

The Revolution in Islamic Finance

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The development of Islamic banking simultaneously represents an expansion of the global financial system, a revival and re-adaptation of Shari`ah principles along a spectrum of cultures and polities, and a potential bridge across gaps that increasingly divide Muslims from one another and from other great civilizations. Islamic finance is a natural magnet for interdisciplinary and cross-cultural researchers. It stands at the intersections of law and economics and of religion and politics, both globally and nationally. In the fields of international and comparative law, it provides a particularly exciting laboratory for students of international regimes, legal and religious pluralism, and the cross-fertilization of Western and non-Western legal traditions.

Students of international law and politics will recognize the new regulatory architecture of Islamic finance as an international regime-in-the-making that is accepting direction from a more established yet still evolving global regime of banking regulators dominated by the industrialized nations of Europe and North America.¹ As these two regulatory systems interact, it will be intriguing to see how they influence one another. Islamic bankers are keen to win greater recognition and legitimacy in global financial circles, and they seem resigned to complying with the prevailing movements toward standardization, disclosure, and corporate governance. However, they also want to preserve distinctive religious values and identities, sparking constant debate over when convergence and harmonization might go too far. Non-Muslim bankers and regulators are increasingly attentive to such concerns, especially as "Shari`ah-compliant" arms of Western banks become powerful and innovative players in Islamic financial markets around the world. Both the global and the Islamic regulatory regimes have strong reasons to accommodate the other's sensitivities; compliance is

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¹ For comparative discussions of international regimes, see Arild Underdal and Oran R. Young, eds, *Regime Consequences: Methodological Challenges and Research Strategies* (Kluwer 2004); James N. Rosenau and Ernst-Otto Czempiel, eds, *Governance without Government: Order and Change in World Politics* (Cambridge 1992).

becoming a two-way street, and each side has a vital stake in the other's rule-making processes.

If the crux of successful international regimes is institutionalizing trust and learning, then hopefully global finance and Islamic finance can strengthen their mutual regard and use it as an ongoing basis for solving common problems. Because many of those problems are ethical and human rather than merely technical and professional, the shared values of monotheism might help to support a productive dialogue. Western bankers are well aware that their industry leaders have shifted strategies from deregulation to re-regulation due to a wave of ethical and leadership failures that threatened the stability and integrity of the global financial system. Some leaders of the financial services industry are calling for broad reforms that would promote a more just and humane variety of world capitalism.² Similarly, Islamic banking is still recovering from its own crisis, stemming from past scandals and from new fears of manipulation by terrorist groups. Its quest for transparency and uniform standards is also an effort to reset the moral compass that was supposed to guide Islamic finance all along.³

For students of legal and religious pluralism, Islamic finance exemplifies the Muslim world's continuing talent for mixing disparate traditions in an eclectic and dynamic synthesis. The theory and practice of Islamic economics supports more ambitious efforts to turn the Shari'ah into a living law that can help to shape social change for many generations. Today, as in the past, the Shari'ah blends holy scripture and oral traditions with multiple styles of human interpretation. It constantly interacts with non-religious law from several sources, particularly local custom, state legislation, and a wide array of Western imports.⁴ The rise of modern international law adds yet another factor to the equation, creating opportunities for a reinvigorated Shari'ah to influence developments far beyond Islam's historical heartlands.

Continued openness and flexibility in Islamic law are especially important as scholarly interest focuses on the problems of globalization and legal transplants. All cultures harbor suspicions that international law is the work of foreigners and that it clashes with some of their fundamental indigenous values. Adapting to international norms forces every society to re-examine its legal

² For a recent example of capitalist auto-criticism, see John C. Bogle, *The Battle for the Soul of Capitalism* (Yale 2005).

³ For critical overviews of the history of the Islamic financial services industry, see Timur Kuran, *Islam and Mammon: The Economic Predicaments of Islamism* (Princeton 2004); Ibrahim Warde, *Islamic Finance in the Global Economy* (Edinburgh 2001).

⁴ On the composite and dynamic nature of Islamic law, see Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, eds, *Islamic Legal Interpretation: Muffis and Their Fatwas* (Harvard 1996); Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago 1969).

traditions in a critical manner, leading to the frequent assertion that most “systems” of law are hybrids that constantly struggle to reconcile multiple inheritances and borrowings.⁵ From this perspective, the supposed incoherence of law in the Islamic world is a nearly universal reality that echoes the histories and contemporary predicaments of all societies. Seeing the Shari’ah and its tribulations not as an aberration of the “other,” but as a variation on our own condition nudges us a bit closer to constructive conversation between civilizations.⁶ This should be good news for liberal and cosmopolitan forces in every culture that refuse to allow fanatics and fundamentalists to dictate the global agenda.

Commercial interests from all religious backgrounds have a vested interest in holding the world together, and it is no surprise that global banking is emerging as an arena for cooperation between Muslim and Western business leaders even as their politicians and citizens seem to drift further apart. Western nations have many good reasons for encouraging the success of Islamic banking and smoothing its integration into a more stable global economy. Progress toward financial harmonization could pave the way for cooperation on other issues, including the far more contentious fields of politics and security.

Islamic finance will need all of the international assistance it can solicit because it is at a crossroads that will force the entire movement to reinvent itself. Five years from now, its landscape will be unrecognizable to the cluster of institutions and personalities that view themselves as today’s unassailable industry leaders. This Article examines mounting pressures that are driving the current revolution in Islamic finance. Islamic bankers must now adapt to simultaneous challenges on three fronts: integration with the global financial system; coordination with the leading international organizations of the Islamic world; and penetration of mass markets in dozens of countries with conflicting cultural, political, and economic conditions. To complicate matters, all of these audiences are moving targets, experiencing upheavals at least as profound as the metamorphosis of Islamic finance itself.

⁵ See, for example, H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* 356 (Oxford 2d ed 2004); Francis Snyder, *Global Economic Networks and Global Legal Pluralism* 7 (Eur U Inst 1999).

⁶ For examples of the comparative study of legal pluralism in the Islamic world, see Ihsan Yilmaz, *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan* (Ashgate 2005); Baudouin Dupret, Maurits Berger, and Laila al-Zwaini, eds, *Legal Pluralism in the Arab World* (Kluwer 1999).

I. INTEGRATION WITH THE GLOBAL FINANCIAL ORDER

The most urgent pressure on Islamic banks is the need to comply with the tighter regulatory provisions adopted by the Basel Committee on Banking Supervision of the Bank for International Settlements. The Basel Committee, created in 1974 by central bank governors of the Group of Ten nations, formulates broad supervisory standards and statements of best practice encouraging governments around the world to converge toward common approaches in banking regulation.⁷ The new Basel Capital Accord ("Basel II") contains a package of tougher guidelines for assessing and controlling financial risk by 2008. Basel II's "three pillars" require larger capital reserves, tighter central bank supervision, and greater public disclosure of risk factors to financial markets.⁸ Islamic banks have joined smaller Western financial institutions both in criticizing the new standards as favoring dominant mega-banks and in trying to negotiate special terms and later deadlines for implementation.

Islamic bankers realize that they have very little leverage in these negotiations because global regulators are determined to impose a measure of discipline on volatile markets in the wake of earlier scandals and failures. Several Western governments are also insisting that Islamic banks prove they have no connection with terrorists.⁹ Under these conditions, Islamic banks have no choice but to comply with Basel II. Such compliance is certain to encourage greater consolidation nationally and regionally as more innovative institutions swallow up competitors, particularly those lacking local political protection.

⁷ The Basel Committee now includes central banks from the G-10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States), and representatives from Luxembourg and Spain. It meets four times a year, usually at the Bank for International Settlements in Basel, where its twelve member permanent Secretariat is located. It is an informal policy forum with no founding treaty and no power to issue binding regulations, but it has developed into the global standard-setting agency for bank supervision. For an overview of the history and operations of the Basel Committee, see Bank for International Settlements, *About BIS*, available online at <<http://www.bis.org/about/>> (visited Jan 15, 2007).

⁸ See Bank for International Settlements, Basel Committee on Banking Supervision, *Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework* ¶ 4, available online at <<http://www.bis.org/publ/bcbs107.htm>> (visited Jan 15, 2007); David Keefe, *Bringing Shari'ah and Basel into Accord*, Global Risk Reg Newsletter, § 2 ¶ 10 (Jan 2004), available online at <<http://www.globalriskregulator.com/archive/January2004-16.html>> (visited Jan 15, 2007).

⁹ See, for example, Mahmoud Kassem and Anita Greil, *Islamic Banking Reputation Suffers In Wake of Sept. 11*, Dow Jones Intl News (Nov 5, 2001); John B. Taylor, Introductory Remarks by John B. Taylor, Undersecretary for Intl Affairs, US Treasury, at the Islamic Finance 101 Seminar, US Treasury Dept, Washington, DC (Apr 26, 2002), available online at <<http://www.ustreas.gov/press/releases/po3068.htm>> (visited Jan 15, 2007).

Many in the Islamic financial community view higher international banking standards not as a threat, but as an opportunity to strengthen the moral and ethical principles that inspired their movement in the first place. The founders of Islamic economics always insisted that they were creating a more just alternative to modern capitalism, not a mere imitation with religious window dressing.¹⁰ Their heirs are increasingly critical of would-be Islamic bankers who seem eager to play by Western rules and who claim to observe the Shari'ah's ban on lending money at interest while employing countless legal fictions and multiparty transactions that violate it in practice and spirit.¹¹

The most powerful Muslim indictment of today's Islamic banking is that it has become addicted to legal formalism and contractual subterfuge while losing sight of the higher goals and intentions (*maqasid*) that law and economics should promote.¹² They argue that Islam's core values abhor exploitation and extreme inequalities in wealth.¹³ Muslim banks should not merely fall in line with global capitalism; they should help to humanize it. When international regulators demand greater honesty and disclosure, genuine Islamic bankers should not just comply, they should *over-comply* because their religion holds them to a higher standard.¹⁴

Many commentators urge those in Islamic finance to add their voices to the chorus of Western reformers trying to build a new type of world capitalism that values social solidarity and egalitarianism. Several writers—Muslim and non-Muslim—have noted the common themes between Islamic economics and finance and certain well-established Western movements, including cooperative

¹⁰ M. Umer Chapra, *Mawlana Mawdudi's Contribution to Islamic Economics* 94 *Muslim World* 163, 163–180 (2004); Khurshid Ahmad and Zafar Ishaq Ansari, eds, *Islamic Perspectives: Studies in Honour of Mawlana Sayyid Abul A'la Mawdudi* 226 (Islamic Found 1979).

¹¹ See Mohammad Nejatullah Siddiqi, Shariah, *Economics and the Progress of Islamic Finance: The Role of Shariah Experts*, paper presented at the Seventh Harvard University Forum on Islamic Finance, Harvard Law School (Apr 21, 2006), available online at <http://www.siddiqi.com/mns/Role_of_Shariah_Experts.htm> (visited Jan 15, 2007); Mahmoud A. El-Gamal, "Interest" and the Paradox of Contemporary Islamic Law and Finance, 27 *Fordham Intl L J* 108, 108–09 (2004).

¹² For an excellent critique of legal formalism in Islamic finance, see discussion of "Rent-seeking Shari'ah-arbitrage" in Mahmoud A. El-Gamal, *Mutuality as an Antidote to Rent-seeking Shari'ah-arbitrage in Islamic Finance*, 3–4, 7–11 (Apr 2005), available online at <<http://www.nubank.com/islamic/Mutuality.pdf>> (visited Jan 15, 2007).

¹³ On the centrality of social justice in Islam, see Fazlur Rahman, *Major Themes of the Qur'an* (Minneapolis 1980); Fazlur Rahman, *Islam and Social Justice*, 1 *Pakistan Forum* 4–5, 9 (Oct–Nov 1970), available online at <<http://www.jstor.org/view/03157725/di010619/01p00057/0?frame=noframe&userID=ca773703@nju.edu.cn/01cce4405d00501b3ea91&dpi=3&config=jstor>> (visited Jan 15, 2007).

¹⁴ For a critique of the "malfunction" of Shari'ah financial advising that fails to interpret Islamic *maqasid* in light of current circumstances, see Siddiqi, Shariah, *Economics and the Progress of Islamic Finance* (cited in note 11).

societies, credit unions, socially-conscious investment funds, green parties, educational endowments, and progressive Christianity.¹⁵ In this vision, integrating Islamic banks into the global financial system can “Islamize” world capitalism at least as much as it Westernizes Muslim economic behavior.

II. COORDINATING WITH ISLAMIC INTERNATIONAL ORGANIZATIONS

The Organization of the Islamic Conference (“OIC”) is the preeminent international organization in the Muslim world—the so-called United Nations of Islam. The OIC and its specialized agencies are responsible for setting and monitoring industry-wide standards for Islamic financial institutions. The Islamic Financial Services Board (“IFSB”), established in 2002, and the Accounting and Auditing Organization for Islamic Financial Institutions (“AAOIFI”), founded in 1991, are the key forums where central bankers, religious scholars, and Islamic banks negotiate uniform regulations and guidelines for Islamic finance in all of the OIC’s fifty-seven member states. Both the IFSB and the AAOIFI were established with the assistance of the Islamic Development Bank, the OIC’s principle financial organ.¹⁶

Their task is daunting. They must not only ensure compliance with the new global regime of Basel II, they must also coax religious advisors from divergent backgrounds to approve uniform rules and procedures that are compatible with the Shari’ah. “Basel compliance” is relatively straightforward compared to “Shari’ah compliance” because central bankers and national governments have the power and motivation to phase-in global regulations, but they seldom have either the religious authority or the political support needed to interpret and harmonize specialized and hotly contested matters of Islamic law.

¹⁵ See Rodney Shakespeare, *An Islamic Money Supply as the Means to Integration*, paper presented at the Seventh Harvard University Forum on Islamic Finance, Harvard Law School (Apr 23, 2006), available online at <<http://www.globaljusticemovement.net/admin/articles.htm>> under *Integrating Islamic Finance in the Mainstream: Regulation, Standardization, and Transparency* (visited Jan 15, 2007); Bill Maurer, *Mutual Life, Limited: Islamic Banking, Alternative Currencies, Lateral Reason* (Princeton 2005); G. Jeffrey MacDonald, *For Investors with a Conscience, Options Grow*, *Christian Sci Monitor* (Sep 19, 2005).

¹⁶ See Organization of the Islamic Conference, *OIC in Brief*, available online at <<http://www.oic-oci.org>> (visited Jan 15, 2007); Islamic Financial Services Board, *Information on the Islamic Financial Board (IFSB)*, available online at <<http://www.ifsb.org/index.php?ch=2&pg=1&ac=1>> (visited Jan 15, 2007); Accounting and Auditing Organization for Islamic Financial Institutions, *Organization Overview*, available online at <<http://www.aoifi.com>> (visited Jan 15, 2007); Islamic Development Bank, *IDB’s Co-Operation with Islamic Banks and National Development Financing Institutions*, available online at <http://www.isdb.org/english_docs/idb_home/cooperations_IslamicBanks.htm> (visited Jan 15, 2007).

Filling this power vacuum has created a bonanza for the “financial *ulama*”—a narrow class of Islamic scholars with a credible claim to knowledge of both classical Shari`ah and modern business practices. All institutions that provide or regulate Islamic financial services have a Shari`ah advisory board that reviews products and policies to ensure that they do not violate religious norms. Each institution is free to choose its own religious advisors and they, in turn, may refer to any sources and principles they regard as appropriate. Many *ulama* serve on multiple boards simultaneously. The same religious scholars frequently advise competing businesses, government regulators, private entrepreneurs, Muslim-run companies in their own regions, and non-Muslim-owned multinational corporations headquartered in Europe, North America, and the Far East.¹⁷ The financial *ulama* often serve their clients not only as outside auditors, but also as permanent consultants or even as regular employees. These inherent conflicts of interest and temptations for self-dealing compromise advisors and clients alike. The OIC is racing to develop common ethical standards for Shari`ah advisory boards and to set up training programs that can staff these boards with certified experts in Islamic finance.¹⁸ In time, these initiatives should mitigate the chaos and cynicism surrounding advisory boards by improving competence and honesty, but they will not stem the widening divergence of scholarly and public opinion on basic questions of doctrine and policy.

The OIC faces a dilemma in trying to promote uniform practices in Islamic financial centers that now span every continent and culture—the same regional rivalries that divide the Islamic business world also drive the struggle for power within the OIC itself. Doctrinal disputes over the suitability of new financial products frequently reflect economic competition between geographic and ethnic groups, particularly between Arabs and non-Arabs, between the Persian Gulf and Southeast Asia, and between majority-Muslim nations and the burgeoning Muslim diasporas in Europe and the Americas.

The OIC is no longer a preserve of the Arabian oil monarchies that created and funded it during the 1970s. Today it more accurately represents the Islamic world as a whole, where about 80 percent of the population is non-Arab. Three regional factions have worked out an explicit power-sharing formula in which

¹⁷ Concerning the financial and political connections of the *ulama* in several countries, see generally Clement M. Henry and Rodney Wilson, eds, *The Politics of Islamic Finance* (Edinburgh 2004).

¹⁸ See Rifaat Ahmed Abdel Karim, Address at the Islamic Financial Services Board 3d Summit on Aligning the Architecture of Islamic Finance to the Evolving Industry Needs (May 17–18, 2006), available online at <<http://www.ifsb.org/index.php?ch=5&pg=21&ac=45>> (visited Jan 15, 2007).

OIC leadership rotates among Arab, Asian, and African blocks, and each faction presents separate reports and recommendations at plenary sessions.¹⁹

Similarly, the world of Islamic finance is becoming more pluralistic every day. Older centers such as Kuwait and Bahrain face innovative rivals in Kuala Lumpur and Singapore, Istanbul and Karachi, London and Geneva, and Los Angeles and Toronto. OIC regulators can go only so far in pressing for financial harmonization and uniformity before dissident groups decide to go their own way. Every nascent international regime has to be aware of its own limits,²⁰ and the OIC's Islamic finance agencies are no exception. Insisting on compliance with controversial standards could destroy the Islamic finance regime while aggravating the broader power struggle that is straining the OIC as a whole.

III. PENETRATING MASS MARKETS

While the global expansion of Islamic finance presents many specific challenges, the most important challenge for Islamic bankers is to win wide acceptance in their own societies. Islamic finance is far more successful in spreading laterally across borders and cultures than in deepening its roots to serve the daily needs of ordinary savers and consumers. Although the genesis of Islamic banking was recycling petrodollars for conservative Arabian monarchies and millionaires, its future lies in more cosmopolitan societies where rising middle classes are creating mass markets for home and auto loans, small business financing, educational and retirement savings, and individual investing.

New demand for Islamic financial services is springing from thousands of local communities worldwide, forcing bankers, regulators, and religious leaders to improvise solutions that best suit their unique circumstances.²¹ Islamic finance has always been a fluid blend of business, politics, and religion, adapting to cultural differences and changing tastes. This tradition of flexibility and ingenuity will become increasingly indispensable as Islamic finance grows to reflect the diversity and vitality of Muslims around the globe.

If Islamic finance succeeds in tapping mass markets, its transformation will be both profound and unpredictable. Most of its potential customers have never seen a survey questionnaire or focus group. Many are willing to heed the advice

¹⁹ Robert R. Bianchi, *Guests of God: Pilgrimage and Politics in the Islamic World* 46–47 (Oxford 2004).

²⁰ Concerning the compliance and enforcement dilemmas of international regimes, see Andreas Hasenclever, Peter Mayer, and Volker Rittberger, *Theories of International Regimes* (Cambridge 1997); Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* 9–17 (Harvard 1995).

²¹ See Shirley Chiu, Robin Newberger, and Anna Paulson, *Islamic Finance in the United States: A Small but Growing Industry*, Chicago Fed Letter 2 (May 2005); Sohail Jaffer, ed, *Islamic Retail Banking and Finance: Global Challenges and Opportunities* (Euromoney 2005).

of local *ulama* about the Islamic credentials of specific products and institutions, but younger, educated Muslims often prefer to make their own judgments, particularly when they think that scholarly opinion is divided, poorly informed, and tainted by self-interest.

The revolution in Islamic finance will be even more dramatic if the industry makes good on its hopes of appealing to non-Muslims. Islamic bankers who are spearheading the drive toward consumer finance are explicitly marketing their services to non-Muslims in pluralistic regions such as South and Southeast Asia, Africa, Europe, and America. Inevitably, the already porous lines between Islamic and conventional banking will be redrawn countless times in many different environments.²²

Given this pervasive uncertainty, Islamic bankers have many opportunities to shape evolving norms and practices instead of merely conforming to conditions imposed by regulators, politicians, and clients. The very youth and fragmentation of Islamic finance could become assets if the Islamic finance community encourages industry flexibility while negotiating new international regimes and alliances with both Muslims and non-Muslims.

IV. ISLAMIC FINANCE AND THE DEMOCRATIZATION OF RELIGIOUS THOUGHT

Muslims today are thinking for themselves in all matters of religion, particularly when they intersect with novel questions of economics, politics, and ethics. The world of Islamic finance is one of several laboratories where independent-minded Muslims are redefining the social implications of their faith, heeding their own consciences more than old-fashioned preachers and authoritarian governments. Most people are highly skeptical of efforts to discover which modern contracts are permitted and prohibited simply by looking to tradition. *Ulama* and self-anointed experts who claim such skills strain credulity.

Sacred texts and classical authorities can provide initial principles and helpful analogies, but they are silent on most of the critical choices of public policy and personal behavior facing contemporary world citizens. The Shari`ah has always been a predominantly human construction—multiple layers of interpretation and inconsistent applications that defy codification and monism. Educated Muslims in every walk of life are critically re-examining traditional

²² Owen Matthews, *How the West Came to Run Islamic Banks*, Newsweek E30 (Oct 31, 2005).

teachings in light of modern science and local conditions, demolishing what little remains of the *ulama's* supposed monopoly on interpretive authority.²³

The rapid democratization of Muslim thought will probably frustrate the OIC's campaign for uniformity and standardization in Islamic finance. The common law roots of the Shari`ah have made pluralism and change inevitable under any conditions, and those qualities will become even more valued as Islam achieves a truly universal personality. OIC technocrats would be wise to wait and watch as a series of regional mass markets develop varying techniques for balancing the special mix of ethical and economic risks that permeate every aspect of Islamic finance. For harmonization to be successful it will have to be negotiated by regional market leaders and central banks, not imposed by a fledgling international agency.

The most difficult decisions for potential clients of Islamic banks are personal and subjective calculations of their level of comfort with uncertainty, both spiritual and financial. Each person is responsible for making a good-faith judgment in the face of divided authority and imperfect information. Every conscience must weigh the likelihood of error and its consequences for worldly fortunes as well as immortal souls.

The current range of religious opinion on Islamic finance provides many alternatives for people with varying tolerance for spiritual risk. The general consensus upholds the formal ban on interest despite frequent assertions that the Qur'an prohibits usury and exploitation rather than interest per se. There is also widespread agreement that simple loans are disfavored transactions that should be restructured as sales, leases, partnerships, or some combination of all three.²⁴

All things being equal, partnerships are preferred because they are seen as promoting reciprocity and solidarity as well as entrepreneurship. Indeed, many regard Islamic profit- and loss-sharing agreements as precursors of modern venture capitalism. Sales are least preferred because historically they were used to disguise interest-bearing loans as markups and installment payments. Sales are still the most common type of Islamic financing, but Shari`ah advisory boards are increasingly adopting stricter rules to guard against sham transactions.²⁵

²³ Mohammed Arkoun, *The Unthought in Contemporary Islamic Thought* (Saqi 2002); see, for example, Alhaji Adeleke Dirisu Ajjola, *The Problem of Ulama*, in Charles Kurzman, ed, *Liberal Islam: A Sourcebook* 239 (Oxford 1998).

²⁴ See generally El-Gamal, 27 *Fordham Intl L J* at 108 (cited in note 11); Abdulkader Thomas, Stella Cox, and Bryan Kraty, eds, *Structuring Islamic Finance Transactions* (Euromoney 2005) (emphasis on chapters 3–5 on *mudaraba* and *musbaraka*, on *murabaha*, and on *ijarah*).

²⁵ El-Gamal, 27 *Fordham Intl L J* at 125–34 (cited in note 11); Simon Archer and Rifaat Ahmed Abdel Karim, *Islamic Finance: Innovation and Growth* (Euromoney 2002).

Leases are usually seen as better than sales but not as meritorious as partnerships. Muslim and Western financial engineers have created a flock of leasing contracts that mimic nearly every product of conventional banking. Multinational banking consortia use leases as the keystones of many government-sponsored infrastructure projects, especially when their revenue streams and underlying assets can be securitized and sold in secondary markets.²⁶

For a time, it appeared that disagreements over the more complex leasing projects would divide conservative Arabian and innovative Asian countries into irreconcilable factions of Islamic banking. The core difference between their views concerned the propriety of selling debt instruments at discounts—a practice that traditionalist *ulama* view as disguised interest and that most financial professionals regard as a precondition for creating secondary markets and liquidity. In the last few years, however, there has been a remarkable rapprochement between these camps, and commentators on each side have adopted intermediate positions that once seemed inconceivable. For example, Malaysian writers acknowledge the need to defer to Persian Gulf sensibilities in order to attract more foreign investment while Saudi scholars are openly advocating the creation of futures and derivatives markets that would be Shari`ah-compliant.²⁷

This cross-fertilization and mutual learning suggests that the current pressure for OIC standardization of Shari`ah norms is premature. Islamic bankers and national regulators are doing precisely what they need to do—listening to their markets and to one another, and altering their repertoire of services accordingly. The future of Islamic finance rests not with an international technocracy or a central committee of handpicked religious advisors, but with millions of Muslim and non-Muslim clients who will examine their consciences and pocketbooks in voting for a range of competing approaches to their constantly changing needs and identities.

Increasing competition will force the new Islamic finance to become more consolidated, but also more diversified to suit regional and cultural tastes. The spread of the Internet and electronic banking will empower clients to mix and

²⁶ For examples of complex leasing arrangements that have been deemed Shari`ah-compliant, see Mohammed Obaidullah, *Islamic Financial Services* 79–88 (King Abdulaziz U 2001), available online at <<http://islamiccenter.kau.edu.sa/english/publications/Obaidullah/ifs/ifs.html>> (visited Jan 15, 2007); Benjamin C. Esty, *The Equate Project: An Introduction to Islamic Project Finance*, 5 J Proj Fin 7 (Winter 2000), available online at <<http://www.financeinislam.com/article/7/1/333>> (visited Jan 15, 2007).

²⁷ Abdul Rahim Al-Saati, *Shar'ia Compatible Futures*, 15 J King Abdulaziz U: Islamic Econ 3 (2002); Saiful Azhar Rosly and Mahmood M. Sanusi, *The Application of Bay' al-'Inah and Bay' al-Dayn in Malaysian Islamic Bonds: An Islamic Analysis*, 1 Intl J Islamic Fin Serv 1 (Jul–Sept 1999), available online at <<http://islamic-finance.net/journals/journal2/art1.pdf>> (visited Jan 15, 2007).

match services from many institutions regardless of location and investment style. Rising middle classes in Muslim societies, overseas workers, and diaspora communities will create global financial networks criss-crossing nations, sects, and languages. The growing participation of non-Muslims as managers, partners, and clients will spark recurrent debates about the core meaning and purpose of Islamic finance and its contributions to humanity. And these debates will bring Muslims back to the same questions they have been pondering since the birth of Islam: How do they forge a universal identity inspired by eternal ideals while adapting to new realities and ancient divisions?