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# **Governing Islamic finance: territory, agency and the making of cosmopolitan financial geographies**

## **Abstract**

This article examines the governance of Islamic finance in two non-Muslim majority sites of its expansion, the United States and the United Kingdom. The article reports on empirical work undertaken in the United States and United Kingdom and demonstrates how an alternative form of economic rationality is being constructed and practiced across diverse socio-spatial contexts to produce what we term cosmopolitan financial geographies. Second, building from recent debates about territoriality, embeddedness and relationality in economic geography, the article responds to calls for a more complex treatment of agency. We develop the concept of ‘cosmopolitan legalities’ to capture the dynamic multi-territorial, relational governance of IBF that melds western and Islamic financial rules and practices through the embodied religious authority of *Shari’a* scholars. These complex legalities demonstrate the significance of postcolonial and religious socio-spatial contexts in the formation of financial markets suggestive of an evolving postcolonial political economy of ‘south-driven’ alliances in a financial landscape dominated by neoliberal rationalities and subjectivities. Further, we illustrate how the development of IBF has, at the same time, prompted regulatory shifts in the United States and United Kingdom, demonstrating the ongoing co-constitution of Islamic and interest-based financial markets. We conclude by offering several implications of our analysis for the study of economic geography more broadly.

*Key words: Islamic Finance, Governance, Cosmopolitan Legalities, Embeddedness.*

## Introduction

In the wake of the financial crisis of 2007, Adair Turner, Chairman of the UK's Financial Services Authority (FSA), characterized much of the financial activity in the City of London as "socially useless" (Inman 2009). The crisis has reinvigorated interest in financial institutions and innovations that offer an alternative to neoliberal-financialization-as-usual.<sup>1</sup> Islamic banking and finance (IBF) presents itself as one such candidate for consideration (Al-Omar and Abdel-Haq 1996; Vogel and Hayes 1998; Lewis and Algaoud 2001) and has demonstrated some resilience through the current economic crisis (Shayesteh 2009; International Financial Services London 2010). It has even had its principles endorsed recently by *L'Osservatore Romano*, the Vatican newspaper (*The Muslim Observer* 2009). Although IBF accounts for less than 1 percent of global financial assets (*The Banker*, 2007) there were just under US\$1 trillion in *Shari'a* compliant assets at the end of 2008 (IFSL 2010) and the industry is reported to be growing at 15 percent per annum even through the global economic downturn (Dawson and Irish 2009). IBF involves a series of prohibitions on *Riba* (translated as 'interest' or 'usury'), *Maysir* or *Qimar* (gambling and speculation), *Gharar* (excessive uncertainty), and a number of other activities deemed *haram* (including the consumption of alcohol, pork, and prostitution). More broadly, *Shari'a* law places a strong emphasis on justice, the sharing of risks and rewards, and fairness and transparency in financial contracts and proceedings.

This article examines the governance of IBF in retail Islamic financial institutions (IFIs) in two non-Muslim majority sites of its expansion, the United States (U.S.) and the United Kingdom (UK). By 'governance', we refer to the way in which a variety of actors mobilize and adapt to territorially-inscribed laws, policies, regulations, and standards (what we describe as 'legalities') in order to shape, enable, and circumscribe particular forms of economic activity. Relatively little attention has been paid to IBF's governance (but see

Warde 2000; Henry and Wilson 2004; Maurer 2006, 2010; Rethel 2011) and aside from Maurer's (2006) nationally-oriented engagement with Islamic home finance in the United States, virtually no academic studies have examined the governance of IBF in 'western' countries.

Beyond developing literatures on IBF, however, we use the governance of IBF as a vantage point from which to address broader debates in economic geography concerning territory, embeddedness and relationality and their role in the formation of a variegated financial landscape or what we term cosmopolitan financial geographies. Our analysis makes two contributions. First, we demonstrate how an alternative form of economic rationality is being constructed and practiced across diverse socio-spatial contexts to produce different financial practices. In so doing, we demonstrate the constitutive role of territory in constructing multi-layered legalities that govern IBF markets in the United States and the United Kingdom (Peck and Theodore 2007, Dixon 2011). Further, we illustrate how the development of IBF has, at the same time, prompted regulatory shifts in the United States and United Kingdom, demonstrating the ongoing co-constitution of Islamic and interest-based financial markets.

Second, building from recent debates about territoriality, embeddedness, relationality and agency in economic geography (Peck 2005; Jones 2008; Hall et al. 2009; Larner and Laurie, 2010), we respond to calls for a more complex treatment of agency better able to grasp "[T]he actual practices of social interaction; decision-making, deal brokering, personal relationships and so on" (Jones 2008a, 76). In this respect, we stress that IBF governance relies overwhelmingly on the embodied religious authority and practices of a small group of *Shari'a* scholars who engage in *ijtihad* (literally 'effort') to interpret the *Qu'ran* and adjudicate whether or not particular financial contracts are 'Islamic' in different historical-geographical contexts.

Third, drawing on recent literatures on cosmopolitanism, we argue that *Shari'a* scholars are both elite and subaltern cosmopolitans, and that their agency produces what we term -- adapting DeSousa Santos and Rodriguez-Garavito (2005) -- ‘cosmopolitan legalities’. These legalities and the dynamic multi-territorial, governance of IBF they produce, signal the entwined postcolonial and religious socio-spatial contexts of IBF suggestive of an evolving postcolonial political economy of south-driven alliances in a financial landscape otherwise dominated by neoliberal rationalities and subjectivities. They also illustrate, to use Peck’s language (2005, 162), the need for “context to be pulled out of the shadows and theorized more explicitly” in demonstrating the spatial constitution of agency. In our empirical analysis of IBF we move socio-spatial context from backdrop to centre stage and demonstrate the constitutive intersections of territorial context and agency to create particular forms of financial governance.

The article proceeds as follows. First we review some of the key theoretical issues involved in theorizing the globalizing nature of economic activity before developing our treatment of agency and our conceptualization of cosmopolitan legalities. We then report on empirical work undertaken in the United States and United Kingdom that provides two ‘cuts’ through the constitution of IBF in the two countries. The first cut considers the significance of territorialized legalities governing IBF in the United States and United Kingdom, the second explores the intersection of these legalities and the embodied knowledge of *Shari'a* scholars enacted through territory which together, we argue, produce the cosmopolitan legalities that govern IBF. By way of conclusion, we suggest the implications of our analysis for the governance of IBF and for economic geography more widely.

### **Beyond embeddedness: cosmopolitan financial geographies**

*Embeddedness, territoriality and relationality*

At the heart of debates in economic geography is the relationship between space, place, structures, networks, and agency. We can begin generally, by recognizing the limitations of, on one hand, either overly territorial accounts of economic geographies (where territories are assumed to be fixed or non-porous), or on the other, overly relational, agentic and network-centered analyses that ignore territorial processes (e.g. Sunley, 2008). Rather, we find it wise to acknowledge what has been called the dialectic of ‘fixity and flow’ (Harvey 1982), ‘socio-territoriality’ (Samers and Pollard 2010), or the term we use in this paper: ‘the dialectic of territoriality and relationality’ (McCann and Ward 2010).

Another more specific means of understanding economic geographies we describe here is to deploy Granovetter’s concept of ‘embeddedness’ (1985), which has been wielded by economic geographers and sociologists alike to describe the cultural, institutional, political, and social determinants of economic activity. Yet embeddedness has come under sustained critique, precisely because of the debates about relationality and networks, among other influences (for example Krippner 2001; Krippner et al. 2004; Hess 2004; Peck 2005; Yeung 2005; Jones 2008a). In a recent contribution, Jones (2008a) summarizes three general limitations of the embeddedness concept. First, although Polanyi’s notion of embeddedness sought to undermine the distinction between ‘economic’ and ‘non economic’ (Krippner 2001), Granovetter’s (1985) narrower formulation in essence, “led scholars to layer a social economy on top of a pre-social and untheorised market” (Krippner 2001, 797), naturalizing a distinction between the ‘social’ and ‘economic’ and, paradoxically, relegating markets to an analytical space “somehow outside, beyond, or external to the various “more embedded”, “more social”, or “more institutionalized” spheres of economic life” (Peck 2005,145). A second concern identified by Jones (2008a) centers on the long-standing anxiety in economic geography around an epistemology of territory and scale, although his critique is broader than the usual concerns about ‘methodological nationalism’ (e.g. Beck 2000; Peck and Theodore

2007), and highlights an unchallenged spatial epistemology implicit in the concept of embeddedness which appears to rely on the importance of local institutions and cultures at the expense of trans-local networks (see also Hess 2004; Yeung 2005).

In what follows, however, we respond to a third critique of embeddedness which centers on its failure to “...capture the role of actors and agents, and of power relations in the global economy” (Jones 2008a, 75).<sup>2</sup> Specifically, Jones (2008a, 75) argues that,

“The implicit epistemological assumptions in this [embeddedness] approach are that explanation of economic action can and should be located with mid-level concepts (firms, institutional environments, etc.), and that the more important form of agency resides in structures and collectives in society (such as firms), rather than being the product of individuals.”

Drawing on Allen’s (2003) ‘power as effect’, Jones (2008a, 76) argues that there is “too much insensitivity to the degree of complexity of associations between different actors and agents in the global economy”, rendering “largely invisible the form of power relations that are important to understanding global economic outcomes” (*ibid*). Jones’ argument exemplifies the significance of poststructuralist perspectives in theorizations of the geography of economic activity. Such literatures focus on the assembling of calculative practices, rationalities and spatial imaginaries that configure political economic outcomes (e.g. Callon 1998; Mitchell 2002; Ong and Collier 2005). The challenge, however, is to understand these configurations without losing sight of how uneven power relations are constituted and mediated over time and space (Allen 2005; Peck 2005). In what follows we focus on these power relations between actors and, in so doing, draw attention to some largely unexamined agents in the form of *Shari’a* scholars (but see Bassens, Derudder and Witlox 2011) who are rather different from the usual suspects that populate financial geographies, for example investment bankers (Hall and Appleyard 2009). *Shari’a* scholars also seem to be

irreplaceable in the formation and governance of IBF markets. Rather than viewing power relations as properties possessed by these agents, however, we demonstrate the socio-spatial *constitution* and practice of such power relations by revealing some of the shifting articulations and co-constitution of territorialized legalities and embodied religious authority that produce the cosmopolitan legalities that govern IBF.

Having sketched the general dialectic of territoriality and relationality that frames this paper, along with a critical assessment of the concept of embeddedness, we move now to a more involved discussion of agency by conceptualizing *Shari'a* scholars as 'elite subaltern cosmopolitans'. This analytical strategy moves us beyond the economic/social dichotomy of embeddedness debates to demonstrate the constitutive significance of the territorialized legalities that *Shari'a* scholars navigate, mobilize, and ultimately transform. In essence, we conceptualize IBF governance through the construction of what we call cosmopolitan legalities.

#### *Elite-subaltern cosmopolitans: the agency of Shari'a scholars*

It is difficult to overstate the importance of *Shari'a* scholars to the operation of IBF. In the discussion that follows, we develop a conceptualization of *Shari'a* scholars as economic actors with distinctive features; first, their agency is uniquely embodied and second, that they are cosmopolitan courtesy of their particular contexts, locations, and practices. Before moving to these two distinctive features, let us briefly outline the significance of *Shari'a* scholars to IBF.

All Islamic banks and other financial institutions offering IBF products are governed by *Shari'a* Supervisory Boards (SSBs) comprising one or more *Shari'a* scholars.<sup>3</sup> Typical duties for SSBs include considering 'concept papers' from banks outlining new or amended IBF products and issuing fatwas pronouncing their compliance (or not) with *Shari'a*



principles. SSBs also undertake an annual audit of bank activities and funds (in addition to conventional financial audits) to ensure that a bank is adhering to a range of Islamic financial filters<sup>4</sup> (Maurer, 2005). Siddiqi (2006, n.p) suggests that *Shari'a* scholars are crucial to the legitimacy of IBF because,

“[F]or the Muslim masses under colonial rule, western financial institutions were an extension of colonialism, an instrument of exploitation like other colonial institutions. Introducing banks and insurance companies in Muslim societies was, therefore, always suspect as the history of nineteenth century shows. Government officials and businessmen with a vested interest would have never succeeded in selling these institutions to the people.”

This suggests the anti-colonial significance of *Shari'a* scholars, but their legitimacy involves a specific form of embodiment as well. Feminist theorists have demonstrated the importance of embodied knowledges and performances, using embodiment as a term that captures a sense of how economic activity is “fluid, becoming, and performed” (McDowell 1999:39). We argue -- and demonstrate through our empirical work -- that IBF ideas and practices are transferred in embodied forms, and that this has significant implications for how IBF is being both globalized and governed. Moreover, *Shari'a* scholars do not simply embody, perform and mobilize Islamic values and expertise, but also wield formidable and often unquestionable religious authority measured by their ability “to modify, in a deep and lasting fashion, the practice and world-view of lay people” (Bourdieu 1987, 127). *Shari'a* scholars working in IBF are an especially select group, combining as they do specialized knowledge of the *Qu'ran*, with training in *fiqh al-muamalat* (Islamic commercial jurisprudence), financial and commercial law and, increasingly, English language skills. *Shari'a* scholars are trained through educational pathways (e.g. Islamic-oriented universities in Malaysia or Pakistan) that are substantially different from other financial agents such as western educated

investment bankers. While other research on financial elites, for example by Godechot (2008), has argued that elites achieve their status through their role within the firm, *Shari'a* scholars' status emanates from beyond the firm; it is constructed through their religious status, rather than their western educational credentials or their employment by any particular financial institution. It is this particular form of embodiment which we demonstrate in the second of our empirical sections.

Further, we argue that *Shari'a* scholars are cosmopolitan actors. At a time when at least Anglophone economic geography is slowly confronting its parochialisms (Pollard and Samers, 2007; Pollard et al. 2009; Vira and James 2011), we conceive of *Shari'a* scholars as cosmopolitans, global citizens able to think and feel 'beyond the nation' (Vertovec and Cohen 2002), spreading Islamic financial practices across borders. While cosmopolitanism is certainly a contested term (for a critical review of this literature, see Baillie-Smith and Laurie 2011), the introduction of cosmopolitanism to our analysis is useful in three senses. First, it implies a 'global citizenship', which in an Islamic sense would mean the *umma* (a community of believers). Second, it suggests an openness to differences and a willingness to engage with the 'other', which is reflected in *Shari'a* scholars' 'global work' (Jones 2008b) of articulating and navigating difference through transnational networks. Third, the concept of cosmopolitanism provides us with a framework for inserting particular religious practices and strategies into our understanding of agency across borders.

Although much discourse on cosmopolitanism is Eurocentric and elitist, more recent work on subaltern cosmopolitanisms (Kothari 2008; Baillie-Smith and Jenkins 2011) foregrounds the neglected experiences of marginalized (or erased) agents. Subaltern cosmopolitanism captures "practices of thinking, border crossing, and connecting that are transgressive of the established order" (Gidwani 2006, 19). This resonates both with the way in which practices of IBF may challenge western financial knowledges (Pollard and Samers

2007) and the reality that most analyses of international financial architectures center on the IMF-Wall Street-US Treasury complex (e.g. Soedeberg 2004; Abdelal 2007). Yet *Shari'a* scholars also confound dualistic notions of subaltern and elite cosmopolitanism in that they also, and at the same time, occupy exalted positions in IBF circles and in wider Islamic society. Indeed, *Shari'a* scholars are substantially different from the usual people cited in the literature on subaltern cosmopolitans, for example, grassroots development activists who evolve into indigenous entrepreneurs or strategic brokers that counter neo-liberal practices (Larner and Craig 2005). Therefore, we argue that *Shari'a* scholars represent elite-subaltern cosmopolitans in that they are an elite group but also subaltern in the sense of drawing upon geo-historical experiences and knowledges from the south and mobilizing wider geographies of faith that shape the governance of financial markets and the formation of Islamic financial consumers. As elite, subaltern cosmopolitans their agency also testifies to the significant relationship between territorial context and religious practices in the governance of financial markets.

*The production of cosmopolitan legalities: connecting territory and cosmopolitan agents*

We draw upon legal geographers, sociologists of law and legal scholars, to conceive of law (or policies, regulations, and even standards) not as fixed or static, but rather as 'legality' (Edelman and Stryker 2005, 530). 'Legality' denotes a broader focus not just on specific 'rules on the books' but also their context, specifically law in action (the behavior of various legal actors), legal consciousness (the experience and understanding of law) and legal culture (common histories, traditions and outlooks of law). Thus, for all our emphasis on the agency of *Shari'a* scholars, we insist that national and other territorially-inscribed forms of governance (manifest in laws, policies, regulations and standards -- what again we refer to as legalities), remain central to understanding the governance and geographies of financial

globalization in general, and IBF in particular. This is because such legalities create barriers to, or at least re-shape any ostensibly frictionless movement of financial practices and are part of what we term the ‘jurisdictional stickiness of territory’. Edelman and Stryker (2005) do not stress a spatialized conception of legality, yet we maintain that legalities are both rooted in and transcend particular socio-spatial contexts, consistent with the relational thinking outlined earlier and also with literatures in international law and the spaces of international law (see for example Jeffrey 2009; Picker 2011). Therefore we argue that the agency of *Shari’a* scholars combines and re-shapes international, national and sub-national legalities to produce ‘cosmopolitan legalities’. These multi-layered legalities muddy long held assumptions about the alignment of national sovereignty and judicial authority or what Griffiths (1986,3) terms ‘legal centralism’ that asserts that law is law of the state, “uniform for all persons, exclusive of all other law, and administered by a single set of state institutions” (see also Delaney 2001).

This plural, relational conception of legality is important for our analysis of the intersection of agency and territorialized legalities. De Sousa Santos and Garavito (2005, 5) use the term “subaltern cosmopolitan legality” to denote “a mode of socio-legal theory and practice suitable to comprehend and further the mode of political thought and action embodied by counter-hegemonic globalization”. We have conceptualized *Shari’a* scholars as elite and subaltern as only they have the status and authority to produce and reproduce complex, hybrid and shifting cosmopolitan legalities. These cosmopolitan legalities allow IBF contracts to ‘work’ in contexts where Islamic law is not dominant, in this case the United States and the United Kingdom. In the subsequent empirical discussion, and echoing the dialectics of relationality and territoriality, we demonstrate our conception of cosmopolitan legalities to signal the relationship between territory on one hand and the embodied knowledges of a unique group of agents on the other.

## **Methodology**

In what follows we report on British Academy funded research<sup>5</sup> undertaken during 2006-2008. Our multi-method research comprised three components; semi-structured interviews with 19 of the most senior practitioners and consultants in Islamic banks, financial institutions and regulatory agencies in the United States and United Kingdom; collation of secondary material from publically available government documents, industry-specific websites and newsletters and popular media sources; and an analysis (from web-sources) of the scholars working on all SSBs at institutions in the United States and United Kingdom. We identified individuals for interview from key reports, existing contact networks and referral from other interviewees. All interviewees were guaranteed anonymity. Interviewees were asked about their career backgrounds, their role in IBF markets, key regulatory issues and the challenges of operationalizing IBF. They were also asked a series of questions about international standard setting in IBF markets, the relationship between these standards and their institution/niche/product, and their understanding and experiences of working with *Shari'a* scholars. Eighteen of the interviews were face-to-face and one was conducted by telephone. All interviews lasted between 1-3.5 hours and yielded transcripts that are drawn upon here. We collected the data on SSBs in August 2008 on the basis of a number of websites and individual bank listings.<sup>6</sup> In the following analysis, we present our discussion initially through a 'national lens' before illustrating some of the sub-national and supra-state governance of IBF. This logic reflects the territoriality of legalities which we later articulate with our analysis of *Shari'a* scholars.

## **Governing IBF, the first cut: territorialized legalities in the United States and United Kingdom**

### *The United States*

IBF in the United States is less developed than in the United Kingdom in terms of the number of IFIs and financial assets, (see Table 1) although the number of IFIs continued to expand during the 2000s (Shayesteh 2009). The governance of IBF in the United States is a fragmented affair and IFIs wishing to conduct business across state lines must be chartered through numerous Federal, regional (or quasi-federal) and state banking regulators.

[Insert Table 1]

Depending on the particular type of financial activity, the Federal dimension of governance involves the United States Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation, the Internal Revenue Service, the Securities Exchange Commission, the relevant regional branches of the Federal Reserve, the relevant state banking departments, and often other state agencies. The United Bank of Kuwait's demand to introduce Islamic home financing (more popularly understood as 'Islamic mortgages') in the United States in the 1990s prompted the OCC to produce two 'interpretive letters' (in 1997 Letter 806 and in 1999 Letter 867) that approved an *ijara*-type mortgage (a 'residential net lease-to-own home finance product' in OCC parlance) and *murabaha* contracts in commercial and retail banking, including Islamic home finance (see Table 2). Following Maurer (2006), these interpretive letters can be viewed as the U.S. government's version of *ijtihad*. With this precedent, the OCC could quickly approve products offered by HSBC's new 'Islamic window', *Amanah*, which hastened the development of IBF in the US. Two years after the OCC ruling, the Financial Services and Modernization Act of 1999 (FSMA) eliminated the 1933 Glass-Steagall requirement that banks must be either investment, commercial or insurance-related banks, but not all three. Islamic banks typically provide all of these services and so the FSMA inadvertently eliminated another obstacle to

the development of IBF although a free-standing, wholly Islamic bank still does not exist in the United States.

[Insert Table 2]

The events of September 11, 2001 (hereinafter ‘9/11’), the war on ‘terrorist finance’, the forced, often arbitrary closure of many IFIs in the United States and a palpable Islamophobia (de Goede 2003) did not deter the U.S. Treasury (in conjunction with the Harvard Islamic Finance Program) from holding an ‘Islamic Finance 101’ seminar in Washington in 2004 (and later in 2008). As Rethel (2011, 10) notes, many of the firms that were closed or held under suspicion in the first few years after 9/11 were “quietly exonerated”. Since 2002, the U.S. Treasury and the Federal Reserve have more proactively supported the development of IBF, and U.S. government officials have made trips to the Gulf States and Malaysia to push the attractiveness and welcoming landscape of the US banking regulatory framework. In 2004, President Bush appointed Mahmoud El-Gamal, a Professor of Economics at Rice University, to be the White House’s first Islamic financial advisor.

Yet the growth of IBF in the United States has not proceeded without obstacles during the 2000s. Adapting Islamic contracts to U.S. banking laws continued to vex regulators and IFIs alike. Our interviewees cited the general complexity of banking and financial regulations and difficulties with specific forms of contract (Source B, D). For example, in IBF there is no category equivalent to that of a ‘deposit’ and forms of Profit and Loss Sharing (PLS), akin to joint investments between banks and depositors, oblige an IFI and its customers to share both gains and losses. As William Rutledge (2005,1), Executive Vice President of the Federal Reserve Bank of New York pointed out, “offering a profit-and-loss sharing deposit is a particularly difficult proposition under a western framework, which takes the certainty of the deposit principle as a given”.

Added to this are restrictions on the range of permissible investments that commercial banks hold and the requirements of the Truth in Lending Act, which mandates advance disclosure of Annual Percentage Rate (APR) interest charges, which jar with IBF principles. For all these obstacles and the complexities of navigating multiple regulators, industry commentators and our interviewees alike argue that more knowledgeable Federal regulators, legal firms and other financial consultants are improving the landscape for IBF in the United States (Dar 2009; Shayesteh 2009, Source B, D).

In addition to these nationally-centered legislation and policies, IBF governance also entails legalities produced through international organizations and sub-national institutions. Concerning the former, our interviewees cited the significance of the not-for-profit Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) based in Manama. AAOIFI has assumed a leadership role in fostering international standard-setting and works to harmonize IBF standards for accounting, auditing, capital adequacy, corporate governance, and ethics for commercial and retail banking across the world. AAOIFI has a number of different membership categories, and at least one of our banks had joined AAOIFI as a full member in November 2008; others banks reported ‘that they were in frequent conversation’ or ‘had considerable engagement’ with AAOIFI.

Another pivotal international standard-setting institution is the Kuala Lumpur-based Islamic Financial Services Board (IFSB) which has become central to the governance of the *sukuk* (Islamic bond) market. Operating since 2003, the IFSB contains some 195 ‘observer member’ IFIs, and seeks to combine *Shari’a* principles with international and ‘conventional’ risk and capital adequacy guidelines. In this sense, it is the equivalent of the Basel Committee and relies on Basel II to provide standards for IFIs. However, it was less relevant to the retail IFIs we interviewed, but more important for investment-oriented IFIs or interest-based banks and financial institutions with ‘Islamic windows’. Only one of the IFIs we interviewed in



both the United States and the United Kingdom was registered as an IFSB ‘observer member’. In addition to AAOIFI and the IFSB, IFIs seek guidance and approval from the Bahrain-based Islamic International Rating Agency (IIRA), while investment and capital markets rely on the International Islamic Financial Market organization as well as the Liquidity Management Centre. These international organizations appear to be driven, Rethel (2011) argues, by the need to normalize or legitimate the practice of IFIs in the face of interest-based financial institutions and ratings agencies.

Concerning the sub-national dimension, the alliances formed in Minnesota by the ‘Midwestern Community Bank’<sup>7</sup> (headquartered in Chicago), exemplify how IFIs in the United States need to negotiate multiple territorialities in order to establish themselves and to expand (Source D). As another of our interviewees put it (Source B) “each state is like a foreign country” in terms of navigating diverse legal requirements involving the sale of real estate, customer protection, disclosure and mortgage fees. One banker from the ‘Mid-Atlantic Islamic Financial Company’ (Source B) commented on the extreme difficulty of establishing a presence in the state of Texas in order to sell Islamic home finance, given the complexity of Texan real estate law. Similarly, the ‘Islamic Mortgage Bank’ reported spending “millions of dollars” in legal fees, customizing its products for different U.S. states.

### *The United Kingdom*

The United Kingdom, and particularly London, is without a doubt the center of IBF in ‘the west’ and home to nearly half of the 50 IFIs in non-Muslim majority countries (IFSL 2010). Similarly, it has been ranked 8<sup>th</sup> in the world in terms of the total amount of *Shari’a*-compliant assets (\$18.1 billion) (HM Treasury and FSA 2008). Until 2010, the Financial Services Authority (FSA) remained the key regulator in the tri-partite structure of governance (FSA, Bank of England, and HM Treasury) overseeing all banks and financial institutions in

the UK since 1987. In order to establish an Islamic bank or financial institution under this system, bank authorities had to apply for approval under Part IV of the Financial Services and Markets Act 2000 (FSMA). Prior to the 2000s, the regulatory landscape for Islamic financial institutions remained difficult and institutions wishing to offer Islamic products in the United Kingdom faced four obstacles. Three of these concerned the ‘regulatory definition of products’, ‘the role of *Shari’a* scholars’ and ‘financial promotions’ (FSA 2007). These related, respectively, to IFIs needing to acquire the correct scope of permission for their activities, clarifying for the FSA whether their *Shari’a* scholars performed an advisory or executive role<sup>8</sup> and the need for all advertising to identify the risks as well as the benefits of Islamic products. The fourth obstacle (identical to the problem in the US) entailed the FSA’s requirement that customer deposits in Islamic banks were fully guaranteed.

In addition to unfavorable tax laws affecting Islamic products (FSA 2007) there were also obstacles affecting specific product markets. For instance, Islamic home finance used to attract double stamp duty<sup>9</sup> -- once on the sale of the house to the bank and then once on its subsequent re-selling to the purchaser -- until the law was changed in 2003. In response, HSBC’s *Amanah* division (an ‘Islamic window’) offered an *ijara* mortgage in 2002 in order to avoid double stamp duty.

The growth of IBF was boosted by the UK government’s proactive stance towards IBF. In 2006, for example, then Chancellor of the Exchequer Gordon Brown called for London to be the European capital of IBF and the City of London’s marketing and promotional organization (City UK) extolled the flexibility of UK regulation for this purpose (IFSL 2008). HM Treasury also set out key UK government objectives with respect to IBF (HM Treasury 2008,5),

“First, to establish and maintain London as Europe’s gateway to international Islamic finance. Second, to ensure that nobody in the UK is denied access to competitively priced financial products on account of their faith.”

In essence, promoting IBF played to discourses about the international competitiveness of the City and an inclusive model of financial citizenship that could embrace Islamic faith while also feeding *Shari’a*-compliant funding streams into housing and, through the Prince of Wales’ Trust, business loans for Muslim entrepreneurs.<sup>10</sup>

Key regulatory changes eliminated double stamp duty in the Finance Act (2003), adjusted the negative tax consequences of Islamic home finance and provided what the FSA (2007) called a ‘level playing field’ for IBF in the United Kingdom. Support for a ‘level playing field’, however, quickly prompted concerns about ‘special favors’ for IFIs. For example, HM Treasury were concerned about any unintended consequences of regulatory changes that unwittingly opened up new tax loopholes (Source G), indicative of the relational co-constitution of Islamic and interest-based financial markets. These changes facilitated the establishment in September 2004 of the first wholly Islamic bank operating outside a Muslim-majority country: the Islamic Bank of Britain (IBB). By 2005 other banks were “queuing up like planes on a runway” to seek FSA approval to offer Islamic products (Source G). Further reforms in the Finance Acts of 2005 and 2006, enabled *murabaha*, diminishing *musharaka* and *mudarabah* contracts (typically for home finance) by changing their tax treatment. The decision making for these changes involved consultation with joint industry/government working groups such as the Islamic Finance Experts Group and the Tax Technical Working Group, NGOs such as the Muslim Council of Britain and other government institutions such as HM Revenue and Customs. The Finance Acts of 2007 and 2008 modified the tax treatment of *sukuk* (Islamic bonds) to resemble other debt instruments (HM Treasury, 2008; HM Treasury and FSA 2008) and in April 2008, the FSA approved the

first *takaful* (Islamic insurance) provider in the United Kingdom and Europe for car and home ownership.

For all the willingness of UK regulators to adjust regulations to facilitate IBF, however, there are ongoing difficulties. For example, London's IBF markets are linked with those of Dubai and the *sukuk* defaults in Dubai and the Gulf States in 2009 raised questions about the intricate legalities of *sukuk* markets. Specifically, while *sukuk* documents are constructed through English law, it remained unclear whether Dubai courts were willing to honor English law (IFSL 2010, 4). As the HM Treasury and the FSA noted in 2008,

“Classifying Islamic financial instruments under existing regulatory frameworks has posed challenges. Although *sukuk* are designed to replicate the economic function of conventional financial products, their legal structures are different and it has therefore proved difficult to map these products into the existing legal framework” (HM Treasury/FSA 2008, 22).

As in the United States, IFIs in the United Kingdom reported frequent consultation with AAOIFI, Basel II, the IFSB, and IIRA, depending on the products they offer. London's involvement in the global *sukuk* market (to a much greater degree than New York) means that Islamic securities and investment firms involved in *sukuk* trading with especially the Gulf States and Malaysia may have more engagement with the IFSB than U.S. IFIs.

Our comparative research thus far makes three contributions. First, it suggests that the UK legal and regulatory lattice through which IBF is governed is more centralized than in the United States, that there are non-trivial differences in the territorialized legalities that shape IBF practices in both contexts. Second and relatedly, it demonstrates the enduring territorial or jurisdictional stickiness of the governance of financial activity, even as it is developed through supra- or trans-state and non-state networks. Third, it illustrates the relational co-constitution of Islamic and interest-based financial markets in that the emergence of some

heterogeneous practices of IBF has prompted regulatory shifts in the U.S. and UK financial regulation. To understand how this co-constitution works in practice, however, we explore the practices of *Shari'a* scholars who navigate this territorialized regulatory unevenness and, in so doing, produce the cosmopolitan legalities that govern IBF.

### **Governing IBF, the second cut: embodied cosmopolitan legalities**

Our bank sources in the United States and United Kingdom reported no fixed rules in terms of the size of their SSBs, but most operated with between 3-6 scholars at any one time. Scholars performed their duties through regular contact by email, conference calls and a series of face-to-face meetings; some banks reported 1-2 meetings a year, others had a minimum of four meetings in a year. There was considerable flexibility reported in dealings with *Shari'a* scholars, however, in recognition of their hectic schedules and the difficulties in scheduling face-to-face meetings.

*Shari'a* scholars working in IBF are a small and specialized group. As one of our sources observed,

They work very, very hard. They are very knowledgeable. They come from different backgrounds, some are economists, others are jurists...very scholarly people and they are not under the illusion that this system is perfect. But they have the enlightenment to know that something is better than nothing. There are 35-40 scholars worldwide who have the authority [Source A].

Our analysis of all UK financial institutions offering Islamic products in August 2008 found that 22 IFIs operated with the approval of 30 *Shari'a* scholars; for U.S. IFIs the figure was 34 and no less than 19 of those scholars were shared with the UK IFIs. The most widely employed scholars and their regional foci are seen in Table 3. Sheikh Nizam Yaquby (Figure

1) sits on over 40 SSBs, while UBS and HSBC *Amanah* are among the 41 institutions that seek advice from Mohammed Elgari in Saudi Arabia.

[insert Table 3, Figure 1]

IFIs in both the United States and United Kingdom stressed that it is essential to secure the services of the ‘right’ scholars for the demographics of their customers because, “understanding is very fragmented, so people will follow one scholar in Egypt and no one else” (Source B).

“It’s very important. For example, for customers from the sub-continent [Scholar X], everyone knows him, because he has got credibility. I have worked with him for 18 years and he will read every single word in the document and our boys in the bank would love him because they learned so much, they would ask him why are you objecting to this? If you had [Scholar Y] in Saudi Arabia, no questions; people trust him. Now the approach there to *Shari’a* scholars is quite different; people on the sub-continent would still approach [Scholar X] and ask him questions. Nobody would ask a question of [Scholar Y] in Saudi Arabia. Nobody. Because they have so much trust in him and if he says something, that is the final word (Source A).

Our findings support those of Maurer (2006) whose U.S. based research found that endorsement by a prominent scholar, and not the properties of the mortgage product, is the decisive factor influencing consumer acceptance of Islamic mortgages.

Thus, a recurring theme stressed in interviews was the significance attached to the role of *Shari’a* scholars in helping IFIs ‘educate’ consumers and, in essence, construct cosmopolitan consumer identities to support demand for IBF products. As one of our U.S. interviewees observed, “there is no consumer education at all, there is no knowledge base” (Source B). A UK source concurred, suggesting that consumer education was “the number one issue” (Source C). Another source observed,

“the take up in the UK was initially slow and education was, in the financial services area, was lower than in America, and especially in the Muslim population...so my team was always conducting seminars around the country and then we went to Muslim community centers, Muslim schools, mosques. We did this because we genuinely believed and we still believe that this is a sign of hope for the Muslim community; if they become home owners, business owners, they become stakeholders, without feeling any less in their own lives, without feeling that they have to let go of something that is so close to their heart, then they will feel proud of their country and they will have a sense of this is our country” (Source A).

One UK bank secured the services of two renowned *Shari'a* scholars to undertake a series of ‘road shows’ to raise awareness of IBF in different parts of the UK (Source A, D). At these events, attended by up to 400 people, the bank advertised their Islamic products and then had a question and answer session where attendees could question the scholars about the Islamic credentials of the products.

The scarcity of *Shari'a* scholars is a significant problem for industry insiders and regulators alike. For the UK’s FSA (2007), for example, the presence of scholars on multiple SSBs raises concerns over the rigor of their oversight. For banks, the heavy work load of existing scholars means longer lead in times for new products and spiraling fees which have risen seven-fold since 2002 (Anonymous 2007) although we found one U.S. IFI for whom a scholar performed his duties gratis. Renowned scholars can earn between \$50,000 - \$100,000 annually per SSB through retainer fees, fees for issuing edicts, audit fees and documentation fees (Pasha 2010). Relatedly, the sources and mechanisms which (re)produce *Shari'a* scholars are far from transparent or standardized (source F). This is a sensitive subject and few interviewees felt comfortable talking about it although two interviewees (Sources A, F)

described a model in which young and promising scholars would be mentored by an established scholar. As Abbas (2008a, n.p.) notes,

“ The chief of sharia structuring at one of the world's largest banks, who spoke on the condition of anonymity because of the sensitivity of the issue said it was better for students to learn through apprenticeships with scholars who could trace their learning to Islam's roots: ‘I don't care whether they have a Ph.D. or not,’ he said. ‘The way traditional Islamic teaching has been handed down is not through certificates or degrees. You need to trace your teaching back to the Prophet. It's a lineage of understanding.’

Scholars thus represent a unique subaltern yet elite group whose knowledge is not acquired or legitimated through the channels of institutionalization or professionalization identified in research on other elites, be they working in finance (Hall et al. 2009) or in economic development (Larner and Craig 2005).

#### *The intersections of territorialized and embodied legalities*

We have argued that *Shari'a* scholars occupy a crucial position in constructing and navigating the complex territorial legalities that shape the development of IBF in different contexts. Here we deepen our analysis of agency to explore the constitutive intersections of territorialized legalities and embodied agency that produce and operationalize the cosmopolitan legalities of IBF. To do this, it is important to appreciate some features of *Shari'a* law that frames scholars' endeavors. As (Siddiqi 2006, n.p.) has argued,

“Islamic economics was conceived in the early part of the twentieth century as an antidote to socialism and capitalism — an Islamic response to what were perceived as God-less western ideologies. The emphasis was on justice. Freedom from colonial rule and all that it meant in terms of exploitation and oppression was to be



accompanied by a return to Islam that stood for elimination of poverty and reduction in inequalities in the distribution of income and wealth. The appeal in all this was to the objectives of Islam, the *maqasid al-Shari'a*. There were few references to *fiqh*, to *Shari'a* in the sense of laws and regulations as codified in early Islamic history”.

As such, *Shari'a* law is an example of what May (2007,184) terms a “thick conception” of law in that it seeks “to establish a more normatively rich content for the concept”. He contrasts “thick” conceptions of law with “thin” conceptions that see the rule of law as “merely the imposition of a set of procedures that are legal in form”, as a largely procedural technique of regulation. In other words, *Shari'a* scholars work with a legal framework that sets out broad principles -- the avoidance of *riba*, *gharar* and *maysir* and the pursuit of social justice -- and not codified procedures that specify how such ends must be achieved. This framework leaves its mark on the governance of IBF in (at least) four ways.

First, above and beyond the difficulties of complying with ‘local’ regulations of, say the OCC or the FSA, it is often not clear to bankers, regulators, customers or indeed *Shari'a* scholars whether a particular financial practice is ‘Islamic’. In such circumstances authority rests exclusively with scholars with a deep knowledge of *Shari'a* law who are *mujtahid* or qualified to practice *Ijtihad* (effort) to arrive at a consensus and issue a *fatwa* which then becomes part of Islamic jurisprudence. And whilst scholars may agree on basic principles, Sunni and Shi'ite Muslims have different schools of *fiqh* (Islamic jurisprudence), such as the four schools of *fiqh* within Sunni Islam (see e.g. Foster, 2010). Nonetheless, for all the legal diversity practiced by *Shari'a* scholars, the ‘Islamicness’ of IBF products is deemed crucial. As one of our interviewees put it, “the biggest stumbling block was whether this product is authentic or not, so what we did was, we got *Shari'a* scholars” (Source A).

Second, it is in adjudicating on the ‘Islamicness’ of different products that *Shari'a* scholars produce what we have characterized as cosmopolitan legalities as they navigate the

shifting intersections of *Shari'a* and other bodies of law. Scholars work with IFIs subject to different legal, regulatory and cultural codes and juggle the (usually conflicting practical and religious) requirements, on the one hand, to harmonize IBF products with local codes in order to make them 'work' in particular contexts, while also, on the other hand, maintaining and (re-)asserting the 'difference' of Islamic vis-à-vis interest-based finance. In this respect, the similarities between Islamic and English common law (El Gamal 2006) have eased the development of IBF in the United Kingdom (Sources A, G, H) not least because some parts of English common law have roots in financial transactions of Islamic origin (Cattan 1955). English law is viewed as 'flexible' because it, "looks at the principles and finds ways to make things happen" (Source H). Thus by way of 'making things happen', *Shari'a* scholars working for Global Bank<sup>11</sup> sanctioned the introduction of different forms of Islamic mortgage in their U.S. and UK branches because of the differences in regulation in the two countries. One source (A) said of regulation,

"it's like your electrical plug. You go to different countries and they are all different. With all our globalization, we haven't managed to create one global standard for electrical plugs, because everybody believes their plug is superior."

Third, these legalities are situated yet dynamic because as scholars interpret rules of *fiqh* in different contexts they are expected to pay attention to the broader objectives of *Shari'a* (Siddiqi, 2006). Scholars rely on *qiyas* (reasoning by analogy) to use the rulings of one event and apply them to another. They can also use three adaptive mechanisms -- departures from tradition -- because of local custom (*'urf*), public interest (*maslaha*) or necessity (*darura*) (Al-Omar and Abdel-Haq 1996). Thus, to cite a famous example, in October 1999 Sheikh Abdullah al-Qaradawi invoked *darura* (necessity) when he issued a fatwa that permitted Muslims to buy a home with an interest-based mortgage if the house was for their use, was their only house and they had no other assets that would allow them to

purchase the house without a mortgage (Maurer 2006). The introduction of this anomaly -- the permissibility of interest-based mortgage products -- acknowledged the economic and legal geographies of the late 1990s when Muslims in the west wanting to purchase houses had few, if any, *Shari'a*-compliant mortgages available to them.

Fourth, and related, scholars are expected to monitor the consequences of their rulings and, if necessary, adapt them with hindsight. Thus, in November 2007, Sheikh Muhammad Taqi Usmani, head of AAOIFI's 18 member SSB, ruled that roughly 85 percent of Islamic *sukuk* (bonds) in circulation globally violated Islamic principles of risk- and profit-sharing because their structures too closely mirrored those of conventional bonds (Bassens, Derudder and Witlox 2011; Anwar 2008; Maurer 2010). AAOIFI rules are only binding in Bahrain, Dubai, Jordan, Lebanon, Qatar, Sudan and Syria, but the ruling was rapidly transmitted around the globe through *Shari'a* scholars sitting on multiple SSBs. The Usmani ruling sent shock waves through global IBF markets and led to a contraction in new issues from over \$40bn in 2007 to less than \$10bn in 2009 (Fidler 2009). In London, uncertainty over their *Shari'a* compliance and the credit crunch slowed activity in *sukuk* markets (Walmsley 2010). Besides its economic impact, Usmani's ruling was viewed as a further demonstration of the implacable authority of *Shari'a* scholars and their willingness to throw sand in the wheels of IBF's expansion if they feel Islamic principles are being compromised. As Oliver Agha (in McLeod-Roberts 2009,1) argues, Usmani's ruling on *sukuk* testifies to the ongoing "struggle for the soul of Islamic finance" as some scholars resist pressure to adapt IBF to the point where it is "indistinguishable from conventional finance".

## **Conclusions**

This article has explored the governance of IBF in two non-Muslim majority sites of its expansion in order to contribute to the literature on IBF, particularly its governance, and to

advance wider debates on the constitution of economic geographies. Our comparative analysis demonstrates some of the ways in which an alternative form of economic and religious rationality is being constructed and practised across diverse spatial contexts (in our case territories). Throughout, we have shunned separations of the social and economic as posited by the concept of embeddedness. Instead, we have deployed the concept of cosmopolitan legalities as a bridging device to capture the dynamic intersections of territory, financial practices, and embodied religious authorities in the form of *Shari'a* scholars. More than demonstrating the significance of socio-spatial contexts or territory however, we have stressed the co-constitution of Islamic and interest-based financial practices as IBF has prompted regulatory shifts in both the United States and United Kingdom.

More broadly, our arguments have a number of implications for economic geography. First, IBF further testifies to the need to internationalize economic geography in a way that extends beyond calls for bridging economic geography and development geography (Murphy 2008; Pollard et al 2009; Pollard, McEwan and Hughes 2011; Vira and James 2011) or the critique of simply western-only, modernization-oriented narratives. Rather, IBF suggests that economic geographers can learn from research on the relationship between civil society and economic development in South East Asia, Latin America and Africa, which has accorded religious faith a much more prominent role in economic development than is the case in usually secular economic geographic studies (for an exception among geographers, see James, 2005). After all, while interest-based banking and finance certainly have their 'iconic individuals' (Hall et al. 2009), *Shari'a* scholars are a cadre of experts with a distinct authority derived from their religious status. Similarly, economic geographers can and should learn from the anthropological and economic sociological literatures that explore the mutual constitution of economic and religious practices, and which can be traced all the way back to at least the work of Max Weber.

Second and relatedly, our paper offers an intervention into the so-called process of ‘post-secularization’ in ‘western societies’ (see Kong 2010). While interest-based finance has Judeo-Christian underpinnings (Maurer 2005, 2006; Pollard and Samers 2007), the development and governance of IBF may serve as additional fodder for debates around the issue of post-secularization. In other words, unlike conventional banking, IBF relies on an explicitly religious framework as a source of governance, which in principle may signal a new more socially responsible approach to finance or at least one that is legitimated differently.

Third our analysis questions whether economic geographers have thus far engaged adequately with legalities as expressions of territory, or what Blomley (2004) calls the ‘enmeshment of law and space’, or indeed through nascent literatures on lawyers and the production of space (Martin, Scherr and City 2010). We would argue that the concept of legalities is a useful device that allows us to hold in tension territoriality and agency and further work should explore the historical-geographical construction of different legalities that shape economic activity, not least because legalities have a particularly territorial quality to them. In this regard, *Shari’a* scholars are not somehow pre- or non-territorial. Their own agency is produced through their postcolonial context which they then bring to the legal systems of the United States and the United Kingdom. Thus, we have established that these legalities are ensconced in territory, yet subject to diverse and cosmopolitan influences as well. In a world where *sukuk* traded in London and New York rest on English common law, but are subject to the decisions of a *Shari’a* scholar based in Pakistan, it may be the very moment to reflect critically on how territory, embodiment, and cosmopolitan legalities intersect to shape different sorts of economic activity. Perhaps of deeper concern, is how legalities associated with particular territories and embodied practices function to enable or dissuade so-called ‘alternative financial practices’ such as IBF. Territory and embodiment

may be pivotal to understanding why putatively more ethical alternatives thrive or do not thrive in particular spaces.

Fourth and related, just as geographers exploring neoliberal globalization have moved away from generic claims about market expansion to produce richer, empirically grounded accounts of “actually existing neoliberalism” (Brenner and Theodore 2002; England and Ward, 2007; Leitner, Peck and Sheppard, 2007; Sheppard and Leitner, 2010), so too is there a need to document and not just assert the uneven and precarious realities of financial globalization. As Peck (2005, 161) argues,

“If the ideological project of neoliberal globalism rests on a (powerful yet misleading) vision of a flat-earth economy, comprised of free-trading, flexible agents, then a critical economic-geographic counterproject would seek strategically to survey the uneven landscape, to expose the cracks and fissures—what Block (2000) called “welds”—in this supposedly unitary system”.

The development of IBF may as yet represent only a small series of fissures but understanding its socio-spatial formation is not simply a means of ‘provincializing’ western financial practices (Pollard and Samers 2007) or just part of the ‘imagineering’ (Lai 2006) that constructs emerging and/or ‘different’ financial markets as economically significant. Rather, we have tried to show how territorialized cosmopolitan legalities are integral to the development of IBF in the particular contexts of the United States and the United Kingdom, while at the same time producing regulatory changes that affect interest-based financial practices. The progressive possibilities of IBF rest not simply on how it adapts to different contexts (although that is certainly a large part of this interaction), but also on how its ‘moral economy’ is communicated through and retains its difference through its encounters with the institutional and knowledge architectures of non-Islamic states and interest-based banking systems. If nothing else, the rise of IBF since the 1990s in the west may contribute to a more

polycentric and cosmopolitan global financial architecture in the twenty first century. More than this, however, it raises critical questions about if, where, and when IBF can provide any kind of a more ‘socially just’ alternative to neoliberal financialization as opposed to merely translating it into Islamic norms and practices. This speaks to the question of a more critical cosmopolitanism with which de Sousa Santos and Rodriguez-Garavito as well as David Harvey (2009) are concerned. In other words, what sorts of ‘cosmopolitan practices’ might be more welcome than others? Whether or not IBF is to be embraced is a matter of considerable debate, both among Muslims and non-Muslims alike, and is perhaps a conversation that requires a different paper. However, in the aftermath of the US-UK sub-prime crisis which has crippled public sector finances in both countries and led to widespread job losses, wage freezes and declining living standards for many, locating examples of ‘actually existing’ (financial) cosmopolitanism might lead us one step further down the road to creating different economic and financial possibilities.

## Notes

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<sup>1</sup> We recognize that the concepts of ‘neo-liberalism’ and ‘neoliberal financialization’ are the subject of extended debate (see for example, Sheppard and Leitner 2010). We therefore use this term reservedly, acknowledging the caveats expressed in the literature.

<sup>2</sup> Jones’ arguments find companionship in some earlier work in economic sociology, economic geography, and in governmentality studies, whether it is the more general focus on de-centred non-state actors or the ‘transnational capitalist class’ (e.g. Sklair 2001, Miller and Rose 2008, Dean 1999).

<sup>3</sup> SSBs are pre-requisites for admission into the International Association of Islamic Banks (IAIB).

<sup>4</sup> For example, the ‘33 percent rule’ stipulates that debt to equity ratios of companies in which investments are held should not exceed 33 percent.

<sup>5</sup> BA Small Grant number SG 45073.

<sup>6</sup> The data reported refers only to institutions operating in the U.S. and UK offering Islamic financial products that have either individual *Shari’ah* scholars or SSBs that vet their products and procedures.

<sup>7</sup> ‘Midwestern Community Bank’ is a pseudonym; we use pseudonyms from this point onwards to refer to the banks in which our interviewees worked.

<sup>8</sup> Any person acting as a Director in an FSA authorized firm is required to be registered under the FSA’s Approved Person Rules (which assess their competency and identify any conflicts of interest).

<sup>9</sup> Stamp Duty Land Tax is a transactions tax that applies to transfers of UK land and buildings.

<sup>10</sup> See his speech on May 19, 2004 at the Islamic Financial Services Industry and Global Regulatory Environment Summit in London.

[http://www.princeofwales.gov.uk/speechesandarticles/a\\_speech\\_by\\_hrh\\_the\\_prince\\_of\\_wales\\_at\\_the\\_islamic\\_financial\\_85.html](http://www.princeofwales.gov.uk/speechesandarticles/a_speech_by_hrh_the_prince_of_wales_at_the_islamic_financial_85.html)

<sup>11</sup> This is a pseudonym.



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**Table 1 Islamic Financial Institutions in western countries and offshore centers (2010)**

<b>Country</b>	<b>Number of Institutions</b>
UK	22
USA	15
Australia	4
France	3
South Africa	3
Switzerland	3
Canada	1
Cayman Islands	1
Germany	1
Ireland	1
Luxembourg	1
Russia	1

Source: Adapted from IFLS 2010 and authors' research.

**Table 2 Major forms of Islamic financial contract**

<b>Product</b>	<b>Type</b>	<b>Description</b>
<b>Ijara</b>	Leasing	A contract under which a bank leases assets for a specified rent and term. This can take the form of a lease purchase contract in which each payment includes a portion of the agreed asset price.
<b>Mudarabah</b>	Profit and loss sharing	A trustee type contract in which a financial institution provides finance for a client who provides all the labor for setting up the business. The financial institution is guaranteed a share of the profits but assumes responsibility for all losses. In many cases a manager (mudarib) is appointed to manage the business.
<b>Murabaha</b>	Debt	A cost-plus purchase and resale transaction in which a bank buys/takes title to a desired commodity from a

		third party and resells it at a predetermined higher price to the client.
<b>Musharakah</b>	Profit and loss sharing	An equity partnership in which each partner contributes capital to a project and shares profit/loss in pre-agreed proportions.
<b>Qard hasan</b>	Debt	A loan which is returned at the end of the agreed period without any interest or share in the profit or loss of the business.
<b>Sukuk</b>	Bond	An asset-backed security that gives investors a share of an asset and exposure to its cashflow and risk.
<b>Takaful</b>	Insurance	A pool of donations in a fund that is used to indemnify each of the participants against certain losses.

**Table 3 Most prominent *Shari'a* Scholars, by SSB membership and region, August 2008**

<b>SSB Memberships</b>	Europe	Middle East	Asia- Pacific	North America	Africa	Total
Sheikh Nizam Yaquby	16	21	5	7	0	49
Dr Mohammed Ali Elgari	7	21	4	9	0	41
Dr. Muhammad Imran Ashraf Usmani	8	12	3	8	0	31
Shaikh Dr. Abdul Ghuddah	8	15	1	7	0	31
Dr. Mohd Daud Bakar	4	9	9	3	1	26

**Source:** Authors' research

**Figure 1: Profile of Sheikh Nizam Yaquby**



Sheikh Nizam Yaquby is a graduate in Economics and Comparative Religion from McGill University (Canada) and has a PhD in Islamic Law from the University of Wales. In addition to his native Arabic, he speaks Farsi, English and Urdu. He works from an office in the back of an electronics shop in Manama, Bahrain.

Yaquby sits on numerous Shariah Boards, including those of the Dow Jones Islamic Index, HSBC Amanah, Citi-Islamic, Abu-Dhabi Islamic bank and the Manama-based Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the most respected body setting international standards in Islamic finance.

In February, 2007 he won the Euromoney Award for “Outstanding Contribution to Islamic Finance”.

Sheikh Yaquby is frequently called upon to consult with governmental and regulatory authorities on issues related to Islamic finance, and he is a regular speaker at seminars and conferences worldwide.

Bloomberg described Sheikh Nizam Yaquby as “the gatekeeper to the \$1trillion market for managing Muslim wealth”, while the Wall Street Journal describes him as “one of Islamic finance’s foremost scholars”.

**Sources:** Author research, Abbas (2008a, b), Shariah Capital Inc. (2010).