

Mahmoud A. El-Gamal

Islamic Finance: Law, Economics and Practice

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Review by:

Abdul Azim Islahi

Islamic Economics Research Center

King Abdulaziz University, Jeddah, Saudi Arabia

Islamic finance is presently one of the most discussed topics of Islamic economics. Literature on the subject and practice of Islamic finance has increased considerably in recent years; a large number of it is characterized as non-original and repetitive. In his work *Islamic Finance: Law, Economics, and Practice*, Professor Mahmoud El-Gamal, as he himself claims, attempted 'a qualitative overview of the practice of Islamic finance and the historical roots that have defined its modes of operation' (p. xi). The author is Professor at Rice University, where he holds the endowed Chair in Islamic Economics, Finance and Management. He has numerous publications to his credit in the areas of econometrics, finance, experimental economics, and Islamic law and finance.

The book is divided into ten chapters, in addition to a brief conclusion. The first chapter is an introduction which starts with a story of Martin Luther and a cobbler to whom the former advised to sell a good shoe at a fair price rather than a "Christian shoe". This sets the perspective for the whole book. To the author's mind, 'the term "Islamic finance" brings an analogy to the concept of a "Christian shoe", rather than good products that are fairly priced' (p. 1). The book ends also at the same story. The author is very critical on the role of "Shari`ah Supervisory Boards" and calls them as "the rent-seeking arbitrageurs". He likens their role to the "European pre-Reformation practice of selling indulgence certificates". The author argues that these 'rent-seeking legal arbitrageurs' place excessive emphasis on contract forms rather than the substance, thus sacrificing economy and efficiency to preservation of form. As evidence, he presents the example of home mortgage transaction where 'the requirement of multiple sale, special purpose vehicles, and documentations of title may add tax as well as legal costs' (p. 5).

In the opinion of El-Gamal the use of Arabic names of 'pre-modern contracts' is meant 'to create an independent identity and brand name for Islamic finance, and to connect the current financial practice to the revered classical age' (p. 18). Criticizing this trend he says: "This adherence to variations on ancient and medieval nominate contracts and the associated need to preserve as many of the conditions stipulated by classical jurists to keep those contracts devoid of *riba* and excessive *gharar* are the primary reasons that Islamic finance has heretofore fallen significantly short of its potential" (p. 19). He expresses his unhappiness that both Shi'ahs and Sunnis are in agreement in their attitude against conventional banking and finance. The book studies the current practice of Islamic finance which has adopted, in the opinion of its author, 'a peculiar form of regulatory arbitrage that is best characterized as Shari'a arbitrage' (p. 20). He describes its methodology. This is done first through identification of a Shari'ah-opposed financial product, then construction of an "Islamic analog" to that product. The same Arabic term is used to add to its credibility. At the same time, efforts are made to keep it sufficiently similar to the conventional structure to ensure that 'the Islamic structure is consistent with secular legal and regulatory framework in target and origin countries'. This is generally done through creation of otherwise unnecessary special purpose vehicles (SPVs). These steps increase transaction costs and reduce efficiency. All this involves 'risk of mispricing' and 'legal and regulatory risks'. The author admits that these risks are 'not unique to Islamic finance', but he thinks that the chance for abuse by money launderers and criminal financiers is higher in Islamic finance than elsewhere (p. 24).

Professor El-Gamal stresses that nominate contracts in classical Islamic jurisprudence were valuable in old days when they were authored, but they are of limited use in the present day expanding money markets, capital markets, option markets, *etc.* Adherence to classical nominate contracts would enhance the tension between efficiency and credibility objectives. As a result the industry has to choose either systematic relaxation in the classical conditions of the contract to enhance efficiency, or Islamic finance may continue to be an inefficient replication of conventional finance. Both directions would be detrimental to the objectives of Islamic finance. Instead of retaining the forms of classical contract, the author asks for application of the substantive spirit of Islamic law (p. 25). In the opinion of the author, 'This can be accomplished by understanding the economic functions served by classical legal provisions and the general principles that prompted classical jurists to pursue those functions within their economic and legal environment. This, in turn, can pave the road for developing financial products that may be marketed more effectively to Muslims and non-Muslims alike' (*ibid*). According to the author, in this case there will be no need to apply classical Arabic names to the new products to give them Islamic colour.

In Chapter Two a summary of Islamic jurisprudence is presented to provide basic perception of the nature of Islamic law and jurisprudence for proper understanding of the following chapters. He also presents a brief history of the development of Islamic jurisprudence and birth of modern Islamic finance. The author asserts that 'Islamic jurisprudence is a common-law system, built primarily on analogy to precedents' (p.27). In his discussion of the basic sources of Islamic *fiqh*, the author's statement that 'reports of the Prophetic Sunnah survived for centuries in the form of oral tradition' is altogether not correct. There are reports that even in the Prophet's time some companions noted down *ahadith*. Written collections were ready within a century (Azami. 1397 AH, pp. 82-142). The period from mid-seventh century AH to 1293 AH is termed by the author as the dark age of Islamic jurisprudence. In fact Islamic history has never seen a 'dark age', be it jurisprudence or any other intellectual field. This period produced great jurist scholars like Ibn Taymiyah (d. 728/1328), Ibn al-Qayyim (d. 751/1350), Jalal al-Din Suyuti (d. 911/1505), Ibn Nujaym (d. 970/1563), Shah Wali-Allah al-Dihlawi (d. 1176/1762), Ibn Abidin (d. 1258/1842), to name a few.

In Chapter Three an analysis of the two prohibitions – *riba* and *gharar* – 'that define the character of contemporary Islamic finance' is provided 'to illustrate that form-oriented nature of Islamic finance as practiced today is unjustified', as it is done at the cost of economic efficiency. The author repeatedly exhorts to focus on 'the substance of Islamic Law' rather than premodern contract forms' (pp. 30-31, 35, 44, 46). He suggests that "To the extent that modern regulatory and legal systems share the main objectives of Islamic Law (*al-maqasid al-Shar'ia* of which the highest are protection of life, wealth, mind, *etc.*), conventional modern regulatory restrictions can often be considered sufficient substitute for classical contract conditions. To the extent that religious law aims to provide personal protections beyond the minimal ones afforded by secular regulatory frameworks, the substance of classical jurisprudence should be used to devise new individual protections within the modern conventional practice" (p. 44).

He shows that the classical jurist envisioned the two major prohibitions in Islamic jurisprudence against *riba* and *gharar* to be efficiency-enhancing. But the present day form-driven Shari'ah arbitrage routinely reduces efficiency relative to conventional financial practices (p.11). He argues that 'in finance the forbidden *riba* is essentially "trading in credit", and the forbidden *gharar* is "trading in risk" as unbundled commodities' (p. 47). Under the heading "Prohibition of *riba*", the author confuses between *riba* in lending money and one arising out of exchanging two commodities, when he says that 'jurists defined the forbidden *riba* generally as trading two goods of the same kind in

different quantities, where the increase is not proper compensation' (p. 49). This definition is not for *riba* which is prohibited in the Qur'an and which was known since ancient days: charging extra amount on loans in lieu of time given for use. It is well known that the definition which he quotes is related to the specific form of *riba* called *riba'l-fadl* prohibited in *ahadith*. The reason and wisdom of its prohibition may not have been clear to many people. Opinions also differed about this kind of *riba* whether it was prohibited as proper *riba* or as a preventive measure. But the *riba* mentioned in the Qur'an was never a matter of difference.

It may be noted that there are numerous prohibitions that the Qur'an has not defined because they were well known to every one, *riba* is one of them. What the later reporters explained as the *riba'l-jahiliyah* was just an example. Such loans might have arisen as a result of cash lending or credit sale / prepaid sale. It might have already an interest stipulated at the time of lending the amount or it might have been imposed at the maturity date of the loan. El-Gamal's categorical statement that pre-Islamic (*riba'l-jahiliyah*) was an interest charged at the maturity of debt from 'interest-free loans' or credit sale (p. 50) is not correct.

In Chapter Four which deals with the sale-based Islamic finance, the author introduces various contracts such as *salam* (prepaid forward sale), *istisna'* (commission to manufacture), *bay' al-fuduli* (uncommissioned agent) *bay' al-musawamah* (negotiated-price sale), *murubahah* (sale with mark up), *wadi'ah* (marked-down price), *bay' al-sarf* (currency exchange), *'inah* and *tawarruq* (same-item sale-repurchase), *bay' al-'uhdah* (custody sale), and *sukuk al-ijarah* (lease bonds). The author complains that cotemporary jurists are generally reluctant to declare that a contemporary financial practice is permissible under Islamic law, even though the default rule in transaction is permissibility unless they find a precedent in classical jurisprudence to justify that contemporary practice. He stresses upon the 'quest for a thoroughly contemporary Islamic financial model that retains the substance of classical jurisprudence, rather than falling into superficial adherence to classical contract forms while possibly violating the substance of Islamic law' (p. 65). No doubt, a new form of contract cannot be rejected merely on the basis of not finding a precedent in classical *fiqh*. But the default rule of permissibility is qualified that the new transaction should not violate any prohibition such as *riba*, *gharar*, etc. This is also a matter of retaining the substance. Substance is not only economic efficiency.

Salam, *istisna'* and *'urbun* and their innovative uses in recent years have been analyzed in Chapter Five. They are given the name of derivative-like sales. The author visualizes how 'Islamic financial practitioners have adapted the classical forms of *salam* and *istisna'* and combined them with other transactions

to generate approximations of conventional financial transactions, including interest-bearing loans, interest-bearing bills and bonds, build-operate-transfer, and build-operate-own infrastructure and other project financing, *etc*'. (p. 81).

Chapter Six deals with leasing, securitization, and *sukuk*. The author first discusses the classical lease contract and its various conditions and interpretations in what he calls premodern jurisprudence, as well as contemporary jurists' adaptation of those conditions. Then he studies contemporary advances in the area of Islamic financial securitization and various *sukuk* structures. He notes that 'In recent years leasing has become increasingly popular as a vehicle for financing the purchase of various assets, as well as issuance of various financial instruments, from mortgage-backed securities to bond structures known as *sukuk*' (p. 97). He notes that 'most *sukuk* structures involve selling a property to a special purpose vehicle and then buying it back or receiving it as a gift at lease's end.' Securitization which is defined as transforming one type of financial exposure into another can be abused in numerous ways. Therefore, higher degrees of transparency and disclosure are required to minimize the possibility of abuse or misinforming investors. The author critically examines opinions of some contemporary jurists about securities bundling-assets-based and debt-based securities and shows their paradox. In this connection, he examines a few *sukuk* cases in Gulf States, for example: Lease-backed Qatar Global *sukuk*, usufruct *sukuk* issued by the German State of Saxony Anhalt and co-managed by Citigroup and Kuwait Finance House, and Bahrain Monetary Agency's *Sukuk al-Salam*. Especially about the last-mentioned, he observes that with its given structure it 'can be used to generate any interest-bearing loan, including unsecured ones'. In his opinion 'this bond structure looks like a mirror image of *tawarruq* which he considers as one of the most egregious results of rent-seeking Shari'ah arbitrage in Islamic finance' (p. 116).

Partnerships and equity investment are the subjects of Chapter Seven. The author identifies five types of partnerships in the classical jurisprudence: *sharikat al-'inan* (limited partnership), *sharikat al-mufawadah* (unlimited partnership), *sharikat al-wujuh* (credit or reputation partnership), *sharikat al-abdan* or *sharikat al-a'mal* (labor partnership) and *mudarabah* (silent partnership). According to the author, since 'jurists of most schools deemed partnership contracts nonbinding and thus allowed each partner unilaterally to dissolve a partnership' and since they ruled that 'partnerships are automatically dissolved on the death of any partner', these classical partnership forms were of very little use and they did not thrive in the industrial age (p. 119). In the opinion of this reviewer, as a study of the period would show, the reasons of Muslim countries' backwardness did not lie so much in the forms of these contracts, as in their negligence of the spirit of their age, their intellectual and

scientific decay and the government's indifference and sometimes even hostility towards big traders and business houses. As the proverb says: when there is will, there is a way. The author, himself notes: contemporary jurists found little difficulty in adapting classical '*inan* (limited partnerships and *mudaraba* or *qirad* (silent) partnerships to justify Western corporate structure' (p. 119).

In the rest of the Chapter he discusses simple common stock equity investments and Islamic finance products that have been structured thereof in recent years. In this connection, the author raises question on the permissibility of mutual funds and rejection of index participation, while in his opinion there is no substantial difference between the two. In case of mutual funds, ownership of mutual fund shares is considered as ownership of underlying stocks which are 'in turn characterized as documentations of ownership of unspecified shares in the assets of the various underlying companies' (p. 124). The mutual fund managers, working as agents of the mutual fund shareholders in reality take the responsibility of paying only the money values of the portfolio of underlying stock, not the delivery of actual stocks if so demanded. The author argues that the index also reflects the value of underlying assets exactly in the same manner as mutual funds do. Thus, there is no reason to allow one and forbid the other.

The author is right to note that advocates of Shari'ah finance always characterized it as faith and ethic based. But in todays practice various providers of financial products and services primarily take 'the form of negative screens'. They avoid 'negative prohibitions (such as "do not ferment alcoholic beverages")', but neglect 'adherence to positive proscriptions' (such as "help the poor")' (p. 125). Likewise, 'industry practitioners have developed a set of financial screening rules that exclude companies with excessive debt or excessive interest income' (p. 126). Relaxation again got the way. The most common set of financial screens currently used are those of Dow Jones Islamic Index. They exclude 'companies with total debt accounting for 33 percent or more of monthly moving average (over the previous year) of market capitalization', 'companies with monetary (cash plus interest-bearing securities) accounting for 33 percent or more of the same monthly moving average (over the previous year) of market capitalization', and 'companies whose accounts receivables account for 45 percent or more of total assets' (p. 127).

After giving the reasons for adopting these ratio screens, the author points out incoherence and dangers for financial ratio screens. For example, no explicit distinction has been made between 'Islamic debt' and other types of debts. 'The bulk of investment of "Shari'ah compliant" funds are in securities listed on the New York Stock Exchange and other major Western exchanges, none of which have listed Islamic banks or companies that seek Islamic financing' (p. 127).

Moreover, if the goal is to meet a particular debt ratio, debt can easily be taken off-balance-sheet using SPVs through sale-lease-back transaction.

At the end of this chapter, the author raises the issue of cleansing return arising out of unlawful interest. He points out a number of paradoxes. The unlawful income must be given to charity. But jurists have not given a rule on how to compute the portion of dividends and capital gains attributed to interest income. Here the author's tone became, rather sarcastic when he says that "it is not clear how 'Islamized' interest (*e.g.* collected or paid through *murabaha* or *ijara* transaction) should be treated" (p. 133). However, he is right in criticising of existing focus on negative screens that reflects that Islamic finance, in general, is a prohibition-driven where very little effort has been taken to apply positive screens like investment in pollution abatement or community development. It is to be noted that the propounders of Islamic banking and finance have been stressing upon the value-based nature of the industry that would operate under Islamic spirit that would aim at earning a reasonable profit with investment in merit goods and services. The current mode of operation of Islamic finance shows the gap between theory and practice. This needs to be rectified. Prof. El-Gamal rightly says: 'if the industry is to succeed in reaching the fast-growing educated Muslim middle class, it will have to outgrow this prohibition-driven mentality and demonstrate positive ethical and religious values that it serves' (p. 134). This may attract many non-Muslim investors as well who share the same ethical and human values.

In Chapter Eight the author discusses how Islamic banks, Islamic insurance companies and Islamic venture capital and private equity firms have evolved over the past few decades. He also briefly discusses the theoretical Islamic economics processes that gave rise to Islamic financial institutions which is considered by the author as merely rhetoric (p. 137). The author holds that it was in the 1970s' that Islamic finance was conceived as a practical implementation (*ibid*). The fact is that the practical efforts in various regions of Muslim world started much earlier. For example, in erstwhile Hyderabad state in the early part of 20th century (Hamidullah, 1944), in India in late 30s and early 40s of the 20th century (Bagsiraj, 2003, p. 9), in Malaysia and Egypt during 1960s (Ahmad, 1995: 77,78, Lewis and Algoud, 2001: 5-6). The author himself notes three experiments of Islamic banking prior to 1970s (p. 163). It is also not correct to say that Islamic economics had begun to take shape in the 1950s (*ibid*). It may be noted that the first book on modern Islamic economics was written by an Indian scholar Mawlana Hifzur Rahman Seoharwi entitled "*Islam ka Iqtisadi Nizam*" (the Economic System of Islam) during 1930s and the second important work was authored by Mawlana Manazir Ahsan Gilani entitled "*Islami Ma`ashiyat*" (Islamic Economics) during 1940s (Islahi, 2008).

With the emergence of Western banking and finance in Muslim countries, there have always been some individual scholars who were not clear on prohibition of bank interest. In 2002, the first time from the prestigious platform of al-Azhar a voice in its favor was raised, though not without dissenting notes. The author reveals that in legalization of the bank interest as the silent partner's profit based on fixed percentage of the partnership capital to solve moral hazard problem, which was the main argument of al-Azhar's Islamic Research Institute, falls in line with the Jewish legal concept on the issue (pp. 138-39). He seems to be appreciating al-Azhar's *fatwa* but ignores the evils of interest which have been pointed out by many Western scholars and Islamic economists (For example, Siddiqi, 1980). We should not forget that once a gap is made in the hedge of restriction, other gaps appear as the centuries pass, until it becomes a question whether there is a hedge at all (Don, 1967, 12:551).

The author reproduces the full text of the question and the *fatwa* of al-Azhar Academy who, in response to a question, replied that those who deal with any bank 'forward their funds and saving to the bank as an agent who invests the fund on their behalf in its permissible dealings, in exchange for a profit distribution that is predetermined'. To al-Azhar's Islamic Research Institute this is based on 'mutual consent', it protects from moral hazard; it is not ruinous of household; and it is not in contradiction to any injunction of the Qur'an and Sunnah. But this *fatwa* was against the opinion held by Shari'ah Appellate Bench of the Supreme Court of Pakistan. It was also rejected by the Committee of the Islamic Fiqh Academy in its session held in Qatar, during January 11-16, 2003.

The Fiqh Academy analysed and contended this *fatwa*: (1) The *fatwa* refers to bank with permissible investment, but banks are forbidden from investing in any instruments other than interest-bearing loans and financial instruments; (2) characterizing the depositor-bank relationship as one of investment agency is incorrect, the correct characterization is lender-borrower; (3) there is a consensus that all forms of bank interest are forbidden *riba*; (4) even if the relationship was to be considered one of investment agency (silent partnership), the prespecification of profits in silent partnership must be as a percentage of total profits, not as a percentage of capital.

The author criticizes the Fiqh Academy's decision because it ignored the moral hazard arguments and highlighted only the principle that return is justified by risk. In his opinion 'jurists insist on the financier's bearing risk of property ownership, in essence ignoring credit, interest rate, liquidity and operational risks to which conventional financial providers are exposed when they extend credit' (p. 146). At this, the author objects that 'those same jurists

have allowed multiple innovations (e.g. through agency in *murabaha*) that practically eliminate risks of ownership and yet continue to justify return based on that cosmetic risk, rather than the true risk of extending credit, Islamically or otherwise' (*ibid*).

However, he seems to be adopting a third course between these two opposing stands. His solution is mutuality and before he presents it, he notes two other conflicting *fatawa* on insurance. By analyzing these *fatawa* he tries to show that 'instead of viewing Islamic banks traditionally as investment agents for depositors and then as investors through financing various customers, consider the depositors themselves as investors who finance the various activities of bank customers, the bank itself acting merely as an intermediary agent and guarantor of the financed parties' (p. 156-57). But the problem is that jurists who are active in Islamic finance reject the combination of agency and guaranty. Thus, the author presents, between two opposing stands on bank deposits and returns – loan and interest on the one hand and investment and profit on the other hand – a synthesis of the two positions 'an alternative agency model of mutuality, wherein depositors would in fact be shareholders of the Islamic bank' (p. 160)

The author devotes Chapter Nine to present his alternative corporate structure for Islamic banks and insurance companies based on mutuality. He gives some examples of Islamic finance mutuality-based in Canada, US, and Trinidad 'but those are very few to alter the fundamentally Shari'a-arbitrage profit-driven nature of industry' (*ibid*). He expresses his anguish that 'by shunning mutuality and adopting some of the most transparent forms of Shari'ah-arbitrage, the regulatory substance of the Shari'ah has been squandered while adherence to forms has continued tragically in the shallowest way' (p. 165).

Discussing the 'potential for mutuality in Islamic banking' and its merits, the author states that in the existing practice of Islamic banking the depositor in the investment account is doubly disadvantaged. Since the managers prefer the interest of shareholder, and the investment account depositor has no control over the bank decision, the latter is always exposed to substantial moral hazard. He is also disadvantaged relative to the depositor in the conventional bank who is deemed creditor of the bank and so has the first claim to its assets in case of bankruptcy. To this problem, the author presents the solution of mutual corporate structure (p. 166). It is a combination of debt and equity structures on the assets and liability sides, which is the mutuality structure of thrift institutions such as mutual savings banks and credit unions. Mutual banking structures 'have been in existence in the West for well over a century and for

which corporate governance and regulatory issues and methods have become well understood' (p. 171). The author thinks that the mutuality approach will solve a number of heretofore unresolved problems in Islamic finance, without adding Shari'ah-arbitrage transaction costs. He notes that 'early credit unions and mutual savings banks in Europe and North America were closely associated with churches and other religious institutions that sought to avoid usury by providing credit at affordable rates to community members, and to avoid profiting from the extension of such credit' (p. 173).

According to the author it is more required to base Islamic insurance or *takaful ta'awuni* on mutuality as the term suggests. But the industry has adopted a "superficial mutuality notion in its name (*takaful*) but not in substance". He claims that mutuality in Islamic banking and insurance can play an important role in redefining the "Islamic" brand name of Islamic finance' (p. 174).

In Chapter Ten he argues that this redefinition of Islamic finance is important since, in his opinion, the industry's current 'Shari'a-arbitrage' is both unsustainable and dangerous. He also shows how some of the financial products, previously considered impossible to synthesize, have in fact been offered in recent years. According to the author, 'The art of Shari'a-arbitrage consists of identifying a captive market, with religious injunctions that forbid a given set of financial products and services, and synthesizing those products and services from variations on those premodern nominate contracts'. In this chapter he also deals with Shari'a arbitrage style hedge fund instruments. According to the author 'Public literature on the exact mechanics used by recently launched Islamic hedge funds is not readily available'. To him 'that is hardly surprising since hedge funds generally are not known for their transparency.' Even the new screening methods that those hedge funds will use to determine which stocks can serve as underlying assets remain proprietary and secret' (p. 180).

The author finds that the gap between Islamic and conventional financial practices is shrinking. This is making the barrier to entry much more easily surmountable. That is the reason that indigenous financial institutions in the Islamic world are facing growing fierce competition from multinational behemoths (p. 182). He thinks that 'the overall rents from Shari'a-arbitrage are expected to dwindle as more competitors try to tap this lucrative market'. Of course these multinational big players will not have any discernible impact on economic and social development of indigenous population. For this purpose the author suggest establishment of 'mosque based network of financial mutuals' to meet their micro finance needs.

In the brief conclusion, the author presented the gist of his book. As a whole the work is well documented but at certain occasions it missed to refer to the source. For example Mufti Ebussoud's (Abu al-Su`ud) permission for lending at interest (pp. 139, 212n), or the preference of Companions for lending a coin again and again rather than to give it away in charity (p. 57).

A few errors of typography are also noticed such as 'some' (for same) (p. 70), 'appropriate' (for appropriate) (p. 99), 'tawwiyat' (for *tawsiyat*) (p. 210n), Abu Sa`id Al-Kudriy (for al-Khudriy) (p. 202n). Similarly, *muqassa* (or *muqassah*) is everywhere typed as '*maqassa*' (pp. xvi, 83, 84, and 104).

On p. 147, the full name "Muslim World League" should have been written, to avoid confusion with the Muslim League of Pakistan – a famous political party.

At some places he could not maintain consistency in dropping the ending 'h' like Abu Ghuddah p. 157, Abu Hurayrah pp. 53, 206n, Ibn Majah p. 206n, Jum`ah p. 149, 151. In fact 'h' should have been retained at all places as it is retained in case of 'zakah' everywhere.

In spite of having raised many controversial issues, *Islamic Finance: Law, Economics, and Practice* by Professor El-Gamal makes a serious reading especially for those who are involved in consultancy and Shari`ah supervisory services. No doubt, it is a significant academic effort. The author sometimes laments a certain job of Shari`ah supervisory board and sometimes his style becomes sarcastic and rhetoric. His tear and jeer during his arguments come out of his sympathy with and attachment to this young industry of Islamic banking and finance and Islamic insurance or *takaful*. Especially his proposal of mutuality-based financial institution deserves serious consideration. This reviewer feels that there is need to bring out an Arabic version of this work, so that it could reach to a wider circle of Shari`ah scholars and practitioners of Islamic finance. Fortunately, the author is capable of doing it.

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