

Islamic Banks between the Jurisprudence of Leading Theorists and Application

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Abstract

The last half of the twentieth century witnessed the birth of Islamic banks. Since their inception, these banks have announced - through their theoreticians - their intention to achieve economic and social development based on their commitment to the principles and provisions of Islamic Sharia. The theoreticians' interests were towards long-term investment and partnership-based contracts as a foundation for mobilizing and using financial resources to achieve development. The paper studies the performance of Islamic banks by collecting data from six Islamic banks in six of the major Muslim countries that engage in Islamic finance. Some of the main conclusions are as follows: The Islamic banks' practice reveals that the thoughts of leading theorists have become absent, as these banks have shifted from the long-term investment method to the short-term commercial method in search of liquidity and profitability. As a result, Murabaha became an alternative to credit on the output side. In turn, current deposits dominated the input side, thus transforming Islamic banks into a form similar to commercial banks. The matter was made worse by the resorting of some Islamic banks to the application of organized 'tawarruq,' which reflects the tendency of some current theorists and implementers to follow the path of traditional banks and enter the tunnel of the jurisprudence of reprehensible tricks. Also, the social role hoped for by Islamic banks has become closer to stagnation than to hoped-for mobility.

Keywords: *Islamic Banks, Muslim Theorists, Islamic Jurisprudence, Bank Practice, Financial Facilities*

Introduction

The last half of the twentieth century witnessed the birth of Islamic banks that represented the first building block of the Islamic economy in the modern era. Its services and products diversified to cover most of the needs of individuals, groups, and institutions alike. The industry was able to impose itself in the global economy in Muslim and Western countries.

Since their establishment, these banks, through their leading theorists, have announced their intention to contribute to achieving economic and social development based on their commitment to the principles and provisions of Islamic Sharia. In this context, the early theorists were interested in long-term investment to achieve its development goals. They relied on partnership-based contracts to mobilize and use resources in Islamic banks to accumulate investable cash balances, distribute available cash resources to the best uses for economic and social development, and contribute directly to the equitable distribution of national income.

The problem of the study is that the scholarship of the leading theorists has become absent in the practical application of Islamic banks in contemporary times, as these banks have shifted from the long-term investment method to the short-term commercial method in search of liquidity and profitability. As a result, *Murabaha* became an alternative to credit on the output side; current deposits dominated the input side¹. Thus, transforming Islamic banks into a form similar to commercial banks. The matter was made worse by the resorting of some Islamic banks to the application of organized banking *tawarruq*, which reflects the tendency of some current theorists and practitioners to follow the path of traditional banks and enter the tunnel of reprehensible tricks. Also, the social role hoped for by these banks has become, in general, closer to stagnation.²

In this context, this study aims first to introduce the theorists of Islamic banks, their thought, and how this thought transformed the contemporary practice of Islamic banks. The second aim is to analyze the contemporary practice of Islamic banks. The importance of the study appears by revealing the differences between the practical application and the thought of leading theorists. The study relied on the descriptive-analytical approach, which seeks to clarify the thought of the leading theorists of Islamic banks and the reality of contemporary application. The study collects secondary data from six Islamic banks from six Muslim countries. The study consists of three sections. The first section introduces the leading theorists of Islamic banks, the second deals with Islamic{Bibliography}{Bibliography} banks in the thought of leading theorists, and the third and final discussion addresses the reality of the application of Islamic banks.

Introducing the Classical Theorists of Islamic Economics

Historical overview

The last quarter of the sixteenth century represented the real beginning of the emergence of traditional banks in their contemporary form. These banks lead economic life in the nineteenth century after the emergence of the industrial revolution, then found their way to Islamic countries through Western colonization. In an attempt to settle economic colonialism, Western banks supervised the application of the economic systems introduced by colonial powers, ensured the export of raw materials to foreign countries, and supported the marketing of colonial power products in these countries.³ These banks played

¹ Migdad, A. M. "CSR practices of Palestinian Islamic banks: contribution to socio-economic development." *ISRA International Journal of Islamic Finance*, 7(2), 133-147. (2017). Retrieved from <https://doi.org/10.1108/IJIF-06-2017-0001>

² Asutay, M. "Conceptualisation of the Second Best Solution in Overcoming the Social Failure of Islamic Finance: Examining the Overpowering of Homoislamicus by Homoeconomicus." *IIUM Journal in Economics and Management*, 15(2), 167-195.(2007). Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1693608

³ Britain established its first bank (Bank of Egypt) in Egypt in 1856, which is not the Bank of Egypt established by Talaat Harb in the year 1920. Its purpose was to work on achieving commercial prosperity between Egypt and Britain and to ensure that Britain obtained the Egyptian cotton on which it was completely dependent on. The British Bank was exposed to financial difficulties after the end of the American Civil War and the fall in cotton prices, but it was re-

a significant and influential role in serving the economies of the colonial governments, causing great harm to colonized countries. The main activity of western banks did not go beyond foreign trade operations. Other industries were weakened, and profits of foreign investments were transferred, exporting all benefits to the colonizing countries.

The banks in Islamic countries during the nineteenth century remained purely foreign banks. Although Islamic countries gained their independence and established national banks, they followed the approach of Western banks.

Western banking system operations were not spontaneous; the colonizer deliberately spread the Western banking culture in Islamic countries while showing its great importance and inevitability for economic activity. Over time, many thought that the economy was only built through traditional banking. Some claim that there is no economy without banks, nor banks without interest, but other literature proved otherwise.⁴ Some nationals became convinced of these systems and adopted these economic thoughts. Perhaps the real reason for their behavior is what was expressed by the Islamic thinker Ibn Khaldoun in his introduction in an eloquent phrase where he says: "The defeated are always fond of imitating the victor in his slogan, his dress, his bee, and all his conditions and habits".⁵

Alongside those were some justificationists who surrendered to the thought of the colonialists and proceeded to justify the working mechanism of traditional banks based on usury with legal fatwas and religious foundations. Attempts emerged to say that the usury on which the banks were based were permitted with flimsy justifications, including 1) that it was not usury of the pre-Islamic era, 2) what is forbidden is usury of consumption for personal expenditure, not usury of trade and production, 3) that what is forbidden is usury doubled, 4) that society has become in a situation of necessity for these benefits, and necessities allow prohibitions.⁶

All these attempts failed. The working scholars of Sharia and economics responded to them, exposing their falsity and refuting their suspicions, emphasizing the sanctity of bank interest, that Muslims must be freed from the abomination of usury and from God's curse on those who commit it. Among these Sharia scholars:

- Sheikh Dr. Muhammad Abdullah Diraz,
- Sheikh Muhammad Abu Zahra,
- Sheikh Hassan Al-Banna,
- Sheikh Abu Al-Ala Al-Mawdudi,
- Among the economists
- Dr. Issa Abdo Ibrahim,

established in 1867, and operated extensively in Egypt and Sudan. However, the banks financial position was subjected to a violent shock as a result of its excessive use of short-term loans that the bank obtained from abroad with the guarantee of securities and agricultural lands and buildings. The bank was forced in the year 1911 to declare its bankruptcy and was liquidated by the National Bank of Egypt, which was established in 1989.

⁴ Siddiqi, M. N. *Banking Without Interest*. (1969).

⁵ Ibn-Khaldun, A. "*Almuqadima for Ibn Khaldun*". (E. M. Ibrahim, Ed.) Cairo: El Kouraan Bookshop. (2006)

⁶ Dawaba, A. "*Fawaeid Albnuk Bayn Alibaha Wa Altahreem (Bank Interests Between Halal and Haram)*". Cairo: Dar Al Salam. (2008)

- Dr. Muhammad Abdullah Al-Arabi,
- Dr. Mahmoud Abu Al-Saud,
- Dr. Ahmed Al-Najjar and others.

This was a starting point for research and study on the establishment of interest-free banks, especially by economists. Signs of this emerged through the establishment of Ahmed Abdel Aziz Al-Najjar, a local savings bank in the Egyptian city of Mit Ghamr, in 1963.⁷ In Pakistan, coinciding with the experience in Egypt, Mohammed Irshad tried, in the year 1963, to convert an interest-based bank into an Islamic bank. Still, the experiment lasted only a few months (Arif, 1988). After that, Nasser Social Bank was established in 1971, and it was the first bank to stipulate in the law of its establishment the prohibition of interest by giving or taking. Furthermore, the nature of the bank's transactions was a social activity and not banking in the first place.⁸

In 1972, the Conference of the Ministry of Foreign Affairs of Islamic Countries in Jeddah recommended establishing an international Islamic bank for Islamic countries. The result of this was the preparation of the agreement for establishing the Islamic Development Bank, which the finance ministers of Islamic countries signed in Jeddah in 1974. It was officially inaugurated in 1975 as an international financial institution (a bank for governments, not individuals) to support economic development in Islamic countries and societies.

In 1974, an attempt was made to establish an Islamic bank in Wadi Madani, Sudan, but it was unsuccessful.⁹ The year 1975, Dubai Islamic Bank was established as the first Islamic commercial bank, after which Islamic banks moved from the establishment stage to the stage of spread. In 1977, the Faisal Islamic Bank of Egypt was established along with the Faisal Islamic Bank of Sudan and the Kuwait Finance House. In 1978, the Jordan Islamic Bank was established, and in 1979 the Bahrain Islamic Bank was established. After that, the spread of Islamic banks continued successively. Islamic banks currently have more than 400 Islamic banks spread in more than 80 countries.

Theorists; Fathers of Islamic Banks:

The paper introduces leading theorists of Islamic banks until 1975, the year the first Islamic bank was established. More focus is on the theoreticians whose ideas turned into practical reality, such as Dr. Ahmed Abdel Aziz Al-Najjar and Dr. Issa Abdo Ibrahim.

1- Sheikh / Hassan Al-Banna: (1906 - 1948)

In an article by Hassan Al-Banna (1939) entitled: "Types of usury and its provisions," he mentioned a practical treatment for usury in the form of a non-interest-based bank based on partnership-based contracts and other banking

⁷ Asutay , M., Aysan, A. F., & Karahan, C. "Reflecting on the Trajectory of Islamic." *Afro Eurasian Studie*, 2(1&2), 4-14. (2013). Retrieved from <https://dergipark.org.tr/en/download/issue-file/19669>

⁸ Siddiqi, M. N. "Islamic Banking And Finance In Theory And." *Islamic Economic Studies*, 13(2). (2006). Retrieved from <http://iesjournal.org/english/Docs/090.pdf>

⁹ Yesuf, A. J. "Islamic Economics and Finance in Sudan: An Overview." Istanbul: Ikam Research Center For Islamic Economics.(2017).

services. Al-Banna explained that banks could perform transactions based on partnership-based transactions while sharing risk and profit in what can be described as a moral economy.¹⁰

2- Sheikh / Abu Al-Ala Al-Mawdudi: (1903-1977)

Abu Al-Ala Al-Mawdudi is one of the first theorists of Islamic banks. He wrote an article entitled "The Practical Picture of Reform," which is the seventh chapter of his book: "Riba" (1958).¹¹ He mentioned in this research that the new banking system is valuable. He considered the banking system among the advantages of the new western civilization that has been impure by its inclusion of a demonic element, "usury." He explained that money intermediation and most banking services are needed. It was then clarified that the primary element that has transformed all these benefits and advantages of the banking system into disadvantages and harmful to the right of human civilization is usury. The second element that greed for usury attracts is that it concentrates wealth in the hands of few capitalists, and they spend it according to their whims in extremely anti-social ways.

Al-Mawdawi explained that long-term money deposits are to be used with the permission of depositors in the form of *Mudaraba* in commercial businesses, industrial and agricultural projects, and other profitable businesses for governments and private institutions, which will result in two significant benefits. First, the investors' interest will unite with trade interest, which depends on bank financing. The second benefit is that the two conflicting interests – that of the investor to maximize return and craftsmen to maximize benefits from their trade - will be transformed into cooperation.¹²

3- Muhammad Aziz:

In Pakistan, Muhammad Aziz laid out an Islamic bank model in one of the economic magazines in Karachi in 1951. He highlighted the role of the Islamic bank as a speculative speculator. He also mentioned this in more detail in his short book "An Outline of Interest less Banking," published in Karachi in 1955.

4- Muhammad Najatullah Siddiqui: (1931 –)

Muhammad Najatullah Siddiqui wrote about non-interest-based banks in Pakistan. His economic background helped him address its technical aspects. He began writing on the subject in 1958, and his book "Banking without Interest" was published in (1969) in Pakistan and India.¹³

5- Muhammad Abdullah Al-Arabi:

¹⁰ Lübber, I. "The Economic Ideology of Hasan al-Banna and the Egyptian Muslim Brotherhood." In H. Elsenhans, R. Ouaisa, S. Schwecke, & M. A. Tétreault, *The Transformation of Politicised Religion From Zealots into Leaders*. p. 27-104. (2015).

¹¹ Al-mawdudi, A. A. Alriba (Usury). 189-194. p.33. (1958).

¹² Al-mawdudi, A. A. Alriba...p. 34

¹³ Siddiqi, M. N. "Banking Without Interest".(1969).

Muhammad Abdullah Al-Arabi presented a paper entitled: "Contemporary Banking Transactions and the View of Islam" at the second conference of the Islamic Research Academy in Cairo, held in May 1965. He introduced a model of an interest-free bank through *Mudaraba* on both sides of the financial resources and uses. Where the bank receives depositors' money through *Mudaraba* and, at the same time, invests those funds by granting them to investors in the form of a *Mudaraba*.

6- Muhammad Baqir al-Sadr: (1935-1980)

Muhammad Baqir Al-Sadr wrote a study for the Preparatory Committee of the Kuwait Finance House, his book: "The Non-interest-based Bank in Islam," published in the late 1960s.¹⁴ His study considered the bank an agent between depositors and investors linked by a *Mudaraba* contract. The depositor is the owner of the money in a *Mudaraba*. The investor is the worker. The bank is an agent and mediator between the capital owner and the Mudarib.

He also dealt with mixing investment deposits, as the bank does not link each deposit to an independent *Mudaraba* contract. Al-Sadr viewed the bank's mediation as a respectable service provided to businessmen, and it is the bank's right to ask for a reward on the basis of "*Juo'la*." This is represented in two things: The first is a fixed wage for the work, and the second is a flexible "*Juo'la*" on the invested worker, which gives the bank the right to a certain percentage of the worker's share of the profit. Al-Sadr also touched on the rest of the non-interest-based bank's business of savings and transfer deposits, collection of checks and bills of exchange, documentary collection, securities services, letters of guarantee and documentary credits, dealing with the provisions of money in exchange, discounting commercial papers and investing in securities. Despite some debates over Al-Sadr's conclusion, he undoubtedly made a remarkable effort to form a roadmap for establishing an interest-free bank.

7- Dr. Ahmed Abdulaziz Al-Najjar: (1932 -)

The development experience influenced Ahmed Abdulaziz Al-Najjar in Germany during his studies in 1958, especially the role of German savings banks in its development after the Second World War. He addressed his uncle, Dr. Muhammad Abdullah Al-Arabi. The latter explained Islam's approach in building and reconstructing the land, assuring him that all the factors he found in building Germany after its destruction are found in the Islamic Sharia. This discussion shifted Al Najjar's attention to the Islamic economic approach.

Al-Najjar excelled over others by transforming ideas into practical models. He established savings banks in Mit Ghamr, Dakahlia Governorate, in the year 1963, by collecting savings from the people of the villages and investing them in economic development projects within the villages according to the Partnership-

¹⁴ Al-Sadr, M. B. "*Al-Bank Al-Larabwi Fe Al-Islam (The non-Interest Based Bank in Islam)*." Beirut: Dar Al-Ta'ruf for Publication. (1994).

based contracts. Profit was distributed between the bank and the money owners, and thus it was the first interest-free bank. Over time, many scholarship was written based on Al-Najjar's experience.¹⁵

Issa Abdo Ibrahim describes this experience by saying - moving to 1962, Al-Najjar and his twenty companions are found striving in the Egyptian countryside to encourage the poor to save until they collected eighty thousand pounds, most of them from empty pockets. The average deposit was twenty piasters or a little more, and total deposits exceeded eight hundred thousand Egyptian pounds, which indicates the success of the efforts made by the owners of the savings project in the most vulnerable societies with the least money.¹⁶

In another instance, Issa Abdo states that in 1962, he met Al-Najjar. He was searching for a solution to a major problem, which is the employment of eighty thousand pounds in a manner consistent with the provisions of Sharia. German experts were opposing mere questioning of usurious systems, and Muslim Egyptian experts with long banking experience waged war against every attempt to subject banking transactions to the rule of Sharia. An exception from this generalization is a few who believed in the soundness of the call to abolish interest and gradually subject all banking activity to the Sharia. Thanks to them, the experience of Mit Ghamr and sisters endured calamities for a few years until Al-Najjar was forced to leave the banks to their fate. He joined Omdurman University in 1976 and resumed work on his project in both Sudan and Germany, where he has close ties.¹⁷

It is worth noting that the number of branches of the savings banks amounted to about 53 branches, including 85,000 clients. These banks provided investment and social services and did not face the predicament of defaulting customers, which did not suit the directions of the ruling authorities in Egypt at the time, so they proceeded to eliminate them and merge them into traditional banks. Al-Najjar reflected his practical experience through his two books: *Banks without Interest as a development strategy*.¹⁸ *The Islamic Banks Movement: Realities of Origin and Images Illusions*.¹⁹

8- Issa Abdo Ibrahim: (1907 - 1980)

Issa Abdo Ibrahim was a leading pioneer in economics until the Dubai Islamic Bank was established on his hands in the year 1975. In early 1920, Issa Abdo bought banknotes from the Bank of Egypt, following the advice of the school principal, but was faced with the predicament of interest and limitations

¹⁵ SHIBU , A. A., & Chachi, A. "Development of Islamic Banking and Finance: The Contribution of Ahmed Abdul Aziz Al Najjar." *Avrasya Sosyal ve Ekonomi Arařtırmaları Dergisi*, p. 223 - 235. (2021).

¹⁶ Ibrahim, E. A. "*Bunuk Bila Fawa'ed (Banks with no Interest)*." Cairo: Dar Ul Fath. P. 54. (1970).

¹⁷ Ibrahim, E. A. *Bunuk Bila*....p.54.

¹⁸ Alnajjar, A. A. "*Harakat Albnuk Alislamiya: Hakaek Ulasli wa Awhaum Assura (The Islamic Banks Movement: Realities of Origin and Illusions of images)*." Cairo. (1993).

¹⁹ Ibid, (1993)

of the Sharia law. The boy Issa Abdo Ibrahim, not knowing what to do, left in himself three traces as a result of the attitude of the nationalist school principal, the religious grandfather who rejected the boy's act, and a neighbor who believed that such experiences are set to fail.²⁰ His curiosity increased even more while and before he was in England from December 1937 to September 1939, when the faculty rejected his views on 'interest.' In the 50s and 60s, he had opportunities to dispute and talk about his ideas on interest at the Libyan University, Al-Azhar, on Egyptian TV, and in Kuwait.

The year 1967 is considered pivotal towards the transition from thought to application. The Preparatory Committee for the Kuwait Finance House was formed in Kuwait City and was keen to follow up the study and call for Islamic banks' establishment and focus its activities on the State of Kuwait. Dr. Issa Abdo Ibrahim was a participant in it. In 1968, Dr. Issa Abdo Ibrahim gave several lectures and held seminars in Saudi Arabia. He made it clear from his meeting with some businessmen that the project is only lacking in the presence of a working body available to serve it. In October 1969, Dr. Issa Abdo Ibrahim went to Lebanon, where he found a response to the idea. He also found studies prepared by responsible men and other students in banking, insurance, and related credit causes.²¹

Counselor Al-Aqeel adds: About the preparatory committee of the Kuwait Finance House, that the committee included: Abdullah Al-Mutawa, Jamal Al-Din Attia, Hammam Al-Hashemi, Nizar Al-Sarraj, Ismail Raafat, Moheb Al-Mahajri, Mohi Al-Din Attia, Abdullah Al-Aqeel, and Abdul Wahid Aman, and Dr. Issa Abdo Ibrahim was invited to study an Islamic bank project, where he worked as a rapporteur for this committee. Sheikh Irshad, the owner of the first experience of a non-interest cooperative bank in Pakistan, was invited to visit Kuwait; ²² he explained his experience and the obstacles he faced. ²³

In its organized meetings, the committee set out to lay down the rules and regulations and set up rules for Kuwait Finance House with a memorandum introducing it as a Kuwaiti shareholding company under incorporation. With the tireless effort of Dr. Issa Abdo Ibrahim in the committee's work, he continued his activity in forming an Islamic public opinion by writing articles in newspapers and magazines, participating in seminars, lectures, and speaking on Kuwaiti radio and television. The focus was to establish Islamic banks and explain their role in the economy. On the other hand, Dr. Issa Abdo Ibrahim continued his meetings with all economic, intellectual, and religious groups. However, the project stumbled because conventional bankers were not convinced of the possibility of establishing a non-interest-based bank. Then, the minister of

²⁰ Alashi, A. K. *Rijal wa Nisaa Aslamou (Convert men and women)*. Cairo: Almaktab Almisri Alhadeeth. p.101-102. (2001).

²¹ Ibrahim, E. A. *Bunuk Bila Fawa'ed....*p. 60-61. (1970).

²² Alaqeel, A. "*Min A'lam Aldawah wa Alharakah Alislamiyah Almua'sirah (Prominent Preachers of Islam and the Contemporary Islamic Movement)*." Cairo: Dar Albasheer. p. 681-682. (2008).

²³ Ibrahim, E. A. *Bunuk Bila Fawa'ed....*p. 50-61. (1970).

finance - at that time - Abdulrahman Salem al-Ateeqi contacted Dr. Issa Abdo Ibrahim in Egypt, reassuring him of his keenness to carry out the project. Thus, after many years, the Kuwait Finance House in 1977 AD.²⁴

However, despite the precedent in preparing for the Kuwait Finance House, its establishment was delayed until the Dubai Islamic Bank was established. Dr. Issa Abdo Ibrahim was the basis for that establishment with the determination of Haji Saeed Lootah.²⁵ This Emirati businessman determined to establish the bank despite some people's fears about the risks behind that.²⁶

Dr. Issa Abdo Ibrahim documented banking contracts from a legal point of view in his book: "Shari'a Contracts Governing Contemporary Financial Transactions," where he presented the relationship between depositors with current accounts and the bank, and between investment deposits and the bank. It also presented contracts for banking services such as transfers and guarantees. This book elaborated on banking because of the hardship Ibrahim faced in preparing the administrative structure, the documentary cycle, and the bulk of documents for the Dubai Islamic Bank, which he contributed to its establishment. Then he mentioned that it is fair to say: "Completing the construction of this Islamic facility will take time, and exhaust sincere efforts for quite a few years, and banks are not everything, even if they are among the most important, and without them are other fields".²⁷

This reflects the clarity of Dr. Issa Abdo Ibrahim's vision and his future introspection. Building Islamic banks is a continuous work. It is unfair to confine the Islamic economy to the angle of Islamic banks, as it is more general and more extensive than them as it is part of the institutions of this economy.

Islamic Banks in the Thought of Classical Muslim Theorists

The views of leading theorists of Islamic banks are visible through their ideas reflected in their writings and turned into reality when these banks were established. Theorists confirmed the role of Islamic banks in contributing to economic and social development. Islamic banks, like other financial institutions, seek profit. Still, they remain institutions with a higher mission, which requires them to feel the needs of society in their environments, link their investment activity to these needs, and work towards fulfilling them as much as possible. Islamic banks, by their nature, are development banks, and this developmental characteristic is directly reflected in their internal organization, investment strategy, and criteria for evaluating and selecting projects.²⁸

²⁴ Alaqeel, A. "Min A'lam Aldawah wa Alharakah Alislamiyah....p. 681-682. (2008).

²⁵ Alqaradawi, Y. "Ibn Alqarya Wa Alkitab, Malamih Seerah was Maseerah (The son of the village and the book, features of a biography and career)." Cairo: Dar Alshorouk. p.377. (2008).

²⁶ Lootah, H. S. "The development of Islamic banks." (D. A. Dawaba, Interviewer) (2009).

²⁷ Ibrahim, I. A. *Aluqud Alshareia Alhakima lil-Muamalat Almaliyah Almuasira (Legal contracts governing contemporary financial transactions)*. Cairo: Dar Alietisam.p. 14. (1977).

²⁸ Aldasouqi, M. "Alwaqf Wa Dawrouhu fe Tanmiyah Almujtama'at (The Role of Waqf in Community Development)." *Silisilat Qadaya Islamiyah*, 64. p.76. (2000).

The Basic Systems of Islamic Banks as a Reflection of the Thought of the Founding Fathers:

The observer of the primary systems of Islamic banks (in the stage of establishment) finds a clear reflection of the thought of the founding fathers, as these systems included the keenness of Islamic banks to contribute to achieving economic and social development. In this context, the Articles of Association of Dubai Islamic Bank stated: "Article 5 Clause 2: "Perform investment activities directly, or by purchasing projects or financing projects or business owned by others".²⁹

The articles of association of the Kuwait Finance House stated: "Article 5 Clause 2: Carry out investments activities directly or by the purchase and finance of projects or activities owned by others, without engaging in "Riba".³⁰

The law establishing the Jordan Islamic Bank stated: "Article 6: The bank aims to cover the economic and social needs in the field of banking services, financing and investment activities organized based on non-interest".³¹

The law establishing the Faisal Islamic Bank of Sudan states in Article (4) the objectives of the bank: The bank works under the provisions of Islamic Sharia to support the development of society by carrying out all banking, financial, commercial, and investment activities. The bank may also participate in the economic and social development activities stated in the bank's articles of incorporation and articles of association inside and outside the Democratic Republic of Sudan.³²

The same is true of the Faisal Islamic Bank of Egypt, as it was stated in the law of its establishment: "Article 2: The purpose of the bank is to carry out all banking, financial and commercial activities, investment activities, establish industrial, economic development and urbanization projects, and contribute to them at home and abroad under what is explained in the bank's articles of association."³³

The leading theorists did not neglect the factor of profit and its importance. However, they closely linked profit-generation to development-based investments. Furthermore, theorists stressed risk-sharing, not risk transfer, and the importance of observing legal conditions of the projects and their priority to society. They were also keen to provide Islamic alternatives in

²⁹ Dubai Islamic Bank. (n.d.). "Restated Articles of Association Dubai Islamic Bank Public Joint Stock Company." Retrieved from <https://www.dib.ae/docs/default-source/sukuk/dib-articles-of-association.pdf>. p. 3.

³⁰ Kuwait Finance House (K.S.C.P.). (n.d.). "Memorandum and Articles of Association." Retrieved from https://www.kfh.com/dam/jcr:b38aa422-9fda-4f3b-bd53-1ef831f5dbae/Articles_of_Association_en.pdf. p. 4.

³¹ Jordan Islamic Bank. "Jordan Islamic Bank Law for Finance and Investment." *Law (13) \ Article (6)*. (1978).

³² Faisal Islamic Bank of Egypt. "Law (48) Establishment of Faisal Islamic Bank of Egypt." *Article (2)*. (1977).

³³ Faisal Islamic Bank of Egypt. *Law (48) Establishment of Faisal Islamic Bank...*(1977).

banking transactions that Muslims need. This helps in developing the saving awareness of the Muslim community, protecting it from hoarding, and encouraging investment by diversifying its tools and means to provide the necessary financing for the needs of individual and institutional investors. Furthermore, correcting the function of money in society as a tool that facilitates trade, not a traded product.

The Basis of the Islamic Bank in the Thought of Theorists:

Based on the previous discussion, it can be said that the foundation of the Islamic bank in the view of theorists is as follows:

1- Investment brokerage

The Islamic bank receives the depositor's money through *Mudaraba* and then directs it to invest in *Musharaka* and *Mudaraba* away from interest rates. Theorists' were interested in partnership-based contracts for their ability to achieve the development goals of Islamic banks. Using such contracts raises funds and employs them in real investments that achieve added value and contribute directly to achieving justice in the distribution of national income.

2- Contributing to achieving economic development

Land development is a requirement of succession, so the focus should be on the partnership-based contracts, not the debts. Partnership-based contracts are characterized by reducing money creation, expanding the circle of benefit through equal opportunities, and opening the way for small and large investors to engage in beneficial investments without collateral that those in dire need of financing don't have. Such Partnership-based contracts prevent the concentration of wealth and protect the bank from the scourge of debts from which the Prophet -PBUH- sought refuge for its negative impact on the individual and society.

3- Contributing to achieving social development:

The role of the Islamic bank is not only to invest in the halal fields, but it also has a different responsibility towards the community by taking into account the Islamic priorities in investment and emphasizing the feasibility of the project, not only the merit of the client. Such considerations allow for the circulation of wealth and encouragement of charity, so money is not only in circulation among the rich.

The early theorists of Islamic banks were keen that those banks would not be separated from the life of the society in which they live. So they preceded with the adoption of Corporate Social Responsibility (CSR), a governance requirement. Also, their concept surpassed this term by adopting partnership-based contracts and prohibiting interest. They were also keen to achieve CSR practically by activating Partnership-based financing without inclination for wealthy clients, but by taking into account the society's financing priorities and collecting charitable resources, and using them to provide social services such as the *qard-hassan* from the *zakat* and charity fund.

The idea of the *qard-hassan* appeared in Islamic banks with the birth of Nasser Social Bank in Egypt at the beginning of the seventies of the last century, where it provided *qard-hassan* for young families and education. Dubai Islamic

Bank proceeded with the same approach as article (71) stipulates: “Granting *qard-hassan* to customers who face urgent difficulties during their transactions to avoid the interest trap and bankruptcy. Also grant *qard-hassan* for necessities such as treatment, marriage, and others.” Islamic banks, like other banks, are keen to highlight CSR in their annual reports following the requirements of governance. However, the absence of *qard-hassan* from the banks under study is noticeable, except for Al-Baraka Group, which did not exceed 0.1% of the total financing with a value of (115,201 dollars). The Sudanese banks did not exceed 0.2% of the total financing amounting to 481 million pounds (see the annual report 2020 AD, Bank of Sudan).³⁴

The Reality of the Application of Islamic Banks

Reviewing and observing the reality of application in Islamic banks necessitates a constructive review. The goal is not to criticize and trawl for errors; instead, the goal is to describe the reality that allows for improvement accurately. Financial mediation has placed investment mediation. Islamic banks' contribution to achieving economic development is almost absent. Its contribution to achieving social development is closer to stagnation and even regression. The split between theoretical jurisprudence and field jurisprudence is tangible.

Financial Intermediation, an Alternative to Investment Intermediation

Financial intermediation in Islamic banks has replaced investment intermediation. Instead of being keen to move towards real developmental direct investments, Islamic banks have become financial intermediaries in search of profitability with little regard to development aspects, which was evident by focusing on debt contracts as a substitute for partnership-based contracts.

Reality reveals that the *Mudaraba* contract is still the prevailing contract between depositors and the bank; reality also shows that debt contracts dominate Islamic banks' uses, making the *Mudaraba* contract ineffective. Furthermore, some banks use netting contracts instead of *Musharaka* contracts with investors, generally through investment agencies. As for the partnership-based contracts are almost absent in most Islamic banks' investments in favor of *Murabaha* contracts (Table1). For example, Qatar Islamic Bank and Kuwait Finance House provide 80% each in *Murabaha* contracts.

Table 1: The Relative Importance of Investment Formulas in Several Islamic Banks for the year 2020

³⁴ Faisal Islamic Bank of Sudan. “The Faisal Islamic Bank of Sudan Law of 1977.” *Article (4) Bank purposes*. Retrieved from <https://arabic.hudocentre.org>, p. 215. (1977).

Islamic Banks Between the Jurisprudence of Leading Theorist and Application

Bank-Instrument	Murabaha		Salam		Istisnaa		Ijarah		Mudarabaha		Musharaka		Other	
	Value	%	Value	%	Value	%	Value	%	Value	%	Value	%	Value	%
Qatar Islamic Bank (million riyals)	87	80%	-	-	0,185	0.1%	20	18%	0,14	0.2%	-	-	2	0.9%
Kuwait Finance House (Million dinars)	11	79%	-	-	0,88	6.3%	2	14%	-	-	-	-	-	-
The Islamic Bank of Dubai (million dirham)	64	40%	-	-	0,87	0.6%	80	50%	10	6%	7	4%	-	-
Faisal Islamic Bank of Egypt (million pounds)	*10	**	-	-	-	-	-	-	-	-	-	-	-	-
Al Baraka Group (Million dollars)	13	12%	0.236	0.2%	92	85%	0.151	0.1%	2	2%	1	1%	-	-
Sudan Banks Group (million pound) (*)	159	66%	4	2%	5	2.1%	0.930	0.4%	11	5%	13	5%	47	20%
Average		55%		1%		19%		17%		3%		3.3%		21%

Source: Banks annual reports

*No data available for 2020, and the latest 2019 update is used.

*** Including *Murabaha*, *Musharaka*, and speculations.

By studying the operations of the six Islamic banks in (Table 1), the researcher's observations of the organized *Murabaha* and *tawarruq* financing find the purpose to be purely for financing, not for investment in the sense that leads to owning assets and bearing risks to obtain a profit. Islamic banks operate that way because it is similar to transactions in traditional banks, especially since most bankers working in Islamic banks came from conventional banks that deal in interest and prefer debt-based instruments over partnership-based instruments.

Supposing that debt and sales contracts are appropriately applied and used responsibly where a balance exists between them and the partnership-based contracts, in that case, most concerns about the practice of Islamic banks should be relieved. Unfortunately, after the spread of organized banking *tawarruq*, the concerns over Islamic banks' performance have increased. Furthermore, Islamic banks in Egypt tended to invest in government treasury bills based on usury. For example, the financial report of Faisal Islamic Bank for the year 2016 AD showed its investment in government treasury bills with an amount of 14.491 million pounds, as well as investing in debt instruments with an amount of 29.922 million pounds. The forbidden investments in securities amounted to 44.863 million pounds, representing 80% of the total investments. The financial report of the Qatar Islamic Bank reveals the bank's investment in derivatives of financial instruments amounting to 601 million riyals despite the sanctity of these derivatives following the decisions of the International Islamic Fiqh Academy.

Table 2: A Comparison of the Relative Importance of Investment Formulas in Several Islamic Banks (2016 – 2020)

Bank-Instrument	Qatar Islamic Bank		Kuwait Finance House		The Islamic Bank of Dubai		Faisal Islamic Bank of Egypt		Al Baraka Group		Sudan Banks Group	
	2016	2020	2016	2020	2016	2020	16	20	16	20	16	19
Murabaha	48.7	80	69.5	79	23.3	40	10.7	-	60.8	12	46.2	66
Salam	-	-	-	-	-	-	-	-	0.8	0.2	3	2
Istisnaa	0.5	0.16	0.6	6.3	1.4	0.6	-	-	0.5	85	0.1	2
Ijara	14.5	18	10.3	14	32	50	-	-	10.3	0.14	0.3	0.4
Mudaraba	0.5	0.2	-	-	8.1	6	-	-	4.5	2	5	4
Musharaka	-	-	-	-	4.2	4	-	-	8.7	1	6.7	5

Other	35.6	0.9	19.6	-	31	-	89. 3	-	14. 4	-	38. 7	20
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Source: Banks annual reports

As (Table 2) presents, the *Murabaha* contract is the most used, and it doubled between 2016 and 2020, as the relative importance of it in Qatar Islamic Bank increased from 48.7% in 2016 to 80% in 2020, the relative importance increased by 31.3% in Qatar Islamic Bank only. In the Kuwait Finance House, the relative importance of the *Murabaha* contract rose from 69.5% in 2016 to 79% in 2020, i.e., increased by 10%. In Dubai Islamic Bank, the increase was by 16.7%. In the group of Sudanese banks, the relative importance of *Murabaha* increased by 19.8%, and this reflects the extent to which Islamic banks rely heavily on the *Murabaha* investment and give it greater relative importance. This limits actual economic development and confines it to specific areas to pursue quick profit and the least risk. This means that the investment does not include all sectors and segments of society. This contradicts the goal of the Islamic economy of creating a real economy that consists of all industries and groups of society and achieves actual economic development.

In contrast to other banks, Al Baraka Group reduced its reliance on the *Murabaha* from 60.8% in 2016 to 12% in 2020, i.e., reduced by 48.8%. The *Istisna'a* contract had the largest share of the relative importance increase among other formulas in Al Baraka Group, where the relative importance increased from 0.5% in 2016 to 85% in 2020. This leads to significant industrial development, and the industrial sector is one of the important sectors in producing a real economy that contributes to economic growth.

The majority of Islamic bank performance highlights the contradiction between contemporary Islamic banks practices and what was proposed by the early theorists that mobilized to establish Islamic banks. Early theorists concluded that the method of *Musharaka* represents the most appropriate contracts on which Islamic banks must rely to employ their financial resources. Leading theorists never thought the *Murabaha* contract would dominate Islamic banks' financing, let alone the organized *tawarruq*.

This situation also contrasts with what was announced by Islamic banks in the first stage of the beginning of their activity that the current structure of investment methods, which mainly depends on the *Murabaha* method, is a temporary situation because it is linked to special circumstances at the beginning of the activity of these banks, and it will be gradually modified in the later stages towards increasing the use of partnership-based contracts in the employment of its resources.

Contribution to Economic Development:

There is no doubt that the contribution to economic development is positively and negatively related to the position of the participants in these banks, as well as the long-term investment ratio to their total investments. The

investment decision is the investors themselves, sometimes affected by the bank's representative's recommendations and consultation.

Table 3: The Relative Importance of Short, Medium, and Long-term Investments in Several Islamic Banks for the year 2020AD

Bank-Instrument	Short & Medium Term				Long-Term				Total
	2020		2016		2020		2016		
	Value	%	Value	%	Value	%	Value	%	
Qatar Islamic Bank (million riyals)	46.366	98	126.348	98.1	1.069	2	2419	1.9	47.435
Kuwait Finance House (Million dinars)	13.502	93	12.845	93.4	1.063	7	910	6.6	14.565
The Islamic Bank of Dubai (million dirhams)	149.216	98	149.216	98.1	2.751	2	2751	1.9	151.967
Faisal Islamic Bank of Egypt (million pounds)	54.825	98	54.825	98.2	1.022	2	1022	1.8	55.847
Al Baraka Group (Million dollars)	13.313	88	15.850	86.7	1.747	12	2347	13.3	15.060
Sudan Banks Group (million pound) *	29	66	-	-	15	34	-	-	44
Average		90		94.9		9.9		5.1	

Source: Banks annual reports

*No data available for 2020, and the latest 2019 update is used. \ (-) no data found

Tables (1 & 2) clarify the marginality of the partnership-based contracts in Islamic banks. As for long-term investment, the relative average of long-term investment for 2016 was 5.1%, while that percentage for short and medium-term investment reached 94.9 %. Table (3) shows that in 2020 long-term investment reached 10%, and short and medium-term investment reached 90%. The relative averages increased due to the presence of data for the Sudan Banks Group in

2019 and the absence of data in 2016. This indicates that no actual change occurred. Islamic banks focus on their function as financial intermediaries aiming for high returns with minimum risk in the shortest of times.

Table 3: The Relative Importance of the Sectoral Distribution of Investments in Several Islamic Banks for the year 2020

Bank-Instrument	Agriculture		Manufacturing		Trade		services		Other	
	Value	%	Value	%	Value	%	Value	%	Value	%
Qatar Islamic Bank million) (riyals			7,9	20	14,6	35.4	12,1	29.2	6,7	16.3
Kuwait Finance House Million) (dinars					4,634999	56.3			3,607,777	43.8
The Islamic Bank of Dubai million) (dirhams					2,571.6	4.9	*41,949.4	94		
Faisal Islamic Bank of Egypt (million pounds)	15000	0.2	839351	9.2	240000	2.6			8,112,459	88
Al Baraka Group Million) (dollars	177,243	2	4,529,603	48	1,716,19	18	2,935,813	31		
Sudan Banks Group million (pound)	32,865.1	21	43,698.3	28	15,807.*1	10.2	15,800.0	10	47,535.0	30.6
Average		7.7		26.3		21.2		41.1		55.9

Source: Prepared by the researcher based on the annual reports of these banks for the year 2020, and 2019 for Sudan

* Including transportation and storage.

The researcher's investigation shows the limited investments of Islamic banks in the industrial and agricultural sectors. The relative average of these two sectors amounted to 8.1% and 4.7%, respectively, in 2016, and 7.7% and 26.3% respectively in 2020. Despite being the backbone of national economies and an important measure of progress, agriculture and manufacturing remain to be financed less than other sectors. The services sector generally receives higher financing; one reason could relate to the low risk and quick maturity.

Islamic banks' ability to effectively contribute to economic development remains limited, and their focus is on capable customers, not feasible projects, as is the case in traditional banks. This is a general observation of the Islamic banks' status. Other variables that affect the position of Islamic banks and could explain their performance include the nature of the financial resources available, the preference of investors, the capacity of Islamic banks' human resources, and some are due to the policy of central banks.

Financial Resource Obstacles:

One of the most significant obstacles that faced the application of long-term investment in Islamic banks is the desire of capital owners to guarantee their funds with the ability to withdraw from these funds in the short-run or upon request. This made the nature of financial resources in Islamic banks mostly short-term, limiting banks' ability to achieve long-term investment objectives. This impacted the Islamic banks' decision to direct most of their investments towards short-term investment to ensure the compatibility of terms related to investment maturity. In addition to that, most Islamic banks retain a high percentage of liquidity for technical, operational, or legal reasons.

Central Bank Obstacles:

The central bank exercises two roles, the first of which is supervisory and the second is financing. The supervisory role is based on several supervisory methods and tools. In practice, these methods and tools are often applied to Islamic banks and conventional banks alike, without considering the different nature of each of them. Conventional banks rely mainly on the interest rate system. The Central Bank reinforces 'interest' as its most important monetary tool. Other Central Bank's supervisory tools impede long-term investment activity in Islamic banks, including the legal reserve policy, the monetary liquidity policy, and prohibiting dealing in fixed and movable assets. As for the financing role, Islamic banks cannot take advantage of the central bank's role as a last resort for liquidity due to their nature and inability to deal with the interest. Those realities affect the activity of Islamic banks, as this situation forces them to maintain a high liquidity ratio to meet the requirements of expected and sudden withdrawals. The liquidity ratio remains either uninvested cash resources or short-term highly liquid investments, which impedes long-term investment activity.³⁵

³⁵ Dawaba, A. (2007). *Dirasat fe Altamweel Alislami (Studies in Islamic Finance)*. Dar Alsalam for Publishing, p. 99-120.

Contribute to Social Development:

The Islamic banks' ability to effectively contribute to social development has become a marginal matter. Islamic banks pay little attention to beneficial investment that prioritizes necessities and needs over luxurious consumption. *qard-hasssan* is rarely used, Zakat funds have declined, and social responsibility has become a utility of good governance.

The Zakat Fund at Faisal Islamic Bank amounted to 153.6 million Egyptian pounds until the end of 2020, including the balance of the end of the period amounting to 30.4 million Egyptian pounds, and 99.6 million Egyptian pounds representing the zakat due according to Sharia law on the bank's ownership rights, and the rest as zakat from investment account holders and individuals and others. 150.8 million pounds has already been disbursed from these resources to the beneficiaries (See, Annual Report 2020, p. 85). As for Al Baraka Banking Group, Zakat is collected from the shareholders based on a decision of the General Assembly each year. It authorizes the Executive Management to pay a zakat amount of 1,656 thousand dollars for 2020. 45.4% of this amount was directed to the poor and needy, and 39.3% for scholarships (see Annual Report 2020, p. 113).

As for Dubai Islamic Bank, the total zakat payable amounted to 368,000 thousand dirhams (Annual Report 2020, p. 58). As for the Kuwait Finance House, it is obligated to pay zakat under Kuwaiti Law No. 46 of 2006. According to this law, the value of the deducted zakat in 2020 amounted to 19,643 thousand Kuwaiti dinars (Annual Report 2020, pp. 10, 12).

It is acknowledged that Islamic banks are not charitable societies, but at the same time, charitable work is part of their fabric. Hence, it is important to activate the social role by benefiting from the zakat of shareholders and depositors who delegate them to the bank and direct them towards their legitimate beneficiaries—also important to provide *qard-hasssan* towards micro-enterprises and people in need.

Inadequate Processes of Ijtihad and Technical Innovation:

The Islamic banking movement began its practical experience before the theorization completed its necessary stages. So over time, Islamic banks discovered a shortage of methods and tools appropriate to their nature, and to carry out their new functions. As a result, Islamic banks reached the path of imitation in many practices.³⁶ Further deepening this problem are the shortcomings of the processes of ijtihad and technical innovation in these banks. It was expected that the application of Islamic banking would be accompanied by

³⁶ Atiyah, J. "Albunuk Alislamiyah Bayn alhuriyah wa Altantheem, Altaqweem wa Alijtihad, Alnathariyah wa Altatbeeq (Islamic Banks Between Freedom and Regulation, Evaluation and Ijtihad, Theory and Practice)." In P. o. Courts, *Kitab Al-Ummah*. Qatar, p. 167. (1993).

an increase in *ijtihad* and technical innovation to develop new methods and working systems appropriate to the nature of Islamic banks. This is curtail to develop solutions to practical problems that successively appear during the development of the Islamic banking experience.

Conclusion

Through this study, the thoughts of leading Islamic theorists show the expectation of Islamic banks to be economic and social development banks. But the reality was different. Financial mediation replaced investment mediation. As such, debtor contracts dominated investments and partnership-based contracts have receded, and short-term investments have taken over at the expense of long-term investments. This status prevented the Islamic banks' effective contribution to economic development. Banks' role in social development has also receded, and profit has become the engine and stimulus in most banks' applications.

Some may claim that the world has changed and theorists' views are outdated, that Islamic banks are financial intermediaries, not merchants nor charitable associations, and that Islamic banks are not responsible for economic and social development. On the contrary, Islamic banks should be investment intermediaries that operate in financial intermediation and trade and direct investment. The innovation of financial instruments beyond the *Murabaha* contract is necessary. This contract is not rejected; what is rejected is for this instrument to dominate, or even worse, replaced by organized banking *tawarruq*, in the name of reducing finance-related risks while tolerating sharia-related risks, which are more important.

Making the excuse that the low percentage of partnership-based contracts is due to moral hazards in our contemporary time cannot be proven. Similarly, it cannot be proven that financing the client through *Musharaka* or *Mudaraba* carries the Islamic bank high risks and that clients themselves do not want to deal with partnership-based contracts as they reveal the confidentiality surrounding their work and the actual profits they achieve. Furthermore, information asymmetry is another excuse. The truth is that the marginality of the partnership-based contracts in the investments of Islamic banks should not be blamed on moral hazard, for there is no pure society.

As for the opinion that Islamic banks are not a state responsible for economic and social development, or a charitable association responsible for social development, this opinion is irrefutable, and none of the early theorists disputes it. There is a difference between partial and complete responsibility. Islamic banks have a successive role by contributing to economic and social development. In the event that partnership-based contracts are activated, it will have a positive impact not only on economic growth but also on social development, with its ability to expand the beneficiaries of the financing, especially those who do not have mortgages as collateral.

In conclusion, this nation was honored with a divine economic system in which there are many methods and means of investment in what is not found in

other traditional systems. As such, Islamic banks need to emerge from the narrowness of *Murabaha* to the broadness of partnership-based methods to fulfill their economic and social responsibility and achieve what they have committed themselves to, since their establishment, by contributing to achieving economic and social development.

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