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*“Analyzing the Contemporary Discourse
about Riba Among Muslims”*

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Introduction

Discourse analysis has become “an increasingly popular and important area of study—both on its own and for what it can tell us about language, society, culture, and thought” (schiffrin, 1994, p. viii). In other words, what people say, through written and spoken mediums and how they say it can be a useful indicator of who they are, how they think, what They are thinking, and their culture and values. This paper is a preliminary look at an e-mail based discussion which ensued following a BBC news report on November 18, 2002 regarding an Al-Azhar committee’s recommendation regarding banks paying a fixed rate of return on its deposits. The Al-Azhar committee’s recommendation sparked a good deal of discussion throughout the world, a lot of it controversial on a number of web sites that cater to various Muslim interests. This paper is limited to the exchange which took place through the e-mail service ibfnet@yahoo.groups.com provided by IBF NET: Islamic Business and Finance NetVersity (<http://www.Islamic-Finance.net>). The Internet based an organization serves the needs of those interested in Islamic financial services and its activities include net-based study leading to diplomas that pertaining to financial services such as banking, insurance, and investment. It would be fair to assume that the those visiting the website or receiving e-mails represents finance professionals and academics rather than public at large. The emails addressing the Al-Azhar committee fatwa were mostly generated during November and December of 2002. In the opinion of the paper, the views express a sampling of the perceptions harbored by the contemporary Muslims regarding riba. hile the views may not be construed as a very scientific sample, they do provide one with a window on how contemporary Muslim professionals engage in discussion pertaining to topics of importance to the Muslim Ummah.

WHAT DID THE BBC STORY SAY!

On 18 November, 2002, BBC reported on a news item with the following headline: “Islamic institute blesses interest” and it went on to report: “The Islamic theological research committee of Egypt's Al-Azhar institute - seen by many as the philosophical center of the dominant Sunni strand of the faith - has voted 21-1 to approve fixed interest rates.” The news story added: “In practice, Egyptian banks may not notice any immediate difference. Despite the problems traditionalists have with interest, nine out of 10 banking institutions in Egypt pay a fixed rate of interest. And from the Al-Azhar

institute's point of view the decision was necessary." The story quoted the remark made by a member of the committee to a news agency: "Religious jurisprudence means change, and it is illogical to remain frozen while the world changes around so long as we do not go against what is written (in the Koran) or the Sunna (Islamic tradition), we have a clear conscience."

The views expressed in the emails posted on IBFNET represent a range of views, all the way from those totally against on one hand and to those in favor of the action suggested by the Al-Azhar committee on the other. Those opposed vastly outnumber those in support—either wholly or partially. That there exists a diversity of itself is not surprising: the subject of riba has generated a lot of discussion in the last 14th centuries of the Islamic era and the diversity of views reflected in the e-mails seems to suggest the subject of riba remains a catalyst for controversy. That a majority of those who took the time to express an electronically opinion is not what the paper seeks to focus upon, instead it is looking at how the opposition to the proposal was expressed.

This paper is not concerned with defining riba itself—that would be quixotic and logistically impossible in the context of a conference paper. What it seeks to do is to look at the discussion that took place through the e-mail of a web-site catering to Muslim providers of financial services and examine the reasoning—or in some cases the lack of it-- underlying the discourse contained in the emails posted on this website. That a majority of the e-mails were opposed to the proposed Fatwa is less of a concern to this paper than how the opposition was expressed and what motivated it. The paper will first summarize the e-mail discussion and then briefly analyze it.

The discussion started when two e-mails quoting the news story were posted on 11/21/2002. This was followed by an e-mail which called the recommendation of the committee as being good for employment and economies in Muslim countries. At least a few e-mails responded by saying unemployment exists in countries that have had fixed rate of return for quite some time. But a larger numbers of e-mail were ostensibly addressing the merits or demerits of the recommendation on the part of Al-Azhar' committee.

Below we provide a sample of the nearly fifty e-mails that specifically dealt with the Al-Azhar committee fatwa---the e-mails are being reproduced verbatim in order to communicate accurately what the e-mails convey...

1

Assalamu alaikum wa rahmatullah: Let us ask Allah (swt) in this blessed month to guard us against such evils. What is next? Blessing pork? Alcohol? If we dont accept those we might be seen as "frozen" Islam began as something strange and will return to strangeness (a Hadith) Ya Allah, give hikma to the muslimen.

2

This latest fatwa by Al Azhar appears to pay more attention to 'modern finance' than the Islamic Shari'ah. Are we not in danger of imitating Christians whose code has become subjected to so much reform to accommodate social changes that it has become of no value? Isn't the correct principle that where there is a contradiction between the Shari'ah and society, it is the latter in the wrong that

is changed not the former?

#3

I think the reason for coming up with Fatwa is the failure of developing an Islamic banking system in Egypt. Egypt is having problems with its high inflation rate that is leading the country to nowhere. The successfulness of other Muslim countries in implementing Islamic banking system should be taken as examples by the AlAzhar's knowledgeable people. Not by stabbing these countries behind their backs by fatwas that are not beneficial for the development of the Islamic banking system.

#4

Not that I consent to the stance, but the following is the precedence to the current declaration. Of what I know, incidentally in the last decade a lot of Islamic institutions were set up in Egypt who started offering double digits returns to the investors, this encouraged depositors to move their money out of the banks and invest with these Islamic institutions. In the last couple of years the situation however reversed with some Islamic institutions who were investing in the equity markets and some people lost all their life times savings and attempted suicide. These were the more elderly. The government in Egypt wants to address both these issues, i.e. provide attractive savings rate to the consumers to that they place their deposits with banks and protect those that could potentially loose their savings. But as you all may know the history of Al Azhar, is that this is one of the earliest institutions where the shariah was influenced by the government and rulers who used this institutions to declare views and rulings which were contrary to the Sharia. Also, you may also know that about 20 years ago, Zaki Badawi in one of his research also took a stance that Interest was allowed in a particular form but 20 years later stepped backed from his stance and declared that all forms of Interest was prohibited. In the last couple of years I have known some of the Shariah scholars to accept that certain form of Interest was acceptable, but have reverted back like Zaki Badawi. Its important not to forget that Sharia is " Allah's law" and He will protect it. I have often discussed it some of the knowledgeable non Muslim professors who have an excellent understanding of Islamic law who say that "Shariah has a way of preserving itself" so what ever Al Azhar says is important but in time will revert, or will not get the attention that it may be expecting. We all know that even the less knowledgeable like us, despite knowing nothing or minimum will not another.

#5

I am usually very inactive member of the very charming discussions (or email exchange should I say). that is of course until today as you can see I would like to add my contribution so it you may inshaa Allah gain something from it if it is right or get rectified in shaa' Allah if i am wrong ... though the reason I have to intervene here is twofold. First my understanding that as Muslims we do not have a Vatican-modeled institution that is of "seen by many as the philosophical center of the dominant Sunni strand of the faith" and as you may all know recently Al-Azhare as a juristic

institution has long lost its integrity and credibility just like the Pakistani religious authorities who have recently allowed dealing in interest. It is the trend that all these institution are succumbing to a visible pressure from various political parties to go and actually permits Riba in the name of modernity "Subhane Allah as if we are still in doubt about the word of Allah and the tradition of his prophet SAAS" i am amazed because instead of receiving initiative on how to develop our own Riba free system with the masses of "wealth" that we processes we go out of our way, disgracefully "trying to find out the next sword" and literarily declaring wars against Allah.... in the name of modernity of course. Muhammed SAAS said that a time would come on my people where the most pious of whom will get dirty by Riba's dust ... well here we are. Getting back to Al Azhare issue i find it strange why is it after 20 years of debate or even more "i.e. since the Muslim world has its final pseudo independence and people have actually discovered banks and all" that fixed interest was not allowed until now why ... "dunno". Second Al-Azhare by the way or one authority of it allowed a transsexual operation to be performed on a subject using some silly argument "wonderful i guess Allah is very happy with this seeing his "Muslim i.e., submitting and pious servants" going out of their way tolerating such things ... anyway finally I have many things to say but I'll limit my self and conclude one last thing Ettakou Allah "fear Allah" Rasoulle Allah said "I have left you on a white testimony its night is as it daylight, the Book of Allah and my Tradition so that whoever holds on to them will never go astary after me"

6

The words usury, riba, interest are being interchanged synonymously, with the greatest irony being that many of the Islamic Bank's own criteria happens to match the rates on offer elsewhere, if not exceed the rates (e.g. Takafol, IIBU). What al-Azhar has done, in part, is simply make an observation of what has been going on for the past 20 years in the Islamic Financing institution where rates and returns are almost if not identically parallel. May Allah have mercy and guide us all, ameen.

7

I am searching for a REAL Islamic finance system, which embodies the spirit of the Quranic injunctions and the Sunnah of the Holy Prophet (SAW).The real Islamic finance system happens to be very similar to current financial systems. I would be interested to know how:

1. mark-ups
2. commissions
3. trade
4. investment
5. audit

etc., are not forms of banking/finance from the 'Quran and Sunnah'. The past few years since my own study in Islamic Banking I cant help but notice the similarities between the two. I think many of us Muslims tend to want to follow catch-phrases such as 'Quran and Sunnah' without realising that

much of what we do today is in fact permitted from the 'Quran and Sunnah'. And it is that chasing of the catch-phrase which diverts us from achieving the actual objective sought.

And Allah knows best.

There were other e-mails. Compared to the number of e-mails that condemned Al-Azhar outright, those that asked readers to hold judgment pending the full reading of the fatwa itself was much smaller—no more than four e-mails urged a full reading of the fatwa before passing a judgement. A number of e-mails saw the fatwa as a occasion for rethinking the underlying basis of Islamic financial services. For this particular e-mail writer, the fact that return is fixed by itself does not negate the soundness of Mudaraba transactions. No other writer sent an attached file documenting the Catholic Church's treatment of Usury centuries ago. About half a dozen writer addressed themselves to part of the argument made by the Al-Azhar committee, to wit, a deposit is not to be seen as a qard (loan) or even as amana, but as wakala. In other words, bank is to use the amount to invest. One such e-mail listing its address as Harvard Law School remarked:

“I agree that the only important argument mentioned in the deliberation, to justify the permissibility of bank interest, is the re-characterization one (i.e. to re-characterize the bank-depositor relationship as a de facto wakala or mudaraba contract instead of a loan). However, I don't think this is a new argument. Dr. Tantawi has made this point in a book published few years ago when he argued that the bank-depositor relationship falls under the rules of mudaraba and not those of qard because the intention of both parties is to allow the bank to invest the deposited money on behalf of the depositor. He then went on to argue that having a pre-determined rate of return on the mudaraba investment is possible under some views and, according to stricter views, will only cause the contract to be fasid (i.e. invalid, under most schools, and unenforceable under the Hanafi school). The strength of this argument is that it shifts the debate away from interest on loans to a whole different area of valid, fasid or batil mudaraba. However, this view may be criticized for its blanket and simplistic validation of all bank activities which are too sophisticated and complicated to be dealt with at such an abstract level.”

Another perspective was introduced to the discussion when a writer mailed in a file concerning the birth in Malaysia of the Islamic Financial Services Board (IFSB). Described as a de facto Islamic Central Bank, globally regulating institutions offering Islamic financial products. The same writer send another e-mail containing analysis of yet another speech of the Malaysian' Prime Minister which included the following words: “Muslims must never forget that we missed the Industrial Age

completely. We have practically no industrial capacity because when the Industrial Revolution was taking place we could not decide whether it was compatible with Islam or not. In the end we were left behind and found ourselves totally dependent on the industrialized countries for our needs, including of course our defense needs.”

The largest numbers of e-mails were posted by Mahmoud A. El-Gamal, a professor at Rice University located in Houston, Texas and the subject of the first “Limited validity of Al-Azhar ruling on interest” and it was dated 11/24/2002. In it he wrote: “The recent ruling by Al-Azhar's Islamic Research Institute is a direct consequence of the patently false claim that Riba = interest. Fifty years of bad economics have canonized the wrong view that "Islamic" finance must be built on "profit and loss sharing", and that any fixed interest is by necessity the forbidden Riba.”

The second e-mail was dated 11/28/2002 and it was titled “Azhar fatwa debate and the issue of Wakalah/Agency.” In it, Professor El-Gamal wrote: I am still trying to get the entire text of deliberations in Al-Azhar's Islamic Research Institute. Until then, I thought I'd send this list a translation of a more detailed account published 11/14/2002 on the Arabic part of islamonline.net -- Arabic readers can read the original article at:

<http://www.islamonline.net/Arabic/news/2002-11/14/article16.shtml>

I am also including my comments on the quoted statements. I apologize for the length of this posting, but I think that there is a lot to learn from this debate, especially regarding the issue of agency as a basis of banking operations (Islamic or otherwise) as opposed to the existing deposit/loan (conventional) model and investor/entrepreneur (Islamic banking) dysfunctional alternative. The third posting dated 12/01/2002 was addressed “Mudaraba vs. wakala & Justice Taqi Usmani's argumentum ad hominem.” It was in part responding to an interview of Justice Usmani about the Al-Azhar fatwa. The interview was included in an e-mail that was e-mailed as part of the discussion. In the interview Justice Usmani acknowledged that he had not read the fatwa and could not comment on it. However he commented at some length about the lack of credibility of Al-Azhar given its willingness to serve as the voice of the Egyptian government.

A number of e-mails sought to defend Justice Usmani from what was seen as an unwarranted attack by Professor El-Gamal on Justice Usmani. These e-mails saw nothing wrong with Justice Usmani pointing out the past history—since credibility of the source is an important element to be considered in accepting or rejecting a Fatwa, according to these defenders of Justice Usmani. To what extent the allegations against Al-Azhar are proven is not addressed by any of several the e-mails which sought to reject the recent Fatwa on the basis of AL-Azhar's alleged history of given in to the dictates of Egyptian government. In his fourth e-mail, dated 12/03/2002, Professor El-Gamal addressed himself to Wakala and Islamic Banking alternatives, and in his fifth, dated 2/08/02, he e-mailed reference to Dr. Al-Qaradawi's counter-fatwa on bank interest which was posted on the website sponsored by Islamonline.net, whose web address happens to be <<http://www.islamonline.net/fatwa/arabic>>. Prof. El-Gamal also wrote: “The fatwa is a clear counter-fatwa against the recent Azhar fatwa legitimizing bank interest (it is final, officially approved by Shaykh-ul-Azhar on December 4, 2002). It is also a good example of scholarly debate, which relies on Prophetic

traditions (hadith) and jurisprudential principles (qawa'id fiqhiyya), rather than relying on the author's reputation and/or popularity in various circles." El-Gamal then translated the Fatwa by Al-Qaradawi.

In his sixth posting, dated 12/11/2002, El-Gamal provides a translation of the text of the official Azhar Fatwa. In the seventh, dated 12/11/02, Professor El-Gamal wrote: "Thanks to Dr. M. Anas Al-Zarqa, I have received a copy of the official Azhar fatwa, a translation of which I shall be posting shortly. I have also received from him the draft of a very interesting article from the Egyptian magazine Rose Al-Yusuf. Its opening line is very interesting: 'A slap on the face of extremists and peddlers of religion.' The article is very critical of the fatwas that forbid bank interest and legitimize "Islamic banks" as an alternative. The reference to "extremists and peddlers of religion" clearly refers to those "Islamic banks". The article also includes the full minutes of the Islamic Research Institute meeting during which the fatwa was approved."

In his eight e-mail dated 12/11/2002, El-Gamal provides a translation of the minutes of the Azhar's Islamic Research Institute meeting. On 4/03/2003, El-Gamal posted his ninth e-mail, which said: "I have posted two new presentations on my website:

1. One explains precisely what the recent Azhar fatwa said and did not say, and discusses the underlying debates within the Azhar School of Shari'a and the opinions of previous scholars on pre-specification of profits. In this presentation I argue that:

- a. The fatwa does not permit bank interest, indeed it does not pertain to banking practice in general,
- b. If anything, it pertains to the de facto practice of "Islamic banks", but offers a possible manner in which the horrendous adverse selection and moral hazard problems associated with Islamic banks can be resolved.

2. The second presentation deals with the modus operandi of Islamic financial institutions, which is "peddling Islam" by marketing camouflaged conventional financial products as "Islamic", relying on opinions of "Shari'a scholars", all of whom should have no credibility due to their conflicts of interest, and most of whom lack proper credentials.

I think it is about time for this industry to publish the fees that Shari'a scholars are paid to issue their opinions, and to have a regulatory agency that determines who can be called a Shari'a scholar. Such an agency should also put in place safeguards to ensure the credibility of juristic opinions upon which the industry is based. The two presentations can be accessed on my website at: <http://www.ruf.rice.edu/~elgamal/files/islamic.html>"

There were a number of e-mail replies which found El-Gamal's last e-mail to be disrespect to those involved in contemporary Islamic banking and financial services. It would be worthwhile to at least quote the question raised by El-Gamal in the posting on his own web-page:

“If the only drug that will cure you contains 10% alcohol, majority view is to use it. If an alternative (marketed as “Islamic”) contains only 5% alcohol, ask yourself:

- How much more does it cost, and why?
- If supporting the new product can help finance more R&D, the extra cost may be justified
- If the institution helps the Muslim community, the extra cost may also be justified.

If it is just a scam to enrich lawyers and “scholars” (most lacking proper credentials/credibility), perhaps the extra cost is not justified.”

ASSESSING THE DISCOURSE

Taken collectively, the e-mails address the following points: the Qur'anic prohibition of riba, what does riba represents the credibility of Al-Azhar, and lastly the practices of the current Islamic financial industry. As stated elsewhere, the paper is not concerned with defining riba or the other issues such as the accusation against Al-Azhar or even the credibility of those providing contemporary Islamic financial services. The paper is focusing on how the discussion took place and how the writers went about expressing themselves on issues that are admittedly quite complex, especially for e-mail discussion format.

Briefly the following points emerge from reading the e-mails:

- For a large number of people, it did not matter what the Fatwa actually said—they were willing to call it a violation of Qur'an and Hadith based on the e-mail that described the news story.
- The tone used in many of these e-mails suggests closed minds and fossilized perceptions. They seem to be marked with self absorption and self-righteousness. For them being a Muslim is entirely a matter of avoiding interest-based commerce, while ignoring even what Qur'an has said about wealth and its proper uses and acquisition, let alone other aspects of life such as human rights and pursuit of knowledge.
- A large number of e-mails seem unwilling to open discussion on what constitutes Riba---for them the issue has been settled once and for all. Never mind that the world they live in is very different from the world that existed 1400 years ago.
- Most writers seem uninformed and unwilling to consider the considerable amount of scholarship pertaining to Riba that is available.
- A lot of discussants seemed all too willing to see the issue isolated and on its own rather than in a context---in other words, using accounting terminology one

could say *riba* seems to be dealt at a transactional level, rather than being seen in terms of the enterprise or even the Muslim Ummah.

- A tremendous amount of discussion is driven by unproven allegations rather than factual concerns.

The extent to which intellectual content is lacking from the discourse at a web-site aimed ostensibly at professionals is a matter of dismay—since it goes to the very heart of the problem facing believing Muslims, which is to make Islam meaningful in 21st century.

Conclusion

An appropriate way to conclude this brief examination of the discussion dealing with an AL-Azhar ruling would be by quoting a well-known contemporary Muslim economist. The comments made by Umer Chapra were part of his remarks [minority view?] attached to the Report of the Council of Islamic Ideology entitled “Elimination of Interest from the Economy” in the late 1970s. Chapra’s remarks are based on three sayings of the Prophet [pbuh]. The first of which says: “Riba has seventy-three entrances, the least of which is like a person getting married to his own mother and worst of them is that he degrades the honor of a Muslim.” The second Hadith has the Holy Prophet [pbuh] saying: “whoever makes a recommendation for his brother but accepts a gift offered by him has entered *riba* through a large gate.” In the last of three Hadiths cited by Chapra, the Prophet [pbuh] said: “Deceiving a *mustarsal* (unknowing entrant into the market) is *riba*.” The remarks made by Chapra to the report read as follows:

The Panel has defined *riba* as equivalent to interest (First Report, p.1) whereas the *riba* has been given a considerably wider connotation in Fiqh literature than what the term interest conveys. Interest refers to what has been termed as *riba al-nasia’ah* or *riba al-jali* or *riba al-duyun* in the Fiqh literature. This is the kind of *riba* that is covered by the Qur’anic ayah. **However, the Sunnah has also emphasized other aspects of *riba* generally termed as *riba al-fadl* or *riba al-khafi* or *riba al-buyu’*. This form of *riba* covers all forms of economic injustice, exploitation and unearned income (other than that, like inheritance and genuine gifts, allowed by the Shari’ah) [Emphasis added].** Ibn “Arabi has defined *riba* as all excess over what is justified by consideration. . . . According to the Holy Prophet [pbuh] a Muslim could indulge in *riba* in a number of ways. That is why Caliph felt inspired to say that “you should abstain from *riba* as well as *ribah*. . . . *Ribah* is from *rayb* which literally means doubt and refers to any income which has the semblance of *riba* or which raises doubts in the mind about its rightfulness. It covers all income derived from injustice to, or exploitation of, others

Thus **the elimination of *riba* from the economy would require the discussion of all forms of exploitation now prevalent in Pakistan or other Muslim countries [emphasis added]**. This would naturally make the subject so vast that the Panel would not be able to cover it. Nevertheless, in fairness to the Prophetic teaching about *riba*, it would have been desirable if the Report had at least made a mention of this point to indicate that the Report is concerned with the elimination of only one aspect of *riba* which is *riba al-nasi’ah*, and which

pertains to the financial sector. It would be desirable if the Government of Pakistan were to appoint another panel to submit a report on other forms of economic exploitation and injustice in Pakistan to complete the study on the elimination of *riba* from the economy. The Report has adopted the simple approach of assuming that merely the removal of interest from the banking system and replacing it by profit-and-loss-sharing (and some other devices) will be sufficient to make the prevalent banking system conform to the requirements of the *Shari'ah*. I wish to express my disagreement with this approach. **Although the elimination of interest and its replacement by profit-and-loss-sharing is a necessary step it is not sufficient. Unless we introduce some fundamental reforms in the economy as well as the money and banking framework, it will not be possible for us to realize the goals stressed by Islam, particularly the goals of economic stability, socio-economic justice and equitable distribution of income and wealth**(emphasis added, Chapra, 1983, p. 212-213).

In his “minority view”, Chapra acknowledges that elimination of corruption from Muslim countries would be an immense task. This was almost a quarter of a century ago; the corruption in Muslim countries has not gotten any less. Given reports from organization such as Transparency International, Muslim countries are annually rated as among the most corrupt. That means the energy being devoted to making the purchasing of cars on installment, buying homes using mortgage, and leasing a fleet of trucks for a business marginally more “hallal” is best expended on reducing corruption at large—since it is that corruption which makes the contemporary Muslim world to drown in an ocean of *riba*!

References

- Ahmed, Ziauddin, *et al.* Money and Banking in Islam (Islamabad, Institute of Policy studies, 1983).
Schiffrin, Deborah. Approaches to Discourse (London, Blackwell, 1994).