *Ṭarīqa,* which is the esoteric dimension of Islam, are both based on the symbolism of the way or journey. The *Sharī'a* guides man towards an understanding of the Divine Will by indicating which acts/objects are from the religious point of view obligatory, a duty *(wājib, farḍ),* which are meritorious or recommended *(mandūb, mustaḥab),* which are forbidden *(ḥarām),* which reprehensible, disapproved *(makrūh),* and which indifferent, permissible *(mubāḥ).*[1019] This, however, raises the question: What, if any, is the criterion for the classification of acts/objects into these five categories?

The Qur'ān declares "... We have made for each of you [i.e., Muslims, Christians and Jews] *a law and a normative way to follow.* If God had willed, He would have made all of you one community."[1020] But, "of course, God did not wish to do so, and He thus created three communities with three sets of laws, so that each community could follow *its own* law."[1021]

In addition to the above question about the criteria of classification of acts/objects, another question now arises: What are these three different sets of laws or normative ways? In an attempted answer to the second question, Sa'īd al-'Ashmāwī posits that the

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[1019] Schacht, *Introduction,* 121.
[1020] Q. 5:48 [italics mine].
[1021] Hallaq, *History,* 5.

law or normative way for the Jews was "righteousness," for the Christians "love," and for the Muslims "mercy" (righteousness plus love).[1022] Now, as already mentioned above, Allāh declares in the Qur'ān: "...This day, I have *perfected* your religion for you, completed My Favor upon you, and have chosen for you Islam as your religion ..." [1023] [italics mine]. As 'Ashmāwī has shown, righteousness and love were already the normative ways. So where is the element of perfection in Islam rightly claimed by the Qur'ān? How can the summing up of two already known ways constitute the perfection of the third way? The perfection must involve something additional, something different, something new, and above all, something complete as a code. Righteousness and love are the divinely desired attributes for humanity, prescribed by true religion since time immemorial. These two human attributes are merely the normative *modus operandi* on the way; they are not the way itself. *Ribā (marbīt/neshekh* for Jews, and by extension for Christians) was proscribed for the Jews and the Christians. But they were not told of the alternative, other than the obvious lending without *ribā.* They were told to operate on the way with righteousness and love, but were not given the complete coordinates of the way, which constituted an element of incompleteness in their ordained ways. For Judaism, the path of righteousness consisted of the simple prohibition of *neshekh* with no prescription of the permitted alternative. For Christianity, the path of love consisted of an exhortation to kindness. Both paths thus constituted an incomplete prescription. The completion/perfection of the way, or *Sharī'a,* came in the form of Islam, which, for the first and the last time, gave the complete coordinates of the way and complete system of conduct to humanity: it not only reiterated the earlier proscription of divine *ribā* (intra-action),[1024] but also gave its human alternative, *bay'* (inter-action),[1025] in all spheres of human activity. This proscription of intra-action and permission of inter-action is, therefore, the answer to the two questions raised above. It is the criteria of classification of acts/objects into the five categories, and it is the identification of the prescribed perfected normative way – what may be called the two-track, or dual, highway to the well.

[1022] Carolyn Fluehr-Labban. Ed. *Against Islamic Extremism: The Writings of Sa'īd al-'Ashmāwī* (Gainesville, Florida: University Press of Florida, 2001), 54.
[1023] Q. 5:3.
[1024] Q. 4:161.
[1025] Q. 2:275.

In the light of this completion/perfection of religion through Islam and in the light of the oft-ignored distinction between *Sharī'a* and *fiqh*, a new definition, i.e., a new human perception of the divinely ordained *Sharī'a* may be posited:

V.2.i. Islamic *Sharī'a* – New Definition

> Islamic *Sharī'a,* as a statement of legal principle, is the Divine Law of illicitness of divine intra-action and *ex-nihilo* creation *(ribā)* and licitness of human inter-action *(bay')* in all spheres of human activity.

The definition of *fiqh* as a human understanding of the Divine Law remains unaffected:

V.2.ii. *Fiqh* Definition

> All efforts to elaborate details of the law, to state specific norms, to justify them by reference to revelation, to debate them, or to write books or treaties on the law are examples of *fiqh.* The word connotes human and specifically scholarly activity. By contrast, *sharī'a* refers to *God's law in its quality as divine.* ... Practitioners of *fiqh* try to discover and give expression to the *sharī'a.* For Muslims, the *sharī'a* evokes loyalty and is a focus of faith; *fiqh* evokes at best respect for juristic scholarship and for a literary tradition [italics mine].[1026]

V.3. *Maqāṣid al-Sharī'a* - Identification

To be of immediate relevance, the divine *Sharī'a* (way) must have humanly cognizable content, purpose *(maqṣad,* pl. *maqāṣid),* positive enabling mechanisms and punitive protective mechanisms. In terms of the "way" metaphor, what is required for a complete definition of *Sharī'a* is: (a) a road; (b) a destination; (c) road signs; and finally (d) road regulations/punishments. Not known directly from the Qur'ān, the content of the *Sharī'a,* i.e., the road, is subject to interpretation and has been dealt with above,[1027] culminating in a new posited definition as the divine law of *ribā* and *bay'.* The purposes *(maqāṣid)* of the *Sharī'a,* i.e., its destination, also not explicitly mentioned in the Qur'ān, have been posited by al-Ghazālī and al-Shāṭibī, but both expositions are subject to serious criticism, below. The positive enabling mechanisms, i.e., the road signs, again not explicitly mentioned in the Qur'ān, have been confused with the *maqāṣid* of the *Sharī'a* by al-Ghazālī and al-Shāṭibī. All that is known definitively from the Qur'ān and

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[1026] Norman Calder, "Law", in *The Oxford Encyclopedia of the Modern Islamic World,* ed. J. Esposito, (Oxford University Press, 1995), II, 450.
[1027] See V.2., above.

the Sunna are the punitive protective mechanisms of the *Sharī'a,* i.e., the *ḥudūd* punishments.

al-Shāṭibī, like al-Ghazālī, offers a taxonomy of the existential purpose or *maqāṣid al-Sharī'a* comprising three legal categories of *ḍarūriyyāt* (necessities), *ḥājiyyāt* (needs), and *taḥsīniyyāt* (improvements). In the *ḍarūriyyāt* (necessities) category, he includes the five fundamental universals *(al-kulliyyāt al-khams)* of preserving life, property, progeny, mind and religion as the *maqāṣid al-Sharī'a.*[1028] The conceptual difficulty with this exposition is that these so-called fundamental universals are not ends in themselves. If they were, they would invite a model of eternity in this life, which is contrary to the divine declaration that man is on this earth only for a specified period.[1029] These fundamentals, therefore, cannot be the purpose of the *Sharī'a.* The preservation of life, for one, can not be a purpose of the *Sharī'a.* If it were, it would negate the divinely declared inevitability of individual death and collective Doomsday *(yawm al-qiyāma).* Also, if it were, there would be no provision for capital punishment in Islamic law. The crime of murder, which runs counter to preservation of life, is not even a *ḥadd* crime. For another, the preservation of property cannot be a purpose of the *Sharī'a.* If it were, it would negate the clear and repeated divine requirement of *ṣadaqa/zakāt* that apparently diminishes rather than preserves property. It would also negate the divine requirement of abstinence from *ribā* that promotes the preservation of property. Similarly, the preservation of progeny can not be a purpose of the *Sharī'a.* If it were, it would again negate the divine requirement of abstinence from *ribā* that, among others, promotes the preservation of progeny. In sum total, these fundamentals are not the *maqāṣid al-Sharī'a.* They are only the enabling mechanisms to achieve the *maqāṣid al-Sharī'a.* What, then, are the *maqāṣid al-Sharī'a?*

Sharī'a, as seen above,[1030] is the Divine Law of illicitness of divine *ribā* (intra-action and *ex-nihilo* creation) and licitness of human *bay'* (inter-action) in all spheres of human activity. The *maqāṣid al-Sharī'a,* therefore, are the preservation and successful operation of these two models of divine intra-activity and human inter-activity. A *living*

[1028] Abū Isḥāq Ibrāhīm Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Aḥkām,* ed. M. Muḥyī al-Dīn 'Abd al-Ḥamīd, 4 vols. (Cairo: Maṭba'at Muḥammad 'Alī Ṣubayḥ, 1970), II, 4 ff, quoted in Ḥallāq, *History of Islamic Legal Theories.* 168.
[1029] Q. 2:36.
[1030] See V.2.i. p. 295, above.

human being, until death, requires only the remaining four of the five fundamentals, i.e., the provision at his disposal of his property, progeny, mind and religion in order to operate successfully, and of his own free will, the human inter-active model and avoid the divine intra-active model. These four fundamentals are thus only the enabling mechanisms to achieve the *maqāṣid al-Sharī'a* which, as posited, consist in the preservation and successful operation of these two models in their proper spheres. Significantly, the protective mechanisms of the *Sharī'a* – *ḥudūd* punishments – also cater only to these four enabling mechanisms, to the exclusion of the preservation of life itself (murder is not a *ḥadd,* but a *qiṣāṣ* – retaliatory punishment – crime).

Accordingly, the following definitions emerge:

V.3.i. *Maqāṣid al-Sharī'a* – New Definition

The *maqāṣid al-Sharī'a* are the preservation and successful operation of the two models of divine intra-activity and human inter-activity.

V.3.ii. Enabling Mechanisms of *Maqāṣid al-Sharī'a* – New Definition

The enabling mechanisms to achieve the *maqāṣid al-Sharī'a* are the provision of property, progeny, mind and religion.

V.3.iii. Protective Mechanisms of *Maqāṣid al-Sharī'a* – Traditional Definition

The protective mechanisms to achieve the *maqāṣid al-Sharī'a* are the *ḥudūd* punishments.

V.4. *Insān Kāmil* (Perfect/Universal Man) – New Definition

The above observations on the *Sharī'a,* its purposes, and its enabling and protective mechanisms, also throw a new light on the concept of The Perfect Man.

The Perfect Man has been variously defined in terms of the pantheistic monism of the Creator *(al-Ḥaqq)* and the creature *(al-khalq)* as complementary aspects of Absolute Being,[1031] or specifically as unity of existence *(waḥdat al-wujūd),*[1032] or again specifically as a copy *(nuskha)* of God,[1033] in terms of man's divine and human traits,[1034] in terms of

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[1031] Ḥussain b. Manṣūr al-Ḥallāj (d. 309/922), *Kitāb al-Ṭawāsīn,* ed. L. Massignon, p. 129, quoted in *Shorter Encyclopedia of Islam,* 170.

[1032] Muḥyī al-Dīn b. al-'Arabī (d. 638/1240), *Fuṣūṣ al-Ḥikam,* ch. 1, quoted in *Shorter Encyclopedia of Islam,* 170.

[1033] 'Abd al-Karīm al-Jīlī, quoted in *Encyclopedia of Islam* (New Ed.), 1241.

[1034] David B. Burrell and Nazih Daher (tr.), *al-Ghazālī: The Ninety-Nine Beautiful Names of God. Al-Maqṣad al-Asnā fī Sharḥ Asmā' Allāh al-Ḥusnā* (Cambridge: The Islamic Texts Society, 1992), vii-vii.

his centrality in and superiority over all creation,[1035] in terms of his innate superiority over animals and his innate outer and inner human qualities *(aḥsan al-taqwīm),*[1036] and in terms of his innate or individually gifted divine qualities. This Perfect Man has been equated with Adam, Muḥammad,[1037] the Ṣūfī saint *(kāmil al-tāmm),*[1038] the prophet and the messenger. Is the title of Perfect Man limited to these individuals, or, as posited by Ibn al-'Arabī, is every man capable of becoming a Perfect Man, and, if so, what makes a man the Perfect Man?

Although the specific term *Insān Kāmil* does not occur in the Qur'ān, the closest Qur'ānic description of "perfection" is "best of moulds" or "fairest of stature" *(aḥsan al-taqwīm),*[1039] which refers more to "excellence" than "perfection." The Qur'ān, on the contrary, speaks of the "imperfections" of man, describing him as, weak,[1040] helpless but ungrateful,[1041] unjust, unthankful and sinful,[1042] hasty, impatient,[1043] rebellious,[1044] and argumentative.[1045] These traits, together with the etymology of *"insān"* which equates it with "oblivion and forgetfulness," clearly negates any concept of the *physical* perfection of man. On the other hand, The Qur'ān speaks of man's leading and preferential position over all creation by referring to his *tashkīr* (placing everything in the service of man),[1046] to his *khilāfa* (his choice as vicegerent on earth),[1047] and to his *amāna* (his acceptance of responsibility for trusting of the faith).[1048] But these processes refer to man's mastery of the universe, and not in any way to his own perfection.

Empirically, man has qualities of perception and the use of reason/judgment not possessed by animals. He also has some divine qualities: he has the Divine Spirit breathed into him, he is created in the image of God, and the chosen ones among men have been blessed with the exalted station of sainthood *(walāya),* prophethood *(nubūwa)* and messengership *(risāla).* But all these qualities are an indication of divinely bestowed

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[1035] Muḥyī al-Dīn ibn al-'Arabī, *Inshā' al-Dawā'ir,* 22.
[1036] Fakhr al-Dīn al-Rāzī (d. 606/1209), quoted in *Encyclopedia of Islam* (New Ed.), 1239.
[1037] Muḥyi al-Dīn ibn al-'Arabī, *Futūḥāt,* quoted in *Encyclopedia of Islam* (New Ed.), 1240.
[1038] Abū Yazīd al-Biṣṭāmī (d. 261/874), quoted in *Shorter Encyclopedia of Islam,* 170.
[1039] Q. 95:4.
[1040] Q. 4:28.
[1041] Q. 10:12; 39:8, 39:49.
[1042] Q. 14:34.
[1043] Q. 17:11; 70:19.
[1044] Q. 46:6.
[1045] Q. 18:54.
[1046] Q. 22:65.
[1047] Q. 2:30.
[1048] Q. 33:72.

superiority and not of completeness or perfection. On the other hand, as Ibn 'Arabī also puts it "it is not necessary for one who is perfect to be superior in everything and at every level."[1049] Conversely, it can be said that it is not necessary for one who is superior to be perfect.

By definition, a thing is said to be "perfect," not necessarily when it is superior to something else, but only when it conforms to certain specifications and requirements, both by design and by action. In the case of man, he has been created with certain physical and spiritual traits (design specifications) and with a purpose (requirements). The concept of perfection (of man), therefore, has to be viewed not in the context of physical and /or spiritual superiority over other creation, but in the context of man's recognition of, and his ability to comply with, the design and the purpose of his creation. Man can become the "Perfect Man" only when, acting in consonance with his design, he complies fully with the purpose of his creation. *Perfection is conformity and the Perfect Man is the Conforming Man.* Contrary to al-Rāzī's idea,[1050] man has a purpose and a determined function *(waẓīfa mu'ayyana),* which is to conform fully to the purpose of his creation. The Qur'ān only specifies what not the purpose of creation is: the universe, including man, is created: "not in vain,"[1051] "not in play,"[1052] "not as pastime,"[1053] and "not for naught."[1054] Moreover, the Qur'ān also says that man could be replaced by some new creation with ease.[1055] It does not reveal what is the purpose of creation beyond stating generally "creation in truth,"[1056] "creation for His worship"[1057] and specifically "creation in pairs."[1058] Based on all Qur'ānic evidence, it was posited above that the purpose of the creation of man is conformity with the inter-active, duality mode of action and the avoidance of the intra-active, singularity mode of action. Therefore,

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[1049] Ibn 'Arabī, *Fuṣūṣ al-Ḥikam, cd. Abū al-'Alā 'Affīf* (Cairo: 1946), 62-63, quoted in Masataka Takeshita, *Ibn 'Arabī's Theory of The Perfect Man And Its Place in The History of Islamic Thought* (Tokyo: Institute for the Study of Languages and Cultures of Asia and Africa, 1987), 5.

[1050] As quoted in *EI* (New Ed.), p. 1238, it was Fakhr al-Dīn al-Rāzī's idea that man, unlike the angels and the beings which are inferior to him, has no determined function (*waẓīfa mu'ayyana*). This conforms to the anthropological view that while man's knowledge is acquired in slow degrees, his progress is unlimited, in superiority to the animals whose knowledge is acquired by instinct (*ilhām*) and even to the angels whose knowledge and actions are limited *(mahjūd).*

[1051] Q. 38:27.

[1052] Q. 21:16.

[1053] Q. 21:17.

[1054] Q. 23:115.

[1055] Q. 14:19-20.

[1056] Q. 44:39.

[1057] Q. 51:56.

[1058] Q. 6:144; 13:3; 20:53; 26:7; 31:10; 36:36; 39:6; 42:11; 43:12; 50:7.

perfection being conformity, the Perfect Man is the one who conforms to this purpose of his creation.

Perfect Man – New Definition

The Perfect Man is one who conforms to the design and purpose of his creation, and to the principle of divine law *(Sharī'a)*, i.e., to protect and implement the concept of divine *waḥdāniyya* (singularity) and human *tathniya* (duality), through abstention from *rubūbiyya* and observance of *bay'iyya*. This Perfect Man is also the Universal Man.

V.5. Islamic Civil Law – Modifications

Five items of Islamic civil law – *Ḥalāl* and *Ḥarām* Criterion, *Fiqh* Repertoire on *Ribā* and *Bay'*, *Ḥiyal*, *Ḍarūra* and *Ḥāja*, and *Ribā* in *Dār al-Ḥarb* require identification/modification:

V.5.i. *Ḥalāl* and *Ḥarām* Criterion – Identification

While indisputably the ultimate judge of *ḥalāl* / *ḥarām* distinction is the Divine Legislator and His Prophet, as ordained in the Scripture and the Sunna, for purposes of juridical extrapolation and to cater to post-revelationary, newly emerging needs, the broadened human understanding of this criterion emerges to be conformity with the intra-action/*ex nihilo-action (ribawī)* and inter-action *(bay'awī)* models – the former prohibited *(ḥarām)* and the latter permitted *(ḥalāl)*.

V.5.ii. *Fiqh* Repertoire on *Ribā* and *Bay'* – Additions

The posited new definitions of *ribā* and *bay'* suggest additions to the repertoire of Islamic *fiqh* on *ribā* and *bay'*.

Any excess, continuation, or creation, in any sphere of human activity, resulting from an act of "divine imitability," manifesting itself through *intra-action* (leading to *faḍl* – excess) or through *ex nihilo-action* (leading to *khalq* – creation from *'adam*, triggered by *nasī'a* – delay), falls under the rubric of the prohibited *ribā* and covers at least the following categories.

Categories of *Ribā*

- Financial: All Financial Intra-action (including contemporary notions of interest/usury (simple or compound, on consumption or production loans, benign or exploitative) regardless of the differentiations of quantum, purpose and consequence
- Commercial:
  - Profit-Determination
  - Delayed Settlement of Transfer of Ownership in any transaction, e.g., credit sale
  - Artificial Juridical Corporate Personality
- Economic: Capitalism
- Agricultural: Human Claim to Agricultural Growth
- Labor: Delayed Wage Settlement
- Religious: P(M)atrilineal (Father-to-son) Leadership
- Political: P(M)atrilineal (Father-to-son) Rulership
- Social:
  - P(M)atrilineal Tribal, Feudal, Communal Leadership
  - Intra-Family Marriage
  - Master-Slave & Mother-Child Relationship
- Cultural: Artistic Reality Reproduction
- Biological:
  - Masturbation
  - Homosexuality (gay and lesbian); Same-Sex Marriage
  - Incest
  - Adultery
  - Animal and Human Cloning
  - Cancer
- Psychological: Demonstration of Oedipus Complex
- Nutritional:
  - Wine Consumption

- Pork Consumption
- Cannibalism

- Engineering: Self-replicating Machines/Robots
- Virtual Reality: Virtual Reality Living Organism Replication
- Architectural: Multi-Storeyed Structures
- Conceptual:
  - Philosophical: Self-ness and Egoism
  - Intellectual: *Ra'y*, Personal Opinion
  - Literary: Assumed Self-Emanation of Literary Work
  - Academic: Scholarly Dogmatism
  - Post Modern: Self-Consciousness

By deduction, the permitted alternative, in all spheres of human activity, is *bay'*, or inter-action. Accordingly, for the above named prohibited *ribawī* actions, the permitted *bay'awī* alternatives are:

Divine-Simulation Models (Prohibited *Ribawī* Intra-Action)	Human-Attuned Models (Permitted *Bay'awī* Inter-action)
• Financial Intra-action (Interest/Usury)	Financial Inter-action *(Murābaḥa)*
• Profit-Determination	Need-Fulfillment
• Delayed Settlement: Ownership Transfer	Instantaneous Settlement
• Corporate Juridical Personality	Individual Human Juridical Personality
• Capitalism	Islamic Financial/Economic System
• Human Claim to Agricultural Growth	Divine Claim to Agricultural Growth
• Delayed Wage Settlement	Instantaneous Wage Settlement
• P(M)atrilineal Caliphate/Imāmate	Random Merit-Based Selection[1059]
• P(M)atrilineal Political Rulership	Random Merit-Based Selection
• P(M)atrilineal Tribal/Feudal Leadership	Random Merit-Based Selection
• Intra-Family Marriage	Inter-Family Marriage
• Master-Slave/Mother-Child Relationship	*Ribawī* Mode Permitted

[1059] System of *wilāyat al-faqīh* (rule of the religious scholar) adopted in Iran.

• Artistic Reality Reproduction	Imaginary Production
• Masturbation	Religiously Authorized Marriage
• Homosexuality/Same-Sex Marriage	Religiously Authorized Marriage
• Incest	Religiously Authorized Marriage
• Adultery	Religiously Authorized Marriage
• Animal and Human Cloning	Natural Reproduction
• Uncontrolled Cell Multiplication	No Human Alternative (Yet)
• Demonstration of Oedipus Complex	Licit Fantasies/Associations
• Wine Consumption	Non-Fermented Drinks Consumption
• Pork Consumption	*Ḥalāl* Meat Consumption
• Cannibalism	Licit *(ḥalāl / kosher)* Food Consumption
• Self-Replicating Machines/Robots	Heterogeneous-Production Machines
• Virtual Reality Life Replication	Virtual Reality Non-Life Replication
• Multi-Storeyed Structures	Single-Storeyed Structures
• Self-ness/Egoism	Self-Renunciation
• Personal Opinion *(Ra'y)*	Consensus *(Ijmā')*; Consultation *(Shūra)*
• Self-Emanating Literature	Inter-active Literature
• Scholarly Dogmatism	Scholarly Concession
• Self-Consciousness	Self-Effaciveness

The above listing is obviously an open-ended collection of Models to be continually expanded to accommodate newly identified ones.

V.5.iii. *Ḥiyal* (Stratagems) – Permissibility

Legal stratagems purportedly to evade the spirit but not the letter of the law *(ḥīla;* pl. *ḥiyal, aḥāyīl)*, such as the fictitious acknowledgement of a larger than actual loan, double sale, and even the doctrines of *damnum emergens* and *lucrum cessans*, were widespread in varying degrees in classical, medieval and contemporary Muslim financial practice, with Ḥanafī, Shāfi'ī and even Mālikī school sanction.[1060]

[1060] See, for example, Vesey-Fitzgerald, *Muhammadan Law*, 197: "Numerous devices have been sanctioned by the Ḥanafī and Shāfi'ī schools to evade the prohibition [of usury]; and the later Ḥanafī law even shows traces of the doctrines of *damnum emergens* and *lucrum cessans*. Even the Mālikī law of today recognizes the *bai' bi'l wafa* under the name of *thania*. Commonest of all devices, as

The commonest of all areas of application being *ribā*, these stratagems, particularly the so-called *ḥīla* of "double sale," are popularly claimed to have rendered the traditional interpretation of *ribā* almost obsolete. But, on the contrary, based on what has been posited in this study, as far as the essence of the Qur'ānic injunction itself is concerned, the so-called stratagems *(ḥiyal)* may in fact have served to implement rather than thwart the Qur'ānic injunction. The Qur'ānic juxtaposition of the prohibited *ribā* with the permitted *bay'* emphasizes the point that a particular process of increase (intra-active) is being prohibited as against a particular process of increase (inter-active) which is being permitted. Therefore, in the case of *ribā*, it is the underlying intra-active process of increase and not the manifest increase *per se* that is the focus of the prohibition. The so-called stratagems *(ḥiyal)*, to the extent that they arduously and meticulously avoided the intra-active process of increase in generating the increase, actually served the Qur'ānic purpose rather than flouted it. The *ḥīla* (trick) should, therefore, more appropriately be re-named as *wasīla* (means). This is fully supported by the evidence of the Prophetic *aḥādīth* where, with the *expressly stated* purpose of obtaining better quality dates, the Prophet prohibited their direct exchange with inferior quality dates (intra-activity), emphatically declaring it to be *ribā*, and recommended the *sale* of the inferior dates for money (inter-activity) to finance the *purchase* of those very superior dates with the received money (inter-activity).[1061] The method or process of the transaction(s) was changed from intra-activity to inter-activity to *comply* with the Qur'ānic requirement, but still to achieve the same *stated* purpose.

Based on the new definitions of *ribā* and *bay'*, posited in this work, which are supported by the notion of the *process* of intra-activity and inter-activity, respectively, methods like double-sale that traditionally appear to circumvent the spirit but not the letter of the law, become perfectly and fully legitimate because they do not in fact circumvent the re-stated spirit of the law, which consists in the prohibition/observance

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everywhere, is a fictitious acknowledgement by the borrower of a larger sum than he actually receives. Such an *iqrār* is conclusive." See also, ibid., p. 214, n.3: "The Ḥanafī school (Imām Muḥammad) permitted the *waqf* of anything sanctioned by custom, including things only capable of a fictitious perpetuity, e.g., a chest of money for loans to the poor (to be repaid with other money). Such a *waqf* was allowed to take interest if so directed by the *wāqif*, because the law against usury applies between man and man, but obviously not between man and God."

[1061] The *Barnī*- and Khaybar-dates *aḥādīth*.

of specified methods and not the rejection/acceptance of the results (excess in both cases) *per se.* This so-called *ḥīla* (trick) becomes a *wasīla* (legitimate means) instead.

V.5.iv. *Ḍarūra* (Necessity) and *Ḥāja* (Need) Doctrines – Inapplicability

The doctrines of *ḍarūra* (necessity) and *ḥāja* (need), with the general sanction of the Qur'ān, have been applied as a source of law *(uṣūl al-fiqh).* In relation to the prohibition of *ribā,* various *fatāwā* have been issued by modern jurists sanctioning different forms of *ribā* in differing cases of necessity and need.[1062]

If the rationale *(ḥikma)* of *ribā* prohibition is exploitation and/or injustice, as conventionally albeit indefensibly held, the application of the doctrines of necessity and need to the injunction of *ribā*-prohibition may be justified. But, when the rationale *(ḥikma)* of *ribā*-prohibition is *shirk* (idolatry/polytheism), as is being posited in this study, there cannot be any justification whatsoever for sanctioning the human practice of *ribā,* for *shirk* is the only sin that Allāh will never permit, tolerate or pardon.[1063]

The doctrines of *ḍarūra* and *ḥāja,* as applied to *ribā*-permissibility thus become null and void. Therefore, any human act/thought resulting from intra-action and/or *ex-nihilo creation* in any field cannot be condoned on grounds of *ḍarūra/ḥāja.* And, in any case, the relaxation of prohibition on account of *ḍarūra/ḥāja* – that too without willful disobedience or transgressing due limits – is restricted specifically only to the eating of dead animals, blood, flesh of swine and slaughter in any name other than that of Allāh.[1064] The juridical extrapolation of this specific concession into a general concession, covering *ribā* as well, is questionable in the first place. The identification of *shirk* as the rationale of *ribawī*-proscription makes this questionable extrapolation absolutely out of the question.

V.5.v. *Ribā* in *Dār al-Ḥarb* – Impermissibility

The permissibility of *ribawī* dealings in the *dār al-ḥarb* (enemy territory) between its inhabitants and Muslims, opined by Imām Abū Ḥanīfa and al-Shaybānī on the

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[1062] Vesey-Fitzgerald, *Muhammadan Law,* 13: "[a] ... revolutionary doctrine [in Ḥanafī law] is that of necessity. There are Qoranic [*sic*] texts which show that necessity is sometimes a valid excuse for the non-performance of religious duties. ... if there is no other means of financing our livelihood except such an infraction of the rule against usury as the *bai' bi'l wafa* we may borrow and *e converso* lend on such terms. ... this subversive doctrine has been but sparingly applied."

[1063] "Verily! Allāh forgives not (the sin of) setting up partners in worship with Him, but He forgives whom He pleases sins other than that, and whoever sets up partners in worship with Allāh has indeed strayed far away." – Q: 4:116.

[1064] Q. 2:173.

authority of Makḥūl,[1065] and later also by Shāh 'Abdul 'Azīz and contemporaneously by Dr. Tahir Qadri in Canada, would automatically stand annulled with the identification of *shirk* as the rationale *(ḥikma)* of the divine prohibition of *ribawī* dealings. If *ribā* is *shirk,* it is simply prohibited regardless of location – exceptions being inadmissible outright. It is beyond comprehension how such stalwarts of Islamic law could have sanctioned this exception in the face of the Prophetic *ḥadīth* equating *ribā* with *shirk.* They were, in effect, inadvertently of course, sanctioning the practice of *shirk* by Muslims in the *dār al-ḥarb.* The inhabitants of *dār al-ḥarb* may be *mushrikūn,* but who can permit Muslims to join that club? These authorities at least owe an explanation for not seeking to discover the true *ḥikma* of *ribā*-prohibition.

V.6. Islamic Criminal Law

Islamic criminal law requires justification for *ḥudūd* punishments and extended application for Qur'ānic and *ta'zīr* punishments for indulgence in *ribā,* as outlined below:

V.6.i. *Ḥudūd* Punishments – Justification

In Arabic terminology, *ḥimā* (lit. sanctuary) is the grazing ground reserved for one's cattle, where grazing by others' cattle is prohibited. The Prophet is reported to have said: "Every king has a *ḥimā* [sanctuary]and the *ḥimā* of Allāh are those of His boundaries *(ḥudūd),* the stepping into of which has been declared illegal *(ḥarām).*"[1066] Now, as has been postulated above, this *ḥimā* of Allāh is the divine domain of singularity *(ribawī* intra-activity), while the *ḥimā* of man, so to speak, is his divinely ordained domain of duality *(bay'awī* inter-activity). Man is supposed to operate strictly within the bounds of his domain. The *maqāṣid al-Sharī'a* and its enabling and protective mechanisms are in fact designed, as shown above,[1067] to enable man to operate within this domain. Moreover, the very test of the temporal success of man on this Earth is his willingness, capability and actual performance in negotiating this domain. Just as the traditionally posited *maqāṣid al-Sharī'a* are in fact the enabling mechanism, the *ḥudūd* punishments are the prohibitory or protective mechanism to enable man to negotiate his

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[1065] al-Sarakhsī, *al-Mabsūṭ,* XIV, 56, *Bāb al-ṣarf fī dār al-ḥarb.*
[1066] *Ṣaḥīḥ Bukhārī,* I, *ḥadīth* no. 49.
[1067] See V.3., p. 295 ff., above.

domain successfully. Any thing which denies man his domain and forces him into the only alternative divine domain, *ḥimā* or *ḥudūd* of Allāh, has to be stopped through the severest of punishments, which are the essence and content of the Islamic *ḥudūd* laws. Just how the *ḥudūd* punishments perform this dual role of promoting immersion in the human domain and preventing transgression into the divine domain will be shown below presently.

There are seven named *ḥudūd* crimes, and associated severe punishments, in Islamic law: *Sāriqa* (theft), *Ḥirāba* (armed robbery, terrorism, corruption), *Shurb* (drinking intoxicants), *Zinā'* (illicit sexual intercourse), *Ridda* (apostasy), *Qadhf* (false accusation of illicit sexual intercourse) and *Baghy* (rebellion).[1068]

The general *Sharī'a raison d'être* is held to be the preservation and supremacy of the rule of law. The special *raisons d'être* of the *ḥudūd* are held to be incapacitation, moral education and retribution. The Qur'ān specifically provides for the punishment of execution, crucifixion, amputation of hands and feet, and exile for those who wage war against Allāh and His Messenger and do mischief in the land.[1069]

The question arises: How exactly do the offences behind the named punishments disrupt the human domain and at the same time infringe upon the divine domain? How can, for example, theft – a social offence – be connected with the *ḥudūd (ḥimā)* of Allāh? The standard explanation for theft being a *ḥadd* is that theft disrupts societal peace, harmony and well-being. While this explains how the human domain is disrupted, it does not explain how the divine domain *(ḥimā* of Allāh) is infringed upon. The full explanation lies elsewhere.

The crime of theft *(sāriqa)* and armed robbery *(ḥirāba)* prevent or restrict man from his economic capability to indulge in *bay'* (inter-action) by depriving him completely or partially of resources to work with. Operation of the duality model *(bay'awī* mode) on earth and its promised introduction in the Hereafter, after its earthly successful operation based on human free will, is the Divine Will. Therefore, anything that disrupts the divinely willed but humanly free-willed duality model is a transgression in both the human and divine domains. Moreover, disruption of the *ḥalāl bay'awī* order

[1068] Detailed in Appendix 9.
[1069] Q. 5:33.

may lead to a purely *ḥarām ribawī* order. Hence the *ḥadd* crime and the seemingly severe punishment of theft and robbery.

It may be argued that the moral crimes of theft and robbery also prevent man from indulging in the sin of *ribā* by depriving him of resources to lend usuriously. But a moral crime cannot be permitted because it prevents another crime or sin. Therefore, in spite of this possible beneficial effect, theft and robbery continue to be classed as *ḥadd.*

Similarly, the act of drinking intoxicants *(shurb)* could deprive man of all his capabilities to distinguish between *bay'awī* and *ribawī* modes of living, thus disrupting both domains. Moreover, fermentation inherent in *khamr* renders it intra-active and therefore *ribawī* – an incursion in to the divine domain. Hence its classification as a *ḥadd.*

Likewise, illicit sexual intercourse *(zinā')* and false accusation thereof *(qadhf)* interfere with the integrity of the biological *bay'awī* mode of living. Hence their classification as *ḥadd.*

Similarly, although rebellion *(baghy)* is not a unanimously agreed upon *ḥadd* among the *madhāhib*, its justification as *ḥadd* could be the general disruption it causes to societal order, including foremost the *bay'awī* order.

Lastly, apostasy *(ridda)* is a total retraction of belief, both in the divine *ribawī* order and the human *bay'awī* order, and hence a dent in both, and therefore a *ḥadd.* As in the case of *shirk* and *ribā*, the Qur'ān does not provide any *ḥadd* punishment for *ridda.* The *ḥadd* punishment of death for *ridda* is only Sunnaic. The Qur'ānic rationale could be that the "rebel of the system" would be meted out other-worldly punishments more severe than the temporal *ḥudūd.*

More pertinently for this thesis, the question is why the sin of *ribā* itself, which is tantamount to operation in the divine domain of intra-activity, does not attract any of the *ḥudūd* punishments? The answer could be that if man chooses to attempt to operate in the divine domain, he has signed off any connection with his own human domain. He is no longer a participant in the temporal test of successful operation of the duality model. He no longer needs any preventive or protective measures to keep him in his domain and out of the divine domain. He has already thrust himself into the divine domain. He has already failed the test of successful operation of the duality model by

not participating in it in the first place. Temporal *ḥudūd* punishments – preventive and protective – do not apply to him at all. God will deal directly with this "rebel of the system"[1070] through something more severe and appropriate: total annihilation through war from God, Satanic insanity, and eternal Hellfire. Hence the special Qur'ānic and Sunnaic treatment of the sin of *ribā*, and its non-inclusion in the *ḥudūd* punishments. Although exempted from *ḥudūd* punishments, however, the sin of *ribā* not only attracts the other-worldly punishments, but even after repentance, it carries with it accountability and possible punishment for the past, as declared in Q. 2:275 – "their matter [past *ribā]* is for Allāh to judge." This stipulation of accountability and punishment for both the *pre-* and *post-* Revelation actions is a unique feature of the sin of *ribā.*

In commenting upon what he calls "minimal Islam" (the five pillars) and "negative or punitive Islam" (the *ḥudūd* punishments), Fazlur Rahman states: "actually there was nothing theoretical at all to link these various items together."[1071] Obviously, he was completely missing the theoretical and unifying theme of this dissertation.

V.6.ii. *Ribā* Punishments – Application

The acts/thoughts in various human fields named in V.5.ii., above, are all intra-active, i.e., *ribawī.* Therefore, all of them attract not only the Qur'ānically ordained punishments for *ribā* – evil touch of the Devil equating to insanity (Q. 2:275), deprivation of Allāh's blessing equating to destruction and extermination (Q. 2:276), war from Allāh and His Messenger (Q. 2:279), loss of belief *(kufr)* (Q. 2:276), and Eternal Hellfire (Q. 2:275) – but also accountability for the past.

Additionally, by the same token, the minority opinion-based *ta'zīr* punishments for financial *ribā* – dissuasion, imprisonment, and eventual death – also become equally applicable to all the other above-named *ribawī* actions.

[1070] *Sūra* 74 is very specific and graphic about it: After stating: "And give not a thing in order to have more" (74:6), it continues very pointedly: "Leave Me Alone with whom I created Alone (74:11); And then granted him resources in abundance (74:12); And children to be by his side (74:13); And made life smooth and comfortable for him (74:14); After all that he desires that I should give more (74:15); Nay! Verily, he has been opposing Our *āyāt* (74:16); I shall oblige him to (climb a slippery mountain in the Hellfire called *al-sa'ūd,* or) face a severe torment (74:17); I will cast him into Hell-fire (74:26); And what will make you know what Hell-fire is? (74:27); Over it are nineteen (74:30); And We have set none but angels as guardians of the Fire. And We have fixed their number (nineteen) only as a trial for the disbelievers ... (74:31).

[1071] Fazlur Rahman, *Islam and Modernity,* 31.

V.7. Islamic Commercial Law – Reconsideration

The basis of Islamic financial law and four specific items, i.e., Financing Modes, Credit Sales, Profit-Determination, and Corporate Legal Personality require reconsideration in the light of the research findings.

V.7.i. Basis of Islamic Business and Finance – Reconsideration

A conceptual research problem, affecting both theory and practice, is the question: What is the positively ordained basis of Islamic business and finance? What is clear is that the stated Qur'ānic requirement is not that of a form of "business organization," e.g., partnership, but of a form of "business transaction," i.e., *bay'* (exchange).[1072] It is generally held that the implementation of Islamic banking and finance requires profit/loss-sharing as a replacement for interest and as the basis for interest-free banking.[1073] But the repeated use of the foundational terms "interest-free" and "profit/loss-sharing" creates imprecision in the contemporary literature on the requirements of the Islamic financial system, both for the "prohibited" and the "permitted" components. Calling it "interest-free" narrows down the scope, and "profit/loss-sharing" confuses the "means" with the "ends" of the system. A review of the relevant Qur'ānic verse and Prophetic *ḥadīth* clarifies this very crucial point:

Q. 2:275, declaring *ribā* (excess from intra-action and from delay) to be *ḥarām* (prohibited) and *bay'* (sale, exchange) to be *ḥalāl* (permitted), and the famous *ribawī*-commodities *ḥadīth,* elaborating the prohibited and the permitted methods of exchange, represent the most complete enunciation of the Islamic commercial/financial theory. But both these rich sources have been misinterpreted so far.

The foundational term "interest-free" as the sole governing basis of the Islamic financial system is problematic because, first of all, Islam requires the prohibition of *ribā*, and as explained lexically and contextually, not just of what is termed as "usury" or "interest" in modern parlance. This distinction is also alluded to in the hermeneutical analysis above. Islamic finance is not synonymous with, but is indeed much wider than, interest-free finance. As already explained above, in the Arabic language, from the root

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[1072] Q. 2:275.

[1073] First suggested by Dr. Muḥammad 'Uzair, a contemporary scholar, Islamic finance theorist, and former Professor of Business Finance and Director of the Institute of Business Administration, Karachi University, and a senior colleague of this writer at this Institute, in his *An Outline of Interest-less Banking* (Karachi: Raihan Publications, 1955).

r.b.w., the definite noun *al-ribā* means "excess" (which partially incorporates financial excess), and the derived verbal Form III, *rābā*, with the associated verbal noun *murābatun,* is assigned the lexical and technical meaning of practicing usury.[1074] But the other derived verbal Forms I, II, IV and V have the lexical meaning of "to grow," "to rear, bring up, educate," "to make grow," and "to be brought up, bred, raised," respectively.[1075] Interestingly, in the *ribā*-prohibitory verses,[1076] the Qur'ān employs the definite noun *al-ribā*, or the indefinite noun *ribā*, both nouns meaning "excess"; but the derived verbal Form III, *rābā,* and its associated verbal noun *murābatun,* meaning "to practice usury," has *not*, specifically and exclusively, been used in any of the *ribā*-prohibitory verses. However, it does not mean usury/interest is not prohibited. The message is rather unmistakably loud and clear: *ribā*-prohibition goes beyond usury or interest.

Not clear is the real source for the contention that the other foundational term "profit/loss-sharing" is the permitted basis of Islamic financial system. The above-quoted Qur'ānic verse clearly specifies *bay'* (sale, exchange) as the permitted *(ḥalāl)* mode of exchange. *Bay'* is a mode of exchange of counter values. It means "to sell, or buy, something from someone for a price," "to make a contract" and "to agree on the terms of a sale, conclude a bargain."[1077] From this lexical meaning of *bay'* it is clear that the Qur'ānic verse makes no reference to profit or loss or its sharing. After all, in a sale/purchase transaction, who will make a contract to incur a loss or to share a profit? *Bay'*, by definition, is not a process of sharing; on the contrary, it is a process of negotiation, of exchange, of inter-action of counter values. Historically, it is true that participation (profit/loss-sharing) has been in use since pre-Islamic times in juxtaposition to lending as a business practice. But this has nothing to do with the essence of the Islamic business requirement, which is simply *bay'*. Again, it is reported that the Prophet himself and his Companions engaged in participation *(mushāraka/muḍāraba)*, profit/loss-sharing, as a business practice. But it must be pointed out that, if at all, they used this business practice not as an end in itself, but simply as a

[1074] Hans Wehr, *Arabic-English Dictionary*, 374.
[1075] Ibid.
[1076] Q. 2:275, 276, 278, 279, 3:130, 4:161, 30:39.
[1077] Hans Wehr, *Arabic-English Dictionary*, 105.

means to enable the participation of individual non-trader savers in the ultimate goal – the final sale transaction *(bay')* with the buyer, dealing in permitted commodities of exchange.

The Prophetic *ribawī*-commodities *ḥadīth* makes the prohibited and the permitted foundation of the Islamic financial system absolutely clear. The gist of the *ḥadīth* is that the Islamic financial system prohibits the realization of "excess" from an exchange of similar commodities, and permits the realization of "excess" from an exchange of dissimilar commodities. But the first part of the *ḥadīth*, "like for like [same quality] , in equal weights [same quantity], from hand to hand [simultaneously, without delay: *nasī'a]* has caused much scholarly confusion. Apparently, the instruction is to exchange the *same* quality, the *same* quantity, at the *same* time. Legitimately questioned is the incentive for any one for this kind of exchange of absolute similarity. But, as already explained above,[1078] the point being missed is that, in fact, the *ḥadīth* is not instructing, but rather prohibiting this exchange, not by a direct negative command of "do not do this," but by the indirect positive command of making the exchange meaningless and purposeless. Instead of saying, for example, "do not smoke," it is saying "smoke without lighting the cigarette." This prohibition includes but is not limited to interest/usury – excess from exchange of money (gold/silver) for money (gold/silver).

The second part of the *ḥadīth* is clear. It is permitting the exchange (sale/purchase) of dissimilar commodities, in any manner, i.e., with excess. (profit), without excess (break-even), or with negative excess (loss). But still, the stipulation of hand to hand exchange (simultaneously, without delay: *nasī'a)* applies, raising serious negative implications for the generally regarded permissibility of the practice of credit sale and advance purchase.

One implication of this prohibited and permitted mode is that the ideal situation would be for each economic agent to have his own sale/purchase of services and traded or manufactured commodities. While both sale and purchase of services but only purchase of commodities is a common practice for every one, the sale of commodities (trading) may, however, not be suitable or even possible for every one. An obvious conclusion from the *ḥadīth* analysis, above, is that, in order to refrain from the

[1078] See p. 247, above.

prohibited exchange of similar commodities (including money), and, if necessary, to participate in the permitted mode of economic behavior, i.e., exchange of dissimilar commodities in any manner, the individual saver (investor), the mobilizer of savings (bank) and the seller of the non-monetary traded or manufactured goods (seller) must constitute one single economic and legal entity. The depositor relationship with the bank and the lender relationship with the commodity seller must disappear. Even a partnership relationship between the depositor, the bank and the seller, where each one retains its legal entity, is not sufficient. The money flow between these three independent parties – placing of savings with the bank, the bank's provision of the pooled savings to the seller, and the reverse flow of profits from the seller to the bank and then to the depositor – would constitute an exchange of money for money and any realized excess in this process would thus come within the ambit of prohibited *ribā*. The only permissible method that avoids *ribā* would be for the three parties to be one legal and economic entity, so that each would be a direct party to the ultimate sale transaction between the seller and the ultimate customer and so that any realized profit would emanate from the exchange of non-monetary commodities for money – the requirement of the *pristine* Islamic financial system – and not from exchange of money for money as in the *actual* currently implemented system.

In the current versions of Islamic financial theory and practice, the main recognized commercial investment mechanisms comprise (1) the *murābaḥa* contract, (2) the *ijāra* contract, (3) the *muḍāraba* contract and (4) the *mushāraka* contract.

The first two contracts, *murābaḥa* and *ijāra,* do not involve any exchange of homogeneity: in both, a commodity or property, or its usufruct, is exchanged for money. Hence, these contracts, when implemented in both letter and spirit, are purely non-*ribawī*.

But in the last two contracts, *muḍāraba* (or *qirāḍ)* and *mushāraka,* both of which are profit-sharing contracts, and both of which certainly pre-date Islam (to the Roman *commenda* and the Jewish *heter isqa* contract), as will be elaborated below, an exchange of homogeneity takes place under the present Islamic legally recognized set up in which the financial institution, acting as one participant in the *muḍāraba* or *mushāraka*

contract, is recognized as an independent artificial legal personality in juxtaposition with the other participants.

There is no direct Qur'ānic reference to *muḍāraba*, though its linguistic root *ḍ.r.b.* is used fifty-eight times in the Qur'ān.[1079] The Qur'ānic verses with admittedly a distant bearing on *muḍāraba* denote "travel" or "travel for the purpose of trade."[1080] But the Prophet and his Companions are said to have engaged in *muḍāraba* ventures.[1081] Saeed notes that "[a]ccording to Ibn Taymiyya, Muslim jurists declared the lawfulness of *muḍāraba*, on the basis of certain reports attributed to some Companions but there is no authentic *ḥadīth* on *muḍāraba* attributed to the Prophet."[1082] Ibn Ḥazm (d. 456/1064), of the Ẓāhirī school, made the same point: "each chapter of *fiqh* has a basis in the Qur'ān and Sunna except *muḍāraba* for which we did not find any basis whatsoever."[1083] According to Sarakhsī (d.483/1090), the Ḥanafī jurist, *muḍāraba* was permitted "because people have a need for this contract."[1084] Ibn Rushd (d.595/1198), the Mālikī jurist, "regards it as a special concession."[1085] According to Qureshi, "[a]lthough *muḍāraba* is not directly referred to in the Qur'ān or Sunna, it is a tradition sanctioned and practiced by the Muslims, and this form of commercial association appears to have continued throughout the early period of Islamic era as the mainstay of the caravan and long distance trade."[1086]

Mushāraka contract is commented upon by Saeed as follows:

> *Mushāraka* (partnership) is the second basic Profit and Loss Sharing (PLS) concept in Islamic Banking. The Qur'ān has used the root of the term *mushāraka*, that is, *sh.r.k.*, approximately 170 times, though none of these verses has used the term strictly in the sense of partnership in a business venture. Nevertheless, on the basis of several verses of the Qur'ān, particularly the verses 4:12 and 38:24, as well as some reports attributed to the Prophet and his Companions, jurists have justified the validity of *mushāraka* in business ventures.[1087]

Tracing the Islamic usage of the *mushāraka* contract, Saeed continues:

> Several sayings attributed to the Companions indicate that some form of partnership was practiced by the earliest Muslim community. These sayings merely refer to the existence of a

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[1079] See, e.g., Q. 2:273; 3:156; 4:101; 5:106; 73:20, quoted in Saeed, *Islamic Banking*, 51-52.
[1080] Asad, *Message of The Qur'ān*, 92, 905.
[1081] Ibn Hishām, *al-Sīrat al-Nabawiyya*, Muṣṭafā al-Sagga et. al. (eds.). (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1955),I, 188; Sarakhsī, *Mabsūṭ*, XXII, 18; Ibn Qudāma, *Mughnī*, V, 26.
[1082] Ibn Taymiyya, *Majmū' Fatāwā Shaykh al-Islām*, XXIX, 101, quoted in Saeed, *Islamic Banking*, 52.
[1083] Shawkānī, *Nayl al-Awṭār*, V, 267.
[1084] Sarakhsī, *Mabsūṭ*, XXII, 19.
[1085] Ibn Rushd, *Bidāyat*, II, 178, quoted in Saeed, *Islamic Banking*, 52.
[1086] D.M. Qureshi, "Modaraba and its Modern Applications." *Journal of Islamic Banking and Finance*, Winter 1985, 7-24, quoted in Saeed, *Islamic Banking*, 52.
[1087] Ibn Qudāma, *Mughnī*, V, 3 ; Sābiq, *Fiqh al-Sunna*, III, 355, as cited in Saeed, *Islamic Banking*, 59.

> form of partnership, without indicating any terms, conditions or concepts which may have been associated with this partnership. Given that these reports do not provide any details as to the valid terms and conditions of such partnership contracts as came to be known later in Islamic law, such terms and conditions as elaborated in *fiqh* would be the product of *ijtihād* by Muslim jurists.[1088]

This non-Qur'ānic and non-Sunnaic origin and the *indirect* Qur'ānic and Sunnaic construction of the *muḍāraba* and *mushāraka* contracts, coupled with the absence from classical and medieval Islamic *fiqh* of the modern concept of artificial corporate legal personality casts serious doubts on the Islamicity of these contracts in their present form.

As can be seen, in the current *muḍāraba* and *mushāraka* contracts, notwithstanding the contractual jargon, the basic business flow runs as follows:

	Money→		Money →		Goods →	
DEPOSITOR	↔	BANK	↔	SELLER	↔	CUSTOMER
	← Money		← Money		← Money	

This flow chart shows that *only* the relationship between the ultimate Customer and the Seller is one of an exchange of heterogeneity (goods for money). The relationships between the Seller and the Bank and between the Bank and the Depositor are *both* exchanges of homogeneity (money for money). Only the relationship between the Customer and the Seller is truly *bay'awī*. Even in the presence of the *muḍāraba* and *mushāraka* contracts, the other two relationships are *ribawī* as they both involve an excess from exchanges of homogeneity, which is prohibited. And these two relationships will remain *ribawī* so long as each participant – the Seller, the Bank and the Depositor – are recognized as *separate* legal entities. As long as they are separate legal entities, there will be an actual *exchange* of homogeneity among them, regardless of their stated paper contracts to share profit/loss and not charge or pay interest. As explained above, the only solution is to merge the three *separate* legal entities – the Seller, the Bank and the Depositor – into *one* legal entity as shareholders and not to recognize the corporation as a separate legal entity apart from the shareholders. This way, while *internally*

[1088] Saeed, *Islamic Banking,* 59, relying on Shawkānī, *Nayl al-Awṭār,* V, 264-5, which posits that some form of partnership was practiced by the earliest Muslim community.

performing their own separate roles of provider of money, mobilizer of money and trader of goods, *externally* they will act as *one* legal entity in their dealing with the ultimate Customer. This is the *only* way each one of them can *directly* share in the ultimate *bay'* with the Customer. And this is the only way to achieve internal "revenue *realization*" rather than external "revenue *distribution.*" The avoidance of external "revenue *distribution*" is the only way to avoid the exchange of homogeneity – investment and dividend between the bank and the depositor, and between the bank and the seller.

This implies that the present participation arrangements between the investor, the bank and the business unit will have to be transformed into shareholding arrangements. It further implies that the concept of the separate legal entity of the corporation, as distinct from the shareholders, will have to be re-examined for its permissibility in the Islamic financial system and done away with.

It is evident from the above analysis, that the simple replacement of interest by profit-sharing is not sufficient for the establishment of the Qur'ān/Sunna ordained Islamic financial system. The underlying concepts have deeper metaphysical, philosophical, social, economic, financial and legal connotations. A transformation on all these fronts will be required for the implementation of this Divinely ordained system, both in letter and spirit.

V.7.ii. Islamic Financing Modes – Reconstruction

The contemporary Islamic financial theory and practice treats *ijāra* (leasing, renting), *mushāraka* (active partnership) and *muḍāraba* (sleeping partnership) as approved business/financing modes/contracts, whereas *murābaḥa* (cost-plus financing), though in extensive actual use, is juridically regarded at best as suspect and at worst as an outlawed mode/contract.[1089] But in the light of the findings above, only the *murābaḥa* and *ijāra* contracts meet the requirement of exchange of heterogeneity and are therefore structurally *bay'awī.* The only constraint is that, to preserve the integrity of the heterogeneous exchange, the *murābaḥa* contract must represent a genuine purchase and a genuine resale, and not just be a paper transaction. On the other hand, in the present

[1089] Outlawed altogether by the Judgment of the Shari'ah Appellate Bench of Pakistan Supreme Court of December 23, 1999 (Islamabad: Advanced Legal Studies Institute,www.nyazee.com,, 2000), 532.

legal setting of artificial corporate legal personality of the seller, the bank, its shareholders, and its depositors, the contracts of *mushāraka* and *muḍāraba* between these parties reflect an exchange of homogeneity and are thus rendered *ribawī.* Needless to say, these findings pose a serious challenge of re-evaluation and re-structuring for contemporary Islamic finance theory and practice.

In contemporary scholarship, the attempted legitimizing argument for the *mushāraka* and *muḍāraba* contracts, i.e., that these were utilized by the Prophet and his Companions, is rebutted by the fact that in classical and medieval Islam there was no legal notion of the separate artificial corporate personality and therefore there was no exchange of homogeneity in these contracts at that time. The essential *structural unity* of the trading caravan ensured that each participant of the venture participated virtually *directly* in the ultimate sale to the ultimate foreign customer – an exchange of heterogeneity: goods for money or goods for *other* goods, which then was truly *bay'awī.* But in the colonially implanted legal structure, the artificial legal personality notion renders the *mushāraka* and *muḍāraba* contracts *ribawī* by introducing an exchange of homogeneity between separate legal entities into these contracts.

The suspect nature of the *murābaḥa* contract in contemporary scholarship derives from the apparent similarity of the end results of the loan contract and the *murābaḥa* contract for the bank. It is argued that in both contracts, the bank's initial cash outlay is repaid in cash in excess and frequently in installments (with delay: *nasī'a),* thus allegedly rendering the *murābaḥa* contract *ribawī* as well. But what is overlooked in this simplistic analysis is that in an interest-bearing loan contract there is direct exchange of homogeneity with excess, whereas in the *murābaḥa* contract there are two constituent exchanges of its opposite, heterogeneity: first money for goods (between bank and supplier) and then goods for money (between bank and customer). If practiced genuinely, the *murābaḥa* contract is truly *bay'awī.* The Prophetic *Barnī-and Khaybar-dates aḥādīth* not only fully corroborate the *murābaḥa* contract but also sanction what has erroneously been dubbed as the *ḥīla* of double sale. However, as shown above, the provision of delayed payment (lump sum or in installments) in the *murābaḥa* contract constitutes *ribā al-nasī'a* through the process of *ex-nihilo* creation.

Furthermore, if the Islamic economic doctrine does not admit of the profit motive as discussed below, all three contracts – *murābaḥa, mushāraka* and *muḍāraba* – will have to be re-worked to conform to the alternative need-fulfillment motive.

V.7.iii. Credit Sales – Impermissibility

Due to the occurrence of two instances of the prohibited *ex-nihilo creation* in delayed settlements of transfer of ownership, credit sales/purchases, which also involve delayed settlements, automatically stand prohibited for humans as *ribawī.* Figuratively speaking, credit purchase is the prerogative of God alone Who has "purchased" from the believers their selves and their belongings in return for Paradise *later.*[1090]

V.7.iv. Profit-Determination – Impermissibility

Islamic jurisprudence *(fiqh) as currently visualized and formulated* admits the notion of profit *(ribḥ).* Without direct Scriptural support, it posits this notion as the permitted alternative to the prohibited institution of interest *(ribā).* It regards profit-sharing as the mainstay of Islamic finance. It recognizes the *muḍāraba* and *mushāraka* contracts as the legally acceptable mechanisms of profit-sharing. But the *muḍāraba* and *mushāraka* contracts certainly pre-date Islam and are not Qur'ān/Sunna-sourced and based. The Qur'ān and Sunna neither expressly permit nor prohibit profit and most certainly do not mention *muḍāraba* and *mushāraka* as permitted profit-sharing mechanisms. The question, then, is: What is the legitimizing source and authority for the notion of profit and its sharing in Islamic law?

The very derivation of the concept of *profit* from the concept of *bay'*, in Islamic legal scholarship, is at best problematic. We are informed by the disciplines of Economics and Accounting that *bay'* (sale or exchange) *per se* does not generate a profit/(loss). For the determination of any profit (or conversely, loss), the sale has to be measured against an earlier purchase, using a *single common* measuring medium. Thus, a sale of a commodity for, say, 100 currency units, compared with the earlier purchase of that commodity for, say, 80 of the *same* currency units, generates a gross profit of 20 currency units. The point to be noted is that it is the comparison of the *currency units* in the sale with the *same currency units* in the earlier purchase that determines a profit (or

[1090] Q. 9:111.

loss). Had the sale of this commodity been for currency units, as in the above example, but the earlier purchase of this commodity been for another currency (foreign purchase) or for another commodity (barter), the comparison of this other currency or other commodity with the currency of sale will not provide any measurement of profit/(loss). In other words, homogeneity of the transacting medium, in sale and earlier purchase, is essential for profit/(loss) determination. This condition makes profit/(loss) absolutely dependent, if not on a direct *exchange* of homogeneity, at least on a *comparison* of homogeneity. This comparison of homogeneity also requires singularity of the object of comparison, i.e., either a single object of comparison or, in case of multiplicity of homogenous objects of comparison, a physical identification of a single object of comparison. The absence of such physical identification gives rise to the accounting theory problem of applying costing assumption methods known as Last-in-First-Out (LIFO), or First-in-First-Out (FIFO), or Average-Costing. Whether it is the exchange or the comparison of homogeneity, in either case, however, profit/(loss) generation constitutes an *intra-active* process, i.e. one agent acting upon or being compared with itself (same genus): money vs. more or less money, or an apple vs. a bigger or smaller apple of the same variety. But a sale, by definition, is an exchange of one commodity for money or for another commodity (different genus). Thus, sale is an *inter-active* process, i.e., two different agents (human as well as non-human, in their own separate spheres) acting on each other. Therefore, in rebuttal of contemporary scholarship, it may be questioned as to how can an *inter-active* process (sale) be synonymous with, or lead to, its diametrically opposed *intra-active* process (profit/loss)? In fact, this intra-activity of profit-generation raises a serious question about the very legitimacy of the concept of "profit" in Islamic law, because profit generation shares this feature of intra-activity with the prohibited *ribā*-generation. Profit-generation, by definition, is a growth of similarity, the process of which is *ribā* and the product of which is *ribḥ*.

As already discussed above, Q. 2:275 declares *ribā* to be *ḥarām* (out of bounds for human application) and *bay'* to be *ḥalāl* (permissible). Now, *ribā* (self-emanation) by definition has the quality of both intra-action and guaranteed excess generation, whereas *bay'* (exchange) by definition has the quality of inter-action and no provision, let alone guarantee, of excess generation. *Bay'*, by itself, can never generate growth. The quantum

of the exchanged commodities is always equalized in value by the "Just Price," whose setter, according to a Prophetic *ḥadīth*, is Allāh *(Allāh al-musā'ir)*.[1091] However, if the Just Price is tampered with artificially (by hoarding), or ignorantly (by lack of market intelligence), or fraudulently (by unethical practices of short weights and measures, etc.), the equilibrium of the exchange is disturbed; hence the strict prohibition of such sharp market practices in Islam. Plausibly, therefore, this verse is prohibiting not only interest but also profit and permitting simple exchange for need-fulfillment. As against *ribā*, the process of *bay'* is not self-emanating because there can never be a true increase in an exchange transaction with Just Price in effect. The exchange is not self-perpetuating because it is a process of replacement, not of an increase upon itself. Arguably then, in the context of sole divine ownership and mere human agency of all property, the governing principle of Islamic Economics and Finance is the motive not of profit-generation but of need-fulfillment. In this need fulfillment economy, devoid of profit, the incentive for the capitalist to provide his capital will come from compensation to him according to the complexity of the assets/services provided by his capital. Just as the *handler* of the assets/services is compensated for his manual labor, the *technician* for his technical skills, and the *manager* for his managerial skills, the *capitalist* will be compensated for the complexity of the asset/service provided by his capital.

V.7.v. Corporate Legal Personality – Reconstruction

As already pointed out above, classical and medieval Islamic *fiqh* did not recognize the concept of separate legal personality of the corporation as distinct from the shareholders. As Bernard Weiss states:

> Baber Johansen has emphasized the fact that in Islamic law the individual proprietor is the prototype of the legal person.[1092] ... The proprietors are the human beings. ... [And] The proprietor is always an individual. Islamic law does not know the concept of the corporate person and therefore does not allow property to be owned by legal entities presided over by a changing personnel. It does provide for joint ownership, although it treats this arrangement strictly as a convergence of rights of individuals.[1093]

[1091] *Sunan Abū Dāwūd*, Book No. 23, *Ḥadīth* No. 3444: "Narrated Anas ibn Mālik: The people said: Apostle of Allāh, prices have shot up, so fix prices for us. He said: Allāh is the one Who fixes prices, Who withholds, gives lavishly and provides, and I hope that when I meet Allāh, none of you will have any claim on me for an injustice regarding blood or property;" also *Ḥadīth* No. 3443.
[1092] Baber Johansen, "Secular and Religious Elements in Hanafite Law: Function and Limits of the Absolute Character of Government Authority." In *Islam et Politique au Maghreb*, edited by E. Gellner and J. Vatin (Paris: Centre National de la Recherche Scientifique, 1981), 283-289.
[1093] Weiss, *Spirit of Islamic Law*, 159.

Weiss points out that joint ownership was the basis of a type of partnership called *sharikat al-milk* (proprietary partnership).[1094]

It was only with the imposition of Western legal regimes that contemporary Islamic jurists half-heartedly came to accept this notion of corporate person as permissible in Islamic commercial/financial law.[1095] But as has been shown above,[1096] this legal notion, by recognizing the corporation as a legal entity separate from the individual legal entity of each shareholder, makes financial transactions between them – the initial investment by the shareholder through Initial Public Offerings (IPOs) and the subsequent dividend distributions by the corporation – exchanges of homogeneity with ultimate excess between two independent parties, which according to Islamic law is a prohibited *ribawī* transaction. Therefore, as explained above,[1097] for purposes of Islamic commercial/financial law, the legal separation of the corporation from the shareholders will have to be discarded and prohibited so as to achieve internal "revenue *realization*" rather than external "revenue *distribution.*"

V.8. Suggested Elaborations

There are many elaborations of a foundational nature for the understanding of the dogma and law of Islam issuing from this research, given its finding that prohibition of intra-action/ex-nihilo action and permission of inter-action is the divine law for humanity and the essence of the *dīn* of Islam. The most significant of these elaborations are presented below.

V.8.i. Perfection of Religion – Elaboration

The Qur'ān declares the perfection of religion and choice of Islam for mankind:

> ...This day, I have perfected your religion for you, completed My Favor upon you, and have chosen for you Islam as your religion ...[1098]

Exactly what constitutes this "perfection of religion" is not elaborated either in the Qur'ān or in the Sunna. An attempt was made above[1099] in the context of Islamic *Sharī'a,* to explain the understanding of this perfection as the first-ever and the last-ever

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[1094] Ibid., n. 9, 159. See also Udovitch, *Partnership and Profit*, 17-39.
[1095] For a detailed treatment of the issue, see Imran Ahsan Khan Nyazee, *Islamic Law of Business Organization: Corporation* (Islamabad: International Institute of Islamic Thought and Islamic Research Institute, 1998).
[1096] See p. 315, above.
[1097] Ibid.
[1098] Q. 5:3.
[1099] See V.2., above.

complete prescription: proscription of intra-action *(ribawī action)* and permission of inter-action *(bay'awī action)* in all fields of human activity.

V.8.ii. Islamic Articles of Faith – Elaboration

The first article of faith in Islam, i.e., to profess belief in the absolute unity and singularity of Allāh, is the cornerstone of the religion. From the divine perspective, this profession of faith in the absolute unity and singularity of Allāh is essential and has been constantly and prominently emphasized in Islamic scholarship as the concept of *tawḥīd.* But from a human perspective, the question is: How does this belief in the singularity of Allāh manifest itself in, and guide, the affairs of man? In light of this belief, how is man supposed to behave temporally? The only possible answer is that the essential belief in the singularity of Allāh operates *in the human domain* not directly but through its corollary and opposite: belief in the duality of man *(tathniya:* creation in pairs). This belief in the duality of man, which practically translates itself as *bay'awī* inter-activity, continually guides man in the conduct of all his affairs and thus continually reinforces his belief in the singularity of Allāh, which translates itself as *ribawī* intra-activity. This conclusion is based on the direct Qur'ānic evidence wherein the Qur'ān treats abstinence from *ribā* as a matter of faith.[1100]

This first article of Islamic faith thus actually incorporates not only belief in the singularity of Allāh *(tawḥīd)* but also belief in the duality of man *(tathniya).* The *statement* of this first article of faith, as formulated by the theologians, might even be considered for rendering in an expanded version in order to specifically mention both divine *tawḥīd* and human *tathniya.*

V.8.iii. Islamic Pillars of Religion – Elaboration

There are five, and according to one reckoning six, pillars of Islam, namely:
(1) the *shahāda* (confession of belief in Allāh and His Messenger Muḥammad),
(2) *ṣalāt* (ritual prayer), (3) *ṣawm (Ramaḍān* fasting), (4) *zakāt* (ritual charity),
(5) *ḥajj* (Mecca pilgrimage), and, according to some, (6) *jihād* (struggle in the way of Allāh).

[1100] Q. 2:276, 278; 3:130; 4:161.

It might be asked that, if *zakāt* is indeed the antithesis of *ribā* (Q. 30:39) and therefore giving of *zakāt* and abstaining from *ribā* are synonymous in effect, why abstention from *ribā* is not even mentioned (as a pillar) and only *zakāt* accorded the status of a pillar of Islam? Surprisingly, the answer is that abstention from *ribā,* far from being absent from the list, is already a pillar of Islam and that too at an even loftier hierarchal level than *zakāt*, since it forms part of the first and most fundamental pillar of *shahāda.* The first pillar reads partly: *lā ilāha illā Allāh* ... There is no god but God. This denial of gods is a denial of, among others, the exclusively Divine attributes or essence of intra-activity, self-subsistence and self-emanation to any entities/concepts other than God. *Ribā,* being the essence of intra-activity, self-subsistence and self-emanation, is thus denied to anything other than God in this first pillar of *shahāda.* Not only is the *ribā*-prohibition thus embedded in the first pillar, but its divinely identified alternative *bay'*- permission is also, by extension, included therein. After all, as already explained above, this notion of the permissibility of *bay'* and the prohibition of *ribā* represents the completion, and selection, of the *dīn* of Islam for mankind.[1101]

Another point of elaboration is that, as borne out by the antithetical juxtaposition in Q. 30:39, *zakāt* is the negation of self-emanation inherent in *ribā:* it is the demolition of the base which could enable self-emanation. But, based on the limited technical meaning of *ribā* as a "financial increase," its opposite *zakāt* has also been rendered in the scholarship in its limited technical meaning of "financial extraction" – so much so that the fourth pillar of *religion* is expressed bluntly in Orientalist scholarship as a "2.5% *financial tax.*" A financial tax, *per se*, has no place in matters religious. As demonstrated above,[1102] *ribā* applies to all spheres even beyond the financial. Hence, its antithesis, *zakāt*, also necessarily applies to all spheres even beyond the financial. Just like abstinence from *ribā,* indulgence in *zakāt* is not limited to the financial domain: both are the practical denial of self-emanation in any domain – whether economic, social, cultural, political, even biological. The lexical meaning of *zakāt* is purification. Hence, even Muslim scholarship holds that extracting (from the wealth) the 2.5% purifies the remaining 97.5%. This is at best a symbolic explanation. The purification inherent in

[1101] Q. 5:3.
[1102] See IV.4.i., above.

ribā-abstinence and *zakāt*-indulgence is purification of the human soul through negating any attempt at self-emanation which is an act of *shirk*. Qur'ānic frequent juxtaposition of *ṣalāt* (prayer) with *zakāt* (purification) also supports this broader interpretation of *zakāt*. Otherwise, why would the Qur'ān put a spiritual matter and a non-spiritual temporal matter on the same level of prescription?

V.9. Implications

There are several broad implications of this new critical theory of normative behavior. However, only three most significant ones are examined here:

V.9.i. Inter-Faith Understanding – New Basis

The idea of inter-faith unity is well put in this saying of Goethe: "If Islam means submission to God, we all live and die in Islam's domain."[1103] Likewise it may be said that if Islam means "conformism" to the divine law of *ribā* (divine intra-activity: *tawḥīd)* and *bay'* (human inter-activity: *tathniya),* then we all live and die in Islam's domain.

For it is clear that the prohibited intra-action *(ex-sui* creation and *ex-nihilo* creation) applies to all human actions in all faiths. Similarly, in the financial domain, interest-free finance rather than just being "Islamic Finance" is more appropriately "Monotheist Finance," while interest-based finance rather than just being "Western Finance" is "Polytheist Finance."

Thus, it can be posited that, on a substantive non-ritualistic level, there is the possibility of common understanding among the revealed monotheist religions of the world on the divine proscription of all forms of intra-active growth and *ex-nihilo* creation that is not the outcome of inter-active and instantaneous processes. In the economic sphere, this common understanding could provide the basis for an inter-active "Divine Economy"[1104] as a substitute for the contemporary *intra-active* Western financial system and the rather *improperly-structured* Islamic financial system. In other spheres of human activity, this common understanding could also provide a litmus test of human actions and thus be the foundation of truly inter-active systems.

[1103] Johann Wolfgang von Goethe (1749-1832).
[1104] A term borrowed from D. Stephen Long, *Divine Economy: theology and the market* (London; New York: Routledge, 2000).

V.9.ii. Islamic Universality and Eternity– Implications

This work has demonstrated that the prohibition of *ribā* and permission of *bay'* in Islam – and by backwards projection in Judaism and Christianity – is not a mere contextual or hence an outmoded historical prohibition/permission. It has also been demonstrated that this divine injunction is not restricted only to the financial domain but applies to all conceivable spheres of human activity. The eschatological dimensions of the resulting models of Divine Singularity and Human Duality have also been dilated upon. The divine prohibition of *ribā* and permission of *bay'* is, therefore, not a financial formula of limited contextual and antique import, but rather a universal formula of eternal import to guide the totality of human existence – both here and in the Hereafter. This is a comprehensive demonstration and proof of the eternity of the laws of the Qur'ān, which poet-philosopher Iqbal was seeking for the *tajdīd* (renewal) of Islam.[1105]

V.9.iii. Modernity – Implications

The response of modernity to the usury discourse essentially is that modern day bank interest is benign and there are State laws in all civilized countries to limit usury and prosecute the offenders. This is essentially what may be called a Limitation Model of usury based on exploitation as the rationale of usury prohibition. But, it has been demonstrated above[1106] that the rationale of usury *(neshekh, tokos, ribā)*-prohibition is not exploitation but idolatry/polytheism (Arabic: *shirk).* In a monotheist milieu, one can not simply *limit* idolatry/polytheism; one has to outright *prohibit* it.

Moreover, the precursors of modern Western banks, the Christian Loan-Banks (the *montes pietatis)* were originally meant to work on a non-profit basis; they were only forced to charge a small amount for maintenance of their administration.[1107] The modification to the Christian doctrine on usury only came first with Calvinism, then with Protestantism (both with the support of rich middle class lenders) and finally with the Catholic Church.[1108] Therefore, even in the Western civilization – the cradle of modernity – usury/interest was equally prohibited as the gravest of sins initially and could regain that status prospectively.

[1105] "My belief is that a person who critically reviews the present system of jurisprudence from the Qur'ānic point of view and would thus prove the eternity of the laws of Qur'ān will be the Mujaddid of Islam" – Muhammad Iqbal

[1106] See IV.2.ii.a., above.

[1107] *Encyclopaedia Judaica,* CD ROM, s.v. "Money Lending", 5-6.

[1108] Nelson, *Idea of Usury,* 73 ff.

CHAPTER VI
CONCLUSION

The concept that appears today to be "the supreme of all *Quaestiones Vexatae* of Islamic law" – the Arabic *ribā* (growth), the Hebraic *neshekh* (bite/sting) and *tarbīt /marbīt* (growth/increase), the Syriac *rebitha* (growth), the Greek *tokos* (offspring), the Latin *ūsūra* (use/enjoyment), the English usury/interest (usage charge), the Sanskrit /Hindi *biyāj/vraddhi* (increase), the Persian/Urdu *sūd* (profit), the Egyptian *ms* (birth), the Sumerian *mas* (calves) – has indeed traversed a checkered path in the annals of human thought. After a very promising conceptual birth, its practical application has involved widespread acceptance, toleration, limitation, regulation, prohibition, modification, restriction, neglect, confusion, suppression, and finally revival. But one underlying theme that has remained constant throughout is that the conceptual application has been confined to the financial context only.

The linguistic wisdom of antiquity provided a very fertile ground of "reproduction" for the development of this concept. But the first known Ancient Law Codes – including Greek and Roman law – ignored this underlying wider linguistic context and were structured exclusively around the financial context of the concept, merely taking a utilitarian approach by only regulating financial usury for the common good. Likewise, the philosophical formulations of the Greeks did reiterate this wider linguistic context of "reproduction" inherent in the concept and did theorize about the "(in)fertility" of money on grounds of natural law. But these venerable Greek philosophers wasted a very promising opportunity by confining themselves in their usury discourse, firstly, to the narrower concept of money only and, secondly, to the secular fortress of natural law, never stepping out into the richer pastures of theology. This early Greek restrictive approach that steered much of the course of later Western thought on the subject served to stifle the logical growth of this concept.

The ancient religions, again, in spite of a promising start of treating usury with contempt, in a demeaning manner, and as among the worst, if not the worst of sins, were limited by the lack of universal development and spread of their tradition and of the

notion. The usury concept, for them, thus remained confined to a mundane financial limitation paradigm.

On the other hand, the Judeo-Christian tradition, although not constrained by any lack of universal development and spread, and in spite of being blessed with divine revelation and occasional rabbinical/patristic/scholastic forays touching extreme theological heights, still did not contribute to the full development of the concept, constrained as it was by several other factors. In its potential contribution, this otherwise rich tradition was constrained primarily by the fact that the divine revelation of this concept in the Bible *(marbīt* only) was only a partial stipulation of the ultimate complete religious code on the concept *(ribā vs. bay'* in the Qur'ān). This scriptural restriction of the scope of the discourse to *marbīt* only was compounded by confining even the meaning of this sole guideline, *marbīt,* to its financial context only, to the utter exclusion of its broader meaning of "growth." Even the sole Biblical juxtaposition of the act of incest with the practice of interest – a pointer to a broader philosophical context for the seemingly limited financial notion – was not explored in later exegetical thought. A further constraint to potential development of the usury concept in this tradition came from the very nature of its scriptural prohibitions: their absolute concreteness and absence of universality – a case approach. This localized, less than universal, focus was further sharpened by an exegetical failure to link the Biblical usury texts with the Genesis texts that speak of "self-creation" *("making in own kind; its seed in it; by their kind; in His image").* Potential conceptual development was further hampered by the scriptural and exegetical adoption of an approach that represented an "extrinsic effect-oriented" rather than "intrinsic cause-oriented" treatment of the concept.

The potential development of the concept was initially further circumscribed by the Jewish notion of the "chosen community" and the Old Testament application of the usury prohibition to only the *"brother"* and not to the *"other."* New Testament teaching did broaden this initial narrow focus by extending the application of the usury rule from "brother" to "other," but this was merely a communal extension and not a conceptual development of the notion in any depth and spread. Christian potential contribution to the usury discourse, initially, was structurally hampered by the nature of the usury teachings in the New Testament: unlike the prohibitory stance of the Old Testament

about usury, the mere recommendatory stance of the New Testament about its binary opposite charity. The absence of punitive measures in the Judo-Christian scripture and jurisprudence further hampered the potential flourishing of the usury discourse.

Operating under these multi-pronged constraints, rabbinical thought did broaden the scope of the Torah prohibition from usury proper to the semblance of usury also, and did scale, albeit occasionally, theological peaks by associating *neshekh/marbīt* with idolatry. In the process, it broadened its treatment of the discourse from mere extrinsic effect-analysis to intrinsic characteristic-analysis. But the extent of further theological development of this usury-idolatry juxtaposition and its ultimate reflection in Jewish positive law, both in its depth and spread, requires further research.

Patristic thought, on its part, faced with the absence of specific New Testament usury-prohibitory guidelines and the apparent Deuteronomic double-standard of prohibiting usury to the *"brother"* but not to the *"other,"* still had to rely on the Old Testament teachings. But in the process, it did more than compensate for the initial handicap by not only relying on but even exceeding the Old Testament teachings, not just on moral but on theological plane as well. This influential thought stream denied the usurer eternal life, branded usury itself as a diabolical act, dilated on the inherent theme of eternal reproduction of usury, deemed usury to result from an "evil union" unknown to nature which has the power to make sterile things fecund, and, in a very pointed incestuous equivalence, denounced usurers as a breed of vipers that gnaw the womb that bears them. It deemed usury to be forbidden by the law of God and even associated, albeit metaphorically, usury (interest) with paganism.

Conciliar legislation extended a helping hand to patristic thought by legislating against the sin of usury, not just for the clergy but also the laity. But these impressive and almost half a millennium long intellectual and legal strides by the Fathers and the Councils were ultimately halted by the onslaught of financial pressure generating from the Church's own immense, accumulating but un-invested, wealth. The Church thus ultimately gave up on the usury question altogether by succumbing to liberal and capitalistic pressures to incorporate "interest" – the modern equivalent of Biblical usury – as an accepted way of religious and secular life. This closed the door on any further theological development of the usury discourse.

This closure of the theological gates was also accentuated by the failure of the medieval scholastics to formulate the usury discourse into a unified theory, notwithstanding their long moral and intellectual leadership of Europe – in the person of such towering figures as Thomas Aquinas – and in spite of their theological, legal and economics input in the discourse. They could not even match, let alone exceed, the earlier rabbinical and patristic theological heights, in spite of the domination of theology over reason in their scholastic theory of usury that merely required their *a posteriori* proofs for the Church's *a priori* decisions, even with flimsy and fatuous argumentation. At best, they could only contribute a sound and valid but narrow and technical case against usury that fell short of a unified theory.

Even this imperfect medieval scholastic theory of usury was served a fatal blow, inspired by Reformation and Protestantism, at the hands of the medieval non-scholastic Calvinist new theory of licitness of not only moderate but, according to some staunch Calvinist classicists, even of all usury. This permanently sealed the already closed doors on any further theological development of the usury discourse.

This sealing of the theological doors is currently reflected in the neutrality and even outright opposition of contemporary Western economic thought to any prohibition of the notion of interest on money which today has become purely a matter of economic theory, quantum of desirable rate of interest and its state regulation to promote economic growth. What was a sin has become a utility.

Finally, despite being endowed with a "completed religion" including, *inter alia*, a complete and fertile code on *ribā* along with its never-before ordained permitted alternative of *bay'* and its rich albeit esoteric Prophetic explication, the Islamic tradition has not fared any better either. Other than the commendable effort of the scholars of *ḥadīth* science, the *muḥaddithūn*, in assembling an impressive list of Prophetic *aḥādīth* on the subject, there is no outstanding *productive* contribution to the *ribā-bay'* discourse, either exegetical or juridical. Classical and medieval exegetes, notwithstanding their comparative diachronic proximity to the source of revelation, consigned this fertile field to utter waste by confining their narrative, legal, textual and even allegorical exegesis on *ribā* to a downright non-descript contextual, non-philosophical and non-theological level. They left this task uncompleted for

contemporary exegetes, who, in turn compounded the problem by succumbing either to a reverence for tradition, or fascination for modernity, or penchant for Economics, or methodological insensitivity to cohesion of the discourse.

The early jurists did not contribute anything to the discourse by adopting a posture of mere ritual obedience of the divine command. True to the demands of their juridical tradition, the later classical and medieval Muslim jurists, for their part, were victims of casuistry, concentrating on the exoteric, neglecting the esoteric, and thus complacently oblivious of any deeper truths or universal, eternal principles in the *ribā* discourse. In spite of the central role of analogical reasoning in the *living* Islamic jurisprudence through the employment of the science of logic, the monumental jurisprudential output on the *ribā* discourse is simply inconclusive. Their perceived juristic premises on *ribā* do not logically lead to their own posited conclusions. The modern Muslim jurist, on the other hand, is torn by the powerful conflict between call of the conscience and lure of utility. The religious courts and juridical academies are increasingly driven by compulsions of State politics. The role of the State legislators is no different either. Modern Muslim State legislation has, in many forms, essentially diluted the initial pristine prohibition of *ribā,* according it the status of "also ran" in the national economy.

Given this total complex and even confusing scenario, modern Muslim theorists and practitioners of Islamic Finance are in a rather unenviable position. Faced with the lack of identification of the definitive rationale of the scriptural prohibition of *ribā* and with the presence of a myriad of inconclusive occasioning factors of the injunction, their *ribā* discourse lacks cohesion. Rather than systematically building on, or demolishing, the others' work, each theorist goes his own way, rather repetitiously on the whole. Similarly, the Orientalists contribution to the Islamic *ribā* discourse is rather disjointed, perfunctory and even self-contradictory. While the contemporary Liberal theorist is constantly and even successfully on the lookout for escape-routes for softening or even evading the prohibition altogether, the Traditionalist/New-Revivalist theorist is rationally defenseless on account of inability to posit a plausible prohibition-rationale, other than the obvious but analogically unhelpful rationale of ritual obedience. On the whole, rather than breaking new ground, the theorists – each in his own way – have sunk deeper and deeper into naïve compliance, ignorant evasion, sheer neglect or even

intellectual bankruptcy. On the other hand, the contemporary practitioner of Islamic Finance is under constant business pressure to develop ever-new Islamic financial instruments for survival and growth of the nascent industry and the individual financial institution, each under the guidance of a separate, independent Sharī'a Board. In the face of lack of common understanding and juridical precision, these Boards pronounce conflicting opinions and guidance on many crucial underlying concepts.

To fill this lacuna – both in theory and practice – a pioneering philosophically and theologically-oriented hermeneutical investigation at the core of this work has yielded a set of postulates that not only solve the famous enigma of *ribā* but also furnish a universally applicable basis of normative human behavior that constitutes the essence of all monotheist law. Focusing sharply on the true core binary opposites, *ribā* and *bay'*, applying rigorously and precisely Qur'ānic semiotic methodology, exploring exclusively causality rather than teleology, and meeting meticulously the demands of analogy has provided answers to the specific thesis questions that have steered the course of this study.

Briefly put and cast in terms of the research task set forth initially, the research answers are:

- ***Ma'nā:*** The meaning of *ribā* was found to be not just any excess, and that of *bay'* not just any exchange, but intra-active excess and inter-active exchange respectively, as delimited by their *tamyīz* (distinction).
- ***Tamyīz:*** The distinguishing/determining characteristic *(tamyīz)* of *ribā* was discovered to be "divine imitability" operating through the modes of an *ex-nihilo creation* process and an *intra-active* growth process. *Tamyīz* – the distinguishing /determining characteristic – of *bay'* was discovered to be an *inter-active* exchange process. Intra-action was defined as the process of an agent acting on a homogenous agent. *Inter-action* was defined as the process of an agent acting on a heterogeneous agent. Therefore, the meaning of *ribā* was found to be an *ex-nihilo creation* and/or an intra-active growth, and that of *bay'* an inter-active exchange. Intra-action was found to be a recognized divine attribute or essence. Inter-action was discovered to be a human attribute or essence. *Ribā*, therefore, was found to be

the inherent exclusive domain of the Creator. *Bay'* was found to be the structured exclusive domain of the Creation.

- ***Ḥikma:*** The rationale of *ribā*-prohibition was discovered to be *shirk* (idolatry, polytheism), and that of *bay'*-permission to be a test of compliance with the design structure and purpose of creation. *Ribā* being the inherent exclusive domain of the Creator, indulgence in *ribā* by humans was found to be a transgression *(ẓulm)* in the divine domain – an act of *shirk* (idolatry). *Bay'* being the structured exclusive domain of the Creation, indulgence in *bay'* by humans was found to be a test of compliance with the human domain (structure and purpose of creation) – an act of *'ibāda* (worship).
- ***'Ilal:*** The *rationes legis* or occasioning factors of the *ḥukm* (injunction) of *ribā*, for the purposes of analogical extrapolation, were discovered to be *"intra-action"* and *"ex-nihilo action."* Both these factors were found to be the modes of the single distinguishing and determining characteristic of "divine imitability" [imitativeness], leading to the same *ḥikma* (rationale) of *shirk* (idolatry). The first mode termed as "*intra-action*" (creation *ex-sui)*, was found, by definition, to operate in exchanges of homogeneity. The second mode termed "*ex-nihilo action*" (creation ex-*nihilo*) was found to operate in all exchanges of homogeneity and heterogeneity which incorporate the element of "delay" in settlement. The *'illa* of *bay'*- permission was found to be "*inter-action.*"
- **Scope:** The application scope of *ribā*-prohibition and *bay'*-permission was found to extend beyond the conventionally restricted financial sphere. Having the inherent but neutral defining characteristics of intra-activity and inter-activity, *ribā* and *bay'*, respectively, were found to be applicable to all spheres of human activity, with specific identification of financial, commercial, economic, agricultural, labor, religious, political, social, cultural, biological, psychological, nutritional, scientific/engineering, virtual reality, architectural, philosophical, intellectual, literary, academic, and post-modern applications.

These research findings were formulated as a new critical theory of normative behavior which might best be referred to as "natural conformism" – respective

conformity with the divine and human modes of operation. Man must not transgress on the divine mode, and must operate strictly within the parameters of his own prescribed mode by conforming to the structural design and purpose of his creation. The theory was encapsulated in the divine law for humanity: impossibility, and hence proscription and even sacrosanctity, of ***non-action,*** i.e., *ex-nihilo* creation *(khalq min al-'adam),* and of ***intra-action,*** i.e., *ex-sui* creation *(khalq min al-nafs)* – both *ribawī* – and permission of ***inter-action,*** i.e., *ex-alio creation (khalq min al-ghayr)* – *bay'awī.* All this in turn was encapsulated in the concept of *waḥdat al-khāliq wa tathniyat al-makhlūq;* or *waḥdat al-mūjid wa tathniyat al-mawjūd; or waḥdat al-rabbānīya wa tathniyat al-insāniyya* (all reducible to the concepts of Divine Singularity and Human Duality). The theory may also be recast as: singularity is the prohibited (sacred) divine model and duality the permitted human model.

The notion of divine singularity *(tawḥīd)* is obviously not new. What is new in this theory is the never before positioned *juxtaposition* of the commonly recognized notion of human duality with the sacrosanctly held notion of divine singularity, and the association of *ribā* with the divine singularity model and that of *bay'* with the human duality model, with total human conformity as a pre-requisite. *Ribā* and *bay'*, far from being the generally held "narrow technical" concepts, thus come out as the *most integrative* of concepts in religious studies. *Ribā* and *bay'* become the ultimate criteria and distinguisher of "monotheist" vs. "polytheist," of "Islamic" vs. "non-Islamic," in all disciplines, whether thought, institutions or practices, and the developer of the Islamic discipline – the ultimate catch-all criteria of Islamic knowledge. These central concepts serve to add juridical definitional precision to *ribā* and *bay';* clarify the Islamic dogma; pinpoint the Islamic *Sharī'a,* its objectives and mechanisms; adjust the *uṣūl al-fiqh;* supplement the *fiqh* repertoire on *ribā* and *bay';* justify the *ḥudūd* punishments in Islamic criminal law; and fine-tune the Islamic civil and commercial law (legitimizing basis for *ḥiyal;* illegitimizing basis for *ḍarūra* and *ḥāja, ribā* in *dār al-ḥarb,* credit sales, and profit-determination; and reconstructing basis for Islamic corporate business and finance legal structure and modes).

Compliance with the monotheist scriptural *ribā-bay'* injunctions is the totality of normative human behavior in its *simplest* form, devoid of technical jargon and religious

ritual, and justifies the designation of the new theory as a critical theory of normative behavior – the elusive Grand Unifying Theory (GUT) of religion. This encapsulation responds to the Quranic declaration:

> This day, I have *perfected* your religion for you, completed My Favor upon you, and have chosen for you Islam as your religion ... – Q. 5:3.

This formulation also conforms to the requirements of the Prophetic *ḥadīth:*

> Prophet Muḥammad said: Make things *easy* for people (concerning religious matters), do not make it hard for them, give them glad tidings, and do not make them run away (from faith) – *Ṣaḥīh al-Bukhārī* I, *ḥadīth* no. 69.

This new Grand Unifying Theory does provide the much sought after answer to "the supreme of all *Quaestiones Vexatae* of Islamic law," yet at the same time raises an even more perplexing and perilous question: Are the modern monotheists disguised yet oblivious polytheists?

Today the world-systems, even of the professed monotheist persuasion, are wittingly or unwittingly submerged in the *ribawī* mode. The likely consequences of operating under complete, partial or parallel *ribawī* systems – financial, commercial, social, economic, or political – without any scriptural sanction and justification, particularly in an Islamic state, are not difficult to visualize, keeping in view the fate of the earlier professed Islamic states in the face of the Divine warning:

يَمْحَقُ اللّٰهُ الرِّبَا

"... Allah blots out ribā ..." – Qur'ān 2:276

This Grand Unifying Theory also raises the question of its proof: Is there a "supporting text" for the central thematic elements of this theory: intra-activity and inter-activity? It must be recognized that there is no such direct evidential text, only some indirect textual indicators and exegetical formulations that have been fully utilized and incorporated in the development of this theory. There is no evidence *(dalīl)* of soundness or proof *(burhān)* because, in the words of the eleventh-century exegete al-Qushayrī, "the most powerful kinds of knowledge are those which are farthest from evidence *(dalīl).*" (al-Qushayrī, *Laṭā'if al-Ishārāt*, IV, 79-80).

Not surprisingly, therefore, the posited legal formulations – flowing from bestowed knowledge and awaiting dissemination for formal consensus – have nevertheless been accorded informal recognition as a logical addition to the current *fiqh* repertoire by this

dissertation's supervisor who is a leading contemporary expert of Islamic law and accords the underlying theory the status of a new creed that could prove to be a major contribution to the field of Islamic law.

The ultimate formal adoption of this creed that the practice of *ribā /neshekh /tokos/sūd* in all shapes and forms – whether conceived narrowly as interest/usury or broadly otherwise – is an act of *shirk* (idolatry, polytheism) could have a phenomenal effect both negatively and positively. On the one hand, it could pose a daunting challenge to all individuals and institutions indulging in this practice in any of its manifestations, and on the other, it could promote universal harmony. Shīrīn Ebādī was awarded the 2003 Noble Peace Prize for a "new interpretation of Islamic law *compatible with human rights.*" Complementarily, this thesis offers a new interpretation of Islamic law, indeed of all monotheist law, *compatible with human obligations.* This renewed posited perception of divinely ordained human conformity with normative behavior – divine: *ribawī* (intra-active) vs. human: *bay'awī* (inter-active) – as the common Abrahamic heritage could promote inter-faith understanding, harmony and peace, and furnish the basis of a New World Order.

Wa Allāhu A'lam – And God knows best

MORPHOLOGY OF *RIBĀ*[1109]

Root:	*r.b.w.*
Root Type:	Defective[1110]
Derived Noun:	*ribā* (indefinite) and *al-ribā* (definite) meaning interest, usurious interest, usury
Adjective:	*ribawī,* meaning usurious

Verbal Forms (3PMS)

FORM I (Basic):	Intransitive
Perfect Tense:	*rabā*
Imperfect Tense:	*yarbuw*
Verbal Noun:	*rabā'* or *rubūw*
Meaning:	to increase, to grow, to grow up, to exceed, to be more than
Active Participle:	*rābin*
Passive Participle:	None (intransitive verb)
Qur'ānic Usage in *Ribā* Verses:	Imperfect tense verb *yarbuw* in Q. 30:39
FORM II (Causative)	Transitive
Perfect Tense:	*rabbā*
Imperfect Tense:	*yurabbī*
Verbal Noun:	*tarbiyya*
Meaning:	to make or let grow, to raise, to rear, to bring up, to educate, to teach, to instruct, to breed, to raise, to grow, to cultivate, to develop
Active Participle (Doer/Actor):	*murabbin*
Passive Participle(Done To/Acted Upon):	*murabban*
Qur'ānic Usage in *Ribā* Verses	None
FORM III (Reflexive)	Transitive
Perfect Tense:	*rābā*
Imperfect Tense:	*yurābī*
Verbal Noun:	*murābātun*
Meaning:	to practice usury
Active Participle (Doer/Actor):	*murābin:* taker of usury (usurer)
Passive Participle (Done To/Acted Upon):	*murāban:* giver of usury
Qur'ānic Usage in *Ribā* Verses:	None as verb, active/passive participle, or verbal noun
FORM IV (Causative)	Transitive
Perfect Tense:	*a'rbā*
Imperfect Tense:	*yurbī*
Verbal Noun:	*i'rbā'*
Meaning:	to make grow, to augment, to increase, to exceed
Active Participle (Doer/Actor):	*murbin*
Passive Participle (Done To/Acted Upon):	*murban*
Qur'ānic Usage in *Ribā* Verses:	Imperfect tense verb, *yurbī,* in Q. 2:276
FORM V	Intransitive
Perfect Tense:	*tarabbā*
Imperfect Tense:	*yatarabbā*
Verbal Noun:	*tarabbin*
Meaning:	to be brought up, to be educated, to be bred, to be raised
Active Participle (Doer/Actor):	*mutarabbin*
Passive Participle (Done To/Acted Upon):	None (intransitive verb)
Qur'ānic Usage in *Ribā* Verses:	None

[1109] All lexical meanings taken from Hans Wehr, *Arabic-English Dictionary*, 374-375.

[1110] Defective root is the third sub-class of the weak class of roots/verbs which consists of (1) assimilated root/verb, with the weak letter *y* or *w* as the first radical, (2) hollow root/verb, with the weak letter *y* or *w* as the middle radical, and (3) defective root/verb, with the weak letter *y* or *w* as the final radical.

MORPHOLOGY OF *RABB*[1111]

Root:	*r.b.b.*
Root Type:	Doubled Sound
Derived Noun:	*rabb* (indefinite) and *al-rabb* (definite) meaning lord, master, owner
Adjective:	*rabbānī* meaning divine
Verbal Forms (3PMS)	
FORM I (Basic):	Transitive
Perfect Tense:	*rabba*
Imperfect Tense:	*yurabbu*
Verbal Noun:	*rubūbiyya*
Meaning:	to be master, be lord, have possession, control, command or authority
Active Participle:	*rābbun*
Passive Participle:	marbūbun
FORM II (Causative)	Transitive
Perfect Tense:	*rabbaba*
Imperfect Tense:	*yurabbibu*
Verbal Noun:	*tarbībun*
Meaning:	to raise, to bring up (a child)
Active Participle (Doer/Actor):	*murabbibun*
Passive Participle (Done To/Acted Upon):	*murabbabun*
FORM III (Reflexive)	Transitive
Perfect Tense:	*rābba*
Imperfect Tense:	*yurābbu*
Verbal Noun:	*murābbatun/ribābun*
Meaning:	to deify, to idolize
Active Participle (Doer/Actor):	*murābbun:* maker of idols (idolater)
Passive Participle (Done To/Acted Upon):	(also) *murābbun*

[1111] All lexical meanings are from Hans Wehr, *Arabic-English Dictionary*, 370-371.

MORPHOLOGY OF *BAY'*[1112]

Root:	*b. y. '*
Root Type:	Hollow[1113]
Derived Noun:	*bay'* (indefinite) and *al-bay'* (definite): lexical meaning 'sale'
Qur'ānic Usage:	*bay'* in Q. 2:254, 9:111, 14:31, & 24:37; *al-bay'* in 2:275 & 62:9
Coined Adjective:	*bay'awī,* meaning contractual
Cognate Noun:	*bay'a* (indefinite) & *al-bay'a* (definite): lexical meaning conclusion of a bargain, business deal, commercial transaction, bargain, sale, homage, profession of loyalty, pledge of allegiance

VERBAL FORMS (3PMS)

FORM I (Basic)	Transitive
Perfect Tense:	*bā'a*
Imperfect Tense:	*yabī'u*
Verbal Noun:	*bay'un*
Meaning:	to sell
Active Participle:	*bā'i'un*
Passive Participle:	*mabā'un*

FORM III	Transitive
Perfect Tense:	*bāya'a*
Imperfect Tense:	*yubāyi'u*
Verbal Noun:	*mubāya'atun*
Meaning:	to make a contract, to pay homage, to acknowledge as sovereign or leader, pledge allegiance
Active Participle (Doer/Actor):	*mubāyi'un*
Passive Participle(Done To/Acted Upon):	*mubāya'un*

FORM IV	Transitive
Perfect Tense:	*'abā'a*
Imperfect Tense:	*yubī'u*
Verbal Noun:	*ibā'atun*
Meaning:	to offer for sale
Active Participle (Doer/Actor):	*mubī'un*
Passive Participle (Done To/Acted Upon):	*mubā'un*

FORM VI	Transitive
Perfect Tense:	*tabāya'a*
Imperfect Tense:	*yatabāya'u*
Verbal Noun:	*tabāyu'un*
Meaning:	to agree on the terms of a sale, conclude a bargain [deal]
Active Participle (Doer/Actor):	*mutabāyi'un*
Passive Participle (Done To/Acted Upon):	*mutabāya'un*

FORM VII	Transitive
Perfect Tense:	*inbā'a*
Imperfect Tense:	*yanbā'u*
Verbal Noun:	*inbiyā'un*
Meaning:	to be sold, be for sale
Active Participle (Doer/Actor):	*munbā'un*
Passive Participle (Done To/Acted Upon):	(also) *munbā'un*

FORM VIII	Transitive
Perfect Tense:	*ibtā'a*
Imperfect Tense:	*yabtā'u*
Verbal Noun:	*ibtiyā'un*
Meaning:	to buy, to purchase
Active Participle (Doer/Actor):	*mubtā'un*
Passive Participle (Done To/Acted Upon):	(also) *mubtā'un*

[1112] All lexical meanings taken from Hans Wehr, *Arabic-English Dictionary*, 105, 375.

[1113] Hollow root is the second sub-class of the weak class of roots/verbs which consists of (1) assimilated root/verb, with the weak letter *y* or *w* as the first radical, (2) hollow root/verb, with the weak letter *y* or *w* as the middle radical, and (3) defective root/verb, with the weak letter *y* or *w* as the final radical.

LEXICAL DEFINITION OF *RIBĀ*

IBN MANẒŪR

***Ribā* as Excess or Benefit:**
There are two kinds of *ribā*, and prohibited is every loan on which an excess is charged or some benefit is obtained out of this loan.[1114]

Parallel between *liyāṭ* (cement) and *ribā*:
Ribā is called liyāṭ because *liyāṭ* is that thing which does not dissolve and remains attached to something else and *ribā* also remains similarly attached to the principal... In this *ḥadīth* as well by *liyāṭ* is meant *ribā* which the people of Jāhilīya used to collect. Allāh forced them to take their principal and leave the extra.[1115]

AL-ZUBAYDĪ, quoting linguist ZAJJĀJ

***Ribā* as Excess:**
Every loan from which an excess is drawn is *ribā*.[1116]

PATRAS BASTAMI

Definition:
Ribā (root *r.b.w.)* as "*raba, yarbu,* multiply, increase, swell, expand as in Q. 22:5; excess such as surplus that comes to the surface like scum, as in Q.13:17; *rabiyun*, increased hold that overpowers, as in Q. 69:10; *arba*, more than the other, as in Q. 16:92."[1117]

AL-AZHARĪ

***Ribā* as Excess:**
Every loan from which an excess is drawn or a benefit obtained is *ribā*.[1118]

RĀGHIB AL-ISFAHĀNĪ

***Ribā* as Excess:**
Ribā is the excess on the principal.[1119]

JAWHARĪ (d. 393A.H.), and IBN MANẒR AFRĪQĪ (d. 711A.H.)

Ribā as manifestation of growth.[1120]

IBN FĀRIS

***Ribā* Definition Not Required:**
"*Ribā* in wealth *(māl)* is well-known".[1121]

P. T. HUGHES

Juridical Definition of *Ribā* as an excess in a homogenous exchange without a counter-value:
A term in Muslim law defined as an excess according to a legal standard of measurement or weight, in one or two homogenous articles opposed to each other in a contract of exchange, and in which such excess is stipulated as an obligatory condition on one of the parties without any return.[1122]

[1114] Ibn Manẓūr, *Lisān al-'Arab* (Beirut : Dār Ṣādir li al-Ṭaba'a wa al-Nashr, 1968), XIV, 304-7.
[1115] Ibn Manẓūr, *Lisān al-'Arab,* IX, 273.
[1116] Murtaḍa al-Zubaydi, *Tāj al-'Arūs* (Cairo: al-Maṭba'a al-Khairiyyah, 1306), X, 142-144.
[1117] Patras Bastami, *Muhit al-Muhit.*
[1118] Abū Manṣūr al-Azharī, *Tahdhīb al-Lugha,* ed., Ibrāhīm al-Ibyārī (Cairo: Dār al-Kātib al-'Arabī, 1967), XV, 473.
[1119] Rāghib al-Isfahānī, *al-Mufradāt fī Gharīb al-Qur'ān* (Cairo : Muṣṭafā al-Bābī al-Ḥalabī, 1961), 185-7.
[1120] *Al-Ṣaḥāḥ al-Jawharī* (Beirut, n.p.,1984), VI, 3349; *Lisān al-'Arab li'l-Afrīqī* (Beirut, n.d.), III, 4.
[1121] Ibn Fāris al-Qazwīnī, *Mujmal al-Lugha*, I, 417.
[1122] Hughes, *Dictionary of Islam,* 544.

***Arabic Ribā* as Hebrew term *neshekh*:**
The word *ribā* appears to have the same meaning as the Hebrew *neshekh,* which included gain, whether from the loan of money, or goods, or property of any kind. In the Mosaic Law, conditions of gain for the loan of money or goods were rigorously prohibited.[1123]

EDWARD LANE

***Ribā*, in its juridical meaning, as Slightest Addition:**
In *Sharī'a* it means an addition, however slight, over and above the principal.[1124]

***Ribā* as an Addition in a Particular Manner:**
Legally *ribā* signifies an *addition obtained in a particular manner* in buying, selling, lending or giving.

Kinds of *Ribā*:
Ribā has two kinds: unlawful (increase over principal in a loan) and lawful (gift with expectation of voluntary return gift).[1125]

HARITH SULAYMAN FARUQI

***Ribā* as 'Danism':**
Lexically, *ribā* also translates as 'danism'[1126] which means lending money on usury, and which is derived from the Greek word *Daneisma* meaning a loan.[1127] Danism has been translated into Arabic to mean "loans with *fāḥish* [excessive] *ribā*."[1128]

[1123] Hughes, *Dictionary of Islam*, 544.
[1124] Edward William Lane, *Arabic-English Lexicon* (London: William and Norgate, 1863).
[1125] Lane, *Lexicon.*
[1126] Harith Sulayman Faruqi, *Faruqi's Law Dictionary - Arabic English* (Tripoli: Libyan Publishing House, 1962).
[1127] E. Cobhan Brewer, *Dictionary of Phrase & Fable* (1898), 329-330.
[1128] Faruqi, *Faruqi's Law Dictionary - Arabic English.*

Appendix 3

QUR'ĀNIC *RIBĀ* EXPOSITIONS

The *Qur'ānic* usage of derivatives from the root *r. b. w.* conveys at least six different shades of meaning:

(1) to grow:

وَتَرَى الْأَرْضَ هَامِدَةً فَإِذَا أَنزَلْنَا عَلَيْهَا الْمَاء اهْتَزَّتْ وَرَبَتْ وَأَنبَتَتْ مِن كُلِّ زَوْجٍ بَهِيجٍ

And thou beholdeth the earth barren, then when We send down water upon it, it quickens and grows ..." – Q. 22: 5

(2) to prosper; to increase:

يَمْحَقُ اللهُ الرِّبَا وَيُرْبِي الصَّدَقَاتِ

"God destroys *ribā*, but makes alms prosper" – Q. 2: 276

وَمَا آتَيْتُم مِّن رِّبًا لِّيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُو عِندَ اللَّهِ

"And what you invest in *ribā* so that it may increase upon the people's wealth, it increases not with God" – Q. 30: 39

(3) to rise (e.g. of a hill):

وَآوَيْنَاهُمَا إِلَى رَبْوَةٍ ذَاتِ قَرَارٍ وَمَعِينٍ

"And We gave them refuge upon a height" – Q. 23: 50

كَمَثَلِ جَنَّةٍ بِرَبْوَةٍ

"... As the likeness of a garden upon a hill" – Q. 2: 265

(4) to swell (e.g. foam):

فَاحْتَمَلَ السَّيْلُ زَبَدًا رَّابِيًا

"... Then the torrent carried a swelling scum ..." – Q. 13: 17

(5) to nurture; to raise (a child):

رَّبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيرًا

"Have mercy upon them as they raised me up when I was a child"– Q. 17: 24

قَالَ أَلَمْ نُرَبِّكَ فِينَا وَلِيدًا

"He said, did we not raise thee amongst us as a child?" – Q. 26:18

(6) augmentation, increase in power:

فَأَخَذَهُمْ أَخْذَةً رَّابِيَةً

"He seized them with a surpassing grip"– Q. 69: 10

أَن تَكُونَ أُمَّةٌ هِيَ أَرْبَى مِنْ أُمَّةٍ

"... That one nation be more powerful than another nation..." – Q. 16: 92

Appendix 4

QUR'ĀNIC *RIBĀ* PRESCRIPTIONS

The conventionally recognized *ribā* prohibitory verses of the Qur'ān, presented below, are spread over four chapters *(suwar; sing.: sūra)* of the Qur'ān. The conventional understanding is that a review of these verses, quoted by all exegetes and jurists, with minor differences of emphasis in interpretation, and translated below, indicates that chronologically the Qur'ānic prohibition of *ribā* came in what the conventional scholarship calls the four stages of revelation: Disapproval, Initial Prohibition, Reiteration of Prohibition, and Comprehensive/Final Prohibition.

Four Stages of Revelation:

- First Stage of Revelation: Disapproval

وَمَا آتَيْتُم مِّن رِّبًا لِّيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُو عِندَ اللَّهِ وَمَا آتَيْتُم مِّن زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْعِفُونَ

> That which ye lay out from *ribā* for increase through the property of (other) people, will have no increase with God: but that, which ye lay out from *zakāt*, seeking the countenance of God, (will increase): it is these who will get a recompense multiplied.
> – Q. 30:39 – (c.615 CE) [1129]

Conventional exegesis holds that *ribā* is declared to be deprived of God's blessing in this verse of *Sūrat al-Rūm* which is Meccan and believed to be chronologically the first in the *ribā*-prohibition process, having been revealed around 615 CE. Here *ribā* is regarded as simply disapproved, and not yet prohibited.

- Second Stage of Revelation : Initial Prohibition

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُّضَاعَفَةً وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ

> O, ye who believe devour not *al-ribā*, doubled and redoubled, and fear Allāh so that you may (really) prosper.
> – Q. 3:130 – (c.625 CE) [1130]

Ribā is unequivocally prohibited for the first time in this verse of *Sūrat Āl 'Imran* which is Medinan and believed to be chronologically the second in the *ribā*-prohibition process, having been revealed around 625 CE after the battle of *Uḥud*.

- Third Stage of Revelation: Reiteration of Prohibition

وَأَخْذِهِمُ الرِّبَا وَقَدْ نُهُوا عَنْهُ وَأَكْلِهِمْ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَأَعْتَدْنَا لِلْكَافِرِينَ مِنْهُمْ عَذَابًا أَلِيمًا

> And they took *al-ribā* though they were forbidden; and they devoured peoples wealth wrongfully. We have prepared for those among them who reject faith, a grievous punishment.
> – Q. 4:161 – (c. 626 CE)

Ribā is reiterated as a prohibited Jewish practice and declared grievously punishable in this verse of *Sūrat al-Nisā'* which is also Medinan and believed to be chronologically the third in the *ribā*-prohibition process, having been revealed around 626 CE. Prohibition and punishment though specifically for the Jews, apply to the Muslims as well, not directly but by implication.

- Fourth Stage of Revelation : Comprehensive/Final Prohibition

The following *Sūrat al-Baqara* verses, which are also Medinan, are believed to be chronologically the fourth

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[1129] Dating is based on the internal evidence of the Qur'ān. See Rahman, Riba, 3.
[1130] Dating based on report in Ibn Hishām, *al-Sīrat al-Nabawiyya*, II, 122-9.

set of verses in the *ribā* -prohibition process, having been revealed around 632 CE. These verses present a comprehensive and final prohibition of *ribā* and permission of *bay'*. Their late revelation before the death of the Prophet, not enabling him to expound them, has been commented upon by Caliph 'Umar in his tradition. Consequently he is reported to have advised the community, in the absence of Prophetic exposition, to shun both *ribā* (usury/interest) and *ribḥ* (profit).

الَّذِينَ يَأْكُلُونَ الرِّبَا لاَ يَقُومُونَ إِلاَّ كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ
وَحَرَّمَ الرِّبَا فَمَن جَاءهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَانتَهَى
فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُوْلَـئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

Those who devour *al-ribā* will not stand except as stands one whom the Satan by his touch hath driven to madness. That is because they say: "sale *[bay']* is like *ribā*, but Allāh hath permitted sale and forbidden *ribā*. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allāh to judge. But those who repeat (the offence) are companions of the Fire: they will abide therein for ever.
– Q. 2:275 – (c.632 CE)[1131]

يَمْحَقُ اللَّهُ الرِّبَا وَيُرْبِي الصَّدَقَاتِ وَاللَّهُ لاَ يُحِبُّ كُلَّ كَفَّارٍ أَثِيمٍ

Allāh deprives *al-ribā* of all blessing but blesses *al-ṣadaqāt* with growth, and Allah loveth not those who are ungrateful and wicked.
– Q. 2:276 – (c.632 CE) [1132]

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُم مُّؤْمِنِينَ

O, ye who believe! Fear Allāh and give up all outstanding *ribā* if ye are indeed believers.
– Q. 2:278 – (c.632 CE) [1133]

فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ وَإِن تُبْتُمْ فَلَكُمْ رُؤُوسُ أَمْوَالِكُمْ لاَ تَظْلِمُونَ وَلاَ تُظْلَمُونَ

If you do it not [not give up all outstanding *ribā*], take notice of war from Allāh and His Messenger. But if you repent, you shall have your capital sums; deal not unjustly, and ye shall not be dealt with unjustly.
– Q. 2:279 – (c.632 CE) [1134]

[1131] Dating based on reports in Ṭabarī's Commentary on the Qur'ān.
[1132] Ibid.
[1133] Ibid.
[1134] Ibid.

SUNNAIC *RIBĀ* PRESCRIPTIONS

Annulment of *Ribā al- Jāhilīya:*
Jābir ibn 'Abd Allāh, giving a report on the Prophet's Farewell Pilgrimage, said: The Prophet addressed the people and said" All of the *ribā* of Jāhilīya is annulled. The first *ribā* that I annul is our *ribā*, that accruing to 'Abbās ibn 'Abd al-Muṭṭalib [the Prophet's uncle]; it is being cancelled completely."[1135]

Universality of *Ribā* Prohibition:
Sha'biyī said that the Prophet wrote to the Christians of Najrān that whoever of you indulges in transactions with *ribā* would render void our protection for him.[1136]

Actual *Ribawī* Practices of Jews, Christians and Zoroastrians (Companion *ḥadīth):*
'Abd Allāh ibn 'Abbās advised people not to do business with Jews, Christians and Zoroastrians. Upon questioning why, he said that these people indulge in *ribawī* transactions and *ribā* is not permitted.[1137]

Gravity of the Sin of *Riba:*
Great Sin
Narrated Abu Ḥurayrah: The Prophet said, "Avoid the seven great destructive sins." The people enquired, "O Allāh's Messenger! What are they?" He said, "(1) To join others in worship along with Allāh (2) to practice sorcery (3) to kill the life which Allāh has forbidden except for a just cause (4) to eat up *ribā* (usury) (5) to eat up an orphan's wealth (6) to show one's back to the enemy and fleeing from the battlefield at the time of fighting (7) and to accuse chaste women who never even think of anything touching their chastity and are true believers"[1138]

Ribā* = *Shirk
'Abd Allāh Ibn Masūd has reported that the Prophet said: "*Ribā* has over seventy kinds and *shirk* (associating partners with Allāh) is like (as bad as) that." – Reported by al-Bazzār, with the same transmitters as those of the *Ṣaḥīḥ*, in Ibn Māja with sound *isnād*.[1139]

***Ribā* > Adultery**
From 'Abd Allāh ibn Ḥanẓalah: The Prophet said: "A dirham of *ribā* which a man receives knowingly is worse than committing adultery thirty-six times."[1140]

From 'Abd Allāh ibn Ḥanẓalah: The Prophet said: "A dirham of *ribā* which a man receives knowingly is worse than committing adultery thirty-six times. Hell befits him whose flesh has been nourished by the unlawful." Reported by Bayhaqī in *Shu'ab al-Īmān*.[1141]

***Ribā* = Incest with Own Mother**
From al-Mustadrak: The Prophet said, *"Ribā* is of seventy kinds, the least of which is as bad as marrying his own mother." [Incest][1142]

From Abū Hurayrah: The Prophet said: *"Ribā* has seventy segments, the least serious being equivalent to a man committing adultery with his own mother." [Incest][1143]

***Ribā* = Attack on Muslim Honor**
Reported by al-Barā'I bin 'Āzib that the Prophet said: *"Ribā* has seventy two kinds, the lowest *(adnā)* of which is man committing adultery with his mother, and the highest *(arbā)* is attacking the honor of a Muslim.

Denial of Temporal and Heavenly Blessings:
From Ibn Mas'ūd: The prophet said: "Even when *[ribā]* is much, it is bound to end up into paltriness."[1144]

[1135] *Ṣaḥīḥ Muslim, Kitāb al-Ḥajj, Bāb Ḥajjati al-Nabī*, also in *Musnad* Aḥmad.
[1136] Alā' al-Dīn 'Alī al-Muttaqī. *Kanz al-'Ummāl* (Hyderabad: Dā'ira al-Ma'rif, 1312), II, 234.
[1137] Ibid., II, 233.
[1138] *Ṣaḥīḥ al-Bukhārī*, IV, *Ḥadīth* no. 28.
[1139] *Muṣnaf 'Abd al-Razzāq*, VIII, 315; *Masnad al-Bazzār* with reference to *Kashf al-Asrār*, I, 64, chapter of *al-shirk, ḥadīth* no. 91; *Sunan Ibn Māja, Kitāb al-Tijārāt, Bāb al-taghlīẓl fī al-ribā, ḥadīth* no. 2275.
[1140] *Mishkāt al-Maṣābiḥ, Kitāb al-Buyū', Bāb al-ribā*, on the authority of Aḥmad and Dāraquṭnī.
[1141] Ibid.
[1142] *Mustadrak Ḥākim.*
[1143] Ibn Māja, *Kitāb al-Tijārāt, Bāb al-taghlīẓl fī al-ribā.*
[1144] Ibid. ; also in *Musnad* Aḥmad.

From Abū Hurayrah: The Prophet said: "God would be justified in not allowing four persons to enter paradise or to taste its blessings: he who drinks habitually, he who takes *ribā*, he who usurps an orphan's property without right, and he who is undutiful to his parents."[1145]

Graphic Punishment:
Reported by 'Ubādah ibn al-Ṣāmit that the Prophet said: "By him in whose authority my life is, some of my followers would spend their night in a state of pride, a false sense of greatness and self-conceit and in sport and pastime. In the morning they will be turned into monkeys and swine. This will befall them because they considered legitimate something which was prohibited, employed women to sing, consumed liquor, devoured *ribā* and wore fabrics made of silk".

Narrated by Samura bin Jandab: The Prophet said: "Tonight I dreamed that two persons came to me and took me to a sacred land until such time that we reached a canal full of blood. A person who was standing in the middle of the canal approached the end. As he attempted to get out of it, the person already standing at the end hit him with a stone so that he was again pushed back to the middle. This was repeated every time the person in the middle wanted to come out of the canal. The Prophet was asked by his companions who the person in the middle was? He said he was one who devoured *ribā*.[1146]

From Abū Hurayrah: The Prophet said: "On the night of Ascension I came upon people whose stomachs were like houses with snakes visible from the outside. I asked Gabriel who they were. He replied that they were people who had received *ribā*."[1147]

From Abū Hurayrah: The Prophet said that when he reached the seventh stage of the heavens on the night of *Ma'rāj* (ascension) and looked overhead, he saw lightning and heard thunder. He then said that I passed on a people whose stomachs were large as if they were houses and they were full of snakes. I asked Gabriel as to who are these people. He said that these are the ones who devour *ribā*..[1148]

***Ribā* Punishment = Lūṭ and 'Ād Punishment:**
Reported by Abū 'Umāma that the Prophet said: "A group of people from my followers would spend their night eating, drinking and engaged in sport and pastime. Their condition in the morning would be that their faces would be looking like that of monkeys and pigs. Some of the people from among them would be affected and buried due to landslides or would be hit by stones falling from the sky. So much so that when people wake up in the morning, they would say that last night such and such family has been buried due to landslide and such and such houses were buried due to landslide. They will have stones showered on them from the sky like these were showered on the people of Lūṭ. Their localities and their houses and their persons will experience windstorms like the ones which annihilated the people of 'Ād. Landslides and showering of stones would be due to their consumption of liquor, wearing of silk, devouring of *ribā*, breaking of relations and due to another trait which the person who has reported this tradition forgot.[1149]

***Ribā* Punishment = Pharaoh Punishment:**
al-Asbahānī has recorded on the authority of Abū Sa'īd al-Khudri that on the night of *Ma'rāj* (ascension), the Prophet saw some people on the heaven of the world whose stomachs were inflated like they were the rooms of a building, and these people could not stand upright. They were lying one upon another on the path which Pharaoh and his men are made to walk every day in the mornings and evenings leading to Hell. The people lying over one another are subjected to stampede by Pharaoh and his men. They pray that the day judgment may never come. This is because they know that on this day they will be sent into Hell. The Prophet said, I asked Gabriel who are these people. He said these are those who devoured *ribā* from amongst your followers. They will not stand except like one whom Satan has maddened by his touch.

[1145] *Mustadrak al-Ḥākim, Kitāb al-Buyū'.*
[1146] Reported by *Bukhārī.*
[1147] Ibn Māja, *Kitāb al-Tijārāt, Bāb al-taghlīẓI fī al-ribā, ḥadīth* no.2273 ; also in *Musnad* Aḥmad.
[1148] Ibid.
[1149] Reported by Imām Aḥmed.

Temporal Curse for *Ribā* Indulgence:
Ibn 'Abbās reported that the Prophet instructed not to sell any edible fruits before they are fully ripe. He also said that when *ribā* and adultery come in vogue in any society then it is like that they have invited Allāh's wrath on themselves.[1150]
Reported by 'Amr bin al-'Āṣ that he heard the Prophet say: "If *ribā* becomes common in a people, they surely start facing draught and food scarcity. And when bribery becomes common in a people, they live under constant fear of their enemy.[1151]

Eschatological Implications of *Ribā*:
Narrated by 'Abd Allāh Ibn Mas'ūd on the authority of the Prophet that he said: "as the Day of Judgment comes closer, *ribā*, adultery and consumption of liquor will become very common".

Condemnation of and Curse on *Ribā* Practice (both taking and giving):
Narrated Abu Juhayfa that he had bought a slave whose profession was cupping and he said: The Prophet forbade taking the price of blood and the price of a dog and the earning of a prostitute, and cursed the one who took or gave *ribā* (usury), and the lady who tattooed others or got herself tattooed, and the picture-maker [artist].[1152]

Condemnation of All Participants of *Ribā* Transaction:
From Jābir, who said: "The Messenger of Allāh has cursed one who charges *ribā*, he who gives it, one who records it, and the two witnesses; and he said, 'They are all equal.'" [1153]

***Ribawī*- Commodities *Aḥādīth*:**
From 'Ubādah ibn aṣ-Ṣāmit, who said, "The Messenger of Allāh said, 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, in equal weights, from hand to hand. If these species differ, then, sell as you like, as long as it is from hand to hand.' " [1154]

"The Messenger of Allāh said, 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, from hand to hand. He who gives in excess or acquires an excess has charged *ribā*.; the person giving and acquiring have the same liability [guilt] in this." [1155]

From Abū Sa'īd al-Khudrī, who said: "The Messenger of Allāh said, 'Do not sell gold for gold, except when it is like for like, and do not misappropriate one through the other; and do not sell silver for silver except when it is like for like, and do not misappropriate one through the other; and do not sell things absent for those that are present" Agreed upon by both al-Bukhārī and Muslim. [1156]

From Abū Hurayrah, who said: "The Messenger of Allāh said, 'Gold for gold, weight for weight, like for like. Silver for silver, weight for weight, like for like. If one gives in excess or acquires an excess, it is *ribā*.' " Reported by Muslim.[1157]

'Abd al-Raḥmān ibn Abī Bakrah from his father, who said: "The Prophet proscribed the sale of silver for silver, gold for gold, except equal for equal, and he ordered us to sell gold for silver as we liked, and silver for gold as we liked."

Ma'mar ibn 'Abd Allāh said, "I used to hear the Messenger of Allāh say, 'Food for food, like for like,' and our food in those days was barley."

From Faḍālah ibn 'Ubayd al-Anṣārī who said, "On the day of (the conquest of) Khaybar, I bought a gold necklace with gems in it for twelve *dīnārs*. On separating them I found that the gold itself was worth more than twelve *dīnārs*. I mentioned this to the Prophet and he said, 'It [jewellery] is not to be sold unless it is separated.'" [1158]

[1150] Reported by al-Ḥakīm.
[1151] *al-Fatḥ al-Rabbānī li-tartīb Masnad Aḥmad al-Shaybānī*, XV, 70.
[1152] *Ṣaḥīḥ al-Bukhārī*, VII, *Ḥadīth* no. 845.
[1153] *Ṣaḥīḥ Muslim*, Kitāb al-Musāqāt, Bāb la'ni ākili al-ribā wa mu'kilihī; *and Ṣaḥīḥ al-Bukhārī*, similar tradition from Abū Juḥayfah; also in Tirmidhī and *Musnad* Aḥmad.
[1154] *Ṣaḥīḥ Muslim*, Kitāb al-Musāqat, Bāb al-alṣarfī wa bay'i al-dhahabi bi al-waraqi naqdan; also in Tirmidhī; al-Ṣan'ānī, *Subul al-Salām Sharḥ Bulūgh al-Marām*, III, 72.
[1155] *Ṣaḥīḥ Muslim, Kitāb al-Musāqat, Bāb al-alṣarfī wa bay'i al-dhahabi bi al-waraqi naqdan.*
[1156] Bukhārī, *Kitāb a-Buyū', Bāb bay'i al-fiḍḍati bi al-fiḍḍah* ; also Muslim, Tirmidhī, Nasā'ī and *Musnad* Aḥmad; Al-Ṣan'ānī, *Subul al-Salām Sharḥ Bulūgh al-Marām*, III, 71.
[1157] Al-Ṣan'ānī, *Subul al-Salām Sharḥ Bulūgh al-Marām*, III, 73.
[1158] *Ṣaḥīḥ Muslim, Kitāb al-Musāqāt, Bāb bay'i al-qilādah fīhā kharazun wa dhahab* ; also in Tirmidhi and Nasā'ī.

Barnī*-and Khaybar-dates *Aḥādīth:
Narrated Abu Sa'īd al-Khudrī: Once Bilāl brought *Barnī* (a superior kind of) dates to the Prophet and the Prophet asked him, "From where have you brought these?" Bilāl replied, "I had some inferior kind of dates and exchanged two *Ṣā's* of it for one *Ṣā'* of *Barnī-dates*, in order to give it to the Prophet to eat." Thereupon the Prophet said, "Beware! Beware! This is definitely *ribā* (usury)! This is definitely *ribā* (usury)! Don't do so, but if you want to buy (a superior kind of dates) sell the inferior kind of dates for money and then, buy the superior kind of dates with that money." [1159]

Abu Sa'īd al-Khudrī and Abū Hurayrah reported that the Messenger of Allāh appointed someone to collect revenue from Khaybar. He brought him dates of high quality *[janīb].* The Messenger of Allāh said, "Are all the dates of Khaybar like this?" He replied, "By Allāh, no. O Messenger of Allāh, we get a *ṣā'* of these in exchange for two *ṣā's* (of our dates) and two *ṣā's* in exchange for three. "The Messenger of Allāh said, "Do not do this, but sell the mixed dates for *dirhams*, and then buy the good quality dates *[janīb]* with the *dirhams.* "[1160]

Delay *(nasī'a)* = *Ribā:*
It is narrated by al-Zuhrī from Mālik ibn Aws that he heard 'Umar ibn Khaṭṭāb saying that the Messenger of Allāh said, "Gold for silver is *ribā,* except 'here you are,' and 'here you are' (from hand to hand), wheat for wheat is *ribā,* except 'here you are,' and 'here you are' (from hand to hand), dates for dates is *ribā,* except 'here you are,' and 'here you are' (from hand to hand), and barley for barley is *ribā,* except 'here you are,' and 'here you are' (from hand to hand)"[salt not mentioned].

From Mālik ibn Aws from ibn 'Umar that the Prophet said, "Wheat for wheat is *ribā,* except 'here you are,' and 'here you are' (from hand to hand), barley for barley is *ribā,* except 'here you are,' and 'here you are' (from hand to hand), and dates for dates is *ribā,* except 'here you are,' and 'here you are' (from hand to hand)"[salt not mentioned].

Samurah ibn Jundub reported that "the Prophet proscribed the sale of an animal for an animal with delay."

Tradition of Usāma:
From Abū Ṣāliḥ al-Zayyāt that he heard Abu Sa'īd al-Khudrī saying: 'A dīnār for a dīnār and a dirham for a dirham.'[He said] I said to him, 'Ibn 'Abbās does not uphold this view.' Abu Sa'īd said, "I asked him about it saying, 'Did you hear it from the Prophet or did you find it in the Book of Allāh?' He replied, 'All this I do not claim, and you know more than me from the Messenger of Allāh, but I was informed by 'Usāmah ibn Zayd that the Prophet said, 'There is no *ribā*, except in *nasī'a*.'[1161]

Other Versions:
"Verily, *ribā* is in *nasī'a.* "[1162]

"There is no *ribā* in what is from hand to hand."[1163]

Tradition of al-Barrā' ibn 'Āzib and Zayd ibn Arqam:
First Version:
al-Bukhārī records the tradition of Ibn Jurayj from 'Amr ibn Dīnār and 'Āmir ibn Muṣ'ab from Abū al-Minhāl, who said: "I asked al-Barrā' ibn 'Āzib and Zayd ibn Arqam about *ṣarf* [transaction in metals with currency value or in currencies] and both said, 'We used to trade during the period of the Messenger of Allāh, so we asked the Messenger of Allāh about *ṣarf,* and he said, "If it is from hand to hand there is no harm, but if it is with a delay, then, it is not proper.'"

Second Version:
On the authority of Muḥammad ibn Ḥātim, on the authority of Sufyān ibn Uyaynah, on the authority of 'Amr ibn Dīnār, on the authority of Abū al-Minhāl, who said: Shurayḥ sold silver to me with a delay up to the pilgrimage *(mawsim)* or up to the *ḥajj.* He came to me and informed me, and I said to him, 'This matter is improper.' He said, 'I

[1159] *Ṣaḥīḥ Bukhārī,* III, *Ḥadīth* no. 506; Muslim, *Ṣaḥīḥ. Kitāb al-Musāqat, Bāb al-ṭa'āmi mithlan bi mithlin,* III, 48; also *Musnad* Aḥmad.
[1160] Bukhārī, *Kitāb al-Buyū', Bāb idhā arāda bay'a tamrin bi tamrin khayrun minhu*; also Muslim and Nasā'ī.
[1161] *Ṣaḥīḥ Bukhārī, Kitāb al-Buyū', Bāb Bay' al-dīnāri bi al-dīnār nasa'an;* also *Ṣaḥīḥ Muslim* and *Musnad* Aḥmad.
[1162] Ibid., II, 138.
[1163] *Ṣaḥīḥ Muslim, Kitāb al-Musāqāt, Bāb bay'i al-ṭa'āmi mithlan bi mithlin*; also in Nasā'ī.

sold it in the market and no one objected to my act.' I then went up to al-Barrā' ibn 'Āzib and asked him. He said, "The Prophet came to Madīnah and we used to engage in this transaction, so he said, 'There is no harm in what is from hand to hand, but that which is with a delay amounts to *ribā*..' Go to Zayd ibn Arqam, who is a bigger trader than I." I went up to him and asked him, and he said the same thing to me.

Indirect Incidence of *Ribā*:

Amīr al-Mūminīn 'Alī has reported the Prophet to have said: "Every loan which brings a benefit is *ribā* ".[1164]

On the authority of Anas ibn Mālik: The Prophet said: "When one of you grants a loan and the borrower offers him a dish, he should not accept it; and if the borrower offers a ride on an animal, he should not ride, unless the two of them have been previously accustomed to exchanging such favours mutually." [1165]

On the authority of Anas ibn Mālik: The Prophet said: "If a man extends a loan to someone he should not accept a gift."[1166]

On the authority of Abū Burdah ibn Abī Mūsā: I came to Madinah and met 'Abd Allāh ibn Salām who said: "You live in a country where *ribā* is rampant; hence if anyone owes you something and presents you with a load of hay, or a load of barley, or a rope of straw, do not accept it for it is *ribā*."[1167]

Faḍālah ibn 'Ubayd said that "The benefit derived from any loan is one of the different aspects of *ribā* ".[1168]

(This *ḥadīth* is regarded as *mawqūf* which means it is discontinued, implying that it is not necessarily from the Prophet; it could be an explanation provided by Faḍālah himself, a Companion of the Prophet.[1169])

On the authority of Abū Umāmah: The Prophet said: "Whoever makes a recommendation for his brother and accepts a gift offered by him has entered *ribā* through one of its large gates." [1170]

On the authority of Anas ibn Mālik: The Prophet said: "Deceiving a *mustarsal* [an uninformed entrant into the market] is *ribā*." [1171]

On the authority of 'Abd Allāh ibn Abī Awfa: The Prophet said: "A *nājish* [one who serves as an agent to bid up the price in an auction] is a cursed taker of *ribā*."[1172]

Universal Spread of *Ribā*:

From Abū Hurayrah: The Prophet said: "There will certainly come a time for mankind when everyone will take *ribā*, and if he does not do so, its dust will reach him."[1173]

Companion *Aḥādīth* on the Ambiguity of *Ribā* Provisions:

On the authority of 'Umar ibn al-Khaṭṭāb who said in a sermon: "Do you think that we do not know categories of *ribā*. No doubt if I could know them, I would love it better than my acquiring Egypt and its adjoining areas. In fact there are categories of *ribā* which are not hidden from anyone. Among them is deferred sale of animals, sale of fruits before they ripen, and exchange of gold with silver with deferred settlement."[1174]

[1164] Ibn Ḥajar, *al-Muṭālib al-'Āliyya* (Beirut: n.p., n.d.), I, 411, *Ḥadīth* no. 1373; 'Alī Mutaqqī, *Kunz al-'amāl*, VI, 238, *Ḥadīth* no. 15516; Suyūṭī, *al-Jāmi' al-Saghīr*, II, 94.

[1165] *Sunan al-Bayhaqī, Kitāb al-Buyū', Bāb kulli qadrin jarra manfa'atan fa huwa riban.*

[1166] *Mishkāt al-Maṣābiḥ, Kitāb al-Buyū', Bāb al-ribā*, on the authority of Bukhārī's *Tārīkh* and Ibn Taymiyyah's *al-Muntaqā*.

[1167] *Mishkāt al-Maṣābiḥ, Kitāb al-Buyū', Bāb al-ribā*, on the authority of Bukhārī.

[1168] *Sunan al-Bayhaqī, Kitāb al-Buyū', Bāb kulli qadrin jarra manfa'atan fa huwa riban.*

[1169] M. Umer Chapra, *Towards a Just Monetary System* (Leicester: The Islamic Foundation, 1986), 238.

[1170] *Bulūgh al-Marām, Kitāb al-Buyū', Bāb al-ribā*, reported on the authority of Aḥmad and Abū Dāwūd.

[1171] Suyūṭī, *al-Jāmi' al-Saghīr*, s.v. *ghabn;* Muttaqī, *Kanz al-'Ummāl, Kitāb al-Buyū', al-Bāb al-thānī, al-faṣl al-thānī*, on the authority of *Sunan al-Bayhaqī*.

[1172] Cited by Ibn Ḥajar al-'Asqalanī in his commentary on al-Bukhārī called *Fatḥ al-Bārī, Kitāb al-Buyū', Bāb al-najsh* ; also in Suyūṭī, *al-Jāmi' al-Saghīr*, s.v. *al-nājish* and Muttaqī, *Kanz al-'Ummāl, Kitāb al-Buyū', al-Bāb al-thānī, al-faṣl al-thānī*, both on the authority of Ṭabarānī's *al-Kabīr*.

[1173] Abū Dāwūd, *Kitāb al-Buyū', Bāb fī ijtināb al-shubuhāt* ; also in Ibn Māja.

[1174] Muttaqī, *Kanz ul-'amāl*, II, 232.

On the authority of 'Umar ibn al-Khaṭṭāb who said: "Three issues are such where I wish the Prophet had explained them to us. Included among these are inheritance, *kilāla*, and certain categories of *ribā*."[1175] (*Khilāfat* and *Kalālat* according to Yusuf Ali).[1176]

Sha'biyī has reported that 'Umar b. Khaṭṭāb said: "We have given up ninety percent of legitimate *(ḥalāl)* transactions for fear of *ribā*."[1177]

On the authority of 'Umar ibn al-Khaṭṭāb: "The last verse to be revealed was on *ribā*. And the Prophet was taken without explaining it to us; so give up not only *ribā* but also *rība* (doubt)."[1178]

[1175] Reported by Ibn Kathīr and Ibn Māja.
[1176] Yusuf Ali, *Holy Qur'ān*, n. 324, 111.
[1177] Muttaqī, *Kanz ul-'amāl*, II, 231.
[1178] Ibn Māja, *Kitāb al-Tijārāt, Bāb al-taghlīẓ fī al-ribā.*

Appendix 6

RIBĀ IN *SĪRA / TĀRIKH* WORKS

***SĪRAT RASŪL ALLĀH* by IBN ISḤĀQ (d. 150/767)**

It contains some purely exegetical sections (e.g. *Sīra* III, 112-28 on Q. 3:121-179). This exegesis confines itself to a kind of lexical paraphrase found in the early commentaries.[1179]

PACTS/LETTERS OF THE PROPHET WITH/TO VARIOUS TRIBES

Pact of the Prophet with Juhayna Tribe:

It stipulates "...As regards pawned property, of the payable loans only the amount of the principal shall be payable, after (debtor's) conversion to Islam. *Ribā* on the pawned amount shall stand cancelled ..."[1180]

Pact of the Prophet with Christians of Najrān:

It stipulates "(9) Whoever from the people of Najrān takes *ribā* after the conclusion of the pact, shall be excluded from my assurance."[1181]

Pact of the Prophet with Thaqīf (Ṭā'if):

It stipulates "(8) Whatever debt of the people of Ṭā'if may be due for payment on a pawned article and whatever debt on a pawned article may be payable till after the 'Ukāz season, should be paid by 'Ukāz. Allāh has no responsibility regarding *ribā*. ... (18) No *ribā* shall be charged on the pawned articles. If they are in a position to pay the amount of the pawn, they should pay it. If they are not able to pay immediately, they should pay up to the *Jamādī al-'ūlā* of the next year. And one whose time is up and does not pay, he has no doubt turned it into a *ribā* transaction. (19) If the people of Thaqīf are in debt, the amount of principal only shall be paid to the creditor."[1182]

Letter of the Prophet to 'Amr Ibn M'abad al-Juhanī:

It states "... whoever from amongst the Muslims, whom payment of a debt is due from somebody, shall receive the amount of the principal only and *ribā* on the pawned amount shall not be admissible."[1183]

[1179] Versteegh, *Arabic Grammar and Qur'ānic Exegesis*, 71.
[1180] Ibn Sa'd, *Kitāb al-Ṭabaqāt al-Kabīr*, III, 24-25, 27, trans. Sultan Ahmad Qureshi, *Letters of the Holy Prophet*, (Lahore: Muslim Educational Trust, n.d.), 43.
[1181] Aḥmad ibn Yaḥya Balādhurī, *Futūḥ al-Buldān*, I, 64-65, as translated in Sultan Ahmad Qureshi, *Letters of the Holy Prophet*, (Lahore: Muslim Educational Trust, n.d.), 50.
[1182] Abū 'Ubayd, *Kitāb al-Amwāl*, 19, 92, as translated in Sultan Ahmad Qureshi, *Letters of the Holy Prophet*, (Lahore: Muslim Educational Trust, n.d.), 53.
[1183] Ibn Sa'd, *Kitāb al-Ṭabaqāt al-Kabīr*, III, 24-25, in Qureshi, *Letters of the Holy Prophet*, 118.

MUSLIM *TAFSĪR* ON *RIBĀ AND BAY'*

PROPHETIC *TAFSĪR*

See *aḥādīth* in Appendix 5.

NARRATIVE *TAFSĪR*

Representative Excerpts:

MUJĀHID (d. 104/722)

Doubling and Redoubling *Ribā:*
Muḥammad b. 'Amr reported to us, he said that Abū 'Āṣim related to him from 'Īsā, he from Ibn Abū Najīḥ, who said that concerning the Qur'ānic verse 'O you who believe, do not devour *ribā with continued redoubling'*, *Mujāhid* said, 'This is the *ribā* of Jāhilīya'.[1184]

ḌAḤḤĀK (d. 105/724)

Contextual Commercial *Ribā* in Buying (Q. 2:278):
Ribā with which buying was done in the Jāhilīya [1185]

QATĀDA (d. 117/735

Contextual Expansion of Ḍaḥḥāk Definition:
The *ribā* of the Jāhilīya consisted in one person selling to another and fixing a time for price settlement. Upon maturity, upon inability of buyer to settle, the seller extended the time limit for an increase in payment due.[1186]

Comment on Q. 2:279:
In this verse Allāh has given the threat of murder for the indulgers in *ribā.*

SUDDĪ (d. 127/745), a Qur'ānic scholar

***Sabab al-nuzūl* as Explanation for Q. 2:278:**
This verse was revealed in the context of 'Abbās b. 'Abd al-Muṭṭalib and a member of Banī Mughīra who, in the Jāhilīya, were partners and had advanced interest-bearing loans to Banī 'Umru of Thaqīf. When Islam came, substantial amount of their capital was employed on interest.[1187]

ZAYD b. ASLAM (d. 130/747)

Doubling and Redoubling *Ribā:*
The *ribā* of the Jāhilīya consisted in its doubling and redoubling (*al-taḍ'īf*) in terms of cash in case of borrowed money] and in age *(al-sin)* [first-ever reference to borrowed cattle].[1188]

AL-ṬABARĪ (d. 310/923), Exegete and Historian

Historical Perception of *Ribā* Conforming to *Ribā al-Jāhilīya:*
Prohibited was *ribā* which means the excess which accrues to the owner of the capital due to extension of the maturity and deferral of payment for the debtor.

Comment on Q. 2:275:
Ṭabarī interprets 'the touch of Satan' in this verse as madness.[1189] According to Ayoub, this interpretation is accepted by all commentators and lexicographers.[1190]

[1184] Ṭabarī, *Tafsīr* (Cairo : n.p., 1374 A.H.), VII, 204.
[1185] Ibn Jarīr, III, 71.
[1186] Ibid., III, 67.
[1187] Ibid., III, 71.
[1188] Report recorded by al-Ṭabari
[1189] al-Ṭabarī, *Jāmi'*, VI, 8-12.
[1190] Mahmoud M. Ayoub, *The Qur'ān and its Interpreters,* 2 vols. (Albany: State University of New York Press, 1984), I, 273.

AL-ZAMAKHSHARĪ (d. 528/1144), Persian-Arab Exegete

Mu'tazalite Commentary But No Analytical Insights on *Ribā* Beyond Semantics.

Alleged Analogical Equivalence of *Ribā* and *Bay'* and its Nullification by an Explicit Statement *(Naṣṣ)*, Without Defining Their Distinction:

Shall not rise again: when they are awakened out of their graves. *Except as one arises whom Satan has prostrated*: that is, (as one) who is cast down to the ground. ... *That is* the punishment *because they have said*: *Bargaining is the same as interest* [*sic*]. One may now ask: Why is it not said that interest and bargaining are just the same (reversing the order of bargaining and interest), since (in the present context) the discussion is about interest and not about bargaining? It should have been said that those who charge interest liken it to bargaining and thus regard interest as permissible. Their (misleading) argument apparently consists in saying that: If someone were to purchase for two dirhams something that is worth only one dirham, then that would be permissible. It is the same if one sells one dirham for two. To this I reply: This is a kind of exaggeration *(mubālagha)*, namely, in the direction that, in their firm belief that interest is justifiable, they have reached such a stage that they charge interest as the basis (*aṣl*) and standard of what is allowable, in order to liken it to bargaining. *Even though God has permitted bargaining but has forbidden interest*: Through these words of God it is denied that they may be treated as the same, and it is shown that a conclusion from analogy *(qiyās)* (as is represented by the apparent argument of those who charge interest) is nullified through an explicit statement (*naṣṣ*). For these words of God show that their conclusion from analogy concerning what is permitted and what is prohibited by God is invalid. ...[1191]

IBN KATHĪR (d. 774/1373)

Classical/Medieval Methodological Tradition of *Tafsīr* of the Qur'ān by the Qur'ān and by the *Ḥadīth (tafsīr bil-ma'thūr:* interpretation by tradition), Discouraging Search for *Ḥikma:*

Allāh's saying : "That is because they say: 'Trading is only like *Ribā*', whereas Allāh has permitted trading and forbidden *Ribā*," meaning: they have made *Ribā* lawful and opposed Allāh's sharī'ah laws. And, "whereas Allāh has permitted trading and forbidden *Ribā*" is probably a perfect answer to their claim and their opposition to Allāh's law, even though they know that Allāh has legally distinguished between trade and usury. He is All-Knower, All-Wise, no one can reverse His Judgment, and <u>*He cannot be questioned about His acts*</u>, but they will be questioned about theirs. He knows the true nature of things and what is useful for His slaves, and He guides them to it; He also forbids them what is harmful to them ...[1192][italics and underlining mine]

Difficulty of Understanding *Ribā:*

As cited by Mahmoud Ayoub, Ibn Kathīr[1193] observes "that the problem of understanding usury and what may lead to it has been one of the most difficult problems for jurists. He cites a statement of 'Umar ibn al-Khaṭṭāb, who said 'There are three things concerning which I wish the Apostle of God had left us a clear injunction to follow.' Among these were the problems of usury."[1194]

LEGAL *TAFSĪR*

ABŪ L-ḤASAN MUQĀTIL IBN SULAYMĀN AL-BALKHĪ (d. 150/767)

Following the requirements of the genre deals with, among others, the legal topic of *ribā* as a separate category. But the text of the *tafsīr* follows the narrative genre in line with the classical/medieval tradition, explaining *ribā* prohibitory verses are explained with the help of each other in the context of the Jāhilīya financial practice.[1195] This exegesis offers no clues to the *'illa* and *ḥikma* of the prohibition.

[1191] Jār Allāh Abī al-Qāsim Maḥmūd ibn 'Umar al-Zamakhsharī, *al-Kashshāf 'an Ḥaqā'iq Ghawāmiḍ al-Tanzīl wa buyūn al-aqāwīl fī wujūh al-tāwīl* (Riyadh: Maktabāt al-'Ubaykān, 1998), I, 319-323, as translated in Helmut Gätje, *The Qur'ān And Its Exegesis*, translated and edited by Alford T. Welch (Oxford: One World Publications, 1996; Reprint 2000), 193-194.

[1192] Ibn Kathīr, *Tafsīr*, abridged by Sheikh Muḥammad Nasīb ar-Rafā'ī (London: al-Firdous Ltd., 1999), 74-75.

[1193] 'Imād al-Dīn Abī al-Fida' Ismā'īl Ibn Kathīr al-Qurayshī al-Dimashqī, *Tafsīr al-Qur'ān al-'Aẓīm*, 7 vols. (Beirut: Dār al-Fikr, 1389/1970), I, 581.

[1194] Ayoub, *Qur'ān and its Interpreters*, I, 272.

[1195] Muqātil b. Sulaymān, *Kitāb Tafsīr al-Khams Mi'at Āya min al-Qur'ān*, 139-140.

TEXTUAL *TAFSĪR* (Dealing with variant readings and grammatical analysis)

ABŪ ZAKARIYYĀ' YAḤYĀ b. ZIYĀD AL-FARRĀ'(d. 207/822)

Comment only on the *Sūrat al-Baqara* and *Sūrat al-Rūm* Verses on *Ribā:*
Contrary to the genre, comments on Q. 2:275 and 2:278 offer a contextual (tribal practice) and *sabab nuzūl* (occasion of revelation) explanation, without any variant reading and grammatical analysis. However, conforming to the genre, comments on Q. 30:39 give both variant readings of one word: ('Āṣim, A'mash and Yaḥya b. Waththāb: *liyarbuwa;* vs. Ahl al-Ḥijāz: *litarbuwa,* both of which he regards as correct) and limited grammatical variation therefrom which at any rate does not contribute to analytical enterprise.[1196]

ALLEGORICAL *TAFSĪR*

MUḤYĪ AL-DĪN IBN 'ARABĪ (d. 638/1240), Andalusian Ṣūfī

In his *Tafsīr Ibn al-'Arabī*, the most widely known Ṣūfī *tafsīr, Ibn al-'Arabī*, offers a conventional exposition of *ribā* without any allegorical meaning.

CONTEMPORARY *TAFSĪR*

QAZI SANAULLAH PANIPATI, Indian exegete:

The dictionary meaning of *ribā* is increase or excess. That is why the Qur'ān says that Allāh increases charity which means that Allāh has forbidden taking back any excess over the amount lent.[1197]

DR. ISRAR AHMAD, Contemporary Pakistani Popular Exegete

Deals with *ribā* mainly in its economic connotation and, dilates considerably on the *ribā*-incest equivalence *ḥadīth,* but explains it in the context of social evil.[1198]

SIR SAYYID AHMAD KHAN, 19th century Indian Educator, Scholar and Exegete

Opinion:
The *ribawī* commodities *ḥadīth* deals with the issue of void sales and this does not enter into the exegesis of that *ribā* which is mentioned in the *ribā* prohibitory verse of *Sūrat al-Baqara* [Q. 2:275 ff].[1199]

ABUL KALAM AZAD (d. 1958), 20th century Indian Political Activist, Scholar and Exegete

No Definition/Analysis of *Ribā* in magnum opus, *Tarjumān al- Qur'ān,*[1200] an explanatory translation of the Qur'ān,

Comments/Translation of Q. 2:275-276:
Ribā mentioned in *Sūrat al-Baqara* is that *ribā* which is taken from a person in need [alluding to exploitation as the prohibition rationale].

Conventional Moral and Economic Approach:
Ribā equates to lack of fellow-feeling, selfishness, exploitation, tyranny, and concentration of wealth in a few hands.

Conventional Contextual Approach:
The greedy behavior of some Muslims in the matter of booty at the Battle of Uḥad was the *sabab nuzūl* of Q. 3:130 which prohibits the doubling and re-doubling *ribā* for believers

Further Unsupported Claim:
Q. 2:275-276 "dwells on the evils of usury."

Novel Medical Approach:
He renders "*yatakhabbaṭuhu ash-shayṭānu min al-massi*", in Q. 2:275, as *epilepsy* "which the superstitious Arabs regarded as the touch of Satan."

[1196] Abū Zakariyyā' Yaḥyā ibn Ziyād al-Farrā', *Ma'ānī al-Qur'ān.* ed. by Muḥammad 'Alī an-Najjār . 3 vols. (Cairo: ad-Dār al-Miṣriyya, 1955-72), 182.
[1197] Qazi Sanaullah Panipati, *Tafsīr Maẓharī.* (Dihlī: Idārat Ishā'at al-'Ulūm li-Nadwat al-Muṣannifīn, 195-?)
[1198] Israr Ahmad, *Islām kā Ma'āshī Niẓām.* [in Urdu] (Lahore: Markazi Anjuman Khuddam al-Qurān, 1985), 22.
[1199] Sir Sayyid Ahmad Khan, *Tafsīr Qur'ān* (Patna: Khuda Bakhsh Oriental Public Library, 1995), 237.
[1200] Abul Kalam Azad, *The Tarjumān al-Qur'ān.* ed. and rendered into English by Dr. Syed Abdul Latif. 2 vols. (Bombay; Calcutta; New Delhi; Madras; Lucknow; London; New York: Asia Publishing House, 1965), II, 131 ff.

Criticism of Medieval and Contemporary Exegetes:
Medieval and contemporary exegetes have missed the exact message and plain simplicity of the Qur'ān for centuries due to their intellectual environment which bred "a gradual decadence in the quality of the Muslim mind. ...When the commentators found that they could not rise to the heights of the Qur'ānic thought, they strove to bring it down to the level of their own mind."[1201]

AHMED ALI, 20th century Pakistani Translator and Commentator

Quotation from *Taj al-'Urus* by Murtaḍa az-Zabidi (d.1205 H) and from *Muhit al-Muhit* by Patras Bastami, a definition of *ribā* (root *r.b.w.)* as "*raba, yarbu,* multiply, increase, swell, expand (beyond the natural or original size), as in [Q.] 22:5; excess such as surplus that comes to the surface like scum, as in [Q.] 13:17; *rabiyun*, increased hold that overpowers, as in [Q.] 69:10; *arba,* more than the other, as in [Q.] 16:92."

Further Explanation:
All this points to *unnatural or artificial increase*. It is first mentioned in a Makki *sura*, 30:39, as lending money at interest to increase one's capital through others' wealth; and is explained at 2: 275 as the opposite of trade, and at 3:130 as doubling and redoubling. By suffocating a person's freedom of action and independence – another meaning of *riba* being *asthma* – it results in oppression, and is condemned in strongest possible terms and forbidden. Since other possibilities of exploitative manipulations of people's needs and constraints exist, the word acquired a special significance in the Quranic order, so that its conceptual ramifications extend to other forms of lending and borrowing, even such lending ten pounds of grain and demanding eleven on return. But today, in the clash of Islamic thought and Western practice, the word has become a subject of polemics, mainly through corruption in the process of translation. The Arabic of the Qur'an is pre-Quranic in its etymological and historical perspectives, and the sense of many words is altered when rendered in terms of modern Arabic. The same is true of the Bible where 'usury', the exact equivalent of *riba* in English, had originally, and formerly, meant "interest of any kind on money lent," has been changed, by accident or design, to mean "iniquitous or illegal interest on a loan," (Chambers 1901 edn.), and 'usurer' has been changed from its original Biblical sense of "money-lender for interest;" and altered in modern (American) versions of the Bible including that of King James Version of 1611 to "money-changer" as in Mark: 11:15; or to "exchangers", as in Matthews: 25:27.[1202][italics mine].

ALTAF GAUHAR, 20th century Pakistani Translator and Commentator

Conventional Definition of *Ribā:*
The increase or excess pertaining to loans, with the "correct English equivalent" as usury.

Traditional Prohibition Rationales: Economic, social and moral standpoints.

Distinction between 'Usury' and 'Interest':
Originally the word usury meant 'the fact or practice of lending money on interest'. It came to mean in later use, 'the practice of charging, taking, or contracting to receive, excessive or illegal rates of interest for money upon loan'. "The crime of usury, before Reformation, consisted in the taking of any interest for the use of money; and now in taking higher rate of interest than is authorized by law." Bentham defined usury as: "I know of but two definitions that can possibly be given of usury: one is, the taking of a greater interest than the law allows of ... the other is the taking of a greater interest than it is usual for men to give and take." It is clear from this that where money is loaned on interest, it amounts to usury in the original sense of the word. Subsequently laws were enacted specifying the limit within which usury was tolerated. This legal or customary limit of tolerance came to be known as interest. In the Encyclopaedia Britannica usury is explained as "compensation for the use of money regardless of amount according to earlier English law ... The laws against usury are of ancient origin. Early laws of China and India prohibited usury. The Mosaic law limited the exaction of interest; the Roman law prescribed or regulated such charges. In England during the Middle Ages the practice of charging interest was maligned by the Church and outlawed by the State. But the credit requirements of modern commerce caused the removal of these restrictions in England and elsewhere." The exaction of oppressive interest is no longer illegal under the common law of England or the United States though debtors are protected from over-reaching lenders by the statute law.[1203]

[1201] Ibid., II. 2, ix-x.
[1202] Ahmed Ali, *al-Qur'ān*, 50.
[1203] Altaf Gauhar, *Translations from the Quran* (Lahore: Sang-e-Meel Publications, 1989), 128-129.

MUHAMMAD ZAFRULLA KHAN, Qādiyānī (Aḥmadiyya) 20th century Pakistani Diplomat, International Jurist and Translator of *The Qur'an*,[1204]

No exegesis in his work and his translation conforms to traditional renderings.

MOHAMMAD BĀQIR BEHBUDĪ, 20th century Shī'ite Qur'ānic Scholar

Seminal Work, *Ma'ni al-Qur'ān,* translated by Colin Turner and rendered as 'exegetically-led' reading i.e. a combination of translation and exegesis, posits the following innovative interpretations of the *ribā* prohibitory verses:

Q. 2:276 [275]:Those who accept usury, and resort to *sophistry* in order *to justify their wrong-doing*, shall not rise from their place in the *market* unless it be like a madman whom Satan has *rolled in the dust and the mud;* only them, *completely abased*, shall they rise. This *wretchedness* is on account of the fact that those who practice usury claim that usury is simply another form of trade. But God has allowed trade and forbidden usury. Those who have given or received usury, but who now heed the words of their Lord on this matter, they shall be forgiven for their *illicit transactions and dealings* in the past: their case is for God to deal with and no-one else. But whoever hears God's directives on this matter, yet persists in dealing in usury, he will abide in the Fire forever.[1205]

Q. 2:277 [276]: God will make usury *a burden* on those who deal in it; *never* will it bring them *good fortune.* Charity, however, He will bless, and with it allow the community to prosper. God does not love those who are ungrateful and *oppressive,* even if they are apparently *good-natured.*[1206]

Q. 2:279 [278]: O you who believe: fear God's wrath! And if you are believers, give up what remains of your *usurious gains* to those who are in your debt.[1207]

Q. 2:280 [279]: If you do not carry out *this just act*, beware lest God and His Prophet wage war against you and deprive you of your wealth and livelihood. But if you repent and *return to God's law,* your capital will be yours: deal not unjustly with your debtors and you shall not be dealt with unjustly.[1208]

Q. 3:131 [130]: O you who believe! *Do not attempt to fight against God.* Do not practice usury, doubling your profits and then doubling them again. Fear God's wrath and put aside usury so that you may *attain salvation.*[1209]

Q. 4:162 [161]: And they accepted usury, even though they had been forbidden to do so; and they devoured and misappropriated the goods and monies of others in their greed. And it is on account of all *these misdeeds* of theirs that We have prepared for them a painful punishment.[1210]

Q. 30:40 [39]: That which you *entrust to commercial organizations, companies and banks* with a view to making a profit will not be increased by God; nor will it increase your sustenance. It is that which you give as *zakat* which will win God's favour and find increase by His leave. Those who pay *zakat* will find their outlay multiplied by their Lord as recompense.[1211]

MUHAMMAD ASAD, 20th century exegete

Conventional Financial Interpretation of *Ribā* Verses.

Social and Moral Approach:
Exploitation of the economically weak by the strong and the resourceful as the prohibition rationale.

Linguistic and Qur'ānic Meaning of *Ribā* – An "unlawful addition", without an agreed juristic definition:
This [Q. 30: 39] is the earliest mention of the term and concept of *ribā* in the chronology of Qur'ānic revelation. In its general, linguistic sense, this term denotes an "addition" to or an "increase" of a thing over and above its original size or amount; in the terminology of the Qur'ān, it signifies any unlawful addition, by way of interest, to a sum of money or goods lent by one person or a body of persons to another. Considering the problem in terms of

[1204] Zafrulla Khan, *The Qur'an.*
[1205] Behbūdī and Turner, *The Quran*, 26.
[1206] Ibid
[1207] Ibid.
[1208] Ibid.
[1209] Ibid., 36.
[1210] Ibid., 57.
[1211] Ibid., 244.

the economic conditions prevailing at or before their time, *most of the early Muslim jurists identified this "unlawful addition" with profits obtained through any kind of interest-bearing loans irrespective of the rate of interest and the economic motivation involved.* With all this – as is evidenced by the voluminous juridical literature on this subject – *Islamic scholars have not yet been able to reach an absolute agreement on the definition of ribā*, a definition, that is, which would cover all conceivable legal situations and positively respond to all the exigencies of a variable economic environment. In the words of Ibn Kathīr (in his commentary on 2:275), "the subject of *ribā* is one of the most difficult subjects for many of the scholars *(ahl al-'ilm).*"

Lack of Prophetic Explication of the Prohibition:
It should be borne in mind that the passage condemning and prohibiting *ribā* in legal terms (2:275-281) was the last revelation received by the Prophet, who died a few days later [according to the uncontested evidence of Ibn 'Abbās; Bukhārī; also, *Fatḥ al-Bārī*, VIII, 164 f.]: hence the Companions had no opportunity to ask the Prophet about the *shar'ī* implications of the relevant injunction – so much so that even 'Umar ibn al-Khaṭṭāb is reliably reported to have said: "The last [of the Qur'ān] that was revealed was the passage [lit., "the verse"] on *ribā*; and, behold, the Apostle of God passed away without [lit., "before"] having explained its meaning to us" (Ibn Ḥanbal, on the authority of Sa'īd ibn al-Musayyab).

Rationale *(Ḥikma)* of *Ribā*-Prohibition (Moral and Socio-Economic Exploitation) and Plea for Continual Diachronic Economic Renewal and Reinterpretation:
Nevertheless, the severity with which the Qur'ān condemns *ribā* and those who practice it furnishes – especially when viewed against the background of mankind's economic experiences during the intervening centuries – a sufficiently clear indication of its nature and its social as well as moral implications. Roughly speaking, the opprobrium [disgrace] of *ribā* (in the sense in which this term is used in the Qur'ān and in many sayings of the Prophet) attaches to profits obtained through interest-bearing loans involving an *exploitation of the economically weak by the strong and resourceful:* an exploitation characterized by the fact that the lender, while retaining full ownership of the capital loaned and having no legal concern with the purpose for which it is to be used or with the manner of its use, remains *contractually* assured of gain irrespective of any losses which the borrower may suffer in consequence of this transaction.

With this definition in mind, we realize that the question as to what kinds of financial transactions fall within the category of *ribā* is, in the last resort, a moral one, closely connected with the socio-economic motivation underlying the mutual relationship of borrower and lender; and stated in purely economic terms, it is a question as to how profits and risks may be equitably shared by both partners to a loan transaction. It is, of course, impossible to answer this question in a rigid, once for all manner: our answers must necessarily vary in accordance with the changes to which man's social and technological development – and, thus, his economic environment – is subject. Hence, while the Qur'ānic condemnation of the concept and practice of *ribā* is unequivocal and final, every successive Muslim generation is faced with the challenge of giving new dimensions and a fresh economic meaning to this term, which, for want of a better word, may be rendered as "usury".

In the present instance [Q. 30:39] (which, as I have mentioned, is the earliest in the history of the Qur'ān), no clear-cut prohibition is as yet laid down; but the prohibition appearing in 2:275 ff. is already foreshadowed by the reference to the immoral hope of increasing one's own substance "through [other] people's possessions", i.e. through the exploitation of others.[1212]

Near-Philosophical Approach:

"The subject of usury *[ribā]* connects logically with ... the subject of charity because the former is morally the exact opposite of the latter: true charity consists in giving without an expectation of material gain, whereas usury is based on an expectation of gain without any corresponding effort on the part of the lender.[1213]

ABDULLAH YUSUF ALI, 20th century translator and commentator

Traditionalist Explanation But a Liberal Financial Definition of *Ribā*:
Usury is condemned and prohibited in the strongest possible terms. There can be no question about the prohibition. When we come to the definition of usury there is room for difference of opinion. Hadhrat 'Umar, according to Ibn Kathīr, felt some difficulty in the matter, as the Apostle left this world before the details of the question were settled. This was one of the three questions on which he wished he had had more light from the Apostle, the other two being Khilāfat and Kalālat. Our 'ulamā', ancient and modern, have worked out a great body of literature on usury, based mainly on economic conditions as they existed at the rise of Islam. I agree with them on the main principles, but respectfully differ from them on the definition of usury. As this subject is highly controversial, I

[1212] Asad, *Message of The Qur'ān*, n. 35, 622-623.
[1213] Ibid., n. 262, 61.

shall discuss it, not in this Commentary, but on a suitable occasion elsewhere. The definition I would accept would be: undue profit made, not in the way of legitimate trade, out of loans of gold and silver, and necessary articles of food, such as wheat, barley, dates, and salt (according to the list mentioned by the Holy Apostle himself). My definition would include profiteering of all kinds, but exclude economic credit, the creature of modern banking and finance.[1214]

***Ribā - Bay'* Contrast in Q. 2:275 – an "apt simile" in an economic-moral approach:**
Whereas legitimate trade or industry increases the prosperity and stability of men and nations, a dependence on usury would merely encourage a race of idlers, cruel blood-suckers, and worthless fellows who do not know their own good and are, therefore, akin to madmen.[1215]

***Ribā* - Charity Contrast in Q. 3:130:**
The last verse [Q. 3:129] spoke of forgiveness, even to enemies. If such mercy is granted by God to erring sinners, how much more is it incumbent on us, poor sinners to refrain from oppressing our fellow-beings in need, in matters of mere material and ephemeral wealth? Usury is the opposite extreme of charity, unselfishness, striving, and giving of ourselves in the service of God and of our fellow-men. Real prosperity consists, not in greed, but in giving, - the giving of ourselves and of our substance in the cause of God and God's truth and in the service of God's creatures.[1216]

Expanded but still Economic Version of *Ribā*, the result of illegal means, economic selfishness, exploitation and self-interest (Q. 30:39):
Ribā is any increase sought through *illegal means*, such as *usury, bribery, profiteering, fraudulent trading* etc. All unlawful grasping of wealth at other people's expense is condemned. *Economic selfishness* and many kinds of sharp practices, individual, national, and international, come under this ban. The principle is that any profit which we should seek should be through our own exertions and at our own expense, not through exploiting other people or at their expense, however we may wrap up the process in the spacious phraseology of high finance or City jargon. But we are asked to go beyond this negative precept of avoiding what is wrong. We should show our active love for our neighbor by spending of our own substance or resources or the utilization of our own talents and opportunities in the service of those who need them. Then our reward or recompense will not be merely what we deserve. It will be multiplied to many times more than our strict account.[1217]

MAWLĀNĀ SAYYID ABUL A'LĀ MAWDŪDĪ, 20th century Journalist, Religious and Political Activist, Writer and Exegete (Coined the expression "Islamic Economics")

Virtual Financial/Economic Treatise in Arab Historical Context in Interpretation of *Ribā-Bay'* Injunctions: [1218]
The term *riba* [*sic*]in Arabic means 'to grow, to exceed, to increase'. Technically, it denotes the amount that a lender receives from a borrower at a *fixed* rate of interest [what about variable rate of interest?] At the time of the revelation of the Qur'ān several forms of interest transactions were in vogue and were designated as *riba* [*sic*]by the Arabs. Of these one[1219] was that the vendor sold an article and fixed a time limit for the payment of the price, stipulating that if the buyer failed to pay within the specified period of time, he would extend the time limit but increase the price of the article. Another[1220] was that a man loaned a sum of money to another person and stipulated that the borrower should return a specified amount in excess of the amount loaned within a given time limit. A third form of interest transaction[1221] was that the borrower and vendor agreed that the former would repay the loan within a certain limit at a fixed rate of interest, and that if he failed to do so within the limit, the lender would extend the time limit, but at the same time would increase the rate of interest. It is to transactions such as these that the injunctions mentioned here apply.[1222]

Translator Ansari's Comment on Q. 2:275 *(yaqūmūn* as 'behave' and *'yatakhabbaṭuhu'* as 'insane'):
The Arabs used the word *majnūn* (possessed by the *jinn)* to characterize the insane. The Qur'ān uses the same expression [where?] about those who take interest. Just as an insane person, unconstrained by ordinary reason,

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[1214] Yusuf Ali, *Holy Qur'ān*, n. 324, 111.
[1215] Ibid., n. 325, 111.
[1216] Ibid., n. 450-451, 156.
[1217] Ibid., n. 3552, 1062.
[1218] Mawdūdī, *Sūd*, 150.
[1219] According to Qatāda, as quoted by Mawdūdī in his *Sūd*, 150.
[1220] According to Mujāhid, as reported in Ibn Jarīr, III, 62, and according to the research of Abū Bakr al-Jaṣṣās, in his *Aḥkām al-Qur'ān*, I, quoted by Mawdūdī in his *Sūd*, 151.
[1221] According to the research of Imām Rāzī, in his *Tafsīr Kabīr*, II, 351, quoted by Mawdūdī in his *Sūd*, 151.
[1222] Sayyid Abul A'lā Mawdūdī, *Tafhīm al-Qur'ān*. English version, *Towards Understanding the Qur'ān*. trans. and ed. Zafar Ishaq Ansari. (Leicester: The Islamic Foundation, 1988), I, n. 315, 213.

resorts to all kinds of immoderate acts, so does one who takes interest. He pursues his craze for money as if he were insane. He is heedless of the fact that interest cuts the very roots of human love, brotherhood and fellow-feeling, and undermines the welfare and happiness of human society, and that his enrichment is at the expense of the well-being of many other human beings. This is the state of 'insanity' in this world: since a man will rise in the Hereafter in the same state in which he dies in the present world, he will be resurrected as a lunatic.[1223]

Detailed Economic Explanation of *Ribā-Bay'* Distinction (Q. 2:275):
The unsoundness of this view [equating *ribā* and *bay'* by the Kuffār] lies in not differentiating between the profit one gains on investment in commercial enterprises on the one hand, and interest on the other. As a result of this confusion, the proponents of this view argue that if profit on money invested in a business enterprise is permissible, why should the profit accruing on loaned money be deemed unlawful? [1224]

Standard Lexical Meaning of Root *r.b.w.:*
'Excess', 'Growth', 'Increase' and 'Rising'.

Restrictive Definition of *Ribā:*
Ribā is from this same root and its connotation is 'excess in wealth' and 'addition to principal'; the Holy Qur'ān uses the word *ribā* to denote interest."[1225]

Rationale *(ḥikma)* of *Ribā*-Prohibition: Purely economic and moral grounds

Injustice as the *raison d'être* of the prohibition:
The contention that *ẓulm* (injustice) is the reason why interest on loans has been disallowed and hence all such interest transactions as do not entail cruelty are permissible, remains yet to be substantiated.[1226]

Punishment for the Sin of *Ribā:* Drastic and unparalleled, including "seventy times worse than incest with one's own mother." [1227]

***Ḥiman* (Ḥudūd: boundaries, sanctuary) of Allāh:**

Initial Inclusion: only the Qur'ānic prohibition of usurious dealings in loans *(ribā nasī'a)*
Later Expansion: addition of preventive measures around this *ḥimā* of Allāh, by the Prophet, through condemnation of all participants of the interest-bearing loan transaction, and by the prohibition of *ribā al-faḍl.*

Definition of *Ribā al-Faḍl* – the protective wall around the *ḥimā* of Allāh:
The prohibited 'excess in an exchange of *similar genus* in an *instantaneous transaction*'.

Prohibition Rationale of *Ribā al-Faḍl:*
Ribā al-Faḍl is 'the prompter to exaction of excess and the promoter of that *mentality* in humans which ultimately leads to usury generation'.[1228]

Fiqh* Exemption of Animals from *Ribā al-Faḍl: The reason for exemption of animals from the prohibition of excess in exchanges of similar genus is purely economic: the wide disparity in value and price of animals of the same genus permits their unequal exchange.[1229]

Rationale for Permissibility of Excess in Exchanges of Different Genus with Requirement of Instantaneity – Purely Economic Approach:
Excess in instantaneous exchanges of different genus is bound to be the result of *current market prices*; but excess in such delayed transactions runs the risk of being tainted with *ribā* due to the inability of accurately forecasting *future market prices.*[1230]

***Ribā-Bay'* Contrast in Q. 2:275:**
The contrast is of *ribā* with profit resulting from a sale transaction,[1231] thereby the Qur'ān prohibits any form of interest.

[1223] Ibid., I, n. 316, 213.
[1224] Ibid., I, n. 317, 214.
[1225] Ibid., *Sūd*, 147, 149.
[1226] Ibid., "Prohibition of Interest in Islam" *al-Islam*, June 1986, 6-8.
[1227] Ibid., *Sūd*, 157.
[1228] Ibid., 164- 166.
[1229] Ibid., 181.
[1230] Ibid., 177.
[1231] Ibid., 82-5.

***Ribā* as *Mujmal* (unelaborated)** – not elaborating all constituent parts of the matter and thus giving rise to classificational uncertainty about *ribawī* commodities, based additionally on the tradition attributed to Caliph 'Umar about the absence of Prophetic explication of the subject. This *mujmal* character of *ribā aḥādīth* is the source of the development of juristic differences on the determination of *ribawī* commodities and the *ratio legis* of their prohibition.[1232]

Need for Updating of Classical *Fiqh:*
According to Mawdūdī, commercial, financial and economic laws in our ancient *fiqh* books now require much updating. In Islamic law, based both on revealed texts and *fiqh*, there is ample provision for softening the strictness of injunctions, including those on *ribā*, according to circumstances and necessity:

- There can be compulsion in paying interest but not in taking interest
- Every necessity does not qualify as compulsion for obtaining interest-bearing loans
- Even in case of dire necessity, interest-bearing loan can be obtained only in required amount and only on condition of prompt repayment upon ability to repay.

MUFTĪ MUHAMMAD SHAFĪ'(d. 1976), Former Grand Muftī of Pakistan

Difference between *Ribā* and *Bay':*
Divine command – the former declared *ḥarām* and the latter *ḥalāl* – no investigation required.

Alleged Ambiguity of Meaning: related not to the Qur'ānic *ribā nasī'a,* but only to the Sunnaic *ribā faḍl.*

Rationale of *Ribā*- Prohibition: moral and economic.

Correspondence between Crime and Punishment:
(1) between the crime of Satanic greedy behavior of usurers on this earth, and the punishment of Satanic state in which they will be resurrected, and
(2) between the crime of disbelief *(kufr)* of denying the divinely ordained polarity of *ribā* and *bay'* and opposing the *ribā*- prohibition, and the punishment of eternal Hellfire and threatened war from Allāh.[1233]

SAYYID QUTB (d. 1966), Ideologue of Muslim Brotherhood

Tafsīr Āyāt al-Ribā:

Moral Stance: Condemnation of bank interest and accusation of modern banks for "eating the bones and flesh" of the poor borrowers and "drinking their sweat and blood" under the umbrella of the interest-based system.[1234]

Fī Ẓilāl al-Qur'ān:

Intrinsic Incompatibility of *Ribā* and Islam:
Ribā and Islam are intrinsically incompatible. *Ribā* clashes with mankind's ethics, belief and worldview, and is an economic evil. In spite of appearances to the contrary, it interferes with the balanced growth of man. It destroys the moral life by promoting greed, jealousy, meanness, and fraud. Allāh would not have prohibited any thing if it were essential for human growth, and that no evil thing can ever be essential for human life.[1235]

[1232] Ibid., 178-179.
[1233] Muftī Muḥammad Shafī, *Ma'ārif al-Qur'ān* (Karachi: Idāra al-Ma'ārif1969), I, 585-622.
[1234] Sayyid Quṭb, *Tafsīr Āyāt al-Ribā* (Dār al-Buḥūth al-'Ilmiyya, n.d.), 12.
[1235] Ibid., *Fī Ẓilāl al-Qur'ān* (Urdu) (Lahore: Islami Academy, n.d.), 70.

Appendix 8

INDIVIDUAL *FUQAHĀ'* / SCHOLARS WORKS ON *RIBĀ*

Second Caliph 'Umar ibn Khaṭṭāb (d. 22/644)

Reported Lamentation: Absence of sufficient Prophetic explication of the *ribā*-prohibiting verses.

Third Caliph 'Alī ibn Ṭālib (d. 40/661)

Purely Economic Context:
"He who ventures transactions without observing the concerned Islamic rules has surely run into *ribā* while he is not aware of it."[1236]

Narration from the Prophet:
"He who is in business and buys and sells things must avoid five traits, otherwise he should not buy or sell anything: usury *(ribā),* taking oath, concealing the faults or defects of the goods, praising it wrongly when selling it, and finding faults in it when buying it."[1237]

Companion 'Abd Allāh Ibn 'Abbās (d. 68/686) and Companions Usāma Ibn Zayd, 'Abd Allāh Ibn Mas'ūd, 'Urwa Ibn Zubayr, and Zayd Ibn Arqām

Initial Opinion:

Ribā al-Jāhilīya* as the Only Unlawful *Ribā:
Ribā al-jāhilīya – the *ribā* conjectured to have been practiced in the pre-Islamic age – to be the only unlawful *ribā* which involved increase in the debt for extension in the period of repayment.

Imām Mālik (d. 179/795)

Muwaṭṭa' Entry:

***Ribā al-Jāhilīya* Exclusively as a Debt Transaction** (on the authority of Zayd b. Aslam):
In the Jāhilīya, *ribā* operated in this manner: if a man owed another a debt, at the time of its maturity the creditor would ask the debtor: 'Will you pay up or will you increase?' *["turbi"* from the root: *r.b.w.].* If the latter paid up, the creditor received back the sum; otherwise the amount due was increased and the term was extended.[1238]

Ṭabarī (d. 310 A.H.)

Prohibited *Ribā* as Increase for Extended Maturity (In line with the above version of the Jāhilīya practice):
Prohibited *ribā* is intended to cover that increase which is stipulated for the owner of the principal, *māl* (lender) because he has extended the maturity for his borrower and postponed the recovery of his loan.[1239]

Ṭahāwī (d. 321 A.H.)

***Ribā* as Increase for Extended Maturity** (corroborating Ṭabarī's definition):
Ribā takes the form of the borrower asking the lender to extend the maturity of the loan for which the borrower will increase the amount of the loan.[1240]

Abū Bakr al-Jaṣṣās (d. 370/980), Ḥanafī jurist and commentator

***Ribā al-Jāhilīya* as a Financial Charge for the Initial Maturity of the Loan:**
The *ribā* that was known to the Arabs and was practiced by them was the lending *(qarḍ)* of *dirhams* and *dīnārs* for a period with an excess in proportion to what was lent and on which they had agreed. They were not acquainted with the spot sale when it contained an excess of the same genus.[1241]

Further Definition of *Ribā al-Jāhilīya:*
... a loan given for stipulated period with a stipulated increase on the principal payable by the loanee.[1242]

[1236] Muhammad Bāqir al-Majlisī, *Biḥār ul-Anwār* (Tehran: al-Maṭba'at ul-Islamiyyah, 1387), CIII, 89.
[1237] al-Shaykh uṣ-Ṣadūgh, *al-Khiṣāl* (Qum, Iran: Mu'assisāt un-Nashr ul-Islami, 1403), I, 286.
[1238] Mālik, *Muwaṭṭa', Kitāb al-buyū', Bāb al-ribā.*
[1239] *Tafsīr Ibn Jarīr* (Beirut: n.p., 1988), II, 103 and IV, 90.
[1240] *Sharḥ Ma'āni al-Āthār li 'l-Ṭaḥāwī,* II, chapter on *ribā,* 223.
[1241] Abū Bakr Aḥmad ibn 'Ali al-Jaṣṣas al- Rāzī, *Aḥkām al-Qur'ān* (Beirut: Dār al-Kitāb al-'Arabī, n.d.), I, 465.
[1242] Ibid., I, 469.

Extended Definition of *Ribā*:
Ribā is that transaction of loan in which a maturity is fixed and an increase over the principal amount of the loan is stipulated on the borrower.[1243]

Divergence between the Literal Meaning and the *Sharī'a* Connotation of *Ribā* and Its Diverse Meanings:
The literal meaning of *ribā* is increase ... but in the *Sharī'a* it has acquired a connotation that its literal meaning does not convey. The Prophet, peace be on him, termed the increase [which is a condition] for waiting, as *ribā* as is evident from the *ḥadīth* narrated by Usāma ibn Zayd in which the Prophet said: "*Ribā* is in waiting ..." Hence God abolished the *ribā* which was being practiced at that time. He also invalidated some other trade transactions and called them *ribā*. Accordingly, the Qur'ānic verse "God has prohibited *ribā*" covers all transactions to which the connotation applies in the *Sharī'a* even though the indulgence of the Arabs in *ribā*, as mentioned above, related to loans in *dirhams* and *dīnārs* for a specified period with the increase as a condition. The term *ribā* hence signifies different meanings. One is the *ribā* prevalent in Jāhilīya ; the second is the disparity or differential *(tafāḍul)* in the volume or weight of a commodity [in spot transactions] ...; and the third is postponing *(al-nasā');* this implies that it is not permitted to sell a commodity against future delivery of the same volume, weight or other measure of the given commodity.[1244]

al-Bayhaqī (d. 459/1066)

Extensive Traditions on *Ribā*:
Subject of *ribā* in more than forty chapters in his work on the traditions, *al-Sunna al-Kubra,* under the heading of "Collection of Chapters on *Ribā*"presenting about two hundred various sound and weak traditions on *ribā*. Value of his contribution historical rather than analytical. Classifications treat *ribā* very broadly covering not only the highly condemned category of usury on loans but also usurious exchanges, sales of future values, speculation, hoarding, land lease, sharecropping and many other exploitative practices causing impoverishment of needy by stronger groups.[1245]

al-Sarakhsī (d. 490 or 495/1096 or 1101), Ḥanafite jurist

***al-Mabsūṭ* Definition:**

Literal and Technical Definition of *Ribā*, as a particular form of *bay'* [the prohibited form]:
Ribā in its literal meaning is excess ... and in the technical sense (in the *Sharī'a), ribā* is the stipulated excess without a counter value in *bay'* (sale/exchange).[1246]

Two Types of *Ribā*:
[The words] '*faḍl* is *ribā*' imply *faḍl* through *qadr* and they imply *faḍl* through a period of delay, and both are intended. This was elaborated in the tradition of 'Ubādah ibn al-Ṣāmit[1247]

Abū Ḥāmid al-Ghazālī (d. 505/1111)

Function of Money and Condemnation of *Ribā*:
And whoever makes a transaction of *ribā* in dirhams and dīnārs he indulges in denial of blessings and conduct of oppression because these have been created for obtaining other things. There is no purpose or benefit in their very selves. Whoever makes them products of trade, makes them the object, against the purpose of their creation.[1248]

Elaboration of the Distinction:
When someone is trading in dirhams and dinars themselves, he is making them as his goal, which is contrary to their functions. Money is not created to earn money, and doing so is a *transgression.* The two kinds of money are means to acquire other things: they are *not meant for themselves.* In relation to other goods, dirhams and dinars are like prepositions in a sentence – used to give proper meaning to words; or like a mirror reflecting colors but having no color of its own. If a person is permitted to sell (or exchange), money with money (for gain), then such transactions will become his goal, and thus money will be imprisoned and hoarded. Imprisonment of the ruler or postman is a transgression, for then they are prevented from performing their functions; same with money.

[1243] Ibid., I, 429.
[1244] Ibid., I, 551-2.
[1245] Ziaul Haque, *Riba: The Moral Economy of Usury, Interest and Profit* (Selangor, Malaysia: Ikraq, 1995), 8.
[1246] al-Sarakhsī, *al-Mabsūt,* XII, 109.
[1247] Nyazee, *Ribā and Islamic Banking,* 111.
[1248] Abū Ḥāmid al-Ghazālī, *Iḥyā' al-'Ulūm al-Dīn* (Beirut: n.p., 1986), IV, kitāb al-shukr al-rukn al-awwal, 96-97.

Selling a dirham with equal amount of it with late payment is also not allowed. This can be done only by a generous person who is trying to be benevolent. In the case of a loan, an act of generosity such as this conveys the person gratitude here and reward in the Hereafter. But, if someone exchanges dirhams for a bigger amount, there is no question of thanks or reward. Further, it is an injustice because it is destroying the qualities of generosity and putting it into compensatory exchange. [Italics mine][1249]

***Ḥikma* of *Ribā* Prohibition** (For Ghazālī, as for many other Jewish, Christian and Islamic scholars):
Sinfulness (absolute scriptural prohibition); possibility of economic exploitation and injustice in transactions.

***Ḥikma* in a purely Economic Context:**
Ribā is prohibited because it prevents people from undertaking real economic activities. This is because when a person having money is allowed to earn more money on the basis of interest, either in spot or in deferred transactions, it becomes easy for him to earn without bothering himself to take pains in real economic activities. This leads to hampering the real interests of the humanity, because the interests of the humanity cannot be safeguarded without real trade skills, industry and construction.[1250]

Permitted and Prohibited Disguised *Ribā*:
Other than lending and borrowing, Ghazālī discusses transactions where *ribā* may arise in disguised form, sometimes consistent and sometimes inconsistent with the scriptural prohibition. Notably, similar arguments were developed later by Thomas Aquinas.[1251]

Detailed Position on Disguised *Ribā* Generation (Ghazālī/other Arab and European Scholastics):
[He] generally assumed that the value of a good was independent of the lapse of time. On this assumption, he argued, there are two ways in which interest *[ribā]* can arise in disguised form: it can happen when there is an exchange of gold for gold, wheat for wheat, etc., *but* with differences in quantity or in the time of delivery. If the time of delivery is not immediate and excess quantity of the commodity is called for, the excess is *riba al-nasiah* [*sic*] (interest due to late payment or delivery). If the quantity exchanged is not equal but the exchange takes place simultaneously, the excess given in exchange is called *riba al-fadl* [*sic*] (interest due to extra payment). Both are forbidden, according to Ghazālī. That is, for either kind of interest *not* to occur, exchange should be with equal quantity and ownership transfer should be simultaneous; otherwise, "disguised" interest could occur. However, if the exchange involves the same *types* of commodities, such as metals (gold or silver) or foodstuffs (wheat or barley), only *riba al-nasiah* is prohibited, whereas *riba al-fadl* is permissible. If exchange is between different types of commodities (metals and foodstuffs), then both kinds are permissible.[1252]

<u>Baghawī (d. 516 A.H.)</u>

Reiteration of above version of the Jāhilīya practice:
In the Jāhilīya, when a repayment became due from a borrower, and the lender demanded repayment, the borrower asked for an extension of maturity in return for an increase in the loan. So they both agreed accordingly.[1253]

<u>Abū Bakr Muḥammad Ibn al-'Arabī (d. 543/1148),</u> **Mālikī jurist and Qur'ān commentator:**

Upheld Traditional view of Ṭabarī: Jāhilīya Financial Excess Levied Not For Initial But For Extended Maturity:
Ribā was well-known among the Arabs. A person would sell something on a deferred payment basis. Upon maturity the creditor would say [to the debtor]: 'Will you pay [as agreed] or will you add an amount *(tarbī)* to the [original] debt?' ... And Allāh declared *ribā ḥarām. Ribā* was well-known to them. Those who consider this verse to be unelaborated i.e. ambiguous, vague (*mujmal*) do not understand this cross-section of *Sharī'a.* Allāh sent His Prophet towards a nation to which he himself belonged and whose language he himself spoke. Allāh's book was also revealed in their language so that it was easy for them to understand. The dictionary meaning of *ribā* is excess and the intention in the verse is all excess without any counter-value.[1254]

Broad Definition of *Ribā*: every increase without an *'iwād* or an equal counter-value is *ribā.*

[1249] Ibid., 192.
[1250] Ibid., 4.
[1251] Karl Pribram, *A History of Economic Reasoning* (Baltimore: John Hopkins University Press, 1983), 15; Bernard W. Dempsey, *Interest and Usury.* (Washington DC: American Council on Public Affairs, 1943), 139.
[1252] S. M. Ghazanfar, ed., *Medieval Islamic Economic Thought: Filling the "Great Gap" in European Economics.* (London; New York: RoutledgeCurzon, 2003), 36.
[1253] *Mu'ālim al-tanzīl li 'l-Baghawī* (Riyadh: n.p., 1409), I, 341.
[1254] Ibn al-'Arabī, *Aḥkām al-Qur'ān,* (Beirut: n.p., 1988), I, 241, 320-321.

Ribā literally means increase, and in the Qur'ānic verse (2:275) it stands for every increase not justified by the return.[1255]

Abū Bakr al-Kāsānī (d. 587/1189), a Ḥanafī authority

Non All-Encompassing Technical (Legal) Definition of *Ribā*:
Ribā in the jargon of the law is of two types: *ribā al-faḍl* and *ribā al-nasā'*. As for *ribā al-faḍl*, it is the excess over the substance of the wealth that has been stipulated in the contract of *bay'* according to a legal criterion, which is [realized through]measure and weight in the genus, while according to al-Shāfi'ī, it is the absolute excess specifically in food with uniformity of genus. As for *ribā al-nasā'*, it is the difference (excess) between the termination of delay and the period of delay and the difference (excess) between the possession *('ayn)* and its non-possession *(dayn)* in things measured and weighed with different genera as well as in things measured and weighed with the uniformity of genera. This is according to us, and according to al-Shāfi'ī, it is the difference between the termination of the period and the delay in foodstuff and precious metals (with currency-value) specifically.[1256]

al-Marghinānī (d. 593/1196)

Definition of *Ribā* (echo of Ibn 'Arabi definition):
Ribā is the excess due to one of the contracting parties as a stipulated condition without any return.[1257]

Ibn Rushd (d. 595/1198)

Definition: Both *Ribā* of Sales and *Ribā* of Debt

Elaboration: Only *Ribā* of Debt

Existing Element: Premium for Late Repayment *(Positive Ribā* of Jāhilīya)

New Element: Discount for Early Repayment *[Reverse Ribā]*:
The jurists agreed that usury is found in two things: sales and that which is established as a liability through sale, credit, or other transactions. *Ribā* which is incurred as a liability is of two kinds. First is that about which there is an agreement, and this is the *ribā* of the period of Jāhilīya (the pre-Islamic age) which is prohibited, as they used to stipulate excess in loans and then delay the period (of repayment). They used to say, "Grant me further delay and I will increase it (the amount)." This is what the Prophet (God's peace and blessing be upon him) meant when he said at the farewell pilgrimage, "Take heed, verily the *ribā* of Jāhilīya is annulled and the first (claim) of *ribā* I cancel is that of 'Abbās ibn al-Muṭṭalib." The second kind is "loss for hastening the period" [discount for early repayment: *reverse ribā*]. This is controversial and we will describe it in what follows.[1258]

Fakhr al-Dīn al-Rāzī (d. 606/1209)

Reinforcement of Basis for Compartmentalization of *Ribā*

Definition of *Ribā al-Jāhilīya:* Financial Charge for Initial maturity (like al-Jaṣṣāṣ but contrary to traditional historical accounts) Plus Financial Charge for Extended Maturity (in accordance with traditional historical accounts):
Know that *ribā* is of two kinds: *ribā al-nasī'a* and *ribā al-faḍl. Ribā al-nasī'a* was well known and familiar during the Jāhilīya. This was so because they used to give wealth on the condition that they would take a fixed amount each month, while the principal amount still remained. Thereafter, when it was time for the repayment of the debt, they demanded the principal from the debtor. If he was unable to pay, they increased the claim and the period. This is the *ribā* that they used to practice... As for the *ribā* through spot transaction *(ribā al-naqd),* it is the sale of wheat for flour made from it, or what is similar. [alternate version of *ribā al-naqd*: the exchange of one *mann* (a measure of weight of two *raṭl)* of wheat for two *mann* of wheat and what resembles that]. [1259]

Rebuttal of Ibn 'Abbās (that prohibited *ribā* is *ribā al-nasī'a* alone):
The evidence for Ibn 'Abbās is that the words of the Exalted, "Allāh has permitted sale," include the spot sale of one *dirham* for two *dirhams* and His words, "prohibited *ribā*," do not include it, because *ribā* is an expression of excess and each excess is not prohibited. On the other hand, His words, "prohibited *ribā*," include a specific type of

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[1255] Ibid., I, 242.
[1256] Abū Bakr al-Kāsānī, *Badā'i' al-Ṣanā'i'* (Beirut: Dār al-Kitāb al-'Arabī, 1982). V, 183.
[1257] Burhān al-Dīn al-Marghinānī, *al-Hidāya* (Karachi : Qur'ān Maḥal, n.d.), Kitāb al-Buyū', chapter on *ribā,* III, 78.
[1258] Ibn Rushd, *Bidāyat* (Cairo: Dār al-Salām, 1995). II, 96.
[1259] Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr,* 32 vols. (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1980), VII, 91.

contract that they used to conclude as *ribā*. This was *ribā al-nasī'a*. Thus, His words, "prohibited *ribā*," apply exclusively to *nasī'a* and it is, therefore established that His words, "Allāh has permitted sale," include the spot sale and His words, "prohibited *ribā*," do not include it, which necessarily implies that it is permitted. Further, it is not possible to say that it is prohibited by the *ḥadīth* as it implies the restriction of the apparent meaning of the Qur'ān with an individual narration *(khabar wāḥid)*, which is not permitted. This is what Ibn 'Abbās (appears to have) conveyed and its essence lies in whether the restriction of (the text of) the Qur'ān is permitted or not? As for the majority of the *mujtahids*, they agreed about the prohibition of *ribā* in both kinds: the first kind by the Qur'ān, and the second by the *Sunna*.[1260]

Ibn al-Athīr (d. 1209 CE)

Definition of *Ribā*:
The original meaning of *ribā* is excess and in the terminology of the *Sharī'a* it means increase in the principal without any contract of sale having taken place.[1261]

al-Nawawī (d. 676/1278)

Rejection of "Exploitation" as Prohibitory Rationale as it could equally well apply to legitimate profit generation.[1262]

Ibn Qayyim al-Jawziyya (d. 751/1350) Ḥanbalite theologian and student of Ibn Taymiyya

Definition of *Ribā* by Degree of Its Hiddenness:
Ribā is of two kinds: *Jalī* and *Khafīy*. The *Jalī* has been prohibited because of the great harm it carries and the *Khafīy* has been prohibited because it is an instrument for the *Jalī*. Hence prohibition of the former is deliberate while that of the latter is precautionary[against exploitation and wrongful acquisition of other's property]. The *Jalī* is *ribā al-nasī'a* and this is what was engaged in during the Jāhilīya, like allowing the postponement of repayment of principal against an increase, and every time there was a postponement, there was an increase... However, *ribā al-faḍl* has been prohibited to close the access to *ribā al-nasī'a*.[1263]

Rationale: Early practice of Arab and Latin Scholastics and their Greek Predecessors of couching their discussions of interest in terms of precious metals and foodstuffs:[1264]
The secret behind the prohibition of unequal exchange of the same kind of precious metals is that their purpose of "moneyness" *(thamaniya)* will be destroyed; and the reason behind the prohibition of unequal exchange of the same kind of foodstuff is that it will destroy their purpose of serving as diet.[1265]

Ibn Kathīr (d. 774/1373)

Definition of *Ribā*:
Ribā has been mentioned in *aḥādīth* repeatedly and the source of it is excess on the principal without any contract of sale.[1266]

al-'Aynī (d. 855/1451)

Definition of *Ribā*:
In the *fiqh* terminology, *ribā* – literally an increase – is an addition to the principal sum without any contract of an equivalent payment.[1267]

***Şeyhülislam* Ebu's-su'ud Efendi, Ottoman Mufti of Istanbul (1545-1574) (with the sanction of Sultan Suleyman)**

First-ever *Fatwa* in Islamic History declaring cash trusts *(awqāf:* pious foundations) deriving income from lending at interest as valid, without the support of any Ḥanafī authority ever, manipulated by Ebu's-su'ud with the help of legal stratagems *(ḥiyāl)* calling the income payments not by the actual name of interest but by the commonly used euphemism of "legal transaction" *(mu'āmala shari'iyya)*, and in spite of the juristically correct opposition of the

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[1260] Ibid., VII, 92.
[1261] Majd al-Dīn al-Mubārak Ibn Muḥammad Ibn al-Athīr, *al-Nihāya fī Gharīb al-Ḥadīth wa al-Āthār* (Cairo: n.p., 1322H.), II, 66.
[1262] Nawawī, *al-Majmū'*, 390-404.
[1263] Ibn Qayyim al-Jawziyya, *I'lām al-muwaqqi'īn*, II, 154ff.
[1264] Ghazanfar, ed., *Medieval Islamic Economic Thought*, 136.
[1265] Ibn Qayyim al-Jawziyya, *I'lām al-muwaqqi'īn*, II, 140.
[1266] Ibn Kathīr, *al-Nihāya* (an authentic book explaining *ḥadīth* terminology).
[1267] Badr al-Dīn al-'Aynī, *Umdāt al-Qārī* (Constantinople: Maṭba'a al-Amīra, 1310 AH), V, 436.

fundamentalist scholar Mehmed of Birgi, guided not by juristic texts but only by the doctrines of necessity and public interest.[1268]

Shāh Walī Allāh of Delhi (d. 1176/1762), Traditionalist Indian Scholar

Support for Liberal Viewpoint: Further Stress on Distinction between 'Actual' and 'Figurative' *Ribā*:
Know that *ribā* has two aspects: actual *[ḥaqīqī]* and figurative. The actual form is in debts, and we have mentioned that it has a central place within the topic of *mu'āmalāt*. The people in Jāhilīya were intensely occupied with it, and it was the cause of continuous wars, and a little of it used to lead to more. It became necessary to seal its door as a whole, therefore, what is revealed in the Qur'ān about it was revealed. The second type is *ribā al-faḍl*, the source of it being *ḥadīth* ... and this was called *ribā* by extension and as a metaphor for the true form of *ribā* ... It was then that *ribā* in this meaning was practiced widely till the true legal form came to be realized in this too.[1269]

Shāh 'Abd al-'Azīz (d. 1824 A.D.) Traditionalist Scholar and son of Shāh Walī Allāh of Delhi

Dār al-Ḥarb Fatwa: Permitted *Ribā* for Muslims in Dealings with non-Muslims in *Dār al-Ḥarb*, which to him, British India was.[1270]

'Abd al-Ḥayy Farangī Maḥlī Lakhnawī (1847-1886)

Opinion: Interest-taking was allowed in India – a *dār al-ḥarb*.[1271]

Sir Sayyid Ahmed Khan (d. 1898)

Opinion: Modern-day bank interest permitted even between and among Muslims even in *dār al-Islam*.

Muḥammad 'Abduh (d. 1905), Grand Mufti of Egypt and his disciple Rashīd Riḍā (d. 1935)

Defence of Modern Bank Interest: Modern Bank Interest is different from *ribā al-jāhilīya* to which only the *ribā*-prohibition applies, even subject to the doctrine of dire necessity. *Ribā al-faḍl* and *ribā al-nasī'a* are both Sunna-based and therefore not prohibited – only *makrūh*.

Reliance: Ibn Qayyim's Distinction between "Manifest *Ribā*" *(Ribā Jalī)* and "Hidden *Ribā*" *(Ribā Khafiy)* [1272]
(a) The only disallowed *ribā* is *ribā al-jāhilīya* (pre-Islamic *ribā*), which is the manifest *(jalī) ribā* and consequently is prohibited not as a way of performing an usurious transaction but as an usurious transaction in itself. As for the two other sorts of *ribā*, namely *ribā al-faḍl* and *ribā al-nasī'ah* (both provided for in *Ḥadīth* and not in the Qur'ān), their prohibition tends to close the loopholes which otherwise might permit manifest *ribā (ribā jalī)*. Thus *ribā al-faḍl* and *ribā al-nasī'a* are under a presumption of prohibition and this presumption is not conclusive but rebuttable. Thus again the sale of any of the six articles mentioned in the *ḥadīth*, with an increase and whether in a hand-to-hand transaction or in a deferred one, is disallowed only if it is intended to lead to manifest *ribā (ribā jalī)*, which takes place when interest accrues on interest already accounted by the time the transaction was concluded.[1273]

(b) As a result, the first increase on the termed loan is lawful, even though agreed in consideration of the delayed term of payment. But if, on maturity date, it is decided to postpone that maturity date against a further increase, that is the unlawful *ribā al-nasī'a*.[1274]

(c) The consequence which comes to mind is that whereas *ribā jalī*, the manifest *ribā*, can be deemed lawful only in case of pressing necessity, such as the one which allows the eating of carrion, the two other sorts of *ribā*, namely *ribā al-faḍl* and *ribā al-nasī'a* (both provided for in *Ḥadīth* and not in the Qur'ān) are regarded with aversion *(karāhiya)* but not as under a rule of prohibition.[1275]

[1268] Colin Imber, *Ebu's-su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), 37, 145-146; J. R. Mandaville, "Usurious piety: the cash waqf controversy in the Ottoman Empire", *International Journal of Middle Eastern Studies*, 10 (1979), 289-308; Ebu's-su'ud, *Bida'at al-qādī*, Süleymaniye Library, Istanbul, MS Lalcli 3,711, chap. 1; Rev. M. McColl, "Are Reforms Possible Under Mussulman Rule?" (mimeo,1881), quoted in El-Gamal, "Interest and the Paradox of Contemporary Islamic Law and Finance", 2.
[1269] Shāh Walī Allāh, *Ḥujjat Allāh al-Bālighah*, 2 vols. (Cairo: Dār al-Turāth, 198?). II, 106-107.
[1270] Mushir-ul-Haq, "Shāh 'Abd al-'Azīz al-Dihlawī and his Times", *Hamdard Islamicus*, VII, No.1, 78.
[1271] Ibid., VII, No.1, n. 99, 95.
[1272] Saleh, *Unlawful Gain*, Second Edition, 35-36.
[1273] *Fatāwā al- Imām Muḥammad Rashīd Riḍā*, eds. S. Munajjid and Y. Khūrī. 5 vols. (Beirut: Dār al-Kitāb al-Jadīd, 1970), II. 606.
[1274] Ibid., II, 608-609.
[1275] Sanhūrī, *Maṣādir al-Ḥaqq*, III, 220. *Karāhiya* is a religious censure with no practical effect on the transaction itself.

(d) Finally, it is attributed to Shaikh Muḥammad 'Abduh that he found ways to show that under Islamic law both interest generated by savings bank accounts and that generated by insurance policies were admissible.

Chibli Mallat Opinion on 'Abduh-Riḍā Position:(in his discussion of early 20th c. Egyptian Saving Funds Scheme): Neither Muḥammad 'Abduh nor Rashīd Riḍā were comfortable about the interest yielded to the depositors on their monies, but they seem to have tolerated it if a scheme of *muḍāraba* could be devised to legitimize the interest on the employees' deposits.[1276]

Abū Zahrah (d. 1974), Egyptian *Faqīh*

Distinction: *Ribā* of the Qur'ān and *Ribā* of the Sunna (echo Shāh Walī Allāh):
Before we put down the pen, we will discuss the legal issue related to *ribā*, which is that the excess in lieu of the period [of repayment] is the *ribā* of the Jāhilīya . It is also called *ribā al-nasī'a*, because the excess in it is in lieu of the period, that is, the duration of delay. The scholars are all in agreement about its prohibition, and it is the *ribā* of the Qur'ān. There is a technical form of *ribā* or that of the Islamic usage. This is the *ribā* of sales *(ribā al-buyū ')*.[1277]

Abūl A'lā Mawdūdī (d. 1979), Traditionalist and Neo-Revivalist

Support of Liberal Position (unwitting but clear): Positing Distinction between *Ribā al-Nasī'a* as the *ribā* of (prohibited by) the Qur'ān, and *Ribā al-Faḍl* as the *ribā* of (prohibited by) the Sunna:
We have stated earlier that *ribā*, in fact, is that excess or *fā'ida* which a creditor receives from the debtor as a stipulated excess over and above the principal amount. In the terminology of the law, this is called *ribā al-nasī'a*. Thus it is *ribā* that is paid and received in a loan transaction. It is this *ribā* that has been prohibited by the Qur'ān. The whole *Umma* agrees about its prohibition.[1278]... *Ribā al-faḍl* is the excess that is found in the spot exchange of two things of the same genus. The Messenger of Allāh (p.b.u.h.) has prohibited this form.[1279]

'Abd al-Razzāq Sanhūrī, the contemporary Egyptian authority on Islamic law

Position on *Ribā*: [1280] Prohibition of *ribā* is the rule, and – unlike the position of 'Abduh and Riḍā – is not under the presumption of aversion *(karāhiya)*.[1281] Only compound interest is first and foremost prohibited in verse Q. 3:130; and based on the testimony of the reports on pre-Islamic *ribā* and also by implication, simple interest would not be prohibited.[1282]

Distinction between *Ribā al-Jāhilīya, Ribā al-Faḍl* and *Ribā al-Nasī'a*:
Ribā al-faḍl is a way to achieve *ribā al-nasī'a* which is a way to achieve *ribā al-jāhilīya*. It is sufficient, as far as *ribā al-nasī'a* is concerned, to allow payment to be postponed once the debt has matured, charging further interest, so as to attain *ribā al-jāhilīya*. Consequently, *ribā al-faḍl* and *ribā al-nasī'a* are not under a direct prohibition (contrary to pre-Islamic *ribā*, which is), but under a prohibition of illicit means – a prohibition designed to close the loopholes which might lead to pre-Islamic *ribā*.[1283] The result of such degrees of prohibition is that *ribā al-jāhilīya* is allowed only in case of pressing necessity *(darūra mulihha)*, while *ribā al-faḍl* and *ribā al-nasī'a* are deemed lawful in case of need *(ḥāja)*.[1284]

Ibrahim Zaki al-Badawi, Egyptian Scholar

Argument: Strict prohibition of *ribā* should apply only to the pre-Islamic form, which is, "the increase in debt principal at the time of the accrual in order to receive a new loan.[1285]

[1276] Chibli Mallat, "The Debate on Ribā and Interest in Twentieth Century Jurisprudence," *Islamic Law and Finance*, SOAS, London, 1988, 74.
[1277] Abū Zahrah, Foreword to Zakī al-Dīn Badawī, *Nazarīyat al-Ribā al-Muḥarram Fī al-Sharī'a al-Islāmiyya*. (Cairo: Dār wa -Maṭābi' al-Sha'b, 1940), trans. Nyazee, quoted in his, *Ribā and Islamic Banking*, 13.
[1278] Syed Abūl A'lā Mawdūdī, *Sūd* (Interest) [in Urdu]. (Lahore: Islamic Publications Private Ltd., 1989) , 163.
[1279] Ibid., 165.
[1280] Saleh, *Unlawful Gain*, Second Edition, 36-37.
[1281] Sanhūrī, *Maṣādir al-Ḥaqq*, III, 222-234.
[1282] Saeed, *Islamic Banking*, 43.
[1283] Sanhūrī, *Maṣādir al-Ḥaqq*, III, 222-237.
[1284] Ibid., III, 237.
[1285] Quoted in Chibli Mallat, "The Debate on *Ribā*", 80.

Doualibi, Contemporary Syrian Politician

Modernist Differentiation between Consumption Loans and Production Loans: Legality of interest on production loans and the illegality of interest on consumption loans, on the grounds that, based on the concern for the poor, the Qur'ānic prohibition applies to consumption loans only.[1286]

Modernist Contention[1287]

Prohibition of *Ribā* Individualistic Only:
Prohibition of *ribā* covers only individuals, not the giving or taking of interest amongst corporate bodies, such as companies, banks, or governments (institutional credit), or the taking of interest from corporate bodies by individuals (individual deposits), because an individual cannot exploit a larger organization like a bank.[1288]

Corroborating Opinion of Pakistan Council of Islamic Ideology on Institutional Credit:
The Advisory Council of Islamic Ideology agrees that *'riba'* [*sic*] is forbidden but is in disagreement as to whether 'interest in the form in which it appears in public transactions' which in the opinion of the Council includes 'institutional credit' as well, would also be covered by *riba* [*sic*] [as] specified in the Holy Qur'ān.[1289]

'Abd al-Raḥmān al-Jazīrī

Elaboration of *Ribā:* (in a compendium on the juristic opinions of the four Sunnī schools of Islamic jurisprudence):

Definition and Classification:
Ribā is one of those unsound *(fāsid)* transactions which have been severely prohibited *(nahyan mughallaẓan)*. It literally means increase ... However, in *fiqh* terminology, *ribā* means an increase in one of two homogenous equivalents being exchanged without this increase being accompanied by a return. It is classified into two categories. First, *ribā al-nasī'a* where the specified increase is in return for postponement of, or waiting for, the payment; for example, buying an *irdabb* (a specific large measure) of wheat in winter against an *irdab* and a half of wheat to be paid in summer. As the half *irdab* which has been added to the price was not accompanied by an equivalent value in the commodity sold and was merely in return for the waiting, it is called *ribā al-nasī'a*. The second category is *ribā al-faḍl,* which means that the increase mentioned is irrespective of the postponement and is not offset by something return. This happens when an *irdab* of wheat is exchanged hand to hand for an *irdab* and a *kīlah* (another measure) of its own counterpart, the buyer and the seller both taking reciprocal possession; or when ten carats of gold produce [*sic*] are exchanged for twelve carats of similar gold produce [*sic*].

Ribā al-Nasī'a:
There is no difference among Muslim jurists about the prohibition of *ribā al-nasī'a.* It is indisputably one of the major sins. This is established by the Book of God, the *Sunna* of His Prophet, and the consensus of the *umma.* The Qur'ān says: ... (verses 2:275-9).

This is the Book of God which has prohibited *ribā* vehemently and has reprimanded the taker so severely that it makes those who believe in their Lord and dread His punishment tremble with fear. Can any reprimand be harsher than God equating the takers of *ribā* with those who have risen in revolt against Him and are at war with Him and His Prophet? What will be the state of that feeble human being who fights with the Almighty and Overpowering God, Whom nothing on earth or in Heaven can frustrate. There is no doubt that by resorting to *ribā* such a person has adopted the course of self-destruction and deprivation.

The obvious meaning of *ribā* to be understood from this noble verse of the Qur'ān is the *ribā* known by the Arabs in the Jāhilīya period as explained by the commentators of the Qur'ān. More than one of them has mentioned that when a loan extended by an Arab matured, he would ask the borrower for the return of the principal or for an 'increase' in return for the postponement. This is also the 'increase' that is known to us. This increase was either in quantity, like postponing the return of a camel now for two in the future, or in age, like postponing the return of a camel aged one year against a camel aged two or three years in the future. Similarly, the Arabs were familiar with situations where a lender would advance money for a period and take a specified amount of *ribā* every month. If the borrower was unable to repay the principal when the loan matured, he would be allowed an extension in the time of repayment [rescheduling] with the continuation of the *ribā* he has been receiving from the borrower. This is the

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[1286] Muḥammad Abū Zahra, *Buḥūth fī al-Ribā* (Kuwait: Dār al-Buḥūth al-'Ilmiyya, 1970), 52-57.
[1287] Saeed, *Islamic Banking,* 45-46.
[1288] Abdul Jabbar Khan, "Divine Banking System." *Journal of Islamic Banking and Finance.* Summer 1984, 24-44.
[1289] Decision taken on January 13, 1964, in response to a question from the Pakistan Ministry of Finance, as quoted in Nawazish Ali Zaidi, "Islamic Banking in Pakistan" *Journal of Islamic Banking and Finance.* Summer 1988, 21-30.

ribā which is prevalent now and charged by banks and other institutions in our countries. God has prohibited it for Muslims ...
The noble verses have decisively prohibited *ribā al-nasī'a* which involves what is generally understood in our times as the giving of a principal amount on loan for a given period against the payment of interest in percentage terms on a monthly or annual basis. Some people try to justify this kind of *ribā* in spite of its conflict with Islam. It is far removed from Islam and is in discord with its basic philosophy in form as well as meaning. Some of them claim that what is prohibited is the charging of *ribā* many times the principal amount as stated by the Qur'ān: "O believers! Charge not doubled and redoubled interest, and fear God so that you may prosper" (3:130). This claim is however absolutely wrong because the objective of the verse is to express a repulsion against interest ...

Ribā al-Faḍl:
Ribā al-Faḍl ... is prohibited according to the four schools of jurisprudence. But some of the Prophet's companions, among them Sayyid 'Abd Allāh ibn 'Abbās, allowed it. Nevertheless, it is reported that he recanted his opinion afterwards and talked about its prohibition. *Ribā al-faḍl* does not have substantial effect on transactions because of the rarity of its occurrence; it is not the objective of people to buy or sell one thing in exchange for the same thing unless there is something extra from which each of the parties may benefit. Notwithstanding this, it has been prohibited because it might lead to the defrauding or deception of less sophisticated persons. ...

The authority for the prohibition of *ribā al-faḍl* lies in what the Prophet said: ... (six commodities *ḥadīth).* This *ḥadīth* indicates that it is neither proper to sell these homogenous commodities against themselves with addition nor is it proper to delay the reciprocal taking of possession. Hence it is not proper to sell a gold guinea against a gold guinea and ten *qurūsh*, neither on a hand-to-hand, nor on a deferred basis, just as it is not right to sell a gold bar weighing ten carats [*sic*] against a gold bar weighing twelve carats [*sic*]. Similar is the case with wheat and barley and other items mentioned in the *ḥadīth.*

And if such is the case, then does *ribā* enter into every commodity or is it confined to just the commodities mentioned in the *ḥadīth,* namely, gold, silver, wheat, barley, dates and salt? There is no difference of opinion among the four schools of jurisprudence that analogically *ribā* enters into other commodities not mentioned in the *ḥadīth.* If there is any difference it is in the analogy *('illa)* used to arrive at the conclusion that the 'addition' is prohibited for all commodities wherever the analogy holds. Only the Ẓāhiriyya confined *ribā al-faḍl* to only the commodities specified in the *ḥadīth.*[1290]

This long excerpt from al-Jazīrī illustrates what may be called a descriptive and concrete style of *fiqhī* presentation on *ribā,* as opposed to an analytical presentation.

[1290] al-Jazīrī, *al-Fiqh 'alā al-Madhāhib al-Arba'a,* 6th ed. II, 245-8.

Appendix 9

ḤUDŪD CRIMES AND PUNISHMENTS IN ISLAMIC LAW

Ḥadd Crime	*Ḥadd* Punishment & (Source)
• *Sāriqa* (theft)	Hand Amputation (Qur'ānic)[1291]
• *Ḥirāba* (armed robbery, terrorism, corruption):	
◦ Without Murder	Hands and feet Amputation
◦ With Murder	Execution/Crucifixion/Exile(Qur'ānic) [1292]
• *Shurb* (drinking intoxicants)	Lashing – not fixed (Sunnaic)[1293]
• *Zinā'* (illicit sexual intercourse):	
◦ *Ghair al-muḥaṣṣan* (unmarried)	-Lashing – 100 times (Qur'ānic)[1294] -Lashing (100) + One Year Exile (Sunnaic)[1295]
◦ *Muḥaṣṣan* (married)	Lashing (100) & Stoning to Death (Sunnaic)[1296]
• *Ridda* (apostasy)	Death (Sunnaic)[1297]
• *Qadhf* (false accusation of illicit sexual intercourse)	Lashing – 80 times (Qur'ānic)[1298]
• *Baghy* (rebellion)	None (Qur'ānic or Sunnaic)

[1291] Q. 5:38, 39.
[1292] Q. 5:33.
[1293] *Ṣaḥīḥ al-Bukhārī*, "Kitāb al-Ḥudūd", VIII. 8, 13, 14, 15.
[1294] Q. 24:2.
[1295] *Ṣaḥīḥ al-Bukhārī*, "Kitāb al-Ḥudūd", VIII, *Ḥadīth* No. 819, repealing Q. 4:15,16.
[1296] *Sunan al-Tirmidhī*, "Kitāb al-Ḥudūd", IV, 32, repealing Q. 4:15,16.
[1297] *Ṣaḥīḥ al-Bukhārī*, "Bāb Ḥukm al-Murtad wa al-Murtadah', VIII, 50, 163.
[1298] Q. 24:4, 5.

ANCIENT USURY LAW CODES

The ancient Law Codes, limiting the usury rate, include the Ur-Nammu Code (c. 2050 B.C.), the Code of Eshnunna (c. 1925 B.C.), the Code of Lipit-Ishtar (c. 1860 B.C.), the Code of Hammurabi (c. 1700 B.C.), the Hittite Code (c.1450 B.C.), the Assyrian Code (c. 1350 B.C.), and the Covenant Code (c. 1000 B.C.),[1299] and Bocchoris' Law from Egypt around the time of the twenty-fourth dynasty (c. 725-709 B.C.).[1300] But the extant codes are only those of Eshnunna, Hammurabi and Bocchoris.

Pre-Legal Code Reforms:

Aim: Protect the widow and the fatherless against the rich man. Debtor protected only indirectly by guaranteeing the rights of his family after his death.[1301]

- **Reform of Urukagina, King of Lagash, Ur I Period (c. 2350 B.C.);**[1302]
- **Reform of Gudea of Lagash, Beginning of Ur III Period (c. 2060-1950 B.C.);**[1303]
- **Code of Ur-Nammu (c. 2060-2043 B.C.).**[1304]

Extant Law Codes:

- Code of Eshnunna (c. 1925 B.C.): Discovered between 1945 and 1949 at Tell Abu Ḥarmal, an outpost of the Kingdom of Eshnunna, this code is the first extant legal source dealing directly with loans at interest, in Laws 18A to 21, limiting rates to 20% for money and 33 1/3 % for grain:[1305]

  18A. Per 1 shekel (of silver) he will add one sixth of a shekel and 6 grains as interest; per 1 kor (of barley) he will add 1 (pan) and 4 seah of barley as interest.

  19. The man who gives (a loan) in terms of his retake shall make (the debtor) pay on the threshing floor.

  20. If a man lends out money to the amount recorded, but has the corresponding amount of barley set down to his credit, he shall at harvest time obtain the barley and its interest, namely 1 (pan) (and) 4 seah per 1 kor.

  21. If a man lends out money in terms of its initial (amount), he shall obtain the silver and its interest, (namely) one sixth (of a shekel) and 6 grains per 1 shekel.

- Code of Hammurabi (1728-1686 B.C.):[1306] It deals extensively with interest-taking and resultant problems in the following pertinent prescriptions:

  48. If a debt is outstanding against a seignior and Adad has inundated his field or a flood has ravaged (it) or through lack of water grain has not been produced in the field, he shall not make any return of grain to his creditor in that year; he shall cancel his contract-tablet and he shall pay no interest for that year.

  49. When a seignior borrowed money from a merchant and pledged to the merchant a field prepared for grain or sesame, if he said to him, "Cultivate the field, then harvest (and) take the grain or sesame that is produced," if the tenant has produced grain or sesame in the field, the owner of the field at harvest-time shall himself take the grain or sesame that was produced in the field and he shall give to the merchant grain for his money, which he borrowed from the merchant, together with its interest, and also for the cost of cultivation.

[1299] Quoted in, George Mendenhall, *Law and Covenant in Israel and Ancient Near East* (Pittsburgh: Biblical Colloquium, 1955), 9.
[1300] Maloney (Background, 28) regards this as a rather unsatisfactory legal source as it is known only through Diodorous of Sicily who wrote in the 1st century A.D. and was thus far removed from Bocchoris' time, and no corroborating Egyptian sources have yet been found.
[1301] Maloney, Background, 14.
[1302] Alexander Scharff and Anton Moorgat, *Ägypten und Vorderasien im Altertum* (Munich: F. Bruckmann, 1950), 242-3, quoted in Maloney, Background, 8.
[1303] Ibid., 278, quoted in Maloney, Background, 14..
[1304] Charles F. Fensham, "Widow, Orphan and the Poor in Ancient Near Eastern Legal and Wisdom Literature," *Journal of Near Eastern Studies,* XXI, (1962), 129-39, p 129; E. Szlechter, "Àpropos du Code d'Ur-Nammu," *Revue d'Assyriologie et d'Archeologie Orientale,* 47 (1953), 6; Szlechter, "Le Prêt dans l'Ancien Testament et dans les codes mésopotamiens d'avant Hammourabi," *Revue d'Histoire et de Philosophie Réligieuses,* 35 (1955), 18-19, quoted in Maloney, Background, 8 and 14.
[1305] Albrecht Goetze, *The Laws of Eshnunna* ("Annual, American Schools of Oriental Research," 31 [1956]), 64f.
[1306] Code of Hammurabi, tr. T. J. Meek, in *Ancient Near Eastern Texts* (Princeton: Princeton University Press, 1955).

50. If he pledged a field planted with (grain) or a field planted with sesame, the owner of the field shall himself take the grain or sesame that was produced in the field and he shall pay back the money with its interest to the merchant.

51. If he does not have the money to pay back, (grain or) sesame at their market value in accordance with the ratio fixed by the king he shall give to the merchant for his money, which he borrowed from the merchant, together with its interest.

66. When a seignior borrowed money from a merchant and his merchant foreclosed on him and he has nothing to pay (it) back, if he gave his orchard after pollination to the merchant and said to him, "Take for your money as many dates as there are produced in the orchard," that merchant shall not be allowed; the owner of the orchard shall himself take the dates that were produced in the orchard and repay the merchant for the money and its interest in accordance with the wording of his tablet and the owner of the orchard shall in turn take the remaining dates that were produced in the orchard.

88. If a merchant (lent) grain at interest, he shall receive 100 qu of grain per kur as interest. If he lent money at interest, he shall receive one-sixth (shekel) six še (i.e., one-fifth shekel) per shekel of silver as interest.

89. If a seignior, who (incurred) a debt, does not have the money to pay (it) back, but has the grain, (the merchant) shall take the grain for his money (with interest) in accordance with the ratio fixed by the king.

90. If the merchant increased the interest beyond (100 qu) per kur (of grain) (or) one-sixth (shekel) six še (per shekel of money) and has collected (it), he shall forfeit whatever he lent.

91. If a merchant (lent) grain at interest and has collected money (for the full interest) on the grain, the grain along with the money may not (be charged to the account?). [Badly damaged text; meaning not clear]

93. If a merchant has given corn or silver on loan (and) has not taken the capital but takes the interest for so much corn (or silver) (as he has lent), whether he has then not caused so much corn (or silver) as he has received to be deducted and has not written a supplementary tablet or has then added the increments to the capital sum, that merchant must double so much corn (or silver) as he has taken and give (it) back.

94. If a merchant lent grain or money at interest and when he lent (it) at interest he paid out the money by the small weight and the grain by the small measure, but when he got (it) back he got the money by the (large) weight (and) the grain by the large measure, (that merchant shall forfeit) whatever he lent.

95. If (a merchant) has given (corn or silver) on loan without witness (or contract), he forfeits (what)soever he has given.

96. If a seignior borrowed grain or money from a merchant and does not have the grain or money to pay (it) back, but has (other) goods, he shall give to his merchant whatever there is in his possession, (affirming) before witnesses that he will bring (it), while the merchant shall accept (it) without making any objections.

101-107. These prescriptions deal with credit transactions between a merchant and a trader, where the merchant is much more than a creditor: beyond his loan, he has a considerable interest in the result of the trading. He is repaid at the end of the transaction, not as straight interest but as a share in the profits, the proportion varying from contract to contract and not fixed by law, making the transaction both a credit-contract and a partnership.

101. It protects the money-lender against the negligence of the borrower who must pay double if he fails to make a profit during the trading journey.

102-103. These provide for the borrower not being burdened with paying penalties or interest or even at times the capital in certain exceptional circumstances.

104-105. These prescriptions require formalities to guarantee against fraud.

106-107. These prescriptions specify penalties for fraud. Prescription # 107 provides that the money-lender who seeks to multiply profit on his loans by denying receipt of payment must pay six-fold if convicted.

Bocchoris' Law from Egypt around the time of the twenty-fourth dynasty (c. 725-709 B.C.): It limited the accumulation of interest to double what was lent and restricted responsibility for debts to the goods of the debtor, excluding his person.[1307]

[1307] Diodore of Sicily, *Bibliotheca Historica*, ed. Fridericus Vogel and Curtius Theodorus Fischer. (Leipzig: Teubner, 1888-1906), I, 79.

GREEK/ROMAN LEGAL REGULATIONS[1308]

CLASSICAL GREEK CIVIL LAW

SOLON (638-558 BCE), Athenian law-giver

In a time of great economic distress he cancelled outstanding debts and introduced some democratic changes, but although his laws did contain many provisions for the poor debtors, they did not prohibit usury nor did they impose maximum rates."[1309]

ROMAN LAW

TACITUS (c. 55A.D.–after 115A.D):

Beginnings of Roman Legal Involvement in the Usury Problem as a Political and Social Issue:

The curse of usury, it must be owned, is inveterate in Rome, a constant source of sedition and discord; and attempts were accordingly made to repress it even in an older and less corrupt society. First came a provision of the Twelve Tablets that the rate of interest, previously governed by the fancy of the rich, should not exceed *unciario faenore*; later a tribunician rogation lowered it to one-half of that amount; and at length usufruct was unconditionally banned. ..[1310]

The Famous Twelve Tablets (Leges Duodecim Tabularum), c. 451- 449 B.C.

- Foundation for the whole fabric of Roman Law
- Codification and promulgation at the behest of the plebeians of what had formerly been customary law administered and interpreted by the patricians.
- First legal intervention on usury
- The question of exorbitant rates of interest is regulated in the eighth tablet of the Twelve Tablets thus:

  ... No person shall practice usury at a rate of more than one-twelfth. [1311]

LEX LICINIA SESTIA (c. 375 B.C.):

It had sought, more comprehensively [than the Twelve Tablets], to reduce the debtor's burden by providing that what had been paid as interest should be deducted from the original sum, and the remainder discharged in three annual installments of equal size.[1312] This and similar accounts are reflective of a political movement, seeking to alleviate the debtor's misery through legal action, culminating in the complete abolition of usury.[1313]

LEX DUILLIA MENENIA (357 B.C.):

It simply reaffirmed the Twelve Tablets prescription on the rate of interest.

LEX GENUCIA (342 B.C.):

It prohibited usury altogether. However, the law fits in poorly with the conditions of the time, and was "honored more in the breach than in the keeping. The law-maker had tried, and failed, to eliminate what was already a necessary part of the Roman economy."[1314]

LEX FLAMINIA MINUS SOLVENDI (217 B.C.):

It allowed borrowers to pay off their debts with money of reduced value.[1315]

LEX CORNELIA DE SULLA (88 B.C.):

It returned to the rate of interest set by the Twelve Tablets.[1316]

[1308] The excerpts are from the doctoral dissertation of Rev. Robert P. Maloney (Maloney, Background, 98-112), which incorporates original research.

[1309] T.W. Taylor and J.W. Evans, "Islamic Banking and the Prohibition of Usury in Western Economic Thought," *Nat. West Quarterly*, Nov., 1987, 16, quoted in Buckley, Theological Examination, 82.

[1310] Maloney, Background, 100.

[1311] A.C. Johnson, P.R. Coleman-Norton and F.C. Borne, *Ancient Roman Statutes* (Austin: University of Texas Press, 1961), 16.

[1312] Livy, VII, 16 and VI, 35, 1-5 (Loeb transl.), as quoted by Maloney, Background, 101-102.

[1313] Maloney, Background, 102.

[1314] Ibid., 103; P. Louis, *Ancient Rome at Work*, trans. E. Warcing, (New York: Barnes and Noble, 1965), 87.

[1315] Adolph Berger, "Lex Flaminia," *RE*, Suppl. VII, 412-413.

LEX VALERIA (86 B.C.):
It allowed bankrupt debtors to liquidate the debt by paying one quarter of the debt.[1317]

CATO THE ELDER (234-149 BC), his grandson CATO THE YOUNGER (95-46 BC), CICERO (106-43 BC), and SENECA (c. 4 BC-65 AD):
They all also condemned usury.[1318]

PLINY THE YOUNGER (c. 112 A.D.)[1319] and EMPEROR CONSTANTINE (in April 325 A.D.):[1320]
Attempted to lower the interest rate. Anatocism (compound interest) was forbidden at least in some cases in Rome.[1321] A reform law put a ceiling on interest accumulation, restricting it to the amount of the capital.[1322]

DIOCLETIAN (In 284 A.D.):
Imposed the penalty of infamy on those who took illegal interest.[1323]

THEODOSIUS THE GREAT (In 386 A.D.):
Decreed that usurers must pay a penalty of four-fold the amount of illegal interest charged by them.[1324]

JUSTINIAN (483-565 A.D.):[1325]

Justinian (483-565) renovated the whole legal treatment of loans at interest, incorporating much previous legislation into his *Corpus* and showing far-reaching kindness toward the debtor. Without going so far as to suppress interest-taking, as other-worldly prohibition might have suggested, he reduced the rate of interest to 6% for ordinary loans and even 4% if the borrower was a *persona illustris.* Those involved in commercial transactions could ask 8%. For maritime loans and loans of produce (where terms were often shorter and the risks were greater), 12% or 12½ % was permitted. [1326] Justinian again forbade that interest mount higher than capital,[1327] and he strengthened the law against anatocism [compound interest].[1328]

CHRISTIAN ERA:

Legal Compliance with, but Later Abrogation of, Other-Worldly Prohibition of Usury:

BASIL THE MACEDONIAN (867-886) Decree in his *Prochiron Legum,* XVI, 14:
"Even though many emperors before us deigned to allow interest-taking, perhaps because of the incorrigibility and crassness of creditors, nevertheless we judge that it ought to be repudiated as unworthy of our Christian state because it is prohibited by *divine law.* Therefore, Our Majesty decrees that no one has the power to receive interest for any reason whatsoever, lest, while we seem to keep the law of God, we should transgress his precept. But if anyone should receive anything, let it be imputed as a debt to the creditor."

Interestingly, when this other-worldly prohibition of usury finally entered oriental imperial law, it was a disaster, and caused such havoc that Basil's successor, Leo the Wise (886-911), abrogated it (with great delicacy).

LEO THE WISE (886-911):
Abrogated Basil's decree and set the maximum rate of interest at 4%:
"Certainly it would be excellent and salutary if the human race, being conformed to the laws of the Holy Spirit, had no need for human regulations. Nevertheless as it is not granted to all to be raised up to the heights of the Holy Spirit and to hear the echo of the divine law, but actually there are very few who arrive there through the practice of virtue, we ought to be quite happy if men at least live comfortably to human laws. The judgment of the Holy

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[1316] Adolph Berger, "Law Cornelia," *Encyclopedic Dictionary of Roman Law* (Philadelphia: American Philosophical Society, 1953), 550.
[1317] E. Weiss, "Leges Valeriae," *RE,* 12, 2417.
[1318] Birnie, *Interest.*
[1319] Pliny the Younger, *Epistulae,* ed. M. Schuster (Leipzig: Teubner, 1958), X, 55 (Loeb transl.).
[1320] *Codex Theodosianus,* ed. & trans. by Clyde Pharr, (Princeton: Princeton University Press, 1952), II, 33, 1.
[1321] *Codex Justinianus.* ed. P. Krueger, (Berlin, 1880), IV, 32, 28.
[1322] *Codex Theodosianus,*, IV, 19, 2.
[1323] *Codex Justinianus.*, II, 12, 20.
[1324] *Codex Theodosianus,* II, 33, 2.
[1325] Maloney, Background, 110.
[1326] *Codex Justinianus.* ed. P. Krueger, (Berlin, 1880), IV, 32, 36.
[1327] Ibid., IV, 32, 27.
[1328] Ibid., IV, 32, 28.

Spirit condemns in an absolute fashion what is called interest on loans of money, and knowing that, the Emperor of eternal memory, our father, decided to forbid, by a special measure, the receiving of interest. But that prohibition became, because of extreme poverty, a cause, not of betterment, as was the legislator's aim, but of perversion..."

Leo explained that those who would formerly have lent to the poor, because they could no longer make gains from their loans, became hard and inhuman toward those who needed their help. Moreover, the law led to perjury and, because of the perversity of human nature, to increased misery.

Leo concluded: "Without wanting to condemn the law in itself (something which would not please God), granted (as I have said) that human nature cannot attain the sublimity of the law, we abrogate this enactment which was *too perfect*, and we permit, on the contrary, a return to the practice of loans of money at interest, as the ancient legislators had authorized.[1329]

[1329] Leo the Wise, *Novellae*, 83, translated by Maloney in his, Background, n. 110, 112-113.

Appendix 11 (a)

OLD TESTAMENT USURY PRESCRIPTIONS

PENTATEUCH TEXTS ON USURY: [1330]

If you lend money to My people, to the poor among you, do not act toward them as a creditor; exact no interest from them.
– Exodus 22:24

You shall not deduct interest from loans to your countrymen, whether in money, or food [victuals], or anything else that can be deducted as interest; but you may deduct interest from loans to foreigners. Do not deduct interest from loans to your countrymen, so that the Lord your God may bless you in all your undertakings in the land that you are about to enter and possess.
– Deuteronomy 23:20-21

If your kinsman, being in straits, comes under your authority, and you hold him as though a resident alien, let him live by your side: do not exact from him advance or accrued interest,[1331] but fear your God. Let him live by your side as your kinsman. Do not lend him your money at advance interest, or give him your food at accrued interest. I the Lord am your God, who brought you out of the land of Egypt, to give you the land of Canaan, to be your God.
– Leviticus 25:35-38

BIBLICAL WISDOM LITERATURE TEXTS ON USURY:

(1) O Lord who may abide in your tent? Who may dwell on your holy hill? (2) Those...
(5) who do not lend money at interest.
– Psalms 15:1-5 [1332]

(5) If a man is righteous and does what is lawful and right ... (7) does not oppress anyone, but restores to the debtor his pledge ... (8) does not take advance or accrued interest ... such a one is righteous; he shall surely live, says the Lord God ... (13) takes advance or accrued interest; shall he then live? He shall not. He has done all these abominable things; he shall surely die; his blood shall be upon himself.
– Ezekiel 18:5-13 [1333]

(11) One commits abominations with his neighbor's wife; another lewdly defiles his daughter-in-law; another in you defiles his sister, his father's daughter. ...(12) In you, they take bribes to shed blood; you take both advance interest and accrued interest, and make gain of your neighbors by extortion; and you have forgotten me, says the Lord God.
– Ezekiel 22: 11-12 [1334]

OTHER HEBREW BIBLE TEXTS ON USURY:

Then I consulted with myself, and I rebuked the nobles, and the rulers, and said unto them, Ye exact usury, every one of his brother. And I set a great assembly against them.
– Nehemiah 5:7

I likewise, and my brethren, and my servants, might exact of them money and corn: I pray you, let usleave off this usury.
– Nehemiah 5:10

He that by usury and unjust gain increaseth his substance, he shall gather it for him that will pity the poor.
–Proverbs 28:8

[1330] Translations from *The Torah: The Five Books of Moses: The New JPS Translation of The Holy Scriptures according to the Traditional Hebrew Text* (Philadelphia: The Jewish Publication Society, 1999). Underlining mine.
[1331] Interest deducted in advance, or interest added at the time of repayment.
[1332] This text was used by the Council of Nicaea (325 AD) in its condemnation of usurious clerics, though literally it refers to any Israelite. It has also been claimed that the usury prohibition, excluding foreigners in Deuteronomy, is given absolutely in this text. Maloney, Background, 72, quoting the text of Nicaea's seventeenth canon.
[1333] This text was extensively used by the Church Fathers. St. Jerome, in his commentary on Ezekiel, claimed that Ez. 18:13 extended the usury prohibition to every case. Maloney, Background, 72.
[1334] The above text was also extensively used by the Church Fathers. Maloney, Background, 72. The reference to incest along with interest is very significant and parallels the incest-*ribā* equivalence *ḥadīth* ascribed to Prophet Muḥammad.

Behold, thy Lord maketh the earth empty, and maketh it waste, and turneth it upside down, and scattereth abroad the inhabitants thereof. And it shall be, as with the people, so with the priest; as with the servant, so with his master; as with the maid, so with her mistress; as with the buyer, so with the seller; as with the lender, so with the borrower; as with the taker of usury, so with the giver of usury to him.
– Isaiah 24:1 - 2

Woe is me, my mother, that thou hast borne me a man of strife and a man of contention to the whole earth! I have neither lent on usury, nor men have lent to me on usury; yet every one of them doth curse me.
–Jeremiah 15:10

He that hath not given forth upon usury, neither hath taken any increase, that hath withdrawn his hand from iniquity, hath executed true judgment between man and man.
– Ezekiel 18:8

Hath given forth upon usury, and hath taken increase: shall he then live? he shall not live: he hath done all these abominations; he shall surely die; his blood shall be upon him.
– Ezekiel 18:13

That hath taken off his hand from the poor, that hath not received usury nor increase, hath executed my judgments, hath walked in my statutes; he shall not die for the iniquity of his father, he shall surely live.
– Ezekiel 18:17

In thee have they taken gifts to shed blood; thou hast taken usury and increase, and thou hast greedily gained of thy neighbours by extortion, and hast forgotten me, saith the Lord God.
– Ezekiel 22:12

GENESIS TEXTS ON BROADER INTRA-ACTIVE CONNOTATION OF *RIBĀ:*

And God said, "Let the earth generate plants, vegetation that produces seed, fruit trees, each making fruit of its *own kind*, which has *its seed in it*, on the earth." And it was so.
– Genesis 1:11

The earth brought out plants, vegetation that produces *seeds of its own kind*, and trees that make fruit that each has *seeds of its own kind in it.* And God saw that it was good.
– Genesis 1:12

And God created the big sea serpents and all the living beings that creep, with which the water swarmed, *by their kinds*, and every winged bird *by its kind.* And God saw that it was good.
– Genesis 1:21

And God said, "Let the earth bring out living beings by their kind, domestic animal and creeping thing and wild animals of the earth by their kind." And it was so.
– Genesis 1:24

And God made the wild animals of the earth *by their kind* and the domestic animals *by their kind* and every creeping thing of the ground *by their kind.* And God saw that it was good.
– Genesis 1:25

And God said, "Let us make a human, in our image, according to our likeness ...
– Genesis 1:26

And God created the human in His image. He created it in the image of God; He created them male and female.
– Genesis 1:27

EARLY RABBINICAL TEACHINGS ON USURY[1335]

Philo (c. 30 B.C.- 45 A.D.)

Commendation of Interest-Free Loans:

For along with the capital, in place of the interest which they determine not to accept, they receive a further bonus of the fairest and most precious things that human life has to give: mercy, neighborliness, charity, magnanimity, a good report and good fame. And what acquisition can rival these? No, even the Great King will appear as the poorest of men if compared with a single virtue. For his wealth is soulless, buried deep in store-houses and recesses of the earth, but the wealth of virtue lies in the sovereign part of the soul, and the purest part of existence, heaven, and the all-creating God claim it as their own.[1336]

Generosity in Lending:

He [God] forbids anyone to lend money on interest to a brother, meaning by this name not merely a child of the same parents, but anyone of the same citizenship or nation. For he does not think it *just* to amass *money bred from money* as their *calves* are *from cattle*. And he bids them not to take this as grounds for holding back or showing unwillingness to contribute, but without restriction of hand and heart to give free gifts to those who are in need, reflecting that a free gift is in a sense a loan that will be repaid by the recipient when times are better, without compulsion and with a willing heart.[1337]

Rabbi Simeon b. Eleazar (160-190 A.D.)

Praise for Lending Without Interest and Condemnation of Those Who Refuse.[1338]

Tosephta to *Baba Mezi'a*

Promise of reward to those who lend freely.[1339]

Talmud and the Medieval Jewish Codes[1340]

Prohibition extended to cover far more than the taking of interest. Four main types of "increase" [=Hebrew *marbīt* and Arabic *ribā*] are distinguished: (1) fixed increase, denoting the ordinary transaction where interest on money is paid directly on a loan [in violation of the express command of Scripture, known as 'Increase under the Mosaic Law']; (2) "the mere dust of increase", denoting some indirect form of interest connected with bargain or sale, even if given more or less gratuitously; also covered is anything given by a borrower in anticipation of a loan [known as 'Rabbinical Increase']; (3) "the semblance of increase", referring to interest paid out of gratitude for a past loan or out of the desire to induce a future one; (4) increase payable by means other than money, including many disparate cases, like, when a borrower honors his creditor by allowing him to perform some religious duty in connection with synagogue worship.[1341]

Siphre on Deuteronomy

Declared all interest, including anything that looks like interest to be forbidden.[1342]

[1335] This presentation of early rabbinical teachings draws heavily and liberally on the work of Maloney (Maloney, Background, 113-135) which incorporates original research.
[1336] Philo, *De Virtutibus*, XIV, 84-85 (Loeb transl.).
[1337] Ibid.,82-83 (Loeb transl.).
[1338] *Baba Mezi'a*, 71a.
[1339] Tosephta to *Baba Mezi'a*, VI, 18.
[1340] Code of Maimonides (12th c.); *Turim* Code of Jacob ben Asher (1248-1340); Code of Joseph Caro, the *Shulchan Arukh* (16th c.)
[1341] Maloney, Background, n. 125, 117; J. Abelson, "Usury (Jewish)", *Encyclopedia of Religion and Ethics*, XII, 557.
[1342] *Siphre on Deuteronomy*, XXIII, 20, 262.

Baba Mezi'a

Extension of usury prohibition to cover a very broad range of rather common commercial activities:[1343]

The creditor may not dwell without charge in the debtor's courtyard or hire it from him at a reduced rate, since that counts as usury.[1344]

If a man sold his field and was given a part of the price and said to the buyer, "Pay me (the rest of) the price when you will, and then take what is yours," this is forbidden.[1345]

None may set up a shopkeeper on the condition of receiving half the profit, or give him money to buy produce with on the condition of receiving half the profit, unless he is paid his wage as a laborer.[1346]

Tosephta to *Baba Mezi'a*

Deals extensively with the broadened concept of usury, by forbidding not just interest-taking but also what looks like, though may not be, usury.[1347] The former was known as *ribbit kezuzah* (interest proper), and the latter as *avak ribbit* (dust of interest).[1348]

Baba Bathra

Further Illustration of Possible Extension of the Understanding, and Subtle Use, of the Usury Principle:

Come and hear! It has been taught: In the case where a man hired a laborer to work for him at the harvesting season for a denarius [lower value currency] a day, and paid him his wage in advance, but at that season the laborer was worth a *sela'* [higher value currency] a day, he must not derive any benefit from it. If, However, a man hires a laborer to commence work at once and to continue through the harvesting season for a denarius a day, although at the harvesting season he was worth a *sela',* he is permitted to pay in advance and to have the benefit of the difference.[1349]

Maloney Explanation of the incidence of Usury in the above passage:

In the first case there is a difference between the salary given and the price of labor: hence there is usury involved, since the laborer is paying a *sela'* [higher value currency] in labor for every denarius [lower value currency] he has received. In the second case the whole period of the contract is considered as one long day [note the oblique similarity with the concept of "unity of session": *majlis* in Islamic law]. Since during the first days of the period labor was only a denarius a day, no higher price need be paid for the other days; hence no usury is involved.[1350]

Baba Kamma

Application of Broadened Concept of Usury to Sales Transactions[1351] as stated by the Gemara:

Advance payment at present prices may be made for the future delivery of products, but no advance payment at present may be made if the value of the products will subsequently be paid in actual money in lieu of them.[1352]

Maloney Elaboration:

The latter transaction is condemned because it could involve the handing over of a sum of money now in exchange for a larger one later, [and] the Gemara views this as contrary to the spirit of the usury prohibition".[1353]

Mishna

Notion and Scope of Guilt in Usurious Transactions :[1354]

These transgress a negative command: the lender, the borrower, the guarantor, and the witnesses. And the Sages say: The scribe also. They transgress the command "Thou shalt not give him thy money upon usury," and "Take

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[1343] Maloney, Background, 118; *Baba Mezi'a*, V, 4.
[1344] *Baba Mezi'a*, V, 2.
[1345] Ibid., V, 3.
[1346] Ibid. This passage refers to a form of business organization known historically as the medieval *commenda* contract and contemporaneously as the Islamic profit-sharing *muḍāraba* contract, with the additional stipulation of a condition of wage for the working partner in addition to the profit share.
[1347] Tosephta to *Baba Mezi'a*, IV, 3.
[1348] *Encyclopaedia Judaica- CD-ROM Edition.* cf. Usury.
[1349] *Baba Bathra*, 86b-87a.
[1350] Maloney, Background, 119-120.
[1351] This later came to be known as *bay' al-salam* in Islamic law.
[1352] *Baba Kamma,* 103a.
[1353] Maloney, Background, 120. This passage has all the elements of what later developed as the Islamic law concepts of *ribā al-faḍl* (excess) and *ribā al-nasī'a* (delay).
[1354] *Mishna* is one of the two constituent parts of the Talmud. The other is Gemara.

thou no usury of him," and "Thou shalt not be to him as a creditor," and "Neither shall ye lay upon him usury," and "Thou shalt not put a stumbling block before the blind, but thou shalt fear thy God. I am the Lord."[1355]

Gemara in the *Jerusalem Talmud*[1356]

Blindness of the usurer who hires a notary and witnesses to attest to his sin,[1357]

Mekiltha on Exodus

Condemnation of All Participants of Usury and Denial of the Usurer Any "Share in Divinity":

So far I know only of a warning to the lender and to the borrower. But how would I know of a warning to the guarantor, to the witness, and to the notary? Therefore, it says here: "Neither shall you lay upon him interest" ... in any capacity at all. In this connection the sages said: He who lends on interest transgresses five commandments, namely: "Not to give" (Lev. 5:37), and not to take (Lev. 5:36), "Thou shalt not be to him as a usurer (Ex. 22:24), "Neither shall you lay upon him interest (Ex. 22:24), and "nor put a stumbling block before the blind (Lev. 19:14). And just as the lender and the borrower transgress five commandments, so also do the guarantor and the witnesses and the notary. R. Judah would exempt the notary. R. Meir says: He who lends on interest, saying to the scribe: "Come and write", and to the witnesses: "Come and sign", has no share in Him who decreed against taking interest.[1358]

Baba Mezi'a (V, 7ff.), Tosephta to *Baba Mezi'a* (4, 4-5, and 9-25), *'Arakin* (IX, 2-4), and *Baba Bathra* (86b-87a)

All available in translation and give further applications of the usury principle by applying it to prices, wages, sale of inheritances, partnerships, advance payments, rents, etc.[1359]

Tosephta to *Baba Mezi'a*

Rabbinical Permission of Exceptions to the Law of Usury on the Rationale of Charity:[1360]

A man can borrow at interest from a woman and her children only to aid them by the interest.[1361]

Gemara of *Babylonian Talmud* (Quotation of Rabbi Jose) (130-160 A.D.):[1362]

Lending at Interest as Denial of God:

Come and see the blindness of the man who lends at interest: ... if someone gets together witnesses, a notary and ink, and writes and signs (a contract), he denies the God of Israel.[1363]

Gemara of the *Jerusalem Talmud*

Interest-taking as Denial of Yahweh:[1364]

Come and see the blindness of those who lend at interest: if anyone calls another an idolater, an incestuous man or a murderer, the other seeks vengeance on his life; but doesn't one who hired a notary and witness and tells them to attest (a usurious contract) deny the Place? This brings out that everyone who lends at interest denies the Principle. [of divine authority][1365]

Maloney Explanation:

Maloney explains that these two texts, read with the Gemara on *Sanhedrin* [1366] and the Tosephta to *Aboda Zara*,[1367] bring out the extreme gravity assigned by the rabbis to the sin of usury:

A Jew was permitted to violate the ordinances of the Torah if he were threatened with death, but he was forbidden to do so in cases of idolatry, immorality and bloodshed. The text given above from the *Jerusalem Talmud* alludes to these three special cases and connects usury with idolatry, the most serious of sins. So grave was the prohibition of idolatry that it was regarded as "equal in weight to the whole Torah."[1368] To drive home their general teaching on

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[1355] *Baba Mez i'a*, V, 11.
[1356] Ibid., V, 11d.
[1357] Maloney, Background, 121.
[1358] *Mekiltha on Exodus*, XXII, 24. This passage has a striking resemblance to the later Islamic Prophetic traditions which also similarly condemn all the participants – the taker, giver, guarantor, witnesses, and scribe – in a usurious transaction.
[1359] Maloney, Background, 121.
[1360] Ibid., 124.
[1361] Tosephta to *Baba Mezi'a*, V, 15. (Maloney transl. from Bonsirven, 472).
[1362] Maloney, Background, 125.
[1363] *Baba Mez i'a*,, 71a. (Maloney transl. from Bonsirven, 461).
[1364] Maloney, Background, 125.
[1365] Gemara of *Jerusalem Talmud, Baba Mez i'a*, V, 11 d (Maloney transl. from Bonsirven, 462).
[1366] *Sanhedrin*, 74a.
[1367] Tosephta to *Aboda Zara*, I, 10.
[1368] *Sanhedrin*, 74a; *Horayoth*, 8a.

idolatry the rabbis formed practical regulations which aimed at lessening the likelihood that Jews would be contaminated with pagan practices. To the modern reader their measures might seem extreme, but they worked from the principle that prevention was better than cure. A book like *Aboda Zara* gives flesh to this principle through multiple minute regulations. The Gemara expresses its working philosophy with an aphorism:[1369] "Keep off, we say to the Nazirite; go round the vineyard and come not near to it." Just as the Nazirite could avoid the fruit of the vine by avoiding the vineyard itself, so also could the Jew be preserved from idolatry by being preserved from any idolatrous object. The Tosephta to *Aboda Zara* applies this principle to usury by forbidding business dealings that involved any money that had formerly been gained from usury.[1370]The connection of usury to idolatry makes rabbinical efforts to avoid even what looked like usury much more understandable.[1371]

Gemara of *Sukkah* and Siphra on *Leviticus*

Communal Punishment for Usury:

In spite of the gravity of the sin of usury (equivalence with idolatry), there is no mention in the Torah of any temporal or other-worldly punishments for the sin on an individual level. It is only on a community level that the rabbis connected, among other things, usury prohibition with Israel's covenant with Yahweh: the "exodus" as punishment for indulgence in, and the "return" on the condition of avoidance of, usury. The Gemara of *Sukkah* and the Siphra on *Leviticus* draw this conclusion:

> The homes of the Israelites have been delivered to the empire because of four faults: on account of those who retain in their possession bills which have been paid (in the hope of claiming them again); on account of those who lend money on usury; on account of those who had the power to protest against wrongdoing and did not protest; and on account of those who publicly declare their intention to give specified sums for charity and do not give.[1372]
>
> I have brought you out of Egypt on the condition that you accept the commandments on usury. Whoever professes them professes the exodus from Egypt, and vice-versa.[1373]

Punishment for Usury:

The prohibition of interest being of a charitable nature, its violation was not treated as a criminal offense to which any penal sanctions attached. It was only a moral transgression. It was only in the prophesies of Ezekiel that usury came to be identified with the gravest of crimes: it is mentioned in the context of larceny, adultery, homicide and other such "abominations" which are worthy of death (Ez. 18:11-13). The threat of death for usury was later interpreted as the divine sanction against irrecoverable and illegitimate self-enrichment (BM 61b)."[1374] Furthermore, moneylenders who take interest are likened to apostates who deny God (Tosef., BM 6:17) and to shedders of blood (BM 61b) and they have no share in the world to come (Mekh. Sb-Y 22:24).[1375]

Maloney Summary of Jewish Outlook towards Usury during the Early Rabbinical Period:

Contemporary with early Christianity, Talmudic legislation far outdid the Old Testament in discouraging interest-taking. Conversely, it strongly emphasized the obligation to lend freely to the poor man. The rabbis at the same time extended the prohibition against usury to much more than interest-taking; they forbade even what looked like usury. But permission to take interest from the gentiles remained in effect; some even regarded it as a command. Casuistry, moreover, did provide for interest-taking in a few cases even among Jews, so that in practice the prohibition was not absolute. Violation of the prohibition was considered very grave; at times it was seen as equivalent even to the shedding of men's blood and the denial of Yahweh. Like the Old Testament, rabbinic literature did not pose the usury question in terms of justice; it saw it in terms of charity towards the poor, especially where the bond of brotherhood united the poor man with his brethren.[1376]

[1369] *Aboda Zara,* 58b.
[1370] Tosephta to *Aboda Zara,* I, 10-11.
[1371] Maloney, Background, 125-126.
[1372] *Sukkah,* 29 a, b.
[1373] Siphre on *Leviticus,* XXV, 38. (Maloney transl. from Bonsirven, 46).
[1374] *Encyclopaedia Judaica- CD-ROM Edition* .s.v. Usury.
[1375] Ibid.
[1376] Maloney, Background, 135.

PATRISTIC TEACHINGS – CHURCH FATHERS/CHRISTIAN THEOLOGIANS [1377]

Clement of Alexandria (c. 150-215 A.D.), of the Greek Church

Among the earliest extant sources denouncing usury, he holds that Ez. 18:4-9 is a prophetic description of the Christian life: by following the prohibition of usury, the newly baptized will attain eternal happiness. [1378] Treating the Mosaic Law as the source for all the moral teaching of the Greeks, he cites the prohibition of usury as an example of the Old Testament teaching on generosity and fellowship.[1379] He treats piety, liberality, justice and humanity as the rationale for the prohibition of usury.[1380]

Tertullian (c. 155-c. 220)

He only gives indirect reference to the prohibition of usury in his attempt to show the harmony between the Judaic Law and the Gospel. According to him, the Old Testament (Ez. 18:8) prohibited interest in order to prepare people for the habit of losing the principal itself (Lk. 6:34). He does not view the new law as abolishing the old, but as surpassing it: the prohibition of usury remains and is expanded – not even to seek the principal from one who is in need.[1381] [This bears a striking resemblance to the later Qur'ānic exhortation in Q. 2:280 to grant facilitating extension and even charitable remission to the needy debtor].

Apollonius (dates uncertain), an Asian bishop

Another early indirect witness to the prohibition of usury, he reproved Montanists for their practice of usury while claiming to be prophets. The scriptural prohibition of usury is not restricted, but only applied *a fortiori*, to the prophets by him.[1382]

St. Cyprian (c. 200-258)

Witnessing the extensiveness of the usury problem, he deals with the morality of usury in an influential compendium of the moral and disciplinary duties of the Christian.[1383] He quotes Old Testament texts to prove that usury is immoral.[1384]

Homilies of the Fathers

Condemnation of usury as immoral finds support not only in the Scripture (Old Testament), but also in its incompatibility with Christian love as expressed in poetic thought in the homilies of the Fathers.[1385]

Commodianus

In an early poem, he castigates the usurer for wounding the poor, stealing from the wretched, and giving to others only in order to impoverish them:

> Why do you senselessly pretend to be good as you wound others? From what you bestow, another is daily weeping. Do you not believe that the Lord sees those things from heaven? Scripture says, "The Most High does not approve of the gifts of the wicked." You break the wretched when you get a chance. Does a man give gifts that he might make another poor? Or, if you lend at interest, taking twenty-four percent, you want to give alms that you might expiate evil with that which is also evil. The Almighty absolutely rejects such works as these. Your donation has been wrung from tears...O wicked one, you deceive yourself, but no one else. [1386]

Lactantius

He makes a similar attack on usury, using justice and ill-effects on the poor as the rationale.[1387] He catalogues the prescription to be followed by the man who sincerely seeks God and strives after truth. [1388]

St. Athanasius (c. 295-373)

Treating usury briefly, he lists ten special precepts – the ninth being not lending at interest – that must be followed to be worthy of dwelling with the Lord in His eternal tabernacle. To him, violation of the charitable lending precept excludes man from eternal life.[1389]

[1377] This section on the teachings of Church Fathers also draws heavily and liberally on the doctoral dissertation of Rev. Robert P. Maloney (Maloney, Background, 136-179) which incorporates original research.

[1378] *Paedagogus*, 1,10.

[1379] *Stromateis*, II, 19.

[1380] Maloney, Background, 138-139.

[1381] Ibid., 140-141.

[1382] Ibid., 141-142.

[1383] *Testimoniorum Libri iii: ad Quirinum*, lib. iii, 48.

[1384] Maloney, Background, 142-143.

[1385] Ibid., 143.

[1386] Commodianus, *Instructiones*, 65. (Maloney transl.), Uncertain dating.

[1387] Lactantius, *Institutiones Divinae*, 18 (before 311 A.D.).

[1388] Ibid., *Epitome*, 64 (Maloney transl.) (after 314 A. D.): "He will not steal nor will he even covet another's goods. He will not give money at usury (for this is to make a profit from the ill-fortune of others), nor will he turn down anyone whom necessity forces to borrow."

Cyril of Jerusalem (c. 315-387)

In a famous catechetical lecture,[1390] he warns his catechumens (Christian converts under instruction before baptism) about usury, treating it as a diabolical action along with intemperance and avarice.[1391] [In the Judeo-Christian tradition this is the first reference to usury as an act of the Devil, and a close parallel to the later Qur'ānic categorization of usury *(ribā)* as "Satanic insanity" (Q. 2:275)].

Hilary of Poitiers (c. 315-c. 367)

In his *Tractatus in Ps. xiv*,[1392] he treats usury as an injury to Christ in the person of the poor man. He states that lending, which should be virtuous, becomes damnable when interest is demanded, increasing the need of the poor man instead of helping him.[1393]

Basil the Great (330-379)

A Cappadocian, and one of the two greatest opponents of usury among the Greek Fathers, he viewed interest-taking as oppression of the poor and a violation of a scriptural prohibition. For him "the struggle against usury is part of a more general battle against the evil practices of the rich..." He berates the cold creditor who is not moved to see a debtor on his knees begging help, who is not swayed by tears and pleas, but only by the hope of interest. Deceitfully the creditor pretends to lend at lower rates than usual, because of friendship, while seeking to take away even the debtor's liberty (through "voluntary servitude" in case of failure to pay the debt).[1394] In a very apt passage, Basil dissuades both the rich and the poor from borrowing, positing "freedom from care" as the rationale.[1395]

Echoing Aristotle, Basil states[1396] that usury must be called *tokos* (offspring) because of all the evils it engenders. But other offspring grow only until they reach maturity, whereas usury never ceases to grow, bringing with it ever-increasing sorrow.[1397]

Gregory Nazianzen (330-389)

He denounces usury like his master, Basil, in words reminiscent of Aristotle and the New Testament (Mt. 25:27 and Lk. 19:23):

> Another man defiles the earth with usury and interest, *gathering where he did not sow and harvesting where he did not plant* – reaping his gain not from the earth, but from the need of the poor.[1398]

Gregory of Nyssa (335-394)

The most versatile of the Cappadocians, he attacks usury in a multi-pronged way. "Like the other Fathers, he considers usury a violation of charity, but interestingly, he gives a brief statement of the same argument which St. Thomas will later borrow from Aristotle and which will become standard in the Middle Ages... Gregory argues that usury results from an evil union unknown to nature ["intra-active"?] which has the power to make sterile things bear fruit, even though nature itself has made only animate things fecund."[1399] Gregory sums up the theme thus:

> But you, *copper and gold*, things that cannot usually bring forth fruit, do not seek to have *offspring*.[1400]

This line of argumentation, based on the [Aristotelian concept of] sterility of money, was revived a millennium later to support the already long-standing prohibition on usury.[1401] Gregory systematically outlines the evils of usury for the usurer, the debtor, and society. He condemns interest-loans not just to the poor but to the rich;[1402] he condemns not only exorbitant interest but even that allowed by civil law.[1403] He also attacks usury from the

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[1389] Maloney, Background, 145.
[1390] *Catecheses*, IV, 37.
[1391] Maloney, Background, 145.
[1392] *Tractatus in Ps. xiv*, 15.
[1393] Maloney, Background, 145.
[1394] Ibid., 146.
[1395] *Homilia ii*, 3: "Are you rich? Do not borrow. Are you poor? Do not borrow. If you are prospering, you have no need of a loan; if you have nothing, you will not repay the loan. Do not give your life over to regret, lest at some time you may esteem as happy the days before the loan. Let us, the poor, surpass the rich in this one thing, namely, freedom from care."
[1396] Ibid.
[1397] Maloney, Background, 148.
[1398] *Oratio xvi*, 18 (Maloney transl.).
[1399] Maloney, Background, 150.
[1400] *Contra Usurarios* (Maloney transl.).
[1401] Noonan, *Scholastic Analysis*, 56.
[1402] *Homilia iv in Ecclesiasten and Ep. Ad Letoium*, quoted in Maloney, Background, 151.
[1403] *Ep. Ad Letoium.*

creditor's point of view, equating the creditor with a thief and robber: both the thief and usurer take away what belongs to others, whether men call that robbery or interest-taking or anything else.[1404] He repeats another common patristic theme, that the money-lender increases the need of the borrower rather than diminishing it.[1405] "If there were not such a great multitude of usurers, there would not be such a crowd of poor people."[1406] He outlines the grave social consequences that usury entails: multiplication of the poor, ruin of homes, occasion for deceit and debauchery.[1407] For him, the sacred scripture forbids the taking of any surplus over and above capital, no matter what pretence at legality is made.[1408] [This is a perfect parallel to the later Qur'ānic stipulation of *"lakum ru'ūs amwālikum*" (you are entitled to your principal)].

"Interest-taking was legal all through the patristic period, but Gregory, like Ambrose, Chrysostom and Augustine, condemned it nonetheless. Like other Fathers, Gregory saw the Old Testament prohibition as clearly still binding. The law had not been destroyed, but fulfilled. No matter what the laws of the empire might say, the law of God still forbade usury."[1409]

In another very significant reference, Gregory, like Basil earlier, denounced usurers as 'a breed of vipers that gnaw the womb that bears them'. [A close parallel is to be found in the later Islamic Prophetic *ḥadīth* which equates *ribā* (usury) with incest with one's own mother].

St. Ambrose (339-397)

He deals exclusively with usury in detail. Far from original but comprehensively covering all scriptural evidence, he condemns usury practice as contrary to divine positive law. He also condemns it as against nature.[1410] Like Aristotle, Ambrose utilizes the theme of *tokos* (offspring) for usury-generation and compares its rapid generation to the birth of hares.[1411] But, Ambrose does not elaborate what is the "divine positive law" and "nature" which are violated by the practice of usury.

He castigates the lender for oppressing the poor.[1412] He disapproves of all kinds of interest, whether of money, produce, or anything else.[1413] He exhorts to a generosity which goes beyond the law.[1414] He condemns the legal centesima [percentage rate][1415] as well as the illegal anatocism [compound interest]:[1416]

> The first of the month arrives, the *capital brings forth its hundredth*; each month comes, interest is born, *evil offspring of evil parents*. This is the generation of vipers. The hundredth has developed; it is demanded, it is not paid; it is applied to the principal...And therefore it begins to be no longer interest, but principal, that is to say, not a hundredth of interest, but interest on a hundredth.

He admits that the Deuteronomy permission to take interest from enemies (*nokri:* foreigner) is applicable even in the Christian era. He clearly allows interest-taking in cases where warfare is justifiable. "Where there is right of war, there is also right of usury."[1417] [This Christian position is similar to the later Islamic *fiqh* ruling of Imām Abū Ḥanīfa and, later, Shāh 'Abdul 'Azīz which permitted interest-taking in the *dār al-ḥarb* (enemy territory)].

Ambrose considered interest-taking serious sin, being deeply aware of the presence of Christ in the poor man.[1418] To exact usury from the poor man was to rob him,[1419] even to kill him.[1420] He classifies usury among the sins that lead to death.[1421]

St. John Chrysostom (344?-407)

He uses a very varied philosophical and theological approach in his attack on usury. He regards usury as harmful to the lender and the borrower, openly opposed to sacred scripture and threat to eternal salvation. For him, the

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[1404] *Homilia iv in Ecclesiasten and Ep. Ad Letoium.*
[1405] *Homilia iv in Ecclesiasten.*
[1406] *Contra Usurarios* (Maloney transl.).
[1407] *Homilia iv in Ecclesiasten.*
[1408] *Ep. Ad Letoium.*
[1409] Maloney, Background, 153.
[1410] Ambrose, *De Officiis,* III, 3.
[1411] Maloney, Background, 161.
[1412] Ibid., *De Tobia,* 16, 17, 28.
[1413] Ibid., 49.
[1414] Ibid., 9, 10.
[1415] Ibid., 34, 40, 42, 50.
[1416] Ibid., 42, 45.
[1417] Benjamin N. Nelson, *The Idea of Usury from Tribal Brotherhood to Universal Otherhood* (Chicago: University of Chicago Press, 1969), 4.
[1418] Ambrose, *De Tobia,* 55.
[1419] Ibid., *De Nabuthe,* 4, 15.
[1420] Ibid., *De Tobia,* 46.
[1421] Ibid., *De Bono Mortis,* 12, 56: "If anyone takes usury, he commits robbery and no longer has life."

rationale of usury prohibition is its injuriousness to the poor and hence a sin on the part of the rich: the scriptural prohibition flows from the evils inherent in the practice. Here Chrysostom is dealing with the immanent values that, for him, the usury prohibition seeks to safeguard. But this necessarily raises the perennial question: what if these values are not at stake in a transaction? This question demolishes the inherent evil theory of usury.

St. Jerome (344-420)

He sees a progression in the laws prohibiting usury: the Old Testament (Lev. 25:35 and Dt. 23:20-21) forbade interest only among the brethren; in the Prophets (Ez. 18:8) all interest-taking is prohibited; the New Testament takes another step by stipulating: "Lend to those from whom you can expect nothing in return" (Lk. 6:34). Thus, for Jerome, the Deuteronomic prohibition had been universalized by the Prophets and the New Testament, as Christians had been enjoined to treat everyone as 'brother'.[1422]

St. Augustine (350-430)

Resting his argument on the identification of Christ with the poor man, he affirms the universal prohibition of usury.[1423] For him, the usurer will be received into the everlasting fire prepared for the devil and his angels: he is excluded from the kingdom of heaven.[1424] [This is the first ever reference, in the Judeo-Christian traditions to a punishment of eternal hell fire for the usurer, later articulated repeatedly in the Qur'ān, and the second reference to the equivalence of usury with devilish act, again articulated pointedly in the Qur'ān]. Temporally, St. Augustine placed usury in the category of crime, classifying it as theft under the seventh commandment.[1425]

Leo the Great (390?-461)

Adding nothing new, he only gives the weight of his considerable authority to the patristic teaching on usury. His famous letter, *Nec hoc quoque,* the single most important document of the early Church on usury, is the clearest general prohibition enunciated by supreme other-worldly authority before 1179, when the Third Lateran Council (canon 25) declared that usury was condemned by both Testaments, and excommunicated and denied Christian burial to manifest usurers.[1426] The letter *Nec hoc quoque* forms the cornerstone of later usury legislation including other-worldly and secular state legislation for Charlemagne's empire. As background material to the letter, Leo emphasizes that Christ came to fulfill the Law, not to destroy it; matters, among which is usury prohibition, which are in harmony with both Testaments, therefore, remain unchanged. He underlines the gravity of the sin of usury by declaring that usury, no matter what its results might be, is sinful. He declares usury taking, by laymen, as seeking a shameful gain (*turpe lucrum*).[1427] The full text of the letter, as given in *Nec hoc quoque,* reads:

> "This point, too, we have thought must not be passed over, that certain men, possessed with the love of base gain, lay out their money at interest and wish to enrich themselves as usurers. For, we are grieved that this is practiced not only by those who belong to the clergy, but also by laymen who desire to be called Christians. And we decree that those who have been convicted be punished sharply, that all occasion of sinning be removed. The following warning, also, we have thought fit to give, that no cleric should attempt to make money in another's name any more than in his own: for it is unbecoming to shield one's crime under another man's gains. No, we ought to look at and aim at only that usury whereby what we bestow in mercy here we may recover from the Lord, who will restore a thousand-fold what will last forever. This admonition of ours, therefore, proclaims that if any of our brethren endeavor to contravene these rules and dare to do what is forbidden by them, he may know that he is liable to deposition from his office, and that he will not be a sharer in our communion who refuses to be a sharer of our discipline." [1428]

Jacob of Saroug (c. 451-521)

In an oblique reference to the connection between paganism and usury as a possible rationale for its prohibition, the Syrian Monophysite Bishop, in an interesting sermon in Syriac, states:

> Satan was lamenting the collapse of his authority as a result of the recent disappearance of *paganism.* In order to recover his power, he is going to make use of *lending at interest (rebitha):* priests and monks will indulge in this practice, and it will be their undoing. Once they have begun it, their orthodoxy, their cult of the true God, will matter little. 'I do not mind', exclaims the Devil, 'if the priest uses the interest he draws from his money to buy an axe with which to smash the temples of the gods! The love of gold is a greater idol than any idol of a god ... It is worth as much to me as all those idols put together. They have cast down the idols, but they will never cast down the coins that we shall put in their place ...' [1429]

[1422] Buckley, Theological Examination, 83.
[1423] Augustine, *Ennarationes in Ps. xxxvi,* sermo 3, 6.
[1424] Ibid., *De Baptismo contra Donatistas,* 4, 9.
[1425] Buckley, Theological Examination, 83.
[1426] Noonan, *Scholastic Analysis,* 15.
[1427] Ibid., *Scholastic Analysis,* 15.
[1428] *Nec hoc quoque,* tr. by C.L. Feltoe, in *The Nicene and Post-Nicene Fathers,* ed. by P. Schaff and H. Wace, (New York: The Christian Literature Co., 1895), v, XII, 3-4.
[1429] Trans. and ed., Abbe Martin, in *Zeitschrift der deutschen morgenlandische Gesellschaft,* 1875, pp. 107-147, quoted in Maxime Rodinson, *Islam and Capitalism,* 239.

MEDIEVAL CHURCH TEACHINGS[1430]

Source of Influence for Medieval Thought: [1431]

- Universally applicable text of Psalm 15.
- Fathers' writings against usury.
- Earlier conciliar condemnation of clerical usurers.
- Not founded upon the doctrine of Aristotle.
- Theological motivation.
- Not linked to Church's own financial interests.
- Indirect causal connection between usury theory and prevailing economic conditions.

Rationale of Prohibition of Sin of Usury: Justice, leading to distinction between commercial business loans, generating profits for the borrower-merchant, and consumption loans, not generating any profits for the needy borrower.

St. Anselm of Lucca (quoting St. Augustine), Hugh of St. Victor, Peter Comester and Peter Lombard:
They classified usury, which was synonymous with interest till early 17th century, as theft under the seventh commandment. **Ivo of Chartres**, emphasizing the unjust character of their acquisition, pointed out that the usuries as stolen goods may not be given as charity.[1432]

The Second Lateran Council:
With absolute authority of an 'infallible' ecumenical council, for the first time, it issued an explicit decree of universal prohibition against usury for all, without, however, explicitly declaring justice as the rationale.[1433]

Gratian:
In 1159, in his collection of canons forming the Church law till the new Code in 1917, he gave definitive shape to the legal form of usury prohibition whose authority directly governed all medieval scholastic writers. This collection quotes St. Augustine, St. Jerome, St. Ambrose and the Nynweger statute to prove that usury is 'whatever is demanded beyond the principal', and cites *'Nec hoc quoque'* of Leo the Great as the most general other-worldly condemnation of usury, and uses Psalm 15 as the only biblical reference. The obligation of restitution is emphasized; otherwise usury is no more than theft.[1434]

Pope Alexander III (1159-1181):
In a vigorous action climaxing the early medieval campaign against usury, Alexander declared credit sales at a higher price than cash sales as usury – the first extension of the usury prohibition from loan transactions to sales transactions. [This conceptual extension, in Christian thought, seems to have occurred rather late, as this extension had already been made in Islamic thought as far back as 632 CE in the Prophetic six-commodities *ḥadīth*]. For Alexander, usury was not admissible even for worthy causes, because usury is a crime detested by both Testaments. Therefore, usury is not merely a matter of a simple other-worldly rule, though it is not yet regarded as against natural law. In 1179, the **Third Lateran Council**, under Alexander, declares usury condemned by both Testaments, excommunicates and denies Christian burial to 'manifest usurers', and prohibits the reception of offerings made by them.[1435]

Pope Urban III (1185-1187):
Continuing and confirming the vigorous actions of Alexander III, in an immensely important move, he cites Luke 6:35 for the prohibition of usury. "For the first time in the entire tradition, a specific command of Christ is authoritatively interpreted by a pope as prohibiting usury. Luke 6:35 will stand, effectively unquestioned, as an absolute divine prohibition of gain from a loan until questioned by **Dominic Soto** in the sixteenth century... Whether it [the gain from a loan] has been stipulated or not, the lender is guilty of 'mortal usury' because this is prohibited by Luke 6:35."[1436]

[1430] These teachings are extracted from the work of Susan L. Buckley in her doctoral dissertation on the theological aspects of usury (Buckley, Theological Examination).
[1431] Noonan, *Scholastic Analysis*, 14.
[1432] Buckley, Theological Examination, 88.
[1433] Ibid.
[1434] Ibid., 89; Noonan, *Scholastic Analysis*, 19.
[1435] Buckley, Theological Examination, 89.
[1436] Ibid., 90.

MEDIEVAL SCHOLASTIC THEORY

Sources of Scholastic Theory:

- Religion
- Religious authority controlled development
- First attempted Western economic theory
- Legal concepts as tools of the theory
- Casuistry

Rationale of Usury Prohibition:

The rationale was the ideal of justice as opposed to the earlier concept of charity or greed. For three centuries they "engaged in an idealistic effort to frame the intellectual and moral conditions under which credit might justly be extended."[1437] They treated usury as a pressing problem and argued against it, distinguishing it from lawful profit. Their theoretical structure lacked consistency but encouraged risk-sharing investment and charity to the poor. Their model lacked simplicity, neat and consistent logical pattern, a single lesson and a universal prescription.[1438] s:

Noonan's View on Rationale:

> It is clear that almost all the historical errors about the scholastic analysis of usury theory arise from a single failure: a failure to consider the theory broadly enough, to take into account either the multiple character of its foundations, theological, economic and legal, or the multiple aspects it presented in practice...[1439]

Buckley's View on Source and Rationale:

The source of the scholastic theory is neither economics nor law but theology. It is a natural-law analysis of usury:

> The scholastics were primarily disciples of the Roman law; economics in their view was always secondary. *Neither economics nor law, however, is at the origin of the scholastic theory – originally and primarily it is a theological creation.* That usury is a sin was the dogma of the Catholic Church. It was because it was part of the content of Christian revelation that the prohibition of usury became the object of detailed, rational exploration; therefore, throughout the scholastic treatment of it other-worldly authority plays a dominant role. It is the effort of the scholastic writers to explain, to expand, and to apply the positive teaching of the Church which results in the natural-law analysis of usury. They do not rely on authority, or revelation, or Roman law alone, but they make a determined effort to rest their case against usury on the nature of man and the nature of things in themselves, whilst at the same time they try to determine what forms of credit are naturally lawful and just – a point which is often neglected.[1440]

Individual Contributions of Scholastic Writers

William of Auxere (1160-1229), the Deacon of Beauvais:

Probably the most influential scholastic writer on usury before St. Thomas Aquinas, and among the first pioneering theologians treating usury from the perspective of natural law, he advanced five contributive arguments in the usury discussion: conflict of usury with the natural law; intrinsic evil of usury; distinction between the absolute and conditional voluntariness of the debtor; general rule for detection of frauds on the usury laws; and new argument on sinfulness of selling time. These arguments became incorporated in the general medieval teaching on usury.[1441]

Pope Innocent IV (r.1250-1261):

An eminent canonist, he attempted a revolutionary departure from the tradition of the past two centuries in ignoring the old 'justice arguments' on usury completely, and developing his own entirely new arguments to show that usury is a social evil, resulting in famine, poverty and greed.

Cardinal Hostiensis (appointed 1261):

As a canonist, he advanced, as his chief argument against usury, the familiar notion that, in a loan transaction, the ownership of the loan passes to the debtor; hence there is no justification for usage charge on it. But he was the first to unmistakably and fully approve a case of *lucrum cessans* wherein , as stated above, by handing money over to another the lender deprived himself of the gain he might have made, and was, therefore, entitled to compensation from the beginning of the original loan, with the proviso that the merchant's principal motive must be a charitable

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[1437] Buckley, Theological Examination, 90.
[1438] Ibid., 90-91.
[1439] Noonan, *Scholastic Analysis*, 407.
[1440] Buckley, Theological Examination, 91.
[1441] Mills, Interest in Interest, 15.

one and the permission was not for habitual lending. "For the first time the honest business man is given lawful reason for charging beyond the principal even though his debtor is in no way at fault. This authoritative canonist's recognition of pure *lucrum cessans*, however much restricted in its practical conditions, is of the greatest importance."[1442]

St. Thomas Aquinas (1225-1274):

Because of his pre-eminence as a theologian and the intrinsic weight of his arguments, he holds a special place in the development of the usury theory. He expanded upon the thought of Aristotle on usury. But due to a glitch in the translation of Aristotle's *Politics* – the Greek term for retail trade was rendered by the translator as *'campsoria'* which specifically means money-changing – Aristotle's case against usury which rests on his case against *all* trade, is accepted by St. Thomas as simply a case against money trade – making money from money.[1443]

Arguments Against Usury:

(1) Roman law point that in a *mutuum* (loan) ownership is absolutely transferred to the debtor – not merely a case of *possessio* but of *dominium*.[1444] For him, "the process of exchange had the quality of a sale, and to sell an article and then charge for the use of it was unjust."

(2) Aristotle's "utility" argument from natural law against usury presented as treating money as a fixed value measure:

All other things from themselves have some utility; not so, however, money. But it [money] is the measure of utility of other things, as is clear according to the Philosopher in the *Ethics* V:9. And therefore the use of money does not have the measure of its utility from this money itself, but from the things which are measured by money, according to the different persons who exchange money for goods. Whence to receive more money for less seems nothing other than to diversify the measure in giving and receiving, which manifestly contains iniquity.[1445]

The major argument of St. Thomas against usury goes beyond the 'money as measure' to 'money as consumptible' argument:

In those things whose use is their consumption, the use is not other than the thing itself; whence to whomever is conceded the use of such things, is conceded the ownership of those things, and conversely. When, therefore, someone lends money under this agreement that the money be integrally restored to him, and further for the use of the money wishes to have a definite price, it is manifest that he sells separately the use of the money and the very substance of money. The use of money, however, as it is said, is not other than its substance: whence either he sells that which is not, or he sells the same thing twice, to wit, the money itself, whose use is its consumption; and this is manifestly against the nature of natural justice.[1446]

(3) The final argument of St. Thomas against usury is based on "metaphysical rather than legal grounds. It is the real distinction between accidental and essential change which forms the foundation of his reasoning."[1447] He argues that, through use, an item like a house might undergo accidental change, but money undergoes essential change. The use and substance of money are the same – an essential change. The use and substance of money cannot be sold separately. In itself, therefore, the loan of money did not justify a charge for its use.

St. Thomas Aquinas, the great theologian, relies on an argument from metaphysics rather than theology for his case against usury: he does not posit any divine law argument for the prohibition.

Burudian (d. 1358), Professor at the University of Paris:

"Usury is evil... because the usurer seeks avariciously what has no finite limits. This places its results outside of nature."

Giles of Lessines, Theologian:

He rejects *lucrum cessans,* allowed for the first time by canonist Hostiensis, and allows interest only in delay, never even mentioning the possibility of interest due from the beginning of a loan.

[1442] Buckley, Theological Examination, 101.
[1443] Ibid., 95-96.
[1444] Hastings, *Encyclopaedia*, 551.
[1445] Noonan, *Scholastic Analysis*, 52.
[1446] St. Thomas Aquinas, *Opera Omnia – Quaestiones disputatc dc Malo* vol. xiii (cd. P. Marc and S.E. Frettc, Paris, 1871-1880), Q. 13, art. 4c, cited in Noonan, *Scholastic Analysis*, 54.
[1447] Buckley, Theological Examination, 99.

Scotus, Theologian:

He adopts the position of St. Thomas against interest of any kind from the beginning of a loan.

Astesanus, Theologian:

He is the first theologian as distinct from a canonist, who admits *lucrum cessans* – interest without fault by the debtor – on the authority of canonist Hostiensis. He also allows *damnum emergens* wherein, as stated above, the lender was entitled to compensation for the 'loss emerging' from his having lent but being compelled himself to borrow at high rate of interest due to debtor's default. He held that interest is licit compensation for damages experienced.

John Major, or Mair, (16th c.), Scottish Theologian:

He is regarded as the last distinguished scholastic and is known for his casuistry. In examining various cases, he not only legitimated, but even accorded moral superiority to, *lucrum cessans,* by distinguishing usury, a profit for the loan itself, from compensation for the profits forgone by the lender. He upheld the licitness of the complicated triple contract which eventually became the paradigm for licit financial loans.

Conceptual Transformation of "Interest" by the Scholastics:

The scholastics transformed the concept of interest from its original version of compensation *upon* and *for* default *(interesse)* to the new version of compensation *from* the start of a loan *for* forgone benefit *(lucrum cessans):*

> The acceptance of 'interest' so far has only involved fault on the part of the debtor ... Did the original law concept of *interesse*, as the 'difference' due to failure to fulfill an obligation, prohibit the admission of such payment without any failure on the part of the debtor? The right to interest ... where the debtor was at fault ... was the original conception of interest. The scholastics would have to take a huge step to admit that interest might be due from the *start* of a loan. To do this seemed to many of them to abandon the foundation for the usury prohibition, the normal gratuitousness of a loan, and it was certainly to go well beyond the Roman notion of *interesse*. But the leap was finally taken.[1448]

With this scholastic rationalization of interest, came to an end any search for the rationale of its (usury's) Scriptural prohibition, and the Church revised its teaching on usury because conscientious Christians were involved in financing.

[1448] Ibid., 100.

MEDIEVAL NON-SCHOLASTIC "NEW THEORY"

Martin Luther:

Although preaching against usury on grounds of oppression of the poor, venting Christian fury against Jewish usurers, and tending to swing back to the strictest standards of the early Church Fathers, he did allow the charging of rent on land and interest to compensate for actual loss (*damnum emergens* and *lucrum cessans*) provided the charge was moderate and was not against the poor.

John Calvin (1509-1564):

The most notable Protestant contributor to a new theory of usury, he unintentionally opened the flood gate in favor of usury. "Calvin deals with usurie as the apothecaire doth with poison" wrote Roger Fenton. Calvin abandoned the detailed scholastic analysis and re-defined usury by proposing one general principle of the 'Golden Rule': "usury is sinful only if it hurts one's neighbor." Biting usury ... will always be condemned by God's law; but a modest profit on a loan under any circumstances is by no means forbidden. The only arguments against taking profit on a loan are drawn from Scripture. Of these, Calvin maintains that Luke 6:35 had been twisted from its original sense. It merely commands generous lending to the poor. Jesus merely wished to correct the vicious custom of the world whereby men readily lent to the rich who could pay back, and not to the poor. Deut. 23:19 was political. The passages in the Old Testament are to be interpreted as requiring only the observance of *charity* and *equity* toward the poor, or, if they are to be interpreted more strictly, they still may be considered only as positive political law appropriate for the Jewish economy, but no longer binding today."[1449] Calvin has only contempt for Aristotle's argument of sterility of money: when money buys a field, from which is yielded a yearly revenue, money then bears money. Interest also proceeds from money as naturally as rent from a field or house.[1450]

Charles du Moulin (Molinaeus) (1500-1566), Distinguished French Lawyer:

He is "the first Catholic writer to urge the licitness of moderate usury. He demolished with meticulous detail the old arguments of the canonists, although he is careful not to oppose the Church itself."[1451]

Claude Saumaise (Salmasius) (1588-1653), a Calvinist classicist:

In 1630 he made the hardiest defense of usury yet undertaken. His works are principally directed against the illogic of the Calvinist communities which would not condemn usury outright, but which persisted in excluding professional usurers from communion.[1452] "His general position is that selling the use of money is a business like any other business. If it is licit to make money with things bought with money, why is it not licit to make money from money? The seller of bread is not asked whether he sells to a poor man or a rich man, why should the usurer? ... The question to be asked was: is there any law against usury? Salmasius argues that in the Bible it is true that Jews were forbidden to take usury from any other Jew, poor or rich. But its prohibition was *political*, and given chiefly because Jews were united in a *blood brotherhood*. After the destruction of the Jewish state, argues Salmasius, it no longer held. As for the gospel, Jesus Christ means to teach nothing of civil polity or economic transactions. The only other-worldly law against usury that Salmasius knows of is the papal law, and why should anyone obey the Pope? In Salmasius, all religious scruple against usury is brushed aside, and the secular law alone sets a limit to profits."[1453]

Scipio Maffei (18th c.), a Veronese count and a Catholic writer:

He was able to expound the Calvinist theory of the licitness of moderate usury without his orthodoxy being challenged. "His main theses had all been stated before in Calvin, Molinaeus, and Salmasius: the Old Testament prohibited usury only from the poor; the New Testament simply required one to be charitable in a general way; the Fathers and Councils only condemned excessive usury; the only usury condemned by any law is usury that hurts one's neighbor; money is not sterile but the instrument of business, and therefore fruitful; loans at interest are necessary for commerce; and the State not only tolerates, but actively enforces, loans at usury; usury is already permitted by the personal *census* [an obligation to pay an annual return from a fruitful property – imperfectly translated into English as 'annuity'], the triple contract [three different permitted contracts with three different persons: a contract of partnership; a contract of insurance against loss of capital; and a contract of insurance against fluctuation of profit], and *lucrum cessans* [compensation for forgone profits], which are understood broadly to include the loss of all future investment opportunity. The natural law argument, Maffei asserts, is that ownership passes in a loan, but he denies that this happens. The lender is still the owner because he can still bequeath or

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[1449] Jean Calvin, *Consilia De Usuris* in *Opera*, X, cols. 248-249, cited in Buckley, Theological Examination, 127-128.
[1450] Buckley, Theological Examination, 128.
[1451] Ibid., 132.
[1452] Noonan, *Scholastic Analysis*, 370, cited in Buckley, Theological Examination,132.
[1453] Buckley, Theological Examination, 132-133.

donate the value of the loan. He alienates only the physical quantity, not the value of the money."[1454] "Therefore, if the lender is still the owner, he can collect rent, as any owner does on property given to another for use."[1455]

[1454] Noonan, *Scholastic Analysis*, 373, cited in Buckley, Theological Examination,133.
[1455] Buckley, Theological Examination,133.

EARLIER CONCILIAR LEGISLATION[1456]

Council of Elvira (306):

It formally prohibits usury among both clerics and laymen, and imposes severe penalties of degradation and excommunication for the violating cleric, and first persuasion and in case of persistence, later excommunication for the layman.[1457]

Council of Arles (314):

In the twelfth canon, it dealt with usury exclusively for the clerics, providing the threatened penalty of excommunication only.

First General Council of Nicaea (325):

In its seventeenth canon, it condemns usury quoting Ps. 15:5. Its legislation was not merely preventative. It stipulates degradation and name removal from church album as the penalty for the many clerics guilty of interest-taking. It clearly outlaws the centesima, the legal rate for money-loans in the eastern empire. While the Nicene prohibition itself is specified for clerics only, [who in lending require their twelve percent], its use of Ps. 15:5, with its unrestricted and absolute rejection of usury, bore important influence on later all-inclusive prohibitions.[1458]

The Council of Carthage (348):

The earliest African council from which a collection of canons survive, in its thirteenth canon, it forbade usury strongly, treating it as a flagrant violation of scripture and against the prophets and the gospel – reprehensible for laymen and prohibited for the clergy *a fortiori*.[1459]

The Council of Laodicea (4th c.):

In its fourth cannon, it contains another prohibition of usury both in money and in kind for the clerics only.[1460]

The Sixth Council of Carthage (401):

In a re-working of Nicaea's seventeenth canon, with a few omissions, it again pronounced against usury, invoking Ps. 15:5 against the usurer and threatening him deposition and removal of his name from the album if he persists in his crime.[1461]

Rabbula, the Bishop of Edessa (412-435) enacted the following canon extending beyond the clergy also to monastic communities, but without the usual penalties:

Priests, deacons, and male and female religious will not demand interest or usury or any type of profane profit.[1462]

Council of Tours (461) again condemned usury.[1463]

The Council of Aix-la-Chapelle (789):

Under Charlemagne (742-814), it repeated the earlier views of the Councils of Elvira, Nicaea and Carthage in declaring usury reprehensible equally for the clerics and laymen.[1464]

[1456] This Appendix also draws heavily and liberally on the doctoral dissertation of Rev. Robert P. Maloney (Maloney, Background, 180-203) for its original research.

[1457] "Canons of the Council of Elvira, c. 303", in *A New Eusebius: Documents illustrating the history of the Church to AD 337* (London: SPCK, 1987), revised edition, 291 Canon 20: "If any cleric be found taking usury, he shall be deposed and excommunicated. If, moreover, a layman be proved to have taken usury, and promise, on being reproved for it, to cease to do so and not exact it further he shall be pardoned; but that, if he persist in that iniquity, he must be cast out of the Church."

[1458] Noonan, *Scholastic Analysis*, 15.

[1459] Mansi, III, 158, quoted in Maloney, Background, 186.

[1460] Mansi, II, 564-565 as quoted in Maloney, Background, 187.

[1461] *Patrologia Latina*, ed. J.P. Migne (Paris, 1844-1865), 84:223, quoted in Maloney, Background, 193.

[1462] *Disciplina Antiochena Antica Siri II*, in *Fonti*, Series III, fasc. 26, p. 415 (Maloney trans.), quoted in Maloney, Background, 194.

[1463] Maloney, Background, 199.

[1464] Buckley, Theological Examination, 84.

CONTEMPORARY WESTERN MILIEU

Western Economic Thought of the 17th and 18th centuries:

It did not contribute to the theological perspective on usury. It approached the question purely in terms of economic theory, quantum of desirable interest rate and its state regulation. Prominent contributors were William Petty,[1465] John Locke,[1466] Dudley North,[1467]David Hume (1711-1776),[1468] and Adam Smith.[1469]

Western Theological Thought:

Jeremy Bentham:

In 1781, he recommended the repeal of even the legal limit on usury and the abandonment of the old Christian prohibition of usury and the scholastic theory. He took the position of Salmasius that money-lending is a trade like any other and price control is as inapplicable to money as to any other commodity. For him, the law against usury is 'foolish and ancient', and is sourced in: a Christian opposition to temporal prosperity; an anti-Semitic distrust of Jewish methods; an ignorant reverence for Aristotle's maxim of barrenness of money; and a worldly love of present pleasure and hatred for the abstemious lender.[1470] "These four motives combined to set in motion the whole formidable machinery against usury, vestiges of which still plague Britain today. Bentham dismisses all scruples against usury: usurers are men as honest as other tradesmen."[1471]

The Roman Catholic Holy Office:

In a series of decisions during 1822-1836, it "ended all doubts and practical difficulties by publicly decreeing that interest allowed by law may be taken by everyone." Thus, in spite of theoretical controversy, "the licitness of the rent of money as a fruitful good, at least in production loans, is asserted ... The biblical and conciliar prohibitions of usury are explained as prohibitions only of excessive usury and Calvin, Molinaeus, and Maffei become the new authorities. The scholastic defenders of the new theory assert that only in its terms can the general permission to take interest be understood and modern commerce be justified. On the other hand, the champions of the old theory reassert the familiar arguments against all usury, pointing out that the general permission to take interest can be understood as an extension of the title of *lucrum cessans*, and need involve no abandonment of the old principles."[1472]

William César, Cardinal de la Luzerne:

He asserted in 1822 in his French work[1473] that no dogma of the Church is at risk by allowing moderate profit on loans to businessmen and the rich. Through an extensive review of papal, conciliar, patristic, and scholastic teaching on usury, he concludes that the only dogma on usury, which ever existed, is the evil nature of excessive or oppressive profit on a loan. He calls the medieval scholastic position 'transient and local opinion' incapable of being elevated above the rank of positive law, and ascribes it to the economic conditions of the time, to the tyranny of Aristotle, and to the ignorance of the Fathers.[1474]

Mark Mastrofini, Member of the Papal Court in Rome:

In his French work[1475] in 1828, he forcefully presented the theses of Molinaeus and Maffei. "Its most original part is its formulation of their theory in terms of money's 'applicability', by which Mastrofini means both the power of being able to use money and its actual use. This applicability is separate from money itself and may always be charged for. A worker cannot be asked to work for nothing simply because he is idle. Similarly, nor can a lender with idle funds be asked to surrender their applicability freely."[1476]

[1465] William Petty, *Political Arithmetick* (1690); *Sir William Petty's Quantulumcumque Concerning Money* (1695).
[1466] John Locke, *Some Considerations of the Consequences of the Lowering of Interest and Raising the Value of Money* (1691).
[1467] Dudley North, *Discourses upon Trade* (1691).
[1468] David Hume, *Of Interest* (1752).
[1469] Adam Smith, *The Wealth of Nations* (1776).
[1470] Jeremy Bentham, *Defence of Usury* 1818, in *Economic Writings*, ed. W. Stark, (London: G. Allen and Unwin, 1952), 9-13; 53; 96-106.
[1471] Buckley, Theological Examination, 136.
[1472] Noonan, *Scholastic Analysis*, 377, cited in Buckley, Theological Examination, 137.
[1473] William César, *Dissertations sur le prêt-de-commerce* (1822).
[1474] Buckley, Theological Examination, 138.
[1475] Mark Mastrofini, *Discussion sur l'usure* (1828).
[1476] Buckley, Theological Examination, 138.

Francis Funk (mid-19th c.), German Theologian:

He justified the new theory of legitimate interest by linking the fruitfulness or sterility of money to the underlying economy: unlike the present economy where money is fruitful, in the static medieval economy, the feudal and guild systems, war, theft, and trade barriers made investment and capital accumulation difficult, rendering money immobile and sterile. He held that law, particularly on usury, does not remain 'abstractly motionless', but develops with economic change. As the economic structure of Europe changed and money became capable of fruitful employment, the Church altered the law to meet the new conditions, broadening the exceptions into general permission and allowing the taking of interest. The only dogmatic principle, which remains unaltered though applied differently in different conditions, is the sinfulness of exploiting one's neighbor. He criticizes the early scholastic theory for its abstract legalistic approach which ignored the economic significance and the moral essence of the usury law. The proper theoretical approach, set out in the new theory, is to abandon the legal technicalities of contracts and titles and adopt one general moral principle that no contract should injure an impoverished neighbor.[1477] His defense arguments for the licitness of rent of money as a fruitful good are multi-pronged: no scriptural or natural reason to contradict this new approach; biblical disapproval only of exploitation of the poor; absence of justification, in the old scholastic theory, of the advantageous present day economic operations; the transference of ownership in a loan is a determination of positive, not natural, law; and money is no longer sterile.[1478]

Joseph Ernest Van Roey (early 20th c.), Belgian Theologian:

He defended the old theory on the grounds that the consumptibility of money, not its productivity, is the essence of the old theory. The modern practice of interest is not the rent of money but the universal claiming of *lucrum cessans,* which legalizes interest. In spite of change in practice with economic change, the scholastic principles – a part of Catholic doctrine – remain unchangeable and equally good in their new application.[1479]

Adam Tanquerey (early 20th c.), Popular French Theologian:

In a syncretistic defense of usury doctrine, he held that money in his age was virtually fecund (new theory) and could be rented at a profit because of the lender's universal suffering of *lucrum cessans* (old theory).[1480]

Jerome Noldin (early 20th c.), German Jesuit:

In his defense of interest-taking he also appealed equally to *lucrum cessans* and the fecundity of money.[1481]

The new *Codex Juris Canonici* of 1917:

Replacing all earlier collections of canon law and becoming the sole statute book of the universal Church, it took the final formal step in the acceptance of general interest-taking by combining all responses, decrees and bulls of the old canon law into a single rule:[1482]

> If a fungible thing is given someone, and later something of the same kind and amount is to be returned, no profit can be taken on the ground of this contract; but in lending a fungible thing it is not itself illicit to contract for payment of the profit allocated by law, unless it is clear that this is excessive, or even for a higher profit, if a just and adequate title be present.[1483]

Summary of Diachronic Development of Christian Attitude towards Usury since Inception:

Despite its Judaic roots, the critique of usury was most fervently taken up as a cause by the institutions of the Christian Church where debate prevailed with great intensity for well over a thousand years. The Old Testament decrees were resurrected and a New Testament reference to usury added to fuel the case. Building on the authority of these texts, the Roman Catholic Church had by the fourth century AD prohibited the taking of interest by the clergy; a rule which they extended in the fifth century to the laity. In the eight century under Charlemagne, they pressed further and declared usury to be a general criminal offence. This anti-usury movement continued to gain momentum during the early Middle Ages and perhaps reached its zenith in 1311 when Pope Clement V made the ban on usury absolute and declared all secular legislation in its favour null and void.[1484]

[1477] F. X. Funk, *Zins und Wucher* trans. and cited in Noonan, *Scholastic Analysis,* 386.
[1478] Buckley, Theological Examination, 140.
[1479] Cardinal Ernest Joseph Van Roey, *De justo auctario ex contractu crediti* (Louvain, 1903), 226, quoted in Noonan, *Scholastic Analysis,* 389, and in Buckley, Theological Examination, 141.
[1480] Buckley, Theological Examination, 141.
[1481] Ibid.
[1482] Ibid.
[1483] *Codex juris canonici* (Rome, 1920).
[1484] Birnie, *Interest.*

Increasingly thereafter, and despite numerous subsequent prohibitions by Popes and civil legislators, loopholes in the law and contradictions in the Church's arguments were found and along with the growing tide of commercialization, the pro-usury counter-movement began to grow. The rise of Protestantism and its pro-capitalist influence is also associated with this change,[1485] but it should be noted that both Luther and Calvin expressed some reservations about the practice of usury despite their belief that it could not be universally condemned. Calvin, for instance, enumerated seven crucial instances in which interest remained "sinful", but these have been generally ignored and his stance taken as a wholesale sanctioning of interest.[1486]

As a result of all these influences, sometimes around 1620, according to theologian Ruston, "usury passed from being an offence against public morality which a Christian government was expected to suppress to being a matter of private conscience [and] a new generation of Christian moralists redefined usury as excessive interest".[1487]

This position has remained pervasive through to present-day thinking in the Church, as indicative views of the Church of Scotland suggest when it declares in its study report on the ethics of investment and banking: "We accept that the practice of charging interest for business and personal loans is not, in itself, incompatible with Christian ethics. What is more difficult to determine is whether the interest rate charged is fair or excessive."[1488]

Similarly, it is illustrative that, in contrast to the clear moral injunction against usury still expressed by the Church in Pope Leo XIII's 1891 *Rerum Novarum* as "voracious usury ... an evil condemned frequently by the Church but nevertheless still practiced in deceptive ways by avaricious men", Pope John Paul II's 1989 *Sollicitude Rei Socialis* lacks any explicit mention of usury except the vaguest implication by way of acknowledging the Third World Debt crisis.[1489]

Christian Perspective on Usury at the Beginning of the 20th Century: syncretistic:

"The usury rule, sapped of its vitality in modern economic conditions, is not abandoned, but so limited in the likelihood of its applicability that profit on credit transactions is made the norm, and usury the exceptional case of unjust extraction." The canonist doctrine, as Roll points out, was steadily weakened with commercial expansion and finally faced with complete collapse of its power to regulate economic life.[1490] She maintains that "after the Reformation, the Church was no longer able to stand in the way of the growth of commercial capitalism, and whether Protestant and Puritan doctrines were themselves conducive to the development of the capitalist spirit is an area of discourse, already much debated ... What is important is that the harmony between Church dogma and feudal society, between theological and economic thought, responsible for the all-embracing quality of the Canon Law, came to an end with the decline of feudal society. This harmony had enabled the institutionalized Church, with its spiritual and secular power, to claim the right *to order the whole of human relations and conduct on this earth* as well as to provide the precepts which would lead to spiritual salvation."[1491] But:

> Canonist thought was essentially an ideology, in economic matters it was an illusory representation of reality. It was successful so long as the conflicts of reality had not become very acute. With the sharpening of these conflicts, the antithetical elements in this ideology were seized upon by the contending parties, and the *original universal character* was lost ... A separation was effected by which *religious dogma ceased to represent an analysis of existing society as well as a code of conduct* ... Though attempts were again to be made to introduce ethical elements into the main stream of economic thought, it remains henceforth independent of religion. The foundation for a secular science of economy was laid.[1492]

[1485] A.E. McGrath, *A Life of John Calvin* (London: Blackwell Press, 1990).
[1486] Birnie, *Interest.*
[1487] R. Ruston, "Does It Matter What We Do With Our Money?", *Priests and People,* May 1993, 171-77.
[1488] Church of Scotland, *Report of Special Commission on the Ethics of Investment and Banking* (1988).
[1489] Visser and McIntosh, Usury, 3-4.
[1490] Roll, *Economic Thought,* 53, cited in Buckley, Theological Examination, 142.
[1491] Buckley, Theological Examination, 142.
[1492] Roll, *Economic Thought,* 53, cited in Buckley, Theological Examination, 143.

CONTEMPORARY MUSLIM SCHOLARLY CONTRIBUTION

MUḤAMMAD RASHĪD RIḌĀ (d. 1935)

Elaboration of *Ribā:*
The particle *'al'* in the term *riba* [*sic*] indicates knowledge and familiarity, which means, 'Do not consume *riba* [*sic*] which was familiar to you and that you used to practice in the pre-Islamic period.[1493]

Rationale *(Ḥikma)* of *Ribā* Prohibition:
- *Ribā* is prohibited because it is an injustice.[1494]
- *Ribā*, which was an exploitation of the need of their [Meccans and Medinans] brothers, was prohibited.[1495]

SA'ĪD AL-NAJJĀR AND 'ABD AL-MUN'IM AL-NAMIR

- **Emphasis on Moral Prohibition of *Ribā* (injustice)** as formulated in the Qur'ānic statement, "*lā taẓlimūna wa-lā tuẓlamūn*" (Do not commit injustice and no injustice will be committed against you).[1496]
- **Relegation of Islamic Legal Form' of *Ribā* to Secondary Position**

ḤAFNI NĀṢIF AND 'ABD AL-'AZĪZ JĀWĪSH, early 20th century Egyptian Scholars

Islamic Prohibition:
Prohibition of 'Usury' not 'interest'; consensually prohibited *ribā* is interest equal to or more than the principal, any lower amount of interest being unlawful is debatable.[1497]

Similar Position of the Egyptian Civil Code:
It is not permitted under any circumstances for the creditor to receive interest which exceeds the amount of the principal.[1498]

SHAWQI DUNYA, 20th century Egyptian Scholar

Justification of Interest for Inflationary Indexation of Loans:
In an inflationary economy an element of interest, by means of indexation of loans, is justified to compensate the creditor for the inflationary loss suffered through decline in the purchasing power of money.[1499]

Mufti Mohammad Shafi

Characterization of *Ribā:* Evil in an exoteric economic context.

Meaning of *Riban* in Q. 30:39: "Gift" and not *"ribā"*, based on a first-ever reference to Q. 74:6 *"wa-lā tamnun tastakthir" (do not favour anybody in the hope that he will return you more to cause your wealth to increase)."*

Quotation (without comment) of *Ḥadīth* reported by Ibn Māja:
Parallel between more than seventy types of *ribā* and *shirk* (idolatry).[1500]

FAZLUR RAHMAN (d. 1988), Pakistani Scholar

Literal and Lexical Meaning of *Ribā:*
'Excess' in all its Qur'ānic manifestations,[1501]

Technical Meaning of *Ribā:* Financial context only.

Characterization of *Ribā:* "Economic Evil."[1502]

[1493] Riḍā, M. Rashīd. *Tafsīr al-Manār* (Cairo: Dār al-Manār, n.d.),III, 94.
[1494] Ibid., III, 103.
[1495] Ibid., III, 108.
[1496] Saeed, *Islamic Banking*, 41.
[1497] Ibid., 46; Quoted in Drāz, *Ribā*, 9.
[1498] Egyptian Civil Law, Article, 9, quoted in Saeed, *Islamic Banking*, 46.
[1499] Quoted in Saeed, *Islamic Banking*, 47.
[1500] Mufti Mohammad Shafi, and Mufti Mohammad Taqi Usmani, trans. Anwar Ahmed Meenai, *The Issue of Interest.* (Karachi: Darul Ishaat, 1997).
[1501] Q. 22:5; 2:276; 30:39; 23:50; 2:265; 13:17; 27:24; 26:18; 69:10; and 16:92.
[1502] Rahman, Riba, 3.

Classification of *Ribā* ("two distinct categories" with the claimed support of "all the *fuqahā'*"):
(1) *Ribā* prohibited by the Qur'ān, "*ribā* al-Qur'ān", and
(2) Extension of the Qur'ānic *ribā* to different forms of exchange and transactions, "*ribā al-ḥadīth*" or "*ribā al-faḍl* (excess)."[1503]

Classification of Qur'ānic *Ribā*-Prohibitory Verses:
(1) *central:* Q. 3:130, (2) *prologue:* Q. 30:39, and (3) *epilogue:* Q. 2:275 ff.,[1504]

***Ratio Legis (Sharī'ah*-value *or 'illat al-ḥukm)* of *Ribā*-Prohibition:**
"Becoming doubled and redoubled." explicitly mentioned in 'central and fundamental' verse Q. 3:130. [1505]

Categorically *Ḥarām Ribā* in the Qur'ān: The atrocious *Ribā al-jāhilīya* only.

Reason for Abolition of All Interest Historically:
All types of interest [usurious or mild] were a part of the *ribā* system which was by nature exorbitantly usurious and had to be banned *as a whole*, without any exceptions, thus banning milder interest as well. This prohibition of the *ribā*-system's constituent mild interest does not cover modern bank interest because modern bank interest is a separate kind of system.[1506]
Specifically:
"Many well-meaning Muslims with virtuous consciences sincerely believe that the Qur'ān has banned all bank interest for all times, in woeful disregard of what *riba* [*sic*] was historically, why the Qur'ān denounced it as a gross and cruel form of exploitation and banned it, and what the function of bank interest [is] today.[1507]

Emphasis on Moral Prohibition of *Ribā* (injustice) as formulated in the Qur'ānic statement, "*lā taẓlimūna wa-lā tuẓlamūn*" (Do not commit injustice and no injustice will be committed against you).

Relegation of Islamic Legal Form' of *Ribā* to Secondary Position.[1508]

Rationale *(Ḥikma)* of *Ribā* Prohibition:
The absence of an early Meccan condemnation of *ribā* would have been contrary to the "wisdom of the Qur'ān", whose only expression is in economic and moral contexts,[1509]

Reformist Stance on *Ribā* Issue:
In a truly Islamic order, if and when established, there will not be any need for bank-interest and the present banking system, and thus the issue of *ribā* would disappear, but any pre-mature abolition of bank-interest would be suicidal for the economy.[1510]

MUHAMMAD UZAIR, **Pakistani Islamic Banking Theorist**

Posited Consensus on Prohibition of Interest in All Forms, Kinds and Purposes:
By this time, there is a complete consensus of all five schools of *Fiqh* ... and among Islamic economists, that interest in all forms, of all kinds, and for all purposes is completely prohibited in Islam. Gone are the days when people were apologetic about Islam, and contended that the interest for commercial and business purposes, as presently charged by banks, was not prohibited by Islam.[1511]

MUHAMMAD UMER CHAPRA, **Pakistani-Saudi Islamic Economics/Finance Expert**

Characterization of *Ribā*:
Ribā represents, in the Islamic value system, a prominent source of unjustified advantage.

Literal Meaning of *Ribā*:
Increase, addition, expansion or growth (not every increase or growth is prohibited in Islam).

[1503] Ibid., 2.
[1504] Ibid., 5.
[1505] Ibid., 6.
[1506] Ibid., 7.
[1507] Fazlur Rahman, "Islam : Challenges and Opportunities", in Alford T. Welch and Pierre Cachia (eds.), *Islam: Past Influence and Present Challenge* (Edinburgh: Edinburgh University Press, 1979), 326.
[1508] Saeed, *Islamic Banking*, 41.
[1509] Rahman, Riba , 3.
[1510] Ibid., 41.
[1511] Muhammad Uzair, "Impact of Interest Free Banking." *Journal of Islamic Banking and Finance*, Autumn 1984, pp. 39-50, 40.

***Sharī'a* Technical Meaning of *Ribā*:**
Based on Ibn Manẓūr's definition, the 'premium' that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in its maturity.
Therefore, based on al-Jazīrī,[1512] *ribā* has the same meaning and import as interest in accordance with the consensus of all the *fuqahā'* without any exception.

Focus of Prohibition:
Ribā al-Nasī'a: The *predetermined positiveness* of the return.
Ribā al-Faḍl: The requirement of equality in exchanges of homogeneity is to ensure "justice and fair play in spot transactions."[1513]

Rationale *(Ḥikma)* of *Ribā*-Prohibition: Establishment of socio-economic justice and prevention of exploitation.

ABDULLAH SAEED

***Ribā* Investigation:** Moral not the prevalent legalistic.

Traditional Interpretation of *Ribā*: Unsuitable and inadequate

Required Approach to Issues of Banking and Finance: *Ijtihād* not *taqlīd*." [1514]

Qur'ānic Contrast of *Ribā* and *Bay'*:
Not a contrast of *ribā* with profit arising out of a sale transaction.
Reasons:
(1) Qur'ān does not go on to exhort trade *(bay')*, but merely states its lawfulness, in 2:275.
(2) The very next 'verse, Q. 2:276, contrasts *ribā* and *ṣadaqa*, as the Qur'ān does in verse 30:39, where the term *zakāt* appears to be synonymous with *ṣadaqa*.' Exegete Rāzī (d. 606/1209) supports this contrast.[1515]

Rationale *(Ḥikma)* of *Ribā*-Prohibition:
Qur'ān specifically mentions injustice as the rationale of prohibition in the final verses prohibiting *ribā*. [1516]
Explanation:
The vast difference between a modern debtor and a pre-Islamic debtor [in terms of borrowers regular incomes and borrower protection laws] should not be ignored if we are to have a meaningful discussion on the issue of *riba* [*sic*] ... *riba* [*sic*] was prohibited primarily to protect the economically and socially disadvantaged in the community."[1517] Qur'ānic prohibition was based on moral and humanitarian considerations, not legalistic ones. The Qur'ān basically prohibited exploitation of the needs of a person in financial difficulty, rather than an 'increase' accruing to the creditor in a loan transaction as such.[1518]
From this perspective [moral principles of the *Sharī'a* such as fairness, justice, and equity], within the context of banking and financial transactions, it would be the injustice factor which would ultimately determine what is *riba* [*sic*]and what is not. An 'increase' in a financial transaction given to the creditor just because it is an increase would not be *riba* [*sic*].This, applied to modern bank interest, would mean that not all forms of interest are [prohibited] *riba* [*sic*], but only those forms which involve injustice to one of the contracting parties... Similarly, a transaction, even though it may not involve an explicit interest component but leads to injustice to one party, may be regarded as a *riba* [*sic*] transaction.
The point to be made here is that it is the circumstances of a particular transaction, the parties to such a transaction, the relative power of the parties vis-à-vis each other as well as the economic and social environment within which the transaction takes place, which should determine whether a particular transaction should be prohibited as *riba* [*sic*].[1519]

Juristic Invention and Widespread Use by Muslims of *Ḥiyal* (Stratagems):
Resorted to in order to enable borrowing and lending for non-humanitarian purposes in any form at any rate and in any circumstances.[1520]

[1512] al-Jazīrī, *al-Fiqh 'alā al-Madhāhib al-Arba'*, II, 245.
[1513] Chapra, *Just Monetary System*, 55-59.
[1514] Saeed, *Islamic Banking*, 3.
[1515] Rāzi, *Tafsīr*, VII, 90.
[1516] Ibid.
[1517] Saeed, *Islamic Banking*, 29.
[1518] Ibid., 142.
[1519] Ibid., 146.
[1520] Ibid., 142-143.

JUSTICE MUFTI MUHAMMAD TAQI USMANI, Pakistani Sharī'a Scholar of Islamic Finance[1521]

Coverage of *Ribā:*
Includes all interest/usury under the prohibition.

Identification of *'illa* and *ḥikma* of the prohibition:
... After prohibiting the transaction of Riba [*sic*], the Holy Quran [*sic*] has mentioned the Zulm [*sic*] as a Hikmat [*sic*] or philosophy of the prohibition, ... The Illat [*sic*] (the basic feature) on which the prohibition is based is the excess claimed over and above the principal in a transaction of loan, ...[1522] ... Zulm [*sic*] translates as 'injustice'.[1523]

Lengthy Discourse, mostly quoting Western economists, on nature of money and perceived evil effects of interest on the global economy.[1524]

KHURSHID AHMED, Pakistani Islamic Economist[1525]

Textual Source of Prohibition:
Ribā al-Nasī'a: Qur'ānic
Ribā al-Faḍl: *Sunnaic*

Rationale *(Ḥikma)* of *Ribā*-Prohibition: Exploitation, injustice and unearned nature of income:

Distinction between *Ribā al-Nasī'a* and *Ribā al-Faḍl:*
Interest refers to what has been termed as *riba al-nasi'ah* [*sic*] or *riba al-jali* [*sic*] or *riba al-duyun* [*sic*] in the *fiqh* literature. This is *the kind* [italics mine] of *riba* [*sic*] that is *directly* [italics mine] covered by the Quranic [*sic*] injunctions. However, the Sunnah has also emphasized *other aspects of riba* [italics mine] generally termed as *riba al-fadl* or *riba al-khafi* or *riba al-buyu* [*sic*]. This form of *riba* [*sic*] covers all aspects of economic injustice, exploitation and unearned income.[1526]

ABDULKADER THOMAS, American Islamic Finance Consultant

Linguistic Notion of *R.B.W.* : Concept of growing, exceeding, or self-generated expansion.
Derivative Meaning of *R.B.W.*: Nurturing or teaching.
Commercial/Financial Meaning: Attribution of self-propelled or intrinsic value:
R.B.W. applied to commerce or money is, in fact, the attribution of self-propelled or intrinsic value. This means that the mere passage of time causes money to gain value. This is unlike anything else created by God the Gracious, for He gives each creation its merits, and then some efforts must be expended to arrive at a greater value. To attribute intrinsic value to money is to declare that money does not require God in order to increase its value. This borders on the elevation of money beyond its place as a medium of exchange or unit of account. Hence, those who grant money an intrinsic value are perilously close to *shirk* or idolatry in their concept of money.[1527]

The Expanded Concept:
Curiously, we modern Muslims have chosen to limit the translation of *ribā* to a one to one correspondence with the English word *interest*. Yet, the forbidden *ribā* is so much more than *interest* that it even borders on shirk or the association of a partner with God.[1528]

[1521] Retired judge of the Shari'a Appellate Bench of the Supreme Court of Pakistan, Vice Chairman of the *Fiqh* Academy of OIC, Jeddah, and a Shari'a Advisor to many financial institutions internationally.
[1522] In a 250-page section in the text of Sharī'a Appellate Bench of the Supreme Court of Pakistan, *Judgment on Ribā*, December 23, 1999 (Islamabad: Advanced Legal Studies Institute,www.nyazee.com,, 2000), 429.
[1523] Ibid.
[1524] Sharī'a Appellate Bench of the Supreme Court of Pakistan, *Judgment on Ribā*, December 23, 1999 (Islamabad: Advanced Legal Studies Institute,www.nyazee.com,, 2000), 433-452
[1525] Pakistan Senator, Nā'ib Amīr of the Jamā'at Islāmī, Pakistan, founder of the Islamic Foundation, Leicester, England, and one of the nine 'Makers' in John L Esposito and John O. Voll, *Makers of Contemporary Islam* (New York: Oxford University Press, 2001).
[1526] Khurshid Ahmad, *Towards The Monetary and Fiscal System of Islam* (Islamabad: Institute of Policy Studies, 1981), 13.
[1527] Abdulkader Thomas, "What is ribā?" in Abdulkader Thomas, ed., *Interest in Islamic Economics* (London; New York: Routledge, Taylor & Francis Group, 2006), 127.
[1528] Ibid., 125-6.

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