

The Interpretative Debate of the Classical Islamic Jurists on *Riba* (Usury)

Farhad Nomani

The American University of Paris

Email: farhad.nomani@aup.fr

JEL Classifications: B00, B11, K12

Keywords: Usury, Classical Islam, Economic history

Abstract

Classical Islamic jurists agreed with each other about the prohibition of *riba*. However, they disagreed on methodological points concerning the interpretation of *riba* in primary Islamic sources. In the view of those Islamic jurists who wrote on the methodology of Islamic law, the objects of *riba* occurred in sale, and only by analogy did they relate *riba* to loan contracts. This was because they considered *riba* either as an "ambiguous" and/or "speculative general" term. This debate led to the clarification and/or specification of *riba* ruling by the authentic hadiths in certain sale transactions.

1. Introduction

This article concentrates on the relevant interpretative principles of the classical jurists for the explanation of *riba* in the Qur'an and the sunna, and the extension of the textual ruling on *riba* to new cases in different forms of transactions. Modern Muslim and non-Muslim scholars rarely explain why the classical Islamic juridical discourses concerning *riba* focused on contracts of sale, and they de-emphasize the fact that *riba* in sales transactions (mainly barter) was the primary point of debate among the jurists. At best, the majority of these studies present what one finds in the Qur'an, the sunna and the writings of some of the classical and modern jurists in reference to *riba*. Therefore, these studies are essentially a review, detailed and/or summarized, of what is found in the *furu`* (literally, branches, positive law) in the section of *mu`amalat* (transactions) [1].

By analyzing the relevant writings of the classical jurists of the Hanafi, Maliki, Shafi`i, Hanbali and Twelver Shi`i schools of law, this article concludes that the focus of the classical jurists on sales was due to the fact that they considered *riba* in the Qur'an as an ambiguous and/or a speculative general term that had to be particularized by the authentic *hadiths* (the reports of the sayings and deeds of the Prophet) in certain sale transactions [2]. Such a focus was an inevitable result of the rules of interpretation that, in due course, were elaborated in *usul al-fiqh* (Islamic jurisprudence) literature, and were adopted by the jurists of different schools of law [3]. This article commences with a summarized review of the *usul al-fiqh*. The main interpretative arguments of the classical jurists and their implications for the problem of *riba* in the *furu`* will be presented by concentrating on the relevant concepts of *usul al-fiqh* for the debate on *riba*.

1.1. *Usul al-fiqh*

Usul al-fiqh is the knowledge of the sources and methodology of *fiqh* (Islamic law). As such, it prepares the premises for *furu` al-fiqh* on the basis of the shari`a evidences (*al-adillah al-shar`iyyah*). These evidences or proofs are divided into the transmitted (*naqliyyah*) and rationalistic (*aqliyyah*). The former are the Qur'an, the sunna and consensus (*ijma`*) among Sunnis and Shi`is, and the latter is *qiyas* (analogical deduction) for Sunnis and *aql* (rationality, reason) for Usuli Shi`is [4]. The overall structure of the Shi`is approach is the same, despite differences over the details of the first three important sources of the shari`a evidences. Eventually, the Usuli school within the Twelver Shi`i replaced strict analogical deduction by "reason" (*aql*) as the fourth source of law, and they allowed some independent interpretation of the texts by means of certain rational operations. Nevertheless, their method for the derivation of rules resembles that of the Sunnis for all practical purposes [5].

The Qur'an and the sunna are the primary source of law and provide indications from which shari`a values or rules (*ahkam*, singular *hukm*) are derived. Yet, these sources are not always self-evident and do not provide enough methodological tools for the derivation of rules. Therefore, an important part of the *usul al-fiqh* is the development of a set of principles and methods for the proper understanding of the legal texts and the deduction of *ahkam*. In this endeavor, *usul al-fiqh* relies on formal logic, theology and linguistic analysis for the development of its principles. These principles reflect partly divergence and partly consensus among schools of law, and even within the same school, over the details of the interpretation of the Qur'an, the sunna including the interpretation of hadith, *ijam`*, analogical deduction, supplementary principles of legal construction and *ijtihad* (the effort to deduce a law from its sources) [6]. What follows will concentrate on the presentation of these principles, especially in reference to the problem of *riba*.

1.2. Relevant concepts of *usul al-fiqh* for the debate on *riba*

According to classical jurists, legal rulings of the shari'a which are transmitted in the texts of the Qur'an and the sunna are either definitive (*qat'i*) or speculative (*zanni*) (Kamali 1991, 21-9). This division depends on the nature of the subject or the clarity of the text. Thus, a definitive text that is clear and specific (*khass*) is not open to interpretation (*ta'wil*) and *ijtihad*. Yet, the speculative texts and words of the same sources render themselves to interpretation and *ijtihad*, and therefore jurists can disagree about the meaning of the text. In fact, a very important part of the *fiqh* is made up of rules that are deduced through interpretation and *ijtihad* [7]. Therefore, part of the problem of *ijtihad*, i.e., the interpretation of what is not self-evident or is unclear, is the correct understanding of words, phrases and sentences of the Qur'an and the Tradition. This concern led the classical jurists to develop and use the methodology of *usul al-fiqh* for the classification of the words of the Law-giver, identify the guidelines for resolving instances of disagreement, and provide a framework for *ijtihad*. This elaborate methodology divides words and legal rules into different types of words and rules based on their clarity, scope and ability to convey a certain meaning.

At the risk of simplification, one could conclude, on the basis of conceptual clarity, that words (and legal rules) can be classified as clear and unclear: the clear words (and legal rules) do not need any interpretation (even though there are exceptions to this), while unclear words are open to interpretation. The problem of the scope of the words (and legal rules) in the primary sources of the shari'a leads to the classification of the general (*'amm*) versus the particular or specific (*khass*), absolute or unqualified (*mutlaq*) versus qualified (*muqayyad*), and homonym (*mushtarak*). According to all the Islamic schools of law, legal rules that are expressed in specific terms (or are particular) do not normally render themselves to interpretation since they are definitive in their imports. Yet under exceptional cases the Hanafis have found it necessary to use *ta'wil* even for the *khass* category. Finally, words (nouns and verbs) of the Qur'an and the *sunna* can also be in the literal, the metaphorical and homonym forms, and ulema differ from each other with respect to the meaning they must rely on for their interpretation (Dutton 1999, 86-121; Pesele n.d., 31-67). Of course such classifications are necessary, given the uncertainty associated with the application of legal rulings that are expressed in uncertain and unclear terms. In addition, differences of opinion in such cases would have important implications for prohibitions and commands.

As regards the problem of *riba*, it is necessary to present a more detailed discussion of the sub-division of unclear words, namely the ambiguous, and the general versus the specific. This is because the disagreement of the classical jurists over the meaning, and therefore the practical implications of the prohibition of *riba* is methodological to a great extent.

Unclear words (and legal rulings) of the Qur'an do not transmit a clear meaning without the aid of additional evidence that may be obtained in the Qur'an, the sunna and by the application of *ijtihad*. Unclear words are divided into *khafi* (obscure), *mushkil* (difficult), *mujmal* (ambiguous) and *mutashabih* (intricate). The ambiguity of the first two can be removed by *ijtihad*, while the precision of the *mujmal* terms can only be established by the Qur'an, the Tradition and *ijma'*. *Mutashabih*, however, is a term in which the meaning is a total mystery, and therefore, cannot be cleared by *ijtihad*.

A *mujmal* word may be either a word with more than one probable meaning (homonym), none of which has dominance over the other, or a term for which the Qur'an has introduced a meaning that is different from its literal meaning in order to transmit a juridical concept. Such words encompass expressions whose denotations are imprecise or general. If the Qur'an or the sunna explains the juridical meaning of such words, they become clear and turn into *mufassar* (clear, explained) and would no longer be open to interpretation and *ijtihad*. Yet, such words become *mufassar* only when the clarification is complete. In the case of insufficiency of the clarification, the *mujmal* becomes a *mushkil* and can be a subject of *ijtihad* by means of induction and analogy among the Sunnis and by means of *'aql* (which also relies on analogy and induction), among the Shi'is. Such a process turns a *mujmal* term into a *Khass* term in practical cases. For example, many classical jurists assert that *zakat*, which literally means growing, is one of these words because its literal meaning is different from its intended shari'a significance. The Qur'an and the Prophet removed the ambiguity as to the juridical meaning of *zakat* as almsgiving, and specified the incidence, the rate, etc., of the command. Yet, this explanation was still incomplete for practical cases, and consequently, further *ijtihad* and interpretation was necessary. In addition, many classical jurists, especially the Hanafis, identified *riba* as a *mujmal* word [8].

The definitive and speculative rulings are related to the general and specific. The Qur'an is full of general terms, and, therefore, the problem is: to whom and to what do they apply? This is a delicate and difficult problem. The specific words of the primary sources are definitive and all schools of Islamic law have a consensus over that, with the exception of the Hanafis. The disagreement is more pronounced in respect to general terms. As regards the general words and rulings of the Qur'an, the Hanafis are of the opinion that these terms are as definitive as the specific terms and rulings in their implications ('Alwani 1995, 84; Pesele n.d., 49-58). However, other schools consider them as words or rulings that may be open to qualification and speculation, and therefore *ijtihad*, if the general in the Qur'an is not turned into a specific ruling. Even if part of a general ruling is specific, it will remain speculative and thus open to interpretation. The reason for this conflict of views is the definition of the general. The Hanafis assert that the application of the general to all of its elements, or all that it includes, is definitive. This is due to the fact that law is normally presented in general terms, and that limiting the application to only a few cases is contrary to the intention of the Legislator and can lead to arbitrary conclusions. For example, if *riba* is considered to be a general term meaning an increase, then any increase in *mu'amalat* should be prohibited. Since this is not the explicit (*nass*) ruling of the Qur'an, therefore, the Hanafis consider *riba* as a *mujmal* term. According to the jurists of the other schools, however, the application of the general to all that it includes is speculative and not definitive, and thus it is open to interpretation. For example, if one identifies *riba* as a general term, such an assertion would not require that every increase would be prohibited, because the prohibition may only be limited to certain kinds of exchanges that are susceptible to *riba*. Another implication of such a disagreement is with respect to the following methodological guideline. According to the Hanafis, the general text of the Qur'an cannot become specific by a solitary hadith that happens to be specific and/or by means of analogical deduction; a definitive text cannot become specific by a speculative text or be limited by it. Other jurists, however, insist that a general text of the Qur'an, which is by nature of the term

speculative, can become definitive by the *khass* of a solitary hadith. This is because most non-Hanafi jurists are of the opinion that a speculative text can become specific by a definitive or another speculative text [9]. Such disagreements lead to the identification of different effective causes (*'ilal*) for reaching a ruling for unprecedented cases and the classification of such cases in different categories of *mu'amalat* in *furu'* discussions.

2. Riba

The vast classical juristic literature that directly and indirectly relates to our discussion can be classified as the exegeses of the Qur'an, the compilations of the *hadith*, books on *usul al-fiqh* and *furu' al-fiqh*. This article will essentially rely on these sources, especially the exegeses of the Qur'an, for the methodological debate on *riba*.

2.1. Riba in the Qur'an and the Tradition

Classical jurists of all Islamic schools of law see the absence of *riba* as one of the conditions for the validity of contracts, and apply its prohibition primarily to sale and barter, but also to other contracts, such as gratuitous loans. To discuss the problem, they start with the primary sources of Islamic law and then proceed with their own interpretation or *ijtihad* that depends on their methodological understanding of the primary sources. However, the exegeses of the Qur'an and the authors of books on *usul al-fiqh* commence with an explanation of the literal meaning of *riba*. The literal meaning of *riba* is stated as increase and growth, either in the form of a self-growth or numerically more when the comparison of two things is intended. It is emphasized that besides its technical and customary meaning among the Arabs in the pre-Islamic era, the Qur'an uses two derivatives of the word *riba* in a literal sense (22:5; 16:92) [10]. However, by studying these commentaries, one notes that the technical, and even to some extent the customary meaning of *riba* as a practice in pre-Islamic era, is a matter of controversy among classical jurists and the interpreters of the Qur'an. They all state that *Riba* was a common practice in the Arabian Peninsula at the advent of Islam and that it mainly took the form of loans of commodities, cattle or money and/or of sales either by direct barter or on credit. In the case of direct barter, the exchange of articles of the same and sometimes of different kind gave rise to an increase, excess or inequality of spot exchange; in the case of sales on credit or loans, the failure to fulfill a contract at the time of maturity led to the continuous multiplication of the obligation in kind (or may be money). Yet, whether the Qur'an refers to the aforementioned types, or a type of debt in the form of commodity or in money, is something that is not very clear in the exegeses of the Qur'an, and it gives rise to varied interpretations among the classical jurists and the interpreters of the Qur'an. According to Ibn Kathir, the problem of the explanation of *riba* has been a very difficult problem for the jurists. To substantiate this observation, he and other commentators of the Qur'an cite 'Umar's statement concerning the lack of practical clarity of the injunction of *riba* (Ibn Kathir 1983, vol.1, 581) [11].

There are four basic references to *riba* in four chapters of the Qur'an. In chronological order, they demonstrate the gradual nature of the prohibition. First, *riba* is indirectly referred to and condemned, and is explicitly presented as the opposite of almsgiving. "For increase through the property of (other) people, will have no increase with Allah: But that which ye lay out for charity, seeking the countenance of Allah, (will increase): It is these who will get a recompense multiplied." (30: 39). Second, Muslims are reminded of the wrong doing of Jews in practicing *riba* despite its prohibition in their religion: "That they took usury, though they were forbidden; and that they devoured Men's substances wrongfully" (4: 161). The third reference to *riba* is clear about the punishment of Muslims who practice *riba* and is explicit about the nature of the *riba* that is condemned: "Devour not usury, doubled and multiplied; But fear Allah; that ye may (really) prosper" (3: 130). Finally, in the fourth reference to *riba*, the Qur'an is explicit about the following points: those who "devour" *riba* must repent and remit the "increase" (i.e., *riba*), in which case they can keep the "principal" or original sum (2: 275-79); [12] the act of *bay'* (exchange) [13] is permitted while *riba* is forbidden (2: 275); almsgiving or zakat is demanded (2: 277) and it is asserted that believers must not deal unjustly and they shall not be dealt with unjustly (2: 279).

Classical jurists and the exegeses of the Qur'an assert that the *riba* in the first reference to it (30: 39) is not about the prohibited *riba*. For example, according to Fakhr Razi, in this verse of the Qur'an believers are called on to "lay out" or give (al-Razi 1990, vol.13, part 25, 111). Tabari is of the opinion that *riba* in this verse is presented against selfish acts which seek not God's grace but personal advantage (al-Tabari 1988, vol.11, part 21, 45-6). Classical Shi'i jurists are also of the same opinion (Mutahhari 1991, 197-8).

Classical jurists and the interpreters of the Qur'an were also divided on their explanation of *riba* in the second reference to it in the Qur'an (4: 161). On the one hand, some insist that this *riba* is not the *riba* which is prohibited by the shari'a but rather refers to the impropriety of "devouring" the property of others (al-Qurtubi 1987, vol.6, 12-3). On the other hand, Tabari asserts that since the *riba* that was practiced among Jews was similar to that of the pre-Islamic period and that Divine rulings for the Jews and Muslims confirm each other, this *riba* is the prohibited *riba* intended for Muslims (al-Tabari, 1988, vol.4, part 6, 23-4).

The third reference to *riba* in the Qur'an has introduced the problem of the "doubled and redoubled" or according to some other translations, "doubled and multiplied". The problem is whether the doubling and redoubling is only limited to the original sum or the animal (e.g., camel) lent in case of non-payment or non-delivery, or that it is about the multiplication of the sum of the original property and the "increase". Besides, it is not clear whether the expression refers only to one of the kinds of *riba* practiced in the pre-Islamic period or if it is the only kind of *riba* that is understood as the *riba* of the Qur'an. Finally, some exegetes of the Qur'an state that this prohibition might have been addressed to polytheists and not the believers (Ibid., vol. 3, part 4, 89-90; al-Razi 1990, vol. 5, part 9, 3-4; al-Qurtubi 1987, vol. 4, 202-3; Imam Malik Ibn Anas 1989, 273-4). Most classical exegetes of the Qur'an, however, identify the Qur'anic *riba* as the increase in an exchange based on deferred delivery and/or payment, i.e.,

riba al-nasi'ah [14].

The last five verses about *riba* in the Qur'an (2: 275-9), known as *ayat al-riba*, are clear with respect to the ban on *riba* for Muslims and determine the right of creditors or those practicing *riba al-nasi'ah* in exchange for recovering the original sum, properties, or commodities lent without any increase. Yet, besides disagreement over the intended significance of the terms such as "devouring" *riba* or the "devil's touch" for those who "devour" *riba*, jurists differ on the exact meaning of the ruling about sale and *riba* (2: 275). In fact, for this reason, classical jurists were obliged to construct the interpretation of *riba* with the aid of Tradition or, in their terminology, to specify it by the Tradition. Thus, according to the Hanafi exegete, al-Jassas, whose exegesis is a juristic *tafsir*: *riba* is a shari'a term because the word has not kept its original meaning. He asserts that Arabs of the pre-Islamic period did not know that the credit sales of gold for gold and silver for silver were *riba* and that even 'Umar had doubts about its exact meaning. He, therefore, concludes that the term *riba* is a *mujmal* term capable of further interpretation (al-Jassas 1916, vol.1,464).

The Traditions of the Prophet are also explicit about the injunction against *riba*. Yet the reports of the sayings of the Prophet (*hadith*) are not unanimous about what exactly constitute *riba* and what forms of contracts come under the Qur'anic prohibition.

There are three principal types of *hadiths* on *riba*. The first type is the most accepted or reliable sayings of the Prophet on *riba*, reported in most compilations of the *hadith*, and states that *riba* exists when six articles of the same kind are either bartered unequally or not delivered immediately: these articles were identified as gold, silver, dates, salt, barley and wheat [15].

The second type of *hadiths*, citing Ibn 'Abbas, a companion of the Prophet, report that there is no *riba* except in deferment, i.e., *riba fi'l-nasi'ah*, in delivery and/or payment. The third type of *hadiths* relate to the last *hadith* on *riba* in which the Prophet, in his sermon on the occasion of the last pilgrimage, explicitly prohibits the pre-Islamic *riba* and refers to it as the *riba* of 'Abbas Ibn 'Abd al-Muttalib. This report asserts that only the recovery of the original sum or property is licit at maturity, thus ruling out the receipt of any excess (el-Bokhari 1977, vol. 1, 1-59).

There are also other reports recorded in the *hadith* texts on other commodities such as meats, fruits, and slaves that indirectly refer to illicit "increases" [16]. In general, however, except for the aforementioned three types of reports of the sayings of the Prophet, other reports are not unanimous and are not equally relied on by jurists.

As regards loans, debt or borrowing there are several *hadiths* that are often relied on by the jurists for their discussion of the subject. One could infer from some of these reports that *riba* in an exchange arises because one of the parties to a transaction demands the delivery or repayment of a larger quantity. However, some of the Traditions insist that if a party to a contract voluntarily gives the other a bonus, the act is prohibited for a sale but acceptable for a loan [17]. In addition, the Tradition is contradictory on the possibility of the reduction of the amount of a debt if the loan "is voluntarily paid before it falls due" [18].

2.2. Classical jurists and the interpretation of *riba*

All schools of Islamic law prohibit transactions that are susceptible to *riba* despite their methodological and interpretational differences that arise because of the foregoing problems in the Qur'an and the Tradition [19]. Yet, these methodological preferences have imposed themselves on the way classical as well as the contemporary jurists identify *riba* in certain contracts.

In general, differences among classical jurists on *riba* can be divided into two inter-related categories. The first category is about the methodological disagreements, especially on linguistic rules of interpretation and the analysis of the effective cause of the ban. The objective of this section is the analysis of these issues with respect to *riba* that are normally part of the *usul al-fiqh*. The second category is about the juridical differences over the practical applications of the ban and are found in the *furu'*. Issues such as the problems of the coverage and the application of the principles of *riba* with respect to articles of exchange, as well as the territorial application and personal coverage of the ban, and legal devices for the circumvention of *riba* have been extensively studied by Muslim and non-Muslim scholars [20].

Classical jurists disagreed with each other over the clarity of *riba* and its prohibition in the Qur'an (2-275). The source of the problem was the lack of clarity of the concept in the primary sources on the one hand, and different procedural rules of thought followed by different schools of law on the other hand. After all, one of the companions of the Prophet, Bin 'Abbas, and the Second Caliph, 'Umar, had certain problems with the concept. For example, it is known that Ibn 'Abbas was of the opinion that the only forbidden *riba* was the pre-Islamic *riba* and that *riba* did not exist in sales with immediate delivery or "hand-to-hand". Besides, classical books on *fiqh* repeatedly state that 'Umar had doubts about the clarity of *riba* and its application to practical cases [21]. In fact, al-Razi states that 'Umar was of the opinion that the *riba* ruling in the al-Baqarah chapter was one of the ambiguous verses of the Qur'an (*ayat al-mujmalat*) [22].

Thus, classical jurists were obliged to take a position, explicitly or implicitly, with respect to the juridical clarity of the command on *riba*. The starting point of the discussion is whether the prohibition of *riba* in the relevant verse (2: 275) is clear or not. They all agreed that *riba* is not a definitive evidence, i.e., free of speculative content, because of the difference between its linguistic and customary meaning in the pre-Islamic period on the one hand, and its specification by the Tradition and the ambiguity of the opinions of the close companions of the Prophet on the problem of *riba* on the other hand. A speculative (*zanni*) Qur'anic text needs clarification, because ambiguity is not a clear basis of action.

All classical jurists have interpreted *riba* according to their preference for the rules of the interpretation of the primary sources, i.e., the Qur'an and the Tradition. The classical Hanafi, some famous classical Shafi'i (e.g., al-Razi) and Maliki (e.g., Ibn Rushd) jurists were of the opinion that *riba* in the Qur'an was an ambiguous (*mujmal*) term, the meaning of which was not clear *per se*, and therefore the ambiguity had to be cleared by the Tradition. Thus, for these jurists *riba* had to be explained by the shari'a because the pre-Islamic Arabs did not know that the unequal exchange of certain articles of the same kind was *riba*. The other known exegetes (except Tabari, who bypasses this discussion), like al-Qurtubi, and many classical jurists like al-Baji and al-Tawwafi, to name only two, were of another opinion. They claimed that *riba* was a general term. Yet some of these exegetes and jurists, for example, those mentioned, present an informative and comparative view of the position of different schools of law on the problem of *mujmalat* [23].

The argument of jurists who opted for the ambiguity of *riba* in the Qur'an, was related to their definition of the general (*'amm*). According to Hanafis, the general is a word of which the scope is without any restriction. In other words, the *'amm* is absolutely general, i.e., it includes everything to which it is applicable and is definitive or free of speculative content. For this reason, when a command is issued in the form of an *'amm*, it must be implemented as such since for the Hanafis the general, as well as the specific of the Qur'an, is definitive, and therefore is not open to interpretation. Since it was obvious that not all sales were illicit and that not every increase in an exchange is prohibited by the Qur'an and the Tradition, these jurists were reluctant to identify *riba*, as well as *zakat*, *salah* and *hajj*, as a general juridical concept [24]. Besides, they were of the opinion that the *khass* specifies the *'amm* only when they are chronologically parallel. Thus, in their opinion, *riba* could not be a general term and the pre-Islamic *riba* of the Qur'an (3: 130) could not specify it. For this reason, they identified *riba* as *mujmal* and restricted its application to the clarification by the Tradition that refers to *riba* in sale.

Shafi'i and many Maliki and the majority of Shafi'i jurists disagreed with the above argument. They claimed that the command on the lawfulness of sale and the unlawfulness of *riba* signified a general command and it could be restricted to certain forms. In other words, they insisted that the *'amm* can comprise some, but not absolutely all the parts to which it could possibly apply. According to al-Shafi'i, in the "Arab tongue," it is possible that a general command applies only to some of its parts (al-Shafi'i 1987, 67-71, 100). In addition, he asserts that the general rulings of the Qur'an could become specific by the Qur'an and the Tradition (Ibid., 325-6).

As noted above, the Hanafis insisted on the application of the general to all of its parts, and by claiming that the general and the specific are both definitive, they did not allow their interpretation. However, for the other Islamic schools of law the juridical application of the general to all its parts is speculative (*zanni*), and therefore can be interpreted and specified by a *khass* which always prevails over a speculative *'amm*. If the general term of the Qur'an is speculative as a whole, before and after specification (*takhsis*), by the Tradition, it is open to interpretation and can be qualified (*muqayyad*) [25]. Thus, for them *riba* in the Qur'an was a speculative general term that was turned into a definitive juridical term and was specified by the tradition. If *riba* is a general term, it would not be restricted only to the one that is referred to in the Qur'an, and it covers any increase in loans or sales that in fact was specified by the Tradition in the exchange of certain articles. However, according to Shafi'i, the Tradition "indicated that God made lawful sale [of every kind], except those which he has forbidden through His Prophet's tongue" (Ibid., 157). According to this argument, the pre-Islamic Arabs practiced one of the forms of *riba*, namely the *riba al-nasi'ah* and the Qur'an revealed the prohibition by referring to a practice that was known to Arabs, and, therefore, could be understood by them. Thus, despite the fact that the advocates of the generality of *riba* could logically extend *riba* to any contract, they, including the Shi'is, effectively followed the Hanafis and confined *riba* to sales contracts; after all, the ambiguous and/or the general term of *riba* in the Qur'an, for one or the other school, was interpreted by the Tradition in sale. In fact, Shafi'i himself insisted that the Qur'anic *riba* is in sale. In his opinion, the meaning of *ra's al-mal* in the Qur'an (2: 279) is the original price of the property in the case of deferred payment in a credit sale (Ibid., 127, 157, 190-1).

Thus, by asserting that *riba* is an ambiguous and/or a general term, all the classical jurists prevented the application of the prohibition of *riba* to all "increases" or "excesses" and limited its interdiction to only certain objects of sale. They confined *riba* to sale contracts because the authentic *hadith* that could clarify and specify it, limited *riba* to sales. Accordingly, these jurists insisted that the pre-Islamic *riba* was *riba al-nasi'ah*, which is *riba* by means of deferment in the famous *hadith* about the exchange of six articles [26].

In addition, the advocates of the juridical ambiguity of *riba* assert that the juridical meaning of *riba* would have become a self-explained or clarified term only if the clarification provided by the Qur'an and the Tradition were complete. However, the clarification was not sufficient in the case of *riba*. Therefore, the term became a *mushkil* (difficult) and opened the road to *ijtihad*. The classical jurists who insisted on the general nature of the juridical meaning of *riba* in the Qur'an, believed that as a speculative term, *riba* was open to interpretation and specification. For this reason, they too accepted *ijtihad* in the case of *riba*, as is evident in their deduction of detailed rulings on *riba* in contracts of sale. However, the thorny question is whether one could identify an "increase" or *riba* in contracts other than sale, for example in loan contracts. Based on the above arguments, the classical jurists had to rationalize the *hadith* that authorizes the voluntary increase (i.e., without stipulated condition) of the sum or the property of a loan that falls due. Evidently, by doing this, *riba* in loans was only a matter of analogical deduction [27]. For some, for example al-Sarakhsi, such a loan resembles alms and charitable or gratuitous acts (al-Sarakhsi 1993, vol. 6, part 11, 133-4, part 12, 9-4, vol. 7, part 14, 35-41). Ibn Kathir, in his interpretation of the first reference to *riba* in the Qur'an (30: 39), states that Ibn 'Abbas had identified an illicit *riba* which was *riba al-nasi'ah*, and a licit *riba* which was the voluntary "excess" as a gift in a contract (Ibn Kathir 1983, vol. 5, 363). Besides, classical jurists did not have a justification for their discussion of *riba* in loans. The only report that they could find on this issue was considered as a *hadith al-muwquwf* (restricted), i.e., a *hadith* in which sayings and acts were related by one of the companions of the Prophet (Shabbir 1982, 30): i.e., 'any loan that gives rise

to an excess, is *riba'* (Homoud 1985, 54). Yet few classical jurists attempted other types of classifications that remained inconsequential and disputable. For example, Ibn Rushd (al-Hafid) separates the pre-Islamic *riba* from the *riba* of the Tradition, i.e., *riba al-fadl* and *al-nasi'ah*. He divides in turn the *riba al-nasi'ah* into delayed delivery (and/or payment) and other liabilities. However, despite his assertion that *riba* occurs both in sale and debt, Ibn Rushd reminds the reader that the majority of jurists dispute such a classification. According to Ibn Rushd, jurists are only unanimous about the *riba* in *bay'* (Ibn Rushd al-Hafid n.d., vol. 1, part 2, 180-3) [28]. Ibn Taymiyya and Ibn Qayyim also differentiate between the pre-Islamic *riba* and *riba* in sale, but their argument is not as clear as that of the Ibn Rushd because they do not identify *riba* in loan contracts (Islahi 1988, 131-3).

Thus, when the great majority of classical jurists discuss the problem of loans, either as different kinds of loans or in other contracts such as donation, which are normally after sale, they are all obliged to refer to contracts of sale based on *riba* to analyze loans that lead to illicit *riba* by means of analogical deduction. In fact, when they discuss the issue of loans that carry an "increase", it is usually to justify the permissibility of such an increase where it is not constrained to any condition. They also derive the rulings for compensation and legitimize the circumvention of the prohibition of *riba* in sale and debt by means of induction and analogy. What follows is their method to solve the problem of the coverage of the *riba* prohibition with regard to objects of exchange and the conditions therein.

2.3. Problem of *riba* and its *'illah*

Except a few commands and cases in the Qur'an and the Tradition where varied interpretations are not possible, most cases (legal rules) in Islamic law are solved by deduction, analogy and, more often, induction. Deduction applies the general legal principles to particular cases. Analogy is used in the establishment of similarity in certain properties and aspects between dissimilar cases or objects. In the case of induction, a particular (specific) is subsumed under a general principle or transition is made between a single fact to general propositions. Induction was the legal reasoning that was extensively used by classical jurists for the new cases of *riba*.

All classical jurists accept the authenticity and the certainty of the *hadith* that the Prophet prohibited the unequal exchange and delayed payment or delivery of six commodities of the same kind: i.e. the exchange of gold for gold, silver for silver, wheat for wheat, barley for barley, date for date and salt for salt. Therefore, they extended the sunna rule to similar commodities and furnished a basis for juridical rulings by finding the purpose, *raison d'être*, or the effective cause in contracts of sale, basically barter (for at the time of the Prophet coins were scarce). For example, many Hanafi and Shi'i classical jurists believe that the six commodities in the famous saying of the Prophet about *riba* have the material property of either being weighed or measured; certain other commodities have the same properties; therefore, the *riba* prohibition applies to all commodities of the same kind (genus) exchanged or sold (including future sales, *salam*) by weight or measure [29]. Thus, according to this argument, the unequal exchange of the same commodities that have different qualities, e.g. horses, or the unequal exchange of articles that are exchanged by number and not by weight and measure, is not susceptible to *riba* (Ibid.) [30]. Of course, this type of argument which tries to find the *'illah*, i.e., the finding of the relevant similarity which justifies the application of a ruling to the new case, is not perfect and relies on human judgment and common sense. This is despite the fact that the jurist insists on starting the reasoning with a precedent (*asl*) in the primary sources. *Ijtihad* by analogy and similar legal reasonings, such as induction, used by Shi'is is also justified by the identification of an *'illah*, no matter how they try to differentiate their method of legal reasoning from that of the Sunnis. For example, the Usuli shi'is have to resort to an *'illah* which in the case of *riba* is based on hadiths that are authorized by the twelve Imams (Kamali 1991, 221). In any case, if the *'illah* is not clearly indicated in the primary sources or is not indicated at all, the identification of the effective cause becomes speculative. For this reason, the use of analogy and induction has given rise to different interpretations among classical jurists, Sunni and Shi'is alike, who have identified different *'ilal* (plural of *'illah*) for the *riba* of the Tradition. These *'ilal* that identify the similarity common to the *asl*, and the *far'* (which are the other commodities), are not necessarily explicit in the *riba* of the Tradition. For example, the *'illah* in the case of *riba* for Malik (and many Maliki jurists) and shafi'i (and many Shafi'is) is different from that of most Hanafis and Shi'is. First, Malikis and Shafi'is divide the six articles of the prophetic *riba* into currency and foodstuff. Second, despite slight differences between them, they assert that the *'illah* for gold and silver is the property of being currency, and the *'illah* for wheat, barley, dates and salt is their property of being foodstuff [31]. Therefore, they conclude that the unequal exchange of coins and/or foodstuffs of the same kind is prohibited in hand-to-hand or deferred transactions. This argument differs from that of the Hanafis and Shi'is because for Shafi'is the property of being of the same kind is not an essential element of the *'illah* but is only a general prerequisite for *riba*. Thus, Shafi'is and Malikis would assert that the unequal and hand-to-hand (as well as deferred) transactions of foodstuffs and currencies of the same genus, whether or not they are measurable or weighable, are prohibited (Imam Malik Ibn Anas, 254-7; al-Shafi'i, 313-4) [32]. In reaction to this reasoning, the Hanafis point out that the unequal exchange of articles of the same genus with different quality must be permitted for practical reasons, and that categories such as foodstuffs or articles of nourishment are too general for practical judgments. Thus, they insist that only the unequal transactions of weighable and measurable articles of the same kind (genus) that have simultaneously the same name, the same origin and the same use, are prohibited: e.g., the unequal hand-to-hand transaction of orange juice and apple juice is permitted (Saleh 1992, 21).

It must be noted, however, that in time the rulings of the jurists have converged due to the dialectical interaction of ideas and arguments. For example, al-Ghazzali, as a Shafi'i, recognizes the impracticality of not considering the differences of qualities and the specific use of articles in the exchange of the same contract (Ibid.). Or, as a latecomer in the schools of law, the Hanbalis' interpretations are a bit different, but represent a more synthesized view about the *'illah* of *riba* that avoids the shortcomings of the other opinions. On the whole, the Hanbalis' views are sometimes closer to the Shafi'is-Malikis, and at other times, are similar to the reasoning of the Hanafis. This is reflected in the argument of Ibn Qudama. For example, according to Ibn Qudama, one

version of the Hanbali opinion asserts that the unequal exchange of foodstuffs that are measurable and weighed, and the currencies that are weighed, in hand-to-hand and deferred transactions are *riba* (Ibn Qudama 1950, 95-100).

Based on the above arguments, and only gradually, jurists of all schools of Islamic law called *riba* in sales as *riba al-fadl* or *riba* by way of excess or increase, and *riba al-nasi'ah* or *riba* by way of deferment (or *riba* of delayed delivery or payment) [33]. The former is the unlawful excess of the counter-values in a "hand-to-hand" transaction. The latter refers to the prohibition of the delay in one of the counter-values since a deferred exchange could produce a gain in one of them (nevertheless, such an exchange was unlawful whether or not it gave rise to a gain).

In sum, despite their conflicting views on details concerning the conditions of sale and the articles the exchange of which were susceptible to *riba*, all jurists emphasized the necessity of the equality of the exchanged counter-values in contracts of sale, and avoided the issue of loans (in which an advantage or an increase may be stipulated for the lender) in the chapter on *riba*, proper [34]. This is because they did not find an authoritative evidence or justification for any other classification in primary sources. Besides, all classical jurists, despite their differences over the conditions and the level of obligations, consider loans, either in the form of *qard* or *'ariyah*, as gratuitous transactions for charitable purposes and donation. Such contracts were not transactions based on *riba*, but were considered as such by analogy. In fact, some jurists, Sunni as well as Shi'is, assert that the reason for the prohibition of *riba* in such contracts is to induce the spread of *qard al-hasanah* (gratuitous loan), and that the prohibition encourages the act of charity (al-Tusi 1991, vol. 3, 276-81; Mutahhari 1991, 254-6). *Qard* was defined as the lending of a fungible commodity that could be weighed, measured and counted, and, as a consequence, involved the transfer of the ownership of the property and required the return of a similar commodity in time of maturity: it is a consumption loan. *'Ariyah* denoted a temporary, but gratuitous, loan of non-fungibles that only transferred the usufruct of the property. Being a charitable contract, a loan could not stipulate an "increase" to the original property at maturity (Ibid.; Linant de Bellefonds 1973, vol. 9, 417-33). Therefore, not being a sale contract, a voluntary "increase" at the end of the maturity of a loan was permitted by the majority of jurists. For the same reason, many of the classical jurists, except many Malikis and Hanbalis, permit the use of legal devices for the circumvention of *riba*. In fact, the relationship between *bay'* and *riba* becomes obvious if we note that most of these legal tricks divide a loan contract into two or more *riba*-free sale contracts in order to circumvent the ban on *riba*. And more important, inasmuch as *riba* occurs in sales, the majority of classical jurists classified the Qur'anic *riba* as *riba al-nasi'ah*.

Thus, it is only in modern times that Muslim scholars, and to a lesser extent, contemporary jurists, have explicitly recognized *riba* in both sales and debts on equal-footing. In fact, the great majority of contemporary prominent jurists are still reluctant to abandon the discussion of *riba* in sale, and present a detailed argument of the exchange of the same articles that lead to *riba*, despite the irrelevance of many of these cases in modern transactions, and consider loan contracts as essentially a gratuitous transaction in their technical writings [35].

3. Conclusion

Classical jurists had a consensus of opinion about the prohibition of *riba*. Yet, they disagreed on the details of the methodology of the interpretation of the primary Islamic sources and, consequently, over the details of the ruling on *riba*.

Classical jurists were of the opinion that the objects of *riba* occur in sale, and, only by analogy they related *riba* to loan, considering the latter a gratuitous contract. This is because they believed that in the Qur'anic verse on *riba* (2: 275), which states that sale is licit and *riba* is illicit, *riba* was either an ambiguous and/or a speculative general term. However, those who insisted on the ambiguity of *riba* injunction and those who asserted the general aspect of the prohibition, tried to clarify and/or specify it by the Tradition. They all agreed that the explanation of the Tradition is related to contracts of sale and that *riba* of the Qur'an should be classified as *riba al-nasi'ah*. For this reason, *fiqh* treats the problem of *riba* in the contract of sale, more precisely as the objects of sale, and it is in such a framework that *riba* was, and still is, discussed in detail by jurists. This of course does not mean that classical jurists do not recognize the possibility of *riba* in a loan; it only shows that this aspect of the problem was secondary to them, and that the important thing was to differentiate between the licit and illicit sales in relation to *riba*. In fact, it is the methodology of the *fiqh* that theoretically and methodologically binds the argument of *riba* to contracts of sale. After all, in the opinion of classical jurists, Qur'an is explicit about it when it permits the sale and prohibits *riba* by bringing these two in one ruling (2: 275). Generally, sellers would like to have a gain when they engage in commercial exchange, yet this gain can sometimes lead to an illicit gain, i.e., *riba*. Thus, they tried to study the conditions under which a sale contract can become illicit.

*Author's note: I thank professor Ali Rahnama for his valuable comments on an earlier draft, and those who kindly and patiently helped me on the translation of the relevant parts of the texts in Arabic. Obviously, the responsibility for errors are mine.

ENDNOTES

[1] Those Muslim scholars who have been interested in the interpretative debate on *riba*, have approached the subject in order to justify their polemics against their Muslim adversaries; these scholars whose studies are of a pioneering nature, are Rashid Reda, Sanhuri, Badawi and Rahman. Rashid Reda and Badawi's books on *riba* are the most comprehensive and informative, yet partisan, polemics on *riba*. Saleh and Homoud's valuable studies of *riba* and banking in Islam are following Rashid Reda-Sanhuri-Badawi's precedent. Homoud's book is a partisan interpretation of Islamic banking, following Badawi's arguments on *riba*. Saleh's position is close to the argument of Sanhuri, but his study is related to *furu'*. See Muhammad Rashid Reda,

al-Riba wa'l-Mu`amalat fi'l-Islam (Cairo, 1986), `Abd al-Razzaq al-Sanhuri, *Masadir al-Haqq fi'l-Fiqh Islami*, vol. 1-3 (Cairo, 1954), Ibrahim Zaki al-Din Badawi, *Nazariyat al-Riba al-Muharram fi'l-Shari`at al-Islamiyyah* (Cairo, 1964), Fazlur Rahman, 'Riba and Interest', *Islamic Studies* 3 (March, 1964), Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law* (London, 1992), and S.H. Homoud, *Islamic Banking* (London, 1985).

[2] For the sake of research in this article, classical Islamic jurists are those who lived between the eighth and the fifteenth century A.D. Thus, besides the works of the real classical jurists, the works of jurists who are normally classified as post-classical by many experts of Islamic law, are exceptionally referred to as classical. See for example the classification of C. Chehata, *Études de droit musulman* (Paris, 1971), 20-7.

[3] When such works were in fact about *usul* and not *furu`*. see Wael B. Hallaq, *Law and Legal Theory in Classical and Medieval Islam* (Aldershot, Hampshire, 1995), chapter 7, 588-601. For example, see *al-Shafi`i's Risala*, trans. Majid Khadduri (Cambridge, 1987), Ahmad Ibn `Ali al-Razi al-Jassas, *Usul al-fiqh al-Musamma al-fusul fi al-usul* (Kuwait, 1985), Muhammad Ibn `Ali al-Basri, *al-Mu`tamad fi Usul al-fiqh*, vol.1 (Damas, 1964), Fakhr al-Din Muhammad Ibn `Umar al-Razi, *al-Mahsul fi `Ilm Usul al-fiqh*, vol.1 (n.p., 1979), Muhammad Ibn Ahmad Ibn Rushd, *al-Muqaddimat*, vol.2 (Beirut, 1988).

[4] For modern and comparative texts on *usul al-fiqh*, see Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge, 1997), H. Hanafi, *Les méthodes d'exégèse* (Le Caire, 1965), Abd al-wahhab Khallaf, *Les fondements du droit musulman*, trans. Claude Dahhab, Asmaa Godin, Mehrezia Labidi Maiza (Paris, 1997), M.H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge, 1991), A.A. Qadri, *Islamic Jurisprudence in the Modern World* (New Dehli, 1986), O.P. Pesle, *Les fondements du droit musulman* (Casablanca, n.d.) and M.M. Shalabi, *Usul al-fiqh al-Islami* (Beirut, 1986).

[5] Twelver Shi`is believe that their Imams are divinely guided and infallible. Therefore, they accept only the Traditions the isnad of which goes back to an Imam. Likewise, the valid *ijma`* for them is the one that at least includes the participation of one of the infallible Imams. See R. Gleave and E. Kermeli, *Islamic law: Theory and Practice* (London, 1997), 24-42.

[6] B.G. Weiss, 'Usul al-Fiqh', *The Encyclopedia of Religion*, vol. 15 (1987), 55-59, and S.M. Mahmassani, *Falsafeh-e Qanunguzari dar Islam*, trans. Isma`il Gulistani (Tehran, 1979), 66. Qadri, *Islamic*, 90-148, 232-49, and Kamali, *principles*, 1-82. See also N.J. Coulson, *A History of Islamic Law* (Edinburgh, 1990).

[7] It is known that in the *Muwatta`*, Imam Malik refers only to two Qur`anic texts that is free of interpretation and requires no further comment. Yet, even such clear texts were in need of interpretation for practical purposes. See Y. Dutton, *The Origin of Islamic Law: the Qur`an, the Muwatta` and Madinan `Amal* (London, 1999), 64-67.

[8] See Ahmad Ibn `Ali al-Jassas, *Ahkam al-Qur`an*, vol. 1 (Beirut, 1916), 464, Muhammad Ibn Ahmad Ibn Rushd, *al-Muqaddimat*, vol.2, 12, Fakhr al-Din Muhammad Ibn `Umar al-Razi, *al-Tafsir al-Kabir*, vol. 4 (Beirut, 1990), part 4, 80, and Abi `Abd Allah Muhammad Ibn Ahmad al-Qurtubi, *al-Jami` li-Ahkam al-Qur`an*, vol. 3 (Cairo, 1987), 355. Much of the polemical debate that is presented by al-Razi is already raised by al-Jassas. However, al-Razi presents the debates in a much more systematic manner. The aforementioned *tafsirs* are all exemplary in relation to the methodological controversy on *riba*.

[9] See for example, al-Razi, *al-Mahsul*, vol. 1, part 3, 117-60, Abu al-Walid al-Baji, *Ahkam al-Fusul fi Ahkam al-Usul* (Beirut, 1986), 254-58 and Ibn Rushd, *al-Muqaddimat*, vol. 2, 12, 20.

[10] All references to the Qu'an in this article are from `Abdullah Yusuf Ali, *The Holy Qur`an* (Brentwood, Maryland, 1989). For a typical presentation of this kind see Abi Ja`far Muhammad b. Jarir al-Tabari, *Jami` al-Bayan*, vol.3, part 3 (Beirut, 1988), 101-4, and al-Jassas, *Ahkam*, vol.1, 464-5.

[11] See also al-Jassas, *Ahkam*, vol. 1, 464, al-Razi, *al-Tafsir*, vol. 4, part 4, 80, and al-Qurtubi, *al-Jami`*, vol. 3, 355.

[12] The word *ra's al-mal* is not a very clear term. It can be translated as the original property, sum or even price. Contemporary jurists and Muslim scholars systematically translate it as capital, and insist that it should be so in order to assert that the Qur'an is referring to loans for business and not loans for consumption purposes. See for example, M. Mutahhari, *Mas'aleh-e Riba* (Tehran, 1991), 50-2, 196-7.

[13] The word *bay`* is one of those ambiguous words that has been translated differently, all being correct: selling, sale, barter, exchange and trade.

[14] See al-Tabari, *Jami`*, vol. 3, part 4, 90, al-Razi, *al-Tafsir*, vol.5, part 9, 3. However, as will be seen, few jurists, eg., Ibn Qayyim, do not agree with this assertion.

[15] el-Bokhari, *Les traditions islamiques*, trans. O. Houdas and W. Marçais, vol.2 (Paris, 1977), 13-4, 56-59, 113-21, Qadri, *Islamic*, 332. For Shi`i compilation of the hadith see Muhammad Ibn al-Hasan al-Tusi, *Tahdhib*, trans. M.B. Behbudi, vol. 3 (Tehran, 1991), 279-81, 378-9. See also Mutahhari, *Mas'aleh-e Riba*, 220-234.

[16] Ibid. See also Ziaul Haque, *Riba* (Kuala Lumpur, 1995), 52-61, and A.I. Qureshi, *Islam and the Theory of Interest* (Lahore,

1970), 60-4, 79-84, for some of these reports.

[17] el-Bokhari, *Les traditions*, 1-59, and Homoud, *Islamic Banking*, 77-99.

[18] J. Schacht, 'riba', *The Encyclopaedia of Islam*, vol. 8 (Leiden, 1995), 492. See also the argument of Shafi'i on contradictory traditions and the contradictory transmission of tradition in *al-Shafi'i's Risala*, 202-24, 325-6.

[19] Due to their literal method of interpretation, only the Zahiri school limits the prohibition of *riba* to the six objects referred to in the Tradition, and, therefore, their points of view is not represented in this article. Yet, see the interesting debate between a Zahiri and a Maliki jurist on this issue in A. M. Turki, *Polémiques entr Ibn Hazm et Bagi sur les principes de*

la loi musulmane (Alger, n.d.), 87.

[20] See for example, saleh, 1992.

[21] For example see, Shams al-Din al-Sarakhsi, *Kitab al-Mabsut*, vol.6, part 12 (Beirut, 1993), 111, Ibn Kathir, *Tafsir*, vol.1, 580, and Muhammad Ibn Rushd al-Hafid, *Badayat al-Mujtahid*, vol.1, part 2 (Cairo, n.d.), 96.

[22] al-Razi, *al-Tafsir*, vol. 4, part 4, 81. Besides al-Jassas as a Hanafi jurist and exegete, al-Razi as a Shafi'i jurist and exegete whose *tafsir* is of a dialectical and theological type, finds *riba* as a *mujmal* ruling (see his position on this point in Ibid., 80-82). See also the discussion of al-Razi on *mujmal* in his book on *usul al-fiqh in al-Mahsul*, vol. 1, part 3, 225-58, and Ibn Rushd, *al-Muqaddimat*, 8-12.

[23] See for example, al-Qurtubi, *al-Jami'*, vol. 3, 355-7, al-Baji, *Ahkam*, 284-6, Najm al-Din Ibn Sa'id al-Tawwafi, *Sharh-i Mukhtasar al-Rudah*, vol. 2 (Beirut, 1988), 659-61.

[24] See for example al-Qurtubi, *al-Jami'*, vol. 3, 256-7, and al-Razi, *al-Tafsir*, vol. 4, part 7, 81-2.

[25] See al-Baji, *Ahkam*, 245, 286, and Kamali, *Principles*, 104-13.

[26] Scanning through all the Sunni and Shi'i classical texts would validate this assertion. In particular, see al-Sarakhsi, *Kitab al-Mabsut*, vol. 6, part 12, Burhan al-Din al-Marghinani, *Al-Hidayah*, vol. 2 (Cairo, n.d.), Khalil Ibn Ishaq, *al-Mukhtasar*, trans. N. Seignette (Paris, 1911), Ibn Rushd, *al-Muqaddimat*, vol. 2, Ibn Qudama, *Le précis de droit*, trans. H. Laoust (Beyrouth, 1950), Abou Muhammad 'Abdallah Ibn Abi Zayd al-Qayrawani, *Al-Risala*, trans. L. Bercher (Alger, n.d.), al-Tusi, *Tahdhib*, vol. 3, and Muhammad Shams al-Din Abu Abdallah 'Amili, *Lum'ah*, trans. A.R. Faid and A. Muhadhdhab, vol.1 (Tehran, 1992).

[27] This point is not appreciated by many contemporary Muslim scholars who believe that such an emphasis will reduce the authenticity of their argument against *riba* in loan. See for example, Mufti Muhammad Shafee Saheb, *The Question of Interest* (Azaadville, South Africa, 1996), 12.

[28] See also Averroes, *Livre des échanges*, tran. Ahmed Laimeche (Alger, 1940), for a clear translation of the chapter on sale.

[29] See Muhammad Ibn Hasan al-Shaybani, *al-Jami' al-Saghir* (Beirut, 1986), 335-6, and al-Sarakhsi, *Kitab al-Mabsut*, vol. 6, part 12, 113-24.

[30] See also Abd al-Rahman al-Jaziri, *Kitab al-Fiqh*, vol. 2 (Beirut, n.d.), 247-9. For Shi'i classical texts see Muhammad Ibn 'Ali Ibn Babawayah, *Man la Yahduruhu al-Faqih*, trans. M.B. Behbudi, vol. 2 (Tehran, 1991), 103-5, al-Tusi, *Tahdhib*, vol. 3, 279, and 'Amili, *Lum'ah*, vol. 1, 221-2. See also Mutahhari, *Mas'aleh-e Riba*, 204-7.

[31] Note that this *'illah* can identify gold and silver as money in general. This is unlike the *'illah* of the Hanafis and Shi'is that logically can lead to the permission of the exchange of unequal paper currencies in modern times, since paper currencies are not weighed.

[32] Malik Ibn Anas, *al-Muwatta*, 254-7, Khalil, *al-Mukhtasar*, 12-21, and *al-Shafi'i's Risala*, 313-4. See al-Marghinani, *al-Hidayah*, vol. 2, part 3, 61-4, for a comparative view of Abu Hanifa, Abu Yusuf and Shafi'i on different types of *riba*.

[33] Thus, classical jurists approve of future sale contracts only when these contracts are free from *riba* or *ghrar* (uncertainty). For, example sale of foodstuff, but not of gold or silver (money), for future delivery with repayment in cash (*salam* or *salaf*), delayed payment for goods delivered at once (*nasi'ah*) and hire and lease (*ijara* of services of human beings, land or buildings are authorized. In general, such sales are valid if they are sales of a known benefit in return for its known equivalent.

[34] For a thorough comparative view of the classical jurists on *'ariya* see Y. Linant de Bellefonds, *Traité de droit musulman comparé*, vol. 9 (Paris, 1973), 417-33.

[35] See for example Khumeini's point of view in A. Biazar-e Shirazi, ed. and trans., *Risaleh-e Nuvin*, vol. 2 (Tehran, 1982),

87-88.

REFERENCES

- `Alwani, T.J. *Islam, conflict d'opinions*, trans. I. Benmahjoub (Paris, 1995).
- Amili, Muhammad Shams al-Din Abu Abdallah. *Lum`ah*, trans. A.R. Faïd and A. Muhadhdhab, vol.1 (Tehran, 1992).
- Averroes, *Livre des échanges*, trans. Ahmed Laimeche (Alger, 1940).
- Badawi, Ibrahim Zaki al-Din. *Nazariyat al-Riba al-Muharram fi'l-Shari`at al-Islamiyyah* (Cairo, 1964).
- Al-Baji, Abu al-Walid. *Ahkam al-Fusul fi Ahkam al-Usul* (Beirut, 1986).
- al-Basri, Muhammad Ibn ♦ Ali. al-Mu`tamad. *fi Usul al-fiqh*, vol.1 (Damas, 1964).
- Biazar-e Shirazi, A. (ed. and trans.). *Risaleh-e Nuvin*, vol. 2 (Tehran, 1982).
- el-Bokhari. *Les traditions islamiques*, trans. O. Houdas and W. Marçais, vol. 1 (Paris, 1977).
- . Vol. 2.
- Chehata, C. *Études de droit musulman* (Paris, 1971).
- Coulson, N.J. *A History of Islamic Law* (Edinburgh, 1990).
- Dutton, Y. *The Origin of Islamic Law: the Qur ♦ an, the Muwatta ♦ and Madinan `Amal* (London, 1999).
- Gleave, R. and Kermeli, E. (eds). *Islamic law: Theory and Practice* (London, 1997).
- Homoud, S.H. *Islamic Banking* (London, 1985).
- Hallaq, Wael B. *A History of Islamic Legal Theories* (Cambridge, 1997)
- . *Law and Legal Theory in Classical and Medieval Islam* (Aldershot, hampshire, 1995).
- Hanafi, H. *Les méthodes d'exégèse* (le Caire, 1965).
- Ibn Babawayah, Muhammad Ibn `Ali. *Man la Yahduruhu al-Faqih*, trans. M.B. Behbudi, vol. 2 (Tehran, 1991).
- Ibn Ishaq. *Khalil al-Mukhtasar*, trans. N. Seignette (Paris, 1911).
- Ibn Kathir, `Imad al-Din Isma`il. *Tafsir al-Qur'an al-`Azim*, vol.1 (Beirut, 1983).
- . Vol. 5.
- Ibn Qudama, *Le précis de droit*, trans. H. Laoust (Beyrouth, 1950).
- Ibn Rushd, Muhammad Ibn Ahmad. *al-Muqaddimat*, vol.2 (Beirut, 1988).
- Ibn Rushd al-Hafid, Muhammad. *Bidayat al-Mujtahid* , vol.1, part 2 (Cairo, n.d.).
- Imam Malik Ibn Anas, *Al-Muwatta*, trans. Aisha Abdurrahman Bewley (London, 1989).
- Islahi, A.A. *Economic Concepts of Ibn Taimiyah* (London, 1988).
- al-Jassas, Ahmad Ibn `Ali. *Ahkam al-Qur'an*, vol. 1 (Beirut, 1916).
- al-Jassas, Ahmad Ibn `Ali al-Razi. *Usul al-fiqh al-Musamma al-fusul fi al-usul* (Kuwait, 1985).
- al-Jaziri, Abd al-Rahman. *Kitab al-Fiqh*, vol. 2 (Beirut, n.d.).
- Kamali, M.H. *Principles of Islamic Jurisprudence* (Cambridge, 1991).
- Khallaf, Abd al-Wahhab. *Les fondements du droit musulman*, trans. Claude Dahhak, Asmaa Godin and Mehrezia Labidi Maiza

(Paris, 1997).

Linant de Bellefonds, Y. *Traité de droit musulman comparé*, vol. 9 (Paris, 1973).

Mahmassani, S.M. *Falsafeh-e Qanunguzari dar Islam*, trans. Isma'il Gulistani (Tehran, 1979).

al-Marghinani, Burhan al-Din. *Al-Hidayah*, vol. 2 (Cairo, n.d.).

Mutahhari, M. *Mas'aleh-e Riba* (Tehran, 1991).

Pesle, O.P. *Les fondements du droit musulman* (Casablanca, n.d.).

Qadri, A.A. *Islamic Jurisprudence in the Modern World* (New Dehli, 1986).

al-Qayrawani, Abou Muhammad `Abdallah Ibn Abi Zayd. *Al-Risala*, trans. L. Bercher (Alger, n.d.).

Qureshi, A.I. *Islam and the Theory of Interest* (Lahore, 1970)

al-Qurtubi, Abi `Abd Allah Muhammad Ibn Ahmad. *al-Jami` li-Ahkam al-Qur'an*, vol. 3 (Cairo, 1987).

-----, vol. 4.

-----, vol. 6.

Rahman, Fazlur, 'Riba and Interest', *Islamic Studies* 3 (March, 1964).

Rashid Reda, Muhammad. *al-Riba wa'l-Mu`amalat fi'l-Islam* (Cairo, 1986).

al-Razi, Fakhr al-Din Muhammad Ibn `Umar. *al-Mahsul fi `Ilm Usul al-fiqh*, vol.1 (n.p., 1979).

-----, *al-Tafsir al-Kabir*, vol. 4, part 4 and 7 (Beirut, 1990),.

-----, vol. 5, part 9.

-----, vol. 13, part 25.

Saheb, Mufti Muhammad Shafee. *The Question of Interest* (Azaadville, South Africa, 1996).

Saleh, Nabil A. *Unlawful Gain and Legitimate Profit in Islamic Law* (London, 1992).

al-Sanhuri, `Abd al-Razzaq. *Masadir al-Haqq fi'l-Fiqh Islami*, vol. 1-3 (Cairo, 1954).

al-Shafi`i's Risala, trans. Majid Khadduri (Cambridge, 1987).

al-Sanhuri, `Abd al-Razzaq. *Masadir al-Haqq fi'l-Fiqh Islami*, vol. 1-3 (Cairo, 1954).

al-Sarakhsi, Shams al-Din. *Kitab al-Mabsut*, vol. 6, part 12 (Beirut, 1993).

-----, vol. 7, part 14.

Schacht, J. 'riba', *The Encyclopaedia of Islam*, vol. 8 (Leiden, 1995).

Shabbir, M. *Authority and Authenticity of Hadith* (New Dehli, 1982).

Shalabi, M.M. *Usul al-fiqh al-Islami* (Beirut, 1986).

al-Shaybani, Muhammad Ibn Hasan. *al-Jami` al-Saghir* (Beirut, 1986).

al-Tabari, Abi Ja`far Muhammad b. Jarir. *Jami` al-Bayan*, vol. 3, part 3-4 (Beirut, 1988).

-----, vol. 4, part 6.

-----, vol. 11, part 21.

al-Tawwafi, Najm al-Din Ibn Sa`id. *Sharh-i Mukhtasar al-Rudah*, vol. 2 (Beirut, 1988).

Turki, M. *Polémiques entr Ibn Hazm et Bagi sur les principes de la loi musulmane* (Alger, n.d.).

al-Tusi, Muhammad Ibn al-Hasan. *Tahdhib*, trans. M.B. Behbudi, vol. 3 (Tehran, 1991).

Weiss, G. 'Usul al-Fiqh', *The Encyclopedia of Religion*, vol. 15(1987).

Ziaul Haque. *Riba* (Kuala Lumpur, 1995).